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Oregon Bad Faith Bill Dies on the Vine

By Lloyd Bernstein

The 2016 Oregon legislative (short) session has recently come to an end, and the insurance policyholder advocates attempt to statutorily create insurance bad faith was thwarted. As you may be aware, recoverable damages in an Oregon insurance dispute are generally limited to contract damages and attorney fees incurred in establishing coverage. The 2016 bad faith bill (SB 1590) came out of the woodwork and was put on a fast track even though, if passed, it would have turned Oregon insurance law on its head.

SB 1590 would have changed Oregon insurance law in five key areas:

1. **Re-writing the duty to defend** – The bill contemplated creating a fiduciary relationship that would have required the insurer to place the insured's interests above its own.
2. **Coverage by estoppel** – Any breach of the duty to defend—even a minor breach, an honest mistake or an honest oversight—would eliminate the insurer's ability to participate in the defense of the lawsuit, but the insurer would still be required to pay for the insured's defense counsel.
3. **Independent defense counsel** – The proposal would have required insurers to pay independent counsel for the insured whenever they were defending under a reservation of rights *or* if there was the possibility for excess exposure.
4. **Regulatory estoppel** – The bill would allow statements by an insurer to a regulatory body (e.g., when getting forms approved) to be used to interpret contract provisions, rather than relying on the plain language of the contract.
5. **Assignment of insurance claims** – The bill would amend ORS 31.825 to allow insured to protect themselves from collection on a judgment by assigning their insurance claims to a claimant as part of a settlement even if the policy had an anti-assignment provision.

SB 1590 was the most expansive and aggressive attempt at insurance bad faith regulation in Oregon in quite some time. After a concerted effort by the insurance industry and other interested groups, SB 1590 was killed in committee. That being said, the ground work has seemingly been laid for another, more concentrated run at bad faith legislation in the 2017 (regular) legislative session.