

**EVERYTHING MATTERS**

## Avoiding Litigation: How Bad Things Happen to Good Actuaries

**Casualty Actuarial Society  
Spring Meeting – May 22, 2012**

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### Why Fear Litigation?

- Years to Resolve
  - Early Exit?
- Expensive, Embarrassing, Emotional
- Justice or Extortion?
  - They Can't Handle the Truth!

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### Litigation Trend

- 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.”

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**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

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**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

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**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 you data later"

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**In Hindsight, All Is Clear** 

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

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**Lessons from the Courtroom** 

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

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**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

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Inoculate Yourself 

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

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