



**MANAGING LEGAL
LIABILITY
AND
INSURANCE
FOR CORPORATE
VOLUNTEER PROGRAMS**

CHARLES TREMPER

JEFFREY D. KAHN

United Way of America
National Center for Community
Risk Management & Insurance

MANAGING LEGAL LIABILITY AND INSURANCE FOR CORPORATE VOLUNTEER PROGRAMS

CHARLES TREMPER

**National Center for Community Risk Management & Insurance
Washington, D.C.**

JEFFREY D. KAHN

**Schnader, Harrison, Segal & Lewis
Philadelphia, Pennsylvania**

United Way of America

**National Center for Community
Risk Management & Insurance**

Copyright © 1992 by the National Center for Community Risk Management & Insurance and the United Way of America

National Center for Community
Risk Management & Insurance
1828 L Street, NW, Suite 505
Washington, DC 20036

United Way of America
701 N. Fairfax Street
Alexandria, VA 22314

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is distributed with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. *From a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers.*

National Center for Community Risk Management & Insurance

The National Center for Community Risk Management & Insurance helps organizations to prevent losses and provide adequately for losses that do occur. The Center's efforts encompass all varieties of insurance as well as risk management and health maintenance strategies designed to reduce injuries, illness, and legal violations. The Center also supports efforts to improve legal liability laws, health policy, insurance data keeping practices, and insurance regulation as each affects nonprofits and volunteers.

United Way of America

United Way of America is the National Service and Training Center for community-based United Ways. The first national service center was established in 1918. United Way of America does not raise or allocate funds, but provides a range of assistance to community-based United Ways that includes the following:

- Serves as a *liaison* with other national charities and with organized labor at the national and local levels.
- Provides *marketing support* to help people better understand United Way and help United Ways better understand their constituents. Also assists United Ways in carrying out strategic planning, market research, and communications.
- Provides *national resources* to help foster stronger government relations at the local, state, and federal levels and to help national corporations plan and implement their community involvement and contributions programs. United Way of America also holds national conferences that enable United Ways to share vital information and ideas.
- Produces *materials and resources* that help United Ways develop a marketing orientation, assess community human-care needs, involve more and different types of people in United Way activities, train volunteers, and reach out to other fund-raising and volunteer markets.
- Provides a variety of *administrative and personnel* programs that includes career counseling for United Way employees, as well as training for United Way volunteers and professionals.
- Develops *state-of-the-art computer software*, and provides technical assistance to United Ways.

This publication was produced with the assistance of Schnader, Harrison, Segal & Lewis, a full-service law firm with a national and international practice. The firm has nearly 250 lawyers in offices in Pennsylvania, New Jersey, Washington, D.C., and New York. Its clients range from large, international corporations to individual entrepreneurs and service organizations.

ACKNOWLEDGEMENTS

A publication on legal and insurance issues ordinarily can be written without ever emerging from the library. Due to the dearth of both precedent and previously published materials pertaining specifically to corporate volunteer programs, we pursued a different course. In addition to consulting the standard reference works we interviewed over two dozen people involved in the administration of corporate volunteer programs. The input of the following individuals improved this booklet and we thank them all for their assistance.

Special thanks go to Elizabeth Kelly, United Way of America's Senior Vice President for Community Partnerships and Volunteer Initiatives, who took the lead in conceptualizing this publication and arranging for its creation. The volunteerism professionals who teamed with Elizabeth, including Kathryn Baerwald, Steve Greenhalgh and Susan Mason of United Way of America, Mary Galligan of the National VOLUNTEER Center, Patricia Bland of the Points of Light Foundation, and Irene Burowski of One to One, provided invaluable guidance and assistance.

In addition, several attorneys and insurance professionals reviewed portions of the manuscript or offered suggestions. We are especially grateful to Robert Woody of Lane and Mittendorf, Pierre Dugan of Johnson & Higgins, and Huntington Block of Huntington T. Block Insurance.

Finally, the law firm of Schnader, Harrison, Segal & Lewis earns our special thanks for enabling one of the authors to participate and for providing the graphics design for the publication.

Cooperating corporate volunteer program managers, risk managers, and attorneys:

Anne McMullin, Program Officer, Employee Volunteer Action, Apple Computer, Inc., Cupertino, Ca.

Jeanne Klug, Manager, Community Affairs, Bell Atlantic Corporation, Arlington, Va.

Russ Kemerer, Community Relations, Paul Rich, Office of Legal Affairs, and Jack French, Corporate Claims Manager, Bell of Pennsylvania, Pittsburgh and Philadelphia.

Kerry Yeager, Volunteer Coordinator, The Chase Manhattan Bank, New York.

Jan Klick, Director, E.C.H.O. c/o Pacific Power & Light Company, Portland, Or.

Carole Smith, Manager, Community Relations, Lynn Williams and Lonnie Edmondson, Managers, Fannie Mae/Woodson Senior High School Incentive Scholarship Program; David R. Menn, Director of Corporate Risk Management, Jane Fitts, Esq., Office of General Counsel, Fannie Mae, Washington, D.C.

Susan Corrigan, President and Chief Executive Officer, Gifts In Kind America, Arlington, Va.

Ron Speed, Vice President, Corporate Public Affairs, Honeywell, Inc., Minneapolis.

Walt A. Smith, Consultant, Corporate Support Policy & Programs, International Business Machines Corporation, Armonk, NY.

John Logan, Esq., Vice President and General Counsel, The March Of Dimes Birth Defects Foundation, White Plains, NY.

Walter Wolfe, Program Manager, Employment & Training Coordination, Montgomery County (Maryland) Government.

Susan Enright, Manager, Community Relations, Pillsbury, Minneapolis.

Diane N. Roth, Executive Director, Resource Connections, Pittsburgh.

Chris Rebstock, Acting Network Services Director, Second Harvest National Food Bank Network, Chicago.

Jose Castro, Vice President, Community Affairs, Security Pacific National Bank, Los Angeles.

Taiga Ermansons, Community Relations Manager, Time Warner, Inc., New York.

Fred Chavez, Executive Vice President, Finance and Operations, United Way of the Bay Area, San Francisco.

Mary G. Jackson, Senior Public Affairs Representative, Virginia Power, Richmond, Va.

Jill Gaumer, Corporate Social Investment, Scott Paper Company, Philadelphia.

Charles Tremper
National Center for Community
Risk Management & Insurance
1828 L Street, NW, Suite 505
Washington, DC 20036

Jeffrey D. Kahn
Schnader, Harrison, Segal & Lewis
1600 Market Street
Philadelphia, PA 19103

TABLE OF CONTENTS

CHAPTER 1: OVERVIEW	1
Liability Fears	1
Liability Risks	2
Benefits of Controlling Liability Risks	3
Structures of Corporate Volunteerism Programs	3
Rising to the Challenge	4
CHAPTER 2: LEGAL LIABILITY	5
Liability Fundamentals	5
Negligence	5
Proving Negligence	6
Company Liability for Acts of Volunteers	6
Vicarious Liability	6
Direct Liability	7
Punitive Damages	9
Company Liability for Injuries <i>to</i> Volunteers	9
Volunteers' Personal Liability	10
Liability Shields	11
Separate Incorporation of the Volunteer Program	11
Collaboration with a Charitable Organization	11
Protective Agreements	11
Waivers and Releases	12
Disclaimers	13
Hold-Harmless Agreements	13
Legal Citations for Chapter 2	14
CHAPTER 3: INSURANCE AND INDEMNIFICATION	15
The Role of Insurance	15
Liability Insurance To Protect the Company	16
Insurance Limitations That Require Special Planning	16
Coverage for Claims in Collaborative Programs	17
Insurance for Volunteers	17
Coverage for Volunteers under a General Liability Policy	18
Special Insurance Policies for Volunteer Programs	18
Indemnification	19
Insurance for Harm to Volunteers	19
Volunteers' Personal Insurance Policies	19
CHAPTER 4: STRATEGIES FOR CONTROLLING LIABILITY RISKS	22
Risk Management	22
Accident Prevention	23
Written Policies and Procedures	24
Position Descriptions	24
Screening	25
Training	25
Supervision	26
Administration	26
Restrictions on Volunteer Activity	27
Conclusion	27
RESOURCES	28
FIGURES	
Spectrum of Company Involvement with Volunteerism	4
Vicarious Liability Factors	8
Insurance Checklist	21
The Risk Management Process	23

USING THIS BOOKLET

This booklet is addressed primarily to managers of "corporate volunteer programs," a term we use broadly to include a great variety of programs in which employers or unions are involved in supporting the volunteer service of their workers or retirees. The principal objective of this booklet is to clarify the liability risks of corporate volunteer programs and to suggest strategies for controlling those risks. Volunteer program managers play *the critical role* in assessing and managing risks that threaten program success. This booklet should help managers with each of the following tasks that they must perform in their risk management role.

1. *Recognize volunteer program risks and related insurance issues.*
2. *Ask the right questions of company lawyers, and alert them to possible liability problems.* Chapter 2 explains the grounds on which a company may be held liable for harm the volunteer program causes. The chapter also includes a discussion of various liability shields, such as waivers and releases, to provide a basis for discussion with counsel.
3. *Be sure the company and individual volunteers have adequate insurance.* Chapter 3 summarizes the major types of insurance and identifies possible gaps in coverage. This chapter will help volunteer program managers, along with company risk managers, to assess the adequacy of current policies and the desirability of additional coverage. It will also provide a basis for discussing the subject of insurance with individual volunteers.
4. *Take appropriate programmatic steps to control risks.* Chapter 4 offers suggestions on using such common practices as screening, written procedures, and supervision to reduce risks.
5. *Consult additional reference material, organizations and professionals as needed.* The "Resources" section in the back of this booklet provides references that augment the information in each chapter.

For readers eager to get the most immediately practical suggestions, we recommend reading Chapter 1, then proceeding directly to Chapter 4. A more thorough understanding of legal liability and insurance can be gained by reading straight through the full booklet. Readers who skip ahead and find they need a fuller explanation of some point can return for more information in Chapters 2 and 3 or consult the materials listed in the Resources section.

SOME LIMITATIONS OF THIS BOOKLET

Although this booklet is filled with practical advice and useful background information, it is not comprehensive. We have made every effort to assure the accuracy and utility of the information presented and advice proffered in this booklet, but we cannot be certain of either. Many of the examples are based on the actual practices of corporate volunteer programs across the country. Nonetheless, they may not be suitable in other contexts. Thus we strongly recommend consulting with the company's legal counsel and risk manager.

Although our suggestions are designed to reduce the likelihood of a successful lawsuit against a volunteer program, their legal effectiveness is largely unproven. Because volunteer programs do not breed much litigation, few of the techniques described here have been tested in court. Even if they have, the judicial decisions of one state will not necessarily be followed in another. Thus, adopting these strategies cannot completely eliminate the possibility that a volunteer program will become involved in litigation. Instead, the suggestions are offered as starting points for program managers to use in working with risk managers, attorneys and other staff to design and implement appropriate strategies.

This booklet focuses specifically on the volunteer aspects of a corporation's philanthropic endeavors and does not address potential liability for donating property or money. Nor will this booklet deal in depth with liability and insurance for nonprofit organizations. Companies that operate their volunteer programs through one or more nonprofit organizations should consult the reference materials listed in the Resources section at the end of this booklet. Similarly, personal liability for nonprofits' volunteers and board members receives little attention here. Finally, specialized areas of legal liability such as antitrust actions, bankruptcy, employee grievances and tax problems are generally not addressed.

chapter one

OVERVIEW

Question: Will the prospect of legal liability scare away business sector support for volunteerism?

Possible Answer: Yes, business firms will abandon volunteer programs once the liability risks are widely recognized.

Better Answer: No, corporate volunteerism will thrive as programs practice effective risk management.

The difference between these two answers depends largely on how company executives, board members, and volunteer program managers understand and respond to the threat of liability. Effective program administration, guided by the principles discussed in this publication, can control liability exposure so that corporate volunteerism achieves its full potential.

LIABILITY FEARS

The possibility of a lawsuit cannot be eliminated by wishing it away. Business executives know that lawsuits are a part of modern life. They also know that the possibility of being sued affects company and individual decision-making about whether to proceed with an otherwise attractive proposal.

Especially when the benefits to the company do not show up immediately on the bottom line, the extra expenses associated with a volunteer program's potential liability can be a strong deterrent. Similarly, employees may be reluctant to volunteer if they are concerned about being sued and losing their personal savings.

As businesses expand their community service role from making contributions to involving their employees in volunteer programs, liability issues become more prominent. To reduce liability fears, volunteer program managers must recognize, understand and control the risks of their operations, just as product development directors and plant managers explicitly factor risk into every decision.

In addition, corporate volunteer program managers must dispel misconceptions about the riskiness of volunteer activities. Insurers specializing in coverage for nonprofits report that claims against volunteers are uncommon. Although no statistics are available, an insurance company that has offered a policy specifically for volunteers has consistently reduced its premiums over time. If claims were high, the premiums would have been rising.

"No obstacle [to volunteer service] is more chilling than the fear of personal liability and the high cost of insurance to protect against liability."

George Bush

Thousands of tiny nonprofits with shoestring budgets administer volunteer programs even though the doctrine of charitable immunity no longer protects them from lawsuits. American businesses with company legal departments, professional risk managers, sophisticated insurance arrangements, and long experience in protecting against lawsuits are in most respects even better situated to manage the liability risks of their volunteer programs than are nonprofits.

There is no sound reason for the threat of lawsuits to torpedo corporate volunteer programs. The benefits to American communities and businesses far outweigh the risks, and the risks can be adequately managed.

With support from their employers, millions of Americans are volunteering for a broad array of activities, from coaching youth sports teams, to serving food at homeless shelters, to working one on one with children who need extra guidance and love. Businesses that support these volunteer efforts through well-managed programs perform an invaluable community service and garner tremendous good will at very little risk of loss from legal liability.

LIABILITY RISKS

People often talk about the prospect of liability in general terms without identifying specific risks. Such generalizations are useless for making rational decisions about managing risks effectively. Pinpointing types of harm, potential injured parties, and which people or entities can be held legally responsible for the harm is an essential first step in reducing the likelihood of both the harm and legal liability.

As with any human activity, volunteerism may cause various types of injury and damage. The potential liability of the volunteer and the company varies depending upon the person injured, the circumstances of the injury, the structure of the volunteer program, and the prior arrangements of the parties involved.

Perhaps the most familiar example of a liability risk is the car accident. For instance, suppose an employee-volunteer is driving an elderly program client to the grocery store. A moment's inattention causes a collision with a truck. The driver, passenger and truck driver are injured; the employee-volunteer's car and the truck are damaged.

Both the passenger and the truck driver may file a lawsuit against the employee-volunteer and the program sponsor or sponsors. The employee-volunteer may seek workers' compensation benefits and can sue in some cases. This situation raises the following questions:

- Is adequate insurance available for the employee-volunteer and the company?
- Did the volunteer program manager check driving records or at least verify that the driver was licensed?
- Was driver safety training offered?
- Were drivers instructed to wear seat belts and to insist that their passengers do the same as a condition of participation in the program?
- Did the company operate the program directly or did it refer employees to a nonprofit organization that operated the program?

Each of these questions has multiple liability implications. This publication focuses on the liability issues for the company, with less attention to the potential personal liability of the volunteer.

An automobile accident is but one incident that can lead to legal liability. A wide variety of situations can lead to claims against the company and each requires appropriate precautions. The following examples illustrate the variety of incidents that may result in a lawsuit.

- Child sex abuse causing emotional injury. The volunteer program sponsor may be liable for not having properly screened, placed or supervised a volunteer who commits abuse or for having failed to respond properly to an allegation of misconduct.

- Injury or losses sustained as the result of bad professional advice (“professional malpractice”). For example, an employee providing counseling on a referral hotline or giving *pro bono* legal advice may offer erroneous guidance.
- Defamation. A volunteer wrongly tells tenants in a community development project that their landlord is involved with organized crime.
- Theft. An employee-volunteer serving as treasurer of a community center steals some of the funds, and the center seeks to recover from the company.
- Invasion of privacy. A volunteer may allow a snoop to look at a confidential client file.

In addition to the variety of types of injury or loss that can arise, the relationship of the injured- or injuring-individual to the company affects liability.

- An employee-participant’s spouse may trip over a tent rope at a reception following a company-sponsored walk-a-thon and sprain an ankle.
- A friend of an employee-volunteer who accepts an invitation to join in a company-sponsored fix-up project may fall off the roof of the house being renovated.
- A retired employee-volunteer may accidentally leave the oven on after visiting an invalid at home resulting in significant fire damage to the kitchen.

BENEFITS OF CONTROLLING LIABILITY RISKS

There are many good reasons for controlling the risk of liability associated with corporate volunteer programs. The most obvious, although not necessarily the most important reason for the ultimate good of the company and the community, is avoiding the payment of damages for injuries. Because most business firms with volunteer programs are more attractive “deep pockets” than most charitable organizations, the risk of even frivolous claims from someone seeking an easy recovery is ever-present. Prospects of a volunteer program being sued are rising today for many reasons, including the increasingly common practice among health insurers to demand that their policy-holders bring suit against the party that caused their injury. Furthermore, the “bad press” of litigation significantly detracts from one of the primary goals of most corporate volunteer programs, i.e., enhancement of the company’s image as a responsible company citizen. Any negative incident may also jeopardize other program goals, such as building company spirit and providing employees with a personally satisfying experience.

STRUCTURES OF CORPORATE VOLUNTEER PROGRAMS

The liability of the company may depend in part on the extent of the company’s involvement in the volunteer activity and its role in determining what the volunteers do. A company’s involvement in a volunteer program may range from simple tolerance to direct operation. In view of the liability implications of these differing levels of involvement, discussed further in Chapter 2, it is important to recognize these varying degrees of involvement and to assure that the company does not inadvertently assume a degree of control for which it is not prepared to take the correlative responsibility.

The table presented on the next page describes five levels of company involvement in volunteerism, ranging from “tolerance” to “direct operation” of a volunteer program. Because the legal and insurance implications differ so much between the “direct operation” category and all of the other arrangements, special terms will be used throughout this booklet to refer to each. Volunteer programs in the first four categories will be referred to as “*collaborative programs*.” Programs that the company operates by itself will be termed “*in-house programs*.”

Spectrum of Company Involvement with Volunteerism	
Tolerance	A company may simply tolerate an activity operated by a separate nonprofit organization by allowing its employees to be solicited for participation, e.g., giving permission for recruiting posters to be posted on company bulletin boards.
Encouragement	A company may actively promote a volunteer opportunity by encouraging employees to participate, e.g., allowing a company supervisor to recruit and organize company employees as a team that will volunteer together for a local organization.
Sponsorship	A company may sponsor a volunteer activity that a nonprofit organization conducts by providing support in the form of cash, goods or services that identify the company with the activity, e.g., providing transportation to the project site and giving company t-shirts to employees who volunteer.
Joint Operation	A company may jointly operate the project with a nonprofit organization by taking an active role in management aspects of the project, e.g., the director of public relations may team with the director of a nonprofit organization to decide which projects to undertake and what tasks company volunteers will perform.
In-house Operation	A company may organize and operate a program without any involvement from a nonprofit except as a possible beneficiary, e.g., conducting tutoring on the company's premises for neighborhood youth.

If injuries do occur, the company's degree of control will be a key factor in assessing the company's liability, as discussed in Chapter 2. Furthermore, the level of its involvement will have insurance implications, which are explained in Chapter 3.

RISING TO THE CHALLENGE

Because most corporate volunteer programs have operated for less than a decade, potential legal liabilities and risk management strategies have not yet received full consideration at every site. As programs mature, increased attention to these matters can help not only to reduce the threat of liability, but also to improve the overall program. For new programs, explicitly addressing the liability implications can allay top management's concerns more effectively than ignoring the topic and hoping for the best.

Fortunately, acknowledging the danger of liability and practicing effective risk management can increase rather than reduce program effectiveness. Because the essence of good risk management is good management, following the recommendations in this booklet can help to produce a more clearly defined and ultimately more effective volunteer program. Although risks cannot be totally eliminated, volunteer program directors can skillfully manage them while addressing the nation's most serious social problems.

CHAPTER TWO

LEGAL LIABILITY

LIABILITY FUNDAMENTALS

Legal liability for injuries occurring in the course of corporate volunteer programs is governed primarily by tort law. Under tort law, an injured person may recover monetary damages from the person, organization, or corporation that caused the harm. All of the examples on pages 2 and 3 of this guide are within the realm of torts. The precise rules of the tort system are determined by so many sources that differ from state to state that almost all generalizations, including the ones in this primer, may be dangerously misleading. Consequently, consulting counsel is always advisable to test one's understanding of the law. In some situations, ambiguity and inconsistency in the law will prevent even the most skilled expert from reaching a definitive conclusion.

The principal objectives of the tort system are to compensate injured parties and to foster due care by requiring the party causing the harm to pay for the damage. To achieve these objectives, damages are based on the extent of loss, including such noneconomic aspects as pain and suffering.

When an injury becomes the basis for a legal claim, the tort system places the parties in an adversarial relationship governed by highly formal rules. The "plaintiff" seeking recovery and the "defendant" contesting the claim square off with the assistance of their lawyers to persuade the judge or jury.

Although the material in this chapter concentrates on the formal rules of law, the outcome of a tort case may depend on a multitude of nonlegal factors. Sympathetic juries deciding these conflicts may be inclined to award money to seriously injured plaintiffs regardless of who caused their injuries. An anti-business judge may impose liability more readily on a business enterprise than on a church. Because most claims are settled without trial, the inter-personal dynamics of negotiation and each side's perceptions of the legal system strongly influence outcomes. These socio-legal factors must be taken into account to develop a fully informed understanding of corporate volunteer programs' legal liability exposure.

Negligence

Little about the tort system is automatic or invariable. At the outset, causing harm or failing to prevent harm does not necessarily result in legal liability. In most instances, tort law imposes liability only if the party who caused the harm was *negligent*, that is, failed to act with the care that a reasonable person would have exercised in the same situation. In order to prevail, the injured party, who becomes the plaintiff in court, must prove three things: (1) the defendant acted negligently, (2) this negligence actually caused the injury, and (3) there were damages. (There is quite a bit more that ultimately goes into a case. We are focusing here on the negligence aspects because they have the most substantial implications for program administration.)

To clarify these principles, we will use the example of Mr. Anderson, who volunteers as a mentor for nine-year-old Bobby in the imaginary LifeSmiles program. In this example, Mr. Anderson is involved with the program through his regular job at the XYZ Corporation. Suppose that on a program-sponsored trip to a museum, Mr. Anderson tells Bobby to run across the street to get to the head of the line before the rest of the group. As Bobby excitedly jumps off the curb, he is struck by a car.

Determining liability for Bobby's injuries begins with an analysis of whether Mr. Anderson was negligent. Mr. Anderson's actions would constitute negligence if a reasonable person would not have instructed Bobby to scamper across the street alone without having first checked for oncoming traffic. As in many cases, the issue cannot be settled by reference to a written law or clear standard. Whether particular conduct is negligent depends on a case-by-case assessment of reasonableness.

Proving Negligence

Proof of negligence depends on the facts of each case. This matter of proof has important practical implications because it ultimately determines whether legal liability can be imposed.

An injured party may seek to prove negligence in several ways. In cases arising from common activities, like Bobby crossing the street, judges or juries may draw on their ordinary experience and common sense to evaluate how a reasonable person would have acted under the circumstances. Some situations are so common that a standard of care may have been established in earlier cases (referred to as "precedents"). For example, a case may hold that the "standard of care" for organized fast-pitch baseball games requires that a batter be provided with a protective helmet.

Because rulings about the appropriate standard of care in those precedents will almost certainly be determinative in future cases, keeping abreast of case developments can help to reduce the risk of legal liability. There may also be state statutes or local ordinances expressly specifying the standard of care in certain situations. As with precedents, it is important to be aware of new laws that may affect the program's liability.

If the claim is against someone acting in a professional capacity—even as a volunteer—a higher standard of care based on the proper practices of the profession may apply. In such cases the individual's qualifications may influence the standard of care applied. To determine the proper standard, the parties may call expert witnesses to testify about prevailing practices.

In sum, the nature of the required standard of care for a volunteer program depends on the interaction of settled law and ad hoc determinations about what is reasonable. Furthermore, none of these factors is static: courts render literally hundreds of new decisions each day, legislatures enact new laws every year, and programs continually improve their practices. Even "common sense" about what is "reasonable" varies over time. For example, it is now almost uniformly considered *unreasonable*—and, hence, potentially negligent—to serve beer to teenagers at a public event. Volunteer program managers should stay abreast of prevailing practices and risk-reducing innovations in the field to protect against liability.

COMPANY LIABILITY FOR ACTS OF VOLUNTEERS

Under our legal system, someone who is injured by an employee or volunteer may bring an action against both the individual who caused the harm and against the company or organization that the individual was serving at the time of the injury. Whether a company is liable for harm caused by an employee-volunteer or a volunteer who is not an employee depends on a number of factors. A company may be liable for damages caused by an individual on either of two legal bases: the corporation may be *vicariously liable* for the individual's negligence, or the corporation may be *directly liable* for its own negligence in administering the volunteer program.

Vicarious Liability

The negligence of an employee-volunteer may be imputed to the corporation, making the corporation "vicariously liable" for all of the damages caused by that negligence. This form of liability is justified on the ground that the entity that directs and benefits from an individual's actions should bear the costs of any resulting harm.

Vicarious liability is legally described using the antiquated terms “master” and “servant.” A “servant” is an individual who performs services for the benefit of and at the direction of another person or legal entity, the “master.”

If a “servant” acts negligently and causes some damage while performing his or her assigned work, then the “master” is legally liable for that damage. The imposition of this vicarious liability does not depend on a finding that the “master” was negligent or at fault in any way. The only questions are whether a “master-servant” relationship existed and whether the servant’s negligence caused the harm.

Although the employer-employee relationship is not wholly synonymous with a “master-servant” relationship, the two usually go together. Similarly, charitable organizations may be vicariously liable for damages caused by their volunteers. For example, a charitable organization was held vicariously liable for injuries caused by the careless driving of one of its volunteers who was picking up supplies for the organization.

Whether a “master-servant” relationship exists between a corporation and a volunteer depends primarily on the following factors: the degree of control the company can exercise over the volunteer, the scope of the volunteer position, and the benefit the company derives from the volunteer’s services. The analysis on the next page applies these factors to the example introduced above involving Mr. Anderson (the LifeSmiles volunteer and XYZ Corporation employee) and the recently injured Bobby.

The more a corporation gets involved in the development and operation of a volunteer program, the greater the likelihood that the company will be held vicariously liable for the negligent acts of its volunteers. The likelihood for vicarious liability is especially high in the case of an in-house program, but vicarious liability is also possible in a collaborative program, especially if the corporation determines who participates as volunteers or what those volunteers do. Conversely, the prospect of vicarious liability is very low if the company’s involvement in the program does not include any power to control the volunteer’s activities. The same kind of analysis would be appropriate if a volunteer’s negligence did not cause a physical injury, but instead breached confidentiality or caused a financial loss. Although the details differ by state, the principles are universal.

If the corporation controls a volunteer program, there is always a possibility that the corporation will be held vicariously liable for the acts of its employees while they are performing volunteer work. It does not necessarily follow, however, that a corporation should reduce its role in managing a volunteer program. As explained in the next section, failure to exercise sufficient control may result in a finding of direct liability against the company. Moreover, the company may want to have a high degree of involvement in a volunteer program for other reasons: e.g., to build a sense of teamwork among the participating employees, to maximize the public relations value of the program, and to have control over the amount of time employees spend in the program.

Direct Liability

In addition to being vicariously liable for the negligent acts of a volunteer, a corporation may be liable for injuries caused by acts directly attributable to the corporation. The usual standard for determining whether the corporation is liable for its own negligence is the same as that for determining the liability of an individual: reasonableness under the circumstances. For example, an injured party might allege that a corporation was negligent in selecting employees to participate in the volunteer program, in making representations about the skills of participating employees, or in not exercising adequate supervision over the volunteer program.

Vicarious Liability Factors

Factor	Meaning	Analysis
Control	The corporation's right to control the volunteer's actions (even if that right is not being fully exercised).	Did XYZ have the right to control the way Mr. Anderson performed his volunteer assignment? Or, is the LifeSmyles program independent of control by XYZ? In the case of a "collaborative program" jointly operated by both the XYZ Corporation and a legally separate LifeSmyles program, a court might find that both the XYZ and LifeSmyles were Mr. Anderson's "masters" and hence vicariously liable. The corporation's role might be so minimal, though, that the court would find an absence of authority to control what Mr. Anderson did during his volunteer work.
Scope	The scope of the volunteer "job" and whether the volunteer's actions fell within that scope.	Was Mr. Anderson acting within the scope of his responsibilities for the XYZ Corporation at the time of the accident? A court might consider whether Mr. Anderson had two "jobs" for the XYZ Corporation—his regular salaried work and his volunteer work. The fact that his participation in the LifeSmyles program was voluntary would not necessarily mean that it was outside of his assigned duties as an XYZ employee. A court would also consider whether, in carrying out his volunteer assignment, Mr. Anderson acted within the scope of that assignment. Was Mr. Anderson supposed to take Bobby to the museum or merely tutor him at another location?
Benefit	The benefit to the corporation from the volunteer's actions.	Was the XYZ Corporation benefiting from Mr. Anderson's volunteer work? Even though XYZ may not be deriving any direct monetary benefit, the court may consider whether XYZ expected the volunteer activity to have an indirect effect on sales or to produce some intangible benefits for the company.

Vicarious and direct liability are not mutually exclusive and may sometimes pull the defense of a claim in different directions. Someone injured by the acts of an employee-volunteer could, in a single lawsuit, seek recovery from the corporation based on both vicarious liability and the corporation's own negligence.

A corporation may be liable for its own negligence even if its employee-volunteer acted in accordance with the governing standard of care. For example, in a suit by a woman who suffered cardiac arrest during a hiking expedition, a jury may conclude that the tour leader did his best to save her life but that the program sponsor was negligent for allowing the group to proceed without including anyone with first-aid training.

***The best liability defense
is reasonable care.***

Ordinarily, a sponsor is not liable for a volunteer's deliberate misconduct. Nonetheless, failure to properly screen or supervise the volunteer could provide a basis for a finding that the sponsor was negligent for giving the volunteer the opportunity to cause harm. Although the sponsor is not responsible for every outrageous act a volunteer may commit, a sponsor can be held liable for failing to take adequate precautions to prevent reasonably foreseeable harm.

Punitive Damages

In an ordinary tort suit, the injured party may recover "damages" equal to the dollar value of any actual loss suffered. In some circumstances, "punitive damages" may also be awarded. The purpose of punitive damages is not to compensate the plaintiff for injuries but to deter egregious conduct in the future. Because punitive damages are not limited to the extent of loss and generally are not covered by insurance, they are seen as a serious threat. Fortunately, a volunteer program can be administered to eliminate most grounds for the imposition of punitive damages.

Although standards for imposing punitive damages differ from state to state, they generally require that the party being sued have acted with malice, callous disregard for safety, the intent to cause harm, or some other gross violation of societal norms. Simply operating a volunteer program in accord with humanitarian principles will minimize the remaining risk of punitive damages. Punitive damages are not ordinarily available against a corporation in a vicarious liability case. If a volunteer commits an outrageous act that the corporation does not sanction, the volunteer, but usually not the corporation, could be subject to punitive damages.

COMPANY LIABILITY FOR INJURIES TO VOLUNTEERS

Suppose that on the next museum expedition, Mr. Anderson himself is hit by a car while crossing the street. If this accident were to occur while Mr. Anderson is performing his regular job, any liability of the XYZ Corp. for his injuries would almost certainly be governed by the workers' compensation law. Most state workers' compensation laws provide the exclusive means for employees to recover from their employers for on-the-job injuries. An employee does not have to prove negligence by the employer before recovering workers' compensation benefits.

But is Mr. Anderson an employee for workers' compensation purposes while serving in a corporate volunteer program? An extended analysis of this question is provided in Chapter 3. That analysis concludes that employee-volunteers' injuries will usually fall under workers' compensation for in-house volunteer programs. The outcome under other program structures is less certain, as discussed in Chapter 3.

If the claim does not fall within the scope of workers' compensation and no special arrangements have been made for this situation, Mr. Anderson would be able to sue the company just as

Bobby could. Liability would depend on whether the company was negligent. For example, perhaps the XYZ Corporation negligently directed Mr. Anderson to follow a particular route from the child's school to the museum, and this route entailed crossing a busy highway with no crosswalk.

The XYZ Corporation, might, however, assert as a defense that Mr. Anderson was himself careless and that his negligence was the real cause of his injuries. The success of that defense would depend on state law.

VOLUNTEERS' PERSONAL LIABILITY

Absent a special statute, volunteers are subject to the same general liability rules as everyone else. Under those rules, an individual is liable for the damages caused by his or her negligence. Thus, Mr. Anderson could be personally liable for Bobby's injuries.

Because fear of being sued may deter some people from volunteering, many states have changed their laws during the past decade to reduce at least some volunteers' exposure to personal liability. The tremendous variety of these "volunteer protection" statutes limits the extent to which we can generalize here. The laws do share one common feature: in place of the ordinary negligence standard, the volunteer protection statutes condition liability on proof of gross negligence, recklessness, willful or wanton misconduct, or some other more serious deviation from ordinary care.

Aside from using different liability standards, volunteer protection laws across the country also differ in the scope of their application and the conditions they impose. Most apply to volunteers of any nonprofit organization, but some are limited to volunteers of charitable or social welfare organizations. Some laws apply only if the volunteer serves an organization that maintains a certain level of insurance, and some limit recovery to the amount of personal insurance the volunteer carries. (These laws are compiled in *State Liability Laws for Charitable Organizations and Volunteers*, listed in the resources section.)

None of these statutes completely immunizes volunteers from liability. The statutes leave open the possibility of claims alleging harm caused by violation of whatever standard the statute establishes. Actions based on federal law are also unaffected by the statutes. For board members, this means that civil rights claims, suits by the Internal Revenue Service for unpaid taxes, and certain other actions are still possible.

The volunteer protection statutes were not enacted with the model of an employee-volunteer in mind. Whether through oversight or deliberate omission, *the terms of volunteer protection laws are not designed to protect volunteers of in-house corporate programs*. Few of the laws apply to volunteers unless they are serving some type of nonprofit entity. Thus, the application of a volunteer protection statute to an employee-volunteer would depend on whether, at the time of the injury, the employee-volunteer is deemed to have been working for the type of organization specified by the statute as a recognized volunteer sponsor. Employee-volunteers who work primarily for the benefit of a nonprofit organization may be covered by one of these statutes. Employee-volunteers who are deemed to be serving the corporation, especially through an in-house program, would not be covered by a volunteer protection statute.

Regardless of any volunteer protection law, an injured person may sue the sponsoring organization or company. Under the doctrine of vicarious liability, explained above, the sponsor may be held liable for the volunteer's negligence, even if the state protects the volunteer from personal liability. An injured person also may sue both the volunteer and the sponsor. If both are legally responsible for the harm, the injured party is permitted in most states to collect the full amount of damages from either. The greater financial resources of large businesses increase the likelihood that they will be named in a suit.

LIABILITY SHIELDS

Several techniques may shield a corporation from liability for harm caused by, or happening to, its volunteers. This section discusses legal aspects of each strategy, along with some practical aspects of implementing them and the pros and cons of each.

Separate Incorporation of the Volunteer Program

Because incorporation protects the owners of a corporation from personal liability for ordinary legal claims against the incorporated entity, most businesses are incorporated. Similarly, a company may create a subsidiary corporation to perform some operations without imperiling the financial assets of the parent company. A similar strategy can limit liability for a company's volunteer program.

In our ongoing example, XYZ Corp. might have created LifeSmyles as a separate corporation. Although XYZ Corp. cannot own LifeSmyles as a charitable organization, control can be maintained through appointment of directors. To be useful as a liability shield, LifeSmyles must be genuinely independent and everyone involved, especially third parties, must be placed on notice that employee-volunteers are serving LifeSmyles rather than XYZ.

If this arrangement is properly administered, an injured party would be able to hold only LifeSmyles liable for harm from the volunteer program. The assets of the XYZ Corp. would be protected because employee-volunteers would be "servants" of LifeSmyles alone. (A court might, however, still permit a cause of action against the XYZ Corp. for negligence in whatever role it plays in establishing or operating the program and may conclude that an employee-volunteer is acting as an XYZ employee as well as a LifeSmyles volunteer.)

Separate incorporation may have other liability-reducing benefits, such as reducing the likelihood that an employee-volunteer can successfully claim that the company impermissibly based employment decisions on volunteer activities. In addition, because many states limit suits against volunteers of charitable organizations, incorporation of a separate charitable entity can reduce the risk of personal liability.

Collaboration with a Charitable Organization

Many corporate volunteer programs are run in collaboration with a separate charitable organization in the community. In addition to the practical advantages of teaming up with an existing organization, this arrangement has potential liability benefits.

As discussed above, imposition of vicarious liability for injuries caused by an employee-volunteer depends on a determination of who had the right to control the employee-volunteer's conduct. When a for-profit company teams up with an independent charitable organization, the charitable organization can operate the program and supervise the volunteers. This may protect the company from vicarious liability, and also from liability for negligent operation of the volunteer program. Moreover, as explained in Chapter 3, collaborative programs can be structured so that the other organization's insurance is primary.

Protective Agreements

The law does not permit any person or entity to declare unilateral immunity from liability, no matter how worthy the cause. Some techniques do exist, though, by which two parties can modify the rules that would ordinarily govern their liability to each other. The chief precaution to bear in mind with any of these techniques is that courts disfavor them and subject them to rigorous scrutiny. Nevertheless, waivers, releases, disclaimers, and hold-harmless agreements can provide some protection from liability in connection with a volunteer program.

Because the legal validity of these techniques is questionable, the advice of counsel should be sought before attempting their use. For this very reason, we have refrained from supplying a model form here. An agreement should be designed by legal counsel specifically for the situation in which it is to be used.

Waivers and Releases

A program sponsor might request that participating volunteers or other participants sign a waiver. A "waiver" or "release" (the terms, although having some legal distinction, are commonly used interchangeably) is an agreement by an individual to relinquish a legal claim against the party that causes an injury. Although a waiver or release is occasionally implied from an individual's behavior (for example, engaging in an obviously hazardous activity such as sky-diving), the term is customarily used with reference to an express or written agreement.

Humorist Dave Barry's parody of a waiver goes overboard to show that a competent person voluntarily accepts the fully disclosed risks of renting skis.

The undersigned agrees that skiing is an INSANELY DANGEROUS ACTIVITY, and that the rental personnel were just sitting around minding their OWN BUSINESS when the undersigned, who agrees that he or she is a RAVING LOON, came BARGING IN UNINVITED, waving a LOADED REVOLVER and demanding that he or she be given some rental skis for the express purpose of suffering SERIOUS INJURY OR DEATH, leaving the rental personnel with NO CHOICE but to . . .

Dave Barry, Dave Barry Turns Forty (Fawcett Columbine, New York 1990).

Liability waivers are valid only if they are entered into *knowingly* and *voluntarily*. In addition, the party that waives liability must receive something in exchange. Few attempted waivers satisfy these standards. Courts often find that arrangements are not voluntary when they are between an individual and a company because of the unequal bargaining power. In recognition of the bargaining disparity, employees usually cannot waive their right to bring an action against their employers. Moreover, waivers for certain types of activities are held void as against public policy. Courts also frequently invalidate waivers on the ground that the individual did not fully appreciate the rights being waived or that the waiver did not specifically indicate that it covered liability for negligence.

Despite their legal vulnerability, if properly drafted and executed, waivers can block liability. Moreover, an individual who has signed a waiver may be less likely to initiate a lawsuit than someone who has not. A waiver may also assist a company in asserting the legal defense of "assumption of the risk" in some states, *i.e.*, that the individual proceeded with the activity despite being aware of the risks, and therefore should not be permitted to receive damages.

The validity of a waiver may depend on when it is executed. Those executed *before* any actual damages occur are more tenuous than those executed *after* an injury has occurred (commonly but not uniformly referred to as "releases"). Waivers written *before* any damages actually occur generally seek to establish that the individual recognizes the risks involved in a forthcoming activity and voluntarily consents to accept the consequences of those risks in exchange for the opportunity to participate. Whether a court will enforce such a "before the fact" waiver is highly dependent on the circumstances involved in each case. If the individual has no practical choice but to sign the waiver, the likelihood of its being upheld is slim. In light of the dubious legal status of "before the fact" waivers, and in the interest of encouraging employee volunteerism, some companies have expressly decided not to use them.

Waivers executed *after* an injury are on much more solid legal ground because the value of the exchange is less speculative. Such waivers are often executed in conjunction with a settlement arrangement. In either event, legal counsel should be consulted in drafting such agreements. The law governing waivers varies widely from state to state and some states prohibit their use in certain situations.

Disclaimers

A “disclaimer” is an express disavowal, repudiation or limitation of liability by one party to a transaction. Disclaimers differ from waivers in that they are unilateral; the injured party does not explicitly agree to the liability limitation. As such, they are of limited legal value. Their principal functions are to refute assertions about extra duties that a program has taken upon itself and to apprise potential claimants of relevant program limitations.

The disclaimer may indicate, for example, that the sponsor does not intend to provide security personnel for an event and is not assuming a special duty of care for the safety of volunteers during the event. Similarly, a clearly-posted disclaimer of liability for harm from using athletic equipment that a company provides pursuant to a sports program may counter any assertion that the company assumes a special duty of care for the safety of the participants. In this sense, a disclaimer is roughly equivalent to an advisory or warning of risks that an individual may choose to accept or avoid. Regardless of legal effect, disclaimers, like waivers, may deter claims.

Hold-Harmless Agreements

A “hold-harmless” agreement operates a little differently from a disclaimer or waiver but serves the same function of protecting the company’s assets. Rather than seeking to bar a lawsuit, a hold-harmless agreement obligates one party to pay any costs the other incurs as a result of a lawsuit. For example, the XYZ Corporation may obtain a hold-harmless agreement from the independent LifeSmyles program as a condition of placing company volunteers with the program. If a subsequent lawsuit names XYZ as a defendant, the agreement will give the company a basis for charging LifeSmyles for resulting costs.

Properly drafted by an attorney, a “hold-harmless” agreement may be better than standard indemnification because the party bound by the agreement may be obligated to pay expenses as they arise rather than reimbursing expenses after they have been paid. Furthermore, the agreement is presumed to apply comprehensively to all costs for which the other party would be held liable including, for example, the legal costs of responding to and defending against a claim as well as the payment of any damages ultimately awarded to the claimant.

Because a hold-harmless agreement does not foreclose a lawsuit, its practical value is limited by the ability of the executing party to pay expenses that do arise. A hold-harmless agreement from an entity with no assets and no insurance is nearly worthless.

For this reason, hold-harmless agreements are frequently conditioned on proof of insurance coverage. The entity promising to pay must provide proof that it has insurance to cover any claims that may arise. For complete protection, the insurance policy must include coverage for liability assumed under contract. As a fall-back position, a certificate of insurance will at least verify that the entity carries insurance up to some specified limit. If primary liability is likely to be assessed against that entity rather than the corporation, this certificate provides almost as much assurance as a hold-harmless agreement.

Legal Citations for Chapter 2

Page

- 7 **Vicarious liability of charitable organizations:** *Trinity Lutheran Church, Inc. v. Miller*, 451 N.E. 2d 1099 (Ind. App. 1983); *Baxter v. Morningside*, 10 Wash. App. 893, 521 P.2d 946 (1974); Annotation, "Liability of Charitable Organizations under Respondeat Superior Doctrine for Tort of Unpaid Volunteer," 82 A.L.R. 3d 1213 (1978); Kahn, "Organizations' Liability For Torts of Volunteers," *University of Pennsylvania Law Review*, vol. 133, p. 1433, 1985.
- 9 **Negligent supervision:** *Wilson v. Tobiassen*, 97 Or. App. 527, 777 P.2d 1379 (1989).
Negligent selection of volunteers: A California jury recently awarded \$3.75 million in damages to the families of three boys allegedly molested in a scouting program (reported in Los Angeles Times, Dec. 9, 1991). In another case the court deemed the screening adequate for a volunteer program, *Big Brother/Big Sister of Metro Atlanta, Inc. v. Terrell*, 359 S.E. 2d 241, 242 (Ga. Ct. App. 1987).
- Punitive Damages:** *Phillips v. Butler*, 685 F.2d 184 (7th Cir. 1982); *Allard v. Church of Scientology*, 58 Cal. App. 3d 439, 129 Cal. Rptr. 797 (1976).
- Workers' Compensation:** Many courts have held that volunteers who receive no compensation are not covered by workers' compensation. *Cardello v. Mt. Herman Ski Area, Inc.*, 372 A.2d 579 (Me. 1977); *Edwards v. Hollywood Canteen*, 160 P.2d 94 (Cal. Ct. App. 1945), aff'd, 27 Cal. 2d 802, 167 P.2d 729 (1946); but see *Stegeman v. St. Francis Xavier Parish*, 611 S.W.2d 204 (Mo. 1981). Cases collected in A. Larson, *The Law of Workmen's Compensation* § 47.41(a) (New York: Matthew Bender, 1991).
- 10 **Volunteer Protection:** National Center for Community Risk Management & Insurance, *State Liability Laws for Charitable Organizations and Volunteers* (Washington, DC, 1990).
- 12 **Waivers (invalidity because of public policy):** Compare *Wagenblast v. Odessa School*, 110 Wash. 2d 845, 758 P.2d 968 (1988); *Tunkl v. Regents of Univ. of Cal.*, 60 Cal. 2d 92, 383 P. 2d 441, 32 Cal. Rptr. 33 (1963) (invalidating waivers) with *Okura v. U.S. Cycling Federation*, 186 Cal. App. 3d 1462, 231 Cal. Rptr. 429 (1986) (upholding waiver after applying *Tunkl* criteria).
- Waivers (must specifically mention negligence):** *Goyings v. Jack and Ruth Eckerd Foundation*, 403 So.2d 1144 (1981).

chapter three

INSURANCE AND INDEMNIFICATION

Insurance offers a middle ground between the extremes of completely eliminating risk—which would paralyze a volunteer program—and accepting full financial responsibility for all harm that may occur—which could bankrupt a company. Moreover, insurance can provide a margin of security so that the participants in a volunteer program are not daunted by concern about their personal assets and so that the program's operation does not threaten its company sponsor.

Just as Chapter 2 noted that legal liability for harm varies depending on the relationship of the injured individual to the company and the extent of the company's involvement in the activity that caused the harm, so too the need for insurance and the types of insurance needed vary with these factors. Following a brief overview of insurance, the discussion in this chapter will turn to claims filed by third parties, who may be either recipients of the program's services or total strangers to the program. Attention will be paid to claims against the company and against individuals in the program, whether or not they are employees. That discussion will be followed by a look at insurance coverage for harm to an employee or other volunteer participating in the program. At the end of the chapter is a checklist for use in evaluating the adequacy of insurance coverage.

The principal conclusion of this chapter is that the insurance arrangements that most companies make for their business affairs will ordinarily cover liability the company could incur due to an employee-volunteer program. Coverage for volunteers' personal liability is less certain under businesses' standard insurance policies, but often can be obtained for little if any additional cost by specifically endorsing relevant insurance policies to include volunteers.

Many of the insurance coverage issues addressed in this chapter depend on whether volunteer activity is considered to be "in the scope of employment." That question would be difficult enough to answer if all volunteer programs were identical and all types of insurance were subject to a uniform rule. Unfortunately, the answer varies depending on the nature of the particular volunteer program and the type of insurance: liability, health, accident or workers' compensation. Moreover, a volunteer activity may be deemed to be within the scope of employment for legal liability purposes but not for insurance coverage.

THE ROLE OF INSURANCE

Insurance offers a company the advantage of replacing the prospect of a large, unpredictable, expense with the payment of a fixed premium. Insurance cannot make risks go away and it cannot, at least over the long term, enable a program with uncontrolled risks to continue to operate. Perhaps its chief function is to increase the peace of mind of everyone protected by its coverage. Even the most effective risk reduction strategy that completely prevents harm cannot shield against frivolous claims. Insurance can neutralize this irreducible risk by paying the expense of a legal defense as well as claims and settlements.

The insurance needs of a corporate volunteer program can ordinarily be satisfied with little if any effect on the company's overall insurance strategy. Within most large corporations, the function of obtaining insurance belongs to a professional risk manager. As the person with primary responsibility for protecting the company from liability losses, the risk manager (or other insurance

purchaser) needs to be familiar with the volunteer program. Risk managers who understand the nature of their company's volunteer program can not only make sure that appropriate insurance coverage is in place, they can also help to prevent claims. Many of the recommendations in this chapter can be best implemented with the assistance of a risk manager.

Some companies are large enough that they self-insure or have such high deductibles that almost all claims are handled without insurance. With self-insurance, concern about coverage being unavailable is eliminated, but the importance of informing the risk manager remains. He or she still needs to make appropriate arrangements to prepare for claims that may arise from the volunteer program.

LIABILITY INSURANCE TO PROTECT THE COMPANY

To provide financial protection from the cost of accidents, most companies obtain a Commercial General Liability (CGL) insurance policy. This policy is very broad, although not totally comprehensive. The breadth of the policy comes from the very expansive scope of its insuring clause, which provides that the policy applies to claims against the company for bodily injury and property damage. Definitions of key terms and explicit exclusions narrow this sweeping protection, but nothing in the standard policy language eliminates coverage for claims merely because they arise from a company's volunteer program.

Specific limitations may be encountered, however, depending on what the volunteer program does and how it does it. For example, the standard CGL policy excludes claims arising from medical services and some policies explicitly exclude claims based on alleged sexual misconduct.

Insurance Limitations That Require Special Planning

Although most companies' standard liability insurance arrangements will ordinarily cover claims arising in the course of volunteer programs, several areas require special attention. The first is the possibility that the program will cause a loss that is outside the scope of coverage. The CGL policy covers only accidentally caused property damage and bodily injury (including death). A suit seeking recovery for financial losses due to advice that a volunteer negligently gave would be outside the bodily injury/property damage coverage. The company risk manager or other insurance expert should know if another type of policy is in place to cover these types of claims.

The second area requiring special attention concerns injuries to participants in the program. Work-related claims by employees ordinarily are subject to the workers' compensation system. As discussed below, workers' compensation will almost certainly apply to physical injuries employees suffer while participating in volunteer programs operated by their employers. In the section below on "Insurance for Harm to Volunteers," we offer some suggestions for making sure that some form of insurance is available if workers' compensation does not apply.

Another major reason that a liability insurer may refuse a claim is that the company did not alert the insurer to the volunteer program during the application process. If the program would be considered an additional "risk exposure," the insurer may claim that activity was never properly insured. Formally, the insurer would contend that the omission of this information on the insurance application voided the policy. Although an insurer is unlikely to take this course, rejection on this ground is possible, especially for claims resulting from activities that insurers' typically consider to be "high risk," such as parades or direct services to children. The company's risk manager or other insurance purchaser must be aware of the volunteer program's operations so he or she can make appropriate arrangements *before a claim is filed*.

Additional coverage also may be necessary to cover special events. If the company is going to provide volunteers for a hot-air balloon fund raiser, for example, a special policy or a "rider" to either the company's or collaborating organization's general liability policy may be necessary. Otherwise the standard "aircraft exclusion" would leave a gap in coverage. Although special events coverage may be purchased separately, the more economical practice is to notify the insurer of the event, preferably at the time of renewal, and attempt to have coverage provided under the Commercial General Liability policy.

As in the liability issues discussed in Chapter 2 of this booklet, insurance rules generally differ for in-house programs, i.e., programs the company operates directly, and collaborative programs, those in which the company acts in concert with another entity, most commonly a nonprofit organization. As a general matter, in-house programs create no special insurance coverage issues. The division of responsibilities in a collaborative program creates some coverage questions that should be resolved before a claim is filed.

Coverage for Claims in Collaborative Programs

If the company provides volunteers for a program that another organization conducts, the company's standard insurance policies should be available to the same extent as in other collaborative arrangements. That is, if the company is named in a suit or an employee is named and the volunteer service is deemed to be "in the course of employment," the coverage under a Commercial General Liability policy should be available.

To decrease the likelihood of incurring a claim because of the volunteer program, some companies require collaborating organizations to demonstrate that they have adequate insurance to defend against and pay potential claims. The most common procedure for this purpose is to require a certificate of insurance from the collaborating organization. This certificate verifies the type and amount of insurance the organization has in force. In some situations a company may also require that the organization sign a hold-harmless agreement (as described in Chapter 2) that obligates the organization to pay all costs of program-related claims filed against the company.

Although these risk control techniques are standard business procedures among companies that contract with each other or operate a joint venture, they may be unsuitable in the volunteer program context. When large companies collaborate with small, community-based, volunteer organizations the company is generally in a much better position to insure against potential harm. Moreover, imposing an insurance requirement on the volunteer group may drain its finances. Foregoing the ordinary company practice of demanding that the other party provide insurance coverage can be an extremely valuable "in-kind" contribution to the program.

Companies that recognize nonprofits' insurance difficulties may execute a hold harmless agreement for the benefit of the collaborating organization. For example, a powerboat manufacturer may agree to use its own vessels to ferry members of an environmental group to an island for a clean-up day. Because the environmental group's insurance probably would not apply, the company may execute a hold harmless agreement to protect the environmental group.

INSURANCE FOR VOLUNTEERS

As discussed in Chapter 2, anyone injured by a volunteer's actions may sue the volunteer as well as the program sponsor. Such a suit could result in personal liability for the volunteer. Consequently, employees and other program participants may ask whether the company will provide insurance coverage or indemnification if they are sued for an incident that occurs while they are volunteering.

Even if volunteers are not aware of their potential personal liability, the program manager should make satisfactory arrangements on their behalf. Employees who are giving their time and energy as volunteers should be informed about the liability and insurance implications, including how to determine the extent of coverage under their personal policies. In addition, the company may need to make special insurance arrangements for injuries to the volunteers themselves. The checklist of insurance questions on page 21 may help program managers and company risk managers assess the need for and adequacy of insurance.

Coverage for Volunteers under a General Liability Policy

The standard Commercial General Liability policy discussed above covers not only the company, but also its employees acting “in the course of employment.” Whether an employee is acting “in the course of employment” for insurance purposes is very nearly the flip side of the question examined in Chapter 2 of whether a company can be held vicariously liable for the acts of its employee-volunteers. For the most part, if the company can be held vicariously liable, the employee was acting “in the course of employment.”

The actions of an employee-volunteer may be considered to be “in the course of employment” on either of two conceptually distinct grounds. The first is that the volunteer activity is an aspect of the employee’s paid job. This interpretation of the scope of the job is possible even though the volunteer service is optional. Depending on how the volunteer program is structured, an employee may be considered to volunteer in much the same way that an executive “volunteers” to go into the office on Saturday. Short of any intimation of company compulsion to volunteer, the volunteer service may have sufficient bearing on the employee-volunteer’s regular employment to be considered part of the job for this purpose.

Alternatively, the volunteer activity may itself be considered to be a separate “course of employment.” “Employment” in this context would denote that the individual is acting on behalf of the company and under its direction, whether compensated or not. Whether the volunteer activity is considered to be a part of the individual’s regular job with the company would be immaterial under this second theory.

Absent specific mention of volunteer service, the coverage under a liability insurance policy is uncertain until an actual claim is filed. To eliminate confusion on this point, some liability insurance policies for nonprofit organizations specifically cover claims against volunteers. To assure volunteers that the company adequately protects them from personal liability, the company may need to have volunteers added as additional insureds by endorsement to its standard policies or, as discussed below, obtain “volunteer insurance,” or indemnify them.

Special Insurance Policies for Volunteer Programs

To provide volunteers with adequate personal protection, some volunteer programs purchase a liability insurance policy that is specifically designed for volunteer service. This type of policy fills the gap that may exist in business insurance policies that do not explicitly include volunteers. This coverage may be even better than inclusion in the company’s general liability policy because it provides independent protection and it may have broader terms.

For service on a nonprofit board, special coverage also may be necessary. Businesses’ directors’ and officers’ policies ordinarily cover only the company’s board of directors, chief officers, and sometimes other executives. Service by employees on a volunteer board is not ordinarily included. If the company’s volunteer activity has a separate board, a directors’ and officers’ policy tailored to a volunteer organization may be desirable. Alternately, the company’s directors’ and officers’ insurance policy might be endorsed to include service on nonprofits’ boards.

Indemnification

In addition to or instead of providing insurance coverage for its volunteers, a company may choose to indemnify them. Most states are now very permissive in the extent of indemnification they allow. Through indemnification a company may agree to pay virtually any costs the volunteer may incur. The only legal limitations on this technique pertain to criminal fines and certain other monetary penalties the law imposes on the individual. In many states, these sanctions cannot be paid by another party.

Indemnification is useful for protecting the personal assets of volunteers, especially those serving on boards of directors, against judgments or other costs that for one reason or another cannot be covered adequately by insurance. For example, few insurance policies will pay income tax penalties that might be assessed against volunteer board members. If the company agrees to indemnify volunteers for such expenses, the risk of personal liability is all but eliminated. As long as the company has sufficient resources to pay the expenses, the volunteer is protected.

Insurance for Harm to Volunteers

Up to this point, the discussion has dealt almost exclusively with insurance covering claims for harm that volunteers may cause. For injuries that volunteers themselves suffer, another type of policy may be necessary. The variety of possibilities for covering harm to volunteers makes the involvement of the company risk manager especially invaluable for this matter.

For employees, coverage for injuries is generally provided by workers' compensation insurance. Workers' compensation rules will ordinarily govern claims for injuries "arising out of and in the course of employment." The same factors discussed above for "scope of employment" are relevant here. Volunteers who are not employees may be able to make a workers' compensation claim in many states if they receive even token compensation for their services.

In some volunteer activities, though, workers' compensation will not be available because the volunteer activity will not be considered part of the employee's job. Likewise, volunteers who are not employees and who receive no compensation will not be covered by workers' compensation. For medical expenses, these individuals may rely on their health insurance, but if they have inadequate coverage or their insurer forces them to file a claim, they may seek recovery from the company. Alternatively, they may be able to recover under the medical payments provision of the general liability policy, but that coverage ordinarily is not available if they are "insureds" for liability purposes. Consequently, the company might need to obtain an accident policy specifically designed to pay the costs of injuries to volunteers without regard to fault.

Volunteers' Personal Insurance Policies

Aside from company insurance policies, volunteers may have adequate liability and health coverage under insurance policies they buy primarily for other purposes. For example, most homeowners' and renters' policies include liability coverage in addition to insuring against damage to the policyholder's property. To be sure of coverage, a volunteer must read the policies and consult with the responsible insurance agent. The pointers below provide some guidance.

Because insurance policies are very specific in terms of what they cover, the definition of coverage is the essential starting point. Of particular importance is the scope of coverage. Many personal insurance policies apply only to claims based on bodily injury and property damage. These two categories encompass the ordinary accidents that are most likely to result in claims against a volunteer, but they are not exhaustive.

The other key portion of the insurance policy is the exclusions section. Volunteers should be certain that the policy's exclusions do not eliminate coverage for the particular volunteer activities they perform. Especially if the volunteer is providing a professional service, which may be broadly construed to include accounting or counseling, checking the exclusions is critical.

If volunteers drive their own cars, it is highly advisable that they maintain their own insurance coverage because in most states financial responsibility for motor vehicle accidents lies primarily with the vehicle owner. In furtherance of this general rule, states generally require that owners carry liability insurance of at least some minimum amount. If a volunteer does have a personal auto policy, it ordinarily will apply to volunteer activities (except, perhaps, for driving a multi-passenger vehicle with special licensing requirements). A personal auto policy may not provide coverage, though, if the volunteer is paid (beyond reimbursement) on a regular basis for using the vehicle, especially if the volunteer transports another person.

The company itself may or may not have non-owned auto coverage that would provide additional liability protection. Even if it does, the company's policy usually would not cover damage to the volunteer's own vehicle. If that is the case, volunteers should be informed so they can make their own insurance decisions accordingly.

Volunteers may also have personal umbrella policies that protect them as volunteers. Umbrella policies increase the dollar value of coverage above auto and homeowners' or renters' policies. Some umbrellas also expand the scope of coverage to include claims that the underlying policies may not cover. Without this expanded coverage feature, an umbrella policy may not cover certain claims even though the policy applies generally to volunteer service. The coverage gap is likely to be greatest for volunteer directors, who are susceptible to claims alleging harm other than bodily injury or property damage.

Regardless of the type of insurance, it will not pay for a claim that alleges only intentional harm, such as if a volunteer molests a child. Insurance still may come into play in such situations, though, if there is an allegation that the company was negligent in screening or supervising the volunteer.

From one or more of the sources discussed in this chapter, volunteers and sponsoring companies should be adequately protected from the financial consequences of liability. The checklist on the next page highlights issues to consider in reviewing coverage options.

INSURANCE CHECKLIST

Coverage for the company against claims by third parties

- Is the company risk manager aware of the volunteer program?
- Do the exclusions of the Commercial General Liability (CGL) policy eliminate desired coverage?
- Is the insurer aware that the company operates a volunteer program?
- If the program has a separate board, are the members of that board covered by directors' and officers' insurance?
- Does the company need to make additional insurance arrangements for special events or other uncommon aspects of the program?
- Can coverage for special events be obtained under the CGL policy?

Coordination of coverage with any collaborating organization

- Does the other organization have insurance?
- Should the company request a certificate of insurance or ask to be named as an additional insured on the other organization's policy?
- Should the company assist the other organization by naming it on the company's policy?
- Should the organization execute a hold-harmless agreement? Should the company execute one in favor of the other organization?

Coverage for individual volunteers against claims by third parties

- Would the company's Commercial General Liability policy provide coverage for all volunteers? Is volunteer work "employment" with the company?
- Do volunteers have adequate coverage under homeowners', renters', or umbrella policies?
- If volunteers drive their own cars while volunteering, is their automobile insurance adequate?
- Should the company purchase liability coverage specifically for volunteers?

Coverage for injuries to employee-volunteers and other volunteers

- Would workers' compensation coverage apply?
- Do the medical payment provisions of the CGL policy apply?
- If individuals other than company employees participate in the program, will they be covered?
- Should the company maintain a separate accident policy?

chapter four

STRATEGIES FOR REDUCING LIABILITY RISKS

The best way to avoid being sued is to avoid causing harm. Because nearly everything a volunteer program does has the potential to cause some type of injury, risk reduction may never be entirely successful, but it can do a great deal to reduce the likelihood of accidents, improper actions and lawsuits. Effective risk management may also be critical to obtaining or maintaining adequate insurance coverage. Following appropriate risk management procedures may reduce insurers' concerns that volunteer programs are not operated with an ordinary business's sensitivity to potential losses.

As explained in Chapter 2, legal liability is generally imposed only if harm results from actions or policies that were not "reasonable" in light of the circumstances. What is "reasonable" for a corporate volunteer program is partially determined by the precautions that similar programs take and the availability of techniques for reducing risk. Thus, program managers should stay abreast of developments in the field.

With this in mind, many of the recommendations in this chapter are based on the actual practices of corporate volunteer programs across the country. In most instances these recommendations are the product of program managers' common sense thinking about how to operate a volunteer project or activity in a prudent, business-like fashion. Adopting the same orientation in modifying these recommendations to suit specific circumstances can effectively reduce the negative effects of potential liability on program operations. The result can reduce company exposure to liability while preserving a successful volunteer program that benefits both the company and the community.

RISK MANAGEMENT

The field of risk management has developed a substantial body of information that can be applied to corporate volunteer programs. Broadly understood, risk management is the process of controlling risks so an organization can perform most effectively. Businesses have led the way in risk management to make their products safer and reduce workplace injuries. The same principles that have been pioneered in industrial settings can be applied to reduce risks in volunteer programs.

Examples of risk reduction practices are setting minimum qualifications for volunteers, establishing rules for where volunteer work should be performed, and ensuring proper supervision of volunteers. These practices reduce the likelihood of harm. In addition, evidence that the company had a risk reduction plan may be useful in defending a lawsuit alleging that the company was negligent in operating its employee-volunteer program.

Risk management is a process for identifying the risks of an activity, analyzing and selecting the techniques that are most appropriate to control those risks, implementing the techniques and monitoring the results.

United Way Risk Management Manual

Because of the variety of activities among corporate volunteer programs, this booklet cannot offer specific strategies for reducing every risk. Moreover, few practices are so widely accepted that they

can be considered standard practices that are essential to protect the public. Instead, this section introduces the basics of a systematic risk management process that volunteer program managers can use in customizing their own strategies. Some of the resources listed at the back of the booklet offer more specific guidance. In simple form, the risk management is a version of ordinary problem-solving: identify the risks, consider alternatives, choose the best strategy, and monitor the results as well as changing conditions.

The Risk Management Process

- 1. Identify "loss exposures" (potential accidents or incidents that may result in the filing of a lawsuit or other damage to the company).**
- 2. Evaluate the utility of alternative measures that could reduce or eliminate the loss.**
- 3. Choose and implement a strategy.**
- 4. Monitor the situation to determine whether the strategy is meeting the company's needs.**

These steps are sufficiently general to be applied to any program. The details vary depending on what the program does. Based on interviews with corporate volunteer program managers and a review of liability claims against volunteer programs, we identified several areas that warrant special attention. The discussion below summarizes techniques for minimizing risks that are either common among volunteer programs or especially problematic. The nature of a particular program may require emphasis on other areas as well.

Accident Prevention

From the first attempts at risk management in the manufacturing sector until today, accident prevention has been a top priority. Simply developing a heightened sensitivity to accidents can go a long way toward preventing them. Recognizing file cabinet drawers that hang open and computer cables that snake across the floor as potential sources of injury triggers the appropriate safety response: keep file cabinet drawers closed when not in use and route computer cables out of harm's way.

Examination of a program from a safety perspective may suggest other measures appropriate to the program. A simple walk-through of a site can identify hazards. If the volunteers work away from the company's premises, having them keep safety logs for a day is a good way to learn about conditions in the field. Similarly, a mental rehearsal of a planned activity can facilitate planning for dangerous conditions that might arise.

Accident prevention can often be accomplished by the systematic application of common sense. Programs that conduct physically taxing activities should make first-aid arrangements. If volunteers are driving as part of their program activities, appropriate care should be taken. Many programs review driving records and vehicle conditions at the time a volunteer begins service and periodically thereafter. Some programs also make arrangements for their drivers to receive safety instruction, perhaps through another division of the company. At a minimum, seat belt use should be mandatory for all participants.

Written Policies and Procedures

The importance of well-developed written policies and procedures for effective management is recognized throughout the business world. For volunteer programs, the development of written policies and procedures serves as an excellent focus for building consensus within the company about the benefits and potential liabilities of volunteer service. The process of committing policies and procedures to paper can serve as a way to reflect upon the liability implications of what the program does and to adopt appropriate measures to control its risks.

Once written, policies and procedures should not only be regularly reviewed and revised, they should also be used as the basis for evaluation of the operation of the program, as called for in step 4 of the risk management process outlined above. Actual practice should be periodically audited to measure compliance with the written procedures and make corrections.

Our interviews with the managers of several companies as well as with key nonprofit organization administrators indicated that written policies and procedures are particularly useful in the following areas:

- Use of company facilities, vehicles, and equipment;
- Volunteer selection criteria and procedures (especially for mentoring programs);
- Verification of drivers licenses and motor vehicle records checks for volunteers who drive;
- Reporting requirements for project approval, progress and completion;
- Reporting and investigation of incidents that may lead to liability; and
- Suspension of assignments and investigation of volunteers suspected of wrongdoing.

To develop adequate policies and procedures, volunteer program managers need not start "from scratch." Checking with other companies and nonprofits that have similar programs can not only save time, but also improve quality. In addition, as discussed in Chapter 2, the common practices among peer group organizations are pertinent to establishing the "standard of care" for volunteer program activities.

One often overlooked element of this process is clearly stating what a program will *not* do. Clarifying the limits of the volunteer program can be useful in defending against claims based on conduct beyond what the program authorizes.

Any draft policies and procedures should be carefully reviewed and approved by the appropriate individuals in the company, e.g., legal counsel, personnel director, affirmative action officer, and insurance specialist or risk manager. Certain language or provisions may have legal or insurance implications that are not obvious to someone who is not an expert in those fields. The purpose of such review is not to scuttle good ideas, but to increase program effectiveness by identifying elements that could be modified to reduce risk. Only upon becoming aware of a risk can a program manager decide intelligently whether it is worth taking.

Position Descriptions

Written position or job descriptions can serve two functions in reducing exposure to liability. First, proper use of written position descriptions can become an integral part of the four-step risk management process described above. Written job descriptions provide a framework for listing the specific tasks a volunteer will be doing, and the qualifications, training and supervision volunteers will need to perform safely and effectively. The job description might also list rules or restrictions on the scope of the volunteer's duties. Having the volunteer read and sign the document helps to communicate the responsibilities and limitations of the assignment.

Second, a job description may be useful if an injured party attempts to hold the corporation vicariously liable for the negligence of a volunteer (see Chapter 2). The corporation may be able to use the job description to establish that the volunteer was not acting in the scope of his or her assigned duties at the time of the incident.

Screening

Screening is one of the most effective risk reduction tools available to the volunteer program manager. *Screening is the process of determining beforehand if an individual meets the requirements of a particular position or program.* Screening is advisable for most programs and essential for some to reduce the likelihood of participation by individuals who pose an unreasonable risk to themselves or others. With volunteers, as with employees, screening can identify unfit individuals who pose an unacceptable danger. Screening also enables the company to find the people best qualified for a "job," whether the position is paid or volunteer.

The elements of an appropriate screening procedure vary with the volunteer's responsibilities and level of involvement with other people. On the low end are programs in which the volunteers have little contact with the public, e.g., a woodlands clean-up project. Programs that give volunteers responsibility for the care of others, especially the elderly, infirm or young require more thorough screening. Major nonprofit organizations that operate such programs, e.g., Big Brothers/Big Sisters of America, Boy Scouts of America, and Girl Scouts USA, have developed very sophisticated screening procedures. (See Resources in the back of this booklet.)

At a minimum, the company should identify the criteria for participation in its volunteer program. The prospective volunteer should submit a written application providing information regarding the necessary qualifications, and the company should, in turn, obtain independent verification of any critical information the applicant provides. Relying on an old employment application on file with the personnel office is insufficient for information that may have changed by the time an employee seeks to volunteer. The need for more extensive background investigation (including criminal records checks), abilities tests, psychological examinations, in-person interviews, social worker assessments, and other measures depends on the program.

Any screening procedures that a program does adopt should be applied uniformly to every person seeking to be a volunteer. An unwaivable screening requirement combats the tendency to permit individuals with a special status in the company to participate without their credentials being reviewed. However valuable these individuals may be to the company, some of them are not suitable for particular volunteer assignments. A mandatory screening process may deter them from inappropriate involvement with the program.

Programs conducted in collaboration with other organizations may rely on the collaborating organization to perform the screening function. By itself, this procedure does not insulate the company from liability if the screening is not adequate. The legal responsibility of the company in such arrangements is to verify that the designated organization is indeed adequately screening all volunteers.

Training

Placing volunteers in situations that they have not been trained to handle invites liability. Volunteers are expected to perform competently and must be trained as needed to meet that expectation. Mandatory orientations and training workshops enable volunteers to meet those standards and thereby reduce the risks that they will cause harm or trigger a lawsuit.

In addition to assuring that the volunteer is competent to perform whatever service the program provides, training also helps define the scope of the volunteer's job and communicates to the volunteer the manner and method in which the company expects the job to be performed. As discussed in Chapter 2, these considerations may be at issue in a suit in which the company is alleged to have been negligent in its operation of a volunteer activity or may be referenced to determine whether an employee-volunteer acted outside the scope of his or her volunteer assignment.

Because improper training can itself lead to liability, it must be done well. The objectives, curriculum and materials for the training program should be developed and evaluated carefully. Depending on the complexity of the training, the services of professional consultants may be desirable. Regardless of whether the company conducts the training itself or contracts with a trainer, quality must be assured.

Supervision

Just like any other company endeavor, volunteer activities must be supervised. Inadequate supervision allows dangerous conditions to persist and can subject the company to liability for incidents that more vigilant oversight would have prevented.

One legal consequence of undertaking to supervise volunteers' activities directly is that the company will almost certainly be legally responsible if injuries nonetheless occur. From the legal perspective, the company's role in matching employees with volunteer assignments and supervising the resulting placement are major factors in determining whether the company will be liable for any harm the employee-volunteer causes. The greater the involvement in supervision and placement, the higher the likelihood that the company will be held responsible. Some companies limit their involvement to placing employees with various volunteer programs and allowing those programs to determine the employees' specific assignments. Others exercise final authority over what employees will do in their volunteer service. They then have the responsibility of exercising due care in the initial placement *and* monitoring the placement to check for signs that anything is amiss.

Administration

Many larger corporations have adopted a team approach for the operation of their volunteer programs. With this approach employee-volunteer units are established according to whatever functional lines may be appropriate (region, company division, etc.) and the unit membership then follows a routine process for researching and evaluating event proposals and implementing selected projects.

In addition to reviewing and evaluating each project, a team approach to managing the company's volunteer activity also provides an excellent locus for developing overall policies and procedures for the volunteer program. The team can develop these policies and procedures based on its actual experience and consideration of effective methods of achieving the company's community involvement goals and objectives.

This project review process may be documented by a volunteer activity report form that initially serves to identify the nature of the volunteer service request (name of agency, type and purpose of activity, dates, contact individuals, etc.) and the resources required (number of volunteers, supplies, equipment, etc.). Thereafter the form can be used to track approvals (e.g., by the team, by the company liaison, by company legal counsel, by the company risk manager, etc.) and to record an evaluation of the project after the event has been completed (e.g., actual number of volunteers used, publicity material, whether the activity should be engaged in again). Maintaining this "paper trail" gives the company a solid basis for refuting allegations that volunteers were insufficiently supervised.



Restrictions on Volunteer Activity

In some instances, good risk management necessitates limitations on volunteer activity. For example, in a school-based tutoring program, if neither the school nor the company can adequately screen all volunteers, the program may need to prohibit home visits to reduce the risk that any volunteer might abuse a child. Even though the home visits might be a great boon for some children, the prospect of abuse may outweigh the potential benefit.

Similarly, if adequate training cannot be provided, a program may not be appropriate. Volunteers who are not competent to perform a service may present an unacceptable risk to themselves, the company, and the community. Some companies with desk-bound employees have expressly decided not to engage in fix-up projects because their personnel lack the necessary skill and safety instincts for the job. Utility companies and others with experienced tradespeople and engineers on their staffs may be able to sponsor fix-up projects with more confidence.

CONCLUSION

As with any company endeavor, volunteer programs come with risks as well as benefits. Acknowledging these risks may be unpleasant and could dampen some enthusiasm for volunteerism, but the alternative of ignoring the liability and insurance aspects of a volunteer program is worse.

Fortunately, the goals of running a successful volunteer program and controlling the inherent risks are compatible. Most business firms are in an excellent position to maximize the benefits and minimize the losses of volunteer programs. By drawing upon the legal and insurance expertise a company has available, along with the experience of volunteer programs in the community and across the country, a volunteer program manager can tap all the necessary resources. Managing corporate volunteer programs with attention to the potential legal liability of the company and participants is the best way to reduce the likelihood of a negative incident occurring that would detract from the many benefits to the company, its workforce, and the community.

RESOURCES

The resources listed here provide additional information pertinent to liability, risk management and insurance for corporate volunteer programs. The list contains a section on publications and a section on organizations with relevant expertise. Because little has been written specifically on these topics, we have included several items that are relevant, although not directly on point. Each publication entry identifies the source to contact to obtain copies. For titles that are not self-explanatory, we have included brief descriptions.

Organizations

Association for Volunteer Administration
PO Box 4584
Boulder, CO 80306
303 497-0238

Big Brothers/Big Sisters of America
230 N 13th Street
Philadelphia, PA 19107
215 567-7000

Human Services Risk Management
818 E. 53rd Street
Austin, TX 78751
512 451-8187

The National VOLUNTEER Center
of the Points of Light Foundation
(also the National Council on Corporate Volunteerism)
736 Jackson Place
Washington, DC 20503
202 408-5162

National Center for Community
Risk Management & Insurance
1828 L St., NW, Suite 505
Washington, DC 20036
202 785-3891

One to One
2801 M Street, NW
Washington, DC 20007
202 338-3844

Points of Light Foundation
736 Jackson Place
Washington, DC 20503
202 408-5162

United Way of America
701 N. Fairfax Street
Alexandria, VA 22314
703 836-7100

Many cities have corporate volunteerism councils that support local programs. To find the nearest council, contact the National VOLUNTEER Center of the Points of Light Foundation.

Publications

CORPORATE VOLUNTEER PROGRAMS

A New Competitive Edge, by Cynthia Vizza, Kenn Allen, Shirley Keller, 1986. (The National VOLUNTEER Center, 736 Jackson Place, Washington, DC 20503). A compendium of profiles of corporate volunteer programs.

Additional materials on this topic are available from The National VOLUNTEER Center of the Points of Light Foundation and the One to One Foundation. See listings under **Organizations**, page 28.

DIRECTORS AND OFFICERS LIABILITY AND INSURANCE

Board Liability: Guide for Nonprofit Directors, by Daniel L. Kurtz, 1988. (Moyer Bell Ltd, Mt. Kisco, NY). ▲

D&O Yes or No?—Directors and Officers Insurance for the Volunteer Board, 1991. (National Center for Community Risk Management & Insurance). ▲

Directors and Officers Liability Insurance and Indemnification, by John A. Edie, 1988. (Council on Foundations, Washington, DC). ▲

LEGAL LIABILITY FOR VOLUNTEERS AND VOLUNTEER PROGRAMS

“Answers to Volunteers’ Liability and Insurance Questions,” 1991. (National Center for Community Risk Management & Insurance). ▲

State Liability Laws for Charitable Organizations and Volunteers, 1991. (National Center for Community Risk Management & Insurance). ▲

Reconsidering Legal Liability for Charitable Organizations and Volunteers, by Charles Tremper, 1989. (National Center for Community Risk Management & Insurance). ▲

“Compensation for Harm from Charitable Activity,” by Charles Tremper, *Cornell Law Review*, vol. 76, p. 401, 1991. ▲

“Organizations’ Liability for Torts of Volunteers,” by Jeffrey D. Kahn, *University of Pennsylvania Law Review*, vol. 133, p. 1433, 1985.

MENTORING

Mentoring Manual: A Guide to Program Development and Implementation, The Abell Foundation, Inc., 1990. (The Baltimore Mentoring Institute, 605 North Eutaw Street, Baltimore, MD 21201).

Partnerships for Success: A Mentoring Program Manual, The Enterprise Foundation and United Way of America, 1990. (United Way of America, Community Partnerships & Volunteer Initiatives Division, 701 North Fairfax Street, Alexandria, VA 22314-2045).

A Special Report On Mentoring, from PLUS [Project Literacy US] and The National Urban League, Inc. (One PLUS One, 4802 Fifth Avenue, Pittsburgh, PA 15213).

Publications marked with a ▲ are available from the National Center for Community Risk Management & Insurance, 1828 L St., NW, Suite 505, Washington, DC 20036, 202 785-3891.

SCREENING

Criminal History Record Checks: A Report for Nonprofits, by American Bar Association Center on Children and the Law, Washington, D.C., 1991.(The National Assembly of National Voluntary Health and Social Welfare Organizations, 1319 F St., NW, Suite 601, Washington, DC 20004).

RISK MANAGEMENT FOR VOLUNTEER PROGRAMS

Legal Liability and Risk Management for Public and Private Entities, by Betty van der Smissen, 1990. (Anderson Publishing Co., Cincinnati 1990). A comprehensive treatise on risk management as applied to the fields of physical education and sports, parks and recreation, leisure services, and camping and adventure activities.

The Nonprofits' Risk Management and Insurance Sampler, 2nd ed., 1991. (National Center for Community Risk Management & Insurance). ▲

Risk Management: Strategies for Managing Volunteer Programs, by Sarah Henderson & Bruce Larson, 1988. (MacDuff/Bunt Associates, Inc., 821 Lincoln, Walla Walla, WA).

Risk Management: A Guide for Nonprofits, 1987. (United Way of America, Alexandria, VA). This guide is out of print. A second edition is expected in 1993.

Publications marked with a ▲ are available from the National Center for Community Risk Management & Insurance, 1828 L St., NW, Suite 505, Washington, DC 20036, 202 785-3891.

