School Board Liability Insurance: The Good, the Bad, and the Ugly

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In my insurance consulting work with schools, one area of coverage is a topic of constant concern — school board liability insurance. There is, in many ways, an air of mystery around this policy. Let's get rid of that!

School board liability insurance is also known as educators' liability or school board legal liability. It's all the same policy. I'll use the acronym, SBLI.

The policy provides protection against a breach of "duty" by board members, administrators, and in many cases, any employee of the school. SBLI pays for actual or alleged wrong decisions; what the policy calls "wrongful acts." Although each insurer defines coverage in its own way, the policies generally include: "any actual or alleged act or omission, error, misstatement, misleading statement, neglect or breach of duty by an insured person in the discharge of his/her duties for the insured."

Some examples of claims include employment-related issues such as discrimination, harassment, and wrongful termination. Also, failure to provide services and mismanagement of assets.

SBLI does not pay for bodily injury or property damage. You buy auto insurance, workers' compensation, and general liability for such claims.

Coverage Considerations

As there are no standard SBLI policies. Each policy and proposal must be evaluated on its own merits. Here are some issues that should be considered:

- **Claims-Made Coverage**
  Most liability insurance policies (general liability, automobile, workers' compensation) pay for events that occur during the policy period. For example, an auto insurance policy will pay for an accident that occurs while the policy is in force. SBLI policies, however, pay for lawsuits filed during the policy period; the wrongful act could have occurred years before. Such is known as claims-made insurance; the policy responds only when a suit is filed, or when a strong threat of a suit exists.

  > Claims-made policy: Pays based on the date of the lawsuit.
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  > Occurrence policy: Pays based on the date of the accident or occurrence.

  The downside of a claims-made policy comes if the policy is canceled. Example: A SBLI policy is put in force January 1, 2002, and is renewed in 2003 and 2004. In 2005, however, the organization decides to end the coverage as the premium has increased. Six months later a letter from an attorney arrives announcing a lawsuit for discrimination in hiring that occurred in 2004. No coverage. Although the policy was in force at the time of the alleged discrimination, the policy was not in force when the suit was filed. The solution to this problem is the extended reporting period found in most policies (see the next paragraph).

- **Extended Reporting Period/Tail Issues**
  Claims-made policies only provide protection for lawsuits and actions brought during the policy period. In the event that coverage is replaced or cancelled, protection may be desired for events that took place prior to expiration/cancellation but for which no claim has yet been filed. This coverage is called a "tail" or "extended reporting period" (ERP). Here are some issues to consider:

- Can you buy the ERP at your option or only when the insurance company cancels the policy?
- For what period is the ERP valid? One year? Two years?? Longer???
- What is the premium for the ERP? (The cost is usually expressed as a percentage of the current premium.)
- In what time frame must the insured decide to buy the ERP? (The usual period is 30 or 60 days.)

- **Policy Limit**
  What amount of coverage is provided by your policy? What's the total amount of protection offered for all claims during the covered time frame (also known as an "aggregate limit")? Multiple claims can, in effect, use up the limit of coverage.
- **Defense within Limit**
  Most SBLI policies include the cost of defending a claim (attorneys' fees, etc.) within the policy limit of liability. That means that the amount of coverage purchased must be enough to cover the awards and the defense costs of all claims. This can be an issue when considering the amount of coverage (aggregate limit) you buy.
- **Failure to Provide Insurance Exclusion**
  This exclusion exists in about a quarter of the policies I see for nonprofit organizations. It removes coverage for suits by alleging that you did not buy the right insurance or enough insurance. If you see this exclusion in your policy, ask that it be removed.
- **Retroactive Date**
  Claims-made policies respond to claims brought during the policy period. Many policies include a date after which a claim must occur in order for the policy to respond—a retroactive date. When changing insurance companies, it is vital to understand the new policy retroactive date. The use of a "Tail" may be necessary if the retroactive date is not sufficiently in the past.
- **Employment-Related Practices Issue**
  Most SBLI policies include coverage for employment-related practices—wrongful discharge, harassment, discrimination, etc. Check the policy's definition of "wrongful employment act." Does it include only certain acts, such as sexual harassment? Or is the coverage broad, including workplace harassment, for example? Are discrimination suits brought by third parties covered? Remember that including employment practices claims in your organization's SBLI policy could affect the limit of liability available for other claims.
- **Policy Exclusions**
  Review your policy for exclusions. Different insurers remove coverage for different events and incidents. Is there coverage for harassment against students? Does the policy cover violation of civil rights and discrimination?

Personal Insurance

In my presentations to school boards I’m often asked about coverage for board service under a homeowner's policy or umbrella liability policy.

Personal liability insurance—either homeowner's or umbrella—covers bodily injury and property damage for which the insured—you—are liable. Business endeavors are excluded. Volunteer activities are covered, but only for bodily injury and property damage. Don't depend on personal liability to protect you from your actions on a school board.

Scott Simmonds is a "fee-only" provider of insurance advice and counsel. He can be reached by at (207) 284-0085 or by e-mail at **Scott@ScottSimmonds.com**. Also visit his school insurance website at **www.SchoolInsuranceHelp.com**.

Scott has worked extensively with schools and school districts helping them buy and manage insurance. He specializes in the management of the insurance bid process.