

## Directors & Officers Liability Insurance



Directors and Officers Liability Insurance has often been viewed as an unnecessary expense for many non-profit organizations. Board members of many non-profits have

been advised that they do not have a need for D&O coverage, for several reasons. So why buy D&O coverage?

Quite often, non-profit directors feel they have no D&O exposure, due to the fact that they are not vulnerable to litigation brought by shareholders. While it is true that shareholder lawsuits against for-profit companies get all of the national headlines, recent studies indicate that approximately 45% of all D&O complaints are brought by shareholders. Where does that leave the remaining 55% of the D&O related litigation? Employees and "customers" – anyone who receives a non-profit's services – are two major sources of litigation brought against non-profit corporations.

Contributors sue directors for violating their duty of care and loyalty to the organization, which results in financial problems for the non-profit. Non-profit organizations generally don't have the funds to pay for high legal fees to defend their directors and officers. D&O policies protect the assets of non-profit organizations. Otherwise, the organizations' assets would be needed to indemnify their directors and officers. A recent appellate court affirmed a jury's verdict and ordered a non-profit to pay \$65,000 indemnification of legal fees and costs incurred by the non-profit's treasurer who had successfully defended himself against an action filed by a member of the non-profit for several claims including slander, intentional infliction of emotional distress, and gross negligence (this is a sample of a small loss).

In addition, most non-profit directors are aware that many states have now passed laws limiting the liability of non-profit volunteers. There are several items which are important to note in this regard: first, the laws are written to provide a certain amount of immunity to volunteers. Such laws provide no protection for the organization's employees, or for the entity itself. In addition, a state's legislature can pass laws limiting a volunteer's liability in state court, but they can not provide immunity from federal laws. The largest area of non-profit

D&O claims is allegations of civil rights violations (such as discrimination based upon gender, age, disability, etc.). Most civil rights complaints are brought before a federal agency or court, for which these state laws do not apply.

Finally, many non-profit directors and officers are relying upon their personal umbrella to protect them in their non-profit service. While it is true that a personal umbrella policy may provide coverage while the insured is serving on a non-profit board, that coverage only applies to the typical exposures covered under an umbrella, such as bodily injury or property damage. A personal umbrella provides no "wrongful acts" coverage for discretionary management decisions

made by a non-profit director or officer.

Insurance coverage, including Directors & Offices Liability and Employment Practices Liability policies, affords non-profit directors and officers and their organizations broader and more effective protections in a world awash in litigation risks.

About the Author Bob Worgess is past president of the Michigan Association of Insurance Agents. Has over 33 years in the insurance business, is the COO and an owner of the Worgess Insurance Agency located in Battle Creek since 1931. The agency writes coverages for all lines of insurance, home, auto, commercial, life, and health including groups.

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