MARKETPLACE REALITIES & RISK MANAGEMENT SOLUTIONS

FIDUCIARY

- The soft Fiduciary Liability insurance market continues, **with program rates flat or down 15% – or more**.
- As in Directors & Officers (D&O) coverage, reductions on the primary layer are now harder to negotiate and are often available only where there is competition, so **the focus here may turn to the excess layers**.
- Many Bermuda carriers remain reluctant to underwrite Fiduciary risks, but some London markets are now more receptive if they also write the D&O.
- Carriers that introduced new D&O forms in 2009-2010 are now looking to do the same for Fiduciary, so stay tuned for more information on **new terms and conditions**.
- A major claim driver for public companies continues to be the prevalence of company stock in the company's pension plans.
- After ERISA tagalong suits (ERISA suits brought in parallel to D&O claims), Fiduciary Liability carriers worry most about the **potential for ERISA actions filed in tandem with Fair Labor Standard Act claims** under the theory that if the minimum wage rules were violated, then credits/contributions to ERISA plans must also have been mishandled. Defense costs covered by ERISA Fiduciary policies (if written on a duty-to-defend basis) can be expensive and unpredictable.

PRICE PREDICTIONS

PRIVATE / NONPROFIT
Flat to -20%

PUBLIC COMPANY
Flat to -15%

WITHOUT COMPANY STOCK
Flat to -20%

RECENT CIVIL ENFORCEMENT: FREQUENCY + SEVERITY

	2005	2006	2007	2008	2009
Cases Filed	178	170	114	91	107
Cases Closed	3,782	3,411	3,236	3,570	3,669
Closed + Corrections	3,056	2,534	2,402	2,696	2,833
Results ($)	$1.7B	$1.4B	$1.5B	$1.2B	$1.36B

Source: Department of Labor Fact Sheet, ***EBSA Achieves $1.36 Billion in Total Monetary Results in Fiscal Year 2009***.

INDUSTRY HIGHLIGHTS

- **Financial Services** — Increased capacity has helped soften this segment of the market, with many risks experiencing decreases greater than the norm.
- **Health Care** — Private and nonprofit firms remain the sweet spot for insurers, especially where Fiduciary Liability may be packaged with D&O and EPL cover.
- **Technology/Media/Telecommunications** — Good risks garner serious interest and competitive terms.
- **Utilities** — Disproportionately low frequency (but higher severity) means that these risks are a desired class for most underwriters.

CONTACT

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