To What Extent Does a Fiduciary Warranty Protect Fiduciaries?

Fiduciary warranties are offered by certain money managers as an added benefit to entice fiduciaries to hire them. The warranty is prominently displayed.

It becomes effective only under certain conditions, which are so unlikely that the warranty is useless. (Don't blame the sales representatives; they don't write the documents. The warranty was created to be deceptive at the Home Office.)

The Warranty promise: "represents, warrants and promises to satisfy the requirement under 404 (a) (1) (b)." If the warrenty provider fails to fulfill 404 (a) (1) (b) and a judge awards damages for that failure the warranty will reimburse the fiduciary.

Section 404 (a) (1) (b) is the fiduciary duty to <u>diversify a retirement plan's investments</u>.

Diversification is achieved

Within a fund

The Investment Company Act of 1940 requires every mutual fund to meet the diversification definition in section 5(b)1. If it is a mutual fund, it is already <u>internally diversified</u>.

Among funds

Department of Labor guidance recommends that diversification <u>among</u> investment funds is met by offering funds from a minimum of <u>three</u> different investment sectors, a stock fund, a bond fund and a money market fund.

The Odds

There are about 8,000 mutual funds. Diversification is achieved by selecting three different kinds of funds. Do you think you could find three cars each of a different color in a parking lot holding 8,000 cars?

- The odds of the warranty being effective are the same as you being <u>unable to find three different colored cars</u>.