To What Extent Does Using a Mutual Fund, Bank, or Insurance Company to Manage Plan Investments Protect a Fiduciary?

Financial institutions are exempt from fiduciary liability unless they accept it in writing.

> Consider: You don't believe that a financial institution would throw away its fiduciary liability exemption for li'l ol' you, do you?

Sec. 38 Investment Manager

TITLE 29--LABOR
CHAPTER 18--EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
SUBCHAPTER I--PROTECTION OF EMPLOYEE BENEFIT RIGHTS
Subtitle B--Regulatory Provisions
Part 4--fiduciary responsibility
Sec 1002 Definitions

(38) The term "investment manager" means any fiduciary (other than a trustee or named fiduciary, as defined in section 1102 (a)(2) of this title)—
(A) who has the power to manage, acquire, or dispose of any asset of a plan;
(B) who
(i) is registered as an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.];
(ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act [15 U.S.C. 80b–3a (a)], is registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary;
(iii) is a bank, as defined in that Act; or
(iv) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and
(C) has acknowledged in writing that he is a fiduciary with respect to the plan.
