

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 CBM2013-00009

Patent 8,140,358

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

**REBUTTAL DECLARATION OF MARY L. O'NEIL ON BEHALF OF
PETITIONER LIBERTY MUTUAL INSURANCE CO. REGARDING U.S.
PATENT NO. 8,140,358**

I, Mary L. O'Neil, hereby declare under penalty of perjury:

I. Qualifications

1. I am currently Principal of O'Neil Consulting Services, Inc. (OCS), an independent actuarial consulting practice, which I established in 1986. I have over 30 years experience as a property casualty actuary in the insurance industry. My CV is attached as Ex. 1032.

2. OCS provides actuarial consulting services to a variety of clients from both the regulatory and private sectors. For example, the regulatory agencies in which

I have provided consulting services include the North Carolina Department of Insurance (for which I have completed Private Passenger Automobile rate analyses for more than twenty years), the New Jersey Department of Insurance, the New York Department of Insurance, the Ontario Automobile Insurance Board, the Texas Office of Public Insurance Counsel, the Georgia Department of Insurance, the Pennsylvania Department of Insurance, and the Wyoming Department of Environmental Quality.

3. Individual insurers or insurance pools for which I have provided consulting services include Integrity Insurance Company in Liquidation (on behalf of liquidator), Home State Holdings, Inc. in Liquidation (on behalf of liquidator), Security Indemnity Insurance Company in Rehabilitation (on behalf of rehabilitator), Pennsylvania Millers Mutual Insurance Company, several small insurers, and several self-insurance pools.

4. The services I have performed on behalf of OCS include analysis of proposed rates by insurers, analysis of required insurer reserves in conjunction with regulatory examinations of insurance companies, evaluation of loss reserves for purposes of reinsurance commutation, preparation of required reserve opinions for individual insurers and pools, evaluation of legislation, and other special projects.

5. Rate analyses have included private passenger automobile, homeowners', dwelling fire, title, and workers' compensation. These projects have been completed for individual rate filings or full industry rate filings in selected states. I have also

estimated the required loss and loss adjustment expense reserves for a multibillion dollar multi-line insurer group, a number of insurers in conjunction with financial examinations, for purposes of commutations, several small insurers, and self-insurance pools. These analyses have sometimes addressed the issues of mass torts or catastrophes.

6. My previous work experience includes insurance actuary positions at the New Department of Insurance (“NJDOI”), Prudential Property and Casualty Insurance Company, and General Reinsurance Corporation.

7. During my nearly two years at NJDOI, I served as the Department’s Chief Actuary. My responsibilities included supervision of the actuarial aspects of regulation for all lines of insurance: personal lines and commercial lines rates and forms, life contracts and health rates. In addition, I supervised the life valuations and supplied assistance to the Examinations Division in valuing property/casualty insurer reserves. I also served as an advisor to the commissioner and other department staff on all issues before the department.

8. For the eleven years I worked at Prudential, I had a variety of responsibilities, which included insurance pricing, marketing, reserving, financial analysis, and various special projects. I started as an actuarial student and rose to the level of Vice President and Assistant Actuary. Finally, at General Reinsurance Corporation, I spent one year doing mostly statistical insurance work.

9. I have also worked with several law firms in a consulting and/or expert capacity. My attached CV lists all the matters in which I was involved, including my testimonial experience. *See Ex. 1032.*

10. I have the professional designations of Fellow of the Casualty Actuarial Society (FCAS), Member of the American Academy of Actuaries (MAAA), Chartered Life Underwriter (CLU), and Chartered Financial Consultant (ChFC). I am also a member of the Casualty Actuarial Society (CAS), American Academy of Actuaries (AAA), and the International Association of Insurance Receivers (IAIR).

11. My education includes a B.S. in Mathematics from Pennsylvania State University, and an M.A. in Statistics, also from Pennsylvania State University.

12. I have been retained on behalf of Petitioner and real party in interest, Liberty Mutual Insurance Company (“Petitioner” or “Liberty Mutual”), I have been asked by Liberty Mutual to respond to certain assertions and opinions offered by Michael Miller and Progressive Casualty Insurance Co. (“Progressive”) concerning U.S. Patent No. 8,140,358 (“the ‘358 patent”) in this matter.

13. I am being compensated at a rate of \$500 per hour for my services, after expert service fees. My compensation does not depend on the outcome of this Business Method Review Petition or the pending litigation between Petitioner and Progressive in the U.S. District Court for the Northern District of Ohio.

II. Scope of Rebuttal Declaration

14. I have been asked to respond to certain assertions and opinions of Mr. Michael Miller expressed in his declaration of June 13, 2013 as Exhibit 2013, his supplemental declaration of June 25, 2013 as Exhibit 2026, and certain assertions of Progressive in its Patent Owner's Response of June 13, 2013.

15. In developing my opinions below, I have considered the following materials:

- Declaration of Michael Miller (Ex. 2013);
- Supplemental Declaration of Michael Miller (Ex. 2026);
- Patent Owner's Response (Paper 21) ("Opposition" or "Opp.");
- Board's Decision on Institution of Covered Business Method Review (Paper 10);
- Progressive's U.S. Patent No. 8,140,358 ("the '358 Patent") (Ex. 1001);
- A certified English translation of Japanese Patent Publ'n H4-182868 ("Kosaka") (Ex. 1003);
- All other materials referenced as exhibits herein.

III. Analysis and Opinions

A. Mr. Miller's Opinions and Progressive's Assertions Regarding "Actuarial Classes" and Determining Auto Insurance Premiums

16. In providing a definition of "actuarial class," Mr. Miller states:

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