



What Is Fiduciary Liability Insurance? And Why Private Companies May Need It.

In today's ever-shifting legal environment, employers are increasingly being held accountable for the benefit options they offer employees. Under the Employee Retirement Income Security Act of 1974 (ERISA), fiduciaries can be held personally liable for losses to a benefit plan incurred as a result of their alleged errors or omissions or breach of their fiduciary duties.

Lawsuits against a privately owned company, its fiduciaries, and its plans can be brought by a host of parties, including:

- Plan participants (employees).
- The government: The Department of Labor and The Pension Benefit Guarantee Corporation.

Fiduciary liability claims can involve a broad range of allegations, such as:

- Denial or change (especially reduction) of benefits.
- Administrative error.
- Improper advice or counsel.
- Wrongful termination of a plan.
- Failure to adequately fund a plan.
- Conflict of interest.
- Imprudent investment of assets or lack of investment diversity.
- Imprudent choice of insurance company, mutual fund, or third-party service provider.

By sponsoring a retirement plan, such as a defined contribution plan or 401(k), profit-sharing plan or employee stock option plan (ESOP), defined benefit plan, or welfare plans such as health or accident plans, a private company may need protection against errors in plan administration and breaches of duty under ERISA.

FIDUCIARY LIABILITY INSURANCE...

- Helps to protect the personal assets of company fiduciaries, as well as the financial assets of the company and employee benefit plans against lawsuits.
- Pays for a legal defense and the insurer will supply expert defense counsel.

Your Private Company May Need Fiduciary Liability Insurance Because:

- It fills in gaps in traditional coverage. It is a common misconception that the employee benefits liability (EBL) section of general liability (GL) insurance or directors and officers (D&O) liability insurance will take care of every possible lawsuit against fiduciaries. However:
 - EBL insurance protects against claims of errors in plan administration, but not against the more expensive and complex ERISA violation claims.
 - D&O liability insurance typically excludes claims for both EBL and breach of ERISA fiduciary duty.
- By accessing the advice of experts and choosing and offering quality, diverse investments, you can mitigate your fiduciary liability exposure, but you can't eliminate it. Even a company sponsoring only a 401(k) is exposed. Employers are increasingly held liable for the selections they are giving to their employees.

- According to *The Chubb 2004 Private Company Risk Survey*¹:
 - One in four (24%) private company executives believe that a retiree may sue the company, its directors and officers, and/or its benefits plan administrators and fiduciaries in 2004.
 - Two-thirds (67%) of private companies plan to reduce their employee benefits this year, increasing their potential fiduciary liability exposure.

Fiduciaries without fiduciary liability insurance may be forced to pay for lawsuit defense costs, judgments, and settlements out of their own pockets.

¹ *The Chubb 2004 Private Company Risk Survey* was sponsored by the Chubb Group of Insurance Companies to gain a better understanding of the many risks private companies and their directors and officers face. Researchers conducted telephone interviews in November 2003 with chief executive officers, chief financial officers, and other executives at a random sample of 300 privately held companies in 30 cities across the United States.

ForeFront PortfolioSM Fiduciary Liability Insurance from Chubb

In order to help protect private companies, their fiduciaries, and their benefit plans, Chubb offers **ForeFront PortfolioSM Fiduciary Liability Insurance**.

COVERAGE FEATURES

Chubb will pay 100% of your defense costs—For covered claims, Chubb pays all defense costs (within the available limits and after payment of any applicable deductible), even if only part of the claim is actually covered. This is called “allocation” and it is important because sometimes losses are incurred by covered and uncovered parties, or insureds incur both covered and uncovered matters. Either way, as long as part of the claim is covered by Chubb’s policy, Chubb pays 100% of the defense costs for such claim.

Chubb manages the defense with expert attorneys—Because Chubb has the duty to defend our ForeFront Portfolio Fiduciary Liability Insurance customers, should a claim arise, we retain expert counsel at affordable rates to manage a strong defense, sparing your company this burdensome worry. We’ve retained a superb panel of attorneys with extensive experience in private company issues who are dedicated to helping secure the most positive outcome possible for your firm.

Coverage for HIPAA violations available—ForeFront Portfolio Fiduciary Liability Insurance customers may obtain protection for civil penalties assessed under the Health Insurance Portability and Accountability Act (HIPAA).

Coverage for 502(i) and 502(l) penalties available—Customers may obtain protection for individual fiduciaries for the civil penalties they may face, including penalties of up to 5% imposed under ERISA Section 502(i) for inadvertent violations of ERISA Section 406, and up to 20% imposed under ERISA Section 502(l) for breaches of fiduciary duty.

Optional coverage for defense outside the limits—ForeFront Portfolio Fiduciary Liability Insurance allows customers to request defense costs to be paid outside the limits of liability. As defense costs are often a significant portion of any claim, this option provides additional protection while preserving the policy limit for other claims or indemnity payments.

Option for guaranteed quote for new employee stock ownership plans (ESOPs)—Chubb can guarantee to issue a discretionary quote for any ESOP created or acquired during the policy period, if the appropriate information is received 30 days prior to the creation or acquisition and the insured pays any required additional premium.

THE CHUBB ADVANTAGE

Chubb has earned its leadership position in the fiduciary liability insurance marketplace as a result of our:

- **Financial strength**—Our financial stability and ability to pay claims rate among the best in the insurance industry, as attested by Standard and Poor’s and A.M. Best Company, the leading insurance rating services. In fact, three members of the Chubb Group of Insurance Companies were recognized in the January 2004 issue of *Best’s Review* as being among only 15 property/casualty insurers, out of more than 3,300, that have maintained an A.M. Best rating of A+ or higher for 50 consecutive years. Agents, brokers, and prospective customers often seek out our services because our reputation in the market is well known.
- **Reputation for paying claims and superior service**—Our reputation for expert, fair claims handling is renowned in the industry: In a 2004 Goldman Sachs survey, agents and brokers rated Chubb #1 out of 40 insurers in service quality.
- **Longevity in the market**—Chubb has been insuring the complex fiduciary risks of privately held companies since 1978.
- **Local underwriters**—Chubb’s worldwide network of branch offices means your company’s management has a trusted ally no matter where they do business.

TAKE ACTION TODAY

Why take the chance that a lawsuit could financially cripple your company? For more information about **ForeFront PortfolioSM Fiduciary Liability Insurance**, or about Chubb’s other ForeFront Portfolio coverages, contact your insurance agent or broker, or email csi-info@chubb.com. Additional information may be found on our Web site at <http://csi.chubb.com>.



Chubb Group of Insurance Companies

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For promotional purposes, Chubb refers to the member insurers of the Chubb Group of Insurance Companies underwriting coverage.

This literature is descriptive only. Whether or not or to what extent a particular loss is covered depends on the facts and circumstances of the loss and the terms and conditions of the policy as issued. Actual coverage is subject to the language of the policies as issued.

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