PLUNKETT COONEY

Michigan Supreme Court Rules 2019 Amendments to No-Fault Act not Retroactive

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Michigan's Supreme Court released its long-awaited Andary decision today and held the Legislature's 2019 amendments to the No-Fault Act that established fee schedule reimbursement rates for medical providers and reduced family-provided home caregiver hours could not be applied to individuals who were covered by a Personal Injury Protection (PIP) policy and suffered injuries before June 11, 2019.

In ruling that these new limitations could not be legally applied to those injured before the effective date of the 2019 No-Fault amendments, the Supreme Court determined:

> (1) That the scope of PIP benefits under an insurance policy and the governing law vests at the time of the injury; and
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> (2) The Legislature did not clearly demonstrate an intent for the 2019 amendments to apply retroactively to individuals with vested contractual rights to uncapped PIP benefits under the pre-amended no-fault statutes.

The Supreme Court also noted that its decision is limited to those entitled to PIP benefits because they were directly covered by a No-Fault policy as either a named insured or covered individual under the policy before the 2019 No-Fault amendments went into effect. It did not address whether individuals injured before June 11, 2019, with a purely statutory claim to No-Fault PIP benefits, such as motorcyclists or pedestrians, are entitled to the same protections.

This is notable because the Supreme Court made a finding that *Andary* and *Krueger* were intended third-party beneficiaries under the respective policies, meaning that they had standing to enforce the policy terms against the insurer (i.e., standing to enforce the contract). Therefore, if the policy attempted to identify those who may be considered insureds under the statute as it existed at that time (e.g., motorcyclists, pedestrians, or occupants), then each of those defined "insureds" will likely be considered intended third-party beneficiaries under the policy and entitled to enforce its terms under the pre-reform statute (i.e., no fee schedule or limited friend/family attendant care). Likewise, if those definitions included a broader scope of individuals than required by the No-Fault statute, those insureds may also be considered intended third-party beneficiaries under those policies.

Conversely, for those policies that did not define other potential "insureds," it is possible that the insurer may be able to apply the reformed statute to those claims. Under this analysis, it is incumbent for an insurer to review the policies affecting individuals impacted by the Andary decision.

Furthermore, the application of the amendments is largely based on the date that the contract was issued. The Supreme Court stated: "At the earliest, the amendments apply to those individuals who were injured while covered by an insurance policy issued on or after June 11, 2019, which is the general effective date for 2019 PA 21. At the latest, these amendments apply to those individuals who were injured while covered by an insurance policy issued after July 1, 2020, that incorporated the requirements of the 2019 amendments."

So, while the Supreme Court was clear that any policy issued prior to June 11, 2019 would not be subject to the 2019 No-Fault amendments, it did not take a position on policies issued from June 11, 2019 through July 1, 2020. Policies falling into these parameters will likely be the subject of future litigation where claimants and providers, alike, attempt to enforce any language under the policy that may provide broader coverage than that required under the reformed version of the Act.

Lastly, the Supreme Court held that the prospective application of the new fee schedule in MCL 500.3157 was constitutional because curbing escalating PIP benefit costs and lowering insurance premiums are legitimate government objectives, and the new fee caps are rationally related to accomplishing these objectives.

While *Andary* is a landmark decision, the opinion was expected given the tenor of the Supreme Court at oral argument. To the extent that you have any questions or wish for additional analysis regarding *Andary*, please do not hesitate to reach out to the attorneys at Plunkett Cooney.