

Cyber Insurance

Businesses large and small are becoming increasingly interested in cyber insurance.

As more work gets done digitally every day, organizations face increasing risks for issues such as cyber attacks and viruses. Fortunately, coverage for these policies is growing ever broader, and premiums are remaining stable.

A cyber policy covers business costs associated with:

- A security breach, including expenses related to remediation and notification.
- Computer virus and/or malware.
- Computer fraud.
- Crisis management following a breach.
- Lawsuits following a breach by a government agency or third party that suffers loss from a breach.
- Regulatory defense expenses.
- E-commerce extortion.
- Business interruption.
- Social engineering.
- Funds transfer fraud.

Outside Trustee Liability

ESOP litigation has unfortunately made it difficult to purchase competitive coverage for service providers who are individual trustees. These policies cover the trustee for their ongoing trusteeships and for the transactions they facilitate.

Institutional trustees have an even harder time procuring insurance. The number of insurers offering coverage to outside trustees has decreased. Insurers deciding to provide the necessary coverage extensions often exit the market 18-24 months later.

Policy forms often present problems as there is no standard trustee policy form and coverage needs to be highly negotiated.

Within the past couple years, trustees are purchasing an individual policy to protect themselves on a single ESOP transaction. These policies insure only the outside trustee, provide several millions in policy limit, and cost several hundreds of thousands of dollars.

Trustees often require ESOP companies to reimburse them for the policy premium, even though the companies are not protected by the policy.

Plan Sponsor Fiduciary Liability Insurance

While the number of companies offering Fiduciary Liability Insurance to ESOP companies has remained relatively steady, they have significantly increased the amount of underwriting information they request about the ESOP—including reviewing the most recent share valuation.

When this kind of information is requested, it is likely that both the insurer requesting the information and the

outside trustee or valuation firm will be required to sign a non-disclosure agreement.

Also, virtually every insurer offering this coverage requires completion of their own questionnaire about the ESOP.

The underwriting guidelines are particularly stringent when a company has recently performed an initial ESOP transaction; in these situations, a Fairness Opinion may be required, along with the valuation.

Limits are typically between \$3 million and \$5 million for a company with transactional exposure (an account with an ESOP transaction within the last six years). As an ESOP matures, underwriters are more willing to offer increased capacity.

We are seeing a trend towards fiduciary limits being requested at a minimum of \$5 million for both mature and

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transactional exposures; an excess insurer is often engaged to provide capacity to the requested limit.

Coverage has expanded and now includes Settlor's coverage—although it is best to check with your agent because some carriers add this via endorsement but do not include it in the base policy form.

We are also seeing an increasing trend for certain insurers to add a tie-in of limits endorsement on the Directors & Officers and Fiduciary coverages for an ESOP claim that triggers both policies. It is preferable to have this endorsement removed and enable these limits to stack.

Directors and Officers Insurance

Pricing for Directors and Officers insurance is increasing at a rate of around 5-10 percent. This is not specific to ESOP companies and is part of a broader market trend due to litigation. Rate increases and retentions may be higher in California.

It is recommended that Directors and Officers Liability be purchased alongside of the fiduciary coverage to help protect ESOP company executives from non-ERISA claims.

Reps and Warranties

Company stock or asset transactions—such as in a sale of an ESOP company—often involve Reps and Warranties Insurance. This type of policy has become more prevalent today as a result of more insurers entering the marketplace and underwriting smaller transactions.

This kind of policy protects against seller's or buyer's breaches of contractual representations and warranties in a definitive agreement. This policy is used to stand in the place of a portion of the seller's indemnification obligations.

The policy usually is in place for three-to-six years, has a deductible ranging from 1-2 percent, and has a premium range of 2-4 percent of the coverage limit purchased.

Professional Liability for Business Valuation Appraisers

Capacity for this type of E&O insurance remains plentiful with a host of insurance companies offering coverage. Policy

limits normally start at \$1 million and can go as high as \$10-\$15 million. Policy premiums are stable at around the \$2,000-\$3,000 mark for \$1 million of coverage.

Editor's Note: The authors administer this affinity insurance program, which is primarily underwritten by Great American Insurance Company. For more information, contact Jeff at jgelburd@murrayins.com or Patrick at pdixon@murrayins.com. 
