



AAPA Port Administration
and Legal Issues Seminar

Hyatt Regency Philadelphia
201 S. Columbus Blvd.
Philadelphia, PA
October 8, 2014, 2:00 pm-3:00 pm

Marine Terminal Management
Training Program

**INSURANCE TRENDS
AND LOSS MITIGATION
STRATEGIES**



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DISCLAIMER

The views expressed by the participants in this program are not those of the participants' employers, their clients, or any other organization. The opinions expressed do not constitute legal advice, or risk management advice. The views discussed are for educational purposes only, and provided only for use during this session.

INSURANCE TRENDS

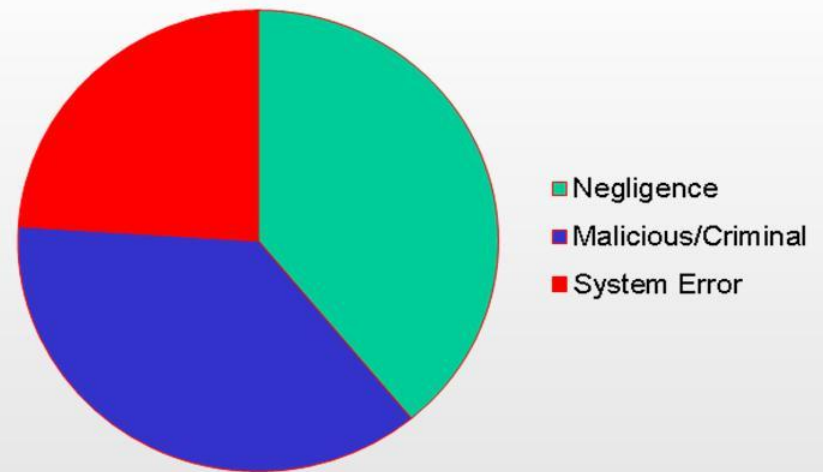
- Cyber Risk/Insurance
- Terrorism
- Infectious Diseases/Ebola
- Climate Change



DATA SECURITY BREACHES

WHAT ARE THE CAUSES?

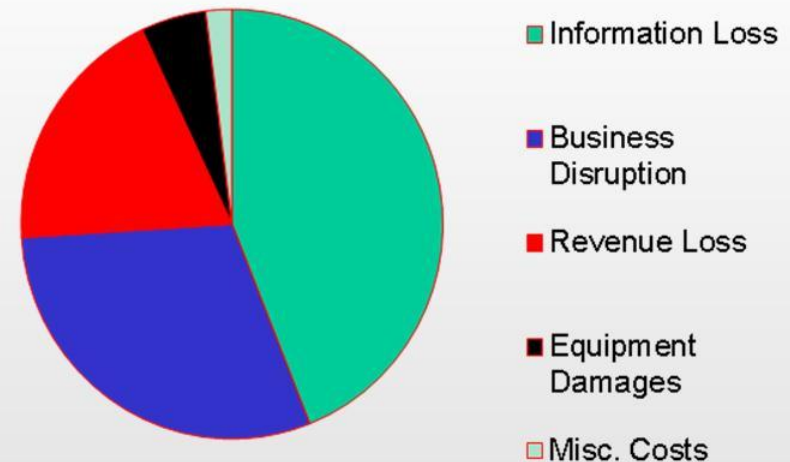
- Negligence – 35%
- Malicious or Criminal Attack – 37%
- System Error – 29%¹



¹2013 Cost of Data Breach Study: Global Analysis, Ponemon Institute, May 2013.
<http://www.ponemon.org/local/upload/file/2013%20Report%20GLOBAL%20CODB%20FINAL%205-2.pdf>

WHAT ARE THE EFFECTS?

- Information Loss – 44%
- Business Disruption – 30%
- Revenue Loss – 19%
- Equipment Damages – 5%
- Other Miscellaneous Costs – 2%²



²2013 Cost of Data Breach Study: Global Analysis, Ponemon Institute, May 2013.
<http://www.ponemon.org/local/upload/file/2013%20Report%20GLOBAL%20CODB%20FINAL%205-2.pdf>

WHAT'S THE COST?

AVERAGE RESOLUTION TIME:
24 days



AVERAGE COST:
\$5.4 Million³



³2013 Cost of Data Breach Study: Global Analysis, Ponemon Institute, June 2013.

http://www.symantec.com/about/news/release/article.jsp?prid=20130605_01&om_ext_cid=biz_socmed_twitter_facebook_mar_ketwire_linkedin_2013Jun_worldwide_CostofaDataBreach

THIRD-PARTY DATA MANAGEMENT & RISKS

- Cloud is the Trend
- Cost Savings
- Data Security Risks
- Lack of Control
- Can delegate the data management but not the responsibility
- What are the risks; Amazon/Sony Breach



BEST PRACTICE



- SEC Guidance
- FFIEC Guidance
- Due Diligence on Vendors
- Negotiate Strong Terms in Vendor/Cloud Contracts
- Risk Transfer Indemnity/Insurance
- Security Assessment of Vendor: Tricky in a Multi-Tenant Cloud Platform
- Make Sure There is Adequate Notice/Disclosure of Use of Cloud to Stakeholders

SECURITY & INSURANCE

- Encryption
 - Automatic red flag for AGs/FTC if data disclosed and not encrypted
- Contractual Indemnity/Hold Harmless
- Mandate insurance purchase by vendor
- Require additional insured status

POLICIES COVERING LOSS

- Take Inventory of Policies
- GL, D&O, E&O, Crime, All Risk Property, Cyber Policies
- 1st Party, 3rd Party, Hybrid Coverage Issues



COVERAGE UNDER CGL?

- IP Exposure
- Data Loss
- Business Interruption
- Third Party Losses
- Privacy

WHEN CONVENTIONAL COVERAGE IS *NOT* ENOUGH



CYBER POLICIES!

CURRENTLY AVAILABLE CYBER INSURANCE

- Privacy Injury Liability
- Privacy Regulatory Proceedings and PCI Fines
- Network and Content Liability
- Crisis Management Fund
- Network Loss or Damage
- Business Interruption
- Electronic Theft
- Network Extortion



THINGS TO DO

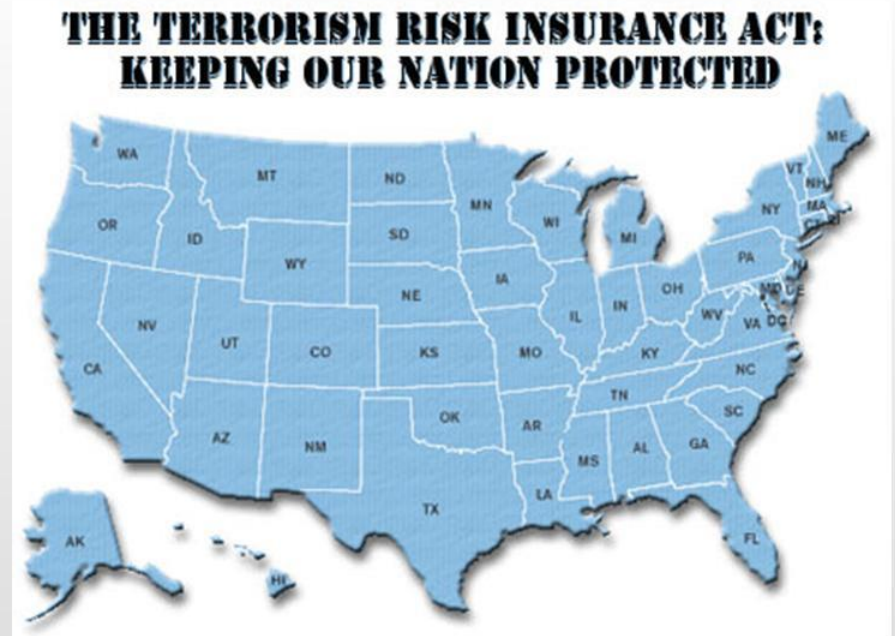
- Understand your exposure.
- Review your insurance policies and request extensions of cyber/data/electronic coverage on existing policies.
- Avoid new exclusions.
- Avoid gaps.
- Enlist an expert consultant or broker.
- Consider panel on cyber policies.
- **DO NOT TAKE “NO” FOR AN ANSWER!**



TERRORISM

TERRORISM RISK INSURANCE ACT (TRIA)

- Enacted in 2002.
- Extended but set to expire on 12/31/2014.
- Bill to extend TRIA is in committee.



TRIA

- Creates a federal “backstop” for insurance claims related to terrorist acts.
- Requires insurance companies to offer terrorism coverage.
- Created a U.S. government reinsurance facility to provide reinsurance coverage to insurance companies in the event of a terrorist act.
- \$100 billion per year cap.

TERRORISM INSURANCE

- Fire exclusion following terrorist act precluded by at least 9 states including New York, California, and Illinois.
- Insurance companies that offer workers' compensation coverage are required to offer terrorism coverage to their clients.

RECOMMENDATIONS

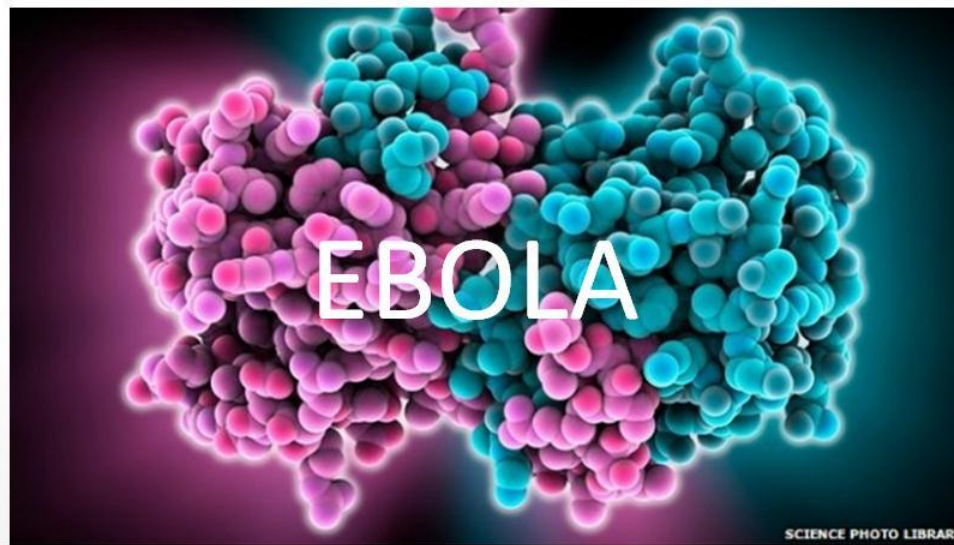
- Negotiate full term terrorism insurance from your insurance companies.
- Review language imposing candidates in which terrorist act losses would be excluded.
- Consider stand alone terrorism insurance to cover gaps in insurance program should TRIA expire.
- Expect severe supply line disruptions in case of a terrorist act.



INFECTIOUS DISEASES



West Africa



- Deadliest virus in history (55% fatalities after infection).
- Company exposures: Personal/Business Interruption.
- Potential global supply chain interruptions.
- Potential port closure or curtailments.

ANALOGY

Coverage for clean-up and removal of property due to the hantavirus in tents in National ports.



RECOMMENDATION

- Protect health and safety of employees.
- Consider supply chain alternatives.
- Maintain general liability insurance coverage for claims of negligence. Watch for exclusions for infectious diseases/bacteria.
- Maintain D&O coverage for claims by investors that you inadequately prepared or acted.
- Maintain property/business interruption insurance.
- Maintain records of any physical impact (closure for clean-up of contamination).

“COMMITTED TO
HEALTH & SAFETY”

**SAFETY
FIRST**



RISING WATER LEVELS



MORE FREQUENT AND *INTENSE* STORMS

2012

Superstorm Sandy
86th Street Subway NYC



2005

Hurricane Katrina
I-10/I-610/West, Louisiana

2005

Hurricane Rita
Coastal Texas



LOSS MITIGATION

- Emergency response plan.
- Identify operations and assets most at risk.
- Pre-loss checklists.
- Update valuations.





ANALYSIS

IDENTIFYING RISKS

IDENTIFY THE TYPES OF RISKS A TERMINAL OPERATOR IS EXPOSED TO:

- Partial or total loss of, or damage to, your property.
- Loss of income through business interruption or reduction of it as a result of property.
- Loss of, or damage to, third parties and/or their property.
- Loss of, or damage to, employees and/or their property.

REDUCING RISKS



REDUCE THE FREQUENCY AS WELL AS THE SEVERITY OF PURE RISKS:

- Avoidance
- Loss Control
- Self-retention
- Insurance

QUESTIONS & ANSWERS

