

Damages from Malware, Cyberattacks, Software Breakdowns, and Data Theft

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Presented by:

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Presentation Outline

I. Introduction

II. Estimating Damages

III. Insurance Policies & Liability

IV. Privacy & Data Breach Laws

V. Conclusion

- Advice for Dealers and Their Attorneys
- Questions and Answers

Damages from Malware, Cyberattacks, Software Breakdowns, and Data Theft

1. Demonstrated Vulnerability
2. Damages Caused by These Events
3. Steps for Dealers and Their Attorneys

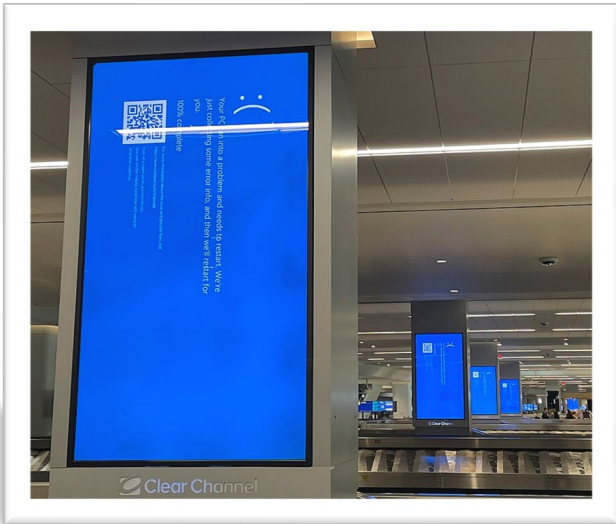
I. Introduction

CDK Incident



On June 19, 2024, a ransomware attack took most of CDK Global's services offline— affecting 15,000 dealers. Anderson Economic Group estimated that the attack cost auto dealers \$1.02 billion.

I. Introduction



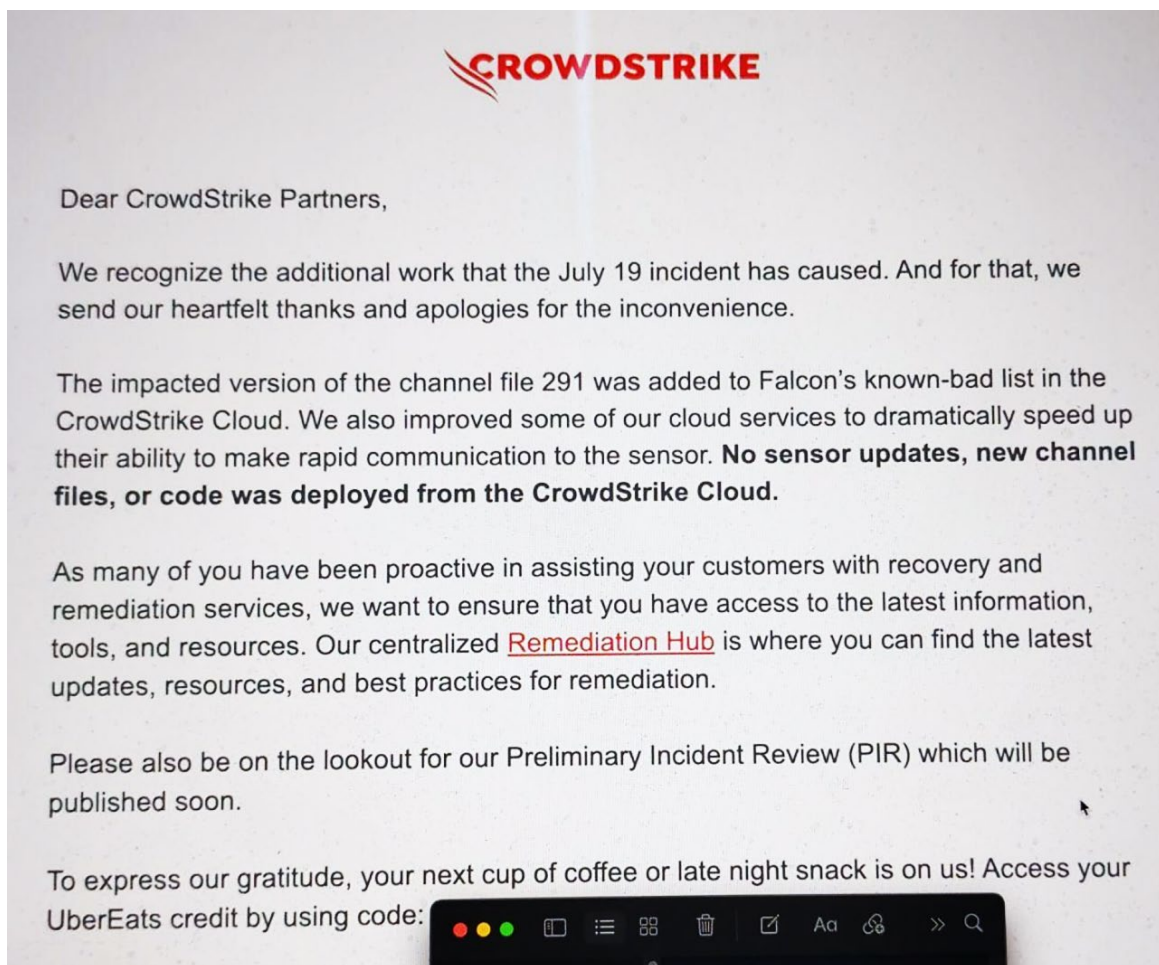
CrowdStrike Event

In July 2024, CrowdStrike's flawed software update caused 8.5 million computers to crash—producing the infamous “BSOD.”

Delta Airlines lost \$500 million in *just one week*.

I. Introduction

*To express their
"gratitude,"
Crowdstrike gave
victims a \$10
Uber Eats card.*



I. Introduction

More Threats

- *Texas v. Meta*,
\$1.4 billion settlement
for unauthorized capture
of personal information
(July 2024)
- GM OnStar,
Lawsuits alleging sharing customer data without
permission with LexisNexis (June 2024)



I. Presenters: Patrick Anderson



Mr. Patrick Anderson founded Anderson Economic Group in 1996. As the firm's principal and CEO, he and other AEG consultants provide expert testimony in cases involving auto dealers and other franchise businesses.

A leading expert in damages, Anderson is known for testimony in *Alaska Rent-A-Car*, *Beck's Beer*, *Tesla*, *MINI of Cleveland*, *Action Nissan*, and other notable cases.

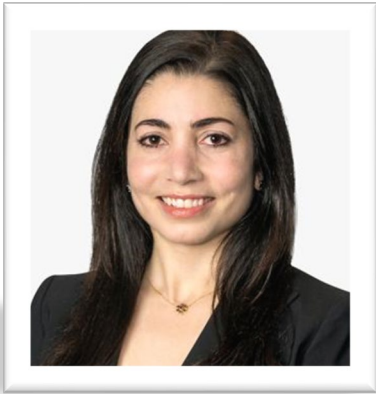
AEG analyses have been cited by many of the country's most respected news outlets.

I. Presenters: Brad Weiss



Mr. Brad Weiss, Partner with Charapp & Weiss, has represented national and international businesses in corporate, employment and complex commercial litigation. Mr. Weiss has also focused on automotive manufacturer/dealer disputes, vehicle allocation, new point protests and antitrust issues. Mr. Weiss has practiced before the United States Supreme Court, 4th Circuit Court of Appeals, Virginia Supreme Court, and Federal Courts in Texas, Florida, California, Ohio and other states.

I. Presenters: Andrea Gumushian



Andrea M. Gumushian of ArentFox Schiff is an Associate Attorney in the firm's Washington, D.C. office.

Andrea advises clients facing complex legal and policy issues at the intersection of regulatory compliance, data privacy, and emerging technology. Before joining private practice, Andrea spent two and a half years on the legal team of a leading SaaS provider to the automotive and insurance industries.

II. Estimating Damages



Patrick Anderson

II. Estimating Damages

A. CDK Event

Anderson Economic Group estimated that the CDK event in June–July 2024:

1. Caused aggregate dealer damages of \$1.02 billion
2. Impacted 15,000 dealers
3. Caused loss of 56,200 new vehicle sales.

II. Estimating Damages

The magnitude of Anderson Economic Group's \$1.02 billion estimate was later confirmed by:

1. Disclosures from publicly-traded dealer groups
 - Group 1 (\$17 M), Sonic (\$30M)
 - Asbury (\$1 per share), AutoNation (\$1.50 per share), 2nd quarter only
2. Sales and service revenue for new auto dealers

II. Estimating Damages

Sonic Automotive Inc.

Press release accompanying Form 10Q, August 5, 2024:

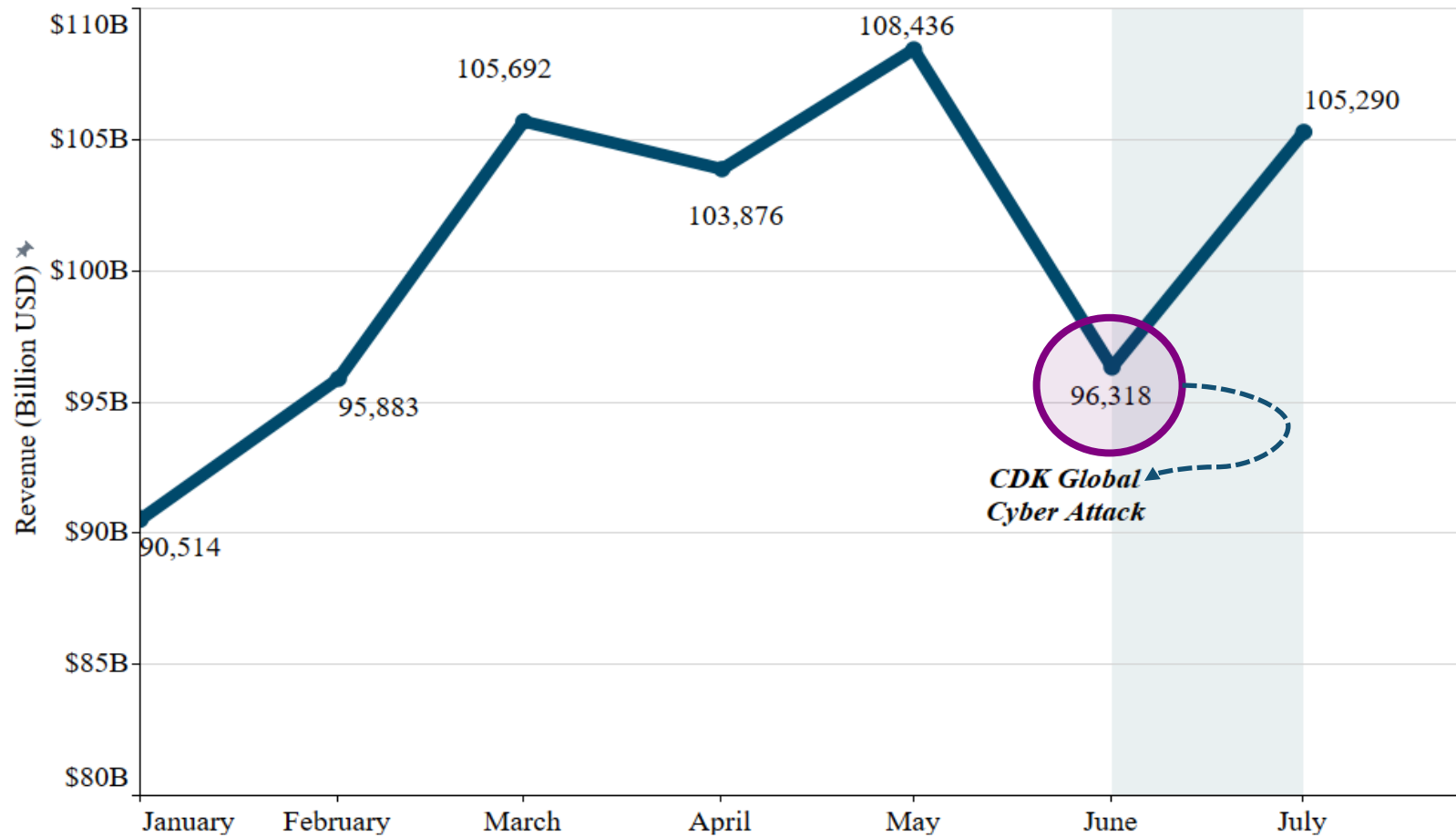
“As of today, Sonic’s access to the information systems provided by CDK has been restored, however we experienced operational disruptions throughout July related to the functionality of certain CDK **customer lead applications, inventory management applications and related third-party application integrations** with CDK. As a result of the business disruption caused by the CDK outage, we estimate our second quarter GAAP income before taxes was negatively impacted by approximately \$30 million, or \$0.64 in diluted earnings per share.”

Form 10Q explanation:

CDK Outage – On June 19, 2024, CDK Global (“CDK”)...notified the Company that CDK had suspended certain systems used by the Company...As a result, the Company experienced disruptions to its dealer management system (“DMS”), its customer relationship management system (“CRM”) and other systems that support **sales, inventory and accounting functions**... [emphasis by AEG]

II. Estimating Damages

Sales and Service Revenue of New Auto Dealers,
U.S. 2024 YTD (11/14)



Source: U.S. Census Bureau (Monthly Retail Trade and Food Services Report)

II. Estimating Damages

B. Six Categories of Damages

1. Earnings from lost new unit sales

- Most obvious and observable result.
- Note: Some sales are just delayed; some are lost to other dealers; some are lost to inertia, loss of interest, financial reversals, and inexplicable events.
- *AEG estimated most signed sales contracts were completed...but many interactions without contracts were not.*

II. Estimating Damages

Six Categories of Damages, continued:

2. Lost earnings on used car sales

3. Lost earnings on parts and service

- Service losses include non-fulfilled appointments, and those not scheduled due to the outage
- Future issue: service problems caused by lack of maintenance.

II. Estimating Damages

Six Categories of Damages, continued:

4. Additional staffing and IT service costs
 - This is explicit in the AutoNation disclosure, and a big part of AEG-estimated damages
5. Additional floor plan interest costs on inventory
6. Damages to consumers
 - This not included in AEG estimate of dealer damages for CDK event.

II. Estimating Damages

C. Damages: Two Examples

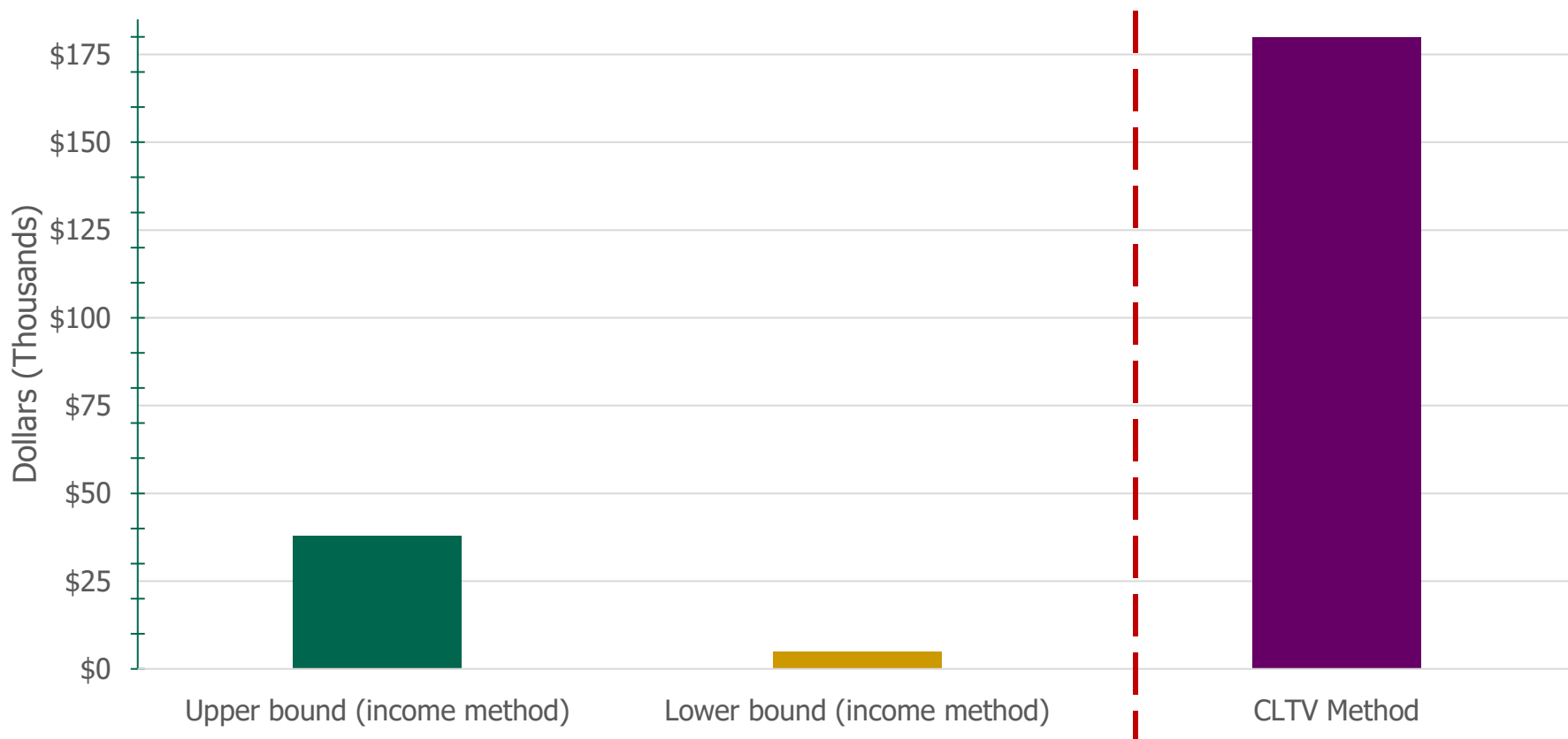


1. California Volvo case (a decade ago):
Between 1 and 5 thousand misleading marketing letters to specific customers, during one month.
2. Newer case:
Theft of over 10,000 records loaded into a competing dealer's DMS and used repeatedly for many months.

II. Estimating Damages

California Volvo Case (One-Month Misuse)

Competing Damages Estimates

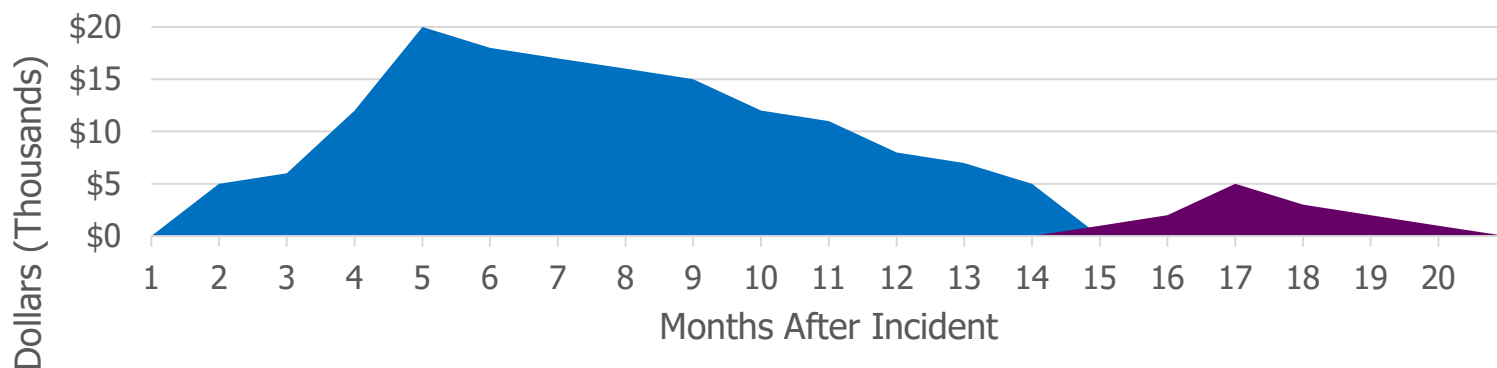


Source: AEG Illustration adapted from actual case.

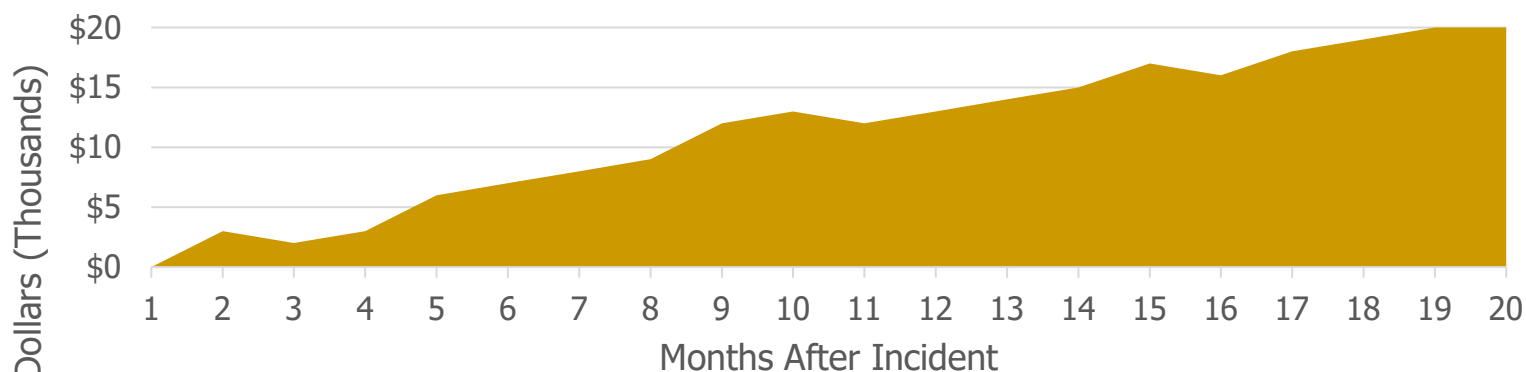
II. Estimating Damages

Modern Case with DMS (Multi-Month Misuse)

New Car and F & I Department Losses



Parts and Service Losses



Source: AEG Illustration of approximate pattern

III. Insurance Policies & Liability



Brad Weiss



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III. Insurance Policies & Liability

A. Potential Problems

1. Email – Outlook hackers



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III. Insurance Policies & Liability

B. Insurance Coverage

1. Determining what coverage a dealership has
2. Determining what coverage a dealership needs for adequate protection

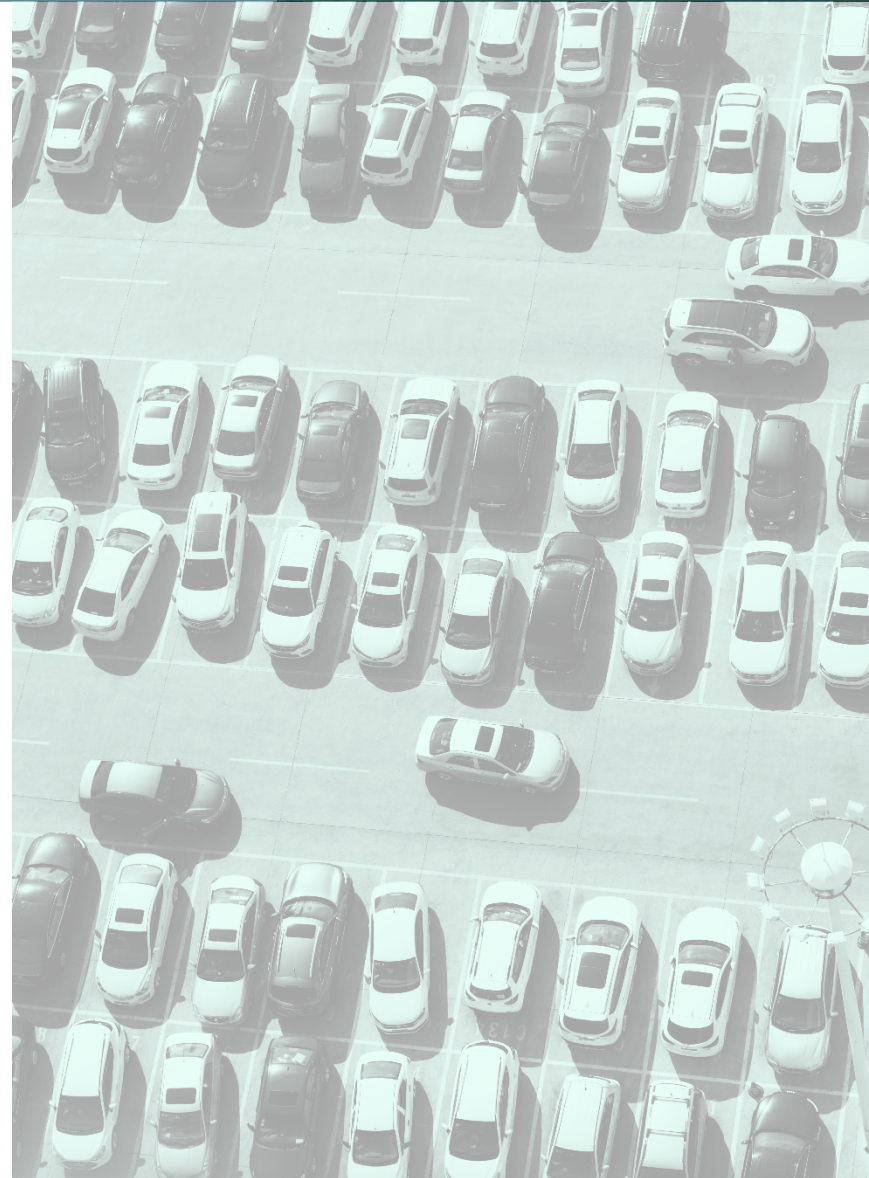


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III. Insurance Policies & Liability

C. Remedies

1. How can a dealership recover funds after loss through hacking?



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IV. Privacy & Data Breach Issues



Andrea Gurnushian

IV. Privacy & Data Breach Issues

A. Federal Trade Commission and State Regulator Enforcement

1. The FTC brings legal actions against businesses for privacy and security-related offenses
 - **Example:** Misleading consumers by failing to maintain security for sensitive consumer information
2. State Attorneys General and other state regulators can enforce data breach notification laws and obligations to maintain reasonable security under state privacy laws.

IV. Privacy & Data Breach Issues

B. State Privacy Laws: A Patchwork

1. No single comprehensive federal privacy law provides a standard set of business obligations.
 - **The American Privacy Rights Act of 2024** (APRA); an attempt to establish the first ever federal standard for comprehensive data privacy and security regulation.
2. As of now, it's left to the states to enact laws in this area.
 - Eight comprehensive state privacy laws will be in effect by the end of 2024 with many more becoming effective in 2025 and 2026.



IV. Privacy & Data Breach Issues

C. Safeguards Rule & Data Breach Notification

1. Collected information is subject to Safeguards Rule.
2. Financial institutions must notify FTC as soon as possible, and no later than 30 days after discovery, of a security breach involving the information of at least 500 consumers.
 - This includes dealers.

IV. Privacy & Data Breach Issues

D. State Data Breach Notification Laws

1. State law generally requires businesses to give notice when it has reasonable belief that any customer whose personal/private information has been accessed (certain states) or acquired (certain states).
2. Notice must be given to each impacted individual/customer and the specified state regulatory authority under certain circumstances.

IV. Privacy & Data Breach Issues

E. CDK Breach: Notification Required?

1. Under the state data breach notification laws, CDK was required to provide notice to any dealer if, upon reasonable belief, that dealer's customer private information had been accessed or acquired by the breach.
2. Dealers may not have been able to independently verify, or otherwise form a reasonable belief, that their customers' personal information had been accessed or acquired as a result of the CDK breach.

IV. Privacy & Data Breach Issues

E. CDK Breach: Notification Delayed

On October 7, 2024, Automotive News reported that CDK notified the Maine Attorney General's Office about the breach, which seems to be its first notification to a state regulator since the June cyberattacks. The notification to the AG's Office indicates that 36 Maine residents were potentially affected. The residents were sent notification letters dated September 20, 2024 and offered credit monitoring services.

V. Conclusion & Questions



Advice for dealers and their attorneys

1. Estimating and claiming losses

Patrick Anderson

2. Dealing with liability issues

Brad Weiss

3. Three tips for responding effectively to a data breach

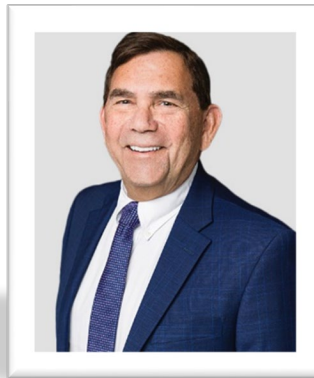
Andrea Gumuchian

V. Conclusion

Questions for Presenters?



PATRICK
Anderson



BRAD
Weiss



ANDREA
Gumushian

Look on your USB drive for additional information.



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