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# Fiduciary and Cyber Liability Insurance

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## **How has fiduciary liability insurance evolved over the past couple years?**

- Coverages – Fiduciary, Administrative and Settlor (non-Fiduciary)
  - Pre-Claim Investigation (GAP, Investigatory, Interview Coverage)
  - Trustee Claim Expenses
  - Benefit Overpayment
  - Fines, Penalties and Taxes
- Claims Trends
  - Benefits Due cases (defense)
  - DOL Investigations
  - Pre-Claim Costs
  - VCP/EPCRS

## Cyber Case Study

- *A Trustee is at a coffee shop working on his laptop before he heads to the Trustee Meeting at the Fund office. He goes up to the counter to refill his coffee and turns around to see his laptop is missing from his table. The laptop was not locked and contained participant data for the Pension, Health and Annuity Funds, including Social Security numbers.*

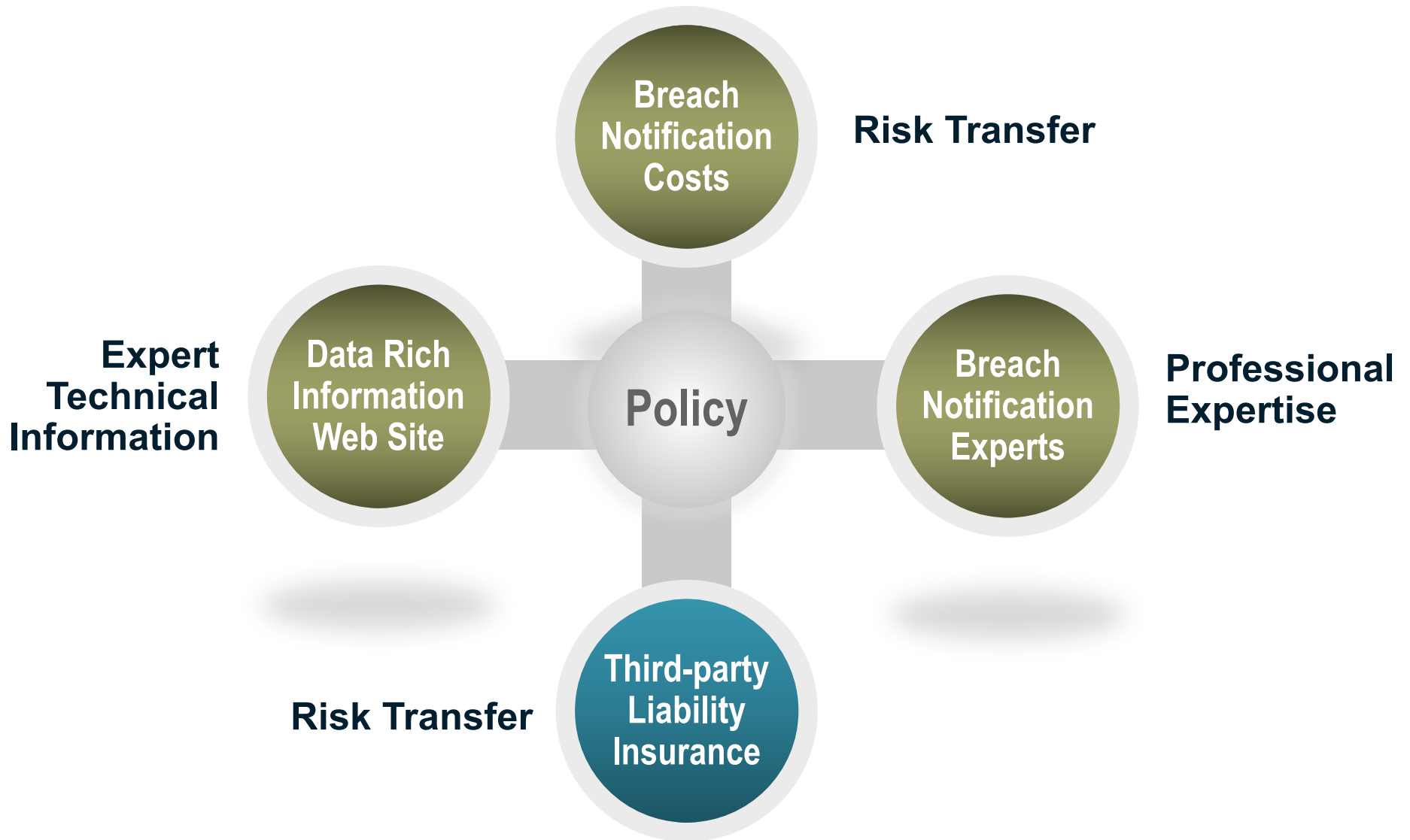


## • ERISA Advisory Council 2011:

- ERISA does not directly address how employee benefit plans should protect PII of participants. Plans need to comply with many state disclosure laws because there are no overall federal issued guidelines. As state laws are developed in the area of privacy of financial data and PII, plan administrators will need to be cognizant of these rules and adjust their administrative practices accordingly.

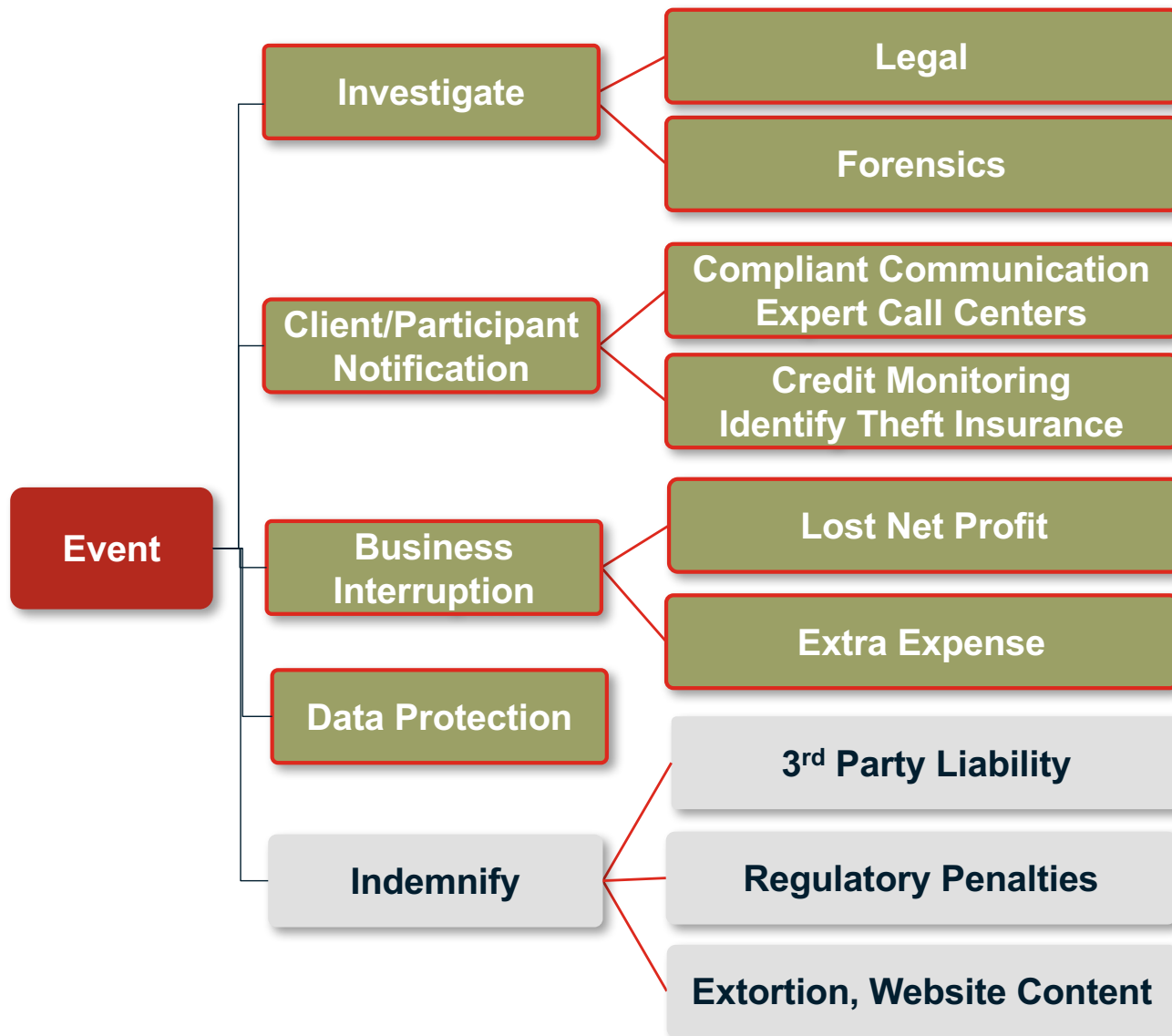
## • ERISA Advisory Council 2016:

- Plan Sponsors and fiduciaries should understand what cyber insurance does and does not provide and how it coordinates with other types of insurance coverage, so that they can appropriately consider whether to incorporate cyber insurance into their cyber risk management strategy.



**Green = Plan Costs (1<sup>st</sup> Party Benefits)**

## Cyber Liability Insurance: First Party Coverage



## Cyber Liability Insurance: Third Party Coverage





## **Do Service Provider Contracts Effectively Transfer Plan Cyber Liability Risk?**

- Due Diligence in Service Provider Selection (SOC 2?)
- Representations and Warranties
- Data Breach Procedures
- Indemnification & Hold Harmless
- Additional Insured

## **What Factors Should a Trustee Consider When Deciding What Insurance the Plan Should Purchase?**

- In Addition to Fiduciary Insurance, Funds Are Increasingly Purchasing Stand-Alone Cyber Policies and Claims Are Occurring Daily – When, Not If . . .
- Claims Administration (Where the Rubber Hits the Road)
- Scope of Coverage (e.g., Pre-Claim Investigations)
- Limits of Liability – How Much Is Enough?
- Financial Security of Carrier
- Premium (Cost)

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