CONTACT US
Dave Perkins, RPLU
(508) 848-4263
dave.perkins@igpspecialty.com

Side A DIC Claim Scenarios: Non-Profit Organizations

Side A DIC coverage is designed to:

- Protect **individual directors and officers (D&Os)** when the organization **cannot indemnify**
- Drop down when underlying D&O insurers **deny coverage or rescind policies**
- Provide **broader coverage terms** (fewer exclusions, broader definitions)
- Sit **outside the traditional D&O program,** often with dedicated limits

1. Insolvency of the Non-Profit Organization

Scenario

A charitable healthcare non-profit experiences significant financial distress and ultimately files for bankruptcy. Former executives are sued by creditors and donors alleging:

- Mismanagement of funds
- Breach of fiduciary duty
- Failure to disclose financial deterioration

Coverage Outcome

- The organization is legally and financially unable to indemnify the directors/officers
- Traditional D&O (Side B/C) coverage is not triggered due to lack of indemnification

Side A DIC Response

- Pays defense costs and settlements directly on behalf of individual D&Os
- Drops down if underlying insurers restrict coverage in bankruptcy
- Protects personal assets of board members

2. Regulatory Investigation with Indemnification Prohibited

Scenario

A non-profit university is investigated by regulators (e.g., Department of Education or state AG) for:

- Misuse of federal grant funds
- Improper governance practices

Certain board members are individually named in enforcement actions.

Coverage Issue

- Local/state law prohibits the organization from indemnifying individuals for certain regulatory penalties or investigation costs

Side A DIC Response

- Covers **non-indemnifiable loss,** including defense expenses
- Broader definition of claim may include **formal investigations earlier than underlying policy**
- May respond where underlying D&O limits regulatory coverage

3. Underlying D&O Carrier Denial (Coverage Dispute)

Scenario

A donor files suit against the non-profit's board alleging:

- Misrepresentation of how funds would be used
- Breach of fiduciary duty

The primary D&O carrier denies coverage citing:

- Application misrepresentation
- Conduct exclusions

Coverage Issue

- Coverage denial leaves individual directors exposed

Side A DIC Response

- **Drops down to provide primary coverage** if denial is improper or disputed
- Typically **not bound** by underlying carrier's restrictive interpretation
- May **advance defense costs immediately**

4. Exhaustion of Underlying D&O Limits

Scenario

A class-action lawsuit is brought by beneficiaries of a large non-profit alleging:

- Mismanagement of endowment funds
- Excessive executive compensation

Defense costs and settlements **fully exhaust the primary and excess D&O towers.**

Coverage Issue

- No remaining insurance available for individuals

Side A DIC Response

- Provides **additional dedicated limits exclusively for individuals**

- Responds after exhaustion to cover:
  - Defense costs
  - Settlements/judgments
    - Protects individuals when organizational coverage is depleted

5. Rescission of Underlying D&O Policy

Scenario

Following a claim, the insurer alleges that the non-profit failed to disclose prior financial irregularities during underwriting and **rescinds the policy.**

Coverage Issue

- Entire D&O policy treated as **void ab initio**
- No coverage available under traditional program

Side A DIC Response

- Not subject to rescission (in many forms, especially for innocent insureds)
- Provides **standalone protection for directors and officers**
- Critical safeguard against underwriting disputes

6. Employment Practices Claim Against Board Members

Scenario

A terminated executive director sues individual board members alleging:

- Wrongful termination
- Discrimination
- Retaliation

The non-profit declines indemnification due to:

- Internal governance disputes
- Allegations of intentional misconduct

Coverage Issue

- Coverage under EPLI may be limited or disputed
- Organization refuses or is unable to indemnify

Side A DIC Response

- Covers **individual board members when indemnification is withheld**
- May provide broader protection if EPLI excludes individuals in certain situations
- Advances defense costs

7. Whistleblower Retaliation Claim Scenario

An employee alleges that senior leadership and board members retaliated against them for reporting:

- Misuse of donor funds
- Accounting irregularities

Coverage Issue

- Non-profit delays or refuses indemnification pending investigation
- Potential exclusions triggered under underlying policies

Side A DIC Response

- Steps in when indemnification is **delayed or denied**
- Covers **defense costs during uncertainty period**
- Helps maintain continuity of legal defense for individuals

8. International Operations – Indemnification Restrictions

Scenario

A global non-profit operates in jurisdictions where:

- Local law restricts indemnification of directors
- Insurance payments to organizations are limited
- A foreign regulator brings action against local board members.

Coverage Issue

- Indemnification **legally prohibited** in that jurisdiction

Side A DIC Response

- Provides **direct payment to individuals globally**
- Designed to comply with local indemnification restrictions
- May include **difference-in-conditions enhancements** for global exposure

9. Donor Lawsuit with Allegations of Personal Misconduct

Scenario

Major donors sue board members individually, alleging:

- Fraudulent fundraising practices
- Personal misuse of charitable funds

Coverage Issue

- Underlying insurer invokes **conduct exclusions** (triggered upon allegation vs. final adjudication, depending on form)

Side A DIC Response

- Often has **more favorable conduct exclusion wording** (final adjudication standard)
- Advances defense costs until wrongdoing is legally established
- Protects individuals from premature denial

10. Failure to Maintain Insurance Claim

Scenario

Board members are sued for failure to maintain adequate insurance coverage for the non-profit, leading to financial loss.

Coverage Issue

- Underlying policy may include exclusions or limitations for this type of claim
- Organization unable to indemnify due to financial strain

Side A DIC Response

- Provides **broader insuring agreement** potentially capturing this exposure
- Steps in where underlying coverage is silent or restrictive
- Protects board members in governance-related oversight claims

Key Takeaways for Clients

Critical for non-profits with:

- Volunteer boards
- Limited financial resources
- Exposure to donor, regulatory, and governance claims

Provides:

- **Personal asset protection** for board members
- **Coverage certainty** when traditional D&O fails
- **Broader terms and independent protection**

Particularly valuable in scenarios involving:

- **Bankruptcy / financial distress**
- **Regulatory investigations**
- **Coverage disputes or rescission**
- **Non-indemnifiable claims**