Testimony for Public Hearing
Oregon Senate Committee on Business and Transportation
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S.B. No. 1590

Chairman Beyer and members of the Committee:

My name is Steve Patterson and I am the General Counsel and Chief Financial Officer for Oregon Mutual Insurance, a mutual insurance company located in McMinnville Oregon. On behalf of the men and women of Oregon Mutual, 90 percent of whom are Oregon residents, I speak in opposition to SB 1590. As we start 2016, Oregon Mutual starts our 122nd year as an Oregon business and one of a shrinking number of domiciled insurance companies in our state. We serve both personal and commercial insurance customers. We provide coverage for both commercial and casualty lines, and with regard to our business owners policy, primarily small businesses and main street businesses.

No company would last 120 weeks, let alone 122 years by cheating with customers. Yet that is the premise upon which you are being asked to consider this legislation which would radically depart from current Oregon law in order to provide an unfair legal advantage and undue enrichment for the few customers the lawyers promoting this bill represent at a significant expense to all purchasers of business and casualty insurance. The unintended consequences of SB 1590, both written and omitted, threaten the ability of my company to write and provide these coverages in Oregon, our largest state.

The bill changes the law for both personal and business insurance. It is unclear to me that this bill is limited to commercial policies. The language says, "under a policy of casualty insurance **or** commercial liability insurance." Casualty polices exist in personal lines home and auto products as well.

Separate Counsel Provisions

Mr. Rossmiller and Mr. Jack spoke about the ills contained in SB 1590. I will try to mention a few things not emphasized in their comments. The language of the SB 1590 creates an obligation by the insurer to provide independent counsel ~~of~~ when the insured defends against a claim under a reservation of rights **or** if the insured has potential liability with respect to claims that exceed the limits of the policy. **Or** is a disjunctive term in this provision and it obligates the insurer providing independent counsel on any claim for liability that exceeds the policyholders limit based on the prayer of the complaint or potential damages. Insufficient limits may be a function of a really large claim or a smaller claim and inadequate coverage. The amount of coverage is a risk transfer that is determined by the purchaser, and if they are smart, with the help of an insurance agent. Often

these decisions are based on economic decisions of cost. Large risk transfer is harder to place, can be expensive and encourages consumers to mitigate the risk so it is more closely related to the insurance limits they purchase..

A claim for failure to defend can arise because the insurer denies coverage and therefore denies the tender of a defense. It can also occur because an insurer defends and reserves their rights under the contract so that, if at some point in the proceeding, the facts establish that the cause of the loss is not covered or a portion is not covered by the policy, they can defend their insured without accepting liability for uncovered loss. Under the current draft of the bill, it says "if an insurer breaches the insurer's duty to defend against a claim". One assumes the breach must be determined through adjudication. If this is correct the insured would have to sue the insurer for which there are already adequate remedies at law. The provision is not clear as to what constitutes a breach or if there is a presumption that a breach occurs simply because there is a denial of coverage or a reservation of rights.

Once an insured gets separate counsel, that counsel, whose rates are undefined and unrestrained in the bill, will be forced by his or her obligation to help the insured without regard for the contract or its coverage and limits. This leads to direct negotiations with the plaintiff where the insured (the party allegedly responsible for the damage) may settle for well over their policy limit in exchange for an agreement by plaintiff that they will not seek satisfaction of the judgement against the insured for a stipulated judgment and an assignment of any claim the policyholder has against the insurer. Here, the lawyer hired by the insurer does not balance the contractual interests but instead works with the plaintiff's lawyer directly against the interest of the carrier.

SB 1590 sets damages for breach without consideration of any factual evidence or findings developed in a trial. Instead it specifically mentions they are based on settlement. Rates are based on loss and payout experience. When none of the parties to the settlement are looking out for the interest of the contractual limitations or the general insurance buying public I think it is clear what will happen and who will pay: we all will. To add insult to injury, SB 1590 then places the burden on the insurer to prove any settlement is unreasonable. This turns the burden of proof on its ear. Finally, this section of the bill negates any provision of an insurance policy that prohibits assignment of a claim for breach of contract.

Insurance is a risk transfer by contract re-writing the contract to expose the insurer to more risk or litigation related to those risks simply makes the number of carriers who offer it smaller and the cost much more expensive. The additional settlement costs and expense added into the process is potentially staggering.

Regulatory Estoppel

In my career with the insurance industry I have worked with Department of Insurance in six states and two provinces in Canada to accomplish form filings for new products and rates. Section 3's regulatory estoppel is unfair, unworkable and is a concept long opposed by regulators and consumer groups when the industry has proposed that approval of rates or forms by the regulator should preclude the regulator or others from taking action against a carrier related to the legality of the forms or rate provisions. I have great respect for the Oregon Department but in any situation

where a party other than a declarant has the ability to summarize, conclude, misunderstand, misinterpret, or fail to mention information accurately is fraught with hazard. Making DCBS employees court reporters is not a workable solution for an issue that seems to resist the idea that the language of the contract rules. No insurance agent speaks on behalf of any insurer I know of relating to forms and filings. Once again, this bill seeks to create an access point for the trial bar to get state assistance in discovery and developing litigation.

Tractors and Farm Equipment

The language of the bill dealing with tractors and changing the current code to move them from being considered not to be an Uninsured Vehicle except while actually upon public roads to being defined as an Uninsured Vehicle "unless the tractor or equipment is on a public road" is, at the very least confusing. The addition of farm equipment to the uninsured motorist laws is well outside of the current state of uninsured motorist coverage. Commercial farm policies do provide liability coverage for the use of farm equipment. Other than driving up the cost of uninsured motorist coverage, I am unclear as to the rationale for this change.

Insurance Division and Complaints

At the end of the bill the Department of Insurance is obligated to provide information about complaints to any requester. It should be noted that the Department publishes a yearly report of complaints and quantifies the total complaints, confirmed complaints and provides a complaint index and ranking for all lines of insurance. This is done to comply with statute. Also, any Market Conduct examination that reviews a company will become a published document after it is finalized and the carrier has been provided due process. One of the many frustrations for the industry in the current Department publication is the definition of a confirmed complaint is unrelated to any finding of a violation of the insurance code. A complaint in which a consumer and a carrier cannot agree on the facts of the claim are considered to be a confirmed complaint. In 2014, Oregon Mutual for example had 1 auto complaint and no confirmed complaints. So consumer information currently exists. The idea that all complaints will be given the legitimacy in this quasi discovery section when a majority of all complaints are not currently not confirmed would be an administrative burden and an unfair measure of performance. Perhaps if this provision required disclosure of only those complaints confirmed after some kind of due process, the element of innuendo would be removed.

For these and other reasons Oregon Mutual opposes SB 1590 and asks for a No vote. SB 1590 is a significant change that would cause significant disruption to the marketplace and the ability of a company like ours to provide these products and services.

Thank You

Steve Patterson