



Recognizing Your Liability Risks



**Church
Mutual**
INSURANCE COMPANY

The Protection SeriesSM

Learn more
about the
liability
exposures your
worship center
faces today.

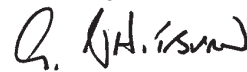
*Since we began protecting
religious centers in 1897,*

we have seen them become far more than spiritual retreats. Today, they also are community, social, educational and recreational centers. As a result, they are exposed to a wide array of circumstances which can lead to accidents and subsequent legal action.

This booklet was prepared to help you learn more about the common exposures facing your organization today. The booklet offers a revealing glimpse of the liability claim files of our company, which insures more religious organizations than any other insurance company in America. It includes several incidents which led to legal action against religious organizations. Their inclusion does not imply negligence or legal liability on the part of the organization or individuals involved.

This is not a safety manual nor an insurance buying guide. It cannot possibly include every potential risk to your ministry. However, we hope it gives you a broad understanding of the civil justice system and how it affects you. Many of the risks discussed are not automatically covered by insurance policies. I recommend that you speak with your insurance agent about each of the legal exposures outlined here and that you purchase appropriate coverages.

Sincerely,



Gerald Whitburn

President

Church Mutual Insurance Company



Today's legal arena for religious ministries.

Many years ago religious organizations enjoyed immunity — “charitable immunity” — for their actions. Legal theory held that their assets were comparable to a trust fund, and could not be used for purposes other than those intended by the donors. Since it was not the intent of donors to have assets used to pay liability awards, charitable organizations were immune from paying them.

Today, the doctrine of charitable immunity is totally absent in most states and of very limited scope in others.

Courts now recognize that injury that results from a religious organization’s negligence is no less painful, disabling or financially damaging than injury resulting from any other person’s or organization’s negligence. Large court awards against religious organizations attest to their equal status in today’s legal arena.



Legal action taken against worship centers.

An organization may be sued for breach of contract or for “tort” liability. Most legal action against worship centers involves torts and that is the focus of this booklet.

Breach of contract.

A contract is breached when one party to the contract performs as agreed, but the other party does not, and the failure causes injury to person or property.

The most common example of breach of contract is failure to pay for or deliver goods and services.

Contracts also are sometimes used to transfer risk. For example, a contract might contain a provision that requires your organization to indemnify, defend or hold harmless another party to protect that party from claims by others.

To protect your interests, it is important that you fully understand any contract before signing it, and that you enter only with the full desire and ability to fulfill your obligations. A competent attorney should examine any contract you plan to enter.

Tort liability.

“Tort” is the legal term for a wrongful act which results in damage. There are four bases for legal action under tort law:

- **Intentional acts** that cause injury to person or property. Libel and slander are examples, as are most criminal acts, such as assault and battery. (Legal action for crimes may be brought forth in both criminal and civil courts.)
- **Strict liability** can result because the law has created “automatic” liability for the benefit of all citizens. Examples of this include very hazardous activities, dangerously defective products and workers’ compensation and liquor laws.
- **Negligence** which arises when an action results or contributes to an unintended injury, or when failure to take action allows the injury to occur. The vast majority of lawsuits against worship centers involve negligence claims.
- **Damages.** Without “damages,” there generally is no basis for legal action. Damages may include physical injury, emotional injury or property damage (destruction, loss of use, diminished value, etc.).



Reasons why lawsuits can be expensive.

A lawsuit, whether based on factual, false or fraudulent claims, is expensive.

Defendants never really come out a “winner” in a lawsuit. It can cost a great deal if an organization is found to be liable or to defend a case even if one is not found liable. Costs include:

- **Legal defense costs.** Costs to defend against a lawsuit can be high, regardless of the outcome. Simple cases brought to trial can cost \$10,000 or more to defend. Complicated cases can reach \$100,000 or more.
- **Court awards for damages.** Court awards can include medical and rehabilitation expenses, lost wages, pain and suffering, and restoration of property lost or damaged. A case involving serious injury or death can easily exceed \$100,000 in damages, and \$1 million awards have become commonplace.
- **Punitive damages.** Occasionally, a court will award punitive damages to the victim to punish a wrongdoer for malicious conduct. This is more likely to occur when an intentional act caused injury or when extreme carelessness contributed to it.
- **Intangibles.** Lawsuits can be disruptive to your ministry and congregation, particularly those of a sensitive nature. A lot of time, energy and concern are invested in lawsuits, detracting from normal functions. Additionally, some lawsuits can divide a congregation. Members often take sides, especially when another member has filed suit.



Worship centers have many liability exposures.

The legal exposures to your ministry can be thought of as falling into many categories. (We have explained some below.) Lawsuits often involve more than one category.

Conditions of your premises.

You cannot prevent all accidents, although you can reduce the likelihood of an accident occurring. The premises should be well maintained, be in compliance with local codes and be made as safe as reasonably possible for members, guests and anyone else who comes to your facility.

Two Church Mutual Protection Series booklets provide helpful suggestions for maintaining safe premises — “Safety Begins With People” and “Make Activities Safer For Your Congregation.”

Consider the following accidents which resulted in legal action against worship centers. Many could have been prevented.

- A young couple was electrocuted when they entered a fountain to cool off. A frayed wire on the fountain pump charged the water.
- One evening, three people slipped on ice that had formed from nearby melting snow. The third person broke her hip.
- An elderly woman died of injuries suffered when she slipped on a cracked and loose step.
- An attendee at an AA meeting was injured from slipping and falling on a wet floor.
- A choir member was injured by a fall down a stairway without handrails.

Activities you sponsor.

Virtually any activity your congregation sponsors, whether at or away from your premises, has potential for accidents and subsequent legal action.

Among the activities for which we have seen legal action are: skiing (snow and water), tubing, sledding and tobogganing, hiking and climbing, biking, boating, canoeing and swimming, hayrides, horseback riding, three-wheeling, motorcycling and snowmobiling.

Also from softball, football, basketball, skating, mud events, obstacle courses and trampolining. Even food poisoning from dinners.

When religious organizations are found negligent — and therefore liable for damages — it is usually because they failed to take adequate safety precautions or provide proper supervision.

Select your activities carefully — based on the capabilities of the participants. Prepare for them with safety, as well as fun, in mind. Have an adequate number of qualified supervisors, which is especially important for youth activities. Be sure each supervisor knows his or her responsibilities. Set ground rules and follow them.

Where equipment is involved, be sure the participants (and supervisors) are adequately trained to use it. And be sure it is regularly inspected and properly maintained.

Consider the following accidents (and thousands of others) which resulted in legal action against worship centers. Many could have been prevented.

- A 15-year-old suffered internal injuries when he crashed his inner tube going over a 25-foot ski jump.
- A young girl injured her arm when she was pushed through a plate glass window at a skating party.

- A 9-year-old was dangling her legs over the side of a haywagon when the tractor driver turned sharply around a building. One leg was crushed between the wagon and the building.
- More than a dozen guests suffered from food poisoning after eating at a dinner.
- A pillow fight at a youth retreat resulted in an eye injury for one young boy.

Your role as an employer.

Your ministry might have one or more employees — clergy (even if considered an independent contractor for tax purposes), secretaries, teachers, custodians, organists, coaches, administrators and counselors.

With employees come several special responsibilities and liability exposures. These include: workers' compensation laws, vicarious liability, discrimination, harassment and wrongful termination actions, corporal punishment and professional liability.

Workers' compensation laws. Almost without exception, your organization is responsible (liable) for work-related injuries. This is a form of "strict" liability which was referred to earlier in this booklet.

In states where a worship center is required to carry workers' compensation insurance, you are responsible for employee injuries without regard to negligence, and whether the injury occurs at or away from your premises. In states where a worship center is not required to carry workers' compensation insurance, an employee can sue for negligence and, in some of these states, the religious organization can be barred from raising some of its normal defenses since it failed to carry workers' compensation insurance.

Consider these actual examples:

- A custodian fell from a ladder while changing a light bulb and broke his arm.
- A secretary suffered a temporarily disabling back strain when moving a heavy typewriter from one table to another.
- A teacher's neck was injured when he was struck in the head by a soccer ball while supervising a playground game.
- An elderly organist broke her hip during a fall down steps from her loft.
- A pastor severely injured his back in an auto accident on the way to a home visitation.

You can create a safer working environment by having well-trained, competent employees and by providing the proper equipment for the job. This doesn't eliminate accidents, but can reduce their likelihood. But accidents do happen — regardless of how hard you try to prevent them. That is why it is important to carry workers' compensation insurance. In most states it is the law. And your responsibility to provide workers' compensation benefits can exist whether you carry insurance or not.

Vicarious liability. Any employer, religious organizations included, can be held liable for the actions of its employees when they're acting within the scope of their duties. If your employee negligently causes injury to another person or property, your organization — as well as the employee — will likely be sued.

Consider these examples:

- A religious organization that sponsored a camp outing was sued when it was alleged that its lifeguard was negligent in not preventing the drowning of a 12-year-old.

- An infant rolled off an unattended changing table at the ministry's day care center, and suffered a skull fracture.
- A worship center was named in a lawsuit when it was alleged that a teacher paddled a child hard enough to cause bruising.
- Several children were injured while riding in the bucket of a tractor driven by a youth minister. It crashed into a tree.

Discrimination, harassment and other actions. In addition to your other exposures as an employer, you also are exposed to "employment practices liability" risks from employee relations. Lawsuits alleging discrimination, sexual harassment and wrongful termination represent a growing concern for religious organizations.

It is important to be familiar with state and federal laws which impact hiring, employment and termination practices and to establish guidelines in accordance with the law.

Here are some general guidelines:

1. Hire and promote on the basis of character, aptitude, education, training and past experience, not on age, race, sex, religion (clergy excepted), marital status, national origin or handicaps which have no bearing on the tasks to be performed.
2. Compensate based on the quantity and quality of work performed, not on the discriminatory factors listed above.
3. Be sure all employees are properly trained and clearly know what is expected of them.
4. Supply proper equipment.
5. Assign work in a fair and equitable manner.
6. Establish written rules of conduct.
7. Evaluate employees carefully and objectively.

8. When disciplining employees:

- Know the facts — be sure that reason for discipline exists.
- Be uniform in your discipline.
- In most cases, give your employees a chance to modify performance or behavior. This can be accomplished through progressive disciplinary action (oral reprimand, written reprimand, suspension, termination).
- Document your disciplinary actions — evidence, reasons and action taken.

9. When contacted by others seeking information regarding current or former employees, confine your comments to employment dates and jobs held — unless your employee or former employee grants you written permission to reveal other information.

10. Implement an employment practices compliance program that includes a policy for dealing with sexual harassment.

Consider these actual examples of legal action taken by employees against worship centers:

- A religious organization was sued for discrimination after firing an employee for using vulgar language.
- Three former employees filed a wrongful termination lawsuit after being fired for failing to obtain lifesaving certification.
- An employee sued for sexual harassment and wrongful termination, claiming she was fired for refusing her boss's advances.
- After a worship center fired an employee for what it claimed was poor performance, the employee sued on the basis that she was fired for discriminatory reasons.

Employee benefits liability. Religious organizations are responsible for properly administering whatever employee benefit plans they may offer. You can be sued for providing incorrect information, for negligently counseling employees about their benefits and for errors in administering your employee benefits program.

Your professional liability. A special concern to worship centers is the exposure to legal action from counseling activities of clergy, teachers and others in a position to counsel. Though most cases involving counseling liability have not resulted in court awards for damages, the exposure is still very real. Several suits have been filed against clergy and their organizations, and each required considerable funds to defend. Examples of claims include failure to refer a person for necessary professional care and exerting undue influence over another person.

Your volunteer workers.



Volunteer workers are one of your ministry's greatest assets when used properly. Otherwise, they become a legal liability. The exposures created by the use of volunteer workers are similar to those created by employees: they can be injured while working or they can cause injuries for which the organization becomes vicariously liable. But there are three important differences that make the exposure from volunteers even greater than from employees.

1. In most states, volunteer workers are not protected by workers' compensation laws. They must resort to the civil justice system for compensation for serious injury.
2. The number of volunteer workers, and their total hours working, frequently exceed those of paid employees.
3. Volunteer workers are more often undertrained, underskilled and underequipped for the multitude of duties they perform.

Consider these claims involving volunteer workers:

- A worker, who was painting from scaffolding, fell and hit his head. He lapsed into a coma.
- A volunteer suffered extensive injuries and weeks of lost income when he fell from a ladder while helping with a building project.
- An aspiring young pianist cut off several fingers with a table saw while helping with a ministry's remodeling project.

Most of the cases involving supervision of activities, conditions of the premises or use of autos in this booklet could involve either employee or volunteer negligence. What may be an employee task in one religious organization is volunteer work in another.

These tips can reduce your liability exposure from volunteer workers.

1. Select a capable person, not just "any" person for the task at hand.
2. Hire a professional for dangerous or technically difficult jobs, such as plumbing, electrical, roof or steeple work.
3. Provide adequate, well-maintained tools and equipment.
4. Supervisors should let each worker know what is expected of them.
5. Be very selective on who may work with children — more on this in the Sexual Misconduct/Molestation section.

Most of Church Mutual's Protection Series booklets provide safety suggestions that can be used to make volunteer work and your activities safer. Additional tips also can be found in our video, "Preventing Workplace Injuries Is No Accident."

Your use of automobiles.



If your organization owns a car, van, bus or any other motor vehicle, you have an obvious exposure to accidents and subsequent lawsuits. We read about auto accidents regularly, including some alarming school bus and van crashes.

What is less obvious is your exposure from vehicles not owned by the organization. It is a real and very common exposure. If you have ever rented or borrowed a vehicle, or asked someone to drive his or her own car on behalf of your ministry, you have had the exposure. If the vehicle is involved in an "at-fault" accident, your organization will likely be named in a lawsuit, along with the vehicle's owner and driver. These exposures are referred to as "Hired and Nonowned autos," and include, for example:

- A pastor asks the secretary to drive down to the office supply store.
- To enable handicapped members to attend worship services, your ministry asks for volunteers to drive them to and from service every Sunday.
- Five members agree to transport children to the skating party, using their own cars.
- One member has a large van — ideal for taking a group to the weekend retreat. You borrow it.

To reduce your exposure from automobiles, use only qualified drivers and well-maintained vehicles. Provide adequate supervision for youngsters and take great care in transporting disabled persons.

Church Mutual's Protection Series booklet and video, "The Road To Safer Transportation," offer many suggestions to make your transportation programs safer.

Here are some auto incidents that resulted in lawsuits:

- A wheelchair-bound woman was injured when the ministry's van in which she was riding suddenly stopped. The chair had not been fastened to the van, and she slammed forward.
- Two adults died and 27 were injured when the ministry's bus went out of control in a downpour of rain. The bus flipped over the guardrail, went through a road sign and tumbled down an embankment.
- After dropping off passengers, the driver of the van lost control on ice and crossed the center line, striking an oncoming car.
- Two bus loads of children were returning to their worship center from a skating party, when the lead bus stopped on the highway to let a child out at her parents' house. As she crossed the highway, she was struck by the other bus.

Sexual misconduct and molestation.



Church Mutual's growing claim files attest to the fact that incidents of sexual misconduct and molestation represent a serious concern. This

includes worship centers, schools and camps of all denominations and in all parts of the country.

The concern for the abused children cannot be overstated. However, there also is great concern for any organization involved in such difficult legal action.

Several lawsuits have been brought against worship centers, schools and camps for sexual abuse committed by clergy, teachers, day care workers, counselors and students. These suits generally allege, among other things, negligence in:

1. Hiring or supervising the offender.
2. Supervising the children.
3. Failing to take proper action when molestation is suspected or reported.

Consider these actual cases which have led to legal action against religious organizations:

- Over a long period of time, a married male teacher abused several young boys in class. He had been fired from three other schools for similar offenses. A check of references, which was not made, might have revealed this problem.
- While employed by the ministry, a camp counselor molested an 8-year-old girl. The lawsuit alleged that the religious organization knew of, but disregarded, a previous similar offense. Also, that it failed to investigate the counselor's qualifications prior to hiring him and that it took no action after learning of this molestation.
- A pastor molested nine young boys at one house of worship. Investigations revealed that officials were aware of an incident at a previous worship center and transferred the pastor because of it.
- Three students sexually abused another student in an unattended room during school hours.

There are steps that can be taken to reduce the chances of sexual abuse occurring. These are outlined in "Safety Tips On A Sensitive Subject: Child Sexual Abuse," a Church Mutual Protection Series booklet. The booklet recommends that abuse be "attacked" through stringent screening of prospective employees and volunteer workers and through well-defined supervisory guidelines and educational programs. It also provides tips for detecting sexual abuse and offers a plan of action to follow when sexual abuse is suspected or reported.

Libel, slander and other personal injuries.

Though sometimes defined to include any injury to a person, "personal injury" as used here refers to injury other than bodily injury and property damage. Among the more common causes of personal injury are libel, slander, invasion of privacy and false arrest. All are forms of offenses to the character or freedom of a person or organization.

Libel and slander are closely related — both are defamations of character. Both involve untrue and malicious statements which harm the reputation, memory, trade or livelihood of a person or organization. Such a statement in written form is libel, in spoken form is slander. Libel also includes publication of malicious untruths through signs, pictures or films.

Worship centers can be sued for libel or slander on the basis of statements made at the pulpit, in bulletins, radio broadcasts, e-mail, Web sites and any other publication or public gathering.

False arrest or wrongful detention lawsuits can arise when individuals are restricted in their movement or when their property is held from them. These incidents are most likely to occur as disciplinary actions or in apprehension of suspected criminals.

Invasion of privacy lawsuits can arise from unwarranted investigations into the personal lives of your members or employees, or from conducting searches of their body or private property.

Consider these actual lawsuits:

- An employee was fired when he made advances on two women; however, he denied this charge. He filed suit for libel when the ministry sent a letter to his prospective employer, giving reasons for the termination.
- The owner of a pornography store sued when worship center members picketed at his store.

The errors and omissions of directors, officers and trustees.

The directors, officers and trustees of your religious organization can be held accountable to the same standards of responsibility applied to other corporate officers in the business community.

Broadly defined, these responsibilities are:

1. To exercise due care and to act responsibly in business affairs.
2. To refrain from engaging in personal activity in such a manner as to injure the organization or enrich the officers at the organization's expense.
3. To avoid illegal acts and stay within the legal powers of the organization.

Actual or alleged failure to fulfill these responsibilities can lead to costly lawsuits brought by congregation members, employees or other affected parties. Legal action can result from well-intended but inappropriate actions. Good intentions can unfortunately result in lawsuits.

The greatest exposure to a worship center and its directors, officers and trustees lie in the areas of:

- Conflict of interest.
- Failure to exercise good judgment.
- Improper expenditures.
- Exceeding the authority granted by the organization's charter.
- Failure to follow procedures per the charter and by-laws.

Consider these actual lawsuits:

- For a building project, the religious organization hired a general contractor who in turn hired several subcontractors. The organization paid the contractor for all work performed, but soon after was sued by the subcontractors who had not been paid by the contractor. The organization's board was found negligent for not obtaining lien waivers from the contractor. They were ordered to pay the subcontractors, doubling the cost of the project.
- A congregation planned to build a new building using savings and borrowed money. The organization's directors reviewed bids, hired contractors and supervised the initial stages of the project. Unfortunately, miscalculations and cost overruns exhausted the organization's savings and credit, leaving the new building only partially completed. Because the organization borrowed to its credit limit and could not generate sufficient funds to meet payments, the bank foreclosed. Both the bank and the members of the congregation sued the directors for misconduct, failure to contract and spend within authorized limits, and lack of diligence.

Educators' liability: a special concern for schools.

Unique to education facilities are lawsuits alleging discrimination against a student, failure to educate and inappropriate financial aids or admissions policies.

Property disputes and other exposures.

Legal action for property disputes can arise because of ways you use your property, or because of questions of ownership.

Depending on the nature of the activities of your ministry, a great number of other exposures may exist. They may stem, for example, from broadcast operations, advertising, pollution, copyright violations, tenant/landlord disputes, medical malpractice, etc.



What your board can do about liability exposures.

Greater recognition of the exposures to lawsuits is the first step in dealing with them — and that's the purpose of this booklet. Once an exposure is recognized, you may choose to:

- **Eliminate the exposure** by avoiding the activity which creates it. This is an impractical option for most activities, but might be wise advice for those which seem to be particularly hazardous — such as three-wheeling, trampolining and hayrides.
- **Control the exposure** through property and vehicle maintenance programs, driver selection and training programs. Also, more careful screening of employees and volunteers and adequate supervision.
- **Transfer the financial consequences** of the exposure to an insurance company through a well-developed, comprehensive insurance program.
- **Accept the exposure** as is. This is not advisable, but often done unintentionally.



You and your insurance company during a legal process.

Your organization.

If an accident or other incidents occur, notify your insurance company. Do not wait until a lawsuit is filed, and do not decide that your insurance company will or will not cover it. Waiting to notify your insurance company wastes precious investigation time.

Most often, a plaintiff's attorney takes a shotgun approach and names in a lawsuit anyone and any organization connected with the incident. Your insurance policy may provide coverage for your organization and anyone acting on its behalf — such as your board, employees or volunteers. Nevertheless, individuals involved also should notify their homeowners or automobile insurance company.

Cooperate fully with your insurance company during the investigation and during all other stages of the proceedings. Virtually all insurance policies require cooperation of the insured, and failure to do so can cause coverage to be voided.

No matter how much sympathy you have for the injured person, or how responsible you feel for the injury, do not encourage the injured party to sue you, and do not make statements of "guilt" or financial offers. You could be accepting responsibility (and liability) when the responsibility and liability lies elsewhere. Encouraging legal action or making offers on your own might be in violation of your insurance policy. Furthermore, it is possible that the suit you encourage is not covered by insurance or could result in a judgment greater than your policy limit.

Understand that there is no such thing as a friendly lawsuit. The civil justice system in the United States is an adversary system. Your organization and the party suing your organization become opponents in the litigation process. Testimony from either side is likely to create hard feelings.

The legal process can be a long, distracting and emotionally draining process for both sides. For cases that are actually tried in court, the process can take from one to five years.

Your insurance company.

Your insurance company will investigate the incident to determine whether coverage is applicable and to prepare a course of action.

Where coverage is applicable, the company may form an evaluation as to the likelihood of your organization (or other named insureds) being found negligent by a jury in a court of law. The probability can be low, likely or highly probable. Based on research of other similar cases, the company may also estimate the value of the case — the amount a jury is likely to award if your organization is found liable.

Working with the evaluation of negligence and the expected value of the case, your insurance company may decide to fight the case in court, or make an out-of-court settlement offer. Because the trial process is painful for both sides, and expensive, out-of-court settlements are generally attractive to both parties. Approximately 95% of all lawsuits are settled out of court.

Finally, it is the role of the insurance company to pay the settlement (or court award) and legal costs, up to the policy limit.

Other Protection Series Booklets.

Contact Church Mutual or your Church Mutual representative or agent for additional copies of this booklet and for other booklets in the Church Mutual Protection Series.

- Crime-Proof Your Worship Center
- Fire Safety At Your Worship Center
- Make Activities Safer For Your Congregation
- The Road To Safer Transportation
- Safety At Your Playground
- Safety Begins With People
- Safety Outside Your Worship Center
- Safety Tips On A Sensitive Subject:
Child Sexual Abuse
- Weather Protection For Your Ministry
- Youth Safety And Your Congregation

Para obtener asistencia inicial en español puede telefonar al (800) 241-9848 o enviar un correo electrónico a la dirección espanol@churchmutual.com.

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