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PROFESSIONAL RESPONSIBILITY

Speaker: LAUREN M. BLOOM*

This open forum will cover discussion of:

- Qualification standards
- Ethical standards
- Standards of practice

MS. LAUREN M. BLOOM: I spend a lot of time working with professional standards. As General Counsel of the American Academy of Actuaries, I am also the chief staff advisor to the Actuarial Board for Counseling and Discipline, and I provide legal advice to the Actuarial Standards Board, the Committee on Qualification, and the Joint Committee on the Code of Professional Conduct. So, in one way or another, I have been involved in the development of every set of standards that the profession has.

One of the things I've discovered is that the profession's understanding of the standards—how they work, how they fit together, whom they apply to, what can happen to you if you don't follow them—varies enormously, depending upon whom you talk to. I want to take you through a brief overview of the different kinds of standards and how they work together. If this seems simplistic, please forgive me. I'll try to do it fairly quickly, but I want to make sure we haven't left anything out.

The primary source of your obligation to fulfill professional standards is the code of professional conduct of the organizations of which you are a member. I say *organizations* because until very recently, the five U.S. organizations (the American Academy of Actuaries, the American Society of Pension Actuaries, the Casualty Actuarial Society, the Conference of Consulting Actuaries, and the Society of Actuaries) had five comparable, but not identical, codes of professional conduct.

Given that many actuaries are members of more than one of those organizations, the potential for confusion was significant. The differences between the codes weren't severe, but nevertheless, they created potential inconsistencies and certainly raised potential problems for the people who might some day have to enforce them. So I am pleased to report that inside of the last year, the five organizations have adopted a truly identical Code of Professional Conduct. You will find it reprinted, among other places, in the 1994 *Yearbook* of the Academy, and that code is the same for all five U.S. organizations. Now sadly, cultural and legal differences between the U.S. and Canada are such that we were not able to achieve an identical code with Canada. It would have been nice; it couldn't be done. But that notwithstanding, the new code, I think, is quite consistent with the Canadian code in most respects and makes clear that, for purposes of practice in Canada, you follow the Canadian rules rather than the code, sort of a when-in-Rome-do-as-the-Romans-do approach.

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*Ms. Bloom, not a member of the sponsoring organizations, is General Counsel of the American Academy of Actuaries in Washington D.C.

The new code came into effect in January 1994, and if you are a member of any one or more of the five U.S. organizations, you are required by virtue of your membership status to follow the code whenever providing professional services. The code deals primarily with ethical questions. It sets standards of conduct, if you will, for how actuaries should comport themselves in a variety of settings. There are 16 precepts overall, and they deal with most of the aspects of common professional practice, the obligation to provide services with integrity, skill, and care. You can't mess up when you do your work under the code. You must comply with qualification standards and standards of practice. There are obligations to disclose the source of your funding and who your client is and to take responsibility for your work product. Advertising, conflict of interest, the duty to act courteously are mentioned. These are basic obligations that you, as professionals, have to satisfy to really work at a high level.

The code also addresses how to deal with membership organizations, how to use membership designations and titles, how to respond if you are contacted by one of the investigatory bodies for the U.S. (The Actuarial Board for Counseling and Discipline) and Canada (Canadian Institute of Actuaries). You have your own obligations with regard to reporting other members whose conduct you feel has fallen short in some way. But perhaps more importantly, the code in Precept 1 states that actuaries must act honestly and in a manner to uphold the reputation of the actuarial profession and to fulfill the profession's responsibility to the public. That's a very broad obligation, and what it really entails is a level of honesty, integrity, and professionalism that I suspect is probably most easily summarized in Harry Truman's old adage: "The buck stops here." You, as professionals, are required by Precept 1 of the code to conduct yourselves honestly and in a manner to uphold the reputation of the profession.

Of course, that always leaves the question, what does that mean? How broad is it? And how much does it apply to things outside of my professional practice? The answer to that question is, we don't know yet. The Actuarial Board for Counseling and Discipline (ABCD), which is the body primarily responsible in the U.S. for applying the code in individual settings, hasn't yet had enough cases for me to be able to say that this absolutely applies only in your professional practice or this applies outside. But my sense is that if you are to the point in which the best argument you have left to make under the code is that what happens wasn't part of your professional practice, you're not in a great position. I hope that you never find yourselves in that position.

The Code of Professional Conduct brings within itself by reference two other kinds of professional standards, the first kind being the standards of practice. The code requires members of the profession to ensure that work performed by them or under their direction complies with applicable standards of practice. In the U.S., those are the Actuarial Standards of Practice that are issued by the Actuarial Standards Board (ASB). Those standards come in different forms. The standards of practice are intended by the board to be an embodiment of what constitutes sound actuarial practice in accordance with actuarial principles in a particular setting. But sometimes actuaries are required by law, regulation, or both to do something that may not be fully consistent with sound actuarial principles in the abstract. That's when you get into compliance guidelines, which are issued by the ASB that tell actuaries the way to

comply with a legal or regulatory obligation that most closely adheres to sound actuarial principles. In other words, it's a bit of a balancing act. Both the actuarial standards of practice and the compliance guidelines are binding upon you as members of the profession, again with one caveat. You will find at the end of the standards of practice what has come to be known as the disclosure clause, the disclaimer clause. It's called a variety of names. But it is a provision that allows you, as an actuary, to say that you know the standard says this, but in this particular setting it makes more sense to do something else instead. You are permitted to do that. Indeed, I would argue that under the code you have an obligation to do that if you are going to exercise the kind of professional judgment that you, as experts, are expected to have. But this provision also requires you, if you're going to do that, to disclose your departure from the standards in an appropriate actuarial communication, so that it guarantees that you will have thought about the departure, made the departure for a reason, and made certain that your client or employer, who presumably is counting on you to follow standards, unless notified otherwise, is advised of what you've done.

Now I also want to call your attention to other things that are in your standards volume, one of which is a little white booklet called "Interpretative Opinion Number 3: Professional Communications of Actuaries and Interpretative Opinion Number 4: Actuarial Principles and Practices." Those two interpretative opinions were originally part of the guides and interpretative opinions to professional conduct of the American Academy of Actuaries. The guides were superseded by the code of professional conduct a couple of years ago, but in the process, the ASB, which had made reference to Interpretative Opinions 3 and 4 throughout the standards, concluded that those interpretative opinions offered solid, professional advice to actuaries and, therefore, should not be simply eliminated with the code being instated. So, it republished Interpretative Opinions 3 and 4 for inclusion in the appendix to the standards volume. It is my sense that those documents are also something that you should be aware of, be familiar with, and be complying with in your practice.

Now not only are you expected as professionals to follow practice standards, you're also expected to follow standards of qualification. Indeed, every time you undertake an assignment, you need to at least take a deep breath and think for a moment or two about whether you are qualified to do that particular assignment and whether you meet applicable standards of qualification. Interestingly enough, in my work with the ABCD, the cases that I've seen, and there are well in excess of 75 at this point, have almost never involved the qualification standards. But, interestingly enough, too, of all the standards in existence, the ones I get the most telephone calls about are the standards of qualification, because people are not as sure as they might be about how they work, who has to follow them, and what's involved, particularly when it comes to continuing education.

The good news is that not all actuaries are required to satisfy the qualification standards. The qualification standards apply to you only if you are issuing what are called public statements of actuarial opinion. I should warn you, however, that the definition of what constitutes a public statement of actuarial opinion is fairly broad. The definition includes opinions that are called for by law or regulation, opinions that are called for by a standard of practice or compliance guideline as promulgated by the ASB, or actuarial communications made for purposes of compliance with standards that are promulgated by the Financial Accounting Standards Board or the Government

Accounting Standards Board. You can see that much of the work that actuaries do falls within that definition of public statement of actuarial opinion. If you are doing that kind of work, at the very least you need to satisfy the general qualification standard. What does that mean? It means you either need to have satisfied the basic education requirements of the standard, and you'll find them in the standards booklet, or before doing the work, have obtained a written statement from another qualified actuary that you have obtained satisfactory alternative education. You can get your education in many ways, but somebody else should have looked at it to verify there aren't any obvious holes.

Next you need to have updated and maintained knowledge of your subject matter by satisfying the continuing education requirements of the general qualification standards. The continuing education requirements, again, are set out in the standards booklet. It comes down to, roughly, 12 hours per year of continuing education. I say *roughly* because you can get that during a two-year period. For instance, in one year you can get 15 hours, in another year you can get nine. You'd still be OK. At least half of that time has to be dedicated to what's called organized activity, so a little light reading on the weekends to keep your continuing education up is not enough. This involves going to meetings and seminars. A session such as this, for example, is an organized activity. Again, you will find organized activity and other activities that the Committee on Qualifications sometimes jokingly refers to as disorganized activity listed in the qualification standards booklet.

Finally, you need to make sure that you have recent, relevant experience involving significant actuarial responsibility in practice that is related to the subject area. Every time you undertake an assignment, think about, first of all, are you qualified to do it? Just generally, do you know what you're doing enough that you can take this on? Then, if you are, is it a public statement of actuarial opinion? If it is, do you have the education, the recent, relevant experience, and the continuing education to issue that public statement? A few kinds of public statements, usually they're annual opinion statements required by statute, have been considered by the Committee on Qualifications to be difficult to perform, and specific qualification standards have been issued for those particular statements of opinion. What that means is that you must meet the specific qualification standard, as well as the general standard, if you are going to issue such a statement. Now the good news is that it's the same 12 hours per year. It's just that with the specific qualification standards for continuing education, it needs to be in a particular subject area around that opinion. You will find a table at the back of the qualification standards booklet that sets out what you have to do to meet specific qualification standards in the specific area in which they might apply.

I have made a lot of reference to booklets. If you are like many actuaries, your little, gray binders may not be entirely full. The problem is, of course, people shift offices; they go back and forth; they forget things; they put them aside; they don't refile materials; something else comes in and it goes into the read-later pile, which accidentally ends up in the trash; and they lose materials. We all do it. It's not a crime. But it's not good if you want to be in professional practice. So let me suggest to you that when you go back, when no one is looking, pull out those standards binders, look through them, see what you're missing, then give the Academy office a call. Individual booklets are available free of charge. Just give us a call, tell us what you need, and we'll be happy to ship them to you. We also can give you full sets of

materials. There will be a nominal fee for printing and handling and shipping, but you can get a complete set of the standards and have them with you at all times.

If you have a specific question about the qualification standards, you can make an inquiry to the Committee on Qualifications on a confidential basis, and your inquiry will be answered. Other questions about the Code of Professional Conduct, the standards of practice, and professional issues in general can be directed, again on a confidential basis, in the form of a written request for guidance to the ABCD. The ABCD is made up of nine, sharp, talented, conscientious, and nice people who work extremely hard. They aren't out to hang anybody, unless the circumstances really warrant it. If you have questions about how to fulfill your professional obligations, they are an excellent resource for you.

Nevertheless, having said that, one of the things I've discovered is that, rather than start with a written request for guidance, actuaries often like to talk things out first. So let me suggest a couple of alternatives there. It is fine to call a member of the ABCD on a confidential basis. If you do that, you're likely to be told to put your thoughts in writing and send a letter to the whole board, because any individual member of the board really can't speak for the board as a whole. You also are welcome to call me. I may be the only attorney in the world who can say this to you, but I do return phone calls. You can address me by my first name, and I will not bill you by the hour. I will not give you individual, legal advice, and there are two reasons for this. I have a potential conflict of interest if I do that because I represent the organization, not the individual members, and it creates a potential problem if I'm trying to advise you and the organization at the same time. Also, we're a national association, and I don't begin to pretend to be expert in the laws of all 50 states. So as I say, I can't tell you what the laws of your states are, but I can tell you when you need to talk to an attorney. So please do feel free, if you have questions, to give me a call. I should also tell you that I'm very good at sitting and listening while you agonize your way through to the right answer all by yourself, and I'm very happy to do that.

As I say, I am the chief staff advisor to the ABCD, which means that I see all cases that come before the ABCD. I read them first, as a matter of fact, and I would much rather help you work out a problem beforehand than have it become the subject of a complaint after the fact. So please feel free to call.

There are other sources of guidance. For some aspects of health, casualty, and life practice, the Academy publishes a series of documents known as *Practice Notes*. Unlike the standards of practice, these are not binding. They are advisory notes that are gathered together by the authors to address various ways that individuals are believed to be handling current areas of practice. They're advisory. If they'd be helpful, use them. Again, call the Academy office, and we'll be happy to send you a set.

What if you don't follow these standards? Nobody is omniscient and that includes the courts, your clients, and the ABCD. It is possible that if you do not follow the standards of practice, the standards of qualification, or the Code of Professional Conduct, nothing at all will happen. It is entirely possible. However, there are two areas of which I want to make sure you're very much aware, the first being the

courts. A standard of professionalism, which is entirely out of my hands, is the standard that a court will set in a lawsuit where your work is being somewhat challenged. That can come up in several ways. The least pleasant is in a malpractice suit, which applies primarily to consultants. In-house people are much less likely to be sued for malpractice. It doesn't mean it won't happen, but it's less likely to happen.

The good news is that if somebody sues you for malpractice, you are being paid a compliment because only professionals can be sued for malpractice. A tradesperson cannot. On the other hand, when those papers are dropped on your desk, you probably won't feel flattered. My sense of things is that the Code of Professional Conduct, the standards of practice, and the standards of qualification are likely to be used by the courts in this country as fairly compelling evidence of what constitutes sound practice in the actuarial field. I know of one district court that has already issued a ruling that an actuary violated the Code of Professional Conduct and that ruling was part of a determination that that actuary was liable for damages to his client. So the code has been enforced by at least one court so far.

My sense is that the standards of practice are likely to be fairly compelling evidence in a court of what constitutes good practice in a particular area. Once in a while, as I travel around the country talking to actuaries about this, someone will ask, "Wouldn't we do well to eliminate the standards of practice because then we could never get sued?" If those people are smart, they duck. If there are no standards of practice, courts will look to other sources to determine the standard of due care in a given instance. What happens is, you pull out a learned treatise; you get an expert witness in; you get an expert; they get an expert; the experts argue it out in front of the court; and the court gets to decide which expert is right. But there are always ways to establish what constitutes good practice. So if you are working in an area in which there is no standard of practice, please don't think that you won't necessarily be watched very carefully by the courts in your jurisdiction.

Let me also say that a malpractice action is the most obvious way for you to be hauled into court, but there are other ways as well. All of us are concerned about the insurer insolvencies that have occurred in this country in the last few years. The actuaries at those companies are very likely to end up on the stand: receivership hearings, shareholder derivative suits, and suits by insureds. Even if you are not a defendant to a suit, you might well end up finding yourself defending your work under oath. It's not fun. So adherence to standards is important.

As a litigator for many years before I came to the Academy, I know for sure that in a lawsuit, it doesn't matter what you did rather you must prove that you did. It is not true that the only source of proof is a written document. Testimony is evidence, and it gets admitted into court all the time. It is nice to be able to prove in writing what you did and when. There are several reasons for that, the best one being that it probably proves that you followed the standards in the first place, which probably made your work product better and which might reduce your risk of getting sued in the first place. But the courts don't expect you to be perfect. Even if you followed the standards, accidents happen and things go wrong. But if you followed the standards, you probably wouldn't have been negligent. So if you're a potential target for a lawsuit and you can prove that you followed existing standards at the time that

you prepared your work product, the odds are good that the plaintiff's lawyer is going to look at that document and direct the lawsuit elsewhere.

Now how do you go about doing that? If you have an in-house counsel, by all means sit down with that person and talk about it. If you don't have a document-retention policy at your company, start one. Figure out how long you should keep things and how to maintain your files in a professional way. Throw out drafts. Avoid marginal notes at all costs. They will always get you into trouble. But make sure that you talk to your attorney about what to keep in your files and for how long, and follow your attorney's advice on this one because the laws in all the states are a little different. But let me also suggest to you that the standards of practice are wonderfully set up to be used as a tool to prepare a memorandum to the file. Most of the standards booklet is made up of history and responses to comments. The standard is laid out in a neat, outlined format. You can sit down and say, "It said I had to look at the following factors. I looked at this and concluded *x*. I looked at this and concluded *y*. I looked at this and concluded *z*." Put it all in the file, and then five years later, if there's ever a question, you have your file. You'll remember what you did, and you'll be able to demonstrate that you followed the applicable standards.

Ordinarily the standards of practice are divided by practice area. Not all of those little, gray booklets are going to affect everything that you do, but by the same token, please don't make the mistake of assuming that you only have to fish out one. A relatively new standard—Standard Number 23 on data quality—addresses what actuaries have to do when dealing with data, the kind of review that you need to give the data, and what kind of disclosures you need to make in communications when you find material flaws in data. That is likely to apply to the vast majority of what you do, so that even if you are doing work for which there is a specific standard, say, you're doing a pension valuation, read Standard Number 23 again before you start to work because it is likely to affect what you need to do. I tend to encourage our members to keep the standards right at the desk and to just periodically flip through them, at least the table of contents. Make sure that you are familiar with what you're likely to need when you do your work, and then make sure you have it at hand.

I mentioned that the courts are going to be one source of enforcement on the standards of practice or the qualification standards; the courts have found them to be good evidence of what constitutes good practice in a given situation. The other body I want to talk about is the Actuarial Board for Counseling and Discipline. The ABCD's brochure will give you an overview of what the ABCD is, how it works, and how to use it. Now, at its best, the ABCD is a counseling body. I wish in some ways we'd been able to draw the C bigger than everything else. Because the counseling is really a large part of what the ABCD does, either through those requests for guidance that we talked about earlier or through the investigation of complaints against actuaries, and complaints come in from many sources. They come in from regulators. They come in from former clients. They come in from fellow actuaries. I've even had one from a woman who was an employee of a company who though that the actuary for the company pension plan had shorted her monthly payment by $10. To her it was a lot of money. There was no direct contact between this person and the actuary at all, but she wanted her $10 a month back. So she came to the ABCD. We're working on that one.

I'm not going to tell you that the ABCD does not discipline people. It does. I can tell you that thus far two recommendations for public discipline have been issued. Many cases are still in the works. Investigations take time, particularly because we have to be very careful about making sure that due process is followed. But we've discovered that the ABCD's most effective tool in many cases is counseling, and that can go anywhere from sort of general guidance up front, as in "We know you didn't do it, don't do it again," or "We found that this is probably not the ideal practice; in the future you might want to consider doing this instead," to "Do that again and you're likely to see a recommendation for public discipline." So there's a broad range of advice. The nice thing about it is it's confidential. So if you find an ABCD envelope in your mail, don't panic. Try to view it as an opportunity to get an education from some very savvy people about how to do your job a little better. I've discovered that when actuaries take that attitude, the process really works well.

But we try to focus on the counseling end of things, and the ABCD sometimes acts as an ombudsman. It will either appoint a volunteer or someone from the board to come between actuaries who are having a dispute or an actuary who's having a dispute with a client. It's amazing how often I hear, "You won't give me my work papers; you haven't paid me." Then the ABCD will get in the middle and say, "You give me the check; you give me the work papers." And a swap will be made. That's one way to try to solve a problem. So the ABCD really performs a variety of functions, of which recommendations for public discipline is only one and has been used the least. The ABCD does not discipline you. It doesn't have the authority to do that. If the ABCD decides that an actuary has violated the code of conduct, the standards of practice, or the qualification standards severely enough and public discipline is warranted, the most the ABCD can do is go back to that member's organizations and tell what happened, what was violated, why that was violated, and what ought to be done about it. Then it remains up to the organizations, again on a confidential basis, to look into the ABCD recommendation and decide what to do about it. So there are many avenues for quiet resolution of problems before they become a matter for public discipline.

The standards of professionalism, as the ABCD calls them, which are the code and the qualification standards and the standards of practice, really are not shackles. When I talk to people often I hear, "I want the opportunity to do what I want to do, and I don't want to be bound by this." I can sympathize with that to a point, but let me also point out that you folks work in some of the most important and, at the moment, most fragile industries in the U.S. People depend on you for their health care, life insurance, casualty insurance, and pensions. If actuaries don't do what they do very well, the insurance industry and the pension system in this country are going to suffer mightily. You are very important people, and if you can view the code as a badge of honor and the standards as guidelines to help you practice to the highest possible level, not only will you do very good work, but you may find yourself less likely to be sued.

FROM THE FLOOR: Can you tell us what some of the general categories are in the 75 cases? You said that qualifications was not one of the main problems.

MS. BLOOM: We haven't had many questions about qualifications. Please understand that the ABCD's caseload is to some degree the product of random selection.

It isn't that there aren't necessarily qualification problems out there. Those haven't tended to be the cases that have been reported to the ABCD. We've gotten a lot of give-me-the-files-pay-me-first kinds of complaints. That happens fairly frequently. Another kind of complaint that we hear often, and I think these are really regrettable, goes something like this: "I've got a little pension plan, and my actuary may or may not have filed the Schedule Bs and the Form 5500s for me this year. I don't know. I've called five times. I've written three. I've faxed twice. My actuary isn't getting back to me, and I don't want to call the IRS and find out. Help."

Nonresponsiveness to client demand is a great source of ABCD complaints, and it's really too bad because often the work has been done. Where the actuary slips up is in not telling the client the work has been done or not giving the client copies of the work. Consultants get hit with ABCD complaints more than in-house people do. I don't think they're doing worse work. I think they're more visible. A client is more likely to get into conflict with a consultant and is going to try to resolve that conflict with an outside party than, say, an employer will with an employee who can always be disciplined or fired internally. So because of that, I think we do see more cases involving consultants.

We've received a fair number of complaints about business solicitations. I think some of that is because the market is tight right now, and people are really scrambling for clients. But there's nothing that seems to aggravate an actuary faster than hearing that a client got a letter from another actuary saying, "Whatever it is your actuary is doing, I can do it better, faster, and cheaper." "Better, faster, and cheaper" is a great way to get yourself in trouble with the ABCD. It's comparative, and unless you know exactly what your competition is doing, how do you know if you can do it better, faster, and cheaper? All you know is that you can do it well, fast, and cheap. So talk up your own work product. Don't set up comparisons that you can't support. The code requires you to be truthful in your advertising, and you can't be truthful when you're making comparisons without enough information.

What we do not do is say that you cannot speak slightingly of another actuary, nor do we say that your advertising has to be tasteful. So if you think purple confetti in an envelope will help you, by all means go for it, but please be careful to make sure that your business solicitations are truthful, and do not overstate what it is that you have to offer. I realize that the market is tight, but actuaries do good work. You don't have to blow your own horn beyond what's reasonable.

We've seen a fair number of other cases. When one actuary takes over for another, we often find that there are problems in the transition. Often it's because there are outstanding fees, and that becomes a matter of state law that you really have to take up with the attorneys. But you will note in the code that you are required to act courteously and in your client's interest under, I believe, Precept 11 of the code. You don't have to say yes and be a doormat to every unreasonable request that's put in front of you. You do have to say no politely.

Now I had an occasion once where I called one of our members after another member had called saying, "I don't really want to complain to the ABCD, but I've got this problem. This person won't talk to me, hangs up the phone, and won't give me records. What do I do?" Well I no sooner identified the member who had called

me, than this actuary let out a torrent of profanity, threatened to sue me, threatened to beat up the actuary who had called me, and slammed the phone down. That doesn't happen very frequently; it became an occasion for ABCD action. Let's leave it at that. That obligation to be courteous pertains even when you're losing a client and you're in a bad mood about it.

Sometimes we get questions about methods, practice questions, if you will. Those tend to come either from regulators who review your work and make use of the ABCD or from other actuaries who have seen your work product and think there's something wrong with it. They will not typically come from outside parties because laypeople like me don't know how to do what it is that you do. In fact, we probably shouldn't be trying to. So with that, it's very difficult for me to challenge one of your assumptions. That's where your expert judgment comes in. But we do get complaints about practice methods. Those, in some ways, are more easily resolved than others because they don't involve the same level of vindictiveness that some of the conduct cases can. We have one case involving civil insurance fraud. That one resulted in a recommendation for dismissal from the organizations, and both the organizations voted to act on that recommendation. You will be hearing about that in next month's update. But nonresponsiveness is probably the thing that we see the most as being the basis for ABCD complaints: late filings, not getting back to clients, not answering calls, not returning letters. It's a level of professional responsibility that goes beyond being good with numbers, and it has to do with learning to be good with people. It's absolutely essential to running a professional business.

FROM THE FLOOR: Do you track complaints with respect to the particular actuary?

MS. BLOOM: Yes, we do.

FROM THE FLOOR: And do you tend to give greater credence if you see a pattern, a large number of similar complaints?

MS. BLOOM: My sense is that that's probably the case. One of the things that the ABCD has built into its system is a process for what I would call progressive discipline, which is to say that if an actuary is brought in front of the ABCD on a case, and it's dismissed with a little guidance, and then the actuary's back six months later, gets counseled, and comes back six months later, the ABCD is going to remember that. It can look at its past actions and start thinking there is a problem of recidivism. Obviously, counseling hasn't done it. Something stronger might be needed. But that also means that the board can start slow and build, if it's appropriate to do so. But, there are cases where it will not wait. That fraud case I was telling you about was one. That wasn't an instance in which somebody got a slap on the wrist. Counseling isn't a slap on the wrist, per se. That's a bad phrase. It is an effort—essentially a decision by the ABCD—to have some confidence in the good faith of the members of the profession, to recognize that most actuaries want to do it right. And when I say we've had probably 70-75 cases, but that's not many. There are 11,000+ actuaries in the Academy alone, probably 14,000 in the U.S.

FROM THE FLOOR: I was wondering if you ever look for cases or whether you always wait for a complaint. Maybe there has been a failure somewhere, and there

hasn't been a complaint on any actuary. It still may be prudent of the ABCD to investigate.

MS. BLOOM: Sometimes that happens. The ABCD will, for example, hear about things through the press. That civil fraud case that I was telling you about came to us through a newspaper article, and the ABCD initiated action there on its own. It does have the authority to do that. I will tell you that other actuaries are probably the best source of information in terms of finding out about what's going on out there. It's a big country. But the ABCD does have the right to act on things when it chooses to. Now the problem with insolvencies is that there have been a lot of them, and although some of those insolvencies may have involved actuarial misconduct or bad actuarial work, an awful lot of them didn't. As I often tell people, you folks are not responsible for the investment decisions of company management. So you can tell the company that it needs larger reserves or that that's a really stupid acquisition, but you can't keep it from doing what it is going to do.

The Academy has been looking at finding a way to conduct an actuarial once-over, if you will, of the opinions that are filed on behalf of failed companies. We've been working with the NAIC to try to develop a way to do that. The latest proposal that's on the table is to set up a board of actuaries who would be available to the state regulators upon request to look at opinions and determine whether the work looks acceptable, and then from there that group might channel inappropriate work to the ABCD. But my sense is that they will probably say that the opinion is fine in many instances.

FROM THE FLOOR: I have a problem. My business cards say "Actuarial and Software Consulting." The software consulting often is purely nonactuarial, yet I don't see anything in the standards as published or the guides to professional conduct that say these do not apply to nonactuarial work. It's really tough for me to think of myself being bound by a set of standards that none of my competitors are bound by. I can't think that that's what you intend. I almost wish that the standards would apply only to work that could not be done by a nonactuary. If I'm doing a software project, I would say that the applicable guidelines for a software project would be the software engineering standards published by the Institute of Electrical and Electronic Engineers (IEEE). I'm not sure that anybody who wrote the actuarial guides knew anything about those. I doubt that there's one other person at this meeting who has ever seen them besides me, but I think that you bind me to follow those when I'm doing a software project, even though it has nothing to do with anything actuarial. If my competitors in the software business can say faster, quicker, cheaper, why can't I? There's some need to clarify the applicability of these, outside of purely actuarial, and in the range that it might or might not be deemed actuarial, but things that may be done by a non-actuary or by an actuary. To me it seems like a strong weakness or an exceptional weakness in this whole system.

There is a code of ethics published by the Association for Computing Machinery (ACM), and I always look to that first because it's much stronger than what comes out of the actuarial profession. If you read its code of ethics, it would prohibit things that actuaries might find easy to do under the guidelines for actuaries.

MS. BLOOM: You're probably prudent to take the most stringent one and live up to that. If you are covered by this other organization's rules as well, then you would look to those. There are obviously no actuarial standards of practice that I'm aware of that deal with software. So you're not going to have a conflict. But as far as the code goes, you are right that the scope of the code's application to your work in nonactuarial activity is going to be something that the ABCD would have to struggle with on a case-by-case basis. It is not something that has been clearly defined, because every case is different. One of the factors I know that it would probably look to is if you were identifying yourself not just as a software expert but also as an actuary and you were using that as part of the way that you were able to put yourself forward as an expert and hold yourself out to the public. In that instance, you're probably going to be covered. On the other hand, if an actuary has become the CEO of a company and hasn't touched actuarial work in years and wouldn't know continuing education from a hole in the ground, that person's activities might not be covered. But that's why it's very difficult for me to tell you what the scope of that obligation is.

Violating the code alone is not going to get you sued. It isn't enough to say that you have a deep pocket, somebody got injured, and you didn't follow the codes. Unless your failure to follow the code caused the injury, there's no lawsuit. You can file malpractice like crazy, but if it doesn't cause the injury, there's no lawsuit. For example, a doctor can absolutely botch an appendectomy, but if the patient survives (the surgery doesn't do any harm), and the patient then gets a hangnail, that's not the doctor's fault. By the same token, be careful about what you're doing, because if you're holding yourself out as an actuary, and you're soliciting business that way, and you do something that causes somebody an injury, you're offering the plaintiff's attorney something if you haven't followed the code. So keep that in mind as you conduct your professional practice.

I realize that the culture has become frighteningly litigious. We at the Academy have started working with the Accountants Coalition and some other professional groups to try to work on tort liability reform across the U.S. It's gotten crazy. It's gotten to the point where people are afraid to do their work and that's insane.

FROM THE FLOOR: I am from Canada. How does one find out what the American standards are? I believe the Canadian rules make specific reference to the standards of practice.

FROM THE FLOOR: They don't say the Americans do have standards.

MS. BLOOM: I'm not sure they consider our standards stiff enough, to be frank. Actually, I think you'll find there's an annotation in your rules of professional conduct on that, but, in any event, please call the Academy office. We will be happy to get you a set of the standards, because those are something that you really do need if you're practicing here.

FROM THE FLOOR: Wouldn't it be more prudent and wouldn't it sort of raise the level of practice if everybody automatically received a copy?

MS. BLOOM: Everybody who's a member of the Academy does.

FROM THE FLOOR: Right, but there are several thousand actuaries who are not members of the Academy.

MS. BLOOM: Well let me tell you how it's worked thus far. I should also tell you that I'm just the lawyer. I don't set all the policies, believe it or not. But having said that, this issue came up right when I first started at the Academy a couple of years ago. The Academy makes a set of the standards available to every member as a courtesy. When you join the Academy, we give you a set of the standards. Some of the other organizations have not been willing to do that, for whatever reason. It's expensive. They cost about $60 per set. We've worked with those organizations to either provide them to members, if the organizations wanted them for the members, or if they didn't, to at least make literature available so the organizations can tell you where to go to get them. But it becomes a matter of your organization deciding how you're going to get a set of standards, but by all means, as I say, please do call us.

Of course, many actuaries work in offices with other actuaries and think that one set in the office is enough. I, of course, don't think you can ever have too many. I'm a resource junkie, and I have books and materials all over my office, and I am a great believer in looking it up again. One thing I would urge you to do as professionals is not to rely too much on your memories, particularly when you're doing something that you've been doing all the time because memory does erode over time. You think you've got something quoted perfectly, and you drop a word here and a word there, and all of a sudden you're doing something very different. So please look at the standards regularly. Put them under your pillow at night. Do what you need to, but get to know them because they really are important.

FROM THE FLOOR: I'm an actuary. I spent 15 years working as an actuary, but for the last seven years I've been working in a nonactuarial capacity, specifically as a recruiter, and I promote myself as an actuary. I use my designation. I feel that that separates me from my competition. But I don't work specifically as an actuary. What kind of an exposure am I creating for myself?

MS. BLOOM: Whenever you do anything negligently, you create a risk of being sued. You create a risk of being sued when you walk across the street against the light. You create a risk of being sued when you turn left out of the right lane. Anytime you do anything negligently, anywhere in the world, and it hurts people, they have the potential to sue you. Please bear that in mind. That would be true no matter what you were doing for a living. It would be true no matter where you went. When I got to the Academy, the code did not specifically say that actuaries should follow this code of professional conduct whenever performing professional services, and I was purple in the face because I hated direction. Now it says that. Regarding the question of whether you are performing actuarial professional services, I would probably have to ask you more questions than we have time for to be absolutely sure. A lot of what you're doing would probably not be covered by the code; for example, the obligation to follow the standards of practice. If you're doing something that's nonactuarial, there aren't standards of practice for it. The qualification standards probably wouldn't apply to what you're doing. But, nevertheless, read the code, be aware of it, and keep it in mind even when you are practicing in a nonactuarial capacity, because a lot of it is just plain good advice.

FROM THE FLOOR: There's common practice to keep the name of the client or employer confidential, which would be in direct conflict with what actuaries are supposed to do.

MS. BLOOM: You will find in the code a provision that says that you have an obligation to keep information confidential, as a matter of fact.

There was a problem that we put together for a session like this about an actuary who had also gone to law school. He was distraught over a problem in his personal life, and gave his employer bad advice on how to comply with the Americans with Disabilities Act. Is this a failure to act with integrity, skill, and care while providing professional services? My sense is probably not. My sense is that in an instance like, that you're really not performing actuarial work, and it is probably not a problem under the code. It's not to say, however, that you're off the hook in court. What is to say is that if you are in a situation in which you do something really awful in a non-actuarial context and the ABCD hears about it, I don't know for sure what will happen, but it's probably a counseling case. Counseling is not discipline. It is given on a confidential basis, but that doesn't mean the ABCD won't have something to say about how it thinks you might want to handle it in the future.

FROM THE FLOOR: You mentioned this nonreturning of a phone call. Are you telling me that if people don't return my phone calls, I'm in a better position to suggest to them that they do?

MS. BLOOM: Yes, you probably are, as a matter of fact. I should tell you, by the by, that this is also the grounds for more complaints to the bar association—along with missing statutes of limitations—than anything else lawyers do. So it's not just actuaries. If nothing else, folks, it's just good business sense. Why alienate people? So it's not just a matter of your professional obligations. It's also recognizing that you, as a money-earner, are wise to stay in touch with the people who are paying your fees. The bar association gets complaints about nonresponsiveness, and the American Medical Association (AMA) gets complaints about physicians not being responsive. So it's not just actuaries.

FROM THE FLOOR: Most cases are confidential, and it's only when you get to a public-reprimand type of decision that something becomes public. How do you deal with a situation in which the complainant is a state insurance department whose records are subject to open record laws?

MS. BLOOM: The ABCD's authority is finite. This sort of question comes up often, not only in the context of public record laws within a department, but also in terms of cases that come to us through the media. Once in a while I see a case that gets a lot of publicity, for whatever reason. This is a very small profession: Everybody knows everybody, and they love to fax each other, which means that newspaper articles are all over the wires within minutes of them coming out. A marvelous example of this, was Ed Savitz, the actuary in Philadelphia who was accused of knowingly having sex with underage boys while carrying the AIDS virus. He is dead, and it never went to trial. There was no determination of guilt, but that was the accusation. My phone rang off the hook about that case. I cannot tell you now, and I never will tell you, whether there was an ABCD case pending against Ed Savitz, but

there's nothing I can do about the newspapers. If *GQ Magazine* picks up the story about an actuary, as was the case with Ed Savitz, there's nothing I can do about it. By the same token, if an insurance department's files are a matter of public record, and a complaint is in the file, I can't do anything about that either. What I can do is promise you that the ABCD files will not become a matter of public record.

FROM THE FLOOR: The only thing that's really bothersome, I think, about that sort of thing is when the complainant is the commissioner of insurance. I always thought two parties were supposed to maintain confidentiality. But obviously any written records the insurance commissioner has, with a few minor exceptions, are public documents.

MS. BLOOM: And it does create difficulties. There's no question about it. As we balance this out, I have also seen complaints on the other side, that say that the ABCD is the star chamber court because it doesn't do everything out in the public eye. Now the answer to that, of course, is who are you protecting? The answer is the actuary. By keeping the process confidential, what we're doing is keeping people from judging before the facts are known. I have seen some very irresponsible things said in the civil fraud case that I was telling you about, for example. Quite a bit of money was involved in that case, but there was no criminal trial. There was no finding of criminal liability, and I have heard that person being referred to as a convicted felon at least five times. That person is not a convicted felon, which means that those statements are libelous. Nevertheless, people are a little careless about what they say; an ABCD complaint can be deemed by some people to be proof of misconduct. So we do what we can to keep it confidential, but there's not a lot I can do with a complainant who's entirely outside our jurisdiction.

FROM THE FLOOR: You mentioned laypeople approaching you with complaints; how do they contact you?

MS. BLOOM: From a variety of sources. It just absolutely intrigues me. In pension cases, often the Joint Board for the Enrollment of Actuaries will send people to us. People will come to us because they know somebody who knows somebody who knows somebody who's an actuary who told them that's an ABCD case. Lack of knowledge has never kept anyone from having an opinion about what constitutes an ABCD case. We get cases from third parties who were notified by an actuary who's been taken over, for example. "Gee, this looks like it really was a problem. You might want to go contact the ABCD about this." I don't know whether the Better Business Bureau knows about us, but I've gotten some very interesting phone calls from some very odd sources, from people who apparently more knowledgeable about the community than I would have expected. So the world knows we're out there and is taking advantage of the process, and I'm pleased to say that I do think it's working. The good news is that, as you will see when the ABCD's annual report comes out with the June *Actuarial Update*, the vast majority of the ABCD cases are being informally resolved more or less at counseling. That means that the profession is getting better. It always pleases me when a case finishes and the actuary says, what else can you tell me about how to do this better? That really seems as if it's working and it's going well, and those are our success stories. I'm not going to tell you that there haven't been some very difficult cases, there have, but the best news

is that most of the time it works exactly the way it's supposed to work, and it's really terrific when that happens.

FROM THE FLOOR: Do you have any cases in which you've investigated an actuary who should have known that another actuary was not performing and didn't inform you?

MS. BLOOM: There have been cases in which I suppose that could have been done. Thus far the ABCD has not done anything along those lines. That isn't to say that it couldn't happen, but thus far it hasn't.

FROM THE FLOOR: If you uncover criminal actions or what you consider to be criminal activity in your investigations, would you turn evidence over to the proper authorities?

MS. BLOOM: That's a tough question. Let me wait and see what we do when it actually happens. I honestly don't know the answer to that question. Thus far it hasn't come up. It's something I would have to think very carefully about and get my own legal advice on. Depending on how it came to me, it might well be a privileged attorney-client communication, in which case it would be a breach of my professional duties to come forward. So I would have to think about that very long and hard before I did anything.

Well, if you are practicing in the U.S., the standards of practice of the ASB apply, and that happens either by virtue of you being a Casualty Actuarial Society (CAS) member, an SOA member, or a CIA member.

FROM THE FLOOR: What about ASPA?

MS. BLOOM: I am not familiar enough with its professional conduct rules to know what its obligations will be. From a legal standpoint, you're wise to take note of the rules anyway, because they're likely to be what the courts in this country would consider good practice. So either way, I'd keep an eye on them as you work here.

FROM THE FLOOR: So if you're from a country that doesn't have standards of practice, you're not sort of jumping up and down saying we don't care where you came from, you're working as an actuary in the U.S., and you have to follow our rules.

MS. BLOOM: Well the difficulty here is that the ABCD's authority comes from the membership status of the actuaries involved. Each of these organizations in the U.S. has delegated to the ABCD responsibility to investigate complaints. If an actuary isn't a member of any of the organizations that is subject to ABCD jurisdiction, we don't have any means to deal with those people directly, but the American courts do. If you're practicing here in the U.S., you are putting yourself within the jurisdiction of the American courts. So the American courts may choose to look to the standards as evidence of what constitutes good practice.

Thus far those sorts of arrangements have not been made with France, for example. There's a lot of talk with a group of actuarial representatives of the various

organizations here in North America and the English-speaking nations abroad to try to develop an approach to international practice. NAFTA is really only the beginning. We're starting to see greater globalization of the economy, and with that is going to come a need for greater cooperation between members of the profession around the world. There are two basic approaches you could take. You could take the I-don't-care-where-you-are-when-you're-one-of-our-members-you-live-up-to-our-rules approach, or you could take the when-in-Rome-do-as-the-Romans-do approach, which is to say that wherever you are, you follow the requirements of that jurisdiction. My sense is that the when-in-Rome approach seems to be the one that the leadership of the profession is favoring right now, but I can't honestly tell you for sure how that's going to play out. At least for purposes of NAFTA that's how it's likely to be handled as we approach the governments for permission for actuaries to cross the borders easily.

FROM THE FLOOR: There was a case a few years ago that was clearly not actuarial, but an actuary was, I believe, suspended from membership for a period of some years and agreed to resign. It was because of selling black-market, bootleg software or something, but it was not anything related to actuarial work. He was dealing in some kind of hot goods.

MS. BLOOM: Interesting.

FROM THE FLOOR: He was removed from membership for four or five years, I think.

MS. BLOOM: I don't know anything about the case. That was well before my time. I've only been with the Academy for about two-and-a-half years. So, if it was before my time, I wouldn't have any knowledge.

FROM THE FLOOR: He was convicted of a felony.

MS. BLOOM: Conviction of a felony will bring you within the jurisdiction of the ABCD under the code. After it gets you there, it really becomes what I guess I would call a sentencing issue. How stiff a penalty is the board going to recommend or is it going to be content with counseling? The further out you get from traditional practice, the tougher it's going to be for the ABCD to juggle that. It has already started thinking about that because it recognizes that sooner or later the case is going to come to it in which something like that is an issue, and it has to then decide what to do.

FROM THE FLOOR: It's my impression, in case of a felony, that it's only after criminal conviction that the ABCD will start to consider whether to take action.

MS. BLOOM: It depends on the felony, and let me tell you why I say that. There are felony convictions that implicate the code and felony convictions that do not. For example, the actuary for a company is accused of having participated in a plan to embezzle company funds and wrote up phony numbers to do it. At that point, that's something that is clearly actuarial and would be covered by other aspects of the code, the obligation to perform professional services with integrity, skill and care. If practice standards were violated, that would be a reason. As a rule, the ABCD holds off when things are in litigation. This isn't an absolute, but often it does, and there

are two reasons for that. First, the minute you get the lawyers involved, no one will talk to you. Also, it really doesn't want its process being abused in court. That's a separate procedure, and you don't particularly want the ABCD's determinations being used as evidence necessarily, although I don't think it would object if it happened. Second, a court's determination can be very helpful, indeed, because a court's findings are factual and can be relied on by the world. So if the ABCD stays its hand until a court case has played itself through, then it has the court record as the basis for its own action and can move rather quickly. Now, having said that, there are going to be some felonies that would be independent code violations, whether they were felonies or not. In an instance like that, the ABCD might not have to wait for a conviction. But if you were talking about a murder conviction, for instance, in which you got a felony, but it was murder at home, and it was not related to work, and you didn't shoot one of your competitors, then at that point I think the ABCD might well be prudent to wait until a conviction was handed down. It's the conviction that gives the ABCD the jurisdiction to act, and at that point the ABCD would then have to decide whether that murder was sufficiently related to your professional activities and whether you should lose your credentials while you're in prison.

FROM THE FLOOR: The Society of Actuaries terminated membership only after the court case and conviction.

FROM THE FLOOR: How long has the ABCD been in existence?

MS. BLOOM: About two-and-a-half-years. Having said that, though, I should tell you the first six months were really spent getting up and running. As an attorney, I have a particular sensitivity to due process and wanting to be sure that we had rules in place that would let people know what the process was, how it was going to work, what to do. So we spent probably six months getting that structure into place, thinking about the large issues and making sure that the group came together as a unit and got to know each other as a working group before we started actually working with cases. So it was probably six months into it that we started actually processing the cases. It's not fully operational. I'm very, very busy. I'd say the ABCD takes anywhere from a third to 40% of my time. So it does keep us running.

The profession supports the ABCD. The Academy, directly through its budget, and the other organizations contribute to the extent that their members are not also Academy members. So you are paying for the ABCD with your dues. I suppose it's probably tempting to ask what the ABCD is doing. "Tell us about cases. We're dying to hear. Details, give me details." If we're successful, you won't hear a lot about what the ABCD is up to, the reason being, of course, the confidentiality. Much of what the ABCD does never becomes public. It doesn't mean that we're not working. We're working very hard and getting many good things done. It's just that if the system works properly, in many cases you will never hear about it. So don't take silence for inactivity. In this instance that's absolutely not the case.

FROM THE FLOOR: Before the ABCD we used to get annual reports. The Society of Actuaries investigated 105 complaints and found them to be all without merit. I think there was a feeling that it was just whitewash; what's the point of complaining? Are you getting more complaints now about, say, billing practices or employment

practices? Have you gotten any of the sexual harassment cases or wrongful termination?

MS. BLOOM: We've received a few employment cases. I really can't say more than that without risking confidentiality, but we have received cases involving actuaries as employers. Billing practices are very tricky. As the subject for a complaint, yes, we have received some billing-practice complaints. As a matter of antitrust law, I believe it is not appropriate for the ABCD to be telling competitors how to bid and how to bill their clients. So with that, billing becomes touchy because how you bill and what you charge for your services is probably not an ABCD matter, and that's my opinion. I'm not going to foreclose the possibility of something like that coming before the ABCD, but the aspect of billing that is most susceptible to ABCD investigation is not the billing itself but whether you do what you say you're going to. For example, you can agree with a client to take a retainer up front and work at an hourly rate, but then you have to bill honestly for the hours that you actually put in. In other words, you need to do what you agreed to up front. If you agreed to a flat rate for work performed, then you have to perform the work for that rate, even if it ends up being more work than you expected.

FROM THE FLOOR: In a case like that, if the actuary charges for the extra, does that come to you, and how do you resolve it?

MS. BLOOM: That would come to us if the client brought it to us, and again, I think the question at that point is going to become whether what you've done has breached integrity. It isn't a matter of your billing practice, per se; it's a matter of your not having done what you said you were going to do, and in an instance like that, I think the ABCD probably would have jurisdiction. What it would do would probably depend on the case.

If you call our office, we can give you names and phone numbers of three or four providers that offer errors and omissions (E&O) insurance. If you know of anyone else, by all means please call me. I'm always happy to expand that list.

FROM THE FLOOR: I'm looking at this from the company's side. It seems to me that the standards are sort of a safe haven for practice.

MS. BLOOM: I was going to say in most of the states. Please don't assume that they're a safe harbor in California. But California aside, I don't know that I would call them a safe harbor exactly. Remember, you still have to follow them in a reasonable manner. When you look at the standards, you'll find that in many instances they really are not a cookbook. There's still a tremendous range for application of actuarial judgment. You can always argue about whether the judgment was properly applied. So the standards are not an absolute safe harbor. They do is they really do encourage you to work thoughtfully and slowly and to do what you need, to think about the things that you need to think about to reach the right result. They're likely to improve your work product, which is probably the best reason to use them. I certainly would hope that the standards are helpful, particularly within the standard valuation actuary format. That's what they're intended to be.

FROM THE FLOOR: I recently heard of an actuary who increased his business from zero to something quite significant based on unrealistically low price. Some of his clients have told me that he's now raising his rates substantially. Would the ABCD consider a complaint against this type of practice, based on a contention that this practice is inherently misleading and inherently tends to mislead clients into thinking that the price is not going to increase when, in fact, it is?

MS. BLOOM: I would need to know more about the situation before I could answer that question, and please also let me make this disclaimer now. I am not the ABCD. So even if I said yes or no, my opinion is worth exactly what you paid to sit here. It is not the opinion of the ABCD as a whole in particular. Actually, it may be worth less because, in fact, you paid a lot to sit here. But that aside, this is simply my view. It would honestly depend on the circumstances and the extent to which this person made promises and then breached them.

I guess I would need something more than bald pricing. My own sense of the thing is that people can negotiate whatever prices they negotiate. But I would need to know more about the case before I could say anything definitive, and even at that, as I say, it's my view, not the ABCD's.

FROM THE FLOOR: Is it possible for an actuary who is going to be in a lawsuit because of an insolvency to go to the ABCD and say that he or she wants the ABCD to look at what was done by the actuary and endorse that what was done was following the standards of practice? When he or she goes to court, the actuary can say "the ABCD, which I put myself in front of, said that I followed the standards of practice?"

MS. BLOOM: I don't know what they do in a setting like that. You could treat it as a request for guidance, I suppose. I don't know what it would do with that. I mean if you're genuinely looking for advice, it's one thing. I think if you're just looking for the ABCD to sort of bless your work, I don't know what it would do on that.

That's an interesting question. My sense is that it would be more reluctant to simply rubber-stamp something than try to provide specific advice to people who are genuinely looking for help. I hope you're not facing litigation soon, but if you are, you know where to find us.

FROM THE FLOOR: I'm just thinking in the abstract.

MS. BLOOM: The ABCD has adopted its own internal operating guidelines, and its operating guidelines include the degree to which they can use ABCD membership as credentials outside. Without looking at them again, maybe they could be used as experts, but, again, I'd have to go look at their operating guidelines and see. The other thing to do, of course, is to hire somebody who's not on the ABCD anymore.

FROM THE FLOOR: In cases in which the courts decide whether there was malpractice based on the standards of practice, how then are the courts determining whether the standards were adhered to?

MS. BLOOM: Thus far the standards of practice have not, to the best of my knowledge, resulted in a decision. It's interesting that the code of conduct made it first. They would do what they would do with any other source of evidence. They would look at the documents. They would argue plain language. If that didn't work, they would bring in two expert actuaries to read and answer questions about the standards to satisfy the court. So, again, you end up with expert testimony, but I might also be well inclined, if I were the attorney, to argue plain language, particularly if the language was something that I thought my client had met. There is a doctrine out there that says that if the document is plain on its face, then the document's plain on its face, and a court can even take judicial notice of what it says.

When I first applied for this job, I answered a blind ad in *Legal Times* magazine in Washington, looking for an attorney who had done work in private discipline and who understood about the application of standards in the private context. I had worked as an attorney for a group that did accreditation for schools, and so I had worked through its accreditation processes and was very familiar with that. Well, I sent in my little resume and my writing sample and wondered who I had sent it to. I received a little packet saying: Hi, we're the American Academy of Actuaries. Do you still want to interview with us?

Well, here I am. So obviously I did. But the implication in the letter was, at least a little bit, and I teased my boss about this, do you know who we are? Do you know what we do? Have you ever heard of actuaries before? Well, as it happened, I hadn't, but my husband who is now a minister had been an insurance adjuster in college and said he could tell me about them. So at least I didn't feel like a total idiot when I went in for my interview. Let me tell you that actuaries are not anonymous. To the contrary. You are well recognized and are becoming more so as the industries that you work in attract the attention of lawmakers around the country.

You have also recently attracted the attention of the Supreme Court of the U.S. in two cases last year, one being the Hewitt case, which I'm sure you've all heard a lot about. Frankly, I think there's been too much written about a case that really isn't likely to have a huge amount of long-term significance. But in another case, you may have heard less about a company called Concrete Pipe & Products in California. Under the Multiemployer Pension Plan Amendments Act amendments to ERISA, the testimony of a plan actuary is given special weight in arbitration. An employer argued before the Supreme Court that shouldn't be the case because actuaries are simply hired guns who will say whatever the plan sponsor says they should say. Well, I lost my temper and called the chair of the Litigation Committee; we filed an amicus brief with the Supreme Court. We included the Code of Professional Conduct, a couple of applicable standards of practice, and Interpretative Opinions 3 and 4. Like I said, please do look at them. We told the court about the professionalism of actuaries. Well, I am pleased to report in a unanimous decision, the Supreme Court not only determined that actuaries' testimony is entitled to special evidentiary weight, but also concluded that because actuaries are unbiased professionals who exercise unfettered professional judgment, that exercise of professional judgment is what entitles their opinions to special weight. So the Supreme Court of the U.S. is impressed with you folks. Professionalism is critical.