

Executive ViewPoint (EVP)

A Management Liability Product *Claims Examples*



Directors and Officers

Supplier Error Causes Breach of Contract Claim from Customer

ABC Company is a privately held wholesaler that sells to contracted retail businesses. ABC depends on its supplier to provide material necessary to create its product. In preparation to fulfill ABC's customers' contract orders for the upcoming season, ABC places its supply order. Unfortunately, days before the delivery date, a processing error occurs in the supplier's facility, which renders the material unusable. As a result, ABC is unable to fulfill customer orders. ABC and its directors are sued for breach of contract by customers. The individual directors are provided a defense. Defense costs total \$74,858.

Shareholders Sue Board for Breach of Duty After Investment Loss

After a successful season, Company A accumulates a large surplus of capital. The board recommends that Roger, a director, lead a committee to generate investment income with the goal to eventually use the funds to build a new facility. The committee meets with several investment consultants before finally deciding to purchase shares of Company B. Four months into the purchase, Company B's shares plummet due to an unsuccessful product launch. As a result, the value of Company A's investment is significantly reduced. Shareholders sue Roger and the committee for breach of duty, mismanagement of funds and negligence. Defense costs exceed \$490,000.

Business Expansion Leads to Competitor Lawsuit

ABC Company is a privately held distributor that is looking to expand its retail customer base in a nearby city. A direct competitor of ABC has already contracted with major retail stores within that city. In an effort to win business, ABC launches an exclusive incentive allowing customers to waive delivery fees for a full year. As a result and unknown to ABC, the customers of the competitor terminate their agreements with the competitor. The competitor sued ABC for tortious interference (wrongful interference with contractual or business relationships). ABC was provided a defense and ultimately won at trial after the judge agreed that ABC's actions did not constitute tortious interference. Defense costs were over \$300,000.

Employment Practices Liability

Employee Fired After Positive Review and Sues for Wrongful Termination

Company A hires Joan. Despite a rigorous hiring process, it soon becomes clear that Joan is not meeting expectations; she is repeatedly late, is rude to her co-workers and managers, and often misses deadlines. In an attempt to avoid dealing with Joan, her manager decides to give Joan a positive review and promote her to another position where she reports to another manager. In her new position, Joan continues to exhibit her poor work ethic. The new manager is unsatisfied with her performance and fires Joan. A few weeks later, the company receives a suit from Joan alleging wrongful termination, as her records show her positive performance review. Joan sues for back pay and front pay and emotional distress. Defense and settlement exceed \$85,000.

Employment Practices Liability (Cont.)

Employee Sues for Workplace Bullying Despite Accommodations

Chrissie works for Company A. She claims to be harassed and bullied by her co-workers. Chrissie goes to her manager and complains. Her manager explains that this is the culture of the department; they like to joke around and enjoy a lively, fun pace. After complaining one more time, the manager decides it would be best to move Chrissie to another department without change in pay. Chrissie is again unhappy and resigns despite accommodations. A few weeks later, Chrissie sues, alleging workplace bullying, sexual harassment and hostile work environment. She claims the new department was a demotion; it limited her opportunity for growth and caused a loss in seniority status. Settlement and defense costs total \$318,750.

Termination of Under-Performing Employee Leads to Age Discrimination Allegation

Company A has employed Ted, age 59, for the last fifteen years. The company invests in new project management software. They offer extensive training sessions to allow all employees to feel comfortable with the software, but Ted does not attend any of them. Ted's productivity is consistently below standard, and the company receives several customer complaints. Ted's supervisor reviews Ted's performance and encourages him to attend the trainings, saying he will be more efficient when he learns to correctly utilize the new software. When Ted's performance does not improve, Ted is fired. Ted files a lawsuit against the company alleging age discrimination, seeking two years' worth of front pay and a large sum for emotional distress. Defense costs and settlement exceed \$120,000.

Fiduciary

Administrative Error Results in Lost Investment Income for Plan Participants

An administrative error causes a stock investment change to not be implemented in Company A's 401k Plan. A group of plan participants realizes this request was never put into effect, and, as a result, they collectively lost \$86,971 in investment income they would have gained. Defense costs and settlements are greater than \$90,000.

Plan Participants Sue Fiduciaries for Failing to Review Work of Third Party Plan Administrator

To ensure the best employee benefit plan investment management, Company AB decides to utilize an outside service provider, XY Benefits, to administer their employee benefit plan. XY Benefits fails to properly diversify plan participants' assets, causing a significant loss in value. Company AB is sued for breach of duty for failing to review the work of XY Benefits. Defense and settlement exceed \$150,000.



Email submissions to professional@devonparkspecialty.com

This document does not amend, extend or alter the coverage afforded by the policy. For a complete understanding of any insurance you purchase, you must first read your policy, declaration page and any endorsements and discuss them with your agent. A sample policy is available from your agent. Your actual policy conditions may be amended by endorsement or affected by state laws.

Executive ViewPoint (EVP)

A Management Liability Product

Executive ViewPoint (EVP) is a Management Liability policy designed to cover private companies with 201 up to 1,500 employees. We offer the following coverage parts and policy features:

Key Policy Features

- Non-rescindable policy
- Duty to defend policy with 100 percent allocation
- No hammer clause
- 12-month application look-back
- Limits of up to \$5,000,000 available for each coverage part
- Timely Notice and Resolution Incentive

Directors and Officers Liability

- Lifetime Occurrence Reporting Provision (LORP) for former directors and officers
- Additional Side A Limit of \$1,000,000 automatically included
- \$100,000 sublimit for:
 - ◆ HIPAA fines and penalties
 - ◆ Foreign Corrupt Practices Act (FCPA) fines and penalties
- Carveback in the definition of "loss" for taxes imposed in bankruptcy on directors and officers for Side A Loss
- Broad definition of "claim," including extradition costs
- \$250,000 sublimit for "shareholder derivative demand investigation costs"
- Broad definition of "insured," including:
 - ◆ Advisory board
 - ◆ In-house general counsel
 - ◆ Independent contractors
- Conduct exclusion includes final non-appealable adjudication in the underlying action language
- Severability of the application and conduct exclusions for "insured persons"

Coverage available via endorsement:

- ◆ Privacy Breach Expense
- ◆ Workplace Violence Expense
- ◆ Kidnap and Ransom Expense
- ◆ Identity Theft Expense
- ◆ Defense outside limits up to \$1,000,000

Employment Practices Liability

- "Loss" includes:
 - ◆ Claimant's attorney fees, as awarded by the court
 - ◆ Front and back pay
- Broad definition of "employee," including:
 - ◆ Interns
 - ◆ Volunteers
 - ◆ Independent contractors
- Broad definition of "wrongful employment act," including:
 - ◆ Gender identity discrimination
 - ◆ Invasion of privacy (includes unauthorized use or disclosure of "confidential employee information")
 - ◆ Acts committed via Internet, email or social media
 - ◆ Harassment including workplace bullying
- Sublimit for \$100,000 (defense and indemnity) for Wage and Hour claims, available by endorsement
- Third-party coverage included for most classes

Fiduciary Liability

- \$150,000 sublimit for "voluntary settlement program costs"
- \$25,000 sublimit for 502c fines and penalties
- \$25,000 sublimit for fines and penalties under the Pension Protection Act of 2006
- \$150,000 sublimit for HIPAA fines and penalties
- Investment loss carveback to the Benefits Due exclusion

Why Purchase an EVP Policy?

- Directors' and officers' personal assets are at risk; they may be personally liable for their business decisions and may be sued as individuals
- A private company is more likely to have an employment practices claim than a general liability or property claim
- By law, fiduciaries of pension and benefit plans are personally liable for their decisions even if they outsource their employee benefit plan to third parties
- Private companies face claims from their employees, customers, suppliers, competitors, creditors and shareholders

Additional Advantages

- A Berkshire Hathaway Company
- Competitive pricing with superior service
- Unlimited, free Employment Practices Liability Helpline
- Online Human Resources Center
- Access to our Business Resource Center



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Executive ViewPoint (EVP)

This product is designed to cover private companies with 201 up to 1,500 employees. We offer Directors and Officers, Employment Practices and Fiduciary Liability with additional coverages offered via endorsement.

Common classes eligible for the EVP policy include, but are not limited to:

- Construction (buildings, heavy and civil, specialty trade)
- Food service
- Hotels
- Information (publishing/data processing)
- Manufacturing
- Miscellaneous professional services (advertising, marketing, consultants)
- Professional services (architects, engineers, interior design, surveyors, accountants)
- Property managers
- Retail trade
- Scientific services (testing labs)
- Services (other – repair and maintenance/personal services)
- Technology services
- Transportation and warehousing
- Wholesale trade

Most common ineligible risk characteristics and classes include, but are not limited to:

- Risks located in AL, LA, MS or WV
- Accounts with more than 1,500 employees
- Publicly traded companies
- Broadcasting (radio/television)
- Casinos
- Financial institutions including mortgage bankers and brokers
- Franchisors
- Full-service restaurants/bars/taverns
- Governmental entities or municipalities
- Health care
- Insurance carriers
- Law firms
- Manufacturing of tobacco, small arms, guided missiles, aircraft
- Motion pictures/Entertainment
- Pharmaceuticals/Nutraceuticals
- Real estate (except property managers)
- Securities brokers/dealers
- Security guards, armored car
- Transportation (passenger)
- Trusts
- Unions
- Utilities
- Venture capital/Private equity firms

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