

My name is David Ashton. I am an Assistant General Counsel with the Port of Portland.

I have specialized in business transactional work with environmental and natural resources aspects and cost recovery work for over 24 years. In the course of that practice, I provide legal advice on allocating transactional risks using insurance products, counsel on coverage matters, and represent the Port on insurance cost recovery claims.

The Port supports SB 314, extending the protections of the Unlawful Trade Practices Act to the insurance industry.

The Port of Portland has substantial aviation, marine, industrial development and navigational dredging missions that heavily rely on insurance products to assist us in providing protection relating to the risks associated with our operations. Various insurance coverages are purchased, including airport liability and war and personal injury coverage. With the scaling back of the protection afforded instrumentalities of the State by the Oregon Tort Claims Act, protection afforded by insurance coverages has become even more central to our businesses. In addition, the Port has hundreds of tenant and facility user relationships where insurance products are a key component of doing business. The Port invests millions of dollars in its various insurance coverages (premiums, deductibles and related costs) and requires its business partners to take out insurance coverages that also protect the Port. We have a dedicated staff to deal with risk management, including the handling of claims.

Many of the insurers we deal with are very cooperative and provide support and payments both reasonably and timely. They are to be applauded. Some insurers, however, are less cooperative and have a propensity to resort to delay, deferral and deflection of coverage on legitimate claims.

The Port is very appreciative of the Oregon Legislature's passage of SB 814 in the 2013 session. We are and will be using its remedies relating to environmental claims. The Port does not believe, however, that bad faith conduct by bad actor insurers is confined to the environmental claims field. There are good reasons to extend remedies for bad faith activities to insurance coverage matters generally. It makes sense to make the remedies of the UTPA available across the industry, and not to continue a special exemption for insurance companies.

Making insurers subject to the Unlawful Trade Practices Act, would benefit both the Port and its many tenants and users, in dealing with substantial claims on liability insurance.

The Port has experienced or witnessed a number of sharp practices by insurers relating to claims handling:

We have seen our tender for coverage as an additional insured on the policy of one of our business partners at PDX get caught up in a long drawn out fight between the user and its insurer over whether or not the claims against the user triggered coverage, based on the insurer's misreading of settled Oregon insurance coverage law.

We have seen an insurer take an unprecedented position that the Port should not be allowed replacement cost of a permanent runway repair based on a non-pavement expert's opinion that a short term repair sufficed. The issue only went away when the short term repair failed shortly thereafter.

We have seen the Port's tender as an additional insured on a tenant's insurance policy be rejected for no obvious reason and then the payment of 100% of the Port's defense costs be delayed for years by the tortured negotiation of the settlement agreement and then the lapse of an extraordinary amount of time before the insurer executed the agreed-upon settlement.

Extending the UTPA to insurers would avoid this kind of misbehavior. It would avoid insurers taking advantage of the float, with the insureds having to incur huge unreimbursable transaction costs to convince the insurer finally to provide the coverage afforded under an insurance agreement containing negotiated and agreed-upon terms and conditions.

The Port is of the view that providing the protections of the Unlawful Trade Practices Act across the board would be good for port authorities and their many tenants and users.

I would be happy to answer any questions.