

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN R. LUCKER, ELIZABETH A. :
LUCKER, NANCY L. ROUSSEAU, :
Individually and On Behalf of All Others :
Similarly Situated, :
Plaintiffs, : No. 07 Civ. 3823 (RJD) (JMA)
-against- :
:

BAYSIDE CEMETERY and :
CONGREGATION SHAARE ZEDEK, :
Defendants. :
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LYNN COHEN Individually and On :
Behalf of All Others Similarly Situated, :
Plaintiff, : No. 08 Civ. 3555 (RJD) (JMA)
-against- :
:

BAYSIDE CEMETERY and :
CONGREGATION SHAARE ZEDEK, :
Defendants. :
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FRAN GOLDSTEIN, Individually and On :
Behalf of All Others Similarly Situated, :
Plaintiff, : No. 08 Civ. 3923 (RJD) (JMA)
-against- :
:

BAYSIDE CEMETERY and :
CONGREGATION SHAARE ZEDEK, :
Defendants. :
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DECLARATION OF HAYDEN BURRUS

I, Hayden Burrus, hereby declare as follows:

1. I am the principal of HB Actuarial Services, Inc. I am a credentialed property and casualty actuary and am a Fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries. I was retained by Plaintiffs' counsel to provide an expert opinion in connection with this case. I have significant experience in the area of cemetery perpetual care fund analyses, have written articles on this topic and provided consulting services to those within the cemetery industry. Attached as Exhibit A is a copy of my firm resume. More information can be obtained on my website at www.hbactuarial.com. I submit this report in further support of Plaintiffs' contention that subject matter jurisdiction does indeed exist under 28 U.S.C. §1332 insofar as this matter does involve a controversy exceeding the sum or value of \$5,000,000.
2. It was my initial understanding that my formal expert report would be due sometime next year after documents and information were produced by the Defendants in this case.
3. I now understand that the Court has a concern that subject matter jurisdiction may not exist under the Class Action Fairness Act which has been incorporated into 28 U.S.C. § 1332. More specifically, that the matter in controversy does not exceed the sum or value of \$5,000,000.
4. I have reviewed publicly available documents and information concerning this case including a number of news articles contained on the www.Baysidecemeterylitigation.com website.

5. Even based upon this limited information, it is my opinion and belief that this case unquestionably involves a controversy exceeding the sum or value of \$5,000,000.
6. It appears from the publicly available information that this 14 acre cemetery is at least 150 years old and contains approximately 34,000 graves. A cemetery of this size, age and scale, which continuously sold perpetual care and annual care contracts, should have retained well in excess of \$5,000,000 for the provision of these perpetual care and annual care services for those burial societies and persons who purchased burial rights in the cemetery. It is my understanding that the burial societies and individuals which purchased burial rights in this cemetery were extremely religious persons who closely observed and followed Jewish law which values the sanctity of a final resting place. This additional fact further supports my conclusion since it is likely that a significant number of the 34,000 graves at the cemetery purchased annual or perpetual care at one point in time.
7. Once additional documents and information are made available to me through this litigation, it is my belief that I can use my actuarial skills to prove that the amount that should have been received in order for perpetual care fund to have been adequately and fairly funded over time for a religious cemetery of this size, age and scale is far in excess of the approximately \$500,000 the Defendants claim they received.

8. Even without the benefit of discovery at this stage of the proceeding, it is reasonable to believe that the \$5,000,000 threshold is easily satisfied in this case for the reasons I have articulated above.

This declaration has been executed this 18th day of December, 2008 under penalties of perjury pursuant to the laws of the United States.



Hayden Burrus

EXHIBIT A

HAYDEN BURRUS
CURRICULUM VITAE

PRINCIPAL ACTUARY, HB ACTUARIAL SERVICES,
DELRAY BEACH, FLORIDA,
2000 TO PRESENT.

- Founder and Principal Actuary of actuarial consulting practice.
- Consulting project leader for all clients.
- Actuarial valuations, pricing, reserve calculations and cash flow projections for self insured entities.
- Analysis of funding adequacy for the 50 and 100 year time horizon for a perpetual care fund of a religious entity.
- Stochastic simulation of possible outcomes for a perpetual care fund for the 50 and 100 year time horizon.
- Recommendation of appropriate funding levels and contribution level for an active perpetual care fund.
- Discussion of perpetual care funding regulation and adequacy with state insurance regulators in nearly every state.

CONSULTING ACTUARY, INSURANCE SERVICES OFFICE (ISO) (Workers'
Compensation Division)
BOCA RATON, FLORIDA, 1999 - 2000.

- Provided day to day management of consulting services for several of ISO's consulting clients. Some more recent assignments include:
- Assessment of expected losses (in aggregate and by reinsurance layer) for a series of reinsurance contracts involved in a litigation dispute.
- Determination of outstanding workers compensation liabilities and required assessment rate for a state workers compensation fund.
- Stochastic simulations of ultimate claim costs for a large Professional Employee Organization (PEO).
- Determination of state specific retrospective premium for insurance companies involved in a litigation dispute.
- Actuarial Opinion work for a Florida domestic insurer.

CONSULTING ACTUARY, INSURANCE DATA RESOURCES (IDR) (Startup
Competitor to NCCI)
BOCA RATON, FLORIDA, 1997 – 1999.

- Provided actuarial support of rating organization functions.
- Trained actuarial and non-actuarial staff regarding traditional workers' compensation ratemaking procedures used in NCCI rate filings including the use of Experience Rating (E-mods) Retrospective Rating, and Classification Codes.
- Prepared and gained approval for IDR's premium rate/loss cost filings.
- Provided actuarial support of IDR's statistical agent functions including support related to the development of software that calculates the E-mods based on all filed rating factors in the state.
- Provided expert business analysis to Florida Department of Insurance meetings regarding implementation of rules, regulations, and guidelines related to the existence of multiple workers' compensation rating organizations and statistical agents in the state of Florida.
- Created IDR's Workers Compensation Retrospective Rating Manual.

ACTUARIAL ASSOCIATE, NATIONAL COUNCIL ON COMPENSATION
INSURANCE (NCCI)
BOCA RATON, FLORIDA, 1993 – 1997.

- Primary business consultant for the Aggregate RateMaking Software System (ARMS) developed for the actuarial department. This system was the first fully automated workers' compensation premium and rate level calculation tool prepared by NCCI. ARMS is a proprietary NCCI computer software product that calculates the fair workers' compensation rate level in each state based on the totality of all loss and premium experience occurring in that state. ARMS was used as the basis for numerous workers' compensation rate and loss cost filings prepared and filed by NCCI throughout the nation. The foundation of ARMS continues to be used by NCCI to this day.
- Preparations of workers' compensation rate / loss cost filings.
- Correspondence with various State Insurance Departments regarding workers' compensation rate / loss cost filings.

SENIOR ACTUARIAL ANALYST, CIGNA PROPERTY & CASUALTY COMPANY;
PHILADELPHIA, PENNSYLVANIA 1990-1992.

- Provided significant actuarial analysis and support work for the Claims Analysis Research Unit under the direction of distinguished research actuaries.

EDUCATIONAL BACKGROUND

- University of Rochester, Rochester, New York.
- Bachelor of Arts degree – Applied Mathematics 1990.
- ARIAS-US Intensive Arbitrator Training Workshop.

PROFESSIONAL CERTIFICATIONS AND DISTINCTIONS

- President, Casualty Actuaries of the Southeast 2006-2007;
- Fellow, Casualty Actuarial Society, 2001;
- Authorized to certify loss reserves for captive insurers by the Vermont and South Carolina Departments of Insurance.
- Member, American Academy of Actuaries, 1998;
 - Entrepreneurial Actuaries;
 - Reinsurance;
 - Risk Management;
 - Smaller Insurance Company;
 - Technology.
- Member, ARIAS (AIDA Reinsurance and Insurance Arbitration Society)
- Member, Captive Insurance Council of the District of Columbia
- Member, Self-Insurance Institute of America

PRESENTATIONS

- North American Cemetery Regulators Association Annual Meeting (2001) – “Ensuring the Adequacy of Cemetery Perpetual Care Funds”
- North American Chevra Kadisha Conference (2008) – “The Future is Yours - Understanding the Cost of Perpetual Care”
- Numerous presentations to state insurance regulators, agents advisory boards and the reinsurance community as Chief Actuary of AmCOMP.
- Numerous presentations to public and privately held companies, municipalities, insurance companies, and non-profit organizations as an actuarial consultant.
- Numerous presentations to attorneys on a variety of insurance cases as an actuarial consultant.
- Numerous presentations to the actuarial community through work as President of Casualty Actuaries of the Southeast, and his presentation at the Casualty Actuarial Society’s Annual Meeting in 2005.

PUBLICATIONS

I authored the acclaimed and widely referenced three part perpetual care series in *International Cemetery and Funeral Management* (February to April, 2001):

- “How to Put Aside Enough Now to Cover Cemetery Costs Later” (Part 1)
- “The Expenses Will Never End, but Some Revenue Sources Will” (Part 2)
- “Developing a Financial Plan for a Perpetual Care Fund” (Part 3)