

Schuette may back Duggan's auto insurance lawsuit

CHAD LIVENGOOD

Attorney General Bill Schuette may "publicly support" Detroit mayor's challenge

Duggan's lawsuit seeks to overturn the constitutionality of auto insurance law

Schuette has voiced his support of Duggan's no-fault reform plan



Bill Schuette

The attorney general may "publicly support" the Detroit mayor's challenge of the constitutionality of Michigan's no-fault law and remove himself from defending the state's insurance department, according to a court filing.

Attorney General Bill Schuette may "publicly support" Detroit Mayor Mike Duggan's lawsuit challenging the constitutionality of Michigan's no-fault auto insurance law and remove himself from defending the state's insurance department in the high-stakes case, according to a court filing.

State Insurance Commissioner Patrick McPharlin said Monday in a court filing that Schuette may create a "conflict wall" to let other attorneys in his office represent the state agency in the lawsuit Duggan filed in August asking a federal judge to declare Michigan's 45-year-old auto insurance scheme unfair and inequitable for motorists in metro Detroit.

"While a final decision has not yet been made, the Attorney General may take a position supporting the Plaintiffs' position in this case," McPharlin said in the court filing.

The potential move by the sitting Republican attorney general comes as he's running for governor in next month's election against Democrat Gretchen Whitmer, who is backed by Duggan.

On the campaign trail, Schuette has voiced support for Duggan's proposal to let drivers opt out of unlimited and expensive medical coverage for injuries sustained in auto accidents — a plan Whitmer has opposed.

"Frankly, I'm Mike Duggan's best hope," Schuette told reporters in August during a campaign stop in Detroit.

In a statement to Crain's on Tuesday, Schuette did not directly address Duggan's lawsuit but said "it's time for the Legislature to act" and create an insurance fraud prevention authority — legislation that has languished in the Capitol for years.

"The mayor of Detroit is right — auto insurance in Michigan has become unaffordable," Schuette said. "It's driving people away, it's keeping businesses from wanting to locate here, it's slowing the growth that we have had over the last eight years."

Duggan's lawsuit, which includes eight other ordinary drivers as plaintiffs, contends the state's auto insurance law "has become unconstitutionally unaffordable" with premiums that are not fair and equitable for Detroiters, who face the highest insurance rates in the nation.

The Detroit mayor has asked a federal judge to force the governor and Legislature to "repair" the auto insurance law within six months. Duggan's lawsuit seeks to test a 1978 Michigan Supreme Court ruling that said compulsory auto insurance rates have to be available to motorists at "fair and equitable rates."

The timing of the lawsuit near the end of outgoing Gov. Rick Snyder's last term likely means either Whitmer or Schuette and the next Legislature would be forced to take action on auto insurance reform should the U.S. District Judge George Caram Steeh rule in Duggan's favor.

If the Legislature doesn't act, Duggan's lawsuit asks the judge to throw out the law and let Michigan revert to being a tort state where injured drivers have to go to court to get their medical bills paid.

After he filed the lawsuit last month, Duggan hinted that the lawsuit would back Schuette into a corner.

"(Schuette) has an interesting decision to make, and we'll see what happens," Duggan told reporters on Aug. 23.

McPharlin's court filing said the Attorney General's Office was taking steps to erect a conflict wall so that assistant attorneys general "from other divisions will represent" Schuette's interests, while the insurance commissioner will be represented by Chief Legal Counsel Eric Restuccia and Assistant Attorney General Ann Sherman.

Like law firms, the Attorney General's Office routinely creates conflict walls to separate attorneys within the office when they have to represent multiple sides in a legal conflict. The conflict wall is intended to create a firewall between state attorneys to preclude them from exchanging confidential information.

"I consent to the attorneys assigned to the Corporate Oversight Division ... with the understanding that the Attorney General may publicly support the plaintiffs in this matter and other attorneys outside of these divisions representing me within the Department of Attorney General may appear on behalf of the Attorney General in support of plaintiffs," McPharlin said in the court filing.

McPharlin's statement is dated Sept. 26 but was filed Monday in U.S. District Court in the Eastern District of Michigan.

A representative from Schuette's office was not immediately available to comment.

Also on Monday, personal injury attorneys at the Bloomfield Hills-based firm Liss, Seder & Andrews PC filed a motion to intervene in the lawsuit on behalf of six catastrophically injured auto accident victims. The firm's lawyers, who specialize in representing drivers with brain and spinal cord injuries, said the potential abolishment of the no-fault law threatens the ability of their clients "to live in their family home as opposed to being institutionalized."

"Prospective Intervenor do not believe the DIFS Director (McPharlin) and the Attorney General will adequately protect their interests and rights," attorney Nicholas Andrews wrote in a court filing.

In the motion to intervene, Andrews argued that Schuette "publicly agrees with the entire premise of (Duggan's) complaint" and suggested he's colluding with Duggan to "gut the no-fault act."

"From the look of it, the Mayor and Attorney General share the common, and unseemly goal of using this lawsuit as a mechanism to cut a quick deal before the election, stipulate that this court must force the Legislature to abolish or gut the No-Fault Act, and emerge as political heroes all without ever inquiring into the insurance industry practices that may violate the law and improperly raise the cost of insurance," Andrews wrote.

In August, Duggan told reporters he had not spoken with Schuette before filing the lawsuit.