

STATE OF MICHIGAN  
COURT OF APPEALS

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AR THERAPY SERVICES, INC.,

Plaintiff,

and

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF MICHIGAN,

Defendant/Third-Party Plaintiff-  
Appellee,

v

PROGRESSIVE MARATHON INSURANCE  
COMPANY,

Third-Party Defendant-Appellant,

and

DOMINIQUE WILLIAMS

Third-Party Defendant.

UNPUBLISHED  
June 14, 2016

No. 322339  
Oakland Circuit Court  
LC No. 2014-138769-AV

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Before: SAWYER, P.J., and BECKERING and BOONSTRA, JJ.

BECKERING, J. (*concurring*).

I concur in the majority opinion because I am bound by this Court's ruling in *Bazzi v Sentinel Ins Co*, \_\_ Mich App \_\_; \_\_ NW2d \_\_ (2016). Were I not bound by that ruling, however, I would conclude that our Supreme Court's decision in *Titan Ins Co v Hyten*, 491 Mich 547; 817 NW2d 562 (2012), which dealt with contractually-based, excess liability coverage and the easily ascertainable rule, does not adversely impact the innocent third-party rule with respect to statutorily mandated no-fault personal injury protection (PIP) benefits. As such, I would affirm the circuit court's ruling (which affirmed the district court's ruling) that Progressive Marathon Insurance Company may not rescind its insurance policy that was in place at the time

of the accident at issue and covered first-party PIP benefits for Christopher Carmichael, as he was injured while a passenger in an automobile insured by Progressive.

/s/ Jane M. Beckering