

GENERAL INSURANCE AND RISK MANAGEMENT CONSIDERATIONS FOR NON-PROFIT ORGANIZATIONS

D&O including Employment Practices Protection

General Liability

- Use of an organization's physical premises
- Small functions held at other people's locations
- Slip and fall
- Sexual Impropriety
- Distribution of things that might cause physical injury
- Food Sickness
- Clothing Injuries
- Overconsumption of alcoholic beverage

Auto Insurance – Hired and Non-Owned Vehicles

- Operation of personal vehicles in the course of volunteerism

Special Event Coverage

- For larger and more complex fundraising events or social gatherings

Workers' Compensation

- If the organization hires employees



Dishonesty Coverage

- Relative to the handling of the organization's finances

Accident Insurance

- For the benefit of volunteers (domestically)

Travel Accident, Medical, Sickness & Death and possibly KR Coverage

- For those traveling internationally

Non Profit Director and Officer Boards can be sued by donors, employees (prospective, current or former), and the general public, third parties, clients, and/or government agencies.



- The personal assets of the individual board members are at stake! Directors & Officers (D&O) insurance can help protect a board member's home, investments, or other personal assets.
- The bylaws of the Non Profit may indemnify the Board but does not guarantee the entity has the resources to fund the cost of a claim. The financial backing of a Directors & Officers policy will ensure financial solvency to the organization.
- Directors and Officers lawsuits can have a devastating impact on the operating budget of the Non-Profit organization, and can even put the entity out of business.
- The average cost of a Directors and Officers policy is often under \$1,000 with a zero retention yet the average cost of a claim is over \$100,000.
- Directors and Officers claims are not covered under General Liability or any other policy form.
- Corporate scandals have heightened regulation of accounting practices. The Sarbanes-Oxley Act has also impacted Non Profits.

- The Internal Revenue Service has increased their scrutiny of Non Profits. Over 400 private foundations have been audited in the past year.
- Directors of Non Profit boards have the same fiduciary duties as corporate board members. Non Profit Directors and Officers lawsuits may involve a variety of issues related to the daily operations of the board including:
 - **Duty of Care** – requires Directors and Officers to act prudently and reasonably in regard to the management of the organization’s affairs
 - **Duty of Loyalty** – prohibits Directors and Officers from using their position in the organization to further their own personal interest
 - **Duty of Obedience** – requires Directors and Officers to ensure that the organization is run in accordance with it’s charter and bylaws, and that the organization complies with applicable laws

Donors – Claims resulting from those who make donations to the organizations



The Board of Directors of a church was sued by a number of their donors, alleging misrepresentation of the financial status of the organization. Three members brought separate suits for repayment of the money lent to the church. The first case settled for \$240,000 of which \$117,000 accounted for expense. The second case settled for

\$75,000 and incurred \$86,000 in defense costs. The last case paid nothing to the claimant, but incurred \$13,000 in defense costs. The total loss including defense costs exceeded \$530,000.

Third Parties – Third party lawsuits can be filed for various reasons

An organization filed a suit against a foundation and its Board of Directors for improperly infringing upon the claimants intellectual property rights. The claimant filed suit seeking injunctive and monetary relief for the Foundation's alleged improper use of trademarked property while promoting their fundraiser. The claim settled and the total loss including defense was over \$400,000.

Employees – The most common claims made by employees involve discrimination, harassment, wrongful termination, retaliation and hostile work environment.

Discrimination

After 10 years of employment, an employee was fired for poor work performance. This employee brought a discrimination suit against their employer under the Americans with Disabilities Act (ADA). The individual alleged lack of work place accommodation and constructive discharge. The claim was closed for a total loss of over \$80,000, including more than \$20,000 in defense costs.

Sexual Harassment

An employee alleged one of the directors sexually harassed her by unwanted physical contact, which occurred multiple times. After mediation, the case settled for \$30,000. The defense costs exceeded \$20,000.

Retaliation

A former employee discovered illegal transactions involving retirement funds. Shortly after reporting the violations, she was terminated by her employer. She filed suit alleging retaliation and wrongful termination. The total loss exceeded \$100,000 with the settlement figure over \$80,000.

Governmental Agencies – Claims due to violations of the law

The United States Department of Justice brought suit, alleging misappropriation of funds and failure to revert unused money back to the government. The insured received federal grant money and allegedly used

leftover grant money to renovate office space instead of return it to the government. The case closed for a total loss of over \$60,000, including \$21,000 for defense costs.

Volunteers – Volunteers are able to bring suits similar to those made by employees

A volunteer claimed the denial of a full time position was due to her sex, race and pregnant condition. She filed a lawsuit claiming discrimination. The claim is pending further litigation and defense costs paid to date total over \$10,000 with an outstanding loss reserve of \$65,000.

Members – A claim against the directors to protect the members' interest.

A law enforcement fraternity began proceedings to have a member removed from the organization. This member then sued the organization in order to have the proceedings halted. While there was no monetary settlement, the defense costs were \$15,000.

Beneficiaries/Clients/Recipients – A claim by the recipient of the organization's services

A discrimination suit was filed against the Board of Directors when the claimant requested a transfer within the housing complex and was denied. The claimant alleged discrimination based on national origin, religion and sex. The claimant was a resident at a drug and alcohol rehabilitation center. The court dismissed the case due to a lack of evidence. More than \$10,000 was paid in defense costs.

* Organizations that dispatch people to other parts of the world face greater risks and it is necessary to investigate, locate and arrange highly specialized insurance to protect those who are traveling or stationed elsewhere. These specialized coverages can be costly. Furthermore, domestic volunteers should be cautioned about the risks associated with volunteerism and should be asked to bear responsibility for their own injuries.