

**PROFESSIONAL OPINION
OR
PROFESSIONAL NEGLIGENCE?**

Before Mr R. J. L. THOMAS, Q.C.
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MOCK CROSS EXAMINATION OF A GENERAL INSURANCE ACTUARY

GENERAL insurance actuaries are acutely aware that any projection of claim reserves could prove to be materially deficient in the light of subsequent events. The actuary will endeavour to ensure that the recipient of any projection undertaken fully understands this; but are the words used by the actuary sufficient to convey this message to the client? Under cross examination in a court of law, could the actuary's professional opinion be made to look more like professional negligence?

The particular hypothetical case considered at the meeting concerned a firm of consulting actuaries. It had, for a number of years, provided an insurance company, the subsidiary of a multinational financial conglomerate, with an opinion on the adequacy of the level of reserves established by the claims and internal actuarial departments within that insurance company.

After the firm had produced its report as at 31 December 1990, the number and amounts of claims on the company had increased. The impact of the adverse developments was such that the report as at 31 December 1992 showed that the company was under-reserved and was insolvent.

The conglomerate and the company sued the firm, alleging that they would have taken remedial action in 1991 had they received a proper actuarial assessment and adequate advice from the actuaries as to the possibility of the reserves established at 31 December 1990 being so deficient.

The meeting took the form of the cross examination of one of the consulting actuaries, the summing up by the judge, and a discussion of the issues involved.

A number of the major issues raised are highlighted below, and concern how much the actuaries should have known, how far they should have made enquiries and informed themselves about any potential problems that could have befallen the insurer, and how they should have worded their report.

What duty do actuaries have to make themselves aware of what is happening that might affect their clients? If they are aware of any possibility of adverse circumstances, these should be highlighted, if only for the sake of protecting

themselves against any possible liability in the future. When enquiries get to areas where there are no answers, then qualifications should be made in the report, setting out the work done precisely, and drawing conclusions from it.

It is the actuary's job to ask the right questions. If the right questions have not been asked, and an opinion is expressed on the basis of facts that are incomplete, but which would have been complete if the right questions had been asked, then there could be considerable difficulties.

Oral advice is always dangerous, and is to be avoided. Do not give advice unless the terms of reference have been set out and the qualifications added.

Actuaries should only work in areas where they have the knowledge and are qualified.

When writing a report, great care should be taken with the adequacy of, and the actual, wording. Actuaries should spell out precisely the basis on which they advise, and make it clear where their opinion is qualified. It is highly desirable to set out in a report precisely on what the actuaries are relying, to give emphasis to the possibility of adverse circumstances of which they are aware, and to state what the limitations are.