STATE OF MICHIGAN

IN THE SUPREME COURT

GERARDO LORENZO TIENDA, and
SILVIA LOPEZ GOMEZ,

Plaintiffs-Appellees,

v.

INTEGON NATIONAL INSURANCE COMPANY, a GMAC Insurance Company,

Defendant-Appellee,

and

TITAN INSURANCE COMPANY,

Intervening Defendant-Appellant.

_____/

Supreme Court No. 147483

Court of Appeals No. 306050

Allegan County Circuit Court
No. 10-46088-NF

SUPPLEMENTAL BRIEF
OF INTEGON NATIONAL INSURANCE COMPANY
IN OPPOSITION TO THE APPLICATION FOR LEAVE TO APPEAL

PROOF OF SERVICE

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INTRODUCTION

The principal argument joined in the application and response briefs of TITAN and INTEGON is whether or not vehicle owner Salvador Lorenzo, along with the other three migrant farm workers with whom he lived and worked, were residents of Michigan on July 29, 2009, when Plaintiffs sustained injuries in a motor vehicle accident. Under the statutory language, the ultimate issue of whether INTEGON or TITAN is responsible for the claimants' no-fault insurance benefits turns on whether the vehicle involved in this Michigan accident was owned or being operated by an "out-of-state resident." If so, then INTEGON's certification filed in Michigan under MCL 500.3163 would require INTEGON's non-Michigan policy to provide benefits in accord with the No-Fault Act; if not, then TITAN, pursuant to its role as the assigned claims insurer under MCL 500.3172(1), is responsible for the loss.

Both TITAN and INTEGON thus have regarded the dispositive question to be whether Lorenzo was or was not a Michigan resident on the date of the accident. (*See*, e.g., Titan's Application for Leave to Appeal, p. x -- "If, on the other hand, the vehicle owner, Salvador Lorenzo, were determined to be a Michigan resident, as the Court of Appeals held in this case, then MCL 500.3163(1) would not apply.") On this point, INTEGON is satisfied that, for the reasons detailed in its Answer to the Application for Leave to Appeal, Lorenzo and his companions were "residents" of Grand Rapids, Michigan, on July 29, 2009.

Indeed, to the extent that domicile and residency are distinguishable -- the former being imbued with a greater sense of permanency than the latter, Lorenzo and the others not only were residents of, but were *domiciled* in, their Michigan home. This is true, INTEGON

submits, because every person at any given point in time must have but a single domicile, *Grange Ins Co v Lawrence*, 494 Mich 475, 494; 835 NW2d 363 (2013), and on July 29, 2009, there simply was no other home or abode in existence competing with the group's Grand Rapids home for "domicile" status. INTEGON thus regards as indisputable the conclusion that its insured, Salvador Lorenzo, was a resident of Michigan at the time of the accident giving rise to this case.

In its order granting oral argument on the application, the Court has requested briefing on whether Lorenzo "was an 'out-of-state resident,' as that term is used in MCL 500.3163(1), at the time of the Michigan accident giving rise to the plaintiffs' claim." (Order, 2/5/14). Since, unlike domicile, a person may be a "resident" of more than one place at the same time, *Grange Ins Co*, 494 Mich at 494-495, the question arises as to whether §3163(1) is concerned with whether a person *is not* a resident of Michigan (as the parties have presumed in this case) or with whether a person *is* a resident of a different state, regardless of whether they might also happen to be a resident of Michigan. If the latter, then the fact that Lorenzo was a Michigan resident would not end the inquiry: Were Lorenzo and his living companions residents of another state concurrent with their residency in Michigan on July 29, 2009?

INTEGON submits, again, that this question must be answered in the negative. The undisputed facts of the case preclude any contention that Lorenzo was maintaining a home or abode anywhere in the world concurrent with his home in Grand Rapids. Accordingly, even if §3163(1) were to be construed as permitting a Michigan resident to qualify, under any circumstances, as an "out-of-state resident" within the meaning of the statute, there is no basis for concluding in this case that Lorenzo was an "out-of-state resident."

It is INTEGON's contention, however, that the term "out-of-state resident" as used in §3163(1) must be construed as referring to someone who is *not* a Michigan resident, in light of §3163(1)'s purpose of requiring non-Michigan insurers to provide Michigan insurance benefits under certain circumstances and Michigan's vehicle registration and insurance requirements applicable to Michigan residents. Michigan residents are required to register their vehicles in Michigan, and likewise must maintain Michigan no-fault insurance coverage on their vehicles. An "out-of-state resident" generally has no such obligation -- hence §3163(1)'s extension of Michigan-like coverage applicable to vehicles owned by such persons. It would be antithetical to §3163(1)'s purposes to construe it as applicable to a vehicle owner who, by virtue of his Michigan residency, already is insured (or at least is required by Michigan law to be insured) under an actual Michigan no-fault automobile insurance policy.

INTEGON thus submits that Salvador Lorenzo was *not* an "out-of-state resident" within the meaning of §3163(1), regardless of how the phrase might be construed, but that the better reasoned construction of the statute would limit its application to one who is *not* a Michigan resident.

ARGUMENT

Where the phrase "out-of-state resident" in MCL 500.3163(1) necessarily refers to one who is *not* a resident of Michigan, and where Integon's insured, vehicle owner Salvador Lorenzo, *was* a resident of Michigan at the time of the subject accident, §3163(1) is inapplicable to the accident giving rise to this case because the involved vehicle was not owned or being operated by an out-of-state resident.

Under the opening provision of the Michigan No-Fault Act, MCL 500.3101(1), any owner of a motor vehicle "required to be registered in this state" is required to maintain a

policy of Michigan no-fault automobile insurance.[1] Whether a vehicle is required to be "registered in this state" is determined by the Michigan Vehicle Code. In this regard, those who are residents of Michigan and those who are not residents of Michigan are treated differently. The general rule is that *every* motor vehicle, when driven or moved on a street or highway, is subject to the act's registration provisions; an exception to this general rule applies to vehicles operated in conformance with the act's provision covering nonresidents:

> Every motor vehicle, recreational vehicle, trailer, semitrailer, and pole trailer, when driven or moved on a street or highway, is subject to the registration and certificate of title provisions of this act, except the following:
>
> (a) A vehicle driven or moved upon a street or highway in conformance with the provisions of this act relating to ... nonresidents.

MCL 257.216. Where a vehicle *is* subject to the act's registration provisions, its owner is mandated by MCL 257.217(1) to "apply to the secretary of state ... for the registration of the vehicle and issuance of a certificate of title for the vehicle."

This registration requirement is absolute with respect to Michigan residents -- the act contains no grace period. If a person is or becomes a Michigan resident and owns a motor vehicle that is being operated on any street or highway, the vehicle must be registered in Michigan. Indeed, a vehicle owner is guilty of a misdemeanor if he or she drives, or permits to be driven, a vehicle that is required to be registered under the Michigan statute but is not so

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[1] "The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. Security shall only be required to be in effect during the period the motor vehicle is driven upon a highway." MCL 500.3101(1). The referenced "security" ordinarily is obtained via a Michigan automobile insurance policy, although self-insurance under certain circumstances is available by approval of the secretary of state. MCL 500.3101(3) and (4).

registered. MCL 257.215. A *nonresident* owner of a motor vehicle, however, does not come under the act's registration requirements unless the vehicle is operated in Michigan more than 90 days. MCL 257.243(4): "A nonresident owner of a pleasure vehicle [i.e., not a commercial vehicle] otherwise subject to this act shall not operate the vehicle for a period exceeding 90 days without securing registration in this state."

Thus, combining the above registration requirements with §3101(1)'s directive that owners of vehicles required to be registered in Michigan maintain Michigan no-fault insurance coverage, one thing is clear: While there is a period of time in which *nonresidents* of Michigan may properly operate, or allow to be operated, their automobiles on Michigan roads without first obtaining a Michigan no-fault automobile insurance policy, a Michigan *resident* must have Michigan no-fault automobile insurance for his or her motor vehicle if it is to be operated on the highway. Failing to maintain no-fault insurance for a vehicle required to be so covered, again, is a prosecutorial offense. MCL 500.3102(2).

In light of these registration and insurance requirements under Michigan law, a question of statutory construction arises in the No-Fault Act's use of the phrase, "out-of-state resident" in MCL 500.3163(1). The provision addresses injuries suffered in an accident in Michigan that involves a motor vehicle owned or operated by an "out-of-state resident."[2] The question is whether the term "out-of-state resident" refers to one who is *not* a resident of Michigan, or to

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[2] "An insurer authorized to transact automobile liability insurance and [no-fault PIP and PPI] insurance in this state shall file and maintain a written certification that any accidental bodily injury or property damage occurring in this state arising from the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle by an out-of-state resident who is insured under its automobile liability insurance policies, shall be subject to the personal and property protection insurance system set forth in this act." MCL 500.3163(1) (emphasis added).

one who *is* a resident of some place other than Michigan. The question becomes material where a person who *is* a Michigan resident happens also to be a resident of another state, and this person's automobile is involved in an injury-accident in Michigan.

As was stated in *Grange Ins Co v Lawrence, supra*, the Court's main objective when construing statutory language is to discern the Legislature's intent through the language plainly expressed. 494 Mich at 493. In this regard, "[i]t is a well-established rule of construction that provisions of a statute must be construed in light of the other provisions of the statute to carry out the apparent purpose of the Legislature." *Farrington v Total Petroleum, Inc*, 442 Mich 201, 209; 501 NW2d 76 (1993), *citing, Dagenhardt v Special Machines & Engineering, Inc*, 418 Mich 520; 345 NW2d 164 (1984), and *Workman v DAIIE*, 404 Mich 477, 507; 274 NW2d 373 (1979).

In *Grange*, the Court examined the meaning of the term "domicile" as it appears in MCL 500.3114(1), preliminarily concluding that the word in the statute is used as a technical term that has acquired a particular meaning in Michigan's common law. The Court thus sought to discern and apply the word in accordance with that particular meaning. 494 Mich at 493. The same can be said for the term "resident" appearing as part of the hyphenated phrase, "out-of-state resident" in §3163(1).

As is noted in *Grange Ins Co v Lawrence, supra*, the terms "domicile" and "residence" are often regarded as legally synonymous. 494 Mich at 498-499; *accord, Cervantes v Farm Bureau Gen Ins Co*, 478 Mich 934, 936 n. 1; 733 NW2d 392 (2007) (Markman, J., dissenting), quoting *Campbell v White*, 22 Mich 178 (1871) -- "'Ordinarily one's residence and domicile (if they do not always mean the same thing) are in fact the same, and where they so concur they

are that place which we all mean when we speak of one's home.'" Yet as fully confirmed in *Grange*, the concepts of domicile and residence are not identical. Stated succinctly, "a person may have only one domicile, but more than one residence." *Grange Ins Co*, 494 Mich at 494.

In this regard, to the extent the two concepts are different, it is clear that residence is established by less of a showing of permanence or long-term intent than is domicile:

> [T]he common law has necessarily distinguished between the concepts of "domicile" and "residence:"
>
> > The former, in its ordinary acceptation, was defined to be, 'A place where a person lives or has his home,' while '[a]ny place of abode or dwelling place,' however temporary it might have been, was said to constitute a residence. A person's domicile was his legal residence or home in contemplation of law.

Grange Ins Co, 494 Mich at 494, *quoting*, *Gluc v Klein*, 226 Mich 175, 177-178; 197 NW2d 691 (1924) (emphasis added).[3]

Thus, while a person may only have one domicile at any point in time, it is possible for a person to be a resident of two particular places at one time. The *Grange* case provides one example. A child of divorced parents may *concurrently* reside in two different households at the same time, but only one will be regarded as the child's place of domicile at any given point

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[3] Black's Law Dictionary, (9th ed., 2009), defines "RESIDENT" as follows:

> resident, n. (15c) 1. A person who lives in a particular place. 2. A person who has a home in a particular place. • In sense 2, a resident is not necessarily either a citizen or a domiciliary.

Consistent therewith, the dictionary's definition of "RESIDENCE" includes, "The place where one actually lives, as distinguished from a domicile. ... • Residence usu. just means bodily presence as an inhabitant in a given place; domicile usu. requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile. Sometimes, though, the two terms are used synonymously." *Id.*

in time. Another example is provided by the typical "snowbird" who generally lives in Michigan but maintains a condominium in Florida for the winter, or one who lives in southeast Michigan but owns a cottage "up north" for the summer. While residing in Florida or northern Michigan, the person nevertheless maintains his or her residency/domicile in southeast Michigan. The same might even be true in reverse -- while residing in his or her domicile-home in southeast Michigan, this person potentially could remain a "resident" of the Florida condominium or the northern Michigan cottage since the "home" is still being maintained.

One additional example of one having a single domicile but being a resident of two different states concurrently is provided by *Gordon v GEICO Gen Ins Co*, unpublished per curiam opinion of the Court of Appeals (No. 301431, March 20, 2012) (Exhibit 15 to Titan's Application), which is addressed at length in the parties' principal briefs. In that case, the plaintiff, Tamika Gordon, was simultaneously a resident of Mississippi and a resident of Michigan in May 2008 when, having purchased her auto insurance in Mississippi, she would travel back and forth between her father's home in Mississippi and her mother's home in Detroit. Indeed, because of her dual residency, Gordon obtained a Mississippi policy that included an endorsement providing Michigan no-fault insurance. This complied with Gordon's obligation, under MCL 257.216 and MCL 500.3101(1), to maintain Michigan no-fault insurance on her vehicle, which was required by virtue of her Michigan residency.[4]

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[4] As is detailed in Integon's principal response brief, *Gordon* is materially distinguishable from the case at bar in that Salvador Lorenzo, INTEGON's insured, was a North Carolina resident -- and *only* a North Carolina resident -- at the time he purchased his policy from INTEGON.

The common theme to these examples of dual-residency, INTEGON submits, is concurrent existence. That is, if a person residing in one place is to be regarded as a "resident" of some other place at the same time, there must, in fact, *be* another residence. Whether the person owns and continues to maintain a condominium in Florida while living in Michigan, or simply keeps a bedroom and several belongings in a family member's home to which they continually return, the other place of residence must concurrently exist, at the time in question, in order for the person to be a resident of that place.

In the case at bar, Salvador Lorenzo, along with the three migrant farm workers with whom he lived, worked and traveled, lived at 1145 Lafayette Ave. S.E., Grand Rapid, Michigan, on July 29, 2009 -- and there was no other place they could call their home, abode, or "residence" in existence at that time. The facts of record conclusively establish that Lorenzo and the others were "residents" of Michigan when the accident in this case occurred -- indeed, despite its more recent arguments to the contrary, TITAN directly admitted as much in the circuit court.[5] Likewise, there is no factual basis for concluding that, at the same time, they maintained any place of residence outside the state of Michigan. Rather, as has been detailed in INTEGON's principal brief in response to the application, Lorenzo and his friends repeatedly and unconditionally "removed" themselves from their place of residency/domicile in North Carolina when they moved to Michigan, and likewise would do so again when they would move to pursue work in Florida.

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[5] "They established a residence together by renting an upstairs apartment for the four of them at 1145 Lafayette Ave. S.E. in Grand Rapids, found employment together at a blueberry farm in Allegan County, and drove to and from their place of employment together in Salvador Lorenzo's 2001 Ford Expedition." (Integon's Motion for Summary Disposition, ¶ 9) (emphasis added); "Admitted." (Titan's Answer to Integon's Motion for Summary Disposition, ¶ 9).

In light of these facts, INTEGON submits that, on July 29, 2009, when the Michigan accident occurred, Salvador Lorenzo was *not* an "out-of-state resident" within the meaning of §3163(1), regardless of whether that statutory phrase is construed to mean "one who is *not* a resident of Michigan" or "one who *is* a resident of someplace that is not Michigan." For the reasons detailed above, however, INTEGON contends that, in light of the context in which it appears and the purposes sought to be achieved by the statute, the phrase "out-of-state resident" must be construed to mean, "one who is *not* a Michigan resident."

RELIEF REQUESTED

For all the reasons set forth herein, the Court is respectfully requested to deny TITAN's application for leave to appeal, or otherwise affirm the decision rendered by the Court of Appeals.

Respectfully submitted,

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