The High Costs of an Abuse Claim

Prevention, right coverage are critical to protecting churches.

By Bobby Ross Jr.

Sexual abuse of a minor is the number one reason churches end up in court. It's a statistic that's been true for a number of years, according to attorney Richard R. Hammar. And churches must do all they can to prevent this type of tragedy. But churches also must be wise and purchase the right kind of insurance that will help cover any legal action that might occur because of abuse or alleged abuse on their property or during church-related events, trips, or activities.

Based on interviews with church insurance experts, attorneys, and a risk management specialist, Church Finance Today offers five guidelines to help churches of all sizes make sure they are financially prepared should the unthinkable ever happen.

1. Don't assume your general liability policy covers abuse claims. It usually does not.

"Some churches may not be aware that their typical church liability coverage doesn't cover sexual abuse or misconduct," said Eric Spack, risk management and loss control director for GuideOne Insurance.

Since there's typically an exclusion for allegations of child abuse in the general liability coverage, he said that churches need separate sexual misconduct coverage. While the agent or broker who sold the insurance should have explained what is or isn't in the policy, churches still may be unaware of, or have certain misconceptions about, what's actually covered by a general liability policy, he said.

To illustrate the point:

• Last year, a federal appeals court affirmed that an insurer need not cover a $4.35 million civil verdict awarded against a church for two teenage girls sexually assaulted by the church's former pastor, Law360 legal news service noted. The court found that the church's policy clearly excluded coverage for any claims of sexual misconduct of an individual.

• In a review of a child abuse case in the July/August 2017 issue of Church Law & Tax Report, Hammar wrote, "The Ohio Supreme Court ruled that an exclusion in a church's insurance policy for criminal or intentional acts precluded coverage not only for the person committing the wrongful act, but also for the church, even though it was being sued for negligence."

This means churches must seek additional insurance to help cover a potential future claim. The amount of coverage needed depends on the size of the church and the scope of its youth programs. For a small church with limited exposure, a policy with coverage as low as $50,000 might be purchased for $50 to $100 a year. For a larger church, a policy with seven-figure coverage might require a premium costing several thousand dollars a year.

Attorney Frank Sommerville's advice on how much coverage to buy: as much as the insurance company will sell you, "because the incremental cost difference between the lowest policy limits and the highest they're willing to sell is usually not that much money."

In some cases, buying two sexual liability policies—the first policy covering damages up to a certain amount and an umbrella policy covering any damages over a certain amount—may be cheaper than a single policy, attorney Richard J. Mathews said.

2. Read the fine print of your sexual liability policy.

Some specific questions to consider when evaluating a sexual liability policy:

• Is the policy based on claims or occurrences?

An occurrence policy states that an insurer will pay for any incidents that happen during the coverage year, regardless of when the claim is made, said Scott Figgins, vice president of underwriting for Brotherhood Mutual Insurance Company. "So let's say I have a Sunday school teacher who molested a 2-year-old child [in 2017], and that child doesn't come forward for 15 years. Under the occurrence policy, the teacher's suit would be covered. Under the claims-made policy, however, the insurer would not pay until the claim was made.
years," he said. "It doesn’t matter, as long
as that occurrence happened between
January 1st and December 31st of 2017,
that policy [the church had that year] will
always respond to it."

The long tail of many allegations is a crit-
ical incentive for churches to save the
original insurance policies forever in
case a claim arises decades later, added
Sommerville, who serves as an editorial
advisor for Church Finance Today.

On the other hand, Figgins said, "A claims-
made policy says that you have to bring the
claim during the period of time that the
policy is enforced."

Also, some insurers specify that their
sexual liability policy only provides cov-
erage if a perpetrator’s first act of abuse
occurred during the policy period. For
example, if the policy were enacted on
January 1, 2017, and acts of abuse were
alleged beginning in 2016 that continued
into 2017, they would not be covered.

Other policies cover all acts that happen
during the policy period, regardless of
whether it’s the first time or the tenth
time the perpetrator has abused a specific
minor, said Judy Frymark, sexual miscon-
duct claims specialist with Church Mutual
Insurance Company.

Failure to carefully read and understand
language of a policy, Frymark said, "can
be very financially catastrophic for the
church if a policy doesn’t cover all acts
during the policy period.

• What locations are covered by the policy?

Mathews, a former general counsel for the
Boy Scouts of America, said it’s important
that the policy cover claims arising out of
any location—not just the church building
or a formally sponsored church event. This
was a lesson he learned during his time
with the Boy Scouts.

For example, would a sleepover at the
youth choir leader’s house be covered?

"Insurance companies, nothing against
them, are always going to look for a legiti-
mate basis to indicate the coverage was
not in effect," Mathews said. "They’ll say
this wasn’t church property, it was just this
guy who assumed he could do this... So you
need to make sure that it is not only the
sanctioned activities that are in the bulle-
tin or come directly from church leader-
ship [that are covered]."

• Does the coverage for legal defense costs
full inside or outside of the sexual misconduct
liability insurance limits?

This question is crucial because defense
costs "can run into the thousands of dollars
over the course of litigation," GuideOne’s
Spacek said. "If the defense costs are inside
the insurance limits, then the amount
available to pay for settlement or judg-
mament of a sexual misconduct claim will
be reduced by the amount of the defense
costs."

For example: "If you have a $2 million
policy, and defense costs come out of that
$2 million policy, you may only have $1
million or $1.5 million to pay claims out," said
Sommerville, who has represented
hundreds of churches in sexual abuse
cases.

• What specific types of abuse are covered?

Brotherhood Mutual’s Figgins said it’s a
myth that sexual abuse claims only arise
out of adult-child relationships.

"It may not just be an adult with a child," Figgins said. "It could be a child with a
child, a teen with a child, an adult with an
adult situation where they feel like they
were coerced into something they didn’t
want to do either through psychological
manipulation or through an improper
counseling situation."

The bottom line, stressed Figgins, is to
have the kind of coverage that would
handle whatever type of sexual misconduct
situation could possibly occur.

• What are the occurrence and aggregate
limits?

An occurrence limit would be the amount
that an insurer would pay for a single
claim—typically $1 million or so for a larger
policy. An aggregate limit would be the
maximum amount the insurer would pay
for multiple claims during a policy period—
for example, a $3 million total for all claims
during the policy period.

3. Check the insurance policy's require-
ments for implementing risk-management
and prevention policies.

A failure to follow guidelines can invalidate
insurance claims. Legally speaking, such a fail-
ure constitutes gross negligence, which is not
covered by a policy, Sommerville explained.

For instance, some insurers recommend that
churches impose a six-month waiting period
before allowing new members to teach Sunday
school or otherwise work with children.
Church Mutual’s Frymark said the reason for
this is that "often sexual predators are not will-
ing to wait that period."

If churches adopt such a six-month rule and
then don’t enforce it, it could cause problems
both in terms of damages awarded against
a church and/or an insurer covering the
damages, said Patti Malott, executive director
of Upright Ministries, a Texas-based nonprofit
that advises churches on safety and security
matters.

Also, "some insurance companies may
require you to run background checks on all

Mobile Reigns Among
Digital Giving

Not all e-giving is equally appealing.

57% MOBILE

24% WEB/ONLINE

14% TEXT

4% CHURCH ADMINISTRATOR*

<1% KIOSK

*A church administrator enters a gift into the church’s
online account based on information the donor provides.

Source: Nonprofit Digital Giving Report, a two-year study
completed in 2017 by Tithe.ly of 1,500 churches that use its
various giving platforms.
the volunteers,” Sommerville said, “and if you never run a background check, [a claim] won’t be covered if allegations of sexual misconduct are made against the volunteer.”

If a church knows someone has a troubled past and allows that person to serve with children, it could invalidate insurance claims. For instance, if a church learns someone is on a sex-offender registry list, but allows the person to serve because the church believes the individual has changed, only to discover that person commits a future act in the course of serving at the church, “some policies would have exclusions for that type of thing. That’s a fairly common exclusion,” Figgins said.

4. Don’t buy the myth that child sexual abuse couldn’t happen at your church.

Churches tend to exhibit a high level of trust and want to extend grace to people, Sommerville said.

Mathews agreed and said, “Churches don’t recognize the danger and the widespread nature of [child sexual abuse]. I think it’s like anything else: We all think it’s never going to happen to us.”

Sommerville recalled a 200-member church that he urged to conduct criminal background checks on all its volunteers and staff. The first time the church did so, it found it had two registered sex offenders volunteering with children.

But he said churches are becoming more aware of the dangers—and of the fact that the dangers aren’t just strangers, but also individuals who are known to the congregation and those whom most members would never suspect.

“I think what’s getting churches’ attention is the size of the settlements and the size of the rewards that juries are giving plaintiffs when churches don’t properly screen their volunteers and workers,” Sommerville said.

Criminal background checks on potential volunteers and staff are important, especially if the insurer requires them, the experts said. But they stressed that many perpetrators never have been caught and, thus, there will be no record.

“The reality is, with the vast majority of cases we’ve had over the years, if you would have run a criminal background check the day before, you would have found nothing,” Figgins said. That reinforces the need for interviews and qualified references during the selection process, and vigilant supervision practices of all staff and volunteers.

5. Remember it’s about more than money—it’s about protecting people and the church.

The experts stressed that while preparing to financially manage a potential problem is vital, and insurance coverage is a critical component of that preparation, prevention is more important. Churches must be vigilant to protect children—and their entire congregation.

“I can’t tell you how many times a church has been substantially damaged by [revelations of child abuse],” Figgins said. “There’s loss of membership, pastors are forced out, deacons and elders turn over. Just dealing with the associated fallout from an emotional perspective, both in the family and the victims, and potentially the perpetrator’s family who may attend there—it is a no-win situation. Thinking of it just in terms of ‘How do I protect myself from a dollar perspective’ really is not the right mentality to have.”

Q: How should we handle our pastor’s club dues?

For the purpose of community outreach, our pastor wants to join a couple of local clubs. The board would like to pay his dues, but can this be considered a business expense?

A:

Many ministers belong to local clubs, including fitness and golf clubs. Some churches agree to pay the annual dues or fees to these clubs as a fringe benefit. In some cases, the minister (or church) treats the club dues as a business expense because membership in the club will either contribute to the minister’s health or expose the minister and church to the community.

Section 274(a)(3) of the tax code specifies that “no deduction shall be allowed for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose.” As a result, dues paid to health and fitness clubs, golf clubs, airline clubs, hotel clubs, and dinner clubs are not longer deductible as a business expense. However, dues paid to professional organizations, such as bar associations and medical associations, and civic or public service organizations, such as Kiwanis, Lions, Rotary, chambers of commerce, and trade associations, are not covered by this prohibition and may qualify as business expenses.

Two points should be emphasized:

- **Reimbursements.** Since most club dues cannot be treated as a business expense, a church cannot pay for or reimburse such dues under an accountable expense reimbursement arrangement. If a church pays for a minister’s club dues, the full amount must be added to the minister’s Form W-2 or 1099-MISC as additional taxable compensation. It is not a business expense that is reimbursable under an accountable arrangement.

- **Deductions.** Ministers cannot claim a business expense deduction for unreimbursed club dues that they pay themselves.

For a more detailed explanation with examples, see chapter 7 in the 2017 Church & Clergy Tax Guide.

—Adapted from the 2017 Church & Clergy Tax Guide by Richard R. Hammar, available on ChurchLawAndTaxStore.com
When Shopping for an AED

To respond to the possibility of sudden cardiac arrest, a growing number of churches are installing defibrillators (AEDs) and training select staff and volunteers on how to use them. This life-saving option has become even more attractive because the cost of the technology has decreased over the years. An AED can be purchased for $1,000 to $2,000. But what should you look for when shopping for a quality AED? Attorney Richard R. Hammar encourages churches to look for these specific features:

- opening the lid readily if it is used (no time is wasted looking for the “on” switch)
- portability
- clear and concise voice prompts that guide users through every step of the rescue process
- one-button operation eliminates rescuer confusion and uncertainty
- status of the machine is easily determined by a red or green light
- powered by an extended-life lithium battery
- a warning light and audible noise announces the battery is low
- automatic self-tests ensure that the unit can deliver full energy
- unit delivers shocks only when appropriate, based on abnormal heart rhythm
- unit can be used on persons with implanted cardioverter defibrillators (ICDs) or pacemakers
- batteries can be “hot swapped” (replaced without turning off the unit)
- illuminated control panel (easily visible in dim light)

To better understand what churches need to know about AEDs, see Hammar's article “The Legal and Moral Case for Defibrillators” in the May/June issue of Church Law & Tax Report—available on ChurchLawAndTax.com.

Sloppy Systems Waste Cash

Sloppy systems and lack of organization are often a money waster. Conversely, effective and efficient processes indicate good financial stewardship: “Here’s a very real, tangible benefit to getting yourself organized: you’ll save real money,” said Ben Crawford on TheRocketCompany.com. “How much money is wasted because of poor planning? Rush jobs, overnight shipping, and high premiums can be avoided with some extra time that healthy systems will give you.”

For help developing electronic systems that can save both time and money, check out “Automate Financial Tasks” in the January 2017 Church Finance Today—also available on ChurchLawAndTax.com.