

Aiding Victims of Clergy Sexual Abuse: What's a Good Samaritan to Do?

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The provision of financial assistance to victims of clergy sexual abuse seeking to obtain mental health counseling and treatment may result in civil liability for religious and other organizations undertaking such aid if precautions are not observed. This newsletter highlights how Pennsylvania law has recently been applied and issues organizations in every state should consider before stepping into the role of Good Samaritans.

On September 29, 2011, the Superior Court of Pennsylvania issued a decision in *Unglo v. Zubik*, No. 1749 WDA 2010, 2011 PA Super 207 (Sup. Ct. PA Sept. 29, 2011), addressing the issue of whether a religious organization that gratuitously undertakes to provide financial assistance to a victim of clergy sexual abuse, and then unilaterally terminates that assistance is liable for damages incurred by the victim after the termination of the assistance. The court held that an entity that provides financial assistance is not obligated to continue that aid indefinitely. Rather, that assistance may be discontinued as long as the recipient is not left in a worse position than when the aid began. The *Unglo* case raises questions about the nature of so-called Good Samaritan laws and the liability implications for religious organizations that voluntarily undertake to provide financial assistance for mental health counseling and treatment to victims of clergy sexual abuse.

Factual Background

Michael Unglo was a victim of sexual abuse at the hands of a Catholic priest from 1982 to 1985, while he was a student at All Saints School and an altar boy at All Saints Church. In June 2008 Mr. Unglo attempted to take his life. In response to outreach by Mr. Unglo's family in December 2008, the Roman Catholic Diocese of Pittsburgh committed to pay for counseling and treatment services for Mr. Unglo. This decision was based in large part on the fact that there was no question surrounding the credibility of Mr. Unglo's allegations against the priest whom he named as his abuser. The priest was known to the diocese as a pedophile and had previously been convicted of molesting another boy. Despite the diocese's commitment to Mr. Unglo's treatment, he again attempted suicide in June 2009.

In total, the diocese paid approximately \$300,000 for Mr. Unglo to receive both in-patient and out-patient treatment services. In March 2010, after two years of financial assistance by the diocese and no marked improvement in Mr. Unglo's mental health, and after extensive discussions with his family and treatment

professionals, the diocese informed Mr. Unglo's family by letter that there would be one final payment of \$75,000 to assist Mr. Unglo in transitioning his life, but thereafter, all financial assistance would cease. Less than two months later, Mr. Unglo completed a suicide.

Mr. Unglo's brother, as executor of Mr. Unglo's estate, initiated a wrongful death action against the diocese alleging that it negligently terminated payments for Mr. Unglo's treatment. The trial court dismissed the complaint on the basis that the plaintiff had failed to establish that the diocese had a legal duty to continue paying for Mr. Unglo's care and counseling.

Superior Court of Pennsylvania Decision

On appeal, this action presented an issue of first impression regarding whether a religious organization may discontinue financial assistance to a victim of clergy sexual abuse after undertaking to pay for counseling and treatment services. The *Unglo* court addressed whether the complaint set forth a cause of action under the Restatement (Second) of Torts Section 323, which provides that a plaintiff may recover for "negligent partial performance" or "negligent termination of services" under the following circumstances:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

- a. his failure to exercise such care increases the risk of such harm, or
- b. the harm is suffered because of the other's reliance upon the undertaking.

Section 323 codifies common-law liability, which may be imposed upon a "Good Samaritan"—generally, a person who gratuitously aids a distressed individual, but whose assistance is negligently performed. As a general rule, one who renders assistance under these circumstances may be held liable only when failing to proceed as a reasonably prudent person would proceed in similar circumstances. This rule raises a related question of when a reasonable person may discontinue assistance, not otherwise required, once begun.

Comment c to Section 323 states that when an actor gratuitously provides aid to another, the actor is not required to continue to provide aid indefinitely, or even until all possible remedies have been exhausted. The exception arises, however, when the actor's assistance has placed the recipient in a worse position,

either by partially performing the obligations undertaken or by requiring the individual to forgo other means of assistance. Under these circumstances, “the actor is not free to discontinue his services where a reasonable man would not do so.”

The *Unglo* court held that while there may be instances where an individual is placed in a worse position after receiving treatment or counseling services, this was not the case here. Mr. Unglo was suicidal before the diocese undertook to provide financial assistance for his treatment and counseling, continued to be suicidal while the diocese aided him and, regrettably, completed his suicide subsequent to the termination of the diocese’s aid. The court found that because the diocese had not placed Mr. Unglo in a worse position than before it undertook to pay for his treatment and counseling services, the diocese could discontinue its financial support without incurring liability.

Implications of the Unglo Decision

While Section 323 does not require an actor who begins furnishing assistance to continue that assistance indefinitely, organizations that undertake such efforts must proceed with caution to ensure the individual is not left in a worse position when terminating such aid.

To mitigate potential Section 323 liability in Pennsylvania and other states that have adopted the Restatement of Torts Section 323 or some similar provision, religious organizations and other entities looking to render financial assistance to victims of sexual abuse perpetrated by clergy and others should enter into written agreements with such recipients at the outset of the undertaking. Consulting with a lawyer to ensure the terms of the proposed assistance are specifically outlined, for example, defining the scope and duration of the assistance, will help govern the expectations of the aid recipient. This step may avert later allegations of “negligent partial performance” or “negligent termination of services” of the sort presented in the *Unglo* matter.

Another threshold consideration religious and other organizations should evaluate when deciding whether to provide financial assistance to victims of sexual abuse concerns the specific coverage and exclusion provisions of the organizations’ general liability and other insurance policies. Issues such as whether the organization’s general liability policy covers the intentional conduct of an employee, the organization’s negligent training and supervision of the employee, and the organization’s negligent termination of assistance are some that may arise and lead to litigation in connection with an insurance coverage action. Understanding the legal implications of applicable historical and current insurance policies can be a complex endeavor; as such, the assistance of a lawyer who can conduct a thorough review of the

relevant insurance policies before the organization enters into any agreement to provide financial assistance is critical.

The *Unglo* court is the first in the country to apply the principles of the Restatement (Second) of Torts Section 323 in the context of claims arising from clergy sexual abuse. How other states will handle such issues—particularly those states whose Good Samaritan laws are defined by other statutes and/or case law, and have not specifically incorporated the Restatement as the definitive law governing these issues—remains to be seen. Notwithstanding the limited impact of the *Unglo* decision outside of Pennsylvania, the decisions of the Pennsylvania trial and appellate courts raise important issues, especially as plaintiffs continue to look for ways to hold religious and other organizations accountable and seek financial and other forms of redress.

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