

**HOUSE COMMITTEE ON JUDICIARY - CIVIL LAW**

**June 21, 1999 Hearing Room 357**

**1:00 p.m. Tapes 193 - 194**

**MEMBERS PRESENT: Rep. Shetterly, Chair**

**Rep. Uherbelau, Vice-Chair**

**Rep. Williams, Vice-Chair**

**Rep. Backlund**

**Rep. Edwards**

**Rep. Lowe**

**Rep. Walker**

**Rep. Wells**

**Rep. Witt**

**STAFF PRESENT: Anne Tweedt, Counsel**

**Rachel Short, Administrative Support**

**MEASURE/ISSUES HEARD:**

**SB 1205A ñ Public Hearing and Work Session**

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
<b>TAPE 193, A</b>		

005	Rep. Shetterly	Calls meeting to order at 1:10 p.m.
<b>SB 1205A PUBLIC HEARING</b>		
016	Counsel Tweedt	SB 1205A establishes rules for interpretation and application of insurance coverage for claims involving environmental contamination at Oregon sites. Discusses the ñA10 and ñA12 amendments ( <b>EXHIBITS A &amp; B</b> ).
041	<b>John DiLorenzo</b>	<b>ICN Pharmaceuticals, Inc.</b>  Testifies and submits written testimony in support of SB 1205A ( <b>EXHIBITS C &amp; D (oversized)</b> ). Discusses the problems and great expense incurred when ICN land was found to be contaminated by a nearby business or vandalism and subsequent cleanup was begun. Describes how the insurers of ICN's policies covered contamination. After the insurance companies denied coverage for the contamination, litigation was filed against 15 of the insurers and all claims have been settled. Discusses defenses that were asserted by the insurance companies to deny ICN cleanup coverage as well as other companies in the area. SB 1205A does not purport to change policy terms or alter contracts made between insurers and insureds. SB 1205A would apply when insurance policies are themselves not clear or parties to the insurance contract lack understanding of the policy. Addresses arguments previously expressed against SB 1205A. My client purchased "all risk" policies with the expectations that all hazards would be covered except for those specified. Discusses the ñA10 amendments (EXHIBIT A).
<b>TAPE 194, A</b>		
023	<b>John Powell</b>	<b>CGU North Pacific and State Farm Insurance Co.</b>  Testifies in opposition to SB 1205A. Discusses a portion of the ñA12 amendments dealing with attorney fees. It was discovered that Section 5 of the bill is defective so we have agreed to delete section 5 and allow the current attorney fees provision to govern and let the court decide the operation of this section.
068	Rep. Uherbelau	What are you talking about when you say the current provision of attorney fees? Are you talking about the statutory contract?
070	Powell	Yes, the current statutory scheme for attorney fees.
076	Rep. Uherbelau	Aren't you deleting ORS 742.061 that apply to the statutory attorney fees in the ñA12 amendments?
082	Powell	That statute would still govern.
097	<b>Angela Warren</b>	<b>American Insurance Association</b>  Testifies in opposition to SB 1205A. Discusses the impact SB 1205A may have

		if insurance companies have to default to the courts for an interpretation of this legislation.
122	Rep. Uherberlau	Where does this bill give coverage where coverage doesn't exist?
130	Warren	Discusses what she meant when she referred to expanding the language that is in an insurance contract.
142	<b>Ann O'Neill</b>	<b>Fireman's Fund Insurance Company</b>  Testifies in opposition to SB 1205A and asks the committee to consider its precedential impact. In its present form, this bill goes further than any insurance law in any other state in the nation by taking the task of private contract interpretation away from the courts and placing it with the legislature. Discusses why contract interpretation belongs in the courts and should stay in the courts. States that insurance companies are writing environmental insurance once again because there is more predictability in the enforcement of environmental laws, and carriers realize their business customers need this kind of insurance.
260	Rep. Uherberlau	When you talk about absolute pollution exclusion, are you saying pollution would not be covered even if it was sudden and accidental?
271	O'Neill	Discusses the Sudden and Accidental Pollution Exclusion rule written into most insurance policies prior to 1985. In 1985 the Absolute Pollution Exclusion was added to policies so that carriers could continue to write commercial liability insurance.
310	Chair Shetterly	Would you prefer that the courts construe insurance contracts rather than the legislature?
312	O'Neill	Yes.
313	Chair Shetterly	But the insurance industry is so heavily regulated by statute and administrative rule, why should the legislature refrain now?
318	O'Neill	We do not want to take the interpretation of contracts out of the courts. This legislation actually legislates the interpretation of contract wording. Carriers are worried that they won't be able to write contracts and have them interpreted in the courts because legislative interpretation is much more far-reaching.
348	Rep. Lowe	Did you have any input into the A10 and A12 amendments to SB 1205A?
353	O'Neill	No. Discusses her concerns with lines 32 and 33 on page 2 of the bill. This particular part of our contracts protects us against collusion.

384	Rep. Lowe	Did you have any input into the ñA10 and ñA12 amendments to SB 1205A?
387	Warren	Yes, in a limited fashion.
403	Rep. Lowe	Do you agree that it is the province of the legislature to set public policy regarding encouraging people to mitigate environmental damages by cooperating with the Department of Environmental Quality (DEQ)?
410	OfNeill	Yes.
413	Chair Shetterly	Discusses the issue of "voluntary payment" as described in Section 4 (2) (c) on page 2 of SB 1205A.
<b>TAPE 193, B</b>		
006	OfNeill	I would ask that in a voluntary payment situation, the carrier be adequately notified and that the claim be tendered to the carrier before the insured incurs costs.
018	Rep. Uherberlau	Did you voice these concerns about notice to the insurer when this bill was on the Senate side?
031	Warren	We were not personally involved in the negotiations on SB 1205A.
041	<b>Steve Telfer</b>	<b>Alliance of American Insurers</b> Testifies and submits written testimony in opposition to SB 1205A ( <b>EXHIBIT E</b> ). States he is in support of the ñA12 amendments.
071	Rep. Lowe	If this bill included the ñA12 amendments, would you be in support of SB 1205A?
075	Telfer	No.
085	<b>Tim Bernasek</b>	<b>Oregon Farm Bureau</b> Testifies in support of SB 1205A stating that this legislation helps farmers and business owners work with state and federal agencies to cleanup contamination on their property in a cooperative manner.
134	<b>Terry Witt</b>	<b>Executive Director, Oregonians for Food and Shelter</b> Testifies and submits written testimony in support of SB 1205A ( <b>EXHIBIT F</b> ).

185	Chair Shetterly	Introduces a letter from Paul S. Brown, American International Group, Inc. in opposition to SB 1205A ( <b>EXHIBIT G</b> ).
192	DiLorenzo	Replies to previous testimony regarding: 1) the relevance of general CGL premiums not having had an increase in the last five years in the state of Washington; 2) that SB 1205A wouldn't apply if the language in insurance contracts is precise with regards to exclusions; and 3) the provision on voluntary payments.
286	Rep. Lowe	What is the present status of the ICN case? Will this legislation, if passed, affect your case?
287	DiLorenzo	The case been settled and dismissed officially as to all defendants except Traveler's Insurance and we are currently in negotiations with them.
293	Rep. Lowe	So the ICN case is moot and will not be affected by this legislation?
295	DiLorenzo	Yes, but if we have further litigation against the excess carriers, this legislation would affect those cases.
302	Rep. Lowe	Have we heard testimony from any of your excess carriers today?
303	DiLorenzo	We named the excess carriers in the original lawsuit, but were told that we could not name them until we had exhausted the primary layer of coverage. The Judge in the case gave the excess carriers the choice of staying in the lawsuit and monitoring it or being dismissed from the case. They chose to be dismissed.
317	Chair Shetterly	Clarifies that the provision in the bill for coverage of payments made pursuant to a written voluntary agreement, consent decree or consent order doesn't abrogate the obligation a policy holder may have to provide notice to the insurance company of any pending settlement or claim.
331	Rep. Witt	Section 4 (2) (a) on page 2 of SB 1205A states that Oregon law shall apply in all cases where the contaminated property is located within the State of Oregon. What if the lawsuit is being brought in a different state, but the property is located in Oregon? Would Oregon law still be applied to the laws of a different state?
338	DiLorenzo	Discusses that it would depend upon the other states' conflict provisions.
350	Rep. Witt	Section 4 (3) on page 2 of SB 1205A states that the previously mentioned rules shall not apply if the application of the rule results in an interpretation contrary to the intent of the parties to the general liability insurance policy. Do you think one of the parties could assert that, at the time they entered into an agreement, any one of sections (a), (b) or (c), though not expressly defined in the contract, was clearly the intent of the parties?

364	DiLorenzo	I am sure insurers would make that argument. That is why this provision is designed to encourage an insurance company to clearly specify what is covered in a contract.
386	Rep. Witt	If an insurance policy clearly says that there must be a lawsuit for coverage to be provided, are you saying that Section 4 (3) on page 2 of SB 1205A would not apply, even though that was the parties' intent?
395	DiLorenzo	No. In order to discern the intent of the parties, the court will first look at the contract. If the contract is specific, then clear language in the contract will prevail. The problem here has to do with "what does suit mean" and many courts have varied and said that agency action by the DEQ or EPA is tantamount to a suit?
426	Rep. Witt	On line 22 of page 2, you have "requests" being equivalent to a lawsuit. If the EPA or DEQ "requests" that certain action be taken, will that be interpreted as tantamount to a lawsuit?
434	DiLorenzo	If that "request" is in writing.
<b>TAPE 194, B</b>		
002	Rep. Witt	Couldn't there be a "request" made by the DEQ or EPA where there is no intent to take enforcement action if the "request" is not complied with?
005	DiLorenzo	I have never encountered an agency "request" that work be done and then not follow that up with threats of enforcement action if the work is not done.
009	Chair Shetterly	Refers back to the issue of "notice" under the policy stating that the insurance company will have something to say if a company has received a complaint from the DEQ or EPA.
015	DiLorenzo	The moment that a policyholder receives such a written request, the policyholder should immediately send that notification to the insurer.
018	Rep. Witt	If this bill passes, will it increase recovery on insurance claims for these types of actions?
019	DiLorenzo	Yes. It will prevent insurance companies from avoiding otherwise valid claims.
025	Rep. Witt	Who will fund those additional costs?
026	DiLorenzo	Insurers stated that the price of CGL policies is bound to go up to cover these costs. Discusses that the re-insurers of insurance companies may be the ultimate ones to absorb the cost.

043	<b>Tom Gordon</b>	<b>Portland Attorney</b>  Clarifies an issue on reasonable pre-tender costs since he was a party to the negotiations on SB 1205A. It is our intent that the defense of pre-tender is still available to carriers. That means that all costs spent before it gets tendered by notice to the carrier, can be resisted by the insurance companies.
053	Chair Shetterly	Mr. DiLorenzo agrees with you.
064	Rep. Lowe	Do you think SB 1205A addresses the public policy area of protecting companies that go ahead and work with DEQ on cleanup?
070	Gordon	It just means that the insured needs to immediately notify their insurance carrier as soon as a cleanup request has been made by DEQ.
086	Chair Shetterly	Closes the public hearing on SB 1205A.
<b><u>SB 1205A WORK SESSION</u></b>		
087	<b>Rep. Williams</b>	<b>MOTION: Moves to ADOPT SB 1205A-10 amendments dated 06/21/99.</b>
		<b>VOTE: 7-0-2</b>  <b>EXCUSED: 2 - Edwards, Uherbelau</b>
	<b>Chair Shetterly</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
091	<b>Rep. Williams</b>	<b>MOTION: Moves to ADOPT SB 1205A-12 amendments dated 06/21/99.</b>
		<b>VOTE: 7-0-2</b>  <b>EXCUSED: 2 - Edwards, Uherbelau</b>
	<b>Chair Shetterly</b>	<b>Hearing no objection, declares the motion CARRIED.</b>

094	Rep. Williams	<b>MOTION: Moves SB 1205A to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 6-1-2</b> <b>AYE: 6 - Backlund, Lowe, Walker, Wells, Williams, Shetterly</b> <b>NAY: 1 - Witt</b> <b>EXCUSED: 2 - Edwards, Uherbelau</b>
	Chair Shetterly	<b>The motion CARRIES.</b>  <b>REP. WILLIAMS will lead discussion on the floor.</b>
104	Chair Shetterly	Closes the work session on SB 1205A.
104	Chair Shetterly	Adjourns meeting at 2:40 p.m.

Transcribed By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Office Manager

**EXHIBIT SUMMARY**

**A - SB 1205A, ñA10 amendments (LC 2971), dated 6/21/99, submitted by John DiLorenzo, 1 pg.**

**B - SB 1205A, ñA12 amendments (LC 2971), dated 6/21/99, submitted by staff, 1 pg.**

**C - SB 1205A, written testimony submitted by John DiLorenzo, ICN Pharmaceuticals, Inc. dated 6/21/99, 12 pgs.**

**D - SB 1205A, written testimony submitted by John DiLorenzo (oversized), ICN Pharmaceuticals, Inc., dated 6/21/99, 74 pgs.**



**E - SB 1205A, written testimony submitted by Steve Telfer, Alliance of American Insurers, dated 6/21/99, 1 pg.**

**F - SB 1205A, written testimony submitted by Terry Witt, Oregonians for Food and Shelter, dated 6/21/99, 1 pg.**

**G - SB 1205A, written testimony submitted by Paul S. Brown, American International Group, Inc., dated 6/21/99, 2 pgs.**

**H - SB 1205A, written testimony submitted by Carl Brigada, Jr. Liberty Mutual, dated 6/21/99, 2 pgs.**

**I - SB 1205A, written testimony submitted by D. E. Bridges, Oregon Water Assoc., dated 6/15/99, 1 pg.**