

# TALES FROM THE DARK SIDE



AMERICAN ACADEMY *of* ACTUARIES

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December 17, 2021

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# Presenters

- **David Driscoll, MAAA, FSA, FCA, EA**  
Chairperson, Actuarial Board for Counseling and Discipline
- **Al Beer, MAAA, FCAS**  
Member, Actuarial Board for Counseling and Discipline
- **Godfrey Perrott, MAAA, FSA**  
Member, Actuarial Board for Counseling and Discipline
- **Moderator: Brian Jackson, JD**  
Academy General Counsel and Director of Professionalism



# Agenda

- Overview of the ABCD
- Overview of the inquiry process
- Case Studies: Exploration of the Dark Side
- Conclusion



# Overview of the ABCD



# ABCD Membership, 2021

## Member

David Driscoll, Chairperson

Debbie Rosenberg, Vice Chairperson

Alice Rosenblatt, Vice Chairperson

Al Beer

William Hines

Richard Kutikoff

Godfrey Perrott

John Schubert

Edward Lee

## Area of Practice

Pension

Casualty

Health

Casualty

Life

Pension

Life

Health

ABCD Counsel



# ABCD Membership, 2022

## Member

David Driscoll, Chairperson

Al Beer, Vice Chairperson

John Schubert, Vice Chairperson

Shawna Ackerman

April Choi

Tammy Dixon

William Hines

Richard Kutikoff

Godfrey Perrott

Edward Lee

## Area of Practice

Pension

Casualty

Health

Casualty

Health

Pension

Life

Pension

Life

ABCD Counsel



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# The ABCD



## Actuarial Board for Counseling and Discipline (ABCD)

- Launched Jan. 1, 1992
- Two primary functions
  - Respond to requests for guidance (RFGs) on professionalism issues
  - Consider complaints about possible violations of the Code





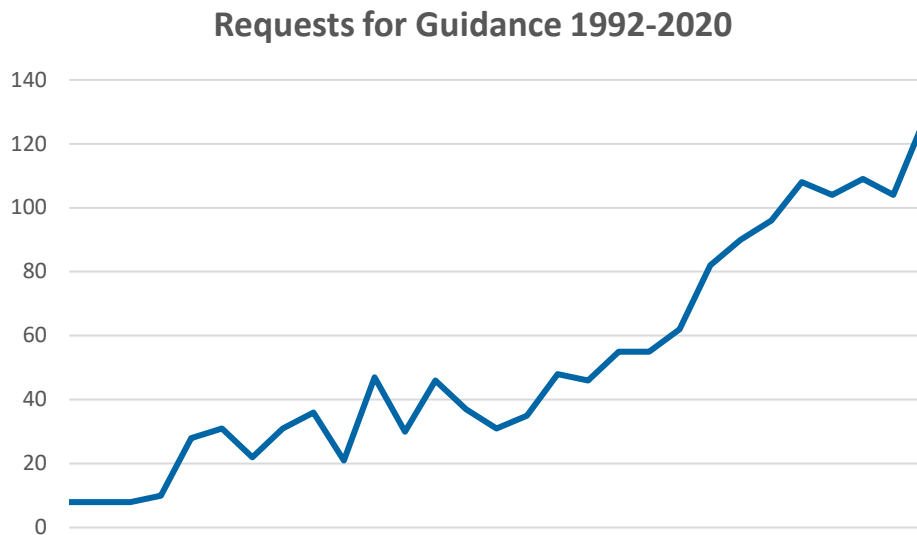
# Requests for Guidance

- Guidance on an actuarial matter that you believe may affect your obligations under the Code
- Confidential advice on appropriate professional practice from an individual member of the ABCD



# ABCD Requests for Guidance

- There has been a significant increase in RFGs over the years.



# Overview of the Inquiry Process



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# ABCD Inquiry

- Based on complaint from individual, typically
  - ▣ Client
  - ▣ Regulator
  - ▣ Another actuary
- At ABCD's initiative
  - ▣ Based on public document that suggests possible violation



# An ABCD Inquiry...

- ❑ Is a fact-finding, not an adversarial, forum.
- ❑ Determines whether the subject actuary materially violated the Code of Professional Conduct.
- ❑ Recommends discipline, when appropriate, to membership organization.

The ABCD cannot impose discipline. Membership organizations determine whether to impose discipline according to their own procedures.



# ABCD Inquiry Process

- Step 1: Initiation of Inquiry
- Step 2: Chairs' review
- Step 3: Investigation
- Step 4: ABCD consideration
- Step 5: Hearing
- Step 6: Deliberations
- Step 7: Refer to member organization(s) for discipline process



# ABCD Complaints Considered Each Year

Primary Practice Area of Subject Actuaries					
	2016	2017	2018	2019	2020
Casualty	6	5	6	13	3
Health	3	6	9	3	6
Life	4	6	5	6	17
Pension	20	24	19	12	21
Total	33	41	39	34	47



# ABCD Activity

Activity					
	2016	2017	2018	2019	2020
Cases in progress Jan. 1	14	19	26	17	14
New cases during period	19	22	13	17	33
Cases resolved during period	14	15	22	20	24
• Dismissed	9	9	6	12	19
• Dismissed with Guidance	1	2	7	1	2
• Counseling	2	1	7	5	2
• Recommended Discipline	2	3	2	2	1
Cases in progress Dec. 31	19	26	17	14	23



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# Disposition of Matters Brought Before the ABCD

Since Its Inception in 1992	
Dismissed	370
Dismissed with Guidance	93
Counseled	80
Mediated	12
Recommended Private Reprimand	7
Recommended Public Discipline	45
<b>Subtotal</b>	<b>607</b>
Request for Guidance	1,515
<b>Total</b>	<b>2,122</b>



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# Working Through Ethical Dilemmas

- ❑ Am I being compliant?
- ❑ Have I been complete and transparent in my disclosures?
- ❑ Am I upholding the reputation of the profession?
- ❑ Is it the right thing to do?



# Case Study 1

## Pressure at the Office



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# Case Study 1: Pressure at the Office

- Jim Halpert FCAS, MAAA, is the Chief Actuary for the publicly traded *Dunder Mifflin Insurance Company* (DMIC).
- The company president, Michael Scott, calls Jim into his office and shares with Jim the fact that the Board of Directors of DMIC has been “*very disappointed with the company’s recent stock price performance.*”
- Michael reminds Jim that DMIC has a significant component of its business in commercial liability lines and therefore its reserve position plays a “*very important role in the determination of Net Income, their stock price... and certainly corporate executive bonuses.*”



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# Case Study 1: Pressure at the Office

- Michael goes on to suggest that Jim be very careful in building any provision for social inflation into the reserves since *“as we all know, any provision would just be a wild guess at this time!”*
- In addition, Michael is insistent that Covid-19 had a significant but, as of yet, unknowable beneficial effect on Accident Year’s 2020 and 2021 loss experience.
- Michael concludes by telling Jim to be *“prudent”* in setting the year-end reserves since *“this is a critical year for the company and, after all, since these are long-tail lines, we will have plenty of time to, if necessary, correct them in the future.”*

- 21 □ Jim calls the ABCD to discuss his situation.



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# Case Study 1: Professionalism Considerations

- The Code identifies the responsibilities that actuaries have
  - ▣ to the public
  - ▣ to their clients and employers
  - ▣ to the actuarial profession
- PRECEPT 1. An Actuary shall act
  - ▣ honestly
  - ▣ with integrity and competence
  - ▣ to fulfill the profession's responsibility to the public
  - ▣ to uphold the reputation of the actuarial profession



# Case Study 1: Professionalism Considerations

## ***ASOP No. 43, Property/Casualty Unpaid Claim Estimates***

**3.6 Unpaid Claim Estimate Analysis**—The actuary should consider factors associated with the unpaid claim estimate analysis that, in the actuary's professional judgment, are material and are reasonably foreseeable to the actuary at the time of estimation. The actuary is not expected to become an expert in every aspect of potential unpaid claims.

**3.6.2 Assumptions**—The actuary should consider the reasonableness of the assumptions underlying each method or model used. Assumptions generally involve significant professional judgment as to the appropriateness of the methods and models used and the parameters underlying the application of such methods and models.



# Case Study 1: Professionalism Considerations

## ***ASOP No. 43, Property/Casualty Unpaid Claim Estimate***

**3.6.7 Changing Conditions**—The actuary should consider whether there have been significant changes in conditions, particularly with regard to claims, losses, or exposures, that are likely to be insufficiently reflected in the experience data or in the assumptions used to estimate the unpaid claims.

**3.7.1 Reasonableness**—The actuary should assess the reasonableness of the unpaid claim estimate, using appropriate indicators or tests that, in the actuary's professional judgment, provide a validation that the unpaid claim estimate is reasonable. The reasonableness of an unpaid claim estimate should be determined based on facts known to, and circumstances known to or reasonably foreseeable by, the actuary at the time of estimation.



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# Case Study 1: Professionalism Considerations

Possible topics of discussion between Jim and Michael:

- 1) Jim is obligated to apply “*professional judgment*” in assessing the “*reasonableness*” of his assumptions.
- 2) Jim can emphasize (and document) the fact that he used all available DMIC and industry data to determine a *balanced, unbiased estimate* of ultimate loss and expense.
- 3) Jim could point out the following advantages to DMIC of complying with professional standards:
  - Auditors questioning the reserve position would create difficult *Board* and *regulatory* issues.
  - *Analysts* and *investors* highly value stability in the reserve process from year to year.

# Case Study 1: Pressure at the Office

Questions?



# Case Study 2

## Missing Records



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# Case Study 2: Missing Records

## Setting the Stage

- ❑ Clampett is a large health insurer active in the Medicare/Medicaid market.
- ❑ Jethro Bodine, MAAA, FSA, is an actuary who was employed by Clampett.
- ❑ Bodine signed the Medicare Advantage bids for Clampett for 2014 and 2015.
- ❑ At the time Clampett was disputing the member counts with CMS. CMS's database had lower numbers than Clampett's internal data.
- ❑ Bodine used the CMS member counts and the Clampett claim costs in his filing.
- ❑ Bodine had a falling out with Clampett in 2016 and did not leave on good terms.



# Case Study 2: Missing Records

## The Complaint

- A complaint was filed with the ABCD in 2020 asserting that Bodine violated Precept 1.
- The CMS member counts were lower than Clampett's, so using those along with Clampett's claim costs increased the per member per month unit costs (to Clampett's benefit).
- The complainant contended that using mismatched claims and membership data was not acting "honestly, and with integrity," which is required by Precept 1.



# Case Study 2: Missing Records

## The Hearing

- The ABCD hired an investigator to investigate the complaint.
- On the basis of the investigator's report, the ABCD decided to hold a hearing and asked Bodine to attend and explain why he had not violated Precept 1.
- At the hearing, Bodine apologized that he had been unable to find or get copies of the filing and associated communication with CMS. He noted that the filings were at least 6 years old.
- He stated he believed he had disclosed the membership and claims data he had used and that he had used the CMS membership data to avoid antagonizing them. CMS and Clampett were trying to resolve the issue of discrepancies, and he did not want to upset that.



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# Case Study 2: Missing Records

## What can we learn

- ❑ Problems take time to mature, and by then our memory may be hazy.
- ❑ We may not be able to get copies of reports and correspondence from a prior employer (especially if we did not leave on good terms).
- ❑ The employer owns the data, and we most likely cannot take a copy with us legally. However, we can identify the data sets we used in our notes and take those with us.



# Case Study 2: Missing Records

## Questions?





# Case Study 3

My client won't let me be reasonable



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# Case Study 3: My client won't let me be reasonable

- Wilma Flintstone, FCA, ASA, MAAA works for a state agency that (among other things) reviews valuations prepared for local retirement systems in her state for compliance with state regulations.
- Wilma is reviewing the latest actuarial valuation report (containing both funding and accounting results) prepared by Barney Rubble, FSA, EA for the Retirement Plan for Employees of the Town of Bedrock.
- Wilma observes that the Town of Bedrock's plan contains a cost-of-living adjustment (COLA) provision, but that it is not described or acknowledged anywhere in the report.



# Case Study 3: My client won't let me be reasonable

- ❑ The COLA provision of the Bedrock plan is similar to that found in the majority of local retirement systems in the same state.
- ❑ If the plan had a funded percentage above 80% in its most recent valuation, the plan may grant a COLA to retirees in an amount not to exceed the increase in the CPI over the most recent plan year.
- ❑ The increase is discretionary—i.e., if the funded percentage is high enough, the trustees of the plan may vote to implement a COLA, but they do not have to do so.
- ❑ Bedrock plan's history indicates that COLAs have been implemented in about 75% of the years in which they could be.



# Case Study 3: My client won't let me be reasonable

- In view of this history, Wilma writes to Barney to ask why his report does not mention the COLA provision at all.
- Barney replies that he is fully aware of the COLA provision, but that he implicitly assumes that future COLAs are zero, since the trustees do not have to implement them.
- Wilma writes back to note the following:
  - ASOP No. 4 states that the actuary should reflect all significant plan provisions known to the actuary as appropriate for the purpose of the measurement.
  - If a significant provision is omitted, the actuary should disclose the omission.

# Case Study 3: My client won't let me be reasonable

- At a minimum, Barney's report should have noted the existence of the COLA provision and either stated that omission of the provision was appropriate for the purposes of the measurement, or that the assumed rate of future COLAs was zero.
  - Bedrock's history of implementing non-zero COLAs in most years in which it is an option makes both approaches questionable.
  - So, the best thing for Barney to do would be to reissue the report to include a description of the COLA provision and a reasonable assumption for future COLAs.
- Barney asks Wilma if they can discuss the matter by telephone, which she agrees to do.



# Case Study 3: My client won't let me be reasonable

- On the call, Barney tells Wilma the following:
  - He agrees that ignoring the COLA or assuming it is zero is “not ideal.”
  - Unfortunately, the predecessor actuary for the Bedrock plan handled the COLA in this way, and his efforts to get the trustees to agree to a more appropriate assumption have been unsuccessful.
  - He'd love to insist on a non-zero COLA assumption, but ultimately “the trustees pick the assumptions,” so he feels his hands are tied.
- Wilma's response
  - The present treatment of the COLA provision in the valuation raises compliance issues with respect to ASOP Nos. 4, 27, and 41.



# Case Study 3: My client won't let me be reasonable

- Regarding Barney's assertion that "the trustees pick the assumptions," and his hands are tied, Wilma reminds Barney:
  - ▣ ASOP Nos. 27 and 41 distinguish between assumptions set by another party and those set by law.
  - ▣ The assumptions adopted by the Bedrock trustees constitute assumptions set by another party under these definitions.
  - ▣ Failure to state that assumptions set by another party are not reasonable, or that their reasonableness cannot be determined, implies that the actuary considers such assumptions reasonable.
  - ▣ In its present form, Barney's report implies that Barney accepts the assumption of no future COLAs as reasonable.



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# Case Study 3: My client won't let me be reasonable

## Questions?





# Case Study 4

## Programmer or Actuary?



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# Case Study 4: Programmer or Actuary? (Scenario 1)

- Anthony DiNozzo, FCAS, MAAA, works at a mid-sized consulting firm, National Corporate Insights and Solutions (NCIS). Anthony's primary responsibility is leading loss reserve reviews for insurance company clients. He is a talented programmer, and often helps with complex system projects.
- Managing Principal of NCIS, Leroy J. Gibbs, CPA, has just landed an assignment with Online Retail, a national manufacturing company.



# Case Study 4: Programmer or Actuary? (Scenario 1)

- ❑ Leroy assigns project to Anthony
- ❑ Anthony and Leroy discuss engagement letter
- ❑ Leroy wants to pull out disclosures
- ❑ Anthony calls the ABCD for guidance



# Case Study 4: Professionalism Considerations

- Scenario 1 – RFG discussion
  - Is this work considered *Actuarial Services*?
  - Is it subject to *Actuarial Standards of Practice*?

# Case Study 4: Professionalism Considerations

## From the Code:

### Actuarial Services

- *“Professional services provided to a Principal by an individual acting in the capacity of an actuary. Such services include the rendering of advice, recommendations, findings, or opinions based upon actuarial considerations.”*

# Case Study 4: Programmer or Actuary? (Scenario 2)

- Anthony begins the project.
- He notices that returns for certain products follow distinct “*development patterns*” depending on the reason why a customer returned the product.
- Anthony meets with Don Mallard and gets a new assignment to apply loss development to Online’s returns.



# Case Study 4: Professionalism Considerations

## □ Scenario 2

- Is this work considered *Actuarial Services*?

- Is it subject to *Actuarial Standards of Practice*?



# Case Study 4: Professionalism Considerations

## From the Code:

### Actuarial Services

- *“Professional services provided to a Principal by an individual acting in the capacity of an actuary. Such services include the rendering of advice, recommendations, findings, or opinions based upon actuarial considerations.”*





# Case Study 4: Programmer or Actuary? (Scenario 2)

## Questions?



# Case Study 5

## **“Winter Is Coming”**

In Bermuda, this means we are entering the Reserve season.



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# Case Study 5: “Winter is Coming”

- ❑ Denise Targaryen, FCAS, MAAA, is a Managing Director at a global accounting firm. She is well respected within the organization and is asked by the Head of the London office, Jon Snow, to conduct an extensive reserve study for his Bermuda based client, *StarkHouse Insurance LTD*.
- ❑ When Denise shares her draft report with Jon, he tells her that it is “*much too lengthy and includes too many extraneous disclosure items. The client doesn’t want such a complex report.*”



# Case Study 5: “Winter is Coming”

- ❑ Denise points out that the report has been prepared in conformance with all the appropriate Actuarial Standards of Practice.
- ❑ Jon argues that ASOPs are for U.S. work and don’t apply in Bermuda. In addition, he suggests that, since it will be prepared as a work product of their firm, it only needs to satisfy appropriate accounting standards.
- ❑ Denise calls the ABCD to discuss her situation.



# Case Study 5: Professionalism Considerations

## **CODE OF PROFESSIONAL CONDUCT**

**PRECEPT 3.** An Actuary shall ensure that Actuarial Services performed by or under the direction of the Actuary satisfy applicable standards of practice.

- **ANNOTATION 3-1.** It is the professional responsibility of an Actuary to observe applicable standards of practice that have been promulgated by a Recognized Actuarial Organization for the jurisdictions in which the Actuary renders Actuarial Services, and to keep current regarding changes in these standards.
- **ANNOTATION 3-2.** Where a question arises with regard to the applicability of a standard of practice, or where no applicable standard exists, an Actuary shall utilize professional judgment, taking into account generally accepted actuarial principles and practices.
- **ANNOTATION 3-3.** When an Actuary uses procedures that depart materially from those set forth in an applicable standard of practice, the Actuary must be prepared to justify the use of such procedures.

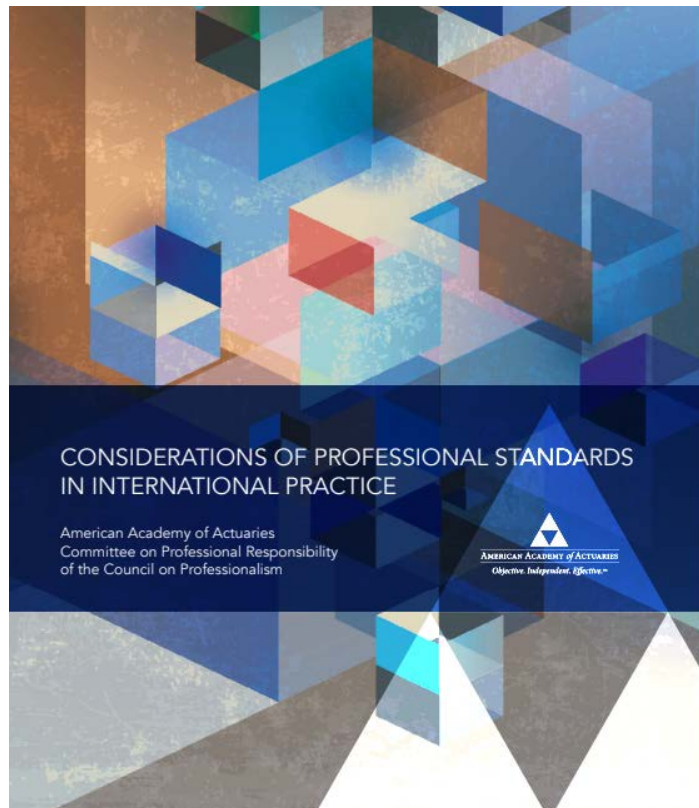


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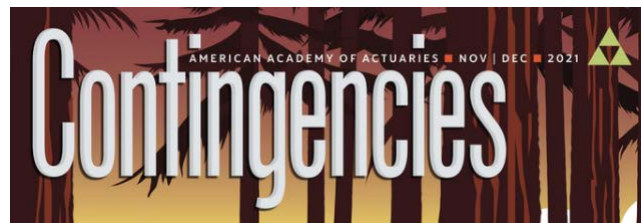
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# Case Study 5: Professionalism Considerations



# Case Study 5: Professionalism Considerations



| Up To Code | WILLIAM HINES

## Where Do You Practice?

I WORK FOR A U.S.-BASED OFFICE of an international consulting firm. I joined the firm more than 20 years ago when many of our clients were based in the areas local to my office. But consolidation in the insurance industry has reduced the number of local insurers and increased the international presence of many of the remaining companies.

The evolution of regulatory systems and innovation in the funding of insurance reserve and capital requirements have made it more common for insurers to move business from one jurisdiction to another to minimize the cost of providing insurance products. As a result, my current client base is from jurisdictions all over the world, with a large part of my practice focused on insurers based in Bermuda and the Cayman Islands. The parent companies of these insurers are often based in other countries. If I am a U.S.-based actuary providing services to

an entity in another country and might also be providing services to its parent in a third country, what code of conduct and standards of practice do I follow?

The Code of Professional Conduct ("Code") in the United States applies to any member of the five U.S.-based organizations, all of which have adopted it, and to all of such actuary's conduct (whether or not the actuary is performing actuarial work), regardless of the jurisdiction in which the conduct occurs. The Code as we know it today was promulgated by the U.S.-based actuarial organizations,

effective January 1, 2001. It was adopted by all U.S.-based actuarial organizations without variation. The Code is the glue that ties all other U.S. professionalism elements together—namely, the U.S. Qualification Standards, the Actuarial Standards Board, and the Actuarial Board for Counseling and Discipline. When practicing internationally, the Code provides the framework for understanding your responsibilities and managing professional risk.

### Qualification Standards

Precept 2 of the Code requires actuaries to perform professional services only when they are qualified to do so on the basis of basic and continuing education and experience. Precept 2 also requires actuaries to satisfy applicable qualification standards for the jurisdiction in which they provide Actuarial Services.

Annotation 2-1. It is the professional responsibility of an Actuary to observe applicable qualification standards that have been promulgated by a Recognized Actuarial Organization for the jurisdictions in which the Actuary renders Actuarial Services and to keep current regarding changes in these standards.

Annotation 2-2. The absence of applicable qualification standards for a particular type of assignment or for the jurisdictions in which an Actuary renders Actuarial Services does not relieve the Actuary of the responsibility to perform such Actuarial Services only when qualified to do so in accordance with this Precept.



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# Case Study 5: Professionalism Considerations

- Is Denise's work subject to *Actuarial Standards of Practice*?
- If so, which one? (US? Bermuda? UK? Other?)



# Case Study 5: “Winter is Coming”

## Questions?



# Case Study 6

## The Valuation Report that Got Away



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# Case Study 6: One that Got Away

- ❑ Wally Cleaver, FSA, MAAA, EA, is an actuary living in the idyllic City of Mayfield. His actuarial consulting firm is engaged to provide services to the Mayfield Municipal Retirement System.
- ❑ Wally's lifelong friend, Eddie Haskell, is a prominent citizen who serves on the Board of Trustees of the Mayfield Municipal Retirement System.
- ❑ Eddie is also the chair of Mayfield Citizens for Limited Taxation.
- ❑ Pension benefits are a major point of contention in current bargaining between the City of Mayfield and its employees.



# Case Study 6: One that Got Away

- In the course of these negotiations, Eddie issues a press release stating that the city cannot afford to provide any improvements in pension benefits for Mayfield employees, and that pension benefits for future new hires may have to be cut back or even replaced by a modest defined-contribution plan.
  - Eddie cites Wally's most recent actuarial valuation report for the Municipal Retirement System as proof of his assertions.
  - Eddie circulates a copy of the report that he has embellished in several ways to highlight the alleged unaffordability of the plan.
  - Prior to Eddie's edits, Wally's valuation reports indicated that the plan is 75% funded as of the most recent valuation date and expressed no opinion on the affordability of the plan for new hires.



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# Case Study 6: One that Got Away

- The unions representing the employees of the City of Mayfield are outraged by the use of the actuarial valuation report to question the viability of the plan.
- They hold a press conference to rebut Eddie's claims.
- They also file a complaint against Wally with the ABCD, alleging that Wally has materially violated Precept 8 of the Code of Professional Conduct by failing to take reasonable steps to prevent his work product from being used to mislead others.
- They also allege that Wally's friendship with Eddie created a conflict of interest and should have been disclosed under Precept 7 of the Code.



# Case Study 6: One that Got Away

If Wally's actuarial report included the following statement:

Cleaver Actuaries, LLC, prepared this report for the exclusive use of the trustees and staff of the Mayfield Municipal Retirement System and its auditors in their review and determination of the funding of the system. Use of this report by other parties may not be appropriate and may result in mistaken conclusions because of failure to understand applicable assumptions, methods, or the inapplicability of the report for purposes other than those intended. Cleaver Actuaries should be asked to review any statement to be made on the basis of the results presented in this report. Cleaver Actuaries will accept no responsibility for any such statement made without its prior review.

does this exonerate Wally from the charge that he violated Precept 8?



# Case Study 6: One that Got Away

- Eddie was able to alter Wally's report because it was provided to the Mayfield Municipal Retirement System Trustees in an unprotected form. To comply with Precept 8, should Wally have provided his report in a form that is less easily altered by others (e.g., a protected PDF)?
- Does the answer to the last question change at all if it is also known that the Mayfield Municipal Retirement System posts actuarial valuation reports on the City's website, where they are accessible by anyone with an interest in the retirement system?
- Does Wally's friendship with Eddie require disclosure under Precept 7 of the Code?



# Case Study 6: One that Got Away

Questions?





# Closing Thoughts

- ❑ Consult your key professionalism documents often.
  - ❑ Code of Professional Conduct (Code)
  - ❑ Actuarial Standards of Practice (ASOPs)
  - ❑ U.S. Qualification Standards (USQS)
- ❑ Use the RFG process if you are up against a professionalism problem – it is quick, easy, and helpful.
  - ❑ It is your lifeline as an actuary.
- ❑ Talk to colleagues – don't be a loner (but keep Precept 13 in mind).



# Closing Thoughts

- Knowledge of the Code and the ASOPs is important in maintaining a high level of professionalism as an actuary.
- While ethical considerations animate our professional standards, being ethical involves more than just adherence to professional standards; it means thinking about what is right in all of your dealings with others.
  - Try to learn from examples, particularly those involving “grey areas.”
  - Don’t be afraid to second-guess yourself.

