

## An Actuary Defends Herself

**T**HE FOLLOWING FICTIONAL PRESENTATION OF OPENING STATEMENTS in a lawsuit is purely hypothetical. It's intended to illustrate the many ways in which our profession's official standards can help an actuary give his or her clients a complete, sound, and accurate work product and guard against unfounded accusations.

**CASE:** *Aaron Burr Smith Inc. Widget Factory and Donut Shoppe (plaintiff) v. Alexandra Hamilton Jones, FSA, MAAA, MSPA, EA (defendant)*

**Counsel for the Plaintiff:** Winthrop Litigious

**Counsel for the Defense:** I. M. Prepared

**Opening Statement:** Mr. Litigious

My client, Mr. Burr, employs 227 people in the town of Maple Corner at his well-known factory and restaurant and has been an outstanding member of the business community for over 40 years. Although he has no obligation to provide a pension benefit to his workers, for many years he has provided a generous retirement pension to eligible employees. The cost of this benefit is a significant one, and, in addition, Mr. Burr must cover the cost of setting up and administering the pension plan. Mr. Burr must hire accountants, attorneys, and even actuaries to make sure that the plan is properly funded and complies with all applicable federal and state laws.

For three years, Mr. Burr retained the defendant, Ms. Jones, to provide actuarial services to the plan. Based on her advice, he has set aside many thousands of dollars each year in contributions to provide those retirement pensions to his loyal employees. He was confident that he had hired a competent and qualified professional to calculate the right amount of contributions to pay for the benefits he had promised to his employees. He made crucial business decisions based on the calculations made by Ms. Jones.

However, last year, Mr. Burr decided to hire a different pension actuarial firm to calculate the amount of contributions. He did not have a complaint about Ms. Jones' work, but the enrolled actuary at the new firm agreed to do the same work for a significantly smaller fee. The new firm calculated much higher contributions for the very same pension benefits.

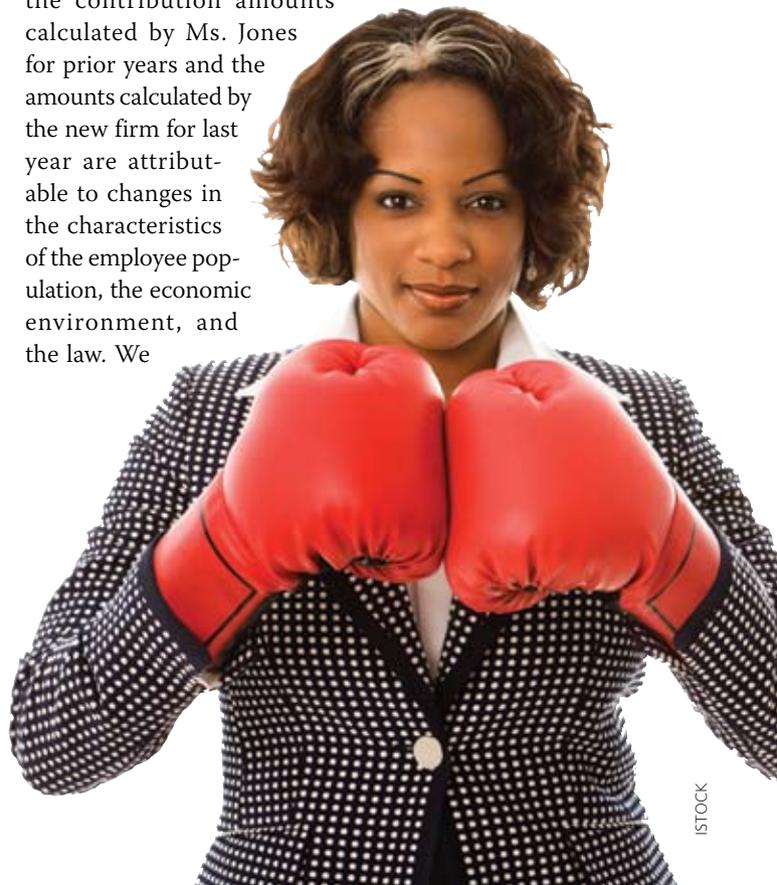
Not only were the new contribution amounts substantially higher than those calculated by Ms. Jones for previous years; the documentation provided by the new firm included items that had never been provided by

Ms. Jones. We intend to demonstrate that Ms. Jones incorrectly calculated contributions, failed to check data quality and the impact of poor data on valuation results, and failed to disclose to Mr. Burr the limitations inherent in these calculations. The result is a severely underfunded pension plan that will require significantly greater contributions in the future.

We ask the court to award \$5,000,000 in damages to our client because of the financial losses inflicted on his business due to the bad advice received from Ms. Jones.

**Response from the Counsel for the Defense:** Mr. Prepared

The work done by my client, Ms. Jones, for Mr. Burr's company was accurate, professional, clearly communicated, and in compliance with every federal and state law that applies to pension plans. We will hear testimony later from Ms. Jones and also from Monty Hall, an expert witness with the actuarial consulting firm Many Smart People Inc. These experts will show that the differences between the contribution amounts calculated by Ms. Jones for prior years and the amounts calculated by the new firm for last year are attributable to changes in the characteristics of the employee population, the economic environment, and the law. We



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will also demonstrate that the assumptions and processes used by Ms. Jones were appropriate and reasonable. In addition, the new items of documentation provided by the new firm are required by the federal law changes made by the Pension Protection Act of 2006, and those items were not even available in prior years.

We have introduced documents labeled as Exhibits 1 through 62, which include the reports prepared by Ms. Jones and given to Mr. Burr; copies of the Code of Professional Conduct, the Actuarial Standards of Practice (ASOPs), and the Qualification Standards with which Ms. Jones complied in doing the work; and actual dated, signed documents from Ms. Jones' files showing the work.

The reports prepared by Ms. Jones for the Burr pension plan clearly describe all of the assumptions used in the calculations. The report goes on to give the pertinent provisions of the pension plan, to lay out the actuarial methods and assumptions used in the calculations, to describe the data used for the calculations, and to describe the reasons that the results are estimates, from which future experience may vary.

Precept 4 of the code states, "An Actuary who issues an Actuarial Communication shall take appropriate steps to ensure that

the Actuarial Communication is clear and appropriate to the circumstances and its intended audience and satisfies applicable standards of practice." Ms. Jones has clearly followed this requirement, as well as the rest of the code, as will be verified later by our expert witness, Mr. Hall.

Going further, Ms. Jones has documented her compliance with the actuarial standards of practice that applied to this work. The relevant sections include a statement in Section 3.3.3 of ASOP No. 41 that the report should disclose "the data, assumptions, and methods used by the actuary with sufficient clarity that another actuary qualified in the same practice area could make an objective appraisal of the reasonableness of the actuary's work as presented in the actuary's report."

As you will see from the testimony of Mr. Hall, Ms. Jones has prepared the report such that her pension actuarial peers could understand how the underlying calculations were done. She also prepared her report so that Mr. Burr could understand her advice and the basis for it.

As required by the profession's Qualification Standards, Ms. Jones states on the first page of the reports, "I, Alexandra H. Jones, am a self-employed consulting actuary. I am a member of the Conference of Consulting Actuaries, the Society of Actuaries, the American Academy of Actuaries, the American Society of Pension Professionals and Actuaries, and an Enrolled Actuary under the Joint Board for the Enrollment of Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein."

Ms. Jones has thoroughly documented her work. Exhibits 2 through 62 include the following papers from the original work files:

- › A description of what was done and why;
- › Details of the calculations that allow another qualified actuary to review the work for reasonableness;
- › A record of what Mr. Burr was told and when, with notes of phone conversations;
- › A list of questions that were asked by Mr. Burr and what was answered;
- › A formal document retention policy;
- › A list of applicable laws and standards;
- › Details of each final calculation;
- › A description of errors and how the corrections were made.

Needless to say, the defendant in this fictional case, Ms. Jones, is well positioned to successfully defend herself. Of course, there is always the chance the jury or judge will disagree.

Although we all hope never to be in the position of being accused of having done unprofessional work, proper documentation of our compliance with the Code of Professional Conduct, the Actuarial Standards of Practice, and the Qualification Standards can make this unpleasant experience as short and painless as possible, increasing the likelihood of a successful outcome for the actuary.



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**Alan Irish or Mary O'Connell**

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