

## Pension Trust Liability Insurance for Private Companies

***No one is immune to large-scale fiduciary liability lawsuits—not even smaller privately owned companies***

The risks are particularly great for smaller companies because they are more likely than large corporations to quickly run out of cash when faced with a large fiduciary liability suit. And since ERISA potentially mandates personal liability for fiduciaries who cause damage to an employee benefit through a breach of fiduciary duty, such a situation could imperil the personal assets of the company's directors, officers and owners.

Shopping for such coverage is not easy, however. Following are eight questions that private companies should ask when seeking coverage to protect themselves and their owners and executives against what could be crippling losses.

### ***What to ask:***

1. [Do companies that offer only "self-directed" 401\(k\) or other very basic employee benefit plans still need fiduciary liability insurance?](#)
2. [We already carry an ERISA fidelity bond. Isn't that enough?](#)
3. [Does the policy cover the hefty penalties assessed by the Department of Labor under ERISA Sections 502\(i\) and 502\(l\)?](#)
4. [Can the policy help private companies avoid fiduciary claims?](#)
5. [Does the policy contemplate privacy claims arising from the Health Insurance Portability and Accountability Act \(HIPAA\)?](#)
6. [Should I worry that my carrier will be there to pay claims?](#)
7. [Would we have a choice of counsel to defend a claim?](#)
8. [Is coverage affordable?](#)

***PrivateRisk Protector<sup>SM</sup> Pension Trust Liability Insurance, underwritten by National Union, one of the nation's leading providers of fiduciary liability insurance, offers private companies all the advantages they need in a fiduciary liability policy: broad coverage with loss-mitigating features, access to top quality defense counsel, and stellar financial strength.***

PrivateRisk Protector Pension Trust Liability Insurance can be packaged with Directors, Officers & Private Company Liability Insurance, Employment Practices Liability Insurance, Employed Lawyers Professional Liability Insurance, and Fidelity and Crime Coverage. The end result is high quality protection for private company risks. All accessible through a streamlined application process.

National Union is a member company of American International Group, Inc. (AIG). Insurance underwritten by member companies holds the highest financial strength ratings from the insurance industry's principal rating agencies.

***To learn more about PrivateRisk Protector, contact your insurance broker or your local National Union representative. You can also e-mail us at***

## *Pension Trust Liability Insurance for Private Companies*

### *Questions Every Client Should Ask About Their Pension Trust Policy*

*No one is immune to large-scale fiduciary liability lawsuits—not even smaller privately owned companies. Therefore, it is essential for a company to obtain adequate insurance to protect their directors, officers and owners against potentially huge losses.*

*The risks are particularly great for smaller companies because they are more likely than large corporations to quickly run out of cash when faced with a large fiduciary liability suit. And since ERISA potentially mandates personal liability for fiduciaries who cause damage to an employee benefit through a breach of fiduciary duty, such a situation could imperil the personal assets of the company's directors, officers and owners.*

*Shopping for such coverage is not easy, however. Following are eight questions that private companies should ask when seeking coverage to protect themselves and their owners and executives against what could be crippling losses:*

**1. *Do companies that offer only "self-directed" 401(k) or other very basic employee benefit plans still need fiduciary liability insurance?***

Yes. Any business that offers any type of employee pension or welfare benefits (medical, dental, etc.) is vulnerable to a fiduciary liability claim. Many of the major ERISA lawsuits that have received press coverage recently are related to self-directed 401(k) plans. Additionally, plan fiduciaries still have a duty to monitor investment performance and select the investment options and provider for the plan with prudence, no matter how much investment choice plan participants are given. Any alleged breach of these duties can lead to a lawsuit, which puts the assets of both the company and its fiduciaries at stake.

**2. *We already carry an ERISA fidelity bond. Isn't that enough?***

No, it's not. The fidelity bond, which is required by ERISA, protects the plan against theft or fraud. There is ordinarily no coverage for the owner or executives of the business and no protection against allegations of breaches of fiduciary duty or administrative errors or omissions.

**3. *Does the policy cover the hefty penalties assessed by the Department of Labor under ERISA Sections 502(i) and 502(l)?***

ERISA requires the Department of Labor (DOL) to assess a 20 percent penalty above and beyond amounts a company pays in a judicial proceeding or settlement with the DOL involving an alleged breach of fiduciary duty. These often substantial sums are required to be paid even if there is no finding of liability, but merely a compromised settlement. ERISA also provides for possible penalties in the event of certain transactions prohibited under ERISA.

**4. *Can the policy help private companies avoid fiduciary claims?***

A fiduciary liability policy can help fiduciaries and plan sponsors avoid fiduciary claims by enabling them to correct plan defects as allowed under the IRS and Department of Labor voluntary compliance and correction programs. Payments of these penalties can be covered under the policy.

**5. *Does the policy contemplate privacy claims arising from the Health Insurance Portability and Accountability Act (HIPAA)?***

A fiduciary liability policy should address the growing exposure companies have to the Health Insurance Portability and Accountability Act (HIPAA)—such as the accidental disclosure of private medical plan information.

**6. *Should I worry that my carrier will be there to pay claims?***

Absolutely. Once, it was easy to be lured by low prices. Many fiduciary liability policyholders recently

witnessed the dangers of this firsthand when a well-known carrier went from an A- rating to insolvency in the course of 18 months. Now, these policyholders don't know how much they will receive on their claims, if anything. To avoid this predicament, choose a carrier with the highest financial strength ratings, as well as proven fiduciary liability experience.

**7. *Would we have a choice of counsel to defend a claim?***

That depends. Some insurers allow no choice, others go so far as to provide a list of top ERISA specialists from which to choose. If an insurer offers such a choice, and has established relationships with the nation's leading fiduciary liability defense firms, its policyholders will benefit from a top-quality defense, doing so at pre-negotiated, preferred rates.

**8. *Is coverage affordable?***

Companies are often surprised to learn just how affordable fiduciary liability insurance is. And efficiency is compounded when coverage is bundled with other essential management and professional liability coverages immediately, or later—as the insured's needs grow and change.

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