



Gallagher

Insurance | Risk Management | Consulting

Staying Ahead of Risk: Insurance Insights for Directors

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May 13, 2026



Your Presenters

Let us introduce ourselves



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Agenda

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Employee Benefits

- Group Health Plans
- Retirement Plans

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Emerging Risk & Insurance

- Fraudulent Transfers & Social Engineering
- Director's & Officers and Professional Liability
- Cyber: Ransomware and Privacy Laws
- Employment Practices Liability

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Representative Insurance Programs

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Appendix

Great Power Has Great Responsibility

Employee Benefit Plans

Who's Who of Fiduciaries

Determined by who has discretion or control over the plan.

- An office (i.e. HR) or name
- Administrative Committee
- Company's Board of Directors

Fiduciary Significance

Subject to standards of conduct for acting on behalf of participants and beneficiaries.

- Acting solely in their interest
- Carrying out duties prudently
- Following plan documents

Laws Affecting Fiduciary Responsibilities

- ERISA
- HIPAA
- ACA
- **And although generally superseded by Federal Laws sometimes:**
 - State
 - Municipalities
- **IRS Regulations**

Fiduciary can be held *personally* liable for their actions, or actions of a co-fiduciary

Fiduciary Landscape

Employee Benefit Plans

Plan Discretion and Control includes:

- Employee Contributions
- Medical Loss Ratio (MLR) Rebates
- Hiring Service Providers (i.e. Carrier, TPA, PBM)
- Monitoring Service Providers
- Maintaining the Plan's Benefits Claims Procedures
- Fees

If your BOD is involved in making these decisions
OR approves these decisions...

THEY MAY BE FIDUCIARIES

**Group Health Plan Protection
with an ERISA Fidelity Bond**

**DOL Voluntary Fiduciary
Correction Program (VFCP)**

Fiduciary Landscape

Retirement Plans

Common Excessive Fee Claims:

- Underperforming Investment Funds
- Excessive Investment Fees
- Service Provider Fees
- Prohibited Transactions

Ways to Mitigate Risk:

1. Strong and consistent application of governance procedures;
2. Have and follow an investment policy statement;
3. Regular meetings, where meeting minutes should reflect actions and decisions;
4. Review fiduciary liability insurance coverage, verify limits and deductibles are appropriate.

Fiduciary Responsibility in the News

Employer Lawsuits Heat Up Against Health Plan Administrators

July 6, 2023, 2:30 AM PDT



Sara Hansard

Recent Lawsuits Are a Wake-Up Call for Employers and Their

JPMorgan Sued for Allowing Inflated Drug Prices through its PBM

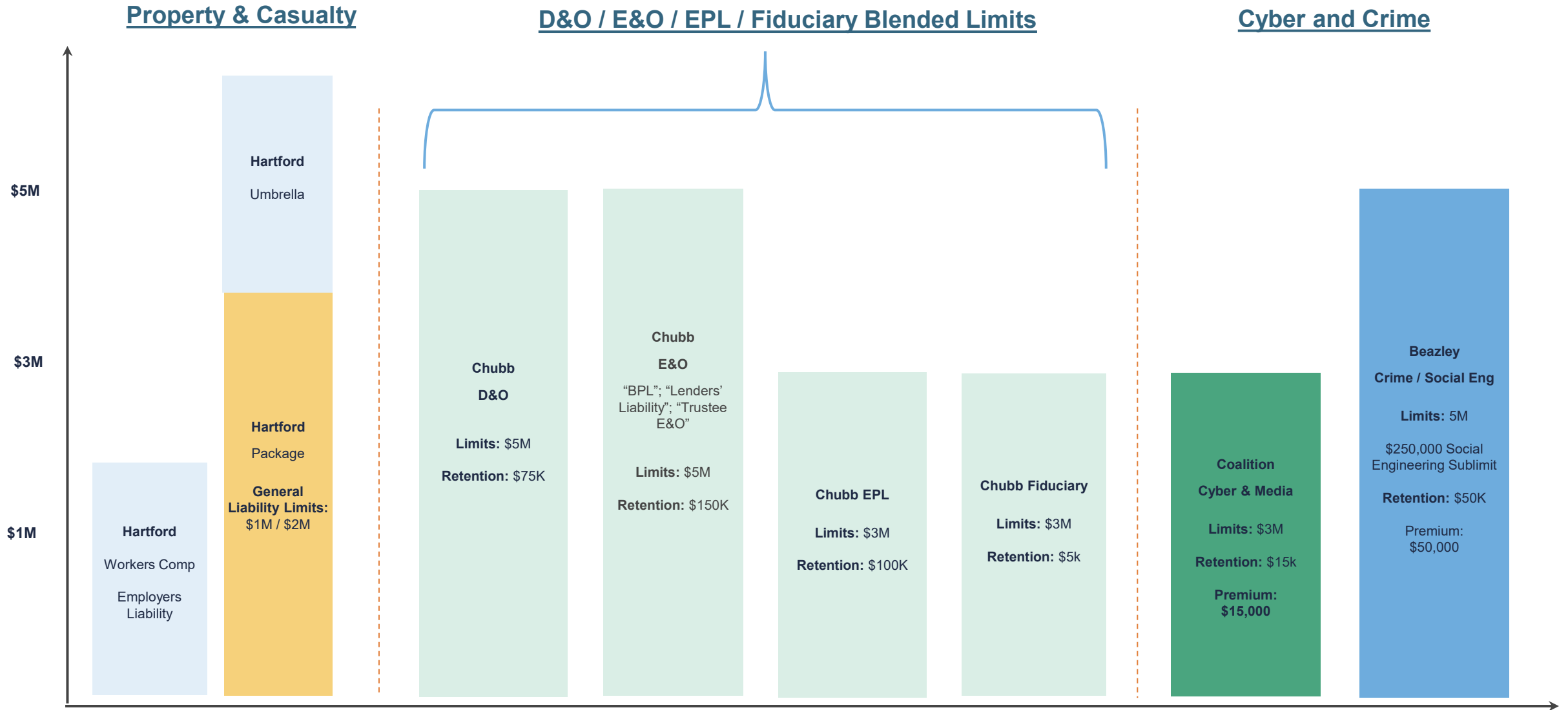
Mar 24, 2025 | Drug costs, Lawsuits, News, Pharmacy Benefits Manager (PBM), Prescription

Employer J&J Sued for Breach of Fiduciary Duties and Mismanagement of Its Group Health Plan

February 2024

Representative Insurance Program

Representative Insurance Program



Emerging Risks and Insurance Response

Fraudulent Transfers and Social Engineering



What is happening?

Increased fraudulent transfers

- AI enabled deepfakes, forgery, and malware
- China, Russia, Iran, N. Korea state sponsors
- Social media amplification
- Human and technology vulnerabilities



Who is targeted?

Banks & Financial Institutions

- Targets and conduits of ~\$3b annual losses
- 60% of banks lost >\$500,000 in direct fraud
- 5,100 complaints of bank impersonation
- Majority Social Engineering; 3x other industries



What insurance responds?

Fidelity and Cyber Insurance

- Fidelity / Crime – Unauthorized
- Social Engineering – Authorized correctly under false pretenses
- Crypto is not automatically covered

White House Races to Head Off Threats From Powerful AI Tools

Group led by National Cyber Director Sean Cairncross aims to identify security vulnerabilities before models from Anthropic, OpenAI are released

By [Brian Schwartz](#) [Follow](#) and [Amrith Ramkumar](#) [Follow](#)

April 10, 2026 7:00 pm ET



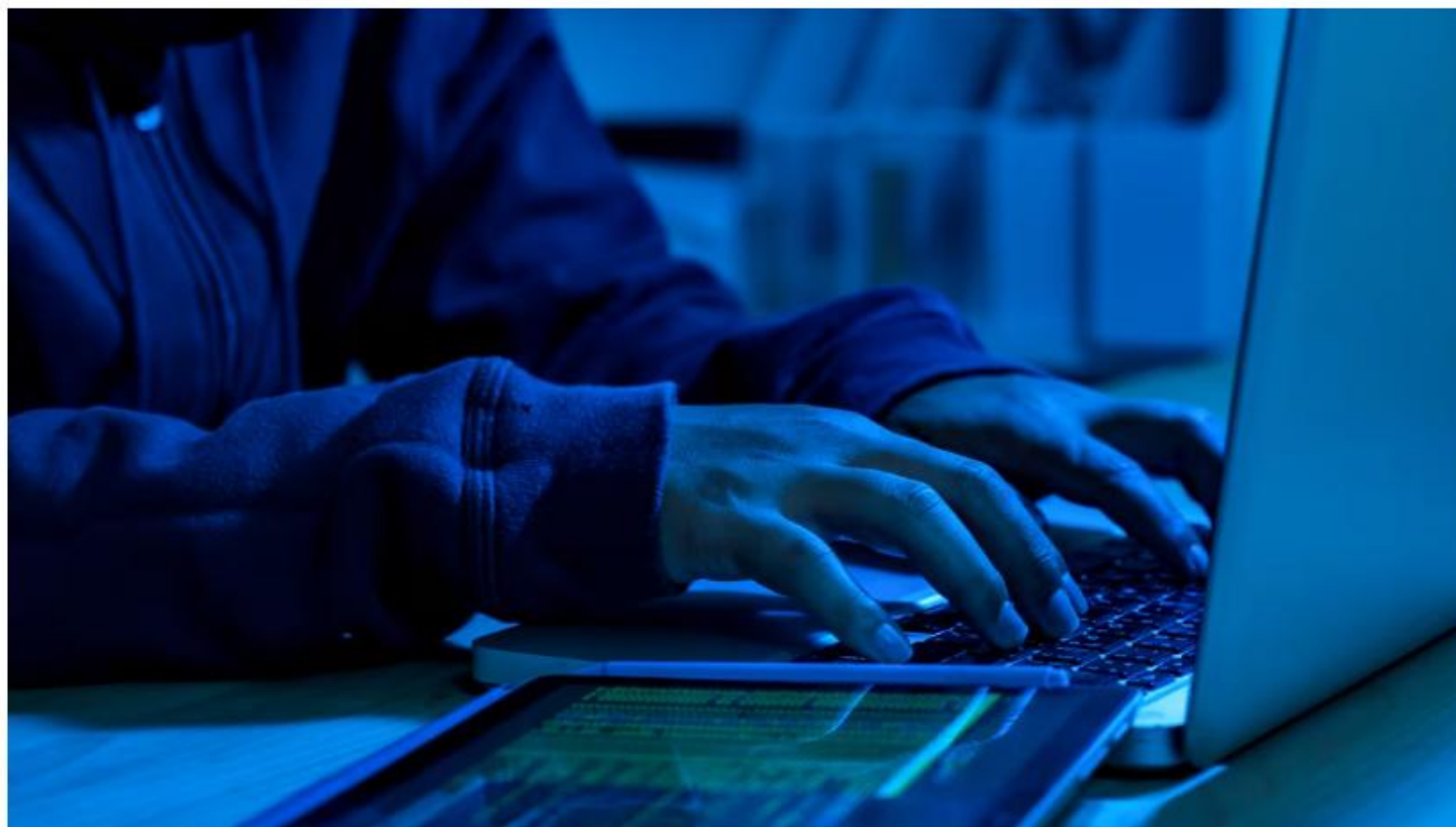
Sean Cairncross, national cyber director, is leading the administration's response to potential AI threats. PAUL MORIGI/GETTY IMAGES FOR THE HILL & VALLEY FORUM

Finance worker pays out \$25 million after video call with deepfake 'chief financial officer'



By Heather Chen and Kathleen Magramo, CNN

🕒 2 min read · Published 2:31 AM EST, Sun February 4, 2024



Authorities are increasingly concerned at the damaging potential posed by artificial intelligence technology. boonchai wedmakawand/Moment RF/Getty Images

Participated in the TikTok Chase Bank Money Glitch?



WHAT CAN I DO IF I PARTICIPATED IN THE TIKTOK CHASE BANK MONEY GLITCH?

By [Ranger Jackson](#) | September 11th, 2024 | Categories: [Criminal Mischief](#) | Tags: [Best Attorney/Law Firm](#), [Best of the Best](#), [criminal defense lawyer](#), [Criminal Mischief](#), [Florida](#)

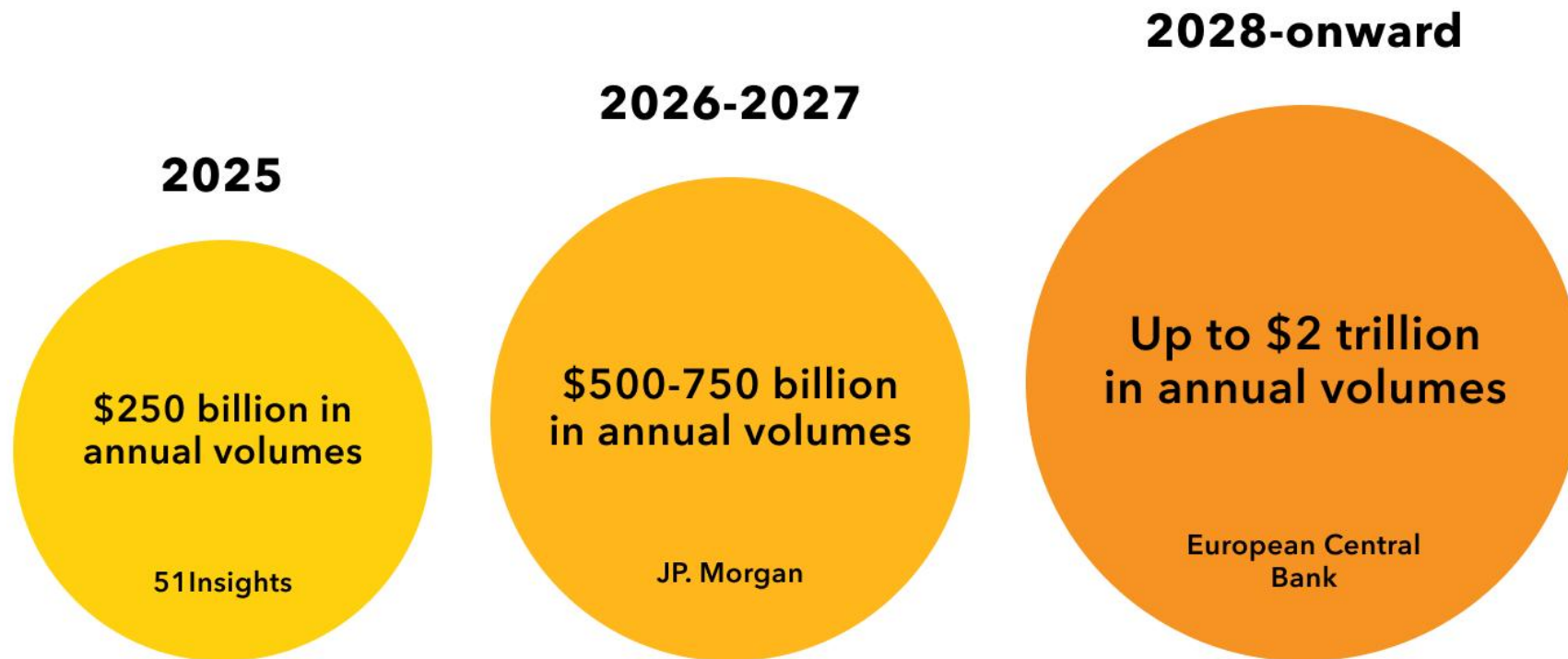
The TikTok Chase Bank Money Glitch has been making waves on social media, and in the news with countless users sharing stories of seemingly endless funds appearing in their accounts. While this glitch may seem like a dream come true for many, it's important to understand the serious legal consequences that can arise from participating in the scam.

The autism center **authorized the payment.**

Even though **they were deceived**, makes the loss **fraudulent but not unauthorized.**



STABLECOIN ADOPTION 2025-2028 OUTLOOK



Crime/Fidelity – Key Insurance Coverage Considerations

- Hackers control the system – **Computer Fraud**
 - Hackers cause a payment – **Funds Transfer Fraud**
 - Employee sends money – **Social Engineering**
- } No crypto coverage

Computer Fraud – Strong bank controls limit coverage availability

- Credential compromise ≠ unauthorized access in many policies
- No employee participation (review, approval, release...)

Funds Transfer Fraud – Negotiate and adopt controls to reality

- Policies require Insured verify instructions through a call back procedure
- Policies require fraudulent instructions be issued through Insured's funds transfer system (would not respond to emails, APIs, vendors, or inputting external instructions)
- Policy assumes every wire is routine – one single system, all procedures always followed, no senior officer overrides, and no judgement-based verification

Social Engineering – Typically subject to sublimit, call-back requirement, and spread across cyber and crime

Crime/Fidelity – Key Insurance Coverage Considerations

Cyber Policy

- May contain **valuable sub-limits** for loss of Customer assets caused by your breach (Invoice Manipulation Coverage).
- Access to **forensic firms to support you** during a breach.
- Data breach **legal guidance**.
- Consumer class actions and notification costs.
- Cyber and Bankers Professional Liability may respond if your customer sues you; the exclusions on the BPL and Cyber need to be carefully negotiated.

Directors & Officers and Professional Liability

What is at stake?

Personal and operational liability

- D&O insurance protects both individuals and the company; excludes professional services
- Bankers Professional Liability (“BPL”) and Lenders' Liability protect the bank from lawsuits related to services / brought by customers

What’s the latest?

Stability with a focus on recent trends

- Underwriters digesting losses and learnings from pandemic CRE performance + SVB, Signature, and First Republic + inflation
- Underwriters are concerned about the private credit space, AI, and global conflicts

How can I improve my insurance position?

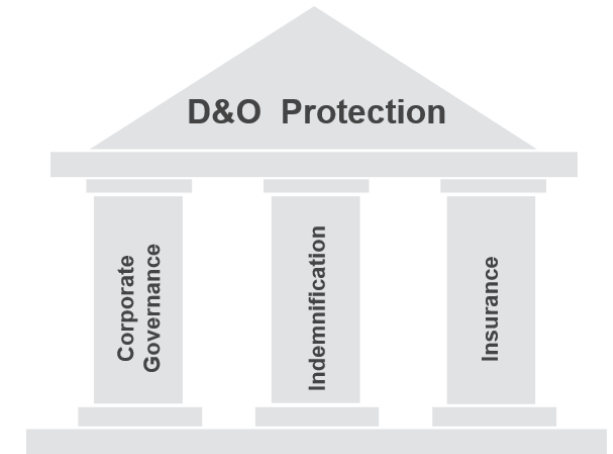
Leverage market conditions

- Competitive marketplace with material coverage enhancements available
- Match “professional services” definition; do exclusions impact material operational exposures or personal liability?

Underwriter Focus – Risk Management & Governance

Directors & Officers Insurance

- More cyclical claims trends
- Higher severity; multi-party litigation
- Regulatory oversight often lands here when individuals are named
- Claims with company wide impact
- Inter-twined issues (i.e. data breach leads to stock drop and investigation)



“BPL” and Lenders’ Liability Insurance

- More consistent claim frequency arising from loan origination and servicing
- Moderate severity; both single and multi-party
- Can arise out of a small and new business silos
- Trust E&O, Investment Banking E&O, and Loan Servicing are considered separate coverage

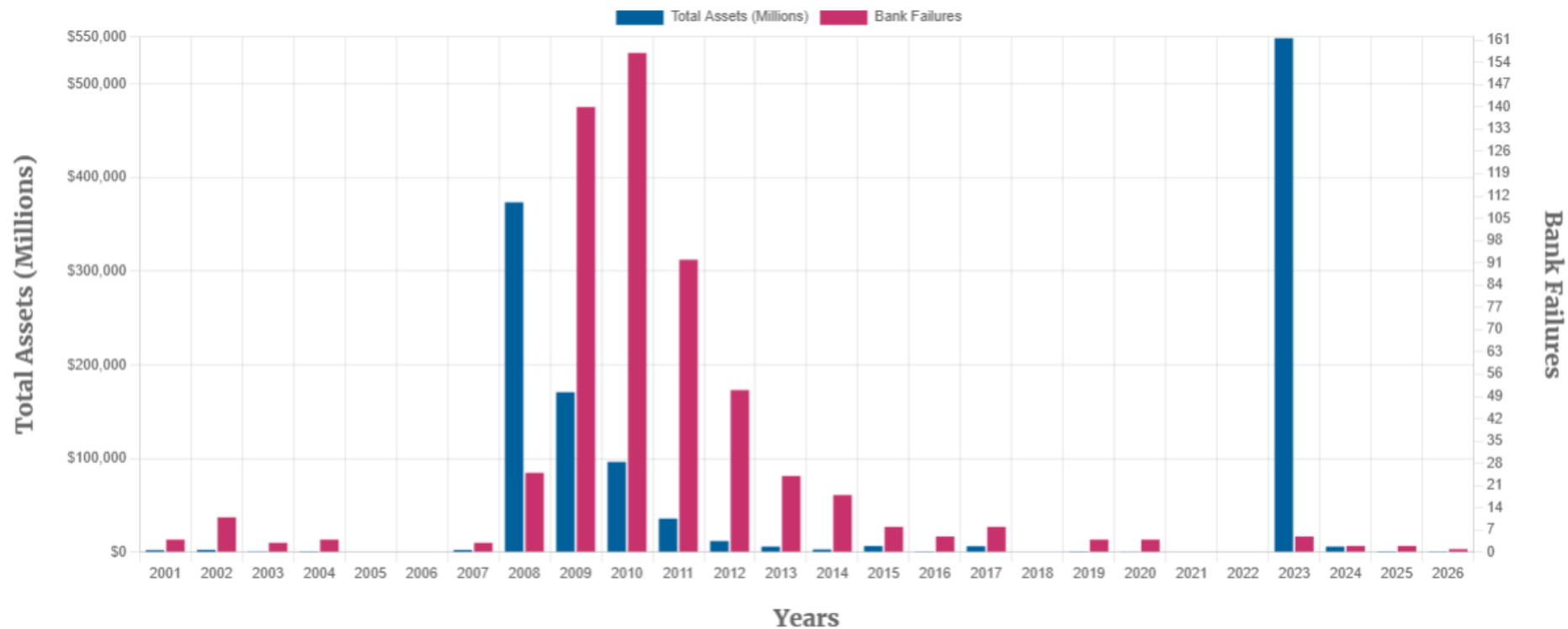
Underwriter Focus – Rearview Mirror

Macro / Industry Wide

- Uninsured/broker depositors %
- Customer concentrations
- Interest rate sensitivity
- Credit quality

Micro / Company Specific

- M&A history
- Sales practices
- Over-draft fee practices



Underwriter Focus – Forward Looking

Macro / Industry Wide

- AI Adoption
- Concentrations (software, green energy, commercial office RE)
- Private Credit largely funded by bank credit lines for PC lenders

Micro / California / Company Specific

- CA wildfire exposures
- CA SB 825
- Crypto exposure; KYC/AML

Key Takeaways



In the United States, the private credit (PC) market grew in real terms from \$46 billion in 2000 to roughly \$1 trillion in 2023.



Banks have played an important role, especially as liquidity providers, in the growth of private credit in recent years.

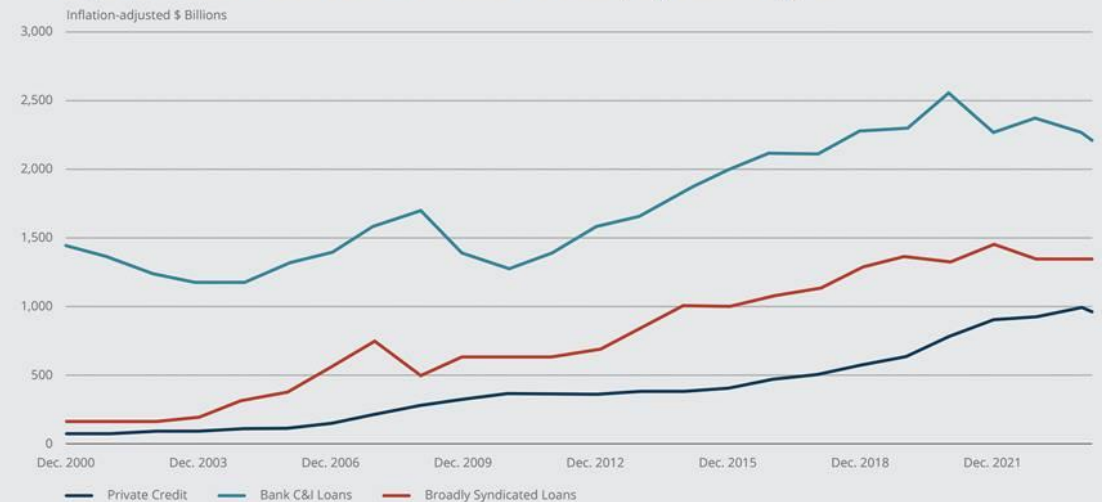


Banks' extensive links to the PC market could be a concern because those links indirectly expose banks to the traditionally higher risks associated with PC loans.



However, bank loans to PC funds are typically secured and among those funds' most senior liabilities—they would be among the first to be paid off. These factors suggest that banks would suffer losses only in severely adverse economic conditions.

Figure 1: Growth of Credit in US over Time, by Credit Type



Note(s): The figure shows the growth (in PCE-deflator-adjusted dollars) of private credit (dark blue line), bank commercial and industrial (C&I) lending (light blue line), and broadly syndicated loans (red line) in the United States from 2000 through 2023.
Source(s): Prequin (private credit data), Pitchbook LCD (broadly syndicated loans data), Federal Reserve H.8 (C&I data), and authors' calculations.

Key Insurance Coverage Considerations

General

- Late Notice: Will not apply unless the insurer has been “prejudiced”
- Duty to defend vs attorney reimbursement rates (\$450 vs \$2,800)

D&O

- Definition of Claim – Coverage for investigations of individuals and the company (confirm no regulatory exclusion)
- Anti-trust and unfair trade practices
- Exclusions: Entity-only or Broad-form: Cyber, Privacy, Professional Services, Contract

BPL

- Definition of Professional Services and Lending Services (Trust and Loan Servicing not automatic)
- Exclusions: Credit delinquent at policy inception, intra-company or owned entity transactions, investment banking



What is happening?

Cyber claims volumes are up

- High litigation environment for “wrongful collection” privacy claims especially CIPA for businesses with direct customer contact
- Ransomware and cyber extortion claims make up a third of cyber claims; costly and complex



Who is targeted?

Banks & Financial Institutions

- Legacy call-recording/TCPA; CIPA website /pixel tracking (Truist); vendor misconduct
- 65% of financial firms were hit by ransomware in 2024; 14% pay; \$545,384 avg



What insurance responds?

Cyber Insurance

- Standard Cyber policies do not respond to privacy claims (non-breach); Cyber policies exclude TCPA
- During a ransomware attack, response costs may out pace ransom payment

Employment Practices Liability

What's is at stake?

7-Figure Settlements & Reputational Damage

- Nuclear verdicts and punitive damages - \$100m Liberty Mutual jury verdict
- Class actions volumes continue to rise
- EEOC Complaints - Retaliation (51.3%), disability (30.4%), and religion (35.2%, with a spike)

What's the latest?

Stability with a focus on recent trends

- 115% increase in EEOC systemic investigations
- CA Fair Employment & Housing Act (AI/Ageism)
- Pay Equity / Transparency (Gender/Discrimination)
- Wage and Hour – Misclassification

How can I improve my insurance position?

Leverage market conditions

- Duty to defend or reimbursement (rates)
- Retention options – CA, Class Action, High Wage
- Wage and hour sublimits
- Punitive damages language

Connect With Us



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Appendix

D&O Risk Appetite: An Underwriter's View

	Favorable	Less Favorable
CUSTOMER	Business	Consumer
SHARE STRUCTURE	Single	Dual / Founder Control
PATH TO PROFITABILITY	Short (or already profitable)	Long to non-existent
VALUATION	In-line w/peers	High
METRICS	Traditional	Unique
BOARD & MANAGEMENT TEAM	Experienced	Novice
REGULATORY PROFILE/PHASE III DATA EXPOSURE	Low	High
SOCIAL CONTROVERSY LEVEL	Not socially controversial	Socially controversial
HEADLINE RISK	No	Yes
GLOBAL FOOTPRINT	Stable	Rapidly expanding
INVESTOR BASE	Institutional long-term holder	Short interest
GROWTH PROFILE	Organic	M&A
CYBER EXPOSURE	Limited to business operations	Consumer/PII

Directors/Officers/Companies: Who Sues Them?



Private Plaintiffs

(Shareholders)
(Employees)

- Federal Securities Class Action Suits
- Opt-Out Securities Suits
- State Law Derivative/Fiduciary Duty Suits
- Creditor Suits
- Employee Suits/ERISA Suits



Government

(Civil)
(Criminal)


- Securities & Exchange Commission (Civil)
- Other Federal Agencies (ex. FDA, DOE) (Civil)
- US Attorney General/DOJ (Criminal)
- State Enforcement Agencies (Civil & Criminal)
- Foreign Governments (v. foreign subsidiaries)

Traditional ABC Coverage

The Directors & Officers Liability Policy provides coverage to the Company and its Directors and Officers through three separate “Sides” with a shared limit of liability.

“**Side A**” provides coverage for non-indemnifiable loss of Directors and Officers.

- E.g., Shareholder derivative settlements for Delaware Corporations (prohibited from indemnifying).
- E.g., Bankruptcy or insolvency.




TRIGGER: Claims against Ds & Os that are *not* indemnifiable

PAYS: On behalf of Ds & Os

RETENTION: None

“**Side B**” reimburses Company for indemnifiable loss of Directors and Officers.

- E.g. Securities Class Action settlements and defense costs.
- E.g. Defense costs for SEC/DOJ investigations and enforcement actions.



TRIGGER: Claims against Ds & Os that *are* indemnifiable

PAYS: On behalf of Company (funds indemnification of Ds & Os)

RETENTION: Apples

“**Side C**” reimburses Company for its defense costs and settlements of Securities Claims



TRIGGER: Claims against Company for securities claims

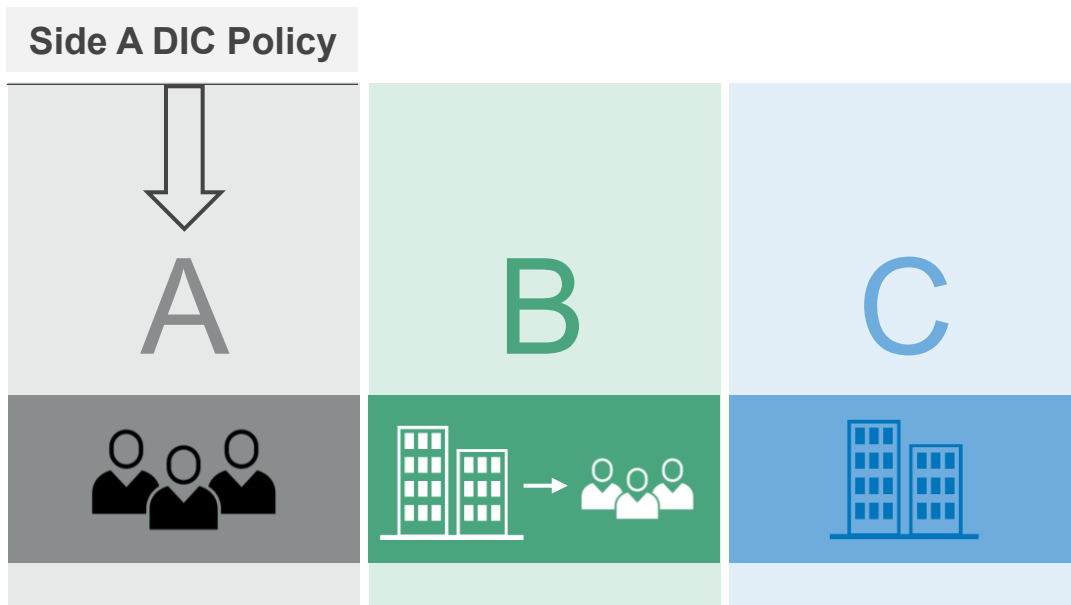
PAYS: On behalf of Company (securities claims)

RETENTION: Apples

It is Customary to Also Purchase Side A DIC Protection

Side A DIC is an additional coverage many companies purchase that sits above a traditional D&O policy. One of the key benefits of such a policy is that the Ds and Os do not share this limit with the organization.

Traditional ABC with Side A DIC Drop Down



Side A DIC Policy Key Policy Features

- Sits excess of Side A of an ABC policy, or can drop down to replace primary A-Side coverage
- Typically, non-rescindable

Coverage Triggers

- ABC policy seized in a bankruptcy
- Company refuses to indemnify (including after M&A)
- Rescission of Side A in underlying policy
- Insolvency of underlying insurance carrier
- When coverage terms are broader than Side A in the underlying policy