

The Risk is Real for Foundation Leaders

Lawsuits brought against foundations and grant-making organizations can range from employment issues, such as harassment, discrimination and wrongful termination, to business practices issues, such as misappropriation, financial mismanagement and negligence.

The risk for your organization is real and significant. So is the protection you can have with insurance offered by Monitor Liability Managers, LLC. Here are just a few examples of the damage a lawsuit can cause.

Court Awards More Than \$2 Million to Contractor

Breach of Contract and Fraud

The plaintiff, a contractor, sued a foundation alleging it persuaded people to donate property and then fraudulently failed to fulfill the terms of the donation agreements. The contractor also sued for breach of contract and related monetary damages. The foundation and its president were named as defendants. The district court awarded the claimant more than \$1 million for unpaid commissions, \$1 million in punitive damages and more than \$46,000 for attorney fees.

Potential Grantees Sue Foundation

Improper Guarantee

A U.S. district court ruled that community volunteers could recover incidental costs from a foundation. The court noted the foundation's repeated written assurances it would allocate a specific sum of funds and resources to the planning process for a program aimed at reducing poverty in the area. The foundation actively recruited volunteers to participate in the planning although it never guaranteed a plan would be accepted and funded. Prior to completion of the planning process, the foundation withdrew its offer for a program stating a unified plan for the area was not possible.



Case Spends Years in Litigation

Racial Discrimination

A white female who was promoted from program coordinator to director sued a university-based foundation for racial discrimination. She alleged when promoted she was told by her supervisor, "You know you are not the right color for the position." After serving nine months as director, she was informed her original hiring would now be subject to an affirmative action search. The plaintiff alleged she was unlawfully terminated from her position. After three years in litigation, a jury found the foundation constructively discharged the plaintiff on the basis of race. The plaintiff was awarded roughly \$44,000 in back pay.

Foundation Pays In Excess of \$500,000 to Defend Claim

Trademark Infringement

A musical artist and band filed a trademark infringement claim against a conservation and environmental foundation. The plaintiffs claimed the foundation's name infringed upon and competed with their business trade name. After approximately four years of litigation, the plaintiffs voluntarily dismissed the case against the foundation. The defendant foundation paid in excess of \$500,000 to defend the claim. The foundation's subsequent counterclaim seeking attorney's fees from the plaintiffs was denied.

Founder/Director Found Personally Liable

Financial Mismanagement

The Eighth Circuit Court of Appeals affirmed a jury verdict finding a foundation's founder/director personally liable for \$430,000 in architect fees in connection with the nonprofit's plan to build a soccer stadium. Applying the "alter ego doctrine," the defendant was considered to be the alter ego of the foundation. The court found that the director could be held personally liable based upon various wrongful acts including the undercapitalization of the foundation.