

Recent Litigation Within the Actuarial Profession and Why You Should Care

You may have seen information from the American Academy of Actuaries (Academy) about the outcome of a lawsuit by a group of eight Academy members against the Academy. Here is information that the Conference of Consulting Actuaries (CCA) believes that all U.S. actuaries need to know about this litigation:

- CCA was not a party to the lawsuit, but supported it financially because we believe the Academy's actions are detrimental to the actuarial profession in the U.S. Note that the eight Academy members who filed the lawsuit first attempted to convince the Academy to change course, to no avail.
- CCA is deeply disappointed in the outcome of the lawsuit, and disagrees with the reasoning by which it was reached. As a professional actuarial organization in the U.S., we continue to believe that the efforts to require the Academy to follow its bylaws, and be accountable to its members and the U.S. actuarial profession, were the right thing to do for the profession.
- We believe that the Academy has misrepresented and maligned other actuarial organizations, including the CCA, in a manner that merits a response.

What was the lawsuit about and how did it end?

In 2018, the Academy's Board of Directors amended the Academy's bylaws with respect to the membership of the Selection Committee that appoints individuals to serve on the Actuarial Standards Board (ASB) and the Actuarial Board for Counseling and Discipline (ABCD). That bylaw change removed representatives from the American Society of Enrolled Actuaries (ASEA) and the CCA from the Selection Committee, which previously included representatives from all five U.S.-based actuarial organizations from the very inception of this committee.

The court granted summary judgment to the Academy. We believe the case was wrongly decided, and that the judge's reasoning renders the clear language of the bylaws meaningless and suggests that the Academy Board can violate its bylaws with impunity and with no recourse by Academy members. Nevertheless, the group that filed the lawsuit does not plan to appeal.

Why does this matter?

There are two reasons why all actuaries who practice in the U.S. should care about this.

First, it is important that the Academy remain accountable to its members and to the profession. The Academy was created in 1965 by the other U.S.-based actuarial organizations as the public interface arm of the profession. The stated mission of the Academy is to represent all actuaries and the actuarial profession in the U.S. The bylaws as originally adopted help ensure that the Academy's activities met these goals, and require 2/3 of the members voting to approve any material bylaws changes.

The Academy Board unilaterally changed its bylaws regarding the composition of the Selection Committee for the ASB and ABCD (the Selection Committee) without the required member vote, disenfranchising the vast majority of its members. When they were challenged on this action, they attempted to have members approve a bylaw change that would have given the Board power to change bylaws without a member vote, thereby concentrating power and decision making in the small number of actuaries on the Academy Board. This does not seem consistent with their mission to serve the U.S. actuarial profession, nor is it consistent with claiming to represent all U.S.-based actuaries. Academy members recognized that this was not in the best interest of the profession and did not approve the amendment.

Second, the exclusion of ASEA and CCA from the Selection Committee, as well as the broader campaign by the Academy to delegitimize these organizations, is divisive, bad for the profession, and not factually

based. As simply one example, at this [link](#) you will find the Academy's September 7, 2018 announcement to its members of the bylaw change. The announcement denigrated both CCA and ASEA by suggesting that these organizations care more about commercial interests than professionalism. Actuaries who have experience with these organizations, either as members or as consumers of the high-quality continuing education (including ethics and professionalism training) offered by both organizations, know this to be an unfounded attack.

Why is it important that CCA and ASEA are represented on the Selection Committee?

All five U.S.-based actuarial organizations agreed to require their members to adhere to a single Code of Conduct, to be subject to the ASOPs promulgated by the ASB and the investigative process of the ABCD, and to financially support these bodies. While the Academy houses the ASB and the ABCD, in recognition of the joint nature of these bodies and their independence from the Academy and the other four U.S.-based actuarial organizations, the Academy bylaws formally spelled out the composition of the Selection Committee. In fact, only the Selection Committee, the ABCD and the ASB are expressly provided for in the Academy bylaws; other committees are left to the discretion of the Academy board. To CCA's understanding, the Selection Committee is not, and never has been, an *Academy* Committee.

When the bylaw regarding the Selection Committee was adopted, the Academy Board of Directors included the Presidents and Presidents-elect of all five U.S.-based actuarial organizations. By explicitly identifying the individuals who were to serve on the Selection Committee in the bylaws, each organization believed they were assured that the composition of that committee would not be amended unless and until 2/3 of the Academy members voting agreed to alter its composition.

This spirit of cooperation described above served the profession well for over 40 years.

The five actuarial organizations primarily serve different actuarial constituencies. As noted in the 2006 report from the Critical Review of the U.S. Actuarial Profession (CRUSAP) task force "the profession is small but diverse, and each of the organizations serves a purpose for its members that might otherwise be overlooked in a monolithic organization."

It is critical to the legitimacy (both real and perceived) of the ASB and ABCD that they have expertise in and representation of the various areas of actuarial practice in the U.S. when promulgating actuarial standards of practice (ASOPs) and in investigating disciplinary cases that come before the ABCD. It is in the best interests of both the public and the actuarial profession to have robust, yet practical, standards that work well in ensuring high quality work across all practice areas, and that the work of an actuary who is the subject of an ABCD investigation be judged by peers.

Such diversity in membership of the ASB and the ABCD can best be achieved by representation of all five U.S. based organizations that are subject to the Code of Conduct on the Selection Committee.

Just because the Courts ruled that the Academy has the right to amend their bylaws as they have done doesn't mean that it was the right thing to do for the profession. We encourage any actuary who has concerns to voice those concerns directly to Academy leadership.