

MEMORANDUM

To: The Rt. Rev. William H. Stokes, Bishop of New Jersey

From: Paul Ambros, Chancellor of the Diocese of New Jersey

Date: June 18, 2020

Re: COVID-19 General Liability Issues for Churches

There is no hard and fast answer to the possibility of liability for churches and the Diocese if someone attending a reopened church claims that they were infected at the church. As I noted during the Clergy Town Hall today, a leading court decision on issues of liability for disease transmission stated:

"Because "[a]ll persons are required to use ordinary care to prevent others being injured as a result of their conduct" . . . , this court has repeatedly recognized a cause of action for negligence not only against those who have actual knowledge of unreasonable danger, but also against those who have constructive knowledge of it."

John B. v. Superior Court, 38 Cal. 4th 1177, 1190 (2006)(citation omitted). There is a danger that an infected person may claim that they were infected at a church, and the church "should have known" that infection was likely.

On the other hand, if a defendant has consciously taken reasonable steps to avoid the transmission of disease, it makes it more difficult for a court to hold them liable. In the Diocese of New Jersey, the guidelines presented by the Task Force for Re-entering, Re-opening, and Re-imagining for the Diocese, which exceed the current Centers for Disease Control guidelines, can certainly be presented as reasonable steps, provided that they are followed by local congregations. The Church Insurance Companies' Coronavirus Risk Management Tip Sheet also presents steps that can and should be taken to protect congregations and visitors.

While none of the liability issues amid the pandemic are certain, if any claim is presented to a given congregation, both the Diocese and the insurance company should be advised immediately. Protecting against contingent liabilities is the very reason for carrying insurance.

Questions were raised about signing waiver documents. These may or may not be of use legally. On the one hand, they show an appreciation of risks by those signing and possibly show an assumption of that risk; on the other, no document can guard against gross negligence or willful misconduct if the church ignores the diocesan guidelines.

If in doubt, consult your insurance representative for advice as to your individual circumstances.