STATE OF MICHIGAN

COURT OF APPEALS

RONALD ALLEN MULLEN,

Plaintiff-Appellant,

v

PROGRESSIVE MARATHON INSURANCE COMPANY, and MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY,

Defendants-Appellees.

UNPUBLISHED
October 22, 2020

No. 350015
Wayne Circuit Court
LC No. 18-004136-NF

Before: BOONSTRA, P.J., and MARKEY and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting summary disposition in favor of defendant Progressive Marathon Insurance Company (Progressive) and its orders granting summary disposition (and partial summary disposition) in favor of defendant Michigan Automobile Insurance Placement Facility (MAIPF). We affirm the former, reverse the latter, and remand for further proceedings.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

On the night of December 1, 2017, plaintiff was involved in a motor vehicle accident with an unnamed driver in Pontiac. Plaintiff testified at his deposition that he had stopped at an intersection, intending to make a left turn. As plaintiff began to make the turn, another vehicle drove into the intersection and struck his vehicle. It was dark at the time of the accident; plaintiff testified that he did not see the other vehicle until he was already turning left because that vehicle's headlights were off. Plaintiff was injured in the accident.

At the time of the accident, plaintiff's driver's license was suspended because he had not paid the fees for a number of traffic tickets. The vehicle plaintiff was driving belonged to his wife, Valerie Mullen (Valerie), and was covered by an automobile insurance policy issued to Valerie by Progressive. Valerie made a claim for personal protection insurance (PIP) benefits to Progressive on behalf of plaintiff. While reviewing the claim, Progressive discovered that Valerie had failed to list plaintiff as a driver in the insurance application, although Valerie and plaintiff were married

and the two were members of the same household when she applied for the policy. After discovering that plaintiff was driving Valerie's car with a suspended license when the accident occurred, Progressive declared Valerie's insurance policy void. In a letter explaining the decision, Progressive informed Valerie that it had voided the policy because "[y]ou or an insured person concealed, misrepresented or made incorrect statements or representations regarding a material fact or circumstance; or engaged in fraudulent conduct in connection with your application." Progressive refunded to Valerie the premium payments that she had previously made under the policy in the amount of $891.13, which was direct-deposited into her bank account. After Valerie's insurance policy was voided, plaintiff filed an application for PIP benefits through MAIPF. However, MAIPF did not assign the claim to a servicing insurer.

Plaintiff filed suit against Progressive and MAIPF, alleging that he was entitled to PIP benefits in relation to the accident. Plaintiff alleged that Progressive was liable for PIP benefits under the policy, or in the alternative that the court enter a declaratory judgment stating that MAIPF was required to assign his claim for PIP benefits to a servicing insurer. Additionally, plaintiff argued that he was entitled to seek PIP benefits (as monetary damages) directly from MAIPF because MAIPF had unlawfully failed to assign his claim to a servicing insurer. MAIPF moved for partial summary disposition, arguing that plaintiff could not obtain PIP benefits directly through MAIPF because MAIPF was not an insurer from whom such benefits could be obtained. The trial court agreed, and entered an order granting partial summary disposition in favor of MAIPF, leaving intact plaintiff's claim that the trial court declare that MAIPF was required to assign his claim to a servicing insurer.

Later in the proceedings, Progressive moved for summary disposition, arguing that it was not liable to plaintiff for PIP benefits because it was entitled to declare Valerie's insurance policy void *ab initio* as a result of material misrepresentations in her insurance application. Progressive explained that Valerie had not listed plaintiff in her insurance application, despite being married to plaintiff, and did not mention that the two were members of the same household. Progressive contended it was "factually undisputed that [Valerie]'s misrepresentations were material, as the premium [Progressive] would have charged . . . for the underlying policy would have been 17.9% [higher] than the premium [Progressive] actually charged." Progressive further argued that Valerie had accepted the rescission of the insurance policy by accepting the direct-deposit of her refunded insurance premiums.

MAIPF also moved for summary disposition of plaintiff's remaining claim that MAIPF was required to assign plaintiff's claim for PIP benefits to a servicing insurer, arguing that it was not required to do so because Valerie's insurance policy through Progressive was valid. MAIPF directed the trial court to *Bazzi v Sentinel Ins Co*, 502 Mich 390, 408-410; 919 NW2d 20 (2018), in which the Michigan Supreme Court stated that (1) an insurer may declare an insurance policy procured through fraud void *ab initio*, and (2) rescission of the policy is available as an equitable remedy to the defrauded insurer. MAIPF argued that, under *Bazzi*, a trial court is required to balance the equities and determine whether a defrauded insurer is entitled to full rescission of an insurance policy. MAIPF asked the trial court to find that a valid Progressive insurance policy had covered plaintiff's accident, which would absolve MAIPF of any responsibility to assign the claim.

At a hearing regarding the two pending motions for summary disposition, the trial court found that MAIPF had correctly argued that a valid insurance policy existed through Progressive

on the date of the accident, thereby absolving MAIPF of responsibility to assign plaintiff's claim to a servicing insurer. With regard to Progressive, the trial court found, applying *Bazzi*, 502 Mich at 410-411, that the balance of the equities weighed in favor of allowing Progressive to rescind the insurance policy. After the hearing concluded, the trial court entered orders granting defendants' motions for summary disposition. Plaintiff filed a motion for reconsideration, which was denied by the trial court. This appeal followed.

II. PROGRESSIVE'S MOTION FOR SUMMARY DISPOSITION

Plaintiff argues that the trial court erred by granting summary disposition in favor of Progressive, because the balance of the equities favored allowing plaintiff to obtain PIP benefits through Progressive. We disagree.

We review de novo a trial court's decision to grant or deny summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion brought under MCR 2.116(C)(10) tests the factual support for the plaintiff's claim." *Arias v Talon Dev Group, Inc*, 239 Mich App 265, 266; 608 NW2d 484 (2000). This Court considers the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Summary disposition "is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id*. A genuine issue of material fact exists "when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

We review de novo the interpretation of equitable doctrines, and review the trial court's findings of fact for clear error. *Canjar v Cole*, 283 Mich App 723, 727; 770 NW2d 449 (2009). We review for an abuse of discretion a trial court's decision to grant equitable relief. *Tkachik v Mandeville*, 487 Mich 38, 45; 790 NW2d 260 (2010). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Barnett v Hidalgo*, 478 Mich 151, 158; 732 NW2d 472 (2007).

Plaintiff argues that the trial court erred by determining that a material misrepresentation had been made in the insurance application. We disagree. Generally, whether an insured has committed fraud is a question of fact for a jury to determine. See *Shelton v Auto-Owners Inc Co*, 318 Mich App 648, 658-660; 899 NW2d 744 (2017). However, when reasonable minds cannot differ as to whether an insured made fraudulent misrepresentations, the trial court may decide the issue as a matter of law. See *Bahri v IDS Prop Cas Ins Co*, 308 Mich App 420, 426; 864 NW2d 609 (2014). To obtain summary disposition in an insurance action on the basis of rescission, "the insurer must show that there is no question of material fact as to any of the elements of its affirmative defense [of rescission]." *Shelton v Auto-Owners Ins Co*, 318 Mich App 648, 657; 899 NW2d 744 (2017). In other words, an insurer must show that

> (1) the misrepresentation was material, (2) that it was false, (3) that the insured knew that it was false at the time it was made or that it was made recklessly, without any knowledge of its truth, and (4) that the insured made the material misrepresentation with the intention that the insurer would act upon it. A statement

> is material if it is reasonably relevant to the insurer's investigation of a claim. [*Bahri*, 308 Mich App at 424-425, quoting *Mina v Gen Star Indemnity Co*, 218 Mich App 678, 686; 555 NW2d 1 (1996).]

In the context of an application for insurance, a misrepresentation is material if "reasonably careful and intelligent underwriters would have regarded the fact or matter, communicated at the time of effecting the insurance, as substantially increasing the chances of loss insured against so as to bring about a rejection of the risk or the charging of an increased premium." *Auto-Owners Ins Co v Mich Comm'r of Ins*, 141 Mich App 776, 781; 369 NW2d 896 (1985).

It is undisputed that Valerie failed to identify plaintiff in the insurance application. Valerie's marital status was listed as single, and she made no mention of plaintiff as either her husband or a member of her household, or of plaintiff's suspended driver's license. At her deposition, Valerie stated that she purposely did not include plaintiff in the insurance application because she knew that the premiums would be higher because of plaintiff's suspended license. Valerie further testified that she told plaintiff that she had not listed him as a driver when she applied for the policy. Valerie denied specifically stating that she was single, however, and suggested that the insurance agent who helped her fill out the application had made a mistake.

There is no question of material fact that Valerie's statements on the policy were false and that she knew they were false when they were made. Valerie signed the application and certified that she had disclosed all adult household members who were living with her at the time the application was filed. Moreover, to the extent plaintiff argues that a portion of the misrepresentations may have been a mistake on the part of the agent, Valerie was ultimately responsible for reading the application and signing the authorization. See *Montgomery v Fidelity & Guaranty Life Ins Co*, 269 Mich App 126, 129-130; 713 NW2d 810 (2005) (finding that a plaintiff could be held responsible for making a material misrepresentation on a life insurance application regardless of whether an insurance agent had helped complete the application, because the plaintiff was responsible for providing complete and accurate information in the application). "A contracting party has a duty to examine a contract and know what the party has signed, and the other contracting party cannot be made to suffer for neglect of that duty." *Id*. at 130.

Moreover, Valerie's misrepresentation regarding plaintiff's residency was material, as evidenced by an affidavit from one of Progressive's insurance underwriters stating that Progressive would have either denied the application or charged a higher premium if it had known that plaintiff lived with Valerie and had a suspended license. See *Auto-Owners Ins Co*, 141 Mich App at 781 (stating that a fact is material if the fact would change a reasonable underwriter's evaluation of an insurance application such that the application would be rejected or the applicant's premiums increased).

There was no genuine issue of material fact regarding the elements of Progressive's defense of rescission. Nonetheless, plaintiff argues that even if Progressive had satisfied these elements, the trial court failed to appropriately balance the equities in light of the fact that he was an innocent third party to the misrepresentations made by Valerie. We disagree. Before *Bazzi*, 502 Mich at 398, automobile insurance companies were precluded from seeking rescission of an insurance policy on the basis of material misrepresentations in an application for insurance with respect to a claim made by an innocent third party; however, in *Bazzi* the Michigan Supreme Court held that

its decision in *Titan Ins Co v Hyten*, 491 Mich 547; 817 NW2d 562 (2012), had abrogated the innocent third party rule, and it instructed trial courts to "balance the equities" in each case in determining whether full rescission was the appropriate remedy. In his concurring opinion in *Farm Bureau Gen Ins Co of Mich v ACE American Ins Co*, 503 Mich 903; 919 NW2d 394 (2018), then-Chief Justice MARKMAN articulated a list of five factors to be considered when a trial court balances the equities in a case involving an innocent third party. The five factors are: (1) whether the insurer could have uncovered the subject matter of the fraud before the innocent third party was injured; (2) whether the relationship between the fraudulent insured and the innocent third party suggests the third party had knowledge of the fraud; (3) whether the innocent third party's conduct played a role in the injury-causing event; (4) whether the third party has an alternate avenue for recovery if the insurance policy is rescinded; and (5) whether policy enforcement only relieves the insured of what would otherwise be the insured's personal liability to the innocent third party. *Id*. at 906-907 (MARKMAN, C.J., concurring). These factors (which we will refer to as the Markman factors) were adopted by this Court in *Pioneer State Mut Ins Co v Wright*, ___ Mich App ___; ___ NW2d ___ (2020), slip op at 5, as "a workable framework as well as necessary guidance to the lower courts and the litigants" in evaluating the equitable remedy of rescission in the context of a claim by an innocent third-party.

The Markman factors were discussed at length in the parties' briefs on appeal and the trial court's ruling also indicates that it considered those factors in rendering its ruling. Specifically, the trial court analyzed whether plaintiff's marriage to Valerie suggested that he had knowledge of the misrepresentations she had made in her insurance application, and whether plaintiff's conduct had played a role in the accident. The trial court opined that plaintiff's marriage to Valerie did not automatically mean that plaintiff knew of her fraudulent statements in the insurance application, but nevertheless found that plaintiff "was aware that he was not listed as a named insured on the policy as [Valerie had] informed him of that fact." This finding is supported by the record; Valerie stated at her deposition that she had told plaintiff that he was not included as a driver on her insurance policy. The trial court further opined that plaintiff knew on the date of the accident that he should not be driving with a suspended license. This, too, had record support; plaintiff has never disputed that he knew that his driver's license was suspended on the date of the accident.

Considering all of the facts and circumstances of this case, the trial court did not abuse its discretion by holding that the balance of the equities weighed in favor of granting Progressive's request to rescind the policy. Our own review of the Markman factors supports this conclusion. The first Markman factor, regarding whether the insurance company could have discovered the fraud before the accident occurred, weighs in favor of Progressive. *Farm Bureau*, 503 Mich at 906-907 (MARKMAN, C. J., concurring). There is no evidence that Progressive could have done more to discover the truth of Valerie's misrepresentations, nor did Progressive "owe a duty to the insured to investigate or verify [an] individual's representations or to discover intentional material misrepresentations." *Hammoud v Metro Prop and Cas Ins Co*, 222 Mich App 485, 489; 563 NW2d 716 (1997). The second factor, concerning whether plaintiff's relationship to Valerie suggested that he had knowledge of the fraud, weighs in favor of Progressive. *Farm Bureau*, 503 Mich at 906-907 (MARKMAN, C. J., concurring). Again, Valerie testified that she had told plaintiff that he was not included as a driver on her insurance policy.

The third factor, regarding whether plaintiff's conduct contributed to the accident, also weighs slightly in favor of Progressive. *Id*. (MARKMAN, C. J., concurring). Although there was no evidence presented that plaintiff had caused the accident, plaintiff nonetheless knew that he was not supposed to drive with a suspended license. Had he not chosen to do so, he would not have been involved in the accident. The fourth factor, which concerns whether plaintiff has an alternate avenue for recovery, weighs in favor of Progressive, because, as discussed later in this opinion, plaintiff could seek recovery of PIP benefits from MAIPF instead of Progressive if the insurance policy was deemed void *ab initio* and rescinded. *Id*. (MARKMAN, C. J., concurring). Finally, the fifth factor, regarding whether enforcing the policy would only relieve Valerie of her personal liability to plaintiff, does not apply in this case. *Id*. (MARKMAN, C. J., concurring). There is no evidence that Valerie is personally liable to plaintiff for his injuries from the accident.

We conclude that the trial court did not err by granting Progressive's motion for summary disposition. Because we affirm the trial court on this ground, we need not address Progressive's alternative argument concerning whether Valerie's acceptance of the direct-deposit refund of her premium payments constituted a "mutual rescission."

III. MAIPF'S MOTIONS FOR SUMMARY DISPOSITION

Plaintiff also argues that the trial court erred by granting MAIPF's two motions for summary disposition. We agree.

MAIPF first moved for partial summary disposition under MCR 2.116(C)(8) and (C)(10), arguing that it was not an insurer and could not be directly sued for PIP benefits. The trial court granted the motion without specifying the applicable subrule. However, the trial court appears to have reviewed evidence outside of the pleadings in making its ruling, as several exhibits were attached to MAIPF's motion for partial summary disposition. When "the resolution of the motion require[s] consideration of evidence outside the pleadings" this Court generally "treat[s] the motion as having been decided under MCR 2.116(C)(10)." *Candler v Farm Bureau Mut Ins Co of Mich*, 321 Mich App 772, 776; 910 NW2d 666 (2017).

MAIPF later moved for summary disposition under MCR 2.116(C)(10), arguing that it was not required to assign plaintiff's claim to an insurer because a valid policy of insurance, i.e., Valerie's policy with Progressive, existed at the time of the accident. The trial court granted that motion despite also granting Progressive's motion permitting rescission of the policy, which Progressive had declared void *ab initio*, after applying the *Bazzi* factors.

We will address these arguments in inverse order. Again, we review de novo a trial court's decision on a motion for summary disposition. *Maiden*, 461 Mich at 118. We also review de novo questions of statutory interpretation. *Edw C Levy Co v Marine City Zoning Bd of Appeals*, 293 Mich App 333, 339; 810 NW2d 621 (2011).

A. MAIPF'S DUTY TO ASSIGN PLAINTIFF'S CLAIM

The Michigan no-fault act, MCL 500.3101 *et seq.*, is intended "to ensure the compensation of persons injured in automobile accidents." *Allstate Ins Co v State Farm Mut Auto Ins Co*, 321 Mich Ap, 543, 552; 909 NW2d 495 (quotation marks and citation omitted). As part of the statutory

scheme, a "person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may claim personal protection insurance benefits through the assigned claims plan" when there does not appear to be any PIP coverage applicable to the injury. See MCL 500.3172(1), prior to amendment by 2019 PA 21 (effective date, June 11, 2019) (stating that a claimant injured in an automobile accident may obtain PIP benefits through MAIPF if no PIP insurance is applicable to the injury or can be identified, if two or more auto insurers dispute their obligation to provide PIP benefits, or if an insurer is financially unable to provide such benefits.) MCL 500.3174 requires MAIPF to "promptly assign the claim in accordance with the [Michigan assigned claim] plan and notify the claimant of the identity and address of the insurer to which the claim is assigned" once MAIPF is timely notified by a person "claiming through the assigned claims plan." However, at the time of plaintiff's accident, MAIPF was first required to "make an initial determination of a claimant's eligibility for benefits under the assigned claims plan" before assigning the claim to an insurer, and it "shall deny an obviously ineligible claim." MCL 500.3173a(1), prior to amendment by 2019 PA 21 (effective June 11, 2019).[1]

Obtaining PIP benefits through MAIPF is effectively a last resort to obtain insurance coverage, and may be done only if an injured party cannot recover by any other means. *Bazzi*, 502 Mich at 419. Therefore, if a valid policy of insurance covering plaintiff existed at the time of the accident, plaintiff would have been precluded from seeking PIP benefits from MAIPF. But when an insurance policy is declared void *ab initio*, it is deemed to have been void "[f]rom the beginning." *Black's Law Dictionary* (10th ed). Since, as discussed, the trial court properly concluded that Progressive could declare the insurance policy at issue void *ab initio* and rescind it, no valid insurance policy existed at the time plaintiff's accident occurred. Therefore, plaintiff's only option was to seek PIP benefits through MAIPF.

At the time of plaintiff's accident, an injured claimant was not entitled to recover PIP benefits from the Michigan assigned claims plan in the following circumstances:

> (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.
>
> (b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.
>
> (c) The person was not a resident of this state.
>
> (d) The person was operating a motor vehicle or motorcycle as to which he or she was named as an excluded operator as allowed under section 3009(2).

[1] 2019 PA 21 amended many of the statutes at issue in this case. All references to statutes found in the no-fault act refer to the versions in effect at the time of plaintiff's accident.

> (e) The person was the owner or operator of a motor vehicle for which coverage was excluded under a policy exclusion authorized under section 3017. [MCL 500.3113 (footnotes omitted), prior to amendment by 2019 PA 21 (effective June 11, 2019).]

A review of the record indicates that none of the circumstances identified in MCL 500.3113 existed in this case.[2] Further, MAIPF may only deny a claim for PIP benefits if the claim is "obviously ineligible." MCL 500.3173a. The term "obviously ineligible" is not defined by the statute; however, dictionary definitions may be useful when determining the meaning of a term or phrase in a statute. *In re Erwin Estate*, 503 Mich 1, 9-10; 921 NW2d 308 (2018). "Obviously" is defined as "in an obvious manner" or "as is plainly evident," and similarly, "obvious" is defined as "easily discovered, seen, or understood." *Random House Collegiate Dictionary* (11th ed). MAIPF has not argued or presented evidence to show plaintiff's claim was obviously ineligible for assignment to a servicing insurer. Consequently, because the Progressive policy was void *ab initio* and properly rescinded, and plaintiff's claim was not obviously ineligible for assignment, plaintiff was entitled to seek assignment of his claim for PIP benefits under MCL 500.3172(1)(a), and thus, the trial court erred by granting summary disposition in favor of MAIPF on that issue.

B. PLAINTIFF'S ABILITY TO SEEK BENEFITS DIRECTLY FROM MAIPF

Plaintiff further argues that the trial court erred by holding that he could not seek PIP benefits directly from MAIPF when MAIPF had failed to assign his claim to a servicing insurer. We agree. This Court recently held that claimants may obtain PIP benefits directly from MAIPF if MAIPF has not assigned the claim to a servicing insurer. *Mich Head & Spine Institute, PC*, ___ Mich App at ___; slip op at 8. In *Mich Head & Spine*, this Court held that the plaintiffs "may seek PIP benefits from MAIPF directly where MAIPF has not assigned the claim to a servicing insurer," rather than merely seeking a declaratory judgment ordering MAIPF to assign the claim to a servicing insurer. *Id*. at ___; slip op at 8. Although MAIPF argues that *Mich Head & Spine* was wrongly decided, we are bound by this published decision. MCR 7.215(J)(1).

We appreciate that *Mich Head & Spine* had not yet been decided when the trial court granted MAIPF's motion for partial summary disposition, and was only approved for publication on January 30, 2020. *Id*. at ___; slip op at 1. "Generally, judicial decisions are given full retroactive effect, i.e., they are applied to all pending cases in which the same challenge has been raised and preserved." *Clay v Doe*, 311 Mich App 359, 362; 876 NW2d 248 (2015) (quotation marks and citation omitted). A court is permitted to limit the retroactive application of a new rule of law if "injustice might result from full retroactivity." *Id*. (quotation marks and citation omitted). Courts typically consider three factors when determining whether to apply a rule of law retroactively: "(1) the purpose to be served by the new rule, (2) the extent of reliance on the old rule, and (3) the effect of retroactivity on the administration of justice." *Id*. at 362-363 (quotation marks and citation omitted). "In a civil suit, the court also looks to 'whether the decision [to be

[2] The evidence suggests that plaintiff knew that he was driving on a suspended license without insurance coverage. However, we are aware of no legal authority holding that those facts rendered plaintiff ineligible to obtain PIP benefits from MAIPF.

applied retroactively] clearly established a new principle of law.' " *Id*. at 363 (citation omitted); see also *WA Foote Mem Hosp v Michigan Assigned Claims Plan*, 321 Mich App 159, 177; 909 NW2d 38 (2017), rev'd in part on other grounds 504 Mich 985 (2019).

This Court did not establish a new principle or rule of law in *Mich Head & Spine*, but rather interpreted a statute, MCL 500.3172, to find that direct claims for PIP benefits may be made against MAIPF if MAIPF declines to assign a claim to a servicing insurer. MAIPF does not argue that MCL 500.3172 has ever prevented plaintiffs from seeking reimbursement of PIP benefits directly from MAIPF, nor have any previous published cases so held. Instead, MAIPF merely argues that its status as an administrator of insurance plans precludes it from being held responsible for direct payment of PIP benefits, the same argument rejected in *Mich Head & Spine*, ___ Mich App at ___, slip op at 8. Accordingly, we see no reason not to apply *Mich Head & Spine* retroactively to cases pending when it was decided. *Clay*, 311 Mich App at 362.

Because there was no valid policy of insurance in existence at the time of the accident, and on this record plaintiff's claim was not obviously ineligible for assignment, plaintiff was entitled to seek assignment to an insurer through MAIPF. And because this Court has held that a plaintiff may seek PIP benefits from MAIPF if MAIPF declines to assign an otherwise valid claim to a servicing insurer, plaintiff was entitled to seek PIP benefits (as monetary damages) directly from MAIPF if it failed to assign his valid claim. The trial court therefore erred by granting both of MAIPF's motions.

We affirm the order granting summary disposition in favor of Progressive, but reverse the orders granting summary disposition (and partial summary disposition) in favor of MAIPF, and remand for further proceedings. We do not retain jurisdiction.

/s/ Mark T. Boonstra
/s/ Jane E. Markey
/s/ Karen M. Fort Hood