Business Insurance: Are You Covered?

Presented by
Regan E. Katz, CRM, RPLU

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Business Insurance: Are You Covered?

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Why not insurance?

- Insurance is the most expensive form of risk management
- What else can I do?
  (p.s. you’re already doing some of this!)
  - Accept
  - Avoid
  - Transfer
  - Mitigate
  - Exploit
Risk Analyzed... Strategy Determined. Now What?

- Once you have determined everything that can’t be transferred, avoided, mitigated or dealt with in any other way...

- Now, we procure insurance.

Typical Insurance Considerations

**Property/Casualty**
- Property
- Business Income
- General Liability
- Hired/Non-Owned Auto
- Workers Compensation
- Umbrella/Excess Liability

**Employee Benefits**
- Health Insurance
- Dental/Vision/Disability
- Group Life
- Other Benefits

**Executive Lines**
- Professional Liability
- Management Liability
- Employment Practices
- Crime/Social Engineering
- Fiduciary Liability
- Cyber/Privacy Liability
- Key Person Life
- Key Person Disability
Property/Casualty Coverage Considerations

- Property
  - Business Interruption
  - Undamaged Improvements/Betterments
  - Flood / Earthquake
- Casualty
  - General Liability
    - Employee Benefits / Fiduciary Coverage Overlap
  - Workers Compensation
    - Including Partners
  - Hired/Non-Owned Auto Liability

Professional Liability

- Excess Capacity in the Market
- To include or not to include Cyber/Privacy coverage?
- Prior Acts Dates
- Application Considerations
Management Liability

Then
- Few Carriers Interested
- Pricing Expensive
- Coverage Not Tailored to Law Firms

Now
- More Experience
- More Claims
- More Interested Carriers
- Pricing / Retentions More Palatable

Cyber Insurance...
Yes, we have talked about this before

Stand Alone Cover
- Highly recommended!
- Won’t erode your LPL limits
- Lower retentions!
- Strategic handling of claims

Add-On to LPL Policy
- Smaller firms who will not purchase a stand-alone policy
- Erodes your LPL limits
- Subject to LPL retention (usually higher)
- What about reputational claims?
Ransomware, No Matter Who You Are...

Percentage of Claims by Revenue Size (N = 591)

- (01) Nano-rev (<$50M)
- (02) Micro-Rev ($50M-$300M)
- (04) Mid-Market and Small-Rev ($50M-$2B)
- (05) Mid-Rev ($2M-$10B)
- (07) Large-Rev ($10B-$100B)
- (08) Mega-Rev (> $100B)
- (99) Unknown

Smaller organizations (< $50M revenue) accounted for the largest percentage of claims.

Percentage of Records Exposed by Revenue Size (N = 343)

- <$2B: 76%
- $2B: 23%
- Unknown: 1%

Larger organizations (> $2B revenue) accounted for the majority of the records exposed.

Ransomware by the Numbers

- In 2017, ransomware exploded; businesses were targeted (vs. individuals in the past).
- 3 main threats likely changed the landscape of ransomware forever:
  - WannaCry, ExPetr and BadRabbit
- As 2017 progressed, the level of innovation was seen declining.
- Due to increased number of modifications, attacks are still a financially concerning threat to businesses.
- New threats may include cryptocurrency mining.
Ransomware/Cyber Extortion

NUMBER OF RANSOMWARE/CYBER EXTORTION CLAIMS BY SECTOR
(N = 66)

Education
Manufacturing
Public Entity
Transportation
Energy
Media
Restaurant
Other
Financial Services
Healthcare
Non-Profit
Professional Services
Retail
Technology

Source: 2017 NetDiligence Survey

“We don’t need a cyber policy, we have a ______ policy!”

Nano Organizations experienced the most cyber incidents, followed closely by Small Organizations

PERCENTAGE OF CLAIMS BY REVENUE SIZE (N=160)

Source: NetDiligence 2015 Cyber Claims Study
# Cyber Liability Insurance

## Third Party Liability Coverages

<table>
<thead>
<tr>
<th>Coverage Description</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Privacy and Network Security Liability</td>
<td>Protection for liability arising out of allegations of security and privacy wrongful acts against the Insured. Damages and claims expenses incurred as a result of a covered claim are included.</td>
</tr>
<tr>
<td>Regulatory Defense and Penalties</td>
<td>Protection for those amounts Insured is obligated to pay arising out of certain privacy regulatory actions. Defense costs and certain fines/penalties included.</td>
</tr>
<tr>
<td>Media Liability</td>
<td>Protection for liability arising out of allegations of multimedia wrongful acts, such as allegations of libel, slander, invasion of privacy, emotional distress, mental anguish - all in connection with the Insured's multimedia.</td>
</tr>
<tr>
<td>First Party Coverages</td>
<td></td>
</tr>
<tr>
<td>Notification Expense/Credit Monitoring</td>
<td>Reimburses Insured for first party notification expenses incurred by insured following a privacy event or security breach. May extend to credit monitoring services, call center services, and other event management response expenses.</td>
</tr>
<tr>
<td>Network Interruption and Data Asset Restoration</td>
<td>Reimbursement for loss of net income and extra expenses following a security breach; also provides reimbursement for reasonable costs to restore, replace or reproduce damaged or destroyed computer programs, software and electronic data.</td>
</tr>
<tr>
<td>Extortion Expenses</td>
<td>Money and expenses paid at the recommendation of an approved service provider relating to cyber extortion demands.</td>
</tr>
</tbody>
</table>

## First Party Coverages

<table>
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<tr>
<td>Computer Fraud / Electronic Fraud / Social Engineering Fraud</td>
<td></td>
</tr>
<tr>
<td>Reputational Harm</td>
<td></td>
</tr>
<tr>
<td>Professional Liability Errors &amp; Omissions</td>
<td></td>
</tr>
</tbody>
</table>

## Additional Coverages Available in Select Policies

- **Computer Fraud / Electronic Fraud / Social Engineering Fraud**
- **Reputational Harm**
- **Professional Liability Errors & Omissions**

## Cyber Business Interruption Options

<table>
<thead>
<tr>
<th>Coverage Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Network Interruption / Business Interruption</td>
<td>Reimbursement for loss of net income and extra expenses following a security breach to an Insured Organization’s computer network.</td>
</tr>
<tr>
<td>Contingent Business Interruption</td>
<td>Reimbursement for loss of net income and extra expenses suffered by Insured Organization following a computer security breach to a third party vendor under contract with the Insured Organization; generally restricted to IT related vendors. Certain policies require scheduling or declaring of vendors for coverage to apply.</td>
</tr>
<tr>
<td>Contingent Business Interruption - Non IT Providers / Outsource Provider Coverage</td>
<td>Reimbursement for loss of net income and extra expenses following a security breach to a third party that is part of an Insured Organization’s supply chain. Certain carriers may offer small sublimits with no underwriting required, but underwriting and declaring of specific vendors must be involved for higher limits.</td>
</tr>
<tr>
<td>System Failure</td>
<td>Reimbursement for loss of net income and extra expenses following a failure of the Insured Organization’s (or potentially third party IT vendor’s) computer network, not necessarily restricted to a security breach; includes unplanned network outages.</td>
</tr>
</tbody>
</table>

*Certain insurers will require scheduling or declaring of third party IT vendors.*

**System Failure Key Underwriting Criteria:** Understanding of business continuity plan, disaster recovery plan, and third party vendors.
Employment Practices

- Claim trends
- Underwriting trends
- EEOC Strategic Enforcement Plans
- The “Harvey” Effect

2017-2021
- Employment Related Classifications
  - Exempt/Non-Exempt
  - OT
  - Staffing/Temps/ICs
- Equal Pay
  - Gender
  - Race/Ethnicity
  - Disability

The “Harvey” Effect

In the early years of EPL, underwriters were required to:
- Review employee handbooks
- Understand training provided by company
- Have documentation that training was provided by Insured and signed off on by employee
- Have At Will statements (in appropriate states)
- Have a defensible position for the carrier to take on the Insured as a risk

In the 2000’s, with a hard market, carriers became focused on retentions & class risk. Generally, favorable results on EPL losses.

In the 2010’s, carriers proceeded to commoditize the purchase of EPL insurance. Underwriters now:
- Review employee handbooks
- Understand training provided by company
- Have documentation that training was provided and signed off on by employee
- Have At Will statements (in appropriate states)
- Have a defensible position for the carrier to take on the Insured as a risk

In the wake of the rampant sexual harassment allegations, we believe the market will move back to required underwriting again:
- Review employee handbooks
- Understand training provided by company
- Have documentation that training was provided by Insured and signed off on by employee
- Have At Will statements (in appropriate states)
- Have a defensible position for the carrier to take on the Insured as a risk

Some carriers asked for Anti-Harassment & Anti-Discrimination statements.

Increased sophistication in HR Dept.

Future thoughts:
- Has training effectively prevented harassing behavior?
- Can insurers continue to cover INTENTIONAL and DELIBERATE acts?
- Will EPL policies transition from paying legal bills and settlements to providing social and industrial psychologists or other resources to teach professional work environments?
Wage & Hour

Wage and Hour filings have increased by over 450% in the last 15 years and are now outpacing Employment Practice Liability (EPL) claims.

Then

Originally, only stand alone coverage was available:
- Mass employers (10K employees+)
- Bermuda was the only market
- Defense costs only
- Deductibles starting around $1M

Now

Approximately 5 years

Now, the market has expanded and coverage is available:
- Midsize employers (750 employees+)
- US AIG, Lloyd’s and Bermuda are the markets
- Defense costs only and indemnity available
- Deductibles starting around $500K
- $250K (max) defense only sublimit may be available on standard EPL policies (normally for < 250 employees)

Crime: A New Age Has Dawned

Most Crime Policies are still in the Prehistoric Age:
- Outdated terminology
- Hackers/new criminal development
- Computer Fraud vs. Social Engineering (Impersonation)
- Cryptocurrency
- Other Property Exposure
- Tangible Property
  - VOIP / Telephone Fraud
  - Gift Cards
Fiduciary

Considerations

- Claims
- Increased Limits
- Coverage for Employee Benefits Liability

“But Our Vendor Handles Everything — How Can We Still Have Fiduciary Liability?”

<table>
<thead>
<tr>
<th>Fiduciary Liability claims</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefit disputes, including denial</td>
<td>47%</td>
</tr>
<tr>
<td>Civil rights, including discrimination</td>
<td>9%</td>
</tr>
<tr>
<td>Reduction of plan benefits</td>
<td>3%</td>
</tr>
<tr>
<td>Communication of plan benefits</td>
<td>7%</td>
</tr>
<tr>
<td>Misleading representations</td>
<td>8%</td>
</tr>
<tr>
<td>Administrative error in benefit plan</td>
<td>3%</td>
</tr>
<tr>
<td>IMDb report investment services</td>
<td>3%</td>
</tr>
<tr>
<td>Other issues</td>
<td>15%</td>
</tr>
</tbody>
</table>

Source: Rough Notes December 2017

Employee Benefits

- Group Health Insurance
- Dental / Vision / LTD / STD
- Supplemental Life Insurance, Disability Insurance
- Other benefit offerings
  - Group Personal Excess
  - Travel, etc
Other Insurance Considerations

Business Protection
- Key Person Life
- Key Person Disability
- Overhead Expense Coverage
- Group Personal Umbrella

Individual Protection
- Life Insurance
- Disability Insurance
- Umbrella Coverage

Emerging Risks
- Active Shooter
- Kidnap Coverage
- Cryptocurrency
- State Judicial Activism
  - Medical Marijuana
- Pending Supreme Court cases
  - NLRA- arbitration requirements, class action waivers
- Americans with Disabilities Act (ADA) claims more pervasive
- Other Insurance Clauses- much more important in this arena
  - than ever before
Since 1915...
Over 102 Years of Service

- Placing over $1.2 billion in premiums annually
- Over 500 professionals
- One of the largest independent Property & Casualty agencies in the U.S. with offices in Houston, Austin, Dallas, Fort Worth and San Antonio
- A Limited Partnership owned by 120 Managing Directors
- Approximately half of our Managing Directors are technical staff

An Award Winning Broker

- Best Practices Agency per Independent Insurance Agents & Brokers of America
- Top 50 Commercial Agency per Insurance Journal
- Wortham voted Best Place to Work by Houston Business Journal
- Wortham's Houston office has been voted Top Workplace 6th year in a row
- Multiple “Power Broker” award winners according to Risk & Insurance magazine
- Multiple Young Guns recognized by Insurance Business
Questions?

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Your opinion matters!

Please take a moment now to complete the evaluation.

Thank You!