A VL real life claim example

Trustees Liability

Family Trust Funds

The Insured was an accountant who acted as a trustee on many client trusts. The other trustee was a lawyer. The particular trust, which gave rise to the claim, was a discretionary family trust. It contained a provision that the capital held in the trust was to be vested in the three sons of the settlor on a specified date based on the youngest son attaining the age of 30 years, but with the provision that the assets could remain in the trust beyond the vesting date if the beneficiaries agreed.

The vesting date came. The settlor advised the trustees that he wished the funds to remain in the trust because certain investments owned by the trust did not mature until after the vesting date. He told the trustees that his sons, the beneficiaries, were happy with this.

However one of the sons, who was in marital strife, approached the trustees with a demand that the trust funds be distributed, or at least his share. The trustees subsequently received a formal claim stating that they had breached their duty to the trust by not distributing the funds on the vesting date. In the interim the value of the trust funds had diminished in the prevailing financial market conditions.

The quantum of the claim was based on the reduced value of funds available for distribution. The claim was for $160,000. Independent legal advice was that the trustees had failed in their duty. Negotiation with the beneficiaries produced an agreed settlement of $130,000 which was shared between the Insured and the other trustee. The policy covered the legal costs.

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A VL real life claim example

Trustees Liability

Superannuation Trust Funds

The Insured was the superannuation trust fund of a small manufacturing firm. The trustees were two directors of the company, the company's lawyer and an employee representative. The company ran into financial difficulties and the two trustee directors arranged for the company to borrow funds from the super fund under a loan agreement, engaging the legal expertise of the lawyer trustee.

At the time, the employee trustee had left the company (and had been paid out his relatively small contributions to the fund) and had not been replaced. A contributing employee took voluntary redundancy from the company and was entitled to a pension from the fund which gave a 'lump sum' option. The employee opted to take a lump sum but the fund could not settle this because of its loan to the company.

The trustees received a letter of claim from the redundant employee. The trustees claimed under the Trustees Liability policy. The trustees had failed in their duty to the trust by misusing the fund. The company was still cash-strapped and was unable to raise the money to make settlement.

The claim was settled with a back to back agreement with the company for reimbursement on the 'drip-feed' over 18 months.

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