

Actuarial Malpractice: How Do Bad Things Happen to Good Actuaries?

**Casualty Actuarial Society
Puerto Rico - 2006**

Ronald M. Lepinskas

Lord, Bissell & Brook
111 South Wacker Drive
Chicago, Illinois
(312) 443-0475

rlaminskas@lordbissell.com

LORD BISSELL & BROOK LLP
ATTORNEYS AT LAW

Why Avoid Suit

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

Malpractice Breeds: Could I Really Be Sued?

- **Fraud**
 - Intentional, Material Misrepresentation
 - “Upon information & belief, [your name] helped conceal”
- **Negligent Misrepresentation**
 - Negligent, Material Misrepresentation, Duty
 - Lay Ignorance: “What’s a Reserve?”
- **Conspiracy / Aiding & Abetting**
- **Breach of Engagement Agreement**
- **Embezzlement / Conversion**

Unfairly, You May Be Treated As:

- 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 in DR Actions): actuaries “should avoid the unauthorized practice of law”
- A member of management

Post-Enron World

- 50 lawsuits reported: 1971 - 2001
- Roughly equal number since then
- Unreported cases
- 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.”

Red Flags

- **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 data to you later

In Hindsight, All Is Clear

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

Lessons from the Courtroom

- Dumb “Helpful” Letter to Client
- Wrongly-Worded Bills
- Implying False Precision
 - Point Estimates
- Failing to Caveat
 - Reliance
- Unwritten Regulatory “Waivers”

Inoculate Yourself

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

You Will Be Judged By

- **Your Words**
- **Your Document Gaps**
- **Your Drafts**
- **Your Decision Whether to Go To Auditor, Audit Comm., Board, DOI**
- **Your Appearance of Professional Independence**