

Published on *Blue Avocado* (<http://www.blueavocado.org>)

[Home](#) > [Content](#) > Board Insurance: Do You Really Need It?

Board Insurance: Do You Really Need It?

Board Insurance: Do You Really Need It?

[First Person Nonprofit](#) [1] • By Susan Bradshaw • April 25, 2011 • [Email](#) [2] [Print](#) [3]



Photo:MNicoleM

We wanted an expert's view on what nonprofits need to know about Directors & Officers (board) liability insurance, so we asked Susan Bradshaw, VP at the [Nonprofits Insurance Alliance Group](#) [4]. (And don't miss the link to a free booklet on D&O at the end of the article):

In today's tight economic environment, nonprofits are facing tough budget decisions, and one expense that often comes up is D&O insurance ([Directors & Officers liability insurance](#) [5]). How should a board of directors think about this insurance?

Some statistics from our 10,000 insured nonprofits to get your attention:

- About 1 in 100 nonprofits each year will file a claim under D&O insurance
- Average cost of a settlement in a D&O claim (meaning it didn't go to court): \$28,000
- Average legal costs of defending a claim: \$35,000

Most D&O claims are employment related: at the Nonprofits Insurance Alliance Group -- which includes both the Alliance of Nonprofits for Insurance (ANI) and the Nonprofits' Insurance Alliance of California (NIAC) -- we know that more than 95% of claims filed against D&O policies are related to wrongful termination, harassment, or discrimination, and so forth. And add to that, during economic downturns, there is an increase overall in the number of employment-related disputes as employers downsize and those fired or laid off find it harder to find employment.

D&O insurance provides coverage for "intentional" actions taken by an organization's board of directors or management that someone else thinks is wrong. So since the board approved all your personnel policies (intentional act), if your nonprofit fires someone and that individual disputes whether you followed your policies . . . well, you get the picture. Or perhaps you followed all your policies but the employee still believes they have been discriminated against or wronged.

Maybe they were wronged and maybe they weren't, but either way, getting to an answer is probably going to be expensive. Your general liability policy is not going to kick in for a third party -- that coverage is for bodily injury, not for claims by employees. If you have coverage for

employment-related lawsuits, that is almost surely going to be found in your D&O policy.

Two more eye-catching statistics:

- One in every 10 claims costs more than \$100,000 (whether a settlement or court determined)
- The two largest claims to date: \$500,000 and \$1 million

I don't know any nonprofit that has those types of dollars just lying around to pay out in a lawsuit!

What are the key features to look for when purchasing D&O?

While it is very tempting to go for what appears to be the cheapest price, there are a couple of things you need to consider. Ask these two key questions first:

- Is there a deductible? Don't get burned by this one! There are policies in the market with no deductible at a very reasonable premium. Remember: deductibles can add up! Just because the quoted premium might be less -- keep in mind, one claim and a \$5,000 deductible can easily triple the original cost of the policy.
- Does the insurance company provide any employment practices assistance? If so, is it only by phone or are email communications also included? Is it free or just subsidized? Is it an unlimited service or is it capped at one or two hours? Make sure you ask these questions. Just two or three consultations a year could easily save you more than the cost of the policy.

Also make sure that the policy language is broad. For example:

- Who, exactly, is going to be insured under this policy? Make sure it includes coverage to any person who was, is, or becomes a director, trustee, officer, employee, committee member, or volunteer of the nonprofit as well as the nonprofit itself.
- Are all costs paid by the insurer as they are incurred? You should not have to front these dollars.
- Does it include broad coverage for employment-related activities? Although it is becoming more common that employment-related activities are covered in the D&O policies, don't assume it is covered -- ask! A broadly written policy covering employment practices should insure a defense for claims alleging a wide range of wrongful employment actions.

OK, so you don't have employees. So based on the data you're thinking you don't need the coverage. Two reasons you should still consider it. First, some individuals are reluctant to serve on a nonprofit board that doesn't have D&O insurance. Check with board members to see if they might each chip in a small amount to make sure they are covered for decisions they make while governing the organization.



Second, a claim which is becoming more common is alleged breach of contract, such as failure

to pay an equipment lease or to pay a contractor for work performed. D&O policies are different in how they respond to claims alleging breach of contract. No nonprofit, no matter how small or how few employees, is exempt from this sort of lawsuit.

What about the board member's homeowner or umbrella insurance?

This question often comes up when I speak with boards, but more than likely their homeowner's insurance protects them for serving on for-profit corporate boards, but excludes volunteer nonprofit board service. And even if that coverage is there, not all board members are homeowners or have the right coverage.

What about legal protections for volunteers?

Legislative protections for volunteers are good, but are not in all states. In addition, even where such protections exist, they can't protect you from violations of the Americans with Disabilities Act (ADA), ERISA (Employee Retirement Income Security Act), or civil rights laws.

Is there anything D&O can't cover?

Yes. In addition to the above, D&O legally can't cover you for tax liabilities the organization incurs, or for any deliberate acts, such as criminal acts.

So, if you are a part of a nonprofit organization, consider D&O as a "must have." Overlooking D&O puts board members at risk unnecessarily. Approach D&O insurance as a positive and essential investment for your organization.

Free booklet: A downloadable, free booklet on D&O insurance is available on the NIAC website; click [here](#) [6]. You'll see other free booklets there, too.



Susan Bradshaw is VP for Marketing, Member & Broker Services at the Nonprofits Insurance Alliance Group [4] (which includes the Alliance for Nonprofit Insurance and the Nonprofits' Insurance Alliance of California). Look for her and NIAG at the next nonprofit conference you attend. Susan spends a lot of time on airplanes visiting nonprofits in various states. She has served on the board of a school for people with autism and a nonprofit providing recovery services. The Nonprofits Insurance Alliance Group [4] is a founding and ongoing sponsor of Blue Avocado.

See also in Blue Avocado:

- [A Board Member's Guide to Nonprofit Insurance](#) [7]
- [What Should Boards Know About Insurance Brokers?](#) [8]

[+](#) Share / Save [f](#) [t](#) [g+](#) [d](#) [9]

[First Person Nonprofit](#)

Source URL (retrieved on 05/19/2011 - 15:19): <http://www.blueavocado.org/node/642>

Links:

- [1] <http://www.blueavocado.org/category/topic/first-person-nonprofit>
- [2] <http://www.blueavocado.org/printmail/642>
- [3] <http://www.blueavocado.org/print/642>
- [4] <http://www.insurancefornonprofits.org>
- [5] http://en.wikipedia.org/wiki/Directors_and_officers_liability_insurance
- [6] https://www.niac.org/Nonprofit-Resources-Nonprofit-Directors-and-Officers-Key-Facts-About-Insurance-and-Legal-Liability.cfm?var_PageAction=View&var_ID=61&NavTemplate=Default
- [7] <http://www.blueavocado.org/content/board-members-guide-nonprofit-insurance>
- [8] <http://www.blueavocado.org/content/what-should-boards-know-about-insurance-brokers>
- [9] http://www.addtoany.com/share_save?linkurl=http%3A%2F%2Fwww.blueavocado.org%2Fcontent%2Fboard-insurance-do-you-really-need-it&linkname=Board%20Insurance%3A%20Do%20You%20Really%20Need%20It%3F%20%7C%20Blue%20Avocado