Epack Extra℠

Fiduciary Liability

Fiduciaries and Plan Administrators need insurance coverage.

- Private companies who sponsor pension, 401(k), ESOP and health and welfare plans, as well as the individuals who manage and administer these plans face unique exposures.
  - Their fiduciary responsibilities, such as avoiding conflicts of interest, maintaining investment diversification, and adhering to strict ERISA standards, expose them to potential lawsuits from plan participants.
  - Under the ERISA act of 1974, fiduciaries can be held personally liable for losses to a benefit plan incurred as a result of their alleged errors, omissions, or breach of their fiduciary duties.[1]
  - Any employee who has discretionary authority over a plan or who assists in its administration can be exposed to liability. These employees might include an appointed fiduciary, a plan administrator, a human resources employee, or anyone who helps to administer a plan.[2]
- Many fiduciaries and plan administrators may not be adequately covered.
  - Often the General Liability, D&O, and Employee Benefits Liability (EBL) policies, as well as ERISA Bonds will not cover the exposures that plan fiduciaries face.
  - Sophisticated programs like early retirement or management restructuring introduce the possibility of ERISA liability claims. Plan fiduciaries can honestly, but mistakenly commit errors and violations of ERISA law.

CNA Fiduciary Liability Insurance provides coverage for a wide range of potential exposures.

- Breach of fiduciary duties under ERISA and similar statutes
- Errors and Omissions in plan administration
- Imprudent choice of insurance companies, investment options or third party service providers
- Remiss investment strategies
- Careless plan management
- Mishandling of records
- Conflicts of interest
- Faulty or negligent advice or counsel to plan participants
- Improper amendments to plan documents
- Improper disclosure to plan participants
- Errors in providing interpretations with respect to any plan
- Errors in enrolling, terminating or canceling employees under any plan

Broad coverage for Fiduciary Liability is provided as one part of the Epack Extra℠ policy. Epack Extra℠ allows insureds to package multiple coverages on one policy form.

Coverage Scenarios

Breach of Fiduciary Duty – Pension Plan

The Facts: ABC Corporation is a biotechnology company. It had a profit sharing and pension plan for its employees. The trustee of the plan decided to hire an investment consultant for investment advice. As the trustee's brother was a well-known investment consultant, he hired him for the position and paid him $300,000/yr. After the plan lost significant value due to bad investments, the plan participants filed a lawsuit against the trustee alleging violations of ERISA including breach of fiduciary duty. The participants alleged that the trustee violated ERISA by hiring his brother for the position and paying him an exorbitant fee out of the plan assets.

The Bottom Line: Defense costs totaled $75,000 and the parties settled for $500,000.

Misrepresentations – Long-Term Disability Plan

The Facts: XYZ is a manufacturing company which specializes in women's apparel and had a long term disability program for its employees. A few years ago, one of its employees, Mr. Smith, was injured in an automobile accident. He called the HR manager at XYZ who told him he would not be eligible for disability benefits under the program because he was not employed at XYZ long enough. The HR manager did not realize that Mr. Smith was covered under an exception to the policy and was eligible for benefits.

The Bottom Line: Mr. Smith sued XYZ and the plan for violation of ERISA and demanded lost benefits and attorneys fees. He was awarded $95,000 in lost benefits as well as an additional $200,000 for attorney fees.

Failure to Pay Fair Market Value for Shares – ESOPs

The Facts: XYZ Corporation is a large home builder company. It has an ESOP plan for its employees. In anticipation of his retirement, the CEO sold his shares in the company to the ESOP for a price set by the ESOP trustees. The employee/participants filed a lawsuit for breach of fiduciary duty alleging that the price paid for the shares was excessive and the trustees did not conduct a prudent and independent investigation into the fair market value of the shares.

The Bottom Line: This matter was settled for $1 million and defense costs exceeded $100,000.

To learn more about CNA's Management and Professional Liability offerings, contact your agent or broker.

www.cnapro.com
800-852-0393

[1, 2] Info excerpted from www.insurecast.com/html/fiduciary_liability_insurance.asp © 2007 InsureCast – a division of Gaston & Associates, Inc.