

COA Opinion: Insurance Commissioner's interpretation of vague statute governs determination on requesting rate increase

9. June 2010 By Jason Byrne

On June 8, 2010, the Court of Appeals published its opinion in [Michigan Basic Property Insurance Association v. Office of Financial and Insurance Regulation, No. 293766](#). Here, the Michigan Basic Property Insurance Association (“MBPIA”) requested a 18.9% rate increase from the state Insurance Commissioner based on an actuarial report. The MBPIA, which is governed by the Commissioner, is an insurance pool created to provide property insurance to qualified individuals that cannot obtain such insurance in the standard market. The relevant statute provides that MBPIA “rates...shall be equal to the weighted average of the 10 voluntary market insurer groups with the largest premium volume in this state.” MCL § 500.2930a(1). With this statutory authority, the Commissioner rejected the requested rate increase because it had been calculated on the base rates of those insurers, without regard to the discounts offered by those insurers resulting in a lower premium actually charged to consumers. This constituted a break from the Commissioner’s prior position regarding the use of base rates only in such calculations. MBPIA appealed this determination to the circuit court, which reversed the Commissioner’s decision. Now, in an opinion authored by Judge Fort Hood, the Court of Appeals reverses the Circuit Court and reinstates the Commissioner’s decision. Specifically, the Court of Appeals found the statute to be ambiguous, but that the Commissioner’s interpretation was consistent with the legislative intent to ensure fairness and reasonableness in rates charged by MBPIA. Specifically, in this context, the Commissioner reasoned that its position regarding the use of base rates needed to be revised, and the statutory term “rates” had to include offered discounts (versus merely the base rates), because over recent years base rates had been artificially inflated to account for such discounts. The Court of Appeals found that there were no cogent reasons for overturning this interpretation, particularly where the MBPIA’s own actuaries noted that other methods of acceptable actuarial analysis would yield a decrease in rates. Judge Bandstra filed a [concurring opinion](#) arguing that a close reading of the statutory language suggests it refers to actual premiums charged (derived from the base rates minus applicable discounts) versus merely the base rates.