UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

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WORKING GROUP ON PRESUMPTIONS

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MEETING

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TUESDAY,
JANUARY 10, 2017

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

MEMBERS

SCIENTIFIC COMMUNITY:

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

MEDICAL COMMUNITY:

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

CLAIMANT COMMUNITY:

FAYE VLIEGER
GARRY M. WHITLEY

DESIGNATED FEDERAL OFFICIAL:

CARRIE RHOADS

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

1:04 p.m.

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

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

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

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

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

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

CHAIR MARKOWITZ: Here.

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

MEMBER CASSANO: Here.

MS. RHOADS: Ms. Faye Vlieger?

MEMBER VLIEGER: Here.

MS. RHOADS: Dr. Leslie Boden?

MEMBER BODEN: Here.

MS. RHOADS: Mr. Garry Whitley?

MEMBER WHITLEY: Here.

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

Dr. John Dement?

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

MS. RHOADS: Okay.

Okay, Dr. Dement?

MEMBER DEMENT: Yes, I'm here.

MS. RHOADS: And, Dr. Ken Silver?

MEMBER SILVER: Here.

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

In the room with me today is Melissa

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

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

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

The Board's website can be found at dol.gov/OWCP/energy/regs/compliance/advisoryboard.htm.

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

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

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

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

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

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

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

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

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

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

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

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

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

Also, although we --

(Telephonic interference.)

MEMBER CASSANO: Hello?

CHAIR MARKOWITZ: We just lost her.

MEMBER CASSANO: We certainly did.

(Whereupon, the above-entitled matter

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

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

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

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

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

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

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

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

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

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

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

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

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

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

with significant uncertainly about certain elements that are needed to make decisions.

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

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

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

MEMBER BODEN: Thanks, Steven.

This is Les Boden.

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

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

program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

signs and test results.

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

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

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

CHAIR MARKOWITZ: Thanks, Les.

This is Steven Markowitz.

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

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

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

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

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

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

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

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

CHAIR MARKOWITZ: Les, you want to

mention rebuttability or --

MEMBER BODEN: Yes, actually, sure.

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

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

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

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

CHAIR MARKOWITZ: Thanks.

Steve Markowitz.

Any comments on Les' discussion?

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

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

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

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

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

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

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

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

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

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

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

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

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

MEMBER BODEN: So, this is Les.

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

CHAIR MARKOWITZ: Other comments?

(No audible response.)

CHAIR MARKOWITZ: Okay. Thank you, Les.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

equitable compensation.

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

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

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

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

CHAIR MARKOWITZ: Correct. That's --

MS. RHOADS: Okay.

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

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

They defined certain exposures --

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

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

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

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

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

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

tunnels and locations specified.

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

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

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

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

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

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

And, for the next slide, for instance,

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

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

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

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

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

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

I think it's years old is my hunch.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And, the, bulletin -- the circular,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

moment and open it up for comments.

MEMBER BODEN: Hi, this is Les. Hello?

CHAIR MARKOWITZ: Yes, I can hear you.

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

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

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

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

MEMBER CASSANO: Yes. This is Tori.

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

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

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

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

MEMBER DEMENT: Hi, this is John Dement.

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

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

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

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

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

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

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

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

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

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

MEMBER WELCH: This is Laura Welch.

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

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

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

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

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

CHAIR MARKOWITZ: Yes, this is Steven.

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

MEMBER WELCH: Yes.

CHAIR MARKOWITZ: Other comments?

MEMBER WHITLEY: Garry here.

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

(Telephonic interference.)

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

that 1995 circular.

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

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

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

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

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

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

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

CHAIR MARKOWITZ: This is Steven.

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

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

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

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

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

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

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

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

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

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

And, then, finally, the issue of the

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

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

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

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

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

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

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

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

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

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

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

to help with the processes for their review.

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

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

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

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

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

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

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

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

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

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

MEMBER DEMENT: This is John Dement.

I agree with the issue of not requiring

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

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

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

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

presumption criteria.

CHAIR MARKOWITZ: This is Steven.

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

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

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

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

MEMBER WELCH: Steven, this is Laura.

I think, you know, that the evidence on

it would be somewhat based on the specific occasion.

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

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

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

CHAIR MARKOWITZ: Much better.

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

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

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

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

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

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

MEMBER DEMENT: Yes, this is John Dement.

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

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

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

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

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

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

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

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

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

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

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

MEMBER WELCH: This is Laura again.

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

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

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

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

MEMBER CASSANO: I think, to a certain

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

CHAIR MARKOWITZ: This is Steven.

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

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

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

to get in the door.

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

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

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

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

So, you don't need the medical person

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

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

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

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

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

But, I think it can be --

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

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

I'm just trying to get --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

cancer, obviously.

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

MEMBER CASSANO: Sure.

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

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

MEMBER BODEN: This is Les.

I was thinking along similar lines to

Laura. Was that Laura who was talking before?

MEMBER CASSANO: This is Tori.

MEMBER BODEN: No, right before you.

MEMBER CASSANO: Yes, that was Laura.

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

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

MEMBER CASSANO: I agree.

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

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

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

MEMBER DEMENT: John Dement.

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

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

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

asbestos exposures related to a given disease.

MEMBER WELCH: That makes sense.

CHAIR MARKOWITZ: Yes, that's interesting.

MEMBER WHITLEY: Garry here.

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

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

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

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

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

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

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

CHAIR MARKOWITZ: This is Steven.

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

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

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

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

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

going to resolve them.

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

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

(No audible response.)

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

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

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

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

that exists.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

You think there are any improvements in this?

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

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

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

MEMBER WELCH: This is Laura Welch.

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

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

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

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

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

CHAIR MARKOWITZ: This is Steven.

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

MEMBER VLIEGER: This is Faye.

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

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

CHAIR MARKOWITZ: This is Steven.

That's interesting because this

bulletin would appear to intend to circumvent that.

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

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

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

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

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

MEMBER VLIEGER: This is Faye again.

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

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

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

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

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

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

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

MEMBER VLIEGER: this is Faye.

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

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

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

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

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

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

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

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

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

You know, that seems pretty broad.

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

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

MEMBER CASSANO: Yes, and --

CHAIR MARKOWITZ: This is Steven.

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

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

But, I think, you know, maybe actually

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

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

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

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

Does that make any sense?

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

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

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

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

CHAIR MARKOWITZ: So, this is Steven.

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

MEMBER DEMENT: This is John.

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

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

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

CHAIR MARKOWITZ: Good idea.

Any final comments on asthma before we move on?

(No audible response.)

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

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

CHAIR MARKOWITZ: Okay.

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

MEMBER CASSANO: Yes.

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

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

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

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

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

But, I don't --

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

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

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

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

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

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

MEMBER WELCH: Yes. Partly, what I

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

(No audible response.)

MEMBER WELCH: I guess so.

CHAIR MARKOWITZ: We can hear you.

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

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

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

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

presumptions.

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

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

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

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

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

rather than COPD.

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

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

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

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

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

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

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

MEMBER DEMENT: Yes, it's five --

MEMBER WELCH: And, then --

MEMBER DEMENT: But it doesn't have to

be continuous, but five years of total exposure.

CHAIR MARKOWITZ: Of total DOE exposure or --

MEMBER DEMENT: No, just --

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

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

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

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

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

five, then they go forward for an individual review.

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

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

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

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

CHAIR MARKOWITZ: Right.

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

exposures.

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

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

CHAIR MARKOWITZ: This is Steven.

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

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

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

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

I'm not talking about the length of time

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

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

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

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

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

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

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

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

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

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

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

diagnosis and then look at a list of job titles.

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

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

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

MEMBER DEMENT: Yes.

CHAIR MARKOWITZ: Actually, the same questions.

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

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

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

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

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

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

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

(No audible response.)

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

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

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

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

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

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

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

that on the call at that time.

(Simultaneous speaking.)

MEMBER VLIEGER: This is Faye.

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

Go ahead, Faye, I'm sorry.

MEMBER VLIEGER: This is Faye.

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

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

So, the air monitoring that they did was

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

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

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

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

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

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

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

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

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

MEMBER WELCH: Yes.

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

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

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

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

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

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

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

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

MEMBER WELCH: This is Laura.

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

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

Any other comments, questions?

(No audible response.)

CHAIR MARKOWITZ: Okay. So --

MEMBER WHITLEY: Garry here.

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

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

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

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

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

but that committee is addressing them.

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

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

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

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

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

MEMBER WELCH: Steven, can you clarify

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

CHAIR MARKOWITZ: Right, right. Yes.

MEMBER WELCH: It's a little unclear.

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

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

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

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

MEMBER VLIEGER: This is Faye.

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

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

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

CHAIR MARKOWITZ: Okay.

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

have coming in.

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

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

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

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

CHAIR MARKOWITZ: Yes, this is Steven.

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

MEMBER WELCH: It may represent all the

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

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

CHAIR MARKOWITZ: Right.

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

MEMBER VLIEGER: This is Faye.

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

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

MEMBER WELCH: That would be great.

CHAIR MARKOWITZ: Yes, that'd be great.

MEMBER WELCH: And, I think probably good.

CHAIR MARKOWITZ: Other comments?

(No audible response.)

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

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

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

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

Does that sound reasonable?

MEMBER VLIEGER: This is Faye.

It sounds good to me.

CHAIR MARKOWITZ: Okay. So, any closing comments?

(No audible response.)

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

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

CHAIR MARKOWITZ: Okay, great.

Okay, thank you very much.

MS. RHOADS: Thanks everybody.

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