



GREATER NEW ORLEANS
FOUNDATION

Not-for-Profit Directors and Officers Liability Insurance

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Basics

- Liability insurance payable to (or on behalf of) directors and officers of an organization or to the organization itself as indemnification for wrongful acts
- Can include defense costs associated with criminal and regulatory matters

All policies cover

- Claims against *Insured Persons*
- For *Wrongful Acts*
- Except *as excluded*

Insuring Agreement

- The Company will pay *on behalf of*
 - A. The **Insured Person** (Coverage A) ...
 - B. The **Insured Organization** as required by indemnification requirement (Coverage B) ...
 - C. The **Insured Organization** (Coverage C – Entity) ...
- For **Wrongful Acts**

See page 1, I. A-C

Insureds

- **Insured: Insured Persons and the Insured Organization**
- **Insured Person:**
 - member of the board (directors, trustees, regents, governors, etc.)
 - **Executive Officer**
 - Employee
 - Volunteer
 - Committee member
 - Estates of these

See Page 2, F-H

Wrongful Act

- Actual or alleged act, error, omission, misstatement, misleading statement, or breach of duty or neglect by
 - an **Insured Person** in that capacity or
 - the **Insured Organization**.
- Any matter asserted against an **Insured Person** just because he or she is one.
- All *except as excluded*

See page 3, *P-Wrongful Act*

Exclusions

- Bodily injury, property damage
- War and Nuclear perils
- Pollution
- Prior claims, notices, litigation, awareness
- ERISA
- Derivative Actions
- Contractually assumed risk
- Fraud
- Compliance costs
- Amounts otherwise owed
- Employment Practices (some might cover)
- Professional Liability (some might cover)

LOSS

- **Defense Expenses** and money an **Insured** is legally obligated to pay due to a **Claim**.
- Includes settlements, judgments, front and back pay, and punitive damages (if allowed by law)
- Excludes civil or criminal fines and any amount allocated to non-covered losses

See page 2, *I-Loss*

Claim

- Written demand for monetary damage and non-monetary relief
- Formal administrative or regulatory proceeding
- Arbitration, mediation or similar alternative dispute resolution if the **Insured** is obligated to participate
- Deemed as first made when
 - an **Executive Officer** receives written notice
 - any **Insured Person** receives written notice under certain circumstances

See page 1, A-Claim

Duties

- Written notice of claim
- Cooperation
- Not-for-profit coverage is usually Duty to Defend
 - Insurer chooses counsel

Settlement Options

- Company has the right to settle.
- Company may not settle without consent.
- Hammer Clause: Anything beyond what the Company could have settled for is on the insured.
- Velvet Hammer Clause: Company and Insured split (various percentages) anything beyond what the Company could have settled for.

See page 6, *B-Settlement*

Limits

- Apply in aggregate for all claims.
- Include defense costs.
- Shared by all.
- Is the limit high enough?

Retention

- Similar to a deductible
- Does not apply to coverage A, claims brought against individuals.
- Applies to Indemnification (Coverage B) and Entity (coverage C)
 - May not apply to defense costs if there is no liability

See page 5, *Conditions, A. Retentions*

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Prior and Pending

- Date prior to which no coverage is provided
 - Civil, criminal administrative or regulatory proceeding
 - Knowledge of prior fact, circumstance, situation, or event that could reasonably be regarded as the basis for a claim
 - Claims submitted to previous insurer

See page 4, 5-7

Changing Insurers

- Try to get same P&P date as on current policy
- If not, make sure potential claims reported to current insurer

Extended Reporting Period

- Provides coverage for claims in the future after cancellation of a policy
- Typically one year (maybe up to three) after cancellation or non-renewal
- Additional premium of 50% to 100% per year of extension
- If policy is *replaced* properly, coverage is not necessary

Louisiana Immunity

- § 2792 – Directors, officers of non-profit hospitals, etc. are not individually liable to anyone receiving benefits
- § 2792.1 – Directors and Officers *not paid a salary* are immune from personal liability if their actions are *in good faith* and within scope of official duties, *except for willful or wanton misconduct*
- § 2792.3 – Directors, officers, and voluntary workers of almost any loosely structured organization are immune from liability *unless willful or wanton misconduct*

This is a very broad and inaccurate interpretation of Louisiana law – NOT LEGAL ADVICE!

Claims Scenarios

- Misuse of funds: State attorney general sued a large charitable foundation, alleging the *trustees were overpaid and underworked*. Settlement: \$5,000,000.
- Failure to manage a property lease: *CC failed to renew its lease on golf course*. Members sued its board. Settlement: \$2,000,000.
- Anti-trust: Trade association sued for anti-trust for *rejection of application for membership*. Defense costs were \$175,000.
- Restraint of trade: Animal owner sued thoroughbred registry after it *refused registration*. Defense and settlement costs exceeded \$2,000,000.

Other coverages often available

- Crime
- Employment Practices Liability
- Fiduciary Liability
- Identity Fraud
- K&R
- Miscellaneous Professional
- Cyber

For Further Information

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