

Management and Professional Liability Claim Scenarios

Fiduciary Liability

Self-dealing and breach of fiduciary duty – pension plan

- **The Facts:** ABC Corp. is a biotechnology company. It had a profit sharing and pension plan for its employees. The trustee of the plan decided to hire an investment consultant for investment advice. As the trustee's brother was a well-known investment consultant, he hired him for the position and paid him \$300,000/yr. After the plan lost significant value due to bad investments, the plan participants filed a lawsuit against the trustee alleging violations of ERISA including self-dealing and breach of fiduciary duty. The participants alleged that the trustee violated ERISA by hiring his brother for the position and paying him an exorbitant fee out of the plan assets.
- **The Bottom Line:** Defense costs totaled \$75,000 and the parties settled for \$500,000.

Failure to pay fair market value for shares – ESOPs

- **The Facts:** ABC corp. is a large home builder company. It has an ESOP plan for its employees. In anticipation of his retirement, the CEO sold his shares in the company to the ESOP for a price set by the ESOP trustees. The employee/participants filed a lawsuit for breach of fiduciary duty alleging that the price paid for the shares was excessive and the trustees did not conduct a prudent and independent investigation into the fair market value for the shares.
- **The Bottom Line:** This matter was settled for \$1 million and defense costs exceeded \$100,000.

(Note: ESOP coverage available only with Epack, NOT Epack EZ)

Misrepresentations – long term disability plan

- **The Facts:** XYZ is a manufacturing company which specializes in women's apparel and had a long term disability program for its employees. A few years ago, one of its employees, Mr. Smith, was injured in an automobile accident. He called the HR manager at XYZ who told him he would not be eligible for disability benefits under the program because he was not employed at XYZ for long enough. The HR manager did not realize that Mr. Smith was covered under an exception to the policy and was eligible for benefits.
- **The Bottom Line:** Mr. Smith sued XYZ and the plan for violation of ERISA and demanded lost benefits and attorneys fees. He was awarded \$95,000 in lost benefits as well as an additional \$200,000 for attorney fees.

