COVID-19 & Executive Risk

Changing Business and Insurance Risks

No business is immune from the impact of COVID-19. For non-essential businesses, these impacts include lost revenue, employee layoffs or forced early retirements, unpaid creditors, accessing government loans, and investor losses. For essential businesses, impacts include keeping employees safe and managing an uncertain supply chain. For businesses operating remotely, impacts include network security, employee isolation, re-integrating employees post lockdown and a customer base in turmoil. As a result, all Executive Risk policies could be impacted. The following concerns are heightened in the current environment.

Directors & Officers Liability

- **Event-driven litigation:** claims by shareholders/investors alleging mismanagement of crisis.
- **Claims by shareholders**/investors alleging inaccurate/inadequate disclosure of the impact of the crisis on the company's operations.
- **Claims relating to bankruptcy proceedings.**
- **False Claims Act** and qui tam claims relating to federal and state funds received under COVID-19 government programs.
- **Antitrust investigations** and suits alleging price gouging. Price fixing is another risk in an environment where competitors may coordinate in order to provide important products which are in short supply.
- **Increased potential for M&A litigation:** deals are slowing, or stopping altogether, and target company shareholders may believe they are being taken advantage of because of a temporarily low share price.
- **Complications in balancing the needs of different stakeholders** during a challenging environment. There is not a road map for directors or officers in the current environment; they may be forced to make difficult decisions, which can lead to feelings of unfair treatment, or second-guessed decisions.

Fiduciary Liability

- **Additional scrutiny on plan fees** and expenses as employees are forced/elect to retire.
- **Potential reductions in benefits** to reduce costs for the plan in the face of declining revenues and earnings could increase claim activities.
- **Decline in value** of 401(k) plans could lead to claims alleging lack of diversity of investment options from participants nearing retirement.
- **Reductions in the values of traditional defined benefit pension plans** could lead to underfunding issues.
- In situations where a plan sponsor becomes insolvent, fiduciaries can be exposed to claims brought by bankruptcy trustees or others for **failing to maintain adequate cash** to pay unemployment premiums, payroll taxes, and other legally mandated amounts.

If an employer is requiring employees to update them on illnesses, is that data being protected in compliance with HIPAA and other privacy laws?

Failure to protect medical records and personal health information can result in Fiduciary Liability claims.

Employment Practices Liability

- **Wrongful termination/discrimination claims**, especially when not all employees were let go or re-hired. The incentive to file EPL claims may increase when employees are laid off into a difficult labor market with double digit unemployment and fewer opportunities for future employment.
- **Failure to provide a safe work environment.**
- **Wage & hour claims**/failure to pay overtime-non-exempt employees may have claims which are hard to controvert during a work from home period.
- **Deprivation of career advancement**/failure to promote.

Cyber Liability

- **Increased number of potential access points** to your systems, caused by remote working, may make it easier for a hacker to gain access to systems.
- **Increased load on IT networks** can increase the risk of not detecting a bad actor.
- **Risk of relaxed policies,** or failure to ensure all employees are effectively patching and updating home software.
- **Unencrypted public WiFi use** by employees.
- **Personal laptops** may be loaded with obsolete operating systems.
- **Motivation of bad internal actors** may be heightened by layoffs and economic uncertainty.
- **Increased frequency of attacks on certain higher-risk industries** (i.e. healthcare, pharma), as hackers appear to be targeting critical industries that must stay up and running.
- **Malicious COVID-themed websites** are proliferating. Many sophisticated websites or emails purport to be from the CDC or other reputable sources, but are used as a means to transmit malware onto computer systems.

Commercial Crime

- **Difficult economic times generally lead to greater employee theft.** Similarly, out of work employees may turn to fraudulent/criminal activity to pay basic living expenses.
- **Increased risk of Social Engineering claims** due to remote working. These are claims where a third party impersonates an employer, client, fellow employee, or vendor and tricks the employee into transferring money, securities, or confidential information. Employees working remotely may be less willing or able to double check with managers regarding payment changes. Working from smaller screens such as laptops or distracting home environments can also make mistakes more likely.
- As many companies reduce their workforce, they find fewer employees performing more duties. Maintaining **segregation of duties** is important risk management to reduce the potential for crime claims.

What to Expect from Insurers

- **Questions, lots of questions.** Underwriters will want to know how you are responding to the pandemic, its impact on your operations and financial results, and what plans you have in place to deal with the crisis moving forward.
- **Increased premiums.** Insurers expect COVID-19 to be the single greatest catastrophe the industry has ever faced, with losses at unimaginable levels for several years to come. Adjusting premiums upward now, and in the future, will become the norm to help compensate for these losses.
- **Decreased limits**. In an attempt to limit future exposure to COVID-19 losses, we expect insurers will reduce the limits they offer on Executive Risk products.
- **Industry segmentation.** Insurers have always considered an insured's industry in the risk analysis process, but those industries that are uniquely exposed to COVID-19 related losses (e.g. healthcare) will face even greater challenges when renewing their Executive Risk program.

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