

VOLUNTEERS, SPORTS AND INSURANCE

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ABSTRACT

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Nationwide budget cuts and corporation "downsizings" have threatened the existence of sports and recreational programs vital to our quality of life. Government agencies, from the federal level down to municipalities, along with corporations private agencies and nonprofit agencies, are increasingly turning to volunteers to support their programs. However, volunteerism creates new liabilities along with benefits. This presentation will explore the role of insurance as a means of such risk management issues. Included are: the various types of insurance available; what each covers; how to negotiate and select a policy contract suited to individual needs; how to negotiate and select a policy contract suited to individual needs; and financing insurance coverage. Sources include statutory laws along with texts, publications, official documents, and private interviews including a consultant specializing in nonprofit insurance. Insurance protection does not rule out the possibility of litigation based on the inherent risks of sports participation. However, it does provide financial security, and promotes safer programs sponsored by those relying on the services of volunteers.

Introduction

Never had the American tradition of philanthropy been tested as it is today. The current state of our nation's economy has created budget cutting and "downsizings" in all sectors where volunteers (VEERS) serve (Weber, 1994). While modern technology has succeeded in reducing the risks inherent of sports programs, new liability risks of volunteerism are surfacing. Ignoring these, we are destined to tip the scale from the benefits of VEER service to one of prohibitive liability. Generally, we view VEERS as "helpers" whose beneficent services supplement the duties of employees (EES), without pay. (Tremper, Seidman & Tufts, 1994). Involved are government (federal and local), private and non-profit agencies. Two problems created by VEER services are: (1) how to deal with the risks VEERS create as individuals, and (2) how to find an insurance company willing to provide the necessary coverage (Lai, Chapman, & Stienbock, 1992, 182).

Sources of VEER Insurance Coverage

I. The Commercial General Liability Policy

(CGL) is usually purchased by the sponsoring agency/organization and it broadly applies to claims made against it for bodily injury and property damage (Tremper & Kahn, 1992, 16). A standard CGL policy pays for: (a) the defense is sued whether or not the charges have merit, (b) in settlement, and (c) upon judgment to the extent of the insured limits (Lai, Chapman & Steinbock, 10). The standard CGL policy includes the following: Premises-Operations, Products and Completed Operations Liability, Fire Damage Liability, Medical payments Coverage, Host Liquor Liability, Additional Insured-Employees, Broad Form Property Damage Liability, Incidental Malpractice, Non-owned Watercraft Liability, and Extended Bodily Injury Liability (Lai, Chapman & Steinbock, 10). As impressive as this list appears, many of them exclude VEERS. They further exclude intentional torts (assault, illegal search of person or property, invasion of privacy, child abuse, sexual misconduct and discrimination [race, color, national origin, sex, age,

political affiliation, and disability]), (Lai, Chapman, & Steinbock, 11; Nonprofit Risk Management & Insurance Institute [NRM&II] 1991, 2, 3). Here, the NRM&II adds that some standard CGL policies may pay for the legal defense of these allegations, but none will cover the cost of the harm these create. In summary, the standard CGL policy with its exclusions should be customized to the needs of the sponsoring agency. Most importantly, in any CGL policy, "VEERS" should be included among its "insureds" or in its endorsements. The Additional Insureds-Volunteers is a blanket endorsement added to the agency's CGL policy which provides coverage to both the agency and the VEER if he/she is sued for injury or damaging property during the course of assigned tasks (Lai, Chapman & Steinbock, 17). If this arrangement does not meet the agency's needs, some insurance carriers offer a Special Multi-Peril policy (SMP) which like the CGL policy, groups a number of broad coverages into a single customized package, i.e. property, liability, crime, equipment floaters, aircraft and watercraft liability (Van der Smissen 1990, Vol. 2, 66-67). Two advantages of a CGL policy are: (1) lower cost coverage and (2) coordinated joint defenses where the sponsoring agency and VEER are codefendants (Community Risk Management & Insurance [CRM&I] Newsletter, September 1993). A major disadvantage is the sharing of coverage whereby if the agency has \$1,000,000 coverage and is held jointly liable with its VEER for a judgment of \$1,500,000 (\$750,000 each), the \$1,000,000 coverage would fall short, thus providing partial coverage (CRM&I, September, 1993).

II. A Separate "Excess" VEER Policy

is the most common approach to protecting only the VEER. "Excess" means that it is secondary, and if the VEER is sued, this would cover costs above and beyond any other policy the sponsoring agency or VEER may have (CRM&I September, 1993). Typically included are: accident insurance, personal liability, insurance, and excess automobile insurance.

Accident Insurance, sometimes referred to as Accident and Injury (A&I) coverage, among which has added dental and vision care, is one of the usual ways to pay for **bodily injuries**. (Lally 1993, 8). Lai, Chapman & Steinbock warn

that an "injury" must be "sudden, unexpected and unforeseeable" (231), and Karnezis elaborates as a slip, fall or mishap" (1980, 1324). An Accidental Death and Dismemberment (AD&D) benefit might be added to the existing A&I policy or purchased separately. In its 1994 brochure, the Volunteer Insurance Service Association, Inc. (VIS)* offers a \$25,000 accident insurance limit to reimburse the cost of medical treatment, hospitalization, and licensed nursing care required as a result of an accident. Here, specific coverage limits are spelled-out in the policy, i.e. \$2,500 for loss of life or loss of both hands, feet, or eyes; \$1,250 for loss of either hand foot or eye (VIS). There is little variability of coverage limits among the insurance carriers specializing in sports activities, and almost all include participants and officials while playing, practicing, and traveling during the insured sponsoring agency's activity, but exclude coverage of claims arising from any personal travel to and from practice sessions or games.(NSU)** A&I policies, unlike personal liability policies, pay claims regardless of fault or the insured agency's legal liability of the VEER's injury (Lally, 8).

A Personal Liability Policy offers protection (\$1 million/occurrence) for a personal injury of property damage liability claim arising from the performance of the VEER's duties. It is important to understand how the policy defines "personal injury." Does it include: violation of copyright, titles, slogans, misuse of advertising, defamation, slander, child abuse, sexual misconduct? Rarely, if at all, would such a policy pay for harm arising from intentional acts but legal defenses against such claims may be covered (NRMI&I, Answers to VEER's Liability and Insurance Questions, 1991, 6-7). For example, VIS would not defend or indemnify the VEER who admitted the wrong doing or whose allegations proved true. Other exclusions common to personal liability policies are bodily injuries arising from errors of omission associated with the VEER's professional services, (physician, nurse, athletic trainer, coach, umpire, etc.), any person associated with work release or court orders sentencing some offenders to either community VEER services (parks, playgrounds, cleanup/maintenance) or direct

service to the victims (the sponsoring agency); Association Insurance Management (AIM) offers a separate policy for such coverage, but sports clubs are not eligible in this policy.*** Tremper and Ryupkema strongly urge organizations to clearly identify in their policies the status of those protected lest there be denial of future claims (1994, 4). A review of rates indicates that the cost of personal liability insurance is relatively low (from \$.50-\$1.00/VEER on an annual policy renewal and there may be a minimum policy premium of \$45.00 or more, thus more economical for agencies insuring large numbers of VEERS).

Motor Vehicles - Most states' statutes hold the owner of a motor vehicle liable for damages arising from accidents (Tremper and Kahn 20), and an increasing number of legislatures are revoking their "Guest Host" statutes which offer some protection to the owner. Basically, insurance for VEER drivers are in one of the following categories: (a) VEERS driving agency owned vehicles or (b) VEERS driving their own autos (CRM&I January, 1994). In the former category, the agency would have to secure coverage for bodily injury, property damage, and uninsured motorist liability through its Commercial Automobile Policy (Lai, Chapman & Steinbock, 37-39). However, since VEERS are usually excluded here, they would have to be added in attached endorsements. In the latter category, the VEER driving his/her own vehicle is most vulnerable and the sponsoring agency should purchase Volunteers' and Employees' Excess Auto Liability Insurance, also known as Social Service Excess Auto Coverage (Lai, Chapman, & Steinbock, 37). This policy extends the organization's coverage to the VEER's for damage caused by VEERS operating their own vehicles while performing assigned tasks (Lai, Chapman & Steinbock, 19). Since this is "excess" coverage of the VEER's own auto policy, the agency's policy would only cover damages to VEER's vehicle. For this, the VEER has no auto insurance, the agency's excess auto liability would cover in excess of the statutory limits (Lai, Chapman & Steinbock, 40). The premiums are generally calculated on the basis of territorial ratings where the vehicles are garaged

* VIS is a member of Association Insurance Management, Inc.

** NSU National Sports Underwriters, Ltd. dba NSU Sports Insurance Agency.

*** AIM, Volunteer Insurance Services, 1994 brochure, Court Referred Alternative Sentencing Volunteers Insurance Program.

and higher amounts of coverage do not result in proportionally corresponding higher premiums, i.e. if \$50,000 coverage costs \$1,420 (Lai, Chapman & Steinbock, 45). Hired Auto Liability Insurance coverage beyond the agency's CGL policy, should be purchased if the agency either rents, hires or borrows motor vehicles with short-term agreements. Like the motor vehicle protection above, this insurance pays for the damage caused by the agency's VEER drivers, and again, does not pay for the damage to the rental vehicle. No motor vehicles are identified specifically in this policy and coverage is in excess of the amount determined by the rental company or vehicle owner. Lai, Chapman & Steinbock further suggest that since most rental companies carry only the minimum coverage dictated by law, hired auto liability insurance is important protection (40). For an extra charge/day, the sponsoring agent may purchase a collision damage waiver (CDW) coverage, which removes the collision deductible charges should the rental care be damaged. The cost effectiveness of CDWs would depend on the frequency and extent of time the sponsoring agency would use rental/hire service. For continuous hirings, an agency might establish a special waiver agreement with one rental company whereby a limit lower than standard collision liability is set in exchange for a financial guarantee, i.e. an open credit card charge (Lai, Chapman & Steinbock, 41). A sponsoring agency which both owns and rents vehicles might consider adding a rental endorsement to its commercial auto policy to purchase comprehensive collision coverage for an extra premium.

III. VEER's Own Insurance Policies

Vulnerable VEERs such as educators, coaches, game officials, nurses, and physicians may get additional liability protection from their own professional organization policy. Invariably, these policies exclude volunteer service, but endorsements may be added to extend the insured's protection to VEER service. VEER game officials should make sure their policy covers all games such as sandlot, baseball, church league, beer league, etc. because independent games may not be covered (Goldberger 1984, 27). Physicians would include sports VEER service in their malpractice endorsement (Lubell 1987).

VEER protection from homeowner's or renter's insurance should never be presumed, because they usually exclude any liability coverage for child abuse (CRM&I September 1993, 9). All of the above VEERs should have careful review of their policies with their brokers to make sure they are covered. "Umbrella" policies of the VEER's existing automobile and personal liability coverages are other sources of their protection. Sponsoring agencies should discuss with the potential VEER all insurance ramifications of service and a good time to do this is in the screening and training stages of their relationship where specific tasks and responsibilities are spelled-out. Again, the VEER's own insurance policy is considered primary where the sponsoring agency has "excess" coverage which only pays for costs beyond the limits of the VEER's policy.

IV. Occurrence vs. Claims Made Policies

Occurrence policies more broadly cover the policy holder against a claim arising out of an incident occurring during the policy period. Claims made policies cover claims made only during the **time** the policy was in effect **and** while still insured with the carrier (Goldberger, 28). Therefore, if a former policy holder is sued any time **after** the policy expired, with no renewal, he/she would not be covered. This can be prevented by adding a "tail" to the policy agreement which would extend coverage to a limited time beyond the end of the policy in the event there is no renewal (Goldberger, 28). This "tail", referred to by many carriers as Extended Coverage, or Extended Reporting Period, or Extended Reporting Endorsement may be limited by state statutes, from 1-5 years (Lai, Chapman & Steinbock, 94). There are additional restrictions concerning "tail" coverage which should be discussed with the insurance broker before making a purchase. If an agency is planning not to renew its current policy and does not have "tail" coverage, it might be able to purchase Prior Acts Coverage (PAC) from the new carrier to cover claims made from incidents occurring during the previous policy period of its prior carrier. The usual period of retroactivity is 1-2 years, and some malpractice policies are 5 years (Lai, Chapman & Steinbock, 57&58). Since PAC

will not pay for any incident which the agency was **aware of** prior to the date of change, it is very important to report all **known** incidents and possible claims (Lai, Chapman & Steinbock, 23). The trend among carriers is to routinely issue only claims made policies, especially where there might be higher claim amounts, and most only issue occurrence policies where claims are consistently low (Lai, Chapman & Steinbock, 20).

V. Workers' Compensation (WC)

A review of the insurance industry's practices indicates that VEERs injured during service are less likely to be covered through WC unless they are legally treated as EES. For example, student teachers performing duties required for their education degrees, and students on athletic scholarships have been held in some states as university EES (Seidman & Tremper 1994, 16). In states where there is a choice between paying WC premiums and purchasing private insurance, the sponsoring agency will have to weigh the benefits derived from each against the cost of their premiums. As a rule, WC premiums are higher than those of accident injury (Lai, Chapman & Steinbock, 119). If an injured VEER can prove negligence on the part of the sponsoring organization, he/she might seek a claim through the organization, he/she might seek a claim through the organization's Employers' Liability section of its WC policy (Lai, Chapman & Steinbock, 111).

VI. Purchasing VEERS Insurance

Some government agencies, large organizations both nonprofit and private, may be fortunate enough to have a staff risk manager to tackle their liability needs. This arrangement relegates these responsibilities to a specialist, thus freeing others in the agency from the ponders of purchasing insurance. Sponsoring agencies are advised to purchase their insurance from carriers who specialize in VEER and sports endorsements. Here, rates are calibrated based on researched knowledge of the inherent risks of each activity. "Packaged" insurance, which is usually the agency's CGL policy with specific added endorsements, in most instances is more economical. Almost all liability policies run on an annual reevaluation/renewal basis. When this purchase arrangement is either unaffordable or unavailable, some agencies, most of which are

either government/public and nonprofit, turn to a Risk Sharing Mechanism (RSM) or "pooling." Some RSMs are outgrowths of either federal or state laws, and are controlled by the state insurance commissioner (Lai, Chapman & Steinbock 206-208). Here, pool/groups with common goals, philosophy, sharing attitudes, standards and claims, turn to a single carrier which specializes in their needs (Bianchi & Salk). Probable coverage exclusions are: outsiders (non-participants in agency's program), spectators, and claims made from unsponsored activities on the agency's premises (Bianchi & Salk).

Agencies whose VEERS serve the physically challenged might be able to get coverage through a "rider" on their existing policies. However, if a large portion of an agency's services is oriented to this population with developmental disabilities, then it should consult with carriers specializing in the uniqueness of this coverage.

The key words describing the approach to purchasing VEER insurance are: **honesty and negotiate** (Lally, Rasenna Consulting, Inc.). Lai, Chapman & Steinbock suggest that it is better to purchase insurance from a broker rather than an agent because brokers are able to make contract with many more companies, whereas agents can only offer choices within their limited agency appointments (196). The following is a summary of ten suggestions listed in the January Nonprofit Risk Management Center Newsletter (1995):

1. **Give the carrier a reason to write the account.** Show risk prevention measures in: (a) recruiting-give accurate job descriptions, (b) screening-potential transporters should be checked for moving violations and where children are involved VEERS checked for criminal records, (c) training, (d) evaluation on a regular basis, (e) supervision, (f) suspension practices-automatic when a VEER is accused of misconduct, and (g) violence management-crowd control for special events.
2. **Price shop and compare existing policy costs with others,** especially "package" coverages and don't hesitate to quote other offers.
3. **Apply early enough to allow the potential**

carrier enough time to evaluate your application.

4. **Complete the application** by supplying all the required information before submitting it.
5. **Attach photocopies of supporting information to application**, in order to document: (a) certifications held by VEERS i.e. Lifeguard Training, CPR, First Aid, Coaches, Game Officials, Nurses, etc., (b) awards and honors your agency and/or VEERS received, and (c) references from leased vehicle companies if you lease these in your program. Besides attachment to the application, list these documents in your cover letter for first and fast exposure.
6. **Provide accurate and honest information** in you claims history, and emphasize any favorable claims trends.
7. **Anticipate questions and have honest answers.**
8. **Promptly respond to any requests for further information.** This sends a message of willingness and cooperation to the carrier.
9. **Negotiate quotation terms with respect.** If you do not accept the potential carrier's quotation, question the reasonableness of its guidelines, and suggest that such a quotation may be either an honest mistake on their part or a misunderstanding of the risks.
10. **Offer alternatives of you reach an impasse in negotiating.** Inquire what you can do to lower the quoted premium, i.e. contract a higher deductible or perhaps follow an approved risk management plan. Hertz Rental Car has a Rejection List of 17 items which it uses as a criterion for its rentals (CRM&I January 1994, 10).

While most liability statutes originate at the state level where efforts have been made to protect VEERS, only some protect sports-related VEERS and most apply only to nonprofit agencies (NRM&I, State Liability Laws for Charitable Organizations and Volunteers with Supplement 1993). The Common Sense Tort Reform bill, currently being considered in Congress is expected to generate a renewal effort among states' legislatures to focus on VEER protection (CRM&I January 1995, 13).

Surely insurance does not reduce the chances of being sued and should not be substituted for a well-planned, well-staffed, safety oriented sports program which relies on VEER services. However, it does provide financial security to those who demonstrate concern not only for their program participants, but also for those VEERS dedicated to the need of others, keeping American tradition of philanthropy alive.

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