COMMUNITY Risk Management & Insurance

A publication of the Nonprofit Risk Management Center *Volume 13, No. 1, January/February 2004*

"Everything's Fine— We've Got Insurance!"

by George L. Head, Ph.D.

Have you heard these jubilant words from your staff or board lately? Even worse, do you comfort yourself with this thought whenever some accident strikes your nonprofit? If so, then everything definitely is not fine within your risk management program.

An "insure-against-everything" strategy is not good risk management because:

- ❑ Insurers will not let you do it.
- ❑ Trying to do it wastes your nonprofit's money.
- ❑ This strategy may encourage your staff to be dangerously careless.

Our Key Thought

The central theme of this article is that a better risk financing strategy puts insurance last, not first, among the sources of funds for financing recovery from accidental losses. Before relying on insurance, which at best only lets your nonprofit share covered losses with an insurer, it's best to explore various ways of using your organization's own financial resources to finance recovery from accidental losses. The more you can rely on your own resources, the less expensive accidents will be for your nonprofit and the more you and your staff will become focused on preventing losses. Over time, this sharper focus on safety will increase the financial and other resources you can direct toward achieving your mission. This will decrease the amount of your organization's money that flows into insurers' profits.

Let's look at the several specific points that underlie this central theme.

1. Insurance Never Pays for Everything

First, when you insure, the insurer never pays your entire loss—you are always left with a significant share: Often there is a deductible you must pay, a deductible that leaves you paying most or all of the smaller, more frequent losses.

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Nonprofit Risk Management Center

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Then there are the really big losses—the ones that exceed the top limits of your insurance. Any costs beyond these top dollar limits on what the insurer will pay for any one loss or for a series of losses in any consecutive 12 months, are yours to pay.

Then there are the losses that fall within the exclusions written into your organization's insurance policies ("We do not pay for…"). Again, these are not covered by your insurance.

Finally, the work of collecting the money an insurer will pay you costs you money. These include:

- ❑ maintaining insurance records,
- ❑ documenting your claims,
- ❑ spending your and others' time,
- ❑ negotiating with insurance adjusters or attorneys, and
- ❑ going to court, if necessary, to protect your rights.

These are all costs your nonprofit must pay to get the benefits your insurance is supposed to provide.

2. Retention's More Cost-Effective

Moreover, insurance premiums are only the beginning of the true costs of the insurance your nonprofit buys. Part of every premium dollar that you spend—from a few pennies to a dime; and rarely two dimes or a quarter for coverage of losses that are very unusual but can be catastrophic when they strike—are coins that you do not need to spend if you can just find ways to be ready to pay for accidental losses out of your own resources rather than buying insurance. Relying on your organization's own resources to pay for accidents is known in risk management circles as "retention."

Some retention alternatives to explore as ways of reducing your costs of accidents include:

- ❑ drawing on your current revenues to absorb minor losses (like wind-damaged roofs or dented fenders),
- ❑ setting up reserves for losses like defects in any products your nonprofit sells or shortfalls in fund-drive collections,
- ❑ borrowing from banks or other lenders to replace damaged machinery, and
- ❑ requiring outside contractors to assume liability for any losses that arise out of their work, regardless of fault, as a condition for winning the contract.

These strategies are all ways of retaining exposures to loss—relying on your organization's own internal resources (including bargaining power with outside contractors)—rather than turning to insurance. In the long run, retention is less costly than insurance, leaving your organization with more resources to fulfill its mission, by surrendering less to insurers' bottom lines. Insurance certainly can stabilize your accident-related costs, but at a significantly higher long-term cost than if your organization plans for these fluctuations and absorbs these more directly.

3. Insurance May Encourage Carelessness

Beyond wasting money on insurers' profits one of the reasons insured losses tend in the long run to be much greater than internally financed (retained) losses is that insurance reduces people's incentives to be careful. If someone else (an insurer) is paying, there is—at least for many people, some of whom surely work in your nonprofit—a greater human tendency to be less cautious, thus more willing to take needless chances.

Consider an analogy. When you are someone's dinner guest at a fine restaurant you do not visit very often, especially when your host is not a particularly close friend, do you spend a bit more than you would spend if you were paying the bill yourself? Most people, perhaps not you but most people, have to admit "Yes" if they are being honest. The "damages" most

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people cause through an evening's restaurant bill often are greater if someone else is paying. Being even subconsciously aware that someone else, especially a seemingly distant and impersonal insurance company, will pay if anything goes wrong, allows many people to relax, allows inattention and perhaps a bit of carelessness to creep into the work habits of even the best of us. In short, an insurance-will-pay mindset opens the door to more frequent, and/or more serious accidents.

In contrast, if safety and efficient job performance is everyone's responsibility—and if everyone knows this is a shared responsibility—caution becomes a group norm. (If we're splitting the restaurant bill equally, most of us will not order a crab cocktail and a filet mignon when we see that the others are having soup-of-the-day and chicken fingers.) But for this shared responsibility to improve safety to work, everyone must know—perhaps must be reminded occasionally—that accidents impose real costs that fall personally on everyone committed to your nonprofit's mission. Retaining many conceivably insurable losses within your nonprofit underscores this shared commitment and gives everyone an opportunity to demonstrate through individual safe work practices a personal dedication to that shared mission.

So Plan to Retain; Cut Your Resource Drain

Insurance clearly has its proper, but limited, place in risk financing, which is to pay the truly unpredictable, truly catastrophic loss for which no one can plan or take effective precautions. Relying more on retention for lesser, more predictable and preventable losses, however, leaves your nonprofit with more money and a more safety-conscious staff, and better prepared to treat at least some seemingly accidental losses as rather routine expenses. When smaller, more-predictable losses become expenses that over the long run are handled as basically normal "retained" expenses, your nonprofit will spend less on insurance, thereby devoting more resources to its mission.

Effective planning is key to changing the seemingly unpredictable costs of many accidents into budgetable expenses. This planning begins with the losses—both accidental and business—that your nonprofit and similar organizations have suffered in the recent past (perhaps since 1995) if this data is available. Some very important questions are:

- ❑ What were the causes of these losses—and, therefore, what can we do now to prevent similar future losses?
- ❑ For each cause of loss, how often did the losses occur—and, therefore, how often can we expect future losses to strike?
- ❑ For each cause of loss, what were the smallest and the largest losses—and could we have sensibly and comfortably planned to pay for some of these smaller losses ourselves rather than spending money on insurance?

For some causes of loss—perhaps vehicle damage, robbery, product defects, or windstorms—your answers to these questions will lead you and your board or finance committee to examine the wisdom of retaining all but the largest losses rather than trying to insure against every possible loss. Retention may be especially attractive if you have economical, effective loss control measures against these potential losses. For other causes of loss—perhaps employee injuries, earthquakes, fire, and automobile liability claims—the losses may be so unpredictable and potentially very severe—that insurance

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"When smaller, more-predictable losses become expenses that over the long run are handled as basically normal "retained" expenses, your nonprofit will spend less on insurance, thereby devoting more resources to its mission."

Maximizing Seasoned Employees' Contributions

by Barbara B. Oliver

In the next several years employers will see a definitive upward shift in the age of available workers. The renown baby boomers (born between 1946 and 1964), who were expected to leave the workforce starting in 2011, are reconsidering retiring at 65, and the pool of younger workers is predicted to shrink report the U.S. Bureau of Labor Statistics and AARP. Many older workers, because they need the money, want to be productive or useful, and want mental stimulation, plan to continue to work in positions that use their accumulated knowledge. Some see continuing in related fields; others envision entirely new positions that keep them learning and involved.

By 2010, the number of workers 55 and older will grow 4 percent, while workers between ages 25 and 54 will shrink 4 percent, predicts the U.S. Bureau of Labor Statistics in *The labor force: study growth and changing composition* by Howard N. Fullerton, Jr., and Mitra Toossi, www.bls.gov/emp/home.htm.

Staying Ahead of the Curve 2003: The AARP Working in Retirement Study explodes some of the myths your organization may be operating under. The nationwide telephone survey of 2,001 individuals between the ages of 50 and 70 years old employed on a full- or part-time basis found these individuals work not only for money but also for intangible benefits, such as enjoyment and a sense of purpose. For many (particularly baby boomers), juggling work and personal responsibilities is a pervasive feature of their lives.
Among other amenities, these workers want respect, training, benefits and job flexibility. Although optimistic about their own ability to find and retain a job, 67 percent have concerns that age discrimination remains a major barrier to their advancement and well-being in the workplace.

The AARP study reveals what changes may make your organization more appealing to older workers, a section of the workforce that will grow into 2050. The Executive Summary of the study (12-page pdf) or Full Report (150-page pdf) is available online at www.aarp.org/bestemployers.

We've adapted the questions that AARP poses to applicants for its annual *Best Employers for People Over 50* awards to help you assess where your organization stands as a "best employer" and how to make your work place more enticing for workers over 50.

Recruitment

AARP finds that an organization's recruiting policies reflect its inclination to consider candidates of different age groups and backgrounds.

What variety of sources does your organization use to seek candidates for position openings:

- ❑ Newspapers?
- ❑ Internet?
- ❑ State or local employment agencies?
- ❑ Job fairs?
- ❑ Senior placement agencies?
- ❑ General placement agencies?
- ❑ Employee referrals?
- ❑ Retired employee referrals?
- ❑ Former employee referrals?

Do your organization's recruiting materials (print, video, artwork and graphics) fully reflect the diversity of the people you wish to recruit?

Workplace Culture

AARP's research suggests that workplace culture is important to older workers. Factors such as a friendly work environment, respect from boss and co-workers, and training opportunities are

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all considered to be essential parts of an ideal job. By answering the following questions, assess how your organization's culture stacks up.

- ❑ Does your organization have a formal mentoring program, where more experienced employees are teamed up with "'junior" employees?
- ❑ Does your organization offer career counseling to your employees?
- ❑ Does your organization offer a tuition assistance program to your employees?
- ❑ Does your organization offer your employees formal training, on site or off site, that helps them keep their required competencies up to date?
- ❑ Do your managers and supervisors actively promote available training opportunities to all employees?
- ❑ Does your organization offer any of the following areas of training to managers and supervisors:
  - ■ Policies and practices related to diversity?
  - ■ Managing an age-diverse work force?
  - ■ Policies and practices on age-related employment law and discrimination?
  - ■ Policies and practices on workplace accommodations for disabled employees?
  - ■ Age-related health and mental health issues?
  - ■ Managing the work-life concerns of staff?
  - ■ Other training related to effectively managing older workers?

- ❑ How does your organization celebrate an employee's long-service anniversaries?
  - ■ Announcement?
  - ■ Publicity?
  - ■ Parties?
  - ■ Awards?
  - ■ No celebration of longevity with nonprofit?

- ❑ Does your organization have an active task force, committee, or other formal process that addresses diversity?
- ❑ Does your diversity program include age-related issues?
- ❑ Within the past three years, have any of the task force or committee's recommendations resulted in improvements to policies or benefits, particularly improvements that may benefit older workers?
- ❑ Does your organization regularly conduct employee opinion surveys?
- ❑ Within the last three years, have any improvements have been made in policies or benefits based on the results from the employee opinionsurvey, particularly improvements that relate to an older workforce?

Continued Opportunities for Career Success

According to AARP's research, the majority of older workers believe that their best work years are ahead of them and feel that they still have a lot to accomplish, demonstrating that these workers value organizations that provide them with continued opportunities for career success. By answering the following questions, assess how your organization provides your employees with continued opportunities for career success.

- ❑ Are formal performance evaluations required for all or most of your organization's employees?
- ❑ Are the managers and supervisors trained in techniques for conducting formal performance evaluations?
- ❑ Are these formal performance evaluations reviewed or audited by the next level of management?

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- ❑ Do employees have an opportunity to challenge any part of their formal performance evaluation?
- ❑ When the performance of managers and supervisors is evaluated, do these evaluations examine their performance in the following areas:
  - Managing work-life issues (e.g., flexible work arrangements, dependent care issues and resources, leave policies, etc.)?
  - Hiring practices?
  - Discipline or termination?
  - Giving rewards (compensation, awards)?
  - Providing opportunity (promotions, new assignments, training)?
  - Performance evaluations?
  - Valuing and promoting diversity, including age?
- ❑ Do managers and supervisors provide workers with opportunities or assignments that may help them gain new experiences or develop new skills (e.g., temporary assignments, new roles, team projects, cross training, etc.)?
- ❑ Does your organization have a formal procedure to handle employee grievances?
- ❑ Does your organization offer your employees workplace accommodations or job redesign due to disabilities?

"Wise risk management practice recommends your organization begin making changes in policies and procedures now to accommodate the changing demographics of future job candidates or you may lose out to more worker-friendly environments as you look to fill critical positions..."

Benefits

AARP's research indicates that the majority of older workers view benefits, such as health insurance coverage, retirement savings plans, adequate paid time off, flexible work schedules, and part-time work, as essential parts of their ideal job. For a list of questions that will help you evaluate the benefits your organization provides, visit www.nonprofitrisk.org and type "Seasoned Employees" in the search field.

How Enticing Is Your Organization to 50+ Workers?

Wise risk management practice recommends your organization begin making changes in policies and procedures now to accommodate the changing demographics of future job candidates or you may lose out to more worker-friendly environments as you look to fill critical positions in your organizations over the next decade and beyond. Your answers to the previous questions provide a foundation for planning to enhance your organization's current practices and phase in additional policies and procedures over the next six years. The beauty of the process is that these changes will make your workplace more attractive to employees of all ages, while making your organization competitive to mature workers who will make up more of the work force until the mid-21st century.

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Apply for 2004 "AARP Best Employers for Workers Over 50"

AARP's "Best Employers" award focuses on employers who are addressing the changing needs of workers as they age in the workplace. The program rewards innovative organizations of all sizes, budgets and types, offering policies and features that appeal to workers 50+, including flexible work options, training/learning opportunities, and age-neutral performance and appraisal systems.

Visit **www.aarp.org/bestemployers** for information on eligibility, application and judging process. The deadline for applications is March 15, 2004.

The AARP Best Employers for Workers over 50 will be announced in the fall followed by a dinner honoring the winners in New York City in September.

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Make the Most of Your Seasoned Talent Pool

- ❑ Provide fair and adequate compensation.
- ❑ Consider flexible schedules, including letting staff set their own hours, offer the option of rotating part-time and full-time assignments, provide phased-in retirement, and allow time off for care-giver rolls.
- ❑ Capitalize on experience and talent while broadening skills and knowledge through new experiences.
- ❑ Provide age-neutral training regardless of job function.
- ❑ Offer enhanced benefits reflecting current and future lifestyle (i.e., long-term care insurance).
- ❑ Ensure age-neutral hiring, performance and evaluation systems.
- ❑ Inspire management values that support employee opinions and input.
- ❑ Provide retirement security (i.e., pension plans that allow for phased retirement without significant financial penalties).
- ❑ Recruit seasoned employees to serve as mentors for younger employees.

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is your only sensible financing option. Each cause of loss (each "peril" to use insurance-policy language) must be evaluated separately, and different nonprofits will quite correctly find different answers to how extensively it should retain rather than insure against losses from each peril.

Each organization's best set of "how-much-to-retain" answers depend on its history, objectives, resources, ability to limit its loss exposures, and tolerance for risk. But, an automatic "O boy, we're insured!" is almost never the right, the responsible, the mission-responsive answer.

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Insurance Fails to Cover Drunk Driving Accident

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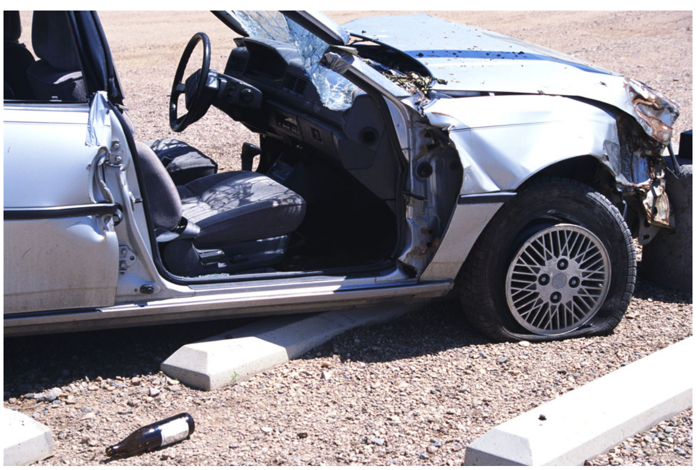
A Veterans of Foreign Wars Post has no insurance to defend it against a suit for injuries caused by a person drinking at the Post and then causing an automobile accident, according to an appellate court in Missouri.

The coverage is precluded by an exclusion for activities "in the business of" serving alcohol. (*Auto Owners (Mutual) Insurance Co. v. Sugar Creek Memorial Post No. 1976, WD 62120, 9/30/03*.)

Coverage for accidents caused by drunk drivers is a recurring problem for nonprofit organizations. Different courts have taken different approaches to resolving the issue.



When the Post was sued by relatives of individuals killed in an auto accident caused by a driver who had allegedly been furnished alcoholic beverages while visibly intoxicated, it turned to its insurer for defense.

Its commercial general liability insurance policy excluded injury caused by furnishing drinks to a person under the influence, but only if the Post was "in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages."

The carrier sought a declaratory judgment that it was not responsible for the claim. The trial court agreed and the Post and the plaintiffs appealed.

The Post had operated a licensed bar open to the public since 1975. It employed a bar tender and a club room manager and generated several thousand dollars of gross revenue a month.

Neither side of the litigation found a Missouri case interpreting the "in the business of" provision.

The Post and the plaintiffs, however, cited a line of cases in other states, including New York, Massachusetts and New Hampshire, holding in favor of the nonprofits insured under similar language.

In those cases, the courts generally took the position that the provision was ambiguous because a nonprofit could not be in the business of selling alcohol when its nonprofit purpose was something other than business.

In one case, a court said that the fact that the nonprofit American Legion Post derived substantial revenues from the operation of its bar did not determine the outcome. "It is the character of the organization, not the profitability of its liquor sales...which determines whether or not an exclusionary clause...applies," it said.

The Missouri court was more persuaded, however, by another line of cases, including decisions in Wisconsin, Washington, South Dakota, and Louisiana, which had generally held that the exclusion describes the activities of an organization rather than its corporate purpose or character.

"When determining whether a liquor-related liability is excluded from coverage, the focus of the analysis shold be on the activities of the insured and the risks inherent in those activities," the Missouri Court said, "rather than on the corporate status of the insured.

Insurance Fails to Cover Accident

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"The VFW's bar exposed its insurer to the same risks inherent in other drinking establishments operated by for-profit entities.... We find that in the context of the policy at issue, given the activities of the VFW, a reasonable person in the position of the VFW would have understood that the VFW was 'in the business of...selling...and serving alcoholic beverages.' Therefore, the VFW was excluded from liability coverage for selling alcohol to [the driver]."

"We do not believe that the term 'in the business of' is ambiguous as used in the policy issued to the VFW simply because the dictionary holds more than one meaning for the term 'business'."

Serving Alcohol at Special Events

Planning to serve alcohol at your event?

1. Make certain that the facility permits it and inquire about any special conditions (requiring the use of professional bartenders or limiting the time liquor can be served).

2. Research laws specific to your community and state that govern the sale and consumption of alcohol. Some states impose very strict liability on organizations that sell or provide alcoholic beverages, while other states hold the drinkers solely liable for their actions. It may be necessary to procure a special license from the appropriate regulatory officials to serve alcohol.

3. Ask your insurance agent or broker for assistance in determining whether your current insurance policy covers events where alcohol is served or if additional liquor liability coverage is needed.

4. Decide if the nonprofit's paid or volunteer staff, or an independent contractor will serve the alcohol. If using a caterer, most of the risks can be transferred to that company when you have obtained the proper additional insured endorsement from the company's carrier. However, if your organization is going to furnish the alcoholic beverages:
   - ❑ Identify the controls needed to make sure that intoxicated or underage patrons aren't served.
   - ❑ Determine how you will handle someone who becomes intoxicated.
   - ❑ Decide whether to serve beer, wine and/or hard liquor.
   - ❑ Choose an open bar or cash bar.
   - ❑ Ask if the bartenders have any special training, such as TIPS responsible alcohol management program.
   - ❑ Arrange with a local transportation company to provide services for intoxicated guests.
   - ❑ Decide how long before the close of the event will you stop serving.

Adapted from *Managing Special Event Risks: 10 Steps to Safety* available at **www.nonprofitrisk.org**.

Theft of Funds Is Not Covered By Insurance

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The employee dishonesty provisions of a standard insurance policy do not protect a charity from loss when an employee conducts an unauthorized fund raising campaign and uses the proceeds for himself, according to the First Circuit Court of Appeals. The Court has affirmed a District Court decision denying coverage for the Special Olympics International and its Massachusetts affiliate. (*Fireman's Fund Insurance Co. v. Special Olympics International, No. 03-1322, 10/10/03.*)

An area manager hired a telemarketer to begin a fund raising campaign in 1991, using the Special Olympics name but without the organization's knowledge. He deposited the money in an unauthorized bank account in the organization's name and then wrote checks to himself, with only a small portion of the $1.1 million raised being used for Special Olympics activities. When the situation was discovered, Special Olympics sought to recover under its employee fidelity policy.

The policy said it covered "dishonest acts committed by an employee...with the manifest intent" to cause loss to the employer and to obtain financial benefit for the employee or a third party. It specifically excluded "indirect loss", which it defined as loss resulting from the organization's "ability to realize income that [it] would have realized had there been no loss" of, property.

The District Court found that Special Olympics was not the "owner" of the funds raised in its name and therefore had no loss under the policy. In its view, the victims were the persons who donated the money after being deceived into believing they were supporting Special Olympics. The District Court recognized that there was a loss of reputation, and perhaps future contributions, but reputation was an intangible asset not covered by the policy.

On appeal. Special Olympics argued that the funds were, in fact, owned by Special Olympics when deposited into a bank account in its name. Recognizing that the charity might be right on the ownership question, the Court of Appeals nevertheless said the issue was whether the loss came within the definitions of the policy. It concluded that the dishonest acts were not committed "with the manifest intent" to hurt the charity.

The Court noted that the manifest intent language had been added to the standard policy about 25 years ago to narrow the scope of coverage. Here, it said, "the facts reveal a scheme that was carefully crafted to bypass the insured entirely; although [the manager] capitalized on the organization's sympathetic charitable mission, his deception was directed at individual donors. And, unlike the classic case of embezzlement, [this] scheme generated new funds, unanticipated by [Special Olympics], specifically for his own benefit. This scenario falls outside even a broad interpretation of what it means for an employee to have a 'manifest intent to...cause the employer to sustain loss'."

While the Court was "sympathetic," it said it was constrained by the policy.

Lessons Learned

Generally, ambiguity in an insurance policy is interpreted in favor of the insured and against the insurance company. This case illustrates a narrow reading of a policy by an appellate court. The case also demonstrates the importance of taking time to read and understand your nonprofit's insurance policies, and remembering that not all losses will be covered. Finally, it's never safe to assume that ambiguous policy language will be interpreted in your favor.

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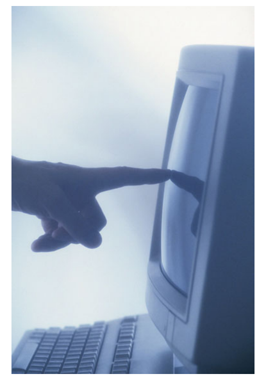

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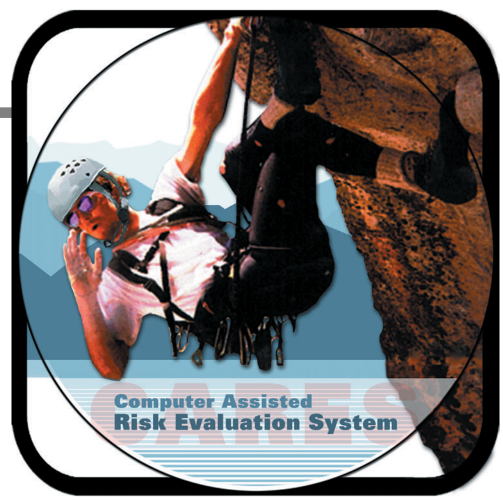

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Child Welfare League of America
Delaware Association of Nonprofit Agencies
Georgia Center for Nonprofits
Kansas Non Profit Association
Laubach Literacy
Maine Association of Nonprofits
Michigan League for Human Services
Michigan Nonprofit Association
Minnesota Council of Nonprofits
North Carolina Center *for* Nonprofits
Ohio 4-H Youth Development
Presbyterian Church USA
Pro Bono Partnership
Texas Association of Nonprofit Organizations
United Way of Central Indiana
Y Services Corporation

Please route to:

- ❑ Executive Director
- ❑ Director of Volunteers
- ❑ Risk Manager
- ❑ Legal Counsel
- ❑ Human Resources
- ❑ Finance/Administration

COMMUNITY
Risk Management & Insurance

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