



Financial and Professional Services Management Liability

TRAVELERS CANADA

Fiduciaries beware – your personal assets are at risk

Wrap+ Fiduciary Liability

Individuals who administer employee benefit plans can be liable for a variety of reasons including the selection of plan investment options, monitoring those investments and educating employees of those options. Steps can be taken to reduce personal liability, such as hiring a competent team of experts, but ultimately the fiduciary remains responsible for the management and administration of the benefit plans.

Defending claims can be expensive and time consuming. According to a recent fiduciary liability survey report, the average cost of paid claims exceeds \$1 million. Defence costs made up a significant portion of overall fiduciary liability losses. When you consider the cost of defending a suit and the possibility of a settlement or judgment, you may ask yourself how a company can afford not to buy fiduciary liability insurance.

Not all fiduciary liability policies are the same, and policy comparisons can be misleading. Do your own analysis.

Check and see how their policy stacks up... there is a difference!

	Wrap+	Their Policy
Definition of employee – includes in-house general counsel, volunteers, full-time, part-time, temporary and seasonal workers	Yes	?
Broad definition of subsidiary – definition of subsidiary includes majority-owned corporations, partnerships, limited liability companies and 50 percent-owned joint ventures under management control of named insured	Yes	?

Wrap+ comprehensive coverage... modular design... flexible options...
customized for private companies

	Wrap+	Their Policy
Broad definition of claim includes: <ul style="list-style-type: none"> • Written demand for monetary damages or non-monetary relief • Civil proceeding • Criminal proceeding • Formal administrative or regulatory proceeding • Arbitration, mediation or similar dispute resolution proceeding • Written request to toll or waive statute of limitations 	Yes	?
Broad definition of employee benefit plan – any employee benefit plan sponsored by the insured organization for the benefit of its employees including government mandated benefit programs	Yes	?
Broad definition of insureds – includes trustee, committee member, member of the board of directors, officer, in-house general counsel, or employee of the insured organization while acting in their capacity as a fiduciary of an employee benefit plan and includes the employee benefit plan	Yes	?
Foreign parent corporation coverage extension	Yes	?
Spousal and domestic partner liability coverage	Yes	?
Definition of loss – includes punitive, exemplary or multiplied damages where insurable by law, with most favourable venue wording	Yes	?
Coverage for merged, terminated and sold plans	Yes	?
Carveback to the pollution exclusion for diminution in value of securities other than securities of the insured organization	Yes	?
Carveback to the breach of contract exclusion for an employee benefit plan – where liability has been assumed under the trust agreement or to the extent that the Insured would have been liable in the absence of such contract or agreement	Yes	?
No exclusions for failure to maintain insurance, libel, slander or defamation	Yes	?
Defence option - option to select duty to defend or reimbursement coverage at policy inception	Yes	?
Additional defence coverage: <ul style="list-style-type: none"> • Option to select additional defence limit of liability 	Yes	?
Flexible limit options: <ul style="list-style-type: none"> • Choice of individual or shared limits of liability • Option to select annual reinstatement of limit of liability (multi-year) 	Yes	?
Acquisitions – automatic coverage for employee benefit plans formed or acquired during the policy period with assets that do not exceed 25 percent of the plan assets of the insured organization	Yes	?
Extended reporting period: <ul style="list-style-type: none"> • Bi-lateral extended reporting period option – available if insurer or named insured cancels or fails to renew • Run-off extended reporting period option – available for a pre-determined premium upon change of control of named insured • Ability to report potential claims during extended reporting period or run-off extended reporting period 	Yes	?
Worldwide coverage – applies to claims made and wrongful acts occurring anywhere in the world	Yes	?
Full severability of all exclusions	Yes	?

	Wrap+	Their Policy
Defence: <ul style="list-style-type: none"> • For allegations of dishonesty/fraud until determined by final adjudication • For allegations against the Insured for gaining a personal profit that the insured is not legally entitled to, until determined by final adjudication • For any claim seeking costs and expenses incurred to comply with an order, judgment, or award of injunctive relief or other equitable relief 	Yes	?
Non-cancelable by insurer – except for non-payment of premium	Yes	?
Notice of non-renewal – 30 Days	Yes	?
Settlement provision – provides the named insured with coverage for 70 percent of loss in excess of settlement offer rejected by named insured	Yes	?
Order of payments – protecting personal assets first	Yes	?
Retentions – only one retention must be satisfied when one claim triggers coverage under two or more liability coverages	Yes	?
Representations: <ul style="list-style-type: none"> • Severability of insured persons with respect to the representations made in the application • Only knowledge and representations of signer of application are imputed to the insured organization 	Yes	?

Fiduciary claims examples

\$1,250,000	A group of employees alleged that the newly selected outside plan administrator improperly delayed transferring fund balances in the plan from one investment option to another, as directed by the participants. Subsequently, the employees sued the plan trustees to recover more than \$1 million in lost investment income. Defence expenses amounted to \$150,000.
\$530,000	Participants of a health plan sued the plan's trustee alleging that the trustee did not monitor the performance of its third party administrator and paid excessive fees. Damages and defence expenses totaled \$530,000.
\$550,000	Trustees of six plans were accused of improperly investing plan assets in a residential real estate development loan that defaulted. The trustees were found to have failed to evaluate the borrower's creditworthiness and determine the economic feasibility of the project. Damages and defence costs totaled \$550,000.



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