TRAVELERS

Fiduciary Liability Coverage

COVERAGE HIGHLIGHTS

Fiduciaries be aware – your personal assets are at risk.

Why you and your organization need protection

If your company sponsors a retirement or benefit plan for its employees and you are involved in any way with the management of that plan, you are likely considered a fiduciary. This means you can be held personally liable for what happens to the plan under Canadian pension law as well as the Employment Retirement Income Security Act (ERISA) for those plans constituted in the United States. As standard directors and officers and employment practices liability policies exclude claims arising from pension or benefit plans, you cannot rely on those policies for protection in case of litigation.

Defending a claim – even if it is without merit – is expensive and time-consuming. According to the latest Tillinghast Survey, the average cost of a paid claim was $994,000, with an average reported defence cost of approximately $365,000.[1] As a fiduciary, you cannot wholly transfer your liability to another party, such as a professional investment firm or a third-party plan administrator.

Coverage highlights

For many employers, offering an employee benefit plan is a way to attract and retain workers. But this will mean nothing if your business collapses under staggering litigation costs. The individual fiduciary can be held personally liable and their assets at risk if they do not carry out their obligations to:

- Act in the best interests of the plan participants for the purpose of providing benefits.
- Act with the care, skill and diligence that a prudent person would use in a similar situation.
- Diversify plan assets.
- Follow the plan document.

Travelers Canada Fiduciary Liability Coverage is critical to the well-being of your company – particularly given the growing exposures in today's volatile climate. It covers errors and omissions that impact your company's benefit plans and helps protect its directors, natural person trustees, officers and employees from costly litigation.

[1] Towers Perrin Tillinghast Survey

Claim scenarios

The following claim scenarios are provided for informational purposes only. Refer to the terms and conditions of the applicable policy and the actual facts of the claim to determine coverage.

Lapsed benefits – $100,000

Shortly after retiring, an individual was diagnosed with a terminal illness. Their benefits administrator failed to inform the retiree that their pre-existing life insurance policy was excluded from their post-retirement benefits. Unaware that they had to separately pay to continue their coverage, the ill retiree's life insurance policy lapsed and they became uninsurable. After the retiree died, their beneficiary claimed that the company did not properly inform the deceased about their policy options – they sued the insured company for the policy amount. Individuals who administer employee benefit plans can be liable for educating employees about their investments and options.

Excessive fees – $1,800,000

Employees participating in a corporate health benefits plan became concerned about excessive administration fees. The employees alleged that because the plan's trustee failed to closely monitor the performance of the third-party administrator, excessive fees were paid out. The health plan participants sued the plan's trustee. Travelers Canada covered the more than $1.8 million loss the plan suffered.

Underperforming investments – $2,000,000

A plan run by the insured company started to underperform. Over a period of time, poorly performing investments caused the plan to run a deficit. The insured company was sued over decisions leading to this shortfall. Travelers Canada defended the claim and paid more than $2 million in settlement and defence costs.

Fiduciary vs. employee benefits liability (EBL) vs. ERISA bond

It can be difficult to determine the difference between a fiduciary liability policy, an employee benefits liability policy (EBL) and an ERISA bond. All provide some type of coverage in connection with employee benefit plans, but fiduciary liability policies are markedly broader than an EBL, and neither of them provides the same coverage as an ERISA bond. Here is a quick overview of each of these coverages:

Fiduciary liability

In contrast to EBL coverage, a fiduciary liability policy not only covers administrative errors and omissions, but also your personal liability for a breach of a fiduciary duty in connection with an employee benefit plan.

EBL

EBL coverage is generally limited to administrative errors and omissions. Administration includes handling records in connection with any plan; enrolling, terminating or cancelling employees under any plan; and interpreting plan benefits. In general, claims involving administrative errors and omissions are frequent, but not severe.

ERISA bond

An ERISA bond is first-party coverage that pays the plan for any loss from theft of plan assets. Under U.S. federal law, every plan constituted in the United States is required to have an ERISA bond.

Why Travelers Canada?

- We've provided effective insurance solutions for more than 130 years and address the needs of a wide range of industries.
- We consistently receive high marks from independent ratings agencies for our financial strength and claims-paying ability.
- With offices across Canada, we possess national strength and local presence.
- Our dedicated underwriters and claim professionals offer extensive industry and product knowledge.

Travelers Canada knows fiduciary liability coverage.

To learn more, talk to your Travelers Canada underwriter or visit travelerscanada.ca.

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