Non-profit D&O 101
Matthew Kletzli
Management Liability Leader
Agenda

• Role and duties of directors & officers
• Coverage Sections
  – Directors & Officers Liability
  – Employment Practices Liability (EPL)
  – Fiduciary Liability
  – Additional coverage sections
• Questions & answers
Role of the Board

Corporations

• Persons under the law and limit liability for owners

The Board

• is responsible for the strategic direction of the organization
• is the central decision making body for the organization
• has ultimate responsibility and accountability for the organization’s actions.
Directors & Officers Liability
Legal Duties of the Board

Fiduciary duties:

• Duty of Care
  – Reasonably prudent person standard

• Duty of Loyalty
  – Best interest of the organization

• Duty of Obedience
  – Operate within filed purpose

Personal liability exists for trustees
  – Often board members won’t join the board without a policy
Directors & Officers Liability
Transparency

Modern Philanthropy

• Governance for gifting
• Maximize funds to intended purposes

Sarbanes-Oxley Legislation

• Not applicable as legislation
• Court rulings say differently

All aspects of the operation are the responsibility of the board
Employment Practices Liability (EPLI)

- All activities from interviewing to post employment activity
- Federal, State and Local Laws
  - Race, color, religion, gender, sexual orientation, national origin, age, disability,
- Volunteers
- Third parties can be discriminated against or harassed
- Cultural
  - #metoo and #timesup
Fiduciary Liability

Employee benefit plan design and administration

Employers liability in a package
- Covers mistakes in signing someone up
- Not for breach of prudence in plan design or investment
Other Coverage Options

• Crime
• Kidnap, Ransom & Extortion
• Various sublimit endorsements
  – Substantive coverage & limits
    - Employed lawyers
    - Antitrust/restraint of trade
  – Very small sublimits
    - Business travel accident
    - Fundraising event blackout
    - Donation assurance
    - Conference cancelation
    - Crisis fund
    - Etc.
Questions?
Your Schinnerer Non-Profit Team

Yumi Park
Senior Account Executive
Phone: (301) 951-6922
Yumi.Park@schinnerer.com

Jessica Smith
Senior Account Executive
Phone: (301) 951-6916
Jessica.Smith@schinnerer.com
Appendix
Claims Scenarios
Breach of Fiduciary Duty

- A non-profit organization applied for and received government funding for the purpose of organizing and hosting a concert event.
- The expenses incurred for the event far exceed the revenues received.
- Government conducted an audit and determined the funds had not been used for the purposes described in the funding application.
- The government commenced action seeking damages due to the alleged negligent misrepresentations in the application documents and for the alleged breach of fiduciary duty on the part of the directors of the organization.
- The claim was resolved by way of negotiated settlement.
Breach of Trust

- A non-profit organization held a fundraising event.
- The organization received a temporary operating fund or “float” from another organization which was to be repaid from the proceeds of the events.
- Unfortunately, the funds were inadvertently deposited into the insured organization’s general account by an employee and used to pay general expenses.
- The organization subsequently filed for bankruptcy and was unable to return the float to the lending company.
- A lawsuit was commenced against the insured organization and the allegations made against the directors included negligence for failing to properly supervise the employee and breach of trust.
Breach of Duty, Abuse of Process

• The board of a professional association revoked an individual’s membership due to allegations of unethical conduct.
• The member sued the association alleging the board of directors had targeted her and they had not followed the organization’s bylaws.
• Although the facts did not appear to support the allegation that the board targeted the member, the bylaws were somewhat ambiguous, making it more difficult to defend the action.
• A settlement was negotiated to avoid any embarrassment or loss of reputation to the association