Insuring Volunteers – Commercial Lines

Many organizations use volunteers to transport kids and senior citizens or provide personal services in homes or medical facilities. How are these uncompensated volunteers treated from a coverage standpoint compared to employees? When it comes to workers compensation, you may be in for a shock.

A Wisconsin woman ran a red light and collided with a vehicle, resulting in severe injuries to the driver, including the amputation of his leg. She was a member of a local church and also a volunteer for a volunteer service organization consisting of members of the church. At the time of the accident, she was in the process of delivering a religious statue for the volunteer organization to a family that had requested one. She was driving her own car. In the ensuing court case, the jury found that her negligence was the sole cause of the accident and that she was driving her vehicle on behalf of her church and/or the volunteer organization.

The jury awarded the injured driver $558,366.06 for past medical expenses, $750,000 for future medical expenses, $10,000,000 for past pain, suffering and disability, and $5,000,000 for future pain, suffering and disability. The jury also awarded the driver’s wife $500,000 for the loss of consortium. The final judgment totaled $18,000,000. Heikkinen v. United Services Automobile Association, Margaret E. Morse, Catholic Mutual Relief Society of America, and Archdiocese of Milwaukee, 724 N.W.2d 243, 296, Wis.2d 438, 2006 WI.

Are such awards unusual? Yes, as to the size of the judgment. As for the frequency of these types of claims, no. Many organizations rely on people to serve in a volunteer capacity as board members on non-profits, school PTA organizations and booster clubs, church boards, and civic organizations, or they may serve as volunteer fire fighters, Scouting leaders, athletic coaches, or in other volunteer capacities. Their participation might be ongoing, as in a church elder position, intermediate, as with a year to four-year service on a high school booster club, or short term, as with a one-day stint building a home for Habitat for Humanity. Their injuries may be serious, even fatal.

Some of these activities are physical and present a bodily injury or property damage exposure, some involve decision making in financial matters where poor decisions and mistakes can lead to financial losses, and many involve the use of autos to transport kids from school to sporting events or senior citizens from their homes to church, stores, or medical facilities. If there is a lawsuit, does the organization have coverage under a CGL or BAP policy? If sued, would these volunteers have any coverage under their personal lines policies? If a volunteer is injured, would s/he have any coverage under a workers compensation or other policy? When it comes to workers compensation, you may be in for a shock.

In this article, we'll examine some commercial lines basics. For the personal lines exposures and coverages (or lack thereof), check out this article:

- **Insuring Volunteers - Personal Lines**

Let’s focus our attention on the following commercial lines policies....

**Business Auto Policy**
The **CA 00 01 03 06** covers permissive users as long as the vehicle is a "covered auto." If volunteers are driving autos owned by the organization, then Symbols 1, 2, 3, 4, and 7 would cover both the organization and the volunteer on a primary basis. If volunteers are driving autos hired or borrowed by the organization, then Symbols 1 or 8 would cover both the organization and the volunteer, the latter covered as long as the organization is not hiring or borrowing the volunteer's own auto.

If the volunteer is driving his or her own vehicle, the organization would be an insured under Symbols 1 or 9, but the volunteer would have no coverage as an insured permissive user because the vehicle is not owned, hired or borrowed by the organization. In this situation, the volunteer may only be able to rely on his or her own auto policy and umbrella. Needless to say, this is the more common volunteer auto exposure.

Since volunteers are typically not afforded workers compensation coverage, it may be advisable for volunteer organizations to provide coverage at as high of limits as possible under the **CA 99 03 - Auto Medical Payments Coverage**. While this endorsement excludes injuries to "employees," unlike the CGL policy discussed below, the BAP does not define "employee" to include volunteers.

One advantage of volunteer status vs. employee status is that the "Fellow Employee" exclusion would not apply to volunteers. This is not the case with the CGL policy.

Finally, it's possible that some auto coverage can be provided by older editions of the ISO CGL policy, as outlined below.

**CGL**

The **CG 00 01 12 04**, unlike the **CA 00 01 03 06**, considers volunteers as employees with regard to Liability coverage. The Who Is An Insured section applies to "Your 'volunteer workers' only while performing duties related to the conduct of your business...." From the Definitions section:

"Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

For medical payments, they are not payable to any insured except that "volunteer workers" ARE covered.

Therefore, volunteers are covered for BI and PD (as well as PI and AI) to others, and for BI to themselves under medical payments. While the CGL policy provides "**cross liability**" coverage for claims made by one insured against another, the Who Is An Insured section specifically excludes BI and PI (e.g., slander) to another "employee" or "volunteer worker." Any such coverage, while probably desirable, would likely have to be manuscripted.

Needless to say, there are exposures that are not covered by the CGL insuring agreement or that are excluded. For example, a PTA was threatened by a suit for copyright infringement when they published a cook book that included a number of recipes taken from copyrighted works.

**Final Note on Auto Liability.** It is possible that older editions of the ISO CGL policy could provide some auto coverage under certain circumstances based on an accident not falling within the primary auto exclusionary wording:
"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured.

Since volunteers were not considered insureds prior to the 2001 edition of the ISO CGL unless added by an endorsement such as the CG 20 21 - Additional Insured - Volunteer Workers or CG 20 22 - Additional Insured - Church Members, Officers and Volunteer Workers, the auto exclusionary language above might not apply to the organization with regard to a volunteer using their own auto.

For example, in one case, a church member would pick up senior citizens in his personal van and transport them to church. When a claim was made against the church, coverage was found under the CGL policy because the owner of the auto (the volunteer church member) was not an insured. Although the CG 20 22 endorsement was mandatory under ISO CLM rules and would have made the volunteer an insured, the underwriter had failed to attach it when the policy was issued.

**Crime**

According to news accounts, the incidence of nonprofit theft is on the rise, particularly in the area of residential communities and school programs. The most common exposures would be theft from the volunteer organization (e.g., a homeowners association or school booster club treasurer) or from those served by the organization (e.g., theft from the home of a "Meals on Wheels" recipient).

The problem with crime forms is the variation in forms and edition dates and their design to be used largely by organizations with employees. As a result, whether a loss arises from "employee" dishonesty, theft on "customer's" premises (e.g., under the CR 04 01 03 00), may depend on the specific form language or insurer interpretation. Suffice it to say that crime coverage is something that should be discussed with the underwriter in order to ensure that proper coverage is in place.

**Professional Liability**

Special programs are usually available for D&O and E&O coverage for nonprofits and volunteer organizations. Check with your carriers for details.

**Workers Compensation and Other Policies**

Can volunteers be covered for workers compensation? The answer is, "it depends" and even being that nebulous, we still aren't 100% sure if and when a volunteer can be covered for workers compensation or equivalent benefits. Some state workers compensation laws specify certain type of volunteers as eligible for statutory workers compensation benefits on a voluntary or mandatory basis, presumably without the need for any type of endorsement. Examples include volunteer fire, ambulance and police personnel. Rating is based on typical payrolls for employees who perform that type of work.

In addition, NCCI provides the Voluntary Compensation and Employers Liability Coverage Endorsement, WC 00 03 11 A to add "Voluntary Compensation Insurance" to the workers compensation policy. The question is whether this endorsement is designed to (or can) be used to insure purely uncompensated volunteers. Our preliminary investigation of this issue reveals that there is a lot of confusion and disagreement about whether it can. This disagreement was found among agents, the VU faculty, and even between insurers writing coverage in the same state under the same laws and NCCI rules.
Below is commentary from the VU faculty on this issue. You may find some of it is overlapping and somewhat repetitive, but we gave each faculty member the opportunity to voice their opinion and rationale. If you have thoughts on this, feel free to send them to us.