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STATE OF MICHIGAN

COURT OF APPEALS

JUSTIN CHILDERS, a Legally Incapacitated Person, by SUSAN CHILDERS, Conservator,

Plaintiff,

and

MICHIGAN PROPERTY & CASUALTY GUARANTY ASSOCIATION,

Intervening Plaintiff-Appellant/Cross-Appellee,

v

PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendant-Appellee/Cross-Appellant.

FOR PUBLICATION
September 15, 2022
9:00 a.m.

No. 356914
Genesee Circuit Court
LC No. 13-101626-NF

JUSTIN CHILDERS, a Legally Incapacitated Person, by SUSAN CHILDERS, Conservator,

Plaintiff-Appellant/Cross-Appellee,

and

MICHIGAN PROPERTY & CASUALTY GUARANTY ASSOCIATION,

Intervening Plaintiff,

v

PROGRESSIVE MARATHON INSURANCE COMPANY,

No. 356915
Genesee Circuit Court
LC No. 13-101626-NF

Defendant-Appellee/Cross-Appellant.

Before: CAVANAGH, P.J., and GARRETT and YATES, JJ.

YATES, J.

Nothing in life is perfectly predictable, even when the Michigan no-fault act is involved. The passage of decades has revealed holes in what was intended to be a comprehensive scheme to simplify automobile insurance and expedite the payment of benefits to victims injured in motor-vehicle collisions. This case reveals yet another hole in the no-fault act that the courts must fill. Plaintiff's son, Justin Childers, was severely injured in a 2011 automobile accident and received no-fault personal protection insurance (PIP) benefits from plaintiff's insurer, which was the first-priority insurer. But when that insurer was declared insolvent, plaintiff filed this action against defendant, Progressive Marathon Insurance Company (Progressive), as the next-highest-priority insurer because Progressive insured a relative of the driver of the vehicle involved in the accident. Michigan Property & Casualty Guaranty Association (MPCGA), which had assumed liability for payment of no-fault benefits after the highest-priority insurer was declared insolvent, intervened in the action and agreed that Progressive was primarily liable for the payment of no-fault benefits. But Progressive responded that the complaints were untimely filed and Progressive was not in the line of priority insurers. On cross-motions for summary disposition, the trial court denied relief to plaintiff and MPCGA and granted summary disposition to Progressive on the basis that the driver of the relevant vehicle was uninsured. Plaintiff and MPCGA then appealed, and Progressive filed a cross-appeal, arguing that the complaints of plaintiff and MPCGA were barred by the one-year statute of limitations in MCL 500.3145(1). We conclude that the complaints were timely filed and the driver of the vehicle was an insured person under Progressive's policy. Therefore, we reverse and remand for entry of orders granting summary disposition in favor of plaintiff and MPCGA.

I. FACTUAL BACKGROUND

On August 6, 2011, Justin Childers was severely injured in a motor-vehicle accident while riding as a passenger. Shaina Groulx owned and was driving the vehicle in which Justin was riding when the collision occurred. Everybody agrees that Shaina's vehicle was uninsured at the time of the accident, which caused injuries to Justin's head and spine that rendered him quadriplegic. As a result of his injuries, Justin was declared legally incompetent and plaintiff, Susan Childers, was appointed as his conservator.

At first, Justin received no-fault PIP benefits from American Fellowship Mutual Insurance Company (American Fellowship) under an automobile policy issued to plaintiff that extended coverage to Justin as a resident relative of plaintiff's household. But on June 12, 2013, American Fellowship was declared insolvent and MPCGA assumed responsibility for its obligations, giving MPCGA a "covered claim" under Michigan's property and casualty guaranty association act, MCL 500.7901 *et seq.* Because MPCGA is a last-resort insurer, it investigated whether there were any other potential insurers liable for no-fault benefits for Justin's care. Progressive was identified as a potential responsible insurer under a policy it issued to Shaina's brother, Matthew, for a vehicle he owned. Progressive was informed of Justin's claim in September 2013, and it denied the claim

in October 2013. In its denial letter, Progressive relied upon a policy exclusion that made Shaina ineligible for PIP benefits under the circumstances of the accident.

Plaintiff and MPCGA filed this action, seeking to hold Progressive responsible for Justin's PIP benefits. They asserted that Shaina, as the driver of the vehicle involved in the accident that injured Justin, was an insured under the no-fault policy that Progressive issued to Matthew for a vehicle he owned. That policy defined an "eligible insured person,"[1] in part, as "you or any relative who sustains accidental bodily injury in an accident involving a motor vehicle." At the time of the accident in August 2011, Shaina had been living with Matthew since October 2010, and she had no other residence. She had changed her address to receive mail at Matthew's apartment. Shaina testified at her deposition that she sustained injuries in the accident, including bruises, fractured ribs, and a sprained ankle. All parties filed cross-motions for summary disposition. Moving under MCR 2.116(C)(10) (no genuine issue of material fact), plaintiff and MPCGA argued that Shaina was an insured person under Matthew's policy, which warranted holding Progressive liable for no-fault coverage under MCL 500.3114(4)(b). Progressive sought summary disposition under MCR 2.116(C)(7) (statute of limitations) and (10). Progressive not only denied that Shaina qualified as an insured person under its policy issued to Matthew, but also insisted that the claims of plaintiff and MPCGA were barred by the one-year statute of limitations in MCL 500.3145(1).

For purposes of their competing motions for summary disposition, the parties agreed to the following stipulated facts:

> 1. Justin S. Childers was severely injured in a motor vehicle accident on August 6, 2011. As a result of his injuries, including quadriplegia, he has incurred, and continues to incur, expenses for his care.
>
> 2. The motor vehicle in which Childers was a passenger when the accident occurred, a 1988 Oldsmobile, was owned, registered and operated by Shaina Lee Groulx, only. Shaina Lee Groulx did not possess any valid automobile insurance policy in her name at the time of the accident. Her 1988 Oldsmobile was itself uninsured at the time of the accident.
>
> 3. At the time of the subject automobile accident, Justin S. Childers did not own a motor vehicle, but he and his mother, Susan Childers, were domiciled in the same household. Since Susan Childers was at that time a named insured on a valid no-fault automobile insurance policy issued by American Fellowship Mutual Insurance Company, Justin S. Childers was entitled to receive whatever personal protection insurance ("PIP") benefits to which he was entitled from American Fellowship.

[1] Some opinions of this Court at times use the phrase "contractual insured." Because the relevant inquiry in this case is whether Shaina is an "insured person" as defined by the Progressive policy, we use that terminology.

4. For a period of time PIP benefits were paid to and for the benefit of Justin S. Childers by American Fellowship.

5. On October 29, 2012, a Rehabilitation Order was entered in the Ingham County Circuit Court placing American Fellowship Mutual Insurance Company into rehabilitation under MCL 500.8112. During this time American Fellowship continued to pay certain PIP benefits to or on behalf of Justin Childers.

6. On or about June 12, 2013, American Fellowship was declared insolvent by Order of the Ingham County Circuit Court, within the meaning of the property and casualty guaranty association act, MCL 500.7901, *et seq*.

7. Pursuant to its statutory duties under MCL 500.7901, *et seq*., and subject to any rights and limitations set forth in the act, the Intervening Plaintiff, Michigan Property and Casualty Guaranty Association" [sic] (hereinafter, "MPCGA") became responsible for the insolvent insurer's obligations that qualify as "covered claims" within the meaning of MCL 500.7925. Justin S. Childers' claim for PIP benefits against American Fellowship qualifies as a "covered claim" under MCL 500.7925.

8. After assuming responsibility for American Fellowship's "covered claims," the MPCGA investigated whether PIP benefits were recoverable by claimant Justin S. Childers from any other insurance policy since, under the governing statute, (a) Childers is required to exhaust all coverage provided under any other insurance policy, (b) any such benefits recoverable by Childers would be a credit against the "covered claim" payable by the MPCGA, and (c) to the extent of any benefit payments actually made by the MPCGA, Childers is deemed to have assigned to the MPCGA any rights he may have against any other insurer for payment of the "covered claim." MCL 500.7931(3); MCL 500.7935(2).

9. On or about September 24, 2013, Defendant, Progressive Marathon Insurance Company (hereinafter, "PMIC"), for the first time received notification of the injuries suffered by Justin S. Childers on August 6, 2011.

10. On November 22, 2013, this lawsuit was initiated on behalf of Justin S. Childers and his conservator, Susan Childers, against Defendant PMIC.

11. Defendant PMIC had issued an auto insurance policy to one Matthew M. Groulx, Policy Number 18940781-7 (a true and complete copy of which is attached hereto), which policy was in effect at the time of the subject accident on August 6, 2011. The only "Named Insured" on the policy is Matthew M. Groulx, and the only motor vehicle identified on the policy, a 2002 Buick Century, was not in any way involved in the Childers accident of August 6, 2011. The name of Shaina Lee Groulx does not appear in the policy issued to Matthew M. Groulx.

12. Matthew M. Groulx is the brother of Shaina Lee Groulx. Some months prior to the subject accident, Shaina Lee Groulx had begun staying with her brother in his apartment in Bloomfield Hills, Michigan, intending to remain there

> temporarily until she could move into an apartment of her own, although she was still staying at the apartment on the date of the accident, August 6, 2011. Whether Matthew M. Groulx and Shaina Lee Groulx were domiciled in the same household is not a stipulated fact but is a disputed point. Additionally, whether Shaina Lee Groulx was injured in the motor vehicle accident of August 6, 2011 is not a stipulated fact, but is a disputed point. For purposes of the issues presented in the parties' cross-motions for summary disposition, only, the parties will assume that Matthew M. Groulx and Shaina Lee Groulx were domiciled in the same household at the time of the subject accident and that Shaina Lee Groulx was injured in the accident.

Addressing the motions, the trial court disagreed with Progressive's statute-of-limitations defense, but agreed that Shaina was not an insured person under the terms of the Progressive policy issued to Matthew. Therefore, the trial court denied summary disposition to plaintiff and MPCGA and granted summary disposition under MCR 2.116(C)(10) to Progressive on the basis that Shaina was not an insured person under its policy. These appeals followed.

II. LEGAL ANALYSIS

The competing parties have presented a host of issues on appeal. First, Progressive argues in its cross-appeal of the denial of relief under MCR 2.116(C)(7) that the claims of plaintiff and MPCGA are time-barred under the statute of limitations set forth in MCL 500.3145(1). We review de novo the legal question of whether a claim is barred by a statute of limitations. *Citizens Ins Co of America v Univ Physician Group*, 319 Mich App 642, 647; 902 NW2d 896 (2017). "Pursuant to MCR 2.116(C)(7), a party may be entitled to summary disposition if a statute of limitations bars the claim." *Id*. at 648. " 'Which statute of limitations applied, whether the limitations period was tolled, and when the limitations period ended are questions of law.' " *Id*. at 647-648. "In deciding a motion under MCR 2.116(C)(7), the court considers all documentary evidence submitted by the parties in the light most favorable to the nonmoving party." *Id*. at 648. "If the pleadings or other documentary evidence reveal no genuine issues of material fact, the court must decide as a matter of law whether the claim is statutorily barred." *Holmes v Mich Capital Med Ctr*, 242 Mich App 703, 706; 620 NW2d 319 (2000). We review de novo all questions of statutory interpretation. *Citizens Ins Co*, 319 Mich App at 648. "The primary goal of statutory interpretation is to give effect to the Legislature's intent[.]" *Id*.

Because we conclude that plaintiff and MPCGA timely filed their complaints, we must next turn to their arguments that the trial court erred when it awarded summary disposition under MCR 2.116(C)(10) to Progressive based upon the conclusion that Shaina was not an insured person under the no-fault policy that Progressive issued to Matthew. "We review de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). A summary disposition motion under MCR 2.116(C)(10) "tests the *factual sufficiency* of a claim." *Id.* at 160. "A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact." *Id.* " 'A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ.' " *Id.* The court must consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties, and must view that evidence in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d

817 (1999). Like matters of statutory interpretation, the interpretation of an insurance contract is a question of law that is reviewed de novo. *Meemic Ins Co v Jones*, ___Mich ___, ___; ___ NW2d ____ (2022) (Docket No. 161865), slip op at 10. With these principles in mind, we shall address the statute-of-limitations issues first, and then we shall consider the issues raised by the competing motions for summary disposition under MCR 2.116(C)(10).

A. STATUTE OF LIMITATIONS

Progressive moved for summary disposition under MCR 2.116(C)(7), contending that the complaints filed by plaintiff and MPCGA should have been dismissed because they were untimely filed pursuant to the one-year statute of limitations prescribed by MCL 500.3145(1) of the no-fault act. As a threshold matter, plaintiff and MPCGA insist that Progressive did not timely assert this defense, so Progressive is barred from relying upon it by dint of the "mend-the-hold" doctrine. We agree with the trial court and conclude that the doctrine is not applicable here, so Progressive may properly rely upon a statute-of-limitations defense. Nonetheless, we also agree with the trial court that the complaints of plaintiff and MPCGA were timely filed and, therefore, not time-barred by MCL 500.3145(1).

1. "MEND-THE-HOLD" DOCTRINE

As an initial matter, we must consider whether Progressive's statute-of-limitations defense is barred by the "mend-the-hold" doctrine. In response to Progressive's argument that the claims of plaintiff and MPCGA were untimely under the one-year statute of limitations set forth in MCL 500.3145(1), plaintiff and MPCGA contend that Progressive was estopped from raising the statute-of-limitations defense by the "mend-the-hold" doctrine because Progressive did not identify that defense as a basis for rejecting plaintiff's claim in its October 2013 denial letter. We disagree.

The "mend-the-hold" doctrine is an old concept, so we must repair to venerable precedent to explain how it operates. " 'Where a party gives a reason for his conduct and decision touching anything involved in a controversy, he cannot, after litigation has begun, change his ground, and put his conduct upon another and a different consideration. He is not permitted thus to mend his hold. He is estopped from doing it by a settled principle of law.' " *CE Tackels, Inc v Fantin*, 341 Mich 119, 124; 67 NW2d 71 (1954), quoting *Ohio & Mississippi Railway Co v McCarthy*, 96 US 258, 267, 268; 24 L Ed 693; 6 Otto 258 (1877). In 1926, our Supreme Court stated in the insurance context that:

> it must be accepted as the settled law of this State, that, when a loss under an insurance policy has occurred and payment refused for reasons stated good faith requires that the company shall fully apprise the insured of all of the defenses it intends to rely upon, and its failure to do so is, in legal effect, a waiver, and estops it from maintaining any defenses to an action on the policy other than those

> of which it has thus given notice. [*Smith v Grange Mut Fire Ins Co of Mich*, 234 Mich 119, 122-123; 208 NW 145 (1926).][2]

Much more recently, we stated that "[t]he doctrine is essentially an equitable theory of estoppel designed to prevent a party from changing positions after litigation has commenced." *Hahn v Geico Indemnity Co*, unpublished per curiam opinion of the Court of Appeals, issued June 12, 2018 (Docket No. 336583), pp 7-8.[3] In other words, the "mend-the-hold" doctrine appears to be an amalgamation of what we today consider waiver and estoppel.

But as with most legal concepts, there are some exceptions to the doctrine. For instance, it does not operate to "protect the insured against risks that were not included in the policy . . . ." *Kirschner v Process Design Assoc, Inc*, 459 Mich 587, 594; 592 NW2d 707 (1999). And while it has been applied to no-fault insurance policies, see *Gividen v Bristol West Ins Co*, 305 Mich App 639, 646-647; 854 NW2d 200 (2014), the doctrine's applicability is limited to only those defenses that are based upon the terms of the policy. *Ruddock v Detroit Life Ins Co*, 209 Mich 638, 652-655; 177 NW 242 (1920). In other words, the purpose of the doctrine is to prevent an insurance company from misleading an insured about the reasons for denying coverage under the terms of a policy. In those circumstances, the insurer is estopped from advancing new theories for denying coverage under the policy's provisions, particularly considering that the insurer is expected to be more intimately aware of the policy's terms.

Here, plaintiff and MPCGA cannot contend that Progressive misled them. Additionally, Progressive's statute-of-limitations defense is not predicated upon the terms of the policy. Instead, Progressive's argument relies upon statutes, and our Supreme Court has instructed courts not to employ equitable doctrines when they intersect and conflict with the edicts of our Legislature. See *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 406-407; 738 NW2d 664 (2007).[4] In any event, considering the history of the "mend-the-hold" doctrine, it seems unwarranted to extend the doctrine beyond defenses that involve the terms of a policy. Moreover, plaintiff and MPCGA were ultimately responsible for the timing of this action, even if that timing was eminently reasonable.

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[2] This Court recently discussed the *Smith* case in *Bartlett Investments, Inc v Certain Underwriters at Lloyd's London*, 319 Mich App 54, 57-58; 899 NW2d 761 (2017).

[3] "Although MCR 7.215(C)(1) provides that unpublished opinions are not binding under the rule of stare decisis," they may still be considered "for their instructive or persuasive value." *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017).

[4] Although we are not persuaded by Progressive's statutory argument on the present question, we acknowledge our Supreme Court's admonition that "if courts are free to cast aside a plain statute in the name of equity, even in such a tragic case as this, then immeasurable damage will be caused to the separation of powers mandated by our Constitution." *Trentadue*, 479 Mich at 406-407. "Statutes lose their meaning if an aggrieved party need only convince a willing judge to rewrite the statute under the name of equity." *Id.* at 407 (quotation marks and citations omitted).

Finally, we note that, under MCR 2.111(F)(3)(a), a statute of limitation is an affirmative defense that must be raised in a party's responsive pleading. The October 2013 denial letter was not issued during litigation. In its responsive pleadings, Progressive properly raised its statute-of-limitations defense. Consequently, the trial court did not err by refusing to apply the "mend-the-hold" doctrine, and thereby allowing Progressive to assert a statute-of-limitations defense.

2. APPLICABLE STATUTE OF LIMITATIONS

Having determined that Progressive may assert a statute-of-limitations defense pursuant to MCR 2.116(C)(7), we must turn to Progressive's argument on cross-appeal that MCL 500.3145(1) applies and mandates dismissal of the complaints. We disagree, concluding as the trial court did that the one-year limitations period in MCL 500.3145(1) does not apply.

At the time of the accident in 2011 and when this case was filed in 2013, MCL 500.3145(1) provided as follows:[5]

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

Plaintiff timely sought benefits from the first-priority insurer, American Fellowship. But the uncommon issue presented here concerns which statute of limitations applies to supplemental proceedings to obtain PIP benefits after a first-priority insurer has been declared insolvent. Indeed, this case differs from most cases because plaintiff and MPCGA are not seeking PIP benefits under the no-fault act; they are seeking credit for payments MPCGA made on behalf of a no-fault insurer, American Fellowship, which became insolvent.

MPCGA is not an insurance company. It was created by, and operates under, the guaranty act, MCL 500.7901 *et seq*., *Mathis v Auto-Owners Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 354824), slip op at 2, and MPCGA's purpose "is to protect the public

[5] "[C]ourts commonly apply the version of the no-fault act in effect at the time of the accident." *Andary v USAA Cas Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 356487), slip op at 4.

against financial losses to either policyholders or claimants due to the insolvency of insurers." *Yetzke v Fausak*, 194 Mich App 414, 418-419; 488 NW2d 222 (1992). "The act accomplishes this purpose by imposing a statutory duty on the MPCGA to pay the obligations of insolvent insurers that constitute 'covered claims' as defined by MCL 500.7925." *Id*. But "MPCGA is not obligated to pay benefits for all 'covered claims[,]' " as MCL 500.7931(3) states that it "shall receive a credit against a covered claim if damages or benefits are recoverable by a claimant or insured under an insurance policy other than a policy of the insolvent insurer." *Mathis*, ___ Mich App at ___; slip op at 3. In other words, MPCGA's role " 'is that of an insurer of last resort,' which an insured of an insolvent insurer can look to for coverage 'only if there is no other insurance company to turn to for coverage.' " *Id*. Thus, it is not merely a reinsurer, and the guaranty act "is not designed for the purpose of the MPCGA to step into the shoes of insolvent insurers."[6] *Id*.

Given the structure and purpose of MPCGA, we hold that the one-year limitations period in MCL 500.3145(1) does not govern because MPCGA is not generally subject to the no-fault act and has not brought this action directly under the no-fault act. Instead, MPCGA's right to proceed against Progressive flows from its authority to file a claim for reimbursement from another insurer in the chain of designated priority insurers. For this reason, we agree with MPCGA that because there is no specified limitations period for covered claims, the default six-year limitations period prescribed by MCL 600.5813 for actions not subject to other limitations periods applies. See *Titan Ins Co v Farmers Ins Exch*, 241 Mich App 258, 263; 615 NW2d 774 (2000).

To be sure, the one-year limitations period in MCL 500.3145(1) applies when one insurer seeks subrogation from another higher-priority insurer. See *Titan Ins Co v North Pointe Ins Co*, 270 Mich App 339, 343-344; 715 NW2d 324 (2006). But MPCGA does not simply stand in the shoes of an insured. *Mathis*, ___ Mich App at ___; slip op at 3. Because the Legislature has seen fit to largely exempt MPCGA from the Insurance Code, MCL 500.7911(3), MPCGA is not subject to the one-year limitations period that applies to a party pursuing benefits under the no-fault act, including other insurers asserting rights to subrogation. And because no such limitations period has been adopted for covered claims brought by MPCGA, it is appropriate to apply the default six-year limitations period in MCL 600.5813 to such claims.

Furthermore, even if MPCGA's claim against Progressive is governed by the one-year limitations period in MCL 500.3145(1), that claim could not have accrued until the highest-priority insurer was declared insolvent. Until American Fellowship became insolvent, MPCGA did not have any claim against the next-priority insurer. Under MCL 600.5827, unless otherwise expressly provided, the limitations period begins to run from the date the claim accrues. In a case where the

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[6] This Court explained this process and MPCGA's duties in *Auto Club Ins Ass'n v Meridian Mut Ins Co*, 207 Mich App 37, 41-42; 523 NW2d 821 (1994). There, this Court observed that when a no-fault insurer becomes insolvent, MPCGA is the insurer of last resort and an injured claimant must look first to other possible insurers at lower levels of priority than the insolvent insurer before MPCGA will be obligated to cover the insolvent insurance company's obligations. *Id*. MPCGA, the Court said, "would be liable for the payment of personal protection insurance benefits only if there were no solvent insurer at any level of priority." *Id*.

applicable statute does not address accrual, MCL 600.5827 makes clear that "the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results." In other words, the claim accrues on the date the plaintiffs first incurred the harms they assert, not the date the defendant breached its duty. *Frank v Linkner*, 500 Mich 133, 150; 894 NW2d 574 (2017). Considering MPCGA's purpose as an insurer of last resort for injured parties and that MPCGA's potential liability for PIP benefits does not arise until a higher-priority insurer is found to be insolvent, MPCGA should be afforded, at a bare minimum, one year from the date of insolvency to pursue its right to a covered claim. Any other approach would defeat the purpose of the guaranty act if MPCGA could only pursue covered claims that occur within the limitations period for the underlying automobile accident.

In this case, MPCGA filed its complaint against Progressive less than a year after American Fellowship was declared insolvent. Accordingly, the complaint was timely filed, regardless of whether the claim is subject to the one-year limitations period in MCL 500.3145(1) or the six-year limitations period in MCL 600.5813. And turning to plaintiff's complaint, even viewing plaintiff's claim as independent from MPCGA's claim, we agree that it, too, was timely filed. Plaintiff had timely filed a claim and received PIP benefits from American Fellowship, the original responsible insurer. Only after American Fellowship was declared insolvent did MPCGA become involved. But under MCL 500.7931(3), plaintiff was obligated to seek lower-priority insurers who might be required to provide PIP benefits for Justin Childers. Although the priority of insurers is governed by MCL 500.3114(4), plaintiff's obligation to pursue other priority insurers arises under MCL 500.7931(3) of the guaranty act. Because the Legislature has not adopted any limitations period for claims pursued under the guaranty act, the six-year limitations period applies. Alternatively, to the extent that the one-year limitations period under MCL 500.3145(1) applies, plaintiff's claim against Progressive did not accrue until American Fellowship was declared insolvent, and plaintiff filed this action less than one year after that event. Therefore, Progressive cannot rely on a statute-of-limitations defense to deny PIP benefits to Justin.

B. INSURED PERSON

We next take up the argument of plaintiff and MPCGA that the trial court erred by ruling that Progressive was not an insurer in the chain of priority insurers responsible for payment of no-fault benefits to Justin because Shaina, the driver of the vehicle involved in the accident, was not a contractually insured person under the terms of Matthew's policy with Progressive. "Michigan's no-fault insurance system aims to provide victims of automobile-related accidents with assured, adequate, and prompt payment for economic losses." *Miller v Farm Bureau Mut Ins Co*, 218 Mich App 221, 225; 553 NW2d 371 (1996). In *Detroit Automobile Inter-Ins Exch v Home Ins Co*, 428 Mich 43, 49; 405 NW2d 85 (1987), our Supreme Court noted that it was "the Legislature's intent that persons, not vehicles, be insured against loss[.]" This is especially true when the statutory provision at issue—like the former MCL 500.3114(4)—ties priority to an individual. *Lee v Detroit Automobile Inter-Insurance Exch*, 412 Mich 505, 508, 515; 315 NW2d 413 (1982); *Turner v Farmers Ins Exch*, 507 Mich 858, 863 n 2; 953 NW2d 204 (2021) (VIVIANO, J., dissenting).

Plaintiff and MPCGA contend that Progressive is a designated priority insurer under MCL 500.3114(4), which at the time of the accident in 2011 stated:

> Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) The insurer of the owner or registrant of the vehicle occupied.
>
> (b) The insurer of the operator of the vehicle occupied.

Accordingly, we must consider whether Shaina, the operator of the vehicle, qualified as an insured person under Progressive's policy.

The trial court properly concluded that, under *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527; 740 NW2d 503 (2007), whether Shaina was an "insured" under Matthew's policy with Progressive should be determined by the terms of the policy. In *Dobbelaere*, this Court ruled that "whether the issuer of a no-fault insurance policy is the 'insurer' of a household member or family member for purposes of MCL 500.3114(4) 'depends on the language of the relevant insurance policy.' " *Id*. at 532-534; quoting *Amerisure Ins Co v Coleman*, 274 Mich App 432, 436 n 1; 733 NW2d 93 (2007). We also explained that although a vehicle owner may be otherwise uninsured, the owner may still qualify as an insured person for purposes of MCL 500.3114(4). *Dobbelaere*, 275 Mich App at 533. In *Coleman*, the relevant insurance policy defined "insured" as including "you or any family member[,]" so this Court concluded that the plaintiff's uncle, who resided with the policyholder (his wife), was an insured for purposes of MCL 500.3114(4)(b). *Coleman*, 274 Mich App at 436. In *Dobbelaere*, we ruled that the relevant relatives were not contractual insureds for purposes of MCL 500.3114(4)(b) because "the policy at issue here does not define who is an insured for purposes of the no-fault endorsement," and we were "unable to discover anything in the plain language of the policy's declaration or general verbiage to indicate an intent by the parties to that contract." *Dobbelaere*, 275 Mich App at 534.[7] Applying the *Coleman*/*Dobbelaere* rule in the case before us, Shaina would be an insured person under Matthew's policy if she was residing with him at the time of the accident. In other words, because *Coleman* and *Dobbelaere* clarify that whether MCL 500.3114(4) applies to an insurer depends upon how the insurer's policy defines the term "insured," we must examine the relevant policy language to determine if Shaina is an insured person under the policy.

The Progressive policy provides that PIP coverage is available in accordance with the no-fault act "for accidental bodily injury to an **eligible insured person** arising out of the ownership,

[7] In another case decided several years later, a plaintiff sought survivor benefits after the decedent, his wife, died in an automobile accident. *Stone v Auto-Owners Ins Co*, 307 Mich App 169, 171; 858 NW2d 765 (2014). The decedent's vehicle was a covered auto under her parents' no-fault policy. *Id*. at 171-172. But neither the plaintiff nor the decedent was a named insured on the policy, and neither was domiciled with the policyholders. *Id*. at 172. We held that because the decedent (the plaintiff's wife) did not live with the policyholders (the decedent's parents) and was not a named insured under their policy, she was not an insured for purposes of the statute even though her vehicle was added to the policy and the plaintiff and the decedent were both named as drivers on the policy. *Id*. at 177-178.

operation, maintenance or use of a **motor vehicle** as a **motor vehicle**, subject to the exceptions, exclusions and limitations specified herein and as additionally provided by the law of the State of Michigan." Subsection (2)(a) of the Progressive policy defines an "eligible insured person" in part as "**you** or any **relative** who sustains accidental bodily injury in an accident involving a **motor vehicle**." Significantly, subsection (2)(b) also defines an "eligible injured person" as "any other person who sustains accidental bodily injury while occupying a *covered auto*." Therefore, whereas the definition in subsection (2)(b) applies to a "covered auto," the definition in subsection (2)(a) applies more broadly to "a motor vehicle," which is not limited to a "covered auto." These policy terms indicate that a covered vehicle need not be involved in order for coverage to be available to a relative injured in a motor-vehicle accident under subsection (2)(a). So now we must determine whether Shaina was Matthew's relative by dint of the Progressive policy. We conclude that, under the policy and the record evidence before us, she was.

The Progressive policy defines a "relative" as

> a person residing in the same household as you, and related to **you** by blood, marriage, or adoption, and includes a ward, stepchild, or foster child. **Your** unmarried dependent children temporarily away from home will qualify as a **relative** if they intend to continue to reside in **your** household.

The first sentence plainly applies here. Shaina, Matthew's sister, testified at her deposition that she had been residing exclusively at Matthew's apartment for several months before the accident. Moreover, she had changed her address to that location and was receiving her mail there. Although Progressive would not concede that Shaina was residing with Matthew at the time of the accident, Progressive offered no evidence that Shaina was not residing at Matthew's apartment at the time of the accident. Consequently, there existed no genuine issue of material fact that Shaina was a resident relative under the Progressive policy at the time of the accident.

As the final element required to satisfy the definition of an insured person under subsection (2)(a) of Progressive's policy, Shaina must have suffered accidental bodily injuries in the involved accident. Although Progressive did not concede that Shaina suffered injuries in the accident, at her deposition Shaina described suffering suspected rib fractures and other injuries in the accident. Even though she did not receive medical treatment for her injuries, that is not a requirement under the Progressive policy. Progressive did not present any evidence to refute Shaina's testimony on the subject of her injuries. Therefore, the record contained no genuine issue of material fact as to whether Shaina suffered accidental bodily injuries in the accident.

But our inquiry is not yet complete. Progressive directs us to a policy exclusion that it says prevents Shaina from receiving PIP benefits under the circumstances of the accident because she was not driving a covered vehicle at that time. Turning once again to Progressive's policy, Part I, ¶ 14, on pages 3-4 of the policy explains that "[c]overage . . . will not apply to any insured person for **bodily injury** or **property damage** arising out of the ownership, maintenance, or use of any vehicle owned by a **relative** or furnished or available for the regular use of a **relative**, other than a **covered auto** for which this coverage has been purchased." Essentially, Progressive argues that this exclusion defeats the claims of plaintiff and MPCGA because Shaina was driving an uninsured vehicle at the time of the accident. We reject this argument because it conflicts with the analysis

set forth in *Sours v Titan Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued December 27, 2011 (Docket No. 301328).

In *Sours*, a vehicle owned and operated by Nakeysha Vond was not insured, but Nakeysha resided with her father, Daniel Vond, who had coverage with Westfield Insurance Company under a policy that defined an "insured" as "you or any family member for the ownership, maintenance or use of any auto or trailer." *Id*. at 2. The policy defined "family member" as "a person related to you by blood . . . who is a resident of your household." *Id*. Citing *Coleman*, 274 Mich App at 432, this Court concluded that because Nakeysha was a "family member" under the policy and the policy extended coverage to "family members" who were not named insureds, Westfield was an "insurer" for purposes of applying MCL 500.3114(4). *Sours*, unpub op at 2. We also rejected Westfield's contention that exclusions under the policy prevented Nakeysha from being treated as an insured, explaining:

> Westfield attempts, however, to distinguish this case from *Coleman* by arguing that a policy exclusion applied to negate liability coverage under the circumstances of this case. That is, the policy indicated that liability coverage was not provided "for the ownership, maintenance or use of . . . any vehicle, other than your covered auto, which is owned by any family member . . . ." However, this exclusion is not relevant to defining *who* is an "insured" for purposes of MCL 500.3114(4). The exclusion merely sets forth a circumstance not covered by insurance. It is the presence of a contractual insured-insurer relationship, not the terms of that relationship, which is the determinative inquiry for defining the "insurer" under the plain language of MCL 500.3114(4).
>
> Similarly, Westfield argues that it was not the insurer of Vond for purposes of PIP benefits because of a policy exclusion. That is, under the PIP coverage section, an "insured" was defined as "anyone else injured in an auto accident . . . if the accident involves any other auto . . . which is operated by you or any family member . . . ." However, Westfield argues, an exclusionary provision indicated that it did not provide PIP coverage for bodily injury "sustained by the owner or registrant of an auto involved in the accident and for which the security required under the Michigan Insurance Code is not in effect." Again, this exclusion merely sets forth a circumstance not covered and is not relevant to defining *who* is an "insured" for purposes of MCL 500.3114(4). And, in any case, there is no requirement that an owner's PIP claim be successful for purposes of MCL 500.3114(4). [*Sours*, unpub op at 3.]

As in *Sours*, the case before us presents a policy exclusion that excludes coverage under a specific circumstance. Specifically, the exclusion purports to preclude Shaina from recovering PIP benefits under the policy because she was not driving a covered auto at the time of the accident. But as in *Sours*, the exclusion does not change *who* is an insured person under the policy, so it does not alter the application of MCL 500.3114(4). Indeed, the exclusion only applies to an "insured person," so Progressive's reliance upon it is an admission that Shaina was an insured *person*.

Progressive not only points out that *Sours* is not binding because it is unpublished, but also contends that it conflicts with *Dobbelaere* and *Coleman* and should not be followed for that reason.

Progressive correctly highlights that "unpublished opinions are not binding under the rule of stare decisis," but they may be considered "for their instructive or persuasive value." *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017). But because *Sours* is so factually similar to this case, it properly may be considered instructive in deciding this case. Moreover, we disagree that *Sours* conflicts with the earlier published cases upon which it (and we) rely. On the contrary, this Court in *Sours* followed *Coleman*, which in turn was followed in *Dobbelaere*. The *Sours* opinion offers a helpful reminder that the no-fault act generally covers persons, not vehicles. And just as in *Sours*, the fact that a policy exclusion may be grounds to deny Shaina PIP benefits does not alter our analysis for purposes of MCL 500.3114(4).[8]

In sum, the trial court erred by awarding Progressive summary disposition with respect to whether Shaina was an insured person under Progressive's policy issued to Matthew. Furthermore, the record reveals that there was no genuine issue of material fact that Shaina is Matthew's relative, she was residing in Matthew's household at the time of the accident, and she sustained accidental bodily injuries in the accident. Accordingly, Progressive qualifies as the next insurer in the chain of priority under MCL 500.3114(4)(b) because Progressive was the insurer of the operator of the vehicle occupied by Justin Childers at the time of the accident. Thus, we reverse the order granting summary disposition in favor of Progressive and remand for entry of an order awarding summary disposition to plaintiff and MPCGA.

III. CONCLUSION

We hold that the trial court correctly ruled that the "mend-the-hold" doctrine does not apply to Progressive's statute-of-limitations defense, and we further conclude that the trial court properly determined that the actions filed by plaintiff and MPCGA were timely. Additionally, we hold that the trial court erred by granting summary disposition in favor of Progressive on the basis that Shaina was not an insured person under Matthew's policy with Progressive. We find that there is no genuine issue of material fact that Shaina is Matthew's relative, she was residing in Matthew's household at the time of the accident, and she suffered bodily injuries in the accident. Thus, Shaina qualifies as an insured person under the terms of Matthew's Progressive policy. Because Shaina is an insured person under Progressive's policy and Shaina was the operator of the vehicle involved in the accident that injured Justin, Progressive qualifies as a designated priority insurer under MCL 500.3114(4)(b). Consequently, plaintiff and MPCGA were entitled to summary disposition under

[8] Progressive argues that *Sours* ignored *Dobbelaere*, as evidenced by a lack of citation to that case. Specifically, Progressive directs us to the proposition, stated in *Dobbelaere*, that "the fact that an individual might derivatively claim PIP benefits through a named insured under MCL 500.3114(1) does not render the policy issuer the 'insurer' of that individual for purposes of MCL 500.3114(4)." *Dobbelaere*, 275 Mich App at 532. Although Progressive correctly identifies this proposition, it ignores that the *Dobbelaere* Court was simply rejecting a bright-line rule that qualifying for PIP benefits and being an "insured" under MCL 500.3114(4) are synonymous by citing the exact language *Sours* relied on from *Coleman*: "this Court has held that whether the issuer of a no-fault insurance policy is the 'insurer' of a household member or family member for purposes of MCL 500.3114(4) 'depends on the language of the relevant insurance policy.' " *Dobbelaere*, 275 Mich App at 532-533.

MCR 2.116(C)(10). Therefore, we reverse the trial court's order awarding summary disposition to Progressive and remand for entry of an order granting summary disposition in favor of plaintiff and MPCGA.

Reversed and remanded for entry of an order granting summary disposition in favor of plaintiff and MPCGA. We do not retain jurisdiction.

/s/ Christopher P. Yates
/s/ Mark J. Cavanagh
/s/ Kristina Robinson Garrett