Offit | Kurman®

M&A Nugget: Cyber Insurance – The Tail

August 24, 2023
By Glenn D. Solomon

As data breaches have become larger (think Equifax, Target, and Yahoo) and more frequent, buyers and sellers should pay more attention to cyber insurance. Cyber insurance provides coverage for risks that arise out of the use of devices that maintain data, including computers and mobile phones. The insurance has existed for years, and generally covers losses incurred by the insured and claims of third parties seeking to be compensated for a data breach. One issue that arises with cyber insurance is that it is usually issued on a "claims-made" basis, which means that, for a loss to be covered, the claim must occur while the insurance policy was in place or within a specified period after the policy lapses. The problem with this is that cyber incidents may not be uncovered until well after the coverage period lapses. This is where tail insurance comes in. The inclusion of a tail provision extends the time during which a claim can be reported and therefore covered. Another way for a buyer to close the gap in coverage that exists with claims-made policies is to purchase cyber insurance with a retroactive coverage date, that will cover cyber incidents that occur before closing. The bottom line here is that with the increase in cyber security breaches, the buyer and seller need to ensure seamless coverage for incidents that occur before closing.