Financial Institutions

Asset Manager Claim Scenarios

Asset managers face unique challenges, risks and opportunities in the financial institutions market – from complex fiduciary responsibilities to critical investor demands to unique regulatory requirements.

CNA's breadth of experience and industry knowledge helps to meet these evolving needs. We offer a broad range of property and casualty insurance products, including Management and Professional Liability, Cyber Liability, Fidelity Coverages and Workers' Compensation. Our industry-specific Directors & Officers (D&O) Liability and Errors & Omissions (E&O) coverages are tailored specifically to asset managers and financial institutions.

Review the claim scenarios and discover how many millions of dollars in defense and settlement costs professionals can avoid with coverages from CNA.

Regulatory Claim Examples

SEC Investigation into Funds Auditor Leads to Investigation of Investment Adviser

The Securities and Exchange Commission (SEC) conducted a routine examination of an insured Registered Investment Adviser and found certain deficiencies, which the adviser corrected. Months later, the adviser received a request for documents in connection with a SEC investigation into one of its auditors, related to how the auditor valued the investment adviser's real estate assets and illiquid securities. The SEC was investigating whether the assets of various funds were overvalued so that the adviser could inflate its fees.

Subsequently, the SEC issued a formal order of investigation directed to the auditor, as well as subpoenas requiring that the adviser produce additional documents related to its marketing, valuation of securities, compliance program, policies and procedures, and more. Because the formal order identified potential violations of securities laws by the investment adviser, the Investment Adviser Professional Liability coverage part was triggered, providing coverage for more than $250,000 in defense costs in complying with the SEC subpoena.

SEC Investigation into Alleged Insider Trading

The SEC issued a subpoena and commenced a formal order of investigation against an insured hedge fund, alleging that the fund had engaged in insider trading in securities of a large telecom company which had recently announced a merger. The hedge fund maintained that it never had any inside information, and had deduced that a merger was likely due to its extensive research into the activities of the telecom company's executives. The SEC did not accept the hedge fund's explanation and issued a Wells notice.

Coverage for defense costs was provided pursuant to the Fund Management and Professional Liability coverage part of the policy. The insured subsequently gave a presentation to the SEC and DOJ on the anatomy of all trades in question and the rationale behind them, including all the public information that was available to deduce the potential for a future merger, and has not heard back from either since the presentation. The claim is expected to close with total insured defense paid at $3 million.

SEC Investigation of Independent Trustees

After conducting an examination of an investment adviser and its sole mutual fund, the SEC issued a deficiency letter regarding the fund's diversification requirements and deviations from the adviser's investment policy. The fund subsequently liquidated and the SEC issued subpoenas to the mutual fund's president and two independent trustees, triggering coverage under the Fund

Management and Professional Liability coverage part. Eighteen months later, the president agreed to pay a fine to resolve claims that he failed to meet the diversification requirements of the fund and fulfill his duties as compliance officer.

The policy provided coverage for $1 million in defense costs incurred by the investment adviser, plus up to $1 million in additional limits for defense costs associated with the independent trustees. This matter exhausted the $1 million limit for the investment adviser and the insured paid an additional $100,000 for defense costs incurred by the independent trustees.

Investor AM Claim Examples

36(b) Claim

A mutual fund was sued in an action under Section 36(b) of the Investment Company Act of 1940, alleging that the fund breached fiduciary duties by charging excessive fees. Although the fund presented strong evidence that it delivered top-tier performance in exchange for below-median fees, plaintiffs argued that the fund failed one of the "Gartenberg factors" for evaluating the reasonableness of fees by not passing on savings from economies of scale to its shareholders as the fund significantly grew assets. Plaintiffs sought more than $800 million in damages.

Coverage for defense costs was provided in accordance with the Investment Adviser Professional Liability coverage part of the policy. The insured incurred $24 million in defense costs before deciding in late 2018 to settle with plaintiffs for $30 million. The insurers have paid $24 million in defense costs (excess of the $5 million retention) to date and the insured has indicated it will likely be coming back to excess carriers to request a settlement contribution.

Suitability Claim

The insured provided investment advice to a retired couple. The couple's portfolio experienced losses, and they filed a claim with the Financial Industry Regulatory Authority, alleging that the insured went against their instructions to invest their life savings into "safe" strategies and invested them in complex leveraged inverse funds instead. They sought compensation for their losses and return of all investment fees. The claim triggered coverage under the Investment Adviser Professional Liability coverage part of the policy. The claim was resolved at an early mediation for about $400,000, of which the policy paid $300,000 above a $100,000 SIR.

Third Party Claim Examples

Third-Party Lawsuit – Equity Clawback Claim

This matter arises out of alleged insider trading by four hedge funds, including our insured, in connection with a prominent bankruptcy. It was alleged that the hedge fund purchased notes from the bankrupt entity based on non-public information regarding settlement talks between the estate, the FDIC and the bank. Those settlement talks involved a dispute over whether $4 billion in funds belonged to the estate or were part of the assets purchased by the bank after an FDIC takeover. The estate's Equity Committee contended that the hedge fund was privy to those talks due to its status as a major creditor, and then, knowing as a result of those settlement discussions that the funds would likely go to the estate, purchased additional debt. The Committee sought "equitable disallowance" of the hedge funds' claims in the bankruptcy, based on the alleged insider trading. Years later, after ordering that the Equity Committee had standing to bring its claim, the judge ordered immediate mediation which resulted in a settlement.

The hedge fund had strong defenses to the insider trading allegations, but the standard for equitable disallowance claims in a bankruptcy proceeding is much less stringent and allows the court wide discretion to exercise its equitable powers. Because of the judge's prior rulings and her commentary regarding the funds' actions during the bankruptcy, the insured claimed its contribution to the settlement was $6.2 million.

Coverage for defense costs was provided in accordance with the policy's Fund Management and Professional Liability Coverage Part and the insurer paid out its $5 million limit.

Poaching a Competitor's Employees

An investment management firm hired an employment recruiter to fill some vacancies. The recruiter successfully targeted a senior manager at a competitor, then recruited several of the manager's team members. The competitor sued the investment management firm and its CEO as well as the recruiter, alleging a scheme to poach the competitor's employees and claiming that, as a direct result of the scheme, the competitor had lost millions of dollars of assets under management and related management fees and sustained damage to goodwill and reputation. The competitor sought damages for loss of management fees, costs related to its investigation of the alleged wrongful acts, disgorgement of all improper profits, punitive damages, interest and costs.

The investment management firm strenuously defended this action for almost five years, incurring more than $3 million in defense costs. At mediation, the competitor made a demand of $25 million. The recruiter had no insurance and refused to make any contribution toward settlement. Ultimately, the investment management firm agreed to pay $10 million to settle the litigation.

The Investment Adviser Management Liability coverage part would cover defense costs for the CEO, but not the investment management firm. Defense cost coverage for the entity would be available if the firm purchased the Private Company endorsement.

For more information, contact your CNA underwriter or visit cna.com/financialinstitutions.