



TAILWATER
CAPITAL

Tailwater Capital “Finance Summit”

*Management Liability and Property & Casualty
Insurance Considerations*

June 12, 2018



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Wortham, L.L.C., General Partner

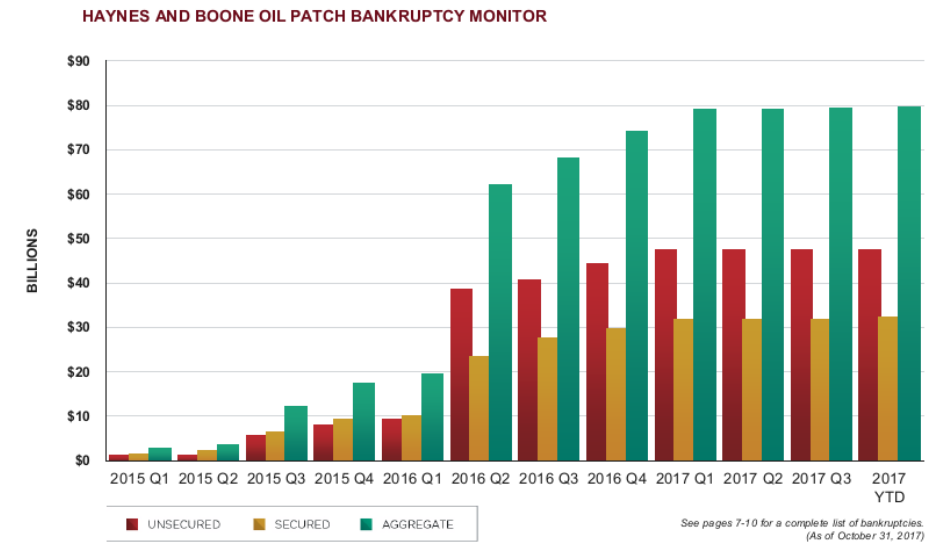
John L. Wortham & Son, L.P.

A photograph of a city skyline at sunset. The sky is filled with large, dramatic clouds in shades of orange, pink, and purple. In the foreground, there is a dense line of green trees. The city skyline in the background features several prominent skyscrapers, including a tall, thin tower with a spherical observation deck. A semi-transparent white rectangular box is centered over the image, containing the title text in a dark blue font.

Directors & Officers Liability Insurance Considerations

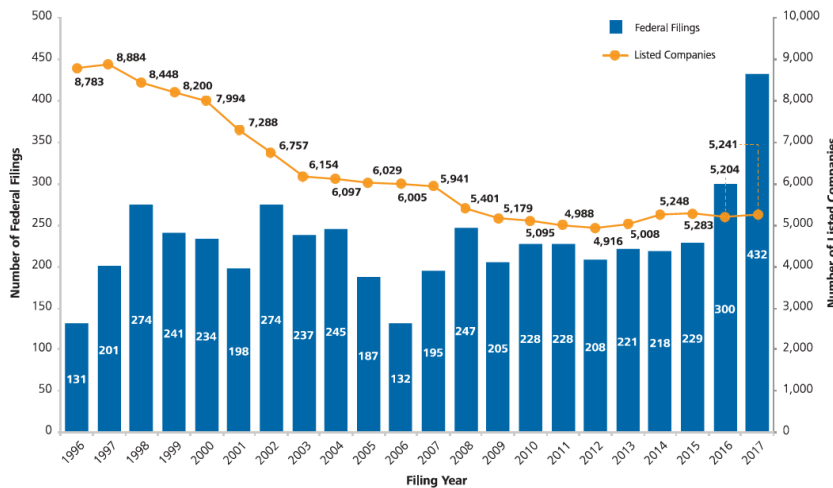
State of the D&O Market

- Market conditions were favorable for Public Directors & Officer's Liability buyers in 2017.
 - Despite worsening loss trends, abundant capacity has kept pricing advantageous for most insureds.
 - Many primary placements were flat – assuming no claims activity or material issues.
 - Programs with more than \$30M of limits experienced reductions in prices across the overall tower.
 - Energy-related bankruptcies peaked in 2016. 45 companies filed in 2015, 69 in 2016 and 19 in 2017. New capital entering the space was also a boon for insureds.
 - While some of the largest primary D&O insurers announced need for corrective action, we have yet to see this executed.



State of the D&O Market

- W Dating back to 1996, the number of companies listed on U.S. exchanges has declined 40%, yet the number of Federal Filings is at an all time high.
- The number of 2017 filings is double the average number of Federal Securities Class Actions filed in any given year over the 1996 – 2016 time frame. This is despite a near record low number of public filers.
- The high number of 2017 filings is skewed to the extent many M&A filings previously filed in state court have been re-filed in federal court.
- The number of filings excluding M&A has increased for the fifth consecutive year and were 15% higher than 2016.

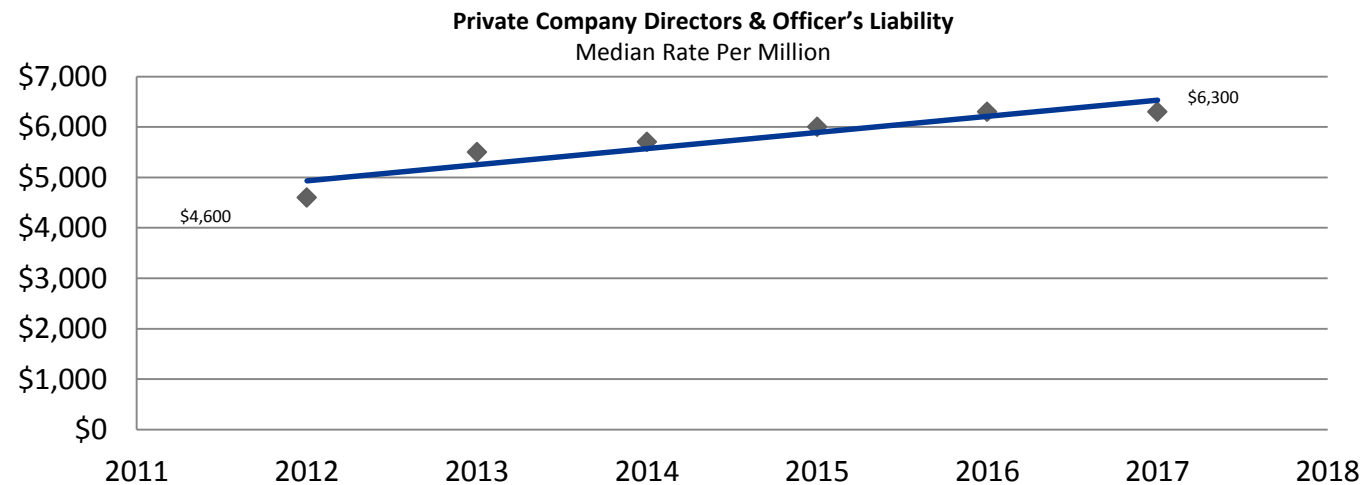


Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data from 2016 and 2017 were obtained from World Federation of Exchanges (WFE). The 2017 Listings data is as of November 2017. Data for prior years was obtained from Meridian Securities Markets and WFE.



State of the D&O Market

- The Private and Not For Profit market has continued to be flat with some select hardening. Most carriers continue to report above normal D&O and EPL claims with loss ratios well above 100%.
 - As a result, insurers are attempting to increase premiums and retentions on accounts they deemed historically underpriced.
 - According to Advisen, premiums for Private Directors & Officer's Liability has increased 37% since 2012.
 - Privately held Insureds need to pay particular attention to terms and conditions as insurers are aggressively attempting to reduce the coverage afforded where possible to reduce losses.



Directors and Officers Liability Insurance

Basic Contract Construction

W Side A Coverage

- Provides coverage for Insured Individuals if the Organization is unable to provide indemnification

W Side B Coverage

- Provides reimbursement to the Organization when indemnification is provided for Insured Individuals

W Side C Coverage

- Provides coverage for the Organization



Directors & Officers Liability

Broad Form Side-A Coverage

- International Side-A
 - Placed in London (Lloyds Syndicates – Beazley and Brit)
 - Sits Excess of Domestically placed global D&O program
 - Provides Side-A coverage in Lloyds-Admitted Countries
 - Allows quicker payment for Individual Insureds in countries where locally admitted coverage may be required (Lloyds is admitted in 80-plus countries)
- Independent Director Side-A Coverage
 - Sits excess of Traditional Coverage
 - Provides coverage only to the Independent Board Members
- Personal Directors Side-A Coverage
 - Sits Excess of all D&O Insurance Available
 - Dedicated solely to one Director
 - Portable
- Retired Directors Side-A Coverage
 - New Coverage started by Retired Directors Assurance
 - Dedicated solely to one Director
 - Provides a six (6) year “tail” for acts committed up to “retirement”



Select D&O Coverage Terms to Look Out For

- Ⓢ Selection of Counsel
- Ⓢ Allocation vs. Reimbursement
- Ⓢ Claims Reporting Obligations
- Ⓢ Anti Trust Exclusions
- Ⓢ Professional Services Exclusions
- Ⓢ Additional Side-A Limits
- Ⓢ Road Show Coverage
- Ⓢ Stacking of Limits





Cyber Liability Considerations

Cyber Liability Insurance – *The Coverage*

Third Party Liability Coverages	Coverage Description
Privacy and Network Security Liability	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.
Regulatory Defense and Penalties	Protection for those amounts Insured is obligated to pay arising out of certain privacy regulatory actions. Defense costs and certain fines/penalties included. Payment Card Industry Fines, Penalties and Assessments generally available via endorsement or separate insuring clause.
Media Liability	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.

First Party Coverages	Coverage Description
Notification Expense/Credit Monitoring	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.
Network Interruption and Data Asset Restoration	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.
Extortion Expenses	Money and expenses paid at the recommendation of an approved service provider relating to cyber extortion and ransomware demands.

Additional Coverages Available in Select Policies



Computer Fraud /
Electronic Fraud / Social
Engineering Fraud



Reputational Harm



Professional
Liability Errors &
Omissions



Cyber Insurance Carrier Services/Consultants

Privacy Attorney Legal Services

- Includes breach counseling to determine scope and severity of breach, as well as assess Insured's obligations under applicable breach notice laws. Outside counsel may often act as “quarterback” to facilitate breach response and coordination of various outside vendors.

Privacy/Security Breach Event Hotlines

- First point of contact for insured in the event of a breach. Most carriers offer a 1-800 number with 24/7 response time capabilities.

Privacy Event Notification Services

- Assistance in preparing notification letters that comply with applicable regulatory requirements.

Credit Monitoring / ID Theft restoration Services



Cyber Insurance Carrier Services/Consultants

Call Center Services

- Available to field FAQs and provide support to affected individuals in the event of a breach.

IT Forensic Consultants

- Provides technical investigation into the scope and cause of a breach.

Public Relations/Crisis Management Services

- Assistance in managing and restoring Insured's business reputation following a breach.

Pre-Breach Mitigation Services

- Most carriers offer loss prevention risk management portals to assist with incident response plan templates, tracking of regulatory requirements and legislation changes, and other educational resources.
- Select carriers may offer more expansive pre-breach services or other risk management tools.



Coverage Trends for Energy & Critical Infrastructure Risks

- Ⓜ Traditional property & casualty policies may not cover full cyber risk due to lack of covered peril trigger and/or exclusionary language including:
 - CL 380 Institute Cyber Attack Exclusion
 - NMA Electronic Data Endorsement

- Ⓜ Alternative products have been created to fill potential coverage gaps:
 - Failure to supply liability arising out of cyber event
 - Property damage/bodily injury arising out of cyber event
 - Cyber terrorism (including property damage / bodily injury)
 - Difference in conditions/excess policies over non cyber placements
 - Buy-backs for cyber related exclusions on non-cyber policies
 - Large Capacity Facilities





Transactional Liability Insurance Considerations

What is Reps and Warranties Insurance?

- Ⓜ Insures against breach of a Sellers Representation
- Ⓜ Facilitates mergers, acquisitions, divestitures and other business transactions
- Ⓜ Used to enhance, supplement, or replace some or all of a seller's indemnification obligation
- Ⓜ Insured is either the Buyer or the Seller (more than 80% of policies are Buyer)
- Ⓜ R&W breaches are generally not covered under a D&O policy
- Ⓜ Coverage has been available in the US since the late 1990's and internationally prior to then
- Ⓜ Over 20 insurers in the market



R&W Premium and Terms

- Ⓜ Target deal size is \$25M to \$1B (sale price)
- Ⓜ Premium – range of 2% to 4% of the limit of liability (one-time premium)
- Ⓜ Deductible range of 1% to 3% of purchase consideration
- Ⓜ Policy Period – follows period of survival (typically up to six years)
- Ⓜ Each policy is unique
- Ⓜ The PSA/Asset Purchase Agreement becomes part of the policy
- Ⓜ Standard exclusions include:
 - Known breaches by a knowledgeable party, such as a deal team member, prior to the inception date of the policy
 - Arising from any covenant, estimate, projection or forward looking statement
 - Arising from a purchase price adjustment in the Transaction Agreement
 - Deal specific exclusions



Additional Coverages



Additional Professional Indemnity Coverages for Consideration

Employment Practices Liability, Fiduciary Liability, Crime and Cyber Liability

Employment Practices Liability

- Employment Practices Liability provides coverage for a broad array of allegations including discrimination, wrongful termination, harassment, and wrongful torts (ie. Wrongful discipline or retaliation) brought by employees or third parties (by extension).
- Wage and Hour Coverage

Fiduciary Liability

- ERISA places a fiduciary responsibility on trustees, administrators and employees connected with employee benefit plans which can be insured by a Fiduciary Liability policy. These employees can be held personally liability.

Crime

- Crime insurance can provide coverage for the theft, disappearance or destruction of money, securities, and other property. The crime policy compliments your property policy by providing coverage that is either excluded or limited within the property policy.
- Social Engineering Coverage

Employed Lawyers

- An Employed Lawyers policy will protect in-house attorneys from allegations of Errors & Omissions in connection with the provision of legal advice and services.

Kidnap/Ransom & Extortion

- Provides coverage for losses arising out of extortion or the kidnap and ransom of the officers, employees and directors, their relatives or other designated persons, including threats to property.





Questions?



A nighttime photograph of a city skyline, likely Chicago, featuring the Willis Tower with its distinctive glowing sphere. The city lights are reflected in the water in the foreground. A semi-transparent white rectangular box is centered over the image, containing the title text.

Property & Casualty Insurance Considerations

State of Market

- 2017 Saw a significant spike in global insured losses
 - Global insured losses from natural catastrophes estimated at \$136 billion, while the 10 year average is \$46 billion
 - Harvey, Irma, Maria => \$93 billion
 - California Wildfires => \$8 billion
 - Earthquakes in Mexico => \$2 billion
 - Lloyd's of London reports a \$2.7 billion loss for 2017
- Overabundance of capital/investments in the insurance marketplace, helping to offset the negative impact from the increased cat losses.



Data sourced from Swiss Re



State of Market – *Upstream & Midstream*

- Ⓜ The negative impact as a result of 2017 Catastrophe losses were short term and rate increases have not sustained
- Ⓜ Upstream / Midstream losses in 2017 were benign (as opposed to downstream which had its worst loss year in 10 years)
- Ⓜ There remains to be excess capital/capacity in the marketplace
 - Lloyd's of London seeking more market share in middle market US upstream/midstream, fuels competition with domestic carriers



State of Market – *Environmental / Pollution Liability*

- Ⓢ The judicial and social climate for pipelines, particularly crude, is not favorable, which has affected the market for insuring these risks.
- Ⓢ It has become increasingly difficult to place coverage on natural gas and NGL lines as of late
 - Seeing some markets respond by lowering limits / raising deductibles
- Ⓢ Appetites have been shrinking fast on high exposures, especially pipelines, over the last 2 years. This somewhat coincides with the exit of AIG from the Pollution Liability market.



Projected Rating Trends – Upstream & Midstream

* Rate
Trend

- Ⓢ Onshore Operator's Extra Expense
- Ⓢ Energy Casualty
- Ⓢ Excess Liabilities
- Ⓢ Onshore Property and Business Interruption
 - Catastrophe Exposed
 - Non Catastrophe Areas
- Ⓢ Commercial Auto
- Ⓢ Environmental / Pollution Liability (Midstream)



* Actual rate adjustment will vary depending on an Assured's own exposures, loss record, current rates, etc.



Sample Insurance Insurance Program

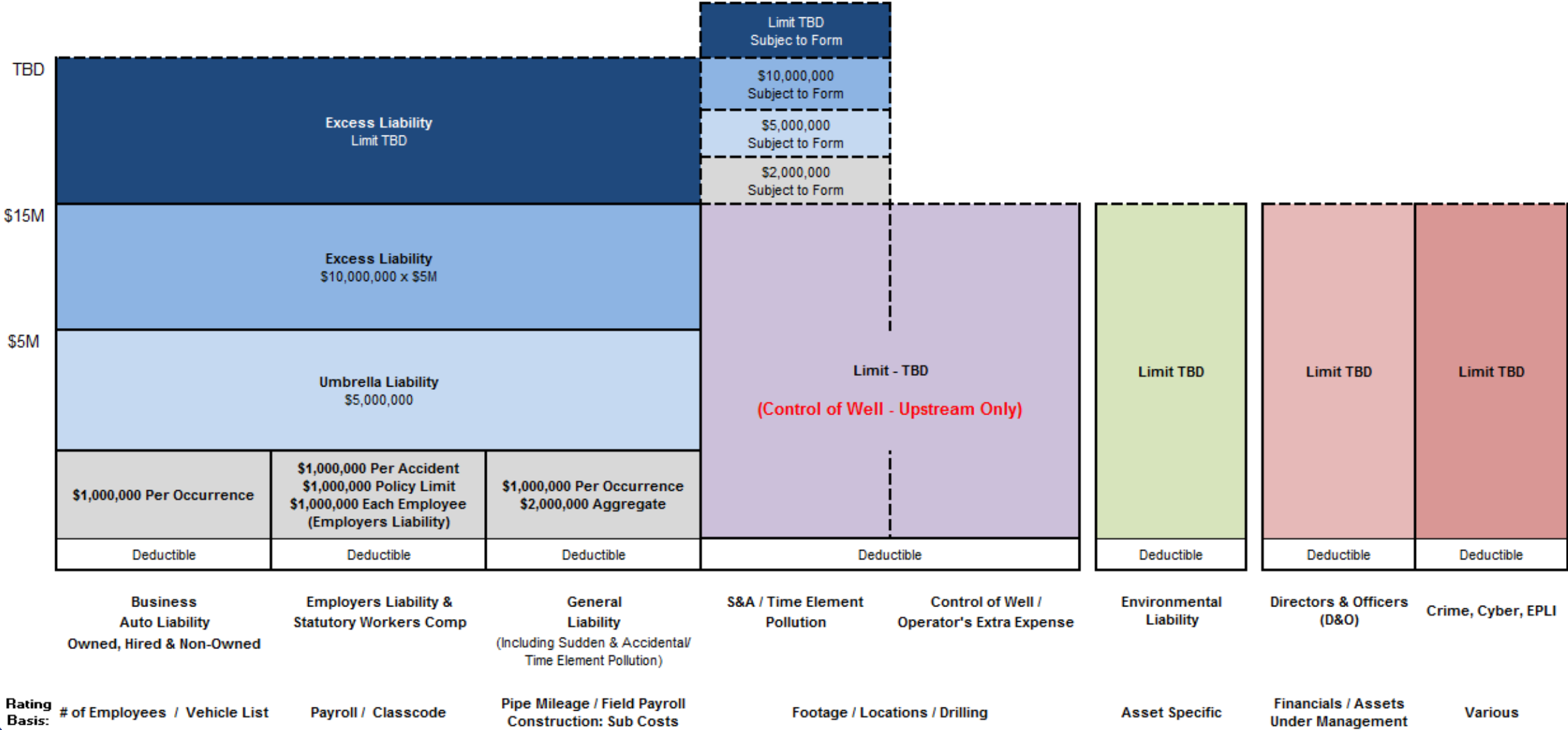
“Pre-Acquisition” Energy

TBD	<div> <div>Umbrella Liability TBD</div> <div> <div>\$1,000,000 Per Occurrence \$2,000,000 Aggregate</div> <div>\$1,000,000 Per Occurrence</div> <div> \$1,000,000 Per Accident \$1,000,000 Policy Limit \$1,000,000 Each Employee (Employers Liability) </div> </div> </div>			<div> <div>Limit TBD</div> <div>Deductible</div> </div>	<div> <div>Limit TBD</div> <div>Deductible</div> </div>	<div> <div>Values (BPP) BI & EE Included</div> <div>Deductible</div> </div>
	General Liability	Business Auto Liability	Employers Liability & Statutory Worker's Compensation	Directors & Officers (D&O)	Crime, Cyber, EPLI	Property / Business Interruption
	OFFICE ONLY Excludes Pollution	Hired & Non-Owned				
Rating Basis	Square Footage	# of Employees	Payroll / Class Code	Financials / Assets Under Management	Various	Values



Sample Insurance Insurance Program

Energy Liability



Sample Insurance Insurance Program

Energy Property

TBD			
	Limit - Asset Specific	Limit - Asset Specific	Limit - Asset Specific
	Deductible	Deductible	Deductible
	Property / Business Interruption Surface Property Underground Pipeline	Oilfield Equipment	Builder's Risk / Delay in Start Up
Rating Basis:	Values / Replacement Cost Loss Limi	Values / Replacement Cost	Values / Replacement Cost



Insurance Considerations - *Midstream*

- W Environmental – Sudden & Accidental vs. Gradual
- W Crude vs. Gas
- W Construction Phase
- W Builder's Risk – GC vs. Owner
- W GL Rating Basis varies between underwriters





Questions?





Wortham Overview

A Partnership That Works... Just Like Yours

- Placing over \$1 billion in premiums annually
- Texas based with a global footprint since 1915
- Over 500 professionals
- One of the independent P&C agencies in the U.S.
- A Limited Partnership owned by 120 Managing Directors
- Approximately half of our Managing Directors are technical staff



Wortham Marketing Experts

- Casualty
- Professional Indemnity
- Property, Boiler & Machinery
- Environmental
- Surety
- Energy and Marine
- Life Insurance
- Excess Casualty
- Employee Benefits
- Personal Lines / Life Insurance



Speaker Biographies – Management Liability

David Garrett, Managing Director, joined the Professional Indemnity/Bond Practice Group in 2007 and was elected Managing Director in 2008. Before joining Wortham, he worked as a Senior Underwriter for Chubb’s Executive Protection Practice and, most recently, was an Assistant Vice President for a global brokerage firm. David attended The University of Texas at Austin earning a Bachelors of Business Administration in Finance with a minor in Accounting. David is an active member of the Professional Liability Underwriting Society and was named a “Power Broker” by Risk & Insurance magazine in the “40 under 40” category for 2008 and “Private Equity” in 2014. David currently places D&O for clients such as Apache Corporation, Nabors Industries, Ltd., Whole Foods Market, Inc., ChevronPhillips Chemical Company, Rosetta Resources, Inc. and Oasis Petroleum, Inc.

Kaitlin Upchurch, Managing Director, joined the Professional Indemnity/Bond department in 2010 and specializes in Directors & Officers Liability, Employment Practices Liability, Fiduciary Liability, Crime/Fidelity Coverage, Kidnap Ransom & Extortion, Professional Liability, and Cyber Security insurance. In 2016, Kaitlin was elected as a “Power Broker” and “Rising Star Broker” by Risk & Insurance Magazine. Prior to joining Wortham, Kaitlin was an underwriter in Chubb’s Executive Protection practice, working also with Chubb’s Professional and Healthcare practices. She attended Wake Forest University earning a Bachelor of Science degree in Business and a Bachelor of Arts degree in French. Kaitlin is an active member of the Professional Liability Underwriting Society, serving on the Texas Chapter Board. She also serves on the Statewide Board of Directors as Director of Finance for Young Risk Professionals of Texas.

Quint Graham, Managing Director, focuses on the placing Professional Indemnity coverages including Directors & Officers Liability, Employment Practices Liability, Fiduciary Liability, Errors & Omissions Liability, and Crime/Fidelity coverage. Before Wortham, he was an Assistant Regional Underwriting Manager with AIG in the National Accounts Division. Quint is a graduate of Fordham University.



Speaker Biographies – Property & Casualty

Fred Bangs, CIC, CRM Managing Director, specializes in marketing and servicing insurance programs for energy and chemical companies. He obtained a BS from Southwestern Oklahoma State University before entering the Insurance Industry as an Underwriter Trainee for a Major Property and Casualty Insurance Company. He attained the position of Senior Casualty Underwriter and developed an Energy Insurance Program for the Rocky Mountain Area before moving to Dallas and joining the Brokerage side of the industry. Fred has been a member of Wortham's Dallas practice since 2007, following a merger with an insurance firm he co-founded and operated for over 15 years.

Martin Newman, Associate Director, joined Wortham in 2014 after six years of production and account management at a Property & Casualty Brokerage Firm in Dallas. His experience includes development, placement, and Management of middle market and large Property & Casualty programs for Energy and Private Equity companies. Martin holds a B.A. from the University of Texas where he majored in History with a minor in Business. He is an active member of the Risk Management Society and pursuing CIC and CPCU designations.





Since 1915...

Over 100 Years of Service

On behalf of the Wortham team, we thank our clients for the honor of serving your insurance, benefits, and risk management needs, and we look forward to working with you in the years to come.

In July 1915, John L. Wortham and his son Gus opened their insurance agency to serve the growing needs of Texas businesses and individuals. Today, more than 500 Wortham insurance specialists serve clients around the world from our offices in Fort Worth, Dallas, Houston, Austin and San Antonio. But no matter how large we've grown, we continue to treat each client, underwriter and vendor with the integrity, trust and respect that have been the hallmarks of the Wortham tradition for over 100 years.

Texas Based with Texas Values.