

Tina Hsu

From: bdschobel@aol.com
Sent: Friday, September 11, 2009 6:28 PM
To: Tina Hsu
Subject: Fwd: [board] Important attachment - please read as soon as possible
Attachments: Academy_board_of_directors_ltr_Wednesday_July_8.doc

-----Original Message-----

From: John P Parks <johnpparks@gmail.com>
To: Academy Board of Directors <board@lists.actuary.org>
Sent: Wed, Jul 8, 2009 1:06 pm
Subject: [board] Important attachment - please read as soon as possible

John P Parks
1642 King James Dr
Pittsburgh, PA 15237
johnpparks@gmail.com
Mobile Phone (412) 760-6533
Home Phone (412) 369-9461
Fax (815) 301-3842

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July 8, 2009

Dear Members of the Board of Directors,

I am writing to you on behalf of myself, Bill, and Steve to let you know about an effort underway that seeks to impugn Bruce for matters that arose in an employment dispute, now resolved, between the Society of Actuaries and its former executive director. We are writing to you now because this effort, led by David Hartman, will likely come to your attention through some other means, and we want to let you know why we disagree with David's efforts.

As is widely known in the actuarial community, the SOA terminated its former executive director in 2006. As sometimes occurs in employment disputes, the executive director sued the SOA and Bruce, who was then President of the SOA. The matter was removed to binding arbitration, outside the court system. This occurred because the SOA had agreed to binding arbitration by virtue of the employment agreement it had with its former executive director. In late 2008, an award was made by an arbitration panel and the SOA resolved the dispute and paid an award. Despite this resolution, there are some within the past ranks of SOA leadership, and past ranks of Academy leadership, who are circulating that arbitration decision among widening groups of people within the profession and using it to argue that Bruce should be removed as president-elect of the Academy.

There are many others, beyond just the three of us, who believe that in the circumstances that led to the dispute between the SOA and its former executive director, Bruce acted courageously, against very entrenched and powerful interests, to give voice to and take action on behalf of internal SOA whistleblowers that were dedicated to doing the right thing. The SOA Board of Directors itself voted to terminate its executive director based on information and facts that are not, and will never be, available to us. They defended their actions in the arbitration proceeding mandated to resolve this employment dispute. It is our understanding that the SOA Board of Directors, its lawyers, and its insurance carrier continued throughout the process of the arbitration proceeding to believe and assert that they had the authority and rightful purposes to terminate the former executive director in the way that they did. We have no basis or reason to question the SOA Board's decisions and actions, or to question that Bruce did the right thing for the SOA.

What has now happened is that some actuaries are using the arbitration award to assert that it proves Bruce defamed the former SOA executive director and should not be Academy President-Elect. We believe it would be highly inappropriate to use this arbitration decision in this way, for a number of reasons.

The issue under discussion relates to a portion of the decision, wherein the arbitrators decided that, in the context of this employment dispute, Bruce had defamed the former SOA executive director. It is our understanding that the SOA Board, its attorneys, its insurer, and Bruce, all felt that their case was strong and that, as they maintained in their briefs on this matter, the statements made by SOA leadership about the matter were true. The arbitrators did not ultimately agree with the SOA's position, and found against them. There may or may not have been mistakes of law, of evidence, of logic, or even common sense by the arbitrators, because *we will never know, as those decisions cannot be questioned. Even if the arbitrators found that $2+2 = 5$, that cannot be contested--* because this was binding arbitration.

It is fundamentally unfair to take a process like arbitration and an award that results from it, and rely on it to prove, in entirely different circumstances, that it must be acted on for some other purpose. And, we have, on information and belief, the additional knowledge that the SOA continued to believe it had done the right thing in terminating its executive director and it so asserted throughout the arbitration process. It is not within our prerogative to question those actions. Unlike decisions rendered by courts of law, arbitration is a private dispute resolution system, for which the parties pay, and their findings have *no standing* in our legal system, as a court's decision would, as a finding of fact or law. Arbitrators need not apply local, state or federal law in their decisions. Their decisions are not appealable, absent fraud or corruption. Arbitration is binding only on the parties to it: in this matter, the SOA and its former executive director.

The circulation of the Arbitration Award itself is very troubling to us. While those who are circulating it assert that it is publicly available, it is not correct to state that it is *generally* publicly available or obtainable by anyone without highly specific information and a zeal for searching. The main reason it appears to be publicly available is that *it is being made publicly available for this purpose*. Finding it from someone other than the parties to the arbitration would require someone to actually go to a specific court, unknown to most, and find a docket where the parties likely filed this simply to notify the court from which the lawsuit was removed, that the matter had concluded. For the reasons noted above, the arbitration decision contains statements that are inappropriate for us to rely on. We have no reason to believe that it provided due process, as our own disciplinary system must, and it certainly did not reference the Code of Conduct. We also believe the decision reveals confidential information that should not be circulated. Arbitration panels can do this. Arbitration panels are not bound to follow local, state, or federal law.

In sum, we do not believe that we, as individuals, or the Academy Board of Directors, should assume that the arbitration award is correct. It was, however, binding on the SOA and its executive director, and they have accepted it, as they must. Based on that award, we have been told the individuals circulating it have filed complaints against Bruce at the ABCD. While complainants are not required not to disclose complaints, in every other instance we are aware of, the ABCD encourages complainants not to disclose such information in order to protect the rights and reputation of the person being

complained about. Whatever the outcome of the ABCD process, we believe that the Academy Board should not preemptively and precipitously act based on statements in an arbitration award. This would be fundamentally unfair to Bruce, and to the Academy itself, which has an institutional interest in maintaining its own well established processes for election and disciplinary proceedings.

Whether the arbitration award was correct or not, we are aware that there are some who believe that its mere existence presents a reputation risk to the Academy when Bruce becomes President. We intend to discuss the situation and bring it to the Board for ultimate resolution. However it must be done in a way that protects Bruce's rights without re-litigating the arbitration award. Our General Counsel advises, and as you know from our own experience, there are limitations about what is proper to discuss regarding our own internal personnel matters, and discussions about *another* organization's internal personnel issues will have even more limitations to avoid subjecting ourselves or the Academy to liability risks.

John P. Parks, President
William F. Bluhm, Past President
Steven G. Lehmann, Penultimate Past President