MICHIGAN
LAWYERS WEEKLY
www.milawyersweekly.com

State rep presses for MCCA data, transparency

By Carol Lundberg
March 30, 2012

When the Michigan Catastrophic Claims Association (MCCA) announced March 16 that it would again raise its annual per-vehicle fee by 21 percent — from $145 per car to $175 per car — there was a collective howl heard around the state.

Drivers complained. Some lawmakers complained. Insurance reform proponents and opponents alike complained.

In response, Rep. Phil Cavanagh, D-Redford, last week introduced a House resolution asking the state treasurer to start a financial review of the MCCA to explore the appointment of an emergency financial manager.

The MCCA is a nonprofit unincorporated association of which every insurance company that sells automobile or motorcycle coverage in Michigan is required to be a member. It is funded by an annual premium assessment to each insurance company based upon the number of automobile and motorcycle policies written in Michigan.

“They’ve got $14 billion in assets and claim they can’t pay” on future claims without a fee increase or reforms to the no-fault system, Cavanagh said.

As of last week, 25 Democrat representatives had signed on in support of it, though Cavanagh said he was certain that some Republicans, who also are frustrated by a lack of transparency, would join them.

MCCA claimed when it announced the annual fee increase that it faces an estimated $2 billion deficit. But the Coalition to Protect Auto No-Fault (CPAN) has called into question those claims, which are hard to prove or disprove without claims data, the coalition said. In January, CPAN filed a Freedom of Information Act (FOIA) lawsuit against MCCA.

“In September of last year when all the Republicans came in, we were concerned,” said CPAN President John Cornack. “They were talking about some serious reforms to no-fault. So that’s why we made a FOIA request. They kept saying the MCCA is not sustainable. But we think it is. Or we can’t know without having more information.”

What CPAN wants to know, Cornack said, is data about average people who are getting benefits through the MCCA, how long they’re sustained in the system, and the amount of the average claim.

“So if we’re going to negotiate and work on something, we know exactly what we’re dealing with. The insurance industry is pushing the hammer so hard that we’re entitled to know the numbers,” said Cornack, who is CEO of the Eisenhower Rehabilitation Center in Ann Arbor, which treats brain injuries.

HIPAA, privacy concerns?

Last year, House Bill 4936 was passed out of committee to the full House, but it was unable to garner enough votes for passage. It would allow policyholders to opt for personal protection insurance (PIP) coverage as low as $250,000, and would set an upper cap at $5 million.

Michigan drivers are required to pay for insurance that provides lifetime coverage of allowable medical care after car accidents. Claims of more than $500,000 are paid by MCCA. It also would have reduced payments to care providers to the next-highest fee schedule, the workers’ compensation schedule.

Claims data is necessary before lawmakers can consider caps, said David Christensen of Michigan Auto Law in Farmington Hills.

“The idea of caps or selling policies that offer a cap, that’s probably a dead issue,” Christensen said.

He noted that it wouldn’t be dead if lawmakers had the data from MCCA. He said that two traditionally Republican constituent groups — the insurance industry and medical care providers — had hoped that lawmakers might be able to negotiate to come up with a solution to what they call a problem, that lifetime PIP coverage is unsustainable, but it shouldn’t be saved at the expense of the medical community.

“The lifetime caps might have a chance, but if MCCA keeps its numbers secret, there’s no way of knowing how many people would wind up having inadequate coverage under a $5 million cap,” Christensen said.

MCCA has not been forthcoming with information, claiming that it’s not subject to FOIA because it’s a private nonprofit, not a public entity.

MCCA Executive Director Gloria Freeland said that the annual report is transparent and subject to audit by the state Office of Financial and Insurance Regulation; but the MCCA is drawing the line at handing over the type of claims data CPAN is seeking.

“We have concerns about HIPAA and privacy. If we give information about individual claims, it’s always fearful that there are assumptions that can be made” that could identify patients publicly and violate their right to privacy, Freeland said. “We provide information in a summarized form … to protect individual claimants.”

MCCA has 13,970 claims open, she added.

“But every year more people get injured, so that number increases,” Freeland said.

Public awareness efforts

Michigan is the only state in the country with unlimited PIP benefits, said Pete Kuhnmuench, executive director of the Insurance Institute of Michigan. Thirty-eight states are tort states.

"Michigan's auto insurance premiums are 11th highest in the country even though we are the only state with the uncapped lifetime benefits," because we avoid litigation costs in the overwhelming majority of cases, Kuhnmuench said.

"We are big advocates of Michigan's no-fault insurance. We're No. 1 in the percent of money paid in premiums that goes back into benefits. But we are also in favor of some cost constraints and maybe a capping."

CPAN has recently engaged in a public awareness campaign; last month, it held a roundtable discussion of MCCA's finances and a public town hall meeting.

A summary of CPAN's roundtable discussion criticized MCCA's $30 annual fee increase, and MCCA's claims that it faces a $2 billion deficit.

According to the summary, MCCA statements show that as of June 30, 2011, the association had assets of $13.8 billion to meet estimated benefit payment obligations of $13.7 billion. Further, the fund's sustainability is impacted by the performance of its investments. In 2009, the association held $7 billion in common stock, according to the summary. Its value grew to $11 billion in 2011. As the economy improves, the association's investments will grow, according to CPAN.

"The MCCA financial statements show that in fiscal year 2011, MCCA showed a net income of $450 million versus a loss of $480 million in 2010 — a difference of about $1 billion improvement in 2011," according to the summary. "Yet, MCCA's deficit improved by even more — $1.5 billion. This does not indicate crisis nor suggest the need for a massive rate increase."

Mathematical, political sense

CPAN also took issue with future claims costs estimates: "There has been extreme volatility in MCCA estimates of future claims over the years. Policymakers should demand an explanation of these wide swings in claim estimates and greater public accountability, the summary noted."

As for the $2.4 billion deficit, CPAN called that questionable as well, because it was based on claims that were "incurred but not reported" (IBNR).

The IBNR claim reserves are estimates of future claims which have not yet been repowered for past coverage.

Said CPAN: "In the most recent MCCA financial statement, IBNR reserves are $2.8 billion compared to $11 billion in reserves for the 13,522 reported claims still open as of June 30, 2011. The IBNR claim reserve — 25 percent of reported claim reserves — appears to be very high. …

"That's the equivalent to saying that there are over 3,000 catastrophic claims that occurred prior to June 30, 2011, but which somehow have not been reported. Given that the MCCA has historically added about 500 to 700 claims every year … it seems unlikely that MCCA will receive 3,000 currently unreported catastrophic claims in the future for events occurring in the past.”

The study notes that if the IBNR claim reserves were only 15 percent of the reported claim reserves, there would be no deficit. And if they were 10 percent, the MCCA would have a surplus equivalent to two additional new years of reported claim reserves.

Cavanagh, who last year introduced legislation that would have subjected MCCA to the Open Meetings Act and FOIA, said the fee increase doesn’t make mathematical sense even if it makes political sense.

“The increase is a political move because [the insurance companies] couldn’t get their legislation through,” he said. “I propose that if there is $14 billion in assets, and they only need $900 million per year, which they report they do, then why can’t you run the fund on the interest alone?”