Who Do You Want Living In Your House?

There are many business insurance policies that, within reason, offer standard terms and conditions of coverage. Automobile and workers' compensation insurance are good examples of this approach. There are other forms of insurance that use non-standard wording and conditions. Fiduciary liability and other professional liability insurance policies use language that is specifically tailored to meet individual business needs.

Of these policies, fiduciary liability insurance covers a very specific exposure that is often overlooked. This exposure is not covered by employee benefits liability insurance or even an ERISA bond. Fiduciary liability is designed to cover anyone who "exercises any authority or control respecting management or disposition of assets." As a result, managers or administrators of health or retirement plans could be personally liable for decisions they make.

Wait a second! I rely on third party vendors for information. I have certificates of insurance from these companies. My vendor agreement provides me with specific assurances as to my responsibilities. *None of these factors will protect your personal assets from fiduciary obligations.* Liability under ERISA extends to anyone who has "any discretionary authority or responsibility." A Tillinghast survey reported that fiduciary claim defense costs alone averaged $365,000.

This figure does not include the cost of claim settlement. According to the same survey, these claim costs averaged $994,000. The potential out-of-pocket or self-insured exposure could be $1,359,000 per claim. Here are some examples of claim exposures:

- Monitoring of investment practices or results
- Failure to properly investigate claims
- Selection of investment manager
- Inadequate instruction given to participants

The solution to these problems would appear to be purchasing a fiduciary liability insurance policy. However, please remember that these polices are customized.

Thinking about purchasing an insurance policy is a logical first step. The most important step, however, is to qualify what you are getting for your premium. Each policy of this type needs to be analyzed by a qualified, independent expert who is not imbedded in the purchasing process. Policy evaluation should be performed by those who stay up-to-date on evolving coverage forms and their impact on your business. Once a policy is purchased, it should be periodically reviewed.

Congratulations, your house is worth $1,359,000. Who do you want living in it?

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