



ACE Commercial Risk Services®

Examples of Management Liability, Employment Practices Liability and Fiduciary Liability Lawsuits Involving Private Companies, Not-For-Profit Entities and Private/Public School Entities

THESE MATERIALS HAVE BEEN PREPARED FOR INFORMATION PURPOSES ONLY. THEY ARE NOT INTENDED TO MAKE ANY COVERAGE REPRESENTATIONS OR TO GIVE COVERAGE OR LEGAL ADVICE.

The following are examples of some of the types of management liability, employment practices liability, and fiduciary liability lawsuits that may be brought against private companies, not-for-profit entities, or private/public school entities. This memo is not intended to and does not provide any opinion or position with respect to coverage that could be available with respect to these matters. Whether or not a particular claim, allegation, damages or loss would be covered under any particular policy, whether indemnity or defense costs coverage, would depend upon the specific policy and endorsement provisions, terms and exclusions, as well as the specific allegations and facts of the claim.

Management Liability:

- Shareholder of the company brings a lawsuit against the directors and officers alleging that he was fraudulently induced to invest money in the company based upon statements made by the d&o's regarding projected revenues. Shareholder brings the suit after the revenues are not achieved and the value of his shares go down.
- Minority shareholders bring a lawsuit against the board of directors alleging that the board recommended a sale of the company for too low a price and for self-serving reasons, including that certain directors obtained lucrative job positions with the acquiring company. Sale is approved by a majority of the shareholders and the minority shareholders sue the board for breach of fiduciary duty including breach of the duty of loyalty.
- Investor brings a lawsuit against the directors and the company alleging the defendants fraudulently induced investor to issue a note payable to the company based upon false representations regarding an expected lucrative contract with a large customer. Investor brings the suit after the contract negotiations fall through and the company defaults on the note.
- Shareholders bring a lawsuit against the directors and officers alleging the defendants shut down the company's operations without shareholder approval as required by the shareholder agreement. Prior to dissolution, the defendants allegedly made compensation payments to themselves without obtaining shareholder approval as required by the shareholder agreement, and diverted corporate assets to themselves in connection with the shut-down.
- Company makes statements in its private placement memorandum to investors about the progress of development regarding a new product. Company raises money through the placement to fund completion of the development. Product fails later tests and is unable to be manufactured. Investors bring a civil lawsuit against the directors, officers and company for intentional and negligent misrepresentation.



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- Parent brings a lawsuit on behalf of her autistic child against the insured/school and school board for violations of federal law setting forth standards of appropriate public education, alleging that the school failed to provide an adequate special education program and the required one-on-one teacher time.
- Church members bring a lawsuit against insured/church and its board alleging negligent misuse of funds resulting from overpayment of church funds for ground maintenance, and breach of fiduciary duty because board member's brother was hired over more competent contractor to renovate the church building.
- Homeowners of a housing development bring a lawsuit against insured/homeowners association alleging breach of fiduciary duty arising out of the association's mandate that each homeowner must join the housing development's golf club as a precondition to the purchase of a home. The membership fee is \$50,000 a year and in light of the economic downturn, such precondition allegedly interferes with the owners' abilities to sell their homes.
- Competitor brings a suit against insured for tortious interference with business relations, alleging that insured solicited employees away from the competitor and conspired with such employees to steal competitor's customer lists and other trade secrets, and is using such information to solicit the competitor's customers.
- Donor brings a lawsuit against a university alleging the university improperly used an endowment established by the donor.
- Members of a consumer co-op bring a lawsuit against co-op's directors alleging the directors breached their fiduciary duties by using co-op funds to purchase personal items such as an automobile and personal computers.
- Plaintiff/seller of food items brings a lawsuit against a food co-op alleging the co-op drove him out of business by engaging in unfair business practices that included favoring other businesses by insisting that he charge less than his competitors and justifying their refusal to pay for his food items by falsely accusing him of providing low quality items.
- Donors bring a lawsuit against the trustees of a charitable organization for allegedly wasting corporate assets by making unnecessary renovations to their headquarters.
- Directors of a tax-exempt organization who authorized the organization to engage in the sale of a certain product and other "profitable operations" were sued for jeopardizing the organization's tax-exempt status.
- Trustees of a museum were sued for negligently handling and damaging works of art, failing to maintain safe premises, failing to keep orderly books and records, and negligently maintaining the museum's interior.



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- The directors of a non-profit corporation were sued for failing to provide access to financial information and for mismanagement of the corporation, which resulted in decreased membership in the organization.
- Donors bring a lawsuit against a non-profit community foundation for failing to properly invest and oversee funds that were donated for the purpose of supporting a community health care center.
- A non-profit hospital system was sued in a *qui tam* action for allegedly engaging in a “pay to play” scheme whereby the hospitals assigned time to oncologists in proportion to the volume of referrals of oncological procedures made by such doctors to the hospital.
- A community health care center was sued by a contractor who provided physical therapy services to the center’s patients for breach of contract and tortious interference with contract when the center hired one of the contractor’s employees as an employee.
- Property owner brings a lawsuit against the property owners association alleging the association failed to make certain assessments necessary to fund its obligations to repair and maintain the association’s infrastructure.
- Property owner brings a lawsuit against the directors of a homeowners association for failing to enforce certain restrictive covenants against another property owner who made an addition to his home and put in a swimming pool which allegedly violated the association’s restrictive covenants.

EPL:

- Former employee who is over 40 years old and is laid off as part of a company-wide downsizing brings a class action against insured/former employer under the Age Discrimination in Employment Act seeking front pay and alleging that the downsizing was discriminatory in that a disproportionate number of laid-off employees were over the age of 40.
- Female former employee files a charge of gender discrimination with the Equal Employment Opportunity Commission (EEOC) against insured/former employer seeking front and back pay and alleging that a male employee with less experience was promoted instead of her, and that she was terminated in retaliation for the complaints she made to management about her unfair treatment.
- Female former employee brings a lawsuit under Title VII of the Civil Rights Act against insured/former employer and her former supervisor alleging “quid pro quo” and hostile work environment sexual harassment and constructive discharge. Employee alleges that her supervisor made repeated sexually crude comments to her and sexual advances toward her, and also told her that she would not get a raise unless she agreed to go out on a date with him. As a result of the pervasiveness of such behavior and the hostile work environment that it created, she alleges that she was forced to resign.



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- Class action brought on behalf of a class of minority employees under Title VII of the Civil Rights Act against insured/employer alleging that the company failed to implement a formal job posting procedure informing employees about job opportunities and instead utilized informal “tap on the shoulder” discriminatory promotion practices that resulted in promotions to a disproportionate number of non-minority employees.
- Contractor brings a suit against insured/school alleging that the school’s decision to award a renovation contract to another bidder was the result of unlawful discrimination based upon religion. Contractor produces emails from a school board member circulating religiously-based jokes to other members during the bidding process. (Third Party EPL)

Fiduciary Liability:

- Retired employee who had never enrolled in the company’s 401k plan brings suit against company and officer/fiduciaries of plan alleging failure to properly advise him on how to enroll and that enrollment was not automatic.
- Employee brings suit against the company and employee/administrator of the employee benefit plan alleging damages resulting from administrator’s negligence in failing to implement employee’s investment choice.
- Employee brings suit against the company and employee/administrator of the employee benefit plan alleging damages resulting from administrator’s delay in transferring fund balances from one investment choice to another.

The above does not provide any summary or assessment of coverage. For current terms and conditions of coverage, please refer to the actual policy. Policyholders are encouraged to consult their insurance agent or broker for advice on policy forms and coverage. Insurance provided by Westchester Fire Insurance Company, Philadelphia, PA, ACE American Insurance Company, Philadelphia, PA, or, in some states, other insurers within the ACE Group of Companies or its allied distribution associates. Surplus lines insurance sold only through licensed surplus lines producers. All products may not be available in all jurisdictions.

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