



## Kerr v Citizens Insurance Company of America

General Litigation Practice Group

*Foster Swift No-Fault E-News*

January 24, 2008

---

### **PRACTICE AREAS**

Insurance Defense

No-Fault Litigation

On January 22, 2008, the Michigan Court of Appeals issued an unpublished opinion in *Kerr v Citizens Insurance Company of America*, Docket No. 273319. An unpublished case does not establish precedent.

The case arose out of an automobile accident in which the driver swerved to avoid hitting a bale of hay on I-94. Plaintiff argued that the hay must have fallen from a vehicle and that there was therefore sufficient nexus between an unidentified vehicle and the accident to implicate her policy's uninsured motorist provision. The trial court denied a defense motion for summary disposition. The Court of Appeals reversed.

The terms of the uninsured motorist provision in the Plaintiff's insurance policy specified physical contact ("hit") in order to trigger coverage. The Court of Appeals reviewed the history of hit-and-run claims in Michigan and noted that "physical contact" has been broadly construed to include, e.g., a rock having been thrown or an object cast off a disappearing vehicle. *Berry v State Farm Mut Ins Co*, 219 Mich App 340, 346; 556 NW2d 207 (1996). It concluded after a review of cases that the *Kerr* case did not fit within the broad interpretation because a jury could not draw a reasonable inference as to how the hay got onto the highway without engaging in impermissible speculation.

The case, while non-precedential, offers a helpful overview of the law of uninsured motorist coverage in the absence of actual physical contact by a hit-and-run vehicle.

---