



## Management Liability

# Epac 3 – Fiduciary Liability

When you manage benefit plans for your employees, they place their trust in you. Errors in plan administration and alleged breaches of fiduciary duties can lead to costly litigation, risking both company assets and personal assets of plan fiduciaries.

CNA's Epac 3 (EP3) Fiduciary Liability insurance is designed to address exposures arising from the administration and management of employee benefit and retirement plans. The modular EP3 form offers a flexible policy and streamlined language, making it easy to understand the coverage and design a policy that meets your needs.

## Did You Know?

- **More than 5,700** lawsuits were filed under ERISA in 2019\*
- **67%** of investigations by the Employee Benefits Security Administration (EBSA) lead to monetary results or other corrective actions\*\*
- EBSA investigations recovered **more than \$2B** in 2019\*\*

\* Seyfarth Shaw LLP 16th Annual Workplace Class Action Litigation Report, 2020 Edition

\*\* DOL.gov/agencies/ebsa

## Epac 3 Policy/Fiduciary Liability Coverage Part Highlights<sup>1</sup>

- Non-rescindable policy
- No action taken by the insurer against the insured if insured does not consent to settle
- Customer-friendly reporting and notice provisions, with prejudiced standard for late notice consideration when renewed with us
- Covered Penalties Section addressing 502(c), Pension Protection Act of 2006, Section 4975 of the IRS Code of 1986, and Patient Protection and Affordable Care Act
- Voluntary Compliance Costs coverage for voluntary compliance resolution programs administered by the U.S. Internal Revenue Service, the U.S. Department of Labor, or equivalent foreign administrative or regulatory agencies
- Expanded definition of Claim incorporating extradition, pre-claim investigation, internal appeal and fact-finding investigations
- Broad definition of Wrongful Act, including breach of fiduciary duties, errors or omissions in administration, errors or omission in an insured's settlor capacity and addresses exposures presented in connection with purchase of insurance through a healthcare exchange

1. Subject to all terms, conditions and provisions of the policy.

## Fiduciary Liability Claim Scenarios

| Example                                                | Cost             | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Excessive Fees/Imprudent Investments</b>            | <b>\$8M+</b>     | In a class action lawsuit filed against the sponsor and fiduciaries of a defined contribution plan, the participants alleged breach of fiduciary duties in failing to negotiate lower recordkeeping fees, improper selection of investment options, and failure to monitor the outside investment manager. Defense costs exceeded \$3 million, and the case was ultimately settled for over \$5 million.                                                                                                         |
| <b>Health &amp; Welfare Plan Denial of Benefits</b>    | <b>\$175,000</b> | A recently married employee submitted paperwork through the company HR department to add the new spouse to their medical plan. A few months later, the employee's spouse developed a serious medical condition. After the spouse was denied coverage under the employee's medical plan, it was found that the spouse was never added. The employee then turned to the employer for payment of the medical bills that were denied due to the failure to add the spouse, and the matter was settled for \$175,000. |
| <b>EBSA Investigates Employee Stock Ownership Plan</b> | <b>\$2.2M</b>    | An auto parts manufacturer was sued by the Department of Labor following an investigation by the Employee Benefits Security Administration (EBSA). The suit alleged that plan fiduciaries enabled the plan to overpay for company stock by millions of dollars, leading the plan to suffer sizeable financial losses. The suit was settled for \$2M, with an additional \$200K civil penalty paid to the Department of Labor.                                                                                    |

### Fiduciary Liability FAQs

#### Who is a fiduciary?

Fiduciary status is determined by the function performed for the plan, not by title. Fiduciaries do not have to be named in the plan documents to meet the criteria. ERISA's fiduciary duties apply to individuals who exercise discretionary authority or control over a plan or its assets, or who provide investment advice to a plan for a fee.

#### Will an ERISA bond or Employee Benefits Liability (EBL) insurance provide adequate coverage?

An ERISA bond is first-party insurance that can afford coverage for the plan for losses caused by theft, but does not address lawsuits brought by third parties. EBL insurance typically provides limited coverage for certain wrongful acts related to errors in plan administration. Neither provides coverage for breach of fiduciary duty claims under ERISA.

#### Can liability be transferred by outsourcing plan management to third parties?

No. Under ERISA, plan fiduciaries have the responsibility for the selection and monitoring of any service providers.

### Broad Appetite

CNA has a broad appetite for many industry classes. EP3 can be written for:

- Publicly traded companies
- Private companies
- Not-for-profit organizations

### Claim Experience Matters

Fiduciary liability losses tend to be very complex, so dealing with an experienced claim team is critical. With an EP3 Fiduciary Liability Coverage Part, organizations will have access to our highly skilled Claim team. These experienced professionals provide expertise and guidance throughout the Claim process, and work hard to achieve the best possible outcome for each policyholder.

### About Us

CNA is one of the largest U.S. commercial property and casualty insurance companies. We provide a broad range of standard and specialized insurance products and services for businesses and professionals in the U.S., Canada and Europe, backed by more than 120 years of experience.

For more information, please contact your local underwriter or visit [cna.com](https://www.cna.com).