

Legal & Safety Concerns Associated with the Use of 15-Passenger Vans

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By: Richard R. Hammar

I am writing to address the legal and safety concerns associated with the continuing use of 15-passenger vans. Many 15-passenger vans carrying passengers have been involved in horrific accidents resulting in death or serious injury to occupants. In response, the National Highway Traffic Safety Administration (NHTSA) investigated several of these accidents, and in April of 2001 issued a rare "consumer advisory" regarding an increased rollover risk for 15-passenger vans under certain conditions. The advisory concludes that 15-passenger vans with more than 9 occupants have a rollover rate in single vehicle crashes that is nearly three times the rate of vans with fewer than 10 occupants. Since 2001 the NHTSA has taken the unprecedented step of reissuing its safety advisory on three additional occasions, in part due to "several tragic rollover crashes involving religious groups on trips."

The NHTSA advisories make the following 10 recommendations to reduce the rollover risk associated with 15-passenger vans:

1. No more than 9 occupants
2. Load occupants from the front of the van.
3. Each occupant is required to wear a seat belt at all times. The van owner should adopt a written seatbelt policy, and drivers should be informed that they are personally responsible for enforcing it. Nearly 80 percent of those killed in 15-passenger van rollovers in 2000 were not wearing seatbelts.
4. Absolutely nothing loaded on the van roof.
5. Van drivers should be well rested.
6. Drivers should drive cautiously (maintain a speed that is safe under the conditions, and be especially careful on rural and curved roads).
7. Inspect tires monthly to check for wear and proper inflation. Worn or improperly inflated tires increase the risk of a blowout. And, a 15-passenger's tendency to rollover increases dramatically during emergency maneuvers, such as a panic

- response to a tire blowout.
8. If the van's wheels drop off the roadway, gradually reduce speed and steer back onto the road when it is safe to do so.
 9. Only use drivers who have received specific training on the use of 15-passenger vans. Several options are available, including a van driver certification course offered by the National Safety Council. This training should be repeated every three years.
 10. Drivers should keep the van's gas tank as full as possible.



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Some churches remove the back seat of their 15-passenger van in order to meet the NHTSA's "no more than 9 occupants" recommendation, but then load the empty space with luggage, equipment, or other items. Such an arrangement does not work in most cases, since the problem is weight and replacing people with equipment or luggage fails to address the underlying problem.

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While not mentioned directly in the NHTSA recommendation, the safety problems associated with 15-passenger vans are compounded when towing trailers.

Any church or ministry that continues to use a 15-passenger van following four NHTSA safety advisories is assuming an enormous risk of liability in addition to the risk such vehicles pose to human life. If one or more occupants are seriously injured or killed, a court might well conclude that the use of a 15-passenger van was negligent. But, it is also possible that a court would conclude that the ministry, and its governing board, were "grossly negligent" as a result of their disregard of the NHTSA safety advisories and their recommendations. A finding of gross negligence is very serious since it would expose the ministry to "punitive damages" that are not covered under its liability insurance policy. In addition, the members of the board could be personally liable for their gross negligence. While state and federal laws provide uncompensated board members of nonprofit organizations with limited immunity from liability, these laws do not protect against gross negligence.

It will become increasingly difficult to obtain liability insurance for 15-passenger vans because of the concerns mentioned above. The largest insurer of school buses in one state has indicated that it no longer will insure 15-passenger vans that carry children to or from school.

In my opinion, churches and other ministries have the following options:

First, continue to use 15-passenger vans but strictly comply with all 10 recommendations made in the NHTSA safety advisories quoted above. If continual compliance with all 10 recommendations cannot be guaranteed, without any exceptions, then this option must not be considered. In most cases, such an assurance will not be possible. In the rare case that continuous compliance with the 10 recommendations can be assured, then this will provide churches with a defense to liability in the event of an accident. The defense may not

be successful, but it at least can be made. Note that the very first recommendation is that the van never contain more than 9 occupants.

Second, sell all 15-passenger vans and replace them with smaller vans or "small school buses." Small school buses are the safest form of transportation. While the initial cost of a new "small school bus" is slightly higher than a fully equipped 15-passenger van, the cost of operation is less expensive because buses are more reliable and have longer useful lives.

Third, rent a vehicle other than a 15-passenger van.

Fourth, use a commercial carrier to provide transportation services.

The second, third, or fourth options should be selected in any of the following five situations:

1. A church cannot obtain insurance for a 15-passenger van.
2. A church uses a 15-passenger van on a regular basis to transport school children (preschool through high school) to or from school or any school-related activity. In such a case, the van would be considered a nonconforming "school bus." While it is still legal to use nonconforming school buses in most states, there is legislation pending in Congress as well as in many state legislatures to change this. Further, even if the use of a nonconforming school bus does not violate state or federal law, such use may result in liability. The largest personal injury verdict in the history of one state resulted from the death of a student in a nonconforming school bus operated by a church.
3. A church wants to reduce the risk of death, injury, and liability (including uninsurable punitive damages, and personal liability for board members who authorize or allow the use of 15 passenger vans).
4. A church wants to send a message that it values human life.
5. Continuous compliance with the 10 safety recommendations contained in the NHTSA safety advisories cannot be guaranteed.

An advantage of the second option is public image. Increasingly, the public is becoming aware of the risks associated with 15-passenger vans. When people see a small school bus operated by a church, many will say, "There is a church that takes the safety of human beings seriously." It really sends a positive message. On the other hand, when people see 15-passenger vans being operated by churches and other ministries, many will have the opposite reaction.

In the final analysis, why would any rational person want to use 15 passenger vans in light of the potential for death, serious injury, and astronomical damages? There is only one reason—to save money. This justification is inexcusable, and is also erroneous when one considers the true "cost" of using these vehicles (death, injury, and staggering legal liability).



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For more information regarding this topic I would direct you to a special report I have written on church vans. It is available from my publisher by calling 1.800.222.1840. This report fully addresses the legal issues associated with the continuing use of 15-passenger vans by churches and other ministries.

If you have questions regarding a risk management issue please contact Jerry Sparks, CIC, CRM at toll free 1.866.662.8210.



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