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Emerging Issues in U.S. Regulation

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Disclaimer

The materials in this presentation are intended to provide a general overview of the issues contained herein and are not intended nor should they be construed to provide specific legal or regulatory guidance or advice. If you have any questions or issues of a specific nature, you should consult with appropriate legal or regulatory counsel to review the specific circumstances involved.

Professional Biography

Fred E. Karlinsky is Co-Chair of Greenberg Traurig's Insurance Regulatory and Transactions Practice Group. Fred has over twenty years of experience representing the interests of insurers, reinsurers and a wide variety of other insurance-related entities on their regulatory, transactional, corporate and governmental affairs matters.

Fred is experienced in transactional law, executive and legislative governmental affairs, administrative law, and corporate representation. He advises clients on operational issues — including start-up initiatives, structuring, capitalization, and collaborative business relationships— and a complete array of regulatory and compliance issues, including licensure and corporate amendment applications, business expansion initiatives, solvency and statutory accounting issues, rate and form filings, and financial and market conduct examinations, to name a few.

Overview

> **Survey of Federal Requirements**
- Dodd-Frank
  - FIO/FSOC/SIFIs
- TRIA
- NARAB

> **NAIC Initiatives**
- Solvency Modernization
  - Group Supervision
- Solvency II Equivalency
- Reinsurance Credit
- Cyber Security

> **Other Topics of Interest**
- Shared Economy/TNCs

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Survey of Federal Requirements

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

> Most sweeping financial regulation overhaul since the Great Depression

> Significant implications for the insurance industry

– Federal Insurance Office (FIO)

– Financial Stability Oversight Council (FSOC)

Federal Insurance Office (FIO)

> The FIO monitors all aspects of the insurance industry, including identifying issues or gaps in regulation

> The FIO coordinates and develops Federal policy on aspects of international insurance matters

> The FIO monitors access to affordable insurance by traditionally underserved communities and consumers, minorities and low to moderate income persons

> The FIO is not a regulator or supervisor

Federal Insurance Office

> Authority extends to all insurance lines except health insurance, and long-term care (except what is included with life or annuity insurance components) and crop insurance

> Represents the U.S. at the International Association of Insurance Supervisors (IAIS)

> Became a full member of IAIS on October 1, 2011; joined the Executive Committee on February 24, 2012

> FIO Director serves as a non-voting member of the Financial Stability Oversight Council (FSOC)

Federal Insurance Office

- The Dodd-Frank Act required the FIO to conduct a study on modernizing the U.S. insurance regulatory system
- Study due to Congress in January, 2012 – was not released until December, 2013
- FIO received nearly 150 comment letters from the industry on how to improve the regulatory system
- FIO held meetings with industry leaders via the Federal Advisory Committee on Insurance

Federal Insurance Office Conclusions

- The FIO concluded, "*the proper formulation of the debate at present is not whether insurance regulation should be state or federal, but whether there are areas in which federal involvement in regulation under the state-based system is warranted*"
- Further, "*should the states fail to accomplish necessary modernization reforms in the near term, Congress should strongly consider direct federal involvement*"

FIO Weighs in on Global Reinsurance

- FIO released its report on the *Breath and Scope of the Global Reinsurance Market and the Critical Role Such Market Plays in Supporting Insurance in the United States* in December 2014
- Report was required under Title V of Dodd-Frank.
  - Reinsurers are essential
  - Natural disasters and other catastrophes.
  - "Covered agreements"

The Financial Stability Oversight Council (FSOC)

- Charged with monitoring the financial services markets, including the insurance industry, to identify potential risks to the financial stability of the United States
- Key function of FSOC is to designate Systemically Important Financial Institutions (SIFIs)
  - FIO may recommend that an institution be designated a SIFI

SIFIs

- SIFI Designation Framework:
  - size
  - interconnectedness
  - lack of substitutes
  - leverage
  - liquidity risk and maturity mismatch
  - existing regulatory scrutiny

SIFIs

- September 2013
  - Prudential, AIG and G.E. Capital
- September 2014
  - MetLife
  - Berkshire Hathaway may be designated as well

SIFIs: Prudential

- Prudential appealed FSOC’s designation to FSOC for reconsideration
  - FSOC denied the appeal
  - Prudential did not appeal to the federal courts
- Prudential Criticism
  - Jim Donelon
  - John Huff

SIFIs: MetLife

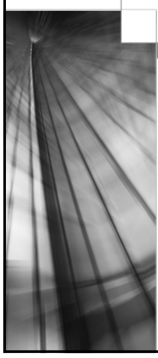
- January 13, 2015: MetLife filed an action in the DC District Court to overturn the designation
- 79 page complaint
  - Several grounds for challenging the designation as “arbitrary and capricious” and violative of both Dodd-Frank and the Administrative Procedure Act
- Competitive disadvantage as a SIFI

SIFI: MetLife

> New research from Keefe, Bruyette & Woods, Inc
> "MetLife better positioned to absorb whatever federal regulators throw at it in terms of heightened oversight"
  - MetLife is based in New York
  - Already is subject to rules that are "notoriously strict" in the state-based system of insurance regulation

SIFIs: Recent Developments

> February 4, 2015: FSOC announces changes to its designation process.
> Increase transparency of the SIFI designation process and the strength of the FSOC as a whole
> Possibly a response to MetLife?



Terrorism Risk Insurance Program Reauthorization Act of 2015

Terrorism Risk Insurance Act (TRIA)

- Before 9/11 commercial insurers generally neither charged for nor specifically excluded terrorism coverage
- November 2002, TRIA was passed by Congress to provide government reinsurance backstop so commercial insurers would offer terrorism coverage
- Current law housed under the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA)
- The act was extended and amended in 2005, 2007, and 2015

TRIA Reauthorization

- Raised the amount of total losses which need to occur in a terrorist attack before the TRIA program kicks in —from $100 million to $200 million over five years, beginning in 2016
- Increased mandatory recoupment from 133% to 144%
- Starting on January 1, 2016, the mandatory recoupment will increase $2 billion each year over five years, raising the mandatory recoupment from $27.5 billion to $37.5 billion
- TRIA reauthorization also included the National Association of Registered Agents and Brokers (NARAB II) provision

TRIA Reauthorization

- Treasury’s Interim Guidance on new provisions
- Documentation for Rates and Forms
  - April 13, 2015
  - Louisiana
- Form of Disclosure
  - NAIC’s Model Disclosure Forms 1 & 2
  - Content of Disclosure

TRIA Reauthorization

- Timing of Disclosure
- New Offers of Coverage
- Exceptions
  - Conditional exclusion
  - Declined coverage
- Material difference after reauthorization

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National Association of Registered Agent and Brokers

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NARAB II

Past Attempts to Implement NARAB in 2013

> National Association of Registered Agents and Brokers Reform Act. (NARAB II) (H.R. 1155 and S. 534)

> 113th Congress – Reintroduced by Rep. Randy Neugebauer, R-Texas (H.R. 1155) and Sen. Jon Tester, D-Mont. (S. 534)

> In January 2014, NARAB II was passed as Title II of S. 1926, the Homeowner Flood Insurance Affordability Act, but was not included in the final version

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NARAB II

Past Attempts to Implement NARAB in 2014

> The House and Senate put modified versions of NARAB II on their respective versions of the TRIA bills (H.R. 4871 and S. 2244)

> The passage of NARAB II was contingent on the survival of TRIA

> TRIA was reauthorized in 2015, which included the NARAB II provision.

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NARAB II – General Overview

> Streamline and improve the licensing process for approved nonresident insurance producers, eliminating duplicative licensing requirements for businesses operating in multiple states

> Improve the licensing process for nonresident insurance producers and strengthen oversight by state insurance regulators

> Create the National Association of Registered Agents and Brokers (NARAB)

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NARAB II – Membership Criteria

> Producer must be already licensed in his home state

> Producer cannot have a currently revoked or suspended license in any state

> Must submit to a background check and fingerprints

– If producer will not have to submit to a background check if he has undergone this process in the last two years

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NARAB II – Membership Criteria

> Membership may be denied because of criminal history or disciplinary action
> When this occurs, producer can obtain a copy of the background check and the denial
> Clearinghouse may also establish other standards for membership
  – Personal qualifications
  – Education
  – Training
  – Experience
> Standards must be just as protective as the NAIC Producer Licensing Model Act
> Bill allows for different classes of membership such as membership for business entities

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NARAB II – Effect of Membership

> By becoming a member of NARAB, the producer streamline process for licensing in other states
> Producer must pay the licensing fee for each state through the Association
> Producer is treated by the state as the functional equivalent of a "nonresident insurance producer"
  – Subject to the laws and regulations in the state related to the that title
> State may challenge the producer's ability to satisfy the criteria of membership in the Association
> State is entitled to ongoing disclosures regarding the producer's authorization to operate in the state or other states where he is licensed

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NARAB II – Renewal & Continuing Education

> Membership must be renewed every other year
> Producer must meet certain continuing education requirements to maintain membership
  – There are no additional educational requirements where the producer is licensed through the Association
  – Producer must still meet the educational requirements of his home state
  – Producer does not have to duplicate requirements for Association, if he has already met the requirements through his home state

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NARAB II – Consumer Complaints

> Toll free number where consumers can place complains regarding producers
> Complaints will be forwarded to the state in which the consumer resides as well as any other states, if appropriate
> State insurance regulators will provide information on the final disposition of the consumer complain to the Association

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NARAB II – Board of Directors

- 13 members
  - 8 state insurance commissioners
  - 3 P&C producer licensing experts
  - 2 life and health producer licensing experts
- 2 year terms; can be reappointed for successive terms
- Removal
  - Entire board can be removed by the President with confirmation by the Senate
  - Board member may be removed by the President for neglect of duties or malfeasance
- President can suspend or prohibit any actions taken by the Board

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NARAB II – Board of Directors

- Powers
  - Establish and collect membership fees
  - Adopt, amend, and repeal bylaws, procedures, or standards for the Association
  - Enter into agreements for the Association
  - Hire and define duties for professionals, employees, and officers of the Association
  - Secure funding

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NARAB II – Relationship to State

- Clearinghouse will preempt state law, regulations, and provisions
- Home states will still retain ability to license insurance producers and impose requirements related to licensing
- States that issue licenses through the clearinghouse cannot impose additional requirements
- States may still investigate and take appropriate disciplinary action

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NARAB II – Conclusion

- Legislation relating to NARAB membership will take effect on January 13, 2017 or the date the Association is incorporated, whichever is later
- Still a lot of work left
  - Board of Directors
    - Executive director of a trade group representing wholesale brokers urged the immediate appointment to members of the board of the National Association of Registered Agents and Brokers.
    - NAIC has already nominated 14 people for the board, but not action has been taken
  - Further questions for operations

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NAIC Initiatives

The NAIC Solvency Modernization Initiative:

> Perform a critical self-evaluation of the U.S. insurance solvency regulation framework, including a review of international developments and potential options for use in U.S. insurance supervision

> The scope of the Solvency Modernization Initiative (SMI) includes the entire U.S. financial regulatory system and all aspects relative to the financial condition of an insurer, and is not limited to the evaluation of solvency-related areas

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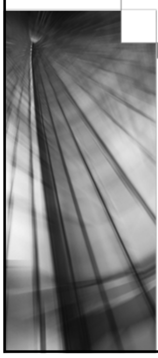

Group Supervision

Insurance Holding Company Systems

Holding Company Model Laws

> Prior Authority
- General statutory authority
  - Conduct investigations and collect information
  - Examine insurer's affairs and assets of controlling/controlled persons
  - Examine MGAs and authority to examine their books, accounts, and records
- NAIC Financial Examiner's Handbook provides for review of insurer's risk analysis of parent or holding company insolvency and liquidity issues

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Holding Company Model Laws

> The Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation were revised in 2010
  - Provide for enhanced authority over insurance holding company system

> To maintain accreditation, a state must substantially adopt the 2010 version of the models by January 1, 2016
  - Nearly every state has adopted the required 2010 amendments to the Model Act

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Holding Company Model Laws

> Revisions include:
  - Expansion of regulator's ability to look at any entity within insurance holding company system
  - Enhancements of regulators' rights to access information
  - Introduction and funding of supervisory colleges
  - Enhancement of corporate governance and management responsibilities
  - Guidance on disclaimer of affiliation filings
  - Additional standards for reviewing affiliate agreements
  - Filling of the new Form F

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Form F

> Form F is meant to evaluate enterprise risk

> Enterprise Risk:
  - Any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause the insurer's RBC to fall into company action level or would cause the insurer to be in hazardous financial condition

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Form F

> A Form F must be completed annually, and is filed with the lead state regulator of the insurance group
  - The lead state regulator is determined based on the procedures set forth in the NAIC Financial Analysis Handbook
  - The lead state acts as a coordinator between the insurance group's regulators to enable better supervision of the group as a whole

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Form F

> Form F filings should contain:
  - Information on strategy, internal audit findings, compliance, or risk management
  - Any changes of 10% shareholders in system
  - 12 month business plan and strategies of the system
  - System capital resources and material distribution patterns
  - Discussions with rating agencies that may cause negative movement in system's credit ratings
  - Material activity or developments in the system that, in the opinion of senior management, could adversely affect system

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Form F – Industry Concerns

> Control and disclosure based on 10% ownership anywhere within holding company system
  - Accurate information may be unavailable

> Some information is very sensitive, trade secret, or involves subjective internal assessments

> Rating agency discussions could be very expansive

> Senior management must make forward-looking, subjective assessments
  - Possibly subject to personal liability or sanctions

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Risk Management and Own Risk and Solvency Assessment Model Act (RMORSA)

> Own Risk and Solvency Assessment (ORSA)
  - A confidential internal assessment appropriate to nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group's current business plan, and the sufficiency of capital resources to support those risks.

> The ORSA has two primary goals:
  - Foster an effective level of enterprise risk management for all insurers in the group
  - Provide group-level perspective on risk and capital to supplement existing legal entity view

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Key ORSA Requirements

> Insurers must periodically, no less than annually, conduct an ORSA to assess the adequacy of their risk management framework and current and estimated projected future solvency position

> Internally document the process and results of the assessment

> Provide a confidential high-level ORSA Summary Report annually to the lead state commissioner if the insurer is a member of an insurance group and, upon request, to the domiciliary state regulator

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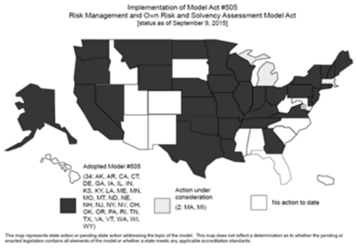
RMORSA Adoption

> As of September, 2015, thirty-four states had adopted the ORSA Model Act:



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Solvency II

Equivalency

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Solvency II – Overview

> The Solvency II Directive aims to establish a revised set of EU-wide capital requirements and risk management standards to increase protection for policyholders

> The strengthened regime should reduce the possibility of consumer loss or market disruption

> The original adoption date was January 1, 2014, but implementation was delayed several times

– The current implementation date is January 1, 2016

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Solvency II – Equivalency

> Solvency II requires that “third countries” (non-EU countries) have substantially similar insurance regulatory frameworks in place in order to obtain equivalency status

– If the third country where an insurance group is based is not deemed equivalent, the group’s entities will become subject to regulation by EU supervisory authorities

> In June, 2015, the European Commission granted provisional equivalency statutes to Australia, Bermuda, Brazil, Canada, Mexico, and the United States

> The NAIC, through the EU-US Dialogue Project, has been working with the EU to foster mutual understandings between these jurisdictions’ regulators

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Credit for Reinsurance

Credit for Reinsurance

> The Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) prohibits a state from denying credit for reinsurance if the domiciliary state of the ceding insurer recognizes such credit and is an NAIC-accredited state

> NAIC: Credit for Reinsurance Model Law and Regulation

– Conditionally Qualified Jurisdictions: Bermuda, Germany, Switzerland, and the United Kingdom

Credit for Reinsurance

> The NRRA allows the Federal Insurance Office to enter into covered agreements with foreign jurisdictions on behalf of the United States

– Covered agreements may recognize certain prudential measures of the foreign jurisdiction's insurance regulator, and may preempt state credit for reinsurance laws

> FIO has declared that it will consider entering into covered agreements to impose uniformity of credit for reinsurance requirements throughout the U.S.

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Cyber Security

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Cyber Insurance Risks Overview

- Current Cyber Security Landscape
- Cyber Insurance
  - Growing Demand
  - Increased regulation
- Cyber Issues for the Insurance Industry
- Best Practices for Insurers

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In the News

- November 24, 2014: Large Entertainment and Electronics Company hacked
  - Release of confidential data: personal information about Sony Pictures employees and their families, e-mails between employees, information about executive salaries at the company, copies of (previously) unreleased Sony films, and other information.

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More Attacks

- Retailer
- Online Retailer
- National Home Improvement Retailer
- Financial Bank

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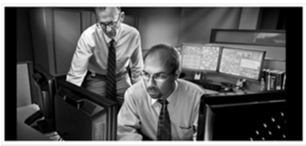
The Recent Past

- Cyber crime in the past mostly involved unsophisticated attacks to deface websites of corporations and governments
- Motivated by the desire for notoriety and bragging rights
- Nation states and organized crime were minimally involved



The Current Picture

> Nation states are increasingly aggressive in attacking corporate and government systems

> Nation states are highly sophisticated


The New York Times

Business Day
Technology

Chinese Army Unit Is Seen as Tied to Hacking Against U.S.

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The Current Picture

> The U.S. National Security Agency (NSA) is responsible for conducting cyber intelligence
  – NSA conducts mass surveillance of electronic communications both within and without the United States

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The Current Picture

> The consensus among governments and the business community is that cyber attacks against organizations will continue to increase for the foreseeable future

> The global cost of cyber crime is estimated to be in the hundreds of millions to billions of dollars

> The costs are either direct or indirect due to costs incurred preparing for breaches, containing breaches, and remediating damage caused by a breach

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How Organizations are Compromised

> Spear Phishing
  – Directed attack to induce an individual into opening an attachment

> Structured Query Language (SQL) attacks
  – Weak digital security protocols can be exploited by SQL injection attacks

> Organizational insiders
  – Rogue employees

> Loss/theft of sensitive information, including loss/theft of mobile electronic devices

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How Organizations are Compromised

> Threats from Outsiders
  - State Sponsored
  - Hacktivists
  - Organized crime
  - Corporate rivals
  - Disgruntled former employees

> Threats from Insiders
  - Employees
  - Trusted 3rd parties with access to data and systems

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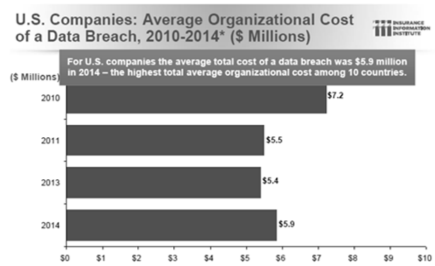
Typical Cost of Cyber Breach



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Risk Profile

Source: Marsh

	LOSS CATEGORY	DESCRIPTION
A	Intellectual property (IP) theft	Loss of value of an IP asset, expressed in terms of loss of revenue as a result of reduced market share.
B	Business interruption	Lost profits or extra expenses incurred due to the unavailability of IT systems or data as a result of cyber attacks or other non-malicious IT failures.
C	Data and software loss	The cost to reconstitute data or software that has been deleted or corrupted.
D	Cyber extortion	The cost of expert handling for an extortion incident, combined with the amount of the ransom payment.
E	Cyber crime/cyber fraud	The direct financial loss suffered by an organisation arising from the use of computers to commit fraud or theft of money, securities, or other property.
F	Breach of privacy event	The cost to investigate and respond to a privacy breach event, including IT forensics and notifying affected data subjects. Third-party liability claims arising from the same incident. Fines from regulators and industry associations.
G	Network failure liabilities	Third-party liabilities arising from certain security events occurring within the organisation's IT network or passing through it in order to attack a third party.
H	Impact on reputation	Loss of revenues arising from an increase in customer churn or reduced transaction volumes, which can be directly attributed to the publication of a defined security breach event.
I	Physical asset damage	First-party loss due to the destruction of physical property resulting from cyber attacks.
J	Death and bodily injury	Third-party liability for death and bodily injuries resulting from cyber attacks.
K	Incident investigation and response costs	Direct costs incurred to investigate and "close" the incident and minimise post-incident losses. Applies to all the other categories/events.

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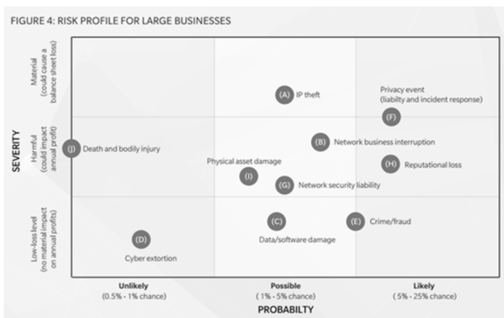
Risk Profile for Large Business



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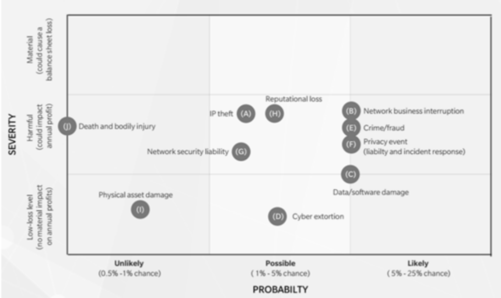
Risk Profile for Small to Medium Sized Enterprises

FIGURE 5: RISK PROFILE FOR SMES



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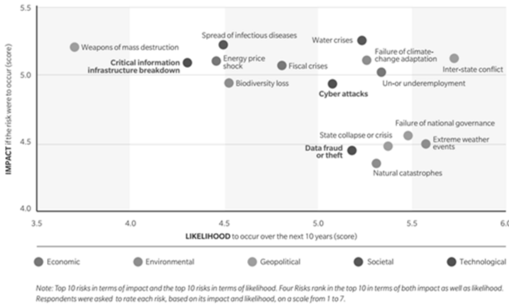
World Economic Forum – Global Risk Report



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Cyber Insurance Demand

- Demand for cyber insurance has increased
  - Approximate total annual cyber insurance premiums:*
    - 2012: $1.0 billion
    - 2013: $1.3 billion
    - 2014: $2.0 billion
- Premium rates have increased
  - Growth may slow because of competition
- Much of the growth in demand is from small and mid-sized businesses
  - However, large retailers have seen a decrease in capacity

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Advantages Over Governmental Regulation

- Flexibility in an ever changing cyber environment
- Fear of legal sanctions as well as an emphasis on best practices
- Global risks are broader than U.S. governmental authorities to effectively manage

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Cyber Risk Coverage

> Loss/Corruption of Data
> Business Interruption
> Liability
> D&O/Management Liability
> Cyber Extortion
> Crisis Management
> Criminal Rewards
> Data Breach
> Identity Theft

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Cyber Gaps in Traditional Insurance

FIGURE 8: EXAMPLES OF TYPICAL CYBER EXCLUSIONS AND GAPS IN TRADITIONAL INSURANCE POLICIES

INSURANCE PRODUCT	MAIN TYPE OF LOSSES COVERED (PRIMARY OBJECTIVE OF THE COVER)	POTENTIAL GAP OF COVER FOR CYBER PERILS
Property	Physical asset damage (first-party).	• Exclusions removing cyber attacks and explicit coverage triggers for physical-asset damage. • Damage to software and data not covered (as deemed intangible form of property).
Business interruption	Lost revenues and additional cost incurred (first-party).	• Traditional policies are not triggered by cyber attacks that do not cause physical damage.
General liability	Third-party liabilities for physical property damage, bodily injury, and advertising injury (liability claims arising from published content, including violation of privacy).	• Exclusions of unauthorised disclosure of personal information.
Errors and omissions/ professional indemnity	Third-party liabilities arising from the performance of professional services.	• Cover may be restricted to liability claims from customers only, hence why claims for disclosure of employees' data are often not covered. • Several exclusions might apply (for example, computer virus transmission).

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Underwriting Difficulties

> Developing field
  – Each year, cyber criminals become more sophisticated – and more dangerous
> Costs uncertain
  – Reputational harm is difficult to quantify
  – Vulnerabilities often go unidentified until it is too late
> Lack of information
  – Much information is classified due to national security concerns

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Defining Insurable and Uninsurable Cyber Risks

> Insurance Risks
  – Liability out of a data breach
  – Notifications
  – Network damage
  – Regulatory Issues
> Uninsurance Risks
  – Catastrophes
  – Operational mistakes
  – Reputational damage
  – Industrial espionage
  – Data as an asset

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Cyber Security & the Human Element

- Cyber incidents are caused by people
  - Accidentally or intentionally
- People implement cyber security
  - Boards
  - Employees
- Bad actors/hackers
- Constant Evolution

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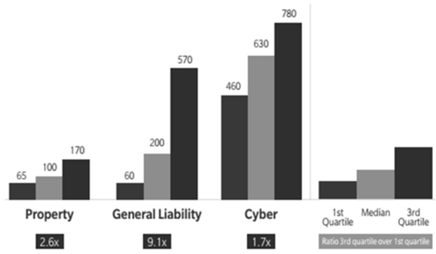
Cyber Insurance Pricing



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Recent Federal & State Legislation

- 2014: Five cyber security bills became law
- Cyber Threat Sharing Act of 2015
  - February 11
  - Sharing information between private industry and Homeland Security
- 47 states enacted legislation
- 32 states in 2015 introduced or are considering security breach notification bills or resolutions

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Health Insurance Portability & Accountability Act

- Federal protections for patient health information
  - Covered Entities
  - Business Associations
- Privacy Rule
- Security Rule
- Breach Notification Rule

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HIPAA Security Rule

> Minimum security standards for protecting ePHI
> Safeguards & Requirements
  – Administrative safeguards
  – Physical safeguards
  – Organizational safeguards
  – Policies and procedures
> Stong cybersecurity practices will help safeguard this information

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Federal Trade Commission

> FTC Act
  – Prohibits "deceptive" and "unfair" acts or practices
  – Generally prohibits false advertisements
> Failure to use property data security protocols can violate the FTC Act
> Unfortunately, FTC does not have published regulations detailing the data security
> Companies must examine over three-dozen FTC settlements and other guidance to attempt to determine what the FTC expects

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SEC Issues Cybersecurity Guidance

> Guidance Update for investment advisors and registered investment companies
  – Need for investment companies, broker-dealers and investment advisers to:
    ▪ review their cybersecurity preparedness
    ▪ update their policies and procedures
    ▪ examine their potential vulnerabilities and assess compliance with SEC regulations
> SEC makes clear that the failure implement adequate cybersecurity protections could raise serious regulatory compliance issues.

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SEC Issues Cybersecurity Guidance

> Examination of 57 broker-dealers and 49 registered investment advisors
> Vast majority of broker-dealers and firms
  – implemented written information security plans
  – regularly reviewed such plans
  – inventoried and catalogued their information security resources
  – made use of encryption and had suffered a cybersecurity incident
> However, only approximately half participated in information sharing programs
> SEC noted varying results on designation of a chief information security officer and oversight and policies governing the use of vendors

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Large Insurer Breaches

- February 2015
  - Cyber security attack
  - Insured's names, birthdays, social security numbers, addresses, emails, and employment information
- March 2015
  - Attack affected 11M patients
  - Largest cyber attack involving medical information to day

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Insurance & Cyber Security

- Insurance companies store large amounts of sensitive information/data on their employees and insureds
  - Length of storage of information is greater for life insurers
- Breaches that occur can/will expose huge data sets and lead to significant exposure
- Regulators are requiring more diligence of insurers to protect client data from cyber threats


INSURANCE JOURNAL

View this article online: http://www.insurancejournal.com/magazines/features/2013/06/17/295232.htm

Regulators Examining Insurers' Cyber Security Readiness

New York's top financial regulator has asked some of the largest U.S. insurance companies to disclose details on their preparedness for cyber attacks, following a similar request to major banks earlier this year.

The New York State Department of Financial Services said it sent letters on May 28 asking insurers whether they have faced any cyber attacks in the last three years, what safeguards they have put in place and how much money they have set aside for dealing with cyber issues.

"Insurance companies, in some cases sometimes more than banks, hold incredibly sensitive information of regular people," said Ben Lawsky, New York's superintendent of financial services, in an interview. "We're trying to get ahead of a problem and focus here on an area that I think has been underappreciated and maybe not focused on enough by regulators."

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Medical Data is Highly Lucrative

- Pat Calhoun
  - Senior Vice President of Network Security at Intel Security
- Medical information has a higher value on the black market than credit card information
- Medical information does not allow for steps to take back the information or cancel the information like credit cards

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Study of Insurance Company & Cyber Risk

- 74% of insurance executives expect cyber IT risks to increase.
  - 2015 Accenture Global Risk Management Study
- 59% of insurance executives experience significant cyber attacks daily or weekly
  - Business Resilience in the Face of Cyber Risk
- Executives expect to hire more people who are experts in managing cyber risks

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N.Y. DFS Report on Cyber Insurance in the Insurance Sector

> February 9, 2015

> Survey of 43 insurers about cybersecurity programs, costs, and future plans

> DFS measures in the future to strengthen cyber security
   – targeted assessments of "cybersecurity preparedness"
   – proposing enhanced regulations requiring insurers to meet heightened standards for cybersecurity
   – exploring measures related to the representations and warranties insurers receive from third-party vendors that handle customer data

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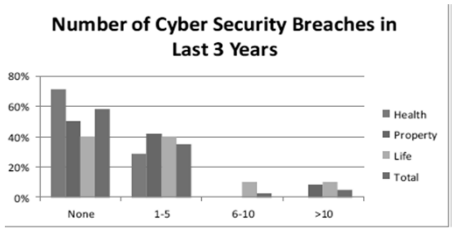
N.Y. DFS Survey on Cyber Insurance in the Insurance Sector



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Enterprise Risk Management

> N.Y. DFS also review ERM reports to understand how cyber security fits into the insurers' overall risk management strategy

> Found a wide array for factors affect an insurer's cyber security program
   – Report assets
   – Transactional frequency
   – Variety of business lines
   – Sales and marketing technologies

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N.Y. Letter on IT Examination Framework

> March 26, 2014: Letter to all insurers noting key revisions to the IT existing examination framework

> IT/cybersecurity examinations will now include:
   – Corporate governance
   – Management of cyber issues
   – Resources
   – Risks posed by infrastructure
   – Protections against intrusions
   – Testing and monitoring
   – Management of 3rd party service providers
   – Cybersecurity insurance coverage

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N.Y. Letter on IT Examination Framework

> Department would conduct comprehensive risk assessment and require a report on an insurer's cybersecurity practices and procedures

> Report must include responses to 16 wide ranging questions
The deadline for submission of the responses was April 27, 2015

> Once the report is submitted and the risk assessment is conducted, the Department would schedule IT/cybersecurity examination

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NAIC Cyber Security Taskforce

> NAIC's Principles for Effective Cybersecurity Insurance Regulatory Guidance

> Principle 1
  – PII is protected from cyber security risks

> Principle 2
  – Confidential consumer information is property safeguarded

> Principle 3
  – Regulators must protect information

> Principle 4
  – Cybersecurity regulations must be flexible

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NAIC Cyber Security Taskforce

> Principle 5
  – Cybersecurity Regulations must be risk based and consider insurer resources

> Principle 6
  – Regulators should provide appropriate regulatory oversight

> Principle 7
  – Planning for incident responses

> Principle 8
  – Third parties and service provides must have controls in place to protect PII

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> Principle 9
  – Cybersecurity risks should be incorporated into an insurer's ERM

> Principle 10
  – IT internal audits should be reviewed by BODs and appropriate committees

> Principle 11
  – Information sharing and analysis organization

> Principle 12
  – Training and assessments for employees

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NAIC Cyber Security Taskforce

> Task Force's Larger Plan
  – Development of a "Consumer Bill of Rights"
  – Model Laws
    - Health Information Privacy Model Act (Model 55)
    - Privacy of Consumer Financial and Health Information Regulation (Model 672)
    - Standards for Safeguarding Customer Information Model Regulation (Model 673)
    - Insurance Fraud Prevention Model Act (Model 680)

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NAIC Cybersecurity Bill of Rights

> Currently considering the adoption of a Consumer Cybersecurity Bill of Rights
  – Bill of Rights outlines what consumers have a right to expect of insurance carriers and agents with regard to data collection and protection

> Initially the Bill of Rights featured 12 points, but was recently reduced to 6 points on October 1, 2015
  – Issue: How Bill of Rights protections dovetail with existing state consumer protection laws

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NAIC Cybersecurity Bill of Rights

> Revised Bill of Rights
  – Force entirely removed 6 proposed insurance consumer rights
  – Revised or simplified the remaining points and definitions found in the document

> Next steps
  – October 14 call

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FINRA Report on Cyber Security Practices

> February 2015 Report

> Key Points
  – Sound governance framework with strong leadership
  – Risk assessments
  – Technical controls
  – Incident response plans
  – Broker-dealers should use strong due diligence across the lifecycle of their vendor relationships

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Best Practices

> Prioritize Cybersecurity
> Incident response teams
  – Outside counsel?
> Security policies and procedures
  – Document cybersecurity roles and responsibilities
  – Alignment with company goals and practices
  – Compliance with regulatory requirements
  – Testing procedures

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Best Practices

> Where is critical information stored? How is it processed?
  – Computers
  – Personal devises
  – Home computers
  – Vendors' systems
  – The "Cloud"
  – Backup media
  – Portable media
  – Nontraditional platforms

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Best Practices

> Assess your security posture
> Develop a detailed incident response plan
  – Simulations
  – Continually improve plan
> Review plan with management and BOD
> Apply risk management principles
> Information sharing process

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Best Practices

> Document who has access to information assets
  – Review for appropriate access
  – Review document controls
> Vendors must have sufficient cybersecurity insurance coverage
> Cyber insurance coverage is adequate for company
> Regularly train employees and vendors
  – Procedures and responsibilities
  – Data protection measures

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IMC North America

Shared Economy

Transportation Network Companies

TNCs General Overview

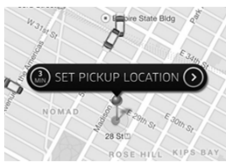
> Transportation Network Companies
> Insurance Coverage Issues
> Potential Solutions
> Recent Regulatory & Legislative Developments

TNCs

> Arranges transportation for a fee
> Uses a technology platform
> Connects riders and drivers using the online app
> TNC takes a portion of the fee

TNC Terms & Conditions

> TNC is not the transportation provider
> Disclaims the safe of the driver
> Driver requirements
– Minimum age limits
– Valid driver's license
– Current vehicle registration & insurance
> Rider log into app, enters location, matched with driver



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TNC Locations

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Coverage Gaps

- Death of Sophia Liu
  - Driver did not have rider in car
  - Waiting for user to request ride
  - Sued TNC company
  - July 2015: Settlement reached
- Uber driver hits passenger with hammer
  - DAs threaten lawsuit over inadequate background checks and false marketing
- Other horror stories

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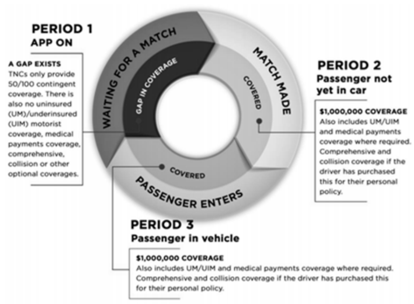
Exposure Periods



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NAIC White Paper

- March 31, 2015
  - NAIC adopts white paper
- "Transportation Network Company Insurance Principles for Legislators and Regulators"
  - Outlines insurance coverage issues
  - Provides potential solutions to the issues

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Issues: Insurance Company Perspective

- Excludes liability coverage for "public or livery conveyance"
  - Exempts share-the-expense carpooling
  - Excludes carrying persons for charge; commercial purposes; compensation; for a fee; or for hire
- Purpose of Exclusions
  - Beyond those found in a typical policy for the type of property or activity being insured
  - Coverage is associated with a rating plan for coverage of an alternate insurance product
- Adjust rating for commercial exposure

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Issues: Insurance Company Perspective

- TNC Exposure Factors
  - Urban congested areas with a higher frequency of accidents
  - Commercial use = more miles driven
  - Distracted drivers
  - Additional passengers could result in higher severity of loss

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Issues: Driver Perspective

- Way to earn extra income in spare time
- But not enough education about potential liability and hidden risk exposures
- TNCs limit liability through disclaimers
  - "You agree that the entire risk arising out of your use of the services, and any third party good or services obtained in connection therewith, remains solely with you, to the maximum extent permitted by applicable law."

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Issues: TNC Perspective

- TNCs bear the primary insurance burden
  - Personal drive may be tempted to turn on TNC app for sole purpose of obtaining insurance
  - Incentive to file claim with TNC insurance
- Benefits of TNCs
  - Increased road safety
  - Fewer personal vehicles
  - Too high of a burden considering the benefits from TNCs
- Quasi-commercial coverage exists

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Issues: Passenger Perspective

> Pros
  - Increase mobility
  - Cutting edge
> Cons
  - Hidden dangers

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Issues: Other For-Hire Transportation Perspective

> Taxis & Limousines
> Insurance limits should be the same for all for-hire transportation services
  - If TNCs are allowed to have lower insurance limits when the vehicle is being used personally, or before it is matched to a passenger, similar lower insurance limits should also apply to taxis and limousines during the same time periods.
> Part Time v. Full Time Drivers

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Review Established Insurance Options

> Drivers have coverage full time
> Purchased by driver
  - Too expensive
  - $5,000 to $7,000 per year
> Buying insurance onto the driver
> California & Colorado
  - Allow for coverage gaps

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New Insurance Products? Spread Burden?

> Development of Policy Endorsements
  - Close Insurance Gaps
  - Concerns for Regulators
  - Statistical Information Sharing
> Spreading Insurance Burden between TNCs and Drivers

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Coverage Amounts

> Coverage Amounts must be high enough to protect persons & property injured in an accident
  - Colorado
    - Inconclusive study
    - Liability Limits: $50,000 per person/$100,000 per accident/$30,000 property damage
  - California: $1 million

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Coverage Types

> Liability
  - Protect passages and third parties

> UM/UIM
  - Same amount as liability coverage

> Comprehensive & Collision
  - Protect TNC driver's car

> Medical Payments
  - Coverage for drivers and passengers

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Education & Outreach

> Driver Awareness Communications
  - Drivers should read PAP to determine exclusions
  - Contact insurer to inform of TNC services
  - Availability of coverage through TNC
  - If gaps exist, drivers should consider purchasing additional coverage

> Consumer Awareness
  - 25 State Bulletins
  - NAIC consumer alerts

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TNC Insurance Compromise Model Bill

> UberX and multiple insurers

> Coordination of coverage between personal coverage and commercial coverage
  - Auto policies can exclude TNCs
  - Primary coverage during Period 1
    - $50,000 per person, $100,000 per occurrence, and $25,000 or $30,000 for property damage
  - Primary coverage during Periods 2 and 3
    - Liability limits of at least $1 million

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NCOIL Model Law to Regulator TNCs

- July 2015: Model Act to Regulate Insurance Requirements for Transportation Network Companies and Transportation Network Drivers
  - Uber-insurer compromise language
- Primary auto purchased by TNC but TNC to cover driver while
  - TNC driver is logged in and available for a transportation request
  - TNC driver is transporting a rider
- Disclosures
- Permit from state
- Who can serve as TNC drives

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City Regulation

- Austin, TX
- Baton Rouge, LA
- Biriмingham, AL
- Chicago, IL
- Cincinnati, OH
- Columbus, OH
- Dallas, TX
- Dayton, OH
- Houston, TX
- Little Rock, AR
- Milwaukee, WI
- Minneapolis, MN
- Oklahoma City, OK
- San Antonio, TX
- Salt Lake City, UT
- Seattle, WA
- Tulsa, OK

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Broward County, FL

- Ordinance in one of Florida's Biggest Counties
  - FTC guidelines
    - Safety of customers and drivers
    - Deterring deceptive trade practices
    - Addressing liability issues
  - TNCs licensed by Broward County
    - Carry insurance consistent with Florida Law
    - National and state background check
    - Undergo regular inspections
- Uber and Lyft announced intention to cease doing business in Broward

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SunSentinel

News

This article is related to: Uber, Bill de Blasio

Resistance to Uber is futile, Broward commission learns

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State Laws

TNC Conclusion

> New option for transportation
> New technologies = new risks
> Regulation and legislation necessary to resolve risk exposure
  – 22 state laws
  – Multiple local ordinances
  – 25 insurance bulletins

Questions

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