

Review of New York Bill S4006: Proposed Expansion of New York's Wrongful Death Act

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Executive Summary

The New York (NY) State Senate is currently considering a bill, S4006 (Hoylman), which seeks to expand the current wrongful death act to permit the families of wrongful death victims to recover compensation for their grief or emotional anguish, among other items.

The New York Civil Justice Institute (NYCJI) has requested that Milliman provide an analysis of the total cost effect of the proposed bill in New York – for property-casualty insurers, policyholders and self-insureds.

Based on the analysis contained in this report, Milliman estimates the proposed law could increase costs as follows:

- *Property Casualty Insurers and Policyholders (Commercial Insurance Market)* – Focusing on the three main lines of insurance with the greatest exposure to wrongful death claims (medical professional liability (MPL), automobile liability (AL) and general liability (GL)) we estimate an overall \$1.9 billion or 12.8% increase to annual loss and loss adjustment expenses (LAE) in New York. This could translate to a corresponding \$2.2 billion or 12.6% increase to the annual premiums paid by New York residents and businesses for insurance.
- *Self-Insureds* – Based on the projected changes to the commercial insured losses¹ as a result of S4006, we estimate that annual liability losses paid by self-insureds in New York could increase by 15.9% or \$1.6 billion.

Current New York Wrongful Death Statute and Proposed Change

Wrongful death statutes establish a cause of action for the expenses incurred by an individual's beneficiaries when that individual dies as the result of the wrongful conduct of another person. Each state has its own laws governing wrongful death lawsuits filed in its civil court system.

Under present New York law, in a wrongful death action, damages are recoverable for pecuniary injuries resulting from the death, including medical aid, nursing, and reasonable funeral expenses.

A wrongful death claim is brought on behalf of the surviving family members and is typically filed by the executor or personal representative of the estate. Current New York law does not allow surviving family members to recover damages for emotional distress or to recover punitive damages in a wrongful death case.

The New York Senate is currently considering bill S4006. This bill would expand the type of damages for which one may bring suit to include:

- a. grief and anguish;
- b. loss of love, society, protection, comfort, companionship and consortium;
- c. pecuniary injuries due to loss of services, support, inheritance; and
- d. loss of nurture, guidance or education.

¹ For the remainder of this report, the term “losses” will refer to loss and LAE combined.

Potential Impact in New York of Bill Enactment

Overview

To determine the impact of allowing the proposed general damages in wrongful death actions in New York, we first estimated the impact of the proposed change on the commercial insurance market. We then used these results to help estimate the impact on self-insureds.

Commercial Insurance Market

For our review of the impact of the proposed change on the commercial insurance market, we focused on the three largest lines of business most susceptible to wrongful death claims – medical professional liability, automobile liability and general liability insurance.

For each of these lines we estimated total losses in New York and those related specifically to bodily injury claims (which would include claims related to deaths). Based on various publicly available databases, we estimated the amount of bodily injury claims related to economic damages for death related claims. We also used these databases to estimate the ratio of non-economic damages to economic damages (a non-economic damages multiplier) for liability claims. By isolating an estimate of the current New York insurance losses related to economic damages for death claims and applying the non-economic multiplier, we determined an estimate of the cost increase related to the addition of non-economic damages for commercial insured losses related to death claims as proposed under S4006.

We adjusted the projected increase in losses for fixed expenses to determine the estimated impact on policyholder premium. The details of these calculations are provided by line of business in Exhibit 1 (MPL), Exhibit 2 (AL) and Exhibit 3 (GL) with the resulting impact on total loss and premium by line provided below.

Table 1
Milliman Estimated Impact of S4006 on P/C Insurance Losses and Premium in New York
(\$ billions)

LOB	2018 NY Earned Premium	Impact of S4006 on Premium		Annual NY Estimated Loss	Impact of S4006 on Losses	
		\$	%		\$	%
MPL	1.6	0.7	47.0%	1.4	0.6	44.7%
AL	8.2	0.5	6.6%	6.8	0.5	6.9%
GL	7.8	0.9	11.8%	6.8	0.8	12.0%
Total	17.6	2.2	12.6%	15.0	1.9	12.8%

A discussion of the key assumptions used in our estimation process is provided below.

Total Annual Losses

The New York 2018 ultimate loss and LAE by line of business was determined by applying the estimated ultimate loss & LAE ratio for each line for New York (from NAIC 2008-2017 Profitability Reports by Line by State) to the annual earned premium by line of business (from the 2018 Annual Statement State page for the P&C industry). To determine losses related to bodily injury claims only, we relied on information from the “Auto Insurance Database Report” for AL and a recent industry GL trend report for GL.

Percentage of Losses from Death Cases

The increased costs that will impact the insurance industry due to the proposed bill result from death claims. Therefore, we estimated the percentage of the total losses by line of business in which claims are associated with an outcome of death. The selected percentage of loss related to death claims and the source used to determine this percentage are provided for each line of business below:

- MPL: The percentage of losses associated with death claims for MPL in New York is estimated to be 27.9%. This amount is based on information from the National Practitioner Databank using data through February 28, 2019 as shown in the Appendix, Sheet 1.
- AL – We estimate 22.7% of annual paid losses for AL relate to death claims based on data taken from the Texas Department of Insurance (DOI) 2015 claim database (the most recent available). After adjusting for non-economic damages (which are currently allowed in Texas), the estimate of economic damages related to death claims for AL in New York is estimated to be 7.2% of total losses as shown in the Appendix, Sheet 3.
- GL – Similar to the approach used for AL, we relied on data from the Texas DOI database to determine the percentage of GL losses related to death claims. Based on this data, we estimate that 9.0% of total losses (excluding non-economic damages related to death claims) relate to economic damages from death claims in New York as shown in the Appendix, Sheet 4.

Relationship of General (Non-Economic) Damages to Economic Damages

Given the estimated current losses and LAE associated with death claims, we then estimated the additional amounts expected for general damages related to these claims should the proposed legislation take effect. To determine the general damage estimates, we reviewed the Texas DOI database as well as a publicly available claim database from the Florida Office of Insurance Regulation (OIR) that both provide the distribution between economic and non-economic damages for paid claims across multiple lines of business. Based on the claims information from these databases (as shown in the Appendix, Sheets 2 to 4), we selected the following multipliers to represent the ratio of non-economic to economic damages for each line of business:

- Medical Professional Liability – 1.60
- Auto Liability – 1.90
- General liability – 2.10

Estimated Impact of S4006 on Self-Insurers

The estimate of wrongful death general damages shown on line 7 of Exhibit 1 and line 9 of Exhibits 2 and 3 include only those liability losses associated with the commercial insurance market – both admitted and excess & surplus insurers. To determine the full effect of the proposal legislation, we estimated the effect on self-insured entities as well. Our estimate of the size of the New York self-insured exposure is based on a study by Conning Research Consulting (“Alternative Markets: Structural and Functional Evolution” dated September 2006) as well as publicly available databases from the states of Florida, Connecticut, and Washington that identify both commercially-insured and self-insured claims. Based on this information, we have assumed the size of the self-insured market in New York, in regards to liability losses, is roughly equal to the size of the commercial insured markets for MPL, AL and GL. As it is not possible to self-insure personal automobile liability, the overall self-insured market share for AL (for both commercial and personal auto insurance combined) is estimated to be 19%. Based on these assumptions, the overall impact of the proposed bill on self-insureds is estimated to be \$1.6 billion. The calculation of the self-insured estimates by line of business is shown on Exhibits 1 through 3.

Statement of Qualifications

Tom Ryan 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. This uncertainty related to the projections in this report is increased due to uncertainty regarding the behavioral changes on the part of plaintiffs, attorneys, and other tort participants as a result of the proposed changes in the bill.

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**Proposed New York State Wrongful Death Expansion Bill (S4006)
Estimated Cost Impact**

<u>Line of Business</u>	(\$thousands)					
	(1)	(2)	(3)	(4)	(5)	(6)
			(2) / (1)			(5) / (4)
	2018 NY State Loss & LAE	Estimated Effect of S4006 on Loss & LAE Dollar	Percentage	2018 NY State Earned Premium	Estimated Effect of S4006 on Premium Dollar	Percentage
(A) Commercial Insurance Market						
(i) Medical Professional Liability	1,431,362	639,785	44.7%	1,581,160	743,709	47.0%
(ii) Automobile Liability	6,780,217	471,066	6.9%	8,196,401	544,466	6.6%
(iii) General Liability	6,778,556	810,577	12.0%	7,846,576	927,175	11.8%
	14,990,134	1,921,429	12.8%	17,624,138	2,215,350	12.6%
(B) Self-Insured Market						
(i) Medical Professional Liability	1,431,362	639,785	44.7%			
(ii) Automobile Liability	1,599,413	111,122	6.9%			
(iii) General Liability	6,778,556	810,577	12.0%			
	9,809,331	1,561,484	15.9%			

Note:

- (Ai), (Bi) See Exhibit 1
(Aii), (Bii) See Exhibit 2
(Aiii), (Biii) See Exhibit 3

**Proposed New York State Wrongful Death Expansion Bill (S4006)
Estimated Effects upon Insurance Premiums and Loss & LAE**

Medical Professional Liability Insurance

(\$thousands)

(1) NY Earned Premium	\$1,581,160
(2) NY Loss & LAE Ratio	90.5%
(3) NY Loss & LAE	1,431,362
(4) Percentage Of Losses From Death Cases from Economic Damages	27.9%
(5) Selected Non-Economic Damages Multiplier	1.60
(6) Percentage Effect On Loss & LAE	44.7%
(7) Effect Of Legislation On Commercial Insurance Market Loss & LAE	639,785
(8) Fixed Expense Adjustment Factor	0.860
(9) Effect Of Legislation On Commercial Insurance Market Premium	743,709
(10) Self-Insured Market Share	50%
(11) Effect Of Legislation On Self-Insured Market Loss & LAE	639,785

Note:

- (1) New York State page from Annual Statement for the year ended December 31, 2018 for the P&C Industry.
- (2) NAIC 2008-2017 Profitability Reports by Line by State
- (3) = (1) x (2)
- (4) See Appendix, Sheet 1
- (5) See Appendix, Sheet 2
- (6) = (4) x (5)
- (7) = (3) x (6)
- (8) = $1 - [50\% \times \text{TL\&F} + \text{Other Acquisition Expenses} + \text{General Expenses}] / \text{Earned Premium}$. Source: S&P Global, 2017 IEE - Part III.
- (9) = (7) / (8)
- (10) Estimated by Milliman
- (11) = (7) / (10) - (7)

**Proposed New York State Wrongful Death Expansion Bill (S4006)
Estimated Effects upon Insurance Premiums and Loss & LAE**

Automobile Liability Insurance

(\$thousands)

	Private Passenger Auto <u>Liability</u>	Commercial Auto <u>Liability</u>	Total Auto <u>Liability</u>
(1) NY Earned Premium	6,219,544	1,976,858	8,196,401
(2) NY Loss & LAE Ratio	83.3%	80.9%	
(3) NY Loss & LAE	5,180,804	1,599,413	6,780,217
(4) Percent BI / Total Liability	50.5%	50.5%	
(5) NY BI Loss & LAE	2,616,306	807,704	3,424,009
(6) Percentage of Losses from Death Cases (Economic Damages Only)	7.2%	7.2%	7.2%
(7) Selected Non-Economic Damages Multiplier	1.90	1.90	1.90
(8) Percentage Effect on BI Loss & LAE	13.8%	13.8%	13.8%
(9) Effect Of Legislation On Commercial Insurance Market Loss & LAE	359,945	111,122	471,066
(10) Fixed Expense Adjustment Factor	0.863	0.872	
(11) Effect Of Legislation On Commercial Insurance Market Premium	417,097	127,369	544,466
(12) Self-Insured Market Share	0%	50.0%	
(13) Effect Of Legislation On Self-Insured Market Loss & LAE	0	111,122	111,122

Note:

- (1) New York State page from Annual Statement for the year ended December 31, 2018 for the P&C Industry.
- (2) NAIC 2008-2017 Profitability Reports by Line by State
- (3) = (1) x (2)
- (4) Percentage based on "Auto Insurance Database Report - 2015/2016" dated 2018.
- (5) = (3) x (4)
- (6) See Appendix, Sheet 3
- (7) See Appendix, Sheet 3
- (8) = (6) x (7)
- (9) = (5) x (8)
- (10) = $1 - [50\% \times \text{TL\&F} + \text{Other Acquisition Expenses} + \text{General Expenses}] / \text{Earned Premium}$. Source: S&P Global, 2017 IEE - Part III.
- (11) = (9) / (10)
- (12) Estimated by Milliman
- (13) = (9) / (12) - (9)

**Proposed New York State Wrongful Death Expansion Bill (S4006)
Estimated Effects upon Insurance Premiums and Loss & LAE**

General Liability Insurance

(\$thousands)

(1) NY Earned Premium	7,846,576
(2) NY Loss & LAE Ratio	86.4%
(3) NY Loss & LAE	6,778,556
(4) Percent BI / Total Liability	63.1%
(5) NY BI Loss & LAE	4,277,879
(6) Percentage of Losses from Death Cases (Economic Damages Only)	9.0%
(7) Selected Non-Economic Damages Multiplier	2.10
(8) Percentage Effect on BI Loss & LAE	18.9%
(9) Effect Of Legislation On Commercial Insurance Market Loss & LAE	810,577
(10) Fixed Expense Adjustment Factor	0.874
(11) Effect Of Legislation On Commercial Insurance Market Premium	927,175
(12) Self-Insured Market Share	50%
(13) Effect Of Legislation On Self-Insured Market Loss & LAE	810,577

Note:

- (1) New York State page from Annual Statement for the year ended December 31, 2018 for the P&C Industry.
- (2) NAIC 2008-2017 Profitability Reports by Line by State
- (3) = (1) x (2)
- (4) From Industry GL Trend Report
- (5) = (3) x (4)
- (6) See Appendix, Sheet 4
- (7) See Appendix, Sheet 4
- (8) = (6) x (7)
- (9) = (5) x (8)
- (10) = $1 - [50\% \times \text{TL\&F} + \text{Other Acquisition Expenses} + \text{General Expenses}] / \text{Earned Premium}$. Source: S&P Global, 2017 IEE - Part III.
- (11) = (9) / (10)
- (12) Estimated by Milliman
- (13) = (9) / (12) - (9)

**New York Civil Justice Institute
Wrongful Death General Damages Study
Percentage of Losses from Death Cases**

Medical Professional Liability - New York

National Practitioner Databank as of 2/28/2019
New York Physicians
For Closed Years 2008 and Subsequent
Distribution of Loss Payments by Outcome

Sum of PAYMENT OUTCOME	Total	Distribution
1	23,251,750	0.3%
2	12,637,300	0.2%
3	293,489,550	4.0%
4	810,828,500	11.0%
5	887,210,250	12.0%
6	1,603,542,750	21.7%
7	992,375,800	13.4%
8	671,818,750	9.1%
9	2,067,995,300	27.9%
10	39,454,750	0.5%
Grand Total	7,402,604,700	100.0%

Outcome 9 = Death

Indicated Death % 27.9%

Selected **27.9%**

**New York Civil Justice Institute
Wrongful Death General Damages Study**

**Florida Hospitals and Physicians
Percent of Non-Economic Damages
by Case Size Distribution**

Medical Professional Liability

(1)	(2)	(3)	(4)
Non-Economic Portion of Total Damages	Claim Counts	Distribution of Claim Counts	Range Mid-Point
Exactly 0%	3,816	25%	0%
0% - 10%	220	1%	5%
10% - 20%	304	2%	15%
20% - 30%	311	2%	25%
30% - 40%	400	3%	35%
40% - 50%	623	4%	45%
50% - 60%	518	3%	55%
60% - 70%	606	4%	65%
70% - 80%	691	4%	75%
80% - 90%	530	3%	85%
90% - 100%	607	4%	95%
Exactly 100%	6,851	44%	100%
Total	15,477	100%	

(5) Portion Related to Non-Economic Damages	62.2%
(6) Portion Related to Economic Damages	37.8%
(7) Indicated Non-Economic Damages Multiplier	1.65
(8) Selected Non-Economic Damages Multiplier	1.60

Note:

- (1), (2) From Florida Closed Claims Database as of 4/2/2019 includes loss years 1999 through 2018
- (3) Based on (2)
- (4) Based on (1)
- (5) Average of (4) using (3) as weights
- (6) = 100% - (5)
- (7) = (5) / (6)
- (8) Selected by Milliman based on (7)

**New York Civil Justice Institute
Wrongful Death General Damages Study**

**Texas Department of Insurance
2015 Closed Claims Database**

Commercial Auto Liability Claims

	(1)	(2)	(3) (1) + (2)	(4)	(5)	(6)
Cases	Economic	Non- Economic	SubTotal	Economic	Non- Economic	Total Database
(i) Death	5,155,375	14,185,480	19,340,855	37,221,736	102,418,970	139,640,706
(ii) Non-Death	30,051,559	52,671,134	82,722,693	175,428,954	301,396,515	476,825,469
(iii) Total	35,206,934	66,856,614	102,063,548	212,650,690	403,815,485	616,466,175

(7) Percentage of Losses from Death Cases	22.7%
(8) Estimated Percentage of NY Losses from Death Cases for Economic Damages	7.2%
(9) Portion Related to Non-Economic Damages for All Cases	65.5%
(10) Portion Related to Economic Damages for All Cases	34.5%
(11) Indicated Non-Economic Damages Multiplier	1.90
(12) Selected Non-Economic Damages Multiplier	1.90

Note:

- (1),(2) From Texas DOI 2015 Closed Claims Database - CAL Claims Only. Subset where Econ vs Non-Econ is identified.
- (6) From Texas DOI 2015 Closed Claims Database - CAL Claims Only
- (4), (5) Distribution of (6) based on (1) - (3)
- (7) = (6i) / (6iii)
- (8) = (4i) / [(4i) + (6ii)]. New York currently doesn't allow non-economic damages for death cases.
- (9) = (5iii) / (6iii)
- (10) = 100% - (9)
- (11) = (9) / (10)
- (12) Selected by Milliman based on (11)

**New York Civil Justice Institute
Wrongful Death General Damages Study**

**Texas Department of Insurance
2015 Closed Claims Database**

General Liability Claims

	(1)	(2)	(3) (1) + (2)	(4)	(5)	(6)
Cases	Economic	Non- Economic	SubTotal	Economic	Non- Economic	Total Database
(i) Death	4,955,000	14,902,000	19,857,000	15,873,724	47,739,704	63,613,428
(ii) Non-Death	6,597,334	9,450,066	16,047,400	56,091,606	103,961,628	160,053,234
(iii) Total	11,552,334	24,352,066	35,904,400	71,965,330	151,701,332	223,666,662

(7) Percentage of Losses from Death Cases	28.4%
(8) Estimated Percentage of NY Losses from Death Cases for Economic Damages	9.0%
(9) Portion Related to Non-Economic Damages for All Cases	67.8%
(10) Portion Related to Economic Damages for All Cases	32.2%
(11) Indicated Non-Economic Damages Multiplier	2.11
(12) Selected Non-Economic Damages Multiplier	2.10

Note:

- (1),(2) From Texas DOI 2015 Closed Claims Database - GL Claims Only. Subset where Econ vs Non-Econ is identified.
- (6) From Texas DOI 2015 Closed Claims Database - GL Claims Only
- (4), (5) Distribution of (6) based on (1) - (3)
- (7) = (6i) / (6iii)
- (8) = (4i) / [(4i) + (6ii)]. New York currently doesn't allow non-economic damages for death cases.
- (9) = (5iii) / (6iii)
- (10) = 100% - (9)
- (11) = (9) / (10)
- (12) Selected by Milliman based on (11)