

1 consolidated suits are concerned with Donald Lee Barnett's sexual
2 conduct with various plaintiffs, that topic will plainly be
3 explored at trial as well as in discovery. Moreover, the exhibits
4 to the Donaldson affidavit demonstrate that the subject of Pastor
5 Barnett's sexual conduct with members of his congregation is
6 already in the public domain. See Rhinehart, 98 Wn.2d at 257
7 (observing that evidence admitted at trial will be a matter of
8 public record and available for publication by any person, and
9 indicating that parties are not entitled to the shelter of a
10 protective order when information has already been made public.)
11 In any event, defendants Barnetts' proposed order, which would
12 wholly seal the Barnetts' depositions, cannot be justified by
13 counsel's speculation that questions may be asked on one narrow
14 topic.

15 The affidavit of Donald Lee Barnett contends that he and the
16 church have experienced threats and harassment since the
17 publication of news stories concerning "litigation involving
18 myself and the Community Chapel and Bible Training Center." He
19 points particularly to media coverage of Judge Norman Quinn's
20 decision removing him as pastor of the Community Chapel.

21 Barnett's affidavit, however, shows absolutely no causal
22 connection between the conduct of open depositions and the
23 incidents he cites. Judge Quinn's decision, for example, is a
24 matter of public record in an entirely different lawsuit. Indeed,
25

26 JORGENSEN MEMORANDUM
OPPOSING BARNETTS' MOTION
FOR PROTECTIVE ORDER

1 most of the articles attached to the Donaldson affidavit deal with
 2 different lawsuits. Putting aside questions about whether
 3 harassment is likely to continue in the wake of Barnett's removal
 4 as pastor, or to what degree harassment has resulted from
 5 Barnett's own preaching about the consolidated lawsuit, plainly
 6 a protective order sealing the Barnetts' depositions is not
 7 justified based on publicity arising out of other lawsuits. It
 8 is also unclear whether, absent some current connection with the
 9 Community Chapel, Barnett has standing to assert likely harm to
 10 the church from open depositions.

11 III. CONCLUSION

12 For the reasons set forth above, Jorgensen requests that the
 13 Court deny defendants' Barnetts' motion for a protective order
 14 sealing their depositions.

15 DATED this 19 day of December, 1988.

16 Respectfully submitted,

17 PRESTON THORGRIMSON, ELLIS & HOLMAN

18 By 

Susan Delanty Jones

Catherine D. Shaffer

19 Attorneys for Plaintiff,

20 Maureen P. Jorgensen

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 22
 23
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 25
 26 JORGENSEN MEMORANDUM
 OPPOSING BARNETTS' MOTION
 FOR PROTECTIVE ORDER

an event of public interest; her own voluntary and extraordinary actions created the newsworthy event.

Times-Mirror Co. v. Superior Court (1988) 198 Cal.App.3d 1420 [rev. denied, May 19, 1988], relied on by plaintiff, is distinguishable. There defendant newspaper publisher ignored a police detective's request that it not publish the name of a witness to an unsolved violent crime, and the resulting article effectively revealed the witness's address as well. The court held that the newsworthiness of the crime did not entitle the publisher to summary judgment in the witness's invasion of privacy action, because the trier of fact could find the risk of criminal attack on the witness and the state's interests in investigating crimes and protecting witnesses outweighed the publisher's interest in publishing the witness's name without risk of liability.

Newsworthiness is, as plaintiff argues, a question of fact. If the evidence bearing on a fact question can support only a finding for one party, however, the issue can properly be decided in that party's favor by the court. Petitioner was entitled to summary judgment in its favor.⁷

This is a proper case for issuance of a peremptory writ in the first instance. (Code Civ. Proc., §1088; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.) All parties were informed this court was considering issuing a peremptory writ in the first instance. The matter having been fully briefed, issuance of an alternative writ would add nothing to the exposition of the issues.⁸

Let a peremptory writ of mandate issue, directing respondent to vacate its order of June 10, 1988, denying petitioner's motion for summary judgment, and to enter a new order granting the motion.

⁷ We do not suggest that a modicum of journalistic self-restraint would not have been salutary. Indeed, we have ourselves omitted plaintiff's name from this opinion.

⁸ The other defendants (see fn. 1, supra) joined in the newspaper defendant's summary judgment motion, and have in this proceeding filed a request that they be granted a writ too. Their position, however, may involve different issues not yet briefed, and will therefore be left for resolution by the trial court in the first instance.

U.S. v. DIDRICHSONS

U.S. District Court
Western District of Washington

UNITED STATES OF AMERICA
v. VALDIS WOLDEMARS DIDRICHSONS, No. C88-686, August 16, 1988

NEWSGATHERING

Access to places—Public institutions—Courtrooms (§40.115)

Protective order, in non-jury civil action brought to revoke defendant's U.S. citizenship, that would exclude press from deposition at which defendant is expected to invoke his Fifth Amendment privilege, is not warranted.

Action brought under Immigration and Nationality Act of 1952 seeking revocation of defendant's U.S. citizenship, based upon government's assertion that such citizenship was obtained unlawfully and that defendant was excludable from U.S. due to his actions during World War II as member of the Latvian security police. On defendant's motion for protective order to exclude press from pre-trial deposition. Motion denied in bench ruling.

Betty-Ellen Shave, Justice Department, Washington, D.C., for plaintiff.

Peter Berzins, of Bianchi, Berzins & Bianchi, Seattle, Wash., for defendant.

David Utevsy, of Foster Pepper & Shefelman, Seattle, for the Hearst Corp.

Transcript of Court Order

Dwyer, J.:

THE COURT: This is to give you the ruling on the defendant's motion for a protective order to exclude Mr. Miletich who, of course, is a Seattle Post-Intelligencer reporter, from the deposition.

The Post-Intelligencer has opposed the motion for a protective order. The Government has been neutral. I have considered the briefs and the supplemental briefs and affidavits and the oral argument given by counsel, and I want to give you now — you already have the ruling, of course, from this morning's message from the clerk — but I want to give you now the basis of the ruling so that it will be available to all of you and also to Judge Coughenour whose case this is. You will

be able to get a transcript from Mr. Sorensen, the court reporter.

The first question is: To what extent, if any, does the press have a First Amendment right to attend a pretrial deposition in a civil case of substantial and genuine public importance? The appellate courts have really not spoken clearly on that as yet. It is clear that there is some First Amendment involvement but there is so far no verbal formula defining exactly what it is.

It is clear, I believe, that at a minimum the reasonableness and legitimacy of the press's interest in the proceedings should be weighed in determining whether good cause for a protective order exists or does not exist. The cases in the field have been decided mostly under the good cause test under Rule 26.

There are three cases that touch on today's problem to one extent or another that are especially worth mentioning. One is *Seattle Times v. Rhinehart*. Another is *Anderson v. Cryovac*, a First Circuit 1986 case which includes a summary of other decisions, and most recently, the case of *Averigan v. Hull*, a 1987 District Court case in the District of Columbia in which a third party deponent, that is, a deponent who was not a party to the case, asked for a protective order to exclude the press from his deposition and the motion was denied.

Now, in the present case, with that background in mind, the question is whether Mr. Didrichsons has shown good cause for the protective order he seeks. Rule 26(c) assumes openness of discovery unless good cause is presented to close it, and of course a deposition, once filed with the clerk, is ordinarily a public document.

There are several factors that seem to me to be decisive when taken as a whole in this case. The first is this: This is clearly a case of great public interest. It involves the public policy of the United States. Beyond that, it involves events of historical importance to the whole world. The Government is a party to this case and it is very clear that the reporter, the newspaper reporter, does have good and legitimate reason to seek access.

Second, this is a deposition of a party to the case, not a third party who is merely a witness, and therefore this deposition is not merely discovery. Under the rules, and particularly Rule 32(a)(2) of the Federal Rules of Civil Procedure, the deposition of a party may be used for any purpose, which means it may be read into evidence at the trial.

Another point worth mentioning is that in a civil case, as distinguished from a criminal case, if a witness invokes the Fifth Amendment at a deposition, ordinarily that may be shown in evidence and an inference may be drawn from it.

Third, all that has happened so far in this deposition is that the defendant has invoked the Fifth Amendment and declined to answer questions on the basis of his constitutional Fifth Amendment privilege. The fact that he has invoked the Fifth Amendment is already public. Mr. Miletich apparently was present for parts of the deposition where that was done, and the fact has also been made public in the filings that have been made with the Court, including Mr. Didrichsons' affidavit of August 9, 1988.

According to counsel, nothing further will happen at the deposition except a few more hours of the same, that is, the witness invoking the Fifth Amendment. So it appears that nothing of substance would be made public that is not already public if the reporter were allowed to remain for the balance of the deposition.

The fourth point is that it is argued on behalf of the defendant that his invoking the Fifth Amendment means he cannot tell his story to refute whatever implications might be read into the questions that he is declining to answer. However, he can do so through his counsel both on the record of the deposition and outside it. Counsel in behalf of Mr. Didrichsons is free to express his full denial of the Government's allegations and of anything that might be implied in the questions.

Fifth, there is no claim here that any of the questions have been out of bounds under the applicable rules. If any question were asked that really would seem to be out of bounds or outrageous, or duly oppressive or harassing to the witness, counsel can simply instruct him not to answer the question, and if that is done, then of course he is not required to invoke the Fifth Amendment in answer to that particular question.

Sixth, as I understand it, only one reporter, one newspaper reporter, has been present at the deposition. There has been no suggestion of a crowd coming into the deposition room or of any improper atmosphere being created in the deposition room.

Seventh, and I believe this is a very important point, there is no claim by Mr. Didrichsons of any effect or potential effect on his right to a fair trial. This is a non-jury rather than a jury case, and the

lack of any contention that the party's right to a fair trial might be affected is an important distinction between this case and others which have touched in various ways on the desire of parties to keep parts of pretrial proceedings under seal.

Eighth and last, the argument by Mr. Didrichsons is that it would be embarrassing to undergo publicity of the fact that he has invoked the Fifth Amendment. As I mentioned, the fact is already available to the public, but in any event, under all the other circumstances that are present, I believe the finding must be that that argument does not set forth a sufficient claim to overcome the other factors.

So for all of those reasons, the motion for a protective order is denied. I do want to say that the ruling is given as to this particular deposition under these circumstances, and that it does not contain any implication as to other depositions that might be taken in the case.

SELDON v. SHANKEN

New York Supreme Court
Appellate Division
First Department

PHILIP SELDON and WINE
NEWS INC., v. MARVIN SHANKEN,
et al., No. 34240, August 4, 1988

REGULATION OF MEDIA CONTENT

Defamation—Defamatory content— Headlines (§11.057)

Magazine article's headline, "Editorial Space for Sale," which accurately described competitor magazine's policy of offering editorial coverage in exchange for specified payments, is not defamatory.

Libel action against magazine. From decision of the New York Supreme Court, New York County, denying defendants' motion for summary judgment, defendants appeal.

Reversed; motion for summary judgment ordered granted.

Full Text of Opinion

Before Murphy, P.J., Carro, Asch, Milonas, and Ellerin, JJ.

Per Curiam:

Order, Supreme Court, New York County (Burton Sherman, J.) entered

September 9, 1987, which *inter alia* denied the defendants' motion for summary judgment dismissing the complaint, unanimously reversed to the extent appealed from, on the law, and the motion for summary judgment dismissing the complaint granted, with costs.

Plaintiff Philip Seldon is a renowned wine expert who edits and publishes a magazine about wine, *Vintage*, owned by his company, plaintiff Wine News, Inc. Plaintiffs bring this action for libel based on an article published in the April 1-15, 1985 edition of the defendants' magazine *Wine Spectator* concerning the editorial and advertising policies of *Vintage*, and a letter to the editor published in the May 1-15, 1985 issue of *Wine Spectator* concerning the same issues.

The article of question was entitled "Editorial Space for Sale in *Vintage*" and reported that *Vintage* had announced a new policy of offering "in depth editorial coverage to those [wineries] willing to subsidize the writing and printing process" and that companies that ignored *Vintage's* phone calls, or that advertised in rival publications but failed to advertise in *Vintage*, would not have their products reviewed. The article also reported Seldon's attempt to solicit wineries to buy space in a weekly "paid advertisement", or "advertorial", column that Seldon planned to run in the New York Times or Los Angeles Times, and that the New York Times had refused to run Seldon's advertisement.

The complained of letter to the editor was an unsolicited letter from a *Wine Spectator* reader who recounted bad experiences that he had had with Seldon and *Vintage* and offered his negative opinion of *Vintage* and its new policy.

The *Wine Spectator* article was based on three letters that *Vintage* openly distributed to members of the wine trade. The first letter announced the "advertorial" column that Seldon said he was planning to place in the New York Times and solicited "bookings". The second letter announced *Vintage's* new policy of offering in depth editorial coverage to those wineries who would pay the fee of the *Vintage* author and pay plaintiffs \$1,000 per page, with an additional charge for color pages. The third letter announced that *Vintage* would not review products that did not advertise in *Vintage*. The *Wine Spectator* article liberally quoted from these letters.

In moving for summary judgment defendants asserted that the publication was true, that it did not have a defamatory

Riley

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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

Plaintiffs,)

v.)

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

Defendants,)
Third Party Plaintiffs,)

v.)

GARY LIEN,)

Third Party Defendant.)

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

Plaintiffs,)

v.)

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

Defendants.)

_____)
MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

COMMUNITY CHAPEL AND BIBLE)

MEMO RE DUTY OF CARE : 1
als15004789.83

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

NO. 86-2-18429-5
NO. 86-2-26360-8

DEFENDANT BARNETTS'
PRELIMINARY MEMORANDUM
REGARDING DUTIES AND
STANDARDS OF CARE

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Francis Curran & Leitch, P.S.

LAWYERS

COMMUNICATIONS

1 TRAINING CENTER, et. al.,)
2)
3 Defendants.)
4)

5 Come now defendants, Don and Barbara Barnett, through their
6 undersigned counsel and submit the following preliminary
7 memorandum regarding the duties and standards of care applicable
8 to clergy and church board members.

9 I. LAW AND ARGUMENT

10 1. Religious Protection

11 The imposition of tort liability constitutes state action
12 which is subject to the limitations of the First Amendment to the
13 United States Constitution and Article 1, Sec. 11 (Amendment 34)
14 to the Washington State Constitution. It is subject to the
15 defense of constitutional privilege.¹

16 The free exercise clause protects freedom to believe and
17 freedom to act. Only an individual's conduct and freedom to act
18 may be regulated.

19 Thus, the amendment embraces two concepts, - freedom to
20 believe and freedom to act. The first is absolute but,
21 in the nature of things, the second cannot be. Conduct
22 remains subject to regulation for the protection of
23 society.²

24 1. Paul v. Watchtower Bible & Tract Soc. of New York, 819
25 F.2d 875, 880 (9th Cir., 1987).

26 2. Cantwell v. State of Connecticut, 310 U.S. 296, 303, 60
27 S.Ct. 900, 903, 84 L.Ed. 1213 (1940). Quoted with approval in
28 State Ex Rel Holcomb v. Armstrong, 39 Wn. 2d 860, 864, 239 P.2d
29 545 (1952).

30 MEMO RE DUTY OF CARE : 2
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Conrad Crawford Luckie, P.L.

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PHONE 425-525-1111

1 A. Religious Preaching

2 A number of claims in the above entitled consolidated cases
3 allege causes of action for marital breakups and emotional
4 distress based upon the preaching of Donald Lee Barnett on the
5 religious belief of Spiritual Connections.³

6 This right is absolutely protected. Murdock v.
7 Pennsylvania, 319 U.S. 105, 110, 63 S.Ct. 870, 873, 87 L.Ed 1292
8 (1943). It is only when a person acts upon his religious belief
9 against another that such action can be regulated.

10 In Sherbert v. Verner, 374 U.S. 398, 402, 83 S.Ct. 1790,
11 1793, 10 L.Ed.2d 965 (1963), the United States Supreme Court
12 wrote:

13 The door of the Free Exercise Clause stands tightly closed
14 against any governmental regulation of religious beliefs as
15 such, Government may neither compel affirmation of a
16 repugnant belief,...; nor penalize or discriminate against
17 individuals or groups because they hold religious views
18 abhorrent to authorities, ...; nor employ the taxing power
to inhibit the dissemination of particular religious
views,... . (Emphasis added) (Citations omitted)

19 The dissemination of Don Barnett's religious beliefs may not be
20 inhibited by the imposition tort liability. The imposition of
21 such liability would constitute state action which is no
22 different than the employment of taxing power. Such liability is
23 inapposite to the mandate of absolute freedom for religious
24

25 3. See, PLAINTIFF'S FIRST AMENDED COMPLAINT FOR PERSONAL
26 INJURIES AND DAMAGES in SANDY EHRLICH, et. ux., et. al. v. RALPH
27 ALSKOG, et. ux., et. al., 86-2-18429-5, paragraphs 10.1-10.4.
28 See also, FIRST AMENDED COMPLAINT FOR DAMAGES AND EQUITABLE
RELIEF in MAUREEN P. JORGENSEN v. COMMUNITY CHAPEL AND BIBLE
29 TRAINING CENTER, 86-2-26360-8, paragraph 18.

30 MEMO RE DUTY OF CARE : 3
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Conrad Conrad Luchie, P. J.

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1 beliefs.

2 Since a person is absolutely free to hold and disseminate
3 his religious beliefs, a cause of action may not be stated
4 against a minister for a marital breakup based upon religious
5 preaching even in jurisdictions where the tort of alienation of
6 affections is still recognized.⁴ As the Missouri court wrote in
7 Hester v. Barnett⁵:

8 Where, however, the interference involves merely the
9 preachment of doctrine or advocacy of religious faith,
10 without unlawful or improper motive, no paramount state
concern is affected and the alienation is not actionable.

11 Each person is free to accept or reject the religious beliefs of
12 another. No cause of action exists for "brainwashing" based upon
13 religious beliefs or indoctrination and marital disharmony
14 allegedly caused therefrom regardless of attempts by plaintiffs
15 to characterize such a cause of action as infliction of emotional
16 distress or outrage.⁶

17 The preaching of religious beliefs is not subject to
18 analysis with respect to duty, because this right is protected by
19 absolute constitutional privilege and an action may not be based
20 thereon.

21
22
23 4. The state of Missouri still recognizes the tort of
24 alienation of affections. However, Washington does not. See,
25 Wyman v. Wallace, 94 Wn.2d 99, 615 P.2d 452 (1980).

26 5. 723 S.W.2d 544, 555 (Mo.App., 1987).

27 6. Lewis v. Holy Spirit Ass'n for Unification, 589 F.Supp
28 10 (D. Mass., 1983) and Meroni v. Holy Spirit Ass'n for
29 Unification, 119 A.D. 200, 506 N.Y.S.2d 174 (1986).

30 MEMO RE DUTY OF CARE : 4
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James Edward Larkin, D.J.

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1 B. Ministerial Counseling

2 No professional standard of care may be established for
3 church counseling. The imposition of such a standard would
4 require this court to engage in an impermissible inquiry into the
5 beliefs of a particular faith.

6 Washington has not recognized a cause of action for pastoral
7 malpractice. The Supreme Court has said only that it is
8 conceivable that an action may be stated in the setting of
9 ministerial counseling. The court did not address the issue of
10 what the applicable standard of care would be.⁷

11 The Missouri Court of Appeals notes that constitutional
12 limitations may prohibit inquiry into the standard of care, and
13 therefore prevent a cause of action for ministerial malpractice.
14 As the court wrote in Hester v. Barnett⁸:

15 Nally leaves unresolved the unavoidable and more vexatious
16 question: whether a theory of clergy malpractice inevitably
17 implicates the freedom to believe aspect of the free
18 exercise clause, and hence unduly involves courts in matters
19 purely sacerdotal. That is because a theory of malpractice
20 is defined in terms of the duty to act with that degree of
21 skill and learning ordinarily used in the same or similar
22 circumstances by members of that profession. (citation
23 omitted). It is a theory of tort, therefore, which
24 presupposes that every cleric owes the same duty of care,
25 whatever the religious order which granted ordination, or
26 the cleric serves, or the beliefs espoused. It is a theory
27 of tort, moreover, which inevitably involves the court in a
28 judgment of the competence, training, methods and content of
29 the pastoral function in order to determine whether the
30 cleric breached the duty "to act with that degree of skill

31 7. See, Lund v. Caple, 100 Wn.2d 739, 747, 675 P.2d 226 (1984).

32 8. 723 S.W.2d 544, 553 (Mo.App., 1987).

1 and learning ordinarily used in the same or similar
2 circumstance by members of that profession." Thus, the
3 question Nally leaves unanswered is whether pastoral
4 counseling is so ineluctably a function of the particular
5 religion that no one definition of its malpractice can
6 evolve into a standard of professional performance, and is
7 otherwise so purely sacerdotal a function, that it is both
8 unfeasible as a theory of tort and not constitutionally
9 permissible.

10 Previously, only California had imposed a professional duty
11 upon church counselors, and only in the limited setting of
12 dealing with suicidal individuals. In that limited setting, the
13 court of appeals found a paramount state interest allowing
14 interference with religious freedom.⁹ However, this case has
15 been recently reversed without discussion of the constitutional
16 issues.¹⁰

17 This court may not impose a professional standard of care
18 upon church counselors. The imposition of such a standard would
19 require this court to make an impermissible inquiry into the
20 religious beliefs of the Community Chapel and Bible Training
21 Center and a comparison between these beliefs and the beliefs
22 held by Christian counselors of other faiths. None of the above-
23 entitled consolidated actions presents the paramount state
24 interest in protecting potential suicide victims necessary to
25 impose a burden upon religious freedom.

26 2. Liability of Corporate Officers

27 9. Nally v. Grace Com. Church of the Valley, 194
28 Cal.App.3d 1147, 240 Cal.Rptr. 215, 230-237 (1987).

29 10. Nally v. Grace Community Church of the Valley, 253 Cal
30 Rptr. 97, 763 P2d 948 (Cal. Sup. Ct., 1988).

31 MEMO RE DUTY OF CARE : 6
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1 Don Barnett is the spiritual leader and an officer of the
2 Community Chapel and Bible Training Center.

3 As spiritual leader of the church, he cannot be held
4 personally responsible for acts in which he was not personally
5 involved.

6 In Magnuson v. O'Dea, 75 Wash. 574, 135 Pac. 640 (1913), the
7 Washington Supreme Court addressed the alleged vicarious
8 liability of a bishop in the Catholic church for a kidnapping in
9 which he was not personally involved. In that case, the
10 plaintiffs alleged that the bishop should have assumed that his
11 co-defendants were involved in the kidnapping and that some duty
12 devolved upon him to coerce a confession from the guilty parties
13 and return their child. The Supreme Court held that it was error
14 to deny the bishop's motion for a directed verdict in the absence
15 of any evidence that he was personally involved in the
16 kidnapping. The court wrote at page 577:

17 He has committed no legal wrong, and the sins of others
18 cannot be visited upon him. He occupies the same position
19 as would the minister in charge of any other church or the
20 head officer of a fraternal society. Such officials are not
21 responsible for the torts of their brethren unless
22 participated in or ratified or approved by them.

23 As an officer and director of the Community Chapel, Don
24 Barnett may be held personally liable, also, only in limited
25 instances. "This is only appropriate where an officer or
26 director commits or condones a wrongful act in the course of
27 carrying out his duties, . . . , and a lack of good faith can be
28 shown." Schwarzmann v. Apartment Owners, 33 Wn. App. 397, 403,
29 655 P.2d 1177 (Div. I, 1982)(citations omitted).

30 The general, if not the universal, rule is that an

31 MEMO RE DUTY OF CARE : 7
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1 officer of a corporation who takes part in the
2 commission of a tort by the corporation is personally
3 liable therefor; but that an officer of a corporation
4 who takes no part in the commission of a tort committed
5 by the corporation is not personally liable to third
6 parties for such tort, nor for the acts of other
7 officers, agents, or employees of the corporation in
8 committing it, unless he specifically directed the
9 particular act to be done, or participated or
10 cooperated therein.

11 Messenger v. Frye, 176 Wn. 291, 295, 28 P.2d 1023 (1934). See
12 also Johnson v. Harrigan-Peach Dev. Co., 79 Wn. 2d 745, 753, 489
13 P.2d 923 (1971).

14 A number of the claims in the above entitled consolidated
15 lawsuits are based upon the alleged acts of persons within the
16 Community Chapel and Bible Training Center other than Don
17 Barnett. Plaintiffs claim that Don Barnett is personally liable
18 for these acts since they were allegedly committed under the
19 doctrine of Spiritual Connections which Don preached. As
20 discussed herein, liability cannot be based upon religious
21 preaching. Don Barnett may be held personally liable only if he
22 actually participated in the alleged act or specifically directed
23 it. He cannot be roped into liability through a general attack
24 upon his religious beliefs which may have been misused by other
25 parties.

26 CONCLUSION

27 Don Barnett's personal liability in the above entitled
28 consolidated actions is limited. He may be held personally
29 liable only for alleged acts which he committed or specifically
30 directed.

31 This court cannot impose a duty of care upon a pastor for

32 MEMO RE DUTY OF CARE : 8
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Seattle, Washington

1 his religious preaching. This right is absolutely protected from
2 such state interference. Consequently, no duty may be imposed
3 upon Don Barnett in relationship to his preaching the religious
4 belief of Spiritual Connections.

5 Similarly, this court cannot impose a professional standard
6 of care upon church counseling. The imposition of such a
7 standard would cause the court to engage in an impermissible
8 inquiry into the beliefs of the Community Chapel and a comparison
9 of these beliefs with those held by other faiths.

10 DATED this 20th day of December, 1988.

11 EVANS, CRAVEN & LACKIE, P.S.

12
13 By Tim Donaldson for
14 JIM CRAVEN

15
16 By Tim Donaldson
17 TIM DONALDSON
18 Attorneys for defendants
19 Barnett

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29 MEMO RE DUTY OF CARE : 9
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Evans, Craven & Lackie, P.S.

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1989 10/15/88

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NO. 86-2-18176-8

KATHY LEE BUTLER, et

Plaintiff AFFIDAVIT OF SERVICE OF:

vs.

SEE ATTACHED DOCUMENTS

DONALD LEE BARNETT, et ux.,

Defendants.

STATE OF WASHINGTON (X) A copy of the summons served
COUNTY OF KING is attached hereto.

The undersigned, being first duly sworn, on oath deposes and says: That he is now and at all times herein mentioned was a citizen of the United States and resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above entitled action and competent to be a witness therein.

That on 12-20-88, at the hour of 9:15 A.M., at the address of 4301 South Pine Street, Tacoma, WA affiant duly served the above-described documents in the above entitled matter upon JACK G. ROSENOW by then and there personally delivering a true and correct copy thereof to and leaving same with MARIAN INGENGEL

RESIDENCE SERVICE

That at the time and place set forth above affiant duly served the above described documents in the above entitled matter upon _____ by then and there, at the residence and usual place of abode of said person(s), personally delivering _____ true and correct copy(ies) thereof to and leaving the same with _____

being a person of suitable age and discretion then resident therein.

Robert Miller

Subscribed and Sworn to before me 12-20-88

Edward J. West

WEST COURIER EXPRESS
314 1/2 Boren Avenue South
Seattle, WA 98144
322-1597

NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

PRESTON, THORGRIMSON

Service Fees 15.00 Travel 4.00 Return 5.00 Other 1.00 Total 25.00

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

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

NO. 86-2-18176-8
MEMORANDUM OF PLAINTIFF
MAUREEN P. JORGENSEN
OPPOSING DEFENDANTS BARNETTS'
MOTION FOR PROTECTIVE ORDER

SANDY EHRLICH, et vir., et)
al.,)
Plaintiffs,)
vs.)
RALPH ALSKOG, et ux., et)
al.,)
Defendants.)

MAUREEN P. JORGENSEN,)
Plaintiff,)
vs.)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et al.)
Defendants.)

JORGENSEN MEMORANDUM
OPPOSING BARNETTS' MOTION
FOR PROTECTIVE ORDER

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

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

Plaintiffs,

vs.

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

Defendants.

SANDY EHRLICH, et vir., et
al.,

Plaintiffs,

vs.

RALPH ALSKOG, et ux., et
al.,

Defendants.

MAUREEN P. JORGENSEN,

Plaintiff,

vs.

COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al.

Defendants.

NO. 86-2-18176-8

MEMORANDUM OF PLAINTIFF
MAUREEN P. JORGENSEN
OPPOSING DEFENDANTS BARNETTS'
MOTION FOR PROTECTIVE ORDER

JORGENSEN MEMORANDUM
OPPOSING BARNETTS' MOTION
FOR PROTECTIVE ORDER

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

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

Plaintiffs,

vs.

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

Defendants.

NO. 86-2-18176-8

MEMORANDUM OF PLAINTIFF
MAUREEN P. JORGENSEN
OPPOSING DEFENDANTS BARNETTS'
MOTION FOR PROTECTIVE ORDER

SANDY EHRLICH, et vir., et
al.,

Plaintiffs,

vs.

RALPH ALSKOG, et ux., et
al.,

Defendants.

MAUREEN P. JORGENSEN,

Plaintiff,

vs.

COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al.

Defendants.

JORGENSEN MEMORANDUM
OPPOSING BARNETTS' MOTION
FOR PROTECTIVE ORDER

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

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

Plaintiffs,

vs.

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

Defendants.

NO. 86-2-18176-8

MEMORANDUM OF PLAINTIFF
MAUREEN P. JORGENSEN
OPPOSING DEFENDANTS BARNETTS'
MOTION FOR PROTECTIVE ORDER

SANDY EHRLICH, et vir., et
al.,

Plaintiffs,

vs.

RALPH ALSKOG, et ux., et
al.,

Defendants.

MAUREEN P. JORGENSEN,

Plaintiff,

vs.

COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al.

Defendants.

JORGENSEN MEMORANDUM
OPPOSING BARNETTS' MOTION
FOR PROTECTIVE ORDER

FILED

1988 DEC 20 PM 3:26

86-2-18176-8

1 KATHY LEE BUTLER, et vir.,

2 Plaintiff,) AFFIDAVIT OF SERVICE OF:
3) SUPERIOR COURT)
4) SEATTLE, WA) SEE ATTACHED DOCUMENTS

4 vs.)

5 DONALD LEE BARNETT, et ux.,)

6 Defendant.)
7)
8)

9 STATE OF WASHINGTON (X) A copy of the summons served
10 COUNTY OF KING is attached hereto.

11 The undersigned, being first duly sworn, on oath deposes
12 and says: That he is now and at all times herein mentioned was
13 a citizen of the United States and resident of the State of
14 Washington, over the age of eighteen years, not a party to or
15 interested in the above entitled action and competent to be a
16 witness therein.

16 That on 12-20-88, at the hour of 9:21 A.M., at
17 the address of 200 Benjamin Franklin Bldg., 4002 Tacoma Mall Bldg.,
18 Tacoma, WA
19 affiant duly served the above-described documents in the above
20 entitled matter upon JIM MESSINA, ESQUIRE

20 by then and there personally delivering a true and correct copy
21 thereof to and leaving same with SARA SPEES

22 **RESIDENCE SERVICE**

23 That at the time and place set forth above affiant duly
24 served the above described documents in the above entitled
25 matter upon _____
26 by then and there, at the residence and usual place of abode of
27 said person(s), personally delivering _____ true and correct
28 copy(ies) thereof to and leaving the same with _____
29 _____

30 being a person of suitable age and discretion then resident
31 therein.

32 *Robert Nick*

33 Subscribed and Sworn to before me 12-20-88

34 *Edward J. West*

35 WEST COURIER EXPRESS
36 314 1/2 Boren Avenue South
Seattle, WA 98144
322-1597

NOTARY PUBLIC in and for the State
of Washington, residing at Seattle.

PRESTON, THORGRIMSON

Service
Fees 15.00 Travel 10.00 Return 5.00 Other 1.00 Total 31.00

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

KATHY LEE BUTLER, et vir.,)
et al.,)
Plaintiffs,)
v.)
DONALD LEE BARNETT, et ux.,)
et al.,)
Defendants.)

Consolidated

No. 86-2-18176-8

JORGENSEN'S RESPONSE IN
OPPOSITION TO AMERICAN
CASUALTY'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

Hearing Date:
December 22, 1988,
3:00 p.m.

SANDY EHRLICH, et vir., et)
al.,)
Plaintiffs,)
v.)
RALPH ALSKOG, et ux., et)
al.,)
Defendants.)

MAUREEN P. JORGENSEN,)
Plaintiff,)
v.)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et al.,)
Defendants.)

JORGENSEN'S RESPONSE IN OPPOSITION
TO AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 1

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

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

Plaintiffs,)

v.)

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

Defendants.)

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

Plaintiffs,)

v.)

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

Defendants.)

MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

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

Defendants.)

Consolidated

No. 86-2-18176-8

JORGENSEN'S RESPONSE IN
OPPOSITION TO AMERICAN
CASUALTY'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

Hearing Date:
December 22, 1988,
3:00 p.m.

JORGENSEN'S RESPONSE IN OPPOSITION
TO AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 1

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

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

Plaintiffs,)

v.)

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

Defendants.)

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

Plaintiffs,)

v.)

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

Defendants.)

MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

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

Defendants.)

Consolidated

No. 86-2-18176-8

JORGENSEN'S RESPONSE IN
OPPOSITION TO AMERICAN
CASUALTY'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

Hearing Date:
December 22, 1988,
3:00 p.m.

JORGENSEN'S RESPONSE IN OPPOSITION
TO AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 1

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

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

Plaintiffs,)

v.)

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

Defendants.)

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

Plaintiffs,)

v.)

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

Defendants.)

MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

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

Defendants.)

Consolidated

No. 86-2-18176-8

JORGENSEN'S RESPONSE IN
OPPOSITION TO AMERICAN
CASUALTY'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

Hearing Date:
December 22, 1988,
3:00 p.m.

JORGENSEN'S RESPONSE IN OPPOSITION
TO AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 1

FILED

NO. 86-2-18176-8

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KATHY LEE BUTLER, et ux,

Plaintiff,

vs.

DONALD LEE BARNETT, et ux.,

Defendants.

1989 DEC 20 PM 3 25
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

AFFIDAVIT OF SERVICE OF:
SEE ATTACHED DOCUMENTS

9 STATE OF WASHINGTON (X) A copy of the summons served
10 COUNTY OF KING is attached hereto.

11 The undersigned, being first duly sworn, on oath deposes
12 and says: That he is now and at all times herein mentioned was
13 a citizen of the United States and resident of the State of
14 Washington, over the age of eighteen years, not a party to or
15 interested in the above entitled action and competent to be a
witness therein.

16 That on 12-20-88, at the hour of 10:22 A.M., at
17 the address of 2200 - 112th Ave., N.E. #200, Bellevue, WA
18 affiant duly served the above-described documents in the above
19 entitled matter upon DON M. GULLIFORD, ESQUIRE
20 by then and there personally delivering a true and correct copy
21 thereof to and leaving same with ANITA MILLER

RESIDENCE SERVICE

23 That at the time and place set forth above affiant duly
24 served the above described documents in the above entitled
25 matter upon _____
26 by then and there, at the residence and usual place of abode of
27 said person(s), personally delivering _____ true and correct
28 copy(ies) thereof to and leaving the same with _____
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30 being a person of suitable age and discretion then resident
31 therein.

Robert Nilsen

32 Subscribed and Sworn to before me 12-20-88

33
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35 WEST COURIER EXPRESS
36 314½ Boren Avenue South
Seattle, WA 98144
322-1597
PRESTON, THORGRIMSON

Edward G. West
NOTARY PUBLIC in and for the State
of Washington, residing at Seattle.

Service
Fees 15.00 Travel 27.00 Return 5.00 Other 1.00 Total 48.00

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

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

Plaintiffs,)

v.)

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

Defendants.)

Consolidated

No. 86-2-18176-8

AFFIDAVIT OF SERVICE
BY MAIL

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

Plaintiffs,)

v.)

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

Defendants.)

MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

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

Defendants.)

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

AFFIDAVIT OF SERVICE
BY MAIL - 1

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

KATHY LEE BUTLER, et vir.,)
et al.,)
Plaintiffs,)
v.)
DONALD LEE BARNETT, et ux.,)
et al.,)
Defendants.)

Consolidated
No. 86-2-18176-8
AFFIDAVIT OF SERVICE
BY MAIL

SANDY EHRLICH, et vir., et)
al.,)
Plaintiffs,)
v.)
RALPH ALSKOG, et ux., et)
al.,)
Defendants.)

MAUREEN P. JORGENSEN,)
Plaintiff,)
v.)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et al.,)
Defendants.)

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

AFFIDAVIT OF SERVICE
BY MAIL - 1

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

KATHY LEE BUTLER, et vir.,)
et al.,)
Plaintiffs,)
v.)
DONALD LEE BARNETT, et ux.,)
et al.,)
Defendants.)

Consolidated
No. 86-2-18176-8
AFFIDAVIT OF SERVICE
BY MAIL

SANDY EHRLICH, et vir., et)
al.,)
Plaintiffs,)
v.)
RALPH ALSKOG, et ux., et)
al.,)
Defendants.)

MAUREEN P. JORGENSEN,)
Plaintiff,)
v.)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et al.,)
Defendants.)

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

AFFIDAVIT OF SERVICE
BY MAIL - 1

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

KATHY LEE BUTLER, et vir.,)
et al.,)
Plaintiffs,)
v.)
DONALD LEE BARNETT, et ux.,)
et al.,)
Defendants.)

Consolidated
No. 86-2-18176-8
AFFIDAVIT OF SERVICE
BY MAIL

SANDY EHRLICH, et vir., et)
al.,)
Plaintiffs,)
v.)
RALPH ALSKOG, et ux., et)
al.,)
Defendants.)

MAUREEN P. JORGENSEN,)
Plaintiff,)
v.)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et al.,)
Defendants.)

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

AFFIDAVIT OF SERVICE
BY MAIL - 1

FILED

NO. 86-2-18176-8

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KATHY LEE BUTLER, et vir.,
Plaintiff,
vs.
DONALD LEE BARNETT, et ux.,
Defendants.

DEC 20 PM 3:25
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

AFFIDAVIT OF SERVICE OF:
SEE ATTACHED DOCUMENTS

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STATE OF WASHINGTON (X) A copy of the summons served
COUNTY OF KING is attached hereto.

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The undersigned, being first duly sworn, on oath deposes and says: That he is now and at all times herein mentioned was a citizen of the United States and resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above entitled action and competent to be a witness therein.

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That on 12-20-88, at the hour of 9:36 A.M., at the address of 625 Commerce Street, Tacoma, WA affiant duly served the above-described documents in the above entitled matter upon JOHN S. GLASSMAN by then and there personally delivering a true and correct copy thereof to and leaving same with JOHN S. GLASSMAN

RESIDENCE SERVICE

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That at the time and place set forth above affiant duly served the above described documents in the above entitled matter upon _____ by then and there, at the residence and usual place of abode of said person(s), personally delivering _____ true and correct copy(ies) thereof to and leaving the same with _____

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being a person of suitable age and discretion then resident therein.

Robert Hill

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Subscribed and Sworn to before me 12-20-88

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WEST COURIER EXPRESS
314 1/2 Boren Avenue South
Seattle, WA 98144
322-1597
PRESTON, THORGRIMSON

Edmond R. Wiley
NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

Service

Fees 15.00 Travel 48.00 Return 5.00 Other 1.00 Total 69.00

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

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

Plaintiffs,)

v.)

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

Defendants.)

Consolidated

No. 86-2-18176-8

AFFIDAVIT OF SUSAN DELANTY
JONES IN SUPPORT OF
JORGENSEN'S RESPONSE TO
AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY

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

Plaintiffs,)

v.)

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

Defendants.)

MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

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

Defendants.)

AFFIDAVIT OF SUSAN DELANTY JONES IN
SUPPORT OF JORGENSEN'S RESPONSE
TO AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 1

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

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

Plaintiffs,)

v.)

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

Defendants.)

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

Plaintiffs,)

v.)

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

Defendants.)

_____)
MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

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

Defendants.)

Consolidated

No. 86-2-18176-8

AFFIDAVIT OF SUSAN DELANTY
JONES IN SUPPORT OF
JORGENSEN'S RESPONSE TO
AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY

AFFIDAVIT OF SUSAN DELANTY JONES IN
SUPPORT OF JORGENSEN'S RESPONSE
TO AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 1

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

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

Plaintiffs,)

v.)

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

Defendants.)

Consolidated

No. 86-2-18176-8

AFFIDAVIT OF SUSAN DELANTY
JONES IN SUPPORT OF
JORGENSEN'S RESPONSE TO
AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY

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

Plaintiffs,)

v.)

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

Defendants.)

MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

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

Defendants.)

AFFIDAVIT OF SUSAN DELANTY JONES IN
SUPPORT OF JORGENSEN'S RESPONSE
TO AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 1

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

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

Plaintiffs,

v.

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

Defendants.

Consolidated

No. 86-2-18176-8

AFFIDAVIT OF SUSAN DELANTY
JONES IN SUPPORT OF
JORGENSEN'S RESPONSE TO
AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY

SANDY EHRLICH, et vir., et
al.,

Plaintiffs,

v.

RALPH ALSKOG, et ux., et
al.,

Defendants.

MAUREEN P. JORGENSEN,

Plaintiff,

v.

COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al.,

Defendants.

AFFIDAVIT OF SUSAN DELANTY JONES IN
SUPPORT OF JORGENSEN'S RESPONSE
TO AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 1

FILED

1988 DEC 20 AM 11:21

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

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

Plaintiffs,

v.

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

Defendants.

Consolidated

No. 86-2-18176-8

AFFIDAVIT OF SERVICE
BY MAIL

SANDY EHRLICH, et vir., et
al.,

Plaintiffs,

v.

RALPH ALSKOG, et ux., et
al.,

Defendants.

MAUREEN P. JORGENSEN,

Plaintiff,

v.

COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al.,

Defendants.

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

AFFIDAVIT OF SERVICE
BY MAIL - 1

ORIGINAL

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
5400 COLUMBIA SEAFIRST CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7011
(206) 623-7580

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

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

I, Kristi L. deRham duly sworn on oath deposes and says:
That I am a citizen of the United States and a resident of
the State of Washington, over the age of twenty-one years and
not a party to this action; that on the 19th day of December,
1988, I caused a copy of the following:

1. Jorgensen's Response in Opposition to American Casualty's Motion for Partial Summary Judgment;
2. Affidavit of Susan Delanty Jones in Support of Jorgensen's Response to American Casualty's Motion for Partial Summary Judgment; and
3. Memorandum of Plaintiff Maureen P. Jorgensen Opposing Defendants Barnettts' Motion for Protective Order

AFFIDAVIT OF SERVICE
BY MAIL - 2

1 to be deposited in the United States Mail in an envelope with
2 first class postage prepaid, addressed to each of the parties
3 listed on Exhibit A attached hereto.

Kristi L. deRham

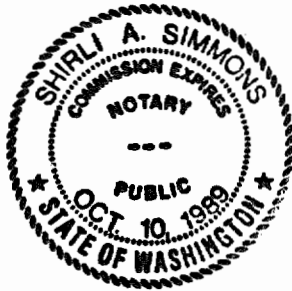
Kristi L. deRham

5 SIGNED AND SWORN to before me this 19th day of December,
6 1988, by Kristi L. deRham.

Shirli A. Simmons

NOTARY PUBLIC

My Appointment Expires: 10-10-89



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AFFIDAVIT OF SERVICE
BY MAIL - 3

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
5400 COLUMBIA SEAFIRST CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7011
(206) 623-7580

EXHIBIT A

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Donald Hall
P. O. Box 168
Big Fork, Montana 59911
Pro Se - Plaintiff

Carl A. Peterson
4203 South 172nd
Seattle, WA 98188
Pro Se - Plaintiff

AFFIDAVIT OF SERVICE
BY MAIL - 4

LAW OFFICES OF
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5400 COLUMBIA SEAFIRST CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7011
(206) 623-7580

FILED

1988 DEC 20 AM 11:21

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

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

Plaintiffs,)

v.)

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

Defendants.)

Consolidated

No. 86-2-18176-8

AFFIDAVIT OF SUSAN DELANTY
JONES IN SUPPORT OF
JORGENSEN'S RESPONSE TO
AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY

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

Plaintiffs,)

v.)

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

Defendants.)

MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

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

Defendants.)

AFFIDAVIT OF SUSAN DELANTY JONES IN
SUPPORT OF JORGENSEN'S RESPONSE
TO AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 1

ORIGINAL

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
5400 COLUMBIA SEAFIRST CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7011
(206) 623-7580

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AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

Plaintiff,

v.

KATHY LEE BUTLER, et al.,

Defendants.

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

Plaintiff,

v.

KATHY LEE BUTLER, et al.,

Defendants.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

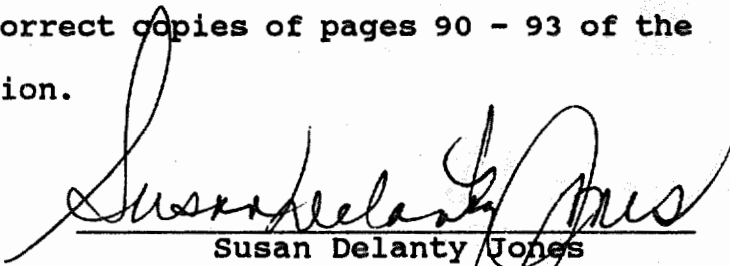
Susan Delanty Jones, being first duly sworn, on oath,
deposes and says:

1. I am one of the attorneys for plaintiff and
declaratory judgment defendant Maureen Jorgensen, and make this
affidavit on my own personal knowledge.

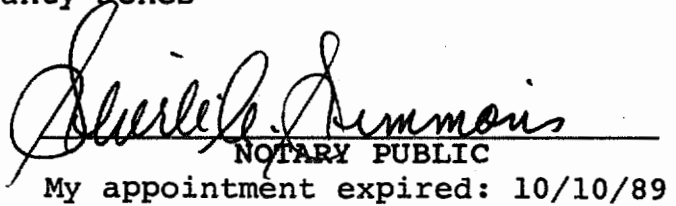
2. Attached as Exhibit 1 is a copy of page 9 of
Jorgensen's First Amended Complaint filed March 14, 1980.

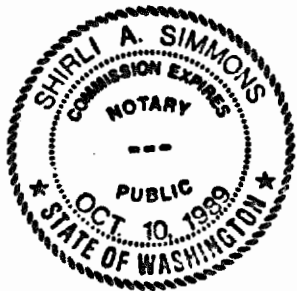
AFFIDAVIT OF SUSAN DELANTY JONES IN
SUPPORT OF JORGENSEN'S RESPONSE
TO AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 2

1 3. On December 9, 1988, I defended the deposition of
2 Jorgensen at my firm's offices in Seattle, Washington. Attached
3 as Exhibit 2 are true and correct copies of pages 90 - 93 of the
4 transcript of that deposition.

5
6 
Susan Delanty Jones

7 SUBSCRIBED AND SWORN to before me this 19th day of
8 December, 1988, by Susan Delanty Jones

9
10 
NOTARY PUBLIC
My appointment expired: 10/10/89



AFFIDAVIT OF SUSAN DELANTY JONES IN
SUPPORT OF JORGENSEN'S RESPONSE
TO AMERICAN CASUALTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 3

1 plaintiff has suffered severe emotional distress and is entitled
2 to recover damages, rescind the parties' agreement and recover
3 funds still held by CCBTC.

4 Third Claim for Relief: Infliction of Emotional Distress

5 26. Plaintiff realleges paragraphs 1 through 25 as is fully
6 set forth in this paragraph 26.

7 27. As stated above, the acts and conduct of CCBTC, by and
8 through its pastor and president, Donald Barnett, were per-
9 petrated so as to intentionally, recklessly, and/or negligently
10 inflict severe emotional distress upon plaintiff, with the
11 knowledge that such distress was certain or substantially certain
12 to result from defendants' outrageous conduct.

13 28. As a direct and proximate result of defendants' con-
14 duct, plaintiff suffered severe emotional distress, was greatly
15 humiliated, shamed and embarrassed, and endured great pain and
16 suffering.

17 29. By reason of the foregoing, plaintiff has sustained
18 general damages, was required to and did incur reasonable and
19 necessary expenses in connection with treatment of her personal
20 injuries.

21 30. As a direct and proximate result of the intentional,
22 reckless, and/or negligent wrongful acts and omissions of the
23 defendants, and each of them, plaintiff is entitled to actual
24 damages, damages for continuing pain and suffering and attorneys'
25 fees.
26

1 A. I'm trying to establish what kind of detail you want.

2 Q. What did Pastor Barnett say publicly about you?

3 A. He said, "Maureen, remember our talk last night? You
4 have demons of suicide, rebelliousness, and jealousy, and you
5 are having these stomach convulsions because you are giving
6 into jealousy and anxiety and fear," screaming at me. And I
7 tried so hard all of those years to submit to him.

8 (Short break.)

9 Q. Mrs. Jorgensen, the statement that you've described
10 made by Pastor Barnett, is that the entire statement?

11 A. Well, no. It went on and on for quite a while. And
12 he was yelling, but it sort of got louder and louder, because
13 he was rebuking me and he was yelling, and then I think he
14 walked towards me with a microphone, and so, because the next
15 thing I knew, he was there, and he was grabbing me and shaking
16 me and screaming at the demons. Me, screaming at me. It
17 seemed like he wanted to kill me. I felt like he was killing
18 me.

19 Q. Were you frightened?

20 A. Well, I had stomach convulsions, and all I had done
21 was asked for somebody to pray for me, a girl that was next to
22 me, and then all of this happened so unexpected, that it
23 shocked me. And I think I went into a state of just shock.

24 Q. Can you tell me when this was?

25 A. It was on a Friday night, and I think that it was the

1 beginning of October, and it was either the last Friday night
2 in September or the first Friday night in October. I at least
3 was able to establish that.

4 Q. In 1985?

5 A. A little bit later. Yes. As I -- because I tried to
6 go check out a tape -- I don't know why I wanted to do that.
7 But anyway, because I couldn't believe what had happened to me.

8 Q. Did you go check out the tape?

9 A. They said that it wasn't -- that it had been erased,
10 or didn't turn out, or something. They wouldn't let me have
11 it.

12 Q. Do you recall who you went to see to check out the
13 tape?

14 A. It was a tape library. No, I don't remember who.

15 Q. Was this very long after? Was this a couple weeks
16 later? Was it the next day? Do you recall how long afterwards
17 it was?

18 A. It wasn't very soon after. It was about a month.

19 Q. Did you stop attending the Chapel at that point?

20 A. I did not.

21 Q. Did you continue attending the Chapel after that?

22 A. After that, I was suffering from depression, and I
23 was suffering from infection, and I was suffering from physical
24 fatigue, chest pains, lower back pains, and things like that,
25 and I was not feeling up to much activity, but I did try to

1 keep going after that. I was afraid that these demons that Don
2 said I had, that I was going to kill myself, and I was afraid
3 of going to hell, so -- and the only life that I knew, the only
4 people I knew were there, and I thought that I had to go there
5 to get help. But when I'd go, I'd just be miserable and cry a
6 lot.

7 Q. How much longer did you continue going to the Chapel
8 after the end of September, 1985?

9 A. Well, I remember in a service in October, I remember
10 being there because, I remember Maureen Sabourin coming up to
11 me. I remember this, so I must have been there in to
12 November. But then I went into the hospital in December, so I
13 didn't go to many in November. I went into the hospital in
14 December sick, so I don't think that I went to many after that,
15 but I remember the cutoff time being very distinctly -- I mean,
16 I never went any more after January something. I know I never
17 went again. There was a point where I just couldn't go even if
18 I tried to force myself. I just could not go.

19 Q. Why not?

20 A. I just couldn't stand to be there. I had been the
21 last -- the last time I went, I was sitting in the middle of
22 the aisle, and I was crying, and a man that was at the church,
23 he pushed me up into the back room and he started telling me I
24 had to give everything up and I had to give my husband up and
25 go to Gethsemane, and he started French kissing me, and it made

1 me sick and I wanted to go home, and I was afraid to go back
2 there because I never knew what was going to happen to me.

3 Q. Anything like that ever happen to you at the Chapel
4 before?

5 A. No.

6 Q. Did you know who this man was?

7 A. Yes.

8 Q. Who was he?

9 A. His name was Bob Hardman.

10 Q. Did he attend the Chapel?

11 A. Yes. I asked him to let me go home, please.

12 Q. Did he?

13 A. Finally.

14 Q. You were in the hospital in December 1985?

15 A. Yes.

16 Q. Why was that?

17 A. I had complained to my doctor about all these things
18 that I had. I had all these pains and sickness and nausea and
19 insomnia, and I couldn't eat. And I was basically just
20 physically a wreck. And he wanted to check me out; see what he
21 could find.

22 Q. What was your doctor's name at that time?

23 A. Dr. Philbrick, I believe was the one who --
24 Dr. Philbrick, P-h -- I don't know how to spell it.

25 Q. And where did he put you in terms of the hospital?

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

CIVIL TRACK ONE

The Honorable John W. Riley

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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

2 Plaintiffs,)

3 v.)

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

5 Defendants, Third)

6 Party Plaintiffs,)

7 v.)

8 GARY LIEN,)

9 Third Party Defendant.)

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

11 Plaintiffs,)

12 v.)

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

14 Defendants.)

15 MAUREEN P. JORGENSEN,)

16 Plaintiff,)

17 v.)

18 COMMUNITY CHAPEL AND BIBLE)

19 TRAINING CENTER, et al.,)

20 Defendants.)

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

NOTICE OF WITHDRAWAL OF
MOTION TO INTERVENE IN
REGARD TO MOTION BY
DONALD LEE BARNETT AND
BARBARA BARNETT FOR A
PROTECTIVE ORDER SEALING
THEIR DEPOSITIONS

HEARING DATE:

December 22, 3:00 P.M.

204 *cp*

21 NOTICE OF WITHDRAWAL OF MOTION TO
22 INTERVENE IN MOTION FOR PROTECTIVE ORDER--1

GRAHAM & DUNN
34TH FLOOR, RAINIER BANK TOWER
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2653
(206) 624-8300

1 Fisher Broadcasting Inc., owner and operator of KOMO TV,
2 hereby withdraws its prior request to the Court pursuant to
3 CR 24(a)(2) to permit it to intervene for the limited purpose of
4 participating in argument on the motion of defendants Donald and
5 Barbara Barnett for a protective order sealing their depositions
6 in the above-entitled consolidated actions. Fisher Broadcasting
7 withdraws its motion without waiving any rights to object at a
8 later date to any protective order entered herein.

9 DATED: December 20, 1988.

10 GRAHAM & DUNN

11
12 By Alice F. Gustafson
13 Michael E. Kipling
14 Alice F. Gustafson

15 Attorneys for Defendants
16 FISHER BROADCASTING INC.

17
18
19
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25
26
afg/f

NOTICE OF WITHDRAWAL OF MOTION TO
INTERVENE IN MOTION FOR PROTECTIVE ORDER--2

GRAHAM & DUNN
34TH FLOOR, RAINIER BANK TOWER
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2053
(206) 624-8300

Dec 20, 1988

KING COUNTY DEC 20 1988

SUPERIOR COURT CLERK MELISSA R. KEATING DEPUTY

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

KATHY LEE BUTLER, and STEVEN L. BUTLER, wife and husband, and the marital community composed thereof; et al.,

Plaintiffs,

v.

DONALD LEE BARNETT and BARBARA BARNETT, husband and wife, and the marital community composed thereof; et al.,

Defendants.

SANDY EHRLICH and MICHAEL EHRLICH, wife and husband; et al.,

Plaintiffs,

v.

RALPH ALSKOG and ROSEMARY ALSKOG, husband and wife; et al.,

Defendants.

MAUREEN P. JORGENSEN,

Plaintiff,

v.

COMMUNITY CHAPEL AND BIBLE TRAINING CENTER, a Washington non profit corporation; et al.,

Defendants.

////////

PRELIMINARY MEMO OF AUTH RE: STANDARD OF CARE - 1

NO. 86-2-18176-8
86-2-18429-5
86-2-26360-8
(consolidated)

PRELIMINARY MEMORANDUM OF AUTHORITY RE: STANDARD OF CARE

CIVIL TRACK I

LEE, SMART, COOK, MARTIN & PATTERSON, P.S., INC. ATTORNEYS AT LAW 800 WASHINGTON BUILDING 1325 FOURTH AVENUE SEATTLE, WASHINGTON 98101 (206) 624-7990 · FACSIMILE (206) 624-5944

2044

1 I. INTRODUCTION

2 The court has requested preliminary memoranda of authority
3 as to duties and standards of care applicable to clergy and church
4 board members to members of a religious congregation. The Community
5 Chapel & Bible Training Center therefore submits this Preliminary
6 Memorandum of Authority.

7 The question appears to pre-suppose the existence of any
8 duty and/or a standard of care with respect to all types of
9 activities; however, there is in the cases a distinction between
10 beliefs and activities and this memorandum adopts that distinction.

11 II.

12 THE FREEDOM TO RELIGIOUS BELIEF AND THE FREEDOM TO
13 DISSEMINATE RELIGIOUS BELIEF IS ABSOLUTELY PROTECTED.

14 First, it must be recognized that the imposition of tort
15 liability constitutes State action which is subject to the
16 limitations of the First Amendment to the United States Constitution
17 and Article 1, Section 11, to the Washington State Constitution. The
18 imposition of tort liability is subject to the defense of
19 constitutional privilege. Paul v. Watchtower Bible & Tract Society of
20 New York, 819 Fed.2d 875 (9th Cir., 1987).

21 The free exercise clause protects freedom to believe and
22 freedom to act. Only an individual's conduct and freedom to act may
23 be regulated:

24 Thus, the Amendment embraces two concepts, freedom to
25 believe and freedom to act. The first is absolute but, in

PRELIMINARY MEMO OF AUTH
RE: STANDARD OF CARE - 2

LEE, SMART, COOK, MARTIN & PATTERSON, P.S., INC.
ATTORNEYS AT LAW
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1325 FOURTH AVENUE
SEATTLE, WASHINGTON 98101
(206) 624-7990 · FACSIMILE (206) 624-5944

1 the nature of things, the second cannot be. Conduct remains
2 subject to the regulation for the protection of society.

3 Cantwell v. State of Connecticut, 310 U.S. 296 (1940), quoted with
4 approval in State Ex Rel Holcomb v. Armstrong, 39 Wn.2d 860. Our
5 Supreme Court, in State Ex Rel Holcomb v. Armstrong, Id., sites
6 Cantwell, Supra., for the proposition that religious freedom can be
7 restricted only to prevent grave and immediate danger to interests
8 which the State may lawfully protect. Our appellate court has also
9 warned that the First Amendment to the United States Constitution
10 prohibits the court from entangling itself in matters of church
11 doctrine and practice. Organization of Lutherans v. Mason, 49 Wn.
12 App. 441, 743 P.2d 848 (1987). One compelling reason for the courts
13 to stay completely out of matters of church doctrine and practice is
14 the fact that one man's comfort and inspiration is another's jest and
15 scorn. West Virginia State Board of Education v. Barnette, 319 U.S.
16 624 (1943).

17 There can be no legitimate claim that the Community Chapel
18 & Bible Training Center, its pastor, its board of directors, and its
19 members are absolutely entitled to believe in any religious doctrine
20 they choose and, further, that in the event those religious doctrines
21 cause a person discomfort, the Constitution specifically prohibits
22 the imposition of liability for infliction of emotional distress.

23 III.

24 THE STANDARD OF CARE WITH RESPECT TO PHYSICAL ACTIVITIES IS
25 GOVERNED BY WELL ESTABLISHED PRINCIPLES OF LAW, WITH ONE EXCEPTION.

PRELIMINARY MEMO OF AUTH
RE: STANDARD OF CARE - 3

LEE, SMART, COOK, MARTIN & PATTERSON, P.S., INC.
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1 Other than that claim of negligence referred to as
2 "pastoral malpractice", the standard of care of the duties owed by a
3 church or its board of directors to the congregation are described in
4 well established principles of law.

5 There is no tort of pastoral malpractice. When confronted
6 with the opportunity to create such a tort, the Supreme Court
7 specifically refused to rule on the issue. Lund v. Caple, 100 Wn.2d
8 739 (1984). Such a tort would necessarily arise out of the religious
9 teachings and beliefs of the particular church or pastor involved and
10 the claim would be predicated on the following contentions:

- 11 (1) I came to you seeking God.
- 12 (2) You told me you knew God's Will.
- 13 (3) I relied on you to show me God.
- 14 (4) You did not show me God.
- 15 (5) I was damaged by my reliance.

16 Any claim of pastor malpractice is predicated on the referenced
17 contentions. Although there would certainly be difficulties with
18 respect to each of the elements insofar as the reliability of proof
19 which would be submitted, no claimant will under any circumstance be
20 able to prove, on a more-likely-than-not basis, the fourth
21 contention: that is, that the pastor did not, in fact, know God's
22 Will and did not, in fact, reveal God's Will.

23 As Justice Jackson wrote in his concurring opinion in
24 Prince v. Massachusetts, 321 U.S. 158 (1944), "Religious activities
25 which concern only members of the faith are and ought to be free as

PRELIMINARY MEMO OF AUTH
RE: STANDARD OF CARE - 4

LEE, SMART, COOK, MARTIN & PATTERSON, P.S., INC.
ATTORNEYS AT LAW
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1325 FOURTH AVENUE
SEATTLE, WASHINGTON 98101
(206) 624-7990 - FACSIMILE (206) 624-8944

1 nearly absolutely free as anything can be."

2 Outside of the realm of "pastor malpractice", all other
3 activities of a pastor or board member, or any other member of the
4 congregation of a church, are goverened by the standards of care
5 which apply to any other actor without regard to the existence of a
6 church or particular religious beliefs.

7 There can be no contention that a church and its board of
8 directors may determine who is entitled to participate in services.
9 The law is well settled that the proprietor of a place to which a
10 person was invited may request the person to leave and, upon
11 non-compliance, the proprietor may use such force as is necessary to
12 eject the disturber. Crouch v. Ringer, 110 Wash. 612 (1920), Austin
13 v. Metropolitan Life, 106 Wah. 371, Huret v. Teufel, 62 Wn.2d 761
14 (1963).

15 Under the doctrine of respondeat superior, the employer may
16 be held vicariously liable only for those acts of misconduct within
17 the scope of employment. Kyreacos v. Smith, 89 Wn. 2d 425 (1977),
18 John Does v. Comp Care, Inc., 51 Wn. App. 923 (1988). Under the
19 concepts of negligent supervision, the employer may be held liable
20 for acts beyond the scope of employment if the employer has prior
21 knowledge of the dangerous tendencies of its employee. LaLone v.
22 Smith, 39 Wn.2d 167, John Does v. Comp Care, Inc., Supra., and Scott
23 v. Central Baptist Church, 197 Cal. App. 3rd 718 (1988).

24 A recent California case, Scott v. Central Baptist Church,
25 appears to be on point with most of the claims asserted in these

PRELIMINARY MEMO OF AUTH
RE: STANDARD OF CARE - 5

LEE, SMART, COOK, MARTIN & PATTERSON, P.S., INC.
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SEATTLE, WASHINGTON 98101
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1 cases. There, a minister engaged in sexual relations with a young boy
2 whom the Sunday School teacher originally met in Sunday School class.
3 After pleading guilty to nine felony counts involving the young boy,
4 a civil complaint for assault and battery and intentional infliction
5 of emotional distress was filed. The church was granted summary
6 judgment and the decision of the trial court was upheld by the Court
7 of Appeals. Citing the Restatement of Agency Second, the Appellate
8 Court agreed with the trial court that the Sunday School's teachers'
9 activities were not within his scope of employment. The court stated:
10 "Certainly Schwobeda [the teacher] was not employed to molest young
11 boys. ... Rather, the acts were independent, self-serving pursuits
12 unrelated to church activities."

13 A similar rule was announced in Magnuson v. O'Dea, 75 Wash.
14 574 (1913). In that case, there was a claim the bishop of the
15 Catholic Church was vicariously liable for a kidnapping in which he
16 was not personally involved. The Supreme Court held that it was error
17 to deny the bishop's motion for a directed verdict in the absence of
18 any evidence that he was personally involved in the kidnapping and
19 part of their decision is illustrative of the principle to be applied
20 in these cases:

21 He has committed no legal wrong, and the sins of
22 others cannot be visited upon him. He occupies the same
23 position as would the minister in charge of any other
24 church or the head officer of a fraternal society. Such
25 officials are not responsible for the torts of their
brethren unless participated in or ratified or approved by
them.

There will in this case be no evidence that sexual activities outside

PRELIMINARY MEMO OF AUTH
RE: STANDARD OF CARE - 6

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1 of marriage were either condoned, ratified or approved by the
2 Community Chapel & Bible Training Center.

3 It should also be noted that in the realm of the relations
4 between husband and wife, our Supreme Court has determined that these
5 relationships are not an interest which the State may lawfully
6 protect. The Supreme Court has, in fact, abolished the claim of
7 alienation of affections in Wyman v. Wallace, 94 Wn.2d 99 (1980). It
8 is difficult to conceive of any legitimate reason why the
9 husband/wife relationship is not worthy of protection in the ordinary
10 tort liability setting and immediately gain some protection once the
11 marriage goes to church.

12 III. CONCLUSION

13 There is no duty or standard of care which may be
14 constitutionally applied to the formulation and dissemination by
15 speech activities of religious beliefs. This country was founded by
16 people who were seeking the right to believe in God the way they
17 chose, and the imposition of tort liability for unorthodox or
18 outrageous religious beliefs should not be permitted by any court.
19 The First Amendment and State Constitution protections for religious
20 belief and speech activities likewise prohibit the creation of a tort
21 of pastor malpractice. Any other activities of church members with
22 themselves are subject to the general standards of care governing the
23 liabilities of any corporation to either its shareholders or general
24 members of the public.

25 DATED: December 20, 1988

Michael J. Bond
MICHAEL J. BOND, of Attorneys for
Defendant Community Chapel

PRELIMINARY MEMO OF AUTH
RE: STANDARD OF CARE - 7

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

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EVANS CRAVEN & LICKIE, P.S.

Korgensen, Austin & Erickson

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

ROSENOW, HALE
& JOHNSON

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

NO. 86-2-18176-8

Plaintiffs,)

MEMORANDUM OF PLAINTIFF
MAUREEN P. JORGENSEN ON
STANDARD OF CARE

vs.)

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

Defendants.)

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

Plaintiffs,)

vs.)

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

Defendants.)

MAUREEN P. JORGENSEN,

Plaintiff,)

vs.)

COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al.)

Defendants.)

JORGENSEN MEMORANDUM ON
STANDARD OF CARE

1

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LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
5400 COLUMBIA SEAFIRST CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104 7011
(206) 623-7580

1
2 AMERICAN CASUALTY COMPANY OF)
3 READING PENNSYLVANIA, a)
4 Pennsylvania corporation,)
5)
6 Plaintiff,)
7)
8 v.)
9)
10 KATHY LEE BUTLER, et. al.,)
11)
12 Defendants.)
13)
14)

15 I. INTRODUCTION

16 Pursuant to this Court's memorandum dated December 1, 1988,
17 counsel for plaintiff Maureen Jorgensen ("Jorgensen") respectfully
18 submits this memorandum concerning duties and standards of care.
19 This memorandum concludes that none of Jorgensen's claims depend
20 on any special duty owing from clergy or church board members to
21 members of a religious congregation.

22 II. DUTIES APPLICABLE TO JORGENSEN'S CLAIMS

23 Jorgensen asserts causes of action for a constructive trust,
24 breach of contract, and infliction of emotional distress against
25 defendants, the Community Chapel and Bible Training Center
26 ("CCBTC"), and its agents and employees, defendants Donald Lee
Barnett and Barbara Barnett ("Barnetts"). Jorgensen has also
moved to amend her First Amended Complaint to clarify and make
express her claim for CCBTC's negligent supervision of the
Barnetts; hearing on the motion to amend is set for December 22,
1988.

1
2 A. Jorgensen Claim for Constructive Trust

3 Jorgensen's claim for a constructive trust is based on the
4 facts that defendants had an ongoing confidential relationship
5 with Jorgensen, enjoyed much greater bargaining power, were aware
6 of her physical and emotional vulnerability and actively
7 participated in arranging the unnaturally large \$580,000.00
8 transfer. Because defendants have been unjustly enriched due to
9 their ongoing undue influence over Jorgensen from 1975 to 1985,
10 Jorgensen seeks restitution of the remaining loan principal
11 balance, fair interest, and prejudgment interest from 1975,
12 through a constructive trust on CCBTC property.

13 Jorgensen's constructive trust claim is not predicated on
14 duties or standards of care particularly applicable to clergy or
15 church board members. Just as a testatrix may be persuaded to
16 execute a will leaving an unnaturally large portion of her estate
17 to a trusted attorney, Jorgensen was unduly influenced to
18 surrender to defendants the funds which were to support her for
19 life. See Peter v. Skalman, 27 Wn. App. 247, 617 P.2d 448, 454
20 (1980). Her association with defendants as a member of Community
21 Chapel is simply one aspect of the trusting, confidential
22 relationship defendants exploited to obtain her assets. See
23 Ferguson v. Jeanes, 27 Wn. App. 558, 619 P.2d 369 (1980).

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26
JORGENSEN MEMORANDUM ON
STANDARD OF CARE

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(206) 623-7580

1
2 B. Jorgensen Claim for Breach of Contract

3 Jorgensen's cause of action for breach of contract is based
4 on defendants' promises to support her for life, and the other
5 understandings which prompted her to enter into the \$580,000
6 transaction, including her acceptance from CCBTC of the December
7 1, 1975 no-interest note. Jorgensen contends that defendants'
8 broken promises, including their subsequent refusal to pay
9 Jorgensen's medical and other expenses, materially breached the
10 parties' agreement, caused a failure of consideration, and
11 constituted infliction of emotional distress and mental anguish,
12 so that she is entitled to rescind the agreement, recover funds
13 still held by defendants, and recover damages.

14 As to this claim, defendants' duties flow from their specific
15 promises and agreements with Jorgensen, rather than their status
16 as clergy or church board members, or Jorgensen's status as a
17 member of a religious congregation. Defendants' duties were
18 simply to keep their promises, particularly because they knew or
19 should have known their failure to do so would cause Jorgensen
20 emotional, mental, and physical suffering and distress.

21 C. Jorgensen Claim for Infliction of Emotional Distress

22 Jorgensen's third claim is based on defendants' acts and
23 conduct so as to intentionally, recklessly and/or negligently
24 inflicted severe emotional distress and injury on her. Knowing
25 of Jorgensen's weakness and vulnerability, defendants led her to
26

1
2 become emotionally and physically dependent on them and, after her
3 transfer of a huge amount of money to them, financially dependent
4 as well. But defendants engaged in activities which destroyed her
5 marriage and home life, broke their promises by refusing funds to
6 meet her medical and other expenses, and responded to her
7 desperate pleas for guidance and help with a public and harsh
8 rebuke in 1985.

9 Plainly a plaintiff may recover for emotional distress caused
10 by intentional conduct. Hunsley v. Giard, 87 Wn.2d 424, 431-32,
11 553 P.2d 1096 (1976). To the extent Jorgensen seeks recovery for
12 defendants' negligent infliction of emotional distress, they owed
13 her a duty to refrain from conduct which 1) foreseeably endangered
14 her and created a likelihood of harm; 2) caused suffering
15 defendants reasonably should have expected; and 3) caused
16 suffering manifested by objective symptomatology. Id. at 435-36.

17 Defendants would have owed Jorgensen the same duty had they
18 been her employers, or siblings, or mere acquaintances. Of course
19 Jorgensen's long involvement in the Community Chapel bears on the
20 foreseeability of injury to her and defendants' knowledge of her
21 special condition. However, defendants' status as clergy or
22 church board members neither adds to nor detracts from their duty
23 to avoid the infliction of foreseeable harm.

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JORGENSEN MEMORANDUM ON
STANDARD OF CARE

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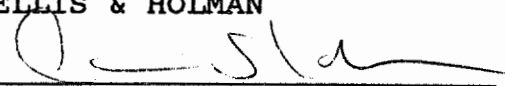
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2 D. Jorgensen Proposed Claim for Negligent Supervision

3 Jorgensen has moved to amend her complaint to make clear her
4 claim for negligent supervision. That claim is based on the duty
5 CCBTC owed plaintiff to properly supervise defendant Donald
6 Barnett in his ministerial and counseling activities, and to
7 refrain from employing or retaining a pastor likely to harm others
8 in the course of his employment or agency. CCBTC's breach of that
9 duty, and its failure to warn Jorgensen of the likelihood that
10 Barnett's activities would cause harm, proximately caused bodily
11 and other injuries to plaintiff, including but not limited to her
12 financial losses, severe emotional distress, bodily anguish and
13 injury, humiliation, and pain and suffering.

14 Negligent employment or retention depends on an employer's
15 failure to exercise due care by retaining an employee despite
16 reason to know of the risk that the employee would inflict harm.
17 La Lone v. Smith, 39 Wn.2d 167, 234 P.2d 893 (1951). Although
18 Jorgensen's negligent supervision claim arises in the context of
19 church employment of a pastor, the duty owed does not differ from
20 that imposed on any employer.

21 DATED this 21 day of December, 1988.

22 PRESTON, THORGRIMSON,
ELLIS & HOLMAN

23 By 
24 Susan Delanty Jones
25 Catherine D. Shaffer
Attorneys for Plaintiff,
Maureen P. Jorgensen

26 JORGENSEN MEMORANDUM ON
STANDARD OF CARE

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FILED

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KING COUNTY
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

Plaintiff,

v.

KATHY LEE BUTLER, et al,
Defendants.

KATHY LEE BUTLER, et al.,

Plaintiffs,

v.

DONALD LEE BARNETT, et al.,
Defendants.

SANDY EHRLICH, et al.,

Plaintiffs,

v.

RALPH ALSKOG, et al.,

Defendants.

CAUSE No. 88-2-04615-8

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

AFFIDAVIT OF BRUCE
WINCHELL OPPOSING MOTION
FOR A PROTECTIVE ORDER
RE SYBIL LEMKE AND SANDY
EHRLICH

CAUSE NO. 86-2-18176-8

CAUSE NO. 86-2-18429-5

AFFIDVIT OF BRUCE WINCHELL OPPOSING MOTION FOR
A PROTECTIVE ORDER RE SYBIL LEMKE AND SANDY EHRLICH - 1
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LANE POWELL MOSS & MILLER
3800 RAINIER BANK TOWER
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2647
(206) 223-7000

1 Washington State Bar Association. Her unwarranted threats and
2 misleading statements to the court are, in my experience,
3 unprecedented.

4 4. Ms. Durham has suggested that the Alskogs, who have
5 been sued by Ms. Ehrlich, have no right to attend the
6 deposition. The court will presumably take judicial notice of
7 the fact that parties do have a right to attend all depositions.

8 5. Ms. Durham next suggests that the Alskogs were moved
9 prior to the deposition so as to threaten Ms. Ehrlich. In
10 fact, exactly the opposite was contemplated. The Alskogs were
11 originally seated in such a way that they would have been on
12 the same side of the table as the witness. Counsel discussed
13 this while Ms. Durham was out of the room and felt that it
14 might be less threatening to Ms. Ehrlich if they were not
15 seated on the same side of the table. The Alskogs then moved.
16 When Ms. Durham request that they return to their original
17 seats, they did so without objection.

18 6. Next, Ms. Durham fails to acknowledge the fact that
19 all counsel, at great expense, were extremely patient in
20 waiting 90 minutes for the deposition to commence. The cost of
21 that delay was probably in excess of \$1,000.

22 7. Ms. Durham next makes reference to a "calculated,
23 albeit subtle attempt to harass annoy and embarrass" her client
24 by whispering among themselves. There were in fact discussions
25 among the lawyers during parts of Ms. Ehrlich's testimony. The

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AFFIDVIT OF BRUCE WINCHELL OPPOSING MOTION FOR
A PROTECTIVE ORDER RE SYBIL LEMKE AND SANDY EHRLICH - 3
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1 implication by Ms. Durham however is that this was in the
2 nature of locker room snickering. It simply was not. It is
3 quite common for attorneys during a deposition to comment among
4 themselves about responses given by a witness, questions which
5 need to be asked, and comments as to the believability of
6 certain responses. That is all that occurred at that
7 deposition. I believe that all counsel are quite cognizant
8 under the fact that it is necessary to conduct these
9 depositions in a manner which will not unduly accentuate the
10 embarrassment of the parties.

11 8. Finally, Ms. Durham at page 4 of her supplemental
12 declaration has discussed in a non-factual manner statements
13 made by me. I attach to this affidavit the last four pages of
14 the Ehrlich deposition so that the court will have a complete
15 transcript of what occurred at that time. It was 5:30 p.m.
16 Because Ms. Durham had taken the rather remarkable position
17 that we would only have one day to depose Ms. Ehrlich, in spite
18 of the fact that we had been kept waiting 90 minutes, we were
19 working late into the night in an attempt to complete this
20 deposition. Ms. Ehrlich was answering the questions she wanted
21 to answer rather than the questions which were put to her. I
22 requested that she answer the questions. I did not "yell at
23 plaintiff Sandy Ehrlich." I also did not stand up and look at
24 Ms. Ehrlich threatenly. I probably did throw my pen on my note
25 pad, because it was apparent that in spite of the great lengths
26 to which we had gone to cooperate with plaintiff in this

AFFIDVIT OF BRUCE WINCHELL OPPOSING MOTION FOR
A PROTECTIVE ORDER RE SYBIL LEMKE AND SANDY EHRLICH
0320BAW

AND POWELL MOSS & MILLER
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1301 FIFTH AVENUE
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(206) 223 7000

1 deposition, we were being unfairly manipulated by plaintiff's
2 refusal to answer questions and counsel's insistence that the
3 deposition be completed in one day. Ms. Durham's client may be
4 agitated by the discovery process. However, she does not have
5 the right to bring suit and then evasively avoid legitimate
6 areas of inquiry.

7 LANE POWELL MOSS & MILLER

8
9 By Bruce Winchell
10 Bruce Winchell
11 Attorneys for Plaintiff
12 American Casualty Company of
13 Reading Pennsylvania

14 SUBSCRIBED AND SWORN to before me: December 21, 1988.

15 Judith G. Thompson
16 NOTARY PUBLIC in and for the State of
17 Washington, residing at Lynnwood.

18 My appointment expires: 9/1/98.

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26 AFFIDVIT OF BRUCE WINCHELL OPPOSING MOTION FOR
A PROTECTIVE ORDER RE SYBIL LEMKE AND SANDY EHRLICH - 5
0320BAW

LANE POWELL MOSS & MILLER
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(206) 223-7000

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

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

vs.)

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

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

vs.)

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

MAUREEN P. JORGENSEN,)
)
 Plaintiff,)

vs.)

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

DEPOSITION OF SANDY EHRLICH

Volume II

APPEARANCES:

For the Plaintiff:

ANN J. DURHAM
Adler, Giersch & Read
401 Second Ave. South
Suite 600
Seattle, WA 98104

APPEARANCES (Continued):

For Defendant Community Chapel
and Bible Training Center:

RICHARD C. ROBINSON
Lee, Smart, Cook,
Martin & Patterson
1325 Fourth Avenue
Seattle, WA 98101

For Defendants Barnett:

JAMES S. CRAVEN
Evans, Craven & Lackie
701 Fifth Avenue
3100 Columbia Center
Seattle, WA 98104

For Defendants Alskog:

JACK G. ROSENOW
Rosenow, Hale & Johnson
Tacoma Mall Ofc. Bldg.
Suite 301
Tacoma, WA 98409

PAULINE V. SMETKA
Helsell, Fetterman,
Martin, Todd and
Hokanson
Washington Building
P.O. Box 21846
Seattle, WA 98111

For American Casualty
Company:

BRUCE WINCHELL
Lane, Powell, Moss &
Miller
3800 Rainier Bank Tower
Seattle, WA 98101

For St. Paul Fire and Marine
Insurance Company:

DON M. GULLIFORD
Law Offices of Don
Gulliford & Assoc.
2200 - 112th Avenue NE
Bellevue, WA 98004

BE IT REMEMBERED that Volume II of the
deposition of SANDY EHRLICH was taken on the 7th day of
December, 1988 before Carol Sorensen Meyer, Court
Reporter.

WHEREUPON, the following proceedings were
had, to-wit:

**Sandra
Baker &
Associates** Court Reporters
and Legal
Video Service

870 10th Lane, Fox Island, Washington 98333, Tacoma 272.9288, Bremerton 373.9032, Seattle 622.9919

1 Q So did you?

2 A Again, I disagreed from the very beginning, but was
3 persuaded and became very submissive to the system, to
4 his teachings that he was the head of our home.

5 Q Even though in your own mind you knew better?

6 A And that was clouded over by confusion and mind control, sir.

7 Q Do you feel any responsibility for the destruction of
8 your marriage to Mike Ehrlich?

9 A I feel that the destruction was caused by the breach
10 and mistrust that came in by the participation in the
11 connection doctrine. We were never the same. We were
12 both very devastated.

13 MR. WINCHELL: Move to strike, nonresponsive,
14 totally nonresponsive. Answer his questions.

15 Q (By Mr. Craven) Do you feel that you have any
16 responsibility for the destruction of your marriage to
17 Mike Ehrlich?

18 A I feel that the, and I know for sure, that the
19 culmination of the divorce accrued because of the
20 teachings of Community Chapel, that we were victims of
21 this destructive doctrine. We were happy, we were
22 content previous to this occasion.

23 MR. GULLIFORD: Same objection.

24 MR. WINCHELL: If you're going to keep us here
25 until all hours, at least have her answer the questions.
Come on.

1 MR. CRAVEN: I'm going to continue the dep,
2 Ann. I'm not trying to be difficult. This is crazy.

3 MS. DURHAM: Let me talk to her for a second.

4 MR. CRAVEN: You talk to her for a week or so,
5 because this deposition is continued. I'm tired --

6 MS. DURHAM: Well, we're not agreeing to a
7 continuance.

8 MR. CRAVEN: -- she's tired. Well --

9 MS. DURHAM: Put that on the record.

10 MR. CRAVEN: I'm telling you it's over for the
11 night.

12 THE WITNESS: I have answered honestly to the
13 best of my ability.

14 MR. CRAVEN: I'm sure you've tried. One of the
15 reasons I'm stopping is because I'm beat and I don't
16 want to lose my temper.

17 MS. SMETKA: And the record should also reflect
18 that the deposition was noted to commence at nine
19 o'clock and we did not commence until, according to my
20 recollection, along about 10:30 and there are several
21 lawyers here who have not had any chance to ask any
22 questions, and on behalf of Defendants Alskog on whose
23 behalf this deposition was noted, I am continuing it.

24 MS. DURHAM: The record should reflect that
25 Sandy Ehrlich is still willing to answer questions and

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is available and will continue to be available today and that we object to the continuance.

MR. ROBINSON: Let the record reflect it's 5:30 p.m. We've been here since 9:00 this morning. I have not had an opportunity to ask any questions on behalf of the Church and I have, by my count, approximately an hour and a half now of questions to ask and I don't believe it's in anybody's interests for us to continue. I think we should continue this matter until another date and time.

MR. GULLIFORD: We acquiesced to waiting for 10:30 so Sandy could compose her thoughts and calm herself down and such things. I shouldn't think it would be a hardship to negotiate a time in the next month or so.

(Deposition continued to a later date.)

FILED

1988 DEC 21 PM 1:39 CIVIL TRACK ONE
THE HONORABLE JOHN RILEY

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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

v.)

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

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

v.)

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

SANDY ERLICH, et al.,)
Plaintiffs,)

v.)

RALPH ALSKOG, et al.,)
Defendants.)

CASE NO. 88-2-04615-8

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

SUPPLEMENTAL AFFIDAVIT OF
JOHN S. GLASSMAN RE:
AMERICAN'S MOTION FOR SUMMARY
JUDGMENT RE: BODILY INJURY

CAUSE NO. 86-2-18176-8 ✓

CAUSE NO. 86-2-18429-5

SUPPLEMENTAL AFFIDAVIT OF
JOHN S. GLASSMAN - 1

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

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MAUREEN PANGBORNE JORGENSON,)
)
Plaintiff,)
)
v.)
)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et al.,)
)
Defendants.)

STATE OF WASHINGTON)
) SS.
COUNTY OF PIERCE)

JOHN S. GLASSMAN, being first duly sworn upon oath, deposes and states:

1. I am one of the attorneys representing Community Chapel in the above consolidated actions, and am competent to testify to the matters herein stated.

2. I was retained by Community Chapel to represent it in the Declaratory Judgment actions brought by American Casualty Company of Reading, Pennsylvania. American provided the general liability policies to Community Chapel which are the subject of the pending declaratory judgment actions in both King and Pierce County.

3. On December 16, 1988, an Order was signed by Pierce County Superior Court Judge J. Kelley Arnold, in the case of American Casualty Company of Reading, Pennsylvania v. Ira

SUPPLEMENTAL AFFIDAVIT OF
JOHN S. GLASSMAN - 2

LAW OFFICES OF
JOHN S. GLASSMAN
P.O. BOX 1703
TACOMA, WASHINGTON 98401
(206) 572-2746

1
2 Gabrielson, et al., Cause No. 88-2-00947-9. A true and correct
3 copy of the "Order Denying Motion for Summary Judgment by
4 Plaintiff Re: Bodily Injury" with the oral decision of April 15,
5 1988, by Judge Arnold, (adopted and incorporated into the
6 December 16th Order by Judge Arnold), is attached hereto and
7 relied upon by Community Chapel in resistance to the Motion for
8 Summary Judgment by American Casualty.

9 4. The King County Motion for Summary Judgment on the issue
10 of "Bodily Injury" was originally scheduled for 3:00 p.m.
11 December 16, 1988. Prior to the court's changing the time for
12 hearing of the King County Motions, American Casualty had noted,
13 in Pierce County, its "renewed Motion for Summary Judgment Re:
14 Bodily Injury," for December 16, 1988, at 9:30 a.m.

15 However, when this court decided to consolidate the motions
16 for hearing on December 22, 1988, American Casualty struck its
17 Pierce County motion, in an attempt to gain inconsistent rulings
18 or decisions between this court and Judge Arnold. At the
19 December 16, 1988 Pierce County presentation hearing were Bruce
20 Winchell, representing American Casualty, Tim Donaldson,
21 representing Don and Barbara Barnett, and myself, representing
22 Community Chapel. Counsel for the Gabrielsons were also present.

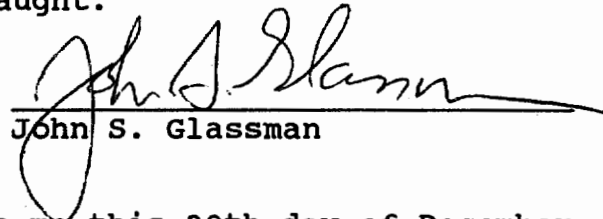
23 Counsel for American admitted, on the record, that he struck
24 the Pierce County motions for reasons of "advocacy" in hopes of
25 having the King County motions heard prior to either entry of an
26

SUPPLEMENTAL AFFIDAVIT OF
JOHN S. GLASSMAN - 3

LAW OFFICES OF
JOHN S. GLASSMAN
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TACOMA, WASHINGTON 98401
(206) 572-2746

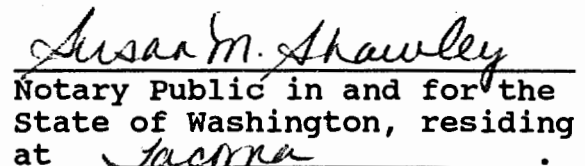
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2 Order or the renewed Motion for Summary Judgment in Pierce
3 County. These forum shopping tactics should not be condoned by
4 the court. It should not surprise the court that American
5 Casualty has never referred to the rulings or orders entered by
6 Judge Arnold, on the same policy language, in its King County
7 motions, to the extreme prejudice of its insured, Community
8 Chapel. It can be inferred from American's tactics that it is
9 forum shopping in hopes of avoiding coverage granted by the
10 Pierce County Superior Court following identical argument based
11 upon identical policy language.

12 Further your affiant sayeth naught.

13
14 
15 John S. Glassman

16 SUBSCRIBED AND SWORN to before me this 20th day of December,
17 1988.



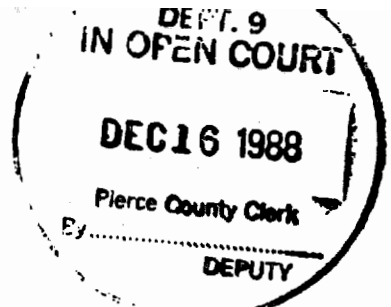
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29 Notary Public in and for the
30 State of Washington, residing
31 at Tacoma.

32 My Commission Expires: 9-27-91

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SUPPLEMENTAL AFFIDAVIT OF
JOHN S. GLASSMAN - 4

LAW OFFICES OF
JOHN S. GLASSMAN
P.O. BOX 1703
TACOMA, WASHINGTON 98401
(206) 572-2746



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

SUITE 3100 COLUMBIA CENTER, 701 5TH AVENUE
SEATTLE, WASHINGTON, 98104

(206) 386-5555

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,
30 mental suffering, and loss of consortium which is consequential
31 SUMMARY JUDGMENT
32 ORDER: 2

Evans, Craven & Lachic, P.S.

LAWYERS

SUITE 3100 COLUMBIA CENTER TOWER 1 AVENUE
SEATTLE WASHINGTON 98104

(206) 386-5555

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.

7
8 **J. KELLEY ARNOLD**

9

HONORABLE J. KELLEY ARNOLD

10 Presented by

11 EVANS, CRAVEN & LACKIE P.S.

12
13 /s/
14 TIM DONALDSON

15 /s/ Hannula - GABRIALSON

16 (s) GLASSMAN - COMM. CHAPEL

17 /s/ WINCHELL - AMERICAN

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31 SUMMARY JUDGMENT
32 ORDER: 3

Evans, Craven & Lackie, P.S.

LAWYERS

SMITHSONIAN CULTURAL CENTER 701 5th AVENUE
SUITE 1000 WASHINGTON, D.C. 20004

(206) 386-5555

RECEIVED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

LAW OFFICES OF
JOHN S. GLASSMAN

AMERICAN CASUALTY COMPANY
of READING, PENNSYLVANIA,

Plaintiff,

vs

IRA GABRIELSON, et ux, et al,

Defendants.

COPY

COPY RECEIVED

DEC 07 1988

No: 88-2-00947-9

Excerpt of Proceedings
EVANS GRAVENOR & ASSOCIATES

ORAL DECISION

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

RECEIVED

DEC 09 1988

P R O C E E D I N G S

LAW OFFICES OF
JOHN S. GLASSMAN
(April 5, 1988)

1
2
3 THE COURT: Thank you, counsel. I'm familiar
4 with the Easy Loader case and, Mr. Winchell, I disagree
5 with your position that that stands for the proposition
6 to support your motion in this case. It is a case
7 where there was no physical contact, and I believe
8 that language that I just cited presupposes from the
9 other language in the case that that's inferentially
10 part of that language.

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

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

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

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

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

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

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

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

13 MR. WINCHELL: Thank you, your Honor.

14 THE COURT: Thank you all, counsel.

(Motion concluded)

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

SANDY EHRLICH, et al.,

Plaintiffs,

v.

RALPH ALSKOG, et al.,

Defendants.

No. 86-2-18176-8
Consolidated with 8-2-04615-8
NOTE FOR MOTION CALENDAR

FILED
KING COUNTY, WASHINGTON
DEC 22 1988
SUPERIOR COURT CLERK
MELISSA R. KEATING
DEPUTY

(Clerk's Action Required)

TO: THE CLERK OF THE COURT AND TO ALL LAWYERS LISTED ON REVERSE SIDE:

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

Calendar Date: December 22, 1988 Day of the Week: Friday

Nature of Motion: Plaintiffs' Motion to Compel Production of Documents & for Imposition of Costs & Fees

DESIGNATED CALENDAR

- | | |
|--|--|
| <input type="checkbox"/> Civil Motion (LR 0.7)(9:30) | FAMILY LAW MOTION (LR 0.5(b) LR 94.041 (W291) |
| <input type="checkbox"/> Summary Judgment (LR 56)(9:30) | <input type="checkbox"/> Domestic Motion (9:30) |
| <input type="checkbox"/> Supplemental Proceeding (LR 69) (1:30) | <input type="checkbox"/> Sealed File Motion (1:30) |
| <input type="checkbox"/> Presiding Judge (Trial Date Motions Only) (11:15 or 1:30 Daily) | <input type="checkbox"/> Support Motion (1:30) |
| Time of Hearing: _____ | <input type="checkbox"/> Modification (1:30) |

EX PARTE MOTION [LR 0.9(b)] W623

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

- | | | |
|--|------------------------|--|
| <input type="checkbox"/> Adoption | Time of Hearing: _____ | <input type="checkbox"/> Receivership (LR 66) (2:00) |
| <input type="checkbox"/> Dissolution | Time of Hearing: _____ | <input type="checkbox"/> Sealed File Motion (9:30) |
| <input type="checkbox"/> Ex Parte Motion | Time of Hearing: _____ | |
| <input type="checkbox"/> Probate | Time of Hearing: _____ | |

DEPARTMENTAL HEARINGS [LR 40(b)]

Special Setting Before Judge/Commissioner: The Honorable John Riley
Time of Hearing: 3:00 p.m. Room E854

Typed Name: Ann J. Durham Dated: _____

Of: Adler Giersch, P.S.

Attorney for: Plaintiffs Ehrlich, et al.

Telephone: (206)682-0300

LIST NAMES, ADDRESSES AND TELEPHONE NUMBERS OF ALL PARTIES REQUIRING NOTICE ON REVERSE SIDE. PLEASE SEE ATTACHED LIST.

NOTE FOR MOTION CALENDAR

CIVIL TRACK I

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

ALL COUNSEL

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800 Washington Building
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Attorney for Defendant CCBTC

Michael Bugni, Esquire
Moren, Cornell, Hansen, P.S.
11320 Roosevelt Way N.E.
Seattle, WA 98125
Attorney for Defendant Howerton

John C. Graffe, Esquire
Rosenow, Hale & Johnson
1620 Key Tower
Seattle, WA 98104
Attorney for Defendants Alskog

Don M. Gulliford, Esquire
Law Offices of Don M. Gulliford
2200 112th Avenue N.E.
Bellevue, WA 98004
Attorney for St. Paul Fire & Marine
Insurance

Rodney Hollenbeck, Esquire
Evans, Craven & Lackie, P.S.
Columbia Center 31st Floor
Seattle, WA 98104
Attorney for Defendants Barnett

Susan Jones, Esquire
Preston Thorgrimson
54th Floor
Columbia Center
Seattle, WA 98104
Attorney for Plaintiff Jorgenson

Jim Messina, Esquire
Molly McCarty, Legal Assistant
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Tacoma, WA 98409
Attorney for Plaintiffs Ehrlich, et
al.

Jack Rosenow, Esquire
Rosenow, Hale & Johnson
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Tacoma, WA 98409
Attorney for Defendants Alskog

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Hellsell, Fetterman, Todd
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Seattle, WA 98101
Attorney for Defendants Alskog

Bruce Winchell, Esquire
Lane, Powell, Moss & Miller
3800 Rainier Tower
Seattle, WA 98104-2647
Attorney for American Casualty

John S. Glassman, Esquire
420 Old City Hall
625 Commerce Street
Tacoma, WA 98402
Attorney for Defendant CCBTC

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

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

Plaintiff,)

v.)

KATHY LEE BUTLER, et al.,)

Defendants.)

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

Plaintiffs,)

v.)

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

Defendants.)

SANDY EHRLICH, et al.,)

Plaintiffs,)

v.)

RALPH ALSKOG, et al.)

Defendants.)

MAUREEN PANGBORNE JORGENSON,)

Plaintiff,)

v.)

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

Defendants.)

No. 88-2-04615-8

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

MOTION TO COMPEL PRODUCTION OF
DOCUMENTS AND FOR TERMS FOR
FAILURE TO COMPLY WITH SUBPOENA
DUCES TECUM

No. 86-2-18176-8

No. 86-2-18429-5

No. 86-2-26360-8

MOTION TO COMPEL - 1

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

1 COME NOW Plaintiffs Larry and Sybil Lemke, by and through
2 their attorneys, Ann J. Durham and Adler Giersch, P.S., and hereby
3 request this Court to enter an order requiring Robert Howerton,
4 by and through his attorney, Michael Bugni, to produce those
5 records requested in the subpoena duces tecum filed and served on
6 November 29, 1988. In addition, plaintiffs move this Court to
7 enter an order requiring Defendant Robert Howerton to pay for
8 plaintiffs' expenses, including attorney's fees.

9 This motion is based on the records and files contained
10 herein, CR 30 and CR 37(a), the attached declaration of Ann J.
11 Durham and the attached exhibits.

12 FACTS

13 Pursuant to the agreement among attorneys to depose all
14 parties involved in this litigation on or before January 1, 1989,
15 Plaintiffs Lemke filed and served a notice of deposition and
16 attached subpoena duces tecum upon Michael Bugni on November 29,
17 1988. Attached to this motion is Plaintiffs' Exhibit 1, which is
18 the Notice of Deposition and Subpoena duces tecum of Robert
19 Howerton.

20 Michael Bugni received said notice of deposition and subpoena
21 duces tecum on November 29, 1988 and stamped "copy received" on
22 the delivery form of ABC Legal Messengers, attached hereto as
23 Plaintiffs' Exhibit 2.

24 On December 6, 1988, in response to a question by plaintiffs'
25 attorney, Ann J. Durham, Mr. Howerton indicated that he had never
26 reviewed the subpoena duces tecum. At the same time, Michael
27 Bugni indicated that, although he had been aware that there had
28

1 been a notice of deposition, he had not read nor reviewed it
2 because he had been too busy to look at it. Accordingly,
3 plaintiffs' attorney could not review and ask follow-up questions
4 about any of the materials requested in the subpoena duces tecum.
5 In addition, Plaintiffs Lemke have not received any acknowledgment
6 of an attempt by either Defendant Howerton or Michael Bugni, his
7 attorney, to comply with the requests in the subpoena duces tecum.

8 RELIEF REQUESTED

9 Plaintiffs Lemke respectfully request this Court to issue an
10 order compelling production of the documents in the subpoena duces
11 tecum. Plaintiffs Lemke also request this Court to issue an order
12 compelling Defendant Howerton to pay the their expenses incurred
13 by his failure to comply with the subpoena duces tecum,
14 specifically, attorney's fees incurred in the bringing of this
15 motion to compel.

16 Plaintiffs Lemke additionally request this Court to allow
17 subsequent deposition of Defendant Robert Howerton, as effective
18 and comprehensive examination of the issues involved in the
19 subpoena duces tecum were necessarily limited due to this failure
20 to comply.

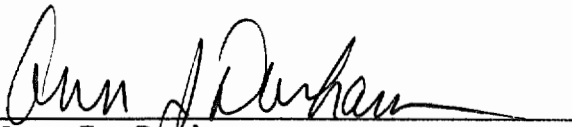
21 A proposed form of order is attached hereto.

22 DATED this 13th day of December, 1988.

23 Respectfully Submitted,

24 ADLER GIERSCH, P.S.

25
26 BY:


Ann J. Durham
Attorney for Plaintiffs Lemke

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

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

Plaintiff,)

v.)

KATHY LEE BUTLER, et al.,)

Defendants.)

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

Plaintiffs,)

v.)

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

Defendants.)

SANDY EHRLICH, et al.,)

Plaintiffs,)

v.)

RALPH ALSKOG, et al.)

Defendants.)

MAUREN PANGBORNE JORGENSEN,)

Plaintiff,)

v.)

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

Defendants.)

No. 88-2-04615-8

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

DECLARATION OF ANN J. DURHAM IN
SUPPORT OF MOTION TO COMPEL AND
MOTION FOR TERMS

No. 86-2-18176-8

No. 86-2-18429-5

No. 86-2-26360-8

DECLARATION OF ANN J. DURHAM - 1

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

1 Ann J. Durham declares as follows:

2 I am of the attorneys of record for Plaintiffs Lemke in the
3 consolidated action in King County Superior Court Cause Nos. 86-
4 2-181876-8 and 88-2-04615-8, currently pending. I have personal
5 knowledge of and am familiar with the records and files contained
6 herein.

7 Pursuant to the agreement among attorneys to depose all
8 parties prior to January 1, 1989, I prepared a notice of
9 deposition and subpoena duces tecum for Defendant Robert Howerton.
10 Said deposition took place on December 6, 1988.

11 I sent all counsel, including Michael Bugni, attorney of
12 record for Defendant Howerton, a copy of the notice of deposition
13 and subpoena duces tecum via ABC Legal Messengers, Inc., on
14 November 29, 1988. I received verification that Michael Bugni had
15 received his copies of the notice of deposition and subpoena duces
16 tecum on November 29, 1988.

17 On December 6, 1988, when I requested Michael Bugni to produce
18 the subpoenaed documents, Defendant Howerton indicated he was
19 unaware that a subpoena duces tecum had been issued. Mr. Bugni
20 indicated, on behalf of Defendant Howerton, that he had not
21 bothered to look at the notice of deposition or the subpoena duces
22 tecum prior to the deposition. In fact, although he had received
23 copies of the notice and the subpoena duces tecum, I had to
24 produce my copy of the subpoena duces tecum for his review during
25 the deposition. Mr. Bugni indicated that he had been "too busy"
26 to comply with the subpoena duces tecum.

27
28 DECLARATION OF ANN J. DURHAM - 2

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

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

NO. 86-2-18176-8

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

AFFIDAVIT OF SERVICE OF:

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

SEE ATTACHED AFFADAVIT
KING COUNTY, WASHINGTON

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

FILED
DEC 22 1988
AM 10:07
KING COUNTY
COURT CLERK
SEATTLE, WA

DEC 22 1988

MAUREEN P. JORGENSEN,
Plaintiff

DEPARTMENT OF
JUDICIAL ADMINISTRATION

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

STATE OF WASHINGTON () A copy of the summons served
COUNTY OF KING is attached hereto.

The undersigned, being first duly sworn, on oath deposes
and says: That he is now and at all times herein mentioned was
a citizen of the United States and resident of the State of
Washington, over the age of eighteen years, not a party to or
interested in the above entitled action and competent to be a
witness therein.

That on 12-21-88, at the hour of 2:58 P.M., at
the address of 11320 Roosevelt Way N.E., Seattle, WA

affiant duly served the above-described documents in the above
entitled matter upon MICHAEL W. BUGNI, ESQUIRE MOREN, CORNELL & HANSEN
by then and there personally delivering a true and correct copy
thereof to and leaving same with BRENDA LINDSEY

RESIDENCE SERVICE

That at the time and place set forth above affiant duly
served the above described documents in the above entitled
matter upon _____
by then and there, at the residence and usual place of abode of
said person(s), personally delivering _____ true and correct
copy(ies) thereof to and leaving the same with _____

being a person of suitable age and discretion then resident
therein.

Robert Miller
Subscribed and Sworn to before me 12-21-88

WEST COURIER EXPRESS
314 1/2 Boren Avenue South
Seattle, WA 98144
322-1597
NOTARY PUBLIC in and for the State
of Washington, residing at Seattle.

PRESTON
Service
Fees 15.00 Travel 10.00 Return 5.00 Other 1.00 Total 31.00

206
32

CIVIL TRACK I

The Honorable John Riley

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

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

(Consolidated)
NO. 86-2-18176-8
AMENDED ANSWER TO DEFENDANTS
RALPH AND ROSEMARY ALSKOG TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES

SANDY EHRLICH, et vir., et al.,
Plaintiffs,
vs.
RALPH ALSKOG, et ux., et al.,
Defendants.

MAUREEN P. JORGENSEN,
Plaintiff,
vs.
COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al.,
Defendants.

AMENDED ANSWER OF DEFENDANTS RALPH
AND ROSEMARY ALSKOG to PLAINTIFFS'
FIRST AMENDED COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES

207th

1 AMERICAN CASUALTY COMPANY OF)
2 READING PENNSYLVANIA, a)
3 Pennsylvania corporation,)

4 Plaintiff,)

5 vs.)

6 KATHY LEE BUTLER, et al.,)

7 Defendants.)

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

10 Plaintiff,)

11 vs.)

12 KATHY LEE BUTLER, et al.,)

13 Deendants.)

14 COME NOW the defendants, RALPH and ROSEMARY ALSKOG, by and
15 through their attorneys of record, and answer Plaintiffs' First
16 Amended Complaint as follows:

17 I.

18 Answering Paragraphs 1.1 through 1.7 of Plaintiffs' First
19 Amended Complaint, these defendants admit that Sandy Ehrlich and
20 Michael Ehrlich were at all times material hereto residents of King
21 County, Washington, but further answering said paragraphs, these
22 defendants deny each and every other allegation contained therein.

23 II.

24 Answering Paragraphs 2.1 through 2.5 of Plaintiffs' First
25 Amended Complaint, these defendants admit Paragraphs 2.1, 2.2, 2.3

26 AMENDED ANSWER OF DEFENDANTS RALPH
AND ROSEMARY ALSKOG to PLAINTIFFS'
FIRST AMENDED COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES

-2-

ROSENOW, HALE & JOHNSON
LAWYERS
SUITE 301 TACOMA MALL OFFICE BUILDING
TACOMA, WASHINGTON 98409
(206) 473-0725

1 and 2.4, but further answering said paragraphs, deny each and every
2 other allegation contained therein.

3 III.

4 Answering Paragraphs 3.1 through 7.1 of Plaintiffs' First
5 Amended Complaint, the allegations contained therein are not
6 directed against these defendants but if an answer thereto is
7 required, these defendants do not have sufficient information to
8 form a belief as to the truth or falsity of the allegations con-
9 tained therein, and therefore deny the same.

10 IV.

11 Answering Paragraph 8.1 of Plaintiffs' First Amended Complaint,
12 these defendants admit this court has jurisdiction over these
13 defendants, but further answering said paragraph, these defendants
14 deny each and every other allegation contained therein.

15 V.

16 Answering Paragraphs 9.1 and 9.2 of Plaintiffs' First Amended
17 Complaint, these defendants admit that all contact between plain-
18 tiffs Michael Ehrlich and Sandy Ehrlich and defendants Ralph Alskog
19 and Rosemary Alskog occurred in conjunction with their activities
20 at Community Chapel Bible and Training Center, but further
21 answering said paragraphs, these defendants deny each and every
22 other allegation contained therein.

23 ****

24 ***

25 AMENDED ANSWER OF DEFENDANTS RALPH
26 AND ROSEMARY ALSKOG to PLAINTIFFS'
FIRST AMENDED COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES -3-

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VI.

Answering Paragraphs 10.1 through 10.4 of Plaintiffs' First Amended Complaint, these defendants admit that as members of Community Chapel Bible and Training Center they were involved in "spiritual connections", but further answering said paragraphs, these defendants deny each and every other allegation contained therein.

VII.

Answering Paragraphs 11.1 through 11.8 of Plaintiffs' First Amended Complaint, these defendants admit that they were all members of the Community Chapel Bible and Training Center and were involved in spiritual connections. Defendants admit that on or about June 13, 1985, Sandy Ehrlich and Ralph Alskog danced together at the elders' retreat. Defendants further admit that in the months of July and August, 1985, no physical contact occurred between plaintiff Sandy Ehrlich and defendant Ralph Alskog; defendants further admit that in September of 1985, plaintiff Sandy Ehrlich approached defendant Ralph Alskog, seeking to reestablish a spiritual connection with him; defendants further admit that during the months of October, November and December, 1985, and in January, 1986, plaintiff Sandy Ehrlich and defendant Ralph Alskog consented, as adults to kiss each other on the lips, did engage in French kissing and did have intimate physical contact once in November, 1985 on church property, once at the end of December, 1985, when

AMENDED ANSWER OF DEFENDANTS RALPH AND ROSEMARY ALSKOG to PLAINTIFFS' FIRST AMENDED COMPLAINT FOR PERSONAL INJURIES AND DAMAGES -4-

1 she came to Ralph Alskog's home and once in early January, 1986, at
2 her invitation to him to come to her home; defendants further admit
3 that on those intimate consenting occasions, both Sandy Ehrlich and
4 Ralph Alskog touched each other and engaged in heavy petting with
5 each other which caused orgasm with Sandy Ehrlich and ejaculation
6 by Ralph Alskog. Further answering said paragraphs, these defen-
7 dants deny each and every other allegation contained therein.

8 VIII.

9 Answering Paragraphs 12.1 through 14.8 of Plaintiffs' First
10 Amended Complaint, the same are not directed at these defendants,
11 but if an answer thereto is required, these defendants do not have
12 sufficient information to form a belief as to the truth or falsity
13 to the allegations contained therein and therefore deny the same.

14 IX.

15 Answering Paragraphs 15.1 through 26.2 of Plaintiffs' First
16 Amended Complaint, insofar as said allegations may be directed at
17 these defendants, these defendants deny each and every allegation
18 contained therein, insofar as said allegations may be directed at
19 others, these defendants do not have sufficient information to form
20 a belief as to the truth or falsity to the allegations contained
21 therein, and therefore deny the same.

22 BY WAY OF FURTHER ANSWER AND AS AN AFFIRMATIVE DEFENSE THESE
23 DEFENDANTS STATE:

24 ****

25 AMENDED ANSWER OF DEFENDANTS RALPH
26 AND ROSEMARY ALSKOG to PLAINTIFFS'
FIRST AMENDED COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES

-5-

1 That if plaintiffs and/or either of them have sustained any
2 injury or damage as alleged in plaintiffs' complaint the same was
3 proximately caused, or contributed to, by the intentional reckless
4 and/or negligent acts of said plaintiffs or that the intentional
5 reckless and/or negligent acts of said plaintiffs proximately
6 caused or contributed to the injuries and damage, if any, allegedly
7 sustained by plaintiffs herein, and that for purposes of pleading
8 herein these defendants state such percentage of culpability on the
9 part of the plaintiffs to be 100%.

10 These defendants reserve the right to amend their answer hereto
11 and to assert such affirmative defenses, cross-claims, coun-
12 terclaims, and third-party complaints as during the course of dis-
13 covery herein may become reasonable and prudent.

14 WHEREFORE having fully answered plaintiffs' complaint, these
15 defendants pray the same be dismissed with prejudice, that said
16 plaintiffs take nothing thereby, that these defendants recover
17 their costs and disbursements necessarily incurred herein and for
18 such other and further relief as the court deems just and equitable
19 in the premises.

20 DATED this 20th day of December, 1988.

21 ROSENOW, HALE & JOHNSON

22 By: 

23 JACK G. ROSENOW
24 Of Attorneys for Defendants,
25 ALSKOG

25 AMENDED ANSWER OF DEFENDANTS RALPH
26 AND ROSEMARY ALSKOG to PLAINTIFFS'
FIRST AMENDED COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES -6-

ROSENOW, HALE & JOHNSON
LAWYERS
SUITE 301 TACOMA MALL OFFICE BUILDING
TACOMA, WASHINGTON 98409
(206) 473-0725

SCOMIS code:

PREHRG DISPHRG HEARING
 POSTHRG MINUTE STLCON

Department No. 25

Date: December 22, 1988

Page 1 of 3

JUDGE: John W. Riley

BAILIFF: BETH CUSTER

COURT CLERK: MELISSA R. KEATING

REPORTER: Raelene Semago

King County Cause No. 86-2-18176-8

Case Caption

Kathy Lee Butler et al vs. Donald Lee Barnett et ux et al

Litigants and attorneys

Donald Bullford representing St. Paul appearing, Bruce Winchell appearing for American Casualty, Ann Durham appearing for Ehrlich et al, Susan Jones and Catherine Schaffer appearing for Jorgenson, Michael Bond appearing for CCBTC, John S. Glassman appearing for CCBTC, James Craven and Timothy Donaldson appearing for Barnett, Andrew Bergh appearing for Wayne Snowwy, Jeff Campiche appearing for Butler, and Craig McEvoy appearing for Alskog, John Graffe appearing for Alskog

Minute Entry

Pre-Trial motions
Plaintiff Butler's motion for reconsideration of leave to amend complaint. The Court grants the motion. Order is signed.
Plaintiff American Casualty's motion for leave to amend complaint. The Court grants the motion. Order is signed.
Plaintiff Jorgenson moves to amend complaint. The Court grants the motion. Order is signed.

sub #

208

Minute Entry

Dept. 25

Plaintiff St. Paul moves for leave to intervene and consolidate #88-2-18321-0 and Peterson et al vs. Butler et al #87-2-14919-6. The Court grants the motion in part with the exception of Peterson et al vs. Butler et al #87-2-14919-6, which shall be continued to February 1, 1989 at 4:00 p.m. Order signed.

Defendant Barnett moves for Protective Order Sealing the Barnett Depositions. The Court denies the motion in part and Orders that Respective Counsel and Parties shall not distribute depositions to any unauthorized persons. Order Signed.

Plaintiff Erlich moves for protective order limiting Depositions of parties and witnesses. The Court grants the motion except for good cause shown. Order Signed.

Plaintiff Lemke moves for Protective Order. The Court reserves ruling.

Plaintiff American Casualty moves for partial Summary Judgment. This cause continued to January 6, 1989 at 2:30 p.m.

Plaintiff Lemke withdraws motion to Compel discovery regarding Howerton.