Executive Protection Portfolio℠

Fiduciary Liability Insurance

CHUBB®

Under ERISA, fiduciaries are personally liable for losses to benefit plans incurred as a result of their alleged breach of duties.

Trustees of employee benefit plans are expected to act in the best interests of the plan participants. If this duty is compromised, even unintentionally, trustees can be held personally liable. In today's litigious society, people who perceive they have been wronged react with lawsuits that can cost millions of dollars to defend and settle. This makes fiduciaries potential lightning rods of liability, particularly in light of the amount of money held in retirement plans today and the valuable protection those plans afford to their participants.

The large majority of fiduciary claims are brought by past or present employees or their families. However, claims may also be brought by another fiduciary or by the Department of Labor (DOL), which enforces the provisions of the Employee Retirement Income Security Act of 1974 (ERISA). When the DOL brings an action, fiduciaries can face civil penalties as well.

The most frequently alleged claims against fiduciaries include:

- Denial or change of benefits
- Administrative error
- Incorrect benefit calculation
- Improper advice or counsel
- Misleading representation
- Wrongful termination of plan
- Civil rights denial or discrimination
- Failure to adequately fund a benefit program
- Conflict of interest
- Imprudent investment
- Cash balance plan conversions
- Lack of investment diversity
- Inappropriate selection of advisors or service providers

Companies can reduce the liability exposure of fiduciaries by employing good loss prevention procedures, such as seeking and following the advice of independent experts, selecting diverse, financially sound investments, and so on. However, in today's changing and unpredictable world, companies can't entirely eliminate fiduciaries' personal liability.

Understanding the need to help protect companies, their fiduciaries, and the benefit plans they manage against fiduciary liability claims, Chubb offers comprehensive Fiduciary Liability insurance coverage.

Coverage Highlights

- **Broad Definition of Insured** - Our policy insures the company, even if it is a debtor in possession under U.S. bankruptcy law, its benefit plans and its fiduciaries.
- **Insurance for 502(i) and 502(l) Civil Penalties** - A loss may include civil penalties up to 5% imposed under section 502(i) of ERISA for inadvertent violation of Section 406 of ERISA. A loss may also include civil penalties of up to 20% of any settlement or judgement imposed under Section 502(l) of ERISA for breach of fiduciary duty.
- **Broad Definition of Covered Plan** - Our policy insures any employment benefit plan, pension benefit plan, or welfare benefit plan defined in ERISA, as well as any other plan or program nor subject to ERISA that is sponsored solely by our customer for the benefit of its employees, including plans outside the United States, and fringe benefit and excess benefit plans. Our policy also insures plans that are actively being developed or proposed by our customer. In addition, we automatically insure new benefit plans (excluding

employee stock ownership plans) added by the customer, without prior notification of the new plan.

- **Broad Definition of Wrongful Act** - Includes allegations of breach of fiduciary duty and negligent administration.
- **Broad Definition of Administration** - Our policy's definition of plan administration is among the broadest available and includes advising, counseling, or giving notice to employees; providing plan interpretations; handling records; effecting enrollment; and terminating or canceling employees, participants, or beneficiaries under any plan.
- **Broad Definition of Employees** – We include full-time, part-time, leased, and temporary employees as well as volunteers.
- **Broad Definition of Claim** - Our definition includes a written demand for monetary damages or nonmonetary relief, a criminal proceeding, formal administrative or regulatory proceedings, and a fact-finding investigation by the DOL, U.S. Pension Benefit Guarantee Corporation, or any similar authority located outside the United States.
- **Voluntary Settlement Program Insurance** – When the customer attempts to rectify a problem by reporting it to the DOL or IRS before it is uncovered by a government audit, Chubb will pay for defense and any fines up to $100,000.
- **Pollution Coverage Extension** – Fiduciaries can be sued when a plan's asset value suffers a substantial decline. Chubb's policy offers unique coverage in that, if the decline is due to a pollution problem at a company in which the plan's assets are invested, the policy's standard pollution exclusion does not apply.
- **Punitive and Exemplary Damages are not excluded**, where insurable by law.
- **Duty to Defend** - Chubb will appoint highly qualified and experienced ERISA counsel to defend covered claims, sparing our customer the burden of selecting appropriate attorneys and managing the defense.
- **Automatic coverage for claims made against an Insured person's spouse or domestic partner for wrongful acts of the Insured person.**
- **Coverage for Acquisitions** – Our policy will automatically insure acquired organizations without notice if the new subsidiary's total assets do not exceed 15% of our customer's total assets.
- **Generous 70/30 Settlement Participation Provision** – If our customer decides not to consent to a settlement recommended by Chubb, and a judgement is ultimately made against our customer, we will pay 70% of the amount, both judgement and defense expenses, in excess of the recommended settlement opportunity.
- **Optional Coverage for Defense Costs outside the Limits of Liability** – Our policy can provide unlimited defense costs coverage.
- **No deductible option available for smaller risks.**
- **"Claims made" Coverage** – We write our policy on a "claims made" basis.
- **Extended Reporting Period** – Whether our customer cancels the policy or Chubb chooses to non-renew coverage, our policy entitles the customer to purchase an extension of coverage for subsequent claims alleging wrongdoing prior to the cancellation or non-renewal.
- **Worldwide Coverage** – Chubb's policy reimburses covered losses that occur anywhere in the world.

Executive Protection Portfolio℠ Fiduciary Liability Enhancement Endorsement

For qualifying customers, Chubb's Fiduciary Liability Enhancement Endorsement offers many features to address the evolving needs of private companies and their fiduciaries, including amendments to provide greater flexibility in managing the claim-reporting process.

Definition of Wrongful Acts
Expanded to include acts, errors or omissions solely in an Insured's settlor capacity with respect to establishing, amending, terminating, or funding a trust or sponsored plan.

Pre Claim Investigation Reporting
Insureds now have the option to report a fact-finding investigation commenced by the U.S. Department of Labor (DOL), Pension Benefit Guaranty Corporation (PBGC) or similar governmental authority located outside of the U.S. prior to any allegation of a wrongful act in writing.

Benefit Claim Denial Reporting
- Insureds may also report, at their option, an appeal of an adverse benefit determination prior to a wrongful act allegation.

Interview Coverage - We cover defense costs incurred by an Insured person when contacted by an enforcement unit during the policy period with respect to an interview by the enforcement unit.

Civil Penalties - Where insurable by law, including ERISA Sections 502(i) and 502(l) with sublimits for:

- Health Insurance Portability and Accountability Act (HIPAA)
- Patient Protection and Affordable Care Act (PPACA)
- Internal Revenue Code 4975 tax penalty
- Pension Protection Act (PPA)

Voluntary Compliance Program Coverage Sublimit coverage for settlement fees and defense costs related to a settlement program notice first made within the policy period.

Definition of Insured - Amended to include:
- Past employees or executives retained as a fiduciary or plan consultant to the sponsored plan.
- Committee that consists of natural person members who are executive or employees

Loss - Broader definition expanded to include:
- Compensatory damages.
- Punitive, exemplary and multiplied damages where insurable by law.
- Claimant attorney fees awarded by a court pursuant to Section 502(g) of ERISA.
- Pre-judgement and post-judgement interest where insurable by law.
- Reasonable fees and expenses of an independent fiduciary retained to review a proposed settlement of a covered claim.

Defense Costs - Defined as reasonable charges incurred in defending or investigating claims. Deductible is waived for the first $50,000 in defense costs incurred for e discovery specialist services on account of a claim.

Claim - Expanded to include:

- Arbitration or meditation.
- Extradition with respect to criminal proceedings.
- Regulatory proceeding against an Insured person fiduciary by an enforcement unit including a Wells notice, target letter or search warrant.
- Written requests upon Insured persons for witness testimony commenced by the service of a subpoena or other similar documents in connection with a wrongful act.

Claim Reporting - Removed "as soon as practicable" reporting in favor of reporting any time during the policy period, but in no event later than 180 days after expiration of the policy period if the policy is renewed with Chubb. If the policy is not renewed with Chubb, notice is required within 60 days of expiration of the policy period.

Additional Enhancements

Pollution - Exclusion is deleted. Clean-up costs are excepted from loss. Other insurance is modified to stipulate policy is excess of any environmental, pollution liability or general liability policy.

Prior Notice - Exclusion applies to notices of circumstances "accepted" rather than "given."

Defense and Settlement -

- The policy advances defense costs to Insured persons if the organization refuses in writing to indemnify or fails to do so within 60 days of the Insured person's written request for indemnification.
- Subject to the applicable aggregate limit of liability, there is no cap on Chubb's liability should the Insured refuse to consent to a recommended settlement.
- Chubb will only recoup advanced defense costs when there has been a final non-appealable adjudication of the conduct exclusion.
- The policy allows full settlement within the retention without prior consent for reported claims.
- The policy allows Chubb, at its sole discretion, to consider payment under the policy for defense costs incurred within 90 days prior to tender of the claim to Chubb.
- Chubb remains liable only for loss incurred with its prior written consent.

Liberalization - Liberalization with respect to state amendatory cancellation/termination and ERP timeframes.

Additional Advantages

- Our public underwriters are positioned throughout the United States and are experienced in a broad spectrum of industries
- Access to Fiduciary loss prevention services
- A Chubb special report: Who May Sue You and Why: How to Reduce Your *ERISA* Risks, and the Role of Fiduciary Liability Insurance

The Chubb Advantage

Fiduciaries must make decisions about other people's money – money that may be embarked for important life expenditures such as health care, retirement, and education. Litigations over the actions and decisions of fiduciaries can be sensitive, time-consuming, and cost millions of dollars, and the financial burden can become personal responsibility of those individuals.

Chubb has earned its leadership position in the fiduciary liability insurance marketplace as a result of:

- **Financial stability:** Chubb receives consistently high ratings for financial strength from A.M. Best, Moody's and Standard & Poor's, the leading independent analysts for the insurance industry.
- **Experience and expertise:** Chubb was one of the first insurers to introduce fiduciary liability insurance coverage. Our depth of understanding of fiduciaries' roles and exposures has allowed us to provide bold, clean, broad coverage since 1978. Over time, we have assembled experienced ERISA panel counsel to provide the strongest possible defense for customers where warranted.
- **Innovation:** Chubb tailors our products to meet a customer's specific needs, including enhancements and specific coverages that are missing or even excluded from other policies.
- **Reputation for paying claims and superior service:** Our reputation for expert, fair claims handling is renowned in the industry. Our claims examiners are experienced in fiduciary liability matters and are committed to a high level of open dialogue and professionalism.

Contact Us

For more information on Chubb's Executive Protection Portfolio℠ and Fiduciary Liability solutions, contact your local agent or broker, or visit www.chubb.com/us/fiduciaryliability.

Chubb. Insured.℠

www.chubb.com/us/fiduciary