



December 9, 2009 – Letter A

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

RE: My Complaint filed 11/4/2009 (Hartman) / Your letter of acknowledgement dated 11/24/2009

Dear Tom:

Your letter acknowledging the ABCD receipt of my complaint against David G. Hartman also advised me of the ABCD requirement, per Article X, Section 9 of the American Academy of Actuaries Bylaws, to keep all proceedings under the Article confidential. Thank you for the copy of the ABCD **Rules of Procedure** included with your letter which reiterates the ABCD's requirement to keep details regarding matters before it and its investigation confidential. As you know, however, I was already very familiar with these Rules.

I understand that per these Rules of Procedure "persons who may be involved in an inquiry shall be informed that the ABCD desires that ***its inquiry [emphasis added]*** be kept confidential." However, as has been noted on numerous occasions such confidentiality is not required of participants in an inquiry and, certainly, this request for confidentiality does not, as it is expressed, apply to a complainant since a complainant is not "involved in an inquiry" made by the ABCD.

Therefore, per the ABCD's *Rules of Procedure* a complainant is not even asked to keep a complaint made to the ABCD confidential and there is no other obligation in the Code that would suggest or require that a complaint made to the ABCD be kept confidential.

In most circumstances the nature of the apparent violation would not be of interest to anyone but the directly involved parties and it may be important for those parties to know that they may be relying on actuarial advice or opinion which may involve a violation of the Code. Therefore, it would be important for a complaining actuary to not only inform the ABCD of such apparent, material violation but to also inform any party who may be relying on advice or opinion possibly affected by a violation of the Code. Such disclosure could be accomplished most easily by making available to interested parties a copy of a properly completed disclosure to the ABCD (per the *Rules of Procedure* section II(C)). In fact, such a disclosure to interested

parties might be considered a requirement under Precept 1 of the Code – Professional Integrity. That is, keeping silent on a potential Code violation that might have an adverse impact on a decision or outcome may be in conflict with fulfilling “the profession’s responsibility to the public” or “detrimental to the reputation of the actuarial profession.”

As you and the ABCD know, in this case the actions of David G. Hartman upon which my complaint is based are well known within the profession and of great importance to members of the profession since Hartman’s actions have affected how the profession is governed and have resulted in significant expense to the Academy which is funded primarily by member dues. Therefore, disclosing my complaint fulfills a duty I believe I have to the profession and, in any event, is not prohibited in any way and, in substance, merely reiterates information which is not itself confidential.

It is hard to understand the implied argument contained in your letter that knowledge of the existence of an ABCD inquiry would have an adverse effect on the ability of the ABCD to conduct inquiries. Clearly, the ABCD cannot conduct an inquiry without making known to those from whom it is requesting information the fact that an inquiry is ongoing. Therefore, keeping the fact that an inquiry was ongoing from those involved in the process would be impossible. It would also seem to me that knowledge of the fact that an inquiry was ongoing by others not directly involved in the process would be immaterial.

I understand that keeping “facts and circumstances involved in any matter considered by the ABCD” confidential (as specified in section X of the *Rules of Procedure*) is necessary in order to protect the integrity of the inquiry and provide due process for the subject actuary. However, keeping confidential the simple fact that an inquiry is being made could not, in my opinion, affect the ability of the ABCD to operate effectively.

Sincerely,

Tom Bakos, FSA, MAAA