

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

3  
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  
16  
17 DEPOSITION OF MARY LOU O'NEIL

18 Washington, D.C.

19 Friday, September 13, 2013

20  
21 Progressive Exhibit 2028  
22 Liberty Mutual v. Progressive  
23 CBM2013-00009

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 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 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 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

M. O'NEIL

driving record points were the supposed bad drivers. And they are the ones, then, that should pay.

So this plan was devised by gathering data from DMV. It was actually Department of Motor Vehicle data. And what they were able to provide were counts, basically, frequency counts by driving record points. Well, then, there -- Those data were now analyzed for revenue generation; break points, where would you break this, would you have groupings of zero to one point, two to three, so on. Where would you break it, what kind of charges would you have at each subdivision.

And then there was the consideration of possibly point forgiveness for those that maybe had one ticket or two points.

So a lot of different scenarios were reviewed and considered, and in the end the only data that were available were indeed just those distributions by number of points and then assignment of dollar values to determine the revenue that might be generated from the system to provide it to the residual market system.

M. O'NEIL

Q. That was an extremely long answer --

A. I'm sorry.

Q. -- to a different question than the one I asked.

MR. MYERS: Objection. 402, 403.

If you want to ask questions, that's great. If you want to comment about the testimony --

MR. WAMSLEY: I do --

MR. MYERS: -- then we're going to have problems.

MR. WAMSLEY: I do want to have --

MR. MYERS: Then we're going to have problems.

MR. WAMSLEY: I do want to have a conversation. I'll have it with you, Mr. Myers. We have limited time. We have five proceedings. And we -- I don't intend to have a filibuster session.

When I ask a question that can be answered yes or no or in a few words, I'd appreciate that kind of answer. If there's a need for qualification, I certainly understand. That's permissible and that's

M. O'NEIL

appropriate. But an answer that goes on for several pages that is not responsive to the question is going to waste our time here and we're going to end up having to bring Ms. O'Neil back, and I don't think any of us wants to do that.

MR. MYERS: I disagree with you. The record will speak for itself.

MR. WAMSLEY: Can we go back to the question and read it to her?

(Whereupon, the requested portion was read back by the Reporter.)

MR. MYERS: Objection. Rule 402, 403.

Q. Can you answer that question yes or no, Ms. O'Neil?

A. Well, once again, my long answer, as you said, was a description of the data and how it was used and why those were the data that were used.

Were those data homogeneous? I would answer yes. I mean, let's look at the definition provided by the standard. Let's see here.

Now, the standard utilizes expected loss costs in its definition of homogeneity.

M. O'NEIL

Now, I did not have expected loss costs available to me in utilizing the data that I was using. Nevertheless, based on my experience in the field, I believe that expected loss costs were appropriately identified by the groupings that were set up.

Q. This statement of principles is one of -- one source of generally accepted actuarial principles and practices; am I right?

A. That is correct. Like I -- I believe I said earlier, you would look at the literature as well and other standards of practice and so on.

Q. And there are other -- as you say, there are other sources of generally accepted actuarial principles and practices besides this statement of principles?

A. Definitely. This is a very small piece of the entire body of information.

Q. Are there any other generally accepted actuarial principles and practices that are in conflict with the ones that are set forth in Exhibit 2012?

MR. MYERS: Objection. 402, 403.

M. O'NEIL

A. I guess I don't understand that question, because if they're in conflict with it, they can't be part of the generally accepted principles and practices. I would think the body of it is fairly cohesive.

Q. I would think so too.

So all the other sources of generally accepted actuarial principles and practices, to the extent they relate to this same subject matter as Exhibit 2012, would be consistent with it; is that correct?

MR. MYERS: Objection. 402, 403.

A. I don't know if I would put it exactly that way. Part of the thing about actuarial science is that it's not an exact science. Everything that has been written in various papers, including this, has been written by people. And it's not like mathematics where two times two is four. This is in the best judgment of the people who wrote it at the time.

The same thing with various papers in the literature. I would assume that a statistician or even another actuary may not necessarily, without this in front of them, write

M. O'NEIL

the same definition for homogeneity. It doesn't make it wrong; it makes it different. So I would think that if we did some research, we would find other criteria that people have put forward related to classifications, not making any one of them more wrong or right, it becomes part of the total body of knowledge of an actuary.

So I really can't -- I can't really agree to what you're saying, that every document we look at is going to have the same thing in it. I don't think so.

Q. In fact, hasn't this statement of principles in Exhibit 2112 -- or excuse me, 2012 been widely accepted by actuaries practicing in the field?

MR. MYERS: Objection. 402, 403.

A. I really wouldn't know what "widely accepted" means. I know that it's part of the standard of practice 12, which is part of the entire set of standards of practice. I'm not sure what the total number is at this time. Nevertheless, there are other papers and so on that have been written related to classifications, related to statistical analyses

M. O'NEIL

of classifications and so on which might expand upon the concepts as they relate to classification. This is more simplistic than a lot of things one might read on the subject.

Q. Are you aware of any other guidelines that conflict with the Exhibit 2012 statement of principles?

MR. MYERS: Objection. 402, 403.

A. These are the only guidelines per se in terms of something that's been set forth as part of the standards of practice. The rest of the body of generally accepted principles and practices would come from professional writings, publications, the body of actuarial literature. That's what I'm referring to that would expand upon this and actually be more technical than this. You would find that in other writings, which would become part of generally accepted actuarial principles and practices as opposed to something that is actually part of the standards of practice.

Q. Are there other standards of practice that are in conflict with the statement of principles in Exhibit 2012?

M. O'NEIL

MR. MYERS: Objection. 402, 403.

A. This is the only standard of practice that deals with classifications.

Q. Okay. In your opinion, has this statement of principles been relied upon by actuaries on matters that it's germane to?

MR. MYERS: Objection. 402, 403.

A. This sounds like the same question you asked me before, only instead of "adhered" you've now said "relied upon." My answer is the same. It's been considered as appropriate along with the rest of the body of actuarial literature.

Q. Have you ever publicly criticized any of these statement of principles?

A. I do not recall having done so. I may have objected to someone perhaps stating that something should be adhered to or something is set in stone type of rule. But I don't recall necessarily criticizing. I don't recall doing that. Anything is possible, I suppose.

Q. Let me refer you to Paragraph 7 of your rebuttal declaration, Exhibit 1022. Feel free to refresh your memory by looking at that paragraph, or the surrounding paragraphs if you

1 M. O'NEIL

2 claims data. In fact, he says actuarial class  
3 claims data, correct? Which could include other  
4 types of claims data besides actual claims data,  
5 correct?

6 A. No. He says expected insurance claims  
7 loss, which is actual claims data. It doesn't  
8 say actuarial.

9 Q. So all expected claims loss data has  
10 to be actual? It can't be estimated?

11 A. Even if it is estimated, it's still --  
12 you're mistaking the word "actual" meaning of a  
13 company as opposed to from some other source.

14 Q. What did you mean by "actual"?

15 A. I meant of a company as opposed to  
16 some other source.

17 Q. You meant their own actual historical  
18 experience; is that right?

19 A. Correct. I meant the company's own  
20 experience as opposed to some other data from  
21 some other source.

22 Q. But you don't find that in  
23 Paragraph 16, do you?

24 A. I believe I do.

25 Q. Expected claims loss could be

1 M. O'NEIL

2 available. You could use data from -- there are  
3 other collection places that you can get data  
4 from. And that's what's not mentioned here.

5 Q. Mr. Miller doesn't say that you have  
6 to use data from a particular company, does he?

7 A. The way this is written, a POSITA  
8 would understand that he's saying that it's used  
9 from the company that is setting up the class.

10 Q. Let me direct your attention to  
11 Paragraph 29 --

12 A. Okay.

13 Q. -- of Exhibit 2010. Do you see the  
14 first sentence of that paragraph, Ms. O'Neil?

15 A. Yes, I see that.

16 Q. Okay. And there Mr. Miller indicates  
17 that other considerations can be taken into  
18 account, including the experience of other rate  
19 filers, business judgment, and all other relevant  
20 information and data within and outside the  
21 state.

22 Do you see that?

23 A. Yes, I see that he wrote that there.  
24 Nonetheless, he didn't allow for that in these  
25 other places.

1 M. O'NEIL

2 estimated as well as taken from actual historical  
3 results. Am I right?

4 A. Indeed, I'm not disagreeing with you.  
5 I'm saying that expected claims loss still would  
6 need to be based on the company's own data based  
7 on what Mr. Miller has said here, is what I'm  
8 saying. I'm saying in my thing that Mr. Miller  
9 has not allowed for the fact that data could be  
10 from some other outside source.

11 Q. Nonetheless, he does not say "actual  
12 claims data" in that paragraph?

13 A. He does not use that exact word. That  
14 is -- That is what I read whenever I read his  
15 testimony. He said expected insurance claims  
16 loss. That implies or basically is a statement  
17 that you would use the company's own expected  
18 insurance claims loss. Expected is estimated,  
19 basically.

20 So when I say "actual" here, it refers  
21 to within the company as opposed to from some  
22 other source, which is what this paragraph talks  
23 about, is that you can use data from other  
24 sources, you could use industry data, you could  
25 use data from another company if it were

1 M. O'NEIL

2 Q. So you don't read his entire  
3 declaration as being consistent with his opinions  
4 here?

5 A. This statement is in a particular  
6 section of the declaration. The other -- I  
7 assume that this definition that we just read in  
8 16 was meant to stand alone.

9 Q. Oh, I see.

10 Isn't it correct that the statement of  
11 principles that Mr. Miller cites in his  
12 declaration allows for using data other than  
13 actual claims loss data?

14 A. We should check. Do we have a  
15 specific spot in here?

16 Q. You're the actuary. I wouldn't want  
17 to point you to the wrong section, Ms. O'Neil.  
18 But I'm referring to Exhibit 2012.

19 A. I'm not finding it right now, but I  
20 suspect that -- I'm not sure that it actually  
21 addresses the exact source of the data. Because,  
22 once again, these are guidelines. They're not  
23 meant to be recipe books.

24 And I just note one more thing  
25 regarding Mr. Miller's sentence that you pointed



# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.