

"First, sue all the consultants."

Business Week magazine - June, 2000

Relevance to In-house Actuaries

- ℵ While you are unlikely to personally be a defendant in a malpractice suit, you do not want to be:
 - ø The central witness in a trial over a failed corporate merger.
 - ø Attacked for not informing management of key material facts
 relevant to a securities fraud lawsuit.
 - The opining actuary on the last statement of opinion before your employer is put into receivership by the state insurance department.

Key Steps to Legal Risk Management

- Before You Start:
 - Know Your Client
 - Evaluate Assignment Risk
 - Avoid Conflicts of Interest
 - Get a contract which protects you
- While Doing The Work
 - Know Your Client's Business
 - Limit Third Party Exposure
 - Be Careful What You Write
- If a problem arises
 - Do's and don'ts

Identifying Risk

Risk can be managed, but only if you learn to identify it.

Know Your Client and Its Business

R. Timothy Muth - 2011 Casualty Loss Reserve Seminar

Identifying Risky Clients Is An Important Part of Managing Litigation Risk

- k It is difficult to win professional malpractice claims when your client has defrauded policyholders or investors.

Risky Clients

- · Client operating at the edge of the law
- Client/user in bad financial shape
- · Inexperienced / incompetent client
- Clients "fired" by their previous professionals
- · Clients experiencing rapid change in their business
- · Appearance that a user needs a particular result

Different Assignments Have Different Risk Profiles

- Being an expert in securities documents
- Mergers and acquisitions
- Statutory opinions and valuations
- Complex software work
- General consulting
- Ask yourself Is someone going to be investing, buying, selling, funding, or changing their financial position in reliance on the advice I am giving? Would they lose money if my advice is wrong?

Avoid Conflicts Of Interest

Professional Guidelines

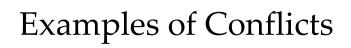
• The actuarial profession has the Professional Code of Conduct

Jury Guidelines

• Were you loyal to your client?

"Prosecutor Ethics"

• Did you receive money from someone you recommended?



- 𝔅 Reviewing the work of a colleague for a different client. ∎
- ℵ Working on opposite sides of an acquisition from a colleague.
- ${}_{\&}$ Working for competing bidders.
- ℵ Taking a referral fee from someone you were hired to evaluate for a client.

Managing Conflict Risk

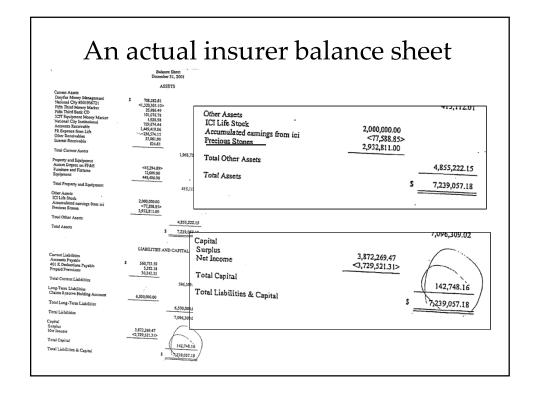
k Identify conflicts
k Disclose to affected parties
k Get written waivers of the conflict of interest.

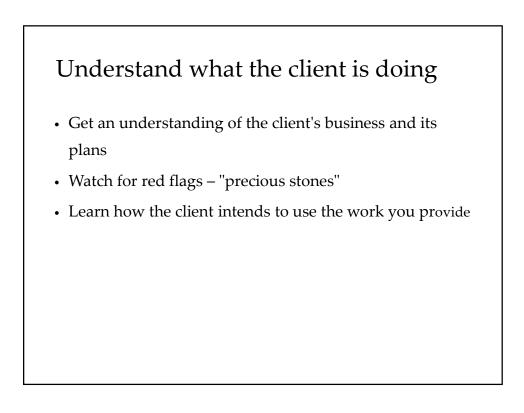


- & Limitation of Liability
- & Alternate Dispute Resolution
- ${}_{\&}$ Limits on Distribution of Work Product
- & Allocation of Responsibility for Data

Once the engagement begins:

Be aware of the overall context of your client's business





Manage Third Party Exposure

Third Party Liability exists when a professional is liable to a non-client (third party) for malpractice.

Increased Risk From Third Party Liability

1.More people to sue you

2. Increased possibility of misunderstanding by user

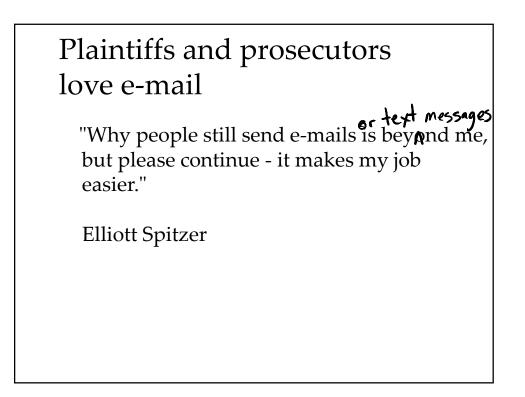
3. No chance to screen out unwanted clients

4. No reservoir of client goodwill



- & Understand client's intended use of your work
- Prohibit distribution of work without your prior written consent -- put the prohibition in your contract and in your report.
- ✤ The condition for your consent will be the third party's agreement not to bring suit against you.

Be Careful What You Write



A Non-Privileged Memo from a real case	
<u> <u>P</u> <u>H</u> <u>O</u> <u>N</u> <u>E</u> <u>N</u> <u>O</u> <u>T</u> <u>E</u> <u>S</u></u>	
<pre>From: J. Dunleavy Date: 12/7/2003 Notes:</pre>	
Received call from Mark. Discussed situation with union pension plan. Problem is with interpretation of plan provisions. From our review the damage to the plan is partly our fault.	
Next Action Item: Pray	

More e-mail lessons

- Apply the *New York Times* test when deciding what to write "Would I be comfortable reading this on the front page of the *New York Times*?"
- Sending an e-mail gives it immortality. It is virtually impossible to delete all evidence of an e-mail which has been sent from your computer.
- Voice mail attachments to e-mail carry the same risk. Offices which deliver voice mail through the e-mail system need to make sure employees are aware those attachments are discoverable in litigation.

What goes in the file?

- & Everything you sent to or received from the client
- & Workpapers necessary to show what you did.
- ℕ The front page of the *NY Times* test
- & Apply these principles when you close up a project.