

The Steward

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Quarterly Insight into Current
Insurance Concerns for Churches



Is Your Church Prepared?

By Richard R. Hammar, On-Line
Church Law & Tax Report, 2014

How should church members and staff respond to an active-shooter incident prior to the time that law enforcement officers arrive? FEMA's guide: *Developing High Quality Emergency Operation Plans for Houses of Worship* states "No single response fits all situations; however, making sure each individual knows his or her options for response [can help them] react decisively [and] save valuable time. Depicting scenarios and considering response options in advance will assist individuals and groups in quickly selecting their best course of action." The Guide offers these suggestions for responding to an active shooter:

Congregational meetings

The Guide states that "it may be valuable to schedule a time for an open conversation. Though some may find the conversation uncomfortable, they may find it reassuring to know that as a whole their church is thinking about how best to deal with this situation."

Respond immediately

It is common for people confronted with a threat to deny the danger rather than respond. The Guide notes that "an investigation by the National Institute of Standards and Technology into the collapse of the WTC towers on 9/11, found that people close to the affected floors waited longer to evacuate than those on unaffected floors." Similarly, during the Virginia Tech shooting, "individuals responded to the shooting with varying degrees of urgency." The Guide recommends that churches train congregants and staff to respond immediately. For example, train congregants to recognize the sounds of danger, act, and forcefully communicate the danger and necessary action.

Run

If it is safe to do so, the first course of action should be to run until in a safe location. Training should emphasize: leave personal belongings behind; visualize possible escape routes, including those for individuals with disabilities; avoid escalators and elevators;

take others with them, but do not stay because others will not go; call 911 when safe; and let others know where they are.

Hide

If running is not a safe option, the Guide recommends that church members "hide in as safe a place as possible." In addition: lock the doors; barricade the doors with heavy furniture; close and lock windows and close blinds or cover windows; turn off lights; silence all devices; remain silent; if possible, use strategies to silently communicate with first responders; for example, in rooms with exterior windows, make signs to signal law enforcement/emergency responders indicating the status of the room's occupants; hide along the wall closest to the exit but out of the view from the hallway (allowing for an ambush of the shooter and for possible escape if the shooter enters the room); and remain in place until given an all clear by identifiable law enforcement.

Fight

The Guide concludes its review of options with this advice: If neither running nor hiding is a safe option, as a last resort, when confronted by the shooter, adults in immediate danger should consider trying to disrupt or incapacitate the shooter by using aggressive force and items in their environment, such as fire extinguishers or chairs.



Maintaining Appropriate Boundaries After Camp

BY: Christy Schiller, Praesidium

More than 11 million youth attend camp each year. They make friends, learn skills, and leave with wonderful memories. Camp staff spend their summers forming positive relationships with youth so that they leave with memories that will last a lifetime. However, it is important for camp leadership to implement policies that govern the interactions between camp staff and minors *after* they leave camp. While it can be difficult for the camp to monitor interactions when the summer is over, camps can implement strong policies about appropriate communications between staff and youth.

The first step is educating staff that they represent the camp – even when they are no longer working at the camp. Legal precedent has taught us that liability for the camp and the staff member can be extended after camp due to the fact that that a relationship started at camp. An offender may “groom” a camper over the summer and continue an inappropriate relationship throughout the year. Some camps include language in staff employment contracts

that staff members will forever represent the camp in their words and actions. Even if you do not include such a statement in your contracts, you can still teach this principle and emphasize transparency. Training staff on the risks provides a rationale for why safeguards are necessary.

The second step is to develop and implement policies about electronic communications between staff and campers. Implementing strong policies is part of managing the risk of abuse at camp, and helps to ensure safety is a part of everyone’s job. Ultimately, it is up to the camp to calibrate these policies as it sees fit – and monitor them accordingly.

Specifically define what types of communications are *appropriate*, for example: sending and replying to emails and text messages from minors *ONLY* when copying in a supervisor or the minor’s parent; communicating through “organization group pages” on Facebook or other approved public forums; maintaining “private” profiles for staff and volunteers that campers cannot access. Specifically define what types of

communications are *inappropriate*, for example: coercive, threatening, shaming, derogatory, or humiliating comments; sexually oriented conversations; private messages; posting pictures of campers on social media sites (this may violate online privacy laws); posting inappropriate comments on pictures; “friending” or “following” campers on social networking sites; any private electronic communication between staff and minors, including the use of social networking sites (Facebook, Instagram, Snapchat, instant messaging, texting, etc.) is prohibited. All communication between staff and minors must be transparent.

Third, provide a copy of these policies to parents and campers. Parents and campers may be your only resource to help monitor after camp. Let them know what to watch for and where to report any violations or inappropriate conduct.

Praesidium works with camps across the country. We understand the unique risks and challenges camps face in abuse prevention. Contact us or visit the Insurance Board website for more information.



Should My Church Work with a Public Adjuster?

*By Mark Zimmerman, IB Employee
Sr. Claims Analyst*

We get this question often, and thought we would address. A public adjuster (PA) works directly for the policy holder (church) to negotiate a property insurance claim. Often, they show up at times of need, such as after large damaging storms or fires. They usually charge between 10 – 15% of the total claim. This amount is not paid by your insurance company, but instead is paid by the church out of the settlement of the claim (think of an attorney getting paid out of a lawsuit settlement, same type of arrangement). Which means, a portion of the monies that the PA just negotiated on your behalf that should be designated for the repair and/or replacement of your church will actually go to the PA. The justification for this expense is based on the premise that the PA will negotiate a larger claim than the church can obtain on their own. Therefore, the PA estimate may incorrectly include wear and tear and/or maintenance items not typically covered by any insurance policy. This tends to result in delays settling a claim, and can make reaching an agreed dollar value difficult.

Your insurance company is prevented from communicating directly with you when you hire a PA. All communication is through the PA. The length of time for the settlement is controlled by the PA, not the church and not the insurance company. Often times, there are disputes regarding value as the PA insists on the most costly means of repair/replacement. This results in a longer recovery period. Your IB policy does provide coverage for business income losses for a reasonable period of recovery, but not for induced delay. Most issues can be resolved quickly with the insurance company without the aid of a PA.

In regards to terms of recovery for a building loss, it is defined in the policy that the



maximum recovery will be the actual cost of repair/replacement. While a PA can provide assistance in understanding the benefits provided by the policy, your insurance company's adjuster can do this effectively as well. As a reminder, the IB is an advocate for the church. Our mission is to see that you are provided with timely service and receive all the benefits of the policy.

As an example of how a PA can adversely affect a claim...we are currently handling a claim presented for interior water damage as a result of the roof drains not being able to keep up with the amount of water from a storm. The church has enlisted a PA who is looking for us to pay for the interior water damage (which the policy covers), but also for a new roof which was not damaged from the storm, and is therefore not covered in the policy. This is causing a delay in resolving this claim and beginning the work as well as additional IB program costs because we have had to retain an expert regarding the condition of the roof. We also cannot talk to the church, but have to trust the PA is explaining everything accurately to the church. It is your choice if you retain the services of a PA. However, if you do hire one, please do the following:

- Do not sign any agreement with the PA unless you have read and understand it.
- Make sure the PA is properly licensed

in the state the PA works, and inquire as to how long s/he has been in the insurance business.

- The PA should belong to one or more of a number of related professional organizations including National Association of Public Insurance Adjusters (NAPIA), Windstorm Insurance Network (WIN), and United Policyholders of America (UPA).
- Ask for and call any references a PA might give you.
- Make sure the PA carefully reviews the damage AND your insurance policy.
- Request and keep all documents related to the claim and keep a journal noting the dates of all calls, phone numbers and names of people involved.
- Keep detailed notes and time stamped photos of damage and a copy provided to any adjusters involved.

Please also be on the alert for local contractors and remediation companies that offer to file your claim for you and then fix the damage, as they are now taking on the role of a PA.

We wanted to provide you with this information so that you can make an informed decision. We cannot stress enough that we will continue to always be an advocate for our churches, and have their best interest in mind. We are your insurance program!



EPLI: What is it? Do I have it?

BY: Joe Boyd, Director, Underwriting Insurance Board

Employment Practices Liability Insurance (EPLI) covers organizations against claims by workers that their legal rights as employees have been violated. These types of claims happen to churches more often than most people think. Approximately **1 in 190** IB participants have reported an EPLI claim every year and the average cost of those claims is more than \$20,000. Some exceeding \$200,000. Many of these claims could have been avoided, or been less expensive to resolve, if proper employment practices were followed.

EPLI provides protection against many kinds of employee allegations, including: discrimination, sexual harassment, wrongful termination, retaliation, defamation, infliction of emotional distress, invasion of privacy, negligent evaluation, wrongful discipline, wrongful reference, failure

to grant tenure, wrongful failure to employ or promote, wrongful demotion.

The policy covers defense costs, judgments and settlements, but does not cover punitive damages or civil or criminal fines. Liabilities covered by other insurance policies such as workers' compensation are excluded too. Your Memorandum of Insurance (MOI) and the policy form should be reviewed for applicable limits, conditions, exclusions, definitions, etc.

Retroactive Date

Alleged wrongful acts (covered by EPLI) that take place before a designated Retroactive Date are generally not covered. For example, if you have a Retroactive Date of January 1, 2012 and a claim is reported in 2016 that occurred in 2011, there would not be coverage. However, there is potentially coverage by the 2011 insurance policy. This is rarely an issue for Insurance Board participating churches, but you

should be aware of your Retroactive Date. Refer to the Liability section of your MOI for your EPLI Retroactive Date (under Directors & Officers). *See story below for more info on retro dates*

Prevention and Loss Control

The following are measures to help reduce the risk of employee lawsuits:

- Create effective hiring and screening programs to avoid discrimination.
- Distribute and post corporate policies.
- Include steps to report sexual harassment or discrimination.
- Make sure supervisors know where the company stands on what behaviors are permissible.
- Document everything that occurs and steps your company is taking to prevent and solve employee disputes.

The good news is that EPLI is part of your IB package. A valuable resource for more information can be found on the IB website: "Your Church: Employer & Small Business."

Understanding Retroactive Dates: One of the most difficult concepts in insurance to explain is the difference between "occurrence" and "claims made" policies. **Occurrence** insurance covers events that occur within the policy year. It's that simple. The policy is generally considered "evergreen" because you can report a claim that occurred many years ago under the policy and provider that was in force at that time. For this reason it is important to keep a good record of occurrence form liability policies. There are two shortcomings to occurrence form: (1) insurance companies may no longer exist when you need them, and (2) coverage such as sexual misconduct may not be available with high limits. **Claims made** insurance covers claims that are reported during a policy term. Claims made insurance expires. Last year's claims made policy is expired for all time. However, this year's policy covers claims reported this year which may have occurred last year in a claims made policy. The inception date of the first claims made policy is usually the "retroactive date" assuming that there have been no gaps or changes in coverage after that first claims made policy. Successive claims made policies cover all claims back to the retroactive date. Therefore, each participant will have a different retroactive date. And so it goes for years and years in a relationship with the insurance company. Many long-time IB participants enjoy a retroactive date as far back as 1993! That means the current policy may cover events from over twenty years ago though just discovered and reported today! If you decide to change coverage FROM claims made TO an occurrence form program you may have a problem. When your claims made policy expires, it will expire for all time back to your retroactive date. If a claim is reported two months into your occurrence form coverage for a sexual misconduct event that occurred in 2003, you will have NO coverage for this earlier event. The occurrence form covers only events since policy inception. This problem does not exist when changing from occurrence to claims made. When leaving a claims made program, you have a limited ability to extend the claims reporting period, usually for one or more years. You may do so by purchasing "extended reporting period" coverage for a premium which will be in addition to your new occurrence form premium. We encourage all participants leaving a claims made program to an occurrence program to purchase it!



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