
From: Jeffrey Gelburd [mailto:jgelburd@murrayins.com]
Sent: Thursday, January 27, 2011 1:00 PM
To: EBSA, E-ORI - EBSA
Subject: Definition of Fiduciary Proposed Rule

I am commenting on the proposed wording by the DOL on making Business Valuation Appraisers who appraise stock within an ESOP a plan fiduciary.

Over the last twenty years I have been involved with placing professional liability (E&O) insurance for Business valuation appraisers who are members of the American Society of Appraisers (ASA).

Appraisers have found it difficult to obtain such insurance from the standard insurance marketplace and often times will only find coverage from the Excess and Surplus (E&S) Lines insurance marketplace. The E&S insurance marketplace is usually the last resort for such coverage as they specialize in hard to place risks. There is usually a surplus lines tax applied to the premium and the policyholder is not protected by individual state guarantee funds should the insurer become insolvent.

The task of finding E&O insurance for this class is exacerbated when trying to cover their exposure of being a plan fiduciary. Currently, as in all E&O type policies, there is an ERISA exclusion which would exclude any claims involving breach of fiduciary duty in accordance with the Act. In order to properly protect the Business Valuation appraiser from ERISA claims, we would need to modify this ERISA exclusion to cover their fiduciary exposure in preparing business valuation reports. Often times insurance companies are unwilling to amend the ERISA exclusion thereby making it impossible to insure this exposure. Thus, if Business Valuation appraisers cannot get proper insurance protection for being plan fiduciaries as proposed, there will be many of these appraisers not providing this service to ESOP companies. This in turn will increase the cost of these annual appraisals thereby deterring further development of new ESOPs and perhaps forcing companies to terminate these plans.

Thank you and please feel free to contact me with any questions you might have.

Jeffrey S. Gelburd, CPCU, ARM
Vice President
Murray Risk Management and Insurance
39 N. Duke Street, P.O.Box 1728
Lancaster, PA 17608-1728
Main Telephone: 717-397-9600
Direct Telephone: 717-735-7176
Fax: 717-735-6960
jgelburd@murrayins.com
<http://www.murrayins.com>

A Best Places to Work in PA Award-Winning Company

Employee Owned/Client Focused

This message contains confidential information and is intended only for the individual(s) named. If you are not a named addressee you should not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this message in error and delete said message from your system.