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VIA ELECTRONIC FILING

Mr. Blake A. Hawthorne
Clerk of the Supreme Court of Texas
201 West 14th Street, Suite 104
Austin, Texas 78701

Re: No. 20.0923, *Jesus Virlar, M.D. and GMG Health Systems Associates, P.A., a/k/a and d/b/a Gonzaba Medical Group v. Jo Ann Puente*, in the Supreme Court of Texas

Dear Mr. Hawthorne:

Petitioners submit this letter responding to questions posed by the Court, principally but not exclusively Justice Busby, about the meaning of the phrase "for injury to another person" in the definition of "claimant" in Tex. Civ. Prac. & Rem. Code § 33.0011(1)(A)–(B).

The Minor's claim in this case is derivative (*i.e.*, "for injury to another person"). Her claim is wholly dependent on an injury to her mother; and the Minor sought damages for failing to receive parental and support *because of* her mother's injury. That is why the Court referred to the newly recognized claim for loss of parental consortium as "derivative." *See Reagan v. Vaughan*, 804 S.W.2d 463, 467 (Tex. 1990).

In *Drilex Systems, Inc. v. Flores*, 1 S.W.3d 112, 122 (Tex.1999), a case that included a *Reagan v. Vaughn* claim, this Court recognized that the term "for injury to another person" in the second sentence of section 33.011(1) was intended to include "all of the family members."

In *Utts v. Short*, 81 S.W.3d 822 (Tex. 2002), Justice Baker's plurality opinion would have overruled *Drilex*, holding instead that "the Legislature did not intend for section 33.011(1)'s second sentence to provide a separate definition of 'claimant'" (*id.* at 832). The Legislature was invited to clarify this issue by a majority of the Court's members. *See id.* at 837 (Phillips. C.J., concurring) & 838 (Owen, J., dissenting).

The next year, the Legislature demonstrated that it *did* intend the second sentence in section 33.0011(1) to be a "separate definition." That very sentence was put into separate subdivision (B), while new subdivision (A) referred separately to independent claims. Thus, the Legislature rejected Justice Baker's *Utts* opinion in favor of the Court's decision in *Drilex*. Further, the Legislature replaced the word "party" with "person" to include a settling family member who, like the one in *Utts*, was not a party.

If the Court were now to hold that "for injury to another person" does not include family members, it would in effect *delete subdivision (B) altogether* from section 33.011(1). That outcome would be directly contrary to the Legislature's response to *Utts*, and it would require a marked (and markedly unjustified) expansion of this Court's Open Courts jurisprudence.

Since 1987 (*see* Petitioner's Bench Book at Tab D, p.3), the Legislature has defined "claimant" in ways that would minimize or prevent those seeking recovery from engineering the type of manipulated settlement that happened here. As stated in the order approving the Minor's settlement and in the hearing that produced that order (*see* Petitioners' Bench Book at Tabs G & H), a "material part of the settlement" of the Minor's claim against the Hospital, the deep pocket in the case, was Mrs. Puente's agreement to dismiss her claim against the Hospital for $0. Preventing such a manipulative avoidance of the settlement credit statute is a reasonable policy choice that the Legislature is constitutionally entitled to make.

By virtue of that same reasonable policy choice, a legislative change to the common law one-satisfaction rule—if one were even made—does not violate the Open Courts provision, particularly when the parameters of the one-satisfaction rule have never been well-established. *See Utts*, 81 S.W.3d at 849 ("No one has suggested that the settlement credit scheme devised by the Legislature is unconstitutional." (Owen, J., dissenting)).

Thus, even assuming that Ms. Puente is entitled to lodge an as-applied Open Courts challenge (which she is not because her statutory recovery exceeded that which she would have obtained under any common-law version of the one-satisfaction rule, see Petitioners' Bench Book at Tab C), the court of appeals erred in sustaining that challenge.

Respectfully,

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Certificate of Service

I hereby certify that I served a true and correct coy of this letter upon all counsel of record, via efile to all counsel of record, as well as to Amicus Curiae, the State of Texas (Kyle.Highful@aog.texas.gov, on October 28, 2022.

/s/ Thomas R. Phillips
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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of this Petitioners' Reply Brief on the Merits upon on all counsel of record, via efile, on October 28, 2022, at the following address:

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