Frequently Asked Questions

Things You Wanted to Know About Fiduciary Liability

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Frequently Asked Questions	**Our Solution**
What is the difference between an ERISA Bond and Fiduciary Liability Insurance (FLI)?	An ERISA bond is first party coverage that typically helps protect a plan against theft and fraud by plan officials. It is required under the law. FLI is third party liability coverage that generally helps protect a plan and plan fiduciaries against breach of fiduciary claims. It is not legally required.
How does FLI differ from an Employee Benefit Liability (EBL) endorsement on a Commercial General Liability Policy?	EBL typically provides third party coverage for a narrow range of wrongful acts involving errors in plan administration. Unlike FLI, it generally does *not* provide coverage for breach of fiduciary duty claims under ERISA. FLI provides coverage for fiduciary breaches as well as for errors in administration.
What is waiver of recourse?	Under ERISA, plan assets cannot be used to purchase FLI unless the policy provides for what ERISA terms "recourse." Multiemployer plans (because they lack corporate sponsors) are typically the only plans that use plan assets to purchase FLI, so their policies contain recourse provisions. Insured persons (not the plan) often purchase "waiver of recourse" endorsements for these FLI policies.
Who is and who isn't insured as a fiduciary?	FLI generally provides coverage for fiduciaries that are employees or executives of the insured organization, as well as employee benefit committee members and natural person trustees of the insured organization. FLI typically does *not* insure third party service providers. Such providers should be insured under their own errors and omissions policy.
What is a settlor function?	A settlor function is typically described as the act of establishing, revising and/or terminating a plan.

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What is the difference between a multiemployer plan and a multiple employer plan (MEP)?	Typically, a MEP is a single plan in which two or more unrelated employers participate. They may be sponsored by a trade association whose members have common interests or by a PEO who shares a co-employer relationship with its clients. MEPs generally allow employers to reduce the administrative burden and fiduciary exposure associated with offering a plan. A multiemployer plan is established in accordance with a collective bargaining agreement and is usually jointly sponsored by a union and an employer association or other group of employers.
I can't get a 5500 from my client - where do I find it online?	5500s can be obtained on the Department of Labor website or FreeERISA.com.
Which employee benefit plans are not subject to ERISA law?	Generally speaking, government plans, church plans and plans established solely to comply with state law (such as workers compensation) are exempt, as are certain payroll practices (e.g. holiday pay) and voluntary employee-pay-all programs.
If all investment decisions have been turned over to a third party (TPA, bank, advisor, etc.), there is little to no liability, right?	Incorrect. Fiduciaries generally retain the fiduciary duty to select, monitor, and if necessary, replace third party service providers.
What is co-fiduciary liability?	ERISA Section 405 imposes co-fiduciary liability on fiduciaries that knowingly participate in, conceal, enable or fail to take reasonable steps to remedy a fellow fiduciary's breach of duty.
How does a Defined Benefit plan differ from a Defined Contribution plan?	In a Defined Benefit plan, employees are guaranteed a certain benefit upon retirement and the employer is responsible for ensuring adequate funding of the benefit. In a Defined Contribution plan, the amount of the contribution to the plan is certain but the amount that will be paid out at retirement depends on the investment return on the contributions. In other words, the amount of any payout is not known ahead of time nor guaranteed.
My client wants to add an outside service provider as an additional insured on their Fiduciary policy. Should I do that?	This is a complicated question, but we generally advise against this, as doing so may convert your FLI into an E&O coverage for the service provider. In the event of a claim against an Insured and the service provider, policy limits may be eroded helping to protect the service provider at the expense of the Insured, *including defending the provider against claims that might be brought against it by a disgruntled Insured.*

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