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Appellate Court Rules 2019 Michigan No-Fault Law Amendments Not Retroactive, Violate State's Constitution

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Earlier today the Michigan Court of Appeals overturned the trial court's decision in the *Andary, et al v USAA Casualty Insurance Company* matter in a 2-1 decision.

Judge Douglas Shapiro authored the majority opinion and Judge Sima Patel provided her concurrence; Judge Jane Markey issued a dissent. As for its reasoning, the majority opinion held: (1) the Michigan Legislature did not clearly demonstrate an intent for the 2019 amendments to apply retroactively to persons injured in pre-amendment accidents; and (2) even if retroactive intent has been demonstrated, the 2019 amendments would impose new limits that substantially impair No-Fault insurance contracts entered into prior to June 11, 2019 and, thus, violate the contracts clause of the Michigan Constitution.

I. Majority Opinion

Regarding the retroactivity issue raised on appeal, the majority focused on the fact that plaintiffs'' motor vehicle accidents occurred prior to the 2019 Amendments and the No-Fault insurance policies then in effect provided for unlimited Personal Injury Protection (PIP) benefits. Because of these facts, the court held that the 2019 amendments substantially altered the "settled expectation[s]" and long-term reliance of the plaintiff. These expectations and rights were obtained in exchange for premiums based on the defendants' obligation to pay all reasonable charges not subject to fee schedules or caps.

Taking it a step further, the majority held that the 2019 amendments contained no "clear, direct, and unequivocal" expression of intent to have them apply retroactively. Despite the fact that the defendants highlighted another section of the Michigan Insurance Code that arguably supported retroactivity (i.e., MCL 500.2111f), the majority held that it was insufficient to overcome the presumption of prospectivity.

The majority could have stopped their opinion at that point. But they also ruled in favor of the plaintiffs regarding their argument that the 2019 amendments violated the contracts clause of the Michigan Constitution. In applying the three-part balancing test regarding such a violation, the majority first concluded that the impairments to the contract were severe. Sticking with the same theme that they applied for retroactivity, the majority noted that the No-Fault insurance policies then in effect provided

for unlimited PIP benefits and required the defendants to pay without regard to fee schedules or hourly caps for attendant care. Therefore, they held that the 2019 amendments wholly removed numerous duties to be performed by the defendant.

As for the other two prongs of the balancing test, the majority did not feel that the defendants explained how application of the 2019 amendments to pre-amendment accidents concerned the legitimate purpose of lowering No-Fault insurance premiums. Nor did the majority find this application reasonable. The majority stated that allowing insurers to retain the premiums from pre-amendment accidents amounted to a windfall. In other words, they were able to retain pre-amendment premiums while only having to pay for a "fraction of the benefits set out in those policies."

As I've previously written about this case for our firm's blog, the plaintiffs also set forth arguments relying on the equal protection and due process clauses. Because its decision regarding retroactivity provided full relief to the injured plaintiffs, the question of prospective application need not be addressed. That is not the case with the provider plaintiff. The majority held that the provider plaintiff did have standing to argue prospective application of the 2019 amendments. But because the provider plaintiff's action was dismissed for lack of standing in the trial court, there was not an adequate record to address its argument as to the equal protection and due process clauses.

II. Dissent

In complete opposition to the majority, Judge Markey's dissent concluded that the 2019 amendments applied to all motor vehicle accidents, even those that occurred prior to the 2019 amendments. Furthermore, she felt that the plaintiffs' constitutional claims would fail.

To support her dissent regarding "retroactive" application, Judge Markey noted that the 2019 amendments did not apply to any previously received treatment or training. While she conceded that there would be treatment or training related to an antecedent event (i.e., a pre-amendment motor vehicle accident), the fact that the 2019 amendments regarding the fee schedules and hourly caps on attendant care only applied to future claims (i.e., those incurred on and after July 2, 2021) did not amount to "retroactive" application. But even if application of the 2019 amendments was found to be a retroactive application, Judge Markey concluded that the Michigan Legislature clearly manifested an intent to be applied to pre-amendment accidents in MCL 500.2111f .

Regarding the arguments that the 2019 amendments violated the contracts clause of the Michigan Constitution, Judge Markey highlighted that the judiciary is tasked with deciding whether the 2019 amendments could survive rational basis review (i.e., the lowest level of scrutiny). Part of the stated purpose of the 2019 amendments was "to provide for the continued availability and affordability of automobile insurance ... in this state and to facilitate the purchase of that insurance by all residents of

this state at fair and reasonable rates[.]" She concluded that that the Michigan Legislature accomplished this task without acting arbitrarily or irrationally.

III. Conclusion

As we sit here today, the appellate court's decision in *Andary* is published case law. At its simplest, it stands for the idea that a No-Fault insured that was in a pre-amendment motor vehicle accident is not subject to the 2019 amendments. But this will not be the last time an appellate body will review the matter. As I previously mentioned, it is a near certainty that this matter will be appealed to the Michigan Supreme Court. Note that the arguments made by the plaintiffs and defendants will be substantially the same -- perhaps a little sharper, a little more focused.

We will keep you apprised of the appellate process as it, undoubtedly, continues to unfold.