STATE OF MICHIGAN

COURT OF APPEALS

AUTO CLUB INSURANCE ASSOCIATION,

Plaintiff,

v

MERIDIAN MUTUAL INSURANCE COMPANY,

Defendant-Appellant,

and

MICHIGAN PROPERTY & CASUALTY GUARANTY ASSOCIATION,

Defendant-Appellee.

FOR PUBLICATION
September 19, 1994
9:50 a.m.

No. 150663
LC No. 91-406259-CZ

Before: Griffin, P.J., and Sawyer and P.H. Chamberlain,* JJ.

SAWYER, J.

Defendant Meridian Mutual appeals from an order of the circuit court granting summary disposition in favor of plaintiff Auto Club and defendant Michigan Property & Casualty Guaranty Association. We affirm.

The underlying facts of this case are undisputed. James Gillies was injured in a single-vehicle accident while he was a passenger in a car driven by James Dorsett. Plaintiff Auto Club was Dorsett's insurer at the time and Gillies was insured under a policy issued by the now-insolvent Cadillac Insurance Company. At the time of the accident, Gillies resided with his mother, who was insured by defendant Meridian. Pursuant to MCL 500.3114; MSA 24.13114, Cadillac Insurance paid personal protection insurance benefits to Gillies. However, after Cadillac had paid nearly $30,000 in benefits, it became insolvent and stopped paying those benefits to Gillies.

After Cadillac ceased paying benefits, Gillies sought benefits from Auto Club as the insurer of the driver and from Meridian, his mother's insurer. Meridian, however, claimed that Michigan Property & Casualty Guaranty Association took the place of Cadillac Insurance and, therefore, was responsible for the payment of the personal protection insurance benefits which were Cadillac's obligation.[1] The Michigan Property & Casualty Guaranty Association is established under Chapter 79 of the Insurance Code, MCL 500.7901 et seq.; MSA 24.17901 et seq., and, in essence, insures insurers. That is, its purpose is to protect insureds against financial losses due to the insolvency of insurers and to establish a mechanism to pay certain obligations of insolvent insurers. Yetzke v Fausak, 194 Mich App 414, 418; 488 NW2d 222 (1992).

At dispute here is the role of the MPCGA with respect to the payment of personal protection insurance benefits when those benefits are the obligation of an insolvent insurer. Meridian Mutual, the

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*Circuit judge, sitting on the Court of Appeals by assignment.

insurer next in line of priority under MCL 500.3114; MSA 24.13114, maintains that MPCGA steps into the shoes of the insolvent insurer, in this case Cadillac, and assumes payment of those benefits. MPCGA, on the other hand, maintains that it is, in essence, an insurer of last resort and that the insured must turn to the insurance company which is next on the order of priority to receive personal protection insurance benefits and that the MPCGA is obligated to pay those benefits only when there is no solvent insurer obligated to pay benefits. The trial court ruled in favor of the MPCGA, as do we.

This dispute may be resolved by consideration of the role of the MPCGA and determining whether it is little more than a reinsurer who blanketly assumes the obligations of an insolvent insurer or whether it is an insurer of last resort who assumes the obligations of an insolvent insurer only when the insured has no where else to turn. In answering this question, two sources are helpful.

First, we look to the statute itself and in particular the provisions of MCL 500.7931(3); MSA 24.17931(3), which provide in pertinent part as follows:

> If damages or benefits are recoverable by a claimant or insured under an insurance policy other than a policy of the insolvent insurer, or from the motor vehicle accident claims fund, or a similar fund, the damages or benefits recoverable shall be a credit against a covered claim payable under this chapter.

This statutory provision, in our opinion, reflects a statutory intent that an insured must first look to other possible insurance coverage before looking to the MPCGA for payment of the obligations of an insolvent insurer. That is, this statutory provision reflects an intent by the Legislature to make the MPCGA an insurer of last resort rather than merely a reinsurer who simply assumes the obligations of an insolvent insurance company.

Also helpful in our analysis is this Court's opinion in Yetzke, supra. In Yetzke, the plaintiff was injured in an automobile accident which was allegedly caused by the defendant's drunk driving. Plaintiff instituted an action against the defendant, whose liability insurer was the now-insolvent Cadillac Insurance Company. The plaintiff's own insurance carrier paid under an uninsured motorist coverage provision of the plaintiff's policy. The MPCGA then claimed a setoff in the amount of that coverage. Since the liability limits of the policy issued by Cadillac to the defendant were less than the uninsured motorist coverage of the plaintiff's policy, that would supply a complete setoff. The plaintiff argued, unsuccessfully, that the setoff for the uninsured motorist coverage should be applied to the total value of the claim, not the amount of coverage supplied by the insured motorist coverage. In resolving this dispute, this Court opined as follows:

> Plaintiffs mistakenly maintain that the purpose of the act is for the MPCGA to step into the shoes of insolvent insurers. To the contrary, the purpose is to protect those persons who have a right to rely on the existence of an insurance policy, who otherwise would be rendered helpless because of an insurer's insolvency. . . . [T]he setoff provision of MCL 500.7931(3); MSA 24.17931(3) clearly states that if coverage is available under another, valid policy, that coverage must be exhausted before the MPCGA becomes involved. We believe this is a reasonable limit upon the MPCGA's liability intended by the Legislature and is consistent with the purpose of the act. [Yetzke, supra at 422.]

In light of the Yetzke opinion, as well as the statutory scheme, we are satisfied that the role of the MPCGA is that of insurer of last resort. That is, an insured of an insolvent insurer can look to the MPCGA for coverage only if there is no other insurance company to turn to for coverage. In the context of the case at bar, the insured does have another insurance company to turn to for coverage,

namely Meridian Mutual, as the insurer at the next level of priority. The MPCGA, on the other hand, would be liable for the payment of personal protection insurance benefits only if there were no solvent insurer at any level of priority.

For the above reasons, we conclude that the trial court correctly determined that Meridian Mutual, as the insurer next in the order of priority, was responsible for the payment of personal protection insurance benefits and, therefore, properly granted summary disposition in favor of the MPCGA.

Affirmed. MPCGA may tax costs.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Paul H. Chamberlain

[1] The parties have since agreed that Meridian, as the insurer of Gillies' mother with whom Gillies resided, has a higher order of priority under MCL 500.3114; MSA 24.13114 than does Auto Club, as insurer of the driver, and therefore Auto Club is not a party to this appeal.