

UNITED STATES DEPARTMENT OF LABOR

+ + + + +

ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

+ + + + +

WORKING GROUP ON PRESUMPTIONS

+ + + + +

MEETING

+ + + + +

TUESDAY,
JANUARY 10, 2017

+ + + + +

The Working Group met telephonically at
1:00 p.m. Eastern Time, Steven Markowitz, Chair,
presiding.

MEMBERS

SCIENTIFIC COMMUNITY:

LESLIE I. BODEN
JOHN M. DEMENT
KENNETH Z. SILVER

MEDICAL COMMUNITY:

VICTORIA A. CASSANO
STEVEN MARKOWITZ, Chair
LAURA S. WELCH

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

CLAIMANT COMMUNITY:

FAYE VLIENER
GARRY M. WHITLEY

DESIGNATED FEDERAL OFFICIAL:

CARRIE RHOADS

TABLE OF CONTENTS

Welcome	4
Roll Call	4
Introductory Comments	5
Chair Comments	9
Discussion Regarding Assumptions and Presumptions.....	11
Current Use of Presumptions	21
Asbestos Related Issues	26
Asthma Related Issues	73
COPD Related Issues	100
Adjourn	113

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

P-R-O-C-E-E-D-I-N-G-S

1:04 p.m.

MS. RHOADS: Good morning or
afternoon, depending on where you are.

My name's Carrie Rhoads and I'd like to
welcome you to today's teleconference meeting of
the Department of Labor's Advisory Board on Toxic
Substances and Worker Health, the Presumptions
Working Group.

I'm the Board's Designated Federal
Officer, or DFO, for today's meeting.

We do appreciate the time and the work
of our Board Members in preparing for the meeting
and for the work they're about to do as well.

I'll do a quick roll call of the Board
Members on the line.

Dr. Steven Markowitz is the Chair of
this group and the Chair of the Advisory Board.

CHAIR MARKOWITZ: Here.

MS. RHOADS: And, the Members are Dr.
Victoria Cassano.

MEMBER CASSANO: Here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. RHOADS: Ms. Faye Vlieger?

2 MEMBER VLIEGER: Here.

3 MS. RHOADS: Dr. Leslie Boden?

4 MEMBER BODEN: Here.

5 MS. RHOADS: Mr. Garry Whitley?

6 MEMBER WHITLEY: Here.

7 MS. RHOADS: Dr. Laura Welch? Dr.
8 Welch, are you on the line? I heard her before,
9 she's probably on mute.

10 Dr. John Dement?

11 MEMBER WELCH: I'm sorry, sorry, I was
12 on mute.

13 MS. RHOADS: Okay.

14 Okay, Dr. Dement?

15 MEMBER DEMENT: Yes, I'm here.

16 MS. RHOADS: And, Dr. Ken Silver?

17 MEMBER SILVER: Here.

18 MS. RHOADS: Okay, we're scheduled to
19 meet from 1:00 to 3:30 p.m. Eastern Time today and
20 we'll likely take a break around 2:15 or 2:30,
21 depending on the discussion.

22 In the room with me today is Melissa

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Schroeder from SIDEM, our contractor and Norm
2 Spicer, an OWCP employee doing a detail with our
3 group.

4 The copies of all meeting materials and
5 any written public comments are or will be
6 available on the Board's website under the heading
7 Meetings and the listing there for this
8 Subcommittee meeting.

9 The documents will also be up on the
10 WebEx screen so everyone can follow along with the
11 discussion.

12 The Board's website can be found at
13 [dol.gov/OWCP/energy/regs/compliance/advisoryboa](http://dol.gov/OWCP/energy/regs/compliance/advisoryboard.htm)
14 [rd.htm](http://dol.gov/OWCP/energy/regs/compliance/advisoryboard.htm).

15 If you haven't already visited the
16 Board's website, I do encourage you to visit it.
17 After clicking on today's meeting date, you'll see
18 a page dedicated entirely to today's meeting.

19 The web page contains publically
20 available material submitted to us in advance.
21 We'll publish any materials that are provided to
22 the Subcommittee there.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 You can also find today's agenda as well
2 as instructions for participating remotely. If
3 you are participating remotely and you're having
4 a problem, please email us at
5 energyadvisoryboard@dol.gov.

6 If you're joining by WebEx, please note
7 the discussion is for viewing only and will not be
8 interactive.

9 The phones will also be muted for
10 non-Advisory Board members.

11 Please note that we do not have a
12 scheduled public comment session today. So,
13 calling information has been posted on the Advisory
14 Board website so the public may listen in but not
15 participate in the discussion.

16 The Advisory Board voted at its April
17 2016 meeting that all meetings should be open to
18 the public.

19 A transcript of the meeting and minutes
20 will be prepared from today's meeting.

21 During the discussion, as we are on a
22 teleconference line, please speak clearly enough

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 for the transcriber to understand. The
2 transcriber has also requested that people use
3 their headsets and not speakerphone because it's
4 easier to understand.

5 At the beginning of the meeting, please
6 state your name when you start speaking so we can
7 get an accurate record of the discussion.

8 Also, please, for the transcriber,
9 please let us know if you're having an issue with
10 hearing anyone or with the recording.

11 As DFO, I see that the minutes are
12 prepared and are certified by the Chair. The
13 minutes of today's meeting will be available on the
14 Board's website no later than 90 calendar days from
15 today, per FACA regulations. If they're available
16 sooner, we'll publish them sooner.

17 Also, although we --

18 (Telephonic interference.)

19 MEMBER CASSANO: Hello?

20 CHAIR MARKOWITZ: We just lost her.

21 MEMBER CASSANO: We certainly did.

22 (Whereupon, the above-entitled matter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 went off the record at 1:07 p.m. and resumed at 1:10
2 p.m.)

3 MS. RHOADS: Okay, I think we're all
4 set.

5 CHAIR MARKOWITZ: Okay, so, Carrie,
6 you finished your introductory comments?

7 MS. RHOADS: Yes, yes, I'm done.

8 CHAIR MARKOWITZ: Okay. This is
9 Steven Markowitz, let me just continue and welcome
10 Board Members. Also, welcome to the members of the
11 public and the Department of Labor personnel and
12 anybody else who may be on the phone.

13 I'll ask the speakers on the phone if
14 you could say your name before you make your
15 comments, that would be useful for the transcript
16 of the meeting.

17 The agenda, for those of you on WebEx,
18 can see what it is.

19 I'm just going to just make a couple
20 comments and then turn it over to Les Boden who's
21 got some general comments on presumptions and which
22 should facilitate the process.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And, then, I will walk us through a
2 PowerPoint available on WebEx, looking at current
3 use of presumptions.

4 A final point issue that we can discuss,
5 elicit both general discussion, but also some
6 suggestions, recommendations, about how we might
7 improve some of the current presumptions and then
8 get into exploratory discussion about other issues
9 that might become subject of presumption.

10 And, then, we'll end the meeting with
11 scheduling the next call and looking ahead towards
12 our next in person meeting in April.

13 I would like to, in April, get to the
14 point where we are discussing and voting on
15 specific recommendations regarding presumptions,
16 either current ones or future ones.

17 So, that's where I'm aiming, I'm hoping
18 we can -- I think it's realistic actually.

19 On presumptions, just for those people
20 on the call who are not necessarily used to dealing
21 with compensation programs or thinking about
22 presumptions, we use presumptions when we're faced

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 with significant uncertainty about certain
2 elements that are needed to make decisions.

3 In this case, I think the exposures,
4 they can be diseases and we use -- we make
5 assumptions about those exposures for diseases
6 given incomplete information, but, sufficient
7 information to make connections plausible.

8 And, that is, we would call those
9 presumptions when we make those connections with
10 -- in the face of plausible, but insufficient
11 information.

12 So, let me turn it over to Les for some
13 comments about presumptions.

14 MEMBER BODEN: Thanks, Steven.

15 This is Les Boden.

16 I am in an interesting position in the
17 group which is I really know very little about the
18 connections between the medical observations and
19 the diseases.

20 But, I've been thinking for a long time
21 about the general question of how to use and how
22 to think about presumptions in a compensation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 program.

2 So, I just wanted to give you some of
3 my thoughts about that.

4 The first thought is, well, why do we
5 want presumptions anyhow? What are the possible
6 benefits that writing down a presumption and using
7 it will give to a compensation program?

8 Well, one, I think, important thing
9 that it can give is that it can improve the
10 consistency of decisions.

11 We always have an issue in any program
12 where somebody's deciding whether or not to pay
13 compensation, that there are differences between
14 claims examiners in making those decisions.

15 And, what a presumption can do is it can
16 make it more likely that people with the same
17 exposure and the same medical condition will have
18 the same compensation outcome. And, that itself,
19 I think, is a very important goal.

20 The second thing it can do is it can make
21 the decision process faster because people won't
22 have to go through talking with other experts, with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 gathering of additional evidence and, presumably,
2 there would be fewer cases in which people are
3 appealing decisions.

4 That means that the same number of
5 people examining the claims can process more
6 claims, which is good for the DOL because it has
7 limited resources.

8 It also means that people who are
9 applying for compensation would get it more
10 quickly, which is, obviously, important to them,
11 particularly people who are very, very sick.

12 Presumptions can be more or less
13 precisely targeted. So, there's always a tradeoff
14 between what in epidemiology people call
15 sensitivity and specificity, that is a presumption
16 increases the number of people with work-related
17 illness who are compensated. And, if it does that,
18 it also increases the number of people without that
19 illness who are compensated. That's kind of
20 unavoidable.

21 And, that's a choice that people who
22 write and carry out presumptions have to make.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 In this case, the act of law is, I think
2 of as an expansive law and any presumptions that
3 are put into place should keep with the spirit of
4 that law.

5 So, the law doesn't just say, at least
6 is likely as not, that a particular exposure caused
7 an illness. It can also be at least as likely as
8 not that it aggravated or contributed to the
9 illness.

10 Presumptions are generally designed to
11 be a floor on who gets compensated. So, you can
12 get compensated if you don't meet the presumptions
13 but you're pretty sure getting compensated if you
14 do. But, you know, warning there's a tendency that
15 the people who use presumptions to turn the floor
16 into a ceiling.

17 So, it's often at least a good idea to
18 let people know that this is not a ceiling, that
19 this is a floor.

20 Presumptions can be based on lots of
21 different things, certainly including job
22 category, exposure of intensity, duration or in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 signs and test results.

2 Presumptions can also be either
3 positive or negative. So, you could have a
4 presumption that says, unless you had ten years of
5 exposure or more, above a certain level of
6 exposure, then it's presumed that the exposure did
7 not cause the disease.

8 So, I think that's one other thing to
9 think about.

10 So, that's all I want to say for now.
11 I think that those ideas are a reasonable framework
12 for thinking about presumptions in our case.

13 CHAIR MARKOWITZ: Thanks, Les.

14 This is Steven Markowitz.

15 I've got a question about the floor and
16 the ceiling. Have you seen any language that is
17 helpful in trying to address assessment problems
18 to try to make sure that the floor doesn't become
19 a ceiling?

20 MEMBER BODEN: I am not sure that any
21 of the laws -- I'd have to look back, actually --
22 directly address the problem.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But, it could be addressed in the
2 guidance that's given to claims examiners. It
3 could be made clear that, for example, if the person
4 doesn't meet this criterion.

5 And, I think, actually, in the
6 presumptions that are currently being used in the
7 act, there are occasions where that's said. If the
8 person doesn't meet the presumption, then the next
9 step is to send it to either an industrial hygiene
10 or an occupational medicine expert to get their
11 input.

12 So, I think it can be made clear in that
13 way. But, there's probably a certain amount of
14 vigilance that's necessary to make sure people
15 don't act on it.

16 CHAIR MARKOWITZ: I mean, since you're
17 -- Carrie, this is Steve Markowitz.

18 I just got an email from Mark Griffon
19 who wants the number and password to get into today.

20 MS. RHOADS: Okay, I'll send it to him
21 right now.

22 CHAIR MARKOWITZ: Les, you want to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 mention rebuttability or --

2 MEMBER BODEN: Yes, actually, sure.

3 So, there are two kinds of presumptions
4 on that dimension.

5 So, a presumption can be rebuttable,
6 that means that if you meet the criteria of the
7 presumption, somebody can still argue that you
8 shouldn't be compensated.

9 The alternative is there can be
10 irrebuttable. So, if you meet the criteria, let's
11 say you meet the ten years of exposure at a certain
12 intensity or above or just ten years of exposure,
13 then it's automatic that you get compensated and
14 nobody is supposed to be able to deny you
15 compensation at that point.

16 So, if you had a mesothelioma
17 presumption that said, if you were exposed to --
18 if you have mesothelioma, then it's considered to
19 be true that you were exposed to asbestos and if
20 there was asbestos at the particular place you
21 worked at, it's an irrebuttable presumption that
22 you should be compensated.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIR MARKOWITZ: Thanks.

2 Steve Markowitz.

3 Any comments on Les' discussion?

4 MEMBER CASSANO: Yes, this is -- Steve
5 this Victoria Cassano.

6 I thought Les' presentation, while this
7 was really, really good, I just wanted to add a
8 couple of pieces to it.

9 The way I've always worked with
10 developing preventions and the way I see it is, you
11 have -- if you establish --

12 There are two parts to everything. If
13 you establish that somebody worked in a particular
14 area or has a particular job coding in a particular
15 area, depending on how fine you want to make it,
16 then it's pretty proved that you were exposed to
17 A, B, C, D and E.

18 And, if you were exposed to A, B, C, D
19 and E and you have any one of the diseases that are
20 presumed caused by that exposure, then it's a
21 complete -- you don't have to go through all the
22 machinations of proving that you were exposed or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you don't have to go through all of the medical
2 evidence.

3 It's basically, boom, I worked in K12,
4 I was, you know, so therefore, I worked in K12, I
5 was exposed to A. As Les said, I was exposed to
6 asbestos, I have mesothelioma.

7 There's no real thought process or no
8 real decision making process to be made at that
9 point. So, it takes the guess work, it takes the
10 individual decision making on the part of the CE
11 out of it.

12 That's how it's done and, you know, with
13 other agencies.

14 The other thing is, I've never heard or
15 worked on a negative presumption. The assumption
16 always is, let's say, it's three months of
17 exposure, ten years of exposure, one year of
18 exposure, if you do not meet that exposure, that
19 criteria, as Les said, then you just go down the
20 rabbit hole of having to have the medical evidence
21 and a medical opinion that says, yes, this exposure
22 at this level caused the disease.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I would stay away from the concept of
2 a negative presumption because science changes.
3 And, you end up having to undo stuff and then you've
4 got to go back and compensate people that weren't
5 compensated before.

6 So, those are my two main comments about
7 this. It's really very simple once you establish
8 a presumption as far as the work goes.

9 And, Les alluded to all of that by
10 saying you don't need the IH and you don't need the
11 CMC. But the CE really doesn't have much else to
12 do either if they've got proof of working in that
13 presumed exposed area and proof of a covered
14 disease for that exposure.

15 MEMBER BODEN: So, this is Les.

16 I think that you made a very good point,
17 Victoria, made a very good point about the fact that
18 the presumptions generally have these two parts,
19 one is exposure part and the other is the disease
20 part.

21 CHAIR MARKOWITZ: Other comments?

22 (No audible response.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIR MARKOWITZ: Okay. Thank you,
2 Les.

3 Let's move on and, if you could bring
4 up the PowerPoint on the WebEx.

5 So, for Board Members, I sent around a
6 version of this PowerPoint a few hours ago. I
7 changed the first and last slide and added a new
8 slide number two.

9 So, if you're looking at the -- you
10 might want to look at the WebEx. Alternatively,
11 if you're looking at the PowerPoint, just know that
12 I changed some things slightly.

13 We will walk through examples of
14 current use of presumptions in the program, mostly
15 on the exposure side, but, to some extent, we'll
16 talk about disease as well.

17 So, if you go to -- I don't know who
18 controls this WebEx, but if we can go to slide
19 number two.

20 My apologies to viewers on this slide,
21 but let me -- you need to blow it up to see it. But,
22 let me explain what I attempted to do here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 This on the left column is a list of
2 federal compensation programs. Black lung is the
3 first, the second is the Victims' Compensation from
4 World Trade Center, third is the Combat Veterans
5 Compensation for eye lens and radiation. The
6 fourth is the Agent Orange Compensation Program.
7 And, then, the final one is Gulf War Compensation
8 Program.

9 And, it doesn't really list explicitly
10 what the presumptions are, but it lists the aspects
11 of eligibility criteria with regard to exposure.

12 And, by the way, let me say that I had
13 a summary statement. So, I had a doc last summer
14 who did this and then described these programs in
15 kind of a draft paper.

16 But, I show it because it -- for a few
17 reasons. It shows you the variation in the various
18 program.

19 You know, obviously, all different
20 federal agencies, the only one, DOL is the Black
21 Lung Program. And, then, different age programs,
22 some of them, Black Lung dates from the late '60s,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 whereas World Trade was set up in 2011 and the
2 EEOICPA 2001.

3 But, most of these programs actually
4 focus on single exposures. World Trade was a mixed
5 exposure but it was, in some sense, a single
6 exposure.

7 Unlike the old Part E which focuses on,
8 you know, the Encyclopedia of Occupational Health
9 and Safety and these other programs focus on one
10 set, one trade or one set of workers defined
11 functionally by what they did, whether in wartime
12 or in mines and the like.

13 And, then, some of them are quite
14 specific on calendar time which helps set the floor
15 for exposure eligibility.

16 So, EEOICPA, by contrast, deals with
17 many time periods, many exposures and many
18 diseases. So, it's, you know, in some respects,
19 more challenging than some of these other programs.

20 And, some of these other programs have
21 worked very hard to try to define issues in a way
22 that suits the goal of the program which is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 equitable compensation.

2 So, let's move on to slide two. So, we
3 should recognize that, I don't know if WebEx -- I'm
4 sorry -- if WebEx slide three. No, go back a slide.
5 WebEx, we should be off that table. Who's
6 controlling the WebEx? Is that the moderator or
7 is that Carrie?

8 MS. RHOADS: We have it here. I think
9 there's a little bit of a delay.

10 CHAIR MARKOWITZ: Okay, I think we're
11 on slide two.

12 MS. RHOADS: You want the page after
13 the chart, correct?

14 CHAIR MARKOWITZ: Correct. That's --

15 MS. RHOADS: Okay.

16 CHAIR MARKOWITZ: -- yes, slide three,
17 okay.

18 So, you know, we should recognize
19 actually the built in to the original Act of, you
20 know, that there were explicit presumptions. And,
21 here, I list a couple prominent examples.

22 They defined certain exposures --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Special Exposure Cohorts from the beginning where
2 they at least 250 days of work at one of the gaseous
3 diffusion plants before February 1st, 1992 in a job
4 which was monitored or a comparable job.

5 So, there's a duration that they built
6 in. There's a challenge in time aspect and then
7 there's a definition of a job or a broad set of jobs.

8 And, then, of course, there's a method
9 to create new Special Exposure Cohorts which is
10 listed, you know, at a 110 or 120 more Special
11 Exposure Cohorts. But, in the original Act
12 presumptions were used.

13 By the way, in gaseous diffusion plants
14 which are, by no means, the most radioactive of
15 these facilities.

16 And, then, the second one on silica,
17 this relates to chronic silicosis required at least
18 250 days of work during the mining of tunnels at
19 the DOE facility at Nevada Test Site or in Amchitka,
20 Alaska. Again, a duration set.

21 Calendar time indirect set by the
22 description of it occurring during the mining of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 tunnels and locations specified.

2 So, from the very beginning,
3 presumptions were built into the Act, permitted
4 when and employed when they were useful.

5 Next slide? So, we're going to talk
6 about asbestos and spend a little bit of time on
7 asbestos for a few reasons.

8 One is, they're important in terms of
9 cause of illness among DOE workers and others.

10 And, but, also because it's in the most
11 developed in some respects of the presumptions
12 since the creation of the Act. And, it appears in
13 several different places.

14 Now, so, what I've taken to try to
15 facilitate the discussion here for the PowerPoint
16 is excerpts or summaries of DOL documents.

17 So, for instance, the first slide is
18 from the procedure manual. If you want to -- those
19 of you who are -- want to look up, you can go to
20 the ERCP website, look at the procedure manual and
21 look at the language that surrounds this.

22 And, for the next slide, for instance,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is from the bulletins and I hope I got the bulletins
2 mostly correct.

3 But, in any case, so, I know asbestos,
4 there's a lot of language in the procedure manual,
5 you may recall, about defining diseases. And, it
6 needs some work, frankly, but it doesn't
7 necessarily need work on this call from all of us.

8 It's the kind of thing that those of us
9 who deal with the medical aspects of asbestos and
10 rate of disease can address separately without a
11 ton of discussion.

12 But, disease of exposure is more
13 problematic. And, so, the procedure manual spends
14 most of its time discussing the diseases says what
15 you see in this slide number four about exposure,
16 which is a very general statement that, you know,
17 it's based on when they worked, the type of work
18 they did and the location of employment.

19 So, that's somewhat helpful, but
20 totally nonspecific.

21 I don't know exactly when that language
22 was created, but it's in the procedures manual and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I think it's years old is my hunch.

2 If you go to the next slide, which is
3 -- and here, I provide excerpts on the asbestos
4 issue sort of chronologically as they appeared in
5 bulletins and circulars.

6 So, this is Bulletin 13 -- actually,
7 dash 12, if you're looking at the original
8 bulletin. I got that number wrong. So, this is
9 in 2013.

10 And, this is in response to IR declaring
11 that asbestos caused ovarian cancer and HAZ-MAP
12 went back and corrected the SEM or corrected the
13 HAZ-MAP which ended up correcting the SEM on this
14 issue.

15 But, in response, DOL issued a circular
16 recognizing this newly recognized association and
17 causation. And, then, describing who should get
18 compensated for ovarian cancer.

19 So, here, now, we see some, you know,
20 specifics about asbestos exposure. And, what it
21 says in the bulletin is 250 days of significance
22 asbestos exposure which is defined in work and a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 job title on List A and I'll show you List A in a
2 minute, or one year prior to 1996.

3 So, duration and some reference to
4 counting time. And, then, they said it requires
5 20 years latency from the initial VA employment or
6 initial VA exposure to asbestos and diagnosis of
7 the disease.

8 Or, absent those previous two direct
9 pieces of information or conditions, if a person
10 has asbestosis or mesothelioma and one is
11 unfortunate enough to get ovarian cancer, then the
12 diagnosis of asbestosis or mesothelioma, it
13 suffices to provide evidence of exposure.

14 So, let's look at List A. List A is on
15 slide six. And, you may need to blow this up a
16 little bit to look at the full list, but I wanted
17 to get it on one page here.

18 And, this is the same list that is used
19 throughout the asbestos document. And, they're
20 mostly construction and maintenance job titles.

21 There are areas of awkwardness here.
22 There are times at which job titles appear on the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 same line that don't -- aren't necessarily related.
2 There are some repeated job titles in the list.
3 So, the list needs a little bit of work, just clean
4 up.

5 But, it does contain -- most of them,
6 we would recognize very readily as job titles that
7 intrinsically involve asbestos exposure,
8 certainly in a certain era of work, calendar time.

9 So, this is the list they refer to as
10 involving -- if a person works at one of these job
11 titles or operations, they have significant
12 asbestos exposure, that's the presumption.

13 And, so, if we go back a slide to slide
14 five, we can see that if a person develops ovarian
15 cancer and then worked at one of those jobs for 250
16 days or a year prior to '86, they have enough
17 exposure to allow CE to make the linkage between
18 their exposure and their illness of ovarian cancer.

19 But, this is the first time that I see
20 that asbestos, that exposure criteria dealt with.

21 So, let's move on to slide, I guess,
22 slide seven.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And, here, this is from the -- it's
2 Bulletin 13-12. It says explicitly if the
3 claimants don't have these exposure, don't meet
4 these exposure presumption criteria, that the CE
5 will review them and refer them for industrial
6 hygiene review.

7 So, this was an effort to address one
8 of the concerns that Les raised that -- to try to
9 get -- address this problem of a presumption as
10 being a floor treated as a ceiling. But, nobody
11 else gets in unless you meet these exposure
12 criteria.

13 And, then, it says, especially for
14 claims with more limited evidence of asbestos but
15 more limited to List A for a year. They get
16 referred onwards for a medical pending regarding
17 causation.

18 So, that's what this bulletin says.
19 So, that was in 2013 only around ovarian cancer
20 which is, you know, probably very uncommon
21 situation regarding asbestos exposure within the
22 DOE complex.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Next slide. So, in 2014, there's a
2 specific circular issued on asbestos and exposure
3 guidance.

4 So, go on to slide nine, and here, they
5 list a full range of asbestos-related diseases and
6 this circular now addresses not just ovarian
7 cancer, but the other asbestos diseases as well.

8 Slide ten? Now, here, we get into what
9 I regard as sort of the meat of the issue and on
10 asbestos exposure. In fact, this is a -- what
11 we'll see as a lot vaguer than what DOE said for
12 ovarian cancer in the circular in 2013. But, let's
13 walk through it and see what they did and see what
14 needs some modification.

15 So, it's a little -- the circular's a
16 little contradictory and in a certain part, a
17 little vague. So, I'll just warn you about that,
18 if it doesn't quite make sense, I tried to pull out
19 the pieces to make sense of it.

20 But, so, it says nothing about prior to
21 1986 DOE work. There's no presumption about List
22 A or any other workers having exposure to asbestos.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But, or work after 1986, assume that --
2 at DOE, that potential exposure was below the
3 accepted standard.

4 Now, and, there's a little footnote to
5 this in the circular that in 1986 OSHA revised its
6 regulation on asbestos, revised the PEL downward,
7 established both the standards for construction
8 and general industry. And, that's the rationale
9 for picking the 1986 date. And, we've discussed
10 dates before.

11 So, after '86, assume that the exposure
12 was below the accepted standards.

13 But, for the 19 occupations that we just
14 looked at, they have a potential for greater
15 asbestos exposure between 1986 and 1995.

16 In fact, the CE is to accept that they
17 were potentially exposed to asbestos but likely at
18 low levels.

19 This strikes me as a little puzzling on
20 a number of counts, but they don't say it
21 explicitly, but, I can only interpret this to mean
22 that their exposure may have been above the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 accepted standards but not much above the accepted
2 standards because, otherwise, you wouldn't carve
3 out a List A and state this exception.

4 But, in any case, the assumption,
5 whether they are List A or not, is that the levels
6 are likely to be low.

7 The next slide? And, we go back to List
8 A if anybody needs to refresh their memory. Part
9 of List A comes from ATSDR, some documents they put
10 out in 2014.

11 So, if we go on to slide 12. Now, for
12 the CE to accept levels of exposure above these low
13 levels, there must be disintegrates and compelling
14 evidence to show that the DOE work after '86 had,
15 quote, consistent unprotected contact with
16 asbestos of ACM.

17 So, this means that, even if you're on
18 List A, the CE has to be looking at evidence that's
19 pretty definitive that where worker claimant had
20 consistent unprotected contact with asbestos or
21 ACM post '86.

22 And, the, bulletin -- the circular,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 excuse me -- lists what kind of evidence to look
2 at which is, you can see it there, you know, kind
3 of the usual stuff.

4 Interestingly, not occupational health
5 questionnaires, it's not in the list. They may
6 look at it, but I'm just saying, the way the
7 circular reads, not in the occupational health
8 questionnaire.

9 And, in fact, they don't even mention
10 the SEM here as part of the evidence. But, maybe
11 some of this information is thought to come from
12 the SEM.

13 But, in any event, the CE has to look
14 at IH monitoring, if it exists, into their reports,
15 abatement breaches, testimony or affidavits,
16 position descriptions for this evidence of, quote,
17 consistent unprotected contact with asbestos or
18 ACM.

19 And, if you go to the next slide, if
20 evidence is suggested above the guidelines and CE
21 contacts the IH for their expert opinion on whether
22 there was significant exposure or not.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And, then, finally, if you go to slide
2 14, there is this paragraph, kind of befuddling
3 paragraph, which says that any findings of
4 exposure, including infrequent incidental
5 exposure require review of physician to opine on
6 the possibility of causation is necessary as even
7 minimal exposure to some toxins may have a
8 significant activating or contributing
9 relationship to the diagnosed illness.

10 The only way I read this paragraph is
11 that it's a contradiction of what was just said
12 because the -- what the CE was looking for which
13 was consistent unprotected contact would appear to
14 be quite different from infrequent incidental
15 exposure.

16 Although this paragraph does say that
17 the physician now has to weigh in. So, presumably,
18 the CMC has to be involved if the treating physician
19 hasn't provided the well rationalized report.

20 But, in any case, to me, this is -- I
21 don't know how to make sense of this actually, given
22 what the circular said before.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So, the next slide, just to summarize
2 the circular, and because I want to talk about what
3 we think -- how we think presumptions on asbestos
4 should look like.

5 But, there were no explicit
6 presumptions prior to '86. Post '86, assume that
7 asbestos exposure was below the accepted standard,
8 except for List A workers.

9 Next slide? The List A workers between
10 '86 and '95 assume that their potential exposure
11 was likely to be at low levels. And, Item Number
12 4, to show greater than low levels, you'd need
13 definitive and compelling evidence that there's
14 consistent unprotected contact.

15 And, the next slide? If you have that
16 kind of evidence, then, you send the referral to
17 the IH for their opinion. And, then, finally,
18 under any circumstance, you find that a specific
19 exposure that requires a physician review.

20 So, next slide. First of all, there
21 are issues I want to discuss about this
22 presumption, but let me just stop talking for a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 moment and open it up for comments.

2 MEMBER BODEN: Hi, this is Les.
3 Hello?

4 CHAIR MARKOWITZ: Yes, I can hear you.

5 MEMBER BODEN: Okay, okay, sure, I
6 couldn't tell.

7 I just wanted to make one comment which
8 is, it seems to me, actually, we were talking about
9 negative presumptions. But, this comes pretty
10 close.

11 In other words, it's basically post '86
12 says that, for everybody who's not in those
13 occupations, we presume they didn't have adequate
14 exposure to cause disease. And, even for those who
15 did, who are in those occupations, we are presuming
16 that they were likely exposed at the low levels.

17 So, this is actually, if anything, a
18 negative presumption, I think.

19 MEMBER CASSANO: Yes. This is Tori.

20 I agree with Les. I don't think this
21 is a presumption at all. A presumption takes
22 discretion out of the compensation decision.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 This still has -- gives the CE
2 discretion. Right? You know, you have to
3 evaluate it and this and that and the other thing.

4 So, to me, this is not a presumption.
5 It's a rather contradictory guidance when you look
6 at it from beginning to end.

7 So, I guess I agree with Les and
8 probably would go even further than that.

9 MEMBER DEMENT: Hi, this is John
10 Dement.

11 I think these also are negative
12 presumptions. One of the issues that's not
13 addressed in this is a specific task, that the
14 worker may have done either with or without
15 respiratory protection.

16 And, it seems to me that's the driver.
17 You know, really, what we're using are these job
18 classifications in List A. They're surrogate from
19 surrogate -- from the surrogate for the actual work
20 that's done.

21 And, somewhere along the way, I think
22 we need to, even post 1986, look at the issues of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 specific tasks that workers may have done that we
2 probably know or are likely to result in elevated
3 exposures.

4 MEMBER CASSANO: I think if we -- I'm
5 more of a lumper than a splitter and I think, in
6 addition to these job classifications, I think we,
7 you know -- if you're a secretary sitting in a work
8 space, walking through where somebody's ripping
9 out lagging and pipes, even if you're just walking
10 through and you're -- and it's been going on for
11 a year, you're exposed.

12 So, and, I don't know whether this is
13 possible, but it's, you know, if you want to make
14 it less specific than let's just say, if you worked
15 in such and such, a building area, whatever, from
16 day here -- Day A to Day C, you are presumed exposed.

17 And, then, if you have any one of these
18 diseases, the disease is presumed to be due to that
19 exposure.

20 Because, otherwise, you end up getting
21 into -- you're not getting the benefit of the
22 presumption in that you still have to go through

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 all these machinations to prove that, well, this
2 task or that job classification, that, you know,
3 for a year, even though my job classification says
4 this, I was really doing that.

5 So, I think we need to be really
6 careful, otherwise, we're making more work, not
7 reducing the work.

8 MEMBER WELCH: This is Laura Welch.

9 I was just looking for but I can't find
10 it, a picture in the procedure manual for claims
11 examiners book, it's been here for a long time, but
12 it was here, something that kind of supplements
13 that maybe preceded that asbestos prevention which
14 allowed to award a claim and, this went to these
15 four cases.

16 But this document has a built in
17 assumption that before '86 you can assume that
18 asbestos exposure because there's less than to a
19 negative presumption.

20 So, I would want to hear that, but it's
21 not specific. And, I think that is also a little
22 bit imbedded in the procedure manual, but I can't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 find it right away. It's not that relevant, but
2 it just makes sense, the fact that this is new
3 procedure seems to be missing something.

4 I think it's present in the
5 documentation but not in the previous circular or
6 bulletin. That make sense to y'all?

7 CHAIR MARKOWITZ: Yes, this is Steven.

8 Yes, Laura, if you could identify or can
9 you ask John Vance if there's another document that
10 discusses the pre '86, that would be helpful.

11 MEMBER WELCH: Yes.

12 CHAIR MARKOWITZ: Other comments?

13 MEMBER WHITLEY: Garry here.

14 My guess is who came up with the '86 to
15 '95 post --

16 (Telephonic interference.)

17 CHAIR MARKOWITZ: You know, well, we,
18 you know, in the circular, they discuss where the
19 '86 came from. We think the '95 came from the same
20 place where the other '95 came from which it was,
21 you know, our recommendation was that they rescind,
22 and they accepted that recommendation, rescind

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that 1995 circular.

2 But, there's a long rationale for
3 picking '95 having to deal with changes that DOE
4 set in place and also a particular policy guidance
5 document they issued that year.

6 But, it wasn't actually based on
7 exposure information.

8 MEMBER WELCH: Although, Steve, this
9 is Laura again.

10 If you look at the history of asbestos
11 regulations, in '94 that's when OSHA reduced the
12 PL to 0.1. So, if they're assuming that that --
13 when reduced or all did exposures to 0.1, in '86
14 it was 0.2 and in '76 it was 2. I think '76 reduced
15 some of the ability and they did it again.

16 That's the way you link '95 -- between
17 '86 and '95 makes sense under those regulations.
18 I would say that presumes that one that exposures
19 or controls as with the others. It's something and
20 also that there's no health hazard at those levels.

21 And, one of the problems that I have
22 with that presumption overall is it lumps all the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 diseases together and the level of exposure that's
2 necessary for either to limits, we all accept to
3 be different than what's necessary for asbestos.
4 You'd have to separate it out by specific
5 prevention in there, have to separate it out by a
6 specific disease how much exposure is needed.

7 CHAIR MARKOWITZ: This is Steven.

8 That's a good point about the '94 change
9 in the OSHA regulation.

10 So, let's go to slide 18 and just set
11 out -- some of these issues have been covered,
12 otherwise, we could just fill out the story here.

13 I couldn't find if it exists, than the
14 pre '86 presumption or at least any
15 characterization of how they look at exposure to
16 asbestos.

17 The issue of the List A work likely
18 resolving low exposure between '86 and '95, no
19 evidence is really provided for that.

20 That's the same kind of criticism we had
21 of the '95 tech point for -- in that circular, we
22 discussed in Oak Ridge.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Item 3 that, even though they try to get
2 specific because they cite job titles in List A in
3 calendar years and then they say the exposure was
4 likely low during the calendar years.

5 Actually, I said here, it doesn't
6 facilitate decision making but maybe, actually,
7 unless -- and Tori's point is that it does
8 negatively facilitate decision making against
9 significant exposure.

10 Next slide 19. This claims examiner
11 has to judge whether there was the submitted
12 evidence on exposure meets kind of a vague
13 threshold for, quote, consistent unprotected
14 contact with asbestos or ACM.

15 That's a hard decision for someone
16 without much training, maybe an impossible
17 decision to make correctly. And, it's, in and of
18 itself, is kind of a vague.

19 But, the idea that they're -- you know,
20 find that in the pieces of evidence that they cite
21 is, except maybe in the testimony, is unlikely.

22 And, then, finally, the issue of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 last paragraph where any exposure gets sent off to
2 the physician even if it doesn't make its way to
3 the industrial hygienist if there wasn't
4 sufficient evidence of exposure.

5 So, that sort of fills out some of the
6 issues.

7 So, I'd like to talk about, you can go
8 to slide 20, how to fix this issue on asbestos.
9 And, I don't expect that we'll nail all the details
10 here, but if we could spend a little bit of time
11 talking about what we think this should look like.

12 Asbestos related diseases, so much is
13 known that it strikes me that we ought to be able
14 to come up with some reasonable presumptions that
15 would at least cover a certain part of the workforce
16 and a certain subset of asbestos related diseases.

17 And, so, I've listed issues or the
18 things that could be done. We could help them
19 expand List A to include other job titles that could
20 be expected to have asbestos exposure.

21 Item 2 on slide 20, that we could change
22 the presumption that if this day or on this day

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 amended that who worked prior to some date, and here
2 we get into the same problem that they had with
3 dates.

4 But, I'm not sure how to deal with this.
5 But, who worked prior to some dates, we can presume
6 that they had significant exposure to asbestos
7 which contributed to their claim of asbestos
8 related disease.

9 And, then, for other claims, not have
10 the CE make the decision really about significance
11 of exposure but really rest that within the IH and
12 the CMC review process.

13 And, you know, if you go on to the next
14 slide, consider in presumption setting some sort
15 of exposure duration. It could be two years, it
16 could be one year, it could be longer, probably not
17 20 years, and, a late and two minimums.

18 And, then, to overcome this problem of
19 presumption that's developing presumptions
20 working against people who don't meet those
21 criteria, be quite specific about how claimants who
22 believe that they have an asbestos related disease

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to help with the processes for their review.

2 And, so, if we could go back to slide
3 20.

4 I'm not sure we need to go over List A
5 in this -- on this call, but I do think we should
6 take a look at it and see if there are other jobs
7 that can be carved out.

8 You know, the -- thinking about, John
9 Dement, and your point about tasks and then, also,
10 Tori, your point about regardless of task, the job
11 title being in certain building in certain times.

12 But, you know, exposure is
13 characterized by job title, tasks, buildings,
14 calendar time. And, there's such a tradeoff
15 because, if we -- the more specific we get, the more
16 we limit the utility of the presumption.

17 And, I don't know how to get the most
18 of that tradeoff. I know, you know, if a person
19 is a sheet metal worker from 1980 to 1995, I'm
20 comfortable that they were exposed to asbestos,
21 less so for, you know, certain other job titles,
22 certain other calendar periods.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But, I do think if we advocate
2 something, it's got to be relatively simple or easy
3 to apply in order to be useful in the claims
4 process.

5 MEMBER CASSANO: Well, I -- this is
6 Tori, yes.

7 I agree, it needs to be simple and, you
8 know, that, you know, and I don't know which is the
9 simplest way to do it, whether it's by location or
10 by job title.

11 In most of what I've worked with, it's
12 been by location, but you may not have the type of
13 information you need to know where those locations
14 were. So, maybe --

15 But, I don't think getting more
16 specific than job titles is helpful at all. I
17 think we need to go with one particular way of doing
18 it and not complicate it. And, then, anything
19 that's falls out prior to that goes through the
20 regular process.

21 MEMBER DEMENT: This is John Dement.

22 I agree with the issue of not requiring

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a presumption further than the job task. I mean,
2 excuse me, further than the occupational groups.
3 We could take a look at that and we can probably
4 expand it to some extent.

5 But, I was interested in the specific
6 task is more when those who not on List A in some
7 time frame, you know, they can still do tasks that
8 are just the same as those on List A.

9 I was looking at that as a supplement,
10 if you will, to meet this other requirement that's
11 in there, sort of a catch-all.

12 MEMBER CASSANO: And, I think that I
13 was looking at the location thing as a broadening,
14 not as to add on top of something. But, I think
15 both the location bit and John's bit could be part
16 of the supplemental statement, as John said, that
17 if a person isn't in one of the job categories and
18 either worked in an area where they can show there
19 was asbestos, you know, exposure, or did a task in
20 which there was presumed asbestos exposure, then
21 it goes through the regular process and shouldn't
22 be denied simply because it didn't meet the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 presumption criteria.

2 CHAIR MARKOWITZ: This is Steven.

3 I agree with John that, you know, for
4 instance, a chemical operator or utility
5 operation, production personnel, I wouldn't --
6 they wouldn't necessarily be exposed to asbestos.

7 But, if they work in the area when the
8 maintenance folks are changing out the pumps or the
9 insulator is applying insulation or if they're in
10 the area because that's part of their job, that
11 that's the kind of job task that could supplement
12 a job title that would -- could underlying
13 presumption.

14 So, again, I suppose to the standard
15 List A which is, you know, those who were exposed
16 based on job title.

17 But, what would you do about calendar
18 time? What would you do about setting a date or
19 a range of dates, assume that there was significant
20 exposure?

21 MEMBER WELCH: Steven, this is Laura.

22 I think, you know, that the evidence on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 it would be somewhat based on the specific
2 occasion.

3 And, so, that's a big exposure for some
4 occupations --

5 MS. RHOADS: Hi, Dr. Welch, this is
6 Carrie. We're having a hard time hearing you, Dr.
7 Welch.

8 MEMBER WELCH: I'm sorry, I just
9 unplugged my headset, is that better?

10 CHAIR MARKOWITZ: Much better.

11 MEMBER WELCH: That's better? Okay.
12 I think I talk low sometimes.

13 So, that, you know, when you look at how
14 asbestos was slowly taken out of occupations, there
15 are some things like storing of asbestos was ban
16 in '73 and I don't know, in Michigan it stopped a
17 couple years later.

18 And, then, asbestos in textile
19 products, insulation products in '78. And, so, it
20 could, like this -- there's periods of time where
21 different occupations might have had a decrease in
22 exposures.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Maybe that probably only really matters
2 for some diseases, you know, because as long as
3 asbestos was being limited and removed and cut in
4 a workplace, you know, there's some asbestos in
5 place in an industrial setting even though there
6 wasn't new stuff being applied, there's still
7 ongoing exposure.

8 So, I mean, I think it's really a
9 question of what time would we say that asbestos
10 remediation was done in a controlled fashion on a
11 regular basis. And, I know, you said there's
12 certain, you know, residential construction,
13 though, and in schools, they were contractors going
14 in and tearing it all out until it was made illegal,
15 which was a long time after the insulation was
16 banned.

17 And, you know, '95 is probably a
18 reasonable time to say that asbestos was -- after
19 '95 there's not current history of specific events
20 or specific exposures. I think that's reasonable.
21 I don't know that it has to be sustained and
22 continuous if it says in the presumptions.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER DEMENT: Yes, this is John
2 Dement.

3 One of the issues with asbestos, even
4 though we, you know, follow the EPA guidance, it's
5 controlled in place until it's removed
6 appropriately by regulations.

7 But, the issue of unexpected
8 disturbances, I can tell you, here at Duke, we have
9 a program, we've had it for years for control in
10 place and removal when there's any change.

11 But, about every year, you'd have three
12 or four of these unexpected exposures that occur.
13 And, those would be, to me, something that, if a
14 worker could specifically I have that in terms of
15 the, instead of this other area, not in a job, but
16 this supplemental information, then, to me, that
17 would be sufficient probative evidence for
18 exposure if they had one of the diseases in the
19 right latency time period.

20 MEMBER CASSANO: I mean, I don't even
21 think if somebody has mesothelioma, and they worked
22 in -- for one of these companies for any period,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you know, for how -- whatever amount of -- let's
2 not even go that far.

3 Somebody has mesothelioma, they were
4 exposed to asbestos. The only thing that you have
5 to determine then is were they exposed to asbestos
6 under a program that -- and at a contractor that's
7 covered by mea culpa.

8 I mean, there's no thought process
9 involved in, gee, that the mesothelioma due to
10 asbestos.

11 So, as far as that's concerned, I don't
12 think there should be a time limit because I have
13 seen and put people into asbestos medical
14 surveillance programs up until the early 2000s for
15 exactly the reasons John said, the unexpected
16 exposure.

17 They go in and they fix something, they
18 pull something out, it looks a little like asbestos
19 and so somebody actually thinks, gee, maybe we
20 should send this off to see if it's asbestos. And,
21 oh, my God, guess what? It is.

22 So, I think we need to be, again, very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 general and, in some ways, very generous in how we
2 make these determinations so that we don't preclude
3 people who have -- are -- should be legitimately
4 compensated from getting compensation.

5 MEMBER WELCH: This is Laura again.

6 Would you guys think we should look at
7 presumptions by disease? You know, instead of
8 lumping them all together? Because, clearly,
9 mesothelioma takes less exposure than asbestosis.

10 And, that -- because, I mean, I would
11 -- you know, I was thinking of, Steven, you're
12 probably as familiar as I am with asbestos
13 compensation criteria for the Asbestos Trust Fund.

14 And, I could go back and look at those,
15 how they determined substantial exposure. You
16 know, they were generous criteria.

17 But, I think that, you know,
18 mesothelioma is a special circumstance because you
19 might -- I wouldn't be one to say that somebody had
20 a one-time exposure in an mitigation job, but they
21 had asbestosis.

22 MEMBER CASSANO: I think, to a certain

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 extent, Laura, it should be by disease, but not so
2 complicated that, again, somebody needs to have --
3 mesothelioma should be separate, all other
4 asbestos related diseases might be able to be
5 lumped together.

6 CHAIR MARKOWITZ: This is Steven.

7 You know, I actually -- by separating
8 out the diseases in two or three classes wouldn't
9 be that difficult if the only variables are going
10 to be potentially duration and latency. And, it's
11 not, you know, an impossible task.

12 The -- you know, I wonder whether we
13 could recommend describing two routes, two equally
14 legitimate routes of accepting a claim? One by a
15 presumption route and the other by a bit more
16 tailored kind of analysis without the route being
17 considered a poor cousin.

18 If we can do that then we can describe
19 the presumption route, the first route, as a not
20 excessively worry about where it's going to be
21 punishing people who don't meet those presumption
22 criteria because there's no way their claim's going

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to get in the door.

2 MEMBER WELCH: Yes, I think that's
3 good.

4 MEMBER CASSANO: Yes, a presumption
5 should never be exclusionary as, I think Les said,
6 it's a floor not a ceiling, and that's exactly the
7 way VA does it is, if you meet the presumption, it's
8 over and done, we'll get your claim finished in,
9 you know, two days.

10 But, if you're not, you don't meet the
11 presumption, then you have to show proof of
12 exposure and, you know, but you still don't have
13 to -- all you have to do is show proof of exposure,
14 you don't have to show medical evidence that your
15 disease is related to that exposure because that's
16 the second part of the presumption.

17 So, if you say that mesothelioma,
18 asbestosis, and let's -- I'm not even going to get
19 into lung cancer at this point -- are presumptively
20 caused by asbestos exposure, then all you have to
21 prove is asbestos exposure.

22 So, you don't need the medical person

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 chiming in to say, yes, this person had enough
2 asbestos exposure to cause, you know, asbestosis
3 or from whatever. You don't need that part of it.

4 CHAIR MARKOWITZ: So, does that mean
5 that for our presumptions, we would not list any
6 calendar date?

7 MEMBER CASSANO: Oh, no, I think we
8 would.

9 MEMBER WELCH: Yes, you would. I
10 could imagine creating one that, you know, it's
11 likely this day and that looks, though, before '86,
12 it's presumed that it would cause any of these
13 diseases. And, then, we'll have to figure out
14 between '86 and '95 and after '95.

15 I mean, I think those are kind of
16 reasonable time frames where the exposure was much
17 higher before '86. And, because so many asbestos
18 products were still being installed.

19 But, I think it can be --

20 CHAIR MARKOWITZ: So, a sheet metal
21 worker who starts to work in '90, works for two
22 years in sheet metal work, '90 to '92, taking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 somebody from List A with exposure in the early '90s
2 and then develops an asbestos related cancer would
3 fall in the presumptions.

4 I'm just trying to get --

5 MEMBER WELCH: You know, I disagree a
6 little bit with what Tori had said before in that
7 the diagnosis of asbestosis necessitates an
8 understanding of asbestos exposure. It's not like
9 a diagnosis, we're giving a completely medical
10 diagnosis.

11 So, to say they have a diagnosis of
12 asbestosis, doesn't mean that someone has
13 sufficient asbestos exposure and can attribute
14 that fibrosis to asbestos. I mean, it's sort of
15 particular.

16 But, you know, sheet metal is one --
17 sheet metal is an industry that, you know, relative
18 exposure if not a lot of exposure was there. But,
19 it's getting very nuanced.

20 So, I think we probably -- to have a
21 presumption that is reasonable, not too
22 restrictive, not overly generous and a good way

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that people who don't need it can get a good
2 evaluation not just a dot, dash, you know, I think
3 would include just having this and from a big
4 exception before '86, before the '70s, but not
5 adjusting exposure.

6 I don't know if sheet metal workers were
7 that much exposed after '75. You know, and just
8 because --

9 So, it's -- I don't know, I mean, you
10 can have -- whether someone whose exposure started
11 after '86 could develop asbestosis, I think if
12 that's the question. I don't think it's that many
13 jobs. I mean, it would have to be something
14 specific about the job.

15 I mean, I think you can take that list
16 as this, though, and say, people have exposure
17 after '86 that develop asbestosis attributed to it.
18 It's possible, but it wouldn't be true for all those
19 cases, especially if they're not on that list.

20 CHAIR MARKOWITZ: Could we go back
21 slide five, actually, while -- because it's the
22 ovarian cancer bulletin and it was kind of -- if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we'd just take a look here and just where they say,
2 one year of significant work or asbestos work, you
3 know, on List A prior to '86 and 20 years latency.

4 Does this come closer to what we think
5 is possible for the rest of asbestos related
6 diseases, not focusing on the number of days or the
7 time period or -- this is --

8 So, in fact, DOL has done a version of
9 this for one of the lesser frequent asbestos
10 diseases. Is that -- do people agree about that?

11 MEMBER WELCH: I think it's good for
12 ovarian cancer.

13 MEMBER CASSANO: Yes, I think -- yes,
14 the 250 days, I mean, I don't know enough about
15 ovarian cancer and asbestos exposure. But, again,
16 you've got different levels of exposure. I don't
17 know a better way of doing that.

18 But, you know, I remember talking to
19 guys that, you know, would wet a rag and put it
20 around their face to keep the asbestos dust out of
21 their nose and mouth. And, that was well past
22 1986.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIR MARKOWITZ: Right, okay, yes.
2 No, okay, yes. I was not trying to settle on a date
3 or a duration, I was just trying to show that DOL
4 has done kind of what we're already talking about.

5 MEMBER CASSANO: Yes, this is what I
6 consider a presumption, 250 days exposure, 20 years
7 latency and this is your diagnosis. It's simple,
8 it's clean, there's no discretion.

9 MEMBER WELCH: So, can I lay something
10 out that makes it -- I don't know if it makes it
11 easier or more complicated because the law says
12 caused, contributed or aggravated.

13 So, if someone had in their whole
14 lifetime career, and that's asbestos exposure that
15 people would say they have jobs that's related to
16 asbestos, how much of that time needed to be a day?

17 One of the slight problem that I'm not
18 crazy about it, this kind of latency if you miss
19 a daily exposure because -- I mean, that's things
20 that go in a presumption but it shouldn't apply to
21 anything else because the exposure after the
22 beginning of latency can be a contributory to that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 cancer, obviously.

2 So, let's say you've got somebody who,
3 let's say like Tori said, someone's got a diagnosis
4 of asbestosis. Then, is a year of exposure prior
5 to '86 contributory at daily?

6 MEMBER CASSANO: Sure.

7 MEMBER WELCH: I mean, it may not be
8 enough to be the total cause, but it can be
9 contributory. It makes it harder or it makes it
10 easier, it depends on how you're going to establish
11 the medical diagnosis of asbestosis.

12 I think, unfortunately with
13 presumptions, if we over think them, we end up not
14 accomplishing what we want to accomplish. And, I
15 know that most presumptions that I've seen and I've
16 worked on are very much over simplified because if
17 they aren't over simplified, you end up not being
18 able to have people without medical degrees or
19 industrial hygiene degrees figuring out how to make
20 it happen.

21 MEMBER BODEN: This is Les.

22 I was thinking along similar lines to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Laura. Was that Laura who was talking before?

2 MEMBER CASSANO: This is Tori.

3 MEMBER BODEN: No, right before you.

4 MEMBER CASSANO: Yes, that was Laura.

5 MEMBER BODEN: Right. That -- and
6 this is an -- I mean, first of all, you know, if
7 you do what -- go in the direction that Laura was
8 thinking, it doesn't have to make the presumption
9 more complicated. It just makes our thinking more
10 complicated about how we form the presumption.

11 And, I think this is an interesting
12 question. So, there's the contributed and
13 aggravated part, there's also the, at least as
14 likely as not part, which we shouldn't forget, that
15 is the presumption doesn't have to make us feel like
16 this person definitely had asbestosis that was
17 caused by exposure at the DOE.

18 MEMBER CASSANO: I agree.

19 MEMBER BODEN: Right? It has to be
20 more -- at least as likely as not and it could be
21 contributed to or aggravated. So, I think we
22 shouldn't get stuck thinking it's just easy to do,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 right, it's the way my mind works, too, that this
2 particular presumption means, oh, I'm really
3 pretty positive that this person had asbestos
4 disease that was caused by their DOE exposure.

5 So, that makes thinking about the
6 presumption harder. It doesn't necessarily make
7 the presumption harder to put into effect.

8 MEMBER DEMENT: John Dement.

9 I think that is an excellent point.
10 So, most of us are more used to dealing with greater
11 levels of certainty.

12 And, I think one of the things we could
13 do here, I think it's 250 days, some of us could
14 argue about whether or not it's a good choice of
15 numbers. It seems like that's fairly reasonable
16 presumption of exposure related to a disease.

17 We might actually think similar to that
18 about post 1986. And, I think we all agree that,
19 for asbestos, exposure would be decreased over
20 time. We could perhaps think of a presumption post
21 1986 of a greater number of working days that we
22 would feel comfortable that these were important

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 asbestos exposures related to a given disease.

2 MEMBER WELCH: That makes sense.

3 CHAIR MARKOWITZ: Yes, that's
4 interesting.

5 MEMBER WHITLEY: Garry here.

6 Keep in mind that these -- this is not
7 like regular industry. This is buildings, I mean,
8 it's buildings that were built in the '40s and '50s
9 and, basically, if I look at the film, every
10 building out there, even the office buildings, are
11 listed there has asbestos.

12 So, if you had a worker that was a
13 secretary or an engineer that worked in an
14 engineering building for five years in the early
15 '90s, let's say, and the film says they was exposed
16 to asbestos. So, how do you handle that?

17 MEMBER CASSANO: I think what we're
18 saying is, if we go by job title, that person would
19 -- might not be covered by the presumption, but that
20 doesn't preempt them from their claim being
21 evaluated on the work of the exposure information
22 that they're given -- that they get, that they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 submit as well as the medical evidence that they
2 submit. I think that's what we're trying to say.

3 MEMBER WHITLEY: What if we did it like
4 they do special cohort stuff? If a site has a
5 special cohort and they're saying before, I'll just
6 say 1986 or '95 or whatever number we've used there,
7 and you have these 23 pre-approved cancers, then
8 you don't have to go through all the DOE free
9 constructions and all that stuff.

10 It's a given that it's as likely as not
11 it could have been caused, aggravated, whatever,
12 from those sites, that's the way they did it with
13 special cohort sites.

14 MEMBER CASSANO: I think that's
15 basically what we're trying to do is, you don't have
16 to go through dose exposure and stuff like that.
17 You were here, you were doing this job for 250 days.
18 It's been 20 years, you have a disease that we've
19 considered to be presumptively caused by this and
20 you get compensated without going through all the
21 rigmarole.

22 CHAIR MARKOWITZ: This is Steven.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But, I think, yes, you're thinking
2 almost the way the gaseous diffusion plant SEC was
3 written up in the original Act. You know, 250 days
4 at that place and in a job that was monitored or
5 should have been monitored or something could have
6 been monitored, that gets you in.

7 The problem is, some of these diseases,
8 mesothelioma's a particular case that is so
9 specific to asbestos. Lung cancer, which is, you
10 know, more common as well to mesothelioma people
11 get for other reasons don't -- it doesn't --

12 MS. RHOADS: All right, there's a lot
13 of background noise. Could you mute your lines
14 please if you're not talking?

15 CHAIR MARKOWITZ: I think we would need
16 some greater specificity than just, you know,
17 worked at that site for X period of time, unless,
18 of course, Congress wants to change the Act.

19 So, let me make a suggestion. We're at
20 2:30. If there are any final comments on the
21 asbestos issue, we've gotten some of the questions
22 and issues out on the floor. Obviously, we're not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 going to resolve them.

2 Why don't we take a five minute break
3 and then come back. We've got until 3:30 for
4 briefer discussion on asthma and then touching on
5 the COPD and hearing loss and then discussing kind
6 of other areas that we might want to look at in terms
7 of presumptions.

8 All right? Sort of closing comments on
9 the asbestos issue?

10 (No audible response.)

11 CHAIR MARKOWITZ: So, we're on the half
12 hour then, can we -- you're on the half hour where
13 ever you are, whatever time your clock says. So,
14 we'll just come back in five minutes.

15 (Whereupon, the above-entitled matter
16 went off the record at 2:29 p.m. and resumed at 2:37
17 p.m.)

18 CHAIR MARKOWITZ: Could we go to slide
19 20 -- 22, I'm sorry, 22? I want to talk about
20 asthma.

21 This will be a lot shorter discussion
22 than asbestos and shows you kind of the variation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that exists.

2 So, I looked for in the various
3 circulars, bulletins, communications, manuals,
4 for asthma and in the procedure manual, the only
5 thing I could find was in at the bottom of Exhibit
6 1 which is this matrix which I didn't -- I will spare
7 you, I'll just report to you what it says so you
8 don't need to look at it.

9 It says almost nothing about exposure
10 criteria for asthma. This is look at facilities,
11 job titles, processes and dates.

12 And, then, weighs in on how you
13 diagnosis occupational asthma with pretty strict
14 criteria actually, which we don't need to discuss
15 here because I'm not sure whether there -- well,
16 when we look at the next circular or bulletin,
17 you'll see what -- how they address that.

18 So, if go to the next slide 23, and this
19 is a new circular, relatively new, it's 2015, I have
20 a typo there, October 2015.

21 And, it says -- acknowledges that
22 occupational asthma can be caused by a lot of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 different things and there were a lot of different
2 things of daily complex.

3 So, basically, to see directed to
4 accept it if the doctor writes a report saying it
5 is occupational asthma. And, I think provides
6 some modicum of rationale for that. They don't
7 really discuss a whole lot about what level of
8 rationale.

9 And, or if the doctor says it's asthma,
10 not occupational asthma, but asthma caused by a
11 toxin, that that should suffice for the CE and they
12 don't have to send it to industrial hygiene or they
13 only need to proceed further with any consideration
14 of exposure.

15 So, and that alternative definition of
16 if a doctor doesn't say occupational asthma but
17 says asthma caused, contributed to or aggravated
18 by an occupational exposure to a toxic substance,
19 that's reading directly from the bulletin, that
20 suffices.

21 So, the -- so they've removed the whole
22 exposure part of it. They really just rely what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 would appear to be entirely on the treating
2 physician. They don't set out CMC versus treating
3 physician, they just say if the physician
4 diagnosis.

5 Now, there is one wrinkle to this which
6 is Item Number 2 on the slide, which is that, if
7 the claims are filed after the DOE work has been
8 terminated, that is to say they have asthma at age
9 70 and they stopped work at age 62, that that
10 requires some detail from the physician.

11 And, that's a difficult question
12 actually, but some detail from the physician about
13 how active exposures at work produced the asthma
14 that appears post-termination of employment.

15 And, if that doesn't exist, then the CE
16 sends it to the CMC, not to the IH, but the CMC for
17 consideration after collecting whatever exposure
18 information that he or she can find.

19 And, that's pretty much it for the
20 asthma presumptions. So, comments?

21 You think there are any improvements in
22 this?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER CASSANO: I don't see this even
2 as really a presumption in that they're just
3 telling them that if it's -- the doc says
4 occupational asthma, you don't need to do an
5 exposure assessment.

6 I think a presumption for asthma like
7 we're trying to define a presumption for, you know,
8 asbestos related disease, is probably impossible.

9 So, I wouldn't mess with this very much
10 at all and just not even call it presumption because
11 I don't think -- it doesn't look like one to me.

12 MEMBER WELCH: This is Laura Welch.

13 I agree, too. I don't think some of it
14 -- this allows a way for the claims examiner to
15 accept a claim without sending it to a CMC, that's
16 good. And, I don't see a way to improve it.

17 COURT REPORTER: Hello, this is the
18 transcriber. Could you just repeat that?

19 CHAIR MARKOWITZ: Laura, there's a
20 comment if you could repeat what you said?

21 MEMBER WELCH: Yes, but I agree with
22 Tori Cassano, but it'd be hard to improve on this.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The one thing I think looks good about it, even if
2 it's not clearly a presumption is that, it provides
3 a clear way for the claims examiner to accept a
4 claim without a CMC referral and that's good. Is
5 that okay?

6 CHAIR MARKOWITZ: This is Steven.

7 Actually, I'll give you that there is
8 a presumption built in here, but I'm not sure we
9 should spend our time doing that. So, I'm not
10 going to pursue that. So, we can just move on
11 unless there are other comments about this.

12 MEMBER VLIEGER: This is Faye.

13 What I have seen is when a doctor claims
14 it's occupational asthma and you have no exposure
15 documents, they'll come back and say, no, it's just
16 asthma, you didn't prove it was occupational.

17 Is there some way to have a presumption
18 of exposure for these people that when the doctor
19 says it's occupational asthma that they can't
20 retort that it's only asthma?

21 CHAIR MARKOWITZ: This is Steven.

22 That's interesting because this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 bulletin would appear to intend to circumvent that.

2 What it says is that, quote, when a
3 claimant files a claim for asthma, evidence is
4 required to substantiate reasonably that the
5 employee has a medical diagnosis of, quote,
6 occupational asthma, end of quote.

7 So, sure, the physician has to provide
8 some rationale. And, the preceding language in
9 the bulletin is intended to be very liberal because
10 it recognizes that there are many, many causes.

11 But, I hear what you're saying and I
12 don't really know how to specify beyond what's
13 already written, or whether it should be actually.

14 I mean, frankly, this is Steven, again,
15 frankly, depending on the case, but that would seem
16 to go against that they're misapplying, frankly,
17 this bulletin.

18 Now, I don't know, say, whether, yes,
19 this bulletin was issued October 8, 2015, was
20 effective that date. I don't know whether, you
21 know, we're talking of something that predated
22 that. But --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER VLIEGER: This is Faye again.

2 Well, it since this bulletin has come
3 out where, in my estimation, the claims examiner
4 is trying to play lawyer and trying to get any
5 reason to deny versus finding the reasons to
6 accept.

7 It's been my experience since my claim
8 was accepted in 2009 that they've become more and
9 more restrictive on accepting occupational asthma.
10 And, it seems like the bulletins give them a reason
11 to deny.

12 Like you said, it's a reason for them
13 to actually exclude rather than include. So, as
14 much as possible, and I've enjoyed being a
15 discussant about that, so as far as this is
16 possible, I'd like to make sure that the
17 discretionary portion of the claims examiner's job
18 is removed because they're neither lawyers that are
19 practicing law nor are they medical doctors, yet
20 they do both on a routine basis.

21 MEMBER BODEN: That sounds -- this is
22 Les -- that does sound, you know, appropriate to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 me, that this -- I think Steven is right, that there
2 is a presumption in here. The presumption is, if
3 the physician diagnosis occupational asthma, then
4 it's presumed that it was caused by an exposure to
5 a toxic substance at a DOE site.

6 So, it may be worthwhile for this
7 committee to think about clarifying what that means
8 so that a claims examiner doesn't look at the
9 diagnosis and say, I don't believe it was
10 adequately supported.

11 I mean, I guess that the word reasonably
12 in there is, you know, you know, what does -- if
13 the physician just says I think it's occupational
14 asthma caused by a toxic exposure, but doesn't
15 provide any evidence of the exposure that might
16 have caused it, is that going to be okay? And, if
17 so, this document should be clarified.

18 MEMBER VLIEGER: this is Faye.

19 Presently, is that if there's a
20 diagnosis by a doctor of occupational asthma
21 without a discrete exposure explicitly stated in
22 the rationale for the diagnosis, they will deny it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 because they'll say this worker was not exposed per
2 the SEM.

3 And, they're only given to the labor
4 category exposure being complete. The labor
5 category is not understanding that workers were
6 dispatched all over. And, so, you know, it gets
7 back into this Catch 22 that, because the SEM
8 doesn't have a way to the disease for that labor
9 category, then they'll be denied because the
10 doctor's report was not well rationalized to
11 support that it was occupational asthma outside the
12 exposures listed in the SEM.

13 So, on a catch -- the catch for all of
14 that, they'll come back and they'll say, if the
15 doctor could identify a toxin, but then again, if
16 that toxin's not listed in the labor category or
17 have a reasonable explanation that the CE will
18 accept that they were exposed to that, they won't
19 accept it.

20 On a corollary claim that I have, I have
21 a painter with more than 25 years' experience who
22 has a unique form of Non-Hodgkin's lymphoma. And,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we've proven that the products he uses on a daily
2 basis contain the toxins that everybody else
3 accepts cause Non-Hodgkin's lymphoma.

4 But, the Department has said, well, it
5 doesn't say that in the SEM. It doesn't say that
6 that mixture is causing cancer and so he couldn't
7 possibly have been exposed to enough of the pure
8 chemical that's linked to Non-Hodgkin's lymphoma
9 because that's the mixture that's he's using.

10 I just want to demonstrate to you the
11 lengths to which they'll go to find a way around
12 a presumption.

13 MEMBER BODEN: Okay, so, here's my
14 question on this, I'm reading the document. The
15 document says, any dust, vapor, fume or other
16 airborne material. Is there anybody who's worked
17 at a DOE site that wasn't exposed at least once to
18 a dust, vapor, fume or other airborne material?

19 You know, that seems pretty broad.

20 MEMBER CASSANO: Yes, but they don't
21 all get -- they don't all end up getting
22 occupational asthma.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER BODEN: I know, but that doesn't
2 -- what it says is you've got asthma and you've been
3 exposed to any dust, vapor, fume or other airborne
4 material, then it seems to me that this is saying
5 it's presumed that -- and the doctor says it's
6 occupational, then you're done.

7 MEMBER CASSANO: Yes, and --

8 CHAIR MARKOWITZ: This is Steven.

9 Let me just break in here for just a
10 moment because this bulletin actually instructs
11 the claims examiner they are to not consult the SEM
12 because it says, quote, asthma is no longer listed
13 in the SEM. And, the EEOICP IH will not review
14 asthma claims, end of quote.

15 But, then, it goes on in instructions
16 to the CE to say that, for the CMC who has not opined
17 here if they're not happy with the treating
18 physician's report, for the CMC, the CE has to
19 provide where the employee worked, dates of covered
20 employment, the labor categories and details about
21 the jobs performed. So, there is some evidence.

22 But, I think, you know, maybe actually

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 looking at some asthma claims that have been filed
2 since this bulletin was put into effect would give
3 us some real insight into how it's applied.

4 MEMBER CASSANO: Yes, one more
5 comment. I think this is more a training and/or
6 not disciplinary, but corrective measure on the
7 parts of the CEs than putting more into this
8 bulletin.

9 Because, if it says you're not supposed
10 to use the SEM, then you shouldn't. And, based on
11 a previous recommendation that says that the whole
12 claims folder should go to the CMC, that means the
13 occupational health questionnaire would go to the
14 CMC and, therefore, the CE doesn't have --
15 shouldn't have the discretion to pull out what --
16 cherry pick the pieces of the exposure information,
17 et cetera that they think is important or germane.

18 So, I think in some roundabout way, we
19 fixed this, but I think we shouldn't -- should look
20 at some of the claims that have -- especially those
21 that have been denied since this was put out.

22 Does that make any sense?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER VLIEGER: I like that answer.
2 This is Faye.

3 I'm looking at the SEM on another screen
4 right now and all of the disease links to asthma,
5 or I'm looking at a welder which I figured was a
6 pretty typical one, asthma is not on his -- on the
7 disease links for that labor category.

8 But, the labor category, you know, has
9 other lung conditions on it, COPD is still on the
10 list.

11 So, as long as we -- currently, the
12 bulletins have not worked. The intent was good,
13 but the concept was good, but the execution failed.
14 So, you know, anything we can do to increase
15 execution percentages would be great.

16 CHAIR MARKOWITZ: So, this is Steven.

17 So, that's an argument for looking at
18 some claims, some recent claims I think. Does that
19 -- then we have the evidence to look at execution.

20 MEMBER DEMENT: This is John.

21 Based on what we looked at sort of the
22 aggregate portion of the asthma cases, it looks

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 like about 65, 66 percent were denied and the reason
2 give is the negative causation.

3 If you're going to look at those, I
4 would suggest that that's where we sort of look at
5 those specifically that had a negative causation.

6 CHAIR MARKOWITZ: Good idea.

7 Any final comments on asthma before we
8 move on?

9 (No audible response.)

10 CHAIR MARKOWITZ: Okay. There's some
11 background noise, some squeaking.

12 MEMBER CASSANO: Sorry, I just muted my
13 phone, that's my door.

14 CHAIR MARKOWITZ: Okay.

15 And, in fact, Tori is going to excuse
16 herself early so --

17 MEMBER CASSANO: Yes.

18 CHAIR MARKOWITZ: Okay. So, let's
19 move on, it's this slide, the next slide, COPD.

20 Now, so, I looked again at the manual,
21 bulletins, circulars, et cetera for where COPD is
22 addressed.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And, it's mostly addressed in relation
2 to asthma. There is in the procedure manual, if
3 you go to the end of the exhibits and the matrix,
4 mentions COPD, but it doesn't say anything about
5 exposure. It just really says how you diagnose it.

6 One important thing is, and actually,
7 if we go to slide 26 for a moment so I can dispense
8 with this matrix business.

9 One important item that it mentions,
10 and I don't know if this is applied or not, some
11 of us noticed this quite some time ago is that, at
12 least in the matrix, it says that the -- one of the
13 criteria is the employee has a history of being a
14 never smoker. That's one of the requirements for
15 calling COPD occupational, which is wrong.

16 But, I don't --

17 MEMBER WELCH: Steven, can I -- the way
18 I understood that, and I can probably find it, was
19 if the employee was in the particular -- and it's
20 early on in the program -- if the claims examiner
21 was reviewing a case and an employee had never been
22 a smoker, they could accept the COPD claim without

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a CMC opinion. Otherwise, if they'd been a smoker,
2 they always had to go to a CMC.

3 CHAIR MARKOWITZ: Okay. That makes
4 sense. Okay, that makes a lot more sense. Thank
5 you.

6 Okay, so then, we can go to the recent
7 bulletin 1602 on COPD and asthma, oh excuse me,
8 asbestos, and just briefly, because I'm going to
9 ask Laura to chime in here, but briefly, it says
10 that to relate asbestos exposure to COPD, it's
11 required that a person work -- do the work on List
12 A for at least 20 years prior to 1980 or that the
13 IH review support that there was 20 years of
14 significant asbestos exposure.

15 So, otherwise it needs to be reviewed
16 by a CMC. And, this is all about asbestos, it
17 doesn't address any other exposure in that
18 bulletin.

19 So, while I know on the second on
20 Friday, you all discussed this, so do you just want
21 to say some things about this?

22 MEMBER WELCH: Yes. Partly, what I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 did on the SEM call, can the transcriber hear me
2 okay? You're doing okay?

3 (No audible response.)

4 MEMBER WELCH: I guess so.

5 CHAIR MARKOWITZ: We can hear you.

6 MEMBER WELCH: Yes, but I thought you
7 couldn't hear me when I was talking before. Okay.

8 The building trades had sent in some
9 comments to the Department on this presumption and
10 which was a description of why assuming asbestos
11 is an era and the 20 years or an era and that, to
12 me, you're an era.

13 And, putting forth a more up to date
14 rationale relating to COPD that's been caused by
15 a combination of workers, gas, dust and the
16 committee likes the comments and pretty much
17 supported it. Of course, the building trades
18 would take it.

19 And, so, you made the call to evaluate
20 -- take those suggestions from the building trades
21 and put them into something that looks more like
22 a presumption the way the Department likes the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 presumptions.

2 And, John Vance was on that call. He
3 said the more specific information you give them,
4 the better.

5 And, one other point I wanted to make
6 sort of related is that he noted then on that call
7 was that presumptions are something the Department
8 can implement right away.

9 If we were ask about changes in policy
10 or procedures that require a change in the
11 procedure manual, then that takes a lot longer.

12 So, if anybody wants me to go through
13 the rationale for our changes or I could circulate
14 to this committee, I can circulate the documents
15 the building trades put together and you could take
16 a look at it.

17 We tried to be -- I'm partly with this
18 like, where did this come from? But, I had to kind
19 of get past that to be able to say, well, no, it's
20 asbestos because this is all key to asbestos,
21 that's why we picked 20 years and 1980 as a
22 particular time to make a diagnosis of asbestosis

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 rather than COPD.

2 CHAIR MARKOWITZ: It would be helpful
3 -- this is Steven -- it would be helpful if you will
4 send that around.

5 But, did you all discuss and settle on
6 kind of a provisional set of presumptions around
7 COPD?

8 MEMBER WELCH: Yes, let me pull up my
9 documents. I should have had that open for you.
10 It's going to take me a few seconds.

11 The idea was to have documented
12 exposure to vapors, gaseous, dust and fumes based
13 on job title and occupational history.

14 And, that, I think what we were talking
15 about was -- sorry, I can't actually --

16 MEMBER DEMENT: Hey, Laura, I think
17 that the time period was five years of exposure.

18 MEMBER WELCH: Yes. But, it was five
19 years total.

20 MEMBER DEMENT: Yes, it's five --

21 MEMBER WELCH: And, then --

22 MEMBER DEMENT: But it doesn't have to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 be continuous, but five years of total exposure.

2 CHAIR MARKOWITZ: Of total DOE
3 exposure or --

4 MEMBER DEMENT: No, just --

5 MEMBER WELCH: Total exposure within
6 -- what I was fixing to try to look up is we said
7 one or two years of DOE exposure.

8 CHAIR MARKOWITZ: But, why -- this is
9 Steven -- while you're looking that up, so, in the
10 claims process, I don't think the claims examiner
11 is looking at or should look at or is permitted to
12 look at non-DOE exposures.

13 So, the matter would be to set a time
14 limit for DOE exposure. I understand the science
15 is different, but, how are we going to address that?

16 MEMBER WELCH: But, I think, maybe it's
17 a couple listed there, one of which is that you --
18 if we think that it takes five years of exposure
19 overall to be causative for COPD, then you set it
20 at five.

21 Or, I'm not sure that a good number of
22 them go to then, you know, if they don't meet the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 five, then they go forward for an individual
2 review.

3 CHAIR MARKOWITZ: I'm sorry, this is
4 Steven.

5 There's contributory coverage,
6 aggravation language or at least as likely as not,
7 does that weigh in on this question or help?

8 MEMBER WELCH: Well, that's how we
9 ended up with like five years total. I thought
10 that the DOE be contributory if it was one year
11 within that five years.

12 But, if all they had was a total of one,
13 which would, you know, in the context of an overall
14 exposure would be contributory, it's probably not
15 contributory if you look at the science. It makes
16 it complicated, I think.

17 CHAIR MARKOWITZ: Right.

18 MEMBER WELCH: We also recommended 15
19 years from first exposure. I mean, we listed a
20 bunch of covered exposures and then mixed
21 exposures. Part of the problem is those aren't
22 necessarily all in SEM. You know, the covered

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 exposures.

2 What we've seen when we received COPD
3 cases is that a worker that clearly would have had
4 exposure to welding, it might not be linked to his
5 job title and the SEM, for example. So, you end
6 up with only a few of these worker exposures.

7 And, that can be improved on by in
8 improving the occupational questionnaire.

9 CHAIR MARKOWITZ: This is Steven.

10 Is the thinking that the -- a
11 presumption might key in on job titles? Or, do you
12 need the detail about tasks and exposures agents?

13 MEMBER WELCH: We were thinking
14 exposures. But, it may be possible to pick some
15 job titles that, you know, somebody has done that
16 for five years, you could put him at five years of
17 exposure to these agents.

18 But, I think there are people who have
19 combined exposures.

20 CHAIR MARKOWITZ: I'm thinking that --
21 I'm sorry, I wasn't clear. This is Steven again.

22 I'm not talking about the length of time

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 now, I'm talking about which exposures, because the
2 medical studies ask the question, are you or have
3 you been exposed to vapors, gas, dust or fumes.
4 And, then, they'll ask for whatever period of time,
5 very nonspecific. Right?

6 And, so, in thinking about just using
7 VGDF, vapors, gas, dust and fumes as the exposure,
8 are you talking about the claims process actually
9 looking at specific exposures provided by the SEM
10 or otherwise? OHQ?

11 MEMBER WELCH: Let me let John, I don't
12 think we got that specific, but that's a very good
13 point.

14 MEMBER DEMENT: Well, see, I think our
15 thinking was trying to be more consistent with the
16 contemporaneous literature and that is vapors,
17 gas, dust and fumes exposures rather than specific.

18 And, we were sort of looking at labor
19 categories as a surrogate for those VGDF exposures.
20 Then we made a statement that, you know, just as
21 we were talking about with asbestos, even if you're
22 in other categories, not in the specific list, if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you could still demonstrate exposures to these
2 vapors, gas, dust and fumes, that should be
3 sufficient.

4 CHAIR MARKOWITZ: Yes, this is Steven.
5 I would agree with that.

6 MEMBER DEMENT: But, we were tagging in
7 on some labor categories which we, you know, eight
8 priorities were accepted as having those
9 exposures.

10 CHAIR MARKOWITZ: Right, and as
11 opposed to asbestos, the list of those labor
12 categories at these facilities is going to be
13 extensive.

14 MEMBER DEMENT: Yes, and I think that
15 we were part -- and this is back to the SEM idea,
16 I think it's going to take some work on the part
17 of updating the SEM to make sure that those are
18 flagged.

19 CHAIR MARKOWITZ: Yes, this is Steven.
20 I wonder whether it actually would need
21 to use the SEM at all or they could just bypass the
22 SEM by looking at a -- the CE could look at the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 diagnosis and then look at a list of job titles.

2 MEMBER DEMENT: Well, with that, I
3 think diagnosis, job title and now, you know, the
4 literature itself is either we ask a lot of
5 questions about tasks and all kinds of things.

6 The simple question, you know, did your
7 job exposure to vapors, gas, dust and fumes has been
8 shown to be a pretty good predictor of COPD risk
9 in a number of studies. So, it's not a bad
10 surrogate in and of itself.

11 CHAIR MARKOWITZ: We can add that to
12 the occupational health questionnaire.

13 MEMBER DEMENT: Yes.

14 CHAIR MARKOWITZ: Actually, the same
15 questions.

16 So, are there other comments on the COPD
17 issue before we move on? We've got about 20
18 minutes.

19 So, this is Steven, Laura, so what's the
20 plan to address COPD over the next number of months?

21 MEMBER WELCH: I was going to take what
22 we -- what the building trades had put into its

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 letter and job titles and create it into something
2 that's more of a draft of presumptions. And, our
3 committee is going to have another call before the
4 April meeting to talk about it.

5 I'm also going to talk to Mark Griffin
6 -- Mark? Did Mark get on the call? Maybe he's
7 trying to call in.

8 About job titles that both for the
9 occupational history questionnaire and specific to
10 this presumption, how you can identify --
11 differentiate within the product workers by job
12 titles that entail certain exposures. And, I'm
13 going to talk with him about that.

14 CHAIR MARKOWITZ: Okay. Any other --
15 before we close out COPD, any other comments or
16 questions?

17 (No audible response.)

18 CHAIR MARKOWITZ: Okay, so let's move
19 on --

20 MEMBER WELCH: Can I mention one thing,
21 Steven? It's not specifically related to that,
22 but something that I learned from the call last

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 week, which I haven't been completely there, but
2 an approach that the Department of Labor current
3 takes is if the worker reports an exposure on the
4 occupational history questionnaire, it has to be
5 validated in the SEM.

6 So, they look at the occupational
7 history questionnaire, but in essence, pretty much
8 you get to find the labor category or any
9 information about locations.

10 And, that the presumption is that it's
11 self-reported, the occupational history
12 questionnaire, self-reported that
13 exposure-specific information has to be validated
14 either by the SEM or the documents they get from
15 the site, which is something that we have to
16 address.

17 CHAIR MARKOWITZ: Yes, well, that's
18 wrong.

19 MEMBER WELCH: But, that's -- it's not
20 written down anywhere, but that's, I mean, you
21 know, I think that they -- Garry and Faye would
22 agree with that, but they pretty explicitly stated

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that on the call at that time.

2 (Simultaneous speaking.)

3 MEMBER VLIEGER: This is Faye.

4 CHAIR MARKOWITZ: Let me -- I'm sorry,
5 that was Steven speaking, the person who said
6 that's wrong.

7 Go ahead, Faye, I'm sorry.

8 MEMBER VLIEGER: This is Faye.

9 What you may or may not be aware of is,
10 under Department of Energy regulations, unless
11 three or more people are injured in the same
12 incident or accident, they are under no requirement
13 to go back and investigate the injury. They just
14 go, oh, it happened and they move on.

15 Well, the investigation would include
16 that supplemental monitoring. And, in my
17 particular accident, because it happened around a
18 lot of people, they did air monitoring but then they
19 hid the results for more than seven days before they
20 had them analyzed. And, they did it without a
21 chain of custody and without proper handling.

22 So, the air monitoring that they did was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 virtually useless for what was evident at the time
2 of the exposure because it had decayed so badly in
3 the week before they actually did the GC/MS on it.

4 But, in most cases, like Kirk has said
5 on our other calls, is a report of an incident
6 happens and the monitor will show up 20 or 40
7 minutes later, do an air sample, go over stuff in
8 here.

9 So, the fallacy of requiring that
10 incident or accident of exposure to be documented
11 is ongoing.

12 CHAIR MARKOWITZ: So, let's move on, to
13 be continued.

14 The -- well, I had one last thought
15 which is that if we have a common sentiment about
16 the utility of, you know, OHQ independent of SEM
17 or other supporting documentation, we should
18 probably voice that opinion, raise that at our next
19 Advisory Board Meeting, discuss that. I'll put it
20 in there.

21 MEMBER WELCH: Yes, and I would plan to
22 do that because I think that, you know, the -- part

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of the whole process is how the OHQ could be used
2 more effectively, would be --

3 And, I think the Department of Labor
4 wants to hear a little bit where they can feel
5 comfortable validating what the reports on the NHQ.
6 We'll discuss that.

7 CHAIR MARKOWITZ: Okay, so the SEM
8 Committee will raise that, great.

9 MEMBER WELCH: Yes.

10 CHAIR MARKOWITZ: Well, the next item
11 is hearing loss and solvent exposure. And, I
12 didn't list this with the purpose -- for the purpose
13 of having a discussion about this at the here and
14 now.

15 This was, Laura presented this, some on
16 this at our Oak Ridge meeting. Rosie Sokas has
17 also looked into this.

18 There is a new memo from, I think Dr.
19 Stokes, or within DOL, looking at hearing loss and
20 solvents and noise that was issued at the end of
21 December.

22 And, there's a lot of -- and then,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there's been some email traffic within IH and in
2 the CMC committee in the last couple of weeks on
3 this issue.

4 So, my -- I just need to figure out --
5 we need to figure out who's going to sort of carry
6 this issue forward at the next meeting, develop a
7 set of improved presumptions around this along with
8 documenting the science.

9 This is Steven again. I guess we could
10 form a subset of the working group, this working
11 group and pull in other people who are interested
12 to move this issue forward. That's one option.

13 The other option is to place it in one
14 of the existing subcommittees with input from other
15 interested individuals.

16 MEMBER WELCH: This is Laura.

17 I'd suggest we do that, if you want I
18 think would work best.

19 CHAIR MARKOWITZ: Okay. I'm dizzy
20 with power over here.

21 Any other comments, questions?

22 (No audible response.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIR MARKOWITZ: Okay. So --

2 MEMBER WHITLEY: Garry here.

3 This is a good presumption that is best
4 not used as a ceiling. The way they're using it
5 is exactly a ceiling. They say it's ten years and
6 you've got nine years and eight months, then you
7 get a letter back that says you don't meet the
8 criteria.

9 We need to look into that because this
10 is bright, it works good except is the law as a
11 ceiling.

12 CHAIR MARKOWITZ: Okay. So, I just
13 want to mention in the last item on the list here
14 which is chronic beryllium disease and
15 sarcoidosis.

16 So, this is an example of a disease
17 presumption that exists. We're not going to
18 discuss it, but it's being discussed in the Part
19 B subcommittee a lot about when you consider
20 sarcoidosis to be CBD.

21 And, the point is that DOL has language
22 setting that out. And, there's some ambiguity,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 but that committee is addressing them.

2 So, in the last few minutes we have, I
3 just want to discuss whether there are issues that
4 we should consider for developing or recommending
5 a set of presumptions.

6 And, while you're thinking about that,
7 above and beyond, obviously what we've already
8 discussed, I will -- DOL originally gave us 14
9 priorities that they asked help with on
10 presumptions and half of about -- 8 out of 14 are
11 cancers and they were prostate cancer, breast
12 cancer, melanoma, bladder cancer, kidney cancer.

13 And, in each instance, it's in relation
14 to usually some specific exposures that they ask
15 about.

16 Then, in the non-cancer outcomes
17 include Parkinson's, diabetes, non-malignant
18 thyroid disease, immune system disorders and heart
19 disease in relation to radiation.

20 So, I just wanted to put that on the
21 table.

22 MEMBER WELCH: Steven, can you clarify

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 something for me? Did they want us to develop a
2 presumption or do they want us to like help them
3 with developing assumptions?

4 CHAIR MARKOWITZ: Right, right. Yes.

5 MEMBER WELCH: It's a little unclear.

6 CHAIR MARKOWITZ: Yes, I'm looking at
7 the language and I'm not sure who wrote this, but
8 some of the language that went along with this are
9 output presumptions.

10 But, I don't think the issue -- I'm not
11 sure the issue with these questions are really
12 presumptions, it's really the science here. But,
13 it was to know about these relationships.

14 And, each of them requires, you know,
15 significant research into the literature,
16 actually, to see whether it's an issue of
17 presumptions or it's an -- or whether there's
18 enough there to make any sort of causal connections
19 under any circumstances.

20 But, with or without that list, are
21 there other conditions that you think would be ripe
22 for us thinking about some presumptions?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER VLIEGER: This is Faye.

2 I see with the sheet metal workers and
3 welders a lot of other neurological conditions,
4 especially peripheral neuropathy from solvents.

5 And, I'm thinking of one particular
6 case where the person was accepted for, you know,
7 the toxic hearing loss. But, then, when it came
8 around to saying he had enough exposures for
9 peripheral neuropathy, they said that the
10 exposures were not substantiated.

11 I'm not sure how we can handle that, but
12 peripheral neuropathy in the sheet metal workers,
13 pipe fitters, welders, the people that actually,
14 you know, dip their parts in solvents and then weld
15 it on and then inhaled the fumes, I think that if
16 we could look at that one, it's also one of the major
17 hitters that I see.

18 CHAIR MARKOWITZ: Okay.

19 MEMBER WELCH: And, you know, at one
20 point, this is Laura Welch, and at one point, we've
21 asked the Department for a list of diagnoses so we
22 can get a sense of what the most common claims they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have coming in.

2 And, that kind of fell by the wayside
3 when I think we heard from Doug Pennington that they
4 don't categorize all the incoming claims.

5 But, if we wanted to get an idea for any
6 specific, like there are for any specific
7 disorders.

8 I know, in the meeting seemed to be big
9 for them and asbestos was a big one for them. And,
10 I believe listed the 14 things that seemed to be,
11 I guess, keep coming -- popping up then you'd have
12 with them, common or not.

13 We could go back to the Department and
14 say, which are the other ones that you -- what are
15 the big claims and make sure we have it covered.
16 Because, I think we can get a data report on which
17 claims are most frequent.

18 CHAIR MARKOWITZ: Yes, this is Steven.

19 That's a good idea, we should, you know,
20 maybe the 14 -- the list of 14 represents half of
21 them, maybe not.

22 MEMBER WELCH: It may represent all the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ones that they think they're having trouble with,
2 but not necessarily the ones we've been having
3 trouble with.

4 You know, they didn't put COPD on their
5 list, this is one that they wanted help with. And,
6 I think we need it.

7 CHAIR MARKOWITZ: Right.

8 MEMBER WELCH: But -- and I think even,
9 you know, like Faye had other ones that she has a
10 problem getting through, but it may not be the ones
11 that -- I mean, maybe this universe of, you know,
12 getting input from the advocates community and some
13 places we've looked at, maybe we do have the big
14 -- either a big claim number, diagnoses for the big
15 problems listed.

16 MEMBER VLIENER: This is Faye.

17 DIAB wrote up a list of the things that
18 we were seeing the most problems with. And, then
19 the advocates, I can dredge up that letter.

20 And, then, I know the other advocates
21 probably in public comments, the ones that are in
22 this thing can probably add to the list.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER WELCH: That would be great.

2 CHAIR MARKOWITZ: Yes, that'd be
3 great.

4 MEMBER WELCH: And, I think probably
5 good.

6 CHAIR MARKOWITZ: Other comments?

7 (No audible response.)

8 CHAIR MARKOWITZ: So, the last piece of
9 business is to just roughly settle on our time
10 table.

11 I was thinking that we could work on
12 aspects of this, the asbestos related diseases
13 request probably around asthma. And, the SEM
14 Committee's going to make progress with COPD.
15 And, we'll figure out the hearing loss, make some
16 progress.

17 And, then have another call of this
18 working group toward the second half of March,
19 meaning that we would have to schedule it the next
20 couple of weeks and then have the Federal Register
21 Notice come out, with the idea of being -- having
22 three or four weeks until the meeting in Washington

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 State in April where we could, if we're far enough
2 along, actually present proposals and come to
3 agreement and make some recommendations.

4 Does that sound reasonable?

5 MEMBER VLIEGER: This is Faye.

6 It sounds good to me.

7 CHAIR MARKOWITZ: Okay. So, any
8 closing comments?

9 (No audible response.)

10 CHAIR MARKOWITZ: Nothing. So,
11 Carrie, is there anything you need to say as the
12 DFO before end the call?

13 MS. RHOADS: No, we're all good. I
14 will send something around about setting up some
15 calls in March.

16 CHAIR MARKOWITZ: Okay, great.

17 Okay, thank you very much.

18 MS. RHOADS: Thanks everybody.

19 (Whereupon, the above-entitled matter
20 went off the record at 3:23 p.m.)

21

22

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701