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DIOCESAN SELF-INSURANCE PROGRAMS: THE PHILADELPHIA APPROACH

JOHN P. O'DEA, ESQUIRE*

We all remember that in the tenth century B.C., Solomon was anointed King of all Israel. Hiram, who at that time was the King of Tyre, sent his messengers to Solomon to give him his best wishes.

There then ensued the following exchange. Solomon gave Hiram's servants, for delivery to Hiram, the following message: "You know that David, my father, could not build a house for the name of the Lord, his God, because of the warfare with which his enemies surrounded him until the Lord put them under the soles of his feet. But now the Lord, my God, has given me rest on every side. There is neither adversity nor misfortune, and so I propose to build a house for the name of the Lord, my God. As the Lord said to David my father, 'Your son, whom I will set upon your throne and your place shall build a house for my name.' Now, therefore, Hiram, please command that cedars and cypress of Lebanon be cut for me, that my servants will join your servants, and I will pay you for your servants such wages as you set, for you know that there is no one among us who knows how to cut timber like the Sidonians."

Hiram's messengers returned to Hiram, gave him the message, and Hiram sent a return message: "Blessed be the Lord this day who has given to David a wise son to be over this great people. I have heard the message which you have sent to me. I am ready to do all you desire in the matter of cedar and cypress timber." The rest of Hiram's message was devoted to the mechanics of shipping, how the cedar and cypress would get there, who would cut it down, et cetera, et cetera.

This exchange, we are told, took place in about 960 B.C. If it took

* Stradley, Ronon, Stevens & Young.
place today, both messages would have been a little lengthier, and they might have said as follows: from Solomon to Hiram, “In fulfillment of my fiduciary duties as King of all Israel, I must provide adequate insurance coverage for this project. Accordingly, please advise me as soon as possible of the following: before you ship any cedar or cypress or before I send my servants to join your servants, if I pay you for your servants, will you continue to carry them on your Workmen’s Compensation coverage or should I add them to my Workmen’s Compensation coverage. If one of your servants is injured on the job, is Workmen’s Compensation his exclusive remedy against me, or can he assert common law claims for negligence against me? If the latter, will my comprehensive general liability insurance cover me or will the carrier disclaim coverage based on Exclusion G which states, ‘This policy shall not apply to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured.’”

Solomon continued, “Before my property and casualty insurers will consider insuring this project, I must give them the following information: audited financial statements of all material suppliers of Hiram of Tyre for the last five years; a complete ten-year claim history including pending reserves of any claims against Hiram of Tyre wherein it is claimed that any defect in cedars or cypress of Lebanon caused bodily injury or property damage; a certificate of insurance from your insurance company, naming King Solomon in his capacity as King of all Israel and the Kingdom of Israel as additional named insured for any bodily injury or property damage, arising out of the design, cutting or use of cedars and/or cypress of Lebanon in the house I plan to build. Regards, Solomon.”

Hiram responded, “I have asked my counsel to respond directly to your inquiries concerning the status of my servants as your employees for Workmen’s Compensation purposes. I have submitted audited financial statements through my insurance broker to some 65 insurance companies, admitted in Tyre and various London markets. My broker has received 65 declinations of coverage. I doubt if you can do any better.”

Hiram continued, “My insurance companies have never paid one core of fine flour or one fat oxen in settlement of any claim against me; however, my loss ratio was over 200 percent. The reason for this is defense costs. I foolishly sold a great number of cedars or cypress of Lebanon to a ladder manufacturer for use in the United States of America. I cannot give you a certificate of insurance covering you in any capacity for anything because all of my insurance coverage has been cancelled.”

Hiram continued, “You have requested that I subcontract with the Sidonians to cut the cedar and cypress. The Sidonians are in bankruptcy as a result of numerous law suits against them by former employees who have alleged that the Sidonians intentionally injured them by intentionally failing to warn them that inhalation and ingestion of cedar and
cypress dust and fumes could cause permanent damage to their sense of smell."

"The Cedar and Cypress Growers Trade Association, of which I am a member, is looking into the feasibility of forming one of those captive insurance companies which will offer liability insurance with a large self-insured retention. I am told that the key to this is finding a re-insurance capability and that none presently exist."

"I suggest that you delay commencement of the project until the insurance market recovers. Regards, Hiram of Tyre."

That brings us in a rather long-winded fashion to our topic which is self-insurance, the experience which we have had in the Archdiocese of Philadelphia with a program of self-insurance which has been in effect now for about eight years.

The program was instituted with the insurance year of December 1, 1978. There were a number of reasons for the institution of this program. Prior to the institution of the program, the Archdiocese, as the Archdiocese, maintained insurance for all Archdiocesan locations and operations. It was up to the individual parish pastor to secure both casualty and property insurance for parish property, parish locations, and parish activities.

Because of the great number of insurance forms in use, and because of the differences between parish pastors, quite often the required insurance simply was not in place for any number of reasons.

It was an administrative nightmare. There were people at the Archdiocese whose job it was to make sure that parishes had insurance in sufficient amounts and the right type of insurance; however, quite often there were gaps in that insurance coverage or there were simply not coverages for activities which should have been covered because of various exclusions which the insurance companies insisted on putting on policies.

The Archdiocese had been insured at the Archdiocesan level for fifteen years with the same liability insurance carrier. For the policy year commencing December 1, 1978, which those of us who are familiar with insurance will recall was right in the middle of what was the last insurance crunch which occurred in the late 1970's, this carrier quoted on a renewal for the year December 1, and indicated that its renewal premium would be 900 percent more than the expiring policy premium.

This is not a large increase in present day terms, where quite often renewal quotations are 2,000 or 3,000 percent higher than they were, and one difference between what is happening in 1986 and what happened in 1985 and what happened in the late 1970's is that back in those days you could get insurance for a price. Quite often now insurance is not available for any price for certain types of institutions for any number of reasons.

Another problem was that the experience had been that the people who handled the claims really did not understand the Archdiocese, par-
ishes, the relations between the Diocese and the parish, and the multitudinous relations which one finds in the Diocesan setting, let's say, for example, between a religious order and the Diocese or a high school.

They really did not understand this. They wasted a tremendous amount of time getting into things which they really should not get into. Quite often they were giving out information which in other contexts could be harmful to the Diocese or to the parish.

For example, there was a tremendous amount of confusion in the insurance carrier with their claims handling people as just what is the Diocese, what is the parish, what is the relationship between those.

This had taken place over a period of five or six years since the repeal of charitable immunities by the Pennsylvania Supreme Court in the early 1970's and it was getting worse. Stradley, Ronon, Stevens and Young's Jim Gallagher, counsel for the Archdiocese, was increasingly getting involved in liability cases, not as defense counsel but sort of as an inert positioner between the insurance company and their claims handling people and the defense counsel which they retained and the client.

Quite often, rather than having defense counsel do such things as answer interrogatories, get the information, they would send them to us because they knew that was the easiest way to go and because they knew we had the information and knew where to get it and could, in effect, do their job for them.

All of these factors entered into the decision to go with a self-insurance program. I think before we discuss the concept of self-insurance and what that entails, we ought to have a little basic understanding of insurance. What type of insurance are we talking about? Basically two types of insurance: casualty insurance or liability insurance on the one hand and property insurance on the other hand.

I've given out a handout. I hope most of you have it. It's a three-page photocopy of parts of a Comprehensive General Liability Insurance policy and endorsements thereto.

Up at the top of that first page are your basic liability insurance coverages. This is the so-called ISO Insurance Service Office, Comprehensive General Liability Insurance coverage, and what it does is say that it will cover the insured or pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage to which the insurance applies, caused by an occurrence.

In the definition sections there are definitions of all of these terms, bodily injury, property damage and most important, occurrence. An occurrence, according to the policy, is an accident, including exposure to continuous or repeated circumstances which results in bodily injury, neither intended nor expected from the viewpoint of the insured.

So, therefore, when Mrs. Murphy comes to church on a cold Sunday
afternoon in February and slips and falls on the ice, an occurrence has happened. When Father O'Malley runs out and says to Mrs. Murphy, "Mrs. Murphy, don't worry about a thing, you're covered by our insurance," it is wrong. That is absolutely incorrect. There is the idea set forth in the policy that there must be legal liability before the insurance covers anyone and the insurance never ever covers the injured person.

The insurance covers those people who are named in the policy as named insureds, additional insureds or insureds. They never cover the injured person or the person whose property is injured in an insurance policy.

To continue, that first paragraph there covers everything. Then there are a host of exclusions which apply to the policy, most of which have absolutely nothing to do with the operations of a diocese or a parish or any institution therein although quite a few of them do still apply, and we will get to some of them as I go through this.

In the ordinary course of things this basic insuring agreement is expanded by a whole host of other documents, one of which is the so-called broad form comprehensive general liability endorsement, part of which is page two of this handout and then there are all sorts of endorsements which could be put on a policy, usually by the insurance company which purport to expand coverage; however, none of them do. They all contract coverage. They are exclusions, except they do not say they are. They are designed by the company to limit coverage.

They are printed forms. Beware of printed form endorsements on an insurance policy. They have no purpose in most instances.

Is there anyone here from an insurance company or an insurance broker or anyone who markets insurance to institutions such as dioceses or parishes or anything like that?

Most of them have absolutely no idea what is in an insurance policy. Most of them have never read it. If you say to your insurance broker for the diocese you represent, "What does this policy cover?" The broker will say, "I don't know, but it is intended to cover this, that or the other thing." But, no, that's not the question. "What does it cover?" The broker will always say, "I don't know what it covers."

Similarly, if you ask an underwriter for an insurance company, "What does this policy cover?" he will tell you, "I don't know. We intend to cover this, that and the other thing," but they will never tell you what it covers.

They are not allowed to. When they become a broker or underwriter, they put a little something in their brain which prevents them from ever saying what the insurance policy covers. All that they ever say is what it is intended to cover. What they intended to cover was what the insured asked to cover, so, in effect, what they were saying is that we got the form or we have the form which we think or we intend covers that for which
you need insurance.

They will never tell you that this is covered, that is covered, or the other thing is covered.

That basically is the scheme of the Comprehensive General Liability Insurance policy which is the policy in universal application throughout the United States. There are changes going on in this policy now. They will be coming effective in the first six months in the United States, the so-called new Comprehensive General Liability Occurrence form, which will replace, in part, this form or the so-called new ISO Insurance Service Office claims-made forms. These are very specialized creatures, particularly the claims-made form.

My personal opinion is that claims-made is to be avoided, if possible; however, if you are forced to a claims-made policy, then you have no choice. You simply have to take it.

The claims-made policy covers, of course, claims made during the policy period, no matter when the occurrence happened. You recall the Comprehensive General Liability policy is triggered insofar as coverage is concerned by an occurrence, thus, if the occurrence happened back in 1940 and suit is instituted today, the occurrence policy which was in effect back in 1940 will cover it.

This is why there are so many problems today with liability insurance and asbestos manufacturers or distributors because the claims which are being made against them cover a great number of years, and include a great number of insurance policies for which the insurance companies say they did not get adequate premiums back in 1940 to cover the claims which are being made today.

The claims-made policy contains what is called a retroactive date. That retroactive date is a very critical date in terms of getting a claims-made policy if one is forced upon you. The retroactive date is the date before which there is no coverage.

What that means is that no matter how long you have a claims-made policy, if something happened before the retroactive date which is set forth in the policy, there will simply be no coverage.

Quite often the retroactive date is the same date as the effective date of the policy so a policy might have, for example, an effective date of April 29, 1986 and a retroactive date of April 29, 1986, and there is no coverage under that policy for anything which happened before April 29, 1986.

Conversely, there is coverage for something which happened after April 29, 1986 if a claim was made within the policy period. Insurance companies will issue claims-made policies without a retroactive date. Your broker will tell you that they will not; however, they will.

There's simply no doubt about that. If pushed hard enough they will. Claims-made is, in a very real sense, the wave of the future. We have all
seen it, I'm sure in our own professional liability policies—we have, at least in Philadelphia.

That's a brief overview of the liability insurance. I will get to the property in a little bit. The program in Philadelphia is administered by the Controller of the Archdiocese of Philadelphia, Monsignor Joseph Cunningham, and he has an insurance department within the Controller's office.

There is an Insurance Committee which advises the Controller with regard to a great number of things. There is a three-member base insurance committee.

The members are insurance brokers. They have a captive insurance broker which functions only as the insurance broker for the Archdiocese of Philadelphia. That captive insurance broker has no other clients. It is a registered or licensed insurance broker in the Commonwealth of Pennsylvania.

There is an expanded insurance committee which consists of the three base members and four additional brokers. These four additional brokers specialize in placing coverage for complex risk and all of them are affiliated with insurance brokers who are known as surplus lines insurance brokers.

Most insurance brokers are not equipped to provide insurance for an organization which is as complex as a large metropolitan diocese or archdiocese can be. Quite often behind the insurance broker is any number of surplus lines brokers who are out trying to find the insurance. They are the ones who are actually contacting the insurance markets trying to satisfy the insurance needs of the diocesan broker client.

The surplus lines brokers are very, very important when it comes to insuring risks such as these. Counsel to the insurance program is Stadley, Ronon, Stevens and Young. The program covers all of the operations of the Archdiocese of Philadelphia and the parishes within the Archdiocese of Philadelphia and their premises with the exception of automobile insurance and nursing homes.

Both of these are insured separately under policies which provide for first dollar insurance. The reason for this is that automobile and medical malpractice insurance which would apply to a nursing home are both highly specialized forms of insurance, and it was just felt that it would be better, in the case of automobile, because of the number of automobile claims and in the case of nursing homes because of the medical malpractice features, to have them insured separately with first dollar insurance.

As I indicated before, the basic coverage is a current type Comprehensive General Liability broad form on the old form and the named insured, I put in our outline.

It took a lot of work to sell the insurance company on issuing a policy with a named insured as inclusive as the named insured which I have on
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page two of my outline. When we submitted the definition of the named insured to the insurance company, that part which is in parentheses where it says, “And the parishes therein (and their pastors both in their individual capacity and their capacity as pastors)” was not in parentheses. The insurance company put it in parentheses because they said it made some difference to the insurance which they were providing.

We asked them what difference it made. They were unable to tell us. We said, “Fine. Leave it in parentheses. It doesn’t make any difference as far as we’re concerned,” and it stayed there for seven years in parentheses.

Every once in a while a pastor will look at that and say, “Why are we in parentheses. Why am I, as a pastor, in parentheses,” and we say, “We don’t know. The insurance company wanted it that way. You know, they want a lot of things and they insisted on putting it in parentheses.”

Some of the additional insureds, and we have a whole list of additional insureds, are religious orders and their members—lessors or licensees where the lease or license requires insurance. Quite frequently the Diocese or a parish will lease or license property from someone else.

For example, in Philadelphia we quite frequently use the Philadelphia Civic Center for such affairs as high school graduations, and anniversaries of the Archbishop. The license agreement requires that we provide insurance, a certificate of insurance, naming the City of Philadelphia as an additional named insured.

Now this happens with such frequency that rather than go back to the insurance company every time that you want a certificate of insurance or every time you want an endorsement adding someone as an additional named insured, we thought it would be better to get a blanket endorsement.

One problem with insurance is every time we go back to the insurance company, and ask them for something, they think we are about to have a huge loss. They start thinking about cancellations so you do not want to go back to them. When you get to the insurance you never want to go back to the underwriter. You want him to forget about you until the next renewal.

Every time the Civic Center is leased or licensed, rather than add the City of Philadelphia, or Department of Recreation every time a CYO team uses a Department of Recreation basketball court, we get a blanket endorsement which takes care of all these people. The insurance company never knows the entire gamut of activities and the underwriter never has the opportunity to think about that great loss which we are trying to put over on him by coming in and asking to add these people as additional named insured.

Religious orders and members. Quite often the Archdiocese, most particularly the high schools, will contract with religious orders and pur-
suant to those contracts, the religious orders will assign various of their members to, let's say, an Archdiocesan institution or a high school.

When that happens, the member of the religious order is, for civil law purposes, a servant, if you will, of the Archdiocese of Philadelphia. A master-servant relationship is established in that the Archdiocese of Philadelphia, principal of the school at which a member of a religious order is teaching, has the right to control, on a day-to-day basis, the activities of that particular person with regard to the performance of his or her duties as a teacher.

Therefore, liability will be imposed on the Archdiocese when, near the end of the year, that person experiencing teacher burnout pokes little Johnny Pain-In-The-Neck right in the face as he has deserved all year, but his parents will undoubtedly sue. Coverage will be afforded the Archdiocese of Philadelphia, the member of the religious order and the religious order under the archdiocesan policy to its limits.

We have also included club members and volunteers as insureds, named insureds on this policy. It would be virtually impossible to operate many of the parishes and their activities in the Philadelphia area without volunteers.

There is a strong sense that when those people are volunteering their services to the archdiocese or to a parish, be it as a lunch mother, be it as a playground mother at an elementary school, be it as someone who helps the kids get on the bus, be it as a library assistant or a member of the Altar and Rosary Society, that they should be protected against any liability which might ensue if during the performance of their duties they might injure someone or someone’s property. Hence, they are included as named insureds on the policy.

Clergy malpractice. A very hot item nowadays. That is all we read about in the newspapers. There are hundreds of thousands of suits in California and such other foreign places, involving clergy malpractice.

We have not had one in the Archdiocese of Philadelphia. However, since 1978 we have been prepared for one and have had a simple endorsement on the policy drafted by us which says that the definition of bodily injury contained in the foregoing policy includes the rendering of clerical services. That covers possible claims of clerical malpractice.

Contractual liability is another item which we have covered in the program. Contractual liability is the insurance which covers your liability or your client’s liability to indemnify someone for bodily injury or property damage. Getting back to the use of the Philadelphia Civic Center, the City of Philadelphia extracts from licensees such as the Archdiocese of Philadelphia an indemnity agreement which makes the Archdiocese of Philadelphia responsible for everything which happens during the course of whatever is going on at the Civic Center in terms of bodily injury or property damage.
The contractual liability expanded coverage part insures the indemnity of independent contractors, including professionals. That's exactly what it says. If an independent contractor, while performing an operation for one of the insureds or while on the premises of an insured injures someone, then that is covered.

For example, Catholic Social Services, which is one of the largest providers of social services in the Philadelphia area, employs social workers. It employs, on an independent contractor basis, psychologists and psychiatrists. If a law suit is instituted against Catholic Social Services wherein it is alleged that a psychiatrist employed by Catholic Social Services negligently treated someone, both Catholic Social Services and that professional will be covered under our policy.

Employed teachers are covered. The coverage includes claims of corporal punishment. This corporal punishment is forbidden by archdiocesan policy; however, insurance is provided against it in the event that it would occur, even though in violation of the policy.

Host liquor liability. This is a very, very sensitive topic with insurance companies. Nowadays there have been decisions in many, many states, including lower court decisions in Pennsylvania, holding to the effect that a social host can be liable for injuries which result from the social host serving persons who are visibly intoxicated who thereafter cause injury to themselves or to third persons.

The parishes within the Archdiocese of Philadelphia and many institutions frequently have had parish affairs—the annual St. Patrick’s Day party, for example, where alcoholic beverages are sold or given away.

Host liquor liability is one of the primary examples of why one of the biggest lies in the world has become—I’m from your insurance company, and I’m here to help you by giving you host liquor liability insurance. Let’s just take a look at the parts which I marked up of the Comprehensive General Liability policy.

Remember that the insurance provides or replies to everything except that which is excluded. Then we have the whole host of insurance and under Exclusion H it says, “This insurance does not apply to bodily injury or property damage for which the insured or his indemnity may be held liable as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages as a lessor of premises used for those purposes if liability is imposed because of the violation of any statute, ordinance or regulation or by reason of selling, serving or giving of any alcoholic beverage to a minor.”

Now this exclusion does not exclude those instances where a social host could be held liable because it does not fall within that provision which starts “if”—by or because of the violation of any statute, ordinance or regulation pertaining to the sale—does not, and if the person is an adult then this exclusion simply does not apply.
However, your insurance broker and the underwriter will tell you that you have got to have host liquor liability. This exclusion, in my opinion, would cover the situation where liquor was sold at a parish affair such as the St. Patrick's Day Party where it is actually sold through tickets, cash or otherwise, where there is a sale to a person and bodily injury results caused by the person who might be visibly intoxicated, and thereafter goes out and has an automobile accident.

That is because the insured organization is not engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages. That is the factual question. Is the insured organization engaged in that business, and I think the answer to that factual question is no.

The next piece of paper we have is the part of the Comprehensive General Liability broad form endorsement which the insurance company tells you will broaden the scope of your coverage but which, in many instances, actually narrows it and in this instance it does not do anything to it, because what it says is Exclusion H does not apply with respect to liability of the insured, arising out of the giving or serving alcoholic beverages at functions incidental to the named insurance business and here's where the insurance underwriter really did not know what he wanted to say because he used the old provided clause. He really could not say it the right way so he had to put the word "provided" in there and then he went on to say, "provided the named insured is not engaged in the business of manufacturing, distributing, selling or serving of alcoholic beverages," so what they say is insurance H does not apply when a named insured is not engaged in the business of manufacturing, distributing, selling or serving of alcoholic beverages.

They go on. The person in charge in insurance is so happy, comes running back and says, "The insurance company will give us host liquor law liability. We got it." Okay, let's turn to the next page.

This is the pernicious Host Liquor Liability Endorsement, and again your broker, agent, whomever, underwriter will tell you it is a great advantage to have this endorsement. What this endorsement does is take away the coverage which the basic policy provides, but it does it under the guise of expanding the coverage, because it says, quite clearly, this insurance does not apply to the sale or dispensing for a consideration of any alcoholic beverage, so before we sought it, you had to be engaged in the business.

Now it says flat out, it does not care what business you are in. You can be a church, a parish, or the Boy Scouts, but the insurance does not apply to the sale or dispensing for a consideration of any alcoholic beverages.

I am only kidding, in large part, about them telling you that this will expand your coverage. The knowledgeable broker or underwriter will tell you, "You will take Host Liquor Liability or we will not write insurance
to you. It's that simple.” However, if the insured can get away without the Host Liquor Liability endorsement, by all means get away with it. Get away with it if they say, “We want you to have the Host Liquor Liability endorsement.” You tell the person who is in charge of insurance in your Diocese to tell them we do not want it and see what happens. They might say you have got to take it, because as you can see we have gone from a policy which provides coverage to one which does not provide coverage in the traditional setting of selling or dispensing for a consideration of alcoholic beverages.

If you can get away with it, try to get away with it. We have a policy with a self-insured retention of $100,000. There is a self-insured retention endorsement which provides that the retained limit on the liability policy is $100,000 per occurrence and $900,000 in the aggregate.

Above that there are many layers of excess insurance going up to an amount which we think will never be reached, but an amount, which under some circumstances, we think might be called upon.

For example, one of the biggest questions he encounters is, what upper limit should I have? In prior years when insurance was easy to buy, that last $10 million or that last $20 million, the difference between $30 million and $100 million cost peanuts.

Now that has become very, very expensive. Excess insurance is very, very expensive if you can get it. We are fortunate in being able to maintain an upper limit of somewhere above the middle eight figures.

We can not get $100 million anymore. It is just not out there to get. Before, the luxury and the comfort of having that last $20 million which was readily available was something that you would want to have.

We have school buses in the Archdiocese of Philadelphia which have sixty-six seats. They take the football team to a game. That gives you some idea of the type of upper limit coverage which you might want to have.

We do not have any long-span buildings which I know of, such as the Kemper Arena or something like that, where you have a risk of building collapse with a great number of people in a building.

I do not think that any of our newer churches or halls are of that type of building, but those are the types of factors which should be considered in determining what upper limit you might have.

Yesterday, I was riding down from Philadelphia, and I was reading the ABA Journal of May 1, 1986. On page 96 it reports, “2.5 million verdict upheld for late ambulance. An 11-year-old who suffered a blow to the head while playing kickball at school had to wait an hour for a City ambulance to take him to the hospital which was located directly across the street from the school. School officials had called the 911 emergency number on three occasions and the boy’s mother had asked school officials that her son be taken to the hospital, but a Chicago Board of Education
policy prohibited the school staff from moving or treating the boy. The boy sued the school and the City for negligence and the jury awarded him $2.5 million, half assessed against each Defendant.”

You could very well substitute the Diocese or the parish anywhere for the school board or the City of Chicago in that scenario. These are the types of verdicts which are being experienced by institutions throughout the country.

They are being experienced by so-called targets. I do not think the church has yet become a target, although one never knows. Targets seem to be municipalities, state governments, inner city transit systems where the jury has the opportunity to get back at the surly bus driver who has never had a kind word to say to them, and they really give it to the old rapid transit system when they get the chance to do it.

I do not think that churches have become targets; however, that’s the type of thing that can happen. We have thousands of children playing in playgrounds every day at parish elementary schools in Philadelphia. There are some 220 parish elementary schools which are covered under this program.

Those elementary schools have attending them somewhere in the neighborhood of 104,000 students, so you can guess the type of risk which is being insured.

We have a Catholic population of 1,300,000 people. We have 301 parishes. We have 1,350 priests within the Archdiocese of Philadelphia; 5,259 sisters; 228 brothers; 2,200 buildings as premises within this program, many of which are very old and, in the inner city in Philadelphia, we have twenty-nine secondary schools operated directly by the Archdiocese of Philadelphia with 39,000 students; five schools of special education with 420 students.

I believe I said 250 parish elementary schools with 104,000 students. We have part-time religious education programs which educate 42,000 students. All of these are insured. All of these schools have the complete range of school activities.

We have a very large—I believe it is the largest nonpublic provider of social services in Pennsylvania—Catholic Social Services which is comprised of in the neighborhood of sixty-five different agencies or institutions providing all sorts of services from senior citizen services to child care centers.

They operate institutions which house and educate dependent and delinquent children who are there as a result of court orders. All of this activity, with the exception of five nursing homes and automobiles, are included within this program, and it’s quite a program.

The retained limit, as I said, is $100,000 per occurrence and $900,000 in the aggregate. The supply is per policy year. Claims handling and legal expenses are not included in the self-insured retention if a claim is settled
for less than the self-insured retention.

All of the law suits which are instituted are defended by the firm of Stradley, Ronan, Stevens and Young. I kind of administer or oversee the assignment of the law suits, and what we try to do, in most parts, is to match up the law suit with one of the lawyers in our office who has knowledge of the particular aspect of the client's operations which are involved in the law suit so that we can handle them in the most efficient manner possible.

The self-insured retention becomes void when the aggregate is reach and coverage becomes void when the aggregate is reached and coverage becomes first dollar. This has never happened. When the Archdiocese would pay out $900,000 in claims in one year, the self-insured retention goes out of the picture. The insurance coverage for claims after that becomes first dollar.

There is no self-insured retention. This has never happened. In fact, in the almost eight years of operation of the program we have only paid out three claims which were in excess of the per occurrence self-insured retention.

We have never reached the aggregate during the operation of the program. The insurer can take over any claim at its expense when the reserve on the claim is over $50,000 or when fatalities—spinal injuries, head injuries, loss of limb or "serious" bodily injury is claimed. The insurance company when it is told about that, and should be told about that by the claims handling company, can step in and take over whenever they receive notice of a claim.

That happened once. In our experience I think that the aftermath of that was that it will never happen again. The insurance company had such an unhappy result with the case after they took it over that I doubt seriously if they would ever do that again.

The Archdiocese retains a claims servicing company which is approved by the insurance company. That claims servicing company is Vincent Insurance Adjustors. They are located in suburban Philadelphia, but I believe they have seventeen or eighteen offices on the East Coast of the United States and a few in the Midwest.

When a claim is reported or when an accident is reported or when the suit is instituted, procedures automatically go into effect.

(1) All accidents must be reported immediately to the Controller's Office. Now what happens? In a number of instances all accidents are not reported to the Controller's Office. We all know that. Father Murphy is concentrating on the fact that the Cardinal is coming to give Confirmation or to confirm people at his parish on Friday afternoon.

He gets served with suit papers Wednesday, puts them in a stack of papers, completely forgets about them. Confirmation is the only thing that's on his mind. Six months later he remembers them. He sends them
in. Many insurance companies, if you had first dollar insurance would say, “You’re a little late giving notice so we’re going to decline the claim whether you have to prove prejudice or not because you breached your contract.”

We have the ability to handle that situation. I am not suggesting that Monsignor Cunningham likes it when that occurs, but we do understand that that can occur. We have an endorsement on the policy which says that “unintentional non-reporting of accidents by other than department heads or His Eminence, John Cardinal Krol, shall not be considered a breach of the notice provisions of the insurance contract” so we cover against this two ways—within the self-insurance program, itself, and in the insurance programs, itself, and in the insurance contract in the event that it would pierce the $100,000 layer.

The accidents are reported immediately to the Controller’s Office, all written notices of claims, the so-called lawyer’s letter and suit papers must be forwarded immediately to the Controller’s Office.

Vincent Insurance Adjustors is immediately notified and adjusts the claim, if possible. Vincent Insurance Adjustors has settlement authority of up to $5,000 with certain sensitive exceptions. Those exceptions are not written down anywhere. They are understood generally to be alleged clergy malpractice, alleged child abuse, official action and other sensitive matters, libel or slander comes to mind where a pastor blasts someone from the pulpit on Sunday, a law suit might ensue—for whatever number of reasons the pastor might not want that law suit settled. Vincent Insurance Adjustors might think it, indeed, is a very good idea to write that person a check for anywhere up to $5,000 and get their release because they are mad and they are going to sue.

However, you simply cannot do that to the pastor. It cannot be done. He’s the pastor of his parish. It has to be worked out. Pastors have to be desensitized, have to be made aware of the fact that such claims should be settled and then it can be done.

Between $5,000 and $10,000, Vincent Insurance Adjustors and the three-member insurance committee must recommend settlement to the Controller and the Controller must authorize that settlement.

Above $10,000, Vincent Insurance Adjustors, the insurance committee and a designated partner of Stradley, Ronan, Stevens and Young must recommend settlement and the Controller must approve the settlement. In all instances the Controller, as the representative of the client, is the person whose authority must be had for settlement above $5,000.

Defensive cases are routinely and universally forwarded to Stradley, Ronan, Stevens and Young where they are distributed for defense, as I have described before.

What problem areas do we have? Let’s break them down into two areas: sexual abuse is a very, very hot item. Insurance companies are
scared to death of it. We do not have a sexual abuse exclusion, yet it is something the underwriters want to talk about all the time. They are paving the way for the exclusion.

We tell them what a great job we do of monitoring people and making sure that nothing like this is going on. These are adequate counselling programs in the high schools, and the principals of the elementary schools have a real handle on what’s going on, but all you see in the news is what is happening at day care centers and various places throughout the country. It is a very, very difficult insurance market for so-called insurance against sexual abuse.

There is no real insurance against sexual abuse. It is included unless it is excluded. What they want to do, what they are talking about, what they are paving the way for, is that exclusion. Clergy, clerical malpractice—we have been able to, as I indicated before—redefine the definition of bodily injury in the policy to include clerical malpractice because of everything that’s been written about it.

Again, it is very difficult to pick up a legal publication without reading something about clerical malpractice. The same is true of the insurance publications. It is becoming a very, very hot item for the insurance underwriters. They are all running around saying “clerical malpractice, clerical malpractice.” They have no idea what they are talking about, but they say it. It’s a buzz word.

We hope to be able to retain that.

Liquor liability. I have already talked to you about that, how we thought we had liquor liability but then they told us that they were going to do us a favor whether we wanted it or not and make us take host liquor liability.

Asbestos. Most—not most—I do not want any insurance underwriter to hear this, but there are buildings within the Archdiocese of Philadelphia—school and other buildings which have asbestos in them.

We are in the process of identifying all those buildings, and taking the appropriate steps after surveys by responsible engineering firms to have the asbestos encapsulated or removed, but still the insurance companies know it is there. They know there is exposure on an occurrence basis down the road, and they are afraid of those risks.

These are a few of the underwriting problems which we have now and will have in the future.

(1) Problem area—claims handling and defense costs.
(2) Prompt accident reporting I’ve already covered.

Admissions of liability. This is the situation where, “Don’t worry about it, Mrs. Murphy, our insurance will take care of it. We’re covered no matter what” happens. It happens every day out in the field, so to speak, to parishes and different agencies. It’s a natural thing. We are able to live with that. We are attempting to educate the people who are really
under the gun in those areas where someone is injured to make a more appropriate response to the effect that we are self-insured that whatever is paid, if you make a claim, will come from church funds and we will investigate this claim. That is what we think is the appropriate response.

The program also includes property insurance. We have all under one policy, all risk replacement cost coverage for all archdiocesan and parish locations. There is a $50,000 self-insured retention on most risks with exceptions for minor risks such as theft of priest's property, burglary, et cetera where there is $1,000 self-insured retention.

There is a $500,000 annual stop loss provision. After a $500,000 self-insured retention is reached during a policy year, the self-insured retention thereafter becomes $1,000 per occurrence. We are probably going to increase that in the next go around. They are starting negotiations right now with the property carriers. I should not say right now. They have been going on for about a month for a July 1 renewal, so we will probably up it to aggregate self-insured retention or the aggregate stop loss.

Claims are adjustable. I designated adjustors for the company in the Archdiocese. All claims are so adjusted because all claims effect the stop loss. If there is a $49,000 claim on day one of the policy year, that affects the aggregate stop loss. The company has an interest in that claim because, depending on how the year goes, they might have to pay out that $49,000.

Coverage disputes. This is a little different than third-party insurance. Coverage disputes are resolved in-house by the Controller upon recommendation of the Archdiocesan adjustor, the insurance committee and Stradley, Ronan, Stevens and Young.

What this means is many, many parish pastors view property insurance as a method of achieving or building a maintenance fund.

It simply isn't that. Property insurance contemplates destruction of the property by some type of accident. That's why it's called "all-risk." It is not a means of providing maintenance money, so, therefore, a parish pastor might see a situation and think, "Ah, huh, I've got an insurance claim."

This situation might be a maintenance problem. The Controller decides in the final analysis based on the recommendations of those people whom I said, whether or not this is a property claim or a maintenance item which will not be recompensed by insurance.

The operations and financial aspects of the program. Participation is mandatory for all archdiocesan operations and locations and is voluntary for parish operations and locations. That's the point where Mr. Gallagher is supposed to guffaw when I say that, but we have 100 percent parish participation we are glad to say.

The fact of the matter is that when a particular parish pastor has said, "I don't want to be in your program. I can do better on my own."
We've said, "Give it a try. Give it a try," and he has never, ever been able to duplicate the coverage for the same amount of money. Never.

First dollar insurance is provided for all participants. The self-insured retentions, both property and liability is borne by something called the insurance fund, but first dollar participation is provided for all participants, so when there's a liability claim against a high school or against a parish, and that results in a $10,000 settlement, the fund pays that. The parish or the Office of Catholic Education which operates the high school is paid a one-shot premium. It's the same as buying insurance.

First dollar insurance for them. They never have to pay any more money.

The Controller's office pays all the premiums and each participant is billed separately based on actuarial principles. The individual components of the program are reviewed by actuaries and the premium is the overall premium and there's one, let's say, for each policy locked up on a percentage basis among all the principles.

For participants it's a rather fair setup. The insurance fund is the result of the synergistic effect of the program. What that means is that the whole is greater than the sum of the parts.

Obviously, there is a little premium which is charged the particular participants above the actual insurance premium to make up and to build the fund for the self-insurance program.

The self-insurance, as I've already said, pays the self-insured retention to the third party on all liability claims and to the agency, institution or parish on property claims and pays all administrative claims handling and legal expenses.

There are several adjuncts to the program.

Student and volunteer medical insurance plan. About three years ago the review of all claims pending indicated that an inordinate amount of claims were made by or on behalf of students and volunteers.

Quite often the field people, Vincent Insurance Adjustors, told us that the reason why these claims were being made is that the people did not want to shoulder the medical expense on their own or some strange reason report it to their insurance company.

Many volunteers are over sixty-five. It was decided to implement a student and volunteer medical expenses plan. The results are starting to show that this has cut down the incidence of those claims.

We have a priest group automobile policy. Any priest in the Archdiocese of Philadelphia who owns his own automobile can participate and get $1 million of insurance at very good rates from this group plan we have.

Safety bulletins go out from the Controller's office on a periodic basis pointing out matters of general safety, reports of cases, actual cases to those people who are out in the field so that they feel that they are a part of the program, that they are being told and giving guidance on how to
minimize losses and keeping them apprised of the program generally.

Periodic property surveys and loss prevention inspections are made on a regular basis. All of the properties are surveyed over a three-year period. Written reports are given to the participants. Those written reports contain “mandatory recommendations.” That is somewhat inconsistent. I don’t think there’s any such thing as a mandatory recommendation. Nevertheless, they are in the program, in the reports.

What has the experience been? The insurance fund is actuarially sound. It continues to grow. It has prospered and reasonable rates have been charged to the participants. The participants cannot secure comparable coverage for comparable prices.

There is an ability which is developed over the years to secure adequate insurance at a price. If I was talking to you two years ago I would have said that we had the ability to secure adequate insurance at a reasonable price.

Many institutions, of the magnitude of a large metropolitan diocese do not have the ability to secure any insurance at any price.

That is a fact of the insurance market today. We have the ability to immediately respond to a claim wherein immediate response is desirable.

Last Wednesday a boy was injured in a chemical lab at one of our high schools. His father was unemployed. There was a question raised immediately about the ability to pay medical expenses for some burns which he suffered as a result of this accident, chemical burns.

There was a decision within an hour which put the family’s mind at ease. The next day they met someone from Vincent Insurance Adjusters who will maintain contact with the family, of course, with the appropriate parish officials from the school—maintain a contact. In all likelihood this claim will settle if there is negligence. We don’t know that yet, or potential liability for a reasonable amount at sometime in the future.

We can respond immediately when a claim is made. If we had first dollar insurance coverage, the claim was made three or four weeks from now, that might be a sign to an adjustor. It might. Most importantly when this program was set up by the former Controller of the Archdiocese of Philadelphia, Monsignor Arthur Naise, he told Mr. Gallagher, Tom Harper and myself, never forget who you represent, and we will represent in these cases.

What that means to us who are involved in the program is that the claims cases can be handled in a humane Catholic manner. Quite often insurance companies as we know do not handle claims in a humane manner, let alone a Catholic manner.

We think we can do that. We think that we can come up with the appropriate response in given circumstances because we control the response. Centralization has resulted in improved relationships with underwriters and assures a flow of accurate information to underwriters.
Underwriters love to have great stacks of information at renewal time. We can give it to them. Our specifications include everything, and they just love it, we’re told, time and time again, of the quality of the presentation, the underwriting presentation which is made.

You do not want to give them very good information at renewal time. Communications between insured, the insurer, claims handlers, and defense counsel have been approved.

I told you before about the problems you have with an outside insurance company. What is the Archdiocese of Philadelphia, what is a parish; a sister as a member of a religious order, what is that; how do they all interrelate; who is the agent of whom for what purposes and how does all of that apply to the civil law.

We no longer have to get into all of that. It’s very time-consuming. It’s usually non-productive and we had insurance companies taking wrong positions in the wrong places. Many of these issues, for example, you do not want to have decided by the court in the context of a personal injury case.

You want to have them decided where the legal issue can be developed without emotionalism, without someone who is injured, needing compensation. Claims handling and defense costs are minimized because of the information bank and ease of communication which has been developed.

We have amassed, of course, a great deal of information about our client and the operations of the client. All of that is readily available to the lawyers in our office. The wheel of defense costs for which the insured ultimately pays if it stays with the same carrier is not constantly reinvented, so, therefore, we are unlike Hiram of Tyre. We think that we can keep our defense costs minimized and not blow the claims ratio sky high.

That is the program in Philadelphia. We think it has been a successful program. We think it is operated in a manner that has benefited the Archdiocese, and will continue to exist as a self-insured program, perhaps with higher limits; perhaps with minor changes, but the basic program will, in all probability, remain the same.