

Top Three Trends in Fiduciary Insurance

AGENDA

- Meet the Experts
- Insurance Perspective
- Legal Perspective
- ASK THE **EXPERTS** Q&A
- Expert **Tips** and Takeaways



MEET THE EXPERTS

Moderator:

Kelly Geary, Esq. ACP, CCP, CIPP/US National Practice Leader, Executive Risk & Cyber, EPIC

Panelists:

Lainee B. Beigel, Esq. Senior Vice President, Executive Risk and Cyber-EPIC

Alison L. Martin, J.D. Senior Vice President, Fiduciary Liability Product Manager-Chubb

Jose M. Jara, Esq. Partner, McGivney Kluger, P.C.

Daniel J. Healy, Esq. Partner, Anderson Kill, LLP



Fiduciary Insurance

Will it Cushion Your Fall?

Setting the Stage - ERISA

Employee Retirement Income Security Act, 1974

- Became effective on January 1, 1975.
- ERISA is a **federal law** that sets minimum standards for **virtually all** Employee Benefit Plans in order to provide protection for individuals in these plans.
- ERISA **mandates** companies purchase a fidelity bond/ERISA Bond (employee dishonesty):
 - Insurance that protects the plan against losses caused by acts of fraud or dishonesty.
- ERISA's section 410(a) places strong personal liability on any person considered a "fiduciary" under the Act's broad definition of the term.





Fiduciary Liability Insurance

• Who is a Fiduciary?

 Anyone who has discretion or control over the plan or the management/investment of plan assets

Responsibility of a Fiduciary under ERISA:

 Fiduciary under ERISA *must* act solely in the interest of plan participants and their beneficiaries <u>and</u> with the exclusive purpose of providing benefits to them.

Fiduciary Liability Insurance

- Born in 1975
- Designed to protect companies from third party liability claims arising from a breach of the fiduciary duties owed pursuant to ERISA.



Insurance Perspective

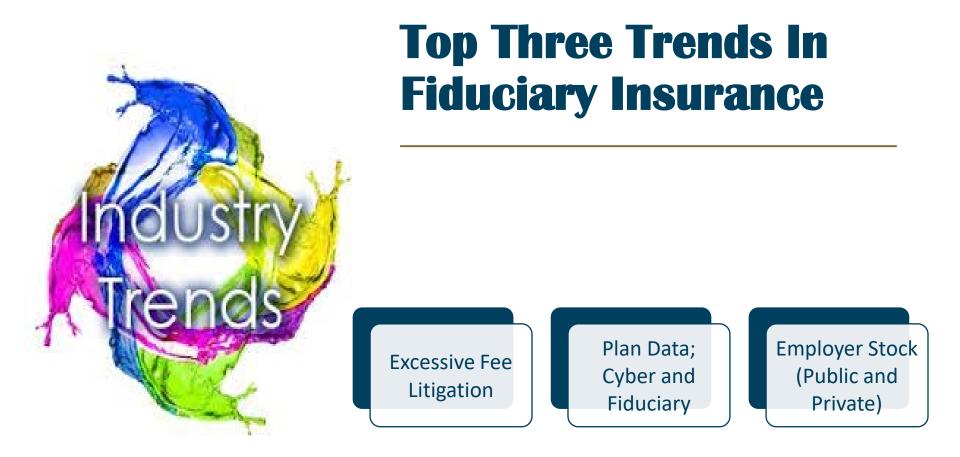


Cause and Effect....

Successful litigation has caused more plaintiffs firms to take on cases involving Fiduciaries

Increasing claim *frequency and severity* has caused changes:

- Pricing
- ✓ Retentions
- ✓ Coverage Terms
- ✓ Underwriting





Legal Perspective



ASK THE EXPERTS!



TIPS AND TAKE AWAYS

INSURANCE TIPS AND TAKEAWAYS (Carrier and Broker)

Carrier Perspective

- Insureds must be on the lookout for higher pricing, increased retentions and more restrictive coverage
- Excessive Fee claims remain a chief concern for carriers
- Increasing amounts of Plaintiffs firms willing to take on cases, means more litigation spend

Broker Perspective

- Be aware of potential overlap between Policies (Cyber; Crime; Fiduciary)
- Understand the changing coverage, and be prepared to negotiate upon renewal
- Strong claims advocacy is important when insureds find themselves with a claim

LEGAL SIDE TIPS AND TAKEAWAYS

Coverage Perspective

- Give notice under all applicable policies
- Be aware of which penalties are covered and what sub-limits you have available
- Understand whether there is a duty to defend or reimburse
- Document ALL claim communications

Policy Holder Perspective

- Have you done an RFP in the last three years?
- Have you compared fees to comparable investments?
- Have you done an inquiry into the quality of services?

CONTACT THE EXPERTS

Kelly Geary, Esq. CCP, CIPP/US,

EPIC National Practice Leader, Executive Risk & Cyber <u>kelly.geary@epicbrokers.com</u> or 917-468-1459



Lainee B. Beigel, Esq. -SVP, Executive Risk and Cyber lainee.beigel@epicbrokers.com or 404-287-0379

Alison Martin– SVP, Fiduciary Liability Product Manager <u>almartin@chubb.com</u> or 412-456-8096 Jose M. Jara, Esq. – Partner, McGivney Kluger, P.C <u>ijara@mcgivneyandkluger.com</u> or 212-509-4420 Daniel J. Healy, Esq. – Partner, Anderson Kill, LLP <u>dhealy@andersonkill.com</u> or 202-416-6547