

To: To the Michigan Court of Appeals

From: Members of the Michigan Legislature

Date: May 27, 2021

Re: *Ellen M. Andary, Philip Krueger, & Eisenhower Center, v. USAA Casualty Insurance Company and Citizens Insurance Company of America*

We, the undersigned lawmakers, sign this memo to express our strongly held belief that the attendant care limitations and the 55% fee schedule provisions of the recently enacted auto no-fault insurance reforms (Public Act 21 of 2019: MCL 500.3157(7) and (10)) should not be retroactively applied to accident victims who purchased insurance policies and sustained bodily injury prior to the enactment of this legislation.

As you know, this retroactivity question is presently pending in the Michigan Court of Appeals in the above-referenced legal case (Andary litigation).

Our colleagues, State Representatives Julie Brixie and Andrea Schroeder, are in the process of filing an amicus curiae brief asking the Michigan Court of Appeals to rule that these specific provisions of the new no-fault law should not be given retroactive application. We support our colleagues' efforts to seek amicus curiae status in this important case and agree with their position regarding the retroactivity issue. We support their efforts for the following reasons:

1. We do not believe the Legislature intended for MCL 500.3157(7) and (10) to be applied retroactively. Many of us voted on this legislation understanding that MCL 500.3157(7) and (10) would only be applied prospectively. Moreover, because there does not appear to be any specific language in this legislation which clearly states a legislative intent to apply these provisions retroactively to previously injured victims, we believe these provisions are presumed to have only prospective application.
2. We believe retroactive application of these provisions would be a violation of plaintiffs' legal rights, including but not limited to, the Contracts Clause of the Michigan Constitution (e.g., Const 1963, art 1, § 10) and case law preserving the sanctity of private contracts.
3. We believe that retroactive application of these specific provisions of the new no-fault law would be fundamentally unfair to survivors of catastrophic auto accidents, such as Ms. Andary and Mr. Krueger (i.e., the plaintiffs in this case). That is true for the thousands of other residents across our state who will lose valuable insurance benefits they have under automobile insurance policies they purchased and entered into many years ago, thereby materially altering their contracts of insurance.

Information that appears on the website of the Michigan Catastrophic Claims Association (MCCA), [which can be accessed by clicking here](#), reflects that there are over 18,000 patients who were injured years ago whose care is funded by the MCCA. Nearly every one of these residents and their families would be severely impacted by retroactive application of these reforms.

Many of those catastrophically injured patients have, for years, been receiving attendant care rendered by family members and friends for many hours every day. If the 56 hour weekly attendant care limitations set forth in MCL 500.3157(10) are retroactively applied to those patients, their critically important daily care will be significantly disrupted.

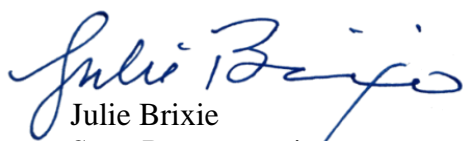
Moreover, the retroactive application of the fee schedule provisions set forth in MCL 500.3157(7) will cause a number of medical provider businesses to either close their doors or otherwise discontinue services to those patients who sustained severe injuries many years ago. Therefore, such application will likely have a significant impact on an important part of Michigan's healthcare economy and seriously impact access to necessary care.

A number of those medical businesses render commercially provided in-home attendant care to auto accident victims who do not have family members who can render such care. Therefore, the closure of such businesses, coupled with the limitations on family provided attendant care, could create a dangerous shortage of critical in-home attendant care services for the patients who are most in need.

In writing this memo we wish to emphasize the urgency of the current situation. The provisions dealing with attendant care and the 55% fee schedule will be put into effect by insurance companies on July 1, 2021. If those provisions are retroactively applied to victims injured before enactment of these provisions, a chaotic situation could rapidly develop. Many medical provider businesses are likely to close, catastrophically injured persons will suffer a significant disruption in their daily care, hundreds of jobs (or more) are likely to be lost, and our courts could be flooded with lawsuits seeking relief from the harsh consequences of retroactively applying these benefit reductions to Michigan citizens.

Therefore, we strongly urge the Michigan Appellate Courts to review these issues, pursuant to the amicus brief filed on behalf of the plaintiffs in the Andary litigation, as they are of great importance to the citizens of the State of Michigan.

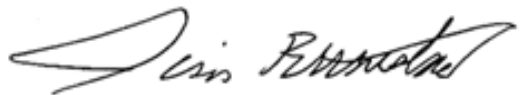
Sincerely,



Julie Brixie
State Representative
69th District



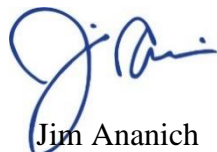
Andrea Schroeder
State Representative
43rd District



Jim Runestad
State Senator
15th District



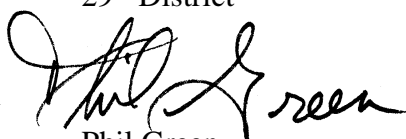
Winnie Brinks
State Senator
29th District



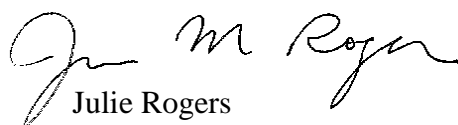
Jim Ananich
Senate Democratic Leader
27th District



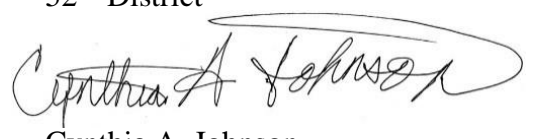
Donna Lasinski
House Democratic Leader
52nd District



Phil Green
State Representative
84th District



Julie Rogers
State Representative
60th District



Cynthia A. Johnson
State Representative
5th District

Stephanie A. Young
State Representative
8th District

Jim Ellison
State Representative
26th District

Kara Hope
State Representative
67th District

Sarah Anthony
State Representative
68th District

Sherry Gay-Dagnogo
Fmr. State Representative
8th District

Cara Clemente
State Representative
14th District

Tenisha Yancey
State Representative
1st District

Bill Sowerby
State Representative
31st District

Yousef Rabhi
State Representative
53rd District

Rachel Hood
State Representative
76th District

Wendell Byrd
Fmr. State Representative
3rd District

Robert Wittenberg
Fmr. State Representative
27th District

Mary Cavanagh
State Representative
10th District

LaTanya Garrett
Fmr. State Representative
5th District

Nate Shannon
State Representative
25th District

Regina Weiss
State Representative
27th District

Curtis Hertel, Jr.
State Senator
23rd District

Ronnie Peterson
State Representative
54th District

Amos O'Neal
State Representative
95th District

Paul Wojno
State Senator
9th District

Tim Sneller
State Representative
50th District

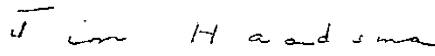
Lori Stone
State Representative
28th District

Padma Kupp
State Representative
41st District

David LaGrand
State Representative
75th District



John Chirkun
Fmr. State Representative
22nd District




Jim Haadsma
State Representative
62nd District



Jeremy Moss
State Senator
11th District



Tullio Liberati
State Representative
13th District



Kevin Coleman
State Representative
16th District



Marshall Bullock, II
State Senator
4th District



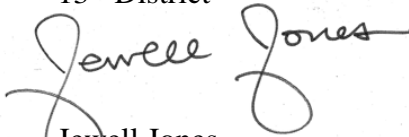
Frank Liberati
Fmr. State Representative
13th District



Shri Thanedar
State Representative
3rd District



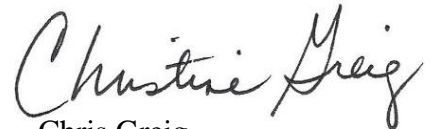
Doug Wozniak
State Representative
36th District



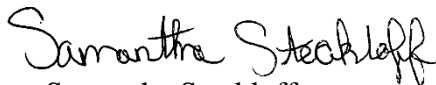
Jewell Jones
State Representative
11th District



Erika Geiss
State Senator
6th District



Chris Greig
Fmr. House Democratic Leader
37th District



Samantha Steckloff
State Representative
37th District



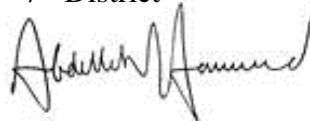
Helena Scott
State Representative
7th District



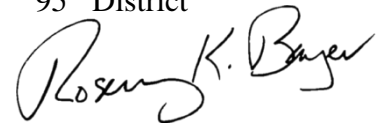
Vanessa Guerra
Fmr. State Representative
95th District



Abe Aiyash
State Representative
4th District



Abdullah Hammoud
State Representative
15th District



Rosemary Bayer
State Senator
12th District



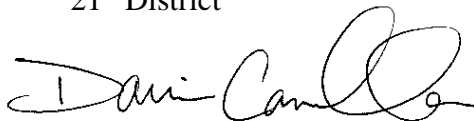
Ranjeev Puri
State Representative
21st District



Mallory McMorrow
State Senator
13th District



Christine Morse
State Representative
61st District



Darrin Camilleri
State Representative
23rd District



Kristy Pagan
Fmr. State Representative
21st District



Jeff Irwin
State Senator
18th District

Sean McCann
State Senator
20th District

Jon Hoadley
Fmr. State Representative
60th District

Felicia Brabec
State Representative
55th District

Sylvia A. Santana
State Senator
3rd District

Stephanie Chang
State Senator
1st District

Sheldon Neeley
Fmr. State Representative
34th District

Betty Jean Alexander
State Senator
5th District

Robert Bezotte
State Representative
47th District

Brian K. Elder
Fmr. State Representative
96th District

Cynthia Neeley
State Representative
34th District

Alex Garza
State Representative
37th District

Gary Howell
State Representative
82nd District

Dayna Polehanki
State Senator
7th District

Rebekah Warren
Fmr. State Representative
55th District

Kelly Breen
State Representative
38th District

Steve Marino
State Representative
24th District