



NEW ENGLAND INSURANCE SERVICES, INC.

P.O. Box 63 ~ Weatogue, CT 06089 ~ Phone (888) 845-8288 Toll Free
Fax (860) 844-8274 ~ Website: www.neisinc.com

Nonprofit Board of Directors Liability Limitation Statutes

To date many states have enacted legislation that limits the liability of the non-profit boards of directors to some degree. As a result, some organizations have concluded that they do not need to carry Directors and Officers Liability insurance for their organization.

This is a mistake.

Since tort reforms are mostly untested in the courts, the impact of the legislation is unknown. Tort reform statutes may or may not be valid. They have to be tested individually with regard to their validity, and state courts sometimes throw out those situations.

In addition, there are exceptions and loopholes in the tort reform protection. Typically, there is almost always some exception to it. The exceptions are normally determined at a trial by a jury, and juries tend to rule whatever they want to rule.

The usual language of such clauses is that the board members are immune to lawsuits unless there is gross negligence involved.

Gross negligence is defined by a judge or jury, and it is impossible to tell what it means relative to a specific case until the court involved makes a ruling.

The only thing you can say about gross negligence is that you don't know what it means. Unfortunately, the way you find out is when a jury rules as to whether or not you are reckless, and at that point it is a little late.

One reason for an organization to obtain or keep D&O Liability insurance is defense costs. Even if a board member defendant wins a case on the grounds of legislative immunity, defense costs can be substantial. There is no defense cost protection in the statute. The State is not going to pay to defend you. As a result, D&O Liability insurance is frequently looked upon as prepaid legal defense.