PLUS MIDWEST - HOT TOPICS
Cyber/EPL

May 6, 2015
Gleacher Center
Chicago, Illinois
Presentations

Two Hot Topics

– Updates on Cyber Security and Liability Issues

– Employment Practices
The Breaches Are Getting Bigger
The Devices Are Getting Smaller

Updates on Cyber Security and Liability Issues
Introduction

A Review of Some Notable Recent Data Breaches

The State of Management’s Response

Class Action Updates
Recent Breaches, Recent Threats

From A to... at least T...

- Anthem, Home Depot, Sony Pictures, Target and more
  - Similarities, Differences
  - Post-Breach Issues
  - Costs
  - Regulator Response
Targets and Threats

- General Business: 54%
- Government: 14%
- Medical: 11%
- Unknown: 11%
- Education: 9%

- Outside: 60%
- Unknown: 14%
- Inside (Accidental): 11%
- Inside (Malicious): 9%
- Inside (Not Classified): 6%
# U.S. Privacy Laws

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<th><strong>State</strong></th>
<th><strong>Federal</strong></th>
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<tbody>
<tr>
<td><strong>Data Breach Notification</strong></td>
<td><strong>Federal Trade Commission</strong></td>
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<tr>
<td>(47 states +)</td>
<td>Section 5 of the Federal Trade Commission Act</td>
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<tr>
<td><strong>Payment Card</strong></td>
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<td>Health Information Technology for Economic Clinical Health Act (HITECH)</td>
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<td><strong>Disposal/Destruction</strong></td>
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<td><strong>Children’s Online Privacy Protection Act (COPPA)</strong></td>
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Notable Recent Breaches

- **Anthem**: PII for 80 million members/former members exfiltrated from network following phishing expedition that allowed intruder access to network.
- **Neiman Marcus**: Payment card information of 350,000 customers taken through malicious software installed onto payment system used for purchases.
- **Sony**: Cyberattack by a group calling itself "#GOP," aka the Guardians of Peace, believed to be from North Korea, leaked some unreleased films online, revealed passwords and executives' salaries and threatened employees and their families.
- **Target**: Attackers stole card data of over 110 million customers by installing malicious software on point-of-sale devices in the checkout lines at Target stores. The malware was installed on Target’s system after obtaining an HVAC vendor’s network credentials.
- **Sourcebooks**: Shopping cart of online bookstore was compromised, enabling hackers to steal names, addresses, credit card numbers, expiration dates, card security codes and email addresses of 5,204 customers.
Data Breaches by the Numbers

2015 on pace to be most active year on record

(Open Security Foundation)
Data Breaches by the Numbers

- 2015 on pace to be most active year on record (Open Security Foundation)
- Numerous high-profile events. Of 10 largest data breaches in U.S. history:
  - 3 within last 12 months
  - 6 within last 24 months
  - Oldest occurred in 2007
- Median of 87 days from initial intrusion to detection (Trustwave)
- 71% of data breaches discovered by third parties (Trustwave)
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Regulatory Response

- **FTC Investigations and Charges:**
  - Section 5(a) of Federal Trade Commission Act, prohibiting unfair and deceptive practices affecting commerce
  - Gramm-Leach Bliley Act (GLBA)

- **HHS Investigations and Charges:**
  - HIPAA/HITECH

- **State Attorney General Investigations and Actions:**
  - HIPAA/HITECH violations
  - State unfair and deceptive trade practices laws
  - State breach notification laws
  - Other state cyber breach legislation (Massachusetts Reg. 17, e.g.)
Data Breach Costs

Ponemon Institute

• Average cost of breach - $5.85 million
• Average notification cost decreased by 10% to $510,000 per breach

NetDiligence, Nov. 2014:

• Average cost of breach litigation – $1.16 million
  – Average settlement payment - $558,000
  – Average defense costs - $699,000
• Average number of records exposed per breach – 2.4 million
How are the Clients Managing?

- Is it a Management Awareness/Oversight Issue?
- Does everyone have a CISO, CPO, CTO?
- Freak out or bail out?
Awareness

Management Awareness

From the Ponemon Institute’s Report: “2014 The Year of the Mega Breach”
Is Technology ...

- A friend or a foe?
- Responding Under Pressure?
- What’s around the corner?
  - EMV (chip/pin)
  - Internet of Things
Class Actions

Class Litigation… No Private Right of Action per legislation But…

- Home Depot (56 million)
- Target (70 million customers’ credit card information)
- Sony PlayStation (77 million account holders)
- Sony Pictures Entertainment (50,000 current/former employees)
- Anthem (current/former members over ten years)
DEFENSES:

- Standing
- Mitigation of the Loss (offering credit monitoring and other remedies before the lawsuits are filed)
- Defining the class
Final Thoughts…

Thank you