

STATE OF MICHIGAN
COURT OF APPEALS

KELLY A. BURKE, JESSE VILLEGAS,
CHARLES JACKSON, GREGORY NELSON,
and THOMAS MARVIN,¹

UNPUBLISHED
April 15, 2003

Plaintiffs-Appellants/Cross-
Appellees,

v

No. 227123
Wayne Circuit Court
LC No. 99-927754-CZ

MICHIGAN CATASTROPHIC CLAIMS
ASSOCIATION,

Defendant-Appellee,

and

AUTO CLUB GROUP INSURANCE COMPANY,
AUTO CLUB INSURANCE ASSOCIATION,
AUTO-OWNERS INSURANCE COMPANY,
CITIZENS INSURANCE COMPANY,
ALLSTATE INSURANCE COMPANY, and
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

Defendants-Appellees/Cross
Appellants,

and

MICHIGAN EDUCATIONAL EMPLOYEES
MUTUAL INSURANCE COMPANY,

Defendant/Cross-Appellant.

Before: Griffin, P.J., and Gage and Meter, JJ.

¹ It appears that Harvey Kline was also a plaintiff in the lower court.

PER CURIAM.

In 1998, the Michigan Catastrophic Claims Association (“MCCA”) returned to its members, the automobile insurance companies who provide no-fault automobile insurance in Michigan, \$1.2 billion of its surplus funds in a lump sum equal to \$180 for each vehicle that was insured on March 18, 1998. The insurance companies gave their current policyholders of March 18, 1998, a sum of \$180 per vehicle. Plaintiffs² filed a potential class-action suit for breach of fiduciary duty and breach of contract against the MCCA and seven automobile insurance companies who are members of the MCCA. Plaintiffs claimed that the refund of \$180 was disproportionate because it did not take into account the pro rata contribution of each policyholder. The MCCA moved for summary disposition under MCR 2.116(8) and (10), arguing that it had no relationship with plaintiffs to support any claim of fiduciary and contractual duties. The insurance companies also moved for summary disposition, under MCR 2.116(4), (8), and (10), arguing that the circuit court either lacked subject-matter jurisdiction or that the commissioner of the office of financial and insurance services (“the Commissioner”) had primary jurisdiction in this case and further arguing that plaintiffs failed to allege viable claims for breach of fiduciary duty or contract. Plaintiffs appeal as of right from an order granting both motions entered by the Wayne Circuit Court. We affirm.

On appeal, plaintiffs argue that the circuit court erred in granting defendants summary disposition. The insurance companies counterclaim, asserting that even if the circuit court had subject-matter jurisdiction over the case, primary jurisdiction in the Commissioner was proper. We conclude that primary jurisdiction in the Commissioner was proper under the circumstances of this case.

This Court reviews the grant or denial of a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Similarly, we review jurisdictional questions de novo. See *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001).

“Primary jurisdiction and subject-matter jurisdiction are distinct legal doctrines.” *Id.* at 205 n 18. Primary jurisdiction applies when a claim is originally cognizable in the courts but requires the resolution of issues that have been placed within the special competence of an administrative body under a regulatory scheme. *Id.* at 197. The judicial process is suspended so that the administrative body may express its views. *Id.* at 198. “The doctrine reflects the courts’ recognition that administrative agencies, created by the Legislature, are intended to be repositories of special competence and expertise uniquely equipped to examine the facts and develop public policy within a particular field.” *Id.*, quoting *Judicial review of administrative agency rules: A question of timing*, 43 Baylor L R 139, 158 (1991). The Michigan Supreme Court has noted that

“[n]o fixed formula exists for applying the doctrine of primary jurisdiction. In every case the question is whether the reasons for existence of the

² It is unclear from the complaint or subsequent filings in the lower court record whether the six plaintiffs were former or current no-fault insurance policyholders on March 18, 1998.

doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation.” [*Travelers Ins Co, supra* at 198, quoting *United States v Western P R Co*, 352 US 59, 64; 77 S Ct 161; 1 L Ed 2d 126 (1956).]

Under the doctrine, an agency uses its special competence to appraise facts, and the agency’s findings may then serve as a premise for later legal consequences. *Travelers Ins Co, supra* at 199-200.

In this case, the Commissioner’s involvement in the matter would focus the parties’ arguments on the correct nature of the refunds and the legal and factual reasoning behind the manner in which the refunds were awarded.³ A judicial determination at this point, without deferring to the primary jurisdiction of the Commissioner, would allow the circuit court to decide the matter without the benefit of the Commissioner’s review of the facts and law in this case. The court would have to proceed without the benefit of the Commissioner’s analysis of how a ruling adverse to defendants in the instant case would affect the statutory operations of the MCCA and the ultimate return of future surplus assessments to policyholders. Thus, this case does not involve basic issues that courts address on a regular basis and that are within the conventional experiences of judges. See *id.* at 199.

We are convinced that the Commissioner is best equipped to review the particular facts and laws at issue in this case and to best anticipate the effect of a ruling adverse to defendants. Deferring to the Commissioner will “reinforce[] the expertise of the agency” and “avoid[] the expenditure of judicial resources for issues that can better be resolved by the agency.” *Id.* at 197. Accordingly, we conclude that the Commissioner had primary jurisdiction over this case.⁴ To the extent that the circuit court granted the motions for summary disposition on different bases,⁵ we note that this Court will not reverse a circuit court’s decision reaching the correct result for the wrong reasons. *Phinney v Perlmutter*, 222 Mich App 513, 532; 564 NW2d 532 (1997). The trial court did not err in its grant of summary disposition.

Affirmed.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Patrick M. Meter

³ The parties characterize the refund in several different fashions.

⁴ Plaintiffs contend that the Commissioner is not empowered to award damages as requested by plaintiffs. In response, and without directly addressing plaintiffs’ contention but instead leaving its ultimate resolution to the Commissioner, we note simply that under the doctrine of primary jurisdiction, circuit court jurisdiction is merely suspended and later circuit court claims may remain. See *Durcon Co v Detroit Edison Co*, 250 Mich App 553, 563; 655 NW2d 304 (2002).

⁵ We acknowledge that the court did not grant the MCCA summary disposition on jurisdictional grounds. However, upon our de novo review we conclude that dismissal on jurisdictional grounds was proper.