STATE OF MICHIGAN

IN THE SUPREME COURT

GERARDO LORENZO TIENDA, and
SILVIA LOPEZ GOMEZ,

Plaintiffs-Appellees,

Supreme Court No. 147483

v.

INTEGON NATIONAL INSURANCE COMPANY, a GMAC Insurance Company,

Defendant/Cross-Plaintiff/Counter-Cross-Defendant/Appellee,

Court of Appeals No. 306050

Allegan County Circuit Court
No. 10-46088-NF

and

TITAN INSURANCE COMPANY,

Intervening Defendant/Cross-Defendant/Counter-Cross-Plaintiff/Appellant.

147483

INTEGON NATIONAL INSURANCE COMPANY'S ANSWER TO TITAN INSURANCE COMPANY'S APPLICATION FOR LEAVE TO APPEAL

PROOF OF SERVICE

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COUNTER-STATEMENT OF THE QUESTION PRESENTED

Salvador Lorenzo is a migrant farm worker who owned a vehicle insured under a non-Michigan insurance policy issued by Integon. Along with his three companions, he and the vehicle were involved in an injury-accident in Michigan. Was he properly held to be a resident of the State of Michigan at the time of the accident, since the Grand Rapids apartment in which he and his companions lived was his *only* place of residence at the time? Accordingly, since §3163 of the No-Fault Act thus did not apply, was Titan properly held liable for the PIP benefits at issue under the act's assigned claim provisions?

The Court of Appeals answered, "Yes."

Integon answers, "Yes."

Titan would answer, "No."

INTRODUCTION

The issue raised below, and the one properly before the Court now, is whether Salvador Lorenzo, along with the other three migrant farm workers with whom he lived and worked, was a resident of the State of Michigan at the time of the subject accident. As owner of the motor vehicle in which Plaintiffs sustained their injuries, Lorenzo's residency determines whether or not INTEGON is liable for Plaintiffs' no-fault insurance benefits. This is so, because MCL 500.3163 provides the only basis on which INTEGON's non-Michigan policy would be required to provide Michigan no-fault coverage, and §3163 applies only where the owner or operator is an out-of-state resident -- i.e., *not* a resident of Michigan.

Importantly, Lorenzo's residency at the time of the accident was the issue regarded by both the trial court and the Court of Appeals as dispositive. TRIAL COURT: "Integon loses on summary disposition if Mr. Lorenzo was not a resident and I find he's not a resident. The corollary to that is that Titan would have lost if Lorenzo was a resident but I don't feel that he is." (**Exhibit B** -- Tr 3/31/11, p. 47); COURT OF APPEALS: "The answer to the question of which insurer, Integon or Titan, is responsible for personal protection insurance (PIP) benefits arising out of a Michigan automobile accident depends on where the insured, Salvador Lorenzo, resided at the time of the accident." (**Exhibit A** -- slip op, at 1).[1]

It is true that if INTEGON's policy applied to provide PIP coverage, which under §3163 would be the case only if Lorenzo was a *non*-resident of Michigan at the time of the

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[1] *Tienda v Integon National Insurance Co*, 300 Mich App 605, 607; 834 NW2d 908 (2013).

accident, then TITAN would have no liability. On the other hand, since Lorenzo was properly determined by the Court of Appeals to have been a Michigan resident, such that §3163 does not apply to require INTEGON's policy to provide Michigan PIP coverage, Plaintiffs' entitlement to benefits must be satisfied under TITAN's coverage pursuant to the applicable assigned claims provision, MCL 500.3172(1) (benefits are paid through the assigned claims plan "if no personal protection insurance is applicable to the injury").

Notwithstanding this singular focus of the case, TITAN's application purports to raise *three* separate questions, with correlating arguments. One of the three (Question No. 2; Argument II) is not properly before the Court since it was not timely raised below, and the last question (Question Involved No. 3), argued in two paragraphs seemingly as an afterthought (Argument III), manifestly is without merit since its essential premise is contradicted by undisputed facts.

TITAN's Question Involved No. 2/Argument II essentially blurs two arguments together, one of which asserts the "innocent third party" doctrine and was timely raised below, the other of which relies on a unique holding in the unpublished case of *Gordon v GEICO Gen Ins Co*,[2] which argument was *not* timely raised below. TITAN's principal argument, of course, has been that Salvador Lorenzo and his companions could not have been Michigan residents at the time of the accident since they were only living in Michigan for three or four months. The alternative argument that TITAN advanced below was based on the premise that a fraudulent misrepresentation by Lorenzo when he acquired his North

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[2] *Gordon v GEICO Gen Ins Co*, unpublished per curiam opinion of the Court of Appeals (No. 301431, March 20, 2012) (submitted as Exhibit 15 to TITAN's Application).

Carolina policy is what led INTEGON to deny Plaintiffs' claims, i.e., that it led INTEGON to void all coverage under its policy. In fact, this premise was altogether false. The ground on which Plaintiffs' claim for benefits was denied was simply that §3163 simply did not apply.

To be sure, INTEGON did explore -- prior to this litigation -- the possibility that Lorenzo had misrepresented his residency when he applied for insurance in North Carolina (*see*, Exhibits 9 and 10 of the Application for Leave to Appeal). This was based largely on a belief, ultimately mistaken, that his 2001 Expedition was titled and registered in Michigan (*id.*). It was not. While an earlier vehicle owned by Lorenzo had once been titled in Michigan, the subject vehicle insured by the Integon North Carolina policy was in fact registered in North Carolina, as TITAN directly concedes (**Exhibit B** -- Tr 3/31/11, pp. 34, 37; *accord*, Application for Leave to Appeal, pp. 7-8). INTEGON eventually denied *Salvador Lorenzo*'s claim for benefits on grounds that he was a Michigan resident at the time of the accident and thus was disqualified from making a claim for Michigan PIP benefits under MCL 500.3113(b) since he had not obtained Michigan insurance coverage for his car as required when he became a Michigan resident (*see*, Exhibit 11 of the Application for Leave to Appeal; also *see*, **Exhibit A** -- Court of Appeals opinion, pp. 8-9, n. 3).

Contrary to TITAN's repeated insistence, however, the reason INTEGON ultimately denied *Plaintiffs*' claims for benefits had nothing to do with fraud or misrepresentation. Rather, as stated in INTEGON's letter to Lorenzo (Titan's Exhibit 11, third paragraph), "[B]ecause the motor vehicle was not owned, operated or used by a non-resident of the State of Michigan at the time of the accident, Integon National Insurance Company has no

responsibility to pay Michigan no-fault benefits to you, or any occupant of the vehicle." (*Id.*) (emphasis added).

Nevertheless, relying on the false premise that Plaintiffs' claims were denied due to Lorenzo having purportedly made false representations, TITAN has repeatedly asserted that Plaintiffs Tienda and Gomez were "innocent third parties" with respect to any such misrepresentation and thus should not have been denied benefits under the INTEGON policy (Titan's Motion for Summary Disposition, 11/30/2010, pp. 24-28; Titan's Answer to Integon's Motion for Summary Disposition, 1/24/2011, pp. 3-6). TITAN now seeks to perpetuate this inapplicable "innocent third party" concept (Application for Leave to Appeal, pp. 26-29, 34-35), apparently in an attempt to blend it into its belatedly raised *Gordon v GEICO* argument (*id.*, pp. 30-34). Yet as this brief will show, TITAN's *Gordon* argument, which relies on the notion that INTEGON "was dealing with a potential Michigan resident" (whatever that is), is utterly unsupported even by the *Gordon* opinion itself.

As its Question Involved No. 3/Argument III, TITAN asserts that the out-of-state coverage clause in the INTEGON policy "automatically converts" the North Carolina policy into a Michigan no-fault policy. Of course, such is the essential effect of §3163 of the No-Fault Act, when it applies. But much like the terms of §3163, the clause in INTEGON's policy on which TITAN bases its assertion is dependent upon an accident happening in a state "other than the one in which your covered auto is principally garaged." And in this instance, it is entirely undisputed that, at the time of the subject accident, Lorenzo's automobile was being "garaged" exclusively in Michigan and the accident itself, likewise, occurred in Michigan.

Thus, the controlling issue is simply whether or not Salvador Lorenzo was a resident of Michigan or an out-of-state resident at the time of the accident. For the reasons stated below, the Court of Appeals properly held that Salvador Lorenzo was a Michigan resident -- and thus *not* an out-of-state resident -- when the subject accident occurred, and properly reversed the judgment of the trial court. Both the holding of the Court of Appeals and its underlying analysis are accurate and well founded. Further review by this Court is not warranted.

COUNTER-STATEMENT OF FACTS

The residency question in this case involves a group of four people who move, frequently and regularly, from state to state, without retaining any ongoing home base connection in or with any one state. The facts show that, while the admittedly non-permanent nature of the group's connection to their Michigan home at the time of the subject accident is undisputed, their connection to Michigan as a "residence" was far superior to any connections to Florida, North Carolina, or anywhere else at the time of the accident. Accordingly, the trial court's determination that Salvador Lorenzo was *not* a resident of Michigan was erroneous and the Court of Appeals correctly reversed that determination, holding in favor of INTEGON and against TITAN regarding liability for the subject loss.

The case arises out of a motor vehicle accident that occurred on July 29, 2009, at approximately 7:00 p.m. in I-196 in Allegan County, Michigan. The Plaintiffs, Gerardo Lorenzo Tienda and Silvia Lopez Gomez, were passengers of a 2001 Ford Expedition. The vehicle was owned and insured by Salvador Lorenzo, who also was riding in the car at the

time. The driver was Heriberto Fernandez Castro.[3] Having finished their work for the day harvesting blueberries on a farm in southwest Michigan, the four were traveling home to their apartment in Grand Rapids, Michigan.[4] Plaintiffs Tienda and Gomez sustained injuries in the accident requiring medical treatment, payment for which became the basis for their no-fault insurance claims and this lawsuit.

Salvador Lorenzo, Heraberto Castro, and Plaintiffs Tienda and Gomez, are migrant farm workers. On a year in and year out basis, the four worked a continuous "circuit" of laboring in the fruit fields of Michigan, Florida, and North Carolina. From the beginning of July through October, they harvested blueberries and grapes in Michigan; then they moved to Florida to harvest strawberries and pull strawberry plants until May; then they moved to North Carolina for a nearly two month stint picking blueberries; then in early July or the end of June they again would move to Michigan (**Exhibit D** -- deposition of S. Gomez, pp. 57-59; **Exhibit E** -- deposition of G. Tienda, p. 15; **Exhibit C** -- sworn statement of S. Lorenzo, pp. 5-7, 15-17; *see*, **Exhibit B** -- Tr 3/31/11, p. 34).

While living in Michigan late in 2008, Salvador Lorenzo purchased a used 1997 Ford station wagon, which he registered in Michigan.[5] Having then moved from Michigan to

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[3] Integon's Motion for Summary Disposition, 12/1/10, ¶¶ 1-2; Titan's Answer to Integon's Motion for Summary Disposition, 1/24/11, ¶¶ 1-2.

[4] "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); "Admitted." (Titan's Answer to Integon's Motion for Summary Disposition, ¶ 9).

[5] **Exhibit B** -- Tr 3/31/11, pp. 34, 36-37; *see*, Titan's Motion for Summary Disposition, 12/1/10, p. 8 (and Exhibit 9 attached thereto).

Florida, and then from Florida to North Carolina in May 2009, however, Lorenzo replaced the prior vehicle by purchasing the subject 2001 Ford Expedition in June 2009 (**Exhibit E**, p. 27; **Exhibit D**, p. 68; *see*, TITAN's Motion for Summary Disposition, p. 8). At this time, Silvia Gomez, Gerardo Tienda, Heriberto Castro and Salvador Lorenzo were living together in North Carolina (**Exhibit D**, pp. 66-67).

On June 22, 2009, having just acquired the 2001 Ford Expedition, Lorenzo applied for and received a North Carolina Personal Auto Policy issued by GMAC Insurance/Integon, for a policy period of June 22, 2009, through December 22, 2009 (Integon's Motion for Summary Disposition, ¶3; Titan's Answer to Integon's Motion for Summary Disposition, ¶3).

Two weeks thereafter, approximately July 4, 2009, Lorenzo, Gomez, Tienda and Castro packed all of their worldly belongings (i.e., clothes) into the Expedition and moved from North Carolina to Michigan (*id.*, ¶6; **Exhibit C**, pp. 7-8, 10; **Exhibit D**, pp. 30-31, 55, 67; **Exhibit E**, pp. 9-10). They traveled non-stop, with Salvador Lorenzo driving, as he was the owner of the vehicle and the only one of them who had a drivers license -- it was issued by the State of Michigan (**Exhibit D**, p. 70; **Exhibit E**, p. 29).

Upon their arrival in Michigan early in July 2009, Lorenzo and the others stayed one night at Tienda's cousin's home in Hartford, then immediately looked for housing and together decided to rent an upper floor apartment on Lafayette Avenue in Grand Rapids, Michigan (**Exhibit C**, p. 8; **Exhibit D**, pp. 16-17, 70; **Exhibit E**, pp. 10-11). Within the next two days they found employment together at a blueberry farm ("We were recommended and we just went there and they gave us work right away") (**Exhibit E**, p. 11).

Soon after being established in their apartment, Silvia Gomez obtained a Michigan personal identification card, bearing her address of 1145 Lafayette Ave. S.E., Grand Rapids, Michigan (**Exhibit F**). Further, having just learned that she was pregnant, Ms. Gomez applied for and began receiving benefits from the WIC program in Michigan (**Exhibit D**, pp. 24, 47; **Exhibit F**). It appears that very little mail was ever sent to any of the four, but during their time living in the Grand Rapids apartment they did receive mail in the form of a cellular phone bill (**Exhibit D**, p. 14).

Thus the four of them lived together in the apartment, paid the rent together, and traveled together back and forth to work at the blueberry farm every weekday (**Exhibit C**, p. 12; **Exhibit D**, p. 54; **Exhibit E**, pp. 15-16). On the way home from work on July 29, 2009, they were involved in an accident that resulted in serious injuries to Plaintiffs Gomez and Tienda. Lorenzo also was injured, and all three received treatment at Holland Hospital, in Holland, Michigan. All three provided the hospital with Michigan addresses for their records.[6]

By application submitted to Integon Insurance October 28, 2009, Plaintiff Tienda claimed entitlement to no-fault insurance benefits based on his accident that occurred in Michigan. In his Affidavit in support of the application, he reported "The address where you lived on the date of the accident" as "1145 Lafayette S.E. Grand Rapids, 49507" (Integon's Motion for Summary Disposition, Exhibit M). Likewise, in support of her application for

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[6] Medical billing records submitted as parts of Exhibits C, G and L to Integon's Motion for Summary Disposition.

benefits dated November 5, 2009, Plaintiff Gomez reported her address at the time of the accident as "1145 Lafayette S.E. Grand Rapids, MI 49507" (*id.*, Exhibit J).

Salvador Lorenzo also applied for benefits. By letter of December 24, 2009, however, INTEGON advised Mr. Lorenzo that his claim was denied on grounds of his Michigan residency. As a Michigan resident at the time of the accident, he was legally required to maintain Michigan automobile insurance on his vehicle and his failure to do so disqualified him from receiving no-fault insurance benefits under MCL 500.3113(b). Additionally, as Integon's policy was not a Michigan no-fault insurance policy, it would only provide benefits under the Michigan No-Fault Act if the terms of MCL 500.3163 applied, and since the vehicle in question was not owned, operated or used by a non-resident of Michigan, the statute was inapplicable.[7]

INTEGON did initially pay benefits in excess of $50,000 to and on behalf of Plaintiffs Gomez and Tienda (*see*, Integon's Motion for Summary Disposition, Exhibit N; Tr 6/3/11, p. 48). Based on its analysis that the Michigan residency of those owning and using the insured 2001 Ford Expedition on the date of the accident rendered MCL 500.3163 inapplicable, however, Integon discontinued payment.

The result was an application for no-fault benefits through the Assigned Claims Facility, which designated TITAN as the insurer to cover the otherwise uninsured losses incurred by Gomez and Tienda.[8] Plaintiffs also initiated the instant lawsuit against

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[7] Titan's Motion for Summary Disposition, Exhibit 7 -- Integon/GMAC letter of December 24, 2009 (submitted here as Exhibit 11 to Titan's Application for Leave to Appeal).

[8] *See*, MCL 500.3171, *et seq.*

INTEGON (Complaint, 1/6/10), and TITAN intervened as a defendant by stipulated order of June 14, 2010. INTEGON then cross-claimed against TITAN for reimbursement of the benefits it already paid (Cross-Claim for Declaratory Judgment and Recoupment, 6/29/10), and TITAN, after being ordered to pay the benefits to which Plaintiffs Gomez and Tienda indisputably were entitled, filed its own cross-claim for reimbursement against INTEGON (Counter-Cross-Claim of Intervening Defendant Titan, 8/6/10).

On December 1, 2010, both TITAN and INTEGON filed motions for summary disposition on the question of which of the two was responsible for payment of Plaintiffs' benefits. Although there was much argument by TITAN on the question of whether Gomez and Tienda qualified as "innocent third parties" regarding their right to receive benefits, in fact their entitlement to benefits was never disputed (*see*, ¶15 of Integon's Motion for Summary Disposition and Titan's Answer to Integon's Motion for Summary Disposition -- both parties admitting that "Plaintiffs are clearly entitled to receive Michigan no-fault insurance benefits"). Rather, the only question was whether the terms of MCL 500.3163 were triggered so as to render INTEGON liable for payment of Michigan PIP benefits, and the issue turned on whether the ownership, operation, maintenance or use of the subject vehicle was by an "out-of-state resident."

The motions were argued and decided in a hearing on March 31, 2011 (**Exhibit B**). As between the two insurers, the arguments focused on whether Salvador Lorenzo and the others, at the time in question, were "residents" of Michigan or, instead, were residents of either Florida or North Carolina (**Exhibit B**, Tr 3/31/11, pp. 10-11). The court, with prompting from TITAN's counsel, construed INTEGON's position to be that "if he is

physically present in Michigan he is a resident of Michigan. ... The residency is where you are, where you hang your hat that night." (**Exhibit B**, pp. 7-8). INTEGON's counsel clarified, however, that the residency facts of this case are materially distinguishable from, say, a traveling salesman, a truck driver who travels across the country, or counsel's parents who spend winters in Florida, since in each case such persons maintain a "home base" or a family to return to, whereas the migrant workers in this case move to a particular state to live and work without maintaining or preserving any semblance of "home" in the prior state left behind (**Exhibit B**, pp. 8, 31-32).

In an opinion rendered from the bench, the court decided in favor of TITAN on the basis that Salvador Lorenzo was a resident of Florida and not of Michigan (**Exhibit B**, p. 42). The court expressed its view that even the case for Lorenzo's residency in North Carolina would be stronger than the case for his alleged residency in Michigan (*id.*). The court acknowledged that Lorenzo and the others brought "almost all of their personal effects" with them as they moved from one state to another, but "I don't find that Mr. Lorenzo was anymore connected to Michigan than to Florida, in fact less." (*Id.*).

Thus the court held that MCL 500.3163, and its reference to a vehicle owner being an "out-of-state resident," applied to require INTEGON to pay the no-fault benefits due in this case. "I do not believe, and now find, that Salvador Lorenzo cannot be considered a resident of the State of Michigan given his status as a migrant farm worker and the relatively short periods of time that he was physically in the state." (**Exhibit B**, p. 44). Although the court reiterated its view that Plaintiffs Gomez and Tienda were "innocent third parties," it ultimately held that the case between the two insurers turned on the residency question:

> THE COURT: ... I think it was correctly observed in this case that it necessarily logically follows that Integon loses on summary disposition if Mr. Lorenzo was not a resident, and I found he's not a resident. The corollary to that is that Titan would have lost if Lorenzo was a resident but I think I don't feel that he is. I don't feel that there is any sound factual basis to conclude that.

(Exhibit B, p. 47).

The court entered a non-final order granting summary disposition in favor of TITAN and against INTEGON on the cross-claims regarding coverage and reimbursement, and thereafter resolved the remaining claim for penalty attorney fees then entered the final order (Order, 4/14/11; Order, 8/23/11).

On INTEGON's appeal of right, the Court of Appeals issued a published opinion reversing the Circuit Court's ruling **(Exhibit A)** -- *Tienda v Integon National Insurance Co*, 300 Mich App 605; 834 NW2d 908 (2013). The Court of Appeals identified the dispositive issue to be whether Salvador Lorenzo was a resident of Michigan at the time of the accident, or a non-resident of Michigan at the time of the accident (*id.*, slip op at 1). Recognizing the cornerstone rule that "every person must have a domicile somewhere" (*id.*, at 8), the Court held that Mr. Lorenzo was a resident of Michigan at the time of the accident as this is where he was living and working, this is where he maintained all of his possessions, and importantly, he had no other residence or place at the time that could be regarded as his home. (*Id.*, at 1-2; *Tienda*, 300 Mich App at 607-608). The court rejected the notion that the residency question presented here could be analogized to situations in which a resident of one state might visit another state for an extended period of time:

> We find inapposite the trial court's comparison of Lorenzo to professional baseball players who travel for games

> throughout the season. As noted, the trial court reasoned that, if these migrant workers changed their place of residency every time they moved, professional baseball players would also change residency every time they stayed in a new hotel room while on the road. As Integon points out, professional baseball players maintain permanent homes and do not carry with them all of their possessions when they play away games. We think Integon's analogy is more apt: "[I]f a journeyman ballplayer were traded regularly from one team to another, season after season, and even arriving at a new team's city with a full expectation that, following that season, he will be traded somewhere else, his state of residency undoubtedly would change each time he moved, unless he maintained a permanent home base throughout all the moves -- which the persons involved in the case at bar did not. ... Indeed, when Lorenzo or, for that matter, Tienda and Gomez, were asked where they would say they lived at the time of the accident, they each responded that they lived in Michigan or that their fixed address was in Michigan. Indeed, they could not respond otherwise because they had with them all of their worldly possessions and had no other place to call home.

(**Exhibit A** -- slip op., at 10; 300 Mich App at 623).

Lorenzo thus was held as a matter of law to be a resident of Michigan at the time of the accident such that §3163 of the No-Fault Act was inapplicable for imposing liability on INTEGON. Accordingly, the Court held TITAN responsible for the payment of no-fault benefits to plaintiffs.

TITAN has now applied to this Court to review the Court of Appeals' decision. For the reasons set forth herein, TITAN's arguments lack substantial merit and further review is not warranted.

ARGUMENT

There is no merit to TITAN's application for leave to appeal, where Lorenzo indisputably was living in Michigan at the time of the accident and maintained no residency-connection anywhere else at the time, and thus the Court of Appeals properly concluded that Lorenzo was a resident of Michigan for purposes of §3163 of the No-Fault Act.

Standard of Review

The Court of Appeals reviewed the issue presented in this case under the de novo standard of appellate review (**Exhibit A** -- slip op, at 3-4). Citing *Fowler v Auto Club Ins Assoc*, 254 Mich App 362, 364; 656 NW2d 856 (2002), TITAN's application likewise has stated that the de novo standard applies (*see*, Titan's Application for Leave to Appeal, p. xi), and INTEGON concurs.

A. Salvador Lorenzo, a migrant farm worker whose North Carolina-insured vehicle was involved in an injury-accident in Michigan, was a Michigan resident at the time of the accident since the Grand Rapids apartment in which he lived was his *only* place of residence at the time. Accordingly, liability for the claimants' insurance benefits was properly held to lie with TITAN, under the No-Fault Act's assigned claims provisions, rather than with INTEGON, under §3163 of the act.

The question in this case was whether INTEGON is required to pay Michigan no-fault benefits pursuant to MCL 500.3163 under its automobile insurance policy issued under North Carolina law. Under MCL 500.3163(1), insurers licensed to issue automobile insurance in Michigan are required to certify that they will provide Michigan no-fault coverage, even though the subject policy is not a Michigan policy, when the vehicle they insure is involved in a Michigan accident. MCL 500.3163(1). There is no dispute that INTEGON has filed a certification under §3163. The statute at issue provides as follows:

> 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). Unless all of the explicit conditions for liability set forth in this statute are met, responsibility for payment of PIP benefits cannot be imposed upon the certifying out-of-state insurer. *Turner v Auto Club Ins Assoc*, 448 Mich 22, 33-34 n. 9; 528 NW2d 681 (1995); *Farm Bureau Ins Co v Allstate Ins Co*, 233 Mich App 38, 40; 592 NW2d 395 (1998) (out-of-state insurer improperly ordered to pay benefits since its insured was not an "out-of-state resident" for purposes of the no-fault act).

The question in this case is whether INTEGON was the insurer of an "owner," Salvador Lorenzo, who was an "out-of-state resident" so as to trigger responsibility on the part of INTEGON to pay benefits as if its policy were a Michigan no-fault insurance policy. If not -- i.e., if Lorenzo was a resident of the State of Michigan and thus *not* an "out-of-state resident" at the time of the accident, the ACF-designated insurer, TITAN, would be responsible for payment of their benefits.

The issue, then, is whether Lorenzo was a resident of Michigan at the time of the accident. In its argument to the Court of Appeals, TITAN made a telling concession concerning the determination of Lorenzo's residency. Noting that Lorenzo obtained his North Carolina insurance policy from INTEGON in June of 2009 even while disclosing his Michigan driver's license, TITAN emphasized that Lorenzo "had a definite address in North

Carolina when he purchased the vehicle." (Titan's Appellee Brief to the Court of Appeals, p. 11; *accord, id.*, pp. 7, 9). Thus, TITAN maintained, "[T]here is simply no doubt but that, from May through July 2009 [sic], Plaintiffs, as well as the vehicle owner, Salvador Lorenzo, were residents of the State of North Carolina." (*Id.*, p. 7) (emphasis added).[9] This is a telling admission by TITAN, since it concedes that the group's mere presence in North Carolina for the two months they were living and working there (May-June 2009), combined with the absence of any ties to any other home state, produced a residency status.

Yet, when the group removed themselves from North Carolina, along with all their worldly possessions (Lorenzo's automobile, their clothes, and whatever other incidentals they owned), and moved to Michigan, the same factors applied to render *this* state their place of "residence." They maintained a home in a Grand Rapids apartment, and they lived and worked there with the intent to remain until it would be time to move again. If they were "residents" of North Carolina in May-June 2009 (of which TITAN asserted "there is simply no doubt" -- Titan's Appellee Brief, p. 7), then it is equally doubtless that, on July 22, 2009, when the subject accident occurred, Lorenzo and his companions were residents of Michigan.

The flaw in TITAN's overall position is its failure to recognize or acknowledge that, while the residency roots of the Lorenzo group were always distinctly shallow *wherever* they were living at any given point in time, the fact that they had an address where they were living, kept their worldly belongings at the address where they were living, and made their "home" in this place until the picking season ended and forced them to relocate, necessarily

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[9] TITAN's assertion was inaccurate only in the sense that it should have stated "May through *June* 2009," since the foursome of Lorenzo, Castro, Tienda and Gomez, is undisputed, departed North Carolina for Michigan on July 4, 2009.

rendered this home their "residence" or "domicile." This is so because, as this Court stated in *Beecher v Common Council of Detroit*, 114 Mich 228, 230; 72 NW 206 (1897), "Every person must have a domicile somewhere." *Accord, Grange Ins Co v Lawrence*, 494 Mich 475, 493-496; 835 NW2d 363 (2013).

In opposition to this tenet, TITAN has baldly asserted that Salvador Lorenzo is not a resident of the State of Michigan, and that whether he would be considered a resident of Florida or North Carolina is irrelevant. Yet it is not irrelevant. If TITAN is to insist that Lorenzo was *not* a Michigan resident at the time of the accident, when he and his companions were sharing an apartment in Grand Rapids, Michigan, it must be able to articulate where Lorenzo *was* a resident, in accord with *Beecher, supra*. TITAN cannot do so, because during the time they were living and working in Michigan, Lorenzo's group had no present connection whatsoever to North Carolina or Florida. No semblance of any "home" was maintained anywhere else to compete with Michigan for the status of "residence."

It is well-established in Michigan case law that "[e]veryone has to be determined to be a resident of some place."

> Every person must have a domicile somewhere. The domicile is acquired by the combination of residence and the intention to reside in a given place, and can be acquired in no other way. [Citation omitted.] The residence which goes to constitute domicile need not be long in point of time. If the intention of permanently residing in a place exists, a residence, in pursuance of that intention, however short, will establish a domicile.

Beecher v Common Council of Detroit, 114 Mich at 230. To be sure, the immediate objection to applying this passage directly to the present case is that neither Lorenzo nor the other three with whom he was living intended to remain "permanently" in their Grand Rapids

apartment. Yet, if strictly applied, the same rule unavoidably must trump any contention that Florida or North Carolina could qualify as their state of residency.[10]

In *Henry v Henry*, 362 Mich 85; 106 NW2d 570 (1960), this Court stated, "Domicile [is] that place where a person has voluntarily fixed his abode not for a mere special or temporary purpose, but with a present intention of making it his home, either permanently or for an indefinite or unlimited length of time." *Id.*, at 101-102, *quoting*, *Williams v North Carolina*, 325 US 226, 236; 65 S Ct 1092; 89 L Ed 1577 (1945) (internal quotation marks omitted). Again, while the apartment at 1145 Lafayette Avenue in Grand Rapids clearly was the place where Salvador Lorenzo and the others *did* voluntarily fix their abode, with an intention of making it their home throughout the time they would live in Michigan, the unique facts of their lifestyle prevent it from being said that this would be their home "indefinitely." Yet again, the same is equally true with any place they ever stayed in Florida or North Carolina -- the significant difference here being that, in July 2009 when the accident happened, *only* Grand Rapids, Michigan was the place they had voluntarily fixed their abode, with a present intention of making it their home.

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[10] Under Michigan law, particularly for purposes of insurance coverage issues, residence and domicile are often regarded as synonymous. *Workman v DAIIE*, 404 Mich 477; 274 NW2d 373 (1979). This Court recently addressed the question of domicile and residence, however, in *Grange Ins Co v Lawrence*, 494 Mich at 494-499. In distinguishing between the concepts of "domicile" and "residence," the Court said that domicile, 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.'" *Grange Ins Co*, at 494, *quoting*, *Gluc v Klein*, 226 Mich 175, 177-178; 197 NW 691 (1924). Pursuant to this distinction, the Court of Appeals' conclusion that Lorenzo was a "resident" of Michigan under §3163(1) at the time of the accident becomes even more irrefutable.

Thus, under the definition provided in *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675; 333 NW2d 322 (1983), the rental apartment in which the four workers were living in July 2009 would qualify as their domicile or residence:

> Domicile and residence ... have been defined as "the place where a person has his home, with no present intention of removing, and to which he intends to return after going elsewhere for a longer or shorter time."

Dairyland Ins, 123 Mich App at 680, quoting, *Hartzler v Radeka*, 264 Mich 451, 452; 251 NW 554 (1933), and citing, *Leader v Leader*, 73 Mich App 276; 251 NW2d 288 (1977). At the time of the subject accident in July 2009, Grand Rapids, Michigan was the *only* place Salvador Lorenzo and the others regarded as their home, since that was where they were physically present, and, as much as anywhere else, it was where they intended to return after being gone "for a longer or shorter time."

As for the concept of "removal" (actually changing domicile) as compared to a temporary visit (which does not change domicile), the case of *Beecher v Common Council of Detroit*, *supra*, provides the following explanation:

> "A removal which does not contemplate an absence from the former domicile for an indefinite and uncertain time is not a change of it. But when there is a removal, unless it can be shown or inferred from circumstances that it was for some particular purpose, expected to be only of a temporary nature, or in the exercise of some particular profession, office, or calling, it does change the domicile. The result is that the place of residence is *prima facie* the domicile, unless there be some motive for that residence not inconsistent with a clearly-established intention to retain a permanent residence in another place."

Beecher, 114 Mich at 231 (quoting, Jacobs, Law of Domicile, §378) (emphasis added).

Under the law stated above, it is clear that, in the absence of any other potential place that might be regarded as a "permanent residence," the place where a person is actually, presently living "is *prima facie* the domicile[.]" And if, under *Grange Ins Co v Lawrence, supra*, establishing one's "residence" presents a lower threshold than establishing one's "domicile," the conclusion that Lorenzo was a "resident" of Michigan at the time of his the subject accident is inescapable. Thus, as applied to the facts, the Court of Appeals properly held that the Lafayette Avenue apartment in Grand Rapids, Michigan, was the legal residence, or domicile, of Salvador Lorenzo and the three others in his household in July of 2009. Their "residency" roots might not have been deep in Michigan at that time, but they were *non-existent* in either Florida or North Carolina, and this must negate any "finding" by the trial court that any state other than Michigan was their state of residency.[11]

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[11] The testimony of the Plaintiffs supports this proposition:

> Q: Silvia, in July of 2009 did you consider yourself to have a permanent address or did you consider your address to be wherever you were living at the time?
>
> * * *
>
> A: A fixed address I didn't have.
>
> Q: Would you agree that your fixed address between July and October for the six years that you told me about was in the State of Michigan?
>
> * * *
>
> A: Yes.

(**Exhibit D**, pp. 43-44).

> Q: Is it fair to say that if someone asked you that question ["where do you live"] between July and October you'd say Michigan, if someone asked you that question between October and May you'd probably say Florida, and if someone asked you that question between May and July you'd probably say North Carolina?
>
> A: [Gerardo Lorenzo Tienda] Yeah. When I'm in Michigan I'm in

Thus it was clear error when the trial court acknowledged that the four traveling migrant workers in this case took "almost" all of their personal effects from one location to another (in fact, there was no "almost" about it -- they testified that *all* their belongings were brought with them to Michigan when they moved from North Carolina), yet discounted Michigan as a state of residence because they were not "anymore connected to Michigan than to Florida, in fact less." (**Exhibit B**, p. 42). Where neither Michigan, Florida nor North Carolina qualified as a state in which any kind of long term home base was maintained -- in effect, where each state was "tied for last place" in the race for residency -- clearly the salient fact of *their actual presence* in Michigan in July of 2009, living there and working there, necessarily qualified as the tie-breaker.

In support of its ruling that Florida rather than Michigan was Lorenzo's state of residence, the trial court cited and considered the several factors identified in *Workman v DAIIE*, 404 Mich 477; 274 NW2d 373 (1979), and *Dairyland Ins Co v Auto-Owners Ins Co, supra* (*see*, **Exhibit B** -- Tr 3/31/11, pp. 44-45). In fact, since these well-known factors inherently presume the existence of two different, *concurrently* existing households in which a person spends time, with the issue being which of the two qualifies as the person's residence or domicile, the factors do not readily lend themselves to the case at bar, where, at the time in question, there was no other concurrently existing "home" to compete with Lorenzo's Grand Rapids household as his place of residency in July of 2009.

> Michigan and when I'm in Florida I'm in Florida. When I'm in North Carolina I'm in North Carolina.

(**Exhibit E**, pp. 24-25).

Nevertheless, to the extent the factors might be applicable, they clearly favor a finding that Michigan, and not any other state, was the group's state of residency in the summer of 2009. The Grand Rapids apartment constituted the only place in which Mr. Lorenzo maintained a bedroom -- there was no "other place of lodging" available to him. The group seldom if ever received mail at any of their homes, but they did receive a cell phone bill while living in the Grand Rapids apartment. What few possessions they had were kept with them in the apartment -- there was no other place for them. Importantly, the only two persons in the group with official state identifications or licenses were Salvador Lorenzo and Silvia Lopez Gomez, and both of their cards were issued by the State of Michigan. Indeed, none of the several *Workman/Dairyland* factors pointed decidedly at any other place of residence *other* than Michigan at the time in question.[12]

Salvador Lorenzo was not merely visiting North Carolina when he traveled there from Florida in spring of 2009, and clearly he was not then merely visiting Michigan, while maintaining a "home" in Florida, when he and the others moved from North Carolina to Michigan early in July 2009. Because they left no "home" of any kind behind, and brought all their worldly possessions with them as they relocated, their moves must be deemed to have effected a change in their residency (*see*, **Exhibit C**, p. 10). The Court of Appeals recognized this point in its indorsement of a professional baseball player analogy that

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[12] Counsel for TITAN asserted that Lorenzo maintained a "post office box" address in Florida (**Exhibit B**, p. 6). This is wholly inaccurate. Lorenzo testified that, at the time of his statement (February 7, 2011), the Florida ranch at which he was working and living in a trailer had a post office address but, to Lorenzo's knowledge, no other address. This does not establish that Lorenzo himself had any kind of home base address, and particularly not at the time in question, July 2009.

differentiated between a player who travels from state to state while maintaining a home in his city of origin and a journeyman player who, being traded regularly from one team to another, season after season, might well change his state of residency each time he moved (*see*, **Exhibit A**, slip op, at 10).

The trial court thus clearly erred in concluding that any state other than Michigan was the state of Salvador Lorenzo's residence at the time of the accident within the meaning of MCL 500.3163. The Court of Appeals properly reversed the trial court, and properly concluded that TITAN, not INTEGON, is responsible for the payment of benefits in this case.

B. TITAN's argument that INTEGON knew or should have known that it was dealing with a "potential Michigan resident" not only is unsupported by Michigan law and not timely raised below, but is factually contradicted by TITAN's direct concession that, in fact, Lorenzo was a North Carolina resident at the time he purchased his insurance.

In the Court of Appeals' oral argument hearing below, TITAN raised for the first time in the litigation an estoppel-type argument based on *Gordon v GEICO Gen Ins Co*, unpublished per curiam opinion of the Court of Appeals (No. 301431, March 20, 2012) (submitted here as Exhibit 15 to Titan's Application), and developed it in its motion for reconsideration in the Court of Appeals. The argument appears as Argument II in the instant application.

TITAN maintains that, while the insurance policy INTEGON issued to Lorenzo on June 22, 2009, was a North Carolina auto liability policy, INTEGON should have issued Lorenzo a Michigan no-fault policy, since INTEGON "knew or should have known that it

was dealing with a potential Michigan resident." Aside from the fact that there is no such concept as a "potential Michigan resident" (and TITAN's application provides no explanation of the phrase), the argument is utterly baseless: Lorenzo was *not* a Michigan resident at the time INTEGON issued its policy.

As noted, TITAN relies on the unpublished opinion in *Gordon v GEICO Gen Ins Co* to assert that, while Lorenzo used a North Carolina address on his application for insurance on June 22, 2009, INTEGON "knew or should have known" that Lorenzo actually was a Michigan resident since he showed the agent a Michigan driver's license. As it appears in the application, the argument is largely a discussion of the *Gordon* opinion itself and an attempt to describe the facts of this case as analogous to those in *Gordon*. The flaw in TITAN's argument is that, while the insurance agent in *Gordon* was, in fact, "dealing with a Michigan resident," *Gordon*, slip op, at 4, INTEGON in this case was "dealing with" a *North Carolina* resident at the time it issued its policy to Lorenzo. TITAN has directly conceded this point: "[T]here is simply no doubt but that, from May through [the beginning] of July 2009, Plaintiffs, as well as the vehicle owner, Salvador Lorenzo, were residents of the State of North Carolina." (Titan's Appellee Brief to the Court of Appeals, p. 7).

INTEGON concurs in this direct concession. The Court of Appeals' opinion concluded as a matter of law that Lorenzo was a Michigan resident from July 4, 2009, through and including the date of the accident, July 29, 2009, since he and his companions at that time had no connection with any other state -- they were living in an apartment in Michigan, kept everything they owned with them in Michigan, and were working in

Michigan. Precisely the same essential facts were true for the group in June 2009 with respect to their then-residency in North Carolina.

In *Gordon*, the plaintiff-policyholder had applied for auto insurance in Mississippi at a time when she had contacts with both Michigan and Mississippi (she lived at times with her mother in Michigan, and at times with her father in Mississippi), which she discussed with the GEICO agent. Accordingly, in 2008 GEICO issued her a Mississippi policy of insurance *and a certificate of no-fault insurance for Michigan* with such coverage extending to May 15, 2009 (slip op, at 1). When the policy was renewed in May 2009, the plaintiff did not specifically tell GEICO that she had moved to Michigan in 2008. For unknown reasons, the new policy commencing May 16, 2009, provided only Mississippi coverage and *not* Michigan no-fault coverage, and plaintiff was injured in a motor vehicle accident in Michigan on May 19, 2009. Based on these facts, the Court concluded that GEICO knew, or at least should have known when it renewed the policy, that it was "dealing **with a Michigan resident**" (emphasis added) -- in part because the plaintiff twice had submitted claims to GEICO, one in late 2008 and one in early 2009, both on losses that occurred in Michigan (slip op, at 2). Thus the policy was deemed, pursuant to MCL 500.3012, to comply with the requirements of Michigan coverage (slip op, at 4-5).

Gordon provides no support for the argument TITAN now asserts. Nowhere does the opinion address the notion of an insurer "dealing with a *potential* Michigan resident." In *Gordon*, there was no question or doubt that, when the subject renewal policy was issued, the plaintiff was, *in fact*, a Michigan resident. The only question was whether the insurer knew

or should have known that this was so, and the Court answered the question in the affirmative.

The exact opposite is true in the case at bar. When Lorenzo applied for his Integon auto policy in June 2009, he reported his address, ***truthfully***, as 115 Juan Sanchez Lane, Teachey, North Carolina, notwithstanding that he had an old Michigan driver's license.[13] And again, TITAN already has conceded that the North Carolina address was Lorenzo's "legitimate" address at the time he acquired the policy (Titan's Appellee Brief to the Court of Appeals, p. 30; *accord*, *id.*, at 32 -- acknowledging that Lorenzo's address in North Carolina was "where he undoubtedly resided" when he obtained his automobile insurance through Integon).

Accordingly, contrary to the premise of TITAN's argument, INTEGON's issuance of a policy to Salvador Lorenzo in June of 2009 for a car he had just purchased while residing in North Carolina was properly issued as a North Carolina policy. Thereafter, upon his removal and relocation to Michigan the next month and his thus becoming a Michigan resident, it was incumbent on Lorenzo to comply with Michigan's insurance law and obtain proper coverage for his vehicle under MCL 500.3101(1), *et seq.* (*see*, **Exhibit A**, slip op, at n. 3). The fact that he failed to do so, INTEGON would again emphasize, did not disqualify Plaintiffs Tienda and Gomez from entitlement to Michigan no-fault benefits. They are indisputably entitled to benefits. Whether those benefits should be paid by INTEGON based on a policy that does not provide Michigan no-fault coverage, however, is a separate

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[13] *See, Witt v American Family Mut Ins Co*, 219 Mich App 602; 557 NW2d 163 (1996) (fact that the plaintiff had an Iowa driver's license did not even raise a genuine issue of fact for the proposition that he was an Iowa resident in the absence of any other residency connections to Iowa).

question; and that question was properly answered by the Court of Appeals in the negative. Only if MCL 500.3163 were applicable would INTEGON be compelled to provide Michigan no-fault benefits, and here, as the Court of Appeals concluded, MCL 500.3163 does not apply.

C. TITAN's final argument fundamentally lacks merit where the out-of-state coverage provision on which the argument relies, by its terms, applies only when an accident happens in a state *other than* the one in which the covered auto is principally garaged. Here, since Lorenzo's vehicle was being garaged in Michigan and the accident occurred in Michigan, the provision cannot apply to "convert" Integon's North Carolina policy "into a Michigan No-Fault policy.

As established above, pursuant to MCL 500.3163, INTEGON's policy would apply to provide PIP coverage to Plaintiffs only if Lorenzo was an "out-of-state" resident -- i.e., *not* a resident of Michigan at the time of the accident. Where Lorenzo *was* a resident of Michigan, INTEGON's policy does not provide Michigan PIP coverage and Plaintiffs' entitlement to benefits must be satisfied under TITAN's coverage pursuant to the applicable assigned claims provision, MCL 500.3172(1) (benefits are paid through the assigned claims plan "if no personal protection insurance is applicable to the injury").

As its final argument, TITAN asserts that an out-of-state coverage clause in the INTEGON policy "automatically converts" the North Carolina policy into a Michigan no-fault policy:

> If an auto accident to which this policy applies occurs in any state or province other than the one in which your covered auto is principally garaged, we will interpret your policy for that accident as follows [i.e., as providing the minimum amounts and types of coverage required in that state or province].

(*See*, Titan's Application for Leave, p. 36).

The essential effect of this clause in the policy, of course, is the same as that of §3163 of the No-Fault Act -- when it applies. Yet, much like the terms of §3163, the subject clause in INTEGON's policy is dependent upon an accident happening in a state "*other than* the one in which your covered auto is principally garaged." And in this instance, there is no factual dispute that, at the time of the subject accident, Lorenzo's automobile was being "garaged" exclusively in Michigan, and likewise, the subject accident occurred in the State of Michigan. TITAN's final argument, therefore, is without merit and does not provide basis for the Court to grant leave to appeal.

RELIEF REQUESTED

For all the reasons set forth herein, the Court is respectfully requested to deny TITAN's application for leave to appeal.

Respectfully submitted,

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By: _____

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