

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
ATTORNEY GENERAL

P O. Box 30212
LANSING, MICHIGAN 48909

October 14, 2008

Michigan Legislature
Lansing, MI 48909

Dear State Legislator:

On July 2, 2008, my office sued Blue Cross and Blue Shield of Michigan for engaging in conduct that is barred under PA 350 of 1980: it illegally acquired three for-profit insurance companies and it illegally gave \$125 million to the Accident Fund, money that belonged to Blue Cross subscribers and Michigan citizens.

Blue Cross responded to the lawsuit by filing a motion to dismiss the complaint. On October 6, 2008, Judge Paula J.M. Manderfield ruled on Blue Cross' motion.

I am pleased to report that the Court rejected Blue Cross' arguments and refused to dismiss our claim that Blue Cross violated PA 350. In fact, Judge Manderfield's opinion supports my position by:

- Concluding that PA 350 prohibits Blue Cross from indirectly acquiring or owning these companies (through its wholly-owned subsidiary, the Accident Fund).
- Supporting my claim that Blue Cross violated PA 350 by giving the Accident Fund \$125 million. Judge Manderfield's interpretation is contrary to the Insurance Commissioner's prior determination, provided in a letter to Representatives Smith and Hune dated May 22, 2008, that PA 350 permits this \$125 million gift.

In light of the foregoing, any statements that Blue Cross "won" its motion or that the lawsuit is essentially "over" are grossly inaccurate. Instead, our two primary claims remain pending, one before Judge Manderfield and one before the Insurance Commissioner.

In a related matter, my office will soon be filing an amicus brief in the case of *Ghada Abraham v Blue Cross Blue Shield of Michigan*, Ingham County Circuit Court, No. 08-1181-AA, which challenges the decision of the Insurance Commissioner that he is without authority to use the excess surplus of Blue Cross to reduce rates, unless it exceeds 1000% of Blue Cross' risk-based assets. Allowing BCBSM to use its surplus to acquire other insurers would effectively forestall any rate reduction with the excess surplus.

Page 2
October 14, 2008

This information may be relevant to your consideration of four bills pending before the Legislature – HBs 5282 through 5285. These bills would greatly deregulate and dramatically change the way Blue Cross currently provides health care insurance to millions of Michigan citizens, allow Blue Cross to own additional insurance companies, and allow Blue Cross to transfer subscriber funds to support the acquisition of other companies.

I seriously question whether these bills should be taken up at a time when our nation is seeing the existence of numerous corporations threatened because of reckless corporate behavior and while my lawsuit remains pending before both the judicial and executive branches. Moreover, you should begin to question whether Blue Cross has earned or can be entrusted with expanded authority given the distinct possibility that a court will determine that Blue Cross misused subscriber money and violated the current provisions of PA 350 limiting its authority to buy other insurers.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Cox". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Mike Cox
Attorney General