

LOWNDES, DROSDICK, DOSTER, KANTOR & REED

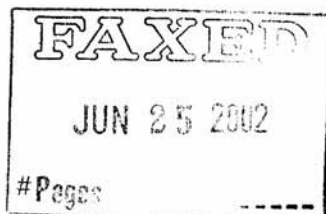
WILLIAM A. SEGRETT
DALE A. BURNET
SHEILA GUPTA DICICCO
WILLIAM E. DOSTER
ERNEST E. DROSDICK (1926-1992)
STEPHEN D. DUNEGAN
RICHARD J. FIELDS
THOMAS E. FRANCIS
LOUIS FRET, JR.
ROBERT F. HIGGINS
LORAN A. JOHNSON
GARY M. KALEITA
HAL N. KANTOR
JOSEPH A. LAKE
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NICHOLAS A. POPE
SHAWN S. RADER
JOHN A. REED, JR.
MICHAEL RYAN
CLEATON J. SIMMONS
JAMES H. SPOONHOUR
JULIAN E. WHITEHURST
JON C. VERGLER
TERRY C. YOUNG

PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

815 NORTH SOLA DRIVE
POST OFFICE BOX 2809
ORLANDO, FLORIDA 32802-2809
TELEPHONE (305) 843-4600
TELECOPIER (305) 422-4498

JAMES BALLETTA
WILLIAM R. BIRD, JR.
MATTHEW G. BRENNER
JANET M. COURTNEY
WILLIAM T. DYMOND, JR.
AARON J. GORDVITZ
JAMES G. KATZELMANN
A. KIMBARK LEE
LINDA C. WALLISTER
N. GREGORY McNEILL
M. DIANNE NISIAK
DAVID S. PETERSON
GARY R. SOLES
CARLA S. TAYLOR
SCOTT C. THOMPSON

September 8, 1987



Recently, your office requested that we advise as to whether the liability insurance coverage for the Officers and Directors of the Church should be dropped due to Chapter 87-245, Florida Session Laws, which became effective on July 1, 1987. The direct answer to your question is that the civil liability insurance for the Officers and Directors of the Church should not be terminated. The reasons are set forth hereinbelow:

Chapter 87-245 of the Florida Session Laws, effective July 1, 1987, provides for limited immunity from civil liability for officers and directors of certain nonprofit organizations. Under this act, an officer or director is not personally liable for money damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy, unless the officer or director breached or failed to perform his duties as an officer or director.

Breaches or failure to perform duties fall within three categories for purposes of the act:

1. Violations of criminal law, unless the officer or director had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful.
2. A transaction in which the officer or director derived an improper personal benefit.

3. Recklessness or an act or omission which was committed in bad faith. Recklessness is defined as acting, or omission to act, in conscious disregard of a risk:
- (a) known, or so obvious that it should have been known, to the officer or director, and
 - (b) known to the officer or director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such act or omission.

The standard for recklessness follows a two-step approach. The first step concerns whether the risk was known or should have been known. The second step then appears to make a "foreseeability/proximate cause" type inquiry regarding the connection between the breach and the injury.

Both parts of the recklessness standard hinge liability on whether the officer or director disregarded a risk "so obvious it should have been known." The "should have been known" language is similar to a negligence standard, the only modification to this standard occurs through the "so obvious" language. An officer or director may have difficulty asserting that he should not be liable for a "nonobvious" injury when in fact the injury has already occurred; therefore, the statutory protection from civil liability is limited.

Because the statute still leaves substantial opportunities for holding officers and directors liable, officer and director liability coverage should not be dropped.

Although as pointed out, the conduct necessary to satisfy the definition of "recklessness" is fairly clear and appears to be similar to the standard for gross negligence, there is other language which is more troublesome. The statute also excepts from immunity conduct of an officer or director which amounts to a breach or failure to perform the duties of an officer or director which "constitutes an act or omission which was committed in bad faith". Please see Section 2(1)(b)3 of the Statute which is attached for your review. In my opinion, this language leaves open the possibility that either a director or officer could be

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held liable for conduct more encompassing than that which satisfies the recklessness standard. For this additional reason, liability coverage is still desirable.

After you have had a chance to review this letter and the attachments, please feel free to call me if you have any questions.

Sincerely,



Timothy J. Manor

TJM:scw
Enclosures
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1 3. Recklessness or an act or omission which was
2 committed in bad faith or with malicious purpose or in a
3 manner exhibiting wanton and willful disregard of human
4 rights, safety, or property.

5 (2) For the purposes of this section, the term:
6 (a) "Recklessness" means the acting, or omission to
7 act, in conscious disregard of a risk:

8 1. Known, or so obvious that it should have been
9 known, to the officer or director; and

10 2. Known to the officer or director, or so obvious
11 that it should have been known, to be so great as to make it
12 highly probable that harm would follow from such action or
13 omission.

14 (b) "Director" means a person who serves as a
15 director, trustee, or member of the governing board of an
16 organization.

17 (c) "Officer" means a person who serves as an officer
18 without compensation except reimbursement for actual expenses
19 incurred or to be incurred.

20 Section 3. Section 607.014, Florida Statutes, is
21 amended to read:

22 607.014 Indemnification of officers, directors,
23 employees, and agents.--

24 (1) A corporation shall have power to indemnify any
25 person who was or is a party, ~~or is threatened to be made a~~
26 ~~party, to any threatened, pending, or completed action, suit,~~
27 ~~or proceeding, whether civil, criminal, administrative, or~~
28 ~~investigative (other than an action by, or in the right of,~~
29 ~~the corporation), by reason of the fact that he is or was a~~
30 ~~director, officer, employee, or agent of the corporation or is~~
31 ~~or was serving at the request of the corporation as a~~