



**Crisis Management for  
Non-Profits, NGOs,  
and Mission  
Organizations**

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## I. Introduction

Global missions work is increasingly dangerous, especially in certain parts of the world. Since 2003, there has been a worldwide spike in global kidnappings that more and more target faith-based workers such as missionaries, as well as other NGO workers.<sup>1</sup> Real risks facing international mission organizations today include: injuries from suicide bombings, kidnappings, torture during hostage situations, threat of execution if captured, demands that ministry cease, and extortion. Besides violence, workers face risks of natural disasters or accidents that may often occur without warning. Agencies operating in this sphere must understand these risks and put systems in place to help ensure the security of missionaries working abroad. Solid crisis management is essential to protecting the safety of people and ministry property, and, in the event of a tragedy, can also go a long way toward preventing legal liability for the organization. Consider the following case study:

It was a tumultuous time in Darfur, Sudan. But crisis often draws those who want to make a difference. A woman in her 30s accepted a position with a large, U.S.-based Christian relief organization working in the area. She chose that organization because she believed it had the resources to make working in Darfur a safe reality. Presumably, she believed in what the agency was doing to effect positive change. She moved to Sudan and began work in 2009.

In May 2010, the employee, her Sudanese co-worker, and her driver headed out to a remote village to perform some relief work. Unbeknownst to her, unrest in the area had grown. It was increasingly dangerous for foreign aid workers. That day, the group was ambushed and taken hostage by Sudanese nationals. It was later discovered that the group's driver was working with the kidnapers to provide information and facilitate the taking. The employee's co-worker was quickly released, leaving the U.S. employee alone. She was subjected to extreme trauma while in captivity, including being threatened with execution and gang rape. After 105 days in the custody of her kidnapers, her safe release was secured by the ministry.

When she returned to the U.S., however, she decided that the ministry was responsible for what she endured. She filed a lawsuit in federal court, alleging that the organization had placed her in the situation that led to her kidnapping, had mismanaged the hostage negotiations, and prolonged her custody. She believed it should pay dearly. According to the employee:

- She had received virtually no training from the organization on how to ensure her safety in the tumultuous area where she would be working;
- The security personnel provided by the organization were inadequately trained, inexperienced, and unprepared to handle the level of risk;

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<sup>1</sup> See Seth Loertscher & Daniel Milton, *Held Hostage: Analyses of Kidnapping Across Time and Among Jihadist Organizations*, The Combating Terrorism Center at West Point, The United States Military Academy (Dec. 2015), <https://ctc.usma.edu/v2/wp-content/uploads/2015/12/Held-Hostagereportc2.pdf>.



- She had been briefly abducted before in the fall of 2009, but quickly released;
- Despite knowing that she and others had been taken hostage on one occasion, the organization did not change its security protocols in the region;
- Other organizations had prohibited their foreign employees from working in South Darfur around that time because of the high risk of harm to foreign aid workers;
- The organization disregarded credible intelligence right before the May 2010 abduction that things were becoming unstable for foreign aid workers and that a kidnapping was likely, particularly in the specific village where the team was traveling, and nothing was done to prevent the trip;
- The organization failed to do its “due diligence” in hiring nationals on the security team, allowing her to be captured because the driver conspired with the kidnappers;
- During the hostage negotiation, the organization prevented the FBI and the employee’s family from being involved, and delayed her rescue, despite having money available for the ransom in a kidnapping insurance policy.

The lawsuit made national news. Ultimately, the employee ended up settling out of court with the ministry and the crisis management consultant, which she also sued. While the settlement was confidential, the original lawsuit sought tens of thousands of dollars from the organization.

This scenario—taken from a real court case<sup>2</sup>—demonstrates that mission organizations and other ministries that are unprepared to deal with the practical and legal aspects of a crisis may end up paying for it in the end. Lack of preparation can cause human, reputational, and financial harm.

Though organizational crises come in all shapes and sizes—from child sexual abuse scandals to employee theft—this paper focuses on the legal implications of crises that may arise from work in foreign countries where there is a higher-risk of injury, kidnapping, or death to missionaries. It first outlines the legal aspects of crisis management, examining how a mission could face legal liability for its actions in a crisis abroad. It analyzes common mistakes an organization can make, and suggests solutions to minimize the risk of liability to the organization and practical steps to prepare for crisis situations. While the spiritual and member care aspects of a crisis are more important, the legal issues still demand consideration and are the focus of this paper.

## II. Legal Liability in the Event of a Crisis

Most missions agree that they should give top priority to the safety of their missionaries and other workers. This is not only a basic tenet of good member care but also critically supports the

<sup>2</sup> *Wagner v. Samaritan’s Purse*, No. 11-cv-3375 (RJS/AJP) (S.D.N.Y.) (Complaint).



organization's ability to carry out its mission in the future. When employees or volunteers suffer injury or death in the course of their work for the mission, the organization must not only recover from the emotional and psychological damage of the event, but must also face the broader implications of legal liability for that damage. Liability can take a variety of forms. These are some of the common claims that an organization may face after a crisis.

## **A. Claims by Employees or Families on their Behalf**

The most common risk of liability after a crisis is a claim from the individual employee (or a loved one on the person's behalf) who was hurt or killed during the crisis. To explain why an employer can be exposed to greater liability for incidents overseas, we first examine U.S. employer liability for such harms domestically, then how the legal landscape changes abroad.

### *1. Injuries in the U.S.*

In the United States, employers usually have some responsibility to compensate their employees if they are hurt on the job. But that compensation rarely comes in the form of judgments from a lawsuit. In the event of injury or death while at work, the main recourse is workers' compensation. In this system, workplace accidents are accepted as a reality of doing business. Employers plan for this inevitability by providing insurance to their employees through the workers' compensation scheme. For employers who participate, these schemes bar other claims of liability against the employer for workplace injury. In other words, workers' compensation is the sole remedy for an employee hurt on the job. If an employee covered by workers' compensation attempts to bring a civil claim against her employer for an injury she claims was the employer's responsibility, the suit will almost certainly be dismissed under this bar.

Workers' compensation is designed carefully. First, the workers' compensation system is a no-fault system that operates without the employee having to take legal action (unless a claim is contested). Costs are predictable to the employer and the system is relatively well-run. Next, workers' compensation coverage is triggered only to the extent injuries arise out of and occur within the course of employment, or "on the clock." When employees are stationed domestically, it is usually easier to determine when injuries occur "on the clock" (though conflicts still arise). In addition, for most religious organizations, the risk of harm while working in the United States is relatively low. Finally, if a third party is responsible for the employee's injury, the employee also has the option of seeking damages against that person in the U.S. court system.

### *2. Why There is Liability Overseas*

When U.S. citizens are stationed abroad, however, the rules shift dramatically. While many states extend workers' compensation coverage for injuries outside the state when employees are working abroad on a short-term basis (typically six months or less), state workers' compensation schemes usually



do not cover employees working on a permanent basis in foreign countries.<sup>3</sup> For most missionaries—whose foreign field assignment is a long-term placement—it is unlikely a U.S. workers’ compensation scheme would cover injuries abroad. If workers’ compensation is off the table, an employee can bring a lawsuit in the event of injury, claiming the employer is responsible for the harm. If this happens, the employer is exposed to a lawsuit in civil courts with the potential for uncapped tort damages for employee injury or death.

The risk of liability for employee injuries while on assignment abroad is also higher because of the differences between working domestically and working abroad. While it is fairly clear when an employee is on his own time stateside, when does the work really end for the employee stationed abroad? Because it is not clear, several courts have determined that employers can be liable for their employees 24/7 while they are working overseas.<sup>4</sup> For example, in one case, an employee stationed in Israel was killed by militants while on a sight-seeing trip on his own time. Despite the fact that he wasn’t actually performing work for his employer when he was killed, the court decided his employer was still responsible to his estate for his death because he would not have been in harm’s way if he had not been overseas on assignment for this employer.

Another factor that can increase liability is the fact that the risk of harm while working in certain countries is very high. For some locations, the risk of serious bodily injury, kidnapping, and death may be as much of a reality for workers as carpal tunnel syndrome would be for a stateside office worker.

Finally, a lawsuit against an employer may be an employee’s only real option for compensation for an overseas injury. The employee cannot exactly file a lawsuit for damages against a terrorist organization. For these reasons, unless the trip is short enough that some state workers’ compensation applies,<sup>5</sup> tort claims are becoming more common after a major crisis—such as where the employee is killed, held hostage, or seriously injured abroad.

### 3. *Negligence Claims*

An employee may claim that the employer was negligent. A claim of negligence asserts: the employer had a certain duty to keep the employee safe, there was a standard of care for the employer’s behavior, the employer did not live up to the standard of care and failed to take whatever measures would have prevented the harm, and it is responsible for the damages sustained. A negligence claim argues that although some bad actor (the kidnapper, the suicide bomber, the terrorist) or other accidental force

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<sup>3</sup> See, e.g., § 8-41-204, C.R.S. 2016 (Colorado workers’ compensation coverage generally extends to out of state injuries for six months after the employee leaves the state).

<sup>4</sup> See *Lewis v. Knappen Tippetts Abnett Eng’g Co.*, 304 N.Y. 461 (1952) (employee shot and killed by Arab militants while working in Israel was effectively “on the clock” despite being on a sightseeing trip when the incident occurred).

<sup>5</sup> Compare *Khan v. Parsons Global Servs.*, 428 F.3d 1079 (D.C. Cir. 2005) (District of Columbia workers’ compensation did not cover employee’s injury during two-year assignment in the Philippines) with *Capizzi v. S. Dist. Reporters, Inc.*, 471 N.Y.S.2d 554 (1984) (employee entitled to New York workers’ compensation where employee was injured on a less-than-a-week long business trip in Canada).



actually injured the employee, if the employer hadn't been careless in placing the employee in harm's way, it wouldn't have happened at all.

Mission organizations are targets for the argument that the duty of care owed to a missionary is higher than for the average employee in the U.S. In *Wagner v. Samaritan's Purse*—the case discussed at the beginning of this paper—the employee brought a negligence claim against the ministry.<sup>6</sup> She argued that the ministry's actions fell below the standard of care for international aid organizations with workers in that region and this caused her to fall victim to her kidnappers. Though that case settled out of court, negligence claims are the most natural claims to expect after a major international event.

#### 4. *Intentional Torts*

An employee may also bring a claim for intentional torts. In contrast to negligence claims, which say only that the employer was reckless or careless in its actions, intentional tort claims require more purposeful action on the part of the employer. A common claim in this category is intentional infliction of emotional distress (IIED). In several cases, IIED claims have been asserted by employees who were dissatisfied with how their hostage situations were handled.<sup>7</sup> If an employee believes the mission did not handle negotiations properly, he or she may claim that the mission's putting "its interests" above her own was so unacceptable that the mission knowingly caused emotional harm to the employee. IIED claims are harder to prove than negligence claims.

#### 5. *Fraud Claims*

Fraud claims have also sometimes been successful in cases where the employer "over-promises and under-delivers" on security and safety in an unstable region. For example, in one case, the surviving family members of several civilian contractors who were killed when their convoy was ambushed by Iraqi insurgents sued their loved ones' employer for fraud.<sup>8</sup> As the basis for this claim, the family members argued that the employer's recruiting materials induced the employees to accept jobs without an understanding of the safety risks involved.<sup>9</sup> The court in that case held that if the company tortiously guaranteed safety to its workers when it knew there was no such guarantee, it could potentially be liable for the resulting injuries—even though the employees were murdered by militants in a war-zone.<sup>10</sup>

### **B. Claims by Non-Employees (Volunteers, Family Members)**

An organization may also be on the hook for persons it does not formally employ. Volunteers and non-employee family members can also be a source of liability, perhaps in an even more challenging way.

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<sup>6</sup> *Wagner v. Samaritan's Purse*, No. 11-cv-3375 (RJS/AJP) (S.D.N.Y.) (Complaint).

<sup>7</sup> *See, e.g., id.*

<sup>8</sup> *See Lane v. Halliburton*, 529 F.3d 548, 554-55 (5th Cir. 2008).

<sup>9</sup> *See id.*

<sup>10</sup> *See id.* at 562.



Courts appear especially reluctant to allow waivers to restrict liability of organizations in the event of the injury or death of non-employees.

### 1. *Volunteers*

Particularly in the short-term missions context, volunteers who are not technically employees may still be owed a duty of care, such that the mission needs to protect them. In one case, a court held that a church sponsoring a short-term mission trip to Costa Rica could be held liable for a teenager's death during the trip.<sup>11</sup> A small group led by an employee of the church had gone to Costa Rica to help build a sanctuary and perform other missions work. While visiting a beach on the Pacific Ocean, a teenage member of the team was knocked into the water by a wave and drowned. His mother brought a wrongful death suit against the church, arguing that it breached its duty of care and supervision. An appellate court ruled that the case should go to a jury, noting it was possible that the church had breached its duty to keep the teenager from harm while on the trip.

Before the trip to Costa Rica, the teenager and his grandmother had signed a waiver releasing the church from liability. The court held the waiver unenforceable, finding that the minor could not legally sign the waiver and the grandmother's execution of a parental consent form did not prevent the boy's mother from suing.<sup>12</sup>

Prepare properly for short-term mission trips, particularly where minors will be attending, and include adequate supervision of the group. Indeed, short-term mission trips may expose a mission to more liability than deploying a long-term missionary, because courts may decide there is a higher duty of care to short-term personnel. Plus, a court may well decide that short-term volunteers do not understand enough about the situation to assume the risk themselves. The case discussed above is a good reminder that waivers—while they have their place—are not a substitute for preparation and supervision.

### 2. *Family Members*

An organization may also be responsible to an employee's family members if there is a crisis. Mission agencies may owe a duty of care to keep safe non-employee family members who accompany an employed missionary to the field. Family members may accompany the employee into the high-risk area and may have their own claims if they are injured. If a mission organization does not technically pay the spouse of a missionary, but she is performing services for the mission, it will have the same duty as to an employee. Where family members are encouraged to accompany missionary staff to the field, the mission's duty likely extends to them as well. In addition, the mission could be liable for whatever

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<sup>11</sup> *Colyer v. First United Methodist Church*, 214 So.3d 1084 (Miss. App. 2016).

<sup>12</sup> The effectiveness of waivers depends partly on state law, and partly on whether the waivers are detailed enough and signed by the right people. But they may not be effective.





assurances of safety it made. Exposure to liability will also depend on how the mission interacts with the family during a crisis.

But the duty may not end there. In some situations, the mission can be liable even if the family members are not themselves direct victims of a kidnapping or other crisis. In one case, an employee's wife was allowed to assert a claim against her husband's employer for intentional infliction of emotional distress after he was kidnapped in the Philippines.<sup>13</sup> The wife claimed that the company had disregarded her husband's safety in favor of "minimizing future corporate kidnappings, thereby provoking [her husband's] kidnappers to torture him, to cut off a piece of his ear, and to send a videotape of the event to the" company.<sup>14</sup> In addition, because the company successfully prevented the wife from paying the demanded ransom, she argued that the company caused her emotional distress through the guilt of knowing she could have prevented her husband's torture.<sup>15</sup>

For planning purposes, it is wisest for the mission to assume that anyone it sends could be involved in some crisis situation, for which the mission will have some responsibility.

### C. Claims by the Government

Organizations may also have to worry about exposure to criminal liability in certain situations. Currently, a huge open question for organizations is whether the organization will be prosecuted for paying a ransom in the event of a hostage situation. The answer to this question is complex and may vary depending on what country's law governs the situation.

U.S. law makes it illegal to provide "material support" to terrorists or terrorist organizations.<sup>16</sup> While not all hostage takers will be terrorists, particularly since a terrorist organization must be so designated by the United States government, paying a monetary ransom demand to a designated terrorist or terrorist organization clearly falls within this law. However, to date, there is no record of an individual being prosecuted under this law for paying a ransom to a designated terrorist organization in order to redeem a hostage. In addition, the U.S. Government has stated publicly that it has no intent to prosecute the families of hostages taken abroad who pay ransom.<sup>17</sup> Nevertheless, there is nothing binding about that promise and paying a ransom to a terrorist organization is definitely against current law. It is a huge gamble to knowingly violate the law. And the penalties are steep: fines and up to life in prison in some

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<sup>13</sup> *Khan v. Parsons Global Servs.*, 521 F.3d 421, 423 (D.C. Cir. 2008).

<sup>14</sup> *Id.* at 429.

<sup>15</sup> *See id.*

<sup>16</sup> 18 U.S.C. §§ 2339A, 2339B.

<sup>17</sup> The White House, *FACT SHEET: U.S. Government Hostage Policy* (Jun. 24, 2015), <https://www.whitehouse.gov/the-press-office/2015/06/24/fact-sheet-us-government-hostage-policy>.



situations.<sup>18</sup> With a new presidential administration in 2017, interpretation of policy around this issue is in flux.

While the U.S. seems to have a current policy of non-prosecution of its “material support” law, other countries—such as the U.K.—appear firm in their stance that paying ransom to terrorists or terrorist organizations can result in prosecution.<sup>19</sup> Depending on where the mission is located, different countries’ laws may apply. In addition, the country where the crisis is taking place may have laws against paying ransoms to, or even negotiating with, terrorist groups. For example, in one business case, after a hostage was successfully released through a ransom payment, government officials in Colombia arrested those involved with the negotiations and held them in prison for two months for their negotiations with “terrorists.”<sup>20</sup> While that happened long ago, and may not be current law in Colombia, careful attention must be paid to local laws in these situations. Even if criminal liability is not a real threat, mismanagement of a sensitive situation can jeopardize the mission’s work in a foreign country and also put other workers at risk.

### **III. Prevention: Best Practices to Minimize Damage in Crisis Situations**

Especially in high-risk areas, missions should be prepared to handle kidnapping, injury, or death. Risks are inevitable, and following best practices can help outcomes and minimize damage for some of these situations. Several excellent crisis management consultants provide expertise on how to prepare personnel for work in dangerous areas and are available to negotiate in hostage situations. In addition, legal counsel should be a part of the crisis management team and be involved in risk management strategies. Other expertise may be needed as well, such as public relations consultants.

Here are some common mistakes and some suggested practical solutions.

#### **Common Mistake #1: Inadequate preparation of the employee for risk.**

In the *Wagner* case discussed previously, the employee claimed that she was not provided any training on how to avoid being kidnapped, though the risk of a hostage situation occurring in Darfur was high. A prepared mission organization can avoid some of these problems.

#### **Suggested Solution: Provide security training and resources.**

Organizations must prepare people for the inevitability of a crisis, which is also the single most important action to minimize liability. Security or hostage training, security protocols, and other like efforts can make a kidnapping or other crisis less likely and improve outcomes. In addition, documentation of training can also protect the organization later from the claim that it didn’t do enough

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<sup>18</sup> See, e.g., 18 U.S.C. § 2339A.

<sup>19</sup> Martin Bentham, *Families of Britons held by terrorists face prosecution if they pay ransom*, Evening Standard (Jul. 22, 2016) <http://www.standard.co.uk/news/uk/families-of-britons-held-by-terrorists-face-prosecution-if-they-pay-ransoms-a3302011.html>.

<sup>20</sup> *Curtis v. Beatrice Foods Co.*, 481 F. Supp. 1275, 1283 (D. NY 1980).



to prevent the crisis. For example, when a senior-level employee was kidnapped in Colombia and tried to sue the owner of the subsidiary where he worked, the court balked at his claim in part because of the extensive security training provided by the company.<sup>21</sup> In addition to security training, and having a crisis management team available for consultation, the employee had every resource at his disposal to implement additional security measures (he was the CEO equivalent of the subsidiary). He failed to use these resources.<sup>22</sup> Because the company put forth so much effort to keep him safe, but he failed to take advantage of the resources, the court would not allow the suit to go forward.<sup>23</sup>

Training and providing resources for protection abroad helps prevent the argument that the sending agency is responsible for placing the employee in danger, or that the employee did not understand the risk. Document any training provided, as well as what security protocols are in place to ensure safety while in dangerous areas. Several very good crisis management firms provide this type of training, and different levels can be provided depending on the risk environment the person will face.

### **Common Mistake #2: Unrealistic expectations about the risk in the area**

In *Wagner*, the employee claimed that she went to work for the organization because she thought it had resources to protect her. Whether based on her own assumptions, or express assurances from the agency, this mirage of safety, when there may have been no way to guarantee safety, was a negative in that case.

### **Suggested Solution: Assess risks, be frank about the risks, and prepare your people mentally for the reality of the situation.**

While precautions should be taken to help keep people safe, being frank with missionaries about the risks may prevent this common mistake. First, the organization itself must be realistic about current risks. Then it must ensure that people in those high-risk areas fully understand what they are taking on. Such an understanding may not be possible for short-term personnel. For long-term personnel, advance training may be needed to clarify risks. This understanding should be in place before personnel enter the area.

Indeed, how the risk is presented to the employee may make all the difference in terms of liability after a crisis. In a high-profile case where four civilian contractors were brutally murdered in Fallujah, the contractors' estates brought a wrongful death and fraud suit premised on the fact that the company had under-delivered on its promise to provide certain security measures in the field.<sup>24</sup> The fraud claim alleged that the false promise of protection (notwithstanding the fact that Iraq was well-known to be

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<sup>21</sup> See *id.* at 1290-91.

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> See *Nordan v. Blackwater Sec. Consulting, LLC*, 382 F. Supp. 2d 801 (E.D. N.C. 2005).



extremely dangerous at the time) induced the contractors to enter into a service agreement and expose themselves to unacceptable risk.<sup>25</sup> The company reportedly paid \$635,000 to settle the case after over five years of litigation (which presumably racked up hundreds of thousands of dollars in attorney fees).<sup>26</sup> In contrast, where the risks of working in Colombia were well-known to an employee and deemed an inherent part of the job he readily accepted, the court was not willing to impose liability.<sup>27</sup> This means that employees must not only be well aware of risk, but their training and awareness should be documented.

Explaining that the risks are real and that protection cannot be guaranteed may not prevent a lawsuit, but it makes one harder to bring. Also, it helps realistically prepare the right people to accept a potentially dangerous calling. Practically, this conversation can be a part of the training and commissioning of a missionary for service in the field. It can be accompanied by a formal written agreement that the missionary understands the risks and desires to enter the field nonetheless. Missions to dangerous areas should probably be presented as possibly involving martyrdom.

Though courts usually disfavor waivers where employees assume the risk of their employment to limit liability, this may well be different in the missions context. As religious ministers, missionaries should have greater leeway to voluntarily agree to take on the risk of injury or death in order to spread the gospel as part of their own free exercise of religion. This makes the missionary employee unique. It is also a theologically sound approach.

But a full-time, adult missionary on a long-term assignment will be regarded differently than the teenager spending a week on a short-term mission trip. A short-term visitor cannot understand the risks in the same way. Waivers may still be used for short-term trips, but may or may not be effective. Courts lean towards finding waivers effective when they explain the risks clearly and in more detail, and when they are signed by the correct people (for instance, a parent rather than a grandparent).

In addition, the mission must work on safety. For instance, the mission might include very detailed briefing on the dangers and how to keep safe on the trip, or put in place policies regarding exploring dangerous areas. Still, the mission should consider carefully where to allow short-term visitors, especially minors, depending on current risks.

A frank conversation (and documentation) about the risks will not extinguish the risk of liability, but it goes a long way toward combatting any argument that the mission agreed to keep the missionary 100% safe 24/7. Both the mission and the missionary should understand these limitations.

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<sup>25</sup> See *id.* at 805-806.

<sup>26</sup> See Bill Sizemore, *Families of dead Blackwater contractors settle suit*, *The Virginian-Pilot* (Jan. 6, 2012), [https://pilotonline.com/news/military/families-of-dead-blackwater-contractors-settle-suit/article\\_257eb270-8ba1-594a-9dc5-1ca58a271825.html](https://pilotonline.com/news/military/families-of-dead-blackwater-contractors-settle-suit/article_257eb270-8ba1-594a-9dc5-1ca58a271825.html).

<sup>27</sup> See *Curtis v. Beatrice Foods Co.*, 481 F. Supp. 1275, 1290-91 (D. NY 1980).



### **Common Mistake #3: Lack of updated security protocols or a clear plan for what to do in the event of a crisis.**

Crises, particularly those involving kidnapping or serious threats against personnel abroad, can send staff back at the home office scrambling. Decisions made in the heat of crisis may later be examined microscopically in court. Even before real crisis develops, organizations need to monitor the on-ground situation and keep current with their security protocols.

In the *Wagner* case, the employee claimed that the security protocols for her organization were grossly inadequate, and that her organization sent her into a region where other organizations had prohibited their employees from traveling based on substantial information that foreign aid workers were in particular danger of abduction. The employee further claimed that once the crisis had developed, the organization had no expertise in crisis management or in negotiating the release of kidnapping victims, and that, before a crisis consulting firm was able to step in, the organization relied upon its inadequately trained in-country security personnel to negotiate (unsuccessfully) with the hostage takers. This mismanagement of the crisis, she claimed, prolonged her captivity and suffering.

### **Suggested Solution: Develop and implement a crisis management policy.**

The agency should also put in place a crisis management policy. While the organization in the *Wagner* case clearly had some crisis management plan, that plan was attacked in litigation as inadequate. A plan is only as good as its execution.

Agencies should evaluate risks and develop situation-specific security protocols for each region where threats may exist, perhaps with the assistance of a crisis management consultant or attorney. Protocols should be developed not only for long-term assignments, but for short-term missions as well.

Every mission organization facing overseas risks should have a clear crisis management policy that is well-known to those who need to implement it in the event of a crisis. The policy should include: the agency's position on negotiating or paying ransom, forming a crisis management team, evacuation authority and plans for medical or high-risk situations, and how to control information during a crisis and inform the correct people. It should cover how to address particular situations, such as when a staff person is arrested, kidnapped, murdered, or taken hostage, or if someone is sexually assaulted. Both the field areas and individuals should have contingency plans in place to safeguard persons, secure property, and preserve the ministry.

Once you have a plan, be sure missionaries know what to expect, who the points of contact are, and how the organization will handle the crisis, before one occurs. For instance, employees may have GPS tracking devices to use in case of emergency. A crisis management plan should clarify what funds are available to individuals or a field in the event of a triggering occurrence, and how the funds can be



accessed. Personnel may want to keep a hidden supply of cash so that they can buy their way through in escaping the country by alternative transportation.

Part of the crisis management plan should include insurance coverage for crisis situations. An overseas workers' compensation plan is a possibility, and should be coupled with a contractual agreement that the insurance will operate like U.S.-based workers' compensation, in that it is a sole remedy for injuries. Some organizations will purchase Kidnap and Ransom (K&R) insurance, though these policies must be kept very confidential so that the organization is not thereby made a target. Liability insurance should be reviewed carefully to make sure that all kidnappings will be covered (rather than excluding kidnappings that are acts of war, for instance). Short-term insurance is available for short-term trips. Various riders are available for diverse types of emergencies. Health insurance should include medical evacuations. Organizational coverage should be broad enough to cover volunteers, accompanying family, and independent contractors. Individual employees should be encouraged (or required) to carry adequate insurance to meet their responsibilities, such as to children.

Though training and policies should be adequate, they must be realistic, meaning that they will be followed every time. Training regimes or policies that look good on paper, but are not followed in practice, can be more of a liability than an asset. Legal review of policies may be helpful for best practices and potential liability. Create policies and follow them.

**Common Mistake #4: Lack of communication about, and planning for, the mission's role and priorities during crisis situations, particularly during hostage negotiations.**

Another issue that came up in the *Wagner* case was the employee's claim that the mission had forced the U.S. Government and her family out of the hostage negotiation process. Multiple times in her complaint, the employee referred to there being a "conflict of interest" between her interests and the mission's interests. The agency was able to act as chief negotiator, which promoted the mission's interest, but the confusion about interests and who was in charge exposed the mission to an argument that it had preserved its interests to the captive's detriment.

**Solution #4: Take steps to allow the agency to participate in crisis management on the ground without fear of reprisal.**

A mission agency should not assume that its missionary's interest in a hostage situation would align with its own. The reality is that negotiating in the "best interest" of an individual missionary, including ransom payment, could severely jeopardize the position of other missionaries (who are then seen as a potential source of income) or the mission's presence in the country (depending on the government position). Conversations about conflict of interest should take place in advance as part of a comprehensive training before the missionary is in the field. It may be necessary to take the position that no one will be sent without agreeing on a policy that benefits the work of the mission as a whole, whether short-term or long-term. This may limit the use of short-term teams, or who can be sent into a given



area. It may be necessary to have serious discussions about whether certain locations are appropriate for deploying families or those who have dependent children.

While on the one hand, a missionary might resent and object to the mission's role as chief negotiator in a hostage situation, the opposite problem may occur. Different interest groups may clamor to be involved—family members, a sending church, or even the Government—and cause issues in the negotiation. Current U.S. policy for U.S. citizen hostage situations abroad designates family members or next of kin as the primary point of contact for the Government's negotiations.<sup>28</sup> This means that the agency may lack power to participate in negotiating a hostage crisis—even if that would be the desire of the missionary involved.

The agency would like to ensure that the missionary is on board with the mission's policies in the event of a ransom demand, and that the mission can have a seat at the bargaining table. One possible approach is to have the missionary complete a statement of intent outlining his or her wishes vis-à-vis hostage negotiations in the event he or she is taken hostage while on the field. Such a statement might specify that the missionary desires that the mission have a seat at the table if the U.S. Government is handling the negotiations. The statement could also address the missionary's understanding of and agreement to the priorities in the event of his or her capture, aspects of the negotiations, acceptance of the mission's policy on ransom and rescue attempts, and disclosure of information to others. This sort of statement would not be legally binding on the missionary or third parties, but it would make clear the missionary's wishes in the event of a crisis.

#### **Common Mistake #5: Incentivizing a lawsuit by not planning for aftercare.**

The employee kidnapped in Darfur in the *Wagner* case undeniably endured a harrowing experience while in captivity. The post-traumatic stress she experienced afterward made her unable to continue working as an aid worker abroad. While the complaint does not suggest that the mission refused to help her when she returned, it is worth emphasizing that aftercare is crucial for those who are successfully released from a hostage situation, or who return to the States after being injured abroad.

#### **Suggested Solution: Create a plan in advance, with employee buy-in, to fairly compensate or care for survivors.**

In general, people file lawsuits when they are angry or desperate. If a person has endured a crisis and does not feel like the mission cares, or feels in some way that he or she has been used, discarded, or pushed aside, the bitterness generated may trigger legal action. Or if a person has overwhelming needs and no financial way to meet them, a lawsuit may seem to be the only option. Good pastoral care and good financial care are both important to help people move on in a way that is productive, rather than take an approach like litigation that is destructive to themselves and the organization.

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<sup>28</sup> Executive Order 13698: Hostage Recovery Activities, 80 Fed. Reg. 37131 (Jun. 29, 2015).



One way to discourage employees from suing the mission after a crisis is to set up a system in advance where their legitimate needs will be addressed outside of litigation. This can take a variety of forms, including providing psychological treatment services, financial compensation when the employee is unable to work after a crisis, or retraining for another position. In addition, the mission agency can contractually agree with its employees how disputes after a crisis will be handled, stating that its religious beliefs require that Christian mediation or arbitration be the sole remedy.

As previously discussed, under some states' workers' compensation schemes, workers can be covered for shorter term assignments even if the injury occurs outside the state of coverage. But when the assignment is more permanent, coverage become uncertain at best. Under workers' compensation, non-employees (like some volunteers or family members) would not be covered at all. Because most missionaries' work abroad is longer term and may not trigger coverage under state workers' compensation schemes, a missionary or family member who needs compensation to cover aftercare may feel the only option is a lawsuit as there is no other recourse.

One way to provide for employees and bar such lawsuits is through foreign voluntary workers' compensation insurance coverage.<sup>29</sup> This coverage can be provided to the employee in exchange for agreement by the employee that this is the sole remedy for harm suffered abroad. Having special coverage like this is probably essential to such a scheme working well; do not try to simply ask the employee to agree to be covered by state workers' compensation. In one case, where an employer had gotten its employee to agree to such coverage, the court noted that the state's scheme simply did not cover a long-term foreign assignment. The court allowed the employee to sue his employer, despite the agreement that the employee would be limited to workers' compensation, because the coverage really did not exist.<sup>30</sup> Foreign voluntary workers' compensation coverage is a special type of policy that some insurance companies provide that expressly covers these situations. This is one way the organization can ensure that any injuries will be taken care of, and minimize exposure to multi-million-dollar lawsuits. If there genuinely is coverage, a contractual agreement for a sole remedy is much more likely to be enforced. Other types of insurance plans are also available to cover non-employees' injuries in various ways, and forms of insurance, such as health, life, and disability, should be considered.

The mission should also consider offering psychological therapy for survivors of crisis situations and their families as part of good member care. In addition, in some extreme situations, the missionary or the family may not be mentally prepared to return to the field. The mission should consider offering services for this transition.

Finally, organizations and their employees can agree in advance that if they ever disagree about compensation or other issues, they will handle differences through Christian alternative dispute

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<sup>29</sup> See, e.g., Chubb Multinational Solutions, *Foreign Voluntary Workers Compensation*, available at: <http://www.chubb.com/businesses/cci/chubb16285.pdf>.

<sup>30</sup> See *Khan v. Parsons Global Servs.*, 428 F.3d 1079, 1087 (D.C. Cir. 2005).





resolution, such as mediation or binding arbitration, rather than a lawsuit. Arbitration agreements have been enforced, even to deal with who should be responsible after a crisis.<sup>31</sup> A Christian arbitration agreement is likely even more enforceable than a regular arbitration agreement, as it flows from the organization's and workers' religious beliefs.

### **Common Mistake #6 Not learning from previous or early warning situations**

Often, before there is a full-blown crisis event, there are earlier warnings, with potential situations that do not become serious. These may even include incidents that happen in other organizations. Rather than dismissing them as “no real problem,” mission organizations should use similar situations that do not “blow up” to refine the crisis plan.

### **Suggested Solution: Conduct internal investigations or strategic planning meetings**

When there has been an incident, minor or major, within the organization or on the same field with another organization, it can be a learning tool. One possible approach is to conduct an internal inquiry—an investigation of how well a situation was handled, or an audit of the organization's crisis plans. A crisis investigation or audit can be done internally, but will likely be higher quality with external consultants, such as an attorney or crisis management consultant or both. This audit may include practice drills to make sure everyone understands the company's policies. In effect, this type of preparation sets up the chessboard for the company's strategy in crisis. While expensive, investigations and audits may help organizations avoid much lost time, grief, and legal liability later.

## **IV. Conclusion**

Because sin is a reality, death, destruction, and evil will happen in this life. The question is not whether an organization will experience a crisis, but when and in what form. By taking crisis management seriously, organizations can protect their people and help them recover from devastating events, as well as staying out of court in the event that something goes awry.

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<sup>31</sup> See, e.g., *Blackwater Sec. Consulting, LLC v. Nordan*, No. 2:06-CV-49-F. (E.D. N.C. Jan. 21, 2011) (arbitration agreement in service agreement enforceable after contractors were murdered abroad while working for private security contractor).

