

CYBERSECURITY

ACLI COMPLIANCE AND LEGAL MEETING

PRESENTERS:

GARY JENKINS, SWISS RE

SCOTT LASHWAY, MANATT, PHELPS & PHILLIPS

PAUL LUEHR, FAEGRE BAKER DANIELS

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THREATS: DATA BREACH COSTS

\$7.9M

U.S. average cost
of a data breach
(\$3.9M globally)

7.6%

Annual increase
in U.S. costs
(+6.7% globally)

\$233

U.S. average
cost for each
exposed record
(\$148 globally)

Megabreaches:

1 million records = est. **\$40 million**

40 million records = est. **\$350 million**

Source: 2018 Cost of Data Breach Study: Global Analysis, Sponsored
by IBM, Conducted by Ponemon Institute LLC (June 2018)

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THREATS: DATA BREACH COSTS

65%

Indirect Costs:

Staff hours

Lost Goodwill

Customer “Churn”

35%

Direct Costs:

Outside Counsel

Outside Experts

ID Theft Insurance

Notification Costs

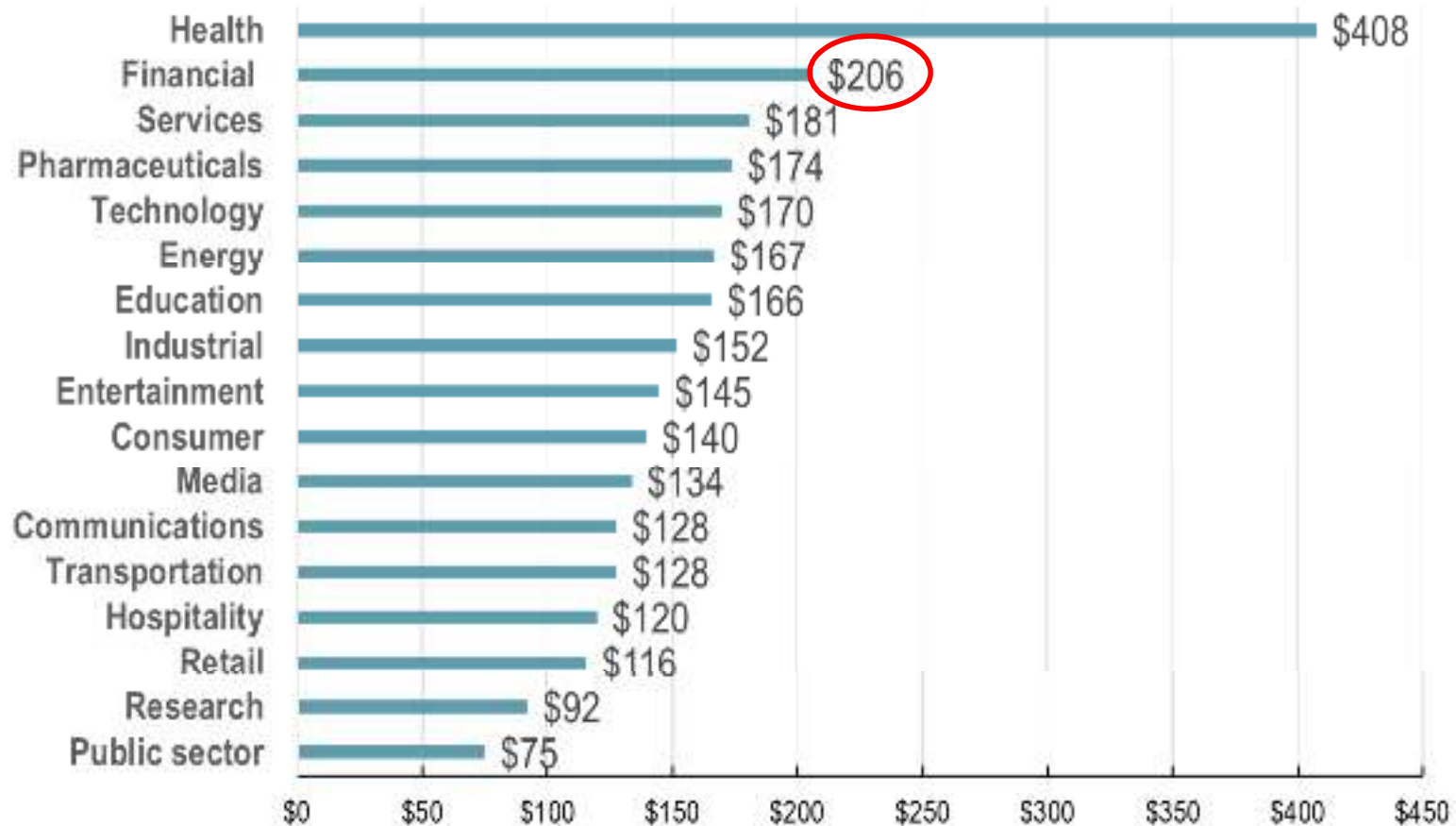
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THREATS: DATA BREACH COSTS

Global Data Breach Cost – Per Capita, by Industry

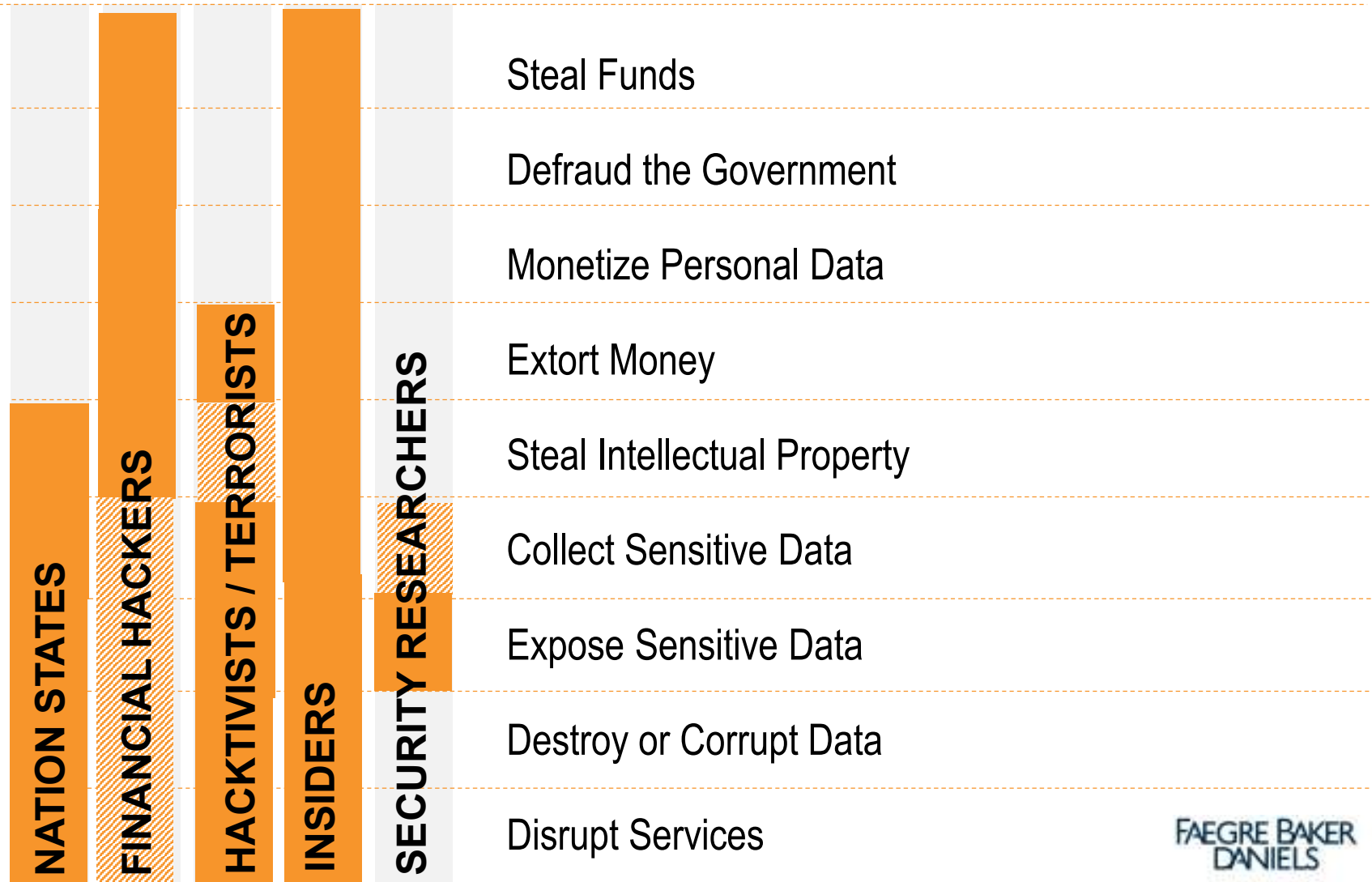


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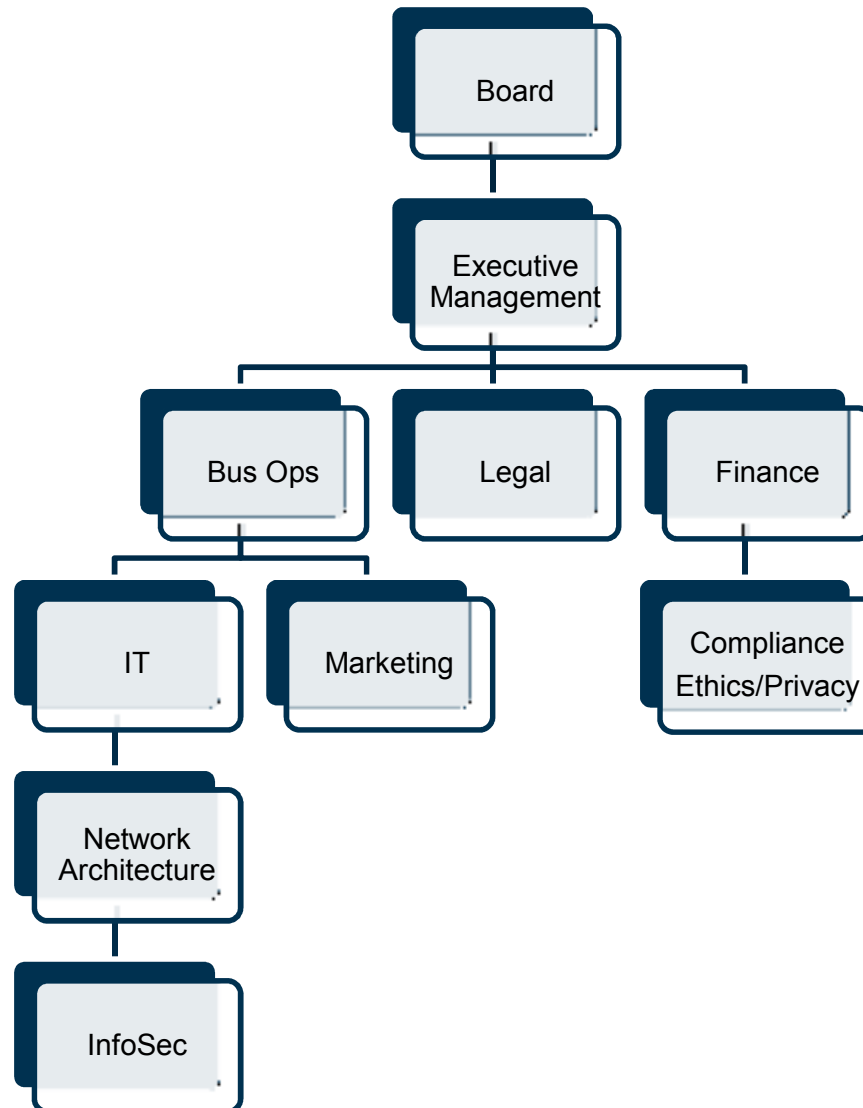
THREAT LANDSCAPE: ATTACKERS



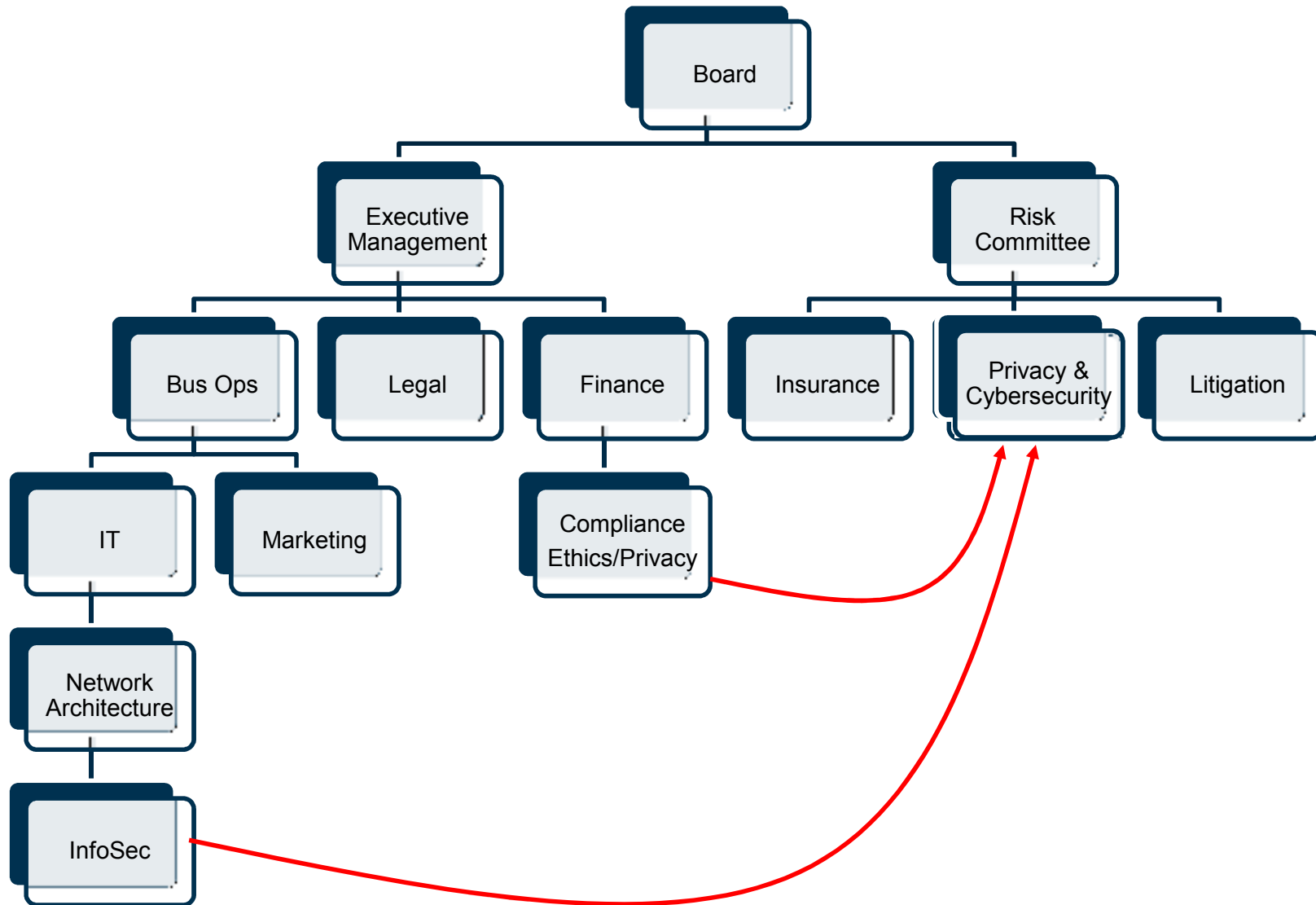
OFFICER & DIRECTOR LIABILITY

- ▷ *In re Caremark Int'l Inc. Deriv. Litig.*, 698 A.2d 959 (Del. Ch. 1996)
 - A board can be liable to shareholders if it “utterly failed to implement any reporting or information system or controls,” or “having implemented such a system or controls, consciously failed to monitor or oversee its operations.”
 - The court found that liability “requires a showing that the directors knew that they were not discharging their fiduciary obligations.”
- ▷ *Palkon ex rel. Wyndham Worldwide Corp. v. Holmes*, No. 2:14-cv-01234 (D.N.J. Oct. 20, 2014)
 - Shareholder case dismissed based on 14 Board discussions about security
 - “Board members had already discussed the cyber-attacks at fourteen meetings from October 2008 to August 2012. ‘At every quarterly Board meeting, the General Counsel gave a presentation regarding the Breaches, and/or [WWC’s] data-security generally.’”
 -

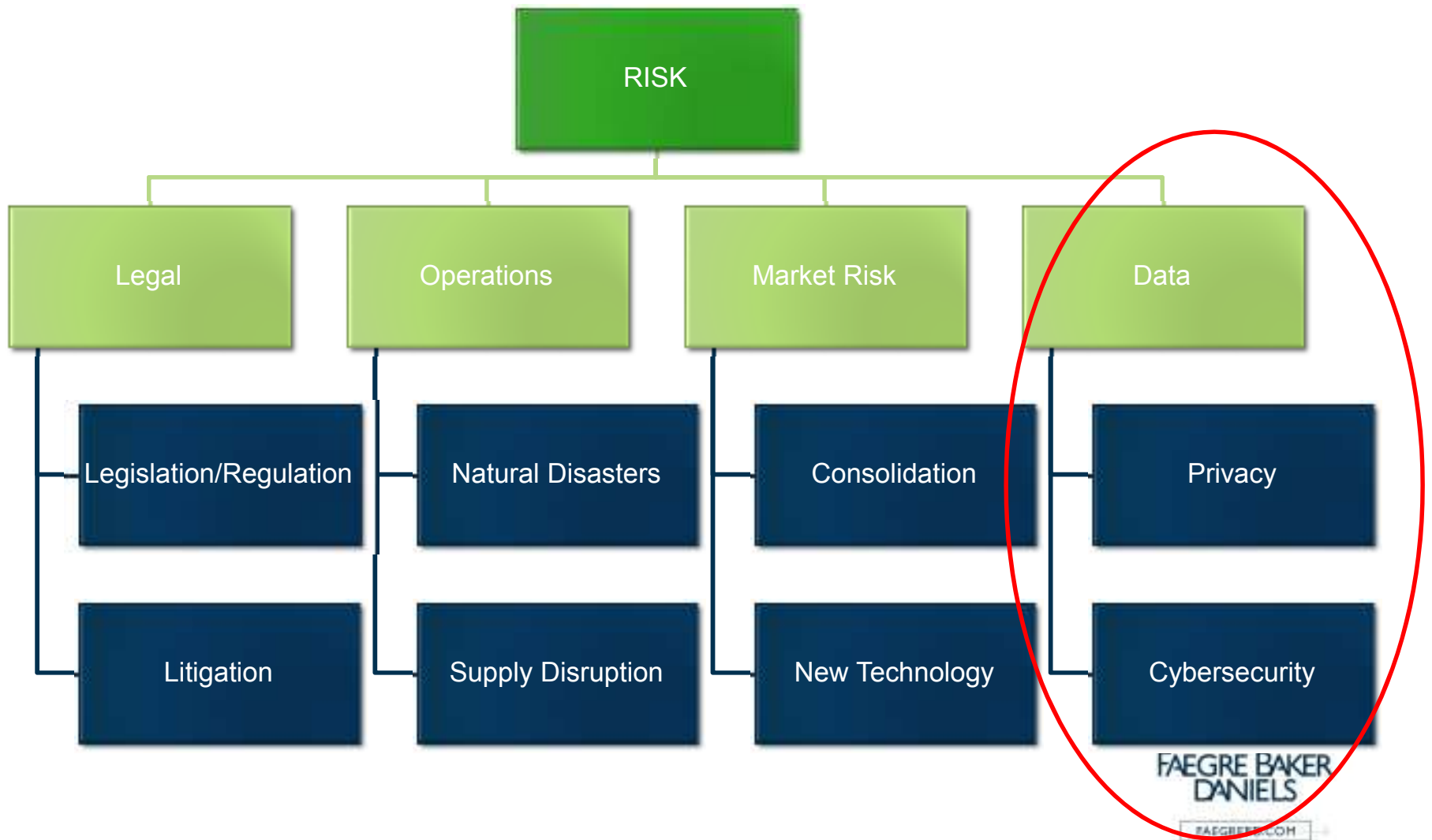
GOVERNANCE - CHANGES



GOVERNANCE - CHANGES



UNDERSTANDING RISK



CYBERSECURITY – A TEAM SPORT

- ▷ **Multiple Representatives**

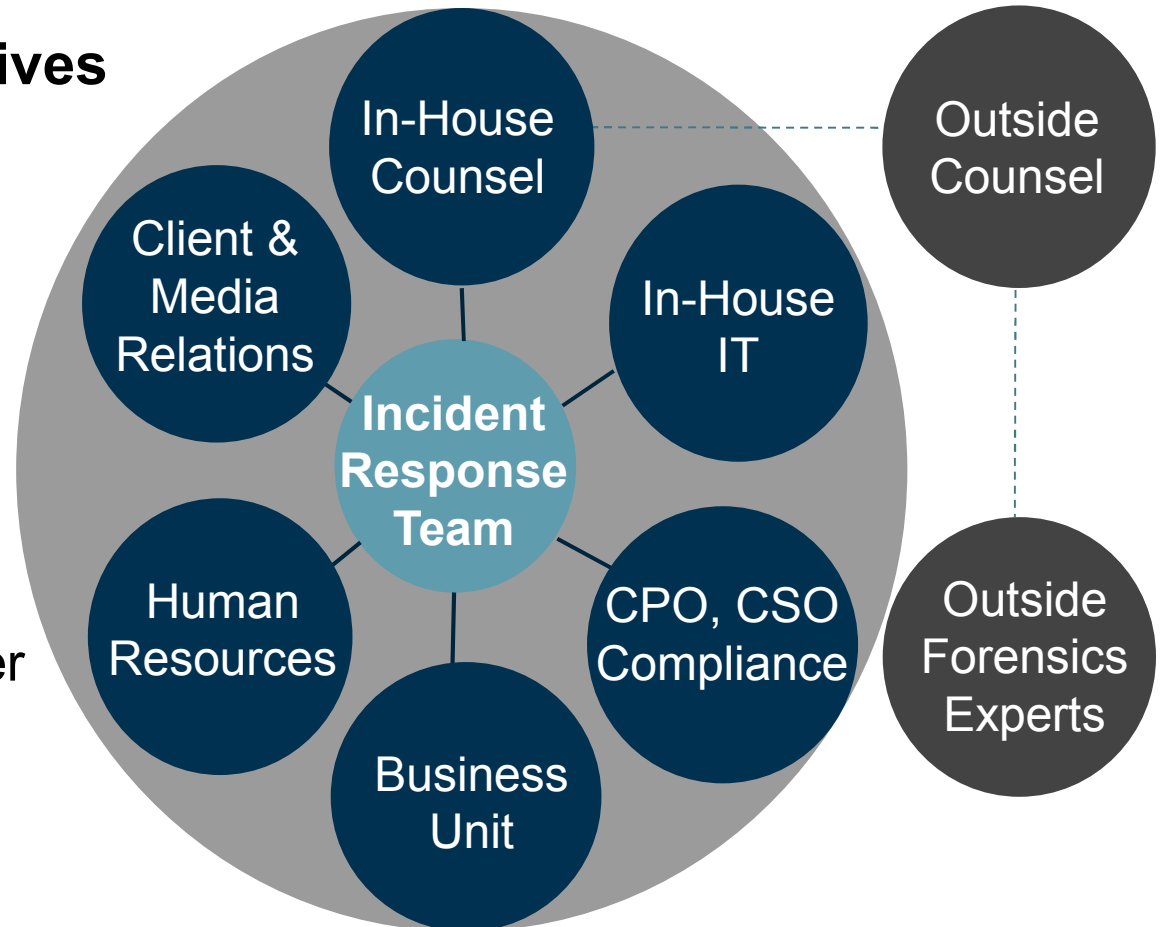
- ▷ **Realistic Triggers**

- ▷ **Counsel as Lead**

- ▷ **Contact Sheets for:**

- Outside counsel
- Forensic experts
- Crisis communicators
- Notification firms
- Insurance agent/broker
- Law enforcement

- ▷ **Practice the Plan!**



LEGAL THREAT: MORE CYBERSECURITY REGULATION

▷ Statutes and Regulations

- NY DFS
- NAIC
- GLBA/FFIEC
- SEC
- FINRA
- GDPR
- CCPA
- PCI DSS
- State Breach Notification Laws



THREAT LANDSCAPE: HEAVIER REGULATION



- ▷ **NY DFS** – Cybersecurity Requirements
 - ▷ Effective August 28, 2017

- ▷ **NAIC** – Insurance Data Security Model Law
 - ▷ Passed October 24, 2017

- ▷ **EU** – General Data Protection Regulation
 - ▷ Effective May 25, 2018

- ▷ **CCPA** – California Consumer Privacy Act
 - ▷ Effective January 1, 2020

LEGAL THREAT: MORE CYBERSECURITY REGULATION



▷ **NYDFS** - “first-in-the-nation”

- **Periodic Risk Assessment** - evaluate & categorize threats or risks
- **Cybersecurity Program** – identify, protect, detect, respond, recover
- **Cybersecurity Policy** - e.g. data classification, vendor management
- **Chief Information Security Officer** - annual Board report
- **Penetration Testing (1 yr) and Vulnerability Assessments (6 mo)**
- **Audit Trail** – financial records (5 yrs); cyber detection (3 yrs)
- **Application Security** – test and validate in-house and external apps
- **Reporting** – 72-hour breach notice; annual certification

LEGAL THREAT: MORE CYBERSECURITY REGULATION

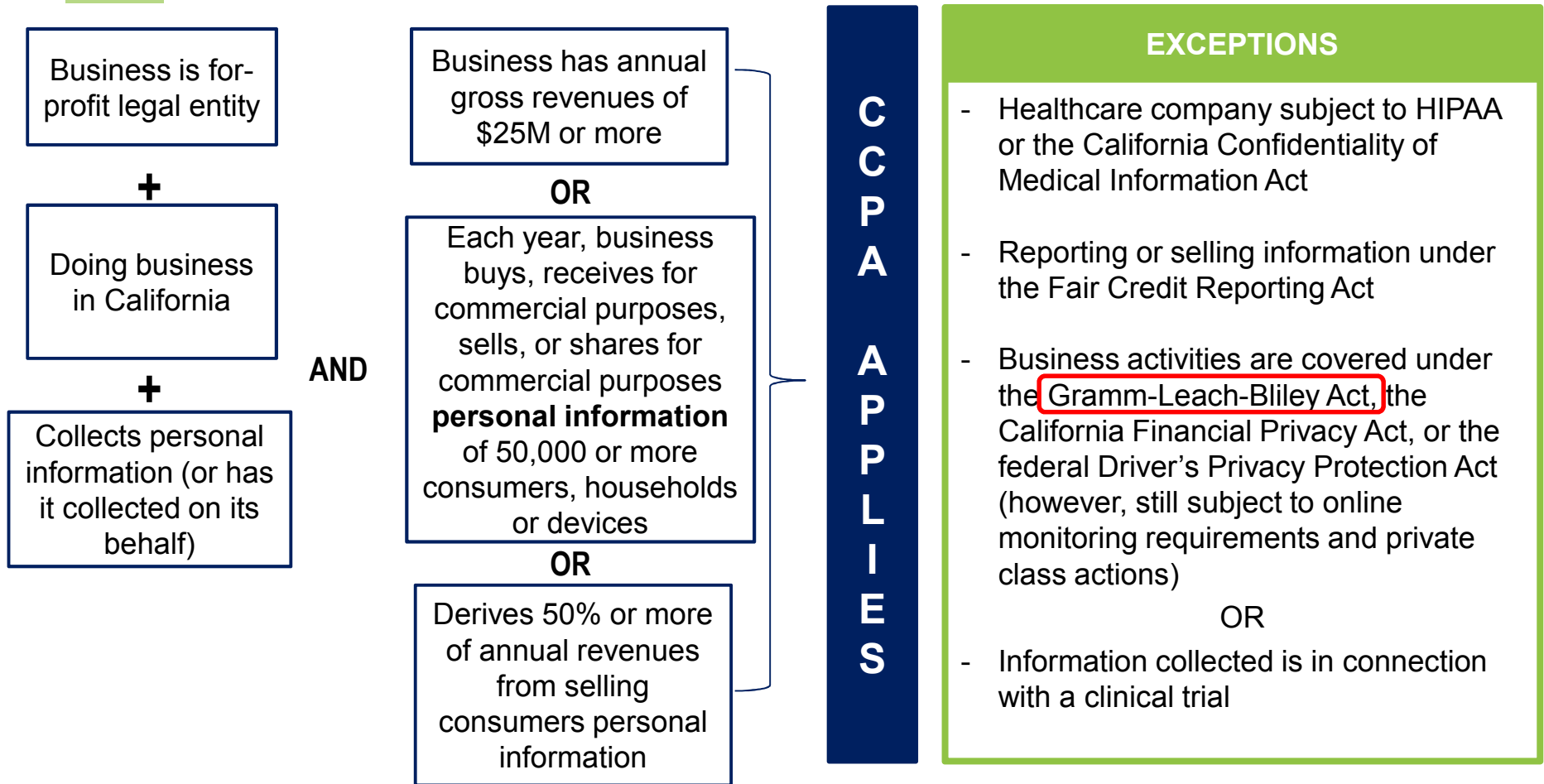
Certification of Compliance with New York State Department of Financial Services Cybersecurity Regulations

The Board of Directors or a Senior Officer(s) of the Covered Entity certifies:
(1) The Board of Directors (or name of Senior Officer(s)) has reviewed documents, reports, certifications and opinions of such officers, employees, representatives, outside vendors and other individuals or entities as necessary; (2) To the best of the (Board of Directors) or (name of Senior Officer(s)) knowledge, the Cybersecurity Program of (name of Covered Entity as of (date of the Board Resolution or Senior Officer(s) Compliance Finding) for the year ended (year for which Board Resolution or Compliance Finding is provided) complies with Part ____.

Signed by the Chairperson of the Board of Directors or Senior Officer(s)
(Name)

Date: _____

CCPA APPLICABILITY



LEGAL THREAT: MORE CYBERSECURITY REGULATION

▶ **CCPA**



- **Data Breach** – “unauthorized access and exfiltration, theft, or disclosure” of PII defined in breach notification law.
- **Cause of Action**
 - Basis – failure to “implement and maintain reasonable security procedures”
 - Timing – after 30-day notice to business and opportunity to “cure”
 - Exemption – none under GLBA
 - Statutory Damages:
 - Private Class Action - **\$100 to \$750** per consumer per incident, or actual damages
 - Attorney General - **\$2,500 - \$7,500** for each violation, based on intent

LEGAL THREAT: MORE CYBERSECURITY REGULATION

Financial Planning All Sections ▾

SEC Warns More Cyber Enforcement Actions Coming

▷ Timing & Disclosures

- What did Company/Execs/Board know, when?
- 8 – K, 10 – Q, 10 – K Obligations
- Regulation FD

▷ Insider Trading

▷ Cybersecurity Violations

- GLBA “Safeguards Rule,” adopted as part of Regulation S-P
- FINRA Actions - Regulations S-P, S-ID, 17 CFR §240.17a-4(f)

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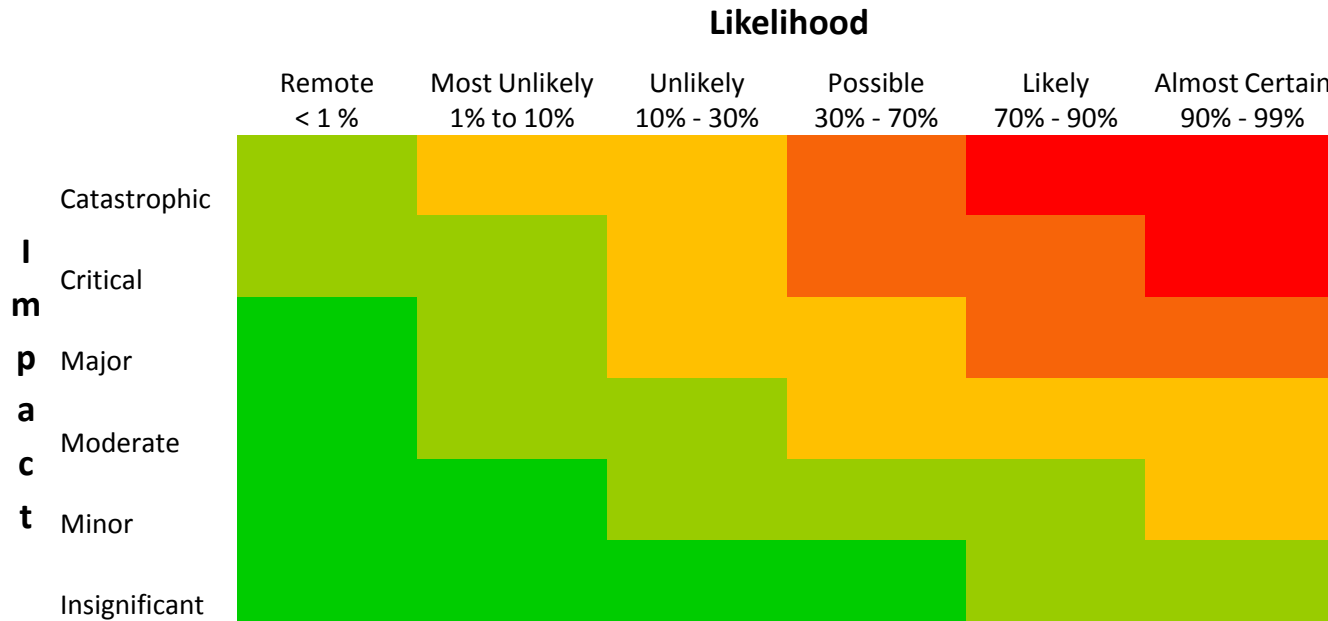
TAKEAWAYS: PERIODIC DATA MAPPING

- ▷ Types of Data
 - NPI, PII, PHI
 - Confidential, Trade Secrets
- ▷ Locations of Sensitive Data
 - Geography
 - Device or function
 - Flows



TAKEAWAYS: CONDUCT A RISK ASSESSMENT

RISK = Vulnerabilities x Threats x Impact x Probability



TAKEAWAYS: VENDOR MANAGEMENT

▷ **Due Diligence**

- Questionnaires
- Audits

▷ **Contract Terms**

- Certs & standards
- Notice
- Cooperation
- Liability/Indemnification
- Insurance



QUESTIONS?

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