

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*.

**RULE 42.64(b)(2) DECLARATION OF MARY LOU O'NEIL ON BEHALF
OF PETITIONER LIBERTY MUTUAL INSURANCE CO. REGARDING
U.S. PATENT NO. 8,140,358**

I, Mary Lou O'Neil, hereby declare under penalty of perjury under the laws of the United States of America:

I have previously been asked by Liberty Mutual Insurance ("Liberty") to testify as an expert witness in this action.

I. Prior Testimony

1. I am the same Mary Lou O'Neil who provided a Rebuttal Declaration in this matter executed on August 16, 2013 as Exhibit 1031. (My information regarding experience, qualifications, and compensation has been provided along with my Rebuttal Declaration, Exhibit 1031, and CV, Exhibit 1032.)

II. Response to Evidentiary Objections

2. I understand an evidentiary objection has been made to Exhibit 1031, asserting that it is hearsay, but in fact it is my sworn expert testimony in the matter. *See* Patent Owner's Notice of Objection to Evidence Pursuant to 37 C.F.R. § 42.64, at 13.

3. I understand that a further evidentiary objection has been made to Exhibit 1031, asserting that it has "no relevant bearing on any issue properly raised in this proceeding." *See* Patent Owner's Notice of Objection to Evidence Pursuant to 37 C.F.R. § 42.64, at 10-11. As I stated in my Rebuttal Declaration (Exhibit 1031), I testified in Exhibit 1031 solely to rebut issues actually raised by Patent Owner in its Patent Owner's Response, including assertions and opinions of Michael Miller expressed in his declaration of June 13, 2013 (attached to the Patent Owner's Response as Exhibit 2013) and certain assertions of Progressive in its Patent Owner's Response of June 13, 2013. Contrary to Progressive's evidentiary objection, my testimony was not offered to "raise new theories and invalidity arguments in an effort to make out a *prima facie* case of unpatentability of the claims," which I understand the Board already found to exist in its Institution Decision.

4. In Exhibit 1031, my Rebuttal Declaration, I indicated that Exhibit 1033 was downloaded from the web site of the publisher, the Actuarial Standards Board, <http://www.actuarialstandardsboard.org/pdf/superseded/intopinion.PDF>, which notes that the document was adopted 1970-1982 by the American Academy of

Actuaries and republished in 1992 by the Actuarial Standards Board. I have been in possession of a hard copy of Interpretive Opinion 4: Actuarial Principles and Practices since its initial publication in 1982 (and as revised in 1990). For purposes of my declaration and ease of provision to counsel, I downloaded Exhibit 1033 (which contains the same substance as the hard copy I have had in my possession) on July 30, 2013. I was familiar with and have used Interpretive Opinion 4 found in Exhibit 1033 on numerous occasions in my work during the period in which it was in force.

Executed this 6th day of September, 2013



Mary Lou O'Neil

At: Pittsburgh, Pennsylvania