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February 29, 2008

Ms. Dana Childers  
Executive Director  
Liability Reform Coalition  
2033 6th Avenue, Suite 1100  
Seattle, WA 98121

**RE: IMPACT ANALYSIS OF WASHINGTON'S ENGROSSED THIRD SUBSTITUTE  
HOUSE BILL 1873 ON STATE GOVERNMENT COSTS – EXECUTIVE  
SUMMARY**

Dear Ms. Childers:

**INTRODUCTION**

Milliman Inc. (Milliman) has been asked by the Liability Reform Coalition (LRC) to evaluate the impact of proposed legislation in the State of Washington on the costs of wrongful death claims. This analysis has been done only for costs related to the state government. Other additional costs will be realized by county and city governments in Washington. Milliman was asked to focus their analysis on the impact of this proposed legislation on the expected frequency of wrongful death claims. The proposed legislation may also change the average cost of wrongful death claims. It is important to keep in mind that the total impact of the legislation on state government costs is the compound effect of changes to both the frequency and the severity of wrongful death claims, as well as changes in the cost of defending such actions.

**EXECUTIVE SUMMARY**

In our analysis of the impact of the wrongful death statutes, we relied on conversations with Washington attorneys who are familiar with the current wrongful death statutes and the proposed wrongful death legislation. The latest version of this proposed legislation, the Engrossed Third Substitute House Bill 1873, will modify several of the wrongful death statutes by increasing the number of eligible beneficiaries under these statutes, and consequently, increase the potential costs incurred by state and local government offices. We anticipate the following under this proposed bill:

- We expect the frequency of wrongful death and survival claims to increase 29% because the revised law allows parents, siblings, and named life insurance beneficiaries to become secondary beneficiaries under wrongful death actions;

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- We also expect a significant increase in the frequency (+182%) of child death claims because the proposed law allows parents to bring a cause of action regardless of the decedent's age;
- We expect the overall frequency of wrongful death, survival, and child death claims against the state to increase 80% under the proposed legislation, which we estimate will cost state government entities in Washington an additional \$9.3 million per year, or \$18.6 million per biennium, as explained below;
- In the event that the average severity of wrongful death claims also increases under the proposed bill, the total impact on wrongful death costs would be greater than \$9.3 million per year; and
- The data used in our analysis represents state government organizations and does not account for local government entities (counties and cities). We expect the anticipated frequency changes would also apply to the wrongful death claim costs incurred by Washington's counties and cities.

In order to quantify the impact of the proposed legislation on the number of wrongful death claims, we used U.S. census data to identify the number of Washington residents whose wrongful death could potentially lead to a cause of action under the current law and proposed bill. We then measured the relationship between the number of potential decedents under the proposed bill and the number of potential decedents under the current statute in order to estimate the potential frequency impact of the proposed legislation.

Table 1 displays a summary of the potential decedents under the current and proposed statutes:

<b>Table 1</b>			
<b>Potential Decedents Under the Current and Proposed Statutes</b>			
<b>(in millions)</b>			
<b>Statute</b>	<b>Potential Wrongful Death Decedents</b>	<b>Potential Child Death Decedents</b>	<b>Total Number of Potential Decedents</b>
Current	3.28	1.64	4.92
HB 1873	4.22	4.62	8.84
% Change	29%	182%	80%

As can be seen in the table above, our analysis indicates that the proposed wrongful death statute could lead to an 80% increase in the number of wrongful death claims each year.

In order to translate this expected frequency impact into the expected impact on total costs, we referenced certain claim severity data. Specifically, we reviewed eleven years of historical claim data from the Office of the Attorney General. This data represents all closed claims incurred by

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the State of Washington under one of the current wrongful death statutes. During the 11-year period reviewed, there were 301 claims closed, of which 129 were closed with a payout.

To determine the overall impact of the expected increase in frequency on the total wrongful death claim costs, we estimated the current average claim severity and the average annual number of claims under the current statutes. Historical average claim amounts from the Office of the Attorney General were projected to fiscal year 2009 levels. The average annual number of claims reflects the average over the 11 years of data available. In this analysis of the projected costs of the proposed legislation, we assumed that the average claim severity would not change as a result of the proposed legislation.

Table 2 displays the results of these calculations, showing the change in total wrongful death costs due to an 80% increase in the number of wrongful death claims. As seen in the table below, the impact of this expected frequency change is an increase in the wrongful death costs of approximately \$9.3 million per year:

<b>Table 2</b>			
<b>Change in Annual Wrongful Death Costs</b>			
<b>Due to an 80% Increase in Frequency – State Government Only*</b>			
<b>Statute</b>	<b>Number of Claims</b>	<b>Average Claim Amount</b>	<b>Total Amount of Claims</b>
Current	12.0	\$970,000	\$11,640,000
HB 1873	21.6	\$970,000	\$20,952,000
Increase	9.6	–	\$9,312,000

\* In the event that the average severity of wrongful death claims also increases under the proposed bill, the total impact on wrongful death costs would be greater than \$9.3 million per year, as estimated above.

Although we focused our analysis on the impact of this proposed legislation on the expected frequency of wrongful death claims, there is also potential for an increase in the average claim amount. The proposed legislation added language on the types of damages the beneficiary is entitled to and clearly defines both economic and non-economic damages. We observed in the claim data provided by the Office of the Attorney General that some of the claims included damages for economic loss only. Increases in the average severity of claims are possible under the new statutory language.

Similarly, our analysis focused on the impact of this new bill as it related to the historical data provided by the Office of the Attorney General. This data represents exposures and claims from state government organizations and does not account for local government entities (counties and cities). We would expect the relationships found in the census data, which reflect Washington's

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total population and underlie the expected frequency change, to also apply to the claim costs under wrongful death statutes incurred by Washington's counties and cities.

## **QUALIFICATION AND LIMITATIONS**

### **Data Reliance:**

In performing this analysis, we relied on data and other information provided to us by the Washington State Office of the Attorney General and publicly available reports summarizing 2000 U.S. Census Data. We did not audit or independently verify this data and information for accuracy. Such a review is beyond the scope of our assignment. If the underlying data or information is inaccurate or incomplete, the results of our analysis may likewise be inaccurate or incomplete.

We performed a limited review of the data used directly in our analysis for reasonableness and consistency. We did not find 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 relationships that are materially inconsistent. Such a detailed review was beyond the scope of our assignment.

### **Uncertainty:**

We based our results on generally accepted actuarial procedures, the information available to us, and our professional judgment. Our results reflect the use of a limited amount of data with inherent volatility. Due to the uncertainty associated with the variable nature of this data, the estimation of several underlying assumptions, and the effect of other factors such as political and legislative issues, actual results will not develop exactly as projected and may, in fact, significantly vary from the projections.



Ms. Dana Childers  
February 29, 2008  
Page 5

It has been our pleasure to assist the Liability Reform Coalition with this analysis. If you have any questions about our analysis or this executive summary, please call us to discuss. We would be glad to assist you with any further analysis.

Sincerely,



Paul D. Anderson, F.C.A.S., M.A.A.A.  
Consulting Actuary



David R. Chernick, F.C.A.S, M.A.A.A.  
Consulting Actuary



Chad C. Karls, F.C.A.S, M.A.A.A.  
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PDA/DRC/CCK/sbs

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