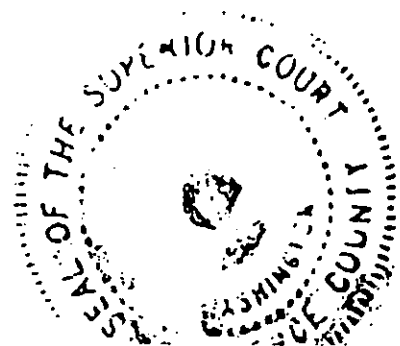


88-2-00947-9 18569997 ARCH4 03-10-03

# ARCHIVE RECORD

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

Kevin Stock, Pierce County Clerk



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6

5 FEB 03 1989

FILED  
IN COUNTY CLERK'S OFFICE  
A.M. FEB 03 1989 P.M.

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

DEFENDANTS' JOINT BRIEF  
IN SUPPORT OF JOINT  
MOTION FOR SUMMARY  
JUDGMENT UPON COVERAGE  
FOR CHURCH ENTITY

I. PROCEDURE

On November 23, 1988 judgment was entered in Pierce County cause number 86-2-02792-6 against both Jack & Shirley McDonald and the Community Chapel and Bible Training Center of Burien upon claims made by Ira & Carol Gabrielson. See, certified copy of judgment annexed to affidavit of Tim Donaldson.

Carol Gabrielson was given a net award of \$130,000.00 upon claims of defamation committed by Jack McDonald and negligence of Jack McDonald. Ira Gabrielson was given a net award of \$17,000.00 upon a loss of consortium claim. The Gabrielsons were awarded costs in the amount of \$988.91. The church was held

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SUMMARY JUDGMENT : 1  
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1 vicariously responsible as McDonald's employer. See, certified  
2 copy of verdict form annexed to affidavit of Tim Donaldson.  
3

4 American Casualty Company of Reading Pennsylvania brought  
5 this above-entitled-cause-of-action to determine the availability  
6 of coverage for the Gabrielsons' claims under a policy of  
7 insurance issued to the Community Chapel & Bible Training Center  
8 of Burien. Therein, American Casualty asks this court to  
9 determine the availability of coverage under bodily injury  
10 provisions and personal injury provisions of a policy it issued  
11 to the Community Chapel & Bible Training Center of Burien, policy  
12 #IP502144020, and it expressly raises issues regarding its duty  
13 to defend. See, plaintiff's amended complaint filed herein.  
14  
15  
16

17 Defendants jointly move this court for summary judgment upon  
18 the duty of American Casualty to indemnify the church entity upon  
19 the judgment against it, to determine that American Casualty  
20 Company must defend the church in Pierce County Cause Number 86-  
21 2-02792-6, to pay the attorney fees of the church incurred  
22 herein, and for attorney fees and terms against plaintiff upon  
23 its frivolous fourth cause of action.  
24  
25  
26

## 27 II. FACTS

28 Jack McDonald was the pastor of the Community Chapel & Bible  
29 Training Center of Tacoma. This church began as a fellowship to  
30

31 BRIEF IN SUPPORT OF  
32 SUMMARY JUDGMENT : 2  
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1 the Community Chapel & Bible Training Center of Burien, and it  
2 eventually became its own separate church corporation. It  
3 controlled its own operation including decision-making and  
4 financial responsibilities with only general direction and  
5 assistance from the Burien church. See, deposition of Jack L.  
6 McDonald, pages 8 through 32.  
7

8  
9 Jack McDonald was not a board member of the Burien church.  
10 During late 1985 and early 1986, the directors of the Burien  
11 church consisted of Don Barnett, board of Senior Elders Chairman;  
12 Jack Hicks, senior elder; E. Scott Hartley, senior elder; and  
13 John DuBois, senior elder. No one within the directorship of the  
14 Burien church gave specific direction to McDonald upon the  
15 operation of the Tacoma church. See affidavits of Hartley,  
16 Dubois, and Barnett.  
17  
18

19  
20 Sometime during the fall of 1985, McDonald engaged in a  
21 sexual relationship with one of the parishioners of the Tacoma  
22 church, Carol Gabrielson. See, deposition of Jack L. McDonald,  
23 page 44 line 6 through page 45 line 4. This relationship was  
24 neither discussed nor brought to the attention of the  
25 directorship of the Burien church until after allegations of  
26 McDonald's misconduct had already been made. McDonald never  
27 discussed the relationship with anyone at Burien. See,  
28  
29

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 3  
32 als1500/4857/802

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1 deposition of Jack L. McDonald, page 45 line 16, through page 46  
2 line 15. Gabrielson did not discuss the relationship. See  
3 affidavit of Carol Gabrielson. The directorship at Burien was  
4 not otherwise aware of the relationship. See, affidavits of  
5 Hartley, DuBois and Barnett.  
6  
7

8 Jack McDonald resigned from his position with the Tacoma  
9 church after the allegations of misconduct were made. See,  
10 deposition of Jack L. McDonald, pages 31 and 32. Prior to his  
11 resignation, no one monitored the content of McDonald's sermons.  
12 See, deposition of Jack L. McDonald, page 24, lines 16 through  
13 19. In particular, no one at Burien ever directed McDonald to  
14 say anything about Carol Gabrielson since they did not even know  
15 her. See also, affidavits of Hartley, DuBois, and Barnett.  
16  
17

### 18 III. POLICY INTERPRETATION

#### 19 1. Community Chapel qualifies for coverage as an entity.

20 The Community Chapel & Bible Training Center is a separate  
21 insured. It is listed upon the declarations page of the American  
22 Casualty policy as the Named Insured. Under heading II, entitled  
23 "PERSONS INSURED," the policy identifies those persons and  
24 entities which qualify as insureds. At subsection (c) it  
25 provides coverage for entities and persons as follows:  
26  
27  
28

29 if the Named Insured is designated as other

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 4  
32 als1500/4857/802

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1 than an individual, partnership or joint  
2 venture, *the organization so designated* and  
3 any executive officer, director or  
4 stockholder thereof while acting within the  
5 scope of his duties as such. (emphasis  
6 added)

7 The declarations page includes a section upon which the nature of  
8 the Named Insured is designated. In that section, the Community  
9 Chapel & Bible Training Center is listed as "Other Church  
10 College." Therefore, the Community Chapel, itself, is an  
11 insured under the policy.

12 Scope limitations contained within the policy do not apply  
13 to the coverage available to the entity. The third and sixth  
14 causes of action by American Casualty herein relate solely to the  
15 coverage available to individuals other than the church entity.  
16

17 Its third cause of action seeks a declaration that the  
18 alleged acts of individuals occurred outside of their scope of  
19 employment. The policy plainly covers the church entity without  
20 any "scope" limitation. The scope limitation in subsection (c)  
21 relates solely to the coverage available to executive officers,  
22 directors, or stockholders.  
23

24 Its sixth cause of action seeks a declaration that Jack  
25 McDonald was not an employee of the Community Chapel. The  
26 employment status of Jack McDonald has no bearing upon the  
27  
28  
29

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 5  
32 als1500/4857/802

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1 coverage available to the Community Chapel & Bible Training  
2 Center. It relates solely to coverage available to McDonald.  
3 The church is covered regardless of whether Jack McDonald was an  
4 employee and regardless of the scope of his duties.  
5

6 2. General Liability Coverage  
7

8 The American Casualty policy is a Comprehensive General  
9 Liability Insurance policy which contains two types of coverage  
10 which are applicable to the Gabrielson award. "Coverage A"  
11 contains Bodily Injury Liability Insurance, and "Optional  
12 Liability Extension B" contains Personal Injury Liability  
13 Insurance.  
14

15 A. Bodily Injury Liability Insurance  
16

17 This Court has previously made rulings upon all but one of  
18 the legal issues with respect to the Bodily Injury Liability  
19 Coverage.  
20

21 The first cause of action of American Casualty herein sought  
22 a declaration that the injuries for which the Gabrielsons made  
23 claims were not bodily injury. By order dated December 9, 1988,  
24 this court ruled that the emotional distress claims and  
25 consortium claims of the Gabrielsons which were consequential to  
26 bodily injury were covered under the policy. By order dated  
27 February 3, 1989, this court ruled that sexual misconduct  
28  
29

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 6  
32 als1500/4857/802

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1 constituted such bodily injury.

2 The sixth cause of action of American Casualty herein sought  
3 a declaration that the injuries of the Gabrielsons fell under a  
4 professional services exclusion, and were not covered. By order  
5 dated November 18, 1988, this court ruled that negligent  
6 counseling in connection with a church related activity is a  
7 covered event under the policy.  
8

9  
10 Consequently, the only remaining legal issue for this court  
11 to determine with respect to the bodily injury provisions  
12 regards the meaning of occurrence. The second cause of action of  
13 American Casualty herein seeks a declaration that the injuries  
14 were not a result of an occurrence.  
15

16  
17 1. An Occurrence must be viewed from the  
18 standpoint of the church entity.  
19

20 An occurrence is viewed from the standpoint of the Insured.

21 An occurrence is defined as follows:

22 Occurrence means an accident, including  
23 continuous or repeated exposure to  
24 conditions, which results in Bodily Injury or  
25 Property Damage *neither expected nor intended*  
26 *from the standpoint of the Insured.* (emphasis  
added)

27 Therefore the existence of an occurrence must be separately  
28 viewed from the standpoint of each insured.  
29

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 7  
32 als1500/4857/802

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1           In Unigard Mut. v. Spokane School Dist., 20 Wn.App. 261, 579  
2 P.2d 1015 (Div. Three, 1978), the Washington Court of Appeals  
3 applied an almost identical definition of occurrence in  
4 determining the availability of coverage for separate insureds  
5 upon intentional acts.  
6

7  
8           In that case a boy, William Winkler, set fire to a school.  
9 An action was brought by the school district against Willie and  
10 his parents, Mr. and Mrs. Charles Hensley, alleging "... that  
11 William Winkler carelessly and negligently caused the fire and  
12 that his parents, the Hensleys, having knowledge of his  
13 propensities, negligently failed to supervise and control him."  
14 id at 262.  
15

16  
17           The court ruled that Willie intentionally set fire to the  
18 school. Therefore, no occurrence existed from his standpoint.  
19 However, the court ruled that Willie's acts constituted an  
20 occurrence from the standpoint of Mr. and Mrs. Charles Hensley,  
21 and coverage existed for them.  
22

23  
24           The court wrote at pages 265-266:

25                   The policy extends defense and  
26 indemnification to "the Insured," and it  
27 excludes from coverage intentional acts  
28 resulting in injury or damage "expected or  
29 intended from the standpoint of the insured."  
30 The parties concede the boy and the Hensleys  
31 are all "insureds" under the policy. In such

32 BRIEF IN SUPPORT OF  
SUMMARY JUDGMENT : 8  
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1 instances, where coverage and exclusion is  
2 defined in terms of "the insured," the courts  
3 have uniformly considered the contract  
4 between the insurer and several insured to  
5 be separable, rather than joint, i.e., there  
6 are separate contracts with each of the  
7 insured. The result is that an excluded act  
8 of one insured does not bar coverage for  
9 additional insureds who have not engaged in  
10 the excluded conduct.

11 The intent of Jack McDonald is irrelevant to the coverage  
12 available to the Community Chapel & Bible Training Center. An  
13 event may not be an occurrence with respect to McDonald, but it  
14 may still be an occurrence with respect to the church. Since the  
15 church is the insured for which coverage is presently sought, the  
16 question of whether there has been an occurrence must be viewed  
17 from its standpoint.

18 2. McDonald cannot imputedly disqualify coverage  
19 for the church entity.

20 In Gruol Constr. v. Insurance Co., 11 Wn.App. 632, 524 P.2d  
21 427 (Div. One, 1974), an action was brought by an insured  
22 contractor against his insurer for "occurrence coverage." In  
23 that case, an employee of the insured improperly backfilled a  
24 construction project causing dry rot damage which was discovered  
25 later. Finding that coverage existed for the contractor, the  
26 court noted that the contractor, himself, had no knowledge of the  
27  
28  
29

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 9  
32 als1500/4857/802

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1 defective backfilling and that it was therefore an occurrence  
2 from the contractor's standpoint.

3  
4 The rule established in the case of Gruol Constr. v.  
5 Insurance Co., 11 Wn.App. 632, 524 P.2d 427 (Div. One, 1974) was  
6 restated in Safeco Insurance v. Dotts. 38 Wn.App. 382, 685 P.2d  
7 632 (Div. Three, 1984), wherein the court wrote at page 386:

8  
9 *Stated differently, an employee's intentional*  
10 *act is not imputed to an employer for*  
11 *purposes of insurance contract interpretation*  
12 *since the insured's only voluntary act was,*  
13 *at most, to negligently hire the actor.*  
(emphasis added).

14 The coverage for the church entity is separate from the  
15 coverage for McDonald. The American Casualty policy contains a  
16 severability clause which states:

17  
18 Insured means any person or organization  
19 qualifying as an Insured in the "Persons  
20 Insured" provision of the applicable  
21 insurance coverage. *The insurance afforded*  
22 *applies separately to each Insured against*  
23 *whom claim is made or suit is brought,* except  
with respect to the limits of the Company's  
liability. (emphasis added)

24 This severability clause creates separate coverage for each  
25 insured which is not dependent upon the coverage which may be  
26 available to any other insured.

27  
28 In Federated American Ins. Co. v. Strong, 102 Wn.2d 665, 689  
29 P.2d 68 (1984), the Washington Supreme Court interpreted an

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 10  
32 als1500/4857/802

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1 almost identical severability clause as the one contained in the  
2 American Casualty policy. It wrote at pages 669-670:  
3

4 Our conclusion that Clyde Strong has  
5 liability coverage is reinforced by a  
6 severability clause contained in the policy:

7 *The insurance afforded under the*  
8 *Liability Section applies separately to*  
9 *each insured against who claim is made*  
10 *or suit is brought, but the inclusion*  
11 *herein of more than one insured shall*  
12 *not operate to increase the limits of*  
13 *Company's liability.*

14 .....  
15 The terms of an insurance policy must be  
16 understood in their plain, ordinary and  
17 popular sense. Clear and unambiguous  
18 language is not to be modified under the  
19 guise of construing the policy.... The  
20 severability clause included in the FAIC  
21 policy clearly and unambiguously provides  
22 that liability coverage applies *separately* to  
23 each insured. It follows that FAIC cannot  
24 deny coverage to one separate insured, Clyde  
25 Strong, based upon the intentional acts of  
26 another insured, Lisa Strong. (emphasis  
27 theirs)

28 The plain meaning of the severability clause contained in the  
29 American Casualty policy dictates that the church and any other  
30 person or organization which qualifies as an insured are covered  
31 separately. The coverage available to each is independent of the  
32 coverage which may be available to the others.

Employees independently qualify as insureds under the  
American Casualty policy. Subsection (f) under heading II of the

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SUMMARY JUDGMENT : 11  
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1 policy which identifies additional parties qualifying as  
2 insureds, provides coverage for:

3 other than executive officers, any employee  
4 of the Named Insured while acting within the  
5 scope of their duties as such....

6 Therefore, employees and the entity are each entitled to separate  
7 coverage.

8 The severability clause must be given effect. A policy  
9 cannot be given a nonsensical reading which renders it  
10 inoperative.  
11

12 It must not be forgotten that the purpose of  
13 insurance is to insure, and that construction  
14 should be taken which will render the  
15 contract operative, rather than  
16 inoperative.... A construction which  
17 contradicts the general purpose of the  
18 contract or results in a hardship or  
19 absurdity is presumed to be unintended by the  
20 parties....

21 Phil Schroeder, Inc. v. Royal Globe Ins. Co., 99 Wn.2d 65, 68,  
22 659 P.2d 509, 511 (1983) (emphasis theirs), modified in 101 Wn.2d  
23 830, 683 P.2d 186 (1984) (citations omitted).

24 This separate coverage and the severability clause, would  
25 be rendered meaningless if the intent of an employee was imputed  
26 to the church entity. Under such a reading the coverage of the  
27 church would never be **separate**. It would always depend upon the  
28 coverage available to the employee. The disqualification of the  
29

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 12  
32 als1500/4857/802

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1 employee would always disqualify the church regardless of the  
2 clear language within the policy providing that coverage is  
3 separate and to be viewed from the standpoint of the church.  
4

5 3. A Continuing Occurrence Cannot be Segregated

6 An insurance policy must be given a reading which gives  
7 effect to all of its provisions.  
8

9 When interpreting language of an insurance  
10 contract, the entire contract is to be  
11 construed together for the purpose of giving  
12 force and effect to each clause.... That  
13 contract must be construed to carry out the  
14 intent of the parties in writing the contract  
15 unless there is a clear expression to the  
16 contrary somewhere within the contract.

17 Neer v. Fireman's Insurance, 103 Wn.2d 316, 320, 692 P.2d 830  
18 (1985) (citations omitted).

19 The policy states that it covers all sums of liability  
20 because of bodily injury caused by an occurrence. The general  
21 granting language of the policy provides:

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

26 A. Bodily Injury...  
27 to which this insurance applies, caused by an  
28 Occurrence....

29 Later in the policy the ways in which an occurrence may arise are  
30 described.

31 BRIEF IN SUPPORT OF  
32 SUMMARY JUDGMENT : 13  
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1 An occurrence may arise through isolated acts or a repeated  
2 series of acts:  
3

4 Occurrence means an accident, *including*  
5 *continuous or repeated exposure to*  
6 *conditions*, which results in Bodily Injury or  
7 Property Damage neither expected nor intended  
8 from the standpoint of the Insured. (emphasis  
9 added)

10 When the occurrence arises through a repeated series of acts, the  
11 policy expressly provides that continuous exposure to a  
12 condition is considered one occurrence. Under heading III,  
13 relating to limits of liability, the policy states with respect  
14 to bodily injury coverage:

15 For the purpose of determining the limit of  
16 the Company's liability, all Bodily Injury  
17 and Property Damage arising out of *continuous*  
18 *or repeated exposure to substantially the*  
19 *same general conditions shall be considered*  
20 *as arising out of one Occurrence.*

21 An occurrence which arises out of continuous or repeated  
22 exposure cannot be segregated between bodily causes of injury and  
23 non-bodily causes of injury. By the terms of the policy,  
24 occurrences may be segregated only when they arise from isolated  
25 events. When an occurrence arises from continuous or repeated  
26 exposure to substantially the same general conditions, it must be  
27 considered one event. See, Gruol Constr. v. Insurance Co., 11  
28 Wn.App. 632, 637-638, 524 P.2d 427 (Div. One, 1974). When this  
29

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 14  
32 als1500/4857/802

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1 continuous exposure results in a bodily injury, it is irrelevant  
2 whether there were other causes along the way which were non-  
3 bodily. The entire exposure, including the bodily injury,  
4 constitutes one occurrence upon which coverage is based.  
5

6 B. Personal Injury coverage.  
7

8 The Fourth and Fifth causes of action of American Casualty  
9 Company relate solely to the personal injury coverage. The  
10 Fourth cause of action seeks a declaration that personal injury  
11 was not suffered. Its Fifth cause of action seeks a declaration  
12 that any defamatory statements were made "with knowledge of the  
13 falsity thereof."  
14

15 1. Personal Injury is manifestly apparent and  
16 defendants are entitled to terms.  
17

18 The fourth cause of action of American Casualty Company is  
19 completely without merit and frivolous. Carol Gabrielson made a  
20 claim and received judgment for defamation.  
21

22 The policy expressly defines personal injury as:

23 a publication or utterance  
24 (1) of a libel or slander *or other defamatory*  
25 *or disparaging material...* (emphasis added)  
26

27 Therefore claims for defamation are expressly covered as personal  
28 injury, and a declaration may be made upon this particular cause  
29 of action without further argument.  
30

31 BRIEF IN SUPPORT OF  
32 SUMMARY JUDGMENT : 15  
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1 American Casualty Company, itself, has recognized that  
2 defamation is covered. In its reservation of rights letter dated  
3 August 7, 1986 which first acknowledged tender of the Gabrielson  
4 suit, the company wrote:

5  
6 However, your policy does provide coverage  
7 for claims of personal injury arising out of  
8 an offense of libel or slander or other  
9 defamatory or disparaging utterances. We  
10 refer you to Form G-39250-C (page 5 or 8, B4)  
11 "Personal Injury and Advertising Injury  
12 Liability Coverage".

13 See, AFFIDAVIT OF TIM DONALDSON IN SUPPORT OF MOTION TO REVISE  
14 SUMMARY JUDGMENT ORDERS, Exhibit 1. American Casualty Company  
15 again wrote on November 30, 1987, stating:

16 As previously indicated, the eighth cause of  
17 action for defamation appears to be covered.  
18 However, coverage is not provided for  
19 defamatory statements:

20 "... made by or at the direction of the  
21 insured with knowledge of the falsity  
22 thereof..."

23 See, AFFIDAVIT OF TIM DONALDSON IN SUPPORT OF MOTION TO REVISE  
24 SUMMARY JUDGMENT ORDERS, Exhibit 3. Despite its clear  
25 recognition of the meaning of the policy, American Casualty now  
26 wishes to litigate the matter.

27 RCW 4.84.185 and CR 11 govern the award of terms and  
28 attorney fees for a frivolous cause of action. Terms and fees  
29 may be awarded if an action is advanced without reasonable cause.

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 16  
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1 In the underlying action, Carol Gabrielson expressly sought  
2 damages for the tort of defamation, and she later received  
3 judgment upon this claim. See, Gabrielson Complaint, Eighth  
4 Cause of Action. Nonetheless, American Casualty Company seeks a  
5 declaration that there was no personal injury despite express  
6 language to the contrary in its policy.  
7

8  
9 Clearly, there exists no reasonable cause for stating this  
10 cause of action. Terms and attorney fees in favor of all  
11 defendants are appropriate.  
12

13 2. McDonald cannot disqualify the church entity under  
14 defamation exclusion.  
15

16 Exclusion (d) to the Personal Injury coverage provides that  
17 the insurance does not apply:

18 to Personal Injury of Advertising Injury  
19 arising out of libel or slander or the  
20 publication or utterance of defamatory or  
21 disparaging material concerning any person or  
22 organization or goods, products or services,  
23 or in violation of an individual's right of  
24 privacy *made by or at the direction of the*  
*Insured with knowledge of the falsity*  
*thereof.* (emphasis added)

25 It must be noted that this particular portion of the policy  
26 under consideration is an exclusion. Certain rules have long  
27 applied to the interpretation of exclusions in insurance  
28 contracts. See, Thompson v. Ezzel, 61 Wn.2d 685, 379 P.2d 983  
29

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 17  
32 als1500/4857/802

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1 (1963).

2 1. "The language of insurance contracts is  
3 to interpreted in accordance with the way it  
4 would be understood by the average man,  
5 rather than in a technical sense...."  
6 Dairyland Insurance Company v. Ward, 83 Wn.2d  
7 353, 358, 517 P.2d 966, 969 (1974).

8 2. "Where exceptions, qualifications or  
9 exemptions are introduced into an insurance  
10 contract, a general presumption arises to the  
11 effect that that which is not clearly  
12 excluded from the operation of such contract  
13 is included in the operation thereof." Phil  
14 Schroeder, Inc. v. Royal Globe Ins. Co., 99  
15 Wn.2d 65, 69, 659 P.2d 509, 511 (1983)  
16 (emphasis theirs), modified in 101 Wn.2d 830,  
17 683 P.2d 186 (1984); quoting Harris, Jolliff  
18 & Michel, Inc. v. Motorists Mut. Ins. Co., 21  
19 Ohio App.2d 81, 85, 255 N.E.2d 302 (1970),  
20 quoting from Home Indemnity Co. v. Plymouth,  
21 146 Ohio St. 96, 64 N.E.2d 302 (1945).

22 3. "It is Hornbook law that where a clause  
23 in an insurance policy is ambiguous, the  
24 meaning and construction most favorable to  
25 the insured must be applied, even though the  
26 insurer may have intended another meaning....  
27 Ambiguous exclusionary clauses,  
28 particularly, should be construed in the  
29 manner most favorable to the insured...."  
30 Dairyland Insurance Company v. Ward, 83 Wn.2d  
31 353, 358, 517 P.2d 966, 969 (1974).

32 The exclusion applies only to those defamatory statements  
33 actually made by or at the direction of the insured. As noted in  
34 Unigard Mut. v. Spokane School Dist., 20 Wn.App. 261, 579 P.2d  
35 1015 (Div. Three, 1978), language within a policy referring to  
36 the insured must be viewed with respect to the particular insured

37 BRIEF IN SUPPORT OF  
38 SUMMARY JUDGMENT : 18  
39 als1500/4857/802

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1 for which coverage is being considered. In the present case,  
2 this particular insured is the church entity.

3  
4 Carol Gabrielson was awarded damages for defamation made by  
5 Jack McDonald. The church entity was held vicariously liable.  
6 The personal injury exclusion applies only to defamatory  
7 statements made by or at the direction of the Insured. Since the  
8 defamation was made by McDonald, an average man would understand  
9 that the church may be disqualified only if the statements were  
10 made at its express direction.  
11

12  
13 Jack McDonald's knowledge of the falsity of his defamatory  
14 statements is irrelevant. American Casualty did not exclude  
15 coverage for defamatory statements made by any insured with  
16 knowledge of their falsity. The exclusion is stated in terms of  
17 the insured. It must be strictly construed to apply only with  
18 respect to the particular insured for which coverage is sought.  
19 Consequently, the church is covered for McDonald's defamatory  
20 statements unless it expressly directed them and it knew they  
21 were false.  
22  
23  
24

#### 25 IV. SUMMARY JUDGMENT

26 Summary judgment is proper if there is no genuine issue as  
27 to any material fact and the moving party is entitled to judgment  
28 as a matter of law. CR 56. Once a moving party submits materials  
29

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 19  
32 als1500/4857/802

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1 establishing that there is no issue of fact, the burden shifts to  
2 the non-moving party.  
3

4 A non-moving party in a summary judgment may not rely  
5 on speculation, argumentative assertions that  
6 unresolved factual issues remain, or in having its  
7 affidavits considered at face value; for after the  
8 moving party submits adequate affidavits, the non-  
9 moving party must set forth specific facts that  
10 sufficiently rebut the moving party's contentions and  
11 disclose that a genuine issue as to a material fact  
12 exists.

13 Seven Gables v. MGM/UA Entertainment, 106 Wn. 2d 1, 13, 721 P.2d  
14 1 (1986). Unless the non-moving party meets this burden, summary  
15 judgment must be granted.

16 The non-moving party cannot rest upon opinions or  
17 conclusions of fact. It must come forward with affidavits of  
18 fact which will be admissable at trial.

19 It is apparent that the emphasis is upon  
20 *facts* to which the affiant could testify  
21 from personal knowledge and which would be  
22 *admissable in evidence*. Thus, there is a  
23 dual inquiry as to whether an affidavit sets  
24 forth "material facts creating a genuine  
25 issue for trial": does the affidavit state  
26 material facts, and, if so, would those facts  
27 be admissable in evidence at trial? If the  
28 contents of an affidavit do not satisfy both  
29 standards, the affidavit fails to raise a  
30 genuine issue for trial, and summary judgment  
31 is appropriate.

32 A fact is an event, an occurrence, or  
something that exists in reality.... It is  
what took place, an act, an incident, a  
reality as distinguished from supposition or

BRIEF IN SUPPORT OF  
SUMMARY JUDGMENT : 20  
als1500/4857/802

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1 opinion.... The "facts" required by CR 56(e)  
2 to defeat a summary judgment motion are  
3 evidentiary in nature. Ultimate facts or  
4 conclusions of fact are insufficient....  
5 Likewise, conclusory statements of fact will  
6 not suffice.... (emphasis theirs)

7 Grimwood v. Puget Sound, 110 Wn.2d 355, 359-360, 753 P.2d 517  
8 (1988). Applying the material facts to the foregoing policy  
9 interpretation, complete summary judgment is proper with respect  
10 to the separate coverage of the church entity for the following  
11 reasons.

12 1. Bodily Injury Coverage.

13 A. Application of Facts to Previous Court Rulings.

14 This court has already made declaratory rulings upon the  
15 meaning of bodily injury and the availability of consequential  
16 damages for emotional distress and loss of consortium. It has  
17 ruled that sexual misconduct constitutes bodily injury, and that  
18 consequential damages to bodily injury in the form of emotional  
19 distress and loss of consortium are covered.  
20  
21  
22

23 It is undisputed that Jack McDonald had a sexual  
24 relationship with Carol Gabrielson over a period of a couple of  
25 months, and that Carol & Ira Gabrielson received judgment for  
26 damages from that relationship. Applying these undisputed facts  
27 to this court's previous rulings, defendants are entitled to  
28  
29

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 21  
32 als1500/4857/802

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1  
2 summary judgment that damages awarded to the Gabrielsons from  
3 that relationship are covered.  
4

5 B. McDonald's Activities Constitute an Occurrence.

6 From the standpoint of the church entity, the relationship  
7 between McDonald and Gabrielson constitutes an unexpected event.  
8 No-one at the Burien church knew of the relationship until after  
9 allegations of misconduct had already been made and the  
10 relationship had ceased. With respect to the separate coverage  
11 of the Burien church entity, there exists coverage for the  
12 judgment against it. Unless affidavits containing facts  
13 admissible as evidence are introduced to the contrary, summary  
14 judgment must be granted. Grimwood v. Puget Sound, 110 Wn.2d  
15 355, 359-360, 753 P.2d 517 (1988).  
16  
17  
18  
19

20 C. The Gabrielson Award Cannot be Segregated.

21 These damages may not be segregated between bodily and non-  
22 bodily origins. It is undisputed that the occurrence in the  
23 present case arises from the entire course of conduct of  
24 McDonald, and Carol Gabrielson's repeated or continuous exposure  
25 to these conditions. This one occurrence contained the repeated  
26 exposure to the sexual misconduct. Under the terms of the  
27 policy, the entire relationship must be treated as one  
28 occurrence. Since this one occurrence contained bodily injury  
29  
30  
31  
32

BRIEF IN SUPPORT OF  
SUMMARY JUDGMENT : 22  
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1 which triggers coverage, the Insured is entitled to  
2 indemnification for all sums awarded.

3  
4 2. Personal Injury Coverage.

5 A. Personal Injury is Stated.

6 The remainder of the Gabrielson judgment is an award upon a  
7 defamation claim. The express terms of the personal injury  
8 provisions cover such an award.  
9

10 B. Defamation Exclusion Does not Apply.

11 As the verdict form indicates, the award was made for  
12 defamation made by Jack McDonald. Therefore, that part of the  
13 personal injury exclusion relating to statements made by ...the  
14 Insured does not apply to the coverage available to the church.  
15

16 With respect to the remainder of the exclusion relating to  
17 statements made at the direction of the Insured, the undisputed  
18 facts are that no one at Burien directed any statements made by  
19 McDonald. McDonald never discussed what had happened with  
20 Gabrielson until after allegations had been made, and no-one on  
21 the directorship of the Burien church ever instructed McDonald to  
22 say anything about the situation.  
23

24 No one at Burien personally knew Carol Gabrielson, and  
25 McDonald denied the existence of his relationship with her until  
26 after the Gabrielson lawsuit was commenced. Since the  
27

28  
29  
30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 23  
32 als1500/4857/802

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1 allegations in the Gabrielson complaint are based upon conduct  
2 which preceded the filing of the lawsuit, no information was  
3 available to third parties upon which they could have knowledge  
4 of the falsity of anything which McDonald may have said.  
5

6 Unless affidavits containing facts admissable as evidence  
7 are introduced to show both that the Burien church actually  
8 directed McDonald's statements and knew that they were false,  
9 summary judgment must be granted. Grimwood v. Puget Sound, 110  
10 Wn.2d 355, 359-360, 753 P.2d 517 (1988).  
11  
12

#### 13 V. CHURCH ATTORNEY FEES IN THE DECLARATORY ACTION

14 An award of attorney fees is proper in a declaratory action  
15 when an insurance company contests its duty to defend. Farmers  
16 Ins. Co. v. Rees, 96 Wn.2d 679, 638 P.2d 580 (1982). In such an  
17 instance, an insured is forced to retain counsel to establish  
18 that to which it is entitled.  
19  
20

21 In the present case, American Casualty Company expressly  
22 contests its duty to defend the church entity in its eighth cause  
23 of action, and it has forced the church to retain the services of  
24 John Glassman to defend this declaratory action. Even if this  
25 court does not grant defendants' motion upon American Casualty's  
26 duty to indemnify, an award of attorney fees for the church  
27 herein is proper since the church clearly prevails upon the duty  
28  
29

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 24  
32 als1500/4857/802

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1 to defend.

2 1. Duty to Defend

3  
4 The court in Western National Assur. v. Hecker, 43 Wn. App.  
5 816, 719 P.2d 954 (Div. II, 1986) wrote at page 820:

6 Ordinarily, an insurer's duty to defend its  
7 insured arises where any facts alleged in the  
8 complaint, if proved true, would render the  
9 insurer liable under the policy.... Thus, an  
10 insurer has no duty to defend its insured for  
11 acts specifically excluded from policy  
12 coverage. An insurer must defend, however,  
13 if the claim is potentially within the  
14 coverage of the policy.... (citations  
15 omitted)

16 Pursuant to the law of this state relating to the duty to defend,  
17 American Casualty has a duty to defend the church if the  
18 allegations within the Gabrielson complaint even potentially  
19 fall within coverage. Copies of both the underlying Gabrielson  
20 complaint and the insurance policy are before this court, and no  
21 further material is necessary or proper to make determinations  
22 upon the duty to defend. At the very minimum, the authorities  
23 cited herein and those cited by defendants upon earlier motions  
24 brought herein establish the potentiality of coverage for the  
25 Gabrielson claims.  
26

27 Upon establishment of this duty, the church is entitled to  
28 its attorney fees in this declaratory action as a matter of  
29

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 25  
32 als1500/4857/802

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1 entitlement.

2  
3 VI. CONCLUSION

4 No material facts are in dispute upon coverage for the  
5 church entity upon the Gabrielson award. Factual issues with  
6 respect to intent, employment, and scope of duties may exist with  
7 respect to Jack McDonald, but they are only relevant insofar as  
8 they affect his separate coverage. These issues are irrelevant  
9 with respect to the separate coverage available to the church.  
10 As discussed herein, the church is entitled to judgment upon its  
11 separate coverage as a matter of law.  
12

13  
14 McDonald and the church are jointly liable for the entire  
15 amount of the Gabrielson award. Consequently, it is not  
16 necessary for the court to address McDonald's separate coverage  
17 if coverage exists for the church. The Gabrielsons may collect  
18 the award from either source. Coverage for the church  
19 effectively terminates the necessity for further activity in this  
20 declaratory action. Therefore entry of a final order at this  
21 time is both necessary and proper.  
22

23  
24 Defendants respectfully ask that this court enter summary  
25 judgment declaring that American Casualty Company has a duty to  
26 pay the entire judgment in the Gabrielson action, enter summary  
27 judgment that American Casualty Company has a duty to defend the  
28

29  
30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 26  
32 als1500/4857/802

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15154 4-21-2665-66827

1 church in that action, order that American Casualty Company must  
2 indemnify the church for its attorney fees in this declaratory  
3 action, impose terms and attorney fees against American Casualty  
4 Company in favor of all defendants upon American Casualty's  
5 frivolous fourth cause of action, and enter a final judgment  
6 herein.  
7

8  
9 DATED this 3<sup>rd</sup> day of February, 1989

10 EVANS CRAVEN & LACKIE, P.S.

11  
12 By Tim Donaldson  
13 TIM DONALDSON  
14 Attorneys for Barnetts

15 RUSH, HANNULA & HARKINS

16  
17 By Dan Hannula  
18 DAN HANNULA  
19 Attorneys for Gabrielsons

20  
21 By John A. Glassman  
22 JOHN GLASSMAN  
23 Attorney for Community Chapel  
24  
25  
26  
27  
28  
29

30 BRIEF IN SUPPORT OF  
31 SUMMARY JUDGMENT : 27  
32 als1500/4857/802

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6

5 FEB 03 1989

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

AMERICAN CASUALTY COMPANY OF  
READING PENNSYLVANIA, a  
Pennsylvania corporation,

Plaintiff,

vs.

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

Defendants.

No. 88-2-00947-9

DEFENDANTS JOINT  
MOTION RE: COVERAGE  
FOR CHURCH ENTITY

FILED  
IN COUNTY OF PIERCE OFFICE  
AM. FEB 03 1989 P.M.  
PIERCE COUNTY WASHINGTON  
CLERK  
BY [Signature] DEPUTY

1. Relief Sought.

Defendants move this court for summary judgment declaring that American Casualty Company of Reading Pennsylvania has a duty under policy number IP502144020 to defend and indemnify the Community Chapel & Bible Training Center of Burien upon claims made by Ira and Carol Gabrielson in Pierce County cause number 86-2-02792-6.

Defendants move this court to award the Community Chapel & Bible Training Center its attorney fees herein.

Defendants move this court to assess attorney fees and terms against American Casualty Company upon its fourth cause of action contained in its amended complaint herein.

Defendants move this court for a final judgment herein.

JOINT SUMMARY  
JUDGMENT MOTION: 1  
tjd\1500\4857\sjm

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1           2.    Grounds.

2           There is no genuine issue of material fact as to coverage  
3 available to the church entity, and defendants are entitled to  
4 judgment as a matter of law.

5           The church is entitled to its attorney fees herein upon  
6 establishing that there exists a duty to defend.

7           There is no reasonable basis to plaintiff's fourth cause of  
8 action and it is frivolous.

9           Entry of summary judgment upon coverage for the church  
10 entity eliminates the need for consideration of other coverage  
11 issues herein.

12          3.    Basis.

13          The AFFIDAVIT OF BRUCE WINCHELL filed herein on March 30,  
14 1988; the AFFIDAVIT OF DON BARNETT filed herein on August 30,  
15 1988; the deposition of Jack L. McDonald excerpts of which are  
16 attached to the affidavit of Tim Donaldson annexed hereto; the  
17 complaint, judgment on jury verdict, and verdict form in Pierce  
18 County cause number 86-2-02792-6 certified copies of which are  
19 attached to the affidavit of Tim Donaldson annexed hereto; the  
20 affidavits of Jack DuBois, E. Scott Hartley, Don Barnett, and  
21 Carol Gabrielson in support of this motion; the AFFIDAVIT OF TIM  
22 DONALDSON IN SUPPORT OF MOTION TO REVISE SUMMARY JUDGMENT ORDERS  
23 and the records and files herein specifically including  
24 plaintiff's amended complaint filed herein on March 25, 1988 and  
25 defendants materials considered in connection with this court's  
26 Summary Judgment Orders entered herein on November 18, 1988,  
27 December 9, 1988, and February 3, 1989.

28          4.    Authority.

29          JOINT SUMMARY  
30          JUDGMENT MOTION: 2  
31          tjd\1500\4857\sjm

32  
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1 Defendants motions are made pursuant to CR 56, CR 54(b), CR  
2 11, RCW 4.84.185, Pierce County Local Rule 10, authorities  
3 contained in DEFENDANTS' JOINT BRIEF IN SUPPORT OF JOINT MOTION  
4 FOR SUMMARY JUDGMENT UPON COVERAGE FOR CHURCH ENTITY, authorities  
5 contained in BARNETT SUPPLEMENTAL OPPOSITION BRIEF TO SUMMARY  
6 JUDGMENT RE: BODILY INJURY, authorities considered in connection  
7 with this court's Summary Judgment Orders entered herein on  
8 November 18, 1988, December 9, 1988, and February 3, 1989.

9 5. Proposed Order. A proposed form of order is attached  
10 hereto.

11 DATED this 3<sup>rd</sup> day of February, 1989

12 EVANS CRAVEN & LACKIE, P.S.

13  
14 By Tim Donaldson  
15 TIM DONALDSON  
16 Attorneys for Barnetts

17 RUSH, HANNULA & HARKINS

18  
19 By Dan Hannula  
20 DAN HANNULA  
21 Attorneys for Gabrielsons

22  
23 By John A. Glassman  
24 JOHN GLASSMAN  
25 Attorney for Community Chapel

26 STATE OF WASHINGTON )  
27 County of King )

28 ss. Affidavit of Tim Donaldson

29 Tim Donaldson being first duly sworn upon oath and having

30 JOINT SUMMARY  
31 JUDGMENT MOTION: 3  
32 tjd\1500\4857\sjm

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1 personal knowledge of the following facts deposes and says:

2 I am at least twenty-one (21) years of age, and I am  
3 competent to make this statement;

4 I am an attorney for Don and Barbara Barnett in the above-  
5 entitled cause of action;

6 Attached hereto as exhibit 1 is a certified copy of  
7 COMPLAINT FOR PERSONAL INJURIES AND DAMAGES filed in Pierce  
8 County cause number 86-2-02792-6;

9 Attached hereto as exhibit 2 is a certified copy of VERDICT  
10 FORM filed in Pierce County cause number 86-2-02792-6;

11 Attached hereto as exhibit 3 is a certified copy of  
12 JUDGMENT ON JURY VERDICT filed in Pierce County cause number 86-  
13 2-02792-6;

14 Attached hereto as exhibit 4 are true and correct copies of  
15 pages 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22,  
16 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 45, and 46 of the  
17 transcription of the deposition of Jack L. McDonald taken upon  
18 oral examination on September 8, 1988;

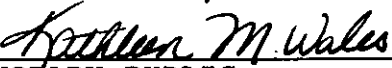
19 Further affiant saith naught.

20   
21 TIM DONALDSON

22 State of Washington  
23 County of KING

Signed and sworn to before me on

24 February 2, 1989 by Tim  
25 Donaldson.

26   
27 NOTARY PUBLIC  
28 My commission expires 8-22-91

29 JOINT SUMMARY  
30 JUDGMENT MOTION: 4  
31 tjd\1500\4857\sjm  
32

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EXHIBIT 1

FILED  
IN COUNTY CLERKS OFFICE

A.M. APR 30 1986 P.M.

PIERCE COUNTY, WASHINGTON  
BRIAN SONNTAG, County Clerk  
DEPUTY

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.

////

COMPLAINT - 1

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

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II.

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

4 III.

5 The defendants Donald Lee Barnett and Barbara Barnett  
6 are husband and wife and are residents of King County,  
7 Washington. Donald Barnett is the head pastor of Community  
8 Chapel and Bible Training Center and as such is responsible  
9 for the administration and direction of the entire congre-  
10 gation, including the Tacoma Chapel. All actions described  
11 of the defendants or either of them were performed on behalf  
12 of the marital community.

13 IV.

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

20 V.

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

25 ////

26 COMPLAINT - 2

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 ////



6

5 FEB 03 1989

FILED  
IN COUNTY CLERK'S OFFICE  
A.D. FEB 03 1989 P.M.  
PIERCE COUNTY WASHINGTON  
COUNTY CLERK  
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. )

AFFIDAVIT OF DON  
BARNETT IN SUPPORT  
OF DEFENDANTS' JOINT  
MOTION RE: COVERAGE  
FOR CHURCH ENTITY

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. )

STATE OF WASHINGTON )  
County of King ) ss.

Don Barnett, being first duly sworn upon oath and having  
personal knowledge of the following facts, deposes and says;

I am at least 21 years of age, and I am competent to make  
this statement;

During the years 1985 and 1986, I was the Board of Senior  
Elders Chairman for the Community Chapel and Bible Training  
Center of Burien;

The other Senior elders were Jack Hicks, E. Scott Hartley,  
and Jack DuBois;

BARNETT SUPPORT  
AFFIDAVIT: 1  
1500\4857\dlb

*Evans, Craven & Lachie, P.S.*  
LAWYERS  
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SEATTLE, WASHINGTON 98104  
(206) 386-5555

15154 1-21-2000 66637

1 At no time was Jack McDonald ever a Senior Elder of the  
2 Community Chapel and Bible Training Center of Burien;

3 During 1985 and 1986, Jack McDonald was the pastor <sup>AB</sup> and an  
4 <sup>AB</sup> ~~Senior Elder~~ <sup>AB</sup> of the Community Chapel and Bible Training Center of  
5 Tacoma which is a separate corporation from the Community Chapel  
6 and Bible Training Center of Burien;

7  
8 During 1985 and 1986, I rarely ever had contact with Jack  
9 McDonald;

10  
11 I had never heard allegations of misconduct committed by  
12 Jack McDonald until only a few weeks prior to the filing of the  
13 lawsuit in Pierce County brought by Ira and Carol Gabrielson,  
14 cause number 86-2-02792-6;

15  
16 To my knowledge, Jack McDonald denied that he had a sexual  
17 relationship with Carol Gabrielson until some time after the  
18 aforementioned lawsuit was filed;

19  
20 I did not personally know Carol Gabrielson, and I never have  
21 had any personal knowledge concerning the truth of her  
22 allegations against Jack McDonald, other than information which I  
23 received during the course of the aforementioned lawsuit;

24  
25 I never attended services at the Community Chapel in Tacoma  
26 at which Jack McDonald made statements regarding Carol  
27 Gabrielson, and I never monitored the contents of his sermons;

28  
29  
30  
31 BARNETT SUPPORT  
32 AFFIDAVIT: 2  
1500\4857\dlb

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15154 421-2883-88838

1 At present, I still do not personally know the contents of  
2 public statements that Jack made about Carol Gabrielson;  
3 TO THE BEST OF MY KNOWLEDGE, <sup>(B)</sup>  
4 No one on the Senior Board at Burien had knowledge of Jack's  
5 activities involving Carol Gabrielson until after allegations of  
6 misconduct were made publicly;

7  
8 Further affiant saith naught.

9  
10 State of Washington  
11 County of King

Don Barnett  
12 DON BARNETT

Signed and sworn to before me on  
13 February 2nd, 1989 by Don  
14 Barnett.

Tom Donahue  
15 NOTARY PUBLIC  
16 My commission expires 1989

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31 BARNETT SUPPORT  
32 AFFIDAVIT: 3  
1500\4857\dlb

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5588-882-17-1  
15154 1-11-2883-88835

5 FEB 03 1989

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

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

No. 88-2-00947-9

BARNETT SUPPLEMENTAL  
BRIEF IN SUPPORT OF  
GABRIELSON MOTION FOR  
SUMMARY JUDGMENT

FILED  
IN COUNTY CLERK'S OFFICE

FEB 03 1989 P.M.

PIERCE COUNTY CLERK  
BY \_\_\_\_\_

I. FACTS

The declarations to the American Casualty policy issued to the Community Chapel & Bible Training Center of Burien, policy #IP502144020, identifies forms GL 9905(7/66) and GL 2114(7/66) as part of the policy. See, AFFIDAVIT OF BRUCE WINCHELL filed herein on March 30, 1988.

Form GL 9905(7/66) is a Products Hazard Exceptions which states that it applies as follows:

Description of Premises and Operations:  
Schools- Colleges & Parochial  
Churches  
Camps

See, AFFIDAVIT OF TIM DONALDSON IN SUPPORT OF MOTION TO REVISE SUMMARY JUDGMENT ORDERS.

Form GL 2114(7/66) is a Professional Services Exclusion which states that it applies as follows:

SUPPLEMENTAL  
SUPPORT BRIEF: 1  
1500\4857\ssb

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15151 1/21/2883 86848

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

3 See, AFFIDAVIT OF BRUCE WINCHELL filed herein on March 30, 1988.

4 II. LAW & ARGUMENT

5 An insurance policy must be given a reading which gives  
6 effect to all of its provisions.

7 When interpreting language of an insurance  
8 contract, the entire contract is to be  
9 construed together for the purpose of giving  
10 force and effect to each clause.... That  
11 contract must be construed to carry out the  
12 intent of the parties in writing the contract  
13 unless there is a clear expression to the  
14 contrary somewhere within the contract.

15 Neer v. Fireman's Insurance, 103 Wn.2d 316, 320, 692 P.2d 830  
16 (1985) (citations omitted).

17 In the present case, the American Casualty Policy contains  
18 both the Professional Services Exclusion and the Products Hazards  
19 Exception. Both of these exclusions must be looked at to  
20 determine the intended scope of the Professional Services  
21 Exclusion. The Products Hazards Exception includes Churches as  
22 one of its described premises and operations. However, the  
23 Professional Services Exclusion lists only Schools- Colleges,  
24 Universities or College Preparatory as within its described  
25 operations.

26 "Where exceptions, qualifications or exemptions are  
27 introduced into an insurance contract, a *general presumption*  
28 *arises to the effect that that which is not clearly excluded from*  
29 *the operation of such contract is included in the operation*

30  
31 SUPPLEMENTAL  
32 SUPPORT BRIEF: 2  
1500\4857\ssb

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1515 1-21-2883 8884





5 FEB 03 1989

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

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

No. 88-2-00947-9

BARNETT SUPPLEMENTAL  
OPPOSITION BRIEF TO  
SUMMARY JUDGMENT RE:  
BODILY INJURY

FILED  
IN COUNTY CLERK'S OFFICE  
FEB 03 1989 P.M.  
BY [Signature] COUNTY CLERK  
DEPUTY

I. FACTS

American Casualty Company acknowledged tender of the defense of Pierce County cause number 86-2-02792-6 and issued a reservation of rights by letter dated August 7, 1986. Therein, the insurance company wrote:

After having thoroughly reviewed the Summons & Complaint, we are not sure that the allegations set forth fall within the definition of "Occurrence" in your policy.

Nowhere therein does the company indicate that it disputes coverage on the basis that the allegations may not constitute bodily injury. In fact, nowhere therein does the company state even generally that other provisions of the policy are relied

SUPPLEMENTAL  
OPPOSITION : 1  
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15151  
4-21-2663 88813

1 upon besides the definition of occurrence. See, AFFIDAVIT OF TIM  
2 DONALDSON IN SUPPORT OF MOTION TO REVISE SUMMARY JUDGMENT ORDERS,  
3 Exhibit 1.  
4

5 The next letter from American Casualty Company which  
6 discusses its reservation of rights is dated September 30, 1986.  
7 Therein, the company lists its reasons for disputing coverage  
8 upon each cause of action in Pierce County cause number 86-2-  
9 02792-6. It expressly states its basis for arguing that  
10 emotional distress alleged by the Gabrielsons is not covered as  
11 follows:  
12  
13

14 The first Cause of Action, emotional distress  
15 is not covered because it results from the  
16 allegations set forth in the second, third  
17 and fourth Causes of Action.

18 The second, third and fourth Causes of  
19 Action, counselor malpractice and pastoral  
20 malpractice are not covered- refer to Form  
21 GL-240766, counselor malpractice and claims  
22 of negligent counseling are excluded.

23 Nowhere therein does American Casualty dispute coverage for  
24 emotional distress on the grounds that it is not bodily injury.  
25 Rather, it contends that the Gabrielson emotional distress claims  
26 are not covered because they arise out of other allegations which  
27 it claims to be subject to the professional services exclusion.  
28 Likewise, the only reason stated for contesting the consortium  
29 claim of Ira Gabrielson was upon argument that the claim was  
30

31 SUPPLEMENTAL  
32 OPPOSITION : 2  
1500\4857\sob

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15154 4-21-2003-38844



1 based upon otherwise excluded conduct under that same exclusion.  
2 See, AFFIDAVIT OF TIM DONALDSON TO REVISE SUMMARY JUDGMENT  
3 ORDERS, Exhibit 2.  
4

5 American does not claim to rely upon the bodily injury  
6 definition until over a year later. By letter dated November 30,  
7 1987, it finally gets around to adding "bodily injury" to its  
8 list of reasons for disputing coverage. Therein, the company  
9 makes no reference to any further investigation upon which these  
10 new reasons are based. Rather, it again refers only to the  
11 allegations contained in the complaint of which it acknowledged  
12 acceptance over a year earlier. See, AFFIDAVIT OF TIM DONALDSON  
13 IN SUPPORT OF MOTION TO REVISE SUMMARY JUDGMENT ORDERS, Exhibit  
14 3.  
15  
16  
17

18 According to its letter dated February 5, 1988, the above  
19 mentioned letters reflect the complete history of the reservation  
20 of rights stated by American Casualty Company prior to the filing  
21 of this declaratory action. See, AFFIDAVIT OF TIM DONALDSON IN  
22 SUPPORT OF MOTION TO REVISE SUMMARY JUDGMENT ORDERS, Exhibit 4.  
23 This action was filed on February 4, 1988. See, record herein.  
24  
25  
26

27 II. LAW & ARGUMENT

28 American Casualty Company purports to reserve its rights by  
29 its August 7, 1986 letter. An insurer may waive through non-  
30

31 SUPPLEMENTAL  
32 OPPOSITION : 3  
1500\4857\sob

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15154 421283 88845

1 action.

2 Waiver, either express or implied, has been  
3 defined as the voluntary and intentional  
4 relinquishment or abandonment of a known  
5 right. It is unilateral in that it arises  
6 out of either action or nonaction on the part  
7 of the insurer or its duly authorized agents  
8 and rests upon circumstances indicating or  
9 inferring that the relinquishment of the  
right was voluntarily intended by the insurer  
with full knowledge of all of the facts  
pertaining thereto.

10 Buchanan v. Switzerland Gen. Ins., 76 Wn.2d 100, 455 P.2d 344  
11 (1969). Since American Casualty reserved its rights only with  
12 respect to the occurrence issue, it waived its rights with  
13 respect to the other issues.  
14

15 The Washington Administrative Code requires an insurer to  
16 act reasonably promptly upon communications with respect to  
17 claims. WAC 284-30-330. Further, investigation of a claim must  
18 be completed within the first 30 days unless it cannot be  
19 reasonably completed during that time. WAC 284-30-370. The  
20 insured must be notified of specific policy provisions upon which  
21 coverage may be denied. If more time is needed to make a  
22 coverage decision, the company must notify the insured that  
23 additional time is needed. WAC 284-30-380.  
24

25 In another case involving this same American Casualty  
26 Company, the Court of Appeals has held that an isolated violation  
27

28  
29  
30  
31 SUPPLEMENTAL  
32 OPPOSITION : 4  
1500\4857\sob

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15154 421-2883-88846

1 of the unfair trade practices promulgated by the Insurance  
2 Commissioner constitutes a per se violation of the Washington  
3 Consumer Protection Act. Evergreen Int'l v. American Cas., 52  
4 Wn.App. 548, \_\_\_ P.2d \_\_\_ (Div. One, 1988).

5  
6 Assuming that American Casualty Company has discharged its  
7 good faith obligation in the present case and was reasonably  
8 prompt with its communications, it must have waived reliance upon  
9 the issue of bodily injury when it declared its reservation of  
10 rights.  
11

12  
13 By the terms of its own correspondence, American Casualty  
14 was fully aware of the nature of the claims in the Gabrielson  
15 case and had reviewed the policy provisions which it felt may  
16 apply. In its letter dated August 7, 1986, the Company expressly  
17 stated "After having thoroughly reviewed the Summons &  
18 Complaint..." a reservation of rights is declared since the  
19 company questions whether there was an occurrence. At no time  
20 though was there even general reference to the bodily injury  
21 provisions of the policy or any other part of the policy for that  
22 matter.  
23  
24  
25

26 No additional time requested to evaluate the coverage  
27 decision with respect to any other issue. Over a month later,  
28 though, American Casualty added its contention that the personal  
29  
30

31 SUPPLEMENTAL  
32 OPPOSITION : 5  
1500\4857\sob

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15154 42112883-88847

1 services exclusion applied. By the terms of its September 30  
2 letter, it did not rely upon any new facts of which it was not  
3 previously aware. Again it referred only to the Gabrielson  
4 complaint which it previously claimed to have thoroughly  
5 reviewed.  
6

7  
8 Over a year later, American Casualty again attempted to  
9 reserve additional issues. Again it referred only to the  
10 complaint which it had received and reviewed over a year and  
11 three months earlier. After stating its new coverage position  
12 based upon solely upon the complaint, American Casualty finally  
13 claims that there may be factual issues which need resolution.  
14 However, its November 30, 1987 letter asserts no new facts and no  
15 additional investigation is mentioned.  
16

17  
18 The only fact relied upon by American Casualty in reserving  
19 its rights is the content of the Gabrielson complaint. By its  
20 own admission, it had thoroughly reviewed this fact at the time  
21 it issued its original reservation. At law, American Casualty  
22 was bound to act reasonably promptly upon the claim made under  
23 its policy. Its failure to do so would constitute per se bad  
24 faith. Consequently, it must have impliedly waived any rights  
25 which were not promptly reserved. American Casualty did not  
26 purport to reserve the bodily injury issue until over a year  
27  
28  
29  
30

31 SUPPLEMENTAL  
32 OPPOSITION : 6  
1500\4857\sob

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15154 4/21/2003 20040

1 after issuing its original reservation, and it does not refer  
2 therein to anything which was unknown to it at the time of the  
3 earlier reservation.  
4

5 Through its non-action American Casualty Company has  
6 accomplished one of two things. It has accomplished either  
7 waiver or bad faith.  
8

9 III. CONCLUSION

10 By application Washington law regarding unfair trade  
11 practices in the insurance business to the principles of waiver,  
12 an insurer must be deemed to waive coverage issues which it does  
13 not timely reserve. Therefore, American Casualty Company has  
14 waived coverage issues with respect to bodily injury unless it is  
15 willing to admit commission of an unfair trade practice.  
16  
17

18 DATED this 2nd day of February, 1989.  
19

20 EVANS CRAVEN & LACKIE, P.S.  
21

22 By Tim Donaldson  
23 TIM DONALDSON  
24 Attorneys for Barnettts  
25  
26  
27  
28  
29  
30

31 SUPPLEMENTAL  
32 OPPOSITION : 7  
1500\4857\sob

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15154 4021/2003 80843



1 involved in a dispute over control of the church;

2 Consequently, my client's access to church records has been  
3 limited;

4 Attached hereto as exhibit 1 is a copy of a letter dated  
5 August 7, 1986 addressed to Wayne Snoey of the Community Chapel  
6 and Bible Training Center from Mary Sullivan of CNA Insurance  
7 Company;

8 Attached hereto as exhibit 2 is a copy of a letter dated  
9 September 30, 1986 addressed to Wayne Snoey of the Community  
10 Chapel and Bible Training Center from Mary Sullivan of CNA  
11 Insurance Company;

12 Attached hereto as exhibit 3 is a copy of a letter dated  
13 November 30, 1987 addressed to Mr. Donald Barnett of the  
14 Community Chapel and Bible Training Center from Mary C. Sullivan  
15 of CNA Insurance Company;

16 Attached hereto as exhibit 4 is a copy of a letter dated  
17 February 5, 1988 addressed to Mr. Donald Barnett & Mr. Wayne  
18 Snoey of the Community Chapel and Bible Training Center from  
19 Edward Kloth of CNA Insurance Company;

20 At the time at which the motion for partial summary judgment  
21 brought by American Casualty Company re: Bodily Injury was heard  
22 on April 15, 1988 my office did not possess copies of the letters  
23  
24  
25  
26  
27  
28  
29  
30

31 AFFIDAVIT OF  
32 TIM DONALDSON: 2  
1500\4857\tjdaff

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1 dated August 7, 1986 and September 30, 1986;

2 Copies of these letters were discovered among a file of  
3 miscellaneous church papers during the week of January 30, 1989  
4 which was provided to my office by Don Barnett at an unknown date  
5 in the latter part of 1988;  
6

7  
8 The copies of the letters were discovered during the course  
9 of organizing church documents while preparing responses to  
10 discovery requests in another proceeding;

11  
12 My office has engaged in a continuing process of discovering  
13 and organizing documents and other materials relating to our  
14 clients and the Community Chapel ever since it was retained to  
15 represent the Barnetts, and the failure to discover the August 7,  
16 1986 letter and the September 30, 1986 letter was not caused by  
17 any lack of due diligence;  
18

19  
20 Attached hereto as exhibit 5 is a copy of a letter dated  
21 August 11, 1988 addressed to Ms. Mary Sullivan of CNA Insurance  
22 Company from Tim Donaldson wherein a complete copy of American  
23 Casualty policy #IP502144020 is requested;  
24

25 A complete copy of said policy was not received by my office  
26 until January 27, 1989 in response to formal discovery requests  
27 in another proceeding;  
28

29 Attached hereto as exhibit 6 is a copy of a form identified  
30

31 AFFIDAVIT OF  
32 TIM DONALDSON: 3  
1500\4857\tjdaff

*Evans, Craven & Lackie, P.C.*

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1 as a Products Hazards Exceptions, form number GL 9905(7/66) which  
2 was received by my office on January 27, 1989 with the complete  
3 copy of American Casualty policy #IP502144020;

4  
5 Prior to receipt of the complete copy on January 27, 1989,  
6 the only copy of the American Casualty policy which my office  
7 knowingly possessed was the copy attached to plaintiffs complaint  
8 for declaratory relief in the above entitled cause of action, and  
9 such other copies which were served upon my office with materials  
10 filed herein as reflected in the court file upon this matter;

11  
12 Prior to January 27, 1989, I had not seen a copy of form  
13 number GL 9905 (7/66), and failure to discover the contents of  
14 said form was not caused by lack of due diligence;

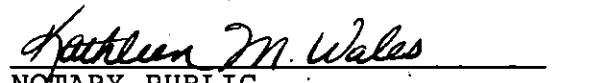
15  
16 Upon discovery of exhibits 1, 2, and 6 hereto, I have not  
17 otherwise delayed in preparing and bringing a motion to revise  
18 this court's summary judgment orders to supplement the record  
19 herein;  
20  
21

22 Further affiant saith naught.

23  
24 State of Washington  
25 County of King

  
TIM DONALDSON

26 Signed and sworn to before me on  
27 February 2, 1989 by Tim  
28 Donaldson.

29   
30 NOTARY PUBLIC  
31 My commission expires 8-22-91

32 AFFIDAVIT OF  
TIM DONALDSON: 4  
1500\4857\tjdaff

*Evans, Craven & Lackie, P.S.*

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SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 4-22-2083 08853

EXHIBIT 1

# CNA INSURANCE COMPANIES

P.O. Box 240111, Seattle, WA 98124-9611

August 7, 1986

Wayne Snoey  
Community Chapel  
& Bible Training Center  
18635 - 8th Avenue South  
Tacoma, Washington 98148

File No.: 57-241 032 S2  
Insured: Community Chapel  
& Bible Training Center  
Claimant: Carol Gabrielson  
Date of Loss: 03/06/86

Dear Mr. Snoey:

We are in receipt of the Summons & Complaint entitled Ira Gabrielson and Carol Gabrielson, husband and wife, Plaintiffs, vs. Jack McDonald and Jane Doe McDonald, husband and wife; Donald Lee Barnett and Barbara Barnett, husband 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. This case was filed in Pierce County Superior Court on 04/30/86. It is our understanding that your personal attorney, Michael W. Bugni, made an appearance on your behalf on or about 05/08/86.

Your policy, IP 5021 44020, underwhich this lawsuit is reported provides coverage for any act or event which meets the definition of "occurrence" as defined in Form G-39200-D (page 10 of 11), Definitions Applicable to Part II:

Occurrence means an accident, including continuous or repeated exposure to conditions, which results in Bodily 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.

After having thoroughly reviewed the Summons & Complaint, we are not sure that the allegations set forth fall within the definition of "Occurrence" in your policy. However, your policy does provide coverage for claims of personal injury arising out of an offense of libel or slander or other defamatory or disparaging utterances. We refer you to Form G-39250-C (page 5 or 8, B4) "Personal Injury and Advertising Injury Liability Coverage".

# CNA INSURANCE COMPANIES

---

Wayne Snoey

- 2 -

August 7, 1986

Subject to a full reservation of all our rights under your policy, we accept notice of this suit and will proceed with an investigation and defense. This matter will be assigned to the lawfirm of Lee, Smart, Cook, Martin & Patterson.

Should you wish to retain your own counsel, please be advised that you do so at your own expense. Although we would not participate in a shared fee basis, we would welcome and fully cooperate with association in this litigation. We refer you to Form G-39200-D (page 7 of 11 3C), "The Insured's Duties in the Event of Occurrence, Claim or Suit."

Unless we receive written notice to the contrary, we assume that you agree with our handling of this case as outlined above. If you have any questions or comments, please feel free to contact me at 1-800-542-7833.

Yours sincerely,



Mary Sullivan  
Claims Representative

MS/rh

~~Sullivan~~  
Sullivan - Atty Law Martin

this policy, and the cost of bail bonds 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

in excess of one year, any limit of the Company's 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

15159



EXHIBIT 2

# CNA INSURANCE COMPANIES

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P.O. Box 240111, Seattle, WA 98124-9611

September 30, 1986

Wayne Snoey  
Community Chapel  
& Bible Training Center  
18635 - 8th Avenue South  
Tacoma, Washington 98148

File No.: 57-241 032 S2  
Insured: Community Chapel  
& Bible Training Center  
Regarding: Gabrielson v. McDonald, Barnett, etal;  
Community Chapel

Dear Mr. Snoey:

We refer you to our correspondence to you of 08/08/86. In that letter, we stated that subject to a full reservation of all our rights under your policy, IP 5021 44020, we accepted notice of the above captioned lawsuit and would proceed with the investigation and defense of this matter.

We acknowledge that you have retained your own counsel, Mr. Michael Bugni, at your own expense to associate in this litigation with Mr. Michael Bond of Lee, Smart, Cook, Martin & Patterson.

We now wish to specify for you what allegations contained in the Summons & Complaint fall within the ambit of coverage provided by your policy and those which do not. Please refer to the 08/08/86 correspondence for pertinent policy forms and definitions.

The first Cause of Action, emotional distress is not covered because it results from the allegations set forth in the second, third and fourth Causes of Action.

The second, third and fourth Causes of Action, counselor malpractice and pastoral malpractice are not covered - refer to Form GL-240766, counselor malpractice and claims of negligent counseling are excluded.

X  
The fifth, sixth and seventh Causes of Action, assault, battery and false imprisonment are not covered - refer to Form G-39200-D, definition of occurrence.

e  
The eighth Cause of Action, defamation is covered - refer to Form G-39250-C, personal injury liability coverage.



# CNA INSURANCE COMPANIES

---

Wayne Snoey

- 2 -

September 30, 1986

The ninth Cause of Action, loss of consortium is not covered because it results from the allegations set forth in the second, third and fourth Causes of Action.

We look forward to your continued cooperation throughout this litigation. Should you have any questions or concerns regarding the policy position of CNA, please contact the undersigned in writing.

Yours sincerely,



Mary Sullivan  
Claims Representative  
1-206-447-5412

cc: Michael Bond, Attorney at Law  
1325 - 4th Avenue  
Seattle, Washington 98101

Michael W. Bugni, Attorney at Law  
11320 Roosevelt Way Northeast  
Seattle, Washington 98125

MS/rh

EXHIBIT 3

# CNA INSURANCE COMPANIES

P.O. Box 240111, Seattle, WA 98124-9611

November 30, 1987

Mr. Donald Barnett  
Community Chapel  
& Bible Training Center  
C/O Rod D. Hollenbeck, Attorney at Law  
Columbia Center, 34th Floor  
701 - 5th Avenue  
Seattle, Washington 98104

File No.: 57-241-032 S2  
Insured: Community Chapel & Bible Training Center  
Regarding: Gabrielson v. McDonald, Barnett, et al; Community Chapel

Dear Mr. Barnett:

As you know, the firm of Lee, Smart, Cook, Martin & Patterson (Lee, Smart) had previously been retained to defend Community Chapel & Bible Training Center (Community Chapel), and Donald and Barbara Barnett. Lee, Smart has now determined that a conflict of interest exists between Community Chapel and other defendants it had represented. Lee, Smart will continue to represent Community Chapel. We have appointed Rod D. Hollenbeck to represent Mr. Barnett and his wife. This then is an appropriate juncture at which to review the issues which we have previously discussed in our correspondence to you dated 08/07/86 and 09/30/86.

We have defended and will continue to defend Community Chapel, and Mr. and Mrs. Barnett. We provide this defense under a reservation of rights. We do so because some or all of the claims asserted by the plaintiffs may not be covered under your policy.

The first cause of action for outrage may not be covered because there may be no "Bodily Injury" (i.e., physical injury) for which coverage is provided under your policy. Bodily injury is defined as: Bodily injury, sickness or disease which occurs during the policy period. The claim for false arrest is based upon a "Personal Injury," coverage does exist. However, as the extent this claim is based upon a "Personal Injury," coverage does exist. Personal Injury includes injuries arising out of:

- (a) false arrest...
- (b) wrongful eviction...

15154 4/21/2883 88885

# CNA INSURANCE COMPANIES

Donald Barnett

- 2 -

November 30, 1987

(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.

Form G-39250-C, page #5.

The outrage claim may also be uncovered because of the possibility that it arises from acts which do not constitute an "occurrence" under your policy. An occurrence is:

"An accident...which results in Bodily Injury...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.

To the extent that the claim of outrage arises from acts which were not "occurrences" under the policy, no coverage exists.

The second, third and fourth causes of action relate to claims of pastoral and counselor malpractice. Coverage may not exist because the acts complained of may not be covered "occurrences," the injury suffered may not be a "bodily injury," and because your policy:

...does not apply to bodily injury due to

1. The rendering or failure to render

(b) any service or treatment conducive to health or of a professional nature.

Form GL 21 14 07 66

The plaintiff's fifth, sixth and seventh causes of action are for assault, battery and false imprisonment. The answer prepared on your behalf alleges the plaintiff instigated the incident in which she was ejected from the Burien Chapel. The claim for false imprisonment appears to be a covered "personal injury." To the extent the assault and battery claims result from "the use of reasonable force," they are covered "occurrences." To the extent the claims of assault and battery are not the result of "the use of reasonable force" no coverage exists, because the claims do not result from "accidents" and hence are not "occurrences" within the policy definitions.

As previously indicated, the eighth cause of action for defamation appears to

**CNA**

For All the Commitments You Make

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# CNA INSURANCE COMPANIES

Donald Barnett

- 3 -

November 30, 1987

be covered. However, coverage is not provided for defamatory statements:

"...made by or at the direction of the insured with knowledge of the falsity thereof..."

The ninth cause of action is for loss of consortium. The the extent this claim is derivative of other uncovered claims, it too is uncovered.

Resolution of these coverage issues will require resolution of related factual issues in litigation. For that reason, we will continue to defend you against the claims (but only so long as it factually appears that a claim is, or may be, covered by the policy), but with full reservation of rights to decline to indemnify you against any liability or judgment based on a claim not covered by the policy. By enumerating the foregoing grounds of potential non-coverage under the policy, we do not restrict ourselves to those grounds, but instead reserve all of our rights under all the provisions of the policy whether specifically discussed in this letter or not. At the same time, by agreeing to our defense of this suit under such reservation of rights, you do not waive any of your rights under the policy. If you have any questions or comments, do not hesitate to call me.

Yours sincerely

Mary C. Sullivan  
Senior Claims Representative  
American Casualty Company  
1-206-587-7482

cc: Rod D. Hollenbeck, Attorney at Law *was*  
Columbia Center, 34th Floor  
701 - 5th Avenue  
Seattle, Washington 98104

Michael J. Bond, Attorney at Law  
800 Washington Building  
1325 - 4th Avenue  
Seattle, Washington 98101

MCS/rh/022

EXHIBIT 4

# CNA INSURANCE COMPANIES

---

P.O. Box 240111, Seattle, WA 98124-9611

February 5, 1988

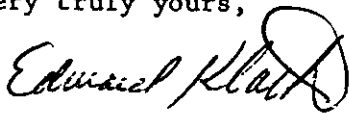
Mr. Donald Barnett  
& Mr. Wayne Snoey  
Community Chapel  
& Bible Training Center  
18635 - 8th Avenue South  
Seattle, Washington 98148

Our File No.: 57-250 414 S2  
Our Insured: Community Chapel  
& Bible Training Center  
Regarding: Gabrielson v. McDonald, Barnett,  
Community Chapel, etal

Dear Mr. Barnett & Mr. Snoey:

As you know, American Casualty Company is defending the above action under a full reservation of rights for reasons previously stated in our correspondence of 08/07/86, 09/30/86 and 11/30/87. As to individual defendants, we wish to also point out that coverage exists for employees, officers and directors only to the extent that such individuals were "acting within the scope of their duties" for Community Chapel. Form G-39250-C, Section II. If you have any questions, do not hesitate to write or call.

Very truly yours,



Edward Kloth  
Claims Supervisor  
American Casualty Company  
1-206-587-7484

cc: Mr. Rod D. Hollenbeck, Attorney at Law

Mr. Michael J. Bond, Attorney at Law

Mr. Tom Frye

EK/rh/893



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15154 4/21/2003 00007

EXHIBIT 5



# Evans, Craven & Lackie, P.S.

LAWYERS

Spokane Office  
N. 1206 Lincoln St.  
Spokane, Washington 99201  
(509) 328-1110  
(800) 922-1243  
(Washington only)  
FAX (509) 328-1294

Seattle Office  
Suite 3100 Columbia Center  
701 - 5th Ave.  
Seattle, Washington 98104  
(206) 386-5555  
FAX (206) 386-5587

Coeur d'Alene Office  
Suite 306  
1200 Ironwood Dr.  
Coeur d'Alene, Idaho 83814  
(208) 667-8276

James S. Craven  
Hugh O. Evans  
H. Terrence Lackie  
Jarold P. Cartwright  
Constance D. Gould  
Michael F. Connelly  
Rodney D. Hollenbeck  
Richard B. White  
Jerome J. Leveque  
Julie A. Twyford  
Patrick E. Pressentin  
John C. Perry  
Gregory M. Kane  
Paul L. Kirkpatrick  
Timothy J. Donaldson  
Timothy P. Malarchick  
Margaret E. Gleason  
David A. Trieweller  
Margaret C. McGinty

RESPOND TO: Seattle

August 11, 1988

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

Ms. Mary Sullivan  
CNA Insurance Company  
2900, 999 Third Avenue  
Seattle, WA 98104

Re: Insured: Barnett  
Claim No: 57 14103252  
Adverse: Snoey

Dear Mary:

Previously, I contacted you on behalf of Don and Barbara Barnett regarding the notice of claims and tender of defense upon actions initiated against the Barnett's and the Community Chapel and Bible Training Center by Gary Lien and Maureen Jorgensen. The Jorgensen action has been brought in King County Superior Court, Cause Number 86-2-26860-8. The Lien action has also been brought in King County, Cause Number 86-2-18282-9. It is my understanding that actions brought by Ira and Carol Gabrielson, Kathy Lee Butler and others, Carl Peterson, and Sandy Ehrlich were tendered and notice of claims given prior to involvement of my firm upon these matters. The Butler action was brought in King County, Cause Number 86-2-18176-8. The Gabrielson action has been brought in Pierce County, Cause Number 88-2-00942-9. The Ehrlich matter was brought in King County, Cause Number 86-2-18429-5. The Peterson action was brought in King County, Cause Number 87-2-14919-6. Please let me know if I am in error upon the tender of the defense and notice of claims of any of the aforementioned actions.

Presently, my office tenders the defense of additional claims and gives notice thereof to American Casualty Company on behalf of the Barnetts. At the request of Don Barnett as president of the Community Chapel and Bible Training Center, I also request defense for the church.

Enclosed please find a copy of the amended complaint in the Ehrlich action which has been joined with the Butler action for

15154 4/21/2003 00000

Ms. Mary Sullivan  
August 11, 1988  
Page 2

purposes of discovery. This amended complaint contains claims made by Catherine Kitchell, Ronald Kitchell, and Wendy Kitchell which were added in March of this year. I request that CNA provide defense for the Barnetts and the church upon the Kitchell claims which were added to the Ehrlich matter.

It has been brought to my attention that CNA also insured the church between 1979 and 1985 under umbrella liability policies as well as the general liability policy. Please take notice of claims under such policies for all of the aforementioned actions and the tender of defense under any such policies which may be applicable.

It is my understanding that CNA insured the church between 1979 and 1986 under a general liability policy, policy number IP502144020. It is also my understanding that the following umbrella policies were in effect. Between 1979 and 1980 an umbrella policy, number RDU05224005, was in effect. Between 1980 and 1981 an umbrella policy UMB3144022, was in effect. Between 1981 and 1982 an umbrella policy was in effect, policy number UMB00845630. Between 1982 and 1985 an umbrella policy was in effect, policy number UMB012144022. Please inform me if any other insurance policies were issued to the Community Chapel and Bible Training Center and the applicable effective dates.

Discovery requests have been made within the various actions requesting the contents of all policies pursuant to CR 26 (b) (2). Subject to Washington Discovery Rules, the Barnetts must respond to such requests as a part of their defense. Pursuant to WAC 284-30-350 (1), (2), I request copies of all of the policies and declaration sheets upon the policies of insurance issued to the Community Chapel and Bible Training Center as identified above and any other policies which may have been in effect.

Please send copies of the policy at your earliest possible convenience. Also, please acknowledge whether American Casualty Company shall accept the defense of the additional claims tendered herein at your earliest possible convenience.

Thank you for your attention to this matter. Please call if you have any questions.

Sincerely,



TIM DONALDSON

als  
15004924.501  
cc: Donald Barnett & Barbara Barnett

15154 4/21/2003 00070

EXHIBIT 6



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. **6**  
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**

**PRODUCTS HAZARD EXCEPTIONS**

It is agreed that the products hazard does not include bodily injury or property damage arising out of the named insured's products manufactured, sold, handled or distributed in connection with (1) the use of any premises described in this endorsement, owned by or rented to the named insured or (2) any operation, described in this endorsement, conducted by or on behalf of the named insured.

Description of Premises and Operations: **Schools - Colleges & Parochial  
Churches  
Camps**



1 he was having an ordinary relationship with another consenting  
2 adult. See, deposition of Jack L. McDonald, pages 43 through 47.  
3 The limited exception of inferred intent for criminal sex abuse  
4 clearly does not apply.  
5

6 The intent/accident issue was recently clarified in  
7 Detweiler v. J.C. Penney Ins., 110 Wn.2d 99, 751 P.2d 282 (1988).  
8 Therein, an insured deliberately fired six bullets at the tire of  
9 a vehicle. The bullets fragmented when they hit a steel axle and  
10 spattered the claimant's face with fragments. Reversing summary  
11 judgment in favor of the insurer on the accident issue, the court  
12 wrote at page 108:  
13  
14  
15

16 Although the result of the claimant's action  
17 (being struck by metal fragments in the neck,  
18 face and eye and sustaining injuries  
19 therefrom) was doubtless unintended, the  
20 means (shooting bullets from a gun at a  
21 nearby steel target) were obviously intended.  
22 It is thus arguable that claimant's injuries  
23 were a natural consequence of his actions an  
24 that no "additional unexpected, independent  
25 and unforeseen happening" occurred to bring  
26 them about. A motion for summary judgment,  
27 however, "should be granted only if, from all  
28 the evidence, reasonable [persons] could  
29 reach but one conclusion." Under the facts  
30 presented, the rapidly moving pickup truck  
31 and moving shooter resulted in changing  
32 distances between shooter an pickup. Those  
and other variables inherent in this confused  
occurrence, such as angle of fire, make  
"accident" a factual issue since reasonable  
minds could disagree as to whether under the  
circumstances what happened was an

31 BARNETT REPLY  
32 BRIEF : 22  
1500\4857\reply

*Evans, Craven & Lackie, P.C.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 4/21/2003 08874

1 additional, unexpected, independent and  
2 unforeseen happening which brought about the  
3 injuries. (citations omitted)

4 The intent element of the occurrence issue is two separate  
5 issues. The first issue is the intent to act. The second issue  
6 is the intent to injure. The intent to act, alone, does not  
7 defeat coverage. Injury caused by additional, unexpected,  
8 independent, and unforeseen happenings is accidental despite the  
9 intent of one to act. This is a factual issue.

10 In the present case, the damage from the McDonald/Gabrielson  
11 relationship arose from Carol Gabrielson's psychological  
12 dependence upon McDonald. See, the AFFIDAVIT OF PHILIP G.  
13 LINDSAY, M.D. filed herein on April 8, 1988. However, this  
14 dependence was not subjectively expected by McDonald. See,  
15 deposition of Jack L. McDonald, pages 43 through 47.  
16 Consequently, there exists a factual issue with respect to his  
17 intent to injure. Summary judgment is therefore improper with  
18 respect to his separate coverage.

19  
20  
21  
22  
23  
24 5. Continuance improper

25 In Transamerica Ins. v. Chubb & Son, 16 Wn.App. 247, 252-  
26 253, 554 P.2d 1080 (Div. One, 1976), the court held that a period  
27 of approximately two months was "... ample time to make further  
28 discovery or, at the very least, prepare and file affidavits  
29  
30

31 BARNETT REPLY  
32 BRIEF : 23  
1500\4857\reply

*Evans, Craven & Lachie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

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1 giving some reasonable support to the motion..." id at 253.

2 Over 2 1/2 years ago, a claim was made arising out of the  
3 Gabrielson action. With respect to coverage for the church  
4 entity, good faith required reasonable investigation and an  
5 explanation with respect to the facts or applicable law upon  
6 which coverage was disputed. WAC 284-30-330.  
7

8 Over a year ago, this declaratory action was filed.  
9 Professional responsibility required that it be "well grounded  
10 in fact and is warranted by existing law or a good faith argument  
11 for the extension, modification, or reversal of existing law..."  
12 CR 11.  
13

14 Almost one year ago, American Casualty Company insisted  
15 that its motion for summary judgment upon the bodily injury issue  
16 must be heard prior to the Gabrielson trial.  
17

18 Now, American Casualty asserts that more time is needed to  
19 develop factual issues. As discussed herein, these factual  
20 issues are irrelevant to coverage for the church entity and based  
21 upon erroneous legal arguments.  
22

23 CR 56 (f) states that a continuance may be granted if a  
24 party responding to a summary judgment demonstrates reasons why  
25 it cannot get affidavits necessary to justify its opposition to  
26 the motion. Nowhere, does American Casualty explain how 2 1/2  
27  
28  
29  
30

31 BARNETT REPLY  
32 BRIEF : 24  
1500\4857\reply

*Evans, Craven & Lachic, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

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1 years has lapsed without it being able to obtain affidavits.  
2 Clearly, continuance would not be proper to allow American  
3 Casualty to establish meritless legal theories and fish for  
4 additional reasons why it should not have to pay.  
5  
6

7  
8 DATED this 24<sup>th</sup> day of February, 1989.  
9

10 EVANS CRAVEN & LACKIE, P.S.

11  
12 By Tim Donaldson  
13 TIM DONALDSON  
14 Attorneys for Barnetts

15  
16 STATE OF WASHINGTON )  
17 County of King ) ss. Affidavit of Tim Donaldson

18 Tim Donaldson being first duly sworn upon oath and having  
19 personal knowledge of the following facts deposes and says:  
20

21 I am at least twenty-one (21) years of age, and I am  
22 competent to make this statement;  
23

24 I am an attorney for Don and Barbara Barnett in the above-  
25 entitled cause of action;

26 Attached hereto as exhibit 1 are true and correct copies of  
27 pages 43, 44, 45, 46, and 47 of the transcription of the  
28 deposition of Jack L. McDonald taken upon oral examination on  
29

30  
31 BARNETT REPLY  
32 BRIEF : 25  
1500\4857\reply

*Evans, Craven & Lackie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15151 4217283 88877

1 September 8, 1988;

2 Attached hereto as exhibit 2 is a courtesy copy of AFFIDAVIT  
3 OF PHILIP G. LINDSAY, M.D. filed herein on April 8, 1988

4 Further affiant saith naught.

5  
6 Tim Donaldson  
7 TIM DONALDSON

8 State of Washington  
9 County of King

Signed and sworn to before me on

10 February 24, 1989 by Tim  
11 Donaldson.

12 Trish Bashaw  
13 NOTARY PUBLIC  
14 My commission expires 09/04/90

15  
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26  
27  
28  
29  
30  
31 BARNETT REPLY  
32 BRIEF : 26  
1500\4857\reply

*Evans, Craven & Lackie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 472172883 88878

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

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

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

10 A. Yes.

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

14 \* \*

15 E X A M I N A T I O N

16 BY MR. DONALDSON:

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

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

21 A. No.

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

24 A. No.

25 Q. Were you ever employed as a counselor?

*Rough & Associates*  
Incorporated  
COURT REPORTERS

405 SEATTLE TOWER  
SEATTLE, WASHINGTON 98101  
(206) 482-1427

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

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

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

7 A. That's correct.

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

11 A. I never did.

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

15 A. She certainly did.

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

19 A. I never did.

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

22 A. I never did.

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

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

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

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

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

11          A.    Not to my recollection.

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

15          A.    I never did.

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

19          A.    He never did.

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

22          A.    It was wrong.

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

*Rough & Associates*  
Incorporated  
COURT REPORTERS

405 SEATTLE TOWER  
SEATTLE, WASHINGTON 98101  
(206) 482-1427

15154 4/21/2003 00001

1 A. Not to my knowledge.

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

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

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

12 \* \*

13 FURTHER EXAMINATION

14 BY MR. DODGE:

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

18 A. Have I seen this before?

19 Q. Yes.

20 A. No, I have not.

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

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

*Rough & Associates*  
Incorporated  
COURT REPORTERS

405 SEATTLE TOWER  
SEATTLE, WASHINGTON 98101  
(206) 462-1427

11/11 DELIVERED

The undersigned, being sworn, on oath, deposes that on this day affiant ...  
... properly stamped and recorded ...  
... attorneys of record of plaintiff ...  
... document to which this ...

*Stacy Naubert*

Subscribed and sworn to before me this 8 day of

April, 1988

*Kristine Marie Nelson*  
Notary Public in and for the State  
of Washington, residing at Tacoma, *exp. 2-9-90*

COPY RECEIVED  
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EVANS, CRAVEN & LACKIE, P.S.

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

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

Plaintiff, )

vs. )

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

Defendants. )

NO. 88-2-00947-9  
AFFIDAVIT OF PHILIP G.  
LINDSAY, M.D.

STATE OF WASHINGTON )  
County of King ) : ss.

PHILIP G. LINDSAY, M.D., being first duly sworn upon  
oath, deposes and says:

I am a Board certified internist and psychiatrist  
licensed to practice medicine and psychiatry in the State of  
////

AFFIDAVIT OF PHILIP G. LINDSAY, M.D. - 1

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

15154 4/21/2683 66863

1 Washington. I have attached, as Exhibit A to this  
2 affidavit, my Curriculum Vitae, which I incorporate herein  
3 by reference. I make the following affidavit from my own  
4 personal knowledge gained from my examination of Carol  
5 Gabrielson, as well as from review of the depositions of  
6 Carol Gabrielson and Jack McDonald, and I am competent to  
7 testify thereto.

8 It is my opinion that Jack McDonald, through the course  
9 of conduct that he pursued toward Carol Gabrielson  
10 maneuvered and coerced her into a position of overwhelming  
11 dependence upon him for her physical, emotional, and  
12 spiritual needs. Carol Gabrielson became so dependent upon  
13 Jack McDonald that she, for all intents and purposes, lost  
14 her free will and her will became subordinate to that of  
15 Jack McDonald. Carol Gabrielson eventually became incapable  
16 of resisting Jack McDonald's counseling, suggestion, and  
17 direction. While Carol Gabrielson was in this state of  
18 dependence, she was not capable of resisting Jack McDonald's  
19 sexual advances and he took advantage of her, sexually, a  
20 great number of times while he enjoyed such a great degree  
21 of control over her.

22 Carol Gabrielson has suffered extreme mental and  
23 psychological injury as a direct result of being used by  
24 Jack McDonald, and through him, the church that he  
25 represented, in this fashion. In my opinion, the mental and  
26 ////

AFFIDAVIT OF PHILIP G. LINDSAY, M.D. - 2

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

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emotional damage from which Carol Gabrielson suffers is a direct result of the physical, as well as mental, way in which she was violated by Jack McDonald.

*Philip G. Lindsay*  
PHILIP G. LINDSAY, M.D.

SUBSCRIBED AND SWORN to before me this 8 day of April, 1988.

*Charles M S Senior*  
NOTARY PUBLIC in and for the State of Washington, residing at Everett  
My commission expires: 12-4-88

////

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IN COUNTY CLERK'S OFFICE

A.M. FEB 03 1989 P.M.

PIERCE COUNTY CLERK  
BY [Signature] DEPUTY

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

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

Plaintiff, )

v. )

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

Defendants. )

NO. 88-2-00947-9

AFFIDAVIT IN SUPPORT OF JOINT  
MOTION FOR SUMMARY JUDGMENT

STATE OF WASHINGTON )  
COUNTY OF KING )

SS.

Reverend E. Scott Hartley, being first duly sworn on oath,  
deposes and states as follows:

1. I am a member of the Board of Directors of the Community  
Chapel and Bible Training Center of Burien (hereinafter referred

AFFIDAVIT IN SUPPORT OF JOINT  
MOTION FOR SUMMARY JUDGMENT - 1

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

1515  
2/28/89 88886

1 to as "Community Chapel"). I make this Affidavit based upon  
2 personal knowledge, and am competent to testify to all matters  
3 herein stated. I have been a member of the Board of Directors of  
4 the Community Chapel for several years including, specifically,  
5 the years 1984 - present.

6 2. During the fall, 1985, through spring, 1986, the  
7 Directors of the Community Chapel - Burien, consisted of Donald  
8 Barnett, Pastor, and Board of Senior Elders Chair; Jack Hicks,  
9 Senior Elder; E. Scott Hartley, Senior Elder; and John (Jack)  
10 DuBois, Senior Elder. Jack McDonald, who was Pastor of the  
11 Tacoma Chapel, was never a Board member of the Burien Church, nor  
12 was he an officer or director of the Community Chapel - Burien.

13 The Tacoma church originated as a bible study, fellowship  
14 group. Jack McDonald emerged as the leader of that group. He  
15 was appointed as Pastor, and they began their own church. It was  
16 eventually incorporated as a separate entity from the Burien  
17 Chapel. We did not exercise, nor did we have the right to  
18 control the content of Pastor McDonald's sermons; or the day-to-  
19 day operations of the Tacoma Chapel following its incorporation.

20 At no time during fall, 1985, through early 1986, did I  
21 know Carol or Ira Gabrielson. I was unaware that she and Jack  
22 McDonald had engaged in a sexual relationship until the fall of  
23 1987, when Jack Hicks, Jack McDonald and myself had a brief  
24 meeting to discuss his involvement with Carol Gabrielson. This  
25  
26

AFFIDAVIT IN SUPPORT OF JOINT  
MOTION FOR SUMMARY JUDGMENT - 2

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

15154 4/21/2003 88887

1 meeting arose out of the lawsuit initiated by Mrs. Gabrielson  
2 against Jack McDonald and the Burien Chapel.

3 At first, Jack McDonald denied any involvement with Mrs.  
4 Gabrielson, but as we pressed him, he eventually admitted to a  
5 small number of sexual contacts with her. I do not recall  
6 specifically, now, how many such contacts he stated he had had  
7 with Mrs. Gabrielson, but it was no where near the figure he  
8 related in trial (approximately 30). Jack Hicks and Jack  
9 McDonald continued the meeting after I left, but he was asked to  
10 resign as Pastor of the Tacoma Chapel.

11 3. I, personally, did not know that Carol Gabrielson and  
12 Jack McDonald had had a sexual relationship until after it was  
13 over, and the lawsuit commenced. I never heard Jack McDonald  
14 make any statements about Carol Gabrielson, nor did I know of any  
15 statements made by McDonald about Carol Gabrielson. I did not,  
16 and to my knowledge, neither did any other elder or director of  
17 the Burien Chapel ever encourage, or require Jack McDonald to  
18 make any statements about Carol Gabrielson, in or out of church.

19 4. The McDonald-Gabrielson relationship was never  
20 discussed, nor brought to the attention of the Board of  
21 Directors, until after her allegations about McDonald's conduct  
22 were made. To my knowledge, Jack McDonald never discussed this  
23 relationship with anyone at Burien. Mrs. Gabrielson did not  
24 discuss the relationship with me nor, to my knowledge, with any  
25 other member of the Board of Directors.

26  
AFFIDAVIT IN SUPPORT OF JOINT  
MOTION FOR SUMMARY JUDGMENT - 3

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

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FURTHER YOUR AFFIANT SAYETH NAUGHT.

E. Scott Hartley  
Reverend E. Scott Hartley

SUBSCRIBED AND SWORN TO before me this 3 day of February, 1989.

John S. Glassman  
Notary Public in and for the State of Washington, residing at TACOMA WA.

My Commission Expires: 6/12/90

AFFIDAVIT IN SUPPORT OF JOINT MOTION FOR SUMMARY JUDGMENT - 4

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

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5 FEB 06 1989

FILED  
IN COUNTY CLERK'S OFFICE

A.M. FEB 03 1989 P.M.

PIERCE  
TED RUTLAND, 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 )  
GABRIELSON, husband and wife; )  
DONALD LEE BARNETT and )  
BARBARA BARNETT, husband and )  
wife; COMMUNITY CHAPEL and )  
BIBLE TRAINING CENTER, a )  
Washington corporation, )  
JACK McDONALD and "JANE DOE" )  
McDONALD, husband and wife, )

Defendants. )

NO. 88-2-00947-9

AFFIDAVIT IN SUPPORT OF JOINT  
MOTION FOR SUMMARY JUDGMENT

STATE OF WASHINGTON )  
COUNTY OF KING )

SS.

Jack DuBois, being first duly sworn on oath, deposes and  
states as follows:

1. I am a member of the Board of Directors of the Community  
Chapel and Bible Training Center of Burien (hereinafter referred

AFFIDAVIT IN SUPPORT OF JOINT  
MOTION FOR SUMMARY JUDGMENT - 1

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

15154 16221 2883 88898

1  
2 to as "Community Chapel"). I make this Affidavit based upon  
3 personal knowledge, and am competent to testify to all matters  
4 herein stated. I have been a member of the Board of Directors of  
5 the Community Chapel for several years including, specifically,  
6 the years 1984 - present.

7 2. During the fall, 1985, through summer, 1986, the  
8 Directors of the Community Chapel - Burien, consisted of Donald  
9 Barnett, Pastor, and Board of Senior Elders Chair; Jack Hicks,  
10 Senior Elder; E. Scott Hartley, Senior Elder; and John (Jack)  
11 DuBois, Senior Elder. Jack McDonald, who was Pastor of the  
12 Tacoma Chapel, was never a Board member of the Burien Church, nor  
13 was he an officer or director of the Community Chapel - Burien.

14 The Tacoma church originated as a bible study, fellowship  
15 group. Jack McDonald emerged as the leader of that group. He  
16 was appointed as Pastor, and they began their own church. It was  
17 eventually incorporated as a separate entity from the Burien  
18 Chapel. We did not exercise, nor did we have the right to  
19 control the content of Pastor McDonald's sermons; or the day-to-  
20 day operations of the Tacoma Chapel following its incorporation.

21 At no time during fall, 1985, through early 1986, did I  
22 know Carol or Ira Gabrielson. In the fall of 1987, Jack Hicks,  
23 Jack McDonald and Scott Hartley had a meeting to discuss his  
24 alleged involvement with Carol Gabrielson. This meeting arose  
25 out of the lawsuit initiated by Mrs. Gabrielson against Jack  
26

AFFIDAVIT IN SUPPORT OF JOINT  
MOTION FOR SUMMARY JUDGMENT - 2

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

15154 4/21/2003 88891

1  
2 McDonald and the Burien Chapel. It is my understanding that Jack  
3 McDonald, initially, denied any involvement with Mrs. Gabrielson.  
4 However, he eventually admitted to a small number of sexual  
5 contacts with her. I do not know how many such contacts he  
6 stated he had had with Mrs. Gabrielson, but it was no where near  
7 the figure he related in trial (approximately 30). He was asked  
8 to resign as Pastor of the Tacoma Chapel.

9 3. I, personally, did not know that Carol Gabrielson and  
10 Jack McDonald had had a sexual relationship until after it was  
11 over, and the lawsuit commenced. I never heard Jack McDonald  
12 make any statements about Carol Gabrielson, nor did I know of any  
13 statements made by him about Carol Gabrielson. I did not, and to  
14 my knowledge, neither did any elder or director of the Burien  
15 Chapel ever encourage, or require Jack McDonald to make any  
16 statements about Carol Gabrielson, in or out of church.

17 4. The McDonald-Gabrielson relationship was never  
18 discussed, nor brought to the attention of the Board of  
19 Directors, until after her allegations about McDonald's conduct  
20 were made. To my knowledge, Jack McDonald never discussed this  
21 relationship with anyone at Burien. Mrs. Gabrielson did not  
22 discuss the relationship with me nor, to my knowledge, with any  
23 other member of the Board of Directors.  
24  
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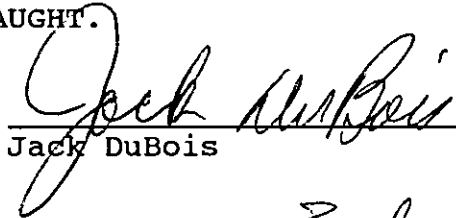
AFFIDAVIT IN SUPPORT OF JOINT  
MOTION FOR SUMMARY JUDGMENT - 3

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


15154 4/21/2003 00052



1  
2 FURTHER YOUR AFFIANT SAYETH NAUGHT.

3   
4 Jack DuBois

5 SUBSCRIBED AND SWORN TO before me this 3rd day of  
6 February, 1989.

7   
8 Notary Public in and for the  
9 State of Washington, residing  
at TACOMA.

10 My Commission Expires: 6/12-90

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AFFIDAVIT IN SUPPORT OF JOINT  
MOTION FOR SUMMARY JUDGMENT - 4

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

15154 4/21/2003 00003

6

5 FEB 03 1989

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

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

No. 88-2-00947-9

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

DEFENDANTS BARNETT'S  
MOTION TO REVISE  
SUMMARY JUDGMENT  
ORDERS TO SUPPLEMENT  
RECORD IN COUNTY CLERK'S OFFICE  
FEB 03 1989 P.M.  
PIERCE COUNTY CLERK  
BY: [Signature] DEPUTY

1. Relief Sought. Defendants Barnett move this Court to revise its Summary Judgment Orders entered herein on November 18, 1988, December 9, 1988, and February 3, 1989, to supplement the record thereto.

2. Grounds. Defendants Barnett have recently gained discovered material which they did not previously possess that bears directly upon the earlier Summary Judgment motions.

3. Basis. This motion is based upon the records and files herein and the Affidavit Tim Donaldson in Support of Motion to Revise Summary Judgment Orders.

4. Authority. This motion is made pursuant to CR 54(b)

MOTION TO REVISE  
SUMMARY JUDGMENT: 1  
1500\4857\73

Evans, Craven & Lackie, P.C.  
LAWYERS  
SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 386-5555

15154 1-21-2883-88854

1 and CR 60.

2 5. Proposed Order. A copy of Defendants' proposed order  
3 is annexed hereto.  
4

5 DATED this 2<sup>nd</sup> day of February, 1989.

6 EVANS CRAVEN & LACKIE, P.S.  
7

8  
9 By Tim Donaldson  
10 TIM DONALDSON  
11 Attorneys for Defendants  
12 Barnett  
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31 MOTION TO REVISE  
32 SUMMARY JUDGMENT: 2  
1500\4857\73

*Evans, Craven & Lackie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 1/21/2003 00005

PROPOSED

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

AMERICAN CASUALTY COMPANY OF	)	
READING PENNSYLVANIA, a	)	
Pennsylvania corporation,	)	
	)	
Plaintiff,	)	No. 88-2-00947-9
	)	
vs.	)	ORDER GRANTING
	)	DEFENDANTS BARNETTS'
IRA GABRIELSON and CAROL	)	MOTION TO REVISE
GABRIELSON, husband and wife;	)	SUMMARY JUDGMENT
DONALD LEE BARNETT and	)	ORDERS
BARBARA BARNETT, husband and	)	
wife; COMMUNITY CHAPEL and	)	
BIBLE TRAINING CENTER, a	)	
Washington corporation,	)	
	)	
Defendants.	)	

I. HEARING

1.1 Date. February \_\_\_\_\_, 1989.

1.2 Purpose. To consider DEFENDANT BARNETTS' MOTION TO REVISE SUMMARY JUDGMENT ORDERS TO SUPPLEMENT RECORD.

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

ORDER REVISING  
SUMMARY JUDGMENT: 1  
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1.4 Evidence. The AFFIDAVIT OF TIM DONALDSON IN SUPPORT OF MOTION TO REVISE SUMMARY JUDGMENT ORDERS, and the records and files herein, specifically including this Court's Summary Judgment Orders entered on November 18, 1988, December 9, 1988, and February 3, 1989.

## II. FINDINGS

2.1 At the time of entry of the present order, this Court's Summary Judgment Orders of November 18, 1988, December 9, 1988, and February 3, 1989 were not final and subject to revision.

2.2 The omissions in the record herein arise from excusable oversight and newly discovered evidence justifies supplementation of the record.

## III. ORDER

Based on the foregoing findings, IT IS ORDERED:

3.1 This Court's Summary Judgment Orders of November 18, 1988, December 9, 1988, and February 3, 1989 are revised to include the AFFIDAVIT OF TIM DONALDSON IN SUPPORT OF MOTION TO REVISE SUMMARY JUDGMENT ORDERS as evidence considered therein upon each order.

3.2 This Court's Summary Judgment Order of November 18, 1988 is revised to include BARNETT SUPPLEMENTAL BRIEF IN SUPPORT OF GABRIELSON MOTION FOR SUMMARY JUDGMENT as authority considered

ORDER REVISING  
SUMMARY JUDGMENT: 2  
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therein.

3.3 This Court's Summary Judgment Orders of December 9, 1988 and February 3, 1989 are revised to include BARNETT SUPPLEMENTAL OPPOSITION BRIEF TO SUMMARY JUDGMENT RE: BODILY INJURY as authority considered therein.

DATED this \_\_\_\_\_ day of February, 1989.

---

HONORABLE J. KELLEY ARNOLD

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

By \_\_\_\_\_  
TIM DONALDSON  
Attorneys for Defendants  
Barnett

ORDER REVISING  
SUMMARY JUDGMENT: 3  
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M

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

NOTE OF ISSUE

9 FEB 03 1989

No. 88-2-00947-9

Department #9 J. KELLEY ARNOLD

AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA  
a Pennsylvania corp.

FILED  
IN COUNTY OF PIERCE  
A.M. FEB 03 1989 P.M.

vs.

IRA GABRIELSON and CAROL GABRIELSON; DONALD BARNETT, et ux;  
and COMMUNITY CHAPEL AND BIBLE TRAINING CENTER,

Plaintiff

Defendant

BRUCE WINCHELL, ESQ.  
3800 Rainier Tower, Seattle, WA 98101-2647  
Phone: 223-7380

Plaintiff's Attorney

TIM DONALDSON, ESQ.  
3100 Columbia Ctr., Seattle, WA 98104  
Phone: 386-5555 (for Defs Barnett)

Defendant's Attorney

DECLARATORY ACTION

Nature of Cause

Jury Trial - Yes  6 Jurors  12 Jurors  No

Time required to try Cause \_\_\_\_\_ days \_\_\_\_\_ hours

ABOVE INFORMATION MUST BE COMPLETED

To the Clerk: 1. DEFENDANTS JOINT MOTION RE: COVERAGE FOR CHURCH ENTITY  
2. DEFENDANTS BARNETTS' MOTION TO REVISE SUMMARY JUDGMENT ORDERS  
Please place on the \_\_\_\_\_ docket which is to be called on  
the ~~24th~~ 3rd day of ~~February~~ March 19 89  
At 9:30 A.M.

Attorney for Defendants Barnett Phone No: 386-5555

Due and sufficient service of foregoing acknowledged this 3rd day of February 19 89

Additional Attorneys involved:

Daniel Hannula, Esq. (for Defs Gabrielson)  
715 Tacoma Ave So., Tacoma, WA 98402  
Phone: 383-5388

Tim Donaldson  
Attorneys for Defendants Barnett

John Glassman, Esq. (for CCBTC)  
240 Old City Hall  
625 Commerce St.  
Tacoma, WA 98402  
Phone: 572-2746

Assigned to Department No. \_\_\_\_\_ this  
\_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Docket Clerk

3 FEB 6 1989

FILED  
IN COUNTY CLERK'S OFFICE  
A.M. FEB 06 1989 P.M.  
PIERCE 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, )

vs. )

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

Defendants. )

NO. 88-2-00947-9

AFFIDAVIT OF CAROL A.  
GABRIELSON IN SUPPORT OF  
JOINT MOTION FOR SUMMARY  
JUDGMENT UPON COVERAGE  
FOR CHURCH ENTITY

STATE OF WASHINGTON )  
 ) SS.  
COUNTY OF PIERCE )

CAROL A. GABRIELSON, being first duly sworn, upon oath,  
deposes and says:

My first contact with the Community Chapel and Bible  
Training Center was in 1974. At that time, I attended

////

AFFIDAVIT OF CAROL GABRIELSON - 1

LAW OFFICES  
RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH  
TACOMA, WASHINGTON 98402

TACOMA 383-5388  
SEATTLE 838-4790

15154 4/21/2003 66186



1 services at the Burien headquarters of the Community Chapel  
2 and Bible Training Center. Initially, my participation was  
3 limited to one night per week because of the distance from  
4 Tacoma to Burien and because I was also attending another  
5 church.

6 Between 1974 and 1983, there were extended period of  
7 time when I did not attend Community Chapel and Bible  
8 Training Center services at all. However, in 1983, I  
9 learned of a Community Chapel and Bible Training Center  
10 satellite church in Tacoma. I began attending that  
11 satellite church in 1983.

12 Except for a period of time from approximately March,  
13 1984 through approximately December, 1984, I regularly  
14 attended the Tacoma satellite church of the Community Chapel  
15 and Bible Training Center. Jack McDonald was the pastor of  
16 that satellite church.

17 I first sought counseling from Jack McDonald in the  
18 summer of 1983. During these early counseling sessions,  
19 Pastor McDonald spent a great deal of time merely listening  
20 to my problems and assuring me that he would pray for me.

21 In May of 1985, I sought marital counseling from Pastor  
22 McDonald. Initially, this counseling progressed much as the  
23 counseling of two years earlier, however, in approximately  
24 September of 1985, the nature of Pastor McDonald's  
25 counseling began to change dramatically. Beginning in  
26

////

AFFIDAVIT OF CAROL GABRIELSON - 2

LAW OFFICES  
**RUSH, HANNULA & HARKINS**

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TACOMA, WASHINGTON 98402

TACOMA 383-5388  
SEATTLE 838-4790

15354 4721/2000 00101

1 September, 1985, Pastor McDonald's counseling became  
2 concerned primarily with detailed sexual matters.

3 This counseling relationship then evolved into a sexual  
4 relationship that lasted through the beginning of January,  
5 1986.

6 While I was involved in a sexual relationship with  
7 Pastor McDonald, I told no one in the headquarters church of  
8 the Community Chapel and Bible Training Center, in fact, I  
9 told no other individual anywhere of my sexual involvement  
10 with Pastor McDonald. The only time I informed anyone at  
11 the headquarters church was after I was disfellowshipped.  
12 To the best of my knowledge, no one at the headquarters  
13 church of the Community Chapel and Bible Training Center  
14 knew of my relationship with Pastor McDonald before they  
15 became aware through my efforts.  
16  
17

18 Carol A. Edwards. Carol A. Gabrielson  
19 CAROL A. GABRIELSON

20 SIGNED AND SWORN to before me this 4<sup>th</sup> day of

21 February, 1989.



2-4-89

Daniel Hernandez  
NOTARY PUBLIC in and for the  
~~State of Washington~~ STATE OF CAL.  
My appointment expires 1992

////

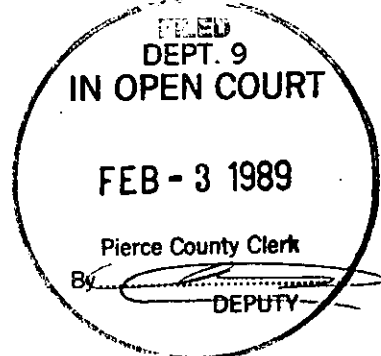
AFFIDAVIT OF CAROL GABRIELSON - 3

LAW OFFICES  
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TACOMA, WASHINGTON 98402

TACOMA 383-5388  
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15154 4/21/2883 88182



6 FEB 03 1989

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

VOL 397 PAGE 1035

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

Plaintiff, )

vs. )

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

Defendants. )

No. 88-2-00947-9

ORDER DENYING RENEWED  
MOTION FOR SUMMARY  
JUDGMENT BY PLAINTIFF RE:  
BODILY INJURY

I. HEARING

1.1 Date. January 6, 1989.

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

1.3 Purpose. To consider the renewed MOTION FOR PARTIAL SUMMARY JUDGMENT of American Casualty Company.

1.4 Evidence. The materials originally submitted in support and in opposition to plaintiff's original motion including AFFIDAVIT OF BRUCE WINCHELL filed herein on March 30, 1988. AFFIDAVIT OF

SUMMARY JUDGMENT ORDER : 1  
als15004857.53

*Evans, Craven & Lackie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 4721/2683 88183

1 HAROLD T. DODGE, JR. IN OPPOSITION TO PLAINTIFF'S MOTION FOR  
 2 SUMMARY JUDGMENT filed herein on April 8, 1988. AFFIDAVIT OF  
 3 PHILIP G. LINDSAY, M.D. filed herein on April 8, 1988. Also  
 4 considered were the materials submitted in regard to the renewed  
 5 motion which were not stricken including SUPPLEMENTAL AFFIDAVIT  
 6 OF BRUCE WINCHELL.

7 1.5 Authorities Considered. Authorities contained in  
 8 MEMORANDUM IN SUPPORT OF AMERICAN'S MOTION FOR PARTIAL SUMMARY  
 9 JUDGMENT filed herein on March 30, 1988, DEFENDANT GABRIELSONS'  
 10 MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY  
 11 JUDGMENT filed herein on April 8, 1988, DEFENDANT COMMUNITY  
 12 CHAPEL AND BIBLE TRAINING CENTER'S MEMORANDUM IN OPPOSITION TO  
 13 MOTION FOR PARTIAL SUMMARY JUDGMENT filed herein on April 8,  
 14 1988, DEFENDANT BARNETTS' BRIEF IN OPPOSITION TO PLAINTIFF'S  
 15 MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS'  
 16 COUNTERMOTION FOR SUMMARY JUDGMENT filed herein on April 7, 1988,  
 17 REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY  
 18 JUDGMENT (BODILY INJURY) filed herein on April 13, 1988,  
 19 AMERICAN CASUALTY'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR  
 20 PARTIAL SUMMARY JUDGMENT, PLAINTIFFS GABRIELSON'S REPLY TO  
 21 SUPPLEMENTAL BRIEF BY AMERICAN CASUALTY, MEMORANDUM IN OPPOSITION  
 22 TO RENEWED MOTION FOR SUMMARY JUDGMENT, MEMORANDUM IN OPPOSITION  
 23 TO RENEW MOTION FOR SUMMARY JUDGMENT, BRIEF IN OPPOSITION TO  
 24 SUMMARY JUDGMENT AND MOTION TO STRIKE AFFIDAVIT OF BRUCE  
 25 WINCHELL.

26 II. ORDER

27 After hearing the argument of counsel and being advised of  
 28 the premises it is ordered and declared:

29 2.1 The court declares that sexual contact which causes  
 30 emotional distress or mental suffering constitutes bodily injury

31 SUMMARY JUDGMENT ORDER : 2  
 32 als15004857.53

*Evans, Craven & Lachie, P.C.*

LAWYERS

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 SEATTLE, WASHINGTON 98104

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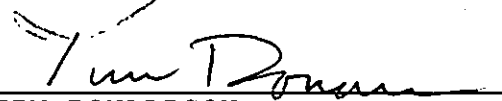
1 under American Casualty Company of Reading Pennsylvania policy  
2 number IP502144020.

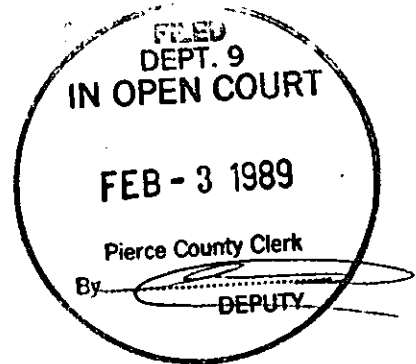
3 2.2 The renewed MOTION FOR PARTIAL SUMMARY JUDGMENT of American  
4 Casualty Company is denied.

5 DATED this 3 day of February, 1989.

6  
7  
8   
9 HONORABLE J. KELLEY ARNOLD

10 Presented by  
11 EVANS, CRAVEN & LACKIE P.S.


12   
13 TIM DONALDSON  
14 Attorneys for Barnetts

15  
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Approved as to form, and  
Notice of Presentation Waived:

LANE, POWELL, MOSS & MILLER

20  
21 Bruce Winchell  
22 Attorneys for American Casualty Company

23 RUSH, HANNULA & HARKINS  
24   
25 Dan Hannula  
26 Attorneys for Gabrielsons

27 JOHN GLASSMAN  
28   
29 John Glassman attorney for Community Chapel

30 SUMMARY JUDGMENT ORDER : 3  
31 als15004857.53  
32

Evans, Craven & Lackie, P.S.

LAWYERS

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SEATTLE, WASHINGTON 98104

(206) 388-5555

15154 6721-2883-88185

1 FEB 16 1989

*A. J. [Signature]*

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
2 IN AND FOR THE COUNTY OF PIERCE  
3 -----

4 AMERICAN CASUALTY COMPANY OF )  
5 READING PENNSYLVANIA, a )  
6 Pennsylvania corporation, )

7 Plaintiff, )

8 vs. )

NO. 88-2-00947-9

9 IRA GABRIELSON and CAROL )  
10 GABRIELSON, husband and wife; )  
11 DONALD LEE BARNETT and )  
12 BARBARA BARNETT, husband and )  
13 wife; COMMUNITY CHAPEL and )  
14 BIBLE TRAINING CENTER, a )  
15 Washington corporation, )

16 Defendants. )

17 ST. PAUL FIRE AND MARINE )  
18 INSURANCE COMPANY, a foreign )  
19 corporation, )

20 Plaintiff, )

21 vs. )

22 IRA GABRIELSON and CAROL )  
23 GABRIELSON, husband and wife; )  
24 JACK McDONALD AND "JANE DOE" )  
25 McDONALD, husband and wife; )  
COMMUNITY CHAPEL and BIBLE )  
TRAINING CENTER, a Washington )  
Corporation, )

Defendants. )

MOTIONS OF JANUARY 6, 1989

**FILED**  
COUNTY CLERK'S OFFICE  
FEB 16 1989  
A.M.  
DEPUTY

PENGAD/WEST, FRESNO, CA 93725

W A - 25

15154 4/21/2003 88186

1 APPEARANCES:

2 FOR AMERICAN CASUALTY CO.:

BRUCE WINCHELL  
Lane, Powell, Moss & Miller  
3800 Ranier Bank Tower  
1301 5th Avenue  
4 Seattle, Washington 98101-2647

5 FOR ST. PAUL FIRE & MARINE:

DON M. GULLIFORD  
Don M. Gulliford & Associates  
6 2200 112th Avenue N.E.  
7 Bellevue, Washington 98004

8 FOR DEFENDANTS GABRIELSON:

DANIEL L. HANNULA  
Rush, Hannula & Harkins  
715 Tacoma Avenue South  
9 Tacoma, Washington 98402

10 FOR DEFENDANTS BARNETT:

TIMOTHY J. DONALDSON  
Evans, Craven & Lackie  
Suite 3100 Columbia Center  
701 5th Avenue  
11 Seattle, Washington 98104

12  
13 FOR DEFENDANTS COMMUNITY  
14 CHAPEL and BIBLE TRAINING  
15 CENTER:

JOHN GLASSMAN  
Attorney at Law  
625 Commerce Street  
Tacoma, Washington 98402

16  
17 BE IT REMEMBERED that the above entitled and numbered  
18 matter came on for hearing motions on the 6th Day of January,  
19 1989, before the Honorable J. KELLEY ARNOLD, Judge of Depart-  
20 ment No. 9 of the above entitled Court.

21 WHEREUPON, the following proceedings were held,

22 to-wit:

23 --

24 --

25 --

1 THE COURT: Mr. Glassman.

2 MR. GLASSMAN: Your Honor, we were here a couple of  
3 weeks ago on my motion to strike Mr. Winchell's November 22,  
4 1988, affidavit. We discovered at that time that apparently  
5 it had not been either noted or served on Mr. Winchell timely.  
6 Other counsel that are here present today had left the court-  
7 room so we decided to set it over to today.

8 During the process of discussing that, Mr. Winchell  
9 indicated that the motion should be granted, basically. He said  
10 my arguments were correct. I am sure he will tell me I am  
11 wrong. Basically, the November 22nd affidavit, as it stands,  
12 was not made upon personal knowledge. It does not affirmatively  
13 indicate that he is competent to testify to the matters therein  
14 stated. It contains statements of hearsay and inferences  
15 based upon hearsay which he is not competent to testify to.

16 As I also stated in the materials that we provided to  
17 you, Paragraph No. 4 of his affidavit states that -- discusses  
18 the jury's ruling and draws inferences from the jury's ruling  
19 that is either illegal argument or takes a conclusion that he  
20 is drawing or an inference that he is drawing in his favor  
21 which is not compatible with the rules of summary judgment,  
22 particularly Civil Rule 56, and the Meadows case that I have  
23 cited to the Court.

24 Same argument applies to Paragraph 5. There is abso-  
25 lutely no -- there is no basis for his statements other than



1 perhaps he was some kind of an observer in the trial or he wants  
2 to make legal argument in an affidavit which is not proper.

3 The purpose of an affidavit in a summary judgment case  
4 is to state facts or to attach documents upon which facts can  
5 be argued. As I told the Court the last time, even though the  
6 documents were not served upon me with the affidavit, we would  
7 not be challenging, I guess, the copies of the documents that  
8 were sent with his affidavit, apparently, to the Court as a  
9 courtesy matter.

10 First of all and second of all, because most of the  
11 documents were attached to Mr. Donaldson's affidavit in opposition  
12 to an earlier motion for summary judgment. So, based upon the  
13 Meadows case, Your Honor, which is an older Washington case in  
14 71 Washington (2d), the affidavit fails and should be stricken.

15 THE COURT: Mr. Winchell. I love the nonverbal communi-  
16 cation all the better. I love it when one attorney says the  
17 other one agrees and the other eyebrows. Just a classic.

18 MR. WINCHELL: I agree in part with Mr. Glassman. I  
19 don't think anybody who participated in the trial or observed  
20 the trial ought to be offering hearsay evidence as to what  
21 occurred at that trial, so I think to that extent there is pro-  
22 bably some argument in my affidavit.

23 As I understand it, there is no objection to the  
24 attachment to the objections at hand and argument from that.  
25 All I ask the Court apply the same rule to my affidavit as

1 applied to Mr. Hickman's affidavit on the 19th, which basically  
2 is legal argument, and treated as such that's what the Court  
3 has done in the past. You did not strike my affidavit, if you  
4 recall.

5 MR. GLASSMAN: The only problem I have with that, Your  
6 Honor, is to the extent that we are being recorded here and  
7 that this affidavit may form the basis of an appeal, I think  
8 that it should be stricken, save the documents that were submitted.

9 MR. WINCHELL: Two different rules. I think the rule--  
10 the Court should apply the same rule in both cases because the  
11 Hickman affidavit is a part of the record that will go on appeal  
12 on the September 9th motion, and this should be also.

13 THE COURT: We are getting into some distinctions here,  
14 I guess, that may or may not have differences. They may have  
15 differences that we are concerned about. I certainly have no  
16 objection to your arguing from these attachments and I certainly  
17 understand that it is important that the record reflect what is  
18 a part of the record and what isn't. The problem is that there  
19 are difficulties with the affidavit that I think -- they are  
20 meritorious problems; in other words, Mr. Glassman has raised  
21 some legitimate issues that justify the striking of the affidavit.  
22 I think we are all saying the same thing but I am concerned,  
23 without regard to the Hickman affidavit, just dealing with this  
24 issue here right now. I am concerned that I don't create a  
25 monster by entering an order that suggests that the affidavit

1 as an affidavit carries that kind of weight and consideration  
2 in terms of how the Court considered the argument. Now, I'd  
3 be real candid with you, Mr. Winchell. I don't recall exactly  
4 what I ruled; in other words, I don't think anything was reduced  
5 to writing with regard to the Hickman affidavit, do you?

6 MR. WINCHELL: No, it was just as we are here today.  
7 You indicated you would treat it as essentially like an amicus  
8 brief were your exact words.

9 THE COURT: Isn't that in essence denying it as an  
10 affidavit?

11 MR. WINCHELL: Well, Your Honor, you denied the motion  
12 to strike the Hickman affidavit.

13 THE COURT: I guess that answers my question. Well,  
14 again, I am trying to be candid with you and tell you that I  
15 accept your statement that that's what I did but I don't remem-  
16 ber my exact language. I am going to grant, for purposes of  
17 this record and forgetting whatever I said with regard to the  
18 Hickman affidavit, because I don't remember it. I am going to  
19 grant the motion to strike. It is certainly without prejudice  
20 to your right to argue the content of it as though it were  
21 presented in the form of a brief.

22 MR. WINCHELL: But you are accepting the attachments?

23 THE COURT: Yes.

24 MR. WINCHELL: They are attached to Mr. Donaldson's  
25 affidavit, in any case.

1 THE COURT: Yes. I am accepting them because they are  
2 attached to Mr. Donaldson's affidavit, in part, at least. We  
3 are talking about a duplication of material here.

4 MR. WINCHELL: There is no real dispute about the  
5 documents, I don't believe.

6 MR. GLASSMAN: Your Honor, I have prepared an order  
7 that was dated for December.

8 \* \* \* \*

9 THE COURT: Moving along.

10 MR. WINCHELL: Your Honor, I guess we are back here  
11 for the third or fourth time on this issue. The issue now is,  
12 however, considerably narrowed. We do have documents which  
13 are attached to the affidavit of Mr. Donaldson and there is no  
14 dispute, as I understand it, with respect to the authenticity  
15 to any of those documents. We also have the complaint which  
16 was filed by the Gabrielsons in this action. I don't understand  
17 there to be any dispute about that complaint. So that is the  
18 evidence we have to bring to the Court on the issue following  
19 up Your Honor's December 16 ruling as to whether there was in  
20 fact any bodily injury. You previously ruled that damages con-  
21 sequential to an injury for emotional distress are covered.  
22 I will just briefly review some of the matters I addressed in  
23 my supplemental brief to summarize the evidence which is before  
24 the Court.

25 I guess the logical starting point is the complaint

1 because it does set forth what Gabrielson intended to prove at  
2 the trial. At page 2 of our brief we indicate that in paragraphs  
3 11 through 13. They are essentially allegations of counselor  
4 malpractice, pastor malpractice and both of those being really  
5 inextricably intertwined with allegations of sexual misconduct  
6 on the part of Jack McDonald.

7 My reading of plaintiff Hannula's most recent brief  
8 that we have no dispute on that issue. Now, a subsequent para-  
9 graph in the complaint sets forth the assault, battery and  
10 false imprisonment claim and those are, I believe, causes of  
11 action 5 through 7, or numbers something like that. And that  
12 again, to simply recap what is stated in the complaint, Carol  
13 Gabrielson alleges that on March 6th, two months after her  
14 relationship with McDonald terminated, she went to the Burien  
15 Chapel and was wrongfully ejected and suffered a compression  
16 fracture of her spine as a result. And the allegation with  
17 respect to the compression fracture, I draw that from plaintiff's  
18 trial brief rather than the complaint. That's where that is  
19 stated.

20 I think the most telling piece of evidence that's  
21 before the Court is really her Instruction Number 6 and that  
22 is where the claim which was put before the jury is summarized.  
23 I quote from it: Plaintiffs claim the defendant Jack McDonald  
24 was negligent as Carol Gabrielson's pastor or counselor or both  
25 in his actions toward Carol Gabrielson. The plaintiffs claim

1 that Jack McDonald's negligence was a proximate cause of psycho-  
2 logical and emotional injuries resulting in medical and psychia-  
3 tric treatment and which may require medical and psychiatric  
4 treatment in the future.

5 That to me is a very key paragraph because psychologi-  
6 cal and emotional injury, there is no reference to a physical  
7 injury as a result of any contact with Jack McDonald; in other  
8 words, the counselor or pastoral practice. There is also a  
9 paragraph about the defamation claim and any damages pertaining  
10 to defamation on that before the Court today is covered under  
11 a separate part of the policy.

12 And then the last paragraph of what I have quoted from  
13 Jury Instruction Number 6 states: The plaintiff claims she was  
14 assaulted, battered and falsely imprisoned -- causes of action  
15 5 through 7 -- by agents of Community Chapel, proximately  
16 causing physical, psychological and emotional injuries.

17 So there you have both prongs, both the physical and  
18 the emotional rather than just the emotional prong of the  
19 injuries for which compensation was being sought. And the in-  
20 structions which went to the jury basically instructed them  
21 that they could compensate Carol Gabrielson if they found lia-  
22 bility on three basic theories; this counselor-pastoral mal-  
23 practice, the defamation and then the assault, battery and  
24 false imprisonment.

25 The jury came back and accepted the first two and rejected

1 the third. The assault, battery and false imprisonment claims  
2 were in fact rejected and that's reflected in the jury verdict.  
3 So then I think the issue does in fact resolve itself to this.  
4 Absent evidence before the Court of physical injury, does  
5 sexual contact, which is part of a counselor and pastor mal-  
6 practice claim, give rise to a bodily injury which is suffi-  
7 cient to fit within the Court's prior ruling that would then  
8 be intentional bodily injury and thus compensable and covered.

9 The answer to me, you find by comparing the NPS case  
10 with the E-Z Loader case and I think both cases put together  
11 support a holding by this Court that now absent some real phy-  
12 sical injury, absent something more than the mere physical  
13 violation,--I say mere, I shouldn't say mere--but more than a  
14 physical violation, there is no--these are not consequential to  
15 bodily injury.

16 Let's look first at the key paragraph of E-Z Loader.  
17 The plaintiff sued E-Z Loader for loss of earnings, prospective  
18 earnings, mental anguish and emotional distress. "The policies  
19 at issue were never intended to cover loss of earnings or any  
20 mental, emotional upset for which plaintiffs recovered a judgment."  
21 Then a couple of key sentences. "The coverage contemplated  
22 actual bodily injury, sickness or disease resulting in physical  
23 impairment as contrasted to mental impairment." They are focus-  
24 ing on the type of damage, not the manner in which the damage  
25 arose. "Under the Traveler's policy, the term sickness and

1 disease are modified by the word 'bodily'." The same case here.  
2 We are modified by the word 'bodily'. Mental anguish and  
3 illness and emotional distress are not covered by the express  
4 terms of the policy. It cannot be stretched to the point where  
5 it would be covered.

6 So our court in effect is saying that an emotional  
7 injury is not bodily injury. At least in the context of a sex  
8 discrimination and wrongful termination claim.

9 Now, contrast that with the position that was adopted  
10 by the NPS court. I am quoting from page 5 of Mr. Hannula's  
11 brief. This quote appears in every brief that's ever been  
12 submitted to any court. The key language, I think, is here:  
13 "We are unable to separate a person's nerves and tensions from  
14 his body. Clearly, emotional trauma can be as disabling to the  
15 body as a visible physical wound. Moreover, it is common knowl-  
16 edge that emotional distress can and often does have a direct  
17 effect on other bodily functions."

18 If that argument were adopted by our court in E-Z  
19 Loader, they could not have reached the conclusion they did,  
20 because what the NPS case says is not that because there is a  
21 physical contact that that's a bodily injury, and then the  
22 emotional distress which is consequential to that is necessarily  
23 covered. NPS is coming right out and disagreeing with our court  
24 and saying the emotional harm in itself is a bodily injury. That's  
25 why the NPS case, which is directly at odds with E-Z Loader,



1 has got to be disregarded. The position set forth in E-Z Loader  
2 must be accepted. How is the emotional harm which befell Carol  
3 Gabrielson different from the emotional harm which befell the  
4 plaintiffs in the E-Z Loader case. The common factor in both  
5 is that there was no physical injury, at least nothing that a  
6 jury found with respect to a physical injury, and they had that  
7 issue before them. There really can't be any dispute that they  
8 addressed that issue.

9 So, Your Honor, I think that, given the complete ab-  
10 sence of any evidence before this Court today that the jury  
11 found any physical injury, that the Court has to follow E-Z  
12 Loader, adopt the position that the damages for emotional  
13 distress which Carol Gabrielson received compensation for are  
14 not consequential to any bodily injury she suffered. Thank you.

15 MR. DONALDSON: Your Honor, I am Tim Donaldson. I am  
16 here representing the Barnetts. Since this motion was brought  
17 and we entered the order, I think, in the beginning of December,  
18 and which this Court clarified or stated what its ruling was,  
19 it didn't determine what a bodily injury was. The nature of  
20 this motion has changed a bit and now I guess we are here today  
21 to determine what is meant by bodily injury.

22 What it comes down to is bodily injury is defined in  
23 the policies as bodily injury. Bodily injury, sickness or  
24 disease. It doesn't have -- it doesn't say great bodily injury;  
25 it does not say grievous bodily injury; it says bodily injury.

1 It doesn't have any modifier which talks about the extent of  
2 the bodily injury that has to be suffered. Consequently any  
3 kind of slight bodily injury at all that triggers the conse-  
4 quential damages triggers the coverage.

5 Now we get back to -- before we start talking about  
6 how we are going to interpret the phrase, we have to go to the  
7 rules of construction of insurance contracts. Number One, they  
8 are read as reasonable persons would read them. Second thing  
9 is, if there are two reasonable interpretations of a clause,  
10 the one that's more favorable to the insured has to be given.

11 Now, I disagree with the way that Mr. Winchell reads  
12 the E-Z Loader case. First off E-Z Loader case has to be read  
13 in the context of the case. You just pulled the quote out of  
14 it. The context of the case was discrimination claims in which  
15 there was no bodily offense at all. So what the Court is  
16 talking about, it did not cover these type of injuries. It's  
17 the same way with the NPS case. The NPS case was a case in New  
18 Jersey in which there was a bodily offense and the opinion in  
19 that case has to be read within the context of the case. Conse-  
20 quently I feel the two are harmonized because bodily injury is  
21 defined in the policy, goes to the nature of the harm, not the  
22 manifestations of the harm.

23 The nature of the harm in this case was a bodily  
24 offense. In short, there is two ways that we can look at it.  
25 Is a bodily offense or is bodily injury going to be looked at

1 in the form of the nature of the harm or the nature of the mani-  
2 festations. We have got a quirk. Mr. Winchell has cited a  
3 Federal Supplement case from, I think, Virginia--maybe West  
4 Virginia, in which they have said that they will look at it in  
5 terms of bodily injury, interms of the manifestations.

6 The other case, the case in New Jersey, and then the  
7 Levy vs. Duclaux case out of Louisiana, both come to the con-  
8 clusion that once you have something, once you have some kind  
9 of bodily offense, you cannot all of a sudden separate out  
10 what's bodily injury and what's not.

11 What the insurance company is asking you to do today  
12 is to say, well, some things that happened to a person that we  
13 are going to call emotional distress, those are not bodily  
14 things. When something happens to me, if I'm suffering from  
15 emotional distress and something in my body, that's something  
16 that is attached to me; that's not something that can be sepa-  
17 rated out. There is not my mind and my body. It's all one  
18 unit. And that's what those cases say; is that we aren't going  
19 to separate those things out.

20 Once we have some kind of a trigger, and what the  
21 trigger is, is a harm, a bodily harm, and that's what we have  
22 in this case.

23 Now this Court is asked today to determine that since  
24 the issue was not decided that there was a bodily injury in the  
25 underlying case that today this Court is to determine that there

1 was no bodily injury. I don't follow that logic. The issue  
2 was not placed in front of the jury in the underlying case  
3 whether or not there was a bodily injury. The case was tried  
4 on a sexual -- it was a sexual offense case. It's kind of  
5 implicit in the case itself that there was -- there was a  
6 bodily, if it was a bodily offense case. To say that the jury  
7 did not come back and state that this constitutes a bodily  
8 injury, therefore, this Court is bound by that ruling, is  
9 ludicrous. Basically what he is asking you to do is speculate  
10 as to the findings of the jury in that case.

11 Now, he hasn't shown us any findings of the jury, He  
12 hasn't shown us any findings of the judge. What he has shown  
13 us is the jury instructions, the pleadings in this case, and  
14 I have cited in my brief -- I term it as a motion to strike,  
15 but mainly it's just an objection to consideration of the  
16 pleadings in this case as evidence, is a cite from an older  
17 case. It's called Regenvetter vs. Ball. It states pleadings  
18 in one action is competent evidence in another where the purpose  
19 is to contradict a party or a witness, but as evidence to prove  
20 the facts at issue, they are not so.

21 We don't have any evidence today. Mr. Winchell is  
22 telling us today that since we have not come forward with any  
23 evidence of bodily injury that this Court has to conclude that  
24 there was no bodily injury. Mr. Winchell has moved for summary  
25 judgment. The burden is upon him to bring forth the evidence

1 that no bodily injury was suffered. He hasn't given us any  
2 evidence. In short, what I am asking the Court today to do is  
3 to deny Mr. Winchell's motion, Number One, on the basis that  
4 there is no evidence before this Court upon whether there was  
5 a bodily injury or not. Secondly, to declare that the sexual--  
6 a sexual offense by its nature is a bodily injury and specify  
7 the issue which is yet to be determined in this case, which  
8 would be in this underlying case, the factual issue of whether  
9 or not that sexual relationship occurred. Thank you.

10 MR. HANNULA: Dan Hannula representing the defendants  
11 Gabrielson. Your Honor, at first, after I read Mr. Winchell's  
12 pleadings, I felt that he was attempting to in some ways con-  
13 fuse the issues and perhaps confuse this Court as to what in  
14 fact was decided in the underlying action. I think that effort  
15 may be a part of what Mr. Winchell has done. I am not saying  
16 it as a criticism but what I think, after listening to his  
17 argument, I think we can cut through all of the citations to  
18 the particular case involved.

19 The issue really boils down to one thing, I think,  
20 Your Honor, and that is, is physical contact which results in  
21 emotional injuries, is that covered under this particular policy.  
22 I think that is the only issue, that I think is before the Court.

23 I think Mr. Winchell may have tried to get there by  
24 introducing the pleadings and stating that there was no physical  
25 injury because we never proved it. Again, I would agree with

1 Mr. Donaldson that you can't use pleadings in another case for  
2 the purpose that Mr. Winchell is attempting to do in this case.  
3 But I don't think there is any dispute at this point that Mr.  
4 Winchell agrees, or at least doesn't deny the fact, that at the  
5 trial there was evidence that Carol Gabrielson was subjected  
6 to sexual misconduct by Jack McDonald. That was the essence,  
7 or at least a significant part, of the essence, of what was  
8 the counselor and pastoral malpractice claims.

9 There is no issue as we stand here today, there is no  
10 issue that Carol Gabrielson was sexually violated by Jack  
11 McDonald. The only evidence the Court has before it is the  
12 affidavit of Philip Lindsay which we presented to the Court  
13 in the initial motion for summary judgment approximately ten  
14 months ago. No one has come in to dispute that my client was  
15 not physically violated.

16 So the only issue becomes, is physical violation, which  
17 arguably does not produce a physical injury, that is, a broken  
18 bone, a bruise, a scratch, I don't even know if you have to have  
19 blood from the scratch. I think what Mr. Winchell is saying,  
20 a physical violation, absent any physical injury of any kind,  
21 is not covered. I think, one, that that would fly in the face  
22 of what we hopefully as Americans consider to be appropriate;  
23 an inappropriate touching of one's person. I have not stated  
24 it very well. I think that's offensive, the argument that as  
25 long as no actual physical harm that we can't see, or that we

1 can see, then therefore there is no bodily injury. That's  
2 what he wants the Court to accept. That's what he wants this  
3 Court to accept and he has got one case, a Virginia case, that  
4 never went to court. As I understand it, there were some alle-  
5 gations by an 11-year-old child that a teacher had sexually  
6 assaulted her. The issue became whether or not there was in-  
7 surance coverage and in this one case only, apparently, accord-  
8 ing, the court in Virginia made the determination that since  
9 she was not physically injured, the emotional suffering and the  
10 pain that was a consequence of the actual physical touching  
11 was not a bodily injury and therefore there was no coverage.

12 I find, quite frankly, Your Honor, that decision  
13 offensive and it flies in the face of, I think, better reasoned  
14 decisions, the ones we have cited such as NPS vs. Insurance  
15 Company of North America, the Levy vs. Duclaux decision and  
16 Chemung vs. Hartford. In the NPS and the Chemung cases, in  
17 both of those cases there was actual -- there was no actual  
18 physical injury but there was a violation of a person, a physi-  
19 cal violation of a person; a physical violation of a person in  
20 both of those cases involved unauthorized sexual contact of  
21 some nature.

22 And I think what the courts -- I think they are very  
23 well reasoned. When someone physically violates a person, when  
24 someone actually physically violates a person and that person  
25 as a consequence suffers an emotional reaction that causes

1 emotional suffering, that is a consequence of a physical contact  
2 and therefore we are going to consider that a bodily injury as  
3 we interpret these policies. We have been up here four times  
4 now, at least. At some point in time you'd like to cut through  
5 all the pleadings and cut through all of the affidavits and say  
6 the issue in this case is whether or not physical contact that  
7 doesn't result in physical harm that we can see but does directly  
8 affect someone emotionally and psychologically, is that a  
9 covered event under a bodily injury; is it a covered event under  
10 these policies that do cover bodily injury.

11 And the courts that have looked at this thing I think  
12 reasonably have taken into consideration that a violation of a  
13 person physically can result in emotional damages; that can be  
14 extremely harmful and are a consequence of the physical contact  
15 are covered. And I think the cases that we have cited in  
16 support of that are much better reasoned than the Virginia case.

17 I think on that basis -- well, I think hopefully --  
18 hopefully we will get at least to the issues in this thing and  
19 I think clearly the cases that we have cited are much more well  
20 reasoned than the one case that they cite. And I don't think  
21 at this point there is really much more to say so I will stop  
22 at this time.

23 THE COURT: All right, who is next.

24 MR. GLASSMAN: John Glassman for Community Chapel. I  
25 will endeavor to be brief. I'd just like to point out, Your



1 Honor, that if you look at the E-Z Loader case, it's clear that  
2 the claims were for the intentional violation of our state law  
3 against discrimination, and under that basis the Court had no  
4 problem finding no coverage nor no duty to defend. The Court  
5 clearly limited its ruling at page 908 and it stated that the  
6 types of things that they were claiming emotional distress re-  
7 lated to this intentional violation of the statute could not  
8 be recovered because it was based upon -- there would be no  
9 coverage because it was based upon those types of things which  
10 the plaintiffs recovered judgment against E-Z Loader, which was  
11 for the intentional violation of the statute. There is no  
12 allegations of physical contact or anything else like that.

13 Secondly, to kind of pick up on a theme that Mr.  
14 Hannula had, American Casualty, I don't like to personalize it  
15 or be subjective, but American Casualty is attempting to argue  
16 that if, during one of these sexual contacts, Carol Gabrielson  
17 had sprained an ankle for whatever reason that she would be  
18 entitled to recover under the policy for the damages arising  
19 from the sprained ankle because there had been a bodily injury,  
20 supposedly; that someone could--or a fracture or whatever else  
21 it was, cut lip. I think, Your Honor, that that would be a  
22 rather absurd reading of the policy.

23 Finally, I would point out to the Court that the jury  
24 instructions from the underlying case submitted in an exhibit  
25 to Mr. Donaldson's pleadings define counselor malpractice and

1 pastoral negligence or malpractice in terms of the breach of  
2 a professional duty, which we understand is a negligent concept.  
3 The jury heard evidence of Mrs. Gabrielson's injuries and  
4 damages, presumably, and they awarded her damages for negligence.  
5 And I think that when Jury Instruction Number 6 summarizes the  
6 claims being made by the plaintiffs and talks about medical  
7 costs and expenses to be incurred in the future, it is a little  
8 bit -- we are going a little bit far to say that there is no  
9 inference, at least, that there wasn't some type of physical  
10 insult that occurred during these connections, so to speak,  
11 between Pastor McDonald and Mrs. Gabrielson.

12 I agree with Mr. Donaldson that I think we have got a  
13 bit of a short record here from which to decide whether bodily  
14 injury in the pure sense occurred. It is the Court's duty to  
15 interpret the insurance contract, but if there is a factual  
16 issue on whether a bodily injury occurred, or at least inferences  
17 bodily injury occurred as outlined, I suppose, by Mr. Hannula  
18 arising from the physical nature of their relationship, then  
19 the Court can't grant his motion and we fall into the trap, I  
20 suppose, we have been here two or three times already and that's  
21 that the Court has -- the Court has already determined that it  
22 will allow, I guess, coverage under the policy for emotional  
23 consequences incident to some type of bodily injury. And if  
24 we are merely here to find a bodily injury to exclude on this  
25 short record, I don't think the Court can do it today. That

1 concludes my comments. Thank you, Your Honor.

2 THE COURT: Counsel, are you observing today or are you  
3 participating?

4 MR. GULLIFORD: I am Don Gulliford on behalf of St.  
5 Paul Fire and Marine. I have brought the stipulated order for  
6 joinder and a bench copy of the complaint for you. If it's  
7 all right, I will hand it up. I have made you a bench copy of  
8 the declaratory complaint for St. Paul. Everyone has stipulated.  
9 When I say everyone, Judge Arnold, I have learned that Mr.  
10 McDonald is pro se. You might want to just interlineate some-  
11 thing that he can apply to the Court for any modifications he  
12 wants to. We all know he won't. He wouldn't want to. This is  
13 arguably to his benefit to have this matter litigated and con-  
14 solidated. I thought he was represented by counsel but I guess  
15 he is not. I don't know, Judge Arnold, if you are keeping an  
16 in camera file on this litigation but I suspect you are.

17 THE COURT: I do have.

18 MR. GULLIFORD: I have also made a bench copy of the  
19 consolidation order also. I will file the original.

20 THE COURT: I simply interlined without prejudice  
21 to Defendant McDonald's right to ask for reconsideration.

22 MR. GULLIFORD: I am going to contact him pro se, Your  
23 Honor, and strongly urge -- I guess he has an advisor but he is  
24 not counsel of record. I can't pronounce the -- Mr. Megel. Is  
25 that right, Mr. Hollenbeck?

1 MR. WINCHELL: Mr. Mieckel.

2 MR. GULLIFORD: I will contact Mr. Mieckel. Judge  
3 Arnold, I will say only sometimes the obvious gets lost. I am  
4 obviously a newcomer to this litigation. In the bench copy  
5 of the declaratory complaint I have handed up to you, one of  
6 the exhibits is the verdict and the jury instructions. It's  
7 obvious what the problem is in this case and I am stating what's  
8 obvious, although I don't think anyone has stated.

9 The record reflects undisputedly that Mr. Winchell  
10 tried on behalf of the original plaintiff, American Casualty,  
11 to intervene in the underlying case and I would argue to fix  
12 the very mess that has arisen as a result of the wording of  
13 those jury instructions, and he was denied that; American Casualty  
14 was denied that opportunity.

15 The problem that's before you is that -- I don't know  
16 how to say it. The horse got out of the barn. All this liti-  
17 gation probably could have been avoided had a set of narrow,  
18 precise, specific interrogatory type instructions been given  
19 to the jury. It wasn't and that's the problem. I guess I am  
20 probably not helping the Court much, but I will shut up at that  
21 point.

22 THE COURT: Mr. Winchell, any response to all of this?

23 MR. WINCHELL: Very brief, Your Honor. First of all,  
24 I don't want to get into case counting. I did a count and we  
25 have cited five cases, not just the one, in all of our briefing.

1 I won't talk about E-Z Loader. I know the Court is familiar  
2 with the case. There are, I guess, three things I would like  
3 to talk about in response.

4 The first is, in response to the argument that you  
5 shouldn't be considering pleadings from another case. Again,  
6 I will go to the policy language so that we can all be clear  
7 about when the duty to pay arises. The company will pay on be-  
8 half of the insured all sums which the insured becomes legally  
9 obligated -- legally obligated -- to pay as damages because of  
10 bodily injury.

11 Now do we determine whether there was a legal alle-  
12 gation without resort to what occurred in the other trial.  
13 It's a little absurd.

14 Secondly, I would like to point out you have now the  
15 St. Paul policy before you. The St. Paul policy expressly  
16 covers bodily injury, and in addition to that, damages for  
17 emotional distress. That indicates that when an insurance  
18 company does intend to make that coverage, or when a document--  
19 an insurance contract can be said to cover emotional distress,  
20 it's a very simple matter to simply write it into the policy.

21 I guess the latter matter I'd like to leave the Court  
22 with is something that hasn't been mentioned, and that's the  
23 question of the derivative claim by Mr. Gabrielson. Regardless  
24 of what the Court's ruling with respect to the issue, and I  
25 agree with Mr. Hannula's framing of the issue before the Court.

1 today. I think the question is, does emotional distress arising  
2 from sexual misconduct constitute a bodily injury. I still  
3 maintain that there -- that we have come forward with evidence  
4 that the bodily injury question went to the jury and the jury  
5 rejected it and there is no contravening evidence that's been  
6 submitted by the defendants in this action.

7           Regardless of the Court's ruling on that point, there  
8 is simply no indication at all that there was any physical con-  
9 tact with Mr. Gabrielson or any bodily injury suffered by Mr.  
10 Gabrielson, none at all. His claim was a consortium claim and  
11 at the very least that claim ought to be held to be noncovered.  
12 Thank you.

13           THE COURT: Does anyone want to respond to the loss  
14 of consortium issue?

15           MR. HANNULA: Yes. We have already -- we covered that.  
16 The Court has already determined that's a consequential damage.  
17 If we prove bodily injury, that's a consequential damage. That  
18 issue has already been resolved.

19           MR. DONALDSON: If there is bodily injury to Carol  
20 Gabrielson. I thought that was the nature of the ruling. If  
21 Carol Gabrielson had bodily injury, loss of consortium was a  
22 consequential damage covered under the single limit liability,  
23 and there is plenty of case law in the state, we cited before  
24 when the Court made their ruling.

25           MR. HANNULA: That issue has been resolved.

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THE COURT: Back in the April ruling of '87.

MR. HANNULA: Yes.

THE COURT: That was my recollection.

MR. WINCHELL: Your Honor, when you made the initial ruling, the assault, battery and false imprisonment claims were still alive.

THE COURT: That is correct. In terms of -- of what was alive at the time, although I didn't -- my recollection is that it wasn't with the assault and battery and the issue of the ejection at the chapel that I had in mind.

You have all agreed what the issue is and that is can the Court, first of all, rule as a matter of law, as Mr. Winchell requests, that sexual contact of the sort described in this case would not constitute a bodily injury if negligently inflicted and gave rise to the psychological or emotional injuries, and the Court has already ruled on the consequential portion of the question. And it really boils down to an analysis, I suppose, of these cases, to the extent that they are the same or similar, and to draw what distinctions may be necessary in order to determine whether the case law as it exists is inconsistent or whether or not it can be rationalized as consistent. And certainly none of the cases, at least none of the Washington cases, are directly in point. There are always distinctions.

The Court is going to deny Mr. Winchell's motion and it is not going to rule that sexual contact in and of itself does

1 not constitute the bodily injury suggested in the policy.

2 It is perhaps an interesting comment that the St. Paul  
3 policy has additional language but that doesn't resolve or  
4 deal with the issue that these policies have to be read as  
5 they would be ordinarily understood.

6 MR. GULLIFORD: Did you say does or does not constitute  
7 bodily injury?

8 THE COURT: Does.

9 MR. GULLIFORD: The Court will not rule on that at  
10 this time?

11 THE COURT: I'm sorry. I either misstated myself or  
12 you misunderstood me. What I am saying is that the Court is  
13 denying the motion for summary judgment because I am refusing  
14 to buy into -- I guess I am stating it in the negative. I am  
15 refusing to buy into the proposition that bodily injury or  
16 that sexual contact does not constitute bodily injury. And  
17 I think the wording in the policy, the circumstances as some-  
18 what limitedly described insofar as the evidence before this  
19 Court is concerned, would preclude the Court's granting the  
20 summary judgment in this case as requested. In other words,  
21 the Court is saying, I guess, to turn the coin over and look  
22 at it through the back side of the glass, that sexual contact  
23 need not have with it the kind of additional buising, scarring,  
24 cutting, scratching, whatever else might inferentially be  
25 intended by that kind of contact in order to be covered.



1           And I was thinking, just before Mr. Glassman said it,  
2 there are really three sorts of degrees here. You could have  
3 the threat of sexual contact, you could have somebody threaten-  
4 ing someone who is powerless to resist but never touch them,  
5 just make the threat and have them terribly fearful, and there  
6 could be all sorts of emotional consequences from that that  
7 would not be covered. That's the first degree.

8           Then the third degree is where there is sexual contact  
9 and there is some pretty objective signs of that because it's  
10 particularly brutal or it's accompanied by blows or bruises or  
11 that sort of thing.

12           Well, then, what you do is get in this middle ground  
13 and that is what about the sexual contact which is physical in  
14 nature but doesn't result in something more than one might  
15 expect from that such as the scarring or the bruising or what-  
16 ever. And that's where the Court has to make its decision and  
17 that's where you have argued that there is some either incon-  
18 sistency in the cases or different lines of authority.

19           I don't really, from the cases that I have reviewed  
20 that you have submitted, all of you, perhaps with the exception  
21 of the Virginia case, see that there is any real disagreement.  
22 I think the cases can be distinguished based either on the  
23 basis of the cause of action or facts in the particular case.  
24 I guess enough said.

25           MR. HANNULA: Your Honor, I don't know if this is

1 going to make it any easier for the Court or for any of us.  
2 But taking off my cloak of advocacy for a moment, I don't think  
3 there is going to be that much of an issue as to what happened.  
4 Really, I think we are at a stage, unless somebody disagrees  
5 with me, I think we are at a stage where the facts in terms of  
6 the physical violation, there is not going to be a dispute.  
7 There are no bruises to my knowledge. There are no cuts, there  
8 are no physical manifestations of injury.

9 THE COURT: I was assuming that to be the case.

10 MR. HANNULA: And unless someone disagrees with me, I  
11 think it's at this time at a stage where we could submit it to  
12 you and you can make a decision as a matter of law one way or  
13 the other, reviewing the case law, reviewing the particular  
14 undisputed facts in this case and considering decisions that  
15 have been decided previously -- does anybody disagree with that  
16 in terms of getting this issue out of the way and perhaps if  
17 there are other issues we can go to that. I just feel like  
18 this issue, with a little bit different degrees, has been  
19 before the Court several times now and at least, unless some-  
20 one disagrees, I don't know if this is an issue that needs  
21 or requires testimony by witnesses, unless someone disagrees  
22 with me.

23 MR. GULLIFORD: Mr. Hannula, what do you mean when  
24 you say the issue -- I think I know what you mean but we can  
25 be led astray.

1 MR. HANNULA: The issue is whether or not the sexual  
2 contact, absent an objective physical injury but resulting in  
3 emotional harm, which I think has been already decided, is that  
4 covered as a bodily injury. That's the one issue that we are  
5 here on and at least I'm submitting to the Court that I think  
6 the Court really has the facts before it. I guess we could  
7 detail to a greater degree but it would seem to me, unless  
8 someone disagrees that this is now an issue of law --

9 MR. WINCHELL: I thought that was your ruling.

10 THE COURT: I really appreciate, Counsel, your remark  
11 because sometimes it's the unspoken that is confusing here. I  
12 was trying to be very careful to do this, to remember that this  
13 was Mr. Winchell's motion for summary judgment. What you are  
14 really saying here is, haven't you then as a matter of law  
15 treated it as though you had had the counter-motion for summary  
16 judgment. Is that not what you are saying in another way?

17 MR. HANNULA: I don't know if I was asking the Court  
18 to make that decision. What I was trying to do with all counsel,  
19 saying do we have a dispute as to the facts or have we gone  
20 beyond that; can we just submit it to the Court.

21 THE COURT: One of the problems, to be real fair with  
22 you, that I have had, I have read so much of your materials in  
23 this case that I have to be very, very careful that, in making  
24 a ruling, that I don't consider something that I have read in  
25 conjunction with another motion or that is not fairly before

1 the Court with regard to this issue. Now, just let me in re-  
2 sponse to that say that my general understanding in this case  
3 is that there was repeated sexual -- that my understanding of  
4 the undisputed facts are that there was repeated sexual contact  
5 with Mrs. Gabrielson; that the jury awarded her damages and  
6 in Interogatory Number 2 or Question Number 2, would have  
7 covered the counseling and pastoral cause of action; that in  
8 order to have answered that question yes, I am assuming that  
9 the jury found -- and this is where I want to be real careful  
10 because I have said that you can't assume -- it seems to me  
11 that it is undisputed -- or I believe it's undisputed that  
12 there was this repeated contact and maybe there is a dispute  
13 about whether it's repeated.

14 I didn't sit through the trial. That's where I want  
15 to be careful that I don't pick up something someplace that's  
16 just an allegation. I didn't follow the newspapers. I don't  
17 know whether McDonald admitted that this happened once, zero  
18 times or 50 times.

19 MR. WINCHELL: It's in fact undisputed there were  
20 repeated sexual contacts, either 20 or 60.

21 THE COURT: Pardon me?

22 MR. WINCHELL: 20 or 60. 20 according to McDonald,  
23 60 according to Carol.

24 THE COURT: Isn't it also undisputed in that context  
25 plaintiff Gabrielson indicated at least at some point in time

1 that she was powerless to resist in a physical sense but that  
2 she was doing -- engaging in this activity because she believed  
3 pursuant to his persuasion that that was what she had to do to  
4 resolve the purposes for which he was helping her? Am I  
5 stretching it?

6 MR. WINCHELL: I guess it's undisputed that was at  
7 least alleged at one time.

8 THE COURT: Wasn't that the basis of the testimony?  
9 Isn't that what we are talking about here, or is it? I don't  
10 want to put words in your mouth.

11 MR. HANNULA: Maybe I was trying to short circuit things  
12 or shortcut things. We can bring our counter motion but what  
13 I had intended to do was simply present the evidence. I will  
14 take it from the transcripts of the testimony, if we need to.

15 THE COURT: You are asking me to become a factfinder  
16 and/or rule as a matter of law?

17 MR. HANNULA: What I really was trying to present to  
18 everyone here, the sense that I got in listening to Mr. Winchell's  
19 argument is that there really is no dispute as to the facts as  
20 to what occurred, and then the question becomes can the Court  
21 at this point just simply take what I consider to be really non-  
22 disputed facts and then make a ruling of law. That was, I  
23 guess -- the question I think was posed more to Mr. Winchell.

24 THE COURT: That's why I was posing this question.  
25 I don't want to step beyond the parameters of the pleadings and

1 the request. I have not heard from any of you in my courtroom  
2 with regard to your motions on this case anything -- any  
3 factual information that would at least at this juncture lead  
4 me to believe that this incident did not qualify as the bodily  
5 injury, this specific incident or involvement or activity; but,  
6 I don't know. I guess that's Mr. Hannula's question. Are there  
7 disputed facts with regard to what happened here that, under  
8 the Court's ruling, still keep this issue alive?

9 MR. DONALDSON: Doesn't she say she was dragged from  
10 the church and handcuffed or something?

11 MR. HANNULA: That's been resolved.

12 THE COURT: That's another issue that's the subsequent  
13 incident. That's when she claims to have been taken by two or  
14 three people from the church and ejected from the church. What  
15 I am concentrating on now is this alleged sexual contact. Mr.  
16 Winchell, I'm not getting a feeling from you.

17 MR. WINCHELL: I am still, I think, in part missing  
18 what everybody else is getting but maybe I can explain why I  
19 think I am missing it. I think it helps for us to all be prac-  
20 tical here because we are spending a lot of time probably being  
21 impractical in some regard, so I don't disagree with the effort.  
22 Clearly it's undisputed that there were repeated sexual con-  
23 tacts and clearly there was an award of damages for negligence.  
24 Were the Court to make an order, you have already held, I think,  
25 in effect, at least it's only a matter of jumping through a

1 hoop. You are not going to change your mind that to the extent  
2 damages for emotional distress were caused by these repeated  
3 sexual contacts and were the basis for the jury's verdict, that  
4 is covered. Now here is where I hesitate. It's on two points.

5 First of all, we haven't begun to address the issue  
6 of occurrence; in essence, were these intentional acts. A  
7 couple of weeks ago we ordered about half of the transcript  
8 from that trial because I just don't feel we can address the  
9 issue of whether there was an occurrence without presenting  
10 to somebody the actual testimony from the trial. It just can't  
11 happen as a practical matter. So that coverage issue is alive.

12 Secondly, at least in my mind --

13 MR. HANNULA: Just for Mr. Winchell's benefit, I under-  
14 stand occurrences being a separate issue. I was focusing on  
15 this particular issue; is this a bodily injury.

16 THE COURT: Was this event --

17 MR. HANNULA: Yes, a bodily injury under the policy.

18 MR. WINCHELL: Again, it's more qualification than  
19 anything else. We may -- I haven't thought this through, but  
20 in light of the Court's ruling, there is a possibility, again,  
21 this is pure argument and hearsay, but there was testimony  
22 about, I think Mr. Hannula would agree, about other things that  
23 Jack McDonald did that Carol Gabrielson considered to be wrong  
24 and that hurt her. Things he said to her, encouraging her to  
25 leave her husband, things like that. And I don't want those

1 things which are more in the nature of pure perhaps counselor  
2 or pastoral malpractice but separate from the sexual misconduct  
3 claim to get swallowed up by any order the Court might enter.  
4 I just don't want any issues to die inadvertently.

5 MR. HANNULA: One, I think Mr. Winchell can protect  
6 himself if that were appearing to happen or going to occur. I  
7 just wanted to see if we could resolve the issue of whether or  
8 not this type of physical contact --

9 THE COURT: In this case.

10 MR. HANNULA -- in this case, does that; does that come  
11 under bodily injury as defined under the policy. I think that's  
12 the one issue I was hoping we could resolve.

13 THE COURT: And Mr. Winchell said at the outset, "I  
14 think that's what the judge already said," subject to his other  
15 concerns about occurrence and other potential negligence alle-  
16 gations that was considered by the jury. Am I hearing you right?

17 MR. WINCHELL: That's basically correct, yes.

18 THE COURT: What I am hearing here is that which I really  
19 suspected but was waiting for somebody to say because I didn't  
20 want to jump through a hoop that wasn't being held up. Is that  
21 there isn't any disagreement about that. I am not trying to  
22 put words in anybody's mouth. Is there any disagreement about  
23 whether the conduct in this case, the sexual conduct in this  
24 case as you all understand it to have occurred, constituted a  
25 bodily injury as the Court has defined it, not as perhaps you



1 would like it to be.

2 MR. WINCHELL: It depends on what your ruling is. It  
3 really does. I understood your ruling to be sexual contact is  
4 a bodily injury. If that's not your ruling --

5 THE COURT: It is.

6 MR. WINCHELL: -- then I am still missing the issue.

7 THE COURT: Mr. Hannula wants to make sure, I guess,  
8 that you are not suggesting that there wasn't a sexual contact  
9 here or that there wasn't -- that whatever happened somehow  
10 doesn't fall within sexual contact.

11 MR. HANNULA: That's right. That's right.

12 MR. WINCHELL: Mr. Gulliford said that wasn't before  
13 the Court today.

14 THE COURT: I hate to bring this up. Mr. Hannula says  
15 we keep coming back here and back here and back here. Are we  
16 not somehow addressing these issues -- somehow the way it's  
17 presented, I think it's very poor practice for a judge to insert  
18 themselves where they are not wanted or make any assumptions  
19 or presumptions because I don't have all of the information,  
20 so I am always maybe perhaps too careful about this. Maybe you  
21 have been too careful. I don't know. It sounds to me like  
22 there is no dispute.

23 MR. WINCHELL: I think the thing to do --

24 THE COURT: Why don't you draw an order and I will bet  
25 you from what you have all said here today, that you can all

1 draw an order that resolves the question that's in your mind  
2 and protects Mr. Winchell as to these underlying or overlying  
3 issues.

4 MR. HANNULA: I appreciate that.

5 THE COURT: I would be hopeful that you could do that  
6 because we need to narrow the focus. You, I thought, went a  
7 long way to doing that, as your briefs came in and supplemental  
8 memorandums. As the day drew nearer I could see that we seemed  
9 to be a lot more focused. At least I thought so at the  
10 beginning.

11 MR. WINCHELL: Thanks, very much.

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PIERCE COUNTY CLERK  
TED RUTTI, 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

SUBPOENA DUCES TECUM  
(George Alberts)

THE STATE OF WASHINGTON TO: George Alberts  
20417 10th Avenue South  
Seattle, Washington

GREETINGS:

YOU ARE HEREBY COMMANDED to be and appear at 2250 Century  
Square, 1501 Fourth Avenue, Seattle, Washington, on Friday the  
17th day of March 1989, at 9:30 a.m. of said day, then and

SUBPOENA DUCES TECUM - 1  
0534BAW

15154 4/21/2003 88143

1 there to give testimony, upon oral deposition, material to the  
2 establishment of the plaintiff's case in the above-entitled  
3 cause, and to remain in attendance upon the undersigned until  
4 discharged, and to bring with you the following:

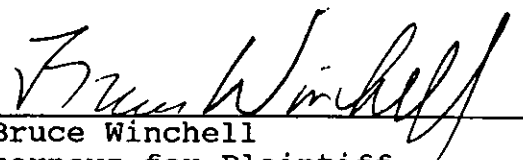
5 1. All materials in your possession which relate in any  
6 way to Community Chapel and Bible Training Center or any person  
7 who has ever attended that church or any of its satellite.

8 Herein fail not at your peril.

9 DATED this 17<sup>TH</sup> day of February 1989.

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LANE POWELL MOSS & MILLER

By   
Bruce Winchell  
Attorneys for Plaintiff

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PIERCE COUNTY WASHINGTON  
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BY [Signature] REPUT.

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

NOTICE OF DEPOSITION  
(John DuBois)

TO: ALL PARTIES

AND TO: Their Attorneys of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the  
testimony of John DuBois will be taken upon Oral Examination at  
the instance and request of the plaintiff in the above-entitled  
action, before a Notary Public, at 2250 Century Square, 1501  
Fifth Avenue, Seattle, Washington on Saturday the 25th day of

NOTICE OF DEPOSITION - 1  
0531BAW

15154 4/21/2003 86145

1 February, 1989, commencing at the hour of 9:30 a.m. to be  
2 subject to continuance or adjournment from time to time or  
3 place to place until completed, and to be taken on the ground  
4 and for the reason the said witness will give evidence material  
5 to the establishment of the plaintiff's case.

6 DATED this 17<sup>TH</sup> day of February, 1989.

7 LANE POWELL MOSS & MILLER

8  
9 By 

10 Bruce Winchell  
11 Attorneys for Plaintiff

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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

NOTICE OF DEPOSITION  
(Scott Hartley)

TO: All Parties  
AND TO: Their Attorneys of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the  
testimony of Scott Hartley will be taken upon Oral Examination  
at the instance and request of the plaintiff in the  
above-entitled action, before a Notary Public, at 2250 Century

NOTICE OF DEPOSITION - 1  
0530BAW

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Square, 1501 Fifth Avenue, Seattle, Washington on Saturday the 4th day of March, 1989, commencing at the hour of 9:30 a.m. to be subject to continuance or adjournment from time to time or place to 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 17<sup>TH</sup> day of February, 1989.

LANE POWELL MOSS & MILLER

By *Bruce Winchell*  
Bruce Winchell  
Attorneys for Plaintiffs

15154 4/21/2003 08148

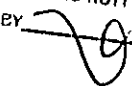


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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PIERCE COUNTY

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

NOTICE OF DEPOSITION  
(George Alberts)

TO: All Parties

AND TO: their attorneys of record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the  
testimony of George Alberts will be taken upon Oral Examination  
at the instance and request of the plaintiff in the  
above-entitled action, before a Notary Public, at 2250 Century

NOTICE OF DEPOSITION - 1  
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15154 4/21/2003 88143

1 Square, 1501 Fifth Avenue, Seattle, Washington on Friday the  
2 17th day of March, 1989, commencing at the hour of 9:30 a.m. to  
3 be subject to continuance or adjournment from time to time or  
4 place to place until completed, and to be taken on the ground  
5 and for the reason the said witness will give evidence material  
6 to the establishment of the plaintiff's case.

7 DATED this 16th day of February, 1989.

8 LANE POWELL MOSS & MILLER

9  
10 By Bruce Winchell  
11 Bruce Winchell  
12 Attorneys for Plaintiff

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PIERCE 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

SUBPOENA DUCES TECUM  
(Mike Sabourin)

THE STATE OF WASHINGTON TO: Mike Sabourin  
18727 Fourth Avenue South  
Seattle, Washington

GREETINGS:

YOU ARE HEREBY COMMANDED to be and appear at 2250 Century  
Square, 1501 Fourth Avenue, Seattle, Washington, on Thursday  
the 23rd day of March 1989, at 9:30 a.m. of said day, then and

SUBPOENA DUCES TECUM - 1  
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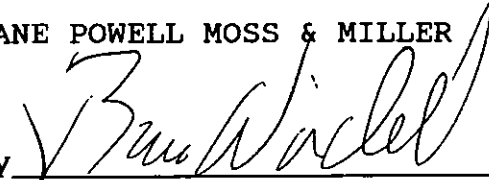
there to give testimony, upon oral deposition, material to the establishment of the plaintiff's case in the above-entitled cause, and to remain in attendance upon the undersigned until discharged, and to bring with you the following:

1. All materials in your possession which relate in any way to Community Chapel and Bible Training Center or any person who has ever attended that church or any of its satellite.

Herein fail not at your peril.

DATED this 17<sup>TH</sup> day of February 1989.

LANE POWELL MOSS & MILLER

By   
Bruce Winchell  
Attorneys for Plaintiff

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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  
SUBPOENA DUCES TECUM  
(Maureen Sabourin)

THE STATE OF WASHINGTON TO: Maureen Sabourin  
18727 Fourth Avenue South  
Seattle, Washington

GREETINGS:

YOU ARE HEREBY COMMANDED to be and appear at 2250 Century  
Square, 1501 Fourth Avenue, Seattle, Washington, on Thursday  
the 23rd day of March 1989, at 2:00 a.m. of said day, then and

SUBPOENA DUCES TECUM - 1  
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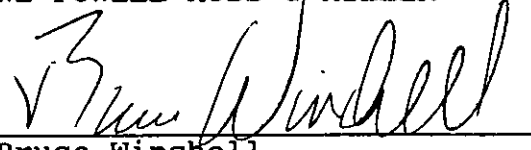
there to give testimony, upon oral deposition, material to the establishment of the plaintiff's case in the above-entitled cause, and to remain in attendance upon the undersigned until discharged, and to bring with you the following:

- 1. All materials in your possession which relate in any way to Community Chapel and Bible Training Center or any person who has ever attended that church or any of its satellite.

Herein fail not at your peril.

DATED this 17TH day of February 1989.

LANE POWELL MOSS & MILLER

By   
Bruce Winchell  
Attorneys for Plaintiff

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PIERCE COUNTY WASHINGTON  
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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

NOTICE OF DEPOSITION  
(Mike Sabourin)

TO: All Parties  
AND TO: Their Attorneys of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the  
testimony of Mike Sabourin will be taken upon Oral Examination  
at the instance and request of the plaintiff in the  
above-entitled action, before a Notary Public, at 2250 Century

NOTICE OF DEPOSITION - 1  
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Square, 1501 Fifth Avenue, Seattle, Washington on Thursday the 23rd day of March 1989, commencing at the hour of 9:30 a.m. to be subject to continuance or adjournment from time to time or place to 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 17<sup>th</sup> day of February, 1989.

LANE POWELL MOSS & MILLER

By Bruce Winchell  
Bruce Winchell  
Attorneys for Plaintiff

15154 4/21/2003 08156



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PIERCE COUNTY CLERK  
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

NOTICE OF DEPOSITION  
(Maureen Sabourin)

TO: All Parties

AND TO: Their Attorneys of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the  
testimony of Maureen Sabourin will be taken upon Oral  
Examination at the instance and request of the plaintiff in the  
above-entitled action, before a Notary Public, at 2250 Century

NOTICE OF DEPOSITION - 1  
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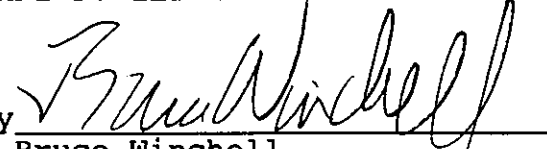
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Square, 1501 Fifth Avenue, Seattle, Washington on Thursday the  
23rd day of March 1989, commencing at the hour of 2:00 p.m. to  
be subject to continuance or adjournment from time to time or  
place to place until completed, and to be taken on the ground  
and for the reason the said witness will give evidence material  
to the establishment of the plaintiff's case.

DATED this 17<sup>TH</sup> day of February, 1989.

LANE POWELL MOSS & MILLER

By 

Bruce Winchell  
Attorneys for Plaintiff

15154 4/21/2003 08158

STATE OF WASHINGTON } SS  
COUNTY OF PIERCE

The undersigned, being first duly sworn, on oath,  
states: That on this day, affiant MAILED  
to the attorneys of record of PLAIN DEFEND.  
a copy of the document to which this affidavit is  
attached.

Shirley M. Markham

Subscribed and sworn to before me this 21 day of

FEBRUARY 19 89

K. Rowley

Notary Public in and for the  
State of Washington

My commission expires 2/9/90.

3 FEB 21 1989

FILED

IN COUNTY CLERK'S OFFICE

A.M. FEB 21 1989 P.M.

PIERCE COUNTY WASHINGTON  
TED RUTT COUNTY CLERK

BY S DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

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

Plaintiff, )

vs. )

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

Defendants. )

NO. 88-2-00947-9

DEFENDANTS GABRIELSON'S  
JOINDER IN DEFENDANTS  
BARNETT'S MOTION TO REVISE  
SUMMARY JUDGMENT ORDERS TO  
SUPPLEMENT RECORD

COME NOW 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  
join in defendants Barnett's motion to revise summary  
judgment orders to supplement record.

////

DEFENDANTS GABRIELSON'S JOINDER  
IN DEFENDANTS BARNETT'S MOTION  
TO REVISE SUMMARY JUDGMENT - 1

LAW OFFICES

RUSH, HANNULA & HARKINS

715 TACOMA AVENUE SOUTH

TACOMA, WASHINGTON 98402

TACOMA 383-5388  
SEATTLE 838-4790

15154 4/21/2883 86153

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Defendants Gabrielson adopt the pleadings submitted by  
defendants Barnett in support of the motion.

DATED this 17<sup>th</sup> day of February, 1989.

RUSH, HANNULA & HARKINS

By: Harold T. Dwyer  
for DANIEL L. HANNULA, Of  
Attorneys for Defendants  
Gabrielson

15154 4/21/2003 00160

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

American Casualty Company of Reading DEPARTMENT #

Pennsylvania, Plaintiff.

vs.

Ira Gabrielson, et al. Defendant.

NO. 88 2 00947 9

FEB 21 1989

NOTE OF ISSUE AND STATEMENT OF ARBITRABILITY

FILED IN COUNTY CLERK'S OFFICE

FEB 21 1989 A.M.

PIERCE COUNTY CLERK'S OFFICE DEPUTY

NATURE OF CAUSE Motion to Dismiss Barnett

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

ESTIMATED TIME TO TRY CAUSE

DATE REQUESTED FOR DOCKET MOTION/ASSIGNMENT March 3, 1989

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

TELEPHONE (206) 223-7000

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

TELEPHONE (206) 383-5388

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

NAME OF PARTY BRINGING MOTION: Plaintiff, American Casualty Company

ARBITRATION

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

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

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

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

ABOVE INFORMATION MUST BE COMPLETED

TO BE COMPLETED BY CLERK

Assigned To:

Date: By:

List Additional Attorneys

Name:

Tim Donaldson  
Address: Evans, Craven & Lackie  
3400 Columbia Center  
Phone: 701 Fifth Avenue  
Seattle, WA 98104  
Attorney For: Telephone: (206) 386-5555  
Attorney for Barnetts

Name:

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

Name:

Jack McDonald  
Address: 4620 Tacoma Avenue South  
Phone: Tacoma, WA 98335

Attorney For:

Name:

Don M. Gulliford  
Address: Law Offices of Don M. Gulliford & Associates  
Phone: 2200 112th Avenue NE  
Bellevue, WA 98004  
Attorney For: Telephone: (206) 462-4000  
Attorney for St. Paul Insurance Company

Name:

Address:

Phone:

Attorney For:

Name:

Address:

Phone:

Attorney For:

3-89  
MOTION

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

1 FEB 21 1989  
A.D. FEB 21 1989  
PIERCE COUNTY CLERK  
TED RUTLAND  
DEPUTY

American Casualty Company of Reading  
Pennsylvania,  
Plaintiff.  
vs.  
Ira Gabrielson, et al.  
Defendant.

NO. 88 2 00947 9

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

NATURE OF CAUSE Cross Motion for Summary Judgment

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

ESTIMATED TIME TO TRY CAUSE \_\_\_\_\_

DATE REQUESTED FOR DOCKET MOTION/ASSIGNMENT March 3, 1989

PLAINTIFF'S ATTORNEY:	NAME	<u>Bruce Winchell</u>
	ADDRESS	<u>Lane Powell Moss &amp; Miller</u> <u>3800 Rainier Bank Tower</u> <u>1301 Fifth Avenue</u> <u>Seattle, WA 98101</u>
	TELEPHONE	<u>(206) 223-7000</u>
DEFENDANT'S ATTORNEY:	NAME	<u>Daniel L. Hannula</u>
	ADDRESS	<u>Rush, Hannula &amp; Harkins</u> <u>715 Tacoma Avenue South</u> <u>Tacoma, WA 98402</u>
	TELEPHONE	<u>(206) 383-5388</u>

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

NAME OF PARTY BRINGING MOTION: Plaintiff, American Casualty Company

ARBITRATION

- This case is subject to arbitration because the sole relief sought is a money judgment and involves no claim in excess of twenty-five thousand dollars exclusive of attorney fees, interests and costs.
- This case is not subject to mandatory arbitration because:
  - Plaintiff's claim exceeds twenty-five thousand dollars.
  - Plaintiff seeks relief other than a money judgment.
  - Defendant's counter or cross claim exceeds twenty-five thousand dollars.
  - Defendant's counter or cross claim seeks relief other than a money judgment.
- The undersigned contends that its claim exceeds twenty-five thousand dollars but hereby waives any claim in excess of twenty-five thousand dollars for purposes of arbitration.

ABOVE INFORMATION MUST BE COMPLETED

TO BE COMPLETED BY CLERK

Assigned To: \_\_\_\_\_

Date: \_\_\_\_\_ By: \_\_\_\_\_

List Additional Attorneys

Name: Tim Donaldson  
Evans, Craven & Lackie  
3400 Columbia Center  
701 Fifth Avenue  
Address: Seattle, WA 98104  
Telephone: (206) 386-5555  
Phone: Attorney for Barnettts

Attorney For:

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

Attorney For:

Name: Jack McDonald  
4620 Tacoma Avenue South  
Address: Tacoma, WA 98335

Phone:

Attorney For:

Name: Don M. Gulliford  
Law Offices of Don M. Gulliford & Associates  
2200 112th Avenue NE  
Address: Bellevue, WA 98004  
Telephone: (206) 462-4000  
Phone: Attorney for St. Paul Insurance Company

Attorney For:

Name:

Address:

Phone:

Attorney For:

Name:

Address:

Phone:

Attorney For:



AMERICAN CASUALTY COMPANY OF  
READING PENNSYLVANIA, a Pennsylvania  
corporation,

AFFIDAVIT OF SERVICE OF

vs.  
IRA GABRIELSON and CAROL GABRIELSON,  
husband and wife; et al.,

Plaintiff

SUBPOENA DUCES TECUM, LETTER;  
DEPO: 3-23-89 @ 9:30 AM

4 FEB 27 1989

FILED  
IN COUNTY CLERK'S OFFICE

A.M. FEB 27 1989 P.M.

Garnishee Defendant

PIERCE COUNTY WASHINGTON  
TED RUTT, COUNTY CLERK

State of Washington  
County of King

ss.

BY \_\_\_\_\_ 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 2/21/89 at 8:00 P M., at 18727 4th Avenue South, Seattle,

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 Mike Sabourin

RESIDENCE SERVICE

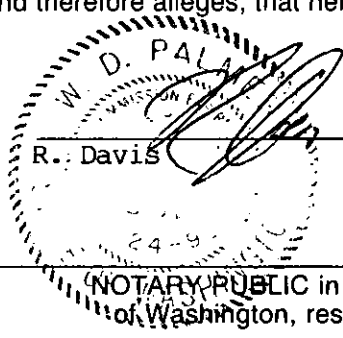
by then and there, at the residence and usual place of abode of said person(s), personally delivering one true and correct copy(ies) thereof to and leaving the same with Dee Chabot, resident

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 2/23/89



SERVICE ATTEMPTED AT:

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

4/20/2003 8:01:05

45154

AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA, a Pennsylvania corporation,

vs.

IRA GABRIELSON and CAROL GABRIELSON, husband and wife; et al.,

FILED IN COUNTY CLERK'S OFFICE

A.M. Plaintiff FEB 2 1989 P.M.

PIERCE COUNTY WASHINGTON COUNTY CLERK TED RUTT, COUNTY CLERK DEPUTY

SUBPOENA DUCES TECUM, LETTER; DEPO: 3-23-89 @ 2:00 PM

Defendant

Garnishee Defendant

4 FEB 27 1989

2 AM 2/23

State of Washington

County of King

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 2/21/89 at 8:00 P M., at 18727 4th Avenue South, Seattle

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 Maureen Sabourin

by then and there, at the residence and usual place of abode of said person(s), personally delivering one true and correct copy(ies) thereof to and leaving the same with Dee Chabot, resident

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 2/23/89

SERVICE ATTEMPTED AT:

Notary Public seal for R. Davis, State of Washington, commission expires 2-24-92, residing at Seattle.

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

154 4/21/2003 88166

5 MAR 14 1989

ORIGINAL

COPY RECEIVED

MAR 13 1989

RUSH, HANNULA & HARKINS

RECEIVED  
MAR 10 1989

LANE POWELL MOSS & MILLER  
ATTY

SUPERIOR COURT FOR THE STATE OF WASHINGTON  
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 & BIBLE )  
TRAINING CENTER, a Washington )  
corporation, )

Defendants. )

NO. 88-2-00947-9

DECLARATION OF ROBERT J. ROHAN  
IN OPPOSITION TO AMERICAN  
CASUALTY'S MOTION FOR DELAY OF  
TRIAL DATE

SET FOR HEARING:  
FRIDAY, MARCH 17, 1989  
9:30 a.m.

FILED  
IN COUNTY CLERK'S OFFICE

AM. MAR 13 1988 P.M.

PIERCE COUNTY WASHINGTON  
TED RUTT, COUNTY CLERK

BY  DEPUTY

I, Robert J. Rohan, state:

1. I am a partner in the lawfirm of Schweppe, Krug & Tausend, P.S., one of the attorneys for defendant Community Chapel and Bible Training Center. I make this declaration based on my own personal knowledge and am competent to be a witness herein.

2. Our lawfirm represents Community Chapel and Bible Training Center ("Community Chapel") in this action, along with Mr. Glassman, and are the counsel for appeal in the underlying Gabrielson case. We requested that American Casualty post a supersedeas bond in the Gabrielson action so that the judgment against Community Chapel could not be enforced against its

1 property pending appeal. American Casualty agreed to pay the  
2 premium of a supersedeas bond, but refused to write the bond  
3 through its own underwriting department and also refused to  
4 obtain the bond from any other company. On behalf of Community  
5 Chapel, I contacted two insurance brokers in Seattle, Washington  
6 who handle supersedeas bonds and asked them to obtain such a bond  
7 on behalf of Community Chapel, using Community Chapel's real  
8 property as security for the bond. Both bonding companies  
9 reported that all of the companies willing to write supersedeas  
10 bonds were not willing to write it on real property and that they  
11 would need a letter of credit in order to write such a bond.  
12 Community Chapel has informed me that their cash flow is not  
13 adequate to service their existing debt, including the first  
14 mortgage on their major piece of real property, and, therefore,  
15 they are not able to either obtain a letter of credit or a bank  
16 loan to back a supersedeas bond.

17 4. Under these circumstances, our clients are not able to  
18 obtain a bond, and are faced with imminent collection proceedings  
19 by the successful plaintiff in Gabrielson. Our client's  
20 deposition on supplemental proceedings has already been taken.

21 5. Continuing the trial date on issues of insurance  
22 coverage could cause irreparable harm to Community Chapel. Any  
23 further delay puts our client at great risk, in that additional  
24 collection and foreclosure proceedings could take place prior to  
25 the Court deciding the Gabrielson insurance coverage questions.

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

DATED this 8<sup>th</sup> day of March, 1989 at Seattle, Washington.

  
\_\_\_\_\_  
ROBERT J. ROHAN

0147-004\A030889.RJR

15154 4/21/2003 08169

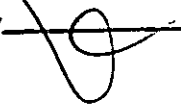
JANNETTE

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FILED  
IN COUNTY CLERK'S OFFICE

A.M. MAR 23 1989 P.M.

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

SUBPOENA DUCES TECUM

THE STATE OF WASHINGTON TO: Records Custodian  
KOMO  
100 Fourth Avenue N.  
Seattle, WA 98109

GREETINGS:

YOU ARE HEREBY COMMANDED to be and appear at 100 4th Ave.  
North, Seattle, Washington, on Friday the 31st day of March.

SUBPEONA DUCES TECUM - 1  
0481BAW

15154 4/21/2003 88170

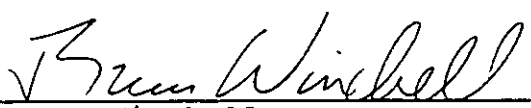
1 1989, at 9:00 a.m. of said day, then and there to give  
2 testimony and produce material relevant to the establishment of  
3 the defendants' case in the above-entitled cause, and to bring  
4 with you the following:

5 1. All video tape relating in anyway to Community Chapel  
6 and Bible Training Center, Community Chapel and Bible Training  
7 Center of Tacoma, Carol Gabrielson, and the Pierce County  
8 lawsuit of Carol and Ira Gabrielson v. Jack and Shirley  
9 McDonald, Donald and Barbara Barnett and Community Chapel and  
10 Bible Training Center, claims asserted against Community Chapel  
11 and Bible Training Center or employees or former employees of  
12 Community Chapel and Bible Training Center of Tacoma.

13 Herein fail not at your peril.

14 DATED this 21<sup>st</sup> day of March 1989.

15 LANE POWELL MOSS & MILLER

16  
17 By   
18 Bruce Winchell  
19 Attorneys for Defendants  
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15154 4/21/2883 88171

JANNETTE

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4 MAR 23 1989

FILED  
IN COUNTY CLERK'S OFFICE

A.M. MAR 23 1989 P.M.

PIERCE COUNTY  
TED RUTHERFORD COUNTY CLERK  
BY \_\_\_\_\_ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

NO. 88-2-00947-9

AFFIDAVIT OF  
COLEEN D. THOMPSON

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

COLEEN D. THOMPSON, being first duly sworn upon oath and  
having personal knowledge of the following facts, deposes and  
says:

1. I am one of the attorneys representing the plaintiff  
American Casualty Company, in the above-captioned case.

2. On March 17, 18, and 20, 1989, I deposed George  
Alberts, the former Minister of Counseling for Community Chapel  
and Bible Training Center.

AFFIDAVIT OF  
COLEEN D. THOMPSON - 1

LANE POWELL MOSS & MILLER  
3800 RAINIER BANK TOWER  
1301 FIFTH AVENUE  
SEATTLE, WASHINGTON 98101-2647  
(206) 223-7000

24198 5882/17/4 15101



1 3. The transcript of Mr. Alberts' deposition is currently  
2 being transcribed and should be available by March 31, 1989.

3 4. Mr. Alberts testified to numerous instances of sexual  
4 contact and marital disharmony occurring in the church as a  
5 result of the Doctrine of Spiritual Connections practiced at  
6 Community Chapel.

7 5. Mr. Alberts further testified that between May 1985  
8 and May 1986 he repeatedly informed Pastor Donald Barnett and  
9 Elders Scott Hartley, Jack Hicks, and Jack DuBois of his  
10 concerns regarding the preaching and practice of Spiritual  
11 Connections and the effect upon the congregation.

12 6. Attached as Exhibit "A" is a document produced in  
13 response to a Subpoena Duces Tecum to Mr. Alberts. This  
14 document was introduced as Exhibit 2 to Mr. Alberts'  
15 deposition. Mr. Alberts testified that Exhibit 2 was prepared  
16 by Linda Steinhaurer, a former member of Community Chapel. The  
17 document is a list of Chapel members who divorced during the  
18 period that Spiritual Connections were being practiced at  
19 Community Chapel.

20 7. Mr. Alberts testified that he has actual knowledge  
21 that 60 of the 157 couples listed divorced as a result of the  
22 practice of Spiritual Connections occurring at Community Chapel.

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25 AFFIDAVIT OF  
26 COLEEN D. THOMPSON - 2  
0005CDT

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8. Further, your affiant sayeth not.

Coleen D. Thompson  
Coleen D. Thompson

SUBSCRIBED AND SWORN to before me: March 23, 1989.

Kathryn M. Kent  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at Edmonds.

My appointment expires:  
September 8, 1989

AFFIDAVIT OF  
COLEEN D. THOMPSON - 3  
0005CDT

15159 4/21/2005 00174

EXHIBIT A

Anderson, LeRay + Cheryl  
 Bramson, Steve + Sharon  
 Benson, Jack + Peggy  
 Case, Gordon + Kim  
 Chabot, Brian + Dee  
 Coleman, Jim + Donna  
 Dowling, Martin + Jo  
 Inye, Janice + Curtis  
 ✓ Gunn, Steve + Laurie  
 ✕ Guthrie, Frank + Rosemary  
 Haller, Rodney + Debbie  
 ✓ Hornbaker, Fred + Patti  
 ✓ Hultkerty, Bruce + Vickie  
 Johnson, Wm. + Sandra  
 Kovacich, Joseph + Charlotte  
 ✕ Lenke, Sharon + Larry  
 Loomis, Wm. + Renee  
 Kirkland Lennbacher, Carol + Hon  
 McElvain, Harvey + Debbie  
 ✓ Nordholm, Paul + Janet  
 Pangburn, Dennis + Maurine  
 Peterson, Larry + Carolyn  
 Rossi, Jon + Nancy  
 Schopf, John + Christina  
 Shaw, Tom + Leah  
 Sytkinski, Michael + Lorelei  
 Syree, Max + Chris  
 Wagner, Jim + Gail  
 ✓ Willer, Milton + Gloria  
 Peterson, Lisa + Tony  
 McClary, Kirk + Melody  
 Massotie, Anthony + Pearl  
 Keoplin, Corky + June  
 Lavaof, Pete + Sylvia

86-3-00388-0	1-16-86
86-3-01179-3	2-10-86
86-3-03219-7	4-21-86
85-3-04629-7	6-6-85
86-3-04075-1	5-20-86
86-3-05792-1	7-16-86
86-3-04395-4	disolution rec. 12-13-86 6-5-8
86-3-02549-2	3-31-86
85-3-10346-1	12-20-85
85-3-09129-2	10-30-85
86-3-03959-1	5-14-86
86-3-2505-1	3-28-86
86-3-00968-3	2-3-86
86-3-03322-3	4-24-86
86-3-02610-3	4-2-86
86-3-00695-1	1-24-86
86-3-03640-1	5-5-86
86-3-0466-0	6-6-86
85-3-09812-2	12-3-85
85-3-08014-2	9-24-85
85-3-09698-7	11-26-85
86-3-03491-2	4-29-86
86-3-04285-1	5-23-86
85-3-06353-1	8-2-85
86-3-01139-4	2-7-86
85-3-10482-3	12-31-85
85-3-10485-8	
86-3-00510-6	1-21-86
85-3-07628-5	9-13-85
86-3-00374-0	1-15-86
85-3-07257-3	8-30-85
86-3-00210-7	1-19-86
86-3-06966-0	8-2-86
86-3-06880-9	8-20-86
86-3-06102-2	7-24-86

	File #	File Date
x Brush, Melvin + Bonnie	86-3-05624-0	7-10-86
Little, Jan + Joseph	86-3-08749-8	10-22-86
Wilson, Maurice + Mary	85-3-09592-1	11-18-85
Russell, Brian + Kiane	86-3-09831-7	12-2-86
Roberts, Kevin + Connie	86-3-10294-2	12-18-86
Jubbs, Lydia + Ron	86-3-10260-8	12-17-86
Morris, Doug + Mary	86-3-09497-9	11-15-86
Marth, Steve + Heather	86-3-08717-0	10-21-86
Mastrorossi, Tom + Cynthia	87-3-00904-5	2-4-87
Levinson, Angela + Daniel	87-3-01256-9	2-17-87
Pruette, Sharon + Jeff	87-3-02377-3	4-1-87
Fisher, Bonnie + Don	87-3-02410-9	4-2-87
Galster, Carol + Terri	86-3-09656-0	11-21-86
Cordas, Doug + Alexie	87-3-02900-3	4-22-87
Werhaly, Debbie + Art	87-3-03733-2	5-21-87
Juggle, Leon + Sharon	87-3-03777-4	5-22-87
y Snowy, Wayne + Kerri	87-3-04113-5	6-8-87
Jackson, Jerry + Ann	<del>87-3-03921-1</del>	5-29-87
Lockrem, Richard + Emma	87-3-02800-7	4-17-87
Uprak, Stacey + Jeff	87-3-05284-6	7-17-87
Thorne, Wil + Linda	87-3-05582-9	7-27-87
Guiles, Roxanne + Leon	87-3-04562-9	6-19-87
Lepeska, Roy + Shirley	87-3-06205-1	8-18-87
McAlpin, Chief + Elena	87-3-06619-7	8-28-87
Shurty, Greg + Alexie	87-3-06618-9	8-28-87
Kerr Jr., Charles + Molly	87-3-04866-1	7-1-87
Hutchison, James + Judith	87-3-06698-7	9-2-87
Haley, Scott + Kristen	87-3-04017-1	6-3-87
Schwartz, Jim + Bev	88-3-00883-7	2-5-88
Weidner, Scott + Vicki	87-3-09099-3	11-23-87
Rainey, Joseph + Marlene	87-3-07138-7	9-17-87
Marx, Robert + Aleta	88-3-01535-3	2-29-88
Ferrell, John D. + Sylvia	87-3-09109-4	11-23-87
Holmes, Perry + Stephen P.	87-3-09861-7	12-29-87

69. Franklin, Mark + Peggy
70. Anable, Chris + Jana
71. Barnett, Don + Barbara
72. Anderson, Ferry + Hosna
73. Cromwell, Wick + Elvia
74. Frierison, Kelley + Jim
75. Maas, Claudia + David
76. Glover, John + Maxine
77. Rapp, Chris + Ray
78. Sabourin, Ferry + Kathy
79. Visser, Jan + Betty
80. Meikart, Hera + Don
81. Byl, Steve + Kelley
82. Quinston, Ruth + Michael
83. Morgensroth, Hax + Heise
84. Lawson, Carolyn + Bill
85. King, Michael + Karen
86. Kilbura, Wm. + Julie
87. Taylor, Earl + Molice
88. Griffith, Cirt + Hebbie
89. Hardman, Adele + Bob
90. Russell, Harrell + Linda
91. Arnold, Hebbie + Paul
92. Wright, Susan + Harrel
93. Patterson, Tom + Bonnie
94. Baldik, Micki + Tom
95. O'Brien, Cheri + Wax
96. Larsen, Geo + Heborah
97. Schmitter, Wax + Connie
98. Wright, Sheila + Wm.
99. Briggs, Tom + Bev
100. Schudt, Brian + Janet
101. Nacey, Sandy + Joel

87-3-08987-1	11-18-87
88-3-01315-6	2-23-88
<sup>Legal Separation</sup> 88-3-01782-8	3-9-88
<sup>Legal Separation</sup> 87-3-08230-3	10-23-87
87-3-09465-4	12-10-87
88-3-00273-1	1-12-88
87-3-09133-7	11-24-87
<sup>Legal Separation</sup> 87-3-09758-1	11-23-87
<sup>Legal Separation</sup> 88-3-01495-1	2-26-88
87-3-08629-5	11-5-87
86-3-02421-6	3-25-86
88-3-02152-3	3-23-88
<sup>Legal Separation</sup> 88-3-03034-4	4-22-88
88-3-0326-1	4-29-88
87-3-09406-9	12-9-87
88-3-02624-0	4-5-88
88-3-03001-8	4-21-88
88-3-00879-9	2-5-88
88-3-02807-2	4-13-88
88-3-02122-1	3-22-88
88-3-03388-2	5-6-88
87-3-09344-5	12-4-87
88-3-02953-2	4-19-88
87-3-07975-2	10-15-87
88-3-02517-1	4-1-88
88-3-02642-8	4-6-88
<sup>Legal Separation</sup> 88-3-02965-6	4-20-88
87-3-09290-2	12-3-87
<sup>Legal Separation</sup> 87-3-06444-5	8-24-87
87-3-09204-0	11-30-87
88-3-03230-4	4-29-88
87-3-07897-7	10-12-87
<sup>Legal Separation</sup> 87-3-09450-6	12-9-87

102.	Lewis, <u>Brown</u> + <u>Bud</u>	87-3-30913-7	5-20-87
103.	Blumel, <u>Craig</u> + <u>Linda</u>	88-3-03760-8	5-16-88
104.	Snyder, <u>Ferry</u> + <u>Laura</u>	84-3-09517-6	April '87'
105.	Williams, <u>David</u> + <u>Christine</u>	87-3-06474-7	8-25-87
106.	Wagner, <u>Bud</u> + <u>Mildred</u>	88-3-04639-9	6-21-88
107.	Seely, <u>Patrick</u> + <u>Myron</u>	88-3-03974-1	5-25-88
108.	Matthews, <u>Chris</u> + <u>Debra</u>	88-3-04725-5	6-24-88
109.	Jones, <u>Lucinda</u> + <u>Ron</u>	88-3-04898-7	7-1-88
110.	Holm, <u>Allen</u> + <u>Sydney</u>	88-3-03818-3	5-18-88
111.	Galas, <u>Drew</u> + <u>Barb</u>	88-3-04280-6	6-7-88
112.	Connelly, <u>John H.</u> + <u>Carol</u>	88-3-04789-1	6-28-88
113.	Kelley, <u>Katherine</u> + <u>Mike</u>	88-3-04197-4 <small>Legal Separation</small>	6-3-88
114.	Newby, <u>Lynn</u> + <u>Jeri</u>	88-3-05997-1	8-4-88
115.	Gideler, <u>Tom</u> + <u>Linda</u>	88-3-06194-1 <small>Legal Separation</small>	8-10-88
116.	Zwack, <u>Renee</u> + <u>Jerry</u>	88-3-05848-6	7-29-88
117.	Hauger, <u>Fanis</u> + <u>Alan</u>	88-3-05728-5	7-25-88
118.	Towery, <u>Kraig</u> + <u>Susan</u>	88-3-05460-0	7-13-88
119.	Simonds, <u>Pat</u> + <u>Bob</u>	88-3-03951-1 <small>Legal Separation</small>	5-24-88
120.	Duex, <u>Ken</u> + <u>Perry</u>	86-3-04861-1	6-13-86
121.	Crow, <u>Hersie</u> + <u>Marquerite</u>	86-3-10296-9	12-18-86
122.	Belknap, <u>Fred</u> + <u>Sherry</u>	88-3-04177-0 <small>Legal Sep.</small>	6-2-88
123.	Goss, <u>Bob</u> + <u>Barb</u>	88-3-04684-4	6-23-88
124.	Reinhart, <u>Bong</u> + <u>Barb</u>	88-3-05202-0	8-25-88
125.	Cooper, <u>Hebbi</u> + <u>Jess (Bud)</u>	88-3-05496-1	7-14-88
126.	Schwartzkopf, <u>Larry</u> + <u>Sandy</u>	88-3-04990-8	7-7-88
127.	Cain, <u>David</u> + <u>Sue</u>	88-3-05782-0	7-27-88
128.	Fischer, <u>Mary Jane</u> + <u>Mike</u>	88-3-05720-0	7-25-88
129.	Willis, <u>Charles H.</u> + <u>Sandra</u>	88-3-06270-0 <small>L.S.</small>	8-15-88
130.	Harold, <u>John</u> + <u>Jaye</u>	88-3-06389-7	8-18-88
131.	Wacker, <u>Carl</u> + <u>Janice</u>	88-3-05769-2	7-27-88
132.	Steward, <u>Trinidad</u> + <u>George</u>	88-3-07140-7 <small>Legal Sep.</small>	9-20-88
133.	Mason, <u>Carl</u> + <u>Barbara</u>	88-3-05269-1	9-12-88
134.	Ochs, <u>James</u> + <u>M. Kathleen</u>	88-3-07228-4 <small>Legal Sep.</small>	9-22-88
135.	McIntosh, <u>Joe</u> + <u>Nancy</u>	88-3-05388-3	9-28-88

Oakland  
Oakland  
Oakland

New

15154 4/21/2863 88175

	136. Loney, Clay + Henry	88-3-07934-3		10-6-88
	137. Kares, Merise + Richard	88-3-07980-7		10-7-88
	138. Hills, John + Stacey	88-3-03946-5		5-24-88
	139. Sachte, Bruce + Karl	88-3-09235-8		12-5-88
	140. Bieracki, Steve + Katherine	88-3-07080-0		9-16-88
	141. Buss, Dennis + Anita	88-3-07181-4		
	142. Bula, Liz + Roger	88-3-07710-3		9-28-88
	143. Von Keldner, Richard +	88-3-07838-0		10-3-88
	144. Hefler, Cecilia + Mark	88-3-07930-1	L.S.	10-6-88
	145. Mahlin, Karin + Ken	88-3-07182-2		10-12-88
	146. Franklin, Mark + Sylvia	88-3-04384-5		6-10-88
	147. Barta, Mary C. + Steve	88-3-06640-3	L.S.	8-26-88
Kirkland	148. Blackburn, Mark + Cathy	87-3-08421-7		10-30-87
"	149. Kalarick, Paul + Joan	87-3-08150-1		10-22-87
"	150. Le Roy, Lance + Anita	86-3-10383-3		12-23-86
"	151. Melton, Ken + Jill	88-3-06661-6		8-26-88
"	152. Wax, Gary + Cathy	88-3-02469-7		3-30-88
"	153. Weatherbee, Craig + Lavonne	88-3-00822-5		2-4-88
Kirkland	154. Theriault, Ed + Lori	88-3-05123-6		7-22-88
	155. Anderson, Martha + Roger	88-3-07460-3		11-16-88
	156. Barta, Jim + Vera (Veronica)	88-3-04624-1	L.S.	6-21-88
Kirkland	157. Nelson, Jan + Mike	88-3-08282-4		10-21-88



# Out of County

1. Gabrielson, Ira + Carol (Tacoma)
2. Kinstler, Mike + Bonnie (Spokane)
3. Tindum, Eric + Bonnie (Tacoma) 86-3-0403-0-6
4. Gault, Carol + Mike
5. Shong, Melody + John (Wiscasset)
6. Konopka, Tom + Jennie (Spokane)
7. Mitchell, Gary + Patrice
8. McManus, Allen + Janice
9. Shaw, Bob + Patrice
10. Finis, Marilyn + Barry (Vancouver)
11. Syce, Harris + Karen 87-3-03008-2 8-3-87 (Pierce)
12. Ebbel, Mike + Sandy
13. Nagro, Cheryl + Tony 88-3-01307-1 4-7-88 (Pierce)
14. Hicks, Jack + Neva 88-3-01337-2 4-8-88 (Pierce)
15. Hendry, Mike + Jill



1 litigation. Sabourin is one of the more prominent dissidents  
2 who have left the Chapel. He was a minister for Community  
3 Chapel from 1973 until December of 1985 when he resigned.  
4 Mr. Sabourin left Community Chapel because of the spiritual  
5 connections doctrine. These excerpts provide a great deal of  
6 back ground information with respect to the church and its  
7 practice of spiritual connections. His testimony demonstrates  
8 that the practice would obviously lead to the type of harm  
9 which befell Carol Gabrielson. It also further establishes Don  
10 Barnett's knowledge of the adverse consequences which were  
11 flowing from spiritual connections at the same time that Jack  
12 McDonald and Carol Gabrielson were involved.

13  
14 Coleen D. Thompson  
15 Coleen D. Thompson

16 Subscribed and sworn to before me on March 23, 1989.

17  
18 Kathryn M. Kent  
19 NOTARY PUBLIC in and for the  
20 State of Washington, residing  
at Edmonds.

21 My appointment expires:  
22 9/8/89

CP100 5007/17/8 4101

EXHIBIT A

**EXHIBIT A**

**EXCERPTS FROM THE DEPOSITION  
OF MICHAEL SABOURIN**

Taken: March 24, 1989

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

Page/Line

Description

50:7 - 51:20

Q. Do you have any knowledge of the extent of involvement of Brian Chabot and women in the church during the time period August 1985 through January 1986?

A. Yes. I did talk with Brian, myself, in September -- early September of '85. And this was at the request of Dee Chabot.

Q. What was the subject matter of your discussion?

A. Well, Dee was concerned that Brian was involved in the connection, and dancing and spending a lot of time with another sister in the church. And it was bringing great consternation to Dee, and so she asked if I would try to talk to him. And it was kind of precarious right then because I knew that if I talked to him, I had to be very careful of what I said, lest it be interpreted as being contrary to the so-called move, and anything that I did say would have to, by definition, almost be contrary to it. So it was a difficult time. And the events that ensued kind of hastened our departure from the chapel. But I talked with Brian -- I was very careful. I just -- the gist of what I was saying to him is: Brian, you need to be careful in these relationships and in this dancing and so forth; you could end up falling in love with another woman.

And I talked with Brian as a friend when I had talked to him in the past, and he had always been very amiable and very easy to talk to. But this time it was like he

stiffened up and he said something to the effect, Well, I am falling in love with them, spiritually, and so forth. And so that was kind of -- I could see that I wasn't going to get anywhere. I mean, he knew where he stood and I sensed that he felt that he had the support of the rest of the elders, too, so I really wanted -- anything more I had to say would make it more difficult for me. So that was pretty much the end of the conversation.

53:12 - 55:3

Q. And it's my understanding from your answer that you had, at the time you talked to Brian Chabot, some reservation concerning the doctrine of spiritual connection?

A. Definitely.

Q. Yet you were hesitant to express this concern to him, due to your job status?

A. Well, it was job status and it was also -- I wanted to express my concern, but I wanted to do it in such a way that it wasn't so obvious that I was speaking against what the pastor was teaching. And, now, it's not an easy thing to do, because I knew that if I spoke plainly, I would probably be called on the carpet, so to speak. And, as it turned out, I was. And the dilemma that I was faced with was, do I speak out plainly and have everybody reject -- you know, in other words, it would seem to be counterproductive to accomplish the goal of trying to help the people and try to turn this thing away from the direction it was going. To come with a frontal attack would have been almost certain discrediting all the people in the congregation, based on past experience.

Q. When you say you were eventually called on the carpet, are you referring to the Brian Chabot incident, specifically?

A. Yes.

Q. And when did this happen?

A. Well, the day after -- that was on a Tuesday night in early September. I don't remember the exact date. On Wednesday, Ralph Alskog came over and informed me that Don Barnett wanted to speak with me. And the way that he presented it, I mean, here was our close friend, and it was pretty business like. And I sensed that I was probably going to be in trouble for what I had said to Brian. So I can only assume that Brian either informed Ralph or Don or someone.

And so next Thursday -- that was on a -- I talked with Brian on Tuesday. Ralph came over on Wednesday. And then on Thursday, Don came over to the house and we had -- I don't want to say we had a discussion with him, but he had a discussion with us, I would say.

68:13 - 70:22

Q. Okay. Now moving on to what he said concerning the prayer request for Maureen Jorgensen, what was the subject matter?

A. The subject matter was that she was having terrible -- some kind of stomach problems, and they may have said more details about it at the time. All I remember is something terrible -- terrible stomach problems; she was in knots or something, very agitated and very much in pain right at that time, and -- because, see, normally, if it wasn't an urgent thing, Don was not accustomed to praying for people if it was a general or long-term type of thing. And so it was somewhat unusual that they would take the time after service to pray for somebody right there.

Q. Anything else said about the subject matter of the prayer request?

A. Yes. Then after explaining what her need was, he talked about having counseled with her and made it clear that he knew what the lead-up to this was, and that she

was going through great consternation because she was unable to -- the terminology was used to release her husband to these spiritual connections, that her husband had been dancing with other women and she was very, very upset by it, and that he had counseled her to get rid of the demons that were holding her back. And if she didn't get rid of the demons, she was going to have serious trouble. And so he felt like this trouble that she was having was a result of her failure to submit herself to the pastor and to deliverance prayer and so forth, to get rid of these demons that were troubling her and her refusal to release her husband.

Q. Did he specifically use the words "failure to release her husband"?

A. I'm not sure if those -- I don't remember the precise words; I remember the gist of the message. So I couldn't say that he used those words specifically. But it was clear -- I don't know whether the word "release" was used or not, but it was clear that she was not accepting this as being God and allowing it to continue. And that was his concern.

Q. Did he use the word "rebellion," specifically?

A. If he didn't use that word, it was a synonym for it. That was the clear message. Rebellion, insecurity, jealousy.

Q. Did he use those specific words?

A. I'm sure he did.

Q. And that was with regard to the doctrine of spiritual connections?

A. Yes.

Q. How long did this introduction take indicating that he had received a prayer request and that she had had stomach



pains, that he had counseled her, he felt that this was the result of her having her stomach tied in knots because of her concern over her husband and that she was not accepting the doctrine of spiritual connections?

A. I would say between five and ten minutes for the introduction before the prayer started.

87:1-20

Q. Do you believe in the existence of Satan?

A. Yes.

Q. Do you believe there are Satanic influences?

A. Yes.

Q. Do you believe there is, from a theological standpoint, from your personal belief, there is a Satanic influence with regard to spiritual connections?

A. Definitely.

Q. Does that form the basis of your opinions regarding spiritual connections?

A. Yes and no. I would say I object to spiritual connections because it's not scriptural, and then the explanation for the phenomenon and the way things have developed, that's another issue. And that's an opinion. My opinion is that Satanic involvement was there, mixed with many other things. I don't blame it solely on Satanic things, but I think that's definitely an element in many cases.

88:13 - 89:24

Q. Did you ever discuss with Maureen Jorgensen her physical condition during the calendar year 1985?

A. Let me think now. I don't know whether she first called us after -- certainly not until after we had left the church and when we first -- she first

called us, which I think was in January of '86.

Q. And what was the contact in January of '86 concerning?

A. I'm trying to think now. I remember first getting a call from her and her being in tears and was afraid that we wouldn't even talk to her. The first thing that she was tremendously relieved by was that we would even talk to her. And I think my only recollection of the first call didn't have to do with her physical condition so much but just the fact that she had left the chapel and she needed some support, and just confirming the same viewpoint on the doctrine of connections that she had come to. In other words, it was just -- and this was typical of a number of people in the church that would call us about the time that they had made a decision to leave and just to see if -- I guess looking for support and confirmation of the understanding that they had come to on this doctrine.

Q. What were Ms. Pangburn's -- Miss Jorgensen now -- words to you regarding her conclusions on the doctrine of spiritual connection?

A. Oh, it's hard to remember, because it was -- there have been so many people, that it's hard to single out one individual and so forth. I would think typically, and I can only say typically because I don't remember the specific words, but, you know, she was losing her husband over it. Just recognizing that it wasn't of God, that it was a deception, and that's -- I think that's the bottom line. I don't remember specifics beyond that.

91:16 - 93:7

Q. What was the motive in the five tapes or your reason for producing the five tapes on spiritual connections as to what you wanted to tell the listener?

A. Okay. Well, we were approached by Lou to speak on the subject. And I had been -- part of the motive was that we had been doing this one on one with people for so long that it was taking a lot of time. And we felt like if we could put it on tape someplace and have it available so people could check the tapes out, it would save us a lot of time. but it was mainly to answer the many, many questions.

Over the last three years as we have talked with people, they have had a number of questions and concerns about, you know, how do we explain this from the scriptures, how did the deception get started, why did this happen at the chapel and so forth. And over th years, as we have shared our opinions on those things and had people want to hear our opinions, because of my former position, people had respect for what I was saying.

So it wasn't so much a voluntary thing, because a part of me wanted to just forget the whole mess and go on with my life, but on the other hand, seeing the people suffering and going through the same kind of mental torment that we had gone through, we wanted to help. And so that was the reasons to make the tapes. And at the request of Lou, we did that. He had a fellowship in a home, and they taped sessions, and so I felt like it would be a good way to reach a lot of people, and tried to keep it on a theological plane, not dealing with personalities or what Don did or what Barbara did or who said what and so forth. And I made that clear at the outset, that I wanted to deal with it from a theological standpoint.

Q. So there is a religious theological basis for your desire to explain to people the absence of a Biblical basis and --

A. Right.

Q. -- and your opinion that there is a Satanic influence?

94:11 -95:18

A. Right, right.

Q. Do you have any factual knowledge of the effects of the doctrine of spiritual connections on Ron Kitchell?

A. Well, other than in his own testimony on the effects and the fact that Barbara expressed that great concern at the elder meeting for him being suicidal because of this.

Q. Any facts regarding the effects of church doctrines on Katy Kitchell?

A. Again, only from what they have had told us, and her own testimony that it almost cost her her marriage.

Q. Other than what you have already testified to with regard to Brian Chabot, any additional personal knowledge of the effects of church doctrines on Brian Chabot?

A. Well, again, the fact that he's still there, the fact that he very much supports the connection teaching and the fact that, you know, that the family is broken up.

Q. Would I be safe in assuming individuals who still are there which -- realizing Don Barnett and Barbara Barnett -- or Don Barnett's no longer participating in the Community Chapel as it exists, do I understand your belief that they feel there is a religious, Biblical basis for spiritual connections if they continue to believe in the practice and that they reject your notion that it's a result of Satanic influences?

A. I'm sure they do. that has been the basic position from day one is that i -- they are basing it on religious experience. So it is a religious theological difference.

97:2-12

Q. Do you have any opinions as to the effects of church doctrines on Michael

Ehrlich, other than you've indicated his rejection of same?

A. Yeah. I would just say a general devastation, a very, very discouraged, very -- you know, he's been through an awful lot, and primarily -- you know, obviously because of his wife's situation, but primarily because of the doctrine of spiritual connections and all of the things that ensued, in his mind, is certainly the cause of it, the primary cause.

112:25 - 114:10

Q Did you feel you personally were ever in a position where you were unable to exercise your independent judgment? And I'm not talking about voicing your opinion. I'm talking about exercising it.

A. That's a hard question to answer.

Q. Do you need a clarification?

A. No, I'm not so sure I need a clarification. Just trying to think back on the way that I felt about things.

A. Certainly by the time the connection doctrine was in place and it started to develop, I felt not so much that I -- well, I certainly felt that I couldn't express my opinion on it. And I felt a tremendous pressure to conform to it that I didn't appreciate, and pressure from sermons and from -- and because most people knew my position knew that I was having some reservations, even though they didn't know the details, I felt like everybody knew, you know, that the sermon was for me or for those that were in my position, which there weren't very many, apparently. And so I felt a lot of pressure there, as far as the spiritual connections doctrine.

Before that time, I certainly felt some constraint as far as expressing my opinion or teaching something that Don didn't agree with. And most of those issues were

relatively small issues that it didn't matter that much to me, anyway. In other words, there were certain grounds I knew that it wasn't safe to tread on. But there were other areas in which I didn't feel any particular constraint at all. But a lot it was because I was already in agreement, theologically, with Don, and so it wasn't a matter of conflict or feeling like I was pressured because I disagreed. But when the connection situation arose, then I began to feel that.

147:8 - 150:3

Q. Prior to the time you left, what, if anything, did Donald Barnett preach would happen to anyone who left the Community Chapel?

A. Well, this was something that increased over the years. In the early years, it wasn't so much anything that was said. It was just more that God has called you here, and we're here to do special work for God, and that if you leave, you're going to miss out on God's best. So that was kind of the general tenor of it. And I think everybody felt that way. They felt, you know, this is the place God's called us, and we don't want to miss out on some of the teaching that we're getting that we could not get elsewhere. So that's the way it started.

As time went on, and especially after 1979 and '80, there was more of the warning that if you leave, if you leave because you're disgruntled about this or that or disagreeing with the pastor or rebellion, whatever, that you're rebelling against God and that you're going to suffer some consequences, and you may lose out on being the Bride of Christ -- not necessarily saying you're going to lose your soul, but you're going to lose out on God's best, and you may get bitterness and you may eventually lose your soul, that type of thing.

And then I would say after this connection teaching, there was more emphasis on it,

more of: You're really going to miss out on God; you may not make it at all if you leave. And that's more from a few tapes that we heard after we left and from what people had said.

So the thing that -- for most people in the chapel, the desire was an intense spiritual desire to have all that God wants for you. And the thought of missing the best was a very serious thing to anybody. And then the thought of getting -- I should say this. About the time that we left, there was also the demon situation, where there were strong warnings that if you talked to people who are disagreeing with this position, you're liable to get the same demons that they have, and you'll be deceived. And so there was a lot of, you know, fear on the part of many people.

This is one of the things that we dealt with as we talked with people that had just freshly left. There was a lot of fear in many of them: Am I still going to make it with God, you know, is there life outside the Community Chapel. And so there was -- it's similar to when Catholics leave the Catholic church. There's a lot of this kind of thing. They're taught all their life, if they don't take the mass, they won't be saved. It was a similar type of thing, and the degree of it varied with the individual. I think the more the person wasn't a teacher of the Word, themselves, people like Mike Ehrlich and Marvin Williams and others, they didn't have as much of a problem with it as people who had been pretty much under the ministry and were being taught and hadn't studied on their own and really felt comfortable, confident, with their own position. But many of them felt that they weren't going to make it, they were going to lose their souls if they left the Chapel. But, as I said, it was a gradual development. That wasn't the feeling all along. And it varied with individuals within the church, too.

By the end there, for us, anyway, by December of '85, there was a lot of fear and it was mentioned often in sermons at the end there: If you don't go along with the teachings on connections, you're going to lose out with God. And: If you leave over this, you may lose your spouse and your soul and so forth. It was pretty -- pretty powerful.

152:2 - 156:12

A. Yeah. My view on that has changed since I was there. I would have expected more to see this for what it was than I did. I was very, very disappointed that people that had known that much about the Word of God could fall for this, because from a theological standpoint, they had all the tools they needed to recognize that this was false, even from Don's own teachings out of his own mouth over the years.

And so I can only attribute it to the tremendous pressure that was on people, which I felt, myself, before. Even though I had a clear theological position on it, the pressure was very, very intense. It's hard to describe it. But I felt it emotionally and psychologically. And even though I had no question about my theological position, these are the people you've spent the last 15 years of your life with, that you've taught, ministered to. To face a separation like that was not easy.

And for many of them, because of the connection doctrine, I think one of the greatest psychological pressures was because the doctrine came between the husband and wife. Anybody who was contemplating leaving was having to face the possibility of losing their family and spouse, as well, because unless both the husband and the wife agreed, the teaching of the chapel was such that if your spouse backslides, turns away from God, you've got to follow the higher authority, which is God. And they would have been clearly instructed to stay with the church, even



at the expense of losing their spouse. So that was a real tough one for anybody to take. I thank God that my wife saw things as I did, because had she not, I may well have lost my family, too.

So that was a compounding factor. You have the fear of losing out with God, the fear of losing your family and friends, so forth. There was a big price to pay, let's put it that way, if you disagreed with the theology on this issue.

Q. In the teachings on spiritual connection at the time when you were at the chapel by Don Barnett, did any of those in any way talk about connections possibly having sexual contact with each other?

A. Well, let's see. At the time that I left in December of '86, we had seen dancing, we had seen touching. They were -- some were talking about kissing already, and we had heard that it happened in some instances. But most of those -- but any sexual involvement was still spoken against from the pulpit. In other words, this is not sexual, and if you go into sexual relationships, you are violating the guidelines that have been set. So that was the official position, and yet there was a great deal of tolerance.

Again, this is where knowledge of what was going on at the time there stops, because that's about as much as we knew when we left, and then later on, from people who have left the chapel since and told us what they were personally involved in at that same time, we find that there was a lot of sexual involvement. And it was not -- it's not so much that it was -- it was certainly not advocated officially, but it was not dealt with, in my opinion, the way it should have been dealt with. And it was -- I feel like there was a toleration for it, and there was talk of, well, if you -- now, I'm not sure whether I heard

this before or after we left, but Don made some statement about if you slip and go too far, then you need to repent of it and go on and so forth.

But then later on, it began -- after we left, he began -- it was never advocated, but he began to say things like, if you tell on someone that has committed adultery, that's worse than actually committing adultery. And things of that nature began to escalate, so it was a progressive thing. I don't think that they're now in a position or ever were in a position of openly advocating that, and the teaching has always been that it's spiritual, and they have advocated kissing and French kissing and a lot of those things since we left, from people that have said it from the pulpit.

Q. I just want to know what your knowledge was at the time you left.

A. Yeah. At the time, at the time, the official position was, no, we don't tolerate these things. And Don wrote me on a letter saying that the guidelines are always as they have been: Don't sit with someone else's spouse during the services. No kissing, no spending time alone. The day that I got the letter, as I was driving down the street, I saw Barbara Barnett with Jerry Swalk, almost sitting in his lap in the car, alone, and so forth. So I didn't have a whole lot of credibility on the guidelines.

But I do remember Don did say this, there was always kind of a loophole. If it's spiritual -- he made statements to the effect that it it's truly spiritual, there are no guidelines. So when elders and others were doing certain things that violated the guidelines -- we'd be in services, even before we left, when Don was saying officially that you shouldn't be sitting with another person's spouse, and just about all of the elders were sitting there with their connections

rather than their spouses. I couldn't believe the contradiction. And yet if you pressed it, it was, well, the guidelines are mainly for those that aren't spiritual enough to really handle it. Those that are more spiritual and more mature can handle it. That's the way it seemed to be.

156:24 - 161:3

Q. What I'm asking is, did you know anything that led you to believe that it was other than a sincerely held religious belief?

A. I guess I'd have to say yes because of the way Don was pressing my wife to dance with him and so forth. I was uncomfortable with it, and she was uncomfortable with it.

Q. Tell me what happened about that.

A. Well, at one of the early retreats in June of -- June of '85, the elders retreat where Don had this initial experience, he had taken some time and danced with my wife for quite some time. I think it was one of the middle sessions of the week. And I was over in another part of the room praying about something else at the time. And afterward, I guess it was a little bit earlier, my wife had expressed some concern about she didn't think it was right the way that Don was expressing himself and so forth; she was uneasy about it. And she did not have the same reservations about the doctrine that I did at the time, but she expressed that concern.

And then at this session, he spent a long time dancing with her. And then afterwards he gave a testimony about the wonderful spiritual experience that he had in this. And then, of course, after that, it was with several of the other elders' wives where he had supposedly his most elevated experiences.

And when I heard the testimony of it, I was bothered and I was put in a position

where Don made some statement in the elders meetings, now, if anybody's really bothered by this, speak up and so forth. And I was hoping that one of the elders would speak up, because I knew if I would have spoke up it would be, well, you're just jealous, you're just insecure and so forth. So it was a very, very uncomfortable position.

So from that time on, my wife and I -- afterwards, we said, we're going to stick together. And that's the way we survived a lot of those retreats. We just clung to each other like glue. And Don was not pleased with this because he wanted to dance with my wife. My wife was the one that first came to me and told me of her concern, so I said, in effect, I'll cover for you. And I didn't want her to have to stand up against Don, because he was very persuasive. And I'm going to stand in the gap, and so that's the way we maintained things.

And up through -- so I had this concern about Don, himself, and my wife was concerned about him. My wife felt like the doctrine -- she wasn't so understanding that the doctrine was wrong as much as I was, but she was concerned about Don, himself. She didn't think that that was quite right, but she was more open to, you know, the idea of connections being totally spiritual.

Then at the elders retreat in August of -- August of '85, just before camp meeting, we had about a week of what we call a retreat. In this case, it was right at the church, and there was a long prayer session and so forth in preparation for the camp meeting. And at one of those sessions -- they had one session on Thursday where they were going to pray for Don. All of the week they had been doing other things, primarily dancing. And they were going to pray for Don.

So we all -- he was laying on the gym floor, and the elders -- most of us were right around him, laying hands on him to pray. And just as he began to pray, he asked for me. And so I came over, and the first thing he said to me is, I feel like you're robbing me. And, of course, the problem was that I was robbing him of being able to dance with my wife and that I was hindering him from having a spiritual experience. And so I told him -- I don't remember, all the words just kind of rushed out because I figured I was finished now, anyway. I just told him I can't do that, it violates my conscience, that the marriage is holy and sanctified by God, and I would do a lot of things for you, but that's one thing I cannot do.

Q. What did he say?

A. He didn't say much more right then. After I had said that, he sat up and he had everybody get up and sit in the chairs, and then he -- and I thought he was going to announce my resignation or something. But he just -- he said, it appears we have a difference of theological opinion here. And then for the next half an hour or so, he went right back into the testimony of his experience with Terri Ehrlich at the earlier retreat and so forth, and defending the doctrine. And then he said at the end that we were going to have prayer about it in the next session. And we had dinner and came back for the prayer. And the service was just dancing again the rest of the evening. And the issue never came up again, so it was just kind of dropped.

And so -- but when I told my wife what he had said to me, that was kind of the last straw for her. She felt like -- she was really shocked to hear that. And so that's why I say that, you know. The original question was, did I have reason to suspect that it might have been other than just a spiritual doctrine of theological difference. I had no proof,

but it was very, very uneasy feeling about Don, himself, and what his intentions were.

161:16 - 162:25

Q. All right. And other than your suspicion that his belief in teachings of spiritual connection was not all theological, did he ever say anything to you, other than what you've said to us, that would indicate that his belief in spiritual connection was other than a theological belief?

Ms. Shaffer: Objection to the characterization. The witness' testimony speaks for itself as to whether he was suspicious or had more grounds than that.

Q. You can answer the question.

A. There's one thing that ties it with this. We had two meetings with Don before we officially left. One of them was in late September of '85, and the other one was in November, as near as I can figure -- that was the last one -- because I remember there was snow on the ground. It was around Thanksgiving time. And that was the last meeting we had with him before I officially resigned in December of '85. And I don't remember which one, I think it was the last one, Don was telling me that he felt that one of my problems was that I had never been a ladies' man. And I didn't say anything back, you know. He was doing most of the talking at that time.

But I thought about it later. That is an odd -- you know, if this is totally spiritual and it has nothing to do with sexual things and so forth, then why should I be hindered because I never had been a ladies' man? That caused me to wonder what the source of it was. So that was another thing that confirmed the suspicion. It was a question raised in my mind. Like I said, there's no proof of anything there, but for me, that caused me to wonder what the source of all this doctrine was.

168:8 - 169:16

Q. Did you ever have a conversation with Jack Hicks about spiritual connections?

A. Yes.

Q. What was your conversation with Jack Hicks about spiritual connection?

A. It was sometime before we left, or at least after the announcement was made that we were leaving, Jack was very concerned for us. And he called and made an appointment to take us to lunch at the Black Angus. And we went to lunch with him. And the first half an hour, hour or so, we were just talking about -- he has an interest in electronics and so forth. We just talked about things like that. But then he got serious and just expressed his great concern for us that we were going to miss out on God and that these connections were really of God, and just tried to persuade us, you know, by relating to us his own experiences and how much he felt the love of God through this and so forth.

And we did ask him some questions, and my wife asked him if he had ever kissed a woman other than his wife, and he seemed very -- he got real uneasy, and -- it was funny, she just kept pressing him and he finally admitted that he had. And so our point was that this was romantic and wasn't spiritual. And we felt we had made our point, and Don didn't pursue things any further and he didn't say too much more after that, as far as trying to persuade us, because our connection was that this was romantic and not spiritual, and it seemed like he really didn't have too much more to say after that. He did call us about a week later, so it seemed like he wanted to talk to us again, but we just declined it then.

172:24 - 174:25

Q. And how did you find out that Marvin Williams and you had a similar belief about spiritual connections?

A. It was in September of '85, early September. We -- I remember after one Sunday morning service, I was especially grieved by what I saw happening with the dancing going on in front. And Rosemary Alskog was in a horrible consternation because of what was happening with Ralph. And they were close friends of ours, and it was getting to us what was happening there. And I remember after a service, seeing another man ministering, you know, holding and hugging Rosemary, trying to console her as she was weeping, and Ralph apparently was off with some other woman; I don't know if it was Sandy or who, and I just felt a real indignation as to what was happening, and I felt I had to do something.

And I -- based on Marvin's reaction in services, the way that Don was preaching and so forth and the lack of amens to the sermons and so forth, I just sensed that he's not going along with this. And I never saw him dancing with other women and so forth. So I said, I've got to talk to Marvin or make a time to get together. So I couldn't find him at the time but I went over to his wife and I said, Can we get together for dinner. And so we did, and that was -- I think it was September 17th. I'm pretty sure. It was a Tuesday.

And so we invited them over for dinner, and we kind of mentioned it real carefully, because I didn't want to say too much, not knowing for sure where he stood, and he didn't want to say too much, not knowing for sure where I stood. But we both had a suspicion that we were a little bit out of agreement with Don on it.

So I don't know, exactly, one thing led to another, just saying little things to see if we got any response and we kept getting responses. So by the end of the evening, we were very, very plain and open that we felt like this was very contrary to the Word of God. And Marvin expressed a concern about Don's attention toward his



wife. He said something like, you know, don't let -- he made some illusion to David and Bathsheba or something, and warned me to protect my wife, that kind of thing. So it was pretty plain then, and we came out in the open about it as far as each other was concerned. And then, of course, as we went back to services and things, we kept quiet and we purposely, didn't even sit by each other, but we felt a great deal of support from each other.

175:10 - 176:5

Q. Did you ever talk to anybody else at the chapel about your concerns or your disagreements with Donald Barnett's theology prior to the time you left, other than Marvin?

A. Only Mike Ehrlich, and that only -- there was one occasion where Mike Ehrlich and I were working during the summer on maintenance during the time that we weren't teaching, and so we were painting a railing outside the main sanctuary one day, and Mike was expressing his concern about his wife spending all this time dancing with other men. And so, you know, we were both very careful, but we did express our disagreement with this. I don't know if anybody overheard the conversation or what, but Mike was reprimanded afterwards by Don, apparently, at his house or something, and told not to be talking about this. It wasn't a thing where he punished him or anything, he just said, Don't be talking to Mike Sabourin about it and something to the effect that our demons were encouraging each other or something.

193:12 - 196:25

Q. That brings up another point. During much of your testimony, particularly at the first part of your deposition, you talked about "this thing," and "thing thing happening." Are you referring to the doctrine of spiritual connection?

A. The doctrine of the connections and the devastation that resulted, in my opinion.

Q. A minute ago, you referred to the term "more intimate dancing"?

A. Uh-huh.

Q. What do you mean by that?

A. Well, at first the dancing was -- at the earliest, the dancing was purely what we call solo dancing, where a person would be out in front of the congregation and dancing to the Lord, but not interacting with anybody around them, just everybody individually. And then after a while, people started maybe dancing in circles around each other, but not touching -- excuse me, no eye contact. And then a little bit later, a few people started looking at each other and making eye contact while they were dancing, but still not touching. And then eventually they started joining hands, touching, and that's about the point where we left.

And subsequent to that -- I haven't witnessed what happened directly after that, but from what people have told me, it turned into more, you know, caressing and real close embracing, and then, of course, kissing and so forth. And I don't know whether that was done as part of the dance or not or whether it's done in the prayer rooms or whatever. That's just what people have told us. So I would say intimate dancing would involve lots of touch, lots of direct eye contact, close proximity.

Q. But as of the time you left in December 1985, people were dancing and perhaps just touching hands?

A. Yeah, more touching hands, and that's as much as I saw. There apparently was more going on in E-250, the other room adjacent to the sanctuary where dancing was done, so forth, than I saw. But in the services, that's all I saw.

Q. Do I understand your testimony that what came between you and the Alskogs was the doctrine of spiritual connections?

A. Yes.

Q. Is there any reason that you are aware of why you have not resumed a friendship with them?

A. On our part, the doctrine is such that friendship with those who feel like -- who believe that it's right to establish relationships with the opposite sex outside of marriage is just not compatible. In other words, we didn't want -- things were so tainted that, you know, we could no longer -- Ralph and Rosemary to us were not the same people they were before, and the relationship that we had before just couldn't be the same because of the doctrine, itself, and the belief that, you know, the woman tries to make a connection with the man and vice versa. We just didn't want any of that.

So it just was incompatible with really that kind of relationship. A doctrinal difference, say, one person believes, you know, in predestination in eternal security and another person who doesn't. That's not going to cause any problem with friendship and so forth. But when one party believes a doctrine that involves intimate relationships with people other than their own spouse, you can't feel comfortable in a friendship maintaining the way things were before. It just wasn't that way anymore.

Q. Can you describe for me your knowledge of either Sandy or Michael Ehrlich prior to 1985.

A. Okay. Mike and Sandy had both been Bible College students of mine. They were in the church before they were married, and Mike was an excellent student, probably one of the top students that I

ever had, and Sandy was a good student and so forth, too.

Q. Let me stop you there. I meant more in terms of your relationship to them. Were you social friends or what?

A. Oh, not really, no. We'd see them at church. We knew who they were. And then Mike was in the eldership because he was a Bible College teacher, so I would see him at the teacher meetings. We would discuss theological things together and so forth, but other than that, we didn't spend time with them outside of the church context.

Q. There did come a time, I understand, when

200:1 - 201:7

you from that time up until his disfellowshippment about his concerns about his wife's involvement in the doctrine of spiritual connections and the practices thereof?

A. Yes. In December when I left, I remember talking to him outside the back door of one of the Bible College buildings as I was heading home. And he had said something to me about, again, how wrong he felt this was and that he had talked to Sandy. I think he said something about talking to Ralph and telling him that this was wrong. And apparently at that time, Sandy still wasn't hearing, wasn't sympathetic. But he was very vocal at that point both to Sandy and apparently to Ralph, too, that this was wrong, at least their relationship was wrong. I don't know that he spoke out against the doctrine, per se, but the relationship. So that's the last I remember while I was there.

Then afterwards, I don't really remember much of an interchange until after he was disfellowshipped.

Q. You used the phrase that Sandy wasn't hearing. Can you tell me what you mean by that?

A. She was not sympathetic to what he was saying. She was supporting Don's position and the church's position that spiritual connections were with God and there was nothing wrong with the relationship between she and Ralph, that it was something that God had been in and that she wasn't going to give it up, and that the problem was with Mike and that he had demons of insecurity and jealousy and so forth.

204:14 - 205:7

Q. Let me ask this: Mike, commencing in the summer of 1985, at various times, expressed to you a concern about Sandy's involvement in the spiritual connection doctrine and practices.

A. Yes.

Q. Did he tell you what effect, if any, he perceived that to be having on their marriage?

A. Yeah. Definitely a negative effect. He just felt -- I think he expressed to me that it was very hard to be warm with her and embrace her, knowing that she had been in the arms of another man. So he felt like it was definitely affecting him in his ability to express love for her. And, of course, he admitted that he felt very jealous and very upset about the situation.

From her standpoint, I really don't know too much about what she was feeling at that time, but just from what Mike said, it was definitely affecting his marriage.

219:14 - 220:15

Q. You also said that she expressed some pretty negative emotions about him, Ralph Alskog, that is. Can you tell me just what it was she expressed along those lines?

A. Well, in my presence, the fact that he was prepetrating and supporting this doctrine, the doctrine was wrong and he took advantage of her, in effect, using the spiritual -- the claim that it was spiritual to take advantage of her, and she felt like it was -- and whether or not she was saying that he was worse than anybody else, I'm not so sure. It's just that he was the one that she was connected to.

Q. When did she express, if you can recall, her feeling that he had taken advantage of her?

A. I don't know the time frame. It was in the context of everything after -- when we talked with Mike and Sandy after they had left. So it wasn't any specific time that that stands out. It's just that that was the general feeling of the whole thing, the whole chapel experience and this whole connection experience, is that it was a deception based on people using the spiritual cloak to accomplish their own goals. In other words, she felt like it wasn't just spiritual, that there was more to it than that, and there was more to it in the mind of some of those at least who were doing it.

221:23 - 223:7

Q. I'm going to rephrase the question.

Did Sandy Ehrlich express the idea that Ralph Alskog had taken advantage of her on more than one occasion, as best you recall?

A. Yes.

Q. Do you recall how many times she said that?

A. Not really. I think probably -- I probably heard something to that effect at least four or five times.

Q. Other than that comment on those occasions, did she say anything else to you or in your presence that you heard to

indicate that she felt she had been forced into her relationship with Ralph Alskog, in other words, that she did not go into it willingly?

MS. DURHAM: Objection. Calls for a conclusion from this witness that's beyond the scope of his knowledge. Calls for speculation and it's compound.

Q. Do you understand the question?

A. Yeah. Yeah.

Q. I just want to know what she said to you.

A. Definitely the impression that I had from her was that she was coerced, not by some overt force, but by the teaching that this was spiritual, that this was the way to a closer relationship with God and that that was the means by which she was led into this. That, in other words, it never would have happened had she not felt like this was going to get her closer to God. That's the impression that we had, that it was ministerial malpractice, that the position of authority that Ralph and Don and others had had in teaching this doctrine and the respect that they had from the people made it believable and made it something that she did in order to find a closer relationship with God.

224:8-23

Q. Did she ever say anything more about what she felt was this coercion that you just referred to?

A. Not that I recall. As far as details, I think we all were acknowledging the same thing, that this doctrine had a powerful effect not just in Sandy's case, but there were hundreds of people around us that were under the power of this thing and suffering the same thing. So it was --

Q. Would it be fair to say that what she communicated to you -- and correct me if I'm wrong, but would it be fair to say that what she was saying was she had

engaged in that practice or engaged in the relationship with Ralph willingly, but it was only because of this doctrine, and had she not been taught that it was okay, she wouldn't have done it?

A. Definitely, definitely.

225:2 - 226:16

Q. Did she express that to you? I mean, I'm not sure if what I just said was putting a couple things together from you or whether she actually said something along those lines.

A. Well, I think it's just expressing disagreement with the doctrine and the fact that if it weren't for this doctrine, none of this would have happened. That was the common theme of all the talk any of us had about the chapel situation.

Q. But she never said to you or in your presence that she hadn't wanted to do that but she felt forced to, is that fair to say?

Ms. Durham: Asked and answered.

A. I wouldn't say in those words, but that's certainly the gist of it. She wouldn't have done it had this doctrine not been there.

Q. The distinction I'm going to make, and undoubtedly I'm not making it clearly, is whether she was telling you, after she had seen the light, that even when she was doing this she didn't want to.

A. Oh. During the time that she was -- I don't get that feeling that she didn't want to do it while she was doing it. She felt like she was doing what was right before God. That's the way any of the people that I have talked to, that they wouldn't have done it if they hadn't convinced themselves that this was right before God. But many had terrible struggles with conscience before they got to that point.



Q. Before they got to the point of thinking that this was a move of God?

A. And going ahead and participate in it, believing that it's the will of God, it's okay. Many went through great struggles with conscience, hearing things preached that were contrary to what their conscience was telling them. But hearing it enough and often enough and hearing the testimonies and so forth and saying, well, if this is of God, it must be my conscience that's wrong, and eventually getting to the point where they went into it.

246:21 - 250:3

Q. Now, what do you mean by saying she had been devastated once?

A. Because of the doctrine of connections interfering with her marriage, having some sort of a relationship with another man, and then coming to see that she was wrong and having to admit that she had done wrong, and now trying to repair the marriage. That would be what I would call the devastation. In other words, that something very, very major happened to their marriage and upset it, and in order to salvage it or repair it, it was going to take some time.

Q. Is there anything more that you would elaborate on in terms of what you called the devastation, other than what you've just said?

A. I guess the only other thing is the feeling that a person has when they find out they've been deceived, you know, that they have been made a fool of. I did something -- I believed something I shouldn't have believed, even if it weren't involving the marriage and so forth. But a lot of people go through that when they come out of groups like this, is How could I have ever been so dumb, or How could I have ever fallen for that.

Q. What do you mean "groups like this"?

A. Well, I would say groups with powerful pressure and control. And the term "cult" is used, but it's got lots of definitions. But people that have gone through difficult religious experiences, where they felt like they had been led down a path that they have later found was not the right one, and then feeling like how could I have ever fallen for it.

Q. Now, with respect to the control you're talking about, did Sandy Ehrlich ever express to you or in your presence anything about what she felt concerning control exercised by the church or the elders or any authority figures in the church over her?

Ms. Durham: Objection. Calls for speculation. Compound. Vague and ambiguous.

Ms. Smetka: Please, Counsel, I've given you a continuing objection on those points.

Q. Go ahead.

A. I would say that the whole issue of control is a hard one to nail down in so many words, because I don't think that it was anything where she was saying, They told me to do this or they were going to torture me, or something like that. It was more the pressure of the teaching and the fact that to be spiritual and to be in good standing in the group, this was the thing that God was leading us to and so forth. So that's the kind of thing I'm talking about. Not a specific, You as a person must do this, but, This is what the congregation is being taught, this is the direction that we're going. If you don't go the direction that we're going, you're losing out with God, you're going to miss the Bride of Christ, you're going to miss the best for you. And for people who want that, that is a tremendous motivating force and a tremendous pressure if you're feeling otherwise. We felt that, even though I had a clear view in my own mind of where I wanted to go.

Q. Well, I'm not quite sure that answered the question I was asking. What I wanted to know is that she expressed to you or in your presence.

A. What she expressed to me in my presence was along these lines, that we were all saying that the doctrine was powerful, it was wrong, it was contrary to the scripture, and that because the leadership was leading the people in this direction and because the people had difficulties in the leadership, this is the reason why they were led into it. And they got themselves into something, believing it was right and finding out later it was wrong, and she did express that.

Q. Did she express anything to you concerning any control-type issue?

A. Not to me, other than the whole concept of the teaching.

Q. And that was limited to the teaching of spiritual connections?

A. Right.

251:25 - 252:19

Q. So it's your understand that there was a time when she was speaking out against the spiritual connections doctrine?

A. Yes. Yes. I don't know to -- whether within the church, to people in the church, but at least when she left, she was very vocal about the fact that it wasn't right and she had been deceived. One thing she said many, many times, and I heard her say, I've been deceived, I've been deceived.

Q. And the deception was the --

A. The doctrine --

Q. -- the doctrine?

A. -- of spiritual connections and the relationship that resulted from it.

Q. But was it your understanding that she was speaking out prior to the time she was disfellowshipped?

A. That I don't know. It seems likely because that would be the reason why she would be disfellowshipped, is that she was making waves.

253:4 - 254:7

Q. Did you ever talk to Rosemary Alskog, let's say, from the summer 1985 period until you left the church at the end of the year?

A. Yes. We -- one occasion that stands out. There weren't very many times, but there was one time that was on their anniversary, which was in August, August '85, and it was the night of their anniversary. I think they had gone to dinner earlier and then they came to church. And as soon as the service was over, Ralph got up and danced with some other sister; I don't know if it was Sandy Ehrlich or someone else. But Rosemary just began to weep. And my wife and I both were there in the pew and just trying to comfort her.

We did drive her home that night, so she went home without her husband. And she was just sobbing and broken, and we just tried to comfort her, but there wasn't much that we could do to comfort her. You couldn't tell her, Well, you're going to get your husband back, this is all going to go away, because it wasn't going away. I felt very helpless because here she was breaking up and there wasn't anything that I could do to assure her that things were going to be all right. We did always tell her that we would be there for her, and my wife affirmed that later on, too, on the phone with her. I think she talked to her once subsequent to that, but I think that's the last time I can recall every talking to Rosemary.

255:3 - 257:21

Q. Could you explain to me your understanding of how the doctrine of spiritual connections was introduced into the church.

A. Well, I would say it was gradual, at least as far as what we saw. Don started talking about spiritual unions or spiritual connections; he used both terms. First I can remember him using that terminology was probably back around March of '85, in that time frame. The dancing had already begun to some extent. And he began to start just talking in some sermons -- now, there was a whole series that started, I don't know when the first one was something like between March and May, somewhere in the spring of '85, he started spiritual and soulful relationships -- S O U L I C A L -- and this was the beginning of a series of sermons that numbered up into the 90's, or something like that, by the time it was done. And he had never preached that many sermons on one subject. This was completely unprecedented.

Q. As many as 90 services on spiritual --

A. Yeah. When we left, the number was up to 30 or something. And people have told us it's gone on. You'll have to check with somebody to see what the number finally -- or if it's still going on, I don't know. But the content of the messages was pretty much the same, but there was a development of it.

Some people that have come out since said that part of the reason they came out is that they saw there was a change in what was taught at the beginning and what was taught later. The basic concept that you could have -- that God wanted to bring his people together, he wanted to unify them, and that in the process of this, that there were special relationships that would develop between Christians that were purely spiritual, that might involve a man with another man's spouse, that type of thing. And that was the basic core of it.

How that was expressed, what kind of expressions, is the thing that began to change. And more and more freedom was given to express that love. At first it

was mainly through the dancing, just being in proximity with one another. In fact, at first he counseled people not to spend time outside of church services or outside of the actual dancing context in this, that that would be wrong. And then over a period of time, that definitely changed to where he was teaching that you needed to spend time outside of the church services and so forth.

But there were certain guidelines that were being given, and those guidelines tended to get looser and looser as time went on. So, in other words, at first there was no touching, no kissing, that type of thing. And then later on, after we left, they were talking that way. I don't know if anything was ever said officially from the pulpit, it's okay to kiss or whatever, but I know that many that have come out since that time have told us that they engaged in that frequently. So -- shall I continue? Anyway, that was the development of it.

About the time that I began to be very concerned was probably June of '85. I had some reservations before that time. I can remember expressing some concern to my wife, but I didn't think that it would go very far. I felt like it would correct itself, because certainly the pastor is not going to allow people to start getting involved in romantic relationships.

257:25 - 258:18

Q. On that issue, I believe it was Catherine Kitchell -- and you can correct me if I mischaracterize what she testified to -- indicated at one time that Don had explained to the congregation that during spiritual connections, things would happen and your body would respond, but don't worry about it, ignore it, because it's a spiritual thing.

A. Uh-huh.

Q. Do you recall Don's sermons?

A. I recall hearing that from the pulpit even before we left, but it was -- it wasn't anything specific said at the time that we left as to what those reactions would be, but I think everybody knew. Later on, again, after we left, we heard feedback from people that much more was being said along those lines. But that is, again, only the things that we've heard from people that have left. And at the time that we left, though, I do remember hearing him say those things.

259:12 - 260:4

Q. Were spiritual connections encouraged by the church?

A. Definitely.

Mr. Rohan: Objection. Vague and ambiguous.

A. I would say absolutely. We felt tremendous pressure. There was one notable sermon in July of '85 that I was at that was a strong, strong plea to release your spouse to the spiritual connections because, if you didn't, you were holding back -- not only holding back God from yourself but you were holding back your spouse from receiving what God wanted for them. And there was a prayer for that, where people would kneel down and pray and have other people pray for them so that the demons of jealousy and insecurity would leave so that you would release your spouse to having a relationship with someone else.

260:15 - 261:14

Q. Do you know what happened, if anything, to people who refused to have spiritual connections or refused to -- well, I'll leave it at that.

A. Okay. I don't know. Again, I refused to, and I ended up out. But I made the decision to leave. In other words, most people who could not go along with this did not feel comfortable staying there, so many left.

But the complicating factor is that many of those people -- the probability of both husband and wife feeling the same way about it was relatively small. One or the other or both were accept -- would normally be accepting that. And at least a great number of them when we had one staying in and one objecting to it, often the one who objected to it stayed in for the sake of not losing their spouse. So many of them did not participate in it and were just staying there and hoping that their spouse would eventually see it. So for that element, I think a lot of people suffered in that respect, that they were enduring things that they couldn't go along with, but they felt stuck because their spouse was. Others who didn't go along with it or refused to participate, if they were free, they just -- they left.

263:22 - 264:14

Q. Perhaps you were speaking of -- are you aware of what counsel people were given via counselors regarding spiritual connections or problems that they were experiencing?

A. Well, the general -- the general thing we've heard from many, many people, and what we did hear from the pulpit, too, is that God is first, and your relationship with God is first. And if your spouse can't receive this, you've got to do what God has called you to do. You can't break up the connection because your spouse is having trouble. The spouse needs to go for deliverance, deliverance prayer, and get rid of demons of insecurities, legalism and so forth. And that's the general thing we've heard from people who have left, is that that's the kinds of counsel they were getting, in general. Now, there's lots more detailed things that I don't even remember, but that's the gist of it.

265:1-17

Q. Okay. Catherine Kitchell and Dee Chabot both testified that George Alberts was not allowed to counsel connections for people having problems with connections.



A. Uh-huh.

Q. Were you aware of this?

A. I'm trying to say -- was I aware of it before we left? I think I do remember, before I left, I was thinking of it more in terms of what -- rather than George, but it may have applied to him, too, but Don did make the statement that he did not want those who had not experienced this counseling those who had. Those of us in the eldership who had not had spiritual connections were not to be counseling people who had. So that may have included George. There may have been more said on that after we left, a little more official in nature on that.

266:18 - 268:25

Q. You testified earlier, I believe you just mentioned it again, that you talked with hundreds of individuals about their problems with spiritual connections.

A. Uh-huh.

Q. Now, when you say problems, by problems, do you mean their theological differences of opinion with the doctrine, or specific problems which were manifesting in these individuals as a result of the doctrine, or both?

A. It was both. It was both. Many times they would ask me, having gone through it -- and in some cases they were out and maybe they were out with their spouse and everything was okay as far as their marriage is concerned, but they wanted verification on what went on. So in those cases, it was more of a theological discussion. In other cases, it was trying to help them go on, now that they've lost their spouse and they've been devastated by it. So it did involve both.

Q. So you talked to a number of individuals that lost their spouse as a result of spiritual connections?

A. Uh-huh.

Mr. Rohan: Objection. Calls for speculation.

Q. Can you estimate how many people --

Mr. Rohan: Same objection.

Q. -- expressed that to you?

Mr. Rohan: Same objection.

A. Oh, it's hard to estimate. It was -- as far as the latter category, the number -- I say hundreds because over a period of years in different fellowships and lots of phone calls and so forth, I would say that that's a fair number. But as far as the breakdown --

A. I'm talking now specifically of people --

A. Who have lost their spouses.

Q. -- who had marital difficulties as a result of this, who expressed this to you.

Mr. Rohan: Same objection.

A. I hate to put down a number on it.

Q. More than ten?

A. Oh, I would say more than ten.

Q. More than 20?

A. That's real tough. Probably, safely, more than 20.

Q. Did you testify earlier that Don Barnett was aware of the problems between the Ehrlich's regarding Sandy's connection with Ralph?

A. Oh, I'm sure he was definitely aware of Mike Ehrlich's reservations about the doctrine of connections, so he must have been aware of the situation with Sandy. But I think his concern was more that he might -- that Mike might resign from the

Bible College because of his disagreement. At least at the time before we left, that was the context of it.

269:3 - 270:3

Q. You testified a little while ago that Sandy Ehrlich had said to you that if it weren't for the doctrine of spiritual connections, none of this would have happened. And you continued to say that this was a common theme of all, and I believe we got cut off, and I'm not sure I ever heard the end of your answer. Can you explain what you meant by a common theme of all?

A. Well, in talking with many people that had been hurt by this, whether their spouses left them or whether they stayed intact but suffered a lot of things because of the hurt that they had incurred in the marriage because of one spouse or another or both becoming involved to one degree or another with someone else, that was very, very common. I mean, that was the central topic of conversation. Apart from dealing with the theology, the first thing with most people was, How could this have happened, and it's ruined my life, and where do we go from here. In other words, people were commonly acknowledging that the doctrine of spiritual connection was the reason and the cause behind the break-up of their family. And that's not to say that people didn't accept responsibility for having believed it. Part of the problem for many people was, How did I swallow it, how did I accept it.

274:20 - 276:22

Q. In the same vein, regarding the spiritual connection, what was the Biblical references that were given to the congregation to support that?

A. the main focus for that was the passage in Peter that talks about there is fervent love, and the Greek word for fervent is boiling. So a lot of emphasis was laid upon that passage. I don't remember the exact reference; I'm sure we could look it up. But that reference was used to say that the -- that God wants his

people to have this boiling -- it's fervent, it's intense, and that we haven't been experiencing that yet. And then from that, any scripture that talked about love between the brethren was read with the word "love" defined as this connection experience.

So, in other words, the way I perceived that was happening, they were using scripture, but they were using scripture with the word "love" defined by this experience that they've had. And so as you read the scriptures, it sounded quite a bit different than it did before, because you redefined the word "love." So that would be the major thrust of Biblical examples.

Over and above that, there was a lot of preaching about God doing new things, Prophet Isaiah and so forth, talking about God doing new things. So there was a lot of preaching, saying God is going to do new things that he's never done before, and he may do unusual things and people might be stumbled by it, and this is one of those things.

So there was no assertion, at least while I was there, that the Bible clearly teaches this, that this is something that apostles did and so forth. But this is something where now that we're in the last times, God is taking us to a further step, and that it's -- I heard kind of both messages. At times they would try to look for scriptural support for it along those lines that I just mentioned, and at other times there were statements to the effect that the Bible doesn't tell us everything, that there are a lot of things that God does that are not written in the scriptures, and we have to be open to the spirit and let the spirit rule us, and not become legalistic and slavish to just what the Bible says.

That's very much out of character with everything that Don had taught for the many, many years up to that time. Many

times he taught in the past that we don't go by experience. We go by the Word of God. Experiences must be judged by the Word and not vice versa. And that was one of the dramatic reverse values that I observed when this doctrine came along from what Don was teaching and many others were going along with.

283:2 - 284:1

Q. Well, previously when we talked about spiritual connections, we talked about things that go beyond kissing. You talked about people being in love or that if it went to far, they could fall in love. I don't know exactly how far these things went, but if they did go as far as your definition of adultery, how does that reconcile with the doctrine of spiritual connections of the church?

Mr. Rohan: Objection. Legal conclusion. Lacks foundation.

A. The only thing I can say, there was never a teaching that it shouldn't go that far, that you should not go that far, that if you did, you were sinning. But my perception was that the magnitude and seriousness of the sin of adultery was greatly reduced. In other words, it was never condoned, it was never encouraged, but if a person fell into adultery, in dealing with that person, a person could argue that we had a powerful spiritual connection that we just couldn't control ourselves, and we fell into adultery. Basically, they were told, Don't do it again, and that sometimes that can happen if you don't, you know, keep the reins on it, that type of thing. So it was never condoned, but the seriousness of the sin was minimized, in my opinion.

285:3 - 286:8

Q. Do you have an opinion regarding the value the church had for the doctrine of spiritual connections over the family or marriage?

A. Uh-huh.

Mr. Rohan: Same objections, plus compound.

Q. What is your opinion?

Mr. Rohan: Same objections.

A. Based on teaching that we heard from the pulpit and much of what we heard afterwards, because the spiritual connections was of God, was a teaching that God was calling his people to, God always takes precedence over everything else in your life, and that includes the family. So it was not saying throw your family away and follow the spiritual connections. But if push came to shove and there was a contradiction between the two or they were irreconcilable, the thing that held precedence was the connections and their relationship with God, in their view. So I think that was the bottom line.

There was a lot of concern, that we heard later, because of so many divorces and so forth, that they were bringing in tapes on marriage and helping the marriage and strengthening the marriage and so forth, because they were concerned about the effect on the family. And that was a more recent development over the last couple of years. And, in my opinion, the two are irreconcilable. You can do all the teaching on marriage you want, but as long as you have the doctrine of spiritual connections, you're going to have problems.

3 MAR 16 1989

ORIGINAL 2

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

MOTION TO SEVER COVERAGE  
DETERMINATIONS WITH  
RESPECT TO JACK McDONALD  
FROM DETERMINATIONS WITH  
RESPECT TO THE CHURCH  
ENTITY

FILED  
IN COUNTY CLERK'S OFFICE

MAR 16 1989 P.M.

PIERCE COUNTY CLERK  
TOD RUTT, COUNTY CLERK  
BY \_\_\_\_\_  
IDENTITY

1. Relief Sought. Defendants move this court to sever coverage determinations under American Casualty Company of Reading Pennsylvania policy number IP502144020 with respect to the Community Chapel & Bible Training Center of Burien from those with respect to Jack McDonald.

2. Grounds.  
Jack McDonald has filed for relief in Bankruptcy court and the continuation of proceedings against him are stayed. The American Casualty policy provides that it is separate with respect to each insured. Therefore severance with respect to the separate coverage of the church is proper. It is also necessary to avoid delay which would cause prejudice to defendants herein.

3. Evidence.  
The AFFIDAVIT OF BRUCE WINCHELL filed herein on March 30, 1988; the affidavit of Tim Donaldson annexed hereto; and the

MOTION TO  
SEVER: 1  
4857\MTS

Evans, Craven & Lackie, P.S.

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

12788 5897/17/8 4513

1 DECLARATION OF ROBERT J. ROHAN IN OPPOSITION TO AMERICAN  
2 CASUALTY'S MOTION FOR DELAY OF TRIAL DATE.

3 4. Authority.

4 Defendants motion is made pursuant to CR 42 and RCW  
5 7.24.050.

6 5. Proposed Order. A proposed form of order is attached  
7 hereto.

8 DATED this 16<sup>th</sup> day of March, 1989

9 EVANS CRAVEN & LACKIE, P.S.

10  
11 By Tim Donaldson  
12 TIM DONALDSON  
13 Attorneys for Barnetts

14 STATE OF WASHINGTON )  
15 County of King ) ss. Affidavit of Tim Donaldson

16 Tim Donaldson being first duly sworn upon oath and having  
17 personal knowledge of the following facts deposes and says:

18 I am at least twenty-one (21) years of age, and I am  
19 competent to make this statement;

20 I am an attorney for Don and Barbara Barnett in the above-  
21 entitled cause of action;

22 On March 15, 1989 my office received notice that Jack  
23 McDonald had filed bankruptcy and that the continuation of  
24 proceedings against him are stayed;

25 In my professional opinion it is not necessary to continue  
26 proceedings against Jack McDonald to determine coverage available  
27 to the Community Chapel and Bible Training Center.

28 Pursuant to the terms of the American Casualty policy which  
29 is attached to the AFFIDAVIT OF BRUCE WINCHELL filed herein on  
30 March 30, 1988 coverage for the church and coverage for McDonald

31 MOTION TO  
32 SEVER: 2  
4857\MTS

*Evans, Craven & Lackie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

82288 421/2883 82228  
15154



1 are separate;

2 In my professional opinion, severance is necessary to avoid  
3 delay caused by the automatic stay of proceedings against  
4 McDonald.

5 Further affiant saith naught.

6 Tim Donaldson  
7 TIM DONALDSON

8 State of Washington  
9 County of King

Signed and sworn to before me on

10 March 16, 1909 by Tim  
11 Donaldson.

12 Irish Bashaw  
13 NOTARY PUBLIC  
14 My commission expires 09/04/90

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31 MOTION TO  
32 SEVER: 3  
4857\MTS

*Evans, Craven & Lackie, P.C.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 4721/2883 88229

PROPOSED

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

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

No. 88-2-00947-9

ORDER SEVERING COVERAGE  
DETERMINATIONS WITH  
RESPECT TO JACK McDONALD  
FROM DETERMINATIONS WITH  
RESPECT TO THE CHURCH  
ENTITY

I. HEARING

1.1 Date. March 17, 1989.

1.2 Purpose. To consider MOTION TO SEVER COVERAGE  
DETERMINATIONS WITH RESPECT TO JACK McDONALD FROM DETERMINATION  
WITH RESPECT TO THE CHURCH ENTITY.

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

1.4 Evidence. The AFFIDAVIT OF BRUCE WINCHELL filed herein  
on March 30, 1988; the affidavit of Tim Donaldson annexed to  
MOTION TO SEVER COVERAGE DETERMINATIONS WITH RESPECT TO JACK

SEVERANCE ORDER: 1  
4857\ORS

15154 4/21/2003 08230

McDONALD FROM DETERMINATION WITH RESPECT TO THE CHURCH ENTITY;  
and the DECLARATION OF ROBERT J. ROHAN IN OPPOSITION TO AMERICAN  
CASUALTY'S MOTION FOR DELAY OF TRIAL DATE.

1.5 Authorities Considered. CR 42 and RCW 7.24.050.

II. ORDER

After hearing the arguments of counsel and otherwise being  
fully advised in the premises, it is declared and ordered:

2.1 Defendants motion to sever is granted.

2.2 Claims with respect to coverage for the Community Chapel and  
Bible Training Center under American Casualty Company of Reading  
Pennsylvania policy number IP502144020 are severed from claims  
with respect to coverage for Jack McDonald under American  
Casualty Company of Reading Pennsylvania policy number  
IP502144020.

DATED this \_\_\_\_ day of March, 1989

---

JUDGE ARNOLD

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

By \_\_\_\_\_  
TIM DONALDSON  
Attorneys for Barnettts

SEVERANCE ORDER: 2  
4857\ORS

15154 4/21/2003 00231

9

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

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

*Glenda Seiber*

Subscribed and sworn to before me this 14th day of March 1989

*Larry C. Seibel*  
Notary Public in and for the State of Washington,

residing at Maple Valley

My commission expires 2-9-90

5 MAILED  
IN COUNTY CLERK'S OFFICE  
MAR 15 1989 P.M.  
PIERCE COUNTY WASHINGTON  
TED RUTT COUNTY CLERK  
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  
AMENDED NOTICE OF DEPOSITION  
(Scott Hartley)

TO: All Parties  
AND TO: Their Attorneys of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the  
testimony of Scott Hartley will be taken upon Oral Examination  
at the instance and request of the plaintiff in the  
above-entitled action, before a Notary Public, at Scheweppe,

AMENDED NOTICE OF DEPOSITION - 1  
0650BAW

ORIGINAL

LANE POWELL MOSS & MILLER  
3800 RAINIER BANK TOWER  
1301 FIFTH AVENUE  
SEATTLE, WASHINGTON 98101-2647  
(206) 223-7000

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Krug & Tausend, 800 Waterfront Place, 1011 Western Avenue,  
Seattle, Washington on Friday the 31st day of March, 1989,  
commencing at the hour of 9:30 a.m. to be subject to  
continuance or adjournment from time to time or place to 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 15<sup>TH</sup> day of March, 1989.

LANE POWELL MOSS & MILLER

By Bruce Winchell  
Bruce Winchell  
Attorneys for Plaintiffs

15154 4/21/2003 88233

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5 MAR 15 1989

FILED  
IN COUNTY CLERK'S OFFICE

AM. MAR 15 1989 P.M.

PIERCE COUNTY WASHINGTON  
TED RUTT, COUNTY CLERK  
BY \_\_\_\_\_ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

AMERICAN CASUALTY CO. of  
READING, PENNSYLVANIA,

Plaintiff,

vs.

IRA & CAROL GABRIELSON,  
DONALD LEE BARNETT & BARBARA  
BARNETT, COMMUNITY CHAPEL &  
BIBLE TRAINING CENTER, JACK &  
"JANE DOE" McDONALD, et, al.,

Defendants.

NO. 88-2-00947-9

NOTICERE: RULE 362

NOTICE IS HEREBY GIVEN that JACK L. MCDONALD and SHIRLEY ANN MCDONALD  
has/have filed a Petition for voluntary Bankruptcy under Section 301 or 302 of the  
Bankruptcy Act in the U.S. Bankruptcy Court for the Western District of Washington, at  
Tacoma, under cause number 89-30907T on March 13, 1989

11 USC § 362 states as follows: §362 Automatic Stay.

(a) ... a petition filed under §301, 302 or 303 of this title operates as a  
stay, applicable to all entities, of---

(1) the commencement or continuation, including the issuance or  
employment of process, of a judicial, administrative, or other  
proceeding against the debtor that was or could have been  
commenced before the commencement of the case under this  
title, or to recover a claim against the debtor that arose before the  
commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the  
estate, or a judgment obtained before the commencement of the  
case under this title;

BRYAN CHUSHCOFF  
*Attorney at Law*  
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TACOMA, WASHINGTON 98408  
(206) 473-5400

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- (3) any act to obtain possession of property of the estate or of property from the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; . . .

DATED: March 13, 1989

  
\_\_\_\_\_  
BRYAN CHUSCHOFF  
Attorney for Debtor(s)

**BRYAN CHUSCHOFF**  
*Attorney at Law*  
6311 PACIFIC AVENUE  
TACOMA, WASHINGTON 98408  
(206) 473-5400

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SUPERIOR COURT FOR THE STATE OF WASHINGTON  
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 & BIBLE )  
TRAINING CENTER, a Washington )  
corporation, )  
  
Defendants. )

NO. 88-2-00947-9  
NOTICE OF APPEARANCE

**FILED**  
IN COUNTY CLERK'S OFFICE  
A.M. MAR 01 1989 P.M.  
~~PIERCE COUNTY CLERK  
TED RUTT  
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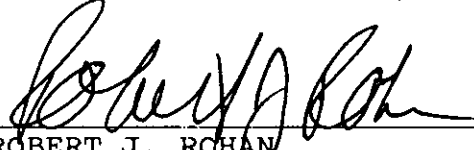
TO: Plaintiff and their counsel;

AND TO: Defendants Gabrielson and Barnett and their counsel

PLEASE TAKE NOTICE that the appearance of Community Chapel & Bible Training Center is hereby entered in the above-entitled cause through the undersigned attorneys. All further papers and pleadings herein, except original process, should be served upon the undersigned attorneys at the address below stated.

DATED this 27th day of February, 1989.

SCHWEPPE, KRUG & TAUSEND, P.S.

By   
ROBERT J. ROHAN  
Attorneys for Defendants  
Community Chapel & Bible  
Training Center

0147-004\2022789.RJR

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IN COUNTY CLERK'S OFFICE

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PETERGE WASHINGTON  
TED RUTA COUNTY CLERK  
BY \_\_\_\_\_  
DEPUTY

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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

OBJECTION TO CONTINUANCE  
OF DEFENDANTS JOINT  
MOTION FOR SUMMARY  
JUDGMENT

Defendants Barnett respectfully object to continuance of  
defendants joint motion for summary judgment.

I. BASIS

1.1 Evidence. The DECLARATION OF ROBERT J. ROHAN IN OPPOSITION  
TO AMERICAN CASUALTY'S MOTION FOR DELAY OF TRIAL DATE, the NOTICE  
OF RELIEF FROM AUTOMATIC STAY, the affidavit of Tim Donaldson  
annexed to DEFENDANTS JOINT MOTION RE: COVERAGE FOR CHURCH  
ENTITY, the AFFIDAVIT OF TIM DONALDSON IN SUPPORT OF MOTION TO  
REVISE SUMMARY JUDGMENT ORDERS, the affidavit of Tim Donaldson  
annexed hereto, and the records and files herein specifically  
including plaintiff's amended complaint filed herein on March 25,

OBJECTION TO  
CONTINUANCE: 1  
4857\OBJECT

*Evans, Craven & Lackie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 4/21/2003 88237

1 1988.

2 1.2 Authority. CR 56 (f), Authorities contained in BARNETT  
3 SUPPLEMENTAL OPPOSITION BRIEF TO SUMMARY JUDGMENT RE: BODILY  
4 INJURY, authorities contained in BARNETT REPLY BRIEF FOR SUMMARY  
5 JUDGMENT, and authorities contained herein.  
6

7  
8 II. LAW & ARGUMENT

9 The only remaining central issue in this declaratory action  
10 with respect to coverage is whether there was an occurrence.

11 The continuance of a summary judgment motion is proper only  
12 when the party opposing the motion presents reasons why it cannot  
13 obtain affidavits essential to justify its opposition to the  
14 motion. CR 56 (f). Affidavits presented to the court for any  
15 reason pursuant to CR 56 must be made in good faith. CR 56 (g).  
16 Upon consideration, the court may make such order as is just.  
17 CR 56 (f).  
18  
19

20  
21 1. Facts sought are not essential

22 The motion for a continuance is based upon the premise that  
23 further discovery is necessary with respect to general activity  
24 and knowledge in the church. They urge that sexual relationships  
25 were frequent in the church in a general sense. This does not  
26 raise relevant unresolved factual issues. General activity and  
27 knowledge is irrelevant.  
28  
29

30  
31 OBJECTION TO  
32 CONTINUANCE: 2  
4857\OBJECT

*Evans, Craven & Lackie, P.C.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

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1           In Dillard v. Employees' Retirement, 93 Wn.2d 677, 681, 611  
2 P.2d 1231 (1980), the Washington Employees' Retirement Board  
3 denied an application for disability arising from an on the job  
4 injury at Western State Hospital after inquiring into whether  
5 such injuries were "...routine in the twisted world of the  
6 mental hospital..." Dillard v. Employees' Retirement, 93 Wn.2d  
7 677, 681, 611 P.2d 1231 (1980). The Supreme Court disagreed with  
8 the decision of the Board finding that the inquiry was irrelevant  
9 to whether a particular claim arose from an accident, writing:  
10  
11

12           Here, any staff member knows of the  
13 possibility of being assailed on Ward M. The  
14 actual assault, however, may come  
15 unexpectedly and the result may be highly  
16 undesirable. We believe an incident  
17 occurring under such circumstances is, in  
18 common parlance, an accident.

19           In the present case, American Casualty asks this court to  
20 inquire into the general atmosphere at the Burien church created.  
21 It hopes this court will make the same mistake that the Board  
22 made in Dillard and inquire into whether affairs were "routine in  
23 the twisted world of the Community Chapel and Bible Training  
24 Center." Such inquiry is irrelevant and fails to raise an issue  
25 of material fact with respect to whether the relationship between  
26 Jack McDonald and Carol Gabrielson was an occurrence from the  
27 standpoint of the Burien church.  
28  
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31 OBJECTION TO  
32 CONTINUANCE: 3  
4857\OBJECT

*Evans, Craven & Lackie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 172172889 88239

1 American Casualty has failed to show that it has been unable  
2 to obtain affidavits, and it has failed to demonstrate reasons  
3 why additional discovery is necessary to determine whether anyone  
4 knew of the McDonald/Gabrielson affair. At law, this is the only  
5 essential issue, and it is not in dispute. No one at Burien knew  
6 of the McDonald/Gabrielson affair. There is no need for a  
7 continuance to allow inquiry into irrelevant areas.

8  
9  
10 2. Lack of Reasons why Affidavits were Unavailable

11 Over 2 1/2 years ago, a claim was made arising out of the  
12 Gabrielson action. With respect to coverage for the church  
13 entity, good faith required reasonable investigation and an  
14 explanation with respect to the facts or applicable law upon  
15 which coverage was disputed. WAC 284-30-330.

16  
17 In Transamerica Ins. v. Chubb & Son, 16 Wn.App. 247, 252-  
18 253, 554 P.2d 1080 (Div. One, 1976), the court held that a period  
19 of approximately two months was "... ample time to make further  
20 discovery or, at the very least, prepare and file affidavits  
21 giving some reasonable support to the motion..." id at 253.

22  
23 American Casualty now claims that it needs additional time  
24 to gather factual information. This assertion is contrary to  
25 fulfillment of its duty to timely investigate, and continuance  
26 for their failure to fulfil its obligations is therefore  
27  
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31 OBJECTION TO  
32 CONTINUANCE: 4  
4857\OBJECT

*Evans, Craven & Lackie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 4/21/2003 80248

1 improper.

2 3. Lack of Good Faith.

3  
4 American Casualty has filed two declaratory actions. It has  
5 brought the action herein, and it has brought the action in King  
6 County cause number 88-2-04615-8. It asks for no less than a six  
7 month continuance of the motion in this case. At the same time,  
8 it has moved for an immediate trial in King County. The  
9 declaratory action has been consolidated with other actions in  
10 King County for which trial is presently set to begin on May 15,  
11 1989. American Casualty has brought a motion in that case to  
12 have a trial date set which immediately follows the trials of the  
13 actions to which it is consolidated.  
14  
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16

17 RCW 7.24.190 provides that the court has the power to stay  
18 other proceedings to protect and preserve the rights of persons  
19 who are parties to a declaratory action. The intent of this  
20 statute is clear. Declaratory actions are designed to determine  
21 the rights of parties under contracts, etc. They are not  
22 intended to allow procedural manipulation designed to prejudice  
23 the rights of the parties.  
24  
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26 This is exactly the manipulation attempted herein.  
27 Previously, this court has made three declarations upon the  
28 interpretation of the American Casualty policy. Each of these  
29  
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31 OBJECTION TO  
32 CONTINUANCE: 5  
4857\OBJECT

*Evans, Craven & Lachie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154-1/21/2883-88241

1 rulings is adverse to the insurer's position. Previously,  
2 American Casualty Company has attempted to simultaneously  
3 litigate identical issues in this court and in King County. On  
4 January 6, 1989 motions were heard both in this court and in King  
5 County upon the interpretation of the term "bodily injury"  
6 contained within the policy.  
7  
8

9 American Casualty now asks this court to delay in making any  
10 final determinations upon issues in this action for six months  
11 while it asks the court in King County for trial upon these same  
12 issues as soon as possible. Evidently, it asserts that it is  
13 ready on the facts in King County, but it somehow lacks these  
14 same facts in Pierce County.  
15  
16

17 Defendants Barnett do not presently ask this court to stay  
18 the proceedings in King County to avoid the attempted re-  
19 litigation of legal issues. However, they do request that this  
20 court take note of this real and immediate possibility should a  
21 continuance be granted. The defendants herein have litigated  
22 coverage issues. They should not be forced to re-litigate these  
23 same issues as a result of procedural maneuvers.  
24  
25

26 4. Delay Unjust.  
27

28 A continuance would cause undue prejudice to the parties  
29 herein who are seeking to obtain coverage. A judgment has been  
30

31 OBJECTION TO  
32 CONTINUANCE: 6  
4857\OBJECT

*Evans, Craven & Lackie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 4/21/2003 00242

1 entered against the Community Chapel and Bible Training Center.  
2 This judgment has been appealed. However, execution upon the  
3 judgment may continue in the absence of a supersedeas bond. RAP  
4 7.2 and RAP 8.1. American Casualty Company has refused to post  
5 this bond, and the church is unable to otherwise obtain such  
6 bond. In the absence of an immediate determination of coverage,  
7 church assets may be executed upon causing irreparable damage.  
8

9  
10 III. CONCLUSION

11 American Casualty fails to present justification for a  
12 continuance. It does not demonstrate that it seeks essential  
13 facts to oppose the motion. It does not demonstrate reasons why  
14 it could not previously obtain these affidavits. It does not  
15 show just reason for delay. In short, it demonstrates only the  
16 desire to gain procedural advantage through selective delay of  
17 proceedings. For these reasons, the Barnetts respectfully  
18 request that this court deny the motion to continue and set the  
19 next available date for hearing upon the merits of the joint  
20 motion for summary judgment.  
21  
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24

25 DATED this 16<sup>th</sup> day of March, 1989.

26 EVANS CRAVEN & LACKIE, P.S.

27  
28 By Tim Donaldson  
29 TIM DONALDSON  
30 Attorneys for Barnetts

31 OBJECTION TO  
32 CONTINUANCE: 7  
4857\OBJECT

*Evans, Craven & Lackie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154-4/21/2003-00243

1  
2 STATE OF WASHINGTON )  
3 ) ss. Affidavit of Tim Donaldson  
4 County of King )

5 Tim Donaldson being first duly sworn upon oath and having  
6 personal knowledge of the following facts deposes and says:

7 I am at least twenty-one (21) years of age, and I am  
8 competent to make this statement;

9 I am an attorney for Don and Barbara Barnett in the above-  
10 entitled cause of action;

11 I am also the attorney for Don and Barbara Barnett in a  
12 declaratory action brought by American Casualty Company in King  
13 County Superior Court, cause number 86-2-04615-8;

14 American Casualty Company raises the same issues with  
15 respect to interpretation of the policy it issued to the  
16 Community Chapel and Bible Training Center in each action;

17 On January 6, 1989, I personally attended and argued against  
18 motions brought by American Casualty Company in both proceedings  
19 upon the coverage for emotional distress damages under the  
20 policy;

21 Attached hereto as an exhibit is a true and correct copy of  
22 a motion for trial date in the King County action which was  
23 brought by American Casualty Company;

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31 OBJECTION TO  
32 CONTINUANCE: 8  
4857\OBJECT

*Evans, Craven & Lackie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 4/21/2003 00244



1 This motion for a trial date is scheduled for hearing on  
2 March 17, 1989;

3  
4 Further affiant saith naught.

5 Tim Donaldson  
6 TIM DONALDSON

7 State of Washington  
8 County of King

9 Signed and sworn to before me on  
10 March 16, 1989 by Tim  
11 Donaldson.

12 Trish Bashaw  
13 NOTARY PUBLIC  
14 My commission expires 09/04/90

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31 OBJECTION TO  
32 CONTINUANCE: 9  
4857\OBJECT

*Evans, Craven & Lackie, P.S.*  
LAWYERS  
SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 386-5555

15154 1/21/2003 00215

Jim  
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CIVIL TRACK ONE  
THE HONORABLE JOHN RILEY

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EVANS, CRAVEN & LACKIE, P.S.

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

AMERICAN CASUALTY COMPANY OF  
READING PENNSYLVANIA, a  
Pennsylvania corporation,

Plaintiff,

v.

KATHY LEE BUTLER, et al,

Defendants.

CAUSE No. 88-2-04615-8

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

MOTION FOR TRIAL DATE

KATHY LEE BUTLER, et al.,

Plaintiffs,

v.

DONALD LEE BARNETT, et al.,

Defendants.

CAUSE NO. 86-2-18176-8

SANDY ERLICH, et al.,

Plaintiffs,

v.

RALPH ALSKOG, et al.,

Defendants.

CAUSE NO. 86-2-18429-5

MOTION FOR TRIAL DATE - 1  
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MAUREEN PANGBORNE JORGENSON, )  
 )  
 ) CAUSE NO. 86-2-26360-8  
Plaintiff, )  
 )  
v. )  
 )  
COMMUNITY CHAPEL AND BIBLE )  
TRAINING CENTER, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

I.

RELIEF REQUESTED

An order setting trial of coverage issues relating to each underlying action for trial immediately following the underlying action to the same jury which heard that case.

II.

STATEMENT OF FACTS

As the Court knows, it has proposed that the claims asserted by Maureen Jorgensen, the Erlich plaintiffs, and the Butler plaintiffs, be set for trial in May and June, 1989. The Court has previously consolidated for purposes of discovery related coverage actions brought by American Casualty and St. Paul Fire & Marine. American Casualty is presently defending the underlying actions under a reservation of rights.

With the exception of the Jorgensen claim, most of the claims asserted against Community Chapel and its employees involve approximately a dozen causes of action. Damages are sought for a variety of harms which are claimed to have

15154 4/21/2003 00247

1 befallen plaintiffs in the underlying actions. Following trial  
2 of the underlying actions, if there is a verdict in favor of  
3 the plaintiffs in the underlying actions, the Court and jury in  
4 the coverage actions will be faced with the task of determining  
5 whether the judgment entered in favor of the plaintiffs was for  
6 damages covered under either American's or St. Paul's policy.  
7 Of particular importance in assessing coverage issues with  
8 respect to American Casualty will be the questions of whether  
9 the jury awarded damages for:

- 10 1. Bodily injury;
- 11 2. Resulting from an occurrence--an accident resulting in  
12 unexpected harm; and
- 13 3. Whether any damages awarded for defamation resulted  
14 from statements which were known to be false by the  
15 speaker.

16 In related litigation presently pending in Pierce County,  
17 American Casualty sought to intervene so that it could propose  
18 jury instructions and a verdict form which would assist in  
19 resolving similar coverage questions. That motion to intervene  
20 was resisted by all parties to the underlying litigation. As a  
21 result, the judgment entered in favor of Carol Gabrielson does  
22 not answer any of the questions which are relevant to  
23 coverage. Consequently, the Pierce County Court is now faced  
24 with the nearly impossible task of ascertaining what a jury in  
25 another courtroom awarded damages for in the underlying  
26 action. American Casualty has demanded a jury to hear issues

1 relevant to coverage. The parties will essentially retry the  
2 five-week Gabrielson trial. That trial, to a large extent,  
3 could have been avoided had some mechanism been devised to have  
4 the Gabrielson jury answer the questions necessary to the  
5 coverage action.

6 American Casualty proposes that coverage issues be tried to  
7 the same jury which will hear the underlying action. It  
8 further proposes that that trial immediately follow trial of  
9 the underlying action. It may be necessary to briefly examine  
10 witnesses on issues which were not brought out in the  
11 underlying action but which are relevant to coverage. American  
12 Casualty is entitled to litigate in its own right such issues.  
13 Wear v. Farmers Insurance, 49 Wn.App. 655, 745 P.2d 526  
14 (1987). Counsel for the parties to the coverage actions will  
15 be able to argue the coverage issues to the twelve individuals  
16 who truly know what the basis for their verdict was. Jury  
17 instructions and a verdict form can then be tailored to answer  
18 the questions necessary to resolve those coverage issues.

19 American's proposed method of handling these issues is both  
20 practical and economical. The Court will avoid having to  
21 impanel a new jury and having to retry the cases which have  
22 already been heard once by a separate jury. What may have been  
23 a five-week trial may be shortened to two to three days.

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III.

STATEMENT OF ISSUES

Should the Court order that trial of the coverage actions follow trial in the underlying actions and be tried to the same jury that heard those underlying actions?

IV.

AUTHORITY

Civil Rule 42, Consolidation; Separate Trials:

(a) Consolidation. When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters at issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

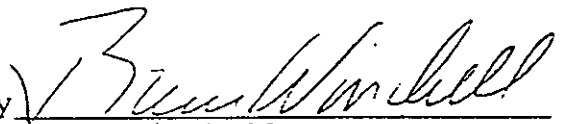
(b) Separate Trials. The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or any separate issue of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury.

The proposed procedure protects the rights of both the insurance companies and the litigants in the underlying actions to a jury trial. It also preserves the defendants' rights in the underlying actions to have a trial which is free of any influence that a jury's knowledge of potential coverage could have on its award of damages. The jury hearing the underlying actions would have no knowledge of the existence of the subject insurance policies or the precise issues concerning the

1 disputes about that coverage until the conclusion of the  
2 underlying actions. Counsel for American Casualty is prepared  
3 to forego the right which it would otherwise have to  
4 participate in jury selection. Counsel for American Casualty  
5 will not participate in any visible way in the underlying  
6 action. At this time, the only procedural protection which  
7 American Casualty anticipates requesting would be that  
8 witnesses which it may wish to examine in the coverage action  
9 not be excused following the completion of their testimony in  
10 the underlying action until such time as American Casualty has  
11 had an opportunity to indicate to the Court, outside of the  
12 presence of the jury, whether it will wish to examine that  
13 witness in the coverage action.

14 DATED this 21<sup>st</sup> day of February, 1989.

15 LANE POWELL MOSS & MILLER

16  
17 By   
18 Bruce Winchell  
19 Attorneys for Plaintiff  
20 American Casualty Company  
21  
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MOTION FOR TRIAL DATE - 6  
0526BAW

LANE POWELL MOSS & MILLER  
3800 RAINIER BANK TOWER  
SEATTLE, WASHINGTON 98101-2647  
206 462 1100

15154 4/21/2003 00251

ORIGINAL

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

FILED  
IN COUNTY CLERK'S OFFICE  
STATE OF WASHINGTON  
A.M. MAR 15 1989 P.M.

2

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.

PIERCE COUNTY, WASHINGTON  
TED RUFF, COUNTY CLERK  
BY \_\_\_\_\_  
DEPUTY

No. 88-2-00947-9

EX PARTE APPLICATION  
TO SHORTEN TIME FOR  
NOTICE UPON MOTION TO  
SEVER

1. Relief Requested. Defendants Barnett respectfully request an order shortening time in which notice must be given upon a motion to sever the above-entitled coverage action with respect to coverage available for the church entity and coverage available for Jack McDonald.

2. Statement of Facts. American Casualty Company issued a policy of insurance to the Community Chapel and Bible Training Center which contains a severability clause providing separate coverage for Jack McDonald and the Community Chapel and Bible Training Center. Defendants have jointly moved for summary judgment with respect to coverage for the church entity. On

EX PARTE  
APPLICATION: 1  
4857\APPSHORT

*Evans, Craven & Lackie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 472172883 88252



1 March 15, 1989, notice was received that Jack McDonald has filed  
2 for relief in bankruptcy court and proceedings against him have  
3 been stayed. Immediate severance is necessary to allow the  
4 continuance of this action with respect to coverage for the  
5 church entity.  
6

7  
8 3. Evidence. The affidavit of Tim Donaldson annexed hereto and  
9 the DECLARATION OF ROBERT J. ROHAN IN OPPOSITION TO AMERICAN  
10 CASUALTY'S MOTION FOR DELAY OF TRIAL DATE.

11  
12 4. Basis. CR 6.

13 DATED this 16th day of March, 1989.

14  
15  
16 EVANS CRAVEN & LACKIE, P.S.

17  
18 By Tim Donaldson  
19 TIM DONALDSON  
Attorneys for Barnetts

20 STATE OF WASHINGTON )  
21 ) ss. Affidavit of Tim Donaldson  
22 County of King )

23 Tim Donaldson being first duly sworn upon oath and having  
24 personal knowledge of the following facts deposes and says:

25 I am at least twenty-one (21) years of age, and I am  
26 competent to make this statement;

27 I am an attorney for Don and Barbara Barnett in the above-  
28 entitled cause of action;

29  
30 EX PARTE  
31 APPLICATION: 2  
32 4857\APPSHORT

*Evans, Craven & Lackie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555


15154 42172883 88253

1 On March 15, 1989, my office received notice that Jack  
2 McDonald filed for relief in the United States Bankruptcy Court  
3 for the Western District of Washington cause number 89-30907T and  
4 that proceedings against him were stayed;

5 Telephone notice was given to the offices of Lane, Powell,  
6 Moss & Miller, attorneys for American Casualty Company, on March  
7 16, 1989 that this application was being presented;

8 Copies of Defendants motion to sever and supporting  
9 materials were sent by messenger to the offices of Lane, Powell,  
10 Moss & Miller, attorneys for American Casualty Company, on March  
11 16, 1989.

12 Further affiant saith naught.

13   
14 TIM DONALDSON

15 State of Washington  
16 County of King

17 Signed and sworn to before me on  
18 March 16, 1989 by Tim  
19 Donaldson.

20 Irish Bashaw  
21 NOTARY PUBLIC  
22 My commission expires 09/04/90

23 EX PARTE  
24 APPLICATION: 3  
25 4857\APPSHORT

26 *Evans, Craven & Lackie, P.S.*

27 LAWYERS

28 SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
29 SEATTLE, WASHINGTON 98104

30 (206) 386-5555

31 15154 4/21/2003 08254

PROPOSED

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

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

No. 88-2-00947-9  
 ORDER SHORTENING  
 TIME FOR NOTICE OF  
 MOTION FOR SEVERANCE

I. HEARING

- 1.1 Date. March 17, 1989.
- 1.2 Appearances. Defendants, Donald Lee Barnett and Barbara Barnett, appeared through their attorneys Evans, Craven & Lackie, P.S. by Tim Donaldson. Defendant Community Chapel and Bible Training Center appeared through its attorney John Glassman. Defendants Gabrielson appeared through their attorneys Rush, Hannula and Harkins by Daniel Hannula. Plaintiff appeared through its attorneys Lane, Powell, Moss & Miller by Bruce Winchell.
- 1.3 Purpose. To consider EX PARTE APPLICATION TO SHORTEN TIME FOR NOTICE UPON MOTION TO SEVER.
- 1.4 Evidence. The affidavit of Tim Donaldson annexed to EX PARTE APPLICATION TO SHORTEN TIME FOR NOTICE UPON MOTION TO SEVER and the DECLARATION OF ROBERT J. ROHAN IN OPPOSITION TO AMERICAN

ORDER SHORTENING  
 TIME: 1  
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CASUALTY'S MOTION FOR DELAY OF TRIAL DATE.

1.5 Notice. Telephonic notice was given of presentation of the application on March 16, 1989.

II. ORDER

After hearing the argument of counsel and being advised of the premises it is ordered and declared:

2.1 Defendant Barnettts EX PARTE APPLICATION TO SHORTEN TIME FOR NOTICE UPON MOTION TO SEVER is granted.

2.2 Defendants Barnett shall give notice on March 16, 1989 of their motion to sever to opposing counsel for hearing on March 17, 1989.

DATED this \_\_\_\_\_ day of January, 1989.

\_\_\_\_\_  
HONORABLE J. KELLEY ARNOLD

Presented by

EVANS, CRAVEN & LACKIE P.S.

\_\_\_\_\_  
TIM DONALDSON  
Attorneys for Barnettts

ORDER SHORTENING  
TIME: 2  
4857\OST

15154 4/21/2883 88256



1  
2 OTHER PARTIES REQUIRING NOTICE:

3 Robert Rohan/Anthony D. Shapiro  
4 Schweppe Krug & Taussend  
5 800 Waterfront Place One  
6 1011 Western Avenue  
7 Seattle WA 98104

8 Bruce Winchell  
9 Lane Powell Moss & Miller  
10 3800 Rainier Bank Tower  
11 Seattle, WA 98101-2647

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

15 Dan Hannula  
16 715 Tacoma Avenue South  
17 Tacoma, WA 98402  
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DECLARATION OF MAILING

ON THIS DAY I DEPOSITED IN THE UNITED STATES MAIL PROPERLY STAMPED AND ADDRESSED ENVELOPE TO THE ATTORNEYS OF RECORD OF PLAINTIFF/DEFENDANT, CONTAINING A COPY OF THE DOCUMENT ON WHICH THIS DECLARATION APPEARS.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON AND THE UNITED STATES THAT THE FOREGOING IS TRUE AND CORRECT.

FILED IN COUNTY CLERK'S OFFICE

AM. MAR 16 1989 P.M.

PIERCE COUNTY WASHINGTON TED RUTT, COUNTY CLERK DEPUTY

EXECUTED AT Seattle THIS 15th DAY

March 9 1989

Suzie Roth

MAR 16 1989

SUPERIOR COURT FOR THE STATE OF WASHINGTON COUNTY OF PIERCE

AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA, a Pennsylvania corporation,

NO. 88-2-00947-9

Plaintiff,

DEFENDANT COMMUNITY CHAPEL AND BIBLE TRAINING CENTER'S ANSWER TO AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

v.

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

Defendants.

Defendant Community Chapel and Bible Training Center ("Community Chapel"), through their undersigned counsel, in answer to plaintiff's Amended Complaint for Declaratory Judgment, admit, deny and allege as follows:

1. Community Chapel is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph I of the Amended Complaint for Declaratory Judgment ("Amended Complaint").

2. Community Chapel admits that it is a Washington corporation. Community Chapel is without knowledge or information sufficient to form a belief as to the truth of the

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1 remaining allegations contained in paragraph II of the Amended  
2 Complaint.

3 3. Community Chapel admits that it is a defendant in an  
4 action pending in Pierce County under Cause No. 86-2-02973-6  
5 brought by Ira and Carol Gabrielson. Community Chapel is without  
6 knowledge or information sufficient to form a belief as to the  
7 truth of the remaining allegations contained in paragraph III of  
8 the Amended Complaint.

9 4. With respect to paragraph IV of the Amended Complaint,  
10 Community Chapel admits that the Gabrielson complaint makes  
11 certain allegations under eight causes of action. Community  
12 Chapel, in answer to that Gabrielson complaint, has denied those  
13 allegations. Community Chapel denies all other allegations  
14 contained in paragraph IV of the Amended Complaint.

15 5. Community Chapel admits that plaintiff insured  
16 Community Chapel under at least one comprehensive general  
17 liability policy from May 9, 1982 until May 9, 1986. Community  
18 Chapel admits that plaintiff purports to include some language  
19 from that policy in the Amended Complaint. Community Chapel  
20 denies all other allegations contained in paragraph V of the  
21 Amended Complaint.

22 6. Community Chapel admits that plaintiff is defending  
23 Community Chapel under a reservation of rights. Community Chapel  
24 denies all other allegations contained in paragraph VI of the  
25 Amended Complaint.

26



1           7. To the extent that paragraph VII of the Amended  
2 Complaint requires a response, Community Chapel denies the  
3 allegation contained in paragraph VII of the Amended Complaint.

4           8. To the extent that Paragraph VIII of the Amended  
5 Complaint requires a response, Community Chapel denies the  
6 allegations contained in paragraph VIII of the Amended Complaint.

7           9. To the extent that paragraph IX of the Amended  
8 Complaint requires a response, Community Chapel denies the  
9 allegations contained in paragraph IX of the Amended Complaint.

10          10. To the extent that the unnumbered paragraph entitled  
11 "FOURTH CAUSE OF ACTION" requires a response, Community Chapel  
12 denies the allegations contained in that paragraph.

13          11. To the extent that the unnumbered paragraph entitled  
14 "FIFTH CAUSE OF ACTION" requires a response, Community Chapel  
15 denies the allegations contained in that paragraph.

16          12. To the extent that the unnumbered paragraph entitled  
17 "SIXTH CAUSE OF ACTION" requires a response, Community Chapel  
18 denies the allegations contained in that paragraph of the Amended  
19 Complaint.

20          13. To the extent that the unnumbered paragraph entitled  
21 "SEVENTH CAUSE OF ACTION" requires a response, Community Chapel  
22 is without knowledge or information sufficient to form a belief  
23 as to the truth of the allegations contained in that paragraph  
24 of the Amended Complaint.

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DATED THIS \_\_\_\_ day of March, 1989.

SCHWEPPE, KRUG & TAUSEND, P.S.

By Anthony D. Shapiro  
Anthony D. Shapiro  
Attorneys for Community Chapel

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4 APR 5 1989

FILED  
IN COUNTY CLERK'S OFFICE

A.M. APR 05 1989 P.M.

PIERCE COUNTY WASHINGTON  
BY TED RUTY, COUNTY CLERK  
DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiff, )

v. )

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

Defendants. )

NO. 88-2-00947-9

AFFIDAVIT OF  
COLEEN D. THOMPSON

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

COLEEN D. THOMPSON, being first duly sworn upon oath and  
having personal knowledge of the following facts, deposes and  
says:

1. I am one of the attorneys representing the plaintiff,  
American Casualty Company, in the above-captioned case.

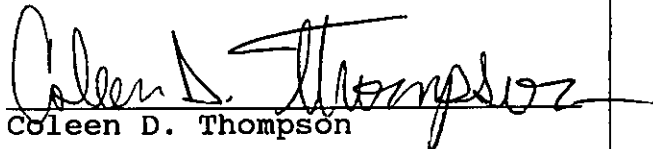
2. On March 23, 1989, I submitted to this court an  
affidavit based on the deposition testimony of George Alberts,  
the former Minister of Counseling for Community Chapel and  
Bible Training Center.

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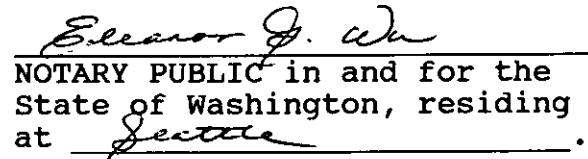
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3. The transcript of Mr. Alberts' deposition was completed April 3, 1989.

4. Attached as Exhibit A is a copy of the transcript of George Alberts' deposition, Volumes I, II and III. Mr. Alberts' testimony provides background information with respect to the church and its practice of spiritual connections. His testimony demonstrates that the practice of spiritual connections was resulting in the type of harm which befell Carol Gabrielson. It also further establishes Don Barnett's and the elders' knowledge of the adverse consequences which were flowing from the Doctrine of Spiritual Connections at the same time that Jack McDonald and Carol Gabrielson were involved. We realize that the transcript of Mr. Alberts' deposition is voluminous; however, this deposition provides one of the most comprehensive explanations of Community Chapel's practice of spiritual connections and the church authority's knowledge of the adverse effects of this practice upon the congregation.

  
Coleen D. Thompson

SUBSCRIBED AND SWORN to before me: April 4, 1989.

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

My appointment expires: 9/25/92

00700 0007/17/8 10101

DECLARATION OF MAILING

The Honorable J. Kelley Arnold

ON THIS DAY I DEPOSITED IN THE UNITED STATES MAIL PROPERLY STAMPED AND ADDRESSED ENVELOPE TO THE ATTORNEYS OF RECORD OF PLAINTIFF/DEFENDANT, CONTAINING A COPY OF THE DOCUMENT ON WHICH THIS DECLARATION APPEARS.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON AND THE UNITED STATES THAT THE FOREGOING IS TRUE AND CORRECT.

5 APR 05 1989

FILED IN COUNTY CLERK'S OFFICE

APR 05 1989 P.M.

PIERCE COUNTY WASHINGTON TED RUTT COUNTY CLERK

BY [Signature] DEPUTY

EXECUTED AT Seattle THIS 4th DAY OF April 1989.

[Signature] SIGNATURE

SUPERIOR COURT FOR THE STATE OF WASHINGTON COUNTY OF PIERCE

AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA, a Pennsylvania corporation,

NO. 88-2-00947-9

Plaintiff,

DECLARATION OF ROBERT J. ROHAN IN OPPOSITION TO COLEEN THOMPSON'S AFFIDAVIT

v.

Hearing: April 10, 1989

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

Defendants.

I, Robert J. Rohan, state:

1. I am a partner in the law firm of Schweppe, Krug & Tausend, P.S., which represents Community Chapel & Bible Training Center ("Community Chapel") in the above litigation. I make this declaration based on my own personal knowledge and am competent to be a witness herein.

2. On March 17, 18, and 21, 1989, I attended the deposition of George Alberts, the former minister of counseling for Community Chapel and Bible Training Center.

3. I have read the affidavit of Coleen D. Thompson dated March 23, 1989, wherein she alleges certain statements by Mr. Alberts during his deposition. Much of what Ms. Thompson alleges

DECLARATION OF ROBERT J. ROHAN

SCHWEPPE, KRUG & TAUSEND, P.S.

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1 that Mr. Alberts testified to is incorrect. To be fair to Ms  
2 Thompson, she had to rely on her notes, while your declarant has  
3 reviewed the actual transcripts of Mr. Alberts' testimony. The  
4 copies of relevant pages from Mr. Alberts' deposition testimony  
5 are attached hereto.

6 4. Ms. Thompson states at ¶5 of her affidavit that Mr.  
7 Alberts "repeatedly" informed Pastor Donald Barnett as well as  
8 senior elders Scott Hartley, Jack Hicks, and Jack DuBois, of his  
9 "concerns" regarding the preaching and practice of spiritual  
10 connections and the affect upon the church's congregation. In  
11 fact, Mr. Alberts testified that he had one lunch with Jack Hicks  
12 where he discussed this with him in January, 1986, and one lunch  
13 with both Scott Hartley and Jack DuBois where he also discussed  
14 this with them. (Vol. 2, pp. 53-55) He also stated that he sent  
15 letters to Pastor Barnett regarding this practice. (Vol. 2,  
16 pp. 80-81, 118-120)

17 5. In regard to ¶6 and ¶7 of Ms. Thompson's affidavit, Mr.  
18 Alberts testified that he did not know whether or not the  
19 document introduced as Exhibit 2 at his deposition was accurate,  
20 nor whether or not the persons listed on that exhibit filed for  
21 divorce because of spiritual connections. (Vol. 3, pp. 84-85)  
22 The intimation in Ms. Thompson's affidavit to the contrary is  
23 simply not true. Further, Mr. Alberts did not testify that he  
24 had actual knowledge that "60 of the 157 couples listed divorce  
25 as a result of the practice of spiritual connection." Rather,  
26

DECLARATION OF ROBERT J. ROHAN

- 2

SCHWEPPE, KRUG & TAUSEND, P.S.

800 WATERFRONT PLACE  
1011 WESTERN AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 223-1600

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1 Mr. Alberts testified that his "knowledge" was mostly " . . .  
2 based on things that I have heard, not directly from the people  
3 themselves . . ." (Vol. 3, pp. 193-194)

4 6. I declare under penalty of perjury under the laws of  
5 the State of Washington that the foregoing is true and correct.

6 DATED this 4<sup>th</sup> day of April, 1989 at Seattle, Washington.

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ROBERT J. ROHAN

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(By Ms. Thompson)

1 connections?

2 A To?

3 Q To anyone, at any time.

4 MS. SHAFFER: Objection, much too overbroad.

5 THE WITNESS: That's a broad question. Yeah,  
6 yes.

7 Q Yes, okay. Did you speak with any elders regarding  
8 your position on spiritual connections?

9 A Yes.

10 Q Who?

11 A Jack Hicks.

12 Q What did you tell Jack Hicks?

13 MS. SHAFFER: When was this?

14 MR. HOLLENBECK: How many people are asking  
15 the questions here?

16 MS. SHAFFER: When was this?

17 THE WITNESS: In January of 1986, Jack Hicks  
18 took me out to lunch and told me that he wanted to talk  
19 to me about connections, and he testified to me about  
20 his connection with Debbie Wenholz and how wonderful and  
21 glorious it was, and he told me that at one occasion they  
22 were together in a restaurant and that he became so  
23 overcome with the spirit of the Lord that he sunk under  
24 the table with his hands in the air and was gloriously  
25 overwhelmed.

(By Ms. Thompson)

1           At that point I looked at him, and I thought,  
2           you know, I don't know what you have been smoking,  
3           but I don't want a puff, and I told him that I did  
4           not believe that that was something that should be  
5           done, that they should be, you know, that people  
6           should be out alone together that way, and that it was  
7           very dangerous. He told me that he was very concerned  
8           about me, that I was not becoming involved in  
9           connections, and that therefore I might not be in  
10          a position to really be where I should be spiritually,  
11          and he informed me that, as a result of the fact that  
12          I had not been participating in connections, that he  
13          had been told by Barbara Barnett that I had been screened  
14          from information pertaining to connections, and that an  
15          effort had been made by the Barnetts to keep me from  
16          finding out about things that were going on in regards  
17          to connections for fear that it might stumble me.

18    Q    Did you discuss your concerns about spiritual connections  
19          with Scott Hartley?

20    A    I remember an occasion where I discussed my concerns  
21          about spiritual connections with Scott Hartley and  
22          Jack Dubois.

23    Q    Could you tell me about that occasion?

24                   MS. SHAFFER: Lack of foundation for failure  
25          to state a time.

(By Ms. Thompson)

1 MS. McGAUGHIE: What?

2 Q When was that?

3 A Sometime between June of '85 and probably March of '86.

4 Q Could you tell me about that conversation?

5 A All I recall about that conversation is that I told him  
6 I was very concerned about the trend and the way things  
7 were going, and I don't recall any specifics beyond that,  
8 and they responded in a way that was supportive of what  
9 was happening, and that's about all I can recall.

10 Q Do you recall whether you told them what your specific  
11 concerns were?

12 A I don't recall.

13 MS. SHAFFER: Objection, vague and ambiguous.

14 THE WITNESS: I don't recall. I don't recall  
15 bringing up any specific concerns to them at that point.

16 (Exhibit 1 marked for  
17 identification.)

18 Q I am handing you what has been marked Exhibit 1.  
19 Could you identify it for me, please?

20 A This is a letter addressed to, it says -- it's addressed  
21 to, "Dear Friends," and was intended to be sent and was  
22 sent to a number of friends of ours from Community Chapel  
23 at the time I left Community Chapel.

24 Q So the letter we discussed earlier?

25 A The letter we discussed earlier.

(By Mr. Rohan)

1 Q Did people start hugging each other only after people  
2 began dancing in couples?

3 A Hugging each other while dancing?

4 Q Yes.

5 A Yes.

6 Q Okay. How soon after people were dancing in couples  
7 did you ever see anybody or did you ever see people  
8 start hugging each other?

9 A I don't recall the time span.

10 Q Did you ever see people, while they were dancing before  
11 the Lord, kissing each other?

12 A No.

13 Q Did spiritual connections start by the time people were  
14 dancing together in couples?

15 A In other words, which came first?

16 Q Yes.

17 A My recollection is that people were dancing together  
18 in couples before the spiritual connections were  
19 introduced.

20 Q You mentioned that you sent Donald Barnett, I believe,  
21 three or four letters, basically complaining to him  
22 about spiritual connection; is that right?

23 MR. HOLLENBECK: Objection, mischaracterization  
24 of testimony.

25 Q You sent Pastor Barnett three or four letters?

(By Mr. Rohan)

1 A Yeah.

2 Q Were any of those letters sent to him prior to the time  
3 spiritual connections started?

4 A No.

5 Q All right. Prior to the time spiritual connections  
6 started, had you raised with anybody any complaints  
7 about the way that dancing before the Lord had  
8 progressed?

9 A No.

10 Q Did you have any, regardless of -- Well, did you,  
11 yourself, have any questions or concerns about dancing  
12 before the Lord prior to the time spiritual connecting  
13 started?

14 MS. JONES: He has already testified that  
15 he did.

16 THE WITNESS: Repeat your question, please.

17 Q Did you have any concerns about dancing before the  
18 Lord prior to the time -- Oh, okay. Now I understand  
19 counsel's objection.

20 MS. JONES: At the beginning.

21 Q At the beginning, when dancing before the Lord first  
22 started, you testified that you had a concern about  
23 whether or not this was spiritual?

24 A Right.

25 Q And you came to the decision that it was spiritual?

(By Mr. Rohan)

1 just after the first of the year, after I talked to  
2 Jack Hicks, where I said I was very concerned, and  
3 that there was a lot of behavior going on with people  
4 being alone together with each other, and reports that  
5 would come up about and things I was hearing about people  
6 spending lots of time alone together, and you would see  
7 people around the church walking around hand in hand,  
8 arm in arm, in boyfriend-girlfriend type relations.

9 These were not normal ways of religious people  
10 relating to each other. Something was obviously wrong,  
11 and you didn't need to be privy to any special  
12 information to see that, in my judgment, and people,  
13 and then reports were coming out about people spending  
14 a lot of time with their connections and things like  
15 that to the point where it was impacting their marriages  
16 in a very negative way. A number of divorces had already  
17 started where people had had connections and had, you  
18 know, started getting divorced and so on, and, in fact,  
19 one of the elders, Lanny Peterson, at that time his  
20 marriage was in the process of breaking up.

21 Q He was married to Don Barnett's daughter?

22 A That's correct. And, you know, I was concerned by the  
23 fact that that didn't ring a bell in Don Barnett's mind.  
24 It was like what does this guy need? You know, and so  
25 I was alarmed not only by what was happening to Lanny,

(By Mr. Rohan)

1 but by the fact that what was happening to Lanny wasn't,  
2 didn't seem to be of any particular concern to Don,  
3 and I basically told him in that last letter that the  
4 church, I do clearly recall making a statement in that  
5 letter that the church was going over the bluff,  
6 and he was the only one who could do something about  
7 it, and would he please act quickly to reverse this thing  
8 before the lives of the, you know, before lives were  
9 really destroyed.

10 I remember just pleading with him to act and do  
11 something to turn this thing around, because as far as  
12 I was concerned, the fruits of this doctrine and this  
13 teaching and this practice were very obviously rotten  
14 and were, the results were already rolling in, and that  
15 it should be already evident that a reversal of course  
16 is very, very much a necessity.

17 Q Was this letter, which you believe was around the  
18 first of January of 1986 --

19 A No, I wouldn't say first of January, maybe more like  
20 the first of February or March.

21 Q All right. Around the first of February or  
22 March of 1986, was this the first time you sent  
23 a letter to Donald Barnett about spiritual connections  
24 where you based it on actually what you observed  
25 happening?

(By Mr. Rohan)

1 A I would not say that, no.

2 Q Was it the first time you sent him a letter based on  
3 what the effect was of spiritual connections that you  
4 saw on others?

5 A No, I would not say that either.

6 Q You believe that may have occurred in a letter between  
7 the first one that you talked about, which was sometime  
8 after June of 1985, and this one in February or  
9 March of 1986?

10 A I believe that may have occurred in one or two  
11 letters between those two letters.

12 Q Did you send a similar letter or have a discussion  
13 regarding the matters you put in any of these letters  
14 after the first one with Jack Dubois, prior to the time  
15 you left the church?

16 A I don't recall sending any letters to any other elders  
17 or any other people on this subject besides Don Barnett.

18 Q Did you have a conversation with any of the elders  
19 or senior elders about the material that you sent to  
20 Donald Barnett in the letters, whether it was referring  
21 that you had sent a letter to Donald Barnett or just  
22 the information that was contained in the letter?

23 A Yeah. The same type of concerns and the same type  
24 of general information was discussed, as I mentioned  
25 earlier, in a conversation with Jack Dubois and



(By Ms. Thompson)

1 A No, I don't know specifically why, but it is my belief  
2 that this list serves a useful purpose in that it does  
3 provide documentation for the number of couples that have  
4 filed for divorce or been divorced since the introduction  
5 of the connection issue.

6 Q Do you believe it documents a significant increase in  
7 marital disharmony as evidenced by the number of divorces  
8 which occurred during this period?

9 A Yes, because prior to this period there were not that  
10 many divorces.

11 Q And how do you know this?

12 A Well, unfortunately, I don't have documentation for all  
13 the divorces that took place before, of chapel people  
14 before this period. Now, if someone wanted to take the  
15 time to do what Linda Steinhauer did for folks from the  
16 chapel who had filed for divorce in, let's say the four  
17 years previous to this period --

18 Q Maybe 1980 to 1984?

19 A -- that might be a very useful comparison, and I strongly  
20 suspect if that statistical comparison were to be made  
21 that it would be found that the divorce rate among chapel  
22 members skyrocketed after the introduction of the  
23 mega-connections in mid-'85.

24 Q Is it your opinion that a large percentage of these  
25 divorces would be due to the doctrine of spiritual

(By Ms. Thompson)

1 connections?

2 A Yes, that certainly is my opinion having looked over

3 these names.

4 Q So do you have certain knowledge as to some of the people

5 on that list?

6 A Mostly it would be knowledge based on things that I have

7 heard, not directly from the people themselves but from

8 other sources.

9 Q Sure, from any source.

10 A Or from knowledge that they had been involved in

11 connections, and that connections had been a very

12 definite issue in their marital difficulties.

13 Q Could you briefly run through the list and set out those

14 individuals who you believe --

15 A I can do that with the understanding that the fact that

16 I don't name someone from this list does not mean that

17 their marital difficulties did not relate to connections.

18 Q Sure.

19 A It's just that I don't, you know, have any understanding

20 that they did.

21 Q Sure, just those that you have knowledge of.

22 A Where there was a connection between the involvement in

23 connections and the marital difficulties leading to the

24 divorce?

25 Q Yes.

(By Mr. Rohan)

1 Q Do you recall any discussions around that time about  
2 Donald Barnett's contribution to the parsonage?

3 A Yes, I do.

4 Q What do you recall?

5 A A public announcement was made in the church to the  
6 entire congregation by Cal Freden, and Cal described  
7 that Don had donated money from the sale of his old  
8 house, and that he was going to be making certain  
9 payments toward the parsonage of so much a month,  
10 and beyond that I don't recall any details.

11 Q And do you recall anything else that was discussed  
12 after that?

13 A No.

(Exhibits 2 through 18 marked  
for identification.)

14  
15  
16 Q Showing you what has been marked as Exhibit 2 to your  
17 deposition, is that your handwriting, Exhibit 2?

18 A No.

19 Q Do you know who prepared Exhibit 2?

20 A Yes.

21 Q Who did?

22 A Linda Steinhauer.

23 Q And she is a former member of Community Chapel?

24 A Correct.

25 Q Did she tell you what she did to prepare Exhibit 2?

(By Mr. Rohan)

1 A She went down, she told me that she went down to the  
2 King County Courthouse and got these names and file  
3 numbers of people who had been divorced during the  
4 time that the connections were going on.

5 Q Did she indicate that she had talked to the people  
6 on this list and determined what the reason for their  
7 divorces were?

8 A No.

9 Q And the date on the right is the date of the filing  
10 of the divorce?

11 A That's my understanding, and this list is probably not  
12 the most up-to-date list that she might have, so that  
13 should be understood.

14 Q Do you know if anybody has attempted to determine who  
15 in the church asked for a divorce because of the  
16 spiritual connections?

17 A I am not aware of any effort to that effect.

18 Q Showing you what has been marked as Exhibit 3,  
19 can you identify that?

20 A Yeah. It's a copy of a church bulletin.

21 Q And that's the one where it was announced that you and  
22 your wife were disfellowshipped from Community Chapel?

23 A Correct.

24 Q Showing you what has been marked as Exhibit 4 to your  
25 deposition, is that a letter that you received from

15154 4/21/2003 08280

5 FEB 27 1989

FILED  
IN COUNTY CLERK'S OFFICE  
A.M. FEB 24 1989 P.M.

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

BARNETT OBJECTION  
TO DISMISSAL AS  
PARTY DEFENDANTS

1. Objection. Defendants Barnett object to plaintiff's motion for Dismissal of the Barnetts as parties herein.

2. Grounds. The AFFIDAVIT OF DON BARNETT IN OPPOSITION TO MOTION FOR DISMISSAL, the affidavit of John Glassman, the affidavit of Tim Donaldson annexed to DEFENDANTS JOINT MOTION RE: COVERAGE FOR CHURCH ENTITY and the records and files herein.

3. Basis. This objection is based upon authorities contained in BRIEF IN OPPOSITION TO DISMISSAL OF BARNETTS.

DATED this 14<sup>th</sup> day of February, 1989.

EVANS CRAVEN & LACKIE, P.S.

By Tim Donaldson  
TIM DONALDSON  
Attorneys for defendants Barnett

BARNETT OBJECTION  
TO PARTY DISMISSAL: 1  
1500\4857\BOTPD

*Evans, Craven & Lackie, P.S.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

ORIGINAL

15154 4-21-2003 00281

**FILED**  
 COUNTY CLERK'S OFFICE  
 FEB 27 1989  
 A.P. FEB 24 1989 P.M.  
 BY                      DEPUTY

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

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

No. 88-2-00947-9

AFFIDAVIT OF DON  
 BARNETT IN OPPOSITION  
 TO MOTION FOR DISMISSAL

STATE OF WASHINGTON )  
 ) ss.  
 County of King )

Don Barnett, being first duly sworn upon oath and having  
 personal knowledge of the following facts, deposes and says;

I am at least 21 years of age, and I am competent to make  
 this statement;

I am the original pastor of Community Chapel and Bible  
 Training Center of Burien;

During early 1988, the church split into two groups;

One group of church followers began to attend religious  
 services conducted by myself;

BARNETT OPPOSITION  
 AFFIDAVIT: 1  
 1500\4957\dlboa

*Evans, Craven & Luckie, P.C.*

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 SEATTLE, WASHINGTON 98104

(206) 386-5555

ORIGINAL

15-154-611-2883-8828

1 One group of church followers began to attend religious  
2 services conducted by the members of the board of senior elders  
3 of the Community Chapel and Bible Training Center;  
4

5 It is my understanding that approximately 350 persons  
6 presently attend services conducted by the members of the board  
7 of senior elders;  
8

9 Presently, approximately 350 persons attend services  
10 conducted by myself;  
11

12 Almost all of these persons attended services at the  
13 Community Chapel and Bible Training Center prior to the split,  
14 and these persons tithed portions of their income to the church  
15 which were used to obtain church assets;  
16

17 I initiated a lawsuit in King County, cause number 88-2-  
18 04148-2, against the senior elders of the Community Chapel and  
19 Bible Training Center over control of the church and its assets;  
20

21 In that lawsuit, I have also made a personal claim to my  
22 interest in the church parsonage in which I live;  
23

24 The church is listed as the record owner of the parsonage;

25 Issues regarding my personal claim to the church parsonage  
26 have not yet been fully resolved in King County cause number 88-  
27 2-04148-2;  
28

29 On December 20, the Honorable Norman Quinn entered orders  
30

31 BARNETT OPPOSITION  
32 AFFIDAVIT: 2  
1500\4957\dlboa

*Evans, Craven & Lackie, P.C.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15151 4-21-2003 00200

1 which presently gives control of the church and its assets to the  
2 senior elder board members;

3  
4 I continue to make claim to control of the church and its  
5 assets on behalf of myself and those followers which attend the  
6 religious services which I conduct, and neither the interests of  
7 myself or the interests of those followers which attend the  
8 religious services which I conduct are represented by those who  
9 presently control the church and its assets;

10  
11  
12 Those persons who presently control the church and its  
13 assets do not represent my interests or the interests of those  
14 followers which attend religious services which I conduct in the  
15 above entitled cause of action;

16  
17 I wish to see the assets of the church preserved;

18  
19 It is my understanding that those who presently control the  
20 church and its assets plan the sale of various assets, and I do  
21 not believe that they represent the interest of preservation of  
22 church assets held by myself and those who attend the church  
23 services which I conduct;

24  
25 The decision of Judge Quinn has been appealed to the Court  
26 of Appeals for the State of Washington, Division One, cause  
27 number 23202-9-I, and the matter is not yet resolved;

28  
29 I wish to remain a party to the above entitled declaratory  
30

31 BARNETT OPPOSITION  
32 AFFIDAVIT: 3  
1500\4957\dlboa

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LAWYERS

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SEATTLE, WASHINGTON 98104

(206) 386-5555

10228-8827-121-15151



1 action to protect my personal interest and the interest of those  
2 who attend services which I conduct in church assets which may be  
3 subject to execution upon the judgment entered in Pierce County  
4 cause number 86-2-02792-6 if it is determined that insurance does  
5 not cover the judgment;  
6  
7

8 Further affiant saith naught.

9  
10 State of Washington  
11 County of King

Don Barnett  
DON BARNETT

Signed and sworn to before me on  
12 February 10, 1989 by Don  
13 Barnett.

Trish Bashaw  
14 NOTARY PUBLIC  
15 My commission expires 09/01/90  
16  
17  
18  
19  
20  
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31 BARNETT OPPOSITION  
32 AFFIDAVIT: 4  
1500\4957\dlboa

*Evans, Craven & Lackie, P.C.*

LAWYERS

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SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 1-21-2883-88285

**CERTIFIED  
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KING COUNTY  
SUPERIOR COURT CLERK  
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HONORABLE NORMAN QUINN  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

DONALD L. BARNETT )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JACK A. HICKS, JACK H. )  
DuBOIS, and E. SCOTT HARTLEY, )  
individually and as the Board )  
of Directors of COMMUNITY )  
CHAPEL BIBLE TRAINING CENTER )  
and COMMUNITY CHAPEL AND )  
BIBLE TRAINING CENTER, )  
 )  
Defendants. )

NO. 88-2-04148-2  
ORDER DISSOLVING RESTRAINING  
ORDERS AND GRANTING PERMANENT  
INJUNCTION

THIS MATTER came on regularly for hearing upon the Motion of Defendants for an Order Dissolving Restraining Orders. The Court having granted defendants' second motion for partial summary judgment, which effectively disposes of all claims in this case, and the Court having reviewed the declarations filed in connection with this motion and Defendants' Motion for Contempt, and having heard arguments by counsel, and the Court finding that the plaintiff has lost on the merits and that the restraining order previously obtained by plaintiff on March 15, 1988 should not have been issued, and that the March 17, 1988 restraining order should be dissolved, now, therefore, it is hereby

441.6

ORDER DISSOLVING RESTRAINING  
ORDERS AND GRANTING PERMANENT  
INJUNCTION -1-

SCHWEPPE, KRUG & TAUSEND, P.S.  
800 WATERFRONT PLACE  
1011 WESTERN AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 223-1600

15154 4/21/2003 88286

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ORDERED that

1. All restraining orders issued in this case are dissolved.

2. The Court shall retain the bond posted by plaintiff until further order of this Court.

3. The clerk shall return the bond posted on or about March 18, 1988 by defendants, to defendants immediately without further order of this Court.

4. Plaintiff Donald L. Barnett is immediately and permanently enjoined from attempting to or actually interfering in any way with the operations, functions, programs, services, management, or governing or any other activities of the corporation.

5. ~~Within \_\_\_\_\_ days from the entry of this order,~~ Plaintiff shall deliver to the corporation all personal property of the corporation, ~~except automobiles,~~ presently in his possession or control. Without limiting the foregoing, this shall include all monies, records, accounts, files, books, tapes,

and keys. *Keys to be delivered by 5:00 p.m. Dec 17, 1988. All other personal property by 5:00 p.m. Dec 19<sup>th</sup> 1988.*

~~6. Within \_\_\_\_\_ days from the entry of this order, plaintiff shall return to the corporation all corporate automobiles and shall vacate the corporation's parsonage.~~

6.7. As used herein, the "corporation" refers to Community

15154 4/21/2003 08287

1 Chapel and Bible Training Center, Inc., and all of its divisions.

2 DONE IN OPEN COURT this 16<sup>th</sup> day of December, 1988.

JUDGE NORMAN QUINN

Presented by:

SCHWEPPE, KRUG & TAUSEND, P.S.

ROBERT J. ROHAN  
Attorneys for Defendants

~~Copy Received; Notice of  
Presentation Waived:~~

LAW OFFICES OF RODNEY G. PIERCE

RODNEY G. PIERCE  
Attorney for Plaintiff

0147-001\0121688.RJR

7. BARNETT shall be entitled to use the Chapel for worship services on the evenings of Friday December 16 and 23, 1988, and on the mornings and evenings of Sunday, December 18 and 25, 1988.

8. Barnett shall be entitled to remain in the parsonage on a rent free basis until his interest in the parsonage is determined. During such period he shall maintain the property in its current condition and pay all applicable utilities.

5 FEB 27 1989

FILED  
IN COUNTY CLERK'S OFFICE

AM. FEB 24 1989 P.M.

PIERCE COUNTY CLERK  
BY: [Signature] DEPUTY

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

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

Plaintiff, )

vs. )

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

Defendants. )

No. 88-2-00947-9

DEFENDANT BARNETTS  
REPLY BRIEF FOR  
SUMMARY JUDGMENT

Defendants submit the deposition of Jack L. McDonald, pages 43 through 47, attached to the affidavit of Tim Donaldson annexed hereto and the AFFIDAVIT OF PHILIP G. LINDSAY, M.D. filed herein on April 8, 1988 in reply to American Casualty and in support of DEFENDANTS JOINT MOTION RE: COVERAGE FOR CHURCH ENTITY.

Summary judgment must be granted if there is no issue as to material fact, and the moving party is entitled to judgment as a matter of law. "To avoid summary judgment, a genuine issue of material fact must be established." Fleury v. Bowden, 11 Wn.App. 617, 621, 524 P. 2d 449 (Div. II, 1974) (emphasis theirs).

BARNETT REPLY  
BRIEF : 1  
1500\4857\reply

*Evans, Craven & Lachie, P.C.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

ORIGINAL

58288-8827-12-1-15151

1 American Casualty fails to raise any issues of material fact  
2 with respect to coverage for the church. Instead, it attempts to  
3 broaden the focus of material issues by resort to meritless legal  
4 arguments.  
5

6 I. REPLY  
7

8 1. "Expectation in the Air" is Irrelevant.

9 American Casualty Company offers no evidence to show that  
10 anyone at the Community Chapel and Bible Training Center in  
11 Burien knew of the relationship between Carol Gabrielson and Jack  
12 McDonald. Instead, it proposes that this court should look at  
13 the church's knowledge of the sexual activities of other  
14 persons. It basically makes the "sex cult" argument. It argues  
15 that relationships more or less frequently occurred and that the  
16 church consequently expected such relationships in a general  
17 sense. This notion of "expectation in the air" was specifically  
18 rejected in Viking Sprinkler Co. v. Pac. Ind. Co., 19 Wn.2d 294,  
19 142 P.2d 394 (1943).  
20  
21  
22

23  
24 Therein, a claim was made for fire damage caused in part by  
25 a defective sprinkler system which was being installed. A pipe  
26 elbow in the system had broken. An workman discovered the broken  
27 pipe and turned the system off overnight. That night a fire  
28 ensued.  
29

30  
31 BARNETT REPLY  
32 BRIEF : 2  
1500\4857\reply

*Evans, Craven & Lackie, P.C.*

LAWYERS

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SEATTLE, WASHINGTON 98104

(206) 386-5555

06288 1882/124 15151

1           The insurer claimed that the broken pipe was not an  
2 accident arguing that breaks more or less frequently occur in  
3 making installations and that the insured consequently expected  
4 such incidents in a general sense. The court rejected this  
5 argument writing:  
6

7  
8           That breaks in elbows sometimes occur in the  
9 course of installation, makes the incident  
10 nonetheless *unexpected* when it does happen.  
11 One would hardly say the puncture of a tire  
12 was not an accident. Although, in a general  
13 way, a puncture may be said to be expected,  
14 yet, when it does happen, no one would deny  
15 that it is "sudden and unexpected."

16 Viking Sprinkler Co. v. Pac. Ind. Co., 19 Wn.2d 294, 297, 142  
17 P.2d 394 (1943) (emphasis theirs). The expectation referred to  
18 in a general liability policy relates to prior knowledge of the  
19 specific incident for which recovery is sought. General  
20 expectation is irrelevant.

21           A similar conclusion was reached in Dillard v. Employees'  
22 Retirement, 93 Wn.2d 677, 611 P.2d 1231 (1980). Therein, an  
23 employee made a disability claim for psychophysiological reaction  
24 to anxiety which left her unable to perform her job as a ward  
25 attendant at Western State Hospital.  
26

27           The attendant, Marguerite Dillard, was assigned to Ward M at  
28 the hospital. This ward housed violence-prone, suicidal, and  
29 self-destructive mental patients. The staff members, including  
30

31 BARNETT REPLY  
32 BRIEF : 3  
1500\4857\reply

*Evans, Craven & Lackie, P.S.*

LAWYERS

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SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 4721/2863 88291

1 Dillard, were frequently subject to physical assault by the  
2 patients and witness to unsettling traumatic events. This  
3 working environment caused Ms. Dillard's psychological  
4 disability.  
5

6 The Washington Employees' Retirement Board denied Ms.  
7 Dillard's application for disability ruling that the incidents  
8 causing her disability were not accidents since they were  
9 "...routine in the twisted world of the mental hospital..."  
10 Dillard v. Employees' Retirement, 93 Wn.2d 677, 681, 611 P.2d  
11 1231 (1980). The Supreme Court disagreed, writing:  
12

13  
14 Here, any staff member knows of the  
15 possibility of being assailed on Ward M. The  
16 actual assault, however, may come  
17 unexpectedly and the result may be highly  
18 undesirable. We believe an incident  
19 occurring under such circumstances is, in  
20 common parlance, an accident.

21 In the present case, American Casualty offers evidence that  
22 the Burien church created the atmosphere in which adulterous  
23 relationships took place. It hopes this court will make the same  
24 mistake that the Board made in Dillard and inquire into whether  
25 affairs were "routine in the twisted world of the Community  
26 Chapel and Bible Training Center." Such inquiry is irrelevant  
27 and fails to raise an issue of material fact with respect to  
28 whether the relationship between Jack McDonald and Carol  
29

30  
31 BARNETT REPLY  
32 BRIEF : 4  
1500\4857\reply

*Evans, Craven & Lackie, P.C.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
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(206) 386-5555

26288 688741214 15151



1 Gabrielson was an occurrence from the standpoint of the Burien  
2 church. In its plain, ordinary, and popular sense, "occurrence"  
3 refers to the particular events upon which the claim is based.  
4 In the Gabrielson case, these events are the McDonald/Gabrielson  
5 relationship and not the John Doe/Jane Doe relationships to which  
6 American Casualty points.  
7  
8

9 The root of the American Casualty argument is that the  
10 church entity should have expected the McDonald/Gabrielson  
11 relationship. However, the focus is not upon what should have  
12 been known, it is upon what actually was known. In Unigard Mut.  
13 v. Spokane School Dist., 20 Wn.App. 261, 579 P.2d 1015 (Div.  
14 Three, 1978), it was expressly alleged that the insureds knew of  
15 their son's propensity to set fires and negligently failed to  
16 prevent him from starting the fire upon which the insurance claim  
17 was based. id at 262. Even with knowledge of their son's  
18 propensities, that fire upon which a claim was made was still an  
19 occurrence. id at 265-266. The exact purpose of the American  
20 Casualty policy is to insure for negligence and the insured's  
21 failure to do what it arguably could have done had it exercised  
22 better care. In short, if coverage is taken away when the  
23 insured should have known, then, there would only be coverage in  
24 instances where the insured could not be held legally liable. In  
25  
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31 BARNETT REPLY  
32 BRIEF : 5  
1500\4857\reply

*Evans, Craven & Lackie, P.C.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

06288-8887-124-15151

1 the context of a general liability policy, the "should have  
2 expected" argument doesn't make much sense.

3  
4 American Casualty fails to present affidavits containing  
5 admissible facts demonstrating that anyone knew of the  
6 McDonald/Gabrielson relationship before it was over. Therefore,  
7 summary judgment must be granted. Grimwood v. Puget Sound, 110  
8 Wn.2d 355, 359-360, 753 P.2d 517 (1988). Seven Gables v. MGM/UA  
9 Entertainment, 106 Wn. 2d 1, 13, 721 P.2d 1 (1986). The  
10 McDonald/Gabrielson affair was unexpected from the standpoint of  
11 the Burien church. General expectation raises no factual issue.  
12 It is a policy interpretation argument which is erroneous at law.

13  
14  
15  
16 2. Prior Knowledge Must be Shown.

17 American Casualty Company cannot distinguish Gruol Constr.  
18 v. Insurance Co., 11 Wn.App. 632, 524 P.2d 427 (Div. One, 1974).  
19 Therein, the court found that the knowledge of an employee of a  
20 corporation, Gruol Construction Company, Inc., could not be  
21 imputed to disqualify coverage. Affirming a judgment finding two  
22 insurers jointly and severally liable to Gruol Construction  
23 Company, Inc., and Kenneth R. Gruol and Carol Gruol, the court  
24 noted that the defective work of the employee came within the  
25 definition of "accident" and "occurrence" since Kenneth Gruol had  
26 no knowledge of the defective work until after its discovery.  
27  
28  
29  
30

31 BARNETT REPLY  
32 BRIEF : 6  
1500\4857\reply

*Evans, Craven & Lackie, P.C.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154 421/2883 88294

1 American Casualty also cites this Court to an unpublished  
2 Division Two opinion entitled Port Angeles School District No.  
3 121 v. The Travelers Indemnity Company, et al.. Therein, it was  
4 found that the School District was not covered for its  
5 discriminatory employment practices adopted by its board. This  
6 opinion may not be cited as an authority. RAP 10.4 (h). More  
7 importantly, though, this case does not address the question at  
8 issue in the present case. In that case, the district attempted  
9 to argue that the "real employers" of school employees were the  
10 citizens of Port Angeles, who would not have had knowledge of  
11 the practices, rather than the district board and superintendent.  
12 This would be the same as the directors of a corporation arguing  
13 that the "real corporation" was the shareholders. Rightly, the  
14 Court of Appeals rejected this argument ruling that the district  
15 was responsible for the discriminatory practices adopted by its  
16 board members and superintendent. The case does not address the  
17 issue of whether the intent of a particular employee can be  
18 imputed to an entity, or even if the intent of a particular  
19 director can be imputed to the entity as a whole.

20 American Casualty Company also cites this court to cases in  
21 other jurisdictions in which the intent of executive officers,  
22 and directors may be imputed to a corporate entity to defeat  
23

24  
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31 BARNETT REPLY  
32 BRIEF : 7  
1500\4857\reply

*Evans, Craven & Lackie, P.C.*

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE  
SEATTLE, WASHINGTON 98104

(206) 386-5555

15154-42172883-88235

1 coverage. Contrary authority exists. See, Glens Falls Indemnity  
2 Co. v. Atlantic Bldg. Corp., 199 F.2d 60 (4th Cir., 1952),  
3 Western Casualty & Surety Co. v. Aponaug Mfg. Co., 197 F.2d 673  
4 (5th Cir., 1952), Owl & Turtle, Inc. v. Travelers Indem. Co., 554  
5 F.2d 196 (1977). Moreover, the cases cited by American Casualty  
6 Company do not apply to the present case. It is undisputed that  
7 Jack McDonald was neither a board member nor an executive officer  
8 of the Burien church.

9  
10  
11 In Nassau Ins. Co. v. Mel Jo-Jo Cab Corp., 423 N.Y.S.2d 813,  
12 102 Misc.2d 455 (1980), affirmed by memorandum decision in Nassau  
13 Ins. Co. v. Mel Jo-Jo Cab Corp., 432 N.Y.S.2d 29, 78 A.D.2d 549  
14 (1980), the court noted the distinction between instances in  
15 which an insurer attempts to impute the knowledge of an executive  
16 officer and the instances in which an insurer attempts to impute  
17 the knowledge of a mere employee. The court notes at pages 815-  
18 817 that "caused by an accident" cases may be divided into three  
19 categories. The first category of cases is where the act is  
20 committed by the insured, himself. The second category of cases  
21 is where the act is committed by an executive officer of a  
22 corporation. The third category is where the act is committed by  
23 an employee of a corporation.

24  
25 In instances where the act is committed by a corporate  
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31 BARNETT REPLY  
32 BRIEF : 8  
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1 officer, a number of factors must be considered to determine  
2 whether there exists a sufficient identity of interest to deem  
3 the act of the officer as that of the corporate entity. See, Owl  
4 & Turtle, Inc. v. Travelers Indem. Co., 554 F.2d 196 (5th Cir.,  
5 1977).  
6

7  
8 However, in instances where the act is committed by an  
9 employee, the intent of the employee cannot be imputed unless  
10 done with the knowledge and consent of the corporation. See,  
11 Nassau Ins. Co. v. Mel Jo-Jo Cab Corp., 423 N.Y.S.2d 813, 102  
12 Misc.2d 455 (1980), affirmed by memorandum decision in Nassau  
13 Ins. Co. v. Mel Jo-Jo Cab Corp., 432 N.Y.S.2d 29, 816-817, 78  
14 A.D.2d 549 (1980), and see, Owl & Turtle, Inc. v. Travelers  
15 Indem. Co., 554 F.2d 196, 198-199 (5th Cir., 1977).  
16

17  
18 In the present case it is undisputed that Jack McDonald was  
19 not on the Senior Board of the Community Chapel and Bible  
20 Training Center of Burien. It is also undisputed that no one  
21 knew of his activities. Therefore, his knowledge could not be  
22 imputed to the Burien church even in jurisdictions which allow  
23 the act of an employee to be imputed to a corporate entity in  
24 some circumstances. American Casualty fails to present  
25 affidavits containing admissible facts demonstrating that anyone  
26 knew of the McDonald/Gabrielson relationship before it was over.  
27  
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31 BARNETT REPLY  
32 BRIEF : 9  
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1 Therefore, summary judgment must be granted. Grimwood v. Puget  
2 Sound, 110 Wn.2d 355, 359-360, 753 P.2d 517 (1988), and Seven  
3 Gables v. MGM/UA Entertainment, 106 Wn. 2d 1, 13, 721 P.2d 1  
4 (1986).  
5

6 3. Segregation  
7

8 A. Impermissible at law

9 American Casualty Company specifically insured for  
10 continuing occurrences, and its own policy recognizes that a  
11 continuing occurrence cannot be segregated. As a matter of law,  
12 their was only one occurrence.  
13

14 It is manifest that the purpose of an insurance contract is  
15 to insure. A policy must be given an interpretation which makes  
16 it operative rather than inoperative. Scales v. Skagit Cy. Med.  
17 Bureau, 6 Wn.App. 68, 70, 491 P.2d 1338 (Div. One, 1971). Under  
18 the interpretation of a continuing occurrence taken by American  
19 Casualty, there would rarely ever be coverage. The insurer would  
20 be able to search through the period of the occurrence until it  
21 found something upon which it could deny coverage for the whole  
22 occurrence.  
23  
24  
25

26 In the history of insurance contracts, coverage used to  
27 defined solely in terms of "accidents." Accidents covered only  
28 isolated events. Standard forms were then changed to define  
29  
30

31 BARNETT REPLY  
32 BRIEF : 10  
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1 coverage in terms of occurrences, the definition of which  
2 included continuous exposure to conditions. 1 R. Long, Liability  
3 Insurance, Section 1.25. In interpreting industry wide revisions  
4 such as this, it is helpful to look at what insurance  
5 underwriters intended. United Pac. Ins. v. Van's Westlake Union,  
6 34 Wn.App. 708, at 713, 664 P.2d 1262 (Div. One, 1983). The  
7 intent behind definition change from the term accident to the  
8 term occurrence was to broaden coverage. See, 1 R. Long,  
9 Liability Insurance, Section 1.25.

10  
11  
12  
13 The American Casualty policy must be read as it would be  
14 understood by an ordinary man. Dairyland Ins. Co. v. Ward, 83  
15 Wn.2d 353, 358, 517 P.2d 966 (1974). An ordinary man reading the  
16 definition of occurrence in the present policy, which  
17 specifically includes coverage for repeated or continuous  
18 exposure to conditions, would not expect that this language  
19 somehow limited coverage. The definition of "occurrence"  
20 broadens the scope of the risks insured. It does not broaden the  
21 scope of the risks excluded as urged by American Casualty. A  
22 continuing occurrence which includes exposure to a covered  
23 condition such as the present case is covered for the entire  
24 occurrence as a matter of law upon interpretation of the American  
25 Casualty policy.  
26  
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31 BARNETT REPLY  
32 BRIEF : 11  
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1                   B. Impermissible by undisputed fact

2                   Failing on its policy arguments, American Casualty now makes  
3 a last ditch effort to avoid paying by claiming that there may be  
4 other things in the Gabrielson award which may give rise to other  
5 arguments of non-coverage. Therefore, this court must now either  
6 retry the entire case or let the insurance company off the hook  
7 entirely. American Casualty's own authorities are contrary to  
8 its position.

9                   American Casualty relies heavily upon Duke v. Hoch, 468 F.2d  
10 973 (Fifth Cir., 1972) for the proposition that the burden is  
11 upon the insured to segregate an unsegregated award. The court  
12 in that case held that the burden is on an insured to segregate  
13 an award which represents covered acts and uncovered acts, after  
14 the insurer met its burden of proving an uncovered act. The  
15 court in that case actually wrote at page 976:

16                   In its defense of the garnishment suit the  
17 burden was upon Home [the insurer] to  
18 establish that the judgment entered against  
19 its insureds and sought to be collected  
20 included damages for noncovered acts....  
21 (material in brackets added)

22 Then, it wrote at page 977:

23                   Once Home established that the unallocated  
24 verdict represented by the judgment was for  
25 noncovered acts, the burden became Duke's to  
26 prove the precise portion of the unallocated  
27 verdict representative of acts for which Home

28 BARNETT REPLY  
29 BRIEF : 12  
30 1500\4857\reply

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1 is responsible....

2 American Casualty evidently asserts that it meets its burden with  
3 no proof whatsoever.  
4

5 It speculates that damages may have been awarded for the  
6 acts of people other than Jack McDonald, and makes the ridiculous  
7 assertion there may be dispute to the fact that the Gabrielson  
8 award is based upon the sexual relationship between Jack McDonald  
9 and Carol Gabrielson. These arguments are not worthy of any  
10 response. Speculation does not create issues of fact or  
11 sufficiently rebut the propriety of summary judgment. Seven  
12 Gables v. MGM/UA Entertainment, 106 Wn. 2d 1, 13, 721 P.2d 1  
13 (1986).  
14  
15  
16

17 The undisputed facts herein are that the Gabrielsons  
18 received an award for the negligence of Jack McDonald and  
19 defamation made by Jack McDonald. The church was held  
20 vicariously liable for the acts of McDonald. See, VERDICT FORM  
21 attached to the Affidavit of Tim Donaldson annexed to DEFENDANTS  
22 JOINT MOTION RE: COVERAGE FOR CHURCH ENTITY. American Casualty  
23 fails to demonstrate how either one of these claims is not  
24 covered with respect to the church entity.  
25  
26  
27

28 Instead, it argues under Wear v. Farmers Ins. Co., 49  
29 Wn.App. 655, 745 P.2d 526 (Div. Two, 1987) that it is not  
30

31 BARNETT REPLY  
32 BRIEF : 13  
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1 collaterally estopped by the findings in the Gabrielson action,  
2 and it may relitigate to determine the "real" basis of the  
3 Gabrielson award. Admittedly, under Wear an insurer does not  
4 lose its right to litigate a legitimate coverage issue by virtue  
5 of defending an underlying action under a reservation of rights.  
6 However, the opinion therein cannot be stretched to the absurd.  
7 Certainly, the court in Wear did not envision that an insurer  
8 could relitigate an entire case to prove that the liability  
9 therein was based upon the acts of someone other than the  
10 tortfeasor. If such is the case, the Barnetts respectfully  
11 submit that American Casualty should attempt to pin liability on  
12 Mickey Mouse in its relitigation of the Gabrielson matter. He  
13 certainly wasn't an employee of the church. Consequently, there  
14 is no risk that he could independently qualify for coverage.  
15

16  
17 Moreover, Duke v. Hoch, 468 F.2d 973 (Fifth Cir., 1972) does  
18 not even apply to the present case. The present case is one in  
19 which there was damage from a continuing occurrence. In this  
20 situation, the other authority cited by American Casualty states:  
21

22  
23 In a dispute between an insured who has  
24 sustained damages of a continuing nature, and  
25 the insurance carriers providing coverage,  
26 the burden of apportionment is on the  
27 carriers.  
28

29 21 J. Appleman, Insurance Law & Practice, Section 12281 (1980)  
30

31 BARNETT REPLY  
32 BRIEF : 14  
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1 citing Gruol Constr. v. Insurance Co., 11 Wn.App 632, 524 P.2d  
2 427 (Div. One, 1974).  
3

4 Washington follows the doctrine of "efficient proximate  
5 cause" which is simply an insurance law principal of proximate  
6 cause that is contrary to exactly the type of maneuver American  
7 Casualty is attempting in the present case. In Villella v.  
8 Pemco, 106 Wn.2d. 806, 816, 725 P.2d 957 (1986) the court wrote:  
9

10 Like this court in Graham, the California  
11 courts applied an "efficient proximate cause"  
12 analysis in determining coverage under  
13 insurance policies which contain clauses  
14 excluding certain risks or perils. The basis  
15 of these decisions is that where there is one  
16 cause which sets other causes in motion,  
17 there is coverage for the loss if the cause  
18 which set the others in motion is an included  
19 risk under the terms of the policy. This is  
20 so even though there might be an excluded  
21 risk which also contributed to the loss or  
22 damage.... (citations omitted)

23 The insurer cannot escape liability by searching for "other"  
24 causes when the primary cause is covered. See also, State Farm  
25 Mutual Automobile Ins. Co. v. Partridge, 109 Cal.Rptr. 811, 514  
26 P.2d 123 (1973) and Underwriters Ins. Co. v. Purdie, 193  
27 Cal.Rptr. 248, 145 Cal. App.3d 57 (1983).

28 Causation, like any other issue, is susceptible to summary  
29 judgment. LaPlante v. State, 85 Wn.2d 154, 531 P.2d 299 (1975).  
30 In the present case, it is undisputed that the relationship

31 BARNETT REPLY  
32 BRIEF : 15  
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1 between Carol Gabrielson and Jack McDonald as pastor/parishioner  
2 and counselor/counselee was fairly ordinary until approximately  
3 September of 1985 when it changed drastically. At that time, the  
4 two began to engage in a sexual relationship that lasted over a  
5 period of months. See, AFFIDAVIT OF CAROL A. GABRIELSON IN  
6 SUPPORT OF JOINT MOTION FOR SUMMARY JUDGMENT UPON COVERAGE FOR  
7 CHURCH ENTITY. This caused her great emotional upset. See,  
8 AFFIDAVIT OF PHILIP G. LINDSAY filed herein on April 8, 1988. It  
9 is also undisputed that McDonald did not receive direction or  
10 approval for his acts from those at Burien. See, deposition of  
11 Jack L. McDonald, pages 43 through 47. No reasonable mind could  
12 conclude that the sex acts of Jack McDonald were not the  
13 "efficient proximate cause" of the injury to the Gabrielsons or  
14 the damage award in the Gabrielson case upon the negligence  
15 claim.  
16

17  
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21 C. Impermissible by Estoppel

22 The "segregation issue" is the latest in a long line of  
23 attempts by American Casualty to add a new non-coverage defense.  
24 It first issued a reservation of rights by letter dated August 7,  
25 1986 raising only the "occurrence" issue. It attempted to add  
26 the "professional services" issue by a letter dated September 30,  
27 1986. By letter dated November 30, 1987, it finally adds the  
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30

31 BARNETT REPLY  
32 BRIEF : 16  
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1 "bodily injury" issue, and a variety of other issues.  
2 Thereafter, it files this action on February 4, 1988 attempting  
3 to add "defamation" issues which it expressly admitted earlier.  
4 See, AFFIDAVIT OF TIM DONALDSON IN SUPPORT OF MOTION TO REVISE  
5 SUMMARY JUDGMENT ORDERS. Now it wishes to assert the "no  
6 segregation, no coverage" issue.  
7  
8

9 American Casualty Company is not immune to the mandates of  
10 the Washington Administrative Code. In another case involving  
11 this same American Casualty Company, the Court of Appeals has  
12 held that an isolated violation of the unfair trade practices  
13 promulgated by the Insurance Commissioner constitutes a per se  
14 violation of the Washington Consumer Protection Act. Evergreen  
15 Int'l v. American Cas., 52 Wn.App. 548, 761 P.2d 964 (Div. One,  
16 1988).  
17  
18  
19

20 The Washington Administrative Code requires an insurer to  
21 act reasonably promptly upon communications with respect to  
22 claims. WAC 284-30-330. Further, investigation of a claim must  
23 be completed within the first 30 days unless it cannot be  
24 reasonably completed during that time. WAC 284-30-370. The  
25 insured must be notified of specific policy provisions upon which  
26 coverage may be denied. If more time is needed to make a  
27 coverage decision, the company must notify the insured that  
28  
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30

31 BARNETT REPLY  
32 BRIEF : 17  
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1 additional time is needed. WAC 284-30-380.

2 The insurer must specify its coverage defenses. Non-waiver  
3 agreements and reservations of rights are not favored and are  
4 strictly construed. In Weber v. Biddle, 4 Wn.App. 519, 483 P.2d  
5 155 (Div. One, 1971), the court wrote at page 524:  
6

7 Such agreements are construed strictly  
8 against the insurer and liberally in favor of  
9 the insured, and will not be extended beyond  
10 the exact terms of the agreements. In  
11 addition, such an agreement will not operate  
12 to prevent a waiver if it is vaguely or  
13 ambiguously drafted. Likewise, a general  
14 notice of reservation of rights failing to  
15 refer specifically to the policy provision  
16 upon which the insurer wished to rely may be  
17 insufficient to prevent waiver or estoppel  
18 from arising from the insurer's control of  
19 the defense of the suit brought against the  
20 insured.

21 An insurer cannot convert its general attempts to absolve itself  
22 from liability into specific policy defenses.

23 American Casualty now attempts to assert that its insured  
24 had an obligation to segregate a continuing occurrence. It  
25 states that it tried to intervene to ask special interrogatories  
26 in the Gabrielson case, but it was not allowed. That attempt to  
27 defeat coverage, like its others, was general and non-specific.  
28 Arguably, American Casualty tried to intervene to submit  
29 interrogatories upon the coverage issues it had developed to that  
30 point. However, the present assertion that its attempt was to

31 BARNETT REPLY  
32 BRIEF : 18  
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1 segregate a continuing occurrence into covered and non-covered  
2 elements is unbelievable and contrary to the position it has  
3 taken throughout the above-entitled declaratory action. From the  
4 outset of this proceeding American Casualty has taken the  
5 position the nothing is covered in any instance.  
6  
7

8 It started with the proposition that nothing was bodily  
9 injury. It then argued that everything was excluded professional  
10 services. It then again argued that nothing was bodily injury.  
11 Now it argues that "something" was non-covered, and it would have  
12 separated out these elements, given the opportunity.  
13

14 In Northwestern Nat. Ins. Co. v. R.S. Armstrong, 627 F.Supp.  
15 951 (Dist. S.C., 1985) the court discussed the application of the  
16 doctrine of collateral estoppel to a reservation of rights.  
17 Therein, the court held that an insurer defending under a  
18 reservation of rights is estopped from asserting policy defenses  
19 that it fails to specify in its reservation. Prejudice is  
20 presumed since the insured must know the insurer's position from  
21 the outset to allow it to make informed decisions regarding its  
22 interests. In the setting of a no reservation defense,  
23 Washington has adopted exactly the same rule. See, Transamerica  
24 Ins. v. Chubb & Son, 16 Wn.App. 247, 554 P.2d 1080 (Div. One,  
25 1976).  
26  
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31 BARNETT REPLY  
32 BRIEF : 19  
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1           Herein, American Casualty relied solely upon the  
2 "occurrence" issue and the "professional services" issue for over  
3 a year before attempting to add a laundry list of other issues.  
4 Another year has now passed, judgment has been entered, and  
5 American Casualty now wishes to add the apportionment issue.  
6 Prejudice must be presumed with respect to any coverage issue  
7 other than the "occurrence" issue and the "professional services"  
8 issue, and prejudice is actual with respect to the new  
9 "segregation" issue.  
10

11  
12           The provisions of the Washington Administrative Code would  
13 be meaningless if American Casualty is permitted to engage in the  
14 conduct attempted here. It cannot be allowed to continually add  
15 new issues and defenses in violation of its good faith duty to  
16 give full, specific, and timely notice to its insured. This is  
17 especially true in instances such as the present case where a  
18 reservation of rights defense is undertaken. See, Tyler v.  
19 Grange Ins. Ass'n. 3 Wn.App. 167, 473 P.2d 193 (Div. One, 1970),  
20 and see Tank v. State Farm. 105 Wn.2d 381, 715 P.2d 1133 (1986).

21 4. Response with respect to Separate McDonald coverage.

22           American Casualty has asked this court to grant summary  
23 judgment with respect to coverage for Jack McDonald. As detailed  
24 herein and in DEFENDANTS' JOINT BRIEF IN SUPPORT OF JOINT MOTION  
25

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31 BARNETT REPLY  
32 BRIEF : 20  
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1 FOR SUMMARY JUDGMENT UPON COVERAGE FOR CHURCH ENTITY, the intent  
2 of Jack McDonald is irrelevant to coverage for the church entity.  
3 However, his intent is relevant to his separate coverage, and  
4 summary judgment thereon is improper.  
5

6 In Rodriguez v. Williams, 107 Wn.2d 381, 729 P.2d 627 (1986)  
7 the court interpreted an intentional act exclusion which applied  
8 to personal injuries expected or intended by the insured.  
9 Therein, the court specifically rejected establishment of an  
10 objective standard to determine the availability of coverage. id  
11 at page 386. As an exception to this general rule, the court  
12 held that intent could be inferred in sex abuse cases involving a  
13 criminal act. id. at page 387. In that case, the sex abuse was  
14 incest with a 15 year old stepdaughter which is a class B  
15 felony. Similarly, Western National Assur. v. Hecker, 43 Wn.App.  
16 816, 719 P.2d 954 (Div. Two, 1986) involved a forcible anal rape,  
17 and Pemco v. Rash, 48 Wn.App. 701, 740 P.2d 370 (1987) involved  
18 the sexual molestation of a 9 year old child.  
19  
20  
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23

24 In contrast, the sexual relationship in the present case  
25 involved the seemingly consensual affair between two adults.  
26 The claim was not for any criminal conduct. Rather, it was based  
27 upon one of the person's psychological dependence upon the other.  
28 Throughout the course of the affair, Jack McDonald believed that  
29  
30

31 BARNETT REPLY  
32 BRIEF : 21  
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5 FEB 27 1989

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IN COURT OF CPD'S OFFICE

A.M. FEB 24 1989 P.M.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiff, )

v. )

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

Defendants. )

No. 88-2-00947-9

BRIEF IN OPPOSITION  
TO DISMISSAL OF BARNETTS

I. FACTS

Don Barnett is the original pastor of the Community Chapel and Bible Training Center. During the year 1988, a split occurred within the church between Barnett and members of the Board of Senior Elders.

Presently, Don Barnett maintains services for approximately 350 church followers. These followers formerly attended the church before the split, and they tithed portions of their incomes which were used to obtain church assets. Approximately the same number of church followers presently attend services conducted by the senior board members.

Don Barnett, personally and as original pastor of the church, brought an action in King County Superior Court, Cause

BRIEF IN OPPOSITION TO  
DISMISSAL OF BARNETTS  
1500\4857\804 - Page: 1

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ORIGINAL

15154 1-28-89 782828 68318

1 No. 88-2-04148-2, against senior elder board members, Jack Hicks,  
2 Jack H. Dubois, and E. Scott Hartley. The lawsuit centers around  
3 control of the church and its assets. Additionally, Don Barnett  
4 has made claims therein regarding his personal claim to the  
5 church parsonage.  
6

7  
8 On December 20, 1988, the Honorable Norman Quinn entered  
9 orders which give control of the church assets to the Senior  
10 Elder Board members. See, certified copies of orders attached to  
11 Affidavit of Don Barnett in Opposition to Motion for Dismissal.  
12 Don Barnett has appealed Judge Quinn's decision and continues to  
13 make claim for control of the church and its assets on behalf of  
14 himself and those who attend church services which he conducts.  
15 See Affidavit of Don Barnett in Opposition to Motion for  
16 Dismissal.  
17  
18

19  
20 Don Barnett currently resides in the parsonage to which the  
21 church is the record owner. Don Barnett's claim to personal  
22 interest in the parsonage has not yet been determined in King  
23 County Cause No. 88-2-014148-2. See Affidavit of Don Barnett in  
24 Opposition to Motion for Dismissal.  
25

26 Those who presently control the church assets do not  
27 represent the interests of Don Barnett and those who attend  
28 church services conducted by Don Barnett. See Affidavit of Don  
29  
30

31 BRIEF IN OPPOSITION TO  
32 DISMISSAL OF BARNETTS  
1500\4857\804 - Page: 2

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15154 4-21-2885-88314

1 Barnett in Opposition to Motion for Dismissal. Attorneys  
2 representing the church in the above-entitled declaratory action  
3 do not represent Don Barnett. See, Glassman affidavit.  
4

5 A judgment was entered against the Community Chapel and  
6 Bible Training Center in Pierce County, Cause No. 86-2-02792-6 on  
7 November 23, 1988, in the amount of one hundred forty-seven  
8 thousand nine hundred eighty-eight dollars and ninety-one cents  
9 (\$147,988.91) upon claims of Ira and Carol Gabrielson. See  
10 exhibits to Affidavit of Tim Donaldson annexed to defendants'  
11 joint motion re: coverage for church entity.  
12  
13

14 II. PROCEDURE

15 American Casualty Company of Reading Pennsylvania has moved  
16 to dismiss Don and Barbara Barnett from the above-entitled  
17 declaratory action. Don Barnett objects to his dismissal and  
18 must be permitted to remain a party in the above-entitled  
19 declaratory action to protect his interest and the interests he  
20 represents in church assets which may be subject to execution  
21 upon the Gabrielson award if there is no insurance coverage.  
22  
23

24 III. LAW AND ARGUMENT

25 "One whose interests are affected by declaratory judgment  
26 has standing and is entitled to be heard." American States  
27 Insurance Company v. Breesnee, 49 Wash. App. 642, 645, 745 P.2d  
28  
29

30 BRIEF IN OPPOSITION TO  
31 DISMISSAL OF BARNETTS  
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1 518 (Division 3, 1987). RCW 7.24.110 provides:

2 When declaratory relief is sought, all persons shall  
3 be made parties who have or claim any interest which  
4 would be affected by the declaration.... (emphasis  
5 added)

6 Don Barnett claims a direct personal interest which would be  
7 affected if there is no insurance coverage for the church, and he  
8 claims an interest as a representative which would be affected if  
9 no coverage exists.  
10

11 1. Personal Interest

12 The Gabrielson judgment was entered on November 23, 1988.  
13 Pursuant to the terms of RCW 4.56.190 et. seq., the real property  
14 of the Community Chapel and Bible Training Center is subject to  
15 execution upon the Gabrielson award.  
16

17 Don Barnett claims a personal interest in a parsonage to  
18 which the record owner is the Community Chapel and Bible Training  
19 Center. His personal claim to this real property has not been  
20 fully resolved in King County Cause No. 88-2-04148-2.  
21

22 In Safeco Insurance Company v. Dairyland Mutual Insurance  
23 Company, 74 Wn.2d 669, 446 P.2d 568 (1968), the Supreme Court for  
24 the State of Washington ruled that an excess insurer has standing  
25 in a declaratory action involving the existence of primary  
26 coverage. The Court ruled that the excess insurer has an  
27 interest which must be represented since it may be held liable if  
28  
29  
30

31 BRIEF IN OPPOSITION TO  
32 DISMISSAL OF BARNETT'S  
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1 no primary coverage exists.

2 In the present case, Don Barnett claims a direct personal  
3 interest in church property which may be liable to satisfy the  
4 Gabrielson judgment if no insurance coverage exists. This  
5 interest is claimed in property which is Don Barnett's home.  
6 Clearly, he has an immediate and real interest to see that the  
7 Gabrielson award is covered by insurance.  
8  
9

10 2. Representative Interest

11 In Vovos v. Grant, 87 Wn.2d 697, 555 P.2d 1343 (1976), it  
12 was held that a party may have standing in both a personal or  
13 representative capacity. In that case, it was determined that  
14 the Spokane County public defender had standing in his represen-  
15 tative capacity of legal for indigent and certain other juveniles  
16 to challenge a court order which affected such individuals.  
17  
18

19 In the present case, the Community Chapel and Bible Training  
20 Center is split. Roughly half of the present followers attend  
21 services conducted by Don Barnett. These followers previously  
22 tithed portions of their income which were used to obtain church  
23 assets. The interests of these persons are not represented by  
24 those who presently control the church assets. Don Barnett does  
25 speak for these persons.  
26  
27  
28

29 In Presbytery of Seattle v. Rohrbaugh, 79 Wn.2d 367, 485  
30

1 P.2d 615 (1971), cert. den. in 405 U.S. 996, 92 S.Ct. 1246, 31  
2 L.Ed.2d 465, reh. den. in 406 U.S. 939, 92 S.Ct. 1762, 32  
3 L.Ed.2d 140, the court ruled that the representative of certain  
4 members of a church which had split possessed standing in an  
5 action to determine the right to church assets. The court cited  
6 the members' interest in preserving the church property. id. at  
7 369.  
8

9  
10 In the case of In re: Bridge's Estate, 40 Wn. 2d 133, 241 P.  
11 2d 439 (1952) it was ruled that residuary legatees are necessary  
12 parties to a proceeding for construction of Will which might  
13 diminish the amount of the estate left available to pass to the  
14 residuary legatees. That case is analogous to the present case.  
15 In the present case, the availability of insurance coverage  
16 directly affects the assets of the church. If no coverage  
17 exists, the church assets may be executed upon to satisfy the  
18 Gabrielson judgment.  
19

20  
21 Depending upon resolution of this declaratory action, the  
22 church may be comprised of substantially diminished assets at the  
23 time in which the control of those assets is finally determined.  
24 Therefore, both sides of the church split are entitled to be  
25 heard upon issues which may affect church assets.  
26

27  
28  
29 3. Dismissal Improper

30  
31 BRIEF IN OPPOSITION TO  
32 DISMISSAL OF BARNETTS  
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1 In any event, the Motion for Dismissal by American Casualty  
2 Company is improper. A voluntary dismissal is an improper  
3 procedure to dismiss less than all claims. In commenting upon  
4 motions for dismissal, the Court of Appeals wrote in Orsi v.  
5 Aetna Insurance, 41 Wash. App. 233, 246, 703 P.2d 1053 (1985):  
6

7  
8 The Federal rules in cases construing them make a  
9 clear distinction between a "claim" and an "action".  
10 Thus, when CR 41(a) refers to dismissal of an "action",  
11 there is no reason to suppose the terms intended to  
12 include the separate claims which may make up the  
13 action. When "dismissal of a claim" is intended, as in  
14 Rule 41(b), that concept is spelled out clearly. Thus,  
15 an amendment under CR 15(a) is technically the proper  
16 procedure, rather than voluntary dismissal under CR  
17 41(a).

18 Consequently, American Casualty's attempts to separate claims  
19 against Don Barnett in this declaratory action and have them  
20 dismissed is improper. Voluntary dismissal may be taken only if  
21 the whole action is to be dismissed.

#### 22 IV. CONCLUSION

23 Defendants Barnett prefer that this court rule upon the  
24 merits of their standing to continue to participate in this  
25 declaratory action. A direct personal interest is claimed in  
26 certain church assets and a representative interest is claimed in  
27 the remainder of church assets which may be subject to execution  
28 if no coverage exists on the Gabrielson award. Therefore, Don  
29 Barnett is entitled to be heard.  
30

31 BRIEF IN OPPOSITION TO  
32 DISMISSAL OF BARNETTS  
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