

## Evaluating *Campus Preservation Planning* (TM)

### Basic Reasons Companies Frequently Use A Holding Company Structure

- Remove excess assets from the risks inherent in operations
- Risk only a "reasonable amount" of capital as required to sustain a corporate shield
- Do not place "all eggs in one basket"
- Standard operating procedure for "single purpose" entities:
  - one real estate parcel per limited liability company

### Why Not Just Purchase More Insurance?

- Minimize Exposure to underinsured risks
  - note difficulty of procuring adequate insurance for catastrophic losses such as:
    - \$37 million loss in crash of 15 passenger van
    - \$26 million loss in car driven by volunteer in recent Montana crash
    - \$41 million loss to Hotchkiss School for mission trip
    - \$17 million loss for volunteer delivering a crucifix, etc.
  - note difficulty in estimating liability due to such factors as:
    - nature of the alleged offense
    - degree of culpability
    - actual harm to others
    - available defenses
    - potential jurisdictional issues
    - potential for settlement
    - means of settlement
    - variation in jury perception
    - jury bias towards Christian organizations



- **Minimize exposure to "gaps" in liability insurance. These items require special endorsements and/or policies:**

- sexual misconduct may have sub-limits and/or exclusions
- employment practices liability is a separate endorsement
- cyber liability insurance is a special endorsement
- religious freedom protection coverage
- confusing coverage issues regarding punitive damages
- armed security detail coverage
- exclusions based on criminal acts or intentional acts

(Arizona case held coverage for assault and battery was provided to the Diocese but excluded the offending priest.)

## What About Claims Arising from Same Sex Marriage Issues?

The complex, evolving nature of the legal risks spawned by the recent Supreme Court decisions in the Windsor case and Obergefell cases were illustrated in the response by Southern Mutual Insurance company as explained in the attached July 17, 2015 news report.

On the one hand, an early website headline warned that "Homosexual agenda may be causing churches to lose insurance".

On the other hand, the president of Southern Mutual Church Insurance company said he wanted to set the record straight by saying that churches were "not in jeopardy of losing their coverage because of their beliefs".

A close examination of his "reassuring" statements revealed issues that were not very reassuring:

- "the general liability form does not provide coverage for this type of situation since there is no claim for bodily injury, property damage, personal injury or advertising injury."
- If a church is concerned about the possibility of a suit, we offer a separate premium endorsement for "Miscellaneous Legal Defense Coverage".
- This endorsement "is not liability coverage, but rather just expense reimbursement for defense costs."
- "There is no coverage for judgments against an insured."

He also noted that the recent changing legal landscape has created a lot of "unknown territory" for churches and communities. He acknowledged that the situation has prompted companies to create add-on policies, such as "violent acts coverage" which insurance companies began offering to as a separate endorsement upon request a few years ago. (See attached article).

## What do Insurance Companies Think of Relying Solely on Insurance for Protection?

In the attached article from Church Executive magazine “Investigating Insurance: Is Your Church Really Covered?” The author interviewed representatives from both Guide One Insurance and from Brotherhood Mutual Insurance.

**The authors freely conclude that it is impossible to make sure that your church is 100% covered: “there will always be risks that are unforeseeable and/uninsurable”:**

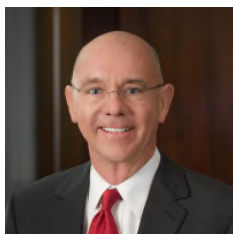
- you can't buy insurance to cover criminal acts such as sexual assault
- many policies exclude coverage for overseas missionary activities and may limit coverage for damages caused by missionaries overseas activities
- you can't buy insurance to replace the roof that failed due to lack of care and maintenance
- you can't buy insurance prohibited by law, such as punitive damages in many states. Some states do not allow insurance coverage for using inherently dangerous products
- there is generally no coverage for acts of pollution, intentional injury/neglect, for war, acts of terrorism or nuclear explosions
- there is no coverage if you forget to add new buildings, new vehicles, new equipment, new ministries or new activities
- “churches often have insufficient coverage for accumulated audiovisual equipment, and for increased replacement cost for buildings due to inflation
- the Brotherhood Mutual representative went on to add “imagine if the church vehicle crashes into a van full of children or a highly paid medical specialist or corporate executive driving with his or her family. In an event like that no agent can ever tell you what liability limit is enough; the sky's the limit. The best advice is to buy the highest limit you can afford.”

## How Complex are the Legal Issues Involved in Insurance Coverage Questions?

As an example of the complexity of the area of insurance coverage, I've attached an exhibit containing a few of the PowerPoint slides from a 2014 seminar presented by the Polsinelli Shughart law firm's “Insurance Recovery Team entitled, “Common Gaps in Business Insurance Coverage – – Avoiding every Insured's Worst Nightmare!”

This presentation highlights gaps in coverage in:

- “CGL,” i.e. commercial general liability insurance policies,
- “Umbrella” policies,
- “Professional liability/errors and omissions insurance” which might potentially apply to professional counseling provided by the church, and
- Exclusions from Directors and Officers coverage (“D & O”) policies.



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## Phoenix man injured in Rocky Point, wins \$5.9 mil. verdict

by KTAR.com (September 21st 2014 @ 5:24am)

PHOENIX — A Maricopa County Superior Court jury has awarded a Phoenix man \$5.9 million for brain and back injuries he suffered while helping to build a church near In Rocky Point, Mexico, in 2006.

According to the Phoenix Business Journal, Ronald Day was 37-years-old during the volunteer trip when the injury took place.

He and his wife Heather Day had their lawyers Larry Crown and Elan Mizrahi of Jennings Haug & Cunningham LLP file the lawsuit against the Central Christian Church and Amor Ministries.

Day stepped on a rafter board which broke, dropping him 10 feet and slamming his head and back into a concrete floor. He burst vertebrae and had frontal and temporal lobe brain damage.

Five of his vertebrae have since been fused together with surgical rods and the Days lost their business as a result of his inability to work. Crown said.

Last 5 Comments

This church playing poor now?

Mr Ted

Has anyone seen their church in Gilbert? It is an absolutely enormous "campus". You could have a community college there. Now they want to play poor? Guess what, sell the building or land it's on. Let them attach their assets. You cannot tell me that a church like that gives out as much as it takes in, even under our very liberal 501.3(c) tax law.

This should put more churches.....

Crane W

on alert - I've been on these mission trips to Mexico, Honduras, Idaho - The jobs they give to volunteers are usually what the locals prefer not doing, or have no skills for. Church volunteers should not be given assignments that no one would expect them to do right here at their own church (because the insurance company wouldn't allow it). Do-gooders need to use common sense.



Has anyone seen their church in Gilbert? It is an absolutely enormous "campus". You could have a community college there. Now they want to play poor? Guess what, **sell the building or land it's on. Let them attach their assets.**

You cannot tell me that a church like that gives out as much as it takes in, even under our very liberal 501.3(c) tax law.

## VERDICTS &amp; SETTLEMENTS

# \$41.5 million awarded to student stricken by encephalitis during school trip to China

Patrick M. Murphy  
Staff writer

A prestigious Connecticut boarding school is on the hook for nearly \$42 million for failing to ensure that a student was protected from insect-borne viral encephalitis during a 2007 trip to China.

In late March, a federal jury in Bridgeport, Conn., awarded \$41.75 million to Cara Mann in her negligence suit against The Hotchkiss School.

"The jury sent the message to schools and any other organizations that take chil-

## Personal Injury

dren on overseas trips that they have a duty to bring those children home safely," said Mann's attorney, Antonio Panvert III of Kaskoff, Kaskoff & Bieder in Bridgeport.

### "Every parent's nightmare"

In the spring of 2007, Mann was ending her freshman year at the college preparatory school located in Lakesville, Conn. The then 15-year-old signed up for a Hotchkiss-sponsored trip to China in June and July. According to Panvert, "massive miscommunication" among school officials resulted in students not being informed of the health risks they would face on the trip.

In particular, while the trip itinerary indicated that the group would be staying in big cities in northeastern China, where there was little risk of insect-borne disease, the teacher in charge had planned a hiking trip to the forests around Mount Fanshan.

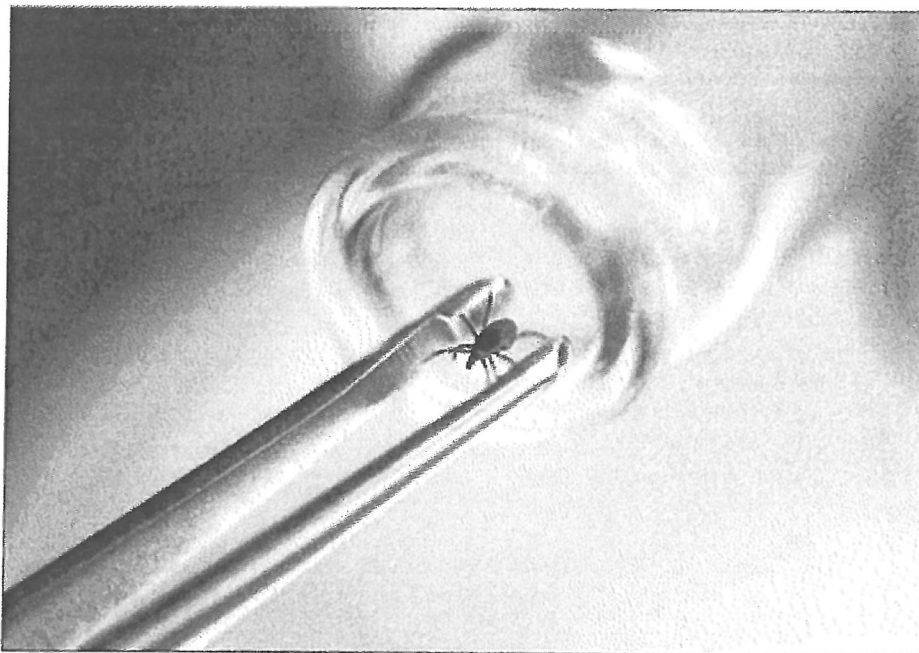
Panvert explained this was a critical omission because the Centers for Disease Control and Prevention (CDC) had posted traveler warnings on its website about the risk of tick-borne encephalitis, and other dangerous insect-borne diseases in the mountainous regions of northeastern China.

Ten days after the hiking trip to Mount Fanshan, Mann came down with a raging fever of 104 and an acute headache. She was hospitalized in China after suffering seizures and paralysis. Doctors ultimately diagnosed Mann with tick-borne encephalitis.

As a result of the illness, Mann suffered permanent neurological damage that has severely limited her motor skills. She is also no longer able to talk, and instead communicates through a computer-assisted typing program.

"It is every parent's nightmare," Panvert said. "Cara got that thing when she was 15. Since then, she has been unable to have a conversation with anybody."

In 2009, when Mann was still a minor, her parents filed suit against The Hotchkiss School. Although the federal suit originally



©iStockphoto.com

alleged that the school was negligent for failing to warn of the need for vaccinations before the trip, Panvert explained that the claim was abandoned before trial when it was discovered that a vaccine against tick-borne encephalitis is not available.

Two claims of negligence did go to the jury. The first was that The Hotchkiss School failed to inform Mann of the risk of insect-borne disease in the places in China where they would be lodging her. The second was that the school failed to ensure that Mann took insect-protection precautions, such as using insect repellent, wearing proper clothing, checking herself for ticks and staying out of underbrush.

After hearing eight days of evidence, the jury deliberated eight hours before finding Hotchkiss negligent on both counts.

"What the jury understood is that the school is supposed to be the expert in travel safety," Panvert said.

The jury awarded Mann \$31.5 million in noneconomic damages, \$9.8 million in future economic damages and \$450,000 for past economic damages.

### Battle of experts

Panvert credited two liability experts with helping him win his case with the jury. The lawyer used a travel medicine specialist from Massachusetts, Stuart Reese. In addition, Panvert enlisted Peter Tarlow, a consultant on tourism safety from College Station, Texas, to provide expert testimony on

**"The jury sent the message to schools and any other organizations that take children on overseas trips that they have a duty to bring those children home safely."**

— Antonio Panvert III

the school's standard of care.

In explaining his success at trial, Panvert said the case swung decidedly in his favor when he succeeded in getting The Hotchkiss School's expert on travel medicine to admit on cross-examination that the school was on actual notice that there was a risk of tick-borne encephalitis in the region where Cara and her Hotchkiss classmates had gone hiking.

"The school's defense all along was that the risk of tick-borne encephalitis was phenomenally unusual and that school officials had no way to foresee it," Panvert said. "But their own expert admitted not only that they should have foreseen it, but that they were on actual notice of the risk."

Panvert had equal success in demolishing the defense's school standard of care expert. Panvert reexamined that the expert's testimony fell apart when it came to light during trial that the witness based his opinions on the results of a questionnaire he had sent out to 50 schools. The only problem, Panvert explained, was that none of the questions on the questionnaire addressed a school's duty to protect students under the circumstances of Mann's lawsuit.

"It turned out that the school's expert

lacked any real foundation at all for his opinions," Panvert said. The lawyer said he convinced the trial judge, U.S. District Judge Stefan R. Underhill, to strike the expert's entire testimony.

Defense attorney Penny Q. Swann, who represented the school, failed to respond to requests for reargument.

However, in a statement, The Hotchkiss School said it planned to appeal the verdict. "As part of our due diligence prior to this 2007 trip to China, we thoroughly checked the CDC website for medical advice and asked parents to do the same. There was never any indication that there was a potential risk of a disabling tick bite. In fact, this is the only recorded case of this particular disease afflicting a traveler in China."

Assuming the jury's verdict stands, Panvert said that he was confident he would collect the judgment. He said that the school has millions of dollars in endowments and other assets, as well as a "very substantial" liability policy.

Panvert spoke with frank admiration for the client, who has managed to overcome all the obstacles that life has thrown her way to attend college.

"Cara's very intelligent and very funny," he said. "I've never met anybody in my life who has dealt with adversity as bravely and optimistically as she has."

**Plaintiff's attorney:** Antonio Panvert III of Kaskoff, Kaskoff & Bieder in Bridgeport, Conn.

**Defense attorney:** Penny Q. Swann of Wight & Dunn in New Haven, Conn.

**The case:** *Mann v. Hotchkiss School*, March 27, 2013, U.S. District Court for the District of Connecticut, Judge Stefan R. Underhill.

Questions or comments can be directed to the writer at [patrick.murphy@lawyersusaonline.com](mailto:patrick.murphy@lawyersusaonline.com).

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RELIGION

# Quadriplegic missionary gets \$26 million settlement from Southern Baptists for Montana crash

Published July 14, 2015

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Associated Press



HELENA, Mont. – Insurers for the Southern Baptist Convention have agreed to pay \$26 million to a South Carolina man who has paralyzed and suffered brain damage in a rollover crash during a 2009 missionary trip in Montana.

Attorney Anders Blewett of Great Falls said Tuesday the insurance companies agreed to pay the full coverage limits of their policies within days of a judge's ruling.

District Judge Mike Salvagni found the North American Mission Board of the Southern Baptist Convention Inc. was liable for the injuries suffered by Jeremy Vangnes.

Salvagni found the driver, another missionary, was acting within the course and scope of his association with the mission group at the time of the July 2009 crash near Belgrade.



## INVESTIGATING INSURANCE: Is Your Church Really Covered?

Don't just assume your current coverage is adequate; brush up on best practices from in-the-trenches church insurance experts.

BY RAEANN SLAYBAUGH

With all that's required of a large-church pastor every day, it's easy to get complacent about insurance coverage. But, if church leaders did take the time to really consider what's at risk with inadequate coverage, a few top-of-mind questions would no doubt emerge:

- How can I make sure my church is 100% covered? (Is that even possible?)
- When should I reevaluate our existing policy? Is waiting until renewal time good enough?
- How can I ensure our liability limits are high enough?
- Are there gaps in our current policy that could prove catastrophic to our ministry?

To answer all these questions, *Church Executive* interviewed a handful of church insurance specialists: Melany Stonewall, corporate communications manager at GuideOne Insurance in West Des Moines, IA; Scott Figgins, vice president — underwriting at Brotherhood Mutual Insurance in Fort Wayne, IN; and Patrick Moreland, CPCU, vice president — marketing at Church Mutual Insurance Company in Merrill, WI.

### No such thing as “100% coverage”

Despite a pastor's best efforts, Moreland, Figgins and Stonewall all agree on one thing: There will always be risks that are unforeseeable and/or uninsurable.

To this end, Figgins cites four categories of risk that even church-specific insurance policies won't cover. The first is *moral hazard*. "In other words, you can't buy insurance to cover a criminal act [such as a person who commits a sexual assault]," he says. The second is *morale hazard*. "For example, a property policy would cover water damage, but not to replace a roof that, due to lack of care and maintenance, now needs to be replaced," Figgins explains.

Additionally, he points out, coverage isn't available for non-compensatory (such as punitive) damages, which some states wouldn't allow insurance to cover — as a result of using inherently dangerous products, for example — or for uninsurable risks that are so infrequent that there's no way to collect enough premiums to cover the damage. War and nuclear explosions are a few examples of the latter.

Stonewall concurs with Figgins' assessment. "Policies generally don't cover claims from pollution, war and intentional injury/neglect," she says. "All insurance contracts/policies have exclusionary wording, limits and sub-limits. The insurance committee or person handling insurance should meet with their agent to have a clear understanding of insurance options."

**Reevaluate your coverage (before you need to)**

Moreland recommends taking a close look at the church's insurance policy every three years. "However, it's also important to notify your agent whenever there are significant changes, such as a new building, or if a vehicle is purchased or sold, or a new ministry is added," he says.

Figgins agrees that the additions of "new buildings, new vehicles, new equipment, new ministries and new activities" are critical times to reevaluate insurance coverage. Overall, he recommends that large churches revisit their policies at least every few years, if not annually. "And when they do, they should factor in the accumulation of personal property, he emphasizes. "In the event of a total loss, churches don't often

have enough coverage for accumulated audiovisual equipment, for example." Figgins also suggests that pastors keep up with building values and inflation, and adjust their coverage accordingly.

In Stonewall's experience, large churches are more proactive than their smaller counterparts in reevaluating their policies outside of renewal time. "[They typically have] staff dedicated to managing the administrative side of church business — a business administrator or executive pastor," she explains. "Additionally, many church bylaws state that items such as property/casualty insurance must be reviewed and quoted every three years. And, boards normally have new members every two years. This sometimes causes the insurance to be reviewed."

**An extra layer of protection is available**

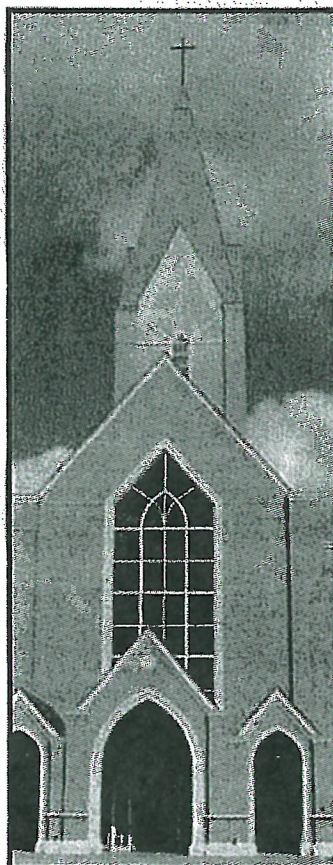
Beyond property, liability, automobile and workmen's compensation

policies is an extra "layer of protection" for churches: an umbrella, or excess, policy.

An umbrella policy does more than just "fill in the gaps" of these other primary coverage areas, as Stonewall explains. "It should be seen as an extra layer of coverage to help protect the church's assets once their underlying coverage limits have been exhausted," she says. "Umbrella coverage levels begin at \$1 million and can run up to \$25 million and beyond."

Moreland agrees, and cites a catastrophic potential lawsuit as an example of why such coverage is important to consider. "Imagine if the church vehicle crashes into a van full of children or a highly paid medical specialist or corporate executive driving with his or her family," he says. "In an event like that, no agent can ever tell you what liability limit is enough; the sky is the limit. The best advice is to buy the highest limit you can afford."

For his part, Figgins says >>



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- Property
- Commercial Auto
- Umbrella & Excess Liability
- Directors & Officers
- Foreign Liability Coverage
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For more information on our program contact Shawn Yingling at 800.233.1957 or syingling@glatfelters.com or visit [www.GlatfelterReligiousPractice.com](http://www.GlatfelterReligiousPractice.com).



"excess" policies in the range of \$1 million to \$5 million are common among his large church clients. However, he's seen church leaders opt for up to \$25 million in excess coverage.

**Familiarize yourself with lesser-known policies**

Several lesser-known, but crucial, insurance coverage areas exist for churches. As Figgins points out, **foreign liability** coverage (for mission trips) is a vital, but often overlooked, policy. Whereas traditional liability coverage/policies are intend-

ed for the U.S., Canada and Puerto Rico, it can cost between \$50,000 and \$100,000 to evacuate a volunteer or staff member from a foreign country. As another example, if a mission volunteer travels to the Middle East and is sued, such a policy would cover that scenario.

Stonewall agrees that foreign liability coverage is very important; but, another area of concern, for her, is how many churches are underinsured in relation to the **full replacement cost of their property**. "We often find that a church hasn't had

a true replacement cost valuation of their buildings and contents in quite a while," she says. "This results in their insurance coverage being too low in the event that they have a major claim."

To this end, Stonewall says it's very important to have a church insurance specialist agent evaluate the replacement cost of the church properties before providing an insurance proposal. "A pastor today should ask his or her agent when the last time the church's buildings and contents were evaluated for a true replace-

**RISK MANAGEMENT RESOURCES (JUST A MOUSE-CLICK AWAY!)**

For church leaders, ensuring adequate insurance coverage and practicing proactive risk management go hand-in-hand. Fortunately, they don't have to "go it alone" when navigating the complicated, yet critical, realm of risk management.

Plenty of downloadable resources are available from Glatfelter Religious Practice (A Division of Glatfelter Insurance Group) and Arthur J. Gallagher Risk Management Services, which specializes in religious institutions.

For the following resources, visit the Arthur J. Gallagher Risk Management Services website at [www.ajgrms.com](http://www.ajgrms.com). Select "Religious" in the "Select Industry" pull-down menu, followed by "Knowledge Center."

- Fine Arts — Realizing Hidden Assets
  - Case Study — Religious Institution 403(b) Plan Alternatives
  - Gallagher Employee Benefits Expertise for Religious Entities
  - Risk Control Services for Religious Entities
- For copies of these two items, contact Peter Persutti — Gallagher's managing director, religious practice — at [peter\\_persutti@ajg.com](mailto:peter_persutti@ajg.com).
- Nonprofits — Section 403(b) Final Regulations and Overview and Action Plan
  - Top Ten Safety and Security Questions



Dozens of whitepapers (from administrative, to liability, to vehicles) are available on the Glatfelter Religious Practice website at [www.glatfelterreligiouspractice.com](http://www.glatfelterreligiouspractice.com). Select the "Risk Control" tab. They include:

- Emergency Action Plan Outline
- Harassment and Discrimination Prevention Training
- Exit Interview Procedures
- Cooking — Fire Prevention and Protection
- Slip-and-Fall Prevention
- 15-Passenger Van Safety

ment-cost analysis," she advises.

Moreland also encounters churches with inadequate limits on buildings. To remedy this, he suggests having an insurance agent measure all the buildings, ascertain construction quality and type, and develop a reasonable estimate of the cost to replace each building.

Additionally, churches with low limits of liability are an area of concern for Moreland. "Budgets are tight in tough economic times, and it can be tempting to scale back on insurance," he concedes. "However, churches need to consider that tight economic times don't reduce the likelihood of a fire, tornado, hurricane, theft, vandalism or injury-causing lawsuit."

Other often underinsured areas of risk for churches include:

**Employment practices.**

According to Stonewall, this is an area of coverage where many churches are lacking. Even more troubling, most

haven't undergone the necessary training to avoid these types of claims, nor do they have the typical HR staff to handle these types of employment issues.

"Churches are no longer immune to being sued by their employees for employment practices," Stonewall points out. "Hiring and termination practices, discrimination and sexual harassment exposures are concerns today."

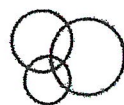
**Cyber liability.** A new area of concern in today's fast-paced, technology-driven society, churches are far from immune to cyber liability risk. "Some churches collect personal data on their members, and many take donations and fees over the internet and have bank account and credit card data from their members," Stonewall points out. In the event such sensitive data is compromised and stolen, the church has a large cyber liability exposure. "In this case,

a church without the right insurance protection would bear the cost of providing credit protection services and potentially any stolen money for the victimized members," she adds. "This can become very costly."

**Sexual misconduct.** While insurance coverage for these types of claims is widely available for churches, the risk management and training to help them avoid them altogether is even more critical.

"Insurance is good at paying money, but it won't protect your church's reputation," Figgins points out. "Having enough insurance doesn't equal doing the right thing." CE

YOU'RE CALLED  
TO EQUIP. HOW?



CHURCH COMMUNITY BUILDER

# Charitable immunity no longer exists, so prepare for litigation

Legal planning process can improve management skills and protect churches against runaway juries.

The doctrine of charitable immunity is dead. Strangers, church members and church employees alike feel no reluctance to sue a church. The number and types of claims against churches have exploded.

The tsunami of sexual abuse claims which forced four Catholic Dioceses into bankruptcy fundamentally altered the way juries react to lawsuits against all churches, Catholic and Protestant alike. In light of this litigation-prone environment, good stewardship requires a comprehensive review of the risks

## If your church has substantial assets, particularly equity in its real estate holdings, in most cases it is not protected from hostile claims.

facing churches. If your church has substantial assets, particularly equity in its real estate holdings, in most cases it is not protected from hostile claims.

All churches face the possibility of a runaway jury verdict. The \$37 million verdict against the Salvation Army for the crash of a 15-passenger van or \$35 million verdict against the Evangelical Lutheran Church in Mitchell, TX arising from a sexual abuse claim are notable examples. Surprisingly, the insurance carriers for churches report that a high percentage of claims against churches (well over 50 percent in most years) are filed by the churches' own employees.

### Pastors are exposed to new lawsuits

Pastors are also exposed to new types of lawsuits which were unheard of a generation ago. Even church board members can, under certain circumstances, be sued personally for claims arising from church matters. Your church's general liability insurance

policy may not provide adequate insurance to cover the value of its holdings. Moreover, the insurance market is volatile. Liability insurance coverage has become increasingly expensive, harder to obtain, contains shrinking limits and may have unexpected exclusions from coverage.

Many insurance carriers have narrowed the scope and the dollar amount of available insurance coverage for sexual abuse claims and for certain types of employee claims. Typical church liability insurance with a \$1 million general limit may restrict coverage for sexual abuse claims to \$300,000. These factors expose your church assets to the risk of being diverted from its intended charitable purpose to be used instead as forced payment of uninsured or underinsured claims.

We developed "The Campus Preservation Planning" process about five years ago. Scottsdale Christian Academy, a well-known Christian School in Scottsdale, AZ, pioneered this concept. The proactive planning goes beyond traditional loss prevention programs. Though originally developed in the context of protecting the resources of a Christian school, this process

can also be used to aid a well-managed church (or para-church organization) in fulfilling its mission in this increasingly hostile legal environment.

This process imports the liability shields commonly used by commercial enterprises into the nonprofit arena. Using an analytic process based on our "Twin Pillars of Stewardship" — churches should be prepared to respond fairly to a just claim, and also be equipped to resist an unjust claim — concepts grounded in real property law are combined with well-accepted corporate asset holding patterns and trust doctrines. Special care must be taken to comply with detailed IRS regulations and to avoid inadvertently incurring sales, rent and/or real property taxes.

We recommend this four part planning process: >>

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By Robert Erven Brown and John R. Politan

## PHASE 1

**Phase one is "The Snapshot":** Risk assessment, resource inventory, ministry overview and outline/diagrams of legal entities.

This "due diligence" review contains questions which would be raised by attorneys for a creditor with a large judgment against the church (i.e., in excess of applicable insurance limits) and questions which would be raised by a lender's attorneys in the process of preparing documents for a large loan to the church.

The reviewing attorneys determine if the corporation is being operated in compliance with Federal and state statutory requirements. The checklist is also useful in analyzing the strengths and weaknesses of the church legal structure, asset holding pattern, cash management, vulnerability to unjust claims, ability to respond to just claims and general loss prevention strategies. By taking proactive steps before a claim occurs, the church strengthens the existence of its corporate shield, as well as its compliance with the fundamentals of good stewardship.

## PHASE 2

**Phase two is the "Concept Memo":** Analyze weaknesses, propose alternative proactive resource plans and begin interactive discussions.

The phase two analysis contains a basic plan with carefully chosen possible alternatives to correct the weaknesses identified in the phase one study. A typical phase two analysis includes recommendations for specific volunteer, pastoral, and employee legal training, changes to the type and amount of insurance coverage, alternative plans for implementing a multiple company ownership structure, use of leases, joint occupancy agreements, deed restrictions, and the like.

Only after approval by tax, legal, insurance and risk management reviewers is the proposal submitted for formal approval. For example, the presence of potential exposure resulting from a day-care program, an elementary or high school, gymnasium, skate park, youth camp, college, seminary, overseas mission travel, 15-passenger vans, airplanes, assisted living center, health clinic, or donated "for profit" operations such as a ranch, oil field, marina, timeshare project, cemetery, etc., can add time and complexity to the analysis.

## PHASE 3

**Phase three is "Implementation Assistance":** The approved concept is implemented in a staged, cost effective manner after formal approval by the church board in compliance with church bylaws and/or other governing documents. The church's legal structure, asset holding pattern, insurance policies and operations are honed to be in full compliance with the approach, i.e., (1) to increase the church's ability to respond fairly to just claims and (2) to reduce vulnerability to unjust claims.

## PHASE 4

**Phase four is "Compliance Review":** Ongoing periodic review of operating and legal compliance is especially critical during the first two years of operations under the reorganized legal structure. A periodic review is important to ensure that proper accounting protocols, corporate minutes, etc., are being maintained.

Professional review of operating results and audit findings in a year or so after implementation is highly recommended to see if the new leadership and new staff members are still "in sync" with the previous plans. Checklists, continuing education, and an "open line" to the professional planners are all helpful to ensure that the church's effort is not undermined by failing to follow the "corporate formalities" which are critical if the church's new legal structure is to withstand the test of time.

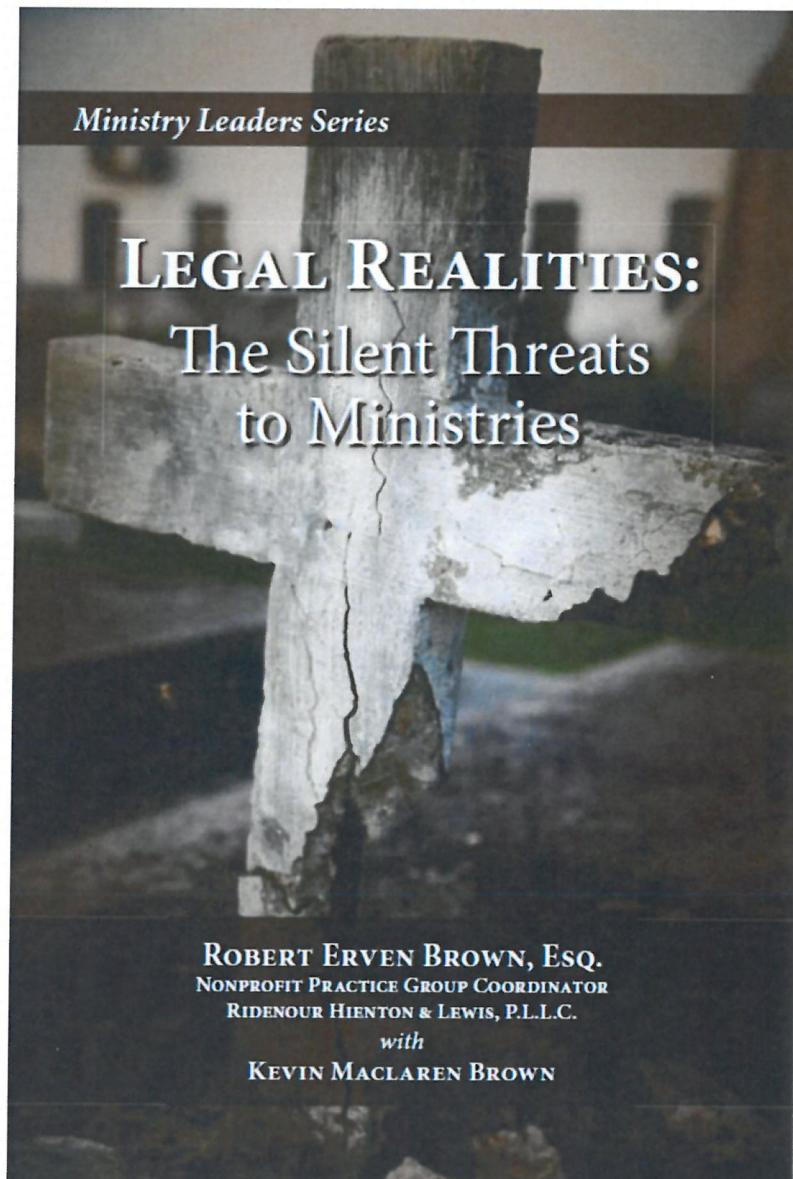
Like most churches in the U.S., your church is most likely not using the full complement of legal structures to protect its critical resources from unjust claims. Our process was created using input from litigators, pastors and commercial transaction specialists to aid churches in the effort to preserve its campus for generations to come. To create an effective shield for church assets, however, you must act before a claim occurs.

By implementing this approach, church leaders can retain the discretion to decide how and when to settle major claims. Rather than being forced to settle unjust claims at the point of a sword, this process equips your leadership with the legal tools to retain discretion in choosing which claims to resist as well as being equipped to respond appropriately to just claims. Most importantly, by conducting a thorough management, insurance and risk management review, the probability of a devastating claim is greatly reduced.

### HOW "CAMPUS PRESERVATION PLANNING" WORKS:

- Phase 1: Snapshot planning assumptions
- Phase 2: Concept memo
- Phase 3: Budget approval and implementation
- Phase 4: Monitoring and compliance

**Robert Erven Brown [Bob@REBpa.com] and John R. Politan [jrp@johnpolitan.com] work with church and parachurch organizations throughout the U.S. using the "Campus Preservation Planning" concept.**



Go to [SilentThreats.com](http://SilentThreats.com) to download a FREE copy of  
**Legal Realities: The Silent Threats to Ministries**  
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## Church & Ministry Law



### **Robert Erven Brown**

Gallagher & Kennedy Shareholder  
Church & Ministry Law, Practice Group  
Leader

Over his 40+ year career, Bob's experience includes five years as a trial attorney and 35 years focusing on nonprofits, real estate and commercial transactions. Through his nonprofit work over the last 15 years, Bob represented secular and faith-based nonprofit entities, including churches, parachurch ministries, human services organizations, rescue missions, summer camps, faith-based schools and other faith-based and secular charities.

A trusted advisor to pastors, business administrators, board members and committees, Bob assists in identifying risks and implementing appropriate protections for key assets of the organization. He counsels boards and leadership teams on campus development and construction, church planting, entity planning services, risk management, real estate & asset protection, insurance coverage, mandatory abuse reporting, media response, protecting religious liberties, board and staff training and acts as general counsel to help resolve ongoing operational concerns.

Bob founded the *Campus Preservation Planning*® program to protect critical assets of faith-based ministries and secular charities against uninsurable, under-insured, and uninsured unjust claims while simultaneously improving overall risk management and stewardship. Our strong personal faith and passion for encouraging ministry make our team an especially valued resource within the faith community. You can expect sensitivity to, and understanding of, current legal issues facing churches and ministries from each member of our Church & Ministry Law group.

Please call or email to talk about how we can assist your church or ministry with your legal needs.

#### **FOR FURTHER INFORMATION, PLEASE CONTACT:**

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