



CAA News

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S. Michael McLaughlin SOA President 2009 - 2010



S. Michael McLaughlin will be installed as the President of the Society of Actuaries during its annual meeting in Boston, October 25-28, 2009. The Caribbean Actuarial Association congratulates Mike on this fantastic achievement and we wish him success during his term. Mike is a Fellow, Society of Actuaries, Chartered Enterprise Risk Analyst (CERA), a member of the American Academy of Actuaries and a Fellow, Institute of Actuaries.

Mike McLaughlin is currently a principal with Deloitte Consulting LLP. He is the leader of the US life actuarial practice and coordinates the firm's international actuarial and insurance solutions practice. This practice covers life and property-casualty actuaries, risk managers and Actuarial Quantitative Solutions analysts. The life actuarial practice provides financial reporting, actuarial modeling, merger & acquisition, product development and enterprise risk management services mainly to Deloitte's insurance industry clients.

Mike has been in the insurance industry for over 30 years. He has had a varied working career, working with insurance companies and consulting firms. Mike was Executive Vice President and Chief Actuary of AXA Financial and was a Principal at Ernst & Young LLP and KPMG Peat Marwick LLP. He has worked in all areas of the insurance industry including life insurance, annuity, disability, reinsurance, credit and home service business, pricing, financial reporting, M&A and capital and risk management.

Mike grew up in Jamaica and studied at the University of the West Indies, Mona Campus. He also attended the University of Waterloo, Canada. His career started with in Jamaica with British American Insurance Company. He qualified as a Fellow of the Institute of Actuaries in 1977.

Mike has been actively involved in the actuarial profession for several years. He chaired the Joint Risk Management Section Organising Committee of the Society of Actuaries and the Chartered Enterprise Risk Analyst credential. He also served on actuarial committees on Fair Value reporting, dealing with including IFRS, FAS 157/159, and Principles-Based (Statutory) Accounting. Mike has served as the Secretary/Treasurer of the SOA and has been a regular board member.

Mike's objectives for his term include increasing actuarial employment opportunities, enhancing the value of our credentials, increasing the SOA's international profile and fostering closer relationships with other actuarial organizations

Poon Affat Elected to the SOA's Board of Directors



Trinidadian Ronald Poon-Affat has been elected to the Board of Directors of the Society of Actuaries for a three-year term. Ronald is currently the Director of Life and Health for Munich Re of Brazil in Sao Paulo, Brazil. His primary area of practice is life insurance but he also works in the fields of reinsurance health and pensions. Ronald is a Fellow of the Society of Actuaries, a Fellow of the Institute of Actuaries, a member of the American Academy of Actuaries and a Chartered Financial Analyst.

Ronald is a graduate of City University, London and has a diverse career. He has worked with reinsurance companies, actuarial consultancies a US Life company and was Chief Actuary with a Caribbean insurance company. His career has taken him to Argentina, Brazil, Mexico, Puerto Rico, the United Kingdom and Trinidad and Tobago.

Ronald has volunteered with actuarial associations since qualifying as a Fellow of the Institute of Actuaries in 1991. He is currently on the Editorial Board of "the Actuary". Ronald has served on the International Section Council for two three-year terms and was the SOA Ambassador in Brazil.

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19th Annual CAA Conference “Crossing the Boundaries of Tradition”

The Caribbean Actuarial Association will be hosting its 19th annual conference at the Rose Hall Resort and Spa in Montego Bay, Jamaica from December 2-4, 2009.



We invite you to come and experience Caribbean hospitality and cuisine while networking with Caribbean actuaries and their colleagues from around the world, sharing ideas and learning from the experts in various fields.

Conference Registration Forms can be downloaded from our website www.caa.com.bb



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Reservation Method

Web-based reservations will be made available in due course. Reservations can also be made by calling 1-(866)-831-1313, referring to the group and meeting name. Hotel reservations must be made on or before November 2nd, 2009.

CAA Conference 2008

The Caribbean Actuarial Association held its 18th Annual Conference December 3-5, 2008 at the Hyatt Regency Hotel, Port of Spain, Trinidad. The Conference's theme was "Changing Perspectives". The conference attracted over 140 participants, mainly from the Caribbean. The conference committee was chaired by Mr. James Camacho and included a team of local actuaries and students.



(conference photographs courtesy of Michelle Thompson)

The conference had a wide and varied programme. Many of the presentations dealt with the issues surrounding the recent financial crisis. It was opened by the Governor of the Central Bank of Trinidad and Tobago, Ewart Williams who presented on *The International Financial Crisis: Implications for our Local Financial Sector*. Other topics which touched on the financial crisis were David Congram's presentation on *"Total Balance Sheet Approach – A Trinidad and Tobago Case Study"*; Wayne Dass' presentation on *"Rating Caribbean Companies"*; Mayne Shah's *"Evaluating Life and Health Insurers in the Caribbean Islands"* and *"Lessons from the Credit Crisis"* by Ravi Rambarran and Jason Julien.



Another area of focus was the management of pension plans. Paul Christiani presented on *"Reforming Public Service Pensions"*; Chris Daykin on *"Controlling Risk in Pensions"*; Alison Tyndall on *"IAS 19 Developments"* and Constance Hall on *"The current State of Pensions and What's next"*.

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There were substantive contributions from many of the Presidents of the international actuarial associations: the President of the International Actuarial Association, David Hartman presented on Claims Reserving; the President of the Society of Actuaries, Cecil Bykerk presented on The SOA's New Chartered Enterprise Risk Analyst Credential and the President of the Canadian Actuarial Association, Mike Hale presented on *"The Actuary's Duty to the Public"*.

At the Annual General Meeting on December 5, 2008, the Association's members ratified the necessary changes to the CAA's governance documents to enable it to become a full member of the International Actuarial Association.



Participants were treated to Trinidadian hospitality at the social events during the conference. There was a welcome reception on Wednesday night during which old friends met again. During the gala dinner on Thursday night there was a show which featured local dancers while the participants took to the high seas on Friday for a dinner and cruise.

This year's conference was sponsored by Eckler Ltd., GGY, Guardian Life of the Caribbean Limited, Munich Re, Sagicor Life, Swiss Re and Valani Consulting.

The CAA and the Institute of Actuaries hosted a Professionalism Course for Experienced Actuaries on December 3, 2008. The main presenters were Chris Daykin, Helen Gregson and Tim Kimpton. Actuaries who are Fellows of the Institute and Faculty of Actuaries met their requirement of attending such a course at least once every ten years.

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Stephen Alleyne Memorial Scholarship Fund

The Stephen Alleyne Memorial Scholarship was launched at the CAA's Annual General Meeting on December 5, 2008. The scholarship will be awarded annually to a student who is pursuing the BSc. degree programme in Actuarial Science at the Mona Campus of the University of the West Indies. The scholarship will first be awarded in the 2010/11 academic year and it will be funded from donations made by members of the Association.

The University is registered as a charitable organisation in Jamaica, Barbados and Trinidad and Tobago. Members can make their donations in any of these countries.

The Scholarship Fund is open for donations. If you need further information on this scholarship you may contact the Association at president@caa.com.bb

Council Elections

CAA Council elections are constitutionally due at this year's Annual General Meeting. The Annual General Meeting will be held on December 4, 2009 at the Rose Hall Resort and Spa, Montego Bay Jamaica at 4:00 pm.

The following positions are open for nominations:

- President Elect
- Vice President
- Secretary/Treasurer
- Member
- Member
- Students' Representative

Ordinary Members who have been Members of the Association for at least one year, are eligible for nomination for these positions with the exception of the Students' Representative. Only Associate and Student members are eligible for this post.

Nominations should be sent to the CAA's Secretary/Treasurer, Mr. Horace Johnson at president@caa.com.bb. The deadline date for nominations is November 27, 2009.

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Benefit Plans and Service Provider Liability – Allocating Risk and Responsibility
Randy Bauslaugh, Partner, Blake, Cassels & Graydon LLP



Increasingly, actuaries in North America are being required by their liability insurers and auditors to enter into formal engagement agreements. This reflects a trend to greater litigation in the pension and benefits area, as well as greater complexity in applicable statutes and regulatory policies. The primary purpose of these letters tends to be to limit or restrict service provider liability for errors and omissions including the expense of legal defence costs. But a properly drafted engagement letter also provides opportunities to enhance relationships between clients and their professional service providers.

Good engagement letters allocate risk and responsibility for various tasks involved in the development and execution of pension and benefit arrangements. Properly drafted, this can help parties avoid surprises, misunderstandings, disputes and litigation. If properly structured and monitored, they can also limit service provider liability and provide evidence of proper execution of fiduciary obligations by scheme administrators and their agents.

This article identifies the main approaches to limiting service provider liability in common-law jurisdictions. It is not exhaustive, and is subject to applicable local law. It should not be relied on as legal advice; you should consult your own lawyers for that.

1. Define the Scope of Services

The scope of the responsibilities to be performed, and correspondingly which responsibilities and liabilities remain with other parties is a first step in limiting liability. This is usually accomplished by stipulating the services to be provided. Doing this in a detailed schedule will facilitate future changes to your contract as it relates to the scope of services to be provided.

Actuaries often provide different kind of services. It is not always easy to tell if the actuary is acting as an agent (as for example when it agrees to provide pension administration services), as an independent expert (as for example when it agrees to provide an actuarial valuation report) or somewhere in between, (as when it recommends changes to plan design or to plan documents to comply with legal or regulatory requirements).

It is important that the service provider make clear it is not, unless expressly stated, responsible for general plan administration or general pension fund investment or operation. Careful wording will avoid unintentional liability as an agent or scheme fiduciary. The objective

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behind provisions that define the scope of services is to permit the service provider to argue that it had strictly limited responsibility, authority and duties.

2. Limit Damages

A second approach, is to use provisions which do not limit the scope or breadth of the duties or obligations of the actuary; but rather limit the amount of damages that may flow from a breach by the actuary of its obligations under the agreement. This might involve the use of numerical limits on liability including caps which are tied to fees paid to the service provider under the agreement over the term of the agreement or a specified period of time. For example, liability might be limited to a \$1 million, or two or five or ten times the fees paid in the prior year. The objective is to limit the financial exposure to a specific dollar amount regardless of the reasons relating to the claim made against the service provider.

Many clients and their counsel react badly to these types of limits. They expect their actuaries to be fully responsible for the loss occasioned by their errors or omissions. The key here is for both parties to fully and frankly discuss the potential risks. Sometimes appropriate caps can be identified by simply considering each parties' ability to obtain insurance.

3. Exclude Liability

A third approach is an exclusionary or limitation of liability clause. An exclusionary clause, as in the case of the second approach described above, does not limit the scope of duties of the service provider; rather, it relieves the actuary from liabilities arising from its acts and omissions. Indemnities are often connected to an exclusionary clause. The objective of an exclusionary clause (whether it stands on its own or operates in conjunction with an indemnity) is to ensure that regardless of the nature of the duty imposed on the service provider, it simply will not be liable for various types of liabilities arising from its performance under the agreement.

In many jurisdictions an exculpatory provision which on its natural and true construction clearly evidences an intention by the parties that it apply in the event of a fundamental breach should be enforceable. However enforceability is heavily influenced by specific facts and circumstances and by the law in the particular jurisdiction. Most legal decisions in this area are influenced by the court's sense of what is fair in the circumstances. Despite these uncertainties, there are some general common trends:

- Exculpatory provisions are very strictly construed against the party seeking to rely upon them and will not be interpreted so broadly as to indemnify a party from failing to provide the very thing provided for in a service agreement.
- An exculpatory provision, however broadly drafted, will not be interpreted to limit damages for fraud or similar egregious acts.
- Courts will invariably consider whether or not the defendant has been guilty of bad faith or sharp or unfair dealing.
- Common-law rules generally prohibit the contracting out of any minimum standards statutes that may apply.

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Inequality of bargaining power is not in many jurisdictions an essential precondition to finding unenforceability of an otherwise applicable exculpatory provision.

4. Fiduciary Considerations

In the case of a relationship which is fiduciary in nature, there is, in addition to the general contract law considerations described above, the further issue of whether contracting out of a fiduciary obligation is itself a breach of fiduciary duty and whether public policy requires that there exist a minimum level of duty or a set of core responsibilities from which the parties cannot be relieved. There is also a divide between those who believe it may not be possible to rely upon relief from fiduciary liability through the use of an exculpatory clause and those who believe that the parties to a relationship, even if it is fiduciary in nature, should be able to contractually exclude liability.

In reviewing a service provider contract (particularly with respect to a service provider who may not fall into an obvious fiduciary category), it is important to remember several basic concepts relating to the co-existence of a contractual relationship and a fiduciary relationship. The first is that the existence of a contract does not necessarily preclude the existence of fiduciary obligations. Second, fiduciary obligations can also be found based on a reasonable expectations analysis where the facts surrounding the relationship may give rise to fiduciary obligations even if the pure contractual terms of the relationship do not indicate a fiduciary obligation. For example, express or implied undertakings from one party to the other may suggest a fiduciary relationship. Past dealings between the parties and industry practice could also suggest a fiduciary relationship.

Some lawyers have concluded that the terms of a contract are critical for determining the scope of fiduciary duty, even in the case of a presumptively fiduciary relationship. Indeed, even in the context of a trust, courts may be prepared to assess the scope of trustee responsibilities based upon the express terms of the trust instrument. In many respects, from the perspective of a service provider the first approach outlined above (i.e., the contract specifically limits the scope of the service provider's duties and responsibilities) may be the most successful of the three because unlike the second approach outlined above (i.e., a provision which limits the amount of damages and/or time limit when a claim must be made), it should be possible through careful drafting to precisely define which tasks are or are not the responsibility of the service provider. The first approach also has a potential advantage over the third approach outlined above (i.e., an exclusionary or limitation of liability clause) in that it will be more difficult to attack such a provision on the basis that it represents an attempt to contract out of what might be basic fiduciary responsibilities.

As in the case of strictly contractual duties, an exculpatory provision which applies to the exclusion of fiduciary duties should be clearly and specifically drafted since it will likely be interpreted very strictly by a court and may be construed against the interest of the party who drafted the document containing it.

5. Consider the Legal Position of the Service Recipient

Having appropriate contracts with service providers is an indication of good governance practices. Accordingly, scheme administrators should

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be receptive to a proposal to document the relationship.

However, if a pension or benefit scheme sponsor or administrator agrees to significant exculpatory provisions in service provider contracts, it could be giving up significant legal rights in the event of loss or liability relating to the performance of a service provider. In plain terms, it may be increasing its legal risks if it agrees to broad limitation of liability provisions (including exculpatory clauses) with its actuarial consultants, investment managers, plan auditor or fund custodians.

The question may also arise as to whether broad exculpatory and indemnity provisions in a service provider contract would be consistent with the standard of conduct imposed on the scheme administrator under common law obligations and under minimum standards laws that may apply. A broad exculpatory or indemnification provision in a service provider contract should not, in and of itself, be inconsistent with the scheme administrator's legal obligations, but obviously as in many other aspects of benefit plan governance, a plan sponsor or administrator will be in a better legal position if it can demonstrate that it engaged in an objective process in the selection of a service provider. A process which took into account not only the contractual terms requested by that service provider but also factors such as the qualifications of the service provider, the nature, scope and quality of the services offered, the availability of the services from other providers, reasonableness of fees, and avoidance or control of conflicts of interest.

CONCLUSIONS

Bearing in mind the increasing amount of pension related litigation, including the prevalence of class action proceedings which frequently include various service providers in addition to the plan sponsor, both plan sponsors and their service providers should be concerned about negotiating and documenting service provider liability. Exclusionary provisions in pension service provider contracts is a serious issue that is here to stay. Both sides need to be flexible, and both should be prepared to discuss and document a reasonable allocation of risks and responsibilities.

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UWI Actuarial Society Annual Awards Dinner 2009

Rory White

The highly anticipated annual University of the West Indies Actuarial Society Awards Dinner was a smashing success the third time around. Students from the UWI's Actuarial Science program amongst others, actuaries, family, friends and honoured guests were all gathered at the Hilton Hotel in Kingston, Jamaica, on Saturday February 28, 2009; all of whom were dressed to impress in stunning formal attire. This annual dinner serves to recognize and award those students who have performed exceptionally in academics throughout the past year. It is also a channel through which aspiring actuaries are able to meet persons from the small fraternity of actuaries in Jamaica.

Mr. St. Elmo Whyte, President of the Caribbean Actuarial Association (CAA), and Master of Ceremonies, commenced the evening's festivities with his opening remarks. He briefly thanked the audience for their attendance and recognized all distinguished guests who were in attendance. Ms. Yannique Thomas, Vice President of the UWIAS, extended a hearty welcome shortly after. The evening proceeded with greetings from the Dean of the Faculty of Pure and Applied Science, Professor Kahwa, on behalf of the Principal of the University of the West Indies Mona Campus, Professor Gordon Shirley. Prof. Kahwa spoke of evolution of the actuarial programme at the UWI, the success it had achieved over the years, the eminence of its alumni and the increasing recognition of the importance of the actuarial profession in the wider Jamaican society.

The first item on the program was a dance by four members of the UWI Actuarial Society. The piece was executed with panache, grace and precision and was well received by the audience. Mr. Pedro Medford, President of the UWIAS, then presented the President's Report which gave a summary of the projects and activities that were undertaken throughout the year and their success. One such activity was the visit to Best Care Children's Home, to which the UWI AS donated much needed toiletries and cleaning agents.

A scrumptious three course dinner was served after which the entertainment continued, with Ms. Stephanie Hazel, a Caribbean Media and Communication student at the UWI, giving a majestic rendition of Etta James', 'At Last'. This was followed by a presentation by three second year actuarial science students from the UWI, on the effects of Unregistered Financial Organisations on the economy and society.

One of the highlights of the night was the address of the guest speaker, Mr. Mike McLaughlin, President-Elect of the Society of Actuaries (SOA), who was humorous but stern. He spoke of the plethora of opportunities available in the field of risk management and the importance of dedication and consistency. Afterwards, his wife, Mrs. Mary McLaughlin, assisted in the presentation of awards. This year a total of thirteen first year, two second year and four final year students received awards. This represented a commendable increase of eight awards over the previous year. Mr. Rory White, Public Relations Officer of the UWIAS, brought the evening to an end with his eloquent vote of thanks.

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The awards dinner was a resounding success and the UWI AS executive committee was truly grateful to those who were instrumental in its organization, planning and financing. All of those who were in attendance would definitely declare that they are now eagerly anticipating the next University of the West Indies Actuarial Society Awards Dinner.

Caribbean Actuarial Association supports UWI Actuarial Science Degree Programme

As announced in our last edition, the CAA has increased the level of support that it provides to the BSc. degree in Actuarial Science of the University of the West Indies, Mona Campus. The CAA has undertaken to pay the examination fees for subjects P (Probability) and FM (Financial Mathematics) for the top ten performers in each academic year - provided that they have A averages. For the Fall/Winter 2009 the eligible students are:

Allen, Maya
Bryant, Bari-Ann
Earle, Kimberley
Earle, Renee
Jackson, Joel
James, Charlene
Knight, Mellissa
Lezama, Noelle-Marie

Miller, Shauna-Kay
Prince, Jodi-Ann
Proverbs, Renee
Romans, Geoffrey
Stephens, Kersen
Thomas, Yannique
White, Rory

Caribbean Actuarial Scholarship Award Winners



In its initial year, the Caribbean Actuarial Scholarship of The Actuarial Foundation, awarded academic scholarships to two most deserving students attending the University of the West Indies. This scholarship was established in memory of Basil L. and Monica G. Virtue by their son-in-law, S. Michael McLaughlin, an actuary who graduated from UWI.

The 2009 Caribbean Actuarial Scholarship recipients were Shauna-Kay Miller, a third-year student; and Sheldon Lewin, a second year student. Ms. Miller and Mr. Lewin demonstrated a strong record of accomplishment, leadership qualities and a commitment to becoming an actuary to become the scholarships first recipients.

The Caribbean Actuarial Scholarship eligibility requirements and application can be found on The Actuarial Foundation's Web site at: <http://www.actuarialfoundation.org/programs/actuarial/scholarships.shtml#Caribbean>. The deadline for 2010 applications will be in July 2010.

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CAA Associateship Course

The CAA in association with the Institute of Actuaries will be hosting a Professionalism Course on December 2, 2009 at the the Rose Hall Resort and Spa, Montego Bay Jamaica. This course is for Associates and senior actuarial students. It will cover ethics and professionalism issues through presentations, discussions and case studies.

This course is being offered free of charge to attendees. If you are interested in attending this course, please tick the box on your registration form on your conference registration form.

Examination Success

Since the last publication of the Association's Newsletter, the following students have passed examinations:

New Fellow

Ramsahai, Randall, Institute of Actuaries

New Associates

Assing, Michelle, Society of Actuaries, Trinidad and Tobago
Beam, Vanette Kay, Society of Actuaries, Jamaica

Other Examination Successes

Affoo, Andrew, ST4, Institute of Actuaries, Trinidad and Tobago
Alexander, Kristy, MLC, Society of Actuaries, Trinidad and Tobago
Archer, Dawn, CT4, CT5, Faculty of Actuaries, Barbados
Assing, Michelle, FAP, Society of Actuaries, Trinidad and Tobago
Brown, Andre Venaugh, C, MFE, Society of Actuaries, Jamaica
Bryan, Shani Dawn, FM, Society of Actuaries, Jamaica
Dalrymple, Kezia, FM, MFE, Society of Actuaries, Trinidad and Tobago
Edwards, Andy, Operational Risk, Society of Actuaries
Escoe, Debbie-Ann, CT5, Institute of Actuaries, Jamaica
Farley, Maria, CT5, CT7, Institute of Actuaries, Barbados
Francis, Mikhail Vijay Ricardo, MFE, Society of Actuaries, Jamaica
Griffith, Ryan, CT4, Institute of Actuaries, Barbados
Jackman, Donnielle, VEE, Society of Actuaries, Trinidad and Tobago
Jackson, Jeneve, FM, Society of Actuaries, Jamaica
Jailal, Danita Adelia, CT1, Institute of Actuaries, Trinidad and Tobago
Lee, Dominic Noel, FM, Society of Actuaries, Jamaica
McKellop, Conrad, CT6, CT8, Institute of Actuaries, Jamaica
Mungroo, Shera, CA1, Institute of Actuaries, Trinidad and Tobago
Stennett, Shayna Anna-Kaye, MFE, Society of Actuaries, Jamaica
Thomas, Junior Winston, MLC, Society of Actuaries, Jamaica
Witter, Camille Rose, MFE, FAP (1), Society of Actuaries, Jamaica

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Interested in Contributing to the CAA's Newsletter?

The next edition of the CAA's Newsletter will be circulated early next year. Members interested in contributing should send their articles to the Association at president@caa.com.bb.

We are interested in receiving articles about Association sponsored events in the region as well as any developments in the fields of finance and actuarial science which you feel would be of interest to our Members.