

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

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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)

14 Patent 8,140,358

15  
16 \_\_\_\_\_  
17 DEPOSITION OF MARY LOU O'NEIL

18 Washington, D.C.

19 Friday, September 13, 2013

20  
21  
22  
23  
24 Reported by: John L. Harmonson, RPR

25 Job 65806

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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

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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.

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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

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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 guidelines for actuaries in their professional  
3 practice. To the extent that someone might  
4 deviate from them for some reason or other, that  
5 is to be documented.

6 However, I do believe I also quoted  
7 somewhere that it even says that the professional  
8 judgment of the actuary in the end is the most  
9 important factor. But nonetheless, these are all  
10 to be treated as considerations and guidelines,  
11 not rules that must be strictly followed. So the  
12 word "adhere" sort of brings that to mind.

13 Q. Have you ever intentionally deviated  
14 from any of the principles set forth in the  
15 statement of principles that's Exhibit 2012?

16 MR. MYERS: Objection. 402, 403.

17 A. I guess I wasn't clear perhaps in my  
18 last answer. These are guidelines. So all of  
19 the standards of practices are guidelines. In  
20 addition to these guidelines, there's a body of  
21 literature to guide actuaries, professional  
22 experience. There is literature that's published  
23 outside of the actuarial profession. There are  
24 many sources of information.

25 So when I would perhaps be working on

1 M. O'NEIL  
2 something, I would be aware of all of those  
3 things. Now, if it turns out for some reason I  
4 may not have appropriate data or the problem, if  
5 it doesn't fit with something here, I was  
6 certainly aware of this, and to the extent  
7 possible would certainly consider it. But if  
8 something that I might need to do differs from  
9 this, there could be a situation where there is a  
10 law or regulation, something like this, I will do  
11 what I believe is the best job and then document  
12 what I have done.

13 Q. That was a pretty long answer. I'm  
14 trying to ask a really simple question.

15 Can you tell me whether you've ever  
16 departed or deviated from the statement of  
17 principles that's set forth in Exhibit 2012?

18 MR. MYERS: Objection. 402, 403.

19 A. I guess I wouldn't call it deviated.  
20 I would call it I've documented my work and  
21 considered these as required in all instances.

22 Q. You're aware, Ms. O'Neil, that this  
23 statement of principles set forth certain  
24 statistical considerations to be considered,  
25 including homogeneity, credibility, and

1 M. O'NEIL  
2 predictive stability?

3 MR. MYERS: Objection.

4 Q. Is that correct?

5 MR. MYERS: Objection. 402, 403.

6 A. I believe you're referring to Section  
7 4(d), subparts 1, 2, and 3, where it lists those  
8 items you just mentioned, homogeneity,  
9 credibility and predictive stability.

10 Q. And based on your past work, you're  
11 familiar with those considerations; am I right?

12 A. That is correct, I am familiar with  
13 these.

14 Q. I'll ask you to go back to your  
15 statements in Paragraph 46 of your rebuttal  
16 declaration. Did you consider those statistical  
17 considerations in the work you did to help  
18 develop an actuarial class system using driving  
19 record points in New Jersey?

20 A. Of course I considered them. And then  
21 once I considered those, then I looked at what  
22 there was available to work with, and those are  
23 the data that were used to put forth this plan.

24 Q. In your opinion, was the data you used  
25 homogeneous?

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2 MR. MYERS: Objection. 402, 403.

3 A. The data which I used were the only  
4 data available. And so I'm not sure how to  
5 answer the question homogeneous in this case. A  
6 lot has been made of the term homogeneous, and I  
7 guess I'm not sure what further to say about that  
8 regarding this particular situation. The goal of  
9 that particular analysis was to generate revenue  
10 based on driving record points which related to  
11 tickets or accidents. Then these were the points  
12 that would be on someone's DMV record.

13 The state would operate the plan, the  
14 state would collect the money, and the state  
15 would remit the money over to the New Jersey  
16 Market Transition Facility, which was the  
17 residual market mechanism in New Jersey. The  
18 rates being charged by the New Jersey MTF which  
19 I'll call it were inadequate for the losses that  
20 that organization or entity was incurring.

21 So to supplement that organization,  
22 someone, I'm not sure who, decided this was one  
23 way to get revenue under the political theory  
24 that let the bad drivers pay, which means anybody  
25 who, in that definition, was someone who had

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

7 Q. I would think so too.

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

13 MR. MYERS: Objection. 402, 403.

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

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

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

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

9 MR. MYERS: Objection. 402, 403.

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

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

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

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

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

17 MR. MYERS: Objection. 402, 403.

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

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2 MR. MYERS: Objection. 402, 403.

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

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

8 MR. MYERS: Objection. 402, 403.

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

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

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

22 Q. Let me refer you to Paragraph 7 of  
23 your rebuttal declaration, Exhibit 1022. Feel  
24 free to refresh your memory by looking at that  
25 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 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 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 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

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