

Here's what Mike Duggan's up against in court fight against no-fault

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Michigan's no-fault law has been in effect since 1973. (Photo: Eric Nasse, MCI)

Detroit Mayor Mike Duggan's lawsuit that attempts to overhaul or junk Michigan's unique no-fault auto insurance system is set for its first hearing Thursday in U.S. District Court in downtown.

The judge is to consider arguments from the Michigan Attorney General's Office as to why the mayor's lawsuit — filed in August — should be dismissed, or at the least removed from federal court and sent to state court.

Duggan, who blames no-fault for Detroit's highest-in-the-nation car insurance rates, is joined in the lawsuit by eight other plaintiffs from across the state who feel that they pay too much for insurance.

The suit asks the court to declare Michigan's 1973 no-fault law unconstitutional for failing to produce car insurance rates that are "fair and equitable."

It then wants the court to give the state six months to amend the law so that rates fall. And if the state doesn't fix no-fault in that time, the suit says the court should declare no-fault "null and void" and revert Michigan to a tort-based car insurance system, similar to Ohio, Indiana and 36 other states where insurance is cheaper.

The defendant in the lawsuit before Judge George Caram Steeh is Michigan's insurance director.

For Duggan, a Democrat, the lawsuit is an alternative approach to lowering auto insurance rates after the state House of Representatives in fall 2017 voted down a no-fault overhaul bill that he had championed by a 63-43 vote.

That bill called for restraints on medical provider pay and giving Michigan motorists a first-ever choice in the amount of mandatory health insurance in their no-fault auto policies.

The legislature's critics — predominantly Democrats — questioned whether insurance companies would significantly lower rates or just pocket any savings from the proposed changes. They also voiced concern that consumers would be lured into buying cheaper and less comprehensive policies, only to regret that choice after a bad crash.

Michigan is the only state that requires the purchase of potentially unlimited lifetime medical benefits as part of auto insurance.

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Duggan's lawsuit has attracted the attention of several Michigan interest groups including the Coalition Protecting Auto No-Fault, a group of medical providers, patient advocates and trial lawyers known as CPAN. The coalition has called Duggan's lawsuit a political stunt that wrongly blames no-fault instead of insurance companies for high premiums.

Another group seeking to intervene consists of six Michigan residents who were catastrophically injured in auto accidents and rely on no-fault's unlimited benefits.

"They are struggling to live the best that they can with these catastrophic injuries, and they are worried what happens to them if (no-fault) goes away," said attorney Arthur Liss of Bloomfield Hills-based Liss, Sester & Andrews, which is representing the group. "There is a great fear by these victims that they will have to be institutionalized" if no-fault benefits stop.

The insurance industry group Insurance Alliance of Michigan also wants to get involved in the case, saying that while it supports Duggan's effort to overhaul no-fault, it believes the state Legislature — not the courts — is the proper venue for such changes.

In written arguments to dismiss the case, lawyers with the state Attorney General's Office contend there is a flaw in the lawsuit's main argument that car insurance rates are unconstitutionally high.

That is partly because the reasons set out in the suit for Michigan's high insurance rates — profligate medical service providers, predatory accident lawyers and others — aren't from defects in the Michigan Constitution. Rather, some of those grievances are "the result of bad actors violating the law," the assistant attorney general wrote in their motion.

In addition, the lawyers argue that Duggan's lawsuit, if not dismissed, should at least be kicked down to the Michigan Supreme Court because no-fault is a state law.

But the lawyer for Duggan and the other plaintiffs, David Fink of Bloomfield Hills-based Fink and Associates, contends in court documents that the lawsuit couldn't be filed in the Michigan Court of Claims, which has jurisdiction for actions brought against the state, because the claims court requires plaintiffs to seek remedy in federal court when possible.

In a statement this week, Fink said that Duggan and the plaintiffs are confident in their legal position heading into Thursday's hearing.

On a separate front, Detroit businessman Dan Gilbert has also pressed for changes in the no-fault system and is now considering a ballot initiative that could put the no-fault question back before voters in November 2020.

Voters statewide in 1962 and 1994 rejected ballot issues that called for limiting no-fault's medical coverage.

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