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I bring a unique perspective to insurance structuring. As a lawyer, I first look at the areas of law that might affect my insurance clients. I next analyze internal compliance to determine the possibility of a future claim. Finally, I look at their insurance policies to determine the depth of current coverage.

This very brief note shows how I would look at a tech company's risk profile.

Intellectual Property: it's highly likely that a tech company has some type of intellectual property – a process, methodology, program, code, or the like, that is key to the company's overall success. Infringement on this property would harm the originator. Intellectual property insurance provides funds for legal representation to prosecute an infringement claim. Some policies also provide loss of business income coverage.

Cyber-risk: this risk is actually based on privacy law, which is a collection of rapidly changing federal and state statutes. Compliance is complicated since there is a large variance between the various jurisdiction's rules. The larger the amount of customer data the insured holds, the bigger the potential liability. A large breach could result in class-action litigation against the insured, which could be a bankruptcy-causing event. Cyber-coverage covers this risk. This is a new policy; it's only been in standardized form for about 10-15 years. It's imperative to obtain the broadest coverage, which not only pays for legal expenses but also public relations costs, credit monitoring for victims, and a large amount for notification expense.

Employment law: Employment law is a mixture of federal and state law. Employee classification issues are potentially the biggest problem for companies. There is a mistaken perception that an employee's tax status is determinative, when, in fact, courts use a multi-factor test. A second complicating factor is that some companies don't have a dedicated in-house or outsourced human resources department, leading to shoddy record keeping. Employment practices insurance covers this risk. Its prime goal is to pay for legal fees and settlement costs. One of the biggest shortcomings with this policy is it only pays for "necessary and reasonable" expenses. A good employment lawyer will cost at least $500/hour, which may be higher than that budgeted by the insurer. A second potential issue is who obtains the lawyer. If the insurer controls this process, they may recommend an attorney that does not get along with the insured, leading to a huge problem.

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Employee fidelity: nationally, the number of incidents and total amount of losses are much higher than reported. The reason is most companies quietly settle to avoid negative publicity. Managing for this risk is difficult since most incidents are first-time offences, eliminating the efficacy of background checks. Losses are typically large because most offenses last 12 months or longer. This risk is covered by an employee fidelity or crime policy. Its primary role is to indemnify the insured for losses caused by the act.

Directors and officers: generally speaking, the actions of c-suite executives are indemnified by the company. But this does not mean that management can't be sued individually. A plaintiff can allege that management was grossly negligence, which, if successful, would remove the limited liability shield. In addition, smaller companies are usually lax regarding corporate compliance, increasing the possibility of poor record keeping, thereby enhancing a plaintiff's possibility of success. The primary purpose of a directors and officer's policy is to pay for legal expenses and damages. With this policy, the method of payment is key: does it pay expenses outright or does it reimburse the executive or the company for funds already expended?

The above paragraphs explain my thought process, which is vastly different from most insurance brokers. It also provides my clients with a far more comprehensive and complete insurance program which better insulates that from harm.

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