PO Box 768 · Hendersonville, TN 37075
(T) 800-768-7475 · (F) 615-264-3980
www.bsrins.com

Fiduciary Liability

With the enactment of the Employee Retirement Income Security Act (ERISA) in 1974, fiduciaries assumed new responsibilities relating to the management and administration of employee benefit plans. ERISA mandates that fiduciaries may be personally liable for breach of certain responsibilities or duties imposed upon them under the law.

Pension Plan

A class of recently-retired employees sued a company and its officers on the committee that administered their pension plan, alleging that the director of employee benefits had misrepresented the benefits available to early retirees. The retirees also claimed that the defendants misplaced critical records of plan participants, which resulted in an underpayment of benefits due. The suite was dismissed, but the matter was settled during the appeal process. The settlement and legal costs incurred by the company totaled $1.25 million.

Group Health Plan

A secretary at a manufacturer suffered a cerebral hemorrhage and required skilled nursing care. Her employer changed its group health policy to a different plan, and the secretary enrolled in the new plan based on the representation that she would receive the same level of nursing care coverage. When the new plan stopped paying for the nursing services, the secretary filed suit, alleging that the employer breached its fiduciary duties under ERISA. Defense costs came to $350,000, and the settlement was $300,000.

Profit Sharing/Pension Plan

A well-established contractor created a profit sharing and pension plan for its employees. The Chairman, serving as trustee for the plan, had extensive experience in the local real estate market. After substantial investigation, including visits to each property and interviews with each borrower, the Chairman invested pension fund assets in local residential mortgages. These investments eventually constituted half the value of the plan because they achieved a good rate of return. The Department of Labor sued the contractor and the Chairman for failing to sufficiently diversify plan assets. The Court agreed with the contractor and the Chairman that the investments were prudent. Total defense costs incurred by the contractor were $600,000.

Crime

A manager of a wholesale distributor colluded with a fellow employee to manipulate inventory and defraud the company. They stole from the company by diverting raw material before it became inventory and by selling other finished products. The scheme had been going for two years. The total loss to the distributor exceeded $1.6 million.

Stolen Check

The insured wrote a check payable to a vendor for $150,000 in satisfaction of a trade debt. Prior to receipt by the vendor, the check was stolen. The name of the payee was fraudulently changed, and the amount of the check was raised to $250,000. The check was deposited into an account in the name of the fictitious payee, and the check was paid by the insured's bank. When the vendor contacted the insured regarding its outstanding receivable, the loss was discovered.

Credit Card Fraud

An employee uses a company credit card to purchase 35 expensive laptops. The employee resigns and the company cannot locate any of the laptops three month later. The total loss to the company was $122,500.

Stolen Supplies

A supply company for retail stores reported three instances in which product was missing. After an investigation the driver and supervisor confessed to the three thefts. The total cost of the theft was approximately $25,000.

Fraudulent Documentation

A company received a shipment of 75 new computers. The documentation was changed to 70 computers. After two months, the company figured out that they were missing 5 new computers. An investigation into the matter revealed the change in documentation. The total cost of the theft was approx. $25,000.