

*Sandra Caplan Community Bet Din*

## Report on Insurance Needs and Options

### 1. What Does Insurance Accomplish?

Insurance is simply a mechanism to finance a loss... It's a financial instrument. [1]

Given the shoestring budget on which many nonprofits operate, a single large and unexpected expense could lead to financial ruin. So, getting the right insurance to guard against the biggest (or baddest) risks is a wise move for nonprofits. [2]

Suits against nonprofits and nonprofit volunteers remain relatively rare. However, when they are filed, the impact on small ... agencies can be devastating, since most are ill-equipped to manage and finance a defense. [3]

### 2. Could Our Bet Din Be Sued? Might It Be Found Liable?

The possibility of being sued and the possibility of being found liable are two completely different things! [4]

With rare exception, a nonprofit can be sued by anyone ... at any time ... for anything. Determining whether a nonprofit will be liable for harm resulting from its acts or omissions depends on the confluence of various factors..... In so many instances, it is difficult, if not impossible, to predict whether liability will be imposed. [3]

Even when a claim does not have merit, someone has to defend the volunteer and the nonprofit. [5]

The VPA [discussed below] doesn't affect the liability of nonprofits... with respect to harm caused by volunteer actions. [3]

### 3. Could Our Bet Din's Volunteer Governors Be Sued? Might They Be Found Liable?

#### ***Personal Exposure of the Volunteers (including Governors and Officers)***

In 1997, Congress — with the purpose of encouraging people to volunteer their services while seeking to ease fears of volunteer liability — passed the federal Volunteer Protection Act (VPA) [42 U.S.C. § 14503(a)]....

The VPA provides immunity for [uncompensated] volunteers serving nonprofit organizations ... for harm caused by their acts or omissions if:

- the volunteer was acting within the scope of his or her responsibilities.
- the volunteer was properly ... authorized to act.

- the harm was not caused by [reckless or grossly negligent] conduct....

[However, a] common source of claims stems from automobile accidents in which a volunteer was driving. The VPA [explicitly] does not protect these volunteers [if another party was harmed]....

The VPA doesn't prohibit lawsuits; it simply provides a limited defense for certain volunteers under certain circumstances.... A plaintiff need only state that a volunteer's action was "willful or in flagrant indifference to the rights and safety of the individual harmed" for the matter to require a factual determination by a court. Therefore, the volunteer is unable to avoid being sued and must defend him- or herself. [3]

#### ***If the Bet Din Incorporates***

A volunteer director or executive officer of a nonprofit corporation is not liable for monetary damages to a third party if the act or omission was done in good faith and within the scope of duty. [6]

#### **4. What Could Go Wrong?**

Almost all of the claims — 90 percent — reported by nonprofit organizations are accidents and injuries related to automobiles or slips, trips and falls at nonprofit locations and special events. [7]

#### ***A Worst-case Scenario***

A [certain] volunteer on [nonprofit] agency business [once] ran a stop sign and hit a vehicle whose driver wound up paralyzed from the neck down. The volunteer's own personal coverage had lapsed, so the agency's auto coverage became primary and the claim was settled for the \$2,000,000 in available limits. [5] [4]

#### ***Average Cost of Claims***

Here are the average costs of claims brought by or against volunteers:

General Liability — \$12,000

Auto Liability (with injury) — \$6,000 [5]

#### ***Volunteer Dayanim and Governors on the Way to Meetings***

Wrongful acts committed while operating a motor vehicle ... [account] for a large number of claims filed against volunteers. [3]

#### **5. Which Types of Insurance Should the Bet Din Have?**

An organization should determine its potential exposure to loss and then get coverage appropriate for that exposure. [4]

All organizations should purchase general liability, typically thought of as "slip and fall" insurance.... Even organizations that don't have offices are subject to claims for damages

such as a slip and fall at a program, or damage to an antique rug at a home where a fundraiser was held.

You should also purchase “non-owned/hired” auto insurance, in case an employee or volunteer is involved in an auto accident and their personal insurance is inadequate. Other types to consider include fidelity insurance for possible embezzlement. [7]

If your staff or volunteers use any vehicles (including their own) for your nonprofit's activities, auto liability insurance is a must.... The insurance will pay for injuries a driver causes to other people or property while carrying out your organization's business. [2]

## **6. How Much Insurance Coverage Is Enough?**

The majority of community-based nonprofits purchase \$1 million in coverage, and that has been sufficient to cover 99 percent of the claims we have seen in our 20 years. [7]

## **7. What Is the Role of an Insurance Broker?**

Nonprofits [should] treat insurance brokers [no] differently than they do other independent consultants.... The broker is there to provide a service to you.... The broker decision should be made on an evaluation of which broker will give your nonprofit the best service throughout the year. [8]

Brokers are professional advisors/consultants who are intermediaries between nonprofits and insurance carriers. This is somewhat similar to how a financial advisor might work with you.... (Insurance companies pay commissions to brokers.)

Brokers work with nonprofits to determine: types of coverage needed; coverage limits; [and] services needed. Based on these guidelines, the broker approaches various insurance companies for price quotes.... In addition ..., nonprofits will want to know about an insurance company's track record in prompt, hassle-free, and fair payment of claims. [7]

## **8. Aside from Insurance, What Else Should We Do to Address the Risk of Lawsuit?**

Your organization only needs to purchase insurance protection against those risks that cannot be avoided through prudent risk management.... If you don't have a risk management program, ask your organization's insurance company, agent or broker, or risk management consulting firm to help design one. [4]

## SOURCES

- [4] “[An Insurance Guide for Nonprofit Organizations](#),” Steve Thompson, Aspen Risk Management Group, San Diego.
- [5] “[Do We Need Insurance for Our Volunteers?](#)” by Chuck Hewitt, Nonprofits Insurance Alliance Group, circa 2014; on *Blue Avocado* (see #1).  
*Claims data are based on 20 years of experience.*
- [6] Cal Gov. Code § 5239, *Non-profit volunteer immunity*.
- [7] “[A Board Member's Guide to Nonprofit Insurance](#),” by Pamela Davis, founder and president of a major nonprofit insurance company: Nonprofits’ Insurance Alliance of California (NIAC), on *Blue Avocado* (see #1).
- [8] “[What Should Boards Know About Insurance Brokers?](#)” by Pamela Davis (see #7).
- [1] [Michael Stoop](#), Metropolitan Risk Advisory, in a comment posted on an article on *Blue Avocado* (online magazine of American Nonprofits).
- [2] “[What Types of Insurance Should a Nonprofit Buy?](#)” by Peri Pakroo, nolo.com
- [3] [State Liability Laws for Charitable Organizations and Volunteers](#), report from the Nonprofit Risk Management Center (Sept. 2001).
- [4] “[Do We Need Insurance for Our Volunteers?](#)” by Chuck Hewitt, Nonprofits Insurance Alliance Group, circa 2014; on *Blue Avocado* (see #1).  
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