

Review of Oregon Bill SB 174

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American Property Casualty Insurance Association

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Executive Summary

The Oregon Legislature recently considered Senate Bill 174 (SB 174), which sought to amend the current insurance law regarding remedies for unfair claim settlement practices. A brief summary is provided below:

- SB 174 defines unfair claim settlement practices as unlawful trade practices subject to the Unfair Trade Practices Act (UTPA). In addition to creating a private cause of action for claimants, enforcement under the UTPA would cause the Office of the Attorney General (OAG) to participate in the regulation of property/casualty insurance. Proposed recoveries include actual damages, punitive damages, attorney fees and legal costs.

The American Property Casualty Insurance Association (APCIA) has requested that Milliman provide an analysis of the impact of this proposed bill to both property/casualty insurers and policyholders.

Based on our analysis contained in this report, Milliman estimates that the proposed law could increase annual loss and loss adjustment expense (LAE) by between \$0.5 billion and \$1.2 billion or approximately 8% to 19% of the average annual loss and LAE incurred by the property/casualty insurance industry (including both admitted and excess & surplus line insurers) in Oregon. The estimated increase in loss and LAE could result in a corresponding increase in annual premium charged to property casualty insurance policyholders in Oregon of between \$0.6 billion and \$1.4 billion or 7% to 16% of the estimated current annual premium paid by Oregon residents and businesses. The percentage increases to some individual lines of insurance are projected to be higher than these average impacts. Our medium estimate of the aggregate impact of the proposed bill is provided in the table below.

Table 1
Milliman Estimated Impact of Proposed Bill on P/C Premiums and Losses in Oregon
(Dollars in Billions)

Bill	2022 OR Earned Premium	Impact of Bill on Premium		Annual OR Estimated Loss	Impact of Bill on Losses	
		\$	%		\$	%
SB 174	8.9	1.0	11.5%	6.1	0.8	13.7%

These values do not include amounts directly associated with affirmed bad-faith claims (which are not covered by insurance policies and thus are excluded from ratemaking) but rather the impact of the proposed bad-faith acts on standard, non-bad faith related losses and premiums due to the environment resulting from the bill.

SB 174 would also subject insurers to regulation by both the Office of the Attorney General (OAG) and the DFR – while we cannot quantify the financial impact of the administrative burden caused by having two functional regulators for insurance, this report discusses the expected consequences of SB 174. The critical conclusion based on our analysis is that if the proposed law is passed, insurers will likely pay more on the same type of claims in the future than they do today given the increased likelihood of either unfounded bad faith claims or threat of litigation by the OAG.

Besides the projected increase in losses and premiums, additional consequences of passing the bill could include:

- an unintended expansion of coverage;
- a possible delay in claim settlements as a result of attorney involvement;
- decreased affordability and reduced availability for consumers as potential new entrants reconsider the viability of Oregon’s insurance market;
- additional cases for the Oregon court system;
- additional insurer insolvencies in Oregon;
- an increase in fraud, especially in No-Fault or Personal Injury Protection (PIP) coverage; and
- inefficiencies and additional cost related to the regulation of insurance due to the introduction of a second regulatory agency with responsibility for monitoring insurance company conduct.

General Background

Bad faith laws, statutes, regulations, and judicial decisions define one possible process and remedy for claimants who have disputes with insurers regarding claims under insurance policies. Bad faith damages are sometimes called “extra-contractual” damages because they are awarded in addition to any damages owed under the insurance policy or contract.

Laws regarding insurance company bad faith differ significantly between state jurisdictions. Differences among state laws exist in regards to:

- Whether an insurer has engaged in conduct equivalent to bad faith;
- Whether the insurer conduct is a general business practice;
- Whether a cause of action for bad faith has a legal basis in tort or contract;
- Defenses to a bad faith claim; and
- Available damages.

Most states utilize some version or portion of the National Association of Insurance Commissioners (NAIC) Model Unfair Claims Settlement Practices Act or Unfair Property/Casualty Claims Settlement Practices Model Regulations. States have modified these model legal acts or enacted unique laws in order to accomplish the same goal or purpose.

Under the Model Act and Regulations, the NAIC states that nothing in those provisions shall create or imply a private cause of action or individual civil lawsuit for violation of those laws. However, not all states have followed this suggestion. A small number of states permit private causes of action and civil suits against insurers for a violation of these unfair claims practices laws. Only one state requires claimants to pursue administrative remedies first.

Current Oregon Legal Environment

Unfair claim settlement practices in Oregon are currently regulated under Chapter 746 of Oregon Revised Statutes (2023 edition), which lists thirteen specific unfair claim settlement practices. These thirteen practices are included in the NAIC Model Act, and the Division of Financial Regulation could act if insurers engaged in any of these practices.

Any of these acts, if committed without cause and performed with such frequency as to indicate a general business practice, constitute an unfair claim settlement practice. However, generally, under current Oregon statute, there is no private right of action for a bad faith tort. Policyholders can bring disputes to the Division of Financial Regulation (DFR). In addition to the administrative system, with its fines and penalties, Oregon courts currently permit common law litigation against insurers.

Oregon common law has been guided by the precedent set by *Farris v U.S. Fidelity and Guaranty Co.*, which precluded plaintiffs from assuming the Oregon insurance code was meant to provide a private cause of action if an insurer violated the provisions of the code. A more recent case, *Moody v. Oregon Community Credit Union* (2023), led to the possibility that Oregon's Unfair Claim Settlement Practices Act establishes a legal obligation to protect third-party claimants from emotional harm caused by violation of the statute. *Moody* has not, however, clearly redefined common law as two 2024 decisions that attempted to interpret *Moody* (*Butters v. Travelers Indemnity Co.* and *Hinzman v. Foremost Insurance Co.*) have led to notably different interpretations.

Proposed Changes to Current Oregon Legal Environment

The Oregon Legislature recently considered bill SB 174 that seeks to amend the current insurance law regarding remedies for unfair claim practices.

SB 174 proposes to add insurance and the prohibition of unfair claim settlement practices to enforcement under the Unfair Trade Practices Act (UTPA). As a result, the Office of the Attorney General would participate in the regulation of property/casualty insurance, which would create a potential conflict with the Oregon DFR, for which the regulation of insurance is a primary function. SB 174 would also create a private cause of action for claimants to sue their insurers; proposed recoveries include actual damages, punitive damages, attorney fees and legal costs.

Impact of First and Third Party Actions – General Discussion

To better understand the impact of the proposed legislation, it is important to understand the impact of allowing bad faith tort actions from a theoretical perspective. For example, economic theory suggests that individuals make decisions to maximize their welfare. Permitting first and third party causes of action can affect incentives and claiming behavior. According to a 2005 study by the Offices of the Insurance Commissioner in West Virginia regarding third party causes of actions, the following are major incentives that change:

- *There is an increased incentive to pursue weak claims.*

Weak claims that would not normally be pursued would become more attractive to claimants and attorneys due to the possibility of punitive damages and the increased likelihood of pressuring the insurance company into a higher settlement.

- *There is pressure for insurers to settle claims at higher amounts.*

Insurers may find it more prudent to settle claims at higher amounts rather than face a jury and accept the risk of a large unfavorable judgment.

- *There is an incentive to retain a lawyer.*

Due to the potential for greater settlement amounts and resulting greater fees, attorneys will be motivated to get more involved, likely perpetuating higher claim amounts and delays in settlement.

- *There is an incentive to perpetuate insurance fraud.*

Aggressive claims settlement practices used by insurers will be discouraged because of the possibility that such practices could be interpreted as unfair. When claims are subject to less scrutiny, the potential for fraud increases.

- *There is an incentive to purchase less coverage and, in the extreme, a propensity to become uninsured.*

As costs incurred by insurance companies rise, those costs would be passed on to insurance consumers through higher rates. These higher rates could cause some policyholders to reduce coverage or drop out of the market, resulting in an increase in underinsured or uninsured risks.

Therefore, as a result of introducing first and third party tort actions, claims costs could increase in the following ways:

1. **Greater Number of Reported Claims** – There will likely be new claims related to first and third party bad faith actions due to the possibility of increased damages with attorney fees provided. In addition, non-bad faith claims could increase as insurers begin to settle some marginal claims that would have been denied under current law in order to avoid the risk of questionable, new litigation. Claimants could bring more claims with no additional costs to them as attorney fees would be covered – and many auto accident claimants already employ lawyers to sue a third party so there would be little additional work. Also, with attorney fees provided, there will likely be many “no damages” bad faith claims brought solely to recover attorney fees and other costs.
2. **Greater Amount of Payment Per Claim** – Claims will likely settle at higher amounts as insurers increase proposed settlements to avoid bad faith actions, extracontractual damages, attorney fees, and associated costs. Claims settlement practices may also change as insurers may need to defend more first and third party actions that may lead to an increase in loss adjustment expenses.

Impact of Introduction of First and Third Party Tort Actions Related to Bad Faith Claims in Other States

Due to recent efforts to change legislation regarding bad faith laws in other states, many analyses have been performed to estimate the impact of allowing first and third party bad faith lawsuits. A listing of some of the more well-known studies is provided in Appendix A, the bibliography to this report. To test the impact of these proposed changes, most analyses focused on No-Fault (PIP) coverage or Uninsured Motorist (UM) coverage. These are first party coverages within personal auto insurance that usually have a sufficient

volume of litigated claims that they can be compared across states. While the studies varied in their approach, methods, and data, they all generally conclude that the presence of tort liability for insurer bad faith increases amounts related to indemnity and defense costs. Other findings include:

- The increase in claim settlements is statistically significant even after accounting for changes in claimed loss amounts when bad faith liability is expanded (Tennyson/Asmat);
- The positive correlation that exists between a bad faith remedy and higher settlement payments exists for both economic and non-economic damages (Browne, Pryor, and Puelz); and
- The impact of tort liability on settlement amounts is greatest for small claims. (Tennyson/Asmat)

Potential Impact in Oregon of Enactment of SB 174

Our review of the proposed bill included discussions with experts in claims resolution and insurance law in Oregon to better understand the provisions of the bill. There is significant concern from these experts that the bill will likely result in unnecessary increased litigation and costs.

Specific concerns included the following:

1. Increased activity due to private right of action – the existence of a private right of action will facilitate findings of bad faith based on a single instance, rather than the common requirement to establish the insurer's actions represent a general business practice. This will likely lead to a significant increase in the number of litigated claims and loss adjustment expense.
2. Additional damages allowed as recoveries – in addition to actual damages covered under the policy, the bill allows for attorney fees and costs and punitive damages. The provision of all these additional amounts of damages is likely to result in higher claim severities.
3. Treatment of large losses – the bill does not appear to account for instances under which settlement is not possible because the claim significantly exceeds the available policy limits. In these instances, the insurer is not likely to be able to settle the claim within policy limits and could be subject to a third party bad faith claim for failure to make a prompt and fair settlement.
4. Proper defense – If an insured understands that its insurer will be responsible for any judgment amounts in excess of policy limits, it is possible that the insured will lose motivation to help the insurer mount a credible defense to large claims. This could result in greater settlement amounts than occur in the current environment where the insured has an active interest in the defense of the claim.
5. Unnecessary duplicative oversight – SB 174 would bring the insurance market under the UTPA, which would lead the OAG to serve as a second regulator of insurers. The DFR currently addresses consumer complaints related to insurance, and there are no indications that the DFR is over-burdened or unable to address the volume of complaints from consumers. There does not appear to be a need for a second functional regulator of insurers.

As a result of our discussions, we have assumed that the standard applied to bring a bad faith claim in Oregon under the proposed bill will be much broader than the current environment and could become similar the environment in Florida prior to its recent revisions. Note that, similar to current Florida law, the

bill would allow private actions for violations of unfair settlement practices and would not require that the claimant prove the insurer's actions were of such a frequency to indicate a general business practice.

Based on our review, we believe the enactment of the proposed bill will result in increases to losses for insurers and to the resulting premium amounts paid by policyholders. In addition, there will likely be additional consequences such as reduced fraud deterrence (and increased fraud), delays in claim settlements, and additional caseload for the Oregon court system.

To determine the impact of the bill on property/casualty insurance losses and premiums in Oregon, we estimated the impact on each individual line of business as shown on attached Exhibits 1 and 2. As discussed above, we believe that the bill could create a "Florida type" bad faith insurance environment and, as such, we generally applied assumptions based on Florida data to Oregon losses and premiums.

The main impact of the bill will be on auto insurance losses and claims. The impact on No-Fault/PIP, Bodily Injury (BI) and Uninsured/Underinsured Motorist (UM/UIM) coverages is determined from the calculations on Exhibit 2 which are based upon Florida, Oregon and countrywide insurance industry data from recent Insurance Research Council (IRC) studies and other reports. The impact on the remaining coverages is detailed in Explanation of Assumptions below. To estimate the impact on premiums, we adjusted the impact on losses to account for (1) the inclusion of fixed expenses in insurance rates that would likely not be impacted by the bill and (2) consistency with current estimated ultimate loss ratios.

We have developed a range of results to provide an understanding of the sensitivity of the results to reasonable, alternative assumptions. Our ranges, for both losses and premiums, are provided in the following table.

Table 2
Milliman Range of Estimated Impacts of SB 174 on
P/C Premium and Losses in Oregon
(Dollars in Billions)

Scenario	2022 OR Earned Premium	Impact of SB 174 on Premiums		Annual OR Estimated Loss	Impact of SB 174 on Losses	
		\$	%		\$	%
Low	8.9	0.6	6.8%	6.1	0.5	8.3%
Medium	8.9	1.0	11.5%	6.1	0.8	13.7%
High	8.9	1.4	16.2%	6.1	1.2	19.1%

Explanation of Assumptions

The 2022 Oregon ultimate loss and LAE was determined by applying the estimated ultimate loss and LAE ratio by line of business for Oregon (from NAIC 2012-2021 Profitability Studies by Line by State) to the annual earned premium by line of business (from the 2022 Annual Statement State page for the P&C industry). The assumed percentage impact (adjusted for fixed expenses and consistency with ultimate loss ratios for the premium adjustment) was then applied to the ultimate loss and LAE. The selection of the percentage impact by line of business is discussed below.

Auto No-Fault or PIP Coverage

Exhibit 2, Sheet 1 is based upon data from IRC reports. The IRC data provided the percentages of Florida and Oregon PIP claimants who use attorneys compared to the percentages who do not use attorneys. The average economic claimed loss in PIP for those who use attorneys compared to those who do not use attorneys was provided in another IRC study (using data through 2012).

Our assumption in using this data is that, with the passage of SB 174, Oregon No-Fault claimants (which currently have attorney involvement in approximately 17% of total claims) will eventually increase toward the attorney involvement level in Florida (51%). We assume that the potential for increased economic payouts from the implementation of SB 174 will draw more attorney participation in the claim process that will increase claim severity.

For current PIP claims, it is evident that the presence of an attorney greatly increases the cost of injuries. As shown on Exhibit 2, Sheet 1, the average economic PIP loss for automobile accidents causing strains and sprains (the most frequent injury type in automobile accidents) equals \$15,402 when attorneys are involved, versus \$6,434 when no attorneys are involved. According to an IRC report, claims with attorney involvement differ from other claims in several ways. Attorney-represented claimants are more likely than those without attorneys to receive chiropractic treatment, physical therapy, magnetic resonance imaging (MRIs), and computed tomography (CT) scans.

Given these assumptions, on Exhibit 2, Sheet 1 we estimate the effect of SB 174 on annual automobile No-Fault losses to be an increase of 38.3%. We treat this as the pessimistic end of a range of the possible impact and reduce the estimated impact by 10% to produce the medium estimate and a further 10% to produce the low estimate. Note that this is only one metric to estimate the impact of SB 174 in Oregon on No-Fault losses and there may be other reasonable estimates that may also be determined. This approach may not capture the full adverse impact of SB 174.

Auto Bodily Injury Coverage

Exhibit 2, Sheet 2 is based on information from studies regarding the impact of bad faith laws in Florida. We believe that the use of the Florida results is appropriate for this study because it is reasonable to project that these bill may create an insurance environment similar to Florida based on the current language in the bill and input from our discussions with Oregon claim and insurance law experts. We relied primarily on information and conclusions from two independently developed studies regarding Florida:

- “Third Party Bad Faith in Florida’s Automobile Insurance System, 2018 Update” published by the Insurance Research Council (IRC) in August 2018; and
- “The Impact of Bad Faith Lawsuits on Consumers in Florida and Nationwide” prepared by the Berkeley Research Group (BRG) in 2010.

Both of these studies used individual claims data to estimate the impact of Florida’s current bad faith law on BI claims and both appear to be reasonable. We used a weighted average of the impacts cited in each study to produce our medium estimate. Given these assumptions, on Exhibit 2, Sheet 2 we estimated the effect on annual automobile bodily injury losses to be an increase of 36.1%. Note that this is only one metric to estimate the impact of SB 174 on BI losses in Oregon and there may be other reasonable estimates that could also be determined.

Auto Uninsured/Underinsured Motorist (UM/UIM) Coverage

Exhibit 2, Sheet 3 focuses on the increased level of attorney involvement in UM/UIM claims after the implementation of the bad faith environment in Florida. The percentage of Florida UM/UIM claimants who use attorneys versus the percentage who do not use attorneys was based on information contained in the Florida Senate Interim Report 2012-132, issued in November 2011. The data also shows the average economic claimed loss for automobile accidents that cause strains and sprains for those who use attorneys versus those who do not use attorneys for BI claims. The BI claim loss information as shown in Columns (4) – (6) was used as a proxy for UM/UIM claim loss as information specific for UM/UIM claims was not available.

Based on historical changes in attorney involvement in Florida, we assume that Oregon UM/UIM claims will have more attorney involvement than in the past due to the proposed law. Approximately 63% of total Florida claims had attorney involvement in 2011, but only 47% of Florida UM/UIM claims had attorney involvement in 2006. It is likely that the percentage of attorney involvement for UM/UIM claims was even lower in the period prior to the start of the bad faith environment in Florida in 1995 than in 2006.

Given these assumptions, on Exhibit 2, Sheet 3 we estimated the effect on annual automobile UM/UIM losses to be an increase of 17.3%. Note that this is only one metric to estimate the impact of SB 174 on UM/UIM losses in Oregon and there may be other reasonable estimates that may also be determined. For example, a study by the Berkeley Research Group (discussed further in the Auto Bodily Injury Coverage section below) states that average pure premiums for states with first party causes of action are 81% higher than the average for states without a defined first party bad faith cause of action. In addition, they find that Florida's average UM/UIM pure premium is 188% higher than the average for states without a defined first party bad faith cause of action.

Auto Property Damage and Physical Damage Coverages

We would expect that the effect of increased attorney involvement on auto property damage and physical damage claims would not be as pronounced as the effect on No-Fault/PIP, BI and UM/UIM claims because the costs of property damage and physical damage claims are better defined. However, there will still be disputes over the cost of repairs and the cash value of damaged or stolen property so some increase could be expected. We have applied an estimated increase of 5% as our medium estimate, with a low estimate of 0% and a high estimate of 10%.

Third Party Liability (Other Liability, CMP Liability, Medical Professional Liability)

The proposed language for SB 174 appears to allow for direct civil actions against insurers in third party liability claims. These lines typically exhibit higher average claim severity and lower average claim frequency as well as higher average policy limits compared to auto. While these characteristics may somewhat mitigate the impact of the proposed bill, the impact will nonetheless be material; we have estimated an increase of 15% to current third party coverage costs.

Property Coverages (Homeowners, Fire, Allied Lines, CMP Non-Liability)

We have estimated an increase of 15% based on an IRC study of the impact of first party tort actions on Homeowners insurance in Washington.

Workers Compensation

While we have attempted to quantify the increase in claim costs for various lines of property/casualty insurance, it is not possible to quantify the increased expense for workers compensation due to the lack of publicly available data for benchmarking. We note, however, that Workers Compensation is primarily a third party coverage with specified limits on indemnity benefits, medical benefits which can be controlled by insurers, and in which a dispute resolution mechanism is already in place, so it is likely to be impacted to a lesser degree than other property/casualty lines of business.

Other P&C Lines

While we have attempted to quantify the increase in claim costs for various lines of property/casualty insurance, it is not possible to quantify the increased expense for certain lines due to the lack of publicly available data for benchmarking. We have selected a 5% expected increase for the remaining lines of business, which include ocean marine, inland marine, accident & health and others.

Potential Unintended Consequences of First and Third Party Tort Liability in Oregon

In addition to the increased costs insurers and policyholders are estimated to incur if the proposed bill is enacted as discussed above, there are other potential unintended consequences of allowing first and third party tort actions in Oregon. Any of these additional outcomes could increase the impact of the proposed bill beyond what Milliman estimated in our analysis described above. These potential unintended consequences include the following:

Unintended Expansion of Coverage

The proposed bill could allow for an unforeseen expansion of coverage. As an example, if there is a bad faith claim against an insurer resulting from a PIP claim and the claim is successful, the court could award compensatory damages, which could include non-economic damages, such as pain and suffering. This would be an expansion of the current no-fault coverage that does not include any provision for non-economic damages. The rates charged by insurers for this coverage only contemplate costs related to economic losses such as expense related to medical care and wage loss and do not include any provision for potential non-economic losses. Therefore, any expansion of coverage, beyond what is currently reflected in historical loss experience would necessitate a rate increase.

Delays in Claim Settlement

If the proposed bill results in greater attorney involvement in claims settlement, there could be longer time periods to settlement. According to an IRC study, *Countrywide Patterns in Auto Injury Insurance Claims* (2018), PIP claims with attorney involvement had longer settlement times than claims without attorney involvement. Thirty-nine percent of PIP claimants with attorneys waited over one year between the date the injury was reported to the insurer and the date final payment was made. Only seventeen percent of claimants without attorneys had a similar wait.

Higher Insurance Rates and Reduced Availability for Consumers

As discussed above, the introduction of first and third party tort actions will likely result in greater reporting of claims (higher frequency) and in greater settlements as insurers seek to avoid tort actions (higher severity). While specifically excluding liability directly relating to bad faith claims from ratemaking data could be achievable, it would be difficult to remove the impact of the greater frequency and severity expected to occur in non-bad faith claims. Therefore, the cost to consumers will likely increase, though not in direct proportion to the increase in losses. If rate increases are somehow suppressed even though actuarially indicated, it is possible insurers may decline to write business at inadequate rates or withdraw from the market, leaving a smaller, less competitive market for policyholders.

Impact on Oregon Court System

No-fault coverage is typically established in part to alleviate an overburdened court system clogged with auto disputes. A verbal threshold of death, serious impairment of body function, and serious permanent disfigurement was established to limit potential lawsuits. The passage of SB 174 could lead to increased litigation and create backlogs in the Oregon court system that may have just returned to operating efficiently following the pandemic.

Prior to the recent passage of tort reform legislation in Florida, the state's legal environment was similar to what could occur in Oregon if SB 174 were to be enacted. Florida experienced significant lawsuit activity, due in part to the requirement that insurers pay attorney fees in most bad faith litigation. According to the Florida Office of Insurance Regulation, Florida accounted for 76% of property insurance lawsuits in the U.S., but only 8% of claims prior to the 2023 reform. Attorney fees are a proposed recovery under SB 174 as well, so Oregon could reasonably expect a significant increase in the number of lawsuits if this bill were passed. This would put more pressure on the Oregon court system.

Insurer Insolvency

An increase in litigation against insurers operating in Oregon, even if such litigation does not result in additional losses, could severely impair the ability of insurers to operate efficiently. In Florida, claims litigation is widely recognized as a key factor in the insolvency of 10 property/casualty insurers in recent years. As a result, Florida legislators enacted reform measures intended to address the recent failures by reducing claims litigation. If SB 174 were passed, Oregon could face similar issues to Florida with a number of insurer bankruptcies and failures.

Reduced Fraud Deterrence

According to Tennyson and Warfel (see Appendix A, Bibliography), while allowing tort actions for the purpose of addressing insurer bad faith in claims settlement may be efficient in theory, practical considerations have important implications. For example, if the expected costs of litigation to insurers are sufficiently high that they exceed the expected cost-savings from reduced fraud costs, insurers will have less incentive to employ fraud reduction strategies. Specifically, claim investigations may lead to insurer actions that bring accusations of bad faith, and thus an excessive threat of bad faith liability may reduce the number and/or scope of claim investigations below optimal level. Fewer fraudulent claims will be detected, increasing expected payouts from filing fraudulent claims.

Statement of Qualifications

Derek Jones FCAS, MAAA and Dionne Schaaffe ACAS, MAAA of Milliman meet the actuarial qualification standards to provide this analysis.

Limitations

Data

In performing this analysis, we relied on publicly available data and other information. We have not audited or verified this data and other information. If the underlying data or information is inaccurate or incomplete, the results of our analysis may not be suitable for the intended purpose.

We performed a limited review of the data used directly in our analysis for reasonableness and consistency and have not found material defects in the data. If there are material defects in the data, it is possible that they would be uncovered by a detailed, systematic review and comparison of the data to search for data values that are questionable or for relationships that are materially inconsistent. Such a review was beyond the scope of our assignment.

Uncertainty

During the course of our review, we applied generally accepted actuarial procedures. However, due to the uncertainty involved in projecting future events, it is likely that actual results will vary from our projections, perhaps materially.

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Proposed Oregon Bad Faith Bill

Estimated Effects on Insurance Premiums

(\$millions)

	(1)	(2)	(3) (2) / (1)
	Total 2022 Direct OR State Earned <u>Premium</u>	Estimated Effect of SB 174 <u>Dollar</u>	<u>Percentage</u>
Low	8,928	609	6.8%
Medium	8,928	1,026	11.5%
High	8,928	1,444	16.2%

Estimated Effects on Loss and LAE

(\$millions)

	(6)	(7)	(8) (5) / (4)
	OR State AY 2022 Estimated <u>Loss</u>	Estimated Effect of SB 174 <u>Dollar</u>	<u>Percentage</u>
Low	6,060	504	8.3%
Medium	6,060	832	13.7%
High	6,060	1,160	19.1%

Note:
(2), (5) From Exhibit 1

**Proposed Oregon Bad Faith Bill
Estimated Effects on Insurance Premiums and Loss & LAE
of SB 174 (Affects First and Third Party Claims)**

Medium Estimate

Dollar Amounts in Thousands

	(1)	(2)	(3) (1) x (2)	(4)	(5) (3) x (4)	(6)	(7) (5) / (6)	(8) (7) / (1)
	Total 2022 Direct Oregon Earned Premium	Oregon 10-Year Average Ultimate Loss Ratio	Oregon AY 2022 Estimated Loss	Estimated % Effect of SB 174 on Losses	Dollar Effect on Losses	Premium / Fixed Expense Adjustment	Dollar Effect on Premium	Estimated % Effect of SB 174 on Premium
Private Passenger Automobile								
No-Fault PIP	\$333,491	72.6%	\$242,021	28.3%	\$68,522	0.836	\$81,937	24.6%
BI	891,130	72.6%	646,709	36.1%	233,501	0.836	279,214	31.3%
Prop Dam	623,791	72.6%	452,697	5.0%	22,635	0.836	27,066	4.3%
UM/UIM	267,339	72.6%	194,013	17.3%	33,476	0.836	40,029	15.0%
Physical Damage	1,152,033	73.1%	841,972	5.0%	42,099	0.839	50,167	4.4%
Total PP Auto	\$3,267,785		\$2,377,411		\$400,233		\$478,414	
Commercial Automobile								
No-Fault PIP	\$12,770	66.4%	\$8,481	28.3%	\$2,401	0.746	\$3,219	25.2%
BI	219,865	66.4%	146,029	36.1%	52,725	0.746	70,671	32.1%
Property Damage	153,906	66.4%	102,220	5.0%	5,111	0.746	6,851	4.5%
UM/UIM	65,960	66.4%	43,809	17.3%	7,559	0.746	10,132	15.4%
Physical Damage	144,802	61.9%	89,659	5.0%	4,483	0.703	6,380	4.4%
Total Comm Auto	\$597,302		\$390,198		\$72,280		\$97,252	
Total Automobile	\$3,865,087		\$2,767,610		\$472,512		\$575,666	
Homeowners	\$1,130,476	79.7%	\$901,010	15.0%	\$135,152	0.907	\$148,941	13.2%
Fire	175,148	81.4%	142,577	15.0%	21,387	0.924	23,154	13.2%
Allied Lines	123,895	69.8%	86,531	15.0%	12,980	0.801	16,198	13.1%
CMP Non-Liability	390,984	62.0%	242,418	15.0%	36,363	0.715	50,852	13.0%
CMP Liability	\$252,736	62.0%	\$156,702	15.0%	\$23,505	0.719	\$32,673	12.9%
Other Liability	937,932	73.3%	687,597	15.0%	103,140	0.819	125,860	13.4%
Medical Professional Liability	\$113,641	84.6%	\$96,189	N/A	\$0	0.955	\$0	0.0%
Workers Compensation	\$745,333	60.1%	\$448,228	N/A	\$0	0.701	\$0	0.0%
All Other Lines of Business	\$1,192,551	44.5%	\$530,790	5.0%	\$26,539	0.501	\$52,943	4.4%
Total - All Lines	\$8,927,783	67.9%	\$6,059,651		\$831,577		\$1,026,288	
					(5) / (3)		(7) / (1)	
					13.7%		11.5%	

Notes:

- (1) Oregon state page from Annual Statement for the year ended December 31, 2022 for the P&C Industry. Other auto liability amounts distributed based on "2019/2020 Auto Insurance Database Report", dated January 2023.
- (2) NAIC 2012-2021 Profitability Reports by Line by State
- (4) Selected by Milliman. PIP Source: Exhibit 2, Sheet 1. BI Source: Exhibit 2, Sheet 2. UM/UIM Source: Exhibit 2, Sheet 3.
- (6) = (2) / Fixed Expense Adjustment Factor
where Fixed Expense Adjustment Factor = 1 - [50% x TL&F + Other Acquisition Expenses + General Expenses] / Earned Premium. Source: S&P Global, 2022 IEE - Part III.

**Proposed Oregon Bad Faith Bill
Estimated Effects on Insurance Premiums and Loss & LAE
of SB 174 (Affects First and Third Party Claims)
Low Estimate
Dollar Amounts in Thousands**

	(1)	(2)	(3) (1) x (2)	(4)	(5) (3) x (4)	(6)	(7) (5) / (6)	(8) (7) / (1)
	Total 2022 Direct Oregon Earned Premium	Oregon 10-Year Average Ultimate Loss Ratio	Oregon AY 2022 Estimated Loss	Estimated % Effect of SB 174 on Losses	Dollar Effect on Losses	Premium / Fixed Expense Adjustment	Dollar Effect on Premium	Estimated % Effect of SB 174 on Premium
Private Passenger Automobile								
No-Fault PIP	\$333,491	72.6%	\$242,021	18.3%	\$44,320	0.836	\$52,997	15.9%
BI	891,130	72.6%	646,709	26.1%	168,830	0.836	201,883	22.7%
Prop Dam	623,791	72.6%	452,697	0.0%	-	0.836	-	0.0%
UM/UIM	267,339	72.6%	194,013	12.3%	23,775	0.836	28,430	10.6%
Physical Damage	1,152,033	73.1%	841,972	0.0%	-	0.839	-	0.0%
Total PP Auto	\$3,267,785		\$2,377,411		\$236,925		\$283,309	
Commercial Automobile								
No-Fault PIP	\$12,770	66.4%	\$8,481	18.3%	\$1,553	0.746	\$2,082	16.3%
BI	219,865	66.4%	146,029	26.1%	38,122	0.746	51,098	23.2%
Property Damage	153,906	66.4%	102,220	0.0%	-	0.746	-	0.0%
UM/UIM	65,960	66.4%	43,809	12.3%	5,368	0.746	7,196	10.9%
Physical Damage	144,802	61.9%	89,659	0.0%	-	0.703	-	0.0%
Total Comm Auto	\$597,302		\$390,198		\$45,044		\$60,375	
Total Automobile	\$3,865,087		\$2,767,610		\$281,970		\$343,684	
Homeowners	\$1,130,476	79.7%	\$901,010	10.0%	\$90,101	0.907	\$99,294	8.8%
Fire	175,148	81.4%	142,577	10.0%	14,258	0.924	15,436	8.8%
Allied Lines	123,895	69.8%	86,531	10.0%	8,653	0.801	10,799	8.7%
CMP Non-Liability	390,984	62.0%	242,418	10.0%	24,242	0.715	33,901	8.7%
CMP Liability	\$252,736	62.0%	\$156,702	10.0%	\$15,670	0.719	\$21,782	8.6%
Other Liability	937,932	73.3%	687,597	10.0%	68,760	0.819	83,907	8.9%
Medical Professional Liability	\$113,641	84.6%	\$96,189	N/A	\$0	0.955	\$0	0.0%
Workers Compensation	\$745,333	60.1%	\$448,228	N/A	\$0	0.701	\$0	0.0%
All Other Lines of Business	\$1,192,551	44.5%	\$530,790	0.0%	\$0	0.501	\$0	0.0%
Total - All Lines	\$8,927,783	67.9%	\$6,059,651		\$503,653		\$608,803	
					(5) / (3)		(7) / (1)	
					8.3%		6.8%	

Notes:

- (1) Oregon state page from Annual Statement for the year ended December 31, 2022 for the P&C Industry. Other auto liability amounts distributed based on "2019/2020 Auto Insurance Database Report", dated January 2023.
- (2) NAIC 2012-2021 Profitability Reports by Line by State
- (4) Selected by Milliman. PIP Source: Exhibit 2, Sheet 1. BI Source: Exhibit 2, Sheet 2. UM/UIM Source: Exhibit 2, Sheet 3.
- (6) = (2) / Fixed Expense Adjustment Factor
where Fixed Expense Adjustment Factor = 1 - [50% x TL&F + Other Acquisition Expenses + General Expenses] / Earned Premium. Source: S&P Global, 2022 IEE - Part III.

**Proposed Oregon Bad Faith Bill
Estimated Effects on Insurance Premiums and Loss & LAE
of SB 174 (Affects First and Third Party Claims)
High Estimate
Dollar Amounts in Thousands**

	(1)	(2)	(3) (1) x (2)	(4)	(5) (3) x (4)	(6)	(7) (5) / (6)	(8) (7) / (1)
	Total 2022 Direct Oregon Earned Premium	Oregon 10-Year Average Ultimate Loss Ratio	Oregon AY 2022 Estimated Loss	Estimated % Effect of SB 174 on Losses	Dollar Effect on Losses	Premium / Fixed Expense Adjustment	Dollar Effect on Premium	Estimated % Effect of SB 174 on Premium
Private Passenger Automobile								
No-Fault PIP	\$333,491	72.6%	\$242,021	38.3%	\$92,724	0.836	\$110,877	33.2%
BI	891,130	72.6%	646,709	46.1%	298,172	0.836	356,546	40.0%
Prop Dam	623,791	72.6%	452,697	10.0%	45,270	0.836	54,132	8.7%
UM/UIM	267,339	72.6%	194,013	22.3%	43,176	0.836	51,629	19.3%
Physical Damage	1,152,033	73.1%	841,972	10.0%	84,197	0.839	100,334	8.7%
Total PP Auto	\$3,267,785		\$2,377,411		\$563,540		\$673,519	
Commercial Automobile								
No-Fault PIP	\$12,770	66.4%	\$8,481	38.3%	\$3,249	0.746	\$4,355	34.1%
BI	219,865	66.4%	146,029	46.1%	67,328	0.746	90,244	41.0%
Property Damage	153,906	66.4%	102,220	10.0%	10,222	0.746	13,701	8.9%
UM/UIM	65,960	66.4%	43,809	22.3%	9,749	0.746	13,068	19.8%
Physical Damage	144,802	61.9%	89,659	10.0%	8,966	0.703	12,761	8.8%
Total Comm Auto	\$597,302		\$390,198		\$99,515		\$134,129	
Total Automobile	\$3,865,087		\$2,767,610		\$663,055		\$807,648	
Homeowners	\$1,130,476	79.7%	\$901,010	20.0%	\$180,202	0.907	\$198,587	17.6%
Fire	175,148	81.4%	142,577	20.0%	28,515	0.924	30,873	17.6%
Allied Lines	123,895	69.8%	86,531	20.0%	17,306	0.801	21,598	17.4%
CMP Non-Liability	390,984	62.0%	242,418	20.0%	48,484	0.715	67,802	17.3%
CMP Liability	\$252,736	62.0%	\$156,702	20.0%	\$31,340	0.719	\$43,564	17.2%
Other Liability	937,932	73.3%	687,597	20.0%	137,519	0.819	167,814	17.9%
Medical Professional Liability	\$113,641	84.6%	\$96,189	N/A	\$0	0.955	\$0	0.0%
Workers Compensation	\$745,333	60.1%	\$448,228	N/A	\$0	0.701	\$0	0.0%
All Other Lines of Business	\$1,192,551	44.5%	\$530,790	10.0%	\$53,079	0.501	\$105,886	8.9%
Total - All Lines	\$8,927,783	67.9%	\$6,059,651		\$1,159,500		\$1,443,772	
					(5) / (3)		(7) / (1)	
					19.1%		16.2%	

Notes:

- (1) Oregon state page from Annual Statement for the year ended December 31, 2022 for the P&C Industry. Other auto liability amounts distributed based on "2019/2020 Auto Insurance Database Report", dated January 2023.
- (2) NAIC 2012-2021 Profitability Reports by Line by State
- (4) Selected by Milliman. PIP Source: Exhibit 2, Sheet 1. BI Source: Exhibit 2, Sheet 2. UM/UIM Source: Exhibit 2, Sheet 3.
- (6) = (2) / Fixed Expense Adjustment Factor
where Fixed Expense Adjustment Factor = 1 - [50% x TL&F + Other Acquisition Expenses + General Expenses] / Earned Premium. Source: S&P Global, 2022 IEE - Part III.

**Proposed Oregon Bad Faith Bill
Estimated Percent Effect upon Personal Injury Protection Losses (PIP)**

		(1)	(2)	(3)	(4)	(5)	(6)
				(1) + (2)			
						Countrywide PIP Average Claimed Losses	
<u>Injury Type</u>		<u>Atty</u>	<u>No Atty</u>	<u>Total</u>	<u>Atty</u>	<u>No Atty</u>	<u>Total</u>
Neck or Back Strains / Sprains	(A) FL PIP Claims	51.0%	49.0%	100.0%	15,402	6,434	11,008
	(B) OR PIP Claims	17.0%	83.0%	100.0%	15,402	6,434	7,959
	(7) Impact of Attorney Involvement on Losses				FL PIP relative to OR PIP		38.3%
	(8) Overall Selected Increase					Low	18.3%
						Medium	28.3%
						High	38.3%

Notes:

- (1A), (1B) IRC Report: Attorney Involvement in Auto Injury Claims, July 2014, Figure 9 (pages 14 and 15).
- (2) = 100% - (1)
- (4), (5) IRC Report: Attorney Involvement in Auto Injury Claims, July 2014, Figure 22 (page 32).
- (6) = (1) x (4) + (2) x (5)
- (7) = (6A) / (6B) - 1
- (8) Selected by Milliman based on (7)

**Proposed Oregon Bad Faith Bills
Estimated Percent Effect upon Bodily Injury Liability Losses (BI)**

	(1)	(2)
	% Increase	Weights
(A) Insurance Research Council (IRC) Report - FL pre & post BF	89.1%	10.0%
(B) Berkeley Research Group (BRG) Report	30.2%	90.0%
(C) Overall Indicated Increase		36.1%
(D) Milliman Selected Increase due to Bad Faith Law		Low 26.1% Medium 36.1% High 46.1%

Notes:

- (1A) IRC Report: Third-Party Bad Faith in Florida's Automobile Insurance System, 2018 Update, Page 4.
Where 89.1% = Average Total Claim Payment in Florida / Average Claim Payment excl portion related to Bad Faith Law
= \$235 / \$124 - 1
- (1B) BRG Report: The Impact of Bad Faith Lawsuits on Consumers in Florida and Nationwide, September 2010, Page 18.
Where 30.2% = Bad Faith Pure Premium / Pure Premium excluding Bad Faith
= \$33.30 / \$110.18
- (2) Selected by Milliman
- (C) Average of (1) based on (2)
- (D) Selected by Milliman

**Proposed Oregon Bad Faith Bills
Estimated Percent Effect upon Uninsured Losses and Underinsured Losses (UM / UIM)**

	(1)	(2)	(3) (1) + (2)	(4)	(5)	(6)
<u>Injury Type</u>	<u>Atty</u>	<u>Florida Claimants No Atty</u>	<u>Total</u>	<u>Countrywide BI Average Claimed Losses</u>		
				<u>Atty</u>	<u>No Atty</u>	<u>Total</u>
Neck or Back Strains / (A) Post-BF FL UM / UIM	63.0%	37.0%	100.0%	8,748	2,717	6,517
(B) Pre-BF FL UM / UIM	47.1%	52.9%	100.0%	8,748	2,717	5,558
(7) Impact of Attorney Involvement on Losses						17.3%
(8) Overall Selected Increase					Low	12.3%
					Medium	17.3%
					High	22.3%

Notes:

- (1A), (2A) The Florida Senate: Insurance Bad Faith, November 2011 (page 14).
- (1B), (2B) The Florida Senate: Insurance Bad Faith, November 2011 (page 14).
- (4), (5) IRC Report: Attorney Involvement in Auto Injury Claims, July 2014, Figure 21 (page 31).
- (6) = (1) x (4) + (2) x (5)
- (7) = (6A) / (6B) - 1
- (8) Selected by Milliman based on (7)