

The Detroit News

Cox sues Blues over funds

7/03/2008

By Christina Rogers and Gary Heinlein

Attorney General Mike Cox, an outspoken critic in recent months of the way Blue Cross Blue Shield of Michigan conducts its business, is taking his battle against the state's largest insurer to court.

Cox on Wednesday sued to overturn a deal in which the nonprofit health insurer gave \$125 million to its for-profit Accident Fund subsidiary to buy another insurance company.

The lawsuit, filed in Ingham County Circuit Court, could doom legislation now stalled in a Senate subcommittee that would allow the Accident Fund to expand into other lines of insurance.

"That's money that should have been used to lower premiums for health insurance," Cox said. "Consumers, the sick and the elderly have paid higher premiums" because the money went to the Accident Fund, he said, noting that Blue Cross Blue Shield rates for individual customers -- those who pay out-of-pocket for coverage because they lack traditional employer-funded health insurance -- went up 79 percent between 2003 and 2007. Group conversion rates went up 92 percent between 2003 and 2007, he said.

"The bottom line is Blue Cross broke the law and we're going to rectify it."

Blue Cross officials rejected Cox's claims, saying the transactions were lawful and the Attorney General's Office had proper notification of the transaction and raised no concerns.

"We think the attorney general is wrong," said Andy Hetzel, vice president of corporate communications for Blue Cross. "And we look forward to resoundingly defeating the lawsuit in court because we know the facts and the law are squarely on our side."

The lawsuit claims the Accident Fund last year illegally used the \$125 million toward the \$127 million purchase of CompWest Insurance Co., a California workers compensation insurer. Cox's lawsuit asks the court to void the purchase and two other subsidiaries bought earlier by the Accident Fund -- United Wisconsin Insurance Co. in 2005 for \$95.8 million and Third Coast Insurance Co. of Illinois in 2007 for \$11.9 million.

As an alternative, Cox wants the court to force the Accident Fund to return the \$125 million to Blue Cross.

Cox said under state law, Blue Cross could loan money to the Accident Fund but can't simply give a for-profit subsidiary \$125 million it collected from customers as a nonprofit insurer.

Critics of the Accident Fund bills, including the Coalition for a Fair & Competitive Insurance Market, applauded Cox for bringing the lawsuit.

Blues-Cox conflict

Cox has been at odds with the Blues since December, when he publicly blasted legislation passed by the state House that restructured state regulation of the individual health insurance market. After the legislation quickly sailed through the House, opponents started speaking up.

Blue Cross officials supported the four-bill package, arguing that it was necessary to ensure its financial stability as insurer of last resort and help reduce keep health care premiums in check. Opponents, including Blue Cross competitors, claimed the legislation will give the Blues a greater stranglehold on the insurance market and would not help consumers.

The House package gave the nonprofit insurer more leeway in setting rates for people that buy their own insurance and allowed the Accident Fund to expand into other insurance lines besides workers compensation.

The Senate eventually passed the legislation dealing with individual health insurance, after stripping several provisions favored by the Blues. Those bills have been sent to a House-Senate conference committee. The two bills related to the Accident Fund never made it out of the Senate Health Policy Committee, in anticipation of the conclusion of Cox's investigation.

Committee Chairman Sen. Tom George said Wednesday that the legislation likely won't move forward until the conclusion of the lawsuit.

"We should wait and not take action on (the legislation) until this has taken its course," because the lawsuit deals with the question of Blue Cross's relationship with Accident Fund, George said. "We shouldn't be modifying that while the current set of rules is being reviewed."

News from Accident Fund

Cox's lawsuit came on the same day Accident Fund and Lansing city officials announced the final details of an agreement in which the firm will move from headquarters west of the State Capitol to a hulking, long-vacant downtown waterfront building owned by the Lansing Board of Water and Light.

"It's strangely coincidental and unfortunate," said Hetzel of the attorney general's time for the announcement. "It really put a dark cloud over this announcement we're making today." The move will bring 500 new jobs and significant economic development to Lansing, Hetzel said.

The timing of the announcement was merely coincidental, said Rusty Hills, a spokesman for the attorney general, who launched his investigation in late April after questions about the Accident Fund transaction arose at Senate committee hearing.

"There is no hidden motive," Hills said. "We concluded our research and we were filing the lawsuit. We wanted to let the press know."

Bill Ballenger, publisher of the newsletter Inside Michigan Politics, said Cox likely has several motivations for taking on the Blues.

"He's been pretty vociferous about fighting this all along. I think he kind of sees himself as a latter-day Republican version of Frank Kelley (long-time former Democratic attorney general), tilting with the behemoth," Ballenger said. "I think there's a bit of gubernatorial politics mixed in. Cox is ambitious. He wants to run for governor and this gives him an issue. He thinks he's right, on solid legal ground and it can help him."

State official calls it legal

In defending the Accident Fund transaction, Blue Cross Blue Shield pointed to a May letter in which Michigan's top insurance official said the transfer of funds from Blue Cross to Accident Fund is legal under Michigan law.

The opinion from Office of Financial and Insurance Regulation Commissioner Ken Ross was in answer to an inquiry from two state representatives.

Cox said Wednesday he disagrees with Ross' conclusion. "Mr. Ross is dead wrong in what he wrote in the letter."

Through spokesman Jason Moon, the insurance regulation office shot back that it stands by its interpretation.

The money routed from Blue Cross to the Accident Fund prior to the purchase was viewed as a "routine transaction" that had "little to no effect on the surplus balance" because the Accident Fund has paid nearly \$200 million in dividends back to the parent organization, a statement from the office said.

"We have expressed our consistent interpretation of the law and the attorney general is entitled to his opinion," Moon said.

Hetzel said the for-profit Accident Fund and its subsidiaries are a crucial part of the Blue Cross business model -- giving it a revenue stream that allows it to absorb losses in its health insurance segment and keep rates low for its 4.6 million health insurance subscribers.

"From our perspective the subsidiary structure is essential for us controlling premiums for more than 4.6 million subscribers," Hetzel said.