



## LIABILITY EXPOSURES FOR VOLUNTEER DRIVERS

Liability for both your organization and your volunteers should be one of your biggest concerns with a volunteer driver program.

Commonly held **misconceptions**: 1) volunteer drivers are always covered by their own Personal Auto Policy (PAP) while using their personal vehicles in their volunteer duties; 2) the limits of liability they carry are “adequate” and provide protection to the drivers themselves as well as indirectly to the organization; and 3) if the organization includes volunteers as insureds under its Business Auto Policy (BAP), that will always protect all volunteers on an excess basis over their PAP limits.

### **Problem #1 – The coverage available under the volunteer’s personal auto policy (PAP) may be limited or nonexistent**

More and more, personal auto insurers are attempting to re-write or “endorse” (change) their policies to EXCLUDE various forms of ridesharing and ridesourcing (ridesourcing would include driving for “transportation network companies” such as Uber); rejecting applications where volunteer driving is indicated; charging “business” versus “personal” use rates; and issuing a host of other conflicting and confusing underwriting “decisions.” Additionally, insurers and agents alike are, at times, providing inaccurate information in response to their insureds’ coverage questions about their volunteer driving activities.

For decades, the personal auto policy (PAP) has contained a “livery” exclusion (i.e., excluding coverage when the insured carries a passenger for a fee.) With the increasing growth of various ridesharing and ridesourcing programs, peer-to-peer programs, and the like, the livery exclusion is getting very close scrutiny.

In the case of *State Farm v. Logisticare Solutions, LLC*<sup>i</sup>, the court ruled that the livery exclusion applied where the volunteer driver received payment for more than the reimbursement of expenses. While the specifics of the case were unusual, the ruling against the volunteer shows that courts will enforce the livery exclusion. It did not matter what the “intent” of the parties was. In response to the argument that this was a “share-the-expense” situation, the court noted that the exception in the exclusion “refers only to expenses” and “unambiguously does not apply where the insured receives more than reimbursement.”

A few states (e.g., Maine) have taken the initiative and passed statutes stating it is illegal for insurers to refuse coverage to an applicant “solely because the applicant is a volunteer driver.” The statute goes on to state “... ‘volunteer driver’ means a person who provides services, including transporting

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individuals or goods, without compensation above expenses to a nonprofit agency or charitable organization ...”<sup>ii</sup>

Suffice it to say that much confusion and misinformation exists in the insurance community, only clouding the issue of coverage for volunteer driving activities

### **Problem #2 – Inadequate limits of liability**

Anyone who owns a vehicle is required to purchase insurance that meets the state’s financial responsibility requirements. However, state financial responsibility requirements are woefully inadequate in today’s litigious environment.

Minimum limits range from a low of bodily injury liability limits of \$12,500 each person/\$25,000 each accident and property damage liability limits of \$7,500 in Ohio to a high of bodily injury liability limits of \$50,000 each person/\$100,000 each accident and property damage liability limits of \$25,000 in Arkansas and Maine. Of course, most states fall around the mean -- bodily injury limits of \$25,000 each person/\$50,000 each accident and property damage liability limits of \$10,000.

One accident involving significant damage to a third party’s vehicle or bodily injury to a passenger in the volunteer’s vehicle or the driver and/or passengers in the third party’s vehicle will quickly deplete the volunteer’s available limits and leave him or her *uninsured* for a good portion of the damages.

### **Problem #3 – Adding “Volunteers as Insured” under the organization’s Business Auto Policy provides only limited coverage.**

Many believe that when the organization adds “Social Service Agencies – Volunteers as Insured” (Insurance Services Office Endorsement CA-99-34-12-93) to its Business Auto Policy, volunteer drivers are then covered. They are – and they aren’t. If they are, the coverage is excess over any other valid and collectible insurance.

This endorsement states, in part: “Anyone volunteering services to you is an “insured” while using a covered “auto” you don’t own, hire or borrow **to transport your clients or other persons in activities necessary to your business.** (*emphasis added*)”<sup>iii</sup> So there is some coverage afforded **IF** the volunteer is transporting your clients or other persons at the time of the accident. Otherwise, no coverage is afforded.

### **What to do?**

Without reviewing every personal automobile insurance policy of every volunteer driver, it is impossible to determine whether coverage for your volunteers’ driving duties exists. As our surveys have found, one cannot rely on a verbal inquiry to an insurance company. Many insurers will refuse to answer “hypotheticals” and will revert to the canned answer of “it all depends on the specifics of the



claim.” Others provide inaccurate information – either ignorantly or intentionally. Further, sometimes volunteers let their personal automobile policies lapse.

For most organizations, it is impractical to examine every policy and/or confirm that every volunteer continuously has a policy in place. Therefore, the default conclusion must be that the volunteers’ policies may provide coverage assuming the volunteer is not being reimbursed for more than actual expenses associated with the volunteer driving and/or has not let the personal automobile policy lapse.

We can conclude that most volunteers have limits that are too low, particularly if their volunteer duties involve transporting clients, fellow volunteers or others.

According to Kelly Blue Book, the average price of a new car is \$33,650. Property damage liability limits of the average volunteer will most likely be insufficient for a multi-car accident resulting in the “totaling” of two or more cars (or one high-end car). Similarly, bodily injury liability limits will be insufficient for an accident involving serious bodily injury to one or more parties. So it is clear that, in the event of a serious accident, the limits that may be available under the volunteer’s personal automobile policy will be exhausted before all damages are paid -- leaving the volunteer with an uninsured loss.

If your organization includes volunteers as insureds under its Business Auto Policy, those volunteers who transport your clients or others will have coverage that is excess over any coverage available under their personal automobile policy. But those volunteers using their personal vehicles for other volunteer activities will not have any coverage.

In summary, there may be coverage for volunteers under their personal automobile policy depending on the specifics of their coverage. More likely than not, their limits will be insufficient in the event of a serious claim. Only certain volunteers will receive excess coverage under the organization’s business automobile policy (assuming it is properly endorsed).

### **A practical solution for this liability exposure**

The Volunteers Insurance Service (VIS) Excess Automobile Liability policy for volunteers is the best solution. All registered volunteers are provided excess automobile coverage at a limit of \$500,000 each accident or three times (3X) their underlying personal auto policy limits; whichever is less. Coverage is afforded for transporting clients, other volunteers, other people, and the volunteer’s regular use of the vehicle during volunteer activities.

It shields the organization’s experience from the adverse auto liability claims experience of its volunteers.



[www.visvolunteers.com](http://www.visvolunteers.com)

It is a cost-effective and a risk-effective solution to the problem. Over 5,000 organizations and millions of volunteers have been successfully employing this solution for over 40 years. All the while, VIS has been at the forefront in providing cost-effective insurance, risk management advice, and a Risk Purchasing Group structure to the nonprofit community.

For more information, we invite you to go to [www.visvolunteers.com](http://www.visvolunteers.com).

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i <http://caselaw.findlaw.com/us-5th-circuit/1667764.html> , United States Court of Appeals, Fifth Circuit. State Farm Mutual Automobile Insurance Company, Plaintiff – Appelle, v. Logisticare Solutions, LLC; Albert Graham, Defendants-Appellants. No. 13-60287. Decided: May 23, 2014.

ii Title 24-A: Maine Insurance Code, §2902F. Volunteer Drivers

iii Insurance Services Office, Inc., CA 99 34 12 93, Page 1 of 1