

Depository Institutions Claims **Examples**

The time when your bank experiences a loss is not the time to learn how its insurance policy works. The following examples illustrate potential exposures and how AmTrust's policy may respond.

Coverage Part / Insuring Agreement	Claims Example
DIRECTORS AND OFFICERS LIABILITY	
Side A - Insured Persons Liability Coverage	As a result of the bank incurring substantial operating losses, the bank's share value declines significantly. In response, a derivative action is brought by a shareholder against the board of directors. The suit alleges mismanagement and the board's failure to supervise the institution in a safe and sound manner. Note that in a shareholder derivative action, the proceeds benefit the institution, not the shareholder.
Side B - Company Indemnification Coverage	The board of a bank invests in a bond issue of a local municipality. Over time, the city defaults on its loans and the bank has to write down the investment loss, wiping out yearly earnings. A shareholder, who has come to rely on the annual dividend, files suit alleging that the board was negligent in making this investment decision.
Side C - Company Liability Coverage	<p>Third Party Example: The bank leases office space to a local restaurant that shares part of the bank's building. The tenant goes out of business and sues the bank, alleging that the bank breached its contract as landlord. The breach of contract allegations are excluded, but defense expenses are covered.</p> <p>Securities Example: A publicly-traded bank, in the process of a merger, is sued by shareholders alleging that the board was negligent because it did not consider other offers. The bank is forced to defend itself and incurs additional costs to get a fairness opinion. The costs for the fairness opinion are not covered as this is considered a normal operating expense, however, defense expenses and a portion of the settlement are covered.</p>
EMPLOYMENT PRACTICES LIABILITY	
Employment Practices Liability	A bank is opening a branch office near the local community college. Another branch manager goes to the institution's president and indicates he wants the opportunity to run the new branch. The bank's president advises that he is looking to bring on a younger branch manager that would better attract youthful clientele in the area at a lower salary. The 55 year-old branch manager sues for age discrimination.
Third Party Liability	A female courier makes weekly deliveries to the institution. Each week the driver is subjected to sexual advances by the branch manager. The driver complains to the individual's supervisor who then notifies the president of the company. The complaint is not addressed and the harassment continues. Finally, the driver files suit against the financial institution claiming sexual harassment and wrongful infliction of emotional distress.
FIDUCIARY LIABILITY	
Fiduciary Liability	A bank's employees claim a profitable investment option was taken away and improperly replaced with another less profitable option. They sue their employer claiming failure to monitor the actions of their outside investment manager.
Voluntary Settlement Program	A bank's loan officers are independent contractors. The IRS audits the institution's payroll and determines they were misclassified and should have been paid as employees. Though the IRS allows them to enter a Voluntary Classification Settlement Program to correct the error and provide relief from having to pay retroactive costs, they still incur fines and penalties.

Coverage Part / Insuring Agreement	Claims Example
HIPAA Civil Money Penalties	A bank mistakenly discloses medical information pertaining to their 25 employees when they don't properly dispose of their personnel files while converting to a paperless system. The minimum penalties in this situation can range from \$100/violation up to a maximum of \$50,000/violation (with an annual maximum of \$1.5 million).
PROFESSIONAL LIABILITY	
Lender Liability	A loan officer indicates to a borrower that the bank will fund the borrower's loan request. The borrower relies on this commitment (and the loan officer's apparent authority to make the commitment) and plans his business accordingly. The loan is subsequently not approved, leaving the borrower with no resources to take advantage of business opportunities that were based on the funding commitment. The borrower sues the loan officer who made the funding commitment.
Professional Services Liability	The bank acts as a depository for ACH transactions of a larger institution. An employee transposes numbers on two merchant accounts, causing ACH credits to be erroneously deposited into the wrong account. When the error is discovered, the funds have already been withdrawn by the business that received it and the entity refuses to return the overage. The customer that incurs the loss sues the bank.
Trust Services Liability	The trustee of a testamentary trust fails to obtain personal property from the executor of an estate as soon as the terms of the will and the probate law permit. The executor misappropriates the assets. The trustee is held liable to the beneficiaries for this loss due to the delay in obtaining possession of the trust property.

For more information, contact us at FISubmissions@amtrustgroup.com

Non-Depository Institutions Claims Examples

The time when your bank experiences a loss is not the time to learn how its insurance policy works. The following examples illustrate potential exposures and how AmTrust's policy may respond.

DIRECTORS AND OFFICERS LIABILITY

The SEC ordered that a Midwest Investment Advisor consent to a cease-and-desist order and penalty to settle charges that the firm sold more expensive mutual fund shares for its retail retirement account clients than necessary, and failed to inform clients that the advisor received greater compensation from the sale of such securities. In total, over 1000 clients paid additional fees and expenses related to the more expensive fund purchases. As part of the SEC's investigation, the Advisor identified all affected accounts and reimbursed clients for fees and expenses.

EMPLOYMENT PRACTICES LIABILITY

A former officer at a Consumer Lending Firm filed suit against the Company for wrongful termination and emotional distress. The Plaintiff, the former Chief Operating Officer, made statements that the company failed to pay an employee in his department overtime and terminated the employee for filing a complaint. The Plaintiff was advised that he was terminated due to performance issues. In actuality the court found that his termination was a retaliatory action by the former employer.

PROFESSIONAL LIABILITY

Example 1: A local community Investment Advisor meets with a client for the first time. After reviewing documents that the client submitted electronically in advance of the meeting, the Advisor proposes a diversified portfolio for the client. One of the proposed investments in the portfolio is a registered fund that is managed by a third party. The fund turns out to be a fraudulent scheme and the Advisor is sued by the client. The suit alleges failure to perform due diligence on the fund manager.

Example 2: In 2014, a large mortgage lender sued a Title Agent based in the Southeastern U.S., claiming an alleged failure to properly secure title following receipt of an order to place title insurance for an Insurance Carrier. The Title Agent was using an independent contractor to handle the search/abstract work on this particular placement, and they were negligent in missing a legal issue on a deed of trust during the search process.

FIDUCIARY LIABILITY

An employee's spouse alleged that her husband had enrolled in supplemental life insurance through his employer. The premium for the insurance was deducted from his paycheck. When he suddenly passed away, she was told by the Life Insurance Carrier that they had no record of his enrollment. As a result, the surviving spouse sued both the employer and Life Insurance Carrier for breach of fiduciary duty and fraud, seeking the cash equivalent of the supplemental insurance plus attorney fees.

For more information, contact us at FISubmissions@amtrustgroup.com