



The Chubb Primary<sup>SM</sup>  
Fiduciary Liability Insurance

*Westchester*<sup>®</sup>  
A Chubb Company

As a leader in fiduciary liability insurance, Westchester understands this exposure and is committed to providing long term solutions to our customers as they navigate the ever-changing risks inherent in employee benefit plans. Through The Chubb Primary<sup>SM</sup> Fiduciary Liability Insurance, we've leveraged our four decades of fiduciary experience to craft a best in class policy, incorporating sought after terms with innovative new offerings to create a better customer experience – from the ease of purchasing a world-class, comprehensive policy to the flexibility of choosing how and when to use your coverage – Westchester delivers.

## Tried and True Coverage Features

**Traditional Claims** – Coverage for written demands for monetary damages, civil and criminal complaints and formal investigations involving breaches of fiduciary duty under ERISA and errors in administering employee benefit plans, as well as fiduciary capacity backstop coverage for claims made against a fiduciary solely because they happen to be a plan fiduciary.

**Fines and Penalties** – Unlimited coverage for ERISA §502(i) and 502(l) fines as well as certain penalties under English law.

**Voluntary Settlement Programs** – First party coverage for companies that discover an issue and want to address it by participating in a governmental correction program.

**Notice of Potential Claims** – Ability to preserve rights to coverage under a current policy for future potential claims that might be made after the policy expires.

**Former Plans and Subsidiaries** – Continuing protection for terminated plans and former subsidiaries for prior conduct if the policy is renewed with Westchester.

**Popular Coverage Features Added** – We've designed The Chubb Primary<sup>SM</sup> Fiduciary Liability Insurance policy to be comprehensive, by incorporating a vast number of coverage features that customers commonly request.

## Elective Reporting Coverages

We've incorporated a vast number of coverage features that customers commonly request:

- *Pre-Claim Investigations* – Department of Labor investigations that do not allege a written Wrongful Act;
- *Tolling requests* – Written requests to toll or waive a statute of limitations applicable to a potential claim;
- *Benefit Claim Denial Appeal* – Appeal of an adverse benefit determination under 29 C.F.R. §2560.503-19h);
- *Interview* – An Enforcement Unit's (including the SEC's) request for an Interview, meeting or sworn testimony from an Insured Person without alleging a Wrongful Act.

**Wrongful Acts** – Adds settlor conduct coverage and newly created backstop coverage for Claims against Insured Persons due solely to their involvement in plan administration.

**Fines and Penalties** – Coverage for certain penalties under Irish law as well as sublimited coverage for penalties under certain Canadian laws, HIPAA/HITECH, the Affordable Care Act, I.R.C. §4975 and ERISA §502(c), including §507 of the Pension Protection Act.

### Exclusions:

- *Conduct* – Uses a final, non-appealable adjudication standard and is limited to profit that's personal in nature for Insured Persons and to advantage that's "financial."
- *Bodily Injury* – Carves out coverage for certain injuries resulting from the selection of a managed care service provider or the denial or delay of any benefit under a health care plan that is not Self-Administered.
- *Pollution and Liability of Others Assumed by Contract* – Removed

**Liberal Claim Reporting and Notice** – Up to 180 days after expiration of a policy that has been renewed, plus waiver of this time period where the Insured demonstrates that it was not reasonably possible to provide notice within 180 days.



**Advancement of Defense Costs** – Advancement of defense costs where an Organization refuses to indemnify an Insured Person.

**Flexible Defense and Settlement** – Flexible option for the Insured to assume the defense of a new claim or to let the duty to defend remain with Westchester, along with the ability to settle within the retention without Westchester's consent and the potential to obtain coverage for some Defense Costs incurred prior to submission.

**Defense Costs Allocation** – 100% pre-determined Defense Costs allocation where Westchester retains the duty to defend, and the use of best efforts based on financial and legal exposure otherwise.

**Fully Non-Rescindable and Severable** – Fully non-rescindable and non-voidable as to all Insureds, and fully severable for Insured Persons.

**Subrogation** – No subrogation against Insured Persons and any amounts recovered will be restored to the Limit of Liability.

**Cancellation** – Insured has the unilateral right to cancel the policy on a pro-rata basis.

**Globalized Coverage Language and Globally Integrated Capabilities** – Equivalency language for statutory and common law that globalizes the policy, along with a global network and affiliated broker relationships for procuring locally admitted policies.

## New Coverage Innovations

We've added innovations that are completely new to the market:

**Failure to Enroll Demand Coverage** – Coverage for plan enrollment errors where the injured party has not filed a formal Claim, which empowers Insureds to quickly resolve delicate situations all in the context of Westchester's renowned coverage for benefits that would have been due but for the failure to enroll.

**Penalty Suite Additional Sublimit of Liability** – An additional sublimit (within policy limits) for fines and penalties which floats above all other fine and penalty sublimits for customers to use if a specific fine or penalty sublimit has been exhausted.

## Why Westchester?

**Thought Leadership** – Westchester strongly encourages loss prevention through education. We provide insight into fiduciary exposures including:

- [Who May Sue and Why: How to Reduce Your ERISA Risks, and the Role of Fiduciary Liability Insurance](#)
- [The War on Retirement Plan Fees: Is Anyone Safe?](#)

**Longevity** – We've been protecting organizations against fiduciary risks for almost half a century; we're here to stay<sup>1</sup>.

**Global Capabilities** – Our worldwide expertise and local presence enable us to solve complex global leadership protection problems that most insurers shy away from.

**Superior Claims Handling** – Our specialized staff attorneys partner with our insureds to provide a smooth claims experience while achieving superior results.

**Financial Stability** – Fiduciary claims can be expensive and protracted, so an insurer's long-term viability is critical. Our financial stability and ability to pay claims rate among the best in the industry, as attested by Standard & Poor's and A.M. Best Company<sup>2</sup>.

<sup>1</sup> Source: [https://www.chubb.com/us-en/\\_assets/doc/17010193-side-a-plus-independent-coverage-endorsements-04.17.pdf](https://www.chubb.com/us-en/_assets/doc/17010193-side-a-plus-independent-coverage-endorsements-04.17.pdf)

<sup>2</sup> Source: [https://www.chubb.com/us-en/\\_assets/doc/14011198-investigative-response-policy-brochure-12.16.pdf](https://www.chubb.com/us-en/_assets/doc/14011198-investigative-response-policy-brochure-12.16.pdf)