

Church Risk Management – The Unforeseen Risk

San Jacinto Baptist Association

May 20, 2014

Church Risk Management

Part I

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Jesus said: “Stay alert. This is hazardous work I’m assigning you. You’re going to be like sheep running through a wolf pack, so don’t call attention to yourselves. Be as cunning as a snake, inoffensive as a dove.”

Matthew 10:16 – The Message*

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Church Risk Management - Introduction

- Child Abuse/Neglect
- Copyright Issues
- Negligence
- Charitable Immunity – Federal and State

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Child Abuse/Neglect

Child Abuse - Definition

- The Texas Family Code, Section 261.101 defines “Abuse” to include the following acts or omissions by a person:
 - causing mental or emotional injury to a child;
 - causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury;
 - causing physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child;
 - fails to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
 - fails to make a reasonable effort to prevent sexual conduct harmful to a child.

Child Neglect - Definition

- Under Texas law, the definition of “Neglect” includes:
 - leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm;
 - placing a child in or failing to remove a child from a situation that results in bodily injury or a substantial risk of immediate harm to the child;
 - failing to seek, obtain, or follow through with required medical care for a child;
 - the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child;
 - placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child.

Child Abuse/Neglect – Duty to Report

- Texas law requires a person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report to a local or state law enforcement agency or the Texas Department of Family and Protective Services.
- If a professional has cause to believe that a child has been abused or neglected or may be abused or neglected, the professional shall make a verbal report within 48 hours after the professional first suspects that the child has been or may be abused or neglected.
 - A "professional" is defined to include teachers, nurses, doctors, and day-care employees.

Texas Department of Family and Protective Services' Contact Information

- Main website: www.dfps.state.tx.us
- Reporting Hotline: 800-252-5400
- Reporting website: www.txabusehotline.org

Criminal Liability For Failure to Report Child Abuse/Neglect

Anyone who is required to report suspected Child Abuse or Neglect under section 261.101 of the Texas Family Code and knowingly fails to make the report could be subject to a Class A Misdemeanor punishable by imprisonment of up to 1 year and/or a fine of up to \$4,000.

Child Abuse/Neglect Prevention

- The Church should have a Child Abuse/Neglect Prevention Policy
- The Church should have a Child Abuse/Neglect Reporting Policy and Procedure
- The Church should have a Child Safety Policy
- The Church should have an approved employment/volunteer application and vetting process
- The Church should perform a background check on all employees and all volunteers working with children before persons are allowed to act on behalf of the Church

Child Abuse/Neglect Prevention (Cont'd)

- All Church Employees and Volunteers working with children should receive annual training
 - The Church's Child Abuse/Neglect Prevention Policy
 - The Church's Child Abuse/Neglect Reporting Policy and Procedure
 - The Church's Child Safety Policy
 - Child Abuse/Neglect Prevention course approved by the Texas Department of Family and Protective Services
 - This annual training should be documented in the Employee's/Volunteer's file

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Copyright Issues

Copyright Law

- Can a teacher show a video clip from *YouTube* in Bible Study?
- Should a worship leader display words from a praise song on the screens in a worship center?
- Can a recipe from a cook book be published in the church's newsletter?
- Is it permissible for a church to show a Christian movie outside on a large screen during a church event?

Copyright Law

- What is a copyright?
 - The United States Patent and Trademark Office (The “USPTO”) states that “Copyright is a form of protection provided by the laws of the United States *to the authors of ‘original works of authorship,’ including* literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works.”
 - A work is protected regardless of whether the work is copyrighted with the USPTO.

Copyright Law

The USPTO states: “Copyright protects ‘original works of authorship’ that are fixed in a tangible form of expression.” Copyrightable works include the following categories:

1. literary works
2. musical works, including any accompanying words
3. dramatic works, including any accompanying music
4. pantomimes and choreographic works
5. pictorial, graphic, and sculptural works
6. motion pictures and other audiovisual works
7. sound recordings
8. architectural works.

Copyright Law – Penalties for Copyright Infringement

- The actual dollar amount of damages and profits.
- The law provides a range from \$200 to \$150,000 for each work infringed.
- Payment of all attorneys' fees and court costs.
- Courts can issue an injunction to stop the infringement.
- Courts can impound the illegal works.
- The person or persons committing the infringement can go to jail.

Copyright Law – Suggested Solutions and Resources

- Develop church wide policies and procedures for use and distribution of copyrighted materials.
- Obtain written permission from the copyright owner for use of the copyrighted material.
- Obtain a license for rebroadcast/republication of copyrighted material in webcasts/social media, music and videos used in the church by obtaining the appropriate licensing membership.
- Christian Copyright Licensing International. See www.ccli.com
- Another resource for a license to show movies and DVDs is Christian Video Licensing International. See www.cvli.com
- Another resource is the Church Music Publishers Association. See www.cmpamusic.org/copyrights
- Consult an attorney who is familiar with Copyright Law.

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Church Liability

Negligence - Definition

- The failure to use such care as a reasonably prudent and careful person would under similar circumstances which proximately causes injury or property damage to another person.
- An organization can be responsible for the acts of its employees or volunteers, if a third party is injured or the third party's property is damaged by the negligent act or omission (failure to act) of an employee or volunteer who is acting in the course and scope of the authority granted by the organization.

Negligence - Causes of Action

- A lawsuit may be brought against an organization by an individual for negligence, including the following causes of action:
 - Negligent Supervision of Employees/Volunteers
 - Negligent Hiring of Employees
 - Negligent Appointment of Volunteers
 - Injuries that occur during a church sponsored international mission trip
 - Premises Liability
 - Use of Church Vehicles or Equipment

Negligence - Examples

- The church builds a new playground with a 2 story slide and tree house. A bolt becomes loose on the slide handrail. A child falls off the steps of the slide after the handrail gives way and breaks her arm.
- After a heavy rainstorm floods a portion of the church's sidewalk, the church maintenance committee fails to completely dry up the water and post warning signs. A church member slips and falls on the wet sidewalk and is injured.

Church Liability – Suggested Solutions

- Develop and implement Safety Policy and Procedures (“Safety P & P”)
- Train staff, employees, and volunteers on Safety P & P
- Oversight by Safety Committee
- Conduct regularly scheduled Safety Audits of the church grounds, facilities, and equipment
- Develop and implement procedure for reporting and investigation of accidents, including timely reporting to insurance company
- Annual review of Safety P &P with insurance advisor and with attorney when necessary

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Charitable Immunity

Federal Volunteer Protection Act of 1997 - Applicability

- The Act applies to:
 - Any nonprofit organization which is described in section 501 (c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) of the Internal Revenue Code and which does not practice any action which constitutes a hate crime as defined under Federal law; or
 - Any nonprofit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime as defined under Federal law.

Federal Volunteer Protection Act of 1997 - Volunteer

- “Volunteer” means an individual performing services for a nonprofit organization or a governmental entity who does not receive—
 - compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or
 - any other thing of value in lieu of compensation, in excess of \$500 per year,
 - and the term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

Federal Volunteer Protection Act of 1997 – Protection for Volunteers

Liability protection for volunteers - No volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if—

- (1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;
- (2) if it is appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;
- (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and
- (4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to possess an operator's license or maintain insurance.

Federal Volunteer Protection Act of 1997 – Exceptions to Protection for Volunteers

- The limitations on the liability of a volunteer under the Act shall not apply to any misconduct —
 - which constitutes a crime of or act of international terrorism for which the defendant has been convicted in any court;
 - which constitutes a hate crime;
 - that involves a sexual offense for which the defendant has been convicted in any court;
 - where the defendant has been found to have violated a Federal or State civil rights law; or
 - where the defendant was under the influence of intoxicating alcohol or any drug at the time of the misconduct.

Texas Charitable Immunity and Liability Act of 1987 - Requirements

- The organization must be a “Charitable organization” as defined in the Act.
 - any organization exempt from federal income tax by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, if it is a corporation, foundation, community chest, church, or fund organized and operated exclusively for charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, fire protection or prevention, emergency medical or hazardous material response services, or educational purposes, including private primary or secondary schools if accredited by a member association of the Texas Private School Accreditation Commission but excluding fraternities, sororities, and secret societies, or is organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community.

Texas Charitable Immunity and Liability Act of 1987 - Requirements

- any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization, excluding fraternities, sororities, and secret societies, or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, and that:
 - (i) is organized and operated exclusively for one or more of the above purposes;
 - (ii) does not engage in activities which in themselves are not in furtherance of the purpose or purposes;
 - (iii) does not directly or indirectly participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office;
 - (iv) dedicates its assets to achieving the stated purpose or purposes of the organization;
 - (v) does not allow any part of its net assets on dissolution of the organization to inure to the benefit of any group, shareholder, or individual; and
 - (vi) normally receives more than one-third of its support in any year from private or public gifts, grants, contributions, or membership fees;

Texas Charitable Immunity and Liability Act of 1987 – Volunteer Immunity

- "Volunteer" means a person rendering services for or on behalf of a charitable organization who does not receive compensation in excess of reimbursement for expenses incurred. "Volunteer" includes a person serving as a director, officer, trustee, or direct service volunteer, including a volunteer health care provider.

Texas Charitable Immunity and Liability Act of 1987 – Volunteer Immunity

- A volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of the volunteer's duties or functions, including as an officer, director, or trustee within the organization.
 - **Exception:** A volunteer of a charitable organization is liable to a person for death, damage, or injury to the person or his property proximately caused by any act or omission arising from the operation or use of any motor-driven equipment, including an airplane, to the extent insurance coverage is required by Texas law, and to the extent of any existing insurance coverage applicable to the act or omission.

Texas Charitable Immunity and Liability Act of 1987 - Employee Immunity

- “Employee” means any person, including an officer or director, who is in the paid service of a charitable organization, but does not include an independent contractor.

Texas Charitable Immunity and Liability Act of 1987 – Employee Immunity

- In any civil action brought against an employee of a nonhospital organization (church) for damages based on an act or omission by the person in the course and scope of the person's employment, the liability of the employee is limited to:
 - money damages in a maximum amount of \$500,000 for each person and \$1,000,000 for each single occurrence of bodily injury or death.
 - and \$100,000 for each single occurrence for injury to or destruction of property.

Texas Charitable Immunity and Liability Act of 1987 – Church Immunity

- In any civil action brought against a nonhospital organization (church) for damages based on an act or omission by the organization or its employees or volunteers, the liability of the organization is limited to:
 - money damages in a maximum amount of \$500,000 for each person and \$1,000,000 for each single occurrence of bodily injury or death
 - and \$100,000 for each single occurrence for injury to or destruction of property.

Texas Charitable Immunity and Liability Act of 1987 – Insurance Requirements

- In order for the Act to apply, the charitable organization must have minimum liability insurance coverage in effect.
 - The coverage shall apply to the acts or omissions of the organization and its employees and volunteers and be in the amount of at least \$500,000 for each person and \$1,000,000 for each single occurrence for death or bodily injury and \$100,000 for each single occurrence for injury to or destruction of property.
 - This insurance requirement does not apply to Volunteers.

Texas Charitable Immunity and Liability Act of 1987 - Exceptions

- The Act does not apply to an act or omission that is intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others.
- The Act does not limit or modify the duties or liabilities of a member of the board of directors or an officer to the organization or its members and shareholders.

Additional Issues – Beyond the Scope of the Presentation

- Other issues include, but are not limited to:
 - Legal Formation/Organization
 - Pastoral/Clergy Counseling, including disclosure of confidential records/communication
 - Libel/Slander
 - Employment Law
 - Maintaining Federal and State Tax Exemptions
 - Reporting requirements to Federal and State Agencies
 - Rebroadcast of worship services/concerts on the Internet and/or DVD sales

Church Risk Management – Take Aways

- Be Proactive
- Have Policies and Procedures in place
- Have an annual review of Policies and Procedures
 - Confirm no change in the law
 - Confirm Policies and Procedures contemplate active ministry areas/future ministry areas
- Have annual training for Employees and Volunteers of Policies and Procedures and document training
- Schedule annual review of the Church's insurance coverage with the Church's insurance advisor

Church Risk Management

Part II

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Why do we buy insurance?

- 1) Might be required by law
- 2) Required by client
- 3) To be socially and financially responsible
- 4) To protect your people and assets
- 5) To survive a catastrophic loss
- 6) To assure stable earnings

Cost of Risk – an organizations cost of risk associated with a particular asset or activity is the total of the following:

- The cost of accidental losses not reimbursed by insurance or outside sources.
- Insurance premiums or payments to other outside sources of funds.
- The cost of measures to prevent or reduce the size of accidental losses.
- The administrative cost for risk management.

What are my risks when I operate a business?

- Premise/Operations
- Products/Completed Operations/Professional Services
- Automobile/transportation Risk
- Workers' Compensation – covering employees work related injuries
- Property & Equipment Risk – risk of loss, physical damage, theft, etc
- Key Man/Personnel Risk
- Sexual abuse & molestation
- Cyber Liability/Privacy Issues
- Professional Liability

What are my risks when I operate a business?

Continued....

- Financial Risk
- Regulatory Risk
- Employment Related Practices Risk
- Market Risk
- Political Risk
- Technology Risk



**To manage these risks you must
first understand your risk**

Risk Management

- The process of making and carrying out decisions that will minimize the adverse effects of accidental losses upon an organization. Making these decisions is a five-step process.

What are the five steps in the Risk Management Process?

- Identifying exposures to accidental loss that may interfere with an organizations' basic objectives
- Examining feasible alternative risk management techniques for dealing with these exposures
- Selecting the apparently best risk management techniques
- Implementing the chosen risk management techniques
- Monitoring the results of the chosen techniques to ensure that the risk management program remains effective

Types of Risk Management

Techniques

- Exposure Avoidance – eliminates the risk entirely
- Loss Prevention – aims to reduce the frequency of a particular loss
- Loss Reduction – aims to reduce the severity of a particular loss
- Segregation of loss exposures – arranging an organizations activities and resources so that no single event can cause simultaneous losses to all of them. Two Types – Duplication & Separation
- Contractual Transfer – transfer legal and financial responsibility for a loss to another. (i.e. you hire a charter bus company to do your transportation)
- Risk Financing Techniques – There are 2 types...retention and contractual liability transfer (Insurance)



Selecting the apparently best risk management technique(s)



Implementing the chosen risk management technique(s)



Monitoring the results of the chosen technique(s) to ensure that the risk management program remains effective

Some of the types of insurance contracts available to you for transferring for some of these risks to another party include:

- Commercial Property Insurance
- Inland Marine/Equipment Insurance
- Commercial Automobile Insurance
- Workers' Compensation Coverage
- Accident Medical Coverage
- Employment Related Practices
- International/Foreign Liability
- Commercial General Liability
- Professional Liability
- Umbrella Liability/Excess Liability Policies
- Cyber Liability
- Directors & Officers

Insurance distribution systems in America

- Direct Writers
- Independent Insurance Agents
- Wholesale Distributors/Excess and Surplus Lines Brokers
- Managing General Underwriter (MGU)/Managing General Agent (MGA)

What is General Liability?

General Liability coverage is designed to provide the named insured protection from bodily injury (BI) and/or property damage (PD) claims from third parties, arising from your business operations/premise, for which you are legally liable. It does provide defense coverage for the above mentioned conditions. Your General Liability policy is a legal contract between you and your insurance company. The insurance company either accepts the risk represented in application or declines. They provide a contract to cover certain risk in consideration of premium paid by you. This forms a legal contract



**How could I become legally liable
for bodily injury or property
damage?**

Unintentional Torts

- Negligence
 - Requirements of negligence:
 - Duty owed
 - Breach of that duty
 - Damages resulting
 - Breach is the cause

Basic Exposures Covered by the Commercial General Liability Policy

- Premise Liability – arising out of the ownership or use of property
- Operational Exposures – Arise out of the operations conducted by the business *AWAY* from premise used or owned
- Products Exposures – arise out of the manufacture, distribution or sales of a product. Two basic requirements – the loss occurs away from the premise and the seller has relinquished control of the product to the buyer.
- Completed Operations Exposures – arise out of the insureds operations which have been completed
- Contractual Liability – liability assumed in a contract or agreements

Who is an insured means...

The definition addresses individuals, partnerships and LLC, but for an organization other than a partnership, joint venture or LLC, you are an insured. Your executive officers and directors are insured, but only with respect to their duties as your officers or directors, your stockholders are also insured's, but only with respect to their liability as stockholders

Each of the following are also insured's in addition to the Named Insured shown on the declaration page of the insurance policy; Employees, Volunteer workers, only while performing duties related to the conduct of your premise, or your employees, and committee members



Coverage part A – Bodily Injury and Property Damage
Two Promises – Pay and Defend
Subject to Policy Exclusions

Coverage Part A

- Bodily Injury or Property Damage
- Caused by an Occurrence
- During the Policy Period
- Within the Coverage Territory

The exclusions under coverage part A include:

- Liability related to operation or use of automobiles (read definition of mobile equipment) Most mobile equipment is covered
- Suits brought against you from employees
- Employment related practices liability
- Outside the coverage territory
- Activities not disclosed or misrepresentations
- Financial Risk
- Products and Completed Operations (unless specifically added on)
- Breach of Contract
- Obligations under workers compensation laws

The exclusions under coverage part A include:

Continued....

- Liquor Liability
- Expected or intended injury (some carriers give this back)
- Certain types of contractual liability
- Pollution (read definition out of policy)
- Aircraft and Watercraft – unless endorsed onto the policy
- Owned saddle animals – unless endorsed onto the policy
- Electronic Data
- Damage to your work product or damage to your work
- Personal and Advertising injury (they add it back on limited basis)



Coverage Part B – Personal and Advertising Injury

Coverage Part B – Personal and Advertising Injury **means injury, including consequential bodily injury,** **arising out of one or more of the following:**

- False arrest, detention or imprisonment
- Malicious prosecution
- Wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premise that a person occupies, committed by or on behalf of its owners, landlords, or lessor;
- Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organizations goods, products or services;
- Oral or written publications in any manner, of material that violates a persons right of privacy
- The use of another's advertising idea in your advertisements
- Infringing upon another's copyright, trade dress or slogan in your advertisements

Exclusions can include:

- Knowingly violate rights of another
- Publish material with knowledge of falsity
- Criminal acts
- Breach of contract
- Contractual liability
- Wrong description of price
- Insureds in media and internet business
- Electronic chat rooms and bulleting boards
- Infringement of copyright, patent, trademark, or trade secret, however this does not apply to infringements in your advertisements or copyright, trade dress or slogan

Coverage Part C – Medical Payments

No fault medical payments for first aid injuries resulting from incidents on your premise, pays benefits up to \$5,000.



Questions?

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Materials

If you would like a copy of this presentation please email Dustin Phillips at dustin.phillips@hibbshallmark.com and ask for the Church Risk Management presentation.

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