

# Can You Be Sued by Kidnapped Employees?

By SBS Training Solutions™

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The answer to this question may surprise not only you, but also your Human Resources and Risk Management teams. This is because the definition and scope of “liability” and “culpability” within the context of kidnapping victims are currently being re-examined and redefined. As an employer or executive, you need to become familiar with the abbreviation KRE. It stands for “Kidnap for Ransom and Extortion”, and it is quickly becoming a moral and legal dilemma for companies seeking new markets, outsourcing manufacturing operations, or requiring employees to travel and work in threat-elevated environments.

Why do you need to know about KRE? Simply put, you and your organization seriously need to consider three primary questions associated with kidnapping, ransom, and extortion.

1. Are the corporation and top leadership legally liable if an employee is kidnapped?
2. What are your responsibilities when you have employees working in a threat-elevated environment?
3. How can you help protect your corporation and your employees from becoming victims of KRE?

## **The Flavia Wagner vs. Samaritan's Purse**

A former U.S. aid worker who had been kidnapped in the Sudan filed a lawsuit in a Manhattan court against a Christian non-profit organization, Samaritan's Purse. Flavia Wagner was kidnapped soon after her arrival in Southern Sudan where she was working as a volunteer for

Samaritan's Purse. Her ordeal lasted for 105 days before being released on Aug. 30, 2010.

As a hostage, Wagner was subjected to physical and emotional abuse, mock executions, constant death threats, and extended periods of solitary confinement. She accused Samaritan's Purse of failing to adequately inform her of the threat, failing to properly train her, and willfully ignoring the warning signs that kidnappings were a threat within the Abu Ajura region. Wagner alleges Samaritan's Purse was reckless by sending her to Southern Sudan without proper information and training, and they delayed paying her ransom solely to save money.

The lawsuit states, "While Samaritan's Purse possessed the resources to extricate plaintiff from her captivity quickly, it instead embarked on a plan designed to protect its own financial and political interest." Her lawyers claim this delay caused her to suffer more than she would have if the ransom had been paid rapidly and with less regard for economics than for her safety.

Her lawsuit also names Clayton Consultants, the company hired to negotiate her release. This case is only one example of the changes affecting corporations and the potential problems arising from employees working in threat-elevated locations.

## **What Worker's Comp Doesn't Cover**

If your employees work in threat-elevated areas (e.g., along the U.S./Mexico border), the standard workers' compensation rules apply

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when they are working on the U.S. side of the border. Employees are not normally eligible to file a claim for workers' compensation when they are outside of the course and scope of their employment. However, they may indeed have a claim if their job requires them to work in a threat-elevated environment. For example, if their employment requires them to work in a higher risk area, and they are exposed to elevated kidnapping risks due to their employment, then liability rules begin to change.

The typical workers' compensation coverage does not usually cover these situations and general liability policies normally contain exclusions for employment related lawsuits. This means you will not have coverage for the loss, plus the defense costs and legal expense will not be covered by your insurance policies. The legal fees alone can become staggering in such cases and the ensuing media coverage and loss of employee morale could be devastating to an organization's corporate image.

No responsible employer would ever consider having an employee work with potentially dangerous and expensive machinery without receiving proper training or without making sure employees were supplied with the necessary safety equipment mandated by groups such as OSHA. The same standards are now being applied to hazardous situation awareness and threat-aversion training.

*"Traditionally, the risks associated with an overseas assignment have been poorly managed."* says Paul Coleman, Executive Vice President of XN Financial, a managing general agency specializing in the risks associated with foreign deployments. *"International mobility [poses perils] that many people don't think about, and failure usually happens due to management."*

The work environment for employees that live in one country yet work in another is notably different regarding the management of the risks. For example, management employees who live in El Paso, Texas or San Diego, California, and commute each day to manage an operation in Juarez or Tijuana, Mexico are exposed to the threat of kidnapping for ransom during their commute.

## **Mitigating the Risk (and Liability) of Kidnap and Ransom Events**

The bar for the standard of care is rising. Corporations that are slow to respond may find themselves in high-profile lawsuits with legal demands that penetrate the insurance layers of the primary Employer's Liability limits and their Umbrella policies (if they carry excess coverage), provided, of course, they are fortunate enough to find coverage in their insurance policies. Pro-active companies will find themselves in a much better position to defend against these suits, both in the legal courts and the courts of public opinion.

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Additionally, attorneys will seek ways to circumvent the company's non-disclosure agreements. While these agreements have been a force in keeping lawsuits such as Wagner's from the public eye, the tide seems to be turning.

Dean A. Sipe, Esq., an Arizona lawyer specializing in corporate law, offers this comment regarding this matter. He says, "*Organizations whose business requires them to send employees or volunteers to hazardous parts of the world should be aware of an evolving standard of care that may impose a duty on them to take reasonable precautions for the safety of such persons placed in harm's way. One way to attempt to meet this standard may be to ensure that employees or volunteers receive training in anti-kidnapping, counter-surveillance awareness, and crucial hostage escape and survival techniques.*"

In the United States, if an employer fails to provide employees with ongoing briefings and training to avoid or deal with these types of threats, there is a significant opportunity for the plaintiff to claim negligence on the part of the employer. Under normal circumstances, an employee who was involved in an auto accident or car-jacking during the usual drive to and from their place of work from their primary residence would not be able to successfully make a worker's compensation claim. Driving to and from the place of primary employment is not considered to be within the "course and scope of employment".

Yet those who find themselves being attacked on the way to work in a threat-elevated area probably would have a claim against the employer, particularly if the employer moved the employee to the area and provided little or no information regarding the elevated threat level of the area. Individual cases would determine the viability of the various workers compensation coverage (or other liability coverage) depending upon the actual coverage and policy language.

## **Understanding Kidnap and Ransom Insurance**

Kidnap for Ransom and Extortion Insurance (KRE Insurance), is designed to provide funds and professional-level negotiators necessary to recover kidnapped individuals in high-risk areas around the world. These policies typically cover kidnapping, extortion, wrongful detention, and hijacking. Normally, insurance companies will specify the use of specific crisis management and professional hostage negotiating teams to aid in the negotiation/recovery process and to minimize losses due to kidnap or ransom.

Hostage negotiation experts have two separate responsibilities. The most obvious is to take charge of the negotiation process, insure the safety of the hostages, and gain their release as quickly as possible. However, the negotiation team has a financial obligation to the insurance company to negotiate a successful release for as low a payment as possible. This "fiduciary" responsibility to the insurance company can extend the time a hostage is held captive. The

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longer a hostage is held, the worse the physical, emotional, and sexual abuse can become.

Experts agree it is preferable to have a professional and experienced team conduct all contact and negotiation conversations with the kidnapers. Yet, one must recognize that a professional negotiating team is working for the insurance company's best interests as well as those of the hostage. Therein lies the dilemma ... the speed of recovery versus the possibility of a lower negotiated ransom payment.

## **Conclusion**

Kidnapping has become a billion-dollar global business, and it is often carried out by teams whose mission is simply to ransom people for money. These kidnapping rings have decision makers, a negotiation team, and an implementation team. It is a worldwide problem, especially within Africa, the Middle East, Malaysia, Philippines, with Mexico and Latin America being the key areas of highest concern. Americans traveling outside the US (or even along the borders) are often preferred targets, even though they may not see themselves as intended kidnapping victims.

The incidence of kidnapping is on the rise, and ignoring the problem is not only a poor idea, it can be an expensive one as well. Corporations and business leaders need to rethink their legal and ethical responsibilities with regard to their employees working in threat-elevated environments. The ramifications of losing an employee in terms of employee morale, liability, and lost productivity make threat-aversion education and training a smart and financially prudent decision. Losing one or more strategic employees to the threat of kidnapping or attack can be very expensive to a corporation, particularly when there are opportunities to provide proper training to reduce the risks to these employees.

If protecting your company's employees while mitigating your organization's liability is important, you need to review your insurance coverage and have a reputable security training company conduct an in-depth audit of your current HR policies and security training procedures.

In potential KRE situations, you and your company's management need to establish a proactive course of action before a kidnaping event ... **NOT AFTERWARDS!**

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For more information on these issues, and to help you understand and schedule security audits, education seminars, and training workshops, contact SBS Training Solutions™ at 888-856-5552 or outside of the USA at (757) 356-5550. Send inquiries to [info@sbstrains.com](mailto:info@sbstrains.com). Download SBS's White Paper and Position Papers at [www.sbstrains.com](http://www.sbstrains.com).