

### Management Liability

### Directors and Officers

### Employment Practices

### Fiduciary

### Professional Liability

### Media

### Miscellaneous

### Network Security and Privacy Injury

### Technology and Telecommunications

### Crime

**Directors, Officers and Trustees of not for profit organizations can be targets of legal action due to the decisions they make and also simply because of their status.**

- Not only do public and private company Directors and Officers have this exposure, but directors, officers, trustees and governors of not-for-profit organizations also face personal liability for their actions
- Directors and Officers of not-for-profits owe the same common law duties of care, loyalty, and obedience to the organization that for-profit D's and O's owe to their respective companies
- Not-for-profit organizations can be sued not only by employees and volunteers, but also by members, customers, competitors, creditors, suppliers, donors, intended beneficiaries, and state and federal regulators.
- According to a Tillinghast-Towers Perrin D&O Survey, not-for-profit organizations have a claims frequency that is four times higher than for-profit companies.<sup>1</sup>
- Most state statutes provide only minimal protection for individuals who voluntarily serve on not-for-profit boards. In addition, there is no immunity for the not-for-profit entity itself.
- The costs to defend claims could cause a financial burden by diverting money away from the intended mission of the organization. And, in some cases, without the proper D&O insurance, individual Directors and Officers could be required to pay for defense costs out of their own personal assets.

Directors and Officers Liability Coverage can help protect the personal assets of the not-for-profit's directors and officers and help preserve the assets of the organization.

### CNA provides:

- Side A Coverage for directors and officers for non-indemnifiable loss resulting from a claim for a wrongful act.
- Side B Coverage reimburses the entity for indemnified loss resulting from a claim against directors and officers for a wrongful act.
- Side C Coverage provides coverage to the entity.

### Common D&O allegations include:

- Failure to perform appropriate due diligence when making business decisions
- Breach of fiduciary duties of care, loyalty and obedience
- Mismanagement of the organization or its assets to the detriment of the intended beneficiaries
- Misappropriation of funds
- Wrongful acts in violation of the charter or bylaws
- Misrepresentations or errors regarding the financial health of the organization
- Conflicts of interest when considering personal motives vs. interests of the organization
- Restraint of trade
- Complaints from members for mismanagement or violation of corporate bylaws
- Defamation, libel and slander

**Broad coverage for Not for Profit Directors and Officers Liability is provided as one part of the Epack Extra® policy. Epack Extra allows insureds to package multiple coverages on one policy form.**

### Injunctive Relief

**The Facts:** An athlete relocated and attempted to join a recreational sports team. The governing athletic association denied eligibility to the athlete based on residency, alleging that the change in address was in name only, and that in fact the athlete continued to reside at the original address. After an unsuccessful attempt to pursue administrative remedies with the association, a complaint was filed seeking an injunction to allow the athlete to play with the team. The association vigorously defended its actions, presenting evidence that the new residence was not occupied by the athlete during the time in question. A key issue in the litigation was the association's interpretation of the applicability of its residency rules.

**Risk Factors:** The association did not want to jeopardize its authority to enforce rules applicable to member teams and athletes.

**The Bottom Line:** Ultimately the injunction was granted in favor of the athlete, and she was allowed to play with the team. Defense costs approached \$100,000.

### Misappropriation of Trademark

**The Facts:** A not-for-profit countrywide association of bridal shops and wedding vendors ("Association") held a convention each year in Las Vegas called the "Down the Aisle Expo." For the past several years, Association had used Mr. Y as a promoter/manager of the convention, but decided to use a different promoter for its upcoming convention. Mr. Y claimed that he owned the trade show and the service mark "Down the Aisle Expo and Trade Show," and that he had the exclusive right to hold a wedding trade show on the dates that Association was planning to hold the show. Association filed a lawsuit against Mr. Y and his company, seeking to establish that it owned the service mark. A counterclaim was filed by Mr. Y against Association and its officers and directors, which alleged that Association had misappropriated the trademark and trade name, breach of implied covenant of good faith and fair dealing and unjust enrichment/detrimental reliance/promissory estoppel. Association then amended its complaint to include additional allegations, including RICO violations.

**Risk Factors:** Because of the money at stake, which was approximately \$300,000 to \$600,000 annually, Mr. Y vigorously litigated the matter, taking many depositions and filing numerous motions, which caused Association to incur substantial defense costs before its attorneys were able to reach a settlement.

**The Bottom Line:** The matter was settled when Association and Mr. Y agreed to withdraw their lawsuits. Association's defense costs were over \$140,000.

### Misrepresentation

**The Facts:** A not-for-profit country club ("Club") was attempting to merge with another club because of financial difficulties. Many members resigned from Club rather than incur further dues payments. After the merger attempt failed, Club decided to sell its property and disburse the funds to its members. A Mr. Ex and twenty other former members of Club requested that Club rescind their resignations. When Club declined, Mr. Ex sued Club and its President, alleging that the President had told him that he could rescind his resignation. The Complaint alleged causes of action for promissory estoppel, negligent misrepresentation, and interference with economic relationship. Mr. Ex sought a judgment allowing him to rescind his resignation, compensatory damages of \$1.5 million, punitive damages of \$500,000, attorneys' fees and costs.

**Risk Factors:** Club's President did not want to settle. The sale of the property was complicated by tax and zoning issues, which made it difficult to determine how much would be distributed to each member. Club also had debt which had to be paid off before any distribution. The Board was hesitant to settle with Mr. Ex before they knew the amount each current member would receive.

**The Bottom Line:** The matter was ultimately settled for approximately \$145,000. Defense costs were over \$180,000.

### Mismanagement and Fraud

**The Facts:** An agricultural cooperative ("Co-op"), entered into a joint venture and formed a limited liability corporation ("LLC") with a food manufacturing company to manufacture and sell baked goods. The parties agreed that Co-op would finance the venture and install the equipment while the food manufacturer would market and sell the products. After operating at a significant loss for approximately one year, Co-op decided it no longer wanted to be a part of the joint venture and would no longer fund the LLC. Despite notice of the dissolution, the food manufacturer continued to sell the baked products while looking for a new partner. The food manufacturer sued Co-op, alleging that the problems were due to the co-op installing inefficient equipment, which increased production costs. It was also alleged that Co-op made fraudulent transfers of funds and violated its duties under the joint venture agreement. Co-op alleged that the food manufacturer failed to market the products properly.

**Risk Factors:** During discovery, an officer of Co-op testified that Co-op had not funded the LLC properly and it was destined for failure.

**The Bottom Line:** Although settlement was attempted, the matter could not be resolved. Co-op won at trial. Defense costs were \$500,000.

To learn more about CNA's Management and Professional Liability offerings, contact your agent or broker.

www.cnapro.com  
800-852-0393



<sup>1</sup> Tillinghast-Towers Perrin 2006 D&O Liability Survey Report