

## COA Opinion: Courts have ultimate authority over the statutory interpretation of the Nonprofit Health Care Corporation Reform Act

8. December 2010 By Julie Lam

After the Legislature amended the Nonprofit Health Care Corporation Reform Act, MCL 550.1101 *et seq.*, (the Act) in 1994 to allow Blue Cross Blue Shield of Michigan (BCBSM) to purchase the state accident fund, a for-profit workers' compensation insurer, BCBSM formed the Accident Fund as a wholly-owned, for-profit Michigan stock insurance subsidiary. Subsequently, the Accident Fund acquired the assets and liabilities of the state accident fund. At issue in this consolidated appeal is the Accident Fund's acquisition of three insurance companies from 2005 to 2007, as well as BCBSM's \$125 million contribution to the Accident Fund in 2007. In [Attorney General v Blue Cross Blue Shield of Michigan, Nos. 290167 & 295750](#), the Court of Appeals affirmed the trial court's grant of summary disposition in favor of BCBSM with respect to count I alleging that the Accident Fund's acquisition violated MCL 550.1207(1)(o) but reversed it on count II alleging that BCBSM's contribution of \$125 million to the Accident Fund violated MCL 550.1207(1)(x)(vi). The Court of Appeals determined that the financial transactions at issue were not undertaken by BCBSM, and that the restrictions of MCL 550.1207(1)(o), prohibiting the acquisition of any "domestic, foreign, or alien insurers", were inapplicable to the Accident Fund. Under the doctrine of primary jurisdiction, the Court of Appeals concluded that the trial court erred by dismissing Count II and referring it to the Commissioner of the OFIR for a determination of whether BCBSM had violated the Act. As the Court of Appeals explained, the courts, rather than OFIR, have the ultimate authority over statutory interpretation of the Act, and any OFIR interpretation is not binding on the court. The Court of Appeals remanded the case to the trial court to make an independent, de novo interpretation of the statute. Judge Bandstra issued a [separate opinion](#), concurring in part and dissenting in part, stating that he would conclude that BCBSM's \$125 million contribution was impermissible under the plain language of MCL 550.1207(1)(x), without remanding the issue to the trial court.