



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

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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 and 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



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

Cause and Effect....

Top Three Trends In Fiduciary Insurance



Excessive Fee
Litigation

Plan Data;
Cyber and
Fiduciary

Employer Stock
(Public and
Private)



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

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