

# Peninsula Clean Energy Executive Committee Meeting

April 8, 2019



**Insurance Status  
and  
Recommendation**

# Current Overall Coverage

Insured	Type	Company	Term	Limits	Deductible/Retention	Premium to PCE	Notes
County of San Mateo; PCE is Additional Insured	Liability - Primary	Princeton	5/22/18 - 5/22/19	\$2,000,000	\$1,000,000	\$0	
County of San Mateo; PCE is Additional Insured	Liability - 2nd Layer	Argonaut	5/22/18 - 5/22/19	\$7,000,000		\$0	Total of \$10MM
PCE	D&O/ Employers Practices Liability	RSUI	7/24/18 - 7/24/19	\$1,000,000	\$50,000	\$25,370	
PCE	Worker's Compensation	State Compensation Insurance Fund	7/13/18 - 7/13/19	Statutory	\$0	\$22,332	Est premium (actual based on reported payroll)
						\$47,702	

## Not included:


- Property
- Crime
- Fiduciary
- Cyber/Professional Liability

## Issues:

- Included in San Mateo County's Coverage
- Significant deductible



# **Property and Casualty/Liability**



# **Director's and Officer's Liability (D&O)**

# Current D&O Coverage

## **\$1 million, with \$50K deductible**

- **Covers D&O and Employment Practices Liability**
- **Does not cover Fiduciary (retirement plans)**
- **Covers Directors with (likely) secondary coverage from their current elected council coverage**
- **Covers PCE Officers**

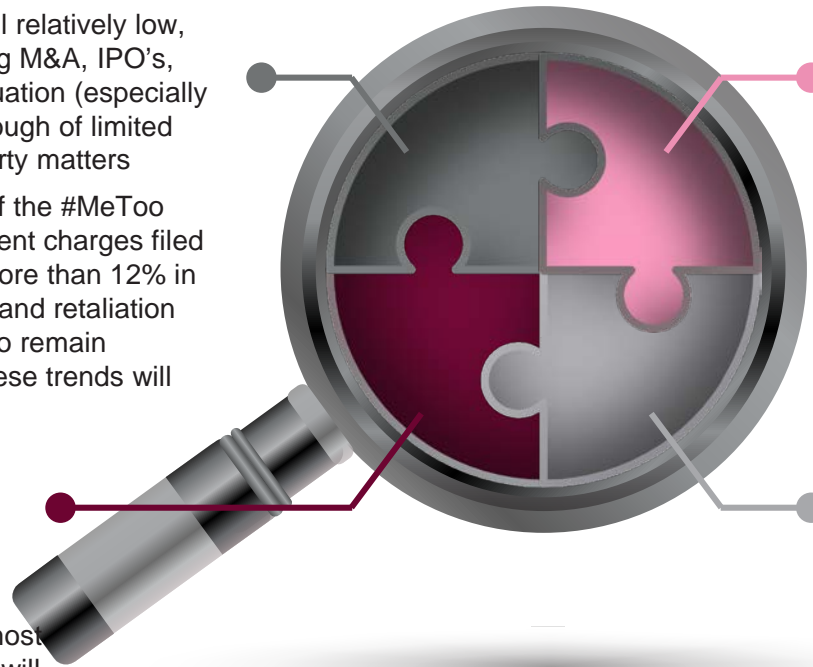
# State of the D&O and EPL Market

## Litigation Trend

- D&O: While frequency is still relatively low, Claims are seen surrounding M&A, IPO's, significant fluctuation of valuation (especially for unicorns), as well as (though of limited coverage) intellectual property matters
- EPL: Aligned with the rise of the #MeToo movement, sexual harassment charges filed with the EEOC increased more than 12% in 2018. Wrongful termination and retaliation Claims otherwise continue to remain prevalent. It is likely that these trends will continue into 2019.

## Insurer Capacity

- D&O: Specific industries (crypto currency and cannabis, especially) continue to be tough for most carriers to write and most will decline outright. Pre-IPO's, pharmaceuticals, bio-tech, and shared economy are challenging classes.
- EPL: CA (as well as Texas and Florida) is a loss leader. As such, carriers have continued to seek retention increases with corresponding employee growth



## Rates

- For the most favorable risk profiles (no claims, healthy financials and adequate funding, no RIFs) market-based pricing is close to expiring for an unchanged risk profile
- Carriers are seeking rate and retention increases for EPL in California
- Policy terms and conditions are generally holding firm with the most broad language in the last 10 years

## Risk Factors

- Increase in rated metrics (employee count, assets, revenues, net loss)
- Layoffs
- Claim activity
- High percentage of employees making over \$100K
- Not enough cash on hand to sustain operations in the next 12-18 months
- Non-compliance with debt covenants

# Changes to Your Risk Profile

## 2018 Risk Profile

- Assets: \$55.3M

## 2019 Risk Profile

- Assets: \$111.8M

# Marketing Summary

## RSUI (Shared options)

\$1M D&O Shared limit  
\$50K D&O retention  
\$1M EPL Shared limit  
\$50K EPL retention  
\$1M Fiduciary Shared limit  
\$2.5K D&O retention  
**=\$32,120**  
*\*Prior/expiring at \$25,370*

\$2M D&O Shared limit  
\$50K D&O retention  
\$2M EPL Shared limit  
\$50K EPL retention  
\$2M Fiduciary Shared limit  
\$2.5K D&O retention  
**=\$51,370**

## RSUI (Separate options)

\$1M D&O Separate limit  
\$50K D&O retention  
\$1M EPL Separate limit  
\$50K EPL retention  
\$1M Fiduciary Separate limit  
\$2.5K D&O retention  
**=\$35,410**

\$2M D&O Separate limit  
\$50K D&O retention  
\$2M EPL Separate limit  
\$50K EPL retention  
\$2M Fiduciary Separate limit  
\$2.5K D&O retention  
**=\$56,800**

## Carriers who declined or stated could not compete

Euclid  
Hiscox  
PGU

## RSUI (Additional Limit Options)

- **\$3M D&O Limits, with Fiduciary and EPLI limits reduced to \$1M - \$52,790 – RECOMMENDED OPTION**
- \$5M D&O Limits, with Fiduciary and EPLI limits reduced to \$1M - \$65,600



# Summary D&O Pricing Options

D&O/ Employers Practices/Fiduciary	RSUI	5/1/19 - 5/1/20	\$1MM D&O / \$1MM EPL and Fiduciary	\$50k D&O / \$2,500 EPL and Fiduciary	\$32,120	Shared Limits
D&O/ Employers Practices/Fiduciary	RSUI	5/1/19 - 5/1/20	\$2MM D&O / \$2MM EPL and Fiduciary	\$50k D&O / \$2,500 EPL and Fiduciary	\$51,370	Shared Limits
D&O/ Employers Practices/Fiduciary	RSUI	5/1/19 - 5/1/20	\$1MM D&O / \$1MM EPL and Fiduciary	\$50k D&O / \$2,500 EPL and Fiduciary	\$35,410	Separate Limits
D&O/ Employers Practices/Fiduciary	RSUI	5/1/19 - 5/1/20	\$2MM D&O / \$2MM EPL and Fiduciary	\$50k D&O / \$2,500 EPL and Fiduciary	\$56,800	Separate Limits
D&O/ Employers Practices/Fiduciary	RSUI	5/1/19 - 5/1/20	\$3MM D&O / \$1MM EPL and Fiduciary	\$50k D&O / \$2,500 EPL and Fiduciary	\$52,790	Separate Limits
D&O/ Employers Practices/Fiduciary	RSUI	5/1/19 - 5/1/20	\$5MM D&O / \$1MM EPL and Fiduciary	\$50k D&O / \$2,500 EPL and Fiduciary	\$65,600	Separate Limits

# Benchmarking

Considering Limit Adequacy

# D&O Claims

## What a loss looks like and its impact



More than 1 in 4 (26%) private companies reported experiencing a D&O loss in the last three years

**\$399,394<sup>1</sup>**

The average reported D&O loss

### The most common losses are related to:



**Customer** sues the company and/or its directors or officers for any reason other than physical injury, product failure, or impairment



**Vendor or supplier** sues the company and/or its directors and officers



**Competitor** sues the company and/or its directors and officers



**Government agency** fines or sues the company and/or its directors and officers



**Partner or other shareholder** sues the company and/or its directors and officers

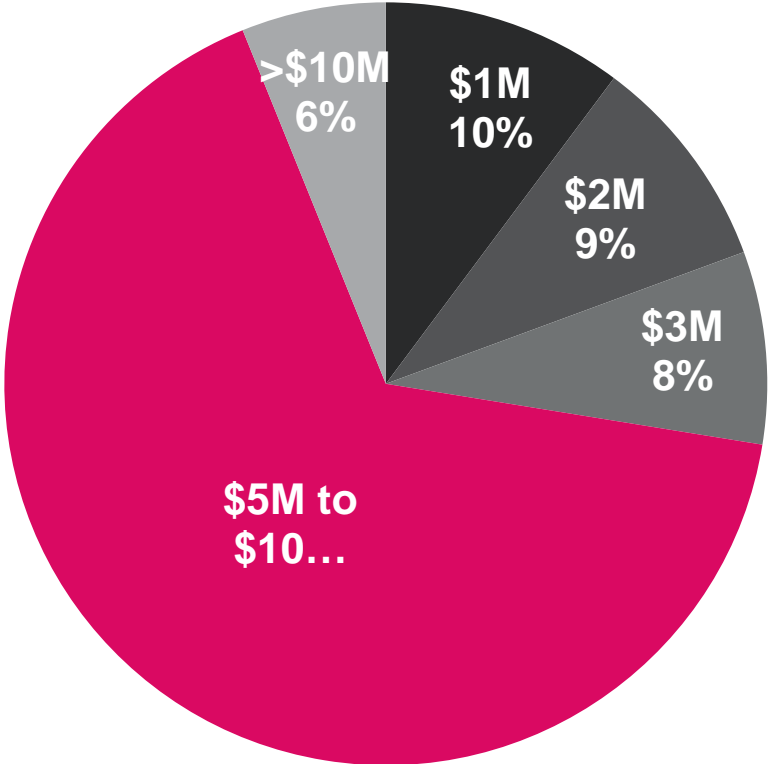


**Director or officer** is sued in connection with the purchase or sale of any equity or debt securities

Government agency Claims include violations of Rule 701. While rare, the SEC did fine Credit Karma in March 2018.

# Peer Groups Limit Purchasing (D&O)

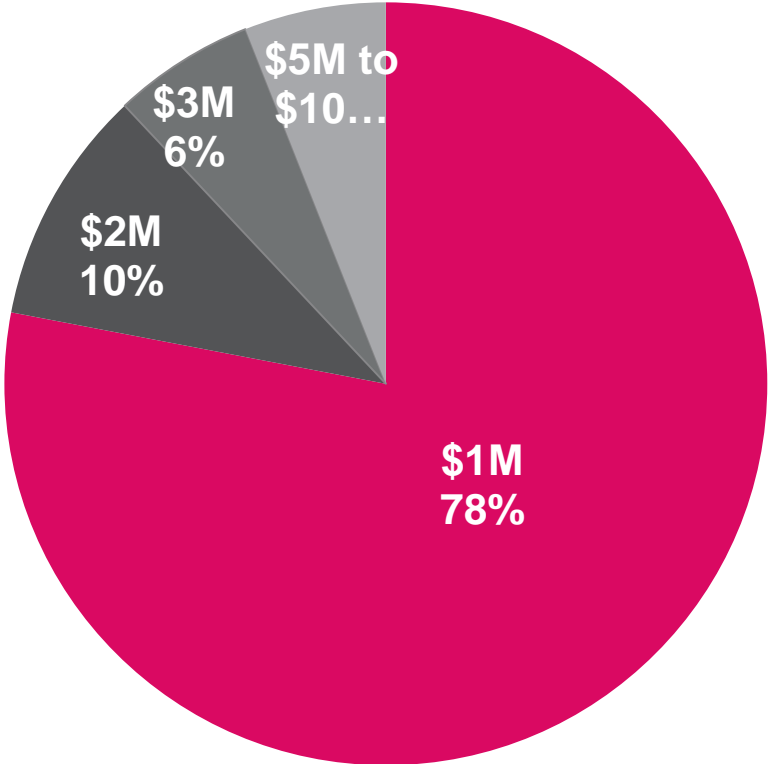
Limits purchased based asset size greater than \$100M



Source: RT ProExec  
Sample: 106

# Peer Groups Limit Purchasing (EPL)

Limits purchased based on employee count 0-50



Source: RT ProExec  
Sample: 1055



# **Recommendation**

# Recommended Coverage

Insured	Type	Company	Term	Limits	Deductible/Retention	Premium to PCE	Notes
PCE	Property/Business Interruption	Federal (Chubb)	5/1/19 - 5/1/20	Replacement Cost	\$5,000	\$4,800	
PCE	General/Employee Benefits Liability	Federal (Chubb)	5/1/19 - 5/1/20	\$1MM/occurrence \$2MM Aggregate	\$1,000	\$5,273	
PCE	Hired & Non-Owned Auto	Federal (Chubb)	5/1/19 - 5/1/20	\$1,000,000	\$1,000	\$748	
PCE	Umbrella Liability (over WC, General)	Federal (Chubb)	5/1/19 - 5/1/20	\$10,000,000	\$0	\$8,240	Total of \$11MM
PCE	Worker's Compensation	Federal (Chubb)	5/1/19 - 5/1/20	Statutory		\$23,816	Est premium (actual based on reported payroll)
PCE	Cyber/Professional Liability	Landmark American	5/1/19 - 5/1/20	\$2MM Limit / \$250K Cyber Crime	\$10,000	\$10,836	
PCE	Crime	Travelers	5/1/19 - 5/1/20	\$500,000	\$5,000	\$1,335	
PCE	D&O/ Employers Practices/Fiduciary	RSUI	5/1/19 - 5/1/20	\$3MM D&O / \$1MM EPL and Fiduciary	\$50k D&O / \$2,500 EPL and Fiduciary	\$52,790	Separate Limits
						\$107,838	