

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIBERTY MUTUAL INSURANCE CO.
Petitioner

v.

PROGRESSIVE CASUALTY INSURANCE CO.
Patent Owner

Case CBM2012-00003
Patent 8,140,358

PATENT OWNER'S OBSERVATIONS ON
TESTIMONY OF MARY L. O'NEIL

The Patent Owner, Progressive Casualty Ins. Co., has the following observations on the September 13, 2013 cross-examination testimony of the Petitioner's reply declarant, Mary L. O'Neil:

1. In Ex. 2015, p. 43, line 17 to p. 44, line 20, Ms. O'Neil testified regarding the type of data that would be collected to establish proper actuarial classes:

Q. But in order to actually use them as classes in setting insurance premiums, am I correct that expected claims loss data would be used to determine whether they were actually useable in that fashion?

MR. MYERS: Objection. 402, 403.

A. It is not that simple of an analysis to determine what the appropriate -- Well, let me go back.

You're setting up the class, is what I understand. Is that correct?

Q. You're considering setting up that class, that's right. That's my hypothetical.

A. So we don't already have it. Well, I think what would be done, if one did not want to collect any information ahead of time, is we would hypothecate that drivers with more accidents might be drivers who have more claims. So we set up the classes and we collect data, and then we look at the data to see if indeed it is true that those drivers that have more accidents have more claims.

Q. So the data you collect is claims data. Am I right?

A. Well, you collect more than that. You would collect premium data, claims data, obviously the number of exposures. You would collect a lot of data.

This testimony is relevant because it supports that making an actuarial class (and its associated rating factor) involves determining or estimating expected claims losses (whether from historical claims loss data or other means), as Progressive's expert Mr. Miller testified. This refutes Liberty's and Ms. O'Neil's criticism of Mr. Miller on this point (Reply Decl., Ex. 1032 at ¶¶ 18-19, and Reply at 11:5-12).

2. In Ex. 2015, p. 98, line 11 to p. 99, line 22, Ms. O'Neil testified as follows with respect to the term "rating factor":

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

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

And so how do we price an insured using that system? We would -- we could have a premium for each of those cells, but as I mentioned earlier, because of the fact that the data by each little cell are not analyzed all the time to come up with a different premium in that particular cell in particular, for convenience sake a single

classification is taken as a base, and it's usually like the adult driver. And all the other prices are related to that. And it's sort of a classification relativity.

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

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

This testimony is relevant because it is inconsistent with Liberty's Reply argument (at 11:5-12) and Ms. O'Neil's testimony at ¶ 19 of her Rebuttal Declaration (Ex. 1032), and is consistent with the way in which Progressive's expert Mr. Miller testified that the term "rating factor" is used and understood in the insurance industry.

3. In Ex. 2015, p. 100, line 25 to p. 101, line 6, Ms. O'Neil testified as follows with respect to the common term "rating factor":

Q. Well, I didn't understand your last answer when you said that they aren't calculated but they're a ratio. Isn't the ratio calculated?

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

This testimony is relevant because it is an admission that the common term “rating factor” associated with actuarial classification plans is a calculated numerical value. This common understanding of “rating factor” is within the Board’s preliminary construction of “rating factor” and is part of the disclosure of the priority documents to the ’358 patent, and contravenes Liberty’s argument on this point (Reply at 11:5-12).

4. In Ex. 2015, p. 101, line 20 to p. 102, line 15, Ms. O’Neil testified:

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

* * *

A. In my experience, every company has a rate manual, and they have agents that need to apply that. And so they all have the same procedures basically where they will publish the relativities, which you’re calling a rating factor, and they will publish the base rate. And that is to be used by the agents to rate the policy.

Now, at this point in time a lot of places aren’t even using those. They’re using little calculators.

This testimony is relevant for the same reason as Observation No. 3. In addition, it is relevant because it is an admission that insurers commonly use rating factors in calculating premiums based on actuarial classes.

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