

## Business Loss Scenario

### Advisor Skims 401(k) Deposits

**Coverage:** Fiduciary Liability

**Cause of Action:** Negligent Selection of Advisor

**Type of Organization:** Sports Apparel Retailer

**Number of Employees:** More than 300

**Annual Revenue:** More than \$50 million

**Description of Event**

It turned out that the internal investment manager hired by a sports apparel retailer to manage investments of its 401(k) plan was allegedly skimming money off the top of employees' retirement fund contributions. He was also a relative of the company's plan administrator and, therefore, a thorough criminal background check was not performed. The Department of Labor (DOL) discovered the scheme during a spot audit. The DOL issued a letter advising the sports apparel retailer of its findings and demanded that the retailer and the investment manager make the plan whole (i.e., replace the funds that were stolen, as well as the investment income the funds would have earned had they been invested as directed by the participants). If the plan was not made whole, the DOL would pursue additional courses of action, including litigation.

**Resolution**

The retailer settled with the DOL prior to litigation and agreed to contribute more than \$2 million to the employees' 401(k) accounts—the amount of funds skimmed from the top of the employees' contributions and the investment income the funds would have earned had they been invested as directed by the employees. Total legal expenses incurred by the sports apparel retailer topped \$75,000.

**Could this happen to your organization? Contact your trusted Chubb agent or broker:**

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