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## NEW ENGLAND INSURANCE SERVICES, INC.

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### *Nonprofit Board of Directors Liability*

One of the myths associated with nonprofit D&O exposures is that there are few sources of claims since nonprofits do not have shareholders. While it is true that the vast majority of lawsuits filed against nonprofit boards are filed by current or former employees that are alleging wrongful employment practices, nonprofits serve large and varied constituencies to which their boards owe specific fiduciary duties similar to duties owed by corporate boards. These constituencies are potential plaintiffs in legal actions brought against nonprofit boards. Potential claimants in a suit against nonprofit directors and organizations include:

- **Insiders** ~ The current and former staff of a nonprofit may bring actions alleging a host of wrongful acts, including wrongful termination, discrimination, sexual harassment, and ADA violations.
- **Outsiders** ~ Third parties that have a relationship with the nonprofit may allege harm caused by the nonprofit and/or its directors, officers or employees. Outside sources can be vendors, funders or another nonprofit.
- **Directors** ~ A nonprofit director may sue another board member alleging violation of a duty owed to the nonprofit. Under certain circumstances, such an action may be compelled.
- **Beneficiaries** ~ The people you are in business to serve may bring claims against directors and officers alleging wrongdoing.
- **Donors** ~ A nonprofit's contributors may sue directors and officers alleging misuse of a restricted gift.
- **Government Officials** ~ State Attorney Generals and representatives of the U.S. Internal Revenue Service and the U.S. Department of Labor may bring actions against nonprofit directors alleging violation of state or federal laws.

Being not-for-profit does not mean that the decisions of the board are immune from public scrutiny. A corporate shield and broad by-laws offer board members, volunteers and employees some protection. Unfortunately, in many cases, such protections may not be adequate. Typical lawsuits against directors and officers include allegations of mismanagement of operations or organization's assets, conflicts of interest, acts beyond authority granted in by-laws, violation of certain state and federal laws and breach of fiduciary duties.

Directors and Officers Insurance provides coverage against "wrongful acts" which might include actual or alleged errors, omission, misleading statements, and neglect or breach of duty on the part of the board of directors. Litigation can last several years, becoming a financial burden and a continuous drain on a not-for-profit organization. If an organization cannot indemnify its directors, officers or employees, either because of the allegations of a lawsuit or as a result of the organization's insolvency, then this financial burden can become the personal responsibility of the organization's directors, officers or employees.