

# FIDUCIARY LIABILITY INSURANCE

for Tech/IT Companies

## What is Fiduciary Liability Insurance?

Pays, on behalf of the insured, legal liability arising from claims for alleged failure to prudently act within the meaning of the Pension Reform Act of 1974. "Insured" is variously defined as a trust or employee benefit plan, any trustee, officer or employee of the trust or employee benefit plan, employer who is sole sponsor of a plan and any other individual or organization designated as a fiduciary. Group life and medical expense plans, as well as pension and retirement plans, are within the scope of the law.

## When do I need Fiduciary Liability Insurance?

If you are an owner or officer who makes decisions about your company's 401(k) plan or other qualified employee benefit plan(s), odds are, your personal assets are at risk! Under the Employee Retirement Income Security Act of 1974 (ERISA), fiduciaries can be held personally liable for losses to a benefit plan incurred as a result of their alleged errors, omissions, or breach of their fiduciary duties.

## Why do I need Fiduciary Liability Insurance?

Under ERISA, fiduciaries may be held personally liable for breach of their responsibilities in the administration or handling of employee benefit plans. Fiduciary Liability Insurance is not required by ERISA. However, it is strongly recommended if you are a fiduciary of a welfare and/or pension plan because your personal assets are at stake. Many fiduciaries believe their ERISA fidelity bond protects their personal assets – it doesn't!

Furthermore, many think that this type of coverage is included in their D&O policy. Most D&O policies exclude fiduciary liability exposures as well as those exposures pertaining to the Employee Retirement Income Security Act (ERISA). ERISA also broadly defines the types of employee benefit plans for which fiduciaries are responsible. This extensive list can include pension plans, profitsharing plans, employee stock ownership plans (ESOPs), and even health and welfare plans.

Moreover, designated fiduciaries aren't the only targets of such lawsuits; targets can also include the employer and even the plan itself. Claims can be brought by plan participants, participants' legal estates, the Department of Labor, and the Pension Benefit Guaranty Corporation. Such claims may include allegations of:

## Coverages Related to Fiduciary Liability

- Fidelity bonds are required by law (ERISA bonding). This is a form of insurance for dishonesty situations. This bonding insurance will not protect the trustees themselves from liability claims and is completely distinct from fiduciary liability insurance.
- Employee Benefit Liability Insurance. Employee Liability Insurance policies cover many claims arising out of errors or omissions in the administration of a benefit plan, including the failure to enroll an employee in the plan as well as the administration of improper advice as to benefits.

Employee benefits liability coverage often is combined with fiduciary liability policies, subject to the single limit. This is a distinct disadvantage because fiduciary liability presents an exposure that is infrequent but severe. The purpose for purchasing a fiduciary liability policy, therefore, can be wiped out with frequent employee benefits liability claims.

## Fiduciary Liability Claims are on The Rise

It's better to evaluate your coverage in the boardroom than in the courtroom. Retirement plans and fiduciaries are prey for litigation, which has increased significantly in severity in recent years.

In a 1993 study of fiduciary liability insurance, Watson Wyatt Worldwide reported fiduciary liability lawsuits involving 23% of the studied companies-nearly triple the 8.7% that reported suits in 1987. And the average indemnity payment grew to more than \$875,000 over the same period, from \$715,000 in 1987.



## Providing Business Insurance Since 1895

InsureCast is a division of Gaston & Associates, Inc., a fourth generation family held independent insurance agency with a history dating to 1895.

InsureCast's marketing territory is national in scope, and we hold property-casualty and life-health licenses in all states except Hawaii.

Our customers range from small start-ups to public companies. We serve about three thousand clients and we endeavor to maintain long-term customer relationships that are based on coverage and service.

InsureCast has become a world leader in technology insurance and professional liability insurance products for Information and Network Technology companies by proactively anticipating changing client needs in order to offer the most up-to-date solution.

We take great pride in continuing our 108 years of caring for our clients and providing value added service.

## Mission Statement

The mission of Gaston & Associates is to provide professional insurance services to the clients we represent.

- ✓ We strive to develop a customer base that will appreciate our service orientation and value added approach.
- ✓ We provide our clients with competitive, high quality insurance oriented products.
- ✓ We endeavor to maintain long-term customer relationships that are based on coverage and service.
- ✓ We embrace automation as a means to enhance service and improve communication.

To accomplish these goals, we establish departments, standards, workflows and procedures that enable us to provide a consistently high level of service to our customers. We staff each department with competent, ethical, individuals who are dedicated to continuing education and professional development.

GASTON & ASSOCIATES INC

100 S. Bedford Road

Suite 220

Mount Kisco, NY 10549

Phone: 914.244.1055

212.697.2444

800.432.7435

Fax: 914.244.1056

212.697.2920

Email: [info@insurecast.com](mailto:info@insurecast.com)

