Bond & Financial Products
Fiduciary Liability
Protect against employee benefit plan exposures

For many employers, offering an employee benefit plan like a 401(k) is a way to attract and retain workers. But it will mean nothing if your business collapses under staggering litigation costs that can occur if the plan fiduciaries do not administer it according to the federal Employee Retirement Income Security Act of 1974 (ERISA). Having the right insurance is critical to the well being of your company – particularly given growing exposures in today's volatile climate.

Why you need protection

Defending a claim, even if it is without merit, is expensive and time-consuming. According to a Tillinghast survey, the average cost of paid claims was $994,000, with an average reported defense cost of approximately $365,000*. Moreover, 69% of substantive ERISA litigation in district courts is resolved in favor of plaintiffs and the occurrence of ERISA litigation is on the rise.**

ERISA expands your duties and liabilities

A plan fiduciary is anyone who has discretionary control over employee benefit plan assets. As fiduciaries, those individuals managing your company's retirement and health plans have an obligation to act solely in the interest of plan participants and beneficiaries – not the company – when making decisions about the plans. And, as fiduciaries, they're held *personally liable* to the plan participants and beneficiaries for errors or omissions or any breach in their fiduciary duties as outlined in ERISA.

Those duties include:

- Making prudent investment-related decisions, including diversifying the investments
- Prudently selecting and monitoring outside firms hired to manage the plans
- Providing benefits
- Defraying expenses as is reasonable
- Following plan terms

Be prepared for today's growing exposures

It's never been more important than now to be protected. The downturn in financial markets, company downsizing and changes in law put fiduciaries at greater risk than ever. Areas of vulnerability include:

Investment losses. Rates of investment on plans in 2008 were down significantly with many pension plans suffering loss. Investments in mortgage-backed and other types of asset-backed securities and investment "ponzi" schemes have hurt some plans. Lawsuits under ERISA by participants attempting to recoup investment losses and lost profits resulting from allegedly imprudent plan investments are on the rise. If you have discretionary control or authority to make investment-related decisions for your company's retirement plans, including the selection of outside professional investment managers, then you and your company could be vulnerable.

* Source: Towers Perrin Tillinghast Fiduciary Liability Survey
**Pension Governance Incorporated and The Michel-Shaked Group ERISA Litigation Study, April 15, 2009

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Benefit reductions. As companies continue to focus on expense reduction, benefits and matching pension contributions often are impacted. If your company is or was involved in any restructuring of its benefit plans, then the company and the plan's fiduciaries might have exposure to lawsuits alleging improper reduction in benefits, misrepresentation, failure to follow plan terms, or improper notice resulting from benefit reductions.

Downsizing. Companies need to be aware that if they're reducing staff to cut costs, it could result in claims alleging that staff reductions were made to prevent employees from obtaining a benefit in the plan, a potential violation of section 510 of ERISA.

401(k) fee litigation. Since 2006, at least 19 class action complaints have been filed against fiduciaries of 401(k) plans alleging that the plan fees and expenses were excessive and not properly disclosed to plan participants.

Changes in regulatory/legal environment. Two recent changes in law can have a major impact on your plan management. In February 2008, the U.S. Supreme Court in the case of LaRue v. DeWolff, Broberg & Associates, found that a loss to one participant's individual 401(k) is actionable as a breach of fiduciary duty causing a loss to the plan. And in 2006, the Pension Protection Act (PPA) took affect. It requires greater transparency of plan information which may prompt more comments, inquiries and complaints from plan participants.

State-of-the-art coverage protects your people and business

You can protect your plan, fiduciaries and your business with Travelers fiduciary liability coverage. This state-of-the-art insurance will cover:

- Defense costs of your fiduciaries – defense provided by law firms specialized in the complexities of ERISA law
- The sums they're legally obligated to pay as a result of an actual or alleged wrongful act or breach of their fiduciary duties
- ERISA 502(i) and 502(l) fines
- Fees, penalties and sanctions imposed under one of the many voluntary settlement programs administered by the Internal Revenue Service and Department of Labor

Risk Management PLUS+ Online®

Included with coverage is access to Risk Management PLUS+ Online at no additional cost to you. A web-based, one-stop resource, providing you with articles, papers and training covering ERISA and related laws. In addition, Travelers provides an ERISA help line offering one hour of free consultation with an attorney specializing in ERISA law***.

Learn more

Contact your independent agent for more information about Travelers fiduciary liability coverage, or visit us at travelers.com.

***Assistance is not intended to replace your company's attorneys. Assistance provided exclusively to Fiduciary Liability policy holders.

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