



UNITED STATES LIABILITY INSURANCE GROUP  
A BERKSHIRE HATHAWAY COMPANY

## *Non Profit Risk Management Seminar*

*Presented for VANNO  
Members*

*Presented by: Adam Taylor, RPLU, CPCU*



**VANNO**

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# Agenda for Today

## 1. Setting the stage:

- Duties and Responsibilities
- Who is going to sue you and why?
- What is your liability and what do you stand to lose?

## 2. What is happening today?

- Legal trends affecting Non Profits
- Statistics and average loss amounts

# Agenda (con't)

- Proactive steps you can take to minimize your risks or being sued for mismanagement and employment related issues

## 3. Why to Buy D&O and EPL Ins?

- What is D&O and EPL insurance?
- Basics of the insurance policy
- What coverage features are a must have?
- Importance of HR support services

# Agenda (con't)

## 4. Recap of discussion

➤ Questions and Answers!!

# Duties and Responsibilities

- Directors and Officers owe three specific duties to the organization, its members, employees and the general public
  - Duty of care – act prudently and reasonably
  - Duty of loyalty – prohibits using position to further own personal interest
  - Duty of obedience – requires the organization be run in accordance with its charter & bylaws

# Duties and Responsibilities (con't)

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- Non Profit Directors and Officers are legally responsible for the day-to-day decision making of their organization. These board members can be held personally liable for any breach of duty.

# Duties and Responsibilities (con't)

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- Additional basic responsibilities
  - Establish a mission and purpose
  - Establish programs and services consistent with the mission
  - Ensure adequate resources to accomplish the mission
  - Provide financial oversight
  - Establish procedures to ensure each board member complies with their duties
  - Etc!

# Who sues Non Profits?

- Non Profit Directors and Officers must always act for the benefit of their organizations. Any perceived breach of these duties can result in a suit that will at the very least incur defense costs

**The Personal Assets of each  
Board Member are at Risk**

# Who Sues Non Profits? (con't)

- Donors – Claims from those who make donations
- Third Parties – Fund raising activities
- Employees – The most common claims
- Governmental Agencies – Claims due improper use of grant money
- Volunteers – Denial of a full time position
- Members – Protection of members' interests
- Beneficiaries – Recipients of the organization's services

**Even groundless accusations can be very expensive to defend**

# What is Your Liability?

- Nonprofit's bylaws require the organization to reimburse or indemnify the board members for legal expenses incurred
- As a board member you therefore are relying on the financial strength of your organization to protect your personal assets
- Organization = total assets
- Board Members = Personal total assets (i.e. savings accounts, investments, college funds, home, car, etc)

**Many times, you are considered the deep pocket**

# Trends Affecting Non Profits

- Reductions in donations and funding
- Need for increased services
- Many Non Profits are being asked to do more with less
- Increased reporting requirements (IRS - new 990 rules)
- Increasing number of claims and severity of litigation
- Corporate scandals have heightened regulation of accounting

**Your liability and exposure to loss is increasing**

# Statistics and average loss

## ➤ Did you know?

- The average cost of a Directors and Officers and/or an Employment Practices claim closed through litigation is over **\$100,000!**
- 85% of Non Profits have an annual budget that is less than the average cost to close a claim
- 70% of claims are Employment related
- The IRS has increased their scrutiny of Non Profits
- 2008-2009 was the most litigious span in U.S. history

# Steps to Minimize the Risk of Litigation

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## ➤ Management Liability

- Operate organization in accordance with the charter, bylaws and mission statement
- Assess the chief executive's performance annually
- Ensure legal and ethical integrity, comply with all legal standards
- Maintain financial stability
- Recruit and orient new board members and assess board performance

# Steps to Minimize the Risk of Litigation

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## ➤ Employment Practices Liability

- Develop and implement HR policies pertaining to discrimination, harassment, termination and retaliation
- Review and update all employment applications and interviewing questions
- Educate your volunteers regarding the policies of proper conduct
- Consult an expert when making employment related decisions (i.e. hiring/firing, FMLA, ADA)

# Directors & Officers and EPL Ins

- What is Directors & Officers and EPL Insurance?
  - D&O or management liability = Screw up insurance / Good faith mistake protection
  - EPL = protection from allegations of harassment, discrimination, retaliation, wrongful termination, failure to hire, failure to promote, 1<sup>st</sup> and 3<sup>rd</sup> party

**Lawsuits can have a devastating impact  
the financial health of your organization**

# Basics of the insurance policy

- Insuring agreement
- Claims made vs. occurrence trigger
- Defense costs
- Exclusions
- Warranties
- Separate limits of liability
- Policy Retention
- Consent to settle provision
- Duty to defend vs. reimbursement policy
- Who is an insured?

**Not all policies provide the same coverage!**

# Must have coverage features

- Broad insuring agreement
- Separate limits for D&O and Employment Practices Liability
- Defense costs provided in addition to the limits
- Life Time Occurrence Reporting Provision (LORP)
- Low retentions
- EPL with third party coverage
- Duty to defend policy
- Free HR consulting services
- Insurance carrier with strong financial rating (A.M. Best: A++)

# Impact of EPL claims

- 70% of claims are from employment related issues
- Each EPL claim drains the organizations resources (wasted time and energy)
- Even if frivolous in nature, makes it tougher to secure affordable insurance
- Impact on reputation? (fundraising, recruiting)

# Importance of HR Consulting Services

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- Good Human resource practices will help prevent claims and retain good people
- Improved defense against allegations
- Increased protection of the organizations financial strength

# Questions and Answers

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➤ Thank you for your participation!