



# Insurance for Non-Profit Organizations

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Joseph Coray, VP Underwriting Director-Small Commercial Insurance, CHUBB

Bettina Rhodes, VP NFP Company Product Manager Financial Lines, CHUBB

Raquel Fruchter, Managing Counsel, NA Office of the General Counsel, CHUBB

Lorraine Mandel, Volunteer Attorney, Lawyers Alliance



## Today's Agenda

- Overview of Insurance/Risk Management
- Types of Liability Insurance to Consider
- Hot Topics
- Ongoing Q&A



## What is Insurance?

- Form of Risk Management (*i.e. manner in which organization transfers risk*)
- Insurance Policy: Contract between one party (“Insured/Policyholder”) and an insurance company (“Insurer/Carrier”) which transfers or shares the risk from the insured to the carrier in exchange for premium
- Policyholders side of the bargain: Premium
- Insurance Carrier’s side of the bargain: When covered item is subject to covered risk, insurer has certain responsibilities (*i.e. investigation, defense, payment for loss/coverage*)



## Why Insurance/Risk Management for Non-Profits?

- Common and Costly Risks: 1) Loss to Property (i.e. fire, damage, car collision, theft); or 2) Liability Loss
- Liability Loss: Loss that arises when non-profit is legally responsible to third parties for the damages they have sustained (**“Third Party Loss”**)
- Categories of Third Party Loss:
  - Injuries to people for failure to provide the appropriate levels of care (staff, clients, volunteers employees)
  - Risks involved in employment practices
  - Liability incurred by directors or officers



## Keys to Managing Risk

- Every Non-Profit should do the following....
  - 1) Evaluate loss exposures
  - 2) Appraise risk management techniques
  - 3) Purchase appropriate insurance
  - 4) Adapt to change.



## Insurance is not “One Size, Fits All”

- When shopping for insurance, it is a good idea to contact several insurance agents/brokers to assess:
  - 1) Types of coverage needed
  - 2) Coverage limits (the maximum amount to be reimbursed for loss)
  - 3) Services or compliance policies needed
- Insurance Broker: Represents the consumer who is purchasing the insurance policy (but paid a commission for sale by carrier)
- Insurance Agent: Sells insurance policies on behalf of one or more insurance companies (paid salary or commission by carrier)



## Property & Casualty Insurance- Starting Definitions

- Property & Casualty Insurance
  - Property Coverages: pays the insured directly as a result of a loss
  - Casualty Coverages: defends the insured and pays 'damages' that result from claims, suits or other legal liabilities



## Typical Coverages/Policies

- Package Policy: generally a single policy with both property and liability coverages
  - BOP: Business Owners Policy, package policy for smaller organizations, which offers multiple coverages, typically property and general liability
    - First Party: pays the insured
    - Third Party: pays the claimant, on behalf the insured's responsibility; tort negligence; defense costs
- Workers Compensation: policy, required by state law, which coverages injury to employees, and liability of employer in claims from employees
- Commercial Auto: policy covering both 1<sup>st</sup> and 3<sup>rd</sup> Party, for ownership, use of automobiles
- Umbrella: generally, excess liability limits for large/catastrophic 3<sup>rd</sup> Party claims or losses





## Non Profit Organizations

- Legal Entity: Corporate, LLC, Partner or Trust
  - “insured” includes Entity, employees, directors or officers acting within the business or scope of their responsibilities
  - Volunteers should be included as “insureds” within their scope of responsibilities, typically on behalf of or at the supervision of the Entity
- Look for “Who is an Insured” section of the Policy
- Most policies refer to the Entity as “You” or “Your”
  - As in, “Your business” or “your property”



## Package/BOP – Property Coverages

- Covers the value of/damage to Property
  - Buildings or Structures , “Real Property”
  - Business Personal Property
  - Property of Others in “your” care, custody or control
  - Extended to personal property of staff/employees
- Property at described premises, address or location
- Extension for property “off-premises” or “in transit”
- Coverage for “special” or “all-risk”
- Subject to specific limits of insurance
- Subject to a deductible
- Loss of Business Income (net income after expenses)
  - Extra Expense
  - Ordinary Payroll
- May extend to lenders, or loss payees



## Property Coverages

- Direct damage to property: cause of loss: fire, theft, wind, rain, etc.
- Most forms, expand to include electrical or mechanical breakdown
- May include: Flood, Earthquake
- Does not always include “water” damage
- Some terms, conditions, or exclusions
  - Leaks, wear and tear
- Subject to a deductible, dollar amount, or period of time
- Payment “Valuation” is typically “Replacement Cost” which is cost to repair or replace with like kind or quality
  - Options, include Actual Cash Value (ACV) or Functional RC
  - Subject to limits on the Policy – Insurance to Value



## Property Coverage Extensions

- Temperature Change/Spoilage
- Crime coverages
  - Employee Theft, Forgery, Money, Computer Fraud
- Options
  - Newly Acquired locations
  - Ordinance and Law
  - Transit
  - Property under renovation or being built
  - Fine Arts, with special valuation
  - Valuable Papers, Accounts Receivable
  - Computer Hardware, software and data
  - Utilities Services, outages, government actions



## Package : Business Liability Coverages

- “Damages” from legal liability, tort negligence
  - Bodily Injury
  - Property Damage
  - Personal & Advertising Injury
  - Medical Expense
- Costs to defend and/or settle a “claim” or lawsuit
- Exclusions for some types of claims or causes of loss
  - Damage to “your work,” “your product;” claims from your employees to you; arising out of autos, watercraft, aircraft,
  - Expected or intended injury, unlawful activities
  - Damage to property in your control (option to include)
- Payment up to the Limit(s) of Insurance
  - Defense costs, outside the limits
  - Supplementary Payments



## General Liability: Who Is Insured

- Insureds who are Named, or included as “You”
- Additional Insureds – other persons or organizations that have specific relationships with you and may required that your insurance is extended to cover these entities for liability resulting from your relationship or business
  - Customers
  - Landlords
  - Lessors of property
  - Contractual obligations, such as event space rental



## Coverage and Limits

- Coverage descriptions:
  - Premises & Operation
  - Products & Completed Work
  - Offense/Injury as described in “Personal & Advertising”
- Other Types
  - Host Liquor Liability
- Hired or Non Owned Auto Liability
- Limits of insurance are expressed as
  - Occurrence Limit (per claim or event)
  - Aggregate (the most of all occurrences in a single policy period)
    - General Aggregate
    - Products Completed Operations Aggregate
  - Policy applies, which is in force when the injury occurs, not when the claim is made or suit is brought



# Declarations – the Information on your policy

- Policy number
- Insurance company name
- Producer name
- Named insured
- Mailing address
- Policy period expressed as month, day, and year commencing at 12:01 a.m. at the policy mailing address

<b>Policy Number:</b> D39362272																				
<b>Renewal of:</b> SERAZD393622721-002																				
<b>Named Insured &amp; Principal Address:</b>		<b>Policy Period:</b> From 11-12-2019 To 11-12-2020 12:01 AM* Standard Time at your mailing address shown																		
<div></div>																				
<b>ADVANCED PREMIUM: \$1,206.00</b>																				
Admitted Status: Admitted		Auditable Status: No Auditable Period: N/A																		
IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE INSURANCE AS STATED IN THIS POLICY																				
<b>Business Description:</b> Services																				
Section 1. PROPERTY																				
<table><tr><th>Coverage</th><th>Limit of Insurance</th><th>Deductible</th><th>Premium</th></tr><tr><td>Business Income and Extra Expense Limit of Insurance</td><td>Actual Loss Sustained</td><td>72 Hour Waiting Period</td><td>Included</td></tr></table>				Coverage	Limit of Insurance	Deductible	Premium	Business Income and Extra Expense Limit of Insurance	Actual Loss Sustained	72 Hour Waiting Period	Included									
Coverage	Limit of Insurance	Deductible	Premium																	
Business Income and Extra Expense Limit of Insurance	Actual Loss Sustained	72 Hour Waiting Period	Included																	
Described Premises: 1231 N Beverly Ave, Tucson, AZ 85712-4903																				
<table><tr><th>Prem. No.</th><th>Coverage(s)</th><th>Limit Of Insurance</th><th>Deductible</th><th>Valuation</th><th>Premium</th></tr><tr><td>1</td><td>Building</td><td>\$140,962</td><td rowspan="2">\$500</td><td>Replacement Cost</td><td>\$427.00</td></tr><tr><td>1</td><td>Business Personal Property</td><td>\$28,957</td><td>Replacement Cost</td><td>\$255.00</td></tr></table>				Prem. No.	Coverage(s)	Limit Of Insurance	Deductible	Valuation	Premium	1	Building	\$140,962	\$500	Replacement Cost	\$427.00	1	Business Personal Property	\$28,957	Replacement Cost	\$255.00
Prem. No.	Coverage(s)	Limit Of Insurance	Deductible	Valuation	Premium															
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1	Business Personal Property	\$28,957		Replacement Cost	\$255.00															

[www.lawyersattaince.org](http://www.lawyersattaince.org)





## Declarations – the Information on your policy

- Liability Limits
- Forms listing & Required Forms
- How to make an insurance claim, Call, Email, Fax for Service

LIMITS OF INSURANCE		
General Aggregate Limit (Other Than Products - Completed Operations)	\$ 2,000,000	
Products – Completed Operations Aggregate Limit	\$ 1,000,000	
Personal and Advertising Injury Limit	\$ 1,000,000	
Each Occurrence Limit	\$ 1,000,000	
Damage to Premises Rented to You (Fire Damage) Limit	\$ 100,000	Any One Premises
Medical Expense Limit	\$ 5,000	Any One Person

*If you are unsure about your policy:*

- 1) Talk to your agent*
- 2) Call the Carrier's Customer Service*



## Package Premium: How is this determined?

- Premium is determined by rate and exposure
- Rate is the cost per “unit” offered by the carrier
- Exposure, varies by line of business, expressed in value
- Property Exposure
  - Values insured
  - Construction, Protection, Occupancy, Exposure
  - Terms and Conditions
- General Liability
  - Class code(s) which described operations
  - Rating basis: Area, Sales, Payroll
  - Limits and Terms & Conditions
- Exposures may be subject to Audit



## Workers Compensation

- Highly regulated line of business
- Required, by state statute, for most employers who have more than 4 employees
- State Law define the coverage



# Workers Compensation Coverage

- Contract between “you” the employer and the Insurance Carrier
  - **You = the employer** – there are no additional insureds in WC, just the employer(s) listed on the policy declarations
- Policy references the Workers Compensation Law of the State(s) named
  - In US, there are Federal Laws – base policy does not include these
- Covers locations of workplaces listed, and all other workplaces in other States listed in declarations.

CHUBB® Chubb Group of Insurance Companies 202B Hall's Mill Road, Whitehouse Station, NJ 08889		INFORMATION PAGE WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY												
<b>Item 1. Name &amp; Mailing Address of the Insured</b> <div style="background-color: blue; width: 150px; height: 40px; margin: 5px 0;"></div> FEIN 26-3964576 TEL#: _____ # of EMP: _____ UI#: _____ Insured is: <b>Name &amp; Address of the Producer</b> AON RISK SERVICES SOUTHWEST, INC. 5555 SAN FELIPE, #1500 HOUSTON TX 77056-0000  Producer Number 0019406		<b>Issued by</b> Chubb National Insurance Company a stock insurance company incorporated in INDIANA  <b>N.C.C.I. Carrier Code</b> 35173  <b>Policy Number</b> (19) 7176-58-59  Previous Policy Number NEW												
<b>OTHER WORK PLACES NOT SHOWN ABOVE - SEE ATTACHED EXTENSION OF INFORMATION PAGE</b>														
<b>Item 2. POLICY PERIOD</b> 12:01 A.M. standard time at the insured's mailing address FROM 02/12/18 TO 02/12/19														
<b>Item 3. A. WORKERS COMPENSATION INSURANCE:</b> Part One of the policy applies to the Workers Compensation Law of the states listed here: TX  B. EMPLOYERS LIABILITY INSURANCE: Part Two of the policy applies to work in each state listed in Item 3A. The limits of our liability under Part Two are: <table><tbody><tr><td>Bodily Injury by Accident</td><td>\$</td><td>1,000,000</td><td>each accident</td></tr><tr><td>Bodily Injury by Disease</td><td>\$</td><td>1,000,000</td><td>policy limit</td></tr><tr><td>Bodily Injury by Disease</td><td>\$</td><td>1,000,000</td><td>each employee</td></tr></tbody></table> C. OTHER STATES INSURANCE: Part Three of the policy applies to the states, if any, listed here: All States, Except states designated in Item 3.A and ND, OH, WA, WY  D. Endorsements (Form No.) Refer To Extension of Information Page "List of Endorsements & Schedules"			Bodily Injury by Accident	\$	1,000,000	each accident	Bodily Injury by Disease	\$	1,000,000	policy limit	Bodily Injury by Disease	\$	1,000,000	each employee
Bodily Injury by Accident	\$	1,000,000	each accident											
Bodily Injury by Disease	\$	1,000,000	policy limit											
Bodily Injury by Disease	\$	1,000,000	each employee											
<b>Item 4.</b> The Premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit. <b>Refer to Extension of Information Page</b>														



## Part One – Workers Compensation Insurance

- Bodily Injury by accident, disease, or death
  - During the policy period
  - Caused or aggravated by employment
    - ***Occupation injury is defined as injury that arise out of and in the course of employment***
    - ***Accidental injury or Occupation disease***
- Payment of benefits as required by WC Law
- Right and Duty to Defend the Employer
- Additional Costs
- No exclusions in policy – refer to State Law. Laws generally exclude:
  - Self Inflicted injuries
  - Injuries during voluntary recreation activities
  - Injuries while intoxicated/drugs
  - Willful misconduct

### State law defines “employee”

- Generally not “Owners”
- Generally not farm labor
- Generally not casual laborers
- May include volunteers



## Part One – Workers Compensation Insurance

### State Benefits include

- All medical expenses
  - Hospital
  - Drugs
  - Physicians
  - Therapy
  - Travel
- Lost Wages (Indemnity)
  - Disability
  - Portion of lost income
  - Vary by state
- Rehabilitation
  - Physical and vocational Rehabilitation
- Death and Survivor
  - Compensates spouses, Children, Dependents
  - Funeral Costs





## Part Two – Employers Liability

- Covers bodily injury that is employment related and negligence based Injuries or employment that fall outside the Workers Compensation Law
- Example: Third Party Over Suits
- WC & EL Mutually Exclusive:
  - If employee accepts WC benefits  
Then they cannot sue employer
- Based on Tort Liability (like GL)
- Specified Limits:
- Typically, three limits:
  - Injury by Accident
  - Injury by Disease (policy limit)
  - Injury by Disease (each employee)

\$500,000/\$500,000, \$500,000

\$1,000,000/\$1,000,000/\$1,000,000

Described in Declarations, 3.B

Employers Liability covers defense of the employer

Employers Liability has exclusions

Employee injured while using a piece of equipment not properly maintained by the employer

- Employee may receive Workers Compensation benefits from his or her employer
- Employee can bring action against equipment manufacturer
- Equipment manufacturer can sue the employer in the same action for contributory negligence



## Part Three – Others States

- Allows coverage in others states, if employer begins work there
  - Newly acquired
  - Extra territorial
- Described in Declarations 3.C
- Typically, we list “All States” not listed in Item 3.A.
- In Four States – North Dakota, Ohio, Washington, Wyoming – these are monopolistic States
  - Insured Employer does not have Workers Compensation
  - They need Employers Liability – called **STOP GAP**
  - **Stop Gap is covered through an endorsement, provides coverage in these “other states” if the employer has workers in that state.**





## Business Auto Policy

- Covers risk around ownership, use and operations of Commercial Auto
- Liability Coverage
  - Liability to 3<sup>rd</sup> Party for Bodily Injury or Property Damage
  - Uninsured or Underinsured Coverage(s)
  - State required No Fault – PIP
  - Limits expressed as CSL – Combined Single Limit
  - Defense covered outside limits
- Physical Damage Coverage
  - Comprehensive
  - Collision
    - Actual Cash Value with deductible



## Who is an Insured?

- **You** for a covered auto
- **Permissive users** – anyone else who uses a covered auto with permission
- **Your employee (or Volunteers)** - *EXCEPT for autos owned by that employee*
- **Anyone liable for the conduct of the above** - *but only to the extent of that liability*



## Auto Limits of Insurance

- Combined Single Limit (CSL) – typically **\$1,000,000**
- Limit applies *per accident*
  - *Not per vehicle, not per person*

◆ Total liability insurance – both bodily injury liability losses and property damage liability losses – in an accident, regardless of the number of people involved.

- Premium determined
  - Size, Weight, Use and Distance traveled
  - Comp/Collision, by Original Cost New, less depreciation for Age
    - Deductibles
    - Coverage for towing, rental replacement



## Other Coverages: Hired Auto & Non- Autos

- **Hired Autos** = autos the named insured leases, hires, rents, or borrows. As respects both the business auto, the term does not include any auto the named insured leases, hires, rents, or borrows from employees.
- **Non-Owned Autos** = those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees or members of their households but only while used in your business or your personal affairs.

The Business Auto policy makes a distinction for these types of auto.

We use SYMBOLS (numbers with definitions) to show how the policy will cover various types of autos.



## Commercial Umbrella

- Higher limits for catastrophic losses
  - Excess General Liability
  - Excess Auto Liability
  - Excess Employers Liability
- Limits are purchased in Increments of millions
  - \$1,000,000
  - \$5,000,000
  - \$10,000,000



## Directors & Officers Liability

- Helps protect your organization and its directors and officers against exposures associated with the management actions and decisions of executives
- It is an essential element of a risk management program to try and alleviate the potential exposure and personal liability of D&Os, as well as the financial drain on corporate assets
- Policy is intended to help protect D&Os against allegations of wrong doing
- Pays for Loss for covered Claim (i.e. damages, judgments, settlements, Defense Costs)
- Can help attract and retain qualified D&Os
- Enables D&Os to focus on their job without worrying about personal liability



## D&O Basic Concepts

Directors and Officers must act in good faith and with prudent judgment in their service to the organization.

Directors have three basic common law duties, all of which are owed to the organizations that they serve:

1. Duty of Care
2. Duty of Loyalty (subset Good Faith)
3. Duty of Obedience



## Directors & Officers Liability

- Duty of Care
  - Affirmative duty to act diligently and prudently in managing the organization's affairs
    - Reasonable diligence – reasonable informed
  - Fact Sensitive
    - Was process rational and in made in good faith?
    - Ordinarily prudent person in a like position





## Directors & Officers Liability

- Duty of Loyalty
  - Fiduciary duty to organization
  - Must refrain from doing any act that breaches the obligation of trust
  - No conflicts of interest
  - Self-dealing scrutinized
  - Cannot use organization's assets for own purposes
  - D&OS required to act in best interest of organization at all times



## Directors & Officers Liability

- Duty of Obedience
  - Must act within powers conferred upon an organization by its charter or the laws of the state of incorporation
  - Directors are liable for “ultra vires” acts (Latin for “beyond the scope”)



## Directors and Officers Liability

- Common Misconceptions:
  - D&O insurance is only needed for public companies
  - We don't have shareholders so we can't be sued
  - GL and Umbrella policies will cover D&O claims
  - My organization will pay for all expenses associated with a D&O liability lawsuit
  - Non-profits are immune to litigation



## What About Statutory Immunity Laws?

- NFP Immunity – in most states, D&O of tax-exempt organizations who serve without compensation are immune from civil liability for acts taken in their capacity as D&Os of such organizations.
- Limitations:
  - Statutory immunity applies only to D&Os; not organization
  - Applies only to liability for negligence. It doesn't apply to liability from gross negligence, reckless or criminal misconduct, or knowing violation of a criminal law.
  - Does not shield directors from being sued
  - Applies only to state law claims; not claims made under federal law



## Non-Profit D&O Risks & Exposures

### *The Risk is Real*

#### Typical Claimants:

Stakeholders

Employees

Creditors

Members / Donors / Clients

Competitors

Governmental Regulatory Agencies

#### Common Allegations:

Fraud and Breach of Fiduciary Duties

Statutory Claims

Self-Dealing and Conflicts of Interest

Consumer Protection Violations &  
Breach of Contract

Intellectual Property Violations

Regulatory Actions, Anti-Trust,  
Violation of Consumer Safety Laws



# D&O Policy Structure

## Insuring Agreements

- Side A –*Personal Coverage*
  - For Individual Insureds
  - Provides Personal Asset Protection
  - For Non-Indemnifiable Losses
  - Zero Retention
- Side B - *Corporate Reimbursement*
  - Reimburses Corporation for Indemnification Provided to the Individual Insured
  - Corporate Retention Applies
  - Presumption of Indemnification
- Side C - *Entity Coverage*
  - Corporate Liability
  - Corporate Retention Applies



## Who is Covered?

- Executives
- Directors, Officers, Trustees, Manager, In-House GC, Committee Members, Worldwide Equivalents
- Employees
- Natural person whose labor or service is engaged by and directed by the Organization, including part-time, seasonal, leased or temporary employees or volunteers



## What is Covered?

- Wrongful Act
  - Any error, misstatement, misleading statement, act, omission, neglect, breach of duty, Personal Injury Wrongful Act or Publisher Wrongful Act, committed, attempted or allegedly committed or attempted by and Insured Person in his or her Insured Capacity or, for purposes of coverage under Insuring Clause 3, by the Organization
  - Any other matter claimed against an Insured Person solely by reason of his or her serving in an Insured Capacity; or
  - Any Outside Capacity Wrongful Act





## Common NFP D&O Exclusions

- Prior Notice Exclusion
- Pending or Prior Litigation Exclusion
- Insured vs. Insured Exclusion
- Pollution Exclusion
- Bodily Injury, Property Damage
- ERISA exclusion
- Outside Capacity Wrongful Acts, is such Claim is brought or maintained by or on behalf of Outside Entity- carve-back derivative claim or directly results from covered claim
- Employment Related Wrongful Act
- Discrimination or Sexual Harassment of any person that is not an Insured



## Common NFP D&O Exclusions

- Conduct-Based Exclusions
  - Deliberate Fraud, Willful Violation of Statute
  - Illegal profit, remuneration or advantage to an Insured
- Securities – carve-back for debt securities exempt under '33 Securities Act
- Full Severability of Conduct Exclusion for Insured Person/only CFO, GC, President, CEO, ED, Trustee, Committee member or chairperson imputes to Organization
- Entity Contract Exclusion
- Infringement of patent or misappropriation of intellectual property, ideas or trade secrets, carve-back for Publisher Wrongful Act



## Employment Practices Liability Insurance

- Helps protect your organization and its executives and employees from an employment-related wrongdoing and many carriers help mitigate EPL exposures by offering loss prevention services
- Who's covered?
  - Organization and subsidiaries
  - Insured persons, such as directors, officers, trustees, committee members, employees (full-time, part-time, leased or seasonal) and volunteers



# Employment Practices Liability Coverage

**Employment Practices Wrongful Act** means any actual or alleged:

- (A) **Breach of Employment Contract;**
- (B) **Employment Discrimination;**
- (C) **Employment Harassment;**
- (D) **Retaliation;**
- (E) **Workplace Tort;**
- (F) **Wrongful Employment Decision; or**
- (G) **Wrongful Termination,**

committed, attempted, or allegedly committed or attempted by an **Organization** or by an **Insured Person** while acting in his or her capacity as such.

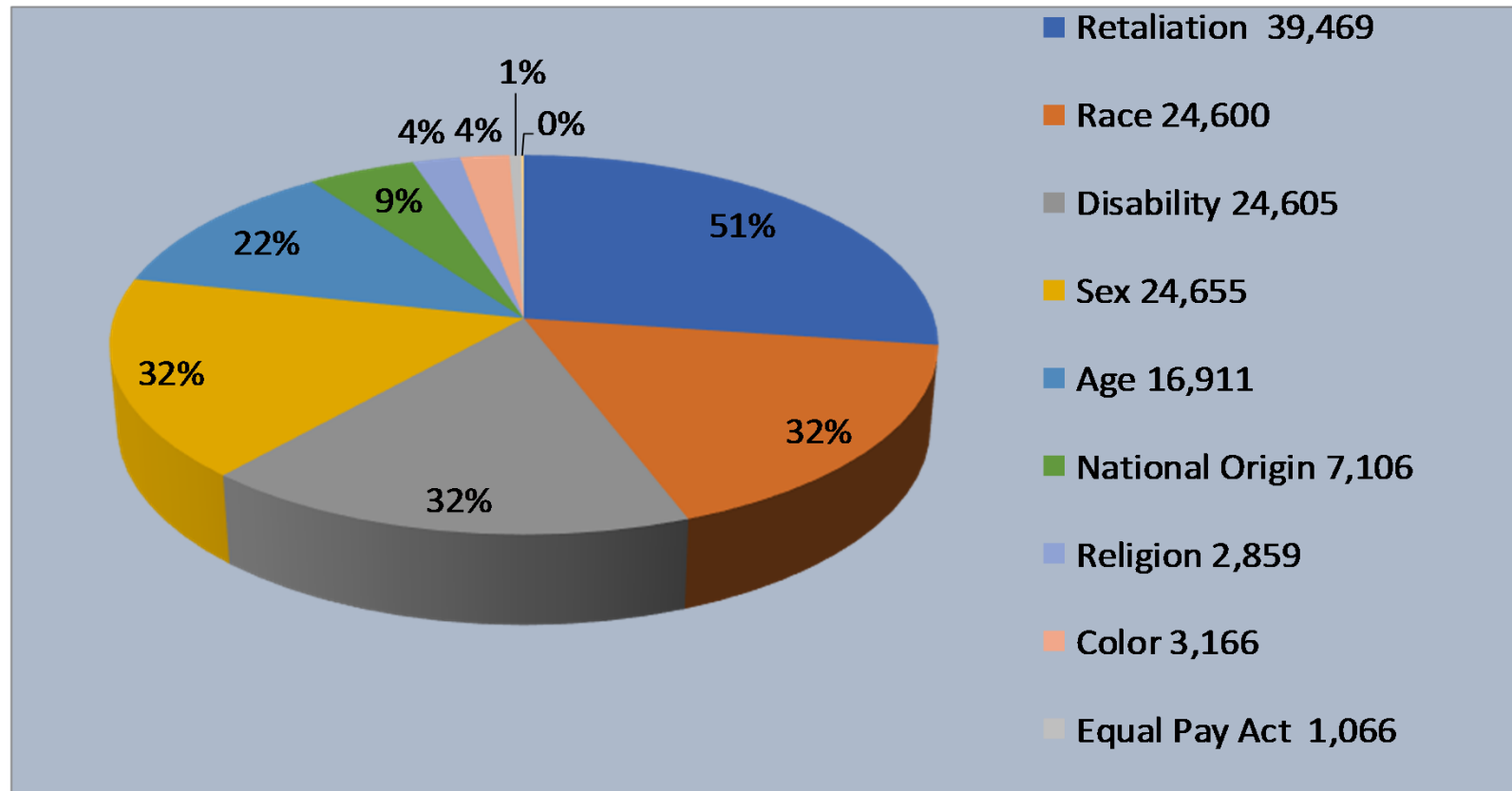
**Third Party Wrongful Act** means any actual or alleged:

- (A) discrimination against a **Third Party** ...; or
- (B) harassment ... including unwelcome sexual ... against a **Third Party,**

committed, attempted, or allegedly committed or attempted by any **Organization** or by any **Insured Person** while acting in his or her capacity as such.



## EEOC Statistics (eeoc.gov 2018)





# Employment Practices Liability

## Loss Prevention Services

Supreme Court has provided employers with a “MAP” to a comprehensive anti-harassment/anti-discrimination policy:

- Publicize Policies & Procedures
- Establish Internal Complaint Resolution Process
- Train Employees on Employment Laws
- Impose Effective Sanctions

Loss Prevention gets you started on the right “ROAD”



## Employment Practices Liability

### Loss Prevention Services Offered By Many Carriers

- Toll-free hotline to nationally recognized employment law firms
- On-line platform tailored for insureds and brokers
- Access to panel of quality firms focused on loss prevention/mitigation with discounted rates
- Cost-sharing feature for loss control services



## Loss Prevention Services

- Library of articles on vital workplace issues including
  - Loss prevention recommendations
  - Legal trends in employment law
  - Wellness & safety
  - Leadership & ethics
- Model handbook, policies and forms
- Training modules
- Short presentations on workplace liability issues, loss scenarios, etc.
- Newsletters – link to current articles





## Fiduciary Liability Coverage

- Helps protect your organization, benefit plans, and their fiduciaries against exposures resulting from the administration and management of employee benefit plans
- Fiduciaries of retirement plans and employee welfare benefit plans can be held personally liable for a mistake in managing or operating the plan or a perceived breach of fiduciary duty
- Fiduciaries or Trustees – A company or individual that sponsors or offers/administers an employee benefit plan; obligated to act in the best financial interest of enrollees
- Employee benefit plans
  - Pension Plans: Defined Contribution and Defined Benefit
  - Health and Welfare plans (medical insurance, dental insurance, life)
- Plan Participants
  - Employees that are enrolled in company benefit plans



## Who is a fiduciary?

- Someone in whom another person has placed the utmost trust & who has an obligation to act for another's benefit
- Fiduciaries may be named in plan
- But not all fiduciaries are named in document:
  - Functional fiduciary to extent one exercise discretionary authority over plan management, plan administration or plan assets or who gives investment advise for compensation
  - May unwittingly be a fiduciary (D&Os)



# Fiduciary Liability Insurance

- Why is it needed?
  - Protects fiduciaries' personal assets for the following reasons:
    - ERISA imposes the “highest duty known to law” on employee benefit plan fiduciaries
    - ERISA Section 409 imposes personal liability on plan fiduciaries who breach their fiduciary duties.
    - ERISA prohibits plans from indemnifying plan fiduciaries, which means plan cannot pay defense costs, settlement or awards on behalf of fiduciaries that have breached their fiduciary duties
    - Even if your organization wishes to indemnify its fiduciaries, it may not be able to
    - Cannot delegate away responsibility to providers
  - Highest duty known to law + Personal Liability + Legal and/or Financial Inability to Indemnify = Exposure of Personal Assets

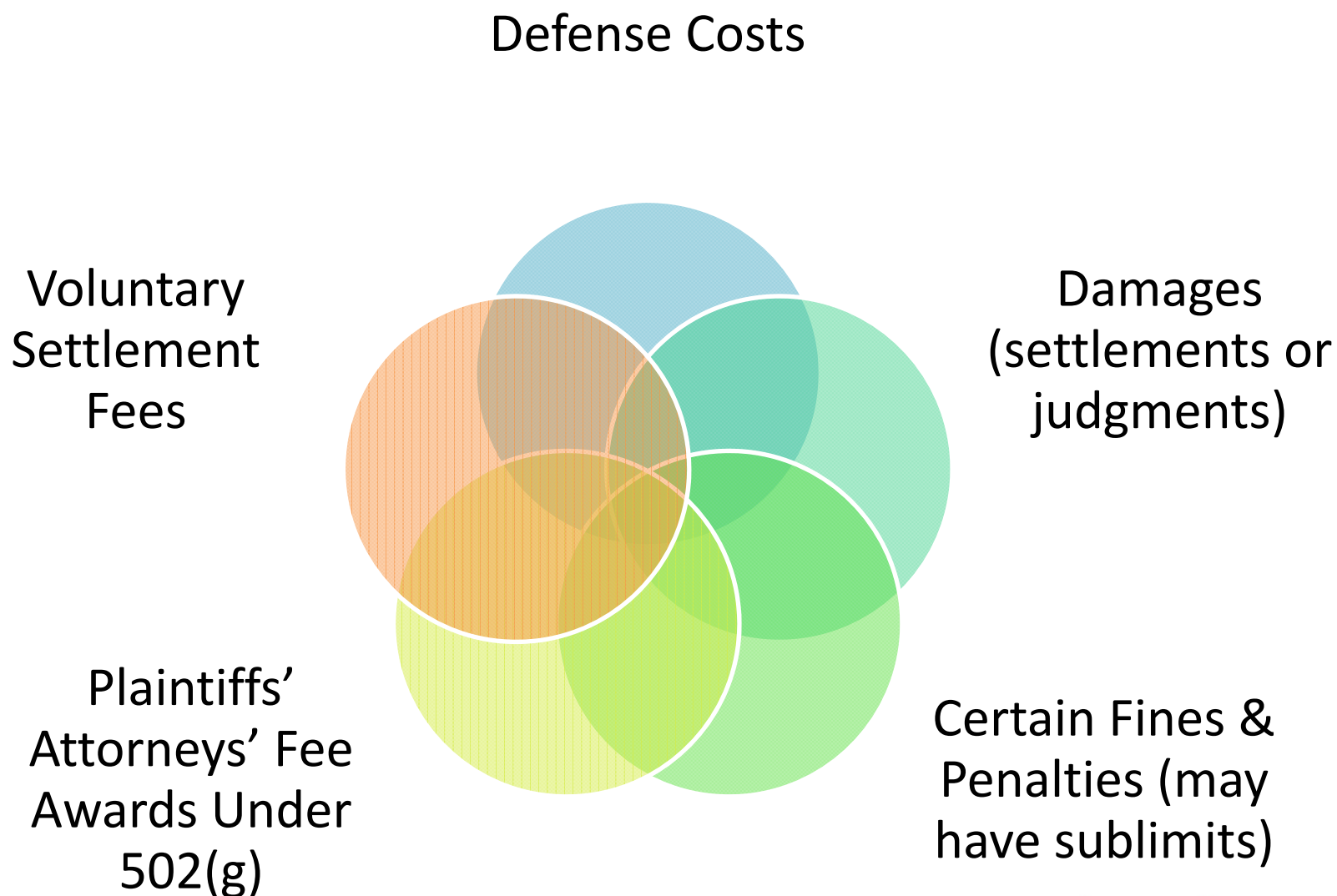


## Fiduciary Liability Coverage

- What is the Fiduciary Exposure?
  - Failure to enroll
  - Improper calculation or benefit denial
  - Error or omission in plan administration
  - Improper advice or counsel
  - Failure to administer the plan according to plan documents
  - Conflicts of interest and prohibited transactions
  - Imprudent investment of assets or lack of investment diversity
  - Imprudent selection and failure to monitor third-party service providers

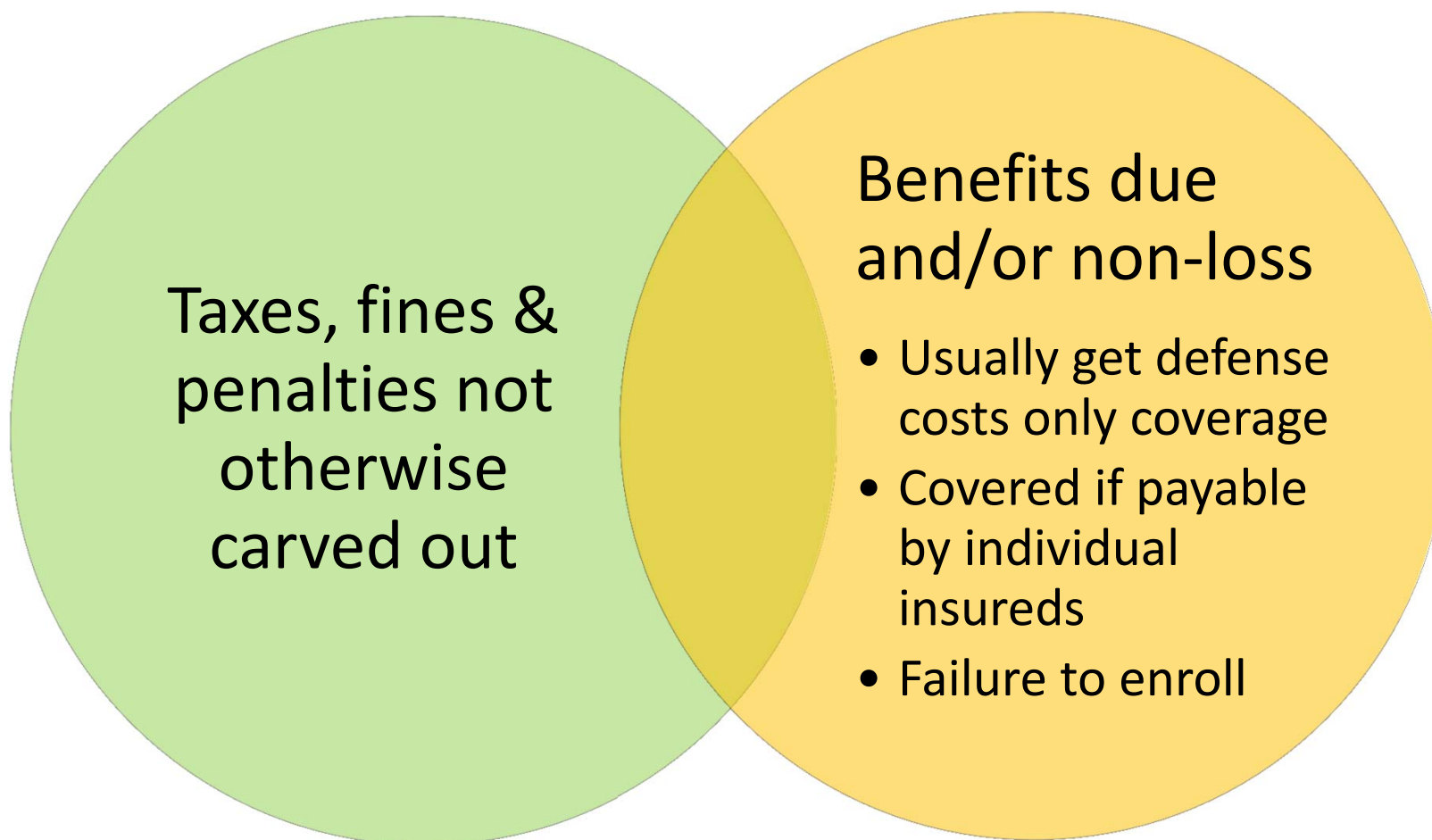


## Fiduciary Liability Insurance May Cover





## Fiduciary Liability Insurance Doesn't Cover





## Crime Coverage

Helps protect your organization from the potentially devastating costs of employee theft

### Insuring Agreements

Theft caused by an Employee, regardless of method

- Employee Theft
- Client Coverage

Theft caused by a Third Party. Specific Perils.

- Premises
- Transit
- Forgery
- Funds Transfer Fraud
- Computer Fraud
- Money Orders & Counterfeit Fraud
- Credit Card Forgery
- Expense Coverage (applies once a covered loss is established excess of a retention)



## Crime – Social Engineering Fraud Coverage

- The Company shall pay the **Organization** for loss resulting from an **Organization** having transferred, paid or delivered any **Money** or **Securities** as the direct result of **Social Engineering Fraud** committed by a person purporting to be a **Vendor, Client**, or an **Employee** who was authorized by the **Organization** to instruct other **Employees** to transfer **Money** or **Securities**.
- **Social Engineering Fraud** means the intentional misleading of an **Employee**, through misrepresentation of a material fact which is relied upon by an **Employee**, believing it to be genuine.
- **Vendor** means any entity or natural person that has provided goods or services to an **Organization** under a legitimate pre-existing arrangement or written agreement. However, **Vendor** does not include any financial institution, asset manager, broker-dealer, armored motor vehicle company, or any similar entity.





# Crime Insurance

## Opportunity

Can sway the otherwise honest!

- Common factors allowing occupational fraud to occur:
  - Lack/overriding existing controls
  - Absence of management review
  - Inadequate internal/external auditing
  - Unchecked management access
  - Uncontrolled vendor relationships

## Rationalization

Ethical lapses allow for fraud to be consistent with personal beliefs (at least in the moment)

- Common Rationalizations:
  - “I was only borrowing the money”
  - “I was entitled to the money”
  - “I had to steal to provide for my family”
  - “I was underpaid; my employer cheated on me”
  - “My employer is dishonest and deserved to be fleeced”

## Motivation

Need and greed= overwhelming temptation

- Common Pressures:
  - Financial difficulties
  - Living beyond one’s means
  - Family problems
  - Health issues, including addictions



## Cyber Security Insurance

- Helps protect your organization from the costs associated with cyber liability lawsuits and cyber crime losses
- First Party Incident Response Coverage
  - Cyber incident response coach
  - Credit monitoring services
- First Party Business Interruption Coverage
  - “Business Interruption Loss” and “Contingent Business Interruption Loss” include continuing normal operating and payroll expenses
- First Party Digital Data Recovery and Network Extortion Coverage
- Cyber Third Party Coverages
  - Regulatory coverage includes regulatory proceedings, regulatory fines, and consumer redress funds
  - “Payment Card Loss” includes monetary assessment, fines, penalties, chargeback, reimbursement, and fraud recoveries, including card reissuance costs



## Kidnap Ransom and Extortion Insurance

- Helps protect your organization against a wide range of expenses associated with incidents of kidnapping and extortion, including the cost of crisis management services, where available.
- Insuring Clauses:
  - Kidnapping and Extortion Coverage
  - Custody Coverage
  - Expense Coverage
  - Accidental Loss Coverage
  - Legal Liability Costs Coverage
  - Disappearance Investigation Expense
  - Express Kidnap Costs
  - Hostage Crisis Costs



## Multinational Issues

Does policy provide worldwide coverage? Only where locally permitted?

Admitted vs non-admitted coverage?

Must insurance be provided by a locally licensed carrier?

Is a local broker required?

Are there local premium payment and local premium tax requirements?

Will claims need to be paid in-country?

If the claim is paid in the parent organization's country rather than the subsidiary country will the parent company incur tax liability?

Cash before cover country?

Minimum broker commissions?



## Hot Topics – What’s Trending

- **Bodily Injury and Sexual Abuse Molestation**
  - Non-profit operations involve children, elderly, mentally/physically disabled and include child care providers, long term care facilities, religious organizations, schools/universities, day cares, youth mentoring programs, camps, etc.
  - D&O and EPL exposures often addressed with BI/PD Exclusion and Exclusion for Sexual Abuse and Molestation (“Sexual Behavior/Misconduct Exclusion”)



## Hot Topics – What’s Trending

- **Bodily Injury and Sexual Abuse Molestation**
  - BIPD Exclusion: “for **Loss** on account of any **Claim** [for OR based, upon, arising from, or in consequence of] bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed”
  - Sexual Behavior Exclusion: “for **Loss** on account of any **Claim** based upon, arising from or in consequence of any actual or alleged **Sexual Behavior**”



## Hot Topics – What's Trending

- **Bodily Injury and Sexual Abuse Molestation**
  - Sexual Behavior means any behavior, act, communication, expression or other conduct that involves sexual contact, physical sexual abuse, physical sexual intimidation, sexual assault, physical sexual molestation
  - Sexual Abuse Exclusions are not standard; and just because a sexual abuse exclusion is present does not mean all coverage is excluded
  - Review D&O and EPL policy for exclusion and defense/allocation strategy



## Hot Topics – What’s Trending

- **Bodily Injury and Sexual Abuse Molestation**
- NY State Child Victims Act (“NYCVA”)
  - Extends Statute of Limitations (SOL) in NY for survivors of child sex abuse
  - Criminal Matters (Felony) – Extends SOL from age 23 to 28
  - Criminal Matters (Misdemeanor) – Extends SOL from age 20 to 25
  - Civil Matters – Extends SOL from age 23 to 55





## Hot Topics – What’s Trending

- **Bodily Injury and Sexual Abuse Molestation**
- NY State Child Victims Act (“NYCVA”)
  - One year window permitting any person sexually abused prior to age 18 to bring civil action (regardless of when abuse occurred) if lawsuit is commenced Aug. 14, 2019 – Aug. 14, 2020
  - Window opening resulted in hundreds of lawsuits dating back to 1950’s
  - Range of lawsuits against organizations (schools, civic/non-profit organizations, religious organizations) with far less against the abuser or individuals



## Hot Topics – What’s Trending

- **Professional Services**

- Non-profits provide a wide ranging set of services ....pay careful attention to this potential exposure
- Typically NFP D&O coverage does not have a built-in Professional Services Exclusion
- *“for **Loss** on account of any **Claim** for any actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted in connection with the rendering of, or actual or alleged failure to render, any professional services for others [for a fee] by any person or entity otherwise entitled to coverage under this Coverage Section.”*



## Hot Topics – What's Trending

- **Professional Services**
- Potential areas addressed with an E&O/Professional Services Exclusion:
  - Services requiring a license (medical, legal, insurance agent);
  - Broadcasting/publishing;
  - Financial Services (includes lending, insurance);
  - Construction/Property;
  - Engagement in standard setting, credentialing or accreditation



## Hot Topics – What's Trending

- **#Me Too/Sexual Harassment**
- Movement resulted in heightened awareness and willingness for victims to come forward and make public accusations or bring lawsuits
  - Employees/volunteers interact with third parties (i.e. donors and members) – Fundraisers are harassed and donors, non-profit leaders can be the perpetrator
  - Reputational damage is a concern (i.e. fear of bad publicity, fear of losing donations)



## Hot Topics – What's Trending

- **Antitrust**
- Non-profits have inherent antitrust exposure
  - Directly/indirectly acting in anticompetitive manner with regard to pricing, employment, membership, or other business practices (i.e. professional associations, business trade associations)
  - Provide/conduct standard setting, peer/tenure review, credentialing, accreditation, certification or rulemaking
- Antitrust suits can lead to significant defense costs, reputational damage and even criminal fines



## Q&A





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[www.lawyersalliance.org](http://www.lawyersalliance.org)



# Lawyers Alliance For New York

Resource Call Line (212) 219-1800 x224

email: [info@lawyersalliance.org](mailto:info@lawyersalliance.org)

website: [www.lawyersalliance.org](http://www.lawyersalliance.org)