



## Shiftin' Gears - Dondi Vesprini

I hope everyone has been having an enjoyable summer. It has been a continued effort in Lansing to right the wrongs that no fault reform has done to motorcyclists in depriving us of our own choice of no-fault medical expense cap and instead handcuffing us to the no fault medical expense cap chosen by the motor vehicle involved in the accident. The fight continues in Lansing to rectify this and urge legislators to pass a bill echoing that which I drafted formerly known as HB 4809, as I continue to represent injured motorcyclists who are feeling the effects of what no fault reform did to them, in many cases being situations where the injured motorcyclists' medical expenses have exceeded the medical cap of the involved motor vehicle that the motorcyclist is handcuffed to, resulting in the motorcyclist having to pay medical bills out of their own pocket or out of their pain and suffering settlement. This continues, as it should, to be the first priority in Lansing in an effort to give motorcyclists their own choice in no fault medical expense caps just like operators of motor vehicles, bicyclists, pedestrians, operators of off-road vehicles enjoy. This is an important fight worth having, just ask any injured motorcyclist who has been stung by this law, and I continue to urge your support in contacting your legislators to achieve equality for motorcyclists.

It has also been an interesting Summer in the Michigan Supreme Court as it considered the issue of whether no fault reform's 2019 limitations on in-home family-provided attendant care and new and reduced fee schedules that medical providers that treat no fault patients must abide by could be applied to a claimant seeking no fault benefits under their no-fault insurance policies that had been issued prior to the 2019 no fault reform.

In the case of *Andary v USAA*, the plaintiff's had been injured in auto accidents prior to 2019 and had been receiving no fault benefits under auto insurance policies purchased by family members of which they were covered persons per the terms of the policy. Up until no fault reform took effect

*September 2023*

in 2019, they had been receiving no fault benefits under the auto insurance policies and laws then in effect which among other things provided for uncapped lifetime medical expenses, including attendant care benefits.

In *Andary*, the plaintiff's argued that by retroactively applying the 2019 no fault reform laws to them would violate their rights.

In a resounding victory for those who were both injured prior to the 2019 effective date of the no fault reform laws and had been claiming no fault benefits under auto insurance policies of which they covered persons under the terms of the policy, on July 31, 2023 the Michigan Supreme Court held that the plaintiff's "rights to the PIP (no fault) benefits at issue in this case were both contractual and statutory in nature, and the 2019 no-fault amendments did not retroactively modify their vested contractual rights." (caption added). The Court went on, "Accordingly, PIP benefits under a no-fault insurance policy remain binding postinjury as to the individuals covered by the policy unless clearly and retroactively invalidated by the Legislature."

The Court cited insurance law for the proposition that "It has long been the rule in Michigan that for insurance purposes the rights and obligations of the parties vest at the time of the accident. For purposes of a no-fault policy of insurance, this means that neither the insured nor the insurer can unilaterally change the terms of a policy after a covered accident occurs. The scope of PIP benefits under an insurance policy vests at the time of injury. *Andary's* and *Krueger's* rights to PIP benefits under the applicable no-fault insurance policies vested, at the latest, when their injuries occurred, and they first became eligible for PIP benefits. That was also when the insurers'



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## Shiftin' Gears Cont'd - Dondi Vesprini

legal obligation to pay PIP benefits for all reasonable and necessary medical expenses at the statutorily mandated minimum level, as incorporated into the insurance contract, was triggered.”

While there is no doubt that this decision serves as a major victory for injured motorists, the Court would not go so far as to apply its decision to motorcyclists injured prior to the 2019 no fault reform date, who are claiming no fault benefits from the auto insurance policy of the motor vehicle involved in the accident. As you may know, when a motorcyclist is involved in an accident with a motor vehicle, the motorcyclist claims his/her no-fault benefits from the insurer of the owner or registrant of the motor vehicle involved in the accident. This means that a motorcyclist's claim for no fault benefits in this situation is purely statutory, as the motorcyclist will not be an insured or covered person under the terms of the motorists auto insurance policy. The Court specifically noted “Our decision is limited to those individuals, like Andary and Krueger, who are entitled to PIP benefits because they were directly covered by a no-fault insurance policy at the time of their accident either as the named insured or as a covered individual under the policy. We do not decide whether individuals who have a purely statutory claim to no fault PIP benefits, such as under MCL 500.3114(4) or MCL 500.3115, are entitled to the same protections.

Pursuant to Andary then, anytime the owner, operator, or registrant of the involved motor vehicle has insurance, since it is that insurance that is responsible for the motorcyclists no fault benefits per statute, the motorcyclist would not be grandfathered into the old no fault law. Under current law, a motorcyclist is only allowed to claim no fault benefits from his OWN auto insurer if the owner, operator or registrant of the motor vehicle involved in the accident has no insurance. Only under that circumstance, as the motorcyclist would be claiming benefits from his own auto policy, if the accident

occurred prior to no fault reform effective date in 2019, would he/she be grandfathered in under the old no fault law just like the plaintiffs in Andary were.

While this decision signals a blow to the oppressive no fault reform we are all now living under, it also amplifies the need to get our insurance bill mentioned earlier passed in Lansing. If our bill (formerly known as HB 4809) that I drafted were passed, it would require that an injured motorcyclist's no-fault benefits be paid by the motorcyclist own auto insurance right from the start. In that circumstance, not only would the motorcyclist get the benefit of the medical expense cap he/she chose for himself/herself, but any motorcyclist injured before no fault reform's effective date in 2019 would be grandfathered in under the old no fault law because his/her no fault claim would be coming as the insured or covered individual under his/her own policy!

I will continue to beat the drum for the passage of our bill as it is critical to the well-being (both physically and financially) to everyone who operates a motorcycle in our State and I implore you to contact your legislators to get this fixed, as the next motorcyclist to be stung by no fault impact may very well be you or someone you love. As always, if anyone has any questions or if I can be of legal assistance to you or anyone you know who has been injured in a motorcycle accident, please don't hesitate to contact me as I successfully represent injured motorcyclists statewide.

Further, if you would like to have me come out to your Region or any other organization you belong to, to speak or give a presentation on the legal rights of an injured motorcyclist or on any specific topic that your group may be curious about, please don't hesitate to give me a call at (248-569-4646) or shoot me an e-mail at [Dondi@buckfirelaw.com](mailto:Dondi@buckfirelaw.com). I give presentations state-wide and there is never a charge associated with having me out. I enjoy having the opportunity to come out and meet motorcycle enthusiasts from all parts of our State!



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