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THE MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION'S LONG-STANDING PRACTICE OF SECOND GUESSING ITS MEMBERS INDEMNITY CLAIMS IS IMPROPER

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Since its inception in 1978, the Michigan Catastrophic Claims Association (MCCA) has been reviewing its members' claims for indemnity under MCL 500.3104(2) for reasonableness and has been rejecting indemnity claims that it concluded were unreasonable. Recently, insurers challenged the MCCA's authority to make such reasonableness determinations with contradictory results in Michigan's trial courts.

The Michigan Court of Appeals resolved the conflict in the consolidated cases of *United States Fidelity Insurance & Guaranty Co. v MCCA* and *Hartford Insurance Company of the Midwest v MCCA*, ___ Mich App ___, ___ NW2d ___ (2007) (Docket No.s 260604; 271199). Secret Wardle represented Hartford in both cases -- as amicus curiae in the USF&G case and as a party in the consolidated case.

The Michigan Court of Appeals held that, "MCL 500.3104 plainly does not incorporate a 'reasonableness' requirement"; and, instead, requires the MCCA to reimburse insurers for 100% of the actual loss amount of PIP benefits paid in excess of the statutory threshold, regardless of the reasonableness of those payments.

The Court of Appeals rejected the MCCA's statutory interpretation arguments as well as its policy arguments. The purpose of MCL 500.3104 is to spread losses from catastrophic injuries among all Michigan insurers to decrease the risk that the affected insurer will become insolvent. The Court recognized that under the MCCA's interpretation, the losses

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This opinion overturns the MCCA's nearly 30-year practice of reviewing the "reasonableness" of its members' claims for indemnity, which resulted in denial of claims for reimbursement and forced insurers to litigate claims not only with their insureds but also with the MCCA. This opinion mandates that the MCCA reimburse insurers for all of the PIP benefits that they pay to their insureds in excess of the threshold payments listed in MCL 500.3104(2), regardless of the reasonableness of these payments.

The substantial threshold amounts that insurers must pay before being entitled to reimbursement under MCL 500.3104, as well as the MCCA's authority to review its members' claims handling procedures, to intervene if it believes that those procedures are not adequately protecting the MCCA's liability and to charge the cost of adjusting claims back to the member, should motivate insurers to be vigilant about paying only reasonable PIP benefits claims by their insureds.

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resulting from payments that the MCCA considers unreasonable will not be spread out and must be absorbed by the affected insurer alone. This may result in the insurer becoming insolvent if it cannot absorb the loss.

The Court of Appeals also rejected MCCA's argument that the court must give deference to its interpretation of the statute, finding that "no such deference is due when the agency's 'interpretation is clearly wrong.'" Thus, the fact that the MCCA has been reviewing its members' claims for indemnity for reasonableness for nearly 30 years is irrelevant because it had no authority to do so.

The Court noted the Legislature did not leave the MCCA without a statutory remedy. It simply is not the remedy that the MCCA has undertaken without statutory authority. Instead, MCL 500.3107(g) permits the MCCA to review its members' claims handling procedures and to intervene if it believes that those procedures are inadequate to properly service the MCCA's liability and to charge the cost of such adjustment to the member insurer.

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