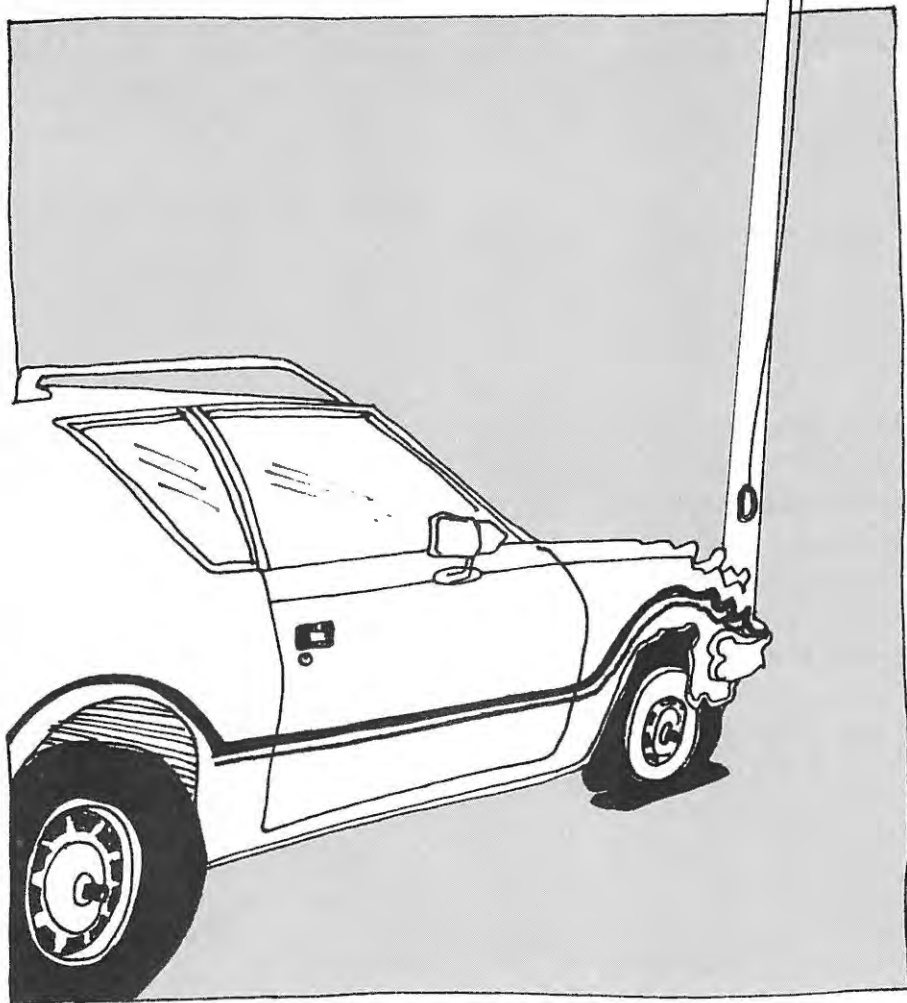


Volunteer Insurance



What's at Stake for the Board Member and Nonboard Volunteer

By Terry Chapman

DOES THE INSURED HAVE volunteers? This is a common question asked by insurance underwriters, and it automatically raises a red flag. If answered affirmatively, it provokes further questions. What do the volunteers do? What are their ages? How many hours are volunteered? Does the insured tell them when to work, where to work, what work to do, etc.? Do the volunteers drive the insured's vehicles? Do the volunteers drive their own vehicles on behalf of the insured? Do the volunteers receive credit at school for their work? Do the volunteers receive any fringe benefits, such as meals, lodging or transportation expenses? These questions are but a sample of those that must be answered to the satisfaction of the underwriters if a social service agency is to obtain insurance.

The insurance underwriter generally does not understand the volunteer organization and has a great deal of difficulty assessing the exposures that the volunteer creates. Insurance companies must control the risks they take, and when volunteers are involved the control over the risk diminishes substantially in the eyes of the underwriters. The organization can control what employees are required to do as well as when and in what manner the job is performed. The underwriters often see the volunteer as beyond the scope of the insured's control. Thus, they frequently are reluctant to offer insurance coverages to a social service agency.

Those of us involved personally in volunteerism know the value of volunteers and the contributions made by volunteers. We recognize that the Third Sector would not be able to provide many valuable services without volunteers. But, because it is increasingly

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difficult to obtain affordable insurance coverages, agencies are having to reassess their priorities and their use of volunteers.

Volunteers also must be concerned with exposures they face from a personal standpoint:

- What if I am sued as a board member due to the actions or inaction of the director?
- What if I am sued for injury to a client?
- What if I am sued for offering bad advice?
- What if I am sued because of an auto accident?
- What if I am injured in the course of volunteering?

All of the aforementioned "what ifs" are realistic concerns; they have been asked before and they will continue to be asked in our litigious society.

The greatest exposure to volunteers is as a board member of an organization. The board is charged with the responsibility of managing the organization. The executive director or administrator reports as an employee to the board. There have been many instances of board members being held personally

recorded vote, it will be assumed by the court that the director either went along with the negligent act or did not have enough of an understanding of the issue to respond in a reasonable manner.

Several cases are now in litigation between nonprofit corporations and former employees alleging discrimination, slander and invasion of privacy. A case in California currently involves a nonprofit corporation that has been defunded because the director did not pay federal and state withholding taxes on employees. The court found that directors were personally responsible for the taxes, which amounted to several thousand dollars.

For an in-depth study of the question, refer to Dickinson School of Law, Carlisle, Penn., for a paper entitled "The Not-For-Profit Corporate Director: Legal Liabilities and Protection" by Kristen M. Brown.

The unfortunate thing is that only three carriers are currently offering errors and omissions insurance for boards of directors of nonprofit corporations: Crum & Forster through L.W. Biegler (found in most major cities), Seaboard Surety through Professional Insurance Consul-

AS A BOARD MEMBER, OR A nonboard volunteer, you should ask your agency about your insurance status. Most carriers will defend a volunteer for liability claims on the basis you are acting as an agent of the organization. The defense, however, is usually provided under a "reservation of rights" clause. This means that rather than admitting responsibility for the claim, the insurance carrier will petition

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to have the court determine whether or not there is negligence on the part of the insured agency. The court may determine no negligence, in which case the volunteer must stand on his/her own.

Some carriers will agree to extend the contract to cover volunteers as named insureds and then full protection under the policy will be provided. This is something that must be negotiated with a carrier by the director through the agency's insurance broker.

You may also look to your personal insurance policy; if you have a homeowners policy with liability coverage, it should afford protection for you. There is an exclusion for business pursuits and professional services. The definition of "business pursuits" is rather nebulous, but "professional services" is clearly defined. For example, if you are a public accountant or bookkeeper and you volunteer your bookkeeping services to an agency, you have no coverage for the advice you give.

Some carriers now offer coverage for the professional liability exposures of volunteers who are professionals, such as physicians, dentists, psychologists and paraprofessionals. These are specific professional or malpractice liability policies. If you volunteer as a counselor at a mental health clinic, you would be wise to check with the director about this type of coverage.

What about volunteers' liability when they are transporting clients in their own

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liable for actions or inactions of the executive director or administrator. The courts have ruled that directors of charitable corporations are required to exercise ordinary and reasonable care in the performance of their duties, exhibiting honesty and good faith. Since a director's conduct is presumed to be in good faith and courts are hesitant to substitute their judgment for that of directors, the rule effectively precludes a finding of liability where there has not been bad faith or a total abdication of responsibility.

Boiling the above information down to its basics: If a person sits on a board of directors of a charitable or nonprofit corporation, the "reasonable and prudent men theory" will be enforced. It is incumbent on the director that all meetings be attended and votes on issues be duly recorded. In the absence of a

tants in Seattle, and, on a very limited basis, American Home Insurance. Premiums range from \$550 per year upward to several thousand dollars per year, depending on the number of members on the board, the amount of funds administered and the number of years in existence. St. Paul Insurance Company and Lloyds of London also offer coverages on a limited basis.

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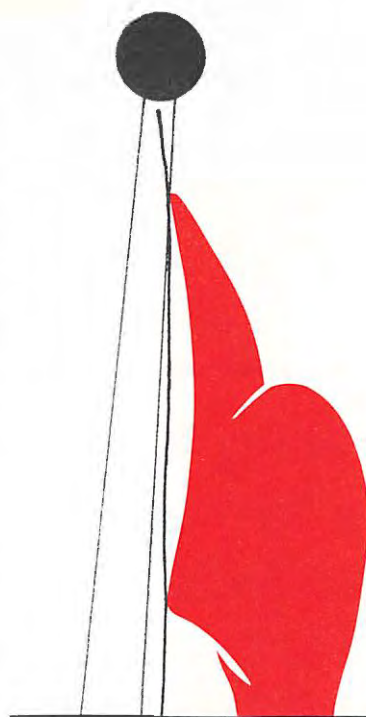
vehicles? A tremendous exposure exists because of recent overruling of the "guest host statute." This law held that if I am an invited guest in your car, I could not sue you without demonstrating "gross negligence" on your part. Today, however, a guest can bring a lawsuit against the host. If you receive mileage allowances for your services, you may be looked upon as a "public livery" or a "for hire vehicle," in which case your personal insurance may be null and void. If you ask, as I did, a dozen insurance companies how they would treat a claim against a volunteer who receives mileage allowance, you will get 12 different answers. Some carriers say they would cancel due to increased exposure; some say they would deny coverage because of the public livery exclusion; some say they will increase the rates to business use rates; and others have different ideas.

Extensive legislation within the various states deals with the question of workers' compensation for volunteers. In California we have worked for two years to obtain passage of a bill that *excludes* volunteers from workers' compensation coverage. This seems at first glance a contradiction of our philosophy as supporters of the volunteer movement. What we experienced in California and throughout the country, however, was the increased costs to nonprofits in obtaining workers' compensation because of the use of volunteers. In some cases carriers were issuing policies at rates 100 or 200 percent higher than standard rates. The problem was that the carrier could not determine whether the volunteer would be found to be an employee

Most carriers will defend a volunteer for liability claims.

by our Workers' Compensation Appeals Board. In the liberal courts the insurance carriers were being required to pay benefits to volunteers even though they had received no premium for the exposure.

The bill we supported allows a board of directors to cover the volunteers with workers' compensation only if they wish to do so. They may then negotiate coverage with a carrier so that the carrier charges a premium based on an hourly wage rate or a flat fee per volunteer.



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THE BRIGHT SIDE OF THIS problem is that the level of awareness of insurance companies is being raised to the fact that a problem exists. Through a specially appointed White House task force, under the direction of Dr. Frank Davis of the University of Tennessee, meetings have been held with insurance industry executives. One result of the meetings has been the establishment of a special code for vehicles operated by social service agencies. This is not a panacea, because many carriers are not familiar with the code and they still harbor prejudices against volunteers. However, it is a major breakthrough in recognition. Under a grant from the Departments of Health, Education and Welfare and Transportation, Dr. Davis has written a book entitled *The Social Service Insurance Dilemma: Problems, Analysis and Proposed Solutions*. It may be obtained from the National Technical Information Service, Springfield, VA 22161 (Contact #DOT-OS70073).

In addition, volunteers who operate their own automobiles while volunteering can be covered under the nonowned auto coverage of the agency. This means that if the agency carries a \$500,000 limit of liability and the volun-

teer carries \$25,000 and is involved in an accident, the volunteer can be covered up to the \$500,000 limit as an individual. A premium charge is made, but it is nominal, approximately \$2 per volunteer.

With the establishment of the special code and the excess coverage under "nonowned auto," the insurance industry is recognizing the existence of and the special needs of the Third Sector.

An insurance brokerage firm called Corporate Insurance Management, or CIMA, located in Washington, D.C., has negotiated a special program exclusively for volunteers called Volunteers Insurance Service. The components include:

- Accident Insurance—\$10,000 limit
- Personal Liability—\$1,000,000 limit
- Excess Auto—\$500,000 limit

The policy, underwritten by Insurance Company of North America, is available only to agencies and not to individual volunteers. The agency may purchase any of the three coverages independent of the other. The costs are:

- Accident Insurance—\$.85 per year per volunteer
- Personal Liability—\$.65 per year per volunteer
- Excess Auto—\$.4 per year per volunteer

In California these coverages are sponsored by the Consortium for Human Services (PO Box 1183, San Jose, CA 95108, (408) 287-0643). In all other states, contact CIMA, 4200 Wisconsin Ave, NW, Washington, D.C. 20016.

I am planning to conduct seminars throughout the country during the coming year. The seminars will be directed to agency directors and board members who wish to learn how to buy insurance coverages, how to select an insurance broker, and how to better understand an insurance policy. It is hoped that the seminars will help raise your level of consciousness about insurance issues.

For further information, contact Chapman & Associates, 301 East Colorado Blvd., Suite 407, Pasadena, CA 91101.