STATE OF MICHIGAN

COURT OF APPEALS

AAA MEMBER SELECT INSURANCE COMPANY,

Plaintiff-Appellant,

and

AUTO OWNERS INSURANCE COMPANY,

Intervening Plaintiff-Appellee,

v

STEVEN T. JOHNSON, JONATHAN PARKER, ERNESTA WILLIAMS, DELOIS WYNNE, VIRGINIA HUDSON, ELANTRA EVANS, KIMBERLY GILLES, and SHARIDA MOORE,

Defendants,

and

SHARON LEFTWICH and CLARA WILLIAMS,

Defendants-Appellees.

UNPUBLISHED
August 20, 2020

No. 349608
Oakland Circuit Court
LC No. 2016-152990-CK

Before: RONAYNE KRAUSE, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

In this no-fault insurance case, plaintiff AAA Member Select Insurance Company (AAA) appeals as of right a judgment of $12,155.36 in favor of intervening plaintiff Auto Owners Insurance Company (Auto Owners) and defendants Sharon Leftwich and Clara Williams. On appeal, AAA challenges the trial court's decision to decline to rescind the automobile-insurance

policy AAA issued to defendant Steven T. Johnson on the basis of the policy's "Concealment and Fraud" provision. For the reasons set forth below, we affirm.

Defendants Clara Williams and Sharon Leftwich were injured in an automobile accident while passengers in a car driven by Jonathan Parker and owned by Steven T. Johnson. Parker was taking Williams, Leftwich and others to a northern Michigan prison to visit individuals incarcerated there. In a lawsuit brought by Williams and Leftwich, AAA, Johnson's automobile insurer, provided a defense to Parker and Johnson under a reservation-of-rights letter. AAA then filed this lawsuit, seeking to rescind the automobile-insurance policy it had issued to Johnson. The AAA policy excluded coverage for "bodily injury or property damage while an insured car is used to carry persons or property for compensation or a fee," and AAA alleged that Johnson was being compensated. AAA also accused Johnson of concealment and fraud. Auto Owners, Williams's insurer, intervened in AAA's lawsuit.

Eventually, AAA moved for summary disposition. Auto Owners filed a countermotion for summary disposition, arguing that AAA was higher in priority. The Supreme Court then issued *Bazzi v Sentinel Ins Co*, 502 Mich 390; 919 NW2d 20 (2018), holding, in relevant part, that the rescission of an insurance policy is an equitable decision that falls within a trial court's discretion. Subsequently, the trial court entered an order denying AAA's motion and granting Auto Owners' motion, deciding in its discretion that AAA was not entitled to rescind the insurance policy it had issued to Johnson.

Michigan's appellate courts review a trial court's decision to grant or deny a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Id.* at 120. When "evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, in the light most favorable to the party opposing the motion." *Id.*, citing MCR 2.116(G)(5). If "the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id.*, citing MCR 2.116(C)(10); MCR 2.116(G)(4); *Quinto v Cross & Peters Co*, 451 Mich 358; 547 NW2d 314 (1996).

"Because a claim to rescind a transaction is equitable in nature, it 'is not strictly a matter of right' but is granted only in 'the sound discretion of the court.' " *Bazzi*, 502 Mich at 409 (citations omitted). Thus, this Court reviews that decision for an abuse of discretion. *Phillips v Deihm*, 213 Mich App 389, 394; 541 NW2d 566 (1995); see also *Pioneer State Mut Ins Co v Wright*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 347072); slip op at 4, quoting *Lenawee Co Bd of Health v Messerly*, 417 Mich 17, 26; 331 NW2d 203 (1982) (explaining that "[t]he remedy of rescission is 'granted only in the sound discretion of the court' " and reviewing it for an abuse of discretion). A trial court abuses its discretion when its "decision falls outside the range of reasonable and principled outcomes." *Pioneer State Mut Ins Co*, ___ Mich App at ___; slip op at 4.

AAA first argues that reversal is required because the trial court lacked the discretion to decline to enforce the "Concealment and Fraud" provision on the basis of equity.[1] We disagree.

"As a general rule, Michigan's no-fault insurance system is 'a comprehensive scheme of compensation designed to provide sure and speedy recovery of certain economic losses resulting from motor vehicle accidents.' " *Bazzi*, 502 Mich at 399, quoting *Belcher v Aetna Cas & Surety Co*, 409 Mich 231, 240; 293 NW2d 594 (1980). Consequently, Michigan law imposes "various requirements detailing the benefits that Michigan automobile-insurance policies must provide, including PIP benefits, which 'are payable to or for the benefit of an injured person or, in the case of his death, to or for the benefit of his dependents.' " *Bazzi*, 502 Mich at 399, quoting MCL 500.3112. Despite the clear contractual nature of automobile-insurance policies, our Supreme Court has made it clear that "the statute is the 'rule book' for deciding the issues involved in questions regarding awarding those benefits" "[b]ecause PIP benefits are mandated by statute under the no-fault act . . . ." *Bazzi*, 502 Mich at 399 (citation and internal quotation marks omitted); see also *id*. at 400 ("There is no question that PIP benefits are mandated by [MCL 500.3112] and that the insurance policy must therefore be read together with the no-fault act . . . .").

The question in this case is the same question the Supreme Court addressed in *Bazzi*: "whether the statute prohibits an insurer from availing itself of the defense of fraud." *Bazzi*, 502 Mich at 400. The Supreme Court clearly determined that "the plain language of the no-fault act does not preclude or otherwise limit an insurer's ability to rescind a policy on the basis of fraud." *Id*. at 401. While *Bazzi* involved "the *common-law* remedies available to an insurer for misrepresentation or fraud," *id*. at 400 (emphasis added), and this case involves the *contractual* remedies available to an insurer for misrepresentation or fraud, a distinction that AAA asserts is consequential, we conclude that, either way, AAA is certainly permitted to avail itself of the defense of fraud. And, most importantly, this remains true even when there is an innocent third party involved. "In the past, Michigan courts have held that the right to rescind ceases to exist once there is a claim involving an innocent third party because [p]ublic policy requires that an insurer be estopped from asserting rescission when a third party has been injured," but the Supreme Court "implicitly abrogated the so-called 'innocent-third-party' rule in *Titan* [*Ins Co v Hyten*, 491 Mich 547; 817 NW2d 562 (2012)]," reasoning that "a public policy rationale does not compel the adoption of such a rule . . . ." *Bazzi*, 502 Mich at 401-402 (citation and internal quotation marks omitted); see also *id*. at 407 ("Accordingly, we hold that *Titan* abrogated the innocent-third-party rule and that [an insurer] is therefore not precluded from raising a defense of fraud.").

Nevertheless, the Supreme Court also made it clear that, even if an insurer can successfully demonstrate the defense of fraud, the insurer is not "categorically entitled to rescission." *Id*. at 408. "Generally, [f]raud in the inducement to enter a contract renders the contract voidable at the option of the defrauded party . . . ." *Id*. (citations and internal quotation marks omitted). Therefore, "an insurance policy procured by fraud may be declared void *ab initio* at the option of the insurer."

[1] AAA conceded at oral argument that this argument fails as a result of our Supreme Court's recent decision in *Meemic Ins Co v Fortson*, ___ Mich ___; ___ NW2d ___ (No. 158302, decided 7/29/20). We nonetheless address it in the interest of completeness.

Id. And when a policy is declared void *ab initio*, "the insurance policy is considered never to have existed." *Id*. That does not mean, however, that obligations imposed on the parties by the policies do not exist. Rather, " '[u]nless rescinded, a voidable contract imposes on the parties the same obligations as if it were not voidable.' " *Id*. at 409, quoting 1 Williston, Contracts (4th ed.), § 1:20, p 76.

"Rescission abrogates a contract and restores the parties to the relative positions that they would have occupied if the contract had never been made." *Bazzi*, 502 Mich at 409. However, "[b]ecause a claim to rescind a transaction is equitable in nature, it 'is not strictly a matter of right' but is granted only in 'the sound discretion of the court.' " *Id*., quoting *Amster v Stratton*, 259 Mich 683, 686; 244 NW 201 (1932). "When a plaintiff is seeking rescission, 'the trial court must balance the equities to determine whether the plaintiff is entitled to the relief he or she seeks.' " *Bazzi*, 502 Mich at 410, quoting *Johnson v QFD, Inc*, 292 Mich App 359, 370 n 3; 807 NW2d 719 (2011). This means that "courts are *not* required to grant rescission in all cases." *Bazzi*, 502 Mich at 410 (emphasis added). This is true even "when two equally innocent parties are affected . . . ." *Id*. In those situations, "the court is 'required, in the exercise of [its] equitable powers, to determine which blameless party should assume the loss . . . .' " *Id*. at 410-411, quoting *Lenawee Co Bd of Health*, 417 Mich at 31.

Ultimately, rescission is an equitable remedy that courts must choose to apply depending on the individual circumstances presented by each case:

> In this instance, rescission does not function by automatic operation of the law. Just as the intervening interest of an innocent third party does not altogether bar rescission as an equitable remedy, neither does fraud in the application for insurance imbue an insurer with an absolute right to rescission of the policy with respect to third parties. Equitable remedies are adaptive to the circumstances of each case, and an absolute approach would unduly hamper and constrain the proper functioning of such remedies. This Court has recognized that [e]quity jurisprudence molds its decrees to do justice amid all the vicissitudes and intricacies of life and that [e]quity allows complete justice to be done in a case by adapting its judgments to the special circumstances of the case. [*Bazzi*, 502 Mich at 411 (citations and internal quotation marks omitted; alterations in *Bazzi*).]

In *Bazzi*, the Supreme Court declared the insurance policy at issue "void *ab initio* due to the fraudulent manner in which it was acquired" but remanded for the trial court to "determine whether, in its discretion, rescission of the insurance policy is available . . . ." *Id*. at 412.

In this case, the trial court followed *Bazzi*. At the outset, it determined that Johnson engaged in fraudulent conduct. As a result, it declared Johnson's AAA policy void *ab initio*. These specific decisions are not challenged. Next, the trial court recognized that rescission was not automatic; rather, the court correctly explained, the decision whether to rescind the policy was a discretionary one that required it to balance the equities. The trial court then exercised that discretion. Stated simply, the trial court's analysis in this case was consistent with *Bazzi*. We find no error in this regard.

On appeal, AAA's primary argument is that the *Bazzi* analysis is not applicable in this case. This argument is primarily based on the fact that "common-law remedies" were at issue in *Bazzi*. See *Bazzi*, 502 Mich at 400 (discussing "the common-law remedies available to an insurer for misrepresentation or fraud"). Conversely, AAA asserts, this case involves *contractual* remedies only. Relying on the rule of law that "court[s] must construe and apply unambiguous contract provisions as written" and cannot "modify unambiguous contracts or rebalance the contractual equities struck by the contracting parties," *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005), AAA argues that it was entitled to a declaration that it was not liable to Leftwich, Williams, or any other individual injured in the accident based on two unambiguous provisions in Johnson's AAA policy.

It is true, as AAA contends, that "[i]nsurance policies are contracts subject to the same contract construction principles that apply to any other species of contract." *Bazzi*, 502 Mich at 399. Thus, "unless a contract provision violates law or one of the traditional defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written." *Rory*, 473 Mich at 461. This means "that the judiciary is without authority to modify unambiguous contracts or rebalance the contractual equities struck by the contracting parties because fundamental principles of contract law preclude such subjective post hoc judicial determinations of 'reasonableness' as a basis upon which courts may refuse to enforce unambiguous contractual provisions." *Id*.

Here, the AAA policy's "Concealment or Fraud" provision provides as follows:

> **CONCEALMENT OR FRAUD**
>
> **We** may void the terms of the policy applying to an **insured car** if an **insured person** has concealed or misrepresented any material fact or circumstance relating to:
>
> a. this insurance; or
>
> b. declarations made in applying for, changing or renewing coverage, as provided under Condition 17 – Declarations.
>
> **We** do not provide coverage for any **insured person** if an **insured person** has concealed or misrepresented any material fact or circumstance relating to this insurance or any claim for which coverage is sought under this policy.

According to this unambiguous provision, AAA was permitted to *void* the terms of the policy because Johnson engaged in fraudulent conduct. Stated differently, the provision permits the policy to be declared void *ab initio*. It does not, however, address rescission. And, as indicated above, an insurance contract, even if declared void *ab initio*, "imposes on the parties the same obligations as if it were not voidable" "[u]nless rescinded . . . ." *Bazzi*, 502 Mich at 409 (citation and internal quotation marks omitted). For this reason, we reject AAA's argument that the policy enables AAA to rescind the policy, rather than simply void it, in light of Johnson's fraudulent conduct.

The only other possible support for AAA's reliance on policy provisions would be the reference in the "Concealment and Fraud" provision that AAA will not "provide coverage for any **insured person**" in light of Johnson's fraudulent conduct. This language is somewhat consistent with the policy exclusion relied on by AAA, which states that the AAA policy's "Liability Coverage does not cover" "**bodily injury** or **property damage** while an **insured car** is used to carry persons or property for compensation or a fee . . . ." In essence, AAA argues that it was not required to provide coverage under the policy to innocent third parties like Leftwich, Williams, and others even if it was not entitled to rescission under the policy's "Concealment and Fraud" provision.

However, if this Court were to accept AAA's argument, insurers would, at least in the vast majority of cases, be "categorically entitled to rescission" in the event of fraudulent conduct by an insured, an outcome the Supreme Court squarely rejected. *Bazzi*, 502 Mich at 408. This is because, like the AAA policy, most—if not all—automobile-insurance contracts include provisions that the insurer will "not provide coverage" when "an **insured person** has concealed or misrepresented any material fact or circumstance relating to this insurance or any claim for which coverage is sought under this policy." If such a provision automatically entitles the insurer to rescission (or something practically identical to rescission), the insurer would always—or, stated differently, "categorically"—be entitled to rescission. AAA has not identified, and there does not appear to be, any legal authority supporting such an understanding.

Rather than reach such a legally unsupported conclusion, it is our view that the fraudulent conduct of an insured, whether that fraudulent conduct be based on common-law or a contractual provision, should be treated the same. See also *Meemic Ins Co v Fortson*, ___ Mich ___; ___ NW2d ___ (No. 158302, decided 7/29/20), slip op at 10 ("It would make little sense to say that an insurer can invoke common-law defenses when sued but cannot place those defenses in its contract.").[2] In both circumstances, an insured is entitled to seek to have the policy declared void *ab initio*. *Bazzi*, 502 Mich at 412. Then, if declared void *ab initio*, the insurer may pursue rescission. *Id*. at 409.[3] The party seeking to rescind a contractual agreement has the burden of establishing that rescission is warranted. *Gardner v Thomas R Sharp & Sons*, 279 Mich 467, 469; 272 NW2d 871 (1937). And, as indicated above, the trial court then has the discretion to determine whether rescission is warranted by balancing the equities based on the specific facts and

[2] In *Meemic*, our Supreme Court was "confronted with a contractual fraud defense to a claim for coverage mandated by the no-fault act." The Court held that "a provision in an insurance policy purporting to set forth defenses to mandatory coverage is only valid and enforceable to the extent it contains statutory defenses or common-law defenses that have not been abrogated." *Id.*, slip op at 10-11.

[3] AAA may pursue rescission in this case because its contract-based fraud claim relates to the inception of the contract. It is therefore "the type of common-law fraud that would allow for rescission." *Meemic*, slip op at 18 (holding that rescission may be allowed where the fraudulent activity either relates to the inception of the contract or, if occurring post-procurement of the contract, relates to a failure to perform a substantial part of the contract or one of its essential terms).

circumstances of each case. *Bazzi*, 502 Mich at 410. That is precisely what the trial court did in this case, and we find no error in this regard.

Even if the trial court relied on the correct analysis, AAA additionally argues, it still reached the wrong result. We disagree with this argument as well.

Again, "[w]hen a plaintiff is seeking rescission, 'the trial court must balance the equities to determine whether the plaintiff is entitled to the relief he or she seeks.' " *Bazzi*, 502 Mich at 410, quoting *Johnson*, 292 Mich App at 370 n 3. This means that "courts are *not* required to grant rescission in all cases," including in situations "when two equally innocent parties are affected . . . ." *Bazzi*, 502 Mich at 410 (emphasis added). Rather, "the court is 'required, in the exercise of [its] equitable powers, to determine which blameless party should assume the loss . . . .' " *Id.* at 410-411, quoting *Lenawee Co Bd of Health*, 417 Mich at 31. "Equitable remedies are adaptive to the circumstances of each case, and an absolute approach would unduly hamper and constrain the proper functioning of such remedies." *Bazzi*, 502 Mich at 411.

Although the relevant circumstances will vary from case to case, Justice Markman recently set forth "a nonexclusive list of factors" that a trial court might consider when exercising discretion in deciding whether to rescind an insurance policy. See *Farm Bureau Gen Ins Co of Mich v ACE American Ins Co*, 503 Mich 903, 906-907; 919 NW2d 394 (2018) (MARKMAN, J., *concurring*). This Court recently relied on those factors as "a workable framework" in *Pioneer State Mut Ins Co*, ___ Mich App at ___; slip op at 6-9. This workable framework is precisely the framework that the trial court relied on below; the parties relied on it as well.

The relevant factors include the following:

> (1) the extent to which the insurer could have uncovered the subject matter of the fraud before the innocent third party was injured; (2) the relationship between the fraudulent insured and the innocent third party to determine if the third party had some knowledge of the fraud; (3) the nature of the innocent third party's conduct, whether reckless or negligent, in the injury-causing event; (4) the availability of an alternate avenue for recovery if the insurance policy is not enforced; and (5) a determination of whether policy enforcement only serves to relieve the fraudulent insured of what would otherwise be the fraudulent insured's personal liability to the innocent third party. [*Pioneer State Mut Ins Co*, ___ Mich App at ___; slip op at 7, quoting *Farm Bureau Gen Ins Co of Mich*, 503 Mich at 906-907 (MARKMAN, J., *concurring*).]

Because the parties do not agree which factors apply, all five will be addressed.

Regarding the first factor, i.e., "the extent to which the insurer could have uncovered the subject matter of the fraud before the innocent third party was injured," Auto Owners and Williams contend that AAA should have been alerted to Johnson's fraudulent conduct given that he owned six vehicles for purportedly personal use. As this Court recognized in *Pioneer State Mut Ins Co*, ___ Mich App at ___; slip op at 7 n 7, however, "[t]he first factor does not impose a duty to investigate upon insurers . . . ." The mere fact that Johnson purportedly had numerous vehicles

does not appear to be sufficiently suspicious to warrant such an investigation. For this reason, we would conclude that this factor weighs relatively evenly between the parties.

Regarding the second factor, i.e., review of "the relationship between the fraudulent insured and the innocent third party to determine if the third party had some knowledge of the fraud," Auto Owners and Williams correctly assert that this factor weighs against rescission because there is no evidence that Williams (or Leftwich) was aware of Johnson's fraudulent conduct. See *Pioneer State Mut Ins Co*, ___ Mich App at ___; slip op at 8 (explaining that the second factor "weighs against rescission" when "there is no evidence that the injured person was ever aware of [the insured's] representations"). This factor weighs against rescission.

Regarding the third factor, i.e., "the nature of the innocent third party's conduct, whether reckless or negligent, in the injury-causing event," Auto Owners correctly asserts that this factor weighs against rescission. As this Court explained in *Pioneer State Mut Ins Co*, ___ Mich App at ___; slip op at 8, "[t]he third factor—the innocent third party's conduct in the event that caused the injury—also weighs against rescission because [the innocent third party] was simply a passenger in [the insured's] car and was not involved in the operation of the vehicle."

Regarding the fourth factor, i.e., "the availability of an alternate avenue for recovery if the insurance policy is not enforced," the trial court largely dismissed this factor, concluding that there would almost always be an alternative avenue for recovery in light of the Michigan Assigned Claims Plan (MACP). See *Spectrum Health Hosp v Mich Assigned Claims Plan*, ___ Mich App ___, ___; ___ NW2d ___ (2019) (Docket No. 343563), p 1 ("The purpose of the MACP is to ensure prompt coverage for persons injured in motor vehicle accidents when coverage cannot be found or is unavailable."). AAA takes issue with this analysis, claiming that there are situations in which the MACP would not be an alternative source of recovery, such as when a claimant fails to comply with the MACP's one-year notice requirement. See MCL 500.3174 ("A person claiming through the assigned claims plan shall notify the Michigan automobile insurance placement facility of his or her claim within 1 year after the date of the accident. . . ."). Regardless, it is unclear how much weight the availability of alternative sources of recovery should be afforded in a case like this. Indeed, turning to those alternative sources of recovery would bring in even more innocent parties. Here, for example, it would mean that Auto Owners, Williams' automobile insurer, and GEICO Indemnity Company, Leftwich's automobile insurer, would be responsible for PIP and uninsured-motorist benefits despite being just as innocent as AAA, Williams, and Leftwich. If it were a situation where, for example, Johnson, the party that actually engaged in the wrongdoing, was collectible, such a factor might be deemed to strongly favor permitting rescission because the at-fault party would experience the consequences of his or her wrongdoing. But, in a situation like this, where potential "alternative sources of recovery" are equally innocent, these circumstances, in and of themselves, would not necessarily tip the scales one way or the other.

However, even if the availability of other sources of recovery was a crucial factor in a case like this, the record reflects that there *is* evidence in the record to support the notion that an alternative source of recovery may *not* have been available. At a hearing with respect to Leftwich, the trial court recognized that "[t]here's evidence that [Leftwich] has an alternative avenue for some recovery absent enforcement of the policy, but evidence also shows that she has reached or will reach her . . . under-insured policy limits." Indeed, Leftwich presented both argument and

evidence that the injuries that she suffered in the accident exceeded her personal automobile policy's uninsured-motorist coverage policy limits. That Leftwich's injuries resulted in expenses that exceeded her own policy's limits means that this factor would weigh heavily *against* allowing rescission. Williams has not presented similar evidence, but has argued that, in the event Johnson's AAA policy is rescinded, her insurance premiums will be increased. AAA merely asserts—without any citation to the record—that Leftwich can recover from GEICO and Williams can recover from Auto Owners. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) (citations omitted). "An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue." *Id*. Because AAA ignores Leftwich's evidence that her injuries resulted in expenses that exceeded her policy limits, and because AAA points to no evidence whatsoever to support its assertion that alternative sources of recovery exist and will not be exhausted, we conclude that this argument is abandoned. We note, however, that Auto Owners and Williams make a persuasive point in arguing that, in the event the AAA policy is not rescinded, AAA will have precisely the same opportunity for recovery against Johnson, its insured, that Auto Owners and Williams would have. "A plaintiff . . . is not required to elect between the remedies of rescission and damages. Furthermore, when a contract is not rescinded, the defrauded insurer may still recover damages on the basis of fraud." *Bazzi*, 502 Mich at 410 n 11 (citations omitted); *Glover v Radford*, 120 Mich 542, 544; 79 NW 803 (1899) ("If there was fraud, and he did not succeed in rescinding the contract, he certainly ought to have the right to recover damages for the injury he had suffered, if any."); *Hedler v Manning*, 252 Mich 195, 197; 233 NW 223 (1930) ("A bill for rescission with alternative prayer for damages for fraud if rescission be impracticable is well laid."). Because each party would presumably have the same ability to pursue recovery against Johnson, this factor would not necessarily weigh strongly one way or the other even if there are alternate sources of recovery.

Finally, regarding the fifth factor, i.e., "whether policy enforcement only serves to relieve the fraudulent insured of what would otherwise be the fraudulent insured's personal liability to the innocent third party," the trial court commented that Johnson "should not be relieved" "from his bad acts in this case, his personal liability," but did not necessarily weigh the factor. AAA claims that "[t]his factor, like the previous one, weighs in favor of allowing rescission," because "[r]equiring [AAA] to provide liability coverage would 'transfer liability to the innocent third party from the insured who committed the fraud to the insurer that did not commit wrongdoing.' " AAA appears to be correct, but it is unclear how much weight this factor should be given, especially in light of the other factors discussed above.

Ultimately, as the trial court concluded, the issue of whether to rescind was a "close" call because all of the parties involved—AAA, Auto Owners, Leftwich, Williams, and perhaps any other individuals injured in the accident—are innocent. Given that all were innocent, it is difficult to conclude that, even if this Court may have reached a different decision, the one reached by the trial court "falls outside the range of reasonable and principled outcomes." *Pioneer State Mut Ins Co*, ___ Mich App at ___; slip op at 3. Indeed, here, much like in *Pioneer State Mut Ins Co*, "[t]he trial court's analysis was specific to the facts and circumstances of the case and went no farther

than what was equitable." *Id*. at ___; slip op at 9. Therefore, this Court "cannot conclude that the trial court abused its discretion by refusing to grant rescission." *Id*.

Affirmed.

/s/ Amy Ronayne Krause
/s/ David H. Sawyer
/s/ Mark T. Boonstra