

“Surplus wealth is a sacred trust which its possessor is bound to administer in his lifetime for the good of the community.” Andrew Carnegie’s words in *The Gospel of Wealth* resonate with many individuals who seek to make a difference by giving back to their communities and joining not-for-profit boards. Whether one is assisting their church, school, local symphony or other charitable endeavors, performing good deeds and civic duties should bring a lifetime of happiness. While the benefits of such activities far outweigh potential risks, it is wise to know what pitfalls may exist and how best to avoid or deal with them.

In this issue of *Wealthy & Wise* we look at the benefits and some potential pitfalls of not-for-profit work. First, we hear from Robyn Kravit, Chief Executive Officer of Tethys Research, about the challenges and rewards she has encountered in her not-for-profit work. Under the heading of unforeseen consequences, we then look at how to spot and keep in check risks that have the potential to negatively impact the overall experience. Finally, we offer a not-for-profit board members guide to Directors and Officers insurance, including a checklist to make sure proper coverages are in place.

Sandra Bravo
President & CEO
Willis Personal Lines, Inc.

COMMITMENT, SERVICE, CONSENSUS: AN INTERVIEW WITH ROBYN KRAVIT

by Blair Leake

Robyn S. Kravit is an international business executive with more than 30 years of experience in management and venture development, especially in Far East markets. She established and directed significant China-based operations, negotiating more than \$1 billion in trade contracts and joint-venture agreements.

Robyn currently provides advice to companies and consulting firms requiring Asian expertise. She is also the Co-Founder and Chief Executive Officer of Tethys Research, a biotechnology start-up company.

She sits on the Board of Directors of the Willis Group (NYSE: WSH), a leading global insurance broker, handling risk management and reinsurance across a wide range of service areas and industries. She



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also serves on the boards of a variety of non-profit entities.

A graduate of Vassar College, she attended Stanford University’s Program for Chinese Language Studies in Taiwan and earned her Master’s degree at Harvard University. Robyn is fluent in Mandarin Chinese.



My experience on non-profit boards has shown me that you get out what you put in. I've learned so much from these experiences, not only intellectually about issues like conservation, international law and education, but also about people, group dynamics and friendship. I have made so many close and lasting friendships through service on these boards.

BLAIR: You have served on a number of prestigious non-profits including The Smithsonian's FONZ, Washington Foreign Law Society and Johns Hopkins University's Whiting School of Engineering. How did you decide to become an advocate for the causes these organizations champion?

ROBYN: When I returned to the USA from abroad, my overarching motivation for non-profit board service was the desire to get involved in my local community and give back. As to the choice of specific organizations, I had five criteria: First, I had to feel passionate about the mission of the organization and respect the work that they do. Second, I wanted to serve with interesting people who were competent in their respective fields and who shared my commitment and passion for the organization. Third, I like to learn and I wanted to serve on organizations that would help me to grow personally or professionally. Fourth, I wanted to be able to contribute my expertise to the board's tool box. And lastly, it had to be fun!

BLAIR: You invested considerable time serving (2000-2010) as President and Director of FONZ, the organization which manages commercial and educational activities for Smithsonian's National Zoological Parks. What motivated you to volunteer with this organization?

ROBYN: I did some pro bono consulting work on a China-related matter for the Zoo. I've always been passionate about animals and wildlife but I had never visited the National Zoo, fearing that animals in captivity might distress me. However through my meetings there, I learned about the incredible research and conservation work being done to protect species around the globe and the superb work FONZ does to connect people with that wildlife. I was hooked!

BLAIR: Under your stewardship, what advancements did FONZ achieve?

ROBYN: The FONZ organization was just turning 50 when I became President and the board thought that was the perfect milestone at which to do some organizational introspection and planning. As a result, we devised and instituted a new strategic plan and revitalized and restructured our board governance.

In 2006, I went to China with John Berry, the Zoo Director, to help negotiate extending the stay of Tai Shan, our baby panda, for a couple of years longer. I guess that's not specifically a FONZ advancement but it was a great achievement for the community.

BLAIR: What distinguishes an organization such as FONZ that has been around for many years and effectively delivers on its mission?

ROBYN: FONZ began as a small group of individuals committed to raising funds for a better zoo. Now it is an organization with over 40,000 members that runs all the visitor services at the zoo. Its growth and sustainability through the years is the result of a constantly engaged board, a highly dedicated staff and a shared passion between them.

BLAIR: What expectations do you consider when accepting a board seat? What qualities do you seek when recruiting a new board member?

ROBYN: I expect to serve on boards that are congenial, but congeniality with a purpose. That is, using our skill sets in a congenial way to forward the goals and aspirations of the organization by fearlessly digging deep and asking the hard questions. You don't want a bomb thrower but you don't want meek passivity either. In my experience, when boards are recruiting new members, they look for these same qualities in addition to looking for specific skill sets.

BLAIR: What impact has serving on a board had on your personal life? Your professional life?

ROBYN: My experience on non-profit boards has shown me that you get out what you put in. I've learned so much from these experiences, not only intellectually about issues like conservation, international law and education, but also about people, group dynamics and friendship. I have made so many close and lasting friendships through service on these boards.

BLAIR: What has been the greatest challenge in serving on non-profit boards?

ROBYN: For me, the biggest challenge was learning how to manage by consensus. Businesses are often run as benevolent dictatorships and while in Asia, I ran my organization the way I felt best. To quote a former president, "I was the decider." But boards don't operate that way, and building consensus was a skill I needed to master.

GIVING BACK NOT ALWAYS REWARDING: RISK HITS CLOSER TO HOME THAN ONE MIGHT THINK

Samantha is a senior executive with a successful Fortune 500 corporation. In addition to her accomplishments in the business world, she is a prominent member of her community. Her country club unanimously nominates her to a seat on its board of directors. She gladly accepts the position.

The following summer, several club members complain about a lack of oversight and management of the lifeguard staff at the pool. They mention the lax attitude of the staff and the frequently empty guard chair. During the next board meeting, Samantha makes a point to inquire about the complaints. Club management assures the board that steps are being taken to "handle the problem." Confident that the matter was under control, the meeting proceeds.

Two weeks later, a child goes missing during a free swim and is found at the bottom of the pool. Thankfully, lifesaving efforts were successful; he was revived and stabilized prior to being transported to the local hospital, after which he made a full recovery.

While the story had a happy ending for the child and his family, the liability threat faced by the board members is quite another story.

Not-for-profit organizations typically operate on tight budgets. Many carry the minimal amount of liability insurance to satisfy statutory requirements (typically \$1 million). You can easily imagine that if the parents decided to sue the club and the board, the above highlighted situation could quickly exhaust those coverage limits — leaving Samantha and the other board members' personal assets exposed for recoupment.



Many individuals are excited to give back to the community or to perform their civic duty when they join a not-for-profit board. Unfortunately they may fail to realize that doing so opens them up to personal liability exposure.

STEPS TO UNCOVER EXPOSURE

Many advisors have updated their professional standards to now include insurance assessments in their asset review processes. In addition, they have chosen to partner with independent insurance advisors who specialize in the level of insurance that their clients need – bringing expertise where it's needed.

We encourage you to have a conversation with your clients to assess their potential risk. Following are a few key questions you can incorporate into your discussions:

1. ARE YOU AN OUTSIDE DIRECTOR OR OFFICER FOR ANY FOR-PROFIT OR NOT-FOR-PROFIT ORGANIZATIONS?

If the board is sued and there is not enough Directors and Officers Liability coverage in place, those sitting on it can be held personally responsible. Clients should discuss their directorship and the risk management options available with a qualified insurance advisor.

2. WHAT ARE THE CURRENT DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY LIMITS FOR THE ORGANIZATIONS YOU SERVE?

Your clients should know the amount of underlying coverage in place. They also should ask if that coverage applies to the outside directors, and if the defense limits are within that limit or in addition to it.

3. HAVE YOU DISCUSSED YOUR ROLE AS A DIRECTOR OR OFFICER WITH YOUR CURRENT INSURANCE ADVISOR?

Your clients should be working with their insurance advisors on an annual basis to review changes in their lifestyle. If their current agent or broker has not asked about their possible role as a director or officer, it may be time for a competitive review.

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HOW CAN YOU PROTECT YOURSELF? BOARD MEMBERS' GUIDE TO DIRECTORS AND OFFICERS INSURANCE FOR NOT-FOR-PROFIT ENTITIES

by

Marilyn Quinlan and Lesley Warrin
Willis Executive Risks Practice

Not-for-profit organizations have limited resources to indemnify directors and officers or to respond to expensive litigation, settlements or damage awards. Where no indemnification or only partial indemnification is available, the personal assets of directors and officers are at risk.

No organization or person is immune from a wrongful act allegation or lawsuit. Statutes do not provide adequate protection for directors and officers, and general liability insurance does not respond to claims against directors and officers for wrongful acts.

Directors & Officers (D&O) insurance is often referred to as “mismanagement liability insurance.” For example, when an employee or third party alleges discrimination or sexual harassment, or when it is alleged that the organization’s funds have been improperly utilized, a carefully constructed policy will respond to cover the organization and you as an individual. Ultimately, the buck stops at the board level for any mismanagement claims. The policy should cover the individuals primarily and the organization second, per the order of payments provision. Depending on the size of the entity, its exposure to risk and the amount of revenue flowing through the organization, you may want higher limits on the policy or want to purchase your own policy, such as Outside Directors coverage.

A board of directors should follow several practices to guard against the threat of lawsuits. While even the best practices are no guarantee that the board will not be sued, good governance can be an effective defense in the case of unjustified allegations. Board practices that are particularly important:

INFORMED AND REGULAR REVIEW OF FINANCIAL STATEMENTS

Board members should understand both the sources of income and how the resources are being expended. The audit committee or the board should meet with the auditor to discuss the annual audit. The audit committee should include a financial expert.

Directors & Officers (D&O) insurance is often referred to as “mismanagement liability insurance.” For example, when an employee or third party alleges discrimination or sexual harassment, or when it is alleged that the organization’s funds have been improperly utilized, a carefully constructed policy will respond to cover the organization and you as an individual. Ultimately, the buck stops at the board level for any mismanagement claims.

REGULAR ATTENDANCE AT BOARD MEETINGS

To render informed decisions about the governance of an organization, board members need to review all the information and attend meetings.

HAVE A CLEAR UNDERSTANDING OF THE BOARD’S ROLE IN PERSONNEL

The CEO or Executive Director should have authority to hire and fire staff below that level. The board should not be involved in these decisions but made aware of situations that could lead to allegations of wrongful termination, etc.

AVOID CONFLICTS OF INTEREST

Board members who receive any compensation from the organization must fully disclose the nature of services provided and the amount received. The Board (excluding the compensated member) needs to determine that this arrangement is in the best interest of the organization. If the Board is uncertain, they should consult an attorney.

ENACT AND COMPLY WITH THE GOVERNANCE POLICIES REQUIRED BY LAW

The Sarbanes-Oxley Act requires that not-for-profits must develop, adopt and disclose a formal policy to respond to employee complaints of illegal, improper or fraudulent activity, and prevent retaliation. Civil rights laws require policies to address complaints of discrimination or harassment of employees. Board members must ensure that the organization promptly investigates employee and volunteer complaints of wrongdoing and implements corrective action. Sarbanes-Oxley also requires not-for-profits to have a written document retention and periodic destruction policy that applies to paper and digital records.

Finally, if you find yourself on a board without appropriate limits and coverage you can purchase a portable D & O Liability policy that protects you for any claims arising from any of the organizations for which you are a board member. This can apply to both for-profit and not-for-profit boards. You can purchase the limit you want to protect your assets as an individual.

If you are a director or officer for a not-for-profit organization, you need to know that there is coverage in place for the organization and for you as an individual.

A CHECKLIST FOR YOU:

- ✓ Does the organization have bylaws that include a robust indemnification provision for the directors and officers? Does it compare favorably to the indemnification provisions of other similarly situated non-profits?
- ✓ Does the organization have a Directors and Officers Liability policy in place? What is the limit? Is the limit adequate to protect the potential exposures?
- ✓ What is the definition of “Insured”? Be sure the definition includes all the positions for which coverage is sought (which could include volunteers, independent contractors, etc.).
- ✓ Does the policy include coverage for Employment Practices Liability (wrongful termination, sexual harassment, discrimination, etc.)? You should be aware that 90% of all claims asserted against non-profits are employment practices related.¹
- ✓ Does the Employment Practices Liability cover third-party claims? These are claims brought by the customers and clients of the non-profit and can present a significant exposure.
- ✓ Does the policy include Fiduciary Liability? If the organization provides pension or retirement plans, this is critical as it protects the organization and the board from claims asserted by its plan participants.
- ✓ If the policy includes Employment Practices Liability and Fiduciary coverage along with the Directors & Officers, are the limits shared? If so, are the limits adequate to address the potential exposure?
- ✓ Does the organization have any dedicated Side A limits? Many carriers will add excess Side A coverage onto the Directors & Officers policy. This provides additional protection to the insured individuals.
- ✓ Does the policy provide for advance payment of claim expenses? In many cases the organization does not have the money to indemnify you and then wait for the insurance company to reimburse them.
- ✓ Is the organization well insured for all other liability claims? If the organization is dealing with children, seniors or developmentally disabled, do they carry insurance for abuse?

The list above is not meant to be a comprehensive review of all the issues that a non-profit organization could face but it's a good starting point. For a more detailed discussion, you should contact your insurance broker that specializes in this coverage.

¹ *Nonprofits' Insurance Alliance of California, 2009, Santa Cruz, CA entitled “Directors & Officers, Key Facts About Insurance and Legal Liability*

CONTACTS

For additional information about the items discussed in this publication or related topics, or read past issues of *Wealthy & Wise*, please contact one of the regional leaders shown below please visit our website on willis.com.

Sandra Bravo

Private Client Group Practice Leader

+1 212 915 8019

sandra.bravo@willis.com

Joe Clark

National Sales Director

+1 610 254 5664

joseph.clark@willis.com

Jim Jameson

New York Region

+1 212 915 8212

james.jameson@willis.com

Michael Smerkanich

Northeast Region

+1 908 931 3061

michael.smerkanich@willis.com

Lynn Killeen

South East Region

+1 410 527 7255

lynn.killeen@willis.com

Ken Kreutz

Central Region

+1 303 765 1561

ken.kreutz@willis.com

Janet Rosin

Western Region

+1 602 787 6055

janet.rosin@willis.com

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