

**MEMORANDUM**

Re: Court of Appeals Release of *Andary v USAA* Opinion

Date: August 25, 2022

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Today, the Court of Appeals issued its long-awaited decision in *Andary v USAA*, \_\_ Mich App \_\_ (2022) (Docket No. 356487). The following is our summary of the decision and its implications on claims handling.

**Issue:**

1. Whether legislative amendments to the No-Fault Act apply retroactively when a person was injured before June 11, 2019.
2. Whether the legislative amendments as a whole violate the Michigan Constitution.

**Answer:**

1. The statute is not to be applied retroactively as there is no demonstrable intent in the text of the amendments by the Legislature to do so, and applying it retroactively would severely impair contractual rights in No-Fault policies that existed at the time of the enactment.

This holding applies “to individuals who were injured before its effective date, even as to services provided after its effective date.” See pg. 11.

2. Further discovery is needed as to whether prospective application of the amendments is considered constitutional as no record exists from the trial court on this issue.

**History:**

The crucial issue of *Andary v USAA* is whether Michigan’s recent amendments to its No-Fault Act apply to people injured prior to 2019; namely, the plaintiffs, Ms. Andary and Mr. Krueger, were catastrophically injured individuals who alleged that the amendments limited the care they could receive. MCL 500.3157(7) and (10) were the focus of their argument. Sec. 7 provided for a fee schedule for reimbursement amounts, and Sec. 10 limited family-provided attendant care to 56 hours per week. The plaintiffs claimed that, because they had contractual rights to unlimited benefits at the time they were injured, their claims should not be subject to these new changes, and secondly, that such a change violated their constitutional rights as their contractual rights were essentially taken away without due process.

The trial court had initially dismissed all of the claims by granting USAA’s Motion for Summary Disposition in lieu of an answer, determining that there was no constitutional violation and that the statute applied retroactively to their claims. Therefore, it bears noting that there was no discovery done in the case.

**Analysis:**

The majority opinion, authored by Judges Shapiro and Patel, first looked at the issue of retroactive application. First, they noted the well-settled principle that statutes are presumed to operate prospectively, unless there is a clearly manifested intent by the Legislature for retroactive application.

Plaintiffs argued there was no such intent in the statute as there is no explicit or implied language in the Act regarding retroactivity. USSA argued the MCL 500.211f(8) implied retroactivity, as the Legislature required insurers to issue refunds to their customers for the “savings realized” from application of the amendments. The Court of Appeals rejected that argument, calling it “very weak.” Rather, the panel reasoned, it would have been very easy for the Legislature to “express its intent plainly,” but it did not do so. The Court further noted that retroactive application clearly impaired previously vested rights as “on the date of (Plaintiffs’) accidents, the recovery of PIP benefits . . . was limited only by the reasonableness and necessity of the provider’s customary charges.” Therefore, the Plaintiffs and other injured persons like them had a reasonable belief that if they were injured, they would receive unlimited benefits, “so long as the charges were reasonable and the care reasonably necessary.” Therefore, as the amendments would “substantially alter the settled expectations” of these victims, retroactive application would be unjust.

The majority further stated that, had it found retroactive intent in the statute, it still would have been rejected as unconstitutional as well, for similar reasons. This analysis was based on the Contracts Clause of the Michigan Constitution, which, put simply, provides that the Legislature cannot enact a law impairing the existing obligations of a contract. See, e.g., *In re Certified Question*, 447 Mich 765, 777 (1994). The majority therefore applied a three-part test to determine whether retroactive application would violate this Clause: (1) whether the change resulted in a substantial impairment of a contractual relationship; (2) whether the legislative disruption of contract expectancies is necessary to the public good; and (3) whether the means chosen by the legislature were reasonable. Given their reasoning regarding an intent for retroactive application, it is not surprising that the Court concluded that the amendments resulted in a substantial impairment of a contractual relationship between injured persons and their insurers. However, the prevailing issue was whether the statute was intended to address a necessary public need that effectively “trumped” that impairment. While the Court of Appeals conceded that the amendments were necessary from a public policy standpoint, their impact on contractual rights could not be ignored. USAA had argued primarily that the amendments were needed to lower insurance rates, which was “contingent on the lowering of benefits.” The Court of Appeals noted that lowering of premiums was “prospective” in nature, thereby reinforcing their conclusion that there was no public need to apply the changes retroactively, as the public good achieved by the statute is to be realized in the future. Therefore, as the severe impairment of contractual rights was not justified by a prevailing public good, applying the statute retroactively is unconstitutional.

The final question before the panel turned to prospective application – in essence, is the statute as a whole, moving forward, unconstitutional as well? The majority essentially declined to answer this question due to the lack of a trial court record on the issue. As noted above, the plaintiffs had been dismissed early on in the case. The Court of Appeals agreed that Andary and Krueger no longer had standing as their asserted harm would be retroactive application of the amendments.; that is, since the statute did not apply retroactively, they were returned to their pre-amendment state of receiving full, unlimited benefits and no longer had a justiciable “injury.” However, another plaintiff, the Eisenhower Center, still had standing since they provided care to injured persons. Presumably, their operations may be affected by continuing application of the amendments moving forward. However, since the trial court had dismissed them as well, the Court of Appeals remanded the case for further discovery on that issue.

Judge Markey authored a dissenting opinion that largely disagreed with both the intent analysis of the majority and the “public good” of the statute. She would determine that retroactive application was not only intended by MCL 500.2111f(8), but that the public good achieved by the statute demanded that the courts defer to the Legislature in enacting it.

It is unclear if either party will appeal to the Supreme Court or if they will instead go through the discovery process before the trial court before pursuing additional appeals. At this time, however, any claims where the person was injured prior to June 11, 2019 should be adjusted under the statute in existence at that time.