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EBL, ERISA, Fiduciary, Crime, Fidelity: what was it I needed again?

THE NAME'S BOND...

ERISA Bonds, Fidelity Bonds or Crime Insurance, Fiduciary Liability insurance, and Employee Benefit Plan Liability insurance are four separate and distinct products that perform four very different functions. It's easy to get these various types of policies mistaken, especially when the names are used interchangeably. Many insurance brokers do not understand their differences and even more consumers are confused.

ERISA BOND

An ERISA Bond is the narrowest of all fidelity/crime coverage as it simply covers employee theft of benefit plan assets. The Employee Retirement Income Security Act of 1974 (ERISA), requires that sponsors of ERISA qualified plans maintain this coverage with certain minimum limits. Most Crime policies also include ERISA provisions that extend coverage for theft of employee benefit plan assets. These provisions are designed to comply with ERISA regulations and eliminate the need for a separate ERISA Bond. Sometimes the ERISA coverage is optional so it is important to confirm that the option is utilized and that adequate limits have been selected.

CRIME INSURANCE / FIDELITY BOND

The names, 'Fidelity Bond' and 'Crime Insurance', are often used interchangeably but technically there is a difference. A Fidelity Bond is just Employee Theft coverage; an employee stealing from an employer. The term Fidelity coverage comes from the word 'fidelity', which means the "quality or state of being faithful". When an employee steals from an organization, he or she has breached the loyalty owed to their employer.

Crime Insurance is Employee Theft coverage, plus a number of optional insuring agreements that protect businesses from theft from outside the

organization, such as from third parties. These risks include but are not limited to receiving counterfeit money orders and currency in good faith, having money or securities stolen from the premises, while in transit or while held by a financial institution, checks forged or altered, money fraudulently transferred or being the subject of theft via a computer. These additional insuring agreements are optional and can be purchased with varying limits, so long as they do not exceed the Employee Theft limit

As previously discussed, the majority of Crime Insurance products include the ERISA Bond coverage as a component of the Employee Theft coverage. There is no additional charge for this coverage, and it is not necessary to maintain a separate ERISA Bond. In contrast, the ERISA Bond will only respond to theft of plan assets by an employee, not to theft of any other assets.

FIDUCIARY LIABILITY

Fiduciary Liability insurance is a liability coverage designed to protect individuals that have a fiduciary responsibility in managing employee benefit plans. ERISA states that individual fiduciaries can be held personally liable if plan participants allege a breach of their fiduciary responsibilities. If they fail to act diligently, make bad decisions in selecting fund options and third party providers, or simply make a mistake when administering the plan, then this policy will most likely provide the individual or organization with defense coverage for allegations and in some cases pay damages owed. Fiduciary liability provides coverage to protect individuals for their decision making.

EMPLOYEE BENEFIT PLAN LIABILITY (EBL)

Employee benefit plan liability is an extension or endorsement to the General Liability policy that provides protection to employers against claims brought by employees or former employees for negligent acts or omissions in the administration of the insured's employee benefits programs. This insurance covers group life insurance and group accident and/or health insurance, profit sharing plans, employee stock subscription plans, and workers' compensation, unemployment insurance, social security benefits and disability benefits.

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Coverage is available for acts or omissions in various administrative activities such as counseling employees, interpreting employee benefits programs, handling records, and enrolling/terminating/canceling employees. Employee Benefit Plan Liability is an administrative errors and omissions product that covers the damages because of a loss sustained by administrative error. A Fiduciary policy may include some administrative errors and omissions coverage, however most companies choose to carry both Fiduciary and EBL.

SUMMARY

An ERISA Bond and EBL coverage are necessary for any company that offers retirement and employee benefit plans. Most companies will benefit from having a more comprehensive Crime Insurance program and can eliminate the expense of a stand-alone ERISA Bond when Crime insurance is purchased. Employee Benefit Plan Liability is normally endorsed on to the General Liability policy but will not address the liability related decision making exposure created by those who act in a Fiduciary capacity. Fiduciary Liability is the only product that will provide defense and indemnity for the decisions made by the plan leadership. Van Gilder strongly recommends that companies carefully consider their needs and engage the appropriate insurance products to meet regulatory requirements, safeguard the corporate balance sheet, and protect the decision makers.

EXECUTIVE LIABILITY SPECIALTY

Van Gilder Insurance Corporation provides the full suite of Executive Liability coverages (Directors and Officers, Employment Practices, Fiduciary Liability, Crime Insurance, Financial Institution Bond, Bankers Professional Liability, Employed Lawyers, Network Security and Privacy Liability, Kidnap Ransom & Extortion and other products) to companies and non-profit organizations of all sizes. Our customers include private and publicly traded companies and range in size from start-ups and pre-revenue organizations to market capitalization of more than \$11B. Our experienced team has the relationships and market access to negotiate coverage for strong organizations as well as those under financial distress. Coverage is key and our dedicated team is committed to the technical crafting of the policy and ensuring that the coverage meets the needs of the board.

ABOUT VAN GILDER

For over a century, Van Gilder has been growing through satisfied customers and referrals. By combining the attention of a small company with the resources of a large one, Van Gilder experts offer the education, advice and guidance customers need to make insurance easier. Through four generations of family leadership, Van Gilder has been working closely with each client to learn their business and personal needs. That's the service Van Gilder offers you. Whether you need current insurance information, competitive rates, or a creative answer to your unique situation, Van Gilder uses its knowledge to provide you with solutions.



ABOUT THE AUTHOR

Monica M. Minkel joined Van Gilder in January 2010 as the leader of the Executive Liability practice. In this role, she oversees a wide range of clients that include public, private, and non-profit companies in a variety of industries. She also manages the team of individuals who support this business. She has

spent nearly a decade as an underwriter or broker focusing exclusively on Executive Liability products, which include Directors and Officers, Employment Practices, Fiduciary Liability, Crime, Kidnap & Ransom, and Employed Lawyers Professional Liability.

Monica began her insurance career in 2001 underwriting Directors and Officers liability coverage for AIG. Monica spent six years as Assistant Vice President of a Financial Services insurance brokerage team in Denver. She also spent five years working in Financial Institutions.

Monica has published articles relating to Directors and Officers Liability in the PLUS Journal and American Agent & Broker Magazine. She holds a Bachelor's degree in Finance from Regis University in Denver and a Graduate Certificate in Leadership and Organizational Change from Colorado State University. In addition, Monica has earned the Management Liability Insurance Specialist (MLIS) designation.