Marsh FINPRO

Fiduciary Liability

Enhance your risk mitigation strategy

The recent upsurge in excessive fee and other retirement plan litigation in the US has raised concerns among Canadian pension plan sponsors and trustees regarding their own potential areas of fiduciary liability.

Canadian pension landscape

In Canada, retirement plan sponsors have a duty under the Pension Benefits Standards Act and other provincial laws to act solely in the interest of plan participants and not of the company. Among many others, their responsibilities include prudence in making plan decisions, diversifying plan investments, and following plan documents. Under these laws, plan sponsors may be held personally liable for a breach of fiduciary duty.

Errors or poor decisions around design, financing, administration, plan termination, or vendor management can have substantial implications for plan fiduciaries, opening the door to potential litigation. Allegations of breach of fiduciary duty typically arise from the following:

- Excessive fees
- Misrepresentation or failure to disclose information
- Negligent supervision
- Improper choice of third parties
- Conflict of interest

Plan sponsors may not be able to indemnify fiduciaries for reasons such as financial distress, unclear indemnification agreements, or legal prohibition.

Fiduciary liability insurance provides protection to plan sponsors and fiduciaries against both personal liability and the costs associated with defending lawsuits alleging mismanagement of plans and their assets.

This coverage is a robust risk mitigation tool for any corporation managing employee retirement plans, and should form an integral part of an organization's governance.

Five reasons why your organization should consider purchasing fiduciary liability insurance

- Pension law imposes upon plan fiduciaries a heightened standard of care.
- Individuals administering pension plans may unwittingly be fiduciaries.
- Pension law imposes personal liability on fiduciaries; fiduciaries who don't have insurance may be placing their personal assets at risk.
- Plans legally cannot indemnify or relieve fiduciaries of liability — and sponsors may not be willing and/or able to indemnify.
- Fiduciaries remain responsible even when delegating oversight to third party providers.

The Marsh advantage

The Marsh FINPRO practice has specialized and long-standing industry expertise to help you identify and manage your company's risks, as well as protect your company from increasing legal and regulatory exposures. As comprehensive risk advisors, we assist our clients in uncovering any red flags in their fiduciary controls and making changes to help remedy any deficiencies. We advise clients on their fiduciary insurance needs by building well-designed fiduciary liability programs, from limit assessment to carrier selection, to help mitigate litigation exposure. Our best-in-class claims advocates are there to help clients resolve claims from the onset.

Go a step further in managing your risk — Mercer offers innovative investment solutions that help plan sponsors address their fiduciary exposure and meet their goals more efficiently.

How Mercer can help

Pension and savings benefits can be onerous to administer and manage. But plan sponsors know they need robust governance and implementation structures if they are to meet their unique financial objectives. Mercer's outsourced chief investment officer (OCIO) professionals can assist plan sponsors in setting investment strategy by providing the enhanced expertise and agility necessary to navigate highly challenging markets.

With Mercer's OCIO platform, you are able to lift the burdens of implementation, monitoring, and reporting. You can let them manage the day-to-day investment management of your program, while freeing your people to drive strategic value, pursue your mission, and transform your organization.

By working with Marsh and Mercer, plan sponsors and fiduciaries can gain access to a combination of industry-specific insurance experience and a deep understanding of how using the right data, applied with a human touch, can help address a range of risks your organization faces.

"Plan sponsors are facing heightened underwriter scrutiny in the areas of due diligence, participant costs, investment options offered, subsidiaries or affiliates, documentation and expertise. Finding adequate coverage to protect corporate and single employer retirement plan fiduciaries clearly has become more challenging."

Kate Maybee
CPCU, Senior Vice President
and Fiduciary Product Leader,
Marsh FINPRO

About Marsh

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