STATE OF MICHIGAN

MICHIGAN SUPREME COURT

GERARDO LORENZO TIENDA, and
SILVIA LOPEZ GOMEZ,

Plaintiffs- Appellees,

-vs-

INTEGON NATIONAL INSURANCE
COMPANY, a/k/a GMAC Insurance Company,

Defendant-Appellees,

and

TITAN INSURANCE COMPANY, ~~as Assignee of the Michigan Assigned Claims Facility,~~

Intervening Defendant-Appellant.

Supreme Court Case No.: Publ Opn 4-23-13 Rec 6-14-13

Court of Appeals Case No.: 306050

Lower Court Case No.: 10-46088-NF

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DEFENDANT-APPELLANT TITAN INSURANCE COMPANY'S
APPLICATION FOR LEAVE TO APPEAL

NOTICE OF HEARING

NOTICE OF FILING OF DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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TABLE OF CONTENTS

Index of Authorities iii

Statement of Order Being Appealed and Requested Relief v

Statement of Questions Involved viii

Statement Justifying Intervention by this Court x

Statement of Facts 1

Procedural History 13

Standard of Review 18

Legal Argument 19

I. The Circuit Court Properly Determined, Under Applicable Michigan Law that the Vehicle Owner, Salvador Lorenzo, Could Not 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 of Michigan and the Court of Appeals Erred When it Ruled Otherwise 19

II. Throughout this Litigation, Integon National Insurance Company Has Alleged that Salvador Lorenzo Made a Material Misrepresentation in his Application for Insurance by Failing to Disclose that He Was a Michigan Resident, and Not a Resident of North Carolina; However, Salvador Lorenzo Clearly Placed Defendant Integon National Insurance Company on Notice of His Possible Michigan Connection, and Even if There Was a Material Misrepresentation, The Lower Court Properly Concluded that No Amount of Fraud by Integon's Named Insured Can Affect the Rights of Innocent Third Parties, Such as Plaintiffs Tienda and Gomez, Who May Claim Mandatory Michigan No-Fault Insurance Benefits Under the Policy of Insurance Issued by Integon National Insurance Company; the Court of Appeals' Failure to Address this Argument Warrants Intervention by this Court.. 26

III. By Virtue of Its Out-Of-State Coverage Clause, the North Carolina Automobile Liability Policy Issued by Integon Automatically Converts into a Michigan No-Fault Policy; Unfortunately, the Court of Appeals Failed to Reference this Argument in its Opinion and Compounded the Error When it Denied Defendant's Motion for Reconsideration 26

Conclusion and Relief Requested 38

INDEX OF AUTHORITIES

Cases

A&M Supply Co. v Microsoft Corp., 252 Mich App 580, 654 NW 2d 572 (2002) 18
Dairyland Ins. Co. v Auto Owners Ins. Co., 123 Mich App 675, 333 NW 2d 322 (1983)..... passim
Darnell v Auto Owners, 142 Mich App 1, 369 NW 2d 243 (1985) 27, 28
Dawson v Farm Bureau, 293 Mich App 563, 810 NW 2d 106 (2011) 36
Eggleston v Bio-Med Applications of Detroit Inc., 468 Mich 29, 628 NW 2d 139 (2003) 18
Farm Bureau Ins. Co. v Allstate Ins. Co., 233 Mich App 38, 592 NW 2d 395 (1998) 20
Farm Bureau v Allstate, 233 Mich App 38, 592 NW 2d 395 (1998) 32
Fowler v ACIA, 254 Mich App 362, 364; 656 NW 2d 856 (2002) 11
Fowler v ACIA, 254 Mich App 362, 656 NW 2d 856 (2002) 18
Goldstein v Progressive Casualty Ins. Co., 218 Mich App 105, 553 NW 2d 353 (1996) 18, 19
Gordon v Geico Gen'l Ins. Co., docket no. 301431, unpublished decision rel'd 3/20/2012. passim
Grange Ins. Co. of Michigan v Lawrence, docket no. 145206 .... 10, 12, 38
In re Scheyers' Estate, 336 Mich 645, 652; 59 NW 2d 33 (1953) 10, 20
Keyes v Pace, 358 Mich 74, 84-85, 99 NW 2d 547 (1959) 17
Keyes v Pace, 358 Mich 74, 99 NW 2d 547 (1959) 29, 34
Rory v Continental Ins. Co., 473 Mich 457, 703 NW 2d 23 (2005) 18, 36
Shepherd Montessori Ctr. Milan v Ann Arbor Charter Twp., 486 Mich 311, 783 NW 2d 695 (2010) 8
Titan Ins. Co. v Brotherhood Mutual Ins. Co., Court of Appeals docket number 283050, unpublished decision rel'd on February 23, 2010 24
Titan Ins. Co. v Hyten, 491 Mich 547, 817 NW 2d 562 (2012) 28, 29, 36
Williams v State Farm Mut'l Automobile Ins. Co., 202 Mich App 491, 509 NW 2d 821 (1993) .. 18
Wilson v League General Ins. Co., 195 Mich App 705, 491 NW 2d 642 (1992) 20
Workman v DAIIE, 404 Mich 477, 274 NW 2d 373 (1979) .... passim

Statutes

2012 PA 204 2
MCL 500.3012 .... 17, 31, 32, 33
MCL 500.3114(1) 10
MCL 500.3114(4) 9, 2, 28
MCL 500.3114(4)(a) 5, 2
MCL 500.3163 .... passim
MCL 500.3163(1) .... passim
MCR 7.302(B)(3) 12
MCR 7.302(B)(5) 12
NCGS 58-2-164(g)(3) 26

STATEMENT OF ORDER BEING APPEALED AND REQUESTED RELIEF

Intervening Defendant-Appellant Titan Insurance Company (hereinafter "Intervening Defendant" or "Titan") submits this Application for Leave to Appeal from the Court of Appeals' published Opinion and Order dated April 23, 2013, as well as the Order from the Court of Appeals dated June 14, 2013, which denied (in a 2-1 decision) Titan's Motion for Reconsideration. In its Opinion, the Court of Appeals reversed the decision of the Allegan County Circuit Court, which had previously granted Titan's Motion for Summary Disposition and had denied the Motion for Summary Disposition filed by Defendant-Appellee Integon National Insurance Company a/k/a GMAC Insurance Company's (hereinafter "Defendant" or "Integon"). A copy of the Court of Appeals' published Opinion dated April 23, 2013, is attached to this Application for Leave to Appeal as **Exhibit 13**. A copy of the Court of Appeals' 2-1 decision denying Titan's Motion for Reconsideration (with Judge Hoekstra dissenting) is attached to this Application for Leave to Appeal as **Exhibit 14**.

Intervening Defendant Titan Insurance Company respectfully requests that, after giving due consideration to the issues presented in this Application for Leave to Appeal, this Court grant any or all of the following relief:

1. Intervening Defendant Titan requests that, in lieu of granting of leave to appeal, this Court issue an Order peremptorily reversing the decision of the Court of Appeals, thereby reinstating the decision of the Allegan County Circuit Court to grant Titan's Motion for Summary Disposition;

2. Alternatively, Intervening Defendant Titan Insurance Company requests that this Court remand this matter back to the Court of Appeals as on reconsideration granted, with instructions that the Court of Appeals decide the issues raised by Titan in this appeal, but were not addressed in the Court of Appeals' published opinion; namely, because Integon knew or should have known that it was dealing with a potential Michigan resident when it issued the North

Carolina automobile liability policy to its insured, Salvador Lorenzo, it should be estopped from denying the claims for Michigan No Fault benefits to the 2 "innocent third parties", Plaintiff-Appellees Tienda and Gomez; this omission was the subject of Titan's Motion for Reconsideration, which Judge Joel Hoekstra, a member of the Court of Appeals panel that heard this case, would have granted;

3. Alternatively, Intervening Defendant Titan respectfully requests that this honorable Court grant its Application for Leave to Appeal, given the significant legal issues raised in this Appeal regarding proper application of the residency factors enunciated by this Court in *Workman v DAIIE, 404 Mich 477, 274 NW 2d 373 (1979)* and the Court of Appeals' in *Dairyland Ins. Co. v Auto Owners Ins. Co., 123 Mich App 675, 333 NW 2d 322 (1983)*, as potentially modified by this Court when it releases its Opinion in *Grange Ins. Co. v Lawrence, Supreme Court docket no. 145206*. Thereafter, following full briefing and oral argument, Intervening Defendant Titan requests that this honorable Court issue an Opinion and Order reversing the decision of the Court of Appeals and reinstating the decision of the Allegan County Circuit Court to grant Intervening Defendant Titan's Motion for Summary Disposition.

As demonstrated *infra*, this case presents a number of significant legal issues arising under the Michigan No-Fault Insurance Act. This case involves a group of migrant farm workers who, year after year, spent only a limited period of time in the State of Michigan, harvesting fruit at farms located in western Michigan. Two weeks after arriving in Michigan in July of 2009, four migrant farm workers, including Plaintiffs-Appellees Gerardo Lorenzo Tienda and Sylvia Lopez Gomez, were injured in a motor vehicle accident while occupying an automobile owned by one of the migrant farm workers, Salvador Lorenzo, and insured under a North Carolina auto liability policy issued by Integon National Insurance Company. Following exhaustive briefing of the issues by both side, the Circuit Court, in a thoughtful and enlightened Opinion issued from the bench, applied the residency standards enunciated by this Court in *Workman v DAIIE, 404 Mich*

477, 274 NW 2d 373 (1979) and the Court of Appeals' decision in *Dairyland Ins. Co. v Auto Owners Ins. Co., 123 Mich App 675, 333 NW 2d 322 (1983)* to conclude that the owner of the vehicle occupied by the two injured Plaintiffs, Salvador Lorenzo, was not a resident of the State of Michigan at the time of this occurrence. As a result, Defendant Integon National Insurance Company, as the insurer of the owner and registrant of the vehicle occupied by Tienda and Gomez, was obligated to afford Michigan no-fault insurance benefits to the two injured occupants of its insured vehicle under MCL 500.3163 and MCL 500.3114(4)(a).

Alternatively, even if the Court of Appeals was correct in its determination that Lorenzo was a resident of the State of Michigan at the time of this occurrence, Integon knew or should have known that it was dealing with a potential Michigan resident when Mr. Lorenzo provided the Integon insurance agent in North Carolina with his Michigan driver's license. Integon subsequently attempted to void coverage as to Salvador Lorenzo, but voiding the policy as to the two innocent third parties involved in the accident, Tienda and Gomez, would have the effect of shifting responsibility for payment of Michigan no-fault insurance benefits to Titan Insurance Company, as assignee of the policyholder–funded Michigan Assigned Claims Plan, as the "insurer of last resort." Because the Court of Appeals did not address this issue, in its published Opinion, Titan filed a Motion for Reconsideration, which was denied in a 2-1 decision by the Court of Appeals on June 14, 2013.

STATEMENT OF QUESTION INVOLVED

1. Did the Court of Appeals fail to properly apply the factors enumerated by this Court in *Workman v DAIIE, 404 Mich 477, 274 NW 2d 373 (1979)* and the Court of Appeals in *Dairyland Ins. Co. v Auto Owners Ins. Co., 123 Mich App 675, 333 NW 2d 322 (1983)* when it incorrectly determined that Salvador Lorenzo, the owner of the vehicle occupied by Plaintiffs, was a resident of the State of Michigan at the time of this occurrence; contrary to the well-reasoned opinion of the Allegan County Circuit Court?

   Intervening Defendant-Appellant Titan contends that the answer is, "Yes."

   Defendant-Appellee Integon contends that the answer is, "No."

   The Court of Appeals answered this question, "No."

   The Trial Court answered this question, "Yes."

   Plaintiffs-Appellees take no position on this question.

2. In a situation where Integon knew or should have known that it was dealing with a potential Michigan resident, did the Lower Court properly rule that Plaintiffs were "innocent third parties," and that no amount of fraud allegedly perpetrated by Integon's insured, Salvador Lorenzo, could affect their rights to recover Michigan no-fault insurance benefits under the Integon policy, in a situation where Mr. Lorenzo clearly disclosed his potential Michigan residence to Integon's agent?

   Intervening Defendant-Appellant Titan contends that the answer is, "Yes."

   Defendant-Appellee Integon contends that the answer is, "No."

   The Court of Appeals did not address this issue, even though it was asked to do so in Titan's Motion for Reconsideration.

   The Trial Court answered this question, "Yes."

   Plaintiffs-Appellees did not take a position on this question.

3. By virtue of its plain and unambiguous statutory language, does the Integon National Insurance Company policy, issued to Salvador Lorenzo, convert to a Michigan no-fault insurance policy, because the accident occurred in the State of Michigan, which has a compulsory insurance law and where, by its own terms, the policy required Integon to provide "at least the required minimum amounts and types of coverage" in the State of Michigan?

   Intervening Defendant-Appellant Titan contends that the answer is, "Yes."

   Defendant-Appellee Integon contends that the answer is, "No."

   The Trial Court did not answer this question.

The Court of Appeals did not address this issue, even though it was asked to do so in Titan's Motion for Reconsideration.

Plaintiffs-Appellees did not take a position on this question.

STATEMENT JUSTIFYING INTERVENTION BY THIS COURT

Many residents of the State of Michigan maintain second or even third homes outside the State of Michigan. It is not at all unusual for someone residing in the State of Michigan to have a home in, say, Arizona or Florida, where they stay for an extended period of time. Sometimes, the Michigan resident's stay in the other state can last weeks or even months. The classic "snowbird" situation comes to mind.

Conversely, many residents of other states travel frequently to Michigan and end up staying for an extended period of time. Perhaps the out-of-state resident has a summer cottage where they stay for the summer and fall. Perhaps they have a home or dwelling that the out-of state resident stays at during hunting season. Other times, out-of-state residents simply travel to Michigan to vacation from one spot to another, enjoying everything Michigan has to offer to such tourists. What if one of those out-of-state residents, either staying at their summer cottage or traveling throughout the state, decides to become a Michigan resident? Stated otherwise, at what point in the process does one cease to become an "out-of-state" resident and become a Michigan resident? **This is precisely this issue before this Court, and resolution of this issue will determine whether responsibility for payment of No Fault benefits to 2 "innocent third parties" should be borne by the insurer which collected a premium payment and knew or should have known that it was dealing with a potential Michigan resident when it issued a North Carolina automobile insurance policy (Defendant Integon) or the automobile insurance policyholders of the State of Michigan, including members of this Court, all of whom contribute, through state-mandated assessments on their insurance premium payments, to fund the Michigan Assigned Claims Plan, the "insurer of last resort" and its assigned insurance carrier, Intervening Defendant Titan Insurance Company.**

The case of migrant farm workers presents a unique challenge when considering their "residency." If migrant farm workers are in Michigan only for a short period of time, can they ever be considered Michigan "residents"? Do they become Michigan "residents" the minute they step foot inside the State of Michigan, as the Court of Appeals held in this case, despite the fact that their only connection to the State of Michigan is their place of temporary employment for three months out of the year, plus a temporary place to stay. On the other hand, if they spend the majority of their time outside the State of Michigan, as this group of migrant farm workers undoubtedly did in this case, would they more properly be considered out-of-state residents, as determined by the Honorable Kevin Cronin, of the Allegan County Circuit Court, following an exhaustive analysis of the residency factors enunciated by this Court in *Workman v DAIIE, 404 Mich 477, 274 NW 2d 373 (1979),* and by the Court of Appeals in *Dairyland Ins. Co. v Auto Owners Ins. Co., 123 Mich App 675, 333 NW 2d 322 (1983),* to determine that Salvador Lorenzo, the owner of the vehicle occupied by the two injured Plaintiffs, was an out-of-state resident, thereby triggering Integon's obligation to pay no-fault benefits to the two injured Plaintiffs pursuant to MCL 500.3163 and MCL 500.3114(4).

The language of MCL 500.3163(1) shows why the case at bar presents a significant legal issue to be resolved by this court. This section of the No-Fault Act provides:

> "An insurer authorized to transact automobile liability insurance and personal and property protection 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, is subject to the personal and property protection insurance system under this act."

There is no dispute but that the subject accident occurred in the State of Michigan. There is also no dispute that Integon is a certified insurer under MCL 500.3163(1). Therefore, if the accident

arose "from the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle by an out-of-state resident," as the Circuit Court properly held, then Integon would be responsible for payment of the Michigan no-fault benefits incurred by the two injured Plaintiffs. 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.

However, this Court is currently considering the issues of "domicile" and residency under the Michigan No-Fault Insurance Act. In *Grange Ins. Co. of Michigan v Lawrence, docket no. 145206*, this Court will be deciding whether or not the minor child of two divorced parents can maintain "dual domiciles" in both the mother and father's home, even though the child is only living with one of the parents at the time of the accident. In its Order Granting Leave to Appeal dated September 19, 2012, this Court ordered the parties to consider the following issue:

> "(1) Whether a person, and in particular the minor child of divorced parents, can have two domiciles for the purpose of determining coverage under MCL 500.3114(1) of the Michigan No-Fault Act."

Note, however, that MCL 500.3163, the statute involved in this case, does not reference "domicile." Rather, it deals with residency. This Court has previously held that a person can only have a single domicile, even if they have more than one residence. *In re Scheyers' Estate, 336 Mich 645, 652; 59 NW 2d 33 (1953).* **Assuming that this proposition is affirmed by this Court in *Grange Ins. Co., supra,* this case presents the next logical step in the analysis; namely, whether a person with multiple "residences" both in and out of this state, can be considered an "out-of-state resident," for purposes of applying MCL 500.3163.**

Of course, Titan firmly believes that the Circuit Court got it right when it properly applied the *Workman* and *Dairyland Ins. Co.* residency criteria to determine that the vehicle

owner, Salvador Lorenzo, was, in fact, an out-of-state resident at the time of the accident. There was simply no basis for the Court of Appeals to determine that the minute Salvador Lorenzo, a migrant farm worker, stepped foot in the State of Michigan, he became a Michigan "resident" when he only spent a short period of time in the State of Michigan- 3 months at most. As the underlying facts giving rise to this litigation are not in dispute, the issue of residency becomes a question of law for the Court to decide. *Fowler v ACIA, 254 Mich App 362, 364; 656 NW 2d 856 (2002).* Because this Court will be conducting a *de novo* review regarding proper application of the residency factors enunciated by this Court in *Workman, supra,* and by the Court of Appeals in *Dairyland Ins. Co., supra,* this case presents an issue of significant legal import regarding proper application of the *Workman* and *Dairyland* factors to migrant farm workers.

This case is further complicated by the fact that Integon is attempting to avoid payment of Michigan no-fault insurance benefits to two "innocent third parties," Plaintiffs Gerardo Lorenzo Tienda and Sylvia Lopez Gomez, in a situation where Integon knew, or should have known, that it was dealing with a potential Michigan resident and, as a result, should have issued a Michigan no-fault insurance policy, instead of a North Carolina automobile liability policy, to Salvador Lorenzo, the owner of the vehicle occupied by the injured Plaintiffs. **The Court of Appeals never addressed this argument, even though it was properly raised by Intervening Defendant in both the Circuit Court and in the Court of Appeals.** Following the release of the Court's published opinion, Titan filed a Motion for Reconsideration, asking the Court of Appeals to address this issue in order to provide this Court with a complete analysis of **all issues** involved in this litigation. The Honorable Joel Hoekstra, one of the judges on the panel that decided this case, would have granted Titan's Motion for Reconsideration. Unfortunately, the

majority ruled otherwise. **In other words, the Court of Appeals never did address the circumstances under which an insurer should be estopped from denying coverage to "innocent third parties" based upon the purported misrepresentations made by its insured, regarding his residency at the time the policy was purchased and other factors that lead Integon to deny coverage, in its entirety to Salvador Lorenzo.**

Simply stated, there is no dispute but that this case involves "legal principles of major significance to the state's jurisprudence" regarding residency of no-fault Claimants in general and residency of migrant farm workers in particular, as required under MCR 7.302(B)(3). In addition, the published Court of Appeals' decision in this case is clearly erroneous and will result in material injustice to no-fault insurance policyholders in the State of Michigan, who will be forced, through premium payments, to pay the benefits incurred by two "innocent third parties," through the statutory assessments necessary to fund the Michigan Assigned Claims Plan, even though the two innocent third parties" were occupants of a vehicle whose owner was insured by "an insurer authorized to transact automobile liability insurance and personal and property protection insurance in this state" – Defendant Integon – under MCL 500.3163(1). See MCR 7.302(B)(5). Furthermore, the Court of Appeals' decision involves proper application of this Court's residency criteria enunciated in *Workman, supra,* and by the Court of Appeals in *Dairyland Ins. Co., supra.* The residency criterion relied upon by both the Circuit Court and the Court of Appeals may be modified, as well, by this Court's impending decision in *Grange Ins. Co., supra.* For these reasons, this case cries out for intervention by this Court, followed by a reversal of the Court of Appeals' decision in this case and reinstatement of the Order for Summary Disposition entered by the Allegan County Circuit Court in favor of Intervening Defendant Titan Insurance Company.

((

STATEMENT OF FACTS

This Appeal involves a claim for first party no-fault insurance benefits, arising out of a motor vehicle accident that occurred on July 29, 2009. Plaintiffs-Appellees Gerardo Lorenzo Tienda and Sylvia Lopez Gomez (hereinafter "Plaintiffs", "Tienda" or "Gomez") were occupants a 2001 Ford Expedition, bearing VIN: 1FMRU17L41LA87107 and South Carolina license plate number 7326EA. While traveling on I-196, nearing its intersection with Adams, in Allegan County, a 2005 Chevy Silverado, owned and operated by Brian Crouse, struck the vehicle occupied by the Plaintiffs. The 2001 Ford Expedition, occupied by Tienda and Gomez, was owned by Salvador Lorenzo, who was also a passenger in the vehicle. The police report is attached as **Exhibit 1**.

BRIEF OVERVIEW OF THE LAW

The dispute in this Appeal involves which insurer is obligated to provide Michigan no-fault insurance benefits to Plaintiff Gerardo Lorenzo Tienda and Sylvia Lopez Gomez. Defendant Integon issued a North Carolina automobile liability insurance policy to Salvador Lorenzo on June 22, 2009, approximately five weeks prior to the subject motor vehicle accident. Because Integon National Insurance Company sells insurance in the State of Michigan, it filed a mandatory Certificate of Compliance with the terms and conditions of the Michigan No-Fault Insurance Act, under MCL 500.3163(1). This section of the No-Fault Act provides:

> "An insurer authorized to transact automobile liability insurance and personal and property protection 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, is subject to the personal and property protection insurance system under this act."

There is no dispute but that the subject accident occurred in the State of Michigan. Therefore, if the accident arose "from the ownership, operation, maintenance or use of a motor vehicle as a

motor vehicle by an out-of-state resident," then Integon National Insurance Company would occupy the highest order of priority for payment of the no-fault benefits incurred by Tienda and Gomez, under MCL 500.3114(4). This is because Integon National Insurance Company would be deemed the insurer of the owner or registrant of the motor vehicle occupied by the Plaintiffs at the time of this occurrence, under MCL 500.3114(4)(a).

Intervening Defendant-Appellee Titan Insurance Company was assigned to handle Tienda and Gomez' claims for Michigan no-fault insurance benefits by the Michigan Assigned Claims Facility (ACF)[1], pursuant to the statutory provisions governing the operation of the ACF, after Defendant Integon National Insurance Company, which initially paid many of the PIP benefits incurred by Tienda and Gomez, refused to honor the additional claims filed by these "innocent third parties."

Titan Insurance Company was allowed to intervene in the lawsuit filed by Plaintiffs against Integon, pursuant to a Court Order entered on June 14, 2010, by the Allegan County Circuit Court. After the depositions of the Tienda and Gomez were taken on August 18, 2010, at which time their eligibility for no-fault benefits under the Assigned Claims Facility was confirmed, Titan Insurance Company paid the no-fault benefits that had been submitted to Titan for payment. Titan then sought reimbursement from Integon National Insurance Company, through its Cross-Claim.

PLAINTIFFS' STATUS AS MIGRANT FARM WORKERS

Plaintiffs Gerardo Lorenzo Tienda and Sylvia Lopez Gomez and, for that matter, the vehicle owner, Salvador Lorenzo, are migrant farm workers from Mexico. They may very well be in the United States illegally – Plaintiffs' counsel refused to allow defense counsel to make inquiries into this area. Both Plaintiffs were deposed on August 18, 2010, and their deposition

[1] The responsibility for administering assigned claims has been transferred to the Michigan Automobile Insurance Placement Facility, and is now known as the Michigan Assigned Claims Plan (MACP). See 2012 PA 204.

transcripts are attached as **Exhibits 2** (Tienda) and **3** (Gomez), respectively. Both Tienda and Gomez provided extensive testimony regarding their work patterns. According to Plaintiff Gomez, she has been working the migrant farm cycle for six years. From July through October, she worked in Michigan picking blueberries. Thereafter, they would travel to Florida where they would pick strawberries and tend to the fields until May. They would then travel to North Carolina, where they would stay for a month and a half to two months picking blueberries. As stated by Ms. Gomez:

> Q Did I understand you correctly that for the past six years you worked in Michigan from July through October?
>
> A Yes.
>
> Q Then after the blueberry season was done in Michigan you would go down to Florida?
>
> A Yes.
>
> Q And in Florida you would go down to pick strawberries?
>
> A Yes.
>
> Q From when to when would you usually pick strawberries in Florida?
>
> A It starts in December until the first part of March?
>
> Q In what area in Florida would you usually go to pick strawberries?
>
> A In Dover, Plant City.
>
> Q Okay. Does the strawberry season end around the first part of March in Florida?
>
> A Yes.
>
> Q And then when the strawberry season ends you would travel to North Carolina?
>
> A When the first period was done then we would start doing something with a – with the strawberry plants themselves.
>
> Q Okay.
>
> A So then in May we would go to North Carolina.
>
> Q Okay. You would finish picking strawberries the first part of March but you would do something with the strawberry plants?

A We pulled them up.

Q Okay. And after you got done pulling up the strawberry plants, then you would go to North Carolina?

A Yes.

Q And when you would go to North Carolina during the six years before the accident?

A Around the 10th of May.

Q Okay. And how long would you stay in North Carolina?

A A month and a half.

Q And you would pick strawberries or would you pick blueberries in North Carolina for that month and a half?

A Yes.

Q And then after that month and a half of picking blueberries you would come up to Michigan?

A Yes.

Q And you and your family have been doing this pattern for approximately six years before the accident?

A Yes.

Deposition of Sylvia Gomez, Exhibit 3, pages 57-59

Plaintiff Tienda had been working the same cycle for nine years:

Q In Sylvia's deposition she described how she and her family would move from Michigan to Florida North Carolina and back to Michigan for at least six years prior to the car accident. Was your life the same way?

A Yes. I have been – been nine years on that circuit.

Deposition of Gerardo Tienda, Exhibit 2, page 15

He also testified that he and the owner of the 2001 Ford Expedition are related – Mr. Lorenzo is his uncle. (Deposition of Gerardo Tienda, Exhibit 2, page 25) Specifically, Salvador Lorenzo is Plaintiff Tienda's father's brother. (Deposition of Gerardo Tienda, Exhibit 2, page 26)

Both Plaintiffs testified that the vehicle owner, Salvador Lorenzo, worked this very same circuit. Plaintiff Tienda testified that while he worked in Florida from October 2008 until May

2009, he worked in the same field as his uncle, Salvador Lorenzo. When the group of migrant farm workers moved to North Carolina, they lived in the same housing unit:

> Q Okay, I may have asked you this before and if so I apologize. Did you see your uncle Salvador Lorenzo during that time [that he worked the fields in Florida]?
>
> A I did see him. I went to this field looking for work.
>
> Q Okay.
>
> A Where I started to live with him was in North Carolina in this trailer. Yeah. And that's why I almost never stayed at home was because of him.
>
> Deposition of Gerardo Lorenzo Tienda, Exhibit 2, page 31

Plaintiff Gomez testified that she first met the vehicle owner, Salvador Lorenzo, "in the fields" in Florida in 2008:

> Q Okay. How long have you known Mr. Salvador Lorenzo?
>
> A I know him like – like two years.
>
> Q How did you first meet Mr. Salvador Lorenzo?
>
> A In the fields.
>
> Q In which state.
>
> A In Florida.
>
> Deposition of Sylvia Lopez Gomez, Exhibit 3, page 59

PLAINTIFFS' LIVING ARRANGEMENTS IN NORTH CAROLINA

Attached as **Exhibits 2** and **5** to Plaintiff Gomez' deposition transcript are copies of photographs taken of some modular homes in North Carolina. **It was in these homes that Plaintiff Gerardo Tienda and Sylvia Gomez, as well as the vehicle owner, Salvador Lorenzo, and other migrant farm workers stayed during the months that they worked at the blueberry farms in North Carolina.** As noted by Plaintiff Gomez:

> Q The question is, take a look at the photographs, and do you recognize these photos?
>
> * * *
>
> A It's photos where we lived in North Carolina.

Q Where you lived with Salvador Lorenzo?

A Yes.

Q Okay. There are a number of – Exhibit 2 shows two trailers. Do you know how many of those trailers were in this area.

A Just two.

Q Just two – okay. Do you know which of these two you and your family lived in?

A That last year we lived in the first one and this year we lived in the second one.

Q Okay. When you say the first one, you mean the one closest to the camera?

A Yes, the closest to the camera.

* * *

Q When you were living in the trailer in North Carolina from May to July of 2009 was that the first time that Mr. Salvador Lorenzo was also living in the same residence as you?

A Yes.

Q Okay. Did Mr. Salvador Lorenzo and you and Gerardo and Heriberto [another migrant farm work who was operating the vehicle at the time of the accident] live in that trailer at the same time?

A Yes.

Deposition of Sylvia Lopez Gomez, Exhibit 3, pages 65 and 67

Because Plaintiffs clearly recognized the housing units depicted in the photographs (which were obtained from the Integon claims file), there is simply no doubt but that, from May through July 2009, Plaintiffs, as well as the vehicle owner, Salvador Lorenzo, were clearly not residents of the State of Michigan.

As indicated below, the address for at least one of these trailers is 115 Juan Sanchez Lane, in Teachey, North Carolina – the very same address that Salvador Lorenzo gave to Integon's agent when he procured the applicable policy of insurance on June 22, 2009 – one month prior to the subject loss. **<u>The fact that he gave this address to Integon's agent, instead</u>**

of the Michigan address shown on his driver's license (which he did disclose to the agent), certainly implies that he did not consider himself to be a resident of the State of Michigan.

LORENZO'S PURCHASE OF THE 2001 FORD EXPEDITION

Attached as **Exhibit 4** is a copy of the Application for Michigan Vehicle Title and an executed Title pertaining to a 1997 Ford that was purchased by Salvador Lorenzo on October 17, 2008, shortly before his move to Florida to harvest crops once again. **This vehicle was not involved in the motor vehicle accident of July 29, 2009.** Accordingly, the statement in Defendant Integon National Insurance Company's denial letter (discussed more fully below), to the effect that, "further, at all times, the 2001 Ford Expedition which you insured under that policy was titled in the State of Michigan" is clearly not true. Integon mistook the 1997 Ford for the 2001 Ford actually involved in the accident.

Plaintiff Tienda testified that the first time that he ever saw the 2001 Ford Expedition, involved in the subject accident, was while he, Mr. Lorenzo and the other migrant farm workers were living in North Carolina:

> Q Alright – when was the first time that you ever saw [the vehicle] involved in this accident?
>
> * * *
>
> A The witness: I believe he had had it for two weeks.
>
> Q Okay.
>
> A I saw it the first time in North Carolina.
>
> Q Okay, when did you see it in North Carolina?
>
> A In the time that we were there.
>
> Deposition of Plaintiff Gerardo Tienda, Exhibit 2, pages 26-27

Plaintiff Gomez testified that the first time she was ever a passenger in the Ford Expedition was about a week before the group of migrant farm workers left North Carolina for Michigan:

> Q Okay. If I understand you correctly, the first time you were inside the Ford Expedition was when you left North Carolina to go to Michigan?

A A week before we actually left I did get into the Ford Expedition.

Q For what purpose.

A To go to the stores and to have a little ride around.

Q Okay, did you drive the Ford Expedition at that time?

A No.

Q Who drove you around?

A Mr. Salvador.

Deposition of Plaintiff Sylvia Gomez, Exhibit 3, page 68

The records obtained from the Michigan Department of State indicate that there was no record of the 2001 Ford Expedition being registered in the State of Michigan. See **Exhibit 5**, computer printout from the Michigan Secretary of State's Office regarding the 2001 Ford Expedition purportedly involved in the subject accident. **Based upon this evidence, a reasonable inference can be drawn that Salvador Lorenzo purchased the 2001 Ford Expedition in June 2009, in the State of North Carolina, to replace the 1997 Ford Explorer that he purchased in Michigan in October 2008.**

SALVADOR LORENZO OBTAINS INSURANCE ON THE 2001 FORD EXPEDITION THROUGH DEFENDANT INTEGON NATIONAL INSURANCE COMPANY

On June 22, 2009, Salvador Lorenzo appeared at Dawn's Insurance Agency, located at 934 North Norwood Street in Wallace, North Carolina, to obtain insurance on the 2001 Ford Expedition. He provided an address of 115 Juan Sanchez Lane, in Teachey, North Carolina – the residences depicted in the photographs attached to Plaintiff Gomez' deposition transcript (Exhibit 3) as Exhibits 2 and 5, referenced above. **However, Salvador Lorenzo provided Defendant Integon National Insurance Company with a copy of his *Michigan* driver's license bearing license number L652 758 012 861. This information clearly appears on the insurance application, attached hereto as Exhibit 6. Furthermore, an actual copy of his driver's license, showing an address of 66400 – 84th Avenue, Apartment 3, in Hartford,**

Michigan, was also found within the Integon claims file and is appended hereto as Exhibit 7.

Even though Defendant Integon National Insurance Company knew that it was potentially dealing with a Michigan resident (or at least someone who might possibly work in Michigan for a short period of time as a migrant farm worker), Defendant Integon National Insurance Company issued a **North Carolina** auto liability policy covering the 2001 Ford Expedition that was later involved in the subject accident. In fact, the Declarations sheet clearly indicates that the owner of the vehicle, Salvador Lorenzo, had a Michigan driver's license. See **Exhibit 8**, Declaration sheet from Integon. This policy was in effect at the time of the motor vehicle accident of July 29, 2009, yet Integon refuses to afford coverage to two "innocent third parties" who were occupying the insured vehicle at the time of the accident.

PLAINTIFFS ARE UNDOUBTEDLY "INNOCENT THIRD PARTIES" WITH REGARD TO THE INSURANCE TRANSACTION BETWEEN SALVADOR LORENZO AND INTEGON

Plaintiff Gomez testified that she did not contribute any money toward the purchase of the Ford Expedition in June 2009. She did not accompany Mr. Salvador Lorenzo to the agent's office on June 22, 2009, when he obtained the policy of insurance with Integon. She did not give him any money toward the insurance premium payment, either. (Deposition of Plaintiff Sylvia Lopez Gomez, Exhibit 3, pages 68-69) Plaintiff Tienda provided similar testimony. (Deposition of Plaintiff Gerard Tienda, Exhibit 2, pages 27-28) Neither Plaintiff was involved in the purchase of the vehicle in North Carolina, nor did Plaintiffs contribute any money toward the operation of the vehicle. Furthermore, neither plaintiff drove the vehicle prior to the motor vehicle accident on July 29, 2009.

Indeed, in its Large Loss Report dated December 3, 2009, Defendant Integon admitted that the "guest passengers" in the insured vehicle, including Plaintiffs Gerardo Lorenzo Tienda and Sylvia Lopez Gomez, would be "innocent third parties," entitled to Michigan PIP benefits

under the Michigan No-Fault Insurance Act. This Large Loss Report, dated December 3, 2009, is attached as **Exhibit 9**. In this Large Loss Report, Integon **conceded** plaintiffs were entitled to Michigan No Fault benefits:

> "There were three guest passengers in the insured vehicle and they would be afforded Michigan PIP as innocent third parties based on the order of priority."

Why Integon nonetheless chose to deny payment of these Michigan no-fault insurance benefits to these "innocent third parties" remains unknown at this time.

INTEGON'S UNWARRANTED DENIAL OF PLAINTIFFS' MICHIGAN NO-FAULT CLAIM

Now that this Court is aware of the true state of affairs regarding Integon's issuance of the subject policy, Titan now turns to the bases for Integon's decision to nonetheless deny coverage for this loss, **even though it knew full well that it was dealing with a potential Michigan resident when it issued the North Carolina auto liability policy to the owner of the 2001 Ford Expedition, Salvador Lorenzo.** Based upon the information contained within Integon's claims file, it appears that Integon denied Plaintiffs' claim for no-fault benefits for any or all of the following reasons:

a. The 2001 Ford Expedition, insured by Integon National Insurance Company, was titled in the State of Michigan, not North Carolina;

b. That Salvador Lorenzo was a resident of the State of Michigan when he applied for insurance with Integon;

c. That there was a material misrepresentation in the Application for Insurance regarding the garaging location of the vehicle;

d. That, because the vehicle was not owned, operated or used by a nonresident of the State of Michigan at the time of the accident, Integon National Insurance Company was not responsible for providing no-fault benefits under MCL 500.3163.

See **Exhibit 10**, Reservation of Rights letter from Integon to Salvador Lorenzo dated October 20, 2009, and **Exhibit 11**, the denial letter from GMAC dated December 24, 2009. **Interestingly,**

<u>the denial letter dated December 24, 2009, was issued just three weeks after Integon admitted, in its Large Loss Report of December 3, 2009, that Plaintiffs Tienda and Gomez "would be afforded Michigan PIP as innocent third parties based on the order of priority."</u>

Obviously, the first reason for the denial is not true, as Integon clearly mistook the 1997 Ford, titled in the State of Michigan, with the 2001 Ford purchased in North Carolina. The second basis is wholly without merit as well, given the fact that Salvador Lorenzo did have a definite address in North Carolina when he purchased the vehicle. With regard to the third reason, any fraud perpetrated by Mr. Lorenzo, with regard to the garaging location of the vehicle to be insured under the Integon policy, cannot inure to the detriment of these "innocent third parties," Plaintiffs Tienda and Gomez with regard to Integon's obligation to pay Michigan PIP benefits to them. Finally, with regard to the fourth reason, the arguments presented by Intervening Defendant Titan Insurance Company, and adopted in the well-reasoned opinion of Judge Cronin of the Allegan County Circuit Court, clearly establish that, in fact, the owner of the vehicle, Salvador Lorenzo, was not a resident of the State of Michigan at the time of this occurrence. Therefore, Integon is responsible for payment of Plaintiffs' no-fault benefits under MCL 500.3163. In this regard, the Court of Appeals erred when it ruled to the contrary.

In summation, Intervening Defendant Titan Insurance Company asserts that given the vehicle owner's lifestyle, and after balancing the various factors for determining residency, discussed more fully below, Salvador Lorenzo was an **<u>out-of-state resident</u>** at the time of this occurrence. He clearly and unequivocally spent more time outside the State of Michigan (9 months) than inside it (3 months). However, even if the Court of Appeals was correct in its Opinion, that Salvador Lorenzo was a Michigan resident at the time of this occurrence, Integon **<u>knew or should have known</u>** that it was dealing with an insured with a potential Michigan connection, but Integon chose nonetheless to issue a North Carolina auto liability policy instead

of a Michigan No-Fault auto policy. Therefore, Integon is estopped from denying Michigan No-Fault benefits to the injured occupants of its insured's vehicle, and the Court of Appeals erred when it refused to address this properly preserved issue, by way of its denial of Titan's Motion for Reconsideration.

PROCEDURAL HISTORY

Plaintiffs filed suit against Integon, only, in the Allegan County Circuit Court, seeking to recover payment of no-fault insurance benefits arising out of the July 29, 2009 accident. Suit was filed only after Integon had its "change of heart," noted above, and denied payment of Michigan No-Fault benefits after conceding, in the aforementioned Large Loss Report, that Plaintiffs "would be afforded Michigan PIP as innocent third parties based on the order of priority." After Integon denied the claim, Plaintiffs filed claims with Michigan Assigned Claims Facility (ACF) in late April 2010. The ACF, in turn, assigned the matter to Titan. Upon receipt of this assignment by the Michigan Assigned Claims Facility in late April 2010, Titan Insurance Company was allowed to intervene as a Defendant pursuant to Court Order.

On November 29, 2010, after taking the depositions of Plaintiffs and reviewing the claims file maintained by Integon regarding these claims, Titan Insurance Company filed its Motion for Summary Disposition and argued that Integon was responsible for payment of Plaintiffs' No Fault benefits under the facts and circumstances of this case. On November 30, 2010, Integon filed its own Motion for Summary Disposition, arguing that Titan Insurance Company, as assignee of the Michigan Assigned Claims Facility, was responsible for payment of Plaintiffs' No Fault benefits. Appropriate responses were filed by all parties and the matter proceeded to oral argument on March 31, 2011. **Counsel for Titan Insurance Company informed Judge Cronin that, in his opinion, "this matter has been briefed to the hilt by both side and I think both parties have presented the issues rather thoroughly."** TR 3/31/2011, page 2. Judge Cronin seemed to acknowledge as much when he commented at the end of his ruling from the bench, that:

> "Again, I want to say that I respect the work you all did and it's been a real education for me and I feel like I have been guided in this exploration by some real pros who know the subject matter better than I do by a long stretch." TR 3/31/2011, page 55.

Judge Cronin made it clear that he had reviewed all of the motions and responses that had been filed by all sides and he was thoroughly prepared to rule on the competing motions.

After hearing oral argument, Judge Cronin initially found that, in fact, Tienda and Gomez were "innocent third parties" and that "Integon/GMAC had an obligation to pay the benefits for their losses regardless of the residency of Mr. Lorenzo because they are innocent third parties." (TR 3/31/2011, page 41). Although the record is not entirely clear, Judge Cronin appeared to rule that the purported misrepresentations made by Lorenzo, regarding his residency at the time he applied for insurance, the titling of his vehicle to be insured under the policy and the garaging location of said vehicle (see page 10 of Titan's Application for Leave to Appeal, *supra,* and Exhibits 10 and 11), could not inure to the detriment of these "innocent third parties, "Tienda and Gomez. However, anticipating that this matter would reach the Court of Appeals and possibly even this Court, Judge Cronin went a step further and determined that "Mr. Lorenzo [the vehicle owner and Integon's insured] is not a resident of Michigan." As stated by Judge Cronin:

> "I appreciate the argument that he was here for three or four months on a regular basis repeated over a substantial period of time, that when he was in the other states, he intended to come back to Michigan, but his intention to come back to Michigan had no permanency to it. He was essentially passing through Michigan. I think he had no greater connection to Michigan than to the two other states; in fact, it would be my ruling and my finding that he was a resident of the State of Florida because he spent more time in Florida and had I think a substantial commitment and a substantial dependency on the income he gleaned from working crops in Florida. So to the extent the appellate courts want to know what my position is on Mr. Lorenzo's residency that is it. **I find that he is a resident of the State of Florida.** I think a case can be made that he was a resident of the State of North Carolina. I think that case is more powerful than the case could be made for residency in Michigan, but it's not as impressive as Florida.
>
> I think all three individuals; the two injured passengers and Mr. Lorenzo took almost all of their personal effects from one location to another, from Michigan to North Carolina to Florida. But, I

don't find that Mr. Lorenzo was any more connected to Michigan than to Florida, in fact less."

TR 3/31/2011, page 42.

Judge Cronin then went on to discuss the application of the residency factors enunciated by this Court in *Workman, supra,* and the Court of Appeals in *Dairyland Ins. Co., supra.* The Court's analysis regarding the residency factors can be found on pages 44 through 46 of Judge Cronin's well-reasoned opinion and ruling from the bench. Having concluded that Plaintiffs were "innocent third parties" not affected by the alleged fraud perpetrated by Salvador Lorenzo in his dealings with Integon, regarding his residency status and vehicle garaging issues, and having concluded that Salvador Lorenzo was not a resident of the State of Michigan at the time of this occurrence, the Circuit Court granted Titan Insurance Company's Motion for Summary Disposition and denied Integon's Motion for Summary Disposition. An Order to that effect was entered by the Allegan County Circuit Court on April 14, 2011. See **Exhibit 12.**

Thereafter, Integon timely filed its Claim of Appeal, as of right, with the Court of Appeals. Following briefing and oral argument, which took place on April 5, 2013, the Court of Appeals issued its published Opinion on April 23, 2013. In its Opinion, attached as **Exhibit 13,** the Court of Appeals noted that because of the peculiar facts involved in this case, this case presented an issue of first impression, due to the fact that neither the vehicle owner, Salvador Lorenzo, nor Plaintiffs themselves had any "permanent" residence in this state or any other state, for that matter. Given Lorenzo's transient working status, therefore, the Court of Appeals concluded that at the time of the July 29, 2009, motor vehicle accident, Salvador Lorenzo was, in fact, a resident of the State of Michigan. As a result, MCL 500.3163(1) did not apply and Integon was relieved of its responsibility to pay no-fault benefits to the "innocent third parties" who were occupying the Integon-insured vehicle at the time of the occurrence despite the fact that a premium was charged by Integon for insuring this vehicle. Instead, the burden was shifting

to the policyholders in the State of Michigan, through their funding of the Michigan Assigned Claims Plan with their premium dollars.

The Court of Appeals did not address the issue of whether or not Integon should be estopped from denying coverage under these circumstances, because it knew or should have known that it was dealing with a potential Michigan resident when it issued the North Carolina automobile liability policy. Accordingly, Titan timely filed a Motion for Reconsideration with the Michigan Court of Appeals on May 14, 2013. In its motion, Titan noted that the Court of Appeals acknowledged that Lorenzo presented a Michigan driver's license to Integon's North Carolina agent. The Court of Appeals also acknowledged that Integon denied the claim for the following reasons:

> "Integon denied Lorenzo's claim for benefits under its North Carolina insurance policy because, among other reasons, it maintains that Lorenzo, at the time of the accident, was a Michigan resident, he did not insure the vehicle with Michigan no-fault insurance and he misrepresented the primary garaging location of the vehicle as his address in North Carolina, when he knew he planned to take the Expedition to Michigan."
>
> *Tienda v Integon Nat'l Ins. Co., slip opinion at page 2.*

Therefore, the Court of Appeals should have addressed Titan's estoppel argument, particularly because Integon was essentially depriving "innocent third parties" of Michigan no-fault benefits, based upon fraud perpetrated upon it by its insured, Salvador Lorenzo. In that regard, the factual circumstances presented in this case was factually on all fours with the Court of Appeals' unpublished decision in *Gordon v Geico Gen'l Ins. Co., docket no. 301431, unpublished decision rel'd 3/20/2012.* The *Gordon* decision is attached as **Exhibit 15** to this Application for Leave to Appeal. In that case, the Court of Appeals ruled that the insurer who had issued a Mississippi automobile liability policy to plaintiff was nonetheless obligated to provide Michigan No-fault benefits to an individual who, even though she represented that she

was a resident of the State of Mississippi, nonetheless had a Michigan driver's license and was traveling in Michigan when the accident occurred:

> "The record is clear that Geico did know, or clearly should have known, it was dealing with a Michigan resident. Even though Ms. Gordon admitted that she told Geico that she lived in Mississippi, provided a Mississippi address, and told Geico that she intended to change her car registration to Mississippi, she provided a Michigan driver's license and Michigan car registration. She also told Geico she would be traveling back and forth to Michigan. Further, Ms. Gordon made claims with Geico, all of which were Michigan losses. **At a minimum, the evidence showed that Geico knew, or should have known, that it was dealing with a Michigan resident who would at least be traveling frequently to Michigan. Thus, Ms. Gordon would have needed no-fault protection based on her conversation with the Geico representative. Therefore, Geico would have issued an insurance policy to comply with her needs."**
>
> *Gordon, slip opinion at pg 4 (emphasis added)*

In other words, the Mississippi automobile liability policy, issued to Ms. Gordon, would be construed in accordance with MCL 500.3012 to provide Michigan no-fault insurance benefits. Arguing that Integon was attempting to "close its eyes to that which others clearly see," *Keyes v Pace, 358 Mich 74, 84-85, 99 NW 2d 547 (1959)*, Titan argued that Integon should be estopped from denying coverage to these innocent third parties. Accordingly, Titan requested that the Court of Appeals grant its Motion for Reconsideration and issue a Supplemental Opinion, on reconsideration, affirming the result reached by Judge Cronin, in the Allegan County Circuit Court. On June 14, 2013, the Court of Appeals, in a 2-1 decision, denied Titan's Motion for Reconsideration. (The Honorable Joel Hoekstra would have granted the motion.) This Order is attached as **Exhibit 14**. Titan now files the instant Application for Leave to Appeal.

STANDARD OF REVIEW

This Court reviews *de novo* a Trial Court's decision on a Motion for Summary Disposition. *Shepherd Montessori Ctr. Milan v Ann Arbor Charter Twp., 486 Mich 311, 783 NW 2d 695 (2010).* Furthermore, issues of statutory construction and interpretation are questions of law that this Court likewise reviews *de novo. Eggleston v Bio-Med Applications of Detroit Inc., 468 Mich 29, 628 NW 2d 139 (2003).* In addition, because there is a contract involved (namely, the insurance policy issued by Defendant Integon National Insurance Company), the proper interpretation of a contract is also a question of law that is reviewed by this Court *de novo. Rory v Continental Ins. Co., 473 Mich 457, 703 NW 2d 23 (2005)*

However, one of the issues involved in this case concerns the residency of the owner of the motor vehicle occupied by Plaintiffs at the time of their involvement in a motor vehicle accident on July 29, 2009. The Court of Appeals has stated that "Generally, the determination of domicile is a question of fact." *Fowler v ACIA, 254 Mich App 362, 656 NW 2d 856 (2002).* However, if "the underlying facts are not in dispute, domicile is a question of law for the Court." *Fowler, supra, citing Goldstein v Progressive Casualty Ins. Co., 218 Mich App 105, 553 NW 2d 353 (1996)* and *Williams v State Farm Mut'l Automobile Ins. Co., 202 Mich App 491, 509 NW 2d 821 (1993).* The Court of Appeals has also stated that, "the determination of domicile is a question of fact for Trial Court resolution." *Dairyland Ins. Co. v Auto Owners Ins. Co., 123 Mich App 675, 333 NW 2d 322 (1983).* To the extent that the Circuit Court made findings of fact in connection with its residency analysis (particularly where, as here, the facts were undisputed), factual findings are reviewed under the "clearly erroneous" standard, in which such findings can be reversed "if there is no evidence to support them or there is evidence to support them but [the appellate] Court is left with a definite and firm conviction that a mistake has been made." *A&M Supply Co. v Microsoft Corp., 252 Mich App 580, 654 NW 2d 572 (2002).*

LEGAL ARGUMENT

I. THE CIRCUIT COURT PROPERLY DETERMINED, UNDER APPLICABLE MICHIGAN LAW THAT THE VEHICLE OWNER, SALVADOR LORENZO, COULD NOT 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 OF MICHIGAN AND THE COURT OF APPEALS ERRED WHEN IT RULED OTHERWISE

In *Workman, supra,* this Court addressed the issue of an insured's "domicile" and "residence" for purposes of applying the Michigan No-Fault Insurance Act. This Court acknowledged that for purposes of the No-Fault Act, the terms "domicile" and "residence" are legally synonymous. **However, this holding could change when this Court releases its decision in *Grange Ins. Co., supra.*** This Court then went on to identify four factors to consider when determining whether a person is "domiciled" in a particular location. These four factors include:

(1) The subjective or declared intent of the person to remain, either permanently or for an indefinite or unlimited length of time, in the place he contends is his "domicile" or "household";

(2) The formality or informality of the relationship between the person and the members of the household;

(3) Whether the place where the person lives is in the same house, within the same curtilage or upon the same premises as the person he or she claims to be domiciled with;

(4) The existence of another place of lodging by the persona alleging "residence" or "domicile" in the household.

The Court of Appeals, in *Dairyland, supra,* set forth five additional factors to be considered when determining where a person is "domiciled." The five factors include the following:

(1) The person's mailing address;

(2) Whether the person maintains possessions at the insured's home;

(3) Whether the insured's address appears on the person's driver's license and other documents;

(4) Whether a bedroom is maintained for the person at the insured's home; and

(5) Whether the person is dependent upon the insured for financial support for assistance.

Both the *Workman* Court and the *Dairyland* Court noted that when considering these factors, no one factor is outcome determinative. Rather, each factor must be balanced and weighed with the others. Obviously, depending upon the factual circumstances, some factors are easier to apply than others. In many factual circumstances, one or more of these factors will not apply.

In this case, the lower Court properly considered whether the vehicle owner, Salvador Lorenzo, was a resident or a non-resident of the State of Michigan by balancing each of these factors. The Court of Appeals has noted, on a number of occasions, that a resident of the State of Michigan cannot be a non-resident for purposes of the No-Fault Insurance Act. *Farm Bureau Ins. Co. v Allstate Ins. Co., 233 Mich App 38, 592 NW 2d 395 (1998)*; *Wilson v League General Ins. Co., 195 Mich App 705, 491 NW 2d 642 (1992)*. **Again, the holding in these cases may be called into question if this Court re-affirms its earlier decision in *Scheyer's Estate, supra,* that an individual may have more than one "residence," but only one "domicile."**

The deposition testimony of Plaintiffs, excerpted above, clearly establish that Salvador Lorenzo, the owner of the vehicle involved in the accident, was part of a group of migrant farm workers who travel every year to various states to harvest strawberries or blueberries. Certainly, neither Salvador Lorenzo nor any of the other migrant farm workers, who were part of his group, including Plaintiffs Tienda and Gomez, had any "subjective or declared intent" to remain "either permanently or for an indefinite or unlimited length of time" in the State of Michigan. In fact, Salvador Lorenzo and the other migrant farm workers spent only three months of the year in the State of Michigan – from July through October. For nine months of the year, they resided outside the State of Michigan, either in Florida or North Carolina. Therefore, application of the first *Workman* factor mitigates against a finding of Michigan domicile for Salvador Lorenzo, as

noted by the Circuit Court below. The Court of Appeals erred by completely disregarding the requirement, in *Workman, supra,* regarding the intent of Lorenzo to remain in the state "for an indefinite or unlimited length of time."

With regard to the second *Workman* factor, Plaintiffs' deposition testimonies clearly established that this group of migrant farm workers traveled together in late 2008 and 2009, staying in the same living units. This Court should recall that both Plaintiffs clearly identified the housing units in North Carolina as the place where they and Salvador Lorenzo stayed while harvesting fruit in North Carolina, before traveling to Michigan. Thus, application of the second *Workman* factor again mitigates against a finding of Michigan domicile for Salvador Lorenzo – again as properly determined by the lower court.

The third *Workman* factor simply does not apply for purposes of determining Salvador Lorenzo's residency.

The fourth *Workman* factor; i.e., the existence of another place of lodging for Mr. Lorenzo, again mitigates against the finding of residence in the State of Michigan. However temporary, it is clear that Salvador Lorenzo and the other migrant farm workers had other places to live in other states. They spent the bulk of their time in the State of Florida harvesting strawberries and tending to the plants from October through May every year. They always worked the fields in the Plant City/Dover area, and it can be reasonably inferred that housing was available for them nearby. They would then travel to North Carolina and, as noted above, they had temporary homes set up for them in North Carolina, while they harvested blueberries from May through July every year. The group would then travel to Michigan, where they would attempt to find temporary housing for the three months that they would be in this state. Again, application of the fourth *Workman* factor mitigates against a finding that Salvador Lorenzo was a resident of the State of Michigan at the time of the accident.

Turning next to the factors identified by the Court of Appeals in *Dairyland, supra,* it appears that Salvador Lorenzo used **multiple addresses** for his mail, his driver's license and his "other documents." Intervening Defendant Titan concedes that Salvador Lorenzo's driver's license makes reference to an address of 66400 – 84th Avenue, Apartment 3, in Hartford. However, Plaintiff Tienda testified, at his deposition on August 18, 2010, that to his knowledge, Salvador Lorenzo **never lived at this address**. It was only used by Lorenzo to obtain a Michigan driver's license. (Deposition of Gerardo Tienda, Exhibit 2, pages 33-35. In fact, the apartment complex in Hartford apparently exists solely to provide temporary housing for migrant farm workers during the harvest season. **Certainly, the apartment could not be considered Salvador Lorenzo's permanent address.**

Similarly, the address shown on the police report, 1145 Lafayette SE, in Grand Rapids, was a temporary address as well for this group of migrant farm workers. Plaintiff Gomez testified that she and the other migrant farm workers had lived at the Lafayette address for only **two weeks** prior to the accident, after traveling from North Carolina:

> Q Sylvia, you told me that you had lived at the Lafayette address for around two weeks when the accident happened?
>
> A Yes.
>
> Q Where did you live immediately prior to that?
>
> A We – we went there to live just as soon as we got from North Carolina. North Carolina, yeah.
>
> Q So you and your parents came to Michigan in July of 2009?
>
> A Yes.
>
> Deposition of Sylvia Gomez, Exhibit 3, page 27.

She also testified that she only intended to stay at this address until mid-October, when she and the other migrant farm workers were scheduled to return to Florida to pick strawberries:

> Q How long did you intend to stay there at the time that photo ID card was issued?
>
> A Until the date I went to Florida, which was October.

Q When this photo ID card was issued, did you have a definite date you knew that you were going to return to Florida?

A No. We had calculated that it would be around the middle of October, but no specific date.

Deposition of Plaintiff Gomez, Exhibit 3, page 14.

She also had no idea who else was renting the home on Lafayette, in Grand Rapids, and noted that there were four migrant farm workers who lived on the upper level and at least three women (if not more) who lived in the lower level. (Deposition of Plaintiff Gomez, Exhibit 3, pages 16-18.

Plaintiff Tienda likewise testified that the apartment on Lafayette, in Grand Rapids, was a temporary residence. See deposition of Plaintiff Tienda, Exhibit 2, pages 10-11.

In the insurance application filed with Integon, Salvador Lorenzo provided an address of 115 Juan Sanchez Lane, in Teachey, North Carolina. **This was, in fact, just as legitimate of an address for Salvador Lorenzo as was any address here in Michigan, as this was the address he obviously used for "other documents"; namely, information regarding his insurance with Defendant Integon National Insurance Company.** This was quite possibly the address that was used by Salvador Lorenzo to register the 2001 Ford expedition that he purchased in North Carolina in June 2009, and insured with Integon.

As far as the second *Dairyland* factor is concerned, regarding where his possessions were kept, it appears that Salvador Lorenzo and the other migrant farm workers had very little in the way of possessions. Certainly, given their transient living situation, a reasonable inference can be drawn that none of Salvador Lorenzo's possessions remained in Michigan while Mr. Lorenzo and the other migrant farm workers traveled to Florida and North Carolina, for nine months out of the year, to harvest fruit. Clearly, when balancing all of the factors enunciated by this Court in *Workman* and the Court of Appeals in *Dairyland, supra,* Salvador Lorenzo was clearly **not** a resident of the State of Michigan at the time of the accident. Whether he would be considered a

resident of Florida or North Carolina is irrelevant, although the Circuit Court specifically found and determined that, in fact, Lorenzo was a resident of Florida. The fact of the matter is that he certainly would not be considered to be a resident of the State of Michigan and the Court of Appeals erred when it ruled to the contrary.

Simply because a person is temporarily living in the State of Michigan does not mean he is "domiciled" in the State of Michigan, thereby rendering him a "resident" for purposes of the No Fault act. The Court of Appeals' decision in *Titan Ins. Co. v Brotherhood Mutual Ins. Co., Court of Appeals docket number 283050, unpublished decision rel'd on February 23, 2010,* is directly on point. This decision is attached as **Exhibit 16.** *Titan Ins. Co* involved the typical "snowbird" situation, where the injured Claimant, Orlin Bestrom, lived in Florida for seven months out of the year, and in Michigan for five months out of the year. While in Michigan, Mr. Bestrom worked as a volunteer at the Pine Ridge Bible Camp in northern Michigan. At the time of this occurrence, he was insured under a Florida insurance policy issued by State Farm. In determining that Mr. Bestrom was, in fact, a non-resident of the State of Michigan, for purposes of applying MCL 500.3163, the Court of Appeals considered Mr. Bestrom's intent to remain in Michigan, either permanently or for an extended period of time, his mailing address, the address listed on his driver's license and other documents, the location of bank accounts and property ownership. The Court of Appeals went on to note the following:

> "In this case, Bestrom considers Florida to be his state of residence and has no intent on moving back to Michigan. He files his federal tax return from his Florida address. His driver's license is from Florida, and his car is registered and insured in Florida. He does not own property in Michigan, but his wife does. He has bank accounts in both Michigan and Florida – for depositing his social security checks. He has spent up to five months of each year for the past 27 years in Michigan. He spends the remaining months in Florida. Mr. Bestrom's intent and the bulk of his permanent connections indicate that Florida is his residence. Thus, although the trial court's analysis was incomplete, the court did not clearly

err in holding that Bestrom is a non-resident for purposes of the No-Fault Act."

Titan Ins. Co., slip opinion at page 3.

It is interesting to note the Court of Appeals use of the 'clearly erroneous" standard of review in Titan Ins. Co., supra, and the Court's reluctance to disturb the Circuit Court's findings and conclusions regarding Bestrom's residency. Why the Court of Appeals did not apply the "clearly erroneous" standard of review, which would have resulted in an affirmance of the Circuit Court's decision in the case at bar, remains a mystery.

Clearly, Salvador Lorenzo's intent was not to remain, either permanently or for an indefinite period of time, in the State of Michigan. Instead, the "bulk of his permanent connections," to the extent that he has any, would indicate that he is a non-resident of the State of Michigan. He spends nine months out of the year outside the State of Michigan. He has used multiple addresses, including an address in North Carolina (where he undoubtedly resided), in order to obtain automobile insurance through Defendant Integon National Insurance Company. His vehicle was likewise registered in the State of North Carolina. The Lower Court properly ruled, after balancing all of the factors, that Lorenzo was an "out-of-state" resident at the time of this occurrence. Unfortunately, the Court of Appeals failed to apply the "clearly erroneous" standard of review when addressing the Lower Court's **findings of fact** that Lorenzo was not a resident of the State of Michigan at the time of this occurrence.

II. THROUGHOUT THIS LITIGATION, INTEGON NATIONAL INSURANCE COMPANY HAS ALLEGED THAT SALVADOR LORENZO MADE A MATERIAL MISREPRESENTATION IN HIS APPLICATION FOR INSURANCE BY FAILING TO DISCLOSE THAT HE WAS A MICHIGAN RESIDENT, AND NOT A RESIDENT OF NORTH CAROLINA; HOWEVER, SALVADOR LORENZO CLEARLY PLACED DEFENDANT INTEGON NATIONAL INSURANCE COMPANY ON NOTICE OF HIS POSSIBLE MICHIGAN CONNECTION, AND EVEN IF THERE WAS A MATERIAL MISREPRESENTATION, THE LOWER COURT PROPERLY CONCLUDED THAT NO AMOUNT OF FRAUD BY INTEGON'S NAMED INSURED CAN AFFECT THE RIGHTS OF INNOCENT THIRD PARTIES, SUCH AS PLAINTIFFS TIENDA AND GOMEZ, WHO MAY CLAIM MANDATORY MICHIGAN NO-FAULT INSURANCE BENEFITS UNDER THE POLICY OF INSURANCE ISSUED BY INTEGON NATIONAL INSURANCE COMPANY; THE COURT OF APPEALS' FAILURE TO ADDRESS THIS ARGUMENT WARRANTS INTERVENTION BY THIS COURT

While Defendant Integon National Insurance Company was investigating this loss, it issued a letter to Salvador Lorenzo on October 20, 2009, indicating that it was potentially denying coverage for the following reason:

> "It appears that the primary garaging location of your insured vehicle and residence may have been misrepresented at the time of application for the above policy."

Again, see **Exhibit 10**. This letter goes on to quote a North Carolina Statute, NCGS 58-2-164(g)(3), to the effect that, "the insurer may . . . deny coverage for any claim arising out of bodily injury or property damage suffered by the applicant" if the applicant was not an innocent third party to any material misrepresentation at the time of the application or renewal. **The problem for Defendant Integon National Insurance Company is that, in fact, Plaintiffs Tienda and Gomez are clearly "innocent third parties" with respect to any fraud that may have been committed by Salvador Lorenzo.** Accordingly, their entitlement to Michigan no-fault insurance benefits, under MCL 500.3163, cannot be affected by any potential fraud, on the part of Salvador Lorenzo.

Indeed, in a Large Loss Report issued on December 3, 2009, referenced earlier in this Brief, Defendant Integon National Insurance Company **concedes** that Plaintiffs were "innocent third parties," and thereby entitled to Michigan no-fault insurance benefits. As noted in the Large Loss Report:

> "There were three guest passengers in the insured vehicle and they would be afforded Michigan PIP as innocent third parties based on the order of priority."

This Large Loss Report is attached as **Exhibit 9**. Why Defendant Integon National Insurance Company suddenly changed course, **after admitting it owed coverage for this loss**, and pulled coverage from Plaintiffs is unknown.

The "Innocent Third Party" doctrine has its roots in Michigan case law. In *Darnell v Auto Owners, 142 Mich App 1, 369 NW 2d 243 (1985)*, one Timothy Darnell suffered injuries after being hit by an automobile while pushing a disabled vehicle. Plaintiff sued his own insurance company, Auto Owners Insurance Company, as well as the insurer of the vehicle that struck him (Dairyland Insurance Company) and the insurer assigned by the Assigned Claims Facility to handle his claim for no-fault benefits, seeking to recover payment of no-fault insurance benefits arising out of the accident. Auto Owners denied the claim based upon the conduct of its insured, Sheila Darnell, who was asked, in the Application for Insurance, whether there were any drivers in her household who had a revoked, restricted or suspended driver's license within the last three years. She responded in the negative. However, Timothy Darnell's driver's license was under restrictions within the three-year period. In ruling that Auto Owners was estopped from denying coverage under the facts and circumstances of this case, the Court of Appeals noted:

> "An insurer may only void a policy of insurance *ab initio* where an innocent third party is not affected thereby and where it can be shown that the insured *intentionally* misrepresented a *material* fact communicated at the time of effecting the insurance; that is, where such misrepresentation substantially increased the risk of loss

> insured against so as to bring about a rejection of the risk or the charging of an increased premium.
>
> * * *
>
> Of most importance, however, is that, because Plaintiff himself made no misrepresentation, Auto Owners must justify rescission on the basis of Mrs. Darnell's statements. But, Mrs. Darnell's misrepresentation does not affect Plaintiff's coverage. Auto Owners argues that it was authorized to void the policy *ab initio* on the basis of the insured's agent's (Mrs. Darnell's) misrepresentation of a material fact. Auto Owners reasons that Plaintiff would not have been insured but for the misrepresentation of his wife who, in addition to being his agent, was a contractual insured under the policy. However, only the claim of an insured who has committed the fraud will be barred, leaving unaffected the claim of any insured under the policy who is innocent of fraud." [Internal quotations and citations omitted].
>
> *Darnell, 369 NW 2d at 247*

Even though Defendant Integon is apparently not formally rescinding the policy, it is, nonetheless, attempting to accomplish the same thing as rescinding the policy; i.e., a denial of coverage to "innocent third parties," Plaintiffs Tienda and Gomez.

Whether Salvador Lorenzo's alleged misrepresentation was with regard to his failure to disclose his potential Michigan connection (which he clearly did, as evidenced by the fact that he provided the agent with his Michigan driver's license), failing to disclose the amount of time that he intended to remain in the State of North Carolina, or his failure to notify Integon National Insurance Company of his relocation to Michigan (for which no factual support was provided to the Trial Court) is irrelevant. These acts and/or omissions clearly cannot affect the rights of innocent third parties, Plaintiffs Tienda and Gomez. Accordingly, Defendant Integon National Insurance Company occupies a higher order of priority for payment of no-fault benefits to or on behalf of Plaintiffs, pursuant to MCL 500.3163(1 and MCL 500.3114(4), and Integon should be estopped from asserting otherwise.

In addition, this Court's recent decision in *Titan Ins. Co. v Hyten, 491 Mich 547, 817 NW 2d 562 (2012)* does not change the analysis. If anything, this Court's reaffirmation of its 1959

decision in *Keyes v Pace, 358 Mich 74, 99 NW 2d 547 (1959)* actually **<u>supports</u>** Titan's position in this case. In *Hyten, supra,* the issue before this Court was whether or not an insurance company could reform its bodily injury policy limits down to the statutorily required minimum policy limits of $20,000.00/$40,000.00, based upon the material misrepresentations made by the insured in an Application for Insurance, notwithstanding the fact that innocent third parties were also involved in the accident. In holding that an insurer was under no duty to verify an applicant's representation, set forth in an Application for Insurance, this Court reaffirmed its earlier holding in *Keyes, supra,* and specifically approved the following language from *Keyes*:

> The short answer to the arguments of waiver and estoppel is that a litigant cannot be held estopped to assert a defense, or to have waived his right thereto, because of facts he does not know, unless, as a matter of judicial policy, we are ready to say he 'should' know them. This we can always do, of course, but there is nothing before us as a matter of fact or of sound policy, to warrant imposition of such knowledge. **<u>This is not to say, of course, that one may willfully close his eyes to that which others clearly see.</u>** But nothing of the sort is here before us. In fact, when actual knowledge was gained, the insurer was not slow to act, canceling the policy *ab initio* and withdrawing its legal representation of the insured. Such action was well justified."
>
> *Keyes, 358 Mich at 84-85,* quoted in *Hyten, 817 NW 2d @ 571 (emphasis added)*

Here, there is no doubt but that Integon "close[d] [its] eyes to that which other clearly see"; namely, that it was dealing with a potential Michigan resident. Despite the fact that the applicant had a **<u>Michigan</u>** driver's license, Integon nonetheless chose to issue a **<u>North Carolina</u>** auto liability policy. Integon presented no evidence in the court below or, for that matter, to the Court of Appeals, to explain why it chose to issue a North Carolina automobile liability policy to an individual who could conceivably be considered a Michigan resident, based on the driver's

license presented.[2] Clearly, Integon did nothing when confronted with the fact that it was dealing with a potential Michigan resident. Rather, it simply "close[d] [its] eyes to that which other clearly see" when it sold the North Carolina auto liability policy to Mr. Lorenzo, and now has the audacity to claim that it was defrauded by this potential Michigan resident!

This type of estoppel argument was previously addressed by the Court of Appeals in *Gordon, supra*. Again, a copy of the *Gordon* decision is attached as **Exhibit 15** for this Court's reference. In *Gordon*, the injured Claimant, Tamika Gordon, was living with her father in Mississippi in September 2007 to the spring of 2008. She purchased an automobile insurance policy from Geico in May 2008, while living in Mississippi. Like Salvador Lorenzo in this case, Tamika Gordon informed Geico that her residential address was somewhere other than the State of Michigan – in that case, she represented her address as being in Mississippi. (In this case, Salvador Lorenzo represented his address as being in North Carolina.) Again, like Salvador Lorenzo in this case, Tamika Gordon also gave Geico copies of her Michigan driver's license that listed her mother's address in Detroit. (Again, Salvador Lorenzo presented the Integon agent with a copy of his Michigan driver's license when he applied for insurance in North Carolina.) Ms. Gordon also told Geico that she would be traveling back and forth to Michigan, although she intended to garage the vehicle in Mississippi. (Given Salvador Lorenzo's migrant farm worker status, as well as the fact that he had a Michigan driver's license, Integon knew or should have known that Salvador Lorenzo was planning to travel to Michigan, notwithstanding any purported representations that he intended to "garage" his vehicle in North Carolina.) Accordingly, Geico issued a Mississippi auto policy to Tamika Gordon, which remained in effect

[2] Indeed, as noted in the transcript of the Trial Court hearing on March 31, 2011, Integon did present the Court with an Affidavit and a Statement Under Oath from Salvador Lorenzo, which was considered by the Circuit Court, but there was no information that counsel for Integon garnered from Mr. Lorenzo regarding his procurement of the subject policy, and any representations or misrepresentations that he may have made to the agent regarding that policy.

at the time of a motor vehicle accident that occurred on May 16, 2009, in the State of Michigan. As it turned out, Tamika Gordon had actually returned to the State of Michigan some time in 2008. Geico refused to provide Michigan no-fault insurance benefits to Tamika Gordon, on the basis that because she was a Michigan resident, she did not qualify for no-fault benefits under MCL 500.3163(1). Ms. Gordon then filed a claim with the Michigan Assigned Claims Facility which, in turn, assigned the matter to Farmers Insurance Exchange. Farmers filed a Motion for Summary Disposition, arguing that because Geico knew or should have know that Ms. Gordon resided in Michigan when it sold the Mississippi auto liability policy to her, Geico was a higher priority insurer under the No-Fault act. Geico filed a response, arguing that it had no reason to know that Ms. Gordon was, in fact, a Michigan resident and further argued that her failure to inform Geico of this fact constituted fraud. The Court granted summary disposition in favor of Farmers and Geico appealed.

On appeal, the Court of Appeals ruled that, in fact, Ms. Gordon was a Michigan resident at the time of the accident. Therefore, Ms. Gordon was not a "non-resident" for purposes of applying the provisions of MCL 500.3163(1). Therefore, just as in the case at bar, the Court of Appeals initially determined that Geico had no responsibility to pay Michigan no-fault benefits under MCL 500.3163(1).

However, the Court of Appeals nonetheless ruled that Geico, the Mississippi auto liability insurer, was responsible for paying no-fault benefits pursuant to MCL 500.3012, which provides in pertinent part:

> "Such a liability insurance policy issued in violation of sections 3004 through 3012 shall, nevertheless, be held valid but be deemed to include the provisions required by such sections, and when any provision in such policy or rider is in conflict with the provisions required to be contained by such sections, the rights, duties and

> obligations of the insured, the policyholder and the injured person shall be governed by the provisions of such sections."

Relying on the Court's earlier decision in *Farm Bureau v Allstate, 233 Mich App 38, 592 NW 2d 395 (1998)*, the Court of Appeals noted that:

> "Interpreting MCL 500.3012, this Court ruled in *Farm Bureau* that 'it is evident that the basic purpose of §3012 is to treat an insurance policy that an insurer issues *purporting to be a Michigan policy that complies with Michigan law* as such even if the written terms of the policy are inconsistent with Michigan law.' *Farm Bureau, 233 Mich App at 41 (emphasis in original)* Therefore, if Geico had issued a policy that purported to comply with Michigan law, then MCL 500.3012 provides the remedy wherein Courts may impose PIP benefits even if the contract language does not provide for the same.
>
> *Gordon, slip opinion at page 3 (italics in original).*

Geico responded by arguing that it issued a Mississippi policy, not a Michigan policy, and that it was unaware of Ms. Gordon's potential Michigan residency. Once again, harkening back to the Court of Appeals' decision in *Farm Bureau, supra,* the Court of Appeals held that because Geico knew or should have known that it was dealing with a potential Michigan resident, it essentially issued a Michigan No-fault insurance policy:

> "Here, however, the trial court found that because Geico knew or should have known that it was dealing with a Michigan resident, Geico must have issued a policy purporting to comply with the Michigan no-fault act, and therefore, that MCL 500.3012 applies and Geico is responsible to pay PIP benefits regardless of what the contract purported to provide.
>
> *Farm Bureau* stands for the proposition that when an insurer has *no reason to know* it is dealing with a Michigan resident, MCL 500.3012 does not apply. *Farm Bureau, 233 Mich App at 43 (emphasis added)*. In fact, the *Farm Bureau* Court only makes one mention of a factual scenario in which the insurer was *actually aware* that it was dealing with a Michigan resident, by way of a footnote, in dicta: 'We emphasize that a case in which an insurer is aware that it is dealing with a Michigan resident and nevertheless issues an out-of-state automobile insurance policy that does not comply with Michigan's no-fault act would be a far different circumstance.' *Farm Bureau*, 233 Mich App at 43 n 2. The *Farm*

> *Bureau* Court was silent regarding a scenario in which an insurer *should have known* it was dealing with a Michigan resident and issues an out-of-state insurance policy. **However, the trial court's reasoning is sound: if an insurer knows or has reason to know that it is dealing with a Michigan resident and issues insurance coverage which purports to provide coverage in the insured's state, then MCL 500.3012 applies. Further, we see no reason not to extend *Farm Bureau* in this manner because, if the insurer knows or has reason to know that the insured is a Michigan resident, the risks discussed in *Farm Bureau* are not implicated.** When the insurer knows or has reason to know it is providing coverage to a Michigan resident, there is no risk that the Michigan resident is seeking an out-of-state policy for lower premiums. When the applicant's residency is known, there is no misrepresentation, and the insurer must provide the coverage it purports to provide. Therefore, if Geico had reason to know that Ms. Gordon was a Michigan resident and issued her a policy for no-fault insurance coverage in Michigan, we hold that MCL 500.3012 applies."
>
> *Gordon, slip opinion at page 4 (italics in original, emphasis added).*

The Court of Appeals then concluded that Gordon was entitled to Michigan no-fault benefits, and that Geico should have known it was dealing with a potential Michigan resident:

> "The record is clear that Geico did know, or clearly should have known, it was dealing with a Michigan resident. **Even though Ms. Gordon admitted that she told Geico that she lived in Mississippi, provided a Mississippi address, and told Geico that she intended to change her car registration to Mississippi, she provided a Michigan driver's license and Michigan car registration. She also told Geico she would be traveling back and forth to Michigan.** Further, Ms. Gordon made claims with Geico, all of which were Michigan losses. **At a minimum, the evidence shows that Geico knew, or should have known, that it was dealing with a Michigan resident who would at least be traveling frequently to Michigan. Thus, Ms. Gordon would have needed no-fault protection based on her conversation with the Geico representative. Therefore, Geico would have issued an insurance policy to comply with her needs.**"
>
> *Gordon, slip opinion at page 4 (emphasis added)*

These arguments apply with equal force to the facts and circumstances in this case. Salvador Lorenzo is obviously a migrant farm worker. Even though he purchased the vehicle in North Carolina and apparently obtained registration for the vehicle in North Carolina, he undoubtedly

presented Integon with his Michigan driver's license. Integon knew or *should have known* that given his migrant farm worker status and his Michigan driver's license, Mr. Lorenzo "would at least be traveling frequently to Michigan." *Gordon, supra.* Therefore, Mr. Lorenzo, as well as the "innocent third parties" who may have been occupying his motor vehicle while traveling in Michigan, "would have needed no-fault protection." *Id.* Accordingly, just as the Court of Appeals did in *Gordon,* a reviewing Court must assume that Integon "would have issued an insurance policy to comply with [his] needs." *Id.* If the person who made the representations, in *Gordon,* is nonetheless entitled to benefits, certainly the case for ordering Integon to provide benefits to "innocent third parties," such as Plaintiffs Tienda and Gomez in this case, is even more compelling.

Essentially, Integon is attempting to "close its eyes to that which others clearly see"; namely, that it was dealing with a potential Michigan resident. *Keyes, supra.* Just as the Court of Appeals concluded in *Gordon, supra,* Integon knew or *should have known* that it was dealing with a potential Michigan resident in this case. Therefore, the policy issued to Salvador Lorenzo must be construed as affording Michigan no-fault insurance benefits to the "innocent third parties" who were occupying the vehicle at the time of this loss. Stated otherwise, Integon is estopped from denying coverage under these circumstances.

In its published Opinion, the Court of Appeals completely failed to address Titan's estoppel argument, or the fact that the Court of Appeals' unpublished decision in *Gordon, supra,* was factually on all fours with the circumstances in this case. In an attempt to correct this error, and to ensure that this Court would have a full opportunity to review **all** of the issues raised in this appeal, Titan timely filed a Motion for Reconsideration with the Court of Appeals. In a 2-1 decision, with Judge Hoekstra dissenting, the Court of Appeals denied Titan's Motion for

Reconsideration. Again, see **Exhibit 14**. Accordingly, Titan now respectfully requests that this Court address the issue or, in the alternative, remand this matter back to the Court of Appeals for further consideration of Titan's estoppel argument. Again, Integon clearly knew, or should have known, that it was dealing with a potential Michigan resident when it issued the North Carolina automobile liability policy and, just as in *Gordon, supra,* the Integon policy should thus be construed as providing for Michigan no-fault benefits to these "innocent third parties."

III. BY VIRTUE OF ITS OUT-OF-STATE COVERAGE CLAUSE, THE NORTH CAROLINA AUTOMOBILE LIABILITY POLICY ISSUED BY INTEGON AUTOMATICALLY CONVERTS INTO A MICHIGAN NO-FAULT POLICY; UNFORTUNATELY, THE COURT OF APPEALS FAILED TO REFERENCE THIS ARGUMENT IN ITS OPINION AND COMPOUNDED THE ERROR WHEN IT DENIED DEFENDANT'S MOTION FOR RECONSIDERATION

On page 3 of the Integon policy, attached as part of Exhibit 3 to Defendant Integon's Motion for Summary Disposition, filed in the circuit court, it provides:

> "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:
>
> If the state or province has:
>
> ***
>
> 2. A compulsory insurance or similar law requiring a non-resident to maintain insurance whenever the non-resident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage."

By its plain language, this section of the Integon policy operates to convert the policy into a Michigan no-fault insurance policy, if the vehicle is being used in a state that has a "compulsory insurance" law. "Insurance policies are subject to the same contract construction principles that apply to any other species of contract." *Hyten, 817 NW 2d at 567; Rory v Continental Ins. Co., 473 Mich 457, 703 NW 2d 23 (2005); Dawson v Farm Bureau, 293 Mich App 563, 810 NW 2d 106 (2011).* In this regard, the contractual language utilized in the Integon policy is clear and unambiguous. If an accident occurs in a state that has a "compulsory insurance" law, the policy "will provide at least the required minimum amounts and types of coverage." This includes, by definition, Michigan no-fault insurance benefits. As the Court is well aware, no-fault insurance is mandatory in the State of Michigan. Therefore, because this section of the policy operates to

change the "types of coverage" available, there is no doubt but that the Integon policy provides Michigan no-fault insurance benefits to the two insured Plaintiffs in this case.

Again, this argument was raised in both the Circuit Court and the Court of Appeals. However, the Court of Appeals failed to address this argument. Titan attempted to rectify this error when it filed its Motion for Reconsideration. Unfortunately, the Court of Appeals compounded the error by refusing to grant Titan's Motion for Reconsideration. Accordingly, Titan again asks this Court to either consider the issue anew or, in the alternative, remand this matter back to the Court of Appeals for ruling on this properly preserved issue.

CONCLUSION AND RELIEF REQUESTED

This Court's upcoming decision in *Grange Ins. Co., supra,* has the potential for changing the way the Courts address issue of domicile and residency. It is quite possible that this Court could overrule the key holding in *Workman, supra,* to the effect that "domicile" and "residence" are synonymous, for purposes of No-Fault. This Court could also reaffirm the proposition that, while one may have multiple residences, one can only have a single domicile. The Court's impending decision in *Grange Ins. Co., supra,* could also alter or modify the factors that a reviewing court must apply when determining "domicile" or "residence."

This case presents an opportunity for this Court to clarify the point in time at which an out-of-state resident becomes a Michigan resident. Furthermore, because MCL 500.3163(1) refers to an out-of-state "resident," as opposed to a person domiciled out of state, this case presents the next logical step in the analysis of whether or not a person could have multiple residences but a single domicile and, if so, whether MCL 500.3163(1) would apply to provide coverage in such circumstances.

However, assuming that the criteria enunciated by this Court in *Workman, supra,* and by the Court of Appeals in *Dairyland, supra,* remain intact, it is apparent that the Court of Appeals erred when it determined that the owner of the Integon-insured vehicle, Salvador Lorenzo, was a Michigan resident. By contrast, Judge Kevin Cronin, of the Allegan County Circuit Court provided a detailed and thoughtful analysis as to why the *Workman* and *Dairyland* factors led to the inescapable conclusion that Salvador Lorenzo was, in fact, not a resident of the State of Michigan at the time of this occurrence.

The more troubling aspect of this case, though, is the fact that the Court of Appeals failed to address Titan's estoppel argument, even when given a chance to do so in Titan's Motion for

Reconsideration. Even if Salvador Lorenzo was a resident of the State of Michigan, at the time of this occurrence, Integon knew, or should have known, that it was dealing with a potential Michigan resident and, accordingly, should have issued a Michigan No-Fault insurance policy, instead of a North Carolina automobile liability policy. As the Court of Appeals noted in *Gordon, supra,* because Integon knew or should have known that it was dealing with a potential Michigan resident, the policy issued by Integon must be construed as providing for Michigan no-fault benefits, particularly with regard to the "innocent third parties" who were injured in the July 29, 2009, motor vehicle accident – Plaintiffs Tienda and Gomez. Titan respectfully requests that this Court correct the error brought about as a result of the Court of Appeals' failure to address this argument, as well as Titan's automatic conversion argument, referenced in Legal Argument III, *supra.*

WHEREFORE, Intervening Defendant Titan Insurance Company respectfully requests that this honorable Court grant it any or all of the following relief:

1. Issue a peremptory Order, vacating the published Opinion of the Michigan Court of Appeals for the reasons stated by Judge Cronin of the Allegan County Circuit Court, in his well-reasoned Opinion from the bench when the Court granted Titan's Motion for Summary Disposition;

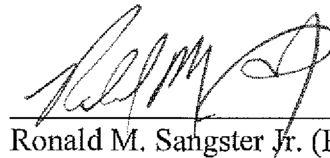
2. Issue an Order directing the Court, on remand, to consider the arguments raised by Intervening Defendant Titan in its Motion for Reconsideration;

3. Alternatively, Intervening Defendant Titan requests that this honorable Court grant its Application for Leave to Appeal and, after full briefing of the issues and oral argument, issue an Opinion and Order reversing the published decision of the Court of Appeals and remanding the matter back to the Allegan County Circuit Court for reinstatement of the Order Granting Summary Disposition in favor Intervening Defendant Titan Insurance Company;

together with such other relief from this Court as may be deemed warranted under these circumstances.

Respectfully Submitted,

LAW OFFICES OF RONALD M. SANGSTER, PLLC

By: 

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