

## MSC Order List: December 7, 2010

8. December 2010 By Madelaine Lane

On Tuesday, December 7, 2010, the Michigan Supreme Court denied the defendant's application for leave to appeal the March 24, 2009 Court of Appeals opinion in [Calderon v. Auto-Owners Insurance Company, Case No. 138805](#). The Court had previously granted oral argument on the application, which was held on November 5, 2010. Following the argument, the Court concluded that it was not persuaded that the question presented merited review.

*Calderon* is a no-fault case arising out of Auto-Owners failure to provide personal injury protection ("PIP") benefits to Arthur Krumm, who was injured in an automobile accident in 2003. The accident occurred in Arkansas. Auto-Owners refused to pay no-fault benefits arguing that Krumm had not been domiciled with his grandmother in Michigan at the time of the accident, and therefore was not covered under her no-fault policy. Lori Calderon, as guardian of the injured Krumm, filed lawsuit seeking the PIP benefits. Because the accident incapacitated him, Krumm was unable to testify about where he was domiciled. The testimony of his family and friends was conflicting. The trial court granted Auto-Owners' motion for summary disposition, holding that the evidence presented would not allow a reasonable trier of fact to conclude that Krumm was domiciled with his grandmother.

The Court of Appeals reversed and held that while there was conflicting testimony concerning Krumm's domicile, there was no evidence that Krumm planned to remain in Arkansas permanently. [Calderon v. Auto-Owners Ins. Co., unpublished opinion per curiam of the Michigan Court of Appeals, issued March 24, 2009 \(Docket No. 283313\)](#). In fact, there was evidence from multiple sources that Krumm intended to move back to Michigan. Although the evidence was not conclusive, the Court held that it did provide a basis for a reasonable jury to believe that Krumm was domiciled with his grandmother at the time of the accident.

Chief Justice Kelly authored a concurring opinion, which she acknowledged was largely a response to Justice Markman's dissent. She reiterated that there are material facts in dispute—namely, where Krumm was domiciled at the time of the accident. She noted that in response to the summary disposition motion, Plaintiff submitted evidence that Krumm's grandmother was actually his adoptive mother; Krumm had periodically visited Arkansas, but always returned to his grandmother's residence; he received mail at his grandmother's residence; he had a Michigan state identification card; and, that he still had his own bedroom at his grandmother's house. In light of this evidence, Justice Kelley believed plaintiff had created a genuine issue of material fact, rendering summary disposition improper.

Justice Markman, joined by Justice Corrigan, dissented from the order denying leave to appeal. In the dissent, Justice Markman contends that there are no facts in dispute concerning Krumm's domicile. He notes that Krumm moved to Arkansas 13 months prior to the accident with his wife and children. He had previously identified himself to Arkansas police as an Arkansas resident with an Arkansas address. There were also indications in the record that Krumm only lived intermittently with his grandmother from 1993 to

1998, and had not lived with her at all from 1999 to 2002. In light of this evidence, Justice Markman contends that statements that Krumm intended to return to Michigan on an uncertain future date are not enough to create a question of fact sufficient to survive summary disposition.