

WHAT AN HONOR!!!!? Directors Liability Insurance Explained



By **Daniel J. Graziano**

Have you, or someone you know, been asked to serve on a Board of a for-profit or not-for-profit company? Did you feel flattered? You should. You should also be asking some questions before and after you say, “Yes.”

Most importantly, you should ask if and how the position will expose you and your assets to potential claims. New Jersey provides some general protection for Board members absolving them from liability if they exercise sound business

judgment in functioning on their Board. However, the determination of reasonable business judgment is a factual one, which, if raised, will generally require that a jury or judge sitting without a jury make that determination. That means that you could be exposed to significant legal fees to successfully raise such a defense, even though you might ultimately be found not to be culpable. Though the corporate organizational documents may provide that the company or agency will defend you at their cost, with many non-profit groups the availability of funds to provide such a defense may be problematic.

Adequate insurance—Directors Liability insurance—is the only effective way to protect you from both the legal expenses of defense as well as liability for claims for damages. You should ask what kind of coverage is in force at the organization you are considering

servicing and, if you are already on the Board, you should be sure that coverage is evaluated professionally at least every four or five years. The reason for that is that the types of exposure and available coverage may change over time. For example, ten years ago it was rare to have employment practices insurance. Five years ago insurance for HIPAA violations and computer security breaches were not generally available and affordable.

Your current insurance broker may not be keeping up with your needs or product availability. An independent review by an attorney experienced in corporate governance issues, can help to limit your exposure to liability so that you can provide such vital public service. Here at Szaferman Lakind, we have a team of attorneys who have spent years practicing in the field of corporate governance, business management and associated legal issues.