



Southern California Casualty Actuarial Club
Casualty Actuarial Society
2015 Spring Meeting

On Being An Expert Witness in Ratemaking and Other Regulatory Matters



MICHELMAN & ROBINSON, LLP

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On Being An Expert Witness in Ratemaking and other Regulatory Matters

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Types of Expert Testimony

- **Civil Proceedings**
- **Administrative Proceedings**
- **Legislative Testimony**



What is an Expert Witness?

- **An expert witness is a person with special knowledge, skill, experience, or education sufficient to qualify that person as an expert on the subject to which his or her testimony relates. California Evidence Code §700.**
- **An expert witness must be qualified as an expert before testimony can be given as an expert.**



What is an Expert Witness?



- **Qualification can be demonstrated by the initial testimony of the proposed expert witness.**
- **Actuaries can demonstrate their qualifications as an expert based upon their education, examinations and credentials.**

How is Expert Testimony Used in Rulemaking and Regulatory Matters?

- **In California, actuaries may be called upon to provide expert testimony in the following types of hearings:**
 - Rulemaking – A hearing to receive public comments before adopting a regulation.
 - Noncompliance- A hearing to determine whether an insurer is or is not in compliance with the Insurance Code and associated regulations.
 - Insurance Code 1065 Stop Order Hearing- A hearing to determine whether a person or entity is conducting business in a manner that threatens to render the business insolvent.
 - Investigative Hearing- A hearing to receive public input on an issue to determine whether action should be taken.
 - CAARP Hearings – A hearing concerning proposed rate change applications of the California Automobile Assigned Risk Plan.
 - Prior Approval Hearings – A Rate Enforcement Bureau Hearing to determine whether approve rates or a rating plan that an insurer has requested.
 - Enforcement Hearing – A Rate Enforcement Bureau Hearing brought against an insurer to enforce a provision of the Insurance Code dealing with rating and underwriting issues.

How is Expert Testimony Used in Litigation Matters

- **Lawsuits by a policyholder against an insurer**
- **Lawsuits involving the filed rate doctrine**
- **Class action lawsuits involving excessive rates, expenses, commissions and allegations of commissions as kickbacks**

Considerations

- **Regulatory hearings are conducted before an Administrative Law Judge of the Administrative Hearing Bureau of the California Department of Insurance.**



Considerations

Are you a potential expert witness?

- Yes, if you are qualified
- What is qualified?
 - Being qualified under the Qualification Standard Prescribed Statements of Actuarial Opinion of the Actuarial Standards Board
 - Is being a MAAA enough?
 - It depends. FCAS designation is highly desirable
- Be familiar with ASOP No. 17 Expert Testimony by Actuaries
- Be familiar with the Actuarial Standards Board Code of Professional Conduct



ASB ASOP No. 17 (May 2011)

- **Standard applies when testifying as an actuarial expert at trial, in hearing, arbitration, in deposition, or by declaration or affidavit.**
- **As an expert you are expressing your actuarial opinion. That opinion is a conclusion drawn from actuarial knowledge or from the application of one or more actuarial methods to a body of data.**
- **ASOP 17 defines an expert as one who is qualified by knowledge, skill, experience, training or education to render an opinion or to otherwise testify as to the matter at issue.**
- **Actuaries may differ in their opinions. That does not mean that one of the actuaries is wrong.**

Major Considerations

- **Be complete in your report and testimony**
- **State facts, assumptions and qualifications**
- **Speak clearly**
- **Speak simply without resorting to jargon but use actuarially appropriate phrases. Be able to tie points to specific authority.**
- **Always expand on the basis for a position as representing the most sound actuarial method or most sound actuarial selection**
- **Speak in terms of ranges and without limitation to one point**
- **Be prepared to disclose your compensation for your testimony**
- **Be prepared to address prior testimony as an expert witness and to refute the hired gun tag that the other side wants to hang on you**
- **Always avoid taking inconsistent positions or be able to distinguish how the positions are not inconsistent**

Keep it Simple



- **You must convince the jury, hearing officer or judge**
- **Your target audience is generally not an actuary**
- **Identify the concepts that will resonate**

Remain Calm

- **Directed Examination**
 - Prepared but NOT scripted
- **Cross Examination**
 - Professional measured resolute
- **DON'T**
 - Get angry
 - Get emotional
 - Get Argumentative
- **If you don't know, you don't know**



Avoid Extreme Positions



- Ranges of projections
- Don't use the extremes of the range

Understand Your Limitations

- **You are presenting your actuarial opinion to a trier of fact**
- **Burden of proof**
- **Actuarial negative v. Positive**
- **Reasonable actuaries may differ in opinion**
- **Be respectful of the opposing opinion**
- **Consider your own limitations**
 - Actuaries of the CDI
 - Consulting actuaries
 - Actuaries employed by an insurer



Take the Other Side



- **Look for rational arguments for the opposition's case**
- **Look for ways to refute those rational arguments**
- **Do not attack personalities**
- **Cross examine yourself**
- **Prepare response in advance**
- **Know your adversaries**

Questions?

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Thank You



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The Rate Filing, Review and Questions to the Actuary
Pretend Insurance Company

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