

UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

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SUBCOMMITTEE ON ADVICE FOR CES RE: WEIGHING
MEDICAL EVIDENCE(AREA #2)

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MEETING

+ + + + +

MONDAY,
DECEMBER 12, 2016

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The Subcommittee met telephonically at
1:00 p.m. Eastern Time, Victoria A. Cassano,
Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY:

LESLIE I. BODEN
KENNETH Z. SILVER

MEDICAL COMMUNITY:

VICTORIA A. CASSANO, Chair
STEVEN MARKOWITZ

CLAIMANT COMMUNITY:

DURONDA M. POPE

FAYE VLIEGER

OTHER ADVISORY BOARD MEMBERS PRESENT

CARRIE A. REDLICH

DESIGNATED FEDERAL OFFICIAL:

CARRIE RHOADS

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

2 1:06 p.m.

3 MS. RHOADS: Thank you. Hi,
4 everybody. My name's Carrie Rhoads and I'd like
5 to welcome you to today's conference meeting of
6 the Department of Labor's Advisory Board on Toxic
7 Substances and Worker Health, the Subcommittee on
8 Medical Advice for Claims Examiners Regarding
9 Weighing Medical Evidence.

10 I'm the Board's Designated Federal
11 Officer or DFO for today's meeting. First, we
12 appreciate the time and the work of our Board
13 members in preparing for this meeting. I'll
14 introduce the Board members on the subcommittee
15 and we'll do a quick roll call if that's okay.

16 (Roll call taken.)

17 MS. RHOADS: Great. We're scheduled
18 to meet from 1:00 to 3:00 p.m. Eastern time
19 today. If you would like we can take a break at
20 2:00, that'll be up to Dr. Cassano I think.

21 In the room with me is Melissa
22 Schroeder from SIDEM, our contractor and John

1 Vance, Policy Branch Chief for DEEOIC.

2 At a, at a previous meeting the
3 subcommittee requested that someone from the
4 program be present.

5 Also here is Norm Spicer who is
6 someone from OWCP who's on detail with us for a
7 couple of months.

8 Copies of all the meeting materials
9 and any written public comments are or will be
10 available on the Board's website under the
11 heading Meetings, and the listing after their
12 subcommittee meetings.

13 Documents will also be up on the WebEx
14 screen so you can follow along with the
15 discussion.

16 The Board's website is
17 dol.gov/owcp/energy/reg/compliance/advisoryboard
18 [.htm](http://dol.gov/owcp/energy/reg/compliance/advisoryboard).

19 If you haven't already visited the
20 Board's website, I encourage you to do so. There
21 is a page entirely dedicated to today's meeting.

22 The web page contains publicly

1 available materials submitted to us in advance
2 and we'll publish any materials that are provided
3 after the meeting unless they contain PII.

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

9 If you're joining by WebEx, please
10 note that this session is for viewing only and
11 will not be interactive. The phones will also be
12 muted for non-Advisory Board members.

13 Please note that we do not have a
14 scheduled public comments session today. The
15 comment --- the call-in information has been
16 posted on the website so the public may listen in
17 but not participate in the subcommittee
18 discussion.

19 The Advisory Board voted at its April
20 meeting that the subcommittee meetings should be
21 open to the public.

22 A transcript and minutes will be

1 prepared from today's meeting. During the Board
2 discussion, as we're on a teleconference line,
3 please speak clearly enough for the transcriber
4 to understand.

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

8 I'd also like to ask the transcriber
9 to let us know if they're having an issue with
10 hearing.

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

18 Also, although minutes will be
19 prepared, we'll also publish the transcript which
20 are obviously more detailed. So the transcript
21 should be available on the Board's website within
22 30 days.

1 I'd like to remind the Advisory Board
2 members that there are some materials that have
3 been provided to you in your capacity as Special
4 Government Employees and members of the Board
5 which are not for public disclosure and cannot be
6 shared or discussed publicly, including in this
7 meeting. Please be aware of this as we continue
8 with this meeting, especially since we have cases
9 on the agenda.

10 These materials can be discussed in a
11 general way, which does not include any PII, such
12 as names, addresses, specific facilities that the
13 cases will discuss or doctors' names.

14 And with that, I convene this meeting
15 of the Advisory Board on Toxic Substances and
16 Worker Health, Subcommittee on Medical Advice for
17 Claims Examiners Regarding Weighing Medical
18 Evidence, and I'm turning it over to Dr. Cassano
19 now who's the Chair.

20 MEMBER CASSANO: Good afternoon or
21 good morning everybody, depending on where you
22 are. I'm Dr. Victoria Cassano. I am an

1 occupational and environmental physician with
2 background in military medicine, radiation
3 health, and some environmental health as well.

4 I just wanted to continue to go around
5 the room for, very briefly, and get some
6 introductions on the Board members. So Dr.
7 Markowitz, and then we could just go from there.

8 MEMBER MARKOWITZ: Steven Markowitz,
9 City University of New York, occupational
10 medicine and epidemiology.

11 MEMBER CASSANO: Les?

12 MEMBER BODEN: Hi, I'm Les Boden. I'm
13 a professor in the Department of Environmental
14 Health at Boston University School of Public
15 Health.

16 MEMBER CASSANO: Ken? Dr. Silver?

17 MEMBER SILVER: Oh. Ken Silver,
18 Associate Professor of Environmental Health in
19 the College of Public Health at East Tennessee
20 State University.

21 MEMBER CASSANO: Ms. Pope?

22 MEMBER POPE: Duronda Pope, United

1 Steel Worker. With the emergency response team,
2 but also a former worker of Rocky Flat.

3 MEMBER CASSANO: And Ms. Vlieger?

4 MEMBER VLIEGER: Hi. Faye Vlieger,
5 worker advocate, former worker at Hanford.

6 MEMBER CASSANO: Hi. Okay. So the
7 agenda has been posted and what I'm going to try
8 to do is keep the initial discussion of the 14
9 Part E cases to end at about an hour, so if we
10 can try to end that at 2:10, I am not going, I'm
11 going to try not to take a break at 2:00. I
12 know, because when I flushed out this agenda, I
13 couldn't add properly.

14 So when we go through the training
15 documents, I think I just want to do that very
16 generally. We'll spend about 30 minutes on that,
17 which will take us to about another 20 minutes to
18 discuss how we're going to do this focus group
19 with the CEs and a little bit about what kinds of
20 questions we should ask, who should be present,
21 who should not be present, and which of us is
22 going to go because that's going to be a work, a

1 working group, not the whole subcommittee.

2 So if we can, we'll probably have
3 about 10, 15 minutes on that. And then I think
4 the closing would be primarily, where do we go
5 from here?

6 We gleaned a lot of information, we've
7 seen a lot of things that we like. We've seen a
8 lot of, some things that we don't like. And then
9 how do we move forward once we finish with the
10 focus group?

11 So having said that, I would like to
12 start with the Part E cases and we're just going
13 to start at the top.

14 Please remember, everybody, when
15 you're discussing these, we are discussing them
16 from a de-identified template.

17 Please make sure that there is no
18 personal information that we present on this
19 call. I don't think there were any on the
20 template, but just to be absolutely sure, we did
21 not post the template.

22 So if we could start, I guess Dr.

1 Markowitz, you did the first three or two or --

2 MEMBER MARKOWITZ: Sure. Let me, why
3 don't, why don't, let me suggest that I do one
4 and then we move to a different person just to
5 mix up the discussion a little bit.

6 MEMBER CASSANO: Okay.

7 MEMBER MARKOWITZ: And I'm not sure
8 which is one.

9 MEMBER CASSANO: Oh, well, just start
10 with any one of them. I don't, I don't really
11 care.

12 MEMBER MARKOWITZ: Okay, fine. I'll
13 do the, I'll do the hearing loss one. And it's
14 labeled Hearing Loss if you want to look it up,
15 if you're in front of a computer and actually
16 want to look up this particular case.

17 This is a case that was accepted in
18 May of 2011. So it's been on the books for a few
19 years. Just a general impression, each, I did
20 three cases.

21 Every case, the order of documents
22 needs to be a little or a lot different, and so

1 in my template, I actually, the beginning of the
2 template, wrote the page number of the more
3 important documents just in part for myself so I
4 could go back to them and part for anybody else
5 looking at this, you could find it, zero in on
6 exactly what, but this is a hearing loss solvents
7 and noise case. And a single claim.

8 There weren't multiple entities for
9 conditions claims here. Ultimately it was
10 accepted.

11 The, to go through the -- it was clear
12 from the EE1, from the claim form and from the CE
13 form, whatever it's called, which acknowledges
14 what the person's claiming, that the, this was
15 about hearing loss.

16 And the entity was documented by an
17 audiogram which showed sensorineural hearing
18 loss. So clinical evidence was in place and was
19 unquestioned and there was no need to seek out
20 additional information about, from a health
21 provider about the diagnosis.

22 The person submitting that audiogram,

1 the person who performed the audiogram or any
2 other health provider never weighed in on the
3 issue of causation.

4 So there was, there was nothing from
5 the treating provider about that issue. Now, I
6 should say that this person was a senior
7 engineering associate for 24 years, from 1966 to
8 1990.

9 I don't think that's an extensive
10 amount of specificity for this phone call. But
11 my point is, it was that solvent-related hearing
12 loss requires 10 years of exposure prior to 1990,
13 10 consecutive years, and this person had a
14 single job title for 24 years prior to 1990.

15 So that was not an issue. That
16 criteria was easily met for calendar time and
17 consecutive years. And the, as I said, the
18 person was a senior engineering associate.

19 If you know anything about the hearing
20 loss criteria under EEOICPA, there are a certain
21 number of solvents that are specified as being
22 relevant.

1 Examples are Toluene, Styrene, Xylene,
2 and a few others. And then there are about 20
3 specific job titles that are, that are provided,
4 and a person has to meet one of those job titles.

5 The, so the issue here was, the
6 industrial hygienist was asked to weigh in on the
7 issue of solvents exposure and noise exposure,
8 and the industrial hygienist produced a report in
9 which he or she confirmed that there was exposure
10 to solvents and noise for the requisite period of
11 time, and ultimately the claim was then accepted.

12 It never went to a CMC, presumably
13 because it wasn't necessary. There was a firm
14 diagnosis. There was the industrial hygiene
15 input.

16 And the only issue that I couldn't
17 quite delineate was, I didn't really see, I saw
18 the industrial hygiene report where they, he or
19 she discussed solvents the person was exposed to,
20 but in the occupational health questionnaire, I
21 didn't see much of solvents.

22 So it wasn't clear to me where this

1 information the IH was using came from. There
2 may be something in the file that I missed
3 because, you know, these, reading these files is
4 a, requires probably one or, one or more of those
5 training courses.

6 But in any event, I didn't see where
7 the information of the solvents came from. The
8 other question I had was the job title.

9 My understanding on these, the
10 solvent-related hearing loss issues is that
11 person has to conform to one of the 20 job
12 titles.

13 Although there may be some provision
14 if you don't fall into one of those titles but
15 you can otherwise prove solvents exposure. But
16 I'm unaware of that provision.

17 So if it exists, if anybody on the
18 phone knows about that provision, that would be
19 useful.

20 But just to close this out then, the
21 question was how a senior engineering associate
22 or whatever synonym that the IH came up with, if

1 there was an alternative job title that he or she
2 equated it to, was considered to have significant
3 exposure and to meet the criteria for noise-
4 related hearing, or noise and solvent combined
5 related hearing loss.

6 So that's pretty much it. The claim
7 was accepted. It did go to, I did note here in
8 my write-up that it went to Dr. Stokes internally
9 at the National Office for an opinion, and that
10 was presumably, that may have been in lieu of the
11 CMC report, on what Dr. Stokes needed to weigh in
12 here on. I'm just looking at it.

13 In any, in any event, my only real
14 question was how this particular job title ended
15 up being compensated.

16 It doesn't appear to conform with one
17 of the listed job titles under the, in the policy
18 of EEOICPA. End of my summary. Victoria?

19 MS. RHOADS: Dr. Cassano, are you
20 still on the line?

21 MEMBER CASSANO: I'm on mute. That's
22 why. Sorry. I'm on, I muted my phone so that

1 you didn't hear me typing and stuff like that as
2 I take notes.

3 Faye, you had one on hypothyroidism.
4 Do you want to go through that quickly?

5 MEMBER VLIEGER: Yes. It's a bit
6 deceiving to say that one is hypothyroidism. I
7 did go through it and, let me pull up my paper
8 here.

9 So the claim was for initially
10 something else, and the hypothyroidism was
11 claimed as a consequential condition.

12 So the claims conditions were actually
13 breast cancer with metastatic sentinel lymph
14 nodes, and then a subsequent claim was made for
15 the, for, it was actually a mild hypothyroidism
16 and a consequential condition of a hysterectomy
17 and diabetes.

18 So let me just go through a brief
19 explanation of the claim and then I can answer
20 the question.

21 So the actual first claim condition
22 was the breast cancer with metastatic sentinel

1 lymph node, and that was in the process of being
2 accepted when the claimant claimed a prophylactic
3 hysterectomy so that they could continue her
4 treatment without the possibility of ovarian or
5 uterine cancer from the chemotherapy they were
6 going to use.

7 When she claimed the prophylactic
8 hysterectomy, she claimed the hypothyroidism and
9 diabetes.

10 So the claim marched through with
11 approval for the breast cancer and the sentinel
12 lymph node, and then was later, during the
13 process, accepted for the prophylactic
14 hysterectomy.

15 However, the hypothyroidism and
16 diabetes were never properly developed. No one
17 related them to chemotherapy, there was no
18 doctor's records saying that they believed that
19 these were related to her chemotherapy.

20 So to go through the questionnaire,
21 the original contention was actually for a Part B
22 Special Exposure Cohort breast cancer, which was

1 accepted.

2 Then later on, the prophylactic
3 hysterectomy was accepted, but the hypothyroidism
4 and diabetes were not.

5 Breast cancer was considered a Special
6 Exposure Cohort because she met that criteria, so
7 there's no further development beyond providing
8 biopsies.

9 So under B, are the contentions of the
10 claimants addressed in a statement? Yes, they
11 eventually, through a number of different
12 succeeding decisions, addressed them all.

13 Is the occupational history
14 questionnaire there? Yes. But she put unknown
15 on everything because she had no idea what she'd
16 been exposed to.

17 Is there a definitive diagnosis? Yes,
18 for the breast cancer and the lymph node there
19 was biopsy.

20 The hysterectomy, as a consequential
21 condition, was proved by her doctor's records
22 where they needed to do it in order to continue

1 her chemotherapy.

2 There was no development for the
3 thyroidism and for the diabetes. The diagnosis,
4 what was accepted did have objective medical
5 evidence. The two that were denied did not.

6 Did they discuss alternative
7 diagnosis? No. Were the three diagnoses
8 accepted by the claims examiner? Yes. I
9 considered that reasonable because no evidence
10 was provided for the other two.

11 Were all the exposures, cause of
12 conditions evaluated? In my opinion, no, they
13 didn't because they didn't actually look at
14 chemotherapy as the cause of the diabetes or that
15 it contributed to the hypothyroidism.

16 But because the breast cancer was a
17 Special Exposure Cohort cancer, they didn't have
18 to do any further development.

19 I didn't see where the treating
20 physician provided any causation on the two
21 denied items of diabetes and hypothyroidism.

22 And then the claim was not referred to

1 an industrial hygienist. Because it was an SEC
2 cancer, they didn't need to do that. Excuse me.

3 Number six, did it go to a contract
4 medical consultant? Yes, but only for the
5 impairment rating because there was a question
6 about whether or not the claimant was actually at
7 maximum medical improvement, and that's a
8 requirement in order to do an impairment rating.
9 Prior to that, there was no CMC report, at least
10 not in the file.

11 Then on item eight, did the CMC
12 provide a rational opinion regarding the nexus
13 between exposures and disease? No, because he
14 was only rating an impairment rating.

15 And nine, was the claim accepted or
16 denied? Accepted for breast cancer, metastatic
17 sentinel lymph node and prophylactic hysterectomy
18 but hypothyroidism and diabetes were denied.

19 And again, the breast cancer was
20 accepted because of the Special Exposure Cohort
21 cancer.

22 Then item 10, the FAB followed the

1 determination of the CE in accepting the three
2 items, but didn't really go into or look into the
3 causation for the two items that were denied.
4 That's the end of mine.

5 MEMBER CASSANO: Okay.

6 MEMBER VLIEGER: And I believe that's
7 number seven.

8 MEMBER CASSANO: And so your feeling
9 was that some of it was done properly, and some
10 of it could've been done better. Correct?

11 MEMBER VLIEGER: Right. And I think,
12 especially with chemotherapy and consequential
13 conditions, I don't know how this actually falls
14 into our toxic exposure stuff, but there's so
15 many things that chemotherapy aggravates or
16 causes that it's not that high, tall of a ladder
17 to climb.

18 MEMBER CASSANO: Okay. Thanks.

19 MEMBER MARKOWITZ: This is --

20 MEMBER CASSANO: Go ahead.

21 MEMBER MARKOWITZ: This is Steven
22 Markowitz. I just have a follow up question

1 here.

2 Not to prolong the discussion, but
3 does this, here were some claimed medical
4 conditions that, which there was not a treating
5 physician rationale, and it didn't make it to the
6 CMC for those particular questions and we don't
7 know why. Is that --

8 MEMBER VLIEGER: That's right. At
9 least it's not in the records I have.

10 MEMBER MARKOWITZ: Right. Right. I
11 mean, I also have this challenge, a lot of
12 documents that, some of the thinking wasn't
13 entirely fair. Anyway, that's my question. We
14 can move on.

15 MEMBER CASSANO: Duronda, you had one
16 on heart failure, rheumatoid arthritis. I think
17 that's the first one I've got listed from you if
18 you want to go ahead, if you want to go through
19 that one.

20 MEMBER POPE: Okay. Yes. The one I
21 had was congestive heart failure and rheumatoid
22 arthritis. This case was denied.

1 I think the DEEOIC had requested some
2 more medical documentation. It doesn't look like
3 there was any more medical documentation
4 submitted.

5 There was also a --- I think the
6 stopping point at this case was really slim in
7 terms of the information that was in the case.

8 I think it stopped when there was
9 conflicting information about the employment
10 records.

11 Looks like the Department of Labor
12 went to corporate and asked for the records and
13 those records were conflicting with what the
14 claimant had submitted.

15 The claimant had also submitted a
16 statement from the union stating that he was a
17 member in good standing on these particular
18 dates.

19 At any rate, the, seems like they used
20 the SEMs to try to make the connection to the
21 health concern which did not prove to be
22 connected to his health concern, and it pretty

1 much stopped there.

2 MEMBER CASSANO: Okay. Yes. It's a
3 little bit troubling to see that there doesn't --
4 - some of these things sort of the ball seems to
5 get dropped and we're not quite sure why.

6 I think if we write down some of the
7 questions, these are the kinds of questions we
8 need to ask, I'd say at the focus group as to why
9 they go forward with some things and sort of let
10 other things drop by the wayside. Because I
11 think it's important for us to know.

12 I have one here on IHD and rheumatoid
13 arthritis. And the original contention in this
14 claim was heart disease initially noted as
15 congestive heart failure, but was actually
16 ischemic cardiomyopathy, which was the result of
17 a myocardial infarction.

18 So basically, this is ischemic heart
19 disease and rheumatoid arthritis. The congestive
20 heart failure is subsequent to the ischemic heart
21 disease.

22 So, and essentially this was, it, the,

1 to go through it briefly, it was remanded and
2 again denied. Went all the way through, was
3 denied, was remanded, and then denied again.

4 So the original contention was
5 available for review. And all the contentions of
6 the claimant were actually addressed. The
7 occupational history questionnaire was utilized.

8 And then the ischemic heart disease,
9 I was a little bit concerned that when they went
10 through the SEM, they would've only gone through
11 congestive heart failure, but they actually did
12 go through and look at ischemic heart disease,
13 and they looked at acute myocardial infarction as
14 well.

15 They, the claimant did not initially
16 provide a medical documentation, so they had to
17 go back and ask for more medical documentation.

18 Now, the question is, were all
19 exposures that might've caused the claim
20 condition evaluated?

21 And I saw this as a recurrent issue
22 when, in several that I looked at as well as the

1 ones you looked at, I'm sure only used the SEM
2 and the claim is remanded by the FAB before the
3 development, after they received documentation of
4 the disease.

5 So again, and we'll get to this when
6 we get to the training document, it seems like
7 people are not necessarily following their, the
8 guidance because the guidance specifically says
9 the SEM is never to be used by itself to deny a
10 claim.

11 So that's a little piece of
12 interesting information. The claim, and again,
13 the claim was not sent to an industrial hygienist
14 because the SEM was not supported, and there was
15 no medical evidence from treating, his provider.

16 I thought that was an appropriate
17 decision because they didn't have anything in the
18 background. However, the claim is also not
19 referred to a CMC because there was no evidence,
20 and no evidence of exposure.

21 And I think in these kinds of cases
22 where you're really not quite sure what's going

1 on, that a CMC review is warranted before denial.

2 The claim was denied based on no
3 medical evidence. I think it was a reasonable
4 decision because there was no medical evidence
5 provided, but I would think that they should've
6 done a little bit more research on possible
7 causations for, possible causations for
8 myocardial infarction or at least severe
9 atherosclerotic disease.

10 Things like carbon disulfide,
11 methylene chloride. I don't know if dioxin-like
12 compounds are in the mix at any of these sites,
13 and diesel exhaust. And none of this was
14 evaluated in any way. It just stopped at the
15 SEM.

16 So I, my feeling was this could've
17 been done a little bit better and a little bit
18 more, excuse me, with a little bit more
19 involvement, a little bit more involved
20 evaluation.

21 Ten, let's see, where's ten? I have
22 one here. Is this ten? Bladder, COPD and

1 bladder cancer. Who had that one?

2 MEMBER POPE: I had bladder cancer.

3 MEMBER CASSANO: And COPD?

4 MEMBER POPE: Right.

5 MEMBER CASSANO: Well let me, I'm

6 trying to --

7 MEMBER POPE: COPD and bladder cancer.

8 That was my --

9 MEMBER CASSANO: Okay. That's

10 Duronda. Right. Okay. Ken, well this case, I

11 have your cases here, but I'm not having --

12 MEMBER SILVER: I had kidney cancer

13 and TCE.

14 MEMBER CASSANO: Okay. Why don't we

15 go, that's right. You just had the kidney cancer

16 and TCE one. Why don't you go through that?

17 MEMBER SILVER: The initial claim was

18 for kidney and prostate cancer, prostate

19 diagnosed maybe six years before the kidney

20 cancer.

21 The employee had less than a year of

22 on the job experience at a gaseous diffusion

1 plant. I won't say which one, but just to give
2 you a feel.

3 He did not have an opinion from a
4 treating physician or any other outside expert.
5 But when DOL received the claim, they got a hit
6 in the SEM for this person's job title and a
7 renal carcinogen, trichloroethylene, being in the
8 matrix in that period of time at the site.

9 So from there, it was referred to an
10 industrial hygienist within DOL who concluded
11 that the employee had significant exposure at low
12 levels.

13 And I couldn't quite see through the
14 crystal ball to appreciate how the industrial
15 hygienist decided it was low level exposure.

16 The claim then went onto a contract
17 medical consultant who did a very thorough job of
18 accessing the peer-reviewed literature and honed
19 right in on a particular epidemiologic study
20 which found an increased risk of renal carcinoma
21 for workers with less than one year of exposure
22 to TCE.

1 And that seems to have clinched the
2 case for her to arrive at even low level exposure
3 for less than a year was sufficient to infer
4 causation.

5 And the claim was paid less than, well
6 exactly a year from the time it was filed. So, I
7 guess this is a success story for the SEM
8 supporting a cancer claim.

9 MEMBER CASSANO: Great. Somebody is
10 talking in the background. If you're not
11 speaking at the moment, if the speakers might
12 mute their phones if they're going to have side
13 conversations, I'd appreciate it. Let's see.
14 Going back --

15 MEMBER MARKOWITZ: Victoria?

16 MEMBER CASSANO: Yes.

17 MEMBER MARKOWITZ: This is Steven.
18 Can I just make a quick comment on that case?

19 MEMBER CASSANO: Yes.

20 MEMBER MARKOWITZ: So, and correct me
21 if I'm wrong, but this was a, essentially a
22 trainee who was at Paducah for -- or gaseous

1 diffusion plant for all of three months, judged
2 to have low level exposure to TCE, but was
3 nonetheless, causation was found and it was
4 compensated.

5 So you know, I would regard this as a
6 generous interpretation. Is that your
7 impression?

8 MEMBER SILVER: Yes. And with a
9 little bit of a wrinkle, some of the early
10 documentation said that the claimant had worked
11 there in an earlier time period, seven or eight
12 years before, but as the claim progressed, that
13 earlier employment history kind of fell out of
14 the picture.

15 So, he was an apprentice and I think
16 there might have been two time periods eight
17 years apart, but in the end, for medical legal
18 purposes, you're right. It was only the brief
19 period later on.

20 MEMBER MARKOWITZ: Okay.

21 MEMBER CASSANO: So do you think they
22 should've included that earlier period as part of

1 their evaluation? I mean, or --- because
2 otherwise I would agree this is pretty generous.

3 MEMBER SILVER: Well, to make an
4 analogy, they're having NIOSH handle Part B
5 radiation claims.

6 NIOSH talks about efficiency processes
7 where if they can get to a decision on the basis
8 of some of the facts, they close the claim and
9 pay it.

10 So I think rather than go down a
11 rabbit hole of looking for documentation of his
12 1960s employment at the facility, they had enough
13 to pay the claim based on his 1970s employment --

14 MEMBER CASSANO: Okay.

15 MEMBER SILVER: -- even if it was for
16 a brief period of time.

17 MEMBER CASSANO: Okay. Got it. Faye,
18 lymphoma and breast cancer.

19 MEMBER VLIEGER: Right. Let me pull
20 up my document in front of me. And that was me
21 talking in the background, sorry. I -- okay.

22 So the original contention for this

1 was numbered six in the emails, but that's not
2 where I found it in the disc. There isn't --

3 MEMBER CASSANO: Yes. I --

4 MEMBER VLIEGER: Go ahead.

5 MEMBER CASSANO: I realized that
6 afterwards that not all the discs had the tiles
7 on, in the same order, and I tried to fix it, and
8 I think the only overlaps, I think Dr. Markowitz
9 and I overlapped on one. But anyway, go ahead.
10 Sorry.

11 MEMBER VLIEGER: That's okay. I
12 managed. It was okay. The original contention
13 of the claimant was lymphoma and breast cancer,
14 and that document was in the file.

15 The statement of accepted facts for
16 the case addresses both conditions. The
17 occupational history questionnaire was included
18 in the file, however, she did not know what she'd
19 been exposed to. And so everything was unknown,
20 unknown, unknown.

21 And then this particular one is from
22 a facility that I believe does not have a SEM,

1 and in the documents from the Department of
2 Labor, they stated that they searched the SEM and
3 could find no toxins that she could've been
4 exposed to for the site. So I didn't quite
5 understand that comment.

6 Because we even had discussed that the
7 site, this was a rather new case, 2015, 2016. We
8 had discussed that this site does not have a site
9 exposure matrix.

10 So I wasn't quite sure where that
11 statement came from, what SEM they could've
12 looked at. So moving on.

13 The, there was a definitive diagnosis
14 by biopsy of the lymph nodes. I could not find
15 the biopsy for the breast cancer, but it was
16 accepted in the statement of accepted facts that
17 there was a biopsy and that she did have these
18 diagnoses.

19 I don't believe under item three, all
20 the exposures could've been, they're looked at
21 for this because it was a cancer, it was
22 evaluated under Part B and Part E.

1 So did the treating physician provide
2 medical evidence regarding causation at
3 employment? No. There was none of that.

4 This worker did not have, it says 250
5 days under Special Exposure Cohort. And so the
6 site she worked at was under Special Exposure
7 Cohort, but she only had six months at the site.

8 So item five, was the claim referred
9 to an industrial hygienist? No. There was no
10 evidence in the SEM of a toxin which causes
11 breast cancer and lymphoma according to the
12 claims examiner in the file.

13 And I don't believe that this was
14 appropriate under item B because since there was
15 nothing in the SEM, the CE didn't look any
16 further than that.

17 It was not referred to an industrial
18 hygienist because there was no evidence in the
19 SEM that a toxin could've caused it. The claims
20 examiner didn't go any further.

21 Number six, was the claim referred to
22 a CMC? No, because there was not adequate

1 evidence to support sending it to the CMC.

2 There was nothing in contention
3 because the claims examiner did not find any
4 toxins that could've caused either breast cancer
5 or lymphoma.

6 Moving down to item 9, it was denied
7 for lack of evidence, and under Part B, the
8 probability of causation was less than 50 percent
9 that it was a radiogenic cancer because she had
10 less than six months at a Special Exposure Cohort
11 site.

12 They did a dose reconstruction that
13 came in at 3.01 percent probability of causation,
14 and it has to meet 50 percent to be qualified
15 under a dose reconstruction.

16 So item nine, see the toxins that are
17 known to cause lymphoma were not evaluated. So
18 basically that is the end of my summary.

19 MEMBER CASSANO: Yes. So just make
20 sure that, guys, that you somehow make note of
21 the things that you thought were missing or where
22 the appropriate chain was not followed.

1 This was an obvious one where the CE
2 stopped at the SEM and went no further. So just,
3 so that we have a record of what we're finding
4 with these, so Duronda, oh, let's go back to
5 Steve, Dr. Markowitz.

6 MEMBER BODEN: How about, wait, are
7 you going to, have you forgotten about me?

8 MEMBER CASSANO: Les?

9 MEMBER BODEN: Yes.

10 MEMBER CASSANO: You didn't, you did
11 one, didn't you?

12 MEMBER BODEN: No.

13 MEMBER CASSANO: No.

14 MEMBER BODEN: I haven't done any yet.

15 MEMBER CASSANO: Oh, you haven't done
16 anything. I'm so sorry. I didn't mean to
17 overlook you. Why don't you --

18 MEMBER BODEN: That's --

19 (Simultaneous speaking.)

20 MEMBER BODEN: The problem was that
21 you did two in a row at the very end.

22 MEMBER CASSANO: Oh, okay. Why don't

1 you do your diabetes one.

2 MEMBER BODEN: Okay. I will do that.

3 First of all, let me mention that it's actually
4 not diabetes. And let me describe the case to
5 you.

6 There may originally have been a claim
7 for diabetes, but at some point, there were
8 multiple diseases, presumably I think, all the
9 diseases that the person may have had.

10 Colon cancer, lung cancer,
11 cardiomyopathy, obstructive sleep apnea,
12 hypertension, chronic beryllium disease, and then
13 diabetes and dyslipidemia. So this was handed to
14 our non-physician, so I will do the best I can.

15 This is a person who's had long
16 experience at one of the sites from 1982 through
17 2003 as a chemical operator.

18 And there were, there were medical
19 records that did support the diagnoses for all of
20 the above-mentioned diseases.

21 There was certainly evidence to
22 support the COPD, pulmonary function testing,

1 definitive diagnosis for the colon cancer, notes
2 from the surgery thereby.

3 So the, all the diagnoses seemed very
4 clear, and really the questions here -- sorry,
5 almost all the diagnoses.

6 There was not a clear diagnosis for
7 chronic beryllium disease, and that is not
8 accepted by the claims examiner because only two
9 of the CBD criteria were met.

10 So there were, there were no opinions,
11 medical opinions regarding causation from any of
12 the treating physicians involved.

13 There was also no evidence that the
14 claim was referred to an industrial hygienist,
15 although this, the COPD, for example, the
16 question of causation for the COPD might well
17 have used an industrial hygiene evaluation.

18 Let me talk for a minute specifically
19 about the COPD. So this was originally denied
20 along with everything else, but then it was, it
21 was reevaluated when the claimant petitioned the,
22 questioned that decision, it was sent to a CMC

1 and the CMC agreed that there were signs of
2 obstructive lung airways disease, and that it was
3 consistent with the possibility of it being work-
4 related.

5 And the report apparently, so the
6 report was not in the records I received. There
7 was a quote from the report saying, however most
8 of his exposures were characterized as infrequent
9 and incidental, and only exposures to chlorine
10 and ammonia were characterized as, and I'm
11 quoting from the CMC report, as intermittent,
12 likely on a daily basis, and because of that and
13 the fact that this, the claimant was a smoker,
14 the CMC report said that the exposures were less
15 likely than, to have less than 50 percent likely
16 to have been a sufficient cause and to, or to
17 significantly impact the COPD.

18 Now, what's a little puzzling about
19 this is, in the, in the record there was, and I
20 have to find this now for a second, there was a
21 statement by the person representing the claimant
22 in this case that the CMC had stated in his

1 report, which I could not see because it wasn't
2 in the, in the, in the records that I received,
3 that the worker had actually had substantial
4 exposure to one of the nitrogen oxides, and that
5 that might indeed have caused the COPD.

6 And, but that the CMC was not asked to
7 look at that evidence reported by the CMC. So
8 that was, that part of it was a little puzzling
9 to me, and certainly raised questions for me,
10 although I don't really know the medicine or the
11 epidemiology behind this.

12 MEMBER CASSANO: And --

13 MEMBER BODEN: That, why this --

14 MEMBER CASSANO: Go ahead.

15 MEMBER BODEN: -- was disregarded.

16 MEMBER CASSANO: And, well, I think
17 what we have to remember is that the CMC only
18 sees what the CE sends to them.

19 They don't see the whole case. They
20 see the statement of case and some of the, some
21 of the industrial hygiene records, and some other
22 stuff, at least according to training documents.

1 I do have a follow up question though.
2 So the colon cancer was never developed at all?

3 MEMBER BODEN: The colon cancer was
4 not really developed.

5 MEMBER CASSANO: Okay.

6 MEMBER BODEN: And, let me just get
7 the, so this is from the hearing representative's
8 document.

9 I have a quote here, now, it says, in
10 reference to your claim for COPD, the District
11 Office determined that, the District Office
12 determined that your exposure to nitrogen dioxide
13 was heavy and extended and according to the SEM,
14 nitrogen dioxide is a substance linked to COPD.

15 But that exposure was not part of the
16 charge to the CMC, and therefore wasn't
17 considered.

18 MEMBER CASSANO: Okay. But even after
19 all that, it was still denied.

20 MEMBER BODEN: It was still denied.
21 That is correct.

22 MEMBER CASSANO: Wow. Okay. Okay.

1 And then, now let's go back up to I guess Dr.
2 Markowitz. Do you want to do the Parkinson's or
3 the prostate first?

4 MEMBER MARKOWITZ: Parkinson's is
5 good.

6 MEMBER BODEN: Yes, I also did that
7 case, so I'll have a couple comments at the end I
8 think.

9 MEMBER MARKOWITZ: Okay.

10 MEMBER CASSANO: But anyway, go ahead.

11 MEMBER MARKOWITZ: Two claims, two
12 claims here. Parkinson's disease and sleep
13 apnea.

14 This is a nicely developed claim
15 actually with a file of 550 pages long. And
16 actually it's a recent decision too. It's from
17 June of this year.

18 There's no question the person had
19 Parkinson's disease and sleep apnea. That was
20 documented by the treating physicians.

21 Both the conditions, actually the
22 treating, they're different treaters, but they,

1 in both instances, the person provided a nice
2 report linking the Parkinson's disease to
3 manganese exposure and sleep apnea to a number of
4 things, including the Parkinson's disease.

5 The claims examiner obtained a
6 coworker affidavit, which is very useful because
7 the job title didn't necessarily translate to
8 manganese exposure, but that coworker affidavit
9 was relied upon by the claims examiner to confirm
10 the exposure.

11 And it was also reviewed, I think by
12 the National Office of Industrial Hygienists
13 within the National Office to address the issue
14 of interpretation of this affidavit and the
15 occupational history to confirm that there was
16 manganese exposure. So that was nicely done.

17 They didn't send it to a CMC because
18 they had rationalized reports, and also Dr.
19 Stokes in the National Office reviewed it. The
20 only -- and they accepted the claim for both
21 Parkinson's and sleep apnea.

22 Frankly, the only question I had here

1 is not one of process, but the outcome, which is,
2 I thought the sleep apnea was kind of a stretch
3 to link it to either Parkinson's or the
4 exposures.

5 But as a matter of process, they did
6 have a treating physician's report that set out
7 the argument, so, you know, all the necessary
8 steps were followed as far as I could tell.

9 MEMBER CASSANO: I have a couple of
10 questions. Well, I actually did this by mistake
11 as well.

12 But I found it interesting that they
13 had both an occupational physician and a
14 neurologist that linked, not only to manganese,
15 but also to TCE.

16 That actually the initial claim from
17 the CE, and I know John Vance is on the phone,
18 and he was involved in this and maybe he can give
19 us some answers on this.

20 Because this is really, and two very
21 good medical opinions, yet it was still, before
22 it was denied at the, at the initial level, and

1 then I think remanded back and still sent to, the
2 industrial hygienist confirmed the manganese
3 exposure.

4 The toxicologist basically said that
5 there was no epidemiological evidence of, that
6 TCE causes Parkinson's disease, and that's not
7 quite where the literature is at this point from
8 my knowledge of the literature.

9 So what --- I'm trying to figure out
10 why this wasn't just, why this wasn't just
11 settled at the point of the CE having two very
12 good well-rationalized medical opinions and still
13 had, I can understand the industrial hygienist to
14 document the level of exposure, but why did it
15 have to go through so many loops?

16 The person had an advocate, and I
17 think it was only after the advocate wrote to the
18 National Office that this was actually accepted
19 for manganese, which I find interesting because
20 with manganese, you would see Parkinson-like
21 syndromes during exposure, and it would
22 eventually, they tend to get better post-

1 exposure.

2 With TCE, you see the long latent
3 period, and then the development of Parkinson's
4 disease, or Parkinsonian-like syndrome or
5 Parkinson's disease.

6 So I think it was the right answer,
7 but for the wrong reason. And I also think it
8 was, it didn't need to go as far as it did.
9 That's my only thoughts on that.

10 MEMBER MARKOWITZ: Well, I mean,
11 understand one thing, Steve Markowitz, they did
12 go down the TCE road for a while based on the SEM
13 and based on the job title, but when it, when it
14 became apparent that there was also manganese
15 exposure, then I think they asked the TCE was
16 confirmed by the toxicologist that it wasn't
17 relevant, that then they went down the manganese,
18 essentially down the manganese road, so --

19 MEMBER CASSANO: But it's still
20 troubling that the TCE was discounted. But
21 anyway, that's my only thoughts on that.

22 Who's next? Duronda, did you do both

1 of yours? Or who, Duronda or Faye, one of you
2 didn't do one of yours.

3 MEMBER POPE: I didn't do the other
4 one of mine. This is Duronda.

5 MEMBER CASSANO: Okay. Okay. And
6 which one is that?

7 MEMBER POPE: That's the, it came out
8 to initially like the bladder cancer, but it was
9 initially COPD.

10 MEMBER CASSANO: Okay.

11 MEMBER POPE: And then the bladder
12 cancer claim followed. So the original
13 contention was COPD and they discovered a 38
14 percent impairment of whole body, 2009.

15 It wasn't discovered until 2015 of the
16 bladder cancer. So they were all processed with
17 the COPD repeated claim for most in the case,
18 there was repeated claim for payment for rental
19 equipment. A nebulizer, I believe.

20 And the refusal of that, I didn't
21 quite understand that, but that was later figured
22 out and accepted. Well, the claimant was able to

1 get that paid for.

2 And then that piece of it, the COPD,
3 was awarded and that piece of it was accepted.

4 And then he developed the, a tumor on his
5 bladder, a cancerous tumor on the bladder, and I
6 believe that it would not have, had he not been
7 part of the SEC program, that he would've been
8 denied of that piece of it as well.

9 But that was later, with the help of
10 his advocates, that was later approved and it
11 seemed like they had, he had tremendous support
12 in terms of documentation, medical documentation.

13 They had a district medical
14 consultant, which that particular individual, I
15 hadn't seen in some of the cases that we had
16 looked over before.

17 And that the DMC came with this
18 decision to establish causation for the, for the
19 case to be approved.

20 I just think that the more support
21 that these claimants have, it seems like the
22 better off they are. But that's a, pretty much

1 the summary of my, this case.

2 MEMBER CASSANO: Yes. I see a lot of
3 that too, that if you present all the information
4 up top, but you have somebody that is a known
5 advocate or attorney or whatever that your case
6 will go a lot better than, and maybe that's
7 because it's better documented. Maybe, you know,
8 there are all sorts of reasons for that.

9 So I will do one, and this was a colon
10 cancer, breast cancer, skin cancer, both basal
11 cell and squamous cell.

12 And the EE-1 is available, all the,
13 all the contentions were addressed. But there
14 were definitive diagnoses of all four, all four
15 cancers.

16 The diagnoses were accepted by the
17 claims examiner because it was a path report.
18 The claimant, and I don't think I'm giving away
19 too much here, was a computer analyst and
20 security escort to nuclear areas.

21 So they only looked at radiation.
22 They didn't look at anything else. She was not

1 considered a member of a Special Exposure Cohort,
2 I presume because her job, her particular job
3 category was not part of a Special Exposure
4 Cohort.

5 So they used IREP and found 11 percent
6 probability of causation, but they did each
7 individual cancer, and then they did them from
8 multiple cancers.

9 They did not look at any other
10 exposures because the computer analyst job
11 description is not listed in any SEM, and that
12 was sort of the end of the case.

13 It was sent to, so it was sent to
14 NIOSH for a dose reconstruction, then the
15 evaluations at IREP.

16 There was no industrial hygiene search
17 conducted by a mission support person who
18 reviewed the particular site, industrial hygiene
19 databases found no industrial hygiene report
20 applicable to this particular individual.

21 Not considered a member of a Special
22 Exposure, but they did note that both breast

1 cancer and colon cancer are specified FCC
2 cancers.

3 And my, the decision not to send it to
4 an industrial hygienist, I think, I said it was
5 appropriate. I still probably believe that.

6 And it was not referred to a
7 consulting, medical consultant, contracting
8 medical consultant, and the reason for that was
9 that it was considered to not have any exposure
10 to the radiation.

11 I think there could've been a little
12 bit more development on the industrial hygiene
13 end to see if there were any synergistic effects
14 from chemicals.

15 But again, I think that was a pretty
16 reasonable decision. The claim was denied for
17 everything. No, considered no exposure.

18 And when we looked at her personal,
19 and I looked at her personal dosimetry records.
20 For the most part they were all under 500
21 millirem. Total lifetime dose was not more than
22 five rem, and therefore I think, at least as far

1 as the radiation goes, and I would presume also
2 for the other hazardous substances, that there
3 was really no, there was no significant exposure.

4 So let's see. Les, you have a
5 meningioma one.

6 MEMBER BODEN: Yes, I had to hit the
7 button. So, yes. So this is a person who was an
8 explosives handler and machine operator from 1958
9 to 1966. And you'll see why I mention this.
10 Then was a farmer for the next five decades
11 actually.

12 So the contention of the claimant was
13 that the claimant had a benign meningioma small
14 vessel disease in his brain.

15 And there was separate contention that
16 the claimant's skin cancer was related to his,
17 who he's worked for, the Department of Energy.

18 The original contention was available
19 for review and the contentions were addressed by
20 the statement of the case. And there's actually
21 an occupational history on the file.

22 The diagnoses for both the skin cancer

1 and the meningioma were supported by objective
2 medical evidence.

3 But as in, I think all the other cases
4 we're talking about today, there was no treating
5 physician statement of relationship between the
6 disease and occupational exposures.

7 There was some idea that a possible
8 exposure to machining oils might have been
9 related to skin cancer.

10 There were no specific exposures that
11 were stated in the record that might've
12 potentially been related to the benign
13 meningioma.

14 Case was not referred to an industrial
15 hygienist. It was no reason given, not
16 surprisingly.

17 And it was referred to a CMC on the
18 question of the skin cancer and the possibility
19 that machining oils might have contributed.

20 The CMC gave what seemed to me, given
21 the little that I know, at any rate, to be a
22 reasonable report based on the questions that

1 were given to him.

2 He said that he did not think that
3 there would've been enough exposure, nor that
4 the, some of the, I guess, cellular changes that
5 one might've expected, if it was, the skin cancer
6 was related to machining oil exposure, was
7 present, and given the fact that the person,
8 after his employment at the Department of Energy,
9 or at a contractor for the Department of Energy,
10 had spent 50 years as a farmer, but it was
11 unlikely that you could meet the more likely than
12 not standard for the skin cancer.

13 MEMBER CASSANO: And then, but the
14 meningioma was not developed, right?

15 MEMBER BODEN: The meningioma was not
16 developed. There was no argument of that, a
17 specific exposure that might've caused the
18 meningioma.

19 They also, by the way, did a NIOSH
20 dose reconstruction for this person, and, which I
21 always find somewhat amusing.

22 A 4.18 percent risk of, that the skin

1 cancer was related to his exposures. Not 4
2 percent, not 4.1 percent, but 4.18.

3 MEMBER CASSANO: Yes. Not -- the IREP
4 is a very interesting program for anybody that's
5 ever used it. So your thoughts are that the skin
6 cancer was handled properly, but --

7 MEMBER BODEN: Yes.

8 MEMBER CASSANO: Now, what are your
9 thoughts about, and it was a benign meningioma,
10 so ---

11 MEMBER BODEN: Yes.

12 MEMBER CASSANO: But again, we have
13 no, we can't tell what reasons the meningioma was
14 just dropped at the point of the CE and not, I
15 think we have some answers in the training
16 documents that help us with this, but from what
17 we see in the case, we have no reason to know why
18 the meningioma was dropped.

19 MEMBER BODEN: Yes. I, presumably, if
20 he knew as much about the causes of meningioma as
21 I do, he certainly would've asked for somebody
22 else's opinion.

1 MEMBER CASSANO: Okay. So who are we
2 now missing? Duronda, you did both, Faye you did
3 both.

4 So just Dr. Markowitz and myself I
5 think who are left. So Dr. Markowitz, do you
6 want to do your prostate cancer one?

7 MEMBER MARKOWITZ: Sure. Yes, this is
8 a, just a two minute one. Prostate cancer and
9 coronary artery disease.

10 Prostate cancer was accepted under
11 Part B. It met the threshold for probability of
12 causation, so that was easy. Automatically
13 accepted under Part E.

14 So then the only issue was heart
15 disease and a long term chemical. And no
16 question about the diagnosis. That was, the
17 medical records were nicely assembled.

18 But I don't see that the whole issue
19 of heart disease was developed at all. I don't
20 see, there's nothing from the treating physician.

21 It wasn't sent to industrial hygiene
22 or CMC, and so I don't, I don't know whether it's

1 sort of a blanket policy on heart disease or
2 whether, you know, the SEM was explored.

3 There wasn't a result of the SEM in
4 the, in the file. So the SEM was explored, and
5 possibly they came up with nothing.

6 It's just okay to me. There wasn't
7 sufficient documentation of the, of what was
8 done. So that's all I have to say about that
9 case.

10 MEMBER CASSANO: Okay. And I think
11 the last one is, oh wait, no. That, I did the
12 colon cancer, breast cancer, and carcinomas
13 already, so I'm looking for my third case now
14 which was multiple immune disorders. This is a
15 very quick one, again.

16 The contention was, lupus, Sjogren's
17 syndrome, and rheumatoid arthritis. I'm not sure
18 how somebody gets three autoimmune disorders. I
19 guess they're just lucky.

20 The person was a lab technician.
21 There was no other, there was no other
22 delineation of what kind of lab tech this person

1 was.

2 She did say in her exposure, in her
3 occupational history questionnaire that she would
4 take contaminated materials back and forth from
5 the sites and contaminated laundry, she would
6 also do, she would also, she would do testing on
7 various liquids and stuff like that to see if
8 there was contamination.

9 It was not real clear to me exactly
10 what she was talking about. The only, oh, she,
11 what's interested, I saw, she was also listed as
12 anemia. She had, that was her other contention
13 was anemia.

14 The only one that was evaluated was
15 the anemia because the SEM was silent on all the
16 others. So I don't know if she was working with
17 some organic solvents.

18 There are some autoimmune disorders,
19 noted the scleroderma, that are associated with
20 some organic solvents epidemiologically. But
21 they only looked at anemia.

22 And the claim is therefore not

1 referred to an industrial hygienist, but it was
2 referred to a CMC only for the anemia.

3 However, it turns out that her anemia
4 was an iron deficiency anemia, so the CMC opined
5 that because it was an iron deficiency anemia, it
6 could not have been due to a toxic exposure. I
7 am, I think that's probably correct.

8 There are things that can compete with
9 iron, compete with iron for heme, but I'm not,
10 I'm not really well versed in all that. And
11 basically the entire claim was denied for no
12 evidence.

13 So that's where we're at on that, so
14 again, I think some of the issues that we have
15 when we look at all of these is that why are some
16 contentions dropped without any explanation.

17 Why does, why do people start at the
18 SEM instead of looking for other evidence or
19 going to an industrial hygienist.

20 And I think, looking at this first, I
21 think it's a good point to go look at the
22 training materials because I think we will learn

1 something from that.

2 Does anybody have any further, excuse
3 me, any further thoughts or comments on some of
4 the general, the things we saw over and over
5 again on the, in these cases?

6 MEMBER BODEN: I have a couple of
7 comments. One is, I was surprised that, at the
8 files that we thought were not, that for example,
9 I had decisions referring to a CMC report that
10 was not in the file.

11 And I don't know, you know, I don't
12 know what else wasn't in the file. So there
13 seems to be some slippage in documents getting
14 into the file.

15 The other thing I want to say, and I
16 think I wasn't clear on this, so there was this
17 case that I had that had the COPD where there was
18 not all the evidence.

19 Exposure was brought to the attention
20 of the CMC. That was November 2013 when the
21 decision was made, and the decision was
22 essentially to reject everything else but to

1 remand the COPD.

2 But there's nothing else in the file.
3 And that was, you know, three plus years ago. So
4 I don't really understand that either.

5 There was supposed to be, they were
6 supposed to look again at the decision. Perhaps
7 send the question back to the CMC about the
8 additional, and the file ended there as far as I
9 can see. So that was one.

10 The other concern I have is the sense
11 and those of you who are, who know much more
12 about the system than I do might have some
13 thoughts about this.

14 I got the feeling from these files
15 that many of the people who were filing these
16 claims aren't really in a very good position to
17 advocate for themselves.

18 And that, you know, some people avail
19 themselves of advocate that they want, I think
20 they are not in a very good position to know if
21 they've been given every opportunity to be
22 successful in their claims.

1 MEMBER POPE: I agree with that,
2 Duronda.

3 MEMBER CASSANO: Yes, I would, this is
4 Dr. Cassano. I just, I would agree with that
5 too.

6 It, I mean, we have trouble figuring
7 out, gee is this the right decision or the wrong
8 decision based on the information that we have.

9 So someone who is not well versed in
10 any aspect of this whole process would probably
11 not have a real good chance, unless they're a
12 member of a, of an Exposure Cohort, Special
13 Exposure Cohort, or you know, or they're, it's
14 just a real obvious thing that's in the SEM
15 where, you know, it's acute lymphocytic leukemia
16 and, you know, benzene exposure or something like
17 that. I think some people have, I think it would
18 be very difficult.

19 Anyway, let's move to the training
20 documents because I think, and I ask people for
21 the people on the, on the line, I ask the Board,
22 the subcommittee members to look at whether these

1 documents were complete, whether there was
2 clarity, whether they were based on current
3 scientific evidence and current policy, and also
4 whether or not there were any gaps in the, in
5 the, in the training documents as we saw them.

6 So, and then, also I didn't write it
7 down, I noted some things that I thought were
8 sort of glaring problems with the training. Not
9 a lot of them, but anyway.

10 So what I want to do is just, the
11 overview one, the DEEOIC claims process big
12 picture.

13 And I just want people to speak up and
14 talk about, this is just an overview of how the
15 process goes.

16 I don't know what a red paying review
17 is, so I was immediately lost at that point. I
18 assume that's the CE's job. But I don't think
19 there was much in this one in particular that had
20 any issues.

21 But anybody else want to speak to the,
22 to this original overview document?

1 MEMBER MARKOWITZ: This is Steven
2 Markowitz. I just want to ask a more general
3 question.

4 I thought that we had asked, perhaps
5 at our first meeting, about how claims examiners
6 were trained to do their jobs.

7 And I thought we were told that there
8 weren't many training materials, that a lot of it
9 was key specific training that was done in each
10 region, each at the, at the resource center or,
11 you know, not the resource center, at the
12 regional office. And did I mishear that, because
13 --

14 MEMBER CASSANO: No. I heard --

15 MEMBER MARKOWITZ: There's a list,
16 there's a, to be just clear, a list, at this
17 meeting we've got five or six to look at, but
18 there's a list of 60 of them that were provided
19 to us which were clearly very well developed and
20 very informative, and had been developed over at
21 least a decade. So did I mishear that or did we
22 ask the wrong question or what?

1 MEMBER CASSANO: I'm not sure, but I
2 heard that as well, that there, I must also add
3 to your comment that I darn well wish I had seen
4 these documents in April because I would've not
5 flailed for six months of trying to understand
6 how this process works.

7 But anyway, we've got them now and we
8 can move forward. But maybe, I don't know if
9 Carrie or John Vance can tell us --

10 (Simultaneous speaking)

11 MEMBER MARKOWITZ: We don't have to
12 get into a back and forth on this.

13 MEMBER CASSANO: Yes.

14 MEMBER MARKOWITZ: But I just wanted
15 to know whether anybody else had heard the same
16 comment. That's all. We, you know, we can --

17 MEMBER CASSANO: No, it's actually in
18 the minutes. It's actually in the minutes that,
19 and then when we had the, when we asked the
20 questions and we came, they came back with some
21 answers for the questions, it was also reiterated
22 in there. So I was surprised to find these.

1 MEMBER SILVER: Well, this is --

2 MEMBER CASSANO: Anybody --

3 MEMBER SILVER: Yes, this is Ken. I
4 remember it putting a fine point on whether there
5 was a career ladder and sort of internal
6 certification program where people obtain
7 objective credentials for expertise in a certain
8 area, and the answer, paraphrasing, is that we've
9 done training but it's more ad hoc as the
10 district offices have needs that come up.

11 And Rachel said that she and John had
12 done much of the training. So --

13 MEMBER CASSANO: Yes.

14 MEMBER SILVER: -- that would be
15 Steve's recollection that we asked if there was
16 something really rigorous and the answer
17 generally was no.

18 MR. VANCE: Yes. This is, this is
19 John Vance. Can I just comment really quickly
20 and just say that, you know, I think Dr.
21 Markowitz has a point that, you know, we do have
22 basic framework training, and I think that this

1 training that we put up on our document library
2 demonstrates the overall application of the
3 process guidance, yet we do a huge volume of case
4 specific kind of training because, you know, the
5 training itself has to be applied.

6 And when you're applying it, you're
7 going to have to work with a lot of cases. So
8 whether we communicated that very clearly or not,
9 the point I'd just like to make is that while we
10 have this kind of training documentation, it
11 needs to translate to actual case scenarios.

12 So there is a lot of hands on case
13 specific kind of guidance that goes on with
14 claims examiners and supervisory management
15 staff.

16 MEMBER CASSANO: Oh, that makes a lot
17 more sense.

18 MEMBER MARKOWITZ: The number, a
19 number of these documents, this is Steve
20 Markowitz, are PowerPoint slides and they're
21 clearly used in training.

22 They're clearly used to properly to

1 enhance what people know and do. And I don't
2 understand, frankly, why we weren't provided with
3 this when we were, when we specifically asked how
4 it is that you bring claims examiners up to
5 speed.

6 Anyway, we don't have to, we, John, we
7 don't have to get into that now. I just wanted
8 to, we can move onto the quality and things, but
9 --

10 MEMBER CASSANO: Yes.

11 MEMBER MARKOWITZ: -- wanted it out
12 there.

13 MEMBER CASSANO: Okay. So does
14 anybody have any additional comments on the
15 initial overview document, which is the claims
16 process document? If not, I will move to the
17 next one.

18 Is that a, does somebody want to speak
19 or not? Okay. So let's go into the next one.

20 MEMBER MARKOWITZ: I'd like to speak.

21 MEMBER CASSANO: That's --

22 MEMBER MARKOWITZ: This is Steve

1 Markowitz. I'd like to, this six pages summary
2 is excellent.

3 It provides a very nicely structured
4 outline of the places the CE might go to, how
5 people like us might understand the program.

6 It's very clearly written. Obviously
7 it's sort of an outline format, but I thought it
8 was excellent.

9 MEMBER CASSANO: Yes. The only thing
10 I wish it had was instead of using, I mean, I
11 know what all these acronyms are except for red
12 paying review, ESQ, red paying review, I would've
13 wished that they had at least initially used,
14 written out the acronyms and then reverted to
15 acronyms afterwards so that we all know what was
16 being talked about.

17 But these weren't written for us, and
18 I presume the people they were written for
19 understand what the acronyms are.

20 MEMBER MARKOWITZ: For --

21 MEMBER CASSANO: Anybody else?

22 MEMBER MARKOWITZ: This is Steven. I

1 was referring to document number two, not
2 document number one. So, anyway.

3 MEMBER CASSANO: Oh, okay. Okay.

4 MEMBER BODEN: This is Les, but I just
5 generally say that I, that not only did I think
6 that the documents were carefully put together,
7 but that also I appreciated the, they make it
8 clear that when in doubt, one should be leaning
9 toward the claimant. I thought that was pretty
10 well done too.

11 MEMBER CASSANO: Any other comments on
12 this particular one? Because I do have a couple
13 of specific things that I, and I know I didn't
14 ask you to do this, but as I went through it, I
15 looked for specific things that I thought might
16 be problematic in the process. And I don't know
17 if anybody else did that.

18 But for instance, on slide 29, where
19 it talked about the CMC review is not necessary.
20 The first answer is when a treating physician
21 provides a well rationalized opinion in response
22 to a claim. That, I have no problem with. Or

1 when there's a presumption of a causation.

2 The last one I do, where it says
3 circumstances of case development does not
4 necessitate a medical opinion, such as there is
5 no evidence of exposure to a toxic substance or
6 plausible scientific associated between toxin and
7 a diagnosed illness.

8 I'm not, I think that's beyond the
9 scope of a CE. I, you know, the, and for all the
10 reasons we've talked about, the SEM isn't
11 complete, number one.

12 Number two, if you look at later on,
13 there's a, they're not allowed to look at any
14 literature unless it's been authorized by the
15 National Office.

16 So they can't use anything but the SEM
17 and the bulletins and the training documents to
18 come up with that.

19 So my feeling is that that may be a
20 problem, because I think that's why so many
21 things stop too early.

22 And the next thing, a couple things,

1 where it talked about the statement of accepted
2 facts. It talked about the employment history is
3 relevant or toxic exposure that's relevant.

4 My feeling is, again, that I think the
5 employment history and the possibility of certain
6 toxic exposures are relevant, and I think we
7 found that out when we looked at these cases.

8 Obviously somebody is dismissing some
9 of the employment history and some of the
10 potential exposures without asking for expert
11 advice on that.

12 And then, this is, at page 35, it goes
13 to where the recommendation that we made that we
14 think the entire file should go to the CMC and
15 the industrial hygienist because, again, I think
16 if you narrow the focus of what the CMC is
17 looking at, you may engender a false decision, or
18 an inappropriate decision. Not a false decision,
19 by the CMC.

20 And the only other, and this is a
21 question I had on the second opinion, second
22 opinion medical opinion, I saw a letter and this

1 is a question that doesn't have to be answered
2 now, but I'd like to get an answer to it.

3 Does anybody specify what type of
4 specialist they should go to? I saw in the thing
5 that it says, well, you need to contact QTC. And
6 QTC has all sorts of physicians all around the
7 country.

8 Some of them are experts. Some of
9 them are general practitioners, private care
10 docs, PAs and nurse practitioners.

11 Well, I guess you wouldn't use a PA in
12 a nurse practitioner, but a lot of them are
13 primary care docs that might not necessarily have
14 information on occupational causative exposure.

15 So those were my comments on this.
16 Does anybody have, anybody else have any
17 additional comments?

18 MEMBER VLIEGER: I, this is Faye. One
19 of the frustrating things for claimants is when
20 something is prescribed, the Department requires
21 that it be prescribed by a doctor.

22 If a PA or a nurse practitioner does

1 something, for example, home health or a medical
2 necessity piece of equipment, the Department
3 defers back and requires that a doctor prescribe
4 it.

5 Even though, you know, the states are
6 allowing these to be prescribed by PAs and nurse
7 practitioners. It's becoming a stumbling block
8 when there's fewer and fewer practitioners for
9 the people to go to.

10 So that's just my comment on that,
11 what was your doctors versus practitioners and
12 the NRPs.

13 MEMBER CASSANO: Yes. Now, I'm trying
14 to remember the actual policy document that we,
15 that we, that we worked on.

16 That defined the physician, and I
17 think PA and nurse practitioner were excluded
18 from that definition. Is that correct, Faye?

19 MEMBER VLIENER: Yes.

20 MEMBER CASSANO: Okay. So maybe
21 there's something that they can do, either you
22 know, a physician or under, working under the

1 authority of a physician or whatever. But --

2 MR. VANCE: Yes, this is, this is John
3 Vance. That's the way it would have to be
4 because the statute itself requires a qualified
5 physician's opinion.

6 MR. KEELER: Right.

7 MR. VANCE: But if we have a PA or a
8 nurse practitioner that's working under the
9 office of a physician who signs off on that
10 person's assessment or what have you, that's
11 fine. But the --

12 MEMBER CASSANO: Okay.

13 MR. VANCE: -- statute actually
14 defines what a qualified physician is and that's
15 an MD.

16 MEMBER CASSANO: Okay. That's what I
17 thought. Okay. Any other comments on this one?
18 Okay.

19 The next one was the development for
20 causation. And does anybody have any comments or
21 statements, other than me, about this one? No.

22 MEMBER MARKOWITZ: I did --

1 MEMBER CASSANO: Go ahead.

2 MEMBER MARKOWITZ: This is Steven. I
3 was, didn't have a chance to go through all this,
4 but there is another document in the list of 60
5 materials, excuse me, which is excellent on the
6 issue of causation, addressing aggravation,
7 contribution and causation.

8 I don't know if it's made its way into
9 this training material or not, but there is
10 another document. I don't remember the name of
11 it, but it was excellent.

12 MEMBER CASSANO: Yes, because we can
13 look at that online. I, anybody else have any
14 questions or issues or comments on this one,
15 because I also had a couple. Anybody else? Ken?
16 Les? Duronda? No?

17 MEMBER POPE: No, I'm pretty much,
18 this is Duronda, I'm pretty much in agreement to
19 what you were saying on the prior documents.

20 I apologize for not speaking up
21 earlier, but I think you're absolutely right in
22 terms of the information that is initially

1 collected by the CE, all that information needs
2 to go to the CMC and let them decide --

3 MEMBER CASSANO: Yes, we make, yes.

4 MEMBER POPE: -- what needs to be
5 omitted or --

6 MEMBER CASSANO: I think there was a
7 recommendation that was put forward at the last
8 full meeting.

9 MEMBER POPE: Okay.

10 MEMBER CASSANO: So what I find
11 troubling on this causation one is the note on
12 Page 6 that says you cannot use studies or
13 reports obtained from internet or other sources
14 to justify case decision unless the DEEOIC
15 National Office has specifically authorized its
16 usage.

17 Where should you, and I agree in I
18 understand why that's there, because you can go
19 to the internet and you can find anybody that
20 will make claims to anything, and unless its
21 vetted in peer reviews, but my problem is that if
22 you can't even look at those reports to say, you

1 know what? I'm not quite sure what's going on.
2 I want to send this to an industrial hygienist or
3 a CMC.

4 And then on Page 7 where it says, if
5 the claimed condition is generally a condition
6 that arises out of occupational exposure, you
7 must pursue additional development whether
8 possible.

9 If a condition is more than less
10 likely caused by occupational exposure, how does
11 the CE know this a priori without asking an
12 industrial hygienist or a, and this is a
13 question.

14 It's not a, it's not a derision of
15 the, of the process. But if the medical evidence
16 was not a likely scaling to an illness, and that
17 it arises, but, I mean, most doctors don't know
18 this. Most physicians don't know this.

19 So I'm not quite sure how a non, a CE
20 would know this without asking. And that's the
21 only comment I have on that.

22 MEMBER VLIEGER: The only question I

1 have along these lines is, are there some sort of
2 list of diseases that would, that these claims
3 examiners have?

4 Some sort of play books that they're
5 using so that they question some diseases and
6 don't question others? Because I am with you.
7 Where are they making these decisions from?

8 MEMBER CASSANO: I agree. So that is
9 a question and that's something that is a little
10 troublesome.

11 Page 14, and this is something, a
12 denial requires a closer look at the evidence and
13 more development to be certain the DOE work
14 related exposures during covered employment were
15 not a significant factor.

16 And it seems like, and this is a good
17 statement, but it seems like, and there are
18 others that are, and Page 15 is the same thing.

19 The SEM is never to be used for a
20 basis for denial. But we saw in claim over claim
21 over claim in the 14 that we did, that if it
22 wasn't in the SEM, it went nowhere.

1 So there seems to be a little bit of
2 disconnect between what we're seeing in the cases
3 and what CEs are supposed to do.

4 The other thing that, this came up at
5 the main meeting, was talking about the former
6 worker program documents.

7 A few other cases had former worker
8 program documents in them, and it says very
9 clearly on Page 19 that it is probative.

10 But I've never seen anything, I've
11 never seen a case where it was actually
12 discussed.

13 And then the next one is, developing
14 for exposure, I think that basically is the same
15 as the last one, other than it just has some
16 place for people to take notes. So I think they
17 actually had the same exact information in them.

18 So if we could stay on the fourth one,
19 not the last one, which is the claims examiner
20 training course, which just is a guide, but just
21 go back to the earlier one please. Are we on
22 that one?

1 MEMBER POPE: Yes.

2 MEMBER CASSANO: No, I'm sorry. Go
3 back to developing for causation, not the other
4 one. So, no. The second to last one. The one I
5 was just on. That one. Thanks. Okay.

6 So does anybody else have any comments
7 on this particular one? The last one is actually
8 a duplicate of the fourth.

9 And they're not going to do the
10 beryllium disease because I think Dr. Redlich,
11 who's on the line, her group is looking at
12 beryllium disease, and from what I looked at when
13 I looked at that particular document, it looked
14 more like that information was in her purview
15 than ours.

16 I just wanted to go to Page 27 on this
17 one because I found the development letter a
18 little problematic.

19 In making the determination whether to
20 specify, I can specifically identify exposures in
21 the development letter, considered a purpose and
22 likely outcome of providing this information.

1 That's a good statement.

2 I agree with the whole statement in
3 general, but I think it may tend to make people
4 not look at exposures that they don't already
5 believe may be causative or probative for the
6 development of a, of a medical outcome.

7 And then Page 31, we've done this
8 already, entire file should go to CMC. And then
9 a troubling phrase on Page 32, which I thought
10 was very interesting, that the statement, a
11 proper statement of accepted facts should
12 preclude the physician from making their own
13 findings of fact.

14 So this is where doing this, putting
15 a, putting a SOAF in and then not sending the
16 whole claims file leads to trouble on both the
17 part of the industrial hygienist and the CMC
18 because they are now limited, not only to just
19 discussing the question that someone without the
20 same level of expertise has and answering those
21 questions, but also only looking at information
22 that the CE deems relevant, and I think we've

1 identified that as a problem in general.

2 So I think, does anybody have, else
3 have any comments on this developing for
4 causation?

5 MEMBER MARKOWITZ: This is Steve
6 Markowitz. So a couple comments. One is the
7 desire to allow the CMC or any consultant to see
8 a broader set of records is to ensure that that
9 person can capably answer the questions that are
10 being posed to him or her.

11 It's not to re-look at the question of
12 the claims above and beyond those particular
13 questions. Is that right?

14 MEMBER CASSANO: I believe that --

15 MEMBER MARKOWITZ: In other words,
16 it's sort of a little bit of a safety net in case
17 the CE doesn't, unknowingly doesn't provide
18 everything that's needed.

19 They answer the questions and the
20 physician or IH or whomever consultant can then
21 see relevant documents that otherwise they may
22 not have seen, but just to see inadvertently to

1 provide those to the consultant.

2 MEMBER CASSANO: Yes. I think that's
3 one of the reasons, but also I'm a little bit
4 concerned if the CE is actually asking the right
5 questions, and I think we've seen this in some of
6 the cases where we have contentions that are just
7 dropped and we don't understand why.

8 On what basis are those dropped? And
9 if they can't make a positive decision, then I
10 would think rather than defaulting to the, I
11 can't find anything therefore it's denied, it
12 should default to, I can't find anything, let's
13 see if one of our experts can.

14 MEMBER MARKOWITZ: Yes, well, that.
15 Steve Markowitz. That's problematic because it's
16 a much larger task, and it's really asking the
17 consultant to essentially do or redo part of what
18 the claims examiner's tasks are.

19 So, and that, if according to affect,
20 is likely to be a little haphazard. So I'm not
21 saying there's not a problem. I'm just not sure
22 that what this --

1 MEMBER CASSANO: How to fix it.

2 MEMBER MARKOWITZ: Yes.

3 MEMBER CASSANO: Okay.

4 MEMBER VLIEGER: I have a, this is
5 Faye. I have a general question along the same
6 lines.

7 If the SEM is no longer going to be
8 updated or even looked at for new data from Haz-
9 Map, where are they going to get their
10 occupational disease list from if they don't
11 allow them to go outside?

12 And then, in looking at this training
13 material, on Page 26 the claims examiner, at the
14 bottom, is specifically told not to provide the
15 claimant with copies of your SEM searches.

16 But the SEM that the claims examiner
17 uses is not the same as the public SEM, and so
18 they may be making a decision based on something
19 that the claimant can't even defend against.

20 So this whole issue of the SEM and now
21 they're, you know, with no contract with Dr. Jay
22 Brown anymore, who's going to make the disease

1 links?

2 MEMBER MARKOWITZ: You know, this is
3 Steve Markowitz. That would be a good question
4 for the committee to take to make sure, the one
5 on the, well, either the SEM committee or the one
6 on the use of the industrial hygiene and
7 physician consultants because it's made directly
8 in line with, we'll try to make sure that
9 question gets over to them, Faye.

10 MEMBER VLIEGER: Thank you.

11 MEMBER MARKOWITZ: I, for one, one
12 other comment quickly. Just a friendly amendment
13 to what, something that was said before, that our
14 review of these 14 cases showed that the CEs
15 typically did the SEM, stopped at the SEM, and
16 didn't go beyond that.

17 I think the cases collectively showed
18 a much broader experience than that. I saw, at
19 least from the cases I looked at, a clear use of
20 the occupational health questionnaire, a
21 consultation with industrial hygienists, so I
22 just, I just don't think it's true that, entirely

1 true that the 14 cases we looked at showed this,
2 you know, exclusive reliance on the SEM without,
3 you know, much movement beyond that.

4 MEMBER CASSANO: I don't mean all of
5 them, but a lot of them did. There were at
6 least, there were two, I mean, there were some
7 contentions in a couple of mine and I think there
8 were several, a couple of others where they, the
9 reasons for it being denied was not supported by
10 SEM, and that was the end of it.

11 But it's very clear in the training
12 documents that that's not supposed to happen. So
13 that, I mean, and I think again, it depends on
14 whoever, who the CE is.

15 Some of them do, maybe the more
16 experienced ones go into more advanced, more, dig
17 a little bit more deeply than from others.

18 But I think that's something that, you
19 don't, you, a claim should never be accepted or
20 denied solely based on who happens to handle your
21 claim. But I think that may happen more than we
22 would like to see it. Okay.

1 We've got five minutes, ten minutes to
2 talk about the focus group. So anybody, any
3 thoughts? I guess some of the questions to the,
4 to the program would be, is this something, my
5 preference would be that we do this before the
6 next full Board meeting, but I don't know if
7 there is resources to be able to send three of us
8 somewhere to meet with someone outside of a
9 formal in person Board meeting. So if you guys
10 could answer that question, I'd appreciate it.

11 MEMBER BODEN: For one second, there
12 was one --

13 MEMBER CASSANO: Sure.

14 MEMBER BODEN: -- other comment that
15 I wanted to make that was a concern to me in the
16 documents, but it wasn't, we didn't get to that
17 document. It was the one, exposure development
18 for Part E cases. And you don't --

19 MEMBER CASSANO: I missed one? Oops.

20 MEMBER BODEN: So in the, in the
21 document that was exposure development for the
22 Part E cases, there's a line on Page 46 that

1 says, well, actually there were two things.

2 One is that there was a line on Page
3 46 which I just didn't understand about why
4 exposure information obtained from FWP work
5 histories are after October 2000 should be used
6 only when corroborated with other evidence.

7 MEMBER CASSANO: Yes, I had that
8 written down too.

9 MEMBER BODEN: And there was another
10 place where they said basically that if you
11 worked as a secretary, that you should be
12 considered unexposed --

13 MEMBER CASSANO: Okay.

14 MEMBER BODEN: -- which I thought,
15 that was on Page 46, if I remember correctly.
16 Oh, no, that's Page 50. I don't, sorry, that was
17 in another document.

18 MEMBER CASSANO: Yes.

19 MEMBER BODEN: But it seemed to me
20 that this was in their causation development for
21 Part E cases on Page 29, I saw it. No.

22 MEMBER CASSANO: I think, yes.

1 MEMBER BODEN: Sorry, I have the page
2 here, but there was some place in there where
3 basically it said, you know, if you worked as a,
4 as a white collar worker that you weren't
5 exposed, and that just seemed to me totally wrong
6 from everything that I know.

7 MEMBER CASSANO: No, I agree. The
8 other thing was that you don't always have to do,
9 everything in the OHQ has to be corroborated, but
10 if a DAR and the SEM allow a positive finding,
11 you don't need to do an OHQ and I think the OHQ
12 should be done regardless, because it may pick up
13 other exposure disease relationships that haven't
14 been considered by the, by the claimant.

15 MR. VANCE: This is, this is John
16 Vance. They actually do occupational
17 questionnaire for every single Part E case.

18 It's part of the normal initial
19 development of a, of a case once it's created
20 under Part E.

21 MEMBER CASSANO: Okay.

22 MR. VANCE: Yes.

1 MEMBER CASSANO: Then your training
2 document is wrong. It does not, does not state
3 that. It says that it doesn't have to be done if
4 there's a positive --

5 MR. VANCE: I know that we put a lot
6 of stuff online. Yes. I know, I know that we
7 put a lot stuff online.

8 I don't know that that's the, when
9 this, when this training was effective because we
10 have, you know --

11 MEMBER CASSANO: Okay.

12 MR. VANCE: -- more than 10 years of
13 --

14 MEMBER CASSANO: Excuse me. I have a
15 pesky dog in the background. Okay. Thanks. So
16 how we, could you, John, while you're, while
17 you're talking, is it possible that we could meet
18 with these CEs between, sometime between now and
19 the next full Board meeting so that we can start
20 to synthesize everything that we've learned?

21 MR. VANCE: Well, I talked to Rachel
22 about this just a little bit ago. This is John

1 Vance again.

2 You know, I think that we're certainly
3 amendable to having you all interact with folks
4 with the staff.

5 The problem that we are going to have
6 is with bargain level employees being asked to
7 provide input on case adjudication activities.

8 So we have bargaining level, which
9 basically means these are unionized employees.
10 And that presents a lot of personnel issues for
11 the Department of Labor with regard to how we
12 would allow the Advisory Board to interact with
13 those folks.

14 I'm not suggesting that the answer is
15 definitively no, but I want you to be aware that
16 that is a concern that will raise issues with how
17 and when we would maybe potentially allow that to
18 occur.

19 So the director has been clear that
20 she will make folks available, but it'll probably
21 be at a managerial or policy level.

22 Much more doable than regular bargain

1 level employees because as you can imagine,
2 there's all kinds of union issues that could be
3 associated with that type of activity.

4 MEMBER CASSANO: Yes. I hear you. So
5 I mean, if it was somebody that was in a
6 supervisory capacity, what I'm trying, what I
7 would, what I would hope to get is people that
8 are still fully involved in the process every
9 day, whether that's a supervisor, a person that's
10 in a supervisory capacity, and therefore not part
11 of the bargaining unit.

12 But somebody that still has their
13 hands on the day to day processes of what's going
14 on rather than, you know, somebody that's so far
15 up in the, in the, in the, in the hierarchy that
16 they, and this happens with any bureaucracy.

17 They tend to lose touch with what's
18 really happening on the ground floor, if you
19 follow what I'm saying.

20 MR. VANCE: Oh, I absolutely
21 understand and I think Rachel is really willing
22 to be as flexible as possible.

1 So I would certainly encourage you to
2 lay out exactly what you are proposing with the
3 understanding that bargain level employees is
4 probably going to be a tough sell, but we
5 definitely, and I think Rachel is definitely very
6 flexible in allowing access to managerial or
7 policy level staff to address whatever questions
8 you might have.

9 MEMBER BODEN: So, this is Les Boden.
10 I'm, I think it would really not be as good for
11 us not to be able to talk to people who are, you
12 know, at the claims examiner level.

13 We need to understand what they're
14 experiences and their jobs and we need to
15 understand it in a way that, I'm not totally sure
16 that managerial level people would be able to
17 provide us with.

18 So I think we should try to explore
19 what the labor relations issues are there and see
20 if there's a way that we can resolve them
21 reasonably.

22 You know, it's not obvious to me what

1 those would have to be. But that's certainly
2 something that I'm willing to talk about.

3 MEMBER CASSANO: Well, I agree with
4 Les.

5 MEMBER BODEN: Really talking to
6 people who are, who are, you know, claims
7 examiners.

8 MEMBER BODEN: Well, just from an
9 academic study, we'd start off offering
10 participants anonymity and we could probably do
11 that here, right?

12 MEMBER BODEN: We have to figure, I
13 mean, there are obviously things that we'd have
14 to figure out, but it just, I think it's worth
15 further discussion to try to understand what the
16 issues are before we give up on it.

17 MEMBER CASSANO: I mean, I agree. I
18 would prefer to have, I was just trying to find a
19 compromise.

20 You know, there's a, there are people
21 that are managerial, that are supervisory and not
22 part of the bargaining unit that are still

1 involved in the process. But I agree that having
2 the people that are actually doing the work every
3 day is better.

4 So John, if we could pursue both of
5 those options, I would appreciate it. And so,
6 and then if the answer is no on the bargaining
7 unit, we'd need, if we can email back and just
8 move through Steven and myself or whatever on
9 what the issues are and how we might be able to
10 mitigate those issues, probably the best option.

11 Any, and Steve, you have any thoughts
12 or comments? Anybody else have any thoughts or
13 comments?

14 MEMBER POPE: I, this is Duronda here.
15 I absolutely agree that we need to hear from the
16 people that's on the ground floor.

17 A lot of times the information as far
18 as what the problems really are don't really
19 reach the top, and I think we've already heard
20 from the Department heads at our initial meeting
21 in April.

22 If we get further down the chain, the

1 people that are actually doing the work that
2 always, you always get more information as to
3 what's really going on. It's been proven time
4 and time again.

5 MS. RHOADS: Okay. This is Carrie.
6 I have a suggestion. If you all could write down
7 exactly what you're wanting from the people that
8 you would want to be in the focus group, then it
9 would be easier to evaluate who exactly could do
10 that, from a union perspective and from just a
11 practical perspective as well.

12 MEMBER CASSANO: Okay, great. So how
13 we'll handle that, if people could send their
14 thoughts on what they want to ask to me, I will
15 compile them, send them back out to the group,
16 and then send them to Carrie, just so we don't
17 have a lot of duplication, and Carrie isn't
18 getting emails from everybody. I would
19 appreciate that.

20 And then just, I know we're running
21 out of time, our comment is, the whole
22 subcommittee cannot meet with these folks because

1 then it would be a subcommittee meeting, so we
2 have to decide on a working group to do that.

3 At the minimum, it would be one
4 claimant representative or one industrial
5 hygienist and one physician, which I guess would
6 be myself.

7 But certainly I think we could have
8 more as long as we don't have the whole
9 subcommittee. So we could get three volunteers
10 and we get one person to volunteer not to go.

11 MEMBER MARKOWITZ: Yes, well, this is
12 Steve Markowitz.

13 MEMBER CASSANO: Yes.

14 MEMBER MARKOWITZ: This is the reason,
15 another reason to keep the number limited, which
16 is that, you know, for an effective focus group,
17 you, the number, the number of people we're
18 learning from need to vastly outnumber the
19 observers for the --

20 MEMBER CASSANO: Okay.

21 MEMBER MARKOWITZ: -- questions just
22 for, to make it effective. That's all.

1 MEMBER CASSANO: So why don't we just
2 leave it with three people. One physician, one
3 industrial hygienist, and one claimant advocate
4 and you guys can decide amongst yourselves which
5 one of you are going, who, which one of you will
6 go, and I guess some of it will depend on timing
7 as well.

8 So the last two questions, the two
9 questions to the program are, number one, please
10 see if we can get three actual CEs and not
11 managerial people, and number two, what kind of
12 timing could we, could we manage to accomplish
13 this in. And number four is where would we do
14 this?

15 MEMBER MARKOWITZ: So Victoria, it's
16 Steve Markowitz. I think they're going to want
17 to see the written request just --

18 MEMBER CASSANO: Okay.

19 MEMBER MARKOWITZ: -- to speculate,
20 before they answer any of those questions.

21 MEMBER CASSANO: Okay. So I will,
22 guys get your, get your thoughts to me on what

1 kinds of questions you want to ask, and also some
2 of the issues you want to discuss.

3 I will compile them, get them back
4 out, and then I will put in a formal request.
5 But before I do that, I'll have it vetted by the
6 group. Okay?

7 MEMBER BODEN: Sure. Just a quick
8 question. Is sending things to you and not to
9 the whole group a, or to the, to be distributed
10 in the whole group sort of a violation of our
11 sunshine principles or --

12 MEMBER CASSANO: Well, we did that
13 with the cases. Carrie --

14 MEMBER BODEN: Or --

15 MEMBER CASSANO: -- if I'm going to --

16 MS. RHOADS: The group is allowed to
17 email each other if you just copy the designated
18 inbox as well.

19 MEMBER BODEN: Okay.

20 MEMBER CASSANO: Okay.

21 MEMBER BODEN: So, but I'm thinking
22 also that, so you're just going to compile the

1 suggestions and then send it out to the whole
2 group? Is that what you're --

3 MEMBER CASSANO: Yes. That's what I'm
4 going to do so that Carrie doesn't have to sit
5 there and go, well, three people wanted this
6 question answered and one person wanted this.

7 I'll just put them all together and
8 compile it. I'm not going to edit it. I may
9 wordsmith a little bit, but then I'll send it
10 back out to the group, and Carrie's going to see
11 it as it develops anyway, but, or the DOL thing
12 will see it as we develop it.

13 But that way, there's a final, at
14 least a final document with the request on it
15 going to the programs and not five people sending
16 a variety of requests directly to the program
17 without them being sort of, because some of the
18 questions may be worded differently but mean the
19 same thing, and I think that that's a need, we
20 have to, that's our responsibility to make it
21 clear and concise rather than have the program
22 try to compile it and figure out what it is we

1 want.

2 MEMBER BODEN: Okay. Just a final
3 question. Has, I mean, during a focus group is
4 actually something that people are trained to do
5 that there are methods and ways of doing them.

6 Is there somebody in our group who
7 has, you know, training in doing focus groups?
8 And if not, should we consider getting some
9 advice on that?

10 MEMBER VLIEGER: Dr. Silver, what's
11 your experience?

12 MEMBER SILVER: I relied on the
13 skilled facilitator for my beryllium studies.

14 MEMBER CASSANO: Yes.

15 MEMBER BODEN: Right.

16 (Simultaneous speaking)

17 MEMBER CASSANO: Now, and I was, that
18 was one of my next questions. Is it possible,
19 given what we're trying to do, and this is a
20 question for the program, to have a skilled
21 facilitator?

22 MS. RHOADS: I can, I can pass that

1 along and see what they think.

2 MEMBER BODEN: Okay.

3 MEMBER MARKOWITZ: That then should
4 also be in our written request.

5 MEMBER CASSANO: Okay. Okay. Okay.

6 Any, we're over time. Any final questions or
7 comments? Everybody know what next steps for us?
8 Yes?

9 MEMBER BODEN: Yes.

10 MEMBER CASSANO: Okay, great. Thank
11 you all.

12 MEMBER MARKOWITZ: Thank you.

13 MEMBER CASSANO: Thanks for the
14 participants and talk to you all soon. Bye.

15 MEMBER POPE: Bye.

16 MEMBER VLIENER: Thank you. Bye bye.

17 (Whereupon, the above-entitled matter
18 went off the record at 3:07 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Subcommittee on Advice for CEs RE:
Weighing Medical Evidence (Area #2)

Before: Toxic Substances and Worker Health Ad. Bd.

Date: 12-12-16

Place: teleconference

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
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Court Reporter

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