Automobile Insurance Work Group:

SELF-INSURED VEHICLES UNDER LIABILITY AND UM/UIM INSURANCE STATUTES

SB 922

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I. Introductory Summary

The proposed legislation would patch two holes in auto insurance coverage caused by self-insured vehicles. First, this bill would assure that the owners of self-insured vehicles provide the statutorily minimum automobile liability coverage of $25,000 per injured person or $50,000 per accident for the drivers of those self-insured vehicles who drive with the owners' consent. In effect, this bill would extend to self-insurers the existing requirement that ordinary auto policies must provide coverage for permissive drivers. ORS 806.080(1)(b). Self-insurance would then mirror traditional insurance.

Second, this bill would assure that if liability coverage failed to exist sufficient to pay the damages caused by a self-insured vehicle, that the injured person could collect on the injured person's own uninsured or underinsured motorist (UM/UIM) coverage. Today, the UM/UIM statute unwittingly declares that self-insured vehicles can never be treated as an uninsured or underinsured vehicle, even when self-insurance provides no recovery at all. ORS 742.504(2)(e)(B). When self-insurance fails or falls short, the injured person's own UM/UIM coverage will not now do its job of making up the difference.

II. History of the Project

At the prompting of several sources, the Oregon Law Commission's Program Committee identified Oregon's auto insurance statutes, particularly the uninsured and underinsured motorist provisions, as a subject for inquiry. *See* ORS 173.338(1) (Commission to discover defects and anachronisms and recommend law reform).

In 2003, an Auto Insurance Study Group considered 22 issues and prioritized the topics for remedial legislation.[1] Nine issues were deemed the highest priority. On February 27, 2004, the Oregon Law Commission approved the creation of a Work Group.[2] On April 29, 2004, the Work Group found consensus on five particular problem areas to address for the 2005 Legislative Session.[3] The Work Group agreed that any remedial legislation should be segregated into separate bills to promote passage and to avoid "gut and stuff" changes. On October 27, 2004, five bills were recommended by the Work Group for consideration by the full Oregon Law Commission. This proposed bill involves two interrelated issues arising from self-insured vehicles.

III. Statement of the Problems

A. Liability Insurance

Fifteen years ago, the Oregon Supreme Court established a fundamental principle in Oregon's Financial Responsibility Law, the set of statutes that declare the basic requirements of auto liability insurance. The court construed the statutes to require that insurance policies on cars must provide liability coverage for anyone who drives with the permission of the owner. Viking Ins. Co. v. Perotti, 308 Or 623, 784 P2d 1081 (1989); Viking Ins. Co. v. Petersen, 308 Or 616, 784 P2d 437 (1989). The legislature confirmed its agreement by codifying the requirement in the next session. 1991 Or Laws ch 768, §8 (now ORS 806.080(1)(b)).

Not everyone is required to buy insurance on their vehicles. Another way to comply with the Financial Responsibility Law is to become "self-insured." ORS 806.060. Any entity which owns 25 or more vehicles may get a certificate of self-insurance from the Department of Transportation so long as the entity promises that it will "pay the same amounts" required by the Financial Responsibility Law. ($25,000 per person / $50,000 per accident). ORS 806.130.

The Oregon Court of Appeals construed the self-insurance statute narrowly, holding that it implied no requirement that a permissive driver of the car be covered by the car's "self-insurance." The requirement to "pay the same amounts" did not imply that the self-insurer must pay under the same circumstances required by the Financial Responsibility Law. Farmers Ins. Co. v. Snappy Car Rental, Inc., 128 Or App 516, 876 P2d 833 (1994) (permissive user not covered); see also Neal v. Johnson, 154 Or App 500, 962 P2d 706 (1998) (no permission).

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[1] The Study Group was chaired by Commission member, Martha Walters, and was comprised of Justice Edwin Peterson, Senator Charlie Ringo, Dean Heiling, John Bachofner, and Joel DeVore.

[2] The Work Group consisted of the Study Group with the addition of four members: Stephen Murrell, Tom Mortland, Neal Jackson, and Richard Lane.

[3] Of the Study Group's "highest priority" issues, the Work Group tabled four issues with the following numeric rankings: (1) the reported conflict between PIP offsets under ORS 742.542 and PIP reimbursement under ORS 742.544; (2) the denial of underinsurance coverage when government negligence causes injury; (8) adding a statutory authorization for medical exams to the PIP statute; and (9) revising or clarifying the UM/UIM time limit in ORS 742.504(12).

Unlike everyday auto insurance, the "self-insurance" on self-insured cars provides nothing when a permissive driver drives. In this regard, self-insurance does not mirror a fundamental requirement of the Financial Responsibility Law.

Self-insurers can be anyone with 25 or more vehicles. Typically, such fleets are owned by corporate entities, utilities, and car rental businesses. Usually, permissive drivers carry their own liability coverage. However, a recurring problem arises when the driver lies about coverage, has been excluded from coverage, or has had coverage canceled. When the driver's own liability coverage fails, there is no coverage for the permissive driver of the self-insured car. Self-insured cars and traditionally insured cars are not treated alike.

B. Uninsured and Underinsured Motorist Coverage

By definition, the uninsured and underinsured motorist statute declares that an "uninsured vehicle" is not a self-insured vehicle. ORS 742.504(2)(e)(B). When the UM/UIM statute was adopted in 1967, the assumption may have been that a self-insured vehicle will always provide enough money to pay damages. That assumption is wrong for two reasons. First, self-insured vehicles do not provide coverage for permissive drivers. As in the Snappy Car case, there may be no money at all. Second, when self-insurance does pay, it is only required to pay the minimal limits of $25,000 per person or $50,000 per accident. Thompson v. Estate of Pannell, 176 Or App 90, 98, 29 P3d 1184 (2001).

Today, injured Oregonians can discover that, not only may the driver of the self-insured car have no liability money, but injured persons will be denied their own uninsured motorist coverage. An injured person may have purchased basic $25,000 / $50,000 UM coverage, but a "self-insured" car is, by definition in the statute, never an uninsured car. Even when drivers of self-insured cars *do* have liability coverage, such as $25,000 / $50,000, the injured person's own *under*insured motorist coverage will automatically and invariably fail. The accident victim may have a severe injury and $100,000 / $300,000 UIM coverage, but a "self-insured" car is, by definition, never an *under*insured car, either.

IV. Objectives of the Proposal

The objectives of the proposal are to assure that self-insurance complies fully with the Financial Responsibility Law. ORS 742.450 to ORS 452.468; ORS Ch 806. Permissive drivers of self-insured cars would be afforded basic liability coverage just as they must be in cars covered by traditional insurance.

If for any reason, the self-insurer is non-complying or self-insurance fails, or if, after paying its basic limits, self-insurance falls short of paying an injured Oregonian's damages, then the injured person's own UM or UIM coverage would pay in the normal way.

Nothing in this proposal is intended to eliminate the existing requirement that a claimant must first exhaust the underlying liability limits by judgment or settlement in one of the ways provided in ORS 742.504(4)(d).

V. The Proposal

The proposal is now identified as SB 922.

VI. Conclusion

It is doubtful that self-insurance was ever intended to provide coverage that is less than the Financial Responsibility Law. We can be certain that no Oregonian expects their own UM/UIM insurance to fail completely, just because the wrong-doer happens to drive a self-insured car. These statutory "defects and anachronisms" well warrant reform. *See* ORS 173.338(1)(a).

VII. Amendment Note

An amendment was made to SB 922 to further clarify the intent of the bill. A new section 1a was added. That section makes it clearer that a self-insurer is required to provide the minimum payments established under ORS 806.070 only when the motor vehicle liability insurance policy of a customer of the self-insurer or an operator of the self-insured vehicle does not provide the minimum required payments established in ORS 806.070. That is, if a customer or operator has proper insurance under Oregon law, the self-insurer will not be liable.