



November 4, 2009

Tom Griffin
Actuarial Board for Counseling and Discipline
1850 M Street, NW
Suite 300
Washington, DC 20036-5805

RE: Conversion of my Guidance request in my letter dated July 20, 2009 into an official **complaint** against David G. Hartman.

Dear Tom:

This is in response to your letter to me dated October 27, 2009 responding to the request for guidance contained in my letter to the ABCD dated July 20, 2009. A copy of my July 20, 2009 letter is attached for reference.

The second paragraph of your letter indicated that it would be inappropriate for the ABCD “to announce with regard to a matter that might come before the ABCD whether a particular actuary appeared to have violated law or engaged in a civil tort.” You also indicated “it would also be inappropriate for the ABCD members or the ABCD to announce outside of the inquiry process whether or not specific acts appear to have violated the Code.”

Therefore, it seems appropriate that I submit to the ABCD this formal complaint against **David G. Hartman**, as was suggested in your letter, so that the ABCD can consider investigating the matters I brought to its attention in my July 20, 2009 letter.

Note that the Hartman’s intent, as shown in his 6/25/09 email to Bruce Schobel, appears to have been to **extort** or **blackmail** Schobel in order to get Schobel to agree against Schobel’s will to “step aside” as the American Academy of Actuaries President-Elect. Hartman’s apparent **threats** were to reveal information Hartman believed would be embarrassing to Schobel and, in fact, Hartman apparently believed the Academy would also be damaged.

Extortion or blackmail is against the law and actuaries subject to the Code are required to obey the law¹. In addition, Precept 1 of the Code requires actuaries to “act honestly, with integrity

¹ From the preamble of the Code: “Laws may also impose obligations upon an Actuary. Where requirements of Law conflict with the Code, the requirements of Law shall take precedence. An Actuary must be familiar with, and keep

and competence, and in a manner to fulfill the profession's responsibility to the public and to uphold the reputation of the actuarial profession." In particular, Annotation 1-4² may be applicable to this situation.

Definition of "blackmail"

You provided in your October 27, 2009 letter to me some personal observations regarding "blackmail". You provided a few definitions of "blackmail" you considered to be from better sources than I quoted in my July 20, 2009 letter. However, I see no substantial differences between the definition I provided, which, I believe, to be a common understanding of the meaning of "blackmail" and the definitions you provided. Essentially, blackmail or extortion is the making of a threat.

I also believe that you have, in your last paragraph, provided characterizations of blackmail that are inappropriate as a matter of law. That is, you raised the points, essentially, that if (1) the information to be revealed is known by others, or (2) the writer has accomplices (in that he copies others) then the threatening act is not blackmail per the definitions you provided.

Clearly, for a blackmail attempt to have a chance to be effective the only necessary requirement would seem to be that the person or persons to whom it is threatened to reveal embarrassing information don't already know it³. The fact that such information may be known to others or be publicly available (if one knows where to look for it) would be irrelevant. Hartman was apparently threatening to reveal information, that is, the Award of Arbitrators document, to people who didn't already know it. He was also apparently threatening to take action which he seemed to believe would be effective in remove Schobel from his position as President-Elect of the Academy unless Schobel stepped aside.

So, while state and federal law may vary regarding extortion or blackmail in particulars, blackmail is generally defined as the making of a threat (see **Attachment A** for detail) and it does not require, if the threat involves a threat to reveal information of an embarrassing nature, that such information not be known by any others. Blackmail or extortion also does not require that the person making the threat not involve others. Therefore, I believe that you are not correct in your conclusion that the email sent by Hartman to Schobel does not fit a reasonable definition of blackmail.

It is also worth noting that while blackmail may in some jurisdictions refer to attempting to "gain something of value" this "something of value" has not, I believe, only been interpreted by courts as a money payment.

current with, not only the Code, but also applicable Law and rules of professional conduct for the jurisdictions in which the Actuary renders Actuarial Services."

² **ANNOTATION 1-4.** An Actuary shall not engage in any professional conduct involving dishonesty, fraud, deceit, or misrepresentation or commit any act that reflects adversely on the actuarial profession.

³ For example, marital infidelity need only be unknown to a spouse (one individual) for such knowledge to be suitable for use in blackmail or extortion.

ABCD Involvement in determining illegal acts

As you noted in your October 27, 2009 letter (see second paragraph), the ABCD wants to involve itself in determining “possible material violations of the Code of Professional Conduct, rather than in determining whether actuaries have committed crimes or torts.” Therefore, the ABCD should recognize that I am not premising my complaint on any presumption that there, in fact, has been a crime or tort committed.

It is clear, however, that whether or not it is a crime under any state or federal statute, Hartman did appear to attempt to extort⁴ Schobel to “step aside” through an apparent threat to reveal what he thought to be embarrassing information. This would seem to be, if not legally extortion, a violation of Precept 10 (Courtesy and Cooperation).

Since Hartman himself seemed to realize and stated that the Academy would be “at risk of being damaged”⁵ his ultimate actions which directly resulted in the Academy, in fact, being damaged⁶ might also be considered an action in violation of Precept 10 which requires cooperation with others in the Principal’s interest”. Under these circumstances, since Hartman was purportedly acting as a former president of the Academy and in the Academy’s interest, the Academy could be considered to be Hartman’s principal. Therefore, I believe that the ABCD should consider whether or not Hartman was acting in his Principal’s interest.

ABCD Consistency requested

In following through on his threats it should also be noted that Hartman argued in the 7/9/09 email he subsequently sent to the Academy board (and, apparently, he also filed a complaint with the ABCD against Schobel regarding the same matter) that Schobel defamed Sarah Sanford⁷. He clearly states that his claim is based on the Award of Arbitration document he circulated to the Academy board with his email.

⁴ From Hartman’s email to Schobel:

“We wanted to give you a chance to voluntarily step aside before we send it - hence this e-mail. “

“You have a choice. Hopefully, you will step aside while the disciplinary process moves to its conclusion. In this way, you can say you cooperated with the process. You can 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. It really is in your interest that you withdraw gracefully and quietly.”

“If you choose not to step aside, please let me know by July 1. Our letter will then be forwarded to the Board.”

⁵ See Hartman’s email to Schobel: “I, and most of my fellow past presidents of the AAA, fear that the public trust that the American Academy of Actuaries has built up over the years since its founding in 1965 is at risk of being damaged. The source of the risk is the American Arbitration Association Award of Arbitrators (Award) document.”

⁶ Note the Academy incurred significant legal fees and a \$600,000 payment to Schobel in the resulting settlement of a lawsuit directly resulting from Hartman’s actions and the Academy lost considerable member support which they are now trying to regain.

⁷ From Hartman’s 7/9/09 email: “A panel of impartial arbitrators of the American Arbitration Association found that Mr. Schobel had defamed the character of Sarah Sanford, formerly the Executive Director of the Society of Actuaries (SOA), resulting in an award of over \$2,000,000.”

However, as was explained to Hartman and other past presidents of the Academy by John Parks in his July 1, 2009 letter, the Award of Arbitration document had no standing⁸ as judicial opinion and, therefore, I presume, was not a finding of any crime or tort. Therefore, it would seem consistent that, if the ABCD chooses to investigate any complaint made by Hartman against Schobel for an act by Schobel which was not, in fact, a violation of any law or a tort, then it should also do so in this complaint even though Hartman's apparent extortion attempt may not be a crime nor subject to tort.

Defamation

While the Arbitrators may have characterized Schobel's expression of opinion as "defamation", legally in a tort sense it seems that it was not – as pointed out by the Academy in John Parks' July 1, 2009 letter. In fact, if Schobel cannot properly be accused of defamation against Sanford as Hartman has done, then Hartman has apparently falsely accused Schobel of "defamation" against Sanford in a very public way. Therefore, the ABCD should, in my opinion, also consider whether or not such a false accusation by Hartman amounts to ***defamation*** of Schobel and, therefore, a violation of the Code.

Request

In reporting to me as Complainant on any decision with respect to this complaint, I request that the ABCD be very clear, without revealing any confidential information, as to its reasoning with respect to any step it takes or decision it makes. For example, if the ABCD decides to dismiss this complaint, I would appreciate understanding the reasoning used by the ABCD to determine that the activities I have disclosed herein are not violations of the Code.

Sincerely,



Tom Bakos, FSA, MAAA

⁸ From John Parks' 7/1/09 letter to the past presidents of the AAA: **1. Arbitration Awards have no standing as judicial opinions, decisions, or precedents.** They are used when the parties to an agreement (such as in, in this case, an employment contract) agree to be bound to resolve a dispute arising under it through "binding arbitration". Awards that result from this process are binding **only** on the parties that agreed to be bound by them. Those parties **are** bound, regardless of whether the decision/award: (1) follows any judicial precedent or applicable law, or (2) makes *its own version of the facts or law*.

ATTACHMENT A

Note the following few sample of applicable law regarding **extortion** or **blackmail** (*emphasis added*):

U. S. Code

Per U.S. Code [TITLE 18](#) > [PART I](#) > [CHAPTER 41](#) > § 873

§ 873. **Blackmail**

Whoever, under a ***threat of informing***, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing, shall be fined under this title or imprisoned not more than one year, or both.

New Jersey Statute

2C:20-5. Theft by Extortion

2C:20-5. Theft by extortion

A person is guilty of theft by extortion if he purposely and unlawfully obtains property of another by extortion. ***A person extorts if he purposely threatens to:***

- a. Inflict bodily injury on or physically confine or restrain anyone or commit any other criminal offense;
- b. Accuse anyone of an offense or cause charges of an offense to be instituted against any person;
- c. Expose or publicize any secret or any asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;***
- d. Take or withhold action as an official, or cause an official to take or withhold action;***
- e. Bring about or continue a strike, boycott or other collective action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act;
- f. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- g. Inflict any other harm which would not substantially benefit the actor but which is calculated to materially harm another person.

It is an affirmative defense to prosecution based on paragraphs b, c, d or f that the property

obtained was honestly claimed as restitution or indemnification for harm done in the circumstances or as lawful compensation for property or services.

Rhode Island

Rhode Island 11-42-2 Extortion and blackmail

Whoever, verbally or by a written or printed communication, maliciously threatens to accuse another of a crime or offense or by a verbal or written communication maliciously threatens any injury to the person, reputation, property, or financial condition of another, or ***threatens*** to engage in other criminal conduct with intent to extort money or any unlawful pecuniary advantage, or with intent ***to compel any person to do any act against his or her will,*** or to prohibit any person from carrying out a duty imposed by law, shall be punished by imprisonment in the adult correctional institutions for not more than fifteen (15) years or by a fine of not more than twenty-five thousand dollars (\$25,000), or both.



July 20, 2009

Actuarial Board for Counseling and Discipline
1850 M Street, NW
Suite 300
Washington, DC 20036-5805

RE: Two Complaints - attached

Dear ABCD:

Attached are complaints against members of the actuarial profession. These complaints refer to activity of these members while providing professional services to either the Society of Actuaries or the American Academy of Actuaries. In the course of providing these services these members produced **actuarial communications** which contained **actuarial findings**.

These terms are defined in ASOP 41 as follows:

Actuarial Communication—A written, electronic, or oral communication issued by an actuary with respect to actuarial services.

Actuarial Findings—The results of professional services provided to a principal by an individual acting in the capacity of an actuary (including commentary on another actuary's work). Such services include providing advice, conclusions, statements of actuarial opinion, other opinions, or recommendations, based upon actuarial considerations.

I believe these members have violated the Code as evidenced by the quality of their actuarial communications and their actuarial findings as outlined in my attached complaints. I have interpreted the duties and obligations of these members with respect to the Code by treating the professional body to which they belonged as their Principal.

I have become aware of information I relied on in making these complaints as a result of my duties as an SoA Board member. Some correspondence upon which I relied was provided to me by Bruce Schobel per my request. None of the information is confidential with the possible exception of references made regarding an expunged criminal record. This expungement information can reasonably be referred to in this complaint as it is already known, apparently, to the ABCD through the disclosures made by David Hartman.

Additional Concern – Request for Guidance

In addition to the complaints I have made and documented in the attached, I also wish to request **guidance** from the ABCD and alert you to another possible Code violation related to the these matters.

Please see the attached text of an email sent by David Hartman to Bruce Schobel on 6/25/2009 attached as an **Exhibit**. I seek your guidance and the guidance of Academy General Counsel on whether or not this email constitutes “blackmail”. If so, then a material Code violation would be apparent.

I have found the following definition of “blackmail” in Wikipedia (which, I agree, may not be an ideal source for a legal opinion which is why I seek guidance):

***Blackmail** is the crime of threatening to reveal substantially true information about a person to the public, a family member, or associates unless a demand made upon the victim is met. This information is usually of an embarrassing and/or socially damaging nature. As the information is substantially true, the act of revealing the information may not be criminal in its own right nor amount to a civil law defamation; the crime is making demands to withhold it. [<http://en.wikipedia.org/wiki/Blackmail>]*

In the 6/25/09 Hartman email to Bruce Schobel there are numerous direct indications that the as a quid pro quo for Hartman not revealing information he feels will be a “public embarrassment” for Bruce, if Bruce resigns, he will withhold disclosing that information to the Academy Board. This seems to meet the definition given above for “blackmail”.

See the following (highlighted in the email text provided):

We wanted to give you a chance to voluntarily step aside before we send it - hence this e-mail.

You have a choice. Hopefully, you will step aside while the disciplinary process moves to its conclusion. In this way, you can say you cooperated with the process. You can 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. It really is in your interest that you withdraw gracefully and quietly.

I ask for you to sleep on these questions, seek the counsel of others and search your soul deeply. I hope you will see your way clear to step aside for now. If you choose to do so, I assume that you will let John Parks and the whole Board know of your decision. If you choose not to step aside, please let me know by July 1. Our letter will then be forwarded to the Board.

The definition of “blackmail” relates to a threat to divulge information that is *substantially true*. As you will see in the attached complaint, I believe, the information Hartman is threatening to reveal if Bruce does not step down is *substantially false*. This would raise a question of whether

Hartman's and Anker's ultimately revealing of the information, as they did when the 7/9/09 email was sent to the Academy Board, amounts to civil defamation as suggested by the above definition.

I request that if your guidance suggests that Hartman's threat may be blackmail or Hartman's actions may be civil defamation, then the ABCD initiate an investigation to resolve those issues.

Thank-you for your consideration of these matters.

Sincerely;

A handwritten signature in black ink that reads "Tom Bakos". The signature is written in a cursive, flowing style.

Tom Bakos

Cc: Mary Downs

EXHIBIT

Text of 6/25/2009 email from David Hartman to Bruce Schobel

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

From: Dave Hartman [<mailto:dghartman@comcast.net>]

Sent: Thu 6/25/2009 3:02 PM

To: Bruce Schobel

Cc: John P Parks; Bluhm, Bill; Lehmann, Steve; Mary Downs

Subject: Draft Letter to AAA Board

Dear Bruce,

I, and most of my fellow past presidents of the AAA, fear that the public trust that the American Academy of Actuaries has built up over the years since its founding in 1965 is at risk of being damaged. The source of the risk is the American Arbitration Association Award of Arbitrators (Award) document. Whether one agrees or disagrees with the finding, it exists. Please view the words in the Award from the perspective of someone in the public.

Please read the attached draft letter addressed to the members of the Board of Directors of the American Academy of Actuaries (AAA). So far, 19 past presidents of the AAA have indicated their willingness to sign this letter. There is still one other past president who has not indicated one way or another if he plans to sign it. Only two have indicated they do not wish to sign it and two more feel they can not sign it due to ABCD conflicts. That covers all 24 past presidents who are not currently on the AAA Board of Directors who have e-mail addresses.

Our interest in drafting this letter to the Board is to protect the reputation of the AAA - an objective I believe you share.

We wanted to give you a chance to voluntarily step aside before we send it - hence this e-mail. We reiterate - the Award exists. It is not a sealed document and more and more people will learn of its contents as time goes on - some in the profession and some outside the profession (the public). As you know, among the things it says are "nothing in the record proved the 'facts' expressed by Schobel were true." and that statements that "Schobel was a convicted felon were substantially true."

Please step back and look at how those statements about your conduct match up to the Academy's Vision Statement and everything else that the Academy stands for. It is hard to imagine that an average Academy member (or any outsider) will understand how the Board of Directors can ignore those statements. Any reasonable observer looking at those statements is likely to conclude that they raise serious questions about the appropriateness of your being in a leadership position in the Academy at this time.

You have a choice. Hopefully, you will step aside while the disciplinary process moves to its

conclusion. In this way, you can say you cooperated with the process. You can 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. It really is in your interest that you withdraw gracefully and quietly.

Or you can choose to fight that outcome against significant odds, causing a distraction from the ambitious and very important agenda that the Academy has charted for the coming year. Having you in office at a time when controversy surrounds your conduct could be highly disruptive to the Academy and would not serve the best interests of the members or the Academy as it pursues its very important mission.

I ask for you to sleep on these questions, seek the counsel of others and search your soul deeply. I hope you will see your way clear to step aside for now. If you choose to do so, I assume that you will let John Parks and the whole Board know of your decision. If you choose not to step aside, please let me know by July 1. Our letter will then be forwarded to the Board.

Thank you for your careful consideration.

Dave