

Your Data Breach Collided With My Personal Injury Coverage

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Editors at *Wired* magazine recently engaged in a year-long project to develop a means to hack the onboard computer of a Jeep, and override the driver's control of several critical vehicle functions. According to a disturbing investigative article published this summer, they succeeded. "Their code," reports *Wired*, is an automaker's nightmare: software that lets hackers send commands through the Jeep's entertainment system to its dashboard functions, steering, brakes, and transmission, all from a laptop that may be across the country." As a result, the hackers were able to commandeer the vehicle and cause it to leave the roadway. Days after the article published, Jeep recalled 1.4 million vehicles equipped with the entertainment system that was the point of entry for the hackers to ultimately access other computerized vehicle controls. Vehicle owners were not required to bring their vehicles to repair facilities; rather, a software fix was mailed to owners to plug in via USB port. Query where Jeep looks for coverage. Presumably, it has specific products liability coverages (likely with add-ons to cover things like recalls and associated public relations) and cyber-liability (likely with specific data breach coverage). Depending on how its insurance package is constructed, inter-company disputes could arise as to which type of coverage is triggered. But the Jeep incident raises the stakes on cyber-liability, which has generally, until now, been considered within the regime of property damage (like the destruction of hardware) and financial losses (associated with fines, penalties, and civil settlements and judgments for, e.g., data breach), but certainly not bodily or personal injury type coverage. While there was no bodily injury in the *Wired* experiment, surely that possibility is imminent. And when that happens, where will the coverage trail lead? Is a hacker a "motorist" once he takes the wheel of a vehicle remotely? Would coverage for injury be available under the hacker's auto liability policy, or the injured party's UM or PIP coverage? What happens when a misprogrammed robot kills a human co-worker? What if two self-driving cars collide? Technological advances are coming fast and furious, and this revolution is indeed televised, albeit on Youtube. As noted in the *Wired* article, hackers' code is a nightmare for automakers, indeed, but we can be sure it's also keeping a few property-casualty underwriters up at night as the term "cybersecurity" continues to take on new meaning.

Authored By



John C. Pitblado

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