



December 3, 2020

Dear Clergy and Senior Wardens,

The Diocese has received inquiries regarding potential liability and insurance coverage should someone claim to have contracted COVID-19 at a church service or event and file suit against a church and/or the parishioners who are tasked with supervising the church's COVID-19 safety protocols. At this time, we are not aware of any such claims in this Diocese or involving any other church.

Potential Liability

The risk of liability for such claims appears to be low for two reasons. First, a person asserting a claim against a church or parishioner regarding COVID-19 would have difficulty proving that he or she contracted COVID-19 at church, given the virus's ubiquity. That burden would be made even more difficult if the church could demonstrate that it exercised reasonable care in preventing the spread of the virus at church, such as by following the Diocese's COVID-19 protocols and the Center for Disease Control's ("CDC") guidelines.

Second, against claims of negligence, the church and parishioners would have the defense of charitable immunity. Under Virginia law, a charitable institution, such as a church, generally is immune from liability for negligence to its beneficiaries, such as those attending church services and events. This immunity extends to the church's servants and agents, including volunteers. Thus, as a general rule, neither a church nor its parishioners could be held liable for negligence should someone claim to have contracted COVID-19 at church.

Charitable immunity may not be available, however, if the church's, or a parishioner's, intentional acts caused the transmission of COVID-19. Examples of actions that could be considered intentional are allowing someone with obvious COVID-19 symptoms to attend church, not enforcing rules on capacity and spacing, or other violations of safety protocols.

Insurance Coverage

Unfortunately, it is a truism of the American legal system that anyone can file a claim against anyone, whether the claim is valid or not. Defending a lawsuit, even a frivolous one, can be costly. No insurance policy covers liability for injury from a communicable disease or injury resulting from intentional acts. Most insurance coverage, however, and in particular that offered by the Church Insurance Agency Corp. ("CIC"), would provide a defense to claims for negligence. If a person were to allege that he or she contracted COVID-19 at church due to the church's, or a parishioner's, negligence, CIC likely would provide defense to the claim under a reservation of rights. This means that the insurer would pay for the defense costs but, in the event

the church or parishioner were ultimately held liable, there likely would be no insurance coverage for the liability. As indicated above, however, liability is unlikely.

If a person were to allege that he or she contracted COVID-19 at church due to the church's, or a parishioner's, intentional acts, it is likely that CIC would decline to provide a defense.

Conclusion

At this time, it appears the risk of liability to a church or parishioner should someone claim to have contracted COVID-19 at a church service or event is low and, depending on the specific claims asserted, CIC would provide a defense under reservation of rights. Churches and parishioners can further reduce their risk by closely adhering to the Diocese's protocols and CDC guidelines. [Diocesan protocols are accessible here.](#)

Careful and consistent implementation of current protocols and guidelines mitigates exposure to risk and safeguards God's people.

Peace to you and to all you serve,

The Rev. Canon Roy Hoffman
Canon to the Bishop