

UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

+ + + + +

SUBCOMMITTEE ON IH & CMC AND
THEIR REPORTS (AREA #4)

+ + + + +

MEETING

+ + + + +

FRIDAY,
DECEMBER 16, 2016

+ + + + +

The Subcommittee met telephonically at
12:00 p.m. Eastern Time, Rosemary K. Sokas, Chair,
presiding.

MEMBERS

SCIENTIFIC COMMUNITY:

MARK GRIFFON
GEORGE FRIEDMAN-JIMENEZ

MEDICAL COMMUNITY:

STEVEN MARKOWITZ
ROSEMARY K. SOKAS, Chair

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CLAIMANT COMMUNITY:

KIRK D. DOMINA
GARRY M. WHITLEY
FAYE VLIENER

OTHER ADVISORY BOARD MEMBERS PRESENT:

CARRIE A. REDLICH

DESIGNATED FEDERAL OFFICIAL:

CARRIE RHOADS

C-O-N-T-E-N-T-S

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

2 12:05 p.m.

3 MS. RHOADS: Thank you. Good morning,
4 everybody. My name is Carrie Rhoads, and I would
5 like to welcome you to today's teleconference
6 meeting of the Department of Labor's Advisory Board
7 on Toxic Substances and Worker Health, the
8 Subcommittee on IH & CMC and Their Reports. I am
9 the Board's Designated Federal Officer for today's
10 meeting.

11 First, we appreciate the time and the
12 work of our Board members in preparing for the
13 meeting and for calling in, and the work they are
14 about to do. I will introduce the Board members
15 on the subcommittee, and we will do a quick roll
16 call for the record.

17 Dr. Rosemary Sokas is the Chair of the
18 subcommittee.

19 CHAIR SOKAS: Here.

20 MS. RHOADS: And its members are Faye
21 Vlieger --

22 MEMBER VLIEGER: Yes, here.

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1 MS. RHOADS: Mr. Kirk Domina?
2 MEMBER DOMINA: Kirk is already here.
3 MS. RHOADS: Mr. Garry Whitley?
4 MEMBER WHITLEY: Here.
5 MS. RHOADS: Mr. Mark Griffon?
6 MEMBER GRIFFON: Here.
7 MS. RHOADS: Dr. George
8 Friedman-Jimenez?
9 MEMBER JIMENEZ-FRIEDMAN: Here.
10 MS. RHOADS: And Dr. Steven Markowitz,
11 who is also the Chair of the Board.
12 MEMBER MARKOWITZ: Here.
13 MS. RHOADS: Great. We are scheduled
14 to meet from noon to 1:30 p.m. Eastern Time today.
15 In the room with me is Melissa Schroeder
16 from SIDEM, our contractor, and Norman Spicer.
17 (Simultaneous speaking.)
18 MS. RHOADS: Excuse me?
19 CHAIR SOKAS: I am sorry. We lost Norm
20 Spicer, the sentence you said after that.
21 MS. RHOADS: Oh. He's an OWCP
22 employee doing a detail with our group.

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1 CHAIR SOKAS: Thanks.

2 MS. RHOADS: Okay. So for the meeting
3 today, since it's only an hour and a half, I don't
4 think we will need a break, unless Dr. Sokas
5 disagrees?

6 CHAIR SOKAS: No.

7 MS. RHOADS: Copies of all meeting
8 materials and any written public comments are or
9 will be available on the Board's website under the
10 heading "Meeting," and the listing next to this
11 subcommittee meeting. The documents will also be
12 up on the WebEx screen so everyone can follow along.
13 Excuse me.

14 The Board's website can be found at
15 [dol.gov/owcp/energy/regs/compliance/advisoryboa](http://dol.gov/owcp/energy/regs/compliance/advisoryboard.htm)
16 [rd.htm](http://dol.gov/owcp/energy/regs/compliance/advisoryboard.htm). And if you have not already visited the
17 Board's website, I encourage you to do so. After
18 clicking on today's meeting, you will see a page
19 dedicated to today's meeting. That webpage
20 contains publicly available materials submitted to
21 us in advance. We will publish any materials that
22 are provided to the subcommittee, and there you

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1 should also find today's agenda as well as
2 instructions for participating remotely.

3 If you are participating remotely and
4 you are having a problem, please email us at
5 energyadvisoryboard@dol.gov. If you're joining
6 by WebEx, please note that this session is for
7 viewing only and will not be interactive. The
8 phones will also be muted for non-Advisory Board
9 members.

10 Please note that we do not have a
11 scheduled public comment session today. The
12 call-in information has been posted on the website
13 so the public may listen in but not participate in
14 the committee's discussion.

15 The Advisory Board voted at its April
16 2016 meeting that subcommittee meetings will be
17 open to the public, so a transcript and minutes will
18 be prepared from today's meeting.

19 During the Board discussions today,
20 since we're on a teleconference line, please
21 everyone speak clearly enough for the transcriber
22 to understand, and at the start of the meeting, when

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1 you begin speaking, please state your name so we
2 can get an accurate record. Also, I'd like to ask
3 for the transcriber to please let us know if they're
4 having an issue with hearing or with the recording.

5 As DFO, I see that the meeting minutes
6 are prepared and ensure they are certified by the
7 Chair. The minutes of today's meeting will be
8 available on the Board's website no later than 90
9 calendar days from today per FACA regulations. If
10 they are available, we will put them up sooner.

11 Also, although formal minutes will be
12 prepared, we will also be publishing verbatim
13 transcripts. Those transcripts should be available
14 on the Board's website within 30 days.

15 I would like to remind the Advisory
16 Board members that there are some materials that
17 have been provided to you in your capacity as
18 special government employees and members of the
19 Board which are not for public disclosure and
20 cannot be shared or discussed publicly, including
21 this meeting. Please be aware as we continue with
22 the meeting today, these materials can be discussed

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1 in a general way which does not include any
2 personally identifiable information, such as
3 names, addresses, specific authorities if a case
4 is being discussed, or doctors' names.

5 And with that, I convene this meeting
6 of the Advisory Board on Toxic Substances and
7 Worker Health, Subcommittee on IH & CMC and Their
8 Reports. I will now turn it over to Dr. Sokas, who
9 is the Chair.

10 CHAIR SOKAS: Thank you so much. So I
11 am going to just turn it right over to Dr. Steve
12 Markowitz for the first substantive item on our
13 agenda, which is an update on the initial
14 recommendations that were forwarded to the
15 Secretary of Labor on November 4th and any
16 subsequent communication Steve had or any
17 follow-up to those recommendations. Dr.
18 Markowitz?

19 MEMBER MARKOWITZ: Sure. So on
20 November 4th, a couple weeks I think after our
21 October -- the end of October meeting, we sent in
22 our eight recommendations with brief rationales

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1 for those, and we have received a written reply in
2 the last couple of weeks.

3 I had had a phone call with Carrie and
4 Tony before we received the written response, so
5 I had some heads-up, but let me just review briefly
6 the response to our recommendations. The overview
7 is that there are two in particular that they
8 specifically responded --

9 CHAIR SOKAS: Steve ?

10 MEMBER MARKOWITZ: Yes?

11 CHAIR SOKAS: Would you mind just -- the
12 recommendations themselves are short. If you
13 could read off the recommendations, maybe, as you
14 are giving the response to them?

15 MEMBER MARKOWITZ: Sure, sure, okay.

16 So Recommendation 1 is we recommended
17 that the circular 1506, which deals with the
18 Post-1995 Occupational Toxic Exposure Guidance, be
19 rescinded. That was, briefly, the guidance that
20 basically instructed the claims examiners that
21 post-1995 exposures were likely to be de minimis
22 unless otherwise proven.

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1 Actually, so let me just say that that
2 recommendation, the DEEOICP accepts this
3 recommendation, agrees with it, and their plan is
4 to rescind this circular so it no longer be
5 effective, and we expect that to occur in January
6 2017, so in a few weeks. So that was our first
7 recommendation.

8 Our second one was that we recommended
9 that the exposure disease links that are part of
10 the SEM, the Site Exposure Matrix, that the
11 DEEOICP, the division ensure that the disease
12 exposure links are at a minimum brought up to date
13 with readily available and authoritative sources
14 that were listed in the IOM report, including for
15 instance the National Toxicology Program, the
16 World Health Organization, the others.

17 The DOL did not really address this. I
18 need to say that most of the recommendations are
19 under consideration. They have not come to
20 decisions about them, and so the fact that they did
21 not address it within the first month of us
22 submitting it does not mean that they are not taking

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1 it seriously or they won't act on it. But I will
2 go a little bit further into how -- what they say
3 about how they are dealing with these
4 recommendations.

5 The third one is that we recommended
6 quite simply that former workers be used by the
7 division district offices in order to administer
8 the occupational health questionnaire. And the
9 response from DOL within the last two weeks was that
10 they agreed, and that they have generally utilized
11 the practice of employing former DOE workers in the
12 program.

13 And here I am actually quoting from
14 them: "In this regard, almost 30 percent of our
15 staff at the resource centers have worked at DOE
16 sites, and some, including three managers, have
17 experience at more than one site. As vacancies
18 occur" -- again, I am just continuing to read from
19 their response -- "the resource centers routinely
20 seek candidates that have DOE experience. DEEOIC
21 believes that with the assistance of the Board, the
22 OHQ can be improved upon and replaced within the

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1 second quarter of the fiscal year, which is January
2 through March of 2017, leading to enhanced data
3 collection on the employees' work history."

4 So that was their response, and I
5 realized actually that our recommendation, we
6 maybe were not -- possibly we weren't specific
7 enough. The fact that 30 percent of the staff at
8 the resource centers worked at one or more DOE sites
9 is a good thing. Obviously, that means they are
10 familiar with DOE.

11 The issue we were really focusing in on
12 was who was actually doing the occupational health
13 questionnaire, and our logic was that people who
14 worked at the site who had frankly experience in
15 production, in operation, in maintenance, you
16 know, the jobs that were in general the higher risk
17 jobs, that those were the folks who should be doing
18 the occupational health questionnaire.

19 So the issue was not simply that of DOE
20 employment. The issue was at the sites, who had
21 the experience to best administer the more
22 difficult parts of the occupational health

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1 questionnaire, which is captured in the exposures.

2 So, you know, in the response from DOL
3 to the fact that 30 percent of the staff at the
4 resource centers had worked at DOE, my concern was
5 that it could easily be administrative personnel
6 because much of the work at the resource center is
7 administrative, and that the administrative
8 personnel from DOE would not necessarily have that
9 expertise in addressing exposures that production,
10 operations, maintenance workers would have. So
11 anyway, that has to be I think discussed a little
12 further in terms of their response.

13 Recommendation number 4 was that we --
14 we suggested that the division establish a process
15 where the industrial hygienists, they interview
16 the claimant directly. And there was no specific
17 response to that. I will get into sort of the
18 general response, DOL, to these recommendations.

19 The fifth recommendation was that the
20 policy teleconference notes that are taken that DOL
21 has, that those be made available, redacted,
22 publicly available so that all parties could

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1 benefit from that. Again, there was no specific
2 response to that.

3 Recommendation number 6 was that we
4 recommend that DOL make -- prospectively make the
5 new change files available online so that claimants
6 could access them. And this actually is tied in
7 with the Recommendation 8, which is that the entire
8 case file be made available to the industrial
9 hygienists and the CMCs so that they have access
10 to all the information that could be relevant.

11 And the response from the DOL is that
12 "The Board has made other recommendations that we
13 believe have the potential to be beneficial to the
14 program, including granting the claimants,
15 industrial hygienists, and contract medical
16 consultants direct access to the case file. As we
17 examine the feasibility of this recommendation,
18 DEEOIC will look at leveraging technological
19 solutions utilized by other divisions within OWCP
20 that will allow this sort of access. DEEOIC will
21 also consider what new procedures, additional
22 resources, contract modifications, and training

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1 will be required." So that is their response to
2 6 and 8, which is that they are kind of thinking
3 about what it means to actually implement those
4 recommendations.

5 And then Recommendation 7, the final
6 one that I haven't discussed so far, is that we
7 recommend that DOL reorganize its occupational
8 medicine resources to pool them so that numerous
9 entities within DOL could draw upon a pool, and this
10 was not specifically addressed by the department
11 in its responses.

12 So let me see if there is anything else
13 in their response which I need to address here.
14 Quote, "With regard to the recommendations, DOL
15 will be issuing detailed responses in the near
16 future." So I am going to be meeting with them soon
17 to discuss, kind of figure out a little bit more
18 about what is involved with review and
19 decision-making around the recommendations, and
20 urging them to move in a timely fashion.

21 I have not been able to pin anyone down
22 to a specific timetable in responses, but I will

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1 continue to try to do that. There are issues.
2 Some of these things that kind of sound
3 straightforward to us, to actually do involves a
4 number of different considerations, some of which
5 we well understand, some of which we probably
6 don't, so it's understandable that there is no
7 specific timetable for addressing these
8 recommendations, but on the other hand, we will
9 push to work with them to make further progress.

10 So Rosie, that is all I have. That is
11 my report.

12 CHAIR SOKAS: So I'd like to just ask
13 if anybody has questions, and I am going to start.
14 So my question to you is it sounds as if there was
15 a positive response to that first recommendation,
16 and in fact, you know, that was already being --
17 or is in the process of being rescinded, which is
18 encouraging. I mean, it suggests that those kinds
19 of recommendations, and I anticipate for example
20 that we will come out of this working group with
21 some additional suggestions that will then be items
22 for discussion at our next full face-to-face

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1 meeting, and what you have just presented suggests
2 that there is a reason to keep doing this -- in other
3 words, that, you know, it doesn't just get tossed
4 in the circular file.

5 And I would suggest that the time frame
6 for the department's response on most of these
7 would be something that gives the Board a chance
8 to think it through, absorb it, you know, reflect
9 on it before our next face-to-face meeting because
10 it does shape how we come up with recommendations
11 then.

12 Did anybody else have -- on the working
13 group have a question for Steve about any of the
14 responses he has given so far?

15 MEMBER VLIEGER: I just have one
16 question, and I don't know if it slipped through
17 the cracks or -- we discussed it at our meeting as
18 well.

19 Circular 1505 is very similar to 1506
20 in that it talks about excluding people from
21 asbestos exposures, and I don't remember if we
22 deferred that for later or included it in a

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1 different subcommittee.

2 MEMBER MARKOWITZ: No. I am sorry, I
3 have to look up the circular again, because if it
4 is the entire circular addressing asbestos, then
5 that will be discussed in the Presumptions Working
6 Group.

7 MEMBER VLIEMER: Okay. All right.
8 That answers my question. Thank you.

9 MEMBER MARKOWITZ: You know, in detail
10 and critically. If it's a variation of the
11 Post-95, then -- but let me look at it and chime
12 in.

13 CHAIR SOKAS: No, I think you are
14 right, Steve. I think that is where it was.

15 MEMBER MARKOWITZ: Okay. Okay.

16 CHAIR SOKAS: Any other questions or
17 comments?

18 (No audible response.)

19 CHAIR SOKAS: Okay. I think we could
20 move right along. Thanks so much, Steve. That
21 was nice and concise.

22 I would like to turn this over to Mr.

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1 Vlieger, Mr. Whitley, and Mr. Domina. Again, this
2 is in follow-up for the public comments that were
3 made at the last full meeting. Faye, do you want
4 to take it over?

5 MEMBER VLIEGER: Yes, I will start. I
6 had computer issues, but I had made hand notes
7 during the public comments on the 19th, and I can
8 go through them, or I can just summarize what --
9 what went on.

10 The -- the flavor of the majority of the
11 comments were that they felt the claims were not
12 handled looking at all of the possible
13 contaminants, that things were limited by what was
14 on the SEM, that the SEM did not explore all of the
15 different variables that were there, including
16 where they worked, what their labor category was,
17 and the processes that were actually there versus
18 what showed up on the SEM.

19 So a number of the comments were based
20 around the concept that there were exposures that
21 were just never considered. Then there were a few
22 outliers that were more around the processing of

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1 their claim, that they didn't understand how things
2 went the way that they did, that the claims process
3 was very slow, that they felt disconnected from the
4 ideas of what Department of Labor was putting
5 forward as causation versus what was going on with
6 their claims.

7 I can read you some of the synopsis from
8 -- this is from the 19th. There were questions
9 about why treatment and travel were not being paid
10 appropriately. When people tried to add things to
11 the SEM, it disappeared and was never added. Labor
12 categories were not listed in the SEM.

13 Toxic exposures as mixtures, not pure
14 chemicals, should be considered. Lack of neutron
15 monitoring at Oak Ridge was one of the claimants.
16 There was a comment about K-25 cross-connected
17 potable water supply to process water and thereby
18 exposed a lot of workers to that.

19 There was a comment that I felt was
20 really interesting, and I don't even know how we
21 get into this: one worker said that he was aware
22 that there were cyanide compounds lining the sewer

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1 lines at Oak Ridge, and when he designed materials
2 that were poured into the sewer, it released
3 cyanide compounds in gases all over the site and
4 into the water -- into the air, so thereby exposing
5 workers.

6 There were some people that talked
7 about the definition of reasonable suspicion
8 versus what is used as more likely as a
9 preponderance of evidence, so they were all -- a
10 lot of it was processing of the claim and how things
11 were justified by the Department of Labor. How the
12 claimant was kept in the loop, a lot of them felt
13 like there was a disconnect and there was no reality
14 between the exposures and what the Department of
15 Labor was reviewing.

16 So those are the summary comments that
17 I have from October the 19th. Garry and Kirk, do
18 you want to take the 18th?

19 MEMBER DOMINA: This is Kirk. I know
20 a couple of things that came up on the first day
21 had to do with the 200-mile travel limit, the people
22 that see a CMC, which is a huge issue, and then also

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1 consequential diseases aggravating and
2 contributing to.

3 And so I don't know on some of the CMC
4 stuff because I know -- I will just speak under
5 workers' comp for Washington, they bring the
6 doctors in, and I understand you've got to be
7 licensed or something in another state, but I mean,
8 I don't know why. For some of these people having
9 to travel great distances, it makes it pretty tough
10 on them.

11 And then I know part of the other part
12 that I heard was with -- they talked about was SEM
13 issues and job titles, and I just want to make a
14 comment about the SEM thing. I received an email.
15 There was a conference call between Department of
16 Labor, Department of Energy, and Department of
17 Energy Richland on November 15th about issues with
18 the SEM about trying to enhance it, and so I got
19 an email on that the day before Thanksgiving, which
20 was a holiday for us, so I didn't see it until the
21 following week.

22 And then I talked to Greg Lewis about

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1 it from Santa Fe on November 30th because there was
2 an advisory board on radiation and worker health
3 there, and I'm going to be a part of this for the
4 Richland one, but the person in Richland that I deal
5 with, we have been playing phone tag a little bit,
6 so we have not been able to catch up with each other
7 on -- because Richland, DOE Richland said they
8 would take the lead on this to try and enhance this,
9 and so I guess that's part of the thing that's
10 coming up in the future.

11 It plays into both this subcommittee
12 and then also the SEM one, so I just wanted to make
13 that comment so people knew that that was coming
14 on, and I don't know if there's anybody from the
15 Department of Labor on the phone that was on that
16 conference call that can comment on this either,
17 so that pretty much concludes what I need to say.

18 MEMBER WHITLEY: This is Garry here.
19 Since I am here at Oak Ridge, I had already talked
20 with a lot of the people that were talking, and that
21 was for those claimants, and what it seems that they
22 feel about the process is that the process is harder

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1 because the claims examiner -- I got one of them
2 in front of me that the claims examiner, even though
3 they have lack of hearing, so they've already sent
4 all the doctor's notes, all of everything that is
5 required, and then they send back a letter, are
6 starting to send back letters now to the doctors
7 that say well be specific, and how do you think this
8 caused that, you know?

9 And so the -- you put the doctor back
10 on the spot to say exactly which chemical that you
11 were around caused the hearing loss? So it is
12 making the process much longer just because of the
13 way they are interpreting -- the claims examiners
14 are interpreting the rules.

15 CHAIR SOKAS: This is Rosie. So what
16 I am hearing, I am just going to kind of see if we
17 can put it into some potential action items for us
18 as a group.

19 So it sounds like -- first of all, I did
20 want to acknowledge both Garry's work, but also the
21 fact that the Ombudsman was at the meeting and that,
22 for a number of individuals who had concerns, it

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1 was very helpful to be able to say here is the
2 person, go speak with him. And that was also true
3 of some of the other DOL people who were there who
4 were immediately able to approach individuals and
5 offer to kind of help, you know, with some of the
6 -- with some of the navigation. So that was -- that
7 I thought was very helpful, and I think we all
8 appreciated that at the meeting and want to make
9 sure that that continues at future public meetings.

10 But to sort of go through some of the
11 things that I just heard reflected now, that one
12 of the huge areas is the concern about the exposure
13 assessment and how exposure assessment is
14 incorporated or not into this whole activity. And
15 obviously, that is one of the main things that our
16 working group is addressing, our subcommittee is
17 addressing, so putting that front and center,
18 recognizing that there is a separate working group
19 for the SEM.

20 So there are a number of areas, and
21 we're going to hear from Mark in a little bit about,
22 you know, some of the -- and I think Faye has already

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1 mentioned some of the issues around trying to get
2 more nuanced exposure assessment conducted by
3 industrial hygienists directly contacting, so that
4 is an area that we can try to move forward on.

5 The other piece I heard was the 200-mile
6 travel limit being expanded. That was a source of
7 hardship for a number of people there, and we have
8 not really taken that up as something that we want
9 to address. And I will put it out there: that does
10 seem to fall into our area for comments, and so we
11 may at the end of this call decide that different
12 people, you know, will take a lead on some of --
13 on developing some thoughts around these
14 particular items so that we can come prepared to
15 the next full meeting with drafted, you know,
16 conversation items that might result in actual
17 recommendations.

18 And then the third thing I am forgetting
19 right now. I am doing a little -- oh, this business
20 about -- that Garry just raised about kind of
21 communicating back with the treating physician and
22 asking for -- I mean, we have had concerns

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1 throughout about the quality of the communication
2 with the treating physician, from the use of some
3 of the terminology that is frankly quite alienating
4 as well as this kind of -- you know, the quote
5 unquote "rationalizing your decision," I mean,
6 which just drives some of us nuts.

7 So I think that as well, and we will get
8 into that later with Carrie in terms of what are
9 the pieces of information that we requested, and
10 what else do we still need to get? But those are
11 three things that I heard right now. I'd like to
12 ask if anybody else, say Mark, Garry, or Kirk, if
13 you've got other things that you want to pull
14 forward from what we just heard to make sure that
15 we don't -- oh, I'm sorry, one last thing.

16 One thing I did remember hearing were
17 the individuals who had problems with the hearing
18 loss, if they didn't have ten consecutive years of
19 exposure, which we all kind of agree was not -- was
20 not justified in the circular, so I think that
21 should definitely be on our list. I know it didn't
22 get discussed right now, but it was one of the items

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1 that came forward in the public testimony.

2 So any other areas for us to take up and
3 move forward with I might have missed?

4 MEMBER JIMENEZ-FRIEDMAN: So I have a
5 concern about these general limitations that are
6 being put on, like all exposures after 1995 are
7 minimal, and this one about the 10 years of exposure
8 for solvent-related contributions to hearing loss,
9 which is medically ridiculous: can we make a
10 general statement as an advisory board that these
11 kind of limitations are not in the interest of
12 making an evidence-based individual decision on
13 causality?

14 CHAIR SOKAS: Steve, I am going to turn
15 that over to you since you have more interaction
16 experience.

17 MEMBER MARKOWITZ: Well, you know,
18 yes, we can make a general recommendation. The
19 problem is whether that will translate properly,
20 because people mean different things by evidence.

21 And, you know, I am sure for instance
22 on the issue of 10 consecutive years with solvents

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1 prior to 1990, there was some evidence that was used
2 to support that decision. So yes, in general,
3 sure, we can make a general recommendation, but I
4 think more specifically, again, on particular
5 issues, I think it will be more effective.

6 MEMBER VLIEGER: This is Faye. And
7 you guys may or may not know this, but the circulars
8 and bulletins came out where they were limiting
9 exposures and limiting people in that labor
10 category to exposures, and the post-95 exclusion,
11 all of those circulars and bulletins came out at
12 about the same time, all using the same rationale
13 that DOE had improved worker safety, and based on
14 the fact that they had produced regulations, not
15 on any audits that proved the same. So I think we
16 are going to end up with the same rationale for all
17 of these limiting bulletins and circulars as we did
18 for 1506.

19 MEMBER JIMENEZ-FRIEDMAN: For
20 example, we could make a recommendation -- this is
21 George -- that those limitations be reflected at
22 the end and not be an overall global statement, but

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1 rather taken on a case-by-case basis when deciding
2 on individual cases, using the SEM and other
3 exposure information.

4 MEMBER MARKOWITZ: Yes, I mean -- Steve
5 Markowitz -- we could, but to direct them back to
6 an incomplete resource that is sometimes
7 inaccurate, you know, raises other issues.

8 MEMBER JIMENEZ-FRIEDMAN: Yes.

9 MEMBER MARKOWITZ: Frankly, if we were
10 able to come up with a more reasonable presumption
11 about the solvent-related hearing loss, that would
12 -- that might be a more efficient way of suggesting
13 the question.

14 CHAIR SOKAS: So Steve, is that
15 something that the other committee is going to do,
16 or should we transfer that over?

17 MEMBER MARKOWITZ: The hearing loss
18 issue, or the --

19 CHAIR SOKAS: The hearing loss issue.
20 I just heard you call it a presumptions question,
21 so --

22 MEMBER MARKOWITZ: Yes. You know,

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1 that is -- I don't know, actually, because it is
2 not an SEM question, really. It is -- nor is it
3 clearly an IH, you know, this committee, so it's
4 kind of cross-cutting.

5 I think it's a prime example of a
6 presumption, so I think we can probably at the
7 moment send it to the Presumptions Working Group.

8 CHAIR SOKAS: Okay, great.

9 MEMBER MARKOWITZ: This will be, you
10 know, the first two weeks in January, and then come
11 back to it by committee if we need to.

12 Let me ask a different question about
13 the 200-mile business, because that is something
14 very specific. And obviously, they went to this
15 200-mile idea because they could not find resources
16 more available locally. That is my guess.

17 So take this on: do we need some data
18 from DOL? In other words, do we need to cite
19 anything, look at anything that would strengthen
20 our approach to this problem of 200-mile limit?
21 And if so, then we should request that before, you
22 know, the next meeting so that we can maybe address

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1 that issue, not just, you know, on the face of it,
2 it sounds ridiculous, 200 miles, but actually have
3 some data to support it.

4 CHAIR SOKAS: So I am going to actually
5 ask Faye and Kirk and Garry as the kind of
6 sub-subcommittee if they wouldn't mind doing that,
7 and I think that's a good idea, you know, to get
8 as much information, maybe data on how frequently,
9 you know, there were problems arising in the past
10 versus now. I mean, whatever you guys want to ask
11 for, but to kind of review that and come up with
12 a -- you know, kind of a framework for discussion
13 and the information needed for it.

14 MEMBER VLIEGER: This is Faye. I can
15 tell you what I heard from claimants here in the
16 Northwest. Many times, this is done because
17 someone at the Department of Labor does not agree
18 with the requirement for home health, and so they
19 get this referee doctor, if you want to call them
20 a referee. That's not the term we use up here.

21 Anyhow, they get this doctor who will
22 look at them, and so they -- they don't want to look

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1 at any of the medical records. They do a one-time
2 assessment of the person in their office and then
3 decide whether or not whatever is appropriate, and
4 many times, it is home healthcare.

5 So the person who is getting home
6 healthcare is limited in many ways, is required to
7 make this travel, and it's an unreasonable thing
8 to require. Many of these people don't drive
9 anymore, have to find someone to take them. And
10 then the distance, you know, is -- and we live with
11 a mountain range in the middle of the state.

12 CHAIR SOKAS: So just to clarify, Faye,
13 and again, Carrie or whoever is on the phone, if
14 you happen to know this, please feel free, and
15 again, it would be helpful for us to know what the
16 requirements were and how they got changed and what
17 they are, for those of us who don't, but again, this
18 is Faye and Garry and Kirk's kind of area of
19 expertise, so I guess if -- I'm losing my thought,
20 I apologize.

21 So it is not what Steve was implying,
22 in other words, that oh, it takes 200 miles to find

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1 a pulmonologist who has expertise in this
2 particular problem or an occupational physician
3 with a particular expertise: it's -- the issue is
4 the use of home healthcare, presumably primary care
5 physicians or rehabilitation medicine physicians
6 at the most, you know, specialized, would be able
7 to do that.

8 So I guess it is an open question: what
9 are the criteria that are used to select people?
10 Why was it felt that the expansion in distance was
11 required? I think those are fairly straightforward
12 questions.

13 MEMBER MARKOWITZ: So what -- this is
14 Steve. My point is that we should frame those
15 questions and pose them to DOL if we want to address
16 this issue.

17 MEMBER VLIEGER: Okay. I got it.
18 This is Faye. I agree we can propose those
19 questions.

20 CHAIR SOKAS: So Faye, you want to
21 restate them?

22 MEMBER VLIEGER: Sure. The question

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1 is -- oh, I'm sorry. The question is primarily
2 what are the -- what are the reasons why the
3 Department of Labor would refer a claimant for this
4 type of evaluation? And then the second primary
5 question is what are the qualifications for the
6 doctor that you are looking for the referral?

7 MEMBER MARKOWITZ: Yes, okay.

8 CHAIR SOKAS: And I would add a third,
9 which is what prompted the change in distance?

10 MEMBER VLIEGER: Oh, the change in
11 distance? Okay.

12 CHAIR SOKAS: Yes.

13 MEMBER VLIEGER: All right. Got it.

14 CHAIR SOKAS: Okay. So those will be
15 reflected in the minutes, and then that is actually
16 -- those are the questions that are going forward
17 then for Carrie to take to DOL.

18 So we have sort of addressed -- we have
19 hearing loss to the Presumptions Working Group, and
20 Steve is going to carry that back to them. We've
21 got the questions that Faye just posed to the
22 Department of Labor, and we'll review and get back.

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1 We are probably not going to focus on the SEM
2 because there is the SEM Committee, but we are going
3 to focus quite a bit, and we can do that maybe in
4 the next -- in not the next one, but the following
5 discussion item, the whole question of the
6 frustration around exposure assessment.

7 Faye, you had mentioned previously the
8 whole question of whether the industrial
9 hygienists are going to be able to interview the
10 workers -- the former workers themselves, and I
11 don't know if now is the time to kind of discuss
12 that a little bit or if you want to defer it to when
13 Mark Griffon is presenting what he sees from some
14 of this.

15 MEMBER VLIEGER: I will defer for now.

16 CHAIR SOKAS: Okay. Great. So we are
17 actually a little ahead of time, which is always
18 lovely. Any other things that we might have missed
19 that should be followed up from the public
20 discussion items last time?

21 (No audible response.)

22 CHAIR SOKAS: All right. Hearing none

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1 --

2 MEMBER WHITLEY: Garry here.

3 CHAIR SOKAS: Sorry?

4 MEMBER WHITLEY: This is Garry. The
5 lady that had -- and I think the ombudsman talked
6 to her, the lady that had like eight or nine
7 inconclusive beryllium tests -- and we discussed
8 a little bit. I think in California, somebody said
9 that after so many inconclusive, it was a positive.

10 We have several of those, and I think
11 we ought to at least ask questions or look at that
12 or something. I mean, you know, I don't know what
13 you do if you had eight or nine inconclusives, and
14 you're still sick.

15 CHAIR SOKAS: So Carrie Redlich was
16 quite adamant about that, and I will turn that over
17 to Steve again because I think it may be something
18 that will come out of either the Presumptions group
19 or -- or something else. Steve, would you want to
20 let us know if that is being addressed?

21 MEMBER MARKOWITZ: Well, we can
22 address that. I mean, the Part B Committee is

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1 going to be looking for work soon.

2 CHAIR SOKAS: Okay. Great, because
3 that was a big issue.

4 MEMBER MARKOWITZ: I mean, on that
5 particular person at the meeting, I can tell you
6 that our former worker program followed up with
7 that person.

8 CHAIR SOKAS: Oh, great.

9 MEMBER MARKOWITZ: And it is actually
10 an important issue to discuss across the former
11 worker programs since we do a lot of beryllium
12 testing, so I will follow up and raise that with
13 Laurie and with the others in the former worker
14 programs, and I will make sure it gets on the plate
15 of the Part B Committee.

16 CHAIR SOKAS: That is terrific.
17 Thanks so much. Thank you, Garry.

18 MEMBER MARKOWITZ: One last thing
19 before we close this out: it does strike me, though,
20 that, you know, we hear the public comments, we
21 listen to them, and then we move on at the meetings.
22 And they are included in the transcript, but maybe

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1 on the Board we should try to figure a way of sort
2 of cataloging them succinctly so that we can make
3 sure that we, you know, come back to them, and that
4 they are not lost.

5 CHAIR SOKAS: Right.

6 MEMBER MARKOWITZ: It's not a specific
7 proposal. I am just throwing out an idea that we
8 should think about.

9 CHAIR SOKAS: No, I think that is
10 really important. I thought that was something
11 that I think we all felt kind of frustrated at the
12 meeting, that, you know, here were people sharing
13 this information, and we couldn't respond
14 immediately, but that wasn't -- you know, that
15 wasn't the way that that was set up.

16 So the -- I think --

17 MEMBER VLIEGER: Just to say, can we
18 just take a little rabbit-hole trip for just one
19 second?

20 Dr. Markowitz, the former worker
21 program, would it be within your purview to
22 discuss, with some of the major players in the

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1 follow-up medical under the Department of Labor's
2 benefit card, in that what I see out of one of the
3 major players many times is the person comes
4 through every two years for their follow-up
5 evaluation, yet nobody connects the dots from
6 year-to-year to make a CBD diagnosis -- is there
7 some way the former worker programs could reach out
8 to some of those major players -- and I will send
9 you an email on this -- to have them be more
10 consistent with their review and their diagnoses?

11 MEMBER MARKOWITZ: When you say "their
12 review," you're talking about the former worker
13 program review, or --

14 MEMBER VLIEGER: No. These are major
15 medical facilities that the Department of Labor
16 allows to do the two-year follow-up for anybody
17 with beryllium sensitivity.

18 MEMBER MARKOWITZ: Well, I mean, that
19 is -- we can follow up off-line, but that -- the
20 former worker programs individually may well be
21 receptive to helping individuals. We're a
22 screening program, you know, offering screening

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1 every three years. We don't -- ones that seem
2 positive, we turn them over to other facilities,
3 and we don't follow them necessarily. So it's just
4 not within our domain. But we can talk about it
5 off-line.

6 MEMBER VLIEGER: Okay. Thanks.

7 CHAIR SOKAS: I mean, so this is just
8 something that --

9 MEMBER GRIFFON: This is Mark Griffon.

10 CHAIR SOKAS: Yes.

11 MEMBER GRIFFON: Just a comment on the
12 follow-up for public comments from the meetings.
13 That is something that we did run over the years
14 in the Radiation Board, and they have a model that
15 we might want to look at in terms of how they do
16 it.

17 They actually report back the next
18 meeting on some of the comments that were made at
19 the previous meeting and whether there was any
20 follow-up from the agency to individuals, because
21 sometimes they ask, you know, specific questions.
22 And we'll just go down, and usually, it's the DFO

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1 that summarizes sort of all the comments, and if
2 there was any action taken by the agency regarding
3 those comments, things like that. And we have a
4 running spreadsheet or database of those. So
5 something, a model we may want to look at and, yes,
6 steal.

7 CHAIR SOKAS: Thanks, Mark. That is a
8 great idea, I think.

9 MEMBER MARKOWITZ: Yes, Carrie, this
10 is Steve Markowitz. If you could locate one or
11 more of those on the Radiation Advisory Board
12 website and send it around, that would be helpful,
13 or maybe Mark can point our way in that direction,
14 so we can see --

15 MS. RHOADS: I can take a look.

16 MEMBER MARKOWITZ: Okay.

17 MS. RHOADS: If you think there's a
18 good one anywhere, anybody, can you send me that
19 one, a particularly good one?

20 CHAIR SOKAS: Mark, can you do that?

21 MEMBER GRIFFON: Yes, I can follow up
22 on that, yes.

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1 CHAIR SOKAS: Okay, great. Thank you.
2 So we're now just exactly on time, I think, and we
3 can move along into -- this is for Carrie now,
4 actually. We're with you in terms of the status
5 of Board requests, and I did have a question for
6 you because when I looked at that -- this is number
7 three that was sent out right before, you know, our
8 face-to-face meeting, it had -- you know, it had
9 a number of charts that were presented that I think
10 were in response to a number of questions, not just
11 one of the other working groups.

12 But the last little tab that was
13 supposed to be in response to our working group,
14 the IH CHC one, I mean, I was kind of puzzled. It
15 was basically a series of two-pagers, and I could
16 not remember if we had asked for it and why we had
17 asked for it, so I apologize. But they didn't seem
18 to be particularly rich in terms of the information
19 contained.

20 MS. RHOADS: So the last tab on the last
21 disk was a series of two-pagers, and you are looking
22 for more information on those topics, or wondering

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1 --

2 CHAIR SOKAS: Well, because I thought
3 what we were asking for was information, so what
4 do the CMCs and the IHs get, and then what do they
5 send back? And -- and that was not what was there.
6 And I might have misremembered, so it is entirely
7 possible I just completely spaced, but -- but so
8 anyway, I will let you just take this part over
9 because I am sure you've got other things to say,
10 but that was the question that came up when I was
11 looking at those.

12 MS. RHOADS: Okay. We can email about
13 that afterwards about exactly what you were
14 expecting, if it wasn't there on the disk.

15 For the other request, just so everyone
16 knows, if you have not gotten your disk yet, we have
17 mailed out a fourth disk on I think Wednesday
18 morning to everybody on the Board. It will come
19 certified mail, like the others, so it might not
20 have gotten there yet.

21 It has on there the latest OHQ draft
22 that the - program has done. It has also the cases

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1 that were requested by the SEM Subcommittee.
2 There are 25 or 26 I think COPD cases, and there
3 is a change on this disk. The previous disks, they
4 had not asked for everything, but they wanted the
5 latest decision and the reports that supported
6 that. On this new disk that is going to everybody,
7 it has all the medicals and all the reports, as we
8 discussed at the last meeting that you thought you
9 needed more of the medical information to look at
10 the cases. So they put all the medical on this
11 disk.

12 And also there was some data requested
13 by the SEM Subcommittee on this disk as well, so
14 you all should be getting that soon.

15 Now for this subcommittee, your last
16 meeting was last summer, and I think that you all
17 have the things that you requested from there
18 except for what Dr. Sokas just asked about. If
19 there is anything else that you think you are
20 missing or that you would like to see, please let
21 me know and I will either help you find it or go
22 and get it from the program if we don't have it

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1 already.

2 But other than that, there are not very
3 many outstanding items. Dr. Sokas did ask for some
4 more information on a couple of the cases that
5 appeared on the third disk, and the program is
6 putting that together. We'll send that out
7 separately when it is together. We did not want
8 to hold up the entire fourth disk for it.

9 CHAIR SOKAS: Thank you.

10 MS. RHOADS: Yes. So --

11 CHAIR SOKAS: Do you have any comments
12 or questions for Ms. Rhoads?

13 (No audible response.)

14 CHAIR SOKAS: Okay. Thank you very
15 much.

16 MS. RHOADS: Sure.

17 CHAIR SOKAS: I think maybe after our
18 -- this next conversation, this next agenda item,
19 we might -- we might have some additional
20 questions. It is not clear to me that having the
21 full record on just the COPD cases are going to be
22 sufficient, but we will see. We will see, and we

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1 may not really have any -- we may not need to see
2 anything other than what you are already
3 collecting, you know, before our next face-to-face
4 meeting, so we'll see what other people say.

5 So I am going to turn this one over to
6 Dr. Griffon and Friedman-Jimenez, and I will have
7 some comments as well, but this is the additional
8 case files that were given in these three that do
9 come up with a bunch of different questions. I did
10 have one little tiny question for Carrie, in case
11 you know this off the top of your head.

12 I mean, one of the things that we had
13 said from the outset was that there is really no
14 need for a family history. I am assuming that that
15 is one of the things that has been deleted on the
16 revised version, but I just didn't -- I haven't seen
17 it, so I was wondering if you happen to know that.

18 MS. RHOADS: I do not know that off the
19 top of my head, so I will check.

20 CHAIR SOKAS: All right. So I am
21 sorry. Mark, George, I am going to turn it over
22 to you right now. George, did you want to start

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1 with any comments you had on any additional case
2 files you looked at, questions --

3 MEMBER JIMENEZ-FRIEDMAN: I couldn't
4 look at any case files because I couldn't find the
5 CDs. Like a good boy, I did not copy them onto my
6 computer, and I don't know where they are.

7 CHAIR SOKAS: Oh, okay. Well, let me
8 get started then and bring Mark into the
9 conversation, because I think a lot of this is IH
10 stuff.

11 So I looked at several of the -- I think
12 the first half of the records that were provided
13 to -- again, it was to another working group, so
14 it was not in response to our particular questions.
15 And just some random thoughts: I mean, you know,
16 there clearly are form letters that go out, and
17 there's a utility to form letters.

18 There is also, unfortunately, you know,
19 I saw a typo in one of them that was "I regret that
20 I could issue" rather than "couldn't issue"
21 approval, so it was in a denial letter, but they
22 kind of somehow mixed that up. So, some of this

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1 is just, you know, are there opportunities for
2 quality improvement, quality assessment?

3 The other thing that struck me pretty
4 strongly with several of the denials was that there
5 might be medical questions that could be raised.
6 There is one, for example, where -- and I am going
7 to turn this over to George -- I'm sorry, to Mark
8 -- just about if there was a laboratory technician
9 who had worked for a number of years, significant
10 amount of time, who had a ton of autoimmune -- was
11 followed in a university rheumatology clinic with
12 a bunch of different autoimmune diagnoses,
13 including lupus, including, you know, inflammatory
14 arthritis, including a number of things, and was
15 rejected on the basis that there -- you know, that
16 there was no credible exposures related to that.

17 One of the concerns I had -- so that's
18 a question for Mark -- one of the concerns that I
19 had, the, you know, this is a partial chart, but
20 it was already 197 pages, right? And there were
21 lots and lots and lots of medical pages from the
22 university, the first bunch of them all about

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1 sinusitis, and, you know, kind of routine stuff
2 before you get into the meat of what the diagnosis
3 has been for years and years and years.

4 So the denial that came through
5 incorporated a reference to a CMC report but did
6 not include that report, and the CMC report
7 basically was that her anemia was attributed to
8 iron deficiency and not related. Well, no one who
9 has followed somebody in rheumatology clinics for
10 20 years is going to attribute anemia in that
11 circumstance to iron deficiency unless there is
12 gross evidence of bleeding someplace, right?

13 So we did have that. One of the things
14 I requested was the CMC report, but the CMC report
15 seemed not to have taken into consideration what
16 the medical evidence was, so there's that whole
17 piece to it.

18 The other piece that was something that
19 I think the earlier recommendation would address
20 is there is also this statement that goes to -- I
21 think it's in a different chart, that we've got the
22 CMC report, and if you request it, we will send it

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1 to you. So it just seems pretty obvious that
2 people should have access to CMC reports. I mean,
3 that should just be an automatic thing.

4 And so if the people aren't getting
5 access through secure port to all of their records,
6 that will be something we need to focus on, but it
7 does remind us that that is something that is
8 useful. So Mark, I am going to turn it over to you
9 in terms of whether you -- what you thought of the
10 information about exposure for that particular
11 case, if you had a chance to look at that one.

12 MEMBER GRIFFON: Yes, Mark Griffon.
13 Yes, I did look at that case, and I mean, I will
14 just speak mainly about what I found that was
15 missing. I don't know that I would -- you know,
16 can make any conclusions or anything like that. I
17 don't think that's our role here anyway.

18 CHAIR SOKAS: Right.

19 MEMBER GRIFFON: But I think the
20 concern I had was that the information that was
21 forwarded to the physician -- I think we talked
22 about this before -- was limited to only the anemia

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1 and the toxic substances that were identified in
2 the SEM that were related to anemia, and all the
3 other diseases were -- I assume that other
4 information was not forwarded to the physician for
5 the final determination.

6 So this gets back to are they getting
7 the whole picture, or are they just getting a --
8 is it getting filtered out ahead of time? The
9 other part I was concerned about was, just as you
10 said, the CMC report was not included, and also I
11 note here in there that when I went through it, I
12 could not find the interview questionnaire. Most
13 of these cases that I looked at had the summary of
14 the interview questionnaire, but I could not find
15 it in this one. I did find a summary of it on page
16 194 out of 197, but not the full questionnaire.

17 So, you know, and I wasn't sure exactly
18 what we had requested and what this represented in
19 terms of the full case file, so that was another,
20 you know, sort of confusion on my part. But I
21 guess, you know, my first -- I guess my most --
22 biggest concern was that the physicians seemed to

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1 have the information that they got sort of filtered
2 down, and made their -- you know, they didn't really
3 look at all the listed immune deficiency diseases.
4 That wasn't included.

5 And I didn't know, Rosie, do you want
6 -- I mean, should I go over some of the others? I
7 mean, I looked at all these cases, not, you know,
8 page-by-page, but I looked at them pretty well, and
9 have comments, if they were appropriate here.

10 CHAIR SOKAS: Yes, I think so, and I
11 have a couple of other comments afterwards on some
12 of the medical aspects of it. One of the points
13 I just did want to make on this particular case as
14 well was that she apparently also got her treating
15 physician from the university to write in letters
16 explaining the relationship between her autoimmune
17 disease with its potential exposures, and those
18 were not included in the record set we received,
19 and those were dismissed by the -- I don't know if
20 they were seen by the CMC, but they were not
21 accepted by the CE.

22 So there's a whole ton of questions

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1 about -- you know, this is a complicated case.
2 Nobody is going to suggest that it is
3 straightforward. But there clearly was a denial
4 made with -- and the question is to what extent was
5 the full complexity of the case actually explored?

6 So Mark, I will turn it back over to you
7 for the other comments that you want to make on
8 other cases.

9 MEMBER GRIFFON: Yes, and I will start,
10 this will be the organization of the files, I am
11 not sure again what we're getting in this -- in the
12 way we're getting the data sent to us, but I wonder
13 if all these case files are just one big PDF rolled
14 together, or if they are separated into, you know,
15 the various pieces. And this is just -- based on
16 what we have done on the other slide, the NIOSH
17 slide, it's a lot easier to look at these records
18 when they're all broken up, so NIOSH breaks up the
19 communications with the claimant into separate
20 folders.

21 They have the dose reconstruction
22 review in separate folders. The DOE records are

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1 separate folders, and there are separate PDFs for
2 all of those. This is maybe nitpicking, but it
3 would be a lot easier.

4 The other point here is that when they
5 do that, if -- when NIOSH finds additional records
6 in the course of their review, they actually -- if
7 they are -- if appropriate, they add them to what
8 is called the Site Research Database, and they are
9 flagged such that they can be used for other cases
10 when appropriate.

11 And I think that's an important thing
12 because, you know, these individual claimants are
13 asked to submit information that they think is
14 pertinent to their case. A lot of times, they will
15 submit these general articles or other studies that
16 have been done related to disease and exposure, and
17 if they just kept the individual's claim file, they
18 never get shared and collected, there might be a
19 whole bunch of COPD studies that are coming in that
20 might be useful to inform other cases, and they are
21 not being added over the full population of claims
22 that come in. So it's more than just organizing

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1 the files. You know, it is how they can be used.

2 The other thing, you know, when I went
3 through this --

4 MEMBER MARKOWITZ: Mark? Mark, I just
5 --

6 MEMBER GRIFFON: Go ahead.

7 MEMBER MARKOWITZ: Before you move on,
8 I just want to support this idea of organizing the
9 files properly. It is not nitpicking at all. They
10 may have -- we don't really know how they do it,
11 and it may -- for us to look at it, they may have
12 merged them all into a single PDF for convenience
13 --

14 MEMBER GRIFFON: Right. That's what I
15 wasn't sure on, yes.

16 MEMBER MARKOWITZ: One convenience,
17 but think of the IH and the CMC. I think we
18 advocate them having access to the whole file. And
19 they need an organized file to look at, so it's not
20 a nitpicking issue.

21 MEMBER GRIFFON: I just -- you know, I
22 wasn't sure whether it's organized internally and

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1 we just got sort of everything merged, like you
2 said, so I --

3 CHAIR SOKAS: So that's a good question
4 for Carrie, if she -- you know, to let us know what
5 the standard organization looks like and how it
6 goes out to people.

7 MEMBER GRIFFON: And I think it comes
8 -- you know, it comes up in some of these files that
9 I looked at because different ones are missing
10 different pieces, and it makes you wonder why, you
11 know? For instance, there was one that was
12 entirely based on the radiation dose, the PoC. I
13 actually cross-referenced this -- well, anyway,
14 the PoC was 54 percent, and yet the dose
15 reconstruction summary, the IREP report, was not
16 in this file, whereas it was in several other files.
17 And so it made me wonder, like, you know, how these
18 are all organized.

19 There is also -- you know, in some of
20 the letters, I think it's probably in all of the
21 letters, there's boilerplate language -- or at
22 least in all the denial letters -- the boilerplate

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1 language when it talks about if this case was based
2 on radiation dose -- and just bear with me for one
3 second. I've got to find it so I can read it,
4 because this is -- this is at least troubling to
5 me.

6 (Pause.)

7 MEMBER GRIFFON: It says, and I am
8 quoting here, "If the claim was denied because a
9 claimed cancer was not causally related to
10 work-related exposure to radiation and you can
11 identify either a change in the PoC guidelines, a
12 change in the DR" -- dose reconstruction --
13 "methods, or an addition of a class of employees
14 to the special exposure cohort, you may also
15 request a reopening of the claim."

16 I am struck by -- I am assuming, and I
17 know it happens on the NIOSH side, that any time
18 there is an SEC, they go back and they do a program
19 evaluation review where they look through all the
20 previously decided cases and make sure that they
21 don't affect any of those cases, and if they do,
22 you know, they'll add them. So in other words,

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1 it's not up to the claimant --

2 CHAIR SOKAS: Right.

3 MEMBER GRIFFON: -- to keep track of
4 these methods changing and all this stuff, but
5 rather if the agency changes the methods, they
6 should automatically reassess previous cases. So
7 I hope -- I just was struck by that language and
8 concerned by that.

9 CHAIR SOKAS: So that is a request also
10 then for Carrie, to see if that language is still
11 being used, and if it is, maybe that's a
12 recommendation we could make to change it, and what
13 the procedure then is if there's a new SEC. How
14 does DOL handle that?

15 MEMBER GRIFFON: Right. And then
16 there is another case in the list of cases that we
17 reviewed, and this follows this last boilerplate
18 language that I described. There was a case in
19 ones that I reviewed that was denied, and that, you
20 know, it made me look close because it was a Hanford
21 case in a certain time period which I was almost
22 sure was an SEC time period.

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1 I looked at the NIOSH website, and it
2 is an SEC time period, so everything I have in that
3 claim file suggests that it was denied, and I would
4 hope it got reevaluated. So that's another reason
5 to bring this up. I think --

6 CHAIR SOKAS: So Mark, I think if you
7 send the information to Carrie, she is looking
8 stuff up on those other cases that I requested, you
9 know, just to see if that case was reopened.

10 MEMBER GRIFFON: Right, right. And
11 then the last, I guess I'm sort of -- you know, these
12 are pretty all over the place. I am sorry.

13 But the last thought I have was on the
14 questions of consistency and fairness: I know one
15 of the cases I looked at, you know, there are places
16 in here, and actually the radiation side of the
17 program is looking at this now too, the question
18 of -- there is a lot of -- necessarily, there's a
19 lot of areas where there is professional judgment,
20 and so when I saw this one case that we had in this
21 group, it was a COPD case, and it came down to not
22 a question of whether there was exposure, but a

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1 question of the frequency and sort of significance
2 of the exposure. And the person doing this review
3 determined that it was not very significant, and
4 the claim was denied.

5 And I wonder if, given to another claims
6 examiner, if they would have come to a different
7 conclusion, you know? So it's that question of how
8 does the program assure, at least to the extent,
9 you know, practicable, consistency between and
10 across different claims examiners? And, you know,
11 that's --

12 CHAIR SOKAS: Would this -- so there
13 was a COPD case that I was looking at that I was
14 struck by that, Mark, it might be the same one,
15 where they went to a medical review, but they were
16 told -- the medical review explicitly said that
17 because the exposure wasn't enough, you know, the
18 information about exposure was not -- was not
19 enough for them to make a determination that the
20 COPD was related, and this was after COPD had been
21 identified as one of many, you know, kind of
22 different things to go forward with, and they got

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1 denied on everything else. They went forward with
2 a request to evaluate the COPD, but it was denied
3 on the basis of the exposure assessment, but you
4 couldn't tell from the chart how much exposure
5 assessment had really taken place.

6 MEMBER GRIFFON: Right. And another
7 COPD case in the group was approved, and I saw no
8 basis for re-exposures, you know what I mean? I
9 didn't see any -- not that it doesn't exist, but
10 it wasn't in the file that we reviewed, anyway.
11 There didn't seem to be any basis at all, just
12 mention of the site of the job, that sort of thing,
13 and it was approved for COPD. So I want -- you
14 know, that raised a consistency question in my
15 mind.

16 CHAIR SOKAS: So I'd like to turn this
17 back to the question that Faye raised earlier about
18 the suggestion that the industrial hygienist be
19 able to actually follow up with the person and
20 interview them, or other approaches to trying to
21 get better exposure assessment into the decision
22 process. And Mark, I don't know if you want to

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1 address that now or if anybody else on the
2 subcommittee wants to discuss that.

3 MEMBER GRIFFON: I will let others
4 chime in.

5 MEMBER MARKOWITZ: This is Steve
6 Markowitz. One of the things we need to do -- we
7 need to learn about is with the expansion of the
8 IH contractor work, which is relatively recent,
9 exactly what's happening: how is the use of
10 industrial hygienists changing? And what goes to
11 the IH is what are they relying upon? Whatever
12 understanding is -- could be available about what
13 is happening with the IH assessment, I think that
14 would -- we should request that from DOL.

15 CHAIR SOKAS: So let me phrase that,
16 then. So we're looking for the invoice that goes
17 to the industrial hygienist, and then the report
18 that the industrial hygienist makes and the
19 information that then gets used from that report,
20 and how it may have changed lately with the new
21 additional personnel and contracted people?

22 MS. RHOADS: Okay, thanks.

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1 CHAIR SOKAS: And related to that, I
2 also want to make sure that -- and I think we've
3 done that in the past a little bit, but in addition
4 to the specific cases that we have here, I think
5 having the full cases on this fourth disk might be
6 enough, but the question really is again looking
7 at -- and we have had some in the past, but the
8 question is what does the CMC get -- maybe two or
9 three cases where we get, what got sent to the CMC,
10 and then what the CMC sent back?

11 MEMBER VLIEGER: This is Faye. I just
12 have a kind of corollary. The information changes
13 or guidelines change on how we're going to look at
14 the claim. For example, now we've had this
15 circular rescinded, 1506 is rescinded.

16 MEMBER MARKOWITZ: In January, Faye.

17 MEMBER VLIEGER: Right, okay. But is
18 the Department of Labor planning on going and
19 looking at all the claims that were denied because
20 of 1506 guidelines?

21 I know they do it for -- like Mark was
22 saying, I know they do it for changes in SEC status

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1 where they go through a non-SEC -- from a non-SEC
2 to an SEC claim. They're supposed to go back and
3 have a way of recouping that. Are they going to
4 do it now for the claims that were denied under
5 1506? I guess that's a question we need to put to
6 the Department of Labor.

7 CHAIR SOKAS: Yes.

8 (Pause.)

9 MEMBER VLIEGER: By the lack of
10 enthusiastic responses, I think oh, that this is
11 the uh-oh type of question.

12 (Laughter.)

13 MEMBER MARKOWITZ: Well, it is going to
14 be challenging, because rescinding that circular
15 does not translate into -- that people in fact had
16 exposures. It just opens the question, whereas
17 movement from a non-SEC to an SEC, you know,
18 categorically changes how a claim is looked at,
19 right? So it's a great question, it's just a very
20 difficult one.

21 CHAIR SOKAS: It's a hard one. So let
22 me actually wrap it into another question, because

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1 what I am concerned about reading some of these
2 cases, I mean, you know, the approvals -- Mark is
3 right. I mean, there's some that go through, and
4 you're not sure what the basis was, but the denials
5 are the ones obviously we focus on, right, I mean,
6 to be blunt about it.

7 And in several of the denials, I mean,
8 I think there are medical questions that get
9 raised. There are exposure assessment questions
10 that get raised, and so it raises the question about
11 review: the review that was carried out by the
12 Department, that February, you know, kind of review
13 was really a process review. It was not an outcome
14 review. And so the question really is should there
15 be -- or should we come up with recommendations for
16 a review process that would randomly pick every
17 third denial or something like that and have a
18 second group of eyes looking at it?

19 Because again, from the ones I looked
20 at, I raised some questions about the autoimmune
21 one. I raised some questions, you know, about the
22 exposure for the COPD. There's others. There's

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1 the consequent illness, if someone becomes weak
2 following tamoxifen for an approved breast cancer,
3 does the resulting type 2 diabetes, you know,
4 follow from that? I mean, those are all questions
5 that I think we could debate and discuss, but it
6 would be helpful to have somebody talking about
7 that in the -- as a quality check, you know, kind
8 of an every third case or every fifth case gets a
9 quality check, even into typos that, you know, kind
10 of go out the door.

11 And not that there were a lot of those.
12 I don't want to imply that at all. But that it
13 might not be a bad idea to have that sort of a
14 quality check conducted before -- and I know there
15 are lots of stages and steps to these processes,
16 so I am not implying that there is none of that,
17 but when we asked about, you know, kind of the
18 quality assessment, again, it was very clear that
19 what had been done and shared with us was process,
20 so maybe this is a question for Carrie.

21 With the IH physician onboard and all
22 of that, are there plans for quality review of the

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1 outcomes of the determinations? And maybe share
2 those plans with us. That would be helpful.

3 MS. RHOADS: Okay.

4 MEMBER MARKOWITZ: Well, this is Steven.
5 You know, one thing that I don't think we have done
6 yet is DOL has provided us with audits of the
7 industrial hygiene and the CMC. It's on the
8 website. And we have also been provided with
9 statement of work from the contractors who do this.
10 I am not sure that we have actually reviewed those
11 and discussed them, because that is kind of the
12 entry point into pushing further on the quality
13 assessment.

14 CHAIR SOKAS: So Steve, I probably
15 missed those, but are those separate from that
16 February review that took place across the country?

17 MEMBER MARKOWITZ: You know, they are
18 on our meeting website. I am just bringing them
19 up here. There's a statement of work for the CMC.

20 CHAIR SOKAS: Right.

21 MEMBER MARKOWITZ: It's the first --

22 (Simultaneous speaking.)

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1 MEMBER MARKOWITZ: -- or whatever, the
2 statement of work for the IHS. There's CMC audit
3 findings 2015 --

4 CHAIR SOKAS: Yes, that didn't help.

5 MEMBER MARKOWITZ: Right. Anyway,
6 the question is whether we need to even briefly
7 review those things to make sure that --

8 CHAIR SOKAS: So if those are the three
9 things you're talking about, those are not helpful
10 for the question I am asking.

11 MEMBER MARKOWITZ: Okay. Okay.

12 CHAIR SOKAS: I mean, if there is
13 something new, I easily could have missed it, but
14 that 2015 CMC audit was really, you know, really
15 a process audit.

16 MEMBER MARKOWITZ: Right, right, okay.

17 CHAIR SOKAS: And we heard at the
18 meeting I think that there was an entire year that
19 went by when nobody had like a third opinion, you
20 know what I mean? That the second opinions and
21 third opinions are not used very often, so I think
22 we -- I don't think it has been happening. It might

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1 now be happening given the enrichment of, you know,
2 more IHs and having a physician back in place, so
3 it may well be that there are plans to do that or
4 that it has started already, so that's the question
5 I would pose, Carrie, you know, is are there plans
6 now for the kind of quality assessment that really
7 takes place looking at the medical determination
8 for the IH information the way it was gathered from
9 an IH or a medical perspective?

10 MS. RHOADS: Okay.

11 CHAIR SOKAS: Thank you. So we are --
12 any additional comments on these? I think the case
13 files are incredibly helpful for, you know, kind
14 of identifying issues. I wanted -- we've got a
15 final 10 minutes now for all of us to decide, you
16 know, anything else that we haven't talked about
17 or any follow-up or action items that we haven't
18 already expressed.

19 MEMBER MARKOWITZ: Well, this is
20 Steve, and I mean this material which was given to
21 us, item number five, which I think falls within
22 this committee because it is labeled Industrial

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1 Hygiene and CMC Subcommittee --

2 CHAIR SOKAS: Those are the ones that
3 are two-pagers that have nothing on them.

4 MEMBER MARKOWITZ: No, these are the
5 development letters, the ten treating physicians.

6 CHAIR SOKAS: They were -- oh, maybe
7 not. Was this in the disk, the third disk?

8 MEMBER MARKOWITZ: Yes, yes.

9 CHAIR SOKAS: Yes. The last item on the
10 third disk that is labeled IH/CMC, I looked through
11 all of those and found them to be remarkably
12 unhelpful. That is why I was asking Carrie to remind
13 me what that was supposed to represent and what we
14 had asked for, because it didn't really have much
15 information. And that was -- the one piece that
16 was interesting was where they were telling people,
17 kind of haranguing them about the 10 continuous
18 years of exposures to solvents to prove that there
19 was -- but that's -- but that to me was not an
20 enlightening -- I mean, maybe I am reading it wrong,
21 right?

22 MEMBER MARKOWITZ: Well --

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1 CHAIR SOKAS: But they were very short.
2 One I think was three pages, and the -- it just,
3 it served to remind me that we need to deal with
4 this hearing loss issue because -- and they
5 expressed it differently to different clinicians.
6 So anyway.

7 MEMBER MARKOWITZ: Well, you know, let
8 me just say that I looked at a bunch of these, and
9 first of all, most of them are not letters to
10 treating physicians, at least in -- that's what
11 they are labeled as, but they are mostly letters
12 to claimants.

13 CHAIR SOKAS: Yes.

14 MEMBER MARKOWITZ: And some of them are
15 asking for more medical information, so I don't
16 know whether that's just a misunderstanding or that
17 DOL doesn't communicate with the treating
18 physician directly, it's all done through the
19 claimant, and the claimants ask, you know, find
20 this. What I found --

21 CHAIR SOKAS: Well that is a good
22 question, actually.

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1 MEMBER MARKOWITZ: But what I found,
2 and they covered more than just hearing loss --

3 CHAIR SOKAS: No, I know.

4 MEMBER MARKOWITZ: But anyway, since I
5 looked at them and since they seemed relevant, I
6 have to say that the quality of these letters is
7 really quite lacking. They were far too
8 complicated. The language is way too confusing.
9 They were highly repetitious. People should look
10 at these letters, even briefly, because --

11 CHAIR SOKAS: I agree.

12 MEMBER MARKOWITZ: -- they are
13 eye-opening, actually.

14 CHAIR SOKAS: So that's a question --

15 MEMBER MARKOWITZ: Yes, I am sorry, I
16 realize that Faye and Kirk and Garry may have seen
17 these letters before -- yes, I think you have --
18 but it's -- take a look, the rest of us.

19 CHAIR SOKAS: And Carrie, I mean, that
20 sort of gets back to an earlier question, but if
21 you could again figure out what those letters are
22 meant to do, because it didn't seem to be in

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1 response to a request for us. Or maybe there was
2 a miscommunicated request from us. But what Steve
3 is suggesting is that given that we already have
4 them, what actually is the purpose of them? Because
5 they are kind of unhelpful.

6 MS. RHOADS: I will go back and mark
7 what they put into that folder with the requests
8 that were made.

9 CHAIR SOKAS: But also, the separate
10 piece is, you know, whether or not that was, you
11 know, kind of a miscommunication. What those are
12 actually meant to do, what their purpose is and who
13 receives them and why?

14 MEMBER MARKOWITZ: Well let me just say
15 what I suspect is that these are letters to
16 claimants in which the claimants ask for additional
17 information from their providers. It can be
18 impairment, it can be causation, it can be
19 diagnosis. And so they aren't -- they are labeled
20 in the table of contents as letters to medical
21 providers, but they look like letters to claimants
22 requesting more medical information. Frequently

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1 they contain requests for additional information
2 --

3 (Simultaneous speaking.)

4 MEMBER MARKOWITZ: -- medical.

5 MEMBER WHITLEY: Garry here. I'm
6 looking at this one in Projects. Sometimes, they
7 send a letter back to the claimant saying -- and
8 a copy of the letter back to the doctor, treating
9 physician, asking for more information or asking
10 to be specific about what chemical or whatever.
11 But my question is on that, the thing about that
12 is if the claims examiner does that, and they don't
13 get a letter back from either the doctor or the
14 claimant that satisfies what they are looking for,
15 and they then -- you know, if you don't do that in
16 30 days, they will recommend that they close the
17 case.

18 Does that case go anywhere else? Does
19 anybody else look at that case after that, or does
20 the claims examiner make the final call that I don't
21 think there is enough information?

22 MEMBER VLIEGER: My experience, this

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1 is Faye, is that no, they don't, because their
2 consideration is that there was inadequate
3 evidence to further the claim, and so they
4 recommend the denial, and in the statement of
5 accepted facts, it will say well they didn't answer
6 us, and there's not sufficient evidence, so that
7 is why we are recommending denial. That is
8 paraphrasing a four-page letter.

9 But you will see many claims like that
10 because the workers submitted them and they said
11 they consider it adequate, but the claims examiner
12 was the final word on it, and the claims are
13 reviewed by the supervisors. If they think there
14 is inadequate evidence, they have the ability to
15 forward the claim with a recommended decision to
16 deny.

17 MEMBER WHITLEY: I agree. That is
18 what I thought was happening, but I just wanted to
19 be sure.

20 CHAIR SOKAS: So my ask, because we've
21 got two minutes left, I want to ask Mark if he would
22 kind of moving forward -- and maybe, you know, maybe

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1 work with Faye on, you know, kind of
2 recommendations for exposure assessments, whether
3 we need more information, or, you know, how to
4 handle that. We already have Faye, Garry, and Kirk
5 going to be working on the 200-mile question.

6 I would also propose that George and I
7 might want to look at, you know, the medical review
8 process for quality assurance, if, you know, we
9 find additional information. Does that sound like
10 we've got our action items covered? Oh, and then
11 the hearing loss that Steve you are going to the
12 Presumptions group.

13 MEMBER MARKOWITZ: Right.

14 CHAIR SOKAS: Any other action items we
15 need to think about?

16 MEMBER MARKOWITZ: Well, whether you
17 want to have another call before our meeting at the
18 end of March.

19 CHAIR SOKAS: Yes. Well, it depends,
20 yes. We can think about that off-line.

21 MEMBER MARKOWITZ: All right.

22 CHAIR SOKAS: All right. We are at the

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1 hour, or the half-hour. Any last comments? Thank
2 you, everybody, and thanks to Carrie and everyone
3 who -- who has been working so hard on this. Any
4 last-minute comments or thoughts?

5 MEMBER JIMENEZ-FRIEDMAN: This is
6 George. I apologize for not being prepared for
7 this. I am moving one office, and things are in--

8 CHAIR SOKAS: Oh, no worries, we'll get
9 you, don't worry. Thank you.

10 All right, everybody. Well, have a
11 wonderful holiday season.

12 (Whereupon, the above-entitled matter
13 went off the record at 1:30 p.m.)

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