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COVERAGE DEVELOPMENTS: FIDUCIARY “STOCK DROP” CLAIMS

There have been recent court decisions which have sparked great concern over insurers denying investment loss claims (e.g. “stock drop” claims) on the grounds that they involve “benefits.” This concern stems from the recent *Guidant*¹ and *Conexant*² case scenarios where plaintiffs—with pension plans involving company stock—alleged that the value of the account was lower than it should be had it not been for a breach of fiduciary duty. The specific breach of fiduciary duty asserted involved the decision to grant investment in company stock.

Money judgments were issued but also concluded that plaintiffs were seeking “benefits” in the stock drop cases. The court rulings expanded the judgment explanation: “Benefits are benefits; in a defined-contribution plan they are the value of the retirement account when the employee retires, and a breach of fiduciary duty that diminishes that value gives rise to a claim for benefits measured by the difference between what the account was worth when the employee retired and cashed it out and what it would have been worth then had it not been for the breach of fiduciary duty.”

Benefits as such are excluded under most policies, so the fear is that insurers will use these rulings to avoid paying “stock drops” or other investment loss on the grounds that they are benefits, even though they typically cover these types of claims. Blais Excess & Surplus Agency of Texas, Ltd. has access to many markets with readily available endorsements clarifying coverage for investment losses and will press the remaining markets to utilize similar wording. This endorsement should expressly communicate and confirm this coverage.

¹See *Erica Harzewski, et al., versus Guidant Corporation, et al.* (June 5, 2007).

²See *Howard Graden, et al., versus Conexant Systems Inc., et al.* (July 31, 2007).

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