

VIS® CONNECTIONS

© 2009, Volunteers Insurance Service

March 2009

We are happy to provide you our publication for nonprofit risk managers, as part of our service to you. The titles in the contents section link directly to their articles, so you can navigate quickly. If you need to change the email address to which this is sent, please send your instructions to our [Communication Department](#). Be sure to include your name, organization and address. You also are welcome to call us at 800.468.4200 for assistance.

In this issue...

[**Volunteer insurance program enhancement for 2009-2010**](#)

[**Volunteer – rhymes with “peer”**](#)

[**Auditing the auditors**](#)

[**The Princeton case – an education for nonprofits**](#)

[**Supreme Court clarifies how to resolve beneficiary disputes**](#)

[**Claims – Timely reporting is a must**](#)

Volunteer insurance program enhancement for 2009-2010

Increased limits at the same cost – that is what we are happy to offer our Volunteers Insurance Service (VIS®) members for the July 1, 2009 renewal! Effective July 1, the limit for the accident medical reimbursement coverage will rise from the current \$25,000 to \$50,000, with no increase in premium. We are very glad to be able to increase this benefit for you, and to be able to keep all rates the same. (NOTE: The limit remains at \$25,000 for participants in our court-referred alternative sentencing program and our work-release program.)

We know that the economy is hard on everyone right now, and we appreciate the fact that you recognize the value of the VIS® program as a practical and inexpensive way to protect your volunteers -- and attract new ones -- while at the same time protecting the organization's own limits of liability and claims experience. It's sound risk management for the long-term interest of the organization.

By now you should have received your invoice for your July 1, 2009 to July 1, 2010 volunteer insurance coverage. If you have not, please contact either Vicki Brooks or Joan Wankmiller (contact information below), so we can send another copy. We also would be happy to answer any questions you have about the renewal.

Here's an overview of the Volunteers Insurance Service (VIS®) program for 2009-2010...

To keep the same coverage as the invoice shows, please send us your payment, and a copy of the invoice, in the enclosed envelope. Your coverage will be renewed from July 1 this year to July 1, 2010. Your cancelled check will be your evidence of coverage until we email your renewal certificate.

Important – Please include your email address in the space provided near the middle of the invoice. We need it to send your renewal certificate, and also to notify you each time we publish a new issue of *VIS Connections* (three times a year).

Rates – As noted above, there will be no rate increase for the 2009-2010 policy period. We have not had a rate increase since 2006.

Reminder...beneficiary forms – Please remember that you should keep on file a beneficiary form for each volunteer. In the tragic event that a volunteer should die in a covered accident, the insurance company will require the beneficiary form. If there is none, the insurance company will require that the volunteer's next of kin complete and have notarized an affidavit that the company will provide – a cumbersome task that can be avoided if the beneficiary form is available instead. (See related story in this issue, **Supreme Court resolves how to clarify beneficiary disputes.**)

If you wish to add coverage – Sometimes, VIS® members who do not carry all three available coverages (accident, volunteer liability, and excess automobile liability) wish to add coverage. It is easy to do, and the renewal is a good time to do it. Instead of sending us payment now, just email us your client code (shown on the invoice), the type of coverage to add, and the number of volunteers. We will issue a revised invoice. Or, just call Vicki Brooks or Joan Wankmiller, and we can handle it on the phone.

Resources on our Website – There are downloadable volunteer brochures, copies of all our policies, “proof of loss” forms, and other resources, at www.cimaworld.com. Click on “Volunteer Insurance Gateway.” You will go to a page where you will see a link to “Forms.”

As always, we greatly appreciate your participation in our unique program, and always are happy to hear from you, any time we can be of help. Just email any of us, or call us at 800.468.4200.

Your service team:

Victoria Brooks, Account Executive, ybrooks@cimaworld.com, 703.778.7301

Joan Wankmiller, Account Executive, jwankmiller@cimaworld.com, 703.778.7306

Volunteer – rhymes with “peer”

In a recent issue of Energize, Inc.'s *Volunteer Management Update* newsletter, Energize President Susan Ellis describes several situations in which volunteer activities have been

hampered because a nonprofit organization's staff did not recognize the value of the volunteers' assistance, or their potential to learn and become more valuable to the organization's mission, or perhaps were too territorial about the work to be done.

From a risk management point of view, these attitudes can be extremely harmful for the organization that depends on volunteers who are fully engaged and motivated.

The article suggests that you ask yourself how many of the following questions you can answer "yes" to, and work on any areas where "yes" isn't yet the right answer:

- We ask "what roles can volunteers fill in this activity?" every time we plan a new project or service.
- Volunteers are assigned to work with department heads and other managers, as well as to lower-level employees.
- We recruit consultants and various experts to give their services *pro bono* when we need to tap special skills – especially skills not already offered by anyone on staff.
- Volunteers serve on planning and assessment committees, alongside employees.
- We regularly turn to volunteers for new ideas, feedback and input.
- We value time donors as much as money donors.

"These are only a few measures of true willingness to find the full range of resources to help meet your organization's mission and serve the people in the best ways," Ms. Ellis says. View volunteers "as *integral* to service delivery, not just as nice helpers."

Resources

Energize, Inc. (www.energizeinc.com) is an international training, consulting and publishing firm, specializing in volunteerism.

Getting Volunteers Started – the Right Way is a two-page guide from VIS® that includes a checklist for volunteer orientation, tips for screening and training, and a list of additional helpful resources. If you would like a copy, please email our [Communication Department](#) and we will send it to you by return email.

Auditing the auditors

One of the many lessons to be drawn from the Bernard Madoff investment-scam catastrophe is that any organization engaging an investment advisor – or a plan administrator for its retirement plan -- first should "drill down" to examine who is certifying the performance of that advisor or administrator. In other words, audit the auditor.

Madoff's firm was "audited" by a little-known firm that was not credentialed by the American Institute of Certified Public Accountants (AICPA) to conduct audits. (What's more, a partner in that firm was related to Madoff.)

AICPA has a "public peer review file," which you can [view here](#). As part of your due diligence in selecting a vendor that will have a role in your organization's and employee's investments, it's a good idea to touch this base.

Remember, IRS regulations that became effective January 1 render many past practices of plan administration unacceptable. For plans that do not comply with the new regulations, there could be severe consequences for the organizations themselves, plan fiduciaries, and the employees who participate.

Nonprofit organizations sponsoring 403(b) plans -- and the individuals involved in the selection of plan administrators and investment options and the monitoring of plan performance -- have a fiduciary responsibility to comply with the regulations. Failure to comply can mean loss of the plan's qualified status, loss of tax-favored treatment on individual employees' investment earnings, and personal liability for plan fiduciaries who failed to make the "prudent" decisions federal law and its implementing regulations require.

The Fall 2007 issue of *The CIMA Letter* includes details of the 403(b) requirements, and offers guidance for compliance. To view that issue, just go to www.cimaworld.com and click on "Periodicals."

Other resources

IRS information on the new 403(b) regulations --
<http://www.irs.gov/retirement/article/0,,id=172430,00.html>

The Nonprofit Risk Management Center (www.nonprofitrisk.org) has a variety of resources that can provide guidance to your board on fiduciary matters, including a new publication, *Financial Risk Management: A Guide For Nonprofit Executives*.

A few other sources that might be helpful:

www.boardsource.org

www.energizeinc.com

www.charitychannel.com

www.nonprofitissues.com

www.idealists.org

The Princeton case – an education for nonprofits

Many nonprofits enjoy substantial donations from individuals or families who wish to use their philanthropy, through the nonprofit, in specific ways. When the donor and the organization are in total agreement on the actual application of the funds, both are happy and fulfilled. But when that is not the case, acrimony and expensive litigation can ensue, as a long-running dispute at Princeton University, recently settled, illustrates.

The case involved allegations that the university has diverted and otherwise misused funds from a foundation established years ago by Princeton and the late Charles and Marie Robertson, of the A&P supermarket fortune. The purpose of the Robertson endowment – originally \$35 million, which swelled to more than \$650 million – was to educate Princeton graduate students for careers in government service, particularly foreign relations. The Robertson heirs filed suit in 2002 to gain control of the money, charging that the funds had been subsumed in the university's overall endowment strategy, and used for purposes that violated the original donors' wishes.

The two sides have argued at length, and expensively, over the meaning of the terms in the original certificate of incorporation and bylaws of the foundation, and the latitude Princeton should have in using the funds. Under the terms of the settlement, as reported in the *Wall Street Journal*, the university must pay \$50 million from its endowment, to a new foundation established by the Robertson family that will be dedicated to the original purpose of the Princeton endowment. (Princeton has maintained that it never deviated from that purpose.) The university also agreed to reimburse the Robertsons' \$40 million in legal fees.

Stay on the same page

It has been an expensive lesson for Princeton (Yale and the University of Southern California have been through similar legal tussles.) Although the amount of money involved might be less for your organization and its donors in actual dollars, it could be proportionately the same. From a risk management point of view, it is very important that agreements with donors be written in very specific terms, and the meaning of those terms agreed upon by all parties, before the documents are signed. Consider using examples to illustrate how the funds can and cannot be used, and the discretion the organization (or the foundation board, if a foundation is established) can have in the actual allocation decisions. There are "donor-advised" funds, "donor-designated" funds, and other configurations. This is an area where legal assistance, from an attorney qualified in nonprofit law, is a must.

Supreme Court clarifies how to resolve beneficiary disputes

A recent Supreme Court decision has resolved an issue that sometimes arises in retirement plans and had divided federal appeals courts – What to do when a retirement plan document and another document, such as a divorce decree, are in conflict regarding a beneficiary designation.

In *Kennedy v. Plan Administrators for DuPont Savings and Investment Plan*, the high court ruled unanimously that the plan document always controls.

In *Kennedy*, a plan participant had divorced, and as part of the divorce agreement, the spouse gave up any right to his retirement benefits. However, the participant neglected to change his beneficiary under the plan, and he died with his ex-wife still designated as beneficiary. When the plan administrator awarded the benefits to the ex-wife, the participant's heirs sued on behalf of his estate, claiming that because the ex-wife had waived her rights, the plan document could be ignored.

The justices disagreed, pointing out that the plan document had a specific procedure for changing beneficiary, and the participant had plenty of time to make the change, between the divorce and his death. Although in this instance the plan administrators knew of the divorce decree and its terms, the justices noted, it is not fair to expect administrators always to know of documents that might be in conflict with the plan document.

Although the Supreme Court ruling clarifies and limits the responsibility of plan administrators, it also illustrates how employees' wishes can be thwarted by their own negligence, reducing or negating an intended benefit. Commenting on the case in a recent newsletter, the law firm Mintz Levin (www.mintzlevin.com) noted that plan sponsors can change plan documents to provide that a divorce automatically revokes a beneficiary designation. If you are a plan sponsor, you also might review your employee communication materials, to make sure that employees know that significant life events such as a marriage, divorce or birth of a child should trigger a review of their beneficiary designations.

Claims – Timely reporting is a must

Please remember that when you buy an insurance policy, the agreement with the insurer is that you will let the insurer know whenever you are aware of a situation that *might give rise to a claim*. Time -- and timely notification -- is critical, if the insurer is to keep its own part of the agreement...to make you whole for any covered loss you might have. Often, particularly with liability claims where a legal defense is required, the insurer needs to begin gathering information right away.

For example, employee-practices claims – a frequent type of directors and officers liability claim -- often are slow to develop, beginning with a complaint and concluding with a court or agency proceeding many months later. If the insurer is not put on notice until the later stages, an effective legal defense might be impossible, and the carrier might exercise its right to deny the claim on the basis that the policyholder did not provide timely notification. State laws vary, but in general they support the insurers in their denial of such claims.

Sometimes, an organization refers a potential claim to its own attorney for direction, without involving the insurance company. *This is always a mistake*. Insurers sometimes allow

policyholders to choose their own attorney, subject to the insurer's approval, but that is always the insurer's call.

Do not wait to see if a problem will "blow over." As soon as you are aware of circumstances that might give rise to a claim, please review your policy language regarding covered claims, and your reporting responsibility. For the policies we have placed on your behalf, at your request we will assist you in dealing with the insurance company in an effort to assure that the claim is properly evaluated and you are treated fairly.

For volunteer claims – the organization does it, not the volunteer

Sometimes, volunteers contact us directly when they have claims. Please be sure your volunteers know that it is the organization's responsibility – not the volunteer's – to report claims.

For complete information on how to file a claim, and the downloadable claim forms themselves, please go to <http://www.cimaworld.com/htdocs/app.htm/volclaim.cfm>.

VIS Commitment

Volunteers Insurance Service is committed to providing its members a complete resource for the nonprofit organization's risk management needs. Our services include:

- Publishing *VIS Connections* as one of our information resources for members;
- Maintaining for members' use a library of information relating to management of risks in the nonprofit organization;
- Researching available and appropriate insurance relating to volunteer activities;
- Designing and administering insurance programs, and compiling underwriting information;
- Providing consultation on risk management issues at no charge to our members, via a toll-free line (800.468.4200);
- Assisting members, on request, with matters relating to insurance.

Customer Insurance Service Commitment

The *Insurance Service* offered by CIMA to its customers is the carrying out of customer orders for the placement of insurance, responding to customer's questions about such insurance, and assisting customers with their claims.

When a customer requests CIMA's help with a claim, CIMA will assist the customer in dealing with the insurance company in an effort to assure that the claim is properly evaluated and the customer is treated fairly. It is the customer's responsibility to notify the insurance company, in accordance with the policy's notice requirements, about any claims, or incidents that might give rise to a claim in the future.

In order for CIMA to fulfill this commitment, the customer must provide CIMA with timely and accurate information regarding the requested insurance, notify CIMA promptly when assistance is needed with a claim, and pay premiums when due. CIMA's commitment will end if the customer is no longer purchasing insurance from CIMA. CIMA cannot guarantee the continued solvency or claims paying ability of any insurance company.

For providing the *Insurance Service* described above, CIMA receives commissions from insurance companies based on insurance premiums paid by the customer. CIMA also may receive incentives, bonuses, overrides or other forms of remuneration from insurance companies that are based on a number of contingencies, including volume and profitability of business CIMA places with those companies, and may earn investment income on premiums. The customer pays no separate fee to CIMA.

CIMA is a full-service consulting and risk management firm and has the ability to provide a much broader range of services than described above. These additional consulting and risk management services involve the greater use of CIMA resources and are available upon specific request of the customer. The services which the customer will receive from CIMA will be limited to the Insurance Service described above, unless the customer has received a separate written Client Service Commitment or Agreement from CIMA for additional services.

If you feel that you have the need for additional services, or would like to know more about our services, please contact your CIMA representative.

CIMA licensing information

The following licensing information is being provided in order to comply with state governmental regulations:

Volunteers Insurance Service Association, Inc. is a risk purchasing group formed and operating pursuant to the Liability Risk Retention Act of 1986 (15 USC 3901 et seq.)

Notice to Texas clients: The insurer for the purchasing group may not be subject to all the insurance laws and regulations of your state. The insurance insolvency guaranty fund may not be available to the purchasing group.

Notice to California clients: License #0B01377 and #0A06046, CIMA Companies Insurance Services

Notice to Minnesota clients: License #009285 and #07544084, The CIMA Companies, Inc.

CIMA, one of its subsidiary companies and/or an authorized individual is licensed in all jurisdictions. Please contact CIMA at 800.468.4200 if you would like information about our licenses.