

# Review of Proposed New York State Bad Faith Bills:

- S6216/A5623
- S3634-B/A5629-B

Prepared for:

American Property Casualty Insurers Association

National Association of Mutual Insurance Companies

New York Insurance Association

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## Executive Summary

The New York State Legislature is currently considering two bills that seek to amend the current insurance law regarding civil remedy for unfair claim settlement practices. The bills differ from each other with regard to the potential claimants (first or third party), possible damage recoveries, and standards of unfair claims settlement practices. A brief summary of each of the bills is provided below:

- S6216/A5623 – Proposes to amend the current insurance law by providing an entirely new private right of action to all policyholders (i.e., first party claimants) and injured parties (i.e., third party claimants). The bill would set forth eleven categories of practices for which a private right of action may be brought. Proposed recoveries include actual damages, interest, compensatory damages, consequential damages, attorney fees and punitive damages; and
- S3634-B/A5629-B – Proposes to amend the current insurance law to maintain an action by persons against a liability insurer seeking compensatory damages where the insurer failed to engage in prompt and fair settlement of a claim, and where the insurer failed to sufficiently consider its insured's interests, and thereby exposed its insured to a judgement in excess of the policy limits. Compensatory damages would be available to the full extent of the judgment against the insured, not limited to the policy limits.

The American Property Casualty Insurers Association (APCIA), National Association of Mutual Insurance Companies (NAMIC) and New York Insurance Association (NYIA) have requested that Milliman provide an analysis of the total cost effect of each of these proposed bills – both to property-casualty insurers and policyholders.

Based on our analysis contained in this report, Milliman estimates that the proposed bad faith laws could increase annual loss and loss adjustment expense (LAE) by between \$3.8 billion and \$5.7 billion or approximately 10% to 15% of the average annual loss and LAE incurred by the property casualty insurance industry (including both admitted and excess & surplus line insurers) in New York. The estimated increase in loss and LAE could result in a corresponding increase in annual premium to property casualty insurance policyholders in New York of between \$4.3 billion and \$6.9 billion or 9% to 15% of the estimated current annual premium paid by New York residents and businesses. The percentage increases to some individual lines of insurance are projected to be higher than these average impacts, depending on the bill. Our medium estimate of the aggregate impact of each of the proposed bills is provided in the table below.

**Table 1**  
**Milliman Estimated Impact of Proposed Bills on P/C Premiums and Losses in New York**  
**(Dollars in Billions)**

Bill	2019 NY Earned Premium	Impact of Bills on Premium		Annual NY Estimated Loss	Impact of Bills on Losses	
		\$	%		\$	%
S6216	46.8	6.9	14.8%	37.4	5.7	15.2%
S3634-B	46.8	4.3	9.3%	37.4	3.8	10.2%

Note the estimated impact of each bill is independent of the impact of the other bill; these are not additive. 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 proposed bills. The critical conclusion based on our analysis is that if either of the bills are passed, insurers will likely pay more on the same type of claims in the future than they do today given the increased likelihood of unfounded bad faith claims.

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

- an unintended expansion of coverage;
- a possible delay in claim settlements as a result of attorney involvement;
- higher insurance rates and reduced availability for consumers;
- additional cases for the already overburdened New York court system; and
- an increase in No-Fault or Personal Injury Protection (PIP) coverage fraud.

## 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 actions 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 New York Legal Environment

Unfair claim settlement practices in New York are currently regulated under New York Insurance Law 2601, which lists eight specific unfair claim settlement practices. These eight practices are included in the NAIC Model Act. (The model act contains fourteen prohibited claims practices that administrative agencies could act on if they are engaged in by insurers with “such frequency as to indicate a general business practice”.)

Any of these acts, if committed without cause and performed with such frequency as to indicate a general business practice, shall constitute an unfair claim settlement practice. However, generally, under current New York law, there is no statutory basis for an insured to bring a bad faith claim. Policyholders can bring disputes to the Department of Financial Services, which can fine and penalize insurers. For No-Fault coverage claims, if it is not possible to conciliate the dispute, it is submitted to an arbitration system. In certain situations, there is an option for a policyholder to appeal an arbitration ruling in the courts. In addition to the administrative system, with its fines and penalties, New York Courts currently permit common law litigation against insurers.

New York courts have held that although allegations of bad faith in denying insurance coverage do not give rise to independent tort actions, where the insured demonstrates “egregious tortious conduct” by the insurer against the insured and the public at large, punitive damages may be awarded.

In 2008, New York’s highest court adopted a new standard with respect to first party bad faith claims. The New York Court of Appeals held that a policyholder may recover consequential damages for an insurer’s breach of good faith handling of a first party property insurance claim (see *Bi-Economy Market, Inc. vs Harleysville*). In 2014, the Second Department held that a policyholder may also recover consequential damages for a liability insurer’s breach of good faith in handling a third party claim.

## Proposed Changes to Current New York Legal Environment

The New York State Legislature is currently considering two bills that seek to amend the current insurance law regarding civil remedy for unfair claim practices. The bills differ from each other with regard to the potential claimants (first or third party), possible damage recoveries and standards of unfair claims settlement practices. As mentioned above, a brief summary of the proposed bills is provided below:

- S6216/A5623 – Proposes to amend the current insurance law by providing an entirely new private right of action to all policyholders (i.e., first party claimants) and injured parties (i.e., third party claimants). The bill would set forth eleven categories of practices for which a private right of action may be brought. Proposed recoveries include actual damages, interest, compensatory damages, consequential damages, attorney fees and punitive damages; and
- S3634-B/A5629-B – Proposes to amend the current insurance law to maintain an action by persons against a liability insurer seeking compensatory damages where the insurer failed to engage in prompt and fair settlement of a claim, and where the insurer failed to sufficiently consider its insured’s interests, and thereby exposed its insured to a judgement in excess of the policy limits.

Compensatory damages would be available to the full extent of the judgment against the insured, not limited to the policy limits.

The unfair settlement practices specifically listed in S6216 are provided in Appendix A along with a comparison to whether similar practices are listed in the NAIC Model Act or NY Section 2601. Note that no specific practices are listed in S3634-B other than that the insurer failed to effectuate a prompt and fair settlement of a claim or any portion thereof, and the insurer “failed to reasonably accord at least equal or more favorable consideration to its insured’s interest as it did to its own interests, and thereby exposed the insured to a judgment in excess of the policy limits”.

## 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 an incentive 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 lower coverages and, in the extreme, a propensity to become uninsured.*

As costs to 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 for. 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 most auto accident claimants already employ lawyers to sue a third party so there would be little additional work.
2. Greater Amount of Payment Per Claim – Claims will likely settle at higher amounts as insurers increase proposed settlements to avoid bad faith actions 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 B, 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 credible data and can generally 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 settlement amounts. 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)

Most of the studies do not provide specific estimates of the resulting increase in costs.

## Potential Impact in New York of Enactment of Bills

Our review of the proposed bad faith bills included discussions with experts in claims resolution and insurance law in New York to better understand the provisions of each of the bills. There is general concern from these experts that each of the bills will likely result in unnecessary increased litigation and costs.

In regards to the bill that creates a private right of action (S6216/A5623), 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 current 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 recoveries for compensatory, consequential and punitive damages as well as reasonable attorney's fees, and interest. The provision of all these additional amounts may increase the likelihood of greater attorney involvement in claims resulting in higher claim severities.
3. **Expansion of Unfair Claim Settlement Practices** – The ten claim settlement practices listed in S6216/A5623 are shown in Appendix A. The wording of these practices would significantly expand what is currently considered to be an unfair claims settlement practice under 2601. A specific example is the failure for an insurer to make a final determination regarding a claim within six months of receiving actual or constructive notice of the claim. This time period may be too short for various complex claims or where critical information for the claim has not been made available to the insurer.

S6216/A5623 also contains language similar to S3634-B/A5629-B, which addresses potential third party bad faith claims. The main concerns expressed for S3634-B/A5629-B follow:

1. **Decreased Standard for Bad Faith Claims** – Current New York case law only allows third party bad faith lawsuits with potential judgments in excess of policy limits when it is proved that the insurer demonstrated gross or willful disregard of the insureds' interests. Bill S3634-B allows an action to be brought when an insurer "failed to effectuate a prompt and fair settlement of a claim". The terms "prompt" and "fair" are not further defined and the resulting ambiguity would likely lead to increased litigation for a more precise determination. In addition, today an insurer must place the interests of its insureds on an equal footing with its own interests when considering a settlement offer. S3634-B proposes that an insurer must "accord at least equal or more favorable consideration to its insured's interests as it did to its own interests", therefore raising the standard for an insurer beyond the current level. These changes will likely lead to a material increase in bad faith litigation.
2. **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 would be subject to a third party bad faith claim for failure to make a prompt and fair settlement.
3. **Possible Expanded Recoveries** – Under current New York Insurance Law 3420, an injured party may directly sue his tortfeasor's insurer only after obtaining a judgment against the insured and waiting thirty days. The potential recovery is then limited to the amount of the judgement subject to the applicable policy limit. Under the proposed bill, successful claimants may recover compensatory damages to the "full extent of the judgment against the insured, not limited to the policy limits". It is unclear if the "full extent of the judgment" could include amounts for attorney fees, consequential damages, post-judgment interest and punitive damages, which would greatly increase any claim amounts.

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.

As a result of our discussions, we have assumed that the standard applied to bring a bad faith claim in New York under the proposed bills will be broader than the current environment and generally more consistent with the current environment in Florida. Note that similar to current Florida law, the proposed bills 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 any of the proposed bills 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 New York court system.

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

The main impact for both bills will be on auto insurance losses and claims. The impact on No-Fault/PIP, Bodily Injury (BI) and Uninsured/Underinsured Motorist (UM/UIM) coverages are determined from the calculations on Exhibit 3 which are based upon Florida, New York 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 premium, 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 bills 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 tables below.

**Table 2**  
**Milliman Estimated Impact of S6216/A5623 on P/C Losses and Premium in New York**  
**(Dollars in Billions)**

Scenario	2019 NY Earned Premium	Impact of S6216/A5623 on Premium		Annual NY Estimated Loss	Impact of S6216A5623 on Losses	
		\$	%		\$	%
Low	46.8	4.6	9.8%	37.4	3.8	10.1%
Medium	46.8	6.9	14.8%	37.4	5.7	15.2%
High	46.8	9.2	19.6%	37.4	7.6	20.3%

**Table 3**  
**Milliman Estimated Impact of S3634-B/A5629-B on P/C Losses and Premium in New York**  
**(Dollars in Billions)**

Scenario	2019 NY Earned Premium	Impact of S3634-B / A5629-B on Premium		Annual NY Estimated Loss	Impact of S3634-B / A5629-B on Losses	
		\$	%		\$	%
Low	46.8	2.9	6.2%	37.4	2.5	6.8%
Medium	46.8	4.3	9.3%	37.4	3.8	10.2%
High	46.8	5.8	12.3%	37.4	5.1	13.6%

### Explanation of Assumptions

The 2019 New York ultimate loss and LAE was determined by applying the estimated ultimate loss & LAE ratio by line of business for New York (from NAIC 2008-2017 Profitability Studies by Line by State) to the annual earned premium by line of business (from the 2019 Annual Statement State page for the P&C industry). The assumed percentage impact for each bill (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 3, Sheet 1 is based upon data from IRC reports. The IRC data (evaluated through second quarter 2017) provided the percentages of Florida and New York 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 S6216/A5623, New York No-Fault claimants (which currently have attorney involvement in approximately 47% of total claims) will eventually increase beyond the attorney involvement level in Florida (currently 55%) and will increase further and approach the current level of attorney involvement as seen with New York BI claimants (87%). We assume that the

potential for increased economic payouts from the implementation of S6216/A5623 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 3, 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 3, Sheet 1 we estimate the effect of S6216/A5623 on annual automobile No-Fault losses to be an increase of 31.0%. Note that this is only one metric to estimate the impact of S6216/A5623 in New York on No-Fault losses and there may be other reasonable estimates that may also be determined. This approach may not capture the entire adverse impact of S6216/A5623.

### *Auto Bodily Injury Coverage*

Exhibit 3, 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 (with a slight adjustment) is appropriate for this study because it is reasonable to project that each bill may create an insurance environment similar to Florida based on the current language in the bill and input from our discussions with New York 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 help determine our medium estimate but adjusted it to reflect the structure of S3634-B/A5629-B and S6216/A5623 that includes the requirement of a judgment against the insured in excess of policy limits before allowing for an action. Given this hurdle, we believe the impact of the bill would be negligible on the settlement values of smaller BI claims that are well below policy limits. As the New York mandatory minimum policy limit for BI is \$25,000 per person/\$50,000 per accident, we judgmentally assumed the majority of BI claims below \$5,000 would not be impacted by the threat of a bad faith claim were either bill to be enacted. According to an IRC study based on 2012 loss data, while approximately 58% of countrywide BI claims were related to amounts below \$5,000, these claims represented only 18% of BI loss dollars. IRC updated these statistics using 2017 data and found that the number of BI claims under \$5,000 had dropped to 46%, (the impact of this decrease in claims on the related dollars of paid BI losses was not provided). Given the shift in the number of claims, loss trend since 2012 and the higher average BI loss amounts in New York relative to countrywide data, we assumed that only 10% of New York BI losses were related to claims less than \$5,000. We tempered the indicated impact derived from the Florida studies by this amount

as shown on Exhibit 3, Sheet 2. Our low and high estimates were calculated by varying our medium estimate by 10%.

### *Auto Uninsured/Underinsured Motorist (UM/UIM) Coverage*

Exhibit 3, Sheet 3 also focuses on the increased level of attorney involvement in UM/UIM claim after the implementation of the current 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 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 New York UM/UIM claims will have more attorney involvement than in the past due to the proposed change in the bad faith 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, and 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 current bad-faith environment in Florida in 1995 than in 2006.

Given these assumptions, on attached Exhibit 3, Sheet 3 we estimated the effect on annual automobile UM/UIM losses to be an increase of 17.4%. Note that this is only one metric to estimate the impact of S6216/A5623 on UM/UIM losses in New York and there may be other reasonable estimates that may also be determined. For example, a recent 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 cost 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 both bills appears to allow for direct civil actions against insurers in third party liability claims. Given the higher average claim severity and lower average claim frequency compared to auto claims, and the higher average policy limits for these coverages, we do not believe the impact of the bill will be as large as estimated for auto BI claims (37.1%). As a result, we have estimated an increase of 20% to current third party coverage costs.

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

Similar to Auto Property Damage and Physical Damage claims, we would not expect that the impact on property coverage would be as much as that expected for No Fault, UM/UIM, and BI coverage. 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*

We do not believe any of the proposed bills will affect Workers Compensation costs materially as 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. Therefore, we have selected no change to costs for this coverage.

### *Other P&C Lines*

We have selected a 5% expected increase for the remaining lines of business. These include ocean marine, inland marine, accident & health and others.

## Potential Unintended Consequences of First and Third Party Tort Liability in New York

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

### *Unintended Expansion of Coverage*

The proposed bills 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. Benefits under no-fault in New York are limited to \$50,000 for economic losses such as expense related to medical care and wage loss. The rates charged by insurers for this coverage only contemplate costs related to the \$50,000 limit on economic losses. They do not include any provision for potential non-economic losses such as pain and suffering. Therefore, any expansion of coverage, beyond what was originally intended would necessitate a rate increase.

### *Delays in Claim Settlement*

If the proposed bills result 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 may 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 would 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 New York Court System*

No-fault coverage was established in New York in part to alleviate an overburdened court system clogged with auto disputes. A verbal threshold of “serious injury” (death, dismemberment, disfigurement, etc.) was established to limit potential lawsuits. The passage of either of the proposed bills could lead to increased litigation and hamper a New York Court System already subject to “significant delays in deciding motions and conducting trials”. (See the “The State of the Judiciary 2014” produced by the New York State Unified Court System.)

### *Reduced Fraud Deterrence*

According to Tennyson and Warfel (see Appendix B, 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 likewise be inaccurate or incomplete. In that event, 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. Our estimates make no provision for the potential impact of the COVID-19 pandemic.

There is substantial uncertainty regarding the impact of COVID-19 on the level and nature of business activity. Exposures, claim frequency, and claim severity will likely be affected in ways we cannot currently estimate. It is important to recognize that actual losses may emerge significantly higher or lower than the estimates in this analysis.

### *Distribution*

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**Proposed New York State Bad Faith Bills**

**Estimated Effects upon Insurance Premiums**  
(\$millions)

	(1)	(2)	(3) (2) / (1)	(4)	(5) (4) / (1)
Total					
2019 Direct					
NY State					
Earned					
Premium					
		<u>Estimated</u>		<u>Estimated</u>	
		<u>Effect of S6216/A5623</u>		<u>Effect of S3634B/A5629B</u>	
		<u>Dollar</u>	<u>Percentage</u>	<u>Dollar</u>	<u>Percentage</u>
Low	46,795	4,603	9.8%	2,920	6.2%
Medium	46,795	6,903	14.8%	4,340	9.3%
High	46,795	9,188	19.6%	5,760	12.3%

**Estimated Effects upon Loss & LAE**  
(\$millions)

	(6)	(7)	(8) (7) / (6)	(9)	(10) (9) / (6)
NY State					
AY 2019					
Estimated					
Loss					
		<u>Estimated</u>		<u>Estimated</u>	
		<u>Effect of S6216/A5623</u>		<u>Effect of S3634B/A5629B</u>	
		<u>Dollar</u>	<u>Percentage</u>	<u>Dollar</u>	<u>Percentage</u>
Low	37,368	3,756	10.1%	2,541	6.8%
Medium	37,368	5,674	15.2%	3,818	10.2%
High	37,368	7,580	20.3%	5,096	13.6%

Note:

(2), (7) From Exhibit 1

(4), (9) From Exhibit 2

**Proposed New York State Bad Faith Bills**  
**Estimated Effects upon Insurance Premiums and Loss & LAE**  
**of Bill S6216/A5623 (Affects First and Third Party Claims)**  
**Medium Estimate**

Dollar Amounts in Thousands

	(1)	(2)	(3) (1) x (2)	(4)	(5) (3) x (4)	(6)	(8) (5) / (6)	(7) (8) / (1)
	Total 2019 Direct NY State Earned Premium	NY State 10-Year Average Ultimate Loss Ratio	NY State AY 2019 Estimated Loss	Estimated % Effect of S6216/A5623 on Losses	Dollar Effect on Losses	Premium / Fixed Expense Adjustment	Dollar Effect on Premium	Estimated % Effect of S6216/A5623 on Premium
<b>Private Passenger Automobile</b>								
No-Fault PIP	\$2,629,786	86.2%	\$2,266,599	31.0%	\$702,443	0.862	\$814,672	31.0%
BI	3,270,840	86.2%	2,819,121	37.1%	1,046,216	0.862	1,213,371	37.1%
Prop Dam	2,565,365	86.2%	2,211,075	5.0%	110,554	0.862	128,217	5.0%
UM/UIM	577,207	86.2%	497,492	17.4%	86,473	0.862	100,289	17.4%
Physical Damage	5,113,229	77.4%	3,958,050	5.0%	197,903	0.862	229,489	4.5%
<b>Total PP Auto</b>	<b>\$14,156,426</b>		<b>\$11,752,337</b>		<b>\$2,143,588</b>		<b>\$2,486,038</b>	
<b>Commercial Automobile</b>								
No-Fault PIP	\$263,135	80.9%	\$212,894	31.0%	\$65,978	0.867	\$76,116	28.9%
BI	1,062,089	80.9%	859,303	37.1%	318,900	0.867	367,898	34.6%
Property Damage	833,011	80.9%	673,963	5.0%	33,698	0.867	38,876	4.7%
UM/UIM	187,427	80.9%	151,642	17.4%	26,358	0.867	30,408	16.2%
Physical Damage	395,736	71.6%	283,527	5.0%	14,176	0.868	16,337	4.1%
<b>Total Comm Auto</b>	<b>\$2,741,399</b>		<b>\$2,181,329</b>		<b>\$459,110</b>		<b>\$529,634</b>	
<b>Total Automobile</b>	<b>\$16,897,825</b>		<b>\$13,933,665</b>		<b>\$2,602,698</b>		<b>\$3,015,673</b>	
Homeowners	\$5,519,117	55.7%	\$3,076,311	15.0%	\$461,447	0.557	\$827,868	15.0%
Fire	849,926	40.1%	340,843	15.0%	51,126	0.401	127,489	15.0%
Allied Lines	657,272	44.3%	291,492	15.0%	43,724	0.443	98,591	15.0%
CMP Non-Liability	2,082,210	66.1%	1,375,713	15.0%	206,357	0.855	241,390	11.6%
CMP Liability	\$2,087,536	66.1%	\$1,379,231	20.0%	\$275,846	0.856	\$322,350	15.4%
Other Liability	8,671,677	86.4%	7,491,350	20.0%	1,498,270	0.880	1,702,184	19.6%
Medical Professional Liability	\$1,569,296	90.5%	\$1,420,622	20.0%	\$284,124	0.865	\$328,606	20.9%
Workers Compensation	\$3,685,033	82.6%	\$3,042,612	N/A	\$0	0.860	\$0	0.0%
All Other Lines of Business	\$4,774,775	105.1%	\$5,016,293	5.0%	\$250,815	1.051	\$238,739	5.0%
<b>Total - All Lines</b>	<b>\$46,794,668</b>	<b>79.9%</b>	<b>\$37,368,132</b>		<b>\$5,674,407</b>		<b>\$6,902,889</b>	
					<b>(5) / (3)</b>		<b>(8) / (1)</b>	
					<b>15.2%</b>		<b>14.8%</b>	

Notes:

- (1) New York State page from Annual Statement for the year ended December 31, 2019 for the P&C Industry. Other Auto Liability amounts distributed based on "Auto Insurance Database Report - 2015/2016", dated January 2018.
- (2) NAIC 2008-2017 Profitability Reports by Line by State
- (4) Selected by Milliman. PIP Source: Exhibit 3, Sheet 1. BI Source: Exhibit 3, Sheet 2. UM/UIM Source: Exhibit 3, Sheet 3.
- (6) = 1 - [ 50% x TL&F + Other Acquisition Expenses + General Expenses ] / Earned Premium. Source: S&P Global, 2019 IEE - Part III. Capped at ultimate loss ratio for lines with material differences.

**Proposed New York State Bad Faith Bills  
Estimated Effects upon Insurance Premiums and Loss & LAE  
of Bill S6216/A5623 (Affects First and Third Party Claims)  
Low Estimate**

Dollar Amounts in Thousands

	(1)	(2)	(3) (1) x (2)	(4)	(5) (3) x (4)	(6)	(8) (5) / (6)	(7) (8) / (1)
	Total 2019 Direct NY State Earned Premium	NY State 10 year average Ultimate Loss Ratio	NY State AY 2019 Estimated Loss	Estimated % Effect of S6216/A5623 on Losses	Dollar Effect on Losses	Premium / Fixed Expense Adjustment	Dollar Effect on Premium	Estimated % Effect of S6216/A5623 on Premium
<b>Private Passenger Automobile</b>								
No-Fault PIP	\$2,629,786	86.2%	\$2,266,599	25.3%	\$572,644	0.862	\$664,135	25.3%
BI	3,270,840	86.2%	2,819,121	27.1%	764,304	0.862	886,418	27.1%
Prop Dam	2,565,365	86.2%	2,211,075	0.0%	-	0.862	-	0.0%
UM/UIM	577,207	86.2%	497,492	12.4%	61,598	0.862	71,440	12.4%
Physical Damage	5,113,229	77.4%	3,958,050	0.0%	-	0.862	-	0.0%
<b>Total PP Auto</b>	<b>\$14,156,426</b>		<b>\$11,752,337</b>		<b>\$1,398,546</b>		<b>\$1,621,992</b>	
<b>Commercial Automobile</b>								
No-Fault PIP	\$263,135	80.9%	\$212,894	25.3%	\$53,786	0.867	\$62,051	23.6%
BI	1,062,089	80.9%	859,303	27.1%	232,969	0.867	268,765	25.3%
Property Damage	833,011	80.9%	673,963	0.0%	-	0.867	-	0.0%
UM/UIM	187,427	80.9%	151,642	12.4%	18,776	0.867	21,661	11.6%
Physical Damage	395,736	71.6%	283,527	0.0%	-	0.868	-	0.0%
<b>Total Comm Auto</b>	<b>\$2,741,399</b>		<b>\$2,181,329</b>		<b>\$305,532</b>		<b>\$352,477</b>	
<b>Total Automobile</b>	<b>\$16,897,825</b>		<b>\$13,933,665</b>		<b>\$1,704,078</b>		<b>\$1,974,469</b>	
Homeowners	\$5,519,117	55.7%	\$3,076,311	10.0%	\$307,631	0.557	\$551,912	10.0%
Fire	849,926	40.1%	340,843	10.0%	34,084	0.401	84,993	10.0%
Allied Lines	657,272	44.3%	291,492	10.0%	29,149	0.443	65,727	10.0%
CMP Non-Liability	2,082,210	66.1%	1,375,713	10.0%	137,571	0.855	160,927	7.7%
CMP Liability	\$2,087,536	66.1%	\$1,379,231	15.0%	\$206,885	0.856	\$241,762	11.6%
Other Liability	8,671,677	86.4%	7,491,350	15.0%	1,123,703	0.880	1,276,638	14.7%
Medical Professional Liability	\$1,569,296	90.5%	\$1,420,622	15.0%	\$213,093	0.865	\$246,454	15.7%
Workers Compensation	\$3,685,033	82.6%	\$3,042,612	N/A	\$0	0.860	\$0	0.0%
All Other Lines of Business	\$4,774,775	105.1%	\$5,016,293	0.0%	\$0	1.051	\$0	0.0%
<b>Total - All Lines</b>	<b>\$46,794,668</b>	<b>79.9%</b>	<b>\$37,368,132</b>		<b>\$3,756,194</b>		<b>\$4,602,882</b>	
					<b>(10) / (3)</b>		<b>(12) / (1)</b>	
					<b>10.1%</b>		<b>9.8%</b>	

Notes:

- (1) New York State page from Annual Statement for the year ended December 31, 2019 for the P&C Industry. Other Auto Liability amounts distributed based on "Auto Insurance Database Report - 2015/2016", dated January 2018.
- (2) NAIC 2008-2017 Profitability Reports by Line by State
- (4) Selected by Milliman. PIP Source: Exhibit 3, Sheet 1. BI Source: Exhibit 3, Sheet 2. UM/UIM Source: Exhibit 3, Sheet 3.
- (6) = 1 - [ 50% x TL&F + Other Acquisition Expenses + General Expenses ] / Earned Premium. Source: S&P Global, 2019 IEE - Part III. Capped at ultimate loss ratio for lines with material differences.

**Proposed New York State Bad Faith Bills  
Estimated Effects upon Insurance Premiums and Loss & LAE  
of Bill S6216/A5623 (Affects First and Third Party Claims)  
High Estimate**

Dollar Amounts in Thousands

	(1)	(2)	(3) (1) x (2)	(4)	(5) (3) x (4)	(6)	(8) (5) / (6)	(7) (8) / (1)
	Total 2019 Direct NY State Earned Premium	NY State 10 year average Ultimate Loss Ratio	NY State AY 2019 Estimated Loss	Estimated % Effect of S6216/A5623 on Losses	Dollar Effect on Losses	Premium / Fixed Expense Adjustment	Dollar Effect on Premium	Estimated % Effect of S6216/A5623 on Premium
<b>Private Passenger Automobile</b>								
No-Fault PIP	\$2,629,786	86.2%	\$2,266,599	36.2%	\$820,789	0.862	\$951,927	36.2%
BI	3,270,840	86.2%	2,819,121	47.1%	1,328,128	0.862	1,540,324	47.1%
Prop Dam	2,565,365	86.2%	2,211,075	10.0%	221,108	0.862	256,434	10.0%
UM/UIM	577,207	86.2%	497,492	22.4%	111,347	0.862	129,137	22.4%
Physical Damage	5,113,229	77.4%	3,958,050	10.0%	395,805	0.862	458,979	9.0%
<b>Total PP Auto</b>	<b>\$14,156,426</b>		<b>\$11,752,337</b>		<b>\$2,877,177</b>		<b>\$3,336,801</b>	
<b>Commercial Automobile</b>								
No-Fault PIP	\$263,135	80.9%	\$212,894	36.2%	\$77,094	0.867	\$88,939	33.8%
BI	1,062,089	80.9%	859,303	47.1%	404,830	0.867	467,032	44.0%
Property Damage	833,011	80.9%	673,963	10.0%	67,396	0.867	77,752	9.3%
UM/UIM	187,427	80.9%	151,642	22.4%	33,940	0.867	39,155	20.9%
Physical Damage	395,736	71.6%	283,527	10.0%	28,353	0.868	32,674	8.3%
<b>Total Comm Auto</b>	<b>\$2,741,399</b>		<b>\$2,181,329</b>		<b>\$611,613</b>		<b>\$705,551</b>	
<b>Total Automobile</b>	<b>\$16,897,825</b>		<b>\$13,933,665</b>		<b>\$3,488,790</b>		<b>\$4,042,353</b>	
Homeowners	\$5,519,117	55.7%	\$3,076,311	20.0%	\$615,262	0.557	\$1,103,823	20.0%
Fire	849,926	40.1%	340,843	20.0%	68,169	0.401	169,985	20.0%
Allied Lines	657,272	44.3%	291,492	20.0%	58,298	0.443	131,454	20.0%
CMP Non-Liability	2,082,210	66.1%	1,375,713	20.0%	275,143	0.855	321,853	15.5%
CMP Liability	\$2,087,536	66.1%	\$1,379,231	25.0%	\$344,808	0.856	\$402,937	19.3%
Other Liability	8,671,677	86.4%	7,491,350	25.0%	1,872,838	0.880	2,127,730	24.5%
Medical Professional Liability	\$1,569,296	90.5%	\$1,420,622	25.0%	\$355,156	0.865	\$410,757	26.2%
Workers Compensation	\$3,685,033	82.6%	\$3,042,612	N/A	\$0	0.860	\$0	0.0%
All Other Lines of Business	\$4,774,775	105.1%	\$5,016,293	10.0%	\$501,629	1.051	\$477,478	10.0%
<b>Total - All Lines</b>	<b>\$46,794,668</b>	<b>79.9%</b>	<b>\$37,368,132</b>		<b>\$7,580,092</b>		<b>\$9,188,371</b>	
					<b>(14) / (3)</b>		<b>(16) / (1)</b>	
					<b>20.3%</b>		<b>19.6%</b>	

Notes:

- (1) New York State page from Annual Statement for the year ended December 31, 2019 for the P&C Industry. Other Auto Liability amounts distributed based on "Auto Insurance Database Report - 2015/2016", dated January 2018.
- (2) NAIC 2008-2017 Profitability Reports by Line by State
- (4) Selected by Milliman. PIP Source: Exhibit 3, Sheet 1. BI Source: Exhibit 3, Sheet 2. UM/UIM Source: Exhibit 3, Sheet 3.
- (6) = 1 - [ 50% x TL&F + Other Acquisition Expenses + General Expenses ] / Earned Premium. Source: S&P Global, 2019 IEE - Part III. Capped at ultimate loss ratio for lines with material differences.

**Proposed New York State Bad Faith Bills  
Estimated Effects upon Insurance Premiums and Loss & LAE  
of Bill S3634-B/A5629-B (Affects Third Party Claims)  
Medium Estimate**

Dollar Amounts in Thousands

	(1)	(2)	(3) (1) x (2)	(4)	(5) (3) x (4)	(6)	(8) (5) / (6)	(7) (8) / (1)
	Total 2019 Direct NY State Earned Premium	NY State 10-Year Average Ultimate Loss Ratio	NY State AY 2019 Estimated Loss	Estimated % Effect of S3634-B/A5629-B on Losses	Dollar Effect on Losses	Premium / Fixed Expense Adjustment	Dollar Effect on Premium	Estimated % Effect of S3634-B/A5629-B on Premium
<b>Private Passenger Automobile</b>								
No-Fault PIP	\$2,629,786	86.2%	\$2,266,599	N/A	\$0	0.862	\$0	0.0%
BI	3,270,840	86.2%	2,819,121	37.1%	1,046,216	0.862	1,213,371	37.1%
Prop Dam	2,565,365	86.2%	2,211,075	5.0%	110,554	0.862	128,217	5.0%
UM/UIM	577,207	86.2%	497,492	N/A	0	0.862	0	0.0%
Physical Damage	5,113,229	77.4%	3,958,050	N/A	0	0.862	0	0.0%
<b>Total PP Auto</b>	<b>\$14,156,426</b>		<b>\$11,752,337</b>		<b>\$1,156,770</b>		<b>\$1,341,588</b>	
<b>Commercial Automobile</b>								
No-Fault PIP	\$263,135	80.9%	\$212,894	N/A	\$0	0.867	\$0	0.0%
BI	1,062,089	80.9%	859,303	37.1%	318,900	0.867	367,898	34.6%
Property Damage	833,011	80.9%	673,963	5.0%	33,698	0.867	38,876	4.7%
UM/UIM	187,427	80.9%	151,642	N/A	0	0.867	0	0.0%
Physical Damage	395,736	71.6%	283,527	N/A	0	0.868	0	0.0%
<b>Total Comm Auto</b>	<b>\$2,741,399</b>		<b>\$2,181,329</b>		<b>\$352,598</b>		<b>\$406,774</b>	
<b>Total Automobile</b>	<b>\$16,897,825</b>		<b>\$13,933,665</b>		<b>\$1,509,368</b>		<b>\$1,748,362</b>	
<b>Homeowners</b>								
Homeowners	\$5,519,117	55.7%	\$3,076,311	N/A	\$0	0.557	\$0	0.0%
Fire	849,926	40.1%	340,843	N/A	0	0.401	0	0.0%
Allied Lines	657,272	44.3%	291,492	N/A	0	0.443	0	0.0%
CMP Non-Liability	2,082,210	66.1%	1,375,713	N/A	0	0.855	0	0.0%
<b>CMP Liability</b>								
CMP Liability	\$2,087,536	66.1%	\$1,379,231	20.0%	\$275,846	0.856	\$322,350	15.4%
Other Liability	8,671,677	86.4%	7,491,350	20.0%	1,498,270	0.880	1,702,184	19.6%
<b>Medical Professional Liability</b>								
Medical Professional Liability	\$1,569,296	90.5%	\$1,420,622	20.0%	\$284,124	0.865	\$328,606	20.9%
<b>Workers Compensation</b>								
Workers Compensation	\$3,685,033	82.6%	\$3,042,612	N/A	\$0	0.860	\$0	0.0%
<b>All Other Lines of Business</b>								
All Other Lines of Business	\$4,774,775	105.1%	\$5,016,293	5.0%	\$250,815	1.051	\$238,739	5.0%
<b>Total - All Lines</b>	<b>\$46,794,668</b>	<b>79.9%</b>	<b>\$37,368,132</b>		<b>\$3,818,423</b>		<b>\$4,340,241</b>	
					<b>(5) / (3)</b>		<b>(8) / (1)</b>	
					<b>10.2%</b>		<b>9.3%</b>	

Notes:

- (1) New York State page from Annual Statement for the year ended December 31, 2019 for the P&C Industry. Other Auto Liability amounts distributed based on "Auto Insurance Database Report - 2015/2016", dated January 2018.
- (2) NAIC 2008-2017 Profitability Reports by Line by State
- (3) Selected by Milliman. PIP Source: Exhibit 3, Sheet 1. BI Source: Exhibit 3, Sheet 2. UM/UIM Source: Exhibit 3, Sheet 3.
- (6) = 1 - [ 50% x TL&F + Other Acquisition Expenses + General Expenses ] / Earned Premium. Source: S&P Global, 2019 IEE - Part III. Capped at ultimate loss ratio for lines with material differences.

**Proposed New York State Bad Faith Bills  
Estimated Effects upon Insurance Premiums and Loss & LAE  
of Bill S3634-B/A5629-B (Affects Third Party Claims)  
Low Estimate**

Dollar Amounts in Thousands

	(1)	(2)	(3) (1) x (2)	(4)	(5) (3) x (4)	(6)	(8) (5) / (6)	(7) (8) / (1)
	Total 2019 Direct NY State Earned Premium	NY State 10 year average Ultimate Loss Ratio	NY State AY 2019 Estimated Loss	Estimated % Effect of S3634-B/A5629-B on Losses	Dollar Effect on Losses	Premium / Fixed Expense Adjustment	Dollar Effect on Premium	Estimated % Effect of S3634-B/A5629-B on Premium
<b>Private Passenger Automobile</b>								
No-Fault PIP	\$2,629,786	86.2%	\$2,266,599	N/A	\$0	0.862	\$0	0.0%
BI	3,270,840	86.2%	2,819,121	27.1%	764,304	0.862	886,418	27.1%
Prop Dam	2,565,365	86.2%	2,211,075	0.0%	0	0.862	0	0.0%
UM/UIM	577,207	86.2%	497,492	N/A	0	0.862	0	0.0%
Physical Damage	5,113,229	77.4%	3,958,050	N/A	0	0.862	0	0.0%
<b>Total PP Auto</b>	<b>\$14,156,426</b>		<b>\$11,752,337</b>		<b>\$764,304</b>		<b>\$886,418</b>	
<b>Commercial Automobile</b>								
No-Fault PIP	\$263,135	80.9%	\$212,894	N/A	\$0	0.867	\$0	0.0%
BI	1,062,089	80.9%	859,303	27.1%	232,969	0.867	268,765	25.3%
Property Damage	833,011	80.9%	673,963	0.0%	0	0.867	0	0.0%
UM/UIM	187,427	80.9%	151,642	N/A	0	0.867	0	0.0%
Physical Damage	395,736	71.6%	283,527	N/A	0	0.868	0	0.0%
<b>Total Comm Auto</b>	<b>\$2,741,399</b>		<b>\$2,181,329</b>		<b>\$232,969</b>		<b>\$268,765</b>	
<b>Total Automobile</b>	<b>\$16,897,825</b>		<b>\$13,933,665</b>		<b>\$997,274</b>		<b>\$1,155,183</b>	
Homeowners	\$5,519,117	55.7%	\$3,076,311	N/A	\$0	0.557	\$0	0.0%
Fire	849,926	40.1%	340,843	N/A	0	0.401	0	0.0%
Allied Lines	657,272	44.3%	291,492	N/A	0	0.443	0	0.0%
CMP Non-Liability	2,082,210	66.1%	1,375,713	N/A	0	0.855	0	0.0%
CMP Liability	\$2,087,536	66.1%	\$1,379,231	15.0%	\$206,885	0.856	\$241,762	11.6%
Other Liability	8,671,677	86.4%	7,491,350	15.0%	1,123,703	0.880	1,276,638	14.7%
Medical Professional Liability	\$1,569,296	90.5%	\$1,420,622	15.0%	\$213,093	0.865	\$246,454	15.7%
Workers Compensation	\$3,685,033	82.6%	\$3,042,612	N/A	\$0	0.860	\$0	0.0%
All Other Lines of Business	\$4,774,775	105.1%	\$5,016,293	0.0%	\$0	1.051	\$0	0.0%
<b>Total - All Lines</b>	<b>\$46,794,668</b>	<b>79.9%</b>	<b>\$37,368,132</b>		<b>\$2,540,954</b>		<b>\$2,920,037</b>	
					<b>(10) / (3)</b>		<b>(12) / (1)</b>	
					<b>6.8%</b>		<b>6.2%</b>	

Notes:

- (1) New York State page from Annual Statement for the year ended December 31, 2019 for the P&C Industry. Other Auto Liability amounts distributed based on "Auto Insurance Database Report - 2015/2016", dated January 2018.
- (2) NAIC 2008-2017 Profitability Reports by Line by State
- (3) Selected by Milliman. PIP Source: Exhibit 3, Sheet 1. BI Source: Exhibit 3, Sheet 2. UM/UIM Source: Exhibit 3, Sheet 3.
- (6) = 1 - [ 50% x TL&F + Other Acquisition Expenses + General Expenses ] / Earned Premium. Source: S&P Global, 2019 IEE - Part III. Capped at ultimate loss ratio for lines with material differences.

**Proposed New York State Bad Faith Bills**  
**Estimated Effects upon Insurance Premiums and Loss & LAE**  
**of Bill S3634-B/A5629-B (Affects Third Party Claims)**  
**High Estimate**  
Dollar Amounts in Thousands

	(1)	(2)	(3)	(4)	(5)	(6)	(8)	(7)
			(1) x (2)		(3) x (4)		(5) / (6)	(8) / (7)
	Total 2019 Direct NY State Earned Premium	NY State 10 year average Ultimate Loss Ratio	NY State AY 2019 Estimated Loss	Estimated % Effect of S3634-B/A5629-B on Losses	Dollar Effect on Losses	Premium / Fixed Expense Adjustment	Dollar Effect on Premium	Estimated % Effect of S3634-B/A5629-B on Premium
<b>Private Passenger Automobile</b>								
No-Fault PIP	\$2,629,786	86.2%	\$2,266,599	N/A	\$0	0.862	\$0	0.0%
BI	3,270,840	86.2%	2,819,121	47.1%	1,328,128	0.862	1,540,324	47.1%
Prop Dam	2,565,365	86.2%	2,211,075	10.0%	221,108	0.862	256,434	10.0%
UM/UIM	577,207	86.2%	497,492	N/A	0	0.862	0	0.0%
Physical Damage	5,113,229	77.4%	3,958,050	N/A	0	0.862	0	0.0%
<b>Total PP Auto</b>	<b>\$14,156,426</b>		<b>\$11,752,337</b>		<b>\$1,549,236</b>		<b>\$1,796,758</b>	
<b>Commercial Automobile</b>								
No-Fault PIP	\$263,135	80.9%	\$212,894	N/A	\$0	0.867	\$0	0.0%
BI	1,062,089	80.9%	859,303	47.1%	404,830	0.867	467,032	44.0%
Property Damage	833,011	80.9%	673,963	10.0%	67,396	0.867	77,752	9.3%
UM/UIM	187,427	80.9%	151,642	N/A	0	0.867	0	0.0%
Physical Damage	395,736	71.6%	283,527	N/A	0	0.868	0	0.0%
<b>Total Comm Auto</b>	<b>\$2,741,399</b>		<b>\$2,181,329</b>		<b>\$472,226</b>		<b>\$544,783</b>	
<b>Total Automobile</b>	<b>\$16,897,825</b>		<b>\$13,933,665</b>		<b>\$2,021,462</b>		<b>\$2,341,542</b>	
<b>Homeowners</b>								
Homeowners	\$5,519,117	55.7%	\$3,076,311	N/A	\$0	0.557	\$0	0.0%
Fire	849,926	40.1%	340,843	N/A	0	0.401	0	0.0%
Allied Lines	657,272	44.3%	291,492	N/A	0	0.443	0	0.0%
CMP Non-Liability	2,082,210	66.1%	1,375,713	N/A	0	0.855	0	0.0%
<b>CMP Liability</b>								
CMP Liability	\$2,087,536	66.1%	\$1,379,231	25.0%	\$344,808	0.856	\$402,937	19.3%
Other Liability	8,671,677	86.4%	7,491,350	25.0%	1,872,838	0.880	2,127,730	24.5%
<b>Medical Professional Liability</b>								
Medical Professional Liability	\$1,569,296	90.5%	\$1,420,622	25.0%	\$355,156	0.865	\$410,757	26.2%
<b>Workers Compensation</b>								
Workers Compensation	\$3,685,033	82.6%	\$3,042,612	N/A	\$0	0.860	\$0	0.0%
<b>All Other Lines of Business</b>								
All Other Lines of Business	\$4,774,775	105.1%	\$5,016,293	10.0%	\$501,629	1.051	\$477,478	10.0%
<b>Total - All Lines</b>	<b>\$46,794,668</b>	<b>79.9%</b>	<b>\$37,368,132</b>		<b>\$5,095,892</b>		<b>\$5,760,444</b>	
					<b>(14) / (3)</b>		<b>(16) / (1)</b>	
					<b>13.6%</b>		<b>12.3%</b>	

Notes:

- (1) New York State page from Annual Statement for the year ended December 31, 2019 for the P&C Industry. Other Auto Liability amounts distributed based on "Auto Insurance Database Report - 2015/2016", dated January 2018.
- (2) NAIC 2008-2017 Profitability Reports by Line by State
- (4) Selected by Milliman. PIP Source: Exhibit 3, Sheet 1. BI Source: Exhibit 3, Sheet 2. UM/UIM Source: Exhibit 3, Sheet 3.
- (6) = 1 - [ 50% x TL&F + Other Acquisition Expenses + General Expenses ] / Earned Premium. Source: S&P Global, 2019 IEE - Part III. Capped at ultimate loss ratio for lines with material differences.

**Proposed New York State Bad Faith Bills  
Estimated Percent Effect upon Personal Injury Protection Losses (PIP)**

	(1)	(2)	(3) (1) + (2)	(4)	(5)	(6)	
					<u>Countrywide PIP Average Claimed Losses</u>		
<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) Current FL PIP	55.0%	45.0%	100.0%	15,402	6,434	11,366
	(B) Current NY BI	87.0%	13.0%	100.0%	15,402	6,434	14,236
	(C) Current NY PIP	47.0%	53.0%	100.0%	15,402	6,434	10,649
	(7) Impact of Attorney Involvement on Losses			(i) NY PIP relative to FL PIP			6.7%
				(ii) NY PIP relative to NY BI			33.7%
	(8) Overall Selected Increase				Medium		31.0%
					Low		25.3%
					High		36.2%

Notes:

- (1A), (2A) IRC Report: Countrywide Patterns in Auto Injury Insurance Claims, 2018 Edition, page 32.
- (1B), (2B) IRC Report: Countrywide Patterns in Auto Injury Insurance Claims, 2018 Edition, page 17.
- (1C), (2C) IRC Report: Countrywide Patterns in Auto Injury Insurance Claims, 2018 Edition, page 32.
- (4), (5) IRC Report: Attorney Involvement in Auto Injury Claims, July 2014, Figure 22 (page 32).
- (6) = (1) x (4) + (2) x (5)
- (7i) = (6A) / (6C) - 1
- (7ii) = (6B) / (6C) - 1
- (8) Selected by Milliman based on (7i) and (7ii)

**Proposed New York State 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	102.6%	20.0%
(B) Insurance Research Council (IRC) Report - NY relative to FL	18.7%	30.0%
(C) Berkeley Research Group (BRG) Report	30.2%	50.0%
(D1) Overall Indicated Increase		41.2%
(D2) Tempering Factor		0.90
(D3) Overall Selected Increase	Medium	37.1%
	Low	27.1%
	High	47.1%

Notes:

- (1A) IRC Report: Third-Party Bad Faith in Florida's Automobile Insurance System, 2018 Update, Page 4.  
Where 102.6% = Average Total Claim Payment in Florida / Average Claim Payment excl portion related to Bad Faith Law  
= \$235 / \$116 - 1
- (1B) IRC Report: Third-Party Bad Faith in Florida's Automobile Insurance System, 2018 Update, Page 4.  
Where 18.7% = Average Total Claim Payment in Florida / Average Total Claim Payment in New York  
= \$235 / \$198 - 1
- (1C) 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 excl Bad Faith  
= \$33.30 / \$110.18
- (2) Selected by Milliman
- (D1) Average of (1) based on (2)
- (D2) Percentage of NY BI losses expected to be affected by S6216/A5623
- (D3) = (D1) x (D2). Low / High were selected by Milliman

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

<u>Injury Type</u>		(1)	(2)	(3)	(4)	(5)	(6)
				(1) + (2)			
		Florida Claimants			Countrywide BI Average Claimed Losses		
		<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) Current FL UM / UIM	63.0%	37.0%	100.0%	8,748	2,717	6,517
	(B) Prior FL UM / UIM	47.0%	53.0%	100.0%	8,748	2,717	5,552
(7)	Impact of Attorney Involvement on Losses						17.4%
(8)	Overall Selected Increase					Low	12.4%
						Medium	17.4%
						High	22.4%

**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)

## Unfair Claim Settlement Practices = Civil Remedy in New York

### Comparison of Unfair Claim Settlement Practices

An insurer would not be substantially justified in refusing to pay or in unreasonably delaying payment when they:

Unfair Practices	Bill: S6216/A5623	NAIC Model Act *	NY Section 2601 *
1. Failed to provide the policyholder with accurate information concerning policy provisions relating to the coverage at issue; or	✓	✓	✓
2. Failed to effectuate a prompt and fair settlement of a claim or portion thereof, and the insurer failed to reasonably accord at least equal or more favorable consideration to its insured interest as it did to its own interests, and thereby exposed the insured to a judgment in excess of the policy limits; or	✓	✓	✓
3. Failed to provide a timely written denial of a policyholder's claim with a full and complete explanation of such denial, including references to specific policy provisions wherever possible; or	✓		
4. Failed to make a final determination and notify the policyholder in writing of its position on both liability for and the insurer's valuation of a claim within six months of the date on which it received actual or constructive notice of the loss upon which the claim is based; or	✓		
5. Failed to act in good faith by compelling a policyholder to institute suit to recover amounts due under its policy by offering substantially less than the amounts ultimately recovered in suit brought by such policyholder; or	✓	✓	✓
6. Failed to advise a policyholder that a claim may exceed policy limits, that counsel assigned by the insurer may be subject to a conflict of interest, or that the policyholder may retain independent counsel; or	✓		
7. Failed to provide, on request of the policyholder or their representative, all reports, letters or other documentation arising from the investigation of a claim and evaluating liability for or valuation of such claim; or	✓		

\* Only definitions similar to Bill S6216/A5623 are included in the table

**Unfair Claim Settlement Practices = Civil Remedy in New York**

**Comparison of Unfair Claim Settlement Practices**

An insurer would not be substantially justified in refusing to pay or in unreasonably delaying payment when they:

<b>Unfair Practices</b>	<b>Bill: S6216/A5623</b>	<b>NAIC Model Act *</b>	<b>NY Section 2601 *</b>
8. Refused to pay a claim without conducting a reasonable investigation; or	✓		
9. Negotiated or settled a claim directly with a policyholder known to be represented by an attorney without the attorney's knowledge or consent; or	✓		
10. Failed to pay on or more elements of a claim where a preponderance of the evidence establishes the claim as to liability notwithstanding the existence of disputes as to other elements of the claim where such payment can be made without prejudice to either party	✓		

\* Only definitions similar to Bill S6216/A5623 are included in the table

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