

Responsibilities & Liabilities of Directors & Officers

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Presented by: David Gottlieb, Account Executive



JONESDESLAURIERS
INSURANCE MANAGEMENT INC.

 **NAVACORD®**

Insurance Program Overview – New Path Foundation

<p>Property Coverage</p> <p>9,629,732 Total Sum Insured (Buildings & Contents)</p> <p>Included - Equipment Breakdown</p> <p>400,000 Business Income & Extra Expense (Each Location)</p> <p>Replacement Cost, No Coinsurance Clause</p>	<p>Commercial General Liability</p> <p>10,000,000 Per Occurrence & No Aggregate</p> <p>10,000,000 Malpractice Liability</p> <p>10,000,000 Non-Owned Automobile</p> <p>5,000,000 Abuse (Aggregate)</p> <p>50,000 Crisis Management</p> <p>10,000 Per Day Workplace Disruption (50,000 Aggregate)</p> <p>10,000,000 Non-Owned Automobile Liability</p>	<p>Professional Liability</p> <p>Claims Made Policy</p> <p>10,000,000 Each Wrongful Act & No Policy Aggregate</p> <p>Retroactive Date – July 1, 2016</p> <p>Defence Costs In Excess</p>	<p>Legal Expense</p> <p>50,000 Per Claim</p> <p>250,000 Aggregate Limit</p> <p>Crime</p> <p>100,000 Employee Dishonesty</p> <p>25,000 Money & Securities</p> <p>25,000 Depositors Forgery or Alteration</p> <p>25,000 Audit Expenses</p> <p>25,000 Computer Funds & Transfer Fraud</p>	<p>Board Member Accident</p> <p>100,000 Accidental Death & Dismemberment</p> <p>D&O Liability</p> <p>2,000,000 Each Wrongful Act & Aggregate</p> <p>1,000,000 Side A Excess Extension</p> <p>Included – Employment Practices Liability</p> <p>250,000 Workplace Disruption</p> <p>Defence Costs In Excess</p>	<p>Cyber Liability</p> <p>5,000,000 Per Occurrence & Aggregate</p> <p>Included – Extortion Threats, Regulatory Fines</p> <p>100,000 Public Relations Costs</p> <p>1,000,000 Business Interruption</p>
<p>1,000 – Deductible On All Losses, Including Sewer Backup Except;</p> <p>25,000 – On Flood,</p> <p>3% / 100,000 – On Earthquake</p>	<p>1,000 On All Losses</p>	<p>2,500 Each Wrongful Act</p>	<p>NIL Deductible</p>	<p>NIL Deductible</p>	<p>5,000 Deductible</p>

*Subject to the Terms & Conditions of the Policies

Duties of Directors & Officers (D&O's)



1. Duty of Loyalty
2. Duty of Diligence
3. Duty of Obedience

Non-Profit organizations are held to the same standards as for Profit Corporations they have a **Fiduciary Duty** to the Corporation.

Fiduciary duty: holding / giving something in trust for / to others.

Duty of Loyalty



- Must refrain from: self-dealing transactions, misappropriation of corporate resources
- Cannot use their position of trust to further their interest
- Cannot engage in activity that harms or takes advantage of the Organization
- Corporate actions must not have mixed motives

Duty of Diligence



- Must discharge their duties with the level of care an ordinary person would use, under similar circumstances and in a similar capacity
- Must discharge their duties in good faith
- Must discharge their duties in a manner that they reasonably believe to be in the best interest of the Organization

Duty of Obedience



- Must be in accordance with the Corporation's by-laws
- Must be in accordance with all statutes – it must be legal
- There are many statutes D&O's personally liable: The Income Tax Act,
- Employment Insurance Act, Canada Pension Plan, Ontario Securities Act, Canadian Business Corporations Act, etc.
- Government agencies are increasingly watchful and will question corporate governance as it relates to supervision and fiduciary duty (Health & Safety Acts)

Personal Liability



**WITH SO MANY RESPONSIBILITIES AND EXPOSURES LURKING,
WHY WOULD ANYONE WANT TO SERVE ON A BOARD OF DIRECTORS?**

- Directors & Officers of an organization have *personal liability*. That means that their own assets (house, cars and bank accounts) are at risk
- The concept of personal liability is central to Directors & Officers insurance
- Even frivolous lawsuits can result in significant legal costs

Indemnification Provisions



For Most D&O's, statutory protection, corporate bylaws or indemnification provisions will provide the first line of defence.

These are hold harmless agreements which provide protection for D&O's, as long as they:

1. Act honestly
2. Act in good faith
3. Act in the best interest of the organization

This front line protection is contingent upon availability of corporate funds.

When these protections fail or fall short directors & officers would need to turn to their insurance policy for protection.

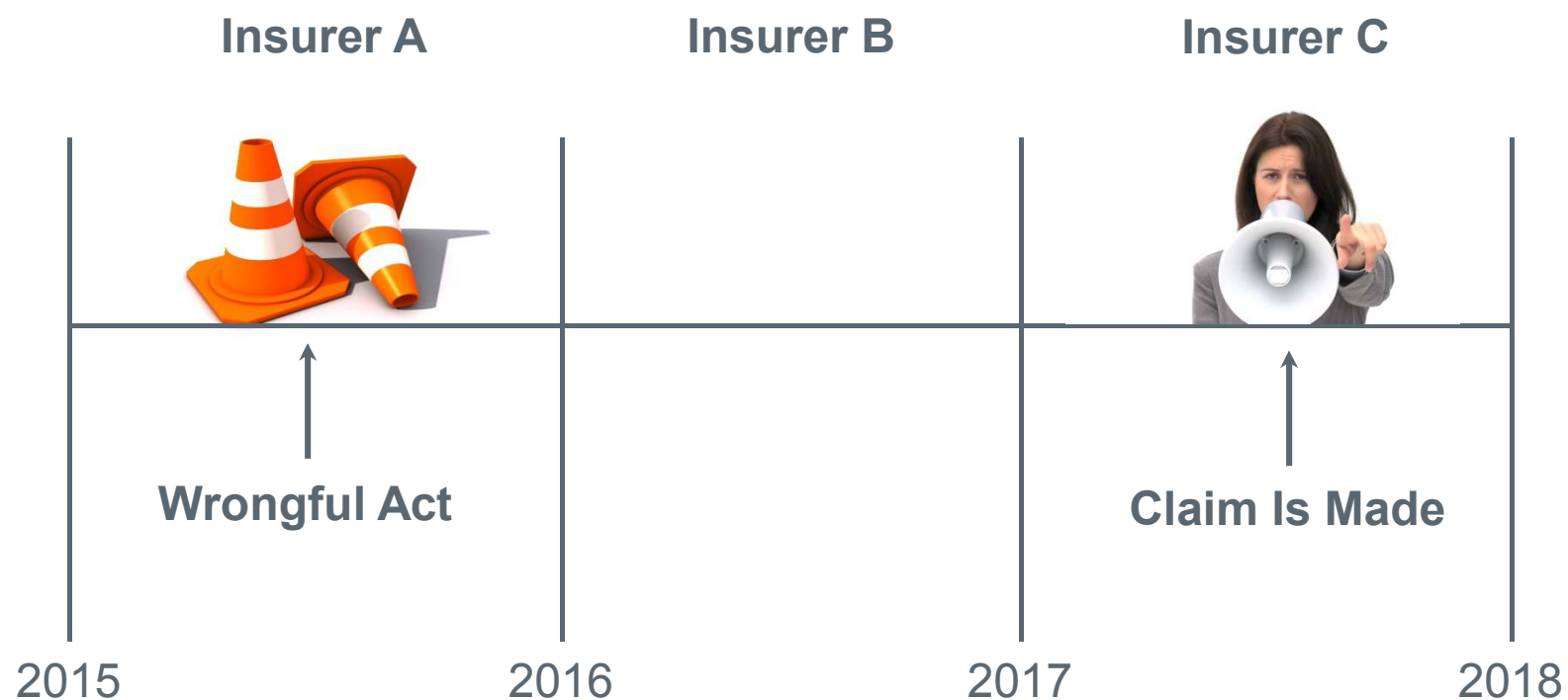
D&O Insurance – Who Is An Insured?



- Past, present and future directors & officers;
- Coverage is extended to spouses and estates;
- Coverage is further extended to cover employees, volunteers and committee members of the organization; and
- Lastly, the Policy covers the organization, including its subsidiaries

Claims Made Policy

The policy responds to a claim made and reported during the policy period.



What Is A Wrongful Act?



What is a wrongful act?

- Any actual, or alleged act, error, omission, misstatement, neglect or breach of duty by the D&O's or insured's
- Or any other matter claimed against them solely by reason of their being directors, officers, trustees, committee members, employees or volunteers of the organization

Employment Practices Liability

Employment Practices Liability (EPL) refers to the liability stemming from interactions in the workplace.

Five Exposure Categories:



Typical Allegations

Government:

Civil / Human rights
Environment
Statutory Liabilities (Taxes)
Regulatory Compliance
Fraud, etc.

Employees:

Discrimination
Harassment
Wrongful Dismissal
Breach of Contract
Whistle Blowing
Retaliation, etc.

Client/Customer (Third Party):

Discrimination
Harassment
Debt Collection
Fraud
Disciplinary Acts, etc.

Beneficiaries:

Breach of Contract
Negligence
Mismanagement of Funds, etc.

Best Practices



How does a D&O perform their function to avoid allegations of wrongful acts?

Five key actions which are adopted by Canadian courts / case law:

1. Identify sources of potential liability.
2. Create a plan or protocol for prevention and put it in writing.
3. Communicate this document to everyone involved with the corporation's operation.
4. Audit / sample the plan or protocol. Is it effective?
5. Take immediate action when necessary.

Any Questions?



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