



SOCIETY OF ACTUARIES

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## ACTUARIES AND DIVORCES

by Michael Frank

Over the years, actuaries have occasionally put aside their regular work to get involved in court cases involving life contingencies. In the last generation, certain changes in lifestyle, the *Brown v. Brown* decision of 1976, and the evolution of more uniform property laws in the states have opened a major new area calling for actuarial expertise, already a specialty for some.

There are problems and issues in this area which have not yet been addressed. Some set of standards must be promulgated soon if actuaries are to continue to be considered professionals by the attorneys, judges, accountants, and others involved in the divorce area.

I hope all actuaries, whether or not doing divorce work now, will gain some familiarity with what is going on in the field.

Whether the state laws treat marital property as community-property or not, part of the present value of the working spouse's accrued pension — at least the portion earned during the period of marriage — is part of the entitlement, and must be accounted for in any settlement. Family practice lawyers call on actuaries or valuation specialists to calculate the value of the pension.

Ideally the lawyer will provide the actuary with sufficient data and sufficient time for the actuary to prepare a written report. The gathering of data is called discovery; key employee data are dates of birth, marriage, filing of divorce papers, employment or participation; and applicable salaries. Enough information about the plan must be provided. Unfortunately, sometimes one is called to come to court with little time to prepare.

The calculation itself is a simple one-line formula: a measure of the benefit accrued (usually a percentage of pay) multiplied by the appropriate rate, calculated as of the date the divorce papers were filed. Obviously there are several parameters where some standardization would be appropriate.

Probably the biggest problem has been with the assumptions used. I recommend Pension Benefit Guaranty Corp. rates in almost all instances. These rates are public property, issued by a government agency mostly involved in insuring adequacy of assets on

### Deaths

Robert W. Ernsdorff	FSA 1949
John F. Heckman	FSA 1940
F.W. Hill	FSA 1926
Arthur Lincoln, Jr.	FSA 1955

plan terminations, as the best representation of current annuity costs. The PBGC has issued a book of tables of single premiums and other rates at various retirement ages, current ages, forms of benefit, covering two sexes. There are 21 sets of interest assumptions (A to U), with lower interest rates built-in for the years farther in the future, basically  $\frac{1}{4}\%$  apart. Each month, the PBGC announces which set is in effect for that month. Other leaders in the field choose these impartial rates.

One alternative would be to use the assumptions for actuarial equivalence in the plan. This would be suitable for an adequately funded plan in the process of termination, or where the participant is entitled to elect an immediate lump sum payout. Most small plans, especially those set up primarily as tax shelters for principal owners, use conservative equivalence rates. Some larger plans tie in with other indices.

The actuary is to be the impartial expert, rather than an *advocate* of one side's position. Unfortunately, a small number of actuaries have been known to develop figures to please the lawyers retaining them, usually by playing with inflation factors, and it only takes a small number to hurt the reputation of actuaries in the matrimonial community. And this results in the other spouse's attorney calling in another actuary to criticize the findings of the first.

In some states, vesting is an issue. There is no consistent guideline on whether to discount when the working spouse is not fully vested.

Another hazy area is that of salary scales. I generally do not assume any salary increases, since I am valuing an *accrued* benefit, and in other situations (terminations, employee statements) accrued benefits are based on a pro-rata share of the projected benefit at normal retirement without salary increases. But what about a situation where the working spouse is likely to earn substantial salary increases in the next years, or perhaps has already started to, between the date the divorce papers were filed

and the current date? Is the actuary to be an expert on economics, the spouse's industry, and the spouse's company?

Another problem which brings up non-actuarial issues is worker attachment. I like the principle of valuing the benefit at the earliest point a participant might retire. If there is a subsidized "thirty-and-out" provision with benefits starting at a younger age than normal retirement, and the working spouse hasn't met the service requirement yet, that means I'm assuming he'll stay on the job until he's eligible for this subsidized benefit. But that won't always be the case. On the other hand, the spouse may work beyond the point he may start collecting, lowering the *value* of his pension.

The actuary might be supplied plan information in various ways: full document, summary plan description, descriptive booklets or statements, notes from the attorney, prior work on the plan, phone calls to benefit managers. What should the actuary accept, if it's not feasible or timely to get it in the form he prefers? Is it part of his responsibility to make sure the right plan is used? Suppose an actuary knows about some feature of a plan, such as a supplementary benefit, that he was not given information on in a particular case — what is his responsibility then?

The report, which varies in length and detail from actuary to actuary, should at least show the employee data, applicable plan provisions, basis of calculation, result, the actuary's qualifications, and certification. Ideally, one actuary's written report will satisfy both counselors and the judge.

Court appearances are often necessitated by one or both of the lawyers' unfamiliarity with the valuation of spousal pension rights, and sometimes this is obvious in court. For further information, see Murray Projector's excellent paper (available from him at his *Yearbook* address) which goes into more detail on many points.

In conclusion, you should take every opportunity to alert attorneys and CPA's not to overlook pension rights, which is often the second most valuable asset in the marriage (after the house). Police/fire and other plans generate results surprising to the parties.

There are ethical and professional issues in the work, and I hope this at least starts a dialogue toward implementing some standards. □