

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  
Patent 6,064,970

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Before the Honorable JAMESON LEE, JONI Y. CHANG, and MICHAEL R. ZECHER, *Administrative Patent Judges*.

**PETITIONER LIBERTY MUTUAL INSURANCE CO.'S FIRST SET OF  
OBJECTIONS TO PATENT OWNER PROGRESSIVE CASUALTY  
INSURANCE CO.'S EXHIBITS**

Pursuant to 37 C.F.R. § 42.64(b)(1), the undersigned, on behalf of and acting in a representative capacity for Petitioner, Liberty Mutual Insurance Company (“Petitioner”), hereby submits the following objections to Patent Owner Progressive Casualty Insurance Co.’s (“Patent Owner”) Exhibit 2012, Exhibit 2013, Exhibit 2016, Exhibit 2018, and any reference to/reliance on the foregoing, and to citations to Exhibit 2013 and Exhibit 2018 in Patent Owner’s Response Pursuant To 37 C.F.R. § 42.220 (“Response” or “Resp.”). As required by 37 C.F.R § 42.62, Petitioner’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

## **I. Objections to Exhibit 2012 and Any Reference to/Reliance Thereon**

Evidence objected to: Exhibit 2012, and any reference to or reliance thereon.

Grounds for objection: F.R.E. 901 (“Authenticating or Identifying Evidence”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”).

Patent Owner fails to provide for Exhibit 2012 the authentication required by F.R.E. 901. Patent Owner’s only reference to Exhibit 2012 in the Response states: “A copy of standards in effect as of 1996 is attached as Exhibit 2012. (Ex. 2012, Miller Decl. at ¶ 34.)” (Resp. at 8). The Miller Declaration’s only mention of Exhibit 2012 (found in paragraph 34, as cited in the Response), is that “Exhibit 2012 is a copy of standards in effect as of 1996.” (Ex. 2010 at ¶ 34). There is nothing to indicate that the document constitutes “standards in effect”, nor is there any information as to what entity supposedly put this “standard into effect.” This is particularly objectionable when on its face the document, although not authenticated, purports to be a “Statement of Principles” issued by one Committee. Patent Owner elsewhere states in its Exhibit List that Exhibit 2012 is dated “1980,” but nowhere in Exhibit 2012 is a date identified, and no evidentiary support for this assertion is provided. Similarly, while Patent Owner’s exhibit list refers to Exhibit 2012 as “Risk Classification Statement of Principles, American Academy of Actuaries Committee on Risk Classification,” Patent Owner has presented no evidence concerning the origin of this document or confirming that it is what it is labeled to be. Patent Owner thus

improperly cites to Exhibit 2012 without providing any authenticating evidence sufficient to support a finding that the item is what Progressive claims it is, in violation of F.R.E. 901.

Furthermore, to the extent the Response, the Miller Declaration, or any other submission of Patent Owner purports to refer to or rely on Exhibit 2012, Petitioner objects to such reference to/reliance on evidence that is not properly authenticated under F.R.E. 901, and as misleading and unfairly prejudicial (F.R.E. 403).

## **II. Objections to Portions of Exhibits 2013 and 2018 Previously Objected To, and Any Reference to/Reliance Thereon**

Evidence objected to: Exhibits 2013 and 2018.

Grounds for objection: As stated on the record in those documents.

Petitioner maintains its objections set forth on the record during the depositions transcribed as Exhibits 2013 and 2018. Furthermore, to the extent any submission of Patent Owner purports to refer to or rely on portions of these transcripts (Exhibits 2013 and 2018) that are objected to, Petitioner objects to such reference/reliance on the same basis.

## **III. Objections to Citations to Exhibit 2013**

Evidence objected to: citations to Exhibit 2013, titled “Transcript of Deposition of Mary L. O’Neil,” on Response pages 20, 20-21, 25-27, 33, and 34.

Grounds for objection: F.R.E. 106 (“Remainder of or Related Writings or Recorded Statements”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”).

While Patent Owner attaches the transcript of the deposition of Mary L. O’Neil as Exhibit 2013, Patent Owner’s citations to that Exhibit in the Response (on pages 20, 20-21, 25-27, 33, and 34) omit citations to portions “that in fairness ought to be considered at the same time” (F.R.E. 106; *see also* Fed. R. Civ. P. 32(a)(6)), and/or inaccurately characterize the testimony so as to be misleading and unfairly prejudicial (F.R.E. 403).

#### **IV. Objections to Citations to Exhibit 2018**

Evidence objected to: citations to Exhibit 2018, titled “Transcript of Deposition of Scott Andrews,” on Response pages 32 and 33.

Grounds for objection: F.R.E. 106 (“Remainder of or Related Writings or Recorded Statements”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”).

While Patent Owner attaches the transcript of the deposition of Scott Andrews as Exhibit 2018, Patent Owner’s citations to that Exhibit in the Response (on pages 32 and 33) omit citations to portions “that in fairness ought to be considered at the same time” (F.R.E. 106; *see also* Fed. R. Civ. P. 32(a)(6)), and/or inaccurately characterize the testimony so as to be misleading and unfairly prejudicial to Petitioner (F.R.E. 403).

## V. Objections to Exhibit 2016 and Any Reference to/Reliance Thereon

Evidence objected to: Exhibit 2016 of the Response, titled “Declaration of Dr. Mark Ehsani,” including at least ¶¶ 20-34.

Grounds for objection: F.R.E. 702 (“Testimony by Expert Witnesses”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”).

The witness providing the declaration attached as Exhibit 2016 (i) is not an expert in the pertinent subject matter qualified to provide the opinions contained in Exhibit 2016 and lacks the necessary “scientific, technical, or other specialized knowledge [to] help the trier of fact to understand the evidence or to determine a fact in issue” because he is not sufficiently knowledgeable about vehicle telematics, and is not sufficiently knowledgeable about insurance issues, especially actuarial issues; and (ii) provides insufficient underlying facts or data upon which they could legitimately be based, in violation of F.R.E. 702. Accordingly, permitting any reliance on this purported expert testimony in the Response or other submissions of Patent Owner would be misleading and unfairly prejudicial to Petitioner (F.R.E. 403).

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