A TIME FOR REFLECTION: MICHIGAN'S NO-FAULT REFORMS REVEAL THE NEED FOR MORE FUNDAMENTAL CHANGE TO MICHIGAN'S AUTOMOBILE INSURANCE SYSTEM

DAVID M. BOUTROUS[†]

[†] B.A. Political Science 2005, *summa cum laude,* University of Notre Dame; M.A. International Relations 2013, Maxwell School of Syracuse University; J.D. Candidate, May 2025, Wayne State University Law School; Assistant Editor, *Wayne Law Review*. Author is a litigation paralegal (insurance defense) at Slater Seibert PLLC, a law firm in Troy, MI. I want to acknowledge my wife, Diana R. Boutrous, for her endless supply of patience, support, and encouragement, without which I could not meet the rigors of law school and law review. I would also like to acknowledge my parents, Dr. James J. Boutrous and Gayle R. Boutrous (deceased), who provided constant love and motivation to succeed. Moreover, I would like to thank Kimberly K. Seibert, Managing Partner at Slater Seibert, PLLC, for her mentorship, and Professor Stephen Calkins of Wayne State Law, for his guidance during the Note writing process. Last but certainly not least, I would like to thank the *Law Review* editorial staff—in particular Alaina Norrito, Holly Gubachy, Lydia Dunn, and Frank Doud—for their meticulous edits and insightful feedback throughout this entire process.

I. INTRODUCTION

On October 1, 1973, the Michigan legislature enacted the No-Fault Act to provide "assured, adequate, and prompt" payment for motor vehicle accident injuries, and to supplant a tort system plagued by long payment delays and high costs.[1] While advocates of the no-fault scheme promised decreased costs, gradually Michigan auto premiums rose appreciably, leading to calls for reform.[2] On May 30, 2019, Governor Whitmer signed bipartisan no-fault auto insurance reform legislation (Public Acts 21 and 22), signifying to many legal practitioners and scholars "the end of an era."[3] The two major provisions of Public Act 21 were (1) the elimination of the requirement for policyholders to purchase lifetime unlimited Personal Injury Protection (PIP) benefits and (2) the implementation of a mandatory "fee schedule for [medical] providers."[4]

Four years after the legislature enacted the reforms, the Michigan Supreme Court issued its decision in *Andary v. USAA Casualty Insurance Co.*[5]—a case that undoubtedly has significant implications for the sustainability of the 2019 reforms. This Note argues that the Michigan Supreme Court's erroneous statutory interpretation in *Andary* further impedes the already modest cost-saving impacts of the 2019 reforms.[6] *Andary's* consequences, coupled with Michigan no-fault's historically poor cost-reducing record, requires a more robust change. This Note offers nationwide statistical data evidencing that no-fault has failed to deliver on its principal goal of reducing costs and that tort states consistently surpass no-fault states in reducing costs.[7]

In Part II, this Note examines the following: (1) no-fault's origin in the United States and in Michigan; (2) no-fault's abrupt rise and equally abrupt fall; (3) Michigan's especially poor no-fault performance on cost containment; (4) Michigan's 2019 legislative reforms which the legislature enacted to reduce no-fault's costs and *Andary's* relationship to

---

1. MICH. COMP. LAWS §§ 500.3101–79 (2019); Wayne J. Miller, *Michigan No-Fault Insurance Guide 2019*, MILLER & TISCHLER, P.C. at cover page (2019), https://www.millertischler.com/wp-content/uploads/2021/03/MT-No-Fault-Booklet-web-version-3-1.pdf [https://perma.cc/Q5Q7-8V89]; Shavers v. Att'y Gen., 402 Mich. 554, 267 N.W.2d 72 (1978).

2. Wayne J. Miller, *No-Fault Reform 2019: Shame,* 12 J. INS. & INDEMNITY L. 2, 3–4 (2019).

3. 2019 Mich. Pub. Acts 21, 22 (codified as amended in scattered sections of MICH. COMP. LAWS §§ 501.3101–79); Ronald M. Sangster, *No-Fault Reform—The End of An Era – Part I,* 12 J. INS. & INDEMNITY L. 3, 8 (2019).

4. Briana Combs, *Michigan's No-Fault Reform: A Nightmare for Victims and Their Providers*, 66 WAYNE L. REV. 895, 899–900 (2021).

5. Andary v. USAA Cas. Ins. Co. et al., 512 Mich. 207, 1 N.W.3d 186 (2023).

6. *See* discussion *infra* Section III.B.1.b.2.

7. *See infra* Section II.D.

those efforts; and (5) no-fault states' performance as compared to tort states with a focus on cost containment. This Note will argue that these five factors indicate that Michigan's no-fault system has failed miserably at reducing costs. In Part III, this Note argues that Michigan's 2019 reforms are highly unlikely to solve the problem of high automobile insurance premiums. The *Andary* decision further reduces the chances of the 2019 reforms working as intended because the court's holding increases the likelihood that auto insurers will raise premium rates in the short to medium terms.[8] Finally, even if the court correctly decided *Andary*—which this Note argues it did not—Michigan's no-fault system is beyond the point of further reforms and the Michigan legislature should repeal the no-fault system in favor of a tort system.[9]

II. BACKGROUND

A. The No-Fault Experiment in Michigan and the United States

On October 1, 1973, the Michigan legislature enacted the No-Fault Act to provide "assured, adequate, and prompt" payment for injuries arising out of motor vehicle accidents and to supplant a tort system plagued by long payment delays and high costs.[10] Under a no-fault system, individuals injured in auto accidents generally may "seek reimbursement for their medical expenses [and wage loss] from their own insurance under their Personal Injury Protection (PIP) coverage regardless of [which party] is at fault for the accident."[11] By contrast, under a tort system, the at-fault driver pays the costs of the accident—or at least the innocent driver's "proportional amount of the fees incurred"—through their own liability insurance coverage.[12]

The no-fault model is traced to the industrialization era.[13] Novel manufacturing technologies increased worker productivity and created more injured workers, which in turn created an impetus to implement

8. *See infra* Section III.B.2.

9. *See infra* Section III.C.

10. Miller, *supra* note 1, at cover page.

11. Patricia Born & Robert W. Klein, *No-Fault Auto Insurance Reform in Michigan: An Initial Assessment*, 2 (Apr. 3, 2023), https://www.iii.org/sites/default/files/docs/pdf/born_klein_michigan_no-fault_paper_public_4-3-2023.pdf [https://perma.cc/B5F8-NQT8].

12. Rachel Bodine, *What's the Difference: No-Fault vs. Tort Car Insurance*, CARINSURANCE.ORG (Nov. 1, 2023) https://www.carinsurance.org/whats-the-difference-no-fault-vs-tort-auto-insurance-705/ [https://perma.cc/9QBA-56TB].

13. Trevor M. Gordon, *To Reform or Repudiate? An Argument on the Future of No-Fault Auto Insurance*, 17 QUINNIPIAC HEALTH L.J. 63, 66 (2014).

safeguards to protect workers.[14] "The financial uncertainty that surrounded tort liability for on-the-job injuries prompted some employers to band together with reformers" to implement the first "liability without fault" paradigm in the workers' compensation arena.[15] By the 1930s, public dissatisfaction with the tort system also manifested itself in the arena of compensation for auto accident-related injuries.[16]

In the 1930s and 1940s, auto accidents represented an ever-increasing source of injury, like industrial accidents.[17] The automobile industry's growth greatly increased the damage and injuries resulting from auto accidents.[18] By 1930, automobile accidents had killed more than 30,000 people—"a fatality rate more than 20 times higher" than in 2010.[19] Despite the high fatality rate, the injured or surviving party could only recover from a few sources.[20] Consequently, many victims of auto accidents "remained wholly uncompensated."[21]

1. Keeton and O'Connell's No-Fault Paradigm

The pressure to find a workable alternative to the tort system mounted as the number of uncompensated auto accident victims grew.[22] In light of this dynamic, Professors Robert Keeton and Jeffrey O'Connell proposed a solution predicated on the modern no-fault concept.[23] Keeton and O'Connell argued that too many individuals suffering economic loss from auto accident injuries remained uncompensated; in fact, the tort liability system left 63% of all victims with no compensation.[24] Furthermore, even when the tort system did provide compensation, the amount was too small and the delivery was too slow.[25] As Keeton and O'Connell plainly noted, "[O]ur system for compensating traffic victims is inadequate—rife with under-compensation or complete lack of compensation of many victims

14. *Id.*
15. *Id.*
16. *Id.* at 66–67.
17. JAMES M. ANDERSON ET AL., THE U.S. EXPERIENCE WITH NO-FAULT AUTOMOBILE INSURANCE: A RETROSPECTIVE 23–24 (2010) (ebook).
18. *Id.* at 23.
19. *Id.*
20. *Id.*
21. *Id.* at 23–24.
22. Norman Freeman Engstrom, *An Alternative Explanation for No-Fault's "Demise"*, 61 DEPAUL L. REV. 303, 317–18 (2012).
23. *Id.* at 318.
24. ROBERT E. KEETON & JEFFREY O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 125–40 (1965).
25. *See* Engstrom, *supra* note 22, at 318.

and overcompensation of others, as well as hardship, waste, and delay."[26] Accordingly, Keeton and O'Connell believed that the law should abolish the tort system and supplant it with a comprehensive no-fault plan in which motorists would bear the burden, through premiums, of providing auto accident victims protection as a cost of driving.[27]

Keeton and O'Connell's no-fault paradigm rapidly won people over, particularly among academics and esteemed editorial boards.[28] Influential lobby groups—including insurers, consumer groups, unions, the American Association of Retired Persons, and the National Association of Insurance Commissioners—also supported the no-fault movement.[29] The no-fault system also had vociferous critics, including the plaintiffs' bar and the American Bar Association.[30] Plaintiffs' attorneys were arguably most hostile to no-fault, "believing (incorrectly, it would turn out) that the reforms would decimate their bread-and-butter caseload."[31]

Keeton and O'Connell's vision became reality in the early 1970s.[32] In 1971, the Massachusetts state legislature was the first state to codify a variant of Keeton and O'Connell's proposal into law, officially ushering in the "no-fault era."[33] Between 1971 and 1976, 15 other states—including Michigan—soon followed Massachusetts's lead.[34] The result was a "diverse menagerie of varying interpretations of the basic [n]o-[f]ault premise, with each state attempting to brew an ideal portion combining the innovating aspects of [n]o-[f]ault, tempered by comforting familiarity of the tort system as a fallback."[35] Despite no-fault's abrupt ascendance in the 1960s and early 1970s, the window for enactment of no-fault legislation was remarkably narrow.[36] From 1971 to 1976, 16 states enacted no-fault, after which time adoption of no-fault "quite abruptly" stopped.[37] In fact, "no new state has enacted a no-fault regime since 1976," and a handful of states—including Colorado, Connecticut, Georgia, Nevada,

26. *See* KEETON & O'CONNELL, *supra* note 24, at 67; Engstrom, *supra* note 22, at 318.
27. Engstrom, *supra* note 22, at 318.
28. *Id.* at 322.
29. *Id.*
30. Id. at 322–23.
31. Gordon, supra note 13, at 68.
32. *Id.*
33. *Id.*
34. *Id.* at 65.
35. *Id.* at 68.
36. *See* Engstrom, *supra* note 22, at 306, 347–48.
37. *Id.* at 306–07; *see also id.* at n. 17 (indicating that Massachusetts enacted no-fault in legislation in 1971, followed by Florida (1972); Connecticut, Hawaii, Michigan, Nevada, New Jersey (1973); Colorado, Kansas, New York, Utah (1974); Georgia, Kentucky, Minnesota, Pennsylvania (1975); North Dakota (1976)).

New Jersey, and Pennsylvania—have repealed their mandatory no-fault regimes.[38]

2. Michigan's No-Fault Experience

Michigan was a major participant in the debate over the inadequacies of the automobile accident compensation system.[39] In 1965, the Michigan legislature first considered supplanting the tort system with a no-fault scheme when then state senator and future Detroit mayor Coleman A. Young introduced a proposal premised on the Keeton-O'Connell plan.[40] Prior to Young's proposal, Michigan conducted a survey on auto-accident injuries; the survey found, among other things, that in catastrophic losses, the chances of a settlement fully compensating an individual were alarmingly poor.[41] For example, "[i]n losses of $25,000 or more, 71% of settlements covered 25% of the economic loss…and no injured party settled for more than 75% of [their] economic loss."[42] The survey also found that claimants who filed an accident-related tort suit generally waited one to three years for some type of settlement; of those cases that went to trial, "67% [of claimants] waited two years or more."[43] In short, injured parties in Michigan experienced the same problems—inadequate compensation and protracted delays in claim settlement—that no-fault advocates identified with the traditional tort-based system, and Michigan's automobile-to-people ratio statistics largely tracked the national statistics.[44]

According to the Michigan Chamber of Commerce, from 1941 to 1971, Michigan's population increased roughly 60% while "the number of automobile registrations…increased 300%, five times the rate of the population."[45] Indeed, at the same time legislators in Michigan debated implementation of a Keeton and O'Connell-type no-fault regime, Detroit turned out "two cars for every person who would be born on a given day."[46] Moreover, costs associated with property damage "increased 62%

38. *Id*; *see also id.* at n. 18 (indicating that New Jersey and Pennsylvania replaced their no-fault regimes with choice systems, "which permit motorists to choose to surrender the right to claim for noneconomic damages…in return for discounted premiums."

39. James T. Mellon & David A. Kowalski, *The Foundations and Enactment of Michigan Automobile No-Fault Insurance*, 87 U. DET. MERCY L. REV. 653, 671 (2010).

40. *Id.* at 674–75.

41. *Id.* at 671.

42. *Id.*

43. *Id.* at 672.

44. *Id.* at 672–73.

45. Mellon & Kowalski, *supra* note 39, at 673; Mich. State Chamber of Commerce, State Legislative Report: Automobile Insurance Reparations 2 (1971).

46. Mellon & Kowalski, *supra* note 39, at 673.

while the costs for auto repair and for hospital stays more than doubled."[47] By 1971, most Michiganders agreed that the *status quo* tort system for auto-accident compensation was flawed—the only question was how to fix it.[48] After considerable debate among Michigan legislators as to the proper replacement system, they reached a compromise whereby they did not eliminate the tort system, but significantly restricted access to it.[49] On October 1, 1973, the Michigan legislature enacted this compromise legislation—which created what would eventually come to be known as *modified no-fault*—birthing Michigan's no-fault chapter.[50]

A *modified no-fault* system guarantees a certain level of economic loss benefits to all accident victims, while imposing a threshold injury requirement—either verbal or monetary—on all victims who pursue tort claims for noneconomic loss against the at-fault party.[51] A monetary threshold requires that an injured person incur a minimum specified dollar amount of medical expense and wage loss before that individual is eligible to file a negligence suit.[52] By contrast, a verbal threshold qualitatively defines the severity of injury necessary for an injured individual to bring a claim for noneconomic damages.[53] In Michigan, a verbal threshold state, a plaintiff establishes a threshold injury by showing that their injury amounted to a "serious impairment of body function, or permanent serious disfigurement."[54] This threshold is a question of law that the court decides.[55]

Michigan's no-fault system represents a "trade-off" between the payment of economic damages and noneconomic damages.[56] This trade-off results in a basic *quid pro quo*: "guaranteed" compensation from the accident victim's own insurance company while compensation for noneconomic loss is barred unless the accident victim "sustained an injury of sufficient severity to qualify for such compensation" (the injury severity standard is the tort threshold).[57] This trade-off's balance can be "delicate"

---

47. *Id.*

48. *Id.* at 677.

49. WAYNE J. MILLER & GEORGE T. SINAS, MOTOR VEHICLE NO-FAULT IN MICHIGAN – REVISED 3–4 (SIMICO PUBL'N: 2017).

50. *See* Mellon & Kowalski, *supra* note 39, at 679.

51. *See* MILLER & SINAS, *supra* note 49, at 4.

52. *Id.*

53. *Id.*

54. MICH. COMP. LAWS § 500.3135(1) (2019).

55. MICH. COMP. LAWS § 500.3135(2)(a) (2019); *See generally* Louis B Cristo, *Litigating the No-Fault Serious-Injury Threshold*, 59 AM. JUR. TRIALS § 347 (1996).

56. MILLER & SINAS, *supra* note 49, at 3–4.

57. *Id.* at 3 (explaining that in Michigan, the plaintiff pierces the threshold by demonstrating that plaintiff suffered "serious impairment of body function, or permanent serious disfigurement"); *see* MICH. COMP. LAWS § 500.3135(2)(a) (2019).

insofar as it seeks to ensure a "meaningful level of economic loss benefits for all accident victims" while also preserving the rights of "seriously injured innocent victims" to recover for diminished quality of life in tort, representing noneconomic benefits.[58] Thus, the Michigan no-fault system results from a "bargain" that is "struck between the proponents and opponents of no-fault regarding the essence of this balancing act."[59]

Both proponents and opponents of Michigan no-fault agree that striking a "bargain" depends on maintaining affordable auto insurance premiums.[60] For many years, Michigan's no-fault system worked fairly well with rates "at or below the national average," notwithstanding Michigan's mandate for unlimited PIP coverage.[61] However, premiums rose gradually, especially in the City of Detroit.[62] At one point, Michigan citizens were consistently "confronted with the highest auto insurance premiums in the country."[63] Insurers blamed fraudulent and excessive medical costs while "consumer groups…blamed insurers for predatory rate-making practices."[64] Regardless of who was to blame, the political and economic unsustainability of the high rates generated tremendous pressure on Michigan policymakers to change the law.[65]

B. MCL 500.3101 et. seq.: A Brief Overview of Michigan's No-Fault Act Before and After the 2019 Reforms

1. Michigan's No-Fault Act Before 2019

Michigan's no-fault system allows vehicle occupants, pedestrians, and even uninsured motorists to receive PIP benefits for accident-related injuries.[66] Pursuant to section 500.3105 of the Michigan Complied Laws (MCL), a no-fault insurer "is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle" regardless of fault.[67] Assuming MCL 500.3105 entitles a claimant to no-fault benefits, and the statute does not otherwise disqualify them from recovering PIP benefits, the final inquiry

58. MILLER & SINAS, *supra* note 49, at 3.
59. *Id.*
60. *Id.*
61. Miller, *supra* note 2, at 4.
62. *Id.*
63. Combs, *supra* note 4, at 896.
64. Miller, *supra* note 2, at 4.
65. *See* Combs, *supra* note 4, at 896 ("With such high rates burdening drivers across the State of Michigan, the Michigan Legislature realized the imminent need to bring down the cost of auto insurance for Michiganders").
66. Combs, *supra* note 4, at 897.
67. MICH. COMP. LAWS § 500.3105(1) (2019).

examines which of several potential insurers is responsible—or the highest in priority—for PIP benefit payments.[68] After the highest priority insurer is identified, that insurer must compensate for "[a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation."[69] Medical expenses, family-provided home attendant care, and home or van modifications all fall under allowable expenses.[70] With no limitations on dollar amount or time duration, the allowable expense benefit provision of MCL 500.3105 is broad-ranging and extensive.[71] Thus, the provision provides for the insurer's payment of legally required lifetime, uncapped medical and rehabilitation expenses.[72] In addition to allowable expenses, a claimant receives work loss benefits for up to three years after the accident; replacement service benefits such as "housekeeping, cooking, lawn and garden maintenance, laundry, baby-sitting/child care and other household duties"; attendant care including "activities of daily living," and survivor loss benefits.[73] To take advantage of replacement services or attendant care benefits, the injured motorist must elect an individual—such as a family member or nurse—to be his service provider, who directly receives the benefit payments.[74]

As mentioned above, the Michigan No-Fault Act also preserves the "rights of seriously injured innocent victims to recover noneconomic losses in tort for diminished quality of life caused by the negligent conduct of others."[75] In a third-party case, the innocent accident victim sues the at-fault driver (policyholder) for "pain and suffering damages, and excess economic damages."[76] While the at-fault party's insurer typically pays the damages, if the at-fault party does not have sufficient insurance or perhaps no insurance at all, the accident victim may sue their own insurance company for underinsured or uninsured benefits, respectively.[77] A third-party case requires the plaintiff accident victim to show, among other things, a "serious impairment of body function, or permanent serious disfigurement."[78]

---

68. MICH. COMP. LAWS §§ 500.3105, 500.3114–15 (2019).

69. MICH. COMP. LAWS § 500.3107(1) (2019).

70. MILLER & SINAS, *supra* note 49, at 4–7.

71. *Id.* at 155–57.

72. Miller, *supra* note 2, at 3–4.

73. *Michigan No-Fault Explained*, APPLEBAUM & STONE L. FIRM, https://applebaumstone.com/michigan-no-fault/ [https://perma.cc/338J-44LS].

74. Combs, *supra* note 4, at 898.

75. MILLER & SINAS, *supra* note 49, at 3.

76. *See Michigan No-Fault Explained*, *supra* note 73.

77. *Id.*

78. MICH. COMP. LAWS § 500.3135(1) (2019); *see generally* Louis B Cristo, *supra* note 55.

By allowing for unlimited PIP benefits for accident-related injuries while also providing access to tort in the case of serious injuries, Michigan's no-fault system proved to be the "most generous in the country."[79] But being the most generous no-fault state came at a heavy cost: Michigan motorists paid among the most exorbitant auto premiums in the nation.[80] The 2019 reforms, discussed in the next section, were designed principally to lower Michigan's high premiums.[81]

2. Main Provisions of Public Act 21 of 2019

On May 30, 2019, Governor Whitmer signed Public Act 21 into law with the express purpose of reducing auto insurance rates for policyholders.[82] The law signified the "end of an era" for many no-fault legal practitioners and scholars.[83] The Act purports to achieve rate reductions through two main provisions: (1) "tiered levels of PIP coverage" supplants the requirement that policyholders purchase unlimited coverage and (2) "fee schedules"—more accurately described as fee "caps"—for medical providers.[84] These two provisions starkly contrast with the preexisting statute which, as explained above, (1) mandated that policyholders purchase unlimited PIP coverage and (2) only required that medical providers' charges be reasonable and the expense be "reasonably necessary" to the claimant's recovery from accident-related injuries.[85]

a. Tiered Levels of Coverage

On July 1, 2020, Public Act 21, codified in MCL 500.3107c, took effect. It states that an "applicant or named insured shall . . . select 1 of the following coverage levels for personal protection insurance benefits": (a) A limit of $50,000 per individual per loss occurrence if the applicant or named insured is enrolled in Medicaid and the applicant's or named

79. Gordon, *supra* note 13, at 72–73.

80. Combs, *supra* note 4, at 896.

81. *See infra* Section II.B.2.

82. 2019 Mich. Pub. Acts 21 (codified as amended in scattered sections of MICH. COMP. LAWS §§ 501.3101–79); *See* Combs, *supra* note 4, at 898–99 (The goal of Michigan's initial implementation of the system was "to provide assured, adequate, and prompt payment for motor vehicle accidents.").

83. Sangster, *supra* note 3, at 8.

84. Combs, *supra* note 4, at 899–90; Sangster, *supra* note 3, at 15.

85. *See* Nasser v. Auto Club Ins. Ass'n, 435 Mich. 33, 49, 457 N.W.2d 637, 645 (1990); Manley v. Detroit Auto. Inter-Ins. Exch., 425 Mich. 140, 150, 388 N.W.2d 216, 220 (1986); Matthew S. LeBeau, *Looking Down the Road at Changes to the Michigan No-Fault Act*, 12 J. INS. & INDEMNITY L. 2, 24 (2019).

insured's spouse has qualified health coverage; (b) A limit of $250,000 per individual per loss occurrence; (c) A limit of $500,000 per individual per loss occurrence; or (d) No limit for personal protection insurance benefits under § 3107(1)(a).[86] Moreover, pursuant to MCL 500.3107d and MCL 3109a, an applicant may "opt out" of PIP benefits altogether under particular circumstances.[87] These tiered levels of benefit coverage supplanted the previous provisions of Michigan's No-Fault Act requiring motorists to purchase unlimited expense benefit coverage.[88] Accordingly, Section 500.3107c gave Michigan motorists the option of: unlimited PIP coverage (as before the 2019 reforms); a $500,000 in PIP coverage; a $250,000 in PIP coverage; $50,000 in PIP coverage "if the insured is eligible for Medicaid;" or the option to opt out of PIP coverage entirely provided the insured "maintains alternative health insurance coverage."[89]

MCL 500.2111f compliments the tiered levels of PIP coverage by setting forth mandatory premium reductions for each level of coverage selected; an insured that selects, for example, $250,000 in coverage will have a greater premium reduction than an insured who selects $500,000 in coverage.[90] Opting out of coverage entirely results in a 100% premium reduction; selecting $50,000 in coverage results in an average 45% premium reduction or greater; and selecting the $250,000 coverage option results in an average 35% premium reduction, while choosing $500,000 results in an average 20% reduction.[91] The mandatory premiums reductions notwithstanding, MCL 500.2111f(9) provides an "escape clause" for insurance companies "to continue rating their policies as they did prior to the passage of the new law."[92]

b. Fee Schedules for Medical Providers

On July 1, 2021, the other key provision of Public Act 21, MCL 500.3157 went into effect mandating a fee schedule for providers.[93] This fee schedule supplants the previous charge limitation of "reasonable" charge.[94] Pursuant to MCL 500.3157(2), a "physician, hospital, clinic or other person that renders treatment or rehabilitative occupational training"

86. MICH. COMP. LAWS § 500.3107c (2019).
87. *See* MICH COMP. LAWS § 500.3107d (2019); MICH. COMP. LAWS § 3109 (2019).
88. Miller, *supra* note 2, at 3–4.
89. Combs, *supra* note 4, at 900; *see also* Miller, *supra* note 2, at 3–4.
90. MICH. COMP. LAWS § 500.2111f (2019); Combs, *supra* note 4, at 900.
91. MICH. COMP. LAWS § 500.2111f (2019); *see also* Combs, *supra* note 4, at 900.
92. MICH. COMP. LAWS § 500.2111f(9) (2019); *see also* Combs, *supra* note 4, at 911, 914.
93. Miller, *supra* note 2, at 4.
94. *Id.*

to an auto accident victim may charge 200% of the amount that Medicare would pay for treatment provided subsequent to July 1, 2021 and prior to July 2, 2022.[95] Additionally, between July 1, 2022 and July 2, 2023, medical providers could charge a "reduced rate of 195% of the amount payable by Medicare, and any treatment provided after July 1, 2023 is only reimbursable to providers at a rate of 190% of the amount" that Medicare would pay.[96] Finally, under MCL 500.3157(7) if a provider delivered service is not payable by Medicare, the provider may charge only 55% of the cost "it would originally have charged for the service as of January 1, 2019."[97] In other words, there is a diminishing fee reimbursement schedule for provider services payable by Medicare: each year the reimbursable amount reduces by a certain percentage. For provider services not payable by Medicare, that provider facility may only charge 55% of what it charged for the same service before January 1, 2019.

The reforms also significantly limit the number of attendant-care hours providers can bill for accident-related injuries. For example, MCL 500.3157(10) does not mandate insurers to pay for at-home attendant care services that family members provide in excess of 56 hours per week, although MCL 500.3157(11) does give insurers the option to contractually provide for the "payment of an excess of 56 hours."[98] In a further effort to reduce costs, the reforms also enabled insurers, including the Michigan Catastrophic Claims Association (MCCA), "to institute greater control over the utilization of medical services arising from auto accidents."[99] Utilization reviews allow an insurer to screen medical services provided by medical providers to patients in order to ensure "quality of treatment, products, services, or accommodations…based on medically accepted standards."[100] Typically, the process begins with a medical provider

---

95. *See* MICH. COMP. LAWS § 500.3157(3); Combs, *supra* note 4, at 900; Miller, *supra* note 2, at 4.

96. Combs, *supra* note 4, at 900–01.

97. *Id.* at 901. MCL 3157(1) reads, in pertinent part:

> Subject to subsections (2) to (14), a physician, hospital, clinic, or other person that lawfully renders treatment to an injured person for an accidental bodily injury covered by personal protection insurance, or a person that provides rehabilitative occupational training following the injury, may charge a reasonable amount for the treatment or training. The charge must not exceed the amount the person customarily charges for like treatment or training in cases that do not involve insurance.
>
> Insofar as Subsection (2) is the fee schedule, it controls, thereby replacing the "reasonable" charge limitation that existed prior to the 2019 reforms.

MICH. COMP. LAWS § 500.3157(1).

98. MICH. COMP. LAWS §§ 500.3157(10)–(11) (2019); Combs, *supra* note 4, at 901.

99. Born & Klein, *supra* note 11, at 98.

100. *Id.*

submitting—at the insurer's request—medical records and other information concerning an insured's treatment or services rendered.[101] Under the reforms, a provider that "knowingly submits false or misleading records…to an insurer or the DIFS [Michigan Department of Insurance and Financial Services] commits a fraudulent insurance act and is subject to sanctions."[102]

c. Effectiveness of Public Act 21 of 2019

As a preliminary matter, it should be noted that the subsequent sections of Part II rely heavily on data. The data are important to show: (1) Michigan's continued inability to keep no-fault costs down; (2) the impact of Michigan's 2019 legislative reforms on Michigan's no-fault costs; and (3) no-fault states' performance as compared to tort states across the United States with a focus on cost containment. Essentially, and to oversimplify, this Note argues that Michigan's high no-fault costs combined with the impact of the 2019 legislative reforms and no-fault states' historical performance compared to tort states, supports the need to repeal Michigan's No-Fault Act and replace it with a tort system.[103]

As discussed above, the Michigan legislature enacted the no-fault system primarily to supplant a tort system plagued by long payment delays and high costs.[104] However, Michigan's no-fault system generated exceedingly high costs instead of reducing them, prompting the 2019 reforms. Nonetheless, the 2019 reforms are insufficient to justify Michigan's continued use of a no-fault system. Lawmakers' continued insistence on a no-fault regime flies in the face of nationwide statistical data evidencing that no-fault has failed to deliver on its principal goal of reducing costs and that tort states consistently surpass no-fault states on the cost metric.[105] For these reasons, this Note utilizes historical and modern data to demonstrate that the Michigan legislature's insistence on no-fault flouts common sense, to the detriment of Michigan motorists.

Early data provides some reason for optimism that Public Act 21 of 2019 has reduced auto insurance premiums in Michigan. According to insure.com the average auto insurance premium in Michigan for 2019 was $2,611, which was nearly "80% higher than the national average."[106] By

101. *Id.*
102. *Id.*
103. *See infra* Section III.
104. *See supra* Section II.A–B.
105. *See infra* Section II.D.
106. Barry Eitel, *Car Insurance Rates by State: The Most Expensive and Cheapest States for Car Insurance in 2023*, INSURE.COM (July 5, 2023), https://www.insure.com/car-

2021, the average insurance premium in Michigan fell to $2,112.[107] However, in 2022, Michigan's average premium rose to $2,133.[108] Notably, even though Michigan's average auto premiums in 2021 and 2022 were substantially lower than in 2019, the 2022 average premium was nonetheless the fourth highest in the United States.[109] Moreover, in Michigan the average expenditure, which is the weighted average of total consumer expenditures on auto insurance divided by the number of insured vehicles, increased from $984 in 2011 to $1,489 in 2019, followed by a sharp decrease to $1,419 in 2020.[110] Comparatively, in 2019 the national average expenditure was $1,071, and $1,047 in 2020.[111]

Statistics from MCCA provide further evidence of Public Act 21's cost-reducing effect. The MCCA's purpose was to "assume and distribute the cost of high PIP claims among all Michigan drivers."[112] The MCCA charges an annual assessment which insurance companies, in turn, pass on to policyholders.[113] "In 2019, the MCCA covered PIP claim costs exceeding $580,000 with an annual per vehicle assessment of $220."[114] As the 2019 reforms reduced claim costs, the MCCA assessments trended downward.[115] Indeed, in 2023, the annual assessment of drivers opting for unlimited PIP coverage was $74 per vehicle, down from $86 per vehicle prior to the reforms.[116] Additionally, in 2021, "the MCCA announced a $400 per vehicle refund for car owners who had insurance as of October 31, 2021."[117] According to the MCCA's press release, "its decision to return surplus assessment dollars to consumers is a direct result of the fee schedule, fraud-fighting measures, and other changes made to Michigan's no-fault insurance law through bipartisan reforms passed in 2019."[118]

---

insurance/car-insurance-rates.html [https://perma.cc/3T69-TGCS]; *see also* Born & Klein, *supra* note 11, at 5.

107. Patricia Born, Robert W. Klein, Lawrence S. Powell, *No-Fault Auto Insurance Reform in Michigan: An Initial Assessment*, J. INS. REG, Feb. 27, 2024. https://content.naic.org/sites/default/files/cipr-jir-2023-10.pdf [https://perma.cc/U7Q6-3PW7]; Born & Klein, *supra* note 11, at 5, 19–20.

108. Eitel, *supra* note 106; Born et al., *supra* note 107, at 4.

109. *See id.*

110. Born & Klein, *supra* note 11, at 20.

111. *Id.*

112. *Id.* at 12.

113. *Id.*

114. *Id* at 13.

115. *Id.* at 12.

116. Born & Klein, *supra* note 11, at 15; *see also* Born et al., *supra* note 107, at n.28.

117. Born & Klein, *supra* note 11, at 13–15.

118. *Id.* at 13 (quoting Press Release, Michigan Catastrophic Claims Association, Michigan Catastrophic Claims Association Announces $400 per-vehicle refund, https://michigancatastrophic.com/Portals/71/LiveArticles/503/MCCA%20Press%20Relea

3. Discontent with 2019 Reforms

Even if Public Act 21 has reduced premiums, it is not difficult to find vociferous critics of the legislation. First, some critiques focus on auto premiums remaining exceptionally high in Detroit while falling statewide.[119] Second, even if tiered coverage reduced premiums for those who opted for lower coverage, the increased costs of purchasing higher tort limits offsets any savings gained thereby.[120] A third criticism suggests that the fee schedule has—and will continue to—hurt the medical provider industry.[121]

To be sure, the above critics have evidence to back up their claims. According to a study by the Zebra, an insurance comparison website, the estimated average premium in Detroit decreased by 17.8% from 2019 to 2022, while the statewide premium dropped just 7.4% from 2019 to 2022.[122] Thus, premiums decreased more in Detroit than they have statewide.[123] In reality, premiums in Detroit "remain astronomically high, consuming about 18% of median household income."[124] Indeed, average auto insurance premiums in Detroit amount to "10.8% of the average personal income per capita in the city."[125] Additional data from the Zebra indicates that in 2019 the average Detroit premium was "roughly double" the average premium statewide, while in 2022, the Detroit premium was 93% higher than the premium statewide.[126] Moreover, according to the

---

se%20Surplus%20Refund%2012132021.pdf?ver=s1NxyyBvcNP3iiw0dBGf7Q%3d%3d [https://perma.cc/U6F8-5GTV].

119. *See, e.g.*, Amanda Nothaft & Patrick Cooney, *Building on Michigan's Auto Insurance Reform Law*, UNIV. OF MICH. POVERTY SOL., Dec. 2021, at 1, https://sites.fordschool.umich.edu/poverty2021/files/2021/12/PovertySolutions-Auto-Insurance-Reform-PolicyBrief-December2021.pdf [https://perma.cc/G64H-PXVD].

120. *See* Miller, *supra* note 2, at 5.

121. Combs, *supra* note 4, at 896.

122. Patricia Born & Robert W. Klein, *Policy Brief: No-Fault Auto Insurance Reform in Michigan: An Initial Assessment*, at 7 (Apr. 3, 2023), https://www.iii.org/sites/default/files/docs/pdf/born_klein_michigan_no-fault_policy_brief_public_4-3-2023.pdf [https://perma.cc/ZE2R-EREV]; *see also 2019 The State of Auto Insurance*, ZEBRA (2019), https://www.scribd.com/document/399383902/The-Zebra-State-of-Auto-Insurance-Report-2019 [https://perma.cc/5GK3-YLPZ]; *2022 The State of Auto Insurance*, THE ZEBRA (2022), https://www.thezebra.com/state-of-insurance/auto/2022/reports/The-Zebra-State-of-Auto-Insurance-Report-2022.pdf [https://perma.cc/LV5F-NDEF].

123. *Id.*

124. Nancy Kaffer, *Opinion: No-Fault Auto Insurance Reform Has Been a Disaster for Michigan*, DET. FREE PRESS (Feb. 17, 2022), https://www.freep.com/story/opinion/columnists/nancy-kaffer/2022/02/17/michigan-auto-insurance-reform/6800753001/ [https://perma.cc/G93K-LHZ7].

125. Born & Klein, *supra* note 11, at 108.

126. *Id.*

Zebra, as of 2025, Detroit's average annual premium was $5,300—the highest of any city in the United States.[127] Prior to the reforms, Michigan's No-Fault Act permitted insurers to use "non-driving factors"—including marital status, education, homeownership status, credit scores, and zip codes—to determine auto insurance rates, which led to higher rates in majority African American zip codes like Detroit.[128] The new law, codified as MCL 500.2114(4), putatively prohibits insurers from using the aforementioned non-driving factors.[129] However, post-reform rates in Detroit remain "highly correlated with race," resulting in little premium relief for Detroit residents.[130]

Regarding the second criticism—higher tort limits offsetting any savings from tiered coverage—it is not difficult to see how those who purchase coverages of less than the unlimited lifetime coverage under the new law will be potentially "exposed to all medical expense damages" exceeding their no-fault PIP policy limits.[131] For example, under MCL 500.3135(3)(c), a driver who "negligently hits and injures" someone "will no longer have tort immunity," but rather be exposed to all medical expense damages beyond the no-fault PIP limit that the injured insured individual chose.[132] Even though the new law requires insureds to purchase $250,000 or more in residual tort liability, an exposure for millions of dollars of excess medical loss in catastrophic cases would require higher tort liability coverage.[133]

Finally, the third criticism focuses on the reforms' deleterious impact on the medical provider industry combined with the absence of meaningful regulations on insurance companies—this criticism suggests that any notable regulations of insurance companies were conspicuously absent from Public Act 21, who were, at least in critics' eyes, the principal culprits behind higher premiums in the first place.[134] Instead, medical cost controls disproportionately harm medical providers, not insurance companies.[135] To these critics, the Act compromises medical providers' ability to operate profitably, leaving Michigan policyholders worse off than they were under the no-fault system in place prior to the Michigan

127. Renata Balasco, *Car Insurance Rates by City*, ZEBRA, https://www.thezebra.com/auto-insurance/how-to-shop/car-insurance-rates-city/ (Apr. 1, 2025). [https://perma.cc/6LJP-QVA9]

128. Nothaft & Cooney, *supra* note 119, at 2.

129. *Id.*

130. *Id.* at 3; *see infra* Section III.A.1.

131. Miller, *supra* note 2, at 5.

132. MICH. COMP. LAWS § 500.3135(3)(c) (2019); *see also* Miller, *supra* note 2, at 5.

133. Miller, *supra* note 2, at 5.

134. Combs, *supra* note 4, at 897, 899–902.

135. *Id.* at 901

legislature passing Public Act 21.[136] According to a Michigan Public Health Institute (MPH) study on the new fee structure's impact on the availability of medical services for people with catastrophic accident-related injuries, 73 participating medical organizations reported a "combined total of $81,366,027 loss in revenue during the last 12-month period."[137] More specifically, the 55% reimbursement cap under MCL 500.3157(7) affected the following operations of the organizations: (1) 140, or 51%, had to "significantly reduce" their services and products; (2) 96, or 35%, "cannot accept new patients" with auto insurance funding; (3) 30, or 11%, had to discharge patients; (4) 21, or 8%, had to "close operations completely"; and (5) 56, or 63%, reported that they "anticipated not being able to serve patients with auto insurance funding within the next 12 months."[138]

C. Andary v. USAA Casualty Insurance Company

Four years after the Michigan legislature enacted Public Act 21, the Michigan Supreme Court issued its decision in *Andary v. USAA Casualty Insurance Co.*[139]—a case having significant implications for the sustainability of the 2019 reforms. In *Andary,* plaintiffs were permanently disabled after sustaining traumatic brain injuries in automobile accidents prior to 2019, and their insurance policies and MCL 500.3101 provided them unlimited lifetime PIP benefits.[140] On August 25, 2022, the Michigan Court of Appeals held (in a 2-1 decision) that the no-fault fee schedule and 56-hours-per week limit on in-home, family provided attendant care do not apply retroactively to "those injured before the effective date of the amendments [reforms]."[141] As an alternative line of reasoning, the court

136. *Id.* at 902, 918–20; citing Miller, *supra* note 2, at 5–6 (Under MCL 500.2119f(9), insurance companies can "escape" the mandated premium reductions under MCL 500.2111f "if the increase results from applying rating factors as approved under this chapter."). According to Wayne J. Miller of *Miller & Tischler, PC*, this section is tantamount to an escape clause permitting insurers to avoid the premium reductions altogether, merely by rating policies as they would anyhow. MICH. COMP. LAWS § 500.2111f(9) (2019).

137. Born & Klein, *supra* note 11, at 96; Mich. Pub. Health Inst., *Phase II Provider Surgery Results from a Study Tracing Impact of Fee Changes in No-Faul Auto Insurance Reforms* (Aug. 2022) [hereinafter *Phase II*]; *See* Mich. Pub. Health Inst., *Phase I Provider Survey Results from a Study Tracking Impact of Fee Changes in No-Fault Auto Insurance Reform* (Dec. 21, 2021) [hereinafter *Phase I*].

138. Born & Klein, *supra* note 11, at 96–97; *Phase I*, *supra* note 137; *Phase II*, *supra* note 137.

139. Andary v. USAA Cas. Ins. Co., 512 Mich. 207, 1 N.W.3d 186 (2023).

140. *Id.* at 222, 1 N.W.3d at 186.

141. Andary v. USAA Cas. Ins. Co., 343 Mich. App. 1, 6, 996 N.W.2d 784, 786 (2022).

held that even if the legislature clearly intended Public Act 21 to apply retroactively to individuals who already were injured and receiving PIP benefits before the amendments' effective date, "retroactive application violates the Contracts Clause of the Michigan Constitution."[142] For the plaintiffs, the court's decision meant that they could continue to receive lifetime unlimited PIP benefits from their insurers, notwithstanding the 2019 reforms.[143] The Michigan Supreme Court granted defendants' leave to appeal.[144] On March 2, 2023, the Michigan Supreme Court heard oral arguments in the consolidated case and issued its opinion on July 31, 2023.[145]

The Michigan Supreme Court affirmed in part the Court of Appeals panel decision, holding that the "legislature did not clearly indicate that MCL 500.3157(7) and (10) apply retroactively to alter the vested contractual PIP benefits of previously injured individuals before the effective date of the amended statutes."[146] The court stated that "[t]he insurance policies covering plaintiffs . . . bind the insurance companies to their promise to provide PIP benefits under the law that existed at the time of injury to those individuals covered by the policies."[147] In short, the Michigan Supreme Court agreed with the Court of Appeals that medical cost controls do not apply retroactively to "the nearly 15,000 car crash victims" whose accidents occurred prior to June 11, 2019 when the amendments became effective; importantly, however, the court also held that the cost controls *do apply* to medical services for car crash victims whose accidents occurred *after* June 11, 2019.[148]

---

142. *Id.* at 24, 996 N.W.2d at 795.

143. Jessee A. Zapczynski, *Appellate Court Rule 2019 Michigan No-Fault Law Amendments Not Retroactive, Violate State's Constitution Michigan Supreme Court Rules 2019 No-Fault Act Amendments Not Retroactive*, PLUNKETT COONEY TRANSP. L. HUB (Aug. 25, 2022), https://www.plunkettcooney.com/publications-No-Fault-amendments-not-retroactive [https://perma.cc/MJ9R-RQWW].

144. *Andary*, 512 Mich. at 230, 1 N.W.3d at 199.

145. *Michigan Supreme Court Hearing on Auto No-Fault Reform: What to Know*, BRIDGE MICH. (Mar. 3, 2023), https://www.bridgemi.com/michigan-government/michigan-supreme-court-hearing-auto-no-fault-reform-what-know [https://perma.cc/QK5T-5F4W].

146. *Andary*, 512 Mich. at 271, 1 N.W.3d at 221.

147. *Id.* at 215, 1 N.W.3d at 191–92.

148. *Id.* at 250, 1 N.W.3d at 210; *see, e.g.*, JC Reindl, *Michigan Supreme Court: No-Fault Overhaul Doesn't Apply to 15,000 Catastrophic Survivors*, DET. FREE PRESS (July 31, 2023), https://www.freep.com/story/money/business/michigan/2023/07/31/michigan-supreme-court-no-fault-case/70496575007/ [https://perma.cc/6KT3-PGUY]. According to the court, "the prospective application of the new fee schedule in MCL 500.3157(7) is reasonably and rationally related to a legitimate legislative purpose, regardless of the effectiveness or wisdom of the policy." *Andary*, 512 Mich. at 271, 1 N.W.3d at 221.

Andary thus addressed whether specific cost-reduction provisions of Public Act 21 were retroactive and, if so, whether they passed constitutional muster. *Andary* did not address, however, the larger policy question of whether a no-fault system is cost effective when compared to a tort system, which is addressed in the following section.

D. No-Fault System and Tort System

Putting aside for the moment Michigan's No-Fault Act and the 2019 reforms to it, the Note turns to an examination of no-fault's historical nationwide performance as compared to the tort system. Proponents of the Keeton and O'Connell no-fault compensation scheme predicted three principal results of no-fault adoption: (1) mandatory first-party insurance compensating accident victims "would ensure that a much larger percentage of injured motorists . . . received adequate compensation;" (2) faster compensation to, and increased medical access for, injured motorists; and (3) "dramatic" cost reductions due to "reduced administrative and legal expenses."[149] Proponents used cost reduction as arguably the most important selling point of the Keeton and O'Connell paradigm.[150] Indeed, "[t]his promise of rate reduction was the most politically potent argument in the no-fault proponents' arsenal. And it was a promise that was relentlessly paraded before the public."[151]

One study conducted by the RAND Institute provides some insight into whether Keeton and O'Connell's predictions came to fruition. A RAND Institute study examined Insurance Research Council survey data from individuals involved in automobile accidents in 1986, 1992, 1998, and 2002.[152] According to the RAND study, no-fault states[153] delivered on

149. Gordon, *supra* note 13, at 67.

150. Engstrom, *supra* note 22, at 338.

151. *Id.* at 334. (internal quotation marks omitted).

152. ANDERSON et al., *supra* note 17, at 83. Admittedly, the data from the RAND Institute study are outdated. Gordon, *supra* note 13, at 76 n.109. Nonetheless, there is no reason to believe that the inferences drawn from the RAND data are not reflective of modern trends. *See* Eitel, *supra* note 106; *see also* Eitel, *infra* note 246; and Eitel, *infra* note 247. For example, since the RAND study was published in 2010, the costs associated with no-fault in Michigan continued to increase, leading ultimately to Public Act 21 of 2019. *See supra* Section II.B.2.

153. Today, Michigan is one of nine states with a "mandatory" no-fault system, also referred to as a "true" no-fault states; three additional states have "choice" no-fault systems (Kentucky, New Jersey, Pennsylvania). Born & Klein, *supra* note 11, at 6–7. Under "choice no-fault" systems, drivers are given the option to choose between a fault or a no-fault policy. *Id.*; MILLER & SINAS, *supra* note 48, at 4. In a mandatory no-fault state, PIP is the primary source of recovery for persons injured in auto accidents. Born & Klein, *supra* note 11, at 7. PIP provides coverage for medical expenses and lost wages to an insured regardless of who is at fault in the accident. *Id.* Currently, 12 states that currently have or

the promise of higher compensation rates for accident victims compared to tort states.[154] The RAND Institute examined the "extent to which individuals report paying out of pocket for economic expenses incurred as a result of motor-vehicle accidents."[155] The study concluded that no-fault offers "slightly higher reimbursement rates than other regimes," including tort.[156] Specifically, accident victims in no-fault states reported receiving reimbursements five to eight percent higher than those in tort states.[157]

The RAND study also looked at speed of compensation and access to medical treatment. The RAND study found that no-fault states processed claims faster than tort states.[158] Specifically, the study discovered that a "substantially higher percentage of claims are resolved within three months in no-fault states than in tort states."[159] In addition to processing claims faster, the study indicated that no-fault states surpass tort states on access to medical treatment.[160] In 1987, 1992, and 1997, a higher percentage of claimants in no-fault states visited a chiropractor or physical therapist compared to claimants in tort states.[161] In 2007, the final year of the study, 37.3% of claimants in no-fault states visited a chiropractor compared to 31.5% of claimants in tort states.[162] Moreover, in 2007, 22.9% of claimants in no-fault states visited a physical therapist, compared to 13.4% in tort states.[163]

In summary, the data show—as promised by no-fault advocates—that no-fault states delivered "slightly" higher compensation rates for accident victims, processed claims faster, and provided greater access to medical care, compared to tort states.[164]

---

include a no-fault system are: Florida, Michigan, New Jersey, New York, Pennsylvania, Hawaii, Kansas, Kentucky, Massachusetts, Minnesota, North Dakota, and Utah. Born & Klein, *supra* note 11, at 6–7; MILLER & SINAS, *supra* note 48, at 4. The District of Columbia and Puerto Rico also have some form of No-Fault insurance. Born & Klein, *supra* note 11, at 6–7; MILLER & SINAS, *supra* note 48, at 4. Finally, eleven of the twelve no-fault states have capped benefits; only Michigan offers unlimited benefits. Born & Klein, *supra* note 11, at 6–7; MILLER & SINAS, *supra* note 48, at 4.

154. ANDERSON et al., *supra* note 17, at 87–88.
155. *Id.* at 87.
156. *Id.*; Gordon, *supra* note 13, at 88.
157. ANDERSON et al., *supra* note 17, at 87.
158. *Id.* at 88–90.
159. *Id.* at 89.
160. Gordon, *supra* note 13, at 78; ANDERSON, et al., *supra* note 17, at 120–27.
161. ANDERSON et al., *supra* note 17, at 120–27.
162. *Id.* at 121–22, Tbl. 5.8.
163. *Id.*
164. *Id.* at 77–131.

1. Cost Containment

While no-fault states surpassed tort states on compensation amounts, speed of claim processing, and access to medical care, tort states decidedly outperformed no-fault states on cost reduction.[165] Proponents of no-fault primarily "packaged and sold" the system to the consumer as a way to "control the cost of insurance."[166] If no-fault's principal objective was cost containment, the data indicates that no-fault has failed in achieving that objective.[167] The same RAND Institute study examined available data and compared the auto-insurance premiums and costs of compensating auto accident victims in states under no-fault, tort, and add-on systems[168] from the 1980s to 2004.[169] [Author please clarify the source of the assertion. The sentence initially alludes to the 2010 RAND study but then cites the 2018 Insurance Factbook and Born & Klein. It is unclear whether the assertion is based on the RAND study or another source.]In add-on states, "drivers can purchase medical coverage and other first-party benefits from their own insurance company as they do in no-fault states," but these states do not restrict third-party lawsuits; importantly, in add-on states, first-party coverage "may not be mandatory" and benefits may be lower than in "true" no-fault states, such as Michigan.[170]

For the entirety of the over 20-year period of the RAND study, premiums in no-fault states were "consistently higher" than in tort states, with the disparity at times running into the "hundreds of dollars."[171] Over time, this premium gap widened—in 2004, premiums in no-fault states were 50% higher than those in tort states.[172] Even more alarming was that cost increases were not limited to PIP.[173] Proponents assumed that under no-fault savings would result from "shifting the burden of compensation from third party to first party insurance".[174] Accordingly, once no-fault supplanted tort, it was generally anticipated that average bodily injury (BI)

165. *Id.* at 144.

166. Engstrom, *supra* note 22, at 334.

167. Gordon, *supra* note 13, at 74.

168. *2018 Insurance Fact Book*, INS. INFO. INST., at 94, https://www.iii.org/sites/default/files/docs/pdf/insurance_factbook_2018.pdf [https://perma.cc/2JSD-NCLH]; Born & Klein, *supra* note 11, at 6 (explaining that as of today, "[t]here are 39 states with a tort liability system and 11 states that are termed Add on states) (emphasis omitted); *see also* Born et al., *supra* note 107, at 10 ("[t]here are 39 states with a tort liability system and 11 states that are termed add-on states.") (emphasis omitted).

169. ANDERSON et al., *supra* note 17, at 63.

170. *See 2018 Insurance Fact Book*, *supra* note 168, at 94.

171. ANDERSON et al., *supra* note 17, at 66; Gordon, *supra* note 13, at 74–75.

172. ANDERSON et al., *supra* note 17, at 66.

173. Gordon, *supra* note 13, at 75.

174. *Id.*

premiums would gradually trend downward.[175] However, this expectation was not met: BI premiums proved to be higher in no-fault states than states with tort systems.[176]

The "experience of states that returned to the tort" system after experimenting with various no-fault systems proves illuminating and further evidences that "[n]o-[f]ault failed in its goal of cost containment."[177] Georgia, Connecticut, Colorado, Nevada, New Jersey, and Pennsylvania all had one thing in common: they repealed no-fault due to its high costs.[178] In 1980, Nevada repealed its no-fault legislation, followed by Pennsylvania in 1984, New Jersey in 1989, Georgia in 1991, Connecticut in 1994, and Colorado in 2003.[179] All six states—especially, Georgia, Connecticut, and Colorado—experienced a "striking pattern of substantial cost decreases" after the repeal.[180] Colorado's repeal resulted in an average premium decrease exceeding $100 "within a year of returning to a tort regime," while Connecticut had a similar precipitous decrease after switching to tort.[181] Georgia experienced a 20 percent drop in premiums after repealing its no-fault system.[182]

2. Medical and Litigation Costs

No-fault states surpassed tort states on medical care accessibility, and motorists in no-fault states utilized medical services at higher rates compared to those in tort states.[183] Unsurprisingly, increased medical utilization drove up premium costs in no-fault states.[184] However, no-fault advocates likely could not have anticipated the extent to which medical costs "skyrocketed" in no-fault states.[185] According to the RAND Institute, in 1987, an accident victim in a no-fault state reported expenses that were on average 5.86% higher than a victim in a tort state; by 1997, this number ballooned to 51%, down to 50% in 2002, before settling on 42% in 2007.[186]

---

175. ANDERSON et al., *supra* note 17, at 69; Gordon, *supra* note 13, at 75.
176. Gordon, *supra* note 13, at 75.
177. ANDERSON et al., *supra* note 17, at 74; Gordon, *supra* note 13, at 75.
178. JC Reindl, *How Aggressive Lawyers, Costly Lawsuits and Runaway Medical Bills Make Detroit Car Insurance Unaffordable,* DET. FREE PRESS, (May 8, 2017), https://www.freep.com/story/news/local/michigan/detroit/2017/05/06/no-fault-auto-insurance-detroit-michigan/100326640/ [https://perma.cc/5KQA-65NW]; Engstrom, *supra* note 22, at 306.
179. Gordon, *supra* note 13, at 75; Engstrom, *supra* note 22, at 306.
180. ANDERSON et al., *supra* note 17, at 74; Gordon, *supra* note 13, at 75.
181. Gordon, *supra* note 13, at 75.
182. ANDERSON et al., *supra* note 17, at 74.
183. *See supra* Section II.D.
184. Gordon, *supra* note 13, at 78.
185. *Id.* at 78, 103.
186. ANDERSON et al., *supra* note 17, at 127–30.

In Michigan, a 2013 study found that providers' claims for auto-accident related medical care were 24% higher than in other states.[187] Moreover, a 2017 Detroit Free Press investigation unearthed that many MRI centers which "appear frequently in no-fault lawsuits in metro Detroit charge as much as $5,300 for an MRI that would cost less than $1,000 at other facilities or about $500 under Medicare."[188]

In addition to higher medical costs, no-fault states' litigation costs unexpectedly exceed litigation costs in tort states.[189] This was not supposed to happen: "[b]y diverting all but the most-serious cases from the third-party tort liability system to resolution between the victim and his or her insurer, proponents of no-fault believed that expensive and time-consuming auto-related litigation would be dramatically reduced."[190] The same RAND study discussed above analyzed the proportion of accident-victim respondents who hired attorneys in two distinct periods, from 1986 to 1992 and from 1997 to 2002.[191] The study concluded that "[o]ver time, no-fault became less effective in delivering on one of its original promises: minimizing the need for lawyer involvement in resolving claims."[192] The RAND study findings are consistent with a 2017 Detroit Free Press investigation that found the number of first-party lawsuits in Michigan "nearly quadrupled in Wayne County since 2004, even as accidents have dropped."[193] The investigation also noted that such first-party suits comprised more than two-thirds of the lawsuits in the state.[194]

Moreover, the RAND study examined patterns on litigation volume in numerous states.[195] Specifically, the study analyzed the "per capita number of new auto case filings in state trial courts for a group of three no-fault states (Florida, Michigan, and New York) and three tort states (California, Arizona, and North Carolina)."[196] In Florida, Michigan, and New York, auto filings were "relatively stable over time, and litigation rates were substantially below" those of tort states in the 1980s.[197] However, over

187. Born & Klein, *supra* note 11, at 12.

188. *See* Reindl, *supra* note 178.

189. ANDERSON et al., *supra* note 17, at 92–94; Engstrom, *supra* note 22, at 346 ("litigation in no-fault states appears, if anything, more protracted—and thus more expensive—than litigation pursued via traditional tort. The reason is this: PIP payments, by tiding victims over, strengthen accident victim's hand vis-à-vis insurers.").

190. ANDERSON et al., *supra* note 17, at 92.

191. *Id.* at 94.

192. *Id.*

193. Reindl, *supra* note 178.

194. *Id.*

195. ANDERSON et al., *supra* note 17, at 127–30.

196. *Id.* at 94.

197. *Id.* at 96.

time, litigation rates "fell substantially" in tort states, "rendering tort and no-fault more comparable by the end of the data period" in 2004.[198]

Finally, fraud can be—and often is—closely related to high medical and litigation costs.[199] According to the Insurance Information Institute in 2022, in many no-fault states, "unscrupulous medical providers, attorneys, and others pad costs associated with legitimate claims – for example, by billing an insurer for a medical procedure never performed."[200] Medical providers and attorneys might also encourage patients or clients to authorize medical procedures that are not medically necessary or indicated.[201]

Thus far, this Note has attempted to lay out the following: (1) no-fault's origin in the United States and in Michigan; (2) no-fault's abrupt rise and equally abrupt fall; (3) Michigan's especially poor no-fault performance on cost containment; (4) Michigan's 2019 legislative reforms which the legislature enacted to reduce no-fault's costs and *Andary's* relationship to those efforts; and (5) no-fault states' performance as compared to tort states with a focus on cost containment. At a minimum, this background suggests that Michigan's no-fault system has come up well short of its goal to reduce costs.[202]

III. ANALYSIS

The remainder of this Note argues that Michigan's 2019 reforms are highly unlikely to cure high automobile insurance premiums. The Note further argues that the Michigan Supreme Court's decision in *Andary* makes it unlikely that the 2019 reforms will even mitigate—let alone cure—high premium costs because the court's holding increases the likelihood that auto insurers will raise premium rates in the short to medium terms. Finally, even if the court correctly decided *Andary*—which this Note argues it did not—Michigan's no-fault system is beyond the point of further reforms because the corrections needed to repair the problems inherent to no-fault swallow up "any remaining benefits to the

198. *Id.*

199. Born & Klein, *supra* note 11, at 65–66; *see also* Born et al., *supra* note 107, at 12 (suggesting that in pre-2019 reform Michigan, "disputes over PIP claims often resulted in costly litigation. These aspects of no-fault benefits encouraged considerable fraud and abuse by medical providers, trial attorneys, and others who found ways to mile the system.").

200. INS. INFO. INST., *Background on: Insurance Fraud* (Aug. 1, 2022), https://www.iii.org/article/background-on-insurance-fraud [https://perma.cc/XF8L-N3MQ].

201. *Id.*

202. *See supra* Section II.D.1.

insured."[203] Moreover, the system is beyond further repairs because, as discussed in Part III, the repairs are animated more by an effort to keep the system for the system's sake, as opposed to benefiting Michigan motorists who are the system's putative intended beneficiaries.[204] Therefore, the Michigan legislature should repeal the no-fault system in favor of a tort system.

A. While the 2019 Reforms Have Resulted in Cost-Reductions, the Reductions are Insufficient to Justify Continued Use of a No-Fault Regime

Even if the 2019 reform legislation reduced premiums, the reduction is not substantial enough to justify the continued existence of Michigan's no-fault regime for three reasons. First, as discussed in Part II, while auto premiums fell statewide they remained unreasonably high in Detroit.[205] Second, the medical cost controls disproportionately harm medical providers, and leave insurance companies relatively unscathed.[206] Third, even if the reforms reduced Michigan's auto insurance premiums, Michigan's premiums remain one of the highest in the U.S.[207] Each of these reasons—and their consequences—are addressed in turn.[208]

1. Unreasonably High Rates in Detroit

In the United States, Michigan's insurance rates are the highest in no small part because of the high rates in the state's biggest city, Detroit.[209] Even after the 2019 reforms reduced insurance rates statewide, premiums in Detroit remained astonishingly high, "consuming about 18% of median household income" in Detroit.[210] Before the reforms, Michigan's No-Fault Act permitted insurers to use non-driving factors—including "marital status, educational attainment, homeownership status, credit scores, and the zip codes"—to determine auto insurance rates, which led to higher rates in majority African American zip codes like Detroit.[211] The new law, codified as MCL 500.2114(4), prohibits insurers from using "sex, marital status, homeownership, education level, zip code, or credit score when

203. Gordon, *supra* note 13, at 93.
204. *See infra* Section III.B.2.
205. *See supra* Section II.B.3.
206. *See id.*
207. *See id.*
208. *See infra* Sections III.A–C.
209. *See* Nothaft & Cooney, *supra* note 119, at 1.
210. *See* Kaffer, *supra* note 124.
211. Nothaft & Cooney, *supra* note 119, at 2.

determining rates."[212] Logically, one would expect that removing these factors which "highly correlate" with race and poverty would lead to dramatic reductions in premiums rates for African Americans in Detroit.[213]

However, despite the Michigan legislature's efforts to reduce premiums in Detroit by mandating changes to auto insurers' risk calculations, no such premium relief occurred, likely owing to legislative oversight.[214] While MCL 500.2114(4) prohibits insurers from using zip codes and credit scores in calculating rates, "it still allows insurance companies to group insurance risks by geographic 'territory' and use an insurance score, which has credit score as a component, in determining rates."[215] As a result, "rates remain as highly correlated with race" as they were before the 2019 amendments.[216] It is therefore not surprising that as of 2022, the average Detroit premium was "93% higher" than the premium across the rest of Michigan.[217] For a set of reforms aimed at reducing rates, the legislature's failure to address a primary factor driving up costs—"predatory rate making practices" in urban areas[218]—is a major oversight. No matter how effective tiered PIP coverage and medical provider fee schedules are at reducing costs statewide, continued astronomical costs in the state's largest city necessarily limits the overall impact of the reforms. The limited impact of the reforms suggests that the cost reductions stemming from fee schedules are not substantial enough to justify the continued existence of Michigan's no-fault regime.

2. Medical Cost Controls Disproportionately Harm Medical Providers

Second, medical cost controls disproportionately harm medical providers, not insurance companies.[219] As discussed in Part II of this Note, just as the 55% reimbursement cap under MCL 500.3157(7) serves as a limit on fees medical providers may charge for services, MCL 500.2111f is tantamount to a "fee schedule on insurance companies" inasmuch as it limits the premium amount insurers can charge policyholders.[220] In theory, Public Act 21 effectuates no-fault cost reductions by targeting both the insurance and medical provider industries and reducing the amounts both

212. MICH. COMP. LAWS § 500.2114(4) (2019); Nothaft & Cooney, *supra* note 119, at 2.
213. Nothaft & Cooney, *supra* note 119, at 2.
214. *Id.*
215. *Id.* at 3.
216. *Id.*
217. Born & Klein, *supra* note 11, at 108.
218. Miller, *supra* note 2, at 4.
219. Combs, *supra* note 4, at 901.
220. *Id.* at 914; *See supra* Section II.B.2.b.

can charge Michigan consumers. In practice, Public Act 21 disproportionately "targets the medical industry" because MCL 500.2111f(9) provides an "escape clause" for insurance companies to "continue rating their policies as they did prior to the passage" of the 2019 reforms.[221] No such escape clause exists for medical providers.[222] MCL 500.2111f(9) reads, "[t]his section does not prohibit an increase for any individual insurance policy premium if the increase results from applying rating factors as approved under this chapter, including the requirements of this section."[223] Effectively, MCL 500.2111f(9) "cancelled out" the statute's other provisions which limit the amount insurance companies may charge their policyholders.[224]

In contrast to the fee schedule for insurance carriers, MCL 500.3157 provides no escape clause for the medical provider industry.[225] Under MCL 500.3157(7), if a provider delivered service is not payable by Medicare, the provider may charge only 55% of the cost it would have charged prior to January 1, 2019.[226] According to the MPH study referenced in Part II, 73 participating medical organizations reported a combined total of $81,366,027 revenue loss owing to this fee cap.[227] Moreover, as also discussed in Part II, loss of revenue meant a reduction in services and products, inability to accept new patients, and in some cases, closing operations completely.[228] Intuitively, it is not difficult to understand how requiring a medical provider—or any business for that matter—to charge 55% of what they previously charged compromises the maintenance and operation of the business by lowering profit margins.[229]

At the same time, as discussed in Part II, legislators were primarily concerned with excessive medical costs when drafting reform legislation,[230] and for good reason. If medical providers' claims for auto-related medical care were "24% higher in Michigan than in other states,"[231] setting mandatory fee schedules for medical providers seems more than

221. Combs, *supra* note 4, at 914, 916.
222. *Id.* at 910–13.
223. MICH. COMP. LAWS § 500.2111f(9) (2019).
224. Combs, *supra* note 4, at 914.
225. *Id.* at 914.
226. *See supra* Section II.B.2.b.
227. *See supra* Section II.B.3.
228. *See id.*
229. *See* Combs, *supra* note 4, at 910 (arguing that medical providers, "like most businesses on this planet, do not operate on a 45% margin."). Of course, this is not to suggest that charging 55% of what a business previously charged will necessarily result in a 45% margin, but rather simply to make the point that margins would be reduced, sometimes significantly so.
230. *See supra* Section II.B.2.
231. Born & Klein, *supra* note 11, at 12.

reasonable. Moreover, as mentioned in Part II, fraud is closely related to high medical and litigation costs.[232] In many no-fault states, and especially in Michigan prior to the 2019 reforms, "unscrupulous" medical providers and attorneys "pad" costs associated with legitimate claims—for example, by billing an insurer for a medical procedure that it did not perform, or by over-billing.[233] Furthermore, prior to the reforms MCL 500.3107(1)(a) entitled an injured person to recover certain allowable expenses which the statute described as all "reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation."[234] Medical providers too often stretched the bounds of reasonableness to include no-fault provider suits in which providers charged five times the amount for MRIs than providers at other facilities charged for the exact same MRI.[235] Accordingly, this Note emphasizes that excessive medical provider charges were a major—if not the most important—factor leading to Michigan's unsustainable no-fault costs.

However, while excessive medical costs, fraud, and abuse undoubtedly created the need for reform, the reform must reign in the waste and abuse without putting medical providers out of business.[236] Instead, Public Act 21 places significant strain on medical providers while providing a convenient statutory circumvention for insurance companies.[237] Even if medical providers' excessive prices share a good portion of the blame for the need to reform, the answer cannot be to cripple the medical provider industry; doing so likely harms those the reforms were putatively intended to help: Michigan auto policyholders.[238] The upshot of MCL 500.3107(1)(a) and MCL 500.2111f(9) will be medical providers leaving the market and possibly leaving accident victims worse off than they were prior to the reforms, with "fewer and lower quality options" for post-accident medical treatment.[239] All the while, the insurance industry will enjoy statutory leeway to circumvent profit-reducing rate constraints.[240] The legislature accurately identified the medical provider industry as a significant reason for out-of-control no-fault costs, but the remedy's statutory framework disproportionately

232. *See supra* Section II.D.2.
233. Reindl, *supra* note 178.
234. MICH. COMP. LAWS § 500.3107(1)(a).
235. Reindl, *supra* note 178.
236. *See* Combs, *supra* note 4, at 913.
237. *Id.* at 910–13.
238. *Id.* at 922.
239. *Id.*
240. *Id.* at 910–13.

harms the medical provider industry when medical providers and insurance carriers could have absorbed the cost reductions more evenly.[241]

A plausible market-based counterargument would contend that pre-2019 reform medical providers were wasteful and inefficient, and there is no evidence that accident victims would be worse off if more efficient medical providers replaced inefficient ones. Admittedly, this critique is fair. After all, there is no evidence that accident victims in tort states, in which medical providers and attorneys presumably lack the same financial incentive to pad medical claim costs as exists under a no-fault system, receive inadequate medical care. However, this counterargument does not explain why the Michigan legislature targeted medical providers while leaving insurers with a statutory loophole. If a legitimate policy reason existed for the legislature's deliberate choice, proponents have yet to convincingly articulate it. Indeed, if the legislature targeted medical providers a *little less* and insurers a *little more*, the 2019 reform package would have likely enjoyed more public legitimacy.

3. Michigan's Statewide Premium Remains One of the Highest in the United States

Even if the 2019 reform legislation reduced premiums, the reduction is not substantial enough to justify the continued existence of Michigan's no-fault regime because Michigan's premiums remain exceedingly high. As discussed in Part II, even though Michigan's average auto premiums in 2022 and 2023 were substantially lower than in 2019, the 2023 average premium was nonetheless the fourth highest in the United States.[242] While significant premium drops statewide should not be dismissed, they can also be—and indeed are—overstated. The costs of Michigan's no-fault system, as with no-fault systems generally, are *invariably* higher than the costs of tort systems,[243] with or without reforms to Michigan's No-Fault Act. Proponents may argue that the 2019 reforms are still relatively new and thus have not had sufficient time to take effect. This argument begs the question: sufficient time for what to take effect? It is doubtful that a marginal improvement in Michigan's no-fault costs was the legislature's intent in passing Public Act 21. Yet a decidedly marginal improvement is precisely the result, and, if history is to serve as a guide, it is exactly what one can expect in the future.

---

241. *Id.*

242. *See supra* Section II.B.2.c. Michigan's average premium rose to $2,133 in 2023, again the fourth highest in the United States.

243. *See supra* Section II.D.1.

As discussed in Part II, the RAND Institute study examined available data and compared the auto-insurance premiums and costs of compensating victims of auto accidents in states under no-fault, tort, and add-on systems from the 1980s to 2004.[244] For the entirety of the study, premiums in no-fault states were consistently higher than in tort states, with the disparity at times running into the "hundreds of dollars."[245] While it is true that the RAND data are older, the cost disparity trends do not appear to have changed. According to insure.com, which ranks the 50 states in terms of lowest premium offerings, of the 12 no-fault states in existence as of 2023, eight are ranked in the bottom half, meaning the states offer higher premiums than at least half of all other states.[246] As mentioned, Michigan's post-reform premiums remain the fourth highest in the U.S.[247] Even assuming the anticipated cost-saving benefits of Public Act 21 would appear over time, historical data from at least 1980 strongly indicate that such a time will never come into fruition. Put differently, while it is possible Michigan may move from the fourth highest premiums to the eighth or tenth highest premiums, absent drastic changes to the law, it is highly improbable that the state will fare much better than its current position. Because the 2019 reforms do not materially change Michigan's status as one of the highest auto premium states in the nation, the cost reductions do not justify the continued existence of Michigan's no-fault system.

B. Andary's Erroneous Statutory Interpretation Will Further Impede the Already Marginal Cost-Saving Effects of the 2019 Reforms

1. The Majority in Andary Erroneously Interpreted the No-Fault Act's Silence on Retroactivity as Evidence that the Act was not Intended to Apply to Pre-Reform Accidents

As discussed in Part II, in *Andary*, the Michigan Supreme Court declined to apply the No-Fault Act's 2019 amendments—most notably the fee cap for medical providers and reduced family-provided attendant care hours—to individuals "who were covered by a Personal Injury Protection (PIP) policy and suffered injures before June 11, 2019."[248] The court held

244. *See supra* Section II.D.1.

245. *Id.*; ANDERSON et al., *supra* note 17, at 66; Gordon, *supra* note 13, at 74–75.

246. *See* Eitel, *supra* note 106.

247. *Id.*

248. Danny C. Allen, *Michigan Supreme Court Rules 2019 No-Fault Act Amendments Not Retroactive*, PLUNKETT COONEY TRANSP. L. HUB (July 31, 2023), https://www.plunkettcooney.com/transportation-law-hub/no-fault-amendments-not-

that these new limitations could not legally apply to those injured before the effective date of the 2019 reforms, reasoning that: (1) PIP benefits vest at the time of the injury; and (2) the legislature did not "clearly demonstrate an intent" for the 2019 reforms "to apply retroactively to individuals with a vested contractual right to PIP benefits under the pre-amendment no-fault statutes" (i.e., the legislature was silent on retroactively).[249] Moreover, the amendments' application is largely based on the date that the insurance company issued the insurance contract. As the Michigan Supreme Court stated, "[a]t 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."[250] The court's reasoning is flawed for two reasons. First, Public Act 21 is not retroactive, even if it applies to pre-2019 accidents.[251] Second, contrary to the majority's interpretation, under the Michigan No-Fault Act, PIP benefits vest when an individual incurs expenses compensable under the No-Fault Act, not at the moment the individual is injured in an auto accident.[252]

a. Public Act 21 is not Retroactive Even if it Applies to Pre-Reform Accidents

The Michigan Supreme Court has long emphasized "that the text is the primary criterion of whether a statute applies retroactively."[253] The Michigan Supreme Court has articulated four principles for courts to consider when determining whether a statute applies retroactively.[254] The four principles are: (1) whether the statute includes specific language providing for retroactive application; (2) a statute is not necessarily retroactive merely because it relates to a prior event; (3) "retroactive laws impair vested rights acquired under existing laws or create new obligations or duties with respect to transaction or considerations already past;" and (4) a remedial or procedural act "not affecting vested rights" can be "given

retroactive [https://perma.cc/JSM7-NL4X]; Andary v. USAA Cas. Ins. Co., 512 Mich. 207, 1 N.W.3d 186 (2023).

249. Allen, *supra* note 248; *Andary*, 512 Mich. 207, 257, 1. N.W.3d 186.

250. *Andary*, 512 Mich. at 250, 1. N.W.3d at 210.

251. *Id.* at 281–82, 1 N.W.3d at 226 (Viviano, J., dissenting).

252. *Id.* at 283–84, 1 N.W.3d at 227–28.

253. Buhl v. Oak Park, 507 Mich. 236, 258, 968 N.W.2d 348, 360 (Viviano, J., concurring).

254. LaFontaine Saline, Inc. v. Chrysler Grp., LLC, 496 Mich. 26, 38, 852 N.W.2d 78, 85 (2014).

retroactive effect" where the injury or claim precedes the enactment of the statute.[255]

Applying the first principle—whether the statute includes specific language providing for retroactive application—to the fee schedule specified in MCL 500.3157, it is evident from the text of the statute that the limitation placed on medical provider charges applies to "treatment or training rendered within a specific period in the future."[256] For example, MCL 500.3157(2) states that a "physician, hospital, clinic, or other person that renders treatment or rehabilitative occupational training" to an auto accident victim may charge 200% of the amount that Medicare would pay for treatment provided *subsequent to* July 1, 2021 and prior to July 2, 2022.[257] MCL 500.3157(7) states that if Medicare would not pay for a provider-delivered service, the provider may only charge 55% of the cost it charged for the same service before January 1, 2019.[258] Moreover, MCL 500.3157(10) similarly provides no indication that it applies only to attendant care rendered for accidents occurring *after* Public Act 21's effective date.[259]

In each of the above-referenced provisions, there is "no textual indication" in the statute that the legislature intended to further limit MCL 500.3157 or its subsections only to compensable PIP benefits tied to accidents occurring *after* the 2019 reforms.[260] Nor does the statute reference the "date or timing of the injury" for which the medical provider provides treatment.[261] In *Andary*, the fact that MCL 500.3157(14) unambiguously states that the previous subsections, (2) to (13) "apply to treatment or rehabilitation occupational training rendered after July 1, 2021", persuaded the dissent that the provisions apply to future treatment.[262] In other words, MCL 500.3157—and all of its subsections—apply to *treatment* after the amendments' effective date; the statute does not mention the injury date.[263] Accordingly, the dissent reasoned that the mere fact that the treatment may relate to pre-reform accidents and policies covering the same does not render the Act retroactive—the second

255. *Id.* at 39, 852 N.W.2d at 86.

256. *Andary*, 512 Mich. at 278, 1 N.W.3d at 224 (Viviano, J. dissenting).

257. MICH. COMP. LAWS § 500.3157(2) (2019) (emphasis added).

258. MICH. COMP. LAWS § 500.3157(7) (2019).

259. MICH. COMP. LAWS § 500.3157(10) (2019); *Andary*, 512 Mich. at 278, 1 N.W.3d at 224 (Viviano, J. dissenting) (emphasis added).

260. *Andary*, 512 Mich. at 279, 1 N.W.3d at 225 (Viviano, J. dissenting).

261. *Id.* at 279, 1 N.W.3d at 225 (Viviano, J. dissenting).

262. *Id.* (Viviano, J. dissenting).

263. *Id.* (Viviano, J. dissenting).

principle (a statute is not necessarily retroactive merely because it relates to a prior event) is therefore satisfied.[264]

In addition to the court's failure to account for the fact that the above-referenced provisions provide no textual evidence that the legislators only meant Public Act 21 to apply to post-reform accidents, the majority mysteriously ignores the plain text of certain provisions that indicate the legislature intended the reforms to apply to pre-reform accidents.[265] For example, MCL 500.2111f(8), which regulates premiums insurers may charge, provides, in pertinent part, "[a]n insurer shall pass on, in filings to which this section applies, savings realized from the application of [MCL 500.3157(2) to (12)] to treatment, products, services, accommodations, or training rendered to individuals who suffered accidental bodily injury from motor vehicle accidents that occurred before July 2, 2021."[266] Thus, the premium reductions are largely contingent upon "the application of the reforms to pre-effective date policies."[267]

b. PIP Benefits Vest When an Individual Incurs Expenses, not at the Time of Injury

In *Andary*, the majority misinterpreted the No-Fault Act when it reasoned that PIP benefits vest at the time of the accident.[268] PIP benefits do not vest at the time of the accident, and the statute does not automatically entitle an injured person with PIP coverage to PIP benefits for future treatment.[269] Pursuant to MCL 500.3142(1), PIP "benefits are payable as loss accrues."[270] Furthermore, under MCL 500.3110(4), "benefits payable for accidental bodily injury accrue not when the injury occurs but as the allowable expense, work loss or survivors' loss is incurred."[271] The dissent defined a vested right as "a present or future right to do or possess certain things not dependent upon a contingency."[272] The plaintiffs in *Andary*—as with any plaintiff in an action for no-fault PIP benefits—"at most . . . had a contingent right to benefits."[273] Put

264. *Andary*, 512 Mich. at 282, 1 N.W.3d at 226 (Viviano, J. dissenting).
265. *Id.* at 278–79, 1 N.W.3d at 224–25 (Viviano, J. dissenting).
266. *Id.* (quoting MICH. COMP. LAWS § 500.2111f(8) (2019).
267. *Andary*, 512 Mich. at 280, 1 N.W.3d at 225 (Viviano, J. dissenting).
268. *Id.* at 283–84, 1 N.W.3d at 227–28 (Viviano, J. dissenting).
269. *Id.* (Viviano, J. dissenting).
270. *Id.* at 283, 1 N.W.3d at 227 (Viviano, J. dissenting); MICH. COMP. LAWS § 500.3142(1) (2019).
271. *Andary*, 512 Mich. at 283, 1 N.W.3d at 227 (Viviano, J. dissenting) (quoting MICH. COMP. LAWS § 500.3110(4) (2019)).
272. *Id.* at 286, 1 N.W.3d at 228 (Viviano, J. dissenting).
273. *Id.* at 285, 1 N.W.3d at 228 (Viviano, J. dissenting).

differently, a plaintiff's right to PIP benefits is contingent upon incurring expenses for accident-related medical expenses.[274]

In short, Public Act 21 unambiguously states that PIP benefits vest when an individual incurs allowable expenses, plain and simple. The majority missed this obvious textual reality in its interpretation of the statute. In missing this textual reality, the majority necessarily misapplied the third retroactivity principle discussed above (retroactive laws impair vested rights) because "PIP benefits for future treatment are not vested rights."[275] Finally, regarding the fourth retroactivity principle (a remedial or procedural act "not affecting vested rights may be given retroactive effect where the injury or claim is antecedent to the enactment of the statute"), to the extent that "PIP benefits are a remedy that can be sought in a legal action, the legislature's changes to the nature of the remedy are remedial...and can be applied retroactively."[276]

In summary, the Michigan Supreme Court in *Andary* disregarded the legislature's will by asserting that the 2019 statutory amendments would retroactively apply to pre-reform accidents.[277] First, the dissent was correct in its interpretation that a plain reading of the text of MCL 500.3157 shows fee schedules for medical providers and limitations on attendant care apply to treatment of victims of motor vehicle accidents that occurred *before* or *after* the enactment of the amendments.[278] Second, the majority erroneously conflated accidents with accident-related treatment. The mere fact that the treatment may relate to pre-reform accidents and policies covering the same does not render the Act retroactive.[279] Third, the majority incorrectly concluded that accident-victims' contractual rights under the No-Fault Act vest at the time of the accident, when in fact they vest when an individual incurs reasonable expenses.[280]

2. Andary will Compromise the Cost-Saving Efforts of Public Act 21

The Michigan Supreme Court's decision in *Andary* further weakens the effectiveness of already questionable 2019 reforms because the decision increases the likelihood that auto insurers will raise premium rates in the short to medium terms.[281] The *Andary* decision means that

274. *Id.* (Viviano, J. dissenting).
275. *Id.* at 283, 1 N.W.3d at 227 (Viviano, J. dissenting).
276. *Id.* at 300, 1 N.W.3d at 236 (Viviano, J. dissenting); LaFontaine Saline, Inc. v. Chrysler Grp., LLC, 496 Mich. 26, 38–39, 852 N.W.2d 78, 85–86 (2014).
277. *Andary*, 512 Mich. at 272, 1 N.W.3d at 221.
278. *See id.* at 276–83, 1 N.W.3d at 223–27 (Viviano, J. dissenting).
279. *Id.* at 281–82, 1 N.W.3d at 226–27 (Viviano, J. dissenting).
280. *Id.* at 294–95, 1 N.W.3d at 233–34 (Viviano, J. dissenting).
281. Born & Klein, *supra* note 11, at 95–96.

insurers will likely take a significant financial hit as their rates assumed that the new fee schedule applied to all claims.[282] This financial hit could compromise the 2019 reforms' cost-saving measures. Justice Viviano's dissent echoes this very concern: "The result today is that through an erroneous interpretation of the statute...the majority has impeded the Legislature's effort to address an important issue in our state. As a result, the efforts of the Legislature and the Governor to reduce costs and make insurance more affordable for all the residents of our state will not come to fruition for many decades."[283]

However, insofar as the Michigan Supreme Court declined to invalidate the medical cost controls for claims after the legislature changed the law, insurers will not necessarily "need to raise their rates to adjust for higher claim costs stemming from the elimination of the controls."[284] Consequently, the prospect that insurers would need to raise premiums for drivers who continue to purchase some level of PIP coverage—which could cause more Michiganders "to lower their PIP coverage or opt out of it entirely"—may have been averted.[285] The mere fact that the court's decision to invalidate the medical cost controls for claims after the 2019 amendments avoided one significant blow to the reforms in the short-term does not mean that another is not coming.[286] Indeed, the *Andary* court's incorrect interpretation of Michigan's No-Fault Act is a potentially significant blow to a reform package already plagued by myriad ills. *Andary* further impedes the 2019 reforms' already modest cost-saving impacts by tempting insurers to use MCL 500.2111f(9)'s premium ratings escape clause.[287] Furthermore, because the *Andary* court disregarded and disrupted the legislature's chief intent of substantial reduction in no-fault costs in enacting the reforms, the decision halted the reforms' political and socioeconomic momentum.

---

282. *Id. See also* Born et al., *supra* note 107, at 30–31 (imputing the increase in Michigan PIP claim costs in 2023 to *Andary*: "The Michigan Supreme Court's decision in the Andary case is causing insurers to pay out more on PIP claims for people injured before the law changed.").

283. *Andary,* 512 Mich. at 273, 1 N.W.3d at 221–22 (Viviano, J. dissenting).

284. Born & Klien, *supra* note 11, at 95.

285. *Id.* at 95–96; *see also* Born et al., *supra* note 107, at 31 ("One development that we would like to examine is drivers' choices for liability limits and PIP coverages. If drivers are significantly reducing their PIP coverage as allowed under the new law, we would expect this to substantially reduce claim costs and premiums. . . . Over time, more drivers may reduce their premiums by choosing lower amount of PIP coverage.").

286. Allen, *supra* note 248; *Andary*, 512 Mich. at 261, 315, 1 N.W.3d at 215, 244.

287. *See* MICH. COMP. LAWS § 500.2111f(9) (2019); *see also* Combs, *supra* note 4, at 911.

C. The Michigan Legislature Should Repeal the No-Fault Act in Favor of a Tort Regime

1. Michigan Should Follow Georgia's, Connecticut's, and Colorado's Approach of Successfully Repealing Mandatory No-Fault Regimes in Favor of Tort Regimes

The argument presented in this Note does not depend on the Michigan Supreme Court's faulty reasoning in *Andary,* discussed in Part III.[288] To the contrary, *even if* the court correctly decided *Andary*—which this Note argues it did not—Michigan's no-fault system is beyond repair and the Michigan legislature should repeal it in favor of a tort system.[289] In this way, the court's decision in *Andary* accelerates the need to repeal Michigan's no-fault regime and replace it with a tort system.[290] However, even assuming that the *Andary* decision proved more favorable to the 2019 reforms' cost-reduction efforts, the Michigan legislature would still need to repeal the no-fault system—albeit further down the road—because no-fault's history makes plain that the system cannot keep costs under control.[291]

As discussed in Part II, cost containment was no-fault's principal objective, and the data unambiguously show that no-fault has failed quite miserably in that regard.[292] A possible objection to this Note's central thesis may be that it seems mysterious to advocate for the repeal of a law that is still integrating new reforms. Opponents might argue to "let it play out." This Note suggests that the only mysterious thing is Michigan lawmakers' continued flouting of nationwide statistical data evidencing

---

288. *See supra* Section III.

289. *See Andary,* 512 Mich. at 273, 1 N.W.3d at 221–22 (Viviano, J. dissenting) (Importantly, the *Andary* decision does not directly or even indirectly support the contention that Michigan's no-fault system should be repealed. However, the author infers from the dissent that *Andary's* holding impedes the cost-saving measures of the 2019 reforms. Because the author has already argued that the cost-saving measures of the 2019 reforms were modest pre-*Andary,* it is highly unlikely that the post-*Andary* world will result in cost reductions sufficient to justify continuation of a no-fault system. In short, the main goal of no-fault is to reduce costs which has not happened. The main goal of the 2019 reforms was to reduce costs, which is unlikely to happen especially in light of *Andary.* Consequently, the justifications for continuing with a no-fault system are not present. To reiterate Viviano's dissent: "The result today is that through an erroneous interpretation of the statute…the majority has impeded the Legislature's effort to address an important issue in our state. As a result, the efforts of the Legislature and the Governor to reduce costs and make insurance more affordable for all the residents of our state will not come to fruition for many decades."); *See supra* Sections III.A–B; *see also infra* Section III.C.

290. *Id.*

291. *See supra* Section II.D.

292. *See supra* Section II.D.1.

that no-fault does not work while the tort system does. Seen from this different vantage point, the hyper-focus on the 2019 reforms and *Andary's* consequences for the viability of them obfuscates the central issue: why does Michigan continue to grasp so tightly to a system whose failure is a *fait accompli*?

The promise of rate reductions was arguably no-fault proponents' strongest argument.[293] As this Note has shown, that promise was an empty one.[294] When Georgia, Connecticut, and Colorado finally realized no-fault could not deliver as promised, they replaced no-fault with a tort system, and costs improved drastically.[295] As discussed in Part II, in 1991, Georgia repealed its no-fault law, followed by Connecticut in 1994, and Colorado in 2003.[296] "If no-fault does indeed affect insurance costs, then, in addition to observing cross-sectional cost differences between states under different system, costs within states should also change as vehicles and drivers are moved out of no-fault coverages."[297] And indeed, all three states experienced a "striking pattern of substantial cost decreases" after the repeal.[298] Colorado's repeal resulted in an average premium decrease of over $100 within a year of returning to a tort system.[299] Connecticut saw "similar precipitous cost decreases following its return to tort."[300] Georgia reached a "steady" premium rate following the no-fault repeal, "a decline of 20 percent relative to costs immediately prior to the change."[301] Rather than continue to add layers of reforms to the 2019 reforms—both judicially and legislatively—Michigan should repeal no-fault and replace it with a tort system based on mandatory bodily injury coverage. Such a change virtually ensures significantly lower costs for Michigan policyholders while also avoiding unneeded confusion about the status of reforms to Michigan's No-Fault Act.

2. If Michigan Continues with No-Fault, it will be for the sake of Keeping a No-Fault System

Other no-fault states have held onto no-fault too long, to their detriment.[302] Like Michigan, Florida is a populous no-fault state with a

293. Engstrom, *supra* note 22, at 334.
294. *See supra* Section II.D.
295. *See supra* Section II.D.1.
296. *See id.*
297. ANDERSON et al., *supra* note 17, at 74.
298. *Id.*
299. *Id.*
300. *Id.*
301. *Id.*
302. *See infra* Sections III.C.2–3.

putatively strong verbal threshold that has been in place since the 1970s.[303] Similar to the Michigan's 2019 reforms, in 2012 Florida enacted several cost-saving reforms to curb costs and abuses within its no-fault system.[304] Unlike Michigan, Florida has a comparably modest $10,000 PIP coverage requirement while Michigan maintained mandatory lifetime coverage until 2019.[305] One of the most notable reforms to Florida's no-fault system was that a medical provider must diagnose an insured with an "emergency medical condition" (EMC) for the insured to qualify for $10,000 in PIP benefits.[306] Without this diagnosis, the insured is only eligible to receive up to $2,500.[307] And yet, despite these efforts at reducing costs, as of 2024, Florida's auto premiums remain at or near the highest in the United States.[308]

As of 2024, the Florida Senate is strongly considering repealing whatever is left of its no-fault system.[309] One reason Florida is considering repealing its no-fault system is fraud and waste.[310] A Florida insurance agency owner who regularly deals with no-fault captured the problem quite well: "It's easy money that attorneys and medical people grab at and they get the $10,000 without breaking a sweat and then they don't bother it anymore…[s]o, it's a quick $10,000, but it has been bleeding the companies for no good reason" as many times there are no accident-related injuries.[311] The insurance agency owner continued: "It'll cost more to keep it [no-fault] because PIP's been so abused…[and] it's so bloated."[312] Finally, the insurance owner concluded that repealing no-fault and replacing it with a tort system would force "people to be responsible for themselves."[313] This anecdotal account of fraud and waste is corroborated by the Insurance Research Council (IRC), an independent research

303. *See ,e.g.*, Engstrom, *supra* note 22, at 320–21.

304. Gordon, *supra* note 13, at 90.

305. *Id.* at 72–95.

306. *Id.* at 90.

307. *Id.*; *See* FLA. STAT. ANN. § 627.732(16) (2013) (defining what an "Emergency medical condition" is for purposes of the statue).

308. Katrina Raenell, *Car Insurance Rates by State in 2024*, INSURE.COM (Jan. 19, 2024), https://www.insure.com/car-insurance/car-insurance-rates.html [https://perma.cc/7NUP-8TB6].

309. *See* Emma Riley, *Florida Senate Proposes New Bill to Remove No-Fault Insurance System,* FLA. NEWS (Mar. 14, 2023), https://www.mypanhandle.com/news/florida/florida-news/florida-senate-proposes-new-bill-to-remove-no-fault-insurance-system/ [https://perma.cc/GE48-XWHC]; *see also* Carey Leisure Carney, *New PIP Florida Law Changes in 2023*: *Get the Facts*, CARNEY LEISURE CARNEY TRIAL ATT'Y, https://careyandleisure.com/new-pip-florida-law-changes/ [https://perma.cc/V6BR-LZBH].

310. *See* Riley, *supra* note 309.

311. *Id.*

312. *Id.*

313. *Id.*

organization supported by property and casualty insurance companies and associations. According to a 2011 IRC report, "[a]lmost one in every three no-fault auto insurance claims closed in Florida in 2007 appeared to involve the exaggeration of an injury or to be inflated by unnecessary or excessive medical treatment."[314]

A second reason Florida is contemplating repeal is that the state simply held onto no-fault for the sake of keeping no-fault, ignoring the overwhelming evidence that the system does not work.[315] Rather than repealing no-fault, Florida enacted a series of reforms that went too far, rendering no-fault virtually unrecognizable.[316] As Trevor Gordon, a Florida personal injury attorney, explained, "these [Florida's] reforms may prove to be the tipping point where the necessities of "fixing" the problems inherent to [n]o-[f]ault destroy any remaining benefits to the insured."[317] Because Florida drivers are not required to carry BI liability insurance, it is conceivable—if not likely—that the injured driver's own policy will be the only coverage available after an auto accident.[318] Before the 2012 amendments, Florida's $10,000 PIP coverage "was already the lowest in the nation among states without mandatory BI coverage."[319] Gordon further explained that "it is easy to imagine a scenario where an injured driver is left with substantial medical expenses and only $2,500 in available coverage."[320]

The Florida legislature overhauled the state's no-fault system by giving itself the power to decide "acceptable" diagnoses and forms of medical treatment that trigger accident victim's receipt of no-fault benefits.[321] Without an EMC diagnosis, an accident victim cannot expect even $10,000 worth of PIP benefits.[322] Thus, Florida attempted to keep its no-fault system by implementing draconian cost-reducing measures which ultimately stripped the system of no-fault's "original purpose": to provide adequate and timely[323] compensation and accessible medical treatment to

314. News Release, *Evidence of Abuse Found in Growing Percentage of Florida No-Fault Insurance Claims*, INS. RSCH. COUNS. (Feb. 9, 2011), https://www.insurance-research.org/sites/default/files/downloads/IRCFloridaPIP_020911.pdf [https://perma.cc/C3VN-74SK].

315. *See* Gordon, *supra* note 13, at 92–93.

316. *Id.*

317. *Id.* at 93. At the time Mr. Gordon made this comment, he was a law student at Quinnipiac University School of Law.

318. *Id.*

319. *Id.*

320. *Id.*

321. Gordon, *supra* note 13, at 91.

322. *Id.* at 90–95.

323. Miller, *supra* note 1, at cover page.

auto-accident victims.[324] In short, Florida kept its no-fault system for the sake of keeping it, as opposed to reforming the system to confer more benefits to Florida motorists.[325] It is contended that Michigan is on a similar path.

Michigan's no-fault trajectory bears significant resemblance to that of Florida (i.e. Michigan is keeping no-fault for the sake of keeping it, not for the sake of benefiting Michigan insureds).[326] Since the Michigan legislature passed the No-Fault Act in 1972, the legislature has set the boundaries for appropriate medical treatment and compensation for auto accident victims and the courts have interpreted the limits of those boundaries.[327] For example, as discussed in Part II, the old law, MCL 500.3107(1)(a), entitled an injured accident victim to recover certain allowable expenses which the statute described as "all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation."[328] After the 2019 reforms, MCL 500.3157's fee schedule replaced the previous charge limitation of "reasonable" charge under MCL 500.3107.[329] In other words, once *reasonable* became exorbitantly expensive to maintain, the legislature put significant restrictions on it. Unlike Florida, which restricted the diagnosis needed to trigger benefits, Michigan restricted how much a medical provider could charge after the statute entitled a claimant to PIP benefits. When the courts identified these restrictions as exceeding the purpose of the No-Fault Act or the Michigan Constitution, they

---

324. Gordon, *supra* note 13, at 92, 100, 104 (As Gordon observes, "...whether Florida's recent effort to rein in costs will succeed is subject to debate. Perhaps more importantly, it remains an open question whether Florida has defeated the original purpose of No-Fault in its zeal to make it affordable.").

325. This is what Gordon means by the statement "...it remains an open question whether Florida has defeated the original purpose of No-Fault in its zeal to make it affordable." Gordon, *supra* note 13, at 92. Put differently, Florida made its no-fault system more affordable in order to keep it, but in doing so sacrificed one of the core aims of no-fault: adequate compensation (i.e., insured must have an EMC diagnosis to even qualify for the full $10,000 in PIP benefits, which is decidedly modest). *Id.*

326. *See supra* Section III.C.2.

327. *See, e.g.,* Admire v. Auto-Owners Ins. Co., 494 Mich. 10, 831 N.W.2d 849 (2013); Griffith *ex rel.* v. State Farm Mut. Auto. Ins. Co., 472 Mich. 521, 697 N.W.2d 895 (2005); Nasser v. Auto Club Ins. Ass'n, 435 Mich. 33, 49, 457 N.W.2d 637, 645(1990) (clarifying that "[t]he plain and unambiguous language of §3107 makes both reasonableness and necessity explicit and necessary elements of a claimant's recovery, and thus renders their absence a defense to the insurer's liability"); Manley v. DAIIE, 425 Mich. 140, 388 N.W.2d 216 (1986) (holding that a benefit that is "reasonably necessary" for a person's care is covered).

328. MICH. COMP. LAWS § 500.3107(1)(a) (2019).

329. Miller, *supra* note 2, at 4.

readjusted the boundaries, as in *Andary*.[330] Strangely, like in Florida, the legislature and the courts continuously readjusted boundaries to a system that required scrapping, not line re-drawing. In short, both the Florida and Michigan legislatures reformed no-fault for the sake of keeping some semblance of a no-fault system, not for the sake of the constituent motorists and policyholders they represent.

Concededly, Florida's $10,000 PIP coverage cap is drastically lower than Michigan's mandatory lifetime coverage until 2019, and significantly lower than the post-2019 reform lowest tiered PIP coverage option of $50,000.[331] Thus, as the argument might proceed, because Florida's starting point for PIP reimbursement was quite modest, any cost-reducing reforms to the system thereafter will more expeditiously strip the system of no-fault's original purpose: to provide adequate and prompt compensation and accessible medical treatment to auto-accident victims.[332]

By contrast, Michigan's no-fault system, which began with unlimited coverage, can afford several "rounds" of cost-reducing reforms before stripping the system of its core no-fault attributes (i.e. adequate compensation).[333] While there may be some truth to such an argument, it also misses the point. No matter where the starting point is (unlimited coverage or a $10,000 cap), the system is being reformed because it costs too much to maintain, and each cost-reducing reform (a fee schedule, tiered coverage, EMC diagnosis, etc.) makes it harder to provide adequate compensation and access to medical care, two foundational elements to the no-fault regime. The three principal goals of no-fault are a) adequate and timely compensation, b) increased medical care access, and c) maintaining lower costs,[334] and pursuing one goal limits achievement of the other (i.e. to make the no-fault system less costly the amount of compensation and medical care access may suffer).[335] Put differently, "[t]he challenge faced by policymakers is how to preserve the cost savings from the reforms while ensuring that accident victims receive adequate medical care."[336]

---

330. *See, e.g.*, Andary v. USAA Cas. Ins. Co., 512 Mich. 207, 250, 1 N.W.3d 186, 210 (2023).

331. Gordon, *supra* note 13, at 72–95.

332. *Id.* at 92.

333. This is merely to suggest the obvious point that because Michigan's no-fault system offers more PIP coverage than Florida, Michigan could continue to reduce the amount of available PIP coverage to further reduce costs while still exceeding Florida's modest $10,000 PIP coverage cap.

334. Gordon, *supra* note 13, at 67.

335. *Id.* at 100.

336. Born & Klein, *supra* note 122, at 8.

3. Advantages of Returning to a Tort System in Michigan Beyond Cost Reductions

This Note agrees with Gordon's proposal that Michigan return to a tort system with "mandatory BI," or residual tort liability, with health insurance companies as the primary payers for accident-related injuries.[337] A return to this system would confer two primary advantages to Michigan drivers and policyholders beyond lower insurance costs.[338] Unlike a no-fault state where an insurer pays for a policyholder's accident-related injuries and medical expenses regardless of which party is at fault, in tort states *fault* is paramount.[339] First, "in tort states, drivers are held responsible for the damage and injuries that they cause to others."[340] If drivers are responsible for damages and injuries caused in auto accidents, a certain level of accountability—conspicuously absent under a no-fault system—will be restored to Michigan.[341] Because the tort system compels negligent or reckless drivers to "internalize the costs of their actions," a tort system reduces potential fraud while also potentially reducing accidents.[342] Second, in a tort system, BI incentivizes responsible driving in addition to lowering costs because an insured only needs to pay when he is at fault.[343]

Importantly, the 2019 reform legislation also mandated an increase in minimum BI limits.[344] Prior to the reform legislation, the Michigan statute required insureds to purchase a minimum of $20,000 for residual tort liability.[345] As of July 1, 2020, MCL 500.3009(a) requires insureds to purchase a minimum of $250,000.[346] Consequently, now Michigan policyholders must purchase $250,000 worth of residual tort liability, meaning their insurer would pay up to $250,000 in the event they were the at-fault driver in an accident.[347] If this mandatory BI coverage continued under a tort system, Michigan motorists would maintain robust protection from liability in cases of serious injury, while avoiding the heavy costs

337. Gordon, *supra* note 13, at 100–01.
338. *Id.* at 101.
339. Gordon, *supra* note 13, at 100–01.
340. Mariah Posey, *Tort Insurance: Full v. Limited*, BANKRATE CAR INSUR. (Jan. 6, 2023), https://www.bankrate.com/insurance/car/tort-insurance/ [https://perma.cc/2KHM-9RKG].
341. Gordon, *supra* note 13, at 101.
342. *Id.*
343. *Id.*
344. Miller, *supra* note 2, at 5.
345. *Id.*
346. MICH. COMP. LAWS § 500.3009(a) (2019).
347. Miller, *supra* note 2, at 5.

associated with no-fault.[348] Indeed, evidence indicates that Michigan's high cost of PIP coverage was a main contributor to high liability insurance premiums.[349] Scrapping no-fault and maintaining BI coverage helps solve that problem. Health insurance companies serving as the primary payers for auto accident-related injuries would help buttress the mandatory BI coverage by keeping BI costs lower and "taking advantage of the health insurer's contractual agreements with medical providers."[350]

Two notable objections to repealing no-fault would be the prospect of (1) increased litigation costs under a tort system and (2) limited compensation for accident-related injuries in which liability is unclear or where the at-fault party seeks compensation for accident-related medical expenses.[351] In the 1970s, no-fault advocates raised the first objection when they pushed for no-fault to replace tort.[352] While that argument may have had validity at the genesis of no-fault, it has little validity under the current system.[353] To the contrary, as discussed in Part II, no-fault states' litigation costs unexpectedly exceed litigation costs in tort states.[354]

The second objection—reduced compensation for accident victims where liability is unclear or where the at-fault party seeks compensation for accident-related medical expenses—is not entirely without merit.[355] After all, as discussed in Part II, adequate and timely medical compensation and access to medical treatment were two important motivations and benefits of no-fault.[356] As likewise shown in Part II, no-fault states surpassed tort states on compensation amounts, speed of claim processing, and access to medical care.[357] However, health insurers serving as the primary payers could achieve adequate and more cost-effective medical care.[358] Whereas health insurers reduce costs through discounts and fee schedules, and use "deductibles, co-payments, utilization controls, and medical protocols" to limit patient treatment, auto insurers tend to pay almost all a victim's bills, and "in most states, at full freight."[359]

---

348. Gordon, *supra* note 13, at 100–03.
349. Born & Klein, *supra* note 11, at 24–25; Born et al., *supra* note 107, at 30.
350. Gordon, *supra* note 13, 102.
351. *See supra* Section II.A.
352. *See supra* Section II.D.2.
353. *Id.*
354. *See id.*
355. *See supra* Section II.A; *see also* Robert Keeton & Jeffrey O'Connell, *Basic Protection—A Proposal for Improving Automobile Claims Systems*, 78 HARV. L. REV. 329, 336–37 (1964).
356. *See supra* Section II.D.
357. *See id.*
358. Gordon, *supra* note 13, at 102–03.
359. Engstrom, *supra* note 22, at 340–41.

Furthermore, it is simply not true that a tort system leaves a negligent driver to "shoulder all the consequences of his carelessness."[360] To the contrary, "[e]ven in tort states, most drivers have first-party health insurance, which pays for medical care for even negligently caused injuries; the vast majority of drivers carry first-party medical payment (MedPay) insurance…and most drivers carry first-party collision insurance, which pays for even an at-fault driver's car repair."[361] This Note supports Gordon's proposal for supplementing mandatory BI and health insurance primary payer coverage with medical payment insurance, like MedPay.[362] MedPay, like no-fault PIP, provides the insured with a fixed "pool of money to pay first-party medical expenses."[363] Unlike PIP, MedPay typically pays all of the charges, and insureds can purchase it for a low cost.[364] While the amount of MedPay coverage is typically modest—a few thousand dollars—it nonetheless helps "defray the cost of deductibles and out-of-pocket expenses."[365] The combination of mandatory BI coverage, health insurance primary payer coverage, and MedPay would go a long way towards placating the concerns that a return to the tort system denies auto accident victims medical access and compensation, while at the same time, significantly reducing costs.[366]

The recommendation to repeal Michigan's no-fault system and replace it with a tort system should not be taken to mean that no-fault is without positives. To the contrary, the system confers several benefits. As discussed in Part II, historical data demonstrates that no-fault states delivered higher compensation rates for accident victims, processed claims faster, and provided more access to medical care, compared to tort states.[367] However, the *sin qua non* to no-fault was the promise of lower costs, which never materialized in any no-fault state, including Michigan.[368]

---

360. *Id.* at 331.

361. *Id.*

362. Gordon, *supra* note 13, at 102.

363. *Id.*

364. *Id.*; *see also* Kacie Goff, *What is Medical Payments (Med Pay) Coverage?*, BANKRATE CAR INSUR. (Dec. 7, 2023), https://www.bankrate.com/insurance/car/medpay-in-car-insurance/ [https://perma.cc/3J59-LEDG].

365. Gordon, *supra* note 13, at 102.

366. *Id.* at 102–03.

367. See *supra* Section II.D.

368. See *supra* Section II.D.2.

IV. CONCLUSION

The foregoing analysis examined no-fault's origin in the U.S. and in Michigan; no-fault's abrupt rise and equally abrupt fall; Michigan's poor no-fault performance on cost containment; Michigan's 2019 legislative reforms enacted to reduce no-fault's costs and *Andary's* relationship to those efforts; and no-fault states' performance as compared to tort states, with a focus on cost containment.[369] Such considerations reveal that Michigan's no-fault system has failed miserably at reducing costs.[370] While the 2019 reforms reduced premium costs, they are highly unlikely to cure the problem of high automobile insurance premiums, especially in light of the Michigan Supreme Court's decision in *Andary v. USAA Casualty Insurance Co.*[371] The court's erroneous statutory interpretation further impedes the 2019 reforms' already modest saving impacts insofar as it pressures auto insurers to raise premium rates in the short to medium terms.[372]

The consequences of the court's decision in *Andary*, coupled with no-fault's historically poor cost-reducing record in Michigan, means a more robust change is in order.[373] This inference is further supported by historical nationwide statistical data evidencing that no-fault has failed to deliver on its principal goal of reducing costs and that tort states consistently surpass no-fault states in reducing costs.[374] Consequently, it is time for Michigan policymakers to consider repealing no-fault in favor of a tort system. Importantly, even if the court decided *Andary* differently, Michigan's no-fault system is beyond the point of repair and the legislature should repeal it in favor of a tort system.[375] Put differently, even if the 2019 reforms drastically reduced auto premiums, historical data suggests a tort system would still provide lower costs than the no-fault system.[376] In this way, the court's decision in *Andary* may have accelerated the failure of Michigan's no-fault system, but the system was plagued by fundamental flaws from the very beginning.

---

369. See *supra* Sections I–III.
370. See *supra* Sections II.A, II.D
371. *See* Andary v. USAA Cas. Ins. Co., 512 Mich. 207, 1 N.W.3d 186 (2023).
372. *See supra* Section III.B.
373. *See supra* Section III.
374. *See supra* Section II.D.
375. *See supra* Section III.
376. *Id.*