UNDERSTANDING, SELECTING AND USING INSURANCE: A GUIDE FOR RELIGIOUS INSTITUTES

by Kevin Duck, Manager of Claim Services, Christian Brothers Services, Romeoville, IL
and Michael A. Airdo, Esq., Cremer, Kopon, Shaughnessy & Spina, L.L.C. in Chicago, IL

INTRODUCTION

The leaders of most religious institutes[1] understand the basic need for quality insurance coverage,[2] but choosing the appropriate types of coverage and the right coverage providers can often seem like a daunting task. In addition, many institutes may be unaware of what their provider expects of them throughout the claims process and, in turn, what the institute may expect from its provider.

This article is intended to give religious institutes practical advice for navigating the insurance market and for choosing the right provider and the right coverage for the needs of the institute. It also offers guidance for working with a provider when making a claim under a policy of insurance.

1 Throughout this article, "institute" will be used to refer to religious institutes and societies of apostolic life. Many institutes separately incorporate their apostolates such that the institute's leadership is not the same as corporate leadership. For the sake of ease herein, "institute" refers to separately incorporated apostolates as well.

2 Throughout this article, the terms "insurance" and "coverage" will be used to refer to any contractual relationship whereby one party agrees to pay for the losses incurred by another party in exchange for some type of payment.

I. RELIGIOUS INSTITUTES' NEED FOR INSURANCE COVERAGE

Sister Maria was recently appointed as the Director of the St. Dominic Shelter.[3] In reviewing the shelter's financial records, she noticed that the shelter pays $10,000 annually for various insurance premiums. She wonders if these funds might be better used to serve the shelter's mission of providing beds for the homeless in San Francisco. After examining the shelter's insurance policies, she believes she can reduce her coverage and premiums and use the money she saves to purchase more sheets and blankets.

Before deciding to reduce the shelter's coverage under its policies, Sister Maria must consider why the shelter requires insurance coverage.

3 This article will rely on hypothetical scenarios to help explain insurance terms and concepts. Each of these hypothetical scenarios is fictional and in no way intended to refer to any actual religious institutes or events.

Understanding why a religious institute needs coverage is the first step to determining what type of coverage is right for a particular religious institute and its apostolates, like the St. Dominic Shelter. First and foremost, insurance coverage is essential to protect the institute's patrimony, or financial capital. Insurance coverage provides the resources to recover and rebuild from property damage, and it can protect the insured from the costs and expenses associated with legal claims against the institute, its members, and its apostolates.

Second, insurance coverage also enables a religious institute to protect its mission and ensure the continuation of its ministries. Significant financial losses can threaten an institute's ability to continue providing programs and support for its members and those whom the institute serves. Such losses can be significantly minimized through comprehensive insurance coverage.

Understanding why a religious institute needs coverage is the first step to determining what type of coverage is right

Finally, religious institutes have a responsibility to obtain insurance coverage as a commitment of good faith to their employees, members, volunteers and donors. This goes beyond simply avoiding a financial loss or ensuring that an institute maintains its work. Individuals place a great deal of trust in religious institutes. Those individuals include the members of the institute themselves, the institute's employees, trustees, board members, and volunteers, those who rely on the institute's programs, and those who make bequests that help fund the institute. All of these people who depend on the institute are vulnerable when it suffers a loss and is not adequately insured. Moreover, insurance providers can assist a religious institute in minimizing the risk that its property will be damaged or that individuals will be injured through their involvement with the institute.

II. UNDERSTANDING THE INSURER/INSURED RELATIONSHIP

Father Gregory is the provincial for the Priests of St. Cassian. At the end of the year, he needs to renew all of the province's insurance coverage. He is considering switching from his current provider, Home & Farm Insurance, to Westbrook Insurance. Father Gregory's good friend is an agent for Westbrook, and Father Gregory believes that this may help the Priests of St. Cassian get better rates and services.

Before purchasing insurance through his friend's company, Father Gregory must understand that insurance is a contractual relationship in which a team of experienced professionals - the "insurance provider" – serves a customer - the "insured" - in exchange for financial consideration, often in the form of an "insurance premium."[4] Through this relationship, the insured is able to transfer the cost of its risks and reduce, or even eliminate, the potential cost of losses.

The relationship between the insured and the insurance provider is governed by a written contract or agreement known as the "policy document" or "plan document."[5] The language of the policy will ultimately determine whether the coverage provider or the insured will be responsible for a loss.[6] The institute should pay particular attention to the policy's language and defini-

4 See *Culhane v. Western Nat. Mut. Ins. Co.*, 704 N.W.2d 287, 296 (S.D. 2005); INSURANCE INFORMATION INSTITUTE, Glossary of Insurance Terms, <http://www.iii.org/media/glossary/> (last visited Jan. 3, 2007).

5 See, *e.g.*, *Cincinnati Ins. Co. v. Pro Enterprises, Inc.*, 394 F. Supp.2d 1127, 1132 (D.S.D. 2005); *Geiger v. American Standard Ins. Co. of Wis.*, 117 P.3d 16, 18 (Colo. Ct. App. 2004); *Steven S. v. GHI*, 787 N.Y.S.2d 828, 831 (N.Y. Civ. Ct. 2004).

6 *Id.*

tions before entering into a coverage agreement. In Father Gregory's case, his friend may promise to provide the Priests with all the coverage they need, but it is Father Gregory's responsibility to read the policy and determine whether it contains all the coverage the Priests need. Appendix A to this article provides a glossary of common terms and provisions used in insurance policies to which leaders should pay particular attention to when selecting coverage.

A Comparison of Different Providers

Brother Simon is looking for an insurance carrier to provide coverage for his order, the Brothers of Santo Domingo. The Brothers of Santo Domingo operate a farm in northern Wisconsin where they raise produce and can preserves to sell in local markets. The farm also serves as a retreat center. Brother Simon believes that his choice of providers is limited to the major insurance companies that he sees advertised on the radio and on television. While investigating his options, however, he is surprised to discover that there are many different types of entities that provide coverage, some of which even cater specifically to the needs of religious institutes, like the Brothers of Santo Domingo.

In choosing a coverage provider, Brother Simon needs to consider what type of provider will best serve the needs of his institute. What follows is a description of the major types of coverage providers and the characteristics of each.

Commercial Insurance Carriers

Commercial insurance carriers are the most common type of coverage provider and the entities most frequently associated with risk management and coverage. Commercial insurance carriers are for-profit entities that are in the business of providing insurance coverage. Commercial carriers make money when the premiums they charge for covering their various insureds exceed the amount of money the company pays for losses incurred by those insureds. The companies that Brother Simon saw advertised are most likely commercial carriers.

Commercial insurance carriers often provide service that is well-established and that offers long-standing expertise and resources to adequately protect the insured's assets. In addition, carriers can provide long-term stability and demonstrate a proven history of meeting customers' needs. Moreover, these companies are regulated by statutes to guarantee that the carrier has the resources to provide the coverage promised.[7] In Brother Simon's case, for instance, a commercial carrier may have a great deal of experience insuring small farms and businesses and may have established policies geared to those types of entities. In addition, the carrier's employees may be very familiar with the claims that a small farm may make and should be experienced in efficiently investigating and resolving those claims.

Commercial insurance companies are driven by profit, which can present significant disadvantages for religious institutes. Many carriers are large corporations with numerous customers and are less able to provide the personal attention that a religious institute needs. Moreover, unless they have coverage programs geared specifically to religious or non-profit entities, large carriers may not understand a religious institute's unique needs and may be unwilling to negotiate policy provisions and exclusions to meet an institute's coverage goals. If Brother Simon chooses a commercial carrier, the carrier may not have a policy that fits all of the Brothers' needs for both the farm and the retreat center. In addition, Brother Simon may discover that it is difficult to resolve claims or complaints through the carrier's customer service center because the representatives do not understand the institute's unique situation.

Risk-Pooling Trusts

Unlike commercial insurance carriers, risk-pooling trusts are non-profit entities.[8] Risk-

7 See, *e.g.*, 215 Ill. Comp. Stat. 5 *et. seq.*
8 See, *e.g.*, Religious and Charitable Risk Pooling Trust Act, 210 Ill. Comp. Stat. 150/1 *et seq.* (2006).

pooling trusts are established in accordance with state statutes and are subject to many of the same regulations as other insurance providers.[9] They are formed by groups of similarly situated institutes who pool and invest their financial resources into a trust.[10] When one member suffers a loss, trust funds are used to cover the loss.[11] In Brother Simon's case, he may choose to join a risk-pooling trust whose membership is comprised of other Catholic religious orders and institutions.

Managers of risk-pooling trusts are generally very familiar with the unique needs of their membership because the members often have similar goals and objectives in terms of insurance coverage. Trusts, therefore, may be more willing to draft policies that better reflect the membership's coverage needs, as opposed to standard commercial packages that are designed for a wider variety of insureds.

In addition to state law, a trust composed of Catholic religious institutions may also be subject to oversight by the Catholic Church under canon law as well.[12] Because the trust members essentially fund their own insurance, a risk-pooling trust may not have the financial history that a commercial carrier has. If Brother Simon opts to become a member of a risk-pooling trust, he should inquire about how the trust is managed and confirm that the trust has sufficient financial backing to support its members' needs.

Risk-Retention Groups and Captives

Two other options that Brother Simon might consider are a risk retention group or a captive. Risk retention groups are permitted under federal law and are licensed by individual states.[13] Like risk-pooling trusts, risk-retention groups are made up of members engaged in similar activities who pool their funds to insure one another.[14] Captives are very similar to risk retention groups in that they are made up of members who pool funds to insure one another.[15] Captives, however, are not licensed. Both risk retention groups and captives can help their members obtain coverage for risks that other providers are unwilling to cover. At the same time, risk retention groups and captives may be a more risky investment, particularly if the group does not have the financial backing to sustain a significant loss by one of its members.

Mutuals

A mutual is essentially a type of commercial insurance carriers. Like other commercial carriers, a mutual is a for-profit company that provides insurance coverage in exchange for a premium and profits when the premiums paid exceed the amount the mutual pays out in coverage. Unlike most commercial carriers, however, a mutual is owned by its insureds, or policy holders, in the same way that a corporation is owned by its shareholders. A mutual returns a portion of its profits to policy holders as a dividend.[16] The remaining profits are retained by the mutual in the event it must provide coverage for very large or unexpected losses. Because a mutual shares many of the same characteristics of a commercial carrier, Brother Simon could expect that his dealings with a mutual would be the same as if he selected another commercial carrier. One advantage, however, is that the Brothers would receive a dividend that could be used to pay for other costs associated with their ministries.

---

9 *Id.*

10 *Id.*

11 INSURANCE INFORMATION INSTITUTE, Glossary of Insurance Terms, *supra.*

12 See, *e.g.*, Christian Brothers Services, Risk Management Programs, <http://www.cbservices.org/cbs/risk_management/rpt/rpt_legal.html> (last visited Jan. 2, 2007).

13 INSURANCE INFORMATION INSTITUTE, Glossary of Insurance Terms, *supra.*

14 See The Asset Protection Book, Risk Retention Groups, <http://www.assetprotectionbook.com/risk_retention _groups.htm> (last visited Jan. 18, 2007).

15 INSURANCE INFORMATION INSTITUTE, Glossary of Insurance Terms, *supra.*

16 *Id.*

III. TYPES OF INSURANCE COVERAGE AVAILABLE

Mother Mary Benedict is the Superior for her order, the Sisters of St. Marguerite. She is meeting with a coverage provider tomorrow and is unsure of the type of coverage her order needs, or even what kind of coverage may be available. Her institute runs several programs for the elderly and operates a nursing home located in California. The Sisters rely on volunteers to assist with their programs and a board of directors which oversees the nursing home. The Sisters also own a great deal of property, including residential facilities for members of the order and the nursing home itself. Finally, the Sisters own several automobiles and other vehicles for use by the Sisters and the nursing home. Mother Mary Benedict wants to ensure that she purchases the right type of insurance to cover all of the Sisters' activities and assets.

As Mother Mary Benedict's example illustrates, religious institutes, because of their diverse assets and programs, are often exposed to a wide range of risks. Simply put, a risk is an opportunity for loss. Each type of risk may require a specific type of coverage for the potential losses associated with that risk. What follows is an overview of six major types of coverage: Property, Automobile, Comprehensive General Liability, Directors and Officers, Workman's Compensation, and Excess Coverage. Appendix B provides a list of more specialized types of coverage that insurance providers typically offer. Each institute should consider its individual needs and the type of coverage required by its membership in order to protect all property holdings and ministry programs.

In addition to considering its own individual needs, each institute must read and consider the terms, exclusions, and limitations of its policy. While an institute may have purchased property insurance, for example, the terms of the policy may exclude coverage for certain types of property or damage. Similarly, an automobile insurance policy may provide coverage for some of the

In addition to considering its own individual needs, each institute must read and consider the terms, exclusions, and limitations of its policy.

institute's drivers, but may limit that coverage to apply only in certain circumstances. Policies for other types of coverage will also contain exclusions and limitations. Each religious institute must be aware of its policy's exclusions and limitations and not merely assume that all losses are covered by their insurance.

Property Coverage

Property insurance provides financial assurance from loss or damage to buildings and personal property. It can provide an institute with the money it needs to rebuild after a fire, flood, earthquake, hurricane or other disaster.[17] Property insurance can provide coverage for buildings, personal property, loss of business income, electrical data processing equipment, boiler and machinery, crime, earthquake, flood, business interruption, water craft, and other coverage as available by the insurer. An institute should review its holdings to determine which coverage is best suited to its operations. It should also have its land, buildings, and personal property appraised periodically and should discuss options for increasing coverage as a property's value increases.

In the case of the Sisters of St. Marguerite, the Sisters' nursing home is located in California. As such, Mother Mary Benedict may also consider

17 See INSURANCE INFORMATION INSTITUTE, Glossary of Insurance Terms, *supra.*

purchasing earthquake insurance. Earthquake insurance provides coverage for damage to buildings and personal property caused by seismic activity. It is a special coverage that should be considered if the location of the buildings and personal property are in an area that may be subject to seismic activity.

Mother Mary Benedict should also consider whether any of the Sisters' properties have unique or distinctive features which may require additional coverage. For instance, property insurance can be increased or specifically scheduled to cover items such as statuaries, stained glass, ornate exterior features or special interior finishes.

Business interruption coverage insures against financial losses the institute suffers as a result of facilities being damaged or closed. These may include loss of tuition, rent, or fees. In Mother Mary Benedict's case, several rooms in the Sisters' nursing home might be destroyed by fire. The Sisters can purchase property insurance that will cover the income lost when the residents who resided in the destroyed rooms transfer to other facilities.

There are certain types of losses that are uninsurable. For instance, items that wear out over time or are not maintained are generally not covered by property insurance. When selecting property coverage, it is important to understand the types of losses that are not covered with a particular insurer's policy.

Automobile Coverage

Institutes can purchase insurance for their automobiles and other vehicles, just like other vehicle owners.[18] Auto insurance can provide coverage to repair damage to the institute's vehicles. It can protect the institute from liability for damage caused by the operation of the institute's vehicles, such as injuries to a pedestrian or other driver, or damage to other vehicles.[19]

> If a religious institute, or any employer, does not have adequate worker's compensation coverage, the State worker's compensation board may fine the employer ...

Because institute vehicles, like those owned by Mother Mary Benedict's community, may be driven by multiple drivers, institutes should consult with their providers to ensure that all potential drivers are covered under their policy. Institutes may also wish to develop internal rules and procedures to avoid situations where a vehicle is used in a manner where coverage is not provided under the insurance policy.

Commercial General Liability Coverage

Commercial General Liability (CGL) insurance protects an institute if someone makes a legal claim against it.[20] CGL insurance generally pays damages that the insured is legally required to pay as a result of its actions.[21] In Mother Mary Benedict's case, for instance, if a visitor to the Sisters' nursing home fell in the facility, the Sisters' CGL carrier would cover the costs of defending the Sisters. The CGL carrier would also cover any damages that the Sisters would be required to pay to the injured person as a result of the proven or admitted negligence. The CGL policy may also cover any claims made against

18 See INSURANCE INFORMATION INSTITUTE, Auto Insurance, <http://www.iii.org/individuals/auto/> (last visited Jan. 18, 2007).

19 *Id.*

20 See generally JEROLD OSHINSKY and GHEIZA M. DIAS, "Liability of Not-For-Profit Organizations and Insurance Coverage for Related Liability," Int'l J. Not-For-Profit L., vol. 4, no. 2/3 (May 2002), <http://www.incl.org/JOURNAL/vol4iss23/oshinsky1.htm> (last visited February 14, 2006).

21 *Id.*

the Sisters by their employees, including claims made by an employee for alleged discrimination or wrongful termination.

A CGL policy will often assign coverage based on the specific activity from which the insured's liability arises, and it may provide different coverage limitations for the different types of liability. The Sisters' policy, for example, may have one provision for claims based on actions by the nursing home's employees and another provision for claims made by visitors who are injured on the nursing home's property.

Directors and Officers Coverage

In addition to CGL coverage to protect the Sisters, Mother Mary Benedict will also need to purchase coverage to protect members of the nursing home's Board of Directors. While residents of the nursing home would likely file a lawsuit against the nursing home and the employees, they might also sue those individuals who serve on the board. Directors and Officers coverage insures an institute's officers and directors against liability that they may personally incur in connection with their service to the institute.[22] By purchasing Directors and Officers coverage, the Sisters protect their board of directors from having to personally defend themselves or to compensate either party in a lawsuit against the nursing home. The Sisters' Directors and Officers carrier, under the terms of the policy, may also be required to pay any money that a board member or officer was legally obligated to pay to a resident.

Worker's Compensation

Worker's compensation is a system of benefits required by law to be provided by employers to most workers who have job-related injuries or diseases. It is required of an employer with a certain number of employees. These employees are covered from the moment they begin their jobs. These benefits are paid regardless of which party, the employer or employee, was at fault. The amount of benefits is limited by law in most states. Religious institutes should consult the laws of their state to determine whether they are required by law to carry worker's compensation insurance.

In exchange for the no-fault nature of the worker's compensation system, employers are granted immunity from civil actions stemming from an employee's work-related injury or illness. In other words, if an employee is injured on the job, he or she will receive worker's compensation benefits, but is not allowed to sue the employer to gain additional money, even if the employer's negligence caused the injury. Even though employees must give up their right to sue, worker's compensation does benefit them. Worker's compensation provides employees with the security of guaranteed funds in the event they are injured, or become ill, while performing their job. This is particularly important if their employer lacks the resources to pay damages that might be awarded to the employee through a lawsuit.

If a religious institute, or any employer, does not have adequate worker's compensation coverage, the State worker's compensation board may fine the employer, as well as assess a percentage of the actual premium that the employer would have paid for the coverage for the period of noncompliance. In addition, an uninsured employer loses its immunity from civil actions and may be sued for personal injury in a court of law by an injured employee.

If Mother Mary Benedict has any volunteers, she may want to consider having them also covered by their policy, which will necessitate additional coverage. If she has more than one facility in multiple states, the Sisters will also need to have those facilities named on the policy to assure that they have worker's compensation coverage for the state in which they are domiciled.

Excess Coverage

Excess Coverage provides coverage when a loss exceeds the policy limits provided by the insured's primary property or commercial general

22 *Id.*

liability coverage.[23] In Mother Mary Benedict's case, for example, the Sisters' liability under their CGL policy may be limited to $1 million per "occurrence" or incident requiring coverage. A lawsuit may be filed against the Sisters by a nursing home resident's adult daughter, for example, claiming that the Sisters were responsible for the death of her mother. The daughter may seek $1.5 million in her lawsuit. In the event that a jury were to award the resident's daughter $1.5 million, the Sisters' CGL coverage would pay $1 million, the limit under that policy. Provided this event was covered under the excess policy, the Sisters' excess coverage provider would then pay up to their coverage limit or the $500,000 remaining award, whichever is less. Excess coverage can provide similar protection when a claim exceeds an institute's coverage under other types of insurance as well, including automobile, directors and officers, and property coverage.

In addition to the types of coverage discussed above, Mother Mary Benedict should consider the needs of her institute to determine if she should purchase any other types of insurance. In the Sisters' case, for example, Mother Mary Benedict should consider purchasing Professional Liability coverage and Errors and Omission coverage to insure the nursing home in the event that a resident files a claim based on the care provided. All religious institutes should carefully consider their own needs when choosing insurance coverage.

IV. IDEAL QUALITIES OF INSURANCE PROVIDERS

Brother Robert is looking for comprehensive insurance for his order, the Brothers of St. Marcus. The Brothers own and operate a retreat center in upstate Michigan and a high school in suburban Chicago, St. Marcus Academy. The Brothers also maintain a home in Wisconsin where senior members of the order are able to retire. In addition, several Brothers are assigned to work in various parishes and schools throughout the United States. Brother Robert knows what types of coverage he needs to purchase, but he is unsure of how to select the best provider.

Choosing the right coverage provider is just as important as choosing the right type of coverage. Brother Robert should consider the following questions when choosing a provider:

1. Does the provider understand the unique needs of a religious institute?

While providing insurance coverage to a religious institute may, in some respects, be similar to providing coverage for a secular business entity, religious institutes have their own set of unique insurance needs. For example, in Brother Robert's situation, a provider who typically insures businesses may not be familiar with the risks associated with a high school and a retreat center. Similarly, an insurer who works with non-religious not-for-profit entities may not be familiar with the structure of a religious institute or the way that an institute and its related organizations function. This lack of awareness can make it difficult for the institute to both obtain appropriate coverage and work with the provider in handling claims. In contrast, providers who regularly provide coverage to religious institutes, because of their experience, understand a religious institute's needs and are able to adapt their coverage services to meet those needs, with respect to both the necessary coverage and the provision of customer service.

A common misconception among people purchasing various types of insurance is that every loss is covered by at least one of their policies. Alternatively, a religious institute may believe that, due to its large size and the value of its account, it can direct its carrier to provide

23 Howard Ende and Eugene R. Anderson, "Liability Insurance: A Primer for College and University Counsel," 23 J.C. & U.L. 609, 668 (1997).

24 See, *e.g.*, *McAuliffe v. Northern Ins. Co. of N.Y.*, 69 F.3d 277, 279 (8th Cir. 1995) (holding that a policy exclusion for intentional acts excluded coverage of claims of sexual exploitation by a parishioner against a parish priest).

coverage or services that are not included in the policy terms. This misconception is simply not plausible. As noted previously, the insurance policy document dictates what types of events will and will not be covered.[24] Insurance providers will not extend coverage that is not provided for by the policy simply because an institute is large or pays a high premium. An institute should speak to any prospective carrier about policy exclusions before deciding to purchase coverage. Most policies traditionally exclude from coverage many of the very types of events that religious institutions most need to be covered.[25] There are providers, however, who are sensitive to the needs of the religious and who are willing to offer the types of coverage that an institute needs, without the standard exclusion provisions found in most policies.

In Brother Robert's case, for instance, a standard Directors and Officers policy may not provide coverage for actions by St. Marcus' volunteers.[26] Similarly, a policy that excludes coverage for "intentional" acts may result in the Brothers having no coverage for claims of sexual misconduct.[27] Brother Robert, therefore, must find a provider who is willing to offer broad coverage for these types of risks that are unique to a religious institute. Moreover, Brother Robert should ensure that the promises of these broad coverage terms are, in fact, contained within the policy documents.

2. Does the provider have a team of professionals dedicated to handling the insurance needs of a religious institute?

Brother Robert should look for a provider with a team of professionals dedicated to providing coverage, including underwriters, risk control professionals, and claims representatives. Each of these individuals plays a specific role as part of a

A common misconception among people purchasing various types of insurance is that every loss is covered by at least one of their policies.

team whose goal is to provide comprehensive protection of the insured's assets. This includes customizing the insurance policy to minimize the risk of loss and ensure that claims are handled appropriately.[28]

Underwriters are responsible for evaluating potential risks and recommending proper coverage that provides the necessary protection.[29] In Brother Robert's case, an underwriter will likely send the appropriate professionals to each facility, review the Brothers' regular activities, and determine the potential risks to which the Brothers are exposed. The underwriter will ultimately create a coverage policy that is tailored to the institute's specific needs.[30]

Every institute should have a risk control program to prevent or minimize the severity of a potential loss. Risk control consultants consult with the insured to identify potential exposures and implement loss prevention programs.[31] A risk control consultant could help Brother Robert make a variety of decisions to reduce the Brothers' risks and liabilities, from creating safety procedures for the Brothers' ministries, to improving facilities to reduce the risk of physical injury to those on the property.

Finally, claims professionals investigate and evaluate claims arising under the policy, from the

25 *Id.*
26 ARTHUR GROSS SCHAEFER and DAN VAN BOGAERT, "The Changing Legal Landscape for Clergy," 42 Cat. Law. 117 (2002).
27 See, *e.g.*, *McAuliffe*, 69 F.3d at 279.

28 *Id.*
29 See INSURANCE INFORMATION INSTITUTE, Glossary of Insurance Terms, *supra*.
30 *Id.*
31 *Id.*

date of the occurrence through resolution of the claim.[32] In Brother Robert's case, he would contact his assigned insurance professionals when an event occurs that may threaten the institute's patrimony or financial capital. The claims professional will work with Brother Robert to provide the necessary information in order to bring the claim to the proper resolution.

As Brother Robert's situation illustrates, religious institutes often present a broad range of potential risks and liabilities that require their insurers to have expertise in multiple areas. The provider for the Brothers of St. Marcus, for example, would need expertise in processing claims associated with the Brothers' diverse property holdings. In addition, the provider would need to be familiar with claims that could be made by employees, students, volunteers, retreat participants, and individuals who interact with the Brothers' members serving across the country.

3. Is the provider dedicated to providing personalized service that is worthy of the religious institute's trust?

As the Brothers of St. Marcus' scenario demonstrates, religious institutes often present providers with a unique and complex combination of assets, risks, needs, and goals that may not be addressed under a provider's standard coverage options or packages. Moreover, Religious institutes are sometimes wary of insurance providers and may believe that providers cannot be trusted.

A provider's disposition to work with religious institutes by providing personalized service is an important factor in choosing an insurance provider. Brother Robert needs to select a provider with professionals whom he feels he and the other Brothers can trust. At any time the Brothers may face a claim that threatens the financial stability of their organization and programs. They need to feel confident that their provider has their best interests in mind. The Brothers may have to share sensitive or confidential information with their carrier in the process of resolving their claim. Brother Robert should ensure that the carrier he selects employs individuals with whom he feels comfortable sharing this kind of information.

4. Does the provider have an adjudication process that properly addresses complaints?

While it is a myth that insurance companies are inherently untrustworthy, Brother Robert should be sure that the insurance provider he selects offers an adjudication process in the event that he is not satisfied with the service he receives. Like any business, an insurance provider is composed of individuals. The decisions these individuals make can have significant consequences for religious institutes, like the Brothers of St. Marcus. Further, just as the provider expects the Brothers to abide by their obligations under the coverage policy, Brother Robert should look for a provider who has a process for challenging the providers' decisions without having to resort to filing a lawsuit against the provider to force coverage.

V. RESPONSIBILITIES OF INSUREDS IN WORKING WITH PROVIDERS

As noted previously, the terms of the coverage policy define the roles and responsibilities of both the insurer and the insured.[33] If the insured fails to abide by its responsibilities under the policy, the insurer may have a basis for denying coverage.[34] Similarly, if the insurer fails to provide the services it agreed to under the policy, the insured can sue to enforce policy terms.[35] The following scenarios demonstrate a religious institute's responsibilities when presenting their provider with a claim.

32 *Id.*

33 See, *e.g.*, *Cincinnati Ins. Co.*, 394 F. Supp.2d at 1132; *Geiger*, 117 P.3d at 18; *Steven S.*, 787 N.Y.S.2d at 831.

34 *Id.*

35 *Id.*

Reporting Claims

Father Tom is the provincial for the Fathers of the Divine Infant. Last week, he received a letter from Elizabeth Jones, a former teacher at St. Lucius High School, which is operated by the Fathers of the Divine Infant. Jones had taught at St. Lucius for one year, but the school chose not to renew her contract. Jones claims that the school's principal, Mr. Scott Burns, was retaliating against her because she refused his repeated requests for a date with her. Jones tells Father Tom that she has found a new job and does not intend to pursue a lawsuit against the school. She writes that her only intention is to let Father Tom know what Burns did so he can take some action to make sure other teachers are not harassed by Burns and then fired like she was.

Father Tom is unsure of how to proceed. No one has ever accused Burns of harassment before, and Father Tom has no proof to support Jones' claims. Father Tom would like to simply discuss the matter with Burns privately and warn him that he will be terminated if Father Tom learns he has acted inappropriately with any other faculty members. Father Tom fears that by involving his general liability insurance carrier, Jones's claims will be leaked to the St. Lucius Community or lead to higher premiums.

Despite his concerns, Father Tom should contact his coverage provider to inform them of Jones' letter. While many individuals believe that these types of claims do not need to be reported to a provider until after a lawsuit has been filed, this is a myth. The Fathers' coverage policy likely requires timely reporting of any event that may give rise to a claim covered under the policy.

Failure to notify the provider of this potential claim in a timely manner could result in the provider denying the Fathers coverage under the policy.[36] When an insured fails to comply with a policy's timely reporting requirement, courts often uphold the provider's decision to deny coverage.[37] Moreover, it is in the Fathers' best interest to involve their provider in this matter. Timely notice allows the provider to begin an immediate investigation into Jones' claims and to better defend the Fathers if Jones does file a lawsuit. Risk managers may be able to help Father Tom determine what, if anything, to do with Burns, and they can also assist in developing policies to prevent incidents like this one from occurring in the future. Finally, if Father Tom has selected a provider whom he trusts, he should not fear the provider making Jones' accusations public or raising rates on claims that never lead to litigation.

When an insured fails to comply with a policy's timely reporting requirement, courts often uphold the provider's decision to deny coverage.

Obligation to Forward Suit Papers

The Sisters of St. Judith operate a community food pantry. Yesterday, the program's director, Sister Mary Frances, was served with a lawsuit. The plaintiff, Jessica Simmons, alleges that last winter, while making a food donation, she slipped and fell on the building's steps and now suffers from severe and chronic back pain. Sister Mary Frances keeps a log of food pantry donors for tax purposes, but cannot find an entry for Simmons. Sister Mary Frances also spoke to Sister Rose Marie, who handles receipt of donations. Sister Rose Marie has no recollection of Simmons, or of anyone falling on the steps. Sister Mary Frances knows that the Sisters have

36 See, *e.g., Montgomery Ward & Co. v. Home Ins. Co.*, 753 N.E.2d 999, 1004 (Ill. App. Ct. 2001).

37 See, *e.g., Graman v. Continental Cas. Co.*, 409 N.E.2d 387, 390 (Ill. App. Ct. 1980).

general liability insurance that covers slip-and-fall cases, but believes that Simmons' claims are false. Sister Mary Frances decides to hold on to the complaint and see if anything develops. Over the next two months, she receives several other documents from the plaintiff related to the lawsuit. She begins to wonder if she should report this to her insurance provider.

Sister Mary Frances needs to forward the complaint, and any other documents she receives in this matter, to her insurance carrier, even if she believes Simmons' claims are false. The Sisters are likely required, under the terms of their insurance policy, to forward any other legal documents that they receive to their coverage provider.[38] Like Father Tom in the previous scenario, Sister Mary Frances risks the provider denying coverage of all the legal papers are not sent to the carrier.[39] Moreover, Sister Mary Frances greatly increases the chance that the Sisters may lose the lawsuit for failure to comply with deadlines imposed by the court system.

Duty to Cooperate with the Provider

Sister Mary Frances reports the lawsuit to the carrier and forwards everything that she receives about the case. She also sends the pages from the donation log for the day Simmons claims she fell and a letter from Sister Rose Marie stating that she has no recollection of anyone falling on that day. The insurance provider refers the matter to an attorney, Ken Smith, retained by the provider to defend the Sisters. Sister Mary Frances believes she has done all that is required of her and is relieved to turn over responsibility for the matter to the insurance company and its attorney. Like many institute leaders, she believes that she does not need to participate further in the claims process.

Two weeks later, however, Smith calls Sister Mary Frances to speak with her about the food pantry program and procedures for dropping off food. Smith asks her to send him complete copies of all of the pantries records – both of people who donated food to the pantry and individuals who have used the pantry's services. Finally, he wants to know when both she and Sister Rose Marie would be available for the plaintiff to take their depositions, which he explains would require them to answer questions from Simmons' attorney under oath. Sister Mary Frances does not understand what further information she can provide. She also believes that her logs, especially of people who have received food from the pantry, should be kept confidential to protect her clients' privacy. Neither she nor Sister Rose Marie have ever given a deposition, nor does their ministry leave them with much time to attend one. She wonders if she really has to do all of the things that he has asked.

Sister Mary Frances needs to cooperate with both the insurance provider and its attorney in the defense of the claim. Insurance policies typically impose a duty on the insured to cooperate with the provider in the defense of their lawsuit.[40] While Sister Mary Frances may believe this is an "open and shut case," to properly defend the Sisters of St. Judith, the attorney hired by the insurance company needs to review all records and documents to determine the institute's likelihood of success. Finally, both Sister Mary Frances and Sister Rose Marie need to comply with the plaintiff's request to take their deposition. Again, if the Sisters refuse to attend their depositions, the carrier can deny them coverage for failure to cooperate. Moreover, the judge who is overseeing the case will likely order them to appear for a deposition and penalize them if they refuse.

---

38 See, *e.g., Johnson v. Banner Mut. Ins. Co.*, 189 N.E.2d 780, 782 (Ill. App. Ct. 1963); *Olivieri v. Coronet Ins. Co.*, 528 N.E.2d 986, 989 (Ill. App. Ct. 1987).

39 See, *e.g., Montgomery Ward & Co.*, 753 N.E.2d at 1004.

40 See, *e.g., Allstate Insurance Co. v. Loester,* 177 Misc. 2d 372, 675 N.Y.S.2d 832 (Sup. Ct. Queens County 1998); *Sharp v. Trans Union LLC,* 845 N.E.2d 719, 727 (Ill. App. Ct. 2006).

VI. WHAT AN INSTITUTE SHOULD EXPECT FROM ITS PROVIDER

Father Joseph is the provincial for the Missionary Fathers of the Sacred Child. He recently received notice that a lawsuit has been filed against the Fathers. The plaintiff claims that she was injured in a car accident that involved a car driven by Father Albert, a member of Father Joseph's order. The woman claims that Father Albert rear-ended her and, as a result, she suffered a large cut on her forehead and has suffered memory loss. Father Joseph understands that he is obligated to forward these documents to his insurance carrier and cooperate with them. Father Joseph wonders, however, what he can expect from his carrier and what he should do if the carrier does not fulfill its obligations.

Father Joseph should expect his insurance carrier to comply with its obligations as set forth by the insurance policy. In addition, the law imposes duties on the Fathers' carrier by which Father Joseph should also expect the carrier to abide. These obligations include the duty to engage in fair dealing, the duty to defend, and the duty to pay, which are discussed more fully below. In the event that Father Joseph's carrier has not fulfilled its duties, Father Joseph can pursue a legal action against the carrier to force it to provide coverage in accordance with the policy's terms.

Duty to Engage in Fair Dealing

While it may not be specifically stated in the policy document, every insurer has an implied duty to act in good faith and engage in fair dealing when working with its insured.[41] This means that Father Joseph should expect that his carrier will treat the Fathers fairly and will not put its own interest ahead of protecting the Fathers' interests.[42] In other words, Father Joseph's carrier must provide coverage if the claim submitted is validly covered under the Fathers' policy and cannot manipulate its investigation of the claim to find a basis for denying coverage.[43]

However, Father Joseph cannot simply turn over the claim to his carrier without remaining involved in the claims process. Rather, while the carrier is required to protect the Fathers' interests, Father Joseph should keep in contact with his carrier to ensure that his claim is properly handled.

Duty to Defend

Insurance companies also have duty to provide a defense for their insured any time a claim is filed that might be covered under the policy, even if there is a possibility that some or all of the claims may eventually be determined to be excluded from coverage.[44] This duty includes providing an attorney to represent both the insurer and the religious institute.

In Father Joseph's case, for instance, the carrier will be required to provide the Fathers with a defense in this case, even if the plaintiff's damages may exceed the policy's limits. In the event that his carrier does believe that a portion of the claim will later be denied coverage, Father Joseph should expect the carrier to provide him with a written Reservation of Rights letter explaining that the carrier is providing a defense, but is reserving its right to later deny coverage. Finally, if the carrier does deny coverage, Father Joseph should expect the carrier to provide a written explanation as to why this particular claim is not covered under his policy.

41 See, *e.g.*, *Brase by Brase v. Loempker*, 642 N.E.2d 202, 206 (Ill. App. Ct. 1994).

42 See, *e.g.*, *Village of Lombard v. Intergovernmental Risk Management Agency*, 681 N.E.2d 88, 96 (Ill. App. Ct. 1997).

43 See, *e.g.*, *Briseno v. Chicago Union Station Co.*, 557 N.E.2d 196, 199 (Ill. App. Ct. 1990).

44 See, *e.g.*, *Nandorf, Inc. v. CNA Insurance Co.*, 479 N.E.2d 988, 991 (1st Dist. 1985).

Duty to Pay

The duty to pay is a broad term used in this article to encompass several duties that an insurance provider has with respect to issuing payment for claims. First, Father Joseph can, and should, expect that his carrier will conduct a thorough investigation of the plaintiff's claim to determine whether her account of the accident is accurate.[45] The carrier should also investigate the plaintiff's injuries and the evidence the plaintiff has to support her claims.

In addition, Father Joseph can expect that his carrier will try to settle the plaintiff's case, rather than let the matter proceed to a trial, if it is in the Fathers' best interest to resolve the dispute. In Father Joseph's case, for example, the plaintiff might be seeking damages of $50,000, which exceeds the Fathers' policy limit of $20,000 for this type of claim. Father Joseph's carrier has a duty to negotiate with the plaintiff and try to settle her claim within the limits of the Fathers' policy.[46] Father Joseph should expect his carrier to consider the advice of the attorney in developing a plan of action for resolving this matter in a way that best serves the Fathers' interests.[47]

Finally, Father Joseph should also expect that his carrier will communicate with him throughout the claims process to keep him apprised of developments in the case, including whether the plaintiff is willing to settle within the policy's $20,000 limits.[48] Since any amount over the $20,000 would have to be paid by the Fathers, however, the carrier cannot agree to a settlement that is in excess of $20,000 without the Fathers' permission. In addition, the carrier cannot abandon negotiations in the event the plaintiff will accept less than $20,000 without first consulting with the Fathers.

If the carrier fails to comply with each of these duties, Father Joseph should first speak with his carrier and attempt to resolve the matter using the carrier's complaint mechanism. Father Joseph then may wish to consult with an independent attorney regarding the Fathers' rights against the carrier.

CONCLUSION

While purchasing insurance for a religious institute may seem like an overwhelming task, the process boils down to three basic decisions: choosing the appropriate type of coverage, selecting the best type of provider, and finding a provider willing to serve the individual needs of the institute. As this article demonstrates, all of these decisions require the institute to assess its unique coverage needs and goals. Once a provider has been selected and an event arises that the institute believes is covered under its policy, the institute should refer to the specific terms of the policy and work with the provider to resolve the claim.

45 See, *e.g.*, *O'Neill v. Gallant Insurance Co.*, 769 N.E.2d 100, 107 (5th Dist. 21002).

46 *Id.* at 106.

47 *Id.* at 107.

48 *Id.*