



**EVERYTHING MATTERS**

# Avoiding Litigation: How Bad Things Happen to Good Actuaries

**Casualty Actuarial Society**

**Philadelphia – March 19-20, 2012**

Ronald M. Lepinkas  
DLA Piper LLP (US)  
203 North LaSalle Street  
Chicago, IL 60601  
(312) 368-6806  
[ronald.lepinkas@dlapiper.com](mailto:ronald.lepinkas@dlapiper.com)

# Why Fear Litigation?



- Years to Resolve
  - Immediate Dismissal, Summary Judgment, Trial
- Expensive, Embarrassing, Emotional
- Justice or Extortion?
  - They Can't Handle the Truth!

- 50 lawsuits reported: 1971-2001
- Since then, more & bigger:  
\$500M to State of Alaska in 2010
- S&P Report
  - Casualty Actuaries have “an abysmal track record” of “signing off on reserves that turn out to be wildly inaccurate”; they are guilty of either “naiveté or knavery.”

# Could I Really Be Sued?



- Fraud
  - Intentional, Material Misrepresentation
  - “Upon information and belief, [your name] helped conceal”
- Negligent Misrepresentation
  - Negligent, Material Misrepresentation, Duty
  - Lay Ignorance: “What does an actuary do?”
- Conspiracy / Aiding and Abetting
- Breach of Engagement Agreement

# Unfairly, You May Become:



- An auditor / fraud detector
  - But ASOP 23 (Data Quality): “This standard does not recommend that the actuary audit data.”
- A lawyer
  - But ASOP 34 (Plan Benefits / DR Actions): actuaries “should avoid the unauthorized practice of law”
- A member of management

- Financial trouble
- Unsophisticated / litigious
- Changing actuaries / auditors
  - Promises / pressure
  - “We’ve sped up paying claims”
  - “We’ve taken steps which will lower ALAE”
  - We’ve re-underwritten our book; our new business is better”
  - “We need your opinion right now; we’ll get you data later”



- Teetering Company
  - Acquisitions, Accounting Gimmickry, Aggressive Reinsurance, Reserve on Low End of Range
- Excuses, Excuses, Excuses
  - Turnover, Computer Problems, “Misplaced” Records
- Politics / Pushy Management

- Dumb “Helpful” Letter to Client
- Wrongly-Worded Bills
- Implying False Precision
- Failing to Caveat
  - Reliance
- Unwritten Regulatory “Waivers”
- Appearance of a Conflict



# You Will Be Judged By



- Your Words (emails!)
- Your Document Gaps
- Your Drafts & Workpapers
- Your Decision Whether To Go to Auditor, Audit Committee, Board, DOI
- Your Appearance of Independence
- Your Policies and Manuals

- Client Screening
- Document Work and Management Reps
- Don't Be Rushed
- Don't Be Unorthodox
- Avoid “Harmless” Conflict of Interest
- Seek Effective Peer Review

# Further Guidance



- Tim Muth's Actuary Law @ <http://actuarylaw.tumblr.com>