



## **CHILD SEXUAL ABUSE AND INSURANCE COVERAGE**

### **Avoiding Common Pitfalls**

*By Gregory Love & Kimberlee Norris*

Every church, whether multi-campus or recent plant, deals with insurance coverage. Ministry leaders tend to gravitate to the least expensive policy options and are often not as knowledgeable as they should be when securing coverage related to child sexual abuse risk. Unfortunately, this reality is revealed only when an allegation arises.

Clearly, child sexual abuse is a foreseeable risk. In addition to implementing an effective safety system ([see prior articles](#)), simple financial stewardship requires a meaningful evaluation of current insurance relationships, coverages, limits and policy terms.

#### **Sexual Abuse Fire Drill**

In classrooms across the country, school administrators lead faculty and students through mock disasters (fires, shootings, bomb threats, tornados, etc.) to ensure the existence of sound safety plans, communicate expectations to all involved and determine any necessary changes or improvements.

A failure to drill a foreseeable disaster can lead to catastrophic results, generally with little or no warning. In the midst of a crisis, it's too late to prepare; the catastrophic event simply reveals whether the ministry took reasonable steps to *prepare* for the foreseeable event. One of the most common deficiencies revealed in a sexual abuse crisis relates to insurance: incorrect coverages, insufficient limits, failure to notify the carrier and claims-made vs. occurrence terms, among other issues. A *fire drill* related to sexual abuse insurance issues is essential for every ministry.

#### **Insurance Fire Drill**

Assume your church receives a sexual abuse allegation. *For purposes of this exercise*, assume the allegation involves multiple victims and the accused is a trusted staff member or volunteer. As to existing insurance coverage, the drill is designed to answer these questions:

- Does your church have the correct coverages for a multi-victim claim?
- Does your church have sufficient coverage (types and limits) for a multi-victim claim?
- Are there endorsements, riders, limitations or qualifications related to sexual abuse coverage?

The majority of ministries purchase insurance coverage through an insurance agent or broker. During the insurance purchase or renewal process, the primary coverage issue negotiated relates to Property & Casualty (P&C). The P&C portion of the premium will typically account for the bulk of the total insurance premium. Without an explicit Sexual Misconduct endorsement, sexual abuse claims typically fall within General Liability policy coverage, and most general liability coverage will now include a separate sexual misconduct section. Few policyholders are familiar

with the terms of the General Liability policy, the limits related to any sexual abuse claim, or terms requiring notice to the carrier when a ministry receives ‘facts that could give rise to a claim’.

### **Failures Revealed in Crisis**

When a ministry fails to take the opportunity to ‘drill’ a foreseeable risk, deficiencies are revealed with a crisis arises.

Several years ago, our law firm (Love & Norris) was retained by a large church addressing sexual abuse allegations related to a trusted staff member, with four female victims from seven to nine years of age. The fact patterns related to the abuse were conclusive and horrific, and we advised immediate care and support for the abuse survivors and their families. When asked, church leaders indicated that the ministry had insurance providing \$1million/\$3million in coverage. When asked whether their insurance carrier was notified when the initial ‘facts’ came to light, leaders replied ‘no’.

#### ***At this point, it was too late to ‘drill’.***

Several significant shortcomings were quickly revealed.

#### No Relationship with a Knowledgeable Agent

First, church leaders could not recall the name of their insurance agent. As a result, the ministry could not quickly and easily understand what coverages were in place: Commercial General Liability Policy (CGL), Errors & Omissions Policy (E&O), Directors & Officers Policy (D&O) and/or Umbrella Policy. This delay was critical: the crisis unfolded on a Saturday and escalated quickly.

A church must have an agent who is knowledgeable about the risks facing a ministry (including child sexual abuse) and be accessible to navigate issues that arise – *at the time of purchase and when an outcry or allegation occurs.*

#### Insufficient Insurance Coverage

Second, the underlying policy did *not* provide \$1million/\$3million in coverage. Upon closer inspection, the policy included a specific ‘Sexual Misconduct’ provision which limited coverage to \$100K/\$300K for sexual abuse claims. The church had no E&O, D&O or Umbrella coverages.

In the midst of crisis, these leaders learned the church’s insurance coverage was grossly inadequate, and it was too late to supplement or improve coverage amounts. In this case, the insurance carrier tendered the \$300,000 aggregate, satisfying its obligation under the CGL policy. The church was forced to absorb defense costs and indemnity out-of-pocket, and quickly dwindled from a church with thirty-six full-time staff members to nine. As of this writing, it is unclear whether the church will survive.

Before crisis hit, ministry leaders should have secured sufficient coverage limits and considered purchasing additional supplemental and umbrella policies. When asked about the church’s insurance agent, the executive pastor said the relationship was inherited from a predecessor. In the midst of crisis, *no one knew the identity of the agent or his contact information.* It was later learned that this agent knew very little about sexual abuse risk or related coverage solutions.

### Notice to Insurance Carrier

Third, leaders indicated they were informed about the allegations early on but failed to notify criminal authorities *or their insurance carrier* because the reports were ‘hearsay’. Church leaders were unfamiliar with mandatory reporting requirements in their state and the ‘notice’ requirement contained in all insurance policies.

The ‘notice’ provision generally reads something like this:

In the event the insured receives information about facts that could give rise to a claim, the insured is required under this policy to notify the insurance carrier immediately, but not later than 24 hours after receipt of this information.

Church leaders had received an allegation several months earlier but considered the information *hearsay* – an oral report from a parent about inappropriate touch described by their seven year-old daughter. This communication should have *immediately* triggered a report to law enforcement, a leave of absence for the staff member for the duration of the criminal investigation, and communication to the church’s insurance carrier. Failure to notify the carrier in this circumstance can result in a ‘reservation of rights’ or a denial of coverage by the carrier. Either scenario places the ministry in an adversarial position with its insurance carrier. In the situation described above, the carrier weighed its options and simply tendered its limits because the aggregate (\$300,000.00) was insignificant compared to the cost of filing a Federal Court lawsuit seeking a Declaratory Judgment against the church, asking a court to find that the church breached its duty to notify the carrier, thereby relieving the carrier of its obligations to provide indemnity or defense.

### **Value of the Fire Drill**

The Fire Drill concept can be helpful in assessing insurance availability and sufficiency. By thinking through a multi-victim allegation, a ministry can evaluate all insurance instruments for potential coverage (CGL, D&O, E&O, Umbrella, etc.), confirm limits, and clearly understand limitations, if any, providing an opportunity to secure appropriate coverages and limits. The ministry should include its insurance agent or broker in this evaluation. For some ministries, other creative solutions may be available.

Church leaders should clearly understand state reporting requirements and *when* to notify the carrier, as well as *what information* to include. A timely and proper notification to law enforcement and a ministry’s carrier is far more likely to occur when staff members are trained to understand the risk of sexual abuse and the common behaviors of sexual abusers. When leaders fail to report allegations of child sexual abuse to civil or criminal authorities, they open themselves up to the possibility of criminal prosecution for *failure to report*. When leaders receive information related to an allegation and fail to notify their carrier, coverage and representation may be jeopardized. As a result, it’s vital that ministry staff members have a practical understanding of the ‘*grooming process*’ of the sexual abuser, and that leaders understand reporting requirements *and* the specific requirements of each policy concerning notification of the carrier.

## **Prevention Systems – A Condition for Coverage**

In the past two decades, the number of lawsuits, settlements and verdicts involving child sexual abuse have skyrocketed. Within the past twelve years, child sexual abuse cases provided the *number one reason churches ended up in the courtroom*. This trend shows no sign of slowing – particularly as state legislatures expand civil statutes of limitations and pass look-back statutes. Look-back statutes create opportunity for abuse survivors to bring civil claims regardless of age, or how long ago the abuse occurred. As a result, abuse allegations from decades ago become currently actionable.

Insurance carriers know this better than anyone, given their obligation to defend and resolve legal matters. As a result, insurance underwriters – those responsible for evaluating a ministry’s risk-worthiness on behalf of the carrier – are far more careful in approving coverage or providing access to certain limits. Underwriters for major insurance carriers are now requiring that ministries demonstrate the existence of an effective child abuse prevention plan before providing coverage or approving a renewal.

Ongoing legislative changes do not necessarily push a church to implement effective preventative protocols – *access to insurance coverage can*. In the past, as an example, the decision as to whether a church would allow a Registered Sex Offender (RSO) to participate in ministry services was an internal one; now it may impact the church’s ability to get or maintain insurance coverage.

Insurance is designed to cover specific risks. Insurance carriers are now expecting churches to raise the bar to minimize the occurrence of child sexual abuse as a condition for insurance coverage. That trend will continue.

## **Finding a Competent Agent/Broker**

A church’s insurance agent/broker fills an important role in the ministry’s risk management effort. The agent/broker should have a strong understanding of the ministry’s programs, coverage needs, unique risks, and methods to reduce these risks. Too often, an agent can assist a ministry in the purchase of Property & Casualty coverage but remains ill-equipped to address the risk of sexual abuse and secure the necessary coverages and limits. A ministry’s Fire Drill should include evaluation of its insurance agent to ensure that he or she is familiar with the unique risks facing the ministry and safety system elements necessary to reduce child sexual abuse risk.

Navigating child sexual abuse issues can be challenging. An effective safety system is crucial, and appropriate insurance solutions are essential. Ministry leaders must better understand the changing environment related to child sexual abuse risk. Before a crisis arises, intentionally evaluate your existing preventative protocols and insurance coverage, keeping in mind the value of appropriate coverages from the right carrier and the assistance of an informed agent/broker.

Armed with an effective safety system, a competent agent/broker and good insurance products, church leaders can better navigate child sexual abuse risk.

**Kimberlee Norris and Gregory Love** are partners in the Fort Worth, Texas law firm of Love & Norris [<https://www.lovenorris.com>] and founders of MinistrySafe [<https://ministrysafe.com>], providing child sexual abuse expertise to ministries worldwide. After representing victims of child sexual abuse for more

*than two decades, Love and Norris saw recurring, predictable patterns in predatory behavior. MinistrySafe grew out of their desire to place proactive tools into the hands of ministry professionals. Love and Norris teach the only graduate-level course on Preventing Sexual Abuse in Ministry Contexts as Visiting Faculty at Dallas Theological Seminary.*

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### **Advice From Insurance Professionals**

There's a difference between an insurance carrier and an insurance broker. In its simplest form: the carrier provides the coverage; the broker works independently to shop for coverages offered by various carriers to meet a client's need. In the current ministry environment, it is imperative to have *both* a knowledgeable agent/broker *and* an insurance carrier accustomed to working with ministries.

Gathered below are thoughts from carriers and brokers who provide competent guidance to ministries of all sizes and complexity.

#### **Guy Russ, AVP of Risk Control, Church Mutual Insurance Company**

*As the nation's leading provider of insurance services to ministries, we work with numerous churches in navigating the risk of child sexual abuse and pioneered a specific sexual misconduct coverage to meet their unique needs. After 123 years, Church Mutual continues to be committed to providing guidance and programs to reduce this and many other risks. Having the correct insurance coverage is critically important, but of course, it's far better to prevent sexual misconduct and abuse before it occurs.*

#### **Andrew Shockey, AVP of Risk Management Services, Philadelphia Insurance Companies**

*When an allegation arises, let your carrier know. We are there to help. Not only is it a requirement of the policy, but we can come alongside and provide critical guidance and resources at the outset. Moving quickly and correctly can be a game-changer.*

#### **Steve Case, AVP, Senior Corp Counsel, Brotherhood Mutual Insurance Company**

*I believe having the right insurance coverage in place for claims of sexual abuse is important, but having a risk management strategy in place is even more critical. As a national insurer specializing solely in Christian ministries, we're focused on providing tools and resources to help ministries protect children and reduce other risks.*

#### **Peter Persuitti, Managing Director, Religious | Nonprofit Practices, Gallagher**

*Every year, Gallagher gathers ministry risk management thought leaders from around the world. New proactive ministries, including victim advocacy and prevention training, are proving to be more effective ways to put the vulnerable first. Gallagher is more than just a broker; Gallagher is a valuable, informed partner as it relates to sexual abuse and many other risks. For ministries, we have been designing risk & claims management solutions, as well as risk financing solutions for 50+ years.*

#### **Jerry Sparks, President, AG Financial Insurance**

*Many insurance agents focus on the property limits and general liability limits, when the #1 reason churches end up in litigation is Sexual Misconduct with a minor, and agents provide less or no coverage limits for Sexual Misconduct. One claim can devastate a church, its reputation and even its existence. As an insurance provider, we know what the risk of child sexual abuse looks like and can provide access to content to equip ministry leaders.*

**Tony McLaughlin, Vice President, *The National Catholic Risk Retention Group, Inc.***

*At National Catholic, we are dedicated to excellence within the field of risk management. It includes partnering with leaders and their organizations to better equip them in how to protect children and the vulnerable.*

**O.S. Hawkins, President, *GuideStone Financial Resources***

*The headlines regarding abuse and lack of safety in some churches cause us to grieve. At GuideStone, we are committed to helping churches and ministries recognize, prevent and respond well to sexual abuse while protecting those entrusted to their care.*

**Adam Sammons, Vice President, *Marsh & McLennan Agency (MMA)***

*Given the shifts in the social and regulatory environments related to child sexual abuse, the risk profile of youth-serving organizations has become increasingly complex. Youth-serving organizations and their boards are being forced to wrestle with the balance of mission and risk. MMA is committed to these organizations to ensure that the brightest minds and biggest hearts continue to bring meaningful change to the communities in which we live and work.*

**Heath Ritenour, Chairman & CEO, *Insurance Office of America (IOA)***

*As a national insurance broker that works with churches, we've seen it all. Child sex abuse insurance coverage is being restricted, excluded, & eliminated by some insurance companies. At IOA, our ministry industry specialists can help you successfully manage your risk management needs. We make the complex simple.*

**Brian Gleason, Senior Risk Manager, *GuideOne Insurance***

*Just one incident of sexual misconduct can destroy the trust, credibility and reputation of an organization for years. In addition to the reputational harm an incident causes, the legal costs of a lawsuit can ruin an organization financially. At GuideOne, we understand that navigating this and other risk issues can be complicated. Our goal is to provide you with tools and guidance that help keep your valuable resources focused on your mission.*