

Benchmarking Limits of Liability for ESOP Companies



Jeffrey S. Gelburd
Vice President
Program Administrator
Murray

Background

Murray, an independent insurance agency located in Lancaster, PA administers an affinity insurance program placing executive liability insurance (D&O, Fiduciary and Employment Practices Liability) for ESOP companies. The program is endorsed by The ESOP Association (TEA) and is entering its 32nd year. Currently the program insures over 350 employee-owned companies. Coverage can be accessed directly from Murray or through a local insurance agent. The program also offers cyber liability and crime insurance.

Quite often our policyholders ask what policy limits are appropriate for their size company. While there are no formulas or ratios to help answer that question, we have data that can assist in answering by presenting what other ESOP companies are purchasing based on their employee count, corporate asset size, and ESOP plan asset size.

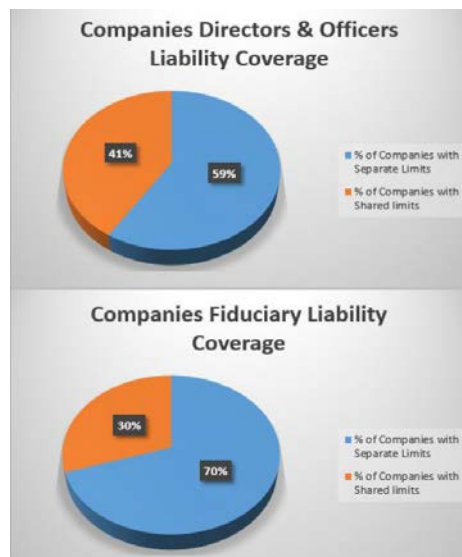
The following information updates a similar report issued in early 2018, and is the fourth such report in the last 12 years. The data used to develop our results and trends are taken from reports generated by the insurance companies providing the coverages in our program with data that was extracted from nearly 359 policy holders in the program.

Findings

Separate vs. Shared Limits of Liability: Purchasers of these coverages have the option to have the policy limits apply separately to each coverage type (D&O, Fiduciary and EPL) or on a “shared” basis. The premium to have the policy limits shared (spread among the three coverages) is generally less expensive than if these limits were to apply separately. Still, having a policy with separate policy limits is another alternative to just increasing your overall policy limit on a shared basis.

A review of the data shows that the majority of purchasers of executive liability insurance have their policy limits apply separately.

Among the policies providing D&O and Fiduciary coverages, 59% purchase their D&O limits on a separate basis. It’s even more dramatic with Fiduciary coverage where 70% of the policies are on a separate basis.



Average Limits of Liability are trending upward: The data used for this report show average limits of liability for D&O and Fiduciary are increasing. Compared to the most recent 2018 study, the average D&O limit increased from \$1.975MM to \$2.8MM, and the average Fiduciary limit increased from \$1.990MM to \$2.5MM. The average Employment Practices Limit of Liability stayed roughly the same over the past three years.



We believe this trend is a result of the following factors:

- Continuing increase in activity against ESOP companies by the Department of Labor.
- Number of ESOP transactions within a company in which the ESOP increases its ownership.
- Stability of premium costs for the additional limits of liability (although overall premiums continue to rise).
- Policies which have their limits apply on a shared basis are more apt to have higher limits than otherwise.
- Should there be a claim on the policy, defense costs (i.e., attorney fees) are paid within the policy limit thereby eroding the policy limit to pay for an award or settlement.



Provided below is a breakdown of the limits of liability being purchased among the three (3) coverages based on common underwriting data of Corporate Assets (D&O), Plan Assets (Fiduciary) and Employee Count (EPL).

We categorized the ESOP companies by corporate and plan asset size for the D&O and Fiduciary study according to the table below. To see how your policy limits compare with other ESOP companies, determine what category your ESOP Company fits into:

- **Category I – corporate or plan assets < \$10MM,**
- **Category II – corporate or plan assets between \$10MM and \$25MM,**
- **Category III – corporate or plan assets between \$25MM and \$50MM, and**
- **Category IV – corporate or plan assets greater than \$50MM.**

Directors and Officers (D&O)

Liability: The findings for the D&O study, based on corporate asset size were as follows:

- 75% of ESOP companies in Category I had D&O policy limits of \$1MM. The remaining 25% in this category had limits between \$2-\$5MM.
- 46% of ESOP companies in Category II have \$1MM policy limits. 25% had \$2MM limits and 27% has D&O limits of between \$3MM-\$5MM. No company had more than \$5MM in this category.

- 41% of ESOP companies in Category III had limits of \$1MM. 21% had limits of \$2MM and 39% had limits of between \$3MM-\$5MM.
- 41% of the ESOP companies in Category IV had \$5MM or above in D&O limits. Otherwise, a little more than half had at least \$2-\$4MM in limits.

Fiduciary Liability: The findings for the fiduciary study, based on plan asset size were as follows:

- 70% of ESOP companies in Category I had fiduciary policy limits of \$1MM. 21% in this category had \$2MM in limits and the remaining had limits of \$3-\$5MM.
- 29% in Category II had fiduciary limits of \$1MM while 35% had limits of \$2MM. The remaining 36% had fiduciary limits of between \$3-\$5MM.
- 32% in Category III had \$1MM in limits while 28% had a \$2MM limit. The remaining had limits of at least \$3MM.
- Only 10% of ESOP companies in Category IV had a \$1MM limit. 43% had limits of either \$2 or \$3MM while another 43% had \$5MM or more.

Employment Practices Liability: To properly compare limits of liability for Employment Practices Liability we have categorized the ESOP companies by employee count, according to the following table.

Determine what category your ESOP Company falls into and then see how you compare with the group for Employment Practices Liability.

- **Category I – less than 50 employees**
- **Category II – between 50-100 employees**
- **Category III – between 100-250 employees**
- **Category IV – over 250 employees**

The findings for policy limits for Employment Practices Liability follow:

- 82% of ESOP companies in Category I had policy limits of \$1MM. 14% in Category II had a \$2MM policy limit. The remaining 4% had limits of \$3MM or more.
- 58% of ESOP companies in Category II had \$1MM in policy limits. 14% had a policy limit of \$2MM and the remaining 28% had policy limits of \$3MM or more.
- 41% of ESOP companies in Category III had policy limits of \$1MM. 40% had a \$2MM limit. The remaining 19% had limits of \$3MM or more.
- 33% in Category IV had a \$1MM policy limit while 17% carried a \$2MM limit. The remaining 50% in this category had \$3MM or more in policy limit.

For more information on this report as well as obtaining an insurance quotation for consideration, ESOP companies (or their local insurance broker/agent) can contact Jeff Gelburd (jgelburd@murrayins.com) or Patrick Dixon (pdixon@murrayins.com).

