

Pending Lawsuits Against The Michigan Catastrophic Claims Association

The Issue

Transparency.

Voters expect our elected officials to make sound policy decisions based on accurate information. By allowing the Michigan Catastrophic Claims Association (MCCA) to remain a super secret organization, our legislature is being forced to make a blind vote regarding proposed changes to Michigan's auto insurance system. The insurance industry claims that without capping benefits and forcing strict cost controls on private healthcare providers, the MCCA will soon go bankrupt. However, the MCCA refuses to make its data public.

By bringing two lawsuits against the MCCA, the Coalition Protecting Auto No-Fault (CPAN) and the Brain Injury Association of Michigan (BIAMI) hope to help lawmakers get the information they need in order to create good public policy. After all, it is the public's money, and Michigan auto insurance policyholders have the right to know how the MCCA fees are determined and how their money is being managed.

The Background

The MCCA is a non-profit unincorporated association created by the State Legislature through a 1978 Amendment to the No-Fault Act. The MCCA is funded through statutory authority requiring that all Michigan insurance companies become members of the MCCA and charges these companies an assessment that is paid out of premiums collected by these insurance companies from their policy holders. Currently, the MCCA assessment is \$175.00 per vehicle, which is a line item on most insurance policy declaration sheets issued to Michigan insurance policy holders. The MCCA uses this funding to pay no-fault Personal Protection Insurance (PIP) benefits for medical and rehabilitation expenses incurred by patients in excess of \$500,000. Under the Michigan No-fault Act, owners and registrants of motor vehicles are compelled to purchase auto no-fault insurance and must pay the full amount of the premium or risk criminal prosecution and imprisonment up to one year.

The CPAN Lawsuit

After several lawful requests for records under Michigan's Freedom of Information Act (FOIA) were denied by the MCCA, CPAN filed a FOIA-based lawsuit against the MCCA to obtain vital claims information regarding the payment of allowable expense benefits on behalf of catastrophically-injured victims. The information is crucial in helping lawmakers determine whether or not the state's auto no-fault system should be changed in the drastic way the insurance industry has proposed.



Since the MCCA is properly considered a “Public Body” it is not permitted to refuse production of the information sought by CPAN. The MCCA however, denied CPAN’s request for this information, citing in its response that the MCCA relies on a special exemption passed by the legislature in 1988 to exempt its records from disclosure. CPAN alleges that the proper and constitutional way for the legislature to amend an existing statute is to reenact and republish the full statute with the desired changes. However, the legislature *violated the constitution* by creating a special exemption for the MCCA outside of FOIA.

The BIAMI Lawsuit

The BIAMI brought suit based on the principle of Michigan’s common law, which allows for persons of “demonstrable interest” to have access to records of activity. The specific plaintiffs represented by the BIAMI, in turn, represent individuals who have or will sustain catastrophic injuries as a result of motor vehicle accidents, as well as the millions of auto policy holders who are and have been underwriting the lion’s share of catastrophic care in Michigan. The BIAMI, an organization with members that include catastrophically-injured auto accident victims and auto insurance policy holders who pay the catastrophic coverage rates imposed by the MCCA, has demonstrable interest in the MCCA’s rate setting and actuarial standards as follows:

- a. Michigan auto insurance ratepayers pay 100% of the rates imposed by MCCA and 100% of MCCA’s administrative expenses;
- b. The rates set by MCCA have a direct impact on the finances of Michigan policyholders;
- c. The policy, if not the letter, of MCL 500.2406 requires that Michigan policyholders have information about how the rates which they are required to pay are calculated; and over thirty years ago, the Michigan Supreme Court, ruled in *Shavers v Attorney General* that Michigan auto policy holders are entitled under the no-fault act to notice as to how their auto insurance rates are set and an adequate remedy to challenge those rates.
- d. The right of catastrophically-injured victims to know that their ongoing care will not be compromised by the mismanagement of or misinformation about MCCA assets.

The BIAMI lawsuit cites that the premium dollars, in the hands of MCCA, are subject to a resulting public trust. Accordingly, the MCCA is obligated to account to both the beneficiaries of the trust, and to the Michigan auto policy-holders who have underwritten the trust.

Status

The case is scheduled to be argued before the Honorable Clinton Canady III in the Ingham County Circuit Court on October 24, 2012. CPAN’s position has been supported by two excellent amicus curiae briefs. The first was a joint brief by the Michigan State Medical Society, the Michigan Osteopathic Association, the Michigan Orthopedic Society, and the Michigan Association of Chiropractors. The second brief was submitted by the NAACP. A decision should be forthcoming after this hearing as to whether legislators and the public will have access to the answers they seek regarding the MCCA, or if it will continue to hide this crucial information under a veil of secrecy.