



Insurance Institute of Michigan

March 23, 2010

The Honorable Mark Meadows
Chair, House Judiciary Committee
House of Representatives
Lansing, Michigan 48909

Dear Chair Meadows:

On behalf of the members of the Insurance Institute of Michigan, I write to express our opposition to **House Bill 5744**. This bill would, in actions based on tort or other legal theory seeking damages for personal injury, property damage or wrongful death, limit consideration of whether a condition is open and obvious only to the jury's assessment of the degree of comparative fault, and not with respect to any other issue of law or fact, including duty.

The open and obvious doctrine has been part of Michigan's jurisprudence for decades in cases involving premises liability. In Michigan, a possessor of land owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition. However, the duty to protect an invitee does not extend to a condition that is so open and obvious that a reasonable person could be expected to discover it on his or her own. Notwithstanding the above, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect against the risk. These principles, and balance they provide, were most recently upheld by the Michigan Supreme Court in *Lugo v Ameritech Corporation* in 2001.

In our opinion, House Bill 5744 would be a significant departure from current law in that the open and obvious condition of a hazard would no longer be part of the analysis of defendant's duty, but could only be considered by the jury to determine comparative fault. We believe the net effect of this change would be more lawsuits, higher and more frequent defense costs, increased cost of settlements and more expensive jury awards – all of which impact insurance costs and premium.

If there are specific shortcomings or deficiencies with the current application of the doctrine, IIM would ask that House Bill 5744 be placed in workgroup where those concerns and attendant issues could be raised and discussed more thoroughly and both sides given time to provide the proper resources to the discussion. Absent such process, the members of the Insurance Institute of Michigan **strongly urge you to vote "NO" on House Bill 5744.**

Thank you in advance for your attention to this matter. Please let me know if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "D.E. Van Koevering", with a long horizontal flourish extending to the right.

Dyck E. Van Koevering
General Counsel

cc: House Judiciary Committee