Fiduciary Liability Claim Examples

Euclid Specialty Managers
Governmental Fiduciary Liability Claim Examples

The **Euclid Vanguard Fiduciary Liability** insurance policy is the prudent choice for governmental benefit plan trustees because it provides the best combination of **scope of coverage**, **financial security** and **expert claims handling**. Many governmental employee benefit plans today remain uninsured because plan administrators often believe that fiduciary liability insurance is not needed. As the following claims examples demonstrate, prudent trustees choose fiduciary liability insurance to provide defense and indemnity protection to protect their personal assets and the assets of the plans they are in position to protect.

Example # 1 – Imprudent Investment Claims

The main indemnity exposure that presents the highest severity for governmental plans are imprudent investment claims. The most high-profile recent example was the lawsuit in 2010 against the City of Detroit Retirement Plan and Police and Fire Plans alleging imprudent investments that included kickbacks and improper payments to trustees from the investment advisers. These type of claims involve the potential for full policy limit exposure. Similar claims were filed with governmental pension plans that had Madoff investments.

Example # 2 – Class Action Complaint

A class action complaint was brought against a state retirement system alleging the Board of Trustees breached their fiduciary duties by not aggressively and publically demanding funding to stay solvent. The plaintiffs alleged illegal borrowing by the Trustees and collusion with state officials to “cover up” alleged underfunding, including the issuance of “secret, taxable pension obligation bonds.” The plaintiffs also alleged the Trustees failed to disclose material information regarding the underfunding and breached their fiduciary duty by selecting investments and investment managers not permitted by statute and which involved high-risk alternative investments “not appropriate for fiduciaries.” Plaintiffs demanded damages for breach of fiduciary duty for selecting improper investments and high-fee investment managers utilizing unsuitable alternative investments. The indemnity payment is based on the alleged improper fees and investment losses.

Fiduciary Expertise

Euclid Specialty has a market leading fiduciary program with Hudson Insurance Company, Rated “A/Excellent” by A.M. Best. Euclid has underwriting and claims authority from Hudson, which allows us to be responsive to our broker partners and clients.

Example # 3 – Breach of Fiduciary Duty – Benefits

Plaintiff filed a petition alleging certain state employee retirement benefit enhancements were granted unlawfully. Plaintiff alleged that “required information” regarding funding and retirement benefit enhancements was not “made public” and therefore the Board of Trustees breached its fiduciary duty. Specifically, Plaintiff alleged that because funds available for retirement benefits is not “infinite,” the Board was improperly advantaging some beneficiaries at the expense of others, since the benefit enhancements were granted unlawfully. Plaintiff also alleged that the Board breached its fiduciary duty in failing to preserve assets available to pay legitimate benefits in violation of the state constitution. Plaintiff sought damages for breach of fiduciary duty for failing to preserve assets by granting unlawful benefits, and for investing in illiquid and risky investments.

Example # 4 – Allegation of Improper Use of Retirement Funds for Personal Benefit

The Trustees of a state retirement system received letters from the state Board of Ethics, alleging that each of the individual Trustees violated certain provisions of state law by virtue of their alleged use of retirement system funds for personal expenses. The letters were the result of a Board of Ethics investigation involving alleged misspending of retirement system funds by the former Executive Director and the Trustees, as well as alleged improper authorization of expenditures by the Trustees that were solely to the benefit of the former Executive Director. The letters to the Trustees alleged breach of fiduciary duty by the Trustees "incurring and/or authorizing expenditures that were of little or no benefit to the system or its members." The Board of Ethics sought to refer the matter to the state District Attorney for potential criminal prosecution, as well as personal reimbursement by the Trustees to the system of alleged unauthorized expenses and/or system funds used for personal expenses. The indemnity exposure is the amount of the alleged improper expenditures.

Other Fiduciary Liability Exposures

1. Imprudent Investments
2. Benefit Claims
3. Funding Clams
4. Service Provider Claims
5. Social Investing
6. Prohibited Transactions/Alleged Dishonesty/Conflicts of Interest

Four Basic Fiduciary Duties

1. ***Duty of Loyalty***
2. ***Duty to Act with Prudence***
3. ***Duty to Diversify Plan Assets***
4. ***Duty to Follow Plan Documents***

The Basics of Fiduciary Liability for Governmental Plans

- **Personal Liability:** - Trustees have Personal Liability for any plan losses resulting from the breach and for any profits that were attained through misuse of plan assets.
- **Penalties:** Fiduciaries may also be liable for statutorily imposed penalties and reasonable attorney fees and costs incurred by the plaintiff.
- **Parties with Standing:** A lawsuit to establish the liability of a fiduciary may be brought by (1) any plan participant or beneficiary, (2) co-fiduciary liability by another plan fiduciary, or (3) a government entity.

Contact Euclid Specialty

Euclid Specialty Managers, LLC is an insurance program administration company specializing in fiduciary and management liability insurance for multiemployer, governmental and other non-profit employee benefit plans. Our underwriters are experts at protecting employee benefit plans from complex fiduciary and other risks.

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