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The Business Liability Coverage Gaps Texas Executives Miss

How ERISA fiduciary liability, D&O insurance, key-person risk, and unfunded buy-sell gaps expose mid-market executives to institutional-level risk their standard commercial coverage cannot address

Palmer Wealth Group™ *13 May 2026*

A Fort Worth business owner had sponsored a 401(k) for fifteen years, maintained a $5 million commercial general liability (CGL) policy, and carried the ERISA fidelity bond his plan required. When a former employee filed a Department of Labor complaint alleging excessive plan fees, the agency opened a civil investigation. None of his three policies responded.

That scenario repeats itself throughout the Dallas-Fort Worth region more often than most mid-market executives realize. Most companies in the $5 to $30 million range carry coverage optimized for visible operational risks: property damage, accidents, vehicle incidents. What they rarely carry is protection against the institutional exposures that actually threaten the organization. This article examines four of them: ERISA fiduciary liability, directors and officers claims, key-person risk, and unfunded buy-sell arrangements.

When Standard Coverage Leaves a Business Liability Coverage Gap

Most business owners build their liability protection around three layers: commercial general liability, a personal umbrella, and the business entity itself as a legal barrier. That model handles the risks it was designed for. Its blind spots are where the real organizational exposure lives.

The Three Policies Business Owners Assume Are Enough

A CGL policy covers bodily injury and property damage arising from business operations. It does not cover management decisions, breach of fiduciary duty, antitrust claims, or lender disputes. Marsh's analysis of private-company liability programs documents that CGL and directors and officers (D&O) coverage are intentionally non-overlapping: each policy explicitly excludes the other's territory.

Most mid-market companies also carry commercial property insurance (which covers physical assets, equipment, and inventory against damage or loss), equipment breakdown coverage (which protects against losses from mechanical or electrical failure of critical systems such as HVAC, manufacturing equipment, and server infrastructure), commercial auto coverage for company and fleet vehicles, and workers' compensation for employee workplace injuries. Together with a general liability policy, these form a complete operational coverage stack. Not one of them extends to the management-level organizational claims that D&O, fiduciary liability, and professional liability coverage are designed to address.

A personal umbrella extends your personal auto and homeowners coverage. It does not respond to claims against your company, your management team, or your board in their organizational capacity. Vouch's D&O analysis notes that private companies relying on a personal umbrella for organizational protection typically discover the gap when a claim arrives.

See also: The Entrepreneur's Blind Spot: When Business Success Overshadows Personal Wealth Planning — describes how business owners concentrate resources on the risks they can visualize. The exposures in this article tend to stay invisible until they become expensive.

Why the Gap Exists Between CGL, Umbrella, and Organizational Liability

Organizational liability spans several distinct policy types: D&O, employment practices liability (EPLI), professional liability (errors and omissions coverage protecting against claims that professional services or advice caused a client financial harm — a critical policy for professional service firms including law firms, accounting practices, consulting companies, and healthcare groups), fiduciary liability, cyber liability (coverage that addresses data breaches, ransomware, and network security incidents), crime, and the general liability policy that anchors most standard commercial stacks. Each covers a defined risk category and explicitly excludes the others. According to Marsh's research on private-company risk, multi-policy coverage disputes are the highest source of unrecovered claims among mid-market companies.

The pattern plays out predictably. A senior executive alleges both employment discrimination and a breach of fiduciary duty under a deferred compensation plan. The EPLI carrier argues it is a fiduciary claim. The fiduciary carrier argues it is an employment claim. Without intentional coordination, neither pays.

Our January 2026 analysis, Why Your Entity Structures May Leave You Dangerously Underinsured, examined the gap between personal umbrella coverage and entity-owned exposures. The four sections below extend that framework to institutional-level risk.

ERISA Fiduciary Liability Insurance: What Every Plan Sponsor Carries — and What Most Don't

If your company sponsors a 401(k) or any qualified retirement plan, you are a plan fiduciary (a person legally responsible for managing a benefit plan solely in the interest of its participants). That designation carries enforceable legal duties and meaningful personal liability risk, regardless of how much administration is delegated to a third party.

What ERISA Section 404 Actually Requires of a Business Owner Who Sponsors a Plan

ERISA Section 404(a) establishes four legal duties for plan fiduciaries: act solely in the interest of participants and beneficiaries; exercise the care and skill of a qualified professional familiar with such matters; diversify plan investments to minimize the risk of large losses; and adhere to plan documents. These are legally enforceable obligations, not aspirational guidelines.

ERISA attorney Fred Reish, one of the country's most cited plan governance practitioners, has noted publicly that plan sponsors frequently discover obligations they did not anticipate — including an ongoing duty to locate missing participants who cannot be found for distributions.

Plan design decisions shape the scope of fiduciary exposure directly. 401(k) Plan Costs, Design Options, and Tax Benefits: A Strategic Guide examines how investment menu structure and fee benchmarking generate or reduce those obligations.

The Mandatory Bond and the Voluntary Insurance — What Each Actually Covers

ERISA Section 412 requires a fidelity bond (a policy protecting the plan against losses from fraud or dishonesty by plan personnel) for everyone who handles plan funds. Per DOL Field Assistance Bulletin 2008-04, the bond must cover at least 10 percent of plan assets handled, subject to a maximum of $500,000 per plan official ($1,000,000 for plans holding employer securities). The bond protects the plan from theft and dishonesty. It does not protect fiduciaries from claims of negligent investment selection, excessive fees, or breach of the prudent-expert standard.

Fiduciary liability insurance addresses those risks separately, and it is voluntary under ERISA Section 410. EisnerAmper's review of Form 5500 filings found approximately 10 percent of plans were inadequately covered even by their mandatory fidelity bonds. The gap in voluntary fiduciary liability coverage is considerably wider.

The DOL Enforcement Trend That Has Changed the Risk Calculus for Mid-Market Plans

EBSA closed 729 civil investigations in fiscal year 2024. Seventy-one percent produced monetary results or corrective action, and the agency recovered $1.384 billion for plan participants, per DOL's official 2024 enforcement fact sheet.

Private litigation has accelerated alongside regulatory enforcement. Encore Fiduciary and Dorsey & Whitney tracked 155 ERISA fiduciary class action lawsuits filed in 2025, approaching record levels. In 2024, excessive-fee filings rose 35 percent year over year, including 13 cases targeting plans with assets under $500 million. Mayer Brown's October 2025 analysis by Richard E. Nowak documented forfeiture-based fiduciary breach claims growing from 5 cases in 2023 to more than 43 in 2025.

Some industry observers, including the ERISA Industry Committee, note that litigation economics often favor plaintiffs' attorneys: 2025 data shows average per-participant awards of approximately $67.79 against average attorneys' fees of $1.59 million. That context does not eliminate plan sponsor exposure. Even meritless claims generate significant legal fees and defense costs — expenses that fiduciary liability insurance is specifically designed to cover.

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D&O Insurance for Private Companies: Why Being Privately Held Does Not Mean Being Protected

Among the most consistent misconceptions we encounter is the belief that directors and officers (D&O) insurance is a public-company concern. Private companies face a broad range of management-related claims. The cost of defending and settling them has risen materially in recent years.

What Mid-Market D&O Claims Actually Look Like

Industry benchmark data long cited by Chubb and Towers Watson indicates approximately 27 percent of private companies experienced a D&O-related claim over a ten-year period, with average costs around $700,000. These figures are several years old and should be read as directional benchmarks rather than current measurements. More recent data from Allianz Commercial's 2026 D&O report, authored by Jarrod Schlesinger and Peter Carozza, shows that U.S. average securities class-action settlement costs rose 27 percent in the first half of 2025 to $56 million, and that defense costs for large D&O claims have nearly doubled over six years.

Private-company claims are not primarily securities matters. Marsh identifies the dominant sources as employment-related management decisions, antitrust allegations, vendor and customer disputes, lender claims, and creditor actions in bankruptcy. Aon's 2025 management liability market report found that 13 of the 18 largest historical derivative settlements occurred in the past five years.

How Much D&O Coverage Is Enough for a Company in the $5–30 Million Range

Gordon B. Coyle, CPCU, of The Coyle Group, notes in his D&O coverage analysis that most private mid-market companies need between $2 million and $10 million in D&O limits, depending on revenue, industry, and board composition. Companies carrying $1 million in limits routinely face uncovered gaps when defense costs alone exceed that amount before any settlement.

DeshCap's 2026 D&O cost guide finds that technology and healthcare companies pay 20 to 30 percent more in premiums than companies in other sectors. Organizations with strong enterprise risk management programs can earn premium credits of up to 15 percent. Underwriters typically require formal risk assessments and review a company's claims history as part of the D&O application process: a clean record and documented governance practices improve both availability and pricing. Under Texas Business Organizations Code Chapter 8 and Delaware General Corporation Law Section 145(g), companies may purchase D&O insurance for their directors and managers. No statute requires it. The practical pressure to carry it comes from outside investors, lender covenants, and board composition — characteristics common to the businesses we serve.

Key-Person Risk and the Coverage Formula Most Business Owners Skip

A company's revenue-generating capacity is often concentrated in one or two people. When that person is unavailable — through death, disability, or departure — the organization faces an immediate loss of client relationships, institutional knowledge, and production that no financial statement anticipates.

Why Revenue Rarely Survives the Loss of Its Primary Architect

A widely cited benchmark from the National Association of Insurance Commissioners (NAIC) found roughly 71 percent of businesses highly dependent on one or two key people, yet only 22 percent carry key-person life insurance. This data is several years old and should be treated as a directional benchmark rather than a current measurement. PwC's 2025 U.S. Family Business Survey found only 34 percent of family firms have a robust, documented succession plan in place. Deloitte Private's 2026 succession study, led by Laura Pearson, found 78 percent of family business executives anticipate a CEO transition within a decade, and only 23 percent are actively implementing a plan.

IRS Revenue Ruling 59-60, the foundational IRS guidance for valuing closely held businesses, explicitly identifies inadequate key-person succession as a factor that depresses a company's fair market value.

Unlike business interruption coverage, which compensates for revenue lost when physical property damage forces a temporary operational halt, there is no standard policy that automatically replaces the income a business loses when its primary revenue architect is simply no longer available.

See also: Building Institutions that Outlast their Founders — examines how intentional organizational design reduces this vulnerability beyond what insurance can address alone.

IRC Section 101(j): The Tax Trap That Invalidates Poorly Structured Key-Person Policies

Key-person life insurance carries a tax complication many business owners discover too late. Under IRC Section 264(a)(1), premiums on a life insurance policy where the business is directly or indirectly the beneficiary are not deductible.

Under IRC Section 101(j), enacted through the Pension Protection Act of 2006, death benefits on employer-owned life insurance (EOLI) policies issued after August 17, 2006 are taxable to the extent they exceed premiums paid. This rule applies unless the employer completed written notice-and-consent requirements before the policy was issued and a statutory exception applies. IRS Notice 2009-48 confirms that closely held and sole-owner corporations are not exempt from these requirements, and the failure cannot be corrected retroactively. Annual reporting is also required on IRS Form 8925 under IRC Section 6039I.

Common sizing frameworks include a multiple of five to ten times annual compensation, a contribution-to-earnings method based on the individual's share of EBITDA over a replacement period, or a replacement-cost approach. Policy structure requires qualified tax and insurance counsel. Palmer Wealth Group and Commonwealth Financial Network do not provide legal or tax advice.

Buy-Sell Agreements Without Funding: A Document That Cannot Protect Anything

A buy-sell agreement is a legal contract governing what happens to a co-owner's interest when a triggering event occurs. Having one is essential. Having one without adequate funding is only marginally better than having none at all.

> "A buy-sell agreement without adequate funding is only marginally better than having none at all."

The Difference Between Having a Buy-Sell Agreement and Having a Funded Buy-Sell Agreement

Deloitte's 2026 succession study found that while 85 percent of family business executives call strategic succession planning critical, only 23 percent are actively implementing a plan. PwC's 2025 Family Business Survey found most existing plans are informal and undocumented.

Practitioners at Thompson Coburn LLP and other succession advisors consistently find the same failure pattern: a buy-sell was drafted when the business was worth substantially less than today, the funding policy was never updated to reflect current value, and the surviving owners have no practical means to honor the agreement when a triggering event occurs. Exit planning specialists estimate roughly half of all business exits are caused by unplanned events: death, disability, divorce, distress, or disagreement.

See also: Maximizing Business Exit Value: Strategies for Successful Transition Planning — examines how business value and exit structure interact within a broader planning framework.

Connelly v. United States: Why Every Entity-Purchase Structure Warrants a Review

In June 2024, the Supreme Court issued a unanimous decision in *Connelly v. United States*, 144 S. Ct. 1406, with direct implications for stock-redemption buy-sell structures. In a redemption arrangement, the company owns a life insurance policy on each owner and uses the proceeds to buy back a deceased owner's shares.

The Court held that corporate-owned life insurance proceeds are includible in the corporation's fair market value for estate tax purposes and are not offset by the redemption obligation. RSM US modeled one illustrative scenario in its 2024 Connelly analysis: heirs in a redemption structure received approximately $0.88 million after estate taxes, compared to a pre-Connelly expectation of approximately $1.81 million.

Practitioners at Stinson LLP, Moore Colson, and Maslon LLP have concluded that every entity-purchase buy-sell funded by corporate-owned life insurance and executed before June 2024 warrants a prompt review with qualified estate-planning counsel.

Structuring a Buy-Sell That Holds Up Under IRS Scrutiny

IRS Revenue Ruling 59-60 establishes eight factors for valuing closely held stock. A buy-sell agreement that sets a fixed price without periodic adjustment may fail to establish estate tax value as the business grows.

Among family members, IRC Section 2703 imposes three requirements: the arrangement must be a bona fide business transaction, it must not function as a device to transfer property below full value, and its terms must be comparable to arm's-length agreements between unrelated parties.

Post-Connelly, many advisors are recommending cross-purchase structures — where co-owners hold policies on each other rather than the company holding them — or special-purpose insurance LLC arrangements. The right approach depends on ownership configuration, state of organization, and estate planning objectives. These decisions require qualified estate and tax counsel.

Building a Coordinated Organizational Risk Architecture

The four exposures in this article do not operate independently. A single claim can implicate multiple policies, each of which excludes the other. Without intentional coordination, coverage disputes can become the exposure.

Why Coverage Disputes Between Overlapping Policies Are the Highest Source of Unrecovered Claims

Marsh's research consistently identifies multi-policy coverage disputes as the highest-frequency source of unrecovered claims among private companies. A wrongful-termination claim that also alleges breach of

fiduciary duty under a deferred compensation plan draws simultaneous demands under both EPLI and fiduciary liability policies. Each insurer argues the other should respond first.

Aon's 2025 management liability market report found that AI-disclosure-related litigation more than doubled between 2023 and 2024, and that DEI-related claims are increasing. Cyber liability is a particularly acute gap in this context: a ransomware event or data breach can simultaneously trigger an exclusion under the general liability policy (no bodily injury or property damage), a D&O claim for alleged failure of oversight, and a professional liability dispute — with each carrier pointing at the others. Legacy commercial stacks were not designed for these scenarios, and coverage stacks that appear complete often are not.

An Annual Coverage Review Framework for Mid-Market Business Owners

Several review triggers belong on an annual planning calendar.

The ERISA fidelity bond should be confirmed each year. The required 10-percent-of-funds coverage amount rises as plan assets grow. EisnerAmper's Form 5500 analysis identifies inadequate bonding as one of the IRS's two most commonly flagged plan compliance issues.

D&O coverage limits should be revisited when revenue changes materially, when outside investors or board members join, or when lender covenants require it. The Coyle Group recommends a formal limit review at least every two years.

Cyber liability coverage should be reviewed annually. Data exposure risk grows with organizational scale, and limits that were adequate at inception can fall behind actual exposure within two to three years as the business adds employees, systems, and client data. Commercial property insurance limits — and the business interruption coverage embedded within most commercial property policies — should be reassessed whenever significant property additions, revenue growth, or lease changes occur. Business interruption coverage is calculated from revenue, so a business that has grown substantially since the policy was written may be underinsured on this dimension.

Texas law does not mandate most commercial insurance coverage types beyond workers' compensation for qualifying employers, but the state's geography makes several coverages especially critical. North Texas experiences significant hail and severe weather activity, making commercial property and equipment breakdown coverage particularly important for DFW businesses. Equipment breakdown coverage is relevant in this context because severe weather can damage critical commercial systems, including electrical panels, HVAC equipment, and server infrastructure. Annual risk assessments that incorporate local severe weather data, prior claims history, and current replacement cost valuations help ensure that commercial property, equipment breakdown, and business interruption coverage remain properly calibrated to actual exposure.

Buy-sell agreements require structural review following significant legal developments such as Connelly and valuation review after major business events. EOLI policies require qualified-counsel review before any new policy is issued for a new key person. The IRC Section 101(j) notice-and-consent requirements cannot be addressed after the policy is issued.

At Palmer Wealth Group™, our role is to identify where these gaps exist and to coordinate the advisory conversation among the P&C insurance brokers, ERISA counsel, and estate-planning attorneys who address them. Mid-market executives in Dallas-Fort Worth benefit from having an advisor who sees all four exposures as part of a single coordinated plan.

Frequently Asked Questions

Q: Is an ERISA fidelity bond the same as fiduciary liability insurance?

No. An ERISA fidelity bond and fiduciary liability insurance are two distinct policies serving entirely different purposes. Under ERISA Section 412, the fidelity bond is mandatory for anyone who handles plan funds and protects the plan itself against losses from theft or dishonesty — per DOL Field Assistance Bulletin 2008-04, it must cover at least 10 percent of funds handled, up to $500,000 per plan official. Fiduciary liability insurance is voluntary and protects plan fiduciaries personally against claims of negligent investment selection, excessive fees, or failure to follow plan documents. The two are not substitutes. Many plan sponsors carry only the required bond, leaving themselves personally exposed to fiduciary breach claims and the legal fees those claims generate.

Q: Does my personal umbrella policy cover claims against my business or LLC?

No. A personal umbrella policy extends the limits of your personal auto and homeowners insurance and responds only to claims against you as an individual. It does not respond to claims filed against your business entity, your management team, or your board in their organizational capacity. An umbrella policy would not cover an antitrust claim from a competitor, a lender's recovery action for alleged management misconduct, or a plan participant's ERISA fiduciary breach claim. Mid-market companies in the $5 to $30 million range frequently discover this gap only after a claim arrives. Organizational liability requires dedicated coverage — specifically D&O and fiduciary liability policies designed for business-entity claims.

Q: Does having a buy-sell agreement protect my ownership interest?

A buy-sell agreement alone does not protect your ownership interest — the protection depends entirely on whether the agreement is adequately funded. An agreement specifying what happens if an owner dies or becomes disabled is only as effective as the financial mechanism behind it. Without current, adequate funding, surviving co-owners must find the money through other means when a triggering event occurs. Additionally, following the Supreme Court's unanimous 2024 decision in *Connelly v. United States*, 144 S. Ct. 1406, any stock-redemption structure funded by corporate-owned life insurance should be reviewed with qualified estate-planning counsel, as the ruling significantly changed how those proceeds are treated for estate tax purposes.

Q: Is key person life insurance tax deductible as a business expense?

No. Under IRC Section 264(a)(1), premiums on a life insurance policy where the business is directly or indirectly the beneficiary are not deductible as a business expense. Key person life insurance premiums fall within this rule. The potential offset is that death benefit proceeds may be received income-tax-free,

but that outcome depends on compliance with the notice-and-consent requirements of IRC Section 101(j) before the policy is issued. If those requirements were not met, the death benefit becomes taxable income to the extent it exceeds premiums paid. Per IRS Notice 2009-48, closely held corporations are subject to these requirements, and a failure to comply cannot be corrected after the policy is in force.

Q: Does commercial general liability insurance cover directors and officers claims?

No. A general liability policy and a directors and officers (D&O) policy are intentionally designed as non-overlapping coverage. The general liability policy covers bodily injury and property damage arising from business operations. It explicitly excludes management-decision claims, breach of fiduciary duty allegations, antitrust actions, and disputes between management and investors, lenders, or employees alleging professional misconduct. Those are the categories D&O and management liability policies are built to address. According to Marsh's analysis of private-company liability programs, reliance on a general liability policy for management-decision claims is one of the most consistently documented sources of unrecovered losses among mid-market companies.

About Palmer Wealth Group™

Palmer Wealth Group™ is a Dallas/Fort Worth, Texas–based boutique wealth management practice operating as a Integrated Wealth Alliance for business owners, corporate executives, professional practice owners, and multi-generational families navigating the financial complexities that accompany significant wealth. Led by Luke A. Palmer, CFP®, AAMS®, CRPS®, AWMA®, the practice delivers comprehensive, integrated wealth management for clients who demand more than conventional advisory models can provide. Learn more at palmerwealthgroup.com.

Important Disclosures

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Industry benchmark data sourced from third-party research including historical surveys by Chubb, Towers Watson, and the National Association of Insurance Commissioners reflects historical measurements and should not be relied upon as current or predictive of future results.

The discussion of Connelly v. United States is provided for educational purposes only. Individual circumstances vary significantly. Consult qualified estate-planning counsel before restructuring any buy-sell arrangement or modifying any employer-owned life insurance structure.

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REFERENCES

1. U.S. Department of Labor, EBSA. "EBSA Restores Nearly $1.4 Billion to Employee Benefit Plans, Participants, and Beneficiaries." FY 2024 Fact Sheet. dol.gov, January 2025.
2. U.S. Department of Labor. Field Assistance Bulletin No. 2008-04. Guidance on ERISA Fidelity Bonding and Fiduciary Liability Insurance. dol.gov.
3. Connelly v. United States, 144 S. Ct. 1406 (2024). Supreme Court of the United States.
4. Internal Revenue Service. Notice 2009-48. Guidance on Employer-Owned Life Insurance Contracts. irs.gov.
5. Internal Revenue Service. Revenue Ruling 59-60. Valuation of Closely Held Business Interests.
6. Allianz Commercial. "Directors and Officers Insurance Insights 2026." Jarrod Schlesinger and Peter Carozza. commercial.allianz.com, 2026.
7. Aon. "Management Liability Insurance Market in 2025: Stability Amid Evolving Risks." Tom Hams. aon.com, 2025.
8. Nowak, Richard E. et al. "The Evolution of Defined Contribution Plan Class Action Litigation in 2025." Mayer Brown. mayerbrown.com, October 2025.
9. PwC. "2025 Survey of US Family Owned Businesses." pwc.com, 2025.
10. Pearson, Laura. "Setting the Table: Succession Planning Strategies for Family Business Legacies." Deloitte Private. deloitte.com, February 2026.
11. Encore Fiduciary / Dorsey & Whitney. "155 ERISA Fiduciary Lawsuits Filed in 2025 as Litigation Broadens." 401kspecialistmag.com, 2026.
12. Marsh. "Navigating Private Companies' D&O Risks and Coverage Opportunities." marsh.com.
13. Coyle, Gordon B., CPCU. "How Much D&O Insurance Is Enough?" The Coyle Group. thecoylegroup.com.

Research Methodology: *This article was prepared with the assistance of AI tools that supported research synthesis and initial drafting. AI tools do not exercise professional judgment and may have gaps in current regulatory or market information. All content was independently reviewed by qualified Palmer Wealth Group™ professionals. The analysis and guidance expressed here represent the professional judgment of Palmer Wealth Group™, not AI outputs. Palmer Wealth Group™ assumes full editorial and compliance responsibility for this content.*