

VIS[®] CONNECTIONS

© 2013, Volunteers Insurance Service

Winter 2013

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. If you need to change the email address to which this is sent, please [contact us](#). Be sure to include your name, organization and address. You also are welcome to call us at 800.222.8920 for assistance.

In this issue...

[Even for the smallest nonprofits, there are suits that fit](#)

[New benefit for VIS members – discounts on products and services](#)

[The risk of being misunderstood](#)

[Volunteers lost, or gained? Two ways of seeing the same thing](#)

[Crossing the line -- Board chairman's involvement in operations](#)

[leads to payroll tax liability](#)

[Introducing...the VIS Twins!](#)

[VIS[®] Commitment](#)

Even for the smallest nonprofits, there are suits that fit

Sometimes, small nonprofit organizations mistakenly believe they are immune from suits alleging discrimination, because federal laws enforced by the Equal Employment Opportunity Commission (EEOC) apply only to organizations with 15 or more employees. But employees, volunteers and third parties can and do successfully sue smaller nonprofits. Even organizations run entirely by volunteers are vulnerable.

Every state has civil rights statutes modeled after federal laws such as the Civil Rights Acts of 1964 and 1991, the Americans With Disabilities Act, Age Discrimination in Employment Act, and Family and Medical Leave Act. Each state also has its own counterpart of the EEOC. Plaintiffs' attorneys find causes of action under these state laws, and sue nonprofit organizations and their boards of directors for discrimination based on age, sex or other factors.

According to Christopher Ziemba, managing claims attorney with Monitor Liability Managers, a managing general underwriter of nonprofit directors and officers liability insurance, plaintiffs often will request a "right to sue" letter from the state administrative agency the same day they file their charge of discrimination. Obtaining that letter satisfies the requirement that the plaintiff exhaust "administrative remedies" before filing a lawsuit. Once a plaintiff receives a right to sue letter, they, or their attorney, can file a lawsuit in state court. "A plaintiff is much more likely to survive a motion to dismiss or a motion for summary judgment in state court" than in federal district court, he adds, "Which means the nonprofit organization often must defend itself at trial with an unpredictable jury pool and after incurring tens and sometimes hundreds of thousands of dollars in defense fees and costs, and with no certainty as to the outcome, which is left to the jury."

Where state anti-discrimination statutes do not apply, tort law often provides the basis for suits against even the smallest nonprofits. Wrongful termination, defamation, and retaliation are among the most frequent charges. State laws governing working conditions such as rest breaks also have been the basis for suits.

Even if a lawsuit is without merit, the organization must defend itself. If the case goes through trial, legal expenses easily can amount to \$100,000 to \$150,000, and often more, and of course a jury sympathetic to a plaintiff is likely to recommend an award several times the amount of the legal expenses themselves. This is why all nonprofit organizations should have directors and officers liability insurance. (A description of the coverage available through CIMA is at <http://www.cimaworld.com/nonprofits/nonprofit-directors-officers-coverage/>.)

Here are a few examples of lawsuits against very small nonprofits:

- A mother whose children were taken from her home and placed in foster care sued a nonprofit whose mission is special advocacy for children. The suit alleged that the organization and its volunteer case worker conspired to provide false testimony to a juvenile court, and that the conspiracy was based on racial and religious discrimination against the mother. The matter was resolved in favor of the nonprofit, but only after legal expenses exceeding \$100,000.
- A volunteer case worker sued the nonprofit she worked for, claiming she had been given reprimands that were based on her age and race, that cases had been taken from her based on her age and race, and that she was not given the assistance she needed to do her work. She claimed severe emotional distress. The case was settled with a \$10,000 payment to the plaintiff. Legal defense costs exceeded \$50,000.
- The co-founder and former president of a nonprofit sued the organization, claiming that board members had engaged in a smear campaign against her, in retaliation for her disclosing improper acts by the executive director during a fundraising campaign. The suit alleged that her reputation had been damaged, affecting her ability to perform her full-time job as an employee of the local school district, and that opportunities to serve on other nonprofit boards were foreclosed for her. The suit was settled for a small amount, but legal defense costs exceeded \$50,000.

It is extremely important that you notify your insurance company at the first indication of a problem that might result in a lawsuit against the organization. The insurance contract requires “timely” notification, so the insurer can investigate and respond appropriately, and you could jeopardize your coverage if you do not comply with this requirement. Do not let your attorney decide whether to notify the insurer, and do not wait to see if the problem will “blow over.” Your account executive would be happy to answer any questions.

New benefit for VIS members – discounts on products and services

Volunteers Insurance Service Association is happy to announce that we now offer our members discounts from several top providers of products and services that might be useful, or even essential, to your operations. They include publications on nonprofit management; programs for scheduling and tracking volunteer activity; background checks; consulting; executive coaching; interim staffing; and training on a variety of nonprofit management topics, fundraising, social media and more.

To see what is available to you as a benefit of participation in VIS, please go to <http://www.cimaworld.com/nonprofits/vis-member-discounts/>. Instructions for identifying yourself as a VIS member are provided. If you have any questions or need help with taking advantage of the discounts, please contact VIS Executive Director [William Henry](#) by email or at 800.222.8920.

The risk of being misunderstood

“Please don’t let me be misunderstood,” sang the Animals in the Sixties. Half a century later, being misunderstood is a risk even for the most effective charities, if they are not also effective at explaining to the public how donations are being used to accomplish the organization’s mission. Failure to get that message across can make them indistinguishable, in the eyes of supporters and would-be supporters, from any other “soul whose intentions are good.”

In a recent blog post, Nell Edgington, president of Social Velocity, a consulting firm for nonprofits (www.socialvelocity.net), noted several trends for the nonprofit community in 2013. “The biggest trend I see is a growing demand for nonprofits to 1) articulate what results they hope their work will achieve and 2) track whether those results are actually happening,” she wrote. “Nonprofits have long discussed the outputs of their work: # of people served, # of services provided. But the sector is increasingly being asked to articulate and track the outcomes they are achieving. How are people’s lives changing because of the work a nonprofit does? Social change has become an increasing demand of funders and other supporters.”

The need for nonprofits to describe outcomes, not just outputs, also is described in *Practicing Professional Ethics in Economics and Public Policy*, by Elizabeth A.M. and Donald Searing, soon to be published by Springer: “Outputs are things like meals served, bottles of water distributed, etc., while outcomes are measured in terms of the well-being of victims. Outcomes might be the proportion of displaced persons whom the agency housed, fed and assisted medically, or the average length of time that people lived in shelters before finding permanent replacement housing.”

This is the information that nonprofits need to share with the public, through the Form 990, their Websites, social media, fundraising appeals, etc. in order to attract the support they need and deserve. And a lot of support is at stake: a study last year by GuideStar, “Money For Good II,” found that as much as \$15 billion contributed annually could be redirected to the highest-performing charitable organizations, if only those organizations did a better job telling their stories.

In *Practicing Professional Ethics*, the Searings add that achieving outcomes sometimes requires that the organization redirect its resources, citing the example of Feeding America. The organization (formerly Second Harvest) became concerned that its original model of collecting surplus, nonperishable food for the hungry was resulting in a high-carbohydrate, low-protein diet for many families. So it began using some of its resources to purchase fresh fruit, vegetables and meat on the open market.

It is very important from a risk management point of view that these kinds of changes be explained to supporters, to recalibrate expectations for the use of donations. If the organization sees the need to purchase fresh fruit and vegetables, or to expand its facilities, obtain new vehicles or equipment, hire more staff, etc. in order to fulfill its mission better, those changes need to be explained and justified. Otherwise, supporters might see in the annual report that overhead expenses are up, and simply assume that contributions are not being used as efficiently as in the past. Ms. Edgington writes, “The bane of the nonprofit sector is the meaningless and destructive public perception that you can separate nonprofit programs from the administrative costs (staff, technology, systems, materials, fundraising) to make those programs happen.” But unless the administrative costs are explained to supporters and would-be supporters, misunderstandings are likely to happen. Some very large, well-known nonprofits have fallen into this trap.

Not only do supporters express interest in transparency and outcomes, so does Congress. The Senate Finance Committee is considering staff proposals to require more information, in the Form 990, on program performance.

Resources

The Winter and Spring 2012 issues of *VIS Connections* include articles on “What donors want to know” and “More on what donors want.” The index page with links to those issues is at www.cimaworld.com/vis-connections/index.

Independent Sector report -- [Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations](#)

Charity Navigator's planned changes on evaluating charities based on results reporting -- <http://www.charitynavigator.org/index.cfm?bay=content.view&cpid=1507>

Volunteers lost, or gained? Two ways of seeing the same thing

The Minnesota Association For Volunteer Administration recently published "*Rural Volunteers: A Vital Force on Fertile Ground*," a study of volunteer service in the rural parts of the state in the context of changing demographics. Authors Elizabeth Ellis, Mary Quirk, Heather Thormodson and Katie Bull conducted a number of interviews with volunteer-based nonprofit organizations. Just as the famous drawing below can be seen either as a young woman or an old woman, the researchers found that volunteer managers in the state's lakeside communities had looked at one demographic shift and interpreted it in very different ways.



Some nonprofit organizations assumed that part-time residents in those communities would not be reliable, and therefore had not tried to engage them. But organizations that had reached out to those part-timers found them more than willing to get involved, for whatever time they were living there.

The researchers also found that no assumptions could be made about the availability of volunteers who were unemployed. Although some people in that situation spend all their free time looking for paid employment, others see volunteer work as a way to gain experience that can lead to paid employment.

According to the Corporation For National and Community Service, Minnesota traditionally has been among the leading states in the percentage of the population that volunteers. The "Rural Volunteers" study and others MAVA has conducted help identify key trends that affect nonprofit organizations' ability to provide needed services and recruit and retain volunteers, and make the case for adequate funding of the volunteerism infrastructure.

Among the findings:

- High gasoline prices are a threat to volunteering in rural areas.
- Many families with adults in their 30's and 40's are moving to small communities. They are good candidates for volunteering, but report a "wariness of newcomers."
- Those volunteers, and Baby Boomers, "are looking to have an impact and want to see clearly how their work will affect the mission of the organization." Those

volunteers often want short-term, flexible volunteering options, and MAVA conducts regular training for volunteer managers on how to develop such options.

- Recent immigrants often need services nonprofits can provide, but they also represent a potential new source of volunteers.

NOTE: The drawing of the young woman/old woman was published in 1915 in the American humor magazine *Puck*, by British cartoonist Ely William Hill. It is entitled “My Wife and Mother-In-Law.”

Crossing the line -- Board chairman’s involvement in operations leads to payroll tax liability

A federal district court has found a nonprofit’s board chairman personally liable for more than \$200,000 in unpaid payroll taxes, after he became directly involved in the financial operations of the organization. Although he received no pay for this work and did not supervise employees, he did sign checks both for payroll and for bills. He also had advanced the organization funds when he learned of an earlier nonpayment of taxes. During the time of his direct involvement, no payment was made to the IRS for current or back payroll taxes, and the IRS investigated.

Sherise Ritter, CPA, managing director and Nonprofit Services Group practice leader of Mercadien Group, Princeton, NJ, wrote about the case, *Logan v. U. S.*, in the Alliance For Nonprofit Management discussion group on LinkedIn. She also provided these “lessons learned,” for *VIS Connections*:

“The fact that the chairman had check-signing ability AND was in a position to make the decisions as to who did and did not get paid (most likely) tipped the scales against him. Many board members have signature authority as part of their internal controls (a second signer), but if the board stays at the appropriate governance level and out of day-to-day management decisions, the line remains bright when proving who makes the decisions.”

She recommends three processes for making sure board members stay within their proper governance role:

1. Have a robust board recruitment process, with an opportunity for the CEO or executive director to discuss board roles and responsibilities, well ahead of appointing board members.
2. Have a sound orientation process for the board, where new board members learn about the governance process of the organization, its programs and other key finance and compliance matters (to name a few fiduciary responsibilities), and
3. Ongoing board training

Logan v. U. S. was decided in the U. S. District Court for the Northern District of Ohio. More information is at <http://www.leagle.com/xmlResult.aspx?page=7&xmlDoc=In%20FDCO%2020120820C07.xml&docbase=CSLWAR3-2007-CURR&SizeDisp=7>

Introducing...the VIS Twins!

Many of you have known Vicki Brooks and Joan Wankmiller for years, although most of you never actually have seen them. By phone and email, Vicki and Joan provide service to the thousands of nonprofit organizations nationwide that protect their volunteers through our unique program, and our members often tell us they enjoy working with them and appreciate their attentiveness.

Unfortunately, as we've learned recently in the case of a high-profile college football player, you might *think* you know someone you've never met, but...So, in case you might wonder what

Vicki and Joan – the VIS Twins, as we call them – look like, WITH THEIR PERMISSION we present them to you here.



As you can see, they are very positive, active, always in close communication with each other, and for the purposes of all our great VIS members, totally interchangeable!

Whenever you need anything, [Vicki](#) and [Joan](#) always are happy to hear from you. You can reach them, or any of us, at 800.222.8920.

Others on your service team:

Aaron Jones, Account Executive, directors and officers liability insurance

Laurie S. Coleman, Senior Vice President

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 additional charge to our members, via a toll-free line (800.468.4200);
- Assisting members, on request, with matters relating to insurance.

Insurance and administrative services are provided to VIS® and its members by The CIMA Companies, Inc. and/or one of its affiliated companies.

VIS®'s Articles of Incorporation, Financial Information, and a list of the members of VIS®'s Board of Directors are available to VIS® Members upon request.

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.