



FINANCIAL AND PROFESSIONAL SERVICES MANAGEMENT LIABILITY

Wrap+ **FIDUCIARY LIABILITY**

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 dollars. 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 can a company 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.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Broad Definition of Claim Includes:			
• Written demand for monetary damages or non-monetary relief	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Civil proceeding	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Criminal proceeding	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Formal administrative or regulatory proceeding	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Arbitration, mediation or similar dispute resolution proceeding	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Written request to toll or waive statute of limitations	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Foreign Parent Corporation Coverage Extension	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Spousal and Domestic Partner Liability Coverage	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Definition of Loss – includes multiplied damages and punitive, exemplary or multiplied damages where insurable by law, with most favourable venue wording.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Coverage for merged, terminated and sold plans	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Carveback to the pollution exclusion for diminution in value of securities. other than securities of the Insured Organization	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No



	Wrap+	Their Policy	
No exclusions for failure to maintain insurance, libel, slander or defamation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Defence Option - option to select Duty to Defend or Reimbursement coverage at policy inception	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Additional Defence Coverage: • Option to select additional defence Limit of Liability	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Flexible Limit Options: • Choice of individual or shared Limits of Liability • Option to select Annual Reinstatement of Limit of Liability (Multi-year)	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> No
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	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Extended Reporting Period: • 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	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> No <input type="checkbox"/> No
Worldwide Coverage - applies to Claims made and Wrongful Acts occurring anywhere in the world	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Full Severability of All Exclusions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Defence: • 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	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> No <input type="checkbox"/> No
Non-Cancelable by Insurer - except for non-payment of premium	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Notice of Non-Renewal - 30 Days	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Settlement Provision - provides the Named Insured with coverage for 70 percent of Loss in excess of Settlement Offer rejected by Named Insured	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Order of Payments - protecting personal assets first	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Retentions - only one retention must be satisfied when one Claim triggers coverage under two or more Liability Coverages	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Representations: • 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	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> No

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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