

Claims Examples

Investment Managers Insurance

Here are some real life examples of how investment managers and trustees can be exposed to investigation and court action undertaken by zealous regulators, disgruntled investors, aggressive competitors and occasionally, even by their own employees. These cases illustrate why every investment manager needs a high quality, comprehensive Investment Managers Insurance (IMI) Policy.

Investment Placement Fee – Hong Kong

General Enterprise Management Services Ltd (“GEMS”) is an investment fund company which managed a fund known as GEMS Oriental Fund II Ltd (the “Fund”). In the course of raising money for the Fund, GEMS approached AIA Capital Corporation Ltd (“AIA”) and invited its parent to invest in the Fund. AIA’s parent subsequently invested USD25million in the Fund.

AIA later expressed an interest to become the placing agent to raise a further USD100million for the Fund. Oral discussion was held between GEMS and AIA’s respective CEOs regarding the placing agency arrangement and the amount of placing fee to be paid in respect of the initial USD25million already invested by AIA’s parent. Disputes subsequently arose as to whether this placing fee agreement was conditional upon AIA raising the additional USD100million or not and also what was the commission rate to be paid on the placement.

In December 2003, AIA brought proceedings against GEMS in Hong Kong demanding the payment of the placement fee of USD500,000. The matter was heard at the Hong Kong Court of First Instance in April 2006 which held that an oral contract had been made between GEMS and AIA and that GEMS was in breach of that contract. GEMS was found liable to pay the placement fee which was determined by the Court to be USD500,000.

CSA Absolute Return Fund – Hong Kong

CSA Absolute Return Fund Ltd (“CSA Fund”) was a hedge fund. Its investment adviser was Charles Schmitt & Associates Ltd (“CSAL”). Complaints were made that improper investments were made by key CSAL personnel in “shadow funds” which were not genuine funds with assets. The Hong Kong Securities and Futures Commission conducted an investigation and obtained an injunction against CSAL.

Various court actions were subsequently commenced by CSA Fund against the auditors, custodian and administrator of CSA Fund for alleged breaches of engagement terms and of the duty of care owed by them to CSA Fund. CSA Fund alleged that the auditor, Ernst & Young, failed to provide a reasonable basis for an audit report, failed to obtain adequate support for the valuations of the fund investment and failed to test the internal control systems of the fund. The custodians, Bank of Bermuda and the administrator, HSBC, were alleged to have failed to act on properly authorised instructions, to detect discrepancies in the investment documents and to carry out reasonable searches of the fund investments. The matter is ongoing and considerable legal fees have already been incurred.

Arranger Representation – United Kingdom

Goldman Sachs International (“GSI”) acted as the arranger for syndication of credit provided to Autodis SA (“Autodis”) for its purchase of shares in a UK listed company. GSI produced a standard Information Memorandum which contained standard “no representation/no responsibility” disclaimer language. IFE Fund S.A. (“IFE”) undertook investment by purchasing bonds and warrants issued by Autodis from GSI in reliance on the memorandum. Between the issue of the Memorandum and the date when IFE invested in Autodis, GSI received reports showing that statements about the UK target company might be incorrect. IFE brought action against GSI in 2005 and contended that GSI had failed to reveal the further information received by GSI.

The UK Court of Appeal delivered a judgment on the extent of the arrangers’ duties. The Court decided that if an arranger expresses in an Information Memorandum that it is not making any representation about its client (and does not “actually” do so), and the Information Memorandum contains a clause stating that the arranger assumes no responsibility for the information contained in the Information Memorandum, the courts will not find an implied representation being made (other than good faith) or that a duty of care arose.

However, if the arranger later became aware of and received additional information rendering what was provided in the Information Memorandum misleading, a duty would be imposed on them to inform the participants. Arrangers must make sure that they act in a manner which is consistent with the disclaimer language. GSI won the appeal in this case.

Financial Advice to Fund Invested Company - Korea

A Hong Kong based international private equity firm managing funds with focused investment in communication, media and technology industries invested in a company incorporated in Seoul (“Seoul Company”) through one of their closed funds (“Fund Korea”). Fund Korea appointed several directors to the board of the Seoul Company. The directors appointed by Fund Korea fell into dispute with the second largest shareholders of the Seoul Company. Those shareholders alleged that the Fund Korea directors had given professional advice to the board, resulting in deteriorating performance of the Seoul Company.

A complaint was lodged with the Seoul Central District Prosecutor’s Office which commenced investigation against the directors appointed by Fund Korea. They were alleged to have breached their fiduciary duties.

Accusing Hedge Fund for Sexual Harassment – America

Andrew Tong was employed as a trader by SAC Capital, an American hedge fund. He alleged that his superior urged him to take drugs to turn him into a more effeminate and obedient employee. Mr. Tong claimed that he started wearing woman’s clothes. It was revealed by the local press that Mr. Tong contended that he suffered emotional distress and had a sexual relationship with his boss. He claimed against his boss and SAC.

The judge (in New York) sent the parties to arbitration. Although SAC denied the allegations and the matter has not yet been resolved, it has incurred extensive legal fees to date.

Want to Know More?

To find out more about Liberty’s IMI policy ask your broker to contact one of our specialist underwriters:

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