"But We Don't Own Any Vehicles"

Four Simple Steps to Surmount Nonowned Auto Risk

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Vehicular liability is a threat for every charitable organization, whether or not it has its own fleet. Home healthcare providers and social workers often use their own personal autos to visit clients and transport them for shopping and appointments. Regional executives travel to their organizations' offices and rent cars at airports. Board members drive to meetings and conferences. Yet a surprising number of nonprofits underestimate the catastrophic risk potential.

Who's On First

Under the common law doctrine of respondeat superior, an individual serving an organization, whether as an employee or volunteer, can create liability for that "master" through his/her own negligence. Owning, maintaining, and driving a vehicle involves plenty of risk – and an unintentional act behind the wheel can have catastrophic consequences for all parties: driver, passenger(s), other driver(s), passenger(s), pedestrian(s)… and employer.

When an accident occurs, the driver's own personal insurance covers his/her liability to the affected parties, while the organization's Nonowned Auto Liability insurance (if purchased) addresses its vicarious liability for the individual's actions. The acid test question, especially in a catastrophic circumstance, is whether either party has enough protection – and all too often, the individual's falls short, placing his/her insurer, the organization's insurer, and the plaintiffs in direct conflict.

Nonowned auto liability ranks among the top five risks for any nonprofit organization, yet it's one of the most neglected. Surprisingly, it's also one of the easiest to manage.

Four Practical Steps

We recommend a multi-pronged approach to address nonowned auto risk:

(1) A NONOWNED AUTO USE AGREEMENT BETWEEN THE EMPLOYEE / VOLUNTEER AND THE ORGANIZATION. This covenant affixes individual responsibility for (1) maintaining specific insurance limits, (2) maintaining current state vehicle inspections, (3) maintaining one's vehicle in safe operating condition when used for organization business, (4) furnishing proof of acceptable insurance and notifying the organization of material changes, (5) ensuring that any ancillary equipment, such as a trailer, be designed/rated for its use on the company's behalf, (6) an acceptable motor vehicle report (MVR) meeting the organization's policy, and (7) no 'business use' exclusion in personal auto insurance policy. The Agreement clarifies that the individual's insurance is meant to be primary and that the individual is responsible for liability arising from operation of his/her vehicle.

(2) AN ORGANIZATIONAL VEHICLE USE POLICY addressing (1) vehicle use rules, (2) distracted driving, (3) driver selection criteria, including points system for moving violations, (4) rental vehicle policy, and (5) post-accident investigation guidelines.

(3) AN "EMPLOYEES AND VOLUNTEERS AS INSUREDS" ENDORSEMENT to the organization's Nonowned Auto Liability insurance policy. This simple rider extends the organization's liability protection to the individual driver, excess of any valid and collectible personal insurance, minimizing the risk of inadequate insurance. Although not typically included in the off-the-shelf auto policy, this broadening feature is often avail-able at nominal additional cost.

(4) UMBRELLA/EXCESS LIABILITY INSURANCE augmenting the organization's primary Nonowned Auto Liability limits. This safety net increases the total amount of protection available for any one occurrence.

These safeguards will not only satisfy the most persnickety insurance underwriters, but will help conserve your resources for mission rather than settlements, judgments or protecting your reputation.

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