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NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

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February 18, 2016

TO: The Honorable Senator Padden, Chair; and Honorable Senator O'Ban, Vice-Chair; Honorable Senator Pederson, Ranking Minority Leader; and Honorable members of the Senate Committee on Law and Justice

RE: ESHB 1248, Mandatory Arbitration Limits – NAMIC's opposition to proposed legislation

Dear Honorable members of the Senate Committee on Law and Justice:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony in opposition to ESHB 1248.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,300 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than $196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 138 members who write property/casualty in the State of Washington, which represents 48% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC is opposed to ESHB 1248 for the following public policy reasons:

1) The proposed expansion of mandatory arbitration is unnecessary – There is no evidence to suggest that the trial courts in the State of Washington are failing to adjudicate civil actions in a fair, timely, and efficient manner for the benefit of civil litigants. Therefore, what is the public policy rationale for increasing the number of cases where litigants are required to submit their legal claim to mandatory arbitration?

2) ESHB 1248 will adversely impact a litigant's right to personally select who (judge, jury, or arbiter) they want ruling on their civil dispute - By increasing the monetary threshold 50% from $50,000 to $75,000, the state legislature will be subjecting more citizens to the mandatory arbitration requirement, thereby, denying more litigants, those with large claims (up to $75,000) the right to have their case decided by way of a traditional civil trial. Shouldn't litigants with

fairly large monetary claims at interest have the right to develop their own litigation strategy? The particular facts of a case and/or the complexity of law at issue may reasonably lead a litigant to decide that a trial court proceeding with full discovery and a standard trial court proceeding is better for the adjudication of their case. Why should this right be taken away from the individual, especially in cases where the monetary stakes of the case are sizeable?

3) Increasing the monetary jurisdiction of mandatory arbitration (MAR) is inconsistent with the very purpose and intent of alternative dispute resolution (ADR)- To make MAR work as intended, the rules of civil procedure are relaxed; discovery and presentation of witnesses and evidence is limited in order to complete a case presentation quickly. In essence, the litigation process is restricted to promote speed in the resolution of the case. In legally and factually straightforward cases, with small monetary damages at interest, arbitration may be reasonable and appropriate. However, in cases with convoluted facts, complicated liability determinations, and complex damages calculations at issue (like what one frequently sees in high-dollar lawsuits), a party may be adversely impacted by being forced into ADR.

Arbitration, by design, has abbreviated pre-hearing timelines. Consequently, litigants are often unable to obtain sufficient medical records and information/evidence pertinent to prove or contest liability and damages. This is acutely a concern for defendants, especially insurance companies, who may be adversely impacted by being forced to defend their policyholder without the full scope of discovery typically needed to develop and present a thorough and comprehensive defense. An important and valuable part of the insuring agreement is the duty to defend provision, so why should an insurer be forced to deny their policyholder the right to have what the insurer believes is best defense (a trial court defense) for the policyholder?

4) The truth of the matter is that plaintiff attorneys see the expansion of MAR as a tactical victory – First of all, plaintiffs generally benefit from having a process that procedurally hinders a defendant from being able to fully develop its case. Limiting a defendant's ability to engage in the level of discovery the defendant deems necessary and restricting the defendant's ability to present its case, provides plaintiffs with an unfair tactical advantage. Why should the defendant be required to "fight with one hand tied behind his back"? Moreover, since MAR is focused upon speedy resolutions as opposed to procedurally structured and evidence intensive adjudications, there is a general inclination for arbiters to "split the difference" on contested damages. In fact, one could argue that "splitting the difference" is something people generally accept and expect when they are in a non- adjudicatory dispute resolution process. This works to the favor of plaintiffs, and incentivizes the filing of over-inflated damages claims by plaintiff attorneys. Since increased damages awards are an insurance rate cost-driver, NAMIC is concerned that ESHB 1248 could adversely impact affordability of insurance for consumers.

5) The proposed legislation is also rife with unintended public policy problems –

a) Detrimental impact on defendants of limited financial means - Washington requires drivers to have automobile liability insurance with *minimum* limit of liability at $25,000 per person. The current MAR monetary jurisdictional limit exposes those who are only able to afford the legally required minimum insurance coverage to personal "out of pocket" liability exposure that is double the mandated coverage limits. For insurance consumers with the financial resources to purchase maximum liability coverage limits, the prospect of higher MAR damages awards does not pose the same level of financial concern as it does for minimum liability

insurance coverage limits consumers. By increasing the MAR monetary jurisdiction level, the state legislature will be increasing an individual's personally liable exposure for the portion of the MAR damages award that exceeds their insurance coverage. From a public policy standpoint, why should plaintiffs be unjustly enriched with higher MAR damages awards to the detriment of defendants of limited financial means?

b) By increasing the monetary jurisdiction of MAR, there will be more lawsuits directed to MAR, which will start to congest arbitration dockets; thereby, reducing the intended speed of the process. MAR was designed to resolve legal disputes quickly. As the volume of cases sent to arbitration increases and the complexity of the legal claims increase, as a result of the higher monetary jurisdiction, the MAR process and timeline for arbitration rulings will start to be more in-line with those of trial courts. In effect, by increasing the monetary jurisdiction of MAR, the state legislature will be exposing the arbitration process to the legal complexity that it was designed and intended to bypass as a form of expedited dispute resolution.

For the aforementioned reasons, NAMIC respectfully requests that the Senate Committee on Law and Justice **VOTE NO on ESHB 1248,** so that MAR is allowed to maintain its identity, integrity, and virility as an expedited dispute resolution process for smaller damages cases with less legally complex issues.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,

Christian John Rataj, Esq.
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