

*Southwest Actuarial Forum
2009 Fall Meeting:*

Litigation Involving Actuaries

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Types Of Claims Relating To Actuarial Work

- Common Law Claims
 - Professional Malpractice
- State Statutory Law
 - Unfair Business Practices Acts
- Federal Statutory Law
 - Securities Act of 1933
 - Securities Exchange Act of 1934

Focus On Loss Reserves

- Largest liability of insurance and reinsurance companies is based on an estimate of accrued claim payment obligations
- Stated value of the company depends on the quality of the estimate
- Risk of over-estimation
 - Competitive disadvantage
- Risk of under-estimation
 - Reserve strengthening
- Perceived earnings manipulation leads to litigation

Three Case Examples

- *Thabault v. Chait and Pricewaterhouse Coopers LLC*
- *Malin v. XL Capital Ltd.*
- *Converium Holding AG Securities Litigation*

Thabault v. PricewaterhouseCoopers

- Claim
 - Professional malpractice
- Plaintiff
 - Receiver of failed casualty insurer
- Wrongdoing Alleged
 - Materially understated company's loss reserves
- Result
 - Jury verdict for \$182.9 million

Malin v. XL Capital

- Claim
 - Class action alleging securities fraud
- Plaintiff
 - Purchasers of XL stock (2001 – 2003)
- Wrongdoing Alleged
 - Falsely represented that company carried sufficient loss reserves
 - Artificially inflated stock price
- Result
 - Complaint dismissed on pleadings
 - Failure to allege fraud with sufficient particularity

Converium Securities Litigation

- Claim
 - Class action alleging securities fraud
- Plaintiff
 - Purchasers of Converium securities (2001-2004)
- Wrongdoing Alleged
 - Falsely represented that company carried sufficient loss reserves
 - Duped independent actuarial consultant
 - Artificially inflated securities price
- Result
 - Claims settled for \$84.6 million after extensive discovery

Issues For Reserving Actuaries

- Comply With Actuarial Standards
 - Know your ASOPs and follow them
- Document Your Work
 - Actuarial method
 - Actuarial assumptions
 - Actuarial approach
 - Ranges and point estimates
- Be Consistent In Your Approach
 - Deviations documented and explained
- Communications With Management
 - Clarity

Issues For Management

- “Best Estimate”
 - Tie to objective, verifiable criteria
- Ranges
 - Book consistently within the range
- Process
 - Allow independent meetings between actuaries and outside directors
- Systems
 - Develop robust systems that minimize human error and manual adjustment
- Disclosures
 - Consider robust disclosures

Issues For Independent Consultants

- Scope of Work
 - Clearly define
- Information Requirements
 - Understand what information the client has (and does not have)
 - Make clear what information you require and why
 - Make clear what information you do not require and why
- Drafts
 - Mark appropriately and discard when done
- Process
 - Be prepared to defend the normal give and take

Questions?
