

Creative Risk Management
The McLaughlin Company

VOLUNTEERS: PROBLEMS AND SOLUTIONS

At some time or another we have all asked someone to volunteer or we have volunteered our own time and expertise. Churches, Rotary Clubs, Scouts, businesses, unions, all have asked for our help or sponsored help for someone else.

What liability exposures do each of the entities and persons incur? We look to insurance to respond to these potential liabilities and this insurance coverage is available from several sources.

We will examine the exposures and insurance solutions to the various parties involved. We will examine the needs of the entity asking for volunteers; the entity that needs the volunteers' time and expertise; the actual volunteer; and fellow volunteers.

THE ENTITY ASKING FOR VOLUNTEERS

This could be a Ronald McDonald House, a hospital, church, scout troop, any entity or organization that needs some form of volunteer help.

This entity needs general liability insurance and automobile liability to provide coverage for negligent acts for which it may be held responsible. This is true for any business, nonprofit organization or individual. If a visitor comes into our home and the ceiling falls on

them, we would probably be liable for that accident. The same is true for any organization or person.

A commercial general liability policy or, in the case of an individual, a personal liability policy will provide the needed coverage. This will protect the recipient of the volunteer's services for acts of negligence for which he may be held liable. The owner or occupier of the location where the volunteer activity is taking place may also be held responsible for the negligent acts of the volunteers.

THE ENTITY THAT SOLICITED THE VOLUNTEERS

The organization that organized the voluntary activity needs insurance coverage for injuries caused by the volunteers or to the volunteers. Again, we are talking about negligent actions of this organization. A general liability policy will provide defense for the named insured which causes bodily injury or property damage. Care is needed to understand this terminology. This will be defined and explained in greater detail at the end of this article.

THE LIABILITY OF THE VOLUNTEER

A Commercial General Liability policy provides coverage for employees while acting within the scope of their duties. This same protection is afforded to a volunteer if the *Additional Insured-Volunteer Workers Endorsement* is added to the Commercial General Liability Policy.

This endorsement limits coverage for bodily injury or property damage. It excludes claims brought against the volunteer for injuries to the named insured, other volunteers or employees. (see side bar on the following page)

COMMERCIAL GENERAL LIABILITY
CG 20 21 10 93

ADDITIONAL INSURED - VOLUNTEER WORKERS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE
PART

WHO IS AN INSURED (Section II) is amended to include as an insured any person(s) who are volunteer worker(s) for you, but only while acting at the direction of, and within the scope of their duties for you. However, no volunteer worker(s) are insureds for:

1. "Bodily injury" or "personal injury":

a. To you, to your partners or members (if you are a partnership or joint venture), to your other volunteer worker(s) or to your "employees" arising out of and in the course of their duties for you;

b. To the spouse, child, parent, brother or sister of your volunteer worker(s) or your "employees" as a consequence of paragraph 1.a. above;

c. For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs 1a or 1b above; or

d. Arising out of his or her providing or failing to provide professional health care services.

2. "Property damage" to property:

a. Owned, occupied, or used by,

b. Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your other volunteer worker(s), your "employees" or, if you are a partnership or joint venture, any partner or member.

This endorsement does offer the volunteer insurance coverage for injuries inflicted on other volunteers of other organizations providing volunteers to the same project.

For example, building and remodeling a house for Habitat for Humanity:

Boy Scout Troop 2728	22 members
UA Local 234	3 volunteers
IBEW Local 317	2 volunteers
UBC Local 189	6 volunteers
Local Rotary Club	7 volunteers

Suburban Building Contractor, Inc.	4 volunteers
Unaffiliated	5 volunteers
Habitat for Humanity	3 "employees"

Scenario ---

A UA volunteer causes bodily injury to:

- ⇒ a UA employee
- ⇒ another UA volunteer
- ⇒ UBC volunteer
- ⇒ Boy Scout
- ⇒ an employee of "Habitat"
- ⇒ an employee of Suburban Building Contractor, Inc.
- ⇒ a member of the public walking by

If each of the represented organizations has a Commercial General Liability policy with the Additional Insured Volunteer Workers endorsement, then each volunteer and employee would be an insured under their sponsoring organization's Commercial General Liability policy, *but not an insured under any of the fellow sponsoring organizations*. The volunteers would also have insurance coverage under their personal liability policies (included in homeowners insurance policies as well as personal umbrella liability) but that insurance is not available to the employees.

The UA General Liability Policy will provide insurance protection to the volunteer for any legal action coming against the volunteer from any of the injured except a fellow UA volunteer or a UA employee. The General Liability of Habitat for Humanity will also provide coverage subject to the same exclusions.

The UA volunteer needs his personal liability policy for any liability he causes to a fellow UA volunteer, UA employee, or the UA local's property as well as Habitat for Humanity's employees, volunteers or its property.

If the volunteer is not volunteering through an organization, then the only protection afforded is through the Habitat for Humanities policies and that would only afford coverage for injuries to the general public. This type of volunteer needs a personal liability policy.



INJURY TO THE VOLUNTEER

This is another matter. Insurance coverage is available from many sources: the organization that solicited the volunteer (the UA local), the entity using the volunteer (Habitat for Humanity), and any other organization that caused the injury.

The problem: This insurance is only available if the one causing the injury is negligent. If the injury is not caused by negligence of some party, no liability coverage would be available. If the volunteer is blinded because an old gas line explodes, coverage may not be available.

The volunteer would have to rely upon the health insurance and disability insurance he or she would have if the same accident occurred at their own home.

While we accept the injury to ourselves that occurs in our private lives, we may feel we should have something extra if the injury is the result of our doing work for others.

If no one has liability it will take a voluntary benefit to provide a benefit to supplement the personal benefits.

In our example, the UA Local 234 could endorse their Workers Compensation insurance to include voluntary compensation.

VOLUNTARY COMPENSATION AND EMPLOYERS LIABILITY COVERAGE ENDORSEMENT WC 00 03 11 A

This endorsement adds Voluntary Compensation Insurance to the policy.

This endorsement provides voluntary coverage for the workers compensation benefits of a given jurisdiction to employees *who are not covered by state workers compensation law.*, the employers liability coverage of the policy applies.

Employees *who may not be covered* under the workers compensation law of a given state include the following.

- Domestic workers
- Agricultural workers
- Volunteers
- Employees injured while temporarily outside of the United States or Canada
- Employees injured while on indefinite assignment outside of the United States or Canada

A. How This Insurance Applies

This insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must be sustained by an employee included in the group of employees described in the Schedule.

2. The bodily injury must arise out of and in the course of employment necessary or incidental to work in a state listed in the Schedule.

3. The bodily injury must occur in the United States of America, its territories or possessions, or Canada, and may occur elsewhere if the employee is a United States or Canadian citizen temporarily away from those places.

4. Bodily injury by accident must occur during the policy period.

5. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

This endorsement will pay 100% of the medical expenses and a portion of the lost wages. Most states pay a weekly benefit equal to $66 \frac{2}{3}$ of the injured employees average weekly wage to a maximum of the states average weekly wage.

LOST WAGES

The Volunteer is not a compensated employee so what are the lost wages based on? Each state has different rules as to what is compensable.

District of Columbia: Bases the benefit on the compensation earned at the regular employment of the volunteer.

Virginia: If the volunteer is performing similar duties as regular employment at the time of injury, the benefit is based on the earnings at regular employment. If the volunteer is performing duties not similar to regular employment then the injury is not compensable.

You need to review each state and territory law and regulations to determine if an injured volunteer is eligible for compensation and what benefit.

In addition to adding the endorsement for volunteers, the Workers Compensation policy should also have the Alternate Employer endorsement. (WC 00 03 01A)

Alternate Employer Endorsement WC 00 03 01 A

This endorsement applies only with respect to bodily injury to your employees while in the course of special or temporary employment by the alternate employer in the state named in Item 2 of the Schedule. Part One (Workers Compensation Insurance) and Part Two (Employers Liability Insurance) will apply as though the alternate employer is insured. If an entry is shown in Item 3 of the Schedule the insurance afforded by this endorsement applies only to work you perform under the contract or at the project named in the Schedule.

This endorsement requires that the project be specifically named on the policy. In our

example, UA Local 234 would add the Voluntary Compensation and Employers Liability Coverage Endorsement as well as the Alternate Employer Endorsement naming: Habitat for Humanity. If the local does other volunteer work they should be named as well (i.e. Ronald McDonald House volunteers or Dollars Against Diabetes Collectors.)

Sample of State Workers Compensation Payments

STATE	% OF WAGES	MAXIMUM PAYMENT
AR	66 $\frac{2}{3}$	\$448
CA	66 $\frac{2}{3}$	490
DC	66 $\frac{2}{3}$	749
IL	66 $\frac{2}{3}$	781
NY	66 $\frac{2}{3}$	400
MS	66 $\frac{2}{3}$	271

By using the Workers Compensation policy, the volunteer is in the same economic position as if he was injured on the job.

The endorsements do not relieve the entities for whom the volunteer is performing tasks of any liability for negligence. They do have a benefit where they are trying to keep a volunteer whole.

These Workers Compensation endorsements are available but not every insurance company will use them or make them available to every insured. Likewise, the insurance company rules, as to what they will charge for this coverage or what they will base the premium on, is not subject to standardized rules. Even if an organization wants to provide workers compensation, they may not be able to secure the coverage.

An alternative to purchasing Workers Compensation would be to purchase an accident policy for the volunteers. The Accidental Death and Dismemberment Policy may provide a benefit of \$50,000 plus \$5,000 accident, medical and a disability benefit of 1% of the face amount per month or \$300 a week.

In our example, the volunteer of UA Local 234, if injured during the voluntary activity could collect \$5,000 toward his medical expenses. This would help meet any deductibles and coinsurance payments that the medical insurance required. If our volunteer is disabled, the policy

will pay \$500 a month for up to eight years. An additional \$300 a week can also be purchased.

LEGISLATIVE RELIEF FOR VOLUNTEERS

Volunteer Protection Statutes

Nearly every state has enacted a provision limiting the liability of non-profit "volunteers". However, these laws only provide protection for volunteers performing services for charitable organizations and apply to directors and officers if they serve without compensation.

Approximately half of the state statutes protect volunteers OTHER THAN directors and officers.

Other terms and conditions may be required in order for the immunity to be effective.

These statutes are welcome relief to limit volunteers liability but should not be relied upon as the sole shield of protection.

Model State Volunteer Service Act (The Bush Model Act)

In 1990 President Bush called for state-by-state adoption of model legislation to enact more uniform and broader volunteer protection statutes.

The Bush Model Act grants immunity from civil liability to any person performing services without compensation for: (i) any corporation or organization exempt from tax under 501 (a) and (c) of the IRS Code, or (ii) any hospital or governmental entity.

For immunity under the Bush Model Act, the volunteer must act in good faith and within the scope of official functions and duties. The Act does not apply to liability based on a volunteer's "willful and wanton misconduct." (As of 1995 two states have enacted volunteer protection statutes based upon the Bush Model Act.)

Every state volunteer protection statute has exceptions which undercut its protection.

CONCLUSION

The act of volunteering is a selfless act in order to help others who are in need. As we have seen, this act is not without its pitfalls.

Except to the physical injury to a volunteer, the insurance protection that an individual volunteer needs is not onerous.

Every organization should at a minimum have a commercial general liability policy. Every individual should have a personal liability policy. These policies are not expensive. The part that requires some consideration is the amount of liability one should carry. Our opinion is nothing less than one million dollars and perhaps your circumstances require more.

We have attempted to give all the parties involved in the act of volunteering an overview as to what options should be considered.

For any organization, asking for volunteers, they should be mindful of the risks they are asking the volunteers to take.

For the volunteers, they should consider that their exposures are neither greater nor different than doing work around their home. It is not the volunteering that creates the liability but how they comport themselves.



Alexis de Tocqueville in his visit to America in our early days described what sets Americans apart from our cousins abroad is this spirit of community and volunteerism.

Special thanks is in order to Rick S. Terven, Business Manager, Local 99 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada in Bloomington, Illinois, for bringing his concerns about the exposures to liability his local and members face when they perform voluntary service to the community.

MISCELLANEOUS ITEMS

Property damage

Another area of concern is damage to or destruction of personal property. The personal property may be owned by the volunteer, another volunteer, the organization requesting volunteers or the organization providing the volunteers.

All liability policies contain an exclusion for property in the insureds care, custody and control. This is property owned, leased, borrowed or rented. Generally, if you are using it, it is excluded property. The reason for the exclusion is the property should be insured by property insurance and not liability insurance.

A workman's tools, if owned by the workman, should be insured by an inland marine policy or part of his homeowners. If owned by a business, then the business should have a policy covering the property.

In order to have property insured, it must be disclosed and described to the insurance company.

If one volunteer borrows a Skill saw belonging to another volunteer and burns out the motor of the skill saw, any insurance recovery would be under a property form and not the liability forms. (The volunteer who damaged the Skill saw may have limited \$500 damage to property of others in his homeowners policy).

If in our example, the Skill saw burns out, but by doing so, sets the house on fire, the negligent act that causes the damage to the house may trigger liability coverage. Liability policies are interpreted very tightly.

The whole house was not in the care, custody and control of the volunteer, only the part he was working on. So, based on the circumstances, the burning down of the house may be covered by the liability policies, while the area around the gas line that was severed by the Skill saw will not be covered.

Just remember, damage to property should be covered by property insurance.

Automobile

There is also an exposure to injury resulting from the use of automobiles. Liability follows the owner of the vehicle. Anyone who uses that vehicle with permission is an insured under the auto policy that insures that vehicle. That is a standard feature in all auto policies, both commercial and personal.

Personal auto policies also automatically provide excess liability coverage for situations when the insured is using an automobile that does not belong to a resident of his household.

Commercial entities must add non-owned and hired car liability to get the excess liability coverage for vehicles they may use or have provided to them (i.e.: A volunteer uses his own auto to take other volunteers to the place of activity.) The cost of this coverage is very inexpensive, usually \$125 per year for \$1,000,000.

*Required Insurance Coverages:***Commercial Entities:**

- Commercial/General Liability Insurance
Additional Insured-Volunteers Endorsement
- Automobile Liability Insurance
Non-owned and hired car included.
- Property Insurance on items made available for use on voluntary project
- Workers Compensation on employees.

Individuals:

- Personal Liability Insurance
- Automobile Liability Insurance
- Property Insurance on items made available to volunteer project
- Medical Insurance
- Disability Income Replacement

Insurance that should be considered but not required:

Commercial Entities;

- Workers Compensation Insurance covering volunteers and alternate employers
- Accidental Death & Dismemberment Insurance including accident medical and accident disability
- Directors and Officers Liability

Types Of Liability

Bodily Injury: Physical injury to persons

Property Damage: Physical destruction of things

Personal Injury: Libel, slander, defamation of character, wrongful arrest or wrongful eviction

FORMS

Commercial General Liability CG 00 01
Additional Insured -Volunteer Workers CG 2021

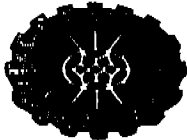
Personal Liability Insurance

Owned Property, Homeowners (HO-1,2,3,8)
Apartment Renters (H0-4)
Condominium owners (H0-6)



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To the Editor of Solutions....

The information you provide in your newsletter is good and varied material but so much of it is unfamiliar to me that I can't retain it all or even understand some of it. Please keep it coming.

Phil Rellihan
UA Local 533
Kansas City, MO

Dear Phil:

Thank you for your comments. We realize much of what we write is foreign to our readers. It is not our intention to entertain or educate. Our object is to place our readers in a position to ask their advisors (attorneys, accountants, insurance agents, international representatives, etc.) meaningful questions and assist in interpreting the answers. We publish an index to all past articles once a year in our December issue and maintain an updated index of past articles at our web site. We will be happy to provide any past articles upon request.



Thank you for your comments. It is comments like yours that keep us publishing this newsletter on a regular basis.

Editor

By the way, many articles come from questions our clients and readers ask us. If any of our other readers have any comments or requests, please feel free to submit them.