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COMES NOW defendant Community Chapel & Bible Training Center and hereby joins defendant Barnett's Motion for Separate Trials. The consolidation of these diverse claims will tend to mislead the trier of fact, and could result in incorrect verdicts.

DATED this 1st day of Nov., 1988.

LEE, SMART, COOK, MARTIN & PATTERSON, P.S., INC.

By *[Signature]* for
DUNCAN K. FOBES
of Attorneys for Defendant
Community Chapel

Civil Track One
The Hon. John Riley
FILED
KING COUNTY, WASHINGTON
NOV 14 1988
SUPERIOR COURT CLERK
MELISSA R. KEATING
DEPUTY

(Copy Receipt)

(Clerk's Date Stamp)

**SUPERIOR COURT OF WASHINGTON FOR
KING COUNTY**

KATHY BUTLER, et ux, et al.,
Plaintiffs,
vs.
DONALD LEE BARNETT, et ux, et al.,
Defendants.

No. 86-2-18176-8
Consolidated/Track One

Notice of Appearance
Re: Plaintiff Christine Hall

TO: Clerk of the Court ~~Plaintiff above named~~ and

TO: All Attorneys of Record, Attorney for
herein.

PLEASE TAKE NOTICE that the appearance of the following named ~~defendant(s)~~ Plaintiff

CHRISTINE HALL

is hereby entered in the above-entitled action through the undersigned attorneys. You are hereby directed to serve all further notices, motions and pleadings, except process, upon said attorneys at their address below stated.

Dated this 21st day of October, 19 88.

KARGIANIS & AUSTIN & Erickson

By 

Attorneys for ~~Defendant~~ Plaintiff
CHRISTINE HALL
47th Floor Columbia Center
701 Fifth Avenue
Seattle, Washington 98104-7010
624-5370

Notice of Appearance

CIVIL TRACK I

163
Rde

FILED

KING COUNTY, WASHINGTON

NOV 14 1988

SUPERIOR COURT

THE HONORABLE **JOHN RILEY**
RECEIVED

OCT 1988

JOHN W. RILEY
SUPERIOR COURT JUDGE

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KATHY LEE BUTLER, et ux., et al.,)

Plaintiffs,)

v.)

DONALD LEE BARNETT, et ux., et al.,)

Defendants.)

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8

DECLARATION OF MAILING

SANDY ERLICH, et ux, et al.,)

Plaintiffs,)

v.)

RALPH ALSKOG, et ux, et al.,)

Defendants.)

MAUREEN PANGBORNE JORGENSEN,)

Plaintiffs,)

v.)

DONALD LEE BARNETT, et ux, et al.,)

Defendants.)

164
RWA

1
2
3 I, Leslie S. Harris, swear under penalty of perjury under the
4 laws of the State of Washington, that:

5 On the 21st day of October, 1988, I placed in the United
6 States mail, first class, postage prepaid, true and correct copies
7 of the following documents:

8 1) Motion, Declaration & Proposed Order Re:
9 Amending Complaint (re: Negligence issues)

10 2) Motion, Declaration & Proposed Order Re:
11 Amending Complaint (re: Minor Children of Hall)

12 3) Proposed Order Re: Amending Complaint to
13 include Negligence Issues and Joining Additional
14 Parties (Hall children)

15 4) Note for Motion (11/02/88) Motion, Declaration
16 & Proposed Order Re: Consolidation & Pre-
17 Assignment with Cause No: 98-2-04615-8, American
18 Casualty v. Butler, et al. with this case.

19 5) Proposed Order Re: Pre-Assignment of Cause No:
20 98-2-04615-8, American Casualty v. Butler, et al.
21 to the Hon. John Riley

22 6) Notice of Appearance re: Christine Hall

23 to the following persons:

24 The Honorable John Riley
25 King County Courthouse
26 Third & James Streets
Seattle, WA 98104

Michael Bond, Esq.
Lee, Smart, et al.,
800 Washington Bldg.
Seattle, WA 98104

DECLARATION OF MAILING - Page 2

LAW OFFICES
KARGIANIS, AUSTIN & ERICKSON
47TH FLOOR COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104 7010
(206) 824 5370

1
2 Rodney Hollenbeck, Esq.
3 Evans, Craven & Lackie, P.S.
4 31st Floor, Columbia Center
Seattle, WA 98104

5 Richard Adler
6 Adler & Giersch P.S.
7 16th Floor, Smith Tower
8 Seattle, WA 98104

9 Jim Messina
10 Molly McCarty, Legal Asst.
11 8002 Tacoma Mall Blvd.
12 Suite 200 Benj. Franklin Bldg.
13 Tacoma, WA 98409

14 Jack Rosenow
15 Rosenow, Hale & Johnson
16 205 Tacoma Mall Office Bldg.
17 Tacoma, WA 98409

18 Susan Jones, Atty
19 Preston, Thorgrimson
20 54th Floor
21 Columbia Center
22 Seattle, WA 98104

23 Robert Howerton, Pro Se
24 3507 South 40th
25 Tacoma, WA 98409

26 John C. Graffe
Rosenow, Hale & Johnson
1620 Key Tower
Seattle, WA 98104

Bruce Winchell
Lane, Powell, Moss & Miller
3800 Rainier Tower
Seattle, WA 98101-2647

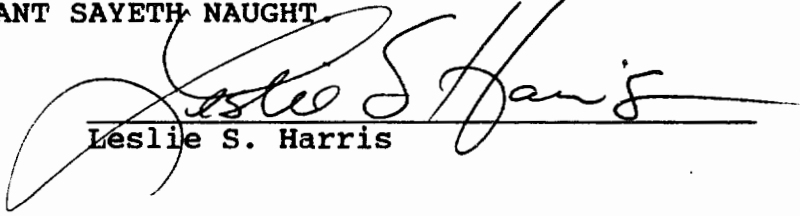
Pauline Smetka
Hellsell, Fetterman, Todd, et al.,
1500 Washington Building
Seattle, WA 98101

DECLARATION OF MAILING - Page 3

LAW OFFICES
KARGIANIS, AUSTIN & ERICKSON
47TH FLOOR COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE WASHINGTON 98104 7010
(206) 624-5370

1
2 Community Chapel & Bible Training Center
3 18635 - 8th Avenue South
4 Burien, WA 98188

5 FURTHER YOUR DECLARANT SAYETH NAUGHT.

6 
7 _____
8 Leslie S. Harris
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

FILED
KING COUNTY, WASHINGTON
NOV 4 1988
SUPERIOR COURT CLERK
MELISSA R. KEATING
DEPUTY

1 KATHY LEE BUTLER, et vir.,)
2 et al.,)

3 Plaintiffs,)

4 v.)

5 DONALD LEE BARNETT, et ux.,)
6 et al.,)

7 Defendants.)

No. 86-2-18176-8

AGREED ORDER FOR
PRE-TRIAL DISCOVERY

8 SANDY EHRLICH and MICHAEL)
9 EHRLICH, Wife and Husband;)
10 LARRY LEMKE, Parent, LARRY)
11 LEMKE, Guardian ad litem on)
12 behalf of SYBIL N. LEMKE, a)
13 Minor; DEE CHABOT, Parent;)
14 DEE CHABOT, Guardian ad litem)
15 on behalf of SHAWNA MICHELLE)
16 CHABOT, MICHAEL GRANT CHABOT,)
17 and NICHOLAS STERLING CHABOT,)
18 Minors; CATHERINE KITCHELL)
19 and RONALD KITCHELL, Wife and)
20 Husband; CATHERINE KITCHELL,)
21 Guardian ad litem on behalf)
22 of WENDY KITCHELL, a Minor,)

23 Plaintiffs,)

24 v.)

25 RALPH ALSKOG and ROSEMARY)
26 ALSKOG, Husband and Wife;)
27 ROBERT HOWERTON and JANE DOE)
28 HOWERTON, Husband and Wife;)
DONALD LEE BARNETT and)
BARBARA BARNETT, Husband and)
Wife; COMMUNITY CHAPEL AND)
BIBLE TRAINING CENTER, a)
Washington Corporation;)
"JOHN DOES" 1-4 and "JANE)
DOES" 1-4, Husbands and)
Wives; FIRST DOE CORPORATION;)
and FIRST DOE PARTNERSHIP,)

Defendants.)

LAW OFFICES OF
ADLER GIERSCH, P.S.
SUITE 600
401 SECOND AVE. S.
SEATTLE, WA 98104
(206) 682-0300

ORDER FOR PRE-TRIAL DISCOVERY - 1

CIVIL TRACK I

1 1. All attorneys are familiar with Civil Track 1 System.
2 2. The trial in the above-entitled cause of action is set
3 for May 15, 1989 (third setting), with the first setting on October
4 2, 1988, and the second setting on April 3, 1989. It is agreed
5 that this pre-trial order is based on the May 15, 1989 trial date,
6 and all counsel will be prepared for a 20-day trial by jury on this
7 date.

8 3. Lay Witnesses

9 Initial cut-off date for disclosure of all parties' lay
10 witnesses shall be November 17, 1988.

11 4. Expert Witnesses

12 A. Cut-off date for disclosure of plaintiffs' expert
13 witnesses shall be January 3, 1989.

14 B. Cut-off date for disclosure of defendants' expert
15 witnesses shall be February 10, 1989.

16 5. Final cut-off dates

17 A. Final cut-off date for disclosure of any new
18 witnesses shall be March 16, 1989.

19 B. Cut-off date for all discovery shall be April 14,
20 1989.

21 6. Exhibits

22 A. Plaintiffs shall identify their exhibits by April 14,
23 1989.

24 B. Defendants shall identify their exhibits by April 21,
25 1989.

26 C. Plaintiffs shall identify their supplemental\rebuttal
27 exhibits by April 28, 1989.
28

1 7. Cut-off date for dispositive motion to be filed shall be
2 April 14, 1989, to be heard April 28, 1989.

3 8. Cut-off date for motions in limine to be filed shall be
4 May 1, 1989, to be heard May 8, 1989.

5 9. Plaintiffs' trial briefs shall be due May 12, 1989.

6 10. Defendants' trial briefs shall be due May 12, 1989.

7 11. Jury instructions shall be due May 15, 1989.

8 12. Stipulated exhibits shall be submitted to the courtroom
9 clerk no later than May 12, 1989.

10 13. Other exhibits shall be submitted to the courtroom clerk
11 no later than May 12, 1989.

12 14. Parties will hold a settlement conference prior to trial
13 at a time and before a judge to be decided upon at a later date.

14 15. Pre-trial conference shall be scheduled for 10:30 a.m. on
15 May 12, 1989.

16 16. Discovery issues are outstanding at this time.

17 17. At this time, there are special problems regarding
18 evidence.

19 18. At this time, there is no protective order.

20 19. At this time, there is no special master or referee.

21 *20. Any party naming a witness is required to produce*

22 *DATED this 8th day of November, 1988.*

23 *that witness for deposition by the opposing parties at an agree-*

24 *able time to all parties and at the expense of the naming*

25 *ADLER GIERSCH, P.S. Party. FAILURE to so comply will*

26 *result in exclusion of said witness at trial except for*

27 *good cause shown.*

28 BY: *Ann J. Durham*
Ann J. Durham
Attorneys for Plaintiffs
Ehrlich, Lemke, Chabot and
Kitchell

Rod Hollenbeck
Rod Hollenbeck
Attorney for Defendants Barnett

1
2
3 Richard H. Adler
4 Attorney for Plaintiffs
5 Ehrlich, Lemke, Chabot, Kitchell

Michael Bugni
Attorney for Defendant Howerton

6 John Messina
7 Attorney for Plaintiffs Ehrlich
8 et al.

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Carline V. Swetka
Jack G. Rosenow
Attorney for Defendants Alskog
et al.

Susan Delanty Jones
Attorney for Plaintiff Jorgenson

Michael Bond
Attorney for Defendant Community
Chapel and Bible Training Center

Jeff Campiche
Attorney for Plaintiffs Butler,
Hall and Brown

Upon the stipulation of counsel for the parties hereto,
IT IS HEREBY ORDERED that the parties comply with the above-
stated discovery schedule, except upon further order to this Court
for good cause shown.

DONE IN OPEN COURT this 10th day of November, 1988.

Judge John Riley

John W. Riley

PRESENTED BY:
ADLER GIERSCH, P.S.

BY: Ann J. Durham
Ann J. Durham
Attorneys for Plaintiffs
Ehrlich, Lemke, Chabot and Kitchell

ORDER FOR PRE-TRIAL DISCOVERY - 4

LAW OFFICES OF
ADLER GIERSCH, P.S.
SUITE 600
401 SECOND AVE. S.
SEATTLE, WA 98104
(206) 682-0300

FILED

KING COUNTY

NOV 14 1988

Melissa Keating

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KATHY LEE BUTLER, et ux., et al.,)

Plaintiffs,)

v.)

DONALD LEE BARNETT, et ux., et al.,)

Defendants.)

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8

MOTION TO AMEND COMPLAINT
and/or to JOIN ADDITIONAL
PLAINTIFFS (minor children
of Plaintiff Christine
Hall)

SANDY ERLICH, et ux, et al.,)

Plaintiffs,)

v.)

RALPH ALSKOG, et ux, et al.,)

Defendants.)

MAUREEN PANGBORNE JORGENSON,)

Plaintiffs,)

v.)

DONALD LEE BARNETT, et ux, et al.,)

Defendants.)

166

MOTION TO AMEND COMPLAINT
and/or TO JOIN ADDITIONAL PLAINTIFFS - Page 1

Rtr

CIVIL TRACK I

LAW OFFICES
KARGIANIS, AUSTIN & ERICKSON
47TH FLOOR COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104 7010
(206) 624 5370

COMES NOW Plaintiff Christine Hall and Carmine Merrett,
proposed guardian ad litem and maternal grandmother of the minor
children, by and through Ms. Hall's attorneys of record, Kargianis,
Austin & Erickson and Jeff Campiche, and pursuant to CR 15 and
moves this court for an order authorizing plaintiffs to add to
their complaint the minor children (Jennifer Allyson Hall and Seann
Forrest Hall) of Ms. Hall, as set forth in plaintiffs' proposed
amended complaint, and waiving this court's previous deadline for
adding parties. This motion is based on CR 15 and CR 20 and the
declaration of Jeff Campiche.

DATED this 21st day of October, 1988.

KARGIANIS, AUSTIN & ERICKSON

BY 
~~JEFF CAMPICHE~~
Attorneys for Plaintiffs

MOTION TO AMEND COMPLAINT
and/or TO JOIN ADDITIONAL PLAINTIFFS - Page 2

LAW OFFICES
KARGIANIS, AUSTIN & ERICKSON
47TH FLOOR COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE WASHINGTON 98104 7010
(206) 624 5370

FILED

KING COUNTY, WASHINGTON

NOV 14 1988

SUPERIOR COURT CLERK
 MELISSA R. KEATING
 DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KATHY LEE BUTLER, et ux., et al.,)
)
 Plaintiffs,)

v.)

DONALD LEE BARNETT, et ux., et)
 al.,)
 Defendants.)

SANDY ERLICH, et ux, et al.,)
)
 Plaintiffs,)

v.)

RALPH ALSKOG, et ux, et al.,)
)
 Defendants.)

MAUREEN PANGBORNE JORGENSEN,)
)
 Plaintiffs,)

vs.)

DONALD LEE BARNETT, et ux, et)
 al.,)
 Defendants.)

CONSOLIDATED/TRACK ONE
 NO. 86-2-18176-8

DECLARATION OF JEFF
 CAMPICHE
 RE:
 MOTION TO AMEND COMPLAINT
 and/or to JOIN ADDITIONAL
 PLAINTIFFS (Minor Children
 of Plaintiff Christine
 Hall)

DECLARATION OF JEFF CAMPICHE RE:
 MOTION TO AMEND COMPLAINT and/or
 ADD PLAINTIFFS: MINOR CHILDREN OF
 CHRISTY HALL, PLAINTIFF - Page 1

CIVIL TRACK 1

LAW OFFICES
 KARGIANIS, AUSTIN & ERICKSON
 47TH FLOOR COLUMBIA CENTER
 701 FIFTH AVENUE
 SEATTLE, WASHINGTON 98104 7010
 (206) 824 5370

167
 MK

1 Jeffery Campiche does hereby swear under penalty of perjury
2 under the laws of the State of Washington the following:

3 1. I am one of the attorneys for Plaintiffs Butler, et al.
4 in this action.

5 2. I make this Declaration in support of a Motion for an
6 order authorizing plaintiffs to amend their complaint for damages
7 to add the minor children of Ms. Hall, (Jennifer Allyson Hall and
8 Seann Forrest Hall) as set forth in plaintiffs' proposed amended
9 complaint, and waiving this court's previous deadline for amending
10 pleadings.

11 3. This firm originally represented Christine Hall when the
12 above case was originally filed in July, 1986. We subsequently
13 withdrew from Ms. Hall's representation as she was out of the state
14 and our communication difficulties were such that we could not
15 ethically represent her interests.

16 4. Ms. Hall has subsequently returned to the State of
17 Washington and is living and working locally and our communication
18 has improved due to the geographic proximity that I have re-entered
19 a Notice of Appearance simultaneous to this Declaration and Motion.

20 5. Ms. Hall was absent from the state and her location was
21 unknown during the time that the court and the parties originally
22 set a cut-off date to amend the pleadings in this action.

23 6. Ms. Hall's minor children have also sustained personal
24 injury arising out of the same conduct or transaction, occurrence,
25 or series of transactions or occurrences by the Defendants. The

26 **DECLARATION OF JEFF CAMPICHE RE:
MOTION TO AMEND COMPLAINT and/or
ADD PLAINTIFFS: MINOR CHILDREN OF
CHRISTY HALL, PLAINTIFF - Page 2**

LAW OFFICES
KARGIANIS, AUSTIN & ERICKSON
47TH FLOOR COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE WASHINGTON 98104 7010
(206) 824 5370

1 factual matters and law are identical to the existing Plaintiffs'
2 claims.

3 7. There are other minor children/Plaintiffs in this action
4 whose claims are based on essentially the same type of conduct.

5 8. There is approximately seven (7) months to a trial date,
6 effective discovery is just beginning so the Defendants would not
7 be unduly prejudiced by the addition of the two children as
8 plaintiffs.

9 FURTHER THIS DECLARANT SAITH NAUGHT.

10 DATED this 21st day of October, 1988.

11 
12 _____
13 JEFFERY CAMPICHE

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25 DECLARATION OF JEFF CAMPICHE RE:
26 MOTION TO AMEND COMPLAINT and/or
ADD PLAINTIFFS: MINOR CHILDREN OF
CHRISTY HALL, PLAINTIFF - Page 3

LAW OFFICES
KARGIANIS, AUSTIN & ERICKSON
47TH FLOOR COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE WASHINGTON 98104 7010
(206) 624 5370

CIVIL TRACK ONE
THE HONORABLE JOHN W. RILEY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KATHY LEE BUTLER, et. ux.,)
et. al.,)

Plaintiffs,)

v.)

DONALD LEE BARNETT, et. ux.,)
et. al.,)

Defendants,)

Third Party Plaintiffs,)

v.)

GARY LIEN,)

Third Party Defendant.)

SANDY EHRLICH, et. ux., et. al.,)

Plaintiffs,)

v.)

RALPH ALSKOG, et. ux., et. al.,)

Defendants.)

MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et. al.,)

Defendants.)

CERTIFICATE OF SERVICE : 1
15004789.COS

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8

CERTIFICATE OF SERVICE

Evans, Craven & Luckie, P.S.

LAWYERS

COMMUNITY CENTER, 1000 4TH AVENUE
SEATTLE, WASHINGTON 98101

(206) 386-5555

168
BE

1
2 THE UNDERSIGNED declares under penalty of perjury that on
3 November 28, 1988 I caused to be delivered a copy of the
4 attached to the following counsel, postage prepaid:

5 Susan Delanty Jones
6 Preston Thorgrimson Ellis & Holman
7 5400 Columbia Center
8 701 Fifth Avenue
9 Seattle WA 98104-7011

10 Michael Bond
11 Lee Smart Cook Martin & Patterson
12 800 Washington Building
13 Seattle WA 98101

14 George Kargianis/Jeff Campiche
15 Kargianis Austin & Erickson
16 701 Fifth Avenue, #4700
17 Seattle, WA 98104

18 Richard Adler/Ann Durham
19 Adler Giersch & Read
20 401 Second Avenue South, #600
21 Seattle, WA 98104

22 John Messina, Esq.
23 Messina & Duffy
24 4002 Tacoma Mall Blvd. #200
25 Tacoma, WA 98409

26 Michael W. Bugni
27 Moren Cornell & Hansen
28 Roosevelt-Pinehurst Building
29 11320 Roosevelt Way NE
30 Seattle, WA 98125

31 Jack Rosenow/John C. Graffe
32 Rosenow Hale & Johnson
#301 Tacoma Mall Blvd.
2000 Tacoma Mall
Tacoma, WA 98409

Pauline V. Smetka
Helsell Fetterman
1500 Washington Building

CERTIFICATE OF SERVICE : 2
15004789.COS

Erans Crawford Luckie, P.A.

LAWYERS

1500 4TH AVENUE
SEATTLE, WA 98101

1 1325 Fourth Avenue
2 Seattle, WA 98111

3 Bruce Winchell
4 Lane Powell Moss & Miller
5 3800 Rainier Bank Tower
6 Seattle, WA 98101-2647

7 John S. Glassman
8 420 Old City Hall
9 625 Commerce St.
10 Tacoma, WA 98402

11 Don M. Gulliford
12 2200 - 112th Ave. NE
13 Bellevue, WA 98004

Andrea L. Smith

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CERTIFICATE OF SERVICE : 3
15004789.COS

Evans, Graves & Luckie, P.A.
LAWYERS

ONE FIFTH AVENUE
SEATTLE, WASHINGTON 98101

(206) 386-5555

630 10 10

CIVIL TRACK ONE
THE HONORABLE JOHN W. RILEY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KATHY LEE BUTLER, et. ux.,)
et. al.,)

Plaintiffs,)

v.)

DONALD LEE BARNETT, et. ux.,)
et. al.,)

Defendants,)

Third Party Plaintiffs,)

v.)

GARY LIEN,)

Third Party Defendant.)

SANDY EHRLICH, et. ux., et. al.,)

Plaintiffs,)

v.)

RALPH ALSKOG, et. ux., et. al.,)

Defendants.)

MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et. al.,)

Defendants.)

DEP. NOT.
15004789.NOD

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8
NOTICE OF DEPOSITION UPON
ORAL EXAMINATION OF LARRY
LEMKE

Evans, Craven & Luckie, P.C.

LAWYERS

(206) 386-5555

169
BE

1
2 TO: All Parties; and
3 TO: All Counsel:

4 YOU ARE HEREBY NOTIFIED that the testimony of LARRY
5 LEMKE will be taken at the instance and request of defendants
6 Barnett in the above action, subject to continuance or
7 adjournment from time to time or place to place until completed
8 and to be taken on the ground and for the reason that said
9 witness will give evidence material to the establishment of the
10 parties' case; said deposition to be held:

11 DATE: Monday, December 5, 1988
12 TIME: 9:30 A.M.
13 PLACE: #3100, 701 Fifth Ave., Seattle, WA

14 DATED November 28, 1988.

15 EVANS CRAVEN & LACKIE, P.S.

16
17 By Tom Donahue
18 JAMES S. CRAVEN
19 Attorneys for Defendants Barnett
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21
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31 DEP. NOT.
32 15004789.NOD

Evans, Craven & Lackie, P.S.
LAWYERS

2000 12 05 11:00 AM
15004789.NOD
(206) 386-5555

FILED

1988 NOV 23 11:42

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

CIVIL TRACK ONE
THE HONORABLE JOHN W. RILEY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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3
4 KATHY LEE BUTLER, et. ux.,)
5 et. al.,)

6 Plaintiffs,)

7 v.)

8 DONALD LEE BARNETT, et. ux.,)
9 et. al.,)

10 Defendants,)

11 Third Party Plaintiffs,)

12 v.)

13 GARY LIEN,)

14 Third Party Defendant.)

15
16 _____)
17 SANDY EHRLICH, et. ux., et. al.,)

18 Plaintiffs,)

19 v.)

20 RALPH ALSKOG, et. ux., et. al.,)

21 Defendants.)

22
23 _____)
24 MAUREEN P. JORGENSEN,)

25 Plaintiff,)

26 v.)

27 COMMUNITY CHAPEL AND BIBLE)
28 TRAINING CENTER, et. al.,)

29 Defendants.)

30
31 DEP. NOT.
32 15004789.NOD

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8

NOTICE OF DEPOSITION UPON
ORAL EXAMINATION OF MAUREEN
JORGENSEN

170
Evans, Crawford Luckie, P.S.

LAWYERS

1000 PINE STREET
SEATTLE, WASHINGTON 98101

(206) 386-5555

1
2 TO: All Parties; and
3 TO: All Counsel:

4 YOU ARE HEREBY NOTIFIED that the testimony of MAUREEN
5 JORGENSEN will be taken at the instance and request of defendants
6 Barnett in the above action, subject to continuance or
7 adjournment from time to time or place to place until completed
8 and to be taken on the ground and for the reason that said
9 witness will give evidence material to the establishment of the
10 parties' case; said deposition to be held:

11 DATE: Friday, December 9, 1988
12 TIME: 9:30 A.M.
13 PLACE: #5400, 701 Fifth Ave., Seattle, WA

14 DATED November 28, 1988.

15 EVANS CRAVEN & LACKIE, P.S.

16
17 By Tom Donahue for
18 JAMES S. CRAVEN
19 Attorneys for Defendants Barnett
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21
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31 DEP. NOT.
32 15004789.NOD

Evans, Craven & Lackie, P.S.
LAWYERS

206-386-5555

FILED
1986 JUN 11 4 32
SUPERIOR COURT
KING COUNTY

CIVIL TRACK ONE
THE HONORABLE JOHN W. RILEY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KATHY LEE BUTLER, et. ux.,)
et. al.,)

Plaintiffs,)

v.)

et. al.,)

Defendants,)

Third Party Plaintiffs,)

v.)

GARY LIEN,)

Third Party Defendant.)

SANDY EHRLICH, et. ux., et. al.,)

Plaintiffs,)

v.)

RALPH ALSKOG, et. ux., et. al.,)

Defendants.)

MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et. al.,)

Defendants.)

DEP. NOT. : 1
15004789.NOD

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8
AMENDED
NOTICE OF DEPOSITION UPON
ORAL EXAMINATION OF LARRY
LEMKE

171
Evans, Craven & Lackie, P.S.
LAWYERS

1000 COLUMBIA CENTER, 701 5th AVENUE
SEATTLE, WASHINGTON 98104
(206) 386-5555


1
2 TO: All Parties; and
3 TO: All Counsel:

4 YOU ARE HEREBY NOTIFIED that the testimony of **LARRY LEMKE**
5 will be taken at the instance and request of defendants Barnett
6 in the above action, subject to continuance or adjournment from
7 time to time or place to place until completed and to be taken on
8 the ground and for the reason that said witness will give
9 evidence material to the establishment of the parties' case; said
10 deposition to be held:

11 DATE: Monday, December 5, 1988
12 TIME: 9:30 A.M.
13 PLACE: #600, 401 2nd Ave. S., Seattle, WA

14 DATED November 28, 1988.

15 EVANS CRAVEN & LACKIE, P.S.

16
17 By 
18 JAMES S. CRAVEN
19 Attorneys for Defendants Barnett
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31 DEP. NOT. : 2
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Evans, Craven & Lackie, P.S.

LAWYERS

1100 4TH AVENUE
SEATTLE, WASHINGTON 98104

(206) 386-5555

ORIGINAL

FILED

KING COUNTY, WASHINGTON

DEC 2 1988

SUPERIOR COURT CLERK
MELISSA R. KEATING
DEPUTY



**SUPERIOR COURT OF WASHINGTON
COUNTY OF KING**

KATHY LEE BUTLER, et vir., et al.,
Plaintiffs,

vs.
DONALD LEE BARNETT, et ux., et al.,
Defendants.

SANDY EHRLICH, et vir., et al.,
Plaintiffs,

vs.
RALPH ALSKOG, et ux., et al.,
Defendants.

NO. 86-2-18176-8

(Consolidated)

NOTE FOR MOTION CALENDAR

(Clerk's Action Required)

TO: THE CLERK OF THE COURT; and to all other parties per list on reverse side:

PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is directed to note this issue on the appropriate calendar.

Calendar Date: November 10, 1988 Day of Week Thursday

Nature of Motion: Re-Note of Defs. Alskog's Motion for Separate Trial

DESIGNATED CALENDAR

- Civil Motion (LR 7) (9:30)
 - Summary Judgment (LR 56) (9:30)
 - Supplemental Proceeding (LR 69) (1:30)
 - Presiding Judge (Trial Date Motions Only) (11:15 or 1:30 Daily)
- Time of Hearing: _____

- FAMILY LAW MOTION [LR 94.04 (W291)
- Domestic Motion (9:30)
- Scaled File Motion (1:30)
- Support Motion (1:30)
- Modification (1:30)

EX PARTE MOTION [LR 0.9(b)] (W285)
The following motions are heard 9:00-12:00 and 1:30-4:15:

- Adoption Time of Hearing: _____
- Dissolution Time of Hearing: _____
- Ex Parte Motion Time of Hearing: _____
- Probate Time of Hearing: _____

- Receivership (LR 66) (2:00)
- Scaled File Motion (9:30)

DEPARTMENTAL HEARINGS [LR 40(b)]
 Special Setting Before Judge/Commissioner:
Time of Hearing: 2:00 p.m.

The Honorable John Riley
Room E854

Typed Name: Jack G. Rosenow
OF: ROSENOW, HALE & JOHNSON

DATED: October 7, 1988

Attorney for: Defs. Alskog
Telephone: 473-0725

LIST NAMES, ADDRESSES AND TELEPHONE NUMBERS OF ALL PARTIES REQUIRING NOTICE ON REVERSE SIDE.
CIVIL TRACK I

ROSENOW, HALE & JOHNSON
301 Tacoma Mall Office Bldg.
Tacoma, Washington 98409
Phone: 473-0725

172
w

NOTE FOR MOTION CALENDAR (NTMTDK)
SC Form JO-138 5/87

List Of Names, Addresses And Telephone Numbers Of All Parties Requiring Notice:

NAME: Richard H. Adler
ADLER, GIERSCH & READ
Address: 1211 Smith Tower
Seattle, Washington 98104
Phone: 682-4267

Telephone:

Attorney For: Co-Counsel for Pls. Ehrlich, et al.

NAME: John L. Messina
MESSINA DUFFY
Address: 200 Benj. Franklin Bldg.
4002 Tacoma Mall Blvd.
Tacoma, Washington 98409
Phone: 472-6000

Telephone:

Attorney For: Co-Counsel for Pls. Ehrlich, et al.

NAME: Pauline V. Smetka
HELSELL, FETTERMAN, MARTIN, TODD &
Address: HOKANSON
1500 Washington Building
Seattle, Washington 98111
Phone: 292-1144

Telephone:

Attorney for: Co-Counsel for Defs. Alskog

NAME: Michael J. Bond
LEE, SMART, COOK, MARTIN &
Address: PATTERSON, P.S., INC.
800 Washington Building
1325 Fourth Avenue
Seattle, Washington 98101
Phone: 624-7990

Telephone:

Attorney For: For Def. Community Chapel & Bible Training Center

NAME: Robert P. Howerton
3507 South 40th St.
Address: Tacoma, Washington 98409

Telephone: Def. Pro Se

Attorney For:

List Of Names, Addresses And Telephone Numbers Of All Parties Requiring Notice:

NAME: Rod D. Hollenbeck
EVANS, CRAVEN & LACKIE
Address: 34th Floor, Columbia Center
701 Fifth Avenue
Seattle, Washington 98104
Phone: 386-5555

Telephone:

Attorney For: Defs. Barnett

NAME: George Kargianis/Jeff Campiche
KARGIANIS, AUSTIN & ERICKSON
Address: 47th Floor, Columbia Center
701 Fifth Avenue
Seattle, Washington 98104
Phone: 624-5370

Telephone:

Attorney For: For Pls. Butler, et al.

NAME: Donald & Christine Hall
P.O. Box 168
Address: Big Fork, Montana 59911

Telephone:

Attorney for: Pls. Pro Se

NAME: Susan Delanty Jones
PRESTON, THORGRIMSON, ELLIS & HOLMAN
Address: 5400 Columbia Center
701 Fifth Avenue
Seattle, Washington 98104
Phone: 623-7580

Telephone:

Attorney For: For Pl. Jorgensen

NAME:

Address:

Telephone:

Attorney For:

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SEP 2 1988

ROSENOW, HALE & JOHNSON

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SEP 6 1988

COPY RECEIVED

AUG 09 1988

EVANS, CRAVEN & LACKIE, P.S.

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AUG 29 1988

CIVIL TRACK ONE
THE HONORABLE *Kargianis, Austin & Erickson*

FILED

KING COUNTY, WASHINGTON

DEC 2 1988

SUPERIOR COURT CLERK
MELISSA R. KEATING
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KATHY LEE BUTLER, et ux., et al.,)

ADLER, GIERSCH, &)
Plaintiffs,)

DONALD LEE BARNETT, et ux., et al.,)

Defendants.)

SANDY ERLICH, et ux, et al.,)

Plaintiffs,)

vs.)

RALPH ALSKOG, et ux, et al.,)

Defendants.)

MAUREEN PANGBOURNE JORGENSEN, et al)

Plaintiffs,)

vs.)

COMMUNITY CHAPEL & BIBLE TRAINING)
CENTER, et al.,)

Defendants.)

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8

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SEP 02 1988

PLAINTIFFS BUTLER, et ux, et al.,
et al., SECOND REQ.
FOR ADMISSIONS AND
FOR GENUINENESS OF
DOCUMENTS

SEP 13 1988

TO: Donald Lee Barnett personally.

TO: Rodney Hollenbeck, Attorney for Barnett, personally.

COME NOW Plaintiffs Butler, et ux, et al., above named, and in accordance with CR 36, requests Donald Lee Barnett in his capacity as the Pastor & General Manager of the Community Chapel & Bible Training Center, defendant corporation and as an individual defendant to admit or deny the following requests for admission separately and fully under oath within twenty (20) days of the date of service.

CIVIL TRACK I

172.5
9#

1 In responding to these requests for admissions, you are
 2 required to separately set forth your answer to each. The matter
 3 will be deemed admitted unless within twenty (20) days after serv-
 4 ice of the request, or within such shorter or longer time as the
 court may allow, the party to whom the request is directed serves
 upon the undersigned attorneys for Plaintiffs Butler, et ux, et
 al., a written answer or objection addressed to the particular
 request signed by the Defendant in both his corporate and
 individual capacities and/or his attorneys.

5 If objection is made, the reasons therefor shall be stated.
 6 The answers shall specifically deny the matter or set forth in
 7 detail the reasons why the answering party cannot truthfully admit
 8 or deny the matter. A denial shall fairly meet the substance of
 9 the requested admission, and when good faith requires that the
 10 party(s) to whom these are addressed qualify his answer or deny
 11 only a part of the matter of which an admissions is requested, he
 12 shall specify so much of it as is true, and qualify or deny the
 13 remainder. An answering party may not give lack of information or
 knowledge as a reason for failure to admit or deny unless he states
 that he has made reasonable inquiry and that the information known
 or readily obtainable by him is insufficient to enable him to admit
 or deny. A party who considers that a matter of which an admission
 has been requested presents a genuine issue for trial may not, on
 that ground alone, object to the request; he may, subject to the
 provisions of CR 37(c), deny the matter and set forth reasons why
 he cannot admit or deny it.

14 **DEFINITIONS**

15 For the purposes of these admissions, the following terms
 shall have the meanings set forth below:

16 A. "Sexual contact" means any physical contact of sexual nature,
 17 with a person other than spouse, sexual contact shall include hug-
 18 ging, kissing, touching breasts, genitalia, or touch genitalia in
 the presence of someone other than spouse, up to and including
 genitalia contact, stimulation of genitalia and intercourse.

19 B. "You" or "your" also means Donald Barnett, individually and
 20 his attorneys and representatives.

SECOND REQUESTS FOR ADMISSION

1 REQUEST FOR ADMISSION NO. 1: Do you admit that you were
2 charged with the crime of indecent exposure in Los Vegas, Nevada in
3 1975.

4 ANSWER: Objection not reasonably calculated to discovery
5 of admissable evidence. Not relevant. /lead to
6

Timothy Donaldson
Timothy Donaldson
Suite 3100 Columbia Center
701 5th Avenue
Seattle, WA 98104

7
8 Without waiving objection denied with the qualification that
9 the original Las Vegas Municipal Police Department request
10 for issuance of a criminal complaint charging indecent
11 exposure was denied and the charge was open and gross lewdness.

12 REQUEST FOR ADMISSION NO. 2: Do you admit that you plead
13 guilty or foreited bail for the amended charge of open and gross
14 conduct?

15 ANSWER: Objection not reasonably calculated to lead
16 to discovery of admissable evidence. Not relevant.

17 Tim Donaldson Without waiving objection denied, with
18 Timothy Donaldson
19 Suite 3100 Columbia Center
701 5th Avenue
Seattle, WA 98104

20 qualification that Don plead guilty to trespass.

21 REQUEST FOR ADMISSION NO. 3: Do you admit that you paid a
22 fine or forfeited bail for said crime?

23 ANSWER: Objection not reasonably calculated to lead to
24 discovery of admissable evidence. Not relevant.

25 Without waiving the objection admitted a \$100.00
26 fine was paid for the crime of trespass. Tim Donaldson
Timothy Donaldson
3100 Columbia Center
701 5th Avenue
Seattle, WA 98104

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REQUEST FOR ADMISSION NO. 4: Do you admit that said crime was based on your having masturbated in a public hallway of the Circus Circus hotel in front of witnesses?

ANSWER: Denied


DATED this 9th day of August, 1988.

KARGIANIS, AUSTIN & ERICKSON

By 
JERE CAMRICHE
Attorneys for Plaintiffs

ANSWER DATED: August 29th, 1988

EVANS, CRAVEN & LACKIE,

By 
RODNEY D. HOLLENBECK
Attorneys for Barnett

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STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

_____, being first duly sworn, on oath deposes and says:

That I am the _____ in the above-referenced matter; that I have read the foregoing PLAINTIFFS SECOND REQUESTS FOR ADMISSION OF FACT AND GENUINENESS OF DOCUMENTS, know the contents thereof, and believe the same to be true.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 1986.

NOTARY PUBLIC in and for the State of Washington, residing at: _____
My Commission Expires: _____

CERTIFICATE OF MAILING

FILED

1988 DEC -6 PM 2:42

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

I hereby certify, under penalty of perjury,
that on December 5, 1988
I deposited in the U.S. mail a properly
stamped and addressed envelope directed to
all counsel of record containing a copy of ^{and Carl Peterson}
the document to which this certification is ^{and Don Hall}
attached.

Miri J. Highland

CIVIL TRACK ONE
THE HONORABLE JOHN RILEY

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KATHY LEE BUTLER, et vir, et al.,)
)
 Plaintiffs,)

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8✓

v.)

DONALD LEE BARNETT, et ux., et al.,)
)
 Defendants.)

MOTION OF ST. PAUL FIRE
AND MARINE INSURANCE
COMPANY FOR INTER-
VENTION AND TO CON-
CONSOLIDATE THE CARL
PETERSON LITIGATION

SANDY EHRLICH, et vir, et al.,)
)
 Plaintiffs,)

NO. 86-2-18429-5

v.)

RALPH ALSKOG, et ux., et al.,)
)
 Defendants.)

MAUREEN PANGBORNE JORGENSEN,)
)
 Plaintiff,)

NO. 86-2-26860-8

v.)

COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al.,)
)
 Defendants.)

MOTION OF ST. PAUL FOR INTERVENTION
AND TO CONSOLIDATE PETERSON LITIGATION - 1
interven.mot

LAW OFFICES OF
DON M. GULLIFORD & ASSOCIATES
2200 112th Avenue N.E.
P.O. Box 548, Bellevue, WA 98009-0548
Bellevue, WA 98004
(206) 462-4000

ORIGINAL

173
2

1 ST. PAUL FIRE AND MARINE INSURANCE)
2 COMPANY, a foreign corporation,)

3 Plaintiff,)

4 v.)

5 KATHY LEE BUTLER, et vir, et al.,)

6 Defendants.)

NO. 88-2-18321-0

7 COMES NOW the St. Paul Fire and Marine Insurance Company,
8 plaintiff in King County Superior Court Cause 88-2-18321-0, and
9 moves the court for an order consolidating such declaratory
10 judgment action under Consolidated Civil Track One Cause 86-2-
11 18176-8.

12 This motion is based upon the prior hearing involving all of
13 the parties before The Honorable Gerald Shellan and The Honorable
14 John Riley whereby all counsel and the court agreed that the
15 pending declaratory judgment action by the plaintiff St. Paul
16 Fire and Marine Insurance Company, now filed under Cause 88-2-
17 18321-0, obviously contained sufficiently similar or identical
18 issues of fact and law to mandate its consolidation for discovery
19 purposes at the present time with the various litigations now
20 consolidated under King County Superior Court Cause 86-2-18176-8.
21 Additionally, it is believed that no counsel opposed such
22 consolidation and, in fact, it is further believed that all
23 counsel favor such consolidation.
24

MOTION OF ST. PAUL FOR INTERVENTION
AND TO CONSOLIDATE PETERSON LITIGATION - 2
interven.mot

LAW OFFICES OF
DON M. GULLIFORD & ASSOCIATES
2200 112th Avenue N.E.
P.O. Box 548, Bellevue, WA 98009-0548
Bellevue, WA 98004
(206) 462-4000

ORIGINAL

1 Accordingly, the plaintiff St. Paul Fire and Marine Insurance
2 Company requests the court to enter the enclosed Order allowing
3 intervention and consolidation.

4 Additionally, plaintiff St. Paul Fire and Marine Insurance
5 Company shows and demonstrates to the court that there exists the
6 litigation which is appended to its declaratory judgment
7 complaint herein as Exhibit 2, entitled Carl A. Peterson, v.
8 Community Chapel and Bible Training Center, Snoey, Barnett, et
9 al., King County Superior Court Cause 87-2-14919-6.

10 It is manifest that the Carl A. Peterson litigation contains
11 similar allegations of wrongdoing on behalf of various
12 defendants which are in many ways identical or comparable to the
13 allegations of wrongdoing made by the various plaintiffs in these
14 consolidated actions.

15 It is further apparent beyond dispute that the Peterson
16 litigation should be consolidated for discovery with the present
17 consolidated cause 86-2-18176-8 to effect economy, not only of

18 /////

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20 /////

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22 /////

23 /////

24

MOTION OF ST. PAUL FOR INTERVENTION
AND TO CONSOLIDATE PETERSON LITIGATION - 3
interven.mot

LAW OFFICES OF
DON M. GULLIFORD & ASSOCIATES
2200 112th Avenue N.E.
P.O. Box 548, Bellevue, WA 98009-0548
Bellevue, WA 98004
(206) 462-4000

ORIGINAL

1 the court's time, but also that of the multiple counsel who are
2 involved for the litigants.

3 DATED this 5 day of December, 1988.

4 LAW OFFICES OF
5 DON M. GULLIFORD & ASSOCIATES

6 By 

7 DON M. GULLIFORD
8 Of Attorneys for St. Paul Fire
9 and Marine Insurance Company

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MOTION OF ST. PAUL FOR INTERVENTION
AND TO CONSOLIDATE PETERSON LITIGATION - 4
interven.mot

LAW OFFICES OF
DON M. GULLIFORD & ASSOCIATES
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P.O. Box 548, Bellevue, WA 98009-0548
Bellevue, WA 98004
(206) 462-4000

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CIVIL TRACK ONE
THE HONORABLE JOHN RILEY

1999 DEC -6 PM 1:04

KING COUNTY
SUPERIOR COURT CLERK
SPACIE, WA.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)

Plaintiff,)

v.)

KATHY LEE BUTLER, et al.,)

Defendants.)

CASE NO. 88-2-04615-8

CONSOLIDATED TRACK ONE
CAUSE NO. 86-2-18176-8 ✓

DEFENDANT COMMUNITY CHAPEL
AND BIBLE TRAINING CENTER'S
RESPONSE TO MOTION FOR SUMMARY
JUDGMENT BY AMERICAN CASUALTY
ON ISSUE OF BODILY INJURY

KATHY LEE BUTLER, et al.,)

Plaintiffs,)

v.)

DONALD LEE BARNETT, et al.,)

Defendants.)

CAUSE NO. 86-2-18176-8

SANDY ERLICH, et al.,)

Plaintiffs,)

v.)

RALPH ALSKOG, et al.,)

Defendants.)

CAUSE NO. 86-2-18429-5

DEFENDANT COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER'S RESPONSE TO MOTION
FOR SUMMARY JUDGMENT BY AMERICAN
CASUALTY ON ISSUE OF BODILY INJURY - 1

JOHN S. GLASSMAN
LAW OFFICES OF
625 COMMERCE STREET
TACOMA, WASHINGTON 98402
(206) 572-2746

ORIGINAL

174
[Signature]

1 MAUREEN PANGBORNE JORGENSON,)
2 Plaintiff,) CAUSE NO. 86-2-26360-8
3 v.)
4 COMMUNITY CHAPEL AND BIBLE)
5 TRAINING CENTER, et al.,)
6 Defendants.)

7
8 I. FACTS

9 This is an identical motion to one that was brought in
10 Pierce County Superior Court on April 15, 1988, in American
11 Casualty v. Ira Gabrielson, et al., No. 88-2-00947-9, and denied
12 by the Honorable J. Kelley Arnold, Pierce County Superior Court
13 Judge. American, by not disclosing the presence of the Pierce
14 County motion and the result thereof, is attempting to obtain an
15 inconsistent ruling from this court to the prejudice of its
16 insured Community Chapel and Bible Training Center ("Community
17 Chapel").

18 Although many depositions have been taken in the King County
19 cases, little evidence has been put before the court to justify
20 either the making or granting of this motion at this time. In
21 reality, this motion "looks" more like one brought under CR
22 12(b)(6), than CR 56. The case was recently consolidated, and it
23 is the holiday season.

24 The court will note that American has not attached its
25 entire comprehensive general liability insurance policy and that
26 it attempts to apply a definition of "bodily injury" from Part II

DEFENDANT COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER'S RESPONSE TO MOTION
FOR SUMMARY JUDGMENT BY AMERICAN
CASUALTY ON ISSUE OF BODILY INJURY - 2

JOHN S. GLASSMAN LAW OFFICES OF
625 COMMERCE STREET
TACOMA, WASHINGTON 98402
(206) 572-2746

1 it attempts to apply a definition of "bodily injury" from Part II
2 of the policy, to narrow the broad grant of coverage under Part I
3 ("Coverage A - Bodily Injury Liability"). Under Part I, not all
4 of which is attached for the court, there is no such exclusion,
5 such as is represented by American in its motion. In the earlier
6 motion heard in Pierce County, Community Chapel filed a
7 Memorandum in Opposition to a Motion for Summary Judgment, a copy
8 of which is attached hereto and incorporated herein by reference.
9 The court will notice the similarities between the motions made
10 by American and factual circumstances of these cases.

11 II. CONCLUSION

12 Now that the cases have been consolidated, American's
13 motion, without adding underlying facts, is at best premature.
14 Allegations contained in the pleadings are sufficient for
15 coverage, as the Pierce County Superior Court has ruled.
16 American's attempted forum shopping, to the prejudice of its
17 insured, Community Chapel, et al., should be repudiated by this
18 court.

19 Respectfully submitted this 6th day of December, 1988.

20 LAW OFFICES OF JOHN S. GLASSMAN

21 By: 

22 John S. Glassman,
23 Attorney for Defendant,
24 Community Chapel and
25 Bible Training Center

26 DEFENDANT COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER'S RESPONSE TO MOTION
FOR SUMMARY JUDGMENT BY AMERICAN
CASUALTY ON ISSUE OF BODILY INJURY - 3

LAW OFFICES OF
JOHN S. GLASSMAN
625 COMMERCE STREET
TACOMA, WASHINGTON 98402
(206) 572-2746

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EVANS, CRAVEN & LACKIE, P.S.

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DEC 02 1988

IN THE SUPERIOR COURT OF WASHINGTON IN
PIERCE COUNTY

LAW OFFICES OF
JOHN B. GLASSMAN

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)

NO. 88-2-00947-9

Plaintiff,)

DEFENDANT COMMUNITY CHAPEL
AND BIBLE TRAINING CENTER'S
MEMORANDUM IN OPPOSITION TO
MOTION FOR PARTIAL SUMMARY
JUDGMENT

v.)

IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife;)
DONALD LEE BARNETT and BARBARA)
BARNETT, husband and wife;)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, a Washington)
corporation,)

Defendants.)

I. REQUESTED RELIEF

American Casualty Company (American) has requested that this court grant a partial summary judgment declaring that it is not liable for damages under any cause of action brought against Community Chapel for any mental or emotional upset or lost earnings for which plaintiffs recover a judgment. American also seeks a declaration of non-coverage as to a cause of action for loss of consortium.

Community Chapel and Bible Training Center (Community Chapel) requests that American's motion for partial summary judgment be denied because certain claims for emotional distress are covered as "bodily injury," as that term is used in American's

DEFENDANT COMMUNITY CHAPEL
AND BIBLE TRAINING CENTER'S
MEMORANDUM IN OPPOSITION TO
MOTION FOR PARTIAL SUMMARY JUDGMENT - 1

LEACH, BROWN & ANDERSEN
ATTORNEYS AT LAW
4040 FIRST INTERSTATE CENTER
888 THIRD AVENUE
SEATTLE, WASHINGTON 98104
(206) 863-2714

1 policy, and because American has not proven the absence of genuine
2 factual issues.

3 II. FACTS

4 In Pierce County Cause No. 86-2-02792-6, Ira Gabrielson and
5 Carol Gabrielson, as plaintiffs therein, alleged that Jack
6 McDonald, the pastor of the Community Chapel and Bible Training
7 Center of Tacoma, manipulated Carol Gabrielson into leaving her
8 husband and coerced and unduly influenced her into having a sexual
9 relationship with himself; that the defendant Donald Barnett knew
10 or should have known that McDonald was involved in the seduction
11 of female members of the Tacoma congregation; that on March 6,
12 1986, Carol Gabrielson was physically assaulted, was handcuffed
13 and forced into a vehicle at the Community Chapel and Bible
14 Training Center of Burien; that she sustained physical injuries as
15 a result of such assault; and that McDonald and Barnett made
16 disparaging statements regarding the Gabrielsons to members of the
17 congregation.

18 Based upon these allegations, the plaintiffs brought nine
19 causes of action, which, respectively, include the following
20 allegations:

21 FIRST CAUSE OF ACTION: "The conduct of each of the above
22 named defendants was outrageous and caused the plaintiffs to
23 suffer severe emotional distress".

24 DEFENDANT COMMUNITY CHAPEL
25 AND BIBLE TRAINING CENTER'S
MEMORANDUM IN OPPOSITION TO
MOTION FOR PARTIAL SUMMARY JUDGMENT - 2

1 SECOND CAUSE OF ACTION: McDonald "manipulat(ed) Carol
2 Gabrielson into a sexual relationship."

3 THIRD CAUSE OF ACTION: "McDonald negligently'violated his
4 duty of care as a counselor by having sexual contact with
5 plaintiff, Carol Gabrielson.....McDonald was negligent in
6 counseling plaintiff Carol Gabrielson and so created an
7 unreasonable risk of physical and mental harm which caused the
8 plaintiff Carol Gabrielson's injuries."

9 FOURTH CAUSE OF ACTION: McDonald and Barnett
10 "intentionally, recklessly or negligently failed to exercise that
11 degree of care, skill, diligence and knowledge commonly possessed
12 and exercised by a reasonable, careful, and prudent pastor in this
13 jurisdiction."

14 FIFTH THROUGH SEVENTH CAUSES OF ACTION: "The acts of the
15 defendants on March 6, 1986, which resulted in injuries to
16 plaintiff Carol Gabrielson, were negligent and/or constitute the
17 torts of assault, battery, and false imprisonment."

18 EIGHTH CAUSE OF ACTION: "The acts of defendants in making
19 disparaging statements damaging the reputation of the plaintiff
20 constitute the tort of defamation."

21 NINTH CAUSE OF ACTION: "As a further and proximate result
22 of the acts of the defendants, plaintiff Ira Gabrielson has
23 suffered a loss of consortium."

24 DEFENDANT COMMUNITY CHAPEL
25 AND BIBLE TRAINING CENTER'S
MEMORANDUM IN OPPOSITION TO
MOTION FOR PARTIAL SUMMARY JUDGMENT - 3

1 Community Chapel is the insured under a comprehensive
2 general liability insurance policy it has with American. Relevant
3 portions of this policy language are now quoted:

4 The company will pay on behalf of the insured all sums
5 which the insured shall become legally obligated to
6 pay as damages because of

- 7 a. Bodily injury; or
8 b. Property damage.

9 To which this insurance applies, caused by an
10 Occurrence, and the company shall have the right and
11 duty to defend any suit against the insured seeking
12 damages on account of such bodily injury or property
13 damage, even if any of the allegations of the suit are
14 groundless, false or fraudulent, and may make such
15 investigation and settlement of any claim or suit, as
16 it deems expedient...." (Page 1 of 1)

17 The definition section of the policy states, in part, as
18 follows:

19 "Bodily Injury means bodily injury, sickness or
20 disease sustained by any person which occurs during
21 the policy period, including death at any time
22 resulting therefrom or Incidental Medical Malpractice
23 Injury."

24 "Occurrence means an accident, including continuous or
25 repeated exposure to conditions, which result in
Bodily Injury or Property Damage neither expected nor
intended from the standpoint of the Insured."

This includes any intentional act by or at the
direction of the insured which results in bodily
injury, if such injury arises solely from the use of
reasonable force for the purpose of protecting persons
or property." (Page 10 of 11)

24 DEFENDANT COMMUNITY CHAPEL
25 AND BIBLE TRAINING CENTER'S
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MOTION FOR PARTIAL SUMMARY JUDGMENT - 4

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1 Community Chapel had "Personal Injury and Advertising Injury
2 Liability Coverage" which provided the following:

3 The company will pay on behalf of the Insured all sums
4 which the Insured shall become legally obligated to
5 pay as damages because of Personal Injury or
6 Advertising Injury to which this insurance
7 applies,...." (page 4 of 8)

8 "Personal Injury means injury arising out of one or
9 more of the following offenses committed during the
10 policy period:

11 (a) false arrest, detention, imprisonment or malicious
12 prosecution;

13 (b) wrongful entry or eviction or other invasion of
14 the right of private occupancy;

15 (c) a publication or utterance

16 (1) of libel or slander or other defamatory
17 or disparaging material...." (page 5 of 8).

18 III. LEGAL AUTHORITY

19 A. Gabrielson's allegations are sufficient to bring her claim for
20 emotional distress within the definition of "bodily injury."

21 Beyond the allegations in the Gabrielson Complaint, there is
22 no description of the kind of physical and emotional injuries
23 suffered, nor are there supporting affidavits as to any attendant
24 symptoms either of the Gabrielsons have had as a result of such
25 injuries. American, as the moving party, has the burden of
proving that there is no genuine issue of material fact. Preston
v. Duncan, 55 Wn.2d 678, 3439 P.2d 605 (1960). In other words,

DEFENDANT COMMUNITY CHAPEL
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1 American must prove that there is no genuine issue of fact and
2 that the matter can be resolved as an issue of law.

3 American only argues that a claim for emotional distress, in
4 the abstract, is not covered as a "bodily injury" under its policy
5 language. As is argued below, certain claims for emotional
6 distress fall within the scope and meaning of the term "bodily
7 injury," and, because no genuine issue of fact has been proven by
8 American, the issue of American's liability cannot be decided as a
9 matter of law.

10 The Washington cases relied upon by American are
11 distinguishable. E-Z Loader v. Travelers Indem. Co., 106 Wn.2d
12 901, 726 P.2d 439 (1986), involved a sex and age discrimination
13 case in which the injured parties suffered no physical contact of
14 any kind but were laid off from their employment. The injured
15 parties recovered an award against their employer for loss of
16 prospective earnings, humiliation, mental anguish and emotional
17 distress. On the appeal of the employer's suit for
18 indemnification, the court stated that the coverage for "bodily
19 injury" contemplated actual bodily injury, sickness or disease
20 resulting in physical impairment. By contrast, Gabrielson's
21 allegations can be understood to mean that McDonald's sexual
22 contacts with her were actual bodily injuries which, in turn,
23 resulted in her emotional distress and physical injuries. I r

24 DEFENDANT COMMUNITY CHAPEL
25 AND BIBLE TRAINING CENTER'S
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1 West Am. Ins. v. Buchanan, 11 Wn.App. 823, 525 P.2d 831 (1974),
2 the parents of a boy hurt in an automobile accident sought
3 recovery for their own mental anguish and grief under an uninsured
4 motorist endorsement. They argued that they had a separate
5 "bodily injury" under the terms of the policy. The court held
6 that the parents could not recover for their own consequential
7 injuries as a result of the bodily injury sustained by another
8 person. At page 827, they stated the following:

9 Grief, mental anguish and suffering are arguably more
10 similar to the "pain and suffering" element of direct
11 damages for a "bodily injury" than to such
12 consequential damages as medical expenses and loss of
13 wages. But we are persuaded that grief and mental
14 anguish are also consequential damages rather than
15 direct damages because their recovery is necessarily
16 dependant upon the injury to another person - the
17 child. (Emphasis added.)

18 Carol Gabrielson's recovery is not dependant upon injury to
19 another person because she was the injured party.

20 A recent line of cases support the proposition that a claim
21 for emotional distress, which results from some physical contact,
22 is encompassed under the "bodily injury" coverage of an insurance
23 policy. Perhaps the case closest to the present factual setting
24 is NPS Corporation v. Insurance Company of North America, 213
25 N.J.Supp. 547, 517 A.2d 1211 (1986), which involved a claim for
sexual harassment. An executive secretary alleged that a plant
manager had committed repeated acts of sexual harassment by

DEFENDANT COMMUNITY CHAPEL
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1 offensively touching her "rear end" and "breast." And as a result
2 of such actions, she claimed that she suffered "serious emotional
3 distress and disruption of her personal life." The trial judge
4 granted the insurance company's summary judgment motion and
5 dismissed the complaint, concluding the term "bodily injury," as
6 used in the policy, contemplated physical harm or damage to the
7 human body and did not include mental anguish or emotional
8 distress. On appeal, the court reversed the dismissal and held
9 that "the term 'bodily injury' included the emotional and
10 psychological sequelae allegedly resulting from the unauthorized
11 invasion of the complainant's person." Id. at 1212. The court
12 stated as follows:

13 (O)ur "courts have come to recognize that mental and
14 emotional distress is just as 'real' as physical pain,
15 and its valuation is no more difficult." Berman v.
16 Allan, 80 N.J. 421, 4433, 404 A.2d 8 (1979).
 Consequently, damages for such distress have been
 ruled allowable in an increasing number of contexts.
 (Citations admitted)

17 Within that framework, we disagree with INA's
18 argument that bodily injury necessarily entails some
19 physical or corporeal harm caused by the application
20 of external violence. We are unable to separate a
21 person's nerves and tensions from his body. Clearly,
 emotional trauma can be as disabling to the body as a
 visible physical wound. Moreover, it is common
 knowledge that emotional distress can and often does
 have a direct effect on other bodily functions.

22 NPS Corporation v. Insurance Co. of No. America, 517 A.2d at
23 1213-14.

24 DEFENDANT COMMUNITY CHAPEL
25 AND BIBLE TRAINING CENTER'S
 MEMORANDUM IN OPPOSITION TO
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1 The NPS court went on to hold that the term "bodily injury"
2 encompassed claims for emotional distress caused by nonconsensual
3 touching.

4 A case that apparently creates even greater coverage than
5 NPS is Loewenthal v. Security Ins., Co., 50 Md.App. 112, 436 A.2d
6 493 (1981), wherein a claim was made that negligent excavation
7 caused inter alia, a breach of contract, loss of rent, and pain,
8 suffering, and mental anguish. The defendant's insurance
9 company's motion for summary judgment, requesting there was no
10 duty to defend, was granted. The appellate court reversed:
11 "Bodily injury," defined in the policy as "bodily injury, sickness
12 or disease sustained by any persons.... encompasses the claim of
13 pain, suffering, and mental anguish. Id. at 499.

14 In Levy v. Duclaux, 324 So.2d 1 (La.App. 1976), a customer
15 accused of shoplifting brought a claim for false imprisonment. It
16 was undisputed that the customer had been grabbed and held by one
17 of the store employees, in front of other shoppers. The insurance
18 company, however, refused to defend against her claim of emotional
19 distress because it argued that such claim was not a bodily
20 injury. In holding that the policy's term "bodily injury"
21 included plaintiff's alleged injuries, the court noted that the
22 plaintiff was "personally exposed to some minimal physical abuse
23 as well as the external force of being accused a shoplifter in

24 DEFENDANT COMMUNITY CHAPEL
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1 front of many witnesses." Levy v. Duclaux, 324 So.2d at 9.

2 The Levy court also stated, at page 10, that

3 (W)e are unable to separate a person's nerves and
4 tensions from his body. It is common knowledge that
5 worry and anxiety can and often do have a direct
6 effect on other bodily functions.

7 The court also commented that the plaintiff's humiliation
8 brought on various physical manifestations.

9 Holcomb v. Kincaid, 406 So.2d 646 (La.App. 1981), involved a
10 claim by a punitive wife against her husband for alleged fraud in
11 marrying her when had not divorced his former wife. The husband's
12 insurance company was dismissed on summary judgment, and the
13 appellate court was asked to determine whether the wife's
14 allegations of humiliation, embarrassment, and mental anguish were
15 covered under the definition of "bodily injury". The policy
16 defined bodily injury as meaning "bodily injury, sickness or
17 disease." The court noted that the circumstances before it were
18 controlled by the Levy case, "in which mental anguish and
19 humiliation were found to be within the definition of bodily
20 injury."

21 Although the Holcomb court does not state a major source of
22 the alleged mental anguish, there can be no doubt that it was the
23 fact that the "husband" had lived with the plaintiff, as his wife,
24 for 12 years. The wife in Holcomb also alleged various physical

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1 effects of her humiliation and mental anguish.

2 The allegations of Carol Gabrielson can be fairly stated as
3 follows: as a result of being coerced and unduly influenced by
4 McDonald, she had sexual intercourse with McDonald numerous times,
5 which acts of sexual contact have created great emotional and
6 physical injuries for her. If this court rules that emotional
7 distress, caused by some physical contact, and accompanied by some
8 physical symptoms, is within the coverage provided by the term
9 "bodily injury," as defined by the American policy, this court
10 cannot grant American's motion.

11 It is also arguable that because of the various
12 interpretations by the courts of the term "bodily injury," the
13 term is inherently ambiguous. Ambiguities in insurance policies
14 are construed in a manner most favorable to the insured. Neer v.
15 Fireman's Fund, 36 Wn.App. 834, 677 P.2d 796 (1984). Although the
16 NPS policy did not expressly define "bodily injury," the court
17 stated that it "presented substantial ambiguities which must be
18 construed against the insurer." NPS Corporation v. Insurance Co.
19 of North America, 517 A.2d at 1213. In Employers Co. Ins. Co. v.
20 Foust, 29 Cal. App. 3d 382, 105 Cal.Rptr. 505 (1972), the mother
21 of a young boy who drowned in a neighbor's pool sued for "severe
22 fright, shock, emotional distress and resulting physical
23 injuries." The insurance policy stated it would be liable for

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1 damages because of "Bodily injury, sickness or disease, included
2 death resulting therefrom, hereinafter called 'bodily injury,'
3 sustained by any person." The court found this definition to be
4 ambiguous in light of a claim for emotional distress and resulting
5 physical injury. And, in Levy v. Declaux, supra, the court
6 specifically held that the definition of "bodily injury" meaning
7 "bodily injury, sickness or disease sustained by any person" was
8 ambiguous. Id. at 10.

9 Further, neither American's general exclusion section (Page
10 1 and 2 of 8) nor the section defining "bodily injury," exclude
11 emotional distress or mental anguish. An inclusionary clause in
12 an insurance contract should be liberally construed to provide
13 coverage whenever possible. Riley v. Viking Ins. Co., 46 Wn.App.
14 828, 733 P.2d 556 (1987). And exclusionary clauses are construed
15 against the insurer. Eurick v. Pemco Ins. Co., 108 Wn.2d 338, 738
16 P.2d 251 (1987).

17 It is also well established that the term "personal injury"
18 is more encompassing than is the term "bodily injury." Community
19 Chapel's policy provides coverage for injury arising out of, inter
20 alia, false arrest, imprisonment or defamation. (Page 5 of 8) .
21 Gabrielson clearly alleged that her claims for false imprisonment
22 arose directly out of the March 6th alleged assault on her person;
23 however, it is unclear from the complaint whether or not the

24 DEFENDANT COMMUNITY CHAPEL
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1 alleged defamatory statements were also made that same time.
2 Based upon the arguments and cases referred to above, with respect
3 to "bodily injury," American should not be allowed to escape
4 liability for claims of emotional distress which arose out of the
5 alleged false imprisonment and defamation.

6 B. It is a breach of faith by American to bring this partial
7 summary judgment.

8 Tank v. State Fram, 105 Wn.2d 381, 715 P.2d 1133 (1986),
9 stands for the proposition that when an insurance company is
10 defending under a reservation of rights, it has an enhanced
11 fiduciary duty to the insured. Here, American is defending
12 Community Chapel in the underlying case under a reservation of
13 rights. American's first obligation, then, is to "thoroughly
14 investigate the cause of the insured's accident and the nature and
15 severity of the plaintiff's injuries." See Tank v. State Farm,
16 supra at 388. There is absolutely no evidence, however, that
17 American has made such investigation into the nature and severity
18 of the Gabrielson's injuries; certainly it has the opportunity to
19 do so in this Declaratory Judgment action. It is found evidence
20 that brought the claim for emotional distress into the policy's
21 definition of "bodily injury," it would quite obviously have no
22 right to bring this partial summary judgment action.

23 If American prevails in this motion, one possible result is

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1 that Community Chapel would more likely reach a result in the
2 underlying case, which result would not be to their best financial
3 advantage.

4 Without some more investigation by American, their motion
5 for partial summary judgment is an act of bad faith on its part.

6 CONCLUSION

7 American has brought this summary judgment motion based
8 solely on the allegations contained the Gabrielson Complaint and
9 on its policy language. A Complaint, however, is not required to
10 spell out every element of a cause of action; it only has to put
11 the defendant on notice of the claim being asserted. Thus, if
12 there is any way in which additional facts or circumstances could
13 bring Gabrielson's claims for emotional distress within the ambit
14 of a "bodily injury," it is premature for the court to grant
15 American's motion as it has failed to prove the absence of a
16 genuine issue of fact. Furthermore, it is an act of bad faith for
17 it to bring this motion at this time without further investigation
18 of the Gabrielson injuries.

19 DATED this 7th day of April, 1988.

20 LEACH, BROWN & ANDERSEN

21
22 By DAVID V. ANDERSEN
23 Attorney for Defendant
Community Chapel and Bible
Training Center

24 DEFENDANT COMMUNITY CHAPEL
25 AND BIBLE TRAINING CENTER'S
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SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

KATHY LEE BUTLER, et ux., et al.,
Plaintiff,
vs.
DONALD LEE BARNETT, et ux., et al.,
Defendant.

FILED

1988 DEC -7 PM 4:12

CLERK
CONSOLIDATED CASE
NO. 86-2-18176-8

NOTE FOR MOTION CALENDAR
(Clerk's Action Required)

TO: THE CLERK OF THE COURT; and to all other parties per list on reverse side:

PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is directed to note this issue on the appropriate calendar.

Calendar Date: December 22, 1988 Day of Week Thursday

Nature of Motion: Motion to Amend First Amended Complaint

DESIGNATED CALENDAR

- | | |
|--|---|
| () CIVIL MOTION (LR 0.7) (9:30) | FAMILY LAW MOTION [LR 0.5(b) LR 94.04] (W291) |
| () SUMMARY JUDGMENT (LR 56) (9:30) | () Domestic Motion (9:30) |
| () SUPPLEMENTAL PROCEEDING (LR 69) (1:30) | () Sealed File Motion (1:30) |
| () PRESIDING JUDGE (Trial Date motions only)
(11:15 or 1:30 daily) | () Support Motion (1:30) |
| Time of Hearing: _____ | () Modification (1:30) |

EX PARTE MOTION [LR 0.9(b)] (W623)

The following motions are heard 9:00-12:00 and 1:30-4:15:

- | | | |
|---------------------|------------------------|---------------------------------|
| () Adoption | Time of Hearing: _____ | () Receivership (LR 66) (2:00) |
| () Dissolution | Time of Hearing: _____ | () Sealed File Motion (9:30) |
| () Ex Parte Motion | Time of Hearing: _____ | |
| () Probate | Time of Hearing: _____ | |

DEPARTMENTAL HEARINGS [LR 40(h)]

(x) Special Setting before Judge/Commissioner The Honorable Judge Riley Room E854
Time of Hearing: 3:00 p.m.

Susan Delanty Jones

Dated: December 7, 1988

Typed Name: Susan Delanty Jones
OF: Breston, Thorgrimson, Ellis & Holman
Attorney for: Plaintiff Jorgensen
Telephone: (206) 623-7580

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FILED

1988 DEC -7 AM 9:09

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

CIVIL TRACK ONE
THE HONORABLE JOHN RILEY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)

Plaintiff,)

v.)

KATHY LEE BUTLER, et al.,)

Defendants.)

CASE NO. 88-2-04615-8

CONSOLIDATED TRACK ONE
CAUSE NO. 86-2-18176-8 ✓

AFFIDAVIT OF MAILING

KATHY LEE BUTLER, et al.,)

Plaintiffs,)

v.)

DONALD LEE BARNETT, et al.,)

Defendants.)

CAUSE NO. 86-2-18176-8

SANDY ERLICH, et al.,)

Plaintiffs,)

v.)

RALPH ALSKOG, et al.,)

Defendants.)

CAUSE NO. 86-2-18429-5

AFFIDAVIT OF MAILING - 1

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1 MAUREEN PANGBORNE JORGENSON,)
2)
3 Plaintiff,)
4)
5 v.)
6)
7 COMMUNITY CHAPEL AND BIBLE)
8 TRAINING CENTER, et al.,)
9)
10 Defendants.)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)

CAUSE NO. 86-2-26360-8

8 STATE OF WASHINGTON)
9)
10 COUNTY OF PIERCE)

SS.

11 SUE SHAWLEY, being first duly sworn on oath, deposes and
12 says:

13 1. That on the 6th day of December, 1988, I deposited in
14 the mail of the United States of America a copy of the attached
15 Defendant Community Chapel and Bible Training Center's Response
16 to Motion for Summary Judgment by American Casualty on Issue of
17 Bodily Injury securely sealed in an envelope with the requisite
18 postage thereon, to be transmitted by first class mail in said
19 envelope contained a true and correct copy to the following:

20 See attached service list.

21 By: Sue Shawley
Sue Shawley

22 SUBSCRIBED AND SWORN to before me this 6th day of December,
23 1988.

24 [Signature]
25 Notary Public in and for the
26 State of Washington, residing
at GIG HARBOR.
My Commission Expires: 9-27-91

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Attorney for Defs. Butler, Lien,
Brown and Fellhauer

Donald and Christine Hall
P. O. Box 168
Big Fork, Montana
(last known address)
Phone:
Defendants Pro Se

Mr. Richard H. Adler
Ms. Ann J. Durham
(see address and phone number above)
Attorney for Defs. Ehrlich, Lemke,
Reynolds & Chabot

Mr. John C. Graffe
ROSENOW, HALE & JOHNSON
Attorneys at Law
1620 Key Tower
1000 Second Avenue
Seattle, Washington 98104
Phone: 223-4770
Attorney for Defs. Alskog

Mr. Michael W. Bugni
(see address and phone number above)
Attorney for Defs. Howerton

Mr. E. Scott Harley
(see address and phone number above)
Defendant Pro Se

Mr. Rod D. Hollenbeck
(see address and phone number above)
Attorney for Defs. Barnett

Mr. John S. Glassman
Attorney at Law
420 Old City Hall
625 Commerce St.
Tacoma, Washington 98402
Phone: 572-2746
Attorney for Def. Community Chapel &
Bible Training Center

FILED

1988 DEC -7 PM 12:08

CIVIL TRACK ONE
THE HONORABLE JOHN RILEY

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ST. PAUL FIRE AND MARINE)
INSURANCE COMPANY, a foreign)
corporation,)
Plaintiff,)

NO. 88-2-18321-0

v.)

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8 ✓

KATHY LEE BUTLER and STEPHEN)
LYNN BUTLER, wife and husband,)
and the marital community com-)
posed thereof; KATHY LEE)
BUTLER as guardian ad litem)
for SCOTT WILLIAM LIEN and)
RANDY WILLIAM LIEN, minors;)
SANDI LEE BROWN and LYLE DAVID)
BROWN, wife and husband, and)
the marital community composed)
thereof; DORA FELLHAUER as)
guardian ad litem for TARA LYNN)
BROWN and TROY STEVEN BROWN,)
minors; CHRISTINE HALL and)
DONALD T. HALL, wife and husband)
and the marital community com-)
posed thereof; SANDY EHRLICH and)
MICHAEL EHRLICH, wife and hus-)
band; LARRY LEMKE, parent; LARRY)
LEMKE, guardian ad litem on)
behalf of SYBIL N. LEMKE, a)
minor; KATHRYN REYNOLDS; DEE)
CHABOT, parent; DEE CHABOT,)
guardian ad litem on behalf of)
SHAWNA MICHELE CHABOT, MICHAEL)
GRANT CHABOT, NICHOLAS STERLING)
CHABOT, minors; RALPH ALSKOG and)
ROSEMARY ALSKOG, husband and)
wife; ROBERT HOWERTON and JANE)
DOE HOWERTON, husband and wife,)
MAUREEN P. JORGENSEN;)
E. SCOTT HARTLEY and JANE DOE)
HARTLEY; DONALD LEE BARNETT and)
BARBARA BARNETT, husband and)

ACKNOWLEDGEMENT AND
ACCEPTANCE OF SERVICE

ACKNOWLEDGEMENT AND
ACCEPTANCE OF SERVICE - 1
ackacc.ser

LAW OFFICES OF
DON M. GULLIFORD & ASSOCIATES
2200 112th Avenue N.E.
P.O. Box 548, Bellevue, WA 98009-0548
Bellevue, WA 98004
(206) 462-4000

177
JH

1 wife; COMMUNITY CHAPEL AND BIBLE)
2 TRAINING CENTER, a Washington)
3 corporation; "JOHN DOES" 1-5 and)
4 "JANE DOES" 1-5, husbands and)
5 wife; FIRST DOE CORPORATION; and)
6 FIRST DOE PARTNERSHIP; FARMERS)
7 INSURANCE COMPANY OF WASHINGTON,)
8 WAYNE SNOEY, individually and)
9 in his official capacity as a)
10 security guard of Community)
11 Chapel; WAYNE SNOEY and JANE)
12 DOE SNOEY, husband and wife, and)
13 the marital community composed)
14 thereof; JOHN DOE, individually)
15 and in his official capacity as)
16 a security guard of Community)
17 Chapel; DREW GALAS, individually)
18 and in his official capacity as)
19 a security guard of Community)
20 Chapel; DREW GALAS and JANE DOE)
21 GALAS, husband and wife, and the)
22 marital community composed)
23 thereof; DEAN GREFTHEH, individ-)
24 ually and in his official capa-)
city as an employee of Community)
Chapel; DEAN GREFTHEH and JANE)
DOE GREFTHEH, husband and wife,)
and the marital community com-)
posed thereof; DON DAVIS,)
individually and in his official)
capacity as a security guard of)
Community Chapel; DON DAVIS and)
JANE DOE DAVIS, husband and wife)
and the marital community com-)
posed thereof; TED KAUFMAN,)
individually and in his official)
capacity as a security guard of)
Community Chapel; TED KAUFMAN)
and JANE DOE KAUFMAN, husband)
and wife, and the marital com-)
munity composed thereof, and)
CARL A. PETERSON and JANE DOE)
PETERSON, husband and wife, and)
the marital community composed)
thereof,)
Defendants.)

ACKNOWLEDGEMENT AND
ACCEPTANCE OF SERVICE - 2
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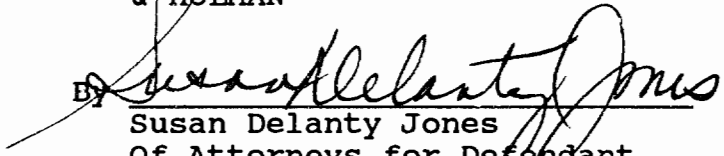
LAW OFFICES OF
DON M. GULLIFORD & ASSOCIATES
2200 112th Avenue N.E.
P.O. Box 548, Bellevue, WA 98009-0548
Bellevue, WA 98004
(206) 462-4000

1 TO: St. Paul Fire and Marine Insurance Co., Plaintiff, and
2 TO: Law Offices of Don M. Gulliford & Associates, its attorneys.
3

4 The undersigned hereby acknowledges receipt of, states she is
5 authorized to, and does hereby accept service of process of
6 Summons and Complaint for Declaratory Judgment entitled St. Paul
7 Fire and Marine Insurance Company v. Kathy Lee Butler and Stephen
8 Lynn Butler, husband and wife, et al., under Consolidated Cause
9 No. 86-2-18176-8, on behalf of defendant (litigation plaintiff)
10 Maureen P. Jorgensen.

11 DATED this 5 day of December, 1988.

12 PRESTON, THORGRIMSON, ELLIS
13 & HOLMAN

14 BY 
15 Susan Delanty Jones
16 Of Attorneys for Defendant
17 (Litigation Plaintiff)
18 Maureen P. Jorgensen
19
20
21
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ACKNOWLEDGEMENT AND
ACCEPTANCE OF SERVICE - 3
ackacc.ser

LAW OFFICES OF
DON M. GULLIFORD & ASSOCIATES
2200 112th Avenue N.E.
P.O. Box 548, Bellevue, WA 98009-0548
Bellevue, WA 98004
(206) 462-4000

The undersigned, being first duly sworn, on oath, states: That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the attorneys of record of all parties, containing a copy of the document to which this affidavit is attached.

Michelle Meier

Subscribed and sworn to before me this 7th day of

December, 1988

Susan M. Shawley

Notary Public in and for the State of Washington.

My appointment expires 9-27-91

FILED

1988 DEC -7 PM 4:39

SUPERIOR COURT CLERK
COUNTY OF PIERCE

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)

Plaintiff,)

v.)

KATHY LEE BUTLER, et al.,)
Defendants.)

KATHY LEE BUTLER, et al.,)
Plaintiffs,)

v.)

DONALD LEE BARNETT, et al.,)
Defendants.)

SANDY ERLICH, et al.,)
Plaintiffs,)

v.)

RALPH ALSKOG, et al.,)
Defendants.)

CASE NO. 88-2-04615-8
CONSOLIDATED TRACK ONE
CAUSE NO. 86-2-18176-8
SUPPLEMENTAL RESPONSE TO
MOTION FOR SUMMARY JUDGMENT

CAUSE NO. 86-2-18176-8

CAUSE NO. 86-2-18429-5

SUPPLEMENTAL RESPONSE TO MOTION
FOR SUMMARY JUDGMENT - 1

LAW OFFICES OF
JOHN S. GLASSMAN
625 COMMERCIAL STREET
TACOMA, WASHINGTON 98402
(206) 572-2746

178
11

1 MAUREEN PANGBORNE JORGENSEN,)
2 Plaintiff,)
3 v.)
4 COMMUNITY CHAPEL AND BIBLE)
5 TRAINING CENTER, et al.,)
6 Defendants.)

7 Attached hereto is a true and correct copy of the
8 "Affidavit of Harold T. Dodge, Jr. in Opposition to Plaintiff's
9 Renewed Motion for Summary Judgment."

10 Attached to this Affidavit is a transcription of the
11 Excerpt of Proceedings held April 15, 1988, before the Honorable
12 J. Kelley Arnold, Pierce County Superior Court Judge. As can be
13 seen from the transcription, Judge Arnold rejected American
14 Casualty Company's argument as to the meaning of the EZ Loader
15 case.

16 Respectfully submitted this 7th day of December, 1988.

17 LAW OFFICES OF JOHN S. GLASSMAN

18 By: 

19 John S. Glassman,
20 Attorney for Defendant,
21 Community Chapel and Bible
22 Training Center

23
24
25
26
SUPPLEMENTAL RESPONSE TO MOTION
FOR SUMMARY JUDGMENT - 2

LAW OFFICES OF
JOHN S. GLASSMAN
625 COMMERCIAL STREET
TACOMA, WASHINGTON 98402
(206) 572-2746

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA,)
a Pennsylvania corporation,)
Plaintiff,)
vs.)
IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife;)
DONALD LEE BARNETT and BARBARA)
BARNETT, husband and wife;)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, a Washington)
corporation; JACK McDONALD)
and "JANE DOE" McDONALD,)
husband and wife,)
Defendants.)

NO. 88-2-00947-9
AFFIDAVIT OF HAROLD T.
DODGE, JR. IN OPPOSITION
TO PLAINTIFF'S RENEWED
MOTION FOR SUMMARY JUDGMENT

STATE OF WASHINGTON)
: ss.
County of Pierce)

HAROLD T. DODGE, JR., being first duly sworn upon oath,
deposes and says:

I am an attorney licensed to practice law in the State of
Washington and I am one of the attorneys of record for the
defendants Gabrielson in the above-entitled action. I

///

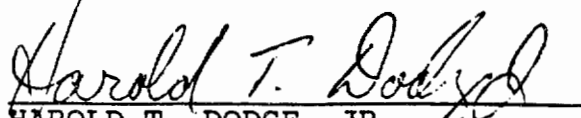
AFFIDAVIT OF HAROLD T. DODGE IN
OPPOSITION TO PLAINTIFF'S RENEWED
MOTION FOR SUMMARY JUDGMENT - 1

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 383 5388
SEATTLE 838 4790

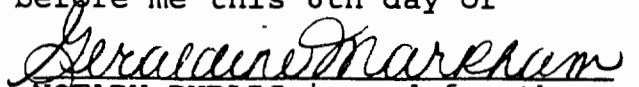
1
2 make the following affidavit from my own personal knowledge of
3 the records and proceedings to date in the above-entitled action
4 and I am competent to testify thereto for the purposes of this
5 motion.

6 Once before, plaintiff has brought a partial motion for
7 summary judgment in an attempt to have the Court rule that its
8 policy of insurance insuring the defendant Community Chapel and
9 Bible Training Center does not cover emotional injuries that may
10 be parasitic to violation of an individual's bodily integrity.
11 These defendants have ordered a transcript of the Court's oral
12 ruling on that previous motion and as soon as these defendants
13 receive that transcript, it will be incorporated into this
14 affidavit by reference as if fully set forth.

15 These defendants believe that it is clear from the Court's
16 previous oral ruling that the emotional damages that the
17 Gabrielsons' suffered as a result of tortious interference with
18 Carol Gabrielson's bodily integrity are items of damages that are
19 covered by plaintiff's policy of insurance insuring the defendant
20 Community Chapel and Bible Training Center.

21
22 
HAROLD T. DODGE, JR.

23 SUBSCRIBED AND SWORN TO before me this 6th day of
24 December, 1988.

25 
NOTARY PUBLIC in and for the
26 State of Washington.
My Commission Expires: 10-4-89.

///

AFFIDAVIT OF HAROLD T. DODGE IN
OPPOSITION TO PLAINTIFF'S RENEWED
MOTION FOR SUMMARY JUDGMENT - 2

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383 5388
SEATTLE 838-4790

COPY RECEIVED

DEC 06 1988

12 DEC 6 1988

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

RUSH, HANNULA & HARKINS

AMERICAN CASUALTY COMPANY)
of READING, PENNSYLVANIA,)
)
Plaintiff,)
)
vs)
)
IRA GABRIELSON, et ux, et al,)
)
Defendants.)

ORIGINAL

No: 88-2-00947-9
Excerpt of Proceedings
ORAL DECISION
IN COUNTY CLERK'S OFFICE

FILED
A.M. DEC 6 1988 P.M.
PIERCE COUNTY WASHINGTON
163 WEST COUNTY CLERK
BY [Signature] DEPUTY

BE IT REMEMBERED that on the 15th day of
April, 1988, the following proceedings were held before
the Honorable J. KELLY ARNOLD, Judge of the Superior
Court of the State of Washington, in and for the County
of Pierce, sitting in Department 9.

The Plaintiff was represented by their
attorney, BRUCE WINCHELL;

The Defendants were represented by their
attorneys, DANIEL HANNULA, TIMOTHY DONALDSON;

WHEREUPON, the following proceedings were had,
to wit:

CATHERINE M. VERNON & ASSOCIATES

COURT REPORTERS
318-19TH AVENUE S.E.
PUYALLUP, WASHINGTON 98371

1 P R O C E E D I N G S

2 (April 15, 1988)

3 THE COURT: Thank you, counsel. I'm familiar
4 with the Easy Loader case and, Mr. Winchell, I disagree
5 with your position that that stands for the proposition
6 to support your motion in this case. It is a case
7 where there was no physical contact, and I believe
8 that language that I just cited presupposes from the
9 other language in the case that that's inferentially
10 part of that language.

11 With regard to the question of whether or not the
12 Court should grant-- whether we call it a partial
13 summary judgment or 12(b) motion-- the Court is going
14 to deny it. I'm denying it on the basis that I don't
15 believe the cases cited by the plaintiff insurance
16 company support the proposition that consequential
17 damages arising out of the kind of conduct alleged
18 are not covered. And secondly but certainly not
19 primarily, and my decision doesn't turn on this, and
20 I perhaps don't even need to say this because I suppose
21 my ruling would be the same either way, but if I had
22 any doubt about my position that I have already
23 expressed, which I don't, I would be concerned about
24 the fact that the motion comes on a Monday before trial
25 in the underlying case. I think that flies in the face

1 of the orderly processing of litigation and the rights
2 of all parties to have their cases disposed of.

3 It may well be, and I certainly don't take issue,
4 Mr. Winchell, with the fact there was a long dry spell.
5 I don't know about that. But I will accept that in
6 terms of discovery, but the issues that you have asked
7 the Court to consider are those that were set forth
8 in the pleadings. The pleadings have been available
9 from the outset. The Court, although there perhaps
10 have been some amendments along the way, the Court
11 on that basis will deny the motion.

12 I'm sure you are going to ask, because I haven't
13 specifically addressed the issue of Mr. Gabrielson's
14 claim and how that fits into all of this. I frankly
15 think that's a closer question, but I'm not satisfied
16 that the Buchannon case and the Easy Loader case, when
17 read in conjunction with one another, really address
18 this situation. I think the facts were different. I
19 think the context in which the issue arose, given the
20 nature of the coverage, was different. On that basis
21 the Court will deny both prongs of the motion.

22 MR. WINCHELL: Your Honor, just a clarification
23 on your ruling. I take it the denial of the motion
24 at this stage is without prejudice for us to go conduct
25 our discovery and come back, at least as to sexual

1 activity claim, and to then address the question of
2 whether those sexual activities, absent some other
3 discernable injury, constitutes a bodily injury to the
4 policy?

5 THE COURT: Well, certainly it's not
6 appropriate for the Court to make factual determinations
7 about what happened in ruling on a motion such as this.
8 If we do that, the Court literally would have to try
9 the underlying case in this case, and that's not why
10 we are here.

11 The ruling would be without prejudice to have
12 the Court recover your position as discovery progresses.

13 MR. WINCHELL: Thank you, your Honor.

14 THE COURT: Thank you all, counsel.

15 (Motion concluded)

16 ///

17 ///

18 ///

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25 ///

STATE OF WASHINGTON, County of Pierce
ss: I, Ted Ruit, Clerk of the above
entitled Court, do hereby certify that this
foregoing is a true and correct
copy of the original now on file in my
office.

IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this

8c. *[Signature]* day of *Dec 19 88*
TED RUIT, Clerk
By *[Signature]* Deputy

CERTIFICATE OF MAILING

On this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the attorneys of record of plaintiff/defendant, containing a copy of the document on which this certificate is affixed.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 15th day of Dec., 1988 at Seattle, Washington

Nathaniel M. Reed

RECEIVED

7 388

SENIOR CLERK SUPERIOR COURT

CIVIL TRACK ONE THE HONORABLE JOHN RILEY

FILED KING COUNTY, WASHINGTON DEC 7 1988 SUPERIOR COURT CLERK MELISSA R. KEATING DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA, a Pennsylvania corporation,

Plaintiff,

v.

KATHY LEE BUTLER, et al., Defendants.

KATHY LEE BUTLER, et al., Plaintiffs,

v.

DONALD LEE BARNETT, et al., Defendants.

SANDY ERLICH, et al., Plaintiffs,

v.

RALPH ALSKOG, et al., Defendants.

CAUSE NO. 88-2-04615-8

CONSOLIDATED TRACK ONE CAUSE NO. 86-2-18176-8

DEFENDANT ALSKOG'S MEMORANDUM IN OPPOSITION TO PLAINTIFF AMERICAN CASUALTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT

CAUSE NO. 86-2-18176-8

CAUSE NO. 86-2-18429-5

CIVIL TRACK I

DEFENDANT ALSKOG'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT - 1 -

ROSENOW, HALE & JOHNSON LAWYERS 5015 6TH FLOOR TOWER 1000 SECOND AVENUE SEATTLE, WASHINGTON 98104 (206) 223 4770 ORIGINAL

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1 MAUREEN PANGBORNE JORGENSON,)
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CAUSE NO. 86-2-26360-8

Plaintiff,
v.
COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al.,
Defendants.

DEFENDANTS Alskog oppose Plaintiff American Casualty Company of Reading, Pennsylvania (hereafter, American Casualty) Motion for Partial Summary Judgment seeking an order finding no obligation by American Casualty to:

"Cover any judgment. . . representing an award of damages for any mental or emotional upset."

This same motion was brought by American Casualty in the companion case of American Casualty v. Gabrielson, et ux., et al., in Pierce County, Cause No. 88-2-00947-9, in April, 1988, and denied.

Defendants Alskog, for purpose of this motion, adopt the reasoning of the parties who have resisted American Casualty's motion in Pierce County, supra, as well as the briefs and affidavits filed in this case by other parties resisting American Casualty's motion herein.

I. THE MOTION IS AMBIGUOUS

The motion is ambiguous because it does not state whether it seeks a finding of no duty to defend and no duty to indemnify or whether American Casualty is seeking at this time a judicial determination of no obligation to indemnify for judgment. Defendants Alskog resist either interpretation of American Casualty's motion

1 for an order finding no obligation to "cover any judgment".
2 (American Casualty's proposed order). American Casualty is pro-
3 viding a defense in the underlying actions for certain named defen-
4 dants under a "reservation of rights". It is a violation of the
5 rule announced in Tank v. State Farm, 105 Wn.2d 381, 715 P.2d 1133
6 (1986), for American Casualty to seek to limit its obligation to
7 its insured in a "reservation of rights" case.

8 Tank v. State Farm, supra, was a case involving a parking lot
9 fight where the insurance carrier provided a defense to its in-
10 sured, reserving the right to contest any obligation to indemnify
11 for judgment entered against the insured. Our Supreme Court held
12 that an insurer has an enhanced fiduciary duty to the insured in a
13 reservation of rights case. A number of things are required, in-
14 cluding a prohibition on taking any action that evidences greater
15 concern for the financial interest of the insurance carrier over
16 its own insured. The relationship between insured and insurer man-
17 dates good faith and fair dealing, both by statute and under a long
18 line of earlier judicial opinions. Tank v. State Farm, supra, page
19 386-391. The Court held:

20 "Finally, an insurance company must refrain from
21 engaging in any action which would demonstrate a greater
22 concern for the insurer's monetary interest than for the
insured's financial risk." (Tank, page 388).

23 In Tank, the carrier waited until the defense had been provided
24 the insured and the underlying action tried to verdict before
25 bringing its summary judgment on coverage. American Casualty is
26 premature in seeking a judicial declaration of rights as to whether

1 they are obligated to indemnify their insured in the event of unfa-
2 vorable jury verdicts before the nature of those claims are liti-
3 gated and determined.
4

5 American Casualty's actions are contrary to Tank if they intend
6 to either withdraw a portion of the defense they are providing
7 their insureds, or intend in any way to influence how that defense
8 is carried out. Furthermore, the Alskogs resist entry of any order
9 that would require American Casualty to provide anything less than
10 a full defense of the Alskogs on all issues. The issues in the
11 underlying case involve mixed questions of law and fact and it
12 would be difficult to meet the obligation of Tank should American
13 Casualty be required to provide anything but a full defense of its
14 insured. When there are mixed issues of law and fact and "no
15 reasonable means of prorating the costs of defense between the
16 covered and the not-covered items, then the insurer is liable for
17 the entire costs of defense". National Steel Constr. v. National
18 Fire Ins., 14 Wn. App. 573, 543 P.2d 642 (1975), Page 576. See
19 Also, Waite v. Aetna Cas. and Sur. Co., 77 Wn.2d 850, 467 P.2d 847
20 (1970), and 41 A.L.R.2d 434.

21 The recent case of Farmer's Insurance v. Edie, 52 Wn. App. 411,
22 412 (1988), further emphasizes the point. That case involved a
23 sexual assault claim brought against Farmer's insured by the
24 insured's daughter. Farmer's defended under a reservation of
25 rights through trial, then brought a declaratory action on
26 coverage seeking a finding of no coverage and no duty to pay any

1 judgment. The court found no coverage, affirmed the action of the
2 trial court in the declaratory action, and stated:

3 "Farmers supplied the Edies with independent legal
4 services throughout the litigation, defending at all
5 times under a comprehensive reservation of rights.
6 Farmer's reservation of rights defense was proper, see
7 Tank v. State Farm Fire and Cas. Co., 105 Wn.2d 381,
8 391, 715 P.2d 1133 (1986), and the Edies have not shown
9 any prejudice that would lead to a successful claim that
10 Farmers was estopped from denying coverage."

11 It is proper that Farmers defended the action on all issues
12 even though they did so under a reservation of rights. Because
13 they did provide the defense fairly under the standards of Tank,
14 they were not estopped from maintaining their position in the
15 declaratory action establishing no coverage.

16 **II. THE E-Z LOADER CASE IS NOT CONTROLLING AND NOT ON POINT**

17 American Casualty has claimed the case of E-Z-Loader v.
18 Traveller's Indemnity Co., 106 Wn.2d 901, 726 P.2d 439 (1986), is
19 controlling and requires a finding of no coverage for damages for
20 any mental or emotional upset. The trial court in Tacoma rejected
21 this reasoning and refused to grant the summary judgment.

22 However, E-Z Loader is not controlling because the case did not
23 involve physical violation or injury of the plaintiff by the defen-
24 dant. It was purely an emotional injury case resulting from
25 alleged discrimination.

26 In these consolidated cases, however, the various claims
plainly allege broader causes of action, including physical viola-
tion and injury. Other insured defendants have addressed these
issues, and defendants Alskog adopt those memoranda and re-

1 spectfully direct the court's attention to those briefs. Most tort
2 actions involving personal injury or violation include additional
3 claims for emotional distress arising with the physical claims.
4 The court should not adopt a blanket rule of no insurance coverage
5 in sexual violation cases where coverage exists for the emotional
6 components of injury in product liability or auto accident cases.

7 CONCLUSION

8 American Casualty has obviously realized a duty to defend on
9 certain aspects of this case. However, under Washington law, mixed
10 issues of law and fact that are not easily separated requires
11 defending on all issues. Furthermore, providing a defense on only
12 some of the issues in this case would likely be in violation of the
13 standard adopted in Tank v. State Farm, supra.

14 Granting American Casualty's motion would necessitate a larger
15 number of defense counsel to become involved, potentially require
16 the retaking of certain depositions, and potentially delay the
17 trial. American Casualty's motion should be denied.

18 RESPECTFULLY SUBMITTED this 6th day of December, 1988.

19 ROSENOW, HALE & JOHNSON

20
21 BY 

John C. Graffe

22
23 BY 

Wayne Vavrichek

24 Of Attorneys for Defendant
25 Alskog

26 2344G

DEFENDANT ALSKOG'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 6 -

ROSENOW, HALE & JOHNSON
LAWYERS
SUITE 1620 KEY TOWER
1000 SECOND AVENUE
SEATTLE, WASHINGTON 98104
(206) 223 4770

1
2
3 CERTIFICATE OF SERVICE

4 I am a citizen of the United States and a resident of Seattle,
5 Washington; I am over the age of eighteen years and not a party of
6 the within entitled cause; my business address is 1620 Key Tower,
1000 Second Avenue, Seattle, Washington, 98104.

7 On December 6, 1988, I served the attached Defendant Alskog's
8 Memorandum in Opposition to Plaintiff American Casualty's Motion
9 for Partial Summary Judgment on the interested parties in said
action, by placing a true copy thereof enclosed in a sealed enve-
lope with postage thereon fully prepaid, in the United States mail
at Seattle, Washington, addressed as follows:

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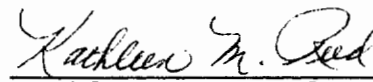
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Attorney for Def. CCBTC

17 I declare under penalty of perjury that the foregoing is true
18 and correct, and that this declaration was executed on December 6,
19 1988.

20 
21 Kathleen M. Reed

22 2345G

FILED

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

KATHY LEE BUTLER, et vir.,
et al.,

Plaintiffs,

v.

DONALD LEE BARNETT, et ux.,
et al.,

Defendants.

Consolidated

No. 86-2-18176-8

AFFIDAVIT OF SERVICE
BY MAIL

SANDY EHRLICH, et vir., et
al.,

Plaintiffs,

v.

RALPH ALSKOG, et ux., et
al.,

Defendants.

MAUREEN P. JORGENSEN,

Plaintiff,

v.

COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al.,

Defendants.

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

AFFIDAVIT OF SERVICE
BY MAIL - 1

LAW OFFICES OF
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Plaintiff,
v.
KATHY LEE BUTLER, et al.,
Defendants.

ST. PAUL FIRE AND MARINE
INSURANCE COMPANY, a foreign
corporation,
Plaintiff,
v.
KATHY LEE BUTLER, et al.,
Defendants.

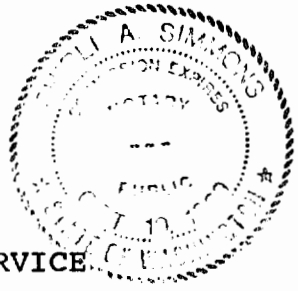
I, Kristi L. deRham duly sworn on oath deposes and says:

That I am a citizen of the United States and a resident of the State of Washington, over the age of twenty-one years and not a party to this action; that on the 7th day of December, 1988, I caused a copy of the Notice of Deposition Upon Oral Examination of Barbara Barnett to be deposited in the United States Mail in an envelope with first class postage prepaid, addressed to each of the parties listed on Exhibit A attached hereto.

Kristi L. deRham

Kristi L. deRham

SIGNED AND SWORN to before me this 7th day of December, 1988.



Paul A. Simmons

NOTARY PUBLIC
My Commission Expires: 10-10-89

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EXHIBIT A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

KATHY LEE BUTLER, et vir.,)
et al.,)

Plaintiffs,)

v.)

DONALD LEE BARNETT, et ux.,)
et al.,)

Defendants.)

Consolidated

No. 86-2-18176-8

NOTICE OF DEPOSITION
UPON ORAL EXAMINATION

TO: Barbara Barnett

AND TO: Rodney D. Hollenbeck and Evans, Craven & Lackie her
attorneys

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the
deposition of Barbara Barnett will be taken upon oral
examination at the request of the plaintiff in the above-
entitled and numbered action, before a Notary Public or other
duly qualified person at the offices of Preston Thorgrimson,
Ellis & Holman, 5400 Columbia Seafirst Center, 701 Fifth Avenue,
Seattle, Washington, on Monday and Tuesday, December 19 and 20,
1988, commencing at the hour of 9:30 a.m. on said days. The
oral examination to be subject to continuance or adjournment

NOTICE OF DEPOSITION
UPON ORAL EXAMINATION - 1

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LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
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701 FIFTH AVENUE
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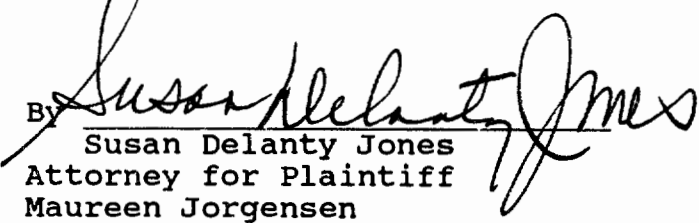
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1 from time to time or place to place until completed, and to be
2 taken on the ground and for the reason the said witness will
3 give evidence material to the establishment of the plaintiff's
4 case.

5 DATED this 7 day of December, 1988

6 Respectfully submitted,

7 PRESTON, THORGRIMSON,
8 ELLIS & HOLMAN

9
10 By 
11 Susan Delanty Jones
12 Attorney for Plaintiff
13 Maureen Jorgensen
14
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NOTICE OF DEPOSITION
UPON ORAL EXAMINATION - 2

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KING COUNTY
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SEATTLE, WA.

CIVIL TRACK I
THE HONORABLE JOHN RILEY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

KATHY LEE BUTLER, et ux.,
et al.,

Plaintiffs,

vs.

DONALD LEE BARNETT, et ux.,
et al.,

Defendants.

NO. 86-2-18176-8

MEMORANDUM IN SUPPORT
OF JORGENSEN'S MOTION
TO AMEND FIRST AMENDED
COMPLAINT

SANDY EHRLICH, et vir., et
al.,

Plaintiffs,

vs.

RALPH ALSKOG, et ux., et
al.,

Defendants.

MAUREEN P. JORGENSEN,

Plaintiff,

vs.

COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al.

Defendants.

MEMORANDUM IN SUPPORT
OF MOTION TO AMEND

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182
jt

1 AMERICAN CASUALTY COMPANY OF)
 2 READING PENNSYLVANIA, a)
 Pennsylvania corporation,)
 3)
 Plaintiff,)
 4)
 v.)
 5)
 KATHY LEE BUTLER, et. al.,)
 6)
 Defendants.)
 7 _____)

8 INTRODUCTION

9 Plaintiff, Maureen Jorgensen ("Jorgensen"), has filed a
 10 motion to amend her First Amended Complaint. As set forth in her
 11 proposed Second Amended Complaint and the Affidavit of Susan
 12 Delanty Jones ("Jones Aff."), Jorgensen seeks to clarify her claim
 13 for negligent supervision and employment by defendant Community
 14 Chapel and Bible Training Center ("CCBTC") of defendants Donald
 15 Lee Barnett and Barbara Barnett ("Barnetts").

16 FACTS

17 Jorgensen filed suit against CCBTC in December, 1986. Her
 18 complaint expressly stated that CCBTC had acted through its
 19 pastor, Donald Barnett. After conducting discovery, including a
 20 deposition of Donald Barnett, Jorgensen moved to amend her
 21 complaint to add a claim for infliction of emotional distress and
 22 to add the Barnetts as defendants. On March 14, 1988, the court
 23 granted Jorgensen's motion to amend. Jones Aff. at 2. The First
 24 Amended Complaint is substantially similar to the original
 25
 26

MEMORANDUM IN SUPPORT
OF MOTION TO AMEND

1 complaint in alleging that the Barnetts acted as representatives,
2 agents and servants of CCBTC.

3 From the time of filing of Jorgensen's original complaint
4 until November, 1988, all discovery pertaining to Jorgensen's case
5 was at Jorgensens' initiative. Id. at ¶¶2, 4. After April 8,
6 1988, when Jorgensen's motion for preassignment and consolidation
7 with this action, Cause No. 86-2-18176-8, was granted, Jorgensen
8 continued to conduct written discovery, including several motions
9 to compel, and completed oral depositions of two witnesses. Id.
10 at ¶3.

11 Discovery by all parties slowed following Judge Little's
12 death. Id. Following this Court's scheduling conference on
13 November 10, 1988, defendants' counsel conducted their first
14 discovery in Jorgensen's case, by informally requesting and
15 receiving an opportunity to examine some of Jorgensen's documents
16 and orally deposing Jorgensen on November 16, 1988. That
17 deposition will resume on December 9, 1988. Defendants have not
18 sought any other discovery from Jorgensen to date. Id. at ¶4.

19 Jorgensen seeks to amend her First Amended Complaint to
20 clarify her interest in the Comprehensive General Liability Policy
21 issued by American Casualty Company of Reading, Pennsylvania
22 ("American Casualty") to CCBTC, covering the period from May 9,
23 1982 until May 9, 1986. To protect that interest, Jorgensen moved
24 to intervene in American Casualty's suit for a declaratory
25 judgment, and the motion was granted on October 10, 1988.
26

MEMORANDUM IN SUPPORT
OF MOTION TO AMEND

3

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1 American Casualty's declaratory judgment action was preassigned
2 and consolidated with this case on November 10, 1988. Id. at ¶¶5,
3 6.

4 American Casualty's policy provides coverage for personal
5 injury caused by CCBC's negligence. In its complaint, American
6 Casualty seeks a declaratory judgment construing the policy
7 language "bodily injury," "occurrence" and "within the scope of
8 his duties." American Casualty seeks to establish that none of
9 tort plaintiffs' injuries fall within the scope of policy
10 coverage. Jorgensen, like the other plaintiffs, alleges
11 infliction of emotional distress as well as other causes of
12 action. Her claims, like those of the other plaintiffs, arise out
13 of the "spiritual connections" and other acts and practices of
14 defendant CCBTC, by and through its agents, defendants Barnetts,
15 and the injuries suffered due to these actions. Id. at ¶¶6, 7.

16 Jorgensen's claim of injury arising from CCBTC's negligent
17 employment and supervision of defendants Barnetts is implicit in
18 the facts alleged in Jorgensen's original complaint and First
19 Amended Complaint. Jorgensen's proposed Second Amended Complaint
20 would make this claim explicit. Id. at ¶8.

21
22 ARGUMENT

23 I. CR 15 Requires That Leave to Amend be Freely Granted Unless
24 Defendants Establish Prejudice.

25 CR 15(a) provides that "leave [to amend] shall be freely
26 given when justice so requires." Leave to amend should be granted

MEMORANDUM IN SUPPORT
OF MOTION TO AMEND

1 absent prejudice to the opposing party. Herron v. Tribune
2 Publishing Company, 108 Wn.2d 162, 165-66, 736 P.2d 249 (1987).
3 Amendment should not be precluded by the amending party's timing
4 or ability to include the amended pleading material in the
5 original pleading, absent prejudice to the non-moving party. Id.
6 at 166.

7 Indeed, "the touchstone for denial of an amendment is the
8 prejudice such amendment would cause the nonmoving party." Del
9 Guzzi Construction Co., Inc. v. Global Northwest Ltd., Inc., 105
10 Wn.2d 878, 888, 719 P.2d 120 (1986) (quoting Caruso v. Local 690,
11 Int'l Bhd of Teamsters, 100 Wn.2d 343, 350, 670 P.2d 240 (1983)).
12 Defendants in this case cannot credibly claim prejudice, in light
13 of the minimal discovery they have conducted to date and the fact
14 that trial is many months away.

15 Moreover, Washington decisions favor amendments based on the
16 same circumstances set forth in the original complaint, because
17 denying leave to amend may hamper a decision on the merits, and
18 defendants are already on notice. Herron, 108 Wn.2d at 167.
19 Jorgensen's claim for negligent supervision and employment is
20 based on the same facts described in her original pleadings.

21
22 II. Denial of Jorgensen's Motion to Amend Would be an Abuse of
23 Discretion.

24 Denial of a motion to amend is a ground for reversal under
25 CR 15, which is to be liberally construed. Adams v. Allstate
26 Insurance Company, 58 Wn.2d 659, 671-72, 364 P.2d 804 (1961)

MEMORANDUM IN SUPPORT
OF MOTION TO AMEND

5

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1 (reversing denial of amendment seeking to allege respondeat
2 superior and negligence of all defendants).

3 Thus, it is error to deny a motion to amend made just three
4 months before trial which would add to an answer at least three
5 new affirmative defenses and four new counterclaims:

6 ... a motion to amend brought 3 months before a trial date
7 allows sufficient time to conduct adequate discovery and
prepare a case for trial, absent special circumstances.

8 Walla v. Johnson, 50 Wn. App. 879, 882-85, 751 P.2d 334 (1988).

9 Here, Jorgensen's motion to amend is brought six months before
10 trial is scheduled, at the very outset of defendants' discovery
11 efforts, and prior to any dispositive motions of any kind.
12 Jorgensen seeks to add just one claim already implicit in her
13 original pleadings. Defendants cannot establish any principled
14 basis on which to deny amendment.

15
16 III. Amendment Will Save Time Because the Proof at Trial will
Establish Jorgensen's Proposed Claim in any Event.

17 Under CR 15(b), "[w]hen issues not raised by the pleadings
18 are tried by express or implied consent of the parties, they shall
19 be treated in all respects as if they had been raised in the
20 pleadings, " and a motion to conform the pleadings to the proof
21 may be made "even after judgment." Even if evidence is objected
22 to on the ground it is not within the pleadings, the court is to
23 allow amendment "freely when the presentation of the merits of the
24 action will be subserved thereby and the objecting party fails to
25 satisfy the court that the admission of such evidence would
26

MEMORANDUM IN SUPPORT
OF MOTION TO AMEND

6

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1 prejudice him in maintaining his . . . defense on the merits."
2 Id.

3 In addition, a new cause of action, tried without objection,
4 may be a basis of recovery under CR 15(b). Harding v. Will, 81
5 Wn.2d 132, 136, 500 P.2d 91 (1972). Jorgensen's complaint already
6 alleges that the Barnetts acted as CCBTC's agents, servants and
7 representatives. Her proof of this allegation will likewise show
8 that CCBTC negligently employed and supervised the Barnetts. CR
9 15(b) would then require that Jorgensen's complaint be deemed
10 amended to conform to this evidence of negligent employment and
11 supervision. To permit amendment now will save time at trial as
12 well as clarifying the issues before the jury.

13
14 IV. Jorgensen's Proposed Claim is Closely Linked to her Existing
Claims Against CCBTC.

15 Jorgensen's First Amended Complaint alleges that the Barnetts
16 acted as "principals, agents, employees and representatives of
17 CCBTC. All actions complained of herein were performed in the
18 scope of their representation, employment and/or agency for
19 CCBTC." First Amended Complaint, ¶5. Thus, Jorgensen already
20 contends that CCBTC is liable under the principle of respondeat
21 superior.

22 Liability under respondeat superior depends on the
23 principal's right to control the acts of the agent. "The right
24 of control, therefore, must exist as a matter of fact or law if
25 the principle of imputed negligence is to apply." Poutre v.
26

MEMORANDUM IN SUPPORT
OF MOTION TO AMEND

7

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1 Saunders, 19 Wn.2d 561, 565, 143 P.2d 554 (1943). Accord
2 Charlton v. Day Island Marina, 46 Wn. App. 784, 792, 732 P.2d 1008
3 (1987).

4 Negligent employment or retention similarly depends an
5 employer's failure to exercise due care by retaining an employee
6 despite reason to know of the risk that the employee would inflict
7 harm. La Lone v. Smith, 39 Wn.2d 167, 234 P.2d 893 (1951).
8 Although a claim based on respondeat superior is not identical to
9 a negligent employment or supervision cause of action, the issue
10 of control is central to each. See id. Thus, Jorgensen's
11 proposed negligent employment and supervision claim is closely
12 linked with her existing claim based on respondeat superior,
13 further reducing any likelihood that amendment would prejudice
14 defendants.

15
16 V. Jorgensen's Proposed Amendment Relates Back to the Date of
17 her Original Complaint.

18 Under CR 15(c), "[w]henver the claim or defense asserted in
19 the amended pleading arose out of the conduct, transaction, or
20 occurrence set forth or attempted to be set forth in the original
21 pleading, the amendment relates back to the date of the original
22 pleading." Washington courts interpret the rule to freely allow
23 plaintiffs to add new claims arising out of the same conduct
24 alleged in the original complaint. See Caruso v. Local Union No.
25 690, 100 Wn.2d 343, 349-51, 670 P.2d 240 (1983).
26

MEMORANDUM IN SUPPORT
OF MOTION TO AMEND

8

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1 Jorgensen's original complaint in substance alleged undue
2 influence, breach of contract and conduct of harmful practices
3 such as "spiritual connections" by Donald Barnett, acting for
4 CCBTC. Jorgensen's proposed negligent supervision and employment
5 claim clearly arises out of the same transactions and occurrences
6 alleged in the original complaint. Indeed, the proposed claim was
7 implicit in Jorgensen's original allegations. Thus, it relates
8 back to the date of her original complaint.

9 CONCLUSION

10 For the reasons set forth above, Jorgensen respectfully moves
11 this Court for an order granting her leave to amend her complaint
12 to allege a negligent supervision and employment claim relating
13 back to the date of her original pleading.

14 DATED this 7 day of December, 1988.

15 Respectfully submitted,

16 PRESTON, THORGRIMSON,
17 ELLIS & HOLMAN

18 By 

19 Susan Delanty Jones
20 Catherine D. Shaffer
21 Attorneys for Plaintiff,
22 Maureen Jorgensen

23
24
25
26
MEMORANDUM IN SUPPORT
OF MOTION TO AMEND

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KING COUNTY
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SEATTLE, WA

CIVIL TRACK I
THE HONORABLE JOHN RILEY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

KATHY LEE BUTLER, et ux.,
et al.,)

Plaintiffs,)

vs.)

DONALD LEE BARNETT, et ux.,
et al.,)

Defendants.)

NO. 86-2-18176-8

SECOND AMENDED COMPLAINT
OF MAUREEN P. JORGENSEN FOR
DAMAGES AND EQUITABLE RELIEF

SANDY EHRLICH, et vir., et
al.,)

Plaintiffs,)

vs.)

RALPH ALSKOG, et ux., et
al.,)

Defendants.)

MAUREEN P. JORGENSEN,

Plaintiff,)

vs.)

COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al.)

Defendants.)

JORGENSEN'S SECOND AMENDED COMPLAINT
FOR DAMAGES AND EQUITABLE RELIEF - 1

ORIGINAL

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1 AMERICAN CASUALTY COMPANY OF)
 2 READING PENNSYLVANIA, a)
 3 Pennsylvania corporation,)
 4 Plaintiff,)
 5 v.)
 6 KATHY LEE BUTLER, et. al.,)
 7 Defendants.)

Plaintiff, Maureen P. Jorgensen, alleges as follows:

I. PARTIES AND JURISDICTION

1. Plaintiff, formerly known as Maureen Pangburn, is and was a resident of King County, Washington at all times material to this action.

2. Defendant, Community Chapel and Bible Training Center ("CCBTC"), is a Washington non-profit corporation. Defendant operates both a church, the Community Chapel, and a college, the Community Chapel Bible College, in Seattle, Washington.

3. The Court has jurisdiction over the subject matter of this lawsuit, which concerns events that occurred wholly in the State of Washington. Venue is proper in King County pursuant to RCW 4.12.025.

4. At all times material to this action, defendants Donald Lee Barnett and Barbara Barnett ("Barnetts") were husband and wife and residents of King County, Washington. Defendant Donald Lee Barnett was the head pastor of CCBTC, and as such had responsibility for the administration and direction of the entire congregation. The Barnetts, or either of them, performed all described actions on behalf of the marital community.