Claims Scenarios

That Could Implicate Fiduciary Liability Coverage

CHUBB®

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Fiduciaries of all types of employee benefit plans are increasingly becoming vulnerable to claims for their actions in operating and administering Defined Contribution Retirement Plans, Defined Benefit Pension Plans, Employee Stock Ownership Plans, and Health and Welfare Employee Benefit Plans. The following samples, which include some examples from Chubb's own paid claims inventory, are depictive of the types of claims made under a Fiduciary Liability insurance policy.

Although these scenarios are based on actual events, certain facts and details have been altered for purposes of illustration and/or to protect the parties' privacy. Coverage for an actual claim depends on the specific facts of such claim. Nothing contained in these scenarios should be relied upon or used as a basis for granting or ensuring coverage.

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Claims Scenarios Involving Defined Contribution Retirement Plans

Type of Scenario	Details
Service Provider Dishonesty	A privately owned company retained a third party administrator ("TPA") to manage the day to day operations of the 401(k) retirement plan that it sponsored for its employees. The TPA, in turn, hired a third party investment manager to invest the plan's assets. The employer eventually discovered that the outside investment manager was "skimming" money off the top of the employees' retirement fund contributions. After further investigation, the employer learned that the investment manager was actually a relative of the owner of the TPA. The DOL discovered the scheme and accused the employer of a breach of fiduciary duty for, in essence, being "asleep at the wheel" and demanded that the employer make the plan whole. The employer had to pay not only to replace the funds that had been embezzled by the investment manager, but also for the lost investment income that the stolen funds would have earned had they been invested in the plan. The insured employer settled with the DOL, contributing more than $2,000,000 towards the loss. Legal expenses topped $75,000.
Failure to Timely Follow Employee's Investment Instructions	A company sponsored a 401(k) plan for its employees. One of its employees who participated in the plan issued instructions to the plan administrator, advising them to revise his 401(k) investments to decrease his investment in a fund that was heavily concentrated in sub-prime investments. The plan administrator executed the transfer within the week. However, in the interim, the sub-prime market imploded, and the employee suffered investment losses of $150,000 as a result of still being invested in the sub-prime vehicle. The employee sued for the lost principal plus lost investment income, claiming that the fiduciaries took too long to process and execute his transfer instructions, thus leaving him exposed to the losses in the sub-prime market.
Duped by a Fraudulent Fund	The fiduciaries of a 401(k) plan, seeking to shield themselves from liability for investment decisions, retained the services of a third party investment manager. The investment manager invested the plan assets with a fund that ultimately turned out to be a Ponzi scheme. All of the plan assets that were invested with the Ponzi scheme were lost. The plan participants sued the fiduciaries for negligently selecting and failing to monitor the investment manager. The employer tendered the suit under its Fiduciary Liability Insurance, and the matter was eventually settled, costing the insurer millions of dollars in defense costs and indemnity.
Employer's Company Stock Offered in Plan Declines in Value	A publicly-traded company that sponsored a 401(k) plan for its employees offered its own company stock as one of the plan investment options. The employer invested some of its matching contributions into the company stock fund and also allowed participants to purchase the company stock with their own contributions. The company stock price declined due to a downturn in the market, resulting in a decline in the participants plan balances. The participants sued the company's fiduciaries – including its directors and officers acting as unnamed, functional plan fiduciaries - for offering the company stock as an investment option and investing the company's matching contributions in the company stock. The plaintiffs alleged that the defendants knew or should have known (based upon nonpublic information) that the company stock was an imprudent, risky investment. After spending more than $10,000,000 in defense costs, the case settled for $7,000,000, all of which was paid for by insurance.

Payment of Excessive Plan Fees	A private university sponsored a large defined contribution plan. The plan participants filed a class action against the plan fiduciaries, alleging that the fiduciaries breached their duties by selecting plan investment options that charged excessive management fees and underperformed their benchmarks when considered net of expenses. The participants also alleged that the fiduciaries breached their duties in failing to negotiate lower recordkeeping fees, and instead agreed to an arrangement under which recordkeeping fees were paid as a percentage of assets under management, including the use of revenue-sharing payments from the fund manager. The claim cost millions of dollars to defend and presented significant potential indemnity exposure.
Including Proprietary Funds as Plan Investment Options	A financial institution (the "Parent Company") sponsored a 401(k) plan for its employees. The Parent Company was affiliated with an asset management company (the "Subsidiary.") The Parent Company included mutual funds managed by the Subsidiary (i.e. "proprietary funds") in the Parent Company's 401(k) plan investment lineup. The 401(k) plan participants (i.e. the employees of the Parent Company financial institution) sued the Parent Company and its plan fiduciaries, alleging that including proprietary funds as a plan investment option constituted a Prohibited Transaction under ERISA and a breach of the duty of loyalty because the funds were selected to generate revenue for the Sponsor. They also argued that the fees charged were excessive and that the proprietary funds underperformed its peers. The Plaintiffs demanded disgorgement of the excessive fees paid and payment for the lost investment opportunity.
Investment in GICs with Financially Unsound Insurance Company	A company that sponsored a 401(k) plan utilized Guaranteed Investment Contracts (GICs) as part of their plan investment lineup, and plan participants invested $12,000,000 in these GICs. However, the GICs were offered by an insurance company that was not AAA rated and had extensive junk-bond holdings. The GIC issuer eventually went into receivership, causing significant losses to the plan participants. The participants sued the plan investment committee, the plan administrator, the plan and the plan sponsor for breach of fiduciary duty and for violating the Master Trust Agreement, which authorized GIC investments underwritten only by AAA rated companies. The case eventually settled for more than $4,000,000 and cost over $750,000 to defend.

Claims Scenarios Involving Defined Benefit Pension Plans

Type of Scenario	Details
Systemic Miscalculation of Pension Benefits	A large manufacturing company maintained a defined benefit plan for its unionized labor force. This plan provided for survivor benefits for decedent employees' spouses. The surviving spouses filed a class action alleging an error in calculating their benefits under the plan because the benefit payments were being reduced by an offset in the amount of social security monies received by the spouses. The plaintiffs claimed that this was contrary to the plan documents as well as the collective bargaining agreement and sued for all past, current and future benefits. The insurance company paid $2,000,000 in defense costs as well as about $2,000,000 for an award of plaintiff's attorneys' fees.

Failure to Monitor Investment Managerv	A large company that sponsored a defined benefit plan retained the services of a professional investment manager in an effort to shield themselves from liability. The professional investment manager invested a large amount of the plan assets into higher risk investments, counting on a significant return in a bull market. However, the market turned and the plan lost $20,000,000, (over half of its value) in a short period of time. The employees claimed that the fiduciaries negligently retained and failed to adequately monitor the third party investment managers, resulting in a significant impairment of the pension benefits and threatening the viability of the plan itself. The fiduciaries faced millions of dollars in exposure, but were ultimately successful in defeating the claim for lack of standing.
Conversion of Defined Benefit Plan to Cash Balance Plan	An employer who sponsored a defined benefit pension plan amended the plan to convert it into a cash balance plan. In doing so, the employer did not allow existing plan participants to accrue additional benefits unless and until their benefits -as calculated under the cash balance plan formula - exceeded their benefit amount as calculated under the prior traditional defined benefit plan. Participants filed a class action against the employer and the plan fiduciaries for breach of fiduciary duty based on wear-away allegations. Approximately $15,000,000 was paid in defense costs.
Cyber Breach of Personal Information	A corporate employer offered an employee benefit plan to its employees, and in the course of administering this plan, the employer obtained access to the employees' protected personal information, including social security numbers. The employer's employee benefit plan records were subsequently "hacked" by an outside party and the personal information was stolen. The plan participants sued the plan fiduciaries for breaching their fiduciary duties under ERISA for failing to safeguard personal information and for neglecting to employ appropriate cyber security methods or retain competent cyber counselors in protecting plan information. Defense costs exceeded $2,000,000.

Claim Scenarios Involving Employee Stock Ownership Plans

Type of Scenario	Details
DOL Investigation Into Fiduciary Breach Based on Selection of ESOP Valuation Advisor	Following an ESOP's purchase of all of the shares of a company, the Department of Labor ("DOL") found that the ESOP fiduciaries and the independent trustee breached their duties in selecting an unqualified advisor to conduct a share price valuation. Specifically, the DOL found that the advisor lacked independence as it had a pre-existing relationship with the seller (having done work for the seller previously.) The DOL also took issue with the quality of the advisor's work in that the advisor allegedly used outdated financial information to perform the valuation. The DOL also condemned the ESOP's failure to attempt to negotiate a lower purchase price. The fiduciaries incurred millions of dollars defending this claim, exhausting their fiduciary liability insurance policy limit.

Creation of an ESOP	The founding shareholder of a successful privately-owned company created an ESOP for the purposes of selling his ownership interests to the ESOP and retiring. The ESOP paid over $500,000,000 for the company shares in a leveraged transaction. The founding shareholder/seller financed the ESOP's purchase of the shares in exchange for promissory note. Shortly after the purchase, the economy slumped and the value of the company declined significantly. The ESOP participants sued the plan fiduciaries, including the selling shareholder, claiming that the stock price was overvalued and that the leverage incurred in the transaction handicapped the company and prevented future company improvements. The ESOP participants also claimed that the interest rate on notes carried by the founder was excessive. The Fiduciary Liability insurer paid approximately $10,000,000 in defense costs, and the matter settled for $5,000,000 in cash plus additional debt forgiveness.
100% Owned ESOP Valuation Issues in Divorce Proceedings	Two brothers established and managed a privately-owned company. This company was 100% owned by an ESOP. Both brothers and their wives worked for the company and participated in the ESOP. One of the wives eventually filed for divorce, at which time her employment was terminated. Shortly thereafter, the company paid almost $2,000,000 for 10 years of backlogged management fees purportedly due and owing to a consulting company that was separately owned by one of the brothers. The estranged spouse alleged that these payments were "trumped up" so as to diminish the value of her distributive share from the ESOP.

Claims Scenarios Involving Health and Welfare Employee Benefit Plans

Type of Scenario	Details
Reduction in Collectively Bargained Retiree Medical Benefits	A large steel manufacturer, pursuant to a renegotiated collective bargaining agreement with the labor union, amended its employee medical plan so as to require all participants in the plan, including retirees, to contribute towards their health insurance premiums. Retired employees filed a class action alleging a breach of fiduciary duty under ERISA. Plaintiffs claimed over $60M in damages due to being required to purchase their own insurance and to pay out-of-pocket medical bills in contradiction of the original plan terms. The plaintiffs also sought reinstatement of the non-contributory benefits allegedly due to them under the original plan. Almost $3,000,000 in defense costs was paid by fiduciary liability insurance.
Failure to Enroll in a Healthcare Plan	An employer offered healthcare benefits to its employees through the use of a third party health insurer. The health insurer allowed participants to add newborn dependent children to their plan as long as notice was provided within sixty days of the child's birth. Following the birth of his child, an employee worked with his employer's HR department and immediately submitted all of the necessary paperwork to add his newborn child to his plan. However, the insured employer failed to submit the paperwork to its health carrier within the sixty day window allotted, and thus the child was not insured. The child developed serious medical complications within the first year of her birth, incurring significant medical bills. When the bills were submitted to the health insurance carrier, they denied coverage for the bills due to the fact that the child wasn't enrolled in the plan. The employee then turned to his employer for payment of the medical bills. The employer turned the claim over to its Fiduciary liability Insurance carrier, who settled the matter by paying well over $100,000 to cover medical bills.

Improper Plan Advice	The partner of an insured law firm became ill, at which point he looked into purchasing additional life insurance benefits through his firm's plan. After he was advised by the firm that he was eligible for these supplemental benefits, he completed and submitted all the necessary paperwork , and his employer deducted money for premium payments from his paychecks.. Some time thereafter, his condition worsened and he eventually passed away. When his widow attempted to collect the life insurance proceeds, she was advised that her late husband was not, in fact, eligible for supplemental life insurance benefits under the terms of the plan, and that her husband had been given improper advice by the firm. The widow demanded payment from the firm for the amount of the promised supplemental benefits. The firm tendered the matter to its Fiduciary Liability Insurance carrier, which paid the full amount demanded and settled the matter before any suit could be filed.
Medical Provider Claims for Systemic Underpayment of Medical Benefits	An employer sponsored a self-funded health plan for its employees, and retained a third party health insurer as the plan administrator (the "TPA"). The TPA determined the appropriate reimbursement amount for medical services. Out-of-network medical service providers, via an assignment of benefits form from the plan participants, filed a class action against the plan and the TPA, alleging systemic underpayment for emergency services provided under state law and seeking payment of uncovered medical services. The plaintiffs specifically alleged that the plan fiduciaries breached their fiduciary duties by selecting an inappropriate TPA and by being complicit in the systemic underpayments. Defense costs exceeded $1,000,000.
Employer's Interference with Attempts to Comply with Insurance Policy Terms	An employee worked for a company that provided health benefits through an HMO. The employee became ill and notified the employer's plan administrator's office HR department of her illness and impending hospitalization, and was told by the plan administrator's office HR department that it was not necessary to also call the HMO since the employer was now on notice. This advice was erroneous as the HMO's notification rules had recently changed. The HMO denied coverage for the hospital bills, pointing to the fact that it had never been notified of the hospitalization in violation of the plan requirements. The employee sued her employer for giving her improper advice and interfering with her ability to procure medical benefits. The claim eventually settled for more than $500,000, including the Plaintiffs' attorney's fees.

About Chubb

Chubb is the world's largest publicly traded property and casualty insurer. With operations in 54 countries, Chubb provides commercial and personal property and casualty insurance, personal accident and supplemental health insurance, reinsurance and life insurance to a diverse group of clients. As an underwriting company, we assess, assume and manage risk with insight and discipline. We service and pay our claims fairly and promptly. We combine the precision of craftsmanship with decades of experience to conceive craft and deliver the very best insurance coverage and service to individuals and families, and businesses of all sizes.

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For more information about Fiduciary Liability insurance, please contact your local agent or broker or visit www.chubb.com/us/fiduciary.

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The claim scenarios described here are hypothetical and are offered solely to illustrate the types of situations that may result in claims. These scenarios are not based on actual claims and should not be compared to actual claims. The precise coverage afforded by any insurer is subject to the terms and conditions of the policies as issued. Whether or to what extent a particular loss is covered depends on the facts and circumstances of the loss, the terms and conditions of the policy as issued and applicable law.

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