



WOODRUFF
SAWYER

ITA

INDEPENDENT TRUSTEE ALLIANCE

Understanding Trustee Liability

RISK MANAGEMENT

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Agenda

- About Woodruff Sawyer
- Fiduciary standard
- Trust structure
- Evolution of roles
- Hidden exposures
 - D&O
 - Appropriate description of services
- Claim examples
- Components of a Trustee Liability Policy
- Introduction of Nomadx® program
- Cyber Liability
- Feedback

Our Presence

Insuring Innovation™ Since 1918

- Headquarters in San Francisco, which anchors operations throughout the US, and globally
- Insuring client innovation for 100+ years
- Ranked #2 in premium volume in Bay Area, translating to market leverage for clients
- 33% of IPO's and (De)SPAC transactions in 2010-2021
- History of protecting the people and assets of business innovators that have evolved into major industries (Silicon Valley tech, Family offices/Trust Companies and trustees, PE/VCs, etc.)
- Customized approach based on extensive risk management expertise and a deep understanding of the region's industries



Data Driven and educational risk management approach

- Data Box
- Cyber Cube
- Captive insurance and other risk financing vehicles
- WS Insights
- Events (live and on demand)

What does the Family Office Group do?



Identify risk: through an assessment process examining the family office structure, service provided and current insurance policies



Mitigate risk: by reviewing communication flow, indemnification agreements and trust structures/documents



Transfer risk: Via appropriate insurance and other risk transfer/financing mechanisms

Target Market



Fiduciary duty and obligations

Fiduciary duty refers to the obligation that you must act in the best interests of the estate as opposed to your own.

You have a lot of power and responsibility and more importantly, **personal liability**

Duties fall into one of three categories:

Duty of loyalty,

Duty of care,

Duty of impartiality

Trust structures and the implications

Traditional trust responsibility

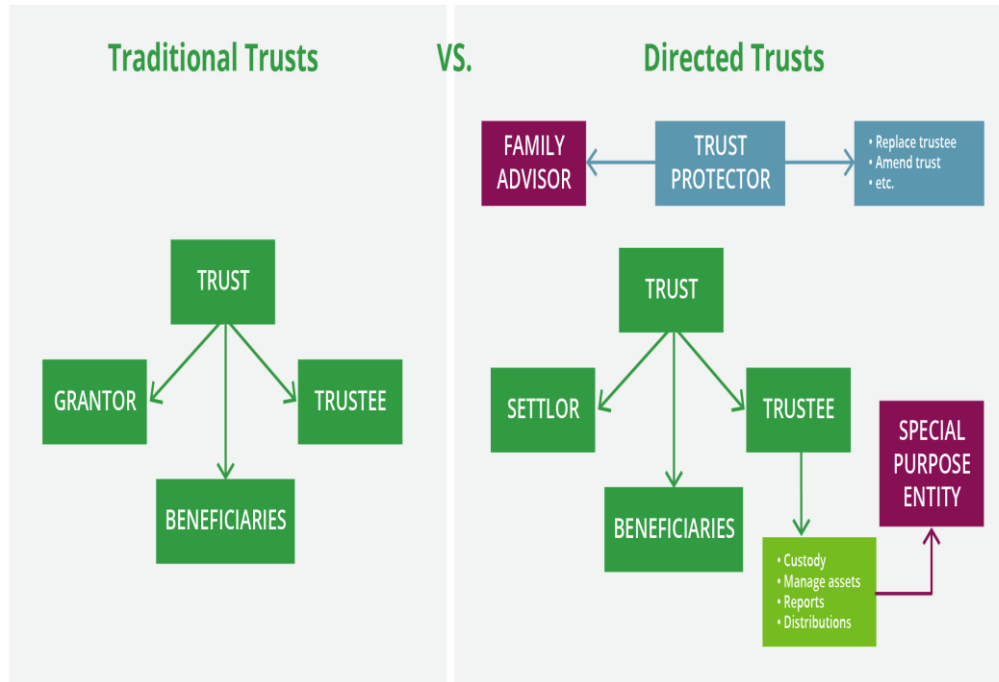
- Investment
- Administration
- Distribution
- reporting

Simple when administering a harmonic family, has a relationship with an investment advisor and the assets are held in marketable securities but if there is....

- Family business
- Family office
- Real estate
- Art and collectibles
- Cryptocurrencies

Also, many fiduciaries serve in multiple roles; trust, will, power of attorney, advance health care directive.

Directed trust – Subcontracting duties



Bifurcated/delegated roles and responsibilities

Each state defines roles differently regarding what is a fiduciary

Services providers change liability (i.e., trust protector)

New roles created and liability may be unknown

Roles

Fiduciary vs. Non-Fiduciary roles in implications of insurance

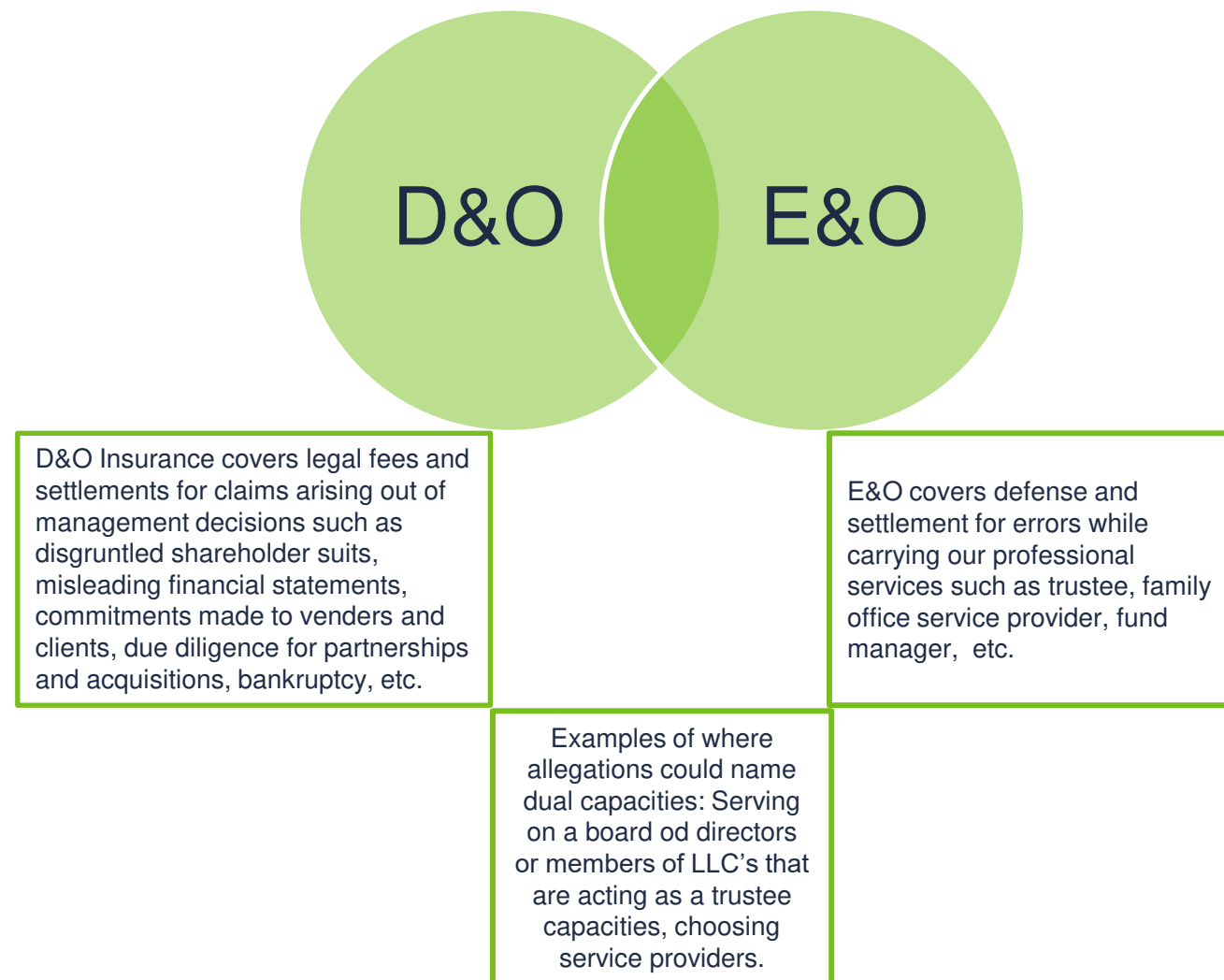
Type of insurance clauses in a lawyer's professional policy:

“those services performed by an Insured as an administrator, conservator, receiver, executor, guardian, trustee or in any other fiduciary capacity and any investment advice given in connection with such services;“

What about?

- Co-trustee
- Agent for trustee
- Trust Protector
- Family Advisor
- SPV
- Member LLC
- Beneficiary Advocate

Directors and officers Liability and Errors and Omissions differences and overlap



Recent interesting claims

Court
Appointed
Trustees

Principal and
interest
accounting

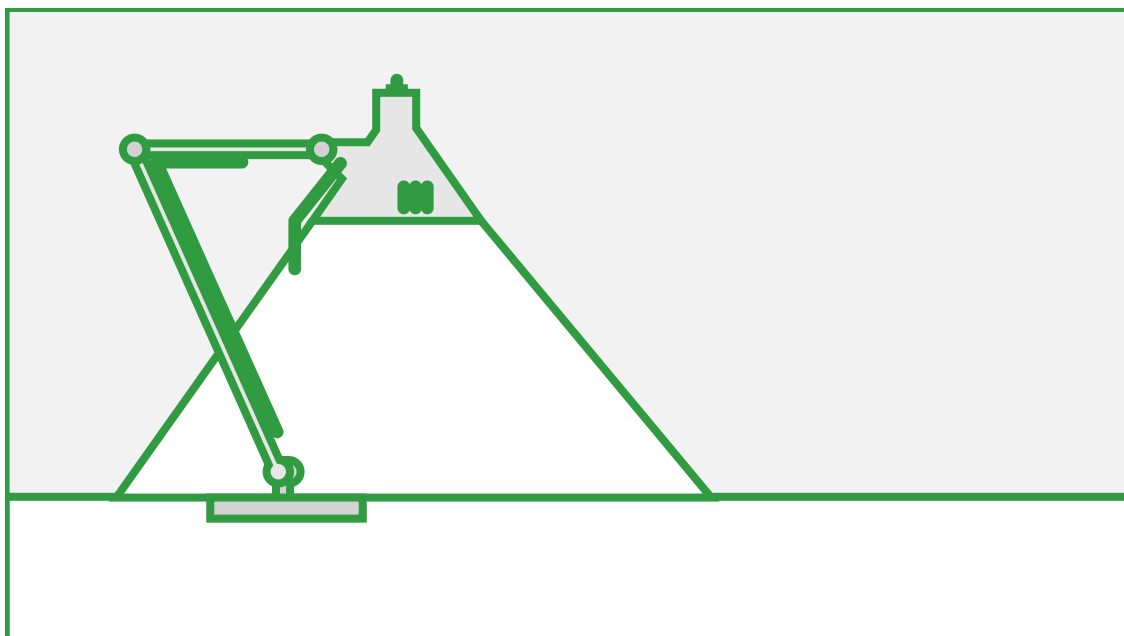
Fee disputes

Trustee
acting serving
on a board

Typical Components of an E&O policy

- **Stand alone E&O vs. Family Office form**
- **Professional service vs. Capacity**
- **Warranty statements**
 - › When its appropriate
 - › Where do you find it
 - Application
 - Policy
- **Reporting claims**
 - › When
 - › Importance
 - › Effect on potential claims
- **Defense and settlement**
 - › Duty to defend vs reimbursement
 - › Settlement/Hammer clause
- **Interrelated wrongful acts**
- **Retroactive date/Pending and Prior Litigation date**
- **Key exclusions/sublimit:**
 - › Criminal, dishonest
 - › Final adjudication vs. undefined
 - › Failure to effect or maintain insurance or bonds
 - › POA services (medical/end of life decisions)

Introducing Nomadx® powered by Balance Partners: Trustee liability MGA



Only MGA specific to trustees

Product offering

- Limit of Liability: \$5M
- Broad definition of professional services to include all trust powers (fiduciary and non-fiduciary roles)
- Includes Cyber liability

Target Markets

- Individual and professional trustees
- Trusts with assets \$5M +
- Will consider family member trustees only if:
 - In an advisory role in a directed trust structure
 - Co-trustee with experience partner such as a trust company or professional trustee
 - Hire an agent for trustee

Expected release date: June 1 release date

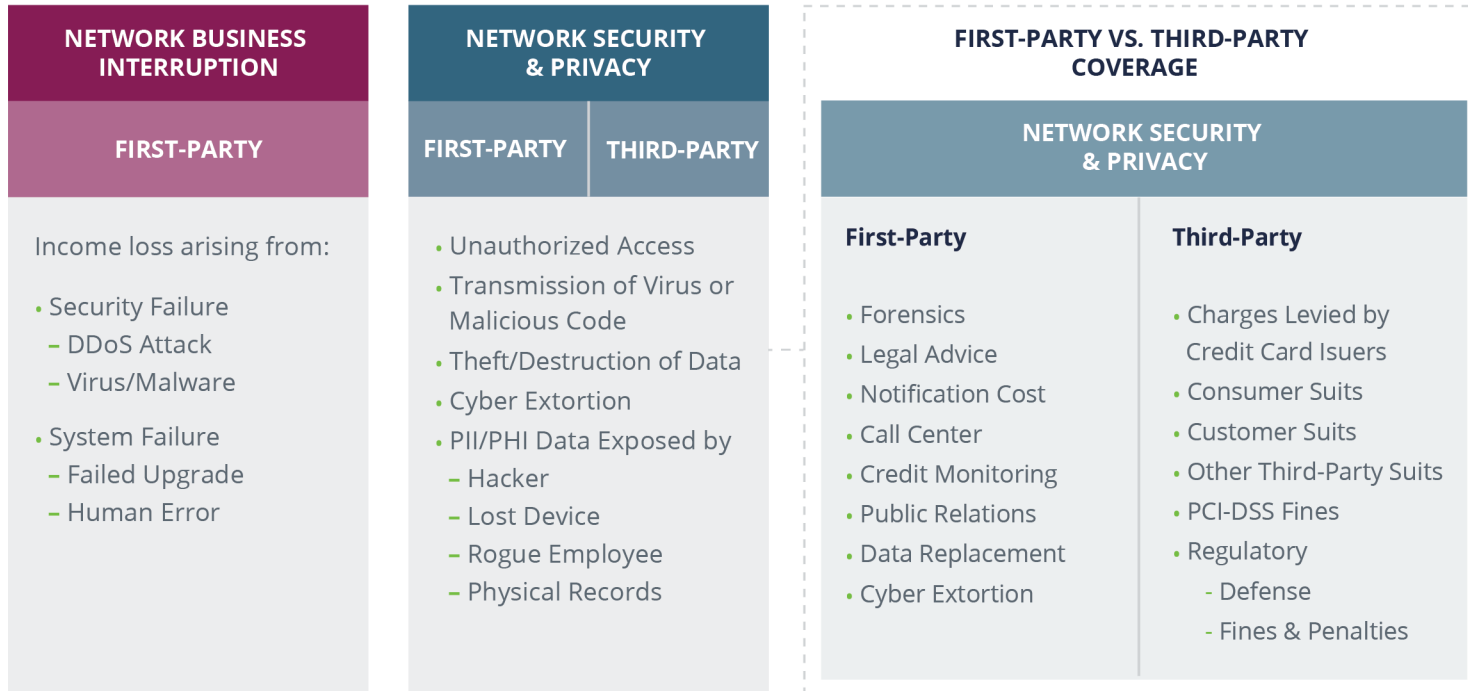
Insurance policy highlights

- Limits of Liability up to \$5 million
- Broad definition of trust services to cover fiduciary and non-fiduciary roles
- Punitive damages
- Blanket coverage for trusts
- Prior acts coverage available
- Advancement of defense costs, including intentional misconduct and gross negligence until final adjudication of allegations
- 80/20 hammer clause
- Coverage available for SPV's and ODL
- No exclusion for failure to effect or maintain insurance
- Cyber liability
- Employee theft (by endorsement)
- General liability (slip and falls)

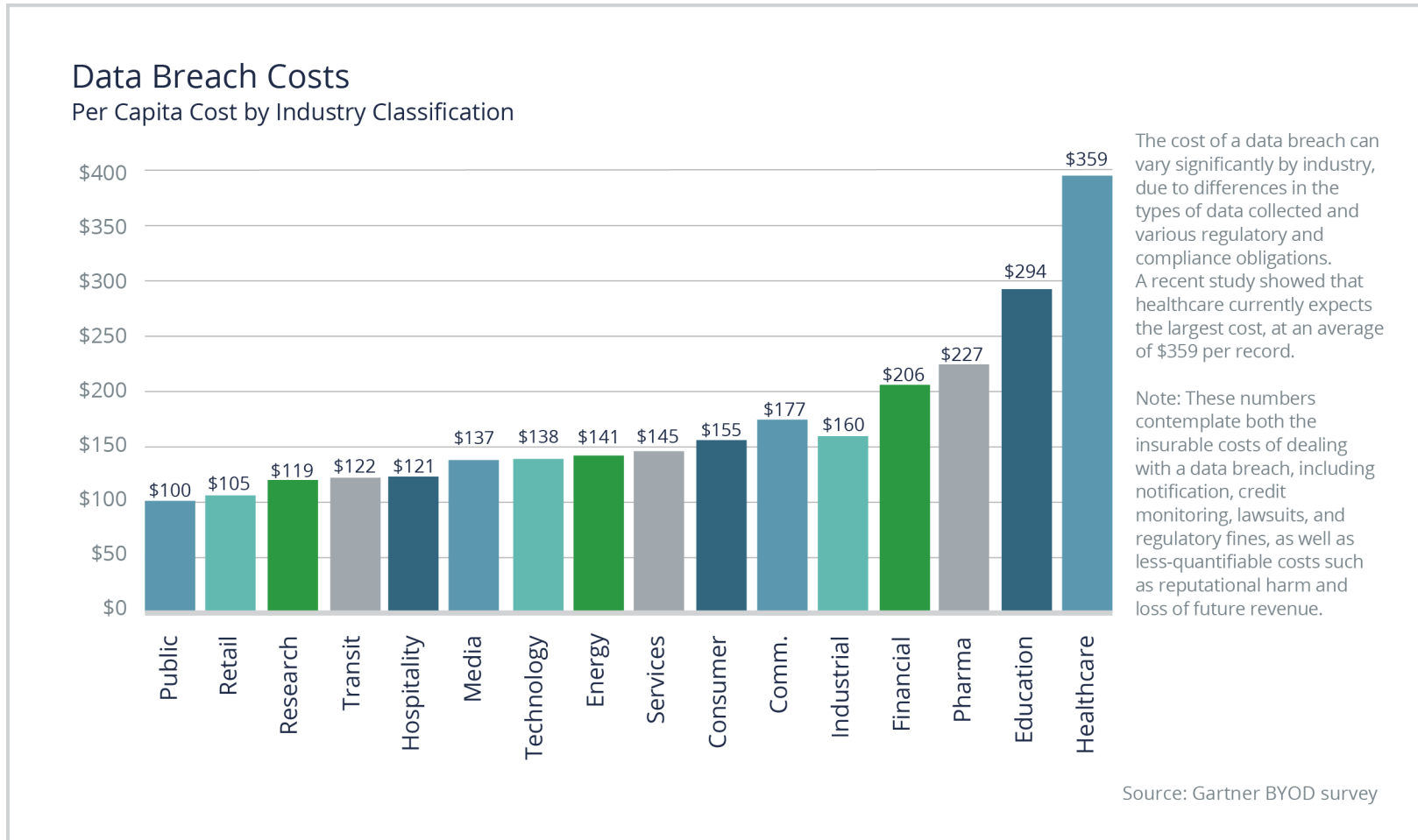
Definition of professional services- feedback

Any person serving as a trustee, **holding fiduciary or fiduciary-like powers** under the terms of a trust, or **empowered to make decisions** with respect to a trust under the terms of the trust agreement, **whether or not in a fiduciary capacity** and whether individually or otherwise,.

Components of a Cyber Policy



Data Breach Costs



Cyber Liability: A Closer Look at the Trends

CARRIER POV **Pricing and terms do not support this level of cyber loss**

HIGHLIGHTS OF CARRIER BEHAVIOR

- AIG:** Imposing a 50% sub-limit on all cyber events with a ransom element. A 50% co-insurance also applies.
- Hiscox** has retreated from the market significantly – non-renewing all accounts over \$100M of revenue; all excess placements; and all construction or manufacturing sector accounts.
- Chubb:** Adding SolarWinds exclusion to all accounts in attempt to reduce future exposure from not responding to event appropriately.

Ransomware is top concern

- Every carrier now requiring supplemental application for ransomware controls.
- Minimum standards for controls being developed, and positive responses required to maintain current level of coverage.
- Some carriers requiring proprietary applications – even when in an excess position on the insurance tower.

Privacy regulation is taking hold

- GDPR fines: 4% of annual revenue
- CCPA fines: up to \$7,500 per violation (read: *per consumer*)
- CCPA private right of action: Statutory damages between \$100–\$750 per consumer
- IL BIPA private right of action: up to \$1,000 per individual
- New York proposed privacy law and biometric privacy law recently – both containing a private right of action.

Board oversight of cyber and privacy risk is increasing

- Many boards now require annual, or more often, privacy and cyber risk update
- Cyber risk analytics are key to supporting cyber insurance limit decision
- Security frameworks (e.g., NIST, CIS Top 20 Controls) provide structure for boards/management to facilitate discussion
- Cyber incidents more frequently leading to SCA claims against company and directors and officers

Ransomware Underwriting Information

As Ransomware severity and frequency continues to rise, Cyber insurers have now started requesting additional underwriting information around defenses they expect companies to have implemented to protect themselves from a ransomware event.

Below are minimum controls (without which you will be vulnerable), baseline measures for stronger protection, and practices that will provide the best protection.

NOTE: INSURERS LOOKING FOR COMPANIES TO HAVE MINIMUM AND BASELINE PROTECTIONS TO CONSIDER THE RISK, AND IN MANY INSTANCES ALSO REQUIRING BEST PROTECTION.

Minimum Protection

Email Security

- Email Tagging
- Email Content and Delivery – Sender policy framework (SPF) checks
- Office 365 add-ons and configuration

Back-up and Recovery Policies

- Back-up key systems and databases

Internal Security

- Deploy and maintain a well configured and centrally managed anti-virus solution
- Macros – limit use of
- Patching Cadence
- Well-defined and rehearsed incident response process
- Educate your users (phishing training, etc.)

Baseline Protection

Back-up and Recovery Policies

- Regular testing of back-ups
- Disconnect back-ups from organizations network
- Separately stored, unique back-up credentials

Internal Security

- Establish a secure baseline configuration
- Filter web browsing traffic
- Use of protective DNS (Domain Name System)
- Manage access effectively i.e.MFA (Multi Factor Authentication), PAM (Privileged Access Management)

Best Protection

Back-up and Recovery Policies

- Encrypted back-ups

Internal Security

- End-point detection and response (EDR) tools
- Comprehensive centralized log monitoring
- Subscription to external threat intelligence services
- Network segregation (i.e. via access control or well-configured firewall)

Notices

Important Notices

1. This information is presented for your convenience, but in no way does it alter the actual contracts of insurance. For coverage details, refer to policies. In the event of conflicting statements, the policy conditions supersede this document.
2. Specimen copies of policies are available.
3. Changes in exposures need to be promptly reported for proper coverage to be put into place.
4. Higher limits of liability may be available. Please let us know if a quote is desired.
5. As a part of the risk management process, we may review leases, contracts or other legal documents on your behalf, in order to determine your compliance with the insurance and surety requirements contained therein, and their effect, if any, on your insurance program. We are not reviewing this information from a legal perspective and recommend that you have any contract reviewed by your legal counsel.
6. If a carrier quoted in this proposal is a "Non-Admitted" or "Surplus Lines" insurer, it means that they are not subject to the financial solvency regulation and enforcement that applies to licensed insurers. The insurer does not participate in any of the insurance guarantee funds created by the state.
7. If one or more of the coverages quoted in this proposal are written on a "Claims Made" basis, coverage under that policy will only apply to claims which are reported during the policy period (and/or extending reporting period, if applicable), for acts arising after the retro-active date, subject to the policy terms, conditions and exclusions. Please refer to the policy for more detailed information.
8. This proposal may be subject to the following:
 - a. Receipt of signed and dated application
 - b. Implementations of loss control program
 - c. Signed Surplus Lines D-1 form
 - d. Completion of loss control recommendations
 - e. Other:



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