



# FINANCIAL AND PROFESSIONAL SERVICES MANAGEMENT LIABILITY

## Wrap+ NON-PROFIT ORGANIZATION DIRECTORS AND OFFICERS LIABILITY

# THE BEST INTENTIONS WON'T PAY RUNAWAY LEGAL FEES

## Wrap<sup>+</sup> **Non-Profit Directors and Officers Liability**

In the wake of controversy surrounding several high profile non-profits, the management of non-profit organizations is under increasing scrutiny. Statutes do not provide adequate protection for Directors and Officers, and traditional general liability insurance will not respond to claims against Directors and Officers for wrongful acts. Even if claims are ultimately proved false, the cost of defending against a lawsuit can be devastating.

The responsibilities of individuals serving on a non-profit board of directors are similar to those of directors of for-profit companies. However, non-profit organizations have limited resources to indemnify Directors and Officers or respond to expensive litigation, settlements or damage awards. Where no indemnification or only partial indemnification is available, the personal assets of Directors and Officers are at risk, as well as those of the entity itself.

Directors and Officers liability coverage is a critical component of the overall insurance protection package that no non-profit organization should forgo, particularly if it wants to attract and retain qualified and motivated Directors and Officers.

Not all non-profit Directors and Officers liability policies are the same, and policy comparisons can be misleading. Do your own analysis.

**Check and see how their policy stacks up... there is a difference!**

	Wrap <sup>+</sup>	Their Policy	
<b>Broad Definition of Insured</b> – includes the Insured Organization as well as past, present or future directors, officers, trustees, members of board of managers, in-house general counsel, executive director, risk manager, human resources manager, employees, volunteers and committee members.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>All Risks Entity Coverage</b> – the non-profit organization and its more than 50 percent owned non-profit subsidiaries are insureds	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Duty to Defend</b> – 100 percent pre-determined allocation for Defence Expenses for Claims against any Insured consisting of loss that is and is not covered by the policy	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Defence:</b>			
• For allegations of dishonesty/fraud until determined by final adjudication	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• For allegations against the Insured for gaining a profit that the Insured is not legally entitled to, until determined by final adjudication	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Additional Defence Coverage</b>			
• Option to select Additional Defence Limit of Liability	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Publishers Liability and Personal Injury coverage</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Non-Entity Employment Practices</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>No Absolute Bodily Injury or Property Damage Exclusions</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Broad Definition of Loss Includes:</b>			
• Punitive, exemplary and multiplied damages with most favourable venue	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Prejudgment and post judgment interest and expenses awarded	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Canadian statutory liabilities payable by Directors and Officers	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Foreign Parent Corporation Coverage Extension</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Broad Definition of Claim Includes:</b>			
• Non-monetary relief	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Civil proceeding	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Criminal proceeding	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Formal administrative or regulatory proceeding	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Arbitration or mediation or similar alternative dispute resolution proceeding	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Written request to toll or waive statute of limitations	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No



Wrap+

Their Policy

	Wrap+	Their Policy	
<b>Settlement Provision</b> – provides the Named Insured with coverage for 70 percent of Loss in excess of a Settlement Offer rejected by the Named Insured	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Non-Rescindable</b> – with respect to all Insured Persons	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Non-Cancelable by Insurer</b> – except for non-payment of premium	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Worldwide Coverage</b> – applies to Claims made and Wrongful Acts occurring anywhere in the world	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Acquisitions</b> – automatic coverage for majority owned Subsidiaries formed or acquired during the Policy Period with assets that do not exceed 25 percent of the total assets of the Insured Organization	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Notice of Non-Renewal</b> - 30 Days	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Extended Reporting Period:</b>			
• Bi-lateral Extended Reporting Period option – available if Insurer or Named Insured cancels or fails to renew	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Run-Off Extended Reporting Period option – available for a pre-determined premium upon Change of Control of Named Insured	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Ability to report Potential Claims during Extended Reporting Period or Run-Off Extended Reporting Period	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Representations:</b>			
• Severability of Insured Persons with respect to the representations made in the Application	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Only knowledge and representations of signer of Application are imputed to the Insured Organization	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Severability of Exclusions:</b>			
• All exclusions are severable with respect to any Insured	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Full severability of fraudulent, criminal or willful conduct and personal profiteering exclusions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Exclusions Include Carvebacks for:</b>			
• Bankruptcy trustees regarding the Insured vs. Insured exclusion	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Whistleblowers regarding the Insured vs. Insured exclusion	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Claims brought by directors or officers who have not served in the past four years regarding the Insured vs. Insured exclusion	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Cross claims for contribution or indemnity regarding the Insured vs. Insured exclusion	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Outside Directorship Liability Coverage (ODL):</b>			
• Automatic coverage for Insured Persons who serve as a director, officer, trustee, etc. or functional equivalent for any Non-Profit entity	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Ability to schedule service on boards of for profit organizations	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Order of Payments</b> – protecting personal assets first	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Defence Option</b> – option to select Duty to Defend or Reimbursement coverage at policy inception	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Spousal and Domestic Partner Liability Coverage</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Retentions:</b>			
• Only one retention must be satisfied when one Claim triggers coverage under two or more Liability Coverages	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• No retention applies with determination of No Liability	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Flexible Limit Options:</b>			
• Choice of individual or shared Limits of Liability	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Options to select Annual Reinstatement of Limit of Liability (Multi-year)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No

## NON-PROFIT ORGANIZATION DIRECTORS AND OFFICERS LIABILITY CLAIMS EXAMPLES

- \$2,000,000 A country club was sued by a group of its members who alleged the directors and officers failed to renew an option to extend the lease of the land used as a golf course. As a result, the lessor required the club to either purchase the land for more than \$10 million or to lease the land for a substantial price. The suit was settled for \$2 million.
- \$3,000,000 An organization providing housing for the disabled was sued by the parents of adult disabled children alleging, among other things, breach of fiduciary duty. After a jury trial and an appeal, the plaintiffs won a judgment in excess of \$3 million.
- \$175,000 A trade association was sued for anti-trust violations in connection with the rejection of a company's application for membership. Defence costs alone were \$175,000.



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