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Date: 9/27/2011 4:22 PM
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Members of the House of Representatives
Committee on Insurance
124 North Capitol Avenue
P.O. Box 30014
Lansing, MI 48909-7514

Re: SB 649 & HR 4936

Dear Representatives:

Other than writing to the Governor, my state Senator, and State Representative regarding the above bills, I have never written to an elected official regarding pending legislation, I feel that the above bill,s, are so unfair and one sided that I could not remain silent. Although these bills were originally called to my attention by our attorney, I assure you that the following comments are mine and not those of my attorney, or anyone else who represents auto injury victims.

I am well aware of the party politics both in Washington and Lansing. But, as most citizens I hope that my elected representatives can rise above party politics and truly represent the best interests of their constituents. Senate Majority Leader Richardvill has posted on the Republican Caucas web site an agenda for the fall of 2011. Included in this agenda is, "Protect the Rights of Citizens." I believe that both SB 649 and HR 4963 do the exact opposite. Rather than protect the rights of citizens they protect large insurance companies. Senator Hune, one of the bill sponsors, on his web page states, "These proposed bills would provide people with responsible options to choose the appropriate level of coverage to suit their needs." But these bills go far beyond that. While providing a great deal of relief to insurance companies, they strip insured citizens of their rights and invades the sanctity of existing contracts.

These acts are nothing more than another bail-out of the insurance industry. We all remember what happened when the federal government bailed out insurance giant AIG. Instead of using all of the bail-out money to satisfy debts, they paid out billions of dollars in bonuses. I always thought a bonus was to award an employee for the contributions he or she has made that contributed to the success of the company. If the company was on the verge of failure, how much a contribution did these employees make to the *success* of the company? To bail-out of the auto insurance business in Michigan comes at the expense of those who can least afford it - those who have suffered catastrophic injuries in

automobile accidents. When we purchased our policy we thought we were entering into a contract granting protection in the event that either one of us was injured in an auto accident. It was always our understanding that the insurance company would pay all reasonable medical expenses, including reasonable amounts for any necessary attendant care.

To let you know where I am coming from, in December of 2000 my husband was in a terrible auto accident. He was not home for three months. He spent most of that time in a hospital ICU unit and the balance in a nursing home. When he was transferred to the nursing home, he was still on a ventilator. He has not worked or driven a car since the accident. When he came home from the nursing home, we hired aids to help him. After a while, I realized that I could provide better care for him than the hired aids, so we discontinued the aides and I have been taking care of him for the past ten years or so.

I may not fully understand all of the changes to the no-fault insurance act; however, I have attempted to read and understand the act to the best of my ability. It seems to me that all of the changes made are for the benefit of insurance companies and there is nothing that benefits the individual citizens of the State of Michigan. I am particularly concerned about the changes made in Section 3107C.

Paragraph (A) of Sub-section (2) limits attendant care to 56 hours a week. Because my husband suffered a closed head injury, he may appear to be normal most of the time, but then, at any time, he may make a poor or impulsive decision that could place him in danger. It is for that reason that my husband's doctor has continually written prescriptions for 24 hour supervision. We appreciate that my husband is better off than many other people who have sustained serious injuries in an automobile accident. While I was taking my husband to therapy, I observed people who were quadriplegic and could hardly communicate. To say that such people do not need round the clock supervision seven days a week is to totally ignore reality.

Paragraph (B) limits compensation paid to care givers to \$11 per hour for basic care and \$17 per hour for skilled care. These amounts are only slightly above minimum wage. It is almost impossible to find qualified workers to work for these amounts. As I indicated before, when my husband first came home from the nursing home, we used outside aides and nurses. We were charged between \$19 & \$20 per hour for aides and \$75 to \$85 per hour for skilled nurses.

Subsection (3) attempts to define both basic care and skilled care. The nature and type of care that any particular patient requires should be determined on a case by case basis, dependant on the nature of the injuries sustained and the manner in which such injuries manifest themselves. As I previously indicated we discontinued the outside aides and nurses because we came to the conclusion that I could provide better care than the aids. An example of this occurred last spring when, I noticed there was something wrong with my husband, although he insisted that he was fine, I insisted that he could not resume his normal routine until he was cleared by his doctor. On the afternoon after he saw his doctor, at my insistence, I received a call from my husband's cardiologist stating that he was in stage four renal failure and had to be admitted to the hospital immediately. I seriously doubt that an 8 hour aid being paid slightly above minimal wage would have been able to recognize my husband's need to see a doctor, yet alone convince him to see a doctor, in light of his insistence that he was alright. The fact that I live with my husband round the clock and have been married to him for over forty years, I believe gives me special insight that no part time aid could acquire. To a person hired to watch him he is just another patient, while to me he is someone who I love and care deeply about.

For the past ten years our auto insurance company had been paying for the attendant care I provided my husband, at rates substantially above the rates contained in the pending bills, and for more than 56 hours a week. After last fall's election they suddenly stopped paying, even though there has been no change in my husband's condition.. During the past ten or eleven months we have been continually dipping into

our savings. This can not continue indefinitely. My husband and I are now both in our sixties. We cannot live on \$616 a week. Assuming that I could find some one competent to care for my husband at \$11 an hour, it is doubtful that, at my age, I could find employment to support us..

I realize that the changes proposed in these bills would not only benefit the auto insurance industry, but would also provide relief to the Michigan Catastrophic Claims fund. We have all seen the portion of our auto insurance premiums that go to this fund increase annually. I am not an economist and do not know the nature or the solution to the trouble that this fund has been experiencing, but I am sure that the answer is not by placing the burden on those who have already been severely injured in an automobile accident.

I agree that we need some reform in the Michigan no-fault insurance act, but the reforms that are needed should be those that protect the ordinary citizen who is required to purchase automobile insurance, not the companies that sell such policies. Recently, I read a book entitled *Delay Deny Defend*, written by Jay M. Feinman. Mr. Feinman, is not a plaintiffs' attorney, but a Distinguished Professor of Law at Rutgers University School of Law. I would recommend this book to anyone dealing with the insurance business, not only consumers, but regulators, legislators and judges as well. After going through what we have been going through the past ten or eleven months with our own insurance company, I cannot say that I was shocked by the content of the book, but I was surprised by the extent to which insurance companies will go to avoid paying legitimate claims.

What we need is legislation that would help curve some of the abuses pointed out by Professor Feinman. We need legislation that would enable individual policy holders to bring an action against an insurance company when it fails to act in good faith in handling a claim, or violates the insurance code, with the possibility of recovering punitive damages. We need regulators, who are not connected to the insurance industry and with the power to impose meaningful penalties on insurance company that action violation of the law, not just a mere slap on the wrist. We need to curve abuses in the discovery process. We need to limit the number of physical and psychological exams that an insurance company can put an injured insured through, especially when the treating physician does not have any ties to any trial lawyers. (In our case my husband's physical medicine and rehabilitation physician was assigned to him by the hospital, the second week my husband was hospitalized, while he was still in a coma. Not only does he have no ties to any trial lawyer that we know of, we have reason to believe that he has been known to provide IMEs on behalf of insurance companies.) Instead of providing relief for an injured insured the bill grants relief to bad acting insurance companies. Insurance policies are complicated contracts that are hard for the average person to understand, I have been told that they are even difficult to understand for attorneys whose practices do not regularly include insurance or personal injury matters. Section 1245 would grant insurance agents immunity from certain conduct. From talking to friends and relatives about this point, I am led to believe that this section could permit insurance agents to be protected from actions that many people would consider fraudulent.

I know that this letter may be longer than the average letter you receive from a constituent, but HR 4963 & SB 649 are so bad, that I felt it was necessary to explain my opposition to these bills in some detail. In fact there are many more parts of the bill that I believe are detrimental to the citizens of the State of Michigan, upon which I have not commented. Thank you for taking the time to read this letter. I trust you will veto either of these bills if they should pass in the legislature..

I feel safe to say that if either of these bills should be signed into law, that no-one who has a family member or close friend who was the victim of an automobile accident will vote for any legislator who voted in favor of such bill.

Very truly yours,

Barbara Pollack