STATE OF MICHIGAN

COURT OF APPEALS

OLD REPUBLIC INSURANCE COMPANY, Plaintiff-Appellant,	UNPUBLISHED April 17, 2012
V	No. 302384 Wayne Circuit Court
MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION, Defendant-Appellee.	LC No. 09-015360-CK

Before: M.J. KELLY, P.J., and FITZGERALD and DONOFRIO, JJ.

PER CURIAM.

Plaintiff, Old Republic Insurance Company (Old Republic), appeals as of right an order denying its motion for summary disposition and granting summary disposition in favor of defendant, the Michigan Catastrophic Claims Association (MCCA). Because *American Home Assurance Co v Mich Catastrophic Claims Ass'n*, 288 Mich App 706; 795 NW2d 172 (2010) controls the outcome of this case, and we decline to revisit that decision given that it was correctly decided, we affirm.

We review de novo a trial court's decision on a motion for summary disposition. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). When reviewing a motion granted under MCR 2.116(C)(10), we consider the pleadings, affidavits, and other evidence in the light most favorable to the opposing party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition under subrule (C)(10) is properly granted "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). A genuine issue of material fact exists when "reasonable minds could differ . . . after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). Summary disposition under MCR 2.116(I)(2) is appropriate "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment[.]"

The Michigan no-fault act, MCL 500.3101 *et seq.*, requires every insurer that provides insurance coverage in Michigan to be a member of the MCCA. "The MCCA is an unincorporated nonprofit association, whose purpose is to provide insurers with indemnification for PIP policies that exceed a certain threshold." *United States Fidelity Ins & Guaranty Co v*

Mich Catastrophic Claims Ass'n, 484 Mich 1, 18; 795 NW2d 101 (2009). MCL 500.3104, which created the MCCA, states, in relevant part:

> (2) The association shall provide and each member shall accept indemnification for 100% of the amount of ultimate loss sustained under personal protection insurance coverages in excess of the following amounts in each loss occurrence:
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> * * *
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> (b) For a motor vehicle accident policy issued or renewed during the period July 1, 2002 to June 30, 2003, $300,000.00.

MCL 500.3104(25)(c) defines "ultimate loss" as "the actual loss amounts that a member is obligated to pay and that are paid or payable by the member, and do not include claim expenses."

In *American Home*, 288 Mich App at 720, this Court held that an insurer's "ultimate loss" is the amount that it is required to pay under MCL 500.3105(1)[1] "regardless of a policyholder's payment of a deductible or the existence of a deductible clause in the insurance policy." Thus, even if a policyholder is unwilling or unable to pay a deductible, the insurer must pay PIP benefits. This Court recognized that MCL 500.3104(25)(c) defines "ultimate loss" as amounts that are paid or *payable* by the insurer, and the ultimate loss is not limited to benefits the insurer actually paid. See *id*. at 719. This Court noted, however, that under article X, § 10.06 of the MCCA's plan of operation,[2] "a member insurer must turn over to the MCCA any amount it recovers from a third party for which the member has already been reimbursed by the MCCA." *Id*. Section 10.06 provides:

> **Recovery from Other Sources.** Whenever a Member recovers from a third party an amount for which it has already been reimbursed by the Association, the Member shall promptly turn such recovered monies over to the Association to the extent of any reimbursement theretofore received . . . . [*Id*. at 720-721.]

The *American Home* Court further stated that, under MCL 500.3104(1) and (20), insurers are bound by the plan of operation, which "does not address the contractual relationship between an insurer and a policyholder." *Id*. at 721. This Court determined that, because policyholders are not members of the MCCA and are not bound by the plan of operation, they are third parties for purposes of § 10.06. *Id*. at 722. Therefore, when the MCCA indemnifies an insurer for an ultimate loss amount and the insurer receives a payment from a policyholder, such as a

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[1] MCL 500.3105(1) requires insurers "to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle[.]"

[2] MCL 500.3104(17) requires the MCCA's board of directors to establish a "plan of operation" "which shall provide for the economical, fair, and nondiscriminatory administration of the association and for the prompt and efficient provision of indemnity."

deductible, the insurer must turn those funds over to the MCCA. *Id.* Further, when an insurer is entitled to a deductible payment from a policyholder but does not receive the payment, "the MCCA is subrogated to the rights of the insurer and may bring an action against the policyholder for the amount of the deductible if the insurer fails to do so[.]" *Id*. at 724. Accordingly, the MCCA is not required to make a payment to an insurer only to have the payment reimbursed. *Id*. at 722, 725.

Old Republic asserts that the *American Home* Court correctly held that the MCCA is obligated to pay benefits that were either actually paid or are *payable* and that the source of the funds used to pay a claim does not affect the MCCA's indemnity obligation. Old Republic contends that the *American Home* Court erred, however, by determining that § 10.06 of the MCCA's plan of operation "trumps" the no-fault statute by requiring insurers to reimburse the MCCA for any amounts paid by policyholders in the form of deductibles, retentions, etc. See *American Home*, 288 Mich App at 725. Old Republic argues that this result contravenes the MCCA's statutorily imposed indemnity obligation and violates separation of powers principles.

Contrary to Old Republic's argument, *American Home* did not hold that § 10.06 of the MCCA's plan of operation trumps the MCCA's statutory duty to indemnify insurers. MCL 500.3104(2) requires the MCCA to indemnify a member insurer for 100 percent of the insurer's ultimate loss. This indemnification obligation exists regardless of whether the insurer is eventually reimbursed, and *American Home* did not affect that obligation. The MCCA must continue to reimburse insurers for benefits paid or payable in excess of the applicable statutory threshold regardless of the existence of a deductible. *American Home*, 288 Mich App at 720. This Court also held that the MCCA's plan of operation, a contractual agreement between the MCCA and its member insurers, requires an insurer to turn over amounts that the insurer receives from a third party when the MCCA has already reimbursed the insurer for that amount. *Id*. at 720-721. The MCCA's obligation to indemnify member insurers is separate from the insurers' obligation to reimburse the MCCA, and the obligations do not conflict. The MCCA's indemnification obligation exists even if the insurer recovers nothing from a third party. *Id.* at 720. Although Old Republic argues that a policyholder is not a "third party" as that term is used in § 10.06 of the MCCA's plan of operation, because a policyholder is not bound by the plan, a policyholder is necessarily a "third party" within the meaning of the plan of operation, which applies to the MCCA and member insurers only. *Id*. at 720-722.

Applying *American Home* to the facts of this case, we conclude that the trial court properly granted summary disposition for the MCCA, albeit for the wrong reason. In June 2003, Dan Hakes suffered severe injuries when the motorcycle that he was riding collided with a vehicle owned by Pepsi Bottling Group (Pepsi) and insured by Old Republic. Hakes received over $500,000 in PIP benefits, all of which Pepsi paid as required under Pepsi's insurance policy with Old Republic. Old Republic admits that all of the benefits paid to Hakes were paid by Pepsi. The trial court granted summary disposition to the MCCA on the basis that Old Republic had not actually paid any PIP benefits to Hakes. This ruling, however, is inconsistent with this Court's determination in *American Home*, 288 Mich App at 719-720, that "ultimate loss" includes benefits that an insurer is obligated to pay, and not just benefits that an insurer has actually paid.

Nevertheless, the trial court reached the correct result because § 10.06 of the MCCA's plan of operation required Old Republic to reimburse the MCCA for any amounts that Old Republic received from Pepsi. The arrangement between Old Republic and Pepsi was analogous to a deductible that Pepsi was required to pay before Old Republic's duty to pay benefits was triggered. If the MCCA indemnified Old Republic for benefits that Hakes received in excess of $300,000, Old Republic would then be required to reimburse the MCCA for the amounts paid by Pepsi, which constituted all of the benefits paid thus far. As this Court held in *American Home*, 288 Mich App at 722, 725, trial courts may decline to order the MCCA to make payments only to have those payments reimbursed. The MCCA's duty to indemnify Old Republic will be triggered only if Pepsi stops paying PIP benefits to Hakes. Accordingly, we affirm the trial court's order granting summary disposition for the MCCA. Although the trial court's order was based on its erroneous application of *American Home*, we will not reverse when the trial court reaches the correct result for the wrong reason. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 508-509; 741 NW2d 539 (2007).

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Michael J. Kelly
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio