# RECORD, Volume 23, No. 3*

Orlando Annual Meeting
October 27-30, 1996


## Session 64PD
## Actuaries In and Around Litigation


**Track:** Product Development
**Key words:** Professional Conduct



**Moderator:** J. LYNN PEABODY
**Panelist:** TIM MUTH†
**Recorder:** J. LYNN PEABODY



*Summary: Actuaries are increasingly exposed to litigation related to their companies, their clients, and their work product. In this session, we will consider recent practice areas where actuaries have been involved in litigation, review important lessons to be learned from these situations, and discuss things we can do to protect ourselves from or better deal with litigious situations.*


**Mr. J. Lynn Peabody:** I'm with Milliman & Robertson in Seattle. I've had the opportunity to be involved in the legal side of the actuarial world several times as an expert witness, and also working with companies as they were preparing for different types of litigation. There are some interesting things going on in that area right now in the insurance industry, so it's a very good topic for us to talk about.

Our primary speaker is Tim Muth. Tim's a litigation partner with Reinhart, Boerner, Van Deuren, Norris & Rieselbach in Milwaukee. He has been with them for about ten years. Tim has a law degree from Harvard Law School. Tim's firm is probably one of the primary firms in the nation dealing, on a regular basis, with issues involving actuaries in litigation. Tim's specific area of practice is professional liability, including actuarial malpractice litigation. So he brings some very good experience to us. Our other speaker, Mike Fitzgerald, is not able to be with us. However, I'll be presenting his comments from an outline he prepared. Mike is one of the legal counsels for The Principal Financial Group.

---



†Mr. Muth, not a member of the Society, is a litigation partner with Reinhart, Boerner, Van Deuren, Norris & Rieselbach in Milwaukee, WI.

The objective of the session is to talk about litigation, and the main thing we want to convey is that it's better to be around litigation than in litigation. So that's going to be the focus of our talk. There are actually a number of areas of litigation activity that actuaries have been involved with recently. Probably the one that you've heard the most about, or that has made the biggest splash in the newspapers, relates to market conduct issues. It seems like there hasn't been a week that has gone by in the last year without discussion in one of the insurance periodicals about either some sort of settlement or some sort of litigation or class action suit that deals with market conduct issues. Actuaries are involved in those. Not that they've created the situations, but they're involved as resources and they're involved as experts. And those are probably the primary areas of litigation activity.

Additionally, the valuation actuary issue is something many of us have been concerned about since the concept first evolved. Actuaries have been signing opinions for a long time. The valuation actuary regulation recognized that actuaries may be put in a different light, in terms of the opinions that they have. Because of that, some protection for actuaries was included in the regulation. But that's an area where many people still feel that, at some point, actuaries are going to be drawn in. All it's going to take is for a company to go under, and actuaries are going to be right in the middle of things.

Of course, the newest area of discussion regarding litigation is the illustration actuary. We haven't even started opining yet. With all of the litigious type of activity that we see, there's concern that actuaries who become the illustration actuaries, or are closely involved, are going to be drawn into the litigation one way or another. And based on the history that we've seen in the market conduct area, I wouldn't be surprised if that would be the case.

Of course, there are many things in your normal, day-to-day professional activities that provide an opportunity for you to be involved in litigation, one way or another. And it's important for you to recognize that just the routine activities you deal with can get you involved in litigation.

Historically, there hasn't been much guidance for actuaries in terms of what they do if they are involved in litigation. In fact, what is out there in actuarial literature has been very narrowly focused on expert witness-type situations. The first writing actually occurred back in 1983, and is published in the *Transactions*. ["The Actuary as Expert Witness," TSA 35, p. 417] It's a very good paper written by Claude Y. Paquin. In the paper, he makes the statement that all actuaries are experts in some areas, and I think that's probably true. We certainly will always be viewed, because of our technical background, as experts. And because of that, I think his paper probably becomes very applicable to us in our routine business life; whether we're

expert witnesses or whether we're just working in an area of expertise. He talks about many practicalities in the expert witness area, including the credentialling of the actuary or the expert, the type of reports you should be making and that you might have in your files, the deposition itself, and the testimony that you go through. It's a very practical paper.

Some very good discussions were written of that paper, also. One was by Dan McCarthy, and a comment Dan makes is very important. It is something that if any of you get involved in providing testimony, Dan says that testimony is, more than anything else, a test of the actuary as a communicator. I think that's very important to remember. It's a crucial issue, not just for actuaries, but for anyone. When you're involved in trial work or testimony, communication is really the key.

The *Actuarial Standard of Practice (ASP) 17* deals with expert witness activities. In its scope statement, it says: "This standard applies to actuaries when they testify as actuarial experts, or when they communicate actuarial opinions in a public forum." When I first had seen this ASP, I really thought it was very narrow and that it doesn't apply in all situations. But, in fact, it does. There are many times when we're making statements in public forums. Now, the standard itself talks more about specific kinds of statements. However, when you think about it, the kind of opinions we make, and the kind of written statements of appropriateness we make are certainly provided to our publics, and they are certainly opinions.

In the standard there's a wide range of issues discussed, some of which are important to us, and some of which would be very seldom seen. It includes such things as present values of benefits, which is something we deal with all the time when we're developing reserves or when we're pricing. Other areas discussed include actuarial values incident to a divorce and lost earnings of a decedent or injured person—a wrongful death kind of situation.

There's no doubt that the standard extends to our daily work, even though it may not appear so. As a standard, it does provide some good guidance. I would suggest to you that you do read it. Look at it, not as an expert witness, but in terms of your daily work, and how you're approaching that work. We do serve many publics, and because of the scope of that standard I think you'd have a difficult time on the witness stand trying to say that it didn't apply to some of the day-to-day things that you do. So keep the standard in mind, because other people will. If you're on the stand, someone else is probably going to know that the standard exists. And if he or she does, it will be waved in front of your face. If that's the case, then it will be good for you to know that it's there and what is in it, just as it is with all of the actuarial standards. I'd like to turn the discussion over to Tim, and get his comments on some of the areas in which he has been involved.

**Mr. Tim Muth:** I will spend some time talking with you now about the situations that you want to avoid. We're going to talk about actuaries not being around litigation as expert witnesses, but about actuaries being in litigation. In keeping with the fact that this is two days before Halloween, some of what I'm going to try to do is to sensitize you by scaring you. I'll scare you about the risks involved when a plaintiff's lawyer gets you in his sights, and I'll talk about what you can do to help avoid those kinds of situations. We want you to stay out of litigation so you're only on the outside, whether it be working as an expert witness or in some other manner.

First, I want to start out just talking about the kinds of lawsuits we have seen in the last five to ten years, where the litigation involved challenges to the work done by an actuary. Those cases may be a malpractice case against an actuary, or a case involving a dispute between two insurers or two other entities, where the appropriateness of the actuary's work was central to the litigation.

Probably the classic type of actuarial malpractice case arises out of insurer insolvencies. This is the situation where the actuary has given a clean opinion to the insurer, and within six months or a year, the insurer is in receivership and its deficiency is $10 million, $20 million, $100 million, or $200 million. When that happens, state insurance regulators, policyholders in class action suits, and secured shareholders in class action suits, bring claims against anybody who can be found, including the actuaries. The classic case is where the actuary has given a clean opinion, and it turns out that the company is insolvent shortly thereafter. The whole question is, was the actuary right when he or she issued that particular opinion?

But we've also started to see, in a number of recent cases, the flip side—cases where the actuary does his or her study and comes out with an opinion that says, this company is hopelessly insolvent. The state takes over the company, and a lawsuit comes from the company saying that the actuary was wrong; the company isn't insolvent and the actuary is responsible for all of the lost profits and lost business of that company because the company is in receivership, they're not writing business, and the owners of the company aren't making any money. That is a new type of litigation. Sometimes the actuary is working for the company issued that opinion. Sometimes the actuarial firm was actually retained by the state regulatory agency as part of a triennial review, and issues the report indicating that the company was insolvent. In any event, the company sues the actuary, saying, you're part of a conspiracy to put it out of business. This type of litigation involving actuaries is alarming. It is important to the regulation of insurer solvency. You have actuaries who are not pulling their punches because of a fear of that kind of lawsuit.

Pension calculations is a second area that provokes lawsuits; we typically see claims stating that actuarial work was done poorly. These suits come in all different

flavors. There are situations where the claim is that there was a calculation of a pension amount due and a payout due under a defined-benefit plan. Sometimes the actuary calculated too great a benefit or too great a lump-sum payout. The mistake is discovered later. The plan tries to get the money back from the former employee who got this large lump sum. That person has already spent it, even if the plan has the right to get the money back. Instead, the plan sues the actuary, saying that it was the actuary's fault that it overpaid, and he or she is responsible for making up the difference. You also see lawsuits in the pension area arising out of funding calculations. An actuary may calculate a certain amount of contributions, a certain funding level, to promise this particular benefit. Two, three, four years down the road, and the plan is in an underfunded situation, and the company or plan sponsor comes back and asks, what happened? The actuaries acknowledge they didn't calculate the amount of funding appropriately. The company says, "Well, we never would have promised that benefit if we had known that the needed contribution would be that high. We think you need to make up the difference to put the plan into a position where it's made whole."

Another area where an actuary's work can be called into question is in mergers and acquisitions when deals go sour. A company purchases a block of business, purchases an insurer, and relies on certain actuarial calculations about the value of that particular book of business. The deal turns out to be much less profitable than the purchaser expected, or it has a large loss, and it decides to find someone to "share the pain." The actuary can easily be a target in that kind of situation. Finally, in securities offerings, when an insurer is a publicly held company, actuaries may be brought in as part of plaintiffs' securities class action suits. So all of those are areas where actuarial work has been challenged or called into question.

What causes actuaries to be in litigation? What causes actuarial work to be the subject of litigation in a claim that states the actuarial work wasn't done properly? The first cause is, and this probably goes without saying, some error or mistake in the work that the actuary did, but that's probably not the right way to phrase it. The better way to phrase it is that there's a perception of an error or mistake made by the actuary because the results that the actuary projected didn't turn out the way somebody who was relying on those projections anticipated.

The perception of an error or mistake can lead to litigation. The legal name for what we're talking about is negligence, and the definition of negligence given by a judge to a jury is very simple. It's the failure of the professional to meet the reasonable standard of care that would be followed by a similarly situated reasonable professional; in other words, failure to do what a reasonable actuary would have done in that situation. That was the legal definition of negligence. Let me give you the cynic's definition of negligence. As a trial lawyer, my definition of

negligence is whatever I can get a jury to say it is, or whatever I can get an expert witness to convince a jury that it is. That's the cynic's view. But very often what drives litigation is the calculation of, in a trial of 12 people picked off of the street, what a jury will say about the level of care exercised by the actuary.

There is another area, another way that you start to see litigation, which is breach of contract. You may have promised, or your company may have promised, a particular result, a particular standard or a particular calculation. That promise may create a standard different from the negligence standard. And so that, as well, is an area that has to be considered.

What takes us from a mistake to a lawsuit? The number one reason is because there has been a loss of money and someone's searching for a deep pocket and someone to share the pain with. And that's related as well to simply trying to find someone to blame. In other words, the person who suffered the loss doesn't want to accept the fact that because of the actions of his or her business the way the market turned out, or the economy, or the way the underwriting worked, that there were losses on a book of business. When you are looking for someone to blame, the professionals are the ones that you turn to, because there is an expectation that the professionals are going to be experts. Legal theories come after the fact. After you find that there's a deep pocket, someone to sue, and that there has been some kind of loss, then you come up with the legal theories, whether it be professional negligence or some kind of misrepresentation claim, or a breach of contract claim.

There are some inherent risks in actuarial work. When actuaries make mistakes, I think it's fair to say you make mistakes with lots of zeros after them. Dealing with the reserves of insurance companies, we're talking about millions and millions of dollars. So when you make mistakes, they are big ones. What that means is there is a reason for someone to say, I'll roll the dice, I'll be willing to take on that gamble, or that approach to litigation. The second thing is that unlike accountants who are simply presenting a snapshot of a company at a particular point in time, the actuary is, to a certain extent, and certainly in the mind of the jury, predicting the future. However you want to put it, you're doing a projection of what goes on in the future. But when jurors look at what actuaries do, they see that actuaries use computers, formulas, methods with long, complicated names, and tables. The juror sees all this and the actuarial profession appears to be a science. After all, you have to take ten tests to become a Fellow. Because jurors see a science, they expect precision. They don't understand the sections of your reports that say, future results may very well be different from my projection. This is the factor that makes actuarial malpractice litigation, or any litigation involving actuaries, very difficult, because the only time that there is litigation is when the future turned out to be different from what you projected.

So the actuary starts with one strike against him or her, because the only reason there is a lawsuit is because the prediction was not accurate. There's also the factor that, in actuarial work, there are many judgment decisions, such as deciding what assumptions to use and selecting data. There are many judgments to be made, and there is no right or wrong answer to many of those judgment calls. After the fact, when the litigation is taking place and everything's being scrutinized, there is plenty of room for somebody to second-guess those judgment calls, with the benefit of 20/20 hindsight. In the same way, you have a great deal of data and you have to make decisions about what data to use and what data not to use. Somebody looking back at that same data with the benefit of perfect hindsight might be able to find things, perhaps, in that data that foreshadowed or indicated the future adverse development.

Finally, these standards are difficult for juries to follow. It is difficult for a jury to understand an instruction from a judge that tells them not to assume, just because the future turned out different from the way the actuary projected, that a discrepancy meant the actuary was wrong. Juries have a hard time with that instruction, these are difficult concepts. Your case is before a jury where, if you're lucky, the average juror will have a high school education.

So those are the risks that make actuarial work riskier than other professional work when it comes to the risk of litigation. We put together next a short skit that's going to help put this in context for you. We're going to look at an actual trial of an actuarial case to help bring these concepts to life.

**Mr. Peabody:** Let me give you some background about this particular situation. This skit involves the examination and cross-examination of Sam Starr, an actuary with Reprobate and Mindless Consulting Firm (R&M). Sam is an FSA and the actuary for Do-It-All Life Insurance Company. Sam was the designated valuation actuary in charge of the work for Do-It-All, and signed statements of actuarial opinion dated December 31, 1992, 1993, and 1994. All three were clean opinions. Although the amount of the company's surplus had been moderately decreasing over the years, the company was clearly solvent as of December 31, 1994. In early 1996, Sam began working on the 1995 opinion. While working late one night, Sam noticed what he believed to be problems with some of the data supplied by Do-It-All. Sam spent the next two weeks confirming his observations and tracking down the source of the problems. This involved not only a re-examination of the data, but trips to Do-It-All, and discussions with private-label partners and two TPAs. When the data problems were corrected, it was clear the company was hopelessly insolvent.

Here were the areas where the problems occurred. First, there were problems with held claims. A portion of Do-It-All's business was disability income sold to professional organizations. While Sam believed they had been adequately reserved in the past, investigations showed there were at least 20 unrecorded claims. It turned out the claim examiner, who had been experiencing some personal problems, at times would simply put new claims in a drawer and forget about them. Each of the 20 unrecorded claims had multimillion-dollar exposures for the company.

A second source of problems came from the quota-share reinsurance that Do-It-All had accepted from a third company, a private-label partner. The ceding company gave Do-It-All a 50% share of a block of high-volume last-survivor policies. The number of policies written, insurance in-force, and reserves were reported to Do-It-All by the ceding company every three months on a computer run. Unbeknownst to Do-It-All, and apparently also unbeknownst to the ceding company, a glitch in the ceding company's computer program produced an anomaly. For six months of each year, the volume was reported on a net basis—a 50% basis, as opposed to a 100% basis, which is how it was reported the other six months. When computing the reserves, the insurance in-force for the entire year was cut in half, where in fact, half of the volume had already been reduced by 50%.

Finally, because of some coding errors on business administered by two TPAs, unintentional or otherwise, certain policies were misclassified. A large block of policies written over the past two years were coded in a manner that would require term reserves. In fact, they were whole life policies.

Sam brought this to the company's attention and to the attention of the insurance commissioner. The company was put into receivership, and lawsuits began to fly. Sam was called as a witness by his own attorney, Whitehat, in a lawsuit. One of the issues pursued by Whitehat was whether the work done by R&M had been done properly. Following Sam's direct examination, he was subject to cross-examination by Blackhat, who tried to show that R&M's work was substandard. Let's see what happened with this. (Because I'm missing a panelist, I need a volunteer. I'd like to get somebody who's well-known in the insurance area, because the person will be acting as a lawyer. I need somebody whom you can believe. I saw Walt Rugland there. Walt, why don't you come up, and would you please be Whitehat?

**Mr. Walter S. Rugland:** How are you employed?

**Mr. Peabody:** I am a consulting actuary with Reprobate & Mindless Consultants and Actuaries.

**Mr. Rugland:** How long have you worked there?

**Mr. Peabody:** Fifteen years.

**Mr. Rugland:** Do you specialize in an area?

**Mr. Peabody:** Yes, I specialize in the area of life and health insurance.

**Mr. Rugland:** What are your qualifications?

**Mr. Peabody:** I have a degree in mathematics from the University of Illinois and a master's degree in mathematics from MIT.

**Mr. Rugland:** Do you have any professional degrees?

**Mr. Peabody:** Yes, I'm an FSA and an MAAA.

**Mr. Rugland:** What does it mean to be an FSA?

**Mr. Peabody:** I passed all the examinations necessary to obtain my Fellowship. It is the highest professional designation an actuary can receive.

**Mr. Rugland:** Are you the actuary primarily involved in doing the statements of actuarial opinion for Do-It-All Life Insurance Company?

**Mr. Peabody:** That's right.

**Mr. Rugland:** What percentage of your time do you spend doing insurance actuarial work?

**Mr. Peabody:** Close to 100%.

**Mr. Rugland:** And what percentage of your time is spent doing reserve analyses and related work for life and health companies?

**Mr. Peabody:** Probably 60% or 70%.

**Mr. Rugland:** Is it safe to say that you've done reserve work for companies other than Do-It-All?

**Mr. Peabody:** Absolutely. I've probably done reserve work for 15 or 20 different companies.

**Mr. Rugland:** All right. As of year-end 1992, 1993, and 1994, you issued statements of actuarial opinion regarding Do-It-All. Is that correct?

**Mr. Peabody:** Yes, it is.

**Mr. Rugland:** What does that mean?

**Mr. Peabody:** Each of those years, we reviewed the reserves and back-up information, and determined that the reserves were calculated in accordance with sound actuarial principles.

**Mr. Rugland:** Did you actually go out and look at the policies themselves, and examine the claim files?

**Mr. Peabody:** No, we could never do all that. What we do is obtain information from Do-It-All.

**Mr. Rugland:** So you obtain information from the company, and you rely on that information?

**Mr. Peabody:** That's right. That's normal practice. In fact, it would be impossible to review the original information ourselves.

**Mr. Rugland:** What we heard earlier from the plaintiff's expert was that some of the information you relied on turned out to be incorrect. Is that true?

**Mr. Peabody:** Yes, in fact, I'm the person who discovered the information was incorrect.

**Mr. Rugland:** You mean you were the person who found the problem?

**Mr. Peabody:** That's right. I was the first one to discover it, and I brought it to the company's and the commissioner's attention.

**Mr. Rugland:** Was the company deliberately trying to deceive you?

**Mr. Peabody:** Oh, no, it wasn't like that at all. It was simply a series of three mishaps, and the information we were given showed that the reserves were lower than they actually should have been. Not only did the company not know it, but I believe that except for one possible circumstance, no one was really aware of the error. You know, the people supplying the information aren't perfect.

**Mr. Rugland:** Can you describe what happened, and how you found it?

**Mr. Peabody:** Sure. There were three separate areas. First let me tell you about the missing claims files.

**Mr. Rugland:** Missing claims files?

**Mr. Peabody:** Yes. When I was working late at night, I noticed there seemed to be an unusual reporting period for some disability income claims. These were claims involving large benefits that dramatically affected the company's loss position.

**Mr. Rugland:** So we're talking about big claims?

**Mr. Peabody:** Oh, absolutely. Well, anyway, here's what I found. For a three-month period of time, over two separate years, there were reports of no large claims at all.

**Mr. Rugland:** No reports at all?

**Mr. Peabody:** That's right. There were none.

**Mr. Rugland:** What was wrong with that?

**Mr. Peabody:** Well, it just didn't seem right. Over a three-month period you would expect five, ten, or fifteen claims to be filed. It could happen one three-month period, but having two of them just didn't seem right.

**Mr. Rugland:** Was it impossible for this to happen?

**Mr. Peabody:** No, not impossible. It certainly could have happened without any claims, but the second time it happened, for some reason, it just didn't seem right.

**Mr. Rugland:** What did you do?

**Mr. Peabody:** Well, the next time I went to the company; I asked about it.

**Mr. Rugland:** Whom did you talk to?

**Mr. Peabody:** I contacted the head of the claims department, and he assured me everything was accounted for.

**Mr. Rugland:** What do you mean by accounted for?

**Mr. Peabody:** Well, once a claim was logged on the system, it was followed regularly. There was a checking; there was no way it could be lost.

**Mr. Rugland:** What did you do then; how did you follow it up?

**Mr. Peabody:** Well, I showed my statistics to the claims person, and he started scratching his head a little bit. He said that it was strange that all of these large claims had normally been handled by one claims adjuster, Dwayne Dooright. He also mentioned that Mr. Dooright was having some personal problems, and hadn't been into work recently.

**Mr. Rugland:** What happened next?

**Mr. Peabody:** Well, we decided to see what we could find, and see if there was any trace of the claims in Mr. Dooright's area.

**Mr. Rugland:** What did you do?

**Mr. Peabody:** We went through his desk, and two file cabinets in his area.

**Mr. Rugland:** Did you find anything?

**Mr. Peabody:** We sure did.

**Mr. Rugland:** What did you find?

**Mr. Peabody:** Well, Dwayne obviously had some problems. In addition to three empty bottles of gin, which the company had already suspected, by the way, we found delinquent child support notices.

**Mr. Rugland:** Anything else?

**Mr. Peabody:** Yes, we found 20—that's right, 20 large claim files that had been reported but never valued. They had simply been thrown into the desk and forgotten.

**Mr. Rugland:** You mean—

**Mr. Peabody:** That's right. He just took them, put them in the bottom of a drawer. He was apparently consumed with his personal problems, and the claims just sat there.

**Mr. Rugland:** What happened?

**Mr. Peabody:** Because of the long elimination periods and other miscommunications, none of the 20 had really come to an actual payment yet, but we went over them and discovered that, in total, they would have been reserved for more than $15 million.

**Mr. Rugland:** What a mess.

**Mr. Peabody:** That's an understatement.

**Mr. Rugland:** All right, tell me about the second problem.

**Mr. Peabody:** Well, it had to do with a 50% quota-share reinsurance.

**Mr. Rugland:** Wait a minute, wait a minute, quote-share? Speak English.

**Mr. Peabody:** Some of the business that Do-It-All insured was for policies that it got that other companies wrote. In fact, in certain instances, what Do-It-All did was it insured 50% of the policy.

**Mr. Rugland:** So that's how it got a 50% quota-share?

**Mr. Peabody:** Right.

**Mr. Rugland:** Go on.

**Mr. Peabody:** Well, every three months, Do-It-All and I would get a computer run from the company that issued the policies, and the computer run showed the amount of insurance in force.

**Mr. Rugland:** Was this in force the total on the computer run, or just Do-It-All's 50%.

**Mr. Peabody:** Well, that's the problem.

**Mr. Rugland:** That's the problem?

**Mr. Peabody:** Yes. That's the problem. It was supposed to be 100% of the amount, but because of some sort of computer glitch, for a three-month period, it would show the total in force at 50%, and then for three months, it would show it for 100%, and then back to the full amount and back to the half amount.

**Mr. Rugland:** What happened?

**Mr. Peabody:** I don't know. I'm not sure they ever knew. All I found out was that, upon examination, there was some sort of coding or a programming error, and that only half of the in force reported; it was supposed to be 100%, and it was at 50%.

**Mr. Rugland:** What happened then?

**Mr. Peabody:** Well, of course, Do-It-All wasn't aware of this, so it kept taking 50% of the reported amount. Well, that was OK when the in force was 100%, but at an amount reported at 50%, Do-It-All took 50% of that, too.

**Mr. Rugland:** And so?

**Mr. Peabody:** And so, it was only recording three-quarters of the total insurance amount.

**Mr. Rugland:** How did you discover that?

**Mr. Peabody:** Well, again, it was just one of those things you look at, and you don't know why you find it. There are changing patterns and cyclical things. I just focused in on it one time, looked at it, and decided to investigate it further, and that's what we found.

**Mr. Rugland:** Did it make a difference?

**Mr. Peabody:** It sure did. We figured that book of business originally had about $45 million of reserves. It actually had $60 million.

**Mr. Rugland:** Well, I guess that was a problem.

**Mr. Peabody:** Yes, about another $15 million problem.

**Mr. Rugland:** Are you going to tell us about the third problem?

**Mr. Peabody:** Well, the third wasn't a computer screw-up or an employee having personal problems.

**Mr. Rugland:** What was it?

**Mr. Peabody:** Well, it was a coding error by two TPAs.

**Mr. Rugland:** A coding error by TPAs?

**Mr. Peabody:** That's right.

**Mr. Rugland:** What are TPAs?

**Mr. Peabody:** They administer certain policies for Do-It-All.

**Mr. Rugland:** What was the problem?

**Mr. Peabody:** Well, they were supposed to code the policies.

**Mr. Rugland:** Code the policies?

**Mr. Peabody:** Yes. They put an identification on it to tell us what kind of business it is, and that sort of thing.

**Mr. Rugland:** Is that important?

**Mr. Peabody:** Absolutely. Some life insurance business is very different than other business, it requires very different reserves.

**Mr. Rugland:** I don't get it.

**Mr. Peabody:** It's really simple. With some insurance, such as annual term insurance reserves, the reserves are relatively small in relation to the amount of the insurance.

**Mr. Rugland:** What happened?

**Mr. Peabody:** Well, I noticed that they were writing policies for what was supposed to be group term insurance.

**Mr. Rugland:** Not much in reserves there, right?

**Mr. Peabody:** Well, there shouldn't be.

**Mr. Rugland:** What happened?

**Mr. Peabody:** Well, they didn't really put the name of the policies in; they put in a code number. In this case, they put the code 14327.

**Mr. Rugland:** Is that wrong?

**Mr. Peabody:** Yes. It should have been 14372.

**Mr. Rugland:** So they just switched the two and the seven?

**Mr. Peabody:** That's right.

**Mr. Rugland:** Did it make a difference?

**Mr. Peabody:** Well, it sure did. You see, the policies coded 14372 weren't really group term.

**Mr. Rugland:** No?

**Mr. Peabody:** That's right. They were actually whole life, sold in high amounts, like real high amounts, and should have been coded 14372.

**Mr. Rugland:** Oh.

**Mr. Peabody:** Yes, "oh" is right. Rather than setting up reserves equal to a small percentage of the premium, we were looking at big numbers.

**Mr. Rugland:** I'm afraid to ask, how big?

**Mr. Peabody:** Just think real big.

**Mr. Rugland:** How did you find it?

**Mr. Peabody:** It was one of those things that just emerged over time; you know this was the third year of the policies. We knew about the business, and after the first year, we expected to see some reserve increases, but didn't happen. After the second year, it looked like a term-type reserve pattern instead of whole life. By the third year, it just didn't seem quite right.

**Mr. Rugland:** So?

**Mr. Peabody:** So we looked into it, and sure enough, term reserves, rather than whole life reserves, had been set up.

**Mr. Rugland:** Well, what did you do when you discovered all of these problems?

**Mr. Peabody:** Well, it took a few weeks, and once we got the correct information, we redid the numbers.

**Mr. Rugland:** And the company was in the soup?

**Mr. Peabody:** In the soup.

**Mr. Rugland:** How did the company react?

**Mr. Peabody:** Well, there was mixed reaction. First of all, it was very congratulatory of me for finding the problems. Second, like you would expect, it was not too happy to find out that the company was insolvent.

**Mr. Rugland:** You said it was congratulatory of you? What did the company say?

**Mr. Peabody:** Well, it just kind of made some comments.

**Mr. Rugland:** Mr. Starr, you're under oath. I understand you may be a little modest, but this isn't the time for it? What did the company say?

**Mr. Peabody:** Well, to be perfectly honest, the president called me Super Sleuth for finding all the problems.

**Mr. Rugland:** I don't have any more questions.

**Mr. Muth:** (Cross examination now by Blackhat.) All right, Mr. Starr. You're the person you say originally discovered the data errors?

**Mr. Peabody:** That's right.

**Mr. Muth:** And some of these errors, it's my understanding, related not only to the year you were looking at, year-end 1995, but related back a number of years.

**Mr. Peabody:** That's correct. In fact, many went back to 1993 and 1994.

**Mr. Muth:** So you mean that some of this data you had looked at before?

**Mr. Peabody:** Well, that's right, but you must understand, it wasn't until this year that we could actually figure out what some of the problems were.

**Mr. Muth:** I'd like to ask you a few questions about that.

**Mr. Peabody:** Now, wait a minute. I didn't cause the problem, I'm the one who found it.

**Mr. Muth:** Mr. Starr, I think what we'll do is let the jury decide who's responsible for the problem. Is that OK?

**Mr. Rugland:** Now, I take it you believe that when you did the statements of actuarial opinion in 1992, 1993, and 1994, that you acted appropriately?

**Mr. Peabody:** Absolutely.

**Mr. Muth:** Is there any question in your mind whether you failed to meet any of the appropriate standards?

**Mr. Peabody:** No question at all.

**Mr. Muth:** Mr. Starr, let me show you the document marked as Exhibit 23. What is it, sir?

**Mr. Peabody:** Uh, well, it's, uh, ASP on data quality.

**Mr. Muth:** Does this standard govern your work, sir?

**Mr. Peabody:** Well, it's—well, you know, there's these guys, and they sort of, every once in a while, write these things.

**Mr. Muth:** Sir, is this the standard of practice for data quality?

**Mr. Peabody:** Yes.

**Mr. Muth:** And do you know of any other standard regarding data quality?

**Mr. Peabody:** Well, no.

**Mr. Muth:** Do you acknowledge that this is to be followed by your profession?

**Mr. Peabody:** I understand it's the data quality standard.

**Mr. Muth:** Well, now, let's look at this. Are you comfortable with the fact that you've met this standard?

**Mr. Peabody:** Well, I haven't read it recently, but I'm sure if I did, I—I do nothing but first-quality work.

**Mr. Muth:** Let's see how first-quality your work is. Let's look at these reports from the private-label partner.

**Mr. Peabody:** I'd be happy to. It just sent the wrong computer runs.

**Mr. Muth:** Well, now, as I understand it, it developed a special computer run to be sent to you for your work.

**Mr. Peabody:** That's right.

**Mr. Muth:** And it was your understanding that it was supposed to be the total insurance, 100% of the insurance in force, but, in fact, some were half amounts. Is that correct?

**Mr. Peabody:** Yes, it—it just went back and forth every three months. It was the darndest thing.

**Mr. Muth:** Well, let me ask you this. You could have looked, you could have gone to the private-label partner and actually looked at its valuation runs. You wouldn't have had to rely on something that it sent over special.

**Mr. Peabody:** Well, sure, I could have, but I—well, I assumed they were right.

**Mr. Muth:** Well, what would the cost have been to go and look at the original information?

**Mr. Peabody:** Well, I guess I would have—I would have had to make a trip over there, it's only 40 miles, but we didn't have any indication of any problem.

**Mr. Muth:** Well, you do admit that its actual in force records are the originals, and the computer runs were just derived from them?

**Mr. Peabody:** That's right, but I had no reason to believe the computer runs weren't an accurate reflection of the originals.

**Mr. Muth:** Mr. Starr, let me ask you this question. How did you weigh the alternatives? Should I do something to confirm the records, or should I simply fix up the run? How did you answer that question?

**Mr. Peabody:** Never gave it a thought, quite frankly. The runs were good enough.

**Mr. Muth:** Well, sir, would you take a look at Section 5.1, sub B, sub 4, of *Standard 23*? It provides as follows; I quote: "The cost and feasibility of alternatives, including the ability to obtain the information in a reasonable time frame, is something you should consider." Is that correct?

**Mr. Peabody:** Well, that's what it says.

**Mr. Muth:** And I think it was your testimony that the way you satisfied this request was that you "never gave it a thought?"

**Mr. Peabody:** Well, I didn't—I didn't say that.

**Mr. Muth:** Well, I thought you said you never thought about getting the original source documents.

**Mr. Peabody:** I don't think—I'm not sure what this means.

**Mr. Muth:** All right, Mr. Super Sleuth—oh, I'm sorry, Mr. Starr. Let's go on. Another area you talked about pertained to these missing claims.

**Mr. Peabody:** You're absolutely right. It was just plain ridiculous. You know, that poor man had terrible problems, I knew that, but you don't really expect that I'm responsible for him throwing the claims in the bottom drawer?

**Mr. Muth:** No, I don't think you're responsible for that at all. The question the jury, Mr. Starr, is going to have to answer is whether your failure to discover that problem during 1992, 1993, or 1994, meets the applicable standard.

**Mr. Peabody:** Well, there's absolutely no way I could have found it.

**Mr. Muth:** Well, again, Mr. Starr, I think that's for the jury to decide. Let me ask you this. Will you turn to Section 5.3 of the standard? Let me ask if I'm reading this right. It says, "The actuary should review the data for reasonableness and consistency."

**Mr. Peabody:** Yes, that's what it says.

**Mr. Muth:** Now, some of the missing claims related back to late 1992, and some go back to early 1994. Is that correct?

**Mr. Peabody:** That's correct. And not only is that correct, but I caught it. I caught it because it just didn't look right to me; it didn't look reasonable. And that's exactly why I did it.

**Mr. Muth:** That's right. That's exactly what you did when you were doing the work for 1995 year-end. Now, let me ask you this. What did you look at? How did you review the claims information for reasonableness and consistency earlier?

**Mr. Peabody:** Well, uh, I, well, I looked at it.

**Mr. Muth:** We know you looked at it. How did it look different at year-end 1995 than it did at year-end 1993?

**Mr. Peabody:** Well, I, uh—

**Mr. Muth:** Let me ask you this. You caught it for the year-end 1995 statement, right?

**Mr. Peabody:** That's right.

**Mr. Muth:** But those gaps existed when you were doing the year-end 1994 statement, correct?

**Mr. Peabody:** Well, I guess so.

**Mr. Muth:** And, in fact, at least one of those two gaps was there when you were doing year-end 1992 and 1993 statements.

**Mr. Peabody:** That's right.

**Mr. Muth:** Now let me ask you this. How come it looked unreasonable for year-end 1995, but the exact same information didn't look unreasonable, or was inconsistent, for 1992, 1993, or 1994? Finally, Mr. Starr, there's this question of the TPAs and the coding.

**Mr. Peabody:** That's right. There's no way anybody could have known about that.

**Mr. Muth:** Well, let's look at that. You indicated that you looked at it, and after three years the reserves were still low, and they should have grown from the first year. Is that correct?

**Mr. Peabody:** That's correct.

**Mr. Muth:** And if you look at the same standard, 5.3, sub A, it says that you should try to decide what is questionable. Would you say that this is questionable?

**Mr. Peabody:** Absolutely, that's why I questioned it.

**Mr. Muth:** Now I think you testified earlier that it was supposed to increase after one year.

**Mr. Peabody:** That's right.

**Mr. Muth:** Well, you looked at it after two years, for year-end 1994, isn't that correct?

**Mr. Peabody:** Well, I think, yes, well—

**Mr. Muth:** Well, let me ask you this, wasn't it questionable at that time? It was supposed to increase in one year, and increase more in two years.

**Mr. Peabody:** Well, it was the third year that really set up the questions.

**Mr. Muth:** Well, I'm not asking you when it became so obvious that anybody could have discovered it. I'm asking you why it wasn't questionable when the increase in two years wasn't what it should have been.

**Mr. Peabody:** All right. I guess, uh—

**Mr. Muth:** You didn't consider getting source data on the quota-share, right?

**Mr. Peabody:** Right.

**Mr. Muth:** And you didn't question the lost claims for 1992, 1993, and 1994, right?

**Mr. Peabody:** Right.

**Mr. Muth:** Right. And finally, you didn't test to see whether the TPAs' reporting made sense, did you? No more questions.

As you can see, an actuary who is the subject of a claim that the actuary's work wasn't done properly is at a disadvantage, especially on the witness stand, and when taking the role of Sam Starr, Super Sleuth.

What I want to discuss now are the things that you can do to help minimize the risk if you will be in the shoes of Sam Starr.

I'd like to start with the basic requirement that you comply with for the Actuarial Standards Board pronouncements. In a lawsuit involving the reasonableness of an actuary's actions, the standards are evidence, they come into evidence, and the jury is told that if the actuary fails to comply with a standard, it is evidence that the actuary was negligent. The flip side isn't true. An actuary can comply with the standards and still be negligent. The standards don't give you a safe harbor, as it were. But they set a minimum level, and at that minimum level you need to comply. And so, ignoring the standards—not taking them into consideration when you're doing a particular project—increases the risk that you will end up like Sam Starr, being questioned about a standard that you never thought about in its applicability until after the fact. Thus, it's important, as you do your work, that you know what standards apply to a given assignment. Keep copies of the standards that regularly apply to your work where you can refer to them.

Next, take steps to make sure that you are complying with the standards. Some firms and some actuaries take the step of creating a checklist, just to make sure that they comply with the different requirements of particular standards of practice for their particular specialty or area. It can be important to make sure that, within an organization as a whole, there is an ethic or an approach of viewing the standards as important, and not just something that some group of guys gets together and writes every now and then.

With respect to deviation from standards, there are situations where your work can not comply with all of the requirements in a standard. Almost all the standards have the same language and cover what you must do in that situation. This language is fairly typical and usually it's the last section in the standard. It says that an actuary must be prepared to defend the use of any procedure that departs materially from this standard. It must include, in any actuarial communication, disclosing the result of the procedure, an appropriate and explicit statement, with respect to the nature, rationale, and effect of such use. That is a commonly overlooked provision of the Actuarial Standards of Practice. At a very minimum, a plaintiff's lawyer can say, "All right, we've seen your work, and where is it that you explained the reason why you departed from the standard in this respect or that respect. Where did you describe for us the effect of that deviation?" That is an important thing to follow through on, in terms of complying with the Standards of Practice.

Regarding report writing, it is essential, as you write actuarial reports, to keep in mind a couple of things. Lynn's earlier point about communication is very important. The actuarial report needs to communicate clearly what you have in

mind—not only the results, but the limitations on those results. Disclaimers, limitations, cautions, intended use, and those kinds of provisions need to be in your report. So, for example, if a report is simply written for internal company management, and not for people who are unfamiliar with the company's operations, the report should say so. If there are limitations on the data that were available, or time constraints on the report that limit the strength of your conclusions, those need to be put there, and they need to be expressed in a way that a jury can understand. Often you will find that it is useful to turn to someone who is not an actuary and ask him or her to critique the writing, ask if he or she understands what you're saying and how the report fits together.

How you document your work in terms of keeping written records and what you put in your file is important. Juries put great weight in what is written down at the time. In other words, a contemporaneous piece of paper, such as the note that you wrote down at the time of the phone conversation, is given credence by jurors, and they give more weight to that note than to the testimony given five years later. If there is a piece of paper that they can look at, that they have in the jury room with them, it makes a big difference. Realize that this fact works both for you and against you. When you are writing in your file, you need to think about how those words look on a large, blown-up exhibit at the front of a courtroom. Because if you're not comfortable with it, then don't write it that way, or don't write it at all. In the same way, if there are points that you think are necessary and favorable, you need to put those down because you want them to be on the large exhibits blown up in the front of the courtroom.

Finally, what happens when a problem arises? As soon as you realize that someone is questioning your work, it is important to do a couple of things. First, get someone who is not personally involved to look at things, to give you a second opinion. Second, it is important to respond proactively, to look up front at how you can deal with this problem. But also, never admit that you did something wrong. Remember that anything you say can and will be used against you. Get legal counsel involved from the beginning. Follow these steps so that if you are in litigation, it'll be successful, and you will win.

Lynn has some more at this point about the actual litigation process, that Mike Fitzgerald would have been talking to us about, such as depositions and other aspects of the process as a whole.

**Mr. Peabody:** My remaining comments will be based on the outline prepared by Mike Fitzgerald. Mike's experience is very practical because he works as a lawyer with insurance companies. His comments are from the perspective of an in-house counsel. It's really different than an outside counsel like Tim. He has more of a

preventative focus, and often looks at the big picture versus a small picture—the whole operation of what's going on. The goals of his comments are to offer some practical tips and observations that may make your involvement in litigation a little bit more of a positive experience, to the extent it can be positive. Mike wanted me to remind you that these comments are not here to be considered legal advice. They're really more suggestions that might make you more effective in the litigation process.

Three general points are important to remember. First of all, you might as well accept the role of litigation in business and the results of adverse outcomes, because they are here to stay. Second, accept the fact that, during your career, you're probably going to be involved, one way or another, in litigation. It's going to happen to you. In the 1990s, claims involving actuarial science are really becoming commonplace. Some of the examples that Tim used carry right through to all of our daily work. The little skit that we did, although quite outlandish, probably rang home to some of you. It certainly did to me. Finally, it's important to resolve to do something about protecting yourself. This is probably the most important point. Review and think about your business practices. Talk to your lawyer. You have in-house counsel, so just on an informal basis, talk to them. If necessary, change your practices. Change the practices of yourself, change the practices of those that work for you. And then, follow through and maintain good practices.

In terms of prelitigation protection, there are certain preventative steps you can take. A general saying is, bad facts make bad laws. So be aware of what you write down, because it will be taken as fact, and it can lead to problems. Most cases are actually won or lost before any lawsuit is ever filed. That's because of the information, or lack thereof, that is available. What can the other side get their hands on, or what do you have available to protect yourself? Good lawyering can bail you out and bad lawyering can make it worse, but you largely control your own destiny in this area.

With respect to oral statements, be careful of what you say. There are many different kinds of statements: there are unclear statements, oral promises, statements of intention, omissions, and disparaging remarks. All of those can come back to haunt you. The types of claims that can result from oral statements, are breach of contract, fraud, defamation, or harassment. What should you do? If it's negative, don't say it.

Alternatively, make a written record. With respect to written materials, Tim talked about some of these, but written materials are probably the key to virtually every litigation. Why is that? Because they establish the who, what, when, where, and the how of events. They become the facts. With respect to litigation, what's

included in written documents? Virtually everything. The obvious, of course, includes company files, records, microfilm, memos, minutes, phone notes, file folders. All of those things are included. Also, the less obvious, such as computer records, voice mail, software, e-mail, calendars, daytimers, planners, post-it notes, videotapes are all written materials that are included. What does the opposing party get when it comes to litigation? Virtually everything. The standard might lead to the discovery of evidence. There's no such thing as a personal or a nonofficial file, no matter where it's kept.

With respect to documentation, what are the most frequent documentation kind of errors? Documentation that's factually inaccurate, such as the wrong times, dates, participants, or events incorrectly recorded, and documentation that's factually incomplete, where you failed to include an important fact that changed the meaning of the document. Failing to document at all, or no record of any events, may be a problem. Finally, failing to recognize how others might interpret a document can be a problem. Those are all going to be viewed in hindsight, so you need to be careful about that.

Other documentation problems include failing to use appropriate language, or poor choice of words, e.g., using words that are loaded, or subjective descriptions. Another is including, in a memo, name-calling, or using the term "idiot" or "fool." Sneakiness, such as putting something in that says, "do not print," or "don't put in file," on a sticky note is a problem. Some jargon that's used, such as "delay the letter," or things like that, when written, will come back to haunt you. Highlighting the file using sticky notes can be a problem sometimes. Certainly, removing documents from a file, whether intentionally or unintentionally, is something of which you need to be careful.

So basically, you should regularly review your notes, review your files, and decide what needs to be retained. What should you do as far as a checklist? Review your company's recordkeeping practices and your own recordkeeping practices. Some companies have specific requirements in terms of how long documents should be kept. Write accurate, factual, and objective documents. Don't use inappropriate language or comments. There are many ways to communicate the same thoughts or to record the same events. Make it accurate, but use good judgment. Think about how your writing will be interpreted by an outside party, a lawyer, a judge, or a jury. How would the document look on a four-foot-by-six-foot exhibit, sitting in front of a jury, with certain things underlined?

How might you be involved in litigation other than as a witness? You might be reviewing a complaint and preparing an answer. In the work that I've done with actuaries in-house, where I've been doing some expert witness testimony outside,

the actuaries in-house have been gathering and putting together information. It takes a tremendous amount of time. Assisting in answering written discovery, interrogatories, and admissions is an area that will take some time. Actually having a deposition taken is another area of involvement. If you're involved in your in-house actuarial work and there's a lawsuit filed, the other side is very likely going to get depositions or statements from anyone who's faintly involved with the process, and that will very definitely involve actuaries. Case evaluations and settlement discussions are other areas where actuaries are involved.

There are a couple of general rules that Mike felt were important with respect to litigation. As you get involved in the process, make your lawyer explain the process so you know what your involvement might be and what it may lead to. The second thing, which goes for many areas, is to prepare. Make yourself prepared!

A few comments about depositions. From my standpoint, depositions are not fun. They can be a positive experience if you really dig down and look for the silver lining, but for the most part, they're not fun. Mike recognized this. He's very involved in preparing his actuaries or other actuaries for depositions. As a result, he has a number of very good ideas about depositions. First of all, lawyers love depositions. This is the primary opportunity for them, other than written documents, to get an opposing party and witnesses to make a mistake. You can't really win the case, but you can definitely lose the case in a deposition. Don't be concerned by one-sidedness. The opposing party's goal, in a deposition, is to find out the facts in general to find out evidence favorable to their side, to commit you to testimony for trial, and then to discredit your testimony or to discredit other witnesses. Now you know where the other side is coming from. It's obvious why depositions aren't necessarily fun.

Mike has 20 rules for preparing for a deposition. Even if you haven't been deposed before, you may sometime, so I think these are very important. (Mike mentions that each lawyer has his or her own preference, in terms of what they want to do and what they feel is necessary when preparing. So you should talk to your own lawyer.) Here are Mike's guidelines.

1. Always tell the truth. This is something the lawyer I've worked with has always said.

2. Make sure you understand the question because your answer is going to be written down and it may come back to haunt you.

3. Take your time in answering.

4. Finish your answers.

5. Speak clearly.

6. Listen to your attorney's objections. Your attorney knows where the trial and the case is going better than you do. He or she has reasons for making objections, so listen to those objections.

7. Do not automatically accept the opposing lawyer's preliminary statements or summaries. The lawyer's going to make some statements that will be in his or her interest. If you accept what that lawyer's say without thinking about it, he or she already has a leg up on you.

8. Avoid being misled by unclear, compound, or trick questions.

9. Don't exaggerate or qualify your answers.

10. Don't use terms such as "never" or "always."

11. Don't guess. If you can't remember, don't pretend you can remember. Only give information you are sure of.

12. Do not volunteer any information that is not requested by a question. I think this is one of the areas where actuaries have a problem when they are testifying or when they're having a deposition taken. They have a tendency to want to explain everything. It's why we can't teach our kids math; we want to explain everything to them. We want to do the same thing to the lawyer. The lawyer asks us a question, and we want to explain the nonforfeiture law. Just answer the question. It's a very hard thing to do. Do not assist the opposing lawyer if he or she is confused. I think this is a great point.

13. Do not attempt to explain or justify your answer.

14. Be consistent and correct in your answers.

15. Don't let the opposing lawyer make you angry or excited. This isn't always an easy thing to do. If the lawyer gets you upset or excited, you're liable to say things that, on trial, will come back to haunt you.

16. Never joke or make flippant comments.

17. Answer all the questions, unless your attorney instructs you otherwise.

18. Don't try to memorize your testimony.

19. Consider all discussions to be on the record.

20. Ask to see any document that you are questioned about. They will hand you documents and ask you things. Ask to see the document, and look at it before you answer. Bring documents and notes to the deposition that you need to support your opinion or your testimony.

That is some good practical deposition advice. Those of you who have been deposed will recognize that's the case.

To summarize with respect to depositions, preparation is critical! It's tedious, time consuming, and disliked by lawyers and witnesses, but very important. You should spend two times the amount of time you think is needed for preparation.

**Mr. Stephen L. Kossman:** I just wanted to make one comment in reference to documentation on the computers. Many people think that when they delete e-mail or delete schedules, that it's deleted. However, during a discovery process, you'd be surprised at how many copies that the tech support area or the management information systems (MIS) area in your company have of your e-mail going back for months, quarters, or years. You should probably find out exactly what the process is in your company. Find out what's going to be available during discovery.

**Mr. Peabody:** Tim, any thoughts on that?

**Mr. Muth:** Yes. I agree with that. Lawyers are just now learning the ways to do what we'd call electronic discovery. I work now with specialists in computer data and backups, and we will, for example, obtain hard drives and backup tapes. Even if information is deleted, if there's a situation where we think the information is needed, we will go after it and try to recover data. So I think that, in many companies, MIS backup policies need to be considered by your in-house legal counsel in connection with record retention policies. Good point.

**From the Floor:** How long should records be kept, and is there any statute of limitations in terms of the length of time the records are maintained?

**Mr. Muth:** The answer to both of those questions is that it varies. I think the most common number of years that I hear for record retention is seven years. Much

depends on the particular area in which you practice. There are different requirements, for example, for enrolled actuaries, and there are various ERISA recordkeeping requirements. That's something that very much should be reviewed with the particular company's counsel to determine what makes sense for your particular company.

With respect to the statute of limitations, that varies from state to state. Every state is a little bit different. It will be as short three years and as long as ten years, and this year's starting point will vary from when somebody first finds out that a mistake was made to the point you made the mistake. There's really no set answer for that; it very much depends on what state you're in, and what was involved in the particular situation.