CYBER ATTACK RESPONSE STRATEGIES

Contractual Risk Allocation, Insurance Coverage and Regulatory Compliance – Who's on First …?

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Thank you for joining; the webinar will start shortly.

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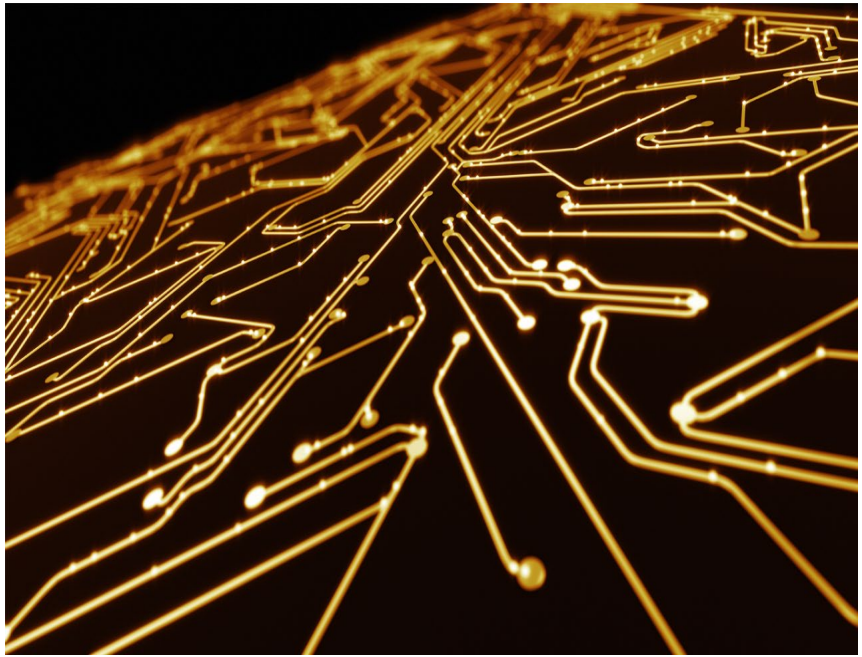
Cyber Attack Response Strategies

Contractual Risk Allocation, Insurance Coverage and Regulatory Requirements – Who's on First …?

AGENDA

- Evolving Cyber Threat Environment
- Types/Impacts of Cyber Attacks
- Risk Allocation Tools to Address Cyber Attacks and Resulting Impacts/Damages
- Cyber Insurance Coverage and Notifications
- Regulatory Requirements and Reporting



EVOLVING CYBER THREAT ENVIRONMENT

- Cyberattacks = the introduction of malicious viruses by state and non-state actors into digital processes that require maintenance and anti virus updates.
- Utilization of contractual risk allocation and insurance coverages to address the liabilities and response costs arising from evolving cyber threats.
- Compliance with US regulations and industry standards when determining the appropriate response strategy to a cyberattack.

EVOLVING CYBER THREAT ENVIRONMENT

- **CISA – ICS Alerts**
  - **July 20, 2021** – Alert (AA21-201A) – Chinese campaign against US Oil and Gas Pipelines.
    - 13 confirmed compromised pipelines, 7 unknown depth of intrusion, 3 near misses.
    - Spearfishing and social engineering.
  - **February 09. 2022** – Alert (AA22-040A) – 2021 Trends Show Increased Globalized Threat of Ransomware.
    - Increased professionalism – Ransomware as a Service (RaaS).
    - Shift from "big game" targets to mid-sized business entities.

EVOLVING CYBER THREAT ENVIRONMENT

- **CISA – ICS Alerts**
  - **March 24, 2022** - Alert (AA22-083A) – Tactics, Techniques and Procedures of State-Sponsored Russian Cyber Actors Targeting Energy Sector.
    - US DOJ indictments against Russian FSB campaigns against US energy sector in 2018. Spearfishing and social engineering.
  - **March 17, 2022** – Alert (AA22-076A) – CISA and FBI disclose threats to US and international satellite communication (SATCOM) networks.
  - **March 15, 2022** – Alert (AA22-074A) – Russian state-sponsored cyber actors gained network access through CISCO MFA protocols. Recommend increased use of time out/lock out defense to repeated failed logins.

EVOLVING CYBER THREAT ENVIRONMENT

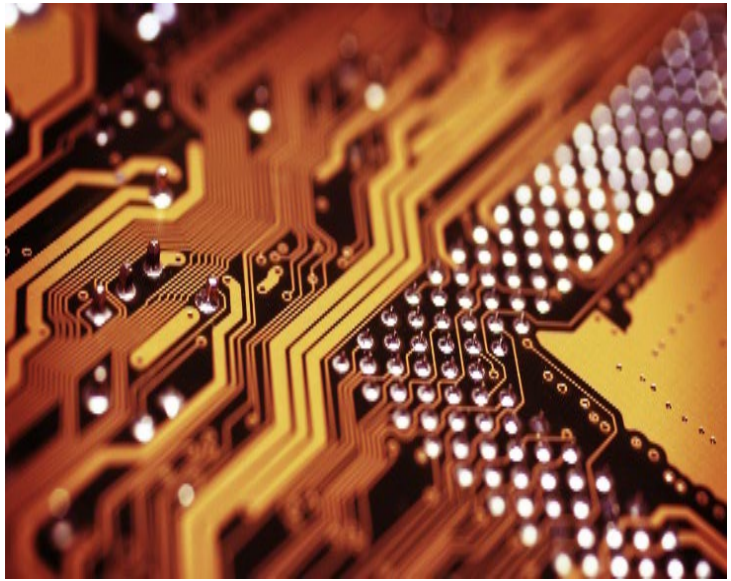
- **Types/impacts of cyberattacks**
  - **Types**
    - Denial of Service (DOS), Distributed Denial of Service (DDOS)
    - Phishing/Whale Phishing
    - MITM
    - Spear-phishing
    - Ransomware
    - Brute force attack

EVOLVING CYBER THREAT ENVIRONMENT

- **Impacts**
  - Loss of confidential, operational and/or financial data.
  - Loss of critical control systems
    - Navigation
    - Well control/MPD
    - RTM
    - Communications

EVOLVING CYBER THREAT ENVIRONMENT

- **Damages**
  - Physical/kinetic damage
  - Personal injury/death
  - Environmental impairment
  - Lost/delayed production
  - Business interruption
  - Loss of proprietary data
  - Costs of responding to cyber attacks
  - Reputational damage

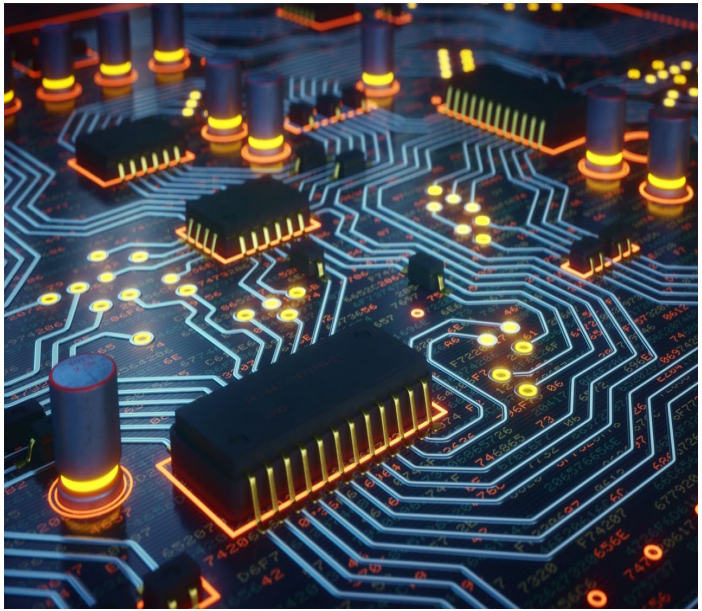


RISK ALLOCATION TOOLS TO ADDRESS CYBER ATTACKS

- **Contractual Risk Allocation Terms and Conditions.**
  - Contractual defense, indemnity and additional insured clauses – will they be effective?
  - Coordination of contractual risk allocation, insurance coverage and management of cyber response activities and costs.

RISK ALLOCATION TOOLS TO ADDRESS CYBER ATTACKS

- **Contractual Risk Allocation**
  - Express terms regarding cyber security procedures/systems/updates.
    - Industry standards
    - Regulatory requirements
    - Reporting past/current cyber incidents, sharing cyber threat information.
    - Extension to each Party's subcontractors/sub-subcontractors.



RISK ALLOCATION TOOLS TO ADDRESS CYBER ATTACKS

- **Contractual Risk Allocation**
  - **Knock Knock**
    - Are standard KFK risk allocation terms applicable to identified risks (equipment, people, pollution) impacted by cyber-attacks on digital systems that were maintained to O&G industry and regulatory standards?
    - Current KFK risk allocation provisions based upon category of people/property – do they apply to cyber related damages?
    - Insurance policies supporting contractual D&I obligations may have a cyber-exclusions.

RISK ALLOCATION TOOLS TO ADDRESS CYBER ATTACKS

- **Warranty**
  - Generally accepted industry standards re: quality, specifications, performance and/or functionality.
  - Warranty require Supplier to provide/perform cyber security updates?

RISK ALLOCATION TOOLS TO ADDRESS CYBER ATTACKS

- **Contractually Required Insurance Coverages**
  - **Required insurance coverages** (Scheduled Property, COW, Redrill, Extra Expense Seepage and Pollution, Care Custody & Control, Extended Cost of Control or Redrill, ROW, Making Wells Safe) - **subject to cyber exclusions?**
  - **Cyber Response Insurance?**
- **Force Majeure**
  - Is a cyber-attack on a digitized control system provided by subcontractor/vendor an FM event?
  - Is a cyber-attack beyond the reasonable control of the party providing/maintaining the digitized control system?
  - Is the subcontractor/vendor obligated to provide notice of cyber updates to purchaser/lessee?

•**Limitation of Liability** – Impacted by failure to comply with cyber security industry standards and updates?

INSURANCE COVERAGE AND NOTIFICATIONS

- **Coverages –Each cyber response insurance policy will have different terms, limits and notice requirements.**
  - First Party Coverage
    - Notice requirements under insurance policy.
    - Initial expenses for response activities involving forensic analysis, notification and legal expenses.
    - Legal Privileges
      - Attorney Client
      - Investigative Privileges
    - BI and recovery costs – may involve required use of insurer's cyber security and cyber response contractors/advisors.
    - Ransomware coverages?

INSURANCE COVERAGE AND NOTIFICATIONS

- Third party coverages for damages arising from cyber attacks
  - Disclosure or misappropriation of confidential data.
  - Shareholder claims for violation of corporate cyber security requirements.
  - Third party and governmental claims arising from cyber event.
  - All dependent upon insured's compliance with insurer's cyber security requirements and possible utilization of insurer's IT cyber response contractors/advisors.

CYBER INSURANCE COVERAGE AND NOTIFICATIONS

- 2021 Lloyd's Cyber Exclusions – Largely focused on state based cyber exclusion against another computers/digitized systems located in another state.
  - LMA5564 – Exclusion 1 – Excludes all losses from war or "cyber operations".
  - LMA5565 – Exclusion 2 – Excludes coverage arising from "retaliatory cyber operations" between specified states, including impacts on the availability of "essential services" in a state. Buy back for "other cyber operations" may be available.
  - LMA5566 – Exclusion 3, is very similar to Exclusion 2, but with no opportunity to buy back coverage for “other cyber operations”.
  - LMA5567 – Exclusion 4 is similar to Exclusion 3, but allows a buyback for "bystander cyber assets" that are affected by a "cyber operation" but is not required to be physically located in an impacted state.

REGULATORY REQUIREMENTS AND REPORTING

- **USCG**
  - CG-5P Policy Letter No. 08-16 – Reporting Suspicious Activity and Breached of Security
  - NIST Cybersecurity Framework
  - National Cybersecurity and Communications Integration Center (NCCIC) – Incident response and management center for cyber incidents.
- **US Department of Treasury – Office of Foreign Asset Control (OFAC)**
  - OFAC – Advisories on Sanctions Risk for Facilitating Ransomware Payments
    - September 21, 2021 OFAC Update
      - OFAC Designation of Malicious Cyber Actors
      - Ransomware payments with sanctions nexus
      - Ransomware payments may violate OFAC Regs
        - Mitigation possible if company paying ransomware maintains:
          - Sanctions compliance program;
          - Updated cybersecurity practices
- **Cybersecurity & Infrastructure Security Agency (CISA)**
  - Ransomware Guide 2020

QUESTIONS?

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