

FACING THE RISK OF ABUSE LIABILITY

ISSUE #1 – PHYSICAL AND SEXUAL ABUSE

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INSURANCE ISSUES FOR CHURCHES AND CHRISTIAN CHARITABLE ORGANIZATIONS

BACKGROUND:

While the issue of physical and sexual abuse is not a new topic, it is rapidly becoming the number one concern for organizations responsible for the care and safety of children. Almost every day we are confronted by stories in the media relating instances of actual and alleged abuse against children while in the care of boys and girls organizations, sports associations, day cares, schools, camps, churches and other charitable organizations such as orphanages, shelters and group homes.

Apart from the obvious emotional and physical damage caused by such acts, many organizations are now facing the staggering financial costs resulting from civil liability judgements awarded to injured parties who are able to establish negligence against organizations due to the criminal actions of their employees or volunteers. One positive result of these highly publicized liability awards has been the heightened awareness on the part of organizations to take pro-active measures to reduce the risk of abuse to children in their care, including the proper screening, training and supervision of those individuals working with children and young people.

In addition to reducing the risk of abuse it is important for the leadership of church congregations and charitable organizations to understand the scope and limitations of their insurance protection as it relates to legal liability arising out of actual or alleged physical and sexual abuse.

ISSUES:

The first insurance coverage issue regarding abuse is that every general liability insurance policy offered by any insurance company contains an exclusion for "criminal" or "intentional" acts. This means that any party who is guilty of a crime will not be afforded any coverage under the policy, as it is illegal to compensate anyone for a criminal act. Any individual who is charged and convicted of child abuse or molestation cannot expect to receive any coverage for legal defense costs or compensatory awards from a liability insurance contract.

The second aspect of liability insurance coverage for physical and sexual abuse is the issue of "vicarious liability". The historical legal principle that a "master" should answer for the actions of his "servants" means that an organization as the "respondent superior" can be held legally liable for the actions of its employees, members or volunteers. This form of indirect legal liability can be established against an organization on such grounds as inadequate hiring, screening or supervision of individuals given authority for the care of children.

At one time liability insurance contracts did not contain any limitations or exclusions with respect to the vicarious liability arising out of physical or sexual abuse. However, with the dramatic rise in civil actions against religious and secular organizations over crimes committed against children in their care, many insurance companies have responded quickly to limit

or exclude any coverage for "vicarious liability", as well as for criminal and intentional acts.

"Child Molestation", "Physical and Sexual Abuse" and "Prohibited Acts" exclusions have been added to the liability wordings offered by most insurers, especially for policyholders responsible for the care of children. This response on the part of the insurance industry in Canada and the United States has been justified on the grounds that underwriters are having difficulty in measuring the size of the potential risk posed by the explosion of claims for actual or alleged abuse.

However this rationalization gives little comfort to church leaders and the administrators of Christian charities who are seeking insurance protection for their organization and their directors, employees, members and volunteers. Therefore it is extremely important for church and charitable organizations to review their liability insurance policies carefully in order to ensure that they fully understand how their coverage will respond to a claim arising out of an abuse incident. We recommend that you check your liability policy with your insurance company or broker in the following areas:

INSURANCE TIPS:

(1) Check to see whether your general liability policy contains an exclusion or limitation for physical or sexual abuse, harassment, molestation, prohibited conduct, etc.

(2) If your policy does provide abuse coverage, review whether it is limited by such features as a high deductible or retention, unusual conditions, or coverage on a "claims made" rather than a regular "occurrence form" (as this could have the effect of creating a gap in coverage if you ever change insurers in the future and an abuse claim subsequently comes to light).

(3) Look carefully at the definition of "bodily injury" in your liability policy wordings to see whether it includes "mental anguish, sickness and disease".

(4) Your directors, officers, trustees, employees, members and volunteers should be included as "additional-named insured's" in order to ensure that they are afforded coverage for legal expenses and civil damages with respect to their official capacities on behalf of the organization.

(5) Provide your insurer with prompt notification of any reported abuse incidents in order to avoid jeopardizing your coverage. Remember to keep long term records of your insurance policies, employment documents and hiring and recruitment guidelines in order to assist you in defending possible future claims.

For more information, or a no obligation review of your insurance program please contact our office.

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