

MARSH

Insurance to Protect ESOP Trustees

OEOC 20th Annual Conference

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Penn National Plaza
Harrisburg, PA 17101



Marsh & McLennan Companies



Fiduciary Liability Insurance

Fiduciary Liability Insurance

What is Covered

- The Plan(s)
- Plan Sponsor
- Individual Persons

Fiduciary Liability Insurance

Insured Persons (“Fiduciaries”) are:

- Directors
- Officers
- Partners
- Trustees
- Employees

of the Plan Sponsor or Plan.

Fiduciary Liability Insurance

Breach of Fiduciary Duty

- Alleged or actual violation of responsibilities or duties imposed on fiduciaries by ERISA.
- Alleged or actual act, omission, error, breach of duty in the administration of the Plan.
- Any other matter or claims against any insured solely by reason of their status as a fiduciary.

Fiduciary Liability Insurance

Typical Exclusions

- Any insured gaining any profit* or remuneration not entitled to.
- Fraudulent or criminal acts of insureds.*
- Intentional non-compliance with any statute or regulation by an insured.
- Prior or pending civil, criminal, or administrative proceeding.
- Bodily injury, damage to tangible property, mental anguish, libel or slander.
- Pollution
- Benefits paid or payable

*Exclusion applies only if adjudication determines acts did in fact occur.
Wrongful Act would not be imputed to other insureds.

Fiduciary Liability Insurance

Policy Form

- Claims Made.
- Are prior acts covered?
- Discovery options?
- Policy limits include defense costs.
- Can be combined with D&O and EPL coverage.
- Policy Limits start at \$1,000,000.
- Deductible Options: \$0 / \$1,000 / \$2,500 / and higher.

Fiduciary Liability Insurance

Exposures to an ESOP

- Purchase and sale of company stock.
- Prohibitive transactions.
- Exclusive Purpose Rule.
- Prudent Person Rule.
- Self dealing.
- Adequate consideration.
- Voting of employer stock.

Fiduciary Liability Insurance

Other Issues

- Outside trustees.
- Indemnification by Plan Sponsor covered?
- How much insurance should be purchased?
- “Duty to Defend” vs. “Pay on Behalf” wording.

Fiduciary Liability Insurance

Other Exposures to an ESOP

- Shareholders
- Employees
- Government agencies
- Suppliers and customers
- Competitors
- Creditors



Directors & Officers Liability Insurance

Directors & Officers Liability Insurance

Directors & Officers Have Three Basic Duties

1. Due Diligence
2. Loyalty
3. Obedience

Directors & Officers Liability Insurance

Coverage Parts:

- A. Individual
- B. Corporate Indemnification
- C. Entity Coverage



Employment Practices Liability Insurance

Employment Practices Liability Insurance

Exposures

- Wrongful Dismissal
- Sexual or Workplace Harassment
- Discrimination
- Violation of Employment Laws
- Failure to Employ or Promote
- Failure to Provide Adequate Workplace or Employment Policies or Procedures



Commercial Crime Insurance

Commercial Crime Insurance

Comprehensive Coverage Form Offering

- Employee Dishonesty
- Forgery or Alteration
- Loss of Money & Securities, Inside or Outside Premises
- Computer Fraud
- Money Orders & Counterfeit Paper Currency



Executive Liability Insurance

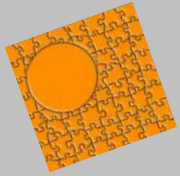
Executive Liability Insurance

Available Coverages

- Four Coverage Parts – One Policy
- Entity Coverage for D&O, Fiduciary & Employment Practices Liability, Crime
- \$0 Deductible for D&O and Fiduciary Available
- Duty to Defend Wording Available
- Fiduciary Coverage to the ESOP and other Plans
- Broad Definition of Claim
- Outside Non-Profit Directorship Liability
- Spousal Coverage

Executive Liability Insurance **Coverages Cont'd.**

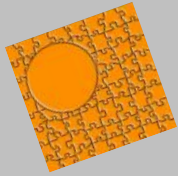
- Policy limits start at \$1,000,000.
- \$15,000,000 capacity available.
- Third Party Liability coverage available.



Executive Liability Policy

Premium Indications

- Annual premiums start at \$5,500.
- Contemplates:
 - \$1,000,000 limit of liability
 - 100 employees or fewer
 - Annual sales less than \$25,000,000
 - Purchase at least three of the four coverages



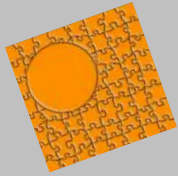
Executive Liability Policy

How to Obtain a Quote

Forward the following to Program Administrator, Marsh USA Inc.

- ❑ Completed and signed application
- ❑ Copy of most recent annual Financial Report
- ❑ Copy of most recent Form 5500 on ESOP and other retirement plans to be insured
- ❑ Copy of Employee Handbook

MARSH



Executive Liability Policy **Program Administrator**

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