

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

05-23-2014

The Michigan Court of Appeals has unanimously held that MCCA records are exempt from FOIA disclosure.

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On May 20, 2014, the Michigan Court of Appeals unanimously held that Michigan Catastrophic Claims Association's (MCCA) records are not subject to Michigan Freedom of Information Act (FOIA) disclosure. ___ Mich App ___ (5/20/14) (Docket No. 314310). Likewise, there is no right to inspect the MCCA's records based on the common law or constructive trust theories.

Plaintiffs, Coalition Protecting Auto No-Fault (CPAN), Brain Injury Association of Michigan (BIAMI), *et al.*, sent a FOIA request to the MCCA seeking specific information. The MCCA claimed that it was expressly exempted from FOIA requests and, as such, refused to disclose the requested information. Relying on FOIA, MCL 12.231, the common law, and the law of trusts, Plaintiffs brought suit against the MCCA to enforce their requests to inspect MCCA's records.¹

The MCCA claimed exemption was based on MCL 500.134(4), which states that "[a] record of an association or facility shall be exempted from disclosure pursuant to Section 13 of the Freedom of Information Act." MCL 500.134(6)(c) goes on to define "association or facility" as the "catastrophic claims association."

Plaintiffs argued the unconstitutionality of MCL 500.134 based on several grounds, including violations of the (1) Const. 1963 Article IV, §25, (2) Title-Object Clause of the State Constitution, and (3) State and Federal Constitutional Due Process and Equal Protection guarantees. Plaintiff CPAN further argued that it had a right to inspect MCCA's records under the common law and under resulting and constructive trust theories. Plaintiff BIAMI claimed, in addition to the aforementioned claims, a right to inspect based on *Shavers, infra*.

Motions for summary disposition were filed by all parties. The trial court denied the MCCA's motion entirely, but granted partial summary disposition in favor of all Plaintiffs under MCR 2.116(c)(8).

SECRET WARDLE NOTES:

Although the Michigan Court of Appeals has unanimously held that the Michigan Catastrophic Claims Association's (MCCA) records are not subject to Michigan Freedom of Information Act disclosure, we believe it is likely that leave to appeal to the Supreme Court will be sought.

¹CPAN and BIAMI brought separate suits, which were consolidated upon stipulation of the parties.

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On appeal, the Michigan Court of Appeals reviewed the trial court's summary disposition ruling *de novo*. It held that the trial court erred in ruling that MCCA's records were not exempt from FOIA.

Rejecting Plaintiffs' argument that MCL 500.134 "does not carve out a wholesale exemption," the Court of Appeals applied the plain language of the statute and found that it "unambiguously exempts 'a record of an association or facility' from disclosure" and that "association or facility" was defined to include MCCA. The Court went on to state that when read in conjunction with Section 13 of FOIA, MCL 15.243, which "permits a public body to be exempt from disclosure of '[r]ecords or information specifically described and exempted...by statute,'" it is clear that "any and all of MCCA's records are fully exempted from FOIA."

Plaintiffs' argument that MCL 500.134(4) violates the State Constitution because the Legislature failed to reenact and republish FOIA was also rejected. The Court held that there was no duty to reenact or republish FOIA, because the statute did not "amend or revise FOIA." Likewise, the Court found no legal merit in Plaintiffs' claim that MCL 500.134 violated the Title-Object Clause or in their claim of right to access records under resulting and constructive trust theories.

The Court also considered Plaintiffs' reliance on *Shavers v. Attorney General*, 402 Mich 554; 267 NW2d 72 (1978) and found it inapplicable for the reason that, unlike *Shavers*, which involved no-fault premiums paid by policyholders, the instant case dealt with premiums paid by member insurers to the MCCA. The Court further acknowledged that "to the extent MCCA's premiums are passed to policyholders, unlike in *Shaver*, MCCA's premiums are subject to an extensive regulatory scheme."

Acknowledging a lack of binding precedent with regard to Plaintiffs' common law rights, the Court discussed several instructive U.S. Supreme Court and Federal Court cases involving conflicts between Federal common law and the Federal Freedom of Information Act. The Court rather swiftly found that the comprehensive statutory scheme, specifically the enactment of FOIA and MCL 500.134, "clearly preempted any pre-existing common law right of inspection that Plaintiffs may have had in this case and the trial court erred in concluding otherwise."

This is a swift blow to the plaintiffs' bar thanks to our rather conservative Court of Appeals. We suspect that the Plaintiffs will seek leave to appeal to the Supreme Court, and will be following closely.

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We welcome your questions and comments.

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