

Ensuring—and Insuring—A Dedicated Volunteer Patrol

BY DAVE BYRD, NSAA DIRECTOR OF RISK & REGULATORY AFFAIRS

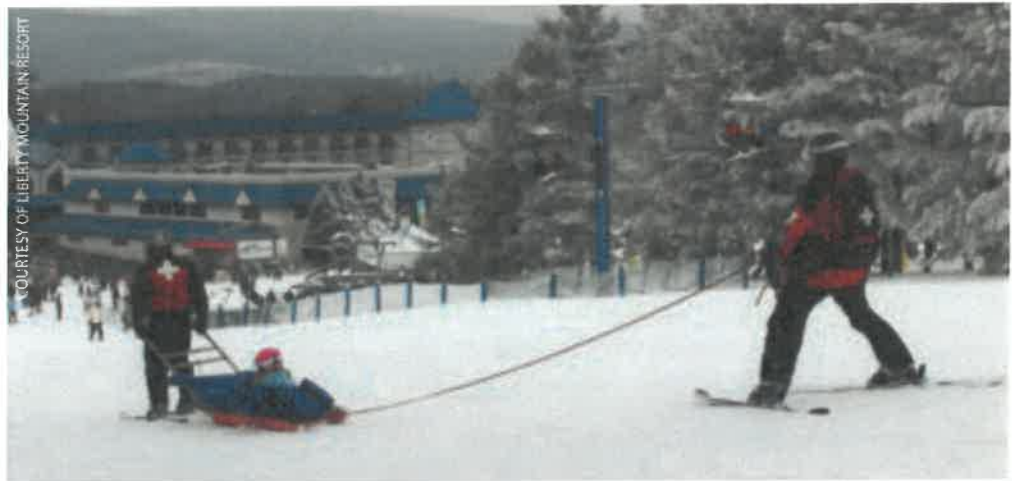
SNOW TIME'S INNOVATIVE INSURANCE FOR VOLUNTEERS IS A MODEL FOR THE INDUSTRY

In 2005, a volunteer ski patroller at Ski Roundtop in Pennsylvania was skiing down the mountain to pick up a meal voucher when he collided with another patroller. His injuries were significant, resulting in a pile of medical bills of more than \$30,000. The volunteer patroller did not have his own health insurance.

Although the patroller sought to obtain workers' compensation coverage, a Pennsylvania appellate court ruled that under the state workers' comp statute, volunteer ski patrollers were not covered by a resort's workers' comp policy, leaving that patroller with sizeable unpaid medical bills. Despite volunteering for Ski Roundtop for 27 years, he was left without recourse to any workers' comp coverage or health insurance.

To be sure, volunteer patrollers are certainly well aware that skiing or snowboarding while patrolling is a risk of their volunteer service, and they willingly and fully accept the long-recognized risks that are inherent in the sport. And, depending on state law, volunteer patrollers routinely acknowledge, during their pre-season orientation, that they are not covered under a resort's workers' comp coverage. But increasingly, ski areas are recognizing there may be a role for them to play in helping to minimize this vulnerability for their dedicated volunteers.

Indeed, the patroller's injury at Ski Roundtop was not an isolated incident. In Montana, which also does not cover volunteers, one volunteer patroller was badly injured while joy-riding on a pile of tower pads pulled on the back of a snowmobile. Despite the patroller's own negligence, the resort was forced to cover nearly seven figures in medical costs. In New York, a volunteer patroller lost her leg due to a collision with a snowmobile, with huge costs to the resort.



▶ Volunteer patrollers at Ski Liberty, one of three areas owned by Snow Time, are insured by a special excess coverage insurance policy.

Although *employees* are always covered by workers' comp, *volunteers* are typically excluded from such coverage in most states. In fact, many large ski states specifically exclude volunteers from workers' comp coverage—California, Utah, Wisconsin, and Michigan, to name a few—leaving a gap in coverage for ski area volunteer patrollers and other resort volunteers.

But this gap is troubling for *both* the volunteer and the resort. There are recent incidents where volunteers have been seriously injured, through no negligence of the resort, but they are not covered by workers' comp in their state, *and* did not have their own personal health insurance. This has forced resorts to cover these injured volunteers under general liability policies, eating up entire deductibles and putting pressure on future premiums.

Ski Roundtop's owner, Snow Time, Inc., recognized this coverage vacuum existed under Pennsylvania workers' comp law and developed an innovative program to help with the gap in coverage for most of its volunteers. Starting in 2005, Snow Time—which owns three Pennsylvania ski areas, including Ski Roundtop, Ski Liberty, and Whitetail—annually purchases an excess umbrella insurance policy specifically to provide some insurance coverage for its volunteers.

Although the coverage is limited, it is not designed to be exhaustive, just enough to fill the gaps in the individual's own health coverage. At Snow Time's three ski areas the supplemental volunteer coverage provides \$25,000 per incident, with an annual cap of \$250,000 for the year. If an individual volunteer patroller does *not* carry his or her own individual

health insurance (whether through the employer or on a spouse's plan, for example), Snow Time's coverage will pay first dollar for any injuries that occurred while patrolling, up to a limit of \$25,000. To be sure, it does not cover injuries when patrollers are on their *own* time, for example, while skiing on the resort's season pass with their family. And Snow Time's policy covers *any* volunteer, including those serving at race competitions or as mountain hosts and ambassadors.

In the eight years this program has been in existence, reliance by volunteers on Snow Time's supplemental policy has been rare. In fact, volunteers have not remotely approached any of the caps, either per incident or the annual cap, said Scott Romberger, the president and CFO of Snow Time. "Thankfully," Romberger noted, "it has only been used for a few thousand bucks here and there. It simply hasn't been utilized much."

For those volunteers with their own personal health insurance, which constitutes the overwhelming majority of Snow Time's volunteer patrol, the insurance provides second-dollar coverage. In other words, the insurance will cover deductibles, co-pays, and other out-of-pocket expenses related to an injury sustained while patrolling.

Likewise, at Camelback Mountain Resort in Pennsylvania, the ski area maintains an excess policy for its volunteers, given the gap in state's workers' compensation coverage. Like Snow Time's policy, Camelback's coverage has a \$250,000 annual cap, but unlike Snow Time, Camelback's policy kicks in *after* the volunteer's personal health insurance has reached its limit, said Charles Blier, Camelback's general manager.

Notably, however, this coverage does *not* extend to lost wages—which traditional workers' comp covers. This is important to understand for volunteers under such

excess policies. If a volunteer patroller is badly injured while patrolling at a resort, even with such supplemental insurance there is no coverage for a volunteer's lost wages from his or her permanent job. It is important to understand these key distinctions between excess policies like Snow Time's supplemental coverage and conventional workers' comp insurance.

But the goal is to encourage volunteers to submit on-mountain injury claims through their own individual health insurance rather than contest it through workers' comp, or worse, through a tort action against a resort. Indeed, this raises a critical point. Starting in 2014, every individual will be required to carry his or her own health insurance (whether it is through a personally purchased plan on a state or federal exchange, or provided through a spouse or employer), or pay a penalty of 1 percent of his or her annual income.

Bear in mind, under Obamacare, the *individual* mandate to carry health insurance is a separate provision from the *employer* mandate, which requires most large employers to offer health insurance to full-time employees.

The point, however, is that in light of this new individual mandate under Obamacare, resorts should seriously consider implementing a policy requiring their volunteers to establish that they have their own medical insurance. This

is indeed allowable under federal law, and it is the clear direction in which the ski industry is moving. Moreover, this can be done as a provision on the volunteer acknowledgement form that most resorts utilize. Depending on the state, resorts could simply ask their volunteers to acknowledge that they are not covered by the state's worker's comp coverage (if that is the law in the resort's state), and to also provide the name and policy number of their individual health insurance plan and provider. While this is not the policy of Snow Time's three resorts, such a requirement for volunteers to have their own individual health insurance would be another tool for resorts to help minimize pressure on a resort's workers' comp policy, or even their general liability policy. After all, starting in 2014, it will be federal law. Indeed, because Obamacare will likely lead to higher deductibles for many, such extra coverage like Snow Time's umbrella policy will be very beneficial.

The cost is surprisingly affordable for resorts. For Snow Time's three ski areas, there are 800 total volunteers, including mountain hosts and ambassadors. Overwhelmingly, however, most volunteers are involved with one of the three areas' ski patrol programs. And the cost of the policy has remained stable over the eight years since Snow Time instituted its insurance program. Romberger said that Snow Time,

Turbocharge Your Social Media



Resort Benefits:

- Videos that drive social media marketing
- New ancillary revenue stream
- Concession model with no upfront costs

FrostByteVideo.com/Resorts + 888.893.7678





COURTESY OF LIBERTY MOUNTAIN SKI AREA

► Volunteer patrollers like Jenna Jarriel appreciate the fact that Snow Time values their dedication with excess insurance coverage.

which purchased the supplemental coverage policy through AIG, pays a premium of about \$11 per volunteer for the coverage. That's right, only \$11 per volunteer. That works out to a cost of about \$8,000 annually to the company for the extra coverage for the volunteers at all three resorts. Simply put, although the coverage provided is not exhaustive, it's a real bargain.

While Snow Time views its supplemental insurance program as part of its broader effort to be a responsible corporate citizen, it also provides other tangible benefits to its resorts.

"If a patroller is injured while volunteering, word spreads quickly, and patrollers wonder if the resort will stand behind them," Romberger explained. "We can now say at least we have some coverage in such cases. It takes the tension and the potential for unrest out of the equation."

Without access to workers' comp, there may be pressure for a volunteer to bring a tort action against a resort under its general liability policy if there is a basis for negligence—something the employees are prohibited from doing since workers' comp is considered their exclusive remedy under the law. In fact, monetary recoveries from a tort action against a resort are likely to be even *more* costly than a workers' comp claim, as injured parties may seek costly damages for pain and suffering—damages that are not allowed under workers' comp

claims (not to mention the underlying legal defense costs from a tort action). Having this type of excess insurance coverage, however, may deter volunteers from considering bringing a tort action through a resort's general liability policy.

And while volunteers from Snow Time's three ski areas greatly appreciate such coverage, even more, they love the important signal it sends to the volunteers that their service is valued and respected.

"Snow Time's volunteer insurance program is just another example of how they support their volunteer ski patrollers," said Bob Scarlett, a 34-year veteran of Ski Liberty's volunteer patrol and a practicing attorney in Baltimore, Maryland. "It's just another way Ski Liberty recognizes the value of its dedicated volunteer patrollers and the critical role we have in protecting the safety of each ski area's skiing and boarding guest," added Scarlett, who also serves as NSP's national volunteer legal adviser.

While Snow Time's actions are admirable, some resorts may find a potential downside to providing such excess coverage to their volunteers—which is why they should be mindful to run such a program by outside employment and labor counsel. If resorts underwrite the cost of this type of supplemental insurance for their volunteers, there is a possibility that this policy may reinforce an employer-employee relation-

ship between the resort and its volunteers, which carries with it ramifications under state or federal employment statutes. The more benefits an employer provides to a volunteer, the stronger the possibility that a court may deem those benefits rising to the level of compensation or wages, which is one of the key underlying factors for determining an employer-employee relationship.

There may be ways to minimize this risk, however. For example, many volunteer patrols hold their own fundraisers to cover dues, training expenses, and so on. A patrol could host a community spaghetti dinner or a local pancake breakfast to raise funds for such supplemental coverage, with the resort perhaps matching whatever the volunteers raise.

Furthermore, NSP itself may spearhead a national umbrella policy that resorts, or individual volunteer patrollers themselves, could buy into, said Scarlett. On a national level, NSP may be able to achieve economies of scale that individual resorts could not achieve with their smaller volunteer patrols, resulting in even less expensive excess coverage insurance than the \$11 cost per volunteer that Snow Time pays for its 800 volunteers. After all, there are more than 31,000 NSP volunteers across the country.

And for NSP volunteers, the separate insurance policy carried by the National Ski Patrol only provides liability protection to NSP-certified instructors while they are performing at NSP-registered courses. It does *not* extend insurance coverage to individual patrollers serving at a resort.

Even so, Snow Time's innovative supplemental insurance program for its volunteers should be celebrated—indeed, encouraged—to other resorts using volunteers.

"Not only is it smart and responsible, at the end of the day it's the right thing to do," Snow Time's president Scott Romberger reasoned. ■

This is a summary. Please see policy forms for coverages and exclusions.



National Ski Patrol Systems, Inc. Insurance Summary and FAQ

The purpose of this document is to provide an overview of the National Ski Patrol Systems Inc's (NSP) liability insurance program. This document has been created to inform patrols, ski areas and NSP sanctioned event organizers about the protection afforded through NSP's General Liability policy. NSP recommends ski areas share this information with their insurers to ensure there is a complete understanding of the coverage afforded by NSP's policy, as well as the coverage that it does not provide. Please review the entire document, including the potential claims scenarios at the end of the document, which provide real-world examples that illustrate how the coverage works.

This document provides an overview of the coverage as it is written today. Under no circumstances shall this document be used in determining coverage provided by NSP's insurance policies nor shall it create any obligation for NSP to defend or indemnify another party. It is strictly a summary designed to help explain NSP's current insurance program to patrols and ski areas based on requests to educate its members about NSP's insurance program.

General Liability Policy

- A general liability policy protects business organizations and their employees against certain liability claims for bodily injury (BI) and third-party property damage (PD) arising out of premises, operations, products, and completed operations; and advertising and personal injury (PI) liability.

Business Auto Policy (BAP)

- A commercial auto policy that includes auto liability and auto physical damage coverages; other coverages are available by endorsement.

Umbrella Liability Policy

- A policy designed to provide protection against catastrophic losses. It generally is written over various primary liability policies, such as the business auto policy (BAP) and commercial general liability (CGL) policy. The umbrella policy provides excess limits when the limits of underlying liability policies are exhausted by the payment of claims; as well it drops down and picks up where the underlying policy leaves off when the aggregate limit of the underlying policy in question is exhausted by the payment of claims.

When does General Liability Coverage Apply?

- During a sanctioned NSP educational course or sanctioned NSP event as defined by NSP.

This is a summary. Please see policy forms for coverages and exclusions.

When does Coverage NOT Apply?

- This Coverage does not apply to losses arising from Occurrences in the normal scope and duty of patrol work conducted at the ski resort.
- Automobiles/Transportation - The general liability policy excludes coverage for losses arising out of the use of an automobile and therefore, all activities involving automobiles are not covered (including transportation of patrol members). It is recommended that local NSP patrols secure automobile liability coverage from a local insurance agent for any transportation exposures (if any).
- Directors and Officers Insurance – Directors and Officers Insurance is not included with this program but is available for divisional, regional, or local NSP boards. Please contact your NSP representative for quotes through the NSP insurance contact.
- Liquor Liability – NSP’s policies do not provide coverage for liquor liability losses.

Please note all examples are hypotheticals. The coverage determination is by the carrier and will be based on the facts, the pleadings and a careful review of the policy language.

Hypothetical Claim Example 1:

During an NSP sanctioned OET refresher class an instructor is teaching an NSP Patroller how to guide a toboggan down the hill. Unfortunately, the party inside the toboggan was not strapped down correctly and rolls out of the sled and suffers an injury. A claim of negligence is made against NSP and the instructor by the injured party.

- As this is an NSP sanctioned OET Class, the NSP policy would respond to defend both NSP and the instructor, as the instructor was an NSP instructor participating in a sanctioned NSP event.

Hypothetical Claim Example 2:

NSP Patrollers at Rocky Bottom Resort are having their annual patrol refresher on-the-hill while looking for potential new patrollers. During a lift evacuation training conducted by the ski area, the belayer accidentally drops an individual from the chair who suffers injuries as a result. A claim of negligence is made against Rocky Bottom Resort, NSP, and the instructor.

- As this is not a sanctioned NSP Educational Event, coverage is **NOT** provided by NSP. Coverage may be provided by the Resort and/or its liability insurance for which the patrollers were acting on behalf. See NSP-NSAA JSOU as reference.

Hypothetical Claim Example 3:

NSP Patrollers at Rocky Bottom Resort are responding to an accident reported on the hill. While exiting the patrol shack and rushing to the scene a patroller hits another skier who suffers injuries as a result. A claim of negligence is made against Rocky Bottom Resort, NSP, and the patroller.

- As this is not a sanctioned NSP Educational Event, coverage is not provided by NSP. Coverage may come from the Resort and/or its liability insurance because the patrollers are acting under the direction of the ski area.

This is a summary. Please see policy forms for coverages and exclusions.

Hypothetical Claim Example 4:

At Powderfall, NSP sets up a bar made of snow and ice to hand out snow cones. The bar begins to melt and a patroller's husband who is there visiting slips and suffers injuries as a result. A claim of negligence is made against the Resort (location of Powderfall) and NSP.

- As this is a sanctioned NSP Event it is possible coverage would be provided for NSP's claim. However, further review of the contract between the hosting site and NSP would be needed before coverage is determined.

Hypothetical Claim Example 5:

NSP Patrollers at Rocky Bottom Resort are having their annual fundraising ski swap at the county fair. A guest at the swap is looking at ski poles when he pokes another person in the face, causing injury to their eye. A claim of negligence is made against Rocky Bottom Resort and NSP.

- As this is not a sanctioned NSP Event, coverage is not provided by NSP. Coverage also may not come from the resort, or their liability carrier, if the patrol was not authorized to hold such an event. Coverage is afforded when acting within the scope and duty of your job.

Hypothetical Claim Example 6:

NSP Patrollers at Rocky Bottom Resort show up to the mountain to find their patrol building was a total loss due to an electrical fire the previous night. Due to the loss of ski patrol property, a property claim is made. The ski patrol property is owned by Rocky Bottom Resorts Patrol.

- There is no insurance provided for patrol buildings, the property of specific patrols, or individual patrollers under the NSP property policy. It is the duty of the individual patrols to insure their property. If patrol property (building and contents) is owned by the resort, property coverage would fall under the terms and conditions of the resort's insurance policies.

Hypothetical Claim Example 7:

NSP Patrollers at Rocky Bottom Resort respond to an injured skier on the mountain. A patroller treats the skier on the hill and transports them to the first aid room at the resort and arranges for them to be transported to a local hospital via ambulance. Later a claim of negligence is made against the individual patroller(s), Rocky Bottom Resort, and NSP alleging a failure to properly treat or transport the individual.

- As this is not a sanctioned NSP Educational Event, coverage is NOT provided by NSP. Coverage would most likely come from the Resort and/or its liability insurance for which the patrollers were acting on behalf of. Patrollers should check with their local resort's liability coverage.

Contact Bill Finley, NSP Finance & Operations Director, with questions or requests for certificates at bfinley@nsp.org or (303) 988-1111 x2624.

RENEWAL ACCEPTANCE FORM FOR SPECIAL RISK ACCIDENT INSURANCE

Name of Group: Crystal Enterprises Inc Policy No: 098505
 Address: 125000 Crystal Mountain Drive City: Thompsonville State: MI Zip: 49683
 Contact Person: _____ Email: _____
 Phone: _____ FAX Number: _____ Website Address: _____
 Effective Date: 09/21/2018 Expiration Date: 09/21/2019 Activity Start Date: _____ Activity End Date: _____
 A detailed list of all sponsored and supervised activities is required to bind coverage (attach additional page if needed) _____

Location Address (attach additional page if needed) _____

Renewal Carrier: Mutual of Omaha	Benefits
Accident Medical Benefit	\$50,000
Deductible	\$500
Physical Therapy Limit	100% of the Allowable Expense
Dental Services Limit	100% of the Allowable Expense
Orthopedic Appliance Limit	100% of the Allowable Expense
Accidental Death	\$10,000
Double Dismemberment	\$10,000
Single Dismemberment	\$5,000
Coverage	Full Excess

Premium Basis	Type	No. of Participants x Rate/Person	= Premium Calculation
19 & older volunteers	per participant	_____ x \$9.20	= \$ _____
Total Premium** Due:			_____

****Full premium or a copy of the check being mailed must be received with the request to purchase coverage.***

****\$600.00 Minimum Premium Required & Non-Refundable.**

Make checks payable to Special Markets Insurance Consultants, Inc. and Mail the original Renewal Acceptance Form with the total premium or Minimum Premium, whichever is greater, and the Policy Administration Fee to:

Larkin Group of Traverse City
13900 S. West Bay Shore Drive
Traverse City, MI 49684

I understand & agree that if this form is accepted by the company, coverage will begin on the date of acceptance or on the date requested, whichever is later, subject to payment of the required premium. Premium computation is subject to audit and may change based on final numbers.

The above information is correct to the best of my knowledge.

Authorized Signature of Policyholder _____ Name (printed) _____
 Title _____ Date _____

All above information requested is required for policy issuance. The licensed appointed agent is required to complete the section below. Policies cannot be issued without all the required information being completed.

Local/Regional Licensed Agency

Agency Name: Larkin Group of Traverse City License Number: _____
 Agent Name (Printed): _____ Agent Address: 13900 S. West Bay Shore Drive
 City, State, Zip: Traverse City, MI 49684 Phone Number: _____
 Email Address: _____ Date: _____
 Signature: _____ Renewal Proposal ID # 28335D
 (Licensed Life/Accident/Health Agent)