



**Financial Institutions Risk Protector<sup>®</sup>**

EXECUTIVE LIABILITY

**Management & Professional Liability  
Insurance for Private Financial Institutions**

## Overview

Private financial institutions face significant management and professional liability risks, different from their publicly-held counterparts. Executive Liability's Financial Institutions Risk Protector® (FI Risk Protector®), an all-in-one solution, gives private financial institutions cost-efficient, flexible protection tailored for their spectrum of management and professional liability risks. Privately-held financial institutions can choose from up to five general, and from two industry-specific insurance coverages that can be combined into one comprehensive, effective insurance program with competitive relations and premiums. Available coverages include:

### Five General Coverages

- Directors, Officers and Private Financial Institution Liability Insurance
- Employment Practices Liability Insurance with EPL Pak® Premier Training and Loss Prevention Resources
- Fiduciary Liability Insurance
- Security & Privacy Liability Insurance
- Employed Lawyers Professional Liability Insurance

### Two Industry-Specific Coverages

- Bankers Professional Liability Insurance
- Insurance Company Professional Liability Insurance

Shared or separate limits of liability are available.

## Financial Institutions Risk Protector: Responding To Real Market Needs

The following information will help you understand and assess a financial institution's management and professional liability exposures—and the solutions FI Risk Protector offers to address them.

### FI Risk Protector Coverage Highlights— Available with all Selected Coverages

- Coverage is noncancelable by the insurer<sup>1</sup>
- Coverage is provided for the spouses/estates and domestic partners of covered individuals
- Coverage encompasses claims made against an insured party anywhere in the world<sup>2</sup>
- A 45-day post policy reporting window<sup>3</sup>
- Policy does not exclude otherwise covered loss related to pollution<sup>4</sup> for which the financial institution is not permitted or required to indemnify individual insureds
- Optional one-, two- or three-year extended reporting periods<sup>5</sup>

The policy also extends entity coverage to encompass owned subsidiaries in which the insured financial institution has a greater than 50 percent stake as well as new subsidiaries with assets totaling less than 25 percent of the insured financial institution's total assets.

<sup>1</sup> Except for nonpayment of premium

<sup>2</sup> Where insurable by law

<sup>3</sup> As long as such Claim was first made against an Insured within 30 days of the Policy Period or the Discovery Period (if applicable)

<sup>4</sup> Other than cleanup costs

<sup>5</sup> Extended Reporting Periods of longer duration may be mandated by applicable State law.

## Directors, Officers and Private Financial Institution Liability Insurance

Directors and officers of private financial institutions and the entities they govern are increasingly targeted in lawsuits brought by a range of parties, including employees, shareholders, customers, clients, policyholders, and regulatory and other governmental bodies. Yet many private financial institution's directors and officers continue to underestimate the risks of executing their corporate duties—or the urgent need for insurance to protect their personal assets in claims.

FI Risk Protector Directors, Officers and Private Financial Institution Liability Insurance provides coverage for the many individuals who are frequently named in these lawsuits. These individuals include past, present or future directors and officers, employees, and outside entity executives. Non-rescindable “Side A” coverage, designed to provide expansive protection for insured individuals in claims, is built into this coverage section.

### Select Coverage Features for Directors, Officers and Private Financial Institution Liability Insurance

- Breach of contract exclusion applicable to entity only
- Securities exclusion does not apply to offerings exempt pursuant to section 3(b) of the Securities Act of 1933
- Coverage for a financial institution's directors and officers serving on the boards of other entities (at the specific direction of the insured financial institution)

- Coverage includes a financial institution's (or the board's) defense costs of an investigation related to a shareholder derivative lawsuit up to \$250,000<sup>6</sup>
- The Insured versus Insured exclusion does not apply to claims brought by an insured director or officer engaging in certain whistleblower activities
- Full severability of the application for individual insureds
- Coverage for punitive damages, where insurable by law
- The services of Executive Liability's Panel Counsel, among the nation's leading defense firms specializing in securities litigation
- Order of Payments provision
- Pre- and post-judgment interest payment coverage (within limits of liability)

### Bank Card Protector

This insurance product protects issuing banks from fraudulent transactions using lost, stolen or counterfeit bank cards. This product also pays for certain of the bank's expenses to replace compromised cards.

This coverage is available on a stand-alone basis and is not sold as part of the FI Risk Protector. The coverage is available through an affiliate or affiliates of Executive Liability and may not be available from an admitted carrier.

<sup>6</sup> Unless this coverage is prohibited in a certain jurisdiction

## Employment Practices Liability Insurance

Employment practices claims have become commonplace for companies of all sizes. Even “routine” settlements of these claims can have a significant impact on a private financial institution.

FI Risk Protector Employment Practices Liability Insurance addresses the wide variety of claims commonly brought against private financial institutions by employees, including lawsuits alleging wrongful termination, discrimination, harassment, retaliation, negligent hiring, failure to provide or enforce policies or procedures, and other employment practices violations.

Coverage extends to the financial institution and many of the individuals named in these suits, including the financial institution and independent directors, officers and employees. Covered employees include past and present, full-time, part-time, temporary and seasonal employees.

### Select Coverage Features for Employment Practices Liability Insurance

- An optional Duty-to-Defend provision included
- Coverage for Equal Employment Opportunity Commission (EEOC) proceedings and investigations
- Coverage for third-party sexual harassment
- Coverage for independent contractors<sup>7</sup>
- Coverage for punitive damages, where insurable by law
- Employment CrisisFund<sup>®</sup>, an innovative coverage that provides policyholders with up to \$25,000, with no retention, toward the fees of a crisis management public relations firm to help them respond appropriately to an incident that already has or could potentially trigger a large employment action

### Supporting the right practices and the best defense

Insureds receive EPL Pak<sup>®</sup> Premier, a package of loss prevention products and services designed specifically to support them in instilling proper workplace training and practices and documenting due diligence in doing so. EPL Pak Premier includes:

- HR Compliance Reference System—an Internet-based reference system that focuses on employment-related laws and regulations and includes forms, policies and procedures to help manage compliance risks and optimize business practices
- Title VII Plus Harassment and Discrimination Training—easily administered tutorials, plus sample policies and a built-in database for maintaining the training documentation required to demonstrate diligence in deterring workplace harassment and discrimination
- The HR Solutions Online Center—state employment alerts, compliance newsletters, training programs and more, conveniently accessible online
- A Recruiting, Retaining and Terminating Employees Manual

## Fiduciary Liability Insurance

Fiduciary liability claims continue to rise in frequency and severity as regulators, plan participants and their beneficiaries increasingly focus on plan-related fiduciary practices. Everything from layoffs, to selection of 401(k) investment options, to undisclosed or unmonitored plan fees, to cutbacks in benefits may trigger fiduciary liability. At the same time, the Employee Retirement Income Security Act of 1974 (ERISA) has been steadily amended to expand protection for plan participants—and potential personal liability for fiduciaries.

FI Risk Protector Fiduciary Liability Insurance provides coverage for a financial institution's directors, officers and employees, as well as plan sponsors and the plan itself.

Coverage addresses a wide variety of claims and provides unique flexibility and support in managing litigation and mitigating losses for pension and welfare plans,<sup>8</sup> including both qualified and non-qualified plans and plans that are spun off or terminated during the policy period.

This coverage section also responds to:

- The five percent and 20 percent penalties assessed by the Department of Labor (DOL) under sections 502(i) and (l) of ERISA, respectively
- Penalties for violations of the privacy regulations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- Certain other penalties and expenses associated with various DOL and Internal Revenue Service (IRS) voluntary compliance programs
- Claims for both monetary and non-monetary relief

### Select Coverage Features for Fiduciary Liability Insurance

- Definition of ERISA includes amendments brought about by HIPAA, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Newborns' and Mothers' Health Protection Act of 1996, and the Women's Health and Cancer Rights Act of 1998
- Coverage for punitive damages, where insurable by law
- Broad definition of plan, including "blanket"<sup>9</sup> wording for most plans, and incorporating IRA-based plans such as SEP (Simplified Employee Pension Plan) and SIMPLE (Savings Incentive Match Plan for Employees)

This coverage section also provides for the advancement of defense costs and provides access to Executive Liability's Panel Counsel, which is comprised of some of the nation's top ERISA litigation defense firms

<sup>8</sup> Except ESOPs, unless added to the policy by endorsement, and multiemployer plans

<sup>9</sup> No listing required, except for ESOPs and certain other plans as described in the policy

## Security & Privacy Liability Insurance

Financial institutions handle private or confidential information, including Social Security numbers, credit information and other sensitive information. Financial institutions face potentially catastrophic liability if this information falls into the wrong hands or becomes public.

FI Risk Protector Security & Privacy Liability Insurance is a state-of-the-market coverage that addresses the liability of financial institutions accused of negligently handling private or confidential data.

### Select Coverage Features for Security & Privacy Liability Insurance

- Important third-party coverage for liability arising from:
  - A failure of the insured's network security
  - A failure to protect or wrongful disclosure of private or confidential information
  - A failure to protect Personally Identifiable Information from misappropriation
  - Violation of any federal, state or local privacy statute alleged in connection with a failure to protect private information
- Definition of claim including written or oral demands for money, services, non-monetary or injunctive relief, civil or binding arbitration proceedings, or regulatory actions
- Coverage for punitive, exemplary and multiple damages awards, where insurable by law (governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages)
- Flexibility in controlling claims—the insured can settle claims within the retention (as long as it is on behalf of all insureds)
- The services of Executive Liability's Technology Panel Counsel, among the nation's leading defense firms specializing in technology-related litigation

## Employed Lawyers Professional Liability Insurance

With regulatory scrutiny at an all-time high, many private financial institutions are choosing to hire in-house counsel to monitor compliance and perform a wide array of legal services—from mergers and acquisitions to contract negotiations. These services potentially expose the in-house attorney and his or her employer to claims of negligence, errors and omissions.

In addition, many employers now ask that their employed lawyers perform specified *pro-bono* services, again raising the risk that actual or perceived errors could result in a claim against the individual employed lawyer, not just the employer.

Many employed lawyers also perform legal services that fall outside the scope of their employment. Such representation may include real estate closings, divorce proceedings or tax and estate planning. Dissatisfaction with the outcome of such “moonlighting” by the recipient of these services may lead to a lawsuit. No matter what the scenario, employed lawyers, even those performing only a few legal services, are at risk of costly professional liability claims.

FI Risk Protector Employed Lawyers Professional Liability Insurance is a simple, affordable safeguard against the potentially explosive financial impact of professional liability claims. Coverage addresses the wide variety of claims commonly brought against in-house counsel and their employers, including:

- Employment-related claims arising out of an in-house attorney’s legal work
- Legal licensing procedures
- Civil, administrative or arbitration proceedings against an employed lawyer

## Select Coverage Features for Employed Lawyers Professional Liability Insurance

- Past, present and future attorneys, and paralegals, clerical staff and other employees of the legal department while acting under the direction and control of employed lawyers. Employers have the flexibility of purchasing coverage for specific employed lawyers or the entire legal department.
- Protect the personal assets of employed lawyers in claims alleging professional malpractice, whether initiated by clients, vendors, employees or other third parties. It offers protection from claims arising out of the legal services provided to employers, as well as “moonlighting” and *pro-bono* services.
- Provide first-dollar coverage for non-indemnified damages an employed lawyer may face from a third-party’s claim of wrongful acts, negligence, errors, omissions or breach of duty in the performance of legal services.
- Cover the losses an employer sustains while indemnifying an employed lawyer for claims arising out of legal services.
- Provide defense costs even if the allegations of the claim are proven groundless, false or fraudulent.

## Fidelity and Crime Coverage

Financial Institutions Liability provide sound coverage for losses of property or assets due to employee dishonesty, including losses arising from forgery or counterfeit currency. Bonds are provided by experienced underwriters and tailored for a wide range of financial institutions, including community banks, savings banks and associations, stock brokers, commodity brokers, stock exchanges, mutual funds, investment banks, insurance companies, real estate investment trusts (REITs), finance companies, and mortgage banks. Executive Liability issues financial institutions bonds on the following forms: Forms 14, 15, 24 and 25.

This coverage is available on a stand-alone basis and is not sold as part of the FI Risk Protector.

## Bankers Professional Liability

Privately held regional and community banks have become increasingly concerned about professional liability exposures, with good reason. A single lawsuit can have devastating repercussions for a bank's solvency and reputation.

FI Risk Protector Bankers Professional Liability Insurance can be relied upon to protect bank assets and defend a financial institution's good name.

Bankers Professional Liability Insurance covers compensatory damages as well as settlements and defense costs resulting from claims of errors and omissions in a wide range of professional services. Punitive damages, where insurable by law, are covered up to an amount not greater than two times compensatory damages. Coverage responds to claims arising from services rendered with or without a fee.<sup>10</sup>

### Select Coverage Features for Professional Liability Insurance

- The ability to cover an array of professional services, including but not limited to services as a receiver or trustee in bankruptcy
- Defense costs coverage for fee disputes
- Pre- and post-judgment interest payment coverage (within limits of liability)

## Insurance Company Professional Liability Insurance

Claims for breach of an implied covenant of good faith and fair dealing lead a list of errors and omissions allegations that are filed against mutual and other privately-organized insurance companies. They also lead the list of reasons why Insurance Company Professional Liability Insurance is critical to these organizations and integral to the FI Risk Protector package.

FI Risk Protector Insurance Company Professional Liability Insurance protects insurance companies from errors and omissions claims arising from professional services they perform, including:

- Claims handling and adjusting
- Risk management
- Safety engineering
- Safety inspections
- Loss control operations
- Salvage operations
- Recovery & subrogation services
- Premium financing
- Actuarial consulting services

Insurance Company Professional Liability Insurance also contains a definition of claim that includes a written demand for monetary relief, and civil, administrative or arbitration proceedings (whether commenced by service of a complaint or similar pleading, or receipt or filing of a notice of charges). Coverage is also provided for punitive damages, where insurable by law.

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To learn more about FI Risk Protector,  
please visit [www.chartisinsurance.com](http://www.chartisinsurance.com),  
email [executiveliability@chartisinsurance.com](mailto:executiveliability@chartisinsurance.com),  
or contact your local insurance broker.  
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175 Water Street  
New York, NY 10038  
[www.chartisinsurance.com](http://www.chartisinsurance.com)



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