

Insurance Regulation Committee



THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' FOCUS ON CYBERSECURITY

By: Daniel A. Cotter

In November 2014, the National Association of Insurance Commissioners (“NAIC”) established the Cybersecurity Task Force (the “Task Force”) to help “coordinate insurance issues related to cybersecurity.” One of the main tasks of the Task Force is to “monitor developments in the area of cybersecurity.” The Task Force has been extremely active in its first eleven months of existence. In April 2015, it issued its [“Principles for Effective Cybersecurity: Insurance Regulatory Guidance”](#) (“NAIC Principles”) and on October 14, 2015, it issued its “Cybersecurity Bill of Rights” (“NAIC Bill of Rights”). This insurance regulatory update addresses these two issuances by the Task Force.

The NAIC Principles

The NAIC Principles are based on the Security Industry and Financial Markets Association’s [“Principles for Effective Cybersecurity Regulatory Guidance.”](#) The NAIC Principles were issued by the Task Force to “establish insurance regulatory guidance” that recognizes the complementary nature of the industry and regulators while protecting consumers. When the

NAIC Principles were published after adoption in April 2015, NAIC President and Montana Commissioner of Securities and Insurance Monica J. Lindeen stated:

“These principles will serve as the foundation for protection of sensitive

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Letter from the Chair

Welcome to the IRC's Newsletter. We're glad to have the support of over 350 TIPS members who have chosen to join the Insurance Regulation Committee. But we know that there are very few lawyers who are interested in tort and insurance practice who would not also benefit from a better understanding of the regulatory framework pursuant to which insurance companies invent, underwrite, market, and perform (or not) their policies. Remember to recommend IRC, and TIPS, to your friends and colleagues. TIPS (and our committee) are actively recruiting new members. Please let us know if we can help you involve new members in either TIPS or our committee!

Last year was a banner one for the Insurance Regulation Committee, thanks in large part to the diligence and enthusiasm of our last Chair, Hilary Rowen. Her work was recognized last August, when TIPS awarded our committee its "Exceptional Achievement" award, and maybe even more prominently when work she presented at CLE programs on the insurance impacts of ride-sharing businesses was not only well-received there, but was selected as the cover article in the summer issue of TIPS Brief.

Also, thanks to her hard work, and that of her predecessors, IRC has built a deep network of relationships with numerous TIPS committees that gives our members many opportunities to learn how insurance regulations play out in practical effect, and also gives us many openings to educate our colleagues about insurance regulation by participating in their marquee educational events. Frankly, we have opportunities for far more programs than the "usual suspects" can cover! If you are interested in becoming involved in the development of future CLE programs with our co-sponsors, or in speaking at one of those programs, please let your fellow committee members know of your interest and capabilities.

In November we co-sponsored, together with the Federation of Regulatory Counsel and the International Association of Insurance Receivers, a "Hot Topics" program at the National Association of Insurance Commissioners meeting in Washington, D.C. that was well attended. 2016 promises to be a busy time for us. In January, we will join with the life and health community to co-sponsor the 42nd Annual Mid-Winter Symposium on Insurance and Employee Benefits in Clearwater, Florida. Members of our committee will present an interactive ethics program on the ethical pitfalls of the investigation and defense of potentially fraudulent claims, with the assistance of Lee Atwater, Florida's Chief Financial Officer (Florida-speak for "Insurance Commissioner among other things") and Major Simon Blank, the head of its Division of Insurance Fraud.

In February, we will reprise that program, with a bit of a pivot, for the Insolvency Workshop offered by the International Association of Insurance Receivers on Amelia Island. Because IAIR and TIPS have a co-operation agreement in effect, TIPS members receive discounted registration rates at this program.

Then in March, we'll contribute to the Joint ABA Labor and Employment Law/TIPS Workers Compensation Committee Midwinter Seminar in New Orleans, where we will present a panel on how lawyers and judges should deal with the insolvency of a workers' compensation insurer.

Looking further ahead, we may be able to participate in the Insurance Coverage Litigation Committee's annual program, as well as to contribute to next spring's TIPS Section Conference. Your help is needed to get those ideas off the ground!

Thank you for your support of IRC, and please keep it coming. ☺

Mary Cannon Veed, Chair

Mary Cannon Veed & Associates

**ABA TIPS Midyear Meeting
February 3-7, 2016
Manchester Grand Hyatt
San Diego, CA**



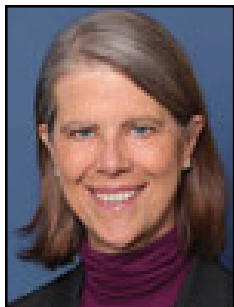
The American Bar Association Tort Trial & Insurance Practice Section will continue the successful 2015-2016 bar year with the ABA TIPS Midyear held February 3-7, 2016 at the Manchester Grand Hyatt in beautiful San Diego, CA. The meeting will feature several must-attend events:

- Enjoy our Complimentary CLE Program: *Hot Topics for Corporate Counsel and Litigation Managers - What's in Your Litigation Toolbox?*
- Meet with colleagues and expand your network at Local Member and Welcome Receptions
- Honor greatness within the industry: The Pursuit of Justice Award presentation
- Important committee and task force business meetings
- Enjoy the sunshine state and relaxing surroundings of San Diego



Register Today!





SELF-DRIVING CARS: IMPACT ON ACCIDENT RATES, INSURANCE COSTS AND RATE STRUCTURE

By: Hilary Rowen, *Sedgwick LLP*

Traditional automobile manufacturers and technology companies are developing cars with a range of automated functions.

Over the next few years, sensors and software will substitute for the human driver in an increasing wide range of driving conditions. Self-driving cars may significantly reduce auto accidents and injuries. At the same time, autonomous and semi-autonomous vehicles do not fit neatly into the current motor vehicle and insurance regulatory regimes.

Classification of Self-Driving Cars

Two systems for classifying the level of autonomous driving functions are in current use. In 2013, the National Highway Transportation and Safety Administration (NHTSA) issued a four-level classification system;¹ in the same year, SAE International, a professional organization of automotive and aerospace engineers, issued a five-level system.²

The NHTSA and SAE classification systems are quite similar. Level 1 in both the NHTSA and SAE classifications refers to stand-alone driver assistance features, such as automatic braking. (Both the NHTSA and SAE systems also include a Level Zero, where there is no automation.) Level 2 in both systems refers to partial automation. The vehicle performs significant vehicle control functions, such as distance maintenance and lane maintenance. Level 2 cars can be operated in “hands free” and “foot free” mode, at least in some driving environments, but require that the driver remain alert and actively monitor the driving environment. A wide range of cars that qualify as Level 2 will be on the market in the next couple of years.

Under both the NHTSA and SAE classifications, in Level 3 cars, the “driver” can delegate all driving functions to the vehicle. Level 3 cars retain steering

wheels and brake pedals, and will signal the driver when driving conditions require the driver to retake control. An alert would sound because of a change in driving conditions—such as heavy rain—that reduced the quality of the sensor data below the level required for autonomous operation or because the vehicle entered a geographic area where autonomous operation was not authorized.

A number of manufacturers and technology company—most notably Google—are testing prototypes of Level 3 cars. There are various estimates regarding when Level 3 cars will be on the market. It is likely that a number of auto manufacturers will offer Level 3 cars within 10 to 15 years.

NHTSA has a single classification, Level 4, for vehicles that dispense with operator controls for steering and braking. The SAE classification system bifurcates this category into two subsets: SAE Level 4 vehicles cannot operate in all conditions and all geographic locations. Prototype Level 4 cars are currently being tested. Some Level 4 autonomous vehicles will probably

be deployed on a limited basis within the

next five years. Such deployment will likely involve low maximum speeds (in the range of 25 to 35 miles an hour) and very limited geographic travel zones. Initial deployment of Level 4 vehicles

will probably occur in towns with a high

concentration of technology companies and in urban city centers. Due to these limitations, the initial deployment of Level 4 cars is likely to be as people-mover fleet vehicles, rather than as private passenger cars.

SAE Level 5 can operate anywhere, any time; including driving situations that would be challenging to a human driver. SAE Level 5 vehicles are still in the speculative vision stage. The sheer versatility of a human driver is hard to match, even though even the current sensor and software technology can easily exceed human reaction times.

Autonomous and semi-autonomous vehicles do not fit neatly into the current motor vehicle and insurance regulatory regimes.

¹ See U.S. Department of Transportation, National Highway Traffic Safety Administration, Preliminary Statement of Policy Concerning Automated Vehicles, 4-5 (May 30, 2013), <http://www.nhtsa.gov/About+NHTSA/Press+Releases/U.S.+Department+of+Transportation+Releases+Policy+on+Automated+Vehicle+Development>.

² See SAE International, Automated Driving: Levels of Driving Automation Are Defined in New SAE International Standard J3016, http://www.sae.org/misc/pdfs/automated_driving.pdf

The Impact of Self Driving Cars on Accident Costs

A solid body of accident data generated by Level 2 and higher automated car technology does not yet exist. Estimates of emerging auto technologies on accident rates typically are extrapolations from crash analysis data for conventional cars. The crash data indicates that various types of driver error are the dominant cause of accidents.³ Where a new technology is designed to address a specific type of driver error – for example, blind spot warning systems – the assumption is that the incidence of accidents caused by a driver’s failure to see an approaching vehicle in a blind spot will go down. An additional assumption is that as increasingly sophisticated combinations of sensor and software algorithms address a wider range of driver errors, the accident rate will drop sharply.

This may well be a sound prediction. But it ignores the more nuanced issues posed by the lengthy period of time in which traditional cars and vehicles with various levels of automation will share the roads. The average age of the fleet of cars on the road in the U.S. is 11 years and slowly increasing. A recent report by the Boston Consulting Group, prepared for the Motor & Equipment Manufacturers Association, notes that because the current generation of advanced driver assistance features generally are optional features, their penetration of the market is only growing at two to five percent annually.⁴ This slow rate may accelerate as additional driver assistance features become mandatory equipment and if car buyers become enamored with the new technology. Nevertheless, the driving environment over the next two decades will reflect a mix of conventional cars and cars with various levels of automation.

The likely result is that insurance costs will trend downwards. The prediction is that over time self-driving cars will generate lower claim frequency and, likely, lower bodily injury severity than conventional cars. In contrast, average property damage severity will likely be higher, due to expensive sensor arrays. In addition, a shortage of repair shops with the expertise needed to repair self-driving cars may create upward pressure on property damage claims. As a result, self-driving cars can be expected to have significantly lower bodily injury premiums and may (or may not) have lower property damage liability and collision premiums. Overall, premiums for self-driving

cars will be lower—and could be significantly lower—than premiums for conventional cars.

The Rise of Novel Subrogation Issues

Self-driving cars will generate an increase in subrogation claims between auto insurance and product liability carriers (or self-insured auto manufacturers) involving disputes regarding whether accidents were caused by human error or technology failures.

Consider the following scenario: A Level 2 or Level 3 car is involved in a two car accident and is alleged to be at fault because it ran a light that was turning red. There is a fact dispute whether there was a sensor or software technology failure or whether the driver took over control from the automated functions in order to run the light. Both of the parties in the accident may want to assert that the cause was a technology failure. The driver of the semi-autonomous car may want to avoid an “at fault” finding that may generate a higher insurance premium. The other driver (and any injured passengers or pedestrians) may want to contend that the accident was caused by a technology failure. Any claim against the at-fault car would be capped, as a practical matter, by the auto policy limits. In contrast, a product liability claim against the manufacturer of the Level 2 or Level 3 car could seek compensation under much higher product liability limits.

Autonomous vehicles will generate other novel claim and coverage disputes. Consider a second scenario: The driver of a Level 2 or Level 3 car is texting. The car signals that the driver needs to retake control due to adverse weather or a sudden change in road conditions. The driver is disoriented and slow to respond; a one car accident occurs. The driver brings a product liability claim, asserting that the car did not provide adequate notice of the need to retake control. The outcome of this claim may well depend on whether the car is classified as a Level 2 or a Level 3 vehicle. Drivers are likely to treat cars at the higher end of Level 2, which will allow hand-free and foot-free operation for extended periods, as being capable of fully autonomous operation, even though the driver is supposed to remain constantly attentive. For a Level 2 car, the odds are that the product liability claim will fail, as the driver was supposed to remain attentive at all times. In contrast, if the accident

³ See National Highway Transportation Safety Administration, “Critical Reasons for Crashes Investigated in the National Motor Vehicle Crash Causation Survey,” February 2015, <http://www-nrd.nhtsa.dot.gov/pubs/812115.pdf>

⁴ See Boston Consulting Group, “A Roadmap to Safer Driving Through Advanced Driver Assistance Systems, September 2015, <https://www.bcgperspectives.com/content/articles/automotive-roadmap-to-safer-driving-through-advanced-driver-assistance-systems/>

involved a Level 3 vehicle, where the driver would be allowed to engage in other activities while behind the wheel, the product liability claim is more likely to be viable. The outcome may turn whether the driver of the Level 3 car had reason to anticipate that driver control would be required (for example, entering snowy conditions or very heavy rain that can limit sensor range) and the length of time between the alert and the termination of autonomous control.

Although self-driving cars will generate novel accident causation theories and coverage disputes, the basic tort issues will not change. The questions will still be: What happened? Who was at fault? And in most states, how much did each party's negligence (or the negligence of the auto manufacturer) contribute to the causation of the accident?

Self-driving cars will provide claims handlers with data to address some of the novel accident causation issues those vehicles will pose. Black boxes — more formally known as event data recorders (“EDRs”) — are common in recent model-year cars. EDRs typically are programmed to record data in a continuous loop, writing over information again and again until a vehicle is in a collision in which the airbags deploy. States that have enacted statutes regulating the testing and eventual deployment of self-driving cars typically require the retention of longer time spans of data immediately prior to an accident. As driving becomes increasingly automated, “black box” data will become more crucial to the resolution of auto claims.

Automated Cars and Traffic Laws

Absent law changes, autonomous vehicles and automated driving systems will need to comply with the Vehicle Code. The most obvious example is speed limits. Especially on freeways, the flow of traffic typically is faster than the posted speed limit. Traditional cruise control features allow the operator to set a speed in excess of the speed limit. More fully automated adaptive cruise control systems may be required to comply with the law. Whether states will enact statutes that permit “flow of traffic” programming for highway driving — for example, to allow automated systems to go no more than five miles per hour over the posted limit if other vehicles on the road are traveling at that speed — is a key question. The answer may affect the situations in which drivers will leave cars in automatic mode or will opt to drive without the benefit of the automated systems.

A more subtle example involves tailgating. Automated cars can safely follow other vehicles more

closely than human operated cars. Indeed, one of the cited benefits of automated cars and trucks is the ability to squeeze more capacity out of existing roads by increase the vehicle density. Some state vehicles codes may already potentially accommodate autonomous vehicles. For example, [California Vehicle Code section 21703](#) states: “The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon, and the condition of, the roadway.” A “reasonable and prudent” distance for an autonomous vehicle would likely be closer than for a human driver, but could some drivers nervous. It remains to be seen how traffic law enforcers will address driving environments with a mix of conventional cars and vehicles with a wide range of automated features.

Automated Cars and Auto Rating Plans

Rating automated vehicles will pose a range of challenges for insurers. Insurers base auto insurance rates on rating factors relating to characteristics of the driver (for example, driving record and years of driving experience), characteristics of the car (both as predictors of the likelihood of an accident and of the cost of repair) and the usage of the car (for example, whether the car is driven in an urban or rural area and the annual mileage). The relevance of the currently common auto insurance rating factors to predicting expected auto insurance claim costs will be quite different for conventional and semi-autonomous cars.

Traditionally, vehicle characteristics are assumed to be immutable once a vehicle leaves the assembly line. In the future, software updates will have the potential to change the risk of accidents after a vehicle is in use. A given software update may not remain in effect long enough to generate meaningful accident data.

The relevance of driver characteristics is also likely to change as cars become increasingly autonomous. A driver with a poor driving record who utilizes the autonomous driving features on a given Level 2 or Level 3 car may have a lower risk of accidents than a driver with a good record who frequently overrides the autonomous driving features on the same make and model car. In states, such as California, that have statutes or regulations mandating that driving record be given significant weight in the determination of auto premiums, semi-autonomous cars will create a mismatch between actual risk of loss and the mandated rating factors.

The use of annual mileage as an auto insurance rating factor is also likely to be transformed by autonomous vehicles. The number of miles driven per year may


become a poor predictor, while the “quality” of miles driven becomes a more significant predictor of auto insurance claim costs. A Level 3 car that is driven 15,000 miles a year, all but 1,000 miles in fully autonomous mode, statistically will likely have a lower accident risk than a Level 3 car driven 7,000 miles a year, with only 3,500 miles in autonomous mode and frequent changes from autonomous to driver-controlled mode.

A number of states currently permit auto rating based on “telematics” in which the rate is based on the qualitative factors—such as the incidence of speeding and sudden braking—in addition to traditional aggregate mileage. Some states prohibit telematic rating. In rating Level 2 and Level 3 cars, the degree of risk will likely vary significantly between miles based on whether the autonomous functions or the driver is in control and whether there is a “hand-off” from the autonomous functions to the driver. Utilization of data regarding the mode in which a Level 2 or Level 3 vehicle is operating may fall within state regulation of telematics and could be prohibited under the current rules in some state. The result would likely be a loss in the accuracy of pricing for innovative vehicles.

When a Level 2 or Level 3 car is driving itself, the driver’s years of driving experience is irrelevant to the risk

of accidents. However, it is probable that inexperienced drivers will be less capable of responding quickly and correctly if they suddenly have to take control of a vehicle that ceases operating in autonomous mode.

The advent of self-driving cars will not immediately erode the predictive value of a driver’s years of experience for auto insurance rating. However, as time goes on, Level 2, Level 3 and Level 4 cars will dominate the fleet, with only a handful of “antique” conventional cars on the road. By 2030, drivers who have been licensed for a decade may have had less time actually in control of a car than many 20-year-old drivers have today.

The brave new world of self-driving cars will pose some novel issues for insurance lawyers. The more mundane aspects of practicing law will also change in the not too distant future. Imagine being able to read expert statements or deposition transcripts while en route to the courthouse — or being able to review a draft contract en route to a client meeting — while your car drives itself. 

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THE ABILITY OF INSURERS TO USE PRICE OPTIMIZATION GIVEN RECENT STATE ACTIONS

By: [Daniel A. Cotter](#)

Price optimization is a method of using the data collected by personal lines insurers to apply predictive analytics to determine consumers' rate sensitivities and adjust the premium accordingly. The industry and regulators disagree on what price optimization is, how it is to be defined, and whether it is an acceptable rating methodology. In the last year, the National Association of Insurance Commissioners ("NAIC") and some states have taken actions to address the question. This regulatory update provides an overview of the activity that has taken place in recent months.

Background and Activity

Earlier this year, the NAIC instructed the Casualty Actuarial and Statistical Task Force to investigate the topic of price optimization and prepare a white paper for dissemination and discussion. However, several jurisdictions had already taken action before the NAIC commissioned the white paper. To date, California, Florida, Indiana, Maryland, Ohio, Vermont and Washington, D.C. have issued directives to personal lines insurers to cease and desist from utilizing price optimization because the practice constitutes "unfair discrimination" and violates state insurance laws. At least one state, Washington, has issued a warning regarding use of price optimization instead of a prohibition, doing so in (June 2015).

Maryland was the first state to prohibit the use of price optimization in its [Bulletin 14-23](#) issued on October 31, 2014. The Bulletin defines price optimization as "the practice of varying rates based on factors other than risk of loss." Next to prohibit the use of price optimization was Ohio, which in its [Bulletin](#) described the practice as pricing "based upon factors that are unrelated to risk of loss in order to charge each insured the highest price that the market will bear." California followed in February 2015 with a [notice](#) prohibiting price optimization defining the term as "any method of taking into account an individual's or class's willingness to pay a higher premium." In the last five months, Florida ([OIR-15-04M](#)), Washington (no bulletin or notice formally issued), Vermont ([Bulletin](#)

[No. 186](#)), Indiana ([Bulletin 219](#)) and the District of Columbia have all weighed in on the issue, with each jurisdiction using its own definition of the term "price optimization." The District of Columbia's prohibition was the most recent; its Bulletin [15-IB-06-8/15](#) issued on August 25, 2015, defined the term as "charging the maximum premium that it expect[s] an individual or class of individuals to bear."

Problems for the Industry

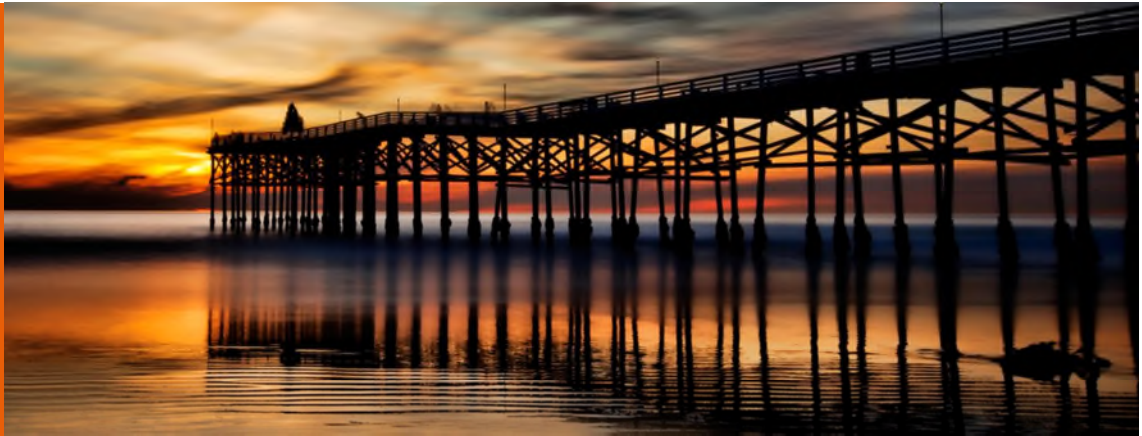
Given the actions outlined above and the growing number of states prohibiting the use of price optimization, the insurance industry faces uncertainty as to what extent they may utilize price optimization in rating personal lines insurance. A second problem is the difference in how the industry defines price optimization as opposed to the narrow and inconsistent definitions applied by the jurisdictions that have addressed the issue to date. While the issues are being addressed by various states and the NAIC, there is some risk for property and casualty insurers that their practices will be reviewed and market conduct activity may ensue by various insurance departments.

Conclusion

Price optimization has long been used in unregulated industries. In addition, property and casualty insurers have long used the ratemaking process as a starting point, taking into account more qualitative factors in pricing such as retention and conversion rates, and often temper price increases over a several-year period to prevent overly burdensome rates. As a result, many in the industry disagree with regulators such as the Ohio Department of Insurance, which asserted in its Bulletin that price optimization "represents a departure from traditional cost-based rating." Hopefully, the anticipated white paper commissioned by the NAIC will help address the open questions and give guidance to both regulators and property and casualty insurers on what practices are permitted when it comes to price optimization. ⚖️

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The industry and regulators disagree on what price optimization is, how it is to be defined, and whether it is an acceptable rating methodology.



Hot Topics for Corporate Counsel and Litigation Managers – What’s in Your Litigation Toolbox?

Thursday, February 4, 2016 at 3 PM | Manchester Grand Hyatt, San Diego, CA

This corporate counsel-focused program will include separate and distinct presentations on cutting edge issues that keep clients up at night. This unique program is planned and presented by five committees – Corporate Counsel, Employment Litigation, Products Liability, Toxic Torts and Environmental Law and Self-Insurers and Risk Managers Committees – and will feature leading corporate counsel and trial lawyers from each of these disciplines. Program highlights:

- **Top Five Things Corporate Counsel Can Do To Prevent Employment Litigation**
- **The Corporate Counsel Insider's View of the Future of Product Liability Litigation in the U.S.**
- **Toxic Tort Litigation – Strategic Litigation Planning Based on Recent Developments and Trends**
- **Current Litigation Issues for Companies with Large SIRs and Deductibles**

Immediately following the program, all attendees are welcome to join TIPS and fellow colleagues at the TIPS local member reception at 5 PM at the Manchester Grand Hyatt. Special thanks to reception sponsor Schwartz Semerdjian Cauley & Moot LLP.

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, VI, WA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for 3 hours of Credit in 60-minute states, and 3.60 credit hours of Credit in 50-minute states. This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, contact Donald Quarles at Donald.Quarles@americanbar.org.

Register Here Now!



THE NATIONAL ASSOCIATION...

Continued from page 1

consumer information held by insurers as well as insurance producers and guide regulators who oversee the insurance industry.”

There are twelve NAIC Principles:

State insurance regulators should ensure that the industry protects personally identifiable consumer information from cybersecurity risks, as well as timely notice of any breach.

1. Information collected and stored by the industry should be “appropriately safeguarded.”
2. State insurance regulators also have an obligation to protect information collected, stored, or transferred by the insurance departments or the NAIC.
3. Cybersecurity regulatory guidance for the insurance industry should be consistent with the National Institute of Standards and Technology (NIST) framework.
4. Regulatory guidance must be “risk-based and must consider the resources of the insurer or insurance producer.”
5. State insurance regulators must provide “appropriate regulatory oversight,” including financial examinations and market conduct examinations focused on cybersecurity.
6. Incident response planning is key.
7. Vendor management is crucial for the industry and regulators.
8. Cybersecurity should be part of the industry’s enterprise risk management (“ERM”) process.
9. Internal audit findings of “material risk” should be reviewed with the entity’s board of directors and appropriate committee.
10. The industry should use an information-sharing and analysis organization to keep abreast of threats and vulnerabilities.
11. Training of personnel is essential.

The (“NAIC”) established the Cybersecurity Task Force, [which] has been extremely active. It issued “Principles for Effective Cybersecurity: Insurance Regulatory Guidance” [and] “Cybersecurity Bill of Rights” (“NAIC Bill of Rights”). This insurance regulatory update addresses these two issuances by the Task Force.

The NAIC Principles are consistent with best practices in the cybersecurity area, including assessment of policies and procedures, protection of personal information, board involvement, and incorporation into ERM. Based on the NAIC Principles, insurers will start to experience heightened scrutiny of their information security practices, ERM programs and cybersecurity preparation.

Cybersecurity Bill of Rights

On October 14, 2015, the Cybersecurity Task Force adopted the Cybersecurity Bill of Rights, despite substantial objections by the insurance industry. The bulk of the comments submitted by the various trade associations for the insurance industry expressed concerns with the fifty-state system of regulation and the vast differences amongst those states in defining various terms such as “personal information.” The industry also expressed concerns that the NAIC Bill of Rights both imposed stricter notice requirements than the forty-seven jurisdictions that currently have notice requirements in the event of a breach and imposed remediation requirements to which the insurance companies currently may not be subject.

The NAIC Bill of Rights expands upon the previously-adopted NAIC Principles. The NAIC Bill of Rights informs consumers that they have the right to know what kinds of personal information is collected and stored by the industry.

In addition, consumers have the right to understand the privacy practices of individual insurers, who are now required to post their privacy practices on their websites in addition to making those practices available in hard copy, which was already a requirement. The NAIC Bill of Rights provides consumers with an expectation that the industry will “take reasonable steps to keep unauthorized persons from seeing, stealing, or using your personal information.” If a breach does occur, the NAIC Bill of Rights requires notice to consumers within “60 days after a data breach is discovered.” The affected insurance company must also provide detailed information to the consumers addressing, among other things, the nature of the breach and the data impacted.

If there is a breach, the NAIC Bill of Rights also provides for each affected consumer to receive at least one (1) year of identity theft protection, funded by the affected insurance company. The final right spells out the

consumer's rights in the event the consumer's identity is stolen. This last right does not directly impact the insurance company, but merely summarizes the rights available to a victim of identity theft.

Conclusion

Cyber breaches have impacted the insurance industry and will continue to do so. In the last twelve months, the NAIC has increased its scrutiny of cybersecurity, the industry's preparation for cyber-breaches, and the steps the industry has taken to combat data breaches. The newly-created Cybersecurity Task Force has taken steps to ensure that the industry is adequately addressing the threat of cybersecurity breaches. The NAIC's adoption of the NAIC Principles in April 2015 and its adoption of the NAIC Bill of Rights in October 2015 are likely the first of many actions we will see from the NAIC and the Cybersecurity Task Force relating to cybersecurity and data protection. Insurers and related companies in the industry will need to review their internal information security and privacy practices and work to ensure that best practices are being implemented to reduce their exposure to cybersecurity threats. ⚖️

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