



# THE INDEPENDENT CONSULTANT

NEWSLETTER OF THE SMALLER CONSULTING FIRM SECTION

## Intellectual Property, Insurance and Business Method Patents

by Nicholas P. Triano, III

*Author's Note: This is a condensed version of a presentation given at the 2002 Society of Actuaries Meeting in Boston. The views expressed here are those of the writer, and do not necessarily represent the views of Mintz Levin Cohn Ferris Glousky & Popeo PC, or its clients. The information provided is for informational purposes only and is not to be considered legal advice. If you have questions, please contact your attorney.*

**I**ntellectual Property is a blanket term describing areas of the law that deal with protection of property which "springs from the mind." This article is a very brief introduction into intellectual property, and a view of how patents may be applied to insurance products.

Why is intellectual property important? In our society, technology is

advancing in leaps and bounds. The business world, including the insurance business, is no different. New product development requires investment of manpower and capital, and there is always a need to make sure that the fruits of product development efforts go as far and as long as possible to maximize return on investment. Hence, protection for new products is essential; without protection, new products may be reverse engineered or knocked off freely, in a sense doing the competition's work. Your competitors are doing the same thing, so it makes good business sense to consider protecting your products wherever you can.

### Types of Intellectual Property

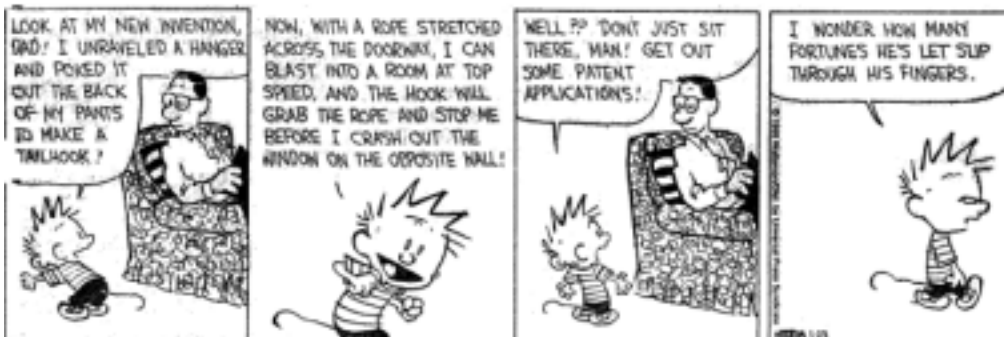
There are several types of intellectual property (we'll focus our discussion on patents, though.) The main ones are:

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This newsletter is free to section members. Back issues of Section newsletters have been placed in the Society library, and are on the SOA Web site, [www.soa.org](http://www.soa.org). Photocopies of back issues may be requested for a nominal fee.

The purpose of the section shall be to encourage and facilitate the professional development of actuaries at smaller consulting firms through assistance with the educational, research, networking and other special needs that arise in their practice.

Expressions of opinion stated herein are, unless expressly stated to the contrary, not the opinion or position of the Society of Actuaries, its sections, its committees or the employers of the authors. The Society assumes no responsibility for statements made or opinions expressed in the articles, criticisms and discussions contained in this publication.

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# Chairperson's Corner

by George W. McCauslan

I am writing this column having just returned from the semi-annual meeting of the chairpersons of all of the Sections of the Society of Actuaries (there are a total of 16 Sections). That meeting was a wonderful opportunity to hear the thoughts of those who are providing leadership to the various Sections, to reconnect with friends and colleagues from years past, and to hear about what is happening with the SOA.

The one point that came up time and time again is the importance of the Sections in providing a mechanism for keeping the individual member of the SOA connected with the organization as a whole. In a conversation with a friend from my days on E&E, I was reminded of the days (before I started in the profession, but not *that* long before) when elections for the SOA officers happened at the Annual Meeting and only the fellows present could vote. At that point (the 1960's), there were fewer than 1,500 fellows. Today, with 10,000 fellows and a total SOA membership of 17,500, the kind of personal connection that existed then throughout the whole organization is impossible. What has replaced that, at least in part, are the Sections, which permit the members to connect with a smaller group of the members whose interests are the same as theirs.

The SOA is in the midst of a major review of its operations and structure. One element that is being carefully examined is the Section system. It is seen as a possible way to

facilitate communication both to and from the Board of Governors. Each Section Council is clearer on the particular concerns of the membership of that Section, and can keep the membership aware of SOA activity of particular importance to them. And, the Section Councils are generally closer to the membership, so that they can hear (and relay) concerns.

Your Section Council is here to organize the kinds of programs that you, the members of the Section, want and need. We conducted the on-line survey earlier this year to give us better information on what you want this Section to do—and who is willing to help us to do it. As the smallest Section (at just under 500 members), we are better able to hear directly from a large portion of our membership. Please do not let that survey be the only time that you give the Section Council your feedback and ideas for things that the Section could do.

Finally, I would encourage all of you who are attending the Vancouver meeting in late June to join us at the Section reception on Sunday evening. It will be a chance to meet members of the Section Council, hear a bit about our future direction (I promise to be brief in my comments), and meet other actuaries working in small consulting firms. I hope to see you there. 🍷

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# This Just In...156 Members Respond to Section Survey!

**A** total of 156 responses to the Member Interest Survey were received by the cut-off date. That represents over 30% of the Membership who took the time and trouble to provide feedback to the Council—an excellent response for this type of survey. Thanks to all who participated!

The top three subjects of interest to Members were the e-Newsletter, Accessible

CE, and New Alerts (Practice and Issue alerts). All but 3 of the topics were ranked Very Important or of Some Importance by 70% or more of the Members, indicating that Members concur (generally) with the focus of the Council.

Summary results (responses have been grouped to give a quick overview. More detail will follow later). 🌱

| Item | Description               | Importance |             | Rank |
|------|---------------------------|------------|-------------|------|
|      |                           | Very/Some  | Neutral/Not |      |
| 1    | e-Newsletter              | 84%        | 16%         | 1    |
| 2    | Peer Review               | 65%        | 35%         | 7    |
| 3    | Expanded Member Directory | 66%        | 34%         | 6    |
| 4    | Networking                | 70%        | 30%         | 5    |
| 5    | Business Needs            | 74%        | 26%         | 4    |
| 6    | Focused CE                | 57%        | 43%         | 8    |
| 7    | Alerts                    | 80%        | 20%         | 2    |
| 8    | Accessible CE             | 79%        | 21%         | 3    |

Written comments were generally approving of the focus as well. Of the total of 18 written responses, there were some common themes (with # of responses):

- Networking opportunities and Marketing 5
- Data and Experience studies 3
- Bulletin Board and Web-based forum 2
- Less-expensive CE 1
- Member Hardware/software needs 1

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To obtain a patent in the United States, there are a number of requirements.

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- **Patents**  
Patents protect the ideas themselves, not just their expression. Patentable subject matter is “any new and useful process, machine, manufacture or composition of matter, or any new and useful improvement thereof.”
- **Copyrights**  
Copyrights protect the expression of the idea rather than the underlying idea itself. Copyrights cover the artistic aspect of recorded works like plays, books and software. Copyright protection covers copying of a *substantial* portion of the work (so, independent creation of a new work is not covered.) The copyright holder has the right to allow others to make copies, prepare derivative works (*e.g.*, a movie adaptation of a book), distribute, sell, rent, lease or lend copies or perform or display the work, *e.g.*, movies, plays or paintings.
- **Trademarks**  
Trademarks identify the source of the goods or services, rather than the goods or services themselves. A trademark is any word, name, symbol, device (or combination) that one uses, in commerce, to identify and distinguish their goods from goods made or sold by others. In fact, if a mark becomes the common identifier for the goods or services, the mark becomes generic and the protection is lost. The trademark (or service mark) is designed to generate good will to the supplier.
- **Trade Secrets**  
Trade secrets are similar to patents in the type of material covered, *e.g.*, the ideas themselves, but they only last so

long as the material or concept is secret. A trade secret is a formula, pattern, device or compilation of information used in business that gives one an opportunity to get a “leg up” on competitors who don’t know the trade secret or use it. Trade secrets can be of potentially unlimited duration (think of the secret formula for Coca-Cola), but their essence is secrecy—once a trade secret is revealed, you cannot get it back.

Patents are a property right granted by the government, which gives the patent holder the right to exclude others from making, selling or using the invention claimed in the patent. The most typical kind of patents are utility patents, which last 20 years from the earliest patent filing date. Utility patents cover anything having an actual use, such as machines, processes/methods or compositions of matter (pharmaceuticals, materials, etc.).

Other types of patents include design patents, which cover ornamental product designs, and plant patents, for distinct and new varieties of plants that have been invented or discovered and asexually reproduced.

To obtain a patent in the United States, there are a number of requirements. **Novelty** is the first requirement. The most important novelty requirements are as follows. Your invention is novel, and you can get a patent, *if* someone has not patented your invention before you; it’s **not** known or used by others in the U.S. or described in a publication anywhere. Also, the invention is novel if *you* have **not** (more than one year prior to your patent filing) patented the invention, described it in a publication anywhere or put it into public use or on sale in this country. (The invention has to also be yours, not someone else’s.)

The second requirement is **utility**. This one is simple; the invention must have some

useful purpose. The invention must not be **obvious** to one of ordinary skill in the art to which the invention pertains; there has to be some “inventive step” that’s more than a minor change or tweak. Lastly, your patent application must disclose the **best mode** for carrying out the invention. Once you file your patent application, an examiner does a search of the “prior art” (*i.e.*, all the relevant technology prior to your invention) and reviews the application to determine if it meets the statutory requirements. If it does, you get a patent.

### Business Methods Patents

Business-related patents are not new. Early financial patents were largely paper-related products and methods. As technology advanced, the focus became on inventing and perfecting the complex machinery necessary to carry out the data processing and calculations, like in the patents covering tabulating and compiling of statistical information (punch cards) which formed the basis of the company which would eventually become IBM. As increasingly powerful electro-mechanical devices evolved, to transistors, and then to microprocessors, the focus became less on the hardware than the ways to use the hardware, *i.e.*, software.

But what is a “business method” patent? There are many who associate business methods as those related to automated business data processing technologies, because of press coverage, *i.e.*, the Amazon “One-Click” patent, and in the rapid growth (up until recently) of e-commerce and the Internet. But many insurance-type patent claims would fall into this category as well. Other (non-data processing-related) process claims that might be labeled a “business method” exist, too.

What kind of business-related subject matter can be patented? Mathematical formulae or algorithms are not patentable

subject matter, but a patent claim *containing* a mathematical formula applying the formula in a structure or process which, when considered as a whole, is performing a function which the patent laws were designed to protect (*e.g.*, transforming or reducing an article to a different state or thing), is patentable subject matter.

Certain types of mathematical subject matter, standing alone, represent nothing more than abstract ideas until reduced to some type of practical application, *i.e.*, a useful, concrete and tangible result. Thus, methods that employ computers to implement an otherwise patentable method are patentable.

However, it was still not widely possible to obtain patents covering methods of doing business, since “business methods” claims were not judged to be proper subject matter for patent protection.

The *State Street Bank* case changed that. *State Street* eliminated the “business methods” exception, and enabled the current wave of business methods patents. In *State Street*, the court held that claims drawn to a method of doing business should be treated like any other process claim. *State Street* involved a data processing system that allows an administrator to monitor and record the financial information flow, and make all the calculations necessary for maintaining a partner fund financial services configuration.

After *State Street*, patent filings for business methods increased dramatically in the U.S. Patent and Trademark Office. Just last year alone, the PTO estimated a 28 percent increase in filings from the previous year. On the flip side, though, the PTO also issued about half as many patents that year than in the previous year. (This was likely due to two things, a combination of the increase in filings and a staffing crunch in the

(continued on page 6)

Examining group, despite PTO efforts to address that.

One example of an insurance product-related patent can be found in U.S. Patent No. 6,343,272, which relates to a system for analyzing and managing a plurality of specified life insurance policies and annuity contracts on behalf of an insurance carrier. The life insurance policies or annuity contracts depend on stock market performance in that the account value increase is determined as a percentage of the performance of a stock market index, with set caps and floors. The percentage is adjusted according to the yield on fixed rate assets. The system manages the increased risk from participation in the stock market by periodically monitoring assets and liabilities and determining the purchase and sale of stock options and other hedging instruments to cover the risks. The system also provides cash and profit determinations from the life insurance policies and annuity contracts.

What happens when a business methods patent application is examined? The first determination to be made is whether the claimed invention is proper subject matter for a patent, *i.e.*, if it has a practical application and therefore satisfies the utility requirement of 35 U.S.C. §101. The claimed invention as a *whole* must accomplish a practical application; *i.e.*, it must produce a “useful, concrete and tangible result.”

An examiner will review the claims to see if the claimed invention produces a “useful, concrete and tangible result.” If the answer is yes, then the claimed invention has a practical application and satisfies the utility requirement of 35 U.S.C. § 101. Thus, the specification needs to be as complete as possible and clearly identify any practical application for the claimed invention. Also, if the claims consist solely of mathematical operations *without* some claimed practical application, or simply manipulate abstract ideas without some

claimed practical application, they will be judged as not suitable subject matter for patenting. The application is then further examined to see if the claimed invention is novel and inventive.

While business methods patents as we know them today are a relatively recent phenomenon, U.S. patent examiners reviewing them are skilled in their field. According to the PTO, most examiners in this technology area have data processing and computer education or experience. Other educational and business industry work experience fields include banking, securities, business development, marketing analysis, real estate analysis, business consulting, management, sales, insurance, business information systems, and financial analysis. Many examiners also have advanced or multiple degrees, *e.g.*, law, Ph.D., Master’s and MBA.

### A Last Word

So, if you have an insurance product or related technology you would like to protect, what’s the best course of action? The best thing to do is to have you and your attorney always consider the whole picture. In some cases a “layered” approach, in *addition* to patenting, may be best. You may want to consider trademark protection for the insurance product itself, copyright protection for protecting underlying source code and trade secret protection (for business practices related to the product that can be kept secret)—or all of these. An experienced IP attorney will be your best guide.

If you are interested in learning more about patents, an excellent and rich source of free information may be found at the U.S. Patent and Trademark Office Web site, <http://www.uspto.gov>. The address for the USPTO’s Business Method Web site is <http://www.uspto.gov/web/menu/pbmethod/>. You can also contact me via e-mail at [nptriano@mintz.com](mailto:nptriano@mintz.com). 📧



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# The Problem With New Clients

by Carl Friesen

**I**n many actuarial firms, anyone who brings in a new client receives congratulations, promotions and celebratory beers. Anyone who just manages to keep an existing client receives no congratulations and sadly, no beer.

Individual practitioners, likewise, rejoice when they land a new client but are less likely to congratulate themselves for hanging onto an existing client.

Why this discrepancy? It's no idle question, because the emphasis on new vs. old clients has serious bottom-line implications. Of course, actuaries need a steady stream of new clients. But a big part of your marketing effort should focus not so much on wooing and wowing potential new clients, but on keeping those you already have.

Consider the fact that new clients often mean a loss for you at first. This is partly because you are more likely to make mistakes while getting to know a new client—and unlike with existing clients there is no reservoir of goodwill to draw upon, and you must work doubly hard to dig yourself out of a hole. A current client will be more forgiving, and therefore more profitable. This means that existing clients pay the bills, while new clients often mean taking a walk on the wild side.

So, existing clients are important to your future. How can you encourage existing clients to continue the relationship, refer potential clients your way and heap praise on you when asked for a reference?

Consider, first, the needs of those existing clients. Quite often they want reassurance that they have made a good decision in continuing to retain you. You need to provide them with that reassurance, or they will be more inclined to take a second look when one of your competitors comes knocking.

However, consider what happens when that same client reads your article in her or his trade magazine. Imagine that the client sees you on the list of presenters for one of his or her industry conferences. Or, wouldn't it boost your credibility to be able to send your client a reprint of a newspaper article quoting you?

For individual actuaries and small firms, this means that marketing efforts must be focused not so much on attracting new clients, but on keeping existing clients.

Actively look for organizations to which present clients belong, join them and get involved. Do presentations at their luncheons and conferences, sponsor their golf tournaments and contribute to their newsletters.

Determine which publications are read by existing clients and get your projects profiled in their pages. Contribute helpful articles, and opinion pieces that show you to be an "insider" in your client's world.

The result is a more profitable practice and probably a whole lot more fun. 🍀



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# The Life of An Independent Consultant

by Ian Duncan

**I**n more than 40 years in the profession, Barbara Lautzenheiser has chalked up an impressive list of firsts, and has become one of the best-known names in the independent consulting business. Not bad for someone who describes her career as “going from mousy to mouthy in 27 years.” Her firsts include first woman to be the president of the Society of Actuaries, (SOA), (1982); one of the first members of the Interim Actuarial Standards Board (1986); one of the first members of the Actuarial Standards Board (1989); one of the first members of the SOA’s Actuarial Foundation (1994); and one of the first women presidents (1984) of three major insurance companies, Montgomery Ward Life Insurance Co., Montgomery Ward Insurance Co. (a property/casualty company in the credit and property/casualty personal lines of

business) and Forum Insurance Company (a property/casualty company in the commercial line of business). Her latest honor is the presidency of the American Academy of Actuaries in 2003-2004.

Today, she is the principal and CEO of Lautzenheiser & Associates, Hartford, CT, a smaller consulting firm (consisting of herself, her office manager, Kathy Perkins, her assistant, Charlene Lautzenheiser and a cadre of specialty subcontractors). She is also very ready with one-liners, quips and advice, as befits someone who calls herself a “Communicating Actuary.” (See her advice, summarized as “Ten Tips for Starting a Consulting Practice” on Page 9).

After her stint with Montgomery Ward, Barbara returned to Hartford, where she had been a senior vice president of Phoenix Mutual in charge of the Actuarial, Corporate Accounting, Planning and Taxes, Reinsurance and Underwriting departments. She turned to consulting, unsure that this was the future that she wanted. But she saw the possibilities offered by consulting to have the “...freedom to do things the way that I thought they should be done.”

Like many who turn to independent consulting, Barbara did not know whether she would make it. So she gave herself nine months to a year to demonstrate that she could build a sustainable consulting practice. This also happened to be the amount of time that she calculated her initial budget (consisting of all her savings) could support her. If the





business did not grow before the money ran out, Barbara would return to the corporate world.

After budgeting all her savings for the new business, Barbara proceeded to ignore her budget in the day-to-day operations of her practice. “Doesn’t sound much like an actuary,” Barbara says of her approach, “but as long as I felt that the present value of future business was positive, I just kept on spending money.” Barbara describes her strategy as: “Becoming visible. I was present at every meeting, on every panel, and behind every microphone with a question. Whatever committees were relevant, I got on them.” She adds: “no lunchtime ever went by that I did not have a lunch date, although I can honestly say that no trackable business ever resulted from a luncheon. Generally, you can’t track where business does come

from...now, however, I think most of my work comes from referrals.”

In addition to spending money on travel, Barbara invested in image. An important component of her image is her office. Barbara purposely maintains an office in one of Hartford’s most prestigious high-rise office towers. “When I started in the business, it was important to me to let potential clients know that I was in the business to stay; not just an insurance executive between corporate jobs.”

Like anyone starting in consulting, Barbara needed a value proposition. Her work at her first employer, Bankers Life Nebraska (now Ameritas), and at Phoenix Mutual (now Phoenix Life) had exposed her to a current hot issue—gender-based/unisex pricing. In turn, this led to positions of increasing

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## Barbara’s 10 Tips For Starting a Successful Consulting Practice

1. You have to get business, not wait for business. Make appointments and go talk to people.
2. Become visible. Marketing yourself is a visibility issue.
3. Spend money to make money.
4. Decide your unique skills and market your unique skills.
5. Pay attention to your reputation. Produce accurate work and quality presentations.
6. It is not just what you do, but how you present it.
7. Image is important. If you want clients to believe you are in the business to stay and not just between jobs, you cannot operate out of your kitchen.
8. As a consultant, you are always on call for your clients, 24 /7.
9. Think positively, or you aren’t going to make it.
10. Clients don’t hire people who do not look successful.

### Barbara's Process For Producing A Successful Consulting Report:

1. The first draft: Chronological.
2. The second draft: Begin with the conclusion.
3. The third draft: Work on consistency.
4. The fourth draft: Check the grammar.
5. The final draft: Does it make sense overall?

responsibility in the Society, culminating in the presidency in 1982. This led to work with the American Academy of Actuaries and the NAIC on Risk-classification, and four retainers for the new practice. "Not enough to support me, but steady business," Barbara says. Her work on current, political issues resulted in her becoming involved in another emerging topic: testing for AIDS. Expanding from her original topic, she developed a practice in consumer issues, such as vanishing premiums and illustrations, another emerging issue. Her work in this area led to her developing a practice in expert testimony as an expert witness, something that remains a major component of her practice today. Another important component of her practice is long-range planning on behalf of organizations, such as work that she completed and helped implement for the Life Office Management Association (LOMA).

Barbara's business has always relied on her own expertise. She considers her value to be interpretation and explanation of issues, communication rather than number-crunching. "Most actuaries can give you numbers and formulas. I translate actuarial concepts into words that the client's Board members, management or regulators will understand." She illustrates with work in gender-based

pricing: "I developed a uni-calorie chart to illustrate the effect of unisex pricing," she says. "That way, hot fudge sundaes have the same value as celery. Judges and regulators got the point."

She has had an assistant actuary in the past, but found that training assistants in her style was time-consuming and ultimately not rewarding, because of staff turnover. She now utilizes independent contractors, because of their knowledge, integrity and attention to details in the specialty area needed for the project. Barbara says, "it's not just what you do that counts, but how you do it." She applies a rigorous process to the production of a consulting report (see box above). Still, she is a strong believer in peer review and will hire a sub-contractor to perform peer review on a consulting report. The one aspect of her practice that, in hindsight she would do differently is to look for additional projects that she can delegate, so that she could leverage herself more.

But that seems like a minor concern next to the success that Barbara has made of a practice that she started 17 years ago, unsure whether it would last a year. 🍀



Barbara J. Lautzenheiser

# Editor's Column

by Ian Duncan

**W**ell, we made it through Issue 1 of the *Independent Consultant*, and have arrived on your (electronic) doorstep with Issue 2. That proves that the newsletter was not a flash in the pan. At the same time, we are pleased to note that membership of the section has grown to over 400 members!

We have some great articles in the current issue, continuing some of the themes we began in our first issue: a profile of a leading independent consulting actuary and a “beginner’s guide” to actuarial expert testimony, a primer in Intellectual Property and another article on marketing-related issues by our regular contributor, Carl Friesen. And a thought-provoking article about a controversial topic for our members, Peer Review, by Ken Hartwell, a member of the Section Council.

As a Council, we have to decide what to focus on next. Being politicians at heart, even minor ones, we follow in the footsteps of the professionals in Washington and..... conduct an opinion survey! So if you have not yet responded to the “SMALLER CONSULTING FIRM SECTION SURVEY,” look out for it in your mail-box, and respond. More information will be available in the next issue of *The Independent Consultant*.

Section activities are beginning to get into gear. The Section will be sponsoring its first social function for members at the Vancouver Spring Meeting. On Sunday evening, June 22, we will be hosting a cocktail reception. It has been purposely scheduled the evening before the start of the meeting so that we will not experience



conflicts with the other sections to which our members belong. So it’s a great opportunity to meet and greet other members of the section, exchange stories and help set direction for the future.

At the Orlando Annual Meeting, the section will be sponsoring a workshop entitled: “Developing and Marketing the Smaller Consulting Practice.” You will find more information about this session elsewhere in this issue of *The Independent Consultant*.

We are always looking for ways to serve our members better, by commissioning and publishing articles that are of value and interest to consulting actuaries. As always, we welcome suggestions and feedback from section members or other actuaries. Contact me at [iduncan@lotteract.com](mailto:iduncan@lotteract.com) if you have a comment or suggestion. 🍀



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# It's Fun To Be An Expert!

by William C. Cutlip

**S**everal years ago I began serving attorneys and their clients with financial evaluations and as an expert witness. Since then I have worked with more than 50 attorneys on over 100 cases. Each one has presented something new, with both attorneys and their cases introducing mind-stretching concepts. The opportunity to creatively apply my actuarial training and experience in new ways has been, well... fun.

I felt a little queasy when I first got into this. I mean, lawsuits, really! What I soon learned was that there usually are legitimate beefs and misunderstandings from both sides in disagreements. When people can't solve those problems with appropriate equity, then the lawyers and the courts step in. It also usually improves the way business is conducted in the future so that everyone can be treated fairly.

A sole practitioner generally fits well in this market. Potential conflicts of interest arise less often than in a large firm whose existing clients may become defendants in lawsuits. As a sole practitioner or member of a small firm you are more likely to have the opportunity to serve both plaintiffs and defendants. This balance best serves and preserves your reputation for independence in the eyes of the court.

If this field interests you, here are some of the things to consider.

## 1. Be comfortable with the case you're serving.

You must always work a case from an independent standpoint. Bring your most critical eye to your work and look at all aspects. At the same time your attorney client will be seeking support from you. If you are uncom-

fortable with the case and the arguments being put forth by your client, refuse up front or bow out as early as new information dictates. You won't do your client or yourself any good if you don't believe that damage has occurred.

## 2. Do I have the stomach for this?

Much of the work involves the financial evaluation of loss and advice for attorneys on the elements they should consider. Sometimes you will be called upon to give testimony, both in deposition and at trial. It is always a strongly adversarial situation. The attorneys on the other side have one clear goal. By the time they are finished with you, they want you to appear an idiot, a liar or both. They'll say you have used questionable data and can have no idea what the future holds, so how can you put a dollar value to loss? Then, you may find friends who are serving as experts for the other side who have opinions diametrically opposed to yours but whose friendship and respect you want to retain.

In these situations you must set aside your emotions and realize that you ARE an expert and have brought your best analysis and judgment to bear. There will be those who disagree, but focus on what you have considered, listen to the questions to see if you need to consider other things and always answer honestly.

## 3. Always wear a white shirt.

When I showed up for testimony on my first case, I found that a colleague in a different discipline, whom I had known for many years, was also an expert for my client. George had whiter hair and several years experience on me. He had been serving as an expert for some time as a post-corporate retirement

## About the author...

**WILLIAM C. CUTLIP, FSA, MAAA, FCA, CLU, ChFC, CPCU**, is a consultant and owns his own firm, William C. Cutlip Consulting, with offices in Madison, Wisconsin and Tuscon, Arizona. He specializes in risk evaluation and expert witness work for attorneys and insurance and business consulting for companies.

Prior to consulting, Bill spent over 30 years with a variety of companies in the insurance industry focusing on management and product development. He was an editor of and the major contributor to *The Actuary's Career Planner*. He has served on a wide variety of professional committees for the past 25 years, including chairmanship of the SOA E&E Professional Development Task Force, former editor of *The Actuary*, and chair of the American Academy of Actuaries General Committee of the Actuarial Standards Board. He currently chairs the SOA Professional Development Committee and has been a frequent presenter at meetings and seminars. 🗣️

vocation. I asked him what words of advice he would offer a neophyte. He smiled, looked me in the eye, and said, "Always wear a white shirt. That way they can't see you sweat." I now own several white shirts.

### 4. Tell the truth. Tell the truth. Tell the truth.

This seems so obvious, but needs to be foremost in your mind. When you became an actuary, you brought the practice of truth-telling with you as a scientific model and personal set of ethics. You've always had an obligation to follow this as stated in our Code of Professional Conduct. You have a guide with an actuarial standard of practice, ASOP 17, which deals with how to conduct yourself as an expert witness.

Your attorney client is looking to you for your expertise. You may see flaws in the case or you may see that there's no case at all. Tell your client up front. It may cost you some work but it will save them and you in the long run.

### 5. Don't count on steady cash flow.

This is an area of practice that is like the old Army maxim: Hurry up and wait! Attorneys

may often (OK, usually) call at the 11<sup>th</sup> hour needing an expert and an initial report quickly. Then it could be several months before there's a new flurry of activity. Often, cases will go on for several years.

An expert's pay is never tied to a portion of the settlement awarded (by legal ethics and your own need to stay independent). But...when you get paid is tied to when you do the work and how quickly the attorney responds to your invoice. Some are good payers. Some take forever. Some rare ones think you should be paid only if they win. Be prepared for an uneven cash flow.

Nevertheless, this continues to be very interesting, challenging and rewarding professional work. It means taking your actuarial skills and applying them in risk situations often unrelated to the insurance arena most of us have experienced. It's this application to new situations and the challenges they present which make the work, well...fun.

If you'd like to find out more about this avenue of practice or just swap stories, give me a call. 🗣️



*William C. Cutlip, FSA, MAAA, is a consultant and owns his own firm, William C. Cutlip Consulting, with offices in Madison, Wisconsin and Tuscon, Arizona. He specializes in risk evaluation and expert witness work for attorneys and insurance and insurance and business consulting for companies. He can be reached at [cutlipconsulting@cs.com](mailto:cutlipconsulting@cs.com).*

# Peer Review

by Ken Hartwell

**I**n putting down my thoughts for this article I have deliberately been a tad provocative, hoping to evoke some reactions (both for and against) by way of letters to this newsletter. Yet peer review seems in itself to be a controversial subject, particularly for actuaries in small or one-person firms, and it is therefore important for me to emphasize that the views expressed here are entirely my personal ones. It is also no coincidence that I have made numerous references to the *Code of Professional Conduct* and to the new Actuarial Standard of Practice, *Actuarial Communications* (referred to hereafter as ASOP No. 41). This is because, in my experience, many actuaries are not entirely familiar with these documents.

## Why should actuaries seek peer review?

Annotation 1-1 of the uniform *Code of Professional Conduct* adopted recently by all the US actuarial organizations states “An Actuary shall perform Actuarial Services with skill and care.” In my view, the words “and care” require that the actuary should at least consider peer review in respect of every work product given to her or his principal. Some have stated that their clients are “not prepared to pay for the work to be done twice” but as will be seen below, that is not what I mean by peer review. And I go further and say that it is inappropriate for the actuary to offer the client the option of peer review. Instead, the actuary should make that determination, and where necessary allowance (in both time and money) for peer review should be made at the start of the work by the responsible actuary.

## What is peer review?

My first response to this question is to say what peer review is NOT. It is not detailed checking to see that the work “was done right” in every respect. I see peer review as perusal by another actuary to ensure that the work product “makes sense” and that the message or messages conveyed are clear (see also “Who is a peer?” below).

## When should peer review be sought?

I believe peer review should be standard practice for all work products of firms of say five or more actuaries. Peer review is often seen as difficult (some would go further and say



impossible) for the one-person firm and I devote some time to such situations. I have deliberately chosen not to draw fine distinctions between firms of two to four actuaries and one-person firms. Clearly, circumstances will dictate what is most appropriate for those “in between” firms.

Precept 2 of the *Code of Professional Conduct*, dealing with qualification standards, is sometimes referred to colloquially as “the look in the mirror.” I think this is often a more difficult decision for a sole practitioner than the matter of peer review, particularly when he or she is really keen to secure a particular piece of work. And it is not easy sometimes to say in response to an inquiry, or even an offer of work, that one is not qualified to do the work. After all, actuaries are versatile, are they not?

I like to think that having survived the first “look in the mirror”, and having decided that what the actuary saw there allowed the work to proceed in terms of qualification standards, the actuary operating as a one-person shop should take a deep breath and then have a second look in that mirror. This time it is not a matter of “Mirror, mirror on the wall .....” but rather “Am I absolutely sure that this project would not benefit by being subjected to peer review?” There are certainly situations in which the one-person actuary, possibly through long experience in a particular type of work, will answer “Yes”; but I urge that the second look in the mirror become automatic.

### Pre- or post-release peer review

There are clearly circumstances in which pre-release peer review is not possible, one



example being a telephone request for a very quick answer.

Nevertheless, those circumstances almost demand post-release peer review as a routine practice (excluding of course work products subjected to pre-release peer review) for all firms of two or more actuaries. Oral communications are covered by the *Code of Professional Conduct* as well as by ASOP No. 41, and the documentation requirements of that ASOP in section 3.6 clearly extend to oral communications, making post-release peer review of on oral communication an easy matter.

Where possible, pre-release peer review is preferable, not least because it avoids the possibility that the result of the review means that the responsible actuary has to go back to the client and say “Oops.....”. That can be embarrassing but I contend it is preferable to the alternative. This also places a time constraint on post-release review, which needs to be done quickly (such as the next day at latest) and not weeks after the work product was given to the client.

(continued on page 16)

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I think it is more important for the actuary doing the review to be able to put her/himself in the shoes of the intended audience.

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### Who is a peer?

Obviously the peer review needs to be done by an actuary, but I believe the reviewer does not need to be equally expert, or more expert than the actuary seeking the peer review in terms of the work in question. I think it is more important for the actuary doing the review to be able to put her/himself in the shoes of the intended audience (which is defined in 2.5 of ASOP No. 41 and usually includes the principal). Note that section 3.1.2 of ASOP No. 41 begins “The actuary should take appropriate steps to ensure that the form and content of the actuarial communication are clear and appropriate to the particular circumstances, taking into account the intended audience.”

I maintain that peer review can be of immeasurable assistance to the actuary in complying with section 3.1.2 as quoted above. Moreover, the phrase “appropriate steps” could be interpreted as almost requiring peer review. Certainly the phrase demands at the very least my second look in the mirror.

Furthermore, Precept 4 of the *Code of Professional Conduct* bears re-reading in this context.

### Who is responsible for the work?

Some in the profession have apparently said that after peer review has taken place, there may be some doubt as to who is actually responsible for the work—the actuary who sought the review, or the reviewer? I disagree strongly with any such notion. Precept 4 as quoted in the preceding paragraph speaks of the “Actuary who issues an Actuarial Communication” and Annotation 4-1 goes on to say “An Actuary who issues an Actuarial Communication shall ensure that the Actuarial Communication *clearly identifies the Actuary as being responsible for it*” (emphasis added by me).

It is also worth looking at ASOP No. 41, remembering that one of the purposes of ASOPs is to amplify the *Code*. Section 3.1.4 makes a few points relevant to the argument I am making, including communications issued jointly and an organization with which an actuary is affiliated. Then section 3.1.6 begins “An actuary who makes an actuarial communication assumes responsibility for it except to the extent the actuary disclaims responsibility by stating reliance on other sources.”

### Benefits of Peer Review

Quite apart from promoting a feeling of satisfaction in a job better done than without peer review, and thereby acting in the interests of the client, the actuary who seeks peer review demonstrates compliance with the *Code of Professional Conduct* and with ASOP No. 41

### Conclusion

Well, I hope I have stirred up a hornets’ nest! Again I reiterate that the views stated here are entirely personal and do not in any way reflect the views of the Council of the Smaller Consulting Firm Section of the SOA. For those who would like to read more about peer review, I commend to you a white paper on the subject issued in 1997 by the Council on Professionalism of the American Academy of Actuaries. You can find this publication on the Academy Web site at [www.actuary.org](http://www.actuary.org), or alternatively by contacting the Academy office in Washington DC at (202) 223-8196. 📧



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# Smaller Consulting Firm Section Will Sponsor Its First Events

**T**he Smaller Consulting Firm Section will be sponsoring its first events at the Society's Spring and Annual Meetings.

## Vancouver Spring Meeting

Wine and Cheese Reception.

Sunday, June 22nd, 5:30 to 7:00 p.m.

### Developing and Marketing the Smaller Consulting Practice.

Thinking about striking out on your own as a consulting actuary? How should you set your priorities? Where should you spend your resources? This session will cover some key considerations:

- Finding and Marketing your value proposition
- Targeting and reaching potential clients
- Advertising, marketing and publishing

- Resources and networking
- Financial management of the small practice

*What will the learner take home?*

- Is the smaller consulting environment right for me?
- Understanding marketing in the smaller practice
- Understanding the finances of the smaller practice

The session has been designed as a Workshop format, so that participants can ask questions and share experiences. We will have a number of experienced independent consultants participating to ensure diversity of experience and opinion. This session should be a lively introduction to our Section! 🧠

SUNDAY, JUNE 22

## Sessions

**SESSION 380 SM** 5:30-7 PM

**SPECIALTY TRACK: SCF**

**SMALLER CONSULTING FIRM WINE AND CHEESE RECEPTION**

This reception offers an opportunity for members and/or prospective members of the new Smaller Consulting Firm Section to get together to network, discuss the future activities of the section and enjoy wine and cheese.

*Open to all meeting attendees. There is a non-refundable charge of \$10 per person. Please include the additional fee with your registration.*

**SESSION COORDINATOR:**  
Allen D. Booth

# Smaller Consulting Firm Section Grows in 2003

The Smaller Consulting Firm Section, the newest and smallest member of the Society's family of sections, increased its membership from 275 in 2002, (including 10 section members who are not members of the Society), to 491 (including 25 non-Society members). For those of you who like to keep score, comparative numbers for some other sections in 2003 are:

| Section                   | Total Members | Non-SOA Members |
|---------------------------|---------------|-----------------|
| Individual Life & Annuity |               |                 |
| Product Development       | 3,899         | 11              |
| Investment                | 4,174         | 6               |
| Pension                   | 3,808         | 12              |
| Health                    | 3,312         | 6               |

## Other Sections to which SCF Section members belong \*

| Pension | Health | Product Development | Financial Reporting | Other |
|---------|--------|---------------------|---------------------|-------|
| 232     | 176    | 130                 | 118                 | 700   |

## Distribution of SOA SCF Section Membership by Country \*

| United States | Canada | International | Total |
|---------------|--------|---------------|-------|
| 381           | 56     | 29            | 466   |

## Distribution of SCF Section Membership by Employment Category \*

|       | Consulting Actuaries | Insurance Organization | Other | Total |
|-------|----------------------|------------------------|-------|-------|
| ASA   | 130                  | 17                     | 22    | 169   |
| FSA   | 250                  | 22                     | 25    | 297   |
| Total | 380                  | 39                     | 47    | 466   |

\* Society of Actuaries Members only

## 2003 Advertising Campaign

In 2003, the section will be promoted at appropriate venues. The first of these was the Enrolled Actuaries' Meeting in Washington, D.C. in March. The section's publicity includes a poster (shown in the next column), copies of the *Independent Consultant* and enrollment materials. We welcome suggestions from members about other ways to publicize and promote the section among actuaries, so if you have an idea, e-mail us! 📧



Poster by Marion Lunt of Effective Communications, Inc.  
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