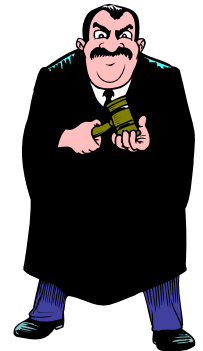


Directors & Officers Liability Insurance
Q&A Session:
Enhancements to make this coverage
work for you



USYSA Workshop
St. Louis, MO
March 3, 2007



Presented by:

John Spiotta
Bollinger, Inc.

Tony Petruzzi
Gracechurch Associates



Q) What is D&O Liability Insurance?

A) In the simplest of terms, D&O insurance provides protection for claims and lawsuits alleging damages for wrongful acts, errors and omissions that do not involve bodily injury.



-
- Q) Why is it called Directors and Officers Liability?**
- A) The coverage was created some forty years ago to protect officers and directors of corporations from lawsuits (mostly from stockholders) arising from wrongful management of their companies.**



- Q) Does D&O only cover directors and officers?**
- A) No, actually the name is misleading. Today D&O policies are available to non-for-profit organizations and cover everyone in the organization as well as the organization as an entity. Some current names for D&O policies are: Wrongful Acts Liability, Executive Liability, Not for Profit Organization Liability and Non Profit D&O Association Liability.**



Q) What are some of types of claims covered by D&O?

A) It provides coverage for (but not limited to) such claims as discrimination, eligibility, wrongful suspension of players, wrongful dismissal of coaches, breach of duty, failure to provide adequate insurance coverage and sexual harassment. It also provides coverage for Employment Practices Liability (EPL) relating to employees and volunteers.



Q) What are the differences between General Liability (GL) and Directors and Officers Liability?

A) General Liability, with a few exceptions, only covers liability claims involving bodily injury or property damage. The exceptions are called Personal Injury which includes false arrest, detention, malicious prosecution, libel, slander, defamation and violation of right to privacy.

D&O covers the liability claims not involving bodily injury or property damage subject to certain exclusions.

An interesting twist that most people don't realize is that if the directors or officers of a league or association are sued because of an injury, that claim falls under the GL policy, not the D&O.

Q) What are the D&O exclusions?

A) Some typical exclusions, in addition to bodily injury and property damage, are pollution claims, violation of responsibility imposed by ERISA, remuneration paid that is a violation of law, dishonest acts, Insured v. insured claims* and breach of contract claims*.

***Some of these exclusions can be negotiated or purchased back.**



- Q) Unlike the General Liability policy where claims are covered on an “occurrence basis”, with the D&O Liability Policy claims are covered on a “claims-made basis”. What’s the difference?**
- A) On an occurrence basis, the policy that was in force at the time of the incident or occurrence provides the coverage. With claims-made, the policy in force at the time the claim is presented (or is first known) is the policy that responds.**



- Q) Can all our leagues be included under one policy purchased by and for the State Association?**
- A) Yes, just by listing as the Named Insured “The member teams, clubs and leagues in addition to the State Association.” But keep in mind that the state and all its leagues would share one limit, usually \$1,000,000, for all claims in the policy year. Also, under such an arrangement claims against an insured by another insured would likely be excluded. It should be noted that leagues can usually purchase their own coverage, have their own limit, at a very reasonable cost.**

Q) How much does D&O coverage cost and what is the basis for the premium?

A) For state youth soccer associations, the cost typically ranges from \$1,500 to \$7,500. The premium is based on the size of the state's membership, the limit of liability, the deductible, the loss history and the financial size and soundness of the organization.

Leagues can buy their own D&O policy for just a few hundred dollars and have their own limit. Some plans offer \$0 deductible and unlimited defense expense. There is very little underwriting required for league policies.



- Q) About deductibles, what's the range and what do they apply to?**
- A) For state associations deductibles can run from \$1,000 to \$10,000 or more. They apply not only to settlements and judgments but also to legal defense expense. (Ouch!.....since most D&O claims only involve legal defense expense – this is where associations can be hit hard).**



Q) Is legal defense a separate limit from the limit of liability?

A) Not usually. Most D&O policies have one limit and it includes both the legal defense and judgments/settlements. However, a separate limit for legal defense can be negotiated, and therefore gives you more coverage for little or no additional premium.

Q) What are some examples of actual D&O soccer claims?

Warning: Some of these are absurd.

A) Some examples are:

Parents sued a state association alleging lack of playing time for their daughter citing negligence, misrepresentation and breach of contract against the league coaches and directors. The player was 12 years old.

A complaint was filed with the State Civil Rights Commission by an employee of a member league alleging that pornography was downloaded on the her computer. She complained to her supervisors and was let go. Her complaint covered under the Employment Practices Liability section alleges sexual harassment and retaliation by the league.



A member league filed an injunction against the State Association for their geographic restructuring of districts. Since the league was an insured under the State's D&O policy, the claim was at first denied because of the "Insured v. Insured Claim Exclusion." The insurance company later rescinded the denial because the intent of the program was to cover claims from members. The insurance company subsequently paid the legal expenses which amounted to \$43,000.

The plaintiff, an employee, sued the state association alleging that she suffered a psychiatric disability arising from her employment; she further contended that that her condition occurred as a result of injurious interaction with her superior. This is another example of Employment Practices Liability covered by D&O policies.

A club, covered under the state's D&O policy, had a complaint filed by a former coach alleging breach of contract because he was not paid \$2,000 in pay plus \$1,300 in expense reimbursement. The claim was settled and the insurance company incurred \$22,322 in legal expenses.



- Q) To get the best coverage for my association, what should I negotiate when purchasing or renewing our Directors and Officers policy?**
- A) To enhance your program, there are some aspects that are readily negotiable or (should be) in most cases without an additional premium. They are:**
- **Defense expense “outside” the limit of liability, not included “in” the limit of liability; or a separate limit for defense expense, a \$500,000 separate limit is common.**
 - **Contractual Liability is a standard exclusion of D&O policies; however, it is possible to have the policy endorsed to cover the legal expenses for contractual liability claims.**
 - **Insured v. Insured claims are also a standard exclusion. If you can’t get the exclusion removed, ask for a separate sub limit for Insured v. Insured claims. Since these claims usually represent legal expense only, not a judgment or settlement, a sub limit of \$100,000 to \$250,000 is probably adequate.**



- **If your claims history is good (few or no claims) try to get a reduction of your D&O deductible at no additional premium. Remember D&O deductible usually apply not only to judgments and settlements but also to the defense expense. A \$5,000 or \$10,000 unexpected payment for a deductible can put a hole in your budget.**
- **Make sure your D&O policy covers claims for both monetary damages and non monetary relief as well, not all D&O policies do.**
- **Request an endorsement that amends the definition of “Employee” to include Volunteers.**
- **Lastly, ask for a multiyear rate guarantee. They’re available and it doesn’t cost anything.**



Now how about your questions...

Got any?

Email us at:

John.Spiotta@BollingerInsurance.com

APetruzzi@Gracechurch.biz



Thanks for attending!

This presentation will be available on our web site

www.BollingerSoccer.com

and

www.USYouthSoccer.org