

August 2023

To: CCL Board of Trustees
From: Governance Committee
Re: Report on activities / Recommendations

Q3 2023

Directors & Officers (D&O) Insurance Policy

After July's Board Meeting at which time the \$2 million policy was approved through Philadelphia-Whitford Insurance for the sum of \$2696.00, JoAnn learned from Bob Longford, the agent who provided the policy and quote of \$4003.00, that there was a critical difference between the two policies: The Selective and Philadelphia Insurance Company policies have a critical coverage difference. To explain, both insurance companies quoted a claims-made policy form, typical of D&O policies. Unlike "occurrence" policies that cover you for incidents that happened during the policy period, "claims-made" policies cover claims which were "made" against the policyholder during the active policy period and which occur after the policy's "retroactive date."

Consequently, when considering a claims-made policy, it is essential to know the "retroactive date" that will be used in the policy, as you want to be sure that you are covered for acts that might have taken place before you purchased your coverage. Specifically, a "retroactive date," also known as a "prior acts exclusion date," is a provision in a claims-made policy that eliminates coverage for wrongful acts occurring before the retroactive date. For example, suppose the retroactive date is the same as the effective date of the policy, and the policy start date is 7/1/23. In that case, it can be highly problematic for the board, as there will be no coverage for any decisions made before the policy's inception date, July 1, 2023.

Alternatively, if the policy provides "full prior acts" coverage, it is a type of claims-made liability policy that does not contain a retroactive date and, therefore, covers claims arising from acts that took place at any time before the policy's inception date - regardless of how far in the past.

The Philadelphia-Whitford policy contained a "prior acts exclusion" or "retroactive date" as the expected date of the policy which means that no coverage exists for any decisions or "wrongful acts" made by the board before the policy would start. Conversely, the Selective-Longley policy includes coverage for "full prior acts." It will defend and protect the board for decisions made any time in the past, except prior or existing litigation. That is why the difference in the policy quote.

After sharing this information with members of the Governance Committee and the Executive Committee, and providing the background to the Executive Director, the go-ahead was given to Longley Insurance to initiate their policy. At this Board meeting, the recommendation is made to affirm that decision, with the increased costs.

RECOMMENDATION: The Governance Committee is recommending that the board affirm the decision to move forward with Longley Insurance.