

HURRICANES, DOGS, AND KING GEORGE...

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What if?

News of the impending hurricane spread throughout the Tidewater area. As people boarded up houses and made preparations, the newly-formed and very eager Community Animal Response Team in Back Bay County planned its response.¹ The volunteer group in the small, rural county consisted of two veterinarians, two veterinary technicians, and three other caring and dedicated animal lovers.

After the storm had passed, The Team Leader contacted the volunteers who met up to discuss their plan, and then broke into three groups to assist animal owners with providing medical care for their pets, and to transport animals to adequate shelter. In their haste to deploy, the Team Leader did not contact or coordinate with the local emergency management office.

The first group to deploy consisted of one small animal veterinarian, her technician, and one additional volunteer. They were assigned by the Team Leader to go house-to-house in an oceanfront neighborhood to see how they could be of assistance. As they walked down the street, an injured dog was spotted. The veterinary technician put a collar and leash on the dog, and they began to treat it. It quickly became defensive and bit the technician. She had to be taken to the hospital to receive stitches and other treatment for the bite. The total bill for her injury was \$2,500.00. She asked the Back Bay CART to pay for her bill.

The second group to deploy consisted of two volunteers with a truck and a horse trailer owned by one of the volunteers. She had received a call from a friend whose show jumpers were stabled in a low-lying area that had sustained massive flooding and wind damage. The two volunteers picked up the horses and took them to a barn in a different county that had been designated by a local emergency management office as a shelter for evacuated horses. When the volunteers began unloading the horses, one became scared, got loose, and sustained a tendon injury. The injury turned out to be career-limiting for the horse, and the owner claimed the horse had significantly decreased in value. She sued the owner of the barn claiming that the horse was able to get loose because a gate was left open in the area where the horses were unloaded, which allowed

¹ Back Bay County is fictional.

the horse to run dangerously around the property, and sued the volunteer that was handling the horse.

The third group to deploy consisted of a large animal veterinarian and his technician. They were assigned to visit several large farms to render assistance. At the first farm, they attempted to treat an alpaca that had been severely injured from flying debris. Despite their best efforts, the alpaca required euthanasia. The farm owner sued the vet for malpractice for his treatment of the alpaca.

Liability for Injuries to Animals and People

The Doctrine of Sovereign Immunity

Sovereign immunity is a judicial doctrine that prevents the government or its political subdivisions, departments, and agencies from being sued without its consent. The doctrine stems from the ancient English principle that the monarch can do no wrong.

The Virginia Supreme Court has made it clear that sovereign immunity is very much alive and is not to be considered an antiquated doctrine. The Court has explained that it is a rule of social policy that protects the public purse, protects against vexatious lawsuits, encourages citizens to assume important governmental positions by alleviating employees' fear of being sued, and promotes the orderly administration of government.

In early American history, the courts supported the traditional view that the United States could not be sued without congressional authorization. This immunity applied to suits filed by states as well as individuals. Thus, for many years, a citizen had no legal recourse against the government for civil liability except by petitioning Congress to pass special legislation awarding the citizen compensation.

Over the history of our country, Congress and states have waived sovereign immunity for certain claims. However, sovereign immunity in Virginia has NOT been waived for those responding to disasters, except for willful misconduct or gross negligence. The pertinent provisions of the *Commonwealth of Virginia Emergency Services and Disaster Law of 2000* are as follows:

§ 44-146.23. Immunity from liability.

A. Neither the Commonwealth, nor any political subdivision thereof, nor federal agencies, nor other public or private agencies,

nor, except in cases of willful misconduct, public or private employees, nor representatives of any of them, engaged in any emergency services activities, while complying with or attempting to comply with this chapter or any rule, regulation, or executive order promulgated pursuant to the provisions of this chapter, shall be liable for the death of, or any injury to, persons or damage to property as a result of such activities. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the Workers' Compensation Act (§ 65.2-100 et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress. For the purposes of the immunity conferred by this subsection, representatives of public or private employees shall include, but shall not be limited to, volunteers in state and local services who are persons who serve in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT).

B. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons, of emergency access or of other uses relating to emergency services shall, together with his successors in interest, if any, not be liable for negligently causing the death of, or injury to any person on or about such real estate or premises or for loss of or damage to the property of any person on or about such real estate or premises during such actual or impending disaster.

C. If any person holds a license, certificate, or other permit issued by any state, or political subdivision thereof, evidencing the meeting of qualifications for professional, mechanical, or other skills, the person, without compensation other than reimbursement for actual and necessary expenses, may render aid involving that skill in the Commonwealth during a disaster, and such person shall not be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from such service.

In addition, where a governmental department engages the volunteer services of a group, the same benefits, including liability insurance, can be extended to the volunteers under the *Virginia State Government Volunteers Act*.

§ 2.2-3600. Short title; declaration of legislative intent.

A. This chapter may be cited as the Virginia State Government Volunteers Act.

B. Since the spirit of volunteerism has long animated generations of Americans to give of their time and abilities to help others, the Commonwealth would be wise to make use of volunteers in state service wherever practically possible. Effective use of volunteers in state service, however, requires that state agencies be provided guidelines for the development of volunteer programs and the utilization of volunteers. **The General Assembly intends by this chapter to assure that people of Virginia may derive optimal benefit from volunteers, and that the time and talents of volunteers in state service may be put to their best use.**

§ 2.2-3605. Volunteer benefits.

A. Meals may be furnished without charge to regular-service volunteers if scheduled work assignments extend over an established meal period. Meals may be furnished without charge to occasional-service volunteers at the discretion of the department's executive head.

B. Lodging, if available, may be furnished temporarily, at no charge, to regular-service volunteers.

C. Transportation reimbursement may be furnished those volunteers whose presence is determined to be necessary to the department. Rates or amounts of such reimbursement shall not exceed those provided in § 2.2-2823. Volunteers may utilize state vehicles in the performance of their duties, subject to those regulations governing use of state vehicles by paid staff.

D. **Liability insurance may be provided by the department utilizing their services both to regular-service and occasional-service volunteers to the same extent as may be provided by the**

department to its paid staff. Volunteers in state and local service, including, but not limited to, any person who serves in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT), shall enjoy the protection of the Commonwealth's sovereign immunity to the same extent as paid staff.

Take-Away: In order for a CART/volunteers to have the same protection as state employees during times of disaster, the CART must be working in coordination with, and at the behest of, the Commonwealth or one or more of its political subdivisions. If a CART works independently, then the volunteers risk being liable for injuries or property damage during the course of its activities.

Take-Away: Proper training is imperative because the CART/volunteers may still be liable for gross negligence or willful misconduct.

Liability For Injuries to Volunteers

A CART's liability to volunteers would likely be limited by certain common law doctrines including assumption of the risk, inherent risk, and in certain instances, contributory negligence. Regardless, a CART would be best served to have all of its volunteers execute a release and waiver that properly acknowledges the risks involved in volunteering and releases the CART from liability for any injuries during the course of volunteer activities.

Take-Away: A well-drafted release is a must.