

NON-PROFIT

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*Directors & Officers*

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LIABILITY INSURANCE

Presented by:  
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GEB

GILLIS ELLIS BAKER

# *by the numbers.*

• 1933

*In business since*

• 55

*Employees*

• \$10MM

*Revenue*

• 63

*Non-profit clients*

• Dozens

*Non-profit boards served*

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# *the 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  
Insureds*



*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

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# *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*
- *Subsidiaries*

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



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# *exclusions.*

- Bodily injury, property damage
- War & 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)

See pages 3 - 6





# *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 pages 2, I-Loss

# *claim.*

01

— Written demand for monetary damage and non-monetary relief

02

— Formal administrative or regulatory proceeding

03

— Arbitration, mediation or similar alternative dispute resolution if the *Insured* is obligated to participate

04

— 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.*

- Can apply per occurrence or in aggregate for all claims
- Include defense costs (Can erode limit of liability)
- Shared by all
- Is the limit high enough?



# *retention.*

- The amount the insured pays before the insurance company starts claim payment.
- 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 & 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 regarded as the basis for a claim*
- *Claims submitted to previous insurer*
- *Application becomes a part of the policy*

See page 4, 5-7

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# *changing insurers.*

- *Claims made vs occurrence*
- *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	Typically one year	Additional premium	If policy is replaced
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...for claims in the future after cancellation of a policy

... (maybe up to three) after cancellation or non-renewal

...of **50%** to **100%** per year of extension

...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

!!!

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

# *claims scenarios.*

01

\$5,000,000

**Misuse of funds:**

State attorney general sued a large charitable foundation, alleging the trustees were overpaid and underworked.

Settlement:  
\$5,000,000

02

\$2,000,000

**Failure to manage a property lease:**

CC failed to renew its lease on golf course. Members sued its board.

Settlement:  
\$2,000,000

03

\$175,000

**Anti-trust:**

Trade association sued for anti-trust for rejection of application for membership.

Defense costs:  
\$175,000

04

\$2,000,000

**Restraint of trade:**

Animal owner sued thoroughbred registry after it refused registration.

Defense & settlement costs exceeded:  
\$2,000,000

# *individual.*



- Some **homeowner's policies** will extend personal and excess liability limits to insureds serving on a not-for-profit board
- **Limitations** vary by insurance provider... EXAMPLE: ACE requires the non-profit board service is uncompensated, where Chubb and PURE make no such requirement

# *other coverages often available.*

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



# *contact.*

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