



## The ESOP Association

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## A Helpful Checklist When Reviewing Fiduciary Liability Insurance

In an effort to assist ESOP Association (TEA) members become better fiduciary liability insurance consumers, we have developed a checklist suggesting areas in the insurance policy that should be reviewed preferably prior to purchasing the policy. We suggest the checklist below should be reviewed prior to making any decision on purchasing the policy.

- Is the ESOP covered in the policy definition of “Employee Benefit Plan” or “Retirement” Plan? Does it need to be listed separately in the policy?
- Are external individual or institutional trustees covered?
- Who is covered in the definition of “Insured Person”?
- Are subsidiaries of the parent company covered?
- Is the policy limit reduced by defense costs paid by the insurer? Is there a separate limit for these costs applicable?
- Are Prior Acts covered?
- What is the Pending and Prior Date on the policy? If moving coverage from one insurer to another make sure this date does not change.
- How is the deductible applied to Defense Costs or Settlements?
- Is the policy limit for Fiduciary Liability coverage shared with other coverages such as D&O or Employment Practices Liability coverage?
- Does the insurance company providing this coverage step in and defend the ESOP right away or must you await reimbursement of costs that exceed the deductible?
- Who elects the legal firm to represent the policyholder if a claim occurs?
- Will the insurance company at least defend you for allegations that may not be covered?
- Have you read all the endorsements that will be issued with the main policy form?
- Does the insurer have the right of subrogation against an insured fiduciary with this policy?
- How could certain answers to questions when completing the application for coverage exclude certain claims?

Finally, it is important to keep in mind that all proposals for coverage should include a sample copy of the policy form and all endorsements proposed. If not, request to see a copy of these forms.

*The above commentary is provided by Jeffrey S. Gelburd, CPCU, ARM, Vice President of Murray Risk Management & Insurance. Jeff has been providing TEA members with Fiduciary Liability insurance since 1989. He serves as Program Manager for The ESOP Association Executive Liability Insurance Program. He can be reached directly at [jgelburd@murrayins.com](mailto:jgelburd@murrayins.com) or 1-800-533-5271. The Program is also available to insurance agents and brokers on behalf of the TEA member.*