

bankruptcy proceedings. Under federal bankruptcy law, the retirees can have representation in order to have input on changes to their health and welfare benefits (They are represented by the Pension Benefit Guarantee Corporation with regard to pensions).

I have found that having a good working relationship with the lawyers is important—they are usually the expert's primary source of information. They can be a good sounding board for ideas and can offer suggestions to help the expert express opinions more clearly. An expert working closely with the lawyers can also help them by giving clear explanations of technical issues and showing how those issues can work to the benefit (or detriment) of their client.

Varied Array of Topics

Expert testimony can include topics such as an analysis of a particular situation, findings with respect to issues that need to be decided in the dispute, discussion of relevant industry custom and practice or damage calculations. Following are some of the common topics that arise in many of my assignments.

Pricing Concepts—The components of premium, as well as pricing formulas and methodology are frequently topics that need to be explained in the context of a dispute. The various components of the premium can be catalogued and described, including claim costs, claim and other administrative expenses, overhead, premium taxes and profit/margin. The concept of loss ratio frequently needs to be explained.

For large group medical or disability insurance, the role of assigning premium rates to a group is played by the underwriter, although the actuary usually provides underwriting formulas and rate manuals. During my career, I have worked both as an underwriter as well as an actuary, and that broad background is useful to me and my clients in my role as expert witness.

For health insurance products such as long-term care or guaranteed-renewable individual disability insurance, explaining the pricing methodology becomes much more challenging. The extent of the explanation needed (which may require examples) must be tailored to the specifics of the dispute.

Contract Wording/Plan Benefits—As an expert, I can assist my client by explaining how wording in the insurance policy (or reinsurance contract or ERISA plan document) might typically be applied. Actuaries generally need an understanding of the documents when performing detailed claim studies, pricing or product development tasks. Many actuaries (myself included) have written insurance and reinsurance contracts and plan documents. Clearly, the interpretation of contracts is a legal issue, with the attorney taking a lead role when the parties disagree. I can offer information regarding industry custom and practice, as well as possible interpretations of language based on my experience.

Regulatory Issues—As actuaries, we are familiar with the regulatory environment. This can include regulation under state insurance laws as well as ERISA, HIPAA, tax laws and other laws and regulations. As an expert, I can assist the client by pointing out areas where these laws may have an impact on the dispute. This has been especially true when I am aware of laws that are very specific to the situation or line of coverage being disputed. A good example of where the actuary's knowledge of the laws can be important is disputes involving pricing or underwriting of small group health insurance, where regulation tends to be different for every state and highly complex.

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Financial Reporting—Helping the attorneys understand the peculiarities of insurance company financial accounting can frequently contribute to a favorable outcome for the client. In some cases, the actuary can explain the proper way to measure profitability in the context of the dispute. In cases involving company solvency, the concepts of surplus and risk-based capital need to be covered.

Professional Standards Applicable to Actuaries—It is important for all actuaries to be familiar with the Code of Professional Conduct and the Actuarial Standards of Practice. I keep these standards at the forefront and make a conscientious effort to comply with them at all times. As an expert, I often review the work underlying the dispute that was performed by other actuaries. I also may review and comment on work performed by the expert actuary hired by other parties to the dispute. Part of that review includes adherence to professional standards. I always assure that the attorneys are aware of these standards, of my practice of fully complying, and of any concerns I may have regarding work of other actuaries that I have reviewed. One of the ASOPs an expert actuary needs to be familiar with is ASOP Number 17—Expert Testimony by Actuaries (March 2002).

Tell it to the Jury

Several complex topics arise in many disputes and need a simple explanation that can be understood by the judge, jury or arbitrator. Some suggested explanations follow.

Reserves—The concept of reserves is fairly straightforward when it comes to medical insurance. Start with someone who goes to a

clinic in, say, April; the bill may take six weeks to get to the claims adjuster, and then maybe another week or two to be processed. The claim was incurred the day the claimant visited the clinic. The amount an insurer is required to recognize as incurred claims is the amount it would have paid had all claims actually been paid the day they were incurred. Actuaries calculate reserves to recognize those incurred expenses that are still in the pipeline and not yet paid (IBNR, incurred but not reported).

Another reserve that occasionally needs to be described is disabled life reserves for long-term disability. Generally, it is sufficient to describe this as a type of annuity reserve (a future series of payments) that takes into account the time value of money, as well as the probability that the claimant may die or recover before all payments would otherwise be made.

Active life reserves (on individual disability insurance or long-term disability insurance) are a complex topic even for actuaries. The simple version of the concept is that a portion of every premium paid in the early years is set aside to be available to cover claims that will arise in the later years of the policy.

Loss Ratio—The loss ratio measures, for each premium dollar, how much of that dollar will actually be paid out in claims. For example, if the loss ratio is 82 percent, for every dollar paid to the insurance company, 82 cents will be paid in claims. (It helps to have a picture handy, starting with a dollar bill.)

When discussing loss ratio, it may help to put it into the context of how the whole premium dollar is used. For example, let's say the agent receives a 12 percent commission (12 cents on the dollar); 3 cents goes to the states as premium tax, and the insurer's expenses are 8 cents on the dollar. Now if we're talking 82 cents going for claims, we've just spent \$1.05 of the \$1.00.

I often review the work underlying the dispute that was performed by other actuaries.

Investment Income—The public perception is that insurance companies have lots of assets (including those big buildings) on which they are earning lots of money. In the loss ratio example, your audience may not give full credibility to your claims that the insurer lost money if you don't specifically address the amount (and nature) of the investment income. I believe this is particularly important with respect to medical insurance. In looking at health insurance profitability, you can explain that the premium dollars are paid out quickly after the insurance company receives them. As a result, the money available for investment (the reserves) is low relative to annual premium (and compared to other forms of insurance).

Maintain the Standards of the Actuarial Profession

As an expert, I have learned even greater appreciation for the standards of our profession and the quality of professionals who become actuaries. When I need to rely on information obtained from the client, I have found that requesting written confirmation from the client's actuaries causes those actuaries to review their work one more time and can help accurately complete the picture.

To be an expert, you need to be able to form opinions supported by the information provided to you, clearly express those opinions and then stand by those opinions in what usually becomes an adversarial situation. I don't believe this work is for the faint-hearted, but it can be well worth the effort. It has been for me! ■

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It's All in the Networking

By Barbara Niehus

A key to being successful as an independent consultant is

networking. To develop my practice as a health expert, I network with attorneys, actuaries and other insurance professionals.

To network, I've used:

- **Mail**—I used mail as my initial approach. I still use it in the rare instance when I can't get an e-mail address. I generally find it ineffective.
- **E-mail**—Early on, I got a couple large assignments directly as a result of an e-mail. Now, however, because of the prevalence of spam e-mail, I find they are less likely to get attention. A key is to have a subject line that differentiates my e-mail from spam (I mention "actuarial services"). And, as with any written correspondence, key ideas have to be covered in the first few lines. I also find e-mails work primarily to remind people that I'm here, if they already know who I am.
- **Phone**—During my first six months in business, I connected with over 100 people by phone, looking for advice and business opportunities. The thought of making those calls initially scared me (I am, after all, an actuary). My greatest surprise was how receptive people were to these calls. Most contacts had advice to offer and gladly recommended other people to contact.

This allowed me to create a good database of contacts. Of all the calls I made, only two resulted in a less than friendly response.

- **Face-to-face meetings**—Most of my face-to-face meetings occur around industry meetings, which have been important in building my business. I try especially to attend meetings covering topics related to reinsurance arbitration and litigation. I'm based in Chicago, and I've made a point to visit local law firms active in insurance/reinsurance disputes. When I'm traveling, I'll try to make some "sales calls" if time allows.

Take Action

Some of my business comes from my active marketing to potential clients, but much more of my business comes from referrals. And those referrals frequently come from sources that are unexpected.

Referrals work in both directions. During my networking, I talk to people in different businesses with different areas of expertise. If I'm working on a matter that requires an expert for, say, an accounting matter, I can provide a valuable service to my client by providing the name of a reliable expert.

By networking, I can find out about people's reputations and previous work. The flip side, of course, is that others can research me, emphasizing the importance of maintaining my own reputation.