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Do Nonprofits Really Need Directors and Officers Insurance? With Cody Wiswasser – Transcript

Jess Birken 00:00:02 Welcome to Charity therapy, the podcast where we explore the ups and downs of the nonprofit sector and answer your burning questions. I'm your host, Jess Birken, owner of Birken Law Office, and I'm excited you're here. Imagine hanging out with me and my super smart, funny, nonprofit expert pals. You get to ask them anything about your nitty gritty nonprofit life and get their wisdom for free. Whether you're a seasoned pro or just strapping on your nonprofit boots, we're here to share stories and remind you you're not alone on this journey. So get ready to join the conversation and bring me the tough questions I ain't scared. Ready to rock? Let's dive in. Hello and welcome to this episode of Charity therapy. I am here with my intrepid co-host Meghan, and she and I have been watching the Ohio season of Love Is Blind, and it's kind of a hot mess.

Meghan 00:00:59 It truly is. I'm like, why are we recording this podcast and not getting caught up because we're behind everyone on the internet and I have to keep dodging spoilers, literally.

Jess Birken 00:01:08 Also, full disclosure before we started recording, I was proposing that we ditch work and get a hotel room and snacks. But just like that sounds creepy, but I just want to lay on somebody else's bed that I don't have to be like, this is my room and it has to be clean and whatever. And then Megan and I can just have like a runway of, like, junk food, snacks between us and then binge watch. Love is blind. That seems like a way better day than working.

Jess Birken 00:00:02 Welcome to Charity therapy, the podcast where we explore the ups and downs of the nonprofit sector and answer your burning questions. I'm your host, Jess Birken, owner of Birken Law Office, and I'm excited you're here. Imagine hanging

out with me and my super smart, funny, nonprofit expert pals. You get to ask them anything about your nitty gritty nonprofit life and get their wisdom for free. Whether you're a seasoned pro or just strapping on your nonprofit boots, we're here to share stories and remind you you're not alone on this journey. So get ready to join the conversation and bring me the tough questions. I ain't scared. Ready to rock? Let's dive in. Hello and welcome to this episode of Charity therapy. Today I have my friend Cody Wiswasser here with me. Cody is an insurance professional at Community Partners Insurance Group where he leverages his insurance knowhow for good. Thanks for joining me on the pod, Cody.

Cody Wiswasser 00:01:00 Happy to be here. Always happy to be here with you, Jess.

Jess Birken 00:01:03 Amen. We have fun.

Jess Birken 00:01:05 We have fun. And. And right now, I am. I am keeping you from enjoying the great outdoors. So, that's. I appreciate your dedication to podcasting right now.

Cody Wiswasser 00:01:16 Well, it's 68, in Chicago right now. I usually have to wait till, like, June for this.

Jess Birken 00:01:19 So there you go.

Cody Wiswasser 00:01:21 Big deal out here.

Jess Birken 00:01:23 Amazing. All right, well, let's get on with it. you know, here's the thing. As a lawyer that I get to say all the time, I get to say, well, it depends like that is

like a go to answer for lawyers. And I have a feeling that that's sort of a big one for you, too. so I know that your answer is going to depend on a lot on people's details, but sort of in general, what kinds of insurance do most non-profits really need?

Cody Wiswasser 00:01:53 Yeah. So it does depend on what they do. I would always say that everyone should have general liability and directors and officers coverage like almost without change and a lot of places to have directors and officers, you have to have a policy with them too.

Jess Birken 00:02:08 Oh that's interesting.

Cody Wiswasser 00:02:10 Getting model in. No, I can do it. I have to do weird stuff to do it. So not everyone will offer that. The directors officers coverage is for the directors and officers you want to those people, they have decided to sit on your board and depending on what you're doing, getting sued is very unpleasant on that side. Some things you invite, more lawsuits, some things you would invite, less. You can do your own risk management on that, but I would say always have directors and officers. And the more assets your board has, the more likely that you invite what we call prominent person lawsuits. So basically, someone sues your organization not because they want to sue your organization, they want to sue someone who's sitting on your board so they see your organization to get to them. And those are always very messy lawsuits because they get tossed out eventually. But it costs ten, 20, \$50,000 before they get tossed in pretrial.

Jess Birken 00:02:58 Well, I'm glad you brought up messy lawsuits and people just suing to get to someone, because our listener question is based around an animal rescue, which if you've worked with nonprofits for any length of time, you know, there's sometimes a lot of drama with the animal rescue folks for whatever reason.

Jess Birken 00:03:20 So let me tee up our listener question for you, because I think this dovetails nicely. All right. Here we go. I'm a member of the founding board for Cat

rescue. We operate out of a chain pet store and have most of our cats in foster. We've been up and running for about two years now, and we've been trying to level up our processes. We recently learned about directors and officers insurance, but I'm not sure if that's really necessary. The nonprofit is fully funded by our founder, and I have a feeling the cost is going to be prohibitive for her if we choose not to get the insurance. I'm just wondering what types of things people could sue me for. As a board member, I do have substantial personal assets, and I don't want some litigious person to come after me for something stupid. But we work in a small community where everyone knows everyone, and I just can't imagine that that would really happen. Well, okay, Cody, what's what's your take here? It seems like Dino is just the tip of the iceberg to me.

Cody Wiswasser 00:04:27 So as far as the direct answer of Dino, I'm going to emphasize part of that question, which is. And they sue for something stupid. is, sorry, that's air quotes, because podcasting is a very visual medium. Most directors and officers motions, unless it's for breach of fiduciary duty, unless your board or your officers steal from you, it is usually something quite frivolous, and it's interpersonal dynamics that turn into a fight that can be tough.

Jess Birken 00:04:55 And so wait, wait, are you saying that claims on know are are most often boards fighting with each other?

Cody Wiswasser 00:05:05 Yeah. Or you're fighting with thunders or. Oh, I had a fascinating one where a state, a government agent, a government entity had written a grant to an organization. The organization and the grant writing entity got into it like the government entity. So the government entity tried to pursue a directors and officers claim to get their money back and claw out for the carrier to tell them, no, that's not how any of this works. And so then they have a claim, and I have.

Cody Wiswasser 00:05:35 When I marketed them, I had to explain to everyone that claims not real, just ignore it. These are not the claims you're looking for. So a lot of them are frivolous, and they're people fighting with each other and their disagreements. Or it's someone who's sitting on the board of your organization. They get into a dispute with

someone in the community, and someone in the community sues the board and also tags the organization on the side.

Jess Birken 00:05:59 Yeah, and any lawyer worth their weight in lawsuits, I don't even know where that was going. Is going to probably name all the board members individually. Just sort of as like a tactic. So absolutely like, yeah, you might get dismissed out, but like you're going to waste a bunch of time getting there. So what what I'm hearing is from this question, is your own board members fighting could be something you get sued over. A funder being angry is something you see as claims. So right there there's two. And we haven't even touched the animals and people getting bitten or, you know, using cleaning chemicals and getting harmed by that and all those sorts of things which wouldn't be covered by directors and officers insurance at all anyway.

Cody Wiswasser 00:06:46 No, that will all go under general liability for the most part, if they're providing veterinary services, either professional vet services or cleaning this kind of thing that'll fall under like errors and omissions, which we sometimes will tack on. But the director and officer side, yeah, there is a lot of exposure and in animal rights cases because people get into disputes over different standards, different beliefs there. It can turn into a spot. Now I'll flag to this person mentioned that they have like substantial assets sitting behind it. So I'm going to like flag a couple of things. One, if you were out there listening as a non-profit and you're a director and you don't have directors and officers coverage and you're sitting on a board, it may be worth funding the organization to do so. Directors and officers coverage, depending on what you're doing. I mean, I've seen it as cheap as 2500, \$3,000, and that's in like expensive places like California, where it's pretty litigious. I don't do a lot of business in cheaper states like Missouri, Iowa, where there's just not as litigious of culture.

Cody Wiswasser 00:07:49 But I mean, sometimes it's cheap, it's \$3,000. And if every board member checks in, it's \$300 and everybody gets to be more protected. The other thing is it depends on what they mean by substantial assets. So we always talk about you write directors and officers. There's three parts to it. You never need the third part for the most part. Those are for like publicly traded organizations. But A and B side are really important. A side is to cover the directors themselves if they get named at a lawsuit. B side is if they make a payment on behalf of the organization because they got sued because of the work for the organization, it pays the organization back for the payment

that the director. Yeah, if that sounds complicated. If B side gets caught implicated, it's usually a messy claim. I've never seen it in real life, but it is important to have there. I hope I never do the A-side. If you have someone with a lot of money because they are a lawsuit magnet, sometimes you have a whole separate policy just for that one board member that has a lot of money.

Cody Wiswasser 00:08:47 We're talking people who have usually \$25 million in assets. Once we clear that threshold, we start talking about adding a side dick, which is called aside for the part and the difference in coverage because we're going to give them additional coverages and that's paid for by the board member themselves. They pay for like an additional enhancement, and it raises the limits of the directors and officers if that one person is named just because.

Jess Birken 00:09:13 Okay.

Cody Wiswasser 00:09:13 Because you have \$1,500 million, your lawsuit magnet, no offense to anyone, 50 or \$100 million.

Jess Birken 00:09:18 Yeah. So the reason for that is, oh, you're a deep pocket. You're an easy target. The unscrupulous lawyers of the world are going to, like, do their research and be like, yeah. And then we name the rich person and try and shake the money tree to get a settlement, because that's cheaper than fighting about it. I see that all the time. So, yeah, why people hate lawyers, you know.

Cody Wiswasser 00:09:41 And talking about the shaking the money tree, a lot of directors and officers claims don't go to court.

Cody Wiswasser 00:09:48 A lot of them settle pretrial or they get and they usually get dismissed. It takes about \$10,000 for an attorney, but that's the number I always hear

thrown about. It's about ten grand to get something thrown out pre-trial to pay for a litigator to show up to do that. I don't know a lot of orgs that have ten grand sitting around to handle that, let alone run the risk. And so the question is, is if your organization is already type funded, ask, do you have ten grand lying around or are you going to fold? If an unscrupulous person sues you kind of frivolously or actually frivolously?

Jess Birken 00:10:19 Right. Okay, so for this, for this person, just based on the limited information we have, what insurance policies do you think this group needs?

Cody Wiswasser 00:10:30 Just what I know. Just the general liability and director and officer. It sounds like they're not handling their veterinarian stuff directly. And if they're operating out of a chain pet store, they're probably not doing their own cleanings, their own nail clippings, and they're not doing it for non rescues, basically for other pets.

Cody Wiswasser 00:10:46 Those are the two that they're really going to need. Is that general liability and director and officer I doubt if they only have a single funder that they have employees. If they do well, we have a whole mess of other coverages that get implicated at that point.

Jess Birken 00:10:59 That makes sense. So I've got a few takeaways here, and I think the main one is, at a minimum, your nonprofit, wherever you are, whatever you're doing, at a minimum you're going to need directors and officers and general liability, just like full stop. Don't even do not pass go, do not pass to get \$200 without that. And then I think secondly is we're two years into operating and we haven't even talked to an insurance person. And to me that's one of the takeaways here. Is this the moment we're starting, what insurance do we need is a question we should be asking right away. Right. Because now we've got a couple of years of potentially things have happened that aren't going to be covered by our new insurance necessarily.

Jess Birken 00:11:47 Right? So a lot of things are exciting when you're starting a new nonprofit and buying insurance is not one. But talk to someone who's a professional about what kind of coverages you need, because it really does depend on what you're doing. And then I think third is, yes, we want to like always assume our community is a positive, wonderful place. But in order to execute our fiduciary duties and to do what's in the best interests of the nonprofit and to protect ourselves and the nonprofit, we need to sort of assume that there is risk. There is no magical bubble that comes around us like the Disney princess, fairies don't just magically wave their fairy dust over you. And just because we're a charity, right? People do get upset. People do fight. Mistakes do happen, bad things happen, and we need to guard the nonprofit, and we need to assume that something bad could happen and make a plan for that eventuality. Anything else you think is important to say? As we wrap up here.

Cody Wiswasser 00:12:59 There's going to only append one thing. If you're forming, you're talking to an insurance person. Just because they quote additional insurances doesn't mean you have to take all of them. You know the cost for the future. Knowing the cost for the future helps you plan for five years down the road. So many nonprofits plan for the next three six months. And 3 to 6 years is an important timeline too.

Jess Birken 00:13:18 Yeah, I love that because a lot can change, right? A lot can change. And if you know, if you can't afford everything all at one time, some insurance is better than no insurance too.

Cody Wiswasser 00:13:29 So 100%.

Jess Birken 00:13:32 Yeah. Cody, thank you so much for coming on the show. If folks want to connect with you, where can they find you?

Cody Wiswasser 00:13:38 I the best place to find us is at our website which is Community partners in S. Com or they can email me directly at Cody Wasser. That's The is a SER at CPI.insurance.com.

Jess Birken 00:13:58 Awesome. And we'll throw that in the show notes.

Jess Birken 00:14:00 Thank you so much.

Cody Wiswasser 00:14:01 Thanks for having me Jess.

Jess Birken 00:14:03 You're so welcome. If you enjoyed this episode y'all like do me a favor. Share it with a friend. If you know a small nonprofit that's walking around with their, you know, stuff hanging out because they don't have any pants on, pants being insurance in this case, I guess. Share this with them. They need to know. Subscribe. Share. Do all the press, all the buttons. It really does help us out. If you have a question or a story to share, get at me. I would love to answer it on the show. Charity therapy dot show is that address and thanks for listening.

About the Author



Hi, I'm Jess Birken

I'm the owner of Birken Law Office, I help nonprofits solve problems so they can quit worrying and get back to what matters most – The Mission. I'm not like most attorneys, I actually have an outgoing personality, and – like you – I like to think outside the box. Most of my clients are passionate and have an entrepreneurial spirit. I'm like that too. My goal is to help you crush it. Getting bogged down in the minutia sucks the joy out of the important stuff. My clients want to do the work – not the paperwork.

Let's connect!

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