

Miscellaneous Professional Liability Insurance for Trustees

Individuals who serve as trustees may face substantial personal liability. Trustees are often called upon during tumultuous times to handle challenging accounting, financial and other managerial responsibilities. Few have prior experience or training in trustee professional services, yet they are tasked with making decisions in the best interest of the beneficiaries, in accordance with the trust and in compliance with the law.

This can lead to any number of contentious situations. Allegations against trustees can take many forms, including mismanagement of trust assets, failure to diversify assets, accounting errors, unfair or improper distributions, failure to follow terms of the trust agreement and conflict of interest. Trustees may be sued by beneficiaries, creditors, charities or government agencies acting on behalf of beneficiaries. And, unlike employees of a professional services organization, trustees are not afforded protection by an entity — actions for breach of trust are brought against the trustee personally.

Trustees' liability coverage is afforded to natural persons in their individual capacities as trustees. Westchester's Miscellaneous Professional Liability insurance for Trustees coverage is tailored to the unique exposures of trustees overseeing a variety of trusts, including:

- Testamentary trusts
- Living trusts (when the grantor is not the trustee)
- Liquidating trusts
- Bankruptcy trusts
- Receiverships
- Claims/insurance trusts

Claims Scenarios

A suit was filed against the trustees of a testamentary trust alleging that the current trustees failed to review and address the prior trustees' actions. Brought by one beneficiary on behalf of herself and the other beneficiaries, the suit alleged breach of fiduciary duty, and that the distributions were not fair, not in accordance with the trust, and unequal. The case was settled with a monetary payment and amendments to the trust as to how future distributions were to be made.

The founder of a large private company created a testamentary trust for his wife and children. The trust assets consisted only of the company's stock. The intent of the trust was to hold the stock within the family, and the terms of the trust relieved the trustees of a duty to diversify. The beneficiaries alleged breach of duty against the trustees for failing to diversify the assets of the trust. As a result of the company's bankruptcy, the trust lost millions in value.

The assets of a trust were managed by an investment advisor. Both the investment advisor and the trustee were sued by the beneficiaries when the trusts' assets declined substantially because of decisions made by the trust's investment advisor. The trustee was sued for failure to properly select and supervise the investment advisor and for failure to ensure that the assets were invested in accordance with the trust's objectives.

A deceased person's will appointed a trustee to oversee the trust created by the deceased's estate, which included three properties. The trustee liquidated the estate and distributed the proceeds in accordance with the will and trust. The beneficiaries brought suit, alleging that the trustee was negligent in obtaining a current, accurate assessment of the property values, resulting in a substantial loss to the estate.

Coverage Features

The following Miscellaneous Professional Liability insurance features are available to trustees:

- No requirement that services are performed for a fee; trustees are not always compensated, and compensation is not required for coverage
- Trustee is the Named Insured
- Definition of Professional Services addresses the exposures unique to trustees
- Final adjudication and non-imputation of the conduct exclusions
- Vicarious liability coverage for the selection of "outside professional services providers"
- Coverage for trustees' employees in their provision of services for the trust

The Westchester Advantage

Westchester has earned its leadership position in professional liability insurance as a result of our:

- **Financial stability:** Westchester receives consistently high ratings for financial strength from A.M. Best, Moody's and Standard & Poor's, the leading independent analysts for the insurance industry.
- **Reputation for paying claims and superior service:** Our reputation for expert, fair claims handling is renowned in the industry.
- **Broad coverage:** Our MPL insurance products offer some of the broadest coverage available in the marketplace. We provide this coverage on a monoline policy form or as part of a suite of specialty liability coverages.

In The News: Allegations Against Trustees

- Two trustees are defendants in litigation brought by the grantor seeking to remove certain assets from the trusts he created for the benefit of his now estranged heirs. At issue is whether the grantors proposed asset swap is fair and equal.
- A lawyer was suspended from practicing law for 30 days and placed on 3 year probation following litigation by the beneficiaries of an estate trust for mishandling trust assets.
- Trustees for an automobile collection charitable trust have been sued for mismanagement of trust assets, including paying themselves excess fees and filing inaccurate tax forms with the Internal Revenue Service.

Contact Us

For more information please visit us at:

<https://www.westchester.com/en/contact-us/product-line/financial-lines.html>

The claim scenarios described here are hypothetical and are offered solely to illustrate the types of situations that may result in claims. These scenarios are not based on actual claims and should not be compared to an actual claim. The precise coverage afforded by any insurer is subject to the terms and conditions of the policies as issued. Whether or to what extent a particular loss is covered depends on the facts and circumstances of the loss, the terms and conditions of the policy as issued and applicable law.

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