

1 make it happen. But my IT folks tell me that  
2 there's a number of issues associated with putting  
3 that new process -- flow that you saw and making  
4 it work the way we want it to work and making sure  
5 the numbers are built and done in an accurate  
6 manner. So we're testing that piece right now,  
7 and before it goes on the web site we want to make  
8 sure it reports what we want it to report and we  
9 don't confuse people or give them misinformation.  
10 So I think in the next few weeks you're going to  
11 see a multiple number of changes on our web site  
12 and I think they'll be more informative than we've  
13 been in the past, and I hope they'll be well-  
14 received.

15 DR. ZIEMER: Let me insert a question here  
16 and then I'll come back. My question is along the  
17 lines of manpower issues, and it may be that Dr.  
18 Toohey will have to help answer it, but now that  
19 you're at a place where you're sort of cranking  
20 out a goodly number of dose reconstructions and  
21 kind of getting ahead of the backlog, how are we  
22 doing manpower-wise in having dose  
23 reconstructionists available to actually handle  
24 the flow?

25 MS. DIMUZIO: Yeah, Dick, do you want to -- I

1 mean -- I know approximately how many staff you  
2 have, but...

3 DR. TOOHEY: That's okay. That's why I come  
4 to these meetings.

5 Dick Toohey, ORAU. We have -- let's see, 20  
6 full-time and three or four part-time external  
7 dose reconstructors, and we feel that's adequate.  
8 That -- that's going very well.

9 We have about the -- half a dozen full-time  
10 and 20 part-time internal dose reconstructors. As  
11 I'm sure the health physicists on the Board are  
12 well aware, that's a rarer breed. And to be  
13 honest, right now that's where we're encountering  
14 a bit of a bottleneck. More of the claims are  
15 needing detailed internal dose reconstruction than  
16 we anticipated. We've developed some grouping  
17 methods which basically looks at do they actually  
18 have positive bioassay results in their monitoring  
19 data, how -- any of these results exceeding the  
20 MDA, are there incident reports or things  
21 indicative of an intake or a wound or something  
22 like that. And as it's turning out, a higher  
23 fraction of the cases really need to be handled by  
24 experienced senior internal dosimetrists, and  
25 we're short on those people. So we've taken a

1 two-pronged approach. One is to try to find more.  
2 And to be honest, I'm not optimistic we will --  
3 can find a whole bunch more available. And the  
4 other way is continuing to develop some more  
5 graded approaches to doing internal dosimetry so  
6 that more of the cases can be adequately handled  
7 by less experienced internal dosimetrists.

8 We're also looking at some improvements in  
9 the IMBA software package and things like that.  
10 There are still some exposure circumstances where  
11 the program can take an inordinate amount of time  
12 to do a dose calculation, like three hours or  
13 something like that. And we're working with Tony  
14 James to resolve and improve some of those issues.  
15 But basically we're doing everything we can to get  
16 more internal dosimetry capability available.

17 **DR. MELIUS:** I'm getting to the end of my  
18 questions. In -- again, I'd also like to  
19 congratulate Larry and the staff for the lines  
20 crossing in the right direction now. I think that  
21 is a, you know, significant achievement and I  
22 really think you -- and it's good. It's good for  
23 the overall program and for the claimants out  
24 there to know that we're starting to eat into the  
25 backlog.

1 I do think it would be helpful for us as a  
2 Board, and I also think for you in these meetings,  
3 to present some of your projections. Where --  
4 where are things going, where do you think -- what  
5 will happen over the next quarter or so forth?  
6 And -- and where issues like the one that Dick  
7 Toohey just mentioned are coming up that may slow  
8 down certain cases, but -- 'cause I -- 'cause I  
9 think, if I understand the process and this data  
10 so far, you are -- you're sort of accelerating the  
11 rate at which you're doing dose reconstructions,  
12 so I think the line's going to keep going in a  
13 very positive direction. We don't know the claims  
14 coming in, obviously, but we certainly -- I think  
15 you can have some projection on where you're  
16 going, and I think that would be useful to present  
17 and show to us and so forth with that.

18 MR. ELLIOTT: Thank you for your thoughts and  
19 your comments, and we're -- we're confident that  
20 the dose reconstructions that we have completed  
21 are done so with sound science and they are  
22 sufficiently accurate. And what we're working on  
23 right now is the timeliness aspect, and we are  
24 trying our best to ramp up and bring as much  
25 capacity to bear as we can on that particular

1 aspect of finalizing dose reconstructions.

2 We're not, however, very good  
3 prognosticators. We -- our crystal ball is not as  
4 clear as we'd like it to be and we don't tend to  
5 do as good a job in forecasting as we would like.  
6 Obviously so 'cause we hoped we'd be -- we'd seen  
7 that line cross the blue line back in December or  
8 even November, but we'll take your comments to  
9 heart and see what we can -- we can project for  
10 you.

11 **DR. MELIUS:** Even if it's just a quarter or  
12 six months or something, I think -- where you feel  
13 confident -- more confident about the forecasting  
14 and its -- do.

15 **MR. ELLIOTT:** I think -- when I say  
16 "project", what we can talk about is issues like  
17 what Dick mentioned that we hadn't anticipated as  
18 clearly or as well, obstacles in our way toward  
19 success, and we surely need to communicate those  
20 to you so you understand what we're facing and --  
21 and these come up almost on a weekly basis, some  
22 little scenario that we hadn't anticipated that  
23 requires us to go back to the drawing board and  
24 figure out a way to work through it and -- or work  
25 around it.

1 DR. ZIEMER: Larry or Martha, could you also  
2 very briefly speak to manpower issues within NIOSH  
3 with respect to the flow and so on? How -- how  
4 are we doing there?

5 MR. ELLIOTT: Well, we have 41 full-time  
6 staff. We have not experienced any particular  
7 bottlenecks with regard to our work in reviewing  
8 and providing direction to ORAU.

9 We have -- we're in the process of adding a  
10 health communication specialist to assist Chris  
11 Ellison because we have huge work to do in that  
12 regard. We realize that. And she's a one-person  
13 shop and certainly needs the additional help and  
14 support.

15 We are finishing up filling the last two  
16 health physicist positions that we've had open.  
17 We think we've got the final two candidates  
18 identified and we think they're very good, and one  
19 will add to our staff some internal dose  
20 experienced.

21 We have -- we feel we have an adequate public  
22 health advisor team. These are the folks that are  
23 the front line points of communication with the  
24 claimants and handle the phone calls and they are  
25 the champions of the claimant. These are the

1 folks that I -- I supervise directly and I ask  
2 them to be champions of the claimant, and I want  
3 them to identify ways that -- identify claims that  
4 need to be moved through, identify ways that we  
5 can improve processing of claims, and they're --  
6 they're all the time busy speaking with health  
7 physicists trying to put a new claim under their  
8 noses and say can't we move this forward for this  
9 reason or that reason.

10 Right now I think -- I think we're adequately  
11 staffed and I don't see any need to try to request  
12 more at this point in time.

13 **DR. MELIUS:** Seeing Ted Katz in the audience,  
14 I have to ask this question, though. What is the  
15 status of the SEC regulation?

16 **MR. ELLIOTT:** Well, the status of the SEC  
17 rule is that we have addressed the public comments  
18 that we had been provided and redrafted the rule,  
19 and it is in review and clearance.

20 **DR. MELIUS:** I think that the -- I guess I --  
21 I have concerns about -- and I know Larry can't be  
22 more precise in giving us a forecast on that and I  
23 don't mean to ask him to do that. But I have some  
24 real concerns that this has gone on for so long  
25 and we as a Board have been very patient with

1 this. We understand some of the difficulties  
2 involved. But at the same time I'm -- there are a  
3 lot of claimants out there that are very concerned  
4 about this. It -- we're about to enter, I -- we  
5 hope, into our review of the dose reconstructions.  
6 And without knowing what's going to be in the SEC  
7 rule, there's some limitations to what we can do  
8 in terms of dose reconstruction review. And I  
9 would like us as a Board to, you know, consider,  
10 you know, sending a letter to the Secretary asking  
11 that this be expedited as much as possible at this  
12 point in time. It's been a long time. It's a  
13 major part of the legislation. As I say, I think  
14 it's really -- the point where it is impacting  
15 what we as a Board are charged with doing from the  
16 original statute in terms of reviewing the  
17 individual dose reconstructions. So I don't know  
18 if anybody else has thoughts on that, but...

19 DR. ZIEMER: Any comments?

20 DR. ANDRADE: My only comment is that I'm as  
21 anxious as you are to see something out on the  
22 SEC. However, as you recall, the bases for the  
23 SEC legislation is such that it really has nothing  
24 to do with DR's except for the fact that it has  
25 been proclaimed that DR's cannot be done. So I

1 don't see the connectivity between the DR program  
2 as it is ongoing and -- and our ability to review  
3 that DR program.

4 DR. ZIEMER: Other comments? Roy?

5 DR. DEHART: I think, as many of you know,  
6 legislation is being proposed to go around and  
7 establish certain entities as special cohort  
8 sites. I think we'll see more of that if this  
9 legislation -- if this action doesn't take place  
10 very soon.

11 DR. ZIEMER: Jim?

12 DR. MELIUS: In response to Tony's comment --  
13 and actually Larry raised the issues earlier. I  
14 disagree, I -- with what you said, Tony. I don't  
15 -- the test for the SEC in the legislation is  
16 sufficient accuracy and feasibility. And we are  
17 asking someone to review what NIOSH has done  
18 without knowing what the test will be of  
19 sufficient accuracy and feasibility, our -- our  
20 reviewer. And I think -- I find -- you know, I've  
21 said this at great length many times before, I  
22 don't see how you can do -- start the dose  
23 reconstruction process or go through all the  
24 claims -- there are some claims obviously you can  
25 do without having some sort of a way of evaluating

1 sufficient accuracy and feasibility, but at some  
2 point I think you hit the wall or you hit a  
3 questionable area where guidance in that area is  
4 needed. When we ask our contractor or the  
5 contractor to review individual dose  
6 reconstructions, at some point they're going to  
7 see the same issue. I mean it's -- I think it's  
8 integral to the legislation and -- and I think it  
9 becomes very problematic. Now do we defer in that  
10 case? I mean we don't know how long this issue's  
11 going to be out there. As Roy said, there's  
12 legislative issues involved now and so forth  
13 because of the delays. And I think us, you know,  
14 drafting -- sending a letter up just pointing out  
15 that there has been delay and it would be very  
16 helpful for this Board to do its activities to  
17 have that information. I think it'd be very  
18 appropriate right now.

19 DR. ZIEMER: Thank you. Other comments?

20 MR. GIBSON: I concur with Dr. Melius's  
21 comments. I believe that the problem we're having  
22 with getting experienced health physicists for  
23 some of the more complicated data, just all of  
24 these issues seem to fit hand-in-hand and I  
25 believe that the third issue that ties it all

1 together would be the SEC rule. So you know, I  
2 see no harm in raising our concern to the  
3 Secretary that we need this -- this rule  
4 finalized.

5 DR. ZIEMER: Thank you. Any other comments  
6 relating to that issue? Jim.

7 DR. MELIUS: Maybe try to get this addressed,  
8 I will make a motion that the Board communicate  
9 with the Secretary our concerns about the long  
10 delays in finalizing the SEC rule and how we feel  
11 that it is important that this be finalized in  
12 order for us to carry out our functions.

13 DR. ZIEMER: Okay. A motion has been made --

14 MR. ESPINOSA: Second.

15 DR. ZIEMER: -- and seconded. I'm going to  
16 ask the mover and seconder if they would be  
17 willing to postpone action on this motion till the  
18 afternoon session so that we can go through the  
19 presentations here. And also I'd like to ask,  
20 when does Henry arrive?

21 DR. MELIUS: Henry I believe arrives late  
22 tonight. If you think this will help, if you want  
23 to put off to this afternoon, that's fine with me  
24 -- or tomorrow. But I'd be willing to try to  
25 draft some specific language that --

1 DR. ZIEMER: Well, that --

2 DR. MELIUS: -- work with other people that  
3 might -- that might be helpful to --

4 DR. ZIEMER: -- that would be the -- one of  
5 the reasons for delaying this so that we can agree  
6 on what the language should be and exactly how to  
7 proceed on that. If this is going to go to the  
8 Secretary, I would want to make sure that the  
9 language was carefully crafted.

10 By consent, we will table this motion. I'm  
11 saying by consent 'cause we're not -- as no one  
12 seems to be objecting and we won't even vote on  
13 tabling, which itself requires a vote, but we'll  
14 agree to remove it from the table later in the  
15 meeting, either this afternoon or tomorrow.

16 Are there other general questions for Martha?

17 (No responses)

18 Thank you very much, Martha. Now I'd like to  
19 call on Pete Turcic from Department of Labor to  
20 give us a status report on the program from their  
21 perspective.

22 STATUS AND OUTREACH - DEPARTMENT OF LABOR

23 MR. TURCIC: Thank you. It's a pleasure to  
24 be here again and to give you a status update of  
25 the Department of Labor program -- portion of the

1 program. And based on some questions that the  
2 Board had requested, I'll try to also update you  
3 on where we are with our outreach efforts.

4 Just briefly going over the claims status,  
5 the number and types of claims as of January 29th,  
6 we've received over 50,000 claims. Of that,  
7 35,000 are claims for cancer; beryllium  
8 sensitivity, 2,252; 2,700 -- little bit over 2,700  
9 for chronic beryllium disease; almost 1,000 -- 977  
10 silicosis; and RECA, over 5,000; and then claims  
11 for non-covered conditions, we received -- about  
12 25,000 of the claims were for conditions not  
13 covered by Part B.

14 The status of the cases that we have, those  
15 50,000 claims, there's a little bit over 38-- that  
16 represents a little bit over 38,000 cases, with  
17 cases pending at NIOSH a little bit -- and these  
18 numbers fluctuate and, you know, they're not going  
19 to match one-for-one with what, you know, NIOSH  
20 gave because of time frames and things like that -  
21 - 13,900. Cases pending a final decision, that  
22 means there's a recommended decision and it's  
23 between the stage of a recommended and final  
24 decision, 1,873. Cases that we have final  
25 decisions on is 26,000 -- over 26,000. And cases

1 pending action in our district office, which --  
2 case development and so forth, 1,131.

3 As of the 29th of January our final  
4 decisions, we've issued final decisions to approve  
5 benefits in over 11,000 claims -- or -- yeah,  
6 11,000 claims and to deny benefits in about  
7 15,000. Recommended decisions, 11,800 recommended  
8 decisions to approve benefits, 17,551 to deny  
9 benefits. 15,300 -- little bit over that -- cases  
10 referred to NIOSH for dose reconstruction. We've  
11 issued over 10,000 payments now and over \$742  
12 million. And our medical benefits, that's  
13 starting to go up pretty rapidly now, about \$25  
14 million in medical benefits.

15 Our initial decisions -- and what we call  
16 initial decision is either a recommended decision  
17 or a referral to NIOSH, it's a -- it's the point  
18 at which Department of Labor has made a decision,  
19 an initial decision that the claimant has a -- has  
20 covered employment and a covered disease. Initial  
21 decisions, recommended decisions in 29,000 -- over  
22 29,000 claims or 22,500 cases, and so from the  
23 initial decisions that we've -- from the cases  
24 that we've received since the beginning of the  
25 program, about -- initial decisions have been

1 issued in 97 percent of all those cases.

2 Final decisions, again, we're final decisions  
3 in 26,000 claims or 20-- about 21,000 cases, and  
4 that accounts for about 54 percent of the cases  
5 that we've received since the inception of the  
6 program on July 31st, 2001.

7 The final decisions, looking at that, right  
8 now -- and this is starting to change, naturally -  
9 - our denials -- for the final decisions that  
10 we've denied, but nine -- over 9,000 of the  
11 denials at this point are for non-covered  
12 conditions; 2,400 were that the employee was not  
13 covered; 728 that the survivors were not eligible;  
14 103 that the condition was not related to  
15 employment -- and those would be things like  
16 individuals that may be filing a cancer claim at a  
17 beryllium vendor, you know, that it's -- it is a  
18 cancer, but cancer is not covered for beryllium  
19 vendors; 2,000 where the medical information was  
20 not sufficient -- and I think that's an important  
21 -- very important point there, that if you look at  
22 it, of the 15,000 cases -- we hear a lot about  
23 how, you know, the lack of medical records. Of  
24 the 50,000 cases -- 50,000 claims, only 2,000 have  
25 been denied because the individual could not