

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX  
ATTORNEY GENERAL

P. O. Box 30212  
LANSING MICHIGAN 48909

July 7, 2008

Michigan Legislature  
Lansing, MI 48909

Dear State Legislator:

On July 2, 2008, Attorney General Mike Cox filed a lawsuit on behalf of the People of the State of Michigan against Blue Cross Blue Shield of Michigan (Blue Cross). The lawsuit contends that Blue Cross has violated its enabling act, PA 350 of 1980, in two significant ways. First, Blue Cross, through its wholly-owned subsidiary the Accident Fund Insurance Company of America (Accident Fund), has invested its funds in, owns, and controls three non-disability insurance companies other than the Accident Fund. The plain language of PA 350 prohibits Blue Cross from engaging in this activity. Second, Blue Cross subsidized and operated the for-profit Accident Fund by giving it \$125 million of Blue Cross' non-profit funds, which belong to Blue Cross subscribers and Michigan citizens, to enable the Accident Fund to purchase a California workers' compensation insurance company called CompWest. Again, PA 350 expressly prohibits Blue Cross from engaging in this activity.

In addition to violating the Blue Cross enabling Act, the lawsuit contends that Blue Cross violated the terms of the purchase agreement that it entered into with the State of Michigan when it bought the State Accident Fund in 1994. That agreement requires Blue Cross to make capital contributions to the Accident Fund in the form of surplus notes (i.e., loans), not as outright gifts.

Although not central to the claims asserted in the lawsuit, the lawsuit also alleges that Blue Cross failed to seek or obtain required regulatory approval before it allowed the Accident Fund to purchase CompWest and two other non-disability insurance companies. Under PA 350, prior to Blue Cross investing its funds in, owning, or controlling any insurance company, it must first obtain: (1) a determination by the Attorney General that the proposed activity is lawful under Section 202 of PA 350; and (2) the written approval of the Commissioner of the Office of Financial and Insurance Regulation that the activity is in the best interest of Blue Cross and its subscribers. Blue Cross is intimately aware of these requirements, having sought and obtained the necessary regulatory approvals in connection with its purchase of M-CARE. Despite Blue Cross' recent statements that the Attorney General or his Department "knew" about the CompWest transaction, let me make it clear that Blue Cross **did not request or obtain any determination from the Attorney General or his Department that the Accident Fund purchases were lawful**, as it was required to do under PA 350. Had Blue Cross done so, these unauthorized transactions could have been prevented before they occurred.

This lawsuit is not an attack on the Accident Fund or all of the positive things that it does for the State of Michigan. Rather, it is a check on Blue Cross' conscious disregard of the rules under which it is statutorily required to operate. PA 350 vests the Attorney General with the responsibility for ensuring that Blue Cross complies with the Act's provisions. Last year, Attorney General Cox fulfilled his historic role as Blue Cross watchdog by successfully contesting Blue Cross' request to raise its Medigap premium rates over 50%—a move that saved Michigan seniors \$97.5 million initially and more than \$69 million annually thereafter. By filing this lawsuit, he is similarly discharging his statutory duties.

The arguments that Blue Cross has advanced to you decrying this lawsuit raise questions of public policy—for example, whether PA 350 should be amended to allow Blue Cross to own non-disability insurers other than the Accident Fund, or whether PA 350 should be amended to allow Blue Cross to transfer non-profit funds to support the expansion of its for-profit subsidiaries. This debate is currently pending before the Legislature in the form of HBs 5284 and 5285. As PA 350 is currently written, however, Blue Cross cannot: (1) invest its funds in, own, or control non-disability insurance companies other than the Accident Fund; or (2) use its non-profit funds to operate and subsidize the for-profit Accident Fund's expansion activities. The lawsuit filed against Blue Cross is a matter of the Attorney General discharging his Constitutional and statutory obligations to enforce the laws of the State of Michigan, including these PA 350 provisions—not a matter of choice.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel S Hurley". The signature is fluid and cursive, with a large initial "R" and "H".

Rachel S Hurley  
Director of Legislative Relations