

# Court of Appeals Says Michigan No-Fault Fee Schedule and Attendant Care Limitations Do Not Apply to Pre-Reform Losses

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The Michigan Court of Appeals issued its long-awaited decision in *Andary v USAA*, which has implications on insurance claims handling.

The Court was considering whether legislative amendments to the No-Fault Act - specifically, the fee schedule and caps on family-provided attendant care contained in MCL 500.3157 - apply retroactively when a person was injured before June 11, 2019, and whether the legislative amendments as a whole violated the Michigan Constitution.

On August 25, 2022, the Court ruled that 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. Therefore, the fee schedule and attendant care cap cannot be applied to claims made by “individuals who were injured before its effective date, even as to services provided after its effective date.”

The Court also stated that 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.

It is unclear if parties will appeal to the Supreme Court or if they will go through the discovery process before the trial court before pursuing additional appeals. At this time, however, any insurance claims where the person was injured prior to June 11, 2019, should be adjusted under the statute in existence at that time. It is also important to note that the opinion generally appears to consider June 11, 2019 as the “effective date” for the statute, but that the fee schedule provision is effective July 2, 2021; therefore, there may still be questions regarding a person’s claims if they were injured “in between” those dates.

## PRACTICE AREAS

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Insurance Defense

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