Private Company Fiduciary Loss Scenarios

Life insurance benefit dispute

COVERAGE SECTION	FIDUCIARY LIABILITY
Cause of action	Administrative error
Company	Privately held
Number of employees	More than 150
Annual revenue	More than $25 million

DESCRIPTION OF EVENT

A management-level employee of the ABC Hotel, earning a $50,000 annual salary, died in an automobile accident. The employee's widow, who was the primary beneficiary of the employee's group life insurance, wrote a letter to hotel management claiming that the life insurance benefit paid to her under the benefit plan should have been five times her deceased husband's salary, not two times his salary. The hotel denied the widow's benefit claim. She sued, alleging that, although the benefit amount had been twice his salary at one time, her husband had requested that the amount be changed to five times just weeks prior to his death. The hotel denied that any change had been requested.

RESOLUTION

After the hotel investigated the widow's claim, they learned that indeed her spouse had requested an increase in the amount of his group life insurance coverage, but that the hotel's human resource representative had not properly processed the request. As a result of this revelation, the hotel settled the widow's case for more than $250,000. The hotel's defense costs exceeded $25,000.

Enrollment oversight

COVERAGE SECTION	FIDUCIARY LIABILITY
Cause of action	Administrative error
Company	Privately held
Number of employees	Fewer than 100
Annual revenue	Less than $10 million

DESCRIPTION OF EVENT

An employee of an on-line office equipment retailer submitted her medical insurance plan enrollment forms to the firm's health plan administrator. The firm's health plan administrator erroneously failed to forward the enrollment forms to the insurance company where receipt of the forms was a prerequisite to coverage. A few months later, the employee required surgery, but coverage was denied because she was never enrolled in the medical plan. The employee's attorney sent a letter to the retailer complaining about the denial of benefits and demanding payment of medical fees of $250,000, the cost of the surgery and post-operative care, plus reimbursement of attorney fees.

RESOLUTION

The case settled for more than $350,000, including attorney fees.

Bad advice

COVERAGE SECTION	FIDUCIARY LIABILITY
Cause of action	Denial of benefits, improper advice
Company	Privately held
Number of employees	More than 200
Annual revenue	More than $50 million

DESCRIPTION OF EVENT

The HMO under the media company's health plan denied payment of medical costs for an employee who was hospitalized following an accident. The HMO claimed that the employee never notified the HMO of her hospitalization, as required under the health plan. In fact, the employee had called her employer's plan administrator, who advised her that because she'd called the employer it wasn't necessary that she call the HMO, forgetting that the notification rules had recently changed. The employee sued her employer and the plan administrator over the benefits denial, alleging that she had received improper advice.

RESOLUTION

The case settled for more than $500,000—the amount of the benefits, plus attorney fees.

Advisor skims 401(k) deposits

COVERAGE SECTION	FIDUCIARY LIABILITY
Cause of action	Negligent selection of advisor
Company	Privately held
Number of employees	More than 300
Annual revenue	More than $50 million

DESCRIPTION OF EVENT

It turned out that the internal investment manager hired by a sports apparel retailer to manage investments of its 401(k) plan was allegedly skimming money off the top of employees' retirement fund contributions. He was also a relative of the company's plan administrator and, therefore, a thorough criminal background check was not performed. The Department of Labor (DOL) discovered the scheme during a spot audit. The DOL issued a letter advising the sports apparel retailer of its findings and demanded that the retailer and the investment manager make the plan whole (i.e., replace the funds that were stolen, as well as the investment income the funds would have earned had they been invested as directed by the participants.) If the plan was not made whole, the DOL would pursue additional courses of action, including litigation.

RESOLUTION

The retailer settled with the DOL prior to litigation and agreed to contribute more than $2 million to the employees' 401(k) accounts—the amount of funds skimmed from the top of the employees' contributions and the investment income the funds would have earned had they been invested as directed by the employees. Total legal expenses incurred by the sports apparel retailer topped $75,000.

Imprudent investment

COVERAGE SECTION	FIDUCIARY LIABILITY
Cause of action	Imprudent investment
Company	Privately held
Number of employees	More than 400
Annual revenue	More than $75 million

DESCRIPTION OF EVENT

Employees who participated in a 401(k) plan formed a class action and sued the investment committee, the plan administrator, the plan, and the sponsor organization, a health care equipment and services company. They alleged that $12 million invested in ABC Company guaranteed investment contracts (GICs) was imprudent because of that company's extensive junk-bond holdings. They further alleged that the investment violated the terms of the master trust agreement, which authorized GIC investments underwritten only by AAA-rated companies. ABC Company was not AAA-rated and was eventually placed in receivership.

RESOLUTION

Participants and their beneficiaries sued for breach of fiduciary duty. Plaintiffs sought to recover their lost profits—the difference in the value of their investments in ABC Company and the value their investments would have had if they would have been placed in AAA-rated investments. It took three years to arrive at a settlement of more than $4 million, including plaintiffs' attorney fees. Defense costs totaled approximately $750,000.

Mismanagement of retirement funds

COVERAGE SECTION	FIDUCIARY LIABILITY
Cause of action	Administrative error
Company	Privately held
Number of employees	More than 20
Annual revenue	More than $5 million

DESCRIPTION OF EVENT

The executive of a biotech firm asked the human resources department to roll over the funds in his retirement plan into specific mutual funds. Almost a year later, noticing the poor performance of the retirement fund, he discovered the firm had mistakenly rolled his retirement funds into money market funds rather than the better performing mutual funds that he selected. Alleging negligence in administration of the plan, the executive demanded that his employer deposit $80,000 into his retirement plan—the amount that the investments would have earned had they been invested as the executive directed.

RESOLUTION

After investigation, it was determined that the investments were not made as directed by the executive. As a result, $80,000 was deposited into the executive's retirement plan. Additionally, $5,000 was incurred in defense expenses.

Loss scenarios are hypothetical in nature and for illustrative purposes only. Whether or not or to what extent a particular loss is covered depends on the facts and circumstances of the loss and the terms, conditions, and endorsements of the policy as issued. It is impossible to state in the abstract whether the policy would necessarily provide coverage in any given situation. Consult your agent, broker, or other expert.

Form 14-01-0790 (Ed. 6/05)

Chubb Group of Insurance Companies
Warren, NJ 07059
www.chubb.com