

# Baby Steps, Big Consequences: How Minimal Efforts Can Maximize Nonprofits' Insurance Coverage



June 7, 2012

ASAE Finance, HR & Business Operations Conference

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# Our (Expected) Journey

- I. Why We Need to Walk: Understanding a Nonprofit's Need for Insurance
- II. What Steps Are Available to Us: Assessing a Nonprofit's Insurance Needs
- III. Who Should Walk on Behalf of Us and for Us: Identifies Insured Persons and Entities
- IV. How Far We Need to Walk: Insurance and Geography
- V. Keeping In Step: Reconsidering Insurance-related Choices
- VI. Keeping In Step: Satisfying Your Obligations
- VII. Conclusion/Question and Answer Session

# Why We Need to Walk: Understanding a Nonprofit's Need for Insurance

## **Obvious Answer:**

**To protect against risks.**

- First line of defense
  - Reasonably expected risks associated with “third parties” (generally, losses by someone other than the “insured”)
  - Reasonably expected risks associated with “first parties” (generally, losses by the “insured”)
  
- Last line of defense
  - Tiers of insurance
  - Umbrella policies

# Why We Need to Walk: Understanding a Nonprofit's Need for Insurance

## *Not So Obvious Answers:*

**There may be legal obligations.**

- Automobile Liability
- Workers' Compensation
- Contractual Obligations

# Why We Need to Walk: Understanding a Nonprofit's Need for Insurance

**It makes business sense to have comprehensive coverage.**

- Protects your organization against catastrophic loss
- Protects your organization against unforeseeable loss
- Protects your people
- Attracts and keeps qualified board members, directors, and officers

**Litigation follows success.**

# Why We Need to Walk: Understanding a Nonprofit's Need for Insurance

**One size does not fit all.**

- “CGLs”
- “Blanket” Policies
- “All Risk” Policies
- “Nonprofit Organization” Policies



**Policies should be relatively,  
but realistically, custom-fitted.**

# Why We Need to Walk: Understanding a Nonprofit's Need for Insurance

**Spending more does not equal better coverage.**

**Insurance is part of an ongoing, self-evaluative process.**

**A nonprofit that does not understand its policies cannot protect against its risks.**

# What Steps are Available to Us: Assessing a Nonprofit's Insurance Needs

- Automobile
- Commercial General Liability
- Directors & Officers
- Errors & Omissions
- ERISA/Fiduciary



# What Steps are Available to Us: Assessing a Nonprofit's Insurance Needs

- Employee Dishonesty/Fidelity
- Property Damage
- Umbrella
- Workers' Compensation
- Specialty Policies



# Specialty Policies That Have Drawn an Increasing Amount of Attention

## Three types of policies that we increasingly see:

- Cyber-security Policies
- Kidnapping Policies
- Expanded Commercial Auto Coverage

# Insurance Coverage for Cyber-Risky Business

In an ever-increasingly technology-centered world, the risks associated with data storage and loss – either by accident or as a result of criminal activity – is very real.

# Specific Cyber-risks

Potential injuries that can result from cyber-security breaches include:

- The compromise of customer financial security through disclosure of personal information
- Lost profits
- Invasions of privacy

# Kidnapping and Ransom

In an increasingly perilous and globalized world, with employees routinely traveling internationally, it is important to consider the realistic dangers posed to you and your employees as a result of international kidnapping and ransom demands.



# Commercial Auto

Organizations have similar auto coverage needs as individuals—liability, collision, comprehensive, medical payments, and coverage for uninsured motorists.

# Who Should Walk on Behalf of Us: Identifying Insured Persons and Entities

## You should be the insured.

- Use the legal name for your nonprofit organization.
  - If you use a trade name, a street name, or some other identifier, your applications and your policies also should reflect that name.
  - If your nonprofit organization changes its name, be sure that your applications and your policies reflect that change.

# Who Should Walk on Behalf of Us: Identifying Insured Persons and Entities

- Do not assume that your insurers know who “you” are.
  - Subsidiary organizations
  - Parent organizations
  - Affiliated organizations
  - Member organizations
  - Committees
  - Branches

# Who Should Walk on Behalf of Us: Identifying Insured Persons and Entities

- Do not assume that your insurers know who your “directors and officers” are.
  - Boards of directors
  - Boards of trustees
  - Those with dual responsibilities
  - Shareholders
  - Managers
  - Officers
  - Spouses

## Who Should Walk on Behalf of Us: Identifying Insured Persons and Entities

- Do not assume that your insurers know what your “directors and officers” expect.
  - Right to retain (and duty to pay) counsel
  - Conflicts of interest
  - Personal indemnification
  - Intersection with articles of incorporation, bylaws, and other issues of corporate governance

# Who Should Walk on Behalf of Us: Identifying Insured Persons and Entities

- Do not assume that your insurers know who your “people” are.
  - Employees
  - Volunteers
  - Students Earning Credit
  - Interns
  - Contractors

# Who Should Walk on Behalf of Us: Identifying Insured Persons and Entities

## Additional Insureds

- Subsidiary, Parent, and Affiliated Organizations
- Independent Contractors
- Co-Venturers
- Government Agencies
- Venues and Related Entities
- Other Contractual Obligations
- Other Drivers (Automobile Policies)

# Who Should Walk on Behalf of Us: Identifying Insured Persons and Entities



You need to  
be involved in  
that  
determination.

# Who Should Walk on Behalf of Us: Identifying Insured Persons and Entities

**Your qualified insurance broker needs to be involved in that determination.**

- Understanding your organization
- Understanding your goals
- Understanding your business

# Who Should Walk on Behalf of Us: Identifying Insured Persons and Entities

**Your qualified insurance broker needs to be involved in that determination.**

- Frankly assessing your potential liabilities
- Helping you address potential liabilities, to the extent possible
- Helping you achieve an optimal level of coverage

## Who Should Walk on Behalf of Us: Identifying Insured Persons and Entities

- Your insurance carriers should be involved in that determination.
  
- Coverage counsel also can help address your concerns about various issues.
  - Scope of the coverage provided
  - Who may be an insured
  - What potential liabilities may be excluded

# How Far We Need to Walk: Insurance and Geography

- Where have your activities been?
- Where are your activities now?
- Where will your activities be during the policy period? The foreseeable future?

# Keeping In Step: Reconsidering Insurance-related Choices

## First Steps

- What are your risks? How do you intend to account for them if “disaster strikes?”
- What are your needs? What role, if any, does insurance play?
- Who are your people and what do they do? What coverage, if any, is provided for their activities?
- What are your goals?

**Warning: Don't stop there!**

# Keeping In Step: Reconsidering Insurance-related Choices

## Keep Stepping

- Ongoing, continuous, thoughtful self-evaluations
- Reconsidering risks as activities (and potential liabilities) expand
- Learning from your own claim history

# Keeping In Step: Reconsidering Insurance-related Choices

## Keep Stepping

- Monitoring fellow nonprofits and claims filed against them
- Monitoring potential plaintiffs, potential claimants, and their counsel
- Monitoring significant legal developments that affect the kinds and amount of potential liability

# Keeping In Step: Reconsidering Insurance-related Choices

## Re-evaluating Where You Are and Where You Want To Go

- You must keep track of your “policy periods.”
- It is reasonable to expect an insurance agent to monitor the end of a policy period, but this is not a delegable responsibility.
- Calendar expirations of insurance policies just like any other deadlines.
- Be sure to include sufficient time to reassess your risks, needs, people, and goals before time runs out on your policies.

# Keeping In Step: Reconsidering Insurance-related Choices

- **Closely monitor your “renewed” policies and consider how they change or impact.**
  - Coverage
  - Insureds
  - Endorsements
  - Exclusions
  - Conditions

# Keeping in Step: Satisfying Your Obligations

**You should consider insurance to be part of a risk management program, not the risk management program.**



# Keeping in Step: Satisfying Your Obligations

## Identify and address risks that you can eliminate.

- Unprofitable activities that do not warrant investment of insurance
- Unprofitable activities that cannot be insured
- Unprofitable activities that cannot be *reasonably* insured

# Keeping in Step: Satisfying Your Obligations

## Identify risks that you can limit.

- Establish and enforce clear employee guidelines.
  - Can reduce litigation and your premiums.
  - Help account for potential risks and liabilities as part of your assessments.

# Keeping in Step: Satisfying Your Obligations

## **Raise awareness about potential liabilities.**

- Defensive driving classes for employees who operate organization vehicles
- Harassment training
- Lunch-and-learns
- Sharing risk-related information from your broker, counsel, and other sources of information about potential liabilities

# Keeping in Step: Satisfying Your Obligations

**Take a hard look at the risks that you can and want to insure. Then look again.**

- Assess (and reassess) what you consider important.
  - Past
  - Present
  - Future

# Keeping in Step: Satisfying Your Obligations

**Assess (and reassess) what risks your organization faces and potential liabilities associated with those risks.**

- Organization's risk history
- Comparable organizations' risk histories
- Legislative environment
- Regulatory environment
- Legal environment
- Risks posed by advocacy groups

# Keeping in Step: Satisfying Your Obligations

## Assess (and reassess) changes to the policies.

- Understand them
  - Match your coverage with your risks
  - Match your coverage with your insureds
  - Ensure the coverage provided meets your realized risks and potential liabilities
  - Ensure the coverage provided extends to the right people
- Keep them

# Keeping in Step: Satisfying Your Obligations

## Common Exclusions

- Exclusions explicitly preclude insurance coverage for losses arising from certain conduct, activities or circumstances
  - “We will defend against and indemnify you against certain kinds of losses, but...”
  - They vary, somewhat, from policy to policy and insurer to insurer
  - The effect that any given exclusion will have on your organization depends on, among other things, the risks that your organization faces

# Keeping in Step: Satisfying Your Obligations

## Safe Harbors

Sometimes insurers provide a respite from broad exclusions—sometimes with, sometimes without an additional premium.

Safe harbors can mean the difference between no coverage for certain risks and conditional coverage for certain risks.



# Keeping in Step: atisfying Your Obligations

## Safe Harbors

### Dishonesty exclusion

Example: “This policy excludes coverage for loss arising from an insured’s dishonest, fraudulent or criminal acts or omissions. If a claim would invoke the insurer’s duty to defend but for the allegations, then the insurer will defend the claim until there is a final adjudication by a factfinder, or admission by the insured...”

# Keeping in Step: Satisfying Your Obligations

## Safe Harbors

### Intentional acts exclusion

Example: “This policy excludes coverage for loss arising from acts expected or intended to cause property damage or bodily harm, except that this exclusion does not pertain to any Wrongful Acts as defined by this policy.”

# Keeping in Step: Satisfying Your Obligations

## Conditions

- Even if a “covered event” occurs and even if no exclusions apply, the insurer’s assistance can be lost
  - Also vary, somewhat, from policy to policy and insurer to insurer
  - Duty to report potentially covered event promptly and/or within a certain number of days
  - Duty to cooperate with the insurance company

# Conclusion

- **The Big Ideas:**
  - Know your *types* of policies
  - Know *your* policies
  - Evaluate your risks and coverages on an *ongoing, continuous* basis.
- **Executing on Those Ideas:**
  - Use the checklist



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