



## A VL real life claim example

# Trustees Liability

## Family Trust Funds

The Insured was an accountant who acted as a trustee on many client trusts. The other trustee was a lawyer. The particular trust, which gave rise to the claim, was a discretionary family trust. It contained a provision that the capital held in the trust was to be vested in the three sons of the settlor on a specified date based on the youngest son attaining the age of 30 years, but with the provision that the assets could remain in the trust beyond the vesting date if the beneficiaries agreed.

The vesting date came. The settlor advised the trustees that he wished the funds to remain in the trust because certain investments owned by the trust did not mature until after the vesting date. He told the trustees that his sons, the beneficiaries, were happy with this.

However one of the sons, who was in marital strife, approached the trustees with a demand that the trust funds be distributed, or at least his share. The trustees subsequently received a formal claim stating that they had breached their duty to the trust by not distributing the funds on the vesting date. In the interim the value of the trust funds had diminished in the prevailing financial market conditions.

The quantum of the claim was based on the reduced value of funds available for distribution. The claim was for \$160,000. Independent legal advice was that the trustees had failed in their duty. Negotiation with the beneficiaries produced an agreed settlement of \$130,000 which was shared between the Insured and the other trustee. The policy covered the legal costs.

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