

10/16/01 “See News Release for any concurrences and/or dissents.”

SUPREME COURT OF LOUISIANA

No. 01-C-0495

JODI KELLEY WILLIAMS

Versus

DONALD WATSON, SWIFTY CAR RENTAL & LEASING, NORTHFIELD
INSURANCE COMPANY, AND STATE FARM INSURANCE COMPANY
AND ABC INSURANCE COMPANY

JOHNSON, J., dissenting

The majority suggests that the inquiry ends once it is determined that an insured and insurer have entered into a valid exclusion agreement. I dissent from the majority’s holding because it is inconsistent with this court’s holding in *Calogero v. Safeway Insurance Company*, 99-1625 (La. 1/19/00), 753 So.2d 170.

In *Calogero*, the plaintiff’s truck was being driven by an excluded driver when it was struck by another vehicle. This court found that the exclusion “applie[d] only to losses or damages *caused by the named driver.*” *Id.* at 173 (emphasis added). We further stated:

Thus, having no evidence that [the excluded driver] caused the accident, Safeway had no reasonable basis to deny the claim. The trial court’s finding that Safeway was arbitrary and capricious in failing to pay [plaintiff’s] claim . . . was not manifestly erroneous.

Thus, although the parties in that case had entered into a valid exclusion agreement, the outcome of the case was predicated upon who caused the accident.

Based on this court’s decision in *Calogero*, I believe that the issue of the driver’s residency status is very material to this case and summary judgment should not have been granted. Accordingly, I respectfully dissent.