# *WHY NON-PROFIT ORGANIZATIONS NEED DIRECTORS AND OFFICERS LIABILITY INSURANCE*

A non-profit board member is obligated to apply diligence, obedience and loyalty in the performance of his or her duties. Board members are expected to act in good faith and in the best interest of the organization. They can be personally and individually liable for their actions, or lack of action, in managing the organization. In addition to insuring the officers and directors, the D&O policy protects the organization itself, and all committee members, volunteers, and employees.

No other policy purchased by the non-profit organization or the individuals involved offers the protection afforded by the D&O liability policy. Florida statutes provide immunity from civil liability to volunteer directors, officers and workers, but we still recommend D&O insurance:

(1) In over 80% of the claims, the organization is named. Neither the organization nor its employees have immunity, so the D&O policy is needed to provide defense and payment.

(2) The statute provides that directors and officers give up their immunity if they violate criminal law, derive an improper personal benefit, act recklessly or with malicious purpose. These are the kinds of behavior that lawsuits usually allege.

(3) Even if the insured is found not guilty, the cost of defense can be substantial. According to the Wyatt Survey, the average defense cost for claims against nonprofit organizations ranged from $35,000 to $103,000, depending on whether settlement was negotiated or litigated.

(4) Florida statutes require that the non-profit entity reimburse any director who successfully defends a lawsuit alleging a wrongful act. Without D&O insurance, most nonprofit agencies would not be able to pay.

(5) Employees are the single most important source for D&O claims (about 80% of claims) Many of these claims fall under federal law, so state statutes provide no immunity.

(6) The Florida statute has not been tested in court. An earlier law giving immunity to charitable organizations was declared unconstitutional.

In summary, the Directors and Officers Liability policy provides unique and necessary protection for wrongful acts of the directors and officers.

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***IMPORTANT NOTICE:***

Re: Conflict between Employee Leasing and Employment Practices Liability

**Problem:**

It has come to out attention that many of our Not-For-Profit clients who are using Employee Leasing may encounter an insurance coverage conflict when an employee files an EEOC/Wrongful Termination/Discrimination claim. Most Not-For-Profit organization purchases Directors & Officers insurance that includes Employment Practices Liability. While at the same time the Employee Leasing Company may be providing this coverage as a part of the Co-Employment contract. The conflict arises when a claim is filed under both policies and the Not-For-Profit organization ends up having to pay the larger deductible of the two policies.

As an example, a Not-For-Profit organization purchased a $1000 deductible on their Directors & Officers policy (including Employment Practices Liability), only to discover at time of claim that they were required by their insurance carrier to pay the $50,000 deductible of their Employee Leasing Company instead of the $1000 deductible they purchased. While this is obviously in equable, the issue will have to be resolved through litigation.

**Solution:**

Request written acknowledgement from your leasing company that their Employment Practices Liability policy states that any coverage your organization has purchased individually will be the primary coverage (with the Employee Leasing Companies policy as excess) in the event of a claim.