Pledging Allegiance

The Abandonment of Reason

A Brief History of how the AAA Board Failed to Recognize and Manage Risk – September 2009

By: Tom Bakos, FSA, MAAA

I remember a quote from a very old *The Actuary* newsletter editorial. It went something like this:

You cannot reason a person out of a thing he has not been reasoned into.

In my experience that is true. In order to have productive dialog anywhere and, in particular, within any of the boards of the actuarial professional organizations to which we belong, it must be based on reason. That, I would have thought, would be easy for actuaries to do. But, alas, I seem to have been mistaken. The Academy board collectively, in my opinion, seems to have acted without reason in considering the matter of the removal of Bruce Schobel from the office of President-Elect of the Academy. They appear to have managed very poorly the risk in that.

This drama probably had its beginnings in about May 2009 and involved information created prior to that as a result of the litigation between the Society of Actuaries (SoA), Bruce Schobel and the SoA's former Executive Director, Sarah Sanford.

The events discussed below are, primarily, things that happened within the *American Academy of Actuaries* (AAA) and, principally, document events that lead up to the Academy Board's August 5, 2009 Board meeting in which a vote was taken to remove Bruce Schobel as President-Elect (and from the Academy board) and the litigation that followed. This documentation, to the extent it is a documentation of facts, is being provided to substitute facts for appearances and demonstrations for impressions.

I am like everyone else. We each bring to the table of reason different education, knowledge, understandings, and perspectives drawn from varying backgrounds and experiences that color the opinions we form – even if we are exercising reason. I have formed opinions and I have expressed them in the following. However, I hope that I have also provided a factual basis for these opinions, that is, how I reasoned myself into them so that the reader, in exercising reason, will be able to either agree or find an equally plausible conclusion based on the facts.

I encourage every reader to disagree, if you must, with any opinions I may have formed and draw his or her own conclusions from the facts presented here. Please do that rather than dutifully marching to the beat of a distant drummer, pledging allegiance as a loyal servant and having opinions you have never been reasoned into.

About the Author

I am a member of the Academy (i.e. MAAA) and also serve on the Academy *Counsel on Professionalism* (COP) and I chair the COP *Committee on Professional Responsibility* and have been either a member of or have chaired that committee since 1996. I am also on the SoA Board of Directors serving as a regular director from 2002 – 2005 and currently serve as a Vice President with a two year term from 2008 – 2010.

There is clearly some crossover on this issue between the SoA and the Academy. However, as I believe all SoA board members have done, I will continue to maintain what is still confidential regarding information we have learned as a result of our SoA board membership service. I will speculate on some ways in which some of this confidential information has mysteriously found its way into this Academy board discussion.

Readers should know that I have known Bruce Schobel personally for, at least, the last 7 years. During that period of time I have never observed or known him to do anything in his professional service that he did not feel would benefit the actuarial profession or its members. I know for a fact that he has left that impression on others as well although, clearly, it is not an opinion universally held. Because of my service within the SoA for the past 37 years and within the Academy I also know many (but not all) of the other players in this drama. I wish to disparage no one. I am presenting the facts as I know them and, sometimes perhaps, opinions I have formed from my analysis of them.

Origins

This drama began, probably, about May 2009. What is known from the record is that on 6/25/09 David G. Harman sent an email to Schobel (Exhibit 1) with an attached draft letter to the Academy board (Exhibit 2). Hartman indicated in his email that he would send his letter to the Academy board unless Schobel agreed to "step aside" until an ABCD complaint Hartman (and perhaps others) had apparently filed with the ABCD was concluded. Hartman indicated in his email that Schobel could "avoid the public embarrassment for you and the Academy that will result if the Board has to discuss preventing you from becoming President in October."

Several things are disturbing about this communication from Hartman:

- Hartman is merely a former President of the Academy. His four year presidential term spanned 1992 – 1996[1]. He was no longer on the board. He might be well within his rights as a member of the Academy (MAAA) to express concern to the Academy board regarding his observations regarding Schobel drawn from the *Award of Arbitrators*[2]

[1] In his 8/3/09 letter to the Academy Board (Exhibit 7) Hartman signed as AAA Past President 1987-88. This is incorrect. Hartman was President of the AAA from 1993-94 per the History in the Academy's 2008 ***Leadership Manual***. Hartman was President of the Casualty Actuarial Society from 1987-88. John Fibiger was President of the Academy from 1987-88.

[2] The ***Award of Arbitrators*** document was produced as a result of litigation between the SoA and Sarah Sanford, its former Executive Director. This document contains details regarding this litigation that the SoA desires to keep confidential in order to protect all parties involved from further damage.

document. However, it seems to me that he was behaving in a way not in keeping with the Code to, in effect, threaten Schobel with sending his letter and a copy of the Arbitrators Award document to the Academy board (which would "embarrass" Schobel) if Schobel does not "step aside".

In a document already posted I have asked the ABCD to look into this as Hartman's actions seemed to me to come very close to, at least, one definition of blackmail.

- The propriety of filing an ABCD complaint against an Academy officer and then requesting said officer "step aside" until the complaint is resolved can certainly be questioned. This seems a bit self-serving and presumes guilt. It does not seem to recognize that the ABCD disciplinary process is designed to provide due process. It does not recognize that recommended discipline is not an automatic consequence of filing a complaint with the ABCD.

- It is also clear from the email and draft letter that Hartman had and intended to distribute a copy of an *Award of Arbitrators* document produced from the SoA litigation with its former Executive Director, Sarah Sanford. Although he claims it is a public document, I have wondered (see below) whether he can demonstrate that he actually received his copy from a public source. In any event, the SoA had a strong desire to keep the document confidential. Hartman's distribution of it would not be in keeping with that desire.

Where did Hartman get the Arbitration Award document?

The *Award of Arbitrators* document originated in the SoA litigation and was available, initially, only to the two sides in that litigation. Clearly, Hartman could only have gotten a copy from someone who had a copy. There are only three possibilities:

Public Source

The *Award of Arbitrators* document was filed with the court by Sanford which, apparently, has made it a public document. This filing, apparently, is why Hartman claims that the document is public although he did not indicate that he actually got it from a public source. Practically, the document is very hard to find. The only information anyone has so far been able to locate from a public source regarding the SoA litigation is the fact of a judgment and the dollar amount of the award. No one that I am aware of to date has yet found a public source for the *Award of Arbitrators* document itself.

In May/June 2009 the SoA had not yet announced that a settlement had occurred.[3] The only people who could have known that a settlement had occurred would be an insider, that is, one of the litigants – the SoA or Sanford. The SoA did not then nor has it ever published anything indicating the existence of an Award of Arbitrators document. Of

[3] The SoA's first announcement was dated 8/21/2009 (Exhibit 3A). It made no mention of an Arbitration document and did not even indicate the date on which the litigation was settled. It recently published a second statement dated 9/11/2009 (Exhibit 3B) which also makes no mention of an Arbitrators Award document.

course, one would need to know the document existed and have critical information identifying it in order to find it. Probably, the only way an uninvolved member of the Academy like Hartman could have become aware of its existence would be from an insider.

Therefore, it seems highly unlikely that Hartman could have been aware of the existence of the document in May/June 2009 from any public statement made by the SoA and, very probably, did not have enough information to get a copy from a public source. In any event, he did not actually claim to have gotten the copy he had from a public source. Any insider with knowledge of the existence of the document, while they may have told Hartman where to look for it in a public record, would have, probably, just found it easier to give Hartman a copy directly.

SoA Board Source

The SoA board, of course, had all of the information pertinent to the SoA litigation in order to make decisions regarding it. All of these discussions were held within executive session as is reasonable when discussing litigation. The SoA board and Leadership Team were very concerned that confidential information regarding the litigation remain confidential. It is highly unlikely that any SoA board member would violate this confidentiality and I do not believe that any of them have.

It is, of course, possible that someone on the SoA board disclosed that an *Award of Arbitrators* document existed and may have disclosed the amount of the settlement, but, as noted above, this information would probably not have helped in finding a public source for the document itself.

Sanford source

The other side in the SoA litigation also had a copy of the Arbitrators Award document. Therefore, it may have been, indirectly a source for Hartman.

A little history …

Sarah Sanford was hired by the SoA effective 12/1/1999 as Executive Director to replace John O'Connor, who had died earlier in the year. A. Norman Crowder III had just become President of the SoA and during the final months of his President-Elect year was, apparently, involved in the process of finding a replacement for O'Conner which ultimately resulted in Sanford being hired.

Sanford was suspended on 11/26/2006 by the SoA Leadership Team was terminated effective 12/18/2006 without cause by the SoA Board in a vote taken on 12/2/2006. Sanford subsequently filed her lawsuit which, ultimately, generated the Award of Arbitrators document when this litigation was resolved in December 2008. Crowder was, reportedly, a supporter of Sanford during this process and actively defended her during the period up to the SoA Board vote on 12/2/2006.

Crowder also served as Chairman of the ABCD from its formation on 1/1/1992 to 1995 and then served as Vice-Chair for one more year to 1996 which overlapped Hartman's presidential term with the Academy. During this period of time Schobel has indicated to me that the ABCD considered a complaint made against him in reference to an expunged conviction. Schobel has indicated that he was not immediately aware that the ABCD had taken up this issue since the ABCD dismissed it without taking any action. He only became aware of it later. Crowder as Chair (or Vice chair) of the ABCD would have probably been aware of the fact of an expunged conviction from this prior ABCD complaint.

Therefore, a possible link to the *Award of Arbitrators* document may be Sanford → Crowder → Hartman. This, however, is speculation on my part.

As I have reported, I have filed a complaint with the ABCD regarding Hartman. I have published my complaint primarily because it provides an analysis of the conclusions drawn by Hartman from the Arbitrators Award which he has made public (effectively) in his emails to Schobel and letters to the Academy former presidents and the Academy board.

The source of Hartman's copy of the Arbitrators Award may become known (at least to the ABCD) should the ABCD proceed with an investigation of my complaint.

Academy response to Hartman's actions

On 7/1/09 the Academy leadership (John Parks, President, and the two immediate past presidents – Bill Bluhm and Steve Lehmann) addressed what they described as a petition to "suspend Bruce Schobel as Academy President-Elect." In this letter (Exhibit 4) sent to past presidents of the Academy they described the Hartman effort as "fundamentally unfair."

The Parks' 7/1/09 letter stated:

> *Rather than the conclusions some have drawn from the Arbitration Award, we draw our conclusions both from what we know the Award is **not**, and from what we know Bruce to **be**. There are many others, beyond just the three of us, who believe that in the circumstances that led to the arbitration, Bruce acted courageously, against entrenched interests, to lead the SOA during this past period of turmoil. Many see him as a protector of whistleblowers who restored the SOA to a position of integrity and strength in its internal leadership. Bruce, in our experience, is a passionate, strong, and outspoken questioner of the status quo and is unafraid where his intellectual curiosity will take him or others.*

The Parks' letter indicates:

- Arbitration awards have no standing as judicial opinions, decisions, or precedents.
- Arbitration eliminates the ability to rebut and (emphasis in original) "***cannot be used to conclude that facts or law (if any) relied on in the decision were true and correct.***"
- The Arbitration Award document does not seem to be available publicly based on their search.

- The Arbitration Award resulted from an employment dispute within the SoA and had nothing to do with the Academy.
- "The Academy has no right to and no business in second guessing the SOA by reviewing or trying to get the bases[4] for the SOA's decision to terminate its ED. This was and is an SOA matter, and we are confident that they have handled it in the best interests of the SOA. This should be the end of that dispute."
- Hartman's reference to a criminal conviction 30+ years ago which has been deleted (i.e. expunged) "***by court order***" is inappropriate, unfair, and irrelevant.

The Parks' letter also points out: "Bruce was the president of the SOA when this dispute occurred, and he remains an officer as its immediate past president and current chairman of its Board. He presides at all SOA Board meetings." This makes clear that the SoA board with access to the information Hartman felt was incriminating took no action.

The Parks letter to the Academy former presidents concludes with the following paragraph (emphasis in original):

> **In summary, we believe that letters and other efforts alleging facts and opinions assumed by some but not believed by many who were directly involved in the dispute, and not proven as a matter of fact and law, are being used to discredit Bruce in his future leadership position (*while we note he remains an officer and leader of the organization where the matter arose*), by circulating a generally not publicly available document *(which has no binding legal authority*) about an internal SOA employment matter (*that obviously had strong proponents in the profession on both sides of the dispute*), will only serve to damage the integrity and the reputation of the profession, the Academy, and Bruce without any reasonable or fair basis for action by the Academy.**

Academy 8/5/09 Special Board Meeting Called

The letter drafted by Hartman was sent by Anker on 7/9/09

The letter from Parks, Bluhm, and Lehmann seemed to have no impact on Hartman. Hartman's discussion with Schobel, however, on the NJ Law regarding disclosing expunged convictions apparently did as the email sent to the Academy board on 7/9/09 (essentially identical to the 6/25/09 draft) was sent by Robert A. Anker who is not a NJ resident (Exhibit 5).

Special Meeting of the Academy board called for 8/5/09

The discussion among Academy board members of the Hartman/Anker letter apparently resulted in a special meeting of the board being called for 8/5/09 (Exhibit 6A). Although no date is specified in the notice, it is understood to be 8/5/09 since that date was the date of an already scheduled Academy Executive Committee meeting.

Per this meeting notice: *"*The purpose of the meeting is to discuss with the Board the letter sent to it by Bob Anker on behalf of 19 past presidents of the Academy."

[4] This wording is from the original parks' letter. Perhaps it should read "…to the basis for the SOA's decision…"

The meeting notice indicated that following practice "we will not have a call-in number or proxies. Attendance in person is necessary to participate in this meeting."

A second notice was sent via email on 7/16/09 (Exhibit 6B) apparently addressing concerns from some Academy board members about their ability to attend the meeting in person. Parks indicated the reluctance of the Academy to allow phone attendance because of the importance of the matter under discussion. He asked about board member's ability to attend on the 8/5/09 date in person, alternate dates, or should the discussion be deferred until the regular 10/20/09 board meeting (in Denver).

Finally, a third notice was sent by Parks on 7/31/09 (Exhibit 6C) 5 days before the 8/5/09 special board meeting. Technically, this notice did not meet the 10 day requirement set in Article III, Section 3 of the Academy Bylaws. However, it should be noted the Academy in the subsequent lawsuit argued that the purpose of a meeting need not be stated in the meeting notice.

The purpose of the meeting as stated in the 7/31/09 notice was, essentially, the same as in the original 7/14/09 notice except that this notice seemed to imply that some action might be taken. There is a reference to votes being "open" and "not secret". It is not clear from this description whether this is referring to the use of secret ballots during the meeting or to publication of any votes that might be taken after the meeting – that is, would votes be held in an open meeting.

Hartman's 8/3/09 email to Academy Board

This is Hartman's "New York Times test" email to the Academy board on 8/3/09[5] (Exhibit 7) which he sent as an individual to, in effect, lobby the Academy board to "vote to require Bruce Schobel to immediately step aside as an officer of the Academy."

Again, it should be noted that Hartman was not a member of the Academy board although he, apparently, had knowledge of an executive session meeting of the board prior to the meeting. Therefore, as merely a member of the Academy (MAAA) Hartman had the unusual opportunity to influence the Academy board in its decision making in an executive session – an opportunity no other MAAA was and, perhaps, is even likely to be granted.

Hartman placed heavy reliance on two items he drew from the Arbitration Award document which he was told in the Parks' letter could not be relied on. He continued to insist that Schobel (1) defamed someone and (2) that he is a convicted felon. Neither of these statements is either true or proven. He seems to ignore entirely that the Arbitrators Award document was available to the SoA board of directors for at least 6 months prior to his 7/9/09 letter to the Academy board and that no action of any kind was even considered by the SoA board relevant to the information in it.

[5] As has already been noted, in this email to the Academy board Hartman misidentifies himself as Academy Past President 1987-88. Hartman was actually Academy president from 1993-94. Hartman was president of the CAS from 1987-88.

Hartman states in his 8/3/09 email that the Arbitrators Award document is publicly available and that it has the potential to harm Academy interests "due to the existence, availability and content of the Award document with its potential of being injuriously utilized by others." He goes on to say: "All it takes is one copy in the wrong hands to create a very bad situation." Yet, apparently, the only copies of the document that have been distributed outside of the tight circle with legitimate access to it were distributed by Hartman.

At the Board Meeting

Academy 8/5/09 Special Board meeting

The discussion occurring during the 8/5/09 Academy Special Board meeting is addressed in Schobel's Third Declaration (Exhibit 8) beginning at paragraph 11. The first hour of the Special meeting was devoted to receiving information from special counsel retained by the Academy.

The "suspension" requested by the 7/9/09 Hartman/Anker letter to the Board was never discussed. Instead a motion was made by John Kollar (Special director and CAS president) to ask Schobel to resign. Clearly, such a motion could have no real impact since it would be only a request that could be ignored. This motion was, apparently, not voted on.

A second motion was made by Cecil Bykerk (Special Director and President of the SoA) to remove Schobel as President-Elect/Director. This motion was seconded by Mike McLaughlin (Special Director and SoA President-Elect). In discussion of this motion Hartman's concerns regarding defamation and felony convictions were, apparently, not discussed. Instead Bykerk raised Schobel's opposition to FEM (Flexible Education Methods), a subject which was part of internal SoA board discussions and a matter not really relevant to anything the Academy is doing.

I point out that, as far as I can see, there is nothing inherently wrong in Schobel expressing opinions in opposition to FEM. I myself have significant concerns. So, apparently, does McLaughlin. We have all expressed them publicly. In fact, the SoA board (and other organizations also examining FEM) is now actively seeking membership feedback, both positive and negative, regarding the FEM proposal the SoA board is now considering. As the SoA board has made no decision on whether or not to adopt FEM, a position in opposition to it would not be in conflict with anything the SoA board has done or any position it has taken. Therefore, I do not understand why Schobel's position on FEM is even relevant to whether or not he should be removed as President-Elect of the Academy.

Per Schobel's declaration (a statement sworn to under penalty of perjury), McLaughlin is reported to have raised issues involving personal conflicts with Schobel or personal conflicts he believes others have had with Schobel. Special Director Larry Sher (CCA President-Elect) argued that Schobel for a time in October 2008 had opposed Sher's becoming President-Elect of the CCA.

All of these arguments seem to me to be based on political motives aimed at removing Schobel as a political opponent and have very little, if anything, to do with his abilities to carry out the duties of President-Elect and president of the Academy.

Nevertheless, the Academy board voted 17-9-1 to remove Schobel as President-Elect. Detail of this vote is attached as Exhibit 9.

Litigation

Schobel sues Academy

On 9/1/2009 Schobel filed suit against the American Academy of Actuaries in the U.S. District Court for the District of Columbia. This followed a 2 – 3 week period during which a non-litigious solution was searched for between Schobel and the Academy.

The Complaint has been posted to http://www.BakosEnterprises.com/Academy. It outlines the history described above and alleges the following:

- Schobel was illegally removed as President-Elect/Director.
- The Academy's actions violated Illinois law.
- The Academy is illegally attempting to replace Schobel

The suit sought injunctive relief in order that Schobel might become President on 10/26/09 and to avoid irreparable harm. In a number of other counts Schobel claims defamation and damages in excess of $1,000,000.

A Temporary restraining order (TRO) was the first target of the suit. Hearings on the case were held on 9/3, 9/9, and 9/15/09. Transcripts of these hearings have been posted to the /Academy website noted above.

It was clear from the beginning that the judge was encouraging settlement and would have difficulty ordering the Academy to take Schobel back as President-Elect unwillingly. However, it is also clear from the transcripts that the judge was not impressed with the Academy's arguments.

9/3/09 Hearing (3 hours, 15 minutes)

From the beginning Judge Sullivan encouraged settlement even going so far as to contact a magistrate judge who would be available for mediation. No decision was made on this during the hearing. The judge used the hearing to understand both sides of the argument giving them about equal time to present their cases.

Schobel's arguments were that he was improperly removed from office as proper meeting notice was not given. Elements of the Academy Bylaws and Illinois law were also argued.

The Academy arguments were that Schobel was properly removed as an officer (President-Elect) by a majority vote of directors (as he was elected by a majority vote of directors) and that once removed as an officer he was automatically no longer a director since his membership as a director was derived from his election as President-Elect.

There was no ruling. Judge Sullivan continued the hearing to 9/9/09 again encouraging settlement. During the hearing Judge Sullivan emphasized this with the following statement:

> *But here, I don't think that argument can be made, no damages can compensate him for his loss. I can think of -- I can think of at least a number of reasons that would enable me to stand before a jury for an hour and talk about all the reasons why they should just put a lot of zeros behind an award. I mean, it's compelling. The President, the President-Elect, his reputation, defamation, but what's missing here? I'm inviting you to tell me where my thinking may be in the wrong place.*

9/9/09 Hearing (about 2 hours, 15 minutes)

This hearing again dealt with the judge questioning both sides so as to better understand the arguments being made.

The discussion focused on how the President-Elect position was tied to the director position, what "discipline" meant, and notice requirements as all of that related to what the Academy Bylaws and Illinois law say. The judge was left with more questions and continued the hearing to 9/15/09 at which time he indicated he would decide on the Temporary Restraining order (TRO). He asked for additional briefs covering the questions:

- Does misleading notice invalidate a meeting; and
- Can one cherry pick statutes and portions of Bylaws.

9/15/09 Hearing (about 20 minutes)

Having considered the briefs filed in response to his request made at the earlier hearing, Judge Sullivan at this hearing did not grant the TRO, indicating that the hurdle in the DC District for the granting of a TRO was not met and that he followed precedent.

In this hearing the judge made several statements clearly sympathetic to Schobel:

> *THE COURT: Right, right. All right. All right. It's really unfortunate that what's put into motion the series of the sequence of events since July is the undisputed fact that the terms of a confidential arbitration agreement were revealed. That's really -- that's really unfortunate. It's unseemly. It's disgusting, but that's -- that's why you folks are all here, and I think that when the final chapter is written in this book, I think the world's going to know more about the American Academy of Actuaries than it ever wanted to learn and know about; nevertheless, the Court's prepared to rule.*

Unseemly as what may have happened, there's no basis in fact or law for a temporary restraining order, an extraordinary legal relief, and it's not sustainable at this point.

While the Court is indeed sympathetic to the manner in which Plaintiff has been removed from his position as President-Elect, the Court must agree with the Defendant that the Board's actions, however disagreeable and arguably disgusting, did not appear to be prohibited by either – and I'll add unseemly -- by either the bylaws of the Act. The Act clearly states that officers can be removed, and his position as a director was based on his status as an officer.

For those reasons, the Court finds that Plaintiff has failed to meet its burden of showing a substantial likelihood of success on the merits as to his claims with respect to his removal as an officer. To be clear, this analysis obviously does not extend to the merits of any of Plaintiff's other claims, because only the issue surrounding his removal are relevant to the request for temporary restraining order. This analysis, therefore, does not extend to the likelihood of success as to Plaintiff's claims of defamation, tortious interference, et cetera.

The judge asked both sides to get together to determine the next step. He was conscious of the need to have a resolution by 10/20/09, the date of the next regularly scheduled Academy board meeting.

Current Status

As of this writing this litigation is awaiting results of mediation.

Risk Management

Whether or not the Academy is successful in establishing a right to remove a President-Elect through a majority vote of the board without notice, it will, apparently, suffer a monetary and reputation loss for not carefully managing the risk. There appear to have been many opportunities lost to minimize the damages.

Academy Initial Response

The initial response of the Academy was, in effect, to make all of the arguments Schobel himself might have made as voiced in Parks' letter dated 7/1/2009. Therefore, it seemed as if the Academy itself (through the current President, Parks, and the two Immediate Past Presidents, Bluhm and Lehmann – two of whom are members of the Academy Executive Committee) was arguing it had no cause or reason to remove Schobel as President-Elect.

A Special Academy board meeting was called (the 8/5/09 meeting) to discuss the 7/9/2009 letter Hartman sent to the Academy board. It seems clear that the meeting was not called to vote to remove Schobel as President-Elect/Director. And, in fact, the meeting did not actually discuss anything in the Hartman letter. When the meeting started down that road of voting to remove it might have been prudent for the chair (or General Counsel, or outside counsel retained specifically by the Academy to give the board advice on this matter) to remind the

board that the meeting was not called for that purpose and proper notice had not been given – as Schobel indicated he pointed out during the meeting.

If the board was intent on removing Schobel as President-Elect/Director they certainly should have done it in a meeting called for that purpose in order to eliminate any cause for lawsuit. Certainly, any reasonable observer could have seen that coming or have, at least, seen it as a possibility. Instead, the Academy board seemed to have meandered wildly down a road they had not intended to take and no one had a foot on the brake. Certainly, Judge Sullivan's characterization of their approach as "disgusting" and "unseemly" could have been anticipated by any reasonable risk evaluator.

The Academy board may have also questioned the wisdom in giving members (MAAA's), even though they were former presidents such extraordinary influence over Academy board decisions of such obvious importance. It has been reported (though I haven't checked) that some of these former presidents are no longer even MAAA's. I wonder if any other 19 MAAA's could have had such influence.

Academy Litigation Response

It should be clear to any reasonable observer that the Academy leadership ignored or, worse, perhaps, didn't even recognize risk. It did not manage it.

Academy board members were, apparently, pledging allegiance to an unreasoned outcome. Certainly, it had been pointed out by the Academy leadership with obvious help from General Counsel that the complaints Hartman made which were drawn from the *Award of Arbitrators* document, specifically defamation charges and a conviction, were either not true or unproven and were without merit. Therefore, an obvious risk avoidance mechanism would have been to ignore them.

Applying reason to all of the arguments made against Schobel including those made at the 8/5/2009 Academy Special board meeting (i.e. being anti-FEM, and having, essentially, a personal style others don't like) do not amount, in my opinion, to cause and, in fact, the Academy has not claimed to have voted to remove Schobel for cause – or, at least, not any real cause related to Schobel's ability to serve the Academy as President-Elect.

What the Academy board did was without reason to allow itself to be led down a road it had no business being on. It seemed to not reference its own bylaws or applicable Illinois law before it acted. Its action involved an exceptionally non-routine matter (the first ever removal of a President-Elect/Director) which would seem to have required more analysis and preparation than it was given. Even common sense did not seem to be applied. Instead, the Academy entered court desperately searching in retrospect for bylaw and Illinois law justification for action it had already taken. In the process they created a judge who thought the Academy *unseemly*, *disgusting*, *disagreeable* and, in general, very sympathetic to Schobel. This is not the kind of risk management one would be looking for in an actuary and certainly not the type of impression anyone would want if facing a jury in a defamation lawsuit.

This is not a condemnation of the Academy. It is a condemnation of its leadership. We are approximately 16,000 strong and, I bet, nearly everyone of us has greater sense than our leadership displayed in this drama. A lesson learned from this is that, apparently, an Academy board majority wants to stifle dissent within Academy board ranks. Essentially, what their vote on 8/5/09 tells us is that if a minority doesn't pledge allegiance to the majority view, the majority can simply vote to remove them from office and replace them with more complacent members.

We should exercise our good sense as members and amend the Academy Bylaws so a tragedy like this can never happen again.

SoA Material

As is clear to every SoA board member, the SoA intention was to keep the Sanford litigation confidential in order to protect all parties and avoid (i.e. risk manage) further damages. Perhaps, then, it would have been wise of Bykerk and McLaughlin, Special Directors on the Academy board but President and President-Elect of the SoA, to have aggressively disputed the need to call a Special Academy board meeting to discuss the Hartman letter which was <u>all about</u> the Sanford litigation. In particular the Hartman letter was all about the *Award of Arbitrators* document which the SoA board was to keep confidential. Bykerk and McLaughlin could have asked the Academy board in deference to the SoA to not take this matter up – at least for the reasons given in the Hartman letter. Instead, they did something else.

It, of course, bears repeating that, in fact, Bykerk and McLaughlin made and seconded the motion that got the Academy into the mess. McLaughlin is a CERA, perhaps he should have known better.

Academy Crisis Management

It may be hard to believe, as all of you watched this crisis unfold, but the Academy has a *Crisis Communications* policy (Exhibit 10). The Academy, apparently, forgot all about it as they apparently forgot all about their Bylaws and Illinois law.

From the policy:

> ***Purpose***
> *This plan was written to provide a decision framework for Academy leaders and staff to use in the event of a public relations crisis. For the purposes of this plan, crises are limited to circumstances in which the Academy and the profession can expect negative publicity and scrutiny from the media, members, government, and other key audiences.*

A key element of the policy is to *seize the debate*. As the *Crisis Communications* policy indicates: "Silence equals agreement when an issue erupts in a public forum and may even be characterized by some as stonewalling."

In this drama, which has been going on for almost 3 months, the Academy has posted one cryptic notice to members about a vacancy in the office of President-Elect and a second notice

on 9/17/09 in which they explain (in seeming disregard for the concept of *seizing the debate*) the following (***emphasis added***):

> In addressing this matter, the Academy has made every effort to protect the long-term best interest of the organization and the profession, and to be sensitive to the interests of the individuals involved. In doing so, ***it has chosen to remain largely silent on the matter***. Our leadership regrets that this has resulted in confusion and frustration for some of our members.

Well, by the time this announcement was made and the Academy had decided "to share certain facts that have become a matter of public record" the information, as the Academy noted, was already well known to anyone with an interest in this drama – and in greater detail.

Damage control is also indicated as important: "Once a crisis has been declared, be proactive in providing members information." Did the Academy do this?

Rehabilitation, the stage we are quickly approaching, is the last step. We can only hope that the Academy will do a better job at that than it has done with respect to everything that has come before.

Awakened the Beast

The reputational damage to the Academy is, perhaps, felt more by its members than any other public. The one NY Times article will quickly be forgotten but members have become aware of a lot of things they had never considered important before. They have suddenly realized that many of them have never voted in an Academy election. They may wonder why and want to do something about that.

More to Tell

I suspect that there will be much more to tell. This story is not over.