

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM**

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,

Case No. 19-738-CZ

Hon. Wanda M. Stokes

Plaintiffs,

v.

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

Defendants.

BRIEF OF AMICUS CURIAE COALITION PROTECTING AUTO NO-FAULT¹

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¹ CPAN's mission is to protect the rights of patients and providers under Michigan's No-Fault law. Members include the Michigan State Medical Society, Michigan Osteopathic Association, Michigan Association of Chiropractors, Eisenhower Center, Michigan Academy of Physician Assistants, Michigan Brain Injury Provider Council, Michigan Dental Association, Michigan Home Care and Hospice Association, Michigan Rehabilitation Association, Spectrum Health System, Michigan Assisted Living Association, Michigan Orthotics and Prosthetics Association, Brain Injury Association of Michigan, Mary Free Bed Rehabilitation Association, Michigan Podiatric Medical Association, Michigan Physical Therapy Association, Michigan Association for Justice, Michigan Protection and Advocacy, Michigan Paralyzed Veterans of America, Area Agency on Aging Association of Michigan, Michigan Disability Rights Coalition, Michigan Guardian Association, Peckham, NeuroRestorative of Michigan, Special Tree, Rainbow Rehabilitation, Origami Brain Injury Rehabilitation, Michigan Committee on Trauma, and MARO, as well as other stakeholders, individuals, accident survivors, family members and care providers.

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ARGUMENT

I. Retroactive Application of Statutory Amendments to the No-Fault Act Violates the Constitutional Prohibition Against the Impairment of Contracts.

Under the No-Fault insurance agreements in effect when Plaintiffs Ellen Andary and Philip Krueger were injured in auto accidents, MCL 500.3107(1)(a) provided for the recovery of PIP benefits for “[a]llowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person’s care, recovery, or rehabilitation. This obligation was carried into Plaintiffs’ compulsory No Fault policies with Defendants USAA and Citizens and became an integral part of the bargain for which their premiums were priced and paid. By law, the No Fault statute sets the minimum coverage the policy must provide; the policy cannot be more restrictive than the statute. *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 531, n10; 502 NW2d 310 (1993) (“compulsory insurance statute in effect declares a minimum standard which must be observed, and a policy cannot be written with a more restrictive coverage”, citing 12A Couch, Insurance, 2d (rev ed), § 45:697, p 334).

For example, the Andarys’ USAA policy states, “In return for payment of the premium and subject to all the terms of this policy, we will provide the coverages and limits of liability for which a premium is shown on the Declarations.” Policy at 3. PIP benefits are shown on the Declarations. Allowable PIP benefits are set forth in Part B and include medical expenses. *Id.* at 10. Medical expenses are defined as “all reasonable fees for **reasonably necessary products and services** and accommodations for a **covered person’s** care, recovery, or rehabilitation.” *Id.* at 9 (emphasis in original). USAA further states that “**We** are obligated to pay only those expenses that are reasonable charges incurred for: a. **Reasonably necessary products and services**; and b. Reasonably necessary accommodations for a **covered person’s** care, recovery, and rehabilitation.” *Id.* at 10 (emphasis in original). Then, under Limit of Liability for medical expenses, the policy

states “There is no maximum dollar amount for reasonable and necessary **medical expenses** incurred for a **covered person’s** care, recovery, or rehabilitation.” *Id.* at 10 (emphasis in original).

The insurers’ contractual obligations to pay *all* reasonable charges for reasonably necessary products, services, and accommodations incurred for their insureds’ care, recovery, and rehabilitation were triggered and became payable at the time of Mrs. Andary’s injury on December 5, 2014 and Mr. Krueger’s injury on March 10, 1990. Under longstanding Michigan law, these promised benefits include all reasonably necessary attendant care, including reimbursement for *in home* attendant care provided by family members (without any limitation on the hours of family-provided care). See *Van Marter v American Fidelity Fire Ins Co*, 114 Mich App 171; 318 NW2d 679 (1982) (insurer must pay for attendant care rendered by stepmother); *Manley v DAIIE*, 425 Mich 140; 388 NW2d 216 (1986) (attendant care provided by parents is allowable expense); *Sharp v Preferred Risk Mutual Ins Co*, 142 Mich App 499; 370 NW2d 619 (1985) (mother’s services to adult son are compensable); *Douglas v Allstate Ins Co*, 492 Mich 241; 821 NW2d 472 (2012) (stating no-fault act does not create different standards depending on who provides the services and the standard of proof for attendant care services “applies equally to services that a family member provides and services that an unrelated caregiver provides”).

Our appellate courts have also consistently held that those who provide care and services to No Fault insureds are entitled to be paid their reasonable and customary charges, and neither Medicare, Medicaid, workers’ compensation, private health insurance or other fee schedules can be used to determine whether a provider’s charge is reasonable. See *Johnson v Michigan Mutual Ins Co*, 180 Mich App 314; 446 NW2d 899 (1989) (rejecting assertion that reimbursement must approximate Medicaid); *Hofmann v Auto Club Ins Ass’n*, 211 Mich App 55; 535 NW2d 529(1995) (rejecting argument that a reasonable charge is what private health insurance would have paid);

Munson Medical v Auto Club Ass’n, 218 Mich App 375; 554 NW2d 49 (1996) (workers’ comp fee schedules could not be used to determine allowable charges); *Mercy Mt Clemens v Auto Club Ins Ass’n*, 219 Mich App 46; 555 NW2d 871 (1996) (amounts customarily paid under workers’ compensation, Medicare, Medicaid, BCBSM are not admissible to prove customary charge).

Thus, under the policies in effect when Plaintiffs were injured, all of the providers who rendered treatment and care were paid their reasonable and customary charges without regard to fee schedules or caps on family provided attendant care. The insurance premiums paid to their insurers secured those unambiguous rights. But now, recent amendments to the No Fault Act which are purported to have retroactive application will substantially diminish the benefits Plaintiffs are entitled to receive by imposing arbitrary limits on the allowable expenses that their Defendant insurers must pay. This creates a windfall for the insurers, who will be arbitrarily relieved of obligations for which the Andary and Krueger policy premiums were long ago computed and paid.

MCL 500.3157(10) imposes a weekly *56-hour cap* for in-home attendant care provided by members of the injured person’s family and friends. Although the unequivocal case law cited above establishes that prior to the Amendments MCL 500.3017(1)(a) entitled Mrs. Andary to be reimbursed for every hour of prescribed attendant care that was reasonably necessary to her care, recovery and rehabilitation *irrespective of the identity of the care provider*, her family members and friends will now be limited to providing only 56 hours of in-home care. Under the Amendments, the rest of Mrs. Andary’s care must be provided by more highly paid strangers.²

² The practical effect of this cap is explained in Plaintiffs’ response brief and in the brief of amicus curiae Brain Injury Association of Michigan. Defendants tout as an “out” left by the Legislature a provision which allows a policyholder “to purchase attendant care benefits in excess of 56 hours.” Mot to Dismiss at 12. This is apparently intended to show that although Mrs. Andary purchased unlimited attendant care benefits years ago, received them for over five years, and is now having them retroactively taken away, the Legislature is graciously permitting Mrs. Andary to purchase the same benefits again. Truly, this is not something Defendants should be proud of,

Further, absent certain exceptions, MCL 500.3157(2) and (7) impose *fee schedules* that cap reimbursement for provider services compensable by Medicare at 200% of the payable amount; products, services, and accommodations that are not compensable by Medicare will be paid 55% of the provider's charge as of January 1, 2019. Many providers, including Plaintiff Eisenhower Center and other rehabilitation facilities that care for spine and brain injury patients, will be unable to operate at the reduced reimbursement amounts and will be forced out of business, requiring Mr. Krueger to leave the home he has known for over 30 years. The practical ramifications of the fee schedules and family care caps are addressed in the briefs of the other amici.

The intended retroactive application of the Amendments to the Andary and Krueger policies violates the constitutional prohibition against the impairment of contracts including contracts between Mrs. Andary and USAA and between Mr. Krueger and Citizens, and contracts between Plaintiffs and their health care providers (including rehabilitation facilities like Eisenhower). As discussed below and in the briefs of Plaintiffs and their amici, legally cognizable claims have been stated. Defendants' motion should be denied.

A. The Contract Clause is Violated When a Statute's Substantial Impairment of a Contract Lacks Public Necessity and the Means Chosen Are Unreasonable.

The United States and Michigan constitutions prohibit the enactment of legislation that impairs existing contractual obligations. U.S. Const, art I, § 10; Const 1963, art 1, § 10. Using

and in fact, the statute does not permit an insured to exceed the 56-hour cap even if additional benefits are purchased. Defendants also argue that "the patient can select family members to provide their attendant care services[,] ... the Act . . . in no way dictates ... providers used by patients ... , if the insurer chooses not to pay for family caregivers, "they [family members] can care for her of their own volition," *meaning without pay*, and "[i]f 56 weeks are not enough, she [Mrs. Andary] *can still pay her children to care for her.*" *Id.* at 6; Defs' Reply at 8, n7. Defendants' argument is shameful. How can Mrs. Andary pay these fees when she, like Mr. Krueger, is brain injured and can no longer be gainfully employed? This is precisely what No Fault insurance was supposed to be for. And how can family members, who gave up jobs and careers to provide the best care for their loved one, be expected to support themselves without an income?

language nearly identical to the federal prohibition, our Michigan Constitution provides that “No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted.” The purpose of the “contract clauses” “is to protect bargains reached by parties by prohibiting states from enacting laws that interfere with preexisting contractual arrangements.” See *In re Certified Question*, 447 Mich 765, 776-777; 527 NW2d 468 (1994). In evaluating a claim for impairment of contract, our courts apply a three-prong test. The first prong asks whether “the state law has, in fact, operated as a substantial impairment of a contractual relationship.” *In re Certified Question*, 447 Mich at 777 (citing *Allied Structural Steel*, 438 US at 244 and *Romein v Gen Motors Corp*, 436 Mich 515; 462 NW2d 555 (1990), *aff’d* 503 US 181 (1992)). This requires a court to determine whether there is a contractual relationship, whether a change in the law impairs that contractual relationship, and whether the impairment is substantial. *Aguirre v State of Michigan*, 315 Mich App 706, 716; 891 NW2d 516 (2016). “[A]n impairment takes on constitutional dimensions only when it interferes with *reasonably expected* contractual benefits.” *Id.* (emphasis added) (internal quotations and citations omitted). See also, *Borman LLC v 18718 Borman, LLC*, 777 F3d 816, 826, 828 (6th Cir 2015) (considering whether contracting party *reasonably expected or relied upon the impaired term*). Or the court might consider whether the legislation attaches “*new and perhaps unanticipated legal consequences to past conduct*” such as would threaten “to ‘deprive citizens of legitimate expectations and upset settled transactions.’” *Ward v Dixie Nat’l Life Ins Co*, 595 F3d 164, 176 (4th Cir 2010) (emphasis added), quoting *Gen Motors Corp v Romein*, 503 US 181, 191(1992)).

Here, Defendants’ performance under the insurance agreements since the time of Plaintiffs’ injuries years and decades before certainly caused Plaintiffs to rely upon and legitimately expect the continued receipt of vested benefits. The first prong is satisfied. The second and third prongs

require the court to consider whether “the legislative disruption of contract expectancies [is] necessary to the public good” and whether “the means chosen by the Legislature to address the public need are reasonable.” *In re Certified Question*, 447 Mich at 777. The burden to make this showing rests with the proponent of the legislation. See *AFT Mich v State of Mich*, 501 Mich 939; 904 NW2d 417 (2017) (affirming in part contract clause violation where a statutory amendment contravened school employees’ contracts with their employers “and the state failed to demonstrate that this measure was reasonable and necessary to further a legitimate public purpose.”).

The requirement that the means be reasonable and necessary elevates the inquiry above rational basis review toward a heightened review standard. See generally, *Natl Ed Assn-Rhode Island by Scigulinsky v Ret Bd of Rhode Island Employees’ Ret Sys*, 890 F Supp 1143, 1151 (D RI, 1995) (holding that intermediate scrutiny applies to contract clause challenge); R. Randall Kelso, *CONSIDERATIONS OF LEGISLATIVE FIT ...*, 28 U Rich L Rev 1279, 1301–04 (1994) (contract clause test is “reasonable and necessary” - heightened rational review); G. Sidney Buchanan, *A VERY RATIONAL COURT*, 30 Hous L Rev 1509, 1573–75 (1993) (describing how the U.S. Supreme Court analyzes contract clause issues under a “heightened version of rational-basis scrutiny” – a “stricter and more complex form of rational-basis scrutiny.”).

B. Here, Impairment of Contract Expectancies is not Necessary for the Public Good, the Means Chosen are Unreasonable, and the Goal Won’t be Achieved.

Defendants unpersuasively argue that the Amendments further the public good and that the means chosen by the Legislature are reasonable. They provide no evidence, merely incanting that the Legislature *could* logically *assume* the Amendments could *possibly* reduce auto insurance premiums. As discussed above, the level of scrutiny for contract clause cases is not merely rational basis. But even under that standard, Defendants’ assumptions and possibilities are not enough. The initial challenge to the constitutionality of the No Fault Act included a 35-day trial consisting of

5,000 pages of transcript and over 200 exhibits. *Shavers v Kelley*, 402 Mich 554, 583; 267 NW2d 72, 79 (1978). As the Supreme Court explained, “[t]he challenged rational bases for the legislative judgments under the act are ‘predicated’ upon complicated statistics and actuarial facts of the motor vehicle insurance ‘trade’ or business (which have substantial economic consequences)” and “the ‘complexity of problems’ inherent in a judicial determination of whether the legislative judgments of the No-Fault Act are constitutional, ‘makes it the more imperative that the Court in discharging its duty, in sustaining governmental authority within its sphere and in enforcing individual rights, shall not proceed upon false assumptions,’” quoting *Borden’s Co v Baldwin*, 293 US 194, 210-211 (1934). The Supreme Court further quoted Justices Stone and Cardozo’s concurring memorandum in *Borden’s* “that it is inexpedient to determine grave constitutional questions upon a demurrer to a complaint, or upon an equivalent motion, if there is a reasonable likelihood that the production of evidence will make the answer to the questions clearer.” *Shavers*, 402 Mich at 616, quoting 293 US at 213. Here, the likelihood that evidence will illuminate these issues is exceedingly high, as shown *by an examination of the insurers’ own recent rate filings*.

Insurance industry expert Doug Heller was retained by CPAN to review insurers’ rate, rule, and form filings under the new law. Because State Farm, Progressive, Auto Club, and USAA have made their filings *non-public*, Mr. Heller’s initial findings (detailed in the attached Exhibit 1) are primarily based upon Auto-Owners’ and Defendant Citizens’ filings, as well as a review of filings by carriers with smaller market shares. Mr. Heller’s findings show the following:

- Citizens has filed for an overall rate increase of *more than \$17 million*, excluding the MCCA assessment. This includes a 1.1% increase in PIP rates over current levels. While MCCA will earn less premium under the new law, *Citizens will earn a total of 3.4% more*.
- On average, Citizens will charge more for each dollar of retained PIP risk under the new law than it charged under the current system. This means that Citizens will earn significantly more premium under the new law than it earned when it provided all customers with unlimited PIP coverage, despite less loss exposure with the new PIP limits. Several other insurers will charge more for each dollar of their retained PIP risk than before.

- For example, Citizens’ exposure for the \$50,000 PIP limit option will be *reduced by 91.4%* compared with unlimited PIP but the premium for this reduced coverage (excluding the MCCA assessment) will decrease by *only 28.6%*. For \$250,000 limits, Citizens’ exposure *decreases by 56.9%* but the premium decrease (excluding the MCCA assessment) is *only 6.1%*. For \$500,000 PIP limits, Citizens’ exposure will decrease by *13.8%* but the premium (excluding MCCA assessment) will *increase by 3.1%*. For unlimited coverage, Citizens’ premium for the same \$580,000 exposure as under current law will be *5.4% higher* than previously charged for the same coverage (excluding the MCCA assessment). Because the first dollars of coverage are typically more expensive to insure, one would not expect a premium decrease equal to the decline in exposure (a 91.4% reduction in coverage does not lower premium by 91.4%). However, the extreme difference between reduced exposure and premium reductions shows that even adjusting for the higher “first dollars,” these are *rate increases* compared with what Citizens previously earned on retained risk.
- Auto Owners will maintain its prior average PIP rates, which reflects the assumption that it will cost *the same* to cover its portion of PIP claims under the new law as the current law.
- For both Citizens and Auto Owners, the statutorily-mandated PIP premium decreases are only met due to the reduced MCAA assessments. The same applies to several other insurers’ plans, which are increasing premium for retained exposure and relying on the MCAA assessment to achieve reductions. MCCA is controlled by insurers. The annual MCCA assessment increases in recent years have resulted in a \$21 billion customer-funded reserve and surplus, which is now being used to fund required premium reductions while insurers *charge the same or more for less PIP exposure*.
- Rates for bodily injury liability coverage are increasing because the new law exposes at-fault motorists to increased tort liability, including all medical expenses above whatever PIP limits the injured motorist selects (\$50,000, \$250,000, or \$500,000). Citizens’ filing shows an increase of 10.6% in its bodily injury rate; Auto-Owners’ increase is 3%. Citizens’ parent, Hanover Insurance, stated in its 2019 10-K, “minimum amounts of bodily injury coverage drivers are required to purchase will increase ...”
- UM/UIM rates will increase: Citizens UM/UIM is up 5.7%; Auto-Owners UIM is up 5% and UM is up 0.9%; Farmers UM is up 26%.
- Citizens paid dividends to Hanover of \$106 million, \$87.9 million, and \$99.9 million in 2019, 2018, and 2017 respectively, costing each of about 212,000 policy holders \$1,386 over 3 years. This belies the claim that insurers could not be profitable under current law.
- Credit and territorial rate discrimination continues under the new law. Drivers in predominantly African-American communities in Detroit will be charged much higher PIP premiums than motorists in nearby whiter, wealthier communities and other areas of the state. For example, because of territory, a driver in Detroit with a perfect driving record and the best credit will pay Citizens 57% more for \$50,000 of PIP medical than the same driver would pay for unlimited PIP medical if they lived less than a mile away in Grosse Pointe Park. If the same Detroit driver only had a moderate credit-based “market discount” from Citizens, the cost of the \$50,000 PIP premium would be 10 times higher than the unlimited PIP premium offered to a Grosse Pointe Park resident with the best credit.

Insurance industry representatives admit that increased liability exposure will cause overall premium costs to rise. Insurance Alliance of Michigan's Executive Director Tricia Kinley said that "[S]ome aspects of the bill increasing liability on consumers will actually increase, as opposed to decrease, auto insurance premiums in Michigan, raising real questions whether this proposal can live up to the savings the governor and lawmakers have promised..."³ See also, Detroit Free Press (6/11/19) attributing to Ms. Kinley that "Michigan motorists will be required to buy significantly more liability coverage under the new auto insurance law, and there are no assurances those extra costs will not offset reductions the law requires in the personal injury protection (PIP) portion of motorists' premiums." Ms. Kinley also said, "We sure hope that they don't wash each other out," noting that the liability portion of the premiums "will undoubtedly go up."⁴ On 7/19/19, it was reported that Insurance Alliance "told the Free Press that the new law's requirement that insurers provide increased liability protection could mean higher premiums."⁵ And on 1/10/20, the Free Press reported, "The auto insurance industry has not made any across-the-board predictions for what will happen to drivers' premiums" under the new system.⁶

Insurance agents say they will recommend motorists buy unlimited PIP and umbrella policies of at least \$1 million to cover potential lawsuits from increased liability exposure. MIRS

³ Kim Russell, WXYZ.com, *Insurance industry warns no-fault reform bill will not save as much as promised*, <<https://www.wxyz.com/news/insurance-industry-warns-no-fault-reform-bill-will-not-save-as-much-as-promised>> (posted and updated May 29, 2019).

⁴ Paul Egan, *Insurance Official: No guaranteed savings under new Michigan auto law*, Detroit Free Press (June 11, 2019) <<https://www.freep.com/story/news/local/michigan/2019/06/11/no-guaranteed-savings-under-new-michigan-auto-law/1369364001/>>.

⁵ Nancy Kaffer, *There's one big problem with Michigan's no-fault auto insurance reform*, Detroit Free Press (July 19, 2019) <<https://www.freep.com/story/opinion/columnists/nancy-kaffer/2019/07/19/michigan-no-fault-auto-insurance-reform/1759554001/>>.

⁶ JC Reindl, *No-fault auto insurance: Michigan drivers won't learn savings until spring or summer*, Detroit Free Press (January 10, 2020) <<https://www.freep.com/story/money/business/2020/01/10/michigan-no-fault-auto-insurance-driver-savings/2845005001/>>. Insurance Alliance is an amicus for Defendants in this case.

reports that Bev Barney, CEO of the Michigan Association of Insurance Agents, acknowledged confusion regarding premium savings, stating “[i]t is strictly on the PIP coverage, which is the medical coverage. And that is not your entire premium. Anything related to your vehicle itself, collision coverage . . . there is no automatic savings or rollback on that . . . I think consumers are sitting out there thinking, ‘Wow, my insurance rates are going to go down by half’ and that’s not the reality that most are going to experience.”

If there are cost savings they will come at the expense of providers, who will lose millions of dollars under the new law. These are the same front-line health care providers incurring great financial loss due to COVID-19.⁷ Finally, courts across the country have found a contract clause violation when a statute *retroactively redefines* policy obligations.⁸

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Dated: April 27, 2020

⁷ Rick Haglund, ‘Millions of Dollars’: New Auto Insurance Law Threatens Munson’s Bottom Line, Traverse City Business News (April 2020) <<https://www.tcbusinessnews.com/millions-of-dollars-new-auto-insurance-law-threatens-munsons-bottom-line/>>; Ronald Ahrens et. al, *What Does the Future Hold?*, dBusiness Magazine (April 21, 2020) <<https://www.dbusiness.com/business-features/what-does-the-future-hold/>>; Mike Martindale, *Beaumont Health reports big first-quarter loss as COVID-19 takes toll*, The Detroit News (April 13, 2020) <<https://www.detroitnews.com/story/news/local/oakland-county/2020/04/13/beaumont-health-reports-big-first-quarter-loss-covid-19-takes-toll/2986606001/>>.

⁸ See e.g., *Harleysville Mut Ins Co v State*, 736 SE2d 651, 658 (2012) (definition of occurrence); *Kirven v Cent States Health*, 760 SE2d 794, 800-801 (2014) (definition of “actual charges”); *Allstate Ins Co v Garrett*, 550 So 2d 22 (Fla Dist Ct App, 1989) (relating to PIP benefits); *In re Workers' Comp Refund*, 46 F3d 813 (CA 8, 1995) (recipient of excess premiums); *Prudential Prop & Cas Ins Co v Scott*, 514 NE2d 595 (Ill, 1987) (affecting family exclusion clause); *Kee v Shelter Ins*, 852 SW2d 226 (Tenn, 1993) (statute of limitations savings provision); *Farmers' Co-Op Creamery Co v Iowa State Ins Co*, 84 NW 904 (Iowa, 1900) (contractual limitations).

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM**

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
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MORIAH, INC., d/b/a EISENHOWER CENTER, a
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Hon. Wanda M. Stokes

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

Defendants.

PROOF OF SERVICE

Cynthia J. Villeneuve, being duly sworn deposes and says that on Monday, April 27, 2020 she emailed a copy of Brief of Amicus Curiae Coalition Protecting Auto No-Fault and this Proof of Service to CircuitCourtRecords@ingham.org and served by email a copy upon counsel of record Lori McAllister (lmcallister@dykema.com), George Sinas (georgesinas@sinasdramis.com), Lauren Kissell (lauren@sinasdramis.com), and Mark Granzotto (mgranzotto@granzottolaw.com), as well as amici curiae counsel Steve Hicks (steve@chair2consulting.com), Liisa Speaker (lspeaker@speakerlaw.com), Jacquelyn Klima (jklima@kerr-russell.com), Charles N. Raimi (raimic@detroitmi.gov), and Eli Savit (SavitE@detroitmi.gov).

/s/ Cynthia J. Villeneuve
Cynthia J. Villeneuve

Exhibit 1

DOUGLAS HELLER

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April 24, 2020

Coalition Protecting Auto No-Fault
Board of Directors
216 N. Chestnut St.
Lansing, MI 48933

Dear CPAN Board:

I have been asked to review public Rate, Rule, and Form filings that have been submitted to the Michigan Department of Insurance and Financial Services (DIFS) pursuant to Public Acts 21 and 22 of 2019 (PA 21/22) and in response to the Acts' changes to Michigan's Auto No-Fault Laws.¹ In this letter I share some of initial findings and concerns regarding the filings I have reviewed.

Please note that my investigation has been hampered to some degree by the apparent decision by DIFS to allow several of Michigan's largest auto insurers to file their entire PA 21/22 Rate, Rule, and Form application on a non-public basis.² As I note below, some company filings I have reviewed include exhibits that were submitted confidentially and are inaccessible to the public, including exhibits with important data alleged to provide actuarial support for certain rates and premium rating factors. This hinders my ability to fully assess these filings. However, the withholding of certain documents within otherwise public filings is not nearly as disruptive to public accountability as the submission of entirely "non-public" filings by State Farm, Progressive, Auto Club, and USAA, which represent more than 50% of the Michigan auto insurance market. This is, in my view, wholly inappropriate and out of step with a reasonable regulatory review process, and this barrier to public access undermines the credibility of rates and rules that will take effect under PA 21/22 on July 2, 2020.

¹ I have prepared this document myself and not on behalf of or in the name of any other organization with which I am affiliated. For reference, however, I serve as the Insurance Expert for Consumer Federation of America and as an insurance consultant to other consumer interest organizations across the country. I am also a consumer representative member of the U.S. Department of Treasury's Federal Advisory Committee on Insurance and an appointed consumer representative to the California Automobile Assigned Risk Plan Advisory Committee. I hold Master of Public Administration (MPA) and Bachelor of Arts (BA) degrees. A complete CV is attached.

² DIFS has told me that, pursuant to MCL 500.2406 (1), these "non-public" filings will be made public after their July 2, 2020 effective date. (April 19, 2020 email from Karen Dennis, Director, Office of Insurance Rates and Forms, DIFS.)

This letter is primarily drawn from a review of the PA 21/22 filings submitted by Auto-Owners Insurance Group and Citizens Insurance (a member of The Hanover Insurance Group), which collectively represent about 16.5% of the Michigan auto insurance market and are the largest insurers to have submitted non-confidential filings. I have segmented my analysis into the following areas:

1. PIP premium rate reductions, overall rates, and profitability
2. Rating based on credit history and geography

Where I cite to documents included in PA 21/22 filings, I am referring to the most current version available from the National Association of Insurance Commissioner System for Electronic Rates and Forms Filing (SERFF) as of April 10, 2020.

1. PIP premium rate reductions, overall rates, and profitability

PIP premium rate reductions

According to PA 21/22 insurers are required to reduce the premium rates for PIP (referred to as “personal protection insurance” in the statute) by between 10% and 45% on average from the insurer’s premium rate that was in effect for PIP coverage as of May 1, 2019. Specifically, pursuant to MCL Section 2111f(2), carriers are required to provide the following average reductions from the 2019 rate for traditional PIP coverage:

- 10% for Unlimited PIP coverage
- 20% for \$500,000 PIP Medical coverage
- 35% for \$250,000 PIP Medical coverage
- 45% for \$50,000 PIP Medical coverage

While both Citizens and Auto-Owners appear to meet these thresholds, it is notable, as is explained below, that Citizens is collecting significantly more premium under the new offerings than they collected when they provided all customers with an Unlimited PIP coverage, even though the insurer will have less loss exposure due to new coverage limits. According to Page 1 of Exhibit A of its filing, Citizens Insurance is raising its rates by \$17,386,920 starting July 2, 2020, excluding the amount it collects for the Michigan Catastrophic Claims Association (MCCA).³

In fact, the only reason these companies’ filed premium rates produce compliant reductions is because policyholders with Unlimited PIP will face a much smaller MCCA assessment and those purchasing a reduced limit PIP Medical policy will no longer be charged an MCCA assessment.⁴

³ Source: SERFF# HNVR-132213674, Exhibit A

⁴ A review of several other smaller market participants finds similar changes. Farmers Insurance Exchange’s Smart Plan Auto PA 21/22 application shows that Farmers is increasing the premium for the exposure it retains and relies on the changes to the MCCA assessment to achieve compliant average premium rate reductions. Source: SERFF# FARM-132247447 17 PIP Reduction Exhibit – FSPA. Similarly Farm Bureau General (SERFF# FBMI-132224650) and

That is to say, in the wake of PA 21/22, several insurers are either charging more (Citizens, Farmers Smart Plan, Farm Bureau General, Hartford Underwriters) or the same (Auto-Owners) for each dollar of PIP insurance retained by the carriers compared with what was charged prior to the enactment of these measures, ostensibly aimed at lowering the cost of claims.

This refusal by several insurers to lower PIP rates comes despite the fact that PA 21/22 reduced the PIP exposure insurers have in several ways. For example,

- As of June 2019, MCL 500.3113 limited PIP coverage for some non-resident Michigan drivers;
- Beginning in July 2020, uninsured claimants (such as seniors, pedestrians, or bicyclists), will receive PIP benefits under the Assigned Claim Plan and be capped at \$250,000). (MCL 500.3114) It is notable that this should lower PIP costs the most in areas, such as Detroit, where there are the highest levels of uninsured persons, but Detroiters do not see relief, as is discussed below;
- Utilization Review Rules for PIP claims takes effect in July 2020 (MCL 500.3157a) and are intended to reduce claim costs to insurers and therefore lower policy rates; and
- The creation of an Anti-Fraud Unit (MCL 500.6301 et seq.) was also meant to create savings by reducing fraudulent claims.

Notwithstanding all these purported savings strategies in PA 21/22, several insurance carriers' plans either maintain or increase PIP rates for the risk that stays with the companies and is not covered by MCCA.

The following chart shows Citizens Insurance's average premium differences between the new coverages and the prior PIP premium rates both before and after adjusting for the MCCA fee change. Additionally, a calculation is provided showing the different amount of exposure retained by the carrier for each coverage compared with the exposure under the Unlimited PIP previously provided.

Hartford Underwriters (SERFF# HART-132301524) are increasing the average premium for PIP Medical, excluding reductions due to the MCCA assessment.

Citizens Insurance PIP Medical average premium rates by coverage limits ⁵

	5/1/19 Unlimited PIP	7/2/20 Unlimited PIP	7/2/20 \$500K PIP Medical	7/2/20 \$250K PIP Medical	7/2/20 \$50K PIP Medical
Citizens Insurance's Exposure per Policy	\$580,000	\$580,000	\$500,000	\$250,000	\$50,000
Change in Citizens Insurance's Exposure per Policy [difference between \$580,000 and new limit]	-	0%	-13.8%	-56.9%	-91.4%
Average PIP Medical Premium Excluding MCCA Assessment	\$ 337.16	\$ 355.53	\$ 347.76	\$ 316.43	\$ 240.73
Average PIP Medical Premium Including MCCA Assessment	\$ 533.04	\$ 455.53	\$ 347.76	\$ 316.43	\$ 240.73
Average PIP Premium Change Excluding MCCA		+5.4%	+3.1%	-6.1%	-28.6%
Average PIP Premium Change Including MCCA		-14.5%	-34.8%	-40.6%	-54.8%

As the table shows, the premium to cover Citizens Insurance's \$580,000 exposure on an Unlimited PIP Medical Policy is 5.4% higher than the company charged on May 1, 2019 for the same coverage. The only reason the average premium charged to the company decreases more than the 10% decrease requirement under law is because of the significant impact of the MCCA assessment reduction. Incredibly, Citizens will charge 3.1% more for \$500,000 PIP Medical coverage than it charged for the \$580,000 of coverage it provided prior to the law change taking effect. Because there can be no excess claims in any of the limited coverage offerings, there is no MCCA assessment, which is how Citizens reaches a premium reduction of those coverages, despite increasing the premium held for itself.

With respect to the \$250,000 and \$50,000 coverages, as the "Change in Citizens Insurance's Exposure per Policy" row reveals, the premium reductions relative to the cost of PIP Unlimited coverage in 2019 are not commensurate with the substantial reduction of risk under the new lower limits. The \$250,000 limits policy, for example, leaves Citizens with 56.9% less exposure than the Unlimited policy, but the premium only drops 6.1%. Similarly, \$50,000 limits represent

⁵ Source: SERFF# HNVR-132213674, Supporting Document Attachments\PIP Rate Reduction Exhibit_v1.1.xlsx

a 91.4% decline in exposure, but only leads to a 28.6% drop in premium, before accounting for MCCA. It is well understood that the “first dollars of coverage” on an insurance policy are more expensive to insure, because while most injury accidents may cost at least a few thousand dollars, fewer cost \$250,000 and fewer still cost \$580,000. Therefore, we would not expect a decline in premium equal to the decline in exposure, but the extreme difference between the exposure reduction and the premium reduction is because, even adjusting for the higher cost of “the first dollars,” this is a rate increase compared with what Citizens previously earned on the portion of insurance it retained.

Unlike Citizens, Auto-Owners Insurance has not filed to increase the average premium rate it charges customers for the PIP Medical exposure that it will retain under PA 21/22 policies. Nor does it lower the premium, however. Instead, Auto-Owners has filed for a rate that assumes that it will cost the same to cover PIP claims under the new strictures of PA 21/22 as it did to cover claims before the law takes effect. As with Citizens, Auto-Owners relies on the impact of the reduced or eliminated MCCA assessment to achieve compliance.

Because the companies are relying on the MCCA reduction to achieve their mandated average premium reductions, it is notable that the lowering of the MCCA assessment only applies for one year. That is, the \$100 annual assessment is effective July 2, 2020 through June 30, 2021. Although I welcome a clarification, it appears that the statutory requirement for these average premium reductions will last through 2028, which means that if there is an increase in the MCCA fee anytime after June 30, 2021, there would likely have to be a reduction in the PIP Unlimited premiums charged by insurers for the coverage they retain to offset the MCCA increase. However, Section 500.2111f(7) allows companies to request, and the DIFS director to approve, rates that do not meet the threshold average premium reductions. I am concerned that insurers may fulfill the initial mandate to lower PIP premiums – while public scrutiny is at its highest – by relying on this one year MCCA assessment reduction, but they may seek relief from ongoing compliance if the MCCA assessment, which is itself determined by an industry-led board, rises in the future.

A final point on this subject is that even when accounting for the MCCA decrease, the customer savings that are calculated are only an average. This means that some people will get more than the minimum required savings, others will see less than the promised relief, and still others will pay more for auto insurance, even with their MCCA savings, than they ever have before. As Auto-Owners acknowledges in its filings, some safe drivers in 48228, in the northwest part of Detroit, will see PIP Unlimited coverage rise from \$383.08 currently to \$703.62 when the PA 21/22 rates take effect; this 83.7% increase is hardly the 10% savings promised under the law. A slightly lower (64%) premium increase faces some good drivers living in Detroit 48203. Both of these predominantly African American neighborhoods have household median incomes that are less than half the Michigan statewide median income, meaning that the pain of the PA 21/22 rate increase these residents face will be particularly acute.

Overall Rates

The average premium changes discussed above reflect the anticipated average amount that future customers will pay for their PIP Medical coverage. It is based on the companies' current book of business, so the actual average premium reductions could be larger or smaller depending upon how the mix of business changes in the future. Additionally, the amount that individual policyholders actually pay for their PIP Medical coverage will vary significantly from this projected average based on rating factors – such as driving record, vehicle type, territory, and credit history (discussed below).

However, another point of analysis in the wake of PA 21/22 is the overall rate changes that are included in the company applications, as that helps to understand what the insurers expect to earn in the new auto insurance environment. As I have already noted, Citizens will earn \$17 million in additional rate compared with its pre-PA 21/22 rate level. Based on the filings I have reviewed, excepting the MCCA fee reduction, Michigan insurers will not collect less premium from drivers under the new law, and there appear to be a few reasons for this.

One reason that the overall rates facing Michiganders are not going down is that rates for bodily injury liability coverage are increasing. Citizens, for example, includes a 10.6% increase to its bodily injury rates.⁶ Auto-Owners includes a 3.0% increase to its bodily injury rates.⁷ This upward pressure on rates, perhaps less discussed than the promised PIP savings, is summarized in a filing by the Insurance Services Office (ISO),⁸ in which the advisory organization states the following:

In response to 2019 Mich. Pub. Acts 21 (former Senate Bill 1) and 2019 Mich. Pub. Acts 22 (former House Bill 4397), the incurred losses and loss adjustment expenses for Bodily Injury have been adjusted by a factor of 1.10 to account for expected increases in losses...

In other words, ISO expects a 10% increase in bodily injury liability claim costs due to the law change. A more detailed explanation for higher bodily injury premiums under PA 21/22 was presented by Citizens parent company Hanover in its 2019 10-K, in which it wrote: "In contrast, the minimum amounts of bodily injury coverage drivers are required to purchase will increase, and we anticipate an increase in tort liability and related litigation from these changes."⁹

Another coverage for which rates appear to be increasing is Uninsured/Underinsured Motorist (UM/UIM) Coverage. Citizens Insurance's rates include a 5.7% increase for UM/UIM coverage, Auto-Owners has filed for a 5% increase for its UIM and 0.9% for its UM, and Farmers for a 26% UM increase.

⁶ Source: SERFF# HNVR-132213674, Exhibit S

⁷ Source: SERFF# AOIC-132194645, Exhibit B – Rate Indication

⁸ Source: SERFF# ISOF-132210867, PP-2019-RLC1-MI-Sect B-Determination of Filed Loss Costs. ISO is an insurance advisory organization that provides rate information to its insurance company members and files that information with DIFS.

⁹ The Hanover Insurance Group, Form 10-K for the fiscal year ended 2019. February 24, 2020. p.22

While drivers spend about 25 to 50% less on these two coverages (BI and UM/UIM) combined compared with PIP, the expenditure on these bodily injury-related coverages may increase under PA 21/22 as consumers find themselves with greater exposure to both liability and uninsured/underinsured losses in the wake of the law changes.

Finally, and perhaps most importantly, despite the law changes in PA 21/22, both Citizens and Auto-Owners filed data that they argue support an increase in the amount of overall PIP rate they should be allowed to collect. In the case of Auto-Owners Insurance Group, the company is foregoing its reported +3.1% “indicated rate level change” for PIP and instead maintaining PIP rates at the pre-PA 21/22 level. Citizens Insurance reports a need to increase PIP rates by +2.5% but has elected to take a +1.1% increase to its PIP rates.

Whether or not Citizens and Auto-Owners are representative of the market as a whole cannot be publicly known, because the state’s other large auto insurers have been allowed to file their rates confidentially. What can be gleaned from these two large Michigan insurers (as well as Farmers, a smaller player in the Michigan market), though, is revealing. For the benefits that drivers are asked to give up in order to achieve savings, and for the systemic constraints imposed under the promise of cutting claim costs, Michigan consumers will be expected to pay the same overall rate for the reduced coverage to Auto-Owners Group (0.0% Rate Change for All Coverages Combined Without MCCA), and Michiganders will actually pay more overall to Citizens Insurance (+3.4% Total Rate Change Excluding MCCA) after implementation of PA 21/22 than policyholders paid before the changes.

Profitability

While insurers had long complained about the challenges of successfully doing business in Michigan as a pretext for high rates and the push to enact PA 21/22, it is worth taking a moment to review a paragraph in the 2019 10-K Report of Citizens Insurance’s parent company, Hanover Insurance Group:

Pursuant to Michigan’s statute, the maximum dividends and other distributions that an insurer may pay in any twelve month period, without prior approval of the Michigan Insurance Commissioner, is limited to the greater of 10% of policyholders’ surplus as of December 31 of the immediately preceding year or the statutory net income less net realized gains, for the immediately preceding calendar year. Citizens declared dividends to its parent, Hanover Insurance, totaling \$106.0 million, \$87.9 million and \$99.9 million in 2019, 2018 and 2017, respectively. [p.110]

This means that during the most recent three years, Citizens sent \$293.8 million in dividend payments upstream to its Massachusetts-based parent company. With about 212,000 policies, that dividend payment cost each policyholder about \$1,386 in total over the course of three years. And now, under PA 21/22, Citizens will be charging their customers even more.

2. Rating based on credit history and geography

PA 21/22 offered two bold promises meant to calm concerns that financially vulnerable drivers, especially in Detroit, would continue to suffer high and unaffordable premiums for now-diminished protection if the law were enacted. In particular, PA 21/22 adopted a prohibition on the use of a resident's ZIP code in setting premiums [MCL Section 500.2111 (4)(f)] and further stated, at Section 500.2108 (8):

A filing under this chapter must specify that the insurer will not refuse to insure, refuse to continue to insure, or limit the amount of coverage available because of the location of the risk, and that the insurer recognizes those practices to constitute redlining. An insurer shall not engage in redlining as described in this subsection.

These provisions appear to have been aimed at limiting the disparate impact of territorial rating and underwriting in Michigan, in which drivers in predominantly African American ZIP codes, and Detroit in particular, faced an auto insurance market that was either unaffordable or unavailable to them. A third provision, states "An insurer shall not use an individual's credit score to establish or maintain rates or rating classifications for automobile insurance." [MCL Section 500.2162] This prohibition seems to have been in response to concerns that the use of consumer credit scores in pricing auto insurance made coverage inaccessible to safe drivers whose financial struggles can leave their credit history battered even if their driving record remains pristine.

Unfortunately, though quite predictably by virtue of other lesser-touted provisions, none of these safeguards offer any meaningful protection from high prices. As the review of Citizens Insurance's and Auto-Owners Group's filings reveal, drivers living in predominantly African American communities in Southeast Michigan and Detroit in particular will continue to face daunting premiums, even for limited coverage, that are often much higher than premiums of other communities, including whiter, wealthier communities very nearby. Further, the prohibition on the use of credit score is no prohibition whatsoever, as the purported ban on credit scoring is gutted by the definition of the term, which limits the prohibition only to the use of "the numerical score ranging from 300 to 850 assigned by a consumer reporting agency to measure credit risk and includes FICO credit score." [Section 500.2151 (e)] Auto insurers remain allowed, under PA 21/22, to use an "insurance score," which is a "a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information..." [[Section 500.2151 (f)]. The "insurance score" that is still allowed, and not the nominally different "credit score," happens to be precisely the credit-based factor that insurers have used in the past.

In this section, I calculate rates for a variety of drivers following the algorithms prescribed in the PA 21/22 filings of Auto-Owners and Citizens. While there are other factors that could alter the premiums either up or down for an individual customer, such as the vehicle model and year, the calculations I present below fairly reflect the differences in premiums that good drivers will

encounter depending upon their home address and their “insurance score.” Where there is insufficient data in the public file to confirm the precise impact of credit, I have noted it.

Auto-Owners Insurance

Impact of Credit History

According to its PA 21/22 rates and rules, Auto-Owners applies an “Insurance Score [] developed from credit related information including: types of accounts, balances, dates opened, and account activity, plus public record items such as judgments and liens and inquiries initiated by the insured.”¹⁰ The effect of this credit-based score on customers’ premiums for all coverages is significant. For example, without considering other factors such as driving safety or territory, a 40-year old driver will see their six-month base rate for Bodily Injury coverage adjusted to as low as \$105.76 for the best credit customers and as high as \$297.23 for the worst credit customers, a 181% swing. The cost of credit history on PIP premiums is even more severe due both to the higher cost of PIP coverage and the larger percentage impact that Auto-Owners applies to its credit factor for PIP coverage. Six-month PIP Medical premiums (again, unadjusted for driving record, vehicle, territory, and other factors) can range from \$664.21 for a top credit rating to \$2,618.51 for a bottom tier credit history, or 294% more.

Using the Auto-Owners Insurance Score factor tables for PIP Medical coverage for a 40-year old driver, and incorporating the discount provided for having no prior insurance claims on their record, I have calculated the adjustments to the semi-annual base rate for a claims-free driver, depending upon credit history. Auto-Owners has 53 credit-based tiers in its Insurance Score, and, for illustration purposes, I have created four credit-history categories for testing a theoretical customer:

1. Best Credit – rated on the highest score available (Tier 53, Insurance Score: 900-997)
2. Good Credit – rated on the 12th highest score (Tier 42, Insurance Score: 819-821)
3. Moderate Credit – rated on the median score (Tier 27, Insurance Score: 757-760)¹¹
4. Poor Credit – rated on the lowest score available (Tier 1, Insurance Score: 1-371)

Auto-Owners: Six-month base premium for 40-year old, claims free driver

	Best Credit	Good Credit	Moderate Credit	Poor Credit
Rating Factor	0.312	0.42	0.612	1.23
Premium	\$358.01	\$481.93	\$702.25	\$1,411.38

Territorial rating compounds the problem

The elimination of the use of ZIP codes as a rating factor and the statutory language targeting “redlining” have not changed the reality that will confront Detroiters when the new PA 21/22

¹⁰ Source: SERFF# AOIC-132194645, MI Complete Manual - 07-02-2020

¹¹ While Tier 27 is the median tier, this driver has an Insurance Score of 760 out of 997, which may represent better credit than is usually considered moderate or average. Since the publicly available portion of the Auto-Owners filing does not more fully describe the distribution of drivers among the tiers, I use the median as a proxy for moderate credit.

rates and rules take effect. Namely, having a Detroit ZIP code, or, more precisely, living in a Detroit area census tract block group, means you will still face wildly high and unaffordable auto insurance premiums, especially if you don't have pristine credit. For those drivers who both live in Detroit and have imperfect credit histories, these rating plans produce a "double whammy" as described below.¹²

Under the Auto-Owners rule plan the cost of PIP Medical coverage can vary by as much as 262% depending upon where you live, all else being equal. So, for example, a claims free driver with perfect credit living in parts of Hudsonville 49426, just west of Grand Rapids, will receive a six-month PIP Medical premium quote of \$307.89.¹³ But if that exact same driver lives on certain blocks (though we don't quite know which) in Detroit 48205, the cost of the exact same coverage rockets to \$1,113.40 for half a year.

Below are premiums for different PIP Medical coverage limits for a 40-year old driver with no prior auto insurance claims in different ZIP codes around Michigan.¹⁴ For each driver, I present the premiums for each PIP Medical coverage option. The tables are repeated to show the combined impact of geography and credit history on drivers.

40-Year Old, Claim Free Driver Six-Month Premium by Coverage Limits and Credit History				
BEST CREDIT	PIP Medical Unlimited	PIP Medical \$500K	PIP Medical \$250K	PIP Medical \$50K
Hudsonville 49426	\$308	\$302	\$280	\$188
Kalamazoo 48906	\$362	\$355	\$330	\$221
East Lansing 48912	\$410	\$402	\$373	\$250
Saginaw 48607	\$566	\$554	\$515	\$345
Pontiac 48342	\$666	\$653	\$606	\$406
Detroit 48238	\$1,024	\$1,003	\$932	\$625
Detroit 48214	\$1,106	\$1,084	\$1,007	\$675
Detroit 48205	\$1,113	\$1,091	\$1,013	\$679

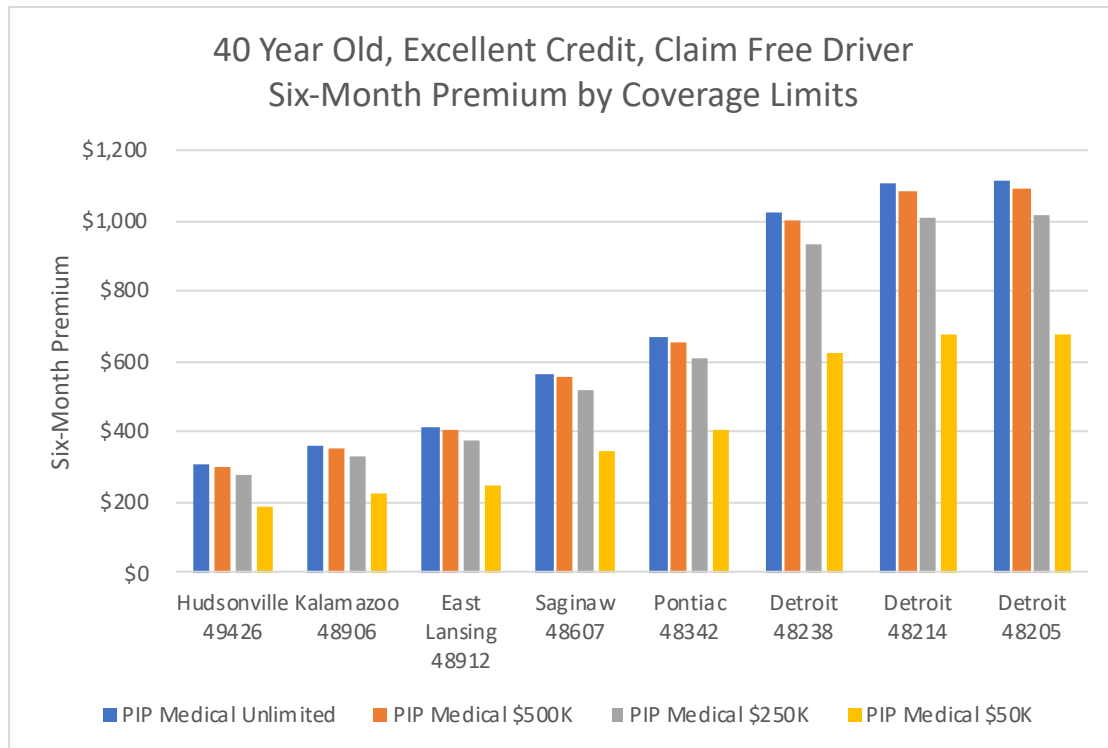
¹² Another analysis could be conducted to demonstrate that drivers living in Detroit will be most likely to face both the negative impacts of territory and the negative impacts of credit score. This analysis would build upon research such as the Federal Reserve Bank of Chicago's 2019 paper, which includes Michigan data, that shows lower-income, urban communities have substantially more subprime credit scored households than wealthier suburban communities. George, T., Newberger, R. G., & O'Dell, M. (2019). The Geography of Subprime Credit. Profitwise, (6), 1-11. <https://www.chicagofed.org/~media/publications/profitwise-news-and-views/2019/pnv6-2019-the-geography-of-subprime-credit.pdf>

¹³ Auto-Owners does not disclose in the public filing which parts of ZIP code 49426 are covered by this rate, and because there are 21 different territories at least partly in this ZIP, the rates vary and can increase by 23% to as high as \$379.49 for the tested driver if they live in the highest priced territory of the ZIP code.

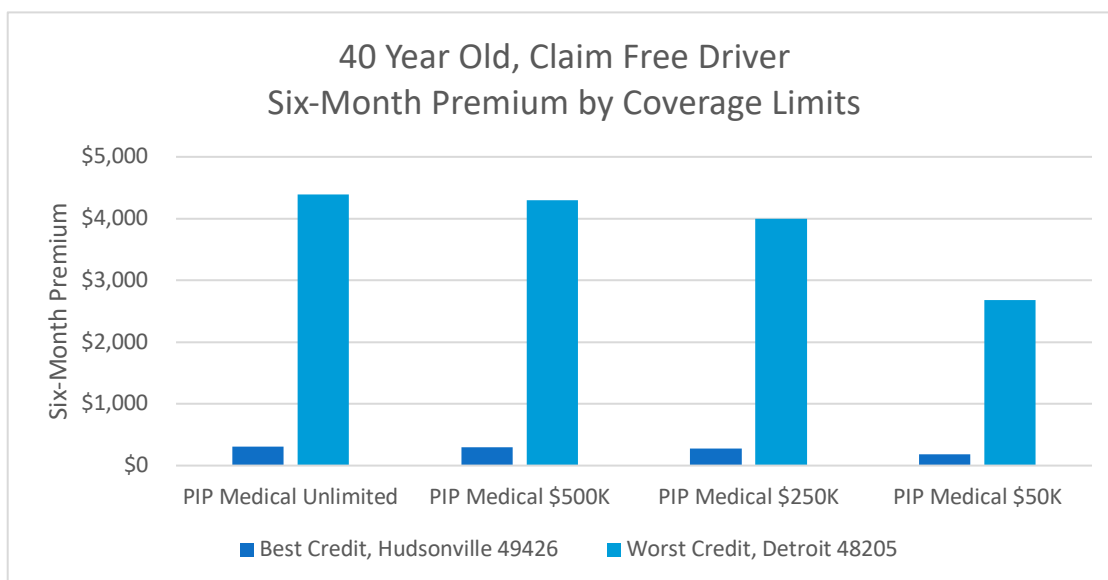
¹⁴ These tests are based on the rate offered in at least one territory of each of the ZIP codes. Because each of the tested ZIP code has several territories, depending upon the neighborhood in the ZIP code in which they live, some drivers will be priced differently than shown.

GOOD CREDIT	PIP Medical Unlimited	PIP Medical \$500K	PIP Medical \$250K	PIP Medical \$50K
Hudsonville 49426	\$414	\$406	\$377	\$253
Kalamazoo 48906	\$488	\$478	\$444	\$298
East Lansing 48912	\$552	\$541	\$503	\$337
Saginaw 48607	\$761	\$746	\$693	\$464
Pontiac 48342	\$896	\$878	\$816	\$547
Detroit 48238	\$1,378	\$1,351	\$1,254	\$841
Detroit 48214	\$1,489	\$1,459	\$1,355	\$908
Detroit 48205	\$1,499	\$1,469	\$1,364	\$914
MODERATE CREDIT	PIP Medical Unlimited	PIP Medical \$500K	PIP Medical \$250K	PIP Medical \$50K
Hudsonville 49426	\$604	\$592	\$550	\$368
Kalamazoo 48906	\$711	\$696	\$647	\$434
East Lansing 48912	\$805	\$789	\$732	\$491
Saginaw 48607	\$1,110	\$1,087	\$1,010	\$677
Pontiac 48342	\$1,306	\$1,280	\$1,189	\$797
Detroit 48238	\$2,008	\$1,968	\$1,828	\$1,225
Detroit 48214	\$2,170	\$2,127	\$1,975	\$1,324
Detroit 48205	\$2,184	\$2,140	\$1,987	\$1,332
POOR CREDIT	PIP Medical Unlimited	PIP Medical \$500K	PIP Medical \$250K	PIP Medical \$50K
Hudsonville 49426	\$1,214	\$1,190	\$1,105	\$740
Kalamazoo 48906	\$1,428	\$1,400	\$1,300	\$871
East Lansing 48912	\$1,617	\$1,585	\$1,472	\$986
Saginaw 48607	\$2,230	\$2,185	\$2,029	\$1,360
Pontiac 48342	\$2,625	\$2,573	\$2,389	\$1,601
Detroit 48238	\$4,037	\$3,956	\$3,673	\$2,462
Detroit 48214	\$4,361	\$4,274	\$3,969	\$2,660
Detroit 48205	\$4,389	\$4,302	\$3,994	\$2,678

As the following graph of the premiums for drivers with the best possible credit shows, it will cost motorists in the Detroit ZIPs more to purchase PIP Medical coverage with a \$50,000 limit than drivers in other parts of the state will have to pay to maintain traditional unlimited PIP coverage (with the one exception that PIP \$50K in Detroit 48238 is slightly less expensive than PIP Unlimited in Pontiac).



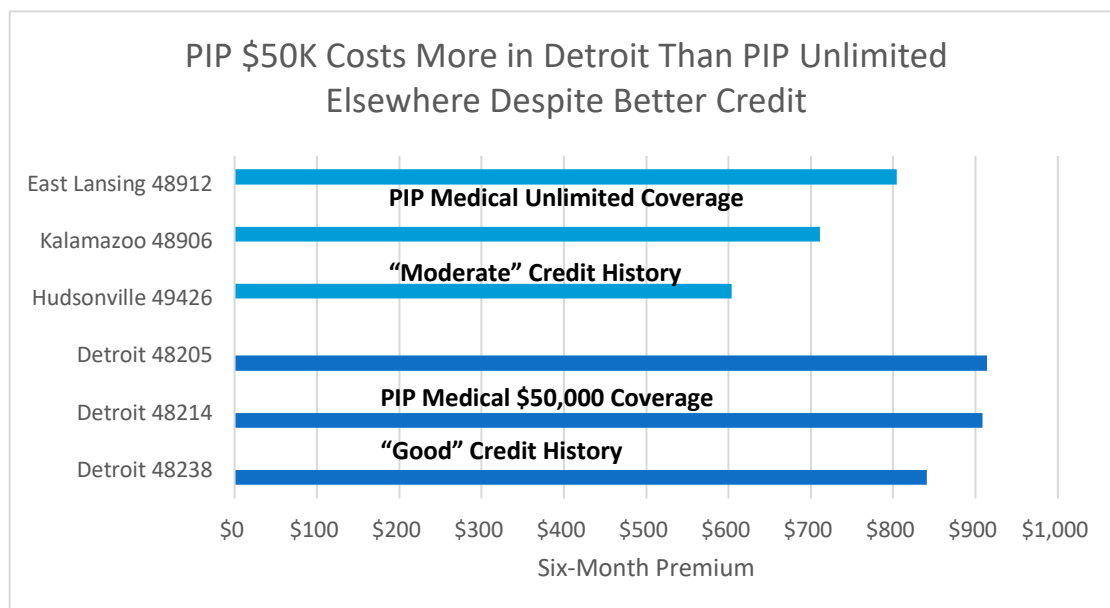
The differences between an excellent credit, claims free driver in Hudsonville and a poor credit, but still claims free driver in Detroit 48205 are staggering, as illustrated below. The combination of having poor credit and living in Detroit leaves that driver paying more than 10 times the amount charged to the excellent credit driver in Hudsonville with the same record.



It is not just in Detroit, however, that good drivers with less than stellar credit will suffer unaffordable insurance premiums. The premium for a PIP \$250k coverage policy in Saginaw and

Pontiac are \$515 and \$603, respectively for a driver who has unblemished credit, but it rises to more than \$2,000 every six months – more than \$4,000 a year just for the limited PIP Medical portion of their policy – if, instead, they have a poor credit history.

The price difference facing drivers living in Detroit lingers even if the credit history of the customers is reversed. As the table below shows, it costs more for a good credit driver in Detroit to purchase \$50,000 of PIP Medical coverage than it costs for a moderate credit driver to buy Unlimited PIP coverage if they live in Hudsonville, Kalamazoo, or East Lansing. As with the other data, all the drivers shown have never filed a claim.



It is worth remembering that all the premiums described above reflect only the cost of PIP Medical and do not include the additional costs drivers will incur to purchase their PIP Wage Loss coverage as well as other mandatory coverages such as Bodily Injury Liability or the Comprehensive and Collision coverage required if they have a loan on their vehicle. Taken altogether, it is clear that Auto-Owners Insurance’s pricing of PA 21/22 policies still leave Detroit drivers and other financially stretched Michiganders with unaffordable auto insurance.

Citizens Insurance

In its PA 21/22 filing, Citizens provides semi-annual (six-month) base rates for each of its coverages. These are, in essence, the starting point for pricing all customers; each customer will have its rates adjusted upward or downward by multiplying several different rating factors that cover such characteristics as their driving record, vehicle type, and garaging territory. In this analysis, I provide some examples of the premium calculations for the two primary no-fault coverages, PIP Medical and PIP Wage Loss, for different drivers. However, for context, the table below illustrates the base rates for the most familiar coverages a driver would purchase.

Citizens Insurance – Six-Month Base Rates for Common Coverages¹⁵

BI	PD	PIP Medical	PIP Wage	Attendant Care	UM/UIM BI	COMP	Basic COLL	Mini Tort	PPI	MCCA
\$756	\$41	\$2856	\$830	\$24	\$80	\$799	\$1596	\$96	\$154	\$50

Impact of Credit History

For the premiums I present below, I have assumed that each driver being insured has not had accidents or violations. Citizens reduces a customer's premium from the base rate according to a score it calls its "Market Discount." This score is a composite of a customer's credit-based insurance score "in combination with non-credit variables:

- Driver, vehicle, and coverage composition on the policy
- Accident and violation history
- Residence type and account status
- Prior Insurance status, including liability limits and continuity of coverage"¹⁶

Because I am unable to find a more detailed description of how the credit and non-credit inputs produce a particular Market Discount (and I suspect the precise algorithm is either filed as a non-public document or not provided to DIFS), I have made certain assumptions for the purposes of my comparisons. As I explain below, I believe my assumptions understate the impact of credit history on Citizens policyholder premiums, but even these conservative interpretations help illustrate the effect on financially vulnerable consumers.

In its formula, Citizens presents about 4,629 possible Market Discount scores. My first assumption, about which I am entirely confident, is that drivers with better credit get better scores, so long as the other non-credit inputs are also "good." Because of the use of non-credit variables, I also assume that drivers with the worst credit, but with clean driving records and continuous coverage, for example, would not get the worst Market Discount. I believe that in order to get the best overall Market Discount score, the policyholder must have very high credit as well as the best scores for the non-credit variables included in this rating factor. This driver will get the most significant discount available and will see their premiums drop as follows:

	Base Rate	Market Discount	Best Credit Premium
PIP Medical (Unlimited)	\$2856	0.0204	\$58.26
PIP Wage Loss	\$830	0.0204	\$16.93

¹⁵ Source: SERFF# HNVR-132213674, Exhibit 10, Base and Endorsement Rates

¹⁶ Source: SERFF# HNVR-132213674, Rule Guide

For drivers with worse credit, it is impossible to precisely guess what rating relativity would be applied. As a note, to support the use of this factor, I believe Citizens should be compelled to disclose the complete algorithm to demonstrate that it is neither unfairly discriminatory nor duplicative of other factors used. Indeed, under PA 21/22, there are limits on the use of prior insurance for rating purposes through January 1, 2022, which suggests this factor may violate the law, depending upon how it is actually constructed. [MCL Section 500.2116b]

For this analysis, I assume that the credit-based insurance score represents a significant proportion of the overall factor calculation. If the most significant discount goes to a driver with a perfect credit history, I use the following assumptions to estimate the impact of different credit histories that are not confounded by other non-credit variables:

- A driver with good credit gets rated in the top 10%,
- A driver with moderate credit gets rated in the top 25%, and
- A driver with very poor credit gets rated in the top 40%.

With those assumptions the resulting six-month premiums are as follows:

	Best Credit	Good Credit	Moderate Credit	Poor Credit
PIP Medical (Unlimited)	\$58.26	\$213.34	\$383.56	\$740.28
PIP Wage Loss	\$16.93	\$62.00	\$111.72	\$215.14

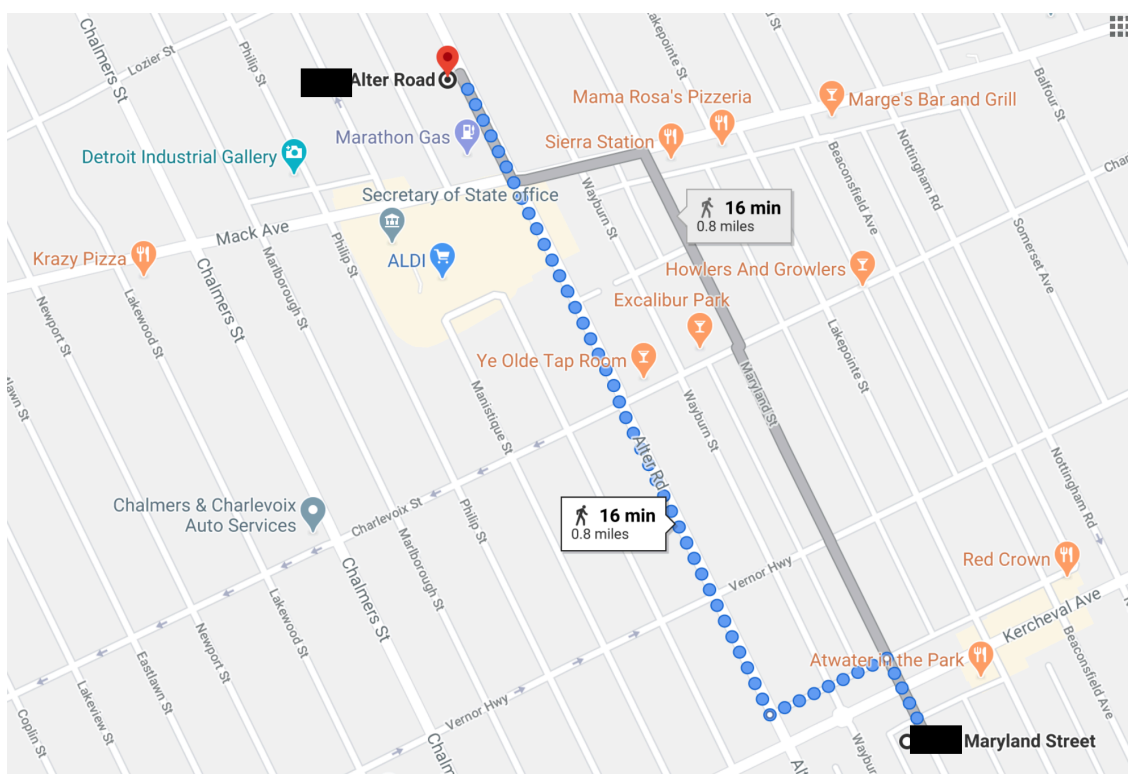
Without being able to review its actual algorithm, I believe this is a reasonably conservative estimate of the impact of credit history on Citizens Insurance policyholders. It suggests that under the new PA 21/22 rates, a Citizens Insurance policyholder's PIP Medical + PIP Wage Loss premium for six months could range from \$75.19 to \$955.41 depending on their credit score, with the poor credit driver paying 1,171% more for coverage.

Territorial rating compounds the problem

The above comparison dramatically understates the actual impact on a dollar basis of credit history, because it is not yet adjusted for territory. Very few Michigan drivers would get precisely the premiums in the table above based on their credit score, because rates also vary significantly by territory. In fact, only 11 of the 8,159 different Michigan census tract block group territories in Citizens Insurance's rating manual have ratings of 1.0 for PIP coverages such that they would see premiums exactly as described above depending upon their credit history. (For reference, one of the 1.0 rated census tract block groups is in White Lake, MI.) For most drivers, however, their premium will go up or down based upon where they live.

To illustrate how the variation in rates by territory in the Citizens plan maintains the severe penalties that have long burdened Detroit drivers, I have calculated PIP premiums for the same four drivers as above (each with a different credit-based “Market Discount”) based on whether they are living in a census tract block group in Detroit 48215 (tract # 261635124001 on Alter Road) or one in Grosse Pointe Park 48230 (tract # 261635502001 on Maryland Street). The addresses used for these quotes are, as the map below shows, less than one mile away from each other. The neighborhoods, though, are demographically very different.

- The residents of the Detroit census tract are 95% African American and 3% White (non-Hispanic) and the median household income is \$19,436
- The residents of the Grosse Pointe Park census tract are 16% African American and 72% White (non-Hispanic) and the median household income is \$108,384



The premiums for PIP Medical Unlimited and PIP Wage Loss for each of these drivers, using the assumed credit impact of the Market Discount factor described above, are as follows:

Six-month quotes for combined PIP Unlimited coverage, by credit-based Market Discount and Territory

Census Tract ↓	Market Discount →	Best Credit	Good Credit	Moderate Credit	Poor Credit
Detroit 261635124001	PIP Medical	\$327	\$1,199	\$2,156	\$4,160
	PIP Wage Loss	\$95	\$348	\$628	\$1,209
	Combined Total	\$423	\$1,547	\$2,783	\$5,369
Grosse Pointe Park 261635502001	PIP Medical	\$111	\$405	\$729	\$1,407
	PIP Wage Loss	\$29	\$105	\$190	\$366
	Combined Total	\$139	\$511	\$919	\$1,772

In short, the premium for the Detroit driver is three times higher than for their neighbor eight-tenths of a mile to the South in Grosse Pointe Park, even if they have the exact same credit history.

Of course, as is noted in footnote 12, data suggest that there will be a lot more subprime credit residents in the poorer census tract on the Detroit side of this border, so it is likely that the average consumer's credit-based "Market Discount" score will be lower in Detroit. Factoring in a difference in credit in combination with the territorial punishment facing Detroiters reveals just how severely the promises of PA 21/22 fall short for those who have historically struggled most with auto insurance premiums. While an excellent credit driver living in Grosse Pointe Park may be offered a combined PIP policy for \$139 for six months, the premium for the same combined coverage would be more than 10 times higher -- \$1,547 -- for the Detroit resident with merely a top 10% (Good Credit) Market Discount score. If the Detroit resident had a very low credit score, even with the same driving record as the Grosse Pointe Park driver, they will be quoted \$5,369 for six-months, a 3,750% increase.

Of course, the centerpiece of PA 21/22 was the ability to choose lower limits coverage in order to save on insurance costs. Here are the various PIP Medical options' premiums for each of the above drivers:

Six-month quotes for PIP Medical, by limits, credit-based Market Discount and Territory

Census Tract ↓	Market Discount →	Best	Good	Moderate	Poor
Detroit 261635124001	PIP Unlimited	\$327	\$1,199	\$2,156	\$4,160
	PIP \$500K (\$1000 Deductible)	\$308	\$1,129	\$2,031	\$3,919
	PIP \$250K (\$1000 Deductible)	\$269	\$984	\$1,770	\$3,416
	PIP \$50K (\$1,000 Deductible)	\$174	\$637	\$1,145	\$2,209
Grosse Pointe Park 261635502001	PIP Unlimited	\$111	\$405	\$729	\$1,407
	PIP \$500K (\$1000 Deductible)	\$104	\$382	\$686	\$1,325
	PIP \$250K (\$1000 Deductible)	\$91	\$333	\$598	\$1,155
	PIP \$50K (\$1,000 Deductible)	\$59	\$215	\$387	\$747

Because of the outsize impact of the Territory and credit-based Market Discount rating factors, a driver with a perfect driving record and the best credit-based market discount who lives in Detroit actually pays 57% more for \$50,000 of PIP Medical coverage than the same driver would pay for Unlimited PIP Medical coverage if they lived less than a mile away in Grosse Pointe Park.

Conclusion

The insurance industry and public officials who pressed for and supported PA 21/22 promised that changes in Michigan's Auto No-Fault Insurance laws would bring relief to Michigan drivers, especially those in Detroit who found it most difficult to afford auto coverage in the past. A review of the filings by the few large companies that have allowed their filings some amount of public scrutiny indicate that the promise was hollow. The bulk of the savings that will be realized is attributable to the change in the MCCA assessment, and the insurers will be capturing the same or more premium for the risk that remains on their books. For those residents who live in Detroit or who have less than good credit, or, worse, live in Detroit and have imperfect credit, the premiums that will be taking effect on July 2, 2020 will continue to be unaffordable by all reasonable measures.

Sincerely,



Douglas Heller

Executive Summary

Douglas Heller is an independent consultant and nationally recognized insurance expert. During two decades of work on public policy and regulatory matters related to insurance, Heller has led regulatory challenges to insurance company rates and practices, represented consumer interests at insurance rulemaking and legislative hearings, served as a consulting expert in litigation, authored several reports on auto insurance pricing in the United States, and, for nine years, served as the Executive Director of the national consumer advocacy organization, Consumer Watchdog. His work has saved policyholders billions of dollars on insurance premiums and helped curb unfair auto insurance pricing practices. In addition to conducting research for and providing expertise to consumer rights organizations and consumer attorneys, Heller serves as a member of the U.S. Department of Treasury's Federal Advisory Committee on Insurance (FACI) as an appointed board member of the California Automobile Assigned Risk Plan (CAARP) Advisory Committee.

Professional Employment History

Independent Consultant

2013-Present

Consumer advocate and consulting expert providing insurance policy expertise and guidance to Consumer Federation of America and other public interest organizations. Conducts research; authors reports; works with policymakers, regulators, coalitions, and media; and provides other strategic services on behalf of social sector clients. Recent projects include:

- Author of peer-reviewed article "An Auto Insurance Lifeline for Safe Driving, Lower-Income Marylanders," commissioned and published by the Abell Foundation (2019)
- *Investigatory Hearing on the Use of Group Rating in Private Passenger Automobile Insurance*, serving as lead advocate and subject matter expert for Consumer Federation of California (2019)
- *In The Matter of the Proposed Rulemaking, Gender Non-Discrimination in Automobile Insurance Rating*, serving as lead advocate and subject matter expert for Consumer Federation of California (2018)
- Consulting expert in the matter of *Rudnicki v. Farmers Insurance Exchange, et al.* (2018)
- Co-author, with J. Robert Hunter, FCAS, MAAA, of "Private Passenger Auto Premiums And Rating Factors – Are They Actuarially Sound?" for Consumer Federation of America (2017)
- Serving as expert on behalf of the Maryland Consumer Rights Coalition and providing testimony before the Maryland General Assembly's Low Cost Auto Policy Workgroup (2017)
- *In the Matter of the Rate Application of State Farm General Insurance Company*, file number PA 2015-00004, serving as lead advocate for Consumer Federation of California during all phases of the public hearing in this homeowners insurance rate matter;
- *In the Non-Compliance Matter Regarding GEICO Insurance*, NC-2015-00001, serving as lead advocate and subject matter expert for Consumer Federation of California;
- *In the Matter of the Rate Application of Wawanesa General Insurance Company*, file number PA 2015-00011, serving as lead advocate and subject matter expert for Consumer Federation of California;
- *In the Matter of the Rate Applications of Hartford Underwriters Insurance Company and Trumbull Insurance Company*, file number PA 2014-00011, serving as lead advocate and subject matter expert for Consumer Federation of California;
- Presenting on the subject of the regulation of California's insurance industry at The Insurance Law Committee of the California State Bar symposium (May 2013).

Federal Advisory Committee on Insurance
Member-Consumer Representative

2020-Present

Federally appointed consumer representative member of FACL, which provides advice and recommendations to assist the U.S. Department of Treasury's Federal Insurance Office in carrying out its statutory authority.

California Automobile Assigned Risk Plan Advisory Board
Board Member-Consumer Representative

2013-Present

Appointee of California Insurance Commissioner Dave Jones, serving as "Consumer Representative" on the board of the public entity that oversees the state's auto insurance private passenger and commercial residual markets and the state's program for low-income motorists.

USC Sol Price School of Public Policy
Adjunct Instructor

2015

Teaching "Strategic Planning in the Social Sector" in the Master of Public Administration Program.

Consumer Watchdog
Executive Director/Executive Director Emeritus (2013)

2004- 2013

Nationally-recognized consumer advocate, managing a staff of consumer advocates, public interest lawyers and administrative personnel, and serving as the organization's lead policy analyst and advocate concerning property and casualty insurance issues.

Advocacy Director, Consumer Advocate, and Community Organizer

1997-2004

Coordinated organization's legislative, regulatory and media advocacy related to insurance, political and corporate accountability and energy and utility issues. Testified before Congress and several state legislatures. Authored several studies, op-eds and news releases on a range of issues including auto insurance discrimination, energy deregulation, medical malpractice insurance, and insurance industry investment practices.

E d u c a t i o n [A c c r e d i t a t i o n s a n d A f f i l i a t i o n s]

University of Southern California, Sol Price School of Public Policy
Master of Public Administration (MPA) with an emphasis on Public Management
Dean's Certificate of Merit in Recognition of Excellence in Academics

May 2014

University of California, Berkeley
BA, Political Science
Summa Cum Laude and Highest Honors in Political Science

May 1994

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