

Our Not for Profit form provides superior coverage:

- Comprehensive Policy Form providing D&O, EPL and Fiduciary Coverages
- Policy Limits up to \$5,000,000 for qualifying risks, Minimum Premium of \$500
- The insurer has the duty to defend covered claims even if they are groundless or fraudulent
- Our Not for Profit policy was designed with broad definitions of claim and loss
- Option for defense outside the limits for qualifying risks
- Two year policies available with annual installments for qualifying risks
- Definition of Charitable Organization is expanded to include 501c (3), (4), (6), (7), and (10) of the Internal Revenue Code
- Third Party Wrongful Personal Injury Coverage
- Mediation Provision – Retention is reduced by 50% (up to \$5,000)
- Consent to settle offered by automatic endorsement – apportionment is 80/20
- Punitive damage coverage is available where insurable by law
- Willingness to consider extending coverage to for-profit subsidiaries
- Severability provisions
- Noncancellable policy except for non-payment of premium
- Coverage applies worldwide
- Automatic Renewal available for qualifying risks – no renewal application required
- Our network of 41 local branches across the country - plus four new branches in the pipeline - enables CNA to provide local resources and conduct business closer to our agents and brokers

Mismanagement and Fraud

The Facts: An agricultural cooperative (“Co-op”) entered into a joint venture and formed a limited liability corporation (“LLC”) with a food manufacturing company (food manufacturer) to manufacture and sell baked goods. The parties agreed that Co-op would finance the venture and install the equipment while the food manufacturer would manufacture, market and sell the products. After operating at a significant loss for approximately one year, Co-op decided it no longer wanted to be a part of the joint venture and stopped funding the LLC. Co-op properly notified food manufacturer of the dissolution, but food manufacturer continued to manufacture, market and sell the baked products while looking for a new joint venture participant. Food manufacturer’s search for a new participant was unsuccessful, so food manufacturer sued Co-op, alleging that the cause of the joint venture’s demise was due to Co-op’s failure to install efficient equipment, which led to increased production costs. Food manufacturer also alleged that Co-op made fraudulent transfers of funds and violated its duties under the joint venture agreement. Co-op argued that it was food manufacturer’s failure to market the products properly caused the failure of the joint venture.

Risk Factors: During discovery, an officer of Co-op testified that Co-op had not funded the LLC properly and it was destined for failure.

The Bottom Line: Although settlement was attempted, the matter could not be resolved and the case was tried. At trial, Co-op won a defense verdict. Defense costs were \$500,000.

Breach of Fiduciary Duty

The Facts: A wealthy member of an agricultural cooperative was married to the sister of one of the board members. After a lengthy and bitter divorce, the member was expelled from the cooperative. The cooperative stated the reasons for the expulsion were that he was no longer a producer of agricultural products and also that he had not done business with the cooperative in more than 12 months, as required by its bylaws. After protracted negotiations between the board and the member failed to produce a resolution, the member filed suit alleging that the cooperative’s board was basing its expulsion on personal reasons. The cooperative responded that it had the right under common law and the governing statute to expel a member for cause.

Risk Factors: During discovery, a memo from a board member surfaced which referenced the plaintiff’s ongoing divorce and questioned whether plaintiff should continue to be a member of the cooperative.

The Bottom Line: After defense costs during discovery exceeded \$200,000, the board agreed to settle. The matter was settled on confidential terms, and defense costs were over \$225,000.

Breach of Fiduciary Duty

The Facts: The members of a large agricultural cooperative produced mainly one crop. Two primary groups formed among the membership and board members. There was a more-aggressive and growth-oriented group of agricultural producers that favored an approach that would grow the market for the product on a long-term basis and explore expanding international marketing opportunities. This approach was opposed by a more-conservative group that argued such an approach may benefit the industry as a whole, but would not produce a benefit for the membership. After many meetings and negotiations, the more-aggressive group prevailed and approved the expenditure of significant funds to implement its plan of growth. Members of the opposing group filed suit against the more aggressive group, alleging a breach of fiduciary duty in that the money spent did not produce a benefit to the organization or its members.

Risk Factors: A majority of the board members were convinced that the aggressive approach was vital to the long-term interests of the organization and did not want to settle. Other members felt continuing to litigate the matter would cause damage to the reputation of the cooperative and hinder their ability to continue to operate.

Bottom Line: A settlement was entered into for \$400,000. Defense costs were in excess of \$50,000.

For more information, contact your Regional Underwriter at
<http://www.cnapro.com/html/contactus.html> or call 800-852-0393.

