

Exposures of Director's and Officer's (D&O): What do you need to know?

Excerpts from the National Underwriter Property & Casualty article "Even volunteers could face D&O suits for nonprofit work" published in the January 16, 2006 issue

Common exposures of Director's & Officer's:

- *employment practices liability*
- *misappropriation of funds*
- *failure to fulfill fiduciary duties*
- *member discrimination*
- *exhausted coverage limits*
- *antitrust and intellectual property violation*

D&O claims arising when other lines of coverage are exhausted:

"The allegation is failure to purchase enough insurance," said Peter Taffee, Managing Director of Executive Perils. "When every other policy fails, it is just the best policy to go after. And unless it is specifically excluded, the lawyers usually can get something out of the D&O policy."

Antitrust claims and intellectual property violations against nonprofits:

Elda Martocci, vice president for nonprofit D&O products for St. Paul Travelers Bond said, "...larger nonprofits, those more national in scope, can also be impacted with antitrust and intellectual property issues, which can be quite severe."

Safe harbor statues providing protection against lawsuits:

Potential targets should not take too much comfort for so-called "safe harbor" statutes that some states have to protect nonprofit organizations from lawsuits, warns Robert Sargent, president of Tenant Risk Services. "Most importantly, they do not protect directors from lawsuits, but only, if the situation qualifies, from damages to plaintiffs in a lawsuit."



Exposures of fraternal organization volunteers

Detailed below are examples from HRH/Kirklin & Co., LLC developed from a review of claims brought against its clients and experience from known occurrences within the greater Greek community.

Purchase of Inadequate Property Insurance

Lack of due diligence by Alumni/House Corporation officers to search out and purchase the best available property insurance, in terms of breadth and cost, can result in uninsured property losses and inadequate funds to rebuild a chapter facility. The financial shortfall can potentially lead to a lawsuit brought against individual directors for failure to fulfill their fiduciary duties to the Corporation. The legal term is derivative action where the interested alumni are actually suing on behalf of the Corporation with recovered assets going to the benefit of the Corporation.

The critical issue as an Alumni/House Corporation officer is to never be penny wise and pound foolish. Do not put yourself in a situation where you have to ask for donations from alumni members to raise money that should, could, or would have been paid by an insurance program; this lack of effort to review options and buy the most comprehensive program available in the market may lead to uninsured losses and accusations of fiduciary negligence.

Violation of Contract/Housing agreement

It is important to closely monitor tenant rights within your jurisdiction to make certain any eviction of a tenant or member due to disciplinary action or lack of rent payment is done so in accordance with local requirements.

Employment Practices Liability

Claims for discrimination, harassment and wrongful termination by chapter cooks, house mothers or resident advisors do arise in a chapter setting out of the employer/employee relationship. Even if the undergraduate chapter is the technical employer the Chapter Advisor(s) and Alumni/House Corporation will not be spared in any litigation. It is important that appropriate supervision is provided to monitor the relationship between the employer and employee. If insurance protection is desired for Employment Practices Liability (EPL) exposure it can be included under most non profit D&O insurance policies.

Wrongful Termination of Membership or Denial of Member Benefits

Proper adherence to the disciplinary policies and expulsion procedures of the organization are critical when dealing with matters of discipline or financial delinquency. Failure to do so has led to claims for financial loss/harm by the individual who believe he has been wrongfully expelled. To a lesser extent claims have been brought by family of legacies who believe their descendent was owed or promised membership.

Additional Information/Contact Us

While many of these examples may seem far reaching in considering your particular chapter operations, the facts remain that when individuals become emotionally involved with the organization, common sense is often discarded and significant legal costs are often incurred to prove one's innocence.

Please contact HRH/Kirklin & Co, LLC with any questions at 1-800-736-4327 or visit us online at www.kirklin.com to view a company directory, product offerings and additional educational resources.