



Think LEADERSHIP. Think Chubb.

U.S. PUBLIC COMPANIES' PERCEPTIONS OF RISK, AND THEIR RISK MITIGATION STRATEGIES

Featuring Findings from the Chubb 2012 Public Company Risk Survey



About This Report

As a leader in providing management and professional liability insurance solutions to publicly traded companies, Chubb is pleased to present this snapshot of how U.S. public companies are contemplating and managing a selection of critical exposures.

We selected these exposures to examine—directors and officers (D&O) liability, cyber liability, fiduciary liability, employment practices liability (EPL) and employee fraud—because they are among the most potentially impactful threats to a company's bottom line during this time of U.S. and global economic uncertainty.

What follows are selected findings from the Chubb 2012 Public Company Risk Survey, as well as up-to-date information gleaned from reliable third-party sources to help add depth to our analysis. We hope you find the “story lines” presented here to be both interesting and useful as you navigate your company through today's challenging business waters.

The Chubb 2012 Public Company Risk Survey

Chubb commissioned POLLARA, a leading public opinion and market research firm, to conduct a telephone survey of management liability insurance decision makers at U.S. publicly traded corporations in February 2012.

Chubb's goals were to:

- Ascertain concern about corporate risks and uncover risk-mitigation strategies.
- Identify the prevalence of D&O liability insurance, the reasons for purchasing, and D&O insurer selection criteria.
- Identify the prevalence of other types of insurance.

A few words about Chubb

For 130 years, the Chubb Group of Insurance Companies has been delivering exceptional property and casualty insurance products and services to businesses and individuals around the world.

Today, we are the 11th largest property and casualty insurer in the United States and have a worldwide network of some 120 offices in 27 countries staffed by 10,100 employees. The Chubb Corporation reported \$50.9 billion in assets and \$13 billion in revenues in 2011. According to *Fortune* magazine, Chubb is the 185th largest U.S.-based corporation. *Forbes* listed Chubb as one of America's 100 Most Trustworthy Companies in 2010.

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Introduction

What are U.S. publicly traded companies most concerned about?

Public company leaders today are managing in interesting times. Whether you're talking about the economy, technology, government regulation or the weather, the common theme for businesses today seems to be uncertainty.

Against this backdrop, Chubb wanted to know what U.S. public company decision makers worried about most. So we asked how concerned they are about the potential litigation and financial losses their company could experience in the next 12 months from a variety of potential financial threats.

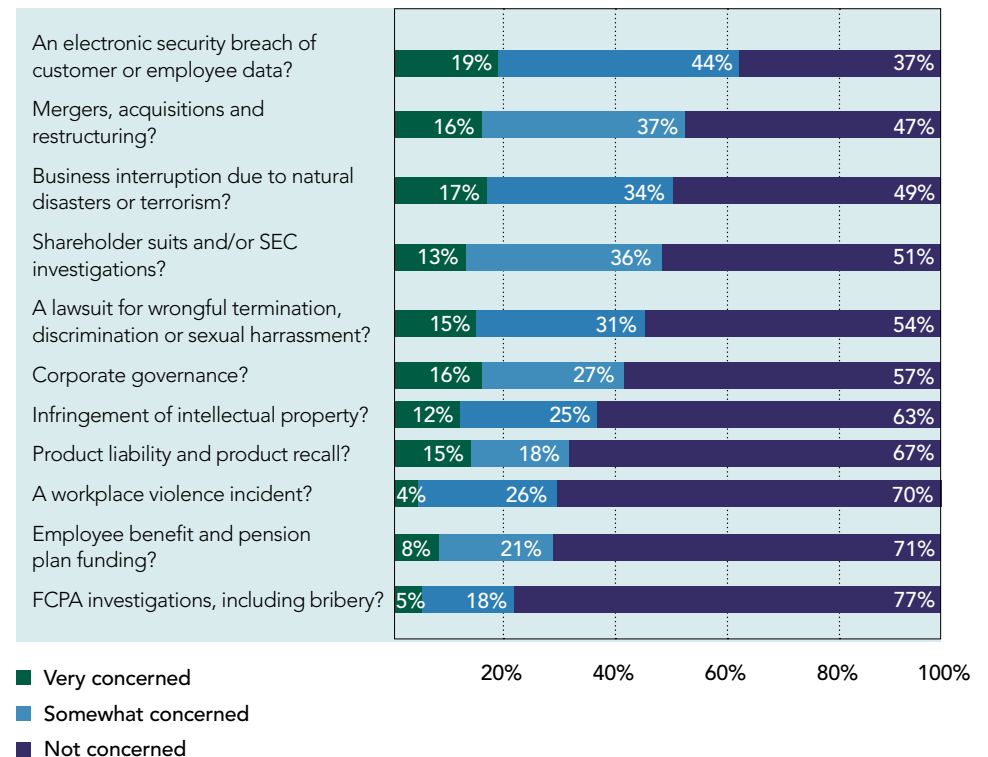
What's hot and what's not

Risks related to **cyber issues, mergers and acquisitions, business interruptions and shareholder suits/SEC investigations** are top of mind for public company decision makers.

They are generally less concerned about employee benefit and pension plan funding, workplace violence, and product liability issues.

When it comes to FCPA investigations, global companies, naturally enough, express more concern than do companies with U.S. operations only.

How concerned are you about the potential litigation and financial losses your company could experience in the next 12 months from:



Source: Chubb 2012 Public Company Risk Survey

Key findings from Chubb's survey

- About D&O liability:
 - **Financial strength** is the leading criteria in selecting a carrier for primary D&O liability insurance and fiduciary liability insurance.
 - **About 2 in 3 public companies consult the board** when purchasing primary D&O liability insurance, but the board is the leading purchase decision maker in only a handful of companies.
- Potentially big risk areas:
 - About **2 in 3 public companies (64%)** still do not purchase cyber insurance.
 - Nearly two-thirds of the companies (**64%**) were involved in a **merger or acquisition** in the past two years—an activity that nearly always creates D&O liability exposures, as well as fiduciary liability and employee fraud risks.
 - A large number (**42%**) of companies **actually experienced an EPL event** in the past two years, and most—but not all—have taken steps to handle their EPL exposures through insurance and other risk management measures.
- Preparing for risk:
 - Over the past year, almost all areas of risk saw a **net increase in resources allocated to risk mitigation**. The biggest increases were allocated for mitigating risks from electronic security breaches, corporate governance, and financial and disclosure controls.
 - **Global companies** are more apt to purchase a **locally admitted policy** for D&O liability than for employment practices liability, fiduciary liability, or crime.

D&O Liability Risks

Senior management in the crosshairs

The risk of a D&O lawsuit is rising

- The number of federal class-action filings hit **188** in 2011, up from 167 in 2009 and 176 in 2010, and higher than the 2005-2010 annual average of 174 filings, according to the Class Action Filings Index™ (CAF Index).
- Although federal class-action filings have climbed relatively slowly, state class-action filings have risen five-fold during the same time period to the point where they now outnumber federal filings.

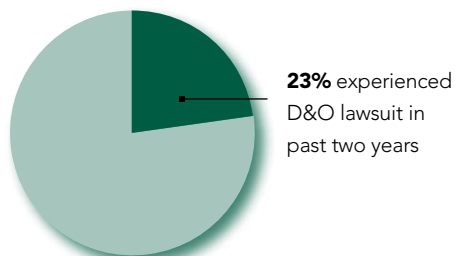
The Chubb survey found that:

- **1 in 4** companies (**23%**) surveyed experienced a D&O lawsuit in the past two years.
- **29%** of respondents said it's likely their companies will face a D&O lawsuit in the coming year.
- A large proportion of respondents expressed concern about potential litigation in the next 12 months from D&O-related issues: **53%** are concerned about mergers, acquisition and restructuring; **49%** about shareholder suits and/or SEC investigations; **42%** about corporate governance. (See chart on page 4.)

Actual D&O Liability Lawsuits:

In the past two years, the company's directors and officers have been sued by:

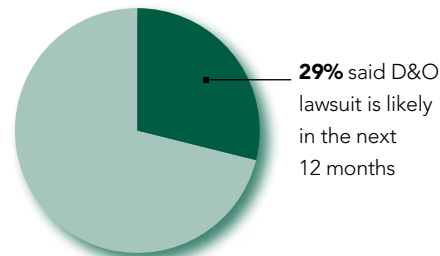
- A government or regulatory agency,
- Shareholders or
- A customer, vendor or competitor:



Source: Chubb 2012 Public Company Risk Survey

Likelihood of a D&O Liability Lawsuit:

A government or regulatory agency, shareholders, customer, vendor or competitor is likely to sue our company's directors and officers in the next 12 months:



Source: Chubb 2012 Public Company Risk Survey

D&O Liability and the Foreign Corrupt Practices Act (FCPA)

In recent years, FCPA enforcement actions taken by the U.S. Securities and Exchange Commission (SEC) and Department of Justice have sharply increased.

- FCPA settlements averaged **18 per year** from 2008-2010, compared to five per year from 2003 to 2006, according to NERA's *SEC Settlement Trends: 2H11 Update*.
- The median company settlement relating to FCPA violations in 2011 was **\$7.8 million**.
- PriceWaterhouseCoopers' 2011 *Securities Litigation Study* stated: "When a publicly held company announces that it is subject to an FCPA investigation or has settled an FCPA enforcement action, shareholder derivative suits are almost certain to follow."

Why the increase? In part it's because the Sarbanes-Oxley Act requires corporations to self-report possible FCPA violations, calls for criminal penalties for willful FCPA violations, subjects corporations to fines up to \$25 million per violation, and calls for fines up to \$5 million and prison up to 20 years for individuals.

Despite the recent threefold increase in FCPA settlements, about **3 in 4 (74%)** of decision makers in global companies said they are not concerned about FCPA investigations, according to the Chubb 2012 Public Company Risk Survey. To be fair, bribery, being illegal, may not be something companies worry about very much, especially when they have an ethics code in place banning the practice, as most public companies probably do.

For more information on FCPA cases, go to www.fcpamaps.com.

Company board involvement is limited

- Somewhat surprisingly, although most companies (61%) consult the board of directors prior to purchasing D&O coverage, the board or a board member is rarely the primary decision maker in selection of the insurance program and carrier (in only 4% of companies), insurance coverage needs and requirements (5%) or policy limits (12%).

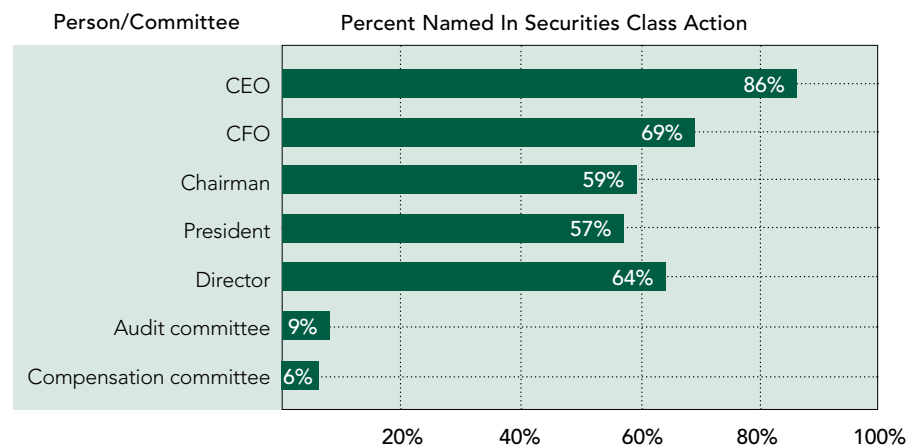
D&O liability insurance purchases: Is independent directors liability (IDL) coverage understood?

- The majority of companies purchase Side A/B/C D&O liability coverage (61%) and Side A-only D&O liability coverage (65%).

- It isn't unusual for directors and officers to believe that a Side A-only D&O policy offers a dedicated layer of protection for independent directors when, in reality, independent directors normally share the Side A-only coverage with inside officers. Fully 29% of Chubb survey respondents say their company purchases IDL insurance, although Chubb believes the actual IDL purchase rate is lower.
- Coverage trends also point to a growing need for IDL insurance. As insurers have expanded coverage for their D&O policies, in the process they have gradually diluted the protection available for independent directors. Yet directors (including independent directors) are a target in 64% of securities class-action lawsuits, according to PricewaterhouseCoopers.

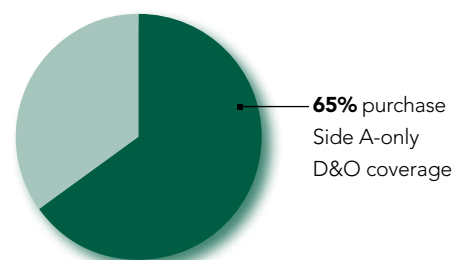
Who Gets Sued?

Senior management is the usual target in a U.S. federal securities class-action lawsuit:



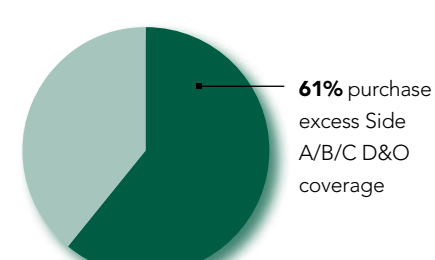
Source: PricewaterhouseCoopers, 2011 Securities Litigation Study

Companies Purchasing Side A-Only D&O Coverage:



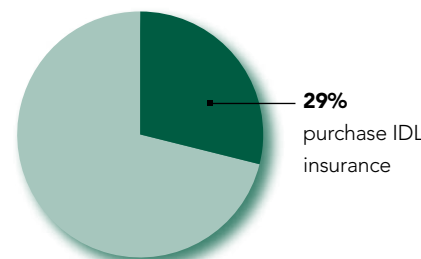
Source: Chubb 2012 Public Company Risk Survey

Companies Purchasing Excess Side A/B/C D&O Coverage:



Source: Chubb 2012 Public Company Risk Survey

Companies Purchasing Independent Directors Liability Coverage:



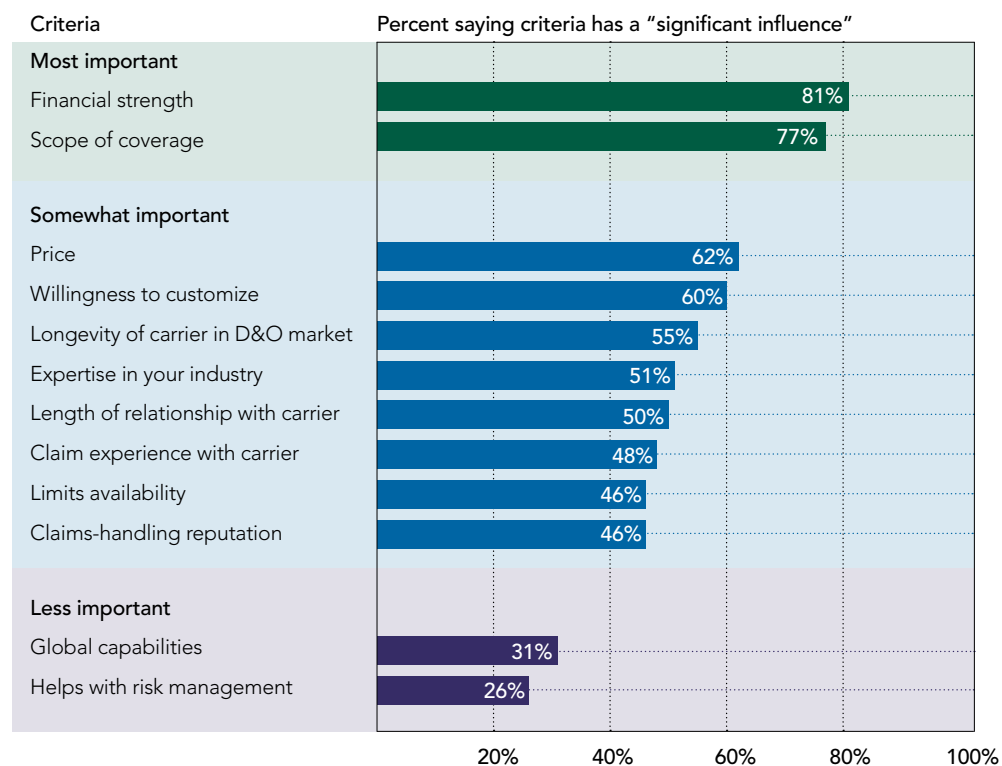
Source: Chubb 2012 Public Company Risk Survey

Selecting the D&O carrier

- Companies overwhelmingly say **financial strength (81%)** and **scope of coverage (77%)** are the most important criteria when selecting a primary D&O insurance carrier.
- Financial strength** is also the primary driver of carrier selection for companies when they are buying Excess D&O (indicated by **86%** of respondents) and A-Side D&O (**84%**).

Selecting a Primary D&O Carrier:

When selecting an insurance carrier for the company's primary D&O policy, **financial strength** and **scope of coverage** are the most important criteria:



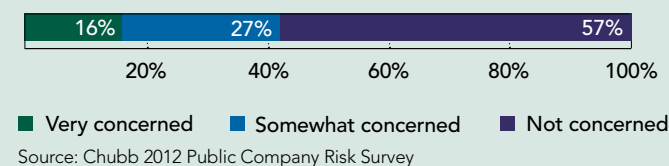
Source: Chubb 2012 Public Company Risk Survey

D&O Liability and Corporate Governance

Many companies are taking steps to mitigate what they perceive to be a growing D&O liability exposure: corporate governance issues.

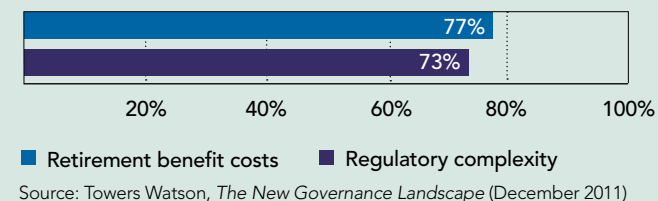
42% of companies are concerned about corporate governance risks:

Level of concern over the potential litigation and financial losses the company could experience in the next 12 months from corporate governance issues:



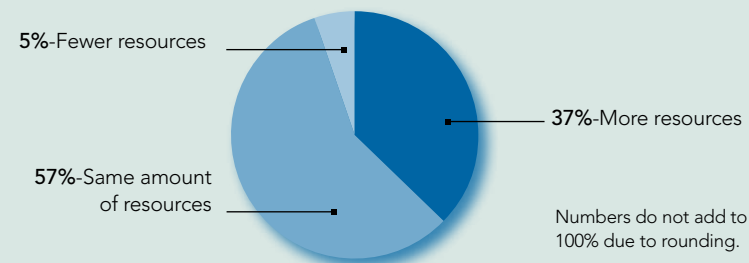
Companies' top governance challenges:

The top governance challenges organizations expect to face in the next two years:



Companies dedicating more resources to managing corporate governance risks:

Compared to a year ago, is your company allocating *more* financial or human resources toward mitigating losses related to corporate governance?



Source: Chubb 2012 Public Company Risk Survey

Mergers and Acquisitions

M&A-related litigation is shockingly commonplace

Multiple-exposure events

M&A-related lawsuits are on the rise, not only at the federal level but more importantly at the state level—which is where the bulk of M&A litigation arises.¹

Furthermore, lawsuits over M&A activity can have **multiple risk implications** for companies—they can be a significant source of D&O liability and fiduciary liability, as well as exposure to employee fraud and FCPA enforcement actions:

- **D&O liability risk:**

- In 2011, **96%** of U.S. public company mergers and acquisitions valued at \$500 million or more elicited at least one shareholder lawsuit, compared to **53%** in 2007.²
- During 2010 and 2011, **85%** of M&A deals valued between \$100 million and \$500 million attracted litigation, and the average number of lawsuits per deal was 4.1.²

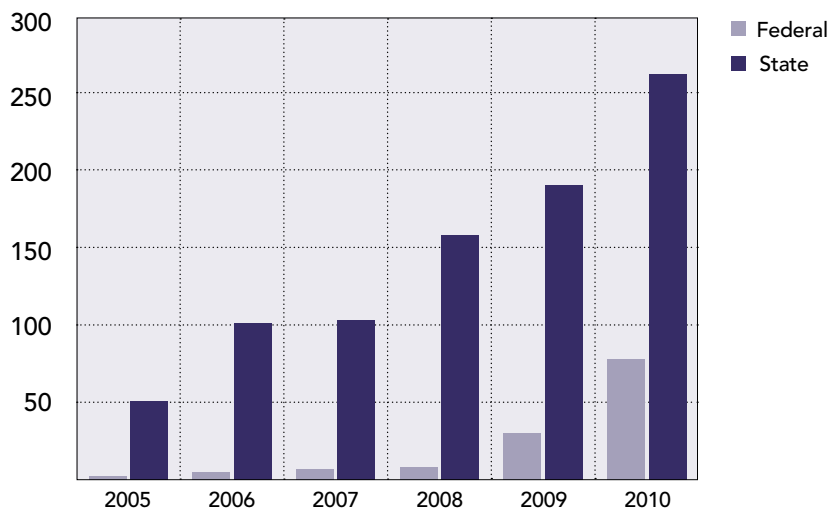
- **Fiduciary liability's six-year tail:**

- Following a merger or acquisition, pension plans and other benefits can be the subject of lawsuits by employees and former employees **for years after the breach of fiduciary duty occurs** (most litigation would fall within the three- to six-year ERISA statute of limitations).

- **Employee fraud risk:**

- A company that's involved in a merger or acquisition may see an increase in employee theft. No company can be 100% sure of what it is acquiring, and employees who are disrupted as a result of a merger or acquisition could become disgruntled and steal from their employer.

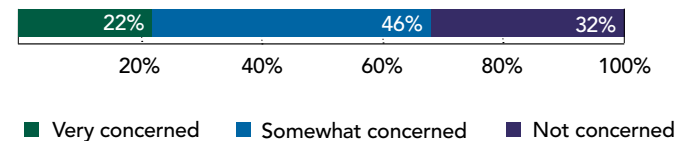
Federal and State M&A Filings:



Source: Jennifer J. Johnson, Lewis & Clark Law School, *Securities Class Actions in State Court* (2011).

Concern About M&A Risks:

For companies experiencing a recent merger, acquisition or restructuring, how concerned are they about potential litigation and financial losses they could experience in the next 12 months from that experience?



Source: Chubb 2012 Public Company Risk Survey

- **Heightened exposure to FCPA enforcement actions**—When a company acquires, merges with or is acquired by a global company, it may face significant exposure should FCPA issues arise:
 - *Risks for the selling company* include government investigation and prosecution, reduction of purchase price, rescinding certain transactions, delay or termination of the deal, or imposition of onerous deal terms.
 - *Risks for the acquiring company* include liability for pre- or post-acquisition violations, investigation costs, remediation expenses, and increased regulatory scrutiny.

Increased concern after an M&A event

- Over half (**53%**) of respondents to Chubb's survey expressed concern over risks stemming from M&A activities. (See chart on page 4.)
- Among those companies that had been through a recent M&A experience, the level of concern for potential litigation and financial losses in the coming year jumps to **68%**.

¹ Jennifer J. Johnson, *Lewis & Clark Law School, Securities Class Actions in State Court* (2011).

² Cornerstone Research, *Recent Developments in Shareholder Litigation Involving Mergers and Acquisitions* (March 2012)

Litigation over a merger or acquisition typically takes one of two forms:

- The target company shareholders file suit shortly after a merger announcement, usually objecting to some aspect of the proposed merger or of the merger-related disclosure.
- Shareholders file suit post-merger, typically alleging that the merger did not live up to expectations.

Fiduciary Liability

Some companies see little risk—at their fiduciaries' peril

If a company provides employee benefit plans, such as health and retirement plans, then the company and its plan fiduciaries are potential targets for a breach of fiduciary duty lawsuit if the plan fails to perform up to participants' expectations.

How do public companies perceive their fiduciary exposure?

Only about a quarter (29%) of respondents said they are concerned about potential litigation and financial losses over the next 12 months from employee benefit and pension plan funding (see page 4). This, despite the fact that such losses can be significant: According to a 2003 Towers Perrin study, average indemnity payments to claimants were **\$994,000** and average defense costs were **\$364,705**.

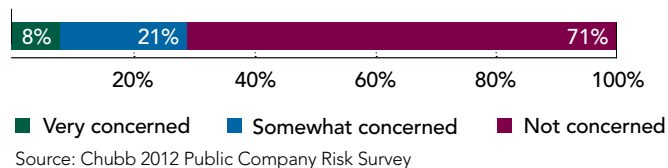
Most companies have fiduciary liability insurance. Yet it's still surprising that **18%** do not purchase this insurance—including **1 in 3** smaller companies (less than \$100

million in market capitalization). Leaders of these companies may not be thinking about certain aspects of fiduciary risk:

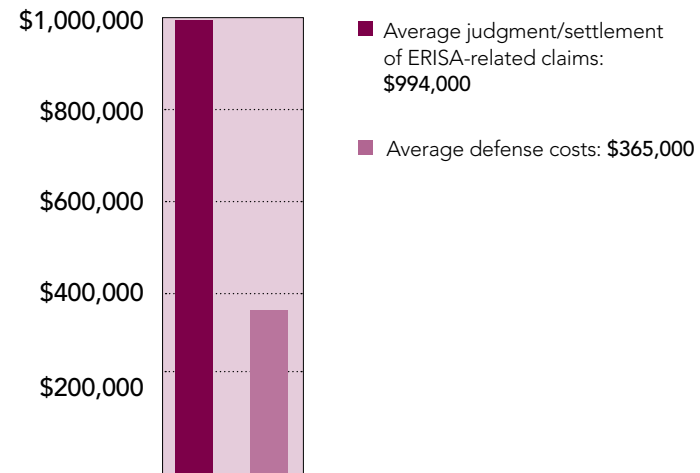
- **Personal liability risk is high:**
 - Many companies, even large ones, fail to recognize the exposures that come with administrating and managing their employee benefit plans.
 - In addition to prohibiting certain transactions, ERISA imposes on fiduciaries the "highest" duties under law.³
- **Company mergers/acquisitions/divestitures can carry years of fiduciary exposure:**
 - Fiduciary liability lawsuits commonly arise when benefit plans are amended, merged, frozen or terminated. This is especially true if participants believe fiduciaries made misleading representations in communicating future benefits.

Most Companies Are Not Concerned About Fiduciary Liability Risk:

Level of concern over the potential litigation and financial losses the company could experience in the next 12 months from an employee lawsuit over benefit and pension plan funding:



Fiduciary Liability Claims Are Costly:

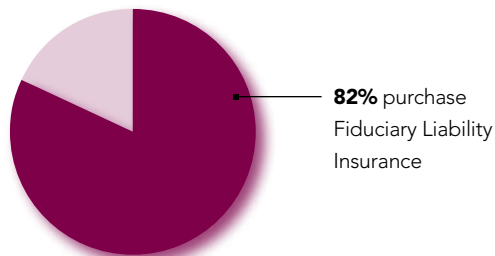


Source: Navigating Today's Fiduciary Concerns, Towers Watson (2003)

- Those employee benefits can crop up in the form of a lawsuit by employees and former employees—for example, if they receive their pension distribution upon retirement only to discover the payment is lower than they previously understood it would be.
 - Because ERISA claims may be brought years after an alleged breach occurs (most would fall within the three- to six-year ERISA statute of limitations), a company and its fiduciaries can be vulnerable to this exposure. Thus it is important to consider purchasing six-year “run-off” or “tail” fiduciary liability insurance protection to help mitigate the risk.
- **Plan fiduciaries face potential litigation involving plan investments and plan fees:**
 - New fee disclosure requirements for pension plans will help to aid an already active plaintiffs’ bar and the Department of Labor in bringing additional claims for prohibited transactions, revenue-sharing and excessive fees.
 - Should the economic recovery continue to struggle and market returns remain volatile, plan fiduciaries may find themselves under fire when it comes to investment selection and investment options, especially when it involves company stock in the plan.

³ Howard v. Shay, 100 F.3d 1484, 1488 (9th Cir. 1996).

Companies That Purchase Fiduciary Liability Insurance:



Source: Chubb 2012 Public Company Risk Survey

Cyber Risks

A leading concern of public companies

Concern over cyber risk is growing . . .

Slowly but surely, concern over cyber risk is growing, and for good reasons:

- About 2 in 5 companies experienced a significant cyber security issue in a recent 12-month period, according to the Computer Security Institute.
- Now 46 states have enacted some type of security breach notification legislation.
- The typical data breach in 2011 resulted in \$5.5 million in organizational costs, according to the Ponemon Institute.

In Chubb's survey, respondents identified cyber risk as their #1 concern from a list of exposures, with **63%** expressing a level of concern (see page 4). Furthermore:

- **24%** said it's likely their company will experience some type of cyber event in the coming year.

- Half of companies (**52%**) are dedicating *additional* resources toward mitigating their cyber risk—a level of present-day attention not given to any other risk covered by the survey.
- Half of companies that don't have an e-security incident response plan (IRP) are planning to develop one in the next 12 months.

. . . but insurance purchases lag

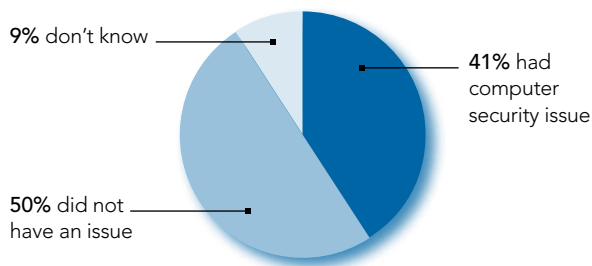
More companies than ever before are buying cyber insurance, and they are buying higher limits.

However, the Chubb survey findings suggest that many company decision makers still need educating about their cyber risks:

- Nearly **2 in 3** public companies (**64%**) still do not purchase cyber insurance—a disconnect when you consider that **63%** of decision makers say they are concerned about their cyber risk.

Cyber Risks Exposed:

Companies that experienced a significant computer security issue from July 2009 through June 2010:



Source: 2010/2011 CSI Computer Crime & Security Survey, Computer Security Institute

The typical data breach in 2011 resulted in:

- **28,349** breached records
- Total costs of **\$194** per record (including notification, call centers, forensics and other direct expenses)
- **\$561,495** in notification costs
- **\$5.5** million in total organizational costs

Source: The Ponemon Institute, 2011 Cost of Data Breach Study

One-third of Americans think businesses don't do enough to protect them from identity theft:



Source: 2011 Opinion Research Corp. study performed for Chubb

- Although **71%** of the companies Chubb surveyed have an IRP for an electronic security breach, more than half (**57%**) of these companies do not include cyber liability insurance as part of their plan.

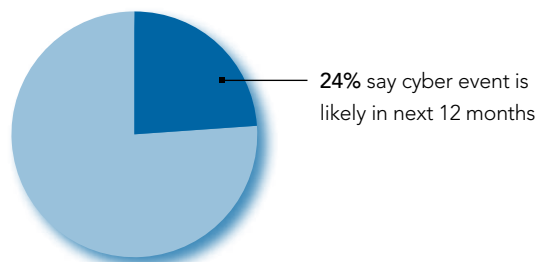
Despite their concern over cyber risks, many companies continue to underestimate or not recognize the potentially serious financial impact of a major cyber event.

"There are only two types of companies: those that have been hacked, and those that will be. Even that is merging into one category: those that have been hacked and will be again."

—FBI Director Robert Mueller (2012)

Likelihood of a Cyber Event Occurring in the Coming Year:

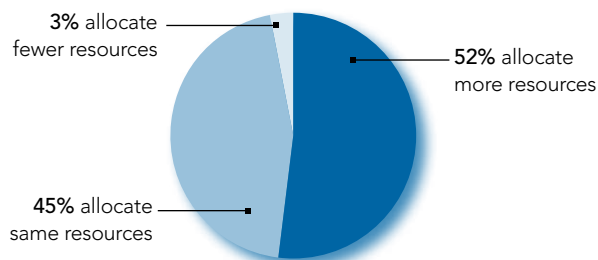
An electronic security breach or other cyber event requiring compliance with privacy notification requirements is likely to occur in the next 12 months:



Source: Chubb 2012 Public Company Risk Survey

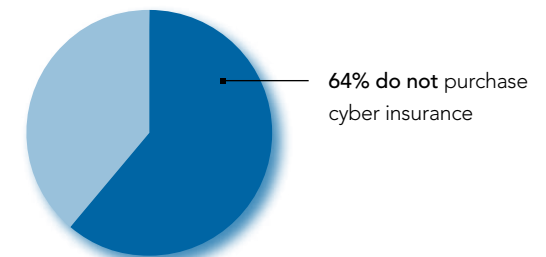
Steps Companies Are Taking to Mitigate Cyber Risk:

Comparative level of financial or human resources companies are allocating toward mitigating the risk of an electronic security breach of customer or employee data, compared to a year ago:



Source: Chubb 2012 Public Company Risk Survey

Companies Purchasing Cyber Liability Insurance:



Source: Chubb 2012 Public Company Risk Survey

Employment Practices Liability (EPL) Risks

Among the most common lawsuits companies face

EPL is a risk that many public companies are familiar with:

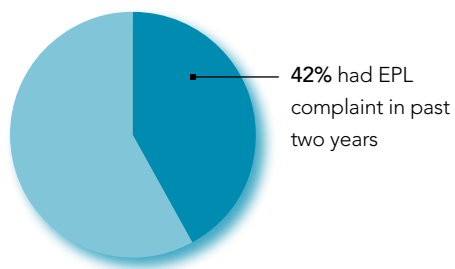
- **42%** of the companies surveyed by Chubb were the target of an employment-related lawsuit or EEOC discrimination complaint over the past two years.
- **46%** express concern about potential litigation and financial losses they could experience in the next 12 months from a lawsuit for wrongful termination, discrimination or sexual harassment.

These numbers speak to the actual risk:

- The **99,947** employment discrimination charges received by the Equal Employment Opportunity Commission (EEOC) in 2011 were a record high.
- The median compensatory award in an EPL lawsuit in 2010 topped **\$200,000**, according to Jury Verdict Research.

Has the Company Had an EPL Complaint?

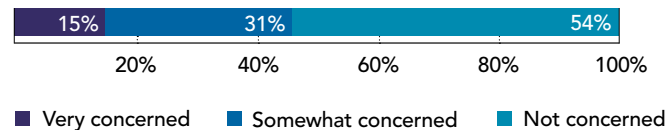
Many companies have been the target of an employment-related lawsuit or EEOC discrimination complaint by an employee or former employee in the past two years:



Source: Chubb 2012 Public Company Risk Survey

Concern Over EPL:

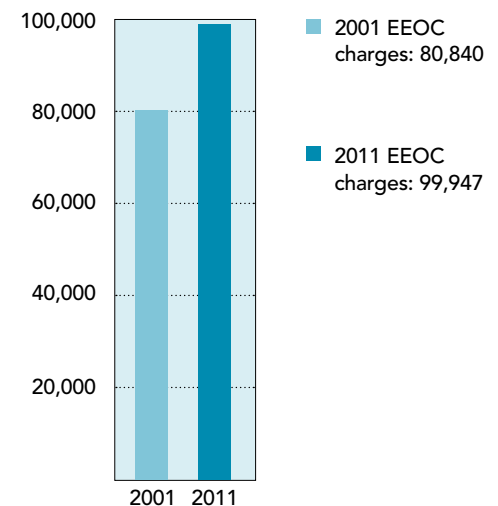
Level of concern over the potential litigation and financial losses the company could experience in the next 12 months from a lawsuit alleging wrongful termination, discrimination or sexual harassment:



Source: Chubb 2012 Public Company Risk Survey

Facts Show an Increasing EPL Risk:

In 2011, the Equal Employment Opportunity Commission (EEOC) received 99,947 charges of employment discrimination—a record high, and an increase of 24% from 10 years ago.



Source: EEOC, for fiscal year October 2010 through September 2011

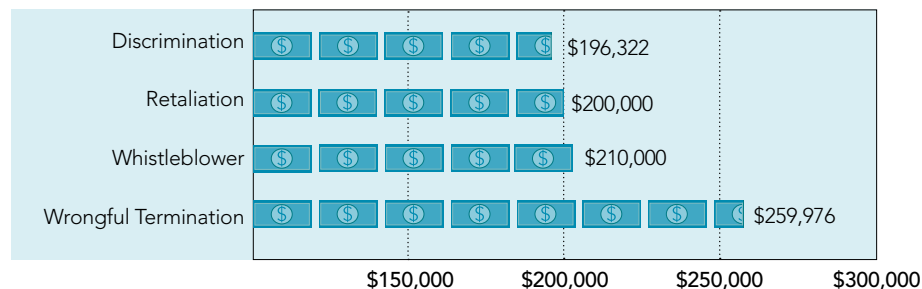
Mitigating EPL exposures

Awareness of EPL exposures has risen to the point where the purchase of EPL insurance today is fairly common—**more than 2 in 3** public companies buy it. Even so, the 1 in 3 companies that *do not buy* insurance protection for employment-related risks appear to be taking a financial risk.

Interestingly, respondents in larger companies expressed more concern about their EPL risk than those in smaller companies, even though smaller companies would seem to be less equipped to absorb the financial hit of an EPL lawsuit.

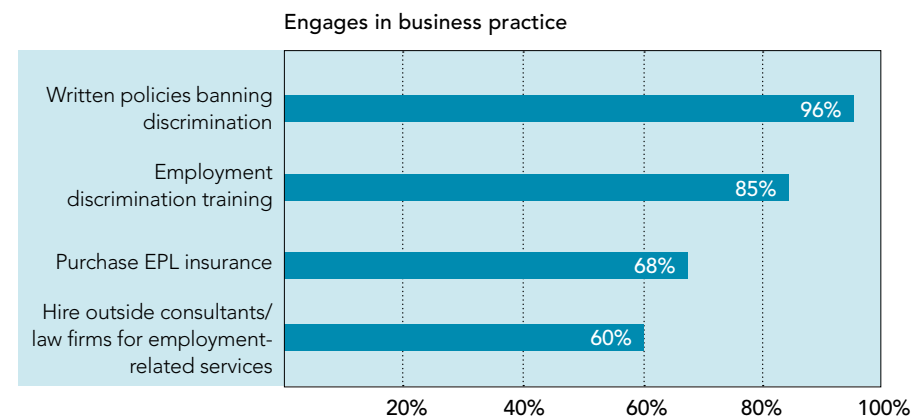
Median EPL Awards Top \$200,000:

The median compensatory award in an EPL lawsuit in 2010, by type of lawsuit:



Source: Jury Verdict Research, 2011

Companies Actively Taking Steps to Manage Their EPL Risk:



Source: Chubb 2012 Public Company Risk Survey

Employee Fraud

A risk that can hit anywhere at any time

A well-documented exposure

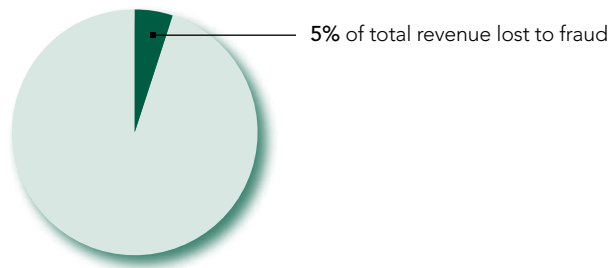
As you might expect, the nature of employee fraud itself is insidious and can take dozens of forms. Even companies with the best financial controls are not immune to a fraud scheme carried out by a determined criminal. According to the Association of Certified Fraud Examiners (ACFE):

- On average, **5%** of a company's annual revenues are lost to employee fraud;
- **More than half** of employee theft results in dollar losses of more than \$100,000;
- Nearly a **third** of thefts resulted in losses of more than \$500,000; and
- The typical fraud scheme lasts **18 months** before being detected.

Background checks can help prevent fraud

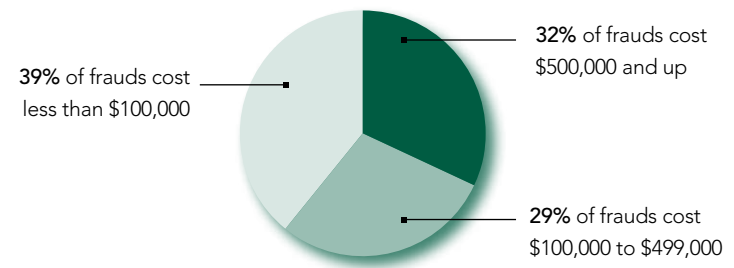
Background checks can help weed out bad job candidates who may be inclined to theft, so it's reassuring that so many companies see the benefit of conducting them on new hires: **83%** of the companies that Chubb surveyed use them.

Companies Lose 5% of Annual Revenue to Employee Fraud:



Source: Association of Certified Fraud Examiners, 2010

Employee Fraud Can Be Costly:



Source: Association of Certified Fraud Examiners, 2010

Smaller companies are more vulnerable

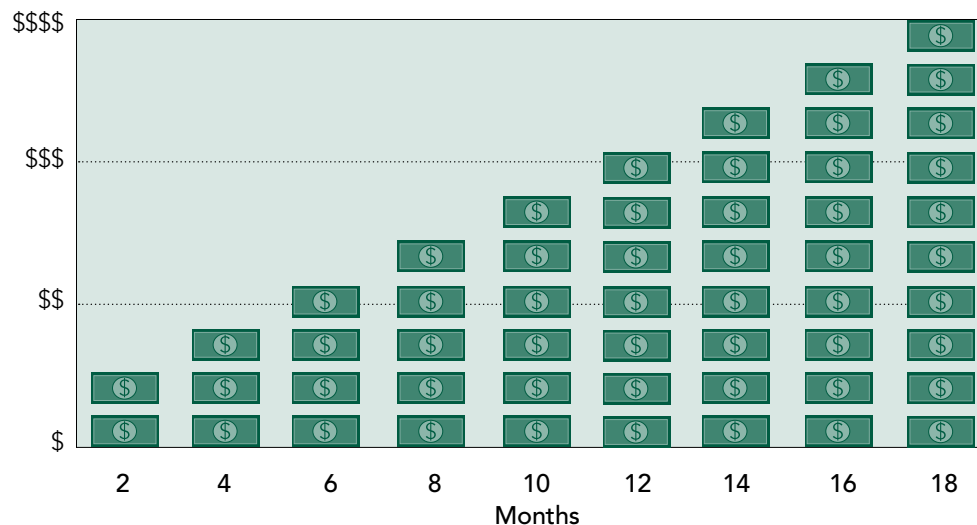
No company is immune to a major fraud scheme, but smaller companies are typically more vulnerable to fraud than larger ones:

- Smaller companies likely have fewer financial controls, so theft is less likely to be detected.
- Fraud losses are likely to have a bigger impact on the bottom line.

Although most companies (82%) purchase crime insurance to manage potential fraud losses, smaller companies are less likely to do so than larger companies—despite their higher risk.

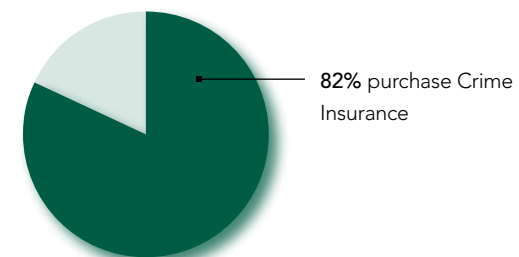
Fraud Can Last a Long Time:

The typical fraud scheme lasts 18 months before being detected—and half of all fraud schemes last longer!



Source: Association of Certified Fraud Examiners, 2010

Most Companies Purchase Crime Insurance:



Source: Chubb 2012 Public Company Risk Survey

A Look at Multinational Companies

Global risks require special attention

Half of the public companies responding to Chubb's survey have "brick and mortar" operations outside the United States.

The non-domestic operations of global companies can carry unique exposures of their own, including those we asked about: D&O liability, fiduciary liability, employment practices liability and crime.

Buying locally admitted coverage

Purchasing coverage on a locally admitted basis, besides being a legal requirement in some jurisdictions for some types of insurance, is usually a good idea for several reasons:

- Every country's regulations, legal system and exposures are unique, and insurance must satisfy local insurance mandates.
- Insurance solutions often do not translate well from one country to the next.
- Policy coverage issues arising out of country-specific differences in law can result in lengthy, potentially expensive disputes.

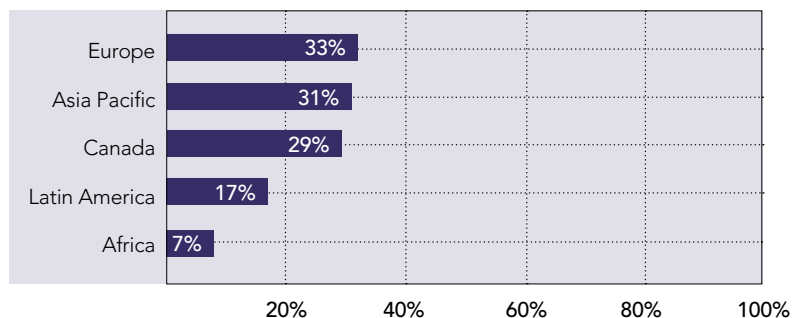
The Chubb survey found that:

- Nearly half (**48%**) of global companies buy locally admitted D&O insurance.
 - The fact that so many companies buy D&O coverage on a locally admitted basis suggests that they actively employ due diligence in the D&O policy purchase decision process.
- Companies are less likely to purchase locally admitted crime (**23%**), EPL (**20%**) and fiduciary (**17%**) policies.
- Overwhelmingly, the #1 reason given for purchasing D&O, EPL and Crime coverage on a locally admitted basis was **"local compliance or regulatory requirements."**
 - Additional reasons for purchasing locally admitted coverage—"request from local director" and "ability to pay claims locally"—were infrequently cited.

It is worth noting that employee fraud can be a major—but often overlooked—exposure in the non-domestic offices of companies.

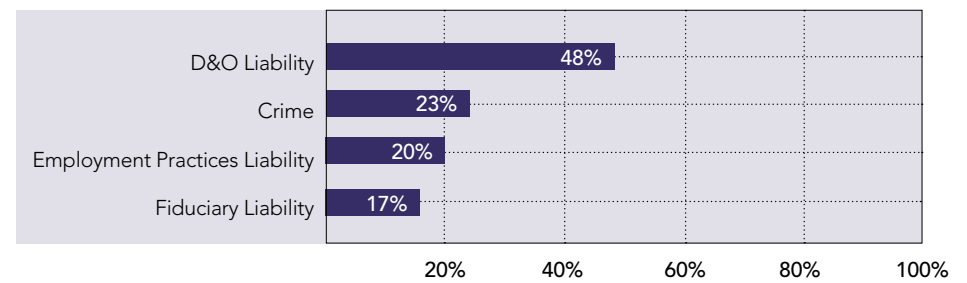
Geographic Presence:

The global companies in Chubb's survey have "brick and mortar" locations in:



Purchasing Locally Admitted Coverage:

Companies purchase locally admitted coverage for:



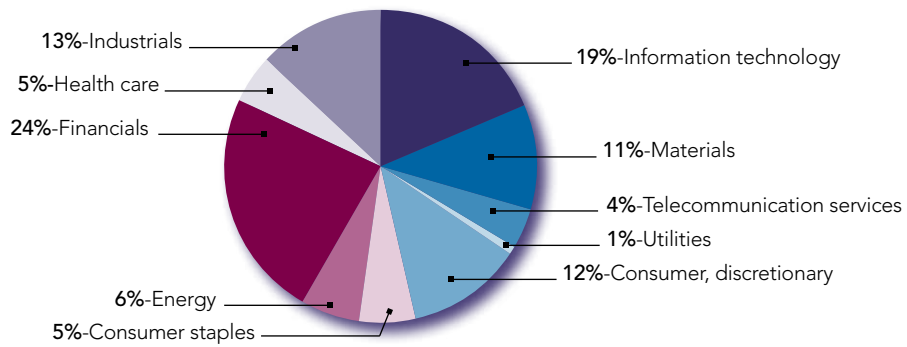
Source: Chubb 2012 Public Company Risk Survey

Source: Chubb 2012 Public Company Risk Survey

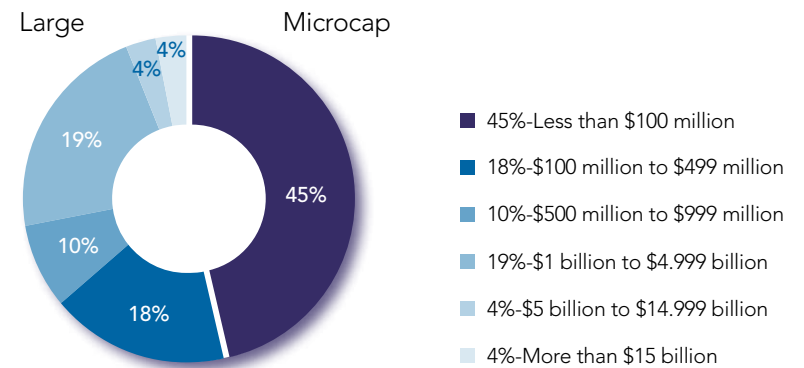
Profile of Participants

in the Chubb 2012 Public Company Risk Survey

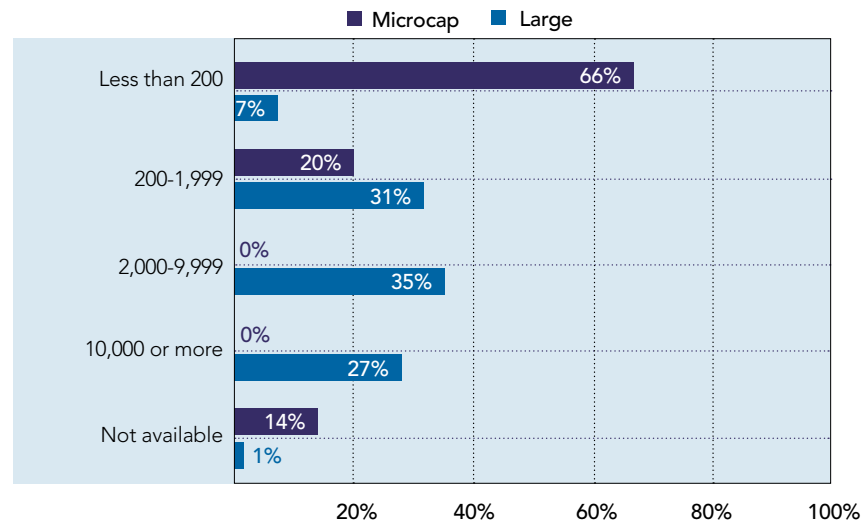
Company Sector:



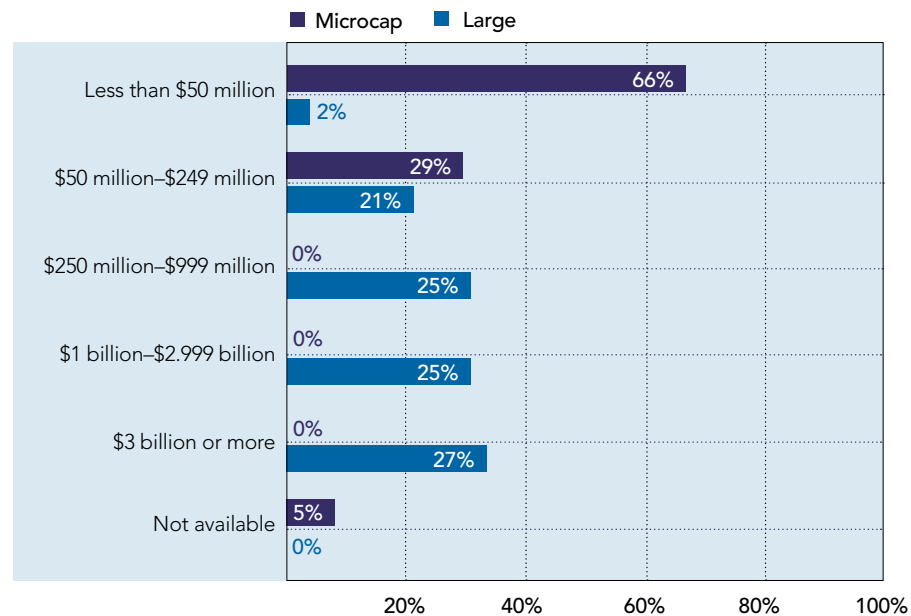
Market Capitalization:



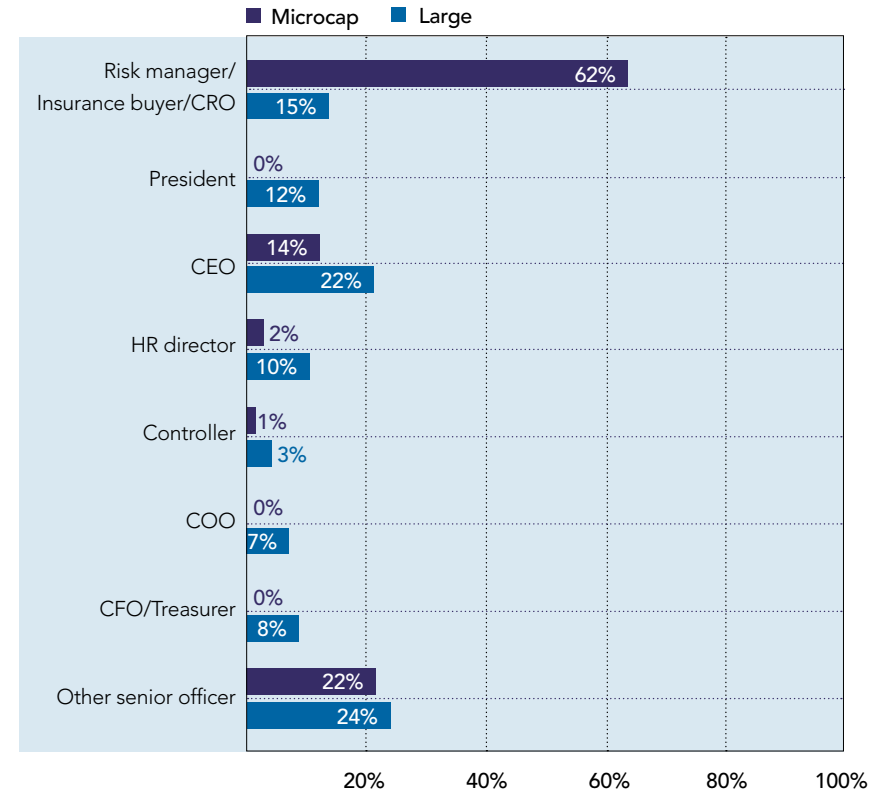
Employee Count:



Revenue:



Respondents:





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