The Napa Think Tank on Temporal Administration seeks to engage experts and practitioners in a pursuit of bold, holistic, comprehensive and collaborative solutions for the Church’s temporal administration, in order to sustain & even thrive in today’s challenging and risk-filled environment.

Year 1 – Risking It All for Christ (2012)
Year 2 – Religious Freedom (2013)
Year 3 – Tackling Church Human Resource Issues (2014)
Announcing
Year 4 – Risks New & Old—A Fresh Perspective (2015)

“Pastoral ministry in a missionary key seeks to abandon the complacent attitude that says: “We have always done it this way.” I invite everyone to be bold and creative in this task of rethinking the goals, structures, style and methods of evangelization in their respective communities.”

Evangelii Gaudium, Pope Francis, Apostolic Exhortation 2014
I. Napa Think Tank Concept – A Collaborative Roundtable since 2011

II. Introduction to the “Napa Think Tank” Concept for 2014, the Participants & the Formal Agenda

III. Executive Summary

IV. Panel Topics
   A. Teacher Contracts and the Ministerial Exception
   B. Record Keeping Panel
   C. Handbooks and Training Panel
   D. Claims Resolution Strategies

V. Napa Think Tank 2015

VI. Appendix
I. Napa Think Tank Concept – A Collaborative Roundtable Since 2011

**MISSION**

Provide thought leadership in temporal administration of the Church Convene a forum for engaging experts in pursuit of relevant solutions Foster networking and collaboration Support our collective call to stewardship in the 21st Century – “Risking It All for Christ”

**VISION**

_The Napa Think Tank on Temporal Administration seeks to engage experts and practitioners in pursuit of bold, holistic, relevant, comprehensive and collaborative solutions for the Church temporal administration, in order to sustain & even thrive in today's challenging and risk-filled environment._

This networking event emanated out of the collaboration of like-minded companies and partners passionate about serving the Church:

» The Busch Firm, based in Irvine, CA
» Patterson Buchanan Fobes & Leitch, Inc., P.S., based in Seattle, WA
» Arthur J. Gallagher & Co. & its Religious Practice, based in Chicagoland, IL

With Church assets exposed every day, these firms came together to ask the question, ‘how can we bring our resources and relationships to bear to address the temporal administration of the Church in America? Tim Busch, the founder of The Busch Firm, had launched the Napa Institute, a mid-summer event at Meritage Resort and Spa in Napa, California to equip Catholic leaders for the “next America.

We piggybacked on that experience to launch a pre-conference, initially creating a conference with the seemingly ironic theme “Risking It All for Christ”, penned by Bishop Morlino of the Diocese of Madison. Yes, ironic, in terms of distinguishing between professional risk management (which we endorse as a necessary part of functioning in contemporary society) and confessional risk management (which we cannot endorse since it would amount to shirking our responsibilities as disciples of Christ).

We all recognize that Church’s mission of salvation and evangelization differs from that of secular businesses. Having recognized this truth, however, one of the goals of this gathering is to look proactively for insights from the business world to enhance the Church’s ability to preserve her assets, without losing sight of her special role in the world, so that the Church’s financial resources can be focused on her mission.

How do we bring the principles of corporate restructuring and risk isolation to bear on the Church’s structures? How does one, for example, restructure the diocese, giving it financial protection, without undermining the hierarchical and canonical authority of the Bishop? This exploration led to collaboration between service providers and Church leaders to address these temporal issues. The discussions around restructuring (and the patchwork of ways in which dioceses have addressed these issues) helped us to discern that a broader scope was needed in order to discuss what the Church needs to do to manage risks as well as assets. Although the Church can take insights from the business world, in what ways does the Church’s approach need to differ from that of secular institutions?
The “Risking it all for Christ” concept emerged from these kinds of questions. We started as a conference in 2012 versus the think tank model into which it evolved in 2013, so that a broader range of technical competencies and experiences could be brought together to discuss the work of temporal administration.

In Year 1, we invited clergy, service providers and Church lay leaders to explore more deeply the importance of risk management. How can one be a good steward of the assets of the organization, if one has not utilized legitimate steps to adequately preserve those assets from risk of loss? Our initial Pre-Conference event shared perspectives on Church historical claims, risk management best practices for commonly encountered risks of the Church and cemented the fact that there was value in digging deeper in to this broader area of temporal administration.

We did not want to create just another risk management conference and the draw in year 1 was truly of experts in their field. We also did not want to leave without some sense of accountability. So we combined both of these interests in the creation of a think tank – focused on gathering experts to delve more deeply into difficult risk issues that are actually facing the Church today, so that holistic, relevant, resourceful best practices might emerge to help the Church in the 21st Century.

Given the desire for this event to be topically relevant, our focus changes each year so that the discussion can help Church leaders manage change in the area of temporal administration.

We are pleased to announce that the 2015 Napa Think Tank will be focused on two very different, yet pervasive issues – cyber risk and sexual misconduct risk. Much has been written about the crisis of misconduct but what have we truly learned about this issue, especially as it relates to the litigious society in which we operate? We will revisit this topic with an eye on new ways of looking at this risk and its threat to the Church and society. Cyber risk takes us to a whole new level of exposure, one that is without boundaries and time. It is another catastrophic risk that the Church must embrace (from an evangelization perspective), but she must also be mindful of the nature of the risk and the tools available to mitigate the risk. So we bring the old and new together in a think tank that will produce some core best practices and elements of duty of care that we think will contribute to the Church’s knowledge of these two subjects for the future.

While space is always very limited, if you are interested in participating or know of experts who should participate given the subject matter for any given year, please let us know.

» Mike Patterson, Patterson Buchanan Fobes & Leitch, Inc.
» Anthony Zand & John Pfeiffer, The Busch Firm
» Peter A. Persuitti, Arthur J. Gallagher & Co., Religious Practice

Phone 855-740-NAPA (6272) | Website: www.temporaladministration.org
II. Introduction

The “Napa Think Tank” for 2014, the Participants & the Agenda

Each year we come out of our experience as a problem solving group so energized and with a feeling that this one was better than last year’s event, but that is the nature of the intense experience that we feel from coming together with a focus and an intent to get clarity and forge solutions. It was truly a gathering of minds, perspectives and insights that has led to this report, what we hope is a useful set of resources for managing a treasured asset of the Church, our people.

We are grateful to the experts that participated in this roundtable in late July 2014:

» The Most Reverend Robert Vasa, Bishop, Diocese of Santa Rosa
» Reverend Steve Sallot, Vicar General Moderator of the Curia, Diocese of Orange
» Rev. Joe Fox, O.P., The Busch Firm
» Sr. Elizabeth Worley, SSJ, Chancellor for Administration and COO, Archdiocese of Miami
» Angeline Trudel, President, Serra Catholic School
» Mary Hunt, Assistant Professor, Department of Business & Economics, Ave Maria University Florida
» Michelle Reinglass, Esq., ADR Office of Michelle A. Reinglass, Judicate West
» Ms. Mary E. Santi, Chancellor, Archdiocese of Seattle
» Joline Treanor, Senior Vice President, Human Resources, St. Joseph Health System
» Anthony Abella, Sr. Area Senior Vice President, Arthur J. Gallagher & Co. Miami
» Steve Henne, Director of Claims, The National Catholic Risk Retention Group
» John Mateer, General Counsel, Liberty Institute
» Ryan Lylengren, Director of Communications, Roman Catholic Diocese of Orange
» Kevin Loos, Directing Manager of Human Resources, Archdiocese of St. Louis

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<tr>
<th>TIME</th>
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<td>DAY 1: Tuesday, July 22, 2014</td>
<td>DRESS: Business Casual</td>
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<td>5:00 pm</td>
<td>Mass</td>
<td>Estate Cave</td>
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<td>6:00 pm</td>
<td>Welcome Reception</td>
<td>Oakville Terrace</td>
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<td>6:30 pm</td>
<td>Opening Dinner &amp; Conference Overview</td>
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<td>7:30 pm</td>
<td><strong>The Great Debate: Ministerial Exception</strong></td>
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<td>Mike Patterson debates a Mystery Guest on the Validity of Ministerial Exception</td>
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<td>8:30 pm</td>
<td>Cigar Reception</td>
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<td>7:30 am</td>
<td>Breakfast</td>
<td>Oakville Terrace</td>
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<td>8:00 am</td>
<td><strong>Teacher Contracts and The Ministerial Exception</strong></td>
<td>Carneros Ballroom</td>
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<td>Angeline Trudell, President of Serra Catholic School</td>
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<td>Mike Patterson, Principal of Patterson Buchanan Fobes &amp; Leitch, Inc.</td>
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<td>Ryan Lylengren, Director of Communications, Diocese of Orange</td>
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<td>Most Reverend Robert Vasa, Bishop of the Diocese of Santa Rosa</td>
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<td>Jeff Mateer, General Counsel, Liberty Institute</td>
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<td>9:30 am</td>
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<td><strong>Record Keeping Panel</strong></td>
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<td>Reverend Joe Fox, O.P., Busch &amp; Caspino</td>
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<td>Mary Santi, Chancellor, Archdiocese of Seattle</td>
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<td>Most Reverend Robert Morlino, Bishop of the Diocese of Madison</td>
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<td>12:30 pm</td>
<td>Lunch Buffet</td>
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<td>Mike Caspino, CEO, Busch &amp; Caspino</td>
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<td>Joline Treanor, Sr. Vice President, Human Resources, St. Joseph Health System</td>
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<td>Kevin Loos, Directing Manager of Human Resources, Archdiocese of St. Louis</td>
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<td>2:30 pm</td>
<td>Break</td>
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<td><strong>Claims Resolution Strategies</strong></td>
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<td>Peter Persutti, Managing Director, Religious &amp; Nonprofit Practice, Arthur J. Gallagher &amp; Co.</td>
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<td>Michelle Reinglass, Esq., ADR Office of Michelle A. Reinglass, Judicate West</td>
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<td>Anthony Abella, Sr., Area Senior Vice President, Arthur J. Gallagher &amp; Co.</td>
<td>Carneros Ballroom</td>
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<td>5:00 pm</td>
<td>Mass</td>
<td>Our Lady of Grapes Chapel</td>
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<td>6:15 pm</td>
<td>Trinitas Wine Reception and Eric Genuis Spiritual Concert among the Vines; followed by Dinner Reception &amp; Concert Dinner</td>
<td>Vineyard Deck Oakville Terrace</td>
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<td>8:30 pm</td>
<td>Cigar Reception</td>
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III. Executive Summary

Below is a synopsis for each of the core areas that helped us surround the human resource topic and the particularly relevant issues pertaining to this important area of temporal administration:

» Teacher Contracts and the Ministerial Exception
» Record Keeping Panel
» Handbooks and Training Panel
» Claims Resolution Strategies

**Teacher Contracts and the “Ministerial Exception”**

The “ministerial exception” is a legal doctrine intended to protect the freedom of religion by exempting religious institutions from anti-discrimination laws in hiring employees. In a 2012 case, Hosanna-Tabor, the United States Supreme Court expanded the “ministerial exception” to include laws against virtually all forms of discrimination on the job. The Supreme Court also refused to limit the “ministerial exception” solely to works who perform “exclusively religious functions” such as ordained clergy. With regard to the practical impact on dioceses nationwide, it is critical that in the realm of employment contracts, especially teacher contracts, that steps be taken to ensure that employees are classified as ministers of the vision of the Catholic Church. It is also important to consider how the employee is held out to the public, such as their title, role and duties. These steps are essential in establishing a defense under the “ministerial exception” in the event of a lawsuit for wrongful termination.

**Record Keeping**

As a result of the numerous lawsuits targeting Catholic Dioceses and Archdioceses across the country, it is critical that dioceses and catholic schools ensure that their records are up to date. Unfortunately, in civil lawsuits, Plaintiffs’ attorneys often argue that a lack of proper record keeping is evidence of a cover-up or failure to comply. The United States as well the Code of Canon Law provide record keeping requirements.

**Handbook and Training Panel**

Keeping an updated employee handbook is critical in mitigating legal liabilities in employment practices. The majority of Catholic organizations in the United States do not maintain an up to date employee handbook, and accordingly, are left exposed. An employee handbook provides an organization with guidance and protocols to deal with employment issues and also can mitigate employment claims through the inclusion of an arbitration agreement. It also serves as a tool to educate employees as to what is expected from them, and provides an opportunity to incorporate the organizations “mission.”

**Claims Resolution Strategies**

Frequency breeds severity and it is this tenet that concerns those presenting on the growing data of carriers, reinsurers, claims administrators, brokers and mediation specialists. Add to this the shift from the legitimate types of claims to more controversial ones (not recognized in common law, yet core to our canons) and the church faces a countercultural shift that could threaten her mission. Forging a diocesan “resolution team” that is empathetic and patient along with an effective mediation process and partnership with EPLI lawyers and mediators is perhaps the best way to reduce the trending of claims and lead to early mediation and settlement.
A. Teacher Contracts and the “Ministerial Exception”

The “ministerial exception” is a legal doctrine in the United States intended to protect the freedom of religion by exempting religious institutions from anti-discrimination laws in hiring employees. The “ministerial exception” bars the application of civil rights laws to churches’ employment relationships with “ministers” as the Free Exercise Clause of the First Amendment to the U.S. Constitution protects a “church’s right to decide matters of governance and internal organization” and the Establishment Clause forbids “excessive government entanglement with religion.” For example, the U.S. government cannot force a Catholic Church to hire homosexual or female priests.

On January 11, 2012, the United States Supreme Court took a crucial step in protecting Church rights by broadening the “ministerial exception” in the matter of Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, 565 U.S. (2012), Docket No. 10-553. In Hosanna-Tabor, the Supreme Court expanded the “ministerial exception” to include federal, state, and local laws against virtually all forms of discrimination on the job. The Supreme Court upheld a Lutheran Church’s decision to fire a teacher, who was classified as a “minister” by the school, from a religious school where her religious duties consumed only 45 minutes of each workday, and who otherwise taught secular subjects. The teacher, who was on a medical leave of absence, threatened to sue the school if she was not reinstated despite school objections due to her health. The school fired the teacher on the grounds that her threat to sue violated the Lutheran religious tenet that members of the faith should resolve internally their disagreements.

The Supreme Court rejected the United States Equal Employment Opportunity Commission’s argument that a “minister” be narrowly defined and instead ruled that District Courts can take each matter on a case by case basis when determining if an employee qualifies as a “minister.” Additionally, the Supreme Court did not define a “minister” within the scope of the “ministerial exception.” Chief Justice John Roberts, writing the opinion for the 9-0 majority, went on to explain that the Court was “reluctant to adopt a rigid formula for deciding when an employee qualifies as a “minister.” The Supreme Court refused to limit the “ministerial exception” solely to workers who perform “exclusively religious functions” such as ordained clergy.

While the opinion noted that the “ministerial exception” was not a “jurisdictional bar” to all such lawsuits claiming working bias, Chief Justice Roberts explained that it is a “defense on the merits.” In other words, such lawsuits can be filed, and the worker who is suing will make a claim that they are the victim of discrimination, and then the denomination gets to answer that the case cannot go forward because it considers the employee to be a “minister.”

The ministerial exception has been at the forefront of a brewing battle within dioceses nationwide with regards to teacher contracts. For Catholic Churches and schools, this importance cannot be understated. In the realm of employment contracts, especially teacher contracts, steps must be taken to ensure that employees classified as ministers of the vision for the Catholic Church. For an employer, it is important to consider how the employee is held out to the public, such as their title, and how the employee’s role and duties convey the message and carry out the Church’s mission.

Catholic Churches and schools form communities with a shared vision to advance the mission of the Church. All employee contracts, especially teacher contracts, should include language-requiring employees to uphold the mission of the Church. It is important to have documentation, i.e. contracts, that demonstrate the organization’s dedication to upholding these beliefs. In the event of a lawsuit for wrongful termination, this contractual language is essential in establishing a defense under the “ministerial exception.”
Temporal Administration

Tackling Church Human Resource Issues

One of the biggest problems with inserting these often called “faith clauses” in employment contracts is the negative press and attention they receive. Several dioceses, including Oakland and Santa Rosa, experienced pushback in the form of protests due to these types of insertions in teacher contracts.

When dealing with the secular media, it is important to articulate a clear message that is true to the mission. A comprehensive strategy is needed to ensure a clear integrated mission that all employees understand and can clearly explain. A school is a community with a vision and all who are involved are part of that mission. Contracting teachers and employees to uphold this vision ensures that they are tasked with upholding the values of the Catholic Church.

For your reference, please find attached in Appendix A an example of a teacher contract at a Catholic school. This teacher contract clearly states:

Teacher recognizes that all are vital participants of the ministry of the Roman Catholic Church and agree to it in personal as well as professional life. The teacher must understand and acknowledge that they must conduct themselves completely with the teachings of the Catholic Church.

This contractual language clearly states that the teacher has a responsibility to teach and act in accordance with the teachings of the Catholic Church. The statements are also not open to interpretation and serve as the first line of defense when invoking the “ministerial exception.”

B. Record Keeping

Catholic Dioceses throughout the United States have been the target of an unprecedented number of lawsuits over the past twenty years. Unfortunately, many dioceses have not done themselves any favors by failing to keep adequate records. Properly documented records of various situations often determine the outcome of lawsuits.

In addition to record keeping requirements imposed by the U.S. government, the Code of Canon Law also has six canons that address record keeping requirements.

These six Canons are as follows:

Can. 486

§1. All documents which regard the diocese or parishes must be protected with the greatest care.

§2. In every curia there is to be erected in a safe place a diocesan archive, or record storage area, in which instruments and written documents which pertain to the spiritual and temporal affairs of the diocese are to be safeguarded after being properly filled and diligently secured.

§3. An inventory, or catalog, of the documents which are contained in the archive is to be kept with a brief synopsis of each written document.

Can. 487

§1. The archive must be locked and only the bishop and chancellor are to have its key. No one is permitted to enter except without the permission either of the bishop or of both the moderator of the curia and the chancellor.

§2. Interested parties have the right to obtain personally or through a proxy an authentic written copy or photocopy of documents which by their nature are public and which pertain to their personal status.
Can. 488. It is not permitted to remove documents from the archive except for a brief time only and with the consent either of the bishop or of both the moderator of the curia and the chancellor.

Can. 489

§1. In the diocesan curia there is also to be a secret archive, or at least in the common archive there is to be a safe or cabinet, completely closed and locked, which cannot be removed; in it documents to be kept secret are to be protected most securely.

§2. Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained.

Can. 490

§1. Only the bishop is to have the key to the secret archive.

§2. When a see is vacant, the secret archive or safe is not to be opened except in a case of true necessity by the diocesan administrator himself.

§3. Documents are not to be removed from the secret archive or safe.

Can. 491

§1. A diocesan bishop is to take care that the acts and documents of the archives of cathedral, collegiate, parochial, and other churches in his territory are also diligently preserved and that inventories or catalogs are made in duplicate, one of which is to be preserved in the archive of the church and the other in the diocesan archive.

§2. A diocesan bishop is also to take care that there is an historical archive in the diocese and that documents having historical value are diligently protected and systematically ordered in it.

§3. In order to inspect or remove the acts and documents mentioned in §1 and 2, the norms established by the diocesan bishop are to be observed.

These canons provide the general guidelines by which all dioceses must adhere. Preserving and governing documents is ultimately the responsibility of the Bishop. While the above referenced canons explain how the Bishop may delegate these tasks, they are often compromised or otherwise neglected. Regrettably, in civil lawsuits, a lack of proper record keeping is often viewed as a cover-up or failure to comply.

Another common misconception often used by detractors of the Catholic Church pertains to canon 489 and the so-called “secret archive.” The term “secret archive” is an unfortunate translation of the Latin “secreto” or in English, “secretary.” In other words, the “secret archive” is actually the “secretarial archive.”

Canon and civil law are distinct with regards to laws. After the recent Boston abuse scandal, most complaints against the Catholic Church settle before trial. This is a huge problem as it represents a failure by diocesan Bishops in their responsibility to proceed in these cases. There is a Canon Law Society of America to help dioceses deal with disciplinary cases. Nevertheless, most dioceses lack trained personal which often leads to a failure to keep adequate records.
In addition to making sure that records are kept properly moving forward, it is imperative that dioceses go back and address inadequate back files. Dioceses are left exposed to potential litigation without correct records. Dioceses need to update policies and regulations to create consistent files including a template to show what is called for in a given situation. All diocesan staff, from administrative assistants to IT personnel, need proper training in record keeping.

Human resources departments are another integral area in the realm of record keeping. Both diocesan and Catholic school human resources departments must ensure that accurate records are kept. In addition to records, email systems can lead to potential problems as administrators often forget that emails are saved on servers and subject to discovery in civil lawsuits. Additionally, accurate record keeping of employee issues is important. Personnel files should contain memos documenting any employee discipline or action.

While these are only a few suggestions with regards to record keeping, the fact remains that dioceses and Catholic schools need to make sure that their records are up to date.

C. Handbook and Training Panel

Human resources claims have become one of the largest legal liabilities to the Roman Catholic Church in the United States. It is essential that all employers, even those in the non-profit world, have a properly updated employee handbook. This is an organization’s first line of defense in mitigating legal liabilities in employment practices.

The vast majorities of Catholic organizations throughout the United States either do not have a handbook at all or have a handbook that is woefully out of date or fails to address critical issues. The most common response when confronted with this reality is simply that the organization did “not have the time to get to it,” or that it is simply “too expensive.” While the upfront cost of creating and updating a handbook can be difficult to justify, a sound handbook is the first line of defense for any religious organization or private company.

In order to help Dioceses and religious organizations deal with both the scope and cost of creating and updating a handbook, attorney Michael W. Caspino, J.D. teamed up with canonist Reverend Joseph Fox, O.P., to create a model lay employee handbook for Catholic institutions. The handbook is offered for sale on a not-for-profit basis and was created to have a comprehensive and updated employee handbook available to every Catholic institution that is affordable and easy to use. For further information regarding the model lay employee handbook, please contact Michael Caspino at mcaspino@buchalter.com.

The value of an employee handbook cannot be understated. Not only does a handbook provide an organization with guidance and protocols to deal with an assortment of employment issues, it can also helps mitigate employment claims against church organizations through the inclusion of an arbitration agreement.

Arbitration agreements allow Catholic churches and religious organizations to deal with internal disputes in private and out of the media’s eyes. Additionally, arbitration agreements help resolve disputes in 50% less time while also saving nearly 30% in defense costs. Arbitration agreements should be included in all handbooks as well as contracts with employees and teachers.

In addition to the Handbook, organizations must look within themselves at their employees and training methods. Job descriptions should be specific and clear. Employees need to know what they are supposed to do and their “performance” should be measured. Handbooks should also provide for progressive discipline including “outs” or opportunities to accelerate discipline, i.e. to terminate employees.
Employees want to know what they can expect from their employers and what is expected from them. Employee handbooks acquaint employees with the current policies, practices, benefits, and conditions of employment with the employer.

Handbooks constitute only a summary of the personnel policies, employee benefits, employment regulations, and conditions of employment in effect at the time of publication and are not meant to be all-inclusive or to explain every employment situation. Moreover, an employee cannot waive certain legal rights from a handbook, such as agreeing to no overtime. Even an executed handbook signature page cannot waive an employee’s rights.

Ultimately, handbooks provide an opportunity for Catholic churches and religious organizations to incorporate their “mission.” All employees should be aware of the organization’s “mission” and the handbook allows organizations to further define their mission and each employee’s role in fulfilling and upholding that mission.

D. Claims Resolution Strategies

One of the compelling reasons to feature our focus on human resource management relates to the emerging trends with claims from the carriers and reinsurers. There is clearly a frequency trend in employment practice claims, in particular, that could portend towards severity in the long run, if not managed more proactively.

We brought together a complementary perspective of the data – seeking insight from the premier carriers, reinsurers and brokers that specialize in diocesan claims and we sought as well the experience of one of the key strategies for success on these claims, the mediation process.

Both Diocesan and Religious Orders are trending upwards, especially in the past three years. In 2000 one church reinsurance reported 56 claims and in 2013 that number peaked at 199 claims. The year 2000 totaled $60,000 while 2013 revealed almost $4 million in excess claims (greater than $250,000).

We examined two claims cases, one that the diocese won and one that the diocese lost. In the latter, a woman ultimately becomes pregnant via artificial insemination and came to the principal to advise her of the pregnancy. For the former, a first grade religious teacher became pregnant by her boyfriend, out of wedlock. Both cases appear to be compelling yet controversial in the eyes of the courts. Different twists, not easy and jurisdictions with different treatments all weight heavily in the outcome.

There are, of course, two types of claims – those that we call the legitimate (not doing the job, closing the school, cutting back on staff) and the controversial (governing the church’s canons and not recognized in common law). It is these new types of claims, controversial indeed, originating from our changing social and moral values or at least from the perception of some as to what these values should be, that could be the new ‘expensive cases’ of the future, unless we are prepared to flexibly get to the right answers for each situation.

To get to the right answers for each situation, there are a set of rhetorical questions that can help the defense get to the right answers for each situation:

1. What is the allegation?
2. What is a notice of a claim and what do we with it?
3. Could you cut off the claim before it is filed?
4. Arbitration or Not?
5. Early Mediation?
6. Dealing with potential press fallout-anticipate; plan strategy (e.g. with crisis counselor, etc)
We have learned a great deal from the sexual misconduct crisis that could apply here in managing these allegations of wrongful termination, etc. Victim advocacy and mediation have become important cornerstones of our work in managing the sexual misconduct crisis and our experts suggest that the mediation process is an important process once a claim is filed. Critical here is the combination of specialists on retainers – both employment law and mediation.

Our roundtable actually participated in a mock mediation that allowed us to witness the components of utilizing joint and separate caucuses, managing the demand numbers from the opponents, what the ‘under the surface’ issues are and other creative solutions that lead to a ‘win-win’ solution.

Of course, the group also reinforced that long before the claim or allegation arises, there needs to be in place protocols for proactive communication with the church’s mission (core beliefs) constantly at the forefront. New employees need orientation as well as a due process that is well documented. Contracts are discussed earlier in this report and form the cornerstone of our communication. Ongoing training can be assigned to staff and leaders over time that sustains the behavior mind-set of advocacy and sincerity. Have a ‘Resolution Team’ ready to bring empathy, a listening posture and a ministerial approach to dealing with these issues. Above all, a culture of transparency is a must.
VI. Napa Think Tank 2015

Tuesday Evening July 28
Wednesday Evening July 29
Meritage Resort & Spa, Napa, California

Risk Old & New – A Fresh Perspective

We are pleased to announce that the 2015 Napa Think Tank will be focused on two very different, yet pervasive issues – cyber risk and sexual misconduct risk.

Much has been written about the crisis of misconduct but what have we truly learned about this issue, especially as it relates to the litigious society in which we operate? We have learned a great deal. We will revisit this topic with an eye on reinforcing new ways of looking at managing this risk and its threat to the Church and society. It is imperative that we be a continuous learning organization!

Cyber risk takes us to a whole new level of exposure, one that is without boundaries and time. It is another catastrophic risk that the Church must embrace (from an evangelization perspective), but she must also be mindful of the nature of the risk and the tools available to mitigate the risk. What can we do as a Diocese to best represent the exposures of the entire enterprise so coverage is comprehensive and triggered in all breaches, no matter where.

So we bring the old and new together in a think tank that will produce some core best practices and elements of duty of care that we think will contribute to the Church’s knowledge of these two subjects for the future.

We are seeking experts that can speak to these issues from the perspective of experience and expertise. We intend to cover a number of areas from duty of care best practices to coverages, proactive risk management protocols and proven positive outcomes. Both of these exposures present catastrophic exposure for the church and need the best minds to come together to help navigate the black swans that may still be out there in the future.
VI. Appendix

A. Compendium of Slides – link to online at www.temporaladministration.org
B. Sample Faculty Contract for Catholic School
C. Link to “Legal Defense Workshop” offered by The National Catholic Risk Retention Group
A. Compendium of Slides – link to online at www.temporaladministration.org
B. Sample Faculty Contract for Catholic School

Annual Faculty Contract
2013 - 2014 School Year

Name: [Name]
Position: Teacher
FTE: 1.00
Salary (annualized)
2013-14 Scale

This agreement (hereinafter the “Contract”) is made by and between
(hereinafter the “School”) and the individual named above (hereinafter the “Faculty Member”). It is agreed that the Faculty Member shall be subject to the following terms and conditions of employment unless mutually agreed otherwise, in writing, by the Faculty Member and the School:

1. **Term of This Contract**: This Contract is to be in effect for the 2013-14 school year (the “school year”). For returning faculty, the school year begins on August 20, 2013; the 190 scheduled on-campus days (which may be reasonably modified by the School if necessary) within the 2013-14 school year consist of five in-service preparation days, 180 student instruction days, two retreat and in-service days, and three wrap-up days. For first year faculty members, the school year will begin on August 14, 2013 to also include three scheduled days for new teacher orientation. The school year will run through June 20, 2014 (the “last scheduled work day”), unless an earlier or later date is determined in the discretion of the School (for example, if when the School is required to cancel scheduled instructional days during the school year due to weather, natural disasters or other causes). If the School determines that it should extend the school year to make up those cancelled instructional days, the School may extend the school year to provide for such make-up instructional days, but not later than June 27, 2014. In the event of such an extension of the school year, the School shall provide written notice to the Faculty Member of the amended last scheduled work day for the school year.

2. **Agreement To Perform Assigned Duties**: This Contract covers teaching duties assigned by the School. The Faculty Member shall be subject to reassignment of these duties at any time in the discretion of the President, Head of School, Principal, or other appropriate administrator of the School, and shall teach and perform other professional services at the School as assigned for the school year 2013-14. Unless otherwise excused, the Faculty Member shall teach during all assigned instructional days and participate in all assigned professional duties. Such professional duties, which may occur on scheduled on-campus days or other days within the school year, may include but are not limited to open houses and admissions events, faculty meetings, department meetings, grade level meetings, student staffing, faculty in-services, back-to-school night, parent-teacher conferences, Baccalaureate Mass, graduation, participating in at least one assigned Campus Ministry sponsored event during the school year (such as Pilgrimage, Destiny, grade level retreats and

[Name]: Faculty Contract 2013-14 (confidential)
Tackling Church Human Resource Issues

3. **Salary Payment Schedule:** The Salary listed above shall be paid in twelve (12) equal monthly installments; the first installment is to be paid on the last business day of September 2013, with the following installments paid on the last business day of each succeeding calendar month through August 2014. In the event that the Faculty Member’s employment should terminate prior to the last scheduled work day, the Faculty Member shall be paid on a pro rata basis based on the number of days worked by the Faculty Member through and including the termination date as a percentage of the total number of work days in the school year. Payments are subject to applicable taxes and withholding.

4. **Faculty Adherence to School Policy:** The Faculty Member agrees to adhere to the policies of the School.

5. **Catholic Church Values and Teachings:**
   Community includes persons of many different faiths and denominations. The School expects that all community members will embrace that diversity of faith with love and respect. Even so, the School is a Catholic school, and the Faculty Member shall accurately teach and express Catholic Church teachings and values when they are applicable to a subject. Further, the public behaviors of the Faculty Member shall at all times be consistent with the values and teachings of the Catholic Church. The policy, values and teachings of the Catholic Church are solely determined by the hierarchy of the Church, using its procedures. If the Faculty Member has questions regarding the policies and teachings of the Catholic Church, the Faculty Member shall request clarification through the Principal or the School’s President.

6. **Representations of Faculty Member:** The Faculty Member represents the following to be true and correct as of the date this Contract is signed by the Faculty Member:

   a. The Faculty Member has not been convicted of a crime or incarcerated in the last 10 years;

   b. The Faculty Member has never been charged with a crime involving children; and

   c. The Faculty Member has not been arrested or charged with any crime for which a court hearing is pending.

   During the period from the date this Contract is signed by the Faculty Member through the last scheduled work day of the school year, if the Faculty Member is accused, arrested, charged, convicted, or subjected to legal action as a result of any allegation of child abuse or neglect, the employee shall immediately notify the President of the School and if the Faculty Member is charged with, convicted of, or pleads guilty to any crime (other than traffic misdemeanors), the Faculty Member shall immediately notify the President.

7. **Other Employment:** During the school year, the Faculty Member agrees not to engage in any other employment outside of the School or in any activity that interferes with the teaching assignments, or inhibits quality or ability of the Faculty Member as a teacher, or presents a conflict of interest on the part of the Faculty Member. In addition, the Faculty

[Name]- Faculty Contract 2013-14 (confidential)
Member affirms that he or she is not a party to any other contract that might interfere with the performance of duties at the School.

8. **Applicability of the Employee Handbook**: The Faculty Member acknowledges that he/she is subject to the rules, policies and procedures in the Employee Handbook, and the High School and Middle School Student/Parent Handbooks for The Faculty Member agrees and understands that these Handbooks are not contracts, are guidelines only, are not promises of particular treatment in particular situations, and may be changed at any time by the School.

9. **Termination for Cause**: The School may terminate this Contract “for cause” before the expiration of its term. “Cause” for termination of this contract explicitly includes, but is not limited to:

   a. The Faculty Member’s failure to follow the School’s rules, regulations, policies, or other requirements imposed by the School or its agents;
   
   b. The Faculty Member’s material breach of the terms of this Contract including, but not limited to, Section 5 of this Contract;
   
   c. Unsatisfactory performance of the Faculty Member’s duties;
   
   d. The Faculty Member’s failure to abide by standards of conduct and behavior reasonably expected in schools of similar quality and reputation or set forth in the Handbooks;
   
   e. The Faculty Member’s inability because of illness or incapacity to perform his/her duties (subject to applicable law);
   
   f. Falsification or misrepresentation of facts committed in the course of employment, or in obtaining employment, or in connection with this Contract;
   
   g. Possessing, using, consuming, or being under the influence of alcohol or illegal drugs while on school premises, or on school-sponsored trips or at school events;
   
   h. Furnishing alcohol or controlled substances to students;
   
   i. Committing sexually exploitative acts with or to a student, including contact with a student of a sexual nature, verbal, electronic or physical sexual advances, sexual contact, or indecent exposure;
   
   j. Performance in flagrant disregard of generally recognized professional standards; or
   
   k. Illegal acts, negligence, insubordination or other behaviors that are inconsistent with the terms of this Contract.

10. **Additional Termination Provisions**: The School may also terminate this Contract before the expiration of its term due to a decline in anticipated enrollment, other reduction of anticipated revenue, significant unanticipated expenses or liabilities, natural disasters and other acts of God, or other exigencies which, in the sole discretion of the

[Name]- Faculty Contract 2613-14 (confidential)
School’s Board of Trustees, necessitate curtailment of the School’s program in whole or in part or closure of any its facilities. A determination that termination of the Contract is necessary for any of these reasons shall be made by the Board of Trustees. In order to terminate the Contract pursuant to this provision, written notification must be hand delivered to the Faculty Member or mailed to the Faculty Member at the Faculty Member’s last known mailing address by August 1, ______. Upon termination of the Contract pursuant to this subparagraph, the Contract shall be null and void and of no further effect.

11. **Resignation:** Should the Faculty Member seek to be released from this Contract before the expiration of its term, such request to be released shall be provided to the School in writing. Unless the School determines that release is in the School’s best interests, the Faculty Member shall continue to be subject to Section 7, above.

12. **Acceptance Terms:** If the signed original of this document is not returned by the Faculty Member to the School Business Office by __________________________, this Contract offer is withdrawn and is null and void.

13. **Teaching Credentials and Background Check Required:** This Contract shall not become effective until the Faculty Member presents the School with a valid teaching certificate, and/or such other credentials as may be required by the School. The Faculty Member authorizes the School to perform a background check (which may include but is not limited to fingerprint and criminal records) with regard to the Faculty Member at any time prior to or during the school year and agrees to execute any documents required in connection with such background check. This employment offer is contingent upon clearance of such background checks to the satisfaction of the School. If the Faculty Member does not cooperate with the background check or if the Faculty Member does not clear the background check to the satisfaction of the School, the School may terminate this Contract.

14. **Dispute Resolution Process:** The School and the Faculty Member agree that any disputes arising under this Contract, out of the Faculty Member’s employment with the School or the termination of that employment, shall be addressed first by the School Principal. If that does not satisfactorily resolve the dispute for the Faculty Member, the Faculty Member shall seek resolution through joint dialogue with the Principal and the School’s designated administrator.

   a. If the School or Faculty Member remains dissatisfied following the dialogue with the Principal and administrator, the parties may request conciliation with the School’s President. If the Faculty Member remains dissatisfied after completion of the processes described above, the Faculty Member may seek recourse throughCanonical processes provided by the __________________________. Whether or not the Faculty Member is Catholic, all Canonical processes must be exhausted before the employee can seek any remedies under secular or civil law.

   b. In addition, if any dispute with Faculty Member regarding employment or this Contract involves the proper interpretation of Catholic values, Catholic teachings, or any other positions of the Catholic Church, the final arbiter of these issues shall be officials within the Catholic Church including the Archbishop of ______ or his designee.

[Name]- Faculty Contract 2013-14 (confidential)
15. **Merger Clause:** It is agreed and understood that as of the effective date of this Contract, there are no other contracts between the School and Faculty Member. Any prior contracts are superseded as of the first contract day under this Contract. It is further agreed and understood that there are no other contracts, express or implied, between the parties and that any policies, handbooks, or employment manuals are not contracts, are guidelines only, and are not promises of particular treatment in particular situations. No person at the School is authorized to make any contracts with Faculty Member, or to amend this Contract, other than the President or Executive Vice President of the School, and then only by a document signed by both the President or Executive Vice President and the Faculty Member.

16. **Captions:** Captions and paragraph headings used in this agreement are for convenience only and are not a part of this agreement and shall not be used in construing it.

17. **Construction and Severability:** No term, clause or language of this agreement shall be interpreted against any particular party solely because that party drafted the agreement of the language in question. In the event that any one or more of the provisions of this agreement shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of this agreement shall not in any way be affected or impaired thereby.

18. **Future Contracts Not Guaranteed:** This Contract is for the specified term only. Nothing in this Contract is intended to express or imply any right to employment following the expiration of its term. The offering of a contract to the Faculty Member for any subsequent school year is within the sole discretion of the School.

By: ____________________________
President and Head of School

By: ____________________________
Principal

Date: May 7, 2013

**FACULTY MEMBER**

______________________________
[Name]

Date: ____________________________

[Name]- Faculty Contract 2013-14 (confidential)
C. Link to “Legal Defense Workshop” offered by The National Catholic Risk Retention Group

Invites you to attend our
Risk Management and Legal Defense Workshop

June 17, 2015
8:30 am - 4:00 pm
Archdiocese of Philadelphia
222 North 17th Street
Philadelphia, PA

Join us in a discussion of current litigation management and risk control issues that face Catholic dioceses and religious institutes throughout the United States.

This program is designed to refine the on-site management of claims and to facilitate the treatment of risk control matters faced by dioceses and religious institutes. In the ever changing legal environment it is important to stay abreast of the most current information and strategies for dealing with liability claims.

There is no fee for this workshop or meals.

Feel free to invite any of your colleagues who may also be interested in this workshop.

Please click here, or on our website at http://nationalcatholic.org, to view the workshop details and register online.