

Attorney General v. Blue Cross Blue Shield of Michigan

Counts in Complaint	AG Arguments	BCBSM Arguments	Judge Manderfield Opinion and Order
<p>I.(a). When BCBSM's wholly owned subsidiary acquired three workers compensation insurance companies, it violated the Nonprofit Health Care Corporation Reform Act.</p>	<p>YES - BCBSM is not authorized to own, directly or indirectly, for-profit insurance companies except pursuant to the limited exceptions in the Nonprofit Health Care Corporation Reform Act. Specifically, BCBSM violated MCL550.1207(1)(o)(iii) and (iv) and MCL 550.1207(1)(x).</p>	<p>NO - It was the Accident Fund, not Blue Cross that acquired the companies, so there is no basis for the claim.</p>	<p>YES - MCL 550.1207(1)(o) "states clearly that it bars not only direct ownership or control, but also indirect ownership or control. . .Specifically, the statue states that health care corporations may not ". . .purchase, take, receive, subscribe for, or otherwise acquire. . . In light of this language, [BCBSM], through its subsidiary, was barred from acquiring the three workers compensation insurance companies unless it met all of the requirements of [the statute]. . . Accordingly, [the AG] has stated a claim upon which relief may be granted. . ."</p>
<p>I.(b). AG has legal standing to enforce the applicable Michigan law against BCBSM.</p>	<p>YES - The Attorney General may bring an action to enjoin a health care corporation from transacting business, if that corporate activity is not authorized.</p>	<p>NO - It was the Accident Fund, not Blue Cross that acquired the companies, so AG's authority to police a health care corporation is inapplicable.</p>	<p>YES - The AG "has standing and [BCBSM's] argument is without merit."</p>
<p>II. BCBSM's \$125 million capital contribution violated Michigan law.</p>	<p>YES - BCBSM provided \$125 million to the Accident Fund so that the AF could acquire another company - thereby illegally subsidizing the operations of the AF with BCBSM capital.</p>	<p>NO - Even though the statute prohibits the use of subscriber funds to operate or subsidize AF in any way, another provision allows for "other financial transactions" between BCBSM and AF.</p>	<p>YES - "Here, to interpret "other financial transactions" as including essentially a grant to the insurer by the health care corporation, would clearly render nugatory the previous language in the statute barring health care corporation or subscriber funds from being 'used to operate or subsidize in any way the insurer.' Accordingly, under the plain language of MCL 550.1207(1)(x)(vi), and with the rules of statutory interpretation firmly in mind, [BCBSM's] argument lacks merit."</p>
<p>III. BCBSM breached the asset purchase agreement under which it acquired the Accident Fund by making the \$125 million contribution to the Accident Fund.</p>	<p>YES - The purchase agreement limited future capital contributions by Blue Cross to the Accident Fund to capital notes - a type of loan instrument.</p>	<p>NO - The purchase agreement terminated.</p>	<p>NO - The terms of the Asset Purchase Agreement are clear that it "shall terminate seven years after the Closing Date." The Closing Date was December 28, 1994. Accordingly, after December 28, 2001, BCBSM was no longer bound by the Agreement.</p>