

Mr. Chairman and members of the committee: Thank you for taking time to address this important issue and the proposed bills to alter Michigan's ban on drug product liability lawsuits.

My name is Jason Thompson, and I am a Michigan attorney with Sommers Schwartz. I would like to make sure the record includes mention of the economic harm that Michigan's immunity statute is causing Michigan's self-insured businesses, self-insured municipalities, and health insurance companies. These entities are my clients.

I represent Michigan payors – self-insured businesses and municipalities and health insurance companies – in lawsuits against pharmaceutical companies for price-gouging violations. Let me give you an example that I am sure you are all familiar with: the Vioxx litigation.

While you may all be aware of the Vioxx personal injury lawsuits, you may not be aware that the payors have also filed suit against Merck for the billions of dollars they spent on Vioxx prescriptions. As a result of marketing to doctors and consumers, Merck was successful in their efforts to have Vioxx prescribed at unprecedented levels. Vioxx replaced NSAIDS and Naproxen as the pain reliever of choice. Of course, what no one knew was that Merck was aware of several studies that confirmed Vioxx caused heart attack and stroke. These studies were buried by Merck.

When the facts as to the unacceptable risks of heart attack and stroke became public, Vioxx was withdrawn from public consumption. But during the preceding years, payors, including Michigan HMOs and self-insured businesses and municipalities, were paying millions in prescription costs. That money – had Merck not hidden the test results on Vioxx induced heart attack and stroke – would have been better spent on lower priced pain relievers. Vioxx was a premium drug sold at premium prices. As a result, Michigan payors overpaid and wasted valuable health insurance dollars on a defective drug.

With that background, I would like to explain the problem Michigan's drug immunity law is causing Michigan payors. Payors like Oakland County, the cities of Warren and Sterling Heights, HMO's like the Wellness Plan and several self-insured Michigan businesses who pay the costs of prescription drugs for their employees. Across America, lawyers like me file lawsuits against drug manufacturers who have wrongfully caused payors to incur excessive prescription drug costs. We have sued Merck for the billions of health care dollars wasted on the expensive Vioxx prescriptions. Similarly, we have sued Pfizer for Bextra prescription costs.

But Michigan's immunity law is raised by the drug companies as a complete bar to the payor lawsuits. Merck has argued that Michigan's law precludes a payor from suing them – and it worked. The Michigan Court of Appeals upheld the defense. Michigan's drug immunity, according to Merck, and as affirmed by the Michigan Court of Appeals, is a complete bar on Michigan payors – including self-insured businesses, municipalities

and health care insurers – from recovering the millions of dollars Merck was paid for Vioxx prescriptions before Vioxx was removed from the market.

The Vioxx example is but one of many lawsuits in which Michigan businesses, municipalities and health insurers face being shut out of recoveries because of our current immunity law.

In my final minutes, let me say this: We need pharmaceutical companies to succeed. We need the wonderful drugs that they produce which enrich, and even save, our lives. But we can no longer afford to allow instances of pharmaceutical greed to deplete our valuable healthcare dollars. Legislators – both federal and state – know how important healthcare cost containment is to our economic survivability. Michigan businesses, municipalities and health insurers are struggling to stretch their healthcare dollars. Their ability to participate in pharmaceutical price gouging litigation is vital to that effort.

If you leave the Michigan immunity law in place, you are hurting Michigan payors. You are costing Michigan citizens health care dollars that they should be getting back from drug companies who are caught price gouging and hiding studies and depriving patients and doctors of valuable information when they are deciding whether to take prescription drugs.

After 13 years, whatever good intent the 1996 legislature had when providing drug companies with immunity, it has not spread across the country. After 13 years, we have not led the way; we stand alone and naked on this issue. On behalf of Michigan payors, I ask that you please pass these bills, fix this problem, and say "yes" to Michigan's self-insured cities, and self-insured companies, to fully participate in recovering valuable health care dollars for their citizens and employees.