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Where Did My Coverage Go And Can I Get It Back? Cyber Incident and Electronic Data Issues

The Hanover Insurance Group

Where Did My Coverage Go And Can I Get It Back?

Cyber Incident and Electronic Data Issues

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BEWARE!!

Coverage for cyber incidents and damage to electronic data is disappearing from Commercial General Liability and Commercial Property policies. How does this affect commercial policyholders, and are there ways to get the coverage back?

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CG 00 01 12 25
Property Damage/Electronic Data

15. ***"Property damage"*** *means:*

a. *Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or*

b. *Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.*

For the purposes of this insurance, "electronic data" is not tangible property.

Note: In CG 00 01 04 13, the definition of electronic data is included in the property damage definition.

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Property Damage/Electronic Data

5. ***"Electronic data"*** *means*

information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

Note: In CG 00 01 04 13, the definition of electronic data is included in the property damage definition and in the electronic data exclusion.

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CG 00 01 12 25
Electronic Data Exclusion

Coverage A Exclusion

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

However, this exclusion does not apply to liability for damages because of "bodily injury".

Note: In CG 00 01 04 13, the definition of electronic data is included in the electronic data exclusion.

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Property Damage
Claim Scenario

A Named Insured contractor is getting ready to do some work at a strip mall. The contractor is setting up his equipment in the parking lot when one of the machines explodes, causing damage to the parking lot and to several of the stores in the strip mall. The following claims are made against the insured. Which are property damage?

- Damage to the parking lot **YES**
- Damage to the stores impacted by the explosion **YES**
- Damage to the data in the computers in some of the damaged stores **NO**
- Loss of use of the stores impacted by the explosion **YES**
- Loss of use of the stores at the other end of the strip mall that were not impacted by the explosion, but which weren't able to open for three weeks **YES**

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CG 00 01 12 25
Applying Exclusion p.

- A Named Insured electrician, while working on wiring in a building, damages several computers and the data in those computers. Although damage to the computers is covered, damage to the electronic data in the computers is not.
- The Named Insured accidentally sends an email containing malware to a customer. The malware damages the electronic data that runs the customer's computer hardware, and the hardware can't be used. This claim, even though it involves loss of use of tangible property, the hardware, is not covered because of the exclusion. The damage arose from damage to the electronic data. **Note**: The Cyber Incident exclusion also applies.
- A Named Insured electrician, while working on wiring in a building, damages data that controls a piece of medical equipment. The machine malfunctions during a procedure, causing bodily injury to a patient. The bodily injury claim against the Named Insured is covered because the exclusion does not apply to bodily injury.

BEWARE! Endorsements may further restrict coverage.

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Exclusion – Electronic Data - Deletion Of Bodily Injury Exception (CG 21 85 12 23)

2. Exclusions

This insurance does not apply to:
p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

~~*However, this exclusion does not apply to liability for damages because of "bodily injury".*~~ **EXCEPTION IS REMOVED!**

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Exclusion – Electronic Data Deletion Of Bodily Injury Exception (CG 21 85 12 23)

Recall our prior claim scenario

A Named Insured electrician, while working on wiring in a building, damages data that controls a piece of medical equipment. The machine malfunctions during a procedure, causing bodily injury to a patient. In the unendorsed CGL, coverage applies because the Electronic Data exclusion does not apply to bodily injury.

This claim is now excluded!

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POLICY NUMBER: COMMERCIAL GENERAL LIABILITY
CG 04 37 12 25

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS OF ELECTRONIC DATA RESULTING FROM PHYSICAL INJURY TO TANGIBLE PROPERTY LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Loss Of Electronic Data Limit: $
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Note: This endorsement was updated from the previous version, CG 04 37 12 23, to reflect the fact that CG 00 01 12 25 includes a Cyber Incident exclusion.

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Loss of Electronic Data Resulting From Physical Injury To Tangible Property Liability Coverage (CG 04 37 12 25)

A. *Exclusion p. under Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:*

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data". However, this exclusion does not apply to liability for damages because of:

(1) *"Bodily injury"; or*

(2) *Loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that results from physical injury to tangible property.*

Note: Coverage applies with a sublimit.

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Loss of Electronic Data Resulting From Physical Injury To Tangible Property Liability Coverage (CG 04 37 12 25)

C. *For the purposes of the coverage provided by this endorsement, the definition of "property damage" in the Definitions section is replaced by the following:*

"Property damage" *means:*

a. *Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;*
b. *Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it; or*
c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

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Loss of Electronic Data Resulting From Physical Injury To Tangible Property Liability Coverage (CG 04 37 12 25)

- Replaces the Electronic Data exclusion in the CGL
- Adds an exception for loss of, loss of use of, damage to, corruption of, inability to access or inability to manipulate “electronic data” that results from physical injury to tangible property
- With respect to coverage provided by the endorsement, such loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data“ is included within the definition of property damage.
- A sublimit applies per occurrence and is shown on the endorsement.

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Loss of Electronic Data Resulting From Physical Injury To Tangible Property Liability Coverage (CG 04 37 12 25)

Recall our prior claim scenario

A Named Insured electrician, while working on wiring in a building, damages several computers and the data in those computers. In the unendorsed CGL, damage to the computers is covered, but damage to the electronic data in the computers is not.

The claim for damage to the data is now covered up to the sublimit.

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Watch Out For!

Loss Of Electronic Data Resulting From Physical Injury To Tangible Property Liability Coverage - Deletion Of Bodily Injury Exception (CG 04 71 12 25)

- Like the CG 04 37 12 25, except that there is no exception for bodily injury

Note: This endorsement was updated from the previous version, CG 04 71 12 23, to reflect the fact that CG 00 01 12 25 includes a Cyber Incident exclusion.

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CG 00 01 12 25
Cyber Incident Exclusion

- Replaces CG 40 35 12 23 Exclusion – Cyber Incident which is withdrawn
- The exclusion is added to Coverage A (Bodily Injury and Property Damage Liability and Coverage B (Personal and Advertising Injury Liability.)

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What is a Cyber Incident?

5. ***"Cyber incident"*** *means any:*

a. *Unauthorized access to or use of any computer system.*
b. *Malicious code, virus or any other harmful code that is directed at, enacted upon or introduced into any computer system and is designed to access, alter, corrupt, damage, delete, destroy, disrupt, encrypt, exploit, use or prevent or restrict access to or the use of any part of any computer system or otherwise disrupt its normal functioning or operation.*
c. *Denial of service attack which disrupts, prevents or restricts access to or use of any computer system, or otherwise disrupts its normal functioning or operation.*

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Cyber Incident Exclusion

Coverage A Exclusion

u. Cyber Incident

"Bodily injury" or "property damage" arising out of a "cyber incident".
This exclusion applies even if damages are claimed for notification costs, credit or identity monitoring expenses, forensic expenses, public relations expenses, data restoration expenses, extortion expenses or any other similar cost or expense incurred by you or others arising out of a "cyber incident".

Note: Similar language is added as exclusion t. in Coverage B.

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Cyber Incident Exclusion

Claim Scenario

The Named Insured accidentally sends an email containing malware to a medical office. The malware damages the electronic data that runs a piece of medical equipment. The machine malfunctions during a procedure, causing bodily injury to a patient.

This claim is now excluded!

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Limited Coverage for Cyber Incidents

The following endorsements introduced with a 12/23 edition date were updated to reflect the fact that CG 00 01 12 25 includes a Cyber Incident exclusion:

- Cyber Incident Liability Coverage Subject To Each Cyber Incident Occurrence And Aggregate Limits **(CG 04 25 12 25)**
- Cyber Incident Liability Coverage And Loss Of Electronic Data Liability Coverage Subject To Loss Of Electronic Data, Each Cyber Incident Occurrence And Aggregate Limits **(CG 04 95 12 25)**

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Limited Coverage for Cyber Incidents

POLICY NUMBER: COMMERCIAL GENERAL LIABILITY
CG 04 25 12 25

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CYBER INCIDENT LIABILITY COVERAGE SUBJECT TO EACH CYBER INCIDENT OCCURRENCE AND AGGREGATE LIMITS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Limits Of Insurance	
Each Cyber Incident Occurrence Limit:	**$**
Cyber Incident Aggregate Limit:	**$**
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	



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CG 04 25 12 25

Cyber Incident Liability Coverage Subject To Each Cyber Incident Occurrence And Aggregate Limits (CG 04 25 12 25)

- Provides a sublimit of coverage for bodily injury or property damage caused by a cyber incident
- Coverage B is not broadened by this endorsement.
- The following exclusion is added:

Cyber Incident Costs Or Expenses
Damages claimed for notification costs, credit or identity monitoring expenses, forensic expenses, public relations expenses, data restoration expenses, extortion expenses or any other similar cost or expense incurred by you or others arising out of a "cyber incident".



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Limited Coverage for Cyber Incidents

POLICY NUMBER: COMMERCIAL GENERAL LIABILITY
CG 04 95 12 25

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CYBER INCIDENT LIABILITY COVERAGE AND LOSS OF ELECTRONIC DATA LIABILITY COVERAGE SUBJECT TO LOSS OF ELECTRONIC DATA, EACH CYBER INCIDENT OCCURRENCE AND AGGREGATE LIMITS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Limits Of Insurance	
Each Cyber Incident Occurrence Limit:	$
Loss Of Electronic Data Limit:	$
Cyber Incident Aggregate Limit:	$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	



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CG 04 95 12 25

Cyber Incident Liability Coverage And Loss Of Electronic Data Liability Coverage Subject To Loss Of Electronic Data, Each Cyber Incident Occurrence And Aggregate Limits (CG 04 95 12 25)

Like CG 04 25 12 25 BUT

- Adds a sublimit for loss of “electronic data” that results from physical injury to tangible property (like the CG 04 37 12 25)
- The Electronic Data exclusion does not apply to “Loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that results from physical injury to tangible property.” (up to the sublimit)



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BI/PD coverage under Cyber forms

Sample Language
Contingent Bodily Injury Coverage [Sub-Limit]

2) The following is added to section VI. Exclusions, A. Exclusions Applicable to All Insuring Agreements, item 3. Bodily Injury:

However, this exclusion shall not apply to:

*a) solely with respect to Insuring Agreement I.B.1. (Network Security Liability), any **Claim** for **Bodily Injury** directly caused by, or directly resulting from, an otherwise covered **Network Security Wrongful Act**.*



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BI/PD coverage under Cyber forms

Sample Language

We will pay on your behalf claim expenses, damages, and regulatory penalties that you become legally obligated to pay resulting from a claim against you for:
1. bodily injury, sickness, disease, or death of a person resulting directly from a security failure;
2. damage or injury to or destruction of tangible property resulting directly from a security failure; or
3. impairment to or loss of use of tangible property, whether physically damaged, injured, destroyed or not, including tangible property that cannot be accessed, used, or is less useful resulting directly from a security failure

Note: A sublimit applies



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Building and Personal Property Coverage Form (CP 00 10 10 12)

Property Not Covered – Electronic Data

- Information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software
- Does not apply to your "stock" of prepackaged software
- Does not apply to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system

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Building and Personal Property Coverage Form (CP 00 10 10 12)

Electronic Data Additional Coverage

- Pays for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss
- Covered Causes of Loss are the Broad Form perils plus virus, but not if the loss is caused by an employee or one the insured has hired to work on the system
- $2,500 annual aggregate limit

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Business Income (and Extra Expense) Coverage Form (CP 00 30 10 12)

Interruption of Computer Operations Limitation

- Coverage for Business Income does not apply when a "suspension" of "operations" is caused by destruction or corruption of electronic data, or any loss or damage to electronic data…
- Coverage for Extra Expense does not apply when action is taken to avoid or minimize a "suspension" of "operations" caused by destruction or corruption of electronic data, or any loss or damage to electronic data…

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Business Income (and Extra Expense) Coverage Form (CP 00 30 10 12)

Additional Coverage - Interruption of Computer Operations

- Coverage applies to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of electronic data due to a Covered Cause of Loss.
- Covered Causes of Loss are the Broad Form perils plus virus, but not if the loss is caused by an employee or one the insured has hired to work on the system
- $2,500 annual aggregate limit

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Cyber Incident Exclusion
CP 10 75 12 20

Excludes loss or damage from a cyber incident, defined as:

1. Unauthorized access to or use of any computer system (including electronic data).
2. Malicious code, virus or any other harmful code that is directed at, enacted upon or introduced into any computer system (including electronic data) and is designed to access, alter, corrupt, damage, delete, destroy, disrupt, encrypt, exploit, use or prevent or restrict access to or the use of any part of any computer system (including electronic data) or otherwise disrupt its normal functioning or operation.
3. Denial of service attack which disrupts, prevents or restricts access to or use of any computer system, or otherwise disrupts its normal functioning or operation.

Note: Coverage applies for resulting fire or explosion.

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COMMERCIAL PROPERTY
CP 10 75 12 20

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CYBER INCIDENT EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY

A. The following exclusion is added to Paragraph **B. Exclusions:**

We will not pay for loss or damage caused directly or indirectly by the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

Cyber Incident

1. Unauthorized access to or use of any computer system (including electronic data).
2. Malicious code, virus or any other harmful code that is directed at, enacted upon or introduced into any computer system (including electronic data) and is designed to access, alter, corrupt, damage, delete, destroy, disrupt, encrypt, exploit, use or prevent or restrict access to or the use of any part of any computer system (including electronic data) or otherwise disrupt its normal functioning or operation.
3. Denial of service attack which disrupts, prevents or restricts access to or use of any computer system, or otherwise disrupts its normal functioning or operation.

B. Exceptions And Limitations

1. **Fire Or Explosion**

   If a cyber incident as described in Paragraphs **A.1.** through **A.3.** of this exclusion results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

2. **Additional Coverage**

   The exclusion in Paragraph **A.** does not apply to the extent that coverage is provided in the:

   a. Additional Coverage – Electronic Data; or

   b. Additional Coverage – Interruption Of Computer Operations.

3. **Electronic Commerce Endorsement**

   The exclusion in Paragraph **A.** does not apply to the Electronic Commerce (E-Commerce) endorsement when attached to your policy.

C. Vandalism

The following is added to Vandalism, if Vandalism coverage is not otherwise excluded under the Standard Property Policy or the Causes Of Loss – Basic, Broad or Special Forms and if applicable to the premises described in the Declarations:

Vandalism does not include a cyber incident as described in Paragraph **A.**

SAMPLE

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Cyber Incident Exclusion With Ensuing Cause(s) of Loss Exceptions CP 10 76 12 20

CP 10 75 12 20 PLUS

Adds coverage for resultant damage by a specified cause of loss or theft, up to a limit as specified on the endorsement

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EDP Policies

- Coverage can be written to apply to hardware as well as to data, media and software.
- Covers the cost to reinstall or reproduce data from duplicates
- May cover the cost to research/reproduce data if no duplicates exists
- Business Income/Extra Expense can often be included.
- Broad covered perils

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ELECTRONIC DATA PROCESSING EQUIPMENT COVERAGE PART (AAIS IM 7200 10 022)

"Hardware" means a network of electronic machine components (microprocessors) capable of accepting instructions and information, processing the information according to the instructions, and producing desired results.

"Hardware" includes but is not limited to: 1) mainframe and mid-range computers and network servers; 2) personal computers and workstations; 3) laptops, palmtops, notebook PCs, other portable computer devices and accessories including, but not limited to, multimedia projectors; and 4) peripheral data processing equipment, including but not limited to, printers, keyboards, monitors, and modems.

"Hardware" does not include: 1) "software"; 2) "telecommunications equipment"; 3) "reproduction equipment"; 4) "protection and control systems"; and 5) "off-site server" and "on-site server".



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Equipment Breakdown Protection Coverage Form (EB 00 20 01 13)

- Covers a breakdown to covered equipment

> *"Breakdown":*
>
> *a. Means the following direct physical loss that causes damage to "Covered Equipment" and necessitates its repair or replacement:*
> *(1) Failure of equipment; pressure or vacuum*
> *(2) Mechanical failure including rupture or bursting caused by centrifugal force; or*
> *(3) Electrical failure including arcing;*
>
> *unless such loss or damage is otherwise excluded within this Coverage Form.*

- Excludes “defects, erasures, errors, limitations or viruses in computer equipment and programs including the inability to recognize and process any date or time or provide instructions to Covered Equipment.”
- A Cyber Incident Exclusion is often added.



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Equipment Breakdown

- More robust forms may include coverage for loss due to electronic circuitry impairment without excluding cyber events.
- e.g. HSB TechAdvantage Equipment Breakdown Coverage Form

"Electronic circuitry impairment" means a fortuitous event involving "electronic circuitry" within "covered equipment" that causes the "covered equipment" to suddenly lose its ability to function as it had been functioning immediately before such event…

"Electronic circuitry" means microelectronic components, including but not limited to circuit boards, integrated circuits, computer chips and disk drives."

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Cyber Policies

Bricking/Computer Replacement - Sample Language

We pay on your behalf computer replacement costs that you incur as a result of the loss of integrity in the firmware of any computer systems you own or lease due to a security failure first discovered by you during the policy period.

Computer systems means::
1. computers and related peripheral components, including Internet of Things (IoT) devices;
2. systems and applications software;
3. terminal devices;
4. related communications networks;
5. mobile devices (handheld and other wireless computing devices); and
6. storage and back-up devices

by which electronic data is collected, transmitted, processed, stored, backed up, retrieved, and which are owned by you.

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Cyber Policies

Hardware/Equipment Replacement Sample Language

…the replacement or repair costs of physical hardware or equipment that are part of an Insured's Computer System which have been damaged electronically but for which there is no Property Damage, and which have been determined by the Insurer, at its sole discretion, to:

i. Be more practical and cost-effective to physically replace or repair such hardware or equipment than to repair or restore through the replacement, restoration, recreation, re-collection, or recovery of Digital Data formerly thereon; or
ii. Be permanently vulnerable or unstable due to the corruption or destruction of firmware formerly thereon.

Note: Insured's Computer System includes computer hardware, software, telephone system, firmware, etc. plus Industrial Control Systems.



Thank You For Attending!

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