

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

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4 _____
LIBERTY MUTUAL INSURANCE CO.

5 Petitioner

6 v.

7 PROGRESSIVE CASUALTY INSURANCE CO.

8 Patent Owner

9 _____
10 Cases CBM2012-00002; CBM2012-00004(JL)

Patent 6,064,970

11 Case CBM2013-00004(JL)

12 Patent 8,090,598

13 Cases CBM2012-00003; CBM2013-00009(JL)

Patent 8,140,358

14 _____
15 DEPOSITION OF MARY LOU O'NEIL

16 Washington, D.C.

17 Friday, September 13, 2013

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19
20
21 Progressive Exhibit 2015
22 Liberty Mutual v. Progressive
23 CBM2012-00003

24 Reported by: John L. Harmonson, RPR

25 Job 65806

1 M. O'NEIL

2 introduced by Mr. Miller.

3 Q. Were you familiar with this document
4 before it was offered by Progressive in its
5 response to the Liberty Mutual petition?

6 A. Yes. I've been familiar with this
7 document since its initial publication. I
8 believe it was back in the 1980s, maybe 1982 or
9 somewhere in that range.

10 Q. So it's a document you're well
11 acquainted with; is that right?

12 A. It's not something --

13 MR. MYERS: Objection. 402, 403.

14 A. I'm familiar with the document as any
15 other professional actuary might be.

16 Q. It's not a document that would be
17 obscured to actuaries practicing in their field;
18 is that right?

19 MR. MYERS: Objection. Federal Rule
20 of Evidence 402, 403. I'm going to give the
21 rule number as we go forward, but I'm
22 referring to the Federal Rules of Evidence.

23 A. I'm not sure what you meant by
24 "obscure." We don't -- at least I as a
25 professional don't sit and look through all of

1 M. O'NEIL

2 the -- you know, I guess there are 50 standards
3 of practice and several statements of principle,
4 daily. I mean, it's on an as-needed basis. You
5 go back to the document whenever you might want
6 to use it.

7 Q. And in fact, you've used this document
8 in your actuarial work in the past?

9 A. Yes, I have used it in the past.

10 Q. And in fact, in the past has some of
11 your actuarial work been conducted in a way
12 that's consistent with the statement of
13 principles set forth in this document?

14 MR. MYERS: Objection. 402, 403.

15 A. I believe all of my actuarial work has
16 always been consistent with all of the standards
17 of practice, which includes the statements of
18 principles.

19 Q. And by that, you mean this statement
20 of principles that is Progressive's Exhibit 2012?

21 A. Well, there are several statements of
22 principles attached to the standards of practice.
23 This is one of them. So I included everything.

24 Q. Okay. Let me now hand you another
25 exhibit, Liberty Mutual Exhibit 1022 in case

1 M. O'NEIL

2 CBM2012-2.

3 (Liberty Mutual Exhibit 1022, having
4 been marked for identification, is attached
5 hereto.)

6 Q. Can you identify that document,
7 Ms. O'Neil?

8 A. Do you wish for me to read the entire
9 description on the cover?

10 Q. If that's how you would like to
11 identify it.

12 Let me ask a different question. Is
13 this your rebuttal declaration in the
14 CBM2012-2 case?

15 A. That is correct. That is what the
16 identifying caption says.

17 Q. And you recognize it as such, correct?

18 A. Yes.

19 Q. Okay. Now, I would ask you to turn to
20 Paragraph 46. Are you there?

21 A. Yes.

22 Q. Okay. In this paragraph you're
23 providing testimony about helping to develop an
24 actuarial class system in New Jersey, correct?

25 MR. MYERS: Objection. 402, 403.

1 M. O'NEIL

2 A. This paragraph mentions something I
3 did as a consultant to the New Jersey Market
4 Transition Facility.

5 Q. And what you did was help to develop
6 an actuarial class system using driving record
7 points; is that right?

8 A. Correct.

9 Q. And when you did that, was your work
10 consistent with the risk classification statement
11 of principles that's Progressive's Exhibit 2012?

12 MR. MYERS: Objection. 402, 403.

13 A. Yes. As I said, my work has always
14 been consistent with the statement of principles.

15 Q. So in your experience, you have always
16 adhered to this statement of principles whenever
17 you have provided your professional services as
18 an actuary?

19 MR. MYERS: Objection.

20 Q. Is that right?

21 MR. MYERS: Objection. 402, 403.

22 A. I wouldn't use that terminology, that
23 terminology of "adhered." As I've explained
24 other places in my declaration, these statements
25 of principles and the standards of practice are

1 M. O'NEIL
 2 refresh your memory and look at that material.
 3 A. I've taken a quick look at that.
 4 Q. Okay. Let me direct your attention to
 5 the first sentence of the paragraph, Ms. O'Neil.
 6 Would you agree with me that automobile accident
 7 statistics such as the number of at-fault
 8 accidents can be considered as a risk
 9 characteristic for which an actuarial class might
 10 be created?
 11 MR. MYERS: Objection. 402, 403.
 12 A. I believe there are existing actuarial
 13 classes based on number of at-fault accidents,
 14 zero, one, two, three, four.
 15 MR. WAMSLEY: My issue is, Jim, that
 16 rather than answer yes or no and explain,
 17 Ms. O'Neil provides a narrative answer which
 18 does not frequently respond to my question.
 19 So I really would, in the interest of
 20 getting this done expeditiously, like to
 21 suggest that the witness, when I present a
 22 simple question that asks for a yes or no,
 23 give a yes or no. If she feels the need to
 24 explain or qualify, she's obviously free to
 25 do so.

1 M. O'NEIL
 2 MR. MYERS: We disagree. Please
 3 proceed.
 4 Q. If one were to create or evaluate a
 5 potential actuarial class relating to number of
 6 accidents, expected claims loss data would be
 7 used in doing that. Am I right?
 8 MR. MYERS: Objection. 402, 403.
 9 A. I'm not sure what you mean by
 10 "evaluate."
 11 Q. To assess whether an actuarial class
 12 can be created.
 13 A. I don't agree with that. I believe
 14 you can create classes, zero, one, two, three,
 15 four accidents. And regardless, as a hypothesis,
 16 one would create those classes.
 17 Q. But in order to actually use them as
 18 classes in setting insurance premiums, am I
 19 correct that expected claims loss data would be
 20 used to determine whether they were actually
 21 useable in that fashion?
 22 MR. MYERS: Objection. 402, 403.
 23 A. It is not that simple of an analysis
 24 to determine what the appropriate -- Well, let me
 25 go back.

1 M. O'NEIL
 2 You're setting up the class, is what I
 3 understand. Is that correct?
 4 Q. You're considering setting up that
 5 class, that's right. That's my hypothetical.
 6 A. So we don't already have it. Well, I
 7 think what would be done, if one did not want to
 8 collect any information ahead of time, is we
 9 would hypothecate that drivers with more
 10 accidents might be drivers who have more claims.
 11 So we set up the classes and we collect data, and
 12 then we look at the data to see if indeed it is
 13 true that those drivers that have more accidents
 14 have more claims.
 15 Q. So the data you collect is claims
 16 data. Am I right?
 17 A. Well, you collect more than that. You
 18 would collect premium data, claims data,
 19 obviously the number of exposures. You would
 20 collect a lot of data.
 21 Q. So when you were doing your work in
 22 New Jersey that you testified about previously
 23 this morning, what data did you refer to in your
 24 work there?
 25 A. For determining what portion of that

1 M. O'NEIL
 2 analysis are you referring to?
 3 Q. It's the activity that's mentioned in
 4 Paragraph 46 of your rebuttal declaration,
 5 Ms. O'Neil.
 6 A. Yes.
 7 Q. That's what I'm referring to.
 8 A. Yes. But what portion of that are you
 9 referring to here now?
 10 Q. I'm referring to the part where --
 11 your activity in support of the development of an
 12 actuarial class system using driver record
 13 points.
 14 A. As I explained before, that system was
 15 developed, as I just mentioned, using the initial
 16 hypothesis that drivers with more driving record
 17 points would result in more claims. So given
 18 that hypothesis and the absence of any prior
 19 historical data of any kind, and the idea was to
 20 generate revenue, I believe we looked at what had
 21 been charged in -- by some companies that
 22 actually charged for violations and began with
 23 that, and then created scenarios that if these
 24 prices were utilized, what would be the revenue
 25 generated, what would be a reasonable charge over

1 M. O'NEIL
 2 AFTERNOON SESSION
 3 THE VIDEOGRAPHER: This is the
 4 beginning of DVD 3 in the deposition of
 5 Ms. O'Neil. On the record at 1:13.
 6 BY MR. WAMSLEY:
 7 Q. Good afternoon.
 8 A. Good afternoon.
 9 Q. Let me show you a couple of new
 10 exhibits, Ms. O'Neil. Maybe you would like to
 11 put those off to the side for the moment --
 12 A. Okay.
 13 Q. -- to reduce a little bit of the
 14 paper --
 15 A. Space.
 16 Q. -- that's in front of you. I'm not
 17 promising we won't revisit them.
 18 A. Well, we might. I'll at least get
 19 them in some order here. There we are.
 20 Q. I just realized I need to look at one
 21 more thing.
 22 Okay. Let me hand you what's been
 23 marked as Liberty Mutual Exhibit 1032 in
 24 CBM2012-3.
 25 (Liberty Mutual Exhibit 1032, having

1 M. O'NEIL
 2 been marked for identification, is attached
 3 hereto.)
 4 Q. And that's your rebuttal declaration
 5 in that matter, correct?
 6 A. Yes. That relates to, as we call it,
 7 the '358 patent.
 8 Q. Right. And I'll also hand you
 9 Progressive Exhibit 2005 in CBM2012-3, which is
 10 Mr. Miller's declaration.
 11 (Progressive Exhibit 2005, having been
 12 marked for identification, is attached
 13 hereto.)
 14 Q. Now, Ms. O'Neil, you did not provide a
 15 declaration relating to the '358 patent earlier
 16 in these proceedings with the petition submitted
 17 by Liberty Mutual, correct?
 18 A. That is correct.
 19 Q. Did you read the '358 patent back
 20 before Liberty submitted its petition relating to
 21 that patent?
 22 A. I believe I did. That is my
 23 recollection.
 24 Q. Did you read any prior art relating to
 25 that patent at that time?

1 M. O'NEIL
 2 A. That I do not recall, specifically
 3 related to that patent as opposed to the others.
 4 Q. Well, are you familiar with the
 5 Nakagawa patent reference?
 6 A. Yes.
 7 Q. Do you recall that? Do you remember
 8 reading that before Liberty submitted its
 9 petition relating to the '358 patent?
 10 A. I am not certain. I might have read
 11 it then. I'm not certain exactly when I read it.
 12 Q. But do you believe you first saw the
 13 Nakagawa patent this summer after Progressive
 14 filed its response to Liberty's petition?
 15 A. No, I had that document in my
 16 possession. I'm just not sure when I actually
 17 looked at it. You know, I might have gotten it
 18 and then it was, you know, don't read this now.
 19 I'm really not sure about the sequence, but I
 20 definitely had it sooner.
 21 Q. Did you prepare a declaration relating
 22 to the '358 patent before Liberty submitted its
 23 petition on that patent?
 24 A. No, I did not prepare one.
 25 Q. Were you asked to provide any opinions

1 M. O'NEIL
 2 about it at that time?
 3 A. Not that I recall.
 4 Q. Do you recall reviewing any other
 5 materials relating to that '358 patent petition
 6 before it was filed?
 7 A. No, I don't recall that at this time.
 8 Q. Did you have meetings with counsel
 9 where you discussed that proceeding?
 10 A. No, I don't recall any such meetings.
 11 Q. Had you been asked, would you have
 12 been able to provide a declaration on the '358
 13 patent back at the time of Liberty's original
 14 petition?
 15 MR. MYERS: Objection. 402, 403.
 16 A. I believe I would have been able to,
 17 yes.
 18 Q. Let's look at your rebuttal
 19 declaration, then, Ms. O'Neil. And in
 20 particular, Paragraph 17, 18 and 19. Are you
 21 there?
 22 A. Yes, I am at the page where 17 begins.
 23 Q. Now, in these paragraphs you disagree
 24 with Mr. Miller and his declaration, correct?
 25 A. Yes, there are several places of

1 M. O'NEIL
2 disagreement.

3 Q. Now, would you agree with me that the
4 term "rating factor" is commonly used with
5 reference to actuarial classes?

6 MR. MYERS: Objection. 402, 403.

7 A. There is a term "rating factor"
8 utilized in the current classification system.
9 However, it is not the same as "rating factor" as
10 referenced in the patent.

11 Q. Is the term -- Well, what do you mean,
12 the term is utilized in current classification
13 systems?

14 A. In the current classification system,
15 which is described, I don't believe the '358
16 patent goes into detail, but it is described in
17 more detail in the '970. The current system
18 describes several rating characteristics, risk
19 characteristics, such as age, sex, marital
20 status, and so on. The standard class plan
21 utilizes those. And I believe it comes up with
22 possibly 260 or so cells of people that are
23 classed -- might be classed in. So there is a
24 lengthy description of that.

25 And so how do we price an insured

1 M. O'NEIL
2 calculating the insurance premiums; is that
3 right?

4 MR. MYERS: Objection. 402, 403.

5 A. I wouldn't characterize it that way.
6 That's why I tried to explain it the way I did.

7 It's which comes first. Okay? In
8 this case, those ratios or class plan
9 relativities are second. The prices for the two
10 classes are first. And all classes have been
11 related to one class for purposes of expense
12 saving and not republishing your entire rate
13 manual every time, for simplicity and other
14 reasons.

15 So they happen to be labeled probably,
16 but maybe 50 years ago, as a rating factor
17 because they were used to rate the policy. It
18 had nothing to do with anything technical about
19 it. And basically they express relationships
20 between a particular class and the base class.
21 So they are not calculated directly. They're
22 just a ratio of two prices.

23 And so I hope that's clear. That was
24 my explanation.

25 Q. Well, I didn't understand your last

1 M. O'NEIL
2 using that system? We would -- we could have a
3 premium for each of those cells, but as I
4 mentioned earlier, because of the fact that the
5 data by each little cell are not analyzed all the
6 time to come up with a different premium in that
7 particular cell in particular, for convenience
8 sake a single classification is taken as a base,
9 and it's usually like the adult driver. And all
10 the other prices are related to that. And it's
11 sort of a classification relativity.

12 But any rate manual, which is the
13 thing the agent uses to price a policy, will call
14 those rating factors because they are used to
15 rate or price the policy. And so for convenience
16 sake, for the agent's use, for publication of the
17 rate manual, all of the cells were ratioed to the
18 base class.

19 So now the insurance company only has
20 to publish new base rates. They don't have to
21 publish a price for each class every time they
22 issue the rate manual to the agent.

23 Q. So under the system you described, the
24 rating factor is a numerical value assigned for
25 each particular classification that's used in

1 M. O'NEIL
2 answer when you said that they aren't calculated
3 but they're a ratio. Isn't the ratio calculated?

4 A. Well, all right. I guess if you want
5 to call it that, yeah, it's calculated in that
6 respect. It's a ratio.

7 Q. Now --

8 A. Let me clarify. I meant that it
9 wasn't a direct calculation. Like for a
10 particular cell we didn't go and like indirectly
11 make calculations of those numbers. Everything
12 is a ratio. That's what I meant.

13 Q. So is that the way, the way you just
14 described, that the auto insurance companies with
15 whom you have worked actually go about assigning
16 rates?

17 MR. MYERS: Objection. 402, 403.

18 A. Yeah, I'm not sure what you mean by
19 that question. I'm sorry.

20 Q. Well, you just described a procedure
21 in which rating factors are used in coming up
22 with rates for a whole universe of people. I'm
23 just asking whether in your experience that's the
24 way insurance companies go about doing that.

25 A. Well --

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