

## Coverage: Creating, Revising and Enhancing TNCRRG Policy Forms

By Michael J. Bemis, President & CEO, TNCRRG

The year 2003 has witnessed incredible success for The National Catholic Risk Retention Group's (TNCRRG's) VIRTUS® programs. The VIRTUS programs, as you'll recall, are the foundation and superstructure of all the risk control (loss prevention/loss control) initiatives undertaken by TNCRRG on behalf of its shareholders and the broader Church.

While we truly thank God for the success of our VIRTUS programs, it is ironic to note that in the minds of many people, TNCRRG's risk control efforts and accomplishments have actually obscured the fact that TNCRRG is an insurance company first, and a provider of risk control services second.



TNCRRG's original and still primary mission is to be a financially stable, long-term source of cost-effective liability insurance coverage for the Church. TNCRRG exists to help finance and manage the liability risks of the Church, which are produced and generated by the very broad and comprehensive ministries undertaken by the Church, including parishes, grade schools, high schools, colleges or universities, cemeteries, Catholic charities services, and others. TNCRRG mitigates or fully relieves its shareholders of the potentially catastrophic financial impact of liability claims. This is done through the provision of insurance coverage, evidenced itself in the TNCRRG policy forms.

So, acknowledging this primary mission, a TNCRRG insured may ask how the insurance coverage is actually developed. This is an excellent and important question that we will now answer.

First, we should note that TNCRRG coverage terms and conditions are always reflective of TNCRRG's strategic commitment to the Church; namely, the provision of the best and most comprehensive coverage available; with the broadest limits possible; at the fairest, most cost-effective price (premium) obtainable. These principles underlie all of our activities associated with the development and improvement of our coverage forms. These principles also, however, represent goals that TNCRRG is committed and dedicated to achieving, but which it may in part be prevented from achieving at any point in time because of a number of internal and external factors that directly affect and impinge upon TNCRRG's provision of its coverage. These factors include: 1) TNCRRG's financial circumstances—its level of surplus (Shareholders' Equity), the adequacy of its reserves, and its investment results; 2) the nature of TNCRRG's reinsurance program and the state of the reinsurance market; and 3) regulatory approval matters.



For example, TNCRRG may wish to provide some new coverage that is "cutting-edge" when compared to the general insurance marketplace and the array of different insurers with which TNCRRG competes. However, TNCRRG's reinsurer may be unwilling to cover TNCRRG for this new coverage exposure, or TNCRRG's regulators may not approve the necessary alteration to the business plan required to effect coverage, or a downturn in TNCRRG's financial circumstances may dictate that it would be financially imprudent or unwise to undertake the new, broader coverage. Similar situations might exist that would prevent expansion of TNCRRG's total limits of coverage or which might suggest that a premium increase is indicated rather than the reduction in price originally planned.

Company management and TNCRRG's Board constantly work together to ensure that TNCRRG avoids such negative outcomes, or in any event, responds appropriately when these negative events occur, to mitigate their effects.

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Assuming that TNCRRG has good financial circumstances, solid reinsurance, and full regulatory authority enabling it to proceed with desirable coverage alterations, how does this process actually work?

To begin, TNCRRG management continuously monitors both Church and insurance industry developments to discern new coverage needs and opportunities and/or the existence of new competitive products. This monitoring is done through one or more of the following avenues: 1) review of both Church and insurance industry publications and websites; 2) review of general business publications/websites and related economic data; 3) attendance at special insurance industry seminars and convocations; 4) dialogue or correspondence with Board members and shareholder employees; 5) collegial interaction with other Catholic and non-Catholic church insurers; 6) dialogue or correspondence with a broad national network of broker relationships (specifically, those that have expertise and experience with church clients); and 7) feedback from TNCRRG's Director of Claims Management regarding coverage revisions that should be explored to address ambiguities in the existent policies (which TNCRRG has become aware of during claim resolutions).

Based upon review of the content amassed from these various information sources and contacts, company management (specifically, the President/CEO, Director of Underwriting and Director of Claims Management) then meets semi-annually to determine which coverage needs and opportunities should be pursued to best serve TNCRRG shareholders—by most comprehensively insuring their provision of ministries to society.

At this point, company management holds a follow-up meeting to each of the two meetings just referenced—this time with TNCRRG's outside coverage counsel. In these all-day meetings with counsel, company management and TNCRRG's coverage attorney actually draft the proposed coverage revisions/enhancements.

Next, coverage counsel analyzes the coverage drafts against case law precedents to determine if the draft language needs to be modified to achieve both greater clarity, and also, to minimize the potential that the language would become the subject of some later litigation following a claim.

Once this process is completed, company management shares the proposed new coverage wording with TNCRRG's reinsurer(s) seeking constructive criticism and ultimate confirmation of support.

Finally, if the coverage change is a totally new expansion and/or major departure from the existent policy forms, company management submits the proposed change(s) to the TNCRRG Board of Directors for their final approval.

Note that the process and procedures described above are repeated each and every year of TNCRRG's operational history.

This is how those (probably boring to you and, perhaps, somewhat intimidating) TNCRRG policy forms come to be and evolve with the passage of time and events.

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## **TNCRRG Provides Series of Legal Defense Practice Workshops**

### **Workshops Specifically Address the Handling of Claims Related to Sexual Misconduct**

TNCRRG employs a multi-faceted approach in provision of its service to the Church. TNCRRG is, of course, a provider of excellent liability coverage. It also has established a leadership position in the Church via its comprehensive and highly regarded child sexual abuse prevention system known as the *Protecting God's Children*<sup>™</sup> program. More recently, TNCRRG has again demonstrated both its commitment to the Church and its innovativeness and creativity through the development and presentation of a series of claim/litigation management workshops—the TNCRRG Legal Defense Practice Workshops.

These workshops are presented as a service to both shareholders and non-shareholders of TNCRRG, and there is no

charge for attending the daylong program, which includes an enjoyable continental breakfast and equally enjoyable lunch. Who said there are no free lunches?

The workshops are designed to encourage attendance by representatives from all dioceses in a province and sometimes they include diocesan representatives from a region large enough to cover the territory of two provinces. The workshops specifically address sexual misconduct claim handling. Topics covered by presenters include:

- 1) Determination of the nature and extent of available coverage;
- 2) Defense preparation (including First Amendment issues, statute of limitation issues, discovery considerations, and litigation planning and management protocols, processes, and procedures);
- 3) Review of resources (including networking with other diocesan counsel, deriving support from the USCCB, interacting with the district attorney, and accessing appropriate medical and psychological consultation);
- 4) Claim disposition (including injury evaluations, particulars of alternative dispute resolution, use of structured settlements, and information regarding the Gilead Center services/methodologies); and
- 5) Finishing with an open panel discussion and Q & A session.



Panelists are arranged by TNCRRG and include both local (to the seminar location) attorneys and other counsel from across the country—all of whom are selected for their expertise on and experience with these very sensitive claims (including several who have established case precedents on these claims in their jurisdictions). The panelists include representatives from the USCCB Office of General Counsel.

Attendee evaluations have consistently reflected highly complimentary feedback regarding the quality of the speakers and course materials, and the comprehensive handling of the topics. TNCRRG also arranges for continuing legal education credits, whenever possible. Finally, the program itself and all presenters reflect an awareness of and sensitivity to the absolute need to handle these claims in a pastoral fashion, which is completely congruent with the Church's teaching and the highest ethical standards of the legal profession.

TNCRRG intends to present at least three such workshops in 2004. To learn more about the workshops and how to attend, please call TNCRRG toll-free at (877) 486-2774 and ask for Douglas W. Grund, Director of Claims Management.

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## Plan Now to Attend TNCRRG's 2004 Winter Meeting

***February 1 to 3, 2004, Fort Lauderdale, Florida***

We encourage you to attend our 13<sup>th</sup> Annual Winter Meeting, February 1 through February 3, 2004, in Fort Lauderdale, Florida. This annual event is a great opportunity to mix and mingle with other church administrators, TNCRRG shareholders, exhibitors, and other friends. We are certain you will find our meeting to be both a great value, and also, *of* great value, in a number of ways.

We continue our historical tradition of providing four risk management related workshops—each workshop is developed and presented by a true expert in his or her respective field. The workshops cover a broad and varied range of topics including:

- A review of litigation alternatives and dispute resolution practices that are consistent with Church teaching;
- A discussion of a simple, yet revolutionary technique for conducting investigation-related interviews;
- An analysis of “cutting edge” medical claim management tools that vastly improve patient outcome while substantially reducing the overall costs of self-funded employee benefits or workers' compensation programs; and

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- An overview and discussion of the legal import of the sexual misconduct crisis in the Church—from the tort perspective.

As a part of our Monday morning business meeting, we will present additional information regarding insurance marketplace issues and phenomena that are relevant and important to everyone—shareholders and non-shareholders, alike. Additionally, we will have an array of service providers and exhibitors represented, with each offering specialized, high-quality services and products to the Church. If you are so inclined, you will have ample opportunity to meet and converse with these good folks outside of our sessions and workshops.

Importantly, note that all of this information, expertise, program materials, and related training are provided by TNCRRG with no conference registration fee whatsoever!

To ensure that you take advantage of this meeting opportunity, we strongly advise and urge you to register as soon as possible. We have arranged for a limited block of rooms (at a discounted rate) at the Sheraton Yankee Trader Beach Hotel and Resort. We encourage you to enjoy the convenience of lodging and attending our meetings at the same location. Additional registration and travel information is available on our Company website at [www.nationalcatholic.org](http://www.nationalcatholic.org). If you plan to attend, please make your arrangements as soon as possible.

We look forward to welcoming you to Fort Lauderdale in February!

### **Workshop:    The Changing Face of Dispute Resolution**

It is a foregone conclusion that in a fallen world, disputes will sometimes arise. It is also the personal experience of most adults that disputes can become very nasty indeed. How disputes get resolved is an entirely different matter. Americans have long prided themselves on a legal system that establishes the paradigm for dispensing justice and resolving disputes. And yet, we all know that this legal system is often the legitimate target of criticism. Frequent, lengthy delays in obtaining justice; excessive costs of litigation; arguments that the “rewards” of litigation often are allocated disproportionately to attorneys while the plaintiff’s and victim’s damages remain inadequately addressed—all these criticisms and even more are all too often justified. And, unfortunately, the problem increases dramatically when the Church finds itself in dispute. In such cases, how does the Church resolve disputes in a fashion that not only is consistent with Christian values and Church teaching, but also is fair to the Church?

A highly experienced jurist will tackle these issues in this workshop. Some of the issues include: analyzing the history of conflict resolution; the problems with the standard litigation model; successful alternatives to the litigation model; and how all this plays out, using the Church as an example.

**Presenter:    Walter L. Murphy**

Walter L. Murphy was appointed Chief Justice of the New Hampshire Superior Court in October 2000, by Governor Jeanne Shaheen after having served as Associate Justice since his appointment by Governor Sununu in December 1983. Previously, he was engaged in private law practice in Plymouth, New Hampshire, for more than 21 years. He has served as Supervisory Judge of Hillsborough County Superior Court (Manchester and Nashua) and as a member of the Superior Court Executive Committee. He is a former member of the Supreme Court Committee on Professional Conduct and its Committee on Judicial Conduct, and has served as an Adjunct Professor at Franklin Pierce Law Center since 1987. He continues to lecture to numerous Continuing Legal Education programs for the New Hampshire Bar Association, New Hampshire Trial Lawyers Association, Tri-State Judges and National State Trial Judges, and has attended and served as Faculty Advisor at the National Judicial College, University of Nevada at Reno. Judge Murphy is a 1959 graduate of the College of the Holy Cross in Worcester, Massachusetts, and Boston College Law School (J.D., 1962) and is co-author of New Hampshire Civil Jury Instructions (Lexis Publishing).

### **Workshop:    Lie Detective: Assessing Honesty During an Interview—The Principles and Processes of Tactical Interviewing**

Dioceses and religious institutes occasionally find themselves confronted with the unpalatable obligation to interview one or more people in a search for the truth underlying a difficult situation. It may be an investigation associated with suspected fraud or employee dishonesty; it may be an investigation of an alleged employment practices violation such as a sexual harassment accusation; or it may be an investigation required as part of a sexual misconduct review board’s due diligence efforts. In all these instances, the search for truth is paramount in order to promote and effect the just resolution of the matter at hand, consistent with the Church’s teaching. The person or people you need to interview know the



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information you need to deal with the matter appropriately. By learning and employing a few simple techniques, you will be able to accurately assess a person's honesty level.

This is the heart of the "Tactical Interviewing" process. In this session you will learn the significance of Listening to Denials; the most effective Questioning Techniques; and how to assess The Accuracy of Gestures; among other things. Best of all, the Tactical Interviewing process is far more congruent with Christian ethics than the "classic" interrogation type of interviewing.

**Presenter: Jerry Lewis**

Jerry Lewis retired as a Lieutenant from the New Jersey State Police after a 25-year career, including being the supervisor of the Violent Crime Analysis and Polygraph Unit. His training and experience taught him that he did not need a polygraph to tell him if people were lying. From his observations and research he developed the Tactical Interviewing Program, which he teaches to law enforcement agencies and private investigators throughout North America. He holds a Masters Degree in Education from Seton Hall University, and is an adjunct professor at Northwestern University.

**Workshop: Medical Risk Management—Innovations for Christian Stewardship**

Health care costs comprise one of the most significant sources of annual financial outlay for any diocese or religious institution. Whether these costs arise as a function of a self-funded employee benefits program, or a self-funded workers' compensation program, or from medical expenses associated with a claim for bodily injuries which the diocese/religious institute is liable for, in every instance, the costs of related medical care can have a substantial impact on precious financial resources. This situation is even more complicated for any religious organization because of the tension created by the apparently conflicting simultaneous obligations to exercise prudent stewardship of ministerial resources while fulfilling the fundamental Christian expectation of providing the best care available to restore the sick and injured. The solution to this dilemma lies in the utilization of effective medical claims management principles and programs. Employing these tools renders both much more positive clinical outcomes for patients, and also, more efficient use of limited financial resources. The result is improved financial management that is completely consistent with Christian ministry and values.

This session will explain the principles behind medical claims management; it will review the research validating the medical claims management proposition; and it will demonstrate medical claims management processes and procedures.

**Presenter: Bruce G. Sundquist**

Bruce Sundquist is Vice President of Health Care Claims, Workers Compensation Risk Management Services, and Workers Compensation Claims Consulting at American Re-Insurance, a member of the Munich Re Group in Princeton, New Jersey. Bruce joined American Re in April 1997 to establish the Health Care Claims services department. Bruce is currently engaged in research and development of health claims and medical risk management services for client companies. Bruce is a member of the Board of Best Doctors in America and serves as American Re's representative to Munich Re on occupational health care strategy. Prior to joining American Re, Bruce was with CNA Insurance in Chicago, Illinois, from 1978 to 1997. His last position with CNA was Vice President and Chief Operating Officer of the Cost Management Division. In this position, Bruce was responsible for the development and operation of all workers compensation medical and disability management services. Before joining CNA, Bruce held several research and engineering positions in the petrochemical industry. Bruce has a bachelor's degree in chemical engineering and business administration.

**Workshop: Tort Liability for Sexual Abuse: An Overview**

This workshop will explore the tort liability issues that arise in connection with sexual abuse by clergy. It is understandable that in the context of a major scandal of national proportions—involving hundreds of cases—most people have assumed that the Church, as well as the abusing clergy, is liable. However, when examined in the context of individual cases, this liability is not always so clear. Among the topics to be considered and analyzed are: 1) the standard of care; 2) the question of vicarious liability; 3) the doctrine of charitable immunity; and 4) the availability and appropriateness of First Amendment defenses.

**Presenter: Catharine Wells**

Catharine Wells is a Professor of Law and former Associate Dean for Academic Affairs at Boston College Law School. She has also taught at the University of Southern California, Stanford University, the University of Utah, and the New

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England School of Law. A graduate of Wellesley College and Harvard Law School, Professor Wells also has a PhD in Philosophy from the University of California, Berkeley, where her field of specialization was American pragmatism. After law school, Professor Wells served as an Assistant Attorney General for the Commonwealth of Massachusetts, beginning her service in the Consumer Protection Division and, continuing from 1979 to 1984, as the Director of the Public Charities Division. In 1984, she returned to academic life and began to publish extensively in the fields of Torts and American Jurisprudence.

**Again, detailed information about the Winter Meeting is available on our Company website. Keep an eye on our calendar of events at:**

[www.nationalcatholic.org](http://www.nationalcatholic.org)

Plus, you can download a hotel registration form and a general registration form from our website. To make your reservation, please print all the pages, then complete the two attached forms and return them by mail or fax—each according to their respective instructions. And, please check our online calendar often for the latest information. For details about the hotel and the Fort Lauderdale area, visit the Sheraton Yankee Trader website at:

[www.sheratontrader.com](http://www.sheratontrader.com)

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