



Nonprofit *Alert*®

Alerting nonprofit leaders to key legal developments and responsive risk management steps

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United Way Reaches Compromise in Costly \$18 Million PipeVine Collapse

Charities that lost millions in funding last year when the donation processing company PipeVine collapsed now stand to recover some of their losses through a compromise struck between United Way of the Bay Area (San Francisco) ("United Way") and PipeVine's bankruptcy receiver. United Way has agreed to contribute \$3.45 million from its own unrestricted reserves to the receivership so that payments can begin to some charities.

United Way also filed a \$3.5 million claim against PipeVine for donations due, but agreed to subordinate its claim. This means United Way's claim would be among the last to be repaid by PipeVine, if it's repaid at all. Hundreds of smaller charities have already filed claims against PipeVine. United Way executives said they agreed to subordinate their claim in an effort to get funds flowing again to the nonprofits that suffered such devastating losses.

PipeVine's Collection Business

PipeVine handled donations designated for more than 50,000 charities nationwide, collecting over \$100 million a year for its charity customers. United Way was one of its biggest customers, relying on PipeVine to process a reported \$40 million in employee payroll donations from 600 Bay Area companies. Some 6,000 United Way charities depended on those collections from PipeVine.

Many Fortune 500 companies, including Chevron and AT&T, contracted with PipeVine to handle their employees' payroll donations to charities. Typically, the companies collected pledge forms from their employees and forwarded them to PipeVine. The companies then deducted money from their employees' pay and sent the money to PipeVine on a quarterly or monthly basis. PipeVine coordinated the collections with the pledge forms and sent the funds to the designated charities.

PipeVine charged a commission of about 7 cents for every dollar it collected. In June 2003, PipeVine abruptly closed its doors when accounts ran dry. An audit conducted thereafter revealed the organization's records "did not reflect the full amount owed to charitable organizations and ... overstated its revenue." PipeVine said *(continued on page 2)*

\$3.5 million will come from United Way's own reserves so payments can begin to charities that were hurt the most.

Liability & Risk Management

Volunteer’s Death During After -Hours Social Can’t be Pinned on Charity

Volunteers who aren’t acting in the scope of their service to a charity can’t hold the charity responsible for accidents that occur after their work ends for the day, two Illinois courts have held. Three volunteer camp leaders at a Ronald McDonald children’s camp completed a Friday evening orientation session, then drove to a local bar. The driver consumed at least five beers while at the bar. On the way back to the camp, he lost control of the vehicle, killing one volunteer who was a passenger in his car and permanently injuring another.

The plaintiffs argued that because the Friday evening visit to local drinking establishments was a “regular practice” during which camp leaders socialized and discussed camp issues, the volunteers were still acting within the scope of their responsibilities and the camp should be liable for their injuries.

But the Appellate Court of Illinois upheld a lower trial court decision ruling that the camp was not liable because the intent of the volunteers was merely to socialize, not to contribute volunteer efforts to the camp while at the bar. The court also noted that the volunteer drove his own vehicle, and not all the camp leaders attended the Friday evening socials.

The volunteers’ drinking and socializing, which led to the fatal accident, was not “within a time or place where [they] would reasonably be performing...duties as a volunteer camp leader,” the court said.

Socializing wasn’t within a time or place where volunteers would reasonably be performing their volunteer duties...



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PipeVine (continued from page 1)

it belatedly realized it needed 8 to 9 cents per dollar collected to cover its operating costs. But the audit also revealed questionable accounting practices such as paying PipeVine employees out of the same account that held charitable donations.

United Way established PipeVine in 1993, then spun it off as an independent, nonprofit organization in 2000. Because of United Way’s historic relationship with PipeVine, the publicity surrounding PipeVine’s collapse has reflected negatively on United Way. Officials at United Way were quick to point out, however, that the bankruptcy receiver did not find any evidence of embezzlement, stolen funds, or diversion of funds at PipeVine. The agreement reached between United Way and the receiver states that it “resolves all outstanding matters between PipeVine and United Way of the Bay Area.”

Camp Isn't Required to Provide Security After Receiving Only Vague Threats of Violence

A California appeals court says "vague threats" made to a Jewish camp aren't enough to make the camp liable for injuries a child received from a deranged anti-Semite who opened fire on campers during the summer of 1999. For several years prior to the shooting, the Anti-Defamation League of Los Angeles and various other groups recommended that Jewish organizations, including the camp, adopt certain security measures against what the League perceived as anti-Semitic threats.

Just months before the shooting occurred, the Anti-Defamation League distributed notices throughout the Jewish community concerning attacks that had been attempted or committed against synagogues and other Jewish establishments in the area. Later, the shooter reportedly said he chose the Jewish Community Center of Greater Los Angeles because it had no security. He fired upon a group of children attending summer camp at the Center, hitting and wounding one child.

The parents of the child sued the Center, claiming the Center was negligent for not instituting better security measures that would have deterred the attack. A lower court dismissed their case, and the California Court of Appeals upheld the dismissal, finding that the warnings the Center had received from the Anti-Defamation League amounted only to tips about "vague threats," which did "not provide an organization with guidance about what, when, and where precautions, if any, should be taken, nor against whom." *Kadish v. Jewish Community Centers*, CA Ct. App., 2nd App. Dist., Div. 1, No. B159740 (10/10/2003).

Legal Lesson: Failure to Protect

In cases like this one that involve alleged negligence for failure to adequately protect against danger, a nonprofit's legal duty is defined by the ever-shifting standard of reasonable care.

The keys in meeting that standard are to be informed and keenly aware of risk management steps taken by similarly situated organizations, and then document your own organization's risk management steps.

Make risk management audits standard operating practice within your organization, and work with professionals to minimize your potential liabilities.

 **To help assess your potential risks, call Steve King or Steve Clarke of Gammon & Grange at (703) 761-5000 to discuss a Legal Audit or to order the recently updated [Legal Audit Questionnaire](#).™**

Nonprofit Alert®

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Nonprofit & Tax Exempt Issues

IRS Questions Group's Staff Benefits & Donor Deals

The Nature Conservancy, the country's largest land conservation group, is now the subject of an IRS examination into alleged private inurement and questionable donor practices. Last year, the Senate Finance Committee investigated the nonprofit for potential tax law violations involving excess benefits given to Conservancy trustees and senior staff. (See *NPA*, Aug. '03).

Articles in the *Washington Post* triggered the inquiry, alleging Conservancy "insiders" benefitted from below-market value property sales and home loans. The articles reviewed the Conservancy's "conservation buyer" program, through which the organization

purchased land for conservation, but then sold it to select individuals (including board members and senior staff) at less than fair market value. The buyers then allegedly donated amounts approximating the Conservancy's loss on each sale and claimed charitable tax deductions for their financial contributions.

The Conservancy told the *Post* that conservation easements on the parcels in question caused the market value to diminish due to the land's limited development potential. But according to the *Post*, those easements

did not restrict buyers from constructing homes – and in some cases guest cottages, garages, swimming pools, docks, and other recreational facilities – on the land.

The Conservancy also reportedly made at least 12 below-market rate interest home loans to senior staff, including one of \$1.55 million to the (continued on page 5)

➔ For more helpful tips, review **Nonprofit Alert® Memo, *Preparing the Nonprofit for an IRS Visit***, or call the attorneys at **Gammon & Grange, P.C.**

How to Respond to an IRS Audit Request

If the IRS decides to audit your organization and asks to review your organization's records, don't panic. Instead, you need to:

- 1) Assemble your team of advisors and identify potential legal issues that may concern the IRS. Have you been audited before? If so, discuss any issues that were not previously resolved.
- 2) Determine how you'll provide information to the IRS. Set up an internal procedure and brief everyone on the impending process.
- 3) Avoid confrontation! Be polite and professional when dealing with IRS representatives. Instruct all your personnel to behave courteously and cooperate when asked.
- 4) Designate space to be used exclusively by IRS representatives to examine the records they request. Instruct personnel to deliver the requested documents to IRS agents there, rather than giving agents unlimited access to all your organization's records.



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Nature Conservancy Audit (continued from page 4)

corporation's president. The Conservancy says all but two of these loans have now been paid, however. Following fallout from the Senate investigation, the Conservancy's Board of Governors discontinued loans and land sales to its employees and trustees. The Conservancy also instituted a new policy requiring all charitable contributions received through the conservation buyer program to be legally documented as part of the transaction. The IRS audit is expected to take a year or longer.

High-Tech Bankruptcies Spawn Unexpected License Problems for Nonprofits

The spate of high-tech bankruptcies over the past few years has produced an unexpected snafu that now has some nonprofits in a technological bind. Many organizations that hold an exclusive license to use certain intellectual property ("IP"), such as copyrights, patents, and trademarks, have been surprised to find they can no longer use such resources after the IP licensor goes bankrupt. That's because the Bankruptcy Code permits holders of licenses in copyrighted or patented works (although not trademarks) to continue using such works only if certain conditions are met – one of those being a requirement that the exclusive license is first recorded with the appropriate government agency.

If your organization holds an exclusive IP license, you should record the license with the appropriate office to ensure your usage rights will continue if the licensor goes bankrupt. In addition to bankruptcy concerns, there are important reasons for recording all types of IP transfers, including licenses, assignments and security interests.

Some copyright & patent licenses can't be used if the owner goes bankrupt, even if you own an exclusive license for use.

➔ For more information, contact Gammon & Grange's IP attorney, Ken Liu at (703) 761-5000.

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