

Management Liability Coverage for Not For Profit Organizations

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Director's Duties

Care

- Reasonably prudent person

Loyalty

- Placing organization's interests first

Obedience

- Compliance with statutory and common law, bylaws and charter

Owed to organization/company, members, employees and the general public. Actions may result in organizational and personal liability.

What is “D&O”?

- Directors, Officers and Corporate Liability
- Protects the assets of an organization from expenses arising from allegations of wrongful acts
- Protects the **individual** directors and officers, and their **PERSONAL ASSETS** when claims are made against them individually

Why “D&O”?

Why is it important to purchase D&O?

- Transfer risk
- Coverage for actual or alleged wrongful acts
- Failure to
- \$114,000 – average D&O claim

What else can a Director or Officer do to personally protect themselves?

Bylaws should provide indemnification

Individual Directors Liability

Be familiar with the laws in your state as they pertain to the sector

D&O Claim Examples

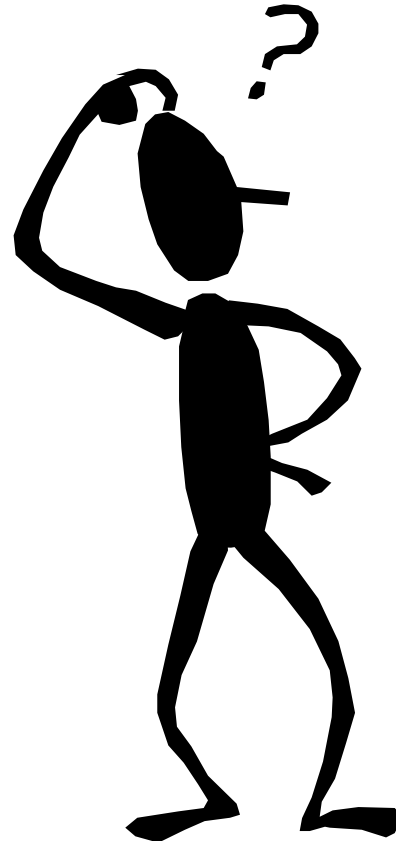
- Copyright: \$650,000 paid
 - Florida association
 - Each director named
 - Copied information from for-profit website
- Non-monetary claim: \$150,000 paid in defense
 - Property owner association
 - Looking to alter home (aka red door syndrome)
- Misappropriation of Assets: \$180,000 paid – litigation pending
 - Donor alleges \$17 million in donations being misused

D&O Claim Examples

- Replevin: \$50,000 paid
 - Photographer hired by organization to photograph members
 - Trustee of photographer's estate sued for ownership and use of pictures
 - Various releases and language used
 - Privacy issue for members

- “Tester Plaintiff” : \$115,000 paid in defense
 - Suit alleged protective shelter violated CA statute on gender discrimination by state funded nonprofits
 - Statutory “carve-out” to CA statute existed protecting certain classes of nonprofits and their constituents
 - Final decision made by CA Supreme Court

D&O Questions



What is EPLI?

Employment Practices Liability Insurance protects organizations/companies from alleged wrongful act claims.

Most EPLI claims are brought by employees including:

- former employees
- potential employees
- volunteers
- independent contractors

Types of EPLI Claims

- **Wrongful Termination**
- **Harassment**
- **Discrimination**
- **Breach of Contract**
- **Failure to Promote/Hire**
- **Failure to make tenure**
- **Retaliation**
- **Whistleblower**
- **Defamation**
- **Wage and Hour**

In 2009

93,277 EEOC Claims



As of 9.30.2010

99,922 EEOC Claims

7%



\$38,000 - average cost to defend EPLI claim

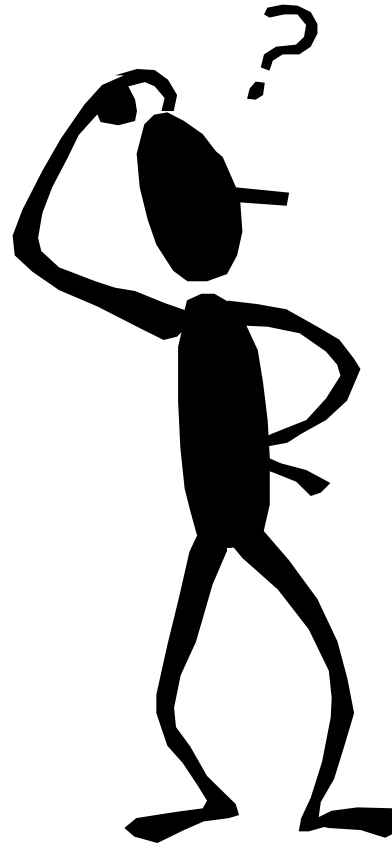
EPLI Claim Examples

- Failure to Employ: \$250,000 paid
 - Summer Camp
 - 7 applicants
 - 6 were interviewed
 - 7th filed age discrimination lawsuit
- Wrongful Termination/Retaliation: Over \$500,000 paid
 - New Development Director questions ethics of organization
 - Terminated for gross insubordination
 - Claimant sued alleging wrongful termination and retaliation for whistleblowing

EPLI Claim Examples

- Breach of Contract/Defamation: \$120,000 paid to resolve matter
 - Founder/President of nonprofit school resigned for personal issues.
 - After resignation, board discovered he had not been performing his duties
 - When former President requested to return, the school board refused due to the discovered dereliction of duty & poor performance.
 - Former President sued alleging breach of contract & defamation
- Age Discrimination: Claim settled for \$55,000
 - Small town convention & visitors bureau wanted a “younger feel”
 - Dismissed long time employee and hired a younger, less qualified person
 - Former employee sued for aged discrimination

EPLI Questions



What coverages should I look for?

- Full Prior Acts – no retroactive date
- Duty to Defend
- Defense expense outside the limit of liability
- Broad definition of Insured that includes spousal extension, leased employees, independent contractors and volunteers
- Punitive damages (where insurable)
- Third Party Coverage
- Free Loss Prevention Services

- Priority of Payments
- Automatic EPL ERP for former Directors and Officers
- All Management Liability policy forms are proprietary. **Be sure your agent knows the difference between them!!**

Common Misconceptions

- I do not have employees, therefore I do not need EPLI
- We're a Not For Profit, no one is going to sue us.
- Our budget is tight this year. We cannot afford to renew.