

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LIBERTY MUTUAL INSURANCE CO.  
Petitioner

v.

PROGRESSIVE CASUALTY INSURANCE CO.  
Patent Owner

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Case CBM2012-00002 (JL)  
Patent 6,064,970

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**Declaration of Michael J. Miller**

Progressive Exhibit 2010  
Liberty Mutual v. Progressive  
CBM2012-00002

## **Declaration of Michael J. Miller**

I, Michael J. Miller, hereby declare under penalty of perjury:

### **Scope of Assignment**

1. I was retained by the law firm of Jones Day, on behalf of the Progressive Casualty Insurance Company (“Progressive”), to render opinions regarding the determination of vehicle insurance premiums.

2. All of my statements and opinions herein are based on my training and education as an actuary, and on my forty-four years of work experience with the pricing, underwriting, and marketing of private passenger auto and commercial vehicle insurance. Unless noted otherwise, my statements and opinions reflect the understanding as of January 1996 of a person of ordinary skill in the art of pricing and underwriting of motor vehicle insurance.

3. My retention agreement with Jones Day calls for me to be compensated at my normal rate of \$450 per hour, plus out-of-pocket travel expenses.

### **Qualifications**

4. I am the owner of EPIC Consulting, LLC and am currently the sole consulting actuary at EPIC. EPIC is an independent consulting firm that provides consulting services to the insurance industry related to the pricing, marketing, and underwriting of property/casualty insurance.

5. I am a Fellow of the Casualty Actuarial Society (“CAS”), having first qualified for membership in the CAS in 1971. I have been elected to two terms on the CAS Board of Directors. I have also served the CAS as Vice President for Research/Development, as the Chair of the CAS Risk Classification Committee, and as the Chair of the CAS Committee on Principles of Ratemaking. As Chair of the Ratemaking Committee, I was the principal drafter of the Statement of Ratemaking Principles.

6. In the past, I have served the Actuarial Standards Board as the Chair of the Property/ Casualty Operating Committee. In that capacity I was responsible for drafting several Actuarial Standards of Practice applicable to all property/casualty lines of insurance.

7. I began my actuarial career at State Farm Insurance in November 1967. My entire career at State Farm was in the Auto Actuarial Department where I was directly involved in the determination of insurance premiums for both private passenger autos and commercial motor vehicles. My work at State Farm started as an actuary trainee, doing the arithmetical calculations necessary to determine auto insurance premiums. In approximately four years I was promoted to a position of manager where I was responsible for pricing State Farm’s auto insurance coverages in the eastern one-third of the United States and the five Canadian provinces in which State Farm operated.

8. During the last four or five years of my State Farm career I was responsible for State Farm's auto insurance rate filings throughout the United States and Canada. I was also a member of a management team responsible for the pricing, underwriting, marketing, and servicing of auto insurance.

9. During my entire career at State Farm, I was directly involved in the design, implementation, and administration of private passenger auto and commercial vehicle insurance rating plans. My work involved those instances when State Farm introduced new risk characteristics into its auto insurance risk classification plans.

10. I left State Farm in 1984 and became an actuarial and management consultant. As a consultant I have provided a wide variety of actuarial and management consulting services involving many different property and casualty lines of business. Over my 29-year career as a consultant, I estimate that the greatest emphasis of my practice has been related to personal auto and residential property insurance. At one time or the other, I have provided consulting services to most of the major insurers in the United States and to several state insurance regulators.

11. During my career as a consultant I have been involved with the formation of a new insurance company that tested new and innovative risk characteristics and introduced new risk characteristics into its risk classification plan. I have also consulted many times with established insurers regarding significant revisions to their existing rating plans, including the use of new risk characteristics.

12. Exhibit 2015 is a copy of my curriculum vitae, which sets forth my experience, qualifications, and publications.

**Person of Ordinary Skill in the Art**

13. I understand that the Board in this matter has stated that a person of ordinary skill in the field of determining vehicle insurance premiums as of 1996 would have a B.S. in mathematics (or equivalent degree); would have at least five years of actual work experience in the insurance industry determining premiums for auto insurance; and would be at least an Associate member of the CAS. I will apply this level of skill in my analysis in this matter and will assume that this level of skill applies to a person of ordinary skill in the art (sometimes abbreviated below as “POSITA”).

14. It is unlikely that a person of ordinary skill as of 1996 would have had the opportunity to obtain actual work experience introducing a new risk characteristic into a risk classification system. As of 1996, making improvements in the accuracy of assessing automobile risk, including the introduction of new risk characteristics for determining auto insurance premiums, was a slow and deliberate process throughout the auto insurance industry. The person of ordinary skill would not have had experience using or applying fuzzy logic to the determination of insurance premiums, but would have been relatively sophisticated in the use of multi-variant statistical

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