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NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

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Oregon State Legislature
Oregon State Capitol
Senate Committee on Business and Transportation 2/4/15
900 Court Street NE
Salem, OR 97301

Sent via email to: james.labar@state.or.us

Re: SB 411, UM/UIM and PIP Coverage - NAMIC's Written Testimony in Opposition

Dear Senator Beyer, Chair; Senator Girod, Vice-Chair; and members of the Senate Committee on Business and Transportation:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the committee for the February 4, 2015 public hearing. Unfortunately, I will be in another state at a previously scheduled legislative meeting at the time of this hearing, so I will be unavailable to attend. Please accept these written comments in lieu of my testimony at the hearing. This letter need not be formally read into the committee hearing record, but please reference the letter as a submission to the committee at the hearing.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than $196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 153 members who write property/casualty insurance in the State of Oregon, which represents 46 percent of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC appreciates Senator Gelser's and Senator Rosenbaum's desire to make sure that insurance consumers receive the full benefit of their UM/UIM auto insurance coverage and their PIP coverage purchased with their automobile liability policy. NAMIC believes that current law and long-standing insurer claims practices provide policyholders with the full value and benefit of their UM/UIM coverage and PIP coverage in a fair, efficient, and affordable manner. NAMIC is concerned that SB 411 will actually harm not help auto insurance consumers, because it will create unnecessary insurance rate cost-drivers that could adversely impact affordability of UM/UIM and PIP coverage, increase the filing of frivolous lawsuits, reward at-fault drivers for

being underinsured in their liability coverage limits, and hinder consumers in their ability to determine the appropriate amount of UM/UIM coverage limits that is best for their personal insurance needs.

SB 411 creates unnecessary insurance rate cost-drivers that could adversely impact affordability of UM/UIM and PIP coverage –

The proposed legislation would significantly alter PIP coverage, because it would: a) modify current law on the reimbursement (legal and contractual subrogation) of personal injury protection insurers by limiting their right to reimbursement to "only the extent that the total amount of [PIP] benefits paid exceeds the damages suffered by that person"; and b) extend personal injury protection benefit coverage for most medical expenses from one year after date of injury to two years after date of injury.

SB 411 will change current law in two significant ways that will have an appreciable and unavoidable impact on the cost of PIP insurance coverage for insurers and their policyholders: 1) The bill will *double* the PIP benefits coverage period; and 2) The proposed legislation will severely restrict an insurer's ability to pursue insurance subrogation, which is used to legally and contractually mitigate damages and the cost of the insurance coverage.

Some question how the proposed legislation will be an insurance rate cost-driver for consumers, but it is hard to imagine how *doubling* the PIP benefits coverage period wouldn't be an insurance rates cost-driver. Common experience supports the rational conclusion that extending the coverage period will increase the number of claims submitted; the number of medical bills submitted; make it easier for plaintiff attorneys to "puff-up" their non-economic damages claim; and increase the claims administration costs, claims adjusting expenses, and legal defense costs associated with the claims. All of these business operating costs directly impact the cost of the insurance product to the consumer.

Additionally, the proposed legislation would severely restrict an insurer's legal right to pursue insurance subrogation by limiting the insurer's claim to reimbursement to "only the extent that the total amount of PIP benefits paid exceeds the *damages* suffered by that person." Current law only restricts the insurer's right to reimbursement to PIP benefits paid in excess of the *economic damages* suffered by the person. Once again, it is hard to imagine how a bill that, for all practical purposes, eliminates an insurer's ability to mitigate its damages through subrogation wouldn't be an insurance rates cost-driver. The changes to the PIP reimbursement scheme will be expensive and unnecessary. Section 4, ORS 742.524 (a), which changes the current notice of denial from the "provider is given" notice to the "provider receives" notice will be problematic in that we will have to prove the provider received our denials vs. showing that we mailed the denial to their last known address. This could mean sending all of our denials certified mail if we want proof of receipt, which would be very expensive for all PIP carriers, and the insureds would ultimately pick up that cost.

NAMIC is also concerned about the proposed changes to Section 4, ORS 742.524 (a), which changes the current PIP notice of denial from the "provider is given" notice to the "provider receives" notice, because this will place a burden on insurers to have to prove that the provider received the denial notice vs. the insurer having to only demonstrate that the notice was mailed to the provider's last known address. The practical impact on insurers is that they will have to send all denial notices by certified mail, to secure proof of receipt, unless the insurer is willing to accept risk of a legal conflict with the provider over receipt of the notice. This

new postal expense would very costly for all PIP carriers and their insureds, who will ultimately bare the cost of this unnecessary requirement.

Moreover, NAMIC questions the public policy rationale and consumer benefit of extending an auto-injury-only medical coverage, when federal law now requires all citizens to have health insurance that will cover the injured party in all situations, even for auto accident related injuries. PIP coverage is already unnecessary and duplicative of health insurance coverage for most auto consumers, so it doesn't make sense to expand the scope and cost of this superfluous medical coverage. If a consumer really wants to improve their medical coverage, he/she would be better served by purchasing a more expansive coverage health insurance policy than they would be by being required to spend more money purchasing a PIP medical coverage that won't provide the consumer with any benefits if the consumer gets sick with the flu, breaks an arm skiing, or suffers a non-auto accident injury.

The UM/UIM provision in SB 411 is also a problematic insurance rate cost-driver, because it will inappropriately increase the amount of UM/UIM payments. It is an irrefutable principle of business, including insurance, that the cost to the consumer is directly influenced by the cost to the insurer of doing business. So when settlement payments increase, claims adjusting expenses increase, and legal settlement costs increase, so too do the cost doing business. This transactional cost-driver could adversely impact the affordability of UM/UIM, thereby preventing some consumers from purchasing the optional insurance coverage at all or force other consumers to purchase less UM/UIM coverage limits.

SB 411 will hinder consumers in their ability to determine what UM/UIM coverage limits is best for their personal insurance needs -

UM/UIM coverage is purchased by consumers with the understanding that if they buy $100,000 in UM/UIM coverage they have a total of $100,000 in *total* coverage available for the auto accident, so if the at-fault driver is uninsured the policyholder has $100,000 in total coverage, and if the at-fault driver is underinsured (i.e. the at-fault party has less liability coverage limits than the injured party has in total damages) the policyholder can go to his/her UIM policy and have a total of $100,000 in coverage. In effect, pursuant to the current law, a policyholder can readily determine what UM/UIM coverage limits to purchase, because the amount of the at-fault party's liability coverage doesn't impact the *total* amount of coverage the insurance consumer has available in protection. If the policyholder wants $500,000 in total coverage, they can purchase that amount. In contrast, the proposed legislation would make it impossible for the policyholder to be certain of the amount of their UM/UIM coverage, because their *total* coverage protection will be partially based upon a variable the consumer cannot control (i.e. the amount of the liability coverage limits purchased by the at-fault party).

EX. 1(a): Current law – X determines that he needs $100k in *total* coverage protection, so he buys $100k in UM/UIM. Consequently, he has $100k in *total* coverage, regardless of what the at-fault party has in liability coverage limits or whether the at-fault driver is uninsured or underinsured.

EX. 1(b): Proposed law - X determines that he needs $100k in *total* coverage protection, so he buys $100k in UM/UIM and gets into an accident with an at-fault driver. If the at-fault driver is *uninsured,* X has $100k in UM coverage limits, if the at-fault driver in *underinsured* with only $25k, X has $125k in possible coverage limits. This doesn't make any sense – a first-party contractual insurance coverage limit shouldn't be determined by a variable beyond the control of the policyholder and outside the scope of the first-party contractual coverage.

Now some have argued that the current UM/UIM law, which allows the insurer to set-off the amount of the at-fault driver's liability policy denies the policyholder of the full value of the UM/UIM coverage limits. That is conceptually and legally incorrect, because the policyholder selects the amount of the *total* coverage limits that he/she wants and he/she gets that exact amount of coverage limits. The mere fact that the UM/UIM insurer get to set-off the amount of the liability coverage limits (which is nothing more than a prospective form of contractual subrogation, i.e. a legal right the first-party insurer has to mitigate damages and recover what it paid out to its policyholder as a result of the negligence of the at-fault party) doesn't change the *total* coverage protection afforded the policyholder. The policyholder is not denied any contractually agreed upon UM/UIM coverage limits. The proposed legislation would force policyholders to have to purchase more UM/UIM coverage limits.

EX. 2(a) Current law – X determines that she needs $100k in coverage protection, so she buys $100k in UM/UIM coverage limits. If the at-fault party has $25k in liability coverage limits, X has $100k in coverage limits available ($25 k from at-fault party and $75k from UM/UIM insurer). How has X been denied any coverage limits benefits? X got what she purchased - $100k in coverage. Insurers base their UM/UIM insurance coverage rates upon this legal ability to recover the damages setoff from the liability carrier.

EX. 2(b) Proposed law - X determines that she needs $100k in coverage protection, so she buys $100k in UM/UIM coverage limits. If the at-fault party has $25k in liability coverage limits, X has $125k in coverage limits available. If the at-fault party has $50k in liability coverage limits, X has $150k in coverage limits available. ($25k or $50k from at-fault party and $100k from UM/UIM insurer, but UM/UIM carrier now cannot collect the setoff from the at-fault driver, so the UM/UIM carrier has to factor this legal inability to collect the setoff into the pricing of the $100k UM/UIM coverage).

In summary, the current UM/UIM law doesn't deny the policyholder of the coverage limit he/she selected and purchased in UM/UIM coverage limits, it just denies the plaintiff's attorney from the possibly of being able to earn a greater contingency fee (std. rate: 33.3%-40%) from a potentially larger pool of coverage limits. Of course, this benefit to the plaintiff attorney is ultimately paid for by all UM/UIM policyholders, who have to pay for the plaintiff attorney's increased contingency fee. NAMIC is concerned that this will encourage unnecessary lawsuits and incentivize frivolous litigation.

For the aforementioned reasons, NAMIC respectfully requests that the committee **VOTE NO on SB 411, a pro-trial lawyer, anti-insurance consumer bill.**

Thank you for your time and consideration of NAMIC's written testimony. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you have any questions pertaining to my written testimony.

Respectfully,

Christian J. Rataj, Esq.
NAMIC's Senior Director State Affairs -Western Region