

# ExecutivePerils

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## Fiduciary Liability Claims Scenarios

- The U.S. Department of Labor sued the individual plan administrator, the 401(k) plan and the sponsor organization. They allegedly failed to inform employees when they switched guaranteed income contract (GIC) companies, and had misled participants by continuing to use the previous GIC company's enrollment forms. **Settlement paid: \$1,000,000.**
- Employees excluded from a company Employee Stock Ownership Plan (ESOP) formed a class action and sued individual plan fiduciaries, the plan and the sponsor organization. The employees sued to recover forfeited wages, and to gain the ability to participate in the sponsor organization's plan. The financially troubled organization had negotiated wage reductions with its employees in exchange for the establishment of an ESOP. However, when the ESOP was finally established, the effective date of the plan excluded former employees and those who had been promoted to management since the resolution of the wage negotiations. After several years, the parties reached a settlement. **Defense costs paid: \$535,000.**
- A retired employee sued the plan administrator and the pension plan alleging an error in administration of the plan and a miscalculation of plan benefits. The employee had announced plans to retire and requested in writing a pension calculation. The plan administrator took over 45 days to value the plan assets. During this time there was a substantial drop in the stock market (Black Monday), which adversely affected the value of the employee's retirement funds. **Settlement paid: \$80,000.**
- Former employees formed a class action and sued the directors, officers, the ESOP trustee, and the sponsor organization. While in financial difficulty, the sponsor organization had bargained for a 15% wage reduction and promised in return to establish an ESOP. Shares acquired by the ESOP were valued at \$10 per share, while the wage reductions were valued at \$44 per share. When the employer sold the company, the acquirer liquidated the ESOP at \$2 per share. Employees argued their former employer misrepresented the value of ESOP shares at the time of wage reduction, and the trustee gave too much consideration per share when the ESOP was first established. This allegedly allowed the acquirer to purchase the shares for an inadequate amount. It took nine years to resolve this case. **Defense costs paid: \$1,800,000.**
- Current and retired female employees formed a class action and sued the plan administrator, the plan and sponsor organization. They alleged that the defendants failed to account for maternity leave when calculating time in service for pension calculations. **Settlement and defense paid: \$2,555,000.**
- The spouse of a plan participant sued the plan administrator and the sponsor organization for the spousal pension rights. The plaintiff alleged that the plan participant forged the signature on the spousal release form, which the plan administrator had notarized, releasing the spouse's retirement funds to the plan participant. **Settlement paid: \$400,000.**

These scenarios are not intended to be interpreted as coverage positions. Coverage for any given claim is based upon its facts and the specific terms and conditions of the policy. Information provided by Chubb Executive Risk.