



*A broad-based coalition to preserve the integrity of
Michigan's model No-Fault Insurance System*

216 N. Chestnut Street, Lansing, MI 48933 (517) 882-1096

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Martha E. Levandowski

May 21, 2013

Mr. R. Kevin Clinton
Director, Department of Insurance and Financial Services
P.O. Box 30220
Lansing, Michigan 48909-7720

Alternate Address:
Ottawa Building, 3rd Floor
611 W. Ottawa
Lansing, Michigan 48933-1070

**Re: Request for records pursuant to the Michigan Freedom of
Information Act (FOIA)**

Director Clinton:

The Coalition Protecting Auto No-Fault ("CPAN") is a Michigan non-profit, non-stock corporation, organized on a directorship basis in accordance with MCL 450.2305, with its principal office located at 216 North Chestnut Street, Lansing, Michigan. I am the Administrative Director of CPAN, a citizen of the state of Michigan, and a resident of Ingham County. On behalf of CPAN and myself individually, I hereby make the request for records specifically described herein pursuant to the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, MCL 15.231 et seq.

The requested records which are the subject of this FOIA Request are described in a letter from Mr. Jay Angoff dated May 15, 2013, attached hereto as Exhibit A, and primarily deal with ratemaking data utilized by the Michigan Catastrophic Claims Association (MCCA) in the formulation of its projections and annual assessments. As you probably know, Mr. Angoff is the former Insurance Commissioner of the state of Missouri and Deputy Insurance Commissioner of the state of New Jersey. He has most recently served as the Director of the U.S. Department of Health and Services Office of Consumer Information and Insurance Oversight and as Senior Advisor to the Secretary and Regional Director of HHS Region VII. In addition, Mr. Angoff has served as counsel to the National Insurance Consumer Organization. Mr. Angoff



details the specific information he recommends we request from your office, at pages 2 and 3 of his letter under the heading “*Requested Records and Information*” paragraphs 1 – 6. Therefore, and for your convenience, the specific records we are hereby requesting in this FOIA request consist of the following:

REQUESTED RECORDS AND INFORMATION

1. *All records regarding and including the actuarial computation utilized in the determination of the unpaid losses and loss adjustment expenses, described at pages 8 and 9 of that certain Audit prepared by PricewaterhouseCoopers LLP entitled “Michigan Catastrophic Claims Association, Financial Statements and Supplemental Schedules (Statutory Basis of Accounting), June 30, 2012 and 2011,” which is referenced at <http://www.michigancatastrophic.com/LinkClick.aspx?fileticket=UOZE8waOjOc%3d&tabid=2936>, which document shall hereinafter be referred to as the “Audit.”*

2. *All records supporting the computation referred to in Request number 1 above, which is described at pages 8 and 9 of the aforesaid Audit, including, but not limited to the following:*

- a. *Any records setting forth the calculation of the present value of disbursements expected to be made in the ultimate settlement of the claims reported.*
- b. *Any records setting forth the actuarial tables the MCCA used to reflect the probabilities of each claimant surviving to incur the costs the MCCA projects.*
- c. *Any records setting forth the calculation of the MCCA’s provision for incurred but not reported losses.*
- d. *Any records setting forth the actuarial assumptions and calculations producing the 5.5% short-term discount rate and the 7.5% long-term discount rate used by the MCCA.*
- e. *Any records setting forth the forecasts producing the economic assumptions for claim cost inflation and investment returns used by the MCCA.*
- f. *Any records setting forth the current economic data and historical long-term Consumer Price Index data producing the inflation assumptions for the 15 different cost component categories referred to in the Audit.*



- g. Any records setting forth the loss development analysis undertaken by the MCCA's actuaries in connection with the provision for unpaid losses and loss adjustment expenses.*
- h. Any records setting forth the trend analysis for both frequency and severity undertaken by the MCCA's actuaries in connection with the provision for unpaid losses and loss adjustment expenses.*

3. All records regarding and including the annual actuarial evaluation for the fiscal year ending June 30, 2012, as described at page 3 of that certain document referred to as the "Michigan Catastrophic Claims Association Annual Report to the Commissioner, Fiscal Year Ended June 30, 2012," which is referenced at <http://michigancatastrophic.com/LinkClick.aspx?fileticket=AFR2dUWBUGI%3d&tabid=4691> and hereinafter referred to as the "Annual Report."

4. All records regarding and including the Annual Assessment Reports of the 10 largest Michigan auto insurance companies by premium volume, which are described at page 3 of the aforesaid Annual Report referred to in Request number 3 above.

5. All records setting forth and including the annuity model used by the MCCA's Opining Actuary, as described at page 7 of the aforesaid Annual Report referred to in Request number 3 above.

6. All records regarding and including the Explanatory Memoranda prepared by the MCCA's actuaries containing the analysis justifying the MCCA's \$175 per-car assessment for the period July 1, 2012 to June 30, 2013.

For purposes of this request, "records" includes information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, emails, instant messages, text messages, drawings, graphs, charts, photographs, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All such records are included in this request if they are in the possession of or otherwise under the control of Mr. R. Kevin Clinton and/or the Department of Insurance and Financial Services, or available to Mr. Clinton in his official capacity as "an ex officio member" of the MCCA who has the power to "visit the association at any time and examine any and all [of] the association's affairs." [See MCL 500.3104(13) and (23)].



Exempt Records

Should you decide to invoke a FOIA exemption as the basis for withholding any record responsive to this request, please include in your full or partial denial letter sufficient information for CPAN to appeal the denial pursuant to M.C.L. § 15.235(4)(a). To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to CPAN.

Format of Records Requested

To reduce or avoid the costs and labor of printing and/or photocopying records, we request that records be provided in electronic format wherever possible, including but not limited to records that are stored or maintained in electronic format. We will provide a USB drive or other media storage device for the records at our expense.

Fee Waiver Request

CPAN requests that you waive all fees in connection with this request as provided by MCL § 15.234(1) (waiver of fee is appropriate where search for and provision of copies of the public record can be considered as primarily benefiting the general public). CPAN will use the information to contribute significantly to public understanding of the Michigan Catastrophic Claims Association and the fees charged to Michigan drivers. CPAN will make all records received available to the public. CPAN has no commercial interest in obtaining the requested information.

Willingness to Pay Fees Under Protest

While a fee waiver should be granted for the reasons set forth above, CPAN is seeking these records regardless of the ultimate decision on the fee waiver request. CPAN thus is willing to pay fees in keeping with the applicable statutory and regulatory requirements, if necessary and under protest, to enable the timely delivery of the records. Fees must be limited to actual costs of labor and copying, and the means for copying must be the most economical available. M.C.L. §

Mr. R. Kevin Clinton
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15.234(1) and (3). Furthermore, fees may only be assessed based on procedures and guidelines published by the public body. Id. at (3). We therefore request that you identify the procedures and guidelines under which you assess fees, and provide an itemized list of fees charged and the justification for them in order to establish compliance with the statutory requirements. In addition, any payment of fees does not constitute waiver of CPAN's right to seek administrative or judicial review of any denial of its fee waiver request. Please contact me before undertaking any action that would result in a fee charge in excess of five hundred dollars.

Record Delivery

Pursuant to M.C.L. § 15.235(2), we expect a response to this request within 5 business days. To reduce or avoid the costs and labor of printing and/or photocopying records, we request that records be provided in electronic format wherever possible, including but not limited to records that are stored or maintained in electronic format. We will provide a USB drive or other media storage device for the records at our expense.

Please produce the requested records on a rolling basis; at no point should the search for – or deliberation concerning – certain records delay the production of others that you have already retrieved and elected to produce.

Please contact me so that I can pick up these records as soon as possible. If you find that this request is unclear in any way please contact me immediately so I can clarify the request or otherwise expedite and simply your efforts to comply.

Sincerely,

A handwritten signature in blue ink that reads "Martha E. Levandowski".

Martha E. Levandowski
On behalf of herself and the
Coalition Protecting Auto No-Fault (CPAN)



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OF COUNSEL

May 15, 2013

VIA EMAIL AND FIRST CLASS MAIL

Martha E. Levandowski
Administrative Director
Coalition Protecting Auto No-Fault
216 North Chestnut Street
Lansing, Michigan 48933

Re: FOIA Request of Michigan Insurance Commissioner

Dear Ms. Levandowski:

You have advised me that CPAN desires to serve a Freedom of Information Act Request on the Michigan Insurance Commissioner, Mr. Kevin Clinton, requesting specific records and information not previously disclosed by the MCCA on its website that will allow CPAN, the public, and members of the Michigan Legislature to accurately assess the facts regarding the future sustainability of the MCCA and the appropriateness of its annual assessments. I recently communicated my thoughts about this subject to CPAN President John Cornack in a memo dated May 7, 2013. What I stated to Mr. Cornack in that memo applies with equal force to any FOIA request that you may make of the Michigan Insurance Commissioner.

Although the MCCA discloses substantial information on its website regarding its financial condition, the MCCA does not disclose any of its ratemaking-related information. Ratemaking information consists of the raw claims-related data and the estimates and assumptions the MCCA's actuaries make about MCCA claims and claimants for any given year. These estimates and assumptions then become the basis for the projections the MCCA makes about its future sustainability and the decisions it makes about the amount of the premium assessments it imposes in order to fund its liabilities. Without having access to the MCCA's ratemaking data, it is impossible to determine (1) whether the MCCA is in danger of becoming unsustainable in the future, as some have claimed, and (2) whether the MCCA has fairly calculated the per-car

EXHIBIT A

surcharges it has levied and drivers have paid in the past several years. It is this ratemaking data that CPAN seeks. This information is not on the MCCA website, nor has the MCCA previously disclosed it. Importantly, the reports that are available on the MCCA website themselves make clear that the information CPAN seeks is not available on the website, since those reports refer to that information but do not enable the reader to access it.

Therefore, in accordance with the foregoing, I recommend that your FOIA Request to the Commissioner be as follows:

Requested Records and Information

1. All records regarding and including the actuarial computation utilized in the determination of the unpaid losses and loss adjustment expenses, described at pages 8 and 9 of that certain Audit prepared by **PricewaterhouseCoopers LLP** entitled "*Michigan Catastrophic Claims Association, Financial Statements and Supplemental Schedules (Statutory Basis of Accounting), June 30, 2012 and 2011,*" which is referenced at <http://www.michigancatastrophic.com/LinkClick.aspx?fileticket=UQZE8waOjQc%3d&tabid=2936>, which document shall hereinafter be referred to as the "Audit."

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- b. Any records setting forth the actuarial tables the MCCA used to reflect the probabilities of each claimant surviving to incur the costs the MCCA projects.
- c. Any records setting forth the calculation of the MCCA's provision for incurred but not reported losses.
- d. Any records setting forth the actuarial assumptions and calculations producing the 5.5% short-term discount rate and the 7.5% long-term discount rate used by the MCCA.

- e. Any records setting forth the forecasts producing the economic assumptions for claim cost inflation and investment returns used by the MCCA.
- f. Any records setting forth the current economic data and historical long-term Consumer Price Index data producing the inflation assumptions for the 15 different cost component categories referred to in the Audit.
- g. Any records setting forth the loss development analysis undertaken by the MCCA's actuaries in connection with the provision for unpaid losses and loss adjustment expenses.
- h. Any records setting forth the trend analysis for both frequency and severity undertaken by the MCCA's actuaries in connection with the provision for unpaid losses and loss adjustment expenses.

3. All records regarding and including the annual actuarial evaluation for the fiscal year ending June 30, 2012, as described at page 3 of that certain document referred to as the "*Michigan Catastrophic Claims Association Annual Report to the Commissioner, Fiscal Year Ended June 30, 2012*," which is referenced at <http://www.michigancatastrophic.com/LinkClick.aspx?fileticket=AFR2dUWBUGI%3d&tabid=4691> and hereinafter referred to as the "Annual Report."

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6. All records regarding and including the Explanatory Memoranda prepared by the MCCA's actuaries containing the analysis justifying the MCCA's \$175 per-car assessment for the period July 1, 2012 to June 30, 2013.

Of interest and for your information, the six (6) items of information set forth above were requested by CPAN from the MCCA in its formal Request for Production of Documents dated February 11, 2013 which was submitted in the pending Ingham County Circuit Court "*transparency*" lawsuit filed by CPAN

against the MCCA.¹ The MCCA has not provided those requested documents because it has appealed the ruling of the Ingham County Circuit Court.

Please let me know if you have any questions regarding my recommendations for your FOIA Request of the Michigan Insurance Commissioner.

Thank you for the opportunity to be of continuing service to your organization.

Sincerely yours,



Jay Angoff

cc: George Sinas

¹ That Request for Production cites the 2011 PWC Audit. The only change I am recommending is that the Request for Production to the Commissioner cite the more recent 2012 PWC Audit, as I have in paragraph 1 above. The substance of both audits is the same.