

# Trial News

WASHINGTON STATE ASSOCIATION for JUSTICE

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## Special Focus: Insurance Law

# “01001101 01101111 01101110 01100101 01111001” Means Money

The “modern” insurance industry was born from the Great Fire of London in 1666. We invented fire a long time before we invented fire insurance. The global economy cannot afford such a lag in distributing the risk of cybercrime.

PricewaterhouseCoopers’s (PwC) 2014 Global Economic Crime Survey (February 2014) found that 7% of US organizations lost \$1 million or more due to cybercrime incidents in 2013, and 19% of US entities reported financial losses of \$50,000 to \$1 million.<sup>1</sup> Allianz estimates that cybercrime costs the US economy over \$100 billion per year and the global economy nearly half a trillion.<sup>2</sup> While data breach frequency appears to be decreasing, severity is rising: another PwC survey - for the UK - found that overall losses rose between 50-100% between 2013 and 2014 despite fewer attacks, with the greatest severity change hitting small business.<sup>3</sup>

Cybercrime frequency and severity is likely grossly under-reported. Businesses face substantial consequences for disclosing the existence and exact nature of a data breach and normally don’t unless they have no choice.<sup>4</sup>

The cyberdefense challenge is daunting. Cyberdefense is a hot industry: Bank of



Paul M. Veillon

America Merrill Lynch estimates the market will grow from \$75 billion a year now to \$170 billion by 2020.<sup>5</sup> But there are no standard qualifications for cybersecurity professionals, and the quality of products varies widely - from antivirus software with an unreasonably narrow scope to products that spot a plethora of threats but generate a plethora of false alarms.<sup>6</sup> Corporate executives don’t understand enough about cybercrime to consume defense services intelligently, and no technical defense can stop the threat of a blackmailed or disgruntled employee.<sup>7</sup> With cybercriminals sharing information with each other more willingly than defenders or companies purchasing cybersecurity, losses will horizontally and vertically proliferate.

Demand for cybercrime insurance is therefore growing rapidly. According to Mark Gilbert in *Bloomberg View*, Marsh & McLennan estimated that the market grew 100% last year to \$2 billion and “Barbican, a Lloyds syndicate that specializes in digital defenses, says it saw a 50 percent jump in demand for coverage in the first quarter of [2015] compared with a year earlier.”<sup>8</sup> Allianz Global Corporate & Specialty predicts that \$2 billion will increase to \$20 billion within 10 years; currently fewer than 10% of companies purchase cybercrime insurance.<sup>9</sup>

But business and the insurance industry face a fundamental problem with pure

cyber risk management: “rapidly adapting insurance” is an oxymoron. Garrett Droege, who runs TechAssure, an association of companies that offer cybercrime insurance, explains: “Traditional insurance is based on sometimes hundreds of years of historical data. They can look back, see where the losses came from, and they price accordingly. With cybercrime, the market’s still very, very juvenile.”<sup>10</sup> Chubb is selective about which companies it insures, choosing only those that already have robust protection in place.<sup>11</sup> Compounding the ever-evolving threat matrix is the ever-evolving consequence matrix as cybercrime’s influence is expanding from privacy and theft to institutional operational or technical failure, intellectual property theft, and cyber extortion.<sup>12</sup> Insurance policies may or may not adapt their perils and damages they cover as quickly as cybercriminals expand their repertoire, which is limited only by their apparently limitless creativity. The US economy desperately needs to diversify the risk of cybercrime, but the insurance industry simply does not have enough data about the risk to underwrite it.

Wherever there is great loss and confusion about who should pay, attorneys shall congregate. Suing a company for privacy damages after a breach is one thing, but cyberinsurance litigation will become more common, more lucrative, and more

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## WSAJ

# Nominate your peers for an award!

by Tara Eubanks

The Washington State Association for Justice is seeking nominations for the following awards. Awards will be given during May’s Law Day Celebration in Seattle and July’s Convention at Suncadia Resort. Each nomination should be accompanied by a nomination letter and any supporting materials in order for it to receive consideration by the committee.

- **Tom Chambers Trial Lawyer of the Year Award:** A lawyer who advances the art and skill of advocacy, either in trial or by training others so as to benefit humankind.
- **Judge of the Year Award:** A judge who, through the exercise of outstanding judicial ruling or leadership, promotes a civil justice system to serve the people.
- **Professionalism Award:** A lawyer who, by conduct and leadership, pro-

motes professionalism and brings dignity and pride to the legal profession by promoting civility, courtesy, and honor among lawyers.

- **Excellence in Journalism Award:** A journalist or reporting organization (traditional or new media) whose reporting, commentary, or editorial furthers public understanding and encourages the protection of consumers, injured people, and the civil justice system.
- **Public Justice Award:** An individual or organization whose efforts, courage, litigation, or innovative work results in the creation of a more just society.
- **Carl Maxey Award:** A WSAJ member who has demonstrated a sustained commitment to diversity in the legal profession.
- **New Lawyer “Ready to Soar”**

**Award:** A WSAJ member in practice fewer than five years who has demonstrated excellence and professionalism in the legal practice, made a substantial contribution to the community, and advanced the mission of WSAJ.

- **Public Official of the Year Award:** A public official whose efforts, courage, or work advances the rights of injured persons, consumers, or employees, and who champions the civil justice system and right to trial by jury.

For a complete description of the award criteria, please visit [washingtonjustice.org](http://washingtonjustice.org).

**Tara Eubanks**, EAGLE member, is chair of the Awards Committee. She practices at the Budlong Law Firm and was a contributing author to the WSAJ Automobile Accident Litigation Deskbook.

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**EAGLE PROGRAM**

New members of the EAGLE program and those who increase their contributions are recognized here each month in appreciation of their commitment to WSAJ. We welcome the following firm and individual contributors.

<b>UPGRADES</b>	<b>NEW EAGLES</b>
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## “01001101 01101111 01101110 01100101 01111001” Means Money

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complex in the coming decades. Attorneys who understand the different insurance products available to companies will be important advisors. For example, a company that believes it is insured for the business interruption suffered from a factory robotics shutdown will need to know if its policy covers only defense and payment for privacy claims. The industry raises many novel questions. For instance, what cyberinsurance exclusions will be void as contrary to public policy? What will constitute cyberinsurance fraud? Attorneys who understand the cybersecurity threat profile and how to characterize a given attack as a covered peril can save companies millions of dollars on disputed claims. Attorneys who understand the direct and consequential losses of data breaches can help make their clients whole and hold insurers accountable for paying all the benefits available under the policy.

For decades, bodily injuries - particularly from motor vehicle collisions - have been the dominant population of property & casualty claims and lawsuits. But according to consultants at KPMG, the auto insurance market will shrink 60% by 2040 as intelligent transportation systems, crash avoidance, crash survivability, and automation increase.<sup>13</sup> Cyberinsurance is a new, complicated, complex, and explod-

ing market that promises to be the frontier of pure risk management in the early 21st Century.

*Paul Veillon is a WSAJ EAGLE Member and solo practitioner at Galileo Law PLLC in Seattle.*

<sup>1</sup> Kevin Mickelberg, et. al., “US Cybercrime: Rising Risks, Reduced Readiness - Key Findings from the 2014 US State of Cybercrime Survey,” © 2014 PricewaterhouseCooper (available as of December 16, 2015 at <http://www.pwc.com/us/en/increasing-it-effectiveness/publications/assets/2014-us-state-of-cyber-crime.pdf>).

<sup>2</sup> Allianz Global Corporate & Specialty, “Businesses Must Prepare for New Generation of Cyber Risks” (available as of December 16, 2015 at [https://www.allianz.com/en/press/news/studies/150909\\_businesses-must-prepare-for-cyber-risks.html](https://www.allianz.com/en/press/news/studies/150909_businesses-must-prepare-for-cyber-risks.html)).

<sup>3</sup> UK Department for Business Innovation & Skills, “2014 Information Security Breaches Survey: Executive Summary” (available as of December 16, 2015 at <http://www.pwc.co.uk/assets/pdf/cyber-security-2014-exec-summary.pdf>).

<sup>4</sup> “Data Breaches in America: The Rise of the Hacker.” The Economist, November 7, 2015 (available as of December 16, 2015 at <http://www.economist.com/news/business/21677638-rise-hacker>).

<sup>5</sup> “Cyber-security: the Cost of Immaturity,” The Economist, November 7, 2015 (available as of December 16, 2015 at <http://www.economist.com/news/business/21677639-business-protecting-against-computer-hacking-booming-cost-immaturity>).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Mark Gilbert, “Insurance Won’t Solve Cybercrime,” Bloomberg View, April 13, 2015 (available as of December 16, 2015 at <http://www.bloombergview.com/articles/2015-04-13/cybercrime-is-the-problem-but-insurance-isn-t-the-solution>).

<sup>9</sup> Allianz, *supra* fn. 2.

<sup>10</sup> John Ydstie, “As Cybercrime Proliferates, So Does Demand For Insurance Against It,” © October 12, 2015 National Public Radio (available as of December 16, 2015 at <http://www.npr.org/sections/alltechconsidered/2015/10/12/445267832/as-cybercrime-proliferates-so-does-demand-for-insurance-against-it>).

<sup>11</sup> *Id.*

<sup>12</sup> Allianz, *supra* fn. 2.

<sup>13</sup> Andrew G. Simpson, “Auto Insurance Market to Shrink 60% by 2040,” Insurance Journal, October 23, 2015 (available as of December 16, 2015 at <http://www.insurancejournal.com/news/national/2015/10/23/385779.htm>).



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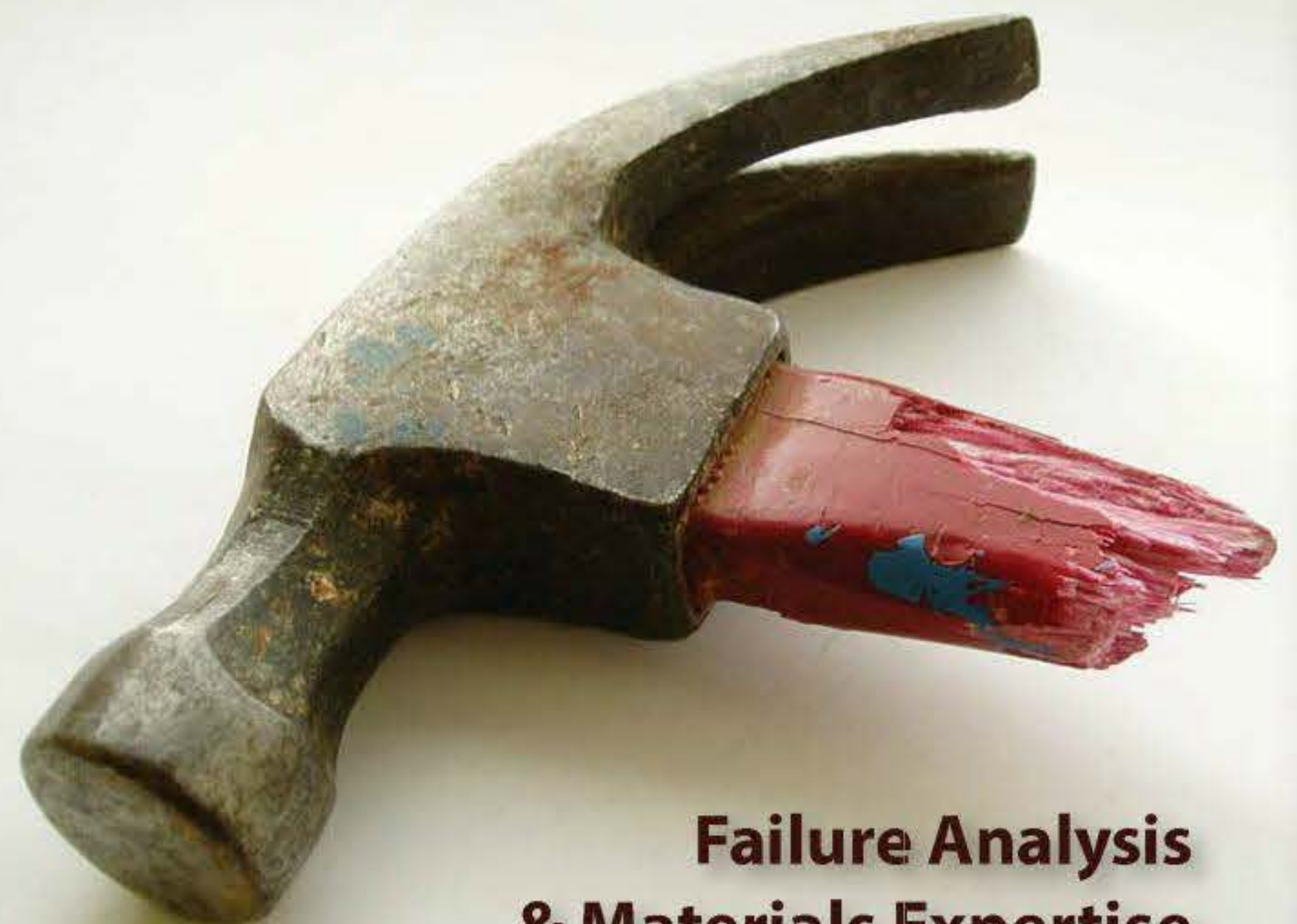
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