Background Information

The actuaries listed are all MSPAs and Enrolled Actuaries.

The pension plan is on a calendar year basis, and unless indicated otherwise has never had a prefunding or carryover balance.

The actuary timely prepared all prior 5500s and Schedule SBs. All prior AFTAPs were prepared and applicable notifications were provided timely. The valuation date for all valuations is January 1.

Case #1 discusses the actuary's alternatives and responsibilities when a client indicates in late September that he will refuse to pay the second half of the actuary's annual fee.

> Are the requirements different depending on whether the actuary's own firm provides actuarial services directly to the client or the actuary is an employee of the firm that providess these services to the client?

Case #2 is similar to Case #1, except that the client is misinterpreting the terms of the service contract.

Case #3 discusses the actuary's alternatives and responsibilities with an abusive client.

Case #4 is takeover situation where there appear to be errors in the prior actuary's work. The prior actuary is uncooperative.

Case #5 is a situation where his client simply has taken money from his retirement plan.

Case #6 discusses the issues involved when his client provides the actuary with a questionable (and possibly self-serving) valuation of the plan's illiquid assets.

Case #7 discusses the actuary's alternatives and responsibilities when a client admits to deliberately having provided the actuary with materially incorrect information.

<u>**#1 - Time to Fire the Client**</u>

Smith, EA, MSPA, is the actuary for ABC, Inc. and its pension plan. The Form 5500 filing deadline has been extended to October 15, 2016. As has been its standard practice, ABC paid Smith's firm the first half of its annual fees in January 2016. The actuarial valuation has been completed, but the AFTAP certification, Schedule SB and the Form 5500 have not been completed, waiting for ABC to tell Smith the date and amount of its final contribution.

On September 28, 2016, the sole owner of ABC tells Smith that he will not pay the second half of the annual fee.

Can Smith stop work immediately, and not prepare the AFTAP certification, SB or 5500?

A. Is there a difference whether

1. Smith owns his own actuarial consulting firm,
2. Jones, EA, MSPA, owns the actuarial consulting firm, or
3. Wilson, not an actuary, owns the actuarial consulting firm.

B. Is there a difference whether

1. ABC does not have any employees,
2. The pension plan covers the owner of ABC and its employees, or
3. The pension plan is covered by the PBGC.

C. Is there a difference if instead of the date of the communication being September 28, the date is:

1. September 1 or
2. August 1.

D. Does it matter if there is a client agreement or other correspondence that provides for work stoppage or resignation by either party after 30 days' notice? (In other words, would Smith have to wait 30 days before stopping work?)

#2 - Another Frugal Client

Alexander the Actuary is having one of those weeks.

On September 28, the owner of Deadbeat Deadbolt Company has called and demanded the Form 5500-SF for both its 401(k) plan and cash balance plan. Deadbeat's owner tells Alexander that he has no intention of paying for the work. He believes that it should be covered by the annual base fee, even though the contract clearly says there is an additional fee. (The base fee in the contract covers the annual valuation/allocation and discrimination testing; there are additional fees for the 5500s and other services.) Deadbeat is current on all outstanding invoices. They are not late yet; just threatening not to pay.

A. Must Alexander deliver the 5500's? PBGC filing?

B. Is the answer different for the 401(k) plan and the cash balance plan?

C. Would the answer be different if the plans only covered the owner? (Assume total plan assets are over $250,000.)

#3 - Just What Alexander Needs

Alexander the Actuary is not happy.

Today is September 1 and the owner of Potty Mouth Plumbing Company has left a recorded voice message for Mary (one of Alexander's employees) that was so full of vicious personal attacks and curse words that Mary cried and said she won't work on the case any longer. Mary wants Alexander to "do the right thing" and resign from the case immediately.

Alexander is torn — this is a good paying client and Mary did miss an agreed upon deadline to deliver the Form 5500 last week. But, Mary is one of his best workers.

A. Do you think that Alexander should resign (either before or after delivering the Form 5500)?

B. Could he resign if today was October 1?

C. Would it make a difference if the recorded message specifically included epithets of a sexual, nationality or racial nature (which offended Mary since she is a member of the relevant sex, nationality or race)?

#4 - A Wonderful Takeover

Smith, EA, MSPA is taking over the actuarial work for a new client (ABC, Inc. and its pension plan) and has discovered certain problems with the prior work. Smith discusses the situation with the owner of ABC and attempts to do so with the prior actuary. *Under what circumstances can Smith (or must Smith) refer the prior actuary to the ABCD?*

A. The prior actuary used the wrong statutory assumptions in last year's valuation.

B. Smith cannot match the prior actuary's results.

   1. The prior actuary's methodology in calculating TNC or FT was materially inconsistent with PPA,

   2. his calculation of PPA balances and amortizations was materially inconsistent with PPA, or

   3. his updating the prefunding and carryover balances from one year to the following year was materially inconsistent with PPA. This included incorrect burning of balances due to the timing of the AFTAP certifications, or incorrect use of contributions in excess of the MRC.

C. There are inconsistencies between the Schedule SB and the prior actuary's valuation report. For example

   1. the participant counts were different,
   2. the reported FTs or TNCs were different or
   3. the interest calculations, treatment of PPA balances or amortizations, or AFTAPs were different.

D. The prior actuary is uncooperative. He has not provided requested materials nor has he answered questions about data, methodology or other aspects of his work. However:

   1. the prior actuary has not been paid for prior work from ABC,

   2. ABC will not pay the prior actuary for his time to provide requested materials or to answer questions, and

   3. Smith will not pay the prior actuary for his time to provide requested materials or to answer questions (most likely because the owner of ABC has indicated that he will not reimburse Smith for these costs).

#5 - I need money

Smith, EA, MSPA is the actuary for ABC, Inc. and its retirement plan. The sole owner of ABC (who is also the sole Trustee) transfers 20% of plan assets directly into his corporation to pay office rent. Smith finds out about this about six months later, as part of his annual review.

The sole owner of ABC wants to either:

A. treat this as a personal loan,

B. not treat it as a personal loan, but have his company repay it within a year with interest, but *not report this as a prohibited / party-in-interest transaction* on the Form 5500,

C. not treat it as a personal loan, but have his company repay it within a year with interest, *report this as a prohibited / party-in-interest transaction* on the Form 5500, but *not file Form 5330*, or

D. Same as B, but the repayment would be with no interest.

1. *If the sole owner of ABC insists on any of the above, what can (or must) Smith do as the actuary?*

2. Does it matter if:

   - ABC doesn't have any employees,
   - ABC has employees covered by the retirement plan, but 90% of the retirement plan benefits are the sole owner's,
   - the retirement plan is a DC plan rather than a DB plan, or
   - the retirement plan is a DB plan that is covered by the PBGC.

#6 - The Plan Assets are Worth What?

A. Elaine, EA, MSPA is the actuary for ABC, Inc. and its pension plan which covers its 20 employees. This is a new client for Elaine. The sole owner of ABC is also the Trustee of his pension plan. A year ago, the pension plan invested 33% of its assets in swamp land. This year, the trustee believes that the swamp will be drained and the property developed; he has reported that the value of the swamp has tripled. No backup is provided, and Elaine is dubious.

If she uses the Trustee's value, there is no contribution required. If she uses the orginal cost value, a contribution is required.

As the actuary, what are her alternatives? Is there a difference if:

1. ABC doesn't have employees
2. ABC has employees covered by the Plan, but 90% of the plan benefits "belong to" the owner of ABC.
3. The retirement plan is a DB Plan covered by the PBGC
4. These assets represent 5% of the total plan assets, rather than 33%.
5. No contribution would be required either way.

B. Same as A, except that the investment is in an oil and gas limited partnership; the same asset value has been used by the Trustee for the past 7 years, including the current year.

C. The Trustee of a pooled profit sharing plan has reported the value of a real estate investment to be around $1 million for each of the past several years. Other plan assets include mutual funds worth another $1 million. The plan covers 20 employees.

Last June, his trusted CFO, with a $600,000 account balance, was fired for embezzling funds from his company.

This year, the Trustee reports the real estate asset value as $500,000. The valuation will be used to determine the amount paid to the fired employee.

Elaine, who is lucky enough to work on this client as well, is wondering what further inquiries she should make.

#7 - Time to Fire the Client

Smith has a different client, Liar, Inc.

On September 28th, the owner of Liar, Inc. admits that the information provided to Smith last year was deliberately and materially incorrect. For example,

1. he deliberately omitted employees or reported materially lower wages, or
2. he deliberately valued illiquid assets higher that their "true" value, or
3. he deliberately provided information about contributions that were not made.

Can Smith stop work immediately, and not prepare the AFTAP certification, SB or 5500? Can he resign?