

## A Deland, Gibson University White Paper

*"Providing Peace of Mind Through Proactive Service."*



## EXPOSURES FOR INDIVIDUALS SERVING ON NON-PROFIT BOARDS

*This document will briefly describe the risks of sitting on a non-profit board and how to best protect yourself or your client from the exposures that arise.*

# EXPOSURES FOR INDIVIDUALS SERVING ON NON-PROFIT BOARDS

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The objective of Lawyers, CPAs, Wealth Advisors and other trusted advisors is to grow, maintain, and service the wealth of their clients. We at Deland, Gibson have found that many of our clients are able to achieve those goals even through the recent meager economic times of the Great Recession. However, the likelihood of problems and exposures arising substantially increases when their insurance advisor is not at the same table managing their *Total Cost of Risk*, thus protecting wealth.

In this white paper we will challenge, teach, and highlight areas where we can tailor a proper insurance and risk management plan to protect the following exposure:

## **Volunteering as a Director or Officer serving on a not-for-profit board**

Our main goal is to address how to properly protect yourself or your client so at the end of the day less time will be spent on insurance and risk management and more time will be spent enjoying life.

The most troubling statistics when protecting wealth are recent lawsuit figures. Chubb Insurance Group states that:

- Personal lines lawsuits make up 40% of tort costs in the United States
- One in Six jury awards exceed 1,000,000
- The size of awards are growing aggressively
- Defense costs can be greater than a jury award or settlement

The growing awards are cause for concern and proper protection is paramount. High net-worth individuals and families are even more at risk due to being higher profile with more to lose. Some of the direct and indirect costs of a lawsuit include:

- Physical assets
- Investible assets
- Future earnings
- Potential inheritance
- Reputation
- Time out of work
- Time away from the family
- Stress

High net worth families often become targets of frivolous claims because of the amount of information that is easily obtainable from the internet. Since defense costs can be greater than the settlement of the award, having properly constructed insurance protection is key.

The exposure from sitting on a non-profit board can seem innocuous, but in the current legal climate protecting your personal assets via a directors and officers insurance policy is one of the most essential steps.

## **About Deland, Gibson Insurance**

Established in 1900, Deland, Gibson has thrived working as a trusted advisor for its client base.

A family business since 1900, DG works with clients to lower their Total Cost of Risk through its signature program, the Deland, Gibson Difference. This process is used to identify the unique risks of you and/or your business and ultimately offer strategies to transfer, mitigate, finance or assume these risks.

Learn more at  
**[DelandGibson.com](http://DelandGibson.com)**



Directors and officers coverage was created because commercial general liability and personal liability policies do not protect a board or its individual members against claims that may arise from wrongful acts or breach of duty. General and personal liability policies protect only against claims that result from bodily injury, personal injury, and property damage.

Directors and officers coverage is designed to protect the assets of both the individual board members and the organization. Coverage includes payments for defense costs, settlements, and judgments. (The policy pays on behalf of an individual who is not indemnified by the by-laws of the non-profit entity. Payments are on behalf of the entity when the board member is indemnified by the by-laws.)

Some non-profits may think directors and officers coverage is not needed because the individuals are protected under the volunteer immunity laws. Immunity laws were made at the State level, not Federal, so this line of defense may not necessarily be sufficient in a court of law.

Some exposures faced as a board member of a non-profit organization include:

- Failure to provide services (for example: serving on a board of a private school or counseling organization)
- Discrimination (an individual may serve on the board of their country club or local youth sports organization)
- Mismanagement of funds (for example a funding source does not agree with how their donated funds were appropriated).

Board members can also be exposed to claims brought by employees. This is why we recommend to our clients that they combine employment practices liability with their directors and officers coverage. Seven out of ten directors and officers claims result from employee discrimination or wrongful termination. These claims are not covered under directors and officers, general or personal liability policies.

**The bottom line:** To properly protect oneself as a volunteer director or officer on a non-profit board the non-profit must have a directors and officers policy, an employment practices liability policy, and the individual must have a personal umbrella policy that includes directors and officers liability.

Recently non-profits have been put under the microscope. One of the most recent and notorious scandals is Penn State. More controls, attention, and public scrutiny are going to be the new normal for non-profits as they monitor the actions of their board. A recent Fast Company article titled "Penn State, and how nonprofit boards will shape up in the wake of scandal" discussed how information can be transmitted through social media with such speed that the public is notified of issues almost immediately. This makes increased controls, transparency, and accountability paramount to maintain the brand and reputation.



The financial services industry has Sarbanes Oxley as its regulatory oversight. While we are not endorsing Sarbanes Oxley, it is merely to show that the non-profit industry has no accountability and oversight in place. The unfortunate reality is due to less oversight, capital, and infrastructure, there are fewer controls and procedures among non-profits. Many non-profits may seem to have trivial exposures such as a little league, country clubs, alumni associations or condo boards. However the exposures are real and because socially they are not thought of in the same vein as a for-profit exposure most situations are not handled with the same strict controls and procedures.

“Accusations of not exercising sufficient control of the environment” – that is all that is necessary for a claim to arise, and one that can easily extend into the seven-figure range. Another area that is a huge exposure is employment practices, as previously stated seven out of every ten claims result from this. If the non-profit firm has an employee there is exposure. This is often overlooked because the board typically does not make human resources decisions. However, the board members oversee management, and they make HR decisions which ultimately lead back to the board.

If you are an individual protecting yourself, or a trusted advisor looking to better protect your client, the only complete solution while serving on a non-profit board is to have:

- A personal lines umbrella with a directors and officers endorsement
- A directors & officers and employment practices policy held by the non-profit.
- Continuous education, strict controls and risk management

The educational and risk management strategies available *prior* to a loss or potential situation can help prevent and mitigate an exposure from becoming a reality. Coverage checks, education on board positions, and duties as well as proper documentation are a few basic steps for individuals and boards to utilize.

Please contact Deland, Gibson to learn more about developing pre-loss strategies to help and protect you or your clients.

