ADDRESSING RISKS IN MANAGING BENEFIT PLANS

BY TERRENCE TRACY

The labor market remains highly competitive as companies seek to hire and retain skilled employees. As part of their hiring and retention efforts, many employers offer a variety of employee benefits, including medical, disability, retirement and profit-sharing plans.

These benefit offerings present risks for organizations. Administering and managing various types of benefit plans requires the employer to act in a fiduciary capacity, exposing the employer to risks both within and beyond the Employee Retirement Income Security Act (ERISA).

Recent litigation highlights the increased risks of fiduciary obligations owed to benefit plans and their beneficiaries. Lawsuits have alleged that plans incurred excessive or unreasonable fees, included imprudent and high-cost investments, and engaged in prohibited transactions.

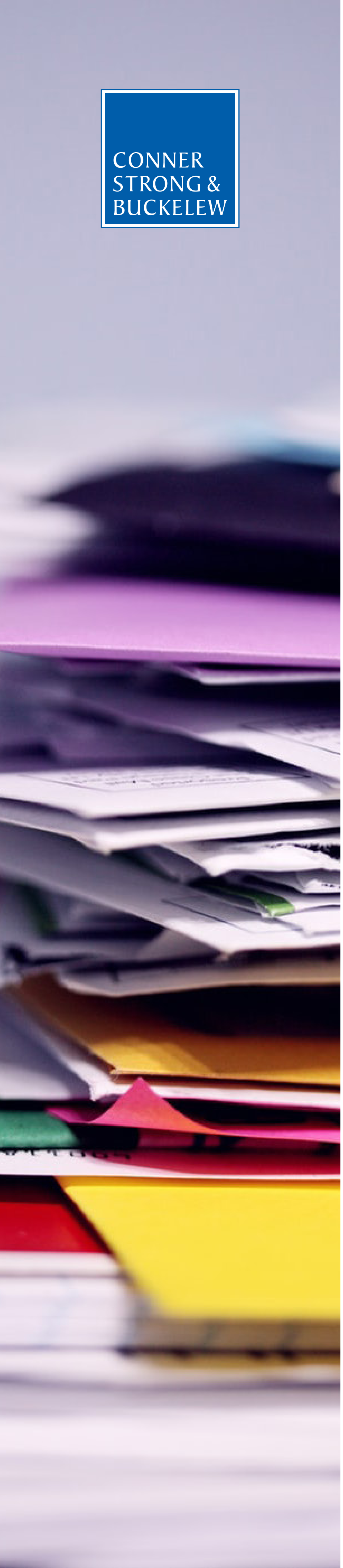
Although lawsuit headlines have involved well-known entities, such as Anthem and BB&T, plan sponsors, fiduciaries and decision-makers at smaller businesses are not immune to claims.

As a result, evaluating exposures and potential liabilities is essential, regardless of plan size and scope.

If your company provides employee benefit plans, significant duties of care may be imposed upon sponsors and individuals who oversee plans and related assets. Individuals are typically designated in plan documents by name, title and role, such as trustee or administrator, as part of committees, while others are separately authorized to make discretionary decisions.

Core duties of a fiduciary, as typically outlined in plan summary documents, include maintaining accurate records, appropriately structuring and offering a menu of investments, selecting advisors, properly detailing the rights and eligibility of participants and engaging in clear communications. Fiduciaries should be cognizant of the obligations imposed upon them by ERISA as well as their duty to prudently fulfill their roles in the sole and best interests of the plans and beneficiaries.

These responsibilities present exposure. For example, a fiduciary may be held personally liable for breach of their duties, which could result in a lawsuit. Using third-party service providers or a bank does not diminish the fiduciary's ongoing duties and obligations to the plans or the potential for personal liability.



To mitigate risks and exposure involving fiduciary responsibilities, follow these three techniques:

1 OBTAIN FIDUCIARY LIABILITY INSURANCE COVERAGE.

A crucial first step for employers to consider is transferring risk from plan sponsors and individuals to insurance carriers via fiduciary liability insurance.

Benefits brokers may not put employers' interests first if insurance companies pay them commissions or bonuses to keep clients on the same plans, cautioned Dave Chase, co-founder of benefits consultancy Health Rosetta.

This transfer establishes an affordable and quantifiable approach to risk, particularly when it comes to unpredictable defense costs. Policies should cover fiduciary and settlor capacities, including personal indemnities arising from errors or breaches, and both ERISA and non-qualified benefit plans.

Even though plan sponsors and individuals may believe they are covered by other types of insurance, this is not always the reality. Utilizing coverages such as directors & officers liability, commercial general liability, employee benefits liability and ERISA bonds to address fraud or dishonesty by bonded individuals is not always adequate since they may contain certain exclusions, which presents employers and individuals with additional uninsured liabilities.

Plan sponsors should also note that fiduciary liability insurance coverage extensions are available for inquiry expenses, voluntary settlements and certain regulatory fines and penalties under the Health Insurance Portability and Accountability Act of 1996, the Affordable Care Act and the Pension Protection Act.

2 MAINTAIN COMPLIANCE AND CONSISTENCY IN PLAN DOCUMENTS.

Employers and sponsors should also ensure that their plan documents are both compliant and consistent.

This includes providing complete and accurate information, particularly around eligibility criteria and available benefits.

Sponsors should attempt to use concise, straightforward and well-organized language throughout documents and within communications to employees. Summary plan descriptions should be distributed in a timely manner and include an outline of the terms and conditions of the plan. Plan sponsors should also seek legal counsel to verify ERISA compliance in plan documents, especially when changes are under consideration.

3 REGULARLY EVALUATE PLAN OPERATIONS, INVESTMENTS AND VENDORS.

A key consideration is forming an effectively structured employee benefits plan committee.

A well-functioning committee should meet a sufficient number of times annually, thoroughly document discussions and actions, and routinely rotate members.

The committee should also thoroughly examine enrollment procedures, investment options and share classes. Additionally, committee members should assess and evaluate third-party administrators' and vendors' performance and expenses.

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