

SENATE COMMITTEE ON BUSINESS, HOUSING AND CONSUMER AFFAIRS

February 24, 1993 Hearing Room 343 3:00 p.m. Tapes 19 - 21

MEMBERS PRESENT: Sen. Bill Dwyer, Chair Sen. Bill Kennemer, Vice-Chair
Sen. Brady Adams Sen. Ron Cease Sen. Peg Jolin

MEMBER EXCUSED:

VISITING MEMBER:

STAFF PRESENT: Cherie Copeland, Committee Administrator Richard
Day-Reynolds, Committee Assistant

MEASURES CONSIDERED: Possible Introduction of Committee Bills

Public Hearing and Possible Work Session:

SB 365 - Specifies that underinsurance benefits are
excess over amounts recovered from other

motor vehicle liability insurance. SB 366 - Allows person
injured in motor vehicle accident to retain personal injury
protection benefits to extent that actual damages

exceeds amount collected from at-fault party. SB 367 - Awards
attorney fees and costs to certain prevailing party in
arbitration proceeding

related to personal injury protection

benefits.

[--- Unable To Translate Graphic ---]

These minutes contain materials which paraphrase and/or summarize
statements made during this session. Only text enclosed in
quotation marks report a speaker's exact words. For complete contents
of the proceedings, please refer to the tapes. [--- Unable To Translate
Graphic ---]

TAPE 19, SIDE A

014 CHAIR DWYER: Calls the meeting to order at 3:05 p.m.

(Tape 19, Side A) INTRODUCTION OF COMMITTEE BILLS

022 CHAIR DWYER: Requests a motion to introduce LC 3495, LC 3497, LC
349 8, LC 3512, and LC 3435. [QUOTE] "The introduction does not
imply

favoritism or unfavorable action toward these bills".

027 MOTION: SEN. JOLIN: Moves the introduction of the bills.

029 SEN. ADAMS: Declares a possible conflict of interest on LC 3495, LC 3497, LC 3498 as a president of a financial institution.

035 CHAIR DWYER: Potential conflict so noted. Hearing no objection to the motion, SO ORDERED.

SB 366 - ALLOWS PERSON INJURED IN MOTOR VEHICLE ACCIDENT TO RETAIN PERSONAL INJURY PROTECTION BENEFITS TO EXTENT THAT ACTUAL DAMAGES EXCEED AMOUNT COLLECTED FROM AT-FAULT PARTY - PUBLIC HEARING Witnesses: Katy Eymann, Oregon Trial Lawyers Association (OTLA) Mick Alexander, Attorney Tom Bessonette, Liberty Mutual Insurance, Sublimity

Insurance John Powell, State Farm Insurance Company Kieth Bauer, Attorney

040 KATY EYMANN, OREGON TRIAL LAWYERS ASSOCIATION: Introduces (EXHIBIT B). When a consumer has Personal Injury Protection (PIP) included in their

vehicle insurance policy, they don't have to reimburse the insurance company for a claim against their PIP should they be injured in an accident. Should you be injured in an accident involving another driver, their insurance company reimburses your insurance company.

082 CHAIR DWYER: How can you receive less than your policy limits if you are hit by an insured driver?

087 EYMANN: (INAUDIBLE) You have to reimburse your own company.

111 SEN. JOLIN: Gives an example. I have \$100,000 worth of coverage and I'm hit by a driver with \$50,000 worth of coverage. If I have \$100,000

worth of losses, you're saying that I would somehow get less than that?

120 EYMANN: Total coverage is still only \$100,000. (INAUDIBLE). In Oregon you're better off if you get hit by a driver without insurance than you are if you're hit by a driver with insurance.

135 MICK ALEXANDER, ATTORNEY: This is a very difficult area of law. The situation Ms. Eymann is illustrating is when the injured person's

damages exceed available insurance, whether his own or someone else's.

If a person's actual damages are greater than the insurance, he has to pay his own insurance company back for his PIP.

148 CHAIR DWYER: If I'm paying for a certain level of coverage for PIP, why shouldn't I get that protection? Why should I be paying for something

I'm not getting? Is that what you're saying?

151 ALEXANDER: Yes. The Legislature addressed the uninsured motorist (UM) issue in 1987. The insurance company gets reimbursed their PIP payment

when someone else is at fault, and they have insurance. What we're addressing are those situations when an injured party's benefits end up being lower than their coverage amount because their insurance company must be paid back. The bottom line is when does the insured have to pay his own company back? The Legislature has said that you don't have to pay back the insurance company when there is a claim involving an uninsured driver. The statutes make the injured party worse off if he is hurt by someone with insurance. Clearly this was not the legislative intent.

197 SEN. KENNEMER: In your \$100,000 worth of coverage example, what makes up that figure? Wages? Medical coverage?

201 ALEXANDER: It could include both of those things as well as pain and suffering.

209 EYMANN: Pain and suffering is often misinterpreted.

214 CHAIR DWYER: Medical, special, general, punitive?

219 ALEXANDER: Probably not punitive. We don't want the consumer to have to pay their insurance company back for PIP coverage when the damages

exceed the coverage. PIP coverage has a separate premium.

231 EYMANN: When the Legislature doubled the PIP coverage, the PIP premium didn't go up very much. This change shouldn't cause rates to go up very much, either.

249 ALEXANDER: This was law that existed prior to a legislative change a few years ago.

266 SEN. ADAMS: If the premiums reflect current law, why have the insurance companies not adjusted premiums to reflect the changes in the law?

280 ALEXANDER: I don't set rates. It takes time to change.

SEN. ADAMS: You want this legislation because you feel customers are not getting something they are paying for. If the insurance companies adjusted rates to deal with that, are there other reasons that make this change necessary?

ALEXANDER: The reasonable expectation of the insured. They expect the level of coverage stated in their policy. They don't expect to have to

pay their own company back.

SEN. ADAMS: Is this misinformation or do we need better labeling?

Better information when getting the policy?

342 EYMANN: Consumers need to know when those PIP benefits are a loan and when they are not. 375 ALEXANDER: The 1987 legislative intent was to give the insured full damages when dealing with uninsured motorists. Any extra coverage could be used to pay back PIP. I believe this body tried to be sure the

injured party gets all they are entitled to, but the court didn't agree.

420 EYMANN: We have amendments that take care of this and make it clearer.

TAPE 20, SIDE A

025 CHERIE COPELAND, COMMITTEE ADMINISTRATOR: Asks about additional language for the amendment.

031 EYMANN: Lists options for language.

036 ALEXANDER: There will be three coverage limits.

048 SEN. JOLIN: In our packets, there is SB 366-2.

050 EYMANN: We're asking you adopt 366-1. We feel it's clearer than 366 -2.

064 TOM BESSONETTE, LIBERTY MUTUAL INSURANCE, SUBLIMITY INSURANCE: Gives personal history. Introduces (EXHIBIT C). Gives history of Personal

Injury Protection (PIP) coverage.

113 CHAIR DWYER: So PIP is basically just a loan?

118 BESSONETTE: Yes, in some instances. The purpose of PIP in Oregon was to offer an alternative to no-fault insurance. The basic concept was to [QUOTE] "stop the appeal of no-fault insurance." In order to contain

costs, the at-fault party was supposed to reimburse the insurance company that had advanced the PIP payments.

144 CHAIR DWYER: But is it logical for that to happen when the loss exceeds the coverage?

151 BESSONETTE: The 1981 Legislature thought so, yes.

154 CHAIR DWYER: How about in 1987?

157 BESSONETTE: I didn't review that record for today, and I would have to do so.

159 CHAIR DWYER: Why should it be more advantageous to be hit by someone with no insurance than by someone with insurance?

162 BESSONETTE: To help keep PIP costs down. Underinsured motorist insurance was made available in 1981.

195 CHAIR DWYER: Insurance policies have not been made clear. It seems as though there is always an escape clause that lets the company avoid

settling. That is always the nature of insurance. How do other states handle this?

209 BESSONETTE: Under the Unfair Claims Practices Act the adjuster that contacts you should explain your benefits under the policy.

213 CHAIR DWYER: That's after the accident. After I've lost \$50,000 I don't want to know I could have avoided it by spending \$10.00 up front. How do other states handle it, which states allow what is being asked

for here, and how do the premiums differ in the states that allow this process?

218 BESSONETTE: Compares rates in Washington and Oregon for uninsured motorist and underinsured motorist coverage. It's mandatory coverage in Oregon, optional in Washington. Discusses stacking benefits.

279 CHAIR DWYER: I'd like to see a list of how other states handle this matter. More than just Washington.

289 BESSONETTE: This same bill was before the House in 1989. There has been a substantial increase in underinsured rates in Washington since

then, 130%.

304 CHAIR DWYER: Is that because more people are driving uninsured, making your risk greater?

307 BESSONETTE: Could be. The prices on that insurance are going up substantially. Mandating companies and people to pay more in Oregon for the same coverage is wrong.

347 SEN. KENNEMER: Is it time to raise the limits? One way to solve underinsured motorists is to raise the limits.

359 BESSONETTE: We lose people from the insurance industry every time we raise the limits. It becomes more unaffordable.

368 SEN. KENNEMER: To some degree it's because people get less and pay more. Since Portland started impounding uninsured cars, there's been a

rush to buy insurance.

376 BESSONETTE: The rush to buy mandatory insurance yielded a lot of one and two month policies just to get proof of insurance cards. I think in three or four months you'll see a lot of people dropping

from the

program in Portland as well.

406 CHAIR DWYER: Civil forfeiture is unconstitutional, and targets minorities and the poor. It's a usurpation of government authority to

take property without due process.

424 BESSONETTE: I agree with you, Sen. Dwyer.

440 SEN. KENNEMER: It is against the law to drive uninsured and we go to extraordinary measures to enforce other parts of the law. I've been a

victim of an uninsured motorist and that's why I feel so strongly about this.

450 CHAIR DWYER: I think the remedy is to make insurance affordable.

TAPE 19, SIDE B

037 JOHN POWELL, STATE FARM INSURANCE COMPANIES: Agents are supposed to explain coverage to consumers. Uninsured motorist law was part of

Oregon's "no-fault" insurance laws. Uninsured motorist insurance is the law in Oregon. If I buy a certain level of insurance, I get those benefits. What SB 365 does is remove the set limit and add my coverage onto the end of that. It lets me collect the amount the underinsured motorist holds, and add mine onto that.

100 CHAIR DWYER: Please speak to SB 366. Address those issues when we hear 365.

103 POWELL: SB 366 deals with first party benefits. PIP kicks in and pays immediate benefits if there is an injury.

122 CHAIR DWYER: Basically it's a loan.

126 POWELL: No. The only time it's a loan is if someone else was later found to be at fault.

141 SEN. ADAMS: Asks for clarification from chart in information packet.

149 POWELL: These coverages are designed for very specific situations. What SB 366 does is make PIP an extension of the wrong-doer's coverage. It would end up costing more.

168 SEN. ADAMS: Are these circumstances currently reflected in premium?

175 POWELL: Yes. Premiums are based on the circumstances in which they would be paid.

184 KEITH BAUER, ATTORNEY: This issue has been before the legislature for fifteen years. The court has confirmed that reimbursement is

appropriate. PIP is another health insurance policy if you are in an accident. Health insurance kicks in after the auto policy. This would make a huge change in the whole system, not just this one area. This system has been in place for a long time. The individual can always purchase more benefits.

270 SEN. JOLIN: Why does the insurance industry fall under the Unfair Claims Practices Act and not the Unfair Trade Practices Act?

295 BAUER: It's a statute that addresses the insurance industry specifically, the only industry so regulated.

314 POWELL: Insurance is not totally exempt from anti-trust. They are also the fourth-largest contributor to the tax base.

(Tape 19, Side B) SB 365 - SPECIFIES THAT UNDERINSURANCE BENEFITS ARE IN EXCESS OVER AMOUNTS RECEIVED FROM OTHER MOTOR VEHICLE LIABILITY INSURANCE - PUBLIC HEARING Witnesses: Katy Eyeman, Oregon Trial Lawyers Association Tom Bessonette, Oregon Mutual Insurance Company, Sublimity Insurance Company John Powell, State Farm Insurance Companies

359 KATY EYMANN, OREGON TRIAL LAWYERS ASSOCIATION: SB 365 would add your underinsured benefits to the amount of insurance held by the other

driver. We understand that this bill will raise rates like in Washington.

416 SEN. JOLIN: Asks question concerning contingency fees.

425 EYMANN: Explains contingency fees.

466 SEN. ADAMS: Is it critical to have the words "hit you " in the bill? Is fault an issue?

TAPE 20, SIDE B

035 EYMANN: If you're at fault, you only get your PIP paid. This addresses the amount of insurance a person thinks they're going to get when they

purchase a policy. We understand this will increase rates because of stacking. People might buy less insurance if they knew it would be added to what they already had. This might help to lower premiums.

063 SEN. ADAMS: Why do people keep taking this to court if the court has repeatedly upheld the concept of reimbursement?

069 EYMANN: Consumers don't often pay attention to law cases, and they often don't know what their insurance is. Contrary to the previous

witness's testimony, the law is not clear and reimbursement has not been occurring in the wake of the Wygant case.

080 CHAIR DWYER: It all boils down to reasonable expectations.

085 TOM BESSONETTE, OREGON MUTUAL INSURANCE COMPANY AND SUBLIMITY INSURANCE COMPANY: Rates have gone up in Washington because of stacking, and

that's why we're against it here in Oregon.

097 CHAIR DWYER: Would you object to it if you could raise the premiums?

099 BESSONETTE: The more we raise premiums, the more people there are out there driving uninsured. We are opposed to these amendments.

107 SEN. KENNEMER: What would the rate increase be if people buy higher levels of coverage?

115 BESSONETTE: Gives sample rates.

123 SEN. KENNEMER: Do you have alternatives to reduce rates?

129 BESSONETTE: Continue mandatory provisions on liability and property damage only like they do in Washington.

154 KEITH BAUER, ATTORNEY: SB 365 would double the effective minimum limit policy in Oregon. This would increase rates. Contests the testimony of

a previous witness.

194 CHAIR DWYER: How do we clear up the question of reasonable expectation?

196 BAUER: By buying a policy that states the amount you wish to have coverage for, and making sure it is stated so in the policy.

215 JOHN POWELL, STATE FARM INSURANCE COMPANIES: UM coverage is designed for specific purpose. It is a mandated coverage different from PIP.

The system works as it is meant to work.

251 CHAIR DWYER: This is not as clear as we would like it to be.

262 POWELL: Neither are most things in life. Everything is ambiguous in the law.

279 SEN. KENNEMER: Asks for clarification on rate sheet in exhibit.

285 POWELL: Explains rate sheet.

(Tape 25, Side B) SB 367 - AWARDS ATTORNEY FEES AND COSTS TO

CERTAIN PREVAILING PARTY IN ARBITRATION PROCEEDING RELATING TO
PERSONAL INJURY PROTECTION BENEFITS - PUBLIC HEARING Witnesses: Katy
Eymann, Oregon Trial Lawyers Association Dan Simcoe, Attorney Stefania
Allison, Citizen John Powell, State Farm Insurance Company

312 KATY EYMANN, OREGON TRIAL LAWYERS ASSOCIATION: (EXHIBIT H). This
bill would allow consumers to get a fair hearing from their insurance
company if the consumer feels their insurance company has harmed them.

332 DAN SIMCOE, ATTORNEY: (EXHIBIT I). Gives history of a former
client. This would allow people to hire an attorney to contest a ruling
of their own insurance company. Even in arbitration hearings the
insurance

company can afford attorneys and other experts, and consumers often
cannot.

380 EYMANN: There are very few arbitrations. Consumers feel it's not
worth it and it is often difficult to get an attorney to take on this
type of case because of the small sums involved.

409 STEFANIA ALLISON, CITIZEN (EXHIBIT J): Involved in an
accident. My insurance company did not pay. I went through eight
months of

arbitration with my own insurance company to get part of my PIP
benefits.

TAPE 21, SIDE A

054 SEN. KENNEMER: Were you reimbursed for your attorney fees?

059 ALLISON: No. I had to pay for the costs I incurred.

065 JOHN POWELL, STATE FARM INSURANCE COMPANIES: Have concerns
about SB 367. Arbitration tries to keep disputes out of court and on an
informal basis. Normally the medical billing is involved. To change how
we deal

with providers is bad public policy.

098 CHAIR DWYER: I disagree. Only if the award exceeds the offer
by the insurance company. I think this would precipitate fairer
settlements.

114 POWELL: In smaller claims, insurance companies will probably
just pay them instead of incurring the costs of arbitration.

123 SEN. ADAMS: How often is an insurance company not represented
by an attorney in arbitration?

125 POWELL: I don't know. It would make sense that in most
cases the insurance company would have an attorney.

128 SEN. KENNEMER: It costs a consumer \$100 to go to arbitration,
and any other experts needed are also at the consumer's expense?

141 POWELL: Yes.

143 CHAIR DWYER: Compares the procedure to that of Small Claims Court.

154 BAUER: This process is fair to all parties. I worry about attorneys pushing their clients to go to arbitration under this bill.

198 SEN. KENNEMER: How many PIP claims are there annually?

210 BAUER: It's possible there were upwards toward 40,000 claims and there were 1300 denied. 226 CHAIR DWYER: We need the Insurance Commissioner to come in and give us a run down of these problems.

- Adjourned the meeting at 5:12 pm.

Submitted by:

Reviewed by:

Willie Tiffany
Administrator

Richard Day-Reynolds Assistant

EXHIBIT LOG:

A - Testimony on SB 365 - Katy Eymann - 1 page B - Testimony on SB 366 - Katy Eymann - 3 pages C - Testimony on SB 365 - Tom Bessonette - 2 pages D - Proposed amendments to SB 366 (-1) - Staff - 5 pages E - Proposed amendments to SB 366 (-2) - Staff - 4 pages F - Proposed amendments to SB 365 (-1) - Staff - 2 pages G - Testimony on SB 365 - John Powell - 1 page H - Testimony on SB 367 - Katy Eymann - 1 page I - Testimony on SB 367 - Daniel Simcoe - 2 pages J - Testimony on SB 367 - Stefania Allison - 2 pages K - Witness Registration - Staff - 3 pages