

# Diocese and Religious Order Bankruptcies

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## Diocese and Religious Order Bankruptcies – The Critical Role of Historical Insurance

*James R. Murray*  
Dickstein Shapiro LLP  
Washington, D.C.

12/20/15/16

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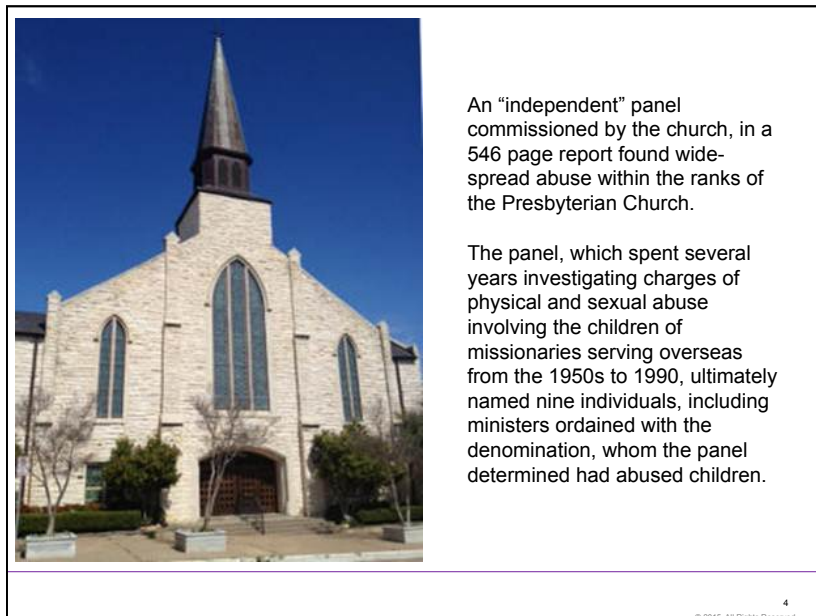
### The Sexual Abuse “Crisis”

- Institutional cases of past decade
  - The “Church” cases
    - Roman Catholic
    - But many others ...

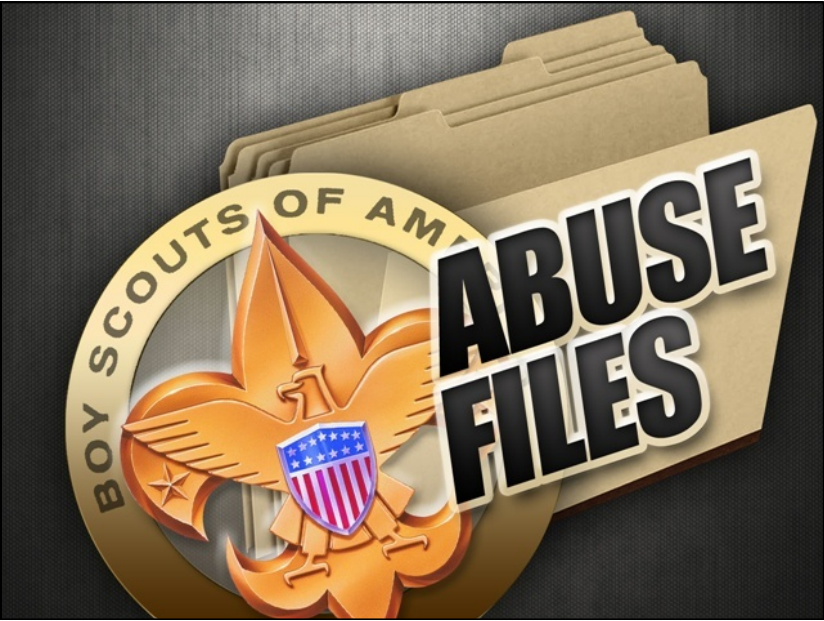
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### Former Students File \$380 Million Sex Abuse Lawsuit Against Yeshiva University



The suit alleges a "massive cover-up of the sexual abuse of [high school] students...facilitated, for several decades, by various prominent Y.U. and [high school] administrators, trustees, directors, and other faculty members."

The [Forward reports](#) that 19 former students of Yeshiva University's affiliated high school filed a \$380 million federal lawsuit against YU today, accusing its administrators and teachers of covering up decades of physical and sexual abuse by staff and, in one case, by a former student allegedly known to be a danger to children who was, nonetheless, allowed in the school's dorms by administrators - who in some cases are themselves alleged pedophiles.

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ARIC INVESTIGATORS

NEW DETAILS REVEALED IN LETTER ABOUT HOPKINS OB-GYN

SAYS DOCTOR WAS CAUGHT WITH MULTIPLE RECORDING DEVICES

MARYLAND HEART CENTER WILL ANSWER YOUR C...

5:00 6:30

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## Largest Sexual Abuse Settlements

Archdiocese of Los Angeles	\$660,000,000
Diocese of San Diego	\$198,100,000
Johns Hopkins Medical	\$190,000,000
Oregon Province of Jesuits	\$166,100,000
Los Angeles Unified School District (Miramonte)	\$139,250,000
Beebe Medical Center	\$123,150,000
Diocese of Orange County	\$100,000,000
Diocese of Boston	\$84,250,000
Diocese of Covington (KY)	\$79,082,000
Diocese of Wilmington	\$77,425,000
Diocese of Portland	\$71,450,000
Diocese of Spokane	\$48,000,000
Diocese of Helena	\$14.3 million

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**Agent:** Alright.  
We have a blue  
Ford Escort for  
you Mr. Seinfeld.  
Would you like  
insurance?

**Jerry:** Yeah, you  
better give me the  
insurance, because  
I am gonna beat  
the hell out of this  
car.

*The Alternate Side, Seinfeld, Season 3, Episode 11*

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## The Crown Jewel of Insurance Grants

### The Standard CGL Insuring Agreement:

The [Insurer] will 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 this policy applies, caused by an occurrence.***

“Occurrence means an accident, including continuous or repeated exposure to conditions, ***which results during the policy period in bodily injury or property damage*** neither expected nor intended from the standpoint of the insured;”

***“Bodily injury” means “bodily injury, sickness or disease.”***

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## The Evolution of Comprehensive General Liability (“Occurrence”-Based) Coverage

- Standard-form CGL policy introduced in 1947.
- Revised numerous times, including 1955, 1966, and 1978.
- When Liability for Occurrences that Resulted in Past Injury or Damage is Created, Insurance Policies from the Year(s) of the Past Injury or Damage Must Respond.

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## The Drafters Sold Insurance for FUTURE Unknowns

- Drafting history associated with each revision of the CGL – replete with evidence concerning underwriting intent.
- Most important changes intended to broaden coverage ***for the unknown and for change in legal liability...*** to foster sales.
- “We are living in the future; I’ll tell you how I know; I read it in the paper, fift[y] years ago.” -- John Prine
- Hear what the insurance underwriters said over 50 years ago:

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### Liability Insurance...

#### Placement and Underwriting

By  
Joseph M. Forest  
Vice President  
Liberty Mutual Insurance Company

(Address before Risk Management Institute, ASIM, Harvard University, September 9, 1959)



Joseph M. Forest  
Joseph M. Forest is Vice President of Liberty Mutual Insurance Company, Boston, Massachusetts. He was named Liberty Mutual in 1958 as the Liberty Mutual Insurance and in 1959 was made Assistant Secretary of the President of ASIM, the President of the American Insurance Association, and in 1959 was named Vice President of the American Insurance Association. Mr. Forest was awarded the Liberty Mutual Award for his outstanding service to the insurance industry. He is the author of various articles and monographs on insurance and underwriting subjects, and received the formal recognition as Assistant Vice President of Liberty Mutual Insurance Company, Boston, Massachusetts, and Harvard University.

#### PLACEMENT AND UNDERWRITING

By  
Joseph M. Forest  
Vice President  
Liberty Mutual Insurance Company

(Address before Risk Management Institute, ASIM, Harvard University, September 9, 1959)

Ours is an intensely competitive economy – dynamic and changing in nature, and one in which to stand still means to fall behind. New concerns are always springing up to produce new products and to replace those which have fallen by the competitive wayside, and new products and processes are constantly replacing outmoded ones.

The insurance industry, as an integral part of this economy, must also be dynamic: it must keep up with industrial progress by developing new policies and new coverages to satisfy the changing requirements of industry for protection.

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For what it's worth...

## Replacement Cost Insurance Demand Accelerates Values

*By Don S. Berman, President, American Insurance Association, Washington, D.C.*

Replacement Cost Insurance (RCI) has become a major factor in the replacement cost movement. The RCI program is a new type of insurance that provides for the replacement of damaged property at the actual replacement cost, rather than the actual cash value. However, many policies do not provide for RCI. The American Insurance Association (AIA) is working to get RCI included in all policies. The AIA is also working to get RCI included in all policies. The AIA is also working to get RCI included in all policies.

The replacement cost of the property is the actual replacement cost, rather than the actual cash value. However, many policies do not provide for RCI. The American Insurance Association (AIA) is working to get RCI included in all policies. The AIA is also working to get RCI included in all policies. The AIA is also working to get RCI included in all policies.

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## Risk Management Institute (From page 16)

David A. Ivey ..... Assoc. Pres. of Insurance  
University of California, San Diego  
B. E. Kiley ..... Chief State Program Director  
New York, New York  
Robert J. Williams ..... President  
California and Insurance Co.  
San Francisco, California  
Steven D. Wilkins ..... Second Vice President  
Insurance Company of America  
Washington, D.C.  
James D. Young ..... Manager, Trade Association  
and Insurance Company  
Johnston & Higgins, New York, N.Y.

Laurence J. Ackerman ..... Dean, School of Insurance Administration  
University of California, San Diego  
Paul A. Burke ..... Managing Director, American Board of Insurance Management, Inc.  
New York, New York  
David A. Ivey, CLU ..... President  
Insurance Company of America  
Washington, D.C.  
C. W. Scott, Insurance ..... President  
Insurance Company of America  
Washington, D.C.

## Liability Insurance—Forest (From page 15)

Two amounts. One area of overall liability insurance that we have been developing rapidly is that created by the demand for broader coverages. There has been a decided change in recent years in the thinking of corporate risk managers who seem to view water damage as a new area of liability that traditionally have not been considered proper subjects for insurance, but which are more properly treated as basic business hazard, the costs of being in business, of the entrepreneur's risk, if you prefer.

Another development which has been introduced in the past several years to the overall coverage experience of the companies is the activity on the part of these firms to regroup parts of their losses by subrogation activity against manufacturers of defective products or suppliers of services which may have caused the loss. With price levels what they are and the probability of their being sued in the future, we can expect

a further increase in ton activity which is of increasing general liability importance. Having lost touch we should note that which ended our last definition period, it is obvious in 1979, we have temporarily lost touch of the cost of price level that in the future higher medical settlements and higher amounts of damaged property

of insurance, reinsurance, increased in these developments, as they directly affect the price you will be paying for insurance in 1980 and 1981. Between the years 1960 and 1980 the average general liability bodily injury claim paid by Liberty Mutual increased over 100% because of inflationary factors. We all hope that any further inflationary tendency of our economy will not produce effects as adverse in the next ten-year period.

Nevertheless related to inflation and rising claim costs in the problem of the future, we can expect

One area of general liability insurance that has been developing rapidly is that created by the demand of insurance buyers for broader coverages. There has been a decided change in recent years in the thinking of corporate risk managers who seem to want coverages to sweep in areas of liability that traditionally have not been considered proper subjects for insurance, but which are more properly matters of basic business hazard, the costs of being in business, or the entrepreneur's risk, if you prefer.

(Start on page 20)

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[illegible]

## Sexual Abuse – Back to the Future Again

- Statutes of Limitations: Variety of Approaches (See *Statute of Limitations Handbook of National Center for Prosecution of Child Abuse*, NDAA)(May 2013)
- Most common: discovery rule
- Montana (1989)
- Delaware (2009) (The Bradley Case)

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## Challenges to Insurance Settlements

- Insurance Coverage Issues
  - Lines of coverage
  - Trigger
  - Sexual molestation/Professional services exclusions
  - Number of occurrences
  - Allocation
  - Expected or intended
  - “Limits” demands
  - Finality
  - Verdict v. settlement value

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Testifying Experts

- Bodily injury
- Expectation
  - Benchmarks of credibility
  - Admissibility

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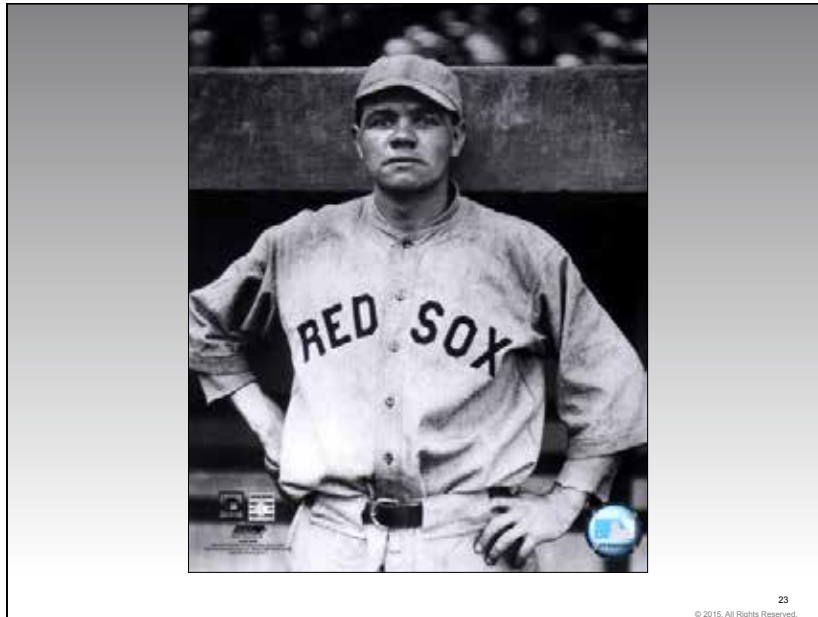
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First of all, I would like to have Pat remain here for another year, but only if he is able to recognize the problem, which Father Gill outlined as "a pediatrician complex". I feel that this has some far reaching consequences in relation to his ability to function as a priest in a parish.

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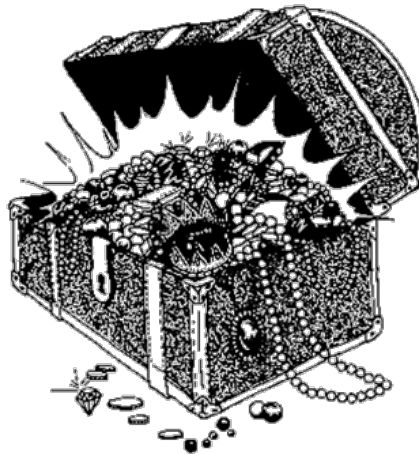
These asbestos mitts for handling hot metal molds and shapes are reversible to fit either hand. Both sides quilted, won't shred or fray on rough, jagged material. Double wear, double life. Wool lined. All seams double stitched. The answer to troublesome problems. \$2.20 a pair. Discounts for quantities. One of 4300 production-speeding, time-saving safety gloves, aprons, sleeves, spats, etc. Write for *Free* catalog.

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## Policy Proof



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## Policy Proof

- Standards of proof
- Archeology
 

– The word “insurance”	– Homes/attics/basements
– Chancery	– Insurance commissioners
– Brokers	– Insurers
– Parishes	– The people
– Schools/colleges	• “assistants” not priests
– Cemeteries	• local agents not “home” underwriters
- Experts
- Discovery

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## Epilogue ... and Lest Your Hearts Bleed for the Insurance Industry

- 2006** Buffet BUYS all of Lloyd’s of London legacy asbestos and pollution liabilities (then estimated in excess of \$8.7 billion – Lloyd’s had paid out more than £17 billion)
- 2010** Buffet BUYS CNA’s asbestos and pollution liabilities (\$2 billion to assume \$4 billion in risk)
- 2011** Warren Buffet BUYS AIG’s asbestos liabilities (receives \$1.65 billion to assume \$4.45 billion in risk)
- 2015** Buffet BUYS 37% share in Insurance Australia Group (he will receive 20% of gross written premium in exchange for paying 20% of IAG’s claims for the next ten years)

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## Epilogue ... And Lest Your Hearts Bleed for the Insurance Industry

“The source of our insurance funds is ‘float,’ which is money that doesn’t belong to us but that we temporarily hold...The \$20 million of float that came with our 1967 purchase [of National Indemnity] has now increased...to \$46.1 billion.

Float is wonderful ... When an underwriting profit is achieved – as has been the case at Berkshire in about half of the 38 years we have been in the insurance business – float is better than free. In such years, we are actually paid for holding other people’s money.”

Warren Buffett – *2004 Shareholder Letter*