Understanding Risk and Liability

Providing transportation will always pose risks related to the service, its drivers, its passengers, and its sponsors. And, providing transportation assistance, especially door-to-door and door-through-door assistance, will increase the normal exposure to potential liability for property damage and bodily injury. There is, however, little evidence of frequent or even infrequent vehicle crashes, or of transportation assistance causing property damage or bodily injury, but such concerns are important when planning a volunteer driver program.

The Beverly Foundation surveyed 225 Faith in Action volunteer driving programs in 2007 and reported a collision liability of 3 percent in the previous 5-year period and concluded that the "low number of collisions that result in legal liability in Faith in Action transportation programs appears to be consistent with other volunteer driver program data. It is believed that such experience results from the fact that volunteer drivers are either safe drivers or that they use especially safe driving methods when driving older people or people with disabilities."

When using the TRIP model to encourage volunteerism, people enrolled in the TRIP program recruit their own volunteers. The volunteer drivers, recruited by riders who are enrolled in TRIP are "informal" volunteers who are not connected to the TRIP service. Informal volunteering is defined as "unpaid help given as an individual to someone who is not a relative". On the other hand, formal volunteering is defined as "unpaid help given as part of a group, club or organization to benefit others".

We asked our attorney to comment on the TRIP model of informal volunteers that receive mileage reimbursement from the rider who recruited them and who they drive for. His response was "Obviously, anyone can sue anyone (but it doesn't mean they'll win)." When considering "Actual causation" he concluded that the offer to pay the rider mileage reimbursement to give to volunteer drivers would not be considered the actual cause of victim's injuries. When evaluating the hypothetical with a "But for" test he gave the opinion that causation is too far removed. When making a "Substantial Factor" assessment that the donation could be considered a substantial factor in causing the neighbor to (presumably) have an accident and injure the rider, he said "I don't think so – too far removed."

However, if an organization imposes bureaucratic requirements on the driver, the relationship of the driver being an informal volunteer is diminished and the volunteer is transformed into a formal volunteer as part of the organization that is sponsoring the service. This change of facts may change the applicability of the relevant laws and, when this occurs, a different result can happen.

SUMMATION: Informal volunteer drivers for riders enrolled in the TRIP program, who are recruited by their rider, have no direct contact to the TRIP organization. The mileage reimbursement, provided by the TRIP organization to the rider who then gifts the reimbursement to their friend or neighbor volunteer, would not be considered the actual cause of any injuries that might occur if the volunteer had an accident. A promise to help pay for gas on an outing is



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too far removed from the cause of an accident and would not be considered as a substantial factor in the causation of an accident or resulting injuries. However, the more closely a program is associated with volunteers, the greater risk to the service sponsor and its funders.

The TRIP model, in which passengers select and recruit their own volunteer drivers, helps to limit risk and liability for the service program. Following the TRIP model precisely does not mean that insurance is not needed.

The minimum insurance that should be secured for a TRIP model service program, when passengers recruit their own volunteer drivers and volunteers use their own vehicles and rides are exclusively arranged between the passengers and their volunteers, is commercial liability insurance and non-owned auto coverage. An organization's existing commercial liability insurance may include coverage of the volunteer service program. The TRIP Program in Riverside coverage includes Commercial General Liability, \$1M each occurrence, \$1M Personal injury, \$2M Aggregate, plus Hired auto and Non-owned auto, \$1M. The amount of coverage required for your organization may be different dependent on the levels of coverage demanded by your funding sources.

If a program recruits, screens and trains volunteers and then matches them with passengers and schedules rides, or has owned vehicles or paid drivers, more insurance coverage is called for. This may include increased amounts of commercial general liability insurance, as well as social service professional liability, business auto liability and collision, volunteer insurance, and improper sexual conduct liability.

Insurance underwriters are trained to analyze risk associated with business practices and recommend appropriate levels of coverage. More than one opinion should be sought. It may be constructive also to consult non-profit risk management centers and similar organizations for unbiased assessments.