

Fiduciary Liability Insurance for Multiemployer Plans

CHUBB®



Trustees of multiemployer health, welfare, and pension trust plans hold a significant and often complex role in managing these plans for the exclusive purpose of providing benefits to participants, dependents, and beneficiaries. Not only does the Employee Retirement Income Security Act of 1974 (ERISA) impose extraordinary responsibilities on these trustees, including personal liability for losses resulting from their breach of duties or for illegal personal profits attained through the misuse of plan assets, but numerous amendments and other laws governing fiduciary conduct now create an even greater breadth of challenges.

Are trustees a target for claims alleging a fiduciary duty breach or failure to properly administer multiemployer plans?

Trustees must execute their obligations with both prudence and loyalty. In other words, they must act with the care, skill

and diligence that a prudent person would exercise in a similar situation. Additionally, they must carry out their duty with respect to a benefit plan solely in the interest of its participants.

Lawsuits are brought against trustees subjecting them to expensive and time consuming legal proceedings with a wide spectrum of allegations:

- Denial or change of benefits
- Administrative error
- Incorrect benefit calculation
- Improper advice or counsel
- Misleading disclosures
- Conflicts of interest and self-dealing
- Imprudent investment of plan assets resulting in funding deficiencies
- Violation of plan documents
- Benefit payment to ineligible individuals
- Disputes regarding tax qualification of a plan
- Improper response to an employer's withdrawal from a plan or default on its obligation to contribute to a plan

What does fiduciary liability insurance cover for multiemployer plans?

In such a rapidly evolving legal landscape, the responsibilities that trustees carry can be daunting. As leading provider of fiduciary liability insurance for multiemployer plans, Chubb customizes fiduciary liability coverage to fit the unique needs of our insured plans with an emphasis in key areas (some of which are available upon request and risk acceptance and must be obtained specifically by endorsement):

- Expanded definition of Wrongful acts includes acts, errors, or omissions in an Insured's settlor capacity with respect to establishing, amending, terminating, or funding plans, in addition to breach of duty imposed by ERISA upon fiduciaries and errors in plan administration.
- Expanded definition of Claim includes:
 - Pre-Claim Investigations (Insured's option to report)
 - Benefit Claim Denials (Insured's option to report)
 - Regulatory proceedings against an Insured Persons by an Enforcement Unit (SEC, DOJ, HHS)
 - Subpoena requests upon Insured Persons
- Additional insuring clauses to cover:
 - Voluntary Program Losses
 - Interview Coverage (Defense Costs associated with interviews by an Enforcement Unit)
- Expanded definition of Loss can be obtained by endorsement to include coverage for civil penalties where insurable by law:
 - Health Insurance Portability and Accountability Act
 - Health Information Technology for Economic and Clinical Health Act
 - Patient Protection and Affordable Care Act
 - Employee Retirement Income Security Act Section 502(c)
 - Section 4975 of the Internal Revenue Code
 - Section 203 of the Bipartisan Budget Act
- Loss can be further broadened to include:
 - Compensatory damages
 - Punitive, exemplary and multiplied damages where insurable by law
 - Claimant attorney fees awarded by a court pursuant to Section 502(g) of ERISA
 - Pre-judgment and post-judgment interest
 - Reasonable fees and expenses of an independent fiduciary retained to review a proposed settlement of a covered claim
 - Benefit Overpayment Insuring Clause
 - Other Taxes, Fines, or Penalties
 - Trustee Non-Fiduciary Defense Costs
 - Umbrella for Civil Penalties
- Duty to Defend can be amended to include option for Insured to select defense counsel
- No Hammer Clause
- Non-cancellable
- Non-rescindable
- Enhanced Claim Reporting (Removed "as soon as practicable" reporting in favor of reporting any time during the policy period, but in no event later than 180 days after expiration of the policy period if the policy is renewed with Chubb)

Why Chubb?

As the world's largest publicly traded property and casualty insurer, Chubb carefully crafts coverage to protect trustees and employees of multiemployer plans from personal liability exposures they face in fulfilling their duties. We have earned our leadership position as a provider of fiduciary liability insurance by our unflinching commitment in providing:

- Broad fiduciary liability protection
- Superior service
- Outstanding underwriting expertise
- Unmatched claims handling
- Continued financial stability as one of A.M. Best Company's elite highest-ranking insurers

Contact Us

To learn more about Fiduciary Liability protection for Public Sector Plans, contact your local underwriter or visit www.chubb.com/us/fiduciaryliability.

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