

# Claim Lessons Learned

The outlay of financial resources, time and emotional toll of any claim can be challenging. While many claims are unavoidable, we've found that many can be prevented through the use of effective loss control measures. Below are four scenarios from actual claims; each scenario contains valuable lessons that participants can use to prevent similar incidents from occurring in the future.

- Scenario #1: A guest attending a church service slipped and fell on the walkway due to an accumulation of ice and snow. The claimant sustained a severe ankle fracture that resulted in surgery.
- Scenario #2: A group of children were playing around in a gymnasium during a church afterschool childcare program. As a result of their rough horseplay, a child was pushed off a stack of floor mats and hit his head on the ground. The fall resulted in a significant injury.
- Scenario #3: A plaintiff slipped and fell on the sidewalk in front of a business that was leasing space from a church. The plaintiff alleged that the church negligently owned, operated and maintained the sidewalk and other premises leased by the tenant, and is suing the church as the landlord for damages. The church's lease agreement with the tenant did not contain any risk-transfer language.
- Scenario #4: A contractor using a torch to perform repairs on a church roof accidentally caused a massive 4-alarm fire when sparks from the torch ignited the asphalt shingles. The fire consumed the church administration building and a good portion of the sanctuary. The total cost of the fire was more than \$15 million. The damages sustained were unable to be recouped from the contractor who did not have adequate insurance coverage to reimburse for the loss or to pay for the additional damages sustained by the other businesses that used the church facilities.

The common thread in all of these is that they could have been either avoided or significantly mitigated. Many accidents are caused by preventable hazards such as wet floors, broken and/or cracked sidewalks, and poor lighting. Others, particularly those involving tenants and contractors, can be mitigated by a contract containing an effective risk-transfer and insurance clause.

For example, slips and falls can commonly occur during the holidays – even with COVID-19 restrictions – because of increased foot traffic. Approximately one million people go to the emergency room each year because of injuries from these types of accidents, and according to the National Floor and Safety Institute (NFSI), fractures are the most common injury. This fits our first scenario involving the church attendee who slipped and fell on the walkway. Taking simple precautions such as routinely salting and clearing walkways of snow/ice would have prevented this accident.

Slip and fall claims due to icy or cracked pavement and/or compromised indoor surfaces have accounted for 50% of the general liability claims reported to Insurance Board since 2015. These claims can run from tens to hundreds of thousands of dollars. Utilizing a program of routine maintenance for sidewalks, parking lots and walkways is an effective way to lower the frequency of these incidents or prevent them entirely. Poor lighting can be another cause of slip and fall incidents. Churches should make sure parking lots are well-lit, especially with the shorter daylight hours during fall and winter seasons.

Playground accidents, much like our second scenario of a child who fell in the gymnasium, frequently involve children under 10 years old. According to the CDC, children between ages 5 to 9 have the highest rate of emergency room visits due to injuries from playground accidents with most occurring at school. In this claim, the child was under the age of 10. The CDC also says one of the ways to prevent these accidents is by providing adequate supervision. In fact, according to the American Academy of Orthopedic Surgeons, close supervision of young children may be the most important factor in minimizing playground accidents. In the scenario, it was alleged that there was little to no supervision at the time of the accident. The injury the child sustained underscores the need for our participants who offer afterschool care to ensure they provide a safe environment.

If a church is allowing a third party such as a tenant to use its facilities, the lease agreement should contain an effective risk transfer clause including requirements for indemnification, certificates of insurance and additional insured language. In scenario #3 the church didn't have

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this type of contract with the tenant. As a result, the church had no recourse against the tenant who would have been responsible for the upkeep of the sidewalk.

A fire can cause significant damage to property and the resulting interruption to daily operations can affect church ministries even after the damages have been repaired. On average, fires are the most severe of all the property damage claims reported to Insurance Board. Unfortunately, some are unavoidable. However, many can be mitigated or prevented by effective loss control measures. In the fourth scenario above, the church fire was caused by a contractor that used a torch to repair the roof of one of the church's main buildings. Most roofing contractor insurance carriers will not cover accidents involving roof repairs where torch work or similar methods are used due to the inherent danger that exists whenever heat or fire is applied in repairing asphalt materials. The contractor in this claim also did not have the appropriate insurance limits to pay for accidents caused by negligence. Because of the contractor's inadequate insurance, there was a question of whether the contractor possessed the necessary expertise to perform the work.

This claim eventually went to mediation and the issue with the contractor's insurance proved to be a factor in prolonging the settlement. In contrast, a few years ago one of our participants reported a significant fire claim caused by contractor negligence. The amount of this claim was in excess of \$10 million. A mistake by the contractor caused the fire. In this claim, however, the contractor carried enough insurance to pay for most of the damages. Like the claim involving the church roofer, this claim was also settled at mediation. The contract's adequate insurance enabled the more timely resolution of this claim, and Insurance Board was able to obtain reimbursement from the contractor's carrier.

Before a participant decides to hire a contractor to perform any work, that contractor's insurance limits should be carefully reviewed. If the contractor is a roofer, the church should make sure repair methods involving torches will not be used, or that the contractor has the required skills and insurance to perform "hot work."

*Additional information about contractor/vendor/tenant contracts and language can be found in the story on page 8.*

