CHAPTER 3

Professional Liability

INTRODUCTION

This Chapter discusses the legal and practical aspects of the professional liability that attaches to actuarial practice. The topic is offered in these parts:

- Overview
- Increase in Litigations
- Legal Aspects of liability
- Incorrect Estimates
- Avoiding Litigations
- Actuary and Fiduciary Duties
- *Amicus Curie* Briefs of the Academy
- Relevant Court Decisions

OVERVIEW

Historical

Beginning with the *Equity Funding* litigation in the 1970,s actuaries have increasingly been targets of professional malpractice. Then followed other litigations crafted after similar litigations involving accountants.

This plethora of professional litigations was initiated by (a) unhappy clients, (b) suffering third parties, (c) regulators and (d) insurance guaranty funds. The usual cause of the dispute involved (a) reserve errors, (b) insurer insolvencies and (c) underfunded pension funds. The root cause of the dispute typically involved (a) faulty data, (b) unreasonable assumptions, (c) flawed methodologies, (d) careless computations and (e) professional ignorance. The primary actuarial specialties involved in such litigations were (a) life, (b) pension, and (c) casualty coverages. Health care plan legal disputes are virtually non-existant, at least so far.

The health actuary, while not typically the target of a professional liability claim, should take heed: the same logic supporting the above-cited litigation may be easily applied to the health actuary.

Professional Liability

The inherent nature of the actuary's employment essentially determines any professional liability. The consulting actuary, using billable time, has a greater exposure to liability than a (a) insurer actuary, (b) a government actuary or a (c) teaching actuary.

The essence of the professional liability issue is this: whenever a professional is engaged to provide a specialized service, such professional has an obligation to exercise due care and competence. Failure to do so will subject such professional to a liability for negligence. The standards do not demand that the professional be correct but only that there be (a) reasonable skill and competence, (b) good faith and (c) an absence of fraud.

Generally Accepted Actuarial Principles

Such Principles are published, maintained and modified by the Academy and serve as guides to the actuary in specified circumstances. Such Principles are recognized by the (a) regulators and (b) courts. The Principles are function-specific.

It is important to note that absent any clear statement of principle, the actuary is obligated to exercise good judgement to see that sound actuarial principles as established by precedent or common usage are followed. Actuaries working in specialized fields have principles to follow that fit that specialized field.

INCREASE IN LITIGATION

Introduction

These specific requirements have contributed significantly to the recent increase in actuarial liability litigation.

- NAIC Actuarial Opinions
- ERISA.

NAIC Actuarial Opinions

The NAIC began to require an actuarial opinion as part of an insurer's annual statement in 1975. This requirement affected both life and health actuaries. The target, typically, of such litigations has been (a) the outside consulting actuary (which has E & O insurance, or *deep-pockets,* usually) rather than (b) the in-house actuary who has only a limited amount of assets to be reached.

The NAIC began to require an actuarial statement of casualty loss reserves in 1990, largely in response to a surprising number of casualty insurer failures. The inherent difficulty in properly setting casualty reserves (huge variances, long run-out tail, changing benefits, etc.) contributed to such increase in litigations.

ERISA

ERISA, enacted in 1974, introduced a host of new laws, rules, concepts, etc. each of which exposed the actuary to new or expanded liability challenges. Examples include:

- The law and its sanctions
- Joint Board for the Enrollment of Actuaries
- Plan qualifications and reporting requirements
- Professional responsibilities
- Actuary as a fiduciary
- Prohibited transactions and parties-at-interest
- Enforcement.

ERISA-Sanctions

ERISA was a huge law that overhauled the entire regulatory fabric of both qualified and unqualified benefit plans. Such included stricter duties and responsibilities for all professionals who service such plans; this included actuaries. Actuaries providing services to ERISA-regulated plans are subject to harsh penalties (both civil and criminal) for the violation of such provisions. ERISA also holds the actuaries to higher standards of independence and accountability.

Enrolled Actuaries

A new professional category – Enrolled Actuary - was created by ERISA. Also created was a new professional organization known as the Joint Board for the Enrollment of Actuaries. Such Board sets the standards and requirements for such Enrolled Actuaries. The Board has the authority to disenroll any actuary who (a) fails to discharge such duties under ERISA or (b) fails to satisfy the duties of enrollment.

Plan Qualification and Reporting

The plan administrator (fiduciary under ERISA) must (a) implement a sound funding policy, (b) properly supervise and manage the plan, (c) establish a procedure for amending the plan and (d) establish a claim procedure. The required statement of financial condition must have an actuarial certification.

Professional Responsibilities

The Enrolled Actuary has added ERISA-provided responsibilities in having to select actuarial methods and assumptions that are unbiased and independent. A regularly-scheduled Actuarial Report is required.

Actuary as a Fiduciary

While ERISA does not specifically provide that the Enrolled Actuary is a fiduciary, facts and circumstances may well indicate otherwise. If the actuary (a) exercises discretionary authority or management of an ERISA plan, (b) exercises authority or control over plan assets, (c) renders investment advice for a fee or (d) has any discretionary control in plan administration, such actuary would most likely be deemed to be a plan fiduciary.

Prohibited Transactions and Parties in-Interest

The actuary, if acting as a plan fiduciary, must commit no fiduciary breaches. Also, the actuary, acting as a party-in-interest must not engage in any prohibited transactions. Examples of prohibited transactions include (a) selling or leasing property to the plan (b) any lending or borrowing between the plan and a party-in-interest, (c) the providing of any goods or services between the plan and the party-in-interest, (d) the receiving by a party-in-interest of any plan asset and (e) the acquisition of any plan sponsor securities, property, etc. unless such is less than 10 % of plan assets.

Enforcement Provision

This section permits a plaintiff (plan participant, plan sponsor or Department of Labor) to directly sue the Plan's enrolled actuary for an alleged infraction. The penalties may be civil or criminal. Also the DOL has significant authority over the Plan Report of the Enrolled actuary.

LEGAL ASPECTS OF LIABILITY

In General

Actuarial liability is a fairly recent tort. It is rooted in standards developed over the years for other professionals, more specifically accountants. The tort involves two separate but interrelated elements: (a) who are the claimants? and (b) what fault must they prove?

Potential claimants include (a) clients, and/or (b) persons who will, or might, rely on the work-product. Fault may be in the range of (a) simple errors, to (b) recklessness to (c) fraud. Rules governing such tort claims vary from (a) state rules to (b) federal rules (i.e., ERISA, IRC, etc.)

Clients

The legal concept of *privity of contract* arises when the actuary agrees to (a) provide certain services in exchange for (a) a fee. This legal concept requires the actuary to deliver the promised service with the (a) skill and competence, (b) reasonably expected of actuaries, as described by (c) generally accepted actuarial principles using (d) reasonable care and (e) honoring confidentiality practices. Depending on facts and circumstances, the actuary may have a fiduciary relationship with the client.

When the actuary fails to act properly either a (a) contract breach, (b) fiduciary breach or (c) tort may exist. Typically, contractual breaches are the most favorable to the actuary with respect to the damages that may be awarded.

Other Practices

While analyzing the obligation of the actuary to a client is relatively simple, such obligation to other involved parties (so-called third parties) becomes more complex. This is because the common law, with respect to such obligation, varies from state to state. To understand the complexity of the states' common law, the following practices should be considered: (a) New York practice, (b) forseeability rule, (c) restatement rule and (d) recklessness and fraud.

New York Practice

Most states follow this practice whereby the work-product is limited to a specific (a) use and (b) client. Some modifications of this practice extend the usage to other (a) person(s) or to (b) groups of persons who may foreseeably use the work-product.

Forseeability Rule

An actuary providing a claim reserve computation with the understanding that the employer was in a buy-sell transaction should have *foreseen* that such actuary could be sued if the claim reserve were challenged.

Restatement Rule

The actuary who provides a work-product that by its nature may be used by *others* should *foresee* that a liability claim may be filed against such actuary should the work-product be faulty. The *others* are any and all users, individually or a group, who may be anticipated reasonably to use such work-product.

Recklessness and Fraud

The courts may *lighten-up* on actuaries as respects third-party negligence suits; such favorable treatment does not apply when the actuary may have been reckless or fraudulent. The courts extend little or no sympathy where recklessness or fraud is found.

INCORRECT ESTIMATES

In General

To provide an erroneous estimate is not a professional error. To be at fault in the determination thereof is another matter. The Academy pronouncements dealing with Generally Accepted Actuarial Principles are the guides used to determine whether proper determinations were made. Such principles include important (a) texts, (b) articles and (c) practices that are commonly accepted or used by actuaries.

Professional errors are of these types:
- Data- related
- Assumption-related
- Methodology-related
- Computation-related
- Knowledge-related.

Data-Related

Data-related errors involve these failures:
- Not reconciling data
- Using inappropriate data
- Misunderstanding data
- Not adjusting for data *aberrations.*

Not Reconciling Data

The actuary, in accordance with the Academy Statement of Principles No. 23 must "when practicable, review the data for as reasonableness and consistency." Moreover, whenever data is used in the analysis of reserves, they must reconcile to the insurer's financial records. Insurer should include the self-funder or plan sponsor.

Examples of not reconciling the data are as follows:
- Lag studies not consistent with paid claims
- Computing reserve deficiency with data not consistent with insurer's published data.

It must be noted that the actuary is obligated to *review* but not *audit* the data.

Using Inappropriate Data

The Academy Statement of Principles No. 23 requires the actuary to use accurate and appropriate data. This typically translates into using the best, but not necessarily *perfect* data. An example might be a lag triangle that was prepared as an *mail-date* rather than on a *book-date.*

Misunderstanding Data

Examples of such misunderstanding include the failure to recognize and/or properly account for such factors as (a) underwriting, (b) claims practices, (c) benefit structure, (d) legal factors, (e) electronic transmissions, (f) social environment or (g) meanings and definitions (IRS Forms W-2 and 1099 and Sub-S Corporations, e.g.).

Not Adjusting

Accepting a lag study, that had anomalies, and not modifying the data (thereby not computing a proper reserve) was an error of not adjusting.

Assumption-Related

The Academy Statement of Principles No 36 requires that the actuary use *reasonable assumptions* where such may be (a) implicit, (b) explicit or (c) involve the estimating or interpreting the future or the past. In some instances, the actuary is obligated to (a) explain, (b) comment on or (c) consider reasonable alternate assumptions and disclose such to the client. In past instances, reasons for the challenge of the actuary's assumptions included (a) conflict with experience, (b) patently unreasonable, (c) inconsistent with economic or market factors and (d) not consistent with past assumptions.

Methodology-Related

The Academy Statement of Principles No. 36 require that the actuary must use appropriate methodology. The actuary is expected to (a) examine options and alternatives, (c) not *jump* to a method without giving it reasonable thought, (d) document and explain any changes in methodology and (e) always avoid setting the assumptions to produce a desired result.

Computation-Related

These primarily include (a) typos, (b) arithmetic and (c) programming errors. These are easy to assert and difficult to defend. If there is an aberrant result, the actuary is obligated to seek and find if such was the result of a computation-related error.

Knowledge-Related

The actuary is obligated to be current as respects laws, regulations, ruling, practices and court decisions. This obligation is becoming increasingly difficult to meet because of the many fast-changing rules, products, decisions, etc.

ACTUARY AND FIDUCIARY DUTIES

In General

Two assertions are put forth by the writer:

1. Depending on facts and circumstances, the actuary may or may not be a fiduciary. The logic expressed in the *amicus curie* brief discussed in this section can be relied upon.
2. If the actuary, however, declares that such actuary is a fiduciary with respect to a work-product and the engager agrees with this declaration, a fiduciary relationship is created and should be honored.

Academy *Amicus Curie* Briefs

In the litigation *United Teacher Associates Insurance Company v. Mackeen and Bailey,* the Academy argued that the actuary (Mackeen) was not a fiduciary. These opinions of the Academy are well considered and deserve careful study.

Actuaries May or May Not Be Fiduciaries

It would be incorrect to necessarily designate an actuary to be a fiduciary because facts and circumstances may indicate otherwise. The actuary is a fiduciary if facts and circumstances so indicate. In one litigation, the actuaries doing ERISA pension work were not held to be actuaries. Simply doing professional work does not make the practitioner a fiduciary. The actuary must have some authority beyond that of a professional function. In one court decision, it was held that a fiduciary duty is an extraordinary one and will not be created lightly.

Courts Decision Was Too Broad

In one litigation, the court gave the appearance of wanting to brand the actuary a fiduciary in order to affix guilt. The case in dispute needed to be adjudicated on the facts and not on the alleged and presumed role of the actuary.

Federal Court v. State Law

A case was heard in the Federal District Court in Texas on grounds of diversity. As such, it was not correct for the court to interject into state law. Texas state law would not have found the actuary to be a fiduciary.

Professional Standards and Fiduciary Breach

The court's presumption was this; since the actuary violated the Academy's Code of Professional Conduct a fiduciary breach was committed. This presumption is not correct. The actuary is obligated to abide by the Code of Professional Conduct whether or not there is a fiduciary relationship. Professional standards arise from Academy's actions and have no relationship to fiduciary issues.

AVOIDING LITIGATIONS

In General

The prudent actuary may dramatically reduce the risk of being sued by following good practices in these areas: (a) engagement agreements (b) work-product design, (c) work-papers and (d) peer review.

Engagement Agreements

Such letters or agreements generally have the purpose of (a) limiting the possibilities of third party negligence, (b) limiting or defining the amount of potential damages, (c) carefully defining the scope, purpose and parties to the work-product and (d) limiting the use and distribution of the work-product. It is the belief of many actuaries that such language is unproductive and reflects unfavorable on their endeavors. Certainly such documents, however well-drafted, have no applicability where recklessness or fraud are involved.

Report Format (Work-Product)

Much can, and should, be done to structure the report format so as to minimize the risk of a professional liability complaint. To this end, helpful language in the work-product should incorporate all of the requirements set forth in the Academy's Statement of Actuarial Practices with special emphasis to such items as these: (a) parties to and the use of the work-product, (b) uncertain or predictive nature of the work-product, (c) assumptions being carefully set forth, (d) data and documentation used, and (e) any inherent problems with the risk. Where there are doubts or reservations by the actuary, a qualified opinion should be provided.

Work Papers

Well-documented and well-organized work papers are essential. These work papers should be (a) complete, (b) indexed, (c) purged of needless items and (d) well-organized. Ideally, the work papers should clearly show that these factors were contemplated: (a) nature of risks, (b) data issues, (c) methods used, (d) assumptions considered and used and (e) reasonableness of the results.

Peer Review

While not commonly used, these can be most useful and constructive. Telephone notes, emails, etc. should be kept of such reviews and should be retained on the work papers.

Overview of Litigations

These were the reasons for most of the professional liability litigations involving the actuary:
1. Pension plan assumptions and methodologies.
2. Reserve computations where there was a buy-sell agreement.
3. Claim reserves with difficult, large or new casualty perils.

AMICUS CURIE BRIEFS

Introduction

The Academy has submitted the following *amicus curie* briefs where professional liability issues were in contest:
- *Shepley v. New Coleman Holdings*
- *Shay v. Newman Howard*
- *Lockheed v. Spink*
- *Cohen v. Briscoe*
- *Willens v. Northwestern Mutual*
- *Municipal Employees v. Gabriel Roeder v. Smith.*

Shepley v. New Coleman Holdings

In a case involving a defined benefit pension plans, the Academy asserted, contrary to the count's findings, the following:
1. The lower court was in error in opining that the actuary was negligent, when the actuary correctly followed the Generally Accepted Actuarial Practices promulgated by the Academy.
2. The lower court was in error in its unrealistic assessment of the ease by which future investment earnings may be predicted.

Shay v. Newman Howard

This Litigation involved an ERISA plan and whether or not the fiduciary thereof has the right and authority to rely on the opinion of the Enrolled Actuary. The essence of the opinion of the Academy was as follows:

1. The lower court was in error in opining that an ERISA fiduciary had the obligations to question or to not accept the expert advice of the Enrolled Actuary who offered such fiduciary professional advice in good faith.
2. The lower court was in error in rejecting the advice of an expert witness who was trained and knowledgeable with respect to the facts of the case.

Lockheed v. Spink

The Academy in this case encouraged the Supreme Court to clarify the actions of the ERISA plan sponsor, the plan document and the specific party-in-interest transaction. The lower court had left *dangling* and important legal precedent set in the *Mertens v. Hewit* decision.

Cohen v. Briscoe

In a case involving the professional work done by a consulting actuarial firm to a failed insurer where the reserves were incorrectly computed, the *amicus curie* brief made these assertions:

1. The valuation actuaries function as a team of professionals advising the management of the insurer.
2. The opinion offered by the consulting actuaries was not a guarantee of the insurer's solvency.
3. The obligation of the consulting actuaries was to *edit*, but not *audit*, the data of the insurer.
4. Professional standards are not binding until they are formally adopted.

Willens v. Northwestern Mutual

In a case involving the meaning of the Academy's Actuarial Statement of Principles, the Academy, in its *amicus curie brief* asserted the following:

1. The Actuarial Statement of Practices was an appropriate source of guide for the actuary.
2. The development of such guides was objective in nature.

Municipal Employees v. Gabriel Roeder v. Smith

In a case involving a pension valuation the *amicus curie* brief argued that an actuary is clearly a professional and should be treated accordingly.

RELEVANT COURT CASES

These court cases should be helpful to the reader in further comprehending the topics offered in this chapter.

Aetna Casualty & Surety Co. v. William M. Mercer, Inc. 173 F.R.D. 235 (N.D.I11. 1997)

Airparts Co. v. Custom Benefits Services of Austin, Inc., 28 F.3d 1062 (10th Cir. 1994)

Alff v. State Personnel Commission, 1985 Wis.App Lexis 3880 (Wis. Ct. App. 1985)

American Independent Insurance Co. v. Lederman, 2000 U.S.Dist. Lexis 12351 (E.D.Pa. 2000)

British Columbia Automobile Assn v. Manufacturers Life Insurance Co., 14 B.C.L.R. 237 (S.Ct.B.C. 1979)

Buchanan v. Greene, 1998 U.S.Dist. Lexis 5505 (D.Kan. 1998)

Bunge Corp. v. Eide, 372 F.Supp. 1058 (D.N.D. 1974)

Carl Colteryahn Dairy, Inc. v. Western Pennsylvania Teamsters & Employers Pension Fund, 847 F.2d 113 (3d Cir. 1988)

Castle Oil Corp. v. Thompson Pension Employee Plans, Inc., 2001 N.Y.Misc. Lexis 1257 (N.Y.Sup.Ct. 2001)

Central States, Southeast & Southwest Areas Pension Fund v. Midwest Motor Express, Inc., 181 F .3d 799 (7th Cir. 1999)

Champagne v. Unity Indus. Life Ins. Co., 161 So. 52, 53, *reh. den*., 161 So. 783 (La. App. 1935)

Checkosky v. Securities & Exchange Commission, 23 F.3d 452 (D.C. Cir. 1994)

CIE Service Corp. v. Milliman & Robertson, 95-4110-CV-C-SOW, *Third Amended and Supplemental Complaint (W.D.Mo. Jul. 1,* 1997)

Cases (continued)

Clinton Mills, Inc. v. Alexander & Alexander, Inc., 687 F.Supp. 226 (D.S.C. 1988)

Connell Industries, Inc. v. Arthur J. Gallagher & Co., 1991 U.S. Dist. Lexis 900 (N.D.I11. 1991)

Cunha v. Ward Foods, Inc., 501 F.Supp. 830 (D. Hawaii 1980)

Dellefield v. TPF&C, 1993 U.S.Dist. Lexis 4673 (N.D.Ill. 1993)

Delmar Vineyard v. Timmons, 486 S. W. 2d 914, 920 (Tenn. App. 1972).

Delta Holdings, Inc. v. National Distillers and Chemical Corp., 945 F.2d 1226 (2d Cir. 1991), *cert. denied,* 508 U.S. 985 *(1992)*

Dill v. Wood Shovel & Tool Co., 1972 U.S.Dist. Lexis 14098 (S.D.

Employee Staffing Of America, Inc. v. William M. Mercer, Inc., 1998 US Dist. Lexis 3104 (S.D.N.Y. 1998)

Equity Funding, In re, 416 F.Supp. 161 (C.D.Cal. 1976)

Farmham v. Watson Wyatt & Co., 3:99-CV-00792 (D.Conn. Feb. 27, 2001)

Firement's Mutual Ins. Co. v. High Point Sprinkler Co., 266 N.C. 134 146 S.E.2d 53 (1966).

Gallagher Corp. v. Massachusetts Mutual Life Insurance Co., 105 F.Supp. 2d 889, 899 (N.D.I11. 2000)

Gallagher Corp. v. Russ, 721 N.E.2d 605 (III.App.Ct. 1999)

Gammel v. Ernst & Ernst, 245 Minn. 249, 72 N.W.2d 364, 367 (1955)

George Knight & Co. v. Watson Wyatt & Co., 170 F.3d 210 (1st Cir. 1999)

Georgia State Bd. v. Friedman's Jewelers, 183 Ga. 669, 189 S.E. 238, 241 (1936).

G*erosa v. Savasta, 1*89 F.Supp.2d 137 (S.D.N.Y. 2002)

GFN Corp. v. KPMG Peat Marwick, 2002 Fla.App. Lexis 3930

(Fla.Ct.App. 2002)
Great Central Insurance Co. v. Insurance Services Office, 74 F.2d 778 (7th Cir. 1996)

Greene v. AMS Life Insurance Co., CV 1992-005232, Minute Entry (Ariz.Super.Ct.Sep. 5, 2001)

Gross v. National Ass'n of Home Builders of the United States, No. 96-00472-E (Tex.Dist.Ct. 1996)

Home State Holdings, Inc. v. PriceWaterhouseCoopers, No. 98-35720/SAS & 98-35723 (D.N.J.Bktcy. 1998)

Horton v. CIGNA Individual Financial Services Co., 825 F.Supp. 852 (N.D.III. 1993)

Isaacs v. Group Health, Inc., 668 F.Supp. 306 (S.D.N.Y. 1987)

King County Employee Ass'n v. State Employee's Retirement Bd., 54 Wash. 2d 1, 336 P.2d 387, 391 (1959)

Lawrence Ins. Group, Inc. v. KPMG Peat Marwick, LLP, Summons, (N.Y.Sup.Ct., Albany County, Dec. 30, 1996)

Leggett v. Missouri State Life Ins. Co., 342 S.W.2d 833, 915 (Mo. 1960).

Los Angeles County Employees Retirement Association v. Towers, Perrin, Forster & Crosby, Inc., CV-01-1351-DDP (C.D.Cal. Feb. 9, 2001)

Louisiana Oilfield Contractors Ass'n v. International Surplus Lines Insurance Co., 610 So.2d 1036 (La.Ct.App. 1992)

Mertens v. Hewitt Assocs., 948 F.2d 607 (9th Cir. 1991), aff'd, 508 U.S. 248 (1993)

Michigan Retail Hardware Assoc. v. Zak, 1993 U.S.Dist. Lexis 5927 (W.D.Mich. 1993)

Nachman Corp. v. Pension Benefit Guaranty Corp., 336 U.S. 360, 100 S.Ct. 1723 (1980)

National Home Insurance Co. v. Towers, Perrin, Forester & Crosby, Inc., 94 CV 0705, Complaint (Colo.Dist.Ct. Feb. 10, 1994)

Orthopaedic Clinic of Monroe v. Ruhl, 786 So.2d 323 (La.App. 2001)

Owyhee County v. Rife, 100 Idaho 91, 593 P.2d 995 (1979).
<u>*(Cases continued)*</u>

Pappas v. Buck Consultants, Inc., 923 F.2d 531 (7th Cir. 1991)

Parrott v. Coopers & Lybrand. L.L.P., 95 N.Y.2d 479. 741. N.E.2d

Potomac Eng'rs v. Walser, 127 f. Supp. 41, 42, aff'd 223 F.2d 356 (D.C. Cir.1955)

Pension Benefit Guarantee Corp. v. Buck, cited in Morais, "Faulting The Fortune-Tellers", Forbes, Oct. 21, 1985

Pension Benefit Guaranty Corp. v. R.A. Gray & Co., 467 U.S. 717, 104 S.Ct. 2709 (1984)

Redall Industries, Inc. v. Wiegand, 878 F.Supp. 1026 (E.D.Mich.1995)

Resolution Trust Corp. v. Massachusetts Mutual Life Insurance Co., 20 F.R.D. 183 (W.D.N.Y. 2001)

Richards v. Union Labor Life Insurance Co., 804 F.Supp. 1101 (D.Minn. 1992)

Sabey v. Howard Johnson & Co., 5 P.3d 730 (Wash.App. 2000

Saffo v. Occidental Life Insurance Co., 602 F.2d 1265 (8th Cir.

Sard v. Hardy, 281 Md. 432, 379 A.2d 1014 (Ct. App. 1977)

Scardelletti v. Bobo, 1997 U.S.Dist. Lexis 14498 (D.Md. 1997)

State Street Trust Co. v. Ernst, 278 N.Y. at 15 N. E.2d at419.

Steiner Corp. Retirement Plan v. Johnson & Higgins, 31 F.3d 935 10th Cir. 1994

Steiner Corp. v. Johnson & Higgins, 118 F. Supp. 2d 1174 (D. Utah 2000), *affd,* U.S.App. Lexis 22581 (10thCir. 2001)

Steiner Corp. v. Johnson & Higgins, 135 F.3d 684 (10th Cir. 1998)

Stewart v. Citizens Casualty Co., 61 Misc. 2d 809, 810 (N.Y.Sup. Ct. 1969)

(Cases continued)

Superior National Insurance Group, Inc. v. Foundation Health Systems, Inc., (N.D.Calif.Bktcy.2000)

Torchmark Corp. v. Rice, 945 F.Supp. 172 (D.Ark. 1996)

Torphy v. Touche Ross & Co., 82-CV-004033 (Wis.Cir.Ct. 1982)

United States v. Bowler, 2001 U.S.App.Lexis 10803 (5^{th} Cir. 2001)

United States v. Consumer Life Ins. Co., 430 U.S. 725 (1977)

United States v. Zazove, 334 U.S. 602 (1948)

United Teacher Associate Insurance Co. v. MacKeen & Bailey, Inc. 847 F.Supp. 521 (W.D.Tex. 1994), aff'd in part, rev'd in part, 99 F.3d 645 (5^{th} Cir. 1996)

Webb v. Mason, Cause No. 99-08253, Compliant (Tex.Dist.Ct. Sep. 17, 1999)