

## **COMPREHENSIVE LIABILITY PROTECTION PLAN SUMMARY**

(REVISED FEBRUARY 12, 1996)

The Seventh-day Adventist Church in the South Pacific Division through its various people, programs and property has responsibilities in regard to dealings with third parties which may expose the church to legal liability claims. The primary source of legal liability claims is in regard to torts. A *tort* is a civil wrong independent of contract for which the remedy is an action for damages. The most common tort is negligence. *Negligence* has been legally defined as the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or, doing something which a prudent and reasonable man would not do. It is simply the neglect of some care which we are bound to exercise toward somebody. The legal principles involved are part of the common law which reflects the views of learned judges when handing down decisions on cases brought before them through the years. (Folk in New Zealand should refer to Note 1.)

The essentials of actionable negligence are:

1. The existence of a *duty of care* owed by the defendant to the plaintiff.
2. *Failure* on the part of the defendant to attain the standard of care prescribed by law.
3. *Damage or injury* suffered by the plaintiff which is causally connected with the breach of duty to take care.
4. The defendant ought reasonably to have *foreseen* that damage or injury would result from his conduct.

Most claims would arise out of bodily injury to, or damage to the property of, third parties. However sometimes there are claims which may relate to personal injuries other than bodily injuries such as allegations of defamation including libel and slander.

It may be found that the church is directly liable for the losses of third parties or may be vicariously liable for such losses caused by people working on behalf of the church. People working on behalf of the church may be found to be directly liable and look to the church for protection. Alternatively the church may be held to be jointly liable with other parties.

It is for these and other reasons that the church has a coverage agreement with Adventist Risk Management at the General Conference which is expressed in what is known as a 'Comprehensive Liability Protection Plan'. This is not an insurance policy although the cover given is very similar to a legal liability insurance policy. The entities covered by this plan are known as 'participants'.

## **1. RISKS COVERED**

### **A. Bodily Injury & Property Damage**

This provides a cover for all sums which the participant may become legally obligated to pay as damages because of bodily injury or property damage to which this protection plan applies. Such must be caused by an 'occurrence' which is defined as 'an accident, including continuous or repeated exposure to substantially the same general harmful conditions'.

The cover does not extend to bodily injury or property damage which was expected or intended from the standpoint of the participant. In other words, the bodily injury or property damage must be unexpected or unintended from the standpoint of the participant for the coverage to apply. The only exception to this is bodily injury resulting from the use of reasonable force to protect persons or property or corporal punishment to any student or pupil administered by or at the direction of any participant. Please refer to section (3) which provided further information in regards to certain risks which are excluded.

### **B. Personal Injury**

This provides a cover for all sums which the participant may become legally obligated to pay as damages because of personal injury to which this coverage part applies. The definition of personal injury includes oral or written publication of material that slanders or libels a person or organisation or disparages a person's or organisation's goods, products or services. It also includes publication of material that violates a person's right of privacy. However this cover does *not* apply if such publication of material is done by or at the direction of the participant with knowledge of its falsity or arises out of a willful violation of law. Also the cover does *not* apply to employment-related acts.

### **C. Medical Malpractice**

This provides a cover for all sums which the participant may become legally obligated to pay as damages because of injury to which this protection plan applies caused by a medical incident which occurs during the protection plan period. The definition of medical incident includes any act or omission in the furnishing of professional health care services. This cover primarily applies to our hospitals and nursing homes.

### **D. Publishing and Radio/TV Liability**

This provides a cover for all sums which the participant shall become legally obligated to pay as damages because of certain specified risks involved with such activities. This cover is required for our publishing and radio television ministries and further details are available upon request.

## **2. ENTITIES COVERED**

Coverage is provided for the General Conference of Seventh-day Adventists and its subsidiary, affiliated or associated facilities. Such entities must be organised and controlled by the Seventh-day Adventist Church. It is further extended to cover church employees, trustees, officials, board members, clergy and volunteer workers but only whilst they are acting at the direction of the church and within the scope of their duties as such.

### 3. RISKS NOT COVERED

Whilst the cover is very broad there are certain areas of risk which are not covered either because it is not appropriate to provide a cover for those risks due to their nature, other more appropriate means of cover are available or the General Conference regards the risks as uninsurable. Some of these exclusions to the cover are listed below:

- A. Liability to *employees* arising out of their employment.
- B. *Seepage or pollution* unless such is caused by a sudden, unintended and unexpected happening.
- C. Use of *motor vehicles* for which compulsory motor vehicle third party insurance is required. (Refer to Note 2.)
- D. Use of *mobile equipment* in, or while in practice or preparation for, a prearranged *racing*, speed or demolition contest or in any stunting activity. Mobile equipment includes bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads. The exclusion would apply to go-karts and similar vehicles (whether or not self-propelled) which are used for such activities. The use of *snowmobiles* is absolutely excluded.
- E. Liability arising out of the use of *mobile equipment* designed primarily for *snow removal, road maintenance or street cleaning*.
- F. Property damage to *premises which we rent or occupy* unless such arises out of fire damage to rented premises caused by our negligence. (Limit US\$1M). Otherwise the cover for property damage does not extend to *property loaned to us or in our care custody or control*. Property' or 'Extra Risks' Covers may be specifically requested for such items.
- G. Liability arising out of *sexual harassment, sexual misconduct, sexual molestation or sexual discrimination*.
- H. Liability arising out of *employment-related practices, policies, acts or omissions*.
- I. Liability arising out of any *security guard activity during which firms are carried*.
- J. Liability arising out of *motorized two or three wheeled all-terrain vehicles*. This exclusion does not apply to four wheeled all-terrain vehicles unless such are used for prearranged racing, speed or demolition contests or any stunting activities.
- K. Liability in Australia arising out of the use of *climbing walls, abseiling and rope courses* more than 1.8 metres above the ground unless specific arrangements have been entered into with the General Conference. To provide such a cover the General Conference needs to have full details in regard to the sites for these activities if they are on our premises and additional charges will be made. If the activities will take place off our premises there is an additional charge for each authorized instructor involved. Such charges are made on an annual basis. Also, certain minimum guidelines need to be complied with before coverage will be provided. Further details are available upon request.
- L. Liability arising out of *asbestos*.

- M. Liability arising out of *fireworks* manufacturing, sale, distribution and displays.
- N. Any agreement which we may enter into which may require us to *indemnify an architect, engineer or surveyor* for liability.
- O. Liability arising out of and occurring during the course of the *movement of any building or structure* by automobile or mobile equipment.
- P. *Nuclear energy and war risks*. However the cover for nuclear medicine and radio-active medical treatment in our hospitals is an exception to this exclusion.
- Q. Liability arising out of *rebounding equipment* used for gymnastic purposes on our premises in Australia. Such rebounding devices include mini-trampolines, springboards, teeterboards and trampolines. However our schools are able to request specific coverage for certain mini-trampolines, springboards, trampolines and reutherboards upon payment of additional premiums and following certain guidelines produced by the General Conference. Further information is available upon request.
- R. Liability arising out of the *repairs and maintenance of motor vehicles* belonging to third parties unless special arrangements are made on the basis of the regular reporting of such activities to us. Further information is available upon request.
- S. Note that the coverage's only apply to our legal liability to pay 'damages'. Fines and penalties are *not* covered.
- T. Liability to another arising solely out of a *contract* the Church has entered into would not normally be covered as the cover is basically for your legal liability for accident bodily injury or property damage at *common law*. Therefore be very careful when entering into contracts which may expose the Church to additional risks. Particularly watch out for onerous indemnity and disclaimer clauses. (Refer to Note 3.)

This summary of the legal liabilities protected under the Comprehensive Liability Protection Plan is intended to simply convey a very basic knowledge in regard to the matters raised. The full wording of the Plan consists of some 61 pages. It is hoped that this information will be helpful in explaining some of the principles which are involved so that a clearer understanding will result in regard to the need for and the applicability of this cover.

This documentation was based upon information available to us as at February 12, 1996. Various changes may be made from time to time. Should you wish to have clarification or confirmation of any aspect of this cover do not hesitate to contact us.

**Note 1.** For folk in New Zealand this information needs to be read in conjunction with the 'Accident Rehabilitation and Insurance Act' which provides compensation for 'personal injury by accident' as defined in the Act. This restricts the right of injured parties to make common law claims for damages.

**Note 2.** All motor vehicles which may travel on a 'public street' must be appropriately registered and have third party insurance as required by State Government legislation. Also, their drivers must be property licensed. A 'public street' includes any street, road, lane, thoroughfare, footpath or place which is open to or used by the public and may be on church-owned property, e.g. car park or

campground, etc. Your local motor vehicle registration authority should be consulted if further clarification is required.

**Note 3.**

If you are entering into a lease or rental agreement for a building or putting on a display in a shopping centre or similar, the cover is able to be extended to include, if required, 'All owners and/or occupiers of real property with whom the Named Insured enters into a contract lease, hire or otherwise temporarily use such real property to the extent that the owner and/or occupier may be liable for injury, loss or damage suffered by a third party as a result of any act, error or omission by the Named Insured'. If the owner requires a certificate of insurance to substantiate this cover we are able to issue such on the stationery of a local insurance company. There is no additional charge to you for this service.

Kelvyn A G Carr  
**ASSISTANT MANAGER**  
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