



88-2-00947-9 18569995 ARCH3 03-10-03

ARCHIVE RECORD

STATE OF WASHINGTON, County of Pierce: I, Kevin Stock, Clerk of the Pierce County Superior Court, do hereby certify that this instrument is a true and correct copy of the original taken under my direction and control on the date attached hereto. IN WITNESS WHEREOF, I hereunto set my hand and the Seal of said Court.

Kevin Stock, Pierce County Clerk



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

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

Plaintiff,)

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,)
JACK McDONALD and "JANE DOE")
McDONALD, husband and wife,)

Defendants.)

NO. 88-2-00947-9
MOTION FOR RECONSIDERATION

W.E. SEP 7 1988

FILED
IN COUNTY CLERK'S OFFICE
A.M. SEP 7 1988 P.M.
PIERCE COUNTY WASHINGTON
100 NORTH BROADWAY
SEATTLE, WASHINGTON 98101
BY _____ DEPUTY

American Casualty Company moves for reconsideration of the court's order denying American's motion for a continuance of plaintiff's Gabrielson's motion for summary judgment. This motion is based upon the Motion and Affidavit to Shorten Time (filed in support of Motion for Continuance), Supplemental Affidavit of Bruce Winchell, the Affidavit of Bruce Winchell Opposing Gabrielson's Motion for Partial Summary Judgment (Employee Status), and American's Memorandum,

MOTION FOR RECONSIDERATION - 1

ORIGINAL

LANE POWELL MOSS & MILLER
3800 RAINIER BANK TOWER
SEATTLE, WASHINGTON 98101 2647
225 7000

4/21/2883 88802
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Opposing Gabrielson' Motion for Summary Judgment (Employee Status).

LANE POWELL MOSS & MILLER



Bruce Winchell
Attorneys for Defendant

15153 472172883 88883


1 argument from counsel.

2 The court orders that American's motion is denied.
3 American may depose Jack Hicks and Jack McDonald prior
4 to the hearing of Gabrielson's motion for partial summary
5 judgment on the issue of employee status and the professional
6 services exclusion.

7 DATED this 9 day of September, 1988.

8

9



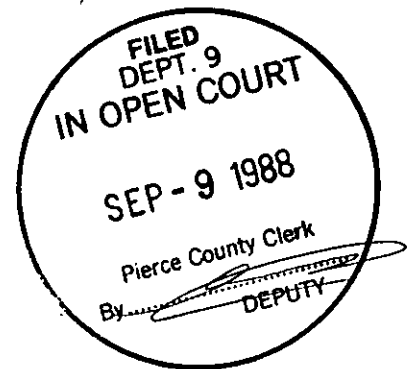
Judge of the Superior Court

10

11 Presented by:
12 LANE POWELL MOSS & MILLER

13

14 _____
Bruce Winchell
15 Attorneys for



16 Approved as to Form:

17

18 _____
Daniel Hannula
Attorney for Gabrielson

19

20 _____
Rodney Hollenbeck
21 Attorney for Barnetts

22

23 _____
John Glassman
24 Attorney for Community Chapel and
Bible Training Center

25

26

ORDER DENYING AMERICAN'S MOTION
FOR CONTINUANCE

15157 412112883 28885

1 representation employment and/or agency for the Community
2 Chapel and Bible Training Center and Community Chapel and
3 Bible Training Center of Tacoma.

4 X.

5 The plaintiffs, Carol and Ira Gabrielson, regularly
6 attended services at both the Community Chapel and Bible
7 Training Center of Tacoma and the Community Chapel and Bible
8 Training Center in Burien for a number of years. As members
9 of the congregation, Carol and Ira Gabrielson attended
10 numerous functions and were active participants in the con-
11 gregation. In addition, the Gabrielsons tithed a portion of
12 their income to the congregation to help sustain it.

13 XI.

14 Defendant Jack McDonald, as pastor of the Tacoma Chapel,
15 held himself out to the Gabrielsons as a qualified counselor.
16 In this regard, Carol Gabrielson began counseling with defen-
17 dant Jack McDonald on a regular basis.

18 XII.

19 As a result of the counseling sessions, defendant Jack
20 McDonald became aware of the vulnerability of plaintiff Carol
21 Gabrielson. Defendant Jack McDonald took advantage of her
22 weakness and her need for support and manipulated her into
23 leaving her husband, plaintiff Ira Gabrielson.

24 XIII.

25 Further, as a result of the manipulation by defendant

26 ////

1 Jack McDonald, plaintiff Carol Gabrielson was coerced and
2 unduly influenced into a having sexual relationship with
3 defendant Jack McDonald. This relationship continued from
4 September through December of 1985.

5 XIV.

6 Defendant Donald Barnett encouraged the members of his
7 congregation, including the Tacoma Chapel, to form intimate
8 attachments with members of the opposite sex as part of the
9 regular services at the Chapel. Defendant Donald Barnett
10 expressly encouraged married members of the congregation to
11 form intimate attachments with persons other than the spouses
12 of the members.

13 XV.

14 Defendant Donald Barnett knew or should have known that
15 these attachments would result in seductions, infidelity and
16 the breakup of marriages. Further, defendant Donald Barnett
17 knew or should have known that his agent in Tacoma, defendant
18 Jack McDonald, was involved in the seduction of female members
19 of the congregation and was abusing the pastoral privilege.

20 XVI.

21 In January, 1986, both plaintiffs Carol and Ira Gabrielson
22 were disfellowshipped from Community Chapel and Bible Training
23 Center of Tacoma, as a consequence of Carol Gabrielson's
24 refusal to participate in any further sexual activities with
25 defendant Jack McDonald.

26 ////

XVII.

1 Plaintiff Carol Gabrielson, in March of 1986, requested
2 permission to attend services at defendant Community Chapel
3 and Bible Training Center in Burien, and was told that she
4 was welcome at that congregation.

XVIII.

5
6 On March 6, 1986, plaintiff Carol Gabrielson attended
7 services at defendant Community Chapel and Bible Training
8 Center of Burien. During her visit to that congregation,
9 plaintiff Carol Gabrielson was physically assaulted by
10 defendants John Does 1 through 4 who bodily dragged her from
11 the chapel, causing the physical injuries which are
12 complained of herein. Plaintiff Carol Gabrielson was also
13 handcuffed and forced into a vehicle belonging to defendant
14 Community Chapel and Bible Training Center of Burien. The
15 actions of John Does 1 through 4 were at the direction and
16 under the request of defendants Jack McDonald, Donald
17 Barnett and Barbara Barnett.

XIX.

18
19 Defendants Jack McDonald, Donald Barnett and Barbara
20 Barnett have further made disparaging statements regarding
21 Carol and Ira Gabrielson to members of the congregation
22 which tended to injure the Gabrielsons' reputation in the
23 community.

24 ////

25 ////

26 COMPLAINT - 6

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

15153 4/21/2883 88888

THIRD CAUSE OF ACTION

XXIV.

The plaintiffs incorporate by reference as if set forth in full each and every allegation as set forth in paragraphs I through XXIII.

XXV.

Defendant Jack McDonald negligently violated his duty of care as a counselor by having sexual contact with plaintiff Carol Gabrielson with the knowledge that Carol Gabrielson was vulnerable. Defendant Jack McDonald was negligent in counseling plaintiff Carol Gabrielson and so created an unreasonable risk of physical and mental harm which caused the plaintiff Carol Gabrielson's injuries. This negligence constitute the tort of counselor malpractice.

FOURTH CAUSE OF ACTION

XXVI.

The plaintiffs incorporate by reference as if set forth in full each and every allegation as set forth in paragraphs I through XXV.

XXVII.

Defendants Jack McDonald and Donald Barnett intentionally, recklessly, or negligently failed to exercise that degree of care, skill, diligence and knowledge commonly possessed and exercised by a reasonable, careful and prudent pastor in this jurisdiction. This failure constitutes the

////

1 tort of pastoral malpractice.

2 FIFTH THROUGH SEVENTH CAUSES OF ACTION

3 XXVIII.

4 The plaintiffs incorporate by reference as if set forth
5 in full each and every allegation as set forth in paragraphs
6 I through XXVII.

7 XXIX.

8 The acts of the defendants on March 6, 1986 which
9 resulted in injuries to plaintiff Carol Gabrielson were
10 negligent and/or constitute the torts of assault, battery
11 and false imprisonment.

12 EIGHTH CAUSE OF ACTION

13 XXX.

14 The plaintiffs incorporate by reference as if set forth
15 in full each and every allegation as set forth in paragraphs
16 I through XXIX.

17 XXXI.

18 The acts of defendants in making disparaging statements
19 damaging the reputation of the plaintiff constitute the tort
20 of defamation.

21 NINTH CAUSE OF ACTION

22 XXXII.

23 The plaintiffs incorporate by reference as if set forth
24 in full each and every allegation as set forth in paragraphs
25 I through XXXI.

26 ////

COMPLAINT - 9

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 363-5388
SEATTLE 838-4790

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XXXIII.

As a further and proximate result of the acts of the defendants, plaintiff Ira Gabrielson has suffered a loss of consortium.

XXXIV.

As a direct and proximate result of the intentional, reckless and negligent wrongful acts of the defendants, and each of them, plaintiffs have been specially and generally damaged in an amount to be fully proven at the time of trial.

WHEREFORE, the plaintiffs pray for judgment against the defendants as follows:

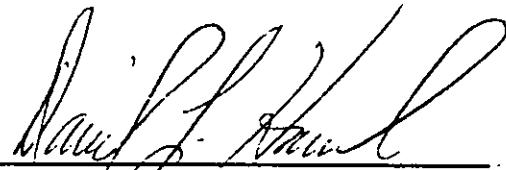
1. For all general and special damages incurred by plaintiffs Ira and Carol Gabrielson in an amount to be proven at time of trial;

2. For plaintiffs' reasonable costs and attorneys' fees incurred in the prosecution of this action;

3. For such other and further relief as the court deems just and equitable.

DATED this 30 day of April, 1986.

RUSH, HANNULA & HARKINS

By: 
DANIEL L. HANNULA

////

COMPLAINT - 10

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

15153 4/21/2883 88812

EXHIBIT 2

3
NOV 1 1988

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE VOL 369 PAGE 795

IRA GABRIELSON and CAROL
GABRIELSON, husband and wife,)
)
) Plaintiffs,)
)
) -vs-)
)
) JACK McDONALD and SHIRLEY
) McDONALD, husband and wife;
) COMMUNITY CHAPEL AND BIBLE
) TRAINING CENTER OF TACOMA;
) COMMUNITY CHAPEL AND BIBLE
) TRAINING CENTER OF BURIEN,
)
)
) Defendants.)

NO. 86-2-02792-6

FILED
DEPT. 4
IN OPEN COURT
OCT 28 1988
Pierce County Clerk
By _____
DEPUTY

VERDICT FORM

QUESTION NO. 1: Was there negligence by the defendant, Jack McDonald, that was a proximate cause of injury to the plaintiff, Carol Gabrielson?

Answer: Yes (Yes or No)

If you answered "yes" to question 1, answer question 2; if your answer to question 1 was "no," skip question 2 and answer question 3.

QUESTION NO. 2: Were the negligent acts of defendant, Jack McDonald, committed while he was acting as the agent of Community Chapel and Bible Training Center of Burien?

Answer: Yes (Yes or No)

Answer Question 3.

QUESTION NO. 3: Did the defendant, Jack McDonald, defame the plaintiff, Carol Gabrielson, which was a proximate cause of injury to her?

Answer: Yes (Yes or No)

If you answered "yes" to question 3, answer

15153 4/21/2003 00014

question 4; if you answered "no" to question 3, skip to question 5.

QUESTION NO. 4: In defaming Carol Gabrielson, was defendant, Jack McDonald, acting as an agent for the defendant corporation of Community Chapel and Bible Training Center of Burien?

Answer: Yes (Yes or No)

Answer question 5.

QUESTION NO. 5: Did the Community Chapel and Bible Training Center assault, batter or falsely imprison plaintiff, Carol Gabrielson, proximately causing injury to her?

Answer: No (Yes or No)

If all answers are no, stop here and notify court. Answer question 6 only if you answered "yes" to question 1.

QUESTION NO. 6: As a result of the injuries suffered by Carol Gabrielson, did plaintiff, Ira Gabrielson, suffer a loss of consortium?

Answer: Yes (Yes or No)

Answer question 7.

QUESTION NO. 7: If your answer to questions 1, 3, or 5 was "yes," what is the total amount of the plaintiff, Carol Gabrielson's damages?

\$ 200,000 .

If your answer to question 6 was "yes," answer question 8.

QUESTION NO. 8: What is the total amount of plaintiff, Ira Gabrielson's, damages?

\$ 20,000 .

Answer Questions 9 and 10 only if you answered "yes" to Question 1.

QUESTION NO 9: Was there any contributory negligence by Carol Gabrielson which was the proximate cause of injury or damage to her?

Answer: Yes (Yes or No)

Answer question 10 only if you answered "yes" to question 9. If "no," proceed to question 11.

QUESTION NO. 10: Using 100% as the total combined negligence of all the parties which contributed to the injury or damage to the plaintiff, Carol Gabrielson, what percentage of such contributory negligence is attributable to her?

Answer: 35 %

Answer Questions 11 and 12 only if you answered "yes" to Question 6.

QUESTION NO. 11: Was there contributory negligence by Ira Gabrielson which was a proximate cause of his own damages?

Answer: Yes (Yes or No)

Answer question 12 only if you answered "yes" to question 11.

QUESTION NO. 12: Using 100% as the total combined negligence of all the parties which contributed to the injury or damage to the plaintiff, Ira Gabrielson, what percentage of such contributory negligence is attributable to him?

Answer: 15 %

Chris McKinney
FOREMAN
(Chris McKinney)

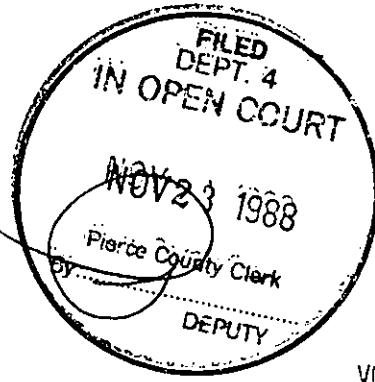
STATE OF WASHINGTON, County of Pierce
ss: I, Ted Rutt, Clerk of the above
entitled Court, do hereby certify that this
foregoing instrument is a true and correct
copy of the original now on file in my
office.

IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of Said Court this
31 day of June 1989
TED RUTT, Clerk
By [Signature] Deputy

3

15153 4/21/2883 88816

EXHIBIT 3



VOL 373 PAGE 155

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

NOV 23 1988

IRA GABRIELSON and CAROL
GABRIELSON, husband and wife,
Plaintiffs,

NO. 86-2-02792-6

vs.

JUDGMENT ON JURY VERDICT

JACK McDONALD and "JANE DOE"
McDONALD, husband and wife;
COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER OF TACOMA;
COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER,
Defendants.

THIS MATTER having come on regularly for trial commencing September 12, 1988 and concluding October 28, 1988, and it appearing to the court that a jury of twelve (12) having been duly selected and impaneled, evidence and testimony having been presented, the court having considered motions and arguments during the course of trial, and the court having duly and properly instructed the jury and the jury having duly rendered its verdict by answering special

ENTERED 88 9 06565 n LAW OFFICES RUSH, HANNULA & HARKINS
JUDGMENT - 1

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 383-5388
SEATTLE 838-4790

15453 4/21/2003 60010

1 interrogatories which are attached hereto and incorporated
 2 herein by reference as if fully set forth, and the jury
 3 having returned its verdict into court and having found for
 4 plaintiff Carol Gabrielson and against defendants Jack
 5 McDonald, Shirley McDonald, the Community Chapel and Bible
 6 Training Center of Tacoma, and the Community Chapel and
 7 Bible Training Center of Burien on the issues of negligence
 8 and defamation in the sum of Two Hundred Thousand Dollars
 9 (\$200,000.00), and the jury having further decided that
 10 plaintiff Carol Gabrielson was thirty-five percent (35%)
 11 contributorily negligent, and the jury further having
 12 returned its verdict finding for plaintiff Ira Gabrielson
 13 and against defendant Jack McDonald, Shirley McDonald,
 14 Community Chapel and Bible Training Center of Tacoma, and
 15 Community Chapel and Bible Training Center of Burien on the
 16 issue of loss of consortium in the sum of Twenty Thousand
 17 Dollars (\$20,000.00), having further decided that plaintiff
 18 Ira Gabrielson was fifteen percent (15%) contributorily
 19 negligent, and the court having considered the records and
 20 files herein, and that no post-trial motions have heretofore
 21 been made in this matter, and the court being fully advised
 22 and considering the cost bill filed by plaintiff in the sum
 23 of \$ 988.91, the court finds that plaintiffs are
 24 entitled to costs in the sum of \$ 988.91. It is hereby

25 ORDERED, ADJUDGED AND DECREED that the judgment herein

26 ////

JUDGMENT - 2

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
 TACOMA, WASHINGTON 98402

TACOMA 383-5388
 SEATTLE 838-4790

15153 4/21/2003 00013

1 entered on behalf of the plaintiff Carol Gabrielson by the
 2 jury was duly regular and proper in the sum of Two Hundred
 3 Thousand Dollars (\$200,000.00), less Seventy-Thousand
 4 Dollars (\$70,000.00) for plaintiff Carol Gabrielson's
 5 contributory fault, and that the same is hereby entered and
 6 that a net judgment of the sum of One Hundred Thirty
 7 Thousand Dollars (\$130,000.00) in favor of plaintiff Carol
 8 Gabrielson be and the same is hereby entered, and it is
 9 further

10 ORDERED, ADJUDGED AND DECREED that the judgment herein
 11 entered on behalf of the plaintiff Ira Gabrielson by the
 12 jury was duly regular and proper in the sum of Twenty
 13 Thousand Dollars (\$20,000.00) less Three Thousand Dollars
 14 for plaintiff Ira Gabrielson's contributory fault, and that
 15 the same is hereby entered and that a net judgment of the
 16 sum of Seventeen Thousand Dollars (\$17,000.00) in favor of
 17 plaintiff Ira Gabrielson be and the same is hereby rendered
 18 and entered, and it is further,

19 ORDERED, ADJUDGED AND DECREED that costs in the amount
 20 of \$ 988.91 are awarded to the plaintiffs and judgment
 21 for the same be and hereby is rendered and entered.

22 JUDGMENT SUMMARY

23 Judgment for plaintiff Carol Gabrielson:	\$ <u>130,000.00</u>
24 Judgment for plaintiff Ira Gabrielson:	\$ <u>17,000.00</u>
25 Costs:	\$ <u>988.91</u>

26 ////

JUDGMENT - 3

LAW OFFICES
 RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
 TACOMA, WASHINGTON 98402

TACOMA 383-5388
 SEATTLE 838-4790

15153 4/21/2003 00020

Judgment Debtors: Jack McDonald, Community Chapel and Bible Training Center of Tacoma, and Community Chapel and Bible Training Center

Judgment Creditors: Carol Gabrielson and Ira Gabrielson

Attorneys for Judgment Creditor: Daniel L. Hannula and Harold T. Dodge, Jr.

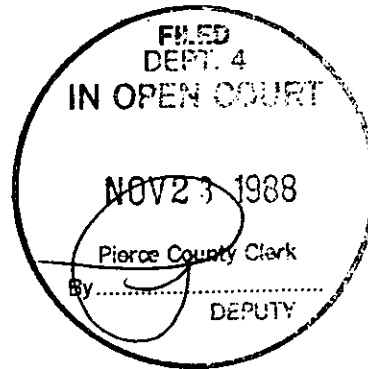
Cause No.: 86-2-02792-6

DONE IN OPEN COURT this 23rd day of November, 1988.

Thomas A. Swayze, Jr.
HONORABLE THOMAS A. SWAYZE, JR.,
JUDGE

Presented by:

RUSH, HANNULA & HARKINS



By: *Daniel L. Hannula*
Daniel L. Hannula, Of
Attorneys for Plaintiffs

Approved as to form:

WILLIAMS, KASTNER & GIBBS

By: _____
Eileen Lawrence, Of Attorneys
for Jack McDonald, Shirley
McDonald and the Community
Chapel and Bible Training
Center of Tacoma

LEE, SMART, COOK, MARTIN & PATTERSON

By: _____
Michael J. Bond, Of Attorneys
for Community Chapel and Bible
Training Center of Burien

STATE OF WASHINGTON, County of Pierce
ss: I, Ted Rutt, Clerk of the above
entitled Court, do hereby certify that this
foregoing instrument 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

21st day of Nov 1988
TED RUTT, Clerk
By: *[Signature]* Deputy

////

JUDGMENT - 4

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2003 000216

EXHIBIT 4

1 they were forming down in Tacoma.

2 Q. As I recall, it was initially a Bible
3 study fellowship?

4 A. Yes.

5 Q. And that was from '79 to '82?

6 A. Yes.

7 Q. Tell me about how that got started?

8 A. Community Chapel in Burien sent down Bible
9 graduates to have a little Bible teaching, and then
10 a few people that were in Tacoma invited their
11 friends, and that's basically how it started.

12 Q. Tell me how you first heard about this
13 fellowship.

14 A. Well, I was attending Community Chapel, and
15 they had people from Tacoma get together at the
16 Burien group to discuss whether there were enough
17 people in Tacoma to, you know, start another little
18 group.

19 Q. How did the people from Tacoma that were
20 attending the Burien chapel get together to discuss
21 that?

22 A. Well, they had -- just had maybe a sign-up
23 sheet or something to notify all the people in
24 Tacoma that they were having a meeting at such and
25 such a house or something like that. I don't recall

1 just all the little details of it. But there
2 were families from Tacoma that were driving up. And
3 we, from Tacoma, knew the ones from Tacoma.

4 Q. Do you recall who organized it?

5 A. Danny O'Brien.

6 Q. Danny O'Brien.

7 What was his role at the Burien
8 church, if any?

9 A. He was a Bible college teacher.

10 Q. Now, am I correct, then, that there was
11 some sort of initial meeting of the people from
12 Tacoma at somebody's house which Danny O'Brien
13 helped to originate?

14 A. Yes.

15 Q. Do you recall whose house that was at?

16 A. No, I don't.

17 Q. Did you attend that initial meeting?

18 A. Yes, I did.

19 Q. Do you remember anybody else who attended
20 that initial meeting?

21 A. My wife; George Jewell, his wife, Ramona;
22 and then there were several Seattle -- I'll call them
23 Seattle people -- that were interested in going to
24 Tacoma, also there. So --

25 Q. Why was that?

1 A. That they wanted to go down, like those
2 that wanted to sing songs. They were going out in
3 a ministerial capacity, just to support -- a
4 "support group," I guess would be a better word,
5 rather than ministerial.

6 Q. Do you know, were there others, but you
7 don't remember them, or was that pretty much it, the
8 four or five of you?

9 A. It seems like there was maybe 14 to 18
10 people, but I don't remember who they were.

11 Q. Your wife, George Jewell and his wife, and
12 Danny O'Brien are the ones you can remember today?

13 A. Yes. There was a fellow by the name of
14 David Floyd there, I believe.

15 Q. Do you recall what was discussed?

16 A. Just that the people in Tacoma would like
17 to get a Bible study going down in Tacoma, and have
18 it overseen by, you know, a Bible college teacher
19 or graduate, so it was on the mark.

20 Q. Were you a graduate?

21 A. Not at the time that this started.

22 Q. When did this start in relation to your
23 graduation?

24 A. Probably six months before my graduation.

25 Q. What happened next?

1 A. I don't understand.

2 Q. With respect to this fellowship.

3 You had this meeting?

4 A. Then they began to have a meeting down
5 there on Friday nights.

6 Q. Was it decided to have weekly meetings
7 when you were at that organizational meeting?

8 A. Yes.

9 Q. Was there a particular location where
10 these weekly meetings were held?

11 A. Yes.

12 Q. Where was that?

13 A. At the Masonic Lodge.

14 Q. What happened at the meetings?

15 A. People singing songs, people testified
16 about their experience walking with God, and the Bible
17 teacher would give a lesson, and then, afterwards,
18 some people would pray for people, and other people
19 would have coffee and cookies and visit with each
20 other, and then they'd go home.

21 Q. To your knowledge, did anybody receive any
22 money as a result of any participation in these
23 meetings?

24 A. No.

25 Q. There was no collection?

1 A. (Witness shakes head.)

2 Q. You have to answer audibly.

3 A. No, there was no collection.

4 Q. Was there a leader of these meetings?

5 A. Yes.

6 Q. Who was that?

7 A. Danny O'Brien was the -- overseeing it, and
8 he had -- various Bible college teachers or graduates
9 would oversee the meeting.

10 Q. At some point in time, did you become
11 somehow involved in more of a leadership role?

12 A. Yes.

13 Q. Tell me about that.

14 A. It began in '79, and later, a few years
15 later, I became the leader, or the --

16 Q. Let's focus on '79 to '82 for right now,
17 before the church corporation was formed.

18 Can you expand a little bit about what
19 your role was in the fellowship, if I can just call
20 it "the fellowship," before the corporation was
21 formed, after you graduated?

22 A. I was just a support, like
23 second-in-command.

24 Q. To Danny O'Brien?

25 A. Or whoever was in the position.

1 Q. Do you recall anybody else who was first
2 in command?

3 A. Greg Theil.

4 Q. What association did he have with the
5 Burien chapel?

6 A. Bible college teacher.

7 Q. Anyone else you can remember?

8 A. David Floyd was there for a short time.

9 Q. Do you recall what association he had with
10 the Burien chapel?

11 A. He was a Bible college graduate.

12 Q. Is that it?

13 A. Yes.

14 Q. Is this sort of like an apprentice period
15 for you, going through this and watching other
16 people lead, so that you can learn how to do it?

17 A. Not really, because I sat under Don
18 Barnett, and I watched him pastor the church from
19 1973. So, I mean, it was the same procedure.

20 Q. It was kind of a continuation of what
21 you'd been doing before?

22 A. Right, just a smaller group.

23 Q. By 1982, how many people were participating
24 in the fellowship?

25 A. Maybe 40 to 50.

1 Q. How was it the decision was made to form
2 the Tacoma church?

3 A. First was a vote by the people to choose a
4 pastor, and we had to make --

5 Q. I want to talk about that, but let's back
6 up.

7 Something happened before they decided
8 to pick a pastor, which is they decided to have a
9 church, probably?

10 A. Well, they incorporated after the pastor
11 was picked.

12 Q. Okay. But didn't a group of people somehow
13 decide: We've got this fellowship. We'd like to
14 have this arrangement more formalized. Let's have a
15 church.

16 What's the first step: Let's pick a
17 pastor?

18 A. Picking the pastor was the first step,
19 yes.

20 Q. I'm wondering about the the discussions
21 that occurred before picking the pastor, which is
22 making this decision about making a church rather
23 than a fellowship.

24 Do you have any knowledge about those
25 discussions?

1 A. No.

2 Q. Tell me about this selection process.

3 A. As I recall, the group got to the place
4 that there were a lot of Seattle Bible college
5 teachers, like Greg Theil, coming down on a weekly
6 basis, and there were myself and George Jewell, who
7 lived in Tacoma, who were working with the people in
8 a secondary, third position, and we still had to
9 work with Greg Theil, who was in Seattle, and had his
10 mind on other things, and so he was -- really just got
11 to the place that the people wanted to have somebody
12 right there that was in charge, living in the same
13 town. So, it's a growth, I guess.

14 Q. Local ownership thing?

15 A. Right.

16 Then the selection was made by the
17 senior board of elders through a process of voting
18 for four or five different people.

19 Q. Let's talk about that in a little more
20 detail.

21 Did you express an interest to
22 anybody in being pastor?

23 A. Yes, I did.

24 Q. Who did you express an interest to, if
25 you remember, or did you just generally make a note?

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1 A. Yes.

2 Q. What is it?

3 A. It's the Articles of Incorporation of
4 Community Chapel and Bible Training Center of Tacoma,
5 Washington.

6 Q. You've obviously have been well taught to
7 answer only the question asked.

8 Can you identify the signatures on
9 the last page?

10 A. Yes. I can identify them.

11 Q. Will you please do that?

12 A. Jack McDonald, Hal Price, and
13 George R. Jewell.

14 Q. What connection did George Jewell have
15 to the Burien corporation, if any, if you know?

16 A. Bible college graduate.

17 Q. To your knowledge, was he employed by the
18 Burien corporation during 1984?

19 A. To my knowledge, he was not employed..

20 Q. By the Burien corporation?

21 A. By the Burien corporation.

22 Q. What about Hal Price?

23 A. I have no knowledge of Hal Price being
24 employed by the Burien corporation.

25 Q. Other than being incorporators of the

1 Tacoma corporation, what role did George Jewell and
2 Hal Price play in Tacoma?

3 A. They were elders of the Tacoma church.

4 Q. Which means they were on the board of
5 directors of the corporation?

6 A. Yes.

7 Q. And I take it you were the other director?

8 A. Yes; I was the other director.

9 Q. Do you recall who the officers were?

10 A. I was the president, and George was the
11 next in line, and Hal was the next in line, whatever
12 they were. I don't even remember what they were.

13 Q. The three of you were officers?

14 A. Yeah, right.

15 Q. Did someone from the Burien corporation
16 provide you with the form for these Articles of
17 Incorporation?

18 A. Yeah; they did the whole thing. They had
19 them printed up.

20 Q. Who handled that for you?

21 A. Jack Hicks.

22 Q. Have you ever been on the board of
23 directors of a corporation before?

24 A. No.

25 Q. Do you know whether George or Hal had?

1 A. No, they hadn't.

2 Q. Did you ever -- I don't want to ask you
3 what you talked about -- talk to a lawyer during
4 the time when the corporation was being formed?

5 A. No.

6 Q. Let me just clear up on these dates. It
7 was '84 that the church was formed and the
8 fellowship, and for '84 that the fellowship became
9 the church?

10 A. No; I think these were something that was
11 added on.

12 Q. So, I was originally right when I said
13 '82?

14 A. Yes.

15 (Exhibit No. 2 was marked
16 for identification.)

17 Q. (By Mr. Winchell) Can you identify Exhibit
18 2, please.

19 A. Articles of Faith and Bylaws, Community
20 Chapel Bible Training Center of Tacoma, a satellite
21 church of Community Chapel Bible Training Center of
22 King County, Washington.

23 Q. Will you identify the signatures on the
24 last page, please.

25 A. Jack McDonald, George R. Jewell, and

1 Hal Price.

2 Q. Did you read the Articles of Incorporation
3 during the time you were active in the church?

4 A. Probably when we first got them.

5 Q. Will you look at the third page, Item 9-B?

6 A. Third page.

7 Q. On the Articles of Incorporation, first
8 one.

9 Do you remember reading the part that
10 says, "All decision-making for this corporation shall
11 be here after vested in the board of directors,
12 except as specifically limited by the corporation
13 bylaws"?

14 A. What's the question?

15 Q. Do you remember reading that part of the
16 Articles of Incorporation?

17 A. I don't remember this very second reading
18 it, but I probably read it.

19 Q. Did you continue to meet at the Masonic
20 Lodge?

21 A. Yes, we did.

22 Q. What was your salary during the first year
23 as pastor?

24 A. None.

25 Q. You were not paid?

1 A. I had my own well drilling business.

2 Q. When did you begin to be paid?

3 A. I don't recall, but it was probably after
4 the church had been incorporated. Probably after
5 1982.

6 Q. 1982 is when you became a pastor?

7 A. Yes.

8 Q. Did the Burien corporation provide you
9 with any money when you started the Tacoma
10 corporation?

11 A. They provided no money.

12 Q. Did they provide any property to you?

13 A. They provided no property.

14 Q. Do you remember what your salary was
15 when you started drawing a salary?

16 A. Maybe \$500 a month.

17 Q. And that would have been during 1983, to
18 your best recollection?

19 A. Yes.

20 Q. Were you still drilling wells?

21 A. Yes.

22 Q. How was your salary determined?

23 A. The corporation board members.

24 Q. Tell me a little more.

25 A. Well, we just decided that I was worth

1 \$500 a month, and after the income came up, I went
2 to \$1,000 a month.

3 Q. So, it was you and Hal and George that set
4 your salary?

5 A. Yes.

6 Q. Was anybody else involved in that process?

7 A. No.

8 Q. As a practical matter, was your salary
9 dependent upon the amount of the collection?

10 A. Yes, it was.

11 Q. Did the Tacoma church keep financial
12 records?

13 A. They had some, but in my transition of
14 moving, I lost all of my files and my diploma. I
15 don't know -- we had some stuff from the church that
16 we gave to Goodwill, and I think my box of stuff
17 might have got --

18 Q. I think we have your diploma, don't we?
19 Wasn't that in one of your earlier depositions?

20 A. No, that was a yearly licensing thing.

21 Q. Who kept the financial records?

22 A. I did, my wife.

23 Q. Can you describe them to me.

24 A. The piece of paper with the offerings that
25 each person gave on a monthly basis, and at the end

1 of the year they've got a notice of how much they
2 gave.

3 Q. So, you kept a record of the revenues?

4 A. Yes.

5 Q. Did you ever send that to the Burien
6 chapel?

7 A. No.

8 Q. Did they ever come and ask?

9 A. No.

10 Q. Were there records kept of the expenses
11 that were incurred?

12 A. I'm sure there were just, you know --
13 jotting down like if they bought tapes or books, but
14 we had very little expenses, because we weren't --
15 just the rent.

16 Q. Well, let's see now; you had rent.

17 No utilities?

18 A. No utilities.

19 Q. Your salary?

20 A. Yes.

21 Q. Were there any other salaries?

22 A. No.

23 Q. Did the church withhold taxes on your
24 salary?

25 A. No.

1 Q. You had to do that yourself?

2 A. Yes, because I was still in the well
3 drilling business until 1985.

4 Q. The Burien chapel never withheld taxes for
5 you, did they?

6 A. No.

7 Q. And they never provided you with health
8 insurance?

9 A. No.

10 Q. Did you have health insurance through the
11 Tacoma church at any time?

12 A. No.

13 Q. Did you ever have any sort of pension
14 benefits provided by the Burien corporation?

15 A. No.

16 Q. Did anyone from the Burien corporation
17 come down to see if you were preaching the right
18 stuff ever?

19 A. Not to my recollection.

20 Q. I asked you before whether any financial
21 assistance of any sort was ever given or given at the
22 outset.

23 In case my question wasn't clear, was
24 any financial assistance ever given by the Burien
25 corporation?

1 A. No.

2 (Exhibit No. 3 was marked
3 for identification.)

4 Q. (By Mr. Winchell) Can you identify
5 Exhibit 3, please.

6 A. Plaintiff's First Set of Interrogatories to
7 the Defendants of Community Chapel and Bible Training
8 Center of Tacoma.

9 Q. Will you turn to the last page, please.
10 There is a part that says, "Jack McDonald, being
11 first duly sworn upon oath, deposes and says:

12 "I am the pastor of Community Chapel
13 and Bible Training Center of Tacoma, one of the
14 defendants in the above-titled action; that I have
15 read the above and foregoing interrogatories and the
16 answers thereto; know the contents thereof and know
17 the same to be true."

18 Now, is that your signature below
19 that statement?

20 A. Looks like it.

21 Q. Do you recall signing these? This would
22 have been in front of a notary?

23 A. I don't recall signing it.

24 Q. Mr. Bugni would have been with you, because
25 it looks like he's the one to notarized it.

1 You don't remember that?

2 A. I don't remember that.

3 Q. Do you remember if you read these
4 interrogatories over before you signed them?

5 A. Okay, now I remember filling this out,
6 yes, and then I gave it to Mike Bugni, right.

7 Q. Don't tell me about your conversations with
8 Mr. Bugni unless somebody else was there, but I would
9 like to know, did he send these to you for you to
10 fill out some draft answers, and then he typed them
11 up?

12 A. Yes.

13 Q. Will you look at Interrogatory No. 6?

14 A. Yes, I see it.

15 Q. Interrogatory No. 6 says, "From 1980 to
16 1986, did you have in effect one or more policies of
17 insurance in which you were named insured or a
18 covered person and which in any manner or to any
19 extent provided or provides you liability coverage,
20 whether primary or excess, with respect to any of
21 the claims, causes of action, injuries or damages
22 claimed against you in this lawsuit?

23 "Answer: No."

24 Do you recall if the answer "no" is
25 what you wrote down on your draft answer?

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1 A. I wrote down "no."

2 Q. Did you believe that to be true at the
3 time that you prepared that answer?

4 A. I knew the Community Chapel of Tacoma had no
5 insurance of any kind.

6 Q. Did Jack Hicks ever tell you that the
7 Burien chapel would provide insurance to the Tacoma
8 corporation, before this lawsuit?

9 A. Not to my recollection.

10 Q. Did any other member of the board of
11 directors of the Burien corporation ever tell you
12 that the Burien corporation would provide insurance
13 to the Tacoma corporation?

14 A. Not to my recollection.

15 Q. Did Don Barnett ever make that kind of
16 representation to you?

17 A. Not to my recollection.

18 Q. I'm going to use the word "employed," and I
19 don't mean to use it in the legal sense, but in the
20 sense you would understand the term to be meant, did
21 anyone else who was employed in any capacity by the
22 Burien corporation ever tell you that the Burien
23 corporation was providing you with insurance?

24 A. Not to my recollection.

25 Q. Have you, since 1982, completed any credit

1 applications?

2 A. I don't recall, but I suppose I have, but,
3 I mean --

4 Q. Car loan, anything?

5 MR. MEIKLE: I'm going to object to
6 this line of questioning.

7 MR. WINCHELL: I'm looking for
8 anything that would indicate what he has been
9 reporting to other people as his place of employment.

10 MR. MEIKLE: Okay.

11 MR. WINCHELL: I don't care what his
12 salary was or anything like that.

13 MR. MEIKLE: Answer.

14 A. Restate the question.

15 Q. (By Mr. Winchell) Have you had any car
16 loans since 1982.

17 A. Yes.

18 Q. Where did you get those from?

19 A. Puget Sound Bank.

20 Q. Which branch?

21 A. I don't recall. The car dealer. He put
22 it in wherever he did it.

23 Q. Who was the dealer?

24 A. The Dodge dealer in Tacoma, but I don't
25 even remember his name.

1 Q. Do you know if it's still there?

2 A. I'm sure it is. It's the one on South
3 Tacoma Way.

4 Q. What year did you purchase that car?

5 A. Probably 1983.

6 Q. Is that the only car loan you've gotten?

7 A. Is that the only one that I've got?

8 Q. Since 1982 that you obtained.

9 A. I've got one in 1984, I think, or '85.

10 Q. Where did you get that from?

11 A. Through the Cadillac dealer up in
12 Bellevue.

13 Q. Do you remember the name of the Cadillac
14 dealer?

15 A. I don't remember the name, but it's the
16 big one up there.

17 Q. Are you still making payments on that
18 loan?

19 A. Yes.

20 Q. Who is the bank, do you know?

21 A. US Bank.

22 If I don't make a couple payments,
23 they're going to come and get it, I know that.

24 Q. Have you sought or obtained any other
25 credit since 1982; Visa applications?

1 A. No.

2 Q. Home improvement loans?

3 A. No.

4 Q. You didn't buy a house?

5 A. No.

6 Q. Have you filed tax returns every year
7 since 1982?

8 A. Up until last year.

9 Q. Didn't file one last year?

10 A. I got to make some money first.

11 Are you going to turn me into the IRS?

12 Q. No.

13 A. I've got you on record. Put that down.

14 (Off the record.)

15 Q. (By Mr. Winchell) Do you recall any
16 instance, including these two credit applications, in
17 which you reported to anybody your place of
18 employment during the period '82 to '87?

19 A. You're making me go real deep.

20 I don't really, you know -- I didn't
21 do a lot of buying, you know. I had my well drilling
22 business, and I just bought supplies and drilled
23 wells, you know.

24 Q. Do you happen to recall what you reported
25 as your place of employment for the 1984 loan?

1 A. Probably a well driller and a pastor, I --
2 whatever I did.

3 Q. Do you recall any instance in which you
4 ever indicated that you were employed by the
5 Community Chapel and Bible Training Center of
6 Burien?

7 A. I never said that I was ever employed by
8 Community Chapel of Burien.

9 Q. Let's jump ahead to November, then, of
10 1987, if I have the right month. That's when you
11 stopped being the pastor of the Tacoma church?

12 A. Yes.

13 Q. We have met and talked before, right?

14 A. Yes.

15 Q. Now, what I recall from talking with you
16 earlier is, you were to a point where you felt the
17 practice of spiritual connections had kind of gone
18 beyond something you felt you could deal with as a
19 pastor of the Tacoma church?

20 A. That's correct.

21 Q. And that was the reason that you decided
22 to resign; is that correct?

23 A. That's correct.

24 Q. And you did resign for that reason?

25 A. Yes.

1 Q. Any other reason that you recall?

2 A. I believe I stated in my deposition that I
3 was not willing to follow Don Barnett up the hill
4 any further, because I felt there was no direction as
5 far as the spiritual connections. Things were not
6 getting better, they were getting worse.

7 Q. Did anyone pressure you to resign?

8 A. No. I made the decision to resign because
9 of the oncoming lawsuit, because of the fact the
10 church had got to a place that it was not
11 financially in a place to where it could support a
12 pastor, and I just made -- it was time to terminate
13 it.

14 Q. When did you meet Carol Gabrielson?

15 A. I can't answer that question without my
16 notes. I mean --

17 Q. It's not that critical.

18 Can you give me a rough time frame?
19 If you can't, you can't.

20 A. I can't. It's somewhere between '83 or '84
21 and '86, '85.

22 Q. Were you a counselor for Carol Gabrielson?

23 A. I was a pastor.

24 Q. What's the difference between a pastor and
25 a counselor?

1 November, right in there. There was about a 60-day
2 period. I could have brought my records.

3 Q. I'm just trying to get just a general
4 feel.

5 You'd already stated earlier that you
6 never tried to manipulate anyone?

7 A. That's correct.

8 Q. During this period of time, did you ever
9 threaten force upon Carol Gabrielson to commit
10 adultery with you?

11 A. I never did.

12 Q. To your perception, did she consent to
13 these things, to this relationship between she and
14 you?

15 A. She certainly did.

16 Q. During the time that this relationship was
17 going on, did you ever tell Don Barnett about this
18 relationship?

19 A. I never did.

20 Q. Did you ever tell Barbara Barnett about
21 this relationship?

22 A. I never did.

23 Q. Did you ever discuss this relationship
24 while it was going on with anyone in the eldership
25 of the Burien church?

1 A. I did not discuss this relationship with
2 anybody, period.

3 Q. To your knowledge, did Carol Gabrielson
4 discuss this relationship with Don Barnett while it
5 was going on, just to your knowledge?

6 A. To my knowledge, I would say that she
7 didn't.

8 Q. During the time in which your relationship
9 was ongoing, did Carol ever mention to you that she
10 had told anyone about the relationship?

11 A. Not to my recollection.

12 Q. When was the first time that you did
13 discuss this relationship with Carol Gabrielson with
14 Don Barnett?

15 A. I never did.

16 Q. Did Don Barnett ever say anything to you
17 which you construed as approval for the relationship
18 that you had with Carol Gabrielson?

19 A. He never did.

20 Q. What was your understanding of the church's
21 position upon adultery?

22 A. It was wrong.

23 Q. Prior to your relationship with
24 Carol Gabrielson, did Don Barnett ever indicate
25 approval of a relationship of adultery?

PROPOSED

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,)
)
Defendants.)
_____)

No. 88-2-00947-9

ORDER GRANTING JOINT
MOTION RE: COVERAGE
FOR CHURCH ENTITY

I. HEARING

1.1 Date. February 24, 1989.

1.2 Purpose. To consider DEFENDANTS JOINT MOTION RE: COVERAGE FOR CHURCH ENTITY.

1.3 Appearances. Defendants Barnett appeared through their attorneys Evans, Craven & Lackie, P.S. by Tim Donaldson. Defendant Community Chapel and Bible Training Center appeared through its attorney John Glassman. Defendants Gabrielson appeared through their attorneys Rush, Hannula and Harkins by Daniel Hannula. Plaintiff appeared through its attorneys Lane, Powell, Moss & Miller by Bruce Winchell.

1.4 Evidence. The AFFIDAVIT OF BRUCE WINCHELL filed herein on March 30, 1988; the AFFIDAVIT OF DON BARNETT filed herein on August 30, 1988; the deposition of Jack L. McDonald excerpts of which are attached to the affidavit of Tim Donaldson annexed

SUMMARY JUDGMENT

ORDER : 1
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hereto; the complaint, judgment on jury verdict, and verdict form in Pierce County cause number 86-2-02792-6 certified copies of which are attached to the affidavit of Tim Donaldson annexed hereto; the affidavits of Jack DuBois, E. Scott Hartley, Don Barnett, and Carol Gabrielson in support of this motion; the AFFIDAVIT OF TIM DONALDSON IN SUPPORT OF MOTION TO REVISE SUMMARY JUDGMENT ORDERS and the records and files herein specifically including plaintiff's amended complaint filed herein on March 25, 1988 and defendants materials considered in connection with this court's Summary Judgment Orders entered herein on November 18, 1988, December 9, 1988, and February 3, 1989.

1.5 Authorities Considered. CR 56, CR 54(b), CR 11, RCW 4.84.185, Pierce County Local Rule 10, authorities contained in DEFENDANTS' JOINT BRIEF IN SUPPORT OF JOINT MOTION FOR SUMMARY JUDGMENT UPON COVERAGE FOR CHURCH ENTITY, authorities contained in BARNETT SUPPLEMENTAL OPPOSITION BRIEF TO SUMMARY JUDGMENT RE: BODILY INJURY, authorities considered in connection with this court's Summary Judgment Orders entered herein on November 18, 1988, December 9, 1988, and February 3, 1989.

II. FINDINGS

2.1 There is no genuine issue as to any material fact with respect to coverage for the Community Chapel & Bible Training Center of Burien upon claims made against it by Carol and Ira Gabrielson in Pierce County Cause number 86-2-02792-6 and the judgment awarded therein.

2.2 Defendants are entitled to judgment as a matter of law.

2.3 Upon finding that coverage exists for the Community Chapel & Bible Training Center of Burien, it is not necessary for this court to make determinations with respect to coverage for other parties herein upon other claims herein, and there is no just

SUMMARY JUDGMENT

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reason for delay upon entry of a final judgment.

2.4 Plaintiff's fourth cause of action herein is frivolous and advanced without reasonable cause.

2.5 Plaintiff brought the above-entitled cause of action seeking declaratory judgment to determine both the extent of the coverage under American Casualty policy number IP502144020 and its duty to defend the Community Chapel and Bible Training Center of Burien upon Pierce County cause number 86-2-02792-6.

III. ORDER

Based on the forgoing findings and summary judgment orders entered herein on November 18, 1988, December 9, 1988, and February 3, 1988, it is declared and ordered:

3.1 American Casualty policy number IP502144020 provides separate coverage for each person and entity which qualifies as an insured under the policy heading entitled "II. PERSONS INSURED."

3.2 American Casualty policy number IP502144020 provides that an occurrence must be viewed from the standpoint of the insured for which coverage is sought.

3.3 The intent of one insured cannot imputedly disqualify the coverage of another insured under American Casualty policy number IP502144020.

3.4 Damages resulting from an occurrence which arises from continuous or repeated exposure to substantially the same general conditions cannot be segregated.

3.5 Defamation is a personal injury as defined by American Casualty policy number IP502144020.

3.6 The application of exclusion (2)(d) under policy heading "B. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY COVERAGE" must be viewed from the standpoint of the insured for which coverage

SUMMARY JUDGMENT

ORDER : 3

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is sought.

3.7 Defendants motion for summary judgment is granted and this court expressly directs entry of judgment that American Casualty Company of Reading Pennsylvania has a duty to defend the Community Chapel and Bible Training Center of Burien in Pierce County Cause number 86-2-02792-6 and that American Casualty Company of Reading Pennsylvania has a duty to pay all sums that the Community Chapel and Bible Training Center is legally obligated to pay in Pierce County Cause number 86-2-02792-6.

3.8 Defendants motion to award Community Chapel & Bible Training Center its attorney fees in Pierce County Cause number 88-2-00947-9 is granted.

3.9 Defendants motion to assess terms against plaintiff upon plaintiff's fourth cause of action is granted, and plaintiff is ordered to pay terms to defendants in the sum of \$_____.

DATED this ____ day of February, 1989

JUDGE ARNOLD

Presented by:
EVANS CRAVEN & LACKIE, P.S.

By _____
TIM DONALDSON
Attorneys for Barnetts

RUSH, HANNULA & HARKINS

By _____
DAN HANNULA
Attorneys for Gabrielsons

By _____
JOHN GLASSMAN
Attorney for Community Chapel

SUMMARY JUDGMENT

ORDER : 4
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Julie A. Twyford
Patrick E. Presentin
Gregory M. Kane
John C. Perry
Timothy J. Donaldson
Timothy P. Malarchick
David A. Trieweiler
Margaret C. McGinty
Philip J. Van de Veer
Thomas M. Roberts

5 JAN 27 1989

RESPOND TO: **Seattle**

January 26, 1989

Willard J. Sharpe
of counsel
* admitted in Washington
and Idaho

Bruce Winchell, Esq.
LANE POWELL MOSS & MILLER
3800 Rainier Tower
1301 Fifth Avenue
Seattle, WA 98101

RE: American Casualty v. Gabrielson, et al.
Pierce County Cause No. 88-2-00947-9

Dear Bruce:

This will confirm our conversation regarding our proposed Order Denying Renewed Motion for Summary Judgment by Plaintiff Re: Bodily Injury, which was set for presentation this Friday, January 27, 1989. As we discussed, you have no problem with the form of the Order, although you want to check to see that all matters which were considered by the Court coincide with those listed in the Order. Please let us know if any have been left out and we will add them.

We have advised Judge Arnold's bailiff, Allyson, to continue presentation of the Order to Friday, February 3, 1989 and informed her that in all likelihood, an agreed Order will be presented for entry by mail.

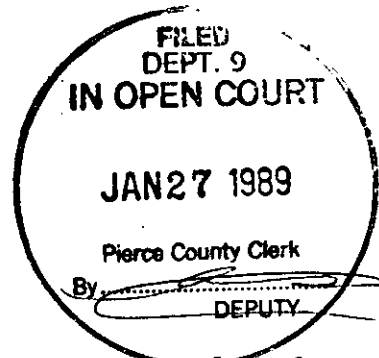
Thank you for your cooperation.

Sincerely,


TIM DONALDSON

TJD/kmw

cc: Daniel Hannula, Esq.
John Glassman, Esq.
Ms. Allyson Smolic



15153 4/21/2003 00054

DEPOSITION NOTICE

2

TO: BRUCE WINCHELL

DATE: OCTOBER 13, 1988

RE: Case Name: AMERICAN CASUALTY VS GABRIELSON

COPY

Venue and No.: PIERCE 88-2-00947-9

Deposition/Date Taken: DONALD J. BARNETT VOLUME III June 29, 1988

FILED
IN COUNTY CLERK'S OFFICE

OCT 14 1988 P.M.

NOTICE OF READINESS

The transcript of your deposition is ready for signing at 1800 Seattle Tower, Seattle, WA (3rd & University). Please call 623-6717 with the date you will be reading your deposition.

PIERCE COUNTY WASHINGTON
JED RUTT, COUNTY CLERK
& DEPUTY

You must within _____ days read and sign the deposition or state in writing your reason for refusal to sign or state in writing the fact that you waive your right to sign; failing to do so, signature will be deemed for all purposes waived and your deposition will be filed with the appropriate representative of the Court.

NOTICE OF READINESS WITH SIGNATURE PAGE

Enclosed is your copy of the deposition of the above-named deponent plus a Change Sheet and Original Signature Page. Please instruct the deponent to review the deposition, record any changes on the Change Sheet, and sign (1) the Change Sheet and (2) the Original Signature Page.

_____ Please return both forms to this office _____ so they may be filed with the original transcript.

NOTICE OF FILING DEPOSITION WITH SIGNATURE

_____ Change Sheet attached _____ No changes

XXX NOTICE OF FILING DEPOSITION WITHOUT SIGNATURE

_____ Signature waived
XXX Deposition not signed within 15 days of Notice of Readiness
_____ Due to nearness of trial date of _____, deposition is filed without signature, to be read at trial.

XXXX ORIGINAL DEPOSITION FILED WITH BRUCE WINCHELL

attorney for PLAINTIF _____

cc: HAROLD T. DODGE, JR.
TIMOTHY J. DONALDSON
DAVID V. ANDERSEN
CLERK OF COURT

LARSEN, SMITH & ASSOCIATES
1800 Seattle Tower, Seattle, WA 98101

15153 4/21/2003 08055

1 1988. This motion is based in part upon the facts set forth
2 below in the Affidavit of Bruce Winchell.

3 DATED this 19th day of August, 1988.

4 LANE POWELL MOSS & MILLER

5
6 By _____
7 Bruce Winchell
8 Attorneys for Plaintiff

9 STATE OF WASHINGTON)
10 COUNTY OF KING)ss
11)

12 BRUCE WINCHELL, being first duly sworn, on oath, deposes
13 and says:

14 1. My name is Bruce Winchell. I represent plaintiff
15 American Casualty in this declaratory action.

16 2. On August 19, 1988, I received a motion for summary
17 judgment on behalf of defendants Gabrielson. The Gabrielsons
18 are claimants in litigation against Pastor Don Barnett and
19 Community Chapel pertaining to alleged sexual improprieties by
20 a pastor for the Tacoma satellite of that church.

21 3. The motion papers, which were actually received on
22 August 18 by our main office, were not served 16 days in
23 advance of the hearing date.

24 4. In a prior motion for partial summary judgment, Judge
25 Arnold indicated that he was very concerned about the timing of
26 the motion in light of an imminent trial date. Trial in this
matter is now set for September 12, 1988.

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5. The parties have stipulated to a stay of discovery until the conclusion of the trial in the underlying action. For that reason, plaintiff's discovery has been wholly inadequate to even begin to respond to a motion for partial summary judgment.

6. My present schedule makes it utterly impossible to properly respond to the issues raised by this motion which, with attachments, appears to exceed 100 pages. On August 22, I have an all-day deposition. On August 23, I must prepare a mediation brief in the morning and attend another deposition in the afternoon. On August 24, I must complete and file a mediation brief in a wrongful termination case in which claimed damages exceed \$2 million. On August 25, I have a deposition in the morning and a document production in the afternoon. On August 26, I have a long-scheduled and critically important witness interview in Bellingham. On August 29, I have the mediation in the above-referenced wrongful termination case. On August 30 and 31, I have depositions in a related declaratory action presently pending in King County. On September 1, I have an arbitration in Everett which will take at least one day and may go into the following day. This motion is noted for September 2.

7. This affidavit summarizes only in the briefest terms
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/ / /

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

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)
Plaintiff,)
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, JACK)
McDONALD and "JANE DOE")
McDONALD, husband and wife,)
Defendants.)

No. 88-2-00947-9

ORDER GRANTING MOTION
TO SHORTEN TIME

The court having heard the motion of American Casualty for
an order shortening time hereby orders that American Casualty's
motion for continuance shall be heard on _____, August _____,
1988, at _____.

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DATED this _____ day of _____, 1988.

JUDGE/COURT COMMISSIONER

Presented by:

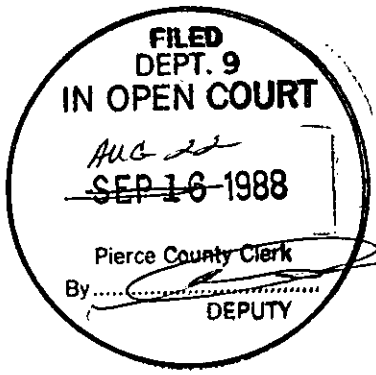
LANE POWELL MOSS & MILLER

By _____
Bruce Winchell
Attorneys for Plaintiff

4/21/78 3:28:58

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S SEP 16 1988

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

No. 88-2-00947-9

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, JACK)
McDONALD and "JANE DOE")
McDONALD, husband and wife,)
Defendants.)

MOTION FOR CONTINUANCE

Plaintiff American Casualty moves for a continuance of
defendants' Motion for Summary Judgment.

DATED this 23rd day of August, 1988.

LANE POWELL MOSS & MILLER

By Bruce W. Winchell

Bruce W. Winchell
Attorneys for Plaintiff

1988 0827/174 ECIS1

1 affidavit which I filed in connection our motion to shorten
2 time for this motion for a continuance.

3 2. American Casualty initiated this declaratory action in
4 February of 1988. In May of 1988, American moved for partial
5 summary judgment with respect to a portion of the policy which
6 appeared, as a matter of law, to provide no coverage for
7 damages for emotional harm. Judge Arnold, in ruling upon that
8 motion, admonished American Casualty because of the timing of
9 the motion. It was his expressed view that with a trial date
10 imminent, a motion for summary judgment was wholly improper.
11 He denied the motion without prejudice.

12 3. At about the same time that Judge Arnold denied
13 American's motion for partial summary judgment, the parties
14 stipulated to a stay of discovery except that American would be
15 permitted to depose Pastor Barnett. American's decision to so
16 stipulate was heavily motivated by Judge Arnold's expressed
17 concerns about American's level of activity shortly before
18 trial. Thus, the only deposition which has been taken in this
19 case by American is that of Pastor Barnett.

20 4. With respect to the particular issue addressed in this
21 motion for summary judgment, which is whether Jack McDonald was
22 an employee of Community Chapel, this lack of discovery is of
23 critical importance. A bit of factual background is necessary
24 to illustrate the necessity of discovery on this point.

25 The insurance policy at issue here was issued to the
26 Community Chapel and Bible Training Center, located in Burien

50000 0007/17/1 50101

1 (Burien Chapel). Burien Chapel is a not-for-profit
2 corporation. Jack McDonald was the pastor for the Community
3 Chapel and Bible Training Center in Tacoma, a separate
4 not-for-profit corporation. Neither that separate corporation
5 nor Jack McDonald were named insureds under the policy.

6 The four factors which are typically identified as being
7 relevant to determination of employment status are: (1)
8 selection and engagement of the servant; (2) payment of wages;
9 (3) power of dismissal; and (4) power to control the servant's
10 conduct. 53 Am. Jur. 2d, Master and Servant, Section 2.

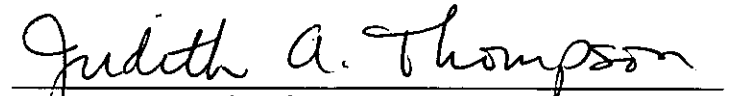
11 While I have not had an opportunity to depose Mr. McDonald,
12 or the chief administrator of the Burien Chapel, Jack Hicks, I
13 have briefly interviewed each of them. They each concede that
14 there were no financial ties between the separate
15 corporations. Mr. McDonald was paid entirely out of whatever
16 he was able to collect from his parishioners. Moreover, no
17 control was exercised over McDonald's day-to-day conduct of the
18 church's affairs. Furthermore, it was the parishioners
19 themselves who ultimately selected Jack McDonald to be their
20 pastor. Thus, the factors which are relevant here appear to
21 indicate that McDonald was not an employee of the Burien
22 Chapel. While Gabrielson will understandably point to the
23 by-laws as conferring some unexercised power upon the Burien
24 Chapel to control McDonald, there clearly will be a sharp
25 factual dispute which can only be properly illustrated
26 following discovery. However, American Casualty is precluded

1 from engaging in discovery prior to trial of this matter. The
2 question of who controlled Jack McDonald, who selected him, who
3 paid him, and who dismissed him are all issues on which there
4 is some dispute of fact. However, that dispute can only be
5 properly brought to the court's attention after the depositions
6 of all witnesses with knowledge are deposed.

7 5. American Casualty respectfully requests that
8 Gabrielson's motion for summary judgment be continued until a
9 date not less than 90 days following the conclusion of trial in
10 the underlying action.

11 
12 _____
13 BRUCE WINCHELL

14 SUBSCRIBED AND SWORN to before me this 22nd day of August,
15 1988.

16 
17 _____
18 Notary Public in and for the State of
19 Washington, residing at: Lynnwood
20 My appointment expires: 9/1/90

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

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)
Plaintiff,)
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, JACK)
McDONALD and "JANE DOE")
McDONALD, husband and wife,)
Defendants.)

No. 88-2-00947-9

MOTION AND AFFIDAVIT TO
SHORTEN TIME

American Casualty moves for an order shortening time so
that it may move for a continuance of Defendants Gabrielson's
Motion for Summary Judgment. American Casualty requests that
the motion for a continuance be heard on Tuesday, August 23,
/ / /
/ / /

15153 4/7/78 88265

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

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American Casualty
Plaintiff.

vs.

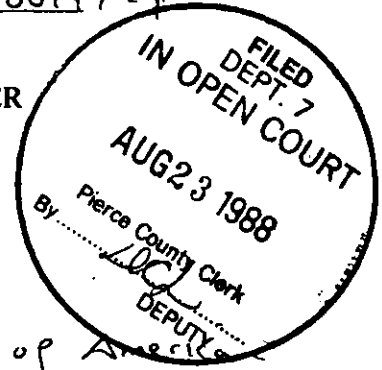
Gabrielson et al
Defendant.

MEMORANDUM OF JOURNAL ENTRY

No. 88-2-00947-9

ORDER

S SEP 16 1988



The court has ~~had~~ heard the motion of ~~American~~

to continue Gabrielson's motion for summary judgment.

The court orders that the motion for a continuence

be heard by Judge Arnold on September 1 at

9:00 a.m. Counsel for American, Bruce Winchell,

is ordered to appear at that time

done in open court this Aug 23, 1988

E. Arnold
Judge

8/23/88

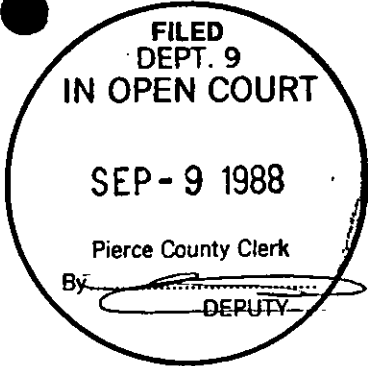
Approved:

Daniel L. Arnold
John S. Gloosma
Jim Donahue
depts *Burnetts*

Att for AS Gabrielson
att. for Comm Chapel

Judge.

Entered in Journal No. _____ Page _____ Dept. No. _____ on _____, 19__



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

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)
)
Plaintiff,)
)
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,)
JACK McDONALD and "JANE DOE")
McDONALD, husband and wife,)
)
Defendants.)

NO. 88-2-00947-9

DECLARATION OF BRUCE WINCHELL
WITH EXCERPTS OF DEPOSITION
OF JACK McDONALD

Attached are excerpts from the deposition of Jack McDonald
which are relevant to the issue of employee status.

DATED this 8th day of September 1988.

LANE POWELL MOSS & MILLER

[Signature]
Bruce Winchell
Attorneys for Plaintiff

DECLARATION OF BRUCE WINCHELL WITH
EXCERPTS OF DEPOSITION OF JACK McDONALD - 1

LANE POWELL MOSS & MILLER
3800 RAINIER BANK TOWER
SEATTLE, WASHINGTON 98101 2647
223 7000

[Signature]

15153 4/21/2003 66666

1 SEATTLE, WASHINGTON; THURSDAY, SEPTEMBER 9, 1988

2 1:30 P.M.

3 -o0o-

4
5
6 JACK L. McDONALD, witness herein, having been
7 first duly sworn on oath,
8 was examined and testified
9 as follows:

10
11 EXAMINATION

12 BY MR. WINCHELL:

13 Q. Will you state your name, please.

14 A. Jack Lee McDonald.

15 Q. Jack, you've been deposed before, so you
16 know, if I ask you something you don't understand, to
17 tell me and I'll try to ask a more clear question,
18 okay?

19 A. Yes.

20 Q. And the other thing we have to be careful
21 about is not talking at the same time, and you
22 answering audibly.

23 A. Yes.

24 Q. Do you understand what lawsuit we're in,
25 here, today?

Rough & Associates
Incorporated
COURT REPORTERS

405 SEATTLE TOWER
SEATTLE, WASHINGTON 98101
(206) 682-1427

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1 A. Yes, I do.

2 Q. What is your address?

3 A. 4620 Tacoma Avenue South, Tacoma,
4 Washington 98408.

5 Q. What is your phone number?

6 A. 475-4620.

7 Q. Do you have any plans to change your
8 address?

9 A. Not right now.

10 Q. You have no reason to think you might be
11 moving?

12 A. Not this very minute.

13 Q. You're not hedging, are you?

14 A. What I'm doing is, if I decide to move
15 tomorrow, I could, but at this point, I'm not
16 deciding to move.

17 Q. You aren't looking for work out of the
18 state or anything like that?

19 A. No, I'm not.

20 Q. Where are you working now?

21 A. I'm not.

22 Q. Where did you last work?

23 A. I worked a month-and-a-half ago. I drilled
24 a well for myself.

25 Q. Have you been periodically self-employed

1 drilling water wells?

2 A. Yes.

3 Q. Is that what you've been doing since the
4 fall of 1987, is drilling wells occasionally?

5 A. Yes.

6 Q. As I recall, you first became involved
7 with the Community Chapel and Bible Training Center
8 in 1973; is that correct?

9 A. That's correct.

10 Q. You began attending church there in 1973?

11 A. That's correct.

12 Q. Did you attend Bible college there?

13 A. Yes, I did.

14 Q. When did you do that?

15 A. 1974.

16 Q. Until?

17 A. 1979.

18 Q. Was that full time?

19 A. Yes.

20 Q. Were you otherwise employed during that
21 time?

22 A. Just in the summers.

23 Q. What did you do in the summers?

24 A. Drilled wells.

25 Q. What did you study during that five-year

1 period?

2 A. Bachelor of theology.

3 Q. Can you elaborate on what you studied a
4 little bit for me?

5 A. Well, they were the courses that you had
6 to take to get the bachelor of theology degree. All
7 the books of the Bible. Six of them, I believe.

8 Q. Is that how the coursework broke down, is
9 you'd have a course on each book of the Bible?

10 A. Mostly. There were a few other different
11 courses, like writing lab and speaking lab and things
12 like that.

13 Q. Did you study counseling?

14 A. No.

15 Q. Did you take any sort of a seminar in
16 counseling?

17 A. Yes, I did.

18 Q. Tell me about that?

19 A. It's called Ministers in Training.

20 Q. When did you participate in the seminar,
21 Ministers in Training?

22 A. I really don't recall the exact year, but
23 I would say '78, maybe. It might have been '77.

24 Q. Did you receive written materials for the
25 Ministers in Training?

1 A. Yes; there were cases of situations, and
2 they had a large class, and they would all work to
3 solve the problem.

4 Q. Do you have any of those materials?

5 A. No.

6 Q. Did you receive grades in connection with
7 your study at the Bible college?

8 A. Yes.

9 Q. Do you have any of your grades?

10 A. No.

11 Q. Did you purchase textbooks or were you
12 supplied with textbooks?

13 A. Mainly, it was out of the Bible. We just
14 used the Bible, and they had a library at the school.

15 Q. So, you don't have any textbooks, other
16 than the Bible, in your possession now from your
17 study at the Bible college?

18 A. No, I don't have any.

19 Q. Do you recall anything about what you were
20 taught, in terms of counseling, during your
21 attendance at the Ministers in Training seminar?

22 A. No, I don't -- it was not that big of
23 emphasis. It was more -- like for me, I just sat
24 back and watched as they solved various cases, you
25 know. It was just pretty much a logical approach,

1 you know.

2 For example, if people were in an
3 argument, they would have to sit down, try to
4 communicate, get their points across, and work it
5 out. It seemed kind of simple to me.

6 Q. So, communication was one aspect that was
7 emphasized?

8 A. Right. That's what I perceived.

9 Q. Who were the instructors?

10 A. Don Barnett.

11 Q. No one else?

12 A. No one else.

13 Q. When was the last time you saw
14 Don Barnett?

15 A. Probably about a year ago. September of
16 '87.

17 Q. Have you seen any of the elders or former
18 elders from the Burien church since, say, December
19 of 1987?

20 A. No.

21 Q. What did you do after 1979, after you
22 graduated?

23 A. I worked in my well drilling business.

24 Q. What else did you do?

25 A. And then I also worked with the church

1 they were forming down in Tacoma.

2 Q. As I recall, it was initially a Bible
3 study fellowship?

4 A. Yes.

5 Q. And that was from '79 to '82?

6 A. Yes.

7 Q. Tell me about how that got started?

8 A. Community Chapel in Burien sent down Bible
9 graduates to have a little Bible teaching, and then
10 a few people that were in Tacoma invited their
11 friends, and that's basically how it started.

12 Q. Tell me how you first heard about this
13 fellowship.

14 A. Well, I was attending Community Chapel, and
15 they had people from Tacoma get together at the
16 Burien group to discuss whether there were enough
17 people in Tacoma to, you know, start another little
18 group.

19 Q. How did the people from Tacoma that were
20 attending the Burien chapel get together to discuss
21 that?

22 A. Well, they had -- just had maybe a sign-up
23 sheet or something to notify all the people in
24 Tacoma that they were having a meeting at such and
25 such a house or something like that. I don't recall

1 just all the little details of it. But there
2 were families from Tacoma that were driving up. And
3 we, from Tacoma, knew the ones from Tacoma.

4 Q. Do you recall who organized it?

5 A. Danny O'Brien.

6 Q. Danny O'Brien.

7 What was his role at the Burien
8 church, if any?

9 A. He was a Bible college teacher.

10 Q. Now, am I correct, then, that there was
11 some sort of initial meeting of the people from
12 Tacoma at somebody's house which Danny O'Brien
13 helped to originate?

14 A. Yes.

15 Q. Do you recall whose house that was at?

16 A. No, I don't.

17 Q. Did you attend that initial meeting?

18 A. Yes, I did.

19 Q. Do you remember anybody else who attended
20 that initial meeting?

21 A. My wife; George Jewell, his wife, Ramona;
22 and then there were several Seattle -- I'll call them
23 Seattle people -- that were interested in going to
24 Tacoma, also there. So --

25 Q. Why was that?

1 A. That they wanted to go down, like those
2 that wanted to sing songs. They were going out in
3 a ministerial capacity, just to support -- a
4 "support group," I guess would be a better word,
5 rather than ministerial.

6 Q. Do you know, were there others, but you
7 don't remember them, or was that pretty much it, the
8 four or five of you?

9 A. It seems like there was maybe 14 to 18
10 people, but I don't remember who they were.

11 Q. Your wife, George Jewell and his wife, and
12 Danny O'Brien are the ones you can remember today?

13 A. Yes. There was a fellow by the name of
14 David Floyd there, I believe.

15 Q. Do you recall what was discussed?

16 A. Just that the people in Tacoma would like
17 to get a Bible study going down in Tacoma, and have
18 it overseen by, you know, a Bible college teacher
19 or graduate, so it was on the mark.

20 Q. Were you a graduate?

21 A. Not at the time that this started.

22 Q. When did this start in relation to your
23 graduation?

24 A. Probably six months before my graduation.

25 Q. What happened next?

1 A. I don't understand.

2 Q. With respect to this fellowship.

3 You had this meeting?

4 A. Then they began to have a meeting down
5 there on Friday nights.

6 Q. Was it decided to have weekly meetings
7 when you were at that organizational meeting?

8 A. Yes.

9 Q. Was there a particular location where
10 these weekly meetings were held?

11 A. Yes.

12 Q. Where was that?

13 A. At the Masonic Lodge.

14 Q. What happened at the meetings?

15 A. People singing songs, people testified
16 about their experience walking with God, and the Bible
17 teacher would give a lesson, and then, afterwards,
18 some people would pray for people, and other people
19 would have coffee and cookies and visit with each
20 other, and then they'd go home.

21 Q. To your knowledge, did anybody receive any
22 money as a result of any participation in these
23 meetings?

24 A. No.

25 Q. There was no collection?

1 A. (Witness shakes head.)

2 Q. You have to answer audibly.

3 A. No, there was no collection.

4 Q. Was there a leader of these meetings?

5 A. Yes.

6 Q. Who was that?

7 A. Danny O'Brien was the -- overseeing it, and
8 he had -- various Bible college teachers or graduates
9 would oversee the meeting.

10 Q. At some point in time, did you become
11 somehow involved in more of a leadership role?

12 A. Yes.

13 Q. Tell me about that.

14 A. It began in '79, and later, a few years
15 later, I became the leader, or the --

16 Q. Let's focus on '79 to '82 for right now,
17 before the church corporation was formed.

18 Can you expand a little bit about what
19 your role was in the fellowship, if I can just call
20 it "the fellowship," before the corporation was
21 formed, after you graduated?

22 A. I was just a support, like
23 second-in-command.

24 Q. To Danny O'Brien?

25 A. Or whoever was in the position.

1 Q. Do you recall anybody else who was first
2 in command?

3 A. Greg Theil.

4 Q. What association did he have with the
5 Burien chapel?

6 A. Bible college teacher.

7 Q. Anyone else you can remember?

8 A. David Floyd was there for a short time.

9 Q. Do you recall what association he had with
10 the Burien chapel?

11 A. He was a Bible college graduate.

12 Q. Is that it?

13 A. Yes.

14 Q. Is this sort of like an apprentice period
15 for you, going through this and watching other
16 people lead, so that you can learn how to do it?

17 A. Not really, because I sat under Don
18 Barnett, and I watched him pastor the church from
19 1973. So, I mean, it was the same procedure.

20 Q. It was kind of a continuation of what
21 you'd been doing before?

22 A. Right, just a smaller group.

23 Q. By 1982, how many people were participating
24 in the fellowship?

25 A. Maybe 40 to 50.

1 Q. How was it the decision was made to form
2 the Tacoma church?

3 A. First was a vote by the people to choose a
4 pastor, and we had to make --

5 Q. I want to talk about that, but let's back
6 up.

7 Something happened before they decided
8 to pick a pastor, which is they decided to have a
9 church, probably?

10 A. Well, they incorporated after the pastor
11 was picked.

12 Q. Okay. But didn't a group of people somehow
13 decide: We've got this fellowship. We'd like to
14 have this arrangement more formalized. Let's have a
15 church.

16 What's the first step: Let's pick a
17 pastor?

18 A. Picking the pastor was the first step,
19 yes.

20 Q. I'm wondering about the the discussions
21 that occurred before picking the pastor, which is
22 making this decision about making a church rather
23 than a fellowship.

24 Do you have any knowledge about those
25 discussions?

1 A. No.

2 Q. Tell me about this selection process.

3 A. As I recall, the group got to the place
4 that there were a lot of Seattle Bible college
5 teachers, like Greg Theil, coming down on a weekly
6 basis, and there were myself and George Jewell, who
7 lived in Tacoma, who were working with the people in
8 a secondary, third position, and we still had to
9 work with Greg Theil, who was in Seattle, and had his
10 mind on other things, and so he was -- really just got
11 to the place that the people wanted to have somebody
12 right there that was in charge, living in the same
13 town. So, it's a growth, I guess.

14 Q. Local ownership thing?

15 A. Right.

16 Then the selection was made by the
17 senior board of elders through a process of voting
18 for four or five different people.

19 Q. Let's talk about that in a little more
20 detail.

21 Did you express an interest to
22 anybody in being pastor?

23 A. Yes, I did.

24 Q. Who did you express an interest to, if
25 you remember, or did you just generally make a note?

1 A. Yes.

2 Q. What is it?

3 A. It's the Articles of Incorporation of
4 Community Chapel and Bible Training Center of Tacoma,
5 Washington.

6 Q. You've obviously have been well taught to
7 answer only the question asked.

8 Can you identify the signatures on
9 the last page?

10 A. Yes. I can identify them.

11 Q. Will you please do that?

12 A. Jack McDonald, Hal Price, and
13 George R. Jewell.

14 Q. What connection did George Jewell have
15 to the Burien corporation, if any, if you know?

16 A. Bible college graduate.

17 Q. To your knowledge, was he employed by the
18 Burien corporation during 1984?

19 A. To my knowledge, he was not employed.

20 Q. By the Burien corporation?

21 A. By the Burien corporation.

22 Q. What about Hal Price?

23 A. I have no knowledge of Hal Price being
24 employed by the Burien corporation.

25 Q. Other than being incorporators of the

1 Tacoma corporation, what role did George Jewell and
2 Hal Price play in Tacoma?

3 A. They were elders of the Tacoma church.

4 Q. Which means they were on the board of
5 directors of the corporation?

6 A. Yes.

7 Q. And I take it you were the other director?

8 A. Yes; I was the other director.

9 Q. Do you recall who the officers were?

10 A. I was the president, and George was the
11 next in line, and Hal was the next in line, whatever
12 they were. I don't even remember what they were.

13 Q. The three of you were officers?

14 A. Yeah, right.

15 Q. Did someone from the Burien corporation
16 provide you with the form for these Articles of
17 Incorporation?

18 A. Yeah; they did the whole thing. They had
19 them printed up.

20 Q. Who handled that for you?

21 A. Jack Hicks.

22 Q. Have you ever been on the board of
23 directors of a corporation before?

24 A. No.

25 Q. Do you know whether George or Hal had?

1 A. No, they hadn't.

2 Q. Did you ever -- I don't want to ask you
3 what you talked about -- talk to a lawyer during
4 the time when the corporation was being formed?

5 A. No.

6 Q. Let me just clear up on these dates. It
7 was '84 that the church was formed and the
8 fellowship, and for '84 that the fellowship became
9 the church?

10 A. No; I think these were something that was
11 added on.

12 Q. So, I was originally right when I said
13 '82?

14 A. Yes.

15 (Exhibit No. 2 was marked
16 for identification.)

17 Q. (By Mr. Winchell) Can you identify Exhibit
18 2, please.

19 A. Articles of Faith and Bylaws, Community
20 Chapel Bible Training Center of Tacoma, a satellite
21 church of Community Chapel Bible Training Center of
22 King County, Washington.

23 Q. Will you identify the signatures on the
24 last page, please.

25 A. Jack McDonald, George R. Jewell, and

1 Hal Price.

2 Q. Did you read the Articles of Incorporation
3 during the time you were active in the church?

4 A. Probably when we first got them.

5 Q. Will you look at the third page, Item 9-B?

6 A. Third page.

7 Q. On the Articles of Incorporation, first
8 one.

9 Do you remember reading the part that
10 says, "All decision-making for this corporation shall
11 be here after vested in the board of directors,
12 except as specifically limited by the corporation
13 bylaws"?

14 A. What's the question?

15 Q. Do you remember reading that part of the
16 Articles of Incorporation?

17 A. I don't remember this very second reading
18 it, but I probably read it.

19 Q. Did you continue to meet at the Masonic
20 Lodge?

21 A. Yes, we did.

22 Q. What was your salary during the first year
23 as pastor?

24 A. None.

25 Q. You were not paid?

1 A. I had my own well drilling business.

2 Q. When did you begin to be paid?

3 A. I don't recall, but it was probably after
4 the church had been incorporated. Probably after
5 1982.

6 Q. 1982 is when you became a pastor?

7 A. Yes.

8 Q. Did the Burien corporation provide you
9 with any money when you started the Tacoma
10 corporation?

11 A. They provided no money.

12 Q. Did they provide any property to you?

13 A. They provided no property.

14 Q. Do you remember what your salary was
15 when you started drawing a salary?

16 A. Maybe \$500 a month.

17 Q. And that would have been during 1983, to
18 your best recollection?

19 A. Yes.

20 Q. Were you still drilling wells?

21 A. Yes.

22 Q. How was your salary determined?

23 A. The corporation board members.

24 Q. Tell me a little more.

25 A. Well, we just decided that I was worth

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1 \$500 a month, and after the income came up, I went
2 to \$1,000 a month.

3 Q. So, it was you and Hal and George that set
4 your salary?

5 A. Yes.

6 Q. Was anybody else involved in that process?

7 A. No.

8 Q. As a practical matter, was your salary
9 dependent upon the amount of the collection?

10 A. Yes, it was.

11 Q. Did the Tacoma church keep financial
12 records?

13 A. They had some, but in my transition of
14 moving, I lost all of my files and my diploma. I
15 don't know -- we had some stuff from the church that
16 we gave to Goodwill, and I think my box of stuff
17 might have got --

18 Q. I think we have your diploma, don't we?
19 Wasn't that in one of your earlier depositions?

20 A. No, that was a yearly licensing thing.

21 Q. Who kept the financial records?

22 A. I did, my wife.

23 Q. Can you describe them to me.

24 A. The piece of paper with the offerings that
25 each person gave on a monthly basis, and at the end

1 of the year they've got a notice of how much they
2 gave.

3 Q. So, you kept a record of the revenues?

4 A. Yes.

5 Q. Did you ever send that to the Burien
6 chapel?

7 A. No.

8 Q. Did they ever come and ask?

9 A. No.

10 Q. Were there records kept of the expenses
11 that were incurred?

12 A. I'm sure there were just, you know --
13 jotting down like if they bought tapes or books, but
14 we had very little expenses, because we weren't --
15 just the rent.

16 Q. Well, let's see now; you had rent.

17 No utilities?

18 A. No utilities.

19 Q. Your salary?

20 A. Yes.

21 Q. Were there any other salaries?

22 A. No.

23 Q. Did the church withhold taxes on your
24 salary?

25 A. No.

1 Q. You had to do that yourself?

2 A. Yes, because I was still in the well
3 drilling business until 1985.

4 Q. The Burien chapel never withheld taxes for
5 you, did they?

6 A. No.

7 Q. And they never provided you with health
8 insurance?

9 A. No.

10 Q. Did you have health insurance through the
11 Tacoma church at any time?

12 A. No.

13 Q. Did you ever have any sort of pension
14 benefits provided by the Burien corporation?

15 A. No.

16 Q. Did anyone from the Burien corporation
17 come down to see if you were preaching the right
18 stuff ever?

19 A. Not to my recollection.

20 Q. I asked you before whether any financial
21 assistance of any sort was ever given or given at the
22 outset.

23 In case my question wasn't clear, was
24 any financial assistance ever given by the Burien
25 corporation?

1 A. No.

2 (Exhibit No. 3 was marked
3 for identification.)

4 Q. (By Mr. Winchell) Can you identify
5 Exhibit 3, please.

6 A. Plaintiff's First Set of Interrogatories to
7 the Defendants of Community Chapel and Bible Training
8 Center of Tacoma.

9 Q. Will you turn to the last page, please.
10 There is a part that says, "Jack McDonald, being
11 first duly sworn upon oath, deposes and says:

12 "I am the pastor of Community Chapel
13 and Bible Training Center of Tacoma, one of the
14 defendants in the above-titled action; that I have
15 read the above and foregoing interrogatories and the
16 answers thereto; know the contents thereof and know
17 the same to be true."

18 Now, is that your signature below
19 that statement?

20 A. Looks like it.

21 Q. Do you recall signing these? This would
22 have been in front of a notary?

23 A. I don't recall signing it.

24 Q. Mr. Bugni would have been with you, because
25 it looks like he's the one to notarized it.

1 You don't remember that?

2 A. I don't remember that.

3 Q. Do you remember if you read these
4 interrogatories over before you signed them?

5 A. Okay, now I remember filling this out,
6 yes, and then I gave it to Mike Bugni, right.

7 Q. Don't tell me about your conversations with
8 Mr. Bugni unless somebody else was there, but I would
9 like to know, did he send these to you for you to
10 fill out some draft answers, and then he typed them
11 up?

12 A. Yes.

13 Q. Will you look at Interrogatory No. 6?

14 A. Yes, I see it.

15 Q. Interrogatory No. 6 says, "From 1980 to
16 1986, did you have in effect one or more policies of
17 insurance in which you were named insured or a
18 covered person and which in any manner or to any
19 extent provided or provides you liability coverage,
20 whether primary or excess, with respect to any of
21 the claims, causes of action, injuries or damages
22 claimed against you in this lawsuit?

23 "Answer: No."

24 Do you recall if the answer "no" is
25 what you wrote down on your draft answer?

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1 A. I wrote down "no."

2 Q. Did you believe that to be true at the
3 time that you prepared that answer?

4 A. I knew the Community Chapel of Tacoma had no
5 insurance of any kind.

6 Q. Did Jack Hicks ever tell you that the
7 Burien chapel would provide insurance to the Tacoma
8 corporation, before this lawsuit?

9 A. Not to my recollection.

10 Q. Did any other member of the board of
11 directors of the Burien corporation ever tell you
12 that the Burien corporation would provide insurance
13 to the Tacoma corporation?

14 A. Not to my recollection.

15 Q. Did Don Barnett ever make that kind of
16 representation to you?

17 A. Not to my recollection.

18 Q. I'm going to use the word "employed," and I
19 don't mean to use it in the legal sense, but in the
20 sense you would understand the term to be meant, did
21 anyone else who was employed in any capacity by the
22 Burien corporation ever tell you that the Burien
23 corporation was providing you with insurance?

24 A. Not to my recollection.

25 Q. Have you, since 1982, completed any credit

1 applications?

2 A. I don't recall, but I suppose I have, but,
3 I mean --

4 Q. Car loan, anything?

5 MR. MEIKLE: I'm going to object to
6 this line of questioning.

7 MR. WINCHELL: I'm looking for
8 anything that would indicate what he has been
9 reporting to other people as his place of employment.

10 MR. MEIKLE: Okay.

11 MR. WINCHELL: I don't care what his
12 salary was or anything like that.

13 MR. MEIKLE: Answer.

14 A. Restate the question.

15 Q. (By Mr. Winchell) Have you had any car
16 loans since 1982.

17 A. Yes.

18 Q. Where did you get those from?

19 A. Puget Sound Bank.

20 Q. Which branch?

21 A. I don't recall. The car dealer. He put
22 it in wherever he did it.

23 Q. Who was the dealer?

24 A. The Dodge dealer in Tacoma, but I don't
25 even remember his name.

1 Q. Do you know if it's still there?

2 A. I'm sure it is. It's the one on South
3 Tacoma Way.

4 Q. What year did you purchase that car?

5 A. Probably 1983.

6 Q. Is that the only car loan you've gotten?

7 A. Is that the only one that I've got?

8 Q. Since 1982 that you obtained.

9 A. I've got one in 1984, I think, or '85.

10 Q. Where did you get that from?

11 A. Through the Cadillac dealer up in
12 Bellevue.

13 Q. Do you remember the name of the Cadillac
14 dealer?

15 A. I don't remember the name, but it's the
16 big one up there.

17 Q. Are you still making payments on that
18 loan?

19 A. Yes.

20 Q. Who is the bank, do you know?

21 A. US Bank.

22 If I don't make a couple payments,
23 they're going to come and get it, I know that.

24 Q. Have you sought or obtained any other
25 credit since 1982; Visa applications?

1 A. No.

2 Q. Home improvement loans?

3 A. No.

4 Q. You didn't buy a house?

5 A. No.

6 Q. Have you filed tax returns every year
7 since 1982?

8 A. Up until last year.

9 Q. Didn't file one last year?

10 A. I got to make some money first.

11 Are you going to turn me into the IRS?

12 Q. No.

13 A. I've got you on record. Put that down.

14 (Off the record.)

15 Q. (By Mr. Winchell) Do you recall any
16 instance, including these two credit applications, in
17 which you reported to anybody your place of
18 employment during the period '82 to '87?

19 A. You're making me go real deep.

20 I don't really, you know -- I didn't
21 do a lot of buying, you know. I had my well drilling
22 business, and I just bought supplies and drilled
23 wells, you know.

24 Q. Do you happen to recall what you reported
25 as your place of employment for the 1984 loan?

1 A. Probably a well driller and a pastor, I --
2 whatever I did.

3 Q. Do you recall any instance in which you
4 ever indicated that you were employed by the
5 Community Chapel and Bible Training Center of
6 Burien?

7 A. I never said that I was ever employed by
8 Community Chapel of Burien.

9 Q. Let's jump ahead to November, then, of
10 1987, if I have the right month. That's when you
11 stopped being the pastor of the Tacoma church?

12 A. Yes.

13 Q. We have met and talked before, right?

14 A. Yes.

15 Q. Now, what I recall from talking with you
16 earlier is, you were to a point where you felt the
17 practice of spiritual connections had kind of gone
18 beyond something you felt you could deal with as a
19 pastor of the Tacoma church?

20 A. That's correct.

21 Q. And that was the reason that you decided
22 to resign; is that correct?

23 A. That's correct.

24 Q. And you did resign for that reason?

25 A. Yes.

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1 Q. Any other reason that you recall?

2 A. I believe I stated in my deposition that I
3 was not willing to follow Don Barnett up the hill
4 any further, because I felt there was no direction as
5 far as the spiritual connections. Things were not
6 getting better, they were getting worse.

7 Q. Did anyone pressure you to resign?

8 A. No. I made the decision to resign because
9 of the oncoming lawsuit, because of the fact the
10 church had got to a place that it was not
11 financially in a place to where it could support a
12 pastor, and I just made -- it was time to terminate
13 it.

14 Q. When did you meet Carol Gabrielson?

15 A. I can't answer that question without my
16 notes. I mean --

17 Q. It's not that critical.

18 Can you give me a rough time frame?

19 If you can't, you can't.

20 A. I can't. It's somewhere between '83 or '84
21 and '86, '85.

22 Q. Were you a counselor for Carol Gabrielson?

23 A. I was a pastor.

24 Q. What's the difference between a pastor and
25 a counselor?

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1 A. My explanation is that a pastor is
2 somebody that just talks to them on a common level,
3 and a counselor is somebody that gets in and does
4 all the nuts and bolts of trying to untangle
5 peoples' lives.

6 Q. Would you make a distinction between
7 theology and psychology?

8 A. Would I make a distinction between those?
9 Why don't you ask me that again.

10 Q. Well, you distinguished between being a
11 pastor and being a counselor, and I'm wondering if
12 one has more to do with theology and the other has
13 more to do with psychology.

14 If you can pick some better words, go
15 ahead and pick some better words.

16 A. I think a counselor might use more
17 psychology, but my reference as a pastor is more
18 just common sense, you know. Come in out of the rain
19 so you don't get wet, you know.

20 If you can't get along with someone,
21 you're going to have to sit down and find out what
22 the problem is, and work your problems out. They're
23 your problems. You got to be honest and open. You
24 know, just common sense. That was the extent of my
25 pastoring.

1 Q. Did you ever have any discussions with
2 anybody as a pastor or counselor or whatever about
3 adultery?

4 A. I'm sure that we had studies about it in
5 the Bible and different things, but I don't recall
6 any --

7 Q. That would be more preaching about it?

8 A. Yes. It says, "Thou shall not commit
9 adultery."

10 Q. Do you believe adultery is wrong?

11 A. Yes, I do.

12 Q. Did you believe it was wrong during the
13 time you were a pastor at the Tacoma church?

14 A. I certainly did.

15 Q. Why was that?

16 A. Because it was wrong, and the way that I
17 felt, and the hell that I went through, and that's
18 why I -- it was a terrible time of my life.

19 Q. Why was it a terrible time of your life?

20 A. Because I was going against my own moral
21 character, what I believed. My conscience was
22 spiting me, and it was -- it was just a real
23 difficult time for me.

24 Q. Do you know if it was against what
25 Carol Gabrielson believed?

1 A. I can't make a decision for her.

2 Q. Let me rephrase it.

3 Did she ever tell you whether or not
4 she believed adultery was right or wrong?

5 A. As I recall, we both felt guilty about it,
6 we both repented for it, and we both terminated
7 because it was wrong.

8 (Off the record.)

9 Q. (By Mr. Winchell) Will you look at, in the
10 Tacoma corporation bylaws, Section 3, Article 4,
11 letter B, which states, in part, "No counselor shall
12 attempt to control or manipulate the life of other
13 individual."

14 Did you ever read these bylaws?

15 A. Yes, I did.

16 Q. Do you remember whether you read that part
17 of the bylaws?

18 A. I'm sure I did read it.

19 Q. Did you ever try to control or manipulate
20 the life of another individual when you were
21 counseling them?

22 A. I never did.

23 Q. And I take it you wouldn't think it was
24 your job as a pastor to control or manipulate
25 somebody?

1 A. I never did, and I never would. I always
2 allowed people to make their own decisions.

3 Q. Did the anyone from the Burien church ever
4 tell you that they would pay for your defense in the
5 lawsuit brought by Carol Gabrielson?

6 A. Yes, they did.

7 Q. Who said that to you?

8 A. I recall being served with the papers, and
9 I believe it was Don Barnett who said that Mike Bugni
10 would take care of the lawsuit, that, you know, that
11 he'd been advised that it wasn't that particular
12 big a thing at that time, and --

13 Q. Who said that?

14 A. Don Barnett.

15 Q. Said that Bugni would take care of it?

16 A. He said that Bugni would take care of it.
17 And later on, as I was giving details of information
18 to Wayne Snowy, he said that all the billing and
19 everything would be taken care of by Burien. I was
20 led to believe, up until the time of my deposition,
21 that, you know, that they were taking care of it, and
22 I went to Jack Hicks, and he said, "Guess what, we're
23 not. You need an attorney. Go find a good attorney,"
24 he said.

25 Q. Did you, prior to that time, refrain from

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1 seeking your own attorney because you were told that
2 one was going to be provided to you?

3 A. Yes. In fact, I signed papers with
4 Michael Bugni saying that he represented me. Then,
5 right before the deposition, he dismissed himself
6 from all four phases, Community Chapel of Burien,
7 Tacoma, Donald Barnett, and Jack McDonald, and he
8 disappeared.

9 Q. Who defends you now?

10 A. Eileen Lawrence.

11 Q. Do you have any complaints about the
12 defense that's being provided to you?

13 A. No, I don't.

14 Q. Do you have any complaints about anything
15 that I've done?

16 A. No, I don't.

17 Q. Do you have any complaints that anything
18 any representative of American Casualty Company has
19 done?

20 A. Only one, if we don't settle this.

21 Q. You would like to see this settled?

22 A. Yes.

23 Q. Let's take a break.

24 (A short break was taken.)

25 * *

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EXAMINATION

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BY MR. DODGE:

Q. Did you feel, as pastor of the Tacoma satellite, that you were required to follow Donald Barnett's dictates?

A. Yes.

Q. Was there any area in which you, as pastor of the Tacoma satellite, did not feel obligated to follow Don Barnett's lead?

MR. WINCHELL: Object to the form of the question.

Q. (By Mr. Dodge) You can answer if you understand the question.

A. I don't understand the question. I would say that if he was going to jump off a building, I wouldn't follow him that way.

Q. Certainly.

As far as corporate affairs in your church.

MR. WINCHELL: Same objection.

A. Well, as a president of my corporation, there would be differences. I would make my own decisions, but as long as I agreed to the direction that he was going. I'm not totally going to follow him over a bluff, you know.

1 Q. (By Mr. Dodge) Are you aware that he had
2 power to remove you at any time?

3 A. Yes.

4 MR. WINCHELL: Objection. That
5 misstates what the law is in this state.

6 A. Yes.

7 Q. (By Mr. Dodge) Were you under that
8 impression?

9 A. Yes.

10 Q. Were you under the impression that he
11 could remove any of the officers of your corporation
12 at any time?

13 A. Well, I assumed if he could remove me, he
14 could remove the officers.

15 Q. And were you under the impression, or did
16 you understand from your bylaws, that if he chose to
17 remove you and the officers, he could appoint
18 whomever he pleased?

19 A. That's correct.

20 Q. Did you feel that you had to follow
21 Donald Barnett's lead in corporate affairs in order
22 to remain as pastor of your church?

23 MR. WINCHELL: I'm going to object.
24 The reference to corporate affairs really is vague.

25 A. I want you to explain "corporate affairs."

1 Q. (By Mr. Dodge) As far as the teachings that
2 you must follow and preach in your church, did you
3 feel that you had to follow Donald Barnett's lead to
4 remain pastor?

5 A. Yes.

6 MR. WINCHELL: Same objection.

7 Q. (By Mr. Dodge) Donald Barnett, I guess, did
8 send Dan O'Brien down to investigate
9 Carol Gabrielson's allegations against you, did he
10 not?

11 A. No, he came up; he didn't send O'Brien
12 down.

13 Q. (By Mr. Dodge) You never had testified that
14 Donald Barnett sent Dan O'Brien as his representative
15 down to speak to you about Carol Gabrielson's
16 allegations?

17 MR. MEIKLE: I'm going to object;
18 it calls for speculation as to what Donald Barnett
19 did.

20 If you know what Donald Barnett did,
21 that's fine.

22 A. I don't know what Donald Barnett did. All
23 I know is that I was called by Dan O'Brien to come
24 to Burien, and he discussed the allegations that
25 Carol had made against me. That's all I know.

1 Q. (By Mr. Dodge) Is this before or after you
2 were served with papers in the Gabrielson lawsuit?

3 A. Before.

4 Q. You understand that the ultimate decision
5 as to your appointment as pastor of the Tacoma
6 satellite was up to Donald Barnett to decide?

7 A. I understood that it was the senior board
8 of elders.

9 Q. Of the Burien church?

10 A. Of the Burien church.

11 Q. You understand that in maintaining your
12 financial records that your bylaws required you to
13 maintain those records in accordance with whatever
14 bylaws the main corporate church had regarding
15 financial books?

16 MR. WINCHELL: Objection. That's
17 totally incomprehensible, whatever you just said.

18 A. Say it again.

19 Q. (By Mr. Dodge) Do you understand that, in
20 keeping financial records for the Tacoma satellite,
21 you were required by your bylaws to maintain those
22 records up to the standards of whatever rules the
23 main corporation in Burien set forth for keeping
24 those kind of records?

25 MR. WINCHELL: Same objection.

1 A. I don't know what you're saying, but we
2 kept some records.

3 Q. (By Mr. Dodge) In the Articles of Faith
4 and Bylaws -- by the way, these Articles of Faith and
5 Bylaws, they were prepared in full and given to you
6 as your Articles of Faith and Bylaws by the main
7 Burien corporation; is that correct?

8 A. That's correct.

9 Q. You had no choice in the matter?

10 A. We just took them and ran with them.

11 Q. Are any of the rules contained within
12 this document and bylaws proposed and generated by
13 the Tacoma satellite church?

14 A. No; they were just standard for starting
15 satellite churches.

16 Q. I guess the easiest way to find it would
17 be Page 2010007, Article 5, Finances. Would you
18 read the first sentence of that, of A, under
19 Finances.

20 A. Yes.

21 Q. Read it out loud, please.

22 A. "The financial organization of this
23 satellite church shall be established and ministered
24 to in such a way that it meets all corporation
25 church, satellite church, and governmental laws and

1 regulations, and ensures reasonable safety against
2 embezzlement and fraud.

3 "Copies of the corporation papers,
4 such as the Articles of Incorporation and these
5 Bylaws, and amendments thereto, shall be forwarded to
6 the corporation church within 30 days of adoption."

7 Q. The "corporation church" referred to there,
8 do you understand that to be the main church of
9 Burien?

10 A. Yes.

11 MR. DODGE: I'm going to look up a
12 document. Why don't I pass to you while I look this
13 up.

14 * *

15 EXAMINATION

16 BY MR. DONALDSON:

17 Q. Jack, I'm going to start off with some
18 questions about your employment as a pastor.

19 First off, were you ever employed by
20 the church college in Burien?

21 A. No.

22 Q. Were you ever employed by the Burien
23 church?

24 A. No.

25 Q. Were you ever employed as a counselor?

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1 A. No.

2 Q. The next questions I have, I'm not going
3 to go into great detail, but they do concern your
4 relationship with Carol Gabrielson. I thought I'd let
5 you know in advance.

6 Did you have a sexual relationship
7 with Carol Gabrielson?

8 MR. MEIKLE: I'm going to object to
9 the form of that question. "Relationship" is pretty
10 broad.

11 Q. (By Mr. Dodge) Did you commit adultery with
12 Carol Gabrielson?

13 A. I stated it on my deposition. I don't
14 know whether you read it before. I stated that I
15 did.

16 Q. What I'm trying to do, Jack, the reason
17 I'm asking you these now, some of the questions I ask
18 you are questions I already know the answers to.
19 The reason I'm asking you is to create a record in
20 this proceeding. So some of the things I may ask
21 you may sound inane to you, but I'm just trying to
22 create a record.

23 During what period of time did you
24 and Carol commit adultery?

25 A. November '85 to December -- October

Rough & Associate
Incorporated
COURT REPORTERS

405 SEATTLE TOWER
SEATTLE, WASHINGTON 98101
(206) 682-1427

15153 47217083 00111

1 November, right in there. There was about a 60-day
2 period. I could have brought my records.

3 Q. I'm just trying to get just a general
4 feel.

5 You'd already stated earlier that you
6 never tried to manipulate anyone?

7 A. That's correct.

8 Q. During this period of time, did you ever
9 threaten force upon Carol Gabrielson to commit
10 adultery with you?

11 A. I never did.

12 Q. To your perception, did she consent to
13 these things, to this relationship between she and
14 you?

15 A. She certainly did.

16 Q. During the time that this relationship was
17 going on, did you ever tell Don Barnett about this
18 relationship?

19 A. I never did.

20 Q. Did you ever tell Barbara Barnett about
21 this relationship?

22 A. I never did.

23 Q. Did you ever discuss this relationship
24 while it was going on with anyone in the eldership
25 of the Burien church?

1 A. I did not discuss this relationship with
2 anybody, period.

3 Q. To your knowledge, did Carol Gabrielson
4 discuss this relationship with Don Barnett while it
5 was going on, just to your knowledge?

6 A. To my knowledge, I would say that she
7 didn't.

8 Q. During the time in which your relationship
9 was ongoing, did Carol ever mention to you that she
10 had told anyone about the relationship?

11 A. Not to my recollection.

12 Q. When was the first time that you did
13 discuss this relationship with Carol Gabrielson with
14 Don Barnett?

15 A. I never did.

16 Q. Did Don Barnett ever say anything to you
17 which you construed as approval for the relationship
18 that you had with Carol Gabrielson?

19 A. He never did.

20 Q. What was your understanding of the church's
21 position upon adultery?

22 A. It was wrong.

23 Q. Prior to your relationship with
24 Carol Gabrielson, did Don Barnett ever indicate
25 approval of a relationship of adultery?

1 A. Not to my knowledge.

2 Q. Generally, is there anything that you can
3 think of that Don Barnett said in his teachings,
4 prior to your relationship with Carol Gabrielson,
5 that led you to believe that the church or
6 Don Barnett would approve of such relationship?

7 A. I don't know of anything in his teachings
8 where he approved of adultery.

9 Q. With the understanding, Jack, that we may
10 call you back if this goes on, I don't have any
11 other questions for you right now.

12 * *

13 FURTHER EXAMINATION

14 BY MR. DODGE:

15 Q. I'm going to hand you a document and ask
16 if you've ever seen it before. I think it was
17 Exhibit 14 to the deposition of Donald Barnett.

18 A. Have I seen this before?

19 Q. Yes.

20 A. No, I have not.

21 Q. Does that appear to you to be a report by
22 Ralph Alskog on certain occurrences that occurred
23 in the church?

24 MR. WINCHELL: Objection; the document
25 speaks for itself. If he's never seen it before, he

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COURT REPORTERS

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SEATTLE, WASHINGTON 98101
(206) 682-1427

15153 4/21/2003 88114

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J.V. OCT 27 1988

FILED
IN COUNTY CLERK'S OFFICE

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

OCT 27 1988 P.M.
PIERCE COUNTY WASHINGTON
TED RUTT COUNTY CLERK
BY DD DEPUTY

American Casualty Co
Plaintiff/Petitioner,

vs.

Gabrielson, et al
Defendant/Respondent.

NO. 88-2-00947-9

ORDER PERMITTING
REMOVAL OF FILE FROM
COUNTY-CITY BUILDING

Permission is hereby granted to Attorney Don Gulliford
of the firm of DON GULLIFORD, Attorneys at Law, 462-4000
(address) 2200 112th NE Bellevue, Washington, 98004, to
remove the above captioned file from the County City Building to
their offices to be returned to the Pierce County Clerk's Office
no later than 10 NOVEMBER, 1988.

Dated this 27th day of OCTOBER, 1988.

[Signature]
COURT COMMISSIONER

Presented by:

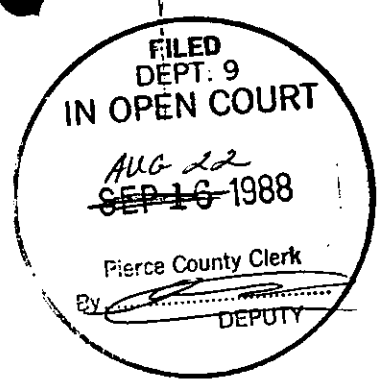
Don M Gulliford
for WSBA #
Attorneys at Law

ORDER PERMITTING REMOVAL
OF CLERK'S FILE

15153 4/21/2003 88115

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S SEP 16 1988

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

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

Plaintiff,)

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, JACK)
McDONALD and "JANE DOE")
McDONALD, husband and wife,)

Defendants.)

No. 88-2-00947-9

MOTION AND AFFIDAVIT TO
SHORTEN TIME

American Casualty moves for an order shortening time so
that it may move for a continuance of Defendants Gabrielson's
Motion for Summary Judgment. American Casualty requests that
the motion for a continuance be heard on Tuesday, August 23,

///

///

15153 4/21/2003 08110

1 1988. This motion is based in part upon the facts set forth
2 below in the Affidavit of Bruce Winchell.

3 DATED this 19th day of August, 1988.

4 LANE POWELL MOSS & MILLER

5 

6 By Bruce Winchell
7 Attorneys for Plaintiff

8
9 STATE OF WASHINGTON)
10 COUNTY OF KING)ss

11 BRUCE WINCHELL, being first duly sworn, on oath, deposes
12 and says:

13 1. My name is Bruce Winchell. I represent plaintiff
14 American Casualty in this declaratory action.

15 2. On August 19, 1988, I received a motion for summary
16 judgment on behalf of defendants Gabrielson. The Gabrielsons
17 are claimants in litigation against Pastor Don Barnett and
18 Community Chapel pertaining to alleged sexual improprieties by
19 a pastor for the Tacoma satellite of that church.

20 3. The motion papers, which were actually received on
21 August 18 by our main office, were not served 16 days in
22 advance of the hearing date.

23 4. In a prior motion for partial summary judgment, Judge
24 Arnold indicated that he was very concerned about the timing of
25 the motion in light of an imminent trial date. Trial in this
26 matter is now set for September 12, 1988.

J1198 5887/12/4 55151

1 5. The parties have stipulated to a stay of discovery
2 until the conclusion of the trial in the underlying action.
3 For that reason, plaintiff's discovery has been wholly
4 inadequate to even begin to respond to a motion for partial
5 summary judgment.

6 6. My present schedule makes it utterly impossible to
7 properly respond to the issues raised by this motion which,
8 with attachments, appears to exceed 100 pages. On August 22, I
9 have an all-day deposition. On August 23, I must prepare a
10 mediation brief in the morning and attend another deposition in
11 the afternoon. On August 24, I must complete and file a
12 mediation brief in a wrongful termination case in which claimed
13 damages exceed \$2 million. On August 25, I have a deposition
14 in the morning and a document production in the afternoon. On
15 August 26, I have a long-scheduled and critically important
16 witness interview in Bellingham. On August 29, I have the
17 mediation in the above-referenced wrongful termination case.
18 On August 30 and 31, I have depositions in a related
19 declaratory action presently pending in King County. On
20 September 1, I have an arbitration in Everett which will take
21 at least one day and may go into the following day. This
22 motion is noted for September 2.

23 7. This affidavit summarizes only in the briefest terms

24 / / /


25 / / /

26

1 some of the reasons for which American Casualty seeks a
2 continuance of this motion.

3 
4 _____
5 BRUCE WINCHELL

6 SUBSCRIBED AND SWORN to before me this 19th day of August,
7 1988.

8 
9 _____
10 Notary Public in and for the State of
11 Washington, residing at: Lynnwood
12 My commission expires: 9/1/90

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FILED
DEPT. 5
IN OPEN COURT

AUG 2 1988

Pierce County Clerk
By *MA* DEPUTY

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

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

Plaintiff,)

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, JACK)
McDONALD and "JANE DOE")
McDONALD, husband and wife,)

Defendants.)

No. 88-2-00947-9

ORDER GRANTING MOTION
TO SHORTEN TIME

The court having heard the motion of American Casualty for
an order shortening time hereby orders that American Casualty's
motion for continuance shall be heard on 23rd of August ~~1988~~
1988, at 9:00 O'Clock A.M. before the Honorable Judge
E Albert Morrison, in the Pierce County - County City
Building. The Motion shortening time to allow said motion
to be heard there has been granted after a conference telephone

ORDER GRANTING MOTION TO
SHORTEN TIME - 1
OIS:0510p

LANE POWELL MOSS & MILLER
3800 RAINIER BANK TOWER
SEATTLE, WASHINGTON 98101-2647
223-7000

07188 6987/17/5 68151

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on Monday, August 22, 1988 at 9:30 AM with Mr Winchell
and Mr. Hanula. Attorney Hallenbeck was notified that the
Order Shortening time was signed & the time & date of the hearing on the
Motion for Continuance

DATED this 22nd day of August, 1988.

James P. Healy
JUDGE, COURT COMMISSIONER

Presented by:
LANE POWELL MOSS & MILLER

By _____
Bruce Winchell
Attorneys for Plaintiff

FILED
DEPT. 5
IN OPEN COURT
AUG 22 1988
Pierce County Clerk
By *M* DEPUTY

88-2-00947-9

12188 8887/17/8 F5151



SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

AMERICAN CASUALTY COMPANY OF READING
PENNSYLVANIA, a Pennsylvania corpora-
tion,
Plaintiff,

v.

IRA GABRIELSON and CAROL GABRIELSON,
husband and wife; DONALD LEE BARNETT
and BARBARA BARNETT, husband and wife;
COMMUNITY CHAPEL and BIBLE TRAINING
CENTER, et al.,
Defendants.

FILED
IN COUNTY CLERK'S OFFICE
NOV 3 1988
NOV 3 1988 P.M.
PIERCE COUNTY WASHINGTON
TED RUTT COUNTY CLERK
DEPUTY

NO. 88-2-00947-9

NOTICE OF PRESENTATION

TO: All Parties of Record;

AND TO: Their Respective Attorneys

YOU AND EACH OF YOU PLEASE TAKE NOTICE that the undersigned will present for entry in
the above-entitled matter as follows:

DOCUMENT(S): Order

BEFORE HONORABLE: Kelley Arnold

LOCATION: ROOM: OF THE Pierce COUNTY COURTHOUSE

AT THE FOLLOWING DATE AND TIME: Friday November 18, 1988 9:30 a.m.
(Weekday) (Date) (Time)

DATED this 31st day of October, 19 88.

Bruce Winchell

Bruce Winchell

OF: LANE POWELL MOSS & MILLER

Attorney(s) For Plaintiff

LANE POWELL MOSS & MILLER
3800 RAINIER BANK TOWER
SEATTLE, WASHINGTON 98101-2647
223-7000

NOTICE OF PRESENTATION (NTPRES)

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

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

NO. 88-2-00947-9

ORDER

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,)
JACK McDONALD and "JANE DOE")
McDONALD, husband and wife,)
Defendants.)

The court has heard the following motions:

1. Gabrielson's Motion for Partial Summary Judgment;
2. American Casualty's Motion for Reconsideration of the Court's Order Denying a Continuance of Gabrielson's Motion for Partial Summary Judgment;
3. American's Motion to Exclude the Affidavit of William Hickman;
4. American's Motion to Exclude Exhibit I to the Affidavit of Daniel Hannula.

15153 4/21/2003 88123

1 The court has considered Gabrielson's Memorandum
2 in Support of Summary Judgment, the Affidavit of Daniel
3 L. Hannula and attachments thereto, American's Motion
4 and Affidavit to Shorten Time; Supplemental Affidavit
5 of Bruce Winchell; American's Motion for Reconsideration
6 of the Order Denying Continuance; American's Motion to
7 Exclude the Affidavit of William Hickman; Motion to Exclude
8 Exhibit I to the Affidavit of Daniel Hannula filed in
9 connection with Gabrielson's Motion for Partial Summary
10 Judgment; Declaration of Bruce Winchell (Exhibit I); American's
11 Memorandum Opposing Gabrielson's Motion for Partial Summary
12 Judgment; Affidavit of Bruce Winchell Opposing Gabrielson's
13 Motion for Partial Summary Judgment on the Issue of Employee
14 Status and attachments thereto; Barnett's Memorandum in
15 Support of Motion for Summary Judgment, Community Chapel's
16 Memorandum in Support of Motion for Summary Judgment;
17 and Declaration of Bruce Winchell and attached Deposition
18 of Jack McDonald. The court has heard argument from counsel
19 for the parties.

20 The Court orders:

- 21 1. American's motion for reconsideration of the
22 order denying American's motion for a continuance is denied.
- 23 2. American's motion to exclude from the court's
24 consideration the Affidavit of William Hickman is denied.
- 25 3. American's motion to exclude from the court's
26 consideration Exhibit I to the Affidavit of Daniel L.

15153 4/21/2003 88124

1 Hannula is granted in part. The court will not consider
2 portions of Exhibit I which discuss communications from
3 attorney Jim Leach to Community Chapel & Bible Training
4 Center.

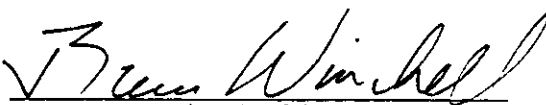
5 4. Gabrielson's motion for partial summary judgment
6 is granted on the issue of negligent counseling. Negligent
7 counseling by an employee acting within the scope of his
8 duties is covered under American's policy.

9 5. Gabrielson's motion for partial summary judgment
10 insofar as it requests a declaration that Jack McDonald
11 be determined to be an employee of Community Chapel and
12 Bible Training Center is denied.

13 DATED this _____ day of September 1988.

14
15 _____
16 Judge of the Superior Court

17 Presented by:
18 LANE POWELL MOSS & MILLER

19
20 By 
21 Bruce Winchell
22 Attorney for Plaintiff

23 Approved as to Form:

24 _____
25 Daniel Hannula
26 Attorney for Gabrielson

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Tim Donaldson
Attorney for Barnetts

John Glassman
Attorney for Community Chapel and
Bible Training Center

15153 4/21/2003 88120

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FILED
DEPT. 9
IN OPEN COURT

NOV 18 1988

Pierce County Clerk
By: _____
DEPUTY

NOV 18 1988

VOL 374 PAGE 1431

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

FILED
IN COUNTY CLERK'S OFFICE

NOV 18 1988

PIERCE COUNTY, WASHINGTON
COUNTY CLERK

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

ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
SUMMARY JUDGMENT BY
DEFENDANTS GABRIELSON

THIS MATTER having come on for hearing on September 9,
1988, on the motion of the defendants Gabrielson for summary
judgment and the Court having considered all material in the
file of record as of the date September 9, 1988, and in
particular having considered the memorandum in support of
motion for summary judgment submitted by the defendants
Gabrielson, the affidavit of William Hickman submitted in

///

ORDER GRANTING IN PART AND DENYING IN
PART MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS GABRIELSON - 1

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

1
15153 4/21/2003 88127

1 support thereof, and the affidavit of Daniel L. Hannula as
 2 effected by the order of this court affecting Exhibit I
 3 thereto and further having particularly considered the brief
 4 in support of the Gabrielsons' motion for summary judgment
 5 submitted by defendants Barnett and the affidavits of
 6 Barbara Barnett and Donald L. Barnett submitted in support
 7 thereof; and the Court having further particularly
 8 considered the plaintiff's memorandum opposing the motion
 9 for summary judgment by defendants Gabrielson and the
 10 affidavit of Bruce Winchell submitted in opposition to the
 11 motion for summary judgment; and the Court further having
 12 heard oral argument presented by counsel for all parties:
 13 Daniel L. Hannula on behalf of the movants, Carol and Ira
 14 Gabrielson, Tim Donaldson on behalf of the defendants
 15 Barnett, John Glassman on behalf of the defendant Community
 16 Chapel and Bible Training Center and Bruce Winchell on
 17 behalf of the plaintiff; and the Court being in all things
 18 fully advised, it is hereby

19 ORDERED, ADJUDGED AND DECREED that negligent counseling
 20 in connection with church related activity is a covered act
 21 within the policy of insurance at issue in this declaratory
 22 action, and it is further

23 ORDERED, ADJUDGED AND DECREED that the issue of whether
 24 Jack McDonald was a covered individual under the terms of
 25 the policy at issue in the above-entitled case involves

26 ///

ORDER GRANTING IN PART AND DENYING IN
 PART MOTION FOR SUMMARY JUDGMENT BY
 DEFENDANTS GARBRIELSON - 2


LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
 TACOMA, WASHINGTON 98402

TACOMA 383-5388
 SEATTLE 838-4790


1 issues of material fact and cannot be determined on summary
2 judgment.

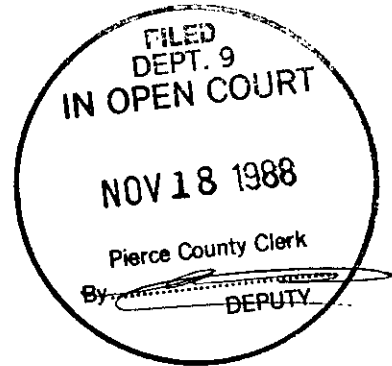
3 DONE IN OPEN COURT this 18 day of November, 1988.

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5 
6 HONORABLE JUDGE J. KELLEY ARNOLD

7 Presented by:

8 RUSH, HANNULA & HARKINS

9 By: 
10 DANIEL L. HANNULA
11 Of Attorneys for Defendants
Gabrielson



12 APPROVED AS TO FORM, NOTICE
13 OF PRESENTATION WAIVED:

14 LANE, POWELL, MOSS & MILLER

15 By: _____
16 BRUCE WINCHELL
Of Attorneys for Plaintiff

17 EVANS, CRAVEN & LACKIE

18 By: _____
19 RODNEY D. HOLLENBECK
20 Of Attorneys for Defendants
Barnett

21 By: _____
22 JOHN GLASSMAN
23 Of Attorneys for Defendant
24 Community Chapel

25
26 ///

ORDER GRANTING IN PART AND DENYING IN
PART MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS GARBRIELSON - 3

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

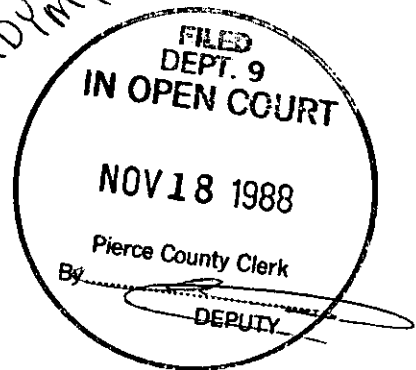
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J.V. NOV 18 1988

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ORDYMT



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.)

VOL 374 PAGE 214

NO. 88-2-00947-9

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

THIS MATTER having come before the Court on
September 9, 1988, upon the motion of the plaintiff to
reconsider the Court's prior order denying plaintiff's
motion for a continuance of defendants Gabrielson's motion
for summary judgment and the Court having considered the
plaintiff's motion and affidavit to shorten time filed in
support of its motion for continuance, the supplemental

///

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION - 1

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790


15153 4/21/2003 88138

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affidavit of Bruce Winchell, the affidavit of Bruce Winchell opposing Gabrielsons' motion for partial summary judgment (employee status) and the plaintiff's memorandum opposing the Gabrielsons' motion for partial summary judgment (employee status); and the Court having considered the oral arguments presented by any of the counsel present for the motion: Bruce Winchell on behalf of the plaintiff, Daniel L. Hannula on behalf of the defendants Gabrielson, Tim Donaldson on behalf of defendants Barnett, and John Glassman on behalf of the defendant Community Chapel and Bible Training Center; and the Court being in all things fully advised, it is hereby

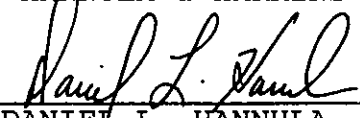
ORDERED, ADJUDGED AND DECREED that plaintiff's motion for reconsideration is denied.

DONE IN OPEN COURT this 18 day of November, 1988.


HONORABLE JUDGE J. KELLEY ARNOLD

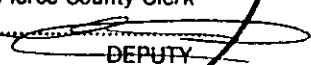
Presented by:

RUSH, HANNULA & HARKINS

By: 
DANIEL L. HANNULA
Of Attorneys for Defendants
Gabrielson

FILED
DEPT. 9
IN OPEN COURT

NOV 18 1988

Pierce County Clerk
By: 
DEPUTY

///

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION - 2

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

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APPROVED AS TO FORM, NOTICE
OF PRESENTATION WAIVED:

LANE, POWELL, MOSS & MILLER

By: _____
BRUCE WINCHELL
Of Attorneys for Plaintiff

EVANS, CRAVEN & LACKIE

By: _____
RODNEY D. HOLLENBECK
Of Attorneys for Defendants
Barnett

By: _____
JOHN GLASSMAN
Of Attorneys for Defendant
Community Chapel

///

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION - 3

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2863 88132

1 partial summary judgment (employee status); and the Court
2 having heard oral argument on the motion by attorneys Bruce
3 Winchell on behalf of the plaintiffs, Daniel L. Hannula on
4 behalf of defendants Carol and Ira Gabrielson, John Glassman
5 on behalf of defendant Community Chapel and Bible Training
6 Center, and Tim Donaldson on behalf of the defendants
7 Barnett; and the Court being in all things fully advised, it
8 is hereby

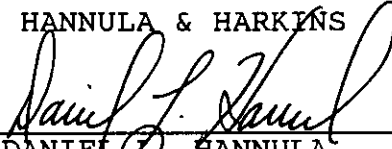
9 ORDERED, ADJUDGED AND DECREED that the plaintiff's
10 motion to exclude the affidavit of William Hickman is
11 denied.

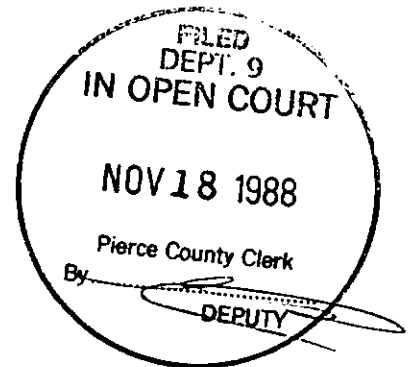
12 DONE IN OPEN COURT this 18 day of November, 1988.

13
14 
15 HONORABLE JUDGE J. KELLEY ARNOLD

16 Presented by:

17 RUSH, HANNULA & HARKINS

18 By: 
19 DANIEL L. HANNULA
20 Of Attorneys for Defendants
Gabrielson



21 APPROVED AS TO FORM, NOTICE
22 OF PRESENTATION WAIVED:

23 LANE, POWELL, MOSS & MILLER

24 By: _____
25 BRUCE WINCHELL
26 Of Attorneys for Plaintiff

///
///

ORDER DENYING PLAINTIFF'S MOTION
TO EXCLUDE AFF. OF WILLIAM HICKMAN - 2

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

15153 4/21/2883 88134

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APPROVED AS TO FORM, NOTICE
OF PRESENTATION WAIVED:

EVANS, CRAVEN & LACKIE

By: _____
RODNEY D. HOLLENBECK
Of Attorneys for Defendants
Barnett

By: _____
JOHN GLASSMAN
Of Attorneys for Defendant
Community Chapel

///

ORDER DENYING PLAINTIFF'S MOTION
TO EXCLUDE AFF. OF WILLIAM HICKMAN - 3

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

15153 4/21/2883 88135

11-18-88
M

P. 357

9

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

AMERICAN CASUALTY COMPANY OF READING

PENNSYLVANIA, a Pennsylvania corp.,
Plaintiff.

vs.

IRA GABRIELSON and CAROL GABRIELSON,

DONALD LEE BARNETT, et ux, et al

Defendant.

NO. 88-2-00947-9

**NOTE OF ISSUE AND STATEMENT OF
ARBITRABILITY**

RP

NATURE OF CAUSE Presentation of Orders

JURY TRIAL: YES/NO [] IF YES, 6 JURORS [] 12 JURORS []

ESTIMATED TIME TO TRY CAUSE _____

DATE REQUESTED FOR DOCKET MOTION/ASSIGNMENT NOVEMBER 18, 1988

PLAINTIFF'S ATTORNEY: NAME BRUCE WINCHELL

ADDRESS 3800 Rainier Bank Tower

Seattle, WA 98101

TELEPHONE 223-7380

DEFENDANT'S ATTORNEY: NAME DANIEL L. HANNULA, Atty for Gabrielsons

ADDRESS 715 Tacoma Avenue South

Tacoma, WA 98402

TELEPHONE 383-5388

FILED
IN COUNTY CLERK'S OFFICE
A.M. NOV 18 1988 P.M.

(NOTE: If additional attorneys involved, please note on reverse side)

NAME OF PARTY BRINGING MOTION: Defendants Gabrielson

PIERCE COUNTY WASHINGTON
TED LUTT, COUNTY CLERK
BY _____ DEPUTY

ARBITRATION

[] This case is subject to arbitration because the sole relief sought is a money judgment and involves no claim in excess of twenty-five thousand dollars exclusive of attorney fees, interests and costs.

[] This case is not subject to mandatory arbitration because:

- [] Plaintiff's claim exceeds twenty-five thousand dollars.
- [] Plaintiff seeks relief other than a money judgment.
- [] Defendant's counter or cross claim exceeds twenty-five thousand dollars.
- [] Defendant's counter or cross claim seeks relief other than a money judgment.

[] The undersigned contends that its claim exceeds twenty-five thousand dollars but hereby waives any claim in excess of twenty-five thousand dollars for purposes of arbitration.

ABOVE INFORMATION MUST BE COMPLETED

TO BE COMPLETED BY CLERK

Assigned To: _____

Date: _____ By: _____

List Additional Attorneys

Name: RODNEY D. HOLLENBECK, Attorney for Defendant Barnett
Address: 3100 Columbia Center, 701 5th Avenue, Seattle, WA 98104
Phone: 386-5555
Attorney For: Defendant Barnett

Name: JOHN GLASSMAN
Address: 625 Commerce, Old City Hall, Suite 420, Tacoma, WA 98402
Phone: 572-2746
Attorney For: Defendant Community Chapel

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

STATE OF WASHINGTON | SS
COUNTY OF PIERCE

The undersigned, being first duly sworn on oath,
states that on this day, affiant mailed
to the attorneys of record of all defts
a copy of the document to which this affidavit is
attached.

Denise L. Johnson

Subscribed and sworn to before me this 9th day of

November, 1988

Serafini Marck
Notary Public and for the
State of Washington

My commission expires 10-4-89

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

NOV 15 1988

AMERICAN CASUALTY COMPANY OF READING

PENNSYLVANIA

Plaintiff.

vs.

IRA GABRIELSON, et al.

Defendant.

NO. 88 2 00947 9

NOTE OF ISSUE AND STATEMENT OF ARBITRABILITY IN COUNTY CLERK'S OFFICE

A.M. NOV 13 1988 P.M.

PIERCE COUNTY CLERK (ON TED RUTT, COUNTY CLERK DEPUTY

NATURE OF CAUSE Notice of Presentation of Order

JURY TRIAL: YES/NO [] IF YES, 6 JURORS [] 12 JURORS []

ESTIMATED TIME TO TRY CAUSE

DATE REQUESTED FOR DOCKET MOTION/ASSIGNMENT Friday, November 18, 1988

PLAINTIFF'S ATTORNEY: NAME Bruce Winchell ADDRESS 3800 Rainier Bank Tower 1301 Fifth Avenue Seattle, WA 98101

TELEPHONE (206) 223-7000

DEFENDANT'S ATTORNEY: NAME Daniel L. Hannula ADDRESS 715 Tacoma Avenue South Tacoma, WA 98402

TELEPHONE (206) 383-5388

(NOTE: If additional attorneys involved, please note on reverse side)

NAME OF PARTY BRINGING MOTION: Plaintiff

ARBITRATION

[] This case is subject to arbitration because the sole relief sought is a money judgment and involves no claim in excess of twenty-five thousand dollars exclusive of attorney fees, interests and costs.

[] This case is not subject to mandatory arbitration because:

- [] Plaintiff's claim exceeds twenty-five thousand dollars.
[] Plaintiff seeks relief other than a money judgment.
[] Defendant's counter or cross claim exceeds twenty-five thousand dollars.
[] Defendant's counter or cross claim seeks relief other than a money judgment.

[] The undersigned contends that its claim exceeds twenty-five thousand dollars but hereby waives any claim in excess of twenty-five thousand dollars for purposes of arbitration.

ABOVE INFORMATION MUST BE COMPLETED

TO BE COMPLETED BY CLERK

Assigned To:

Date: By:

List Additional Attorneys

Name: Rodney D. Hollenbeck
Address: Evans, Craven & Lackie
34th Floor, Columbia Center
701 - 5th Avenue
Phone: Seattle, WA 98402
(206) 386-5555
Attorney For: Defendnats Barnettts

Name: John Glassman
Address: 625 Commerce
Old City Hall, Suite 420
Phone: Tacoma, WA 98402
(206) 572-2746
Attorney For: Defendants Community Chapel & Bible Training Center

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

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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
PROPOSED
ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
SUMMARY JUDGMENT BY
DEFENDANTS GABRIELSON

THIS MATTER having come on for hearing on September 9,
1988, on the motion of the defendants Gabrielson for summary
judgment and the Court having considered all material in the
file of record as of the date September 9, 1988, and in
particular having considered the memorandum in support of
motion for summary judgment submitted by the defendants
Gabrielson, the affidavit of William Hickman submitted in

///

ORDER GRANTING IN PART AND DENYING IN
PART MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS GARBRIELSON - 1

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2003 88148

1 support thereof, and the affidavit of Daniel L. Hannula as
2 effected by the order of this court affecting Exhibit I
3 thereto and further having particularly considered the brief
4 in support of the Gabrielsons' motion for summary judgment
5 submitted by defendants Barnett and the affidavits of
6 Barbara Barnett and Donald L. Barnett submitted in support
7 thereof; and the Court having further particularly
8 considered the plaintiff's memorandum opposing the motion
9 for summary judgment by defendants Gabrielson and the
10 affidavit of Bruce Winchell submitted in opposition to the
11 motion for summary judgment; and the Court further having
12 heard oral argument presented by counsel for all parties:
13 Daniel L. Hannula on behalf of the movants, Carol and Ira
14 Gabrielson, Tim Donaldson on behalf of the defendants
15 Barnett, John Glassman on behalf of the defendant Community
16 Chapel and Bible Training Center and Bruce Winchell on
17 behalf of the plaintiff; and the Court being in all things
18 fully advised, it is hereby

19 ORDERED, ADJUDGED AND DECREED that negligent counseling
20 in connection with church related activity is a covered act
21 within the policy of insurance at issue in this declaratory
22 action, and it is further

23 ORDERED, ADJUDGED AND DECREED that the issue of whether
24 Jack McDonald was a covered individual under the terms of
25 the policy at issue in the above-entitled case involves
26

///

ORDER GRANTING IN PART AND DENYING IN
PART MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS GARBRIELSON - 2

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 836-4790

15153 4/21/2669 88141

1 issues of material fact and cannot be determined on summary
2 judgment.

3 DONE IN OPEN COURT this _____ day of November, 1988.
4

5
6 HONORABLE JUDGE J. KELLEY ARNOLD

7 Presented by:

8 RUSH, HANNULA & HARKINS

9
10 By: _____
11 DANIEL L. HANNULA
12 Of Attorneys for Defendants
13 Gabrielson

14 APPROVED AS TO FORM, NOTICE
15 OF PRESENTATION WAIVED:

16 LANE, POWELL, MOSS & MILLER

17
18 By: _____
19 BRUCE WINCHELL
20 Of Attorneys for Plaintiff

21 EVANS, CRAVEN & LACKIE

22
23 By: _____
24 RODNEY D. HOLLENBECK
25 Of Attorneys for Defendants
26 Barnett

By: _____
JOHN GLASSMAN
Of Attorneys for Defendant
Community Chapel

///
ORDER GRANTING IN PART AND DENYING IN
PART MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS GARBRIELSON - 3

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2883 88142

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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
PROPOSED
ORDER DENYING PLAINTIFF'S
MOTION TO EXCLUDE AFFIDAVIT
OF WILLIAM HICKMAN

THIS MATTER having come before the Court on
September 9, 1988, upon the plaintiff's motion to exclude
the affidavit of William Hickman submitted by defendants Ira
Gabrielson and Carol Gabrielson in support of their motion
for summary judgment in the above-entitled case and the
Court having considered the briefing contained within
plaintiff's memorandum opposing Gabrielsons' motion for

///

ORDER DENYING PLAINTIFF'S MOTION
TO EXCLUDE AFF. OF WILLIAM HICKMAN - 1

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

15153 4/21/2003 08143

1 partial summary judgment (employee status); and the Court
2 having heard oral argument on the motion by attorneys Bruce
3 Winchell on behalf of the plaintiffs, Daniel L. Hannula on
4 behalf of defendants Carol and Ira Gabrielson, John Glassman
5 on behalf of defendant Community Chapel and Bible Training
6 Center, and Tim Donaldson on behalf of the defendants
7 Barnett; and the Court being in all things fully advised, it
8 is hereby

9
10 ORDERED, ADJUDGED AND DECREED that the plaintiff's
11 motion to exclude the affidavit of William Hickman is
12 denied.

13 DONE IN OPEN COURT this _____ day of November, 1988.

14
15 _____
HONORABLE JUDGE J. KELLEY ARNOLD

16 Presented by:

17 RUSH, HANNULA & HARKINS

18
19 By: _____
DANIEL L. HANNULA
20 Of Attorneys for Defendants
Gabrielson

21 APPROVED AS TO FORM, NOTICE
22 OF PRESENTATION WAIVED:

23 LANE, POWELL, MOSS & MILLER

24 By: _____
BRUCE WINCHELL
25 Of Attorneys for Plaintiff

26 ///

ORDER DENYING PLAINTIFF'S MOTION
TO EXCLUDE AFF. OF WILLIAM HICKMAN - 2

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2883 88144

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APPROVED AS TO FORM, NOTICE
OF PRESENTATION WAIVED:

EVANS, CRAVEN & LACKIE

By: _____
RODNEY D. HOLLENBECK
Of Attorneys for Defendants
Barnett

By: _____
JOHN GLASSMAN
Of Attorneys for Defendant
Community Chapel

///

ORDER DENYING PLAINTIFF'S MOTION
TO EXCLUDE AFF. OF WILLIAM HICKMAN - 3

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2003 00145

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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

PROPOSED

ORDER ON PLAINTIFF'S MOTION
TO EXCLUDE EXHIBIT I TO THE
AFFIDAVIT OF DANIEL HANNULA
FILED IN CONNECTION WITH
GABRIELSONS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

THIS MATTER having come on for hearing September 9,
1988, on the motion of the plaintiff to exclude Exhibit I
to the affidavit of Daniel L. Hannula filed in connection
with the defendants Gabrielsons' motion for partial summary
judgment and the Court having considered briefing upon the
subject contained within plaintiff's memorandum opposing

///
ORDER ON PLTF'S MTN TO EXCLUDE
EXHIBIT I TO AFF. OF DANIEL
HANNULA FILED RE: GABRIELSON'S
MTN FOR PARTIAL SUMMARY JUDGMENT - 1

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2003 88146

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Gabrielsons' motion for partial summary judgment (employee status) and the declaration of Bruce Winchell submitted in support of plaintiff's motion, which contains a letter of Harold T. Dodge, Jr. to all counsel in the case explaining how Exhibit I was obtained; and the Court having further heard the arguments of attorneys Bruce Winchell on behalf of the plaintiff, Daniel L. Hannula on behalf of the defendants Gabrielson, Tim Donaldson on behalf of the defendants Barnett, and John Glassman on behalf of the defendant Community Chapel and Bible Training Center; and the Court being in all things fully advised, it is hereby

ORDERED, ADJUDGED AND DECREED that the Court will consider the portions of Exhibit I that purport to the factual references generated by members of the Board of Directors of the defendant Community Chapel and Bible Training Center regarding whether or not Jack McDonald was the agent of the Community Chapel and Bible Training Center; and it is further

ORDERED, ADJUDGED AND DECREED that the Court will not consider those portions of Exhibit I that purport to be relations to communications made between the defendant

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////
////
///

ORDER ON PLTF'S MTN TO EXCLUDE EXHIBIT I TO AFF. OF DANIEL HANNULA FILED RE: GABRIELSON'S MTN FOR PARTIAL SUMMARY JUDGMENT - 2

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 383-5388
SEATTLE 636-4790

15153 4/21/2003 08147

1 Community Chapel and Bible Training Center and its
2 attorneys.

3 DONE IN OPEN COURT this _____ day of November, 1988.
4

5
6 HONORABLE JUDGE J. KELLEY ARNOLD

7 Presented by:

8 RUSH, HANNULA & HARKINS

9
10 By: _____
11 DANIEL L. HANNULA
Of Attorneys for Defendants
Gabrielson

12 APPROVED AS TO FORM, NOTICE
13 OF PRESENTATION WAIVED:

14 LANE, POWELL, MOSS & MILLER

15 By: _____
16 BRUCE WINCHELL
Of Attorneys for Plaintiff

17 EVANS, CRAVEN & LACKIE

18
19 By: _____
20 RODNEY D. HOLLENBECK
Of Attorneys for Defendants
Barnett

21
22
23 By: _____
24 JOHN GLASSMAN
Of Attorneys for Defendant
Community Chapel

25
26
///
ORDER ON PLTF'S MTN TO EXCLUDE
EXHIBIT I TO AFF. OF DANIEL
HANNULA FILED RE: GABRIELSON'S
MTN FOR PARTIAL SUMMARY JUDGMENT - 3

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

15153 4/21/2003 08148

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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
PROPOSED
ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

THIS MATTER having come before the Court on
September 9, 1988, upon the motion of the plaintiff to
reconsider the Court's prior order denying plaintiff's
motion for a continuance of defendants Gabrielson's motion
for summary judgment and the Court having considered the
plaintiff's motion and affidavit to shorten time filed in
support of its motion for continuance, the supplemental

///

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION - 1

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

15153 4/21/2883 88149

1 affidavit of Bruce Winchell, the affidavit of Bruce Winchell
2 opposing Gabrielsons' motion for partial summary judgment
3 (employee status) and the plaintiff's memorandum opposing
4 the Gabrielsons' motion for partial summary judgment
5 (employee status); and the Court having considered the oral
6 arguments presented by any of the counsel present for the
7 motion: Bruce Winchell on behalf of the plaintiff, Daniel
8 L. Hannula on behalf of the defendants Gabrielson, Tim
9 Donaldson on behalf of defendants Barnett, and John Glassman
10 on behalf of the defendant Community Chapel and Bible
11 Training Center; and the Court being in all things fully
12 advised, it is hereby

13 ORDERED, ADJUDGED AND DECREED that plaintiff's motion
14 for reconsideration is denied.

15 DONE IN OPEN COURT this _____ day of November, 1988.
16

17
18 HONORABLE JUDGE J. KELLEY ARNOLD

19 Presented by:

20 RUSH, HANNULA & HARKINS

21 By: _____

22 DANIEL L. HANNULA
23 Of Attorneys for Defendants
24 Gabrielson

25
26 ///

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION - 2

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2003 08156

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APPROVED AS TO FORM, NOTICE
OF PRESENTATION WAIVED:

LANE, POWELL, MOSS & MILLER

By: _____
BRUCE WINCHELL
Of Attorneys for Plaintiff

EVANS, CRAVEN & LACKIE

By: _____
RODNEY D. HOLLENBECK
Of Attorneys for Defendants
Barnett

By: _____
JOHN GLASSMAN
Of Attorneys for Defendant
Community Chapel

///
ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION - 3

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 383-5388
SEATTLE 338-4790

15153 4/21/2003 88151

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NOV 23 1988

FILED
IN COUNTY CLERK'S OFFICE

A.M. NOV 23 1988 P.M.

PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)
Plaintiff,)
v.)
IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife;)
DONALD LEE 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 BRUCE WINCHELL

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

BRUCE WINCHELL, being first duly sworn on oath, deposes and says:

1. I am one of the attorneys for plaintiff American Casualty Company.

AFFIDAVIT OF BRUCE WINCHELL - 1
0219BAW

LANE POWELL MOSS & MILLER
3800 RAINIER BANK TOWER
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2647
(206) 223-7000

25153 4/21/2003 88152

1 2. As the court will recall, American originally moved
2 for partial summary judgment on the question of whether damages
3 for emotional distress were compensible under the bodily injury
4 provision in American's policy. The court denied that motion
5 without prejudice and did not grant Barnett's cross-motion on
6 that same issue. For the court's convenience, American has
7 assembled and enclosed all of the pleadings which were
8 submitted to the court in connection with that motion.

9 3. Trial has now taken place in the underlying action.
10 The jury awarded plaintiffs in the underlying action \$147,000.
11 A copy of the jury instructions and completed verdict form are
12 attached to this affidavit as Exhibits A and B.

13 4. The jury ruled in favor of defendants on Gabrielson's
14 assault, battery and false imprisonment claim which arose out
15 of a March 6 incident in which Gabrielson was ejected from the
16 Burien Chapel. That claim was the basis for a bodily injury
17 claim asserted in Gabrielson's complaint. The court will note
18 that the jury was not instructed that in order to make an award
19 of damages for emotional distress, it must find some physical
20 manifestation of that distress.

21 5. On the basis of the jury's rejection of Gabrielson's
22 assault, battery and false imprisonment claim, and resultant
23 rejection of any claim for physical injury, American renews its
24 motion for partial summary judgment and requests an order
25
26

AFFIDAVIT OF BRUCE WINCHELL - 2
0219BAW

LANE POWELL MOSS & MILLER
3800 RAINIER BANK TOWER
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2647
(206) 223-7000

15153 4/21/2003 88153

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declaring that to the extent that Gabrielson's award represents compensation for emotional distress, that award is not covered under American's general liability policy.

DATED this 22nd day of November 1988.

LANE POWELL MOSS & MILLER

By Bruce Winchell
Bruce Winchell
Attorneys for Plaintiff

SUBSCRIBED AND SWORN to before me: Nov. 22, 1988.

Judith A. Thompson
NOTARY PUBLIC in and for the State
of Washington, residing at Unnwood.

My appointment expires: 9/1/90.

15153 4/21/2003 88154

FILED
DEPT. 9
IN OPEN COURT

NOV 18 1988

Pierce County Clerk
By: _____
DEPUTY

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

VOL 374 PAGE 1434
NOV 18 1988

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
ORDER ON PLAINTIFF'S MOTION
TO EXCLUDE EXHIBIT I TO THE
AFFIDAVIT OF DANIEL HANNULA
FILED IN CONNECTION WITH
GABRIELSONS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

THIS MATTER having come on for hearing September 9,
1988, on the motion of the plaintiff to exclude Exhibit I
to the affidavit of Daniel L. Hannula filed in connection
with the defendants Gabrielsons' motion for partial summary
judgment and the Court having considered briefing upon the
subject contained within plaintiff's memorandum opposing

///
ORDER ON PLTF'S MTN TO EXCLUDE
EXHIBIT I TO AFF. OF DANIEL
HANNULA FILED RE: GABRIELSON'S
MTN FOR PARTIAL SUMMARY JUDGMENT - 1

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

1

15153 4/21/2003 08155

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Gabrielsons' motion for partial summary judgment (employee status) and the declaration of Bruce Winchell submitted in support of plaintiff's motion, which contains a letter of Harold T. Dodge, Jr. to all counsel in the case explaining how Exhibit I was obtained; and the Court having further heard the arguments of attorneys Bruce Winchell on behalf of the plaintiff, Daniel L. Hannula on behalf of the defendants Gabrielson, Tim Donaldson on behalf of the defendants Barnett, and John Glassman on behalf of the defendant Community Chapel and Bible Training Center; and the Court being in all things fully advised, it is hereby

ORDERED, ADJUDGED AND DECREED that the Court will consider the portions of Exhibit I that purport to the factual references generated by members of the Board of Directors of the defendant Community Chapel and Bible Training Center regarding whether or not Jack McDonald was the agent of the Community Chapel and Bible Training Center; and it is further

ORDERED, ADJUDGED AND DECREED that the Court will not consider those portions of Exhibit I that purport to be relations to communications made between the defendant

////

////

////

///

ORDER ON PLTF'S MTN TO EXCLUDE EXHIBIT I TO AFF. OF DANIEL HANNULA FILED RE: GABRIELSON'S MTN FOR PARTIAL SUMMARY JUDGMENT - 2


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

15153 4/21/2003 88156

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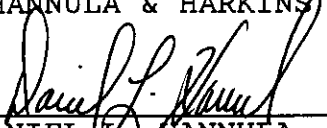
Community Chapel and Bible Training Center and its attorneys.

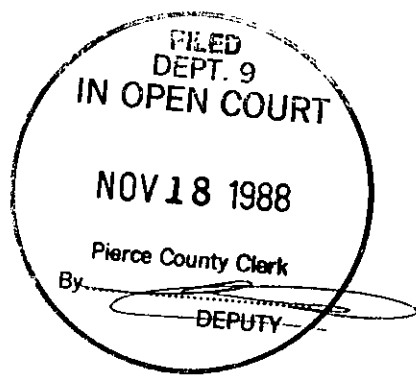
DONE IN OPEN COURT this 18 day of November, 1988.


HONORABLE JUDGE J. KELLEY ARNOLD

Presented by:

RUSH, HANNULA & HARKINS

By: 
DANIEL E. HANNULA
Of Attorneys for Defendants
Gabrielson



APPROVED AS TO FORM, NOTICE OF PRESENTATION WAIVED:

LANE, POWELL, MOSS & MILLER

By: _____
BRUCE WINCHELL
Of Attorneys for Plaintiff

EVANS, CRAVEN & LACKIE

By: _____
RODNEY D. HOLLENBECK
Of Attorneys for Defendants
Barnett

By: _____
JOHN GLASSMAN
Of Attorneys for Defendant
Community Chapel

///
ORDER ON PLTF'S MTN TO EXCLUDE EXHIBIT I TO AFF. OF DANIEL HANNULA FILED RE: GABRIELSON'S MTN FOR PARTIAL SUMMARY JUDGMENT - 3

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

15155 4/21/2883 88157

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

06-88
Phone call

J.S. [Signature]
NOV 23 1988
PIERCE COUNTY CLERK DEPUTY

AMERICAN CASUALTY COMPANY OF READING
PENNSYLVANIA

Plaintiff.

vs.

IRA GABRIELSON, et al.

Defendant.

NO. 88 2 00947 9

NOTE OF ISSUE AND STATEMENT OF ARBITRABILITY

FILED
IN COUNTY CLERK'S OFFICE
A.M. NOV 23 1988 P.M.

NATURE OF CAUSE Motion for Partial Summary Judgment

JURY TRIAL: YES/NO [] IF YES, 6 JURORS [] 12 JURORS []

ESTIMATED TIME TO TRY CAUSE _____

DATE REQUESTED FOR DOCKET MOTION/ASSIGNMENT JAN 6 89
December 16, 1988

PLAINTIFF'S ATTORNEY: NAME Bruce Winchell
ADDRESS LANE POWELL MOSS & MILLER
3800 Rainier Bank Tower
1301 Fifth Avenue
Seattle, WA 98101

TELEPHONE (206) 223-7000

DEFENDANT'S ATTORNEY: NAME Daniel L. Hannula
ADDRESS Rush, Hannula & Hawkins
715 Tacoma Avenue South
Tacoma, WA 98402

TELEPHONE (206) 383-5388

(NOTE: If additional attorneys involved, please note on reverse side)

NAME OF PARTY BRINGING MOTION: Plaintiff

ARBITRATION

[] This case is subject to arbitration because the sole relief sought is a money judgment and involves no claim in excess of twenty-five thousand dollars exclusive of attorney fees, interests and costs.

[] This case is not subject to mandatory arbitration because:

- [] Plaintiff's claim exceeds twenty-five thousand dollars.
- [] Plaintiff seeks relief other than a money judgment.
- [] Defendant's counter or cross claim exceeds twenty-five thousand dollars.
- [] Defendant's counter or cross claim seeks relief other than a money judgment.

[] The undersigned contends that its claim exceeds twenty-five thousand dollars but hereby waives any claim in excess of twenty-five thousand dollars for purposes of arbitration.

ABOVE INFORMATION MUST BE COMPLETED

TO BE COMPLETED BY CLERK

Assigned To: _____

Date: _____ By: _____

13053 4/21/2883 88158

List Additional Attorneys

Name: Rodney D. Hollenbeck
Evans, Craven & Lackie
Address: 34th Floor Columbia Center
701 Fifth Avenue
Phone: Seattle, WA 98402
(206) 386-5555
Attorney For: Defendants Barnettts

Name: John Glassman
625 Commerce
Address: Old City Hall, Suite 420
Tacoma, WA 98402
Phone: (206) 572-2746
Attorney For: Defendants Community Chapel & Bible Training Center

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

The undersigned, being first sworn, on oath, states: That on this day affiant 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 to which this affidavit is attached.

Shonda Suler

1 Subscribed and sworn to before me this 23 day of November 19 88

2 *Judith A. Thompson*

3 Notary Public in and for the State of Washington, residing at Lynnwood 91/90

4 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

5 AMERICAN CASUALTY COMPANY OF)
6 READING PENNSYLVANIA, a)
7 Pennsylvania corporation,)

7 Plaintiff,)

8 v.)

9 IRA GABRIELSON and CAROL)
10 GABRIELSON, husband and wife;)
11 DONALD LEE BARNETT and)
12 BARBARA BARNETT, husband and)
13 wife; COMMUNITY CHAPEL AND)
14 BIBLE TRAINING CENTER, a)
15 Washington corporation, JACK)
16 McDONALD AND "JANE DOE")
17 McDONALD, husband and wife,)

14 Defendants.)

15 TO: Defendants; and
16 TO: All attorneys of record

J.R. NOV 30 1988

FILED
IN COUNTY CLERK'S OFFICE
A.M. NOV 30 1988 P.M.
PIERCE COUNTY CLERK
BY *[Signature]* DEPUTY

VOL 377 PAGE 819

No. 88-2-00947-9

DEMAND FOR A
TWELVE-MEMBER JURY

FILED
(Clerk's Action Required)

PIERCE COUNTY SUPERIOR COURT
TED RUTT
CLERK OF THE SUPERIOR COURT
TACOMA, WASHINGTON 98402

88-2-00947-9

CURR. DATE ACCT. DATE TIME
11/30/88 11/30/88 2:45 P.M.

REG/RECEIPT # TRAN-CODE DOCKET-CODE
02-13242-001 1140 \$FRJ12

PAID BY: LANE
TRANSACTION AMOUNT: \$50.00

18 You will please take notice that plaintiff American
19 Casualty elects to have the above-entitled action trial by a
20 twelve-member jury and will deposit with the clerk of the
21 above-entitled court the statutory fee.

22 DATED this 22nd day of NOVEMBER, 1988.

23 LANE POWELL MOSS & MILLER

24 By *[Signature]*
25 Bruce Winchell
26 Attorneys for Plaintiff
American Casualty of Reading
Pennsylvania

DEMAND FOR A TWELVE-MEMBER JURY - 1
OIS:0887p

LANE POWELL MOSS & MILLER
3800 RAINIER BANK TOWER
SEATTLE, WASHINGTON 98101-2647
223-7000

ORIGINAL

15153 4/21/2003 06163

The undersigned, being first duly sworn, on oath, states: That on this day
affiant 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 to which this affidavit is attached.

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Shonda Secker

NOV 30 1988

Subscribed and sworn to before me this 23 day of

November 19 88

Judith A. Thompson

Notary Public in and for the State of
Washington, residing at *Seattle, Lynwood 9/1/90*

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiff,)

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, JACK)
McDONALD AND "JANE DOE")
McDONALD, husband and wife,)

Defendants.)

No. 88-2-00947-9

AFFIDAVIT OF BRUCE WINCHELL

FILED
IN COUNTY CLERK'S OFFICE
A.M. NOV 30 1988 P.M.
PIERCE COUNTY CLERK
TED RUTT, COUNTY CLERK
BY *[Signature]* DEPUTY

STATE OF WASHINGTON)
COUNTY OF KING) ss.

BRUCE WINCHELL, being first duly sworn on oath, deposes and
says:

1. I represent plaintiff American Casualty in this action.
2. On Wednesday, November 23, 1988, it is expected that
plaintiffs in the underlying action, Ira and Carol Gabrielson,

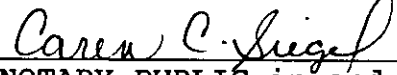
15153 4/21/2883 88161

1 will obtain a judgment in the amount of \$147,000.00 against
2 Community Chapel and Bible Training Center and Jack McDonald.
3 It is further anticipated that execution on that judgment may
4 be delayed by virtue of post-trial motions and/or an appeal.

5 3. In order to resolve the questions of coverage prior to
6 any attempts by Gabrielson to execute upon its judgment,
7 American requests that trial in this matter be set prior to
8 April 1, 1989. At the same time, American requests that this
9 court impose a stay upon Gabrielson's execution of the judgment
10 in question.

11 
12 Bruce Winchell

13 SUBSCRIBED AND SWORN to before me: November 23, 1988.

14 
15 NOTARY PUBLIC in and for the
16 State of Washington, residing
17 at _____

18 My appointment expires:
19 2-9-90

20
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15153 4/21/2003 0816Z

LAW OFFICES
LANE POWELL MOSS & MILLER
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

3800 RAINIER BANK TOWER
SEATTLE, WASHINGTON 98101-2647
(206) 223-7000

November 21, 1988

FILED
IN COUNTY CLERK'S OFFICE

A.M. **NOV 30 1988** P.M.

PIERCE COUNTY CLERK
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

The Honorable J. Kelley Arnold
Pierce County Superior Court
Department 9, Room 217
930 Tacoma Avenue S.
Tacoma, Washington 98402

Re: American Casualty v. Ira Gabrielson, et al.

Dear Judge Arnold:

Enclosed is American Casualty's motion for an early trial date and a stay of execution on the judgment obtained by Gabrielson. American is also requesting that this matter be heard by a jury.

Very truly yours,

LANE POWELL MOSS & MILLER



Bruce Winchell

BW:egw
Enclosures
OIS:18241

cc: Daniel L. Hannula
Rodney D. Hollenbeck
John Glassman

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

3.5 NOV 5 1988
Filed in Court

AMERICAN CASUALTY COMPANY OF READING

PENNSYLVANIA

Plaintiff.

vs.

IRA GABRIELSON, et al.

Defendant.

NO. 88 2 00947 9

NOTE OF ISSUE AND STATEMENT OF ARBITRABILITY

NATURE OF CAUSE Motion for an Early Trial Date and a Stay of Execution

JURY TRIAL: YES/NO [YES] IF YES, 6 JURORS [] 12 JURORS [X]

ESTIMATED TIME TO TRY CAUSE _____

DATE REQUESTED FOR DOCKET MOTION/ASSIGNMENT December 2, 1988

PLAINTIFF'S ATTORNEY: NAME Bruce Winchell
ADDRESS LANE POWELL MOSS & MILLER
3800 Rainier Bank Tower
1301 Fifth Avenue
Seattle, WA 98101

TELEPHONE (206) 223-7000

DEFENDANT'S ATTORNEY: NAME Daniel L. Hannula
ADDRESS Rush, Hannula & Hawkins
715 Tacoma Avenue South
Tacoma, WA 98402

TELEPHONE (206) 383-5388

FILED
IN COUNTY CLERK'S OFFICE
NOV 30 1988 P.M.
PIERCE COUNTY CLERK
BY [Signature] DEPUTY

(NOTE: If additional attorneys involved, please note on reverse side)

NAME OF PARTY BRINGING MOTION: Plaintiff

ARBITRATION

[] This case is subject to arbitration because the sole relief sought is a money judgment and involves no claim in excess of twenty-five thousand dollars exclusive of attorney fees, interests and costs.

[] This case is not subject to mandatory arbitration because:

- [] Plaintiff's claim exceeds twenty-five thousand dollars.
- [] Plaintiff seeks relief other than a money judgment.
- [] Defendant's counter or cross claim exceeds twenty-five thousand dollars.
- [] Defendant's counter or cross claim seeks relief other than a money judgment.

[] The undersigned contends that its claim exceeds twenty-five thousand dollars but hereby waives any claim in excess of twenty-five thousand dollars for purposes of arbitration.

ABOVE INFORMATION MUST BE COMPLETED

TO BE COMPLETED BY CLERK

Assigned To: _____

Date: _____ By: _____

Z-271a

ORIGINAL

15153 4/21/2003 08164

List Additional Attorneys

Name: Rodney D. Hollenbeck
Evans, Craven & Lackie
Address: 34th Floor Columbia Center
701 Fifth Avenue
Phone: Seattle, WA 98402
(206) 386-5555
Attorney For: Defendants Barnettts

Name: John Glassman
625 Commerce
Address: Old City Hall, Suite 420
Tacoma, WA 98402
Phone: (206) 572-2746
Attorney For: Defendant Community Chapel & Bible Training Center

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

STATE OF WASHINGTON }
COUNTY OF KING } ss AFFIDAVIT
OF MAILING

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

Shonda Seiber

Subscribed and sworn to before me this 23 day of

November 19 88

Judith A. Thompson

Notary Public in and for the State of
Washington, residing at Lynnwood
9/1/90

15153 4/21/2883 88165

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

AMERICAN CASUALTY COMPANY OF READING
PENNSYLVANIA, a Pennsylvania corporation
Plaintiff.

NO. 88-2-00947-9

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,
Defendant.

NOTE OF ISSUE AND STATEMENT OF
IN COUNTY ARBITRABILITY

A.M. NOV 21 1988 P.M.

PIERCE COUNTY CLERK
DEPT. OF

NATURE OF CAUSE Assignment Docket for Trial Setting

JURY TRIAL: YES/NO [No] IF YES, 6 JURORS [] 12 JURORS []

ESTIMATED TIME TO TRY CAUSE 3-days

DATE REQUESTED FOR DOCKET December 2, 1988

PLAINTIFF'S ATTORNEY: NAME BRUCE WINCHELL
LANE, POWELL, MOSS & MILLER

ADDRESS 3800 Rainier Bank Tower
Seattle, WA 98101-2647

TELEPHONE 223-7380

DEFENDANT'S ATTORNEY: NAME DANIEL L. HANNULA
RUSH, HANNULA & HARKINS
GABRIELSONS

ADDRESS 715 Tacoma Avenue South
Tacoma, WA 98402

TELEPHONE 383-5388

(NOTE: If additional attorneys involved, please note on reverse side)

NAME OF PARTY BRINGING ~~MOTION~~ Assignment: Defendants GABRIELSON

ARBITRATION

[] This case is subject to arbitration because the sole relief sought is a money judgment and involves no claim in excess of twenty-five thousand dollars exclusive of attorney fees, interests and costs.

[] This case is not subject to mandatory arbitration because:

- [] Plaintiff's claim exceeds twenty-five thousand dollars.
- [] Plaintiff seeks relief other than a money judgment.
- [] Defendant's counter or cross claim exceeds twenty-five thousand dollars.
- [] Defendant's counter or cross claim seeks relief other than a money judgment.

[] The undersigned contends that its claim exceeds twenty-five thousand dollars but hereby waives any claim in excess of twenty-five thousand dollars for purposes of arbitration.

ABOVE INFORMATION MUST BE COMPLETED

TO BE COMPLETED BY CLERK

Assigned To: _____

Date: _____ By: _____

List Additional Attorneys

Name: TIMOTHY DONALDSON
EVANS, CRAVEN & LACKIE
Address: 3100 Columbia Center
701 Fifth Avenue
Phone: Seattle, WA 98104
386-5555
Attorney For: Attorneys for Defendants BARNETTS

Name: JOHN GLASSMAN
Address: Post Office Box 1703
Tacoma, WA 98401
Phone: 572-2746
Attorney For: Defendants COMMUNITY CHAPEL

Name:
Address:
Phone:
Attorney For:

STATE OF WASHINGTON)
COUNTY OF PIERCE) ss
The undersigned, being first duly sworn, on oath,
states: That on this day, affiant MAILED
to the attorneys of record of PLAINTIFF/DEFENDANTS
a copy of the document to which this affidavit is
attached.
Alexander Marckham
Subscribed and sworn to before me this 24 day of
November, 19 88
K. Rowley
Notary Public in and for the
State of Washington
My commission expires 2/1/90

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

STATE OF WASHINGTON
COUNTY OF PIERCE

The undersigned, being first duly sworn, on oath,
states: That on this day, affiant HAD DELIVERED
to the attorneys of record of PLAINTIFFS
a copy of the document to which this affidavit is
attached.

Harold T. Dodge, Jr.

Subscribed and sworn to before me this 1 day of

Dec, 19 88

R. Rowley
Notary Public in and for the
State of Washington

My commission expires 2/9/90.

P DEC 2 1988

FILED
IN COUNTY CLERK'S OFFICE

A.M. DEC 1 1988 P.M.

PERCE...
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

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 JURY DEMAND
AND REQUEST FOR STAY OF
EXECUTION

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 make the

////

AFFIDAVIT OF HAROLD T. DODGE, JR. - 1

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2003 00168
JC

1 following affidavit of my own personal knowledge of the files and
2 records in both the declaratory action and the underlying action
3 and I am competent to testify thereto for the purposes of this
4 motion.

5 Exhibit A to this Affidavit, incorporated herein by refer-
6 ence, is Trial Brief of the plaintiffs in the underlying action;

7 Exhibit B to this Affidavit, incorporated herein by refer-
8 ence, is Community Chapel and Bible Training Center's Trial Brief
9 in the underlying action;

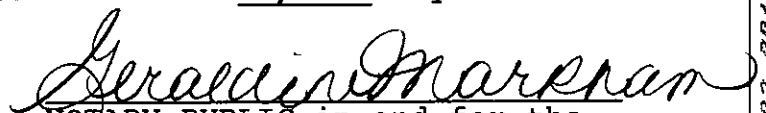
10 Exhibit C to this Affidavit, incorporated herein by refer-
11 ence, is the court's instructions to the jury in the underlying
12 action;

13 Exhibit D to this Affidavit, incorporated herein by refer-
14 ence, is the special verdict form submitted to the jury in the
15 underlying action along with answers to the interrogatories as
16 provided by the jury;

17 Exhibit E to this Affidavit, incorporated herein by refer-
18 ence, is a true and correct copy of the judgment on jury verdict
19 entered in the underlying action by Honorable Thomas A. Swayze,
20 Jr., Judge, on November 23, 1988.

21 
22 HAROLD T. DODGE, JR.

23 SIGNED AND SWORN to before me this 1 day of
24 Dec., 1988.

25 
26 NOTARY PUBLIC in and for the
State of Washington
My appointment expires 10-4-89.

////

AFFIDAVIT OF HAROLD T. DODGE, JR. - 2

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2883 88163

EXHIBIT

A

EXHIBIT

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

IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife,)

Plaintiffs,)

vs.)

JACK McDONALD and "JANE DOE")
McDONALD, husband and wife;)
DONALD LEE BARNETT and BARBARA)
BARNETT, husband and wife, and)
"JOHN DOES" NOS. 1-4 and)
"JANE DOES" NOS. 1-4, husbands)
and wives; COMMUNITY CHAPEL)
AND BIBLE TRAINING CENTER)
OF TACOMA; COMMUNITY CHAPEL)
AND BIBLE TRAINING CENTER,)

Defendants.)

NO. 86-2-02792-6

TRIAL BRIEF

I. STATEMENT OF FACTS

A. INTRODUCTION.

The plaintiffs in this case are Carol and Ira
Gabrielson. The Gabrielsons claim that defendant Jack
McDonald was negligent in counseling Carol Gabrielson at a
time when defendant McDonald was her counselor and pastor at
the defendant Community Chapel and Bible Training Center

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TRIAL BRIEF - 1

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1 of Tacoma. The plaintiffs are suing defendant Donald L.
2 Barnett and the main corporation of the Community Chapel and
3 Bible Training Center on the theory that Jack McDonald was
4 an agent of the Community Chapel and Bible Training Center
5 (hereafter "corporation"), or the agent of Donald L.
6 Barnett, or both, all during the time he negligently
7 counseled Carol Gabrielson.

8 The plaintiffs are also suing the corporation for an
9 assault committed by corporation security personnel against
10 Carol Gabrielson.

11 As a proximate result of the negligence of the
12 defendants, Carol Gabrielson has suffered serious
13 psychological, physical, and emotional injuries, which have
14 necessitated past therapy and treatment and which may
15 necessitate future therapy and treatment.

16 Ira Gabrielson claims that the injuries caused Carol
17 Gabrielson by the defendants resulted in a loss to him of
18 his wife's companionship, services, and society during the
19 duration of the marriage.

20
21 B. FACTS EXPECTED TO BE PROVEN AT TIME OF TRIAL.

22 At trial, the plaintiffs intend to introduce evidence
23 proving the following facts:

24 Carol and Ira Gabrielson were married in 1965. During
25 the majority of their life together, Carol and Ira had a
26 relatively stable marriage in which they raised two

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TRIAL BRIEF - 2

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1 daughters and during which they remained productive and
2 responsible citizens. The Gabrielson household was run
3 along traditional lines; Ira was the breadwinner and Carol
4 the homemaker. In addition, Carol had a hobby, which she
5 had pursued throughout childhood and as an adult, of raising
6 animals.

7
8 The marriage was not trouble-free, but it worked for
9 Carol and Ira by providing each with the type of emotional
10 support that allowed them to function in and cope with
11 society. Carol, especially, was deeply religious and was
12 brought up, religiously, as a Pentecostal.

13 Carol Gabrielson's first contact with the Community
14 Chapel and Bible Training Center was in 1974. At that time,
15 she attended services at the Burien headquarters of
16 Community Chapel. Initially, her participation was limited
17 to one night per week because of the distance from Tacoma to
18 Burien and because she was also attending another church.
19 Between 1974 and 1983 there were extended periods when Carol
20 did not attend the chapel. In 1983, Ms. Gabrielson learned
21 of a Community Chapel satellite church in Tacoma and she
22 began attending that satellite church in 1983.

23 Except for a period from about March through about
24 December, 1984, Carol Gabrielson regularly attended the
25 Tacoma satellite church. Jack McDonald was pastor of the
26 Tacoma satellite.

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TRIAL BRIEF - 3

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1 Carol Gabrielson first sought Jack McDonald's counsel
2 in the summer of 1983. During these early sessions, Jack
3 McDonald spent a great deal of time merely listening to
4 Carol's problems and assuring her that he would pray for
5 her.

6 In May of 1985, Carol sought marital counseling from
7 Jack McDonald. Initially, this counseling progressed much
8 as her previous counseling had, until about September, when
9 the nature of Jack McDonald's counseling began to change,
10 dramatically.

11 The first instance of this change occurred in
12 September, 1985 when, during a counseling session in his
13 office, Jack McDonald turned on music, turned down the
14 lights and asked Ms. Gabrielson to sit with him on a small
15 couch. Pastor McDonald instructed Ms. Gabrielson that she
16 needed to know that she was loved and began talking to her,
17 in detail, about sexual matters. McDonald unbuttoned Ms.
18 Gabrielson's blouse and began to kiss her breasts. Ms.
19 Gabrielson became so visibly shaken that McDonald was forced
20 to stop.

21 Jack McDonald assured Ms. Gabrielson that there would
22 be no repeated impropriety and Ms. Gabrielson continued to
23 receive counseling from Jack McDonald. Jack McDonald
24 thereafter began a program of counseling wholly
25 inappropriate to Ms. Gabrielson's case. He began to isolate
26

////

1 Ms. Gabrielson from all support structures and systems
2 outside of the society of the church while, at the same
3 time, increasing Carol's dependence solely upon him for all
4 temporal as well as spiritual needs. He counseled her to
5 give up her hobby of raising animals, which she did. He
6 counseled her not to talk to her husband, Ira, because he
7 insisted that Ira was possessed by demons. He eventually
8 counseled Carol to leave Ira, altogether.
9

10 In late September of 1985, Carol did leave Ira. Jack
11 McDonald assisted Carol in moving out of the family home.

12 The first place into which Jack McDonald moved Carol
13 Gabrielson was his own home. Thereafter, Jack McDonald
14 moved Ms. Gabrielson into a series of different places to
15 live, mostly the homes of congregation members who were away
16 from town for periods of time. During this interval, Jack
17 McDonald visited Carol wherever she was residing at the time
18 and continued his counseling of Carol's ever increasing
19 problems. In these counseling sessions, Jack McDonald was
20 increasingly adamant in his sexual overtures toward Carol.

21 During this time, Jack McDonald manipulated Carol
22 Gabrielson into a sexual relationship that lasted through
23 about the beginning of January, 1986. Carol lost all ability
24 to resist Jack McDonald and at the height of his influence
25 over her, she would engage in any sexual act that Jack
26 McDonald demanded. Throughout the period, Jack McDonald

////

1 justified the entanglement by claiming he would help Carol
2 by showing her how God had intended her to use her body.
3 When Carol would protest that their sexual involvement was
4 sin, Jack McDonald would justify their "fallen" state with
5 biblical reference. Eventually, Carol realized that she was
6 being used merely for Jack McDonald's sexual gratification.
7

8 As Carol began to resist Jack McDonald's actions, he
9 became very negative toward her and was, on occasion,
10 violent. On several occasions, McDonald shook Ms. Gabrielson
11 violently. At least once, when Carol indicated her diminish-
12 ing faith in his counseling, he threw her to the floor. As
13 Ms. Gabrielson began to protest more and more, Jack McDonald
14 began to assert that she was controlled by demons.

15 Once Carol was able to break away from McDonald, she
16 wanted to confess the sins which she was convinced she and
17 McDonald had committed to Donald L. Barnett of the main
18 corporation in Burien in order to clear her conscience.
19 Jack McDonald insisted that they keep the affair a secret
20 between them. Because Carol insisted on involving the
21 senior members of the corporate church, McDonald
22 disfellowshipped her. By disfellowshipping Carol, Jack
23 McDonald effectively cut her off, entirely, from the society
24 of the only friends that she had left.

25 In an attempt to remain a part of the Community Chapel,
26 Ms. Gabrielson went to the main chapel in Burien on the

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TRIAL BRIEF - 6

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1 evening of March 6, 1986, hoping to obtain the counsel of
2 some senior church official. Jack McDonald also attended
3 the Burien chapel on the evening of March 6, 1986. When he
4 spotted Carol at the chapel, he reported her to the security
5 officers in attendance as a disfellowshipped person who
6 should not be allowed to remain on the premises.
7

8 The security personnel literally dragged Carol
9 Gabrielson from the chapel and threw her, handcuffed, into a
10 car outside where the King County Police interceded. Carol
11 Gabrielson suffered a compression fracture as a result of
12 her ejection from the chapel.

13 This incident at the Burien chapel marked the end of a
14 destructive chain of events wherein Carol Gabrielson's
15 vulnerability was used against her by her pastor and
16 counselor, Jack McDonald, under the guise of religious and
17 emotional guidance. Pastor McDonald took advantage of
18 Carol's weakness, vulnerability, and her need for support by
19 manipulating her into leaving her husband, Ira Gabrielson.
20 Pastor McDonald coerced Carol Gabrielson into having a
21 sexual relationship with him.

22 Attempting to continue her long-standing pattern of
23 worship, Ms. Gabrielson attempted to participate with the
24 congregation at the Burien Community Chapel, where she
25 endured physical assault and resulting injury. Both Carol
26 and Ira Gabrielson suffered injuries to their reputation,

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TRIAL BRIEF - 7

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1 severe emotional distress and, in the case of Ira
2 Gabrielson, a loss of consortium due to the negligent and
3 reckless acts of Jack McDonald and other officials of the
4 Community Chapel and Bible Training Center during the latter
5 period of her worship with that church.

6 C. AGENCY.

7 From a review of the corporate by-laws, it is readily
8 apparent that the main corporation of the Community Chapel
9 and Bible Training Center has retained so much power to
10 control its satellites and the satellite pastors that the
11 satellite pastors can only be regarded as agents for the
12 corporation. Among the dictates of the by-laws reserving
13 control to the main corporation are the following: the main
14 corporation by-laws state that the satellite churches are a
15 "division" of the main corporation; that the corporation
16 "does not and cannot exist independently from the various
17 divisions"; that as a division of the corporation, the
18 satellites are under the jurisdiction of the steering
19 committee of the main corporation; that pastors of satellite
20 churches are subject to admonishment, discipline and removal
21 by the main corporation's steering committee; that each
22 satellite church is an extension of the main corporation;
23 that each satellite, along with its pastor, is subject to
24 the by-laws of the main corporation and that each satellite
25 church is affiliated with and subject to the main
26

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TRIAL BRIEF - 8

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1 corporation's disciplines.

2 As other indicia of the single identity of the main
3 corporation and its satellites, satellite pastors are
4 officially listed with the main corporation as "current
5 officers and major appointees" of the main corporation; the
6 main corporation dictates the by-laws of each satellite and
7 no satellite may alter its by-laws without Pastor Donald Lee
8 Barnett's personal approval; no satellite may make any
9 regulation not dictated in the main corporation's by-laws
10 without the approval of the main corporation; the articles
11 of incorporation and the by-laws of the Tacoma satellite
12 were dictated to Jack McDonald in their entirety by the
13 corporation.

14 These represent only a few of the examples evident in
15 the by-laws of the complete power to control the satellites
16 and satellite pastors reserved by the main corporation.
17 Jack McDonald was pastor of the Tacoma satellite church,
18 appointed and ordained by the main corporation. As such,
19 Jack McDonald served not only as pastor and religious leader
20 of the Tacoma chapel but as an agent of the defendant
21 Community Chapel and Bible Training Center corporation.
22

23 C. RESPONDEAT SUPERIOR.

24 Jack McDonald, as pastor of the Tacoma satellite chapel
25 of the Community Chapel and Bible Training Center, was held
26 out to Carol and Ira Gabrielson as a qualified pastor and

////

1 counselor by the corporate church. Carol Gabrielson began
2 counseling with defendant Jack McDonald on a regular basis
3 due to his position as a pastor and counselor.
4

5 As is evident in the by-laws dictated to the satellites
6 by the main corporation, counseling, both spiritual and, for
7 example, marital, is a legitimate activity, expected of
8 pastors, and encouraged to the point that it is controlled
9 by the by-laws in its "Statement on Counseling."

10 As a result of what began as legitimate marital counsel-
11 ing, Pastor Jack McDonald became aware of the vulnerability
12 of Carol Gabrielson. Pastor Jack McDonald influenced and
13 manipulated Carol Gabrielson into leaving her husband, Ira
14 Gabrielson, and further, he coerced her into having sexual
15 relations with him. This relationship continued from
16 September of 1985 through early January of 1986.

17 Due to his position as pastor and counselor at the
18 Community Chapel of Tacoma, Jack McDonald was able to gain
19 the trust, confidence and eventual submission of Carol
20 Gabrielson. Acting within the course and scope of his
21 employment with the Community Chapel and Bible Training
22 Center, Pastor McDonald, under the guise of counseling
23 method, initiated a course of emotional manipulation and
24 sexual gratification at the expense of Carol Gabrielson
25 based upon his intimate knowledge of her particular
26 vulnerabilities.

////

TRIAL BRIEF - 10

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1
2 D. NEGLIGENCE OF DONALD L. BARNETT AND THE
CORPORATE HIERARCHY.

3
4 Donald L. Barnett introduced an activity to the
5 congregation of the corporation known as "spiritual
6 connecting." This activity usually involved couples, men
7 and women from different marriages. Donald Barnett
8 explained that this activity was supposed to manifest the
9 love of God passing through the individuals resulting in
10 a powerful union--a spiritual connection--between the two
11 individuals involved. In theory, married couples were too
12 involved, socially and physically, to receive a purely
13 spiritual connection and, so, the rhetoric encouraged these
14 unions between persons from different marriages.

15 Although the connection could arise, and on occasion
16 supposedly did arise, between men, between women, or among
17 groups of more than two, the connection most frequently
18 occurred between one man and one woman, either of whom might
19 be married, but not to each other.

20 The connection manifested in an intense attraction
21 between the affected individuals. It involved extended
22 periods of close contact, intense gazing into each other's
23 eyes, close embracing, caressing, and prolonged dancing to
24 music, which was chosen especially to enhance the
25 experience. Kissing, and even french kissing, was allowed.
26 Judgment on the apparent intimacy of any couple's physical

////

1 contact was specifically withheld because Donald L. Barnett
2 taught that nothing done in the "spirit" was wrong.

3
4 Everyone involved in the hierarchy of the corporation
5 was wary of the destructive potential of encouraging such
6 intimate physical and emotional relationships between
7 couples of different marital circumstances. Evidence of the
8 damage done in implementing the practice was apparent in the
9 inordinate amount of time these connected couples began to
10 spend with each other at the expense of the couples' marriages,
11 the jealousies that developed, and the inappropriate physical
12 intimacy being justified as spiritual. These misgivings
13 were never voiced to Donald Barnett because of the widespread
14 feeling that it would do no good. Jack DuBois and especially
15 Scott Hartley had these misgivings. Jack McDonald was also
16 extremely wary when first introduced to this practice,
17 although he felt bound by the church's laws to follow Donald
18 Barnett's example and to implement the activity at the
19 Tacoma satellite.

20 Eventually, a spiritual connection formed between Carol
21 Gabrielson and Jack McDonald. This, in addition to McDonald's
22 position as Carol's pastor and counselor, resulted in
23 Carol's extreme trust in, and dependence upon, Jack McDonald.
24 The result was that Carol was convinced to spend more and
25 more time with McDonald at the expense of her family. The
26 final result was the sexual coercion described earlier.

////

TRIAL BRIEF - 12

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1 Donald L. Barnett was allowed to introduce and
2 encourage the activity known as spiritual connections
3 despite knowledge by the church hierarchy that Donald L.
4 Barnett had abused his position in the church on prior
5 occasions to take sexual advantage of female parishioners
6 and despite the knowledge that the program was being used to
7 justify inappropriate sexual contact among members of the
8 congregation.
9

10 II. LAW AND ARGUMENT

11 A. JACK McDONALD'S NEGLIGENCE CONSISTED OF
12 ENGAGING IN A SEXUAL RELATIONSHIP WITH CAROL
13 GABRIELSON WHO WAS BOTH A MEMBER OF HIS
14 CONGREGATION AND HIS COUNSELEE.

15 There is ample precedent that it is negligence on the
16 part of a health care professional to have sexual contact
17 with a client whom he is counseling.

18 The federal case, Simmons v. United States, 805 F.2d
19 1363 (9th Cir. 1968) was a case applying Washington law that
20 discussed the negligence of a psychiatrist who engaged in
21 sexual conduct with a client:

22 There is no question that a mental health
23 professional's sexual involvement with a
24 client is a breach of duty and malpractice
25 under Washington law.

26 Simmons, supra, 805 F.2d at 1368.

Likewise, Washington statutes provide that it is
unethical for any psychologist to engage "in any act

////

1 involving moral turpitude" and, more particularly,
2 "physically abusing or having sexual contact with a patient
3 or client" is defined as unethical. RCW 18.83.120(1), (18).
4

5 Carol Gabrielson's relationship to Jack McDonald was
6 that of a congregant/counselee to a pastor/counselor.
7 Washington state law clothes this relationship with all the
8 indicia of utmost respect. The law clothes both the
9 priest-penitent relationship and the counselor-counselee
10 relationship with testimonial privileges. See RCW
11 5.60.060(2), (3). Such privileges are born of the sanctity
12 with which the relationships are regarded. It may be
13 assumed that the relationships protected by testimonial
14 privileges meet the requirements recognized at common law
15 for the existence of a testimonial privilege:

16 (1) The communication must originate in
17 confidence that it will not be disclosed;

18 (2) The element of confidentiality must
19 be essential to the full and satisfactory
20 maintenance of the relation between the
21 parties;

22 (3) The relation must be one which in the
23 opinion of the community ought to be
24 sedulously fostered; and

25 (4) The injury that would inure to the
26 relation by the disclosure of the
communication must be greater than the
benefit thereby gained for the correct
disposal of litigation.

Senear v. Daily Journal American, 97 Wn.2d 148, 153, 641 P.2d
1180 (1982).

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TRIAL BRIEF - 14

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1 The relationship between a person and her God is so
2 sacrosanct that the protection of a person's religious
3 beliefs is written into both the United States and the
4 Washington state constitutions. Jack McDonald represented
5 God's anointed shepherd to Carol Gabrielson; the person upon
6 whom God had laid His hand to lead her in her pursuit of a
7 righteous life and the ultimate reward promised by God in the
8 Bible that is reserved for His followers. If anyone ever
9 stood in a fiduciary relationship to Carol Gabrielson, it was
10 Jack McDonald.

11 A fiduciary relation is one founded on trust or confi-
12 dence reposed by one person in another. State of Montana v.
13 Hooser, 227 P. 819, 821, 71 Montana 1 (1924). It exists
14 where there is special confidence reposed in one who in
15 equity and good conscience is bound to act in good faith and
16 with due regard for the interests of the one reposing the
17 confidence. Neagle v. McMullen, 165 N.E. 605, 608, 334 Ill.
18 168 (1929). The origin of the confidence and the source of
19 the influence are immaterial. Quinn v. Phipps, 1132 So. 419,
20 420, 93 Fla. 805 (1927).

21 The gravamen of Carol Gabrielson's complaint lies in the
22 malpractice, deceit, assault and coercion by Jack McDonald; a
23 person who was in a position of overpowering influence over
24 her and in whom she placed trust, not only for her temporal
25 well being, but for the salvation of her soul.

26 ////

1 Washington courts have commented upon the sexual abuse
2 by one in such a powerful position of confidence and trust of
3 the one reposing such trust and confidence. In the case Omer
4 v. Edgren, 38 Wn.App. 376, 685 P.2d 635 (1984), the
5 Washington Court of Appeals discussed the New York case Roy
6 v. Hartogs, 81 Misc.2d 350, 366 N.Y.S.2d 297 (1975) in
7 deciding that sexual abuse of a patient by a health care
8 provider was malpractice:
9

10 In Roy v. Hartogs, 81 Misc.2d 350, 366 N.Y.S.2d
11 297 (1975), a patient sued her psychiatrist
12 alleging the doctor had sexual relations with her
13 as part of the treatment program. The court
14 analyzed this type of case and found it involved a
15 fiduciary relationship between psychiatrist and
16 patient and was analogous to a guardian-ward
17 relationship. The gravamen of the plaintiff's
18 complaint lay in the malpractice, deceit, assault
19 and coercion by a person in a position of
20 overpowering influence and trust.

21 This case involves a fiduciary relationship
22 between psychiatrist and patient and is
23 analogous to the guardian-ward relationship
24 in Graham v. Wallace (50 App.Div. 101, 108)
25 wherein the court stated: "The ward cannot
26 waive performance of this duty or surrender
these rights of protection. When the
guardian thus betrays his trust and ruins the
morals, the character and reputation of his
ward, he should not be heard to say in a
court of justice, by way of legal excuse or
justification for the seduction, that the
ward was capable of consenting. Consent
obtained under such circumstances is no
consent and should stand for naught. It is
essential to the preservation and enforcement
of the ward's right of protection in her
chastity and virtue that a violation of this
right by her guardian should not pass with
impunity, but that it should be vindicated
and the seducer punished on the civil as well
as on the criminal side of the court".

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TRIAL BRIEF - 16

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1
2 . . . there is a public policy to protect a
3 patient from the deliberate and malicious
4 abuse of power and breach of trust by a
5 psychiatrist when that patient entrusts to
6 him her body and mind in the hope that he
7 will use his best efforts to effect a cure.
That right is best protected by permitting
the victim to pursue civil remedies, not only
to vindicate a wrong against her but to
vindicate the public interest as well.

8 Omer, supra, 38 Wn.App. at 378-79, quoting, Roy v. Hartogs,
9 supra, 81 Misc.2d at 352-54.

10 The court approved of the reasoning quoted in the Roy
11 case reciting that the physician-patient relationship in
12 Washington is also considered fiduciary in character:

13 Washington has also characterized the
14 relationship between physician and patient as
15 fiduciary: "The physician-patient relationship is
of a fiduciary character. The inherent necessity
for trust and confidence requires scrupulous good
faith on the part of the physician."

16
17 Omer, supra, 38 Wn.App. at 379.

18 The reasoning evident in the Omer case for finding a
19 fiduciary relationship between a physician and a patient and
20 the negligence inherent in violation of that relation by
21 coercing sexual contact applies with even greater force to
22 the present situation in which Carol Gabrielson went to
23 Jack McDonald as both her pastor and as her counselor and
24 had her ultimate trust and confidence violated by his sexual
25 abuse.

26 ////

////

1 B. JACK McDONALD WAS THE AGENT OF THE DEFENDANT
2 CORPORATION, COMMUNITY CHAPEL AND BIBLE
3 TRAINING CENTER.

4 Jack McDonald was the agent of the Community Chapel and
5 Bible Training Center in accordance with the definition of
6 an agent approved in the Washington Pattern Jury Instructions:

7 An agent is a person employed under an
8 express or implied agreement to perform
9 services for another called the principle,
10 and who is subject to the principle's control
11 or right to control the manner and means of
12 performing the services. One may be an agent
13 even though he or she receives no payment for
14 services. The agency agreements may be oral
15 or in writing.

16 WPI 50.01.

17 The right of the corporate church to control Jack
18 McDonald is evident in the by-laws of the corporate church
19 and in the by-laws of the Tacoma satellite, which the
20 corporate church dictated to the Tacoma satellite.

21 Instances of this right of control are recited in the
22 Statement of Facts, supra, and are set forth in detail in
23 the by-laws of both the corporate church and the satellite,
24 which will be introduced into evidence.

25 The actual exercise of control over the Tacoma church
26 by the corporate church is evident in an investigation
conducted by the corporate church into the daily affairs of
the satellite church entitled "Failure of Jack McDonald to
Comply with By-laws." This investigation recites the
failures of Jack McDonald to ensure that the internal

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TRIAL BRIEF - 18

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1 operation of the Tacoma satellite was conducted as demanded
2 by the main corporation.

3 Counseling was a legitimate service and was a duty
4 imposed upon Jack McDonald by the by-laws dictated to him by
5 the corporate church. The standards for legitimate
6 counseling activity are contained in those by-laws as a
7 "Statement on Counseling" which, along with the remainder of
8 the by-laws, was dictated to the Tacoma satellite by the
9 main corporation.

10
11 ☉. THE COMMUNITY CHAPEL AND BIBLE TRAINING
12 CENTER, AS PRINCIPLE, IS LEGALLY RESPONSIBLE
13 FOR THE HARM INFLICTED UPON CAROL AND IRA
14 GABRIELSON BY ITS AGENT, JACK McDONALD.

15 The corporate church is liable for Jack McDonald's
16 conduct because his conduct was within the scope of his
17 agency. Washington agency law has long held that a master
18 cannot excuse himself when any "authorized act was
19 improperly or unlawfully performed." DeLeon v. Doyhof Fish
20 Products Co., 104 Wash. 337, 343, 176 P. 355 (1918), nor can
21 he excuse himself when an unauthorized act is done in
22 conjunction with other acts which are within the scope of
23 duties the employee is instructed to perform. Pearson v.
24 United States, 522 F.2d 459, 464 (9th Cir. 1975); Smith v.
25 Leber, 34 Wn.2d 611, 623, 209 P.2d 297 (1949).

26 In a recent case discussing scope of employment, the
Washington Supreme Court reiterated the test for determining

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TRIAL BRIEF - 19

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1 whether an employee was within the course of his employment
2 as:

3
4 Whether the employee was, at the time,
5 engaged in the performance of the duties
6 required of him by his contract of employ-
7 ment; or by specific direction of his
8 employer; or, as sometimes stated, whether he
9 was engaged at the time in the furtherance of
10 the employer's interest."

11 Dickinson v. Edwards, 105 Wn.2d 457, 467, 716 P.2d 814
12 (1986) (quoting Elder v. Cisco Construction Co., 52 Wn.2d
13 241, 245, 324 P.2d 1082 (1958)) (emphasis in original). The
14 Washington court has emphasized the importance of the
15 benefit to the employer in applying this test. Dickinson,
16 supra, 105 Wn.2d at 467. In Dickinson, the court applied
17 respondeat superior to allow a plaintiff injured by a drunk
18 employee to recover from a banquet-hosting employer who
19 required the employee's attendance at a party furthering the
20 employer's interest. Id. at 468. In so holding, the court
21 noted that acts in violation of company policy, negligent
22 acts performed contrary to instructions, and acts
23 "forbidden, or done in a forbidden manner," may create
24 employer liability. Id. at 470 (quoting Restatement
25 (Second) of Agency, § 230 (1958)).

26 D. IRA GABRIELSON HAS A VALID CLAIM FOR LOSS OF
CONSORTIUM.

A claim of loss of consortium is the independent cause
of action of a "deprived" spouse for the loss of the love,
////

1 affection, care, services, and society of the injured or
2 "impaired" spouse. Lund v. Caple, 100 Wn.2d 739, 742 n.1,
3 744, 675 P.2d 1272 (1984).

4 In Lund, the court addressed the question whether one
5 spouse may sue alone for loss of consortium and if so,
6 whether the allegation of loss of consortium is so similar
7 to alienation of affections that it is barred as a matter of
8 policy. Lund, supra, 100 Wn.2d at 742.

9 In Lund, Mr. Lund sued Alan Caple, pastor of the
10 Westgate Chapel, for negligent impairment of consortium.
11 Mrs. Lund refused to join in the lawsuit.

12 The Washington Supreme Court held that where the
13 allegation of the "deprived" spouse is that the tortfeasor
14 interfered with his or her marriage because of sexual
15 misconduct with the "impaired" spouse, the allegation is too
16 similar to alienation of affections to be maintained, unless
17 the "impaired" spouse joins as a plaintiff in the lawsuit
18 asserting his or her own injury leading to the "impairment":
19

20 Here, John Lund is suing because of alleged
21 sexual misconduct that interfered with his
22 marriage. His wife did not join the lawsuit,
23 which alone would not bar the action, but
24 does indicate at least the possibility of a
25 vengeful motive or a so-called "forced sale"
26 on the part of a wronged husband. As such,
this lawsuit is so similar to an alienation
of affections action that as a matter of
policy it falls within the prohibitions of
Wyman v. Wallace, supra.

////

TRIAL BRIEF - 21

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1 This opinion, however, should not be read as
2 precluding an action against a counselor,
3 pastoral or otherwise, in which a counselor
4 is negligent in treating either a husband or
5 wife. It is conceivable that a malpractice
6 action would be appropriate where a counselor
7 fails to conform to an appropriate standard
8 of care, injures the patient/spouse which in
9 turn results in loss of consortium damages to
10 the other spouse. Where, however, the
11 alleged underlying tort is based upon an
12 extramarital relationship with the
13 "impaired" spouse and the "impaired" spouse
14 does not desire to assert á claim, such an
15 action becomes in essence a suit for
16 alienation of affections. Absent the
17 "impaired" spouse's claims, remaining
18 allegations amount to an alienation of
19 affections action. . . ."

20 Lund, supra, 100 Wn.2d at 747.

21 In the present action, Carol Gabrielson has joined Ira
22 Gabrielson in the lawsuit asserting claims of negligence on
23 the part of Jack McDonald resulting in severe mental and
24 emotional harm. The mental and emotional harm is the
25 impairment upon which Ira Gabrielson's claim hinges. Ira
26 Gabrielson seeks damages for the loss of love, affection,
services, society and consortium during the duration of his
marriage to Carol.

E. NEGLIGENCE OF DONALD L. BARNETT AND THE
COMMUNITY CHAPEL AND BIBLE TRAINING CENTER.

Neither the Washington State nor the Federal
Constitutions may be used as a front to excuse licentious
conduct:

////

////

1
2 Absolute freedom of conscience in all matters
3 of religious sentiment, belief and worship,
4 shall be guaranteed to every individual, and
5 no one shall be molested or disturbed in
6 person or property on the count of religion;
7 but the liberty of conscience hereby secured
8 shall not be so construed as to excuse acts
9 of licentiousness or justify practices
10 inconsistent with the peace and safety of the
11 state.

12
13 Washington State Constitution, Article I, Section 11,
14 Amendment 34.

15 Thus, the amendment embraces two concepts,
16 freedom to believe and freedom to act. The
17 first is absolute but in the nature of
18 things, the second cannot be. Conduct
19 remains subject to regulation for the
20 protection of society.

21
22 Cantwell v. Connecticut, 110 U.S. 296, 203, 60 S.Ct. 900,
23 903, 84 L.Ed. 213 (1940) (discussing the free exercise
24 clause of the United States Constitution).

25 As may be seen from the above quotes, the freedom to
26 act is not absolute, even when embellished with a religious
vener. The Washington Supreme Court has indicated that it
will not hesitate to use state action to prevent abuse of an
individual or of the family by unscrupulous individuals
attempting to shield themselves behind the freedom of
religion clauses of our constitutions. Carrieri v. Bush, 69
Wn.2d 536, 419 P.2d 132 (1966) was an action for alienation
of affections brought by a husband against the pastor of a
religious sect. The plaintiff's marriage began to suffer

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TRIAL BRIEF - 23

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1 due to the pastor's increasing influence over her. The
2 plaintiff was told by the pastor that he was "full of the
3 devil" and eventually the wife was persuaded to leave the
4 family home and her whereabouts were concealed by the
5 defendant. The wife eventually filed for, and was granted,
6 a divorce. The plaintiff filed suit against the pastor and
7 elders of the church, for alienation of affection. At
8 trial, the court granted the defendant's challenge to the
9 sufficiency of the evidence and the plaintiff appealed.
10

11 The Supreme Court reversed the trial court's decision
12 and held as follows:

13 Respondents, however, impliedly urge, and the
14 trial court in effect conferred upon them, an
absolute privilege to interfere in appellant's
marriage and upon religious grounds.

15 There is no question that our state
16 constitution protects the free exercise of
17 religious beliefs, and neither a religious
18 belief nor the lack of such belief is, of
19 itself, grounds for a divorce. But, one does
20 not, under the guise of exercising religious
21 belief, acquire a license to wrongfully
22 interfere with familial relationships. Good
23 faith and reasonable conduct are the
24 necessary touchstones to any qualified
25 privilege that may arise from any invited and
26 religiously directed family counseling,
assistance, or advice. Ill will,
intimidation, threats, or reckless
recommendation of family separation directed
toward inalienating the spouses, where found
to exist nullify the privilege and project
liability.

69 Wn.2d at 544-45 (emphasis added) (citations omitted).

While the tort of alienation of affections has been

////

1 abolished in this state, the principles of Carrieri remain.
2 A religious leader does not by merely shouting "free
3 exercise" acquire a right to encourage or practice seduction
4 and adultery among his or her parishioners. The "good faith
5 and reasonable conduct" which activates the privilege must
6 be present.

7
8 Donald L. Barnett instituted a program that encouraged
9 the practice of seduction and adultery among the various
10 congregations of the Community Chapel and Bible Training
11 Center. The practice of spiritual connections was, in
12 practice as exemplified by Donald L. Barnett's conduct,
13 nothing more than an excuse to practice the seduction and
14 adultery with vulnerable members of his congregation. This
15 licentious conduct was known to the hierarchy of the
16 corporation. Far from discouraging this, the majority of
17 the board of directors willingly participated in seduction
18 and adultery while attempting to justify their actions under
19 the rubric of the spiritual connection.

20 III. CONCLUSION

21 Jack McDonald, Carol Gabrielson's pastor and counselor,
22 was negligent in that he coerced Carol Gabrielson into a
23 sexual relationship in the guise of legitimate counseling.

24 Jack McDonald was the agent of the Community Chapel and
25 Bible Training Center due to the right of control retained
26 by the corporation over the satellite church at which Jack

////

1 McDonald was pastor.

2
3 Counseling was an activity encouraged by the
4 corporation, which outlined the parameters of legitimate
5 counseling and dictated those parameters to its satellite
6 churches and pastors in the by-laws it provided for
7 incorporation of its satellites.

8 The main corporation is responsible for the harm done
9 to Carol and Ira Gabrielson because that harm is the result
10 of legitimate corporate activities carried out by Jack
11 McDonald in an inappropriate manner.

12 Donald L. Barnett and the hierarchy of the Community
13 Chapel and Bible Training Center were negligent in that they
14 abused their fiduciary position of trust and power by
15 encouraging the practice of seduction and adultery among the
16 congregations of the corporation in the guise of legitimate
17 religious activity.

18 DATED this _____ day of _____, 1988.

19 RUSH, HANNULA & HARKINS

20
21 By: _____
22 DANIEL L. HANNULA, of
23 Attorneys for Plaintiffs

24
25
26 ////

TRIAL BRIEF - 26

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EXHIBIT

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1 laws of the State of Washington. The corporation includes a chapel, a
2 Bible college, and a Christian school.

3 The Community Chapel & Bible Training Center at Tacoma
4 (hereinafter referred to as "the Tacoma church") was affiliated with
5 the Burien church. It is referred to as a "satellite church";
6 however, the Tacoma church is a separate corporation with no
7 financial relationship to the Burien church. The Tacoma church
8 started as a Bible fellowship and grew into a full church.

9 Jack McDonald was the original pastor of the Tacoma church.
10 Jack McDonald is an ordained minister and he received his training at
11 the Community Chapel & Bible College at Burien. Jack McDonald is a
12 graduate of the Bible college.

13 The duties of any pastor of any Community Chapel which is
14 affiliated with the Burien church include the typical sacraments of
15 all ordained ministers. That is the pastor has the right and
16 obligation to marry members of the church, preside at funerals, and
17 assist members of the church with spiritual matters. Adultery,
18 fornication, and other sexual relations outside of marriage are
19 strictly forbidden.

20 "Spiritual connections" is a religious doctrine which arose
21 in the Burien church. The doctrine is based on the belief that those
22 who have accepted Jesus Christ as their personal savior are capable
23 of personally experiencing God's love. "Spiritual connections" is a
24 form of worship.
25

1 The form of worship which became known as "spiritual
2 connections" was not created by Pastor Barnett. Spiritual connections
3 is, by all accounts, a spontaneous phenomena which arose among
4 members of the church at Burien. Throughout Pastor Barnett's
5 preachings regarding spiritual connections, he warned against the
6 temptation to succumb to physical, romantic and/or sexual
7 relationships. Although one was encouraged to "love thy neighbor",
8 love which became physical, romantic and/or sexual was specifically
9 prohibited.

10 Carol Gabrielson was raised in a pentecostal family.
11 Pentecostals believe in many supernatural events, including "speaking
12 in tongues". Carol Gabrielson had the gift of speaking in tongues.
13 Carol Gabrielson was severely abused as a child.

14 These facts form the basis of a conflict between religion
15 and psychiatric medicine. Carol Gabrielson and other witnesses will
16 describe Gabrielson's reports of hearing voices, speaking in tongues,
17 experiencing out of body experiences, and intense religious feelings.
18 The non-medical witnesses will describe these experiences as
19 manifestations of her deep and profound religious faith. Plaintiff's
20 expert, Dr. Philip Lindsay, psychiatrist, will testify that these
21 reports of Carol Gabrielson are all symptoms of psychiatric illness.

22
23 DOES THIS COURT INTEND TO PERMIT A JURY TO DECIDE WHETHER
24 CAROL GABRIELSON HAD A RELIGIOUS EXPERIENCE OR IS MERELY MENTALLY
25 ILL?

TRIAL BRIEF - 3

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1 Carol Gabrielson left her parent's home at age 15 or 16,
2 while in the tenth grade, to marry Ira who was about 23 years old at
3 the time. The Gabrielsons raised a family of two daughters. Carol
4 Gabrielson, in addition to raising a family, raised animals. Ira was
5 a mechanic and worked hard to support his family.

6 Carol Gabrielson advises her therapists that she was
7 sexually unhappy with Ira. She was apparently incapable of orgasm for
8 the first fifteen years of her marriage. She began to read books and
9 articles about sexual relations. She began to complain about Ira's
10 sexual performance. Carol asked Ira to visit a sexual therapist and
11 he refused.

12 Carol Gabrielson attended church in Puyallup called "The
13 Upper Room". It was a pentecostal church. Carol would occasionally
14 attend services at the Burien church. By 1985, the Burien church had
15 grown substantially.

16 Carol began to attend services at the Tacoma church. She
17 did not agree with some doctrines preached at the Tacoma church
18 specifically related to "demon deliverance" and she left and returned
19 to The Upper Room. It appears that, in 1985, notwithstanding her
20 disagreement with certain of the theology preached at the Tacoma
21 church she in any event returned to full time membership at the
22 Tacoma church.

23 In mid-1985, the spiritual connection theology was
24 developing. The spiritual connections form of worship included
25 dance and intense prayer. Carol was at first reluctant to participate

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1 because she felt inhibited. At first, she danced by herself alone,
2 and then she began to dance with others. Ira did not like this form
3 of worship at all. Carol began to dance with Pastor Jack McDonald.

4 Carol became increasingly rebellious to Ira's wishes..
5 According to Ira, she stopped keeping house and cooking the meals to
6 his satisfaction. Carol spent increasing amounts of time at church.
7 Ira became jealous. Carol got mad. Carol moved out of Ira's house in
8 October, 1985, and their legal separation commenced.

9 Carol Gabrielson fell in love with Jack McDonald. He
10 apparently became infatuated with her also. Their relationship left
11 the spiritual realm and became physical and sexual. Carol and Jack
12 will testify they both knew it was sin and wrong and they both prayed
13 for forgiveness. They told each other they had to stop. However, love,
14 conquers all.

15 Carol claims that, between October and December 1985, they
16 had sexual intercourse fifty to sixty times. Jack McDonald says it
17 was more like twenty. In any event, there is no dispute that their
18 physical relationship was consummated in various places, including
19 Carol's home, Jack's home, their friends' home, church and, at least
20 one time, in a motel.

21 Carol Gabrielson says Jack McDonald tricked her into having
22 sex during the course of a counselling relationship. Jack McDonald
23 says she seduced him and that there was no counselling relationship
24 between the two of them.

25

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1 The facts appear to demonstrate a middle aged man having a
2 sexual affair with a woman who had been unhappy in her marriage.

3 Around December 1985, Jack McDonald broke off the
4 relationship and Carol Gabrielson really got mad. She asked him to go
5 with her and confess to Pastor Barnett. McDonald refused. Carol began
6 to threaten to expose him to his church. Jack McDonald then
7 disfellowshipped Carol Gabrielson from the Tacoma Community Chapel.

8 On March 6, 1986, Carol went to the Burien church for
9 services. Somebody from the Tacoma church observed her and advised
10 the Burien ushers that she had been disfellowshipped. Carol was asked
11 to leave and she refused. She began to speak in a loud, vulgar, and
12 obscene manner. She refused repeated requests to leave. Security
13 guards were called and, when they approached her, she ran to the
14 front of the church screaming. She was seized and forcibly removed.
15 Carol was dragged kicking and screaming from the church premises:

16 Carol Gabrielson is now divorced and remarried and living
17 in San Diego, California.

18 II. DISCUSSION

19 1. THE BURIEN CHURCH IS NOT RESPONSIBLE FOR JACK
20 McDONALD'S ACTIVITIES.

21 Under the doctrine of respondeat superior, the employer may
22 only be held vacariously liable for acts of misconduct within the
23 scope of the employment. Kyreacos v. Smith, 89 Wn.2d 425, 572 P.2d
24 723 (1977). John Does v. Comp Care, Inc., 51 Wn. App. 923 (1988)
25 Under negligent supervision, the employer may be held liable for acts

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1 beyond the scope of employment if the employer has prior knowledge of
2 the dangerous tendencies of its employee. LaLone v. Smith, 39 Wn.2d
3 167, 234 P.2d 893, John Does v. Comp Care, Inc., Supra. See also, Doe
4 v. Durtschi, 110 Idaho 466, 716 P.2d 1238, 60 A.L.R. 4th 225 (1986).

5 First, there is no evidence that Jack McDonald was an
6 employee of the Burien church. Indeed, there is no financial
7 relationship between the Burien church and the Tacoma church. Jack
8 McDonald was employed by the Tacoma church only. Second, the
9 undisputed evidence will be that the sexual relationship between Jack
10 McDonald and Carol Gabrielson was specifically prohibited by the
11 doctrines of the Burien church and these activities were, therefore,
12 not within Jack McDonald's scope of duties as pastor of the Tacoma
13 church. Third, there will be no evidence that Jack McDonald had any
14 dangerous tendency and further, and more importantly, no evidence
15 whatsoever that anybody at the Burien church had any prior knowledge
16 indicating Jack McDonald may engage in sexual relations with a member
17 of his church.

18 There is no factual basis to support plaintiff's claim of
19 respondeat superior and it must, therefore be dismissed.

20 2. THE BURIEN CHURCH IS NOT LIABLE FOR CAROL GABRIELSON'S
21 PERSONAL INJURIES, IF ANY, WHICH WERE CAUSED BY HER EJECTION FROM THE
22 CHURCH ON MARCH 6, 1986.

23 Church services at the Burien church are not open to the
24 public and, further, the services are held on private property. The
25 Burien church is entitled to exclude from its premises any person if

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1 so wishes to be excluded. The Burien church is free to associate or
2 disassociate itself with and from any person it so desires.

3 The law is well settled that the proprietor of a place to
4 which a person was invited may request one making a disturbance to
5 leave and, upon non-compliance, the proprietor may use such force as
6 is necessary to eject the disturber. Crouch v. Ringer, 110 Wash. 612
7 (1920), Austin v. Metropolitan Life, 106 Wash. 371, Huret v. Teufel,
8 62 Wn.2d 761 (1963).

9 Once the ushers requested that Carol Gabrielson leave the
10 church services, she had no right to be present. At the moment Carol
11 Gabrielson refused to leave the premises when requested, the Burien
12 church ushers were entitled to use as much force as was reasonably
13 necessary to eject her from the premises.

14 Carol Gabrielson was not about to be removed from the
15 premises and the security guards' exercise of force to effect the
16 ejection was, under all circumstances, reasonable. Carol Gabrielson's
17 claim for personal injuries arising out of her ejection from the
18 Burien church on March 6, 1986 must be dismissed.

19 3. IRA GABRIELSON'S CLAIM FOR LOSS OF CONSORTIUM MUST BE
20 DISMISSED.

21 In their ninth cause of action for loss of consortium, the
22 Gabrielsons alleged that Pastor McDonald "took advantage of [Carol
23 Gabrielson's] weakness and her need for support and manipulated her
24 into leaving her husband plaintiff Ira Gabrielson."

25 This allegation is nearly identical to the plaintiff's

1 claim in Lund v. Caple, 100 Wn.2d 739, 675 P.2d 226 (1984), in which
2 a husband asserted that the defendant pastor, during his counselling
3 sessions with Mrs. Lund, had seduced her, causing the breakup of the
4 Lunds' marriage. The Washington Supreme Court affirmed an order
5 granting summary judgment in favor of the pastor on the ground that
6 plaintiffs' cause of action was, in fact, a claim for alienation of
7 affections, a tort which had been abolished in Wyman v. Wallace, 94
8 Wn.2d 99, 615 P.2d 452 (1980).

9 Just as in Lund v. Caple, Supra., the Gabrielsons' cause of
10 action for loss of consortium is, in fact, a claim for alienation of
11 affections. The complaint alleges that "plaintiff Carol Gabrielson
12 was coerced and unduly influenced into having a sexual relationship
13 with defendant Jack McDonald." The claim rests upon (1) the fact of
14 marriage, (2) adulterous intercourse, and (3) consequent breakup of
15 the marriage. These are the essential elements of the abolished tort
16 of alienation of affections. Lund v. Caple, Supra.

17 The Gabrielsons' cause of action for loss of consortium
18 should be dismissed because it is, in essence, a claim for alienation
19 of affections which is no longer a tort in the state of Washington.

20 4. UNDER THE CIRCUMSTANCES OF THIS CASE, THERE IS NO TORT
21 OF "CREATING AN ATMOSPHERE" BECAUSE PASTOR BARNETT'S PREACHINGS AND
22 THE RELIGIOUS DOCTRINE OF THE BURIEN CHURCH ARE ABSOLUTELY PROTECTED
23 BY CONSTITUTIONAL PRIVILEGE.

24 The free exercise clause of the United States
25 Constitution's First Amendment prohibits a State from unduly

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1 burdening the free exercise of religion. Thus, the United States'
2 Supreme Court has asserted that "in every case, the power to regulate
3 [religious conduct] must be exercised as not in attaining a
4 permissible end, in unduly to infringe the protected freedom [of the
5 exercise of religion.]" Cantwell v. Connecticut, 310 U.S. 296 (1940).
6 More recently, in Sherbert v. Verner, 374 U.S. 398 (1963), the court
7 emphasized that "only the gravest abuses, endangering paramount
8 interests, give occasion for permissible limitation."

9 There is no doubt that State tort law, whether statutory or
10 common law, constitutes State action. The test, said the Supreme
11 Court in New York Times v. Sullivan, 376 U.S. 254 (1964), "is not the
12 form in which State power has been applied but, whatever the form,
13 whether such power has in fact been exercised." In Paul v. Watch
14 Tower Bible & Tract Society of New York, No. 85-4012, Slip Opinion at
15 8 (9th Cir., June 10, 1987), the court stated:

16 Clearly, the application of tort law to activities of
17 a church or its adherence in their furtherance of their
18 religious belief is an exercise of State power. When
19 imposition of liability would result in the abridgement of
20 the right to free exercise of religious beliefs, recovery
21 in tort is barred.

22 I It is undisputed that the Community Chapel is a church and
23 that Pastor Barnett's spiritual preachings were offered as a part of,
24 and in furtherance of, the church's religious doctrine. Thus, by
25 virtue of the First Amendment to both the State and Federal
26 Constitutions, the Community Chapel is presumptively immune from tort
27 suits with regard to the activities challenged by the Gabrielsons.

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1 In Paul v. Watch Tower Bible & Track Society, the
2 appellant, a former member of the Jehovahs Witness Church, brought an
3 action against the church, claiming the common law torts of
4 defamation, invasion of privacy, fraud and outrageous conduct. After
5 her parents were "disfellowshipped" from the church, the plaintiff
6 withdrew her membership and was "shunned" by church members.

7 The Court of Appeals affirmed an order granting summary
8 judgment in favor of the defendant on the ground that the church's
9 "shunning activity", even if tortious, was subject to a
10 constitutionally derived privilege which rendered it immune from most
11 tort actions. In particular, the free exercise clause rendered the
12 church immune from suits alleging intangible, emotional harm.
13 "Intangible or emotional harms cannot ordinarily serve as a basis for
14 maintaining a tort cause of action against a church for its practices
15 - or against its members ... offence to someone's sensibility
16 resulting from religious conduct is simply not actionable in tort."
17 Paul, at p. 11.

18 Society's interest in compensating persons for intangible
19 harm is not sufficient to overcome the constitutional values embodied
20 in the First Amendment. "Without society's tolerance of offences to
21 sensibility, the protection of religious differences mandated by the
22 First Amendment would be meaningless." Id.

23 Just as in the Paul decision, the Gabrielsons' claim of
24 damage is not based upon allegations of physical assault. It is based
25 upon allegations that the Community Chapel's practice of spiritual

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1 counselling amounted to the intentional infliction of emotional
2 distress. Gabrielson has not alleged sexual assault.

3 In Christofferson v. Church of Scientology of Portland, 57
4 Or. App. 203, 644 P.2d 577, 40 A.L.R. 4th 1017 (1982), the plaintiff
5 was a former member of the defendant church, who sued the church for
6 making allegedly fraudulent claims concerning the benefits of
7 membership. The plaintiff argued that, because these claims were
8 offered to her on the secular basis of self-improvement, the First
9 Amendment was not a bar to judicial inquiry into the validity of the
10 claims.

11 The court rejected this argument, stressing that the free
12 exercise clause required that the religious character of each of the
13 allegedly fraudulent statements be evaluated in the context of the
14 church's religious doctrine as a whole, rather than isolation.
15 "Statements made by religious bodies must be viewed in the light of
16 the doctrines of that religion. Courts may not sift through the
17 teachings of a religion and pick out individual statements for
18 scrutiny, deciding whether each standing alone is religious."
19 Christofferson v. Church of Scientology, Id. In order to overcome the
20 presumption of constitutional privileges, the plaintiff had to prove
21 that the vocabulary of religion was merely "tacked on" to conceal a
22 wholly secular purpose. Christofferson v. Church of Scientology, Id.

23 The Gabrielsons' causes of action against the Burien church
24 should be dismissed because the courts are constitutionally barred
25 from inquiring into the validity of the Burien church's theology.

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1 This court does not have jurisdiction to determine whether
2 the Burien church and its doctrines are true religion.

3 DATED this 19 day of September, 1988.

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

6 By Michael J. Bond
7 MICHAEL J. BOND
8 of Attorneys for Defendant
9 Community Chapel & Bible Training
10 Center of Burien
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EXHIBIT

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NOV -2 1988

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

IRA GABRIELSON and CAROL
GABRIELSON, husband and
wife,

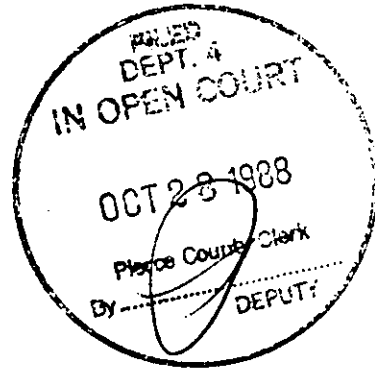
VOL 389 PAGE 1245

Plaintiffs,

NO. 86-2-02792-6

-vs-

JACK McDONALD and SHIRLEY
McDONALD, husband and wife;
COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER OF TACOMA;
COMMUNITY CHAPEL AND BIBLE
TRANING CENTER OF BURIEN,



Defendant .

COURT'S INSTRUCTIONS TO THE JURY

DATED: 10/24/88

Thomas A. Swayze, Jr.
JUDGE THOMAS A. SWAYZE, JR.

15153 4/21/2883 88214

INSTRUCTION NO. 1

It is your duty to determine the facts in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given is not important. The attorneys may properly discuss any specific instructions they think are significant, but you should consider the instructions as a whole.

The evidence you are to consider consists of the testimony of the witnesses and the exhibits offered and received. Disregard any evidence which was not admitted or which was stricken by the court.

In determining whether any matter has been proved, you should consider all of the evidence introduced on the question. Each party is entitled to the benefit of the evidence whether produced by him or another.

You are the sole judges of the believability of the witnesses and of what weight is to be given to the testimony of each. Take into account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony in light of all the

evidence, and any other factors that bear on believability and weight.

Lawyers' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence, however, and you should disregard any remark, statement or argument which is not supported by the evidence or the law being given to you.

The lawyers have the right and the duty to make objections. These should not influence you.

The law does not permit me to comment on the evidence, in any way, and I have not intentionally done so. If it appears to you that I have, disregard the comment.

Jurors have a duty to consult with one another and to deliberate with a view to reaching a verdict. Each of you must decide the case for yourself after an impartial consideration of the evidence with your fellow jurors. You should not hesitate to re-examine your views and change your opinion if you are convinced it is wrong. You should not surrender your honest belief solely because of the opinions of other jurors, or for the mere purpose of returning a verdict.

You are officers of the court and must act impartially and with a sincere desire to determine the proper verdict. Throughout your deliberations permit neither sympathy nor prejudice to influence you.

INSTRUCTION NO. 2

A witness who has special training, education or experience in a particular science or profession may be allowed to express an opinion in addition to giving testimony as to facts. He is called an expert witness. You are not bound by his opinion. In determining the weight to be given such opinion, you may consider the education, training, experience, knowledge and ability of that witness, the reasons given for his opinion, the sources of his information, and the factors already given you for evaluating the testimony of any other witness.

INSTRUCTION NO. 3

Evidence is of two kinds -- direct and circumstantial.

Direct evidence is that given by a witness who testified directly of his own knowledge concerning facts to be proved. Circumstantial evidence consists of proof of facts or circumstances which according to common experience tends to indicate the truth of the fact sought to be proved.

One kind of evidence is not necessarily more valuable than the other.

INSTRUCTION NO.

4

VOL 389 PAGE 1250

You should decide the case of each defendant separately as if it were a separate lawsuit. Unless a specific instruction states that it applies to a specific defendant, the instructions apply to each defendant.

INSTRUCTION NO. 5

VOL 389 PAGE 1251

All parties are equal before the law whether they be a corporation, partnership or individual. Each is entitled to the same fair and unprejudiced treatment as any individual would be under like circumstances.

INSTRUCTION NO. 6

The plaintiffs in this case are Carol Gabrielson and Ira Gabrielson. The plaintiffs claim that defendant Jack McDonald, while in his capacity as pastor of the defendant Community Chapel and Bible Training Center of Tacoma and, at the same time as an agent of the defendant corporation, Community Chapel and Bible Training Center of Burien was negligent as Carol Gabrielson's pastor, or counselor, or both, in his actions towards Carol Gabrielson.

The plaintiffs claim that Jack McDonald's negligence was a proximate cause of psychological and emotional injuries, resulting in medical and psychiatric treatment and which may require medical and psychiatric treatment in the future.

The plaintiff Carol Gabrielson claims that Jack McDonald defamed her and that such defamation was a proximate cause of psychological and emotional injuries, resulting in medical and psychiatric treatment and which may require medical and psychiatric treatment in the future.

The plaintiff Carol Gabrielson claims that she was assaulted, battered and falsely imprisoned by agents of the defendant Community Chapel and Bible Training Center of Burien, proximately causing physical, psychological and emotional injuries resulting in medial and psychiatric treatment and which may require medical and psychiatric treatment in the future.

Ira Gabrielson claims that the injuries caused Carol

Gabrielson by the defendant resulted in a loss of his wife's companionship, services, and society during their marriage.

The plaintiffs claim that defendant Community Chapel and Bible Training Center corporation of Burien is legally responsible for the assault, battery and false imprisonment, and for Jack McDonald's acts toward Carol Gabrielson and the damage claimed to have been the result.

Defendant Jack and Shirley McDonald deny plaintiff's factual allegations and claims of negligence. Defendants McDonald and the Community Chapel of Tacoma also deny the nature and extent of plaintiff's damages and allege plaintiff's claims for damages bear no relationship to her association with the defendants. Defendant McDonald denies he was acting as agent for the Community Chapel of Burien.

Defendant Community Chapel of Burien denies all of plaintiff's claims. Community Chapel of Burien also denies the nature and extent of plaintiff's damages.

Defendants McDonald, The Community Chapel of Tacoma and defendant Community Chapel of Burien raise as affirmative defenses the following claims:

Plaintiffs' contributory negligence was a proximate cause of damages to Carol and Ira Gabrielson.

That Carol Gabrielson assumed the risk of emotional harm by entering into a sexual relationship with Jack McDonald.

Community Chapel of Burien also raises as an affirmative defense the following claim with respect to the events of

March 6, 1986:

That the Community Chapel was entitled to use and did use as much force as was reasonably necessary to remove Carol Gabrielson from the premises.

The plaintiffs deny these claims.

Each party has the burden of proof of each of their claims by a preponderance of the evidence, and that damage, if any, was a proximate cause of such conduct.

INSTRUCTION NO. 7

The foregoing is merely a summary of the claims of the parties. You are not to take the same as proof of the matters claimed; and you are to consider only those matters which are established by the evidence. These claims have been outlined solely to aid you in understanding the issues.

When it is said that a party has the burden of proof on any proposition, or that any proposition must be proved by a "preponderance" of the evidence, or the expression "if you find" is used, it means that you must be persuaded, considering all the evidence in the case, that the proposition on which that party has the burden of proof is more probably true than not true.

The term "proximate cause" means a cause which in a direct sequence, unbroken by any new independent cause, produces the injury complained of and without which such injury would not have happened.

There may be one or more proximate causes of an injury.

INSTRUCTION NO. 10

Negligence is the failure to exercise ordinary care. It is the doing of some act which a reasonably careful person would not do under the same or similar circumstances or the failure to do something which a reasonably careful person would have done under the same or similar circumstances.

INSTRUCTION NO. 11

VOL 369 PAGE 1259

Ordinary care means the care a reasonably careful person would exercise under the same or similar circumstances.

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INSTRUCTION NO. 12

Counselor negligence or malpractice is the failure to exercise that degree of care, skill or learning expected of a reasonably prudent counselor at that time in the State of Washington acting in the same or similar circumstances.

INSTRUCTION NO. 13

Pastoral negligence or malpractice is the failure to exercise that degree of care, skill or learning expected of a reasonably prudent pastor at that time in the State of Washington in the same or similar circumstances.

INSTRUCTION NO. 14

An assault is an attempt, with unprivileged force, to inflict bodily injuries on another, accompanied with the apparent present ability to effectuate the attempt if not prevented, the apprehension created in the mind of the assaulted person being more important in determining whether there was an assault than the undisclosed intention of the assaulter.

INSTRUCTION NO. 15

One commits a battery if he acts intending to cause a harmful or offensive contact with the person of another, or imminent apprehension of such a contact and such harmful contact with the person of the other directly or indirectly results.

A bodily contact is offensive if it offends a reasonable sense of personal dignity.

INSTRUCTION NO. 16

False imprisonment is the unprivileged intentional violation of a person's right of personal liberty or unprivileged intentional restraint of that person.

A person is imprisoned or restrained when he is deprived of either liberty of movement or freedom to remain in a place of her lawful choice and such imprisonment or restraint may be accomplished by physical force alone, or by threat of force, or by conduct reasonably implying that force will be used.

Ira Gabrielson has sued Jack McDonald and the Community Chapel and Bible Training Center claiming loss of consortium. Loss of consortium is the separate cause of action of one spouse for the separate injury to that spouse suffered as a consequence of injuries inflicted upon the other spouse, resulting in a loss of love, affection, care, services, companionship and society during their marriage.

An agent is acting within the scope of authority if the agent is engaged in the performance of duties which were expressly or impliedly assigned to the agent by the principal or which were expressly or impliedly required by the contract of employment. Likewise, an agent is acting within the scope of authority if the agent is engaged in the furtherance of the principal's interests.

The proprietor of a place to which a person was invited may request one making a disturbance to leave and, upon non-compliance, may use such force as is reasonably necessary to eject the disturber.

The proprietor of a place to which a person was not invited may request such person to leave and, upon non-compliance, may use such force as is reasonably necessary to accomplish removal.

INSTRUCTION NO. 21

Members of the security department of the Community Chapel and Bible Training Center, and those acting at their direction, were agents of the defendant Community Chapel and Bible Training Center and, therefore, any act or omission of any member of the security department, and those acting at their direction, was the act or omission of the defendant Community Chapel and Bible Training Center.

INSTRUCTION NO. 28

The Washington State Constitution, Article One, Section
11, states in part:

Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state.

INSTRUCTION NO. 29

VOL 369 PAGE 1276

You are instructed that plaintiff may not recover any damages from either Community Chapel for any emotional distress caused to Carol Gabrielson as a result of being disfellowshipped from the Community Chapel.

INSTRUCTION NO. 31

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages, the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff Carol Gabrielson, you must determine the amount of money required to reasonably and fairly compensate her for the total amount of damages. If you find for the plaintiff Carol Gabrielson, you should consider the following elements:

1. The nature and extent of the injuries;
2. The disability experienced and with reasonable probability to be experienced in the future;
3. The pain and suffering, both mental and physical, experienced and with reasonable probability to be experienced in the future;
4. The reasonable value of necessary treatment and services received and those with reasonable probability to be required in the future;
5. The loss of enjoyment of life.

If you find for the plaintiff Ira Gabrielson, you must determine the amount of money required to reasonably and fairly compensate the plaintiff Ira Gabrielson for the total amount of damages. If you find for the plaintiff Ira Gabrielson, you should consider the following elements:

Loss to plaintiff Ira Gabrielson of love, affection, care,

services, companionship, society and consortium of his wife, during their marriage.

The total amount of damages so determined is the figure which will be reduced by the percentage of plaintiff's contributory negligence, if any.

The burden of proving damages rests with the plaintiff and it is for you to determine whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess or conjecture.

Your decision should not be influenced by sympathy or by prejudice.

The law has not furnished us with any fixed standards by which to measure pain, suffering, or disability. With reference to these matters, you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION NO. 32

According to mortality tables, the average expectancy of life of a female aged thirty-eight (38) years is 40.20 years. This one factor is not controlling, but should be considered in connection with all the other evidence bearing on the same question, such as that pertaining to the health, habits, and activity of the person whose life expectancy is in question.

If you find that before this occurrence the plaintiff had a pre-existing bodily condition which was causing pain or disability, and further find that because of this occurrence the condition or the pain or the disability was aggravated, then if your verdict is in favor of the plaintiff, you should consider the aggravation of the condition or the pain or disability proximately due to such aggravation, but you should not consider any condition or disability which may have existed prior to the occurrence or from which plaintiff may now be suffering which was not caused or contributed to by reason of the occurrence.

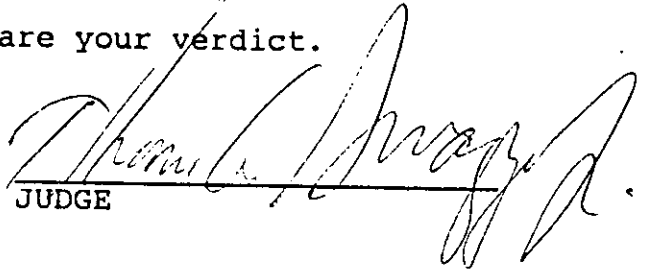
INSTRUCTION NO. 34

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a foreman to act as chairman. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has a chance to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted in evidence, these instructions and a special verdict form which consists of several questions for you to answer. It is necessary that you answer each of the questions unless the questions themselves specifically provide otherwise. You should answer the questions in the order in which they are asked as your answers to some of them will determine whether you are to answer all, or only some, or none of the others. Accordingly, it is important that you read the questions carefully and that you follow the directions set forth.

This being a civil case, ten of your number may agree upon the answer to a question. Any ten jurors may agree

upon the answer to any question. The same ten jurors must agree upon the answers to all questions. Whether the foreman is one of the ten or not, the foreman will sign the verdict and announce your agreement to the bailiff who will conduct you into the court to declare your verdict.


JUDGE

INSTRUCTION NO. 18

Defamation is the utterance of false statements of fact, rather than opinion, about another person, knowing that the statements are false, or in reckless disregard of the truth, or when the exercise of reasonable care would have produced knowledge of the falsity.

INSTRUCTION NO. 20

Contributory negligence is negligence or fault on the part of a person claiming injury or damage which is a proximate cause of the injury or damage complained of.

If you find contributory negligence, you must determine the degree of such negligence, expressed as a percentage, attributable to the person claiming such injury or damage. The court will furnish you a special verdict form for this purpose. Your answers to the questions in the special verdict form will furnish the basis by which the court will reduce the amount of any damages you find to have been sustained by a party who was contributorily negligent, by the percentage of such contributory negligence. Using 100% as the total combined negligence of the parties which contributed to the injury or damage to the plaintiff, you must determine what percentage of such negligence is attributable to the plaintiff.

This instruction does not apply to plaintiff's claims for defamation, assault, battery or false imprisonment.

INSTRUCTION NO. 21

VOL 369 PAGE 1268

A person who fully understands a risk of harm to herself and who voluntarily submits to such risk under circumstances which manifest her willingness to assume the risk is not entitled to recover for harm within that risk.

This affirmative defense and instruction is not applicable to the claim of defamation.

INSTRUCTION NO. 22

Regarding the allegations against Jack McDonald, the defendant Corporation of Community Chapel and Bible Training Center is sued as the principal and the defendant Jack McDonald as the agent.

If you find that the defendant Jack McDonald was the agent of the defendant Community Chapel and Bible Training Center and was acting within the scope of authority, and if you find Jack McDonald is liable, then both are liable. If you do not find that Jack McDonald is liable, then neither defendant is liable.

If you find that the defendant Jack McDonald is liable but do not find that he was acting as an agent of the defendant Community Chapel and Bible Training Center, or if you find that he was acting outside the scope of his authority as an agent of the defendant Community Chapel and Bible Training Center then the defendant Community Chapel and Bible Training Center is not liable.

INSTRUCTION NO. 23

VOL 369 PAGE 1270

Any act or omission of an agent within the scope of authority is the act or omission of the principal, and both are responsible and liable for damage, if any.

An agent is a person employed under an express or implied agreement to perform services for another called the principal, and who is subject to the principal's control or right to control the manner and means of performing the services.

EXHIBIT

D

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

IRA GABRIELSON and CAROL
GABRIELSON, husband and wife,)

Plaintiffs ,)

NO. 86-2-02792-6

-vs-

JACK McDONALD and SHIRLEY
McDONALD, husband and wife;)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER OF TACOMA;)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER OF BURIEEN,)

VERDICT FORM

Defendants.)

QUESTION NO. 1: Was there negligence by the defendant, Jack McDonald, that was a proximate cause of injury to the plaintiff, Carol Gabrielson?

Answer: Yes (Yes or No)

If you answered "yes" to question 1, answer question 2; if your answer to question 1 was "no," skip question 2 and answer question 3.

QUESTION NO. 2: Were the negligent acts of defendant, Jack McDonald, committed while he was acting as the agent of Community Chapel and Bible Training Center of Burien?

Answer: Yes (Yes or No)

Answer Question 3.

QUESTION NO. 3: Did the defendant, Jack McDonald, defame the plaintiff, Carol Gabrielson, which was a proximate cause of injury to her?

Answer: Yes (Yes or No)

If you answered "yes" to question 3, answer

question 4; if you answered "no" to question 3, skip to question 5.

QUESTION NO. 4: In defaming Carol Gabrielson, was defendant, Jack McDonald, acting as an agent for the defendant corporation of Community Chapel and Bible Training Center of Burien?

Answer: Yes (Yes or No)

Answer question 5.

QUESTION NO. 5: Did the Community Chapel and Bible Training Center assault, batter or falsely imprison plaintiff, Carol Gabrielson, proximately causing injury to her?

Answer: No (Yes or No)

If all answers are no, stop here and notify court. Answer question 6 only if you answered "yes" to question 1.

QUESTION NO. 6: As a result of the injuries suffered by Carol Gabrielson, did plaintiff, Ira Gabrielson, suffer a loss of consortium?

Answer: Yes (Yes or No)

Answer question 7.

QUESTION NO. 7: If your answer to questions 1, 3, or 5 was "yes," what is the total amount of the plaintiff, Carol Gabrielson's damages?

\$ 200,000.00

If your answer to question 6 was "yes," answer question 8.

QUESTION NO. 8: What is the total amount of plaintiff, Ira Gabrielson's, damages?

\$ 20,000.

Answer Questions 9 and 10 only if you answered "yes" to Question 1.

QUESTION NO 9: Was there any contributory negligence by Carol Gabrielson which was the proximate cause of injury or damage to her?

Answer: Yes (Yes or No)

Answer question 10 only if you answered "yes" to question 9. If "no," proceed to question 11.

QUESTION NO. 10: Using 100% as the total combined negligence of all the parties which contributed to the injury or damage to the plaintiff, Carol Gabrielson, what percentage of such contributory negligence is attributable to her?

Answer: 35 %

Answer Questions 11 and 12 only if you answered "yes" to Question 6.

QUESTION NO. 11: Was there contributory negligence by Ira Gabrielson which was a proximate cause of his own damages?

Answer: Yes (Yes or No)

Answer question 12 only if you answered "yes" to question 11.

QUESTION NO. 12: Using 100% as the total combined negligence of all the parties which contributed to the injury or damage to the plaintiff, Ira Gabrielson, what percentage of such contributory negligence is attributable to him?

Answer: 15 %

F O R E M A N

EXHIBIT

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

IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife,)
Plaintiffs,)

NO. 86-2-02792-6

vs.

JUDGMENT ON JURY VERDICT

JACK McDONALD and "JANE DOE")
McDONALD, husband and wife;)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER OF TACOMA;)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER,)
Defendants.)

THIS MATTER having come on regularly for trial commencing September 12, 1988 and concluding October 28, 1988, and it appearing to the court that a jury of twelve (12) having been duly selected and impaneled, evidence and testimony having been presented, the court having considered motions and arguments during the course of trial, and the court having duly and properly instructed the jury and the jury having duly rendered its verdict by answering special

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TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2883 88257

1 interrogatories which are attached hereto and incorporated
2 herein by reference as if fully set forth, and the jury
3 having returned its verdict into court and having found for
4 plaintiff Carol Gabrielson and against defendants Jack
5 McDonald, Shirley McDonald, the Community Chapel and Bible
6 Training Center of Tacoma, and the Community Chapel and
7 Bible Training Center of Burien on the issues of negligence
8 and defamation in the sum of Two Hundred Thousand Dollars
9 (\$200,000.00), and the jury having further decided that
10 plaintiff Carol Gabrielson was thirty-five percent (35%)
11 contributorily negligent, and the jury further having
12 returned its verdict finding for plaintiff Ira Gabrielson
13 and against defendant Jack McDonald, Shirley McDonald,
14 Community Chapel and Bible Training Center of Tacoma, and
15 Community Chapel and Bible Training Center of Burien on the
16 issue of loss of consortium in the sum of Twenty Thousand
17 Dollars (\$20,000.00), having further decided that plaintiff
18 Ira Gabrielson was fifteen percent (15%) contributorily
19 negligent, and the court having considered the records and
20 files herein, and that no post-trial motions have heretofore
21 been made in this matter, and the court being fully advised
22 and considering the cost bill filed by plaintiff in the sum
23 of \$ 988.91, the court finds that plaintiffs are
24 entitled to costs in the sum of \$ 988.91. It is hereby

25 ORDERED, ADJUDGED AND DECREED that the judgment herein

26 ////

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15153 4/21/2883 88258

1 entered on behalf of the plaintiff Carol Gabrielson by the
2 jury was duly regular and proper in the sum of Two Hundred
3 Thousand Dollars (\$200,000.00), less Seventy-Thousand
4 Dollars (\$70,000.00) for plaintiff Carol Gabrielson's
5 contributory fault, and that the same is hereby entered and
6 that a net judgment of the sum of One Hundred Thirty
7 Thousand Dollars (\$130,000.00) in favor of plaintiff Carol
8 Gabrielson be and the same is hereby entered, and it is
9 further

10
11 ORDERED, ADJUDGED AND DECREED that the judgment herein
12 entered on behalf of the plaintiff Ira Gabrielson by the
13 jury was duly regular and proper in the sum of Twenty
14 Thousand Dollars (\$20,000.00) less Three Thousand Dollars
15 for plaintiff Ira Gabrielson's contributory fault, and that
16 the same is hereby entered and that a net judgment of the
17 sum of Seventeen Thousand Dollars (\$17,000.00) in favor of
18 plaintiff Ira Gabrielson be and the same is hereby rendered
19 and entered, and it is further,

20 ORDERED, ADJUDGED AND DECREED that costs in the amount
21 of \$ 988.91 are awarded to the plaintiffs and judgment
22 for the same be and hereby is rendered and entered.

23 JUDGMENT SUMMARY

24 Judgment for plaintiff Carol Gabrielson: \$ 130,000.00
25 Judgment for plaintiff Ira Gabrielson: \$ 17,000.00
26 Costs: \$ 988.91

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JUDGMENT - 3

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15153 4/21/2003 88255

1 Judgment Debtors: Jack McDonald, Community Chapel and Bible
2 Training Center of Tacoma, and Community
3 Chapel and Bible Training Center

4 Judgment Creditors: Carol Gabrielson and Ira Gabrielson

5 Attorneys for Judgment Creditor: Daniel J. Hannula and
6 Harold T. Dodge, Jr.

7 Cause No.: 86-2-02792-6

8 DONE IN OPEN COURT this 23d day of November, 1988.

9 ~~THOMAS A. SWAYZE, JR.~~ ~~SWAYZE, JR.~~

HONORABLE THOMAS A. SWAYZE, JR.,
JUDGE

10 Presented by:

~~THOMAS A. SWAYZE, JR.~~

11 RUSH, HANNULA & HARKINS

12
13 By: _____

Daniel L. Hannula, Of
14 Attorneys for Plaintiffs

15 Approved as to form:

16 WILLIAMS, KASTNER & GIBBS

17
18 By: _____

Eileen Lawrence, Of Attorneys
19 for Jack McDonald, Shirley
20 McDonald and the Community
21 Chapel and Bible Training
Center of Tacoma

22 LEE, SMART, COOK, MARTIN & PATTERSON

23
24 By: _____

Michael J. Bond, Of Attorneys
25 for Community Chapel and Bible
26 Training Center of Burien

////

JUDGMENT - 4

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

IRA GABRIELSON and CAROL
GABRIELSON, husband and wife,)
Plaintiffs,)

NO. 86-2-02792-6
COST BILL

vs.

JACK McDONALD and "JANE DOE"
McDONALD, husband and wife;)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER OF TACOMA;)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER,)
Defendants.)

STATE OF WASHINGTON)
COUNTY OF PIERCE) SS.

DANIEL L. HANNULA, being first duly sworn, upon oath,
deposes and says:

I am one of the attorneys representing the plaintiffs
Carol Gabrielson and Ira Gabrielson in the above-entitled
cause of action. The following is a true and accurate bill
of costs and disbursements incurred herein:

////

COST BILL - 1

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SEATTLE 415-4790

15153 4/21/2003 08251

STATE OF WASHINGTON
COUNTY OF PIERCE

The undersigned, being first duly sworn, on oath,
states: That on this day, affiant HAD DELIVERED
to the attorneys of record of PLAIN DEFEND
a copy of the document to which this affidavit is
attached.

Stacyne Maresman

Subscribed and sworn to before me this 1 day of

Dec 19 88

R Rowley
Notary Public in and for the
State of Washington

My commission expires 2/9/90

J.V. DEC 02 1988

FILED
IN COUNTY CLERK'S OFFICE

A.M. DEC 1 1988 P.M.

PIERCE COUNTY CLERK
TOD RUT...
BY [Signature] DEPUTY

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

DEFENDANTS GABRIELSON'S
MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S JURY DEMAND
AND MOTION FOR STAY OF
EXECUTION

I. FACTS

The Gabrielsons have entered a judgment on jury verdict
in their favor in the underlying action, Gabrielson et ux.
v. Community Chapel and Bible Training Center, Jack
McDonald, Shirley McDonald, and the Community Chapel and
Bible Training Center of Tacoma, in the amount of

////

MEMORANDUM IN OPPOSITION - 1

LAW OFFICES
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TACOMA 383-5388
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15153 4/21/2003 88263

1 \$147,998.91. See Exhibit E to the Affidavit of Harold T.
2 Dodge, Jr. submitted herewith.

3 American Casualty, plaintiff in this declaratory
4 action, has filed a demand for a jury in the declaratory
5 action and a request to stay the Gabrielsons from executing
6 on their judgment in the underlying action.

7 Defendants Gabrielson oppose both plaintiff's jury
8 demand and its request for a stay of execution in the
9 underlying action.

10 II. LAW AND LEGAL ARGUMENT

11 A. JURY TRIAL IS INAPPROPRIATE IN THIS
12 DECLARATORY ACTION BECAUSE PLAINTIFF IS
13 COLLATERALLY ESTOPPED FROM RETRYING FACTUAL
14 ISSUES DECIDED BY THE JURY IN THE UNDERLYING
15 ACTION.

16 Where an insurer's interests are in harmony with its
17 insured's interests, collateral estoppel binds an insurer to
18 factual determinations made in a prior liability action
19 against the insured:

20 Collateral estoppel can bind an insurer to
21 factual determinations made in a prior
22 liability action against the insured in a
23 subsequent declaratory judgment action to
24 determine coverage issues. The court in
25 Finney v. Farmers Insurance Company, 21
26 Wn.App. 601, 586 P.2d 519 (1978), aff'd, 92
Wn.2d 748, 600 P.2d 1272 (1979) state the
general rule that when an insurer has notice
of an action and an opportunity to
participate, it is bound by any judgment
against its insured on liability questions,
and barred by any material finding of fact
that is essential to the liability judgment
and also is decisive of coverage under an
insurance policy. Finney, 21 Wn.App. at 716.

////

MEMORANDUM IN OPPOSITION - 2

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Application of the aforementioned principles of collateral estoppel against a liability insurer is justifiable, however, only when the insurer's interests are in harmony with the insured's interests. When the insurer has the same interests as the insured in disputing liability and damage issues, it is fair to treat the insurer as a party for collateral estoppel purposes.

Wear v. Farmers Insurance Company, 49 Wn.App. 655, 659-60.

The plaintiff's interests and the interests of its insured were in harmony in the underlying case on the only coverage issue left for consideration in this declaratory action--agency.

This court has previously decided in a summary judgment motion brought by the plaintiff that plaintiff's bodily injury coverage includes coverage for the emotional and psychological damages resulting from any unauthorized invasion of Carol Gabrielson's person.

Also, this court has previously decided, in a summary judgment motion brought by the Gabrielsons, that acts of professional negligence by plaintiff's insured or its agents are covered under the policy of insurance in question in this declaratory action.

The court did not rule on whether or not Jack McDonald was an agent of the Community Chapel an Bible Training Center.

In the underlying action, the issue whether plaintiff's

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1 insured was liable for damages to Carol Gabrielson depended
2 entirely upon whether Jack McDonald was found to be the
3 Community Chapel's agent. Plaintiff's interests and those
4 of its insured were in complete harmony on the issue of
5 agency: If Jack McDonald had been found not to be the
6 Community Chapel's agent, then the Community Chapel would
7 have borne no liability and the plaintiffs would have no
8 coverage. There could be no liability and no coverage
9 unless agency was shown to exist.

10 At Exhibit A to the Affidavit of Harold T. Dodge, Jr.
11 submitted in conjunction with this Memorandum, is the Trial
12 Brief of the plaintiffs in the underlying action
13 demonstrating plaintiffs' agency theory. At Exhibit B to
14 the Affidavit of Harold T. Dodge, Jr. submitted in
15 conjunction with this Memorandum is the Trial Brief of
16 Community Chapel and Bible Training Center submitted in the
17 underlying action showing its position that Jack McDonald
18 was not an agent of the Community Chapel and Bible Training
19 Center. At Exhibit C to the Affidavit of Harold T. Dodge,
20 Jr. submitted in conjunction with this Memorandum are the
21 court's instructions to the jury in the underlying action,
22 which include instructions on agency. At Exhibit D to the
23 Affidavit of Harold T. Dodge, Jr. submitted in conjunction
24 with this Memorandum is the special verdict form submitted
25 to the jury in the underlying action, along with the answers

26 ////

MEMORANDUM IN OPPOSITION - 4

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2003 08265

1 as provided by the jury.

2 As may be gathered from a review of the exhibits to the
3 Affidavit of Harold T. Dodge, Jr., the issue whether Jack
4 McDonald was Community Chapel and Bible Training Center's
5 agent was squarely at issue and hotly contested at trail.
6 The precise issue was submitted to the jury and the jury
7 answered unequivocally, that Jack McDonald was Community
8 Chapel and Bible Training Center's agent. Because the
9 precise issue of agency was determined by the jury in the
10 underlying action, plaintiff in this declaratory action is
11 collaterally estopped from relitigating the question of
12 agency in this declaratory action.

13 Because no questions of fact remain to be determined in
14 this declaratory matter, the plaintiff is not entitled to a
15 jury trial on any issue.

16 At the very least, if the plaintiff is to have a jury
17 trial, he should demonstrate to the court and to the other
18 parties to this action what, if any, issues of fact it
19 believes exist to be tried in the declaratory action.

20 B. THE COURT SHOULD NOT GRANT A STAY OF
21 EXECUTION.

22 The defendants Gabrielson have entered a judgment on the
23 jury's verdict in their favor in the underlying action. The
24 Community Chapel and Bible Training Center, a defendant found to
25 be liable in the underlying action, has assets in excess of \$12

26 ////

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1 Million Dollars. Community Chapel and Bible Training Center's
2 insurer, the plaintiff in this declaratory action, proposes that
3 the court stay the Gabrielson's execution on their judgment in
4 the underlying action. No stay is appropriate in this case.

5 The defendants Gabrielson believe that Community Chapel and
6 Bible Training Center has assets in excess of \$12 Million
7 Dollars. It is immaterial to the Gabrielsons who pays their
8 judgment. Whether the insurance company pays or whether it
9 forces its client to pay is a matter for dispute between the
10 plaintiff insurance company and its insured, Community Chapel
11 and Bible Training Center.

12 The Gabrielsons have won their judgment in the underlying
13 action in a jury trial. They have a judgment against Community
14 Chapel and Bible Training Center. Community Chapel and Bible
15 Training Center has assets to satisfy the judgment. The
16 Gabrielsons are entitled to pursue Community Chapel and Bible
17 Training Center to pay the judgment. If the Community Chapel
18 and Bible Training Center's insurer will not pay the judgment
19 then the Gabrielsons should be free to execute against the
20 Community Chapel and Bible Training Center's assets. What the
21 process of execution means to the insurance company and its
22 client, Community Chapel and Bible Training Center, in terms of
23 extra expense and unexpected personal exposure on Community
24 Chapel and Bible Training Center's part, is a matter that the
25 plaintiff and its client can address between themselves, but it

26 ////

MEMORANDUM IN OPPOSITION - 6

LAW OFFICES
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TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2003 88268

1 is not the Gabrielsons' concern and the extra delay and
2 harassment inherent in a stay of execution should not be
3 visited upon the Gabrielsons merely because the insurance
4 company wants to argue about who should pay the judgment.

5 If the court is inclined to grant a stay of execution, then
6 the Gabrielsons request that the court order that plaintiff post
7 a cash bond for the amount of the Gabrielsons' judgment in the
8 underlying action (\$147,998.91) plus interest at 12% per annum
9 for a period of twelve months (\$17,759.86) in accordance with
10 RCW 7.24.190.

11 III. CONCLUSION

12 The insurance company's request for jury trial should be
13 denied because it has not demonstrated any issue of fact for
14 which a jury trial is available in accordance with RCW 7.24.

15 The insurance company's request for a stay of execution in
16 the underlying action should be denied, but if granted, the
17 insurance company should be ordered to post a cash bond in the
18 amount of \$165,758.77 in accordance with RCW 7.24.190 to secure
19 the Gabrielsons' judgment in the underlying action during the
20 pendency of this declaratory action.

21 DATED this 30th day of November 1988.

22 RUSH, HANNULA & HARKINS

23
24 By: Harold T. Dooker
25 for DANIEL L. HARKINS, OF
26 Attorneys for Defendants
Gabrielson

////

MEMORANDUM IN OPPOSITION - 7

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

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W.E. DEC - 1 1988

FILED
IN COUNTY CLERK'S OFFICE

A.M. **DEC 1 1988** P.M.

PIERCE COUNTY WASHINGTON
TED RUIT, COUNTY CLERK
BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)
)
Plaintiff,)
)
v.)
)
IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife;)
DONALD LEE 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

MEMORANDUM IN SUPPORT
OF MOTION TO STAY
EXECUTION

American Casualty has requested that this court grant an order staying execution on the judgment obtained by Gabrielson on the underlying action pending resolution of the declaratory action. American Casualty presumes that the church will join in this motion although it has been unsuccessful in its attempts to contact the church's counsel to discuss this point.

MEMORANDUM IN SUPPORT OF MOTION TO STAY
EXECUTION
0250BAW

IC
LANE POWELL MOSS & MILLER
3800 RAINIER BANK TOWER
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2647
(206) 223-7000

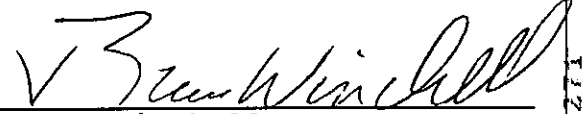
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1 The court has an inherent equitable power to stay execution
2 on a judgment "when the demands of justice to all parties can
3 be reasonably satisfied" only by such a stay. Paglia v.
4 Breskovich, 11 Wn.App. 142 522 P.2d 511 (1974). The reason it
5 would be unjust to permit execution on Gabrielson's judgment at
6 this time is that it would place American CASualty and the
7 church in an untenable position. If American Casualty obtains
8 a supersedeas bond in order to permit the church to pursue an
9 appeal, and that appeal is unsuccessful, then American may be
10 placed in a position of conceding coverage if it is forced to
11 collateralize that bond with its own guarantee. American would
12 in effect be denied the right to a trial on the coverage issue
13 in the event of an appeal. American does have a right at some
14 point to have its declaratory action heard before undertaking
15 defense obligations. Tank v. State Farm, 105 Wn.2d 381, 391,
16 715 P.2d 1123 (1986).

17 Accordingly, American requests that the court issue an
18 order staying execution on Gabrielson's judgment until such
19 time as related coverage questions are resolved.

20 DATED this 15th day of December, 1988.

21 LANE POWELL MOSS & MILLER

22
23 By 
24 Bruce Winchell
25 Attorneys for Plaintiff
26

MEMORANDUM IN SUPPORT OF MOTION TO STAY
EXECUTION
0250BAW

- 2

LANE POWELL MOSS & MILLER
3800 RAINIER BANK TOWER
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2647
(206) 223-7000

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FILED
DEPT. 9
IN OPEN COURT

DEC - 2 1988

Pierce County Clerk
By [Signature]
DEPUTY

SUPERIOR COURT OF WASHINGTON - COUNTY OF PIERCE

Americas Casualty
Plaintiff/Petitioner,

vs.
Sevelson
Defendant/Respondent.

CASE NO. 88-2-00947-9

Assignment of Trial Date (NTTD)
Assignment of Hearing Date (NTHG)
Trial Date Continuance (ORCTD)
Hearing Date Continuance (ORCNT)

DEC 05 1988

Retrial Conf.

Setting Code C9 (Must be filled in)

INITIAL ASSIGNMENT:

The trial/hearing date assigned is 10 - 19 - 89 @ 9:00 A.M.
(month) (day) (year)

Length of Trial/Hearing _____
Check one of the following:

- Court Trial
- 6-Person Jury
- 12-Person Jury

Setting (S1, S2, S3, or P) _____

CONTINUANCE:

The trial/hearing date formerly set for _____
(month) (day) (year)

is continued to _____
(month) (day) (year)

P- Bruce Wenschell
D- Daniel Hamula
John Therman

DEC - 2 1988

DATED: _____

By direction of the Honorable:
J. KELLEY ARNOLD

JUDGE
ALLYSON P. SMOLIC
JUDICIAL ASSISTANT

5

Assignment/Continuance of
Trial/Hearing Date
(LPCR 10)
Z-2378

(in person)

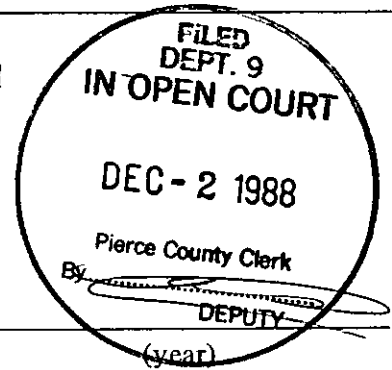
15153 4/21/2003 88272

SUPERIOR COURT OF WASHINGTON - COUNTY OF PIERCE

American Casualty
Plaintiff/Petitioner,
vs.
Tabuelson
Defendant/Respondent.

CASE NO. 88-2-00947-9
Assignment of Trial Date (NTTD)
Assignment of Hearing Date (NTHG)
Trial Date Continuance (ORCTD)
Hearing Date Continuance (ORCNT)

DEC 05 1988



Setting Code 19 (Must be filled in)

INITIAL ASSIGNMENT:

The trial/hearing date assigned is 11-27-89
(month) (day) (year)

Length of Trial/Hearing 2 wks.
Check one of the following:

- Court Trial
- 6-Person Jury
- 12-Person Jury

Setting (S1, S2, S3, or P) S2

CONTINUANCE:

The trial/hearing date formerly set for _____
(month) (day) (year)
is continued to _____
(month) (day) (year)

P- *Bruce Winchell*
D- *Daniel Hamula*
John Glasman

DATED: DEC - 2 1988

By direction of the Honorable:
J. KELLEY ARNOLD
JUDGE
ALLYSON P. SMOLIC
JUDICIAL ASSISTANT
JUDICIAL ASSISTANT

5

Assignment/Continuance of
Trial/Hearing Date
(LPCR 10)

Z-2378
(Council - in person)

15153 4/21/2003 88273

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12 DEC 8 1988

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

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 FILED
IN COUNTY CLERK'S OFFICE

A.M. DEC 6 1988 P.M.
PIERCE COUNTY WASHINGTON
COUNTY CLERK
DZCUTY

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

15153 4/21/2003 88274

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)

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FORM 2094

PENGAD/WEST, FRESNO, CA 93725

15153 4/21/2003 08277

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FILED
IN COUNTY CLERK'S OFFICE

A.M. DEC 6 1988 P.M.

PIERCE COUNTY WASHINGTON
TED RUNT COUNTY CLERK

BY _____ DEPUTY

DEC 06 1988

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiff,)

v.)

IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife;)
DONALD LEE 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

MOTION TO STRIKE

NOVEMBER 22, 1988

AFFIDAVIT OF BRUCE WINCHELL

COMES NOW the Defendant, Community Chapel and Bible Training Center ("Community Chapel"), and moves the court for an Order striking the November 22, 1988 Affidavit of Bruce Winchell. That Affidavit is submitted in support of a Motion for Summary Judgment, and does not comply with Civil Rule 56(e).

This motion is based upon the November 22, 1988 Affidavit of Bruce Winchell, CR 56(e), and the Memorandum submitted herewith.

MOTION TO STRIKE NOVEMBER 22, 1988
AFFIDAVIT OF BRUCE WINCHELL - 1

ORIGINAL

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

15153 4/21/2003 08276

1 DATED this 5th day of December, 1988.

2 LAW OFFICES OF JOHN S. GLASSMAN

3 By: *John S. Glassman*
4 John S. Glassman,
5 Attorney for Defendant,
6 Community Chapel and Bible
7 Training Center

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MOTION TO STRIKE NOVEMBER 22, 1988
AFFIDAVIT OF BRUCE WINCHELL - 2

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

15153 4/21/2003 08275

9

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

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

DEPARTMENT # 9

Plaintiff,

NO. 88-2-00947-9

vs.

IRA GABRIELSON and CAROL GABRIELSON,
husband and wife; DONALD LEE BARNETT,
COMMUNITY CHAPEL AND BIBLE TRAINING
CENTER, et al.,

Defendant.

NOTE OF ISSUE AND STATEMENT OF
ARBITRABILITY

NATURE OF CAUSE Motion to Strike November 22, 1988 Affidavit of Bruce
Winchell

JURY TRIAL: YES/NO [] IF YES, 6 JURORS [] 12 JURORS []

ESTIMATED TIME TO TRY CAUSE _____

DATE REQUESTED FOR DOCKET MOTION/ASSIGNMENT December 16, 1988 FILED IN COUNTY CLERK'S OFFICE

PLAINTIFF'S ATTORNEY: NAME Bruce Winchell
ADDRESS 3800 Rainier Bank Tower
Seattle, WA 98101
TELEPHONE 223-7380

DEFENDANT'S ATTORNEY: NAME Timothy J. Donaldson
ADDRESS 3410 Columbia Center, 701 Fifth Ave.
Seattle, WA 98104
TELEPHONE 386-5555

DEC 6 1988 P.M.
BY [Signature] DEPUTY
PIERCE COUNTY CLERK

(NOTE: If additional attorneys involved, please note on reverse side)

NAME OF PARTY BRINGING MOTION: John S. Glassman
John S. Glassman, Atty for Community Chapel
ARBITRATION

[] This case is subject to arbitration because the sole relief sought is a money judgment and involves no claim in excess of twenty-five thousand dollars exclusive of attorney fees, interests and costs.

[x] This case is not subject to mandatory arbitration because:

- [] Plaintiff's claim exceeds twenty-five thousand dollars.
- [] Plaintiff seeks relief other than a money judgment.
- [] Defendant's counter or cross claim exceeds twenty-five thousand dollars.
- [] Defendant's counter or cross claim seeks relief other than a money judgment.

[] The undersigned contends that its claim exceeds twenty-five thousand dollars but hereby waives any claim in excess of twenty-five thousand dollars for purposes of arbitration.

ABOVE INFORMATION MUST BE COMPLETED

TO BE COMPLETED BY CLERK

Assigned To: _____

Date: _____ By: _____

List Additional Attorneys

Name: Harold T. Dodge
Address: 715 Tacoma Avenue S.
Tacoma, WA 98402
Phone: 383-5388
Attorney For: Defendant, Gabrielson

Name: John S. Glassman
Address: P. O. Box 1703
Tacoma, WA 98401
Phone: 572-2746
Attorney For: Defendant, Community Chapel

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

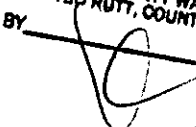
Name:
Address:
Phone:
Attorney For:

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DEC 06 1988

FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY
DEC 6 1988 P.M.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

PIERCE COUNTY WASHINGTON
TUD RUTT, COUNTY CLERK
BY  DEPUTY

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

Plaintiff,

v.

IRA GABRIELSON and CAROL
GABRIELSON, husband and wife;
DONALD LEE 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

MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE NOVEMBER
22, 1988 AFFIDAVIT OF
BRUCE WINCHELL

I. FACTS RELEVANT TO MOTION

Attached hereto is a copy of the Affidavit of Bruce Winchell as served upon Defendant, Community Chapel. Although Mr. Winchell did not serve any of the attachments with the Affidavit itself, he subsequently provided materials referred to therein. His failure to comply with CR 56(e) (requiring attachment of copies is not a basis for this motion to strike). However, it is indicative of the plaintiff's attitude in this case.

Nowhere does the Affidavit state that it is made upon personal knowledge, as required under Washington law, and it

MEMORANDUM IN SUPPORT OF MOTION
TO STRIKE NOVEMBER 22, 1988
AFFIDAVIT OF BRUCE WINCHELL - 1

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

ORIGINAL

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1 contains inadmissible hearsay throughout. The substance of the
2 Affidavit does not provide any facts within which the court can
3 verify the assertions made therein. For example, paragraph 4
4 states as follows:

5 4. The jury ruled in favor of defendants on
6 Gabrielson's assault, battery and false imprisonment
7 claim which arose out of a March 6 incident in which
8 Gabrielson was ejected from the Burien Chapel. That
9 claim was the basis for a bodily injury claim asserted
in Gabrielson's complaint. The court will note that
the jury was not instructed that in order to make an
award of damages for emotional distress, it must find
some physical manifestation of that distress.

10 Nowhere in the remainder of the Affidavit is any evidence or
11 fact which verifies the assertions made by Mr. Winchell. The
12 text of the jury instructions themselves negate the statements
13 contained in Mr. Winchell's Affidavit. Specifically, plaintiff
14 claimed the negligent causation of injuries, and the jury awarded
15 money to the plaintiff based upon negligently inflicted damages.

16 Paragraph 4 contains argument and hearsay, not fact, as well
17 as Mr. Winchell's supposition as to what the jury did or did not
18 do.

19 Similarly, paragraph 5 fails for the same reasons. There is
20 no objective way to verify the subjective, legal reasoning stated
21 by Mr. Winchell within that paragraph, nor are there any facts
22 set forth within which to assess or verify the claims made
23 therein.

24 At best, if the Affidavit is allowed to stand, at all,
25 it should be for the proposition that it attaches documents,
26

MEMORANDUM IN SUPPORT OF MOTION
TO STRIKE NOVEMBER 22, 1988
AFFIDAVIT OF BRUCE WINCHELL - 2

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

15153 4/21/2003 00203

1 although the documents attached are not sworn to or certified as
2 required by CR 56(e). Further, Mr. Winchell is not competent to
3 attest to the correctness of the attached documents. He was not
4 a party to the underlying lawsuit, nor was he counsel of record
5 in the underlying lawsuit. However, to the extent one of
6 Gabrielson's attorneys, Harold Dodge, attached true and correct
7 copies of certain of these documents in his Affidavit in
8 Opposition to Plaintiff's Jury Demand and Request for Stay of
9 Execution, dated December 1, 1988, the failure of counsel to
10 comply with the rule is somewhat mitigated.

11 II. LAW AND ARGUMENT

12 The basic guidelines and principles underlining Civil Rule
13 56(e) are set forth in Meadows v. Grant's Auto Brokers, 71 Wn.2d
14 874, 431 P.2d 216 (1967) as follows:

15 Is it once apparent from the rule that affidavits
16 submitted in a summary judgment proceeding must (1) be
17 made on personal knowledge (2) set forth admissible
18 evidentiary facts (3) affirmatively show that the
19 affiant is competent to testify as to his or her
20 averments, and (4) have appended or served therewith
sworn or certified copies of all papers or parts
thereof referred to the body of the affidavit. The
rule further authorizes the court to permit
supplementation of or opposition to affidavits by way
of depositions or further affidavits.

21 One of the reasons for the requirements of the rule is
22 that an affidavit - not being subject to cross-
23 examination - is a poor substitute for a live witness-
24 whose tone or inflection of voice, movement of head,
25 hand or eye, and general conduct or demeanor are
26 discernable and sometimes determinative - coupled with
the proposition that the summary judgment procedure was
not designed to deprive a litigant of a trial on
disputed issues of fact. Thus it is that affidavits
submitted should comply with the requirements of the

MEMORANDUM IN SUPPORT OF MOTION
TO STRIKE NOVEMBER 22, 1988
AFFIDAVIT OF BRUCE WINCHELL - 3

LAW OFFICES OF
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TACOMA, WASHINGTON 98402
(206) 572-2746

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1 rule and conform, as nearly as possible, to what the
2 affiant would be permitted to testify to in court.
3 Although the rule, in this respect, makes no
4 distinction between affidavits of the moving and non-
5 moving party, it is almost the universal practice-
6 because of the drastic potentials of the motion - to
7 scrutinize with care and particularity the affidavits
8 of the moving party while indulging in some leniency
9 with respect to the affidavits presented by the
10 opposing party. (Citations omitted). In this line of
11 respect, it should be added, however, that the leniency
12 spoken of does not permit of overtraining upon the
13 indulgence of the court, for it is still necessary for
14 the non-moving to satisfy the court that there exists a
15 genuine issue of material fact, particularly in the
16 face of a strong showing to the contrary. (Citation
17 omitted).

18 Suffice it to say, the Affidavit of Bruce Winchell does not
19 comply with Washington law and should be stricken.

20 Respectfully submitted this 5th day of December, 1988.

21 LAW OFFICES OF JOHN S. GLASSMAN

22 By: 

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

MEMORANDUM IN SUPPORT OF MOTION
TO STRIKE NOVEMBER 22, 1988
AFFIDAVIT OF BRUCE WINCHELL - 4

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

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiff,)

v.)

IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife;)
DONALD LEE 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 BRUCE
WINCHELL

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

BRUCE WINCHELL, being first duly sworn on oath, deposes and
says:

1. I am one of the attorneys for plaintiff American
Casualty Company.

AFFIDAVIT OF BRUCE WINCHELL - 1
0219BAW

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1 2. As the court will recall, American originally moved
2 for partial summary judgment on the question of whether damages
3 for emotional distress were compensable under the bodily injury
4 provision in American's policy. The court denied that motion
5 without prejudice and did not grant Barnett's cross-motion on
6 that same issue. For the court's convenience, American has
7 assembled and enclosed all of the pleadings which were
8 submitted to the court in connection with that motion.

9 3. Trial has now taken place in the underlying action.
10 The jury awarded plaintiffs in the underlying action \$147,000.
11 A copy of the jury instructions and completed verdict form are
12 attached to this affidavit as Exhibits A and B.

13 4. The jury ruled in favor of defendants on Gabrielson's
14 assault, battery and false imprisonment claim which arose out
15 of a March 6 incident in which Gabrielson was ejected from the
16 Burien Chapel. That claim was the basis for a bodily injury
17 claim asserted in Gabrielson's complaint. The court will note
18 that the jury was not instructed that in order to make an award
19 of damages for emotional distress, it must find some physical
20 manifestation of that distress.

21 5. On the basis of the jury's rejection of Gabrielson's
22 assault, battery and false imprisonment claim, and resultant
23 rejection of any claim for physical injury, American renews its
24 motion for partial summary judgment and requests an order
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AFFIDAVIT OF BRUCE WINCHELL - 2
0219BAW

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declaring that to the extent that Gabrielson's award represents compensation for emotional distress, that award is not covered under American's general liability policy.

DATED this 22nd day of November 1988.

LANE POWELL MOSS & MILLER

By Bruce Winchell
Bruce Winchell
Attorneys for Plaintiff

SUBSCRIBED AND SWORN to before me: Nov. 22, 1988.

Judith A. Thompson
NOTARY PUBLIC in and for the State
of Washington, residing at Unwood.

My appointment expires: 9/1/90.

1 to strike the affidavit upon which the motion is based, the
2 November 22, 1988 Affidavit of Bruce Winchell, and those
3 pleadings are adopted herein by reference. The motion to strike
4 Mr. Winchell's Affidavit will be heard December 16, 1988, at the
5 same time the Motion for Partial Summary Judgment will be heard.

6 Respectfully submitted this 6 day of December, 1988.

7 LAW OFFICES OF JOHN S. GLASSMAN

8
9 By: 

10 John S. Glassman,
11 Attorney for Defendant,
12 Community Chapel and Bible
13 Training Center
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MEMORANDUM IN OPPOSITION TO RENEW
MOTION FOR SUMMARY JUDGMENT - 2

LAW OFFICES OF
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15153 4/21/2883 88298

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

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15153 4/21/2883 88292

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

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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
26 Bodily Injury or Property Damage neither expected nor
27 intended from the standpoint of the Insured."

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

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34 DEFENDANT COMMUNITY CHAPEL
35 AND BIBLE TRAINING CENTER'S
MEMORANDUM IN OPPOSITION TO
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
Advertising Injury to which this insurance
applies,...." (page 4 of 8)

6 "Personal Injury means injury arising out of one or
7 more of the following offenses committed during the
policy period:

8 (a) false arrest, detention, imprisonment or malicious
9 prosecution;

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

11 (c) a publication or utterance

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

14 III. LEGAL AUTHORITY

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

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

24 DEFENDANT COMMUNITY CHAPEL
25 AND BIBLE TRAINING CENTER'S
MEMORANDUM IN OPPOSITION TO
MOTION FOR PARTIAL SUMMARY JUDGMENT - 5

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15153 4/21/2003 08235

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
MEMORANDUM IN OPPOSITION TO
MOTION FOR PARTIAL SUMMARY JUDGMENT - 6

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15153 4/21/2003 082906

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
AND BIBLE TRAINING CENTER'S
MEMORANDUM IN OPPOSITION TO
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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
MOTION FOR PARTIAL SUMMARY JUDGMENT - 8

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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

24 DEFENDANT COMMUNITY CHAPEL
25 AND BIBLE TRAINING CENTER'S
MEMORANDUM IN OPPOSITION TO
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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

25 DEFENDANT COMMUNITY CHAPEL
AND BIBLE TRAINING CENTER'S
MEMORANDUM IN OPPOSITION TO
MOTION FOR PARTIAL SUMMARY JUDGMENT - 10

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15159 4/21/2083 88318

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

24 DEFENDANT COMMUNITY CHAPEL
25 AND BIBLE TRAINING CENTER'S
MEMORANDUM IN OPPOSITION TO
MOTION FOR PARTIAL SUMMARY JUDGMENT - 11

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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
25 AND BIBLE TRAINING CENTER'S
MEMORANDUM IN OPPOSITION TO
MOTION FOR PARTIAL SUMMARY JUDGMENT - 12

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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 Farm, 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

24 DEFENDANT COMMUNITY CHAPEL
25 AND BIBLE TRAINING CENTER'S
MEMORANDUM IN OPPOSITION TO
MOTION FOR PARTIAL SUMMARY JUDGMENT - 13

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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
24 Community Chapel and Bible
25 Training Center

24 DEFENDANT COMMUNITY CHAPEL
25 AND BIBLE TRAINING CENTER'S
MEMORANDUM IN OPPOSITION TO
MOTION FOR PARTIAL SUMMARY JUDGMENT - 14

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15153 4/21/2003 08384

FILED
IN COUNTY CLERK'S OFFICE
A.M. DEC 6 1988 P.M.
PIERCE COUNTY CLERK
TED WITT, COUNTY CLERK
BY [Signature] DEPUTY

DEC 06 1988

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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

MOTION TO STRIKE
NOVEMBER 22, 1988,
AFFIDAVIT OF BRUCE WINCHELL

LO

COME NOW the defendants, Ira Gabrielson and Carol Gabrielson and join in the motion of defendant Community Chapel and Bible Training Center moving the Court for an order striking the November 22, 1988, Affidavit of Bruce Winchell.

DATED this 6th day of December, 1988.

RUSH, HANNULA & HARKINS

By: [Signature]
HAROLD T. DODGE, JR
Of Attorneys for Defendants
Gabrielson

///

MOTION TO STRIKE NOVEMBER 22, 1988,
AFFIDAVIT OF BRUCE WINCHELL - 1

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PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
DEPUTY

DEC 6 1988

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

5

STATE OF WASHINGTON)
County of Pierce : ss.)

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

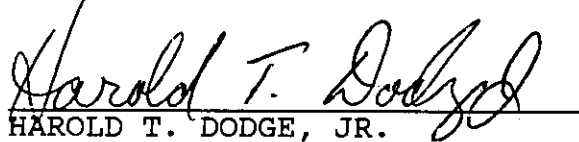
LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 383-5388
SEATTLE 838-4790

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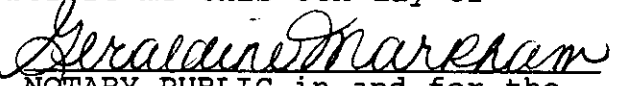
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2 make the following affidavit from my own personal knowledge of
3 the records and proceedings to date in the above-entitled action
4 and I am competent to testify thereto for the purposes of this
5 motion.

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
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TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2683 88987

DEC 06 1988

12 DEC 8 1988

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

HANNULA & HARKINS

IN AND FOR THE COUNTY OF PIERCE

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
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

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P R O C E E D I N G S

(April 15, 1988)

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

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

STATE OF WASHINGTON, County of Pierce
ss: I, Ted Rutt, Clerk of the above
entitled Court, do hereby certify that this
foregoing instrument 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. *6* day of *Dec* 19 *78*
TED RUTT, Clerk
By *[Signature]* Deputy

15153 4/21/2003 08311

FILE
IN COUNTY CLERK'S OFFICE

A.M. DEC 6 1988 P.M.

PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
RY. DEPUTY

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DEC 06 1988

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

MEMORANDUM IN OPPOSITION TO
RENEWED MOTION FOR SUMMARY
JUDGMENT

5

ATTACHED HERETO and incorporated herein by reference is
a true and correct copy of "Defendants Gabrielson's
Memorandum in Opposition to Plaintiff's Motion for Summary
Judgment" which was filed in April, 1988, in response to the
initial motion brought by the plaintiff, American Casualty,
on April 15, 1988. The supporting Affidavit of Harold T.
Dodge, Jr. has not been reproduced, however, it is on file

///
MEMORANDUM IN OPPOSITION TO RENEWED
MOTION FOR SUMMARY JUDGMENT - 1

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15153 4/21/2003 88312

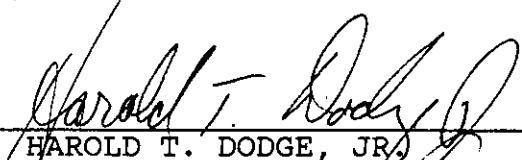
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with the Court and is incorporated herein by reference as if fully set forth.

Rather than restate the cases and analysis previously provided to the Court, the Gabrielsons' brief in opposition to the initial motion for summary judgment states the position of the Gabrielsons in opposition to plaintiff's motion.

Respectfully submitted this 6th day of December 1988.

RUSH, HANNULA & HARKINS

BY: 
HAROLD T. DODGE, JR.
Of Attorneys for Defendants
Gabrielsons

///

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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,)

NO. 88-2-00947-9

vs.

DEFENDANTS GABRIELSONS'
MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

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. BACKGROUND AND POSTURE

Carol and Ira Gabrielson, defendants in this
declaratory action, are plaintiffs in a separate lawsuit
pending in Pierce County under case number 86-2-02792-6
seeking damages against American Casualty's insureds, Jack
and "Jane Doe" McDonald, Donald Lee and Barbara Barnett,
"John Does" No. 1-4 and "Jane Does" No. 1-4, Community

////

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 1

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15153 4/21/2003 06314

1 Chapel and Bible Training Center of Tacoma, and Community
2 Chapel and Bible Training Center.

3 American Casualty, insurer of the Community Chapel and
4 Bible Training Center, filed a Complaint for Declaratory
5 Judgment on about February 1, 1988. On about March 25,
6 1988, American Casualty filed an Amended Complaint for
7 Declaratory Judgment. In conjunction with the filings of
8 the Complaint and Amended Complaint, American Casualty noted
9 this Summary Judgment Motion to be heard on April 15, 1988.
10 Only 21 days have lapsed between the date of the Amended
11 Complaint and the hearing of this Summary Judgment. The
12 defendants Gabrielson have not had an opportunity to engage
13 in discovery.
14

15 In this declaratory action, plaintiff seeks to resolve
16 the coverage issues "through a series of motions for partial
17 summary judgment." Plaintiffs Memorandum, page 4, lines 11
18 through 12. This initial Summary Judgment Motion asks: (1)
19 the court to declare that the plaintiff is not liable for
20 damages under any cause of action for any mental or
21 emotional upset or lost earnings for which the Gabrielsons
22 might recover a judgment against plaintiff's insured, the
23 Community Chapel and Bible Training Center, and (2) for a
24 declaration of non-coverage for Ira Gabrielson's claims for
25 loss of consortium. Plaintiff's Memorandum, page 7, line 25
26 through page 8, line 4.

////

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 2

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SEATTLE 838-4790

15153 4/21/2003 88315

1 Carol and Ira Gabrielson have filed a Motion in Pierce
2 County case number 86-2-02792-6 seeking to amend their
3 complaint to conform to evidence. The amendment would add a
4 false imprisonment cause of action against Jack McDonald,
5 the Community Chapel and Bible Training Center, and the
6 Community Chapel and Bible Training Center of Tacoma. The
7 outcome of that Motion to Amend the Complaint is important
8 to the posture of this Motion because, if granted, American
9 Casualty's policy of insurance, by its terms, provides
10 coverage not only for "bodily injury," but also for
11 "personal injury" under section VB, the Personal Injury and
12 Advertising Injury Liability Coverage, provided under
13 "Optional Liability Extensions" as more fully discussed
14 below.

15
16 To a great extent, the method proposed by American
17 Casualty to resolve the coverage issues in this declaratory
18 action is impractical and is fraught with perils. Most
19 importantly, the issue of whether Jack McDonald is an
20 employee, executive officer, or director within the
21 Community Chapel and Bible Training Center must be resolved.
22 Such a determination will involve a very in-depth
23 examination of the corporate structure of the Community
24 Chapel and Bible Training Center and the relationship of
25 satellite churches to the main corporation in accordance
26 with the corporate by-laws and the extensive control of the

////

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 3

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TACOMA 383-5388
SEATTLE 838-4790

15153 4/21/2003 0831b

1 corporation over satellites and satellite pastors as
2 outlined in those by-laws.

3 II. APPLICABLE POLICY SECTIONS

4 There are two separate and distinct types of injury for
5 which American Casualty's comprehensive general liability
6 insurance policy provides:

- 7 1. Bodily injury in case of an occurrence; and
8 2. Personal injury in case of false arrest, false
9 imprisonment, false detention, and non-malicious defamation.

10 Under coverage A--Bodily Injury Liability, Section I on
11 page 1 of 8 of the policy, the policy provides:

12 The company will pay on behalf of the insured
13 all sums which the insured shall become
14 legally obligated to pay as damages because
15 of

16 A. Bodily injury

17 to which this insurance applies, caused by an
18 occurrence.

19 Under Section II of the policy, under the heading
20 "Persons Insured" the policy provides:

21 C. If the named insured is designated in
22 the declarations as other than an individual,
23 partnership or joint venture, the organi-
24 zation so designated and any executive
25 officer, director, or stockholder thereof
26 while acting within the scope of his duties
as such,

* * *

(f) Other than executive officers,
any employee of the named insured while
acting within the scope of their duties
as such.

////

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 4

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TACOMA 383-5388
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15153 4/21/2003 00317

1 An occurrence is defined on page 10 of 11:
2

3 Occurrence means an accident, including
4 continuous or repeated exposure to
5 conditions, which results in bodily injury or
6 property damage neither expected nor intended
7 from the standpoint of the insured.

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

13 By the terms of the policy, there is no definition for
14 "bodily injury" as that term is used under Section I of the
15 policy describing coverage for bodily injury. A definition
16 of bodily injury is given on page 9 of 11 stated by the
17 policy to apply to part 2 of the policy which deals with
18 persons insured:

19 Bodily injury means bodily injury, sickness
20 or disease sustained by any person which
21 occurs during the policy period, including
22 death at any time resulting therefrom or
23 incidental medical malpractice injury.

24 Section V of the policy is entitled "Optional Liability
25 Extensions." Under that section, subparagraph B is entitled
26 "Personal Injury and Advertising Injury Liability Coverage."
The declaration page of the policy indicates that the
Community Chapel and Bible Training Center elected to pay
for coverage under Section V B, Personal Injury. The
personal injury portion of the policy under Liability
Extensions provides the following coverage:

(1) The company will pay on behalf of the

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MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 5

LAW OFFICES
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TACOMA 383 5388
SEATTLE 836 4790

15153 4/21/2003 08310

1 insured all sums which the insured shall
2 become legally obligated to pay as damages
3 because of personal injury . . . to which
4 this insurance applies, sustained by any
5 person or organization and arising out of the
6 conduct of the named insured's business
7 within the policy territory.

8 On page 5 of 8 of the policy, under the "Additional
9 Definitions" section, the policy defines the personal
10 injuries for which it will indemnify the insured:

11 Personal injury means injury arising out of
12 one or more of the following offenses
13 committed during the policy period

14 (a) false arrest, detention,
15 imprisonment, or malicious prosecution;

16 (c) a publication or utterance

17 (1) of a libel slander or
18 other defamatory or disparaging
19 material.

20 The personal injury protection provided
21 in the policy for defamatory material is
22 limited in that it does not include "libel or
23 slander" or the publication or utterance of
24 defamatory or disparaging material concerning
25 any person or organization . . . made by or
26 at the direction of the insured with know-
ledge of the falsity thereof.

From the language quoted above, it is seen that the
policy provides "bodily injury" protection for "occurrences"
and expands the coverage to include "personal injury"
arising from false arrest, detention, imprisonment,
malicious prosecution and as a result of nonmalicious
defamation.

One other area germane to this argument is the

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MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 6

LAW OFFICES
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SEATTLE 528-4730

15153 4/21/2003 88319

1 coverage provided by the policy for negligent professional
2 services rendered on behalf of the corporation. The policy
3 does not exclude professional services rendered on behalf of
4 certain divisions of the corporation. American Casualty
5 asserts in its memorandum that professional services are
6 excluded from the coverage offered by the policy. The
7 policy language does not support this claim. The exclusion
8 to which American Casualty refers states as follows:
9

10 It is agreed that with reference to any
11 operation described below or designated in
12 the policy as subject to this endorsement,
13 the insurance does not apply to bodily injury
14 or property damage due to:

15 1. The rendering or failure to render

16 * * *

17 (b) Any service or treatment
18 conducive to health or of a
19 professional nature.

20 The operations to which this exclusion applies are
21 described on the exclusion as "schools -- colleges,
22 universities or college preparatory."
23

24 LAW AND LEGAL ARGUMENT

25 1. JACK McDONALD IS AN EMPLOYEE, EXECUTIVE
26 OFFICER, DIRECTOR, OR AGENT OF THE DEFENDANT
CORPORATION COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER.

Before the court can decide whether or not certain acts
asserted against the plaintiff's insureds are covered by the
policy, it will be necessary to determine whether Jack

////

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 7

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15153 4/21/2003 08328

1 McDonald is an agent, executive officer, director, or
2 employee of the insured. Submitted as an exhibit to the
3 Affidavit of Harold T. Dodge, Jr. in opposition to the
4 summary judgment in Pierce County Cause Number 86-2-02792-6
5 are excerpts of the By-Laws of the Community Chapel and Bible
6 Training Center which detail the control that the
7 corporation exerts over its satellites. The following are
8 some salient features of the By-Laws demonstrating the
9 degree of control exercised by the main corporation over
10 satellites:

11 All satellite churches are a part of the
12 Community Chapel and Bible Training Center
13 corporation, Division 1, Section II, Articles
2, 3E; Division 6, Section I, Article 1;

14 All satellite churches are governed by the
15 main corporation's Board of Directors,
Division 1, Section II, Article 2;

16 Pastors of satellite churches are subject to
17 "admonishment, discipline, and ultimate
removal" by the corporate Board of Directors,
18 Division 1, Section II, Article 6;

19 A satellite pastor can only be appointed by
the main corporation, Division 6, Section II,
20 Article 1 a 1;

21 All satellite pastors are listed with the
main corporation as "current officers and
22 major appointees of the corporation,"
Division 1, Section X, Article 3;

23 Satellite churches are but mere
24 "extension[s]" of the main corporation,
Division 6, Section I, Article 2.

25 Included as an exhibit to the Affidavit of Harold T.
26

////

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 8

LAW OFFICES
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15153 4/21/2003 08321

1 Dodge, Jr. in opposition to this Motion for Summary Judgment,
2 is a communication from Jack Hicks, then a member of the
3 Board of Directors of the plaintiff's insured, to the other
4 members of the Board of Directors, which further emphasizes
5 the degree to which the corporation is responsible for the
6 acts of satellite churches and satellite pastors.
7

8 As is evident from the By-Laws and from the communication
9 to the Board of Directors by Jack Hicks, great questions of
10 fact exist as to whether or not Jack McDonald is an executive
11 officer, director, or employee of the plaintiff's insured.

12 2. THE COVERAGE EXTENDS TO INJURIES SUFFERED BY
13 CAROL AND IRA GABRIELSON AS THE RESULT OF
14 JACK McDONALD'S NEGLIGENT COUNSELING.

15 As detailed above, the insurance policy provides
16 coverage for harms proximately resulting from negligent
17 professional services rendered on behalf of divisions of the
18 corporation other than its schools. The policy does not
19 exclude coverage for malpractice actions against any insured
20 individual involving negligent professional services performed
21 by personnel of the corporation except as they might be
22 rendered in conjunction with the Bible College Division and
23 the Church School Division of the Corporation. Community
24 Chapel and Bible Training College, the named insured,
25 consists of five divisions: The Church of Community Chapel
26 and Bible Training Center; Community Chapel and Bible
Training College; Community Chapel Christian School; Community

////

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 9

LAW OFFICES
RUSH, HANNULA & HARKINS

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SEATTLE 838-4790

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Chapel Publications; and Satellite Churches. See 1978 By-Laws, Exhibit A to Affidavit of Harold T. Dodge, Jr. Of the professional services capable of being rendered by the corporation, only those rendered by the Bible College and the Christian School are excluded. See Exclusion, Exhibit B to Affidavit of Bruce Winchell in support of this motion. Any bodily injury proximately resulting from the negligent professional services rendered in conjunction with the furtherance of the goals, objectives, and business of the church, publication, and satellite divisions of the corporation would be a covered injury under the policy.

3. COVERAGE EXTENDS TO ALL OF THE INJURIES CLAIMED BY CAROL AND IRA GABRIELSON UNDER THE PERSONAL INJURY AND ADVERTISING INJURY LIABILITY COVERAGE PROVIDED BY THE POLICY UNDER SECTION V OF THE POLICY "OPTIONAL LIABILITY EXTENSIONS".

The plaintiffs have filed a motion in Pierce County Cause Number 86-2-02792-6 seeking to amend their Complaint to include a cause of action against Jack McDonald and, through his agency, against the Corporation, for the tort of false imprisonment as a result of Jack McDonald's negligently counseling Carol Gabrielson, depriving her of her free will, exercising ultimate control over her, depriving her of her ability to make her own decisions, and depriving her of her ability to resist his suggestion and direction, and ultimately

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MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT - 10

LAW OFFICES
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TACOMA, WASHINGTON 98402
TACOMA 383-5388
SEATTLE 338-4790

15153 4/21/2003 08323

1 coercing her into sexual acts which she had no power or will
2 to resist.

3 Under the personal injury coverage of the extended
4 liability section of the policy, plaintiff has contracted to
5 pay on the behalf of the insured all sums which the insured
6 becomes legally obligated to pay as damages because of per-
7 sonal injury. Personal injury is defined as injury arising
8 out of false imprisonment. The personal injury protection
9 provided by the extended liability section of the policy is
10 not limited in any way to "bodily injury," it provides cover-
11 age for "personal injury."

12 This section of the policy would provide coverage for all
13 of the physical suffering as well as related mental suffering
14 experienced by Carol Gabrielson as a proximate result of the
15 tortious acts of Jack McDonald and the Community Chapel and
16 Bible Training Center proximately resulting from acts con-
17 stituting false imprisonment.

18 Ira Gabrielson's claim for loss of consortium is also a
19 "personal injury" and coverage is available to him for his
20 damages under the extended liability section of the policy.
21 See Bruner v. Little, 97 Wash. 319, 166 P. 1166 (1917).

- 22 4. COVERAGE UNDER THE PLAINTIFF'S POLICY EXTENDS
23 TO PROVIDE COVERAGE FOR CAROL AND IRA
24 GABRIELSON'S SECOND, THIRD, AND FOURTH CAUSES
25 OF ACTION IN PIERCE COUNTY CAUSE NUMBER
26 86-2-02792-6.

The Second, Third and Fourth Causes of Action against

////

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 11

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 538-4790

15153 4/21/2003 06324

1 the plaintiffs' insureds in Pierce County Cause Number
2 86-2-02792-6 involve professional malpractice, either as
3 counselor malpractice or pastoral malpractice. As argued
4 earlier, plaintiff's insurance policy does not exclude
5 coverage for negligent professional services rendered on
6 behalf of the plaintiff's insured in conjunction with the
7 church or satellite divisions of the corporation.
8

9 Under the bodily injury portion of plaintiff's
10 insurance policy, plaintiff's insureds are covered for
11 negligent professional services if, as a proximate result
12 thereof, Carol Gabrielson incurred "bodily injury." The
13 ultimate result of plaintiff's insureds' negligence was that
14 Jack McDonald coerced Carol Gabrielson into a sexual
15 relationship.

16 The sexual relationship and the sexual acts making up
17 that relationship are an occurrence within the definitions
18 of plaintiff's insurance policy. The plaintiff's insurance
19 policy defines an "occurrence" as an "accident." With
20 reference to the exclusion for which the plaintiff argues,
21 the Washington courts have adopted the following test which
22 must be applied before it can be determined as a matter of
23 law that a sexual act is or is not an occurrence:

24 (1) The insured must intend both the act
and the injury;

25 (2) The intent may be actual or may be
26 inferred by the nature of the act and the

////

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 12

LAW OFFICES
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accompanying reasonable foreseeability of harm;

(3) Once intent to cause injury is found, it is immaterial that the actual injury caused is of a different character or magnitude than that intended.

Western National Assurance Company v. Hecker, 43 Wn.App. 816, 825, 719 P.2d 954 (1986).

No discovery has been conducted in this case to date to ascertain Jack McDonald's intent. Without discovery on that issue, summary judgment is not appropriate on the issue of whether or not Jack McDonald's sexual activity with Carol Gabrielson was or was not an "occurrence".

5. COVERAGE EXTENDS TO CAROL AND IRA GABRIELSON'S FIFTH, SIXTH AND SEVENTH CAUSES OF ACTION IN PIERCE COUNTY CAUSE NUMBER 86-2-02792-6.

Carol and Ira Gabrielson's Fifth, Sixth and Seventh Causes of Action against plaintiff's insureds in Pierce County Cause Number 86-2-02792-6 allege the tort of false imprisonment. As discussed in detail above, plaintiff's insurance policy extends coverage to all personal injuries resulting from false imprisonment under the personal injury protection provided in the optional liability extensions of its policy.

6. COVERAGE EXTENDS TO CAROL AND IRA GABRIELSON'S EIGHTH CAUSE OF ACTION IN PIERCE COUNTY CAUSE NUMBER 86-2-02792-6.

The plaintiff's insurance policy provides coverage to

////

1 its insureds for nonmalicious defamation under the personal
2 injury portion of the optional liability extensions. Under
3 that section, plaintiff excludes coverage if the defamation
4 was made with knowledge of the falsity of the statements.
5 No discovery has been done to date to determine whether or
6 not the defamatory statements made by Jack McDonald
7 concerning Carol Gabrielson's disfellowshippment were made
8 maliciously.

9 Carol Gabrielson has given testimony in Pierce County
10 Cause Number 86-2-02792-6 that Jack McDonald made statements
11 that she was disfellowshipped and that she should be shunned
12 and that she was possessed with a myriad of demons when, in
13 fact, Carol Gabrielson had not been disfellowshipped. See
14 Affidavit of Harold T. Dodge, Jr. ^{Exhibit D} at pages 19 through 23 (affidavit).

15
16 7. COVERAGE EXTENDS TO CAROL AND IRA
17 GABRIELSON'S NINTH CAUSE OF ACTION IN PIERCE
18 COUNTY CAUSE NUMBER 86-2-02792-6.

18 Ira Gabrielson asserts, in the Ninth Cause of Action in
19 Pierce County Cause Number 86-2-02792-6 that, as a result of
20 the negligent acts of plaintiff's insureds, he suffered a
21 loss of consortium. If Carol and Ira Gabrielson's Motion to
22 Amend their Complaint is granted, they will have stated a
23 cause of action against plaintiff's insureds for false
24 imprisonment consisting of plaintiff's insureds' depriving
25 Carol Gabrielson of her free will and in the process
26 injuring Ira Gabrielson's marital relationship with Carol

////

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 14

LAW OFFICES
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TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 324-4790

15151 4/21/2883 88327

1 Gabrielson. Under the personal injury protection provided
2 by the optional liability extensions in plaintiff's
3 insurance policy, Ira Gabrielson's consortium claim would be
4 covered as a personal injury.

5 8. THE INJURIES SUFFERED BY CAROL GABRIELSON AS
6 THE PROXIMATE RESULT OF ACTS COMPLAINED OF IN
7 PIERCE COUNTY CAUSE NUMBER 86-2-02792-6 ARE
8 BODILY INJURIES FOR COVERAGE PURPOSES IN
9 PLAINTIFF'S INSURANCE POLICY.

10 Carol Gabrielson's injuries are the direct result if
11 the physical, as well as mental, violation worked upon her
12 by plaintiff's insureds. See Affidavit of Philip Lindsay,
13 M.D. Because Carol Gabrielson's mental and emotional
14 suffering is a direct result of plaintiff's insureds'
15 nonconsensual physical violation of her, coverage must
16 extend to cover Carol Gabrielson's emotional and
17 psychological injuries. This position is well supported by
18 decisions bearing on the precise question from other
19 jurisdictions.

20 In the New Jersey case, NPS Coporation v. Insurance
21 Company of North America, 517 A.2d 1211 (N.J. App. 1986),
22 the court ruled that emotional and psychological injuries
23 directly resulting from nonconsensual violation of a
24 plaintiff's bodily integrity, in the form of sexual
25 harassment involving touching of parts of the plaintiff's
26 body, was a covered "bodily injury":

////

////

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 15

LAW OFFICES
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1 We hold that the term "bodily injury," as
2 used in the policy, includes the emotional
3 and psychological sequelae allegedly
4 resulting from the unauthorized invasion of
5 the complainant's person.

6 517 A.2d at 1212.

7 In support of its holding, the court reasoned that
8 emotional and mental harms are real bodily injuries that may
9 result from physical violation:

10 [O]ur "courts have come to recognize that
11 mental and emotional distress is just as
12 'real' as physical pain, and that its
13 valuation is no more difficult."

14 * * *

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

26 517 A.2d at 1213-14.

When mental and psychological injury directly flows
from a physical violation, those injuries are "bodily
injuries":

Accordingly, we are convinced that the term
"bodily injury," as used in the policy,
encompasses claims for emotional distress
caused by an assault and battery.

517 A.2d at 1214.

////

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 16

LAW OFFICES
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15153 4/21/2003 66329

1 Likewise, the Louisiana case of Levy v. Duclaux, 324
2 S.2d 1 (La.App. 1975) demonstrates that coverage exists
3 under the "bodily injury" insurance policy language for
4 mental and psychological injuries which result from physical
5 violation. In Levy, the plaintiff was minimally physically
6 abused and suffered emotional and psychological injuries as
7 a direct result:

8
9 When this language [bodily injury] is
10 analyzed particularly in the light of the
11 facts of the Nickens case as opposed to the
12 instant case, we reach the conclusion that
13 the term bodily injury in the policy of our
14 insurer does include plaintiff's injuries.
15 In the Nickens case there is absence of any
16 contact between an external force or violence
17 and distress plaintiffs sustained over the
18 loss of their personal effects. There the
19 plaintiffs were not at the premises at the
20 time of the fire. In the instant case, the
21 plaintiff was personally exposed to some
22 minimal physical abuse as well as the
23 external force of being accused a shoplifter
24 in front of many witnesses. The damage
25 instantly resulted from the application of
26 that force. This situation is entirely
different from when where a hypothetical
plaintiff might hear that a hypothetical
defendant had some weeks previously said that
plaintiff was a thief, because the sudden
humiliation, embarrassment and mental anguish
did not set in immediately upon the direct
application of the accusation. Perhaps the
distinction being drawn can be made clearer
by framing the Nickens case in a hypothetical
variation of its facts. Suppose they made
they exit from the premises without any
physical injury but suffered such shock that
sometime thereafter they experience
nightmares and deep mental anguish as the
result of the experience. Query: Would the
results of the Nickens case have been the
same? The facts of our case show that

////

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 17

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15153 4/21/2003 08338

1 plaintiff's mental distress was accompanied
2 by immediate external physical manifestations
3 of crying and hysteria and her functions were
4 outwardly affected for some time after the
incident. Therefore, this case is
distinguishable from the Nickens case and
there is coverage.

5 324 S.2d 9-10.

6 The cases just discussed point out the distinction
7 between the cases cited by the plaintiff and Carol
8 Gabrielson's situation. The plaintiff cites the Washington
9 case E-Z Loader Boat Trailers, Inc. v. The Travelers
10 Indemnity Company, 106 Wn.2d 901, 726 P.2d 439 (1986) for
11 the proposition that mental suffering is not a "bodily
12 injury." In the E-Z Loader case, there was absolutely no
13 physical violation of the plaintiff by the defendant. The
14 plaintiff's injuries were purely emotional as the result of
15 suffering discrimination.

16 Carol Gabrielson, on the other hand, suffered repeated
17 physical violations, which directly resulted in emotional
18 and psychological injuries. These sequelae are just as much
19 direct injuries as pain and suffering from a broken leg, and
20 the plaintiff's insurance must extend to Carol Gabrielson's
21 injuries in like fashion.

22 CONCLUSION

23 Plaintiff's Motion for Summary Judgment must be denied
24 in all respects. As outlined in this memorandum, coverage
25 is available for all acts complained of by Carol and Ira

26 ////

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 18

LAW OFFICES
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SEATTLE 838-4790

15153 4/21/2863 86331

1 Gabrielson in Pierce County Cause Number 86-2-02792-6. In
2 the alternative, plaintiff's motion is untimely at this
3 point because defendants, Carol and Ira Gabrielson have not
4 had an opportunity to engage in discovery pertinent to
5 coverage issues raised by the plaintiff in its complaint.

6 DATED this 7 day of April, 1988.

7 RUSH, HANNULA & HARKINS

8
9 By:

Harold T. Dodge, Jr.
Harold T. Dodge, Jr.
Of Attorneys for
Defendants Ira and
Carol Gabrielson

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MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT - 19

LAW OFFICES
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TACOMA 333-5348
SEATTLE 838-4790

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FILED
IN COUNTY CLERK'S OFFICE
A.M. DEC 7 1988 P.M.
PIERCE COUNTY WASHINGTON
TOD RUTY, COUNTY CLERK
BY DEPUTY

J.V. DEC 7 1988

The Honorable J. Kelly Arnold

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiff,)

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.)

No. 88-2-00947-9

BRIEF IN OPPOSITION TO
SUMMARY JUDGMENT AND
MOTION TO STRIKE AFFIDAVIT
OF BRUCE WINCHELL

5

Defendants incorporate and refer this court to DEFENDANT BARNETTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS' COUNTERMOTION FOR SUMMARY JUDGMENT filed herein on April 7, 1988.

Defendants incorporate and refer this court to its oral decision of April 15, 1988 denying plaintiff's motion for summary judgment, a transcription of which was filed herein on December 6, 1988.

Additionally, defendants move this court to strike the Affidavit of Bruce Winchell pursuant to CR 56 (e).

LAW AND ARGUMENT

This Court's oral decision of April 15, 1988 previously denied this same motion without prejudice in regard to factual issues regarding whether a bodily injury had been suffered. This BRIEF IN OPP TO SUMMARY JUDGMENT : 1 als15004857.80

Evans, Craven & Lackie, P.C.

LAWYERS

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SEATTLE, WASHINGTON 98104

(206) 386-5555

55688 68824124 68333 15151

1 Court held that consequential damages for emotional distress are
2 covered under the American Casualty policy.

3 American Casualty has re-noted the motion for summary
4 judgment simply upon the basis that the jury in Pierce County
5 cause number 86-2-02792-6 was not instructed with respect to
6 physical injury. The jury made no finding of any kind with
7 respect to this issue.

8 Summary judgment may be granted only when there exists no
9 genuine issue as to any material fact. CR 56 (c). Plaintiff has
10 failed to meet its burden in showing that summary judgment is
11 proper. It has shown only that a factual issue relevant in this
12 declaratory action was not determined in the underlying action.
13 It does not follow that such lack of a determination establishes
14 the factual issue which is in dispute.

15 Further, plaintiff submits materials with respect to the
16 findings of the jury in the underlying case through the affidavit
17 of Bruce Winchell. Mr. Winchell was not on the jury in the
18 underlying case, and he was neither a party nor counsel to a
19 party in that case. Consequently, he has no personal knowledge
20 of the findings made by the jury in that case. Without such
21 personal knowledge, he is not competent to testify by affidavit
22 with respect to those proceedings. CR 56 (e).

23 CONCLUSION

24 Plaintiff submits only unresolved factual issues to this
25 court for summary judgment, and plaintiff has submitted such
26 issues improperly by a defective affidavit.

27 Therefore, defendants respectfully ask that this court
28 strike the affidavit of Bruce Winchell and deny plaintiff's

29
30 BRIEF IN OPP TO SUMMARY JUDGMENT : 2
31 als15004857.80
32

Evans, Craven & Lackie, P.C.

LAWYERS

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SEATTLE, WASHINGTON 98104

(206) 386-5555

1 motion for summary judgment.

2 DATED this 6th day of December, 1988.

3 EVANS, CRAVEN & LACKIE, P.S.

4
5
6 By Tim Donaldson
7 TIMOTHY DONALDSON
8 Attorney for defendants
9 Barnett

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30 BRIEF IN OPP TO SUMMARY JUDGMENT : 3
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Evans, Craven & Lackie, P.S.

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RUSH, HANNULA & HARKINS

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LAW OFFICES OF
JOHN S. GLASSMAN
CLERK'S OFFICE
DEC 7 1988
WASHINGTON
PIERCE COUNTY CLERK

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

AMERICAN CASUALTY COMPANY OF READING

PENNSYLVANIA,

Plaintiff.

vs.

IRA GABRIELSON, et al.

Defendant.

NO. 88 2 00947 9

RE-NOTE
NOTE OF ISSUE AND STATEMENT OF
ARBITRABILITY

NATURE OF CAUSE Motion for Partial Summary Judgment

JURY TRIAL: YES/NO [] IF YES, 6 JURORS [] 12 JURORS []

ESTIMATED TIME TO TRY CAUSE _____

DATE REQUESTED FOR DOCKET MOTION/ASSIGNMENT Change from December 16, 1988 to January 6, 1989

PLAINTIFF'S ATTORNEY: NAME Bruce Winchell

ADDRESS Lane Powell Moss & Miller
3800 Rainier Bank Tower
1301 Fifth Avenue
Seattle, WA 98101

TELEPHONE (206) 223-7000

DEFENDANT'S ATTORNEY: NAME Daniel Hannula

ADDRESS Rush, Hannula & Harkins
715 Tacoma Avenue South
Tacoma, WA 98402

TELEPHONE (206) 838-4790

(NOTE: If additional attorneys involved, please note on reverse side)

NAME OF PARTY BRINGING MOTION: Plaintiff

ARBITRATION

[] This case is subject to arbitration because the sole relief sought is a money judgment and involves no claim in excess of twenty-five thousand dollars exclusive of attorney fees, interests and costs.

[] This case is not subject to mandatory arbitration because:

- [] Plaintiff's claim exceeds twenty-five thousand dollars.
- [] Plaintiff seeks relief other than a money judgment.
- [] Defendant's counter or cross claim exceeds twenty-five thousand dollars.
- [] Defendant's counter or cross claim seeks relief other than a money judgment.

[] The undersigned contends that its claim exceeds twenty-five thousand dollars but hereby waives any claim in excess of twenty-five thousand dollars for purposes of arbitration.

ABOVE INFORMATION MUST BE COMPLETED

TO BE COMPLETED BY CLERK

Assigned To: _____

Date: _____ By: _____

List Additional Attorneys

Name: Rodney D. Hollenbeck
Evans, Craven & Lackie, P.S.
Address: 34th Floor Columbia Center
702 5th Avenue
Phone: Seattle, WA 98104
(206) 386-5555
Attorney For: Defendants Barnettts

Name: John Glassman
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Address: Old City Hall, Suite 420
Tacoma, WA 98402
Phone: (206) 572-2746
Attorney For: Defendant Community Chapel

Name: Brian L. Meikle
Girolamai, Wood & Meyers
Address: Norton Clapp Law
949 Market, Suite 560
Phone: Tacoma, WA 98402
(206) 272-4205
Attorney For: Defendant McDonald

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE COUNTY CLERK'S OFFICE

FILED

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

A.M. **DEC 8 1988** P.M.
PIERCE COUNTY WASHINGTON
TED RUTY COUNTY CLERK
DEPUTY

vs.

NO. 88-2-00947-9
PROPOSED
ORDER DENYING
SUMMARY JUDGMENT

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.)

THIS MATTER having come before this Court on the 15th day of April, 1988, on motion of the plaintiff seeking summary judgment that the plaintiff's policy of insurance at issue in the above-entitled action does not cover emotional damages stemming from bodily injury; and the Court having considered the plaintiff's memoranda and affidavits in support of its motion, the memoranda and affidavit of

///
ORDER DENYING SUMMARY JUDGMENT - 1

LAW OFFICES
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SEATTLE 838-4790

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defendants' in opposition to the motion; and the Court having heard oral argument of counsel both in support of and in opposition to the motion; and the Court being in all things fully advised, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the plaintiff's motion is denied, and it is further

ORDERED, ADJUDGED AND DECREED that the consequential damages, including emotional damages suffered as a consequence of inappropriate invasion of Carol Gabrielson's bodily integrity as alleged in Gabrielson, et ux, vs. Community Chapel and Bible Training Center, et al, Pierce County Superior Court Cause No. 86-2-02792-6, are covered items of damages within the terms of plaintiff's policy of insurance at issue herein.

DONE IN OPEN COURT this _____ day of December, 1988.

HONORABLE J. KELLEY ARNOLD

Presented by:
RUSH, HANNULA & HARKINS

By: _____
DANIEL L. HANNULA
Of Attorneys for Defendants
Gabrielson

///
ORDER DENYING SUMMARY JUDGMENT - 2

LAW OFFICES
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15153 4/21/2003 88339

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APPROVED AS TO FORM:

LANE, POWELL, MOSS & MILLER

By: _____
BRUCE WINCHELL
Attorney for Plaintiff

EVANS, CRAVEN & LACKIE

By: _____
TIMOTHY DONALDSON
Attorney for Defendant
Barnett

By: _____
JOHN GLASSMAN
Attorney for Defendant
Community Chapel

///

ORDER DENYING SUMMARY JUDGMENT - 3

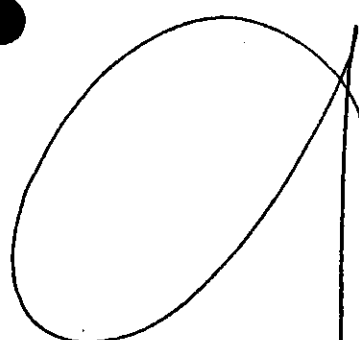
LAW OFFICES
RUSH, HANNULA & HARKINS

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SEATTLE 838-4790

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FILED
IN COUNTY CLERK'S OFFICE

DEC 8 1988 P.M.

PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK

DEC 8 1988

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,

Defendants.

No. 88-2-00947-9

NOTICE OF PRESENTATION

TO: BRUCE WINCHELL, DANIEL HANNULA AND JOHN GLASSMAN;

YOU AND EACH OF YOU PLEASE TAKE NOTICE that the undersigned
will present for entry in the above-entitled matter as follows:

DOCUMENT: ORDER DENYING MOTION FOR SUMMARY JUDGMENT BY PLAINTIFF

RE: BODILY INJURY;

BEFORE HONORABLE: J. Kelley Arnold;

LOCATION: ROOM: 217 OF THE Pierce County Courthouse;

AT THE FOLLOWING DATE AND TIME: Friday, December 16, 1988 at
9:30 a.m.

DATED this 7th day of December, 1988.

EVANS, CRAVEN & LACKIE, P.S.

By Tim Donaldson
TIM DONALDSON
Attorneys for defendants Barnett

NOTICE OF PRESENTATION : 1
als15004857.NOP

Evans, Craven & Lackie, P.S.

LAWYERS

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SEATTLE, WASHINGTON 98104

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15153 5/21/2005 06341
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PROPOSED

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,)

Defendants.)

No. 88-2-00947-9

ORDER DENYING MOTION FOR
SUMMARY JUDGMENT BY
PLAINTIFF RE: BODILY
INJURY

I. HEARING

1.1 Date. April 15, 1988.

1.2 Appearances. Plaintiff appeared through its counsel Lane, Powell, Moss & Miller by Bruce Winchell. Defendants, Ira and Carol Gabrielson, appeared through their attorneys Rush, Hannula & Harkins by Dan Hannula. Defendants, Donald Lee Barnett and Barbara Barnett, appeared through their attorneys Evans, Craven & Lackie, P.S. by Tim Donaldson. Defendant, Community Chapel and Bible Training Center, appeared through their attorneys Leach, Brown & Andersen by David Andersen.

1.3 Purpose. To consider MOTION FOR PARTIAL SUMMARY JUDGMENT of American Casualty Company filed herein on March 30, 1988.

1.4 Evidence. AFFIDAVIT OF BRUCE WINCHELL filed herein on March

SUMMARY JUDGMENT
ORDER: 1

Evans, Craven & Lackie, P.S.

LAWYERS

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SEATTLE, WASHINGTON 98104

(206) 386-5555

2288-2821-1-1

1 30, 1988. AFFIDAVIT OF HAROLD T. DODGE, JR. IN OPPOSITION TO
2 PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT filed herein on April 8,
3 1988. AFFIDAVIT OF PHILIP G. LINDSAY, M.D. filed herein on April
4 8, 1988.

5 1.5 Authorities Considered. Authorities contained in
6 MEMORANDUM IN SUPPORT OF AMERICAN'S MOTION FOR PARTIAL SUMMARY
7 JUDGMENT filed herein on March 30, 1988, DEFENDANT GABRIELSONS'
8 MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY
9 JUDGMENT filed herein on April 8, 1988, DEFENDANT COMMUNITY
10 CHAPEL AND BIBLE TRAINING CENTER'S MEMORANDUM IN OPPOSITION TO
11 MOTION FOR PARTIAL SUMMARY JUDGMENT filed herein on April 8,
12 1988, DEFENDANT BARNETTS' BRIEF IN OPPOSITION TO PLAINTIFF'S
13 MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS'
14 COUNTERMOTION FOR SUMMARY JUDGMENT filed herein on April 7, 1988,
15 and REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY
16 JUDGMENT (BODILY INJURY) filed herein on April 13, 1988.

17
18 II. FINDINGS

19
20 2.1 Decision. This Court's oral decision which was transcribed
21 and filed herein on December 6, 1988 is adopted and incorporated
22 herein.

23
24 III. ORDER

25
26 On the basis of the forgoing findings, it is ordered and
27 declared:

28 3.1 American Casualty Company of Reading Pennsylvania policy
29 number IP502144020 provides coverage for emotional distress and
30 mental suffering which is consequential to bodily injury.

31 SUMMARY JUDGMENT
32 ORDER: 2

Evans, Craven & Lackie, P.C.

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE, WASHINGTON 98104

(206) 386-5555

1 3:2 The MOTION FOR PARTIAL SUMMARY JUDGMENT of American Casualty
2 Company is denied without prejudice to the respect that this
3 court does not presently determine whether a bodily injury has
4 occurred.

5 DATED this _____ day of December, 1988.
6
7

8 _____
9 HONORABLE J. KELLEY ARNOLD

10 Presented by

11 EVANS, CRAVEN & LACKIE P.S.
12
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14 _____
15 TIM DONALDSON
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31 SUMMARY JUDGMENT
32 ORDER: 3

Evans, Craven & Lackie, P.S.

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE, WASHINGTON 98104

(206) 386-5555

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12-16-88
M

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

AMERICAN CASUALTY COMPANY OF

READING PENNSYLVANIA, a
Pennsylvania corporation, Plaintiff.

vs.

IRA GABRIELSON and CAROL GABRIELSON,
et al,

Defendant.

NO. 88-2-00947-9

P DEC 8 1988

NOTE OF ISSUE AND STATEMENT OF
ARBITRABILITY

NATURE OF CAUSE Presentation of Order Denying Summary Judgment

JURY TRIAL: YES/NO [] IF YES, 6 JURORS [] 12 JURORS []

ESTIMATED TIME TO TRY CAUSE _____

DATE REQUESTED FOR DOCKET MOTION/ASSIGNMENT DECEMBER 16, 1988

PLAINTIFF'S ATTORNEY: NAME BRUCE WINCHELL

ADDRESS 3800 Rainier Bank Tower
Seattle, WA 98101

TELEPHONE 223-7380

DEFENDANT'S ATTORNEY: NAME DANIEL L. HANNULA, Attorney for Gabrielsons

ADDRESS 715 Tacoma Avenue South
Tacoma, WA 98402

TELEPHONE 383-5388

(NOTE: If additional attorneys involved, please note on reverse side)

NAME OF PARTY BRINGING MOTION: Defendants Gabrielson

ARBITRATION

[] This case is subject to arbitration because the sole relief sought is a money judgment and involves no claim in excess of twenty-five thousand dollars exclusive of attorney fees, interests and costs.

[] This case is not subject to mandatory arbitration because:

[] Plaintiff's claim exceeds twenty-five thousand dollars.

[] Plaintiff seeks relief other than a money judgment.

[] Defendant's counter or cross claim exceeds twenty-five thousand dollars.

[] Defendant's counter or cross claim seeks relief other than a money judgment.

[] The undersigned contends that its claim exceeds twenty-five thousand dollars but hereby waives any claim in excess of twenty-five thousand dollars for purposes of arbitration.

ABOVE INFORMATION MUST BE COMPLETED

TO BE COMPLETED BY CLERK

Assigned To: _____

Date: _____ By: _____

List Additional Attorneys

Name: TIMOTHY DONALDSON
Address: 3100 Columbia Center, 701 Fifth Avenue, Seattle, WA 98104
Phone: 386-5555
Attorney For: Defendant Barnett

Name: JOHN S. GLASSMAN
Address: 625 Commerce, Old City Hall, #240, Tacoma, WA 98402
Phone: 572-2746
Attorney For: Defendant Community Chapel

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

Name:
Address:
Phone:
Attorney For:

STATE OF WASHINGTON | SS
COUNTY OF PIERCE
The undersigned, being first duly sworn, on oath,
states: That on this day, affiant HAD DELIVERED
to the attorneys of record of PLTE & DEFS.
a copy of the document to which this affidavit is
attached.
Denise L. Johnson
Subscribed and sworn to before me this 8th day of
December, 19 88
Notary Public in and for the
State of Washington
My commission expires 10-4-89

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FILED
IN COUNTY CLERK'S OFFICE

A.M. DEC 15 1988 P.M.

PIERCE COUNTY WASHINGTON
TED RUTZ COUNTY CLERK
BY _____ DEPUTY

DEC 15 1988

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

Plaintiff,

v.

IRA GABRIELSON and CAROL
GABRIELSON, husband and wife;
DONALD LEE 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 BRUCE
WINCHELL

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

BRUCE WINCHELL, being first duly sworn on oath, deposes and
says:

1. I am one of the attorneys for plaintiff American
Casualty Company.

AFFIDAVIT OF BRUCE WINCHELL - 1
0301BAW

ORIGINAL

LANE POWELL MOSS & MILLER
3800 RAINIER BANK TOWER
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2647
(206) 223-7000

4-21-2003 030347

1 2. American objects to entry of the order submitted by
2 counsel for Gabrielson. The order does not fully recite the
3 materials considered by the court on the motion. Furthermore,
4 in requesting an order that all consequential damages are
5 covered, the proposed order goes far beyond the issues which
6 were before the on April 15, 1988, and far beyond any ruling
7 made by the court.

8 3. The only issues that were before the court on
9 April 15, were American Casualty's motion for partial summary
10 judgment in which it asked for a declaration that damages for
11 emotional distress were not covered bodily injuries and
12 defendant Barnett's counter-motion for partial summary judgment
13 "on the basis that the American policy covers consequential
14 damages to bodily injury, including emotional distress and loss
15 of consortium." Defendant Barnetts' Brief in Opposition to
16 Plaintiff's Motion for Summary Judgment and in Support of
17 Defendant's Counter-Motion for Summary Judgment, page 2. The
18 court denied American's motion and did not grant Barnett's
19 counter-motion. Accordingly, the only order which ought to be
20 entered is one denying American's motion without prejudice. No
21 other ruling was made on April 15, 1988. No motion for
22 reconsideration was brought by Barnett or any other party.

23 4. Accordingly, American Casualty submits that the court
24 ought to enter the order proposed by Barnett except that
25 paragraphs 2.1 and 3.1 ought to be deleted. If Barnett wishes
26

AFFIDAVIT OF BRUCE WINCHELL - 2
0301BAW

1 to renew its motion which was first heard by this court on
2 April 15, it must do so on 21 days notice as provided in the
3 civil rules. It should not be permitted to skirt those notice
4 requirements through what is in effect is a belated motion for
5 reconsideration. The reason paragraph 2.1 which is denominated
6 findings should be deleted is because Civil Rule 52(a)(5)(B)
7 expressly states that findings of fact and conclusions of law
8 are not necessary with respect to a decision on a motion for
9 summary judgment.

10 DATED this 14th day of December 1988.

12 LANE POWELL MOSS & MILLER

13 By Bruce Winchell
14 Bruce Winchell
15 Attorneys for Plaintiff

16 SUBSCRIBED AND SWORN to before me: 12/14/88.

17 Carol Dennis Danna
18 NOTARY PUBLIC in and for the State of
19 Washington, residing at Seattle.

20 My appointment expires: 5/8/89.

26

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J.R. DEC 19 1988

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE FILED
IN COUNTY CLERK'S OFFICE

AMERICAN CASUALTY COMPANY)
OF READING, PENNSYLVANIA,)

Plaintiff,)

vs)

IRA GABRIELSON, et ux,)
et al,)

Defendants.)

AC. DEC 19 1988 P.M.

PIERCE COUNTY WASHINGTON
TED WITT, COUNTY CLERK

BY _____ DEPUTY

No: 88-2-00947-9

ORIGINAL

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 respective attorneys, DANIEL HANNULA, TIMOTHY DONALDSON, DAVID ANDERSON;

WHEREUPON, the following proceedings were had, to wit:

1 within the scope of their duties. That is not affected by
2 anything the Court will do here today.

3 We also are not asking the Court to in any way rule
4 upon any physical injuries, any pain and suffering of any
5 sort that Carol Gabrielson may have sustained as a result
6 of any of these allegations.

7 I recognize the Court has reviewed the materials.
8 They are voluminous. I think it probably is helpful to
9 very briefly take a look at some of the allegations of the
10 complaint because we are here just on the record as it's
11 set forth in the complaint, and the coverage as set forth
12 in the policy. It breaks down into several categories.

13 First of all, Carol Gabrielson alleges that Jack
14 McDonald held himself out as a qualified counselor, became
15 aware of her vulnerability and then, quoting from
16 paragraph 12, "Defendant Jack McDonald took advantage of
17 her weakness and her need for support and manipulated her
18 into leaving her husband." And then in the following
19 paragraph, "Further, as a result of the manipulation by
20 Defendant Jack McDonald, Plaintiff Carol Gabrielson was
21 coerced and unduly influenced into having a sexual
22 relationship with Defendant Jack McDonald. This
23 relationship continued from September through December of
24 1985."

25 Now, apparently sometime after that Carol Gabrielson

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1 had what is called disfellowship from the Tacoma Chapel.
2 She then later requested apparently to come up to the
3 Burien Chapel. And when she was at the Burien Chapel it's
4 alleged in the complaint, on March 6 of 1986, the
5 following year, she stated that she was physically
6 assaulted by Defendants John Doe's 1 through 4.

7 Now, the connection to Donald Barnett and the
8 Community Chapel up in Burien, which is a separate
9 corporation from the Tacoma corporation, as set forth in
10 paragraph 14, where it said that "Donald Barnett expressly
11 encouraged married members of the congregation to form
12 intimate attachments with persons other than spouses."

13 And finally, your Honor, there is an allegation of
14 defamation relating to disparaging remarks that were
15 supposedly made by Jack McDonald and Donald Barnett. And
16 her ex-husband, Ira Gabrielson, asserts a claim for loss
17 of consortium.

18 Now, as I mentioned, there are two basic coverages at
19 issue. The first is coverage for personal injury that
20 relates generally to coverage for damages arising out of
21 things such as false imprisonment and defamation. Those
22 are probably the two that are particularly at issue here.
23 That will not be affected in any way. We are not asking
24 the Court to rule in any way upon the extended coverage
25 under the personal injury protection.

1 We are asking the Court to rule upon the bodily
2 injury provision. And I have written the relevant clause
3 up on the board there. The provision states that coverage
4 is provided for sums which the insurer shall be legally
5 obligated to pay as damages because of bodily injury
6 caused by an occurrence.

7 An occurrence is subsequently defined as an accident
8 which results in unexpected harm. I would emphasize the
9 words "caused by an occurrence" because that's where you
10 see the causation link in this policy.

11 First we say what kind of damages are covered, and
12 then in the words "caused by an occurrence," it is set
13 forth what type of activities may give rise to bodily
14 injury which will result in coverage.

15 This is confirmed, your Honor, because when you go
16 down to the definition of bodily injury, it doesn't talk
17 in any way about something that arises in a particular
18 way. It defines bodily injury as a type of damage, and
19 it's bodily injury meaning bodily injury, sickness or
20 disease. It's clearly a type of damage.

21 Now, this issue came before the Supreme Court less
22 than two years ago. It was an Easy Loader case which is
23 at 106 Wn 2d 901, and a particular holding is at page 908.
24 That was a sex discrimination-- sex and employment
25 discrimination case and there was a jury verdict in favor

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1 of the Plaintiffs in the amount of \$148,000. It was for
2 lost earnings and mental anguish. And the Court said the
3 policies-- and these are the exact same provisions, your
4 Honor, we have the same definition of bodily injury, the
5 same definition of occurrence, so really exactly the same
6 words. "The policies were never intended to cover any
7 mental or emotional upset, mental anguish and illness and
8 emotional distress are not covered by the express terms of
9 travelers policy."

10 Now, the defendants in this action purport to draw a
11 distinction with the travelers case by saying well there
12 you don't have some physical contact, and they make
13 reference to this three months of sexual activity and the
14 ejection from the Burien Chapel on March 6. But that
15 distinction is disposed of, your Honor, in the Buchannon
16 case, because that case, which is at 11 Wn App 823, and
17 holdings are at 824 to 825, is that was a case in which a
18 daughter was undisputably injured in a car accident.

19 A claim was made under an uninsured motorist
20 provision and the policy provided coverage for bodily
21 injury, \$15,000 per person and \$30,000 per occurrence.
22 No doubt that the daughter gets her \$15,000. Parents come
23 along and say we were injured too as a result of her
24 bodily injury and therefore we are making a claim for our
25 mental anguish under her bodily injury coverage. And the

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Court says no, that is not an item of damage which is covered under a bodily injury policy.

Again, there we have the exact same words, "coverage is provided for damages because of bodily injury." That case really deals with the distinction that the defendants are purporting to draw here. It's a distinction that makes no sense because we are talking about damages, and not damages which arise in a particular manner.

Regardless of what the Court rules today the ninth cause of action for Mr. Gabrielson's loss of consortium claim ought to be disposed of. Coverage cannot be provided under the bodily injury provisions for Mr. Gabrielson because there is no allegation in the complaint as to him that there was any physical contact. So even if the Court should disregard the Buchannon case and the clear language of Easy Loader, the ninth cause of action with respect to bodily injury coverage is not covered. Thank you, your Honor.

THE COURT: Mr. Hannula?

MR. HANNULA: My name is Dan Hannula and I am representing Carol and Ira Gabrielson. Since we are the first named defendants we will proceed.

Your Honor, the issue in this partial summary judgment motion is very, very narrow and I think that is extremely significant for this Court. The Plaintiff

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1 American is asking for two things, and he says that very
2 clearly in his memorandum. He states that he wants this
3 Court to declare that the insurance company is not liable
4 for damages under any cause of action for any mental or
5 emotional upset or lost earnings which plaintiff recovers
6 in judgment. The second is a declaration of non-coverage
7 for loss of consortium.

8 Your Honor, what counsel fails to advise this Court
9 is that bodily injury, as defined in this policy, clearly
10 covers emotional injury which arises from a physical
11 injury. I think that's the real significance in this
12 motion, your Honor.

13 In essence in a bodily injury claim any consequential
14 damages, any damages that flow from that bodily injury,
15 are recoverable under this particular part of the policy.
16 The two cases that he has cited I think are totally
17 misrepresentative of the facts in our case.

18 In our case, your Honor, in essence, in every one of
19 the causes of action, including that of loss of
20 consortium, they arise as a consequence of induced
21 physical sexual contact between one of the defendants in
22 the main action and my client, Carol Gabrielson. And
23 second, the emotional injuries arise out of a false
24 imprisonment and assault and battery which occurred at the
25 church in Burien on March 6 of 1986.

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1 The two cases he cites are Easy Loader and Buchannon
2 versus Western American. In Easy Loader, your Honor,
3 there was absolutely no physical injury. It was merely a
4 case where the plaintiff was complaining of mental and
5 emotional suffering and there was absolutely no physical
6 contact or physical injury of any kind. It clearly does
7 not apply in this case.

8 Second, the Buchannon versus Western American case I
9 think has been totally misrepresented by the plaintiff.
10 Your Honor, that was a case in which a child was injured
11 in a car accident. Obviously her injuries exceeded the
12 policy limit, you know, as well as policy like 25/50, that
13 is one person can recover no more than let's say 25. I
14 don't know if that was the amount, but this is in essence
15 what the case was about. The girl obviously had injuries
16 and damages in excess of \$25,000, so she recovered that
17 \$25,000.

18 Well, the parents-- the lawyer, you know, I think in
19 somewhat novel argument said, well, the parents also have
20 a claim because they suffered because they had to watch
21 their daughter experience this physical pain and
22 suffering. So they wanted to go for the other \$25,000 as
23 a separate cause of action. What the court said was you
24 can't do that because you didn't suffer physical injury.
25 But very clearly the court indicated that with respect to

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1 that first \$25,000 the plaintiff's had a cause of action
2 which was recoverable under that policy for their
3 consequential damages.

4 In other words their loss of-- it's not loss of
5 consortium, but let's say the impact that the affect of
6 the destruction or at least the partial destruction of
7 parent-child relationship was a recoverable item under the
8 policy but only as a consequential damage of the bodily
9 injury and therefore it came within that first \$25,000.
10 Again, very significantly in that case the parents were
11 not physically injured as we have in this case.

12 We have cited several cases and the other defendants
13 have cited several cases which clearly set forth-- and
14 Yakima Cement versus Great American is one, but clearly
15 set forth the proposition that under a bodily injury
16 policy any emotional suffering, any consequential damages
17 of any kind that arise out of a physical injury are
18 recoverable under the bodily injury portion of the policy.

19 Now, Mr. Winchell says we are here only on the bodily
20 injury coverage. We are not here on the personal injury
21 coverage. He makes that distinction. That's arguably
22 somewhat seductive, but what is very important, and the
23 Court should be aware, is that the bodily injury coverage
24 is very broad coverage.

25 The personal injury coverage which he says is not at

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1 issue here, and I agree with him on that, is very limited
2 coverage. And your Honor, under the circumstances-- and
3 this is in essence a 12(b) motion, that's all it is. He's
4 done no discovery whatsoever. He's presented no facts to
5 this Court about this case. All he is saying is that if
6 you look at the pleadings under all those causes of
7 action, under bodily injury coverage, you are not entitled
8 to emotional pain and suffering, you are not entitled to
9 recover.

10 But if you look at our pleadings, and that's all the
11 Court can do at this stage, you look at the pleadings and
12 it's clear that the emotional suffering that we are
13 seeking damages for arises out of the physical injuries
14 that we discussed and the elicited sexual contact, the
15 coercive sexual contact, and the false imprisonment and
16 assault and battery which occurred on church property.
17 And therefore, your Honor, this motion for summary
18 judgment, which is really not a motion for summary
19 judgment, should fail.

20 I want to add one more thing, your Honor. I think
21 it's very important for the Court to be aware of because I
22 think that this proceeding ought to be held in abeyance
23 until the other main case is tried. And I think the Court
24 should be aware of this.

25 We have been involved in an incredible amount of

1 discovery over the past five or six months. There has
2 been no issue of insurance coverage until about 30 days
3 ago. That's the first-- really in essence that's when the
4 issue of coverage became an issue in this case. A concern
5 obviously for the plaintiff because if there is insurance
6 money it's always easier to recover a judgment. But when
7 we were involved in discovery we were not taking
8 depositions specific with reference to whether or not
9 there was insurance coverage or focusing on the issue of
10 whether or not these acts were going to be considered
11 covered under the policy.

12 Now, within 30 days they bring this motion, in
13 essence a motion on the pleadings, when in the complaint
14 in the case we as plaintiffs and the rest of these
15 defendants are taking depositions this week-- we took
16 depositions every day, ten hours a day, and each one of
17 these defendants is an insured under this particular
18 policy.

19 All of their resources and all of our resources are
20 focused on a case which is being tried on May 18 of this
21 year. And the way it's going it could conceivably take
22 two months for this insurance company to make us as
23 plaintiff's, and probably even more of significance the
24 defendants which they insure, now redirect their attention
25 to a declaratory judgment action, which materially affects

1 them, one month before trial when we are engaged in night
2 and day discovery, literally night and day discovery. I
3 think is outrageous and is one of the strongest cases of
4 bad faith that I personally have ever seen, your Honor,
5 and I say that with a lot of conviction.

6 What I am really asking this Court to do is to hold
7 off-- and another thing is he suggests he's going to take
8 this piecemeal. In other words, he's going to break down
9 coverage a piece at a time. In other words, we have to go
10 through this. We have a volume like this for one motion
11 and apparently he is going to keep bringing us back into
12 court little by little and continue to make us focus our
13 energy on this case when we have a trial a month from now.

14 What I'm asking the Court is obviously depending on
15 what the Court rules here today, but I am asking this
16 Court to hold this in abeyance until the other case is
17 tried-- until the energies which are being focused 100
18 percent of the time can continue to be focused. And I
19 think then they may speak to it, but I think there is a
20 strong issue of bad faith in this circumstance, your
21 Honor.

22 THE COURT: When was the other case filed?

23 MR. HANNULA: The other case was filed
24 approximately 18 months ago. I may be not completely
25 accurate but it's at least 18 months ago. We had a trial

1 date in November and it was-- well, yeah, we had a trial
2 date in November. It was continued to April and now it's
3 been continued to May, but this case last been ongoing for
4 at least 18 months, if not longer.

5 THE COURT: Thank you.

6 MR. DONALDSON: Your Honor, my name is Tim
7 Donaldson. I am here on behalf of Don and Barbara
8 Barnett. And this is a very limited issue and I have a
9 very limited argument.

10 Before I start though I want to make a correction.
11 What Mr. Winchell has said the policy reads, it does not
12 say it pays sums. It says "all sums which arise because
13 of bodily injury."

14 The issue here is not whether or not it covers a
15 separate claim for emotional distress. The issue here is
16 whether or not this policy covers emotional distress
17 damages which arise from a bodily injury.

18 The situation is totally distinguishable from the
19 Easy Loader case in which there was no physical injury at
20 all. There was no bodily injury.

21 In this case there have been allegations of sexual
22 assault. There have been allegations of physical assault.
23 And the question is does the policy-- does it just cover
24 bodily injury or does it cover all the "all sums" arising
25 out of that bodily injury? And the question is whether

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1 consequential damages are covered.

2 Mr. Winchell has cited Western American, and I'm not
3 going to belabor Western American except to the point that
4 all that that case said was that the consortium damages
5 did not constitute a separate bodily injury. They were
6 covered under the single limit of liability as a
7 consequential damage.

8 There is other authority in the State of Washington,
9 and I have cited in my brief Zoda versus Mutual of
10 Enumclaw, United Pacific versus Edgecomb, which holds the
11 same thing. Consortium damages which arise out of a
12 spouse's bodily injury are covered under that limit of
13 liability as a consequential damage.

14 Now, Yakima Cement versus Great American Insurance
15 Company set down the rule on consequential damages. If
16 there is something-- if there is some allegation which
17 triggers coverage under the policy, in this instance a
18 bodily injury, all consequential damages which resulted
19 from that bodily injury are covered.

20 In that case it was the similar policy but a
21 different provision. It was injury to tangible property.
22 In that case they said you have shown an injury to
23 tangible property all consequential damages to that are
24 also covered.

25 I'm not going to belabor it anymore except to say

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1 that the issue here is not whether or not this policy
2 covers separate claims for emotional distress. The
3 question here is whether or not it covers consequential
4 damages for an allegation of bodily injury. The policy
5 itself and the case law in the state makes it very clear
6 that consequential damages, including the emotional
7 distress and including the loss of consortium are covered.

8 THE COURT: Thank you. Counsel?

9 MR. ANDERSON: My name is David Anderson, for
10 the record. Very briefly and very simply the plaintiff
11 has not met the burden of proof in a summary judgment
12 motion. It has not shown there is an absence of factual
13 issues with respect to the claim for emotional distress.
14 Particularly it has not shown that sexual activity is not
15 a bodily injury.

16 Mr. Hannula said this is really a 12(b) motion and
17 there was an allegation in the third cause of action that
18 McDonald negligent counseling created unreasonable risk of
19 physical and mental harm. There is that allegation of
20 physical harm certainly. We have cited cases from other
21 jurisdictions which have no trouble finding coverage for
22 emotional distress which comes up under the term bodily
23 injury, especially if there is physical contact which
24 initiated or started that emotional distress, and
25 especially a physical symptom manifests such distress.

1 Lastly without repeating, going over all the other
2 points that we have made, I just say personal policy
3 defines bodily injury in part by the term bodily injury.
4 I think that's inherently ambiguous. Other courts that we
5 have cited said the same. There is no specific exclusion
6 for injuries regarding mental distress. I believe there
7 is coverage. Thank you.

8 THE COURT: Mr. Graffe?

9 MR. GRAFFE: Your Honor, if I can be heard real
10 briefly. I don't represent a party to this case, as the
11 Court probably is aware. I do represent the Alskog family
12 in a case that's been brought in King County. There were
13 three underlying cases that have been consolidated. A
14 similar declaratory action was recently filed in King
15 County and I represent Mr. Alskog in that declaratory
16 action. It was filed last month. Not all the defendants
17 have appeared.

18 I have forwarded my initial discovery to the
19 plaintiff insurance company and we haven't heard a
20 response yet. There are different plaintiffs in the
21 underlying action so there are different defendants in the
22 declaratory. There are some different defendants in the
23 declaratory, and there are some common defendants in the
24 declaratory.

25 I am here because I am very concerned about the

1 practical impact of a ruling here on a judge in King
2 County. And I was also down here for the discovery
3 motion, but that was heard another day. Although it's
4 probably not legally res judicata or collateral estoppel
5 because we are not a party, because of the notoriety of
6 the case and ability of this department I am very
7 concerned that there will be a practical impact in King
8 County. If Mr. Winchell gets this motion here, that will
9 be the order which will be, I'm sure, appended to his
10 motion for summary judgment in the King County cases
11 without having the party an opportunity to object to the
12 motion down here.

13 So I concur with Mr. Hannula that this case should be
14 set over, at a very minimum until the King County
15 defendants have at least appeared. They haven't all
16 appeared. At a very minimum until the plaintiff insurance
17 company responds to the discovery so that we can see if
18 there is something to be concerned about.

19 THE COURT: Thank you. Mr. Winchell, response?

20 MR. WINCHELL: I'll try to be brief and I'll try
21 to address the points I think are probably relevant to
22 you, your Honor. I will not respond to the allegation of
23 bad faith because Mr. Hannula has had this case for 18
24 months. He took only one deposition apparently in the
25 first 14 months. And we have been caught by surprise, as

1 there was no physical contact, and I believe that language
2 that you just cited presupposes from the other language in
3 the case that that's inferentially part of that language.

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

20 And it may well be, and I certainly don't take issue,
21 Mr. Winchell, with the fact that there was a long dry
22 spell. I don't know about that, but I will accept that in
23 terms of discovery, but the issues that you have asked the
24 Court to consider are those that were set forth in the
25 pleadings, and the pleadings have been available from the

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1 outset.

2 The Court, although perhaps there have been some
3 amendments along the way, the Court on that basis will
4 deny the motion. And I'm sure you are going to ask
5 because I haven't specifically addressed the issue of Mr.
6 Gabrielson's claim and how that fits into all of this. I
7 frankly think that's a closer question. But I'm not
8 satisfied that the Buchannon case and the Easy Loader case
9 when read in conjunction with one another really address
10 this situation. I think the facts were different. I
11 think the context in which the issues arose, given the
12 nature of coverage, was different, and on that basis the
13 Court will deny both prongs of the motion.

14 MR. WINCHELL: Your Honor, just a clarification
15 on your ruling. I take it the denial of the motion at
16 this stage is without prejudice for us to go conduct our
17 discovery and come back at least as to the sexual
18 activities claimed and to then address the question of
19 whether those sexual activities, absent some other
20 discernible injury constitutes a bodily injury to the
21 policy.

22 THE COURT: Well, certainly it's not appropriate
23 for the Court to make factual determinations about what
24 happened in ruling on a motion such as this. If we do
25 that, the Court literally would have to try the underlying

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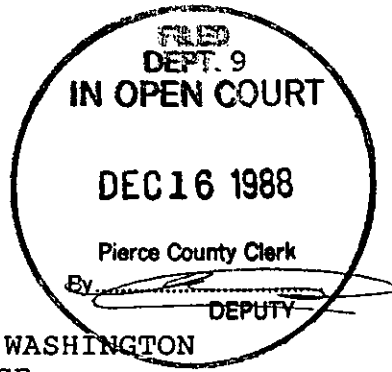
case in this case, and that's not why we are here.

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

MR. WINCHELL: Thank you, your Honor.

THE COURT: Thank you all, counsel.

(End of motion)



FILED DEC 16 1988

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,)
)
Defendants.)

VOL 383 PAGE 39

No. 88-2-00947-9

ORDER DENYING MOTION FOR
SUMMARY JUDGMENT BY
PLAINTIFF RE: BODILY
INJURY



I. HEARING

1.1 Date. April 15, 1988.

1.2 Appearances. Plaintiff appeared through its counsel Lane, Powell, Moss & Miller by Bruce Winchell. Defendants, Ira and Carol Gabrielson, appeared through their attorneys Rush, Hannula & Harkins by Dan Hannula. Defendants, Donald Lee Barnett and Barbara Barnett, appeared through their attorneys Evans, Craven & Lackie, P.S. by Tim Donaldson. Defendant, Community Chapel and Bible Training Center, appeared through their attorneys Leach, Brown & Andersen by David Andersen.

1.3 Purpose. To consider MOTION FOR PARTIAL SUMMARY JUDGMENT of American Casualty Company filed herein on March 30, 1988.

1.4 Evidence. AFFIDAVIT OF BRUCE WINCHELL filed herein on March

SUMMARY JUDGMENT
ORDER: 1

Evans, Craven & Lackie, P.S.
LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE, WASHINGTON 98104

(206) 386-5555

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30, 1988. AFFIDAVIT OF HAROLD T. DODGE, JR. IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT filed herein on April 8, 1988. AFFIDAVIT OF PHILIP G. LINDSAY, M.D. filed herein on April 8, 1988.

1.5 Authorities Considered. Authorities contained in MEMORANDUM IN SUPPORT OF AMERICAN'S MOTION FOR PARTIAL SUMMARY JUDGMENT filed herein on March 30, 1988, DEFENDANT GABRIELSONS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT filed herein on April 8, 1988, DEFENDANT COMMUNITY CHAPEL AND BIBLE TRAINING CENTER'S MEMORANDUM IN OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT filed herein on April 8, 1988, DEFENDANT BARNETTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS' COUNTERMOTION FOR SUMMARY JUDGMENT filed herein on April 7, 1988, and REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT (BODILY INJURY) filed herein on April 13, 1988.

II. FINDINGS

2.1 Decision. This Court's oral decision which was transcribed and filed herein on December 6, 1988 is adopted and incorporated herein.

III. ORDER

On the basis of the forgoing findings, it is ordered and declared:

3.1 American Casualty Company of Reading Pennsylvania policy number IP502144020 provides coverage for emotional distress, mental suffering, and loss of consortium which is consequential

SUMMARY JUDGMENT
ORDER: 2

Evans, Craven & Lackie, P.C.

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE, WASHINGTON 98104


(206) 386-5555

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1 to bodily injury.

2 3.2 The MOTION FOR PARTIAL SUMMARY JUDGMENT of American Casualty
3 Company is denied without prejudice to the respect that this
4 court does not presently determine whether a bodily injury has
5 occurred.

6 DATED this 16 day of December, 1988.

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9 
10 HONORABLE J. KELLEY ARNOLD

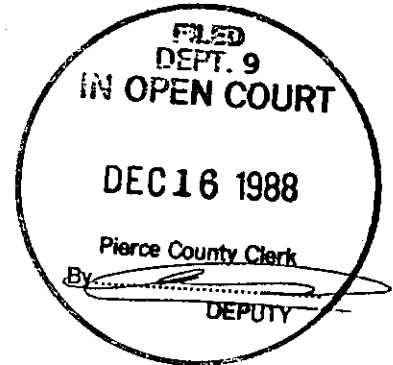
11 Presented by
12 EVANS, CRAVEN & LACKIE P.S.

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14 TIM DONALDSON

15 Form
16 Approved

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31 SUMMARY JUDGMENT
32 ORDER: 3

Evans, Craven & Lackie, P.S.

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE, WASHINGTON 98104

(206) 386-5555

15153 1/21/2883 88374

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

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

COPY

DEC 16 1988
COPY RECEIVED
DEC 16 1988
No: 88-2-00947-9
Excerpt of EVANS CRIMINAL RECORDS DEPT. 9
ORAL DECISION IN OPEN COURT
DEC 16 1988
Pierce County Clerk
By _____ 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

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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

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MISS GUILF

FILED
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A.M. **DEC 30 1988** P.M.
PIERCE COUNTY CLERK
[Signature]

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

NO. 88-2-00947-9

AMERICAN CASUALTY'S
SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT

I.

INTRODUCTION

Since this motion was originally renoted, the court has entered an order on the original motion, which was heard on May 15, 1988. That order provides that damages for emotional distress which are consequential to a bodily injury are covered under American's policy. The issue thus presented is narrowed to the question of whether the jury found that there was a

5

ORIGINAL

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1 covered bodily injury for which Carol and Ira Gabrielson
2 received judgment.

3 II.

4 COMPLAINT

5 Gabrielsons' complaint in the underlying action is attached
6 to the supplemental affidavit of Bruce Winchell as Exhibit A.
7 The substantive allegations against defendant Jack McDonald are
8 contained in paragraph nos. XI, XII and XIII.

9 XI. Defendant Jack McDonald, as pastor of the
10 Tacoma Chapel, held himself out to the Gabrielsons as
11 a qualified counselor. In this regard, Carol
12 Gabrielson began counseling with defendant Jack
13 McDonald on a regular basis.

14 XII. As a result of the counseling sessions,
15 defendant Jack McDonald became aware of the vulner-
16 ability of plaintiff Carol Gabrielson. Defendant Jack
17 McDonald took advantage of her weakness and her need
18 for support and manipulated her into leaving her
19 husband, plaintiff Ira Gabrielson.

20 XIII. Further, as a result of the manipulation by
21 defendant Jack McDonald, plaintiff Carol Gabrielson
22 was coerced and unduly influenced into a having sexual
23 relationship with defendant Jack McDonald. This
24 relationship continued from September through December
25 of 1985.

26 The other substantive factual allegations are contained in
paragraphs 18 and 19. Paragraph 18 sets forth the allegation
that on March 6, 1986:

Plaintiff Carol Gabrielson was physically assaulted by
defendants John Does 1-4, who bodily dragged her from
the chapel, causing the physical injuries which are
complained of herein.

Paragraph 19 contains the factual allegation supporting the
cause of action for defamation.

1 The causes of action which were asserted in the complaint
2 are set forth beginning at page 7 of the complaint and are
3 summarized below:

- 4 1. Outrage.
- 5 2. Intentional counselor malpractice.
- 6 3. Negligent counselor malpractice.
- 7 4. Pastor malpractice.
- 8 5-7 Assault, battery and false imprisonment.
- 9 8. Defamation.
- 10 9. Loss of consortium.

11 III.

12 TRIAL BRIEF

13 In plaintiff's trial brief, which is appended to the
14 Affidavit of Harold Dodge as Exhibit A, plaintiff stated at
15 page 1:

16 The Gabrielsons claim that defendant Jack McDonald was
17 negligent in counseling Carol Gabrielson at a time
18 when defendant McDonald was her counselor and pastor
at the defendant Community Chapel and Bible Training
Center of Tacoma.

19 Plaintiffs then continued at page 2 of their brief by discuss-
20 ing the assault claim.

21 The plaintiffs are also suing the corporation for an
22 assault committed by corporation security personnel
against Carol Gabrielson.

23 Discussing that aspect of their claim further at page 7,
24 plaintiffs asserted:

25 Carol Gabrielson suffered a compression fracture as a
26 result of her ejection from the chapel.

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IV.

JURY INSTRUCTIONS

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2
3 At the end of the case, the court gave Jury Instruction
4 No. 6, which is attached as Exhibit C to the Affidavit of
5 Harold Dodge. That instruction states in part:

6 Plaintiffs claim that defendant Jack McDonald . . .
7 was negligent as Carol Gabrielson's pastor, or
8 counselor, or both, in his actions towards Carol
9 Gabrielson.

10 The plaintiffs claim that Jack McDonald's negligence
11 was a proximate cause of psychological and emotional
12 injuries, resulting in medical and psychiatric treat-
13 ment and which may require medical and psychiatric
14 treatment in the future.

15 The plaintiff, Carol Gabrielson, claims that Jack
16 McDonald defamed her and that such defamation was a
17 proximate cause of psychological and emotional
18 injuries . . .

19 The plaintiff, Carol Gabrielson, claims she was
20 assaulted, battered and falsely imprisoned by agents
21 of the defendant Community Chapel and Bible Training
22 Center of Burien, proximately causing physical,
23 psychological and emotional injuries resulting in
24 medial and psychiatric treatment which may require
25 medical and psychiatric treatment in the future.

26 (Emphasis added.) Instruction No. 12 contained the instruction
with respect to negligent counseling. Instruction No. 13
contained the instruction with respect to pastoral mal-
practice. Instruction No. 14 contained the instruction with
respect to assault. Instruction No. 15 contained the instruc-
tion with respect to battery. Instruction No. 16 contained the
instruction with respect to false imprisonment.

There can be no legitimate contention that the case which
went to the jury was anything other than one of emotional harm

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1 arising from counselor malpractice and pastor malpractice and
2 that the claim for actual physical injury (compression
3 fracture) was based upon the March 6th assault, battery and
4 false imprisonment claim. Defendants, in the declaratory
5 action, have come forward with no evidence to the contrary.

6 Exhibit D to the Affidavit of Harold Dodge contains the
7 jury verdict form. In answering Question No. 1, the jury found
8 that Jack McDonald's negligence did injure Carol Gabrielson.
9 In answering Question No. 3, the jury found that Jack McDonald
10 injured Carol Gabrielson by defaming her. Damages arising from
11 defamation are not at issue in this motion. In Question No. 5,
12 the jury considered the assault, battery and false imprisonment
13 claim.

14 Q. Did the Community Chapel and Bible Training
15 Center assault, batter or falsely imprison
16 plaintiff Carol Gabrielson, proximately causing
17 injury to her?

18 A. No. (Yes or No)

19 Thus, the only evidence which is before the court is that
20 plaintiff's claim for a physical injury resulting from an
21 assault, battery or a false imprisonment was rejected by the
22 jury. Again, defendants have come forward with no evidence to
23 create a factual issue to contradict this evidence. A party
24 resisting a motion for summary judgment may not rest on mere
25 allegations or assertions that factual issues exist.
26

V.

LEGAL ISSUE

The legal issue before the court is whether emotional harm arising from counselor malpractice, including sexual misconduct, is harm which is consequential to a bodily injury. The authorities discussed previously clearly demonstrate that when an act causes emotional harm, rather than physical harm, there is no covered bodily injury.

Since first briefing the issue, American has noted that this question was recently addressed in the Eastern District of Virginia. American and Foreign Insurance v. Church School and Diocese of Virginia, 645 F. Supp. 628 (E.D. Va. 1986). Claims were asserted against a teacher, supervisory personnel, and a church school in connection with sexual abuse of an 11-year-old student. Causes of action were asserted for assault, battery, and infliction of emotional distress. Coverage was provided for bodily injury caused by an occurrence. The court stated:

The insurance policy defines "bodily injury" as "bodily injury, sickness or disease." American contends that this term connotes physical injuries to the body, as opposed to emotional injuries to the person, and that the Johnsons' claims are not covered because they allege purely emotional harm. In response, Church Schools argues that it is the type of claim alleged and not the basis of the damages sought that should determine coverage. Because the Johnsons allege a battery, which requires some type of body contact, such claim, so church schools contends, fits within the definition of "bodily injury." The policy makes no reference to "body contact."

1 While the Virginia courts have not interpreted the
2 term "bodily injury," courts that have interpreted
3 this language have determined that it limits policy
4 coverage to physical injury to the body and does not
5 include claims for purely nonphysical or emotional
6 harm. (Citation omitted.)

7 . . .

8 [Church school's] argument appears to ignore the
9 distinction between physical or bodily contact and
10 injury.

11 Id. at 632. A copy of the Church Schools case is attached to
12 this memorandum.

13 VI.

14 CONCLUSION

15 It is not disputed that there was bodily contact between
16 Carol Gabrielson and Jack McDonald. However, there is no
17 evidence that the jury made any award for bodily injury. To
18 the contrary, the jury rejected Gabrielson's physical injury
19 claim, as described in Instruction No. 6, when it rejected her
20 assault, battery and false imprisonment claim. Accordingly,
21 American respectfully requests that an order granting it
22 partial summary judgment be entered by this court.

23 DATED this 30th day of December, 1988.

24 LANE POWELL MOSS & MILLER

25 By Bruce Winchell
26 Bruce Winchell
Attorneys for American
Casualty

defendant's "wrongful act" was not the failure to adequately mark or remove the wreck, but was rather the *decision* not to better mark or remove the wreck, which decision was made ashore....

Id. at 64. The court rejected this line of reasoning, declaring that "'the foundation of the right to recover [under DOHSA] is a wrongful act or omission *taking effect* on the high seas.'" *Id.*, quoting *Lacey v. L.W. Wiggins Airways, Inc.*, 95 F.Supp. 916, 918 (D.Mass.1951). In *Lacey*, defendant's alleged failure to inspect a plane properly on land was held to be grounds for a DOHSA claim based on the plane's subsequent crash into the high seas. *Lacey*, 593 F.Supp. at 917-918. See also *Shaw v. Grumman Aerospace Corp.*, 593 F.Supp. 1066 (S.D.Fla.1984), *aff'd*, 778 F.2d 736 (11th Cir.1985) (DOHSA deemed applicable in suit against aircraft manufacturer seeking recovery for a death caused by the sudden crash of a carrier-launched plane which allegedly malfunctioned because of design defects).

In light of existing authority, the Court finds that DOHSA is applicable to the facts here. Plaintiff's allegations that Defendants acted negligently both before and after the snorkeling expedition do not defeat admiralty jurisdiction. The key operative fact, disputed by none of the parties, is that the decedent's illness commenced while he was participating in the snorkeling expedition; i.e., while he was on the high seas, as defined by DOHSA, in connection with an activity bearing a substantial relationship to a traditional maritime activity—the operation of a cruise ship on the high seas.

This Court further finds, pursuant to the Supreme Court's recent decision in *Offshore Logistics Inc. v. Tallentire*, — U.S. —, 106 S.Ct. 2485, 91 L.Ed.2d 174 (1986), that Plaintiff here shall be barred from seeking recovery under the Florida Wrongful Death Act or any other state wrongful death statute. The Supreme Court's ruling in *Tallentire* states unequivocally that state wrongful death statutes are pre-empted by DOHSA where it applies. *Id.* at —, 106 S.Ct. at 2500. As DOHSA only

allows recovery for pecuniary damages, Plaintiff shall be barred from seeking non-pecuniary damages in this cause of action.

The Court having carefully reviewed the record in this cause, having considered the memoranda submitted by the parties, and being otherwise fully advised in the matter, it is hereby

ORDERED AND ADJUDGED that Defendants' Motion for Partial Summary Judgment on the Issue of the Applicability of the Death on the High Seas Act be and the same is hereby GRANTED.



AMERICAN AND FOREIGN
INSURANCE COMPANY,
Plaintiff,

v.

CHURCH SCHOOLS IN the DIOCESE
OF VIRGINIA, et al., Defendants.

Civ. A. No. 86-0297-R.

United States District Court,
E.D. Virginia,
Richmond Division.

Sept. 29, 1986.

Insurer brought action seeking declaratory judgment that it had no duty to defend or indemnify private school, teachers and staff members against suit brought by 11-year-old student and her mother for alleged assault and battery, intentional and negligent infliction of emotional distress and negligent improper sexual conduct arising out of teacher's allegedly touching student in a sexual manner. The District Court, Merhige, J., held that: (1) claims were not covered by school's liability policy, and thus, insurer had no duty to defend.

100P MARSHALL GREEN & MARSH

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Cite as 645 F.Supp. 628 (E.D.Va. 1986)

and (2) insurer was not estopped from denying coverage.

Ordered accordingly.

1. Insurance ¶435.38, 514.9(1)

Claims against private school, teachers and staff members brought by 11-year-old student and her mother for alleged assault and battery, intentional and negligent infliction of emotional distress arising out of teacher's allegedly touching student in a sexual manner were claims for purely emotional injury and as such were excluded from coverage under policy, which insured school, teachers and staff and which obligated insurer to pay all sums insured might become legally obligated to pay as damages because of bodily injury caused by an occurrence; therefore, insurer had no duty to defend school, teachers, and staff.

2. Insurance ¶435.38, 514.9(1)

Claims against private school, teachers, and staff members by 11-year-old student and her mother for alleged negligent improper sexual conduct arising out of teacher's allegedly touching student in a sexual manner were occurrences under policy which covered school, teachers, and staff members; however, due to fact that no bodily injury was alleged, negligence claim fell outside scope of policy's comprehensive general liability coverage and insurer had no duty to defend school, teachers, and staff.

3. Insurance ¶435.38, 514.9(1)

Claims against private school, teachers, and staff members brought by 11-year-old student and her mother for alleged assault and battery, intentional and negligent infliction of emotional distress and negligent improper sexual conduct arising out of teacher's allegedly touching student in a sexual manner were not covered under broad-form comprehensive liability coverage for school, teachers, and staff members under which personal injury was covered and defined as injury arising out of publication or utterance of libel or slander or other defamatory or disparaging materi-

al or in violation of individual's right of privacy; there was no claim asserted for libel, slander, defamation, or disparagement, and thus, insurer had no duty to defend school, teachers, and staff.

4. Insurance ¶435.38, 514.9(1)

Claims against private school, teachers, and staff members brought by 11-year-old student and her mother for alleged assault and battery, intentional and negligent infliction of emotional distress and negligent improper sexual conduct arising out of teacher's allegedly touching student in a sexual manner did not fall within broad-form comprehensive liability coverage which covered personal injury and defined the injury as arising out of violation of individual's right of privacy; alleged remarks of teachers and staff members at certain meetings were not claimed to have involved matters held private by student and mother, and thus, insurer had no duty to defend school, teachers, and staff.

5. Insurance ¶390

Insurer was not estopped from denying coverage for private school, teachers, and staff members where insurer filed declaratory judgment suit to have liability under policy determined and insurer provided adequate notice to insured of intent to contest coverage in its reservation of rights letter; it was not necessary for insurer to specifically enumerate each factual element of claims in its letter.

Henry H. McVey, III, John M. Oakey, Jr., Christopher C. Spencer, McGuire, Woods & Battle, Richmond, Va., for plaintiff.

Sa'ad El-Amin, Richmond, Va., for defendants Loree Anitra Johnson and Judy Johnson.

Samuel W. Hixon, III, A. Peter Brodell, Williams, Mullen & Christian, Richmond, Va., Margaret L. Bacigal, for defendants Church Schools in the Diocese of Virginia, Allen W. Becker, Peggy Ross, Susan E. Goff and Amy Archinal.

pecuniary damages, and from seeking non-pecuniary damages on this cause of action.

carefully reviewed the matter, having considered the views of the parties, and advised in the matter,

ADJUDGED that Defendant's Partial Summary Judgment of the Applicability of the High Seas Act be and is GRANTED.

SYSTEM

JD FOREIGN COMPANY, Plaintiff,

IN the DIOCESE OF VIRGINIA, Defendants.

Case No. 86-0297-R.

District Court, Eastern District of Virginia, Division 1.

1986.

action seeking declaratory judgment had no duty to defend school, teachers and staff members in instant suit brought by student and her mother for alleged assault and battery, intentional and negligent infliction of emotional distress and negligent improper sexual conduct arising out of teacher's allegedly touching student in a sexual manner. The District Court held that: (1) claims against school's liability policy had no duty to defend,

LAW. FURN. MISS. A. WALKER
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MEMORANDUM

MERHIGE, District Judge.

Plaintiff is a New York corporation engaged in the business of insurance, whose principal place of business is in Charlotte, North Carolina.

Defendant Church Schools in the Diocese of Virginia is a Virginia corporation whose principal place of business is in Virginia.

The individually named defendants are each citizens of the Commonwealth of Virginia.

Jurisdiction is premised on 28 U.S.C. § 1332 and 28 U.S.C. §§ 2201 and 2202.

The matter comes before the Court on the plaintiff insurance company's motion for summary judgment. Having been fully briefed and argued, the motion is ripe for disposition.

Facts

This suit brought by the American and Foreign Insurance Company ("American") seeks a declaration that it has no duty to defend or indemnify Church Schools in the Diocese of Virginia ("Church Schools") and several of its teachers and staff members against a suit brought by a student, Loree Anitra Johnson, and her mother, Judy Johnson, against St. Catherine's School and the individually named defendants in the instant suit. Church Schools is a corporation operating several schools in Virginia, including St. Catherine's School. Church Schools carries a liability insurance policy issued by plaintiff which insures the schools, their teachers and staff members, under certain circumstances.

For convenience, the Court's reference to Church Schools in this memorandum is intended to include each of the named defendants.

The Johnsons' suit arises from an incident which allegedly occurred at St. Catherine's on September 27, 1985. Loree Johnson, a St. Catherine's student then age 11, alleges that she fell off of her stool in art class. In the course of getting up, her art teacher, defendant Archinal, squeezed her buttocks in a sexually suggestive manner.

The Johnsons allege that when they reported the incident to the Director of the Middle School, defendant Ross, and the Headmaster, defendant Becker, these individuals engaged in a cover-up and failed to fully and fairly investigate the incident. They claim that a meeting was held at which Loree was humiliated and Mrs. Johnson was harassed. The Johnsons further allege that Becker and Ross, along with the school chaplain, defendant Goff, humiliated Loree at a schoolwide assembly by giving a sermon about how a jealous little school girl had ruined the life of a schoolteacher by falsely claiming sexual abuse.

Loree and her mother filed a Motion for Judgment in Richmond Circuit Court on March 1, 1986. In their suit against St. Catherine's and the individual defendants, they alleged counts of assault and battery and intentional infliction of emotional distress and sought compensatory and punitive damages for Loree's and Mrs. Johnson's mental anguish and humiliation.

On March 19, 1986, Church Schools notified its local insurance agent of the lawsuit, who conveyed this information to American on March 21, 1986. In a letter dated March 25, 1986, American informed Church Schools that it "reserve(d) the right to set up any and all defense(s) of non-coverage" with respect to "a claim being presented on behalf of Loree Anitra Johnson for (1) assault and battery, (2) intentional emotional harm occurring as a result of an occurrence on or about 9/25/85." It based its reservation of rights on claims of untimely notice of the claim and non-coverage of intentional acts.

The Johnsons filed an Amended Motion for Judgment in the Richmond Circuit Court on September 16, 1986. While adding no new counts to their previously alleged assault and battery and intentional infliction of emotional distress claims, the Johnsons did add allegations of negligent "improper sexual contact" and negligent infliction of emotional distress. The amended motion for judgment was brought to the Court's attention for the first time in

LAW OFFICE OF JAMES B. HARRIS

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the hearing on the instant motion for summary judgment on September 17, 1986.

Procedural Background

American filed its declaratory judgment action in this Court on May 9, 1986, asking for a declaration that it owed no duty to defend or indemnify Church Schools or its employees against the Johnsons' lawsuit. American provided three grounds for its proposed declaration: (1) failure of a condition precedent to coverage under the policy, claiming Church Schools had failed to provide notice of the occurrence "as soon as practicable"; (2) lack of coverage under the policy provision covering "bodily injury ... caused by an occurrence"; (3) lack of coverage under the provision covering "personal injury" arising out of "a publication or utterance ... of a libel or slander or other defamatory or disparaging material, or ... in violation of an individual's right of privacy."

In its answer, in addition to denying American's claims of untimely notice and lack of coverage, Church Schools raised the affirmative defenses of waiver and estoppel, claiming that the reservation of rights letter failed to reserve the right to contest coverage of the sermon incident, but raised only the sexual assault incident itself.

American filed the instant Motion for Summary Judgment on August 29, 1986, seeking judgment in its favor on the grounds of non-coverage under both the bodily injury and personal injury policy provisions. Church Schools, in opposition to the motion, claims coverage under both provisions and waiver of non-coverage of at least the sermon incident.

The Merits

The parties raise no factual dispute as to the literal content of the Johnsons' Motion for Judgment, Amended Motion for Judgment,

1. Plaintiff has argued that the Court should look beyond the allegations in the motion for judgment to the underlying facts disclosed by the depositions and incorrectly cites *Reisen v. Aetna Life and Casualty Co.*, 225 Va. 327, 302 S.E.2d 529 (1983) as support for its position. In fact, *Reisen* does not deviate from the Virginia Supreme Court's traditional position established in *Travelers, supra*, that the duty to defend is deter-

ment, or the insurance policy covering Church Schools. Therefore, the Court is presented solely with the legal issue of the proper interpretation to be given the bodily injury and personal injury coverages under the policy and whether the scope of either or both of these provisions encompasses the Johnsons' claims, creating a duty on American to defend the lawsuit. A finding that such claims were not covered does not, however, end the matter, for the Court must determine whether American is estopped from raising non-coverage as a defense.

Because this action is before the Court pursuant to its diversity jurisdiction, state law applies. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). Since the insurance policy was issued and delivered in Virginia and all relevant acts and omissions occurred in Virginia, Virginia law applies to this dispute. *Maryland Casualty Co. v. Burley*, 345 F.2d 138 (4th Cir.1965).

I. *Coverage of the Claims*

Under Virginia law, coverage is determined by examining whether the allegations of the motion for judgment fall within the scope of the policy's coverage. *Travelers Indemnity Co. v. Obenshain*, 219 Va. 44, 46, 245 S.E.2d 247, 249 (1978).¹ Only if it clearly appears that the claims set forth in the motion for judgment are not covered is the insured relieved of its duty to defend. If coverage is in doubt, the insurance company must defend. *Travelers, supra*, 219 Va. at 46, 245 S.E.2d at 249 (citing *London Guar. Co. v. C.B. White & Bros.*, 188 Va. 195, 198-200, 49 S.E.2d 254, 255-56 (1948)). Further, the Court must examine the allegations of the Amended Motion for Judgment, as any new or different causes of

mined solely from the allegations in the motion for judgment. *Reisen, supra*, 302 S.E.2d at 531. The Court held that the insurer had a duty to defend based on a motion for judgment alleging both negligence and intentional torts despite the trial court's determination based on the underlying facts in the declaratory judgment suit that the injury was caused by non-covered intentional acts. *Reisen, supra*, 302 S.E.2d at 531.

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 SEATTLE, WASHINGTON 98101

action raised therein also could create a duty to defend. See *Bernard v. Gulf Ins. Co.*, 542 S.W.2d 429, 431 (Tex.Civ.App. 1976). As the insurance policy in the instant case specifically provides, as long as the allegations in the Motion for Judgment present potentially covered claims, the insurer must defend even if the allegations in fact are groundless, false or fraudulent.

Thus, in the instant case, the Court must examine the allegations of the Johnsons' Motion for Judgment and Amended Motion for Judgment to determine whether they present claims within the scope of the policy's coverage. The parties agree that, if coverage exists, it is found under either the Comprehensive General Liability Insurance provisions covering "bodily injury" or the Broad Form Comprehensive General Liability provisions covering "personal injury" arising from the commission of certain enumerated torts.²

A. Bodily Injury Coverage

The Comprehensive General Liability coverage obligates American to pay "all sums which the insured shall become legally obligated to pay as damages because of ... bodily injury ... caused by an occurrence." The parties' dispute concerns whether the Johnsons allege: (1) a bodily injury, (2) caused by an occurrence.

1. Bodily Injury

[1] The insurance policy defines "bodily injury" as "bodily injury, sickness or disease." American contends that this term connotes physical injuries to the body, as opposed to emotional injuries to the person, and that the Johnsons' claims are not covered because they allege purely emotional harm. In response, Church Schools argues that it is the type of claim alleged and not the basis of the damages sought that should determine coverage. Because the Johnsons allege a battery, which requires some type of body contact, such claim, so Church Schools contends, fits within the

2. See Exhibits B & C to Memorandum in Support of Plaintiff's Motion for Summary Judgment.

definition of "bodily injury." The policy makes no references to "body contact."

While the Virginia courts have not interpreted the term "bodily injury," courts that have interpreted this language have determined that it limits policy coverage to physical injury to the body and does not include claims for purely nonphysical or emotional harm. See, e.g., *Rolette County v. Western Casualty & Surety Co.*, 452 F.Supp. 125, 130 (D.N.D.1978). In *Rolette*, the court held that "bodily injury" coverage did not extend to "nonphysical harm to the person." While the claim was denominated an "injury to the person," the court held that the insurer was under no duty to defend where only damages for humiliation and emotional distress were sought. *Rolette, supra*, 452 F.Supp. at 130; see also *St. Paul Fire & Marine Ins. Co. v. Campbell County School Dist.*, 612 F.Supp. 285, 287-88 (D.Wyo.1985) (no duty to defend under "bodily injury" coverage "where party not suing for physical injury or disease").

While Church Schools argues that a claim for assault and battery is covered, its sole support for this claim is the Black's Law Dictionary definition of "battery." Their argument appears to ignore the distinction between physical or bodily contact and injury. While it is true that Johnson alleges a bodily contact, the harm alleged is purely emotional. Defendant argues that Loree may "more forcefully prove her claim for bodily injury at trial." However, in ruling on the duty to defend, the Court looks only at the allegations in the Motion for Judgment and not at what may be proven at a subsequent trial. In giving the "bodily injury" coverage its plain meaning, it simply does not cover the Johnsons' claim for purely emotional injury.

While the plaintiff raises additional allegations of negligence in the Amended Motion for Judgment, it adds no allegations which even arguably claim physical or bodily injury. Thus, the result remains that

ment.

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the Johnsons' claims are not for covered bodily injuries.

2. Occurrence

[2] Even if the Johnsons' claim were construed as alleging a "bodily injury," such injury also must arise out of an "occurrence" in order to be covered. Under the policy and Virginia law, the term "occurrence" is defined as an "accident ... which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured." *Travelers, supra*, 219 Va. at 47, 245 S.E.2d at 248. Under such a provision, allegations of intentional torts are not covered and impose no duty to defend. *Travelers, supra*, 219 Va. at 47, 245 S.E.2d at 249. While Virginia courts have not decided whether an alleged assault and battery would be covered under such a clause, courts which have considered this precise issue generally have held that coverage is not afforded. *See* Annot., 72 A.L.R. 3d 1090, 1103-04 (1976).

The Johnsons' original Motion for Judgment alleges only intentional acts by the insured—assault and battery and intentional infliction of emotional distress. Therefore, their claims, as originally asserted, are not for covered "occurrences" under the bodily injury coverage.

The Johnsons' Amended Motion for Judgment, however makes new allegations that Archinal "negligently ... made improper sexual contact with Loree" and that the defendants "engaged in specific conduct which was negligently ... designed to frighten, intimidate and embarrass plaintiffs."³ In the prayer for relief, plaintiff further seeks compensatory damages for negligent infliction of emotional distress. While the plaintiff questions the validity of these allegations,⁴ the merit of plaintiff's contentions is immaterial in determining the insurer's liability to defend. *See, e.g., Brohawn v. Transamerica Ins. Co.*, 276 Md. 396, 407-08, 347 A.2d 842, 850 (Insurer

3. Amended Motion for Judgment ¶¶ 13, 42.

4. Plaintiff's counsel argues that the added allegations are invalid because Virginia law does

must defend any suit stating covered claim even though it "cannot possibly succeed because either in law or in fact there is no basis for a plaintiff's judgment.") (quoting *Burd v. Sussex Mutual Ins. Co.*, 56 N.J. 383, 389, 267 A.2d 7, 10 (1970)). The Court is limited to ascertaining from the motion for judgment itself whether its allegations "state a case which may be covered by the policy." *Travelers, supra*, 219 Va. at 46, 245 S.W.2d at 249.

Under this broad standard, the plaintiff's allegations of negligence state a claim for an "occurrence" under the policy. However, because the plaintiff has not alleged any bodily injury, the negligence claim still falls outside the scope of the policy's Comprehensive General Liability coverage.

B. Broad Form Comprehensive Liability Coverage

Church Schools further contends that the Johnsons' claims fall under American's Broad Form coverage. Under this section, "personal injury" is covered and is defined as "injury arising out of one or more of the following offenses ... (3) a publication or utterance (a) of a libel or slander or other defamatory or disparaging material, or (b) in violation of an individual's right of privacy."

1. Libel, Slander, Defamation or Disparagement Claim

[3] American quite properly claims that the Johnsons' Motion for Judgment alleges no claim for libel, slander, defamation, or disparagement, and therefore is not covered. In fact, the motion for judgment makes no allegations that any false statements were made—an essential element in torts of this nature.

The cases cited by plaintiff support their contention that the personal injury coverage applies only to claims for personal injuries actually arising out of the enumerated torts, and not to claims which merely make

not recognize causes of action for negligent assault and battery or negligent infliction of emotional distress.

ary." The policy "body contact." rts have not inter- njury," courts that guage have deter- coverage to phys- nd does not include ytical or emotional e County v. West- y Co., 452 F.Supp. In Rolette, the njury" coverage did ytical harm to the m was denominated on," the court held under no duty to ages for humiliation were sought. Ro- pp. at 130; see also ve Ins. Co. v. Camp- ist., 612 F.Supp. 285, (no duty to defend coverage "where par- ytical injury or dis-

ools argues that a battery is covered, its claim is the Black's definition of "battery." ears to ignore the dis- sical or bodily contact it is true that Johnson ct, the harm alleged is Defendant argues that forcefully prove her ry at trial." However, ty to defend, the Court legations in the Motion not at what may be ent trial. In giving the erage its plain meaning, t cover the Johnsons' notional injury.

iff raises additional alle- nce in the Amended Mo- t, it adds no allegations y claim physical or bodi- the result remains that

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reference to allegedly libelous or disparaging statements as factual background. In *C.O. Morgan Lincoln-Mercury, Inc. v. Vigilant Ins. Co.*, the Yancys sued a car dealer for conversion. 521 S.W.2d 318 (Tex.Civ.App.1975). In pleading the facts of their conversion claim, the Yancys alleged that Morgan "did willfully, maliciously, unlawfully, speak and utter libelous remarks which were calculated to, and did, defame Plaintiff." *Morgan, supra*, 521 S.W.2d at 319. The court held that this claim was not covered by the personal injury provision because the suit was for conversion, not defamation, and damages were not sought for the allegedly defamatory remarks. Instead, the court described such allegations as a mere "recital of the facts leading up to the conversion," creating no duty to defend. *Morgan, supra*, 521 S.W.2d at 321-22; see also *Omark Industries, Inc. v. Safeco Ins. Co.*, 590 F.Supp. 114 (D.Or.1984) (factual allegation of disparaging remark in context of sex discrimination suit did not create coverage).

To refute American's claim of non-coverage under the personal injury clause, the defendant Church Schools merely makes a conclusory statement that the "very essence" of the Johnsons' claims is that the defendants made defamatory or disparaging remarks to the Johnsons.⁵ Defendant fails to cite any case in support of its position, nor does it point to any specific allegations in the motion for judgment.

Even if such allegations could be found in the motion for judgment, the mere fact that the factual allegations of a complaint contain the words "libel" or "disparaging" cannot form the basis for coverage under this provision. As the cases cited by plaintiff recognize, coverage must be determined based on the claims under which relief is sought. In the instant case, the Johnsons' claims are not for injuries arising out of one of the defamation torts enumerated in II(D)(3)(a) of the Broad

Form provisions and are not covered thereunder.

2. Invasion of Privacy Claim

[4] At the hearing on the instant motion, defense counsel argued for the first time that the Johnsons' claims fell within the Broad Form provisions covering personal injuries arising out of the offense of utterances in violation of an individual's right of privacy. The defendants contend that the alleged statements made in the October 1, 1985, meeting between St. Catherine's personnel and the Johnsons and in the alleged October 24, 1985 sermon by Goff raised invasion of privacy claims.

While no cases have been located interpreting the invasion of privacy policy provision, it must be examined in the same light as the defamation policy provision. Thus, the Johnsons' claims may be covered under this provision if their motion or amended motion for judgment raises a substantive claim for invasion of privacy, but not if it merely alleges facts relating to an invasion of privacy as factual background to their assault and battery and intentional infliction of emotional distress claims. See, e.g., *Morgan, supra*, 521 S.W.2d at 321-22.

Neither the Johnsons' motion for judgment nor their amended motion for judgment raises allegations supporting a substantive claim for invasion of privacy. The defendants' alleged remarks in the October 15th meeting and the October 24th sermon are not claimed to have involved matters held private by the plaintiffs. The Johnsons' only contention is that the defendants' remarks humiliated and embarrassed them. The mere fact that these remarks may have involved private matters, while not alleged by defendant Church Schools, at most provides factual background to the Johnsons' claim for intentional infliction of emotional distress. As such, these allegations do not trigger coverage under the Broad Form personal injury provisions.

5. In fact, at the hearing on the instant motion, Church Schools' counsel didn't raise this contention, but instead claimed for the first time that

the Johnsons' claims are for utterances in violation of their right to privacy.

Thus, the Johnsons' claims are not covered under the personal injury provisions of American's policy, and the Court concludes that, absent a waiver or estoppel, American has no duty to defend such claims.

II. Waiver and Estoppel

[5] The defendants assert that even if the Johnsons' claims are not covered, American is estopped from denying coverage of the Johnsons' intentional infliction of emotional distress claim concerning the assembly incident because their reservation-of-rights letter did not reserve the right to contest coverage of that incident.

American correctly, in the Court's view, cites the general rule that the defense of waiver and estoppel cannot be used to extend coverage where coverage does not exist. See, e.g., *Insurance Co. of North America v. Atlantic National Ins. Co.*, 329 F.2d 769, 775 (4th Cir.1964). As the defendant points out, an exception does exist when the insurer "assumes and conducts the defense of an action . . . without disclaiming liability and giving notice of its reservation of rights, "in which case it is then estopped from later denying coverage. *Atlantic, supra*, 329 F.2d at 775.

The exception only applies, however, "in the rare instance when an insurer, with knowledge of the lack of coverage, assumes and conducts a defense without either disclaiming liability or under a reservation of rights." *Rowe v. United States Fidelity and Guaranty Co.*, 375 F.2d 215, 221 (4th Cir.1967). Thus, an insurer has been estopped from denying coverage when it has actively conducted a defense and participated in a settlement, *Dairyland Ins. Co. v. Hughes*, 317 F.Supp. 928, 939 (W.D.Va.1970), or has attempted to disclaim coverage three days prior to trial, *Aetna Life and Casualty Co. v. McCabe*, 556 F.Supp. 1342, 1355 (E.D.Pa.1983).

The insurer has not been estopped, however, where it has given notice of its intent to contest coverage through "a timely reservation of rights under the policy which fairly informs the insured of the insurer's position." *Aetna, supra*, 556 F.Supp. at

1354. Filing of a declaratory judgment suit to have liability under the policy determined also bars application of estoppel. *Allied Mutual Ins. Co. v. Hingst*, 360 F.Supp. 1204, 1209 (D.N.D.1973).

In the instant case, American is not estopped from denying coverage of the Johnsons' claims. Indeed, American provided adequate notice to Church Schools of its intent to contest coverage in its reservation of rights letter and in the instant declaratory judgment action. While defendant argues that the reservation of rights letter did not expressly contest coverage of the sermon incident, such a technical reading of the letter is inappropriate. The letter adequately informed the insured that American contested its duty to defend against Johnsons' claims. It was not necessary for American to specifically enumerate each factual element of these claims. American gave timely notice of its position before any defense was begun. Trial of the Johnsons' claims is not scheduled until March 1987, and the insured can claim no prejudice when it has six months to prepare its case.

An appropriate order granting the relief sought will issue.

JUDGMENT ORDER

For the reasons stated in the accompanying Memorandum this day filed and deeming it proper so to do, it is ADJUDGED, ORDERED and DECLARED as follows:

1. American and Foreign Insurance Company has no duty to defend Church Schools in the Diocese of Virginia, Allen W. Becker, Peggy Ross, Susan Goff and Amy Archinal against the allegations contained in Motion for Judgment and Amended Motion for Judgment filed in the Circuit Court of the City of Richmond, Virginia styled, *Loree Anitra Johnson, an infant who sues by and through her next friend and mother, Judy Johnson, plaintiff, v. St. Catherine's School, Allen W. Becker, Peggy Ross, Susan E. Goff and Amy Archinal*, under date of March 13, 1986; and September 16, 1986 respectively.

e not covered there-

Privacy Claim

on the instant mo- argued for the first s' claims fell within isions covering per- out of the offense of a of an individual's defendants contend ements made in the ng between St. Cath- the Johnsons and in 24, 1985 sermon by f privacy claims.

e been located inter- privacy policy provi- ned in the same light ily provision. Thus, ay be covered under motion or amended raises a substantive privacy, but not if it elating to an invasion background to their nd intentional inflic- ession claims. See, e.g., S.W.2d at 321-22.

ons' motion for judg- ded motion for judg- ns supporting a sub- sion of privacy. The marks in the October October 24th sermon ave involved matters plaintiffs. The John- 1 is that the defend- ated and embarrassed t that these remarks rivate matters, while dant Church Schools, ual background to the ntentional infliction of As such, these allega- coverage under the l injury provisions.

re for utterances in viola- privacy.

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2. American and Foreign Insurance Company has no duty to indemnify Church Schools in the Diocese of Virginia, Allen W. Becker, Peggy Ross, Susan Goff and Amy Archinal, for any sum which they might be legally obligated to pay as damages on the basis of the allegations set forth in the aforementioned Motion for Judgment or Amended Motion for Judgment.

Judgment is entered for plaintiff and against the defendants. Plaintiff is entitled to its taxable costs.



Leonard F. GAJKOWSKI, Plaintiff,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES, Defendant.

No. CIV-82-480C.

United States District Court,
W.D. New York.

Sept. 29, 1986.

Claimant sought judicial review of the denial of disability benefits. Following a remand to the Secretary of Health and Human Services for further findings, the Secretary denied benefits without holding a new hearing. The District Court, Curtin, Chief Judge, held that the administrative law judge and the Appeals Council failed to give sufficient weight to a vocational report which indicated that the claimant was unable to work and, therefore, the denial of disability benefits was not supported by substantial evidence.

Reversed and remanded.

Social Security and Public Welfare
§143.75

Neither administrative law judge nor Appeals Council gave sufficient weight to

vocational report which provided detailed analysis based on long-term, firsthand observation of claimant in various work settings, which provided evidence of claimant's actual inability to work and which concluded that claimant's back pain made him unable to perform any vocational activity and, therefore, denial of disability benefits to claimant, who was 49-year-old truck driver with sixth-grade education and who sustained injuries to his knee and back, was not supported by substantial evidence.

Joseph M. Broderick, Buffalo, N.Y., for plaintiff.

Roger P. Williams, U.S. Atty. (Kathleen M. Mehlretter, and Denise E. O'Donnell, Asst. U.S. Attys., of counsel), Buffalo, N.Y., for defendant.

CURTIN, Chief Judge.

In March of 1983, this case was remanded to the Secretary for further findings in light of the decision of the United States Court of Appeals for the Second Circuit in *Campbell v. Secretary*, 665 F.2d 48 (1982), reversed, *Heckler v. Campbell*, 461 U.S. 458, 103 S.Ct. 1952, 76 L.Ed.2d 66 (1983). On remand, the Secretary denied benefits without holding a new hearing in light of the Supreme Court's holding in *Campbell*. After carefully reviewing the record, I find that the Secretary's determination that plaintiff is not disabled is not supported by substantial evidence.

Mr. Gajkowski is now 49 years old and has a sixth grade education. He worked steadily for some 28 years, the last 17 as a truck driver, before injuring his knee and back (Tr., pp. 39, 70). He attempted to return to his truck driving job twice after his back injury, but testified that he was forced to stop both times because of pain (Tr., pp. 91, 95).

In her initial decision, the Administrative Law Judge [ALJ] found that Mr. Gajkowski was unable to return to his past work but retained the residual functional capacity to perform light-to-sedentary work. Af-

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FILED
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A.M. DEC 30 1988 P.M.
PIERCE COUNTY CLERK
PIERCE COUNTY CLERK

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

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA,)
a Pennsylvania corporation,)
)
Plaintiff,)
)
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; JACK McDONALD)
and "JOANE DOE" McDONALD,)
husband and wife,)
)
Defendants.)

NO. 88-2-00947-9

SUPPLEMENTAL
AFFIDAVIT OF
BRUCE WINCHELL

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

Bruce Winchell, being first duly sworn upon oath, deposes
and says:

1. I am one of the attorneys representing American
Casualty.

AFFIDAVIT OF BRUCE WINCHELL - 1
0002bw

ORIGINAL

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1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2647
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2. Attached as Exhibit A to this affidavit is the complaint filed by Carol and Ira Gabrielson against Community Chapel and Bible Training Center and others.

Dated this 28th day of December, 1988.

Bruce Winchell
BRUCE WINCHELL

SUBSCRIBED AND SWORN to before me this 29th day of December, 1988.

Judith A. Thompson
NOTARY PUBLIC in and for the State
of Washington residing at Lynnwood
My commission expires: 9/1/90

AFFIDAVIT OF BRUCE WINCHELL - 2
0002bc

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

IRA GABRIELSON and CAROL
GABRIELSON, husband and wife,
Plaintiffs,

NO. 86 2 02792 6
COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES

vs.

JACK McDONALD and "JANE DOE"
McDONALD, husband and wife;
DONALD LEE BARNETT and BARBARA
BARNETT, husband and wife; and
"JOHN DOES" NOS. 1-4 AND "JANE
DOES" NOS. 1-4, husbands and
wives; COMMUNITY CHAPEL AND
BIBLE TRAINING CENTER OF
TACOMA; COMMUNITY CHAPEL AND
BIBLE TRAINING CENTER,
Defendants.

COME NOW the plaintiffs by and through their attorney
of record, Daniel L. Hannula of Rush, Hannula & Harkins, and
for cause of action against the defendants state and allege
as follows:

I.

The court has jurisdiction over the subject matter
herein and the parties hereto.

////

COMPLAINT - 1

EXHIBIT A

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 361-1234

10000 8882-12-1 15151

II.

1 The plaintiffs Carol Gabrielson and Ira Gabrielson are
2 husband and wife and are residents of Pierce County,
3 Washington.

4 III.

5 The defendants Donald Lee Barnett and Barbara Barnett
6 are husband and wife and are residents of King County,
7 Washington. Donald Barnett is the head pastor of Community
8 Chapel and Bible Training Center and as such is responsible
9 for the administration and direction of the entire congrega-
10 tion, including the Tacoma Chapel. All actions described
11 of the defendants or either of them were performed on behalf
12 of the marital community.

13 IV.

14 The defendants Jack McDonald and "Jane Doe" McDonald
15 are husband and wife and residents of Pierce County,
16 Washington. Jack McDonald is the pastor of Community Chapel
17 and Bible Training Center of Tacoma. All actions described
18 of the defendants or either of them were performed on behalf
19 of the marital community.

20 V.

21 The defendants "~~John Does~~" 1-4 and "~~Jane Does~~" 1-4 are
22 husbands and wives and are residents of the State of
23 Washington. All actions described of the defendants or any
24 of them were performed on behalf of the marital community.

25 ////

26 COMPLAINT - 2

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 361 5388

15153 4/21/2883 86398

VI.

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The defendant Community Chapel and Bible Training Center of Tacoma is a corporation licensed to do business and doing business in the State of Washington.

VII.

The defendant Community Chapel and Bible Training Center is a corporation licensed to do business and doing business in the State of Washington and the is parent corporation of Community Chapel and Bible Training Center of Tacoma.

VIII.

At all times material hereto, the defendants John Does 1 through 4 were agents, employees and representatives of Community Chapel and Bible Training Center and/or Community Chapel and Bible Training Center of Tacoma and all actions complained of herein were performed in the scope of their representation employment and/or agency for the Community Chapel and Bible Training Center and the Community Chapel and Bible Training Center of Tacoma.

IX.

At all times material hereto, the defendants Donald Lee Barnett, Barbara Barnett, and Jack and "Jane Doe" MacDonald were principals, agents, employees, and representatives of Community Chapel and Bible Training Center and Community Chapel and Bible Training Center of Tacoma and all actions complained of herein were performed in the scope of their

////

LAW OFFICES
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725 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 253 1382

15153 4/21/2003 88333

1 representation employment and/or agency for the Community
2 Chapel and Bible Training Center and Community Chapel and
3 Bible Training Center of Tacoma.

4 X.

5 The plaintiffs, Carol and Ira Gabrielson, regularly
6 attended services at both the Community Chapel and Bible
7 Training Center of Tacoma and the Community Chapel and Bible
8 Training Center in Burien for a number of years. As members
9 of the congregation, Carol and Ira Gabrielson attended
10 numerous functions and were active participants in the con-
11 gregation. In addition, the Gabrielsons tithed a portion of
12 their income to the congregation to help sustain it.

13 XI.

14 Defendant Jack McDonald, as pastor of the Tacoma Chapel,
15 held himself out to the Gabrielsons as a qualified counselor.
16 In this regard, Carol Gabrielson began counseling with defen-
17 dant Jack McDonald on a regular basis.

18 XII.

19 As a result of the counseling sessions, defendant Jack
20 McDonald became aware of the vulnerability of plaintiff Carol
21 Gabrielson. Defendant Jack McDonald took advantage of her
22 weakness and her need for support and manipulated her into
23 leaving her husband, plaintiff Ira Gabrielson.

24 XIII.

25 Further, as a result of the manipulation by defendant

26 ////

COMPLAINT - 4

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TACOMA 20 528

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1 Jack McDonald, plaintiff Carol Gabrielson was coerced and
2 unduly influenced into a having sexual relationship with
3 defendant Jack McDonald. This relationship continued from
4 September through December of 1985.

5 XIV.

6 Defendant Donald Barnett encouraged the members of his
7 congregation, including the Tacoma Chapel, to form intimate
8 attachments with members of the opposite sex as part of the
9 regular services at the Chapel. Defendant Donald Barnett
10 expressly encouraged married members of the congregation to
11 form intimate attachments with persons other than the spouses
12 of the members.

13 XV.

14 Defendant Donald Barnett knew or should have known that
15 these attachments would result in seductions, infidelity and
16 the breakup of marriages. Further, defendant Donald Barnett
17 knew or should have known that his agent in Tacoma, defendant
18 Jack McDonald, was involved in the seduction of female members
19 of the congregation and was abusing the pastoral privilege.

20 XVI.

21 In January, 1986, both plaintiffs, Carol and Ira Gabrielson
22 were disfellowshipped from Community Chapel and Bible Training
23 Center of Tacoma, as a consequence of Carol Gabrielson's
24 refusal to participate in any further sexual activities with
25 defendant Jack McDonald.

26 ////

COMPLAINT - 5

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XVII.

1 Plaintiff Carol Gabrielson, in March of 1986, requested
2 permission to attend services at defendant Community Chapel
3 and Bible Training Center in Burien, and was told that she
4 was welcome at that congregation.

5 XVIII.

6 On March 6, 1986, plaintiff Carol Gabrielson attended
7 services at defendant Community Chapel and Bible Training
8 Center of Burien. During her visit to that congregation,
9 plaintiff Carol Gabrielson was physically assaulted by
10 defendants John Does 1 through 4 who bodily dragged her from
11 the chapel, causing the physical injuries which are
12 complained of herein. Plaintiff Carol Gabrielson was also
13 handcuffed and forced into a vehicle belonging to defendant
14 Community Chapel and Bible Training Center of Burien. The
15 actions of John Does 1 through 4 were at the direction and
16 under the request of defendants Jack McDonald, Donald
17 Barnett and Barbara Barnett.

18 XIX.

19 Defendants Jack McDonald, Donald Barnett and Barbara
20 Barnett have further made disparaging statements regarding
21 Carol and Ira Gabrielson to members of the congregation
22 which tended to injure the Gabrielsons' reputation in the
23 community.

24 ////

25 ////

26 COMPLAINT - 6

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FIRST CAUSE OF ACTION

XX.

1
2 Plaintiffs hereby incorporate by reference as if set
3 forth in full each and every allegation as set forth in
4 paragraphs I through XIX.
5

XXI.

6 The acts of each of the defendants as stated above are so
7 extreme as to go beyond all possible bounds of decency. The
8 conduct of each of the above named defendants was outrageous
9 and caused the plaintiffs to suffer severe emotional distress.
10 Each of the above-named defendants acted intentionally or
11 recklessly to cause severe emotional distress to the
12 plaintiffs.
13

SECOND CAUSE OF ACTION

XXII.

14 The plaintiffs incorporate by reference as if set forth
15 in full each and every allegation as set forth in paragraphs
16 I through XXI.
17
18

XXIII.

19 Defendant Jack McDonald did not exercise the degree of
20 care, skill, diligence and knowledge commonly possessed and
21 exercised by a reasonable, careful and prudent counselor in
22 this jurisdiction by manipulating Carol Gabrielson into a
23 sexual relationship. This intentional or reckless failure
24 constituted the tort of counselor malpractice.
25

26 ////

COMPLAINT - 7

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SEASIDE 360-378

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THIRD CAUSE OF ACTION

XXIV.

The plaintiffs incorporate by reference as if set forth in full each and every allegation as set forth in paragraphs I through XXIII.

XXV.

Defendant Jack McDonald negligently violated his duty of care as a counselor by having sexual contact with plaintiff Carol Gabrielson with the knowledge that Carol Gabrielson was vulnerable. Defendant Jack McDonald was negligent in counseling plaintiff Carol Gabrielson and so created an unreasonable risk of physical and mental harm which caused the plaintiff Carol Gabrielson's injuries. This negligence constitute the tort of counselor malpractice.

FOURTH CAUSE OF ACTION

XXVI.

The plaintiffs incorporate by reference as if set forth in full each and every allegation as set forth in paragraphs I through XXV.

XXVII.

Defendants Jack McDonald and Donald Barnett intentionally, recklessly, or negligently failed to exercise that degree of care, skill, diligence and knowledge commonly possessed and exercised by a reasonable, careful and prudent pastor in this jurisdiction. This failure constitutes the

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COMPLAINT - 8

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tort of pastoral malpractice.

FIFTH THROUGH SEVENTH CAUSES OF ACTION

XXVIII.

The plaintiffs incorporate by reference as if set forth in full each and every allegation as set forth in paragraphs I through XXVII.

XXIX.

The acts of the defendants on March 6, 1986 which resulted in injuries to plaintiff Carol Gabrielson were negligent and/or constitute the torts of assault, battery and false imprisonment.

EIGHTH CAUSE OF ACTION

XXX.

The plaintiffs incorporate by reference as if set forth in full each and every allegation as set forth in paragraphs I through XXIX.

XXXI.

The acts of defendants in making disparaging statements damaging the reputation of the plaintiff constitute the tort of defamation.

NINTH CAUSE OF ACTION

XXXII.

The plaintiffs incorporate by reference as if set forth in full each and every allegation as set forth in paragraphs I through XXXI.

////

COMPLAINT - 9

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XXXIII.

1 As a further and proximate result of the acts of the
2 defendants, plaintiff Ira Gabrielson has suffered a loss of
3 consortium.
4

XXXIV.

5 As a direct and proximate result of the intentional,
6 reckless and negligent wrongful acts of the defendants, and
7 each of them, plaintiffs have been specially and generally
8 damaged in an amount to be fully proven at the time of
9 trial.
10

11 WHEREFORE, the plaintiffs pray for judgment against the
12 defendants as follows:

- 13 1. For all general and special damages incurred by
14 plaintiffs Ira and Carol Gabrielson in an amount to be
15 proven at time of trial;
16 2. For plaintiffs' reasonable costs and attorneys' fees
17 incurred in the prosecution of this action;
18 3. For such other and further relief as the court
19 deems just and equitable.

20 DATED this 20 day of April, 1986.

21 RUSH, HANNULA & HARKINS

22
23 By: 
24 DANIEL L. HANNULA

25
26 ////

COMPLAINT - 10

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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

PLAINTIFFS GABRIELSON'S
REPLY TO SUPPLEMENTAL
BRIEF BY AMERICAN CASUALTY

I. INTRODUCTION

Plaintiff insurance company, in its supplemental brief,
narrows the issue before the court to the question whether
the injuries suffered by Carol Gabrielson qualify as "bodily
injury" under the insurance company's policy of insurance
insuring defendant Community Chapel and Bible Training

////

REPLY TO SUPPLEMENTAL BRIEF - 1

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1 Center. In the concluding section of its brief, the
2 insurance company admits "that there was bodily contact
3 between Carol Gabrielson and Jack McDonald." Without
4 hinting to the court that the "bodily contact" to which it
5 refers between Carol Gabrielson and Jack McDonald has been
6 found by a jury to have consisted of the repeated
7 victimization of Carol Gabrielson by sexual acts into which
8 Jack McDonald coerced her in the guise of legitimate
9 counseling and pastoring, the insurance company asks this
10 court to rule, as a matter of law, that because there is as
11 yet no evidence that the sexual acts resulted in rent flesh
12 or the transmission of a sexually transmitted disease, there
13 is no "bodily injury" and no coverage.

14 The ruling sought by the insurance company would erect
15 artificial distinctions between injuries that have long
16 since been debunked by medical thought and rejected by
17 enlightened courts.

18 II. LAW AND ARGUMENT

19 The insuring language of plaintiff insurance company's
20 policy insuring defendant Community Chapel and Bible
21 Training Center provides that:

22 The company will pay on behalf of the insured
23 all sums which the insured shall become
24 legally obligated to pay as damages because
of

25 A. Bodily injury.

26 ////

REPLY TO SUPPLEMENTAL BRIEF - 2

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to which this insurance applies, caused by an occurrence.

Coverage A--Bodily Injury Liability, Section 1, page 1 of 8.

Bodily injury is defined as:

B. [B]odily injury, sickness or disease sustained by any person which occurs during the policy period. . . .

The issue is whether Jack McDonald's repeated sexual violation of Carol Gabrielson was sufficient "bodily injury" to trigger coverage in accordance with this court's prior ruling that consequential damages as the result of bodily injury are insured under plaintiff's policy. Dr. Philip G. Lindsay has submitted an affidavit in conjunction with defendants Gabrielson's initial opposition to plaintiff's summary judgment motion and that affidavit remains the only factual material submitted on the issue raised by plaintiff:

It is my opinion that Jack McDonald, through the course of conduct that he pursued toward Carol Gabrielson maneuvered and coerced her into a position of overwhelming dependence upon him for her physical, emotional, and spiritual needs. Carol Gabrielson became so dependent upon Jack McDonald that she, for all intents and purposes, lost her free will and her will became subordinate to that of Jack McDonald. Carol Gabrielson eventually became incapable of resisting Jack McDonald's counseling, suggestion, and direction. While Carol Gabrielson was in this state of dependence, she was not capable of resisting Jack McDonald's sexual advances and he took advantage of her, sexually, a great number of times while he enjoyed such a great degree of control over her.

////

REPLY TO SUPPLEMENTAL BRIEF - 3

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Carol Gabrielson has suffered extreme mental and psychological injury as a direct result of being used by Jack McDonald, and through him, the church that he represented, in this fashion. In my opinion, the mental and emotional damage from which Carol Gabrielson suffers is a direct result of the physical, as well as mental, way in which she was violated by Jack McDonald.

Affidavit of Philip G. Lindsay submitted in opposition to plaintiff's original Motion for Summary Judgment.

The only medical evidence submitted in this declaratory action is that Carol Gabrielson was physically violated by Jack McDonald and that that violation directly resulted in injury and consequential damages. The physical violation about which we are talking is sexual violation, or, as plaintiff is frank to admit in its supplemental brief, "sexual misconduct." Jack McDonald used his position of trust to control Carol Gabrielson and to coerce her into sexual acts. Carol Gabrielson's mental and emotional injuries are the direct result of the way he physically "violated" her. The cases cited to this court by the defendants Gabrielson to date demonstrate that once a physical violation is shown, coverage for bodily injury is triggered without regard to degree of physical injury.

In the New Jersey case NPS Corporation v. Insurance Company of North America, 517 A.2d 1211 (N.J. App. 1986), the court ruled that emotional and psychological injuries directly resulting from nonconsensual violation of a

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1 plaintiff's bodily integrity, even though it involved no
2 more than the defendant's touching parts of the plaintiff's
3 body, was a covered "bodily injury":

4 We hold that the term "bodily injury" as used
5 in the policy, includes the emotional and
6 psychological sequelae allegedly resulting
7 from the unauthorized invasion of the
8 complainant's person.

9 715 A.2d at 1212.

10 In supporting its holding, the court reasoned that
11 emotional and mental harms are real bodily injuries that may
12 result from physical violation:

13 [O]ur "courts have come to recognize that
14 mental and emotional distress is just as
15 'real' as physical pain, and that its
16 valuation is no more difficult."

17 * * *

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

517 A.2d 1213-14.

When mental and psychological injury directly flows
from a physical violation, those injuries are "bodily
injuries":

////

////

REPLY TO SUPPLEMENTAL BRIEF - 5

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Accordingly, we are convinced that the term "bodily injury," as used in the policy, encompasses claims for emotional distress caused by an assault and battery.

517 A.2d at 1214.

It is hornbook law that a "battery" need not consist of physical injury, but is present where there is the least bodily contact if that contact may be considered offensive. Offensive contact is that contact which would be offensive to a reasonable person.

Likewise the Louisiana case, Levy v. Duclaux, 324 S.2d 1 (La.App. 1975) demonstrates that coverage exists under the "bodily injury" insuring language for mental and psychological injuries which result from even a slight degree of violation. In Levy, the plaintiff was physically restrained, without resulting physical injury, in connection with being suspected as a shoplifter. Despite the slight violation, the court held that it was sufficient "bodily injury" to trigger insurance coverage:

When this language [bodily injury] is analyzed particularly in the light of the facts of the Nickens case as opposed to the instant case, we reach the conclusion that the term bodily injury in the policy of our insurer does include plaintiff's injuries. In the Nickens case there is absence of any contact between the external force or violence and distress plaintiffs sustained over the loss of their personal effects. There the plaintiffs were not at the premises at the time of the fire. In the instant case, the plaintiff was personally exposed to

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some minimal physical abuse as well as the external force of being accused as a shoplifter in front of many witnesses. The damage instantly from the application of that force. This situation is entirely different from when a hypothetical plaintiff may hear that a hypothetical defendant had some week previously said that plaintiff was a thief, because the sudden humiliation, embarrassment and mental anguish did not set in immediately upon the direct application of the accusation. Perhaps the distinction being drawn can be made clearer by framing the Nickens case in a hypothetical variation of its facts. Suppose they made their exit from the premises without any physical injury but suffered such shock that some time thereafter they experienced nightmares and deep mental anguish as the result of the experience. Query: Would the results of the Nickens case have been the same? The facts of our case show that plaintiff's mental stress was accompanied by immediate external physical manifestations of crying and hysteria and her functions were outwardly effected for some time after the incident. Therefore, this case is distinguishable from the Nickens case and there is coverage.

324 S.2d 9-10.

The cases cited demonstrate that once a physical violation is found, there should be no inquiry into its degree. It must be borne in mind, however, that Carol Gabrielson suffered more than a slight physical contact. Counsel for the insurance company would be frank in admitting that Dr. Lurie, Carol Gabrielson's treating psychiatrist, testified at the trial of the underlying action that he diagnosed her as suffering from a major depressive episode and post-traumatic stress disorder as a

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REPLY TO SUPPLEMENTAL BRIEF - 7

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1 result of Jack McDonald's sexual violation of her.

2 The diagnostic and statistical manual of mental
3 disorders (Third Ed. Rev. 1987) recognizes both major
4 depressive episode and post-traumatic stress disorder as
5 separate, distinct, very real sicknesses and/or diseases:
6

7 MAJOR DEPRESSIVE EPISODE: The essential
8 feature of a major depressive episode is
9 either depressed mood (or possibly, in
10 children or adolescents, an irritable mood)
11 or a loss of interest or pleasure in all, or
12 almost all, activities and associated
13 symptoms, for a period at least two weeks.
14 These symptoms represent a change from
15 previous functioning and are relatively
16 persistent, that is, they occur for most of
17 the day, nearly every day, during at least a
18 two-week period. The associated symptoms
19 include appetite disturbance, change in
20 weight, sleep disturbance, psychomotor
21 agitation or retardation, decreased energy,
22 feelings of worthlessness or excessive or
23 inappropriate guilt, difficulty thinking or
24 concentrating, and recurrent thoughts of
25 death, or suicidal ideation or attempts.
26

* * *

17 Id. at 218-19.

18 POST-TRAUMATIC STRESS DISORDER: The
19 essential feature of this disorder is the
20 development of characteristic symptoms
21 following a psychologically distressing event
22 that is outside the range of usual human
23 experience (i.e. outside the range of such
24 common experiences as simple bereavement,
25 chronic illness, business losses and marital
26 conflict). The stressor producing this
syndrome would be markedly distressing to
almost anyone, and is usually experience with
intense fear, terror and helplessness. The
characteristic symptoms involve
reexperiencing the traumatic event, avoidance
of stimuli associated with the event or

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REPLY TO SUPPLEMENTAL BRIEF - 8

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1 numbing of general responsiveness, and
2 increased arousal. The diagnosis is not made
3 if the disturbance lasts less than one month.

4 Id. at 247.

5 The New York case, Chemung v. Hartford Casualty and
6 Insurance Company, 496 N.Y.S.2d 933, a case involving rape,
7 dealt with the exact point at issue in this motion,
8 construing the exact language at issue in this motion
9 rejected the exact argument advanced by the insurance
10 company in this motion:

11 The defendant issued a comprehensive general
12 liability insurance policy to the County of
13 Chemung, covering the period from
14 February 14, 1982 to February 14, 1983,
during which time the underlying events took
place (policy no. 07HCMA1160W). Pursuant to
the terms of that policy the defendant is
obligated to:

15 Pay on behalf of the insured all sums
16 which the insured shall become legally
17 obligated to pay as damages because of
18 bodily injury to which this insurance
19 applies, caused by an occurrence, and
the company shall have the right and
duty to defend any suit against the
insured seeking damages on account of
such bodily injury.

20 "Occurrence" is defined in the policy
21 as: An accident, including continuous
22 or repeated exposure to conditions,
23 which results in bodily injury or
property damage neither expected nor
intended from the standpoint of the
insured.

24 The defendant does not contend that the
25 conduct attributed to the county employees in
26 the Andrus action was exempted or intended,
rather it is contended that the allegations

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REPLY TO SUPPLEMENTAL BRIEF - 9

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1 in the federal complaint do not seek damages
2 for "bodily injury." Simply stated, the
3 defendant's contention is that the term
4 "bodily injury" does not include injuries
5 manifested by other than physical complaints.
6 Defendant characterizes the allegations of
7 the federal complaint as seeking recovery for
8 injuries of a purely mental or emotional
9 nature.

10 This is the same position that the insurance company is
11 asserting in the present motion. The New York court
12 rejected the insurance company's argument:

13 To reiterate, the defendant is obligated "to
14 pay on behalf of the insured all sums which
15 the insured shall become legally obligated to
16 pay as damages because of bodily injury to
17 which this insurance applies caused by an
18 "occurrence." If at the trial of the federal
19 action the plaintiffs therein establish that
20 Christine Andrus was indeed sodomized and
21 sexually abused as alleged, then an
22 occurrence will be established which requires
23 defendant to indemnify the county and its
24 employees for all damages flowing therefrom,
25 including mental and emotional suffering and
26 humiliation. (citations omitted). Moreover,
by the terms of the policy the defendant must
indemnify the county for damages recovered by
Mr. and Mrs. Andrus for the care and loss of
services of Christine.

496 N.Y.S.2d at 936.

As the cited cases demonstrate, physical violation of
a person's bodily integrity is a "bodily injury." Once such
a violation has been established, there is no need to show
torn flesh, blood, or broken bones in order to established a
"bodily injury" and consequential damages as a result of the
violation qualify for indemnity under policies of insurance

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REPLY TO SUPPLEMENTAL BRIEF - 10

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such as the plaintiff's insuring against "bodily injury."

III. CONCLUSION

Plaintiff insurance company's motion must be denied. The court should enter an order that the Gabrielsons' consequential damages proximately resulting from Jack McDonald's sexual violation of Carol Gabrielson are compensable damages under plaintiff's policy of insurance insuring against "bodily injury."

DATED this 4th day of January, 1989

RUSH, HANNULA & HARKINS

BY: Harold T. Dodge, Jr.
Daniel L. Hannula and
Harold T. Dodge, Jr.

Attorneys for Defendants
Gabrielson

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BY Kelly DEPUTY
The Honorable J. Arnold

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

1	AMERICAN CASUALTY COMPANY)	
2	OF READING PENNSYLVANIA, a)	
3	Pennsylvania Corporation,)	
4)	
5)	
6)	
7	Plaintiff,)	No. 88-2-00947-9
8	v.)	
9)	BARNETT SUPPLEMENTAL
10	IRA GABRIELSON and CAROL)	BRIEF IN OPPOSITION
11	GABRIELSON, husband and wife,)	TO SUMMARY JUDGMENT &
12	DONALD LEE BARNETT and BARBARA)	MOTION TO STRIKE
13	BARNETT, husband and wife;)	SUPPLEMENTAL AFFIDAVIT
14	COMMUNITY CHAPEL AND BIBLE)	OF BRUCE WINCHELL
15	TRAINING CENTER, a Washington)	
16	Corporation,)	
17)	
18	Defendants.)	

I. MOTION TO STRIKE

Defendants Barnett move this court to strike the SUPPLEMENTAL AFFIDAVIT OF BRUCE WINCHELL, and renew their motion to strike the AFFIDAVIT OF BRUCE WINCHELL pursuant to CR 56 (e).

CR 56 (e) requires that "...affidavits shall be made on personal knowledge, shall set forth such facts as would be admissable in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." None of these requirements are met by either of Mr. Winchell's affidavits.

The present motion for summary judgment concerns the duty of American Casualty Company to pay a judgment entered in the underlying case to this declaratory action, Pierce County cause number 86-2-02792-6. The duty to pay, as opposed to the duty to defend, is not based upon the allegations made in the underlying

SUPPLEMENTAL BRIEF &
MOTION TO STRIKE: 1

Evans, Craven & Lackie, P.C.
LAWYERS

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98-2-00947-9

1 case. Rather, it depends upon the actual determination of
2 factual issues relating to coverage. The contrast between these
3 two duties was discussed in Western National Assur. v. Hecker,
4 43 Wn.App. 816, 719 P.2d 954 (Div. II, 1986). The court in that
5 case wrote at pages 820-821:

6 An insurer's duty to pay, in contrast to
7 the duty to defend, depends upon the actual
8 determination of factual issues relating to
9 coverage.... Normally, an insurer's duty to
10 pay arises only when the injured party
11 ultimately, in the underlying tort action
12 against the insured, prevails on facts that
13 fall within the policy coverage....(citations
14 omitted)

15 The issue to be determined upon the present summary judgment
16 motion relating to coverage is whether Carol Gabrielson suffered
17 a bodily injury. Through American Casualty's own affidavits, it
18 is apparent that this issue was not determined in the underlying
19 action.

20 Neither affidavit of Bruce Winchell affirmatively shows that
21 Mr. Winchell is competent to testify as to the factual
22 determinations made by the jury in the underlying case. Mr.
23 Winchell was neither the judge nor a juror in that case.
24 Further, he has not submitted any findings or conclusions made by
25 the jury or judge in that case. He submits only the pretrial
26 pleadings, and jury instructions from which he asks this court to
27 infer such findings or conclusions.

28 Americans Casualty's position seems to be that this court
29 can infer that no bodily injury was suffered since the issue was
30 not determined in the underlying action. With no disrespect
31 intended, this court should determine that Carol Gabrielson is in
32 fact World Wrestling Federation wrestler "The Fabulous Moolah,"

SUPPLEMENTAL BRIEF &
MOTION TO STRIKE: 2

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1 technical meaning. It must be given ordinary definition.

2 In our opinion, the proper inquiry is not
3 whether a learned judge or scholar can, with
4 study, comprehend the meaning of an insurance
5 contract, but whether the insurance policy
6 contract would be meaningful to the layman
7 who at his peril may be legally bound or held
8 to understand the nature and extent of its
9 coverage. The language of insurance policies
is to be interpreted in accordance with the
way it would be understood by the average
man, rather than in a technical sense.

10 Dairyland Ins. Co. v. Ward, 83 Wn.2d 353, 358, 517 P.2d 966
11 (1974). Therefore, the term "bodily injury" must be given an
12 ordinary definition which would be understood by an average man.

13 [I]f a clause can be construed in two ways, one favorable to
14 the insured and the other favorable to the insurer, the
15 construction favoring the insured must be adopted." McDonald
16 Indus. v. Rollins Leasing Corp., 26 Wn.App. 376, 380, 613 P.2d
17 800 (Div. One, 1980), citing Dairyland Ins. Co. v. Ward, 83 Wn.2d
18 353, 358, 517 P.2d 966 (1974).

19 The policy defines bodily injury as follows:

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

25 The definition is not prefaced with any modifier such as "serious
26 bodily injury," or "grievous bodily injury." Therefore any
27 bodily injury triggers coverage, no matter how slight. As this
28 court has already ruled, any emotional distress, mental
29 suffering, or loss of consortium which is consequential thereto
30 is also covered.

31 Would an ordinary person understand improper sexual contact

32 SUPPLEMENTAL BRIEF &
MOTION TO STRIKE: 4

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1 to constitute bodily injury? Without doubt an ordinary man would
2 consider rape a bodily injury. The question, then, is whether
3 some technical distinction can be drawn between rape and other
4 improper sexual contact which distinguishes it from bodily
5 injury.

6 2. Bodily Injury

7 At common law, an action for improper sexual contact was
8 denominated as indecent assault. The first time Washington
9 recognized that emotional distress injuries could be recovered
10 for such an action was in Martin v. Jansen, 113 Wash. 290, 193
11 Pac. 674, 198 Pac. 393 (1920). A review of this case is
12 instructive with respect to the nature of such a claim. Many of
13 the arguments made in that case by the defendant to attempt to
14 avoid an award for emotional injuries are now asserted by
15 American Casualty in its attempt to have this court distinguish
16 the injury suffered by Carol Gabrielson from its bodily origin.

17 In that case, claims were made on behalf of Helen Martin
18 against Joseph Jansen. Helen was employed as a clerk in a store
19 operated by Jansen. On July 20, 1919, Helen and Jansen were the
20 only persons in the store after it had closed. Thereafter,
21 Jansen "...enticed the said Helen Martin to enter a rear room or
22 compartment of the said store, and there attempted to and did
23 embrace the said Helen Martin against her will and did offer to
24 and take liberties with the said Helen Martin, and did attempt to
25 persuade the said Helen Martin to consent to have intercourse
26 with him, the said defendant." Martin v. Jansen, 113 Wash. 290,
27 291, 193 Pac. 674, 198 Pac. 393 (1920).

28 The court recognized that the nature of such a claim is a
29 violation of the person, writing at page 295:

30 The defendant also argues that the court erred in permitting

31 SUPPLEMENTAL BRIEF &
32 MOTION TO STRIKE: 5

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1 evidence of mental anguish because of the assault, and
2 relies upon the case of Corcoran v. Postal, where this court
3 held there could be no recovery for damages arising from
4 mental anguish as a result of negligence when not
5 accompanied by physical injury. Those were cases where
6 there was no assault and no violation of the person. This
is a case where there was a violation of the person of Miss
Martin.

7 It noted further that there is a distinction between such a case
8 and cases in which there is no offense against another's person.

9 We are of the opinion that the defendant does not
10 distinguish between cases where there is no invasion of the
11 person and those cases where there is an actual invasion of
the person. We think there is no merit in this contention.

12 Instances in which another's person is violated are bodily by
13 their very nature.

14 In a similar situation, the Superior Court of New Jersey
15 discussed the availability of coverage under the bodily injury
16 provisions of an insurance policy. In NPS Corp v. Insurance Co.
17 of North America, 213 N.J. Super. 547, 517 A.2d 1211 (1986),
18 claims were made by an employee against her employer for sexual
19 harassment. The employee, Sarah Schaeffer, claimed that "... a
20 co-employee, the plant manager, had committed repeated acts of
21 sexual harassment by 'offensively touch[ing]' her 'rear end' and
22 'breasts.'" NPS Corp v. Insurance Co. of North America, 213 N.J.
23 Super. 547, 517 A.2d 1211, 1212 (1986).

24 The court reasoned that the mental and emotional distress
25 arising from sexual harassment by offensive unauthorized touching
26 is "... just as 'real' as physical pain, and that its valuation
27 is no more difficult." NPS Corp v. Insurance Co. of North
28 America, 213 N.J. Super. 547, 517 A.2d 1211, 1214 (1986).
29 Applying the standard rules applicable to construction of
30 insurance contracts, the court wrote at page 1214:

31 SUPPLEMENTAL BRIEF &
32 MOTION TO STRIKE: 6

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1
2 Within that framework, we disagree with INA's argument
3 that bodily injury necessarily entails some physical or
4 corporeal harm caused by the application of external
5 violence. We are unable to separate a person's nerves
6 and tensions from his body. Clearly, emotional trauma
7 can be disabling to the body as a visible physical
8 wound. Moreover, it is common knowledge that emotional
9 distress can and often does have a direct effect on
10 other bodily functions.

11 See also, Levy v. Duclaux, 324 So.2d 1 (La.App., 1975).

12 At best, American Casualty can show that there exists two
13 reasonable interpretations of the phrase "bodily injury."
14 American Casualty cites this court to American & For. Ins. v.
15 Church Sch., Diocese of Va., 645 F.Supp. 628 (E.D.Va., 1986) for
16 the interpretation that improper sexual contact constitutes a
17 bodily injury. The Barnetts cite this court to NPS Corp v.
18 Insurance Co. of North America, 213 N.J. Super. 547, 517 A.2d
19 1211, 1214 (1986) for the interpretation that such does
20 constitute a bodily injury. Both are reasonable.

21 Defendants Barnett recognize that there exists a split in
22 other jurisdictions whether improper sexual contact constitutes a
23 bodily injury. Competent courts disagree upon the meaning of the
24 phrase. In this jurisdiction, however, the court must choose the
25 definition most favorable to the insured. McDonald Indus. v.
26 Rollins Leasing Corp., 26 Wn.App. 376, 380, 613 P.2d 800 (Div.
27 One, 1980), citing Dairyland Ins. Co. v. Ward, 83 Wn.2d 353, 358,
28 517 P.2d 966 (1974). Consistent with the distinction noted in
29 Martin v. Jansen, 113 Wash. 290, 291, 193 Pac. 674, 198 Pac. 393
30 (1920) between emotional distress which accompanies a bodily
31 violation and isolated emotional distress, this court must adopt
32 the reasonable interpretation of "bodily injury" noted in NPS
Corp v. Insurance Co. of North America, 213 N.J. Super. 547, 517

SUPPLEMENTAL BRIEF &
MOTION TO STRIKE: 7

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1 A.2d 1211, 1214 (1986) that includes improper sexual contact and
2 the consequences thereto.

3 III. CONCLUSION

4 Plaintiff has apparently changed the nature of its renoted
5 motion and asked this court to determine that Carol Gabrielson
6 did not suffer a bodily injury. However, it has failed to offer
7 adequate affidavits demonstrating such lack of injury. Instead
8 it asks this court to infer findings which were never made in the
9 underlying action from inadmissible documents. Defendants
10 respectfully ask that this court strike the SUPPLEMENTAL
11 AFFIDAVIT OF BRUCE WINCHELL and the AFFIDAVIT OF BRUCE WINCHELL
12 which are improper pursuant to CR 56 (e).

13 Further, defendants Barnett request that this court deny
14 American Casualty's motion. In so denying, this court is
15 requested to specify the factual issue which remains in dispute
16 and declare the reasonable interpretation favorable to the
17 insured that the American Casualty policy covers improper sexual
18 contact as bodily injury pursuant to CR 56 (d).

19 DATED this 5th day of January, 1989.

20 EVANS CRAVEN & LACKIE, P.S.

21 By Tim Donaldson
22 TIM DONALDSON
23 Attorneys for Defendants Barnett
24
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31 SUPPLEMENTAL BRIEF &
32 MOTION TO STRIKE: 8

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1 since that issue also was not determined in the underlying
2 action. The Barnetts offer such analogy only to show how the
3 position urged by American Casualty is untenable and defies
4 logic.

5 American Casualty offers pleadings in the underlying case as
6 evidence of the factual issues which were determined. As such,
7 the pleadings are inadmissible. "Pleadings in one action are
8 competent evidence in another where the purpose is to contradict
9 a party or his witness, but as evidence to prove the facts at
10 issue they are not so." Regenvetter v. Ball, 131 Wash. 155, 162,
11 229 Pac. 321 (1924).

12 American Casualty's duty to pay for "bodily injury" depends
13 upon the actual determination of whether a bodily injury
14 occurred. This issue was not determined in the underlying
15 action. Consequently, American Casualty's reliance upon other
16 issues determined in that case is misplaced.

17 II. SUPPLEMENTAL OPPOSITION AUTHORITIES

18 On December 16, 1988, this court entered its ORDER DENYING
19 MOTION FOR SUMMARY JUDGMENT BY PLAINTIFF RE: BODILY INJURY
20 wherein this court ruled that the American Casualty policy covers
21 emotional distress, mental suffering, and loss of consortium
22 which is consequential to bodily injury. Therefore the remaining
23 issue is whether a bodily injury was suffered.

24 Carol Gabrielson and Jack McDonald engaged in a sexual
25 relationship. See, DECLARATION OF BRUCE WINCHELL WITH EXCERPTS
26 OF DEPOSITION OF JACK MCDONALD filed herein on September 9, 1988.
27 In the underlying action to this proceeding, she was awarded
28 damages for her injuries suffered therefrom.

29 1. Rule of Construction

30 The language in an insurance contract cannot be given
31 SUPPLEMENTAL BRIEF &
32 MOTION TO STRIKE: 3

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IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiff,)

v.)

IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife,)
and the marital community com-)
posed thereof; COMMUNITY)
CHAPEL and BIBLE TRAINING)
CENTER, a Washington corpora-)
tion; JACK McDONALD and "JANE)
DOE" McDONALD, husband and wife,)
and the marital community com-)
posed thereof,)

Defendants.)

NO. 88-210947-9
IN COUNTY CLERK'S OFFICE
A.M. JAN 6 1989 P.M.
PIERCE COUNTY CLERK
TED RUITT, COUNTY CLERK
BY _____ DEPUTY

COMPLAINT FOR
DECLARATORY JUDGMENT

I.

DESCRIPTION OF LITIGATION

This is a declaratory judgment action brought pursuant to the Washington Uniform Declaratory Judgment Act, RCW 7.24, et seq., and CR 57, wherein the plaintiff seeks a judgment by the court that an excess insurance policy issued by the plaintiff to the defendant insured, Community Chapel and Bible Training Center, does not afford coverage to such insured or its officers, elders, employees, etc., named hereafter, for multiple claims made by

COMPLAINT FOR
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1 defendants Gabrielson in a lawsuit in Pierce County, together
2 with a judgment obtained in such suit and stated more
3 specifically hereafter in this declaratory complaint.
4

5 II.

6 STATUS OF THE PLAINTIFF

7 Plaintiff St. Paul Fire and Marine Insurance Company
8 (abbreviated hereafter in this complaint as "St. Paul") is a
9 foreign corporation in the business of selling insurance in the
10 State of Washington, and is licensed to do so in Washington, and
11 has paid all fees and excise taxes due and owing to the State of
12 Washington and is qualified to bring this action.
13

14 III.

15 PLAINTIFF'S POLICY OF EXCESS INSURANCE

16 3.1. Plaintiff St. Paul issued an Umbrella Excess Liability
17 Protection Policy No. 584XB2982 to the defendant insured
18 Community Chapel and Bible Training Center (hereafter abbreviated
19 as "CCBTC"), with a policy period of May 9, 1985, until May 9,
20 1986. A complete copy of such Umbrella Excess Liability
21 Protection Policy is attached to this complaint as Exhibit 1 (on
22 yellow paper).

23 3.2. The insurance provided in such St. Paul policy is
24 excess to the basic insurance policy issued by the American

1 Casualty Company of Reading, Pennsylvania, a division of the CNA
2 Insurance Companies, and which basic insurance coverage was
3 issued by American Casualty under Policy No. IP052144020, as well
4 as to automobile liability coverages issued by American Casualty
5 or CNA which are not relevant to the litigation herein.

6 3.3. The St. Paul Umbrella Excess Liability Protection
7 Policy provides in part:

8 * * *

9 What This Agreement Covers

10 We'll pay amounts you and others protected under this
11 agreement are legally required to pay as damages for
12 covered bodily injury, property damage, personal injury,
13 and advertising injury claims, caused by an event.

14 Event means an accidental event that results in bodily
15 injury or property damage the protected person didn't
16 expect or intend to happen. An event also means an act
17 or a series of similar or related acts that result in
18 personal injury or advertising injury.

19 Bodily injury means any harm to a person's health that
20 happens while this agreement is in effect. Bodily injury
21 includes any physical harm, sickness or disease. And it
22 includes mental anguish, injury or illness, whether or
23 not there has been physical harm or illness. If a bodily
24 injury is covered, we'll cover damages for care, loss of
services or death resulting from the injury.

Property damage means any damage to tangible property of
others that happens while this agreement is in effect.
This includes loss of use of the damaged property
resulting from the damage. Property damage also includes
loss of use of other's property that hasn't been
physically damaged if caused by an accidental event that
happens while this agreement is in effect.

Personal injury means any of the following acts of
interference with an individual's rights that happens in
the course of your business while this agreement is in
effect:

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2 *false arrest, wrongful detention, malicious prosecution,
humiliation or false imprisonment;
3 *libel, slander, defamation of character, or invasion of
an individuals right of privacy. But not such acts that
4 arise from advertising activities;
5 *wrongful entry, wrongful eviction or other invasion of
the right of private occupancy; or
6 *assault or battery committed to prevent or remove a
danger to people or property.

7 Advertising injury means any of the following acts of
interference with a person's rights that happens in the
8 course of your business while this agreement is in
effect:

9 *libel, slander, defamation of character, or invasion of
10 an individuals right of privacy;
11 *infringement of any copyright, title or slogan;
12 *piracy, unfair competition or idea misappropriation
under an implied contract;

13 when the act is committed or alleged to have been
committed in any advertisement, publicity article,
14 broadcast or telecast and arises out of your advertising
activities.

15 Injury or damage. When we say injury or damage we mean
bodily injury, property damage, personal injury or
16 advertising injury.

17 . . .

18 **Defense of claims.** We won't pay the cost of, or conduct
the investigation, defense, or settlement of a claim if
19 those costs are covered by your Basic Insurance.
However, we do have the right to associate in the defense
20 and control of any claim that is reasonably likely to
involve us.

21 If any event results in claims that use up the limits of
22 coverage under your Basic Insurance, we'll then take over
the defense of any claim resulting from the same event
23 that has been brought against you or any other protected
person. But we'll only do this if:

24 *the claim is covered by this agreement; and

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1 *this agreement is immediately in excess of your Basic
2 Insurance. This means you don't have other excess
3 insurance with another company that would apply over your
4 Basic Insurance. Of course, you may have excess
insurance that applies to claims over the limits of
coverage in this agreement.

5 **Coverage When Your Basic Insurance Doesn't Apply**

6 If your Basic Insurance doesn't cover a claim which is
7 covered by this agreement, we'll pay damages that you or
8 other protected persons are legally required to pay.
However, you'll be responsible for the claim up to the
deductible amount shown on the Coverage Summary. Of
course, our payments won't exceed the limit of coverage.

9 **Additional benefits.** All of the following benefits are
10 in addition to the limits of coverage. These benefits
apply only when your Basic Insurance doesn't apply.

11 Defending lawsuits. We'll defend any suit brought
12 against you or any other protected person for covered
13 claims, even if the suit is groundless or fraudulent. We
14 have the right to investigate, negotiate and settle any
15 suit or claim if we believe that is proper. We'll pay
16 all costs of defending the suit, including interest on
that part of any judgment that doesn't exceed the limit
of coverage that applies. But we won't defend a suit or
pay a claim after the limit of coverage has been used up
in paying judgments or settlements.

17 (pp. 1, 2, 3, Form 43209 Insuring Agreement, Ex. 1.)

18 . . .

19 **Who Is Protected Under This Agreement**

20 Protected persons are persons and organizations protected
21 under this agreement.

22 Here's a list of "protected persons" and certain
23 limitations on their liability protection. Each is
24 protected separately. However, the limits of coverage
shown in the Coverage Summary are shared by all protected
persons.

1 **Who is Protected For Claims Not Related To Autos**

2 . . .

3 **Corporation.** If this policy is in the name of a
4 corporation, or other type of organization, its executive
5 officers, directors and stockholders are protected while
6 they're acting within the scope of their duties for the
7 named organization.

8 **Employees.** Your employees are protected while they're
9 acting within the scope of their duties for you.
10 (Emphasis added)

11 (pp. 3, 4, Form 43209 Insuring Agreement, Ex. 1.)

12 . . .

13 **Exclusions - Claims We Won't Cover**

14 We won't cover or defend against claims for any of the
15 following liabilities.

16 **Prior acts.** We won't cover advertising injury claims,
17 nor will we cover personal injury claims for libel,
18 slander, defamation of character or invasion of an
19 individuals right of privacy when the claim is based on
20 an event that happened before this agreement was in
21 effect.

22 Such an event may involve a series of similar advertising
23 material. If it does, we won't cover claims based on
24 that event when the first act, statement, advertisement,
25 publicity article, broadcast or telecast of the series
26 happened before this agreement was in effect.

27 (p. 6, Form 43209 Insuring Agreement, Ex. 1.)

28 * * *

29 **PROFESSIONAL SERVICES EXCLUSION ENDORSEMENT**

30 This endorsement changes your Umbrella Excess Liability
31 Protection.

32 **How Your Coverage Is Changed**

33 Your protection is changed by adding the following
34 exclusion to the Exclusions - Claims We Won't Cover

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1 section. The effect of this change is to reduce your
2 coverage.

3 **Professional services.** We won't cover injury or damage
4 resulting from the performance of or the failure to
perform any professional service in your capacity as a
CHURCH.

5 (p. 1, Form PEX019 Exclusion Form, Ex. 1.)

6
7 . . .

8 **PERSONAL INJURY LIMITATION ENDORSEMENT**

9 This endorsement changes your Umbrella Excess Liability
Protection.

10

How Your Coverage Is Changed

11 Your protection is changed by adding the following to the
12 Exclusions - Claims We Won't Cover section. The effect
of this change is to reduce your coverage.

13 **Personal injury.** We won't cover a claim resulting from
14 any of the following offenses unless it's covered under
your Basic Insurance.

15 *False arrest, wrongful detention, malicious prosecution
or false imprisonment.

16 *Libel and slander, defamation of character, or invasion
of the rights of privacy.

17 *Statements made in advertising, broadcasting or
telecasting activities by you or on your behalf.

18 *False statements about an organization or its products,
or services made by or on behalf of any protected person
19 with knowledge that they are false.

*Wrongful entry or wrongful eviction.

20 **Other Terms**

21 All other terms of your policy remain the same.

22 (p. 1, Form PEX010-82)

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IV.

STATUS OF DEFENDANTS

4.1. Defendant insured Community Chapel and Bible Training Center ("CCBTC") is believed to be a corporation licensed to do business and doing business in the state of Washington, or a non-profit corporation or other religious organization, having its principal place of business at 18635 Eighth Avenue South, Seattle, Washington.

4.2. Defendants Ira Gabrielson and Jane Doe Gabrielson are believed to have been residents of the state of Washington, and regardless of their residency are plaintiffs in an action entitled Pierce County Cause No. 86-2-02793-6. A copy of such Pierce County Gabrielson complaint in that action is attached as Exhibit 2. In such Gabrielson complaint, the defendants Community Chapel and Bible Training Center (CCBTC), Jack McDonald and Jane Doe McDonald were named as defendants, among other defendants against whom judgment was not taken and against whom causes of action were dismissed at the close of the plaintiff Gabrielson's original case.

4.3. Defendants Jack McDonald and Jane Doe McDonald are believed to be a marital community, the exact status of which is uncertain and unknown to the plaintiff St. Paul at this time, but of which leave will be asked to correct at time of trial or upon the law and motion calendar and allegations as to the "defendants

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1 McDonald" hereafter herein are intended to denominate Jack
2 McDonald individually as well as the marital community, if
3 applicable. The defendants McDonald are believed to be
4 Washington residents and the defendant Jack McDonald is alleged
5 to have been pastor of the Tacoma Chapel of the defendant CCBTC
6 as the parent corporation to the Tacoma Chapel.

7 4.4. DEFENDANTS IN THIS DECLARATORY ACTION WHO ARE
8 PLAINTIFFS OR OTHERWISE INTERESTED PARTIES IN LITIGATION.

9 4.4.1. "GABRIELSON LAWSUIT"

10 4.4.1.1. As stated previously, the defendants
11 Gabrielson in this declaratory action were and are plaintiffs in
12 an action against CCBTC and defendants McDonald, as well as other
13 defendants who have been dismissed at trial, in Pierce County
14 Cause 86-2-02793-6, and a copy of such complaint, as stated, is
15 attached as Exhibit 2.

16 4.4.1.2. The Gabrielson complaint alleged that
17 defendant Jack McDonald was pastor of the Tacoma Chapel of CCBTC
18 and that McDonald "manipulated" Gabrielson "into leaving her
19 husband" and "coerced and unduly influenced" her into having a
20 sexual relationship. It further alleged that CCBTC, acting
21 through its pastor or officers, "knew or should have known that
22 McDonald was involved in the seduction of female members of the
23 congregation." Some causes of action asserted are and were:
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- (a) Outrage;
- (b) Intentional church counselor malpractice;
- (c) Pastoral and other malpractice;
- (d) Assault;
- (e) Battery;
- (f) False imprisonment; and
- (g) Defamation among other claims and allegations in the Gabrielson complaint (Exhibit 2).

4.4.1.3. The Gabrielson complaint alleged that these activities and relationships continued from September through December of 1985, and that the plaintiffs Gabrielson were disfellowshipped in January, 1986, from CCBTC of Tacoma as a consequence of Carol Gabrielson's refusal to participate in any further sexual activities with the defendant Jack McDonald, and further that in March of 1986, plaintiff Carol Gabrielson was assaulted and handcuffed and dragged from the defendant CCBTC, all at the direction and at the request of defendant Jack McDonald and other officers or agents of CCBTC.

4.4.2. JUDGMENT OBTAINED

4.4.2.1. The aforesaid Gabrielson complaint and underlying litigation culminated in a jury trial in Pierce County, Washington, resulting in a jury verdict and judgment in favor of the plaintiff Carol Gabrielson and plaintiff Ira Gabrielson against defendants Jack McDonald, Shirley McDonald,

1 and CCBTC on November 23, 1988, for a net judgment for the
2 plaintiff (defendant herein) Carol Gabrielson of \$130,000.00, the
3 plaintiff (defendant herein) Ira Gabrielson of \$17,000.00 and
4 costs of \$988.91 total, and a copy of such verdict and Judgment
5 is attached hereto as Exhibit 3.
6

7
8 v.

9 PLAINTIFF ST. PAUL FIRE AND MARINE INSURANCE COMPANY
10 CLAIMS, ALLEGATIONS AND CAUSES OF ACTION

11 As to the litigation plaintiffs Gabrielson named herein as
12 defendants, and all of the named defendants, including the CCBTC,
13 Jack McDonald, individually, and Jane Doe McDonald, his wife, and
14 the marital community thereof, and all employees, agents,
15 officers, elders, etc., of CCBTC, and any other persons having an
16 interest herein, plaintiff St. Paul alleges and seeks declaratory
17 judgment that:

18 5.1. Bodily Injury: None of the alleged injuries or claims
19 of the litigation plaintiffs Gabrielson for which compensation
20 was sought, and judgment granted, constitute a "Bodily Injury" as
21 that term is defined in the St. Paul policy except for harm to
22 health through mental anguish.

23 5.2. Property Damage: None of the alleged injuries or
24 claims of the litigation plaintiffs Gabrielson for which

COMPLAINT FOR
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Bellevue, WA 98004
(206) 462-4000

15153 4/21/2003 00436

1 compensation was sought, and judgment granted, constitute
2 "Property Damage" as that term is defined in the St. Paul policy.

3 5.3. Event: None of the alleged injuries or claims of the
4 litigation plaintiffs Gabrielson for which compensation was
5 sought, and judgment granted, constitute an "Event" as that term
6 is defined in the St. Paul policy.

7 5.4. Within The Scope Of Their Duties: None of the alleged
8 injuries or claims of the litigation plaintiffs Gabrielson for
9 which compensation was sought, and judgment granted, resulting
10 from alleged acts of the defendants were "acts Within The Scope
11 Of Their Duties" as that term is defined in the St. Paul policy.

12 5.5. Personal Injury: None of the alleged injuries or
13 claims of the litigation plaintiffs Gabrielson for which
14 compensation was sought, and judgment granted, constitute
15 "Personal Injury" as that term is defined in the St. Paul policy.

16 5.6. Injury or Damage: None of the alleged injuries or
17 claims of the litigation plaintiffs Gabrielson for which
18 compensation was sought, and judgment granted, constitute "Injury
19 or Damage" as that term is defined in the St. Paul policy.

20 5.7. Defamation: None of the alleged injuries or claims of
21 the litigation plaintiffs Gabrielson for which compensation was
22 sought, and judgment granted, constitute "Defamation" as that
23 term is defined in the St. Paul policy, nor is coverage provided
24 for such judgment under the definition of personal injury in the

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1 St. Paul policy as provided in the Personal Injury Limitation
2 Endorsement PEX010, because such defamation was not covered under
3 the Basic Insurance Policy provided CCBTC by its basic primary
4 insurance company, The American Casualty Company of Reading
5 Pennsylvania.

6 5.8. Jury Verdict: The judgment granted the defendants
7 Gabrielson in Pierce County Cause No. 86-2-02792-6 (Exhibit 3)
8 was based upon a three-page jury verdict form, including a
9 specific finding in favor of the plaintiff, Carol Gabrielson, for
10 defamation. Such jury verdict form is attached hereto as part of
11 Exhibit 3.

12 5.9. The Policy of the plaintiff St. Paul does not provide
13 coverage for personal injury from false arrest, wrongful
14 detention, malicious prosecution or false imprisonment; libel and
15 slander, defamation of character, or invasion of the rights of
16 privacy; false statements about an organization or its products,
17 or services made by or on behalf of any protected person with
18 knowledge that they are false; wrongful entry or wrongful
19 eviction because such are not covered under the Basic Insurance
20 Policy with the American Casualty Company and are thus excluded
21 under the personal injury limitation endorsement PEX010 of the
22 St. Paul policy.

23 5.10. Certain of the litigation plaintiffs Gabrielson's
24 alleged injuries arose from "any service or treatment related to

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1 health or of a professional nature" as that term is used in the
2 policy and are thus excluded from coverage.

3 5.11. Certain or all of the litigation plaintiffs
4 Gabrielson's alleged injuries arose from "performance of or
5 failure to perform any professional service in your capacity as a
6 CHURCH." as that exclusion is used in the policy (Professional
7 Services Exclusion Endorsement PEX019) and are thus excluded from
8 coverage.

9 5.12. The plaintiff St. Paul has no duty to defend or
10 indemnify named or unnamed defendants, CCBTC, or officers or
11 employees of CCBTC seeking coverage now or in the future.

12 5.13. Certain or all of the litigation plaintiffs
13 Gabrielson's alleged injuries arose from claims based on an event
14 that happened before the plaintiff St. Paul's insurance policy
15 was in effect and thus are excluded as "Prior acts." under the
16 exclusion section of the St. Paul policy.

17 5.14. The judgment obtained in favor of the plaintiffs
18 Gabrielson (Exhibit 3) totals approximately \$148,000.00, which is
19 less than the threshold coverage provided by the plaintiff
20 St. Paul's excess insurance policy and, thus, the policy of the
21 plaintiff St. Paul is not applicable or available for payment of
22 any claims or judgments asserted by the defendants Gabrielson,
23 nor do any other duties or obligations arise in favor of the
24 defendants Gabrielson or any other named defendants herein.

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VI.

PLAINTIFF'S PRAYER FOR DECLARATORY RELIEF

6.1. Plaintiff St. Paul Fire and Marine Insurance Company requests that the Court grant declaratory judgment declaring:

6.2. That none of the injuries for which the litigation plaintiffs Gabrielson seek compensation fall within the scope of coverages provided under the plaintiff St. Paul Fire and Marine Insurance Company's Excess Liability Policy;

6.3. That the St. Paul Fire and Marine Insurance Company has no duty to defend or indemnify the Community Chapel and Bible Training Center (CCBTC) or the defendants McDonald, et al., or other officers, agents, employees, elders and all other defendants against whom claims are asserted by litigation plaintiffs.

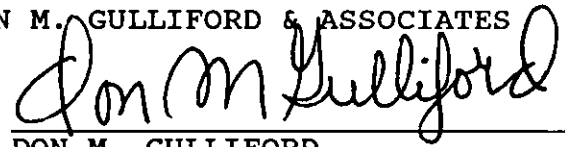
6.4. That the St. Paul Fire and Marine Insurance Company policy herein is an excess policy, above the threshold of the litigation plaintiffs Gabrielson's judgment herein and, therefore, the plaintiff St. Paul Fire and Marine Insurance Company has no duty or obligations whatsoever to the litigation plaintiffs/judgment creditors Gabrielson or any other party or defendant herein.

1 6.5. Plaintiff St. Paul further requests from the Court
2 such other and further relief as to the Court may seem
3 appropriate at time of trial or upon the law and motion calendar.
4

5 DATED this 5th day of January, 1989.

6 LAW OFFICES OF
7 DON M. GULLIFORD & ASSOCIATES

8 By



9 DON M. GULLIFORD
10 Of Attorneys for Plaintiff
11 St. Paul Fire and Marine
12 Insurance Company

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15153 4/21/2003 08441

Introduction

FRANK A. PERRY

St Paul

NOV 15 1988

Your policy protects your business against a variety of losses. It's written in plain, easy-to-understand English. We encourage you to read it.

C.I.D. MANAGER
NORTHWEST SERVICE CENTER
TRUE AND CERTIFIED COPY

Frank A. Perry

584XB2982

The words you, your and yours mean the insured named here:

**COMMUNITY CHAPEL & BIBLE TRAINING CENTER
18635 8TH AVENUE SOUTH
SEATTLE, WASHINGTON**

Your policy is composed of General Rules, an explanation of What To Do If You Have A Loss, and one or more Agreements explaining your coverage. It may also include one or more endorsements. Endorsements are documents that change your policy. The agreements and endorsements you have are listed below.

Which is a

- co-partnership
- corporation
- joint venture
- individual
- other: NON-PROFIT

This policy will begin on 5-9-85 and continue until 5-9-86

Your former policy, number NEW is automatically cancelled on the date this policy begins.

We, us, our and ours mean the **St. Paul Fire and Marine Insurance Company**. We're a capital stock company located in St. Paul, Minnesota.

In return for your premium, we'll provide the protection stated in this policy.

Your premium is \$1,000.00

Agreements And Endorsements Included In This Policy

Title	Form number and edition date
INTRODUCTION	40504(7-82)
UMBRELLA EXCESS LIABILITY PROTECTION COVERAGE SUMMARY	43172(2-82)
UMBRELLA EXCESS UNINSURED MOTORIST ENDORSEMENT	43299(1-84)
UMBRELLA EXCESS LIABILITY PROTECTION	43209(2-83)
AUTO LIABILITY LIMITATION ENDORSEMENT	43111(2-82)
PROPERTY EXCLUSION ENDORSEMENT	43121(2-82)
PROFESSIONAL MEDICAL SERVICE EXCLUSION ENDORSEMENT	43125(3-82)
PROFESSIONAL SERVICES EXCLUSION ENDORSEMENT	REX019(3-82)
UMBRELLA EXCESS ATHLETIC PARTICIPANT EXCLUSION ENDORSEMENT	PEX012(5-82)
PERSONAL INJURY LIMITATION ENDORSEMENT	PEX010(1-82)

NON-RENEWED
DESTROY DATE

RECEIVED

NOV 16 1988

NORTHWEST SERVICE CENTER
CLAIM DEPARTMENT

This policy is not effective unless it's signed by an authorized representative of The St. Paul.

Name and address of authorized representative

**JOHN F. SNAPP & SONS
314 FIRST AVENUE WEST
SEATTLE, WASHINGTON 98119
#460395-5**

Authorized representative

Signature date

**UMBRELLA EXCESS LIABILITY PROTECTION
COVERAGE SUMMARY**

St. Paul

RECEIVED

NOV 16 1988

**NORTHWEST SERVICE CENTER
CLAIM DEPARTMENT**

This Coverage Summary shows the limits and extent of coverage under your Umbrella Excess Liability Protection. It also describes your Basic Insurance.

Limits Of Coverage

Each event limit Total limit
\$2,000,000.00 \$2,000,000.00

**Deductible (Applies to each event not covered by your Basic Insurance)
\$ 10,000.00**

Schedule of Basic Insurance

General Liability

Insurer
CNA

Policy number
IP052144020

Policy period
5-9-85 TO 5-9-86

Limits of insurance

Bodily Injury and property damage combined

Each event Total limit
(occurrence) (aggregate)
\$ 500,000.00 \$ 500,000.00

Bodily Injury

Each accidental event
(occurrence) Total limit(aggregate)
\$ \$

Property damage

Each accidental event
(occurrence) Total limit(aggregate)
\$ \$

Automobile Liability

Insurer
CNA

Policy number
BUA032144021

Policy period
5-9-85 TO 5-9-86

Limits of insurance

Bodily Injury and property damage combined

Each accident
\$ 500,000.00

Bodily Injury

Each person Each accident
\$ \$

Property damage

Each accident
\$

Employer's Liability

Insurer

Policy number

Policy period

Limit of insurance

Each event (occurrence)
\$

If issued after the date your policy begins, these spaces must be completed and our representative must sign below.

Authorized representative

Policy issued to

COMMUNITY CHAPEL & BIBLE TRAINING CENTER

Coverage takes effect Policy Number
5-9-85 584XB2982

15153 4/21/2003 88443

**UMBRELLA EXCESS UNINSURED MOTORIST
ENDORSEMENT**

St. Paul

This endorsement changes your Umbrella
Excess Liability Protection.

How Your Coverage Is Changed

Your protection is changed by adding the
following paragraph to the What This
Agreement Covers section.

Uninsured Motorists. We'll provide Unin-
sured Motorists Coverage but only if the
claims are covered under your Basic In-
surance shown below. And then, only in
accordance with the applicable provisions
of your Basic Insurance.

The most we'll pay for all Uninsured Mo-
torists claims in one policy year is the To-
tal limit shown below under the Limit of
coverage.

Other Terms

All other terms of your policy remain the
same.

Limit of coverage
\$ 2,000,000.00 Total Limit

Basic Uninsured Motorists Insurance

<i>Insurer</i>	<i>Limits of Insurance</i>	
CNA	Each person	Each accident
<i>Policy number</i> BUA032144021	\$ 500,000.00	\$ 500,000.00
<i>Policy period</i> 5-9-85 TO 5-9-86		

If issued after the date your policy
begins, these spaces must be completed
and our representative must sign below.

Authorized representative

Policy issued to
COMMUNITY CHAPEL & BIBLE TRAINING CENTER

Liability takes effect Policy Number
5-9-85 584XB2982

15153 4/21/2003 88444

UMBRELLA EXCESS LIABILITY PROTECTION

St Paul

We've designed this agreement to provide extra protection, over your basic liability insurance. Of course, there are some limitations which are explained later in this agreement.

Table of Contents	Page	
		injury, and advertising injury claims, caused by an event.
What This Agreement Covers	1	Event means an accidental event that results in bodily injury or property damage
Coverage In Addition To Your Basic Insurance	2	the protected person didn't expect or intend to happen. An event also means an
Coverage When Your Basic Insurance Doesn't Apply	3	act or a series of similar or related acts that result in personal injury or advertising injury.
Who Is Protected Under This Agreement	3	Bodily injury means any harm to a person's health that happens while this agreement is in effect. Bodily injury includes any physical harm, sickness or disease. And it includes mental anguish, injury or illness, whether or not there has been physical harm or illness. If a bodily injury is covered, we'll cover damages for care, loss of services or death resulting from the injury.
Who Is Protected For Claims Not Related To Autos	3	
Who Is Protected For Auto-Related Claims	4	
Where We Cover	5	
Limits Of Coverage	5	
Each Event Limit	5	
Total Limit	5	
The Deductible	6	Property damage means any damage to tangible property of others that happens while this agreement is in effect. This includes loss of use of the damaged property resulting from the damage. Property damage also includes loss of use of other's property that hasn't been physically damaged if caused by an accidental event that happens while this agreement is in effect.
Exclusions-Claims We Won't Cover	6	
Other Rules For This Agreement	8	Personal injury means any of the following acts of interference with an individual's rights that happens in the course of your business while this agreement is in effect:
Other Insurance	8	•false arrest, wrongful detention, malicious prosecution, humiliation or false imprisonment;
Appealing Judgments	8	•libel, slander, defamation of character, or invasion of an individuals right of privacy. But not such acts that arise from advertising activities;
Paying Covered Claims	9	•wrongful entry, wrongful eviction or other invasion of the right of private occupancy; or
Keeping Your Basic Insurance In Effect	9	
Adjustment of premium	9	
Recovering Damages From A Third Party	9	
What To Do If You Have A Loss	10	

What This Agreement Covers

We'll pay amounts you and others protected under this agreement are legally required to pay as damages for covered bodily injury, property damage, personal

St Paul

• assault or battery committed to prevent or remove a danger to people or property.

Advertising injury means any of the following acts of interference with a person's rights that happens in the course of your business while this agreement is in effect:

- libel, slander, defamation of character, or invasion of an individual's right of privacy;
- infringement of any copyright, title or slogan;
- piracy, unfair competition or idea misappropriation under an implied contract;

when the act is committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arises out of your advertising activities.

Injury or damage. When we say injury or damage we mean bodily injury, property damage, personal injury or advertising injury.

Coverage In Addition To Your Basic Insurance

When a claim covered by this agreement is covered by your Basic Insurance, we'll pay damages you and others protected by this agreement are legally required to pay if those damages are over the coverage limits of your Basic Insurance. But we'll only pay amounts up to the limits of coverage under this agreement. For example:

You are the owner of a store. A customer slips and falls in your store and suffers serious injury. The customer then sues you and the court awards him \$1,000,000 in damages.

You have a basic liability insurance policy with a coverage limit of \$750,000 and the limit of coverage under this agreement is \$1,000,000. We'll therefore pay \$250,000 since that's the amount by which the damages exceed the limit of your Basic Insurance; and it's also less than the limit under this agreement.

Your Basic Insurance is listed on the Schedule of Basic Insurance. It doesn't matter whether you bought the insurance from us or from other insurance companies. We refer to this insurance as your Basic Insurance in this agreement.

If the total limits of your Basic Insurance (which may be referred to in the Basic Insurance policies as aggregate limits) are reduced by the payment of claims resulting from all events that occur during our policy year and that would be covered by this agreement, we'll pay damages above those reduced limits. And if the limit of your Basic Insurance were used up altogether to pay claims that would be covered by this agreement, this agreement will then cover you as if it were your Basic Insurance.

Damages you are legally required to pay are either:

• amounts you or other protected persons must pay under a court judgment; or

• amounts you or another protected person must pay under the terms of a settlement agreement signed by you, by us, and by the party making the claim.

But they don't include legal expenses, your office expenses or the salaries of your employees. Amounts recovered from other sources are deducted from amounts you or another protected person must pay to determine the net liability.

Defense of claims. We won't pay the cost of, or conduct the investigation, defense, or settlement of a claim if those costs are covered by your Basic Insurance. However, we do have the right to associate in the defense and control of any claim that is reasonably likely to involve us.

If any event results in claims that use up the limits of coverage under your Basic Insurance, we'll then take over the defense of any claim resulting from the same event that has been brought against you or any other protected person. But we'll only do this if:

• the claim is covered by this agreement; and

*this agreement is immediately in excess of your Basic Insurance. This means you don't have other excess insurance with another company that would apply over your Basic Insurance. Of course, you may have excess insurance that applies to claims over the limits of coverage in this agreement.

Coverage When Your Basic Insurance Doesn't Apply

If your Basic Insurance doesn't cover a claim which is covered by this agreement, we'll pay damages that you or other protected persons are legally required to pay. However, you'll be responsible for the claim up to the deductible amount shown on the Coverage Summary. Of course, our payments won't exceed the limit of coverage.

Additional benefits. All of the following benefits are in addition to the limits of coverage. These benefits apply only when your Basic Insurance doesn't apply.

Defending lawsuits. We'll defend any suit brought against you or any other protected person for covered claims, even if the suit is groundless or fraudulent. We have the right to investigate, negotiate and settle any suit or claim if we believe that is proper. We'll pay all costs of defending the suit, including interest on that part of any judgment that doesn't exceed the limit of coverage that applies. But we won't defend a suit or pay a claim after the limit of coverage has been used up in paying judgments or settlements.

Expenses related to defense. We'll also pay all reasonable costs that you or any protected person incur at our request while helping us investigate or defend a claim or suit. This includes up to \$200.00 per day for actual loss of earnings. For example, if someone sues you, we may ask you to be a witness in a trial. If you lose earnings as a result, we'll pay up to \$200.00 per day for earnings you actually lose.

Legal bonds. We'll pay premiums for appeal bonds, or bonds to release property that's being used to secure a legal obli-

gation, that are required in a suit we defend. We'll pay premiums for bonds valued up to the limit of coverage. We'll also pay the cost of bail bonds required because of a covered auto accident, including bonds for related traffic law violations. But we have no obligation to apply for or furnish these bonds.

If the laws of a foreign country prohibit us from providing these Additional Benefits, we'll pay any similar expenses you incur with our written consent.

Who Is Protected Under This Agreement

Protected persons are people and organizations protected under this agreement.

Here's a list of "protected persons" and certain limitations on their liability protection. Each is protected separately. However, the limits of coverage shown in the Coverage Summary are shared by all protected persons.

Who Is Protected For Claims Not Related To Autos

This section describes those protected for claims not arising out of the use of autos. Persons who are protected for auto-related claims are described in the next section of this agreement.

Individual. If this policy is in your name as an individual, you and your spouse are protected against claims resulting from conducting your business as a sole proprietor.

Partnership-joint venture. If this policy is in the name of a partnership or joint venture, that organization is protected. Individual partners or co-venturers are also protected for their liability as members of the named organization. But we won't protect any person or organization for their liability resulting from membership in a partnership or joint venture which is not named as an insured in the introduction.

Corporation. If this policy is in the name of a corporation, or other type of organization, its executive officers, directors and stockholders are protected while they're acting within the scope of their duties for the named organization.

Employees. Your employees are protected while they're acting within the scope of their duties for you.

Subsidiaries. If you have subsidiaries or own or control other companies before the date this agreement takes effect, they're protected. We'll also protect other such companies that you acquire while this agreement is in effect if you notify us within 60 days after you acquire them.

Real estate manager. Any person or organization is protected while acting as a real estate manager for you.

Those protected under your Basic Insurance. We'll protect any other person or organization who is protected under your Basic Insurance, subject to the same coverage limitations as your Basic Insurance.

Those you have agreed to protect. We'll protect any person, organization, trustee or estate with whom you've entered into a written contract that requires you to provide the kind of protection offered by this agreement. However, this protection only applies in connection with:

- operations you conduct or that are conducted on your behalf; or
- facilities you own or use.

Who Is Protected For Auto-Related Claims

The following persons are protected for auto-related claims and the extent of coverage is explained.

1. You.
2. Those protected under your Basic Insurance. We'll protect any other person or organization who is protected under your Basic Insurance, subject to the same

coverage limitations as your Basic Insurance.

3. Anyone while using with your permission an auto you own, rent or borrow. However, we won't protect:

- the owner of an auto you rent or borrow if the owner is an employee of yours or a member of an employee's household, unless covered under your Basic Insurance;

- you or anyone else, if this policy is in the name of a partnership, for the use of an auto owned by or registered in the name of a partner, unless covered under your Basic Insurance;

- anyone while working in the business of selling, servicing, repairing or parking autos, unless the business is yours;

- anyone while moving property to or from an auto, unless he or she is one of your employees, a person who leases or borrows an auto from you, or any of that person's employees.

4. Anyone legally responsible for the actions of a protected person, to the extent of that responsibility. But we'll protect the owner or anyone else from whom you rent or borrow an auto only if that auto is a trailer connected to an auto you own.

Autos are cars, trucks, trailers and other land vehicles designed for travel on public roads - but not mobile equipment.

Mobile equipment means the following types of land vehicles:

- Those that don't have to be licensed.
- Those designed for use mainly off public roads.
- Those kept for use only on your premises or that part of a road or other access adjacent to your premises.
- Those used only to provide mobility for permanently attached specialized equipment. For example, these include well drilling rigs, power cranes, concrete mixers that remain on a job site and similar equipment.
- Specialized equipment like bulldozers, rollers, graders, farm machinery and similar equipment.

Where We Cover

We cover events that take place anywhere.

Limits Of Coverage

Two types of limits - an "Each event limit" and a "Total limit" - apply to the amount we'll pay. These limits are shown in the Coverage Summary.

Each Event Limit

This is the most we'll pay for all claims that result from any one event. This applies no matter how many persons protected under this agreement are involved or how many claims are made. We'll consider all bodily injury and property damage caused by continuous or repeated exposure to basically the same conditions to be the result of one event.

We'll also consider all personal injury caused by a series of similar or related acts to be the result of one event.

And we'll consider all advertising injury caused by a series of acts in which the same or similar advertising material is used to be the result of one event. Regardless of the number or kinds of media involved.

A photo used in your advertising campaign includes two men in the background. They never consented to the use of their pictures. You use the photo in different magazine ads and television commercials over a few weeks. Both men sue you for invasion of privacy. We'll consider their claims to be the result of one event.

Total Limit

The total limit is the most we'll pay for all claims involving products and completed work, that result from all accidental events that occur in a policy year. By

policy year, we mean each consecutive annual period of this agreement.

Products and completed work. The total limit applies to bodily injury and property damage that happens away from your premises and is caused by your products, your completed work, or people relying on statements or warranties you've made about your products or completed work.

Your products mean any product or its container which you or others using your name have manufactured, sold, handled or distributed, if the injury or damage occurs after you've given physical possession of the product or container to others. We won't consider a vehicle to be a container. We won't consider items rented to others to be your products. Nor will we consider your products to include an item you haven't sold but which you allow others to use - like a vending machine.

Completed work means work you've completed, had completed for you or abandoned.

When we consider work to be completed. We'll consider work to be completed at the earliest of the following, even though further service, maintenance, correction, repair or replacement is required because of a defect:

- When all work contracted to be done by you or on your behalf has been finished.
- When all work to be done by you or on your behalf at the site of the work which causes the injury or damage has been finished.
- When the part of the work which causes the injury or damage has been put to its intended use by someone other than another contractor who is working for a principal on the same project.

However, we won't consider uninstalled or abandoned materials or tools to be completed work. Nor will we consider any work done in connection with transporting property - other than a condition created by the loading or unloading of a vehicle - to be completed work.

The Deductible

The Coverage Summary shows the amount of the deductible. The protected person will be responsible up to that amount for each event to which your Basic Insurance doesn't apply. We'll pay covered claims over the deductible amount up to the limit of coverage that applies. We may pay all or part of the deductible on your behalf. If we do, you agree to repay that amount to us promptly.

Exclusions-Claims We Won't Cover

We won't cover or defend against claims for any of the following liabilities.

Prior acts. We won't cover advertising injury claims, nor will we cover personal injury claims for libel, slander, defamation of character or invasion of an individual's right of privacy when the claim is based on an event that happened before this agreement was in effect.

Such an event may involve a series of similar or related acts, statements or the use of similar advertising material. If it does, we won't cover claims based on that event when the first act, statement, advertisement, publicity article, broadcast or telecast of the series happened before this agreement was in effect.

Advertising. We won't cover advertising injury claims that result from any of the following:

- failure to perform your obligations under a contract;
- infringement of trademark, service mark or trade name by using any of them as the trademark, service mark or trade name of the goods or services you sell or advertise or offer for sale (but this exclusion will not apply to infringement of someone else's titles or slogans);
- incorrect description of goods or services; or
- mistakes in the advertised price of goods or services.

Worker's compensation. We won't cover obligations that protected persons or their insurers have under worker's compensation, unemployment compensation, disability benefits or similar laws. But this exclusion won't apply to liability of others you've assumed under a contract or agreement.

Product recall. We won't cover losses based on the recall or withdrawal of your products from the market for any reason. Nor will we cover losses resulting from the recall or withdrawal of any work you've completed or had completed for you. Or of any item of which your products or work forms a part.

Damage to your products or work. We won't cover damage to your products caused by the product itself or by any of its parts. Nor will we cover damage to your work that's caused by the work itself or by materials or equipment connected with it. But we will cover liability claims for damage to your completed work which results from work done for you by others, such as contractors, if covered by your basic insurance.

Business risk. We won't cover loss of use of tangible property that hasn't been physically damaged when the loss of use is caused by your failure to live up to a contract or by the failure of your products or work to live up to your promises. But we will cover loss of use of tangible property of others that's caused by sudden or accidental damage or destruction of your products or work after they've been used by another person. For example:

You supply a customer with a motor that is part of a conveyor belt. You give a one-year warranty against breakdown of the motor. It breaks down after six months. Although the conveyor isn't damaged, your customer has losses due to loss of use of the belt. We won't cover this loss. However, if the motor had suddenly caught fire, we would cover your liability for the loss of use of the belt.

Pollution. We won't cover injury or damage caused by the discharge, dispersal, release or escape of:

- smoke, vapor, soot or fumes;
- acids, alkalis, toxic chemicals, liquids or gases; or
- waste material or other irritants or contaminants.

But this exclusion won't apply if such discharge, dispersal, release or escape is sudden and accidental.

Injury to fellow employees. We won't cover an employee for claims resulting from injury to or death of another employee of the same employer, that happens in the course of such employment.

But if such claims are covered by your Basic Insurance, this exclusion will not apply. We'll cover these claims subject to the same coverage limitations as your Basic Insurance.

Aircraft. We won't cover claims for injury or damage due to the ownership, maintenance, use, loading or unloading of:

- an aircraft owned, operated, rented or borrowed by any protected person; or
- any other aircraft operated by anyone in the course of his or her employment by any protected person.

But if such claims are covered by your Basic Insurance, this exclusion will not apply. We'll cover these claims subject to the same coverage limitations as your Basic Insurance.

Aircraft means only those aircraft designed to transport people or property.

Watercraft. We won't cover claims for injury or damage due to the ownership, maintenance, use, loading or unloading of any watercraft over 75 feet long unless:

- such claims are covered by your Basic Insurance; or
- you notify us within 30 days after you acquire such a watercraft.

Damage to property you own or control. We won't cover claims for property damage to:

- property you or any other protected person owns;
- property owned or rented by one protected person that is rented to, used by, or in the custody or control of another protected person;

- aircraft or watercraft you or any other protected person rents, uses, has custody of or controls; or
- property you or any other protected person rents, occupies, uses, has custody of or controls, to the extent you or the other protected person are required by contract to insure the property.

War. We won't cover liabilities you assume by contract if they arise out of war (declared or undeclared), invasion, civil war, rebellion, revolution, military or usurped power or confiscation or nationalization of property by a government or other public authority. But this exclusion does not apply to liabilities arising out of events that take place in the United States of America, its territories or possessions, or Canada.

Nuclear energy liability. We won't cover liability for which you or other protected persons are covered under a nuclear energy liability policy issued by a group such as one of the following:

- The American Nuclear Insurers;
- The Mutual Atomic Energy Liability Underwriters; or
- The Nuclear Insurance Association of Canada.

Nor will we cover a liability that would have been covered by a policy of one of those groups if its limit hadn't been used up.

We won't cover claims for property damage to a nuclear facility located in the United States or Canada when the liability arises out of services or materials you or any protected person furnished to the facility. This includes liability for all forms of radioactive contamination. And we won't cover any claims that arise out of services or materials that you or other protected persons furnish to any nuclear facility located outside the United States or Canada.

We won't cover claims resulting from radioactive, toxic, explosive or other hazardous properties of nuclear material in any of these three situations:

1. You or other protected persons are required by law to maintain financial pro-

tection for nuclear events. Or you or they are entitled, or would have been entitled had this policy not been issued, to indemnity for nuclear events from the United States.

2. The nuclear material is located at, or at any time discharges from, any nuclear facility that is owned or operated by you or any protected person. Nor will we cover such claims if the nuclear facility owned by you or any protected person is operated by others.

3. The nuclear material is contained in spent fuel or waste that you, any protected person, or others acting for either, have at any time possessed, transported or disposed of.

Nuclear material means source material, special nuclear material or by-product material as defined under the federal Atomic Energy Act.

Nuclear facilities are any of the following:

- Nuclear reactors.
- Enrichment plants.
- Fuel or spent fuel handling or processing plants.
- A location used for handling, storing or disposing of nuclear waste.
- A location containing more than 25 grams of plutonium or uranium 233 combined, or more than 250 grams of uranium 235.

Spent fuel is any fuel element or component, whether solid or liquid, which has been used or exposed to radiation in a nuclear reactor.

Nuclear waste is waste from any of the first three nuclear facilities named above which contains by-product material. But we won't consider waste to include tailings or other wastes from the processing of ore to extract or concentrate uranium or thorium to produce source material.

Other Rules For This Agreement

The following are general rules and conditions that apply to this agreement. You should also look at the "General Rules" page that's attached.

Other Insurance

If other insurance applies to claims covered by this agreement, the insurance under this agreement is excess and we won't make any payments until the other insurance has been used up. This won't be true, however, if the other insurance is specifically written to be excess over this agreement.

Except to the extent stated in this agreement, this insurance isn't subject to the terms, conditions, or limitations of any of your other insurance.

Appealing Judgments

We can appeal a judgment against any person protected under this agreement if:

- the judgment is for more than the amount of your deductible or the limits of coverage under your Basic Insurance, whichever applies; and

- the protected person and the Basic Insurers do not appeal it.

If we appeal the judgment, we will pay the costs of the appeal and any interest on those costs. Those payments will be in addition to the limits of coverage under this agreement.

Paying Covered Claims

If you are required to pay a covered claim either by the judgement of a court or by agreement with the person who made the claim and with us you may go ahead and pay the claim. If you then give us proof that you did so, we'll reimburse you for the amount by which your payment exceeds either the coverage limits of your Basic Insurance or the deductible, whichever applies.

Or, if you ask us to do so, we'll pay the person who made the claim.

Keeping Your Basic Insurance In Effect

You promise to keep the insurance policies listed in the Schedule of Basic Insurance in effect while this agreement is in effect. You promise not to change the terms, conditions or limits of coverage of those policies; and, if you renew or replace any of them, to make sure that the new policy is not more restrictive than the one it replaces. This insurance will remain in effect if you break any of these promises but we won't be liable for more than we would have been if you had kept your promises.

If you replace a policy listed in the Schedule with an equivalent revised standard form policy that's published by Insurance Services Office or similar rating organization, we'll treat that as a renewal or replacement without any change of terms or conditions. And we won't regard using up part or all of the limits of coverage of your Basic Insurance due to all events during one policy year as a change of terms or conditions.

If you're unable to recover from a Basic Insurer because it becomes insolvent or because you fail to comply with the terms of your contract with that insurer, this agreement will only apply to amounts over the limits shown in the Schedule of Basic Insurance.

Adjustment of premium

Ordinarily, we charge you a flat premium for this agreement. However, we may change your premium if you add new persons or property to those which are protected under your Basic Insurance. You must notify us promptly if this happens. Then, if you must pay an additional premium on your Basic Insurance because of the additional persons or property, we'll have the right to charge you an additional premium for this agreement.

Recovering Damages From A Third Party

This section replaces the section with the same title on the "General Rules" page, but only for this agreement.

Any person protected under this agreement may be able to recover all or part of a loss from someone other than us. Because of this, each protected person must do all that's possible to preserve any right of recovery available. If we make a payment under this policy, that right of recovery will belong to us.

Division of recovery. Any amount recovered will be divided as follows:

- First, any protected person or insurer who paid amounts over the limits of coverage under this agreement will be reimbursed for the actual excess amount paid.
- Next, we'll be reimbursed for any payments we've actually made.
- Then if any amount remains, it will belong to any Basic Insurer or protected person who paid damages to the person who made the claim.

Expenses of recovery proceedings will be divided in the same ratio as the recovery is shared. But if we bring proceedings on our own to try to obtain a recovery and we fail to do so, we'll pay all the expenses of those proceedings ourselves.

What To Do If You Have A Loss

The What To Do If You Have A Loss page is replaced by the following only for this agreement:

Someone is injured or something happens which can result in a liability claim. If there's an accident or incident likely to involve this agreement, you or any other protected person must:

1. Tell us or our agent what happened as soon as possible. Do this even though no claim has been made by you or another protected person is aware of having done something that may later result in a claim. This notice should include:

- The time and place of the event;
- The protected person involved;
- The specific nature of the incident including the type of claim that may result; and

•The name and addresses of any injured people and witnesses.

2. Notify the police if a law may have been broken.
3. Send us copies of all demands or legal documents if someone makes a claim or starts a lawsuit.
4. Cooperate and assist us in securing and giving evidence, attending hearings and trials, and obtaining the attendance of witnesses.
5. Refrain from taking on any financial obligations or paying out any money without our authorization. Doing so may result in our not making reimbursement of the payment even though the cost is covered by the policy. But this rule doesn't apply to money spent for emergency first aid to others at the time of an accident.

AUTO LIABILITY LIMITATION ENDORSEMENT

St Paul

This endorsement changes your Umbrella Excess Liability Protection.

How Your Coverage Is Changed

This endorsement limits your auto coverage.

We won't cover injury or damage resulting from the ownership, maintenance, use, loading or unloading of an auto unless it's covered under your basic insurance.

Other Terms

All other terms of this policy remain the same.

If issued after the date your policy begins, these spaces must be completed and our representative must sign below.

Authorized representative

Policy issued to

COMMUNITY CHAPEL & BIBLE TRAINING CENTER

Endorsement takes effect Policy Number
5-9-85 584XB2982

15153 4/21/2883 88455

PROPERTY EXCLUSION ENDORSEMENT

St. Paul

This endorsement changes your Umbrella Excess Liability Protection.

How Your Coverage Is Changed

The following exclusion is added to the Exclusions - Losses We Won't Cover section of this agreement.

Control of Property. We won't cover damage to any of the following:

- Property you or other protected persons rent, occupy or hold for sale or safekeeping;
- Property you use;
- Property any protected person physically controls; or

- Property being transported by any protected person.

However, we'll cover damage to property you use or control that you've assumed liability for under a written sidetrack agreement.

Other Terms

All other terms of this policy remain the same.

If issued after the date your policy begins, these spaces must be completed and our representative must sign below.

Authorized representative

Policy issued to

COMMUNITY CHAPEL & BIBLE TRAINING CENTER

Endorsement takes effect Policy Number

5-9-85

584XB2982

15153 4/21/2883 88456

**PROFESSIONAL MEDICAL SERVICE EXCLUSION
ENDORSEMENT**

St Paul

This endorsement changes your Umbrella
Excess Liability Protection.

How Your Coverage Is Changed

The following paragraphs are added to
the Exclusions - Losses We Won't Cover
section of this agreement.

Professional Medical Service. We won't
cover injury or damage due to providing
or failure to provide:

- Medical, surgical, dental, x-ray, nurs-
ing service or treatment, or the serving
of food or beverage within these services;
- any service or treatment related to
health or of a professional nature;
- any cosmetic or tonsorial service or
treatment;

- drugs, medical or dental supplies or ap-
pliances; or
- the handling of corpses or the perform-
ance of autopsies.

This exclusion won't apply to coverage
provided by the Umbrella Excess Hospital
Professional Liability Protection - Claims
Made.

Other Terms

All other terms of your policy remain the
same.

If issued after the date your policy
begins, these spaces must be completed
and our representative must sign below.

Authorized representative

Policy issued to

COMMUNITY CHAPEL & BIBLE TRAINING CENTER

Endorsement takes effect Policy Number

5-9-85

584XB2982

15153 4/21/2883 88457

**PROFESSIONAL SERVICES EXCLUSION
ENDORSEMENT**

This endorsement changes your Umbrella
Excess Liability Protection.

How Your Coverage Is Changed

Your protection is changed by adding
the following exclusion to the Exclusions -
Claims We Won't Cover section. The
effect of this change is to reduce your
coverage.

Professional services. We won't cover
injury or damage resulting from the
performance of or the failure to perform
any professional service in your capacity
as a CHURCH.

Other Terms

All other terms of your policy remain
the same.

If we issue this form after the date your policy
takes effect, we must complete these spaces and
our representative must sign below.

Authorized representative _____

Policy issued to
COMMUNITY CHAPEL & BIBLE TRAINING CENTER

Agreement takes effect
5-9-85

Policy number
584XB2982

**UMBRELLA EXCESS ATHLETIC PARTICIPANT
EXCLUSION ENDORSEMENT**

This endorsement changes your Umbrella
Excess Liability Protection.

How Your Coverage is Changed

Your protection is changed by adding the
following exclusion to the Exclusions -
Claims We Won't Cover section. The effect
of this change is to reduce your coverage.

Athletic participants. We won't cover
claims for bodily injury or personal injury
to students resulting from practicing or
taking part in physical training, a sport
or athletic activity or contest.

Other Terms

All other terms of your policy remain
the same.

If we issue this form after the date your policy
takes effect, we must complete these spaces and
our representative must sign below.

Authorized representative _____

Policy issued to

COMMUNITY CHAPEL & BIBLE TRAINING CENTER

Agreement takes effect

5-9-85

Policy number

584XB2982

PEX012 Ed.5-82 Printed in U.S.A.

cSt. Paul Fire and Marine Insurance Co.1983

Insuring Agreement 6

Endorsement number 6 to Insuring Agreement 56

Endorsement number _____ to

40502 Ed. 1-80 Printed in U.S.A.

15153 4/21/2003 08453

PERSONAL INJURY LIMITATION ENDORSEMENT

This endorsement changes your Umbrella Excess Liability Protection.

How Your Coverage is Changed

Your protection is changed by adding the following to the Exclusions - Claims We Won't Cover section. The effect of this change is to reduce your coverage.

Personal injury. We won't cover a claim resulting from any of the following offenses unless it's covered under your Basic Insurance.

- °False arrest, wrongful detention, malicious prosecution or false imprisonment.
- °Libel and slander, defamation of character, or invasion of the rights of privacy.

- °Statements made in advertising, broadcasting or telecasting activities by you or on your behalf.
- °False statements about an organization or its products, or services made by or on behalf of any protected person with knowledge that they are false.
- °Wrongful entry or wrongful eviction.

Other Terms

All other terms of your policy remain the same.

If we issue this form after the date your policy takes effect, we must complete these spaces and our representative must sign below.

Authorized representative _____

Policy issued to
COMMUNITY CHAPEL & BIBLE TRAINING CENTER

Agreement takes effect
5-9-85

Policy number
584XB2982

40502 Ed. 1-80 Printed in U.S.A.

15150 4/21/2003 08460

II.

The plaintiffs Carol Gabrielson and Ira Gabrielson are husband and wife and are residents of Pierce County, Washington.

III.

The defendants Donald Lee Barnett and Barbara Barnett are husband and wife and are residents of King County, Washington. Donald Barnett is the head pastor of Community Chapel and Bible Training Center and as such is responsible for the administration and direction of the entire congregation, including the Tacoma Chapel. All actions described of the defendants or either of them were performed on behalf of the marital community.

IV.

The defendants Jack McDonald and "Jane Doe" McDonald are husband and wife and residents of Pierce County, Washington. Jack McDonald is the pastor of Community Chapel and Bible Training Center of Tacoma. All actions described of the defendants or either of them were performed on behalf of the marital community.

V.

The defendants "John Does" 1-4 and "Jane Does" 1-4 are husbands and wives and are residents of the State of Washington. All actions described of the defendants or any of them were performed on behalf of the marital community.

////

COMPLAINT - 2

LAW OFFICES
RUSH, HANNULA & HARKINS
18 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
PHONE 34-2222

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

IRA GABRIELSON and CAROL GABRIELSON, husband and wife,)
Plaintiffs,)
vs.)
JACK McDONALD and "JANE DOE")
McDONALD, husband and wife;)
DONALD LEE BARNETT and BARBARA)
BARNETT, husband and wife; and)
"JOHN DOES" NOS. 1-4 AND "JANE)
DOES" NOS. 1-4, husbands and)
wives; COMMUNITY CHAPEL AND)
BIBLE TRAINING CENTER OF)
TACOMA; COMMUNITY CHAPEL AND)
BIBLE TRAINING CENTER,)
Defendants.)

NO. 86 2 02792 6
COMPLAINT FOR PERSONAL INJURIES AND DAMAGES

COME NOW the plaintiffs by and through their attorney of record, Daniel L. Hannula of Rush, Hannula & Harkins, and for cause of action against the defendants state and allege as follows:

I.

The court has jurisdiction over the subject matter herein and the parties hereto.

////

COMPLAINT - 1

EXHIBIT A

LAW OFFICES
RUSH, HANNULA & HARKINS
18 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
PHONE 34-2222

1 representation employment and/or agency for the Community
2 Chapel and Bible Training Center and Community Chapel and
3 Bible Training Center of Tacoma.

4 X.

5 The plaintiffs, Carol and Ira Gabrielson, regularly
6 attended services at both the Community Chapel and Bible
7 Training Center of Tacoma and the Community Chapel and Bible
8 Training Center in Burien for a number of years. As members
9 of the congregation, Carol and Ira Gabrielson attended
10 numerous functions and were active participants in the con-
11 gregation. In addition, the Gabrielsons tithed a portion of
12 their income to the congregation to help sustain it.

13 XI.

14 Defendant Jack McDonald, as pastor of the Tacoma Chapel,
15 held himself out to the Gabrielsons as a qualified counselor.
16 In this regard, Carol Gabrielson began counseling with defen-
17 dant Jack McDonald on a regular basis.

18 XII.

19 As a result of the counseling sessions, defendant Jack
20 McDonald became aware of the vulnerability of plaintiff Carol
21 Gabrielson. Defendant Jack McDonald took advantage of her
22 weakness and her need for support and manipulated her into
23 leaving her husband, plaintiff Ira Gabrielson.

24 XIII.

25 Further, as a result of the manipulation by defendant

26

COMPLAINT - 4

LAW OFFICES
RUSH, HANNUTA & HARKINS
1800 COMMERCIAL AVENUE
TACOMA, WASHINGTON 98402

VI.

1 The defendant Community Chapel and Bible Training Center
2 of Tacoma is a corporation licensed to do business and doing
3 business in the State of Washington.

VII.

4 The defendant Community Chapel and Bible Training Center
5 is a corporation licensed to do business and doing business in
6 the State of Washington and the is parent corporation of
7 Community Chapel and Bible Training Center of Tacoma.

VIII.

8 At all times material hereto, the defendants John Does 1
9 through 4 were agents, employees and representatives of
10 Community Chapel and Bible Training Center and/or Community
11 Chapel and Bible Training Center of Tacoma and all actions
12 complained of herein were performed in the scope of their
13 representation employment and/or agency for the Community
14 Chapel and Bible Training Center and the Community Chapel and
15 Bible Training Center of Tacoma.

IX.

16 At all times material hereto, the defendants Donald Lee
17 Barnett, Barbara Barnett, and Jack and "Jane Doe" MacDonald
18 were principals, agents, employees, and representatives of
19 Community Chapel and Bible Training Center and Community
20 Chapel and Bible Training Center of Tacoma and all actions
21 complained of herein were performed in the scope of their
22

23

24 COMPLAINT - 3

LAW OFFICES
RUSH, HANNUTA & HARKINS
1800 COMMERCIAL AVENUE
TACOMA, WASHINGTON 98402

XVII.

Plaintiff Carol Gabrielson, in March of 1986, requested permission to attend services at defendant Community Chapel and Bible Training Center in Burien, and was told that she was welcome at that congregation.

XVIII.

On March 6, 1986, plaintiff Carol Gabrielson attended services at defendant Community Chapel and Bible Training Center of Burien. During her visit to that congregation, Plaintiff Carol Gabrielson was physically assaulted by defendants John Does 1 through 4 who bodily dragged her from the chapel, causing the physical injuries which are complained of herein. Plaintiff Carol Gabrielson was also handcuffed and forced into a vehicle belonging to defendant Community Chapel and Bible Training Center of Burien. The actions of John Does 1 through 4 were at the direction and under the request of defendants Jack McDonald, Donald Barnett and Barbara Barnett.

XIX.

Defendants Jack McDonald, Donald Barnett and Barbara Barnett have further made disparaging statements regarding Carol and Ira Gabrielson to members of the congregation which tended to injure the Gabrielsons' reputation in the community.

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COMPLAINT - 6

LAW OFFICES
RUSH, MANNULA & HARKINS
19 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
PHONE 841-1111

Jack McDonald, Plaintiff Carol Gabrielson was coerced and unduly influenced into a having sexual relationship with defendant Jack McDonald. This relationship continued from September through December of 1985.

XIV.

Defendant Donald Barnett encouraged the members of his congregation, including the Tacoma Chapel, to form intimate attachments with members of the opposite sex as part of the regular services at the Chapel. Defendant Donald Barnett expressly encouraged married members of the congregation to form intimate attachments with persons other than the spouses of the members.

XV.

Defendant Donald Barnett knew or should have known that these attachments would result in seductions, infidelity and the breakup of marriages. Further, defendant Donald Barnett knew or should have known that his agent in Tacoma, defendant Jack McDonald, was involved in the seduction of female members of the congregation and was abusing the pastoral privilege.

XVI.

In January, 1986, both plaintiffs, Carol and Ira Gabrielson were disfellowshipped from Community Chapel and Bible Training Center of Tacoma, as a consequence of Carol Gabrielson's refusal to participate in any further sexual activities with defendant Jack McDonald.

////

COMPLAINT - 5

LAW OFFICES
RUSH, MANNULA & HARKINS
19 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
PHONE 841-1111

THIRD CAUSE OF ACTION

XXIV.

The plaintiffs incorporate by reference as if set forth in full each and every allegation as set forth in paragraphs I through XXVIII.

XXV.

Defendant Jack McDonald negligently violated his duty of care as a counselor by having sexual contact with Plaintiff Carol Gabrielson with the knowledge that Carol Gabrielson was vulnerable. Defendant Jack McDonald was negligent in counseling Plaintiff Carol Gabrielson and so created an unreasonable risk of physical and mental harm which caused the Plaintiff Carol Gabrielson's injuries. This negligence constitute the tort of counselor malpractice.

FOURTH CAUSE OF ACTION

XXVI.

The plaintiffs incorporate by reference as if set forth in full each and every allegation as set forth in paragraphs I through XXV.

XXVII.

Defendants Jack McDonald and Donald Barnett intentionally, recklessly, or negligently failed to exercise that degree of care, skill, diligence and knowledge commonly possessed and exercised by a reasonable, careful and prudent pastor in this jurisdiction. This failure constitutes the

////

COMPLAINT - 8

LAW OFFICES
RUSH, HANNULA & HARKINS
18 SECOND AVENUE SOUTH
TACOMA, WASHINGTON 98402
PHONE 325-1111

FIRST CAUSE OF ACTION

XX.

Plaintiffs hereby incorporate by reference as if set forth in full each and every allegation as set forth in paragraphs I through XIX.

XXI.

The acts of each of the defendants as stated above are so extreme as to go beyond all possible bounds of decency. The conduct of each of the above named defendants was outrageous and caused the plaintiffs to suffer severe emotional distress. Each of the above-named defendants acted intentionally or recklessly to cause severe emotional distress to the plaintiffs.

SECOND CAUSE OF ACTION

XXII.

The plaintiffs incorporate by reference as if set forth in full each and every allegation as set forth in paragraphs I through XXI.

XXIII.

Defendant Jack McDonald did not exercise the degree of care, skill, diligence and knowledge commonly possessed and exercised by a reasonable, careful and prudent counselor in this jurisdiction by manipulating Carol Gabrielson into a sexual relationship. This intentional or reckless failure constituted the tort of counselor malpractice.

////

COMPLAINT - 7

LAW OFFICES
RUSH, HANNULA & HARKINS
18 SECOND AVENUE SOUTH
TACOMA, WASHINGTON 98402
PHONE 325-1111

1 tort of pastoral malpractice.

2 FIFTH THROUGH SEVENTH CAUSES OF ACTION

3 XXVIII.

4 The plaintiffs incorporate by reference as if set forth
5 in full each and every allegation as set forth in paragraphs
6 I through XXVII.

7 XXIX.

8 The acts of the defendants on March 6, 1986 which
9 resulted in injuries to plaintiff Carol Gabrielson were
10 negligent and/or constitute the torts of assault, battery
11 and false imprisonment.

12 EIGHTH CAUSE OF ACTION

13 XXX.

14 The plaintiffs incorporate by reference as if set forth
15 in full each and every allegation as set forth in paragraphs
16 I through XXIX.

17 XXXI.

18 The acts of defendants in making disparaging statements
19 damaging the reputation of the plaintiff constitute the tort
20 of defamation.

21 NINTH CAUSE OF ACTION

22 XXXII.

23 The plaintiffs incorporate by reference as if set forth
24 in full each and every allegation as set forth in paragraphs
25 I through XXXI.

26 ////

COMPLAINT - 9

USE OFFICE
RUSH, HANNULA & HARKINS
18 THOMAS MOORE BOOTH
TACOMA, WASHINGTON 98402
206-863-1818

1 XXXIII.

2 As a further and proximate result of the acts of the
3 defendants, Plaintiff Ira Gabrielson has suffered a loss of
4 consortium.

5 XXXIV.

6 As a direct and proximate result of the intentional,
7 reckless and negligent wrongful acts of the defendants, and
8 each of them, Plaintiffs have been specially and generally
9 damaged in an amount to be fully proven at the time of
10 trial.

11 WHEREFORE, the plaintiffs pray for judgment against the
12 defendants as follows:

- 13 1. For all general and special damages incurred by
- 14 plaintiffs Ira and Carol Gabrielson in an amount to be
- 15 proven at time of trial;
- 16 2. For plaintiffs' reasonable costs and attorneys' fees
- 17 incurred in the prosecution of this action;
- 18 3. For such other and further relief as the court
- 19 deems just and equitable.

20 DATED this 20 day of April, 1986.

21 RUSH, HANNULA & HARKINS

22 BY: 
23 DANIEL L. HANNULA

24 ////

25 COMPLAINT - 10

USE OFFICE
RUSH, HANNULA & HARKINS
18 THOMAS MOORE BOOTH
TACOMA, WASHINGTON 98402
206-863-1818

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JAN 6 1989

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IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

NO. 88-2-00947-9

Plaintiff,)

v.)

IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife,)
and the marital community com-)
posed thereof; COMMUNITY)
CHAPEL and BIBLE TRAINING)
CENTER, a Washington corpora-)
tion; JACK McDONALD and "JANE)
DOE" McDONALD, husband and wife,)
and the marital community com-)
posed thereof,)

SUMMONS ON
COMPLAINT FOR
DECLARATORY JUDGMENT

Defendants.)

FILED
IN COUNTY CLERK'S OFFICE
A.M. JAN 6 1989 P.M.
PIERCE COUNTY CLERK
TED RATT COUNTY CLERK
BY _____ DEPUTY

TO: Defendants above named.

A lawsuit has been started against you in the above entitled court by St. Paul Fire and Marine Insurance Company, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the plaintiff within twenty (20) days after the service of this summons, excluding the

SUMMONS ON COMPLAINT FOR
DECLARATORY JUDGMENT - 1
decjudsm.gab

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

15153 4/21/2003 08466

1 day of service, or a default judgment may be entered against you
2 without notice. A default judgment is one where the plaintiff is
3 entitled to what he asks for because you have not responded. If
4 you serve a notice of appearance on the undersigned attorney, you
5 are entitled to notice before a default judgment may be entered.

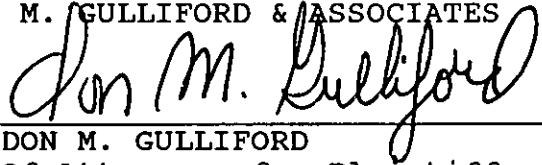
6 You may demand that the plaintiff file this lawsuit with the
7 court. If you do so, the demand must be in writing and must be
8 served upon the plaintiff. Within fourteen (14) days after you
9 serve the demand, the plaintiff must file this lawsuit with the
10 court, or the service on you of this summons and complaint will
11 be void.

12 If you wish to seek the advice of an attorney in this matter,
13 you should do so promptly so that your written response, if any,
14 may be served on time.

15 This summons is issued pursuant to Rule 4 of the Superior
16 Court Civil Rules of the State of Washington.

17 DATED this 5th day of January, 1989.

18
19 LAW OFFICES OF
DON M. GULLIFORD & ASSOCIATES

20 By 
21 DON M. GULLIFORD
22 Of Attorneys for Plaintiff

23
24 SUMMONS ON COMPLAINT FOR
DECLARATORY JUDGMENT - 2
decjudsm.gab

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

15153 4/21/2003 08467

5

JAN 6 1988

Vol 308 PAGE 2088
DEPT. 9
IN OPEN COURT
JAN - 6 1989
Pierce County Clerk
By _____
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)
)
Plaintiff,)
)
v.)
)
IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife;)
DONALD LEE 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
ORDER STRIKING NOVEMBER 22,
1988 AFFIDAVIT OF BRUCE
WINCHELL

THIS MATTER having come on for hearing on December 16, 1988,
on the motion of defendant, Community Chapel, for an Order
Striking the November 22, 1988 Affidavit of Bruce Winchell, and
the court having considered the supportive documents filed by
Community Chapel, together with the November 22, 1988 Affidavit
of Bruce Winchell, and the court being and all things fully
advised, it is hereby

ORDERED, ADJUDGED AND DECREED that the November 22, 1988
Affidavit of Bruce Winchell is stricken for failure to comply
with Civil Rule 56(e). See, Meadows v. Grant's Auto Brokers, 71
Wn.2d 874, 431 P.2d 216 (1967).

ORDER STRIKING NOVEMBER 22, 1988
AFFIDAVIT OF BRUCE WINCHELL - 1


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

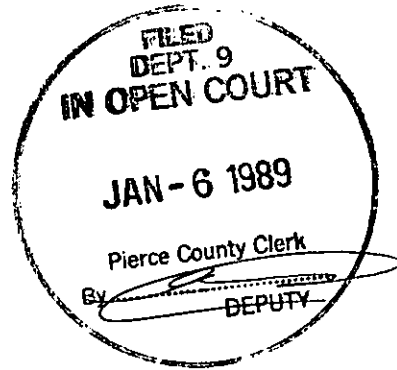
15153 4/21/2003 08460

DONE IN OPEN COURT this 6 day of ~~December~~, ^{JANUARY} 1989, 1988.


JUDGE J. KELLEY ARNOLD

Presented by:


John S. Glassman,
Attorney for Defendant,
Community Chapel and
Bible Training Center



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ORDER STRIKING NOVEMBER 22, 1988
AFFIDAVIT OF BRUCE WINCHELL - 2

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

15153 4/21/2003 00403

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JAN 6 1989

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IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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,)

Defendants.)

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

Plaintiff,)

vs.)

IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife;)
JACK McDONALD and JANE DOE)
McDONALD, husband and wife;)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, a Washington)
Corporation,)

Defendants.)

NO. 88-2-00947-9

STIPULATED ORDER OF
CONSOLIDATION AND JOINDER

FILED
IN COUNTY CLERK'S OFFICE
A.M. JAN 6 1989 P.M.
PIERCE COUNTY CLERK
BY _____ DEPUTY

The undersigned counsel for the parties involved stipulate
STIPULATED ORDER OF
CONSOLIDATION AND JOINDER -1

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

15153 4/21/2003 88478

1 that the declaratory judgment complaint of the St. Paul Fire and
2 Marine Insurance Co. subjoined to the existing caption of this
3 litigation on the face of this order, may and shall be consoli-
4 dated and joined with this existing Pierce County Nr. 88-2-00947-9
5 for discovery and trial, and that this court may enter an order
6 for such consolidation (without prejudice to defendant M^c Donald
right to ask for reconsideration)

7 Dated this 6th day of January, 1989.

8 LAW OFFICES OF DON M. GULLIFORD
& ASSOCIATES

LANE POWELL MOSS & MILLER

9
10 By Don M. Gulliford
Don M. Gulliford
11 Of Attorneys for Plaintiff St. Paul

By Bruce Winchell
Bruce Winchell
12 Of Attorneys for Plaintiff
13 American Casualty

14 RUSH, HANNULA & HARKINS

15 By Daniel L. Hannula
Daniel L. Hannula
16 Of Attorneys for Defendants
17 Gabrielson

Of Attorneys for Defendants
McDonald

18 LAW OFFICES OF JOHN S. GLASSMAN

19 By John S. Glassman
JOHN S. GLASSMAN
20 Of Attorneys for Defendant
21 Community Chapel & Bible Training
22 Center

23 ORDER OF CONSOLIDATION

24 Pursuant to the above and foregoing stipulation, such consoli-
dation is so ordered under cause number 88-2-00947-9 and all
parties may be consolidated into one heading.

Dated this 6th day of January, 1989.

Presented by: Don M. Gulliford

Kelley Arnold
HON. KELLEY ARNOLD, JUDGE

FILED
IN COUNTY CLERK'S OFFICE
A.M. JAN 6 1989 P.M.
TED RUTT, COUNTY CLERK
DEPUTY

STIPULATED ORDER OF CONSOLIDATION
& JOINDER -2

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

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

IRA GABRIELSON and CAROL
GABRIELSON, husband and wife,
Plaintiffs,

vs.

JACK McDONALD and "JANE DOE"
McDONALD, husband and wife;
COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER OF TACOMA;
COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER,
Defendants.

NO. 86-2-02792-6
JUDGMENT ON JURY VERDICT

THIS MATTER having come on regularly for trial
commencing September 12, 1988 and concluding October 28,
1988, and it appearing to the court that a jury of twelve
(12) having been duly selected and impaneled, evidence and
testimony having been presented, the court having considered
motions and arguments during the course of trial, and the
court having duly and properly instructed the jury and the
jury having duly rendered its verdict by answering special

////

JUDGMENT - 1

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 383-5388
SEATTLE 328-4790

EXHIBIT 3

15153 1721-2883 88172

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interrogatories which are attached hereto and incorporated herein by reference as if fully set forth, and the jury having returned its verdict into court and having found for plaintiff Carol Gabrielson and against defendants Jack McDonald, Shirley McDonald, the Community Chapel and Bible Training Center of Tacoma, and the Community Chapel and Bible Training Center of Burien on the issues of negligence and defamation in the sum of Two Hundred Thousand Dollars (\$200,000.00), and the jury having further decided that plaintiff Carol Gabrielson was thirty-five percent (35%) contributorily negligent, and the jury further having returned its verdict finding for plaintiff Ira Gabrielson and against defendant Jack McDonald, Shirley McDonald, Community Chapel and Bible Training Center of Tacoma, and Community Chapel and Bible Training Center of Burien on the issue of loss of consortium in the sum of Twenty Thousand Dollars (\$20,000.00), having further decided that plaintiff Ira Gabrielson was fifteen percent (15%) contributorily negligent, and the court having considered the records and files herein, and that no post-trial motions have heretofore been made in this matter, and the court being fully advised and considering the cost bill filed by plaintiff in the sum of \$ 988.91, the court finds that plaintiffs are entitled to costs in the sum of \$ 988.91. It is hereby ORDERED, ADJUDGED AND DECREED that the judgment herein

////
JUDGMENT - 2

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 383-5288
SEATTLE 438-4790

21188 88821274 88473
CS151

1 entered on behalf of the plaintiff Carol Gabrielson by the
2 jury was duly regular and proper in the sum of Two Hundred
3 Thousand Dollars (\$200,000.00), less Seventy-Thousand
4 Dollars (\$70,000.00) for plaintiff Carol Gabrielson's
5 contributory fault, and that the same is hereby entered and
6 that a net judgment of the sum of One Hundred Thirty
7 Thousand Dollars (\$130,000.00) in favor of plaintiff Carol
8 Gabrielson be and the same is hereby entered, and it is
9 further

10
11 ORDERED, ADJUDGED AND DECREED that the judgment herein
12 entered on behalf of the plaintiff Ira Gabrielson by the
13 jury was duly regular and proper in the sum of Twenty
14 Thousand Dollars (\$20,000.00) less Three Thousand Dollars
15 for plaintiff Ira Gabrielson's contributory fault, and that
16 the same is hereby entered and that a net judgment of the
17 sum of Seventeen Thousand Dollars (\$17,000.00) in favor of
18 plaintiff Ira Gabrielson be and the same is hereby rendered
19 and entered, and it is further,

20 ORDERED, ADJUDGED AND DECREED that costs in the amount
21 of \$ 988.91 are awarded to the plaintiffs and judgment
22 for the same be and hereby is rendered and entered.

23 JUDGMENT SUMMARY

24 Judgment for plaintiff Carol Gabrielson: \$ 130,000.00
25 Judgment for plaintiff Ira Gabrielson: \$ 17,000.00
26 Costs: \$ 988.91

////

JUDGMENT - 3

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 363-5388
SEATTLE 628-4790

15153 4/21/2003 00474

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Judgment Debtors: Jack McDonald, Community Chapel and Bible Training Center of Tacoma, and Community Chapel and Bible Training Center

Judgment Creditors: Carol Gabrielson and Ira Gabrielson

Attorneys for Judgment Creditor: Daniel L. Hannula and Harold T. Dodge, Jr.

Cause No.: 86-2-02792-6

DONE IN OPEN COURT this 23d day of November, 1988.

~~THOMAS A. SWAYZE, JR.~~
HONORABLE THOMAS A. SWAYZE, JR.,
JUDGE

Presented by: ~~THOMAS A. SWAYZE, JR.~~
RUSH, HANNULA & HARKINS

By: _____
Daniel L. Hannula, Of
Attorneys for Plaintiffs

Approved as to form:
WILLIAMS, KASTNER & GIBBS

By: _____
Eileen Lawrence, Of Attorneys
for Jack McDonald, Shirley
McDonald and the Community
Chapel and Bible Training
Center of Tacoma

LEE, SMART, COOK, MARTIN & PATTERSON

By: _____
Michael J. Bond, Of Attorneys
for Community Chapel and Bible
Training Center of Burien

////
JUDGMENT - 4

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 363-5288
SEATTLE 428-4790

15153 4/21/2003 88475

question 4; if you answered "no" to question 3, skip to question 5.

QUESTION NO. 4:

In defaming Carol Gabrielson, was defendant, Jack McDonald, acting as an agent for the defendant corporation of Community Chapel and Bible Training Center of Burien?

Answer: Yes (Yes or No)

Answer question 5.

QUESTION NO. 5:

Did the Community Chapel and Bible Training Center assault, batter or falsely imprison plaintiff, Carol Gabrielson, proximately causing injury to her?

Answer: No (Yes or No)

If all answers are no, stop here and notify court. Answer question 6 only if you answered "yes" to question 1.

QUESTION NO. 6:

As a result of the injuries suffered by Carol Gabrielson, did plaintiff, Ira Gabrielson, suffer a loss of consortium?

Answer: Yes (Yes or No)

Answer question 7.

QUESTION NO. 7:

If your answer to questions 1, 3, or 5 was "yes," what is the total amount of the plaintiff, Carol Gabrielson's damages?

\$ 200,000.00

If your answer to question 6 was "yes," answer question 8.

QUESTION NO. 8:

What is the total amount of plaintiff, Ira Gabrielson's, damages?

\$ 20,000.

Answer Questions 9 and 10 only if you answered "yes" to Question 1.

QUESTION NO 9:

Was there any contributory negligence by Carol Gabrielson which was the proximate cause of injury or damage to her?

Answer: Yes (Yes or No)

Answer question 10 only if you answered "yes" to question 9. If "no," proceed to question 11.

QUESTION NO. 10:

Using 100% as the total combined negligence of all the parties which contributed to the injury or damage to the plaintiff, Carol Gabrielson, what percentage of such contributory negligence is attributable to her?

Answer: 35 %

Answer Questions 11 and 12 only if you answered "yes" to Question 6.

QUESTION NO. 11:

Was there contributory negligence by Ira Gabrielson which was a proximate cause of his own damages?

Answer: Yes (Yes or No)

Answer question 12 only if you answered "yes" to question 11.

QUESTION NO. 12:

Using 100% as the total combined negligence of all the parties which contributed to the injury or damage to the plaintiff, Ira Gabrielson, what percentage of such contributory negligence is attributable to him?

Answer: 15 %

FOREMAN

J. Kelly Arnold

PIERCE COUNTY CLERK'S OFFICE
A.M. JAN 23 1989 P.M.
PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK

JAN 23 1989

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,

Defendants.

No. 88-2-00947-9

NOTICE OF PRESENTATION

TO: BRUCE WINCHELL, DANIEL HANNULA AND JOHN GLASSMAN;

YOU AND EACH OF YOU PLEASE TAKE NOTICE that the undersigned
will present for entry in the above-entitled matter as follows:

DOCUMENT: ORDER DENYING RENEWED MOTION FOR SUMMARY JUDGMENT BY
PLAINTIFF RE: BODILY INJURY;

BEFORE HONORABLE: J. Kelley Arnold;

LOCATION: ROOM: 217 OF THE Pierce County Courthouse;

AT THE FOLLOWING DATE AND TIME: Friday, January 27, 1989 at
9:30 a.m.

DATED this 20th day of January, 1989.

EVANS, CRAVEN & LACKIE, P.S.

By Tim Donaldson *Kathleen*
TIM DONALDSON
Attorneys for defendants Barnett

NOTICE OF PRESENTATION : 1
als15004857.NOP

Called
Evans, Craven & Lackie, P.S.

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE, WASHINGTON 98104

(206) 386-5555

19488 5982/174 55151

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

3 AMERICAN CASUALTY COMPANY OF)
4 READING PENNSYLVANIA, a)
5 Pennsylvania corporation,)

6 Plaintiff,)

7 vs.)

8 IRA GABRIELSON and CAROL)
9 GABRIELSON, husband and wife;)
10 DONALD LEE BARNETT and)
11 BARBARA BARNETT, husband and)
12 wife; COMMUNITY CHAPEL and)
13 BIBLE TRAINING CENTER, a)
14 Washington corporation,)

15 Defendants.)

No. 88-2-00947-9

ORDER DENYING RENEWED
MOTION FOR SUMMARY
JUDGMENT BY PLAINTIFF RE:
BODILY INJURY

16 I. HEARING

17 1.1 Date. January 6, 1989.

18 1.2 Appearances. Plaintiff appeared through its counsel Lane,
19 Powell, Moss & Miller by Bruce Winchell. Defendants, Ira and
20 Carol Gabrielson, appeared through their attorneys Rush, Hannula
21 & Harkins by Dan Hannula. Defendants, Donald Lee Barnett and
22 Barbara Barnett, appeared through their attorneys Evans, Craven &
23 Lackie, P.S. by Tim Donaldson. Defendant, Community Chapel and
24 Bible Training Center, appeared through its attorney John
25 Glassman.

26 1.3 Purpose. To consider the renewed MOTION FOR PARTIAL SUMMARY
27 JUDGMENT of American Casualty Company.

28 1.4 Evidence. The materials originally submitted in support and
29 in opposition to plaintiff's original motion including AFFIDAVIT
30 OF BRUCE WINCHELL filed herein on March 30, 1988. AFFIDAVIT OF

31 SUMMARY JUDGMENT ORDER : 1
32 als15004857.53

Evans, Craven & Lackie, P.S.

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE, WASHINGTON 98104

(206) 386-5555

15153 4/21/2883 86482

1 HAROLD T. DODGE, JR. IN OPPOSITION TO PLAINTIFF'S MOTION FOR
2 SUMMARY JUDGMENT filed herein on April 8, 1988. AFFIDAVIT OF
3 PHILIP G. LINDSAY, M.D. filed herein on April 8, 1988. Also
4 considered were the materials submitted in regard to the renewed
5 motion which were not stricken including SUPPLEMENTAL AFFIDAVIT
6 OF BRUCE WINCHELL.

7 1.5 Authorities Considered. Authorities contained in
8 MEMORANDUM IN SUPPORT OF AMERICAN'S MOTION FOR PARTIAL SUMMARY
9 JUDGMENT filed herein on March 30, 1988, DEFENDANT GABRIELSONS'
10 MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY
11 JUDGMENT filed herein on April 8, 1988, DEFENDANT COMMUNITY
12 CHAPEL AND BIBLE TRAINING CENTER'S MEMORANDUM IN OPPOSITION TO
13 MOTION FOR PARTIAL SUMMARY JUDGMENT filed herein on April 8,
14 1988, DEFENDANT BARNETTS' BRIEF IN OPPOSITION TO PLAINTIFF'S
15 MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS'
16 COUNTERMOTION FOR SUMMARY JUDGMENT filed herein on April 7, 1988,
17 REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY
18 JUDGMENT (BODILY INJURY) filed herein on April 13, 1988,
19 AMERICAN CASUALTY'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR
20 PARTIAL SUMMARY JUDGMENT, PLAINTIFFS GABRIELSON'S REPLY TO
21 SUPPLEMENTAL BRIEF BY AMERICAN CASUALTY, MEMORANDUM IN OPPOSITION
22 TO RENEWED MOTION FOR SUMMARY JUDGMENT, MEMORANDUM IN OPPOSITION
23 TO RENEW MOTION FOR SUMMARY JUDGMENT, BRIEF IN OPPOSITION TO
24 SUMMARY JUDGMENT AND MOTION TO STRIKE AFFIDAVIT OF BRUCE
25 WINCHELL.

26 II. ORDER

27 After hearing the argument of counsel and being advised of
28 the premises it is ordered and declared:

29 2.1 The court declares that sexual contact which causes
30 emotional distress or mental suffering constitutes bodily injury

31 SUMMARY JUDGMENT ORDER : 2
32 als15004857.53

Evans, Craven & Lackie, P.S.

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE, WASHINGTON 98104

(206) 386-5555

15155 472172883 88483

1 under American Casualty Company of Reading Pennsylvania policy
2 number IP502144020.

3 2.2 The renewed MOTION FOR PARTIAL SUMMARY JUDGMENT of American
4 Casualty Company is denied.

5 DATED this _____ day of January, 1989.
6
7

8
9 HONORABLE J. KELLEY ARNOLD

10 Presented by

11 EVANS, CRAVEN & LACKIE P.S.
12
13

14 TIM DONALDSON
15 Attorneys for Barnetts

16 Approved as to form, and
17 Notice of Presentation Waived:

18 LANE, POWELL, MOSS & MILLER
19
20

21 Bruce Winchell
22 Attorneys for American Casualty Company

23 RUSH, HANNULA & HARKINS
24
25

26 Dan Hannula
27 Attorneys for Gabrielsons

28 JOHN GLASSMAN
29
30

31 John Glassman attorney for Community Chapel

32 SUMMARY JUDGMENT ORDER : 3
als15004857.53

Evans, Craven & Lackie, P.S.

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE, WASHINGTON 98104

(206) 386-5555

15153 4/21/2883 88484