

88-2-00947-9 18569982 ARCHREC 03-10-03

ARCHIVE RECORD

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

Kevin Stock, Pierce County Clerk



W.E. FEB -4 1988

FILED
02-04-1988
8:59 a.m.
PIERCE COUNTY SUPERIOR COURT
TED RUTT
CLERK OF THE SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,
IN AND FOR THE COUNTY OF PIERCE
88-2-00947-9

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

REG/RECEIPT # TRAN-CODE DOCKET-CODE
02-01300 1100 BFFRC
PAID BY 880582 00947 9 878.00
TRANSACTION AMOUNT

Plaintiff,

v.

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

Defendants.

NO.
20 DAY SUMMONS
(CR-4)

THE STATE OF WASHINGTON TO: IRA GABRIELSON

1. A lawsuit has been started against you in the above
entitled court by the plaintiff.

2. Plaintiff's claim is stated in the written complaint,
a copy of which is served upon you with this summons.

20 DAY SUMMONS - 1

LANE POWELL MOSS & MILLER
3800 RAINIER BANK TOWER
SEATTLE, WASHINGTON 98101-2647
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A.M. FEB 04 1988 P.M.
PIERCE COUNTY WASHINGTON
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,
IN AND FOR THE COUNTY OF PIERCE

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

Plaintiff,)

v.)

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

Defendants.)

NS-8 2 00947 9

20 DAY SUMMONS
(CR-4)

THE STATE OF WASHINGTON TO: IRA GABRIELSON

1. A lawsuit has been started against you in the above
entitled court by the plaintiff.

2. Plaintiff's claim is stated in the written complaint,
a copy of which is served upon you with this summons.

20 DAY SUMMONS - 1

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3. In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned lawyer for plaintiff within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where the plaintiff is entitled to what is asked for because you have not responded.

4. If you serve a notice of appearance on the undersigned lawyer, you are entitled to notice before a default judgment may be entered.

5. If not previously filed, you may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the plaintiff. Within 14 days after you serve your demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

6. If you wish to seek the advice of a lawyer in this matter, you should do so promptly so that your written response, if any, may be served on time.

7. This summons is issued pursuant to Rule 4 of the Civil Rules for Superior Court of the State of Washington.

DATED this 1st day of February, 1988.

LANE POWELL MOSS & MILLER

By Bruce Winchell
Bruce Winchell
Of Attorneys for Plaintiff

FILED
IN COUNTY CLERK'S OFFICE
A.M. FEB 04 1988 P.M.
PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,
IN AND FOR THE COUNTY OF PIERCE

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)
)
Plaintiff,)
)
v.)
)
IRA GABRIELSON and CAROL GABRIELSON,)
husband and wife; DONALD LEE BARNETT)
and BARBARA BARNETT, husband and)
wife; COMMUNITY CHAPEL and BIBLE)
TRAINING CENTER, a Washington)
corporation,)
)
Defendants.)
)
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NO. 88 2 00947 9
20 DAY SUMMONS
(CR-4)

THE STATE OF WASHINGTON TO: CAROL GABRIELSON

1. A lawsuit has been started against you in the above entitled court by the plaintiff.
2. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

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3. In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned lawyer for plaintiff within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where the plaintiff is entitled to what is asked for because you have not responded.

4. If you serve a notice of appearance on the undersigned lawyer, you are entitled to notice before a default judgment may be entered.

5. If not previously filed, you may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the plaintiff. Within 14 days after you serve your demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

6. If you wish to seek the advice of a lawyer in this matter, you should do so promptly so that your written response, if any, may be served on time.

7. This summons is issued pursuant to Rule 4 of the Civil Rules for Superior Court of the State of Washington.

DATED this 1st day of February. 1988.

LANE POWELL MOSS & MILLER

By Bruce Winchell
Bruce Winchell
Of Attorneys for Plaintiff

FILED
IN COUNTY CLERK'S OFFICE
A.M. FEB 04 1988 P.M.
PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,
IN AND FOR THE COUNTY OF PIERCE

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)
)
Plaintiff,)
)
v.)
)
IRA GABRIELSON and CAROL GABRIELSON,)
husband and wife; DONALD LEE BARNETT)
and BARBARA BARNETT, husband and)
wife; COMMUNITY CHAPEL and BIBLE)
TRAINING CENTER, a Washington)
corporation,)
)
Defendants.)
)
)
)

NO. 88 2 00947 9
20 DAY SUMMONS
(CR-4)

THE STATE OF WASHINGTON TO: DONALD LEE BARNETT

1. A lawsuit has been started against you in the above entitled court by the plaintiff.
2. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

20 DAY SUMMONS - 1

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3. In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned lawyer for plaintiff within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where the plaintiff is entitled to what is asked for because you have not responded.

4. If you serve a notice of appearance on the undersigned lawyer, you are entitled to notice before a default judgment may be entered.

5. If not previously filed, you may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the plaintiff. Within 14 days after you serve your demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

6. If you wish to seek the advice of a lawyer in this matter, you should do so promptly so that your written response, if any, may be served on time.

7. This summons is issued pursuant to Rule 4 of the Civil Rules for Superior Court of the State of Washington.

DATED this 17 day of February. 1988.

LANE POWELL MOSS & MILLER

By Bruce Winchell
Bruce Winchell
Of Attorneys for Plaintiff

FILED
PIERCE COUNTY CLERK'S OFFICE
A.M. FEB 04 1988 P.M.
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,
IN AND FOR THE COUNTY OF PIERCE

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)
)
) Plaintiff,)
)
) v.)
)
IRA GABRIELSON and CAROL GABRIELSON,)
husband and wife; DONALD LEE BARNETT)
and BARBARA BARNETT, husband and)
wife; COMMUNITY CHAPEL and BIBLE)
TRAINING CENTER, a Washington)
corporation,)
)
) Defendants.)
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NO. 88 2 10947 9
20 DAY SUMMONS
(CR-4)

THE STATE OF WASHINGTON TO: BARBARA BARNETT

1. A lawsuit has been started against you in the above
entitled court by the plaintiff.

2. Plaintiff's claim is stated in the written complaint,
a copy of which is served upon you with this summons.

20 DAY SUMMONS - 1

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3. In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned lawyer for plaintiff within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where the plaintiff is entitled to what is asked for because you have not responded.

4. If you serve a notice of appearance on the undersigned lawyer, you are entitled to notice before a default judgment may be entered.

5. If not previously filed, you may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the plaintiff. Within 14 days after you serve your demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

6. If you wish to seek the advice of a lawyer in this matter, you should do so promptly so that your written response, if any, may be served on time.

7. This summons is issued pursuant to Rule 4 of the Civil Rules for Superior Court of the State of Washington.

DATED this 1st day of February. 1988.

LANE POWELL MOSS & MILLER

By Bruce Winchell
Bruce Winchell
Of Attorneys for Plaintiff

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3. In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned lawyer for plaintiff within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where the plaintiff is entitled to what is asked for because you have not responded.

4. If you serve a notice of appearance on the undersigned lawyer, you are entitled to notice before a default judgment may be entered.

5. If not previously filed, you may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the plaintiff. Within 14 days after you serve your demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

6. If you wish to seek the advice of a lawyer in this matter, you should do so promptly so that your written response, if any, may be served on time.

7. This summons is issued pursuant to Rule 4 of the Civil Rules for Superior Court of the State of Washington.

DATED this 1st day of February, 1988.

LANE POWELL MOSS & MILLER

By Bruce Winchell
Bruce Winchell
Of Attorneys for Plaintiff

FILED
IN COUNTY CLERK'S OFFICE

A.M. **FEB 04 1988** P.M.

PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK

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

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

Plaintiff,)

v.)

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

Defendants.)

No. 88 2 00947 9

COMPLAINT FOR
DECLARATORY JUDGMENT

I.

American Casualty Company of Reading Pennsylvania
(American) is a Pennsylvania corporation, which is licensed to
do business in Washington and which has paid all fees due and
owing.

II.

Ira and Carol Gabrielson are Washington residents, residing
in Pierce County. Donald Lee Barnett (Barnett) and Barbara

1 Barnett, husband and wife, are Washington residents. Community
 2 Chapel and Bible Training Center (Community Chapel) is a
 3 Washington corporation.

4 III.

5 Ira and Carol Gabrielson are plaintiffs, in an action
 6 against Donald and Barbara Barnett and Community Chapel and
 7 other defendants, including Jack McDonald (McDonald) and Jane
 8 Doe McDonald, John Does 1-4, Jane Does, 1-4, husbands and
 9 wives, and Community Chapel and Bible Training Center of Tacoma
 10 (Tacoma Chapel). That action is presently pending in Pierce
 11 County under Cause No. 86-2-02793-6. A copy of the Complaint
 12 in that action is attached as Exhibit A.

13 IV.

14 The Gabrielson complaint alleges Jack McDonald was pastor
 15 of the Tacoma Chapel, Community Chapel was the parent corpora-
 16 tion to Tacoma Chapel and Barnett was pastor of Community
 17 Chapel. It further alleges that McDonald "manipulated"
 18 Gabrielson "into leaving her husband" and "coerced and unduly
 19 influenced" her into having a sexual relationship. It further
 20 alleges Barnett "knew or should have known . . . McDonald was
 21 involved in the seduction of female members of the
 22 congregation." Causes of action asserted are:

- 23 1. Outrage;
- 24 2. Intentional counselor malpractice;
- 25 3. Counselor malpractice;
- 26 4. Pastoral malpractice;

- 1 5. Assault;
- 2 6. Battery;
- 3 7. False imprisonment; and
- 4 8. Defamation.

5 v.

6 American insured Community Chapel under a Comprehensive
 7 General Liability Policy from May 9, 1982 until May 9, 1986. A
 8 copy of relevant portions of the policy is attached as
 9 Exhibit B. The policy provides in part:

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

12 A. Bodily Injury . . . caused by an
occurrence . . .

13 * * *

14 Bodily Injury means bodily injury, sickness
 15 or disease . . .

16 * * *

17 Occurrence means an accident, including
 18 continuous or repeated exposure to conditions,
 19 which results in bodily injury or property damage
 neither expected nor intended from the standpoint
 of the insured.

20 * * *

21 Each of the following is an insured . . .

22 (c) any executive officer, director or
 23 stockholder thereof while acting within the
scope of his duties . . .

24 * * *

25 (f) any employee . . . while acting within
 26 the scope of their duties . . .

1 The company will pay . . . all sums which the insured
 2 shall become legally obligated to pay as damages
 3 because of personal injury . . . arising out of the
 4 named insured's business . . .

5 * * *

6 A "Personal Injury" means injury arising out of . . .

7 (a) false arrest, detention, imprisonment . . .

8 (b) wrongful . . . eviction . . .

9 (c) a publication or utterance

10 (1) of a libel or slander or other
 11 defamatory or disparaging material.

12 * * *

13 This insurance does not apply . . . to Personal
 14 Injury arising out of . . . publication . . . of
 15 defamatory material . . . made by or at the
 16 direction of the insured with knowledge of the
 17 falsity thereof.

18 * * *

19 EXCLUSION

20 (Malpractice and Professional Services)

21 [T]he insurance does not apply to bodily
 22 injury . . . due to

23 1. the rendering or failure to
 24 render . . . any service or
 25 treatment conducive to health or
 26 of a professional nature . . .

(Emphasis supplied)

VI.

American is presently defending Community Chapel and
 Barnett under a full reservation of rights.

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VII.

FIRST CAUSE OF ACTION

American seeks a declaration that none of the alleged injuries for which plaintiffs seek compensation constitute a "Bodily Injury" as that term is defined in the policy.

VIII.

SECOND CAUSE OF ACTION

American seeks a declaration that none of the alleged injuries for which plaintiffs seek compensation were "caused by an occurrence" as that term is defined in the policy.

IX.

THIRD CAUSE OF ACTION

American seeks a declaration that the alleged acts by Barnett were not acts "within the scope of his duties" as that term is used in the policy.

FOURTH CAUSE OF ACTION

American seeks a declaration that none of the injuries alleged in the complaint constitute a "personal injury" as that term is defined in the policy.

FIFTH CAUSE OF ACTION

American seeks a declaration that any defamatory statements which were made by an insured were made "with knowledge of the falsity thereof" as that term is used in the policy.

SIXTH CAUSE OF ACTION

American seeks a declaration that certain of the injuries alleged arose from "service or treatment conducive to health or

1 of a professional nature" as that term is used in the policy
2 and are thus excluded from coverage.

3 SEVENTH CAUSE OF ACTION

4 American seeks a declaration that it has no duty to defend
5 Community Chapel or Barnett.

6 PRAYER FOR RELIEF

7 American requests that the court:

- 8 1. Declare that none of the injuries for which plaintiff
- 9 seeks compensation fall within the scope of coverage provided;
- 10 2. Declare that American has no duty to defend Community
- 11 Chapel or Barnett against the claims asserted;
- 12 3. Award American such other relief as the Court
- 13 considers to be fair and equitable.

14 DATED this 1st day of February, 1988.

15 LANE POWELL MOSS & MILLER

16
 17 BY Bruce Winchell
 18 Robert W. Thomas
 19 Bruce Winchell
 20 Of Attorneys for Plaintiff
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

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

NO. 86 2 02792 6

vs.

COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES

JACK McDONALD and "JANE DOE")
McDONALD, husband and wife;)
DONALD LEE BARNETT and BARBARA)
BARNETT, husband and wife; and)
"JOHN DOES" NOS. 1-4 AND "JANE)
DOES" NOS. 1-4, husbands and)
wives; COMMUNITY CHAPEL AND)
BIBLE TRAINING CENTER OF)
TACOMA; COMMUNITY CHAPEL AND)
BIBLE TRAINING CENTER,)
Defendants.)

COME NOW the plaintiffs by and through their attorney
of record, Daniel L. Hannula of Rush, Hannula & Harkins, and
for cause of action against the defendants state and allege
as follows:

I.

The court has jurisdiction over the subject matter
herein and the parties hereto.

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COMPLAINT - 1

EXHIBIT A

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 313 5381

II.

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The plaintiffs Carol Gabrielson and Ira Gabrielson are husband and wife and are residents of Pierce County, Washington.

III.

The defendants Donald Lee Barnett and Barbara Barnett are husband and wife and are residents of King County, Washington. Donald Barnett is the head pastor of Community Chapel and Bible Training Center and as such is responsible for the administration and direction of the entire congregation, including the Tacoma Chapel. All actions described of the defendants or either of them were performed on behalf of the marital community.

IV.

The defendants Jack McDonald and "Jane Doe" McDonald are husband and wife and residents of Pierce County, Washington. Jack McDonald is the pastor of Community Chapel and Bible Training Center of Tacoma. All actions described of the defendants or either of them were performed on behalf of the marital community.

V.

The defendants "~~John Does~~" 1-4 and "~~Jane Does~~" 1-4 are husbands and wives and are residents of the State of Washington. All actions described of the defendants or any of them were performed on behalf of the marital community.

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VI.

The defendant Community Chapel and Bible Training Center of Tacoma is a corporation licensed to do business and doing business in the State of Washington.

VII.

The defendant Community Chapel and Bible Training Center is a corporation licensed to do business and doing business in the State of Washington and the is parent corporation of Community Chapel and Bible Training Center of Tacoma.

VIII.

At all times material hereto, the defendants John Does 1 through 4 were agents, employees and representatives of Community Chapel and Bible Training Center and/or Community Chapel and Bible Training Center of Tacoma and all actions complained of herein were performed in the scope of their representation employment and/or agency for the Community Chapel and Bible Training Center and the Community Chapel and Bible Training Center of Tacoma.

IX.

At all times material hereto, the defendants Donald Lee Barnett, Barbara Barnett, and Jack and "Jane Doe" MacDonald were principals, agents, employees, and representatives of Community Chapel and Bible Training Center and Community Chapel and Bible Training Center of Tacoma and all actions complained of herein were performed in the scope of their

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

4 X.

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

13 XI.

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

18 XII.

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

24 XIII.

25 Further, as a result of the manipulation by defendant

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

XIV.

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

XV.

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

XVI.

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

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XVII.

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

XVIII.

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

XIX.

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

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FIRST CAUSE OF ACTION

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XX.

Plaintiffs hereby incorporate by reference as if set forth in full each and every allegation as set forth in paragraphs I through XIX.

XXI.

The acts of each of the defendants as stated above are so extreme as to go beyond all possible bounds of decency. The conduct of each of the above named defendants was outrageous and caused the plaintiffs to suffer severe emotional distress. Each of the above-named defendants acted intentionally or recklessly to cause severe emotional distress to the plaintiffs.

SECOND CAUSE OF ACTION

XXII.

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

XXIII.

Defendant Jack McDonald did not exercise the degree of care, skill, diligence and knowledge commonly possessed and exercised by a reasonable, careful and prudent counselor in this jurisdiction by manipulating Carol Gabrielson into a sexual relationship. This intentional or reckless failure constituted the tort of counselor malpractice.

////

THIRD CAUSE OF ACTION

XXIV.

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

XXV.

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

FOURTH CAUSE OF ACTION

XXVI.

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

XXVII.

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

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tort of pastoral malpractice.

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FIFTH THROUGH SEVENTH CAUSES OF ACTION

XXVIII.

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

XXIX.

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

EIGHTH CAUSE OF ACTION

XXX.

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

XXXI.

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

NINTH CAUSE OF ACTION

XXXII.

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

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XXXIII.

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

XXXIV.

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

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

1. For all general and special damages incurred by plaintiffs Ira and Carol Gabrielson in an amount to be proven at time of trial;
2. For plaintiffs' reasonable costs and attorneys' fees incurred in the prosecution of this action;
3. For such other and further relief as the court deems just and equitable.

DATED this 30 day of April, 1986.

RUSH, HANNULA & HARKINS

By: [Signature]
DANIEL L. HANNULA

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1. Producer No. **028252** Branch **050** Policy Number **50 214 20**

NAMED INSURED & ADDRESS (No., Street, Town, County, State, Zip)
COMMUNITY CHAPEL & BIBLE TRAINING CENTER
18635 Eighth Avenue South
Seattle, WA 98148

- Continental Casualty Company
 - National Fire Insurance Company of Hartford
 - American Casualty Company of Reading, Pa.
 - Transportation Insurance Company
- The Business of the Named Insured is
Church & College

2. Policy Period: **5-9-85** to **5-9-86** AT NOON (STANDARD TIME) AT THE LOCATION OF THE PREMISES INVOLVED

INSURED IS Individual Corporation Partnership Joint Venture Other **Church & College**

Insurance is provided in accordance with the following schedule of coverages. No coverage is provided for any Part of this policy unless a limit of liability or the word "included" is shown for such Part.

a. Part I Damage to Property/Business Earnings See Separate Schedule

Item	Description and Location of Property Covered	Limit of Liability		
		Building(s)	Contents	Business Earnings
		\$	\$	
b. % = Coinsurance Clause; %ML = Monthly Limit Clause AA = Agreed Amount Clause		<input type="checkbox"/> AA	<input type="checkbox"/> %ML	<input type="checkbox"/> AA

c. Part I Property Deductible Amount: \$100; \$ **1,000**

d. MORTGAGE CLAUSE: Subject to the provisions of the mortgage clause in Part I of this policy, Loss (if any) on building items under Part I shall be payable to: (insert name, address and item number)

As Per Attached G39543-A

e. Part II Comprehensive General Liability

	Per Occurrence	Aggregate
Combined Limits of Liability	\$ 500,000	\$ 500,000

Optional Liability Extensions: Only those coverages where an appears are included. Except as otherwise indicated the Comprehensive General Liability limits apply.

- Medical Payments \$1,000 per person, unless otherwise indicated
- Fire Legal Liability \$100,000 per occurrence, unless otherwise indicated
- Personal Injury \$100,000 aggregate applies, unless otherwise indicated
- Blanket Contract
- Broad Form Property Damage

See Part II for other coverages and limits of liability which may be afforded.

f. Part III Comprehensive Part IV Boiler and Machinery: See Part III and IV for Coverage and Limits

g. **Not Included**

3. Forms and Endorsements made part of this policy at time of issue include: (Insert number and suffix)

PART I: SEA-102, G39200-D, G39224-C, G39225-B, G39239-A, G39543-A, G30454-C, G39282-A98, G39282-299, G41099-A, G88131-A46, G41396-A99, TL0210(6/76), G31824-A

PART II: G31670-3, G39025-A, G39250-C, G39251-B, G2114(7/66), G19905(7/66), G10412(1/73), G12208(1/74), G12203(1/74)

Provisional Premium is \$ **28,829** and is payable \$ **28,828** at inception, and \$ _____ at each anniversary.

The premium for installments subsequent to the initial installment shall be subject to adjustment on the basis of the rates in effect at each anniversary date, unless indicated by an X in the box. NOT APPLICABLE

This policy shall not be valid unless countersigned by a duly authorized agent of this Company.

E. J. ... Chairman of the Board
[Signature] Corporate Secretary
 Countersigned by _____ Authorized Agent



For All the Commitments You Make®

COMPREHENSIVE GENERAL LIABILITY INSURANCE (Combined Limits of Liability)

I. COVERAGE A—BODILY INJURY LIABILITY

COVERAGE B—PROPERTY DAMAGE LIABILITY

The Company will pay on behalf of the *Insured* all sums which the *Insured* shall become legally obligated to pay as damages because of

- A. *Bodily Injury* or
- B. *Property Damage*

to which this insurance applies, caused by an Occurrence, and the Company shall have the right and duty to defend any suit against the *Insured* seeking damages on account of such Bodily Injury or Property Damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

Exclusions

This insurance does not apply:

- (a) to liability assumed by the *Insured* under any contract or agreement except an *Incidental Contract*; but this exclusion does not apply to a warranty of fitness or quality of the *Named Insured's Products* or a warranty that work performed by or on behalf of the *Named Insured* will be done in a workman-like manner;

- (b) to *Bodily Injury* or *Property Damage* arising out of the ownership, maintenance, operation, use, loading or unloading of
 - (1) any *Automobile* or aircraft owned or operated by or rented or loaned to any *Insured*, or
 - (2) any other *Automobile* or aircraft operated by any person in the course of his employment by any *Insured*;

but this exclusion does not apply to the parking of an *Automobile* on premises owned by, rented to or controlled by the *Named Insured* or the ways immediately adjoining, if such *Automobile* is not owned by or rented or loaned to any *Insured*;

- (c) to *Bodily Injury* or *Property Damage* arising out of
 - (1) the ownership, maintenance, operation, use, loading or unloading of any *Mobile Equipment*

while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith;

- (d) to *Bodily Injury* or *Property Damage* arising out of and in the course of the transportation of *Mobile Equipment* by an *Automobile* owned or operated by or rented or loaned to any *Insured*;

- (e) to *Bodily Injury* or *Property Damage* arising out of the ownership, maintenance, operation, use, loading or unloading of
 - (1) any watercraft owned or operated by or rented or loaned to any *Insured*, or
 - (2) any other watercraft operated by any person in the course of his employment by any *Insured*;

but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the *Named Insured* nor to watercraft under 26 feet in length which are neither owned by *Named Insured* nor used to carry persons or property for a charge.

- (f) to *Bodily Injury* or *Property Damage* arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

- (g) to *Bodily Injury* or *Property Damage* due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to
 - (1) liability assumed by the *Insured* under an *Incidental Contract*, or
 - (2) expenses for first aid under the Supplementary Payments provision;

- (h) to *Bodily Injury* or *Property Damage* for which the *Insured* or his indemnitee may be held liable:
 - (1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or

- (2) if not so engaged, as an owner or lessor of premises used for such purposes.

if such liability is imposed

- (i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or
- (ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person except with respect to liability of the *Insured* or his indemnitee as an owner or lessor described in (2) above;

But part (i) and (ii) of this exclusion does not apply with respect to liability arising out of the giving or serving of alcoholic beverages at functions incidental to the *Named Insured's* business provided the *Named Insured* is not engaged in the business of manufacturing, distributing, selling or serving of alcoholic beverages and part (ii) of this exclusion does not apply with respect to the liability of the *insured* or his indemnity as an owner or lessor described in (2) above.

- (i) to any obligation for which the *Insured* or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (j) to *Bodily Injury* to any employee of the *Insured* arising out of and in the course of his employment by the *Insured* or to any obligation of the *Insured* to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the *Insured* under an *Incidental Contract*;
- (k) to *Property Damage* to
 - (1) property owned or occupied by or rented to the *Insured*,
 - (2) property used by the *Insured*, or
 - (3) property in the care, custody or control of the *Insured* or as to which the *Insured* is for any purpose exercising physical control.

but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to *Property Damage* (other than to *Elevators*) arising out of the use of an *Elevator* at premises owned by, rented to or controlled by the *Named Insured*;

- (l) to *Property Damage* to premises alienated by the *Named Insured* arising out of such premises or any part thereof;

- (m) to loss of use of tangible property which has not been physically injured or destroyed resulting from

- (1) a delay in or lack of performance by or on behalf of the *Named Insured* of any contract or agreement, or
- (2) the failure of the *Named Insured's Products* or work performed by or on behalf of the *Named Insured* to meet the level of performance, quality, fitness or durability warranted or represented by the *Named Insured*;

but this exclusion does not apply to loss of use of other tangible property from the sudden and accidental physical injury to or destruction of the *Named Insured's Products* or work performed by or on behalf of the *Named Insured* after such products or work have been put to use by any person or organization other than an *Insured*;

- (n) to *Property Damage* to the *Named Insured's Products* arising out of such products or any part of such products;
- (o) to *Property Damage* to work performed by or on behalf of the *Named Insured* arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
- (p) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the *Named Insured's Products* or work completed by or for the *Named Insured* or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
- (q) to *Property Damage* included within:
 - (1) the *Explosion Hazard* in connection with operations identified in this policy by a classification code number which includes the symbol "x,"
 - (2) the *Collapse Hazard* in connection with operations identified in this policy by a classification code number which includes the symbol "c,"
 - (3) the *Underground Property Damage Hazard* in connection with operations identified in this policy by a classification code number which includes the symbol "u."

II. PERSONS INSURED

Each of the following is an *Insured* under this insurance to the extent set forth below:

- (a) if the *Named Insured* is designated in the Declarations as an individual, the person so designated but only with respect to the conduct of a business

of which he is the sole proprietor, and the spouse of the *Named Insured* with respect to the conduct of such a business;

- (b) if the *Named Insured* is designated in the Declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such:

Spouse—Partnership—If the *Named Insured* is a partnership, the spouse of a partner but only with respect to the conduct of the business of the *Named Insured*:

- (c) if the *Named Insured* is designated in the Declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such:

- (d) any person (other than an employee of the *Named Insured* or organization while acting as real estate manager for the *Named Insured*); and

- (e) with respect to the operation, for the purpose of locomotion upon a public highway, of *Mobile Equipment* registered under any motor vehicle registration law, any person while operating with the permission of the *Named Insured* any such equipment registered in the name of the *Named Insured* and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis to such person or organization; provided that no person or organization shall be an *Insured* under this paragraph (e) with respect to: *Property Damage* to property owned by, rented to, in charge of or occupied by the *Named Insured* or the employee of any person described in Paragraph II, Persons Insured.

- (f) other than executive officers, any employee, of the *Named Insured* while acting within the scope of their duties as such; but the insurance afforded to such employees does not apply to:

- (1) *Bodily Injury* to another employee of the *Named Insured* arising out of or in the course of his employment, or
- (2) *Bodily Injury* to the *Named Insured*, or if the *Named Insured* is a partnership or joint venture, any partner or member thereof, or the spouse of any of the foregoing.
- (3) *Property Damage* to property owned, occupied or used by, rented to, in the care, custody or control of or over which physical control is being exercised for any purpose by another employee of the *Named Insured* or if the *Named Insured* is a partnership or joint ven-

ture, any partner, member or spouse of any of the foregoing.

This insurance does not apply to *Bodily Injury* or *Property Damage* arising out of the conduct of any partnership or joint venture of which the *Insured* is a partner or member and which is not designated in this policy as a *Named Insured*.

III. LIMITS OF LIABILITY

Regardless of the number (1) *Insured* under this policy, (2) persons or organizations who sustain *Bodily Injury* or *Property Damage*, (3) claims made or suits brought on account of *Bodily Injury* or *Property Damage* to which this insurance applies, the Company's liability is limited as follows:

Coverages A and B Combined—The limit of liability stated in the Declarations Page as applicable to "each *Occurrence*" is the total limit of the Company's liability under Coverages A and B combined for all damages as the result of any one *Occurrence* provided that with respect to any *Occurrence* for which notice of this policy is given in lieu of security or when this policy is certified as proof of financial responsibility under the provisions of the motor vehicle financial responsibility law of any state or province, such limit of liability shall be applied to provide the separate limits required by such law for *Bodily Injury* liability and *Property Damage* liability to the extent of the coverage required by such law, but the separate application of such limit shall not increase the total limit of the Company's liability.

Subject to the above provision respecting "each *Occurrence*," the total liability of the Company for all damages because of all *Bodily Injury* and *Property Damage* to which this coverage applies and described in any of the numbered subparagraphs below shall not exceed the limit of liability stated in the Declarations Page as "aggregate".

- (1) all *Property Damage* arising out of premises or operations rated on a remuneration basis, or Contractor's Equipment rated on a receipts basis, including *Property Damage* for which liability is assumed under the *Incidental Contract* relating to such premises or operations, but excluding *Property Damage* included in subparagraph (2) below;
- (2) all *Property Damage* arising out of and occurring in the course of operations performed for the *Named Insured* by independent contractors and general supervision thereof by the *Named Insured*, including any such *Property Damage* for which liability is assumed under any *Incidental Contract* relating to such operations, but this subparagraph (2) does not include *Property Damage* arising out of maintenance or repairs at premises owned by or

rented to the *Named Insured* or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

- (3) all *Bodily Injury* and *Property Damage* included within the *Completed Operations Hazard* and all *Bodily Injury* and *Property Damage* included within the *Products Hazard*.

Such aggregate limit shall apply separately (i) to the *Property Damage* described in subparagraphs (1) and (2), (ii) with respect to each project away from premises owned by or rented to the *Named Insured* in subparagraphs (1) and (2) and (iii) to the sum of the damages for all *Bodily Injury* and all *Property Damage* described in subparagraph (3).

Coverages A and B—For the purpose of determining the limit of the Company's liability, all *Bodily Injury* and *Property Damage* arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one *Occurrence*.

IV. POLICY TERRITORY

This insurance applies only to *Bodily Injury* or *Property Damage* which occurs within the *Policy Territory*.

V. OPTIONAL LIABILITY EXTENSIONS

The following coverages are optional and coverage is afforded only when indicated in the Declarations page as included.

A. CONTRACTUAL LIABILITY COVERAGE

- (1) The definition of *Incidental Contract* is extended to include any contract or agreement relating to the conduct of the *Named Insured's* business.
- (2) The insurance afforded with respect to liability assumed under an *Incidental Contract* is subject to the following additional exclusions:
- (a) to *Bodily Injury* or *Property Damage* for which the *Insured* has assumed liability under any *Incidental Contract*, if such injury or damage occurred prior to the execution of the *Incidental Contract*.
- (b) if the *Insured* is an architect, engineer or surveyor, to *Bodily Injury* or *Property Damage* arising out of the rendering or failure to render professional services by such *Insured*, including
- (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, and
- (2) supervisory, inspection or engineering services;
- (c) if the indemnitee of the *Insured* is an architect,

engineer or surveyor, to the liability of the indemnitee, his agents or employees, arising out of

- (1) the preparation or approval or the failure to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or
- (2) the giving of or the failure to give directions or instructions by the indemnitee, his agents or employees, provided such giving or failure to give is the primary cause of the *Bodily Injury* or *Property Damage*.

- (d) to any obligation for which the *Insured* may be held liable in an action on a contract by a third party beneficiary for *Bodily Injury* or *Property Damage* arising out of a project for a public authority; but this exclusion does not apply to an action by the public authority or any other person or organization engaged in the project.
- (e) to *Bodily Injury* or *Property Damage* arising out of operations, within 50 feet of any railroad property, affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing; but this exclusion does not apply to sidetrack agreements.

- (3) The following exclusions applicable to Coverages A (*Bodily Injury*) and B (*Property Damage*) do not apply to this Contractual Liability Coverage: (b), (c) (2), (d) and (e).

- (4) The following additional condition applies:

Arbitration. The Company shall be entitled to exercise all of the *Insured's* rights in the choice of arbitrators and in the conduct of any arbitration proceeding.

B. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY COVERAGE

- (1) The Company will pay on behalf of the *Insured* all sums which the *Insured* shall become legally obligated to pay as damages because of *Personal Injury* or *Advertising Injury* to which this insurance applies, sustained by any person or organization and arising out of the conduct of the *Named Insured's* business, within the *Policy Territory*, and the Company shall have the right and duty to defend any suit against the *Insured* seeking damages on account of such injury, even if any of the allegations are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.
- (2) This insurance does not apply:

(a) to liability assumed by the Insured under any contract or agreement;

(b) to *Personal Injury* or *Advertising Injury* arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of the Insured;

(c) to *Personal Injury* or *Advertising Injury* arising out of a publication or utterance of a libel or slander, or a publication or utterance in violation of an individual's right of privacy, if the first injurious publication or utterance of the same or similar material by or on behalf of the *Named Insured* was made prior to the effective date of this insurance;

(d) to *Personal Injury* or *Advertising Injury* arising out of libel or slander or the publication or utterance of defamatory or disparaging material concerning any person or organization or goods, products or services, or in violation of an individual's right of privacy, made by or at the direction of the Insured with knowledge of the falsity thereof;

(e) to *Personal Injury* or *Advertising Injury* arising out of the conduct of any partnership or joint venture of which the Insured is a partner or member and which is not designated in the Declarations of the policy as a *Named Insured*;

(f) to *Advertising Injury* arising out of

(1) failure of performance of contract, but this exclusion does not apply to the unauthorized appropriation of ideas based upon alleged breach of implied contract, or

(2) infringement of trademark, service mark or trade name, other than titles or slogans, by use thereof on or in connection with goods, products or services sold, offered for sale or advertised;

(3) incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised.

(g) with respect to *Advertising Injury*

(a) to any Insured in the business of advertising, broadcasting, publishing or telecasting, or

(b) to any injury arising out of any act committed by the Insured with actual malice.

(h) to *Personal Injury* to another employee of the *Named Insured* arising out of or in the course of his employment.

(3) Limits of Liability

Regardless of the number of (1) Insureds here-

under, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought on account of *Personal Injury* or *Advertising Injury* the total limit of the Company's liability under this coverage for all damages shall not exceed the *Bodily Injury* limit of liability stated in the Declarations Page as aggregate.

(4) Additional Definitions

Advertising Injury means injury arising out of an offense committed during the policy period occurring in the course of the *Named Insured's* advertising activities, if such injury arises out of libel, slander, defamation, violation of right of privacy, piracy, unfair competition, or infringement of copyright, title or slogan.

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

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

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

(c) a publication or utterance

(1) of a libel or slander or other defamatory or disparaging material, or

(2) in violation of an individual's right of privacy;

except publications or utterances in the course of or related to advertising, broadcasting, publishing or telecasting activities conducted by or on behalf of the *Named Insured* shall not be deemed *Personal Injury*.

C. PREMISES MEDICAL PAYMENTS COVERAGE

The Company will pay to or for each person who sustains *Bodily Injury* caused by accident all reasonable *Medical Expense* incurred within one year from the date of the accident on account of such *Bodily Injury*, provided such *Bodily Injury* arises out of (a) a condition in the *Insured Premises* or (b) operations with respect to which the *Named Insured* is afforded coverage for *Bodily Injury* liability under the policy

This insurance does not apply:

(1) to *Bodily Injury*

(a) arising out of the ownership, maintenance, operation, use, loading or unloading of

(1) any *Automobile* or aircraft owned or operated by or rented or loaned to any Insured, or

(2) any other *Automobile* or aircraft operated by any person in the course of his employ-

ment by any *Insured*:

but this exclusion does not apply to the parking of an *Automobile* on the *Insured Premises*, if such *Automobile* is not owned by or rented or loaned to any *Insured*:

(b) arising out of

(1) the ownership, maintenance, operation, use, loading or unloading of any *Mobile Equipment* while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity, or

(2) the operation or use of any snowmobile or trailer designed for use therewith:

(c) arising out of the ownership, maintenance, operation, use, loading or unloading of

(1) any watercraft owned or operated by or rented or loaned to any *Insured*, or

(2) any other watercraft operated by any person in the course of his employment by any *Insured*:

but this exclusion does not apply to watercraft while ashore on the *Insured Premises*:

(d) arising out of and in the course of the transportation of *Mobile Equipment* by an *Automobile* owned or operated by or rented or loaned to the *Named Insured*:

(2) to *Bodily Injury*

(a) included within the *Completed Operations Hazard* or the *Products Hazard*:

(b) arising out of operations performed for the *Named Insured* by independent contractors other than

(1) maintenance and repair of the *Insured Premises*, or

(2) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures:

(c) resulting from the selling, serving or giving of any alcoholic beverage

(1) in violation of any statute, ordinance or regulation,

(2) to a minor,

(3) to a person under the influence of alcohol, or

(4) which causes or contributes to the intoxication of any person.

if the *Named Insured* is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or if not so engaged, is an owner or lessor of premises used for such purposes, but only part (1) of this exclusion (2) (C) applies when the *Named Insured* is such an owner or lessor:

(d) due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing:

(3) to *Bodily Injury*

(a) to the *Named Insured*, any partner therein, any tenant or other person regularly residing on the *Insured Premises* or any employee of any of the foregoing if the *Bodily Injury* arises out of and in the course of his employment therewith:

(b) to any other tenant if the *Bodily Injury* occurs on that part of the *Insured Premises* rented from the *Named Insured* or to any employee of such a tenant if the *Bodily Injury* occurs on the tenant's part of the *Insured Premises* and arises out of and in the course of his employment for the tenant:

(c) to any person while engaged in maintenance and repair of the *Insured Premises* or alteration, demolition or new construction at such premises:

(d) to any person if any benefits for such *Bodily Injury* are payable or required to be provided under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law:

(e) to any person practicing, instructing or participating in any physical training, sport, athletic activity, or contest whether on a formal or informal basis:

(f) if the *Named Insured* is a club, to any member of the *Named Insured*:

(g) if the *Named Insured* is a hotel, motel, or tourist court, to any guest of the *Named Insured*:

(4) to any *Medical Expense* for services by the *Named Insured*, any employee thereof or any person or organization under contract to the *Named Insured* to provide such services.

LIMITS OF LIABILITY

The limit of liability for Premises Medical Payments Coverage is \$1,000 each person unless otherwise stated in the Declarations Page. The limit of liability applicable to "each person" is the limit of the Company's liability for all Medical Expense for Bodily Injury to any one person as the result of any one accident; but subject to the above provision respecting "each person," the total liability of the Company under Premises Medical Payments Coverage for all Medical Expense for Bodily Injury to two or more persons as the result of any one accident shall not exceed the limit of Bodily Injury liability stated in the policy as applicable to "each Occurrence."

When more than one Medical Payments coverage afforded by the policy applies to the loss, the Company shall not be liable for more than the amount of the highest applicable limit of liability

ADDITIONAL DEFINITIONS

When used herein:

Insured Premises means all premises owned by or rented to the Named Insured with respect to which the Named Insured is afforded coverage for Bodily Injury liability under this policy, and includes the ways immediately adjoining on land:

Medical Expense means expenses for necessary medical, surgical, x-ray and dental services including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services.

ADDITIONAL CONDITION

Medical Reports: Proof and Payment of Claim

As soon as practicable the injured person or someone on his behalf shall give to the Company written proof of claim, under oath if required, and shall, after each request from the Company, execute authorization to enable the Company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the Company when and as often as the Company may reasonably require. The Company may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the Company.

D. FIRE LEGAL LIABILITY COVERAGE—REAL PROPERTY

With respect to Property Damage to structures or portions thereof rented to or leased to the Named Insured, including fixtures permanently attached thereto, if such Property Damage arises out of fire:

- (1) All of the exclusions of the policy, other than the Nuclear Energy Liability Exclusion (Broad Form).

are deleted and replaced by the following:

This insurance does not apply to liability assumed by the Insured under any contract or agreement.

- (2) The limit of Property Damage liability as respects this Fire Legal Liability Coverage—Real Property is \$50,000 each Occurrence unless otherwise stated in the Declarations Page.

- (3) The Fire Legal Liability Coverage—Real Property shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof), available to the Insured, such as, but not limited to, Fire, Extended Coverage or Installation Risk Coverage, and the Other Insurance Condition of the policy is amended accordingly.

E. BROAD FORM PROPERTY DAMAGE LIABILITY COVERAGE (Including Completed Operations)

The insurance for Property Damage liability applies, subject to the following additional provisions

- (1) Exclusions (k) and (o) are replaced by the following:

- (a) to property owned or occupied by or rented to the Insured, or, except with respect to the use of Elevators, to property held by the Insured for sale or entrusted to the Insured for storage or safekeeping.

- (b) except with respect to liability under a written sidetrack agreement or the use of Elevators.

- (1) to property while on premises owned by or rented to the Insured for the purpose of having operations performed on such property by or on behalf of the Insured.

- (2) to tools or equipment while being used by the Insured in performing his operations.

- (3) to property in the custody of the Insured which is to be installed, erected or used in construction by the Insured.

- (4) to that particular part of any property, not on the premises owned by or rented to the Insured

- (i) upon which operations are being performed by or on behalf of the Insured at the time of the Property Damage arising out of such operations, or

- (ii) out of which any Property Damage arises, or

- (iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the Insured.

5) with respect to the *Completed Operations Hazard* and with respect to any classification stated in the policy or in the Company's manual as "including completed operations," to *Property Damage* to work performed by the *Named Insured* arising out of such work or any portion thereof, or out of such materials, parts or equipment furnished in connection therewith.

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(2) The Broad Form Property Damage Liability Coverage shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the *Insured*, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the Other Insurance Condition of the policy is amended accordingly.



For All the Commitments You Make

POLICY CONDITIONS

THE FOLLOWING CONDITIONS APPLY TO ALL PARTS OF THE POLICY

A. TIME OF INCEPTION: To the extent that coverage in this policy replaces coverage in other policies terminating at 12:01 A.M. (Standard Time) on the inception date of this policy, this policy shall be effective at 12:01 A.M. (Standard Time) instead of at Noon (Standard Time).

Special State Provisions; California, Florida, Oregon and Washington: All coverages in this policy shall be effective at 12:01 A.M. (Standard Time).

B. INSURANCE UNDER MORE THAN ONE PART: In the event that more than one Part of this policy covers the same loss, damage or claim, the Company shall not, under any circumstances, be liable for more than the actual loss, damage or claim sustained by the Insured.

C. CONFORMITY WITH STATUTE: The terms of this policy and forms attached hereto which are in conflict with the statutes of the state wherein this policy is issued are hereby amended to conform to such statutes.

D. PREMIUM: All premiums for this insurance shall be computed in accordance with the Company's rules, rates and rating plans, applicable to the insurance afforded.

If this policy is issued for a period in excess of one year with a specified expiration date and a premium is payable at each anniversary, such premium shall be determined annually on the basis of the rates in effect at the anniversary date.

Premium designated in this policy as "provisional premium" is a deposit premium only which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each annual period, or part thereof terminating with the end of the policy period, the earned premium shall be computed for such period and, upon notice thereof to the Named Insured, shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, the Company shall return to the Named Insured the unearned portion.

The Named Insured shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the Company at the end of the policy period and at such times during the policy period as the Company may direct.

E. CANCELLATION OF POLICY: This policy may be cancelled at any time at the request of the In-

sured. The Company may cancel this policy at any time by mailing to the Insured and to any mortgagee designated in this policy at any time by mailing to the Insured and to any mortgagee designated in this policy at the last address known to the Company or its agent at least a 60 day notice of cancellation. If the premium is not paid when due, the Company will mail at least a 10 day notice of cancellation.

If the Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

F. LIBERALIZATION CLAUSE: If during the period that insurance is in force under this policy, or within forty-five days prior to the inception date thereof, on behalf of this Company there be adopted, or filed with and approved or accepted by the Insurance Supervisory Authorities, all in conformity with the law, any changes in the form attached to this policy by which this form of insurance could be extended or broadened without increased premium charge by endorsement or substitution of form, then such extended or broadened insurance shall inure to the benefit of the Insured as though such endorsement or substitution of form had been made.

G. CONCEALMENT—FRAUD: This entire policy shall be void if, whether before or after a loss, the Insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or the interest of the Insured therein, or in the case of any fraud or false swearing by the Insured relating thereto.

H. INSPECTION AND AUDIT: The Company shall be permitted but not obligated to inspect the Named Insured's property and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the Named Insured or others, to determine or warrant that property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Company may examine and audit the Named Insured's books and records at any time during the policy period and extensions thereof and

within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

DECLARATIONS: By acceptance of this policy, the Named Insured agrees that the statements in the Declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance.

CHANGES: Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any Part of this policy or estop the Company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

K. SPECIAL DEFINITIONS:

- 1. Wherever in any form attached the word "policy" appears it shall mean the Part of this policy to which such form applies.
- 2. Wherever in any form attached the words "advance premium" appear, they shall mean "provisional premium" as set forth in item D. Premium above.

L. PROTECTIVE SAFEGUARDS: It is a condition of this insurance that the Insured shall maintain so far as is within his control such protective safe-

guards as are set forth by endorsement hereto. Failure to maintain such protective safeguards shall suspend this insurance, only as respects the location or situation affected, for the time of such discontinuance.

M. NOTICE TO INSURED: If more than one Insured is named in the Declarations, the Insured first named shall act for itself and for every other Insured for all purposes of this policy. Knowledge possessed by an Insured shall, for the purposes of this policy, constitute knowledge possessed by every Insured. Cancellation of this policy by, or through notice to, the Insured first named shall be cancellation of this policy with respect to every Insured.

N. FAILURE TO RENEW: If the Company has offered to renew this policy and the Named Insured has accepted the offer of renewal, but the renewal has not been issued to the Named Insured prior to the expiration date, then this policy shall continue in full force and effect as though renewed from the date of expiration until replaced by a renewal certificate or policy but in no event to exceed 12 months from the date of expiration stated in the Declarations or in a renewal endorsement attached to this policy. Premium for this extension shall be computed in accordance with the rules and rates contained in the Company's manual at the date of such expiration of this policy.

THE FOLLOWING CONDITIONS APPLY TO PART I

A. WAR RISK EXCLUSION: This Part shall not apply to loss caused, directly or indirectly, by or due to any act or condition incident to the following:

- 1. Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining, or using military, naval or air forces; or (b) by military, naval or air forces; or (c) by an agent of any such government, power, authority or forces, "it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces;
- 2. Insurrection, rebellion, revolution, civil war, usurped power, or action taken by government authority in hindering, combating or defending against such an occurrence; seizure or destruction under quarantine or customs' regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

B. NUCLEAR CLAUSE: The word "fire" in this Part is not intended to and does not embrace nuclear

reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled. Loss by nuclear reaction or nuclear radiation or radioactive contamination is not intended to be and is not insured against by this Part, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by "fire" or any other perils insured against by this Part. Subject to the foregoing and all provisions of this policy, direct loss by "fire" resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this Part.

C. NUCLEAR EXCLUSION: Loss by nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing is not insured against by this Part, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by any of the perils insured against by this Part; and nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, is not "explosion" or "smoke." This clause applies to all perils insured against hereunder except the perils of fire and lightning, which are otherwise provided for in the Nuclear Clause above.

D. NO BENEFIT TO BAILEE: This insurance shall in no way inure directly or indirectly to the benefit of any carrier or other bailee for hire.

E. ASSIGNMENT: This policy shall be void if assigned or transferred without the written consent of the Company.

F. CONDITIONS:

1. In the event of loss, permission is granted for the Insured to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the property from further damage, and provided further that the Insured shall keep an accurate record of such repair expenditures. The cost of any such repairs directly attributable to damage by any peril insured hereunder shall be included in determining the amount of loss. Nothing herein contained is intended to modify the policy requirements applicable in case loss occurs, and the Insured shall protect the property from further damage.
2. Permission is hereby granted for such unoccupancy as is usual or incidental to the described occupancy.
3. Permission is hereby granted for such use of the premises as is usual and incidental to the occupancy and to keep and use all materials in such quantities as are usual and incidental to such occupancy.

G. NO CONTROL: This insurance shall not be prejudiced:

1. By any act or neglect of the owner of any building if the Insured is not the owner thereof, or by any act or neglect of any occupant (other than the Insured) of any building, when such act or neglect of the owner or occupant is not within the control of the Insured, or
2. By failure of the Insured to comply with any warranty or condition contained in any form or endorsement attached to this policy with regard to any portion of the premises over which the Insured has no control.

H. POLICY PERIOD, TERRITORY: This Part applies only to loss to property during the policy period while such property is within the 50 states of the United States of America, the District of Columbia or the Commonwealth of Puerto Rico.

I. COINSURANCE CLAUSE: The Company shall not be liable for a greater proportion of any loss to the property covered than the limit of liability under this Part for such property bears to the amount produced by multiplying the coinsurance percentage stated in the Declarations by the total value of the insured property determined by the same method of valuation used to establish the amount of the loss.

In the event that the aggregate claim for any loss is both less than \$10,000 and less than 5% of

the limit of liability for all contributing insurance applicable to the property involved at the time such loss occurs, no special inventory or appraisal of the undamaged property shall be required providing that nothing herein shall be construed to waive the application of the first paragraph of this clause.

If insurance under Part I of this policy is divided into separate limits of liability, the foregoing shall apply separately to the property covered under each such limit of liability.

If this insurance is written on a reporting basis, the foregoing Coinsurance Clause does not apply and is replaced by the applicable reporting form provisions.

As respects the State of Florida, the rate charged in this policy is based upon the use of this Coinsurance Clause, with the consent of the Insured.

J. AGREED AMOUNT CONDITIONS: If the Declarations Part I Damage to Property/Business Earnings Schedule specify "agreed amount," the following conditions apply:

Subject to all the conditions and stipulations otherwise applicable to Part I, the "Coinsurance Clause" in this policy is suspended and replaced by the following:

1. With respect only to the items specified in the Declarations Part I Damage to Property/Business Earnings Schedule, as being subject to these "agreed amount" provisions, it is made a condition of this insurance that the application of the "Coinsurance Clause" is suspended in determination of loss caused by the perils insured against occurring after the inception date of this policy or endorsement attaching these "agreed amount" conditions.
2. If this policy is renewed by endorsement, these "agreed amount" conditions shall not apply unless "agreed amount" is shown on the renewal endorsement as applying to the renewal.

K. LIMITS OF LIABILITY AND DEDUCTIBLE: This Company shall not be liable:

1. for more than the limits shown on the Declarations Part I Damage to Property/Business Earnings Schedule; nor
2. for the amount of any deductible shown in Section 2 of the Declarations Part I Property/Business Earnings Schedule, applying separately to each occurrence. Windstorm or hail losses occurring at separate locations in the course of a single storm shall be considered a single occurrence.

L. WHAT TO DO WHEN LOSS OCCURS:

1. The Insured shall as soon as practicable report to this Company or its agent every loss or damage which may become a claim here-

under and also report such loss or damage to the police if such is a result of violation of the law and shall also file with the Company or its agent within 90 days from the date of loss a detailed sworn proof of loss. Failure by the Insured to report the loss or damage and to file such sworn proof of loss as required shall invalidate any claim hereunder for such loss;

2. It shall be necessary for the Insured to use all lawful and proper efforts for the safeguarding and recovery of the property covered or its value without prejudice to this insurance, and this Company will contribute to the just and reasonable charges thereof in such proportion as the amount of insurance hereunder bears to the whole value of the property involved in the disaster at the time such loss shall occur. The acts of each party or their agents in saving, preserving or recovering the property shall not be considered or held to be either a waiver or an acceptance of abandonment;
3. The Insured and every claimant hereunder shall submit to examination by the Company, subscribe the same, under oath, if required, and produce for the Company's examination all pertinent records, all at such reasonable times and places as the Company shall designate and shall cooperate with the Company in all matters pertaining to loss or claims with respect thereto;
4. No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor until 30 days after the required proofs of loss have been filed with the Company, nor at all unless commenced within 2 years from the date when the Insured first has knowledge of the loss;
5. The insured property may be owned by the Insured or held by him in any capacity or may be property for which the Insured is legally liable; provided, the insurance applies only to the interest of the Insured in such property, including the Insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the Insured's proof of loss;
6. It shall always be the option of this Company to take all or any part of the articles at the ascertained or appraised value or to repair or replace any property lost or damaged with other of like kind and quality within a reasonable time of giving notice, within 30 days after receipt of the proof herein required, of its intention to do so;
7. There can be no abandonment to this Company of the property insured unless specifically agreed to by the Company;
8. All adjusted claims shall be paid or made good within 30 days after presentation and acceptance of satisfactory proofs of interest

and loss at the office of this Company. No loss shall be paid hereunder if the Insured has collected the same from others:

9. If the Insured and the Company fail to agree as to the amount of loss, each shall, on the written demand of either, made within 60 days after receipt of proof of loss by the Company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for 15 days to agree upon such umpire, then, on the request of the Insured or the Company, such umpire shall be selected by a judge of a court of record in the state in which such appraisal is pending. The appraisers shall then set the amount of loss, stating separately the actual cash value at the time of loss and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The Insured and the Company shall each pay his or its chosen appraiser and shall bear equally the other expenses of the appraisal and umpire. The Company shall not be held to have waived any of its rights by any act relating to appraisal;
10. If the Insured shall sustain any loss covered by this policy which exceeds the applicable amount of insurance hereunder, the Insured shall be entitled to all recoveries (except from suretyship insurance, reinsurance, security or indemnity taken by or for the benefit of the Company) by whomsoever made, on account of such loss under this policy until fully reimbursed, less the actual cost of effecting the same; and any remainder shall be applied to the reimbursement of the Company.

M. IMPAIRMENT OF RECOVERY: Except as noted below, the Company shall not be bound to pay any loss if the Insured shall have impaired any right of recovery for loss to the property insured. It is agreed that:

1. As respects property while on the premises of the Insured, permission is given the Insured to release others in writing from liability for loss prior to loss, and such release shall not affect the right of the Insured to recover hereunder, and
2. As respects property in transit, the Insured may, without prejudice to his insurance, accept such bills of lading, receipts or contracts of transportation as are ordinarily issued by carriers containing a limitation as to the value of such goods or merchandise.

N. OTHER INSURANCE:

1. Loss by fire or other perils not provided for in 2 below: If at the time of the loss, there is other insurance available to the Insured or any other interested party covering such loss

or which would have covered such loss except for the existence of this insurance, then the Company shall be liable as follows:

- (a) If such insurance is Contributing Insurance, defined as any insurance written in the name of the Insured, upon the same plan, terms, conditions and provisions as contained in this policy whether collectible or not, the Company shall be liable for no greater proportion of any loss than the limit of liability under this policy bears to the whole amount of insurance covering such loss.
 - (b) If such insurance is Specific Insurance, defined as any insurance other than that described as Contributing Insurance in (a) above, the Company shall not be liable for any loss hereunder until the liability of such Specific Insurance has been exhausted, and then shall cover only such amount as may exceed the amount due from Specific Insurance (whether collectible or not) after application of any contribution, coinsurance, average or distribution or other clauses contained in policies of such Specific Insurance affecting the amount collectible thereunder, not exceeding however, the applicable limit of liability under this policy.
2. Loss by burglary, robbery or theft or loss of personal property covered on an unspecified peril basis: insurance under this policy shall apply as excess insurance over any other valid and collectible insurance which would apply in the absence of this policy.
 3. When loss under this policy is subject to a deductible, the Company shall not be liable for more than its pro rata share of such loss in excess of the deductible amount.
- O. LOSS CLAUSE:** Unless otherwise provided any loss hereunder shall not reduce the amount of this policy.
- P. LOSS PAYABLE CLAUSE:** Loss, if any, shall be adjusted with the Named Insured and shall be payable to him unless other payee is specifically named hereunder; provided, at the option of the Company any loss to property of others may be adjusted with and paid to the owner of such property.
- Q. MORTGAGE CLAUSE:** (Applies only to buildings). This entire clause is void unless name of mortgagee(s) or trustee(s) is inserted in the Declarations Part I Damage to Property/Business Earnings Schedule. Loss or damage, if any, on buildings under this policy, shall be payable to the aforesaid as mortgagee (or trustee) as interest may appear. This insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or

notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the operation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, that the mortgagee (or trustee) shall notify this Company of any change of ownership or occupancy or increase the hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for 10 days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and this Company shall have the right, on like notice, to cancel this agreement.

Whenever this Company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgage's (or trustee's) claim.

Loss or damage, if any, under this policy shall be payable to the aforesaid mortgagee (or trustee) as interest may appear under all present or future mortgages, in order of precedence of such mortgages, in accordance with the terms of this Standard Mortgagee Clause, it being understood that no notice of increase or decrease in any mortgagee's interest is required.

R. BRANDS OR LABELS: If branded or labeled merchandise is damaged and the Company elects to take all or any part of the property at the agreed or appraised value, the Insured may at his own expense stamp "salvage" on the merchandise or its containers or may remove the brands or labels, if such stamp or removal will not physically damage the merchandise.

S. VALUATION: Subject to all other provisions and conditions, the following valuations are established for property insured under Part I:

1. Insured's buildings, as defined in no event to include rugs or carpeting, curtains or draperies, upholstery, cloth awnings, unit air conditioners, domestic appliances and outdoor equipment), at the full cost to repair or replace the property (without deduction for depreciation) if repaired or replaced with due diligence and dispatch and within a reasonable time after loss, but not to exceed:

- (a) The cost to replace the property covered on the same site in a condition equal to, but not superior to or more extensive than, the condition when new.
- (b) The amount actually and necessarily expended in repairing or replacing such property or any part thereof.
- (c) If the damaged property is not repaired or replaced within a reasonable time after loss, or if the Insured shall so elect, the actual cash value (with deduction for depreciation) of the damaged or destroyed property. If the Insured shall elect following loss to make claim on the basis of actual cash value he shall have the right to make further claim for additional liability on the basis of additional cost of repair or replacement, provided the Company is notified in writing within a reasonable time after loss of the Insured's intent to make further claim.

In no event shall aggregate payment for this and any other property insured under any item of the Declarations Part I Damage to Property/ Business Earnings Schedule exceed the limit of liability shown for such term.

- 2. Property of others at the amount for which the Insured is liable but in no event to exceed actual cash value. Loss shall be adjusted with the Insured for the account of the owner(s) of said property, except that the right to adjust such loss with said owner(s) is reserved to the Company and the receipts of the owner(s) in satisfaction thereof shall be in full satisfaction of any claim by the Insured for which such payments have been made.
- 3. Property sold but not delivered at the actual selling price of the Insured less all discounts and unincurred expenses.
- 4. Finished stock, manufactured by the Insured at the selling price of such property at the

time and place of loss less all customary discounts and unincurred expenses. 1992 08/12/4 15151

- 5. Patterns, molds, models, dies: At actual cash value with proper deduction for depreciation or obsolescence, however caused, and shall in no event exceed what it would then cost to repair or replace the same with material of like kind and quality.
- 6. Tenant's Improvements and Betterments:
 - (a) If repaired or replaced within a reasonable time after loss at the expense of the Insured, the actual cash value of the damaged or destroyed property;
 - (b) If not repaired or replaced within a reasonable time after loss, that proportion of the original cost at time of installation of the damaged or destroyed property which the unexpired term of the lease or rental agreement, whether written or oral, in effect at the time of loss bears to the period(s) from the date(s) such improvements and betterments were made to the expiration date of the lease;
 - (c) Property replaced by another for the benefit of and at no cost to the Insured tenant shall not be covered hereunder.
- 7. All other Insured property: At actual cash value.

T. SUBROGATION: In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice such rights.

U. VACANCY AND UNOCCUPANCY CLAUSE: This Company shall not be liable for loss caused by vandalism or malicious mischief occurring after a described building (whether intended for occupancy by owner or tenant) has been vacant or unoccupied for a period of 30 consecutive days, nor for loss caused by any other insured peril after it has been vacant for a period of 60 consecutive days, regardless of the date coverage is effective.

This condition shall not apply to one and two family dwellings nor to buildings in due course of construction.

THE FOLLOWING CONDITIONS APPLY TO PART II

1. SUPPLEMENTARY PAYMENTS:

The Company will pay, in addition to the applicable limit of liability;

- (a) all expenses incurred by the Company, all costs taxed against the Insured in any suit defended by the Company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment

and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;

- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of

...this policy, and the... required of the *Insured* because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed \$250 per bail bond, but the Company shall have no obligation to apply for or furnish any such bonds;

- (c) expenses incurred by the *Insured* for first aid to others at the time of an accident, for *Bodily Injury* to which this policy applies;
- (d) reasonable expenses incurred by the *Insured* at the Company's request in assisting the Company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$25 per day.

2. **FINANCIAL RESPONSIBILITY LAWS:** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for *Bodily Injury* liability or for *Property Damage* liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The *Insured* agrees to reimburse the Company for any payment made by the Company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

3. **INSURED'S DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT:**

- (a) In the event of an *Occurrence*, written notice containing particulars sufficient to identify the *Insured* and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the *Insured* to the Company or any of its authorized agents as soon as practicable.
- (b) If claim is made or suit is brought against the *Insured*, the *Insured* shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.
- (c) The *Insured* shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the *Insured* because of injury or damage with respect to which insurance is afforded under this policy; and the *Insured* shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The *Insured* shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

4. **AGGREGATE:** If this policy is in effect for a period

liability stated in this policy as "aggregate" shall apply separately to each consecutive annual period.

5. **SUBROGATION:** In the event of any payment under this Part, the Company shall be subrogated to all the *Insured's* rights of recovery therefor against any person or organization and the *Insured* shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The *Insured* shall do nothing after loss to prejudice such rights.

6. **ACTION AGAINST COMPANY:** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the *Insured's* obligation to pay shall have been finally determined either by judgment against the *Insured* after actual trial or by written agreement of the *Insured*, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the *Insured* to determine the *Insured's* liability, nor shall the Company be impleaded by the *Insured* or his legal representative. Bankruptcy or insolvency of the *Insured* or the *Insured's* estate shall not relieve the Company of any of its obligations hereunder.

7. **OTHER INSURANCE:** The insurance afforded by this Part is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the *Insured* has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance.

With respect to any insurance afforded by this policy for *Bodily Injury* or *Property Damage* arising from watercraft where the *Insured* is, irrespective of this insurance, covered or protected against any loss or claim which would otherwise have been paid by the Company, there shall be no contribution or participation by this Company on the basis of excess, contributing, deficiency, concurrent, or double insurance or otherwise.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

- (a) **Contribution by Equal Shares:** If all of such other valid and collectible insurance provides

for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than would be payable if each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

(b) Contribution by Limits: If any of such other insurance does not provide for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

8. NUCLEAR EXCLUSION:

It is agreed that:

1. This policy does not apply:

A. Under any Liability Coverage, to damage

(1) with respect to which an *Insured* under this policy is also an *Insured* under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an *Insured* under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the *Insured* is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to damage resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

C. Under any Liability Coverage to damage resulting from the hazardous properties of nuclear material, if

(1) the nuclear material (a) is at any nuclear facility owned by or operated by or on behalf of an *Insured* or (b) has been discharged or dispersed therefrom;

(2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an *Insured*; or

(3) the damage arises out of the furnishing by an *Insured* of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to *Property Damage* to such nuclear facility and any property thereat.

II. As used in this exclusion

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material," "special nuclear material," and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

(a) any nuclear reactor,

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,

(c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the *Insured* at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means an apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.

9. **ASSIGNMENT:** Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon. If, however, the *Named*

Insured shall die, such insurance as is afforded by this policy shall apply (1) to the *Named Insured's* legal representative, as the *Named Insured*, but only while acting within the scope of his duties as such, and (2) with respect to the property of the *Named Insured* to the person having proper temporary custody thereof, as *Insured*, but only until the appointment and qualification of the legal representative.

DEFINITIONS APPLICABLE TO PART II

When used in the provisions applicable to Part II of this policy (including endorsements forming a part hereof):

Automobile means a land motor vehicle, trailer or semitrailer designed to travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment.

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

Collapse Hazard includes "structural property damage" as defined herein and *Property Damage* to any other property at any time resulting therefrom. "Structural property damage" means the collapse of or structural injury to any building or structure due to (1) grading of land, excavating, burrowing, filling, backfilling, tunnelling, pile driving, cofferdam work or caisson work or (2) moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof. The collapse hazard does not include *Property Damage* (1) arising out of operations performed for the *Named Insured* by independent contractors, or (2) included within the *Completed Operations Hazard* or the *Underground Property Damage Hazard* or (3) for which liability is assumed by the *Insured* under an *Incidental Contract*.

Completed Operations Hazard includes *Bodily Injury* and *Property Damage* arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the *Bodily Injury* or *Property Damage* occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the *Named Insured*. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (1) when all operations to be performed by or on behalf of the *Named Insured* under the contract have been completed,
- (2) when all operations to be performed by or on behalf of the *Named Insured* at the site of the operations have been completed, or
- (3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organiza-

tion other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The *Completed Operations Hazard* does not include *Bodily Injury* or *Property Damage* arising out of

- (1) operations in connection with the transportation of property, unless the *Bodily Injury* or *Property Damage* arises out of a condition in or on a vehicle created by the loading or unloading thereof,
- (2) the existence of tools, uninstalled equipment or abandoned or unused materials, or
- (3) operations for which the classification stated in the policy or in the Company's manual specifies including *Completed Operations*.

Elevator means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery; but does not include an automobile servicing hoist, or a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a hod or material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and having a compartment height not exceeding four feet.

Explosion Hazard includes *Property Damage* arising out of blasting or explosion. The explosion hazard does not include *Property Damage* (1) arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) arising out of operations performed for the *Named Insured* by independent contractors, or (3) included within the *Completed Operations Hazard* or the *Underground Property Damage Hazard* or (4) for which liability has been assumed by the *Insured* under an *Incidental Contract*.

Incidental Contract means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance.

except in connection with work for the municipality, (4) sidetrack agreement, or (5) elevator maintenance agreement.

Incidental Medical Malpractice Injury means injury arising out of the rendering of or failure to render, during the policy period, the following services:

- (A) medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
 - (B) the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.
- Incidental Medical Malpractice Injury** does not apply to:

- (1) expenses incurred by the **Insured** for first aid to others at the time of an accident and the "Supplementary Payments" provision and the "Insured's Duties in the Event of Occurrence, Claim or Suit" Condition are amended accordingly; or
- (2) any **Insured** engaged in the business or occupation of providing any of these services described under (A) and (B) above;
- (3) injury caused by any indemnitee if such indemnitee is engaged in the business or occupation of providing any of the services described under (A) and (B) above.

Insured means any person or organization qualifying as an **Insured** in the "Persons Insured" provision of the applicable insurance coverage. The insurance afforded applies separately to each **Insured** against whom claim is made or suit is brought, except with respect to the limits of the Company's liability.

Loading or Unloading, with respect to an **Automobile**, means the handling of property after it is moved from the place where it is accepted for movement into or onto an **Automobile** or while it is in or on an **Automobile** or while it is being moved from an **Automobile** to the place where it is finally delivered, but **Loading or Unloading** does not include the movement of property by means of a mechanical device (other than a hand truck) not attached to the **Automobile**.

Mobile Equipment means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled. (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the **Named Insured**, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment.

Named Insured means the person or organization named in Section 1. of the Declarations of this policy. Any organization which is acquired or formed by the

Named Insured and over which the **Named Insured** maintains ownership or majority interest, other than a joint venture, provided **Named Insured** insurance does not apply to **Bodily Injury**, and **Property Damage**, **Personal Injury** and **Advertising Injury** with respect to which such new organization under this policy is also an **Insured** under any other similar liability or indemnity policy or would be an **Insured** under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 90 days from the date any such organization is acquired or formed by the **Named Insured**.

Named Insured's Products means goods or products manufactured, sold, handled or distributed by the **Named Insured** or by others trading under his name including any container thereof (other than a vehicle), but **Named Insured's Products** shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold.

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

This includes any intentional act by or at the direction of the **Insured** which results in **Bodily Injury**, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property.

Policy Territory means:

- (1) the United States of America, its territories or possessions, or Canada, or
- (2) international waters or air space, provided the **Bodily Injury** or **Property Damage** does not occur in the course of travel or transportation to or from any other country, state or nation, or
- (3) anywhere in the world with respect to damages because of **Bodily Injury** or **Property Damage** arising out of a product which was sold for use or consumption within the territory described in paragraph (1) above, provided the original suit for such damages is brought within such territory.
- (4) Anywhere in the world with respect to **Bodily Injury**, or **Property Damage**, and when such coverage is provided, **Personal Injury** or **Advertising Injury** arising out of the activities of any **Insured** permanently domiciled in the United States of America though temporarily outside the United States of America, its territories and possessions or Canada, provided the original suit for damages because of any such injury or damage is brought within the United States of America, its territories or possessions or Canada.

Such insurance as is afforded by paragraph (4) above shall not apply:

- (a) to **Bodily Injury** or **Property Damage** included within the **Completed Operations**

Hazard or the Products Hazard;

(b) to premises medical payments coverage.

Products Hazard includes **Bodily Injury** and **Property Damage** arising out of the **Named Insured's Products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **Bodily Injury** or **Property Damage** occurs away from premises owned by or rented to the **Named Insured** and after physical possession of such products has been relinquished to others.

Property Damage means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an **Occurrence** during the policy period.

Underground Property Damage Hazard includes **Underground Property Damage** as defined herein and **Property Damage** to any other property at any time resulting therefrom. **Underground Property Damage** means **Property Damage** to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection therewith, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, burrowing, filling, back-filling or pile driving. The **Underground Property Damage Hazard** does not include **Property Damage** (1) arising out of operations performed for the **Named Insured** by independent contractors, or (2) included within the **Completed Operations Hazard** or (3) for which liability is assumed by the **Insured** under an **Incidental Contract**.

This endorsement forms a part of the policy to which attached effective on the inception date of the policy unless otherwise stated herein.
(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective

Policy No **IP 50 214 40 20**

Endorsement No **8**

Named Insured **COMMUNITY CHAPEL & BIBLE TRAINING CENTER**

Countersigned by _____
(Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:
**COMPREHENSIVE GENERAL LIABILITY INSURANCE
MANUFACTURERS AND CONTRACTORS LIABILITY INSURANCE
OWNERS, LANDLORDS AND TENANTS LIABILITY INSURANCE**

EXCLUSION
(Malpractice and Professional Services)
(Form A)

It is agreed that with respect to any operation described below or designated in the policy as subject to this endorsement, the insurance does not apply to bodily injury or property damage due to:

1. the rendering or failure to render
 - (a) medical, surgical, dental, x-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith
 - (b) any service or treatment conducive to health or of a professional nature, or
 - (c) any cosmetic or tonsorial service or treatment.
2. the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances, or
3. the handling of or performing of autopsies on dead bodies

Description of Operations: **Schools - Colleges, Universities or College Preparatory**

AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA, A PENNSYLVANIA CORPORATION,

IRA GABRIELSON, ET UX, ET AL

vs.

AFFIDAVIT OF SERVICE OF

J.R. FEB 23 1988

Plaintiff

Defendant

Garnishee Defendant

20 DAY SUMMONS (CR-4) COMPLAINT FOR DECLARATORY JUDGMENT

FILED IN COUNTY CLERK'S OFFICE A.M. FEB 23 1988 P.M. PIERCE COUNTY WASHINGTON TED RUTT, COUNTY CLERK DEPUTY

State of Washington County of King

ss.

The writ served was accompanied by four answer forms and three postage prepaid envelopes which were pre-addressed to the Clerk of the Court, to the Plaintiff or his attorney, and to the Defendant, and cash or check payable to the garnishee, to the amount of Ten Dollars.

A copy of the summons served 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 2/19/88 at 7:45p M., at 19010 1st Ave. So., Seattle

King County, Washington, affiant duly served the above-described documents in the above-entitled matter upon Donald Lee Barnett

by then and there personally delivering a true and correct copy thereof to and leaving same with Donald Lee Barnett

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.

Affiant further states that he is informed and believes, and therefore alleges, that neither of said defendants is in the military service of the United States.

TRIPS @ MILES

Subscribed and Sworn to before me 2/22/88

J. Roberson kjh

SERVICE ATTEMPTED AT:

Notary signatures: J. Roberson, Ramona J. Holmes

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

Service Fees 6.00 Travel 52.00 Return Fee 5.00 Cert. Mail Total \$ 63.00

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

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)
Plaintiff,)
v.)
IRA GABRIELSON and CAROL GABRIELSON,)
husband and wife; DONALD LEE BARNETT)
and BARBARA BARNETT, husband and)
wife; COMMUNITY CHAPEL and BIBLE)
TRAINING CENTER, a Washington)
corporation,)
Defendants.)

NO. 88-2-00947-9
20 DAY SUMMONS
(CR-4)

THE STATE OF WASHINGTON TO: 

1. A lawsuit has been started against you in the above entitled court by the plaintiff.
2. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

LANE POWELL MOSS & MILLER
2800 RAPER BARR TOWER
SEATTLE WASHINGTON 98101-2841
823 7000

1 further papers and pleadings herein, except original process, be
2 served upon the undersigned at the address below stated.

3 DATED this 22 day of February, 1988.

4 LEACH, BROWN & ANDERSEN

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6 *James G. Leach, by David V. Andersen*
7 JAMES G. LEACH,
8 Attorney for Community Chapel
9 and Bible Training Center
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24 NOTICE OF APPEARANCE - 2

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In the SUPERIOR Court, for PIERCE County, State of Wash. No. 88 2 00947 9

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,
vs.

AFFIDAVIT OF SERVICE OF
IN COUNTY CLERK'S OFFICE

IRA GABRIELSON, et ux.,
et al.,

B-1 Plaintiff } MAR 2 1988

AM. MAR 2 1988 P.M.

Defendant }

PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
20 DAY, SUMMONS; COMPLAINT FOR
DECLARATORY JUDGMENT

Garnishee Defendant }

State of Washington

County of King

ss.

The writ served was accompanied by four answer forms and three postage prepaid envelopes which were pre-addressed to the Clerk of the Court, to the Plaintiff or his attorney, and to the Defendant, and cash or check payable to the garnishee, to the amount of Ten Dollars.

A copy of the summons served 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 2/25/88 at 9:33 P M., at 13920 6th Ave E, Tacoma, Pierce

~~King~~ County, Washington, affiant duly served the above-described documents in the above-entitled matter upon

by then and there personally delivering a true and correct copy thereof to and leaving same with _____

That at the time and place set forth above affiant duly served the above described documents in the above-entitled matter upon Carol Gabrielson

by then and there, at the residence and usual place of abode of said person(s), personally delivering a true and correct copy(ies) thereof to and leaving the same with Teresa Gabrielson, daughter

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

Affiant further states that he is informed and believes, and therefore alleges, that neither of said defendants is in the military service of the United States.

_____ TRIPS @ _____ MILES

Subscribed and Sworn to before me 2/29/88

D. Arbogast

SERVICE ATTEMPTED AT:

Sally A. Richards
NOTARY PUBLIC in and for the State of Washington, residing at Tacoma

Service Fees 6.00 Travel 11.00 Return Fee 5.00 Cert. Mail Total \$ 22.00

RESIDENCE SERVICE

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

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

v.)

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

NO. 88-2-00947-9
20 DAY SUMMONS
(CR-4)

THE STATE OF WASHINGTON TO: CAROL GABRIELSON

1. A lawsuit has been started against you in the above entitled court by the plaintiff.
2. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

20 DAY SUMMONS - 1

LANE POWELL MOSS & MILLER
3600 RAINIER BANK TOWER
SEATTLE WASHINGTON 98101-2847
223 7000

AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA, a Pennsylvania corporation, vs.

AFFIDAVIT OF SERVICE OF FILED IN COUNTY CLERK'S OFFICE

A.M. MAR 2 1988 P.M.

IRA GABRIELSON, et ux., et al.,

Plaintiff

Defendant

Garnishee Defendant

PIERCE COUNTY WASHINGTON 20 DAY SUMMONS COMPLAINT FOR DECLARATORY JUDGMENT

State of Washington

County of King

ss.

The writ served was accompanied by four answer forms and three postage prepaid envelopes which were pre-addressed to the Clerk of the Court, to the Plaintiff or his attorney, and to the Defendant, and cash or check payable to the garnishee, to the amount of Ten Dollars.

A copy of the summons served 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 2/25/88 at 8:48 P M., at 8614 152nd E, Puyallup, Pierce

King County, Washington, affiant duly served the above-described documents in the above-entitled matter upon Ira Gabrielson

by then and there personally delivering a true and correct copy thereof to and leaving same with Ira Gabrielson

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.

Affiant further states that he is informed and believes, and therefore alleges, that neither of said defendants in the military service of the United States.

TRIPS @ MILES

Subscribed and Sworn to before me 2/29/88

D. Arbogast

SERVICE ATTEMPTED AT:

Notary Public Seal for Sally A. Richards, State of Washington, Commission Expires 12-31-93, Tacoma

Service Fees 6.00 Travel 17.00 Return Fee 5.00 Cert. Mail Total \$ 28.00

RESIDENCE SERVICE

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

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

v.)

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

NO. 88-2-00947-9
20 DAY SUMMONS
(CR-4)

THE STATE OF WASHINGTON TO: IRA GABRIELSON

1. A lawsuit has been started against you in the above
entitled court by the plaintiff.

2. Plaintiff's claim is stated in the written complaint,
a copy of which is served upon you with this summons.

20 DAY SUMMONS - 1

LANE POWELL MOSS & MILLER
3800 RAVEN BARR TOWER
SEATTLE WASHINGTON 98101-2647
225 7000

FILED
IN COUNTY CLERK'S OFFICE

A.M. **MAR 8 1988** P.M.

PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

C.F. **MAR 8 1988**

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiff,)

v.)

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

Defendants.)

No. 88-2-00947-9

NOTICE OF APPEARANCE BY
DEFENDANTS BARNETT

TO: PLAINTIFFS; and
TO: BRUCE WINCHELL, your attorney:

PLEASE TAKE NOTICE that the defendants named above, DONALD LEE BARNETT and BARBARA BARNETT, hereby enter their Notice of Appearance in the above-entitled action, by and through their attorney of record, and request that all further pleadings or papers herein, except process, be served on their counsel at the address set out below.

DATED March 7, 1988.

EVANS CRAVEN & LACKIE, P.S.

By: Rodney D. Hollenbeck
RODNEY D. HOLLENBECK
Attorneys for Defendants

NOTICE OF APPEARANCE - Barnett
15004857.NOA

Evans, Craven & Lackie, P.S.

LAWYERS

34th FLOOR COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE WASHINGTON 98104

(206) 386-5555

MK

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

Denise L. Johnson

Subscribed and sworn to before me this 2nd day of

March 19 88

W.E. MAR 3 1988

Guadalupe Marlam
Notary Public in and for the State of Washington residing in Wash. Mon - Exp: 10-4-89

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

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

Plaintiff,)

vs.)

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

Defendants.)

NO. 88-2-00947-9

NOTICE OF APPEARANCE

MN

FILED
IN COUNTY CLERK'S OFFICE

A.M. **MAR 3 1988** P.M.

PIERCE COUNTY WASHINGTON
TED RUTT COUNTY CLERK
BY: *[Signature]* DEPUTY

TO: CLERK OF THE COURT; and

TO: Plaintiff above-named, and BRUCE WINCHELL, its attorney

YOU, AND EACH OF YOU, ARE HEREBY NOTIFIED that the above-named defendants, IRA GABRIELSON and CAROL GABRIELSON, hereby appear in the above-entitled cause and request that all further papers and pleadings herein, except original process, be served upon the undersigned attorneys at the address below stated.

DATED this 2nd day of March, 1988.

RUSH, HANNULA & HARKINS

By: *[Signature]*
DANIEL I. HANNULA
Attorneys for Defendants
Gabrielson

///

NOTICE OF APPEARANCE-1

LAW OFFICES
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

TACOMA 383-5388
SEATTLE 838-4790

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*Rec'd LPMM
3/22/88*

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B.L. MAR 24 1988

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

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)
Plaintiff,)
v.)
IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife;)
DONALD LEE BARNETT and)
BARBARA BARNETT, husband and)
wife; COMMUNITY CHAPEL and)
BIBLE TRAINING CENTER, a)
Washington corporation,)
Defendants.)

NO. 88-2-00947-9

PLAINTIFF'S FIRST DISCOVERY
REQUEST TO DEFENDANT COMMUNITY
CHAPEL AND BIBLE TRAINING
CENTER: REQUEST FOR PRODUCTION
AND INTERROGATORY AND
RESPONSES THERETO

FILED
IN COUNTY CLERK'S OFFICE
A.M. **MAR 24 1988** P.M.
PIERCE COUNTY WASHINGTON
TED RUTY, COUNTY CLERK
BY _____ DEPUTY

TO: Community Chapel and Bible Training Center
AND TO: James G. Leach and Leach, Brown & Andersen,
its attorneys

In accordance with Rules 26, 33 and 34 of the Washington
Civil Rules for Superior Court, plaintiff hereby propounds
to defendant Community Chapel and Bible Training Center the
following production request and interrogatory and hereby
gives defendant notice that said production request and inter-
rogatory are to be answered fully in writing and under oath
by its agents or representatives, and that these answers to
interrogatories and responses to the document requests are

PLAINTIFF'S FIRST DISCOVERY REQUEST TO
DEFENDANT COMMUNITY CHAPEL & BIBLE
TRAINING CENTER - 1

1 to be served on the undersigned attorneys within twenty (20)
 2 days from the receipt of these interrogatories and document
 3 requests.

4 These interrogatories and document requests are continuing
 5 in nature and in accordance with Civil Rule 26(e) you are
 6 requested to provide any information that alters or augments
 7 the answers now given. Room for transcribing your answers
 8 has been provided after each document request and interroga-
 9 tory. If there is insufficient room for your answers to
 10 these interrogatories and document requests, please attach
 11 supplemental pages. Your answers to these document requests
 12 and interrogatories are to include all information known to
 13 you, your attorneys, agents or investigators.

14 The term "document" includes any documents or information
 15 in the possession of you, your directors, elders, agents, or
 16 attorneys and includes any book, pamphlet, periodical, letter,
 17 report, memorandum, note, message, telegram, cable, record,
 18 study, working paper, chart, graph, index, tape, minutes,
 19 contract, lease, invoice, correspondence, electrical or other
 20 transcription or taping of telephone or personal conversations
 21 or conferences, or any and all other written, printed, typed,
 22 punched, taped, filed or graphic matter, however produced or
 23 reproduced.

24 The term "identify" when used in reference to a document,
 25 means to state the date; name of author, including his address;
 26 the type of document (e.g., letter, memorandum, telegram,

PLAINTIFF'S FIRST DISCOVERY REQUEST TO
 DEFENDANT COMMUNITY CHAPEL & BIBLE
 TRAINING CENTER - 2

1 etc.); its present or last known location; all other means
2 of identifying it with sufficient particularity to meet the
3 requirements for its inclusion in the motion for production
4 pursuant to the Civil Rules for Superior Court; and the
5 identity of its present or last known custodian. If such
6 document was, but no longer is in your possession or subject
7 to your control, state what disposition was made of it and
8 the reason for such disposition.

9 PRODUCTION REQUEST AND INTERROGATORY

10 REQUEST FOR PRODUCTION NO. 1: Please produce:

- 11 a) Articles of Incorporation for Community Chapel and
- 12 Bible Training Center.
- 13 b) Articles of Incorporation for Community Chapel and
- 14 Bible Training Center of Tacoma.
- 15 c) Bylaws for Community Chapel and Bible Training Center.
- 16 d) Bylaws for Community Chapel and Bible Training Center
- 17 of Tacoma.
- 18 e) All minutes or notes of meetings of the Board of
- 19 Directors, Board of Elders or any other governing or supervisory
- 20 body of Community Chapel and Bible Training Center since
- 21 January 1, 1979.
- 22 f) All minutes or notes of meetings of the Board of
- 23 Directors, Board of Elders or any other governing or supervisory
- 24 body of Community Chapel and Bible Training Center of Tacoma
- 25 since January 1, 1979..
- 26 g) All minutes, notes, correspondence, memo or other

1 documents which pertain in any way to:

2 1) The allegations made in the complaint
3 by Carol Gabrielson, Pierce County Cause No.
4 86-2-02792-6.

5 2) Other incidents or alleged incidents
6 of sexual contact involving members, Elders,
7 Pastors, employees, Directors, volunteers,
8 students or other persons in any way affiliated
9 with Community Chapel and Bible Training Center
10 and Community Chapel and Bible Training Center
11 of Tacoma.

12 3) The formation of Community Chapel and
13 Bible Training Center of Tacoma.

14 4) The appointment of Jack McDonald as
15 pastor of Community Chapel and Bible Training
16 Center of Tacoma.

17 5) The termination of Jack McDonald as
18 pastor of Community Chapel and Bible Training
19 Center of Tacoma.

20 6) The employment of Jack McDonald.

21 RESPONSE

22 1. (a), (b), (c), (d): Produced

23 1. (e) Board of Directors/Elders minutes back to January 5, 1983, produced.

24 Remainder of Director's minutes and Deacon's minutes available for inspection at

25 PLAINTIFF'S FIRST DISCOVERY REQUEST TO
26 DEFENDANT COMMUNITY CHAPEL & BIBLE
TRAINING CENTER - 4

1 Community Chapel and Bible Training Center. To extent priest-penitent privilege
2 is involved, objection is raised.

3 1. (f) Not in possession or control of Community Chapel and Bible
4 Training Center.

5 1 (g) (1) Objection. Request is overbroad and burdensome. Attorney -
6 client privilege, psychologist-client privilege, and priest-penitent privilege
7 also applies to certain information. Furthermore, regarding certain documents,
8 a protective order has been issued under Pierce County Cause No. 86-2-02792-6;
9 based upon this order, Community Chapel cannot and will not produce those
10 documents covered in such order. To the extent that some documents are
11 produced, such production does not waive the above-stated objections.

12 1 (g) (2) Objection. Request is overbroad, burdensome, and not designed
13 to lead to relevant evidence. The following privileges: attorney-client,
14 pschologist-client, and priest-penitent, also protects certain documents. To
15 the extent that certain documents are produced, each production does not waive

(See attached page)

16 INTERROGATORY NO. 1: With respect to documents requested
17 in Production Request No. 1 which did exist but no longer
18 exist, please:

- 19 a) Identify those documents.
20 b) State what disposition was made of those documents.
21 c) State when those documents were disposed of.
22 d) State who disposed of those documents.
23 e) State why those documents were disposed of.

24 RESPONSE:

25
26 PLAINTIFF'S FIRST DISCOVERY REQUEST TO
DEFENDANT COMMUNITY CHAPEL & BIBLE
TRAINING CENTER - 5

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the above-stated objections.

1. (g) (3), (4), (5), (6). Produced.

PLAINTIFF'S FIRST DISCOVERY REQUEST TO
DEFENDANT COMMUNITY CHAPEL & BIBLE
TRAINING CENTER

LEACH, BROWN & ANDERSEN
ATTORNEYS AT LAW
4040 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104
(206) 583-2714

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That he is the SECRETARY of the defendant corporation herein to which this Request for Production and Interrogatory are addressed, knows the contents thereof, and believes the same to be true.

E. Scott Hartley

SUBSCRIBED AND SWORN to before me this 18 day of March, 1988.

David V. Anderson

NOTARY PUBLIC in and for the State of Washington, residing at Seattle. My commission expires: Oct 1, 1990

PLAINTIFF'S FIRST DISCOVERY REQUEST TO DEFENDANT COMMUNITY CHAPEL & BIBLE TRAINING CENTER - 7

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FILED
IN COUNTY CLERK'S OFFICE
MAR 25 1988 3:51 P.M.
MAR 25 1988

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

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

Plaintiff,)

v.)

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

Defendants.)

NO. 88-2-00947-9
MOTION TO COMPEL DISCOVERY

COMES NOW plaintiff American Casualty Company of Reading
Pennsylvania and moves this court for an order compelling
full and complete responses to American Casualty's First
Discovery Request to Defendant Community Chapel and Bible
Training Center. This motion is based upon the attached
Affidavit of Bruce Winchell.

DATED this 24th day of March, 1988.

LANE POWELL MOSS & MILLER

By Bruce Winchell
Bruce Winchell
Of Attorneys for Plaintiff

1 2. Other incidents or alleged incidents
 2 of sexual contact involving members, Elders,
 3 Pastors, employees, Directors, volunteers, stu-
 4 dents or other persons in any way affiliated
 5 with Community Chapel and Bible Training Center
 6 and Community Chapel and Bible Training Center
 7 of Tacoma.

8 **RESPONSE:**

9 1(g)(1) Objection. Request is overbroad and
 10 burdensome. Attorney-client privilege, psy-
 11 chologist-client privilege, and priest-peni-
 12 tent privilege also applies to certain informa-
 13 tion. Furthermore, regarding certain docu-
 14 ments, a protective order has been issued under
 15 Pierce County Cause No. 86-2-02792-6; based
 16 upon this order, Community Chapel cannot and
 17 will not produce those documents covered in
 18 such order. To the extent that some documents
 19 are produced, such production does not waive
 the above-state objections.

16 1(g)(2) Objection. Request is overbroad, bur-
 17 densome, and not designed to lead to relevant
 18 evidence. The following privileges: attor-
 19 ney-client, psychologist-client, and priest-
 20 pentitent, also protects certain documents.
 To the extent that certain documents are pro-
 21 duced, each production does not waive the above
 22 stated objections.

20 **INTERROGATORY NO. 1:** With respect to

21 documents requested in Production Request No.
 22 1 which did exist but no longer exist, please:

- 23 a) Identify those documents.
- 24 b) State what disposition was made of
- 25 those documents.
- 26 c) State when those documents were dis-

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posed of.

d) State who disposed of those documents.

e) State why those documents were disposed of.

RESPONSE:

5. American Casualty has filed this declaratory action because it believes its comprehensive general liability policy does not cover judgments for damages arising out of sexual misconduct by those affiliated with the church. American Casualty has set forth in its complaint five specific reasons supporting its position. Those are summarized below:

a. The policy primarily covers bodily injuries. The claims made are primarily for emotional injuries.

b. The policy covers only injuries arising out of occurrences. An occurrence is an accident causing bodily injury neither expected nor intended from the standpoint of the insured. Sexual misconduct is not accidental. Moreover, the injuries caused cannot be considered to have been unexpected from the standpoint of the insured.

c. To the extent claims are made against individuals, those individuals are only covered while acting within the scope of their duties. Sexual misconduct is not within the scope of duty for any agent of Community Chapel.

d. One aspect of this case concerns a claim for defamation. There is no coverage for defamatory statements which were known to be false. Plaintiff must thus prove that such defamatory statements were negligently, but not intentionally, made.

MOTION TO COMPEL DISCOVERY - 4

1 e. Causes of action are asserted for
2 counselor malpractice. Coverage for such causes
3 is expressly excluded under a malpractice and
4 professional services exclusion.

5 6. At this stage of the declaratory action, American
6 Casualty is seeking to collect all documents which are relevant
7 to the claims made by Carol Gabrielson and other plaintiffs
8 who have filed lawsuits against Community Chapel. Discovery
9 Request 1(g) (1) and (2) are particularly relevant because
10 of the definition of occurrence contained in the policy. An
11 occurrence must pertain to bodily injury neither expected
12 nor intended from the standpoint of the insured. The expecta-
13 tion or intention of Community Chapel, through its leadership,
14 must in part be ascertained by determining what knowledge it
15 had of sexual misconduct by leaders and church's members.
16 Thus, all documents in possession of the church which may
17 reflect the knowledge of the leadership and/or its agents
18 are relevant to this action. For that reason, the objection
19 that these requests are overbroad and burdensome is completely
20 misplaced.

21 7. Objection is also made that the production request
22 violates attorney-client privilege. American Casualty does
23 not seek documents which are reflective of confidential com-
24 munications between attorney and client. Based upon my
25 discussions with David Anderson, attorney for Community Chapel,
26 I understand that no documents which are not confidential
communications between attorney and client are being withheld

MOTION TO COMPEL DISCOVERY - 5

1 under this claim.

2 8. Objection is next made that certain documents are
3 protected by a psychologist-client privilege. American Cas-
4 ualty requests that the court order that Community Chapel
5 identify such documents with particularity. Based upon my
6 discussions with David Anderson, I understand that the privi-
7 lege is not asserted with respect to any plaintiffs in this
8 or other actions.

9 9. The next objection asserted is one of priest-penitent
10 privilege. The asserted privilege is governed by RCW
11 5.60.060(3):

12 A clergyman or priest shall not, without the
13 consent of the person making the confession,
14 be examined as to any confession made to him
15 in his professional character, in the course
16 of discipline enjoined by the church to which
17 he belongs.

18 The scope of this privilege is discussed in Washington Practice.

19 By its specific terms, the privilege created
20 by the statute is very narrow. Its language
21 indicates clearly the confessions must be in
22 accordance with church discipline concerning
23 confessions. Only confessions specifically
24 authorized by particular churches seem to be
25 included. Such confessions are authorized in
26 relatively few religious denominations . . .
The privilege by its terms does not extend to
matters observed by the clergymen which are
not intended to be communicated as part of a
confession . . . Reports of child abuse or
neglect are not subject to the privilege.

27 Tegland, 5 Wn. Prac. § 184 (1982) Clearly, the priest-penitent
28 privilege is quite limited. It applies only within the
29 context of denominations that recognize such confessions.

30 MOTION TO COMPEL DISCOVERY - 6

1 Furthermore, the privilege applies in the context of confes-
2 sions and not to other oral communications by church members
3 to the church leadership. Finally, by its terms, the privilege
4 would apply only where communications are to a clergyman.
5 Thus, communications to others in the church leadership would
6 not be protected. Again, American Casualty requests a specific
7 identification of any document for which this privilege is
8 asserted.

9 10. Community Chapel next asserts, as to Request 1(g) (1),
10 the provisions of a protective order issued by this court in
11 the Gabrielson action. Counsel have agreed that American
12 Casualty will be bound by the terms of that order and it is
13 understood that subject to that agreement, all such documents
14 have been produced.

15 11. Community Chapel extensively records sermons and
16 meetings of its leadership. Many of these recordings have
17 dealt with issues which are within the scope of the production
18 requests made. No such audio recordings have been produced.
19 Such recordings are expressly included within the scope of
20 these requests by virtue of the definition of documents set
21 forth in the preliminary section to these interrogatories
22 and production requests. For instance, it was reported in
23 the Seattle Times on March 1, 1988 that:

24 The elders revealed their allegations against
25 the Reverend Donald Lee Barnett at a closed
26 meeting with the congregation Friday night .
. . The church routinely records its meeting.

MOTION TO COMPEL DISCOVERY - 7

1 To restrict Barnett, Community Chapel's three
 2 elders - Jack DuBois, Jack Hicks and Scott
 3 Hartley wrote a letter to him February 15th
 tape reveals.

4 Neither the tape of that meeting nor the February 15th letter
 5 have been produced. It is further noted in the same article
 6 that:

7 The eldership decided to act after spending
 8 fifteen hours a week for the past five weeks
 in committee hearings about and with the Pastor
 according to the tape.

9 Once again, there have apparently been numerous meetings
 10 concerning the allegations of sexual misconduct leveled against
 11 the church leader and apparently such meetings are recorded.
 12 Such recordings and notes or minutes of such meetings have
 13 not been produced.

14 12. A March 17, 1988 article in the Seattle Post-Intel-
 15 ligencer makes reference to a December 23 letter to the
 16 elders from Jerry Zwack detailing Donald Barnett's promiscuous
 17 adulteries. That letter has not been produced. A March 11,
 18 1988 Seattle Times article contains the following quotation:


19 Bates' ruling came as Barnett, removed over
 20 allegations of sexual misconduct, mounted a
 21 desperate appeal to his flock, accusing the
 church elders of sin and three emotional letters
 he sent to members of the congregation.

22 Those letters have not been produced.

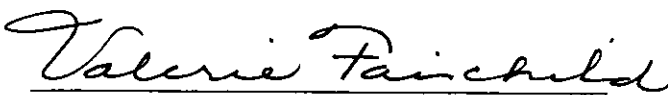
23 13. Counsel for the church has indicated an inability
 24 to obtain documents under the control of Donald Barnett.
 25 The discovery requests expressly request documents and informa-
 26 tion under the control of agents of Community Chapel. Barnett

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obviously fits within that description. In light of recent King County rulings, he is more closely identified with the church than any other individual. Intramural squabbling between the elders and Barnett ought not impair American's discovery rights in the declaratory action. American requests that the church (and Barnett) be ordered to produce all requested documents immediately or else be declared in default in this action.


BRUCE WINCHELL

SUBSCRIBED AND SWORN to before me this 25th day of March, 1988.


NOTARY PUBLIC in and for the State of Washington, residing at Lynnwood.
My commission expires: 4-28-88

Rec'd LPM 3/22/88

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

AMERICAN CASUALTY COMPANY OF)	
READING PENNSYLVANIA, a)	NO. 88-2-00947-9
Pennsylvania corporation,)	
Plaintiff,)	PLAINTIFF'S FIRST DISCOVERY
v.)	REQUEST TO DEFENDANT COMMUNITY
)	CHAPEL AND BIBLE TRAINING
IRA GABRIELSON and CAROL)	CENTER: REQUEST FOR PRODUCTION
GABRIELSON, husband and wife;)	AND INTERROGATORY
DONALD LEE BARNETT and)	
BARBARA BARNETT, husband and)	
wife; COMMUNITY CHAPEL and)	
BIBLE TRAINING CENTER, a)	
Washington corporation,)	
Defendants.)	

TO: Community Chapel and Bible Training Center

AND TO: James G. Leach and Leach, Brown & Andersen,
its attorneys

In accordance with Rules 26, 33 and 34 of the Washington Civil Rules for Superior Court, plaintiff hereby propounds to defendant Community Chapel and Bible Training Center the following production request and interrogatory and hereby gives defendant notice that said production request and interrogatory are to be answered fully in writing and under oath by its agents or representatives, and that these answers to interrogatories and responses to the document requests are

PLAINTIFF'S FIRST DISCOVERY REQUEST TO
DEFENDANT COMMUNITY CHAPEL & BIBLE
TRAINING CENTER - 1

1 to be served on the undersigned attorneys within twenty (20)
2 days from the receipt of these interrogatories and document
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PLAINTIFF'S FIRST DISCOVERY REQUEST TO
DEFENDANT COMMUNITY CHAPEL & BIBLE
TRAINING CENTER - 2

1 etc.); its present or last known location; all other means
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19 Directors, Board of Elders or any other governing or supervisory
20 body of Community Chapel and Bible Training Center since
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 4 86-2-02792-6.

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 10 and Community Chapel and Bible Training Center
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 16 Center of Tacoma.

17 5) The termination of Jack McDonald as
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 19 Center of Tacoma.

20 6) The employment of Jack McDonald.

21 RESPONSE

22 1. (a), (b), (c), (d): Produced

23 1. (e) Board of Directors/Elders minutes back to January 5, 1983, produced.

24 Remainder of Director's minutes and Deacon's minutes available for inspection at

25 PLAINTIFF'S FIRST DISCOVERY REQUEST TO
 26 DEFENDANT COMMUNITY CHAPEL & BIBLE
 TRAINING CENTER - 4

1 Community Chapel and Bible Training Center. To extent priest-penitent privilege
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10 documents covered in such order. To the extent that some documents are
11 produced, such production does not waive the above-stated objections.

12 1 (g) (2) Objection. Request is overbroad, burdensome, and not designed
13 to lead to relevant evidence. The following privileges: attorney-client,
14 pschologist-client, and priest-penitent, also protects certain documents. To
15 the extent that certain documents are produced, each production does not waive

(See attached page)

16 INTERROGATORY NO. 1: With respect to documents requested
17 in Production Request No. 1 which did exist but no longer
18 exist, please:

- 19 a) Identify those documents.
- 20 b) State what disposition was made of those documents.
- 21 c) State when those documents were disposed of.
- 22 d) State who disposed of those documents.
- 23 e) State why those documents were disposed of.

24 RESPONSE:

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the above-stated objections.

1. (g) (3), (4), (5), (6). Produced.

PLAINTIFF'S FIRST DISCOVERY REQUEST TO
DEFENDANT COMMUNITY CHAPEL & BIBLE
TRAINING CENTER

LEACH, BROWN & ANDERSEN
ATTORNEYS AT LAW
4040 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104
(206) 583-2714

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That he is the SECRETARY of the defendant corporation herein to which this Request for Production and Interrogatory are addressed, knows the contents thereof, and believes the same to be true.

E. Scott Hartley

SUBSCRIBED AND SWORN to before me this ___ day of _____, 1988.

NOTARY PUBLIC in and for the State of Washington, residing at _____ My commission expires:

PLAINTIFF'S FIRST DISCOVERY REQUEST TO DEFENDANT COMMUNITY CHAPEL & BIBLE TRAINING CENTER - 7

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

9

NOTE OF ISSUE

No. 88-2-00947-9

Department J.S.

AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA
IN COUNTY CLERK'S OFFICE
Pennsylvania corporation,

FILED
A.M. **MAR 25 1988** P.M. Plaintiff

vs.

PIERCE COUNTY WASHINGTON
TED RUTT COUNTY CLERK

IRA GABRIELSON and CAROL GABRIELSON, husband and wife DONALD

LEE BARNETT and BARBARA BARNETT, husband and wife; et al.,

Defendant

Bruce Winchell

Plaintiff's Attorney

Daniel Hannula/Attorney for Gabrielsons, Rodney Hollenbeck/Attorney
for Barnetts and David Andersen/Attorney for Community Chapel

Defendant's Attorney

Nature of Cause Declaratory Judgment Action

Jury Trial - Yes 6 Jurors 12 Jurors No

Time required to try Cause 10 days _____ hours

ABOVE INFORMATION MUST BE COMPLETED

To the Clerk:

Please place on the _____ Motion _____ docket which is to be called on
the 1st day of April 19 88

Bruce Winchell
Bruce Winchell

223-7000
Morgan

Attorney for Plaintiff

Due and sufficient service of foregoing acknowledged this _____ day of _____ 19 _____

Attorneys for

Assigned to Department No. _____ this
_____ day of _____ 19 _____

Docket Clerk

STATE OF WASHINGTON }
COUNTY OF KING } 55
AFFIDAVIT
OF MAILING

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

Maxine Schief
Subscribed and sworn to before me this 25th day of
March, 19 88
W. H. K.
Notary Public in and for the State of
Washington, residing at Seattle. 8-1-91

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

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAR 25 1988 P.M.
PIERCE COUNTY WASHINGTON
TED JUTT, COUNTY CLERK
BY _____ DEPUTY

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

No. 88-2-00947-9
AMENDED
COMPLAINT FOR
DECLARATORY JUDGMENT

I.

American Casualty Company of Reading Pennsylvania
(American) is a Pennsylvania corporation, which is licensed to
do business in Washington and which has paid all fees due and
owing.

AMENDED
COMPLAINT FOR DECLARATORY JUDGMENT - 1

3041R

II.

Ira and Carol Gabrielson are Washington residents, residing in Pierce County. Donald Lee Barnett (Barnett) and Barbara Barnett, husband and wife, are Washington residents. Community Chapel and Bible Training Center (Community Chapel) is a Washington corporation.

III.

Ira and Carol Gabrielson are plaintiffs, in an action against Donald and Barbara Barnett and Community Chapel and other defendants, including Jack McDonald (McDonald) and Jane Doe McDonald, John Does 1-4, Jane Does, 1-4, husbands and wives, and Community Chapel and Bible Training Center of Tacoma (Tacoma Chapel). That action is presently pending in Pierce County under Cause No. 86-2-02793-6. A copy of the Complaint in that action is attached as Exhibit A.

IV.

The Gabrielson complaint alleges Jack McDonald was pastor of the Tacoma Chapel, Community Chapel was the parent corporation to Tacoma Chapel and Barnett was pastor of Community Chapel. It further alleges that McDonald "manipulated" Gabrielson "into leaving her husband" and "coerced and unduly influenced" her into having a sexual relationship. It further alleges Barnett "knew or should have known . . . McDonald was involved in the seduction of female members of the congregation." Causes of action asserted are:

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- 1. Outrage;
- 2. Intentional counselor malpractice;
- 3. Counselor malpractice;
- 4. Pastoral malpractice;
- 5. Assault;
- 6. Battery;
- 7. False imprisonment; and
- 8. Defamation.

V.

American insured Community Chapel under a Comprehensive General Liability Policy from May 9, 1982 until May 9, 1986. A copy of relevant portions of the policy is attached as Exhibit B. The policy provides in part:

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

A. Bodily Injury . . . caused by an occurrence . . .

* * *

Bodily Injury means bodily injury, sickness or disease . . .

* * *

Occurrence means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

* * *

Each of the following is an insured . . .

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(c) any executive officer, director or stockholder thereof while acting within the scope of his duties . . .

* * *

(f) any employee . . . while acting within the scope of their duties . . .

The company will pay . . . all sums which the insured shall become legally obligated to pay as damages because of personal injury . . . arising out of the named insured's business . . .

* * *

A "Personal Injury" means injury arising out of . . .

- (a) false arrest, detention, imprisonment . . .
- (b) wrongful . . . eviction . . .
- (c) a publication or utterance
 - (1) of a libel or slander or other defamatory or disparaging material.

* * *

This insurance does not apply . . . to Personal Injury arising out of . . . publication . . . of defamatory material . . . made by or at the direction of the insured with knowledge of the falsity thereof.

* * *

EXCLUSION

(Malpractice and Professional Services)

[T]he insurance does not apply to bodily injury . . . due to

- 1. the rendering or failure to render . . . any service or treatment conducive to health or of a professional nature . . .

(Emphasis supplied)

VI.

American is presently defending Community Chapel and Barnett under a full reservation of rights.

VII.

FIRST CAUSE OF ACTION

American seeks a declaration that none of the alleged injuries for which plaintiffs seek compensation constitute a "Bodily Injury" as that term is defined in the policy.

VIII.

SECOND CAUSE OF ACTION

American seeks a declaration that none of the alleged injuries for which plaintiffs seek compensation were "caused by an occurrence" as that term is defined in the policy.

IX.

THIRD CAUSE OF ACTION

American seeks a declaration that the alleged acts by the individual defendants were not acts "within the scope of their duties" as that term is used in the policy.

FOURTH CAUSE OF ACTION

American seeks a declaration that none of the injuries alleged in the complaint constitute a "personal injury" as that term is defined in the policy.

FIFTH CAUSE OF ACTION

American seeks a declaration that any defamatory statements which were made by an insured were made "with knowledge of the falsity thereof" as that term is used in the policy.

AMENDED
COMPLAINT FOR DECLARATORY JUDGMENT - 5

SIXTH CAUSE OF ACTION

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American seeks a declaration that certain of the injuries alleged arose from "service or treatment conducive to health or of a professional nature" as that term is used in the policy and are thus excluded from coverage.

SEVENTH CAUSE OF ACTION

American seeks a declaration that Jack McDonald was not an employee of Community Chapel.

EIGHTH CAUSE OF ACTION

American seeks a declaration that it has no duty to defend Community Chapel or Barnett.

PRAYER FOR RELIEF

American requests that the court:

- 1. Declare that none of the injuries for which plaintiff seeks compensation fall within the scope of coverage provided;
- 2. Declare that American has no duty to defend Community Chapel or Barnett against the claims asserted;
- 3. Award American such other relief as the Court considers to be fair and equitable.

DATED this 25th day of March, 1988.

LANE POWELL MOSS & MILLER

By Bruce Winchell
Robert W. Thomas
Bruce Winchell
Of Attorneys for Plaintiff

B.L. MAR 25 1988

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FILED
IN COUNTY CLERK'S OFFICE
A.M. MAR 25 1988 P.M.
PIERCE COUNTY WASHINGTON
TED TUTT, COUNTY CLERK
BY _____ DEPUTY

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

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

NO. 88-2-00947-9
20 DAY SUMMONS
(CR-4)

THE STATE OF WASHINGTON TO: Jack McDonald

1. A lawsuit has been started against you in the above entitled court by the plaintiff.
2. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

20 DAY SUMMONS - 1

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

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3. In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned lawyer for plaintiff within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where the plaintiff is entitled to what is asked for because you have not responded.

4. If you serve a notice of appearance on the undersigned lawyer, you are entitled to notice before a default judgment may be entered.

5. If not previously filed, you may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the plaintiff. Within 14 days after you serve your demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

6. If you wish to seek the advice of a lawyer in this matter, you should do so promptly so that your written response, if any, may be served on time.

7. This summons is issued pursuant to Rule 4 of the Civil Rules for Superior Court of the State of Washington.

DATED this 25TH day of March 1988.

LANE POWELL MOSS & MILLER

By Bruce Winchell
Bruce Winchell
Of Attorneys for Plaintiff

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31 MAR 25 1988
FILED
COUNTY CLERK'S OFFICE
M. MAR 25 1988 P.M.
PIERCE COUNTY WASHINGTON
COUNTY CLERK
BY: _____ DEPUTY

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

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

NO. 88-2-00947-9
20 DAY SUMMONS
(CR-4)

THE STATE OF WASHINGTON TO: Jane Doe McDonald

1. A lawsuit has been started against you in the above entitled court by the plaintiff.

2. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

20 DAY SUMMONS - 1

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3. In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned lawyer for plaintiff within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where the plaintiff is entitled to what is asked for because you have not responded.

4. If you serve a notice of appearance on the undersigned lawyer, you are entitled to notice before a default judgment may be entered.

5. If not previously filed, you may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the plaintiff. Within 14 days after you serve your demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

6. If you wish to seek the advice of a lawyer in this matter, you should do so promptly so that your written response, if any, may be served on time.

7. This summons is issued pursuant to Rule 4 of the Civil Rules for Superior Court of the State of Washington.

DATED this 25th day of March, 1988.

LANE POWELL MOSS & MILLER

By Bruce Winchell
Bruce Winchell
Of Attorneys for Plaintiff

LANE POWELL MOSS & MILLER

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

LAW OFFICES

3800 RAINIER BANK TOWER
SEATTLE, WASHINGTON 98101-2647
(206) 223-7000

CABLE: EMBE
TELEX: 32-8808
TELECOPIER: 223-7107

ANCHORAGE, ALASKA

BELLEVUE, WASHINGTON

MOUNT VERNON, WASHINGTON

ANNE F. ACKENHUSEN
* SAMUEL D. ADAMS
* ROBERT C. AUTH
WARREN E. BABB, JR.
RICHELLE GEROW BASSETTI
MARK G. BEARD
RANDALL P. BEIGHLE
WILLIAM L. BLACK III
KATHLEEN M. BOWMAN
MARK C. CARLSON
PETER G. DAWSON
GRANT S. DEGGINGER
* LOUISE R. DRISCOLL
PAMELA K. EDINGER
STACEY S. FISHER
KATHERINE COOPER FRANKLIN
STEVEN V. GIBBONS
* ROBERT ROSS GILLANDERS
STUART D. HEATH
DANIEL M. HENDRICKSON
HOLLIS RUTH HILL
** DAVID T. HUNTER
** BREWSTER H. JAMIESON
JANINE D. JOHNSON
* MARILYN J. KAMM
MICHAEL B. KING
JEFFREY D. LAVESON
BRUCE W. LEAVERTON
JOSEPH E. LYNAM
JOHN MCKAY
BARRY N. MESHER
JOHN J. MITCHELL

THOMAS G. MORTON
* JOHN R. NEELEMAN
RICHARD A. NIELSEN, JR.
MIDORI OKAZAKI
CHRISTIAN N. OLDHAM
WILLIAM A. PELANDINI
RALPH C. POND
JOHN E.D. POWELL
D. MICHAEL REILLY
JANET D. REIS
* MARK RINDNER
RONALD D. SALSBUURY
MARK P. SCHEER
REED P. SCHIFFERMAN
DAVID M. SCHOEGGL
ANDREW L. SEIPLE
CLIFFORD D. SETHNESS
STEPHEN C. SMITH
DAVID C. SPELLMAN
CATHY A. SPICER
LAWRENCE W. STEVENS
PAUL D. SWANSON
CARLA TACHAU
THOMAS W. TOP
MICHAEL T. TURNBULL
KAREN VEDDER
TIM D. WACKERBARTH
WM. BRADFORD WELLS
DOUGLAS E. WHEELER
MARK A. WHEELER
DENISE D. WIEST
BRUCE WINCHELL

GORDON W. MOSS, PS
RAYMOND W. HAMAN, PS
G. KEITH GRIM, PS
D. WAYNE GITTINGER
BARRY H. BIGGS
RICHARD F. ALLEN, PS
THOMAS S. ZILLY
ROBERT W. THOMAS
HARTLEY PAUL
DAVID C. LYCETTE
ROBERT J. FREDERICK, PS
MATTHEW R. KENNEY, PS
JOHN R. TOMLINSON, PS
FRANK W. DRAPER
ROBERT L. ISRAEL, PS
ROBERT R. DAVIS, JR.
EUGENE R. NIELSON
DALE E. KREMER, PS
CHARLES R. EKBERG, PS
KENYON P. KELLOGG, PS
MICHAEL D. DWYER
MARK EDWIN JOHNSON
** JAMES L. ROBERT, PS
C. WILLIAM BAILEY, PS
EVAN O. THOMAS III
MICHAEL E. MORGAN
* KERMIT E. BARKER, JR.
WAYNE W. HANSEN
** JAMES B. STOETZER
RICHARD C. SIEFERT
LARRY S. GANGNES, PS
DAVID G. JOHANSEN
MICHAEL H. RUNYAN
DEBORAH D. WRIGHT
** DALE W. HOUSE
ANNE McDONALD
H. PETER SORG, JR.
RUDY A. ENGLUND
LEE A. THORSON
DOUGLAS J. SHAEFFER
ELLEN O. PFAFF
THOMAS F. GROHMAN
D. JOSEPH HURSON
SCOTT F. CAMPBELL
CHRISTOPHER B. WELLS

COUNSEL TO THE FIRM	OF COUNSEL
WILBUR J. LAWRENCE A. WESLEY HODGE EUGENE H. KNAPP, JR.	W. BYRON LANE GEORGE V. POWELL PENDLETON MILLER BRUCE SHORTS WILLIAM J. WALSH, JR.

* ADMITTED IN ALASKA
** ADMITTED IN ALASKA AND WASHINGTON
ALL OTHERS ADMITTED IN WASHINGTON

March 25, 1988

Clerk
Pierce County Superior Court
Pierce County Courthouse
Tacoma, WA. 98402

Re: American Casualty Company
v. Ira Gabrielson, et al.
No. 88-2-00947-9

Dear Sir or Madam:

On Friday, March 25, 1988, we filed a civil motion in this matter. Please note that a related matter is presently pending before Judge Steiner.

Very truly yours,

LANE POWELL MOSS & MILLER

Bruce Winchell
Bruce Winchell

BW/ms

cc: Daniel Hannula
Rodney D. Hollenbeck
David V. Anderson

FILED
IN COUNTY CLERK'S OFFICE

A.M. **MAR 28 1988** P.M.

PIERCE COUNTY CLERK
TED RUFF COUNTY CLERK

BY *[Signature]* DEPUTY

DD

COPY RECEIVED
MAY 1988
MAR 30 1988

RUSH, HANNULA & HARKINS

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

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

No. 88-2-00947-9

MEMORANDUM IN SUPPORT OF
AMERICAN'S MOTION FOR PARTIAL
SUMMARY JUDGMENT (ROD OFFICE
INJURY)

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAR 30 1988 P.M.
PIERCE COUNTY CLERK
BY _____ DEPUTY

INTRODUCTION

This is a declaratory judgment action. American Casualty Company (American) insured Community Chapel and Bible Training Center (Community Chapel) under a comprehensive general liability (CGL) policy from May 1982-May 1986. Community Chapel, Donald Barnett (pastor of Community Chapel), Community Chapel and Bible Training Center of Tacoma (Tacoma Chapel) and Jack

MEMORANDUM IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY JUDGMENT - 1

1 McDonald (pastor of Tacoma Chapel) are defendants in an action
2 brought by Carol Gabrielson and her ex-husband, Ira. That
3 action is scheduled for trial on May 18, 1988 before Judge
4 Steiner.

5 Gabrielson alleges sexual misconduct by McDonald, that she
6 was assaulted while being ejected from Community Chapel and
7 that McDonald made defamatory statements about her. She
8 alleges Community Chapel, Barnett and Tacoma Chapel are legally
9 responsible for McDonald's actions. Gabrielson asserts the
10 following causes of action:

- 11 1. Outrage.
- 12 2. Intentional Counselor Malpractice.
- 13 3. Negligent Counselor Malpractice.
- 14 4. Pastor Malpractice.
- 15 5.-7. Assault, Battery, False Imprisonment (related to
16 ejection claim).
- 17 8. Defamation.
- 18 9. Loss of Consortium (Mr. Gabrielson.).

19 The complaint seeks unspecified general and special
20 damages. Gabrielson's complaint is Exhibit A to the Amended
21 Complaint for Declaratory Judgment which is included with this
22 motion.

23 COVERAGE

24 American is defending the Gabrielson action under a full
25 reservation of rights. American asserts the claims made
26 against defendants are non-covered for the following reasons:

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1. The policy covers damages because of "Bodily Injury." To the extent defendants seek indemnification for damages for emotional harm rather than physical injury, their claim is not covered.

2. In order for damages for "Bodily Injury" to be covered they must result from an "Occurrence." An "Occurrence means an accident." Gabrielson has testified that she had intercourse with McDonald 50-60 times. McDonald's and Gabrielson's actions were obviously not accidents. Furthermore, any resultant bodily injury must have been neither "expected nor intended from the standpoint of the insured." As a matter of law, sexual misconduct is deemed to intentionally harm the victim.

3. The individual defendants are only covered "while acting within the scope of [their] duties." Actionable sexual misconduct is not within the scope of a church employee's duties.

4. The claims of counselor and pastor malpractice are non-covered because of a professional services exclusion. That exclusion is typically a part of a CGL policy because coverage for professional malpractice is offered under professional liability policies.

5. The causes of action for assault, battery and false imprisonment are only covered as intentional acts "if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property." If Gabrielson

1 establishes her ejection claim, she will have established that
2 any force used was not reasonable.

3 6. The defamation claim is not covered if the defamatory
4 statements were made "with knowledge of the falsity thereof."

5 7. As to McDonald, American asserts noncoverage for the
6 additional reason that he was not an employee of Community
7 Chapel. Rather, he was employed by the Tacoma Chapel, a
8 separate corporation.

9 Because of the numerous claims by Gabrielson and multiple
10 defenses to coverage, American will seek to resolve coverage
11 issues in an efficient and orderly manner through a series of
12 motions for partial summary judgment. This motion addresses
13 the scope of coverage for "Bodily Injury."

14 BODILY INJURY

15 American's policy contains the following language:

16 The Company will pay on behalf of the Insured all
17 sums which the Insured shall become legally obligated
18 to pay as damages because of

18 A. Bodily Injury or

19 B. Property Damage

20 to which this insurance applies caused by an
21 Occurrence. . . .

21 Comprehensive General Liability Insurance, Form 39250-C, Page 1
22 of 8. (Relevant policy forms are Exhibit B to the Declaratory
23 Complaint.)

24 Bodily Injury is defined in the policy as follows:
25
26

1 Bodily Injury means bodily injury, sickness or
 2 disease. . . .

3 Policy Conditions, Form G39200, Page 9 of 11.

4 Although the complaint is not specific as to the injuries
 5 for which damages are sought, emotional harm is clearly one
 6 component. For instance, in paragraph XXI of her complaint,
 7 Gabrielson alleges the defendants "caused the plaintiff to
 8 suffer severe emotional distress." Emotional distress is not a
 9 covered bodily injury under the policy.

10 The leading Washington case is E-Z Loader v. Travelers
 11 Indem. Co., 106 Wn.2d 901, 726 P.2d 439 (1986). In E-Z Loader,
 12 a defendant in a sex and age discrimination suit sought cover-
 13 age for the claim made against it. A jury verdict was rendered
 14 for \$148,974.99 for "lost wages, mental anguish, suffering and
 15 humiliation." Id. at 904. The Travelers CGL policy covered
 16 bodily injury which was defined identically to American's
 17 policy. Id. Our Supreme Court held:

18 The plaintiffs sued E-Z Loader for loss of
 19 earnings and prospective earnings, humiliation, mental
 20 anguish and emotional distress. The policies,
 21 Travelers and Highlands, at issue here, were never
 22 intended to cover loss of earnings or any mental or
 23 emotional upset for which plaintiffs recovered a
 24 judgment against E-Z Loader. (Citation omitted.) The
 25 coverage contemplated actual bodily injury, sickness
 26 or disease resulting in physical impairment, as
 27 contrasted to mental impairment. Under the Travelers
 28 policy the terms "sickness" and "disease" are modified
 29 by the word "bodily." Mental anguish and illness, and
 30 emotional distress are not covered by the express
 31 terms of the Travelers policy. The policy cannot be
 32 stretched to the point where it would cover such
 33 problems. (Citations omitted.)

34 Id. at 908 (emphasis added).

1 Similarly, in West Am. Ins. v. Buchanan, 11 Wn. App. 823,
 2 525 P.2d 831 (1974), parents of an injured daughter asserted a
 3 derivative claim under the uninsured motorist provision of its
 4 automobile policy. The court held that a derivative claim for
 5 "mental anguish, grief and injury to the parent child relation-
 6 ship" did not seek indemnity "because of a bodily injury." Id.
 7 at 824. The court noted that "To read the policy as the
 8 Buchanans wish would be to read out of the clause the word
 9 'bodily,' and such is clearly not permissible under any
 10 principle of contract construction." Id. at 825.

11 Other jurisdictions have consistently reached the same
 12 result. In Roulette County v. Western Cas. & Sur. Co., 452 F.
 13 Supp. 125 (D.N.D. 1978), the county sought to be defended
 14 against claims of wrongful seizure of property which caused
 15 plaintiffs to be "embarrassed, humiliated [and] suffered great
 16 mental anguish and emotional distress." Id. at 129. Western's
 17 CGL policy contained the same coverage for bodily injury caused
 18 by occurrences as American's. The court held:

19 In arguing that the damages alleged by the
 20 Guzmans are covered, plaintiffs seem to be equating
 21 the policy definition of bodily injury with the
 22 broader term "personal injury." The use of the term
 23 "bodily injury" in the policy limits the harm covered
 24 by the policy to physical injury, sickness or disease
 25 and does not include nonphysical harm to the person.
 26 United States Fidelity & Guaranty Co. v. Shrigley, 26
 F. Supp. 625, 628 (W.D. Ark. 1939). In tort actions
 alleging mental suffering, the courts have con-
 sistently distinguished mental and emotional harm from
 physical harm, whether or not they recognize mental
 suffering as a separate cause of action.

Id. at 130.

1 A like result was reached in Farm Bureau Mut. Ins. Co. of
2 Michigan v. Hoag, 356 N.W.2d 630 (Mich. App. 1984). Hoag was a
3 police officer. His misconduct caused the conviction of Morris
4 for murder. Morris sued Hoag. The policy at issue was a CGL
5 policy issued to Hoag's employer. The policy applied to claims
6 for bodily injury. The court stated:

7 As a general rule, other jurisdictions have found
8 the term "bodily injury" to be unambiguous and under-
9 stood to mean hurt or harm to the human body, contem-
10 plating actual physical harm or damage to a human
11 body. See, e.g., Cotton States Mutual Ins. Co. v.
12 Crosby, 244 Ga. 456, 260 S.E.2d 860 (1979); Nickens v.
13 McGehee, 184 So. 2d 271, 278 (La. App. 1966).

14 . . . [W]e believe that the term "bodily injury" is
15 not ambiguous and does not include humiliation and
16 mental anguish and suffering as alleged in plaintiff's
17 complaint in federal court. When policy language is
18 clear and unequivocal, given its ordinarily understood
19 meaning, its terms must be enforced. The courts
20 should not rewrite the contract.

21 Id. at 633.

22 In another case which is directly on point with respect to
23 Mr. Gabrielson's consortium claim, it was held that a husband's
24 loss of consortium resulting from his wife's industrial
25 accident was not a bodily injury. Diamond Intern. Corp. v.
26 Allstate Ins. Co., 712 F.2d 1498. Defendants are thus not
covered as to plaintiffs' ninth cause of action for loss of
consortium.

CONCLUSION

24 The holding American seeks at this juncture is quite
25 narrow. First, American asks this court to declare that it is
26 not liable for damages under any cause of action for any mental

1 or emotional upset or lost earnings for which plaintiffs
 2 recover a judgment. Second, American seeks a declaration of
 3 non-coverage as to plaintiff's ninth cause of action for loss
 4 of consortium. American is not now seeking a declaration of
 5 non-coverage as to any other causes of action or as to any
 6 physical harm Gabrielson may have suffered. The relief sought
 7 is directly controlled by on-point opinions of our Supreme
 8 Court and Court of Appeals and is consistent with the law of
 9 other jurisdictions.

10 DATED this 29TH day of March, 1988.

11 LANE POWELL MOSS & MILLER

12
 13 By Bruce Winchell
 14 Bruce Winchell
 15 Coleen D. Thompson
 16 Of Attorneys for American
 17 Casualty Company

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MAR 30 1988

RUSH, HANNULA & HARKINS

MAR 30 1988

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

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

NO. 88-2-00947-9

v.

MOTION FOR PARTIAL
SUMMARY JUDGMENT

IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife;)
DONALD LEE BARNETT and)
BARBARA BARNETT, husband and)
wife; COMMUNITY CHAPEL and)
BIBLE TRAINING CENTER, a)
Washington corporation,)
JACK McDONALD and "JANE DOE")
McDONALD, husband and wife,)
Defendants.)

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAR 30 1988 P.M.
PIERCE COUNTY CLERK
BY *[Signature]* DEPUTY

COMES NOW the Plaintiff, American Casualty Company of Reading, Pennsylvania and moves this court for an Order granting partial summary judgment. This motion is based upon the Memorandum in support of plaintiff's motion and the Affidavit of Bruce Winchell and attachments to that affidavit.

LANE POWELL MOSS & MILLER

[Signature of Bruce Winchell]

Bruce Winchell
Of Attorneys for Plaintiff
American Casualty Company of
Reading, Pennsylvania

MOTION FOR PARTIAL
SUMMARY JUDGMENT
Page 1 of 1

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MAR 30 1988

RUSH, HANNULA & HARKINS

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

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

NO. 88-2-00947-9

v.

IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife;)
DONALD LEE BARNETT and)
BARBARA BARNETT, husband and)
wife; COMMUNITY CHAPEL and)
BIBLE TRAINING CENTER, a)
Washington corporation,)
JACK McDONALD and "JANE DOE")
McDONALD, husband and wife,)
Defendants.)

AFFIDAVIT OF BRUCE WINCHELL

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAR 30 1988 P.M.
PIERCE COUNTY CLERK
TED RUYER
BY _____ DEPUTY

STATE OF WASHINGTON)
COUNTY OF KING) ss.

Bruce Winchell, being first duly sworn upon oath, deposes and states as follows:

1. My name is Bruce Winchell. I am one of the attorneys for American Casualty.

2. Attached to this affidavit is a true and accurate copy of the Amended Complaint for Declaratory Judgment and Exhibits attached to that Complaint, including the Complaint in the matter of Gabrielson v. Community Chapel and the insurance

AFFIDAVIT OF BRUCE WINCHELL

Page 1

1 policy at issue in this action.

2

3

Bruce Winchell
Bruce Winchell

4

5

SUBSCRIBED AND SWORN to before me this 28th day of March,
6 1988.

6

7

Valerie Fairchild
NOTARY PUBLIC in and for the State
8 of Washington residing at Lynnwood.

8

9

My Commission expires: 4-28-88

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NOTARIAL PUBLIC
COUNTY OF PIERCE
The undersigned being first duly sworn, depose and say that the within and foregoing instrument is a true and correct copy of the document to which it refers, and that the same is a true and correct copy of the original instrument.

Madeline Schindler

Subscribed and sworn to before me this 25th day of

November 1988

Reginald K.

Notary Public in and for the State of Washington, residing at Seattle 8-1-41

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

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

No. 88-2-00947-9
AMENDED
COMPLAINT FOR
DECLARATORY JUDGMENT

I.

American Casualty Company of Reading Pennsylvania
(American) is a Pennsylvania corporation, which is licensed to
do business in Washington and which has paid all fees due and
owing.

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Ira and Carol Gabrielson are Washington residents, residing in Pierce County. Donald Lee Barnett (Barnett) and Barbara Barnett, husband and wife, are Washington residents. Community Chapel and Bible Training Center (Community Chapel) is a Washington corporation.

III.

Ira and Carol Gabrielson are plaintiffs, in an action against Donald and Barbara Barnett and Community Chapel and other defendants, including Jack McDonald (McDonald) and Jane Doe McDonald, John Does 1-4, Jane Does, 1-4, husbands and wives, and Community Chapel and Bible Training Center of Tacoma (Tacoma Chapel). That action is presently pending in Pierce County under Cause No. 86-2-02793-6. A copy of the Complaint in that action is attached as Exhibit A.

IV.

The Gabrielson complaint alleges Jack McDonald was pastor of the Tacoma Chapel, Community Chapel was the parent corporation to Tacoma Chapel and Barnett was pastor of Community Chapel. It further alleges that McDonald "manipulated" Gabrielson "into leaving her husband" and "coerced and unduly influenced" her into having a sexual relationship. It further alleges Barnett "knew or should have known . . . McDonald was involved in the seduction of female members of the congregation." Causes of action asserted are:

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- 1. Outrage;
- 2. Intentional counselor malpractice;
- 3. Counselor malpractice;
- 4. Pastoral malpractice;
- 5. Assault;
- 6. Battery;
- 7. False imprisonment; and
- 8. Defamation.

v.

American insured Community Chapel under a Comprehensive General Liability Policy from May 9, 1982 until May 9, 1986. A copy of relevant portions of the policy is attached as Exhibit B. The policy provides in part:

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

A. Bodily Injury . . . caused by an occurrence . . .

* * *

Bodily Injury means bodily injury, sickness or disease . . .

* * *

Occurrence means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

* * *

Each of the following is an insured . . .

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(c) any executive officer, director or stockholder thereof while acting within the scope of his duties . . .

* * *

(f) any employee . . . while acting within the scope of their duties . . .

The company will pay . . . all sums which the insured shall become legally obligated to pay as damages because of personal injury . . . arising out of the named insured's business . . .

* * *

A "Personal Injury" means injury arising out of . . .

- (a) false arrest, detention, imprisonment . . .
- (b) wrongful . . . eviction . . .
- (c) a publication or utterance
 - (1) of a libel or slander or other defamatory or disparaging material.

* * *

This insurance does not apply . . . to Personal Injury arising out of . . . publication . . . of defamatory material . . . made by or at the direction of the insured with knowledge of the falsity thereof.

* * *

EXCLUSION
(Malpractice and Professional Services)

[T]he insurance does not apply to bodily injury . . . due to

- 1. the rendering or failure to render . . . any service or treatment conducive to health or of a professional nature . . .

(Emphasis supplied)

VI.

American is presently defending Community Chapel and Barnett under a full reservation of rights.

VII.

FIRST CAUSE OF ACTION

American seeks a declaration that none of the alleged injuries for which plaintiffs seek compensation constitute a "Bodily Injury" as that term is defined in the policy.

VIII.

SECOND CAUSE OF ACTION

American seeks a declaration that none of the alleged injuries for which plaintiffs seek compensation were "caused by an occurrence" as that term is defined in the policy.

IX.

THIRD CAUSE OF ACTION

American seeks a declaration that the alleged acts by the individual defendants were not acts "within the scope of their duties" as that term is used in the policy.

FOURTH CAUSE OF ACTION

American seeks a declaration that none of the injuries alleged in the complaint constitute a "personal injury" as that term is defined in the policy.

FIFTH CAUSE OF ACTION

American seeks a declaration that any defamatory statements which were made by an insured were made "with knowledge of the falsity thereof" as that term is used in the policy.

AMENDED
COMPLAINT FOR DECLARATORY JUDGMENT - 5

3 0 4 1 R

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

229-7000

SIXTH CAUSE OF ACTION

1 American seeks a declaration that certain of the injuries
2 alleged arose from "service or treatment conducive to health or
3 of a professional nature" as that term is used in the policy
4 and are thus excluded from coverage.

SEVENTH CAUSE OF ACTION

5
6 American seeks a declaration that Jack McDonald was not an
7 employee of Community Chapel.

EIGHTH CAUSE OF ACTION

8
9 American seeks a declaration that it has no duty to defend
10 Community Chapel or Barnett.

PRAYER FOR RELIEF

11
12 American requests that the court:

- 13 1. Declare that none of the injuries for which plaintiff
14 seeks compensation fall within the scope of coverage provided;
15 2. Declare that American has no duty to defend Community
16 Chapel or Barnett against the claims asserted;
17 3. Award American such other relief as the Court con-
18 siders to be fair and equitable.

19 DATED this 25th day of March, 1988.

20
21 LANE POWELL MOSS & MILLER

22 By Bruce Winchell
23 Robert W. Thomas
24 Bruce Winchell
25 Of Attorneys for Plaintiff
26

AMENDED
COMPLAINT FOR DECLARATORY JUDGMENT - 6

3041R

LANE POWELL MOSS & MILLER
3600 RAINIER BANK TOWER
SEATTLE, WASHINGTON 98101-2647
223-7000

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

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

NO. 86 2 02792 6

COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES

vs.

JACK McDONALD and "JANE DOE")
McDONALD, husband and wife;)
DONALD LEE BARNETT and BARBARA)
BARNETT, husband and wife; and)
"JOHN DOES" NOS. 1-4 AND "JANE)
DOES" NOS. 1-4, husbands and)
wives; COMMUNITY CHAPEL AND)
BIBLE TRAINING CENTER OF)
TACOMA; COMMUNITY CHAPEL AND)
BIBLE TRAINING CENTER,)
Defendants.)

COME NOW the plaintiffs by and through their attorney
of record, Daniel L. Hannula of Rush, Hannula & Harkins, and
for cause of action against the defendants state and allege
as follows:

I.

The court has jurisdiction over the subject matter
herein and the parties hereto.

////

COMPLAINT - 1

EXHIBIT A

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 310-4388

II.

The plaintiffs Carol Gabrielson and Ira Gabrielson are husband and wife and are residents of Pierce County, Washington.

III.

The defendants Donald Lee Barnett and Barbara Barnett are husband and wife and are residents of King County, Washington. Donald Barnett is the head pastor of Community Chapel and Bible Training Center and as such is responsible for the administration and direction of the entire congregation, including the Tacoma Chapel. All actions described of the defendants or either of them were performed on behalf of the marital community.

IV.

The defendants Jack McDonald and "Jane Doe" McDonald are husband and wife and residents of Pierce County, Washington. Jack McDonald is the pastor of Community Chapel and Bible Training Center of Tacoma. All actions described of the defendants or either of them were performed on behalf of the marital community.

V.

The defendants "~~John Does~~" 1-4 and "~~Jane Does~~" 1-4 are husbands and wives and are residents of the State of Washington. All actions described of the defendants or any of them were performed on behalf of the marital community.

////

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 361-5388

VI.

1 The defendant Community Chapel and Bible Training Center
2 of Tacoma is a corporation licensed to do business and doing
3 business in the State of Washington.
4

VII.

5 The defendant Community Chapel and Bible Training Center
6 is a corporation licensed to do business and doing business in
7 the State of Washington and the is parent corporation of
8 Community Chapel and Bible Training Center of Tacoma.
9

VIII.

10 At all times material hereto, the defendants John Does 1
11 through 4 were agents, employees and representatives of
12 Community Chapel and Bible Training Center and/or Community
13 Chapel and Bible Training Center of Tacoma and all actions
14 complained of herein were performed in the scope of their
15 representation employment and/or agency for the Community
16 Chapel and Bible Training Center and the Community Chapel and
17 Bible Training Center of Tacoma.
18

IX.

19 At all times material hereto, the defendants Donald Lee
20 Barnett, Barbara Barnett, and Jack and "Jane Doe" MacDonald
21 were principals, agents, employees, and representatives of
22 Community Chapel and Bible Training Center and Community
23 Chapel and Bible Training Center of Tacoma and all actions
24 complained of herein were performed in the scope of their
25

26 ////

COMPLAINT - 3

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 253 5288

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

4 X.

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

13 XI.

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

18 XII.

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

24 XIII.

25 Further, as a result of the manipulation by defendant

26 ////

COMPLAINT - 4

LAW OFFICES
 RUSH, HANNULA & HARKINS
 715 TACOMA AVENUE SOUTH
 TACOMA, WASHINGTON 98402
 TACOMA 36-5381

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

5 XIV.

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

13 XV.

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

20 XVI.

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

26 ////

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 252 1300

XVII.

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

XVIII.

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

XIX.

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

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FIRST CAUSE OF ACTION

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XX.

Plaintiffs hereby incorporate by reference as if set forth in full each and every allegation as set forth in paragraphs I through XIX.

XXI.

The acts of each of the defendants as stated above are so extreme as to go beyond all possible bounds of decency. The conduct of each of the above named defendants was outrageous and caused the plaintiffs to suffer severe emotional distress. Each of the above-named defendants acted intentionally or recklessly to cause severe emotional distress to the plaintiffs.

SECOND CAUSE OF ACTION

XXII.

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

XXIII.

Defendant Jack McDonald did not exercise the degree of care, skill, diligence and knowledge commonly possessed and exercised by a reasonable, careful and prudent counselor in this jurisdiction by manipulating Carol Gabrielson into a sexual relationship. This intentional or reckless failure constituted the tort of counselor malpractice.

////

COMPLAINT - 7

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 363-1388
SEASIDE 435-2788

THIRD CAUSE OF ACTION

XXIV.

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

XXV.

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

FOURTH CAUSE OF ACTION

XXVI.

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

XXVII.

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

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tort of pastoral malpractice.

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FIFTH THROUGH SEVENTH CAUSES OF ACTION

XXVIII.

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

XXIX.

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

EIGHTH CAUSE OF ACTION

XXX.

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

XXXI.

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

NINTH CAUSE OF ACTION

XXXII.

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

////

XXXIII.

1 As a further and proximate result of the acts of the
2 defendants, plaintiff Ira Gabrielson has suffered a loss of
3 consortium.
4

XXXIV.

5 As a direct and proximate result of the intentional,
6 reckless and negligent wrongful acts of the defendants, and
7 each of them, plaintiffs have been specially and generally
8 damaged in an amount to be fully proven at the time of
9 trial.
10

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

- 13 1. For all general and special damages incurred by
- 14 plaintiffs Ira and Carol Gabrielson in an amount to be
- 15 proven at time of trial;
- 16 2. For plaintiffs' reasonable costs and attorneys' fees
- 17 incurred in the prosecution of this action;
- 18 3. For such other and further relief as the court
- 19 deems just and equitable.

20 DATED this 30 day of April, 1986.

21 RUSH, HANNULA & HARKINS

22
23 By: *Daniel L. Hannula*
24 DANIEL L. HANNULA
25

26 ////

1. Producer No. **028252** Branch **050** Policy Number **50 214 20**

NAMED INSURED & ADDRESS (No. Street, Town, County, State, Zip)
COMMUNITY CHAPEL & BIBLE TRAINING CENTER
18635 Eighth Avenue South
Seattle, WA 98148

- Continental Casualty Company
 - National Fire Insurance Company of Hartford
 - American Casualty Company of Reading, Pa.
 - Transportation Insurance Company
- The Business of the Named Insured is **Church & College**

2. Policy Period: **5-9-85** to **5-9-86** AT NOON (STANDARD TIME) AT THE LOCATION OF THE PREMISES INVOLVED

INSURED IS Individual Corporation Partnership Joint Venture Other **Church & College**

Insurance is provided in accordance with the following schedule of coverages. No coverage is provided for any Part of this policy unless a limit of liability or the word "included" is shown for such Part.

a. Part I Damage to Property/Business Earnings See Separate Schedule

Item	Description and Location of Property Covered	Limit of Liability		
		Building(s)	Contents	Business Earnings
		\$	\$	

b. % = Coinsurance Clause; %ML = Monthly Limit Clause
 AA = Agreed Amount Clause

c. Part I Property Deductible Amount: \$100; \$1,000

d. MORTGAGE CLAUSE: Subject to the provisions of the mortgagee's clause in Part I of this policy, Loss (if any) on building items under Part I shall be payable to: (insert name, address and item number)

As Per Attached G39543-A

e. Part II Comprehensive General Liability

	Per Occurrence	Aggregate
Combined Limits of Liability	\$500,000	\$500,000

Optional Liability Extensions: Only those coverages where an appears are included. Except as otherwise indicated the Comprehensive General Liability limits apply.

- Medical Payments (\$1,000 per person, unless otherwise indicated)
- Fire Legal Liability (per occurrence, unless otherwise indicated)
- Personal Injury (per occurrence, unless otherwise indicated)
- Blanket Contractual Liability (per occurrence, unless otherwise indicated)
- Broad Form Property Damage

f. See Part II for other coverages and limits of liability which may be afforded.

Part III Contractual Liability: See Part III and IV for Coverage and Limits

Part IV Boiler and Machinery: See Part III and IV for Coverage and Limits

3. Forms and Endorsements made part of this policy at time of issue include: (Insert number and suffix)

PART I: S3A-102, G39200-D, G39224-C, G39225-B, G39239-A, G39543-A, G30454-C, G39282-A98, G39282-299, G41099-A, G88131-346, G41396-A99, Y10210(6/76), G31824-A

PART II: G31670-B, G39025-A, G39250-C, G39251-B, G12114(7/66), G19905(7/66), G10412(1/73), G12208(1/74), G12203(1/74)

Provisional Premium is \$ 28,829 and is payable \$ 28,828 at inception and \$ _____ at each anniversary.

The premium for installments subsequent to the initial installment shall be subject to adjustment on the basis of the rates in effect at each anniversary date.

Unless indicated by an X in the box, NOT APPLICABLE

This policy shall not be valid unless countersigned by a duly authorized agent of this Company.

Countersigned by  Authorized Agent

 Chairman of the Board
 88-30201-C

For All the Commitments You Make[®]

COMPREHENSIVE GENERAL LIABILITY INSURANCE (Combined Limits of Liability)

I. COVERAGE A—BODILY INJURY LIABILITY

COVERAGE B—PROPERTY DAMAGE LIABILITY

The Company will pay on behalf of the *Insured* all sums which the *Insured* shall become legally obligated to pay as damages because of

A. Bodily Injury or

B. Property Damage

to which this insurance applies, caused by an Occurrence, and the Company shall have the right and duty to defend any suit against the *Insured* seeking damages on account of such Bodily Injury or Property Damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

Exclusions

This insurance does not apply:

- (a) to liability assumed by the *Insured* under any contract or agreement except an *Incidental Contract*; but this exclusion does not apply to a warranty of fitness or quality of the *Named Insured's Products* or a warranty that work performed by or on behalf of the *Named Insured* will be done in a workmanlike manner;

- (b) to *Bodily Injury* or *Property Damage* arising out of the ownership, maintenance, operation, use, loading or unloading of

- (1) any *Automobile* or aircraft owned or operated by or rented or loaned to any *Insured*, or
- (2) any other *Automobile* or aircraft operated by any person in the course of his employment by any *Insured*;

but this exclusion does not apply to the parking of an *Automobile* on premises owned by, rented to or controlled by the *Named Insured* or the ways immediately adjoining, if such *Automobile* is not owned by or rented or loaned to any *Insured*;

- (c) to *Bodily Injury* or *Property Damage* arising out of
- (1) the ownership, maintenance, operation, use, loading or unloading of any *Mobile Equipment*

while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith;

- (d) to *Bodily Injury* or *Property Damage* arising out of and in the course of the transportation of *Mobile Equipment* by an *Automobile* owned or operated by or rented or loaned to any *Insured*.

- (e) to *Bodily Injury* or *Property Damage* arising out of the ownership, maintenance, operation, use, loading or unloading of

- (1) any watercraft owned or operated by or rented or loaned to any *Insured*, or
- (2) any other watercraft operated by any person in the course of his employment by any *Insured*;

but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the *Named Insured* nor to watercraft under 26 feet in length which are neither owned by *Named Insured* nor used to carry persons or property for a charge.

- (f) to *Bodily Injury* or *Property Damage* arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

- (g) to *Bodily Injury* or *Property Damage* due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to

- (1) liability assumed by the *Insured* under an *Incidental Contract*, or
- (2) expenses for first aid under the Supplementary Payments provision;

- (h) to *Bodily Injury* or *Property Damage* for which the *Insured* or his indemnitee may be held liable.

- (1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or

(2) if not so engaged, as owner or lessor of premises used for such purposes.

if such liability is imposed

- (i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or
- (ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person except with respect to liability of the *Insured* or his indemnitee as an owner or lessor described in (2) above.

But part (i) and (ii) of this exclusion does not apply with respect to liability arising out of the giving or serving of alcoholic beverages at functions incidental to the *Named Insured's* business provided the *Named Insured* is not engaged in the business of manufacturing, distributing, selling or serving of alcoholic beverages and part (ii) of this exclusion does not apply with respect to the liability of the *insured* or his indemnity as an owner or lessor described in (2) above.

- (i) to any obligation for which the *Insured* or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (j) to *Bodily Injury* to any employee of the *Insured* arising out of and in the course of his employment by the *Insured* or to any obligation of the *Insured* to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the *Insured* under an *Incidental Contract*;

(k) to *Property Damage* to

- (1) property owned or occupied by or rented to the *Insured*,
- (2) property used by the *Insured*, or
- (3) property in the care, custody or control of the *Insured* or as to which the *Insured* is for any purpose exercising physical control

but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to *Property Damage* (other than to *Elevators*) arising out of the use of an *Elevator* at premises owned by, rented to or controlled by the *Named Insured*,

(l) to *Property Damage* to premises alienated by the *Named Insured* arising out of such premises or any part thereof;

(m) to loss of use of tangible property which has not been physically injured or destroyed resulting from

- (1) a delay in or lack of performance by or on behalf of the *Named Insured* of any contract or agreement, or
- (2) the failure of the *Named Insured's Products* or work performed by or on behalf of the *Named Insured* to meet the level of performance, quality, fitness or durability warranted or represented by the *Named Insured*;

but this exclusion does not apply to loss of use of other tangible property from the sudden and accidental physical injury to or destruction of the *Named Insured's Products* or work performed by or on behalf of the *Named Insured* after such products or work have been put to use by any person or organization other than an *Insured*;

(n) to *Property Damage* to the *Named Insured's Products* arising out of such products or any part of such products;

(o) to *Property Damage* to work performed by or on behalf of the *Named Insured* arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

(p) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the *Named Insured's Products* or work completed by or for the *Named Insured* or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(q) to *Property Damage* included within:

- (1) the *Explosion Hazard* in connection with operations identified in this policy by a classification code number which includes the symbol "x,"
- (2) the *Collapse Hazard* in connection with operations identified in this policy by a classification code number which includes the symbol "c,"
- (3) the *Underground Property Damage Hazard* in connection with operations identified in this policy by a classification code number which includes the symbol "u."

II. PERSONS INSURED

Each of the following is an *Insured* under this insurance to the extent set forth below:

(a) if the *Named Insured* is designated in the Declarations as an individual, the person so designated but only with respect to the conduct of a business

of which he is the sole proprietor, and the spouse of the *Named Insured* with respect to the conduct of such a business;

ture, any partner, member or spouse of any of the foregoing.

(b) if the *Named Insured* is designated in the Declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;

Spouse—Partnership—If the *Named Insured* is a partnership, the spouse of a partner but only with respect to the conduct of the business of the *Named Insured*.

(c) if the *Named Insured* is designated in the Declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such,

(d) any person (other than an employee of the *Named Insured* or organization while acting as real estate manager for the *Named Insured*, and

(e) with respect to the operation, for the purpose of locomotion upon a public highway, of *Mobile Equipment* registered under any motor vehicle registration law, any person while operating with the permission of the *Named Insured* any such equipment registered in the name of the *Named Insured* and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis to such person or organization, provided that no person or organization shall be an *Insured* under this paragraph (e) with respect to *Property Damage* to property owned by, rented to, in charge of or occupied by the *Named Insured* or the employee of any person described in Paragraph II, Persons Insured.

(f) other than executive officers, any employee, of the *Named Insured* while acting within the scope of their duties as such, but the insurance afforded to such employees does not apply to:

(1) Bodily Injury to another employee of the *Named Insured* arising out of or in the course of his employment, or

(2) *Bodily Injury* to the *Named Insured*, or if the *Named Insured* is a partnership or joint venture, any partner or member thereof, or the spouse of any of the foregoing.

(3) To *Property Damage* to property owned, occupied or used by, rented to, in the care, custody or control of or over which physical control is being exercised for any purpose by another employee of the *Named Insured* or if the *Named Insured* is a partnership or joint ven-

This insurance does not apply to *Bodily Injury* or *Property Damage* arising out of the conduct of any partnership or joint venture of which the *Insured* is a partner or member and which is not designated in this policy as a *Named Insured*.

III. LIMITS OF LIABILITY

Regardless of the number (1) *Insured* under this policy, (2) persons or organizations who sustain *Bodily Injury* or *Property Damage*, (3) claims made or suits brought on account of *Bodily Injury* or *Property Damage* to which this insurance applies, the Company's liability is limited as follows:

Coverages A and B Combined—The limit of liability stated in the Declarations Page as applicable to "each *Occurrence*" is the total limit of the Company's liability under Coverages A and B combined for all damages as the result of any one *Occurrence* provided that with respect to any *Occurrence* for which notice of this policy is given in lieu of security or when this policy is certified as proof of financial responsibility under the provisions of the motor vehicle financial responsibility law of any state or province, such limit of liability shall be applied to provide the separate limits required by such law for *Bodily Injury* liability and *Property Damage* liability to the extent of the coverage required by such law, but the separate application of such limit shall not increase the total limit of the Company's liability.

Subject to the above provision respecting "each *Occurrence*," the total liability of the Company for all damages because of all *Bodily Injury* and *Property Damage* to which this coverage applies and described in any of the numbered subparagraphs below shall not exceed the limit of liability stated in the Declarations Page as "aggregate".

(1) all *Property Damage* arising out of premises or operations rated on a remuneration basis, or Contractor's Equipment rated on a receipts basis, including *Property Damage* for which liability is assumed under the *Incidental Contract* relating to such premises or operations, but excluding *Property Damage* included in subparagraph (2) below;

(2) all *Property Damage* arising out of and occurring in the course of operations performed for the *Named Insured* by independent contractors and general supervision thereof by the *Named Insured*, including any such *Property Damage* for which liability is assumed under any *Incidental Contract* relating to such operations, but this subparagraph (2) does not include *Property Damage* arising out of maintenance or repairs at premises owned by or

rented to the *Named Insured* or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

- (3) all *Bodily Injury and Property Damage* included within the *Completed Operations Hazard* and all *Bodily Injury and Property Damage* included within the *Products Hazard*.

Such aggregate limit shall apply separately (i) to the *Property Damage* described in subparagraphs (1) and (2); (ii) with respect to each project away from premises owned by or rented to the *Named Insured* in subparagraphs (1) and (2) and (iii) to the sum of the damages for all *Bodily Injury* and all *Property Damage* described in subparagraph (3)

Coverages A and B—For the purpose of determining the limit of the Company's liability, all *Bodily Injury* and *Property Damage* arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one *Occurrence*.

IV. POLICY TERRITORY

This insurance applies only to *Bodily Injury* or *Property Damage* which occurs within the *Policy Territory*.

V. OPTIONAL LIABILITY EXTENSIONS

The following coverages are optional and coverage is afforded only when indicated in the *Declarations* page as included

A. CONTRACTUAL LIABILITY COVERAGE

- (1) The definition of *Incidental Contract* is extended to include any contract or agreement relating to the conduct of the *Named Insured's* business
- (2) The insurance afforded with respect to liability assumed under an *Incidental Contract* is subject to the following additional exclusions:
 - (a) to *Bodily Injury* or *Property Damage* for which the *Insured* has assumed liability under any *Incidental Contract*, if such injury or damage occurred prior to the execution of the *Incidental Contract*.
 - (b) if the *Insured* is an architect, engineer or surveyor, to *Bodily Injury* or *Property Damage* arising out of the rendering or failure to render professional services by such *Insured*, including
 - (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, and
 - (2) supervisory, inspection or engineering services;
 - (c) if the indemnitee of the *Insured* is an architect,

engineer or surveyor, to the liability of the indemnitee, his agents or employees, arising out of

- (1) the preparation or approval or the failure to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or
 - (2) the giving of or the failure to give directions or instructions by the indemnitee, his agents or employees, provided such giving or failure to give is the primary cause of the *Bodily Injury* or *Property Damage*.
 - (d) to any obligation for which the *Insured* may be held liable in an action on a contract by a third party beneficiary for *Bodily Injury* or *Property Damage* arising out of a project for a public authority; but this exclusion does not apply to an action by the public authority or any other person or organization engaged in the project
 - (e) to *Bodily Injury* or *Property Damage* arising out of operations, within 50 feet of any railroad property, affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing; but this exclusion does not apply to sidetrack agreements.
 - (3) The following exclusions applicable to Coverages A (*Bodily Injury*) and B (*Property Damage*) do not apply to this *Contractual Liability Coverage* (b), (c), (2), (d) and (e).
 - (4) The following additional condition applies:
Arbitration. The Company shall be entitled to exercise all of the *Insured's* rights in the choice of arbitrators and in the conduct of any arbitration proceeding.
- B. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY COVERAGE**
- (1) The Company will pay on behalf of the *Insured* all sums which the *Insured* shall become legally obligated to pay as damages because of *Personal Injury* or *Advertising Injury* to which this insurance applies, sustained by any person or organization and arising out of the conduct of the *Named Insured's* business, within the *Policy Territory*, and the Company shall have the right and duty to defend any suit against the *Insured* seeking damages on account of such injury, even if any of the allegations are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements
 - (2) This insurance does not apply.

- (a) to liability assumed by the *Insured* under any contract or agreement;
- (b) to *Personal Injury* or *Advertising Injury* arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of the *Insured*;
- (c) to *Personal Injury* or *Advertising Injury* arising out of a publication or utterance of a libel or slander, or a publication or utterance in violation of an individual's right of privacy, if the first injurious publication or utterance of the same or similar material by or on behalf of the *Named Insured* was made prior to the effective date of this insurance;
- (d) to *Personal Injury* or *Advertising Injury* arising out of libel or slander or the publication or utterance of defamatory or disparaging material concerning any person or organization or goods, products or services, or in violation of an individual's right of privacy, made by or at the direction of the *Insured* with knowledge of the falsity thereof;
- (e) to *Personal Injury* or *Advertising Injury* arising out of the conduct of any partnership or joint venture of which the *Insured* is a partner or member and which is not designated in the Declarations of the policy as a *Named Insured*;
- (f) to *Advertising Injury* arising out of
 - (1) failure of performance of contract, but this exclusion does not apply to the unauthorized appropriation of ideas based upon alleged breach of implied contract, or
 - (2) infringement of trademark, service mark or trade name, other than titles or slogans, by use thereof on or in connection with goods, products or services sold, offered for sale or advertised;
 - (3) incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;
- (g) with respect to *Advertising Injury*
 - (a) to any *Insured* in the business of advertising, broadcasting, publishing or telecasting, or
 - (b) to any injury arising out of any act committed by the *Insured* with actual malice;
- (h) to *Personal Injury* to another employee of the *Named Insured* arising out of or in the course of his employment.

(3) Limits of Liability

Regardless of the number of (1) *Insureds* here-

under, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought on account of *Personal Injury* or *Advertising Injury* the total limit of the Company's liability under this coverage for all damages shall not exceed the *Bodily Injury* limit of liability stated in the Declarations Page as aggregate.

(4) Additional Definitions

Advertising Injury means injury arising out of an offense committed during the policy period occurring in the course of the *Named Insured's* advertising activities, if such injury arises out of libel, slander, defamation, violation of right of privacy, piracy, unfair competition, or infringement of copyright, title or slogan.

Personal Injury means injury arising out of one or more of the following offenses committed during the policy period.

- (a) false arrest, detention, imprisonment, or malicious prosecution;
- (b) wrongful entry or eviction or other invasion of the right of private occupancy;
- (c) a publication or utterance

(1) of a libel or slander or other defamatory or disparaging material, or

(2) in violation of an individual's right of privacy;

except publications or utterances in the course of or related to advertising, broadcasting, publishing or telecasting activities conducted by or on behalf of the *Named Insured* shall not be deemed *Personal Injury*

C. PREMISES MEDICAL PAYMENTS COVERAGE

The Company will pay to or for each person who sustains *Bodily Injury* caused by accident all reasonable *Medical Expense* incurred within one year from the date of the accident on account of such *Bodily Injury* provided such *Bodily Injury* arises out of (a) a condition in the *Insured Premises* or (b) operations with respect to which the *Named Insured* is afforded coverage for *Bodily Injury* liability under the policy

This insurance does not apply

(1) to *Bodily Injury*

(a) arising out of the ownership, maintenance, operation, use, loading or unloading of

(1) any *Automobile* or aircraft owned or operated by or rented or loaned to any *Insured*, or

(2) any other *Automobile* or aircraft operated by any person in the course of his employ-

ment by any *Insured*:

but this exclusion does not apply to the parking of an *Automobile* on the *Insured Premises*, if such *Automobile* is not owned by or rented or loaned to any *Insured*:

(b) arising out of

- (1) the ownership, maintenance, operation, use, loading or unloading of any *Mobile Equipment* while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity, or

- (2) the operation or use of any snowmobile or trailer designed for use therewith.

(c) arising out of the ownership, maintenance, operation, use, loading or unloading of

- (1) any watercraft owned or operated by or rented or loaned to any *Insured*, or

- (2) any other watercraft operated by any person in the course of his employment by any *Insured*.

but this exclusion does not apply to watercraft while ashore on the *Insured Premises*.

(d) arising out of and in the course of the transportation of *Mobile Equipment* by an *Automobile* owned or operated by or rented or loaned to the *Named Insured*.

(2) to *Bodily Injury*

- (a) included within the *Completed Operations Hazard* or the *Products Hazard*;

(b) arising out of operations performed for the *Named Insured* by independent contractors other than

- (1) maintenance and repair of the *Insured Premises*, or

- (2) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures.

(c) resulting from the selling, serving or giving of any alcoholic beverage

- (1) in violation of any statute, ordinance or regulation.

- (2) to a minor.

- (3) to a person under the influence of alcohol, or

(4) which causes or contributes to the intoxication of any person.

if the *Named Insured* is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or if not so engaged, is an owner or lessor of premises used for such purposes, but only part (1) of this exclusion (2) (C) applies when the *Named Insured* is such an owner or lessor.

(d) due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing:

(3) to *Bodily Injury*

(a) to the *Named Insured*, any partner therein, any tenant or other person regularly residing on the *Insured Premises* or any employee of any of the foregoing if the *Bodily Injury* arises out of and in the course of his employment therewith;

(b) to any other tenant if the *Bodily Injury* occurs on that part of the *Insured Premises* rented from the *Named Insured* or to any employee of such a tenant if the *Bodily Injury* occurs on the tenant's part of the *Insured Premises* and arises out of and in the course of his employment for the tenant;

(c) to any person while engaged in maintenance and repair of the *Insured Premises* or alteration, demolition or new construction at such premises;

(d) to any person if any benefits for such *Bodily Injury* are payable or required to be provided under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(e) to any person practicing, instructing or participating in any physical training, sport, athletic activity, or contest whether on a formal or informal basis.

(f) if the *Named Insured* is a club, to any member of the *Named Insured*;

(g) if the *Named Insured* is a hotel, motel, or tourist court, to any guest of the *Named Insured*

(4) to any *Medical Expense* for services by the *Named Insured*, any employee thereof or any person or organization under contract to the *Named Insured* to provide such services.

are deleted and replaced by the following
This insurance does not apply to liability assumed by the insured under any contract or agreement.

LIMITS OF LIABILITY

The limit of liability for Premises Medical Payments Coverage is \$1,000 each person unless otherwise stated in the Declarations Page. The limit of liability applicable to "each person" is the limit of the Company's liability for all Medical Expense for Bodily Injury to any one person as the result of any one accident; but subject to the above provision respecting "each person," the total liability of the Company under Premises Medical Payments Coverage for all Medical Expense for Bodily Injury to two or more persons as the result of any one accident shall not exceed the limit of Bodily Injury liability stated in the policy as applicable to "each Occurrence."

When more than one Medical Payments coverage afforded by the policy applies to the loss, the Company shall not be liable for more than the amount of the highest applicable limit of liability

ADDITIONAL DEFINITIONS

When used herein:

Insured Premises means all premises owned by or rented to the Named Insured with respect to which the Named Insured is afforded coverage for Bodily Injury liability under this policy, and includes the ways immediately adjoining on land.

Medical Expense means expenses for necessary medical, surgical, x-ray and dental services including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services

ADDITIONAL CONDITION

Medical Reports, Proof and Payment of Claim

As soon as practicable the injured person or someone on his behalf shall give to the Company written proof of claim, under oath if required, and shall, after each request from the Company, execute authorization to enable the Company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the Company when and as often as the Company may reasonably require. The Company may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the Company

D. FIRE LEGAL LIABILITY COVERAGE—REAL PROPERTY

With respect to Property Damage to structures or portions thereof rented to or leased to the Named Insured, including fixtures permanently attached thereto, if such Property Damage arises out of fire:

- (1) All of the exclusions of the policy, other than the Nuclear Energy Liability Exclusion (Broad Form).

- (2) The limit of Property Damage liability as respects this Fire Legal Liability Coverage—Real Property is \$50,000 each Occurrence unless otherwise stated in the Declarations Page.

- (3) The Fire Legal Liability Coverage—Real Property shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof), available to the Insured, such as, but not limited to, Fire, Extended Coverage or Installation Risk Coverage, and the Other Insurance Condition of the policy is amended accordingly.

E. BROAD FORM PROPERTY DAMAGE LIABILITY COVERAGE (Including Completed Operations)

The insurance for Property Damage liability applies, subject to the following additional provisions

- (1) Exclusions (k) and (o) are replaced by the following:

- (a) to property owned or occupied by or rented to the Insured, or, except with respect to the use of Elevators, to property held by the Insured for sale or entrusted to the Insured for storage or safekeeping.

- (b) except with respect to liability under a written sidetrack agreement or the use of Elevators.

- (1) to property while on premises owned by or rented to the Insured for the purpose of having operations performed on such property by or on behalf of the Insured.

- (2) to tools or equipment while being used by the Insured in performing his operations.

- (3) to property in the custody of the Insured which is to be installed, erected or used in construction by the Insured.

- (4) to that particular part of any property, not on the premises owned by or rented to the Insured

- (i) upon which operations are being performed by or on behalf of the Insured at the time of the Property Damage arising out of such operations, or
- (ii) out of which any Property Damage arises, or

- (iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the Insured.

with respect to the *Completed Operations Hazard* and with respect to any classification stated in the policy or in the Company's manual as "including completed operations." to *Property Damage* to work performed by the *Named Insured* arising out of such work or any portion thereof, or out of such materials, parts or equipment furnished in connection therewith.

(2) The Broad Form Property Damage Liability Coverage shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the *Insured*, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the Other Insurance Condition of the policy is amended accordingly.



For All the Commitments You Make

POLICY CONDITIONS

THE FOLLOWING CONDITIONS APPLY TO ALL PARTS OF THE POLICY

A. TIME OF INCEPTION: To the extent that coverage in this policy replaces coverage in other policies terminating at 12:01 A.M. (Standard Time) on the inception date of this policy, this policy shall be effective at 12:01 A.M. (Standard Time) instead of at Noon (Standard Time).

Special State Provisions; California, Florida, Oregon and Washington: All coverages in this policy shall be effective at 12:01 A.M. (Standard Time).

B. INSURANCE UNDER MORE THAN ONE PART: In the event that more than one Part of this policy covers the same loss, damage or claim, the Company shall not, under any circumstances, be liable for more than the actual loss, damage or claim sustained by the Insured.

C. CONFORMITY WITH STATUTE: The terms of this policy and forms attached hereto which are in conflict with the statutes of the state wherein this policy is issued are hereby amended to conform to such statutes.

D. PREMIUM: All premiums for this insurance shall be computed in accordance with the Company's rules, rates and rating plans, applicable to the insurance afforded.

If this policy is issued for a period in excess of one year with a specified expiration date and a premium is payable at each anniversary, such premium shall be determined annually on the basis of the rates in effect at the anniversary date.

Premium designated in this policy as "provisional premium" is a deposit premium only which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each annual period, or part thereof terminating with the end of the policy period, the earned premium shall be computed for such period and, upon notice thereof to the Named Insured, shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, the Company shall return to the Named Insured the unearned portion.

The Named Insured shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the Company at the end of the policy period and at such times during the policy period as the Company may direct.

E. CANCELLATION OF POLICY: This policy may be cancelled at any time at the request of the In-

sured. The Company may cancel this policy at any time by mailing to the Insured and to any mortgagee designated in this policy at any time by mailing to the Insured and to any mortgagee designated in this policy at the last address known to the Company or its agent at least a 60 day notice of cancellation. If the premium is not paid when due, the Company will mail at least a 10 day notice of cancellation.

If the Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

F. LIBERALIZATION CLAUSE: If during the period that insurance is in force under this policy, or within forty-five days prior to the inception date thereof, on behalf of this Company there be adopted, or filed with and approved or accepted by the Insurance Supervisory Authorities, all in conformity with the law, any changes in the form attached to this policy by which this form of insurance could be extended or broadened without increased premium charge by endorsement or substitution of form, then such extended or broadened insurance shall inure to the benefit of the Insured as though such endorsement or substitution of form had been made.

G. CONCEALMENT—FRAUD: This entire policy shall be void if, whether before or after a loss, the Insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or the interest of the Insured therein, or in the case of any fraud or false swearing by the Insured relating thereto.

H. INSPECTION AND AUDIT: The Company shall be permitted but not obligated to inspect the Named Insured's property and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the Named Insured or others, to determine or warrant that property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Company may examine and audit the Named Insured's books and records at any time during the policy period and extensions thereof and

within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

DECLARATIONS: By acceptance of this policy, the Named Insured agrees that the statements in the Declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance.

CHANGES: Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any Part of this policy or estop the Company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

SPECIAL DEFINITIONS:

- 1. Wherever in any form attached the word "policy" appears it shall mean the Part of this policy to which such form applies.
- 2. Wherever in any form attached the words "advance premium" appear, they shall mean "provisional premium" as set forth in item D. Premium above.

PROTECTIVE SAFEGUARDS: It is a condition of this insurance that the Insured shall maintain so far as is within his control such protective safe-

guards as are set forth by endorsement hereto. Failure to maintain such protective safeguards shall suspend this insurance, only as respects the location or situation affected, for the time of such discontinuance.

M. NOTICE TO INSURED: If more than one Insured is named in the Declarations, the Insured first named shall act for itself and for every other Insured for all purposes of this policy. Knowledge possessed by an Insured shall, for the purposes of this policy, constitute knowledge possessed by every Insured. Cancellation of this policy by, or through notice to, the Insured first named shall be cancellation of this policy with respect to every Insured.

N. FAILURE TO RENEW: If the Company has offered to renew this policy and the Named Insured has accepted the offer of renewal, but the renewal has not been issued to the Named Insured prior to the expiration date, then this policy shall continue in full force and effect as though renewed from the date of expiration until replaced by a renewal certificate or policy but in no event to exceed 12 months from the date of expiration stated in the Declarations or in a renewal endorsement attached to this policy. Premium for this extension shall be computed in accordance with the rules and rates contained in the Company's manual at the date of such expiration of this policy.

THE FOLLOWING CONDITIONS APPLY TO PART I

A. WAR RISK EXCLUSION: This Part shall not apply to loss caused, directly or indirectly, by or due to any act or condition incident to the following:

- 1. Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining, or using military, naval or air forces, or (b) by military, naval or air forces; or (c) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces;
- 2. Insurrection, rebellion, revolution, civil war, usurped power, or action taken by government authority in hindering, combating or defending against such an occurrence; seizure or destruction under quarantine or customs' regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

B. NUCLEAR CLAUSE: The word "fire" in this Part is not intended to and does not embrace nuclear

reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled. Loss by nuclear reaction or nuclear radiation or radioactive contamination is not intended to be and is not insured against by this Part, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by "fire" or any other perils insured against by this Part. Subject to the foregoing and all provisions of this policy, direct loss by "fire" resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this Part.

C. NUCLEAR EXCLUSION: Loss by nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing is not insured against by this Part, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by any of the perils insured against by this Part; and nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, is not "explosion" or "smoke." This clause applies to all perils insured against hereunder except the perils of fire and lightning, which are otherwise provided for in the Nuclear Clause above.

- D. **NO BENEFIT TO BAILEE:** This insurance shall in no way inure directly or indirectly to the benefit of any carrier or other bailee for hire.
- E. **ASSIGNMENT:** This policy shall be void if assigned or transferred without the written consent of the Company.
- F. **CONDITIONS:**
 1. In the event of loss, permission is granted for the Insured to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the property from further damage, and provided further that the Insured shall keep an accurate record of such repair expenditures. The cost of any such repairs directly attributable to damage by any peril insured hereunder shall be included in determining the amount of loss. Nothing herein contained is intended to modify the policy requirements applicable in case loss occurs, and the Insured shall protect the property from further damage.
 2. Permission is hereby granted for such unoccupancy as is usual or incidental to the described occupancy.
 3. Permission is hereby granted for such use of the premises as is usual and incidental to the occupancy and to keep and use all materials in such quantities as are usual and incidental to such occupancy.
- G. **NO CONTROL:** This insurance shall not be prejudiced:
 1. By any act or neglect of the owner of any building if the Insured is not the owner thereof, or by any act or neglect of any occupant (other than the Insured) of any building, when such act or neglect of the owner or occupant is not within the control of the Insured, or
 2. By failure of the Insured to comply with any warranty or condition contained in any form or endorsement attached to this policy with regard to any portion of the premises over which the Insured has no control.
- H. **POLICY PERIOD, TERRITORY:** This Part applies only to loss to property during the policy period while such property is within the 50 states of the United States of America, the District of Columbia or the Commonwealth of Puerto Rico.
- I. **COINSURANCE CLAUSE:** The Company shall not be liable for a greater proportion of any loss to the property covered than the limit of liability under this Part for such property bears to the amount produced by multiplying the coinsurance percentage stated in the Declarations by the total value of the insured property determined by the same method of valuation used to establish the amount of the loss.
 In the event that the aggregate claim for any loss is both less than \$10,000 and less than 5% of

the limit of liability for all contributing insurance applicable to the property involved at the time such loss occurs, no special inventory or appraisal of the undamaged property shall be required providing that nothing herein shall be construed to waive the application of the first paragraph of this clause.

If insurance under Part I of this policy is divided into separate limits of liability, the foregoing shall apply separately to the property covered under each such limit of liability.

If this insurance is written on a reporting basis, the foregoing Coinsurance Clause does not apply and is replaced by the applicable reporting form provisions.

As respects the State of Florida, the rate charged in this policy is based upon the use of this Coinsurance Clause, with the consent of the Insured.

- J. **AGREED AMOUNT CONDITIONS:** If the Declarations Part I Damage to Property/Business Earnings Schedule specify "agreed amount," the following conditions apply:

Subject to all the conditions and stipulations otherwise applicable to Part I, the "Coinsurance Clause" in this policy is suspended and replaced by the following:

1. With respect only to the items specified in the Declarations Part I Damage to Property/Business Earnings Schedule, as being subject to these "agreed amount" provisions, it is made a condition of this insurance that the application of the "Coinsurance Clause" is suspended in determination of loss caused by the perils insured against occurring after the inception date of this policy or endorsement attaching these "agreed amount" conditions.
2. If this policy is renewed by endorsement, these "agreed amount" conditions shall not apply unless "agreed amount" is shown on the renewal endorsement as applying to the renewal.

- K. **LIMITS OF LIABILITY AND DEDUCTIBLE:** This Company shall not be liable:

1. for more than the limits shown on the Declarations Part I Damage to Property/Business Earnings Schedule; nor
2. for the amount of any deductible shown in Section 2 of the Declarations Part I Property/Business Earnings Schedule, applying separately to each occurrence. Windstorm or hail losses occurring at separate locations in the course of a single storm shall be considered a single occurrence.

- L. **WHAT TO DO WHEN LOSS OCCURS:**

1. The Insured shall as soon as practicable report to this Company or its agent every loss or damage which may become a claim here-

under and also report such loss or damage to the police if such is a result of violation of the law and shall also file with the Company or its agent within 90 days from the date of loss a detailed sworn proof of loss. Failure by the Insured to report the loss or damage and to file such sworn proof of loss as required shall invalidate any claim hereunder for such loss;

- 2. It shall be necessary for the Insured to use all lawful and proper efforts for the safeguarding and recovery of the property covered or its value without prejudice to this insurance, and this Company will contribute to the just and reasonable charges thereof in such proportion as the amount of insurance hereunder bears to the whole value of the property involved in the disaster at the time such loss shall occur. The acts of each party or their agents in saving, preserving or recovering the property shall not be considered or held to be either a waiver or an acceptance of abandonment;
- 3. The Insured and every claimant hereunder shall submit to examination by the Company, subscribe the same, under oath, if required, and produce for the Company's examination all pertinent records, all at such reasonable times and places as the Company shall designate and shall cooperate with the Company in all matters pertaining to loss or claims with respect thereto;
- 4. No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor until 30 days after the required proofs of loss have been filed with the Company, nor at all unless commenced within 2 years from the date when the Insured first has knowledge of the loss;
- 5. The insured property may be owned by the Insured or held by him in any capacity or may be property for which the Insured is legally liable; provided, the insurance applies only to the interest of the Insured in such property, including the Insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the Insured's proof of loss;
- 6. It shall always be the option of this Company to take all or any part of the articles at the ascertained or appraised value or to repair or replace any property lost or damaged with other of like kind and quality within a reasonable time of giving notice, within 30 days after receipt of the proof herein required, of its intention to do so;
- 7. There can be no abandonment to this Company of the property insured unless specifically agreed to by the Company;
- 8. All adjusted claims shall be paid or made good within 30 days after presentation and acceptance of satisfactory proofs of interest

and loss at the office of this Company. No loss shall be paid hereunder if the Insured has collected the same from others:

- 9. If the Insured and the Company fail to agree as to the amount of loss, each shall, on the written demand of either, made within 60 days after receipt of proof of loss by the Company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for 15 days to agree upon such umpire, then, on the request of the Insured or the Company, such umpire shall be selected by a judge of a court of record in the state in which such appraisal is pending. The appraisers shall then set the amount of loss, stating separately the actual cash value at the time of loss and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The Insured and the Company shall each pay his or its chosen appraiser and shall bear equally the other expenses of the appraisal and umpire. The Company shall not be held to have waived any of its rights by any act relating to appraisal;
- 10. If the Insured shall sustain any loss covered by this policy which exceeds the applicable amount of insurance hereunder, the Insured shall be entitled to all recoveries (except from suretyship insurance, reinsurance, security or indemnity taken by or for the benefit of the Company) by whomsoever made, on account of such loss under this policy until fully reimbursed, less the actual cost of effecting the same; and any remainder shall be applied to the reimbursement of the Company.

M. IMPAIRMENT OF RECOVERY: Except as noted below, the Company shall not be bound to pay any loss if the Insured shall have impaired any right of recovery for loss to the property insured. It is agreed that:

- 1. As respects property while on the premises of the Insured, permission is given the Insured to release others in writing from liability for loss prior to loss, and such release shall not affect the right of the Insured to recover hereunder, and
- 2. As respects property in transit, the Insured may, without prejudice to his insurance, accept such bills of lading, receipts or contracts of transportation as are ordinarily issued by carriers containing a limitation as to the value of such goods or merchandise.

N. OTHER INSURANCE:

- 1. Loss by fire or other perils not provided for in 2 below: If at the time of the loss, there is other insurance available to the Insured or any other interested party covering such loss

or which would have covered such loss except for the existence of this insurance, then the Company shall be liable as follows:

- (a) If such insurance is Contributing Insurance, defined as any insurance written in the name of the Insured, upon the same plan, terms, conditions and provisions as contained in this policy whether collectible or not, the Company shall be liable for no greater proportion of any loss than the limit of liability under this policy bears to the whole amount of insurance covering such loss.
- (b) If such insurance is Specific Insurance, defined as any insurance other than that described as Contributing Insurance in (a) above, the Company shall not be liable for any loss hereunder until the liability of such Specific Insurance has been exhausted, and then shall cover only such amount as may exceed the amount due from Specific Insurance (whether collectible or not) after application of any contribution, coinsurance, average or distribution or other clauses contained in policies of such Specific Insurance affecting the amount collectible thereunder, not exceeding however, the applicable limit of liability under this policy.

- 2. Loss by burglary, robbery or theft or loss of personal property covered on an unspecified peril basis: insurance under this policy shall apply as excess insurance over any other valid and collectible insurance which would apply in the absence of this policy.
- 3. When loss under this policy is subject to a deductible, the Company shall not be liable for more than its pro rata share of such loss in excess of the deductible amount.

O. LOSS CLAUSE: Unless otherwise provided any loss hereunder shall not reduce the amount of this policy.

P. LOSS PAYABLE CLAUSE: Loss, if any, shall be adjusted with the Named Insured and shall be payable to him unless other payee is specifically named hereunder; provided, at the option of the Company any loss to property of others may be adjusted with and paid to the owner of such property.

Q. MORTGAGE CLAUSE: (Applies only to buildings). This entire clause is void unless name of mortgagee(s) or trustee(s) is inserted in the Declarations Part I Damage to Property/Business Earnings Schedule. Loss or damage, if any, on buildings under this policy, shall be payable to the aforesaid as mortgagee (or trustee) as interest may appear. This insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or

notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, that the mortgagee (or trustee) shall notify this Company of any change of ownership or occupancy or increase the hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for 10 days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and this Company shall have the right, on like notice, to cancel this agreement.

Whenever this Company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

Loss or damage, if any, under this policy shall be payable to the aforesaid mortgagee (or trustee) as interest may appear under all present or future mortgages, in order of precedence of such mortgages, in accordance with the terms of this Standard Mortgagee Clause, it being understood that no notice of increase or decrease in any mortgagee's interest is required.

R. BRANDS OR LABELS: If branded or labeled merchandise is damaged and the Company elects to take all or any part of the property at the agreed or appraised value, the Insured may at his own expense stamp "salvage" on the merchandise or its containers or may remove the brands or labels, if such stamp or removal will not physically damage the merchandise.

S. VALUATION: Subject to all other provisions and conditions, the following valuations are established for property insured under Part I:

1. Insured's buildings, as defined but in no event to include rugs or carpeting, curtains or draperies, upholstery, cloth awnings, unit air conditioners, domestic appliances and outdoor equipment), at the full cost to repair or replace the property (without deduction for depreciation) if repaired or replaced with due diligence and dispatch and within a reasonable time after loss, but not to exceed:

- (a) The cost to replace the property covered on the same site in a condition equal to, but not superior to or more extensive than, the condition when new.
- (b) The amount actually and necessarily expended in repairing or replacing such property or any part thereof.
- (c) If the damaged property is not repaired or replaced within a reasonable time after loss, or if the Insured shall so elect, the actual cash value (with deduction for depreciation) of the damaged or destroyed property. If the Insured shall elect following loss to make claim on the basis of actual cash value he shall have the right to make further claim for additional liability on the basis of additional cost of repair or replacement, provided the Company is notified in writing within a reasonable time after loss of the Insured's intent to make further claim.

In no event shall aggregate payment for this and any other property insured under any item of the Declarations Part I Damage to Property/Business Earnings Schedule exceed the limit of liability shown for such term.

- 2. Property of others at the amount for which the Insured is liable but in no event to exceed actual cash value. Loss shall be adjusted with the Insured for the account of the owner(s) of said property, except that the right to adjust such loss with said owner(s) is reserved to the Company and the receipts of the owner(s) in satisfaction thereof shall be in full satisfaction of any claim by the Insured for which such payments have been made.
- 3. Property sold but not delivered at the actual selling price of the Insured less all discounts and unincurred expenses.
- 4. Finished stock, manufactured by the Insured at the selling price of such property at the

time and place of loss, less all customary discounts and unincurred expenses.

- 5. Patterns, molds, models, dies: At actual cash value with proper deduction for depreciation or obsolescence, however caused, and shall in no event exceed what it would then cost to repair or replace the same with material of like kind and quality.
- 6. Tenant's Improvements and Betterments:
 - (a) If repaired or replaced within a reasonable time after loss at the expense of the Insured, the actual cash value of the damaged or destroyed property;
 - (b) If not repaired or replaced within a reasonable time after loss, that proportion of the original cost at time of installation of the damaged or destroyed property which the unexpired term of the lease or rental agreement, whether written or oral, in effect at the time of loss bears to the period(s) from the date(s) such improvements and betterments were made to the expiration date of the lease;
 - (c) Property replaced by another for the benefit of and at no cost to the Insured tenant shall not be covered hereunder.
- 7. All other Insured property: At actual cash value.

T. SUBROGATION: In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice such rights.

U. VACANCY AND UNOCCUPANCY CLAUSE: This Company shall not be liable for loss caused by vandalism or malicious mischief occurring after a described building (whether intended for occupancy by owner or tenant) has been vacant or unoccupied for a period of 30 consecutive days, nor for loss caused by any other insured peril after it has been vacant for a period of 60 consecutive days, regardless of the date coverage is effective.

This condition shall not apply to one and two family dwellings nor to buildings in due course of construction.

THE FOLLOWING CONDITIONS APPLY TO PART II

1. SUPPLEMENTARY PAYMENTS:

The Company will pay, in addition to the applicable limit of liability;

- (a) all expenses incurred by the Company, all costs taxed against the Insured in any suit defended by the Company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment

and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;

- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of

quired of the *Insured* because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed \$250 per bail bond, but the Company shall have no obligation to apply for or furnish any such bonds;

- (c) expenses incurred by the *Insured* for first aid to others at the time of an accident, for *Bodily Injury* to which this policy applies;
- (d) reasonable expenses incurred by the *Insured* at the Company's request in assisting the Company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$25 per day.

2. **FINANCIAL RESPONSIBILITY LAWS:** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for *Bodily Injury* liability or for *Property Damage* liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The *Insured* agrees to reimburse the Company for any payment made by the Company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

3. **INSURED'S DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT:**

- (a) In the event of an *Occurrence*, written notice containing particulars sufficient to identify the *Insured* and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the *Insured* to the Company or any of its authorized agents as soon as practicable.
- (b) If claim is made or suit is brought against the *Insured*, the *Insured* shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.
- (c) The *Insured* shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the *Insured* because of injury or damage with respect to which insurance is afforded under this policy; and the *Insured* shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The *Insured* shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

4. **AGGREGATE:** If this policy is in effect for a period

liability shall in this policy as "aggregate" shall apply separately to each consecutive annual period.

- 5. **SUBROGATION:** In the event of any payment under this Part, the Company shall be subrogated to all the *Insured's* rights of recovery therefor against any person or organization and the *Insured* shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The *Insured* shall do nothing after loss to prejudice such rights.
- 6. **ACTION AGAINST COMPANY:** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the *Insured's* obligation to pay shall have been finally determined either by judgment against the *Insured* after actual trial or by written agreement of the *Insured*, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the *Insured* to determine the *Insured's* liability, nor shall the Company be impleaded by the *Insured* or his legal representative. Bankruptcy or insolvency of the *Insured* or the *Insured's* estate shall not relieve the Company of any of its obligations hereunder.

- 7. **OTHER INSURANCE:** The insurance afforded by this Part is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the *Insured* has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance.

With respect to any insurance afforded by this policy for *Bodily Injury* or *Property Damage* arising from watercraft where the *Insured* is, irrespective of this insurance, covered or protected against any loss or claim which would otherwise have been paid by the Company, there shall be no contribution or participation by this Company on the basis of excess, contributing, deficiency, concurrent, or double insurance or otherwise.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

- (a) **Contribution by Equal Shares:** If all of such other valid and collectible insurance provides

for contribution by equal shares. The Company shall not be liable for a greater proportion of such loss than would be payable if each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

(b) Contribution by Limits: If any of such other insurance does not provide for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

8. NUCLEAR EXCLUSION:

It is agreed that:

1. This policy does not apply:

A. Under any Liability Coverage, to damage

(1) with respect to which an *Insured* under this policy is also an *Insured* under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an *Insured* under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the *Insured* is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to damage resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

C. Under any Liability Coverage to damage resulting from the hazardous properties of nuclear material, if

(1) the nuclear material (a) is at any nuclear facility owned by or operated by or on behalf of an *Insured* or (b) has been discharged or dispersed therefrom;

- (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an *Insured*; or
- (3) the damage arises out of the furnishing by an *Insured* of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to *Property Damage* to such nuclear facility and any property thereat.

II. As used in this exclusion "hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material," "special nuclear material," and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste.
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the *Insured* at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste.

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.

9. **ASSIGNMENT:** Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon. If, however, the Named

Insured shall die, such insurance as is afforded by this policy shall apply (1) to the Named Insured's legal representative, as the Named Insured, but only while acting within the scope of his duties as such, and (2) with respect to the property of the Named Insured to the person having proper temporary custody thereof, as Insured, but only until the appointment and qualification of the legal representative.

DEFINITIONS APPLICABLE TO PART II

When used in the provisions applicable to Part II of this policy (including endorsements forming a part hereof):

Automobile means a land motor vehicle, trailer or semitrailer designed to travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment.

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

Collapse Hazard includes "structural property damage" as defined herein and *Property Damage* to any other property at any time resulting therefrom. "Structural property damage" means the collapse of or structural injury to any building or structure due to (1) grading of land, excavating, burrowing, filling, backfilling, tunnelling, pile driving, cofferdam work or caisson work or (2) moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof. The collapse hazard does not include *Property Damage* (1) arising out of operations performed for the Named Insured by independent contractors, or (2) included within the *Completed Operations Hazard* or the *Underground Property Damage Hazard* or (3) for which liability is assumed by the Insured under an *Incidental Contract*.

Completed Operations Hazard includes *Bodily Injury* and *Property Damage* arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the *Bodily Injury* or *Property Damage* occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the Named Insured. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (1) when all operations to be performed by or on behalf of the Named Insured under the contract have been completed.
- (2) when all operations to be performed by or on behalf of the Named Insured at the site of the operations have been completed, or
- (3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organiza-

tion other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The *Completed Operations Hazard* does not include *Bodily Injury* or *Property Damage* arising out of

- (1) operations in connection with the transportation of property, unless the *Bodily Injury* or *Property Damage* arises out of a condition in or on a vehicle created by the loading or unloading thereof,
- (2) the existence of tools, uninstalled equipment or abandoned or unused materials, or
- (3) operations for which the classification stated in the policy or in the Company's manual specifies including *Completed Operations*.

Elevator means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery; but does not include an automobile servicing hoist, or a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a hod or material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and having a compartment height not exceeding four feet.

Explosion Hazard includes *Property Damage* arising out of blasting or explosion. The explosion hazard does not include *Property Damage* (1) arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) arising out of operations performed for the Named Insured by independent contractors, or (3) included within the *Completed Operations Hazard* or the *Underground Property Damage Hazard* or (4) for which liability has been assumed by the Insured under an *Incidental Contract*.

Incidental Contract means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance,

except in connection with work for the Municipality, (4) sidetrack agreement, or (5) elevator maintenance agreement.

Incidental Medical Malpractice Injury means injury arising out of the rendering of or failure to render, during the policy period, the following services:

- (A) medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
 - (B) the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.
- Incidental Medical Malpractice Injury** does not apply to:

- (1) expenses incurred by the *Insured* for first aid to others at the time of an accident and the "Supplementary Payments" provision and the "Insured's Duties in the Event of Occurrence, Claim or Suit" Condition are amended accordingly; or
- (2) any *Insured* engaged in the business or occupation of providing any of these services described under (A) and (B) above;
- (3) injury caused by any indemnitee if such indemnitee is engaged in the business or occupation of providing any of the services described under (A) and (B) above.

Insured means any person or organization qualifying as an *Insured* in the "Persons Insured" provision of the applicable insurance coverage. The insurance afforded applies separately to each *Insured* against whom claim is made or suit is brought, except with respect to the limits of the Company's liability.

Loading or Unloading, with respect to an *Automobile*, means the handling of property after it is moved from the place where it is accepted for movement into or onto an *Automobile* or while it is in or on an *Automobile* or while it is being moved from an *Automobile* to the place where it is finally delivered, but **Loading or Unloading** does not include the movement of property by means of a mechanical device (other than a hand truck) not attached to the *Automobile*.

Mobile Equipment means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the *Named Insured*, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment.

Named Insured means the person or organization named in Section 1. of the Declarations of this policy. Any organization which is acquired or formed by the

Named Insured and over which the *Named Insured* maintains ownership or equity interest, other than a joint venture, provided this insurance does not apply to **Bodily Injury**, and **Property Damage**, **Personal Injury** and **Advertising Injury** with respect to which such new organization under this policy is also an *Insured* under any other similar liability or indemnity policy or would be an *Insured* under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 90 days from the date any such organization is acquired or formed by the *Named Insured*.

Named Insured's Products means goods or products manufactured, sold, handled or distributed by the *Named Insured* or by others trading under his name including any container thereof (other than a vehicle), but **Named Insured's Products** shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold.

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

This includes any intentional act by or at the direction of the *Insured* which results in **Bodily Injury**, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property.

Policy Territory means:

- (1) the United States of America, its territories or possessions, or Canada, or
- (2) international waters or air space, provided the **Bodily Injury** or **Property Damage** does not occur in the course of travel or transportation to or from any other country, state or nation, or
- (3) anywhere in the world with respect to damages because of **Bodily Injury** or **Property Damage** arising out of a product which was sold for use or consumption within the territory described in paragraph (1) above, provided the original suit for such damages is brought within such territory.
- (4) Anywhere in the world with respect to **Bodily Injury**, or **Property Damage**, and when such coverage is provided, **Personal Injury** or **Advertising Injury** arising out of the activities of any *Insured* permanently domiciled in the United States of America though temporarily outside the United States of America, its territories and possessions or Canada, provided the original suit for damages because of any such injury or damage is brought within the United States of America, its territories or possessions or Canada.

Such insurance as is afforded by paragraph (4) above shall not apply:

- (a) to **Bodily Injury** or **Property Damage** included within the **Completed Operations**

Hazard or the Products Hazard;

(b) to premises medical payments coverage.

Products Hazard includes **Bodily Injury** and **Property Damage** arising out of the **Named Insured's Products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **Bodily Injury** or **Property Damage** occurs away from premises owned by or rented to the **Named Insured** and after physical possession of such products has been relinquished to others.

Property Damage means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an **Occurrence** during the policy period.

Underground Property Damage Hazard includes **Underground Property Damage** as defined herein and **Property Damage** to any other property at any time resulting therefrom. **Underground Property Damage** means **Property Damage** to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection therewith, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, burrowing, filling, back-filling or pile driving. The **Underground Property Damage Hazard** does not include **Property Damage** (1) arising out of operations performed for the **Named Insured** by independent contractors, or (2) included within the **Completed Operations Hazard** or (3) for which liability is assumed by the **Insured** under an **Incidental Contract**.

This endorsement forms a part of the policy to which attached effective on the inception date of the policy unless otherwise stated herein
(The following information is required only when this endorsement is issued subsequent to preparation of policy)

Endorsement effective

Policy No **TP 30 214 40 20**

Endorsement No **8**

Named Insured **COMMUNITY CHAPEL & BIBLE TRAINING CENTER**

Countersigned by _____
Authorized Representative

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:
**COMPREHENSIVE GENERAL LIABILITY INSURANCE
MANUFACTURERS AND CONTRACTORS LIABILITY INSURANCE
OWNERS, LANDLORDS AND TENANTS LIABILITY INSURANCE**

EXCLUSION
(Malpractice and Professional Services)
(Form A)

It is agreed that with respect to any operation described below or designated in the policy as subject to this endorsement, the insurance does not apply to bodily injury or property damage due to:

1. the rendering or failure to render:
 - (a) medical, surgical, dental, x-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith
 - (b) any service or treatment conducive to health or of a professional nature
 - (c) any cosmetic or tonsorial service or treatment.
2. the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances, or
3. the handling of or performing of autopsies on dead bodies.

Description of Operations: **Schools - Colleges, Universities or College Preparatory**

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation
vs.

APR 1 1988

Plaintiff

AFFIDAVIT OF SERVICE OF
SUMMONS AND AMENDED
COMPLAINT FOR DECLARATORY
JUDGMENT

IRA GABRIELSON, et ux., et al.

Defendant

FILED
IN COUNTY CLERK'S OFFICE
A.M. APR 1 1988 P.M.
PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
BY _____
DEPUTY

Garnishee Defendant

State of Washington
County of King

ss.

The writ served was accompanied by four answer forms and three postage prepaid envelopes which were pre-addressed to the Clerk of the Court, to the Plaintiff or his attorney, and to the Defendant, and cash or check payable to the garnishee, to the amount of Ten Dollars.
 A copy of the summons served 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 3/29/88 at 6:25 p M., at 4620 Tacoma Ave., Tacoma, Pierce

~~King~~ County, Washington, affiant duly served the above-described documents in the above-entitled matter upon

by then and there personally delivering a true and correct copy thereof to and leaving same with _____

RESIDENCE SERVICE

That at the time and place set forth above affiant duly served the above described documents in the above-entitled matter upon Jack McDonald and Jane Doe McDonald, husband and wife

by then and there, at the residence and usual place of abode of said person(s), personally delivering 2 true and correct copy(ies) thereof to and leaving the same with Fritz Gottfried, resident

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

Affiant further states that he is informed and believes, and therefore alleges, that neither of said defendants is in the military service of the United States.

_____ TRIPS @ _____ MILES

Subscribed and Sworn to before me 3/31/88

L. Johnson sj

SERVICE ATTEMPTED AT:

SALLY A. BRYAN
STATE OF WASHINGTON
NOTARY -- PUBLIC
My Commission Expires 4-11-92

Sally A. Bryan
NOTARY PUBLIC in and for the State
of Washington, residing at Tacoma

Service Fees 12.00 Travel 8.00 Return Fee 5.00 Cert. Mail _____ Total \$ 25.00

**Jack
McDonald**

Defence in writing,
lawyer for plaintiff

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

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

NO. 88-2-00947-9
20 DAY SUMMONS
(CR-4)

THE STATE OF WASHINGTON TO: Jack McDonald

1. A lawsuit has been started against you in the above entitled court by the plaintiff.
2. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

20 DAY SUMMONS - 1

LANE POWELL MOSS & MILLER
2600 RAINIER BANK TOWER
SEATTLE WASHINGTON 98101 2647
223-7000

AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA, a Pennsylvania corporation vs.

Plaintiff

IRA GABRIELSON, et ux., et al.

Defendant

Garnishee Defendant

AFFIDAVIT OF SERVICE OF NOTE OF ISSUE; MOTION FOR PARTIAL SUMMARY JUDGMENT; MEMORANDUM IN SUPPORT OF AMERICAN'S MOTION FOR PARTIAL SUMMARY JUDGMENT (BODILY INJURY); AFFIDAVIT OF BRUCH WINCHELL

FILED IN COUNTY CLERK'S OFFICE

A.M. APR 04 1988 P.M.

PIERCE COUNTY WASHINGTON TED BUTT COUNTY CLERK

State of Washington } County of King

ss.

The writ served was accompanied by four answer forms and three postage prepaid envelopes which were pre-addressed to the Clerk of the Court, to the Plaintiff or his attorney, and to the Defendant, and cash or check payable to the garnishee, to the amount of Ten Dollars.

BY A copy of the summons served 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 3/30/88 at 3:20 P M., at 4620 Tacoma Ave S, Tacoma, Pierce

King County, Washington, affiant duly served the above-described documents in the above-entitled matter upon Shirley McDonald (Jane Doe)

by then and there personally delivering a true and correct copy thereof to and leaving same with Shirley McDonald

That at the time and place set forth above affiant duly served the above described documents in the above-entitled matter upon Jack McDonald

by then and there, at the residence and usual place of abode of said person(s), personally delivering a true and correct copy(ies) thereof to and leaving the same with Shirley McDonald, Wife

RESIDENCE SERVICE

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

Affiant further states that he is informed and believes, and therefore alleges, that neither of said defendants is in the military service of the United States.

TRIPS @ MILES

Subscribed and Sworn to before me 4/1/88 L. Johnson kdo

SERVICE ATTEMPTED AT:

SALLY A. BRYAN STATE OF WASHINGTON NOTARY PUBLIC My Commission Expires 4-11-92

NOTARY PUBLIC for and for the State of Washington, residing at Tacoma

Service Fees 12.00 Travel 19.50 Return Fee 5.00 Cert. Mail Total \$ 36.50

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

Denise L. Johnson
5th

Subscribed and sworn to before me this _____ day of

April 1988

Kristine Marie Nelson
Notary Public in and for the State
of Washington, residing at Tacoma, WA 98402-2990

FILED
IN COUNTY CLERK'S OFFICE
A.M. APR 05 1988 P.M.
PIERCE COUNTY WASHINGTON
TED RUTLO COUNTY CLERK
BY _____ DEPUTY

WE. APR - 5 1988

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

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

Plaintiff,)

vs.)

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

Defendants.)

NO. 88-2-00947-9

ANSWER

In answer to the plaintiff's amended complaint herein,
the defendants Gabrielson admit, deny and allege as follows:

I.

Said defendants admit paragraphs I, II, and III of plain-
tiff's complaint.

II.

In answer to paragraph IV of the plaintiff's complaint,

////

ANSWER - 1

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

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these answering defendants conditionally admit paragraph IV of the plaintiff's complaint, but allege that the complaint of the plaintiffs in the Pierce County cause now pending is more completely set forth in the complaint on file in Pierce County Cause Number 86-2-02793-6, a copy of which complaint is attached to the plaintiff's complaint as Exhibit A and that said defendants alleged specifically in paragraph IX of their complaint:

At all times material hereto, the defendants Donald Lee Barnett, Barabara Barnett, and Jack and "Jane Doe" MacDonald were principals, agents, employees, and representatives of Community Chapel and Bible Training Center and Community Chapel and Bible Training Center of Tacoma and all actions complained of herein were performed in the scope of their representation employment and/or agency for the community chapel and Bible Training Center and Community Chapel and Training Center of Tacoma.

III.

In answer to paragraph V of plaintiff's complaint, these answering defendants admit that the plaintiff American insured Community Chapel under a Comprehensive General Liability Policy from May 9, 1982 until May 9, 1986 and that a copy of portions of the policy is attached as Exhibit B to the plaintiff's complaint in this action; these answering plaintiffs deny that all relevant portions of the policy attached to the plaintiff's complaint as Exhibit B are set forth in paragraph V of their complaint and that various allegations contained in said paragraph V constitute excerpts from said policy and parts thereof

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which are not pertinent to the plaintiff's coverage of their insureds insofar as it pertains to the plaintiff's complaint.

IV.

In answer to paragraph VI of plaintiff's complaint, these answering defendants have no information or knowledge as to the nature of the defense of Community Chapel and Barnett in this action nor do they have any information as to the terms and provisions of any reservation of rights alleged to have been entered into between plaintiff insurance company and their insured, and therefore deny the allegations contained in paragraph VI of plaintiff's complaint.

V.

These answering plaintiffs deny that the plaintiff herein is entitled to a declaration or declarations as are set forth in the allegations of paragraph VII, VIII and IX of the plaintiff's complaint and further allege that the plaintiff insurance carrier is not entitled to a favorable declaration as to the First through Seventh Causes of Action set forth in the foregoing paragraph.

WHEREFORE, these answering defendants, Ira Gabrielson and Carol Gabrielson, request and pray that the court in this cause enter an order denying the plaintiff's right to the aforementioned declarations and for the declarations set forth in their prayer for relief, and that plaintiff's complaint be dismissed with prejudice and that these answering plaintiffs

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have and recover their costs expended herein, together with reasonable attorneys' fees.

These answering defendants further pray that the Court award them such other relief as the Court considers to be fair and equitable in the premises.

DATED this 4th day of April, 1988.

RUSH, HANNULA & HARKINS

By: *Harold T. Dodson*
for DANIEL L. HANNULA, of
Attorneys for Defendants
Gabrielson

////

ANSWER - 4

LAW OFFICES
RUSH, HANNULA & HARKINS
715 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
TACOMA 383-5388
SEATTLE 839-4790

DD

FILED
IN COUNTY CLERK'S OFFICE

A.M. APR 07 1988 P.M.

PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK

BY _____ DEPUTY

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IN THE SUPERIOR COURT OF WASHINGTON IN AND FOR
PIERCE COUNTY

AMERICAN CASUALTY COMPANY OF)	
READING PENNSYLVANIA, a)	NO. 88-2-00947-9
Pennsylvania corporation,)	
)	DEFENDANT COMMUNITY CHAPEL
Plaintiff,)	AND BIBLE TRAINING CENTER'S
v.)	MEMORANDUM IN OPPOSITION TO
)	MOTION FOR PARTIAL SUMMARY
IRA GABRIELSON and CAROL)	JUDGMENT
GABRIELSON, husband and wife;)	
DONALD LEE BARNETT and BARBARA)	
BARNETT, husband and wife;)	
COMMUNITY CHAPEL AND BIBLE)	
TRAINING CENTER, a Washington)	
corporation,)	
)	
Defendants.)	

J.V. APR 7 1988

I. REQUESTED RELIEF

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

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

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

LEACH, BROWN & ANDERSEN
ATTORNEYS AT LAW
4040 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104
(206) 583-2714

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

3 II. FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 The definition section of the policy states, in part, as
 13 follows:

14 "Bodily Injury means bodily injury, sickness or
 15 disease sustained by any person which occurs during
 16 the policy period, including death at any time
 resulting therefrom or Incidental Medical Malpractice
 Injury."

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

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

23
 24 DEFENDANT COMMUNITY CHAPEL
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1 Community Chapel had "Personal Injury and Advertising Injury
2 Liability Coverage" which provided the following:

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

6 "Personal Injury means injury arising out of one or
7 more of the following offenses committed during the
policy period:

8 (a) false arrest, detention, imprisonment or malicious
9 prosecution;

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

11 (c) a publication or utterance

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

14 III. LEGAL AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 The NPS court went on to hold that the term "bodily injury"
2 encompassed claims for emotional distress caused by nonconsensual
3 touching.

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

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

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

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

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

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

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

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

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1 effects of her humiliation and mental anguish.

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

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

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

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

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

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

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

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

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

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

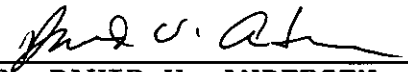
4 Without some more investigation by American, their motion
 5 for partial summary judgment is an act of bad faith on its part.

6 CONCLUSION

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

19 DATED this 7th day of April, 1988.

20 LEACH, BROWN & ANDERSEN

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

24 DEFENDANT COMMUNITY CHAPEL
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 MEMORANDUM IN OPPOSITION TO
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DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiff,)

v.)

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

Defendants.)

No. 88-2-00947-9

DEFENDANT BARNETT'S)
BRIEF IN OPPOSITION)
TO PLAINTIFF'S MOTION)
FOR SUMMARY JUDGMENT)
AND IN SUPPORT OF)
DEFENDANTS' COUNTERMOTION)
FOR SUMMARY JUDGMENT)

COME NOW defendants, Don and Barbara Barnett, through their undersigned counsel, and submit the following brief in opposition to plaintiff's motion for summary judgment and in support of defendants' countermotion for summary judgment:

I. FACTS AND PROCEDURE

American Casualty Company of Reading Pennsylvania, hereinafter referred to as "American", insured the Community Chapel and Bible Training Center under a comprehensive liability policy from May 9, 1982 until May 9, 1986. This policy provides coverage for all sums an insured may be responsible to pay on account of bodily injury. It provides in pertinent part:

The Company will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of

A. Bodily Injury....

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1 Plaintiff has brought a motion for summary judgment upon the
 2 contention that certain claims do not constitute bodily injury.
 3 Defendant has brought a countermotion on the basis that the
 4 American policy covers consequential damages to bodily injury,
 5 including emotional distress and loss of consortium.

6 Claims have been made against Community Chapel and Bible
 7 Training Center and other persons qualifying as insureds under
 8 the American policy, including the Barnetts, in an action brought
 9 by Ira Gabrielson and Carol Gabrielson in Pierce County, Cause
 10 No. 86-2-02792-6. The complaint in that action alleges damages
 11 resulting from a sexual relationship between Carol Gabrielson and
 12 Jack McDonald which continued from September through December of
 13 1985. Additionally, that complaint alleges damages resulting
 14 from a physical assault which occurred on March 6, 1986. These
 15 damages include alleged emotional distress and a claim for loss
 16 of consortium.

17 The American policy broadly covers all damages an insured
 18 may be responsible to pay because of bodily injuries. The
 19 Gabrielsons make claims for emotional distress and loss of
 20 arising directly because of the alleged sexual misconduct and
 21 assault which constitute bodily injury.

22 II. LAW AND ARGUMENT

23 The rule with respect to insurance coverage for
 24 consequential damages was stated in Yakima Cement v. Great
 25 American Ins., 93 Wn.2d 210, 219, 608 P.2d 254 (1980).

26 We have previously held that similar policy
 27 language, i.e. "injury to ... tangible
 28 property", does not prevent intangible injury
 29 resulting in consequential damages. The
 30 policy does not require tangible damage to
 31 tangible property. ... However, consequential
 32 damages arising from intangible injury may be

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1 awarded only when they result directly from
 2 injury to or destruction of tangible
 3 property. (Citations omitted).

4 Coverage must be triggered by a loss which falls within the
 5 provisions of a policy. Once such a loss triggers this coverage,
 6 it extends to all consequential damages flowing therefrom. In
 7 the present case, bodily injury claims have been made for alleged
 8 sexual misconduct and physical assault. These alleged injuries
 9 trigger coverage under the American policy, and the damages
 10 flowing therefrom are also covered.

11 1. Bodily Injury.

12 It well-established in Washington that mental anguish and
 13 emotional suffering are a component of damages for assault. As
 14 the Washington Supreme Court wrote over 70 years ago in Burger v.
 15 Covert, 75 Wash. 528, 530, 1135 Pac. 30 (1913):

16 The mental distress of the assaulted person
 17 may be, and often is, a very material portion
 18 of the injury flowing from such a wrong.

19 Further, it has long been recognized that emotional distress is a
 20 consequential damage of claims based upon sexual misconduct.
 21 See, Martin v. Jansen, 113 Wash. 290, 193 Pac. 674, 198 Pac. 393
 22 (1920). The coverage available for such injuries under the
 23 bodily injury provisions of an insurance policy was discussed in
 24 NPS Corp v. Insurance Co. of North America, 213 N.J. Super. 547,
 25 517 A.2d 1211 (1986). The court in that case rejected an
 26 argument advanced by the insurer that emotional distress did not
 27 qualify as bodily injury under the policy. The court wrote at
 28 page 1214:

29 We are unable to separate a person's nerves
 30 and tensions from his body. Clearly,
 31 emotional trauma can be as disabling to the
 32 body as a visible physical wound. Moreover,

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1 it is common knowledge that emotional
2 distress can and often does have a direct
3 effect on other bodily functions.

4 In the present case, the policy written by American broadly
5 covers all sums that American's insureds may have to pay because
6 of bodily injury. The emotional distress claims made by Carol
7 Gabrielson flow directly from her alleged bodily injury and are
8 inseparable components of it.

9 American relies upon E-Z Loader v. Travelers Indemnity Co.
10 106 Wn.2d 901, 726 P.2d 439 (1986). That case is inapplicable in
11 the present setting. In that case, the claimants did not allege
12 any bodily injury. The claims in that case were for sex and age
13 discrimination resulting in loss of earnings and prospective
14 earnings, humiliation, mental anguish and emotional stress.
15 There was no allegation of physical contact or injury
16 accompanying the mental anguish and emotional distress claims.
17 That situation is distinguishable from the present case in which
18 emotional distress claims are consequential to bodily assault.
19 See, Lumbermen's v. United Services Auto, 218 N.J. Super. 492,
20 528 A.2d 64, 67-68 (1987).

21 American also cites Western American Ins. v. Buchanan, 11
22 Wn.App. 823, 525 P.2d 831 (Div. I, 1974) for the proposition that
23 mental anguish and grief do not constitute bodily injury.
24 American misconceives the holding of that case. The court in
25 that case held that the claims of parents for mental anguish
26 arising out of the bodily injury of their child does not
27 constitute a separate bodily injury. However, the damages are
28 consequential and recoverable under the policy limits for the
29 bodily injury. See, Western American Ins. v. Buchanan, 11

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1 Wn.App. 823, 828-829 (Div. I, 1974). This case is contrary to
 2 the contention made by American.

3 The Court of Appeals addressed the issue of coverage for
 4 consequential damages in General Insurance Co. v. Gauger, 13
 5 Wn.App. 928, 538 P.2d 563 (Div. III, 1975). Claims were made
 6 against an insurance policy for loss of profits arising from crop
 7 loss. The insurer disputed coverage on the basis that the policy
 8 covered only injury to tangible property and that lost profits
 9 were not an injury to tangible property. The court rejected this
 10 argument, writing at pg. 932:

11 In other words, there being injury to
 12 tangible property [crop loss], any and all
 13 damages flowing therefrom and not expressly
 14 excluded by the policy are covered under the
 term "property damage" as that term is
 defined in the policy.

15 American is presently attempting to make the same argument
 16 rejected in that case in the setting of bodily injury coverage.
 17 This argument may not be maintained, because the rule upon
 18 coverage for consequential damages enunciated in General
 19 Insurance Co. v. Gauger, 13 Wn.App.928, 932, 538 P.2d 563 (Div.
 20 III, 1975) also applies to bodily injury coverage.

21 There would seem to be no question that
 22 consequential damages to the claimant himself
 23 are covered by liability policies. Once the
 24 injury is covered by a liability policy, then
 25 the resulting damage is covered. The term
 26 "bodily injury" as used in an automobile
 27 policy undertaking to pay all sums the
 28 insured would become legally obligated to pay
 29 because of bodily injury included bodily or
 physical injury even where such injury was
 30 proximately caused, not by direct collision,
 but by the emotional distress induced
 directly or indirectly by such a collision.

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1 And the mental distress may and should be
2 covered by the policy.

3 Appleman, Insurance Law and Practice, Sec. 4893, Revised Vol. 8A,
4 page 53 (1981). Damages flowing from bodily injury, including
5 emotional distress, are covered.

6 2. Loss of Consortium.

7 There exists a long line of authority in Washington holding
8 that loss of consortium which arises from the bodily injury of
9 another is covered consequential loss. See, West American Ins.
10 v. Buchanan, 11 Wn.App, 823, 525 P.2d 831 (Div. I, 1974); Zoda v.
11 Mutual of Enumclaw, 38 Wn.App. 98, 684 P.2d 91 (Div. III, 1984);
12 rev.den. in 102 Wn.2d 1018 (1984) and United Pacific Ins. v.
13 Edgecomb, 41 Wn.App 741, 706 P.2d 233 (1985). Consortium damages
14 fall within the general rule providing coverage for consequential
15 damages.

16 All this is not to say, however, that someone
17 in Mrs. Thompson's position is precluded from
18 bringing her claim for consequential damages
19 within the lower limits of the coverage
20 provided. Both policies agree to pay for all
21 damages resulting from bodily injury to one
22 person. This would appear to include
23 consequential as direct damages. And in
24 their liability sections, both policies speak
25 of all damages as including damages for care
26 and loss of services. Even though loss of
27 consortium is not specifically mentioned, it
28 is so closely related an item as to be
29 necessarily included.

30 Thompson v. Grange Ins., 34 Wn.App. 151, 162-163, 660 P.2d 307
31 (Div. II, 1983) rev. den. in 99 Wn.2d 1011 (1983). These damages
32 may be recovered under the limit of liability for the spouse
suffering the bodily injury. In the present case, Ira Gabrielson
claims a loss of consortium because of the alleged bodily injury

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1 of Carol Gabrielson through sexual misconduct. The American
2 policy covers all sums for which an insured may have to pay
3 because of bodily injury, thus, the consortium claims are covered
4 consequential damage.

5 Further, damages for loss of consortium may be recovered
6 under a separate limit of liability if it causes a separate
7 bodily injury. This issue was addressed in Abellon v. Hartford
8 Ins. Co., 167 Cal.App.3d 21, 212 Cal.Rptr. 852 (1985). In that
9 case, the court held that a separate limit of liability would be
10 triggered if the spouse suffering the loss of consortium thereby
11 suffered a bodily injury. This issue is a question of fact. Id.
12 at 855.

13 The American policy covers loss of consortium consequential
14 to bodily injury. The only remaining issue is the monetary limit
15 of coverage. In the event that Ira Gabrielson did not suffer
16 bodily injury as the result of his alleged loss of consortium,
17 then the single limit of liability applies. However, a separate
18 limit of liability applies if the loss of consortium caused Ira
19 Gabrielson bodily injury. This issue is a question of fact which
20 cannot be resolved at this time.

21 III. CONCLUSION

22 It is the rule in Washington that consequential damages are
23 covered when they are caused by an injury which triggers the
24 provisions of an insurance policy. In the present case, the
25 alleged bodily injury of Carol Gabrielson triggers coverage under
26 the American policy. Therefore, the claim for emotional distress
27 and loss of consortium which flow from her alleged bodily injury
28 are covered.

29 Under Washington law, there is no question that loss of
30 consortium constitutes consequential damage caused by the bodily

31 DEFENDANTS' BRIEF
32 FOR COUNTERMOTION : 7
15004857.200

Evans, Craven & Luckie, P.S.

LAWYERS

34th FLOOR COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE WASHINGTON 98104

(206) 386-5555

1 injury of a spouse. In the present case, the alleged loss of
2 consortium of Ira Gabrielson arose as a consequence of the
3 alleged bodily injury of Carol Gabrielson through her sexual
4 relationship with Jack McDonald.

5 Therefore, defendants respectfully ask this court to deny
6 plaintiff's motion for summary judgment and grant defendants'
7 countermotion reserving the question upon whether a separate
8 limit of liability is available for the consortium claim of Ira
9 Gabrielson until such time that factual issues relating to that
10 question are resolved.

11 Dated this 7th day of April, 1988.

12 EVANS CRAVEN & LACKIE, P.S.

13
14 By Tim Donaldson
15 TIM DONALDSON
16 Attorneys for Defendants Barnett
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31 DEFENDANTS' BRIEF
32 FOR COUNTERMOTION : 8
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Evans, Craven & Lackie, P.S.

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PIERCE COUNTY WASHINGTON
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BY [Signature] DEPUTY

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

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

No. 88-2-00947-9

SUPPLEMENTAL AFFIDAVIT
OF BRUCE WINCHELL IN
SUPPORT OF MOTION TO
COMPEL DISCOVERY

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

BRUCE WINCHELL, being first duly sworn upon oath, deposes
and says:

1. My name is Bruce Winchell. I am one of the attorneys
for American Casualty Company.

2. I have spoken extensively with David Andersen,
attorney for Community Chapel, since this motion was first
noted. The results of those discussions are as follows:

1 a. Mr. Andersen agreed to produce counselling
 2 records for those individuals who are plaintiffs in actions
 3 against Community Chapel. None have been received.

4 b. Community Chapel continues to refuse to produce
 5 records reflecting discussions between church leaders and/or
 6 employees and members regarding claims of sexual activity which
 7 bear upon the issues in this case. In refusing to produce such
 8 records, the church has failed to set forth any facts which
 9 would allow it to meet its burden of establishing a pertinent
 10 privilege.

11 c. Destroyed records have not been identified.

12 d. Mr. Andersen has agreed to produce copies of all
 13 depositions except those of Donald Barnett ~~and Jack McDonald~~.
 14 Those depositions have not been produced.

15 e. The deposition of Barnett was sealed pursuant to
 16 a stipulated order in the Gabrielson action. See Exhibit A.
 17 In that same action, the court expressly ruled in denying
 18 American's motion to intervene that American would be permitted
 19 to seek those depositions in the declaratory action. See
 20 Exhibit B. Because those documents are responsive to
 21 American's production request, this court's order should
 22 include an order that those depositions be produced. American
 23 will agree not to disseminate the contents of those depositions
 24 except as is necessary to resolve the declaratory action.
 25 Since these depositions represent the sworn testimony of
 26 Barnett and McDonald in prior depositions, their relevance

1 cannot be questioned. Moreover, making the depositions
2 available will, in all likelihood, result in a substantial
3 savings of time and money for all of the parties to this action
4 by avoiding the necessity of redeposing these individuals.

5 Civil Rule 26(c)(6) permits the court to seal a
6 deposition. In this case, Barnett's deposition was sealed by a
7 stipulated order. The purpose of the provision is to "prevent
8 the deposition from being used for undesirable publicity
9 purposes". 4 Moore's Federal Practice ¶ 26.74 (1987). In
10 considering a request to unseal a deposition, the court should
11 consider the importance of the information, the damage
12 disclosure may cause and the public interest in the materials.
13 Id. The importance of the information contained within the
14 depositions is undeniable. It bears directly on coverage
15 issues. Because of the extensive publicity which has already
16 surrounded these cases, the potential for additional damage is
17 minimal. This is especially true since American agrees not to
18 disseminate the contents and to use the contents only as needed
19 to resolve coverage issues. Moreover, Gabrielsons' attorneys
20 have now made excerpts of Barnett's deposition part of the
21 public record by virtue of their response to American's motion
22 for partial summary judgment. American is also willing to
23 agree to an order that to the extent the contents are used in
24 support of motions, they shall be sealed.

25 f. Mr. Andersen has represented that all tape
26 recordings which fall within the scope of American's production

1 request are in the possession of Mr. Hannula. American has
2 thus subpoenaed those records.

3 g. Mr. Andersen has indicated that a December 23
4 letter from Jerry Zwack is available. It has not been produced.

5 h. Mr. Andersen has indicated that a February 15,
6 1988 letter from church elders to ~~to~~ Donald Barnett is
7 available. It has not been produced.

8 i. The academic records of Jack McDonald and the
9 textual materials of all counselling classes taken by
10 Mr. McDonald have not been produced. The only objection raised
11 has been that obtaining the textual materials would be
12 burdensome.

13 3. In their summary judgment response, Community Chapel
14 has argued that American has a duty to investigate this claim.
15 Yet it has not provided the documentary material which is the
16 essential first step to such an investigation.

17 4. The production request to Community Chapel expressly
18 includes by its terms all agents. Donald Barnett is an agent
19 of the Chapel. Community Chapel has not produced any documents
20 in the possession of its agent, Donald Barnett responsive to
21 this request.

22 / / / /

23 / / / /

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26

1 5. American seeks terms of \$500 under Civil Rule 37 and
2 sanctions for Community Chapel's failure to permit discovery.

3 DATED this 13th day of April, 1988.

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Bruce Winchell
Bruce Winchell

SUBSCRIBED AND SWORN to before me this 12th day of April,
1988.

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

My appointment expires:
9/1/90

FILED
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A.M. DEC 16 1987 P.M.

PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
BY _____
CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

1
2
3 IRA GABRIELSON and CAROL)
4 GABRIELSON, husband and wife,)

5 Plaintiffs,)

6 v.)

No. 86-2-02792-6

7 JACK McDONALD and "JANE DOE")
8 McDONALD, husband and wife;)

STIPULATED MOTION AND
ORDER TO SEAL DEPOSITION

9 DONALD LEE BARNETT and BARBARA)
10 BARNETT, husband and wife;)

11 and "JOHN DOES" NOS. 1-4 and)
12 "JANE DOES" NOS. 1-4, husbands)

13 and wives; COMMUNITY CHAPEL AND)
14 BIBLE TRAINING CENTER OF TACOMA;)

15 COMMUNITY CHAPEL AND BIBLE)
16 TRAINING CENTER,)

17 Defendants.)

18 COME NOW defendants Donald and Barbara Barnett, through
19 counsel, and move this court for an order sealing the deposition
20 of Donald Barnett and ordering that its contents shall not be
21 revealed until further order by this court.

22 This motion is made pursuant to CR 26(c)(6). It is based
23 upon the records and files herein.

24 DATED this 16th day of December, 1987.

25 EVANS CRAVEN & LACKIE, P.S.

26 By Rodney D. Hollenbeck
27 RODNEY D. HOLLENBECK
28 Attorneys for Defendants Barnett
29
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31

STIP. MOTION/ORDER TO
SEAL DEPOSITION : 1
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Evans, Craven & Lackie, P.S.
LAWYERS

EXHIBIT "A"

34th FLOOR COLUMBIA CENTER, 701 5th AVENUE
SEATTLE WASHINGTON 98104
(206) 385-5555

Stipulated to by:

Stipulated to by:

Michael J. Bond

15/

MICHAEL J. BOND
Attorney for Community Chapel
and Bible Training Center

BRIAN L. MEIKLE
Attorney for McDonald

Stipulated to by:

Daniel Hannula

DANIEL HANNULA
Attorneys for Plaintiffs

O R D E R

THIS MATTER having come regularly before this court by stipulated motion, and this court being fully advised of its premises, it is hereby

ORDERED that the deposition of Donald Barnett shall be sealed and it shall be opened only by order of this court.

IT IS FURTHER ORDERED that the contents of the deposition of Donald Barnett shall not be revealed or disseminated by any party or their attorney in any means except as ordered by this court. This Order does not restrict the use of information obtained within the law firm of Rush Hannula & Harkins.

IT IS FURTHER ORDERED, based on stipulation by Rod Hollenbeck, counsel for defendants Barnett, that the discretionary appeal filed on November 23, 1987 by Mike Bugnis be dropped.

DATED this 16 day of December, 1987.

D. GARY STEINER

J U D G E

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

By Rodney D. Hollenbeck
RODNEY D. HOLLENBECK
Attorneys for Defendants Barnett

STIP. MOTION/ORDER TO
SEAL DEPOSITION : 2
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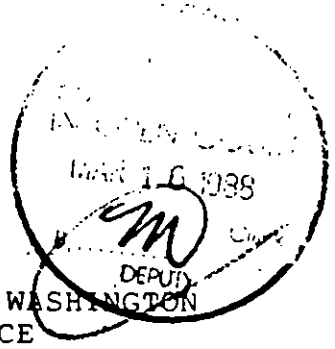
Evans, Craven & Lackie, P.S.

LAWYERS

34th FLOOR COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE WASHINGTON 98104

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

IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife,)
)
v. Plaintiffs,)
)
JACK McDONALD and "JANE DOE")
McDONALD, husband and wife;)
DONALD LEE BARNETT and)
BARBARA BARNETT, husband and)
wife; and "JOHN DOES" NOS.)
1-4 and "JANE DOES" NOS. 1-4,)
husbands and wives; COMMUNITY)
CHAPEL AND BIBLE TRAINING)
CENTER OF TACOMA; COMMUNITY)
CHAPEL AND BIBLE TRAINING)
CENTER,)
)
Defendants.)

NO. 86-2-02792-6
ORDER ON MOTION
TO INTERVENE

The court has heard the motion of American Casualty Company to intervene in this action for the purposes of:

1. Obtaining copies of all depositions;
 2. Being permitted to attend all depositions;
 3. Being permitted an opportunity to question deponents;
- and
4. To be permitted to propose submission of special interrogatories to the jury, should this case be tried.

The court has considered the following materials submitted by the various parties: Defendant American Casualty Company's

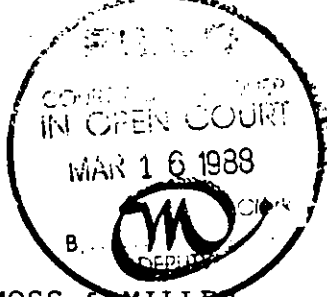
ORDER ON MOTION
TO INTERVENE - 1

1 Motion to Intervene and Memorandum in Support of Motion to
2 Intervene with Exhibits, Defendant Community Chapel & Bible
3 Training Center's Opposition to Motion to Intervene, Defendants
4 Barnetts' Memorandum in Opposition to Motion to Intervene,
5 Plaintiffs' Memorandum in Opposition to Motion to Intervene
6 and Defendants McDonalds' Opposition to Motion to Intervene

7 The court has also heard the argument of counsel for
8 all parties.

9 ORDERED: American Casualty Company's motion is denied.
10 However, denial of this motion is without prejudice to American
11 Casualty's right in the related declaratory judgment action
12 to move for disclosure of depositions taken in this action.

13 DONE IN OPEN COURT this 16 day of ~~February~~ ^{MARCH}, 1988.



David Johnson
JUDGE
DAVID H. JOHNSON
COURT COMMISSIONER

14 Presented by:
15 B. *[Signature]*
16 LANE POWELL MOSS & MILLER

17 By *Bruce Winchell*
18 Bruce Winchell
19 Of Attorneys for Defendant
20 American Casualty Company

21 Approved as to Form;
22 Notice of Presentation Waived:

23 EVANS, CRAVEN & LACKIE
24 By *Rodney Hollenbeck*
25 Rodney Hollenbeck
26 Of Attorneys for Defendants
Barnett

ORDER ON MOTION
TO INTERVENE - 2

SMITH, SMART, COOP. MARTIN & PATTERSON

Michael Bond

Michael Bond
Attorneys for Community Chapel
and Bible Training Center

WELLS, WOOD & MEYERS

Brian Meikle

Brian Meikle
Attorneys for Defendants
Donald

WELLS, HANNULA & HAWKINS

Daniel L. Hannula

Daniel L. Hannula
Attorneys for Plaintiffs
Sagarielson

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ORDER ON MOTION
TO INTERVENE - 3

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A.M. **APR 13 1988** P.M.
PIERCE COUNTY CLERK
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

C.R. APR 13 1988

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

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

No. 88-2-00947-9

REPLY MEMORANDUM IN SUPPORT
OF MOTION FOR PARTIAL SUMMARY
JUDGMENT (BODILY INJURY)

INTRODUCTION

The responsive briefs filed by Gabrielson, Barnett and
Community Chapel ignore on point Washington law and instead
urge this court to follow a poorly reasoned New Jersey
decision. Moreover, Gabrielson has tried to complicate the
issue before the court by devoting the first 15 pages of their
brief to issues other than the meaning of bodily injury.

1 American is not seeking a declaration as to the scope of
 2 coverage under the personal injury provisions of the policy.
 3 If emotional harm resulted from a covered personal injury, that
 4 coverage will be unaffected by the court's ruling on this
 5 motion. Gabrielson's motion to amend her complaint is
 6 therefore irrelevant. Furthermore, American is not seeking a
 7 declaration that any physical (i.e. - bodily) injury is
 8 non-covered. If, as alleged, there were physical
 9 manifestations of emotional harm, coverage for those injuries
 10 will be unaffected by this motion.

11 POLICY INTERPRETATION

12 Defendants argue that because Gabrielson's emotional injury
 13 arose from sexual activities, her emotional injury is converted
 14 into a bodily injury. This argument ignores the plain wording
 15 of the policy. Insurance contracts typically define coverage
 16 in two ways. First, coverage may be granted for harm arising
 17 in a particular manner. The personal injury coverage in
 18 American's policy is an example (Personal Injury means injury
 19 arising out of . . . utterance of . . . defamatory . . .
 20 material). Second, coverage may be granted for particular
 21 types of damage. The provision at issue covers a particular
 22 type of damage -- bodily injury. The definition of bodily
 23 injury refers to a type of damage, not to damage arising in a
 24 particular manner: "Bodily Injury means bodily injury,
 25 sickness or disease."

26 The limitation as to the manner in which damage arose is

1 incorporated by the inclusion of the phrase "caused by an
 2 occurrence."

3 Dictionary definitions confirm the ordinarily understood
 4 meaning of bodily injury.

5 bodily: . . . of or relating to the body . . .
 6 bodily contrasts with mental or spiritual

7 bodily injury insurance: insurance against loss . . .
 8 from for bodily injury

9 Webster's Third New International Dictionary Unabridged (1981)
 (emphasis added)

10 Bodily: Pertaining to or concerning the body; of or
 11 belonging to the body or physical constitution; not
mental but corporeal.

12 Bodily condition: Status of human body at a given
 13 point in time as contrasted with state of mind.

Black's Law Dictionary, Fifth Ed. 1979 (emphasis added)

14 CONCLUSION

15 American's proposed order, a copy of which is attached,
 16 quotes directly from E-Z Loader, 106 Wn.2d at 908.

17 The court decrees that "mental anguish and illness,
 18 and emotional distress are not covered" under the
 19 bodily injury provisions of the policy issued by
 American Casualty Company.

20 In order to deny American's motion, the court would be
 21 required to hold that the rule enunciated in E-Z Loader is not
 22 the law of this state:

23 The coverage contemplated actual bodily injury . . .
 24 as contrasted to mental impairment [T]he terms
 25 sickness and disease are modified by the word
 "bodily". Mental anguish and illness, and emotional
 26 distress are not covered.

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Id. (emphasis added) American respectfully requests that the court grant partial summary judgment in its favor.

RESPECTFULLY SUBMITTED this 13TH day of April, 1988.

LANE POWELL MOSS & MILLER

By Bruce Winchell
Bruce Winchell
Coleen D. Thompson
Of Attorneys for Plaintiff
American Casualty Company of
Reading Pennsylvania

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

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

No. 88-2-00947-9
ORDER ON MOTION FOR PARTIAL
SUMMARY JUDGMENT

The court has heard the motion of plaintiff American
Casualty Company of Reading Pennsylvania (American) for partial
summary judgment. It has considered the following materials
submitted by plaintiff on that motion:

Motion for Partial Summary Judgment, Affidavit of
Bruce Winchell, Memorandum in Support of Motion for
Partial Summary Judgment, and Reply Memorandum in
Support of Motion for Partial Summary Judgment (Bodily
Injury).

It has also considered the following materials submitted by
defendants in opposition to that motion:

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Defendant Barnett's Counter-motion for Summary Judgment, Defendant Barnett's Brief in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendants' Counter-motion for Summary Judgment, Defendant Community Chapel & Bible Training Center's Memorandum in Opposition to Motion for Partial Summary Judgment, Defendants Gabrielson's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment (with attachments) and Affidavit of Philip G. Lindsay, M.D.

The court has heard the oral argument of counsel.

The court decrees that Carol Gabrielson's claims asserted in Pierce County Cause No. 86-2-02792-6 for mental anguish and illness, and emotional distress are not covered items of damage under the bodily injury provisions of the policy issued by American. The court further decrees that Ira Gabrielson's claim for loss of consortium is not covered under American's policy. Plaintiff's Motion for Partial Summary Judgment is hereby granted. Defendant Barnett's cross-motion for partial summary judgment is denied.

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

JUDGE/COURT COMMISSIONER

Presented by:
LANE POWELL MOSS & MILLER

By _____
Bruce Winchell
Of Attorneys for Plaintiff
American Casualty Company of
Reading Pennsylvania

ORDER ON MOTION FOR
PARTIAL SUMMARY JUDGMENT - 2
OIS:0025p

1 Approved as to Form; Notice
2 of Presentation Waived:

3 RUSH, HANNULA & HARKINS

4

5 By _____
6 Daniel L. Hannula
7 Of Attorneys for Defendants
8 Gabrielson

9
10 LEACH, BROWN & ANDERSEN

11

12 By _____
13 David V. Andersen
14 Of Attorneys for Defendant
15 Community Chapel & Bible
16 Training Center

17

18 By _____
19 Rodney D. Hollenbeck
20 Of Attorneys for Defendants
21 Barnett

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J. Kelly Arnold
morning motion

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APR 14 1988

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GIROLAMI, WOOD & MEYERS
ATTORNEYS AT LAW

APR 14 1988

Copy Rec'd in Law Library
Date: 4-14-88
1B: file for Arnold

RUSH, HANNULA & HARKINS

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IN THE SUPERIOR COURT OF WASHINGTON IN AND FOR
PIERCE COUNTY

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

NO. 88-2-00947-9

Plaintiff,)

v.)

AFFIDAVIT OF
E. SCOTT HARTLEY

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.)

FILED
IN COUNTY CLERK'S OFFICE

A.M. APR 14 1988 P.M.

PIERCE COUNTY CLERK
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

I, E. SCOTT HARTLEY, having been first duly sworn on oath,
state the following to be true:

1. I am a Senior Elder at and Director of Community Chapel
and Bible Training Center (hereinafter referred to as "Community
Chapel").

2. Community Chapel believes Scripture to teach that the
Church may train, authorize and appoint men to engage in the
spiritual ministry of counseling. Our counseling program is a
vital and active ministry of our church.

AFFIDAVIT OF E. SCOTT HARTLEY - 1

ORIGINAL

LEACH, BROWN & ANDERSEN
ATTORNEYS AT LAW
4040 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104
(206) 583-2714

1 3. The original Pastor, Donald Lee Barnett, encouraged and
2 concurred in the counseling program at Community Chapel; the
3 immediate direction, oversight and supervision of the counseling
4 program has been done by other ministers on the staff of Community
5 Chapel.

6 4. The counselors themselves are trained ministers and lay
7 members of Community Chapel. Every counselor, however, is
8 qualified, according to Scriptural guidelines, to act in this
9 spiritual capacity.

10 5. Community Chapel considers its counseling ministry to be
11 intimately tied into the commission of the Church, and believes
12 that it is part of the entire fabric of their religious belief and
13 practice.

14 6. It is understood by the counselors, and by the
15 counselees, that communications made during counseling would be
16 kept strictly confidential, according to scripture. This is a
17 sincerely held religious belief.

18 7. If counselees knew that their communications would not
19 be afforded confidentiality, their religiously motivated conduct
20 of seeing a Community chapel counselor would be totally
21 devastated. They could not trust their counselors to hear about
22 their deepest problems and be confident that this communication
23

24 AFFIDAVIT OF E. SCOTT HARTLEY - 2
25

1 would be kept confidential. How could they confess sin and
2 receive spiritual guidance?

3 8. Our church commenced in January, 1988, hearings
4 regarding allegations of sin by Donald Barnett. Every person
5 attending those hearings was an ordained minister of our church
6 and these hearings were conducted with the understanding that the
7 facts disclosed would be held in the strictest confidence and no
8 revealed to other persons.

9 9. During the course of the hearings I acquired information
10 with respect to Donald Barnett. This information was revealed to
11 me through two sources only. First, Don Barnett made certain
12 confessions to us. Second, one or more ministers disclosed
13 without identifying individuals that they had heard confessions by
14 members of the congregation. The disclosure made by the minister
15 during our hearings were made with the full knowledge and
16 expectation that the disclosures would be maintained in strictest
17 confidence.

18 10. The contents of any documents, which were created as a
19 result of the hearings which commenced in January, 1988, were
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24 AFFIDAVIT OF E. SCOTT HARTLEY - 3
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1 developed as a result of confidential disclosures which were made
2 during these hearings.

3 E. Scott Hartley
4 E. SCOTT HARTLEY

5 SUBSCRIBED and SWORN to before me this 12 day of April,
6 1988.

7 Michael A. Leach
8 NOTARY PUBLIC in and for the State of
9 Washington, residing at subb1
10 My commission expires: 05/1, 1990

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AFFIDAVIT OF E. SCOTT HARTLEY - 4

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APR 14 1988

RUSH, HANNULA & HARKINS

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C.R. APR 14 1988

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

IN COUNTY CLERK'S OFFICE

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

Plaintiff,)

v.)

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

Defendants.)

A.M. APR 14 1988 P.M.

PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK

No. 88-2-00947-9 DEPUTY

DEFENDANTS BARNETTS'
ANSWER TO AMENDED
COMPLAINT FOR DECLARATORY
JUDGMENT

Comes now defendants, Don and Barbara Barnett, through their undersigned counsel by way of answer to plaintiff's amended complaint for declaratory judgment and admit, deny, and allege as follows:

I. ANSWER

1.1 Insofar as paragraphs VII, VIII, IX, and unnumbered paragraphs alleging FOURTH CAUSE OF ACTION, FIFTH CAUSE OF ACTION, SIXTH CAUSE OF ACTION, SEVENTH CAUSE OF ACTION, and EIGHTH CAUSE OF ACTION require a response, defendants deny same.

1.2 Defendants possess insufficient information to either admit or deny paragraph I, and therefore deny same.

1.3 Insofar as paragraph II. refers to Donald Lee Barnett, Barbara Barnett, and the Community Chapel and Bible Training Center, defendants admit same. Insofar as paragraph II contains other and further factual allegations, defendants possess insufficient information to either admit or deny, and therefore deny same.

ANSWER TO AMENDED
COMPLAINT : 1
15004857.20

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1 1.4 Defendants admit the contents of paragraph III, and allege
2 that the cause of action pending in Pierce County is properly
3 identified as cause number 86-2-02792-6.

4 1.5 Defendants admit the contents of paragraph IV, and deny
5 paragraph IV insofar as it purports to be inclusive of the
6 allegations within the complaint filed in Pierce County cause
7 number 86-2-02792-6 or an accurate characterization of all claims
8 contained therein.

9 1.6 Defendants admit the contents of paragraph V, and deny
10 paragraph V insofar as it purports to be inclusive of all
11 provisions of coverage contained within the insurance policy or
12 an accurate characterization of all provisions of coverage
13 contained therein.

14 1.7 Defendants admit paragraph VI insofar that American is
15 defending under a reservation of rights, and deny paragraph VI
16 insofar as it purports to contain the legal effect of such
17 defense.

18 II. AFFIRMATIVE DEFENSES

19 2.1 Plaintiff has failed to state a claim upon which relief can
20 be granted including, but not limited to, any and all claims for
21 declaratory relief dependent upon factual issues to be determined
22 in Pierce County cause number 86-2-02792-6.

23 2.2 Plaintiff has waived its right to contest coverage.

24 2.3 Plaintiff is estopped from denying coverage.

25 Wherefore defendants request relief as follows:

26 1. That plaintiffs each and all causes of action alleged in
27 plaintiffs complaint be dismissed with prejudice;

28 2. That this court find in favor of defendants and against
29 plaintiff upon any and all declarations of coverage;

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31 ANSWER TO AMENDED
32 COMPLAINT : 2
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3. That defendants be awarded costs and reasonable attorney fees incurred herein; and

4. For such other and further relief that this court deems just and equitable.

Dated this 14th day of April, 1988.

EVANS CRAVEN & LACKIE, P.S.

By Tim Donaldson
TIM DONALDSON

Attorneys for Defendants Barnett

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ANSWER TO AMENDED
COMPLAINT : 3
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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

C.R. APR 14 1988

AMERICAN CASUALTY COMPANY)
OF READING PENNSYLVANIA, a)
Pennsylvania Corporation,)
Plaintiff,)
v.)
IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife,)
DONALD LEE BARNETT and BARBARA)
BARNETT, husband and wife;)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, a Washington)
Corporation,)
Defendants.)

No. 88-2-00947-9

DEFENDANTS BARNETTS'
OBJECTION TO MOTION
TO COMPEL AND REQUEST
FOR PROTECTIVE ORDER

Comes now defendants, Don and Barbara Barnett, and object to plaintiff's motion to compel discovery requesting that plaintiff's motion be denied and that this court enter a protective order which prohibits further discovery in this matter until after the action now pending in Pierce County Cause number 86-2-02792-6 is finally determined. Alternatively, defendants request a protective order limiting disclosure of any and all materials upon which this court may order discovery.

This objection is based upon the records and files herein, the affidavit of Donald Barnett filed herein, and for reasons more fully explained in Defendant Barnetts' brief in opposition to motion to compel and for protective order filed herein. This objection and requests for protective orders is made pursuant to CR 37(a)(2) and CR 26(c)(1), (2), and (4).

Dated this 14th day of April, 1988.

EVANS CRAVEN & LACKIE, P.S.

By Tim Donaldson
TIM DONALDSON
Attorneys for Defendants Barnett

OBJECTION TO
MOTION TO COMPEL : 1
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PIERCE COUNTY SUPERIOR COURT
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

C.R. APR 14 1988

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

1 AMERICAN CASUALTY COMPANY)
 2 OF READING PENNSYLVANIA, a)
 3 Pennsylvania Corporation,)
 4)
 5 Plaintiff,)
 6 v.)
 7 IRA GABRIELSON and CAROL)
 8 GABRIELSON, husband and wife,)
 9 DONALD LEE BARNETT and BARBARA)
 10 BARNETT, husband and wife;)
 11 COMMUNITY CHAPEL AND BIBLE)
 12 TRAINING CENTER, a Washington)
 Corporation,)
 Defendants.)

No. 88-2-00947-9

DEFENDANTS BARNETTS'
BRIEF IN OPPOSITION
TO MOTION TO COMPEL
AND FOR PROTECTIVE ORDER

Comes now defendants, Don and Barbara Barnett, through their undersigned counsel, and submit the following brief in opposition to plaintiffs motion to compel discovery and for a protective order.

I. FACTS AND PROCEDURE

The above entitled action is for declaratory relief. It was brought by American Casualty Company to determine the availability of coverage for claims made against persons qualifying as insured under a policy issued to the Community Chapel and Bible Training Center in an action brought by Ira and Carol Gabrielson in Pierce County Superior Court, file number 86-2-02792-6. This underlying action has not yet been tried, and it is currently pending.

On March 2, 1988, American Casualty Company served discovery requests upon the Community Chapel and Bible Training Center. Therein, plaintiffs requested production of all minutes, notes, correspondence, memo or other documents which in any way pertain

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1 to alleged incidents of sexual contact involving members,
 2 Elders, Pastors, employees, Directors, volunteers, students, or
 3 other persons in any way affiliated with the Community Chapel and
 4 Bible Training Center. Additionally plaintiffs requested
 5 production of all such materials relating to allegations made in
 6 the Gabrielson Complaint in Pierce County Cause No. 86-2-02792-6.

7 On March 25, 1988, plaintiff made similar discovery requests
 8 upon Don and Barbara Barnett. Plaintiff has presently brought a
 9 motion to compel discovery of materials requested of the church
 10 in its first discovery. Most of the discovery requests made upon
 11 the church are identical to discovery requests made of the
 12 Barnetts.

13 II. LAW AND ARGUMENT

14 Discovery may be made only of information which is not
 15 privileged and which is likely to lead to relevant evidence. CR
 16 26.

17 A. RELEVANCE

18 Discovery is not presently available to plaintiff in this
 19 action. This is a declaratory action in which American Casualty
 20 Company has asked this court to determine the availability of
 21 coverage for claims made an action brought in an action currently
 22 pending in Pierce County Superior Court, cause number 86-2-02792-
 23 6. Two duties may arise under the American Casualty Policy.
 24 There may be a duty to defend, and there may be a duty to pay.
 25 The only issue which may be determined by this court prior to the
 26 conclusion of the underlying action is the duty to defend.

27 The duty to pay is dependent upon factual issues determined
 28 in the underlying action. These issues cannot be determined by
 29 this court in the present declaratory action unless all parties

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1 acquiesce. The rule in this Division was stated in Western
2 National Assur. v. Hecker, 43 Wn.App. 816, 719 P.2d 954 (Div. II,
3 1986). The court in that case wrote at pages 820-821:

4 An insurer's duty to pay, in contrast to
5 the duty to defend, depends upon the actual
6 determination of factual issues relating to
7 coverage.... Normally, an insurer's duty to
8 pay arises only when the injured party
9 ultimately, in the underlying tort action
10 against the insured, prevails on facts that
11 fall within the policy coverage.... In this
12 case, however, the trial court found in the
13 declaratory judgment proceeding that, based
14 upon a determination of the factual issues
15 relating to coverage, Western had no duty to
16 pay. Although the court did not directly
17 confront the duty to defend issue, its
18 conclusion that there was no duty to pay
19 necessitated the conclusion that there was no
20 duty to defend.

21 Under the circumstances, we cannot find
22 fault in the trial court's act of
23 determining, at the declaratory judgment
24 stage, the ultimate factual issues relating
25 to the underlying tort action. In its
26 complaint, Western asked the court to
27 determine coverage, its duty to defend, and
28 its duty to pay. In his answer, Nuzum did
29 not object to the scope of Western's request
30 but rather himself requested the court to
31 make a factual determination that his act had
32 not been intentional. Moreover, during oral
argument, Nuzum argued that he did not act
intentionally and suggested to the court that
it give more weight to his version of the
facts. Accordingly, we will not now hear
Nuzum's complaint that the court resolved the
factual dispute when he specifically
requested the court to do so. When a party
submits an issue and argues it before the
court below, that party cannot complain on
appeal that the trial court erred in

30 BRIEF OPPOSING
31 MOTION TO COMPEL : 3
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1 considering and resolving that issue.
 2 (citations omitted)

3 In the present case, the Barnetts do not acquiesce to the
 4 determination of factual issues. Defendants' answer filed herein
 5 specifically asserts that these issues may not be determined by
 6 this court at this time.

7 The only coverage issue presently before this court is the
 8 duty to defend. As opposed to the duty to pay, there are no
 9 factual issues which need development. The duty to defend is
 10 dependent solely upon the allegations in the complaint. The
 11 court in Western National Assur. v. Hecker, 43 Wn. App. 816, 719
 12 P.2d 954 (Div. II, 1986) wrote at page 820:

13 Ordinarily, an insurer's duty to defend its
 14 insured arises where any facts alleged in the
 15 complaint, if proved true, would render the
 16 insurer liable under the policy.... Thus, an
 17 insurer has no duty to defend its insured for
 18 acts specifically excluded from policy
 19 coverage. An insurer must defend, however,
 20 if the claim is potentially within the
 21 coverage of the policy.... The determination
 22 of the insurer's duty to defend may be made
 23 in a declaratory judgment proceeding.
 24 (citations omitted)

25 A court in a declaratory judgment action is not in the business
 26 of trying the facts in the underlying action. A determination of
 27 the duty to defend requires review only a copy of the complaint
 28 in the underlying action, and a copy of the insurance policy. If
 29 claims in the complaint could potentially fall within coverage,
 30 then there is a duty to defend.

31 Defendants Barnett do not acquiesce to American Casualty
 32 being allowed to make an end run around the bounds of this
 33 declaratory action to try issues which are to be determined in

34 BRIEF OPPOSING
 35 MOTION TO COMPEL : 4
 36 15004857.80C

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1 the underlying action. A declaratory action brought before an
 2 underlying action is concluded has a very limited purpose. None
 3 of the materials sought by plaintiff have any relevance to the
 4 duty to defend, and issues upon the duty to pay cannot be
 5 presently tried before this court. Therefore, defendants
 6 respectfully ask that this court deny plaintiffs motion to compel
 7 and enter a protective order pursuant to CR 37 (a) (2)
 8 prohibiting further discovery until the underlying action is
 9 concluded.

10 Since this issue is determinative of the availability of
 11 discovery in this action, no further argument is necessary. In
 12 the event that this court does permit limited or full discovery,
 13 defendants also include additional arguments upon discovery
 14 limitations.

15 B. PRIVILEGE

16 Defendants assert that many of the materials sought by
 17 plaintiff are privileged. Plaintiffs broad discovery requests
 18 conceivably encompass confessions made by Don Barnett to church
 19 elders and also counseling records. These materials include
 20 confidential statements made by church members, many of whom are
 21 not parties to this action or the underlying action.

22 1. Clergyman privilege

23 RCW 5.60.060 states:

24 A member of the clergy or a priest shall not,
 25 without the consent of a person making the
 26 confession, be examined as to any confession
 27 made to him or her in his or her professional
 28 character, in the course of discipline
 29 enjoined by the church to which he or she
 30 belongs.

31 BRIEF OPPOSING
 32 MOTION TO COMPEL : 5
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1 As the affidavit of Don Barnett demonstrates, his confession
2 before church elders and confessions made by church members
3 through church counseling is a regular part of the religious
4 beliefs and discipline of the Community Chapel and Bible Training
5 Center. Such religious counseling are for the purpose of
6 spiritual development, and religious and doctrinal guidance is
7 given by church counselors based upon the religious teachings of
8 the Community Chapel.

9 There is no authority which interprets the Washington
10 statute. However, an almost identical statute was interpreted by
11 the Minnesota Supreme Court in In Re Swenson, 237 N.W. 589 (1931)
12 in which it was held that the privilege embraces all religions
13 and the particular form of confession practiced by each. The
14 privilege is not limited solely to confessions in the manner of
15 practice exercised by the Catholic church.

16 If we are to construe this statute as meaning
17 that the only "confession" that is privileged
18 is the compulsory one under the rules of the
19 particular church, it would be applicable
20 only, if our information is correct, to the
21 priest of the Roman Catholic Church.
22 Certainly the Legislature never intended the
23 absurdity of having the protection extend to
24 the clergy of but one church. Had the
25 Legislature intended to so limit the
26 privilege, the word "priest" would probably
27 been used instead of "clergyman."

28 Id. at 590. In Pardie v. Pardie, 158 N.W.2d 641, 645 (1968)
29 statements made for the purpose of receiving counsel upon family
30 problems were afforded protection. The term "confession" cannot
31 be limited in a technical sense. It is bound only by the
32 discipline of each particular church. As the court in Swenson,
further noted:

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1 We are of the opinion that the "confession"
 2 contemplated by the statute has reference to
 3 a penitential acknowledgment to a clergyman
 4 of actual or supposed wrongdoing while
 5 seeking religious or spiritual advice, aid,
 6 or comfort, and that it applies to a
 7 voluntary "confession" as well as to one made
 8 under a mandate of the church.

9 Id. at 590. The Community Chapel fosters the sincere belief that
 10 the physical and spiritual man are interrelated requiring
 11 counseling in all matters of its members lives to accomplish
 12 spiritual development. This counseling is no less important to
 13 the Community Chapel than the confessional is to the Catholic
 14 church.

15 The privilege embraces confessions "in the course of the
 16 discipline" to which the member of clergy belongs. RCW
 17 6.60.060(3). The Supreme Court of Iowa interpreted a similar
 18 statute in Reutkemeier v. Nolte, 161 N.W. 290 (1917) writing at
 19 page 293:

20 This statute is based in part upon the idea
 21 that the human being does sometimes have need
 22 of a place of penitence and confession and
 23 spiritual discipline. When any person enters
 24 that secret chamber, this statute closes the
 25 door upon him, and civil authority turns away
 26 its ear. The privilege of the statute
 27 purports to be applicable to every Christian
 28 denomination of whatever polity.

29 The Community Chapel and Bible Training Center uses counseling as
 30 its course of discipline for confession and spiritual guidance
 31 upon the confidential problems of its members, and as head
 32 pastor, Don Barnett depends upon confession before his elders for
 his spiritual guidance. Therefore each qualify under the
 clergyman privilege.

BRIEF OPPOSING
 MOTION TO COMPEL : 7
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1 The privilege cannot be limited on the basis that
 2 confessions were made to church counselors who were not
 3 necessarily the pastor within the church. The counselors within
 4 the church play an important role within the church discipline in
 5 conjunction with the church Pastor. As stated in In Re Verplank,
 6 329 F.Supp. 433 (1971) at page 436: such a situation "... appears
 7 to be closely akin to the relationships between a lawyer and the
 8 nonprofessional representatives that he engages to assist him in
 9 serving his clientele." In that case the court held that the
 10 clergyman privilege applies to disclosures made to non-clergy
 11 counselors who performing a clergy function in a general way.
 12 See also, Eckman v. Board of Educ. of Hawthorne School Dist., 106
 13 F.R.D. 70 (1985). Within the Community Chapel, the counselors
 14 are responsible for giving spiritual advice based upon the
 15 teachings of the pastor. The counselors play an intregal role to
 16 the faith in helping each member of the church to receive the
 17 individual attention necessary for the development of each.

18 It is irrelevant that the counseling serves a purpose which
 19 may extend beyond its role in spiritual development. It is
 20 impossible to distinguish between the disclosures made within
 21 church counseling for the purpose of spiritual development and
 22 disclosures made for other purposes. This issue was addressed in
 23 Rivers v. Rivers, 292 S.C. 21, 354 S.E.2d 784 (S.C. Ct. App.,
 24 1987). The Court in that case wrote at pages 787-788:

25 We realize that to some extent Dr. Carlson in
 26 counseling Helen acted as a therapist and not
 27 as a clergyman. Whether he acted to a
 28 greater extent as a therapist or as a
 29 clergyman would be difficult, if not
 impossible, for us to determine. We
 therefore conclude that because of the

30 BRIEF OPPOSING
 31 MOTION TO COMPEL : 8
 32 15004857.80C

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1 practical difficulty in distinguishing
2 between the counseling Helen received from
3 Dr. Carlson as a therapist and between the
4 counseling she received from him as a
5 clergyman, all her confidential
6 communications to Dr. Carlson are deemed to
7 have been made to him in his professional
8 capacity as a clergyman.

9 Defendants do not contest that the members of the Community
10 Chapel entrust their confidences to church counselors for a
11 variety of reasons. Included within these reasons is spiritual
12 development. Since it would be impossible to destroy other
13 confidentiality between the church members and church
14 counselors without also destroying spiritual confidentiality,
15 the disclosure of neither can be compelled.

16 2. Common Law Privilege

17 In Senear v. Daily Journal American, 97 Wn.2d 148, 641 P.2d
18 1180 (1982), the Washington Supreme Court held that common law
19 may supply a testimonial privilege although statute may not.

20 The Common law-judge-made law-insofar as
21 it is neither inconsistent with the
22 constitution and laws of the United States or
23 of the State of Washington, nor incompatible
24 with the institution and conditions of
25 society, is the law of this state.... Common
26 law is not static. It is consistent with
27 reason and common sense.... The common law
28 "owes its glory to its ability to cope with
29 new situations. Its principles are not mere
30 printed fiats, but are living tools to be
31 used in solving emergent problems....

32 Where a case is not governed by statute
law, as is the circumstance here, it is an
appropriate occasion for this court to apply
the common law to determine the outcome of
the case.... (citations omitted)

33 BRIEF OPPOSING
34 MOTION TO COMPEL : 9
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1 Id at 152. In finding a common law testimonial privilege for
2 reporters, the court applied the following standard:

3 (1) The communication must originate in a
4 confidence that it will not be disclosed; (2)
5 the element of confidentiality must be
6 essential to the full and satisfactory
7 maintenance of the relation between the
8 parties; (3) the relation must be one which
9 in the opinion of the community ought to be
10 sedulously fostered; and (4) the injury that
would inure to the relation by the disclosure
of the communication must be greater than the
benefit thereby gained for the correct
disposal of litigation.

11 Id at 153. Under this standard, a privilege may exist in the
12 absence of one provided by statute.

13 In the present case, it is clear that the communications
14 made by Don Barnett to the elders and those made by church
15 members to the counselors were of a confidential nature. This
16 confidentiality allowed full disclosure to enable spiritual
17 advice upon a the personal development of church members.
18 Without this confidentiality, the counselors could not expect the
19 disclosure which is necessary to fully and adequately fulfil
20 their roles in rendering spiritual advice. Further, this
21 confidentiality is between a church and its members. Both
22 Article I, Section 11 and Amendment 34 of the Washington
23 Constitution, and the First Amendment to the United States
24 Constitution through the Fifteenth Amendment to the United States
25 Constitution demonstrate the importance placed upon this
26 relationship by society. Finally, disclosure in this instance,
27 especially of information regarding sexual relationships, would
28 be devastating to the individuals who have depended upon the
29 confidentiality in disclosing intimate details of their private

30 BRIEF OPPOSING
31 MOTION TO COMPEL : 10
32 15004857.80C

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1 lives. This surely outweighs the importance of an insurance
 2 coverage question. In short, the counseling records of the
 3 Community Chapel and Bible Training Center meet all of the
 4 requisites of a common law testimonial privilege.

5 3. Counselor Privilege

6 RCW 5.60.060 provides:

7 An attorney or counselor shall not, without
 8 the consent of his or her client, be examined
 9 as to any communication made by the client to
 10 him or her, in his or her advice given
 thereon in the course of professional
 employment. (emphasis added)

11 No authority can be found in Washington which limits this
 12 privilege to counselors at law. Further, no legislative history
 13 can be found upon the language in question. In the absence of
 14 such guidance, the general rules of statutory construction apply.

15 RCW 5.60.060 does not define the term counselor. Therefore,
 16 the term must be given its ordinary meaning which may be found by
 17 resort to extrinsic aids, such as a dictionary. Garrison v.
 18 State Nursing Bd., 87 Wn.2d 195, 196, 550 P.2d 7 (1976).
 19 Webster's New World Dictionary (1970) defines a counselor as:

- 20 1. a person who counsels; adviser 2. a
 21 legal adviser, as of an embassy or legation
 22 3. a lawyer, esp. one who conducts cases in
 23 court: in full, counselor-at-law 4. a
 24 person in charge of a group of children at a
 camp

25 The definition of counselor includes lawyers, however, the
 26 definition is not exclusive of other meanings. A counselor is "a
 27 person who counsels," an "adviser." The present statute does not
 28 include words of limitation. It generally provides protection
 29 for statements made to counselors as well as attorneys.

30 BRIEF OPPOSING
 31 MOTION TO COMPEL : 11
 32 15004857.80C

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1 Attorney and counselor are stated in RCW 5.60.060 in the
 2 disjunctive. It has long been the rule in Washington provisions
 3 within a statute which are stated in the disjunctive must be
 4 given effect independently. State v. Tiffany, 44 Wash 602, 87
 5 Pac. 932 (1906). Effect cannot be given to both terms in RCW
 6 5.60.060 if both are given the same definition. The term
 7 "counselor" would be rendered meaningless if it were defined to
 8 mean only attorneys. In that case the statute would read "An
 9 attorney or attorney shall not,...., be examined...." Therefore,
 10 the privilege afforded by RCW 5.60.060 extends to both attorneys
 11 and counselors.

12 C. CONSTITUTIONAL LIMITATIONS

13 Plaintiff has asked this court to enter an order compelling
 14 a church to turn over its records and files. Such an order would
 15 constitute state action. "The test is not the form in which
 16 state power has been applied but, whatever the form, whether such
 17 power has in fact been exercised." New York Times Company v.
 18 Sullivan, 376 U.S. 254, 265, 84 S.Ct. 710, 718, 11 L.Ed.2d 686
 19 (1964).

20 Both Article I, Section 11 and Amendment 34 of the
 21 Washington Constitution, and the First Amendment to the United
 22 States Constitution through the Fifteenth Amendment to the United
 23 States Constitution protect the free exercise of religion against
 24 state interference. The implication of these interests requires
 25 this court to balance the competing interests. Sherbert v.
 26 Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963).

27 The affidavit of Don Barnett demonstrates that counseling is
 28 an intregal part of the faith of the Community Chapel as is the
 29 confidentiality which is attendant to it. The forced disclosure

30 BRIEF OPPOSING
 31 MOTION TO COMPEL : 12
 32 15004857.80C

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1 of church records would directly affect the Community Chapel and
 2 it would have a chilling effect upon future church counseling.
 3 It is highly unlikely that church members would continue to make
 4 confidential disclosures in counseling once it becomes apparent
 5 that counseling records are available to anyone that brings a
 6 lawsuit. The interest of American Casualty in having an
 7 insurance question resolved pales in comparison.

8 **D. ADDITIONAL PROTECTIVE ORDER**

9 In the event that this court grants plaintiff's motion to
 10 compel, defendants alternatively have asked this court for a
 11 protective order prohibiting disclosure of these materials. In
 12 Seattle Times Co. v. Rhinehart, 467 U.S. 20, 104 S.Ct. 2199, 81
 13 L.Ed.2d 17 (1984), the U.S. Supreme Court held that such an order
 14 may be granted upon a showing of good cause. See also, Rhinehart
 15 v. Seattle Times, 98 Wn.2d 226, 654 P.2d 673 (1982).

16 As the affidavit of Don Barnett demonstrates, he and the
 17 members of the Community Chapel relied upon their beliefs and an
 18 expectation of privacy in making confidential disclosures. For
 19 this reason, it is clear that such materials should be subject to
 20 discovery only under a protective order.

21 **III. CONCLUSION**

22 The present action is for declaratory relief. The limited
 23 nature of such a proceeding are attended by limitations upon the
 24 materials which may be discovered. Presently, the underlying
 25 action to this declaratory action is still pending.
 26 Consequently, the only issues which may be addressed by this
 27 court are upon the duty to defend. The only materials necessary
 28 to determine such issues are the complaint in the underlying
 29

30 BRIEF OPPOSING
 31 MOTION TO COMPEL : 13
 32 15004857.80C

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1 action and the insurance policy. All other materials are not
2 relevant.

3 Further, plaintiff seeks materials from a church which
4 relate directly to the essential beliefs of the faith. These
5 materials are protected by Constitutional limitations and
6 testimonial privileges.

7 Finally, a protective order is necessary and proper in the
8 event that this court determines that the materials are subject
9 to discovery.

10 Defendants request that this court deny plaintiffs motion to
11 compel discovery and enter a protective order prohibiting further
12 discovery until the underlying is resolved. Alternatively,
13 defendants ask for a protective order prohibiting disclosure of
14 the materials subject to discovery.

15 Dated this 14th day of April, 1988.

16 EVANS CRAVEN & LACKIE, P.S.

17
18 By Tim Donaldson
19 TIM DONALDSON
20 Attorneys for Defendants Barnett

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30 BRIEF OPPOSING
31 MOTION TO COMPEL : 14
32 15004857.80C

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11:25

C.R. APR 14 1988

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF PIERCE

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

NO. 88-2-00947-9

Plaintiff,)

v.)

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

AFFIDAVIT OF)
DONALD BARNETT BY)

FILED
IN COUNTY CLERK'S OFFICE
A.M. APR 14 1988 P.M.
PIERCE COUNTY CLERK
TED RUTT, COUNTY CLERK
DEPUTY

Defendants.)

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

I, DONALD LEE BARNETT, having been first duly sworn on oath, state the following to be true:

1. I have been the Senior Pastor of Community Chapel and Bible Training Center (hereinafter referred to as "Community Chapel") since at least 1968.

2. Attached as Exhibit "A" are certain pages from the By-Laws of Community Chapel. On page 18, (Chapter Two, Division Two, Section I, D,) "Duties of the Pastor," the By-Laws state the following teaching of Community Chapel:

Recognizing that the Bible teaches a "body ministry" and that the Pastor does not have time, strength, or desire to run the entire Church in its many avenues of service, he shall not be expected to do allof the ministries of the Church, including: visiting and praying for the sick and needy, witnessing, and counseling.

AFFIDAVIT OF DON BARNETT
15004857.a1

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1 3. On page 21 of Exhibit "A", (Chapter Two, Division Two,
2 Section II, Article One), the By-Laws state the role of Elders.
3 This statement includes the following:

4 With the Pastor's concurrence, Elders may teach classes;
5 direct worship services; preach; baptize; administer
6 communion; perform marriages and conduct funerals; lead
7 visitation groups; counsel and guide those who seek help....

8 Article Four of the above-cited Section states as follows:

9 Elders shall have all the honors, rights and privileges
10 which attend ordination into the ministry of the Gospel of
11 Jesus Christ.

12 4. On page 29 and 30 of Exhibit "A" (Chapter Two, Division
13 Two, Section VI, Article Four), the By-Laws contain Community
14 Chapel's "Statement of Counseling." This statement is reflective
15 of our religious belief that Scripture teaches the Christian
16 Church to offer counseling to those who seek it out. At the
17 Community Chapel, counseling is an integral part of our
18 congregational life, belief and discipline.

19 5. The counseling services of the Community Chapel are
20 based upon our sincere religious belief that each person consists
21 of a spiritual person, a soulical person, and a physical person,
22 which are necessarily interrelated. Church counseling is the
23 means by which church members confess their physical and soulical
24 concerns for spiritual growth.

25 6. Between 1980 and 1988 there were approximately 3,000
26 members of the Community Chapel. Services provided by Church
27 counselors were essential to our belief in spiritual counseling
28 due to the size of the congregation.

29 7. Most of the counselors of the Community Chapel were

30
31 AFFIDAVIT OF DON BARNETT
32 15004857.a1

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SEATTLE WASHINGTON 98104

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1 ministers themselves and were supervised by a Minister on the
2 staff of Community Chapel.

3 8. The congregation knew that any communications they made
4 to these counselors would be held in the utmost confidentiality.

5 9. During several sessions in February 1988, before
6 approximately fifteen Elders and counselors who all are ministers
7 in my Church, I made numerous admissions and confessions, which I
8 understood would be kept in the confidence of such Elders. In
9 accordance with my faith, these confessions were for the purpose
10 of my spiritual, ~~physical~~ and soulical growth. These confessions
11 and statements were made as part of the internal discipline and
12 practice of Community Chapel.

13 Donald Lee Barnett
14 DONALD LEE BARNETT

15 SIGNED AND AFFIRMED before me this 13th day of April, 1988.

16 Tom Donaldson
17 NOTARY PUBLIC
18 My Commission Expires 1989

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30 AFFIDAVIT OF DON BARNETT
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EXHIBIT A

5. The Board of Senior Elders shall select a new Pastor to fill a pastoral vacancy. This choice shall be satisfactory to a minimum two-thirds (2/3) majority of the voting congregation. No other conditions shall be imposed.
- C. The New Pastor.
1. A Pastor subsequent to the original Pastor differs in authority from the original Pastor in that:
 - a. He may be removed from office by a two-thirds (2/3) majority vote of the Board of Senior Elders and a simple majority vote of the congregation. The Pastor shall have no vote in the case.
 - b. On regular business his position as a member of the Board of Senior Elders gives his vote no special weight.
- D. Duties of the Pastor.
1. Each Pastor shall preach, teach, admonish, encourage, and advise as God gives him ability. The Pastor shall live a godly life and endeavor to shepherd the flock to its spiritual benefit.
 2. Recognizing that the Bible teaches a "body ministry" and that the Pastor does not have time, strength, or desire to run the entire Church in its many avenues of service, he shall not be expected to do all (or more than he feels he should or can reasonably handle) of the ministries of the Church, including: visiting and praying for the sick and needy, witnessing, and counseling.
- E. The Pastor's salary shall be determined by the Board of Senior Elders, which shall re-evaluate the salary rate annually. Once set and accepted, each Pastor's salary shall not be decreased, unless there is a general recession or depression, and then only to the same ratio as the published wage/price index decline for the local area.

ARTICLE TWO: The Board of Senior Elders of the Corporation Church shall be the same committee as that of the entire Corporation and shall act in both capacities as defined in Division One, Section IV above, of these Bylaws.

ARTICLE THREE: The Deacon Board.

A. Duties.

1. The Deacon Board shall oversee the necessary insurance programs, maintenance and safety of the buildings and grounds, janitorial work, security, equipment purchases, appointment of ushers, and other financial and mundane obligations and duties of the Church. The Deacon Board shall insure prompt payment of all obligations, keep neat and accurate records of all expenditures and business, and keep the Chairman of the Board of Senior Elders advised in writing of all decisions.
2. The Deacon Board shall appoint a Treasurer who shall be under the supervision of the General Manager and continue in office until removed by the Deacon Board or until he resigns. (See Division One, Section IX, Article Five above, for the duties, powers, and limitations of the office of the Treasurer.)

- K. The Deacon Board shall not meet to vote if more than one member is absent. If the vote is such that the missing member's vote might have an impact upon the outcome of the decision, no decision shall be made until that person's vote is in, except in emergency matters, which shall be judged to be so by all present. If more than one member is absent in an emergency session, the full complement shall be made up by the Chairman appointing substitute members for that meeting from among the Elders.

SECTION II

Elders

ARTICLE ONE: The office of Elder shall be a spiritual office in the Church of Community Chapel and Bible Training Center, to which persons are ordained. (See Section VII below.) Elders shall serve in ministering to the spiritual needs of the Church as requested by the Pastor and as God leads them and gives them gifts, talents, and abilities. With the Pastor's concurrence, Elders may teach classes; direct worship services; preach; baptize; administer communion; perform marriages and conduct funerals; lead visitation groups; counsel and guide those who seek help; pray for the sick and needy in the Church, hospitals, and homes; act as advisors to the Pastor, Board of Senior Elders, and/or Deacons (the term "advisors" is not to be confused with the separate term "administrators"); lead prayer meetings, fellowships, etc.; minister in worship services in any Scriptural capacity; and/or perform other functions or ministries for which there is a need.

ARTICLE TWO: In order to effectively meet the varied spiritual needs of the Church, Elders are appointed to the oversight of specific areas of ministry. For the sake of defining these areas, there shall be three types of Elders ordained by Community Chapel and Bible Training Center:

- A. Senior Elders: Ordained Elders who collectively are responsible to be the governing body of the Corporation, under the Pastor. All Senior Elders are members of the Board of Senior Elders. (See also Division One, Section IV above.)
- B. Ministerial Elders: Ordained Elders who have the oversight of specific spiritual ministries in the Church; including teaching of the Holy Scriptures and pastoring Satellite Churches, among others.
- C. Departmental Elders: Ordained Elders who have the oversight of specific departments within any of the Divisions of Community Chapel and Bible Training Center and who direct staff members in performing the spiritual ministries of the church.

ARTICLE THREE: Elders shall be appointed to office by a unanimous vote of the Board of Senior Elders residing at the headquarters of Community Chapel and Bible Training Center.

ARTICLE FOUR: Elders shall have all the honors, rights, and privileges which attend ordination into the ministry of the Gospel of Jesus Christ.

- J. We are opposed to taking part in any form of violence or in any action to aid the establishment of world government or of a national or world church by man's efforts (Luke 3:14).
- K. We trust God, not man, to be our defense (Psalms 59:16,17; 118:8).
- L. We believe in doing good to all men, evil to none (Galatians 6:10; Romans 12:17).
- M. We are appreciative of the federal Constitution that is based on godliness, and of the Christian attitudes that accrue from our godly forebears. We are thankful for the freedom that we do enjoy in this great nation of ours and pray that its leaders will lead us in the paths of righteousness, godliness, peace, and justice (1 Timothy 2:1,2).
- N. We are conscientiously opposed on the grounds of our religious faith to aiding the military in any way. We believe that born-again Christians must not take part in fighting the wars of this world.

ARTICLE FOUR: Statement on Counseling.

- A. We believe that the Holy Scriptures teach Christians to encourage, counsel, admonish, exhort, and rebuke the brethren in matters of faith, doctrine, domestic life, marriage, godliness, and all other areas taught by the Bible, and to do so with all authority (Titus 2:15). Accordingly, the Church shall train to its satisfaction and authorize counselors for the ministry of godly counsel to those in need.
- B. No counselor shall attempt to control or manipulate the life of another individual. However, this shall not be construed to prohibit the counselor from teaching the laws of the Church and the Bible, or from giving counsel or explaining what he would do under similar circumstances. It is our conviction that a Church counselor has Bible precedent to explain Biblical, godly, and moral principles that are in accordance with his office and the teachings of Scripture according to the teachings of this Church.

It is our belief that such counsel does not do violence to a person's free will, because advice from counselors is just that—advice and no more. The recipient of the counsel is not bound to follow the counsel he seeks or that is given (he must be responsible for his own actions) unless the counselor directs a person to a certain action in accordance with the Church laws, in which case that person has the free choice of following the rules or of seeking another church. Our Church policy is that our Church is only for those who agree with the Bible and the calling and authority of this Church.

While explaining the full implications of considered action, the counselor shall be very careful not to give absolute directions in matters which are entirely subject to the free choice of the recipient of counsel. The following list illustrates the type of decisions which, according to our firm policy, the counselor must carefully leave open to the choice of the recipient of counsel.

- 1. A counselor shall refrain from making any absolute recommendation about either seeking or not seeking professional medical or psychiatric care or obtaining care in or out of clinics or hospitals.

(continued)

2. A counselor shall refrain from telling the recipient of counsel that he either should or should not seek a divorce, give up a child for adoption, or seek an abortion.
 3. A counselor shall refrain from giving advice which would cause the recipient of counsel to disobey any law (unless the Board of Senior Elders has determined that the particular law is contrary to the higher law of God as revealed in the Bible).
 4. A counselor shall not accuse a person of being "demon-possessed."
- C. We recognize that individuals who are under stress may be prone to misinterpretation of counsel; therefore, counselors shall exercise caution when dealing with emotionally volatile issues and shall attempt to give counsel which is easily understood.

SECTION VII

Ordination and Licensing into the Ministry

ARTICLE ONE: We believe that those who are called into the full-time ministry of the Gospel of Jesus Christ; including Pastors, Elders, Teachers of the Holy Scriptures, and Evangelists; and those responsible for the leadership of religious ministries; are to be ordained or licensed into the ministry of the Gospel of Jesus Christ by the Board of Senior Elders. Definitions of Ordination and Licensing:

- A. Ordination into the ministry of the Gospel: Recognition and attestation of the calling of God into the ministry of the Gospel as Pastor, Elder (Senior Elder, Departmental Elder, or Ministerial Elder), and/or [general] Minister of the Gospel of Jesus Christ. Ordination shall be in effect for the duration of the ministry unto which one is ordained. Specifically,
1. The ordination of a Senior Elder shall be in effect until he is removed from office or until he resigns.
 2. The ordination of a Ministerial Elder (Teacher of the Holy Scriptures, Minister of Counseling, General Ministerial Elder, etc.) shall be effect until the ministry which he has been given to oversee ceases to exist, or until he is removed from the responsibility of performing the ministry(ies) within this Church for which he was ordained, or until he resigns.
 3. The ordination of a Departmental Elder (Overseer of Music, Overseer of Christian Publishing, Overseer of Sunday School, etc.) shall be in effect until the department he has been given to oversee ceases to exist, until he is removed from the oversight of that department, or until he resigns.
 4. The ordination of the Pastor shall be in effect until he is removed from the position of Pastor (with the exception of the original Pastor, who cannot be removed from office while living), until he resigns, or until this Church no longer exists.

(continued)

5. The ordination of a Minister of the Gospel of Jesus Christ shall be for life. Community Chapel and Bible Training Center may, however, elect to disallow his ministry in this church, disfellowship him, and/or refuse to recognize his ministry if he becomes incapable of performing the ministry, if he departs from the faith, or if he lives unrepentant in sin. In such matters, the decision of the Board of Senior Elders is final.

B. Licensing into the ministry of the Gospel: Appointment to the ministry of the Gospel of Jesus Christ in recognition of a yet-to-be-proven calling of God to minister in a specific way; such as preaching, teaching, leading a satellite fellowship, evangelizing, or ministering in deliverance or healing. Licensing shall be in effect until the date of expiration noted on the individual ministerial licenses.

ARTICLE TWO: Ordination into the ministry shall be by the laying on of hands and prayer. We accept the command of God to "lay hands suddenly on no man" to mean to prove the candidate and be careful not to thrust into Ordination those whom God is not ready for us to ordain.

ARTICLE THREE: Ordination and Licensing into the ministry of the Gospel are both appointments to the ministry of the Gospel of Jesus Christ for the purpose of recognition of such appointments by this Church, by other churches, and by the civil government. Those who are ordained or licensed into the ministry of the Gospel of Jesus Christ shall be known as "ministers," although within Community Chapel and Bible Training Center we will use the more specific terms as outlined in Article One above.

ARTICLE FOUR: The qualifications of a candidate for Ordination into the ministry of the Gospel shall be:

- A. The fact that the candidate feels the call of God into the ministry, has a field of ministry open to him, and desires to be ordained and set apart for God in a full-time ministry.
- B. The fact that the candidate has to the Board of Senior Elders demonstrated himself capable of ministering in the capacity to which he is to be ordained.
- C. The fact that the candidate has to the Board of Senior Elders demonstrated himself to be spiritual and a credit to his office.

ARTICLE FIVE: The qualifications of a candidate for licensing into the ministry of the Gospel shall be:

- A. The fact that the candidate feels the call of God to minister His Gospel in a specific field of ministry.
- B. The fact that the candidate has to the Board of Senior Elders demonstrated himself to be spiritual and capable of ministering in the capacity to which he is to be licensed.

ARTICLE SIX: We recognize the following offices to which men of God are ordained as being parts of the government of the Church which God has ordained:

- A. Pastors.
- B. Elders (Senior Elders, Departmental Elders, and Ministerial Elders).

(continued)

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

Plaintiff,

v.

IRA GABRIELSON, et al.,
Defendants.

No. 88-2-00947-9 FILED
IN COUNTY CLERK'S OFFICE

NOTICE OF DEPOSITION
UPON ORAL EXAMINATION 1988 P.M.

PIERCE COUNTY WASHINGTON
NOTARY COUNTY CLERK
BY [Signature] DEPUTY

TO: Defendants
and to: All Counsel of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the testimony of

Jack McDonald will be taken upon

Oral Examination at the instance and request of the plaintiff in the
above-entitled and numbered action, before a Notary Public, at 2250 Century Square Building
Seattle, Washington, on Wednesday the 27th day of April 1988
commencing at the hour of 9:00 o'clock a.m.; the said Oral Examination to be
subject to continuance or adjournment from time to time or place until completed, and to be taken on
the ground and for the reason the said witness will give evidence material to the establishment of the
plaintiff's case.

J.V. April 14 1988

DATED this 11th day of April, 1988

LANE, POWELL, MOSS & MILLER

Office, Post Office Address and
Telephone of Attorneys Issuing Notice:

LANE, POWELL, MOSS & MILLER
3800 Rainier Bank Tower
Seattle, Washington 98101-2647
(206) 223-7000

by [Signature]
Bruce Winchell
Attorneys for Plaintiff

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

Plaintiff,

v.

IRA GABRIELSON, et al.,

Defendants.

No. 88-2-00947-9

SUBPOENA DUCES TECUM

THE STATE OF WASHINGTON, to: E. Scott Hartley
1208 South 140th
Seattle, WA.

YOU ARE HEREBY COMMANDED to be and appear at the offices of
LANE POWELL MOSS & MILLER, 2250 Century Square Building,

Seattle, Washington, on Thursday, the 28th day of April,
19 88, commencing at the hour of 9:00 o'clock a.m., on said day, then and there
to testify as a witness at the request of plaintiff

J.V. APR 14 1988

in the above-entitled cause, and to remain in attendance upon the undersigned until discharged. AND
YOU ARE FURTHER COMMANDED to bring with you at said time and place the
items listed on Attachment "A" hereto.

FILED
IN COUNTY CLERK'S OFFICE
A.M. APR 14 1988 P.M.
PIERCE COUNTY WASHINGTON
TOD RUIT COUNTY CLERK
BY [Signature] DEPUTY

HEREIN FAIL NOT AT YOUR PERIL

WITNESS my hand this 11th day of April, 1988.

Office, Post Office Address and Telephone of
Attorneys Issuing Subpoena:

Bruce Winchell
LANE POWELL MOSS & MILLER
3800 Rainier Bank Tower
Seattle, WA. 98101
(206) 223-7000

[Signature]
By: Bruce Winchell
Attorneys for Plaintiff

ATTACHMENT "A"

1. All statements in any form, notes of conversations, and any written material in any form whatsoever relating to all allegations by females of conduct involving physical contact between DONALD LEE BARNETT and any such female.

2. All material of any form whatsoever supporting allegations of sexual misconduct and/or physical contact between DONALD LEE BARNETT and any of his supposed or alleged or claimed spiritual connections.

3. All material of any kind supporting the decision of the COMMUNITY CHAPEL to forbid DONALD L. BARNETT to be alone with any woman not his wife.

4. All material supporting or tending to support a statement reported in the Seattle Post-Intelligencer on March 4, 1988, attributed to LANNY PETERSON that DONALD LEE BARNETT "has been in sexual sin of substantial magnitude, and it is such a great threat to his ministry and this church - putting the board of senior elders in legal-lawsuit jeopardy personally and putting our whole church on the line," or words to that effect.

5. Any and all letters advising any member of the church eldership that the church's by-laws may be illegal under Washington State law and/or that any member of the church eldership could be held personally liable if they took no action against a member of the pastoral staff who used his church position to take sexual advantage of people.

6. All material of any sort tending to support the statement reported in the Seattle Post-Intelligencer on March 6, 1988, attributed to JACK HICKS that "Once they're willing to see the information we have, it's difficult for me to see how a person with integrity could support that kind of conduct in the name of Christ," or words to that effect.

7. All materials of any sort relating to physical contact between DONALD LEE BARNETT and females which tends to support the decision of the church's eldership to remove DONALD LEE BARNETT as pastor of the Community Chapel.

8. All materials of any sort relating to physical contact between DONALD LEE BARNETT and females which tends to support the church eldership's decision to seek to have DONALD LEE BARNETT banned from church property.

9. Any and all records of any testimony heard by any elder from any witness tending to corroborate any and all allegations of sexual misconduct or physical contact on the part of DONALD LEE BARNETT.

10. Copies of any letter distributed in any fashion to DONALD LEE BARNETT and/or any chapel member including any material relating in any way to any knowledge that the chapel eldership might have had that DONALD LEE BARNETT was involved in "numerous adulterous relationships with women in the church," as reported in the Seattle Post-Intelligencer on March 7, 1988.

11. All material tending to show that DONALD LEE BARNETT has a drug dependency.

12. All material of any form whatsoever tending to support the allegations made by the eldership of the Community Chapel that DONALD L. BARNETT:

A. Has coerced women and threatened to banish them from the church unless they lied about their sexual involvement with him to church counselors, elders, and the courts;

B. Has lied in the past and present to church counselors, the elders and the congregation about the number of women he has been involved with and the extent of the involvements.

13. All materials of any form whatsoever evidencing the elderships' attempts to counsel DONALD LEE BARNETT about his sexual conduct.

14. All material of any form whatsoever relating in any way to the hiring, termination, performance or compensation of Jack McDonald.

15. All materials pertaining to sexual activity between any church employee, elder, deacon, director or officer and any past member of the church.

J. Kelly Arnold
morning motion

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RUSH, HANNULA & HARKINS

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GIROLAMI, WOOD & MEYERS
ATTORNEYS AT LAW

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Date: 4-14-88
By: JK Arnold

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IN THE SUPERIOR COURT OF WASHINGTON IN AND FOR
PIERCE COUNTY

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

NO. 88-2-00947-9

Ch. No. 14-1988

DEFENDANT COMMUNITY CHAPEL'S
MEMORANDUM IN
OPPOSITION TO MOTION TO
COMPEL DISCOVERY

FILED
IN COUNTY CLERK'S OFFICE

A.M. **APR 14 1988** P.M.

PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

I. INTRODUCTION

Plaintiff seeks invasion of privileged and confidential communications which are contained in the counseling records of the Community Chapel and of privileged and confidential communications which were made to the ministers of Community Chapel in the course of church disciplinary proceedings. Defendant Community Chapel requests that American Casualty Insurance Co. not be allowed such information.

II. FACTS

In its first request for production, American Casualty Insurance Co. (American), requested, inter alia, all documents in

DEFENDANT'S MEMORANDUM IN
OPPOSITION TO MOTION TO
COMPEL DISCOVERY - 1

LEACH, BROWN & ANDERSEN
ATTORNEYS AT LAW
4040 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104
(206) 583-2714

ORIGINAL

1 any way related to the underlying Gabrielson suit (Pierce County
2 Cause No. 86-2-02792-6) and in any way relating to any sexual
3 activity of anyone in anyway related to Community Chapel.
4 Community Chapel objected on the basis that such requests were
5 overbroad, burdensome and, with respect to the latter request,
6 were privileged and not intended to lead to admissable
7 information.

8 Subsequently, American indicated that it would seek to
9 compel the discovery of counseling records and files from the
10 counseling ministry sponsored by Community Chapel. Such a motion
11 would seek to compel discovery, as per its request, of documents
12 relating to the sexual conduct and activity of those who sought
13 counsel.

14 Community Chapel objects to American's deliver delving into
15 the counseling files in its possession.

16 1. The church teaches that spiritual counseling may be
17 conducted by trained and authorized men other than the head
18 pastor.

19 2. The church approved only those individuals as
20 counselors who were qualified, according to scriptural guidelines,
21 to act as spiritual counselors and advisors.

22 3. Ministers on the church staff supervised the
23 counseling program.

24 DEFENDANT'S MEMORANDUM IN
25 OPPOSITION TO MOTION TO
COMPEL DISCOVERY - 2

1 subject matter in the pending action, and which appears reasonably
2 calculated to lead to the discovery of admissible evidence.

3 Neither Carol Gabrielson nor Ira Gabrielson went to any
4 counselor at Community Chapel. Carol Gabrielson and Jack McDonald
5 both testified they had no reason to believe that either Pastor
6 Barnett or any other member of Community Chapel's leadership
7 encouraged, condoned, or sanctioned extramarital sexual relations.
8 It is difficult to see how evidence of sexual activity of other
9 individuals, as may be contained in the churches counseling
10 records or in any temporary notes regarding the church's internal
11 disciplinary hearings, would lead to any admissible evidence.

12 B. Plaintiff's discovery request is an infringement on the
13 churches's free exercise of religion; and such an infringement
14 requires a showing of compelling need and none is shown.

15 The government may never interfere with an individual's
16 right to believe whatever he or she wants; in determining whether
17 the government may interfere with or restrict religiously
18 motivated conduct, the courts much consider (a) whether the
19 activity was motivated by and rooted in legitimate and sincerely
20 held religious belief, (b) whether the activity was unduly and
21 substantially burdened by the government's action, and (c) whether
22 the government has a compelling interest in limiting the religious
23 activity that cannot be accomplished by less restrictive means.

24 DEFENDANT'S MEMORANDUM IN
25 OPPOSITION TO MOTION TO
COMPEL DISCOVERY - 4

1 Wisconsin v. Yoder, 406 U.S. 205 (1972).

2 The Affidavits of Scott Hartley and Donald Barnett
 3 demonstrate that the process of seeking spiritual counsel, of
 4 making confidential communications to ministers of the church, and
 5 of making confessions, arise out of sincerely held religious
 6 beliefs of Community Chapel members. If the church counseling
 7 records and internal church disciplinary matters are fair game for
 8 discovery, the church's spiritual counseling and internal church
 9 disciplinary procedures will be unduly and substantially burdened.
 10 A communicant must be allowed to speak only with the expectation
 11 of total confidentiality; there is no practical less restrictive
 12 alternative.

13 Where encroachment upon first amendment freedoms, such as
 14 the free exercise clause, is a threat, the court has required that
 15 the party seeking discovery demonstrate an adequate foundation or
 16 compelling need for the information sought. In re Verplank, 329
 17 F. Supp. 433 at 437 (C.D. CA. 1971.)

18 C. The "clergy-communicant" privilege protects
 19 communication made to the church's spiritual counselors and to the
 20 church's disciplinary session.

21 R.C.W. 5.60.060 (3) provides as follows:

22 A clergyman or priest shall not, without the
 23 consent to the person making the confession, made to

24 DEFENDANT'S MEMORANDUM IN
 25 OPPOSITION TO MOTION TO
 COMPEL DISCOVERY - 5

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him in his professional character, in the course of discipline examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

There are four fundamental conditions necessary to the establishment of a privilege between persons standing in a given relation. These requirements are: (1) The communication must originate in confidence that it will not be disclosed; (2) the element of confidentiality must be essential to full maintenance of the relation between the parties; (3) the relation must be one which should be sedulously fostered; and, (4) the injury in inuring to the relation be disclosure of the communication must be greater than the benefit thereby gained for correct disposal of the litigation. State ex. rel. Haugland v. Smythe, 25 Wn.2d 161, 169 P.2d 706 (1946).

The Affidavits of Hartley and Barnett indicate the counselors and ministers in the church's counseling program were always trained and authorized by the church, there was always supervision by the ministerial staff.

It should be clear that the communications made to these spiritual counselors by members of the congregation are made in confidence with the belief that the communications would not be disclosed. Furthermore, the element of confidentiality is essential to the maintenance of the church's counseling ministry

1 to its congregation; this ministry of spiritual counseling, and
2 the relationships between the counseling staff and the
3 congregation, should be diligently fostered. Substantial injury
4 would be caused to this ministry and the relationships which are
5 part of it by the compelled disclosure of confidential
6 communications.

7 These Affidavits also show that statements made during the
8 January and February disciplinary hearings were made (1) with the
9 expectation of privacy, (2) to ordained ministers of the Community
10 Chapel, and (3) in a confessional nature.

11 In Reutkemeier v. Nolte, 179 Iowa 342, 161 NW 290 (1917),
12 the court held the unordained elders of the Presbyterian church
13 were subject to the clergyman-penitent privilege. It so held
14 because such elders were responsible for the spiritual life of the
15 church and its members.

16 In Eckmann v. Board of Education, 106 F.R.D. 70 (E.D. Mo.
17 1985), a "Sister Dominique" of the Catholic church was held
18 subject to the privilege, since she heard certain statements in
19 her role as a "spiritual director" and "spiritual advisor" in the
20 Catholic Church. Interestingly, nothing is stated about her
21 ability to hear confessions.

22 The clergyman's privilege covers not only communications
23 made to the clergyman himself but to those members of his staff

24 DEFENDANT'S MEMORANDUM IN
25 OPPOSITION TO MOTION TO
COMPEL DISCOVERY - 7

1 who participate in a general way with a significant portion of the
2 activity of the minister. In re Verplank, 329 F. Supp. 433 (C.D.
3 CA 1971). In Verplank, the court extended the clergyman's
4 privilege to the staff who were necessarily involved in the
5 activities of the minister in counseling persons seeking guidance.
6 The court determined, just as nonprofessional representatives
7 aiding attorneys were subject to the attorney-client privilege,
8 those counselors working under the minister heading the counseling
9 services for draftees were also subject to the privilege because
10 their duties involved in large measure those of the clergyman.

11 In People v. Thompson, 133 Cal. App. 3d 419, 184 Cal. Rptr.
12 72 (1982), the clergyman's privilege was not found to extend to a
13 Mr. Ward, who was trained as an ethics officer under the tenets of
14 Scientology, and who was employed by defendant's employer solely
15 to increase sales. The Thompson court asked "What is the nature
16 of the function being performed by the person who received the
17 statement?" In answering this question, the court held that Mr.
18 Ward had not assumed a clergyman's role and that the
19 communications were not made with an expectation of
20 confidentiality. By contrast, the counselors at Community Chapel
21 had assumed the roles as spiritual counselors, and the ordained
22 ministers were authorized to perform many functions and roles of a
23 pastor.

24 DEFENDANT'S MEMORANDUM IN
25 OPPOSITION TO MOTION TO
COMPEL DISCOVERY - 8

1 Finally, the United States Supreme Court has recognized that
 2 privileged communications extend not only to the specific
 3 individual to whom a privileged communication is made but to those
 4 in the "control group" who are required to act on the confidential
 5 communication. Upjohn Co. v. United States, 449 U.S. 383, 101 S.
 6 Ct. 677, 66 L. Ed. 2d 584 (1981).

7 D. The church counselors and the ministers who attended the
 8 church disciplinary hearings have a qualified privilege.

9 In Senear v. Daily Journal American 97 Wn. 2d 148, 641 P.2d
 10 1180 (1982), a news journalist was held to have a qualified,
 11 common-law privilege with respect to confidential communications
 12 made to the journalist. After noting the above-mentioned four-
 13 part test necessary to the establishment of a privilege, see State
 14 ex. rel. Haugland v. Smythe, supra, the court stated that the
 15 first two conditions were easily met - confidence the
 16 communication will not be disclosed and the necessity of
 17 confidentiality to the maintenance of the relationship between the
 18 parties.

19 The court then held that the relation between informant and
 20 the journalist is one which must be sedulously fostered.
 21 Defendant argues that there is an even greater need to foster the
 22 relationship between church counselors and the congregational
 23 members who seek out their help and advise. Likewise, the

24 DEFENDANT'S MEMORANDUM IN
 25 OPPOSITION TO MOTION TO
 COMPEL DISCOVERY - 9

1 relation between church members and a ministerial staff vis-a-vis
 2 church disciplinary proceedings needs to be encouraged and
 3 fostered. An individual needs assurance that if he raises any
 4 kind of charge against someone, that those charges will be heard
 5 and dealt with in-house. To inhibit this freedom will result in
 6 either suppressed anger, gossip, or civil litigation. Alternative
 7 dispute resolution forums must, and should, be encouraged.

8 The Smythe court then looked at four factors in balancing
 9 the interests at stake: (1) The claim must not be frivolous; (2)
 10 the information sought must be critical, or must "go to the
 11 heart," of the cause of action; (3) a reasonable effort must be
 12 made to acquire the desired information by other means; and (4)
 13 the court must decide that the interest of the counselors and
 14 ministers in nondisclosure is supported by a need to preserve
 15 confidentiality. Id. at 155-156. To defendant's knowledge,
 16 American has not this far attempted other means of discovery in
 17 this case. Further, the nature of the information requested
 18 regarding sexual activity in the Community Chapel can hardly be
 19 described as "critical;" even if Donald Barnett know of such
 20 reported activity, it is incredulous to see how he, or Community
 21 Chapel, could become responsible for the alleged sexual
 22 relationship between McDonald and Carol Gabrielson, which
 23 relationship took place at another church, in another city, and

24 DEFENDANT'S MEMORANDUM IN
 25 OPPOSITION TO MOTION TO
 COMPEL DISCOVERY - 10

1 presumably in secret.

2 The ecclesiastical relationships which need to be fostered
3 in this society should be not damaged in order for American to
4 search for evidence which would support its improbable theory of
5 non-coverage.

6 IV. CONCLUSION

7 The communications requested by American were made to
8 counselors and ministers in an ecclesiastical context, and with
9 the expectation of confidentiality, and as part of the
10 communicant's free exercise of religion. American should not be
11 allowed to trample on such free exercise rights and on the
12 individual's expectations that their communications were protected
13 and private. This court should deny American's motion to compel
14 discovery with respect to counseling records and internal church
15 disciplinary hearings during which time confessions and admissions
16 were made.

17 DATED this 14th day of April, 1988.

18 Leach, Brown & Andersen

19
20
21 By David V. Andersen
22 DAVID V. ANDERSEN

23
24 DEFENDANT'S MEMORANDUM IN
25 OPPOSITION TO MOTION TO
COMPEL DISCOVERY - 11

AGREEMENTS

The elders agree that it is necessary to protect Don from accusations of conflict of interest and of misusing his pastoral authority to exercise unfair control over these hearings to his personal advantage. Therefore, the elders ask Don to voluntarily submit to two conditions.

1. Don shall not exercise any authority over these hearings and over the exclusive eldership review sessions. The board of elders as a group shall exercise final authority over these meetings. This agreement applies only to these hearings and does not pertain to any other church matters.

2. Don ^{& Jerry} shall permit the hearings to continue until they are concluded to the satisfaction of the elders. Don shall not act as pastor to stop the meetings once they have begun.

Honald Lee Barnett
1-25-88

GUIDELINES FOR ELDERSHIP HEARING
BETWEEN DON BARNETT AND JERRY ZWACK

1. The purpose of the hearings is to resolve all of Jerry Zwack's specific grievances against Don Barnett.
2. Discussion shall be restricted to the grievances. Discussion of other issues shall not be permitted, unless the moderator agrees that the information is relevant.
3. Russell MacKenzie is moderator. He shall exercise final control over the proceedings and maintain order.
4. The first phase of the hearing shall consist of each party presenting their entire case without interruptions or objections by the other party. Jerry Zwack shall speak first.
5. The second phase of the hearing shall consist of rebuttals and answers to rebuttals by the two parties, and questioning by the elders. Jerry Zwack shall speak first to begin the second phase. The elders may ask any questions necessary to develop a complete picture. The moderator shall regulate the rebuttals, answers to rebuttals, and the questioning.
6. The hearings shall be strictly confidential. No permanent notes or recordings of any kind shall be permitted. No discussion of the hearing shall be permitted with people outside the elders who attend.
7. All allegations shall be investigated by the elders as necessary to determine the facts. The elders shall distinguish between allegations that are disputed, and ones that are admitted to be true. No allegation shall be accepted as fact unless it is admitted to be true, or it is supported by witnesses.
8. The moderator may allow the elders to interject questions at any time (including during the first presentation of their case by each party) for the purpose of correct understanding.
9. Don Barnett and Jerry Zwack must both be present at all the hearings, except for the exclusive eldership review sessions which will be held after the hearings are completed. Neither Don nor Jerry shall attend these review sessions.
10. The hearings must be conducted in a respectful manner. The elders shall show respect for both parties, and both parties shall show respect for the elders and each other. No arguing, interruptions, disdain, or manifestations of any kind shall be permitted.
11. Final decisions regarding each grievance shall be determined by a majority vote of all elders present at the exclusive eldership review sessions, not including Don Barnett or Jerry Zwack. David Motherwell and John Bergin shall be regarded as elders during all sessions and may vote. The elders shall present their final decisions to Don Barnett and Jerry Zwack.

Division Two

L-BL-R8011,b4

5. The Board of Senior Elders shall select a new Pastor to fill a pastoral vacancy. This choice shall be satisfactory to a minimum two-thirds (2/3) majority of the voting congregation. No other conditions shall be imposed.

C. The New Pastor.

1. A Pastor subsequent to the original Pastor differs in authority from the original Pastor in that:
 - a. He may be removed from office by a two-thirds (2/3) majority vote of the Board of Senior Elders and a simple majority vote of the congregation. The Pastor shall have no vote in the case.
 - b. On regular business his position as a member of the Board of Senior Elders gives his vote no special weight.

D. Duties of the Pastor.

1. Each Pastor shall preach, teach, admonish, encourage, and advise as God gives him ability. The Pastor shall live a godly life and endeavor to shepherd the flock to its spiritual benefit.
2. Recognizing that the Bible teaches a "body ministry" and that the Pastor does not have time, strength, or desire to run the entire Church in its many avenues of service, he shall not be expected to do all (or more than he feels he should or can reasonably handle) of the ministries of the Church, including: visiting and praying for the sick and needy, witnessing, and counseling.

- E. The Pastor's salary shall be determined by the Board of Senior Elders, which shall re-evaluate the salary rate annually. Once set and accepted, each Pastor's salary shall not be decreased, unless there is a general recession or depression, and then only to the same ratio as the published wage/price index decline for the local area.

ARTICLE TWO: The Board of Senior Elders of the Corporation Church shall be the same committee as that of the entire Corporation and shall act in both capacities as defined in Division One, Section IV above, of these Bylaws.

ARTICLE THREE: The Deacon Board.

A. Duties.

1. The Deacon Board shall oversee the necessary insurance programs, maintenance and safety of the buildings and grounds, janitorial work, security, equipment purchases, appointment of ushers, and other financial and mundane obligations and duties of the Church. The Deacon Board shall insure prompt payment of all obligations, keep neat and accurate records of all expenditures and business, and keep the Chairman of the Board of Senior Elders advised in writing of all decisions.
2. The Deacon Board shall appoint a Treasurer who shall be under the supervision of the General Manager and continue in office until removed by the Deacon Board or until he resigns. (See Division One, Section IX, Article Five above, for the duties, powers, and limitations of the office of the Treasurer.)

(continued)

A-3

K. The Deacon Board shall not meet to vote if more than one member is absent. If the vote is such that the missing member's vote might have an impact upon the outcome of the decision, no decision shall be made until that person's vote is in, except in emergency matters, which shall be judged to be so by all present. If more than one member is absent in an emergency session, the full complement shall be made up by the Chairman appointing substitute members for that meeting from among the Elders.

SECTION II

Elders

ARTICLE ONE: The office of Elder shall be a spiritual office in the Church of Community Chapel and Bible Training Center, to which persons are ordained. (See Section VII below.) Elders shall serve in ministering to the spiritual needs of the Church as requested by the Pastor and as God leads them and gives them gifts, talents, and abilities. With the Pastor's concurrence, Elders may teach classes; direct worship services; preach; baptize; administer communion; perform marriages and conduct funerals; lead visitation groups; counsel and guide those who seek help; pray for the sick and needy in the Church, hospitals, and homes; act as advisors to the Pastor, Board of Senior Elders, and/or Deacons (the term "advisors" is not to be confused with the separate term "administrators"); lead prayer meetings, fellowships, etc.; minister in worship services in any Scriptural capacity; and/or perform other functions or ministries for which there is a need.

ARTICLE TWO: In order to effectively meet the varied spiritual needs of the Church, Elders are appointed to the oversight of specific areas of ministry. For the sake of defining these areas, there shall be three types of Elders ordained by Community Chapel and Bible Training Center:

- A. Senior Elders: Ordained Elders who collectively are responsible to be the governing body of the Corporation, under the Pastor. All Senior Elders are members of the Board of Senior Elders. (See also Division One, Section IV above.)
- B. Ministerial Elders: Ordained Elders who have the oversight of specific spiritual ministries in the Church; including teaching of the Holy Scriptures and pastoring Satellite Churches, among others.
- C. Departmental Elders: Ordained Elders who have the oversight of specific departments within any of the Divisions of Community Chapel and Bible Training Center and who direct staff members in performing the spiritual ministries of the church.

ARTICLE THREE: Elders shall be appointed to office by a unanimous vote of the Board of Senior Elders residing at the headquarters of Community Chapel and Bible Training Center.

ARTICLE FOUR: Elders shall have all the honors, rights, and privileges which attend ordination into the ministry of the Gospel of Jesus Christ.

Division Two

- J. We are opposed to taking part in any form of violence or in any action to aid the establishment of world government or of a national or world church by man's efforts (Luke 3:14).
- K. We trust God, not man, to be our defense (Psalms 59:16,17; 118:8).
- L. We believe in doing good to all men, evil to none (Galatians 6:10; Romans 12:17).
- M. We are appreciative of the federal Constitution that is based on godliness, and of the Christian attitudes that accrue from our godly forebears. We are thankful for the freedom that we do enjoy in this great nation of ours and pray that its leaders will lead us in the paths of righteousness, godliness, peace, and justice (1 Timothy 2:1,2).
- N. We are conscientiously opposed on the grounds of our religious faith to aiding the military in any way. We believe that born-again Christians must not take part in fighting the wars of this world.

ARTICLE FOUR: Statement on Counseling.

- A. We believe that the Holy Scriptures teach Christians to encourage, counsel, admonish, exhort, and rebuke the brethren in matters of faith, doctrine, domestic life, marriage, godliness, and all other areas taught by the Bible, and to do so with all authority (Titus 2:15). Accordingly, the Church shall train to its satisfaction and authorize counselors for the ministry of godly counsel to those in need.
- B. No counselor shall attempt to control or manipulate the life of another individual. However, this shall not be construed to prohibit the counselor from teaching the laws of the Church and the Bible, or from giving counsel or explaining what he would do under similar circumstances. It is our conviction that a Church counselor has Bible precedent to explain Biblical, godly, and moral principles that are in accordance with his office and the teachings of Scripture according to the teachings of this Church.

It is our belief that such counsel does not do violence to a person's free will, because advice from counselors is just that—advice and no more. The recipient of the counsel is not bound to follow the counsel he seeks or that is given (he must be responsible for his own actions) unless the counselor directs a person to a certain action in accordance with the Church laws, in which case that person has the free choice of following the rules or of seeking another church. Our Church policy is that our Church is only for those who agree with the Bible and the calling and authority of this Church.

While explaining the full implications of considered action, the counselor shall be very careful not to give absolute directions in matters which are entirely subject to the free choice of the recipient of counsel. The following list illustrates the type of decisions which, according to our firm policy, the counselor must carefully leave open to the choice of the recipient of counsel.

- 1. A counselor shall refrain from making any absolute recommendation about either seeking or not seeking professional medical or psychiatric care or obtaining care in or out of clinics or hospitals.

(continued)

Division Two

2. A counselor shall refrain from telling the recipient of counsel that he either should or should not seek a divorce, give up a child for adoption, or seek an abortion.
 3. A counselor shall refrain from giving advice which would cause the recipient of counsel to disobey any law (unless the Board of Senior Elders has determined that the particular law is contrary to the higher law of God as revealed in the Bible).
 4. A counselor shall not accuse a person of being "demon-possessed."
- C. We recognize that individuals who are under stress may be prone to misinterpretation of counsel; therefore, counselors shall exercise caution when dealing with emotionally volatile issues and shall attempt to give counsel which is easily understood.

SECTION VII

Ordination and Licensing into the Ministry

ARTICLE ONE: We believe that those who are called into the full-time ministry of the Gospel of Jesus Christ; including Pastors, Elders, Teachers of the Holy Scriptures, and Evangelists; and those responsible for the leadership of religious ministries; are to be ordained or licensed into the ministry of the Gospel of Jesus Christ by the Board of Senior Elders. Definitions of Ordination and Licensing:

- A. Ordination into the ministry of the Gospel: Recognition and attestation of the calling of God into the ministry of the Gospel as Pastor, Elder (Senior Elder, Departmental Elder, or Ministerial Elder), and/or [general] Minister of the Gospel of Jesus Christ. Ordination shall be in effect for the duration of the ministry unto which one is ordained. Specifically,
1. The ordination of a Senior Elder shall be in effect until he is removed from office or until he resigns.
 2. The ordination of a Ministerial Elder (Teacher of the Holy Scriptures, Minister of Counseling, General Ministerial Elder, etc.) shall be in effect until the ministry which he has been given to oversee ceases to exist, or until he is removed from the responsibility of performing the ministry(ies) within this Church for which he was ordained, or until he resigns.
 3. The ordination of a Departmental Elder (Overseer of Music, Overseer of Christian Publishing, Overseer of Sunday School, etc.) shall be in effect until the department he has been given to oversee ceases to exist, until he is removed from the oversight of that department, or until he resigns.
 4. The ordination of the Pastor shall be in effect until he is removed from the position of Pastor (with the exception of the original Pastor, who cannot be removed from office while living), until he resigns, or until this Church no longer exists.

(continued)

COPY RECEIVED

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY APR 14 1988

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

Plaintiff,

v.

IRA GABRIELSON, et al.,

Defendants.

RUSH, HANNULA & HARKINS

No. 88-2-00947-9

NOTICE OF DEPOSITION
UPON ORAL EXAMINATION

FILED J.V. APR 14 1988
IN COUNTY CLERK'S OFFICE

A.M. APR 14 1988 P.M.

PIERCE COUNTY WASHINGTON
TED HUNT COUNTY CLERK

BY DEPUTY

TO: Defendants

and to: All Counsel of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the testimony of

Jack H. DuBois

will be taken upon

Oral Examination at the instance and request of the plaintiff in the
above-entitled and numbered action, before a Notary Public, at 2250 Century Square Building
Seattle, Washington, on Tuesday the 26th day of April 1988
commencing at the hour of 9:00 o'clock a.m.; the said Oral Examination to be
subject to continuance or adjournment from time to time or place until completed, and to be taken on
the ground and for the reason the said witness will give evidence material to the establishment of the
plaintiff's case.

DATED this 11th day of April 1988

LANE, POWELL, MOSS & MILLER

Office, Post Office Address and
Telephone of Attorneys Issuing Notice:

LANE, POWELL, MOSS & MILLER
3800 Rainier Bank Tower
Seattle, Washington 98101-2647
(206) 223-7000

by Bruce Winchell
Bruce Winchell
Attorneys for Plaintiff

NOTICE OF DEPOSITION
UPON ORAL EXAMINATION

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,
Plaintiff,
v.
IRA GABRIELSON, et al.,
Defendants.

No. 88-2-00947-9

SUBPOENA DUCES TECUM

J.V. APR 14 1988

THE STATE OF WASHINGTON, to: Jack Hicks
430 South 188th
Seattle, WA. 98148

YOU ARE HEREBY COMMANDED to be and appear at the offices of
LANE POWELL MOSS & MILLER, 2250 Century Square Building,

Seattle, Washington, on Monday, the 2nd day of May,
19 88, commencing at the hour of 9:00 o'clock a.m., on said day, then and there
to testify as a witness at the request of plaintiff

in the above-entitled cause, and to remain in attendance upon the undersigned until discharged. AND
YOU ARE FURTHER COMMANDED to bring with you at said time and place **FILED**
items listed on Attachment "A" hereto. IN COUNTY CLERK'S OFFICE

A.M. APR 14 1988 P.M.
PIERCE COUNTY WASHINGTON
TED RUTHERFORD COUNTY CLERK
DEPUTY

HEREIN FAIL NOT AT YOUR PERIL

WITNESS my hand this 11th day of April, 1988.

Office, Post Office Address and Telephone of
Attorneys Issuing Subpoena:

Bruce Winchell
LANE POWELL MOSS & MILLER
3800 Rainier Bank Tower
Seattle, WA. 98101
(206)223-7000

Bruce Winchell
By: Bruce Winchell
Attorneys for Plaintiff

ATTACHMENT "A"

1. All statements in any form, notes of conversations, and any written material in any form whatsoever relating to all allegations by females of conduct involving physical contact between DONALD LEE BARNETT and any such female.

2. All material of any form whatsoever supporting allegations of sexual misconduct and/or physical contact between DONALD LEE BARNETT and any of his supposed or alleged or claimed spiritual connections.

3. All material of any kind supporting the decision of the COMMUNITY CHAPEL to forbid DONALD L. BARNETT to be alone with any woman not his wife.

4. All material supporting or tending to support a statement reported in the Seattle Post-Intelligencer on March 4, 1988, attributed to LANNY PETERSON that DONALD LEE BARNETT "has been in sexual sin of substantial magnitude, and it is such a great threat to his ministry and this church - putting the board of senior elders in legal-lawsuit jeopardy personally and putting our whole church on the line," or words to that effect.

5. Any and all letters advising any member of the church eldership that the church's by-laws may be illegal under Washington State law and/or that any member of the church eldership could be held personally liable if they took no action against a member of the pastoral staff who used his church position to take sexual advantage of people.

6. All material of any sort tending to support the statement reported in the Seattle Post-Intelligencer on March 6, 1988, attributed to JACK HICKS that "Once they're willing to see the information we have, it's difficult for me to see how a person with integrity could support that kind of conduct in the name of Christ," or words to that effect.

7. All materials of any sort relating to physical contact between DONALD LEE BARNETT and females which tends to support the decision of the church's eldership to remove DONALD LEE BARNETT as pastor of the Community Chapel.

8. All materials of any sort relating to physical contact between DONALD LEE BARNETT and females which tends to support the church eldership's decision to seek to have DONALD LEE BARNETT banned from church property.

9. Any and all records of any testimony heard by any elder from any witness tending to corroborate any and all allegations of sexual misconduct or physical contact on the part of DONALD LEE BARNETT.

10. Copies of any letter distributed in any fashion to DONALD LEE BARNETT and/or any chapel member including any material relating in any way to any knowledge that the chapel eldership might have had that DONALD LEE BARNETT was involved in "numerous adulterous relationships with women in the church," as reported in the Seattle Post-Intelligencer on March 7, 1988.

11. All material tending to show that DONALD LEE BARNETT has a drug dependency.

12. All material of any form whatsoever tending to support the allegations made by the eldership of the Community Chapel that DONALD L. BARNETT:

A. Has coerced women and threatened to banish them from the church unless they lied about their sexual involvement with him to church counselors, elders, and the courts;

B. Has lied in the past and present to church counselors, the elders and the congregation about the number of women he has been involved with and the extent of the involvements.

13. All materials of any form whatsoever evidencing the elderships' attempts to counsel DONALD LEE BARNETT about his sexual conduct.

14. All material of any form whatsoever relating in any way to the hiring, termination, performance or compensation of Jack McDonald.

15. All materials pertaining to sexual activity between any church employee, elder, deacon, director or officer and any past member of the church.

COPY RECEIVED
APR 14 1988

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

RUSH, HANNULA & HARKINS

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
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Plaintiff,

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IRA GABRIELSON, et al.,

Defendants.

No. 88-2-00947-9

J.V. APR 14 1988

NOTICE OF DEPOSITION
UPON ORAL EXAMINATION

CLERK'S OFFICE

A.M. APR 14 1988 P.M.

PIERCE COUNTY WASHINGTON
TED RUSH COUNTY CLERK
DEPUTY

TO: Defendants
and to: All Counsel of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the testimony of

Jack Hicks will be taken upon

Oral Examination at the instance and request of the plaintiff in the
above-entitled and numbered action, before a Notary Public, at 2250 Century Square Building
Seattle, Washington, on Monday the 2nd day of May 1988
commencing at the hour of 9:00 o'clock a.m.; the said Oral Examination to be
subject to continuance or adjournment from time to time or place until completed, and to be taken on
the ground and for the reason the said witness will give evidence material to the establishment of the
plaintiff's case.

DATED this 11th day of April 1988

LANE, POWELL, MOSS & MILLER

Office, Post Office Address and
Telephone of Attorneys Issuing Notice:

LANE, POWELL, MOSS & MILLER
3800 Rainier Bank Tower
Seattle, Washington 98101-2647
(206) 223-7000

by Bruce Winchell
Bruce Winchell
Attorneys for Plaintiff

COPY RECEIVED
APR 14 1988

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY, WASH. LA & HARKINS

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

Plaintiff,

v.

IRA GABRIELSON, et al.,

Defendants.

No. 88-2-00947-9
**NOTICE OF DEPOSITION
UPON ORAL EXAMINATION**
FILED
IN COUNTY CLERK'S OFFICE

A.M. APR 14 1988 P.M.

PIERCE COUNTY CLERK
TED RUIT COUNTY CLERK
DEPUTY

TO: Defendants
and to: All Counsel of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the testimony of

Donald Lee Barnett will be taken upon

Oral Examination at the instance and request of the plaintiff in the
above-entitled and numbered action, before a Notary Public, at 2250 Century Square Building
Seattle, Washington, on Thursday the 21st day of April 1988
commencing at the hour of 9:00 o'clock a.m.; the said Oral Examination to be
subject to continuance or adjournment from time to time or place until completed, and to be taken on
the ground and for the reason the said witness will give evidence material to the establishment of the
plaintiff's case.

DATED this 11th day of April, 1988

LANE, POWELL, MOSS & MILLER

Office, Post Office Address and
Telephone of Attorneys Issuing Notice:

LANE, POWELL, MOSS & MILLER
3800 Rainier Bank Tower
Seattle, Washington 98101-2647
(206) 223-7000

by Bruce Winchell
Bruce Winchell
Attorneys for Plaintiff

COPY RECEIVED

APR 14 1988

RUSH, HANNULA & HARKINS

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

Plaintiff,

v.

IRA GABRIELSON, et al.,

Defendants.

FILED
No. 88-2-00947 COUNTY CLERK'S OFFICE

NOTICE OF DEPOSITION APR 14 1988 P.M.
UPON ORAL EXAMINATION

PIERCE COUNTY WASHINGTON
TED RUTT COUNTY CLERK
DEPUTY

TO: Defendants

and to: All Counsel of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the testimony of

E. Scott Hartley will be taken upon

APR 14 1988

Oral Examination at the instance and request of the plaintiff in the
above-entitled and numbered action, before a Notary Public, at 2250 Century Square Building
Seattle, Washington, on Thursday the 28th day of April 1988
commencing at the hour of 9:00 o'clock a.m.; the said Oral Examination to be
subject to continuance or adjournment from time to time or place until completed, and to be taken on
the ground and for the reason the said witness will give evidence material to the establishment of the
plaintiff's case.

DATED this 11th day of April 1988

LANE, POWELL, MOSS & MILLER

Office, Post Office Address and
Telephone of Attorneys Issuing Notice:

LANE, POWELL, MOSS & MILLER
3800 Rainier Bank Tower
Seattle, Washington 98101-2647
(206) 223-7000

by Bruce Winchell
Bruce Winchell
Attorneys for Plaintiff

NOTICE OF DEPOSITION
UPON ORAL EXAMINATION

COPY RECEIVED

APR 14 1988

RUSH, HANNULA & HARKINS

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a

Plaintiff,

v.

IRA GABRIELSON, et al.,

Defendants.

No. 88-2-00947-9

FILED
NOTICE OF DEPOSITION COUNTY CLERK'S OFFICE
UPON ORAL EXAMINATION

A.M. **APR 14 1988** P.M.

PIERCE COUNTY WASHINGTON
TED RUFF COUNTY CLERK

BY _____ DEPUTY

TO: Defendants

and to: All Counsel of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the testimony of

Daniel Hannula

will be taken upon

I.V. APR 14 1988

Oral Examination at the instance and request of the plaintiff in the

above-entitled and numbered action, before a Notary Public, at 2250 Century Square Bldg.

Seattle, Washington, on Monday the 25th day of April 1988

commencing at the hour of 4:30 o'clock p.m.; the said Oral Examination to be

subject to continuance or adjournment from time to time or place until completed, and to be taken on

the ground and for the reason the said witness will give evidence material to the establishment of the

plaintiff's case.

DATED this 13th day of April, 1988.

LANE, POWELL, MOSS & MILLER

Office, Post Office Address and
Telephone of Attorneys Issuing Notice:

LANE, POWELL, MOSS & MILLER
3800 Rainier Bank Tower
Seattle, Washington 98101-2647
(206) 223-7000

by Bruce Winchell
Bruce Winchell
Attorneys for Plaintiff

NOTICE OF DEPOSITION
UPON ORAL EXAMINATION

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

Plaintiff,

v.

IRA GABRIELSON, et al.,
Defendants.

No. 88-2-00947-9

SUBPOENA DUCES TECUM

THE STATE OF WASHINGTON, to: Daniel Hannula

YOU ARE HEREBY COMMANDED to be and appear at the offices of
LANE POWELL MOSS & MILLER, 2250 Century Square Building,

Seattle, Washington, on Monday, the 25th day of April,

19 88, commencing at the hour of 4:30 o'clock p.m., on said day, then and there

to testify as a witness at the request of plaintiff

in the above-entitled cause, and to remain in attendance upon the undersigned until discharged. AND

YOU ARE FURTHER COMMANDED to bring with you at said time and place the

See Attachment "A"

FILED J.V. APR 14 1988
IN COUNTY CLERK'S OFFICE
A.M. APR 14 1988 P.M.
PIERCE COUNTY WASHINGTON
TED RUTT COUNTY CLERK
BY [Signature] DEPUTY

HEREIN FAIL NOT AT YOUR PERIL

WITNESS my hand this 13th day of April, 1988.

Office, Post Office Address and Telephone of
Attorneys Issuing Subpoena:

Bruce Winchell
LANE POWELL MOSS & MILLER
3800 Rainier Bank Tower
Seattle, WA. 98101
(206)223-7000

[Signature]
By: Bruce Winchell
Attorneys for Plaintiff

ATTACHMENT "A"

All documents in the possession of the law firm of Rush, Hannula & Harkins which have been obtained in connection with the lawsuit of Gabrielson v. McDonald, et al., Pierce County Cause No. 86-2-02792-6.

The term "document" means all written or recorded materials, including but not limited to, correspondence, pleadings, deposition transcripts, documents produced by parties, documents obtained by subpoena, notes and all other non-privileged materials commonly found within legal files.

The term "document" excludes:

1. Confidential Attorney-Client Communications
2. The recorded mental impressions of attorneys Rush, Hannula & Harkins.

Please identify documents which are withheld under a claim of privilege as to date, author, recipient and nature of privilege.

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

Plaintiff,

v.

IRA GABRIELSON, et al.,

Defendants.

No. 88-2-00947-9

SUBPOENA DUCES TECUM

THE STATE OF WASHINGTON, to: Jack H. DuBois
2459 S.W. 150th
Seattle, WA.

APR 14 1988

YOU ARE HEREBY COMMANDED to be and appear at the offices of
LANE POWELL MOSS & MILLER, 2250 Century Square Building,

Seattle, Washington, on Tuesday, the 26th day of April,
19 88, commencing at the hour of 9:00 o'clock a.m., on said day, then and there
to testify as a witness at the request of plaintiff

in the above-entitled cause, and to remain in attendance upon the undersigned until discharged. AND
YOU ARE FURTHER COMMANDED to bring with you at said time and place the
items listed on Attachment "A" hereto.

FILED
IN COUNTY CLERK'S OFFICE

A.M. **APR 14 1988** P.M.

PIERCE COUNTY WASHINGTON
TER RUTT COUNTY CLERK

BY [Signature] DEPUTY

HEREIN FAIL NOT AT YOUR PERIL

WITNESS my hand this 11th day of April, 1988.

Office, Post Office Address and Telephone of
Attorneys Issuing Subpoena:

Bruce Winchell
LANE POWELL MOSS & MILLER
3800 Rainier Bank Tower
Seattle, WA. 98101
(206) 223-7000

[Signature]
By: Bruce Winchell
Attorneys for Plaintiff

ATTACHMENT "A"

1. All statements in any form, notes of conversations, and any written material in any form whatsoever relating to all allegations by females of conduct involving physical contact between DONALD LEE BARNETT and any such female.

2. All material of any form whatsoever supporting allegations of sexual misconduct and/or physical contact between DONALD LEE BARNETT and any of his supposed or alleged or claimed spiritual connections.

3. All material of any kind supporting the decision of the COMMUNITY CHAPEL to forbid DONALD L. BARNETT to be alone with any woman not his wife.

4. All material supporting or tending to support a statement reported in the Seattle Post-Intelligencer on March 4, 1988, attributed to LANNY PETERSON that DONALD LEE BARNETT "has been in sexual sin of substantial magnitude, and it is such a great threat to his ministry and this church - putting the board of senior elders in legal-lawsuit jeopardy personally and putting our whole church on the line," or words to that effect.

5. Any and all letters advising any member of the church eldership that the church's by-laws may be illegal under Washington State law and/or that any member of the church eldership could be held personally liable if they took no action against a member of the pastoral staff who used his church position to take sexual advantage of people.

6. All material of any sort tending to support the statement reported in the Seattle Post-Intelligencer on March 6, 1988, attributed to JACK HICKS that "Once they're willing to see the information we have, it's difficult for me to see how a person with integrity could support that kind of conduct in the name of Christ," or words to that effect.

7. All materials of any sort relating to physical contact between DONALD LEE BARNETT and females which tends to support the decision of the church's eldership to remove DONALD LEE BARNETT as pastor of the Community Chapel.

8. All materials of any sort relating to physical contact between DONALD LEE BARNETT and females which tends to support the church eldership's decision to seek to have DONALD LEE BARNETT banned from church property.

9. Any and all records of any testimony heard by any elder from any witness tending to corroborate any and all allegations of sexual misconduct or physical contact on the part of DONALD LEE BARNETT.

10. Copies of any letter distributed in any fashion to DONALD LEE BARNETT and/or any chapel member including any material relating in any way to any knowledge that the chapel eldership might have had that DONALD LEE BARNETT was involved in "numerous adulterous relationships with women in the church," as reported in the Seattle Post-Intelligencer on March 7, 1988.

11. All material tending to show that DONALD LEE BARNETT has a drug dependency.

12. All material of any form whatsoever tending to support the allegations made by the eldership of the Community Chapel that DONALD L. BARNETT:

A. Has coerced women and threatened to banish them from the church unless they lied about their sexual involvement with him to church counselors, elders, and the courts;

B. Has lied in the past and present to church counselors, the elders and the congregation about the number of women he has been involved with and the extent of the involvements.

13. All materials of any form whatsoever evidencing the elderships' attempts to counsel DONALD LEE BARNETT about his sexual conduct.

14. All material of any form whatsoever relating in any way to the hiring, termination, performance or compensation of Jack McDonald.

15. All materials pertaining to sexual activity between any church employee, elder, deacon, director or officer and any past member of the church.

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FILED
IN: COUNTY CLERK'S OFFICE
A.M. **APR 19 1988** P.M. C.R. **APR 19 1988**
PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

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

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

No. 88-2-00947-9
SECOND SUPPLEMENTAL
AFFIDAVIT OF BRUCE WINCHELL

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

- 1. My name is Bruce Winchell.
- 2. As a result of discussions with all counsel, the issue
before the court on American's Motion to Compel has been

SECOND SUPPLEMENTAL AFFIDAVIT
OF BRUCE WINCHELL - 1
OIS:0049p

Mh

1 substantially narrowed. David Andersen, on behalf of Community
 2 Chapel, has produced the transcripts of all depositions which
 3 have been ordered with the exception of the deposition of
 4 Donald Barnett. Mr. Andersen has also agreed to obtain and
 5 provide copies of all other deposition transcripts which are
 6 ordered in the Gabrielson case. The parties have agreed to
 7 reserve all other discovery matters except the question of the
 8 Barnett deposition, until the conclusion of the underlying
 9 action. American has agreed to engage in no discovery other
 10 than to obtain those depositions, except to depose Barnett if
 11 his deposition transcript is not provided to American.

12 3. Thus, the only matter before the court is the
 13 deposition of Donald Barnett. I am told that he has testified
 14 for 5-1/5 days in the underlying action. Because the insured's
 15 expectations and notice to the insured are critical coverage
 16 issues, it is anticipated that most of that deposition will be
 17 relevant. American has agreed that it will not disseminate the
 18 deposition if it is produced. Further, American has agreed
 19 that it will make no use of the deposition without first
 20 providing five days' written notice to all parties, indicating
 21 specifically, the particular excerpts to be attached to any
 22 pleading.

23 4. American respectfully requests that this court permit

24 / / / /
 25

26

1 it to obtain a copy of Barnett's deposition with an appropriate
2 protective order.

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Bruce Winchell
Bruce Winchell

SUBSCRIBED AND SWORN to before me this 19th day of April,
1988.

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

My appointment expires:
2/1/90

4/18 4:18
 53200 8802/12/18 15191
 COPY RECEIVED
 APR 18 1988
 PIERCE COUNTY CLERK'S OFFICE
 RUSH, HANNULA & HARKINS P.N.
 A.M. APR 18 1988
 PIERCE COUNTY WASHINGTON
 TED RUTVIG COUNTY CLERK
 DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiff,)

v.)

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

Defendants.)

No. 88-2-00947-9

DEFENDANTS BARNETTS'
 SUPPLEMENTAL BRIEF
 AND AFFIDAVIT IN
 OPPOSITION TO MOTION
 TO COMPEL DISCOVERY

C.R. APR 18 1988

Comes now defendants, Don and Barbara Barnett, through their undersigned counsel submit this supplemental brief in opposition to plaintiff's motion to compel discovery and in support of defendant's request for a protective order suspending discovery in this matter.

I. FACTS AND PROCEDURE

This declaratory action was brought by American Casualty Company to determine the availability of coverage for claims made in Pierce County Cause number, 86-2-02792-6, against the Community Chapel and Bible Training Center, Don and Barbara Barnett, and others. American Casualty Company is defending the Community Chapel and the Barnetts under a reservation of rights. The underlying action is currently pending and is presently set for trial on May 18, 1988.

On December 16, 1987, an order sealing the deposition of Donald Barnett was entered in Pierce County Cause number Cause

SUPPLEMENTAL
 BRIEF : 1
 15004857.80W

Evans, Craven & Larkie, P.C.
 LAWYERS

34th FLOOR COLUMBIA CENTER, 701 - 5th AVENUE
 SEATTLE WASHINGTON 98104

(206) 386-5555

1 number 86-2-02792-6. It is ordered therein that the deposition
2 may be opened only by order of the court.

3 On January 29, 1988, American Casualty Company moved to
4 intervene in the underlying action for the purpose of
5 participating in discovery, submitting special interrogatories to
6 the jury upon coverage issues, and obtaining access to the
7 deposition to Donald Barnett. Defendants contested that motion
8 on the basis that such intervention was contrary to the enhanced
9 obligation of good faith which American Casualty Company owes to
10 those parties it is defending under a reservation of rights.
11 Defendants argued that any attempt by American Casualty to
12 establish coverage issues contrary to the interests of its
13 insured would also entail establishing factual issues which were
14 contrary to the interests of its insured in defending against
15 liability.

16 The motion of American Casualty was denied. In an order
17 entered on March 16, 1988 denial was made without prejudice upon
18 the ability of American Casualty to move for disclosure of the
19 deposition of Donald Barnett in this declaratory action.

20 On March 2, 1988, American Casualty served broad discovery
21 requests upon the Community Chapel and Bible Training Center for
22 disclosure of materials relating to allegations made in the
23 complaint in the underlying action currently pending in Pierce
24 County Cause number 86-2-02792-6. On March 25, 1988, American
25 Casualty served almost identical discovery requests upon the
26 Barnetts.

27 Plaintiff has brought this present motion to compel against
28 the Community Chapel upon the March 2, 1988 discovery requests.
29 Plaintiff's materials in support of its motion indicate that one
30 of the items it seeks is the sealed deposition of Donald Barnett.

31 SUPPLEMENTAL
32 BRIEF : 2
15004857.80W

Evans, Craven & Luckie, P.S.

LAWYERS

34th FLOOR COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE WASHINGTON 98104

(206) 386-5555

1 However, no motion has been brought before this court to unseal
2 the deposition or condition the order sealing the deposition.

3 II. LAW AND ARGUMENT

4 A. Barnett deposition

5 Presently, the deposition of Don Barnett is sealed. Neither
6 counsel for the Barnetts, the church, nor the Gabrielsons may
7 disclose its contents. American Casualty's last attempt to gain
8 access to this deposition was denied without prejudice allowing
9 it to move for disclosure in this action.

10 Plaintiff has failed to bring such a motion. Rather,
11 plaintiff has asked this court to compel discovery of this
12 protected material. Consequently, the form of plaintiff's
13 present attempt to gain access is defective. The March 16 order
14 entered in cause number, 86-2-02792-6, does not give American
15 Casualty any right to the material it seeks. It gives American
16 Casualty only the right to bring a later motion in this court
17 upon the protective order sealing the deposition.

18 Plaintiff has moved to compel discovery. Discovery may not
19 be made of materials which are privileged. CR 26(b)(1).
20 Presently, the deposition of Don Barnett is privileged by order
21 of the court in Pierce County Cause number, 86-2-02792-6. Until
22 such time as that order is properly conditioned or removed,
23 discovery may not be made of that material.

24 1. No right to material

25 The court order in Pierce County Cause number, 86-2-02792-6,
26 does not grant American Casualty a right to the deposition of Don
27 Barnett. It simply denies American Casualty's last attempt to
28 gain access without prejudice.

29 As the U.S. Supreme Court wrote in Seattle Times Co. v.

30
31 SUPPLEMENTAL
32 BRIEF : 3
15004857.80W

Evans, Craven & Luckie, P.S.

LAWYERS

34th FLOOR COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE WASHINGTON 98104

(206) 386-5555

1 Rhinehart, 467 U.S. 20, 32-33, 104 S.Ct. 2199, 2207-2208, 81
2 L.Ed.2d 17 (1984):

3 Moreover, pretrial depositions and
4 interrogatories are not public components of
5 a civil trial. Such proceedings were not
6 open to the public at common law,..., and, in
7 general, they are conducted in private as a
8 matter of modern practice.... Much of the
9 information that surfaces during pretrial
10 discovery may be unrelated, or only
11 tangentially related, to the underlying cause
12 of action. Therefore, restraints placed on
13 discovered, but not yet admitted, information
14 are not a restriction on a traditionally
15 public source of information. (citations
16 omitted).

17 In the underlying action, broad access was permitted to counsel
18 for the Gabrielsons to inquire into the private sex life of Don
19 Barnett. Much of this information went far beyond the bounds of
20 claims made against the Barnetts or other defendants in that
21 action. At this time, there has been no trial of that matter.
22 Consequently, it is not clear to what extent information
23 contained in Don Barnett's deposition will be admitted as
24 evidence upon claims made in that action.

25 American Casualty may discover only relevant information in
26 this action. Until the underlying action is resolved, the only
27 issues presently before this court are upon the duty to defend.
28 See, Western National Assur. v. Hecker, 43 Wn.App. 816, 820-821,
29 719 P.2d 954 (Div. II, 1986). The only information which is
30 relevant upon this issue is the Complaint filed in the underlying
31 action. "... [T]he duty to defend hinges not on the insured's
32 potential liability to the claimant, but rather on whether the
complaint contains any factual allegations rendering the insurer
liable to the insured under the policy." State Farm Insurance v.

SUPPLEMENTAL
BRIEF : 4
15004857.80W

Evans, Craven & Lackie, P.C.

LAWYERS

34th FLOOR COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE WASHINGTON 98104

(206) 386-5555

1 Emerson, 102 Wn.2d 477, 486, 687 P.2d 1139 (1984). None of the
 2 information contained within the deposition of Don Barnett bear
 3 any relevance to this issue. None of the information contained
 4 therein changes the face of the Gabrielson complaint.

5 The duty of American Casualty to pay, depends upon
 6 resolution of the underlying action. See, Western National
 7 Assur. v. Hecker, 43 Wn.App. 816, 820-821, 719 P.2d 954 (Div. II,
 8 1986). Until this underlying action is resolved, this court has
 9 no basis to determine the relevancy, if any, of information
 10 contained within the deposition of Don Barnett.

11 B. Supplemental Support for Protective Order

12 Defendants have objected to plaintiff's motion to compel,
 13 and have additionally requested that this court grant a
 14 protective order as empowered by CR 26 (c) through CR 37 (a)(2)
 15 prohibiting further discovery in this matter until the underlying
 16 action is resolved. As more fully explained in Defendant
 17 Barnetts' Brief in Opposition to Motion to Compel and for
 18 Protective Order filed herein on April 14, 1988, any information
 19 obtained through discovery would not be relevant upon the duty to
 20 defend, and issues upon the duty to pay are not properly before
 21 this court. Defendants offer this supplemental support for their
 22 request for a protective order.

23 1. Enhanced Obligation of Good Faith

24 American Casualty is presently defending the Barnetts under
 25 a reservation of rights. An insurance company defending under
 26 reservation of rights owes an enhanced obligation of good faith
 27 to its insured. In fulfilling the obligations imposed by
 28 defending in such a manner, an insurance company must meet a
 29 specific criteria. One part of this criteria is that "...an
 30 insurance company must refrain from engaging in any action which

31 SUPPLEMENTAL
 BRIEF : 5
 32 15004857.80W

Evans, Craven & Luckie, P.S.

LAWYERS

34th FLOOR COLUMBIA CENTER, 701 - 5th AVENUE
 SEATTLE WASHINGTON 98104

(206) 386-5555

1 would demonstrate a greater concern for the insurer's monetary
 2 interest than for the insured's financial risk." Tank v. State
 3 Farm, 105 Wn 2d 381, 388, 715 P.2d 1133 (1986).

4 American Casualty's attempt to push discovery in this matter
 5 prior to trial in the underlying action is a direct violation of
 6 this duty. On April 14, 1988, counsel for the Barnetts received
 7 Seven different notices of depositions which are all scheduled
 8 prior to trial in the underlying action. These notices range
 9 from the depositions of Don Barnett and Jack McDonald, which have
 10 been completed in the underlying action, to the deposition of the
 11 Gabrielson's attorney, Dan Hannula. In American Casualty's rush
 12 to have coverage issues determined, it has given counsel for the
 13 Gabrielsons a second opportunity to depose Don Barnett and Jack
 14 McDonald prior to trial in the underlying action. In short, many
 15 of the issues which American Casualty seeks to establish to
 16 defeat coverage, such as intent on the part of its insured, are
 17 contrary to defense of the underlying action. At the same time
 18 that American Casualty has undertaken to defend its insured
 19 against the claims of the Gabrielsons in the underlying action,
 20 it seeks to try the Gabrielson's case for them in this action.

21 There can be no reason for the course of action taken by
 22 American Casualty other than protection of its own financial
 23 interests. Clearly, there is no prejudice to it in awaiting the
 24 outcome of the underlying action. In Wear v. Farmers Insurance
 25 Co., 49 Wn. App. 655, 745 P.2d 526 (Div. II, 1987), the Court of
 26 Appeals for this division held that an insurance company would
 27 not be bound by determinations adverse to its interests that are
 28 made in an underlying action in which the insurer is defending
 29 under a reservation of rights. However, there is no indication
 30 that the converse holds true. If American Casualty is allowed to

31 SUPPLEMENTAL
 32 BRIEF : 6
 15004857.80W

Evans, Craven & Luckie, P.S.

LAWYERS

34th FLOOR COLUMBIA CENTER, 701 - 5th AVENUE
 SEATTLE WASHINGTON 98104

(206) 386-5555

1 try the Gabrielson's case for them in this action, there is the
 2 likelihood that such determinations could be used against
 3 American Casualty's insured in the underlying action.

4 III. CONCLUSION

5 American Casualty has made broad discovery requests for
 6 materials which are not relevant to issues presently pending
 7 before this court. Included within these the discovery requests
 8 are materials relating to the cause of action brought by Ira And
 9 Carol Gabrielson which are not relevant to the duty of American
 10 Casualty to defend upon the underlying action. Also included
 11 within the materials sought is the sealed deposition of Don
 12 Barnett which contains many materials which are private and not
 13 relevant to this action. Further, the present attempt of
 14 American Casualty to compel disclosure of this deposition is
 15 procedurally improper.

16 Plaintiff's maintenance of the present action, and attempts
 17 to gain discovery materials and a determination of issues adverse
 18 to its insured prior to resolution of the underlying action are
 19 in direct contravention of the enhanced obligation of good faith
 20 which it owes by conducting a reservation of rights defense. No
 21 prejudice will result to American Casualty by waiting until
 22 resolution of the underlying action which is scheduled for trial
 23 less than a month away. However, the course of action presently
 24 employed by American Casualty runs a great risk of causing
 25 prejudice to defense of its insured in the underlying action.

26 Therefore, defendants respectfully ask that the motion of
 27 American Casualty to compel discovery be denied and this court
 28 enter a protective order prohibiting further discovery in this
 29 action until after resolution of Pierce County cause number 86-2-
 30 -02792-6.

31 SUPPLEMENTAL
 32 BRIEF : 7
 15004857.80W

Evans, Craven & Luckie, P.S.

LAWYERS

34th FLOOR COLUMBIA CENTER, 701 - 5th AVENUE
 SEATTLE WASHINGTON 98104

(206) 386-5555

Submitted this 18th day of April, 1988.

EVANS CRAVEN & LACKIE, P.S.

By Tim Donaldson
TIM DONALDSON
Attorneys for Defendants Barnett

STATE OF WASHINGTON)
County of King) ss.

Tim Donaldson being first duly sworn upon oath deposes and says:

I am an attorney with Evans, Craven & Lackie, P.S.

My firm, Evans, Craven & Lackie, P.S. represents Don and Barbara Barnett in the above entitled action;

My firm, Evans, Craven & Lackie, P.S., also represents Don and Barbara Barnett in an action brought in this court by Ira and Carol Gabrielson against my clients and others cause number 86-2-02792-6 which is currently pending before the Honorable D. Gary Steiner which is the basis for this declaratory action upon insurance coverage which may be available for claims made in the Gabrielson action;

This underlying action to the present declaratory action is scheduled for trial on May 18, 1988;

On March 25, 1988 my office was served with a notice and motion to compel discovery against the Community Chapel and Bible Training Center to be heard on April 1, 1988;

On March 25, 1988 my office also received notice of the deposition of Don Barnett to be taken on April 20 and April 21, 1988;

SUPPLEMENTAL
BRIEF : 8
15004857.80W

Evans, Craven & Lackie, P.S.

LAWYERS

34th FLOOR COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE WASHINGTON 98104

(206) 386-5555

1 On March 25, 1988 my office also received notice of the
2 deposition of Jack McDonald to take place on April 18, 1988;

3 On March 25, 1988 my office also received copies of
4 plaintiff's second discovery requests propounded to the Community
5 Chapel and Bible Training Center and Plaintiff's first discovery
6 requests propounded to the Barnetts;

7 On March 29, 1988, I personally called plaintiff's attorney,
8 Bruce Winchell, and asked for a continuance of plaintiff's motion
9 to compel discovery and a suspension of other discovery;

10 Mr. Winchell declined my request and informed me that his
11 client could not continue the motion or discovery, because it
12 wished to resolve this matter prior to May 18, 1988;

13 Mr. Winchell also informed me of his client's motion for
14 summary judgment to be heard on April 15, 1988;

15 On March 30, 1988, my office received notice that the
16 hearing upon American Casualty's motion to compel was continued
17 until April 15, 1988 at request of the court;

18 On April 14, 1988, my office received amended notice of the
19 deposition of Don Barnett, scheduling said deposition on April
20 21, 1988;

21 On April 14, 1988, my office also received amended notice of
22 the deposition of Jack McDonald, scheduling said deposition on
23 April 27, 1988;

24 On April 14, 1988, my office received notice of the
25 depositions of Daniel Hannula, Jack H. Dubois, E. Scott Hartley,
26 Jack Hicks, and Wayne Snoey scheduled for April 25, April 26,
27 April 28, May 2, and May 3 respectively;

28 On April 15, 1988, Mr. Winchell asked that the deposition of
29 Don Barnett be rescheduled pending American Casualty successfully
30 compelling discovery of the sealed deposition of Don Barnett to

31 SUPPLEMENTAL
32 BRIEF : 9
15004857.80W

Evans, Craven & Lackie, P.C.

LAWYERS

34th FLOOR COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE WASHINGTON 98104

(206) 386-5555

1 permit counsel for American Casualty a better opportunity to
2 prepare for the deposition of Don Barnett in this action and
3 review the sealed deposition of Don Barnett taken in the
4 underlying action;

5 That further your affiant sayeth not.
6

7
8 Tom Donaldson

9
10 Subscribed and sworn before me this 18th day of March, 1988.

11
12 Susan McWhirter
13 Notary Public for the State of Washington
14 residing at Freeland.
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30
31 SUPPLEMENTAL
32 BRIEF : 10
15004857.80W

Evans, Craven & Luckie, P.C.

LAWYERS

34th FLOOR COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE WASHINGTON 98104

(206) 386-5555

In the SUPERIOR for PIERCE Co. State of Wash. No. 88 2 00947 9

AFFIDAVIT OF SERVICE OF

AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA, a Pennsylvania corporation,

vs.

Plaintiff

IRA GARBIELSON, et al.,

Defendant

Garnishee Defendant

State of Washington

County of King

ss.

C.R. APR 19 1988 FILED

WITNESS FEE CHECK; SUBPOENA DUCES TECUM/DEPOSITION 4/25/88 at 4:30 PM

PIERCE COUNTY CLERK TED RUTLAND DEPUTY

The writ served was accompanied by four answer forms and three postage prepaid envelopes which were pre-addressed to the Clerk of the Court, to the Plaintiff or his attorney, and to the Defendant, and cash or check payable to the garnishee, to the amount of Ten Dollars.

A copy of the summons served 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 4/15/88 at 10:06 AM., at 715 Tacoma Ave. S, Tacoma, Pierce

King County, Washington, affiant duly served the above-described documents in the above-entitled matter upon Daniel Hannula

by then and there personally delivering a true and correct copy thereof to and leaving same with Barbara Brewer, Legal Assistant

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.

Affiant further states that he is informed and believes, and therefore alleges, that neither of said defendants is in the military service of the United States.

TRIPS @ MILES

Subscribed and Sworn to before me 4/18/88

B. Doneigo kdo

SERVICE ATTEMPTED AT:

SALLY A. BRYAN STATE OF WASHINGTON NOTARY PUBLIC My Commission Expires 4-11-92

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

Service Fees 6.00 Travel 4.00 Return Fee 5.00 Cert. Mail Total \$ 15.00

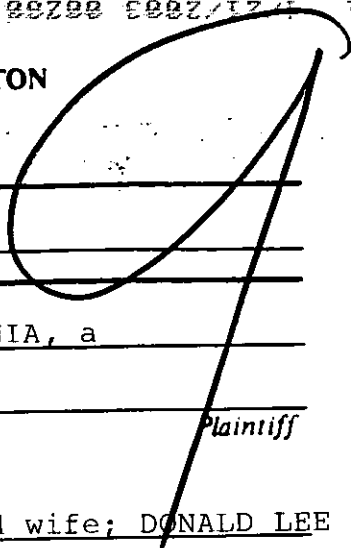
RESIDENCE SERVICE

J.R. MAR 3 0 1988

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

NOTE OF ISSUE

4-15-88
mat



No. 88-2-00947-9

Department ✓

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; et al.,

Defendants

LANE POWELL MOSS & MILLER By Bruce Winchell

Plaintiff's Attorney

Daniel Hannula/Attorney for Gabrielsons; Rodney Hollenbeck/
Attorney for Barnetts; and David Andersen/Attorney for Community
Chapel/Jack and Jane Doe McDonald for themselves

Defendant's Attorney

Nature of Cause Motion for Partial Summary Judgment

Jury Trial - Yes 6 Jurors 12 Jurors

Time required to try Cause 10 days

FILED
IN COUNTY CLERK'S OFFICE
A.M. hours **MAR 30 1988** P.M.
PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK
DEPUTY

ABOVE INFORMATION MUST BE COMPLETED

BY

To the Clerk:

Please place on the Motions (Civil) docket which is to be called on

the 15th day of April 1988

Bruce Winchell
LANE POWELL MOSS & MILLER

By Bruce Winchell

Attorney for Plaintiff American Casualty Company

Due and sufficient service of foregoing acknowledged this _____ day of _____ 19 _____

Attorneys for

Assigned to Department No. _____ this _____ day of _____ 19 _____

COPY RECEIVED

MAR 3 0 1988

RUSH, HANNULA & HARKINS

Docket Clerk

In the SUPERIOR

Court, for PIERCE

County State of Wash. No. 88-2-00947-9

AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA, a Pennsylvania corporation

AFFIDAVIT OF SERVICE OF

vs. Plaintiff

IRA GABRIELSON, et al.,

Defendant

Garnishee Defendant

State of Washington

County of King

ss.

The writ served was accompanied by four answer forms and three postage prepaid envelopes which were pre-addressed to the Clerk of the Court, to the Plaintiff or his attorney, and to the Defendant, and cash or check payable to the garnishee, to the amount of Ten Dollars.

A copy of the summons served 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 4/16/88 at 4:40p M., at 2459 S.W. 150th, Seattle

King County, Washington, affiant duly served the above-described documents in the above-entitled matter upon

Jack H. DuBois

by then and there personally delivering a true and correct copy thereof to and leaving same with

Jack H. DuBois

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.

Affiant further states that he is informed and believes, and therefore alleges, that neither of said defendants is in the military service of the United States.

TRIPS @ MILES

Subscribed and Sworn to before me 4/19/88

C. Legge sk

SERVICE ATTEMPTED AT:

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

Seattle

Service Fees 6.00 Travel 11.00 Return Fee 5.00 Cert. Mail Total \$ 22.00

RESIDENCE SERVICE

Stamp: MN FILED APR 20 1988 DEPT. CLERK'S OFFICE DEPO: 4/26/88 @ 9:00am A.M. APR 20 1988 P.M. PIERCE COUNTY CLERK TED HUTCHINS DEPUTY

AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA, A PENNSYLVANIA CORPORATION,

vs.

IRA GABRIELSON, ET AL.,

Plaintiff

Defendant

Garnishee Defendant

AFFIDAVIT OF SERVICE OF

SUBPOENA DUCES TECUM, WITNESS FEE CHECK, DEPO: 5/2/88 9:00 a.m. IN COUNTY CLERK'S OFFICE

A.M. APR 20 1988 P.M.

PIERCE COUNTY WASHINGTON DEPUTY COUNTY CLERK

DEPUTY

MN

State of Washington

County of King

ss.

The writ served was accompanied by four answer forms and three postage prepaid envelopes which were pre-addressed to the Clerk of the Court, to the Plaintiff or his attorney, and to the Defendant, and cash or check payable to the garnishee, to the amount of Ten Dollars.

A copy of the summons served is attached hereto

The undersigned, being first duly sworn, on oath deposes and says: That he is now and at all times hereinafter 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 4/16/88 at 10:25a M., at 430 South 188th, Seattle

King County, Washington, affiant duly served the above-described documents in the above-entitled matter upon

Jack Hicks

by then and there personally delivering a true and correct copy thereof to and leaving same with

Jack Hicks

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.

Affiant further states that he is informed and believes, and therefore alleges, that neither of said defendants is in the military service of the United States.

TRIPS @ MILES

Subscribed and Sworn to before me 4/19/88

R. Davis

SERVICE ATTEMPTED AT:

Notary Public Signature

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

Service Fees 6.00 Travel 11.00 Return Fee 5.00 Cert. Mail Total \$ 2.00

RESIDENCE SERVICE

4/21/2023 11:12:17

COPY RECEIVED
APR 20 1988

COPY RECEIVED
APR 20 1988

RUSH, HANNULA & MARKINS

GIROLAMI, WOOD & MEYERS
ATTORNEYS AT LAW

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, a
Pennsylvania corporation,

Plaintiff,

v.
IRA GABRIELSON, et al.,

Defendants.

No. 88-2-00947-9

NOTICE OF DEPOSITION
UPON ORAL EXAMINATION
FILED
IN COUNTY CLERK'S OFFICE
A.M. APR 20 1988 P.M.

TO: Defendants
and to: All Counsel of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the testimony of
Donald Barnett will be taken upon

Oral Examination at the instance and request of the plaintiff in the
above-entitled and numbered action, before a Notary Public, at 2250 Century Square Building
Seattle, Washington, on Tuesday and Wednesday the 10th & 11th day of May 1988
commencing at the hour of 9:00 o'clock a.m.; the said Oral Examination to be
subject to continuance or adjournment from time to time or place until completed, and to be taken on
the ground and for the reason the said witness will give evidence material to the establishment of the
plaintiff's case.

DATED this 20th day of April 1988

LANE, POWELL, MOSS & MILLER

Office, Post Office Address and
Telephone of Attorneys Issuing Notice:

LANE, POWELL, MOSS & MILLER
3800 Rainier Bank Tower
Seattle, Washington 98101-2647
(206) 223-7000

by Bruce Winchell
Bruce Winchell
Attorneys for Plaintiff

NOTICE OF DEPOSITION
UPON ORAL EXAMINATION

1 in the Ehrlich case, but none asserted claims specifically against
2 the Alskogs. The Ehrlich case has been consolidated with two other
3 multi-party personal injury cases involving Community Chapel and
4 Bible Training Center under King County Cause Number 86-2-18176-8.
5 This case has been pre-assigned to Judge Little who has issued an
6 extensive order with regard to discovery.

7 American Casualty, the plaintiff herein, has also filed a
8 declaratory judgment action in King County, naming as defendants
9 all parties, plaintiffs and defendants, involved in the King County
10 personnel injury litigation. That case has only recently been
11 filed, and discovery is just commencing.

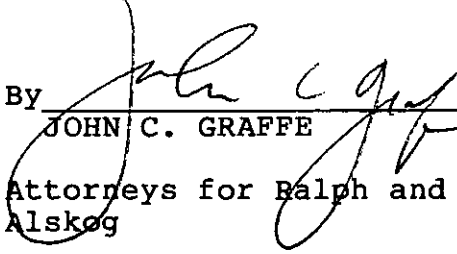
12 Other defendants to this action will file objections to plain-
13 tiff's motion to compel discovery, and the Alskogs concur with
14 these objections. However, it is important to note that plain-
15 tiff's discovery in the Pierce County declaratory judgment action
16 will be undoubtedly be helpful, if not dispositive, of its disco-
17 very attempts in the King County declaratory judgment action. The
18 threat of plaintiff's motion is best shown by reference to two por-
19 tions of the affidavit of Bruce Winchell in support of plaintiff's
20 motion. Specifically, at Page 4, plaintiff states: "American
21 Casualty has filed this declaratory action because it believes its
22 comprehensive general liability policy does not cover judgments or
23 damages arising out of sexual misconduct by those affiliated with
24 the Church". At Page 5, Mr. Winchell states: "At this stage of
25 the declaratory action, American Casualty is seeking to collect all
26

1 documents which are relative to the claims made by Carol Gabrielson
2 and other plaintiffs who have filed lawsuits against Community
3 Chapel".

4 Clearly, it would be manifestly unfair to allow the plaintiff to
5 proceed with discovery against Mr. & Mrs. Alskog which is literally
6 being done "behind their back". Accordingly, it is respectfully
7 submitted that if the court does not deny plaintiff's motion in its
8 entirety, then the court specifically should exclude from discovery
9 all "documents" which identify or pertain in any way to Ralph and
10 Rosemary Alskog. The plaintiff's attempt at discovery of its
11 claims against Ralph and Rosemary Alskog should be guided and
12 controlled by the King County Superior Court, which has jurisdic-
13 tion over the Alskogs.

14 RESPECTFULLY SUBMITTED, this 19 day of April, 1988.

ROSENOW, HALE & JOHNSON

17 By 
18 JOHN C. GRAFFE
19 Attorneys for Ralph and Rosemary
20 Alskog

21 1257G

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AMERICAN CASUALTY COMPANY OF
READING PENNSYLVANIA, A
PENNSYLVANIA CORPORATION vs.

IRA GABRIELSON, ET AL.,

Plaintiff

Defendant

Garnishee Defendant

APR 21 1988
SUBPOENA DUCES TECUM,
WITNESS FEE CHECK, FILED
DEPO: 4/28/88 @ 9:00 AM
IN COUNTY CLERK'S OFFICE
A.M. APR 21 1988 P.M.
PIERCE, FENNER & SMITH
TED RUTT, COUNTY CLERK
DEPUTY

State of Washington

County of King

ss.

The writ served was accompanied by four answer forms and three postage prepaid envelopes which were pre-addressed to the Clerk of the Court, to the Plaintiff or his attorney, and to the Defendant, and cash or check payable to the garnishee, to the amount of Ten Dollars.
 A copy of the summons served 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 4/16/88 at 5:30 P. M., at 1208 South 140th, Seattle, King County, Washington, affiant duly served the above-described documents in the above-entitled matter upon E. Scott Hartley

by then and there personally delivering a true and correct copy thereof to and leaving same with E. Scott Hartley

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 _____

RESIDENCE SERVICE

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

Affiant further states that he is informed and believes, and therefore alleges, that neither of said defendants is in the military service of the United States.

_____ TRIPS @ _____ MILES

Subscribed and Sworn to before me 4/19/88

C. Tegge pg
[Signature]

SERVICE ATTEMPTED AT:

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

Service Fees 6.00 Travel 11.00 Return Fee 5.00 Cert. Mail 0.00 Total \$ 22.00

COPY RECEIVED

MAY 16 1988

RUSH, HANNULA & HARKINS

COPY RECEIVED

MAY 17 1988

GIROLAMI, WOOD & MEYERS
ATTORNEYS AT LAW

FILED
IN COUNTY CLERK'S OFFICE

A.M. **MAY 17 1988** P.M.

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

PIERCE COUNTY CLERK
TED RUTTI
DEPUTY

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

Plaintiff,)

v.)

IRA GABRIELSON and CAROL)
GABRIELSON, husband and wife;)
DONALD LEE BARNETT and)
BARBARA BARNETT, husband and)
wife; COMMUNITY CHAPEL and)
BIBLE TRAINING CENTER, a)
Washington corporation, JACK)
McDONALD and "JANE DOE")
McDONALD, husband and wife,)

Defendants.)

No. 88-2-00947-9

NOTICE OF DEPOSITION
UPON ORAL EXAMINATION

J.V. MAY 17 1988

TO: Defendants above-named and all counsel of record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the
continuation of the deposition testimony of Donald Lee Barnett,
will be taken upon oral examination at the instance and request
of the plaintiff in the above-entitled and numbered action,

/ / / /

/ / / /

NOTICE OF DEPOSITION
UPON ORAL EXAMINATION - 1
OIS:0121p

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

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1 before a Notary Public, at the offices of LANE POWELL MOSS &
2 MILLER, 2250 Century Square Building, Seattle, Washington, on
3 Tuesday, the 31st day of May, 1988, at 9:00 a.m.; the said oral
4 examination to be subject to continuance or adjournment from
5 time to time or place until completed, and to be taken on the
6 ground and for the reason the said witness will give evidence
7 material to the establishment of the plaintiff's case.

8 DATED this 16th day of May, 1988.

9 LANE POWELL MOSS & MILLER

10 By Bruce Winchell
11 Bruce Winchell
12 Of Attorneys for Plaintiff
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FILED
DEPT. 9
IN OPEN COURT

JUN - 6 1988

Pierce County Clerk
By _____
DEPUTY

FILED JUN 3 1988
IN COUNTY CLERK'S OFFICE 3 1988
A.M. JUN 3 1988 P.M.
PIERCE COUNTY WASHINGTON
TED RUTT COUNTY CLERK
BY _____ DEPUTY
MN
JUN 03 1988

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

VOL 329 PAGE 256

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

No. 88-2-00947-9
ORDER ON MOTION TO COMPEL

The court has heard the motion of plaintiff American Casualty Company of Reading Pennsylvania (American) to compel discovery.

The court has considered the following pleadings submitted by plaintiff:

Motion to Compel Discovery, Supplemental Affidavit of Bruce Winchell in Support of Motion to Compel Discovery and Second Supplemental Affidavit of Bruce Winchell.

1 The court has also considered the following pleadings
2 submitted by defendants:

3
4 Defendants Barnettts' Objection to Motion to Compel and
5 Request for Protective Order, Defendants Barnettts'
6 Brief in Opposition to Motion to Compel and for
7 Protective Order, Defendant Community Chapel's
8 Memorandum in Opposition to Motion to Compel Discovery
9 and Defendants Barnettts' Supplemental Brief and
10 Affidavit in Opposition to Motion to Compel Discovery.

11 The court has heard the oral argument of counsel including
12 counsel for Ralph and Rosemary Alskog. In addition, the court
13 has considered the objection of Ralph and Rosemary Alskog to
14 Plaintiff's Motion to Compel Discovery.

15 The court orders: That for good cause shown, Donald
16 Barnett's deposition taken in Pierce County Cause No.
17 86-2-02792-6 need not be produced; Barnett will be made
18 available for deposition prior to the May 18, 1988 trial in the
19 underlying action; any excerpts from Barnett's deposition taken
20 in Pierce County Cause No. 88-2-00947-9 filed with the court
21 shall be sealed and may be disseminated only to the parties,
22 their attorneys and experts; ^{and} Any depositions of Community
23 Chapel elders taken subsequent to April 20, 1988, in Pierce
24 County Cause No. 86-2-02792-6, and taken in Pierce Cause No.
25 88-2-00947-9, shall not be reproduced, delivered or
26 disseminated in any fashion to any person other than the
parties involved, their attorneys, and their experts, and any

004
TGD
ATD
BW

ORDER ON MOTION
TO COMPEL - 2
OIS:0055p

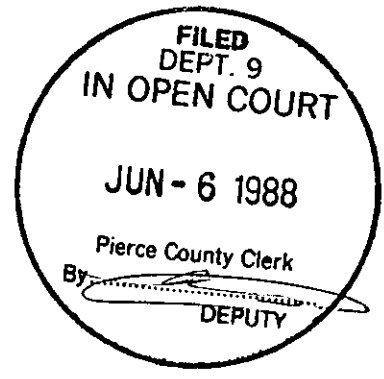
1 excerpts of such depositions shall be sealed if such excerpts
2 are filed with the court.

3 DATED this 6 day of June, 1988.

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6 
JUDGE/COURT COMMISSIONER

7 Presented by:
8 LANE POWELL MOSS & MILLER

9
10 By Bruce Winchell
11 Bruce Winchell
12 Of Attorneys for Plaintiff



13 Approved as to Form; Notice
14 of Presentation Waived:
15 LEACH, BROWN & ANDERSEN

16 By David V. Andersen
17 David V. Andersen
18 Of Attorneys for Defendant
19 Community Chapel & Bible
20 Training Center

21 EVANS, CRAVEN & LACKIE, P.S.
22 By Rodney D. Hollenbeck
23 Rodney D. Hollenbeck
24 Of Attorneys for Defendants
25 Barnett

26 RUSH, HANNULA & HARKINS
By Daniel L. Hannula
Daniel L. Hannula
Of Attorneys for Defendants
Gabrielson

ORDER ON MOTION
TO COMPEL - 3
OIS:0055p

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SK
AUG 10 1988

IN THE SUPERIOR COURT OF WASHINGTON IN AND FOR
PIERCE COUNTY

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

NO. 88-2-00947-9
NOTICE OF WITHDRAWAL
re:
COMMUNITY CHAPEL &
BIBLE TRAINING CENTER

FILED
IN COUNTY CLERK'S OFFICE

A.M. AUG 10 1988 P.M.

PIERCE COUNTY WASHINGTON
TED RUIT COUNTY CLERK
BY _____ DEPUTY

TO: Counsel of Record
TO: E. Scott Hartley, Jack DuBois, and Donald Barnett,
directors of Community Chapel & Bible Training Center
AND TO: The Clerk of the above entitled Court

YOU AND EACH OF YOU please take notice that pursuant to CR
71 the firm of Leach, Brown & Andersen, and the undersigned,
herewith give notice of intent to withdraw as attorneys of record
for Defendant Community Chapel and Bible Training Center, a
Washington non-profit corporation. This withdrawal of counsel
shall be effective without order of the court in this matter, and,
unless an objection to such withdrawal is served upon said firm at
its address indicated below on or before the expiration of said

NOTICE OF WITHDRAWAL
re:
COMMUNITY CHAPEL &
BIBLE TRAINING CENTER - 1

ORIGINAL

LEACH, BROWN & ANDERSEN
ATTORNEYS AT LAW
4040 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104
(206) 583-2714

1 ten days after service of this Notice, will constitute such
2 withdrawal.

3 No trial date has been set.

4 Withdrawing counsel does herewith consent to the
5 substitution of other counsel in its place and stead. Until such
6 substitution, the party indicated below, at its last known address,
7 should be deemed to be representing itself:

8 Community Chapel & Bible Training Center
9 18635 8th Ave. S.
Seattle, WA 98148

10 DATED this 8 day of August, 1988.

11 LEACH, BROWN & ANDERSEN

12 By 

13 David V. Andersen
14 Attorneys for Defendants
15 Community Chapel & Bible
16 Training Center
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24 NOTICE OF WITHDRAWAL
25 re:
COMMUNITY CHAPEL &
BIBLE TRAINING CENTER - 2

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IN THE SUPERIOR COURT OF WASHINGTON IN
PIERCE COUNTY

2s
AUG 10 1988

AMERICAN CASUALTY COMPANY OF)
READY PENNSYLVANIA, a Pennsylvania)
(foreign))
Plaintiffs,)
vs.)
IRA GABRIELSON and CAROL,)
GABRIELSON, et. al.)
Defendants.)

NO. 88-2-00947-9
AFFIDAVIT OF MAILING
AUG 10 1988 P.M.

FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY WASHINGTON
TED RUTT COUNTY CLERK
BY [Signature] DEPUTY

I, Debbie Holden, being first duly sworn, state:

I am a citizen of the United States, over the age of 18 years, not a party to or interested in the within matter and competent to be a witness herein.

That on the 8th day of August, 1988, I deposited in the mails of the United States envelopes addressed and postage first class prepaid, directed to:

E. Scott Hartley	Donald L. Barnett	Jack DuBois
c/o Community Chapel	c/o Community Chapel	c/o Community
& Bible Training Center	& Bible Training	Chapel & Bible
18635 8th Ave. S.	18635 8th Ave. S.	Training Center
Seattle, WA 98148	Seattle, WA 98148	18635 8th Ave S
		Seattle, WA
		98148

which envelope contained Notice of Withdrawal re. Community Chapel & Bible Training Center

Debbie Holden
DEBBIE HOLDEN

SIGNED and SWORN to before me on the 8th day of 1988.

[Signature]
NOTARY PUBLIC in and for
the State of Washington
residing at Seattle
Commission expires: Oct 1, 1990

AFFIDAVIT OF MAILING - 1

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FILED
IN COUNTY CLERK'S OFFICE

2/s
AUG 18 1988

A.M. **AUG 18 1988** P.M.

PIERCE COUNTY, WASHINGTON
TED BUTT, COUNTY CLERK

BY _____ DEPUTY

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

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

NO. 88-2-00947-9

vs.

DEFENDANTS GABRIELSONS'
MOTION FOR SUMMARY JUDGMENT

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

COME NOW the defendants Carol Gabrielson and Ira Gabrielson by and through their attorney of record Daniel L. Hannula of the law firm of Rush, Hannula & Harkins and moves the court for an order granting summary judgment declaring as a matter of law that plaintiff American Casualty Company of Reading, Pennsylvania's policy of insurance insuring the defendant Community Chapel and Bible Training Center

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MOTION FOR SUMMRAY JUDGMENT - 1

ORIGINAL

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provides coverage for the negligent professional services rendered by Jack McDonald in furtherance of the corporation's business activities as a church. This motion is based on Civil Rule 56(b), the affidavit of William R. Hickman, the affidavit of Harold T. Dodge, Jr., and the memorandum in support of this motion for summary judgment.

DATED this _____ day of _____, 1988.

RUSH, HANNULA & HARKINS

BY: 
DANIEL L. HANNULA, OF
Attorneys for Defendants
Gabrielson

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AUG 18 1988

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

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

Plaintiff,)

vs.)

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

Defendants.)

NO. 88-2-00947-9

MEMORANDUM IN SUPPORT OF
DEFENDANTS GABRIELSONS'
MOTION FOR SUMMARY JUDGMENT

FILED
IN COUNTY CLERK'S OFFICE

A.M. **AUG 18 1988** P.M.

PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

FACTS

Carol and Ira Gabrielson, defendants in this declaratory action, are plaintiffs in a separate lawsuit pending in Pierce County under case number 86-2-02792-6 seeking damages against American Casualty Company of Reading, Pennsylvania's (hereafter "American") insureds Jack and "Jane Doe" McDonald, Donald Lee and Barbara Barnett,

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MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT - 1

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ORIGINAL

1 John Does No. 1-4 and Jane Does No. 1-4, Community Chapel
2 and Bible Training Center of Tacoma (hereafter "Tacoma
3 satellite" or "Tacoma branch") and Community Chapel and
4 Bible Training Center (hereinafter "corporate church" or
5 "corporation"). The complaint in Pierce County cause number
6 86-2-02792-6 is included as Exhibit K to the affidavit of
7 Daniel L. Hannula in support of this summary judgment
8 motion. As causes of action against plaintiff's insureds,
9 the Gabrielsons have alleged outrage, counselor malpractice,
10 pastoral malpractice, assault, battery, false imprisonment,
11 defamation, and loss of consortium.

12 As a basis for the above claims, the Gabrielsons assert
13 in their complaint, in par, that Jack McDonald, as pastor of
14 the Tacoma satellite, negligently counseled Carol Gabrielson
15 and coerced her into a sexual relationship with him. The
16 negligence of the corporate church is based upon the laws of
17 principal and agent and respondeat superior. The
18 Gabrielsons assert that Jack McDonald, as pastor of the
19 Tacoma satellite, was the agent of the corporate church and
20 that his counseling was within the scope of his agency.

21 The court has previously ruled that the injuries
22 alleged by the Gabrielsons are compensable under the
23 insurance policy at issue in this case if the acts
24 complained of are covered under the policy. This summary
25 judgment asks the court to rule as a matter of law that Jack

26 ////

MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT - 2

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1 McDonald was an agent of the corporation and that the policy
2 provides coverage for the negligent professional services
3 rendered by Jack McDonald in his capacity as agent for the
4 corporation while counseling Carol Gabrielson.

5 LAW AND LEGAL ARGUMENT

6 A. AMERICAN'S INSURANCE POLICY INSURING THE
7 CORPORATION INSURES AGAINST NEGLIGENT PROFES-
8 SIONAL SERVICES RENDERED BY AGENTS OF THE
9 CORPORATION IN PURSUIT OF CHURCH RELATED
10 PORTIONS OF CORPORATE BUSINESS ACTIVITY.

11 According to the plain language and wording of
12 American's policy of insurance insuring the corporation,
13 negligent professional services rendered in pursuit of
14 church operations are covered acts for which the policy
15 provides coverage.

16 The declarations page of the insurance policy recites
17 that "the business of the named insured is church and
18 college." Exhibit A to the affidavit of Daniel L. Hannula.

19 Under coverage A--Bodily Injury Liability, Section I on
20 page 1 of 8 of the policy, the policy provides:

21 The company will pay on behalf of the insured
22 all sums which the insured shall become
23 legally obligated to pay as damages because
24 of

25 A. Bodily injury

26 * * *

to which this insurance applies, caused by an
occurrence.

Under Section II of the policy, under the heading

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"Persons Insured" the policy provides:

C. If the named insured is designated in the declarations as other than individual, partnership or joint venture, the organization so designated and any executive officer, director, or stockholder thereof while acting within the scope of his duties as such,

* * *

(f) other than executive officers, any employee of the named insured while acting within the scope of their duties as such.

An "occurrence" is defined on page 10 of 11:

Occurrence means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

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

A definition of bodily injury is given on page 9 of 11:

Bodily injury means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including debts at any time resulting therefrom or incidental medical malpractice injuries.

Endorsement number 8 to the policy provides:

EXCLUSIONS

(Malpractice and Professional Services)

(Form A)

It is agreed that with respect to any operations described below or designated in the policy as subject to this endorsement the

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insurance does not apply to bodily injury or property damage due to

1. the rendering of or failure to render

* * *

(b) any service or treatment conducive to health or of a professional nature.

* * *

Description of Operations:
Schools--colleges, universities or college preparatory.

Exhibit A to the affidavit of Daniel L. Hannula.

The policy language clearly recognizes that the business of the insured was both "church and college." Id. at declarations sheet. Recognizing these two distinct facets of the corporation's business, American excluded negligent professional services from the coverage it provided only with regard to "schools--colleges, universities or college preparatory." Id. at Ensoresement 8.

The rules of construction of insurance policies applied to the clear language of the plaintiff's insurance agreement require the conclusion that negligent professional services rendered by the corporation in conjunction with the "church" portion of the corporation's business operations are covered acts.

Language in an insurance contract must be interpreted as it would be understood by the average person purchasing

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insurance. Shotwell v. Transamerica Insurance Co., 91 Wn.2d 61, 167-68, 588 P.2d 208 (1978); Riordan v. Commercial Travelers Mutual Insurance Co. 11 Wn.App. 707, 711, 525 P.2d 804 (1974).

The plain language of the policy is to the effect that negligent professional services rendered by the corporation in its "church" affairs is covered under the policy.

When policy language is reasonably susceptible to different interpretations, the interpretation most favorable to the insured will be adopted. If ambiguous, the coverage must be interpreted in accordance with the way it would be understood by the ordinary man buying insurance, even though the insurance company may have intended a different meaning. Witherspoon v. St. Paul fire Insurance Co., 86 Wn.2d 641, 650-51, 548 P.2d 302 (1976); Dairlyand Insurance Co. v. Ward, 83 Wn.2d 353, 358, 517 P.2d 966 (1974).

Regardless of what American thought it was insuring, it excluded only negligent professional services rendered by the corporation in conjunction with the corporation's business operations involving its "schools--colleges, universities or college preparatory." Exhibit A to affidavit of Daniel L. Hannula at Endorsement 8. The language providing insurance against negligent professional services rendered in conjunction with "church" operations is plain from reviewing the Declarations page and Endorsement 8.

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MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT - 6

LAW OFFICES
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Inclusionary clauses, i.e., those clauses which create coverage and define the insured entity or risk, are to be very broadly construed in favor of the insured. Hawaiian Insurance and Guaranty Co. v. Federated American Insurance Co., 13 Wn.App. 7, 20, 534 P.2d 48 (1975). Exclusionary clauses in insurance policies must be strictly construed against the insurance company, and will not cut off the coverage unless stated in clear, unambiguous language. Dairyland Insurance Co., supra, 83 Wn.2d at 358.

The declarations page of the policy provides that the insurance agreement covers the corporation and describes the corporation's activities as follows:

The business of the named insured is church & college.

Endorsement number 8 excludes only the expressly described operations: "schools--colleges, universities, or college preparatory."

The allegations in the Gabrielsons' complaint in Pierce County Cause No. 86-2-02792-6 refer overwhelmingly to church related activity; there are no allegations in the complaint referring to "schools--colleges, universities or college preparatory." See Exhibit K to the affidavit of Daniel L. Hannula.

The declarations page of the policy expressly recognizes two major activities of the named insured:

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"church & college." The exclusion in endorsement 8 expressly relates only to the college activity: "schools--colleges, universities or college preparatory." Nowhere in the insurance policy is there any language to the effect that Endorsement 8 is intended to relate to any church operations.

Endorsement number 8 provides:

EXCLUSIONS

(Malpractice and Professional Services)

(Form A)

It is agreed that with respect to any operations described below or designated in the policy as subject to this endorsement the insurance does not apply to bodily injury or property damage due to

- 1. the rendering of or failure to render

* * *

(b) any service or treatment conducive to health or of a professional nature.

Description of Operations:
Schools--colleges, universities or college preparatory.

As the introductory phrase indicates, this exclusionary endorsement expressly relates only to "operations described below," i.e., "description of operations, schools--colleges, universities or college preparatory." Since the exclusion does not relate to church operations, the negligent professional services rendered in conjunction with church

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operations remain covered acts. See generally, affidavit of William R. Hickman.

B. THE INSURANCE POLICY PROVIDES COVERAGE FOR THE NEGLIGENT PROFESSIONALS SERVICES SUPPLIED BY JACK McDONALD IN CONJUNCTION WITH CHURCH OPERATIONS BECAUSE HE WAS AN AGENT OF THE CORPORATION.

Any harm proximately caused Carol or Ira Gabrielson by the negligent professional services rendered by Jack McDonald as pastor of the Tacoma satellite is covered under the plaintiff's insurance policy because Jack McDonald was an agent of the corporation acting within the course and scope of his agency while rendering personal or marital counseling, or both, to Carol Gabrielson.

The decisive factor in determining whether an agency relationship exists is the right of the principal to control its agent's acts:

It is the right to control another's physical conduct that is the essential and often times decisive factor in establishing vicarious liability whether the person controls is a servant or a nonservant agent.

Massey v. Tube Art Display, 15 Wn.App. 782, 787, 551 P.2d 1387 (1976). (citations omitted).

[T]he plaintiff need now show that the principal controlled or had the right to control every aspect of the agent's operation in order to incur vicarious liability. Rather,

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[i]t should be sufficient that plaintiff presents substantial evidence of . . . control or right of control over those activities from whence the actionable negligence flowed. If the rule were otherwise, then a person wishing to accomplish a certain result through another could declare the other to be an independent contractor generally, and yet retain control over a particularly hazardous part of the undertaking without incurring liability for acts arising out of that part. Such a result would effectively thwart the purpose of the rule of vicarious liability.

Massey, supra, 15 Wn.App. at 787 quoting, Jackson v. Standard Oil Co., 8 Wn.App. 83, 91, 505 P.2d 139 (1972).

In this regard, it may be emphasized that it is not de facto control nor actual control nor actual exercise of a right to interfere with or direct the work which constitutes the test, but, rather, the right to control the negligent actor's physical conduct in the performance of the service.

Massey, supra, 787-88, quoting, Baxter v. Morningside, Inc., 10 Wn.App. 893, 895-96, 521 P.2d 946 (1974) (emphasis in original).

When the right to control exists as to a relevant activity, it is proper for a court to determine, as a matter of law, whether a principal/agent relationship exists:

In making his ruling that Tube Art was responsible as a matter of law for Redford's actions, the trial judge stated,

I think that under the undisputed evidence in this case, they not only had the right to control, but they did control. They controlled the location of the spot

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to dig. They controlled the dimensions. They controlled the excavation and they got the building permits. They did all of the discretionary work that was necessary before he started to operate. They knew the method of excavation was going to be by use of a backhoe rather than a pick and shovel. . . . They in effect created the whole atmosphere in which he worked. And the fact that even though he did not work for them all of the time and they paid him on a piece-work basis for the individual job didn't impress me particularly when they used him the number of times they did. . . . So I am holding as a matter of law that Redford's activities are the responsibility of Tube Art.

Massey, supra, at 788.

The uncontrovertable facts in this case are that the Tacoma satellite of the corporation was an integral part of the corporation and that the corporation had the extensive and undeniable right to control the intimate details of the operation of the Tacoma satellite generally and over Jack McDonald's actions as pastor in particular.

The following language of the corporate by-laws demonstrates the right of control the corporation reserved to itself over the details of the operation of the Tacoma satellite and over Jack McDonald's actions as pastor of that satellite (all quotes are from Exhibit B to the affidavit of Daniel L. Hannula):

The name of this corporation shall be
COMMUNITY CHAPEL AND BIBLE TRAINING CENTER.
The total corporation is not an entity in

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itself. It is rather the sum of the functions of all the divisions of Community Chapel and Bible Training Center. The corporation does not and cannot exist independently from the various divisions.

Division 1, Section I, Article 1 (emphasis supplied).

Community Chapel and Bible Training Center may own and/or operate schools, satellite churches, publication outlets, service facilities, and other such structures and fellowships anywhere in the world.

Division I, Section II, Article 3 (emphasis supplied).

The objective of Community Chapel and Bible Training Center shall be

A. to establish and maintain places of worship.

* * *

D. to give spiritual counseling to those in need.

* * *

G. to edify and help the total man: body, soul and spirit.

H. to aid man, as God's creation, spiritually, physically, mentally, socially, and financially.

Division 1, Section I, Article 4 (emphasis supplied).

The total corporation (Community Chapel and Bible Training Center) shall be controlled by a board of directors, hereafter in this document called "the steering committee" (referred to in the October 18, 1967 article of corporation [sic] as "the board of elders"), and in subsequent articles of corporation revisions (if and as such are made) as "the board of directors."

Division 1, Section II, Article 1 (emphasis supplied).

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Community Chapel and Bible Training Center [the Corporation] shall consist of various divisions of the single corporation. Each division head governs his own division (without direct supervision by the steering committee of the corporation), yet the steering committee governs all divisions through these by-laws, and appoints and removes all division heads except when the original pastor is that division head.

Division 1, Section II, Article 2 (emphasis supplied).

The various divisions of the corporation as of this June, 1978, revision are:

* * *

E. Satellite churches.

Division 1, Section II, Article 3 (emphasis supplied).

The pastors of the satellite churches shall be subject to admonishment, discipline, and ultimate removal by the steering committee.

Division 1, Section II, Article 6 (emphasis supplied).

The steering committee shall direct the corporation in such matters as:

* * *

D. Revising the articles of corporation, the articles of faith, and the by-laws.

* * *

G. Determining whether or not to subsidize any department of the corporation, including satellite churches.

H. Exercising jurisdiction over the departments within the corporation. The steering committee shall not normally override decisions of division heads or exercise its authority over their individual finances, and other matters except where it feels such action is absolutely necessary. (This clause shall not be interpreted to give the steering

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committee authority over those areas that are specifically stated to be outside the jurisdiction of the steering committee, being exclusively the prerogative of the office involved.

Division 1, Section III, Article 8 (emphasis supplied).

The general manager shall have the responsibility of directing the budgets of the various divisions. Each divisions shall administer its own budget within the limitations placed upon it by the general manager.

Division 1, Section VII, Article 9 (emphasis supplied).

The financial organization of Community Chapel and Bible Training Center shall be established and administered in such a way that it meets all governmental and Community Chapel and Bible Training Center laws and regulations, and insures reasonable safety against embezzlement and fraud. The financial organization of the corporation shall be supervised by the general manager in accordance with these by-laws and the following regulations.

Division 1, Section VIII, Article 1 (emphasis supplied).

The custodian of the by-laws, who is appointed by the general manager, shall maintain a list entitled CURRENT OFFICERS AND MAJOR APPOINTEES OF THE CORPORATION. It shall list the names of people filling all "titled positions" in all divisions except satellite churches, including but not limited to all pastors, assistant pastors, steering committee members, president, vice-president, secretary, deacon board members, elders, general manager, treasurer, administrators, bookkeepers, and any other positions that the steering committee or pastor deem necessary. The pastors of satellite churches shall appear on this list.

Division 1, Section X, Article 3 (emphasis supplied).

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MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT - 14

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The pastor may appoint and oversee officers and helpers in support of the ministry, in non-spiritual capacities, in areas that would not fall under the normal jurisdiction of the deacon board, subject to the approval of the steering committee. He may remove such appointees at his own discretion.

A. Examples of such spiritual support ministries that would fall under the pastor's jurisdiction rather than the deacon boards are:

* * *

(6) Satellite church coordinator.

Division 2, Section I, Article 1, Item A. 8. a. (6) (emphasis supplied).

A satellite church shall be part of the corporation of Community Chapel and Bible Training Center, King County, Washington. Its name shall be its location prefixed to the name of the corporation. (Example: "Chippawa Valley Community Chapel and Bible Training Center")

Division 6, Section I, Article 1 (emphasis supplied).

A satellite church shall be an extension of the original "church of Community Chapel and Bible Training Center" also called "the church" or "mother church" in these by-laws. (See Division 1, Section II, Article 3 above); hereafter in this division called "the corporation church."

Division 6, Section I, Article 2 (emphasis supplied).

A satellite church shall be a church with a pastor, elders, deacons, and congregation that is subject to the by-laws of the corporation of Community Chapel and Bible Training Center, even though it may be a separate legal corporation due to its location in a different state. It shall be affiliated with the original corporation of Community Chapel and

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Bible Training Center in King County, Washington, and subject to its disciplines. It shall be legally considered to be of the same "denomination" as its headquarters in King County, Washington, although no "denomination" in the traditional sense exists.

Division 6, Section I, Article 3 (emphasis supplied).

The satellite church shall be considered a part of the corporation church in polity, discipline, faith, and denomination, but it shall not be able to encumber the corporation church with its own obligations. The satellite church shall be financially self-supporting, and financially self-governing. The corporation church shall assume no financial obligation to the satellite church.

Division 6, Section I, Article 4 (emphasis supplied).

In the event that the pastor and/or the congregation of a satellite church shall seek to dissolve their relationship with the corporation church, the corporation church shall have the right to assume ownership of the buildings and all assets and liabilities, although it shall not be required to do so. The corporation church shall have authority to dismiss any or all of the pastors and officers and to appoint replacements as it sees fit and to retain whatever part of the congregation that remains. The satellite church shall turn over all financial records and books to the corporation.

Division 6, Section I, Article 5 (emphasis supplied).

The pastor [of the satellite church] shall be appointed and ordained by the corporation church and shall serve until removed by either the corporation church or by a minimum two-thirds (2/3) vote of the voting elders and the congregation of the satellite church.

Division 6, Section II, Article 1, Part A.1 (emphasis supplied).

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Replacement pastors shall be appointed in the same way as the first pastor, except that a minimum of all the voting elders, save one, of the satellite church must ratify the appointment. If three appointments by the corporation church are all refused by the satellite church, the corporate church shall appoint the pastor, which appointment shall not require ratification. The pastor may be one of the original non-ratified appointees.

Division 6, Section I, Article 1, Part A.2 (emphasis supplied).

The voting eldership [of the satellite] shall direct the satellite church in the same areas as non-voting elders and in such matters as:

* * *

(6) requesting modification of by-laws for the satellite church from the corporation church.

(7) making laws for the satellite church, as necessary, within the frame work of these [corporate] by-laws.

Division 6, Section II, Article 2 (emphasis supplied).

The financial organization of the satellite church shall be established and administered in such a way that it meets all corporation, satellite, and governmental laws and regulations, and insures reasonable safety against embezzlement and fraud. A copy of the corporation papers and in-house by-laws (see also Section V, Article 2 below) shall be forwarded to the corporation church within 30 days after their completion.

Division 6, Section II, Article 4.

All changes to the by-laws of the satellite church shall be approved by:

A. The original pastor of the corporation church

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C. The steering committee of the corporation church.

Division 6, Section VI, Article 1.

The satellite church may add a Section VII, additional in-house regulations made by the satellite church.

A. No regulation of a satellite church shall conflict with other directives of these [corporate] by-laws.

* * *

C. The name of the satellite church shall be affixed to Division 6 of these by-laws.

D. Copies of all new in-house regulations shall be promptly sent to the corporation church for review and advice. The corporation church shall have authority to overturn or modify any such additions that it construes to be contrary to the general tenor of the by-laws or of the directives of the corporation.

Division 5, Section VI, Article 2.

The above excerpts are only examples of the control exerted over the satellite churches by the corporate church. In fact, the corporate church controlled every aspect of a satellite church's existence. The entire section of the corporate by-laws, Division 6, starting on page 32 of Exhibit B to the affidavit of Daniel L. Hannula should be read by the court to gain a full understanding of the extent of control exercised over the satellite churches by the corporate church.

The Tacoma satellite of the corporate church incorporated in 1984 and adopted by-laws in 1984. See Exhibits C and D to the

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affidavit of Daniel L. Hannula. As further uncontravertable evidence of the right of control and actual evidence of control exercised and reserved by the corporation church, the corporate church actually dictated to the Tacoma satellite the exact wording of the satellite's articles of incorporation and by-laws. See affidavit of Daniel L. Hannula excerpting deposition testimony of Donald L. Barnett.

Further uncontrovertable evidence of control may be observed by comparing Exhibits C and D to the affidavit of Daniel L. Hannula to Exhibit E to the affidavit of Daniel L. Hannula. Exhibits C and D are the articles of incorporation of the Tacoma satellite and the articles of faith and by-laws of the Tacoma satellite. Exhibit E is Chapter 6 and Chapter 7 of the by-laws of the corporate church adopted in 1986. Even though Exhibit E is dated 1986, the testimony of Donald L. Barnett excerpted in the affidavit of Daniel L. Hannula is that the model articles of incorporation for satellite churches included as Chapter 7 to Exhibit E, and the model by-laws for satellite churches, included as Chapter 6 to Exhibit E were dictated to the Tacoma satellite in 1984 by the Corporation.

This control exerted by the corporate church extended to control over the manner in which counseling was to be accomplished within the entire corporate church. This right to control the method and manner of counseling may be seen in the "statement on counseling" included in the satellite by-laws at

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Section 3, Article 4 (Exhibit D). This statement on counseling was dictated to the Tacoma satellite verbatim by the corporation church as can be seen at Exhibit E, the 1986 by-laws of the corporation at Chapter 6, Section 3, Article 4 on page 56 thereof.

Other than the incontrovertible evidence of control and rights to control gleaned from an examination of the corporate by-laws and the by-laws of the Tacoma satellite, there is ample uncontrovertable evidence that the corporation exerted actual control over the Tacoma satellite. Exhibit F to the affidavit of Daniel L. Hannula shows that the corporation actively controlled the process of selection of Jack McDonald as leader of the Tacoma branch of the corporate church. Exhibit G to the affidavit of Daniel L. Hannula is an agreement exhibiting the corporation's right to control the process by which Jack McDonald was ultimately chosen as pastor of the Tacoma satellite reciting the authority of the corporation over the Tacoma branch and over the ultimate disposition of the Tacoma branch's assets. This "agreement" was largely incorporated into the Tacoma satellite's by-laws and can be seen at Exhibit D, Section IV, which required that the satellite church conform to the dictates of the corporation even to the extent of standards regarding dress and hair style.

Exhibit H to the affidavit of Daniel L. Hannula is the results of an investigation conducted by the corporation into the degree to which the Tacoma satellite was complying with the dictates of the corporation. Exhibit H demonstrates that the

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corporation actually did act to enforce its control over the Tacoma satellite by auditing the compliance of the Tacoma satellite and reporting on "failures by Jack McDonald to comply with by-laws." A review of the report shows that the corporation was in actual control of the most intimate details of the operation of the Tacoma satellite.

Exhibit I to the affidavit of Daniel L. Hannula is an internal assessment of the principal/agent relationship between the corporation and its Tacoma satellite conducted by the board of directors of the corporate church. It concludes that Jack McDonald was an agent of the corporation by virtue of the right of the corporation to control his actions.

Exhibit J to the affidavit of Daniel L. Hannula is a letter from Donald L. Barnett to satellite pastors dated April 8, 1988 specifically relinquishing the control over the satellites and the satellite pastors that had existed prior to that time.

The materials referred to demonstrate that the satellite churches, such as the Tacoma satellite, were divisions of the corporate church, integral parts of the corporate church, and parts without which the corporation could not exist.

The corporation reserved the right to control every aspect of the Tacoma satellite church's existence. The corporate church dictated the Tacoma satellite's articles of incorporation and its by-laws. The corporate church insured that the Tacoma satellite could make no rules for its own operation without the express

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approval of the corporation.

The corporation dictated the method and manner of counseling. The corporation made all of the rules and those rules make it obvious that counseling was a function expected of Jack McDonald as pastor of the Tacoma satellite. As such, counseling activity is uncontrovertably a function within the scope of Jack McDonald's agency. This counseling activity is also a function undeniably within the realm of "church" business. Any negligent services rendered in conjunction with Jack McDonald's counseling were covered acts for the purpose of the plaintiff's policy of insurance.

CONCLUSION

American's insurance policy insuring the Community Chapel and Bible Training Center corporation insured against negligent professional services rendered by the church and its agents as part of corporate "church" operations. Jack McDonald was an agent of the corporation for purposes of coverage under American's insurance policy. As a matter of law, plaintiff's insurance policy provides coverage for Jack McDonald's negligent counseling of Carol Gabrielson.

DATED this 17 day of August, 1988.

RUSH, HANNULA & HARKINS

By: *Daniel L. Hannula*
DANIEL L. HANNULA, OF
Attorneys for Defendants
Gabrielson

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