

**STATE OF MICHIGAN**

MI Supreme Court

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<b>Case Title:</b> ELLEN M ANDARY V USAA CASUALTY INSURANCE COMPANY	<b>Case Number:</b> 164772
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02-02-2023

Date

/s/ Marla Linderman Richelew

Signature

Linderman Law PLLC

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**STATE OF MICHIGAN  
IN THE MICHIGAN SUPREME COURT**

ELLEN M. ANDARY, a legally  
incapacitated adult, by and through  
her Guardian and Conservator,  
MICHAEL T. ANDARY, M.D.,  
PHILIP KRUEGER, a legally  
incapacitated adult, by and through  
his Guardian,  
RONALD KRUEGER, & MORIAH, INC.,  
d/b/a EISENHOWER CENTER,  
a Michigan corporation,

Plaintiffs-Appellants,

v

USAA CASUALTY INSURANCE  
COMPANY, a foreign corporation, and  
CITIZENS INSURANCE COMPANY  
OF AMERICA, a Michigan corporation,

Defendants-Appellees.

Supreme Court Case No. 164772

Court of Appeals Case No. 356487

Ingham County Circuit Court

Case No. 2019-000738-CZ

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**REP. JULIE BRIXIE AND REP. GARY HOWELL'S AMICUS CURIAE BRIEF  
IN SUPPORT OF FINDING THAT THE LEGISLATURE DID NOT INTEND  
TO APPLY THE CHANGES TO THE NO-FAULT ACT RETROACTIVELY  
TO INDIVIDUALS INJURED IN MOTOR VEHICLE ACCIDENTS BEFORE THE  
NO-FAULT ACT WAS AMENDED**

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## INTRODUCTION

The overriding legal question in this case is whether recent changes made to the No-Fault Act in 2019 will be applied retroactively to individuals injured in motor vehicle accidents long before the law was amended. Effective July 1, 2021, reimbursement for family-provided attendant care services and post-acute rehabilitation was reduced by the majority of insurance companies to levels that jeopardized the care that has long been provided for persons injured in motor vehicle accidents in Michigan under the No-Fault Act. Significant damage has been done to these individuals by misapplication of the law; damage that was never intended to be done by the Legislature. This brief is filed on behalf of two members of the Legislature who were “in the room where it happened”, one Democratic Representative and one Republican Representative as this issue transcends party lines. However, attached to this brief is a Memorandum signed by almost one hundred (100) Representatives and Senators, all having been elected by Michiganders. That memo specifically states:



“We support our colleagues’ efforts to seek amici curiae status in this important case and agree with their position regarding the retroactivity issue.” Exhibit A.

Based on information and belief, this memorandum serves as one of the largest, if not largest, bipartisan efforts by Legislators to ensure that the words the Legislature enacted are properly interpreted as intended.

**STATEMENT OF INTEREST OF AMICUS  
CURIAE REP. JULIE BRIXIE AND REP. GARY  
HOWELL<sup>1</sup>**

Representative Julie Brixie (D-Meridian Township) is currently serving her third term in the Michigan House of Representatives. She represents the 69<sup>th</sup> District. Plaintiffs/Appellants, Ellen and Michael Andary, reside in her district. Representative Gary Howell (R-Lapeer) served for three terms in the House of Representatives, including when the no-fault changes were passed. He represented the 82<sup>nd</sup> District. Previously, Representative

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<sup>1</sup> The undersigned counsel states under MCR 7.312(H)(3) that no party or counsel for a party authored this amicus brief, in whole or in part, and also, no party or counsel for a party contributed money that was intended to fund the preparation or submission of this amicus brief.

Andrea Schoeder filed the prior amicus filings in this case as a Representative of the 43<sup>rd</sup> District but she sadly lost her fight to cancer.

Both Rep. Howell and Rep. Brixie were present and participated in the voting when the Michigan House of Representatives approved the legislation that subsequently became 2019 PA 21. That legislation included significant changes to reimbursement for family-provided attendant care services and post-acute rehabilitation services that are now being challenged on appeal in this pending case.

As noted in Plaintiffs/Appellees' Brief, that underlying legislation, now 2019 PA 21, did not state that it would be applied retroactively. Yet, the trial court in this case nonetheless concluded that 2019 PA 21 applied retroactively to individuals who were injured in motor vehicle accidents before the law was changed. As a result, auto accident victims like Ellen Andary and Philip Krueger faced devastating, and potentially life-threatening, consequences due to cuts in reimbursement for family-provided attendant care services and post-acute rehabilitation until the Michigan Court of Appeals reversed the trial court in *Andary v USAA Cas Ins Co*, \_\_\_NW2d\_\_\_;

2022 Mich. App. LEXIS 5127 (Ct App, Aug. 25, 2022). Businesses that care for persons seriously injured in motor vehicle accidents in Michigan similarly faced an existential threat with the cuts in reimbursement for existing patients and that industry has been gutted by the improper retroactive interpretation employed by the insurance industry.

As duly elected representatives in the State of Michigan, Rep. Brixie and Rep. Howell have a significant interest in seeing that legislation is applied as intended by the Legislature when passed. Here, the trial court's decision to apply this legislation retroactively to individuals previously injured in motor vehicle accidents has negated the Legislature's intent in amending the No-Fault Act. It also raised serious constitutional questions as the Michigan Court of Appeals held that it violates the contracts clause of the Michigan Constitution, Art. 1, §10, by denying catastrophically injured persons like Andary and Krueger the PIP benefits that their PIP insurers agreed to provide for them when PIP coverage was secured, and premiums were paid long before the No-Fault Act was amended in 2019. *Andary, supra*.

This case will determine with finality whether 2019 PA 21 will be applied retroactively or not. It will also have a broader effect on other laws passed that do not specify how they will be applied. For those reasons, and the ones stated previously, Rep. Brixie and Rep. Howell, in conjunction with all other legislators who support this amicus brief's filing request that this Honorable Court uphold the Michigan Court of Appeals' Opinion in this matter. The memorandum of support signed by additional legislators is attached as Exhibit A<sup>2</sup>.

### **CONCURRING STATEMENT AS TO QUESTIONS PRESENTED**

Amicus Curiae accepts and concurs with the Statement of Questions Presented stated in Plaintiff/Appellants' brief, especially as to the question which concerns the retroactive application of 2019 PA 21 to those individuals who were injured in motor vehicle accidents before the No-Fault Act was amended on June 11, 2019.

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<sup>2</sup> The Memorandum submitted in the Court of Appeals is attached as Exhibit B which shows other former Legislators who also supported this effort throughout the course of this case.

**CONCURRING STATEMENT AS TO  
FACTS AND PROCEEDINGS**

Amicus Curiae accepts and concurs with the Statement of Material Proceedings and Facts that was provided in Plaintiff/Appellants' Brief.

**STANDARD OF REVIEW**

Whether a statutory amendment applies retroactively is a question of statutory interpretation subject to de novo review. *Johnson v Pastoriza*, 491 Mich 417, 428-429, 818 NW2d 279 (2012).

**ARGUMENT**

- I. **The Legislature did not intend to apply the changes to the No-Fault Act retroactively to individuals injured in motor vehicle accidents before the No-Fault Act was amended.**

"In determining whether a statute applies retroactively or prospectively, the intent of the Legislature governs." *Johnson*, 491 Mich at 429, citing *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001). Moreover, because of the potential for unfairness that exists whenever a statute is applied retroactively, and not prospectively, "[s]tatutes are presumed to apply prospectively unless the Legislature

clearly manifests the intent for retroactive application.” *Johnson, supra*, 491 Mich at 429, citing *Brewer v A D Transp Express, Inc*, 486 Mich 50, 55-56, 782 NW2d 475 (2010). Accordingly, “[t]he Legislature’s expression of an intent to have a statute apply retroactively must be clear, direct, and unequivocal as appears from the context of the statute itself.” *Davis v State Employees’ Retirement Bd*, 272 Mich App 151, 155–156, 725 NW2d 56 (2006).

Here, there was no “clear, direct, and unequivocal” expression by the Michigan Legislature of its intent for 2019 PA 21 to apply retroactively. As with much legislation, 2019 PA 21 merely said that it would be immediately effective when the Governor signed it, as she did on June 11, 2019. There was no direction regarding whether the amendments made to it should be applied prospectively or retroactively. Consequently, the trial court clearly erred by applying it retroactively. Had the Legislature intended for the amendments made to the No-Fault Act in 2019 to apply retroactively, it could have easily said so. For example, recent laws passed to address the COVID-19 pandemic did so. See generally, MCL 691.1477, which states that

“[t]he liability protection provided by this act applies retroactively, and applies on or after March 29, 2020 and before July 14, 2020.”

To determine whether a law has retroactive effect, this Court “keep[s] four principles in mind.” *LaFontaine Saline, Inc v Chrysler Grp, LLC*, 496 Mich 26, 38, 852 NW2d78 (2014):

First, we consider whether there is specific language providing for retroactive application. Second, in some situations, a statute is not regarded as operating retroactively merely because it relates to an antecedent event. Third, in determining retroactivity, we must keep in mind that retroactive laws impair vested rights acquired under existing laws or create new obligations or duties with respect to transactions or considerations already past. Finally, a remedial or procedural act not affecting vested rights may be given retroactive effect where the injury or claim is antecedent to the enactment of the statute.

Here, as in the *LaFontaine* case, the factors clearly weigh against applying the recent changes to the No-Fault Act retroactively. In particular, as noted previously, there is no specific language found in 2019 PA 21 that provides for retroactive application. Furthermore, there are clearly “vested rights acquired under existing laws”, i.e. the No-Fault Act before it was amended,

that will be impaired. As such, as the Michigan Court of Appeals has made clear in its well-written and well-supported opinion, the trial court erred when it held that the changes to the No-Fault Act applied retroactively. *Andary, supra*.

Simply put, many legislators voted on this legislation with the understanding that the changes to reimbursement for family-provided attendant care services under MCL 500.3157(10) and the 55% fee schedules for post-acute rehabilitation services not covered by Medicare under 500.3157(7) would not be applied retroactively to individuals who purchased coverage (and were injured in a motor vehicle accident) before the No-Fault Act was amended. In fact, DIFS stated publicly that 2019 PA 21 does not apply retroactively and that it was never intended to do so. Yet, PIP insurers in Michigan have reduced reimbursement drastically based on those newly added provisions under MCL 500.3157.



**II. Applying the recent changes made to the No-Fault Act retroactively is not consistent with Michigan law and it violates the contracts clause of the Michigan Constitution.**

As stated in Plaintiffs-Appellants' brief filed with this Court in support of upholding the Michigan Court of Appeal's opinion, the law in Michigan is clear that legislation must not be applied retroactively if doing so will impair existing contract rights. *Andary, supra*. In *LaFontaine, supra*, 496 Mich at 44, this Court made that point abundantly clear when it refused to apply retroactively an amendment that was passed in 2010 to the Motor Vehicle Franchise Act, MCL 445.1561, et seq, which expanded geographically the relevant market area for dealerships to a nine-mile radius, because it would "impinge on the manufacturer's right" under a previously negotiated "dealer agreement" that limited the relevant market area to a six-mile radius.

Here, retroactive application of 2019 PA 21 likewise impairs the contract rights of individuals that purchased coverage, paid premiums, and were injured in motor vehicle accidents before the law was amended to limit reimbursement for family provided attendant care services and post-acute rehabilitation services not covered by the Medicare program. It

further impairs the rights of providers of post-acute rehabilitation services who contractually agreed to provide services for those same individuals with an understanding that reasonable and customary rates would be paid.

Furthermore, retroactive application of 2019 PA 21 violates the contracts clause of the Michigan Constitution. See Mich Const 1963, Art 1, § 10. In *AFT Mich v State of Michigan*, 501 Mich 939, 904 NW2d 417 (2017), this Court held that the contracts clause was violated because the Legislature retroactively imposed a salary reduction on public school employees that negated contractual agreements previously negotiated between the public schools and their employees. The same analysis applies under these circumstances because 2019 PA 21, if applied retroactively, will similarly reduce reimbursement from what the parties previously agreed when contracts were signed.

## CONCLUSION

Applying retroactively the changes made to reimbursement under the No-Fault Act in 2019, specifically, the cap on family-provided attendant care and the 55% fee schedules for services not covered by the Medicare program is fundamentally unfair to individuals who purchased coverage and were injured in motor vehicle accidents before the No-Fault Act was amended. It is also unfair to businesses that contracted with those individuals based on the understanding that the services provided would be reimbursed at rates customarily charged as the parties agreed. Doing so would not only undermine the Legislature's intent in amending the No-Fault Act, but it would also violate the contracts clause of the Michigan Constitution, because contract rights had clearly vested.

Therefore, on behalf of Representatives Brixie and Representative Howell, and supported by the signers of Exhibit A, it is respectfully requested that this Honorable Court hold that the changes to reimbursement for family-provided attendant care services under MCL 500.3157(10) and the 55% fee schedules for post-acute rehabilitation

services not covered by Medicare under 500.3157(7) do not apply retroactively to individuals who purchased coverage (and were injured in a motor vehicle accident) before the No-Fault Act was amended.

Respectfully submitted on February 2, 2023,

/s/ Marla Linderman Richelew

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**PROOF OF SERVICE**

The undersigned certifies that the forgoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on this February 2, 2023.  
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Signature /s/ Marla Linderman Richelew

**EXHIBIT A**

**Memorandum of Support**

**Dated February 2, 2023**

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# Memo

**To:** To the Michigan Supreme Court

**From:** Members of the Michigan Legislature

**Date:** February 2, 2023

**Re:** *Ellen M. Andary, Philip Krueger, & Eisenhower Center, v USAA Casualty Insurance Company and Citizens Insurance Company of America*  
Michigan Supreme Court Case No. 164772

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The retroactivity question has been decided by the Michigan Court of Appeals in the above-referenced legal case (Andary litigation) and is presently before the Michigan Supreme Court. We, the undersigned Legislators<sup>1</sup>, 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.

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<sup>1</sup> Legislators refers to both current Legislators and Legislators who voted on Public Act 21 of 2019 who may no longer be serving but can speak to their intent and understanding of the Legislation passed.

We write to confirm that our position on this matter has not changed. Previously, our colleagues, State Representatives Julie Brixie and Andrea Schroeder authorized attorney Marla Linderman Richelew to file an amici 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. Unfortunately, in the meantime, we lost our colleague Representative Andrea Schroeder but understand that our colleagues State Representatives Julie Brixie and Gary Howell have taken up the mantle and have authorized Ms. Linderman Richelew to file an amici curiae brief asking the Michigan Supreme Court 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 amici 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 and has caused 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.

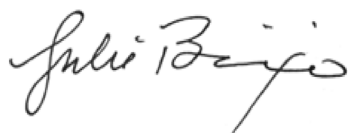
*In writing this memo we wish to emphasize the urgency of the current situation.* The provisions dealing with attendant care and the 55% fee schedule will be put into effect by insurance companies on July 1, 2021. If those provisions are retroactively applied to victims injured before enactment of these 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 Supreme Court 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  
73rd District



Gary Howell  
Fmr. State Representative  
82nd District



Winnie Brinks  
State Senate Majority Leader  
29th District



Abe Aiyash  
State House Democratic  
Floor Leader  
9th District



Amos O'Neal  
State Representative  
94th District



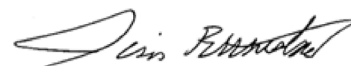
Abdullah Hammoud  
Fmr. State Representative  
15th District



Alex Garza  
Fmr. State Representative  
12th District



Betsy Coffia  
State Representative  
103rd District



Jim Runestad  
State Senator  
23rd District

Betty Jean Alexander  
Fmr. State Senator  
5th District

Curtis Hertel Jr.  
Fmr. State Senator  
23rd District

Erika Geiss  
State Senator  
1st District

Brian K. Elder  
Fmr. State Representative  
96th District

Cynthia Neeley  
State Representative  
70th District

Erin Byrnes  
State Representative  
15th District

Cara Clemente  
Fmr. State Representative  
14th District

Darrin Camilleri  
State Senator  
4th District

Frank Liberati  
Fmr. State Representative  
13th District

Chris Greig  
Fmr. House Democratic  
Leader  
37th District

Dayna Polehanki  
State Senator  
5th District

Jaime Churches  
State Representative  
27th District

Christine Morse  
State Representative  
40th District

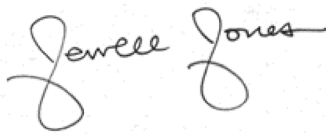
Donovan McKinney  
State Representative  
14th District

Jenn Hill  
State Representative  
109th District

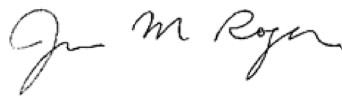
Jim Ananich  
Fmr. State Senate  
Democratic Leader  
27th District

Emily Dievendorf  
State Representative  
77th District

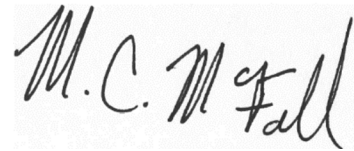
Jeremy Moss  
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7th District



Jewell Jones  
Fmr. State Representative  
11th District



Julie Rogers  
State Representative  
41st District



Mike McFall  
State Representative  
8th District



Jim Ellison  
Fmr. State Representative  
26th District



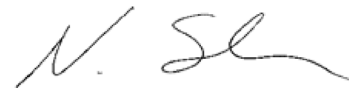
Kara Hope  
State Representative  
74th District



Natalie Price  
State Representative  
5th District



Kevin Coleman  
State Representative  
25th District



Nate Shannon  
State Representative  
58th District



Jimmie Wilson  
State Representative  
32nd District



Lori Stone  
State Representative  
13th District



Padma Kuppa  
Fmr. State Representative  
41st District



John Chirkun  
Fmr. State Representative  
22nd District



Mary Cavanagh  
State Senator  
6th District



Penelope Tsernoglou  
State Representative  
75th District



Jon Hoadley  
Fmr. State Representative  
60th District



Phil Green  
State Representative  
67th District

Rachel Hood  
State Representative  
81st District

Samantha Steckloff  
State Representative  
19th District

Stephanie Chang  
State Senator  
3rd District

Ranjeev Puri  
State Representative  
24th District

Sarah Anthony  
State Senator  
21st District

Sylvia Santana  
State Senator  
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Robert Wittenberg  
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27th District

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State Senator  
19th District

Tullio Liberati  
State Representative  
2nd District

Ronnie Peterson  
Fmr. State Representative  
54th District

Sharon MacDonell  
State Representative  
56th District

Yousef Rabhi  
Fmr. State Representative  
53rd District

Rosemary Bayer  
State Senator  
13th District

Sheldon Neeley  
Fmr. State Representative  
34th District

Jason Morgan  
State Representative  
23rd District

Sam Singh  
State Senator  
28th District

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Will Snyder  
State Representative  
87th District

Bill Sowerby  
Fmr. State Representative  
31st District

David LaGrand  
Fmr. State Representative  
75th District

Noah Arbit  
State Representative  
20th District

Stephanie A. Young  
State Representative  
16th District

Felicia Brabec  
State Representative  
33rd District

Mallory McMorrow  
State Senator  
8th District

Carol Glanville  
State Representative  
84th District

Veronica Paiz  
State Representative  
11th District

Tim Sneller  
Fmr. State Representative  
50th District

John Damoose  
State Senator  
37th District

Helena Scott  
State Representative  
7th District

Dylan Wegela  
State Representative  
26th District

Jeff Irwin  
State Senator  
15th District

Jim Haadsma  
State Representative  
44th District

Joey Andrews  
State Representative  
38th District

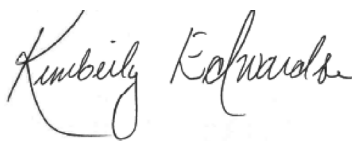
LaTanya Garrett  
Fmr. State Representative  
5th District

John Fitzgerald  
State Representative  
83rd District

Denise Mentzer  
State Representative  
61st District



Carrie Rheingans  
State Representative  
47th District



Kimberly Edwards  
State Representative  
12th District



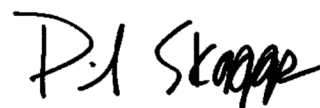
Jasper Martus  
State Representative  
69th District



Jason Hoskins  
State Representative  
18th District



Alabas Farhat  
State Representative  
3rd District



Phil Skaggs  
State Representative  
80th District



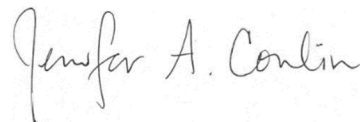
Kristian Grant  
State Representative  
82nd District



John Roth  
State Representative  
104th District



Kelly Breen  
State Representative  
21st District



Jennifer Conlin  
State Representative  
48th District



Kevin Hertel  
State Senator  
12th District

Reggie Miller  
State Representative  
31st District



Sue Shink  
State Senator  
14th District



Robert Bezotte  
State Representative  
50th District



Kristen McDonald Rivet  
State Senator  
35th District



Brenda Carter  
State Representative  
53rd District



Cynthia A. Johnson  
Fmr. State Representative  
5th District



Paul Wojno  
State Senator  
10th District

**EXHIBIT B**

**Memorandum of Support**  
**Dated May 27, 2021**

**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*

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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 amici 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 amici 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  
69<sup>th</sup> District

Andrea Schroeder  
State Representative  
43<sup>rd</sup> District

Jim Runestad  
State Senator  
15<sup>th</sup> District

Winnie Brinks  
State Senator  
29<sup>th</sup> District

Jim Ananich  
Senate Democratic Leader  
27<sup>th</sup> District

Donna Lasinski  
House Democratic Leader  
52<sup>nd</sup> District

Phil Green  
State Representative  
84<sup>th</sup> District

Julie Rogers  
State Representative  
60<sup>th</sup> District

Cynthia A. Johnson  
State Representative  
5<sup>th</sup> District

Stephanie A. Young  
State Representative  
8<sup>th</sup> District

Jim Ellison  
State Representative  
26<sup>th</sup> District

Kara Hope  
State Representative  
67<sup>th</sup> District

Sarah Anthony  
State Representative  
68<sup>th</sup> District

Sherry Gay-Dagnogo  
Fmr. State Representative  
8<sup>th</sup> District

Cara Clemente  
State Representative  
14<sup>th</sup> District

Tenisha Yancey  
State Representative  
1<sup>st</sup> District

Bill Sowerby  
State Representative  
31<sup>st</sup> District

Yousef Rabhi  
State Representative  
53<sup>rd</sup> District

Rachel Hood  
State Representative  
76<sup>th</sup> District

Wendell Byrd  
Fmr. State Representative  
3<sup>rd</sup> District

Robert Wittenberg  
Fmr. State Representative  
27<sup>th</sup> District

Mary Cavanagh  
State Representative  
10<sup>th</sup> District

LaTanya Garrett  
Fmr. State Representative  
5<sup>th</sup> District

Nate Shannon  
State Representative  
25<sup>th</sup> District

Regina Weiss  
State Representative  
27<sup>th</sup> District

Curtis Hertel, Jr.  
State Senator  
23<sup>rd</sup> District

Ronnie Peterson  
State Representative  
54<sup>th</sup> District

Amos O'Neal  
State Representative  
95<sup>th</sup> District

Paul Wojno  
State Senator  
9<sup>th</sup> District

Tim Sneller  
State Representative  
50<sup>th</sup> District

Lori Stone  
State Representative  
28<sup>th</sup> District

Padma Kupp  
State Representative  
41<sup>st</sup> District

David LaGrand  
State Representative  
75<sup>th</sup> District

John Chirkun  
Fmr. State Representative  
22<sup>nd</sup> District

Jim Haadsma  
State Representative  
62<sup>nd</sup> District

Jeremy Moss  
State Senator  
11<sup>th</sup> District

Tullio Liberati  
State Representative  
13<sup>th</sup> District

Kevin Coleman  
State Representative  
16<sup>th</sup> District

Marshall Bullock, II  
State Senator  
4<sup>th</sup> District

Frank Liberati  
Fmr. State Representative  
13<sup>th</sup> District

Shri Thanedar  
State Representative  
3<sup>rd</sup> District

Doug Wozniak  
State Representative  
36<sup>th</sup> District

Jewell Jones  
State Representative  
11<sup>th</sup> District

Erika Geiss  
State Senator  
6<sup>th</sup> District

Chris Greig  
Fmr. House Democratic Leader  
37<sup>th</sup> District

Samantha Steckloff  
State Representative  
37<sup>th</sup> District

Helena Scott  
State Representative  
7<sup>th</sup> District

Vanessa Guerra  
Fmr. State Representative  
95<sup>th</sup> District

Abe Aiyash  
State Representative  
4<sup>th</sup> District

Abdullah Hammoud  
State Representative  
15<sup>th</sup> District

Rosemary Bayer  
State Senator  
12<sup>th</sup> District

Ranjeev Puri  
State Representative  
21<sup>st</sup> District

Mallory McMorrow  
State Senator  
13<sup>th</sup> District

Christine Morse  
State Representative  
61<sup>st</sup> District

Darrin Camilleri  
State Representative  
23<sup>rd</sup> District

Kristy Pagan  
Fmr. State Representative  
21<sup>st</sup> District

Jeff Irwin  
State Senator  
18<sup>th</sup> District

Sean McCann  
State Senator  
20<sup>th</sup> District

Jon Hoadley  
Fmr. State Representative  
60<sup>th</sup> District

Felicia Brabec  
State Representative  
55<sup>th</sup> District

Sylvia A. Santana  
State Senator  
3<sup>rd</sup> District

Stephanie Chang  
State Senator  
1<sup>st</sup> District

Sheldon Neeley  
Fmr. State Representative  
34<sup>th</sup> District

Betty Jean Alexander  
State Senator  
5<sup>th</sup> District

Robert Bezotte  
State Representative  
47<sup>th</sup> District

Brian K. Elder  
Fmr. State Representative  
96<sup>th</sup> District

Cynthia Neeley  
State Representative  
34<sup>th</sup> District

Alex Garza  
State Representative  
37<sup>th</sup> District

Gary Howell  
State Representative  
82<sup>nd</sup> District

Dayna Polehanki  
State Senator  
7<sup>th</sup> District

Rebekah Warren  
Fmr. State Representative  
55<sup>th</sup> District

Kelly Breen  
State Representative  
38<sup>th</sup> District

Steve Marino  
State Representative  
24<sup>th</sup> District