

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS**

RECEIVED

APR 15 2013

**Alexander S. Macaulay
Circuit Court Judge**

S.C. Supreme Court

CASE No. 2010-CP-02124

DENISE S. BOWEN **Appellant**, *Petitioner*

vs.

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, ... Respondent.**

RECORD ON APPEAL

**Edwin L. Turnage
HARRIS & GRAVES, P.A.
812 Laurens Road
Greenville, SC 29607
(864) 235-1331**

**T. David Rheney
GALLIVAN WHITE & BOYD, P.A.
55 Beattie Pl, Suite 1200
Greenville, SC 29601
(864) 271-9580**

Attorney for Appellant

Petitioner

Attorney for Respondent

INDEX

Orders and Judgment

Order of October 17, 2011	2
Judgment in a Civil Case of October 17, 2011	13
Order of November 18, 2010	14

Pleadings

Complaint	16
Amended Complaint	20
Answer and Counter-Claim	23
Reply	27
Appellant's Motion for Summary Judgment	28
Respondent's Motion for Summary Judgment	29
Appellant's Memorandum in Support of Summary Judgment	31
Respondent's Memorandum in Support of Summary Judgment	39
Appellant's Supplemental Memorandum in Support of Summary Judgment	48
Respondent's Supplemental Memorandum in Support of Summary Judgment	51

Testimony

Affidavit of Denise F. Bowen	55
Affidavit of Larry Thrasher	58
Deposition of Denise F. Bowen	59
Deposition of Larry Thrasher	108

Exhibits

Exhibit A	142
Exhibit B	146
Exhibit C	153
Exhibit D	156
Exhibit E	159
Exhibit F	161
Plaintiff's Exhibit 1	163
Plaintiff's Exhibits 3	177
Plaintiff's Exhibit 10	178

Other Materials

Paula L. Forbes June 17, 2011, email to Judge Macaulay	180
Edwin Turnage's June 20, 2011, letter objecting to the proposed order	181
Notice of Appeal	183

Certificate of Counsel	184
------------------------------	-----

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
FILED-CLERK'S OFFICE
COUNTY OF ANDERSON) ANDERSON SC C.A. NO.: 2010-CP-04-2124

Denise F. Bowen,

OCT 17 A 8:55

RCB

Plaintiff,

COMMON PLEAS AND
GENERAL SESSIONS

vs.

State Farm Mutual Automobile
Insurance Company,

Defendant,

**ORDER GRANTING
SUMMARY JUDGMENT
TO STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY**

This matter is before the Court on cross-motions for summary judgment. The motions were argued on March 10, 2011. The Court hereby grants State Farm's motion for summary judgment and denies the plaintiff's motion for summary judgment.

BACKGROUND

This declaratory judgment lawsuit arises from an automobile accident near Anderson, South Carolina on January 16, 2010. The plaintiff was riding as a passenger in a car driven by Rebecca Gilliam. Just before the accident Ms. Gilliam was stopped at the intersection of Cherry Drive and S.C. Highway 24. She intended to make a left turn onto Highway 24 to travel toward Anderson. She apparently failed to see a vehicle driven by Timothy Michael Arndt, traveling from her left toward her right, and entered the intersection directly in front of the Arndt vehicle, thereby causing the accident and the plaintiff's injuries.

Following the accident the plaintiff made a claim against Ms. Gilliam. The automobile liability insurer for Ms. Gilliam, Travelers Insurance Company, paid its liability limits to the plaintiff in exchange for a covenant not to execute. The plaintiff then made a claim against State Farm Mutual Automobile Insurance Company (hereinafter "State Farm") for recovery of underinsured motorist benefits under a policy issued by State Farm to Larry Thrasher, the plaintiff's father. State Farm denied the plaintiff's claim for UIM benefits because the plaintiff

was not a resident relative of her father. Thereafter the plaintiff filed this declaratory judgment action to determine whether the policy provides coverage applicable to the accident.

UNDISPUTED FACTS

Prior to May 2007 the plaintiff and her husband, Raymond, resided at 207 Cherry Seed Lane in Anderson, South Carolina. Larry Thrasher resided in Greenville, South Carolina. Mr. Thrasher developed cancer and became increasingly ill over a period of time. The plaintiff would travel to and from her home in Anderson to his home in Greenville to take care of him. Eventually it was decided that Mr. Thrasher should move to Anderson to be closer to the plaintiff. In or about May 2006 the plaintiff and her husband purchased a used double-wide mobile home and placed it on the same parcel of property at 207 Cherry Seed Lane. They spent a year upfitting the home for their use. In approximately May 2007 the plaintiff and her husband moved to the new/upfitted mobile home. At about that same time Mr. Thrasher moved to the plaintiff's old mobile home, which remained on the same parcel of land.

The plaintiff and her husband received a variance from the Anderson County Codes Office to have two dwellings on the same parcel of land. To do so, it was required that when the second home was placed on the property that each home be given a separate mailing address. The new home was designated as 209 Cherry Seed Lane (hereinafter "209") and the old home was designated as 207 Cherry Seed Lane (hereinafter "207"). While the new home was being upfitted, the plaintiff and her husband continued to receive their mail at 207. When they moved to the new home in approximately May 2007, they changed their mailing address to 209. That has continued to be their mailing address ever since.

When Mr. Thrasher leaves 207, either due to his death or the need to move to some type of healthcare facility, his home will have to be removed from the property. The plaintiff admits that she and her husband have no intention of moving back to the 207 address when her father leaves that home, and will remain at 209.

In November 2009 Mr. Thrasher underwent surgery at MUSC for throat cancer. After approximately two to three weeks he returned to his home at 207. Between the time Mr. Thrasher moved to 207 in May 2007 and the time he returned after surgery, the plaintiff never spent a night in his home. After his return from MUSC, the plaintiff would spend nights at 207 because of her father's medical condition and his need for her care. Around the time of this accident in January 2010 the plaintiff had personal items at 207, including a bed and articles of clothing, but almost all of her belongings remained at 209.

The central issue in this case is whether the plaintiff resided with her father for the purpose of recovery of UIM benefits under his policy with State Farm. Both her deposition and the deposition of Mr. Thrasher were taken, and written discovery was exchanged regarding this issue. From that, the following evidence is undisputed:

1. It was Ms. Bowen's intention when her father moved to 207 and she moved to 209 for him to have his own home and for her to have her own home;
2. The plaintiff gave 207 to her father;
3. The plaintiff considers 207 to be her father's home until he dies;
4. The plaintiff never stayed overnight at 207 until her father needed medical care after his surgery at MUSC;
5. The plaintiff's husband lives full-time at 209 and has never spent a night at 207 since moving away from there;
6. Mr. Thrasher considers 209 to be the plaintiff's "primary residence";
7. When the plaintiff is not providing care for her father she always goes back to 209;
8. Mr. Thrasher's purpose in moving to 207 was for his daughter to take care of him;
9. The purpose of the plaintiff staying at 207 was not to live or reside there, but to help Mr. Thrasher;

10. It was always the plaintiff's intention to return to 209;
11. The plaintiff receives her mail at 209 and has always received her mail there since she moved;
12. Mr. Thrasher had his own car and paid his own insurance on the day of the accident;
13. The plaintiff had her own car on the day of the accident and paid her own insurance;
14. Mr. Thrasher's car is still registered in his name and the plaintiff only drives it because her car broke down in mid-2011;
15. The plaintiff was not counting on her father to purchase car insurance for her;
16. Mr. Thrasher and the plaintiff use separate insurance companies to insure their cars;
17. Mr. Thrasher pays for his food;
18. The plaintiff reimbursed Mr. Thrasher when he bought groceries for her;
19. Mr. Thrasher paid his portion of the water bill (one bill was issued by the county and each party paid every-other-month);
20. Mr. Thrasher paid for his landline telephone until it was removed after the accident;
21. Mr. Thrasher pays his cell phone bill;
22. The plaintiff pays her cell phone bill;
23. Mr. Thrasher pays his electric bill and the plaintiff pays hers;
24. Mr. Thrasher pays taxes on 207;
25. The plaintiff pays taxes on 209;
26. Mr. Thrasher pays all the expenses of his home; and
27. There is no insurance coverage on either mobile home.

APPLICABLE POLICY LANGUAGE

The following policy language from the State Farm policy applies to this lawsuit.

UNDERINSURED MOTOR VEHICLE-COVERAGE W

You have this coverage if "W" appears in the "Coverages" space on the declarations page.

We will pay damages for *bodily injury* or *property damage* an *insured*:

1. is legally entitled to collect from the owner or driver of an *underinsured motor vehicle*; or
2. would have been legally entitled to collect except for the existence of any damages cap or limitation imposed by statute.

The *bodily injury* or *property damage* must be caused by accident arising out of the operation or ownership of the *underinsured motor vehicle*. The *bodily injury* must be sustained by an *insured*.

(Policy at Page 19)

Who Is an Insured

Insured – means:

1. *you, your spouse* and relatives;

(Policy at Page 20)

DEFINED WORDS WHICH ARE USED IN SEVERAL PARTS OF THE POLICY

Relative – means a *person* related to *you* or *your spouse* by blood, marriage or adoption who resides primarily with *you*. It includes *your* unmarried and unemancipated child away at school.

You or *Your* – means the named insured or named insured shown on the declarations page.

(Policy at Page 4)

APPLICABLE LAW

A declaratory judgment action is neither legal nor equitable, "but is determined by the nature of the underlying issue." Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). "In South Carolina, an insurance policy is a contract between the insured and the insurance company, and the terms of the policy are to be construed according to contract law." Cook v. State Farm Auto. Ins. Co., 376 S.C. 426, 429, 656 S.E.2d 784, 786 (Ct. App. 2008). "The determination of resident relative status is a factual finding for the trial court." Id. at 430, 656 S.E.2d 784, 786.

In State Farm Fire and Cas. Co. v. Breazell, 324 S.C. 228, 478, S.E.2d 831 (1996), the South Carolina Supreme Court adopted the test applied in A.G. by Waite v. Travelers Ins. Co., 112 Wis. 2d 18, 331 N.W.2d 643 (App. 1983) to determine whether a person is a resident of the household of another. In Waite, the determination was based upon three factors: 1) living under the same roof; 2) in a close, intimate and informal relationship; and 3) where the intended duration of the relationship is likely to be substantial, where it is consistent with the informality of the relationship, and from which it is reasonable to conclude that the parties would consider the relationship in contracting about such matters as insurance or in their own conduct in reliance thereon. Breazell at 231, 478 S.E.2d at 832. In subsequent cases, it has been held that there is no bright line test for determining when a person is a resident relative of another, and that each case is to be decided upon its own facts. Cook v. State Farm Auto. Ins. Co., 376 S.C. 426, 656 S.E.2d 784 (Ct. App. 2008) (citing Auto-Owners Ins. Co. v. Horne, 356 S.C. 52, 61, 586 S.E.2d 865, 870 (Ct. App. 2003)).

Cook is perhaps the most analogous case to this case in South Carolina to determine whether a person is a resident relative of another for insurance purposes. In that case a granddaughter was injured in a one-vehicle collision. The driver of the vehicle tendered her liability limits to the granddaughter and thereafter the grandfather and mother brought a declaratory judgment action seeking UIM coverage under the grandfather's policy of automobile insurance. The trial court

(7) 11
2

entered judgment in favor of the insurer, holding the granddaughter was not a resident relative of the grandfather, and the South Carolina Court of Appeals affirmed that ruling.

Discovery in Cook revealed the following:

1. Mother owned a mobile home with her husband that was located on grandfather's property;
2. Grandfather owned the house on the same property;
3. The structures had separate property tax assessments, electrical services, phone services, septic tanks and insurance policies;
4. The two structures were physically separate;
5. Bills and expenses for the two structures were paid separately;
6. Father/husband stayed in the mobile home exclusively;
7. Grandfather helped with bills of mother and father only when they could not afford to pay their own bills;
8. The majority of the family possessions of mother and father were kept in their mobile home; and
9. Granddaughter had toys and clothes at grandfather's house, would stay there while mother was away but would return home when mother returned home.

Under those circumstances, many of which are identical to the plaintiff in this case and just as compelling, the trial court held that the granddaughter was not a resident relative of her grandfather for insurance coverage purposes.

In Smith v. Auto-Owners Ins. Co., 377 S.C. 512, 660 S.E.2d 271 (Ct. App. 2008), mother and father lived at a home in Laurens. Father maintained a separate residence in Spartanburg while he worked part-time there during the week, maintaining clothes, toiletries and other items for his personal use in that home. Tracy Smith, their son, lived in the Spartanburg County home. Following his death in a car accident his estate sought recovery of underinsured motorist benefits

under mother and father's automobile policy. While noting that Tracy and his father did indeed live together for part of the week, the court held they were not resident relatives of each other for the purpose of insurance coverage. In reviewing the Waite factors, the court held that while the first two factors were met, the third was not. It stated:

No evidence in the record indicates Ernest and Tracy intended their living arrangement to be substantially long or durable or that they treated their living arrangement as anything but a matter of temporary convenience. Ernest and Tracy did not insure their automobiles together or share the responsibilities of taxes or household bills. Ernest did not insure the Spartanburg County home at all. Although Ernest may have spent up to four nights per week in the Spartanburg County home, it appears he stayed there merely as a matter of convenience and in lieu of renting a hotel room.

(Id. at 518, 660 S.E.2d at 274) (emphasis added) Therefore, the mere fact that parties stay/sleep under the same roof, even for substantial periods of time, does not establish residency for the purpose of insurance coverage, particularly when they do so merely as a convenience.

The issue of whether a person may be a resident of two households seems to have only been addressed in cases, or at least the vast majority of cases, involving a minor child in a divorced or separated parent scenario. In Auto-Owners Ins. Co. v. Horne, 356 S.C. 52, 586 S.E.2d 865, 870 (Ct. App. 2003), the court was presented with the issue of whether a minor unemancipated child could be a resident of more than one household. Ultimately, the court did not reach that issue because the facts of the case had established that the minor child was not even a resident of her non-custodial father's home on the day of the accident, and therefore she did not qualify for UIM coverage under her father's policy. In addition, every case cited in Horne, whether supporting or opposing the proposition of dual residency, with one exception, involved a minor child claiming to be a resident of multiple households due to the divorce or separation of his or her parents. The only exception to that involved a child over the age of eighteen who claimed that he was an unemancipated minor and should be permitted to seek recovery under his non-custodial father's policy. Elder v. Metro. Prop. & Cas. Co., 851 S.W.2d 557 (Mo. Ct. App. 1993). In that case the court concluded that the son was

not truly unemancipated, had not even stayed with his father in the two and on-half years preceding the accident, and was therefore not a resident of his father's household. No South Carolina court has held that an emancipated adult can be a resident of multiple households.

APPLICATION OF LAW TO FACTS

As noted above, there is no authority in South Carolina supporting the proposition that an emancipated adult can be a resident of two households for the purpose of seeking recovery of UIM benefits. While the plaintiff argues that Horne stands for "the principle that an insured may be a resident relative of multiple households" (Pl. Supp. Brief at Page 2), that case does not stand for such a broad proposition. Instead, it dealt with only whether "a minor unemancipated child can be a resident of two households." Id. at 69 note 8, 586 S.E.2d at 875. In addition, none of the cases cited in Horne support that proposition.

Even if an emancipated adult could be a resident of two households in South Carolina for the purpose of recovery of UIM benefits, the undisputed evidence establishes the plaintiff did not reside with her father on the day of the accident. At that time the plaintiff spent nights in her father's home solely for the purpose of assisting with his healthcare. While that was no doubt important for Mr. Thrasher's healthcare purposes, it was a matter of temporary convenience during the acute phase of his recovery after his surgery at MUSC in November 2009. In addition, it is abundantly clear the homes were run completely separate and apart from a financial standpoint, with the plaintiff paying the expenses of running her home and her father paying the expenses of running his home from the day he moved there until the present date. The plaintiff's husband remained at 209 and virtually all of her belongings remained there. It was her intention for 207 to be her father's home and for 209 to be her home. In short, she had no intention of residing at both addresses on the day of this accident.

The only way the plaintiff can qualify for UIM benefits under her father's policy is if she actually resided with him on the day of the accident. The undisputed facts, as noted above, establish

that she did not. To reach such a conclusion the Court would have to conclude that the plaintiff was not a resident of 209. Such a finding is illogical. All of the indicia of residency, including receipt of her mail, the vast majority of her personal property, her husband, the financial arrangements for the running of the homes, and her representations to local, state and federal governments for tax purposes, point to 209 as her residence versus few if any factors of significance that point to her being a resident of 207. It would be illogical, when required to pick between which of the two homes the plaintiff resided in on the day of the accident, to conclude that she resided anywhere other than 209.

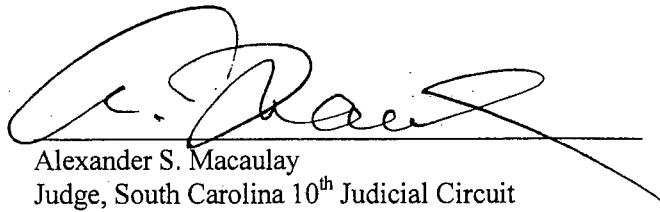
Finally, the plaintiff argues that 207 and 209 should be treated as one residence for the purpose of establishing residency and her entitlement to recovery of UIM benefits under her father's policy. This argument is also without merit. If it was the intention of the parties to treat the entire property as one residence, then there would have been no reason to run the homes as two completely separate and distinct households. From the day Mr. Thrasher moved into his home until the present day he paid for the upkeep of his home, including electrical and other utility service, phone and cell phone bills, car insurance, taxes and every other significant financial aspect necessary to run a home, and the plaintiff paid for the upkeep of her home. There was no intention of treating the separate homes as one residence, even up to this day, except for the need to argue that to try to obtain the insurance coverage sought in this lawsuit. As such, this argument also fails.

CONCLUSION

For all the foregoing reasons, the Court finds that the plaintiff was a resident of 209 Cherry Seed Lane on the day of the accident, that her home was separate and distinct from the home located at 207 Cherry Seed Lane and that the plaintiff did not reside at 207 Cherry Seed Lane. As such, the Court grants State Farm's motion for summary judgment and denies the plaintiff's motion for summary judgment.

rcb

AND IT IS SO ORDERED.


Alexander S. Macaulay
Judge, South Carolina 10th Judicial Circuit

Dated: Oct 14, 2011

FILED-CLERK'S OFFICE
ANDERSON SC
2011 OCT 17 A 8:56
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP0402124

LCB

Denise F Bowen vs. State Farm Mutual Automobile Insurance Company

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at Anderson, South Carolina, this 17th day of October, 2011.

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 17th day of October, 2011, and a copy mailed first class this 17th day of October, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Edwin L. Turnage Harris & Graves, PA P.O. Box
6263 Greenville, SC 29606

ATTORNEY(S) FOR THE PLAINTIFF(S)

T. David Rheney Gallivan White & Boyd PO Box
10589 Greenville SC 29603

ATTORNEY(S) FOR THE DEFENDANT(S)

Richard A. Shirley

Richard A. Shirley - Clerk of Court

MOTION FEE PAID

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

RLH

DENISE F. BOWEN,

Plaintiff,

Civil Action No. 2010-CP-04-2124

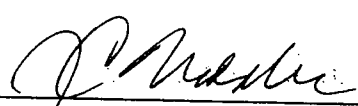
vs.

ORDER

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

The parties hereby stipulate that the proper name of the Defendant is "STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY." The caption is hereby amended to reflect STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY as the party defendant to this action.


ADMINISTRATIVE JUDGE,
10th Judicial Circuit

November 18, 2010

FILED-CLERK'S OFFICE
ANDERSON SC
2010 NOV 19 A 10:15
COMMON PLEAS AND
GENERAL SESSIONS

WE STIPULATE:

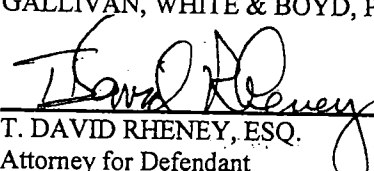
HARRIS AND GRAVES, P.A.


EDWIN L. TURNAGE
Attorney for Plaintiff
SC Bar No. 12842
Post Office Box 6263
Greenville, SC 29606
(864) 235-1331
elt@harrisgraves.com

Greenville, South Carolina

Dated: 9/22/10

GALLIVAN, WHITE & BOYD, PA


T. DAVID RHENEY, ESQ.
Attorney for Defendant
SC Bar No. 1213148
One Liberty Square
55 Beattie Place, Suite 1200
Greenville, SC 29601
(864) 271-9580

Greenville, South Carolina

Dated: 9/20/10

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

FILED-CLERK'S OFFICE
ANDERSON SC

IN THE COURT OF COMMON PLEAS

2010 JUN 18 A 9:02

DENISE F. BOWEN,

COMMON PLEAS AND
GENERAL SESSIONS

Civil Action No.

~~2010~~ CP - 04 - 2124

Plaintiff,

vs.

COMPLAINT

STATE FARM FIRE AND CASUALTY
COMPANY,

Jury Trial Requested

Defendant.

The Plaintiff would respectfully show unto the Court that:

1. The Plaintiff is a citizen and resident of Anderson County, South Carolina.
2. The Plaintiff is informed and believes that the Defendant, STATE FARM FIRE AND CASUALTY COMPANY, is an insurance corporation that does business and owns property in ANDERSON County, South Carolina.
3. On or about January 16, 2010, Plaintiff was a passenger in a Ford Truck stopped on Cherry Road at the intersection of S.C. Highway 24 near Anderson. At that time and place, Rebecca Gilliam (hereinafter "Gilliam"), who was driving the Ford Truck, failed to verify she could clear highway traffic and she drove her vehicle onto Highway 24 attempting to execute a left turn. Defendant Gilliam was cited for failure to yield to traffic on the highway.
4. Gilliam was driving a vehicle insured by State Farm Insurance Company policy 0135-939-40D. The liability limits of the policy with regard to Plaintiff's claim was \$25,000.
5. On or about May 10, 2010, Plaintiff settled her liability claim against Gilliam with State Farm and Gilliam in exchange for a Covenant Not to Execute against Gilliam's personal assets.

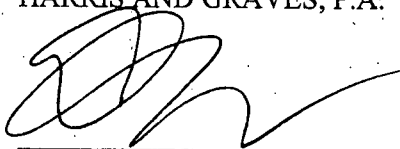
6. Plaintiff asserted an underinsured motorist claim against her father Larry Thrasher's State Farm Insurance Company policy number 40-8552-371. Plaintiff alleges she is a resident relative with Larry Thrasher (hereinafter "Thrasher") and is therefore covered under his policy.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

7. The allegations of paragraphs 1 through 6 are incorporated by reference as if set forth herein verbatim.
8. On or about January 16, 2010, Defendant STATE FARM FIRE AND CASUALTY COMPANY issued a policy providing coverage for Thrasher, under policy number 40-8552-371. At the time of an automobile collision described in paragraph 3 above, Plaintiff was a resident relative of Thrasher's home at 207 Cherry C Road, Anderson, SC 29605.
9. On June 9, 2010, an adjuster for STATE FARM FIRE AND CASUALTY COMPANY denied coverage and alleged that Plaintiff was not a resident relative of her father, Mr. Thrasher, its named insured.
10. Prior to June 9, 2010, Plaintiff and Mr. Thrasher provided STATE FARM FIRE AND CASUALTY COMPANY two recorded statements, including a statement of the Plaintiff, confirming that she was a resident relative of Larry Thrasher's residence on the date of the collision, January 16, 2010.
11. Plaintiff respectfully states that she is entitled to a Declaratory Judgment against the Defendant declaring that STATE FARM FIRE AND CASUALTY COMPANY's policy number 40-8552-371 provided coverage to its statutory insured, Plaintiff Denise Bowen, up to the liability limit of the policy.

WHEREFORE, the Plaintiff prays for the declaratory judgment against Defendant, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

HARRIS AND GRAVES, P.A.



EDWIN L. TURNAGE

Attorney for Plaintiff

SC Bar No. 12842

P.O. Box 6263

Greenville, SC 29606

(864) 235-1331

elt@harrisgraves.com

Greenville, South Carolina

Dated: 6/15/18

MITCHELL J. WILLIAMS
STEVEN D. HAYMOND
ROBERT F. McMAHAN, JR.
MICHAEL S. SWINDELL
EDWIN L. TURNAGE
JOHN M. CROFT
S. HAMPTON EADON, III*

*Also Licensed in North Carolina

LAW OFFICES
HARRIS AND GRAVES, P.A.
"Our mission is to provide exceptional personal and professional service to our clients"

812 LAURENS ROAD
P.O. BOX 6263
GREENVILLE, SOUTH CAROLINA 29606
864-235-1331
864-235-1741 (FAX)

June 9, 2010

OFFICES
COLUMBIA
GREENVILLE
CONWAY
FLORENCE
ROCK HILL
SPARTANBURG

OF COUNSEL
E. WESLEY GRAVES, III

RETIRED
SHIPP D. HARRIS

The Hon. Cathy M. Phillips
Anderson County Clerk of Court
P.O. Box 8002
Anderson, SC 29622

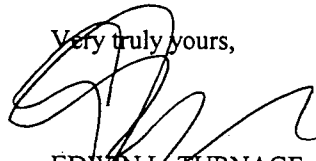
RE: *Denise F. Bowen vs. James Gilliam & Rebecca Gilliam & Timothy Michael Arndt & David Arndt*
Our File #: 201025316

Dear Sir/Madam:

Enclosed please find the original and copies of a Summons and Complaint regarding the above-referenced matter which I would appreciate your having appropriately filed. I would also appreciate your returning to us clocked copies of these pleadings in the envelope provided for your convenience. Our check in the amount of \$150.00 is enclosed as filing fee.

We appreciate your cooperation.

Very truly yours,



EDWIN L. TURNAGE
elt@harrisgraves.com

Enclosures

FILED-CLERK'S OFFICE
ANDERSON SC
2010 JUN 18 A 9:01
COURT PLAS AND
GENERAL SESSIONS



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

DENISE F. BOWEN,

Plaintiff,

vs.

STATE FARM MUTUAL INSURANCE
COMPANY,

Defendant.

Civil Action No. 2010 CP - 04 - 02124

AMENDED COMPLAINT

Jury Trial Requested

2010 JUL 13 A 11:57

FILED-CLERK'S OFFICE
ANDERSON SC

The Plaintiff would respectfully show unto the Court that:

1. The Plaintiff is a citizen and resident of Anderson County, South Carolina.
2. The Plaintiff is informed and believes that the Defendant, STATE FARM MUTUAL INSURANCE COMPANY, is an insurance corporation that does business and owns property in ANDERSON County, South Carolina.
3. On or about January 16, 2010, Plaintiff was a passenger in a Ford Truck stopped on Cherry Road at the intersection of S.C. Highway 24 near Anderson. At that time and place, Rebecca Gilliam (hereinafter "Gilliam"), who was driving the Ford Truck, failed to verify she could clear highway traffic and she drove her vehicle onto Highway 24 attempting to execute a left turn. Defendant Gilliam was cited for failure to yield to traffic on the highway.
4. Gilliam was driving a vehicle insured by State Farm Insurance Company policy 0135-939-40D. The liability limits of the policy with regard to Plaintiff's claim was \$25,000.
5. On or about May 10, 2010, Plaintiff settled her liability claim against Gilliam with State Farm and Gilliam in exchange for a Covenant Not to Execute against Gilliam's personal assets.

6. Plaintiff asserted an underinsured motorist claim against her father Larry Thrasher's STATE FARM MUTUAL INSURANCE COMPANY policy number 1465-886-40. Plaintiff alleges she is a resident relative with Larry Thrasher (hereinafter "Thrasher") and is therefore covered under his policy.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

7. The allegations of paragraphs 1 through 6 are incorporated by reference as if set forth herein verbatim.
8. On or about January 16, 2010, Defendant STATE FARM MUTUAL INSURANCE COMPANY issued a policy providing coverage for Thrasher, under policy number 1465-886-40. At the time of an automobile collision described in paragraph 3 above, Plaintiff was a resident relative of Thrasher's home at 207 Cherry C Road, Anderson, SC 29605.
9. On June 9, 2010, an adjuster for STATE FARM MUTUAL INSURANCE COMPANY denied coverage and alleged that Plaintiff was not a resident relative of her father, Mr. Thrasher, its named insured.
10. Prior to June 9, 2010, Plaintiff and Mr. Thrasher provided STATE FARM MUTUAL INSURANCE COMPANY two recorded statements, including a statement of the Plaintiff, confirming that she was a resident relative of Larry Thrasher's residence on the date of the collision, January 16, 2010.
11. Plaintiff respectfully states that she is entitled to a Declaratory Judgment against the Defendant declaring that STATE FARM MUTUAL INSURANCE COMPANY's policy number 1465-886-40 provided coverage to its statutory insured, Plaintiff Denise Bowen, up to the liability limit of the policy.

WHEREFORE, the Plaintiff prays for the declaratory judgment against Defendant, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

HARRIS AND GRAVES, P.A.



EDWIN L. TURNAGE
Attorney for Plaintiff
SC Bar No. 12842
P.O. Box 6263
Greenville, SC 29606
(864) 235-1331
elt@harrisgraves.com

Greenville, South Carolina

Dated: 7/12/18

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Denise F. Bowen,

Plaintiff,

vs.

State Farm Mutual Automobile
Insurance Company,

Defendant,

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2010-CP-04-2124

**ANSWER AND
COUNTER-CLAIM
(Jury Trial Demanded)**



The defendant, State Farm Mutual Automobile Insurance Company, improperly identified as State Farm Mutual Insurance Company (hereinafter "State Farm"), answering the complaint of the plaintiff respectfully alleges and will show unto the Court that:

FOR A FIRST DEFENSE

1. State Farm lacks sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and, therefore, denies the same.

2. State Farm admits that this case is subject to the jurisdiction of this Court, but lacks sufficient knowledge and information to form a belief as to the remaining allegations of Paragraph 2 of the Complaint and, therefore, denies the same.

3. State Farm admits that this case is subject to the jurisdiction of this Court, but lacks sufficient knowledge and information to form a belief as to the remaining allegations of Paragraph 3 of the Complaint and, therefore, denies the same.

4. State Farm admits that this case is subject to the jurisdiction of this Court, but lacks sufficient knowledge and information to form a belief as to the remaining allegations of Paragraph 4 of the Complaint and, therefore, denies the same.

5. State Farm admits that this case is subject to the jurisdiction of this Court, but lacks sufficient knowledge and information to form a belief as to the remaining allegations of Paragraph 5 of the Complaint and, therefore, denies the same.

6. State Farm admits that this case is subject to the jurisdiction of this Court, but lacks sufficient knowledge and information to form a belief as to the remaining allegations of Paragraph 6 of the Complaint and, therefore, denies the same.

7. The allegations of Paragraph 7 of the Complaint do not require a response from State Farm. To the extent a response is required, those allegations are denied.

8. State Farm denies the allegations of Paragraph 8 of the Complaint.

9. State Farm lacks sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint and, therefore, denies the same.

10. State Farm lacks sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 10 of the Complaint and, therefore, denies the same.

11. State Farm denies the allegations of Paragraph 11 of the Complaint.

12. State Farm denies each and every allegation of the complaint not admitted, qualified or explained herein.

FOR A SECOND DEFENSE

13. State Farm adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

14. State Farm alleges that the plaintiff's complaint fails to state facts sufficient to constitute causes of action upon which relief can be granted as against it and is, accordingly, barred.

FOR A THIRD DEFENSE

15. State Farm adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

16. State Farm alleges that the plaintiff has failed to mitigate its damages in the manner provided for by law. Such failure to mitigate is thus pled as a complete defense and bar to its claims.

FOR A FOURTH DEFENSE

17. State Farm adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

18. State Farm alleges that it provides no coverage for any of the claims or damages raised by the plaintiff in her complaint. As such, the plaintiff's claims against it are barred.

FOR A FIFTH DEFENSE

19. State Farm adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

20. State Farm alleges that coverage is excluded under the terms, conditions and/or exclusions of its policies for any of the claims being made by the plaintiff. Such terms, conditions and/or exclusions are thus pled as a complete defense and bar to those claims.

FOR A SIXTH DEFENSE

21. State Farm adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

22. State Farm alleges that there has been a failure to comply with conditions precedent as required in making claims under the terms of any policies issued to it. As such, the plaintiff's claims against it are barred.

FOR A SEVENTH DEFENSE

23. State Farm adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

24. State Farm alleges that the plaintiff is not an insured under any policy issued by it and has no rights under any such policy. Accordingly, the plaintiff cannot maintain a cause of

action against it, for declaratory relief or otherwise, as it has no standing to do so. As such, the plaintiff's claims against it should be dismissed.

FOR AN EIGHTH DEFENSE AND COUNTER CLAIM

25. State Farm adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

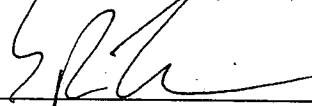
26. State Farm alleges that the plaintiff is not a resident relative under the policy at issue.

27. State Farm alleges that it is entitled to a judgment from this Court that the plaintiff is not entitled to underinsured motorist coverage from it under the facts of this case.

WHEREFORE, State Farm prays as follows:

- (1) For a judicial declaration that the policy at issue provides no coverage as a result of the plaintiff not being an insured under the terms of the policy and that State Farm has no obligation to pay any of the claims at issue;
- (2) That plaintiff's claims against it be dismissed;
- (3) For the costs of this action; and
- (4) For any such other and further relief as this Court shall deem just and proper.

Gallivan, White & Boyd, P.A.



T. David Rheney, Esq. (S.C. Bar No. 13148)

Eric R. Tonnsen, Esq. (S.C. Bar No. 74800)

Post Office Box 10589

Greenville, SC 29603

864-271-9580 (phone)

864-271-7502 (fax)

drheney@gwblawfirm.com

etonnsen@gwblawfirm.com

Attorneys for State Farm Mutual Automobile
Insurance Company

September 17, 2010

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

DENISE F. BOWEN,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

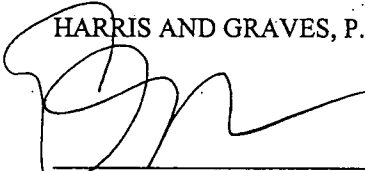
Civil Action No. 2010-CP-04-2124

REPLY

Plaintiff answers Defendant's counter-claim as follows:

1. Answering to paragraph 25, Plaintiff incorporates the allegations of paragraphs 1 through 11 of the Amended Complaint as if set forth herein verbatim. The remaining allegations of paragraph 25 are denied.
2. Plaintiff denies the allegations of paragraphs 26 and 27.

HARRIS AND GRAVES, P.A.



EDWIN L. TURNAGE
Attorney for Plaintiff
SC Bar No. 12842
Post Office Box 6263
Greenville, SC 29606
(864) 235-1331
elt@harrisgraves.com

Greenville, South Carolina

Dated: 9/28/10

FILED-CLERK'S OFFICE
ANDERSON SC
2010 SEP 22 12:31
COMMON PLEAS AND
GENERAL SESSIONS

MOTION FEE PAID

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

Handwritten initials

DENISE F. BOWEN,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

Civil Action No. 2010-CP-04-2124

**MOTION FOR
SUMMARY JUDGMENT**

TO: T. DAVID RHENEY, ESQ., ATTORNEY FOR DEFENDANT:

Please take notice that the Plaintiff, by undersigned attorney, will move before the Presiding Judge for the Court of Common Pleas for Anderson County, in the Judicial Circuit, at 10:00 a.m. on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel, as follows: That the Plaintiff be granted summary judgment on the issue of liability in this action pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that plaintiff is entitled to judgment as a matter of law and there is no genuine issue of material fact.

HARRIS AND GRAVES, P.A.

Handwritten signature of Edwin L. Turnage

EDWIN L. TURNAGE
Attorney for Plaintiff
SC Bar No. 12842
P.O. Box 6263
Greenville, SC 29606
(864) 235-1331
elt@harrisgraves.com

Greenville, South Carolina

Dated: 10/18/10

FILED-CLERK'S OFFICE
ANDERSON SC
2010 OCT 28 P 3:47
COMMON PLEAS AND
GENERAL SESSIONS

MOTION FEE PAID



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

C.A. NO.: 2010-CP-04-2124

Denise F. Bowen,)

Plaintiff,)

**STATE FARM'S MOTION
FOR SUMMARY JUDGMENT**

vs.)

State Farm Mutual Automobile
Insurance Company,)

Defendant,)

**TO: DENISE F. BOWEN, PLAINTIFF, AND EDWIN TURNAGE, ESQUIRE,
ATTORNEY FOR PLAINTIFF**

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service hereof, or at such time and place as the court may deem appropriate, the defendant, State Farm Mutual Automobile Insurance Company, will move the court for an order, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, granting summary judgment in the above-referenced matter. The grounds for said motion are that there is no genuine issue of material fact, and, therefore, the plaintiffs' complaint should be dismissed as a matter of law.

The defendant submits the pleadings in this matter, all discovery undertaken prior to the hearing of this motion, and such memorandum of law as may be submitted to the court prior to the hearing of this motion in support hereof.

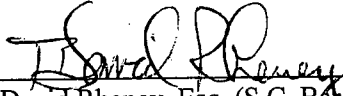
[SIGNATURE BLOCK ON FOLLOWING PAGE]

COMMON PLEAS AND
GENERAL SESSIONS

2010 NOV 19 PM 3:53

FILED-CLERK'S OFFICE
ANDERSON SC

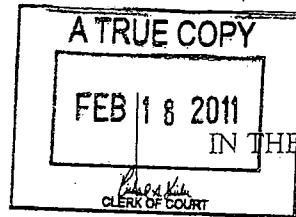
Gallivan, White & Boyd, P.A.



T. David Rheney, Esq. (S.C. Bar No. 13148)
Eric R. Tonnsen, Esq. (S.C. Bar No. 74800)
Post Office Box 10589
Greenville, SC 29603
864-271-9580 (phone)
864-271-7502 (fax)
drheney@gwblawfirm.com
etonnsen@gwblawfirm.com
Attorneys for State Farm Mutual Automobile
Insurance Company

November 17, 2010

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON



IN THE COURT OF COMMON PLEAS

DENISE F. BOWEN,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

Civil Action No. 2010-CP-04-2124

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

This matter is before the Court on cross motions for summary judgment. The case arises from State Farm Mutual Automobile Insurance Company's denial of coverage to Denise Bowen, the daughter of its insured, Larry Thrasher. The sole issues for the Court are as follows:

1. whether the State Farm automobile policy for Larry Thrasher provided underinsured motorist coverage (UIM) to Denise Bowen as a resident relative, and
2. whether the law compels coverage even if the policy can reasonably be read to exclude coverage of Denise Bowen.

I. STATEMENT OF FACTS

The case arises from a January 16, 2010, motor vehicle collision. Ms. Bowen was a passenger in a Ford Truck driven by Rebecca Gilliam. The truck was stopped on Cherry Road at the intersection of S.C. Highway 24 near Anderson. Ms. Gilliam failed to verify she could clear highway traffic and she drove her vehicle onto Highway 24 attempting to execute a left turn. Meanwhile, a Toyota pickup truck driven by Defendant Timothy Michael Arndt was driving down Highway 24. When Gilliam pulled out, the Toyota crashed into the Ford Truck.

In the T-bone collision, Ms. Bowen sustained abrasions and contusions to her left forearm, elbow and right knee. She also suffered cervical spine and back strains with muscle

spasms in the neck. Plaintiff had moderate pain in her abdomen. A CT Scan of Plaintiff's abdomen revealed a splenic laceration with free intra-abdominal and pelvic fluid, undoubtedly blood from the spleen. Plaintiff was admitted to the hospital and remained hospitalized through January 19, 2010. On January 29, 2010, Plaintiff developed sudden pain in her abdomen and a repeat CT scan showed worsening fluid around the liver and spleen and pelvis suggestive of a subacute hemorrhage. Fortunately, the bleeding was not active and Plaintiff did not have to undergo splenectomy. However, she was hospitalized for an additional five days until February 2, 2010. Denise Bowen's medical costs are at least \$45,428.57

On June 2, 2010, Ms. Bowen settled her liability claim for the \$25,000 policy limits on a Covenant Not to Execute with the driver of her vehicle, Ms. Gilliam. The Gilliam policy was coincidentally written by State Farm.

Ms. Bowen then made a UIM claim against a State Farm automobile insurance policy owned by her father, Larry Thrasher. It is undisputed that Mr. Thrasher's policy included \$25,000 of UIM coverage. However, State Farm denied that Ms. Bowen was covered by Mr. Thrasher's policy based on a conclusion Ms. Bowen was not a "relative" within the meaning of the policy.

Ms. Bowen and Mr. Thrasher live on the same residential property in Anderson. (Denise Bowen Depo. at 38-39; Exhibit 3). However, the property has two mobile home trailers. Mr. Thrasher lives in one trailer. Ms. Bowen's husband lives in another. The two residences share the same driveway and septic tank, and the doors are within a stone's throw away from one another. (See Exhibits 4-6; Denise Bowen Depo. at 22; 41-42).

Ms. Bowen lives in both trailers. (Denise Bowen Depo. at 31; 33-34; 39; 43; 51). She considers the group of three—her husband Raymond, her father Larry, and herself—to be one

family unit. (Denise Bowen Depo. at 41). Visitors to the homeplace, park in the same driveway. Indeed, all vehicles at the home are principally garaged at the same physical location. (Denise Bowen Depo. at 42).

Mr. Thrasher is a cancer survivor. (Denise Bowen Depo. at 41). On November 28, 2009, Mr. Thrasher underwent surgery at MUSC in Charleston. He returned home on December 10, 2009, about six weeks before the collision. (Denise Bowen Depo. at 52-53). On December 10, 2009, Denise Bowen lived with Larry Thrasher on a daily basis continuously up until April 10, 2010. (Denise Bowen Depo. at 53). Because of his illness and her affection for her father, Ms. Bowen lives in his trailer about half the time. (Denise Bowen Depo. at 31). Their relationship is very intimate. Ms. Bowen baths Mr. Thrasher, and helps him with his catheter. (Denise Bowen Depo. at 40-41) He has a room there, and clothing. (Denise Bowen Depo. at 45-46; Exhibits 7-9) She has open access to enter and leave and to use the trailer whenever she would like to do so. (Denise Bowen Depo. at 46-47; see Affidavit of Ms. Bowen and Larry Thrasher).

II. ANALYSIS

A. Ms. Bowen Is A Resident Under The State Farm Car Policy Issued To Mr. Thrasher.

“Where the words of an insurance policy are capable of two reasonable interpretations, we will adopt the construction most favorable to the insured. Forner v. Butler, 319 S.C. 275, 277, 460 S.E.2d 425, 427 (Ct. App. 1995) (citing Greenville County v. Insurance Reserve Fund, 313 S.C. 546, 443 S.E.2d 552 (1994)). ‘Furthermore, exclusions in an insurance policy are to be construed most strongly against the insurer.’ Forner, 319 S.C. at 277, 460 S.E.2d at 427. ‘Rules of construction require clauses of exclusion to be narrowly interpreted, and clauses of inclusion to be broadly construed.’ Laidlaw Env. Serv. (TOC) v. Aetna Cas. & Sur. Co. of Ill., 338 S.C. 43, 47, 524 S.E.2d 847, 849 (Ct. App. 1999) (quoting McPherson v. Mich. Mut. Ins. Co., 310

S.C. 316, 319, 426 S.E.2d 770, 771 (1993)).” Auto-Owners Ins. Co. v. Rhodes, 385 S.C. 83, 104-05 (Ct. App. 2009).

However, we subject insurance contracts to the same rules of interpretation governing other types of contracts. Unisun Ins. Co. v. Schmidt, 331 S.C. 437, 440, 503 S.E.2d 211, 213 (Ct.App. 1998), cert. granted, (April 22, 1999). ‘The foremost rule in interpreting an insurance contract is to give effect to the intent of the parties as shown by the language of the contract itself. When the contract language is clear and unambiguous, the language alone determines the contract's force, and terms must be construed to give effect to their “plain, ordinary, and popular meaning.’ Dorman v. Allstate Ins. Co., 332 S.C. 176, 178, 504 S.E.2d 127, 129 (Ct. App. 1998). ‘Ambiguity may not be created in an insurance policy by singling out a sentence or a clause . . . [and] courts may not torture the ordinary meaning of language to extend coverage expressly excluded by the terms of a policy.’ Falkosky v. Allstate Ins. Co., 311 S.C. 369, 371, 429 S.E.2d 194, 196 (Ct. App.), modified, 312 S.C. 210, 439 S.E.2d 836 (1993) (internal citations omitted).”

With regard to resident relative status, in Buddin v. Nationwide Mut. Ins. Co., 250 S.C. 332, 157 S.E.2d 633 (1967), the Supreme Court addressed a policy exclusion limiting relative residency. The Court stated as follows:

The courts have uniformly held that where the clause is one of inclusion it should be broadly construed for the benefit of the insured while in exclusion cases the same clause is given a more restricted interpretation. This is necessary because in both situations the courts favor an interpretation in favor of coverage. The touchstone is that the phrase “resident of the same household” has no absolute or precise meaning, and, if doubt exists as to the extent or fact of coverage, the language used in most policies will be understood in its most inclusive sense.

Id. (citations omitted).

The underinsured motorist section of the State Farm policy defines “insured,” in relevant part, as follows:

Insured – means:

1. you, your spouse and relatives;

(Policy at Page 20). The policy defines the term “relative,” in relevant part, as follows:

Relative – means a **person** related to **you** or **your spouse** by blood, marriage or adoption who resides primarily with you. . . .

(Policy at Page 4). It is undisputed that Ms. Bowen is related to Mr. Thrasher by blood.

She is his daughter. The key language limits coverage to a relative, “who resides primarily with you.”

The policy fails to define the term “resides” and therefore it must be interpreted broadly in favor of Ms. Bowen. Here, it is undisputed that both Ms. Bowen and Mr. Thrasher live on the same single family residential property. Their buildings where they sleep are in very close proximity.

The dictionary defines “reside” as follows: “to settle oneself or a thing in a place : be stationed.” See Webster's Third New International Dictionary, Unabridged, Merriam-Webster, 2002, <http://unabridged.merriam-webster.com> (6 Dec. 2010). The particular place where both Mr. Thrasher and Ms. Bowen stay and live is the same. While, it is reasonable from their perspective to say that there are two residences on the property, it is also reasonable from ours to say that Mr. Thrasher and Ms. Bowen live at the same place. The term “reside” here is ambiguous. Therefore, the State Farm policy must be broadly construed to include both dwellings within the broadest, reasonable sense of the word “reside.” Interpreting the insurance policy broadly as required by our court yields coverage for Ms. Bowen under Mr. Thrasher’s policy.

B. South Carolina Public Policy Requires the Policy, if Read to Limit Coverage, cover Ms. Bowen as a “resident relative.”

When considering interpretation of a policy provision in an insurance policy, it is important to remember the purpose of our law. The Supreme Court states that the purpose of the uninsured motorist law is, “to provide benefits and protection against the peril of injury or death by an uninsured motorist to an insured motorist and his family” Nationwide Mut. Ins. v. Smith, 376 S.C. 60 (Ct. App. 2007) (citing Schmidt at 368, 529 S.E.2d at 283 citing Ferguson v. State Farm Mut. Auto Ins. Co., 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973)). Similarly, the purpose of underinsured motorist coverage is to provide protection when people are hurt by a vehicle insured by an under insured driver.

With this in mind, Section 38-77- 30(7) of the South Carolina Code defines “insured” to include both the insured person or persons named in a policy and “while resident of the same household, the spouse of any named insured and relatives of either.” S.C. Code Ann. § 38-77-30 (definitions). The dictionary defines “household” as follows:

- 1 *obsolete* a : the maintaining of a house : HOUSEKEEPING b : household goods and chattels
- 2 : those who dwell under the same roof and compose a family : a domestic establishment; specifically : a social unit comprised of those living together in the same dwelling place

Webster's Third New International Dictionary, Unabridged. Merriam-Webster, 2002.

<http://unabridged.merriam-webster.com> (6 Dec. 2010). The term “household,” as defined by the dictionary, consists of a social unit living together in the same dwelling place. Ms. Bowen does not concede that the place she, her father, and her husband reside are separate “dwellings.” To the contrary, their family unit includes the entire family. However, the term does suggest the

situation in which Mr. Thrasher and Mr. Bowen live under separate roofs. Thus, for purposes of argument, Ms. Bowen asserts that she resides in both "households."

It is well-settled under South Carolina public policy that policy provisions regarding resident relatives must be interpreted broadly to provide coverage to potential insureds. Exclusionary and restrictive interpretations of resident relative policy provisions are disfavored by law in South Carolina.

Our court requires a two-prong analysis of who is a resident of the same household. First, the court must determine the substance where each person resided. Smith v. AutoOwners, 377 S.C. 512, 516, 660 S.E.2d 271 (Ct. App. 2008). In this case, both Mr. Thrasher and Ms. Bowen reside under the same roof, the same household.

Second, the court should consider the quality of the residency. To do so, the court must apply the Waite, three-factor test as follows:

1. liv[es] under the same roof;
2. in a close, intimate, and informal relationship, and
3. where the intended duration of the relationship is likely to be substantial, where it is consistent with the informality of the relationship and from which it is reasonable to conclude that the parties would consider the relationship in contracting about such matters as insurance or in their conduct in reliance thereon.

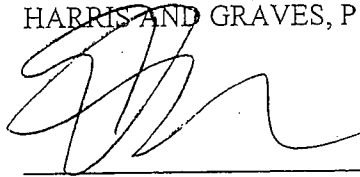
Smith v. AutoOwners, 377 S.C. 512, 517, 660 S.E.2d 271 (Ct. App. 2008)

Here, the testimony establishes that Ms. Bowen resides in both trailers on the property. She spends the nights several times per week with Mr. Thrasher. There, she has her own room, bed, and clothing. Mr. Thrasher and Ms. Bowen state that the arrangement is permanent, due to Mr. Thrasher's illness and health. Mail still arrives at Mr. Thrasher's box, which box is located on the exact same residential property.

CONCLUSION

For the foregoing reasons, this Court must grant Plaintiff's Motion for Summary Judgment and Declare Denise Bowen is insured under Defendant's policy.

HARRIS AND GRAVES, P.A.



EDWIN L. TURNAGE

Attorney for Plaintiff

SC Bar No. 12842

P.O. Box 6263

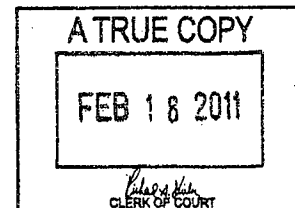
Greenville, SC 29606

(864) 235-1331

elt@harrisgraves.com

Greenville, South Carolina

Dated: 2/16/11



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Denise F. Bowen,

Plaintiff,

vs.

State Farm Mutual Automobile
Insurance Company,

Defendant,

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2010-CP-04-2124

**MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

The defendant, State Farm Mutual Automobile Insurance Company, submits this memorandum in support of its Motion for Summary Judgment, and in opposition to the plaintiff's Motion for Summary Judgment.

BACKGROUND

This declaratory judgment lawsuit arises from an automobile accident near Anderson, South Carolina on January 16, 2010. On that date the plaintiff, Denise F. Bowen, was riding as a passenger in a car driven by Rebecca Gilliam. Just before the accident Ms. Gilliam was stopped at the intersection of Cherry Drive and S.C. Highway 24. She intended to make a left turn onto Highway 24 to travel toward Anderson. She apparently failed to see a vehicle driven by Timothy Michael Arndt, traveling from her left toward her right, and entered the intersection directly in front of the Arndt vehicle, thereby causing the accident.

Following the accident the plaintiff made a claim against Ms. Gilliam. Her automobile liability insurer, Travelers, paid its liability limits to the plaintiff in exchange for a covenant not to execute. Thereafter the plaintiff made a claim against State Farm Mutual Automobile Insurance Company (hereinafter "State Farm") for recovery of underinsured motorist benefits under a policy issued by State Farm to Larry Thrasher, the plaintiff's father. State Farm denied

the plaintiff's claim for UIM benefits and the plaintiff filed this declaratory judgment action to determine whether the policy provides coverage applicable to the accident.

UNDISPUTED FACTS

Prior to May 2007 the plaintiff and her husband, Raymond, resided at 207 Cherry Seed Lane in Anderson, South Carolina. Larry Thrasher resided in Greenville, South Carolina. Mr. Thrasher developed various forms of cancer and became increasingly ill over a period of time. The plaintiff would travel to and from her home in Anderson to take care of his physical needs. Eventually it was decided that Mr. Thrasher should move to Anderson to be closer to the plaintiff. In or about May 2006 the plaintiff and her husband purchased a used double-wide mobile home and placed it on the same parcel of property at 207 Cherry Seed Lane. They spent a year upfitting the home for their use. In approximately May 2007 the plaintiff and her husband moved to the new/upfitted mobile home. At about that same time Mr. Thrasher moved to the plaintiff's old mobile home, which remained on the same parcel of land.

The plaintiff and her husband had to receive a variance from the Anderson County Codes Office to have two dwellings on the same parcel of land. (Bowen depo. at Page 12). It was also required that when the second home was placed on the property that each home be given a separate mailing address. The new home was designated as 209 Cherry Seed Lane and the old home was designated as 207 Cherry Seed Lane. (Bowen depo. at Page 8). While the new home was being upfitted, the plaintiff and her husband continued to receive their mail at 207 Cherry Seed Lane. When the plaintiff and her husband moved to the new home in approximately May 2007, they changed their mailing address to 209 Cherry Seed Lane. (Bowen depo. at Page 12). That has continued to be their mailing address ever since. (Bowen depo at Page 12).

As noted above, the plaintiff had to obtain a variance from the county to place two homes on the same parcel of land. When Mr. Thrasher leaves 207 Cherry Seed Lane, either due to his death or the need to move to some type of healthcare facility, the 207 home will have to be

removed from the property since it is only there by special designation because of Mr. Thrasher's medical needs. (Bowen depo. at Page 34; Thrasher depo. at Page 16). The plaintiff and her husband have no intention of moving back to the 207 address when her father leaves that home, and will remain at 209. (Bowen depo. at Page 35).

In November 2009 Mr. Thrasher underwent surgery at MUSC for throat cancer. After approximately two to three weeks he returned to his home at 207. Between the time Mr. Thrasher moved to 207 in May 2007 and the time he returned after surgery, the plaintiff never spent a night at 207. (Thrasher depo. at Page 26, 27). After his return from MUSC, the plaintiff would spend nights at 207 because of her father's medical condition and his need for her care. Around the time of this accident in January 2010, the plaintiff had some personal items at 207, including a bed and articles of clothing, but most of her belongings remained at 209. (Thrasher depo. at Page 26).

While the central issue in this case is whether Ms. Bowen was a resident relative of her father for the purpose of recovery of UIM benefits under his policy with State Farm, there is a litany of undisputed testimony to assist in answering that question in addition to the undisputed evidence noted above. That includes:

1. It was Ms. Bowen's intention when her father moved to 207 and she moved to 209 for him to have his own home and for her to have her own home. (Bowen depo. at Page 36);
2. The plaintiff gave 207 to her father. (Bowen depo. at Page 10);
3. The plaintiff considers 207 to be her father's home until he dies. (Bowen depo. at Page 13, 14);
4. The plaintiff never stayed overnight at 207 until her father needed medical care. (Bowen depo. at Page 27; Thrasher depo. at Page 26, 27);
5. The plaintiff's husband lives full-time at 209. (Thrasher depo. at Page 21);

6. Mr. Thrasher considers 209 to be the plaintiff's "primary residence". (Thrasher depo. at Page 21);
7. When the plaintiff is not providing care for her father she always goes back to 209. (Thrasher depo. at Page 21);
8. Mr. Thrasher's purpose in moving to 207 was for his daughter to take care of him. (Bowen depo. at Page 29, 30, 52; Thrasher depo. at Page 27, 30, 32);
9. The purpose of the plaintiff staying at 207 was not to live or reside there, but to help Mr. Thrasher. (Thrasher depo. at Page 27);
10. It was always the plaintiff's intention to return to 209. (Thrasher depo. at Page 28);
11. The plaintiff receives her mail at 209 and has always received her mail there since she moved. (Bowen depo. at Page 12; Thrasher depo. at Page 18);
12. Mr. Thrasher had his own car and paid his own insurance on the day of the accident. (Thrasher depo. at Page 33; Bowen depo. at Page 16, 17);
13. The plaintiff had her own car on the day of the accident and paid her own insurance. (Thrasher depo. at Page 34; Bowen depo. at Page 15-18);
14. Mr. Thrasher's car is still registered in his name and the plaintiff only drives it because her car broke down in mid-2011. (Thrasher depo. at Page 15; Bowen depo. at Page 15);
15. The plaintiff was not counting on her father to purchase car insurance for her. (Bowen depo. at Page 17);
16. Mr. Thrasher and the plaintiff use separate insurance companies to insure their cars. (Bowen depo. at Page 16);
17. Mr. Thrasher pays for his food. (Thrasher depo. at Page 19);
18. The plaintiff reimbursed Mr. Thrasher when he bought groceries for her. (Bowen depo. at Page 26);

19. Mr. Thrasher paid his portion of the water bill (one bill was issued by the county and each party paid every-other-month). (Bowen depo. at Page 21; Thrasher depo. at Page 22);

20. Mr. Thrasher paid for his landline telephone until it was removed after the accident. (Bowen depo. at Page 25);

21. Mr. Thrasher pays his cell phone bill. (Thrasher depo. at Page 20; Bowen depo. at Page 24);

22. The plaintiff pays her cell phone bill. (Bowen depo. at Page 25);

23. Mr. Thrasher pays his electric bill and the plaintiff pays hers. (Bowen depo. at Page 23);

24. Mr. Thrasher pays taxes on 207. (Thrasher depo. at Page 27; Bowen depo. at Page 19);

25. The plaintiff pays taxes on 209. (Bowen depo. at Page 19);

26. Mr. Thrasher pays all the expenses of his home. (Thrasher depo. at Page 19, 27);
and

27. There is no insurance coverage on either mobile home. (Bowen depo. at Page 36).

APPLICABLE POLICY LANGUAGE

UNDERINSURED MOTOR VEHICLE-COVERAGE W

You have this coverage if "W" appears in the "Coverages" space on the declarations page.

We will pay damages for *bodily injury* or *property damage* an
insured:

1. is legally entitled to collect from the owner or driver of an *underinsured motor vehicle*; or
2. would have been legally entitled to collect except for the existence of any damages cap or limitation imposed by statute.

The *bodily injury* or *property damage* must be caused by accident arising out of the operation or ownership of the *underinsured motor vehicle*. The *bodily injury* must be sustained by an *insured*.

(Policy at Page 19)

...

Who Is an Insured

Insured – means:

1. *you, your spouse* and relatives;

(Policy at Page 20)

DEFINED WORDS WHICH ARE USED IN SEVERAL PARTS OF THE POLICY

Relative – means a *person* related to *you* or *your spouse* by blood, marriage or adoption who resides primarily with *you*. It includes *your* unmarried and unemancipated child away at school.

...

You or *Your* – means the named insured or named insured shown on the declarations page.

(Policy at Page 4)

LAW

In State Farm Fire and Cas. Co. v. Breazell, 324 S.C. 228, 478, S.E.2d 831 (1996), the South Carolina Supreme Court adopted the test applied in A.G. by Waite v. Travelers Ins. Co., 112 Wis. 2d 18, 331 N.W.2d 643 (App. 1983) to determine whether a person is a resident of the household of another. In Waite, the determination was based upon three factors: 1) living under the same roof; 2) in a close, intimate and informal relationship; and 3) where the intended duration of the relationship is likely to be substantial, where it is consistent with the informality of the relationship, and from which it is reasonable to conclude that the parties would consider the relationship in contracting about such matters as insurance or in their own conduct in reliance thereon. Breazell at 231, 478 S.E.2d at 832. In subsequent cases, it has been held that there is no bright line test for determining

when a person is a resident relative of another, and that each case is to be decided upon its own facts. Cook v. State Farm Auto. Ins. Co., 376 S.C. 426, 656 S.E.2d 784 (Ct. App. 2008) (citing Auto-Owners Ins. Co. v. Horne, 356 S.C. 52, 61, 586 S.E.2d 865, 870 (Ct. App. 2003)).

Cook is perhaps the most analogous case to this case in South Carolina to determine whether a person is a resident relative of another for insurance purposes. In that case a granddaughter was injured in a one-vehicle collision. The driver of the vehicle tendered her liability limits to the granddaughter and thereafter the grandfather and mother brought a declaratory judgment action seeking UIM coverage under the grandfather's policy of automobile insurance. The trial court entered judgment in favor of the insurer, holding the granddaughter was not a resident relative of the grandfather, and the South Carolina Court of Appeals affirmed that ruling.

Discovery in Cook revealed the following:

1. Mother owned a mobile home with her husband that was located on grandfather's property;
2. Grandfather owned the house on the property;
3. The structures had separate property tax assessments, electrical services, phone services, septic tanks and insurance policies;
4. The two structures were physically separate;
5. Bills and expenses for the two structures were paid separately;
6. Father/husband stayed in the mobile home exclusively;
7. Grandfather helped with bills of mother and father only when they could not afford to pay their own bills;
8. The majority of the family possessions of mother and father were kept in their mobile home; and
9. Granddaughter had toys and clothes at grandfather's house, would stay there while mother was away but would return home when mother returned home.

Under those circumstances, many of which are identical to the plaintiff in this case and just as compelling, the trial court held that the granddaughter was not a resident relative of her grandfather for insurance coverage purposes.

In Smith v. Auto-Owners Ins. Co., 377 S.C. 512, 660 S.E.2d 271 (Ct. App. 2008), mother and father lived at a home in Laurens. Father maintained a separate residence in Spartanburg while he worked part-time there during the week, maintaining clothes, toiletries and other items for his personal use in that home. Tracy Smith, their son, lived in the Spartanburg County home. Following his death in a car accident his estate sought recovery of underinsured motorist benefits under mother and father's automobile policy. While noting that Tracy and his father did indeed live together for part of the week, the court held they were not resident relatives of each other for the purpose of insurance coverage. In reviewing the Waite factors, the court held that while the first two factors were met, the third was not. It stated:

No evidence in the record indicates Ernest and Tracy intended their living arrangement to be substantially long or durable or that they treated their living arrangement as anything but a matter of temporary convenience. Ernest and Tracy did not insure their automobiles together or share the responsibilities of taxes or household bills. Ernest did not insure the Spartanburg County home at all. Although Ernest may have spent up to four nights per week in the Spartanburg County home, it appears he stayed there merely as a matter of convenience and in lieu of renting a hotel room.

(Id. at 518, 660 S.E.2d at 274) (emphasis added) Therefore, the mere fact that parties stay/sleep under the same roof, even for substantial periods of time, does not establish residency for the purpose of insurance coverage, particularly when they do so merely as a convenience.

APPLICATION OF LAW TO FACTS

In this case, it is apparent from a review of the evidence that the plaintiff spent nights in Mr. Thrasher's home solely for the purpose of assisting with his healthcare. In short, she stayed there merely as a convenience, albeit an important one for Mr. Thrasher's purposes, rather than staying in her separate residence. The evidence established through discovery reveals that the plaintiff never

intended to establish residency at 207 after she moved out of that home in May 2007. Her purpose in spending the night there was to provide care for her father during his most acute period of recovery from surgery, not to establish residency for insurance or any other purpose. Indeed, even during that time Mr. Thrasher maintained the residence as his home while the plaintiff and her husband maintained 209 as their residence. Absolutely no steps were taken by the plaintiff to establish residency any place other than 209. It is apparent that spending the night there and even keeping some small number of personal effects there was purely for convenience and without any intention of becoming a resident of 207. In fact, it was not until this accident that the thought ever occurred to the plaintiff to make a claim that she was a resident of 207. Therefore, she was not a resident of 207, but was a resident of 209 and only 209 on the day of her accident.

CONCLUSION

For all the foregoing reasons, State Farm requests that the Court grant its Motion for Summary Judgment, and deny the plaintiff's Motion for Summary Judgment. The plaintiff was not a resident of 207 for the purpose of attempting to recover underinsured motorist benefits under her father's policy.

Gallivan, White & Boyd, P.A.



T. David Rheney, Esq. (S.C. Bar No. 13148)

Eric R. Tonnsen, Esq. (S.C. Bar No. 74800)

Post Office Box 10589

Greenville, SC 29603

864-271-9580 (phone)

864-271-7502 (fax)

drheney@gwblawfirm.com

etonnsen@gwblawfirm.com

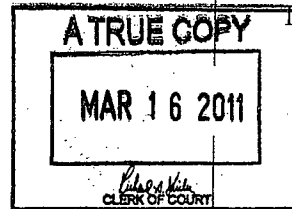
Attorneys for State Farm Mutual Automobile
Insurance Company

March 8, 2011

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

DENISE F. BOWEN,



Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-04-2124

**PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

On March 10, 2011, the Court conducted a hearing on the parties' cross motions for summary judgment. At the hearing, the trial judge developed the issue of whether the statutory definition of the term "insured" limits a person to a single primary residence. Stated alternatively, the issue is whether a person may simultaneously be resident of more than one household.

The South Carolina automobile insurance statute defines "insured" to include both the insured person or persons named in a policy and "while resident of the same household, the spouse of any named insured and relatives of either." S.C. Code Ann. § 38-77-30 (definitions). The Smith v. AutoOwners, 377 S.C. 512, 516, 660 S.E.2d 271 (Ct. App. 2008), case, which was briefed and discussed at the hearing, suggested the Supreme Court had yet to definitely address the issue. "Although the courts have contemplated the meaning of 'resident relative' on numerous occasions, the issue of whether an insured may reside in multiple households simultaneously is one of first impression." Id. at 516 (footnote omitted). The Smith court found a father stayed at the son's home only as a mere "convenience," and did not reach the multiple residence issue.

Despite the Smith Court's declaration the multiple residence issue is one of first impression, there is a published South Carolina appellate court decision that endorses and affirms the principle that an insured may be a resident relative of multiple households. In Auto Owners Ins. Co. v. Horne, 356 S.C. 52, 586 S.E.2d 865 (Ct. App. 2003), the South Carolina Court of Appeals thoroughly reviewed the multiple residence issue in other jurisdictions. Afterward, the Horne Court provided trial courts guidance on how to address the multiple residence issue:

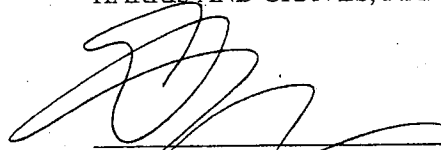
The analysis in cases of this type is generally fact specific and no bright line test exists for determining under what instances a child is a resident relative of a noncustodial parent.

Id. at 61. Horne clearly acknowledged that in South Carolina a person may be a resident relative of multiple residences for purposes of automobile insurance. "[I]mplicit in this decision is the recognition that a child of divorced parents may be a resident of two households." Id. at 69, n.8. In footnote 8, the Horne Court quoted Cook v. Fed. Ins. Co., 263 S.C. 575, 582, 211 S.E.2d 881, 884 (1975), "A person may have only one domicile, but may have several residences."

Like the South Carolina Court of Appeals, other jurisdictions that have addressed the issue, have determined that, "it is generally recognized that a person may be a resident of more than one household for insurance purposes." Davis v. Maryland Casualty Co., 76 N.C. App. 102, 106, 331 S.E.2d 744, 746 (Ct. App. 1985) (citing Travelers Insurance Co. v. Mixon, 118 Ga. App. 31, 162 S.E. 2d 830 (1968)); see also Sutherland v. Glens Falls Ins. Co., 493 So. 2d 87 (Fla. Dist. Ct. App. 1986) ("it is possible to have a residence -- as opposed to domicile -- in more than one place at the same time.")

In view of the Legislature's statutory definition of "insured," together with the remedial purpose of underinsured motorist coverage and the well-settled guidance that insurance provisions of exclusion must be narrowly construed, it is apparent that under this unique case Denise Bowen was a resident relative of more than one household.¹ The Court must grant her motion for summary judgment.

HARRIS AND GRAVES, P.A.



EDWIN L. TURNAGE
Attorney for Plaintiff
SC Bar No. 12842
Post Office Box 6263
Greenville, SC 29606
(864) 235-1331
elt@harrisgraves.com

Greenville, South Carolina

Dated: 3/15/11

¹ Plaintiff continues to argue that under the circumstances, the State Farm policy term "residence" included both trailers and the entire Bowen family unit of Larry Thrasher, Denise Bowen, and Raymond Bowen.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

C.A. NO.: 2010-CP-04-2124

Denise F. Bowen,)

Plaintiff,)

vs.)

State Farm Mutual Automobile
Insurance Company,)

Defendant,)

**DEFENDANT'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

BACKGROUND

The defendant, State Farm Mutual Automobile Insurance Company, submits this supplemental memorandum in support of its Motion for Summary Judgment, and in opposition to the plaintiff's Supplemental memorandum in support of her Motion for Summary Judgment.

This matter is before the court on cross motions for summary judgment. During a hearing on March 10, 2011 Judge Macaulay raised the issue of applicable South Carolina case law on whether a person can be a resident of multiple households. He invited counsel to research the issue if they wished and submit supplemental briefs prior to March 28, 2011.

LAW

There is no case in South Carolina which has adopted a rule that any person can be a resident of multiple households. And no South Carolina court has ever held that an adult can be a resident of multiple households, much less in a factual scenario such as that presented in this case. Therefore, to the extent that the Court may consider whether the plaintiff can be a resident of more than one household, the answer to that question is clear. She cannot.

In her supplemental brief the plaintiff cites Auto Owners Ins. Co. v. Horne, 356 S.C. 52, 586 S.E.2d 865 (Ct. App. 2003) for the proposition that South Carolina appellate courts have endorsed and affirmed "the principal that an insured may be a resident relative of multiple

households.” (Pl. Supp. Brief at Page 2). However, Horne simply does not stand for such a broad proposition. In that case the court was presented with only the question of whether “a minor unemancipated child can be a resident of two households.” Id. at 69 n.8, 586 S.E.2d at 875). The court held that it did not need to reach that issue because the facts of the case had established that the minor child was not even a resident of her non-custodial father’s home on the day of her accident, and therefore that she did not qualify for UIM coverage under her father’s policy.

Importantly, the issue of whether a person may be a resident of two households seems to have only been addressed in cases, or at least in the vast majority of cases, involving a minor child in a divorced or separated parent scenario. Every single case cited in Horne, whether supporting or opposing the proposition of dual residency, with one exception, involved a minor child claiming to be a resident of multiple households due to the divorce or separation of his or her parents. The only case cited in Horne that even involved a child over the age of eighteen (18) was Elder v. Metro. Prop. & Cas. Co., 851 S.W.2d 557 (Mo. Ct. App. 1993), in which the twenty year old son of the insured claimed that he was an unemancipated minor and should be permitted to seek recovery under his non-custodial father’s policy. The court held that the evidence established that the son was not truly unemancipated and had not even stayed with his father in the two and one-half years preceding the accident, and simply held he was not a resident of his father’s household. All of the other cases reviewed in Horne involved minor children in a divorced or separated parental situation.

There is no case with facts remotely similar to those presented here in which a court has held an adult to be a resident of multiple households. Those facts are stated in detail in State Farm’s Memorandum in Support of Summary Judgment. The plaintiff was 49 years old on the day of the accident and was not only emancipated, but was married and had virtually all of her belongings in her own home, which was located just a short distance from her father’s home.

While she may have spent nights in her father's home around the time of the accident, the clear intent of that was to provide medical care for him during the acute phase of his recovery after surgery at MUSC in late November 2009. The homes were run completely separate and apart from a financial standpoint, with the plaintiff paying the expenses of running her home and her father paying the expenses of running his home from the day he moved there until the present day. Under these facts the plaintiff would not qualify as a resident of her father's home even if South Carolina recognized the principle of law that a person can be a resident of multiple households.

These same facts also establish the lack of merit of the plaintiff's primary argument that the "residence" includes both the trailer owned by Mr. Thrasher and the trailer owned by the plaintiff and her husband. The plaintiff claims that the entire property should be viewed as one big family unit, but the facts belie that argument. If that was the intention of the parties, then there would have been no reason to run the homes as two completely separate and distinct households. Specifically, from the day Mr. Thrasher moved into his home until the present day he paid for the upkeep of his home, including electrical service, water (there was one bill that was paid in alternate months by the parties), phone, cell phone, car insurance, taxes and every other significant financial aspect necessary to run a home. It is obvious he and the plaintiff had no intention of treating the separate homes as one residence, even up to this very day, except for the need to argue such to try to obtain the insurance coverage sought in this lawsuit.

The only way the plaintiff can qualify for UIM benefits under her father's policy is if she actually resided with him on the day of the accident. The facts as noted above and in State Farm's Memorandum in Support of Summary Judgment establish that she was not. In addition, to reach such a conclusion, the Court would also have to conclude that she was not a resident of her own household. Such a finding is illogical. All of the indicia of residency, including her mail, the vast majority of her personal effects, her husband, the financial upkeep and

representations to local, state, and federal governments for taxes purposes, point to 209 Cherry Seed Lane as her residence versus few if any factors of significance that would point to her being a resident of her father's household. It would be illogical, when required to pick between which of the two households the plaintiff resided in to conclude that the plaintiff resided anywhere other than 209 Cherry Seed Lane based upon these facts.

CONCLUSION

For all the foregoing reasons, State Farm requests that the Court deny the plaintiff's Motion for Summary Judgment and grant its Motion for Summary Judgment. The plaintiff was not a resident relative of her father's household on the day of the loss, and has never been a resident of his household since he moved to the property. Neither the facts nor the law support the plaintiff's claim and State Farm is entitled to summary judgment as a matter of law.

Gallivan, White & Boyd, P.A.


T. David Rheney, Esq. (S.C. Bar No. 13148)
Eric R. Tonnsen, Esq. (S.C. Bar No. 74800)
Post Office Box 10589
Greenville, SC 29603
864-271-9580 (phone)
864-271-7502 (fax)
drheney@gwblawfirm.com
etonnsen@gwblawfirm.com
Attorneys for State Farm Mutual Automobile
Insurance Company

March 24, 2011

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

FILED-CLERK'S OFFICE IN THE COURT OF COMMON PLEAS
ANDERSON SC

2010 NOV 22 A 11: 59

DENISE F. BOWEN,

Plaintiff
COMMON PLEAS AND Civil Action No. 2010-CP-04-2124
GENERAL SESSIONS

vs.

AFFIDAVIT OF DENISE F. BOWEN

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

I, DENISE F. BOWEN, PERSONALLY APPEARED before the NOTARY PUBLIC
below, and I state, swear, and attest as follows:

1. I am DENISE F. BOWEN. I am over the age of 18 and a resident of Anderson County, South Carolina. I am a citizen of South Carolina. The following facts are true and correct to the best of my knowledge and recollection:
2. On or about January 16, 2010, I was a passenger in a Ford Truck stopped on Cherry Road at the intersection of S.C. Highway 24 near Anderson. At that time and place, Rebecca Gilliam (hereinafter "Gilliam"), who was driving the Ford Truck, failed to verify she could clear highway traffic and she drove her vehicle onto Highway 24 attempting to execute a left turn. Rebecca Gilliam was cited for failure to yield to traffic on the highway.
3. In the collision, I sustained abrasions and contusions to her left forearm, elbow and right knee. I also suffered cervical spine and back strains with muscle spasms in the neck, and had had moderate pain in my abdomen. A CT Scan of my abdomen revealed a splenic laceration with free intra-abdominal and pelvic fluid, undoubtedly blood from the spleen. I was admitted to the hospital and remained hospitalized through January 19, 2010. On

January 29, 2010, I developed sudden pain in my abdomen and a repeat CT scan showed worsening fluid around the liver and spleen and pelvis suggestive of a subacute hemorrhage. Fortunately, the bleeding was not active and I did not have to undergo splenectomy. However, I was hospitalized for an additional five days until February 2, 2010. I incurred medical costs of approximately \$45,139.07.

4. Rebecca Gilliam was driving a vehicle insured by State Farm Insurance Company policy 0135-939-40D. The liability limits of the policy with regard to the liability claim was \$25,000.
5. On or about May 10, 2010, I settled my liability claim against Gilliam with State Farm and Gilliam in exchange for a Covenant Not to Execute against Gilliam's personal assets.
6. Meanwhile, I asserted an underinsured motorist (UIM) claim against my father Larry Thrasher's State Farm Insurance Company policy number 40-8552-371. I alleged I was a resident relative with Larry Thrasher (hereinafter "Thrasher") and was therefore covered under his policy. Pursuant to that UIM claim, State Farm adjusters and investigators took recorded statements of both me and my father. I was present for the recorded statement of my father. Both statements are attached under Exhibits A and B to this Affidavit. My statement (Exhibit B) is true and correct as amended. I believe the statement transcript of Larry Thrasher attached under Exhibit A accurately records what was said in my presence.
7. Exhibit C has pictures of my property, including both of the trailers where I reside.
8. Exhibit D has pictures of the room in my father's trailer where I sleep when I stay with him.
9. Exhibit E contains documents from Anderson County granting permission to have both trailers located on my real estate property, where I live.

10. Exhibit F contains documents from the utilities that service our property in Anderson County, and the real estate documents related to it.

11. FURTHER AFFIANT SAYETH NOT.

Dated: 11-5-10

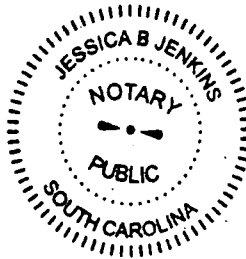
Denise Bowen
DENISE BOWEN

Signature:

SWORN to before me this

11-5-10
day of

2010
Notary Public for South Carolina
My Commission Expires:
10-27-2016



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

DENISE F. BOWEN,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-04-2124

AFFIDAVIT OF LARRY THRASHER

I, LARRY THRASHER, PERSONALLY APPEARED before the NOTARY PUBLIC
below, and I state, swear, and attest as follows:

1. I am Larry Thrasher. I am over the age of 18 and a resident of Anderson County, South Carolina. I am a citizen of South Carolina. The following facts are true and correct to the best of my knowledge and recollection:
2. The recorded statement transcript attached as Exhibit A is a true and correct rendition of my statement on the date it was taken. I have carefully reviewed the statement and believe it is true and correct in all respects except as where indicated.
3. FURTHER AFFIANT SAYETH NOT.

Dated: 11-5-10

Larry T Thrasher
LARRY THRASHER

Signature:

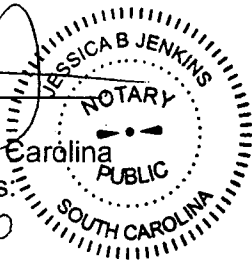
SWORN to before me this

11-5-2010
day of.

2010

Notary Public for South Carolina
My Commission Expires:

6-27-2016



FILED-CLERK'S OFFICE
ANDERSON SC
2010 NOV 22 A 11:59
COMMON PLEAS AND
GENERAL SESSIONS

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS

2 COUNTY OF ANDERSON)

3
4 DENISE F. BOWEN,)

5 Plaintiff,)

6 vs.)

NO. 10-CP-04-2124

STATE FARM MUTUAL AUTO)

INSURANCE COMPANY,)

7 Defendant.)

8 COPY

9
10
11
12 Deposition of

13 DENISE F. BOWEN

14
15
16 Pursuant to Notice of Deposition and/or agreement in
17 the above-entitled case, a deposition was taken on the
18 6th day of January, 2011, commencing at approximately
19 2:30 p.m., attended as follows:
20
21
22
23
24
25

1 Pursuant to Notice and/or agreement to take
2 depositions, the within deposition was taken by Susan L.
3 McCracken, RMR, a Notary Public, as required under South
4 Carolina Court Rule 30, et al, by consent of all parties,
5 at the law office Gallivan, White & Boyd, 55 Beattie
6 Place, Greenville, South Carolina.

7 **WAIVER**

8 It is agreed by Counsel for all parties that the
9 reading over of and signing of the deposition by the
10 witness are waived.

11 **

**

**

**

12 The deponent was duly sworn to tell the truth, the
13 whole truth and nothing but the truth of her own
14 knowledge concerning the matter herein:

15 **DENISE BOWEN**

16 having been first duly sworn, was examined
17 and testified as follows:

18 **EXAMINATION**

19 **BY MR. RHENEY:**

20 Q Miss Bowen, my name is David Rheney. We met
21 before at your -- I guess your dad's home. You were able
22 to sit through your dad's deposition, so you know
23 generally I will be asking questions and Edwin may ask
24 you some and I may throw in another couple, but most of
25 the questions I expect will get asked by me. I am not

1 "Witness nods affirmatively" or something like that.

2 Okay?

3 A Yes, sir.

4 Q If you need to take a break for any reason, you
5 let me know. We will be happy to stop as long as you
6 like. The only thing I would ask, if we take a break in
7 the deposition, don't speak to anybody about the
8 deposition, Edwin, me or anybody else. Now that you are
9 sworn in, you are sort of on your own until the
10 deposition is over, so you can talk about anything else
11 you want, but not about the deposition itself, and,
12 again, I don't think we are going to be very long. You
13 let me know. I will depend on you to tell me if you need
14 to take a break. Okay?

15 A Yes, sir.

16 Q Let me get a little bit of background
17 information from you first. Let me make sure I am
18 getting the addresses correct again. We all know this is
19 two different mobile homes on one piece of property in
20 Anderson County, right?

21 A Yes, sir.

22 Q One of the addresses is 207 -- I am sorry.
23 What is the street address again?

24 A Cherry Seed Road.

25 Q And the other is 209. Just so I am clear, your

1 dad lives at which one? 207?

2 A 207.

3 Q And you are married, right?

4 A Uh-huh. [yes].

5 Q And you and your dad live at 209; is that
6 correct?

7 A Yes.

8 Q Okay. I just want to sort of set the
9 background there to make sure I am clear. What is your
10 husband's name?

11 A Raymond.

12 Q Now, I am going to, I guess, to sort of move
13 things along so you can get on home repeat some of the
14 things I think that we all agree about. I just want to
15 make sure that you agree with those because you have
16 given a statement before, but you haven't given sworn
17 testimony before in this case. My understanding from
18 having taken your dad's deposition is that at one time,
19 you and Raymond lived in the house designated as 207
20 Cherry Seed Lane, right?

21 A Yes, sir.

22 Q Your dad took sick some years ago?

23 A Yes, sir.

24 Q And you were having to run back and forth to
25 Greenville County, I believe, to help deal with some of

1 his medical issues?

2 A Yes, sir.

3 Q Eventually, you were either going to have to
4 move here or y'all were going to have to get him over
5 there to give him better care, right?

6 A Yes, sir.

7 Q So the decision was made -- and, again, I want
8 you to tell me if I am not getting this right. The
9 decision was made that he would move over there to 207 --

10 A Yes, sir.

11 Q -- Cherry Seed Lane, which was where you and
12 your husband lived at the time?

13 A Yes, sir.

14 Q And y'all would buy a new unit or new mobile
15 home and put it on the same lot, and that would be
16 identified as 209 Cherry Seed Lane; is that right?

17 A Yes, sir.

18 Q Is that, in fact, what y'all did?

19 A Yes.

20 Q Do you remember when in time that was? I
21 remember talking to him about three years here and two
22 years there.

23 A That was four years ago.

24 Q So we are now in 2011, so 2006, seven?

25 A 2007.

1 Q Do you remember the month?

2 A It was around May. It was May.

3 Q Now, my understanding is that at that time, he
4 was able to get around okay by himself, even though he
5 was obviously sick.

6 A Yes.

7 Q He would be able to get in his car and drive
8 and go to the grocery store and to whatever?

9 A Yes, sir.

10 Q When he moved into 207 Cherry Seed, did y'all
11 simultaneously move into the mobile home that was then at
12 209?

13 A No. Before that happened, we bought an old
14 mobile home that had to be completely redone. It took us
15 a year to do it. Then when that was completed and we
16 moved into that mobile home, we moved my father there.

17 Q Okay. Is that mobile home still there, or has
18 that been removed from the lot?

19 A What?

20 Q You said you bought an old mobile home and you
21 redid it.

22 A We bought the double wide.

23 Q The 209?

24 A 209. We had to completely redo it.

25 Q Okay. So while that was being redone, were you

1 still residing in 207?

2 A Yes, sir.

3 Q Was your dad there already?

4 A [Witness shakes head].

5 Q Okay. So in anticipation of your dad moving
6 over to your lot, y'all bought an older mobile home, put
7 it on the lot, and that became 209?

8 A Yes, sir.

9 Q And then y'all spent a year redoing that?

10 A Yes, sir.

11 Q My understanding is as well that you had to get
12 a variance from Anderson County to allow there to be two
13 mobile homes on one lot; is that right?

14 A Yes, sir.

15 Q There was, I guess, restrictions?

16 A Medical necessity.

17 Q The codes in Anderson say only one house per
18 lot, I guess, or at least where you live?

19 A Exactly.

20 Q Did y'all ever consider dividing the lot so it
21 was two different lots, legally speaking, so you could
22 have one on one and one on the other?

23 A No. We gave that mobile home to my dad. We
24 wanted him there.

25 Q Yes, ma'am. I just didn't know if y'all had

1 ever given any consideration, instead of having you go to
2 Anderson County and saying "We want two mobile homes on
3 one lot," just partition the property so it is two lots
4 with one on each lot.

5 A No; because it was only zero point nine acres,
6 and that is just not enough property to divide into. We
7 never considered that.

8 Q Okay. Is that because of some legal
9 restriction or that would just make each lot too small?

10 A Too small and my husband didn't -- we didn't
11 want to do that.

12 Q Did you y'all actually think about that and say
13 "No, we are not going to do that"?

14 A No. We never considered it.

15 Q Did you say your dad actually moved into 207 in
16 May of 2007?

17 A Yes, sir.

18 Q So the upfitting of the other, the 209 mobile
19 home, would have started sometime in May, 2006?

20 A Right.

21 Q When in time did y'all get the designation for
22 the 209 home? And by that, I mean, you got two mailboxes
23 out front, one that says 207 and another one that says
24 209. Did y'all move the mobile home there and
25 immediately that became 209, or did you have to go

1 through some process?

2 A We had to go to the codes office at the Belk
3 Building in Anderson and get permission to have two
4 dwellings on the same place and to have two different
5 mailboxes.

6 Q Okay.

7 A Those were the restrictions.

8 Q So as soon as it got there, y'all had to have
9 that second mailbox put in?

10 A Before we even moved it on there, yes, sir.

11 Q When you were living in 207 for that several
12 months to a year while 209 was being upfitted, did you
13 change your address to 209, or did you continue to
14 receive mail at 207?

15 A We continued to receive mail at 207.

16 Q When you moved into 209 after it had been
17 upfitted and your dad moved into 207, did you change your
18 mailing address to 209?

19 A Uh-huh [yes], right then.

20 Q And has that continued to be your mailing
21 address ever since then?

22 A Yes.

23 Q So that change would have been made in roughly
24 May of 2007 when your dad moved into 207?

25 A Yes, sir.

1 Q Okay. Do you have any signed -- this may sound
2 like a lawyer question, but did you and your dad ever
3 sign an agreement as to his living there and what he
4 would pay for and what he wouldn't, or did y'all just
5 have a verbal understanding as to that?

6 A A verbal.

7 Q When he moved there, what was your
8 understanding with him as to what he would pay for and
9 what you would?

10 A We gave my dad the trailer until he dies. That
11 is his. We didn't charge him. We pay his property
12 taxes. We share the water bills, one septic tank. He
13 pays it one month. We pay it one month. The only thing
14 he pays is his lot bill separate.

15 Q We will get to that a little bit more in just a
16 second. You, of course, sat in on your dad's deposition,
17 right?

18 A Uh-huh [yes].

19 MR. TURNAGE: You have to answer "yes" or
20 "no" for the record.

21 Q [Mr. Rheney] We know what you mean.

22 A Okay. I am sorry.

23 Q You sat in on your dad's deposition?

24 A Yes, I did.

25 Q All right. So 207, you said you gave him the

1 keys and it is his until he dies?

2 A Yes.

3 Q But has the ownership, the legal ownership of
4 it ever changed? By that, I mean, for my house, my wife
5 and I are listed as the owners with the county. Are you
6 and your husband still listed as the owners of 207, or is
7 your dad listed as the owner?

8 A We are.

9 Q So you get the tax bill?

10 A Yes.

11 Q All right. Now, tell me, you said that
12 starting in May of 2007 when your dad moved in, you
13 changed your mailing address to 209, right?

14 A Yes, sir.

15 Q And have continued to receive mail there ever
16 since?

17 A Yes, sir.

18 Q Did your dad's address become the 207?

19 A Yes, sir.

20 Q Does your dad get mail at 207?

21 A Yes, sir.

22 Q Did that begin in May of 2007?

23 A Yes, sir.

24 Q Okay. Do you have a car now?

25 A No, I do not.

1 Q Do you and your husband share a car, or do you
2 use your dad's or what?

3 A I use -- my husband, he drives a big truck, so
4 he uses his. Most of the time, I use my father's because
5 my father doesn't drive anymore.

6 Q Your dad has -- is the car that you drove to
7 Edwin's office today, is that your dad's?

8 A Yes.

9 Q Is it registered in his name?

10 A Yes, it is.

11 Q And you use that only because or you use that
12 because he just doesn't drive anymore?

13 A And plus I take him to the doctor in
14 Greenville, his doctor visits, his medicine, anything he
15 needs.

16 Q Sure. So any errands you run for him, you use
17 his car?

18 A Right.

19 Q Did you have a car at some point in the past?

20 A Yes, I did. The motor blew.

21 Q When was that?

22 A It was just six months ago.

23 Q What kind of car was that?

24 A It was a Saturn, 1994.

25 Q '94 Saturn?

1 A Uh-huh [yes]. And we are looking for me
2 another one.

3 Q What happened to your '94 Saturn?

4 A The motor blew.

5 Q And that was about six months ago?

6 A Yes.

7 Q Did you keep your own insurance or you and your
8 husband keep your own insurance on the Saturn?

9 A Yes.

10 Q Who was that with?

11 A Palmetto.

12 Q That is your agent, right, the person you go to
13 to write your check for your coverage?

14 A Uh-huh [yes].

15 Q What insurance company?

16 A Travelers.

17 Q Is your husband's insurance coverage through
18 the same insurance company, Travelers?

19 A Yes, sir.

20 Q And your dad's was with State Farm, right?

21 A Yes, sir.

22 Q Is your dad's car still insured with State
23 Farm?

24 A Yes, sir.

25 Q You weren't in any way, as I understand it,

1 depending on your dad to purchase any insurance for your
2 benefit, were you?

3 A I don't understand that question.

4 Q Well, on your car, you bought your own
5 insurance, right?

6 A Yes, sir.

7 Q On his car, he bought his own insurance through
8 State Farm?

9 A Yes.

10 Q Did he pay the bills on his own insurance?

11 A Yes.

12 Q You weren't counting on him to get insurance
13 for you, were you?

14 A But he said that I was covered under his policy
15 to drive.

16 Q Okay. Regardless of what he said --

17 A Yeah.

18 Q -- about that, you weren't counting on him to
19 get insurance coverage for you, were you?

20 A No, not for my car, no.

21 Q What car were you driving at the time of this
22 accident?

23 A I was driving my father's and my car.

24 Q Excuse me?

25 A My father's truck and my car. I wasn't driving

1 when I had my accident.

2 Q I am sorry. Were you a passenger?

3 A Yes, I was a passenger.

4 Q And you were in whose car?

5 A Rebecca Gilliam.

6 Q When you would drive back around this time,
7 back around the time of this accident in January, your
8 car was in service, right, your Saturn?

9 A Yes.

10 Q Was that the Saturn that you had?

11 A Yes.

12 Q And then you had your dad's car?

13 A Yes, sir.

14 Q And you would use them both?

15 A Yes.

16 Q When would you use one versus the other? Was
17 there any rhyme or reason to that?

18 A No.

19 Q By that, I mean, if you are running an errand
20 for your dad, would you use his car, and if you are
21 returning an errand for yourself, would you use your
22 car?

23 A I used both of them.

24 Q Okay. Now, there is one tax assessment for
25 this piece of property, right, or is there two?

- 1 A You mean for each trailer?
- 2 Q Yes, ma'am.
- 3 A There is two.
- 4 Q One for 207 and one for 209?
- 5 A Yes, sir.
- 6 Q That's because you have gone through the county
7 to get that variance?
- 8 A That's right.
- 9 Q Who pays the taxes on 209?
- 10 A Me and my husband.
- 11 Q And what about 207?
- 12 A Me and my husband.
- 13 Q Does your dad -- since he moved there, has your
14 dad paid taxes on --
- 15 A Yes, he has paid taxes on --
- 16 Q Let me make sure I get my places right. He is
17 at 207?
- 18 A Yes, sir.
- 19 Q Has he ever paid taxes on 209?
- 20 A No.
- 21 Q Has he paid the taxes on 207?
- 22 A Yes.
- 23 Q And do y'all pay it and he reimburses you?
- 24 A Yes. That's the way it works.
- 25 Q So in effect, he is paying the taxes on it?

1 A Yes.

2 Q And has that always been the case since he
3 moved in there?

4 A Okay. One year he didn't because that was when
5 he had his surgery in 2009 because he was having a lot of
6 expenses and all, so my husband out of the goodness of
7 his heart paid the taxes that year.

8 Q And the accident was -- this particular
9 accident was January of 2010, right?

10 A Yes, sir.

11 Q So in 2009, because of your father's medical
12 issues, he didn't have the money to pay the taxes?

13 A Right.

14 Q So your husband paid the taxes on it?

15 A Yes, he did.

16 Q Are the taxes about the same for one versus the
17 other?

18 A Just about, yeah.

19 Q So he moved in in 2007. When does the tax bill
20 come due; do you know? You said it is for 2009. Do you
21 know when that was that it came through?

22 A October.

23 Q So ten of '09 when the tax bill came in October
24 of 2009 for 207, y'all paid that?

25 A Yes.

1 Q And your father did not reimburse y'all for
2 that?

3 A No. We didn't make him.

4 Q And then when the taxes came due for 2007 in
5 October of 2007, I assume -- is that right?

6 A Uh-huh [yes].

7 Q Did your father pay them then?

8 A In 2007, yes.

9 Q I am sorry. When the taxes came due in October
10 of 2010, did your father then go back to paying the
11 taxes?

12 A Yes, yes, sir.

13 Q Now, the taxes, that is for the time period
14 going forward for the next 12 months when you pay them;
15 is that right?

16 A Yes.

17 Q Now, are there two separate utility bills for
18 the 207 and 209?

19 A Yes, sir.

20 Q Has your father always paid the utility bills
21 for 207?

22 A The light bill? Are you talking about energy?

23 Q When I say "utilities," I guess that is --
24 shoot. My wife handles all this. We will call it the
25 light bill.

1 A He pays his own.

2 Q He pays the electric bill?

3 A But the water bill, we pay one every two months
4 and he pays.

5 Q Yes, ma'am. That is because there is just one
6 water bill for the whole property, right?

7 A Yes, sir.

8 Q So when it comes due one month, let's say in
9 January of this year, you may pay it, and next month when
10 it comes in for February of 2011, he will pay it?

11 A Right.

12 Q So he pays essentially for his use of water,
13 and y'all pay for your use?

14 A Yes, sir.

15 Q And y'all pay for 209, the water bill for
16 209?

17 A The electric bill.

18 Q We are talking about the water bill.

19 A The water bill is all in one because we only
20 have one septic tank.

21 Q Yes, ma'am. That is the one y'all split?

22 A Uh-huh [yes].

23 Q Has he ever paid -- I am sorry. You are right.
24 I am the one getting confused. Then there is a light
25 bill, electric bill?

1 A Yes, sir.

2 Q Is there a separate electric bill for 207?

3 A Yes, sir.

4 Q And he pays that?

5 A Yes, sir.

6 Q Has he always paid that since he's lived

7 there?

8 A Yes, sir.

9 Q And y'all pay for 209?

10 A Yes, sir.

11 Q Has there ever been a time he paid for 209?

12 A No.

13 Q Ever been a time y'all paid for 207 since he

14 moved there?

15 A No.

16 Q Is there a cable bill, Charter Cable?

17 A No, sir.

18 Q What other monthly recurring bills are there

19 for 207 that you know about?

20 A None.

21 Q I think, seems like I recall your dad doesn't

22 have a wall mounted or table mounted, a land line

23 telephone, right?

24 A No.

25 Q He's got just a cell phone?

1 A Yes, sir.

2 Q His cell phone service, does he pay for that
3 himself?

4 A Yes, sir.

5 Q Was there ever a land line in 207 since your
6 father lived there?

7 A Yes. We had to have one because he had to have
8 that in order to get that machine that costs \$800 for him
9 to put up to his throat to talk. We had to have one.

10 Q You had to have a land line?

11 A Uh-huh [yes].

12 Q Through Southern Bell or whatever?

13 A Yes; but he didn't have to have that machine
14 after all. The hole closed up, so we took it out.

15 Q After the surgery?

16 A Uh-huh [yes].

17 Q So there was a land line up until when?

18 A I would say around February of 2010.

19 Q 2010?

20 A Uh-huh [yes], three months after his surgery.

21 Q So you had to have it up until the surgery, and
22 then it just took some period of time after the surgery
23 in November of 2009 to realize it is time to shut this
24 thing down?

25 A That's right, yes, sir.

1 Q And did he always pay the bills for that land
2 line?

3 A Yes, sir.

4 Q Do you have in your home a land line?

5 A No, sir.

6 Q Do you have your own telephone?

7 A Yes, sir.

8 Q And you pay your own telephone bills?

9 A Yes.

10 Q The 207, is that home paid for?

11 A Yes.

12 Q No mortgage?

13 A [Witness shakes head].

14 Q Is there any kind of bank line on it?

15 A No, sir.

16 Q What about for 209? Is that paid for?

17 A Paid for.

18 Q Y'all don't make any type of monthly mortgage
19 or bank payment for your homes?

20 A No, sir.

21 Q Does your father pay y'all rent for the
22 property?

23 A No, he doesn't.

24 Q Has he ever paid rent?

25 A No.

1 Q And by that, I mean has he ever paid y'all rent
2 since he moved to 207?

3 A No, sir.

4 Q When he was able to get out and about, did he
5 buy his own groceries?

6 A Yes, when he could eat, yes.

7 Q Did you sometimes buy some to put in his house
8 as well?

9 A Yes.

10 Q Would he sometimes go buy things at the grocery
11 store that you needed in your house as well?

12 A No.

13 Q Like, for instance, would he say "I am going to
14 the grocery store. Do you need me to pick anything up
15 for you," a bag of sugar, and bring it back?

16 A Sometimes he would, yeah.

17 Q Would you reimburse him for that?

18 A Yes.

19 Q Do you do all his grocery shopping now? I
20 assume he can't get out and about very much.

21 A Yes, I do. They bring his milk to the house
22 most of the time.

23 Q You do?

24 A They bring his milk out.

25 Q "They" who?

1 A The infusion place. They bring his Boost milk
2 out and his supplies.

3 Q That is something you told us before the
4 deposition -- I don't think we were on the record -- your
5 dad is on a liquid diet?

6 A Yes.

7 Q That is done through a tube in his stomach?

8 A Feeding tube.

9 Q So this liquid milk I assume is high in
10 vitamins and proteins and all that kind of stuff?

11 A That is the only thing keeping him alive.

12 Q That is the only thing he can eat?

13 A Uh-huh [yes].

14 Q But up to the time that he would need groceries
15 from a grocery store --

16 A I would do it.

17 Q But would he also do that for himself when he
18 was able to get out?

19 A When he was able, yes, sir.

20 Q When did he become pretty much confined to the
21 house?

22 A Right after his surgery in November of 2009.

23 Q Okay. Now, between May of 2007 when your dad
24 moved into 207 and when he had his surgery in November of
25 2009, I think I recall he said in his deposition that you

1 did not spend any nights over there during that -- I
2 guess that is two, two-and-a-half years?

3 A Right.

4 Q When did you start spending nights at the
5 home?

6 A When we come home after two weeks in
7 Charleston. After we come home from there, I was there
8 every night, and even after my wreck, I was there two
9 months after. When I come home from the wreck, I went
10 straight to his house.

11 Q You said he was in the hospital for --

12 A Two weeks starting November 28th.

13 Q Was that at MUSC?

14 A Yes, sir.

15 Q The surgery was November 28 or he got out
16 then?

17 A His surgery was the 28th. I was down there for
18 Thanksgiving that year.

19 Q So he would have then come home roughly the
20 10th through the 15th of December?

21 A Yes, sir.

22 Q And you began staying with him at that time?

23 A Yes, sir.

24 Q Why was it that you began staying with him at
25 that time?

1 A He couldn't be left. He had bad -- he had
2 bad -- his whole top of his leg was bleeding with gauze.
3 His whole arm had to be done. I had to clear the tube.
4 He couldn't be left because he was in such severe pain
5 and nobody -- I had to take care of him. I had to be the
6 nurse.

7 Q So it was to provide medical care for him?

8 A Yes, extensive.

9 Q Did you continue to provide the medical care
10 from the time he came home then roughly the 10th, 12th of
11 December up to the time of this accident?

12 A Yes.

13 Q And then I think you said even after the
14 accident --

15 A Yes, sir.

16 Q -- you stayed another couple months?

17 A Three months, yes, sir.

18 Q So that gets us up to about when you moved out
19 of the house?

20 A I would say around April.

21 Q So approximately April of 2010, you stopped
22 spending nights over there or at least every night?

23 A Every night. I would stay a few nights at my
24 house after that.

25 Q And I recall from his testimony he said that he

1 had some kind of tube in his throat and he said the
2 doctor had told him on some nights he should close off
3 that tube to retrain himself how to breathe, I guess,
4 through his nose or his mouth?

5 A And I had to sleep in the room beside him so if
6 he quit breathing -- I would have to keep up all hours of
7 the night.

8 Q That's what I remember him saying. On those
9 nights when he was going to close off that tube, you
10 would stay there because somebody had to be listening to
11 make sure he didn't choke?

12 A Yeah. I wouldn't sleep on those nights,
13 yeah.

14 Q So those nights when he would close off that
15 tube, you would need to stay there for medical reasons?

16 A Yes.

17 Q And then I think he said perhaps in his
18 deposition there are some nights that perhaps were just
19 bad nights?

20 A Oh, yeah.

21 Q And you would stay with him then for medical
22 reasons again?

23 A Yes.

24 Q And then from that April up until I guess now
25 when he is having a pretty good night or pretty good day,

1 you will go stay at your own home?

2 A Yes, unless he calls me.

3 Q Ma'am?

4 A Unless he calls me on the phone. If he calls
5 and says -- nobody can understand him, but I can
6 understand -- "Denise," I know to get up there.

7 Q Okay. Since April of 2010 -- I am trying to
8 think of the right way to phrase this. Let me back up.
9 I will sort of lay the ground work, and, again, tell me
10 if I am not right. Beginning roughly April of 2010, you
11 started to stay some at 209 and then some at 207?

12 A Yes, sir.

13 Q When you would stay at 207, it would be because
14 medically, he needed some help?

15 A Yes, sir.

16 Q Now, in April of 2010, did you stay more at 207
17 than in May or June of 2010? What I am getting at is:
18 As time has gone on, have you tended to stay less and
19 less at 207?

20 A About half and half.

21 Q So since April of 2007, it's been about half
22 and half?

23 A Yes, sir.

24 MR. TURNAGE: I think you meant April of
25 2007.

1 MR. RHENEY: Yeah. I have got this 207 on
2 my brain because of the address.

3 THE WITNESS: Mainly because that thing
4 keeps closing up and I have to take him back
5 and forth to get that thing opened back up, and
6 I stay with him, you know, because of that.

7 Q [Mr. Rheney] When you say "that thing opened
8 back up" --

9 A The trumpet.

10 Q Before the deposition started, you were telling
11 us he is going to have to have more surgery because the
12 skin graft has actually grafted so well, it's closed down
13 his throat.

14 A Yes.

15 Q So when you're saying "that thing closes up,"
16 you are talking about his throat would close up?

17 A It closes up over his nasal passages somehow.

18 Q And he can't breathe?

19 A Right.

20 Q You have also mentioned a couple times a
21 trumpet. Is that the thing that was in his nose when I
22 was there?

23 A It's a long thing. They have to make a hole
24 for that to go down in there and keep it open.

25 Q It wasn't just in his nose; it was a tube that

1 actually goes down in his lungs?

2 A Down his throat.

3 Q That is what he would breathe through?

4 A Yes.

5 Q Is he able to use that now?

6 A Well, they took it out -- I think it's been
7 three weeks ago, and now they are going to have to go
8 back in because it's closed back up again.

9 Q So did they take it out to like sort of
10 experiment to see if it would stay open, if he could
11 breathe without it?

12 A Yeah. They are hoping it will stay open, but I
13 am going to tell them they're going to have to do
14 something else.

15 Q When they took it out, that skin graft and
16 everything closed back up, so now they got to put it back
17 in?

18 A Yeah.

19 Q Either that or open up the skin graft
20 somehow?

21 A Yes, sir.

22 Q So when you're staying at his home, it is
23 because he medically needs you to be there to help him?

24 A Yes, sir.

25 Q Even when you're at 207 staying, say, in the

1 daytime with your dad, do you still go back and forth to
2 209 to cook and clean and bathe?

3 A Yes. I go back down there and cook something
4 for my husband. I take baths at my daddy's, too, but I
5 go right back to Daddy's. I don't spend much time with
6 my husband.

7 Q Do you consider 209 to be your permanent
8 address?

9 A Well, I am half and half, if you want to know
10 the truth, like I am cut in half, you might say.

11 Q Well, I hate to bring up an unpleasant subject.

12 A Okay.

13 Q I am trying to think of a polite way to ask
14 this, but I don't know any way, and I apologize. Your
15 dad is very sick.

16 A Yes.

17 Q And when he passes away, you will go -- 209
18 will be your home?

19 A Yes.

20 Q And I think even at that time, the county will
21 require you to take 207 down?

22 A Yeah. They will give me 30 days.

23 Q 207 is only there because of his medical needs,
24 and once those needs end, either because he goes into a
25 hospital or dies or whatever, then 207 will have to be

1 removed?

2 A Yes, sir.

3 Q Just I guess to ask it another way, should your
4 dad go into a nursing home or something, you and your
5 husband have no intention of moving into 207?

6 A No, sir.

7 Q Y'all will take that down, and you will stay at
8 209?

9 A Yes, sir.

10 Q This thought hadn't occurred to me until just
11 now. Does the variance that you have from the county,
12 does that identify which home has got to be removed when
13 the time comes, or does it give you the option of taking
14 one or the other?

15 A No, it didn't give me an option. If I can
16 refer to one of these pieces of paper --

17 Q Sure.

18 A Right at the very bottom of that second
19 paragraph.

20 Q You have showed me an August 13 letter from
21 Anderson County that says that -- the paragraph you
22 pointed to says "Our records indicate that you were
23 issued a mobile home permit for a second home to be
24 located on the same parcel in order to take care of your
25 father. The permit was issued for medical hardship only.

1 If the medical exception still exists for your father, I
2 will need a new medical statement for your father
3 immediately. If your father no longer resides in the
4 mobile home, you will need to get the necessary permits
5 to move the mobile home within 30 days," and your
6 understanding of that is the mobile home is the one he
7 lives in?

8 A Yes, sir.

9 Q Miss Bowen, you haven't been dependent upon
10 your dad in any way for food or clothing or care since he
11 moved to 207, have you?

12 A No, sir.

13 Q And I gather the intention was, when he moved
14 there, was for him to have his home and you to have
15 yours?

16 A Yes, sir.

17 Q Okay. There is insurance on both homes, right,
18 insurance coverage?

19 A No. We have none.

20 Q There is not?

21 A [Witness shakes head].

22 Q So do you even have insurance coverage on
23 209?

24 A No.

25 Q So if they burn down, there is no insurance to

1 pay for that?

2 A That's right.

3 Q Miss Bowen, thank you. I appreciate your time
4 and your patience, and please give my regards to your
5 dad. I am sorry to hear he is not doing well.

6 A Thank you.

7 [Plaintiff's Exhibit 1 was marked for
8 identification.]

9 MR. TURNAGE: I just wanted to put some
10 documents in the record since we have cross
11 motions for summary judgment. I don't think
12 there is going to be any problem. We will
13 stipulate to that so we make sure we will we
14 have that in our record as Exhibit 1, which is
15 I believe the policy that is at issue in this
16 case.

17 MR. RHENEY: Sure.

18 [Plaintiff's Exhibit 2 was marked for
19 identification.]

20 EXAMINATION

21 BY MR. TURNAGE:

22 Q Now, do you recognize that document, Denise?

23 A Yes.

24 Q What is that?

25 A It's a record of our property, right?

1 MR. RHENEY: I am sorry. What?

2 THE WITNESS: A record of our property.

3 Q [Mr. Turnage] Is that a property tax record
4 from Anderson County for the real estate that you live
5 at? If you don't know, that's okay.

6 A I don't know.

7 Q Let me show you this one. I will mark this as
8 Exhibit 3.

9 [Plaintiff's Exhibit 3 was marked for
10 identification.]

11 THE WITNESS: Okay. That's the plat of
12 our land.

13 Q [Mr. Turnage] You recognize that?

14 A Yes, I do.

15 Q What is that?

16 A That is a plot of our property.

17 Q Is that plat what you got from the Anderson
18 County real estate office?

19 A Yes, it is.

20 Q Does that show the location of your real estate
21 that Mr. Rheney has been asking you questions about?

22 A Yes, sir.

23 Q He's referred to 207 and 209, the mailing
24 addresses, repeatedly. Both of those are located on that
25 one piece of real estate --

1 A Yes, sir.

2 Q -- that you have your finger on?

3 A Yes, sir.

4 Q There is a square block around it; is that
5 right?

6 A Yes, sir.

7 Q How much acreage is on that lot?

8 A Zero point nine.

9 Q Now, who do you live with?

10 A Both my father and my husband.

11 Q And all y'all live on that one dwelling
12 place?

13 A Yes, we do.

14 Q Now, there's been some questions about medical
15 necessity. I want you to just go into a little bit,
16 first of all, your relationship. Larry Thrasher is the
17 policy holder of the State Farm policy we are talking
18 about.

19 A Yes.

20 Q What is your relationship to Larry Thrasher?

21 A He is my father.

22 Q And you call him your daddy?

23 A My daddy.

24 Q And do you have -- it's not just medical
25 necessity. That is not the only reason you are taking

1 care of him, is it?

2 A No.

3 Q What is the other reasons?

4 A I am the only person he has.

5 Q Do you have any affection for him?

6 A I love him with all my heart, and he will not
7 go to a nursing home over my dead body.

8 Q Okay. Now, when Mr. Rheney was asking you
9 about some of the details about your care for him, so
10 that the judge can understand if he looks at your
11 deposition about just how intimate your relationship is
12 with your father, could you explain some of the things
13 you do on a day-to-day basis to care for your dad?

14 A I feed him, I do his laundry, I do his errands,
15 I clean for him, I take care of him, I feed him.

16 Q And with regard to the medical treatment or the
17 care you provide, it is more like nursing care?

18 A Nursing care, yes, sir.

19 Q I am sorry to have to be detailed, but the
20 judge is going to want to know about how intimate your
21 relationship is with Larry Thrasher. Can you explain for
22 the record some of the intimate things you do for your
23 father as far as taking care of him?

24 A If he needs for me to give him a bath, I have
25 given him a bath. If he needs for me to do his catheter,

1 I have done -- his catheter has come out. I have put it
2 back in, you know, just I do everything for my father.
3 It doesn't matter how intimate it is. I will do it, and
4 I don't think nothing about it.

5 Q Now, your father, he's got a medical problem.
6 What exactly just in general terms is wrong with your
7 dad?

8 A He has had four throat cancers. He's had his
9 throat removed. He's had prostate cancer, and he is
10 still having problems with his throat cancer.

11 Q Okay. Now, the location where y'all live, who
12 lives at that location?

13 A Me, my father and my husband.

14 Q Do you consider that group of people, you, your
15 father and your husband, to be one family unit?

16 A Yes, I do.

17 Q Now, if your father or anybody else were to
18 drive over to your property, your dwelling place, where
19 would they park their vehicles?

20 A In our driveway.

21 Q Is the driveway we are talking about -- Mr.
22 Rheney used the two mailing addresses. Is there two
23 different driveways?

24 A No.

25 Q So everybody parks at the same place?

1 A Yes, sir.

2 Q So the vehicles are principally garaged at the
3 same physical location?

4 A Yes, sir.

5 Q And people either -- your father's car or your
6 husband's car, they are both parked in the same
7 carport?

8 A Garage, uh-huh [yes].

9 Q And I think we have some pictures that you have
10 already given an affidavit for that are in the record.

11 A Uh-huh [yes].

12 Q Some of those pictures showed some pictures
13 inside a trailer, and I want to just ask, if I could,
14 about those. Maybe I need to mark them so we are clear.

15 MR. RHENEY: Can I see whatever was
16 Exhibit 2?

17 MR. TURNAGE: First of all, let's mark
18 this one as the next Exhibit 4.

19 [Plaintiff's Exhibit 4 was marked for
20 identification.]

21 Q [Mr. Turnage] Now, the carport and driveway we
22 are talking about, is it shown in Exhibit 4?

23 A Yes. There it is.

24 Q All right. And the two trailers that are
25 located in that dwelling place, can you point them out?

1 A That is one. That is my father's, and that is
2 ours.

3 Q So the trailer on the left, that is where your
4 daddy lives?

5 A Yes.

6 Q And the trailer on the right, that is where
7 Raymond Bowen lives?

8 A Yes.

9 Q Now, does Raymond ever stay over in the trailer
10 where your daddy lives?

11 A No.

12 Q So you are the only person that lives in both
13 places?

14 A Yes.

15 MR. RHENEY: Object to the form.

16 Q [Mr. Turnage] Do you live in both places?

17 A Yes.

18 Q Okay. Let me get this one marked.

19 [Plaintiff's Exhibit 5 was marked for
20 identification.]

21 Q [Mr. Turnage] Now I am going to show you
22 what's been marked as Exhibit 5, which is this dwelling
23 place. Can you tell me, does Exhibit 5 for
24 identification, Denise, show both of the trailers located
25 at this dwelling place?

1 A Yes, it does.

2 Q And can you point out which is which?

3 A This is my father's, and this is my
4 husband's.

5 Q Okay. So you pointed to the trailer in the
6 foreground. You said that is your daddy's?

7 A Uh-huh [yes].

8 Q And the trailer in the distance, background
9 there, is Raymond Bowen's?

10 A Yes, sir.

11 Q And both of them are about how many feet away
12 from one another?

13 A 50 foot.

14 [Plaintiff's Exhibit 6 was marked for
15 identification.]

16 Q [Mr. Turnage] Let me show you, this one is
17 marked as Exhibit 6. What does this one show?

18 A This shows the carport with my daddy's vehicle
19 and my car, and this is the side of Raymond's.

20 Q So the physical geographic place we are talking
21 about, all the same?

22 A All the same.

23 Q Okay. Now, why do y'all have two mailing
24 addresses? What is the purpose of that?

25 A Because the building and codes said if it was

1 two dwellings, I mean, two different houses, you have to
2 have two different mailboxes.

3 Q And how far apart are the two mailboxes?

4 A About 12 inches.

5 Q 12 inches apart?

6 A Yeah.

7 Q Let me show you what we will mark as the next
8 three, seven, eight and nine.

9 [Plaintiff's Exhibits 7, 8 and 9 were marked
10 for identification.]

11 Q [Mr. Turnage] All right. Let's start with
12 Exhibit 7. What does that show, Denise?

13 A That is my bedroom at my daddy's.

14 Q And is that the bed you sleep on when you are
15 over there to spend the night?

16 A Yes. That's my clothes.

17 Q Those are your clothes in Exhibit 7?

18 A Yes, sir.

19 Q Let me show you Exhibit 8.

20 A That is the drawer with my socks and my shirts
21 and all and my daddy's.

22 Q And it's a chest of drawers in the picture. Is
23 that chest of drawers located in the same room as your
24 bed?

25 A Yes, sir.

1 Q And inside that drawer that is pulled open,
2 whose clothes are those?

3 A Mine.

4 Q And that is also in the bedroom in the trailer
5 where your father lives?

6 A Yes, sir.

7 Q And this Exhibit 9, what is that?

8 A That is the closet in that bedroom with my
9 clothes.

10 Q Okay. Now, we didn't ask you about -- I think
11 Mr. Rheney may have mentioned one time that your father
12 had a set of keys. Do you have free access into the
13 trailer where your daddy lives?

14 A I have my own key.

15 Q And does your daddy have any objection if you
16 come in there?

17 A No, sir.

18 Q Are you able to get something out of the
19 refrigerator if you want it?

20 A Yes, sir.

21 Q You mentioned that you might take a shower over
22 there.

23 A Yes, sir.

24 Q Nobody is going to say -- he is not going to
25 say don't -- you don't have to ask him permission to do

1 that?

2 A No, sir.

3 Q Let me mark this.

4 [Plaintiff's Exhibit 10 was marked for
5 identification.]

6 Q [Mr. Turnage] I was a little confused about
7 this, what we marked Exhibit 10. Is that your
8 handwriting on the top of that?

9 A Yes, it is.

10 Q It says "Our light bills. We pay them"?

11 A Yes.

12 Q The first page of Exhibit 10 has 209 and 207.

13 A This is a shop, shop in the back of our house.
14 We have to pay the light bill for that, too.

15 Q So there is the trailer that Raymond Bowen,
16 your husband, lives in, the light bill is 209, and there
17 is a shop that he uses that is a separate building, and
18 that is showing up as 207?

19 A Yeah.

20 Q It says 207; is that right?

21 A Uh-huh [yes].

22 Q And then the second page?

23 A See, that is my daddy's.

24 Q So multiple bills from Duke Power?

25 A Right.

1 Q That come?

2 A Uh-huh [yes].

3 Q Some go to 209. Two of them go to 207, and one
4 of them is for your husband's shop?

5 A Right.

6 Q One of the 207s?

7 A Yeah.

8 MR. TURNAGE: I think that's all I have
9 for now.

10 EXAMINATION

11 BY MR. RHENEY:

12 Q Miss Bowen, I have got just a few follow-up
13 questions for you.

14 A Yes, sir.

15 Q You said you don't want your dad to go to a
16 nursing home; he can stay there until the time comes?

17 A Yes, sir.

18 Q Your dad, though, is in that home because of
19 his medical needs, right?

20 A Yes and -- yes. That's it.

21 Q Up to the time he moved there, he had his own
22 home in Greenville?

23 A Greenville.

24 Q And it wasn't until he just medically needed
25 the help, more help than you could deliver from a

1 distance, that he was moved there?

2 A Yes, sir.

3 Q So the reason he is there is because of his
4 sickness?

5 A Yes, sir.

6 Q If he wasn't sick, he would still be in
7 Greenville County?

8 A Yes.

9 Q Now, let me ask you quickly about the
10 mailboxes. We talked about this earlier. Exhibit 3
11 shows one parcel of land here, and that is because y'all
12 have never had it subdivided, right?

13 A Right.

14 Q You and your husband, you said y'all never even
15 talked about it?

16 A No.

17 Q In response to my question, you said that would
18 just make two pieces of property too small?

19 A Yeah.

20 Q So that is not something y'all have ever sought
21 to do that's been refused to you; y'all just never
22 thought about it?

23 A We never discussed it because I told my husband
24 either he was going to move my daddy down here or I was
25 divorcing him and moving to Greenville.

1 A Yeah.

2 Q You consider this to be your daddy's house,
3 right?

4 A My daddy's and mine.

5 Q Ma'am?

6 A My dad's and mine.

7 Q What about your husband?

8 A Well, I live there, too, half the time, so
9 really, both places are mine. I consider them both
10 mine.

11 Q You referred to it several times as "My daddy's
12 house."

13 A Yeah.

14 Q You consider this to be where your dad lives?

15 A Yeah.

16 Q And at some point in time, that house will go
17 away, and your permanent address is 209?

18 A Yes.

19 Q Do you know if, when the time comes for there
20 to be only one piece, one home on the property, will it
21 go back to 207, or will it stay 209?

22 A Stay 209.

23 Q And if your dad wasn't sick at all, he wouldn't
24 be there. I think we have already talked about that.

25 A Uh-huh [yes].

1 Q If he wasn't sick, you wouldn't be staying in
2 the house at all, would you? You would be in 209?

3 A No. I would stay with him because he doesn't
4 have anybody else. He is lonely.

5 Q But if he was well, he wouldn't even be there.
6 He wouldn't be on that parcel of land, right?

7 A Right.

8 Q He would be in Greenville?

9 A Right.

10 Q And you would be at old 207, now 209, right?

11 A Yes, sir.

12 Q So the reason you stay there is because he is
13 sick?

14 A Yes, sir.

15 MR. RHENEY: Thank you, ma'am.

16 EXAMINATION

17 BY MR. TURNAGE:

18 Q I just wanted to clear up one last thing about
19 the dates because I think we were not using the year when
20 Mr. Rheney was asking you questions about your father,
21 Larry Thrasher's, surgery, and I think you said it was on
22 November 28.

23 A Uh-huh [yes].

24 Q What year was that?

25 A 2009.

1 Q And so when he came home from Charleston, MUSC
2 following the surgery, he came home on or about December
3 10, 2009?

4 A Yes, sir.

5 Q And that's when you started living there every
6 day?

7 A Yes, sir.

8 Q Or spending the night there every night?

9 A Yes, sir.

10 Q That continued up until April 10 of 2010?

11 A Yes, sir.

12 Q Okay. I just wanted to make clear on the dates..

13 MR. RHENEY: I am sorry if I said
14 otherwise. That is my mistake.

15 MR. TURNAGE: We didn't have the year.

16 MR. RHENEY: There is too many 2009s,
17 2010s, 207s and 209s around. I don't disagree
18 with that.

19 [DEPOSITION CONCLUDED AT 3:30 P.M.]

20

21

22

23

24

25

Appearances:

Edwin L. Turnage, Esquire
Harris & Graves
P. O. Box 6263
Greenville, South Carolina 29606

Appeared on behalf of the Plaintiff,

T. David Rheney, Esquire
Gallivan, White & Boyd

One Liberty Square

55 Beattie Place, Suite 1200

Greenville, South Carolina 29601

Appeared on behalf of the Defendant.

Also Attending:

Denise Bowen, Plaintiff.

Deposition Reported By:

Marsha G. Monroe, CR
Depositions And..., Inc.
101 Broadus Avenue
Post Office Box 10268
Greenville, South Carolina 29603
(864) 235-3518

Depos (108) nd..., Inc.
(864) 235-3518

Larry Thrasher

Page 3

Index

	Page
Waiver	4
Direct Examination by Mr. Turnage	4
Cross-Examination by Mr. Rheney.....	14
Redirect Examination by Mr. Turnage.....	28
Recross-Examination by Mr. Rheney.....	33
Certificate of Notary Public	35
Exhibits (Attached):	
Plaintiff's No. 1 marked.....	32
Plaintiff's No. 2 marked.....	32

Note: The transcript of Larry Thrasher in the above matter is the work product of the court reporter and Depositions and..., Inc., and is not to be copied, shared, distributed or reproduced without prior written authorization.

Depos (109) nd..., Inc.
000, 25-3518

1 Pursuant to Notice and/or agreement to take
2 depositions, the within deposition was taken by Marsha
3 G. Monroe, a Notary Public, as required under the South
4 Carolina Rules of Civil Procedure, Rule 30, et al., by
5 consent of all parties, at the home of Larry Thrasher,
6 207 Cherry Seed Road, Anderson, South Carolina.

7 Waiver:

8 Counsel agreed that both the reading over of and
9 signing of the deposition are NOT hereby dispensed with
10 and waived.

11 The witness agreed that both the reading over of
12 and signing of the deposition are NOT hereby dispensed
13 with and waived.

14 ** ** ** **

15 The witness was duly sworn to tell the truth, the
16 whole truth and nothing but the truth of his own
17 knowledge concerning the matter herein.

18 Larry Thrasher, being duly sworn, testified as follows:

19 Direct Examination by Mr. Turnage:

20 Q. Mr. Thrasher, I'm Edwin Turnage and I represent Denise
21 Bowen. Do you understand your testimony here today is
22 under oath?

23 A. Yeah.

24 Q. And that the oath the court reporter just gave you is
25 the same oath that you would take if you were testifying

1 in court in front of a judge and jury?

2 A. Yes, sir; I understand.

3 Q. Also, one of the things is it's possible that your
4 testimony today may be actually used in the court during
5 the trial or a preliminary proceeding as your testimony.
6 Do you understand that?

7 A. Yes, sir. . .

8 Q. What's going to happen is as you answer my question,
9 she's going to take down your answer on those recorders
10 and then she's going to type it up into a book so we can
11 read it, what's called a transcript.

12 A. Yeah.

13 Q. If you could, just tell the young lady, the court
14 reporter, what is your speech impediment, so that
15 there's a record of that.

16 A. Well, I went to - - I had this what they call - - said
17 it was - - I had that, put that in my throat there for
18 about six months. Then they grafted skin off my arm and
19 my nose - - from going up my nose - - my nose there.

20 And he wound up going up my nose and it grewed over
21 my nose there and they had to put the skin in to where I
22 could breathe through my nose. Want to make my voice
23 - - that's one reason - - they took half my voicebox out
24 and that's the reason my voice is like it is.

25 Q. And the reason that you had to have your voicebox

1 removed is because you had cancer?

2 A. Right.

3 Q. What kind of cancer do you have, Mr. Thrasher?

4 A. The doctor - - I never did - - I don't really know.

5 Q. Are you still being treated for your cancer problem?

6 A. Right.

7 Q. Where do you go to get treated for that?

8 A. Charleston, South Carolina.

9 Q. How often do you have to go to Charleston for treatment?

10 A. I done made about eight or nine trips this year. I done
11 made three trips this last three months. Going back day
12 after tomorrow to see what to do about this stent.

13 Q. About how many operations have you had done in
14 Charleston?

15 A. This is the third.

16 Q. And the one coming up day after tomorrow?

17 A. May not be an operation tomorrow, may just be a checkup.

18 Q. We'll be praying for you then. Your medical condition,
19 when you were discharged from the hospital - - the date
20 of this accident was in January of 2010.

21 A. Right.

22 Q. About how long before - just to back up a second, the
23 case we're here about is your daughter, Denise Bowen's
24 motor vehicle collision in January 2010.

25 A. That would be - - you mean, was she staying here then?

1 Q. Because the judge is not going to know who Denise Bowen
2 is to you, Larry Thrasher, can you tell the lady how
3 you're related to Denise Bowen?

4 A. Denise is my daughter and I was operated on November the
5 28th. And I stayed in the hospital two weeks and she
6 was staying up here with me for awhile after when she
7 had the wreck. Then after that, I know she stayed with
8 me for a couple more weeks and now she stays with me
9 once in awhile.

10 Q. So Ms. Bowen, the Plaintiff in this case, is your
11 daughter?

12 A. Yeah.

13 Q. Before she had a motor vehicle collision, she at that
14 time was living here in the place we're having this
15 deposition today?

16 A. Right.

17 Q. Just so the court would know where that is, we're here
18 in a trailer?

19 A. 207 Cherry Seed Road in a trailer.

20 Q. Is that your residence?

21 A. Right.

22 Q. And how many bedrooms do you have in this trailer?

23 A. Three bedrooms.

24 Q. Does Denise Bowen have a bedroom in this trailer?

25 A. She uses the back bedroom.

1 Q. Can you point that out for Mr. Rheney?

2 A. Back bedroom (indicating).

3 Q. Does she have any of her stuff - - -

4 A. Yeah.

5 Q. What does she have?

6 A. She has clothes and makeup and all back there.

7 Q. Does your daughter, Denise, have a key to get in here?

8 A. Yes, sir.

9 Q. Does she have free reign to go anywhere in here she
10 wants to?

11 A. Yes.

12 Q. Can she go to the refrigerator and get something to
13 drink?

14 A. Yes.

15 Q. Can she use the dishwasher?

16 A. Well, I ain't got no dishwasher.

17 Q. Do you have any appliances?

18 A. Yeah. I got a refrigerator and stove and microwave.

19 Q. Can Denise use that?

20 A. Yes.

21 (Court reporter marks document as Plaintiff's Exhibit 1;
22 attached to deposition.)

23 Direct Examination Resumed by Mr. Turnage:

24 Q. When she had this motor vehicle collision, my

25 understanding is - - let me back up for a second. We've

1 marked for identification Plaintiff's Exhibit 1. Do you
2 see that that's in your hand there?

3 A. Yeah.

4 Q. That's a recorded statement you gave to an investigator
5 from State Farm Insurance.

6 A. Right.

7 Q. State Farm is the Defendant in this case technically.

8 A. Right.

9 Q. I mailed that to you a few days ago. Have you had a
10 chance to review that?

11 A. Yeah.

12 Q. If you were to testify under oath, would you say that
13 statement is accurate as to what your testimony - - -

14 A. That's exactly what I said.

15 By Mr. Rheney:

16 Objection.

17 Q. Is this recorded statement true and accurate - - -

18 A. Uh-huh (affirmative).

19 Q. - - - about the facts in this case?

20 A. Yeah.

21 By Mr. Turnage:

22 I'm just trying to save his voice. I want to make sure

23 - - can we stipulate to the statement being accurate?

24 You're objecting to my question.

25 By Mr. Rheney:

1 My objection is you're asking him is the whole statement
2 accurate, you're not asking him specifics of the
3 statement.

4 By Mr. Turnage:

5 I'm trying to save his throat.

6 By Mr. Rheney:

7 I understand, but I think the question is still what is
8 accurate as opposed to a five-page statement in general.
9 I'm trying to think of a way to deal with that without
10 him having to use up his voice.

11 By Mr. Turnage:

12 Let me try to approach it a different way and I'll try
13 to lay a different foundation.

14 Direct Examination Resumed by Mr. Turnage:

15 Q. Mr. Thrasher, when the State Farm investigator came out
16 and took your statement, your recorded statement, do you
17 remember that day?

18 A. Yes, sir.

19 Q. When he was asking you questions that day, were you
20 trying to the best of your ability to tell him the
21 truth?

22 A. I told him the truth.

23 Q. Have you had an opportunity before today to read this
24 typewritten statement that was prepared of that meeting
25 with you and the State Farm adjustor?

1 A. I've not read this yet.

2 Q. But you've read what's marked as Exhibit 1?

3 A. Yeah, yeah.

4 Q. There's some handwritten notes in there where there were
5 some corrections made in a couple of places?

6 A. Yes.

7 Q. Go ahead and show that to Mr. Rheney so he can see where
8 the changes are. Just give him the whole thing, he'll
9 look through it and find them.

10 By Mr. Rheney:

11 I'm looking at Denise's statement.

12 By the Witness:

13 That's what I got through the mail.

14 By Mr. Rheney:

15 This is Denise's statement.

16 By Ms. Bowen:

17 I didn't get his. That's all we got.

18 By Mr. Rheney:

19 This is Denise's statement.

20 By Ms. Bowen:

21 Yeah, that's mine.

22 By Mr. Turnage:

23 I didn't give him the right one then. Let me see if
24 I've got a copy. May not be able to save time after
25 all. Let's start over then.

1 Direct Examination Resumed by Mr. Turnage:

2 Q. Going back through the story, as I understand the story,
3 before your daughter had her motor vehicle accident in
4 January of 2010, you had been to the hospital in
5 Charleston?

6 A. Right.

7 Q. And how long before her motor vehicle collision had you
8 been discharged from the hospital in Charleston?

9 A. About seven or eight days.

10 Q. And when you were discharged from the hospital, did you
11 have to have somebody to take care of you here?

12 A. Yes.

13 Q. Why was that?

14 A. Well, because on account of my breathing and cleaning my
15 tubes and all that and because I had to stop it up to
16 see if I could sleep without it. And they said that
17 somebody had to be with me when I was trying to sleep
18 with that thing stopped up.

19 Q. So did anybody like a nurse or anybody other than your
20 daughter come and stay with you?

21 A. They didn't stay with me but they come see me for four
22 weeks.

23 Q. Who was it that spent the night here with you?

24 A. Denise.

25 Q. And how long did she stay here with you when you were

1 initially discharged from the hospital?

2 A. It was till she had that wreck.

3 Q. And up until the time of her accident - - do you
4 remember the day she had her accident?

5 A. Yes.

6 Q. How often at that time frame was she staying here to
7 take care of you when she had that accident?

8 A. She was here just about all the time.

9 Q. And this property where we're located here in Anderson
10 County, this lot, is this one piece of real estate
11 bought here?

12 A. Yeah.

13 Q. And on this particular lot, are there two trailers?

14 A. Right.

15 Q. Can you describe this other trailer over here?

16 A. That belongs to Denise and her husband.

17 Q. So you have one three-bedroom one here that you live in?

18 A. Right.

19 Q. And there's another one over yonder - - -

20 A. Right.

21 Q. - - - and you can walk over there?

22 A. Right.

23 Q. One minute you're there?

24 A. Yeah, could do that.

25 Q. But Denise would spend the night here in your trailer

1 with you because of your condition?

2 A. Right.

3 Q. Did she cook meals here?

4 A. I didn't eat anything till after - - she didn't - - -

5 Q. You said she had her clothes and makeup here?

6 A. Right. She stayed here so she had to have them, in the
7 bedroom.

8 Q. In the bedroom over yonder?

9 A. Right.

10 Q. Did she come and go freely in this home without any
11 restrictions?

12 A. Right.

13 Q. Did you feel like she was living here with you?

14 A. Right.

15 By Mr. Rheney:

16 Object to the form.

17 By Mr. Turnage:

18 Mr. Rheney may have some questions.

19 Cross-Examination by Mr. Rheney:

20 Q. Mr. Thrasher, my name is David Rheney and I do have some
21 questions. I do want to emphasize if you want to take a
22 break, you let me know, we'll stop - - -

23 A. I'm okay now.

24 Q. What?

25 A. I'm okay.

1 Q. You let us know if you need to stop and we can take a
2 break. We can come back another day as well.

3 A. Okay

4 Q. Before your illness, did you live in Greenville?

5 A. Yes.

6 Q. This lot which the mobile homes are on, am I correct - -
7 let me ask you if you have any understanding of this.

8 Am I correct that it is zoned, for lack of a better
9 word, for just one mobile home?

10 A. Yes.

11 Q. And Denise had to go get a special permit to allow there
12 to be two mobile homes here?

13 A. Right.

14 Q. And the reason for that special permit was because your
15 illness had grown advanced - - -

16 A. Right.

17 Q. - - - and she needed to be close to you?

18 A. Yeah. I was planning on moving down here before that
19 anyway.

20 Q. But if you were otherwise healthy, like Mr. Turnage or
21 Denise is, you couldn't have a second mobile home on
22 this lot; is that right?

23 A. If it wasn't for me they couldn't, no.

24 Q. Right. The reason there are two on this lot is because
25 she got special permission to have two because of your

1 illness; right?

2 A. Right. I had to get a doctor's statement and said I had
3 to be close to my daughter.

4 Q. You had to get a doctor's statement saying you had to be
5 close to your daughter?

6 A. Right.

7 Q. And then your daughter took that to whoever it is that
8 approves these things for the County of Anderson - - -

9 A. Right.

10 Q. - - - and got special permission to put two mobile homes
11 here?

12 A. Right.

13 Q. Okay. Now, if you got healthy again, then one of the
14 two mobile homes would have to be moved; right? I'm
15 sorry, that was a bad question. If you had to go to a
16 nursing home or some type of healthcare facility, - - -

17 A. They'd have to get rid of this trailer.

18 Q. I'm sorry?

19 A. They'd have to move this trailer.

20 Q. Right. Let me finish my question. I'm going to repeat
21 what I think your answer was. Tell me if I'm not
22 correct. If you had to go to a nursing home or a
23 hospital or something like that, then this trailer would
24 have to be moved off the property?

25 A. True.

1 Q. That is true?

2 A. True.

3 Q. Now, it is also my understanding and tell me - - as
4 Edwin did, I'm going to try and save your voice a little
5 bit by repeating what I think I know and I want you to
6 tell me if I'm not correct.

7 It's my understanding there are two different
8 mailboxes, - - -

9 A. Right.

10 Q. - - - one for your mobile home and one for Denise's
11 mobile home; is that correct?

12 A. Yes, sir.

13 By Mr. Rheney:

14 And if it's okay, Edwin, rather than him have to say yes
15 or no, if he nods his head and we all understand it, I
16 have no problem with her saying that.

17 Cross-Examination Resumed by Mr. Rheney:

18 Q. Now, your address is 207 Cherry - - -

19 A. Cherry Seed Road.

20 Q. - - - Seed Road and Denise has a separate address, which
21 is 209 Cherry Seed.

22 A. Right.

23 Q. There are two mailboxes, one for you and one for her;
24 right?

25 A. Right.

1 Q. She has never gotten her mail here at 207 Cherry Seed;
2 has she?

3 A. Well, she used to have her old mail over here. Not her
4 new mail, just the old mail.

5 Q. I'm sorry?

6 A. She got -- you know, when she didn't have it changed.

7 Q. I'm not sure I understand.

8 By Mr. Rheney:

9 Denise, can you help us out a little with that?

10 By Ms. Bowen:

11 We used to live in this trailer. We bought the
12 doublewide. It took us a year to redo it so that we
13 could move my father.

14 Cross-Examination Resumed by Mr. Rheney:

15 Q. Let me make sure that's your understanding. Denise and
16 her husband used to live in this trailer, 207, and then
17 they bought a new one and made it 209?

18 A. Right.

19 Q. And moved you into 207?

20 A. Right.

21 Q. And she gets mail at 209; is that correct?

22 A. Yes, sir.

23 Q. And you get mail at 207?

24 A. Right.

25 Q. Has she always gotten her mail at 209 since she moved to

1 that address?

2 A. Right.

3 Q. It's my understanding that she does not and has not paid
4 any of the expenses of the upkeep of this house?

5 A. No, I have.

6 Q. You paid for that?

7 A. Right.

8 Q. You do not pay Denise rent?

9 A. No.

10 Q. As far as the food in this house, you paid for the food?

11 A. I pay for everything.

12 Q. And Mr. Turnage asked about her having the freedom to
13 come in and out and cook and that type thing. But you
14 pay for the food in the refrigerator and in the pantry;
15 correct?

16 A. Right.

17 By Mr. Rheney:

18 Do you need to take a break?

19 By the Witness:

20 I'm all right.

21 Cross-Examination Resumed by Mr. Rheney:

22 Q. You pay your own utilities?

23 A. Right.

24 Q. Do you have a land line telephone?

25 A. No, I have a cell phone.

1 Q. Cell phone. Okay. Do you pay for your own cell phone?

2 A. Right.

3 Q. You don't have an old-fashioned phone, a land line?

4 A. No.

5 Q. As far as the power, the heat, the air-conditioning,
6 those type things, you pay for those yourself?

7 A. Yes, sir.

8 Q. And Denise does not contribute to that?

9 By Ms. Bowen:

10 We share the water bill.

11 Q. Denise has just said something about a water bill.

12 A. We share that.

13 Q. Is there one water bill for the lot itself or are there
14 two separate water bills? Do you have - - -

15 A. Just one water bill.

16 Q. You don't have a water bill for this, 207, and she's got
17 - - -

18 A. Huh-uh (negative).

19 Q. - - - a separate one for 209, it's just one water bill
20 for the property - - -

21 A. Right.

22 Q. - - - that both are on?

23 A. Right.

24 Q. And y'all split the cost of that. So do you basically.
25 pay for the water you use here in this 207 mobile home?

- 1 A. I pay for it one month and they pay for it the next.
- 2 Q. So you pay your share and she pays her share?
- 3 A. Right.
- 4 Q. Do y'all have any kind of joint checking account?
- 5 A. No, I don't have a checking account.
- 6 Q. Do you manage your own finances to the extent you're
- 7 able to?
- 8 A. Right.
- 9 Q. Let me ask you a little bit about Denise. Denise is
- 10 married; right?
- 11 A. Yes, sir.
- 12 Q. Does her husband live full-time over at the 209 - - -
- 13 A. Right.
- 14 Q. - - - Cherry Seed address?
- 15 A. Yes, sir.
- 16 Q. Is that her primary residence?
- 17 A. Yes.
- 18 Q. That's Denise's primary residence?
- 19 A. Yes, sir.
- 20 Q. When she leaves here, she goes back there?
- 21 A. Yes, sir.
- 22 Q. My understanding is you had surgery at Charleston back
- 23 in November of 2009; is that correct?
- 24 A. Right.
- 25 Q. That she stayed with you in Charleston at the hospital

1 there?

2 A. Right.

3 Q. Then she stayed here a good portion of the time over the
4 next several months with you; right?

5 A. Yes, sir.

6 Q. Were there nights even during that say two to three
7 months after your surgery where she would stay over at
8 209?

9 A. She would sometimes, yeah.

10 Q. And she would sometimes spend the night here?

11 A. Right.

12 Q. The nights that she spent with you, were they nights
13 that were particularly bad for you - - -

14 A. Yes, I had a lot of bad nights.

15 Q. A lot of what?

16 A. I had a lot of bad nights.

17 Q. A lot of bad nights?

18 A. Right.

19 Q. When you were having a pretty good night, would she go
20 back and stay at 209?

21 A. Yes, sir.

22 Q. So usually the nights that she stayed here, it was
23 because you were having a particularly bad night?

24 A. Right.

25 Q. Is that pain wise?

1 A. Pain wise and breathing.

2 Q. Then on the nights that you were pretty comfortable and
3 doing okay, she would go back to the 209 address?

4 A. Yes, sir.

5 Q. Can you give us an estimate of how much she stayed here
6 versus at 209 in any average week in the two months
7 after your surgery?

8 A. Well, sometimes she'd stay up here every day and every
9 night. And sometimes when her husband was off work, she
10 would stay down there a couple of nights. But most
11 nights, she stayed up here with me.

12 Q. So most of the time she was here, some of the time she
13 was down at - - -

14 A. Right.

15 Q. When I say down, I mean - - -

16 A. 209.

17 Q. - - - 209 is a few feet lower than this one it looks
18 like.

19 A. Yes, sir.

20 Q. When she did stay here, it was usually because you were
21 having a bad night?

22 A. Yes, sir. Because when I had - - what they call that
23 thing I had in my neck?

24 By Ms. Bowen:

25 Larynx - - trach, trach tube.

1 Q. You had a trach tube after your surgery?

2 A. The doctor told me sometimes close it up at night, but
3 have somebody here with me to make sure I didn't choke,
4 - - -

5 Q. I see.

6 A. - - to learn to - - to see how I breathed and when I - -
7 then when I would cover that up, I had to have somebody
8 here with me.

9 Q. I got you. Let me just repeat to make sure we've got it
10 right. After your surgery, you had a trachea tube?

11 A. Yes, sir.

12 Q. And the doctor told you that some nights you should
13 close it?

14 A. Right.

15 Q. But on those nights when you closed it, you needed
16 somebody close by to make sure you didn't choke?

17 A. Right.

18 Q. Just out of curiosity, why would you close it versus
19 leaving it open?

20 A. Have to learn to breathe.

21 Q. Teach you to breathe?

22 A. Right.

23 Q. So instead of breathing through the trachea tube, it
24 would sort of retrain you to breathe through your nose
25 and your mouth?

- 1 A. My mouth. I couldn't breathe through my nose.
- 2 Q. So that would retrain you to breathe through your mouth
- 3 - - -
- 4 A. Right.
- 5 Q. - - - instead of relying on the trachea tube?
- 6 A. Yes, sir.
- 7 Q. And on those nights when you were doing that, Denise
- 8 would stay those nights to make sure you didn't choke?
- 9 A. Yes, sir.
- 10 Q. But I think you said when you were having good nights or
- 11 more comfortable nights, she would go back - - -
- 12 A. Sometimes I would sleep without it because it bothered
- 13 me too much.
- 14 Q. I think that Mr. Turnage asked that Denise still stays
- 15 here sometimes; right?
- 16 A. Every once in a while, yeah, she stays up here.
- 17 Q. Is it less now than it was back - - -
- 18 A. Less now than it was.
- 19 Q. And when she stays here now, is it still because you're
- 20 having a bad night?
- 21 A. Sometimes with my nose cause I can't breathe through my
- 22 nose and then I'd get choked up at night, and I still
- 23 do.
- 24 Q. So am I correct that when she stays here now, it's
- 25 usually because you're having a worse night than another

1 night?

2 A. Yes, sir.

3 Q. Then when you're having an okay night, nowadays she goes
4 back to 209?

5 A. Yes, sir.

6 Q. She also has, I assume, a room in 209?

7 A. Yes, sir.

8 Q. The whole house is hers, I guess?

9 A. Yes, sir.

10 Q. She's got clothes and furniture, TVs, all that kind of
11 thing down there?

12 A. Yes, sir.

13 Q. You've been living here for how long now?

14 A. About going on four years.

15 Q. Before you had that surgery, were you living here alone
16 before you had the surgery last November?

17 A. Yes. Yes, sir.

18 Q. Denise would not stay here much?

19 A. No, not at night, no.

20 Q. She would not spend the night - - -

21 A. No.

22 Q. - - - before you had that surgery - - -

23 A. No.

24 Q. - - - in November of '09?

25 A. No, sir; no.

- 1 Q. Who pays the taxes? Do y'all split the taxes?
- 2 A. Split the taxes - - I pay the taxes on this trailer.
- 3 Q. You pay the taxes on this trailer?
- 4 A. Right.
- 5 Q. So you basically treat this trailer as your own as far
- 6 as expenses of upkeep?
- 7 A. Yes, sir.
- 8 Q. You've told me that before you had the surgery Denise
- 9 did not spend the night.
- 10 A. No.
- 11 Q. Shortly after the surgery, she spent more time - - -
- 12 A. Right.
- 13 Q. - - - and now she's spending less time?
- 14 A. Right.
- 15 Q. And during the several months right after the surgery,
- 16 she would usually stay when you were having a bad night?
- 17 A. Right.
- 18 Q. And when you would have a good night and even now when
- 19 you have a good night, she goes back to 209?
- 20 A. Right.
- 21 Q. So her staying here wasn't for her to live here, - - -
- 22 A. No, no.
- 23 Q. - - - it wasn't for it to be her residence, - - -
- 24 A. No, no.
- 25 Q. - - - she was just staying here to help you?

1 A. To help me.

2 Q. Always with the intention of going back to 209?

3 A. Yes, sir.

4 By Mr. Rheney:

5 Thank you, sir. That's all the questions I have. I'm
6 sorry I was late, I apologize, and I'm sorry to trouble
7 with all these questions. Thank you.

8 By the Witness:

9 No problem.

10 Redirect Examination by Mr. Turnage:

11 Q. Mr. Thrasher, just to followup on that, your condition
12 is not going to get better; is it?

13 A. Not as I know of. They ain't told me nothing.

14 Q. Does the doctor still want you to have somebody to stay
15 here from time to time to take care of you?

16 A. To check on me, yes, cause I - - I can't stay here by
17 myself all the time cause if I were to go to the
18 hospital, I don't know what I'd do.

19 Q. And this property where we're located, which just
20 happens to be within a stone's throw of where your
21 daughter lives, - - -

22 A. Right.

23 Q. - - - whose property is this?

24 A. This belongs to her - - her and her husband.

25 Q. So they pay the property taxes?

- 1 A. I pay - - I pay it on the trailer.
- 2 Q. And they pay it on the lot?
- 3 A. Right.
- 4 Q. Your daughter, how often now, which is about a year
- 5 since the accident, even now how often does she spend
- 6 the night here?
- 7 A. Maybe once or twice a week she'll stay over here with
- 8 me.
- 9 Q. Once or twice per week?
- 10 A. Right.
- 11 Q. And when she's staying over here once or twice per week
- 12 and living over here, she stays in this back bedroom?
- 13 A. Right.
- 14 Q. And the reason she stays over here is to make sure that
- 15 your breathing is okay?
- 16 A. Right.
- 17 Q. So you still need somebody here at least once or twice a
- 18 week to take care of you overnight?
- 19 A. Yes, sir. Till I get this out of my nose. Make sure I
- 20 can breathe through my nose.
- 21 Q. Mr. Rheney was asking you what her primary residence
- 22 was. Would you consider her to be a resident here with
- 23 you?
- 24 A. Not all the time, no.
- 25 Q. But she is here at least a few times a week?

1 A. Sure she is.

2 Q. So at least for the part time she stays here, you
3 consider her to be living here?

4 A. Right, right.

5 By Mr. Rheney:

6 Object to the form.

7 Q. This arrangement as far as it exists now, back when she
8 had her accident in January of 2010, you were in much
9 worse shape than you're in now?

10 A. Yes, sir.

11 Q. And before she had her accident, how often was she
12 staying here at - - -

13 A. She stayed here every night.

14 Q. And that was after the surgery you had in November of
15 2009, - - -

16 A. Right.

17 Q. - - - and probably up until she had - - -

18 A. Yeah, until she had her accident.

19 Q. Was she always welcome to come and spend the night here
20 at any time?

21 A. Any time.

22 Q. But her intent was to come here and take care of you?

23 A. Right.

24 Q. Did you want her to stay here with you?

25 A. Yes, sir. I would ask her to.

1 Q. Mr. Rheney was asking about the mail and I think he got
2 a little confused. You were telling him that Denise
3 still gets some mail here?

4 A. Old, old mail. Like maybe she didn't change it or
5 somebody from way back yonder.

6 Q. But there's still occasional pieces of mail that come to
7 her at this place?

8 A. Right. It's maybe advertising something or other.

9 Q. I've got a couple of pictures. Let me show you this
10 one. Is this a picture of the lot where we're having
11 this deposition today?

12 A. Right, right.

13 Q. In this photograph, if you look in the background,
14 there's a trailer in the back?

15 A. Yeah.

16 Q. Is that where we are right now?

17 A. Right.

18 By Mr. Turnage:

19 Let's mark this one as Exhibit 2.

20 By the court reporter:

21 Are you going to leave that one as 1 or do you want me
22 to mark this one as 1?

23 By Mr. Turnage:

24 Yes, let's mark it as 1, we're not going to use the
25 other one.

1 (Court reporter marks document as Plaintiff's Exhibit 1;
2 attached to deposition.)

3 By Mr. Turnage:

4 And put that one as No. 2.

5 (Court reporter marks document as Plaintiff's Exhibit 2;
6 attached to deposition.)

7 Redirect Examination Resumed by Mr. Turnage:

8 Q. Is that a black-and-white picture of the bed your
9 daughter sleeps in when she stays here?

10 A. Yes, sir.

11 Q. And she was staying in that bed pretty much every night
12 from November of 2009 up until the time she had her
13 accident?

14 A. Right.

15 Q. To take care of you because of your physical condition?

16 A. Right.

17 Q. And she still comes over and takes care of you at least
18 on a regular basis of two or three times per week now?

19 A. Right, right.

20 Q. When you moved to this location, did you tell State Farm
21 you were moving?

22 A. Yes, sir.

23 Q. Did they ask you any questions about who was living here
24 with you or anything like that?

25 A. No, no, no. They just asked me what my new address was.

- 1 Q. And you told them this, 207?
- 2 A. Right, yes.
- 3 By Mr. Rheney:
- 4 A couple of things real quick.
- 5 Recross-Examination by Mr. Rheney:
- 6 Q. When you moved here, were you able to get around on your
- 7 own when you moved here?
- 8 A. Yes, sir.
- 9 Q. Did you have your own vehicle?
- 10 A. Yes, sir.
- 11 Q. Do you have your own vehicle now?
- 12 A. Yes, sir.
- 13 Q. I gather you don't get out much.
- 14 A. I don't get out driving much, no.
- 15 Q. Does it pretty much stay where it is now?
- 16 A. Yes, sir. She takes me to the doctor and all that. I
- 17 got my family doctor in Greenville and she has to take
- 18 me to Greenville. I'm going Thursday to my - - she
- 19 takes me to the store, the drugstore.
- 20 Q. Denise may drive you around in your car?
- 21 A. Yes, sir.
- 22 Q. Does she drive you around in her car some as well?
- 23 A. Almost always in my car.
- 24 Q. Almost always in your car. Has she ever owned a car?
- 25 A. She - - she don't own one now.

1 Q. I'm sorry?

2 A. She don't own a car now.

3 Q. Oh, does not now?

4 A. No.

5 Q. When you moved here, did she have a car?

6 A. Yeah.

7 Q. So when she's taking care of you and your things, y'all
8 use your car and she drives you around?

9 A. Yes.

10 By Mr. Rheney:

11 Thank you, sir. I appreciate your time and good luck to
12 you. Take good care of yourself.

13 (There being no further questions, this deposition was
14 concluded at approximately 3:02 p.m.)

15

16

17

18

19

20

21

22

23

24

25

Reporter's Certification

I, Marsha G. Monroe, a Notary Public for the State of South Carolina, duly commissioned and qualified as such, certify:

That the foregoing proceedings were taken before me at the time and place herein set forth, at which time the witness was put under oath by me;

That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded by me and were thereafter transcribed;

That all offered exhibits, stipulations and objections, if any, involved in this cause are duly attached or included herein;

That the foregoing is a true and correct transcript of the testimony given by the witness.

I further certify that I am not a relative or employee of any of the parties or the attorneys, and am not of counsel or attorney for any of the parties to said action, and am not in any manner interested in the case, financial or otherwise.

In witness thereof, I have set my hand and official seal.

Date: 10/7/2010



Marsha G. Monroe

Notary Public for South Carolina

My commission expires: 4/30/2018

Claim Number: 408552371

Claim Office:

(Transcriptionist's note: Q:= Steven Flack; A:= Larry Thrasher; B:= Unidentified Female Voice; C:= Edwin Turnidge)

This is Steven Flack with State Farm Insurance and I am interviewing Larry Thrasher in person on April 14th, 2010 concerning a claim involving his daughter Denise Bowen. Um this claim was January 16th, 2010.

Q. Mr. Mr. Thrasher will you please state your full name?

A. Larry Tyrone(sp?) Thrasher.

Q. Is this recording being made with your full knowledge and consent?

A. Right.

Q. Now Mr. Thrasher ah do you currently reside at 207 Cherry Seed...

A. Road.

Q. Road?

A. Yes sir.

Q. And how long have you lived at this address?

A. Been about over three years.

B. (Inaudible).

A. Yeah it's been over three years.

Q. Okay. Now um has your daughter resided with you at any time during the three years?

A. She stayed with me when I was on (inaudible). She was up here all the time with me.

Q. When were you operated on Mr. Thrasher?

A. November the 28th. Of '09.

Q. Of '09?

A. '09.

Q. Okay and ah....

A. And she stayed two weeks at the hospital with me. When I was in the hospital.

B. (Inaudible).

A. She was the only one I had.

Q. Now ah you were at the hospital in Charleston(sp?)?

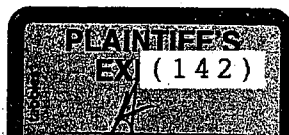
A. Yeah.

Q. Is that correct? And you were there two weeks before you came home is that correct?

A. Yes sir.

Q. Okay. Now when you returned home ah you d- are you stating your daughter resided with you?

A. For yep for a few weeks.



Statement of: Larry Thrasher
Claim #: 408552371
Page #: 1

Claim Number: 408552371

Claim Office:

Q. Why...

B. A month Daddy.

A. Well whatever. (Inaudible) spent the night with me lots of times. Two or three times a week or whatever.

Q. Okay so she actually spent the night with you?

A. Oh yeah.

Q. Okay.

A. All the time.

Q. All right does she have a room here at your residence?

A. (Inaudible) right back here.

Q. Does she have clothes in that room?

A. Yes sir. I bought a bed for her to put back there.

Q. And where did you buy that bed?

A. From a guy movin' to movin' from movin' from one place to (inaudible).

Q. And you you stated you bought that bed for for a sole reason...

A. Yeah.

Q. Of her stayin' here?

A. Yeah.

Q. Okay. Now where does your daughter where did your daughter reside before she moved here?

A. 209.

Q. Okay how far away is 209?

A. I'd say about 50 75 feet.

Q. Okay. Now did you ever get any of your daughter's mail...

A. No.

Q. At 207?

A. No.

Q. Okay. And how long did your daughter stay with you ah as far as from the time you had the surgery and you got home until the present. How long?

A. She stayed for about two weeks but then she come up and stayed with me everyday. And sometimes at night when I needed her.

Q. So just for ca- clarification though when you say she stayed with you for two weeks are you talkin' about the two weeks at the hospital?

A. No ah here at the house too 'cause I had to have somebody.

Q. Okay. Now do you was anybody else living in the residence besides you...

A. No.

Claim Number: 408552371

Claim Office:

Q. And your daughter?

A. No just me right here.

Q. Okay. Did you have a nurse or anything to stay with you?

A. I had home nursing but they come up t- to see me but they didn't stay with me.

Q. They didn't stay fulltime?

A. Huh uh.

Q. Okay. Now the ah are there any other comments Mr. Thrasher?

A. (Inaudible) I know of.

Q. Okay. Are remarks you made in this recording your true version to the best of your knowledge?

A. That's right. If it weren't for her I woulda been (inaudible). I couldn't have stayed by myself.

Q. Okay but then now was that doctor's orders? Did the doctor state...

A. No they didn't say for her to stay her but but she I had to have somebody.

Q. Well Mr. Thrasher just so we know the extent of your medical condition can you explain to me the medical issues you have ongoing?

A. What on my throat?

Q. Yes sir.

A. My throat is still sore and she (inaudible) 'til it's better.

Q. And what was the reason for your surgery on your throat?

A. Cancer.

Q. Cancer? Okay. Any other problems?

A. Nope.

Q. Medically?

A. No (inaudible).

Q. Okay.

A. (Inaudible).

Q. All right. Ah any other comments you'd like to make regarding the claim and and....

A. No. No (inaudible).

Q. All right. Um for the record I'd also like to note that ah attorney Edwin um Turnidge is here. Ah Mr. Turnidge do you have any comments?

C. Well lemme lemme ask Mr. Thrasher a couple questions so you have a complete recording. Mr. Thrasher does your daughter Denise still stay over here um overnight from time to time?

A. Sure sure.

C. And she's been staying here overnight from time to time since you got back from Charleston(sp?)...

Claim Number: 408552371

Claim Office:

- A. Right right.
C. When you were in in November...
A. Yes.
C. Or early December?
A. Yep.
C. 2009?
A. Yep.
C. Okay that's all I had.
- Q. Okay. Mr. Thrasher before I conclude this interview are there any other comments you'd like to make?
A. No. (Inaudible) anyway but she has. She stays with me a lot. And she still be stayin' with me when I got to go to doctor Friday. She'll be up here every (inaudible). Gotta go back to Charleston. (Inaudible) we're afraid they gonna put me back in the hospital. 'Cause I can't breathe through my nose. (Inaudible).
- Q. Okay well if you don't have any further comments ah are the remarks you made in this recording your true version to the best of your knowledge?
A. Yes sir.
- Q. And these remarks ah you were aware this was being recorded?
A. Yes sir.
- Q. Mr. Turnidge ah do you have any further comments?
C. No sir.
- Q. At this time I'd like to conclude the recorded interview.

To be completed and returned with each relevant audio transcribed outside of Transcription Express, Inc. premises. The Vendor is under contract with State Farm Mutual Automobile Insurance Company, on behalf of itself, its subsidiaries and affiliates.

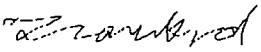
TRANSCRIPTIONIST AFFIDAVIT

I, Renee Bennett declare that:

- 1) I have transcribed this State Farm Insurance recorded claim statement to the best of my ability.
- 2) This audio has not been added to, erased, cut, text deleted, or altered in any way while in my possession.
- 3) I have not provided, and I will not provide, this audio or its contents in any form to anyone other than the Vendor identified below.
- 4) This audio remained in my possession the entire time between the start date & time and the return date & time indicated below.

THIS AUDIO WAS IN MY POSSESSION April 30, 2010 2:00 P.M.
THIS AUDIO WAS RETURNED TO VENDOR May 3, 2010 11:00 A.M.

Signed: 
Address: 1254 S. Nassau, Mesa, AZ 85206

Signed: 

Transcription Express, Inc., 925 N. McQueen Suite #106, Gilbert, AZ 85233

Received From: Greer
Date & Time Received by Vendor: May 3, 2010 AT 12:00 P.M.
Date & Time Sent to Zone Location: May 3, 2010 AT 12:30 P.M.
Dated: May 3, 2010

Claim Number: 408552371
Claim Office:

(Transcriptionist's note: Q:= Steven Flack; A:= Denise Bowen; B:= Larry Thrasher; C:= Edwin Turnidge)

This is Steven Flack with State Farm Insurance and I am interviewing Denise Bowen in person on April 14th, 2010 concerning a claim um that she was involved in on January 16th, 2010.

Q. Ms. Bowen will you please state your full name?

A. Denise Bowen.

Q. Is this recording being made with your full knowledge and consent?

A. Yes.

Q. I would also like to announce that ah Ms. Bowen's father Larry Thrasher is present. Mr. Thrasher will you p- state your full name?

B. Larry Tyrone(sp?) Thrasher.

Q. And ah Ms. Bowen's attorney ah Edwin Turnidge(sp?) is also available. Mr. Turnidge would you state your name?

C. Edwin Lake Turnidge(sp?).

Q. Now Ms. Bowen you indeed were involved in an accident on January 16th, 2010?

A. Yes I was.

Q. Okay ah the point of this ah interview is to establish residency for Ms. Bowen. Ms. Bowen at the time of the accident where did you reside?

A. I live right there in that doublewide but I stay with my father a lot.

Q. Okay. What did...

A. I was staying with him a lot then.

Q. So Mr. Thrasher's your father-in-law?

A. He's my father.

Q. Your father?

A. Yes.

Q. Okay. What's ah your father's address?

A. It's 207 Cherry Seed Road(sp?).

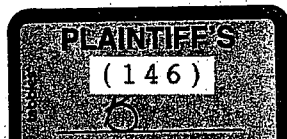
Q. Okay and then ah the residence that you refer to what is that address?

A. 209 Cherry Seed Road.

Q. Okay. Now when you say you stay with your father can you describe wh- what that means?

A. He had just had cancer surgery in Charleston(sp?). And I had to stay with him because I had to take care of him constantly. And that's right when he had a (inaudible).

Q. Okay.



Statement of: Denise Bowen
Claim #: 408552371
Page #: 1

Claim Number: 408552371

Claim Office:

- A. After (inaudible) I was stayin' back at my house.
- Q. How long ago was the your father's surgery?
- A. November.
- Q. Of...
- A. 27th.
- Q. Of 2009?
- A. Um hum.
- Q. Okay and how long have you been stayin' with your father?
- A. For about four months Daddy?
- B. Somethin like that.
- A. Yeah.
- B. Off and on.
- A. Off and on but...
- Q. Four months?
- A. After a while I was three months I was (inaudible) I wouldn't leave him.
- Q. So when you say four months is that four months from today?
- A. No Novem- when we got back in two weeks okay it's about December somethin' we got back. We was down there two weeks. We got back and (inaudible) December January February March. Was it March?
- Q. Sorry for the record ah December 2009?
- A. Um hum.
- Q. January 2010?
- A. Um hum.
- Q. February 2010?
- A. Um hum.
- Q. And March 2010?
- A. Um hum.
- Q. Is that correct Ms.?
- A. Yes it is.
- Q. Okay. Ah during the time you stayed with him ah could you describe ya know how much time you spent in the house?
- A. All the time. I hardly ever left my daddy.
- Q. All day?
- A. Um hum. Oh yeah.
- Q. Did you stay the...
- A. And the night. Oh yes. I had my own bedroom.

Claim Number: 408552371

Claim Office:

Q. So you spent the night?

A. I did.

Q. And you just...

A. I wouldn't leave him.

Q. You just stated you had your own room?

A. Yes I had my own room.

Q. Okay.

A. Um hum.

Q. Did you do you have your own clothes in this room?

A. Sure do.

Q. Now were you getting mail at your father's address?

A. No at my address.

Q. Okay ah now your address can you describe how far away your address is?

A. Hm 100 foot? Maybe?

Q. Okay.

A. Um hum.

Q. Do both the addresses share ah a mailbox?

A. No.

Q. Okay.

A. They're right beside each other.

Q. Okay the mail boxes are right beside each other?

A. Um hum.

Q. Are you still currently stayin' with your father?

A. Oh no but if he needs me to I do.

Q. Okay.

A. I mean I'm up here every day.

Q. Okay. Did you change your driver's license to ref- reflect your father's address?

A. No.

Q. Okay. Ms. Go ahead d-...

A. We had to get a special permit put here for my father to live here 'cause I'm his keeper. I'm his main caregiver.

Q. What kind of permit is that?

A. We had to get a permit from the state and I had to send her a statement from the doctor every six months and I am the primary caregiver. Because if somethin' happens to my daddy we had to gotta have this trailer moved (inaudible). This is only for him.

Claim Number: 408552371

Claim Office:

Q. Okay.

A. Yeah.

Q. How long with this your father's mobile home been on this property?

A. We got that trailer years ago. He's been here about two years Daddy? I moved him from Greenwood(sp?) two years ago.

Q. Okay.

B. (Inaudible) know how long this trailer been here.

A. Oh we've had we were in this trailer for no 11 years. And we just had that trailer two years ago.

Q. Now when you say this trailer we're currently in your father's address takin' this statement.

A. This was ours but we gave it to my daddy.

Q. Okay.

A. Um hum.

Q. And now you gave it to your dad two years ago?

A. Um hum.

Q. Okay and your dad's been here ever since?

A. Um hum.

Q. All right and then you pur- if I understand you correctly you you purchased another trailer and you guys moved into that trailer after your dad moved into this one?

A. To m- no we moved in that one to bring my daddy down here.

Q. Okay.

A. Um hum. So he'd have his own place.

Q. All right. The permit ah specifically what what was the permit state?

A. It's a letter that states that my father still I have to be his primary caregiver and I have to take care of him. Because once somethin' happens to my daddy this trailer has to be moved immediately. This is only for him 'cause I have to take care of him 'cause he (inaudible) can't.

Q. So the permit is in regards to the trailer being on this property?

A. And him having cancer and me...

Q. Okay.

A. Taking care of him.

C. Cou- if I can interject I think the reason I'm not positive I haven't talked to them about this but the lot this is only one...

A. (Inaudible).

C. One lot where both properties are located on the same piece of real estate and I think she's referring to an Anderson(sp?) County restriction that says only one residence per lot. But the the plot of land where both of these properties are it's the same the same I- same land.

Claim Number: 408552371

Claim Office:

- A. Um hum.
- C. Same piece of property real estate-wise.
- Q. Okay.
- C. And so that's what she's talking about about the permit that I have this (inaudible)...
- A. There was a lot of rigamarole (inaudible).
- Q. So is that your understanding based on what Mr. Turnidge just said?
- A. Yes. Um hum.
- Q. Okay.
- A. Oh yeah.
- Q. So for the record ah the permit is because of there being two trailers on one plot of land?
- A. Um hum.
- Q. And you have to have a special permit to do that...
- A. (Inaudible).
- Q. In Anderson County?
- A. Medical medical permit.
- Q. Okay.
- A. Um hum.
- Q. All right. Ms. Bowen are there any other ah specifics that you'd like to mention regarding why you have to live with your father?
- A. No all they did I'm the only one to take care of him and nobody else. And he's not goin' anywhere soon.
- Q. Okay.
- A. It was either me move to Greenwood or him move here.
- Q. Okay.
- A. That was the options.
- Q. Any other comments?
- A. And we've looked on gettin' that trailer for years and they we agreed (inaudible) we were gone a year just to move my daddy down here.
- Q. Okay. And you're referring to the trailer at 209?
- A. Um hum.
- C. Tell tell him for the recording what is your father's medical condition that (inaudible)...
- A. He had...
- C. (Inaudible).
- A. He had four throat cancers a prostate cancer and he's had this goin' on since 2001. And I was havin' to go back and forth to Greenwood and I finally decided it was gettin' worse and worse and I said Ron(sp?) you either move my daddy

Claim Number: 408552371

Claim Office:

down here or I movin' to Greenwood. (Inaudible). 'Cause I'm the only he's got three daughters but I'm the only one that's takin' care of him.

Q. Okay.

A. And I've been takin' care of my daddy for (inaudible).

Q. Does anyone else live in this residence besides...

A. No.

Q. Your father and yourself?

A. Nobody.

B. (Inaudible).

A. (Inaudible) does not live here Daddy.

B. He lives down there.

A. Yeah he lives down there.

Q. Okay. Any other comments Ms. Bowen?

A. Huh uh.

Q. Are remarks you well Mr. Attorney do if you have any c- comments you wanna...

C. No sir.

Q. All right. Ah are the remarks you made in this recording your true version to the best of your knowledge?

A. Yes sir.

Q. And this recording was made with your full knowledge and consent?

A. Yes sir.

Q. Just state your name again please.

A. Denise Bowen.

Q. Mr. Turner w- ah Turnidge would you please state your name again?

C. Edwin Lake Turnidge.

Q. And Mr. Thrasher will you state your name again please?

A. Larry Tyrone Thrasher.

Q. At this time this concludes the recorded interview.

To be completed and returned with each relevant audio transcribed outside of Transcription Express, Inc. premises. The Vendor is under contract with State Farm Mutual Automobile Insurance Company, on behalf of itself, its subsidiaries and affiliates.

TRANSCRIPTIONIST AFFIDAVIT

I, Renee Bennett declare that:

- 1) I have transcribed this State Farm Insurance recorded claim statement to the best of my ability.
- 2) This audio has not been added to, erased, cut, text deleted, or altered in any way while in my possession.
- 3) I have not provided, and I will not provide, this audio or its contents in any form to anyone other than the Vendor identified below.

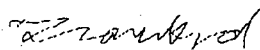
Claim Number: 408552371

Claim Office:

4) This audio remained in my possession the entire time between the start date & time and the return date & time indicated below.

THIS AUDIO WAS IN MY POSSESSION April 30, 2010 2:00 pm
THIS AUDIO WAS RETURNED TO VENDOR May 3, 2010 11:00 A.M.

Signed: 
Address: 1254 S. Nassau, Mesa, AZ 85206

Signed: 
Signed:

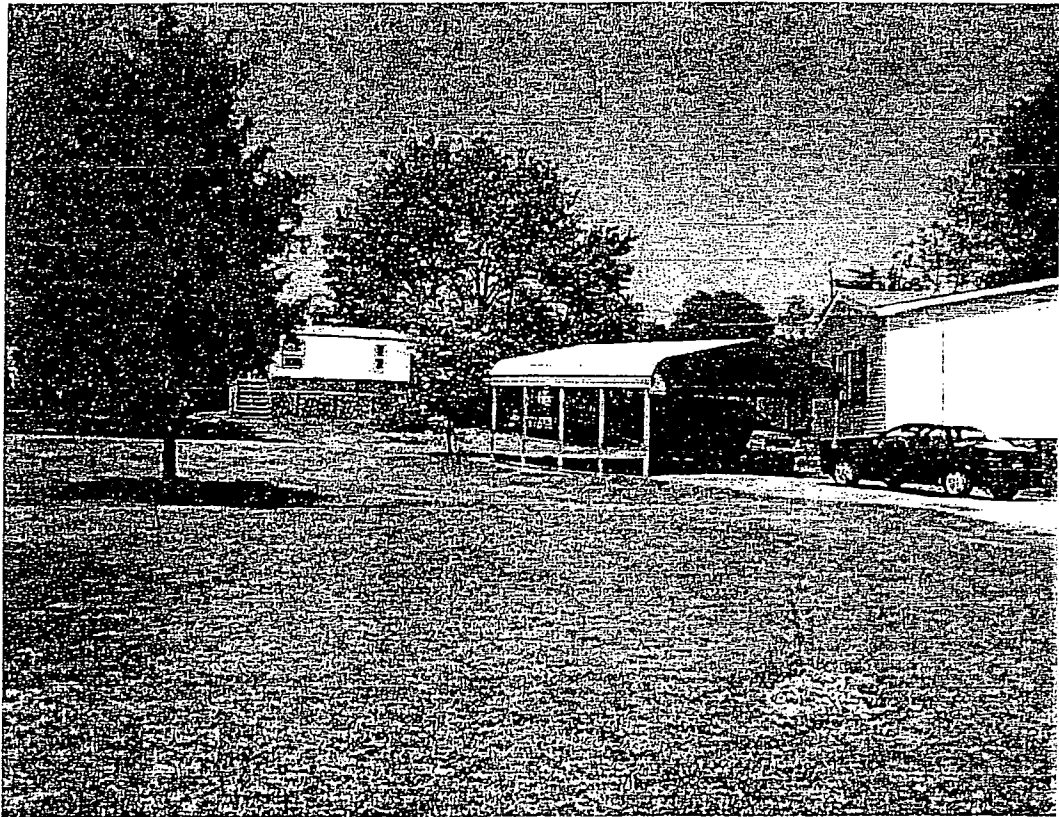
Transcription Express, Inc., 925 N. McQueen Suite #106, Gilbert, AZ 85233

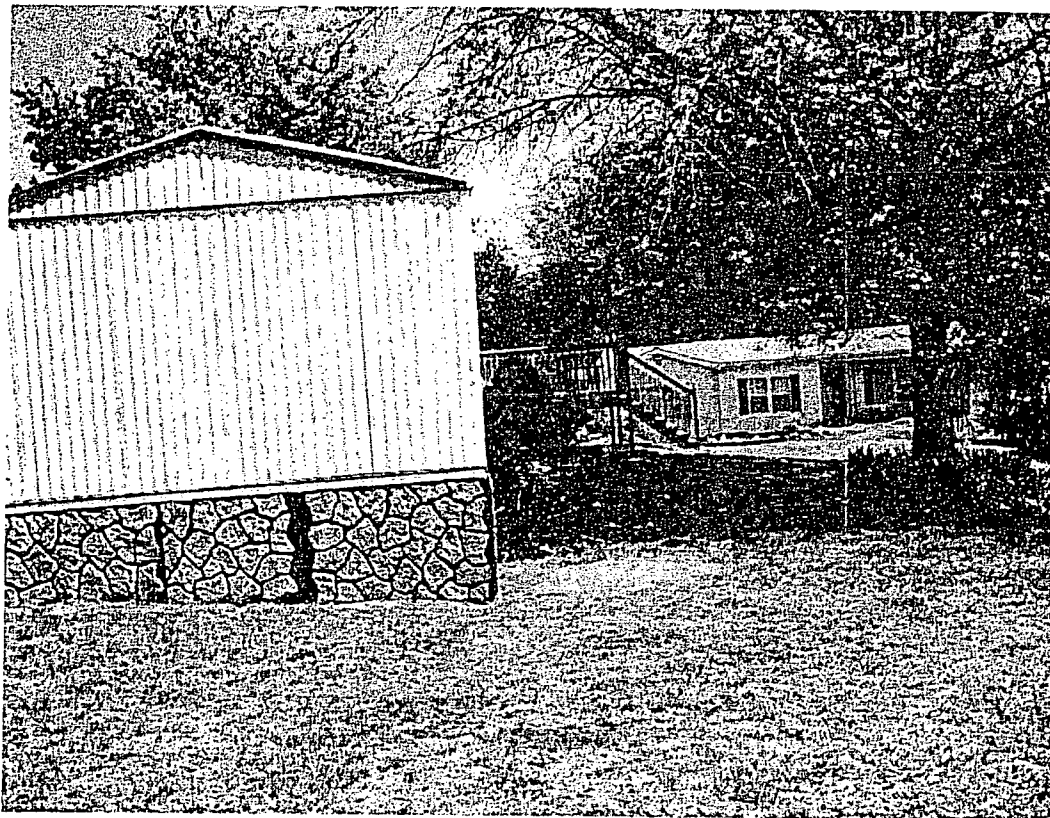
Received From: Greer

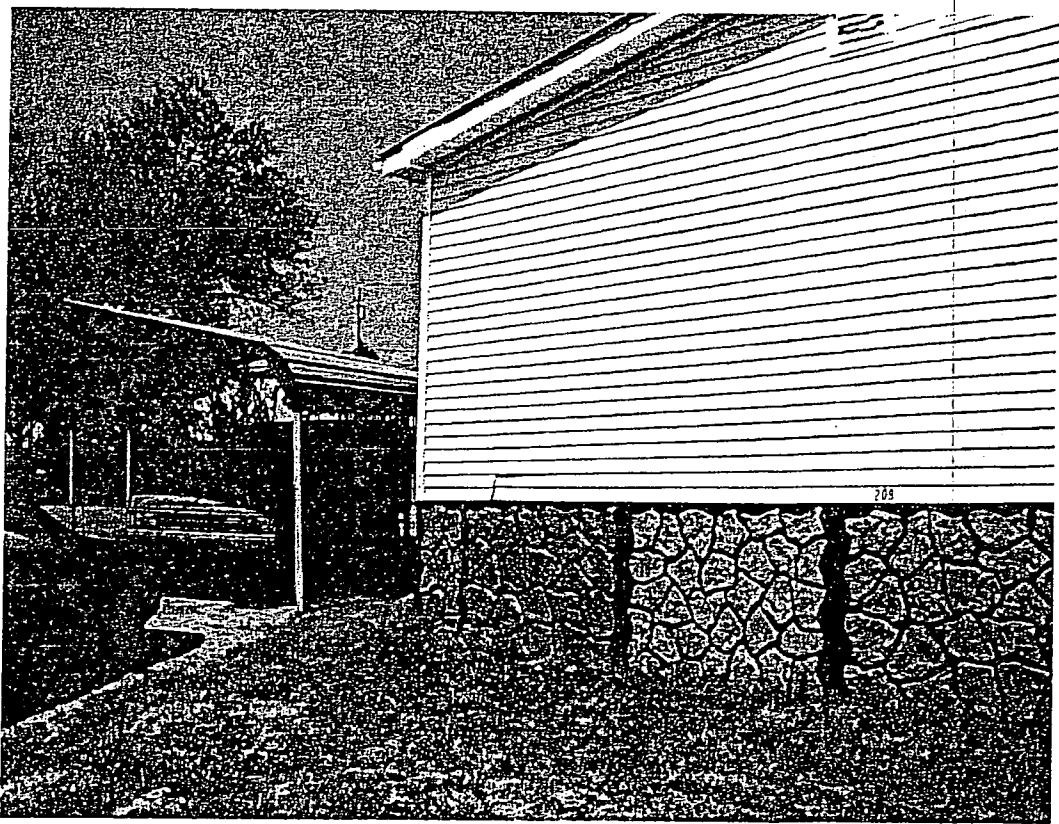
Date & Time Received by Vendor: May 3, 2010 AT 12:00 P.M.

Date & Time Sent to Zone Location: May 3, 2010 AT 12:30 P.M.

Dated: May 3, 2010















ANDERSON COUNTY

SOUTH CAROLINA

Development Standards Department
111 South Main Street- PO Box 8002
Anderson, SC 29624
Phone # (864)260-1087 Fax # (864)260-4795

August 13, 2008

Ms. Denise Bowen
209 Cherry Seed Road
Anderson, SC 29625

**Re: Medical Exception for father (Mr. Larry Thrasher)
Mobile Home License 400-00-20-080**

Dear Ms. Bowen,

I am updating all Medical Exception records. I contacted you by telephone on 6/16/08, 6/18/08, and again on 8/04/08 when you stated that Mr. Thrasher had an appointment with his doctor on August 7th and you stated that you would bring his medical statement to our office after his appointment.

Our records indicate that you were issued a mobile home permit for a 2nd home to be located on the same parcel in order to take care of your father. The permit was issued for medical hardship only. If the medical exception still exists for your father, I will need a new medical statement from his doctor immediately. If your father no longer resides in the mobile home, you will need to get the necessary permits to move the mobile home within 30 days.

Please contact our office if you have any questions @ 260-1087.

Sincerely,

M. Bennett
Development Standards



WEST ANDERSON WATER DISTRICT
2767 WHITEHALL ROAD - ANDERSON, S.C. 29625
TELEPHONE (864) 225-5741 (ALL HOURS)

Temp - Return Service Requested

PRESENT READING DATE	PREVIOUS READING DATE	NO. OF DAYS	ACCOUNT NO.	
8/24/10	6/28/10	57	0602-524	
QUANTITY X 1000			CODE	NET AMOUNT OF BILL
METER READING PRESENT	PREVIOUS	USED		
538	529	9	W MS	45.50 2.25
9/20/10		52.53	47.75	
ARREARS	DUE DATE	PAY THIS AMOUNT AFTER DUE DATE	PAY THIS AMOUNT BY 5 PM ON DUE DATE	

SEE REVERSE SIDE FOR CODE EXPLANATION

DHEC MANDATED WATER TEST
CHARGE \$2.25 FOR 2011

we share
→ the water
bill because
there is only
one for both
properties.





ANDERSON COUNTY
SOUTH CAROLINA

PAYID#:

001224

TAX RECEIPT

TAXES FOR THE
YEAR ENDING

DEC 31, 2010

This Tax Receipt is null
and void if payment is
made with a check that
fails to clear the bank

CLASS	RATIO	NO. ACRES	NO. LOTS	LAND ASSESSMENT	NO. IMPS	IMP ASSESSMENT	TAX LEVY
R	.040		1	320	1	160	
							CITY .00000
							COUNTY .30350
MORT COMPANY	IND PARK	PROPERTY IDENTIFICATION				TOTAL ASSESSMENT	CITY TAX
		LT 29 CHERRY SEED RD				480	
DORCO ID NUMBER		TAX MAP SHEET		MARKET VALUE		COUNTY TAX	
		690701006		12,000		145.68	
REAL PROPERTY		REAL ESTATE		ASSESSMENT	TAX DISTRICT	TAX YEAR	ACCOUNT NUMBER
					005	2010	2010 1704788

FEES:

000000000
***** TAXPAYER COPY *****
BOWEN RAYMOND BRIAN
209 CHERRY SEED RD
ANDERSON
SC 296250000
COUNTY TAX 145.68
CITY TAX
FEES
LESS EXEMPTIONS 83.38
PENALTY ADDED
PREVIOUS PAYMENTS
REFUNDED
PAYMENT APPLIED***
OVER PAYMENT*****
TOTAL PAYMENTS 62.30

TAX PAID

OCTOBER
21 2010

Jan P. Phillips
COUNTY TREASURER

BOWEN RAYMOND BRIAN
209 CHERRY SEED RD
ANDERSON SC 296250000

PLACE
STAMP
HERE

Taxes
FOR
Property -
Land.
We share
this bill.



Anderson County Treasurer
PO BOX 8002
ANDERSON SC 29622-8002

such coverage is provided by this paragraph, it will apply only until 12:01 A.M. Standard Time at the address shown on the declarations page on the sixth day after the delivery of the *car* to you or *your spouse*. Any comprehensive or collision coverage provided by this paragraph is subject to a deductible of \$500.

Non-Owned Car – means a *car* not owned by, registered to or leased to:

1. *you, your spouse*;
2. any *relative* unless at the time of the accident or *loss*:
 - a. the *car* currently is or has within the last 30 days been insured for liability coverage; and
 - b. the driver is an *insured* who does not own or lease the *car*;
3. any other *person* residing in the same household as *you, your spouse* or any *relative*; or
4. an employer of *you, your spouse* or any *relative*.

Non-owned car does not include a:

1. rented *car* while it is used in connection with the *insured's* employment or business; or
2. *car* which has been operated or rented by or in the possession of an *insured* during any part of each of the last 21 or more consecutive days. If the *insured* is an *insured* under one or more other car policies issued by us, the 21 day limit is increased by an additional 21 days for each such additional policy.

A **non-owned car** must be a *car* in the lawful possession of the *person* operating it.

Occupying – means in, on, entering or alighting from.

Person – means a human being.

Private Passenger Car – means a *car*:

1. with four wheels;
2. of the private passenger or station wagon type; and
3. designed solely to carry *persons* and their luggage.

Relative – means a *person* related to *you* or *your spouse* by blood, marriage or adoption who resides primarily with *you*. It includes *your* unmarried and unemancipated child away at school.

Spouse – means *your* husband or wife who resides primarily with *you*.

Temporary Substitute Car – means a *car* not owned by or leased to *you* or *your spouse*, if it replaces *your car* for a short time. Its use has to be with the consent of the owner. *Your car* has to be out of use due to its breakdown, repair, servicing, damage or *loss*. A **temporary substitute car** is not considered a **non-owned car**.

Utility Vehicle – means a motor vehicle with:

1. a pickup, panel or van body; and
2. a Gross Vehicle Weight of 10,000 pounds or less.

You or Your – means the named insured or named insureds shown on the declarations page.

Your Car – means the *car* or the vehicle described on the declarations page.

b. insured or bonded for bodily injury and property damage liability at the time of the accident, but:

(1) the limits of liability are less than required by the *Financial Responsibility Act*;

(2) the insuring company denies coverage or is, or becomes, insolvent; or

(3) a cause of action for the *bodily injury* or *property damage* is barred by the South Carolina Tort Claims Act; or

2. a "hit-and-run" *motor vehicle* whose owner or operator remains unknown, but only if:

a. the *bodily injury* or *property damage* was caused by physical contact with the unknown vehicle; or the accident was witnessed by someone other than the owner or operator of the insured vehicle. The witness must sign an affidavit attesting to the truth of the facts of the accident contained in the affidavit; and

b. the *insured* was not negligent in failing to determine the identity of the other vehicle and the driver of the other vehicle at the time of the accident.

An *uninsured motor vehicle* does not include any motor vehicle owned by:

1. the *insured* who sustains *bodily injury* or *property damage*;

2. a self-insurer in accordance with the applicable provisions of law; or

3. the State or any of its political subdivisions when the vehicle is operated by a *person* with proper authorization.

UNDERINSURED MOTOR VEHICLE - COVERAGE W

You have this coverage if "W" appears in the "Coverages" space on the declarations page.

We will pay damages for *bodily injury* or *property damage* an *insured*:

1. is legally entitled to collect from the owner or driver of an *underinsured motor vehicle*; or

2. would have been legally entitled to collect except for the existence of any damages cap or limitation imposed by statute.

The *bodily injury* or *property damage* must be caused by accident arising out of the operation or ownership of the *underinsured motor vehicle*. The *bodily injury* must be sustained by an *insured*.

THERE IS NO COVERAGE UNTIL THE LIMITS OF LIABILITY OF ALL APPLICABLE *BODILY INJURY*, *LIABILITY* AND *PROPERTY DAMAGE* LIABILITY INSURANCE POLICIES OR BONDS THAT APPLY TO THE *BODILY INJURY* OR *PROPERTY DAMAGE* HAVE BEEN USED UP BY PAYMENT OF JUDGMENTS OR SETTLEMENTS, OR PAYMENT HAS BEEN MADE UNDER SUCH POLICIES OR BONDS UP TO ANY DAMAGES CAP OR LIMITATION IMPOSED BY STATUTE.

Underinsured Motor Vehicle - means a *motor vehicle*, as to which there is *bodily injury* liability insurance or a bond applicable at the time of the accident in an amount of at least that specified in the *Financial Responsibility Act* and:

1. the amount of the insurance or bond is less than the amount of the *insured's* damages; or

2. the *insured's* damages exceed any damages cap or limitation imposed by statute.

An *underinsured motor vehicle* does not include any *motor vehicle* while located for use as premises.

Our Right to Defend

If the *insured* files suit against the owner or driver of the *underinsured motor vehicle*, we have the right to defend on the issues of the legal liability of and the damages owed by such owner or driver.

Definitions

Financial Responsibility Act – means the Motor Vehicle Financial Responsibility Act of South Carolina.

Motor Vehicle – means a self-propelled vehicle or trailer designed for use on public roads.

A *motor vehicle* does not include:

1. traction engines;
2. road rollers;
3. farm tractors;
4. tractor cranes;
5. power shovels;
6. well drillers; or
7. electric trolleys.

Property Damage – means damage to property of the *insured*.

Who Is an Insured

Insured – means:

1. *you, your spouse and relatives*;
2. any other *person* while *occupying* or using *your car*, a *newly acquired car*, or a trailer attached to either, if such vehicle is:
 - a. insured under the liability coverage; and
 - b. being used with *your* consent; and
3. any *person* to the extent he or she may recover damages under a state wrongful death statute because of the death of an *insured* under 1. or 2. above.

Payment of Any Amount Due

We will pay any amount due to the *insured* or the *insured's* representative.

Limits of Liability

Coverage U

1. Bodily Injury

The amount of coverage is shown on the declarations page under "Limits of Liability – U – Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes all injury and damages to others resulting from this *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

2. Property Damage

The amount of coverage is shown on the declarations page under "Limits of Liability – U – Property Damage, Each Accident". This is the amount of coverage for all *property damage* as the result of one accident.

3. The most we pay will be the lesser of:

- a. the difference between:
 - (1) the amount of the *insured's* damages; and
 - (2) the amount paid to the *insured* by or for any *person* or organization who is or may be held legally liable for the *bodily injury* or *property damage*; or
- b. the limit of liability of this coverage.

Coverage W

1. Bodily Injury

The amount of coverage is shown on the declarations page under "Limits of Liability – W – Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes

2. REPORTING A CLAIM — INSURED'S DUTIES

The following is added:

A *person* or organization making claim under this policy must, when we ask, give us proof of loss on forms we furnish.

A *person* making claim under Personal Injury Protection Coverage, Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, and Death, Dismemberment and Loss of Sight Coverage must provide written authorization for us to obtain:

1. medical bills;
2. medical records;
3. wage, salary, and employment information; and
4. any other information we deem necessary to substantiate the claim.

If an injured *person* is a minor, unable to act, or dead, then his or her legal representative must provide us with the written authorization.

If the holder of the information refuses to provide it to us despite the authorization, then at our request the *person* making claim or his or her legal representative must obtain the information and promptly provide it to us.

3. SECTION II — PERSONAL INJURY PROTECTION — COVERAGE P AND MEDICAL PAYMENTS — COVERAGE C

- a. The following paragraph under both Personal Injury Protection Coverage and Medical Payments Coverage:

Expenses are reasonable only if they are consistent with the usual fees charged by the majority of similar medical providers in the geographical area in which the expenses were incurred for the specific medical service.

is changed to read:

Expenses are reasonable only if they are the lowest of any one of the following charges:

1. the usual and customary fees charged by a majority of health-care providers who provide similar medical services in the geographical area in which the charges were incurred;
2. the fees agreed to by both the injured *person's* healthcare provider and us; or
3. the fees agreed upon between the injured *person's* healthcare provider and a third party when we have a contract with such third party.

- b. The following is added to both Personal Injury Protection Coverage and Medical Payments Coverage:

We have the right to:

1. obtain and use:
 - a. peer reviews; and
 - b. medical bill reviewsof the medical expenses and services to determine if they are reasonable and necessary for the *bodily injury* sustained;
2. use a medical examination of the injured *person* to determine if:
 - a. the *bodily injury* was caused by a motor vehicle accident; and
 - b. the medical expenses and services are reasonable and necessary for the *bodily injury* sustained; and
3. enter into a contract with a third party that has an agreement with the injured *person's*

healthcare provider to charge fees as determined by that agreement.

- c. The following is added to **Deciding Amount** under both Personal Injury Protection Coverage and Medical Payments Coverage:

Arbitrators shall have no authority to decide any questions of law or conduct arbitration on a class-wide or class-representative basis.

4. **SECTION IV — PHYSICAL DAMAGE COVERAGES**

COMPREHENSIVE — COVERAGE D and COLLISION — COVERAGE G

- a. The following is added:

You agree that replacement glass need not have any insignia, logo, trademark, etching, or other marking that was on the replaced glass.

- b. The following is added to **Settlement of Loss — Comprehensive and Collision Coverages**:

Appraisers shall have no authority to decide any questions of law or conduct appraisal on a class-wide or class-representative basis.

5. **MOTORCYCLE COVERAGE ENDORSEMENT and TRAILER ENDORSEMENT**

The definition of *newly acquired car* in the above item 1. replaces the definition of *newly acquired car* in both the **MOTORCYCLE COVERAGE** endorsement and the **TRAILER ENDORSEMENT** if either endorsement is a part of *your* policy. In addition, under the **TRAILER ENDORSEMENT**, the definition of *car* as found in the definition of *newly acquired car* is changed to include a trailer newly owned by or newly leased to *you* if it is of the same type as the trailer described on the declarations page.

6940.2 AMENDATORY ENDORSEMENT

This endorsement is a part of *your* policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as *your* policy unless a different effective date is specified by us in writing.

In consideration of the premium charged, it is agreed that *your* policy is changed as follows:

1. DEFINED WORDS

- a. The following definition is added:

Fungi — means any type or form of fungus or fungi and includes:

1. mold;
2. mildew; and
3. any of the following that are produced or released by fungi:
 - a. mycotoxins;
 - b. spores;
 - c. scents; or
 - d. byproducts.

- b. *Non-Owned Car* — The provision which reads:

Non-owned car does not include a rented car while it is used in connection with the *insured's* employment or business.

is deleted.

2. SECTION I — LIABILITY — COVERAGE A

Under the paragraph that reads "In addition to the limits of liability, we will pay for an *insured* any costs listed below resulting from such accident":

- a. item 3.c. is deleted.
- b. item 4 is changed to read:
 4. The following costs and expenses if related to and incurred after a civil lawsuit has been filed against an *insured* for damages for which liability coverage is provided by this policy:

- a. loss of wages or salary, but not other income, up to \$100 for each day an *insured* attends at *our* request:

- (1) an arbitration;
- (2) a mediation; or
- (3) a trial of a civil suit.

- b. reasonable expenses incurred by an *insured* at *our* request, other than loss of wages, salary, or other income.

The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to us before we will pay.

- c. The provision titled Trailer Coverage is changed to read:

Trailer Coverage

The liability coverage extends to the ownership, maintenance or use, by an *insured*, of:

1. trailers designed to be pulled by a *private passenger car* or a *utility vehicle*, except those trailers in 2.a. below.

Farm implements and farm wagons are considered trailers while pulled on public roads by a *car* we insure for liability.

These trailers are not described in the declarations and no extra premium is charged.

2. the following trailers only if they are described on the declarations page and extra premium is paid:

- a. trailers designed to be pulled by a *private passenger car* or a *utility vehicle*:

- (1) if designed to carry *persons*; or

- (2) while used with a motor vehicle whose use is shown as "commercial" on the declarations page (trailers used only for pleasure use are covered even if not described and no extra premium paid); or

- (3) while used as premises for office, store or display purposes; or

- b. trailers not designed to be pulled by a *private passenger car* or a *utility vehicle*.

When we refer to trailer coverage, *insured* means:

1. *you*;
2. *your spouse*;
3. the *relatives* of the first *person* named in the declarations;
4. any other *person* while using *your car*, a *newly acquired car* or a *temporary substitute car*, if its use is within the scope of consent of *you* or *your spouse*; and

5. any other *person* or organization liable for the use of a covered trailer by one of the above *insureds*.

- d. The first paragraph under **Limits of Liability** is changed to read:

Limits of Liability

1. The amount of bodily injury liability coverage is shown on the declarations page under "Limits of Liability — Coverage A — Bodily Injury, Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes all injury and damages to other *persons* resulting from this *bodily injury*, and all emotional distress resulting from this *bodily injury* sustained by other *persons* who do not sustain *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

3. MEDICAL PAYMENTS — COVERAGE C

The following is added to What Is Not Covered Under Coverage C:

- a. THERE IS NO COVERAGE FOR *BODILY INJURY* THAT RESULTS FROM EXPOSURE TO *FUNGI*.
- b. THERE IS NO COVERAGE FOR *BODILY INJURY* THAT RESULTS FROM:
 - (1) NUCLEAR REACTION;
 - (2) RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR

- (3) THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE.

4. SECTION III — UNINSURED MOTOR VEHICLE — COVERAGE U AND UNDERINSURED MOTOR VEHICLE — COVERAGE W

- a. The following wording under the definition of "Uninsured Motor Vehicle" is deleted:

An *uninsured motor vehicle* does not include any motor vehicle owned by the *insured* who sustains *bodily injury* or *property damage*.

- b. Who Is an Insured is changed to read:

Who Is an Insured

Insured — means:

1. *you, your spouse and relatives;*
2. *any other person while occupying or using your car, a newly acquired car or a trailer attached to either, if that person is occupying or using the vehicle with your consent; and*
3. *any person to the extent he or she may recover damages under a state wrongful death statute because of the death of an insured under 1. or 2. above.*

- c. Item 1. Bodily Injury, under Limits of Liability Coverage U is changed to read:

1. Bodily Injury

The amount of coverage is shown on the declarations page under "Limits of Liability — U — Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one

person" includes all injury and damages to others resulting from this *bodily injury*, and all emotional distress resulting from this *bodily injury* sustained by other *persons* who do not sustain *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

- d. Item 1. Bodily Injury, under Limits of Liability Coverage W is changed to read:

1. Bodily Injury

The amount of coverage is shown on the declarations page under "Limits of Liability — W — Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes all injury and damages to others resulting from this *bodily injury*, and all emotional distress resulting from this *bodily injury* sustained by other *persons* who do not sustain *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

- e. Item 4. under When Coverages U and W Do Not Apply is replaced with the following:

THERE IS NO COVERAGE TO THE EXTENT THE COVERAGE LIMITS UNDER THIS SECTION OF THIS POLICY EXCEED THE

LIMITS REQUIRED BY THE
FINANCIAL RESPONSIBILITY
ACT:

- a. WHILE ANY *INSURED* IS
OCCUPYING A MOTOR
VEHICLE OWNED BY OR
LEASED TO YOU, YOUR
SPOUSE, OR ANY RELA-
TIVE IF:
 - (1) IT IS NOT YOUR CAR OR
A NEWLY ACQUIRED
CAR; AND
 - (2) IT IS NOT INSURED
FOR THE COVERAGE
SOUGHT UNDER THIS
SECTION OF THIS POL-
ICY;
- b. IF THE *UNINSURED MOTOR
VEHICLE OR UNDERIN-
SURED MOTOR VEHICLE* IS
OWNED BY OR LEASED TO
YOU, YOUR SPOUSE, OR
ANY RELATIVE.
- f. Item 5. under When Coverages U and
W Do Not Apply is deleted.
- g. The following is added to When Cov-
erages U and W Do Not Apply

THERE IS NO COVERAGE FOR
PROPERTY DAMAGE THAT
WAS PROXIMATELY CAUSED
BY THE DRIVER OF YOUR CAR
OR A NEWLY ACQUIRED CAR.
- h. The provision titled If There Is Other
Uninsured Motor Vehicle Coverage
is replaced with the following:

If There Is Other Uninsured
Motor Vehicle Coverage

 - 1. If uninsured motor vehicle cov-
erage for *bodily injury* or *prop-
erty damage* is available to you,
your spouse or a relative from
more than one policy provided
by us or any other insurer; then
the uninsured motor vehicle

coverage provided by this pol-
icy shall apply:

- a. on a primary basis if you,
your spouse or a relative
sustains *bodily injury* or
property damage while
occupying your car, or
while not occupying a mo-
tor vehicle or trailer.
 - b. on an excess basis if you,
your spouse or a relative
sustains *bodily injury* or
property damage while oc-
cupying a motor vehicle or
trailer other than your car.
2. If:
- a. you, your spouse or a
relative sustains *bodily in-
jury* or *property damage*
while not occupying a mo-
tor vehicle or trailer; and
 - b. uninsured motor vehicle
coverage from more than
one of our policies issued to
you, your spouse or a rela-
tive applies to the accident,
then:
 - (1) only one policy with
the highest uninsured
motor vehicle cover-
age limit shall apply in
that limit; and
 - (2) the uninsured motor
vehicle coverage from
each of the other poli-
cies we issued shall
apply only in an
amount equal to the
minimum limits re-
quired by the *Financial
Responsibility Act* for
bodily injury and *prop-
erty damage* liability.
3. If you, your spouse or a rela-
tive sustains *bodily injury* or

property damage while *occupying* a motor vehicle or trailer other than *your car* that is owned by or leased to *you*, *your spouse* or a *relative*, then this coverage applies only to the extent of:

- a. the uninsured motor vehicle coverage applicable to the occupied motor vehicle or trailer, or
- b. the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage,

whichever is higher.

4. If *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying* a motor vehicle or trailer not owned by or leased to *you*, *your spouse* or a *relative*, then only one policy issued by us to *you*, *your spouse* or any *relative* with the highest uninsured motor vehicle coverage limit shall apply.
5. Subject to items 1, 2, 3 and 4 above, if this policy and one or more other policies provide uninsured motor vehicle coverage for *bodily injury* or *property damage*:
 - a. on a primary basis, then we are liable only for our share. Our share is that percent of the damages payable on a primary basis that the limit of liability that applies from this policy bears to the total of all applicable uninsured motor vehicle coverage provided on a primary basis.
 - b. on an excess basis, then we are liable only for our

share. Our share is that percent of the damages payable on an excess basis that the limit of liability that applies from this policy bears to the total of all applicable uninsured motor vehicle coverage provided on an excess basis.

- i. The provision titled *If There Is Other Underinsured Motor Vehicle Coverage* is replaced with the following:

If There Is Other Underinsured Motor Vehicle Coverage

1. If underinsured motor vehicle coverage for *bodily injury* or *property damage* is available to *you*, *your spouse* or a *relative* from more than one policy provided by us or any other insurer, then the underinsured motor vehicle coverage provided by this policy shall apply:
 - a. on a primary basis if *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying your car*, or while not *occupying* a motor vehicle or trailer.
 - b. on an excess basis if *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying* a motor vehicle or trailer other than *your car*.
2. If:
 - a. *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while not *occupying* a motor vehicle or trailer; and
 - b. underinsured motor vehicle coverage from more than one of our policies issued to *you*, *your spouse*

or a *relative* applies to the accident, then:

- (1) only one policy with the highest underinsured motor vehicle coverage limit shall apply in that limit; and
 - (2) the underinsured motor vehicle coverage from each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage liability.
3. If *you, your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying* a motor vehicle or trailer other than *your car* that is owned by or leased to *you, your spouse* or a *relative*, then this coverage applies only to the extent of:
- a. the underinsured motor vehicle coverage applicable to the occupied motor vehicle or trailer, or
 - b. the minimum limits required by the *Financial Responsibility Act*, for bodily injury and property damage,
- whichever is higher.
4. If *you, your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying* a motor vehicle or trailer not owned by or leased to *you, your spouse* or a *relative*, then only the one policy issued by us to *you, your spouse* or any *relative* with

the highest underinsured motor vehicle coverage limit shall apply.

5. Subject to items 1, 2, 3 and 4 above, if this policy and one or more other policies provide underinsured motor vehicle coverage for *bodily injury* or *property damage*:

- a. on a primary basis, then we are liable only for our share. Our share is that percent of the damages payable on a primary basis that the limit of liability that applies from this policy bears to the total of all applicable underinsured motor vehicle coverage provided on a primary basis.
- b. on an excess basis, then we are liable only for our share. Our share is that percent of the damages payable on an excess basis that the limit of liability that applies from this policy bears to the total of all applicable underinsured motor vehicle coverage provided on an excess basis.

5. SECTION IV — PHYSICAL DAMAGE COVERAGES

- a. The following is added to the definition of *Loss*:

Loss does not include any reduction in the value of any vehicle or detachable living quarters after it has been repaired, as compared to its value before it was damaged.

- b. Item 2 under **COMPREHENSIVE — COVERAGE D** is changed to read:

2. We will pay *you* for transportation costs incurred if *your car* is stolen. We will pay up to \$25 per day beginning when *you* tell us of the theft and ending when we offer to pay for the *loss*.

If the daily incurred transportation costs are payable under both Comprehensive Coverage and Car Rental and Travel Expenses Coverage, we will pay only under the one coverage where *you* collect the most. If payments have been made under Car Rental and Travel Expenses Coverage and such payments have either exhausted the total amount payable under Car Rental Expense or reduced the total amount payable under Car Rental Expense to less than \$25, then we will pay under Comprehensive Coverage.

- c. The following is added to COLLISION - COVERAGE G:

Loss caused by *collision* does not include *loss* due to:

1. missiles or falling objects;
2. windstorm or hail;
3. earthquake, water or flood;
4. theft or larceny;
5. malicious mischief or vandalism; or
6. riot or civil commotion.

- d. The first paragraph of Limit of Liability — Comprehensive and Collision Coverages is changed to read:

The limit of our liability for *loss* to property or any part of it is the lower of:

1. the actual cash value; or

2. the cost of repair or replacement. The cost of repair or replacement does not include any reduction in the value of the property after it has been repaired, as compared to its value before it was damaged.

- e. The paragraph under CAR RENTAL AND TRAVEL EXPENSES - COVERAGE R1 in *your* policy booklet that reads:

Any car rent payable under this coverage is REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE

is changed to read:

If the incurred daily rental charge is payable under both Comprehensive Coverage and Car Rental and Travel Expenses Coverage, we will pay only under the one coverage where *you* collect the most.

- f. The provision titled Total Amount of Expenses Payable - Coverage R1 in *your* policy booklet is changed to read:

Total Amount of Expenses Payable - Coverage R1

1. The most we will pay for Car Rental Expense incurred in any one occurrence is \$400.
2. The most we will pay for Travel Expenses incurred by all *persons* in any one occurrence is \$400.
3. The most we will pay for Rental Car - Repayment of Deductible Amount Expense incurred in any one occurrence is \$400.

- g. Trailer Coverage

The paragraph which reads:

The most we will pay under the comprehensive or collision coverage for a *loss* to such non-owned trailer or unit is \$500.

is changed to read:

The most we will pay under the comprehensive or collision coverage for a *loss* to such non-owned trailer or unit is \$2500.

- h. Item 2.c. of **Trailer Coverage** is deleted.
- i. The following is added to **When The Physical Damage Coverages Do Not Apply**:
 - a. THERE IS NO COVERAGE FOR *LOSS* TO ANY VEHICLE DUE TO *FUNGI*. THIS APPLIES REGARDLESS OF WHETHER OR NOT THE *FUNGI* RESULT FROM A *LOSS* THAT IS PAYABLE UNDER ANY OF THE PHYSICAL DAMAGE COVERAGES. WE WILL ALSO NOT PAY FOR ANY TESTING OR REMEDIATION OF *FUNGI*, OR ANY ADDITIONAL COSTS REQUIRED TO REPAIR *YOUR CAR* THAT ARE DUE TO THE EXISTENCE OF *FUNGI*.
 - b. THERE IS NO COVERAGE FOR *LOSS* TO ANY VEHICLE THAT RESULTS FROM:

- (1) NUCLEAR REACTION;
- (2) RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR
- (3) THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE.

6. CONDITIONS

The following is added to 1. Policy Changes:

e. Change of Policy Address

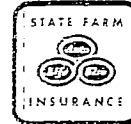
We may change the named insured's policy address as shown on the Declarations Page and in our records to the most recent address provided to us by:

- 1. *you*; or
- 2. the United States Postal Service.

7. The following is added to *your* policy:

Your purchase of this policy may allow *you* to purchase certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other policies from State Farm Mutual Automobile Insurance Company, State Farm Fire and Casualty Company, and subsidiaries or affiliates of either, subject to their applicable eligibility rules.

State Farm Insurance Companies®



Atlanta Operations Center
14350 Johns Creek Parkway
Duluth, Georgia 30096-0001

CERTIFICATE

I, the undersigned, do hereby certify that I am custodian of the records pertaining to the issuance of policies issued by the South Carolina Division of State Farm Mutual Automobile Insurance Company, Bloomington, Illinois.

I further certify that the attached policy, number 146 5886-C04-40, is a copy of the policy issued to Larry T Thrasher, 2505 Highway 123 Lot 16, Greenville, SC 29611, together with endorsements issued subsequently and effective as follows, based on our available records:

6940.2 - Amendatory Endorsement - Effective - 3/04/08.

The policy is currently in effect on the loss date January 16, 2010.

A handwritten signature in cursive script that reads "Brenda Holmes".

Brenda Holmes
Underwriting Operations Team Manager

Dated this 15 day of June, 2010.

A handwritten signature in cursive script, likely belonging to the Notary Public.

Notary Public

Joni Stowe
Notary Public
Forsyth County, Georgia
My Commission Expires
April 22, 2014

our light bills
we pay them.

RETURN THIS PORTION WITH YOUR PAYMENT TO THE ADDRESS BELOW. THANK YOU FOR YOUR BUSINESS.
076557
401

991950441680010000000004071000000000000 88 0 88 0

#19K0 F4BT 80CB IS03#

01 AV 0.335 **AUTO T7 0 0704 29625-553009
1075593 I IRFA CR -C01



RAY B BOWEN
209 CHERRY SEED RD
ANDERSON SC 29625-5530

Account Number	1950441680
Verification Code	1
Amount Due	\$40.71
Current Charges Past Due After	11/23/2010

PO BOX 70516
CHARLOTTE NC 28272-0516



0704-01-b1-1075593-0001-0089786

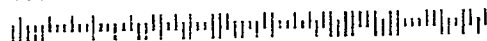
Total Amount Enclosed \$
Visit us at www.duke-energy.com

RETURN THIS PORTION WITH YOUR PAYMENT TO THE ADDRESS BELOW. THANK YOU FOR YOUR BUSINESS.
076558
401

990000574607010000000001889000000000000 88 0 88 0

#00Y0 K7FT 07CB IS06#

01 AV 0.335 **AUTO T7 0 0704 29625-553007
1075594 I IRFA CR -C01



RAYMOND B BOWEN
SHOP
207 CHERRY SEED RD
ANDERSON SC 29625-5530

Account Number	0000574607
Verification Code	1
Amount Due	\$18.89
Current Charges Past Due After	11/12/2010

PO BOX 70516
CHARLOTTE NC 28272-0516



0704-01-b1-1075594-0001-0089787

Total Amount Enclosed \$
Visit us at www.duke-energy.com



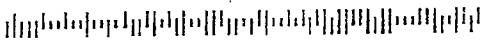
Daddy's light
bill - he pays
his bill.

RETURN THIS PORTION WITH YOUR PAYMENT TO THE ADDRESS BELOW. THANK YOU FOR YOUR BUSINESS.
076556
401

991263052449000000000006946000000000000 88 0 88 0

#12T3 Y5DF 49CB IS00#

01 AV 0.335 **AUTO T7 0 0704 29625-553007
1075592 IIRIA CR -C01



LARRY T THRASHER
207 CHERRY SEED RD
ANDERSON SC 29625-5530

Account Number	1263052449
Verification Code	0
Amount Due	\$69.46
Current Charges Past Due After	11/23/2010

PO BOX 70516
CHARLOTTE NC 28272-0516



0704-0141-1075592-0001-0009705

Total Amount Enclosed	\$ 69.46
-----------------------	----------

Visit us at www.duke-energy.com

Edwin Turnage

From: Paula Forbes <pforbes@gwblawfirm.com>
Sent: Friday, June 17, 2011 3:10 PM
To: AMacaulayLC@sccourts.org; Edwin Turnage
Cc: David Rheney
Subject: Denise Bowen v. State Farm 2010-CP-04-2124
Attachments: Order Granting SJ.DOC

Attached please find from David Rheney the proposed Order Granting Summary Judgment to State Farm Mutual Automobile Insurance Company. Please let us know if you have any questions or note any changes that need to be made.

Sincerely,

Paula L. Forbes
Legal Assistant to T. David Rheney
and Eric R. Tonnsen
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Suite 1200 (29601)
P.O. Box 10589
Greenville, SC 29603
864.241.7010 (Direct)
864.271.7502 (Fax)
pforbes@gwblawfirm.com
www.gwblawfirm.com

This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

MITCHELL J. WILLIAMS
STEVEN D. HAYMOND
ROBERT F. McMAHAN, JR.
MICHAEL S. SWINDELL
EDWIN L. TURNAGE
S. HAMPTON EADON, III*

*Also Licensed in North Carolina

LAW OFFICES
HARRIS AND GRAVES, P.A.
"Our mission is to provide exceptional personal and professional service to our clients"

512 LAURENS ROAD
P.O. BOX 6263
GREENVILLE, SOUTH CAROLINA 29606
864-235-1331
864-235-1741 (FAX)

OFFICES
COLUMBIA
GREENVILLE
CONWAY
FLORENCE
ROCK HILL
SPARTANBURG

OF COUNSEL
E. WESLEY GRAVES, III

RETIRED
SHIPP D. HARRIS

June 20, 2011

VIA EMAIL AND MAIL

The Hon. Alexander S. MaCaulay
P.O. Drawer 428
Walhalla, SC 29691

RE: *Denise F. Bowen vs. State Farm Mutual Auto. Ins. Co.*
Civil Action No.: 2010-CP-04-2124

Dear Judge MaCaulay:

I received a copy of a draft order from Mr. Rheney's office. I did not receive copies of any correspondence from your office that precipitated it. Nor did I receive any correspondence from Mr. Rheney explaining why he drafted an order. I don't know what guidance (if any) the court gave to Mr. Rheney's office in drafting the order. However, I have now read it and it is important that the court consider the following errors and omissions from the draft order.

There are no references to the record in Mr. Rheney's draft so it is difficult to determine how Mr. Rheney arrived at some of the State Farm version of "facts." I would therefore request the Court consider the following true facts that were misstated in the draft order:

Inaccurate Facts

Statement 1: Misstates the testimony of Ms. Bowen to the extent it suggests she lived separately from her father. She actually testified that she considered the group of people, her, her father and her husband to be one family unit. (Bowen Depo. at 41)

Statement 6: States that Mr. Thrasher considers 209 to be the plaintiff's primary residence. However, Ms. Bowen testified she stays at 207 about half the time. (Bowen testimony at 31) At the time of the collision, she was staying overnight at 207 on a daily basis. She continued to live with her father in 207 until April 2010. (Bowen Depo. at 53)

Statement 9: Alleges the purpose of Plaintiff staying at 207 was "not to live or reside there but to help Mr. Thrasher." There is nothing I can find in the record that supports that statement of fact. The closest item is when Ms. Bowen admitted she lives with her father "because he medically needs you to be there to help him." (Bowen Depo. at 33) However, Ms. Bowen also said she stays with her father "because he is lonely" and "because he doesn't have anybody else." (Bowen depo. at 52) She said, "I love him with all my heart, and he will not go to a nursing home over my dead body." (Bowen Depo. at 40)

Mr. Rheney's office also left out a host of important facts that factor into a resident relative analysis. The omitted facts are as follows:

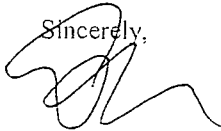
Omitted Facts

1. The buildings at numbers 207 and 209 share the same driveway and septic tank, and the doors are within a stone's throw away from one another. (See Exhibits 4-6; Denise Bowen Depo. at 22; 41-42).
2. Ms. Bowen lives in both trailers. (Denise Bowen Depo. at 31; 33-34; 39; 43; 51).
3. Ms. Bowen considers the group of three—her husband Raymond, her father Larry, and herself—to be one family unit. (Denise Bowen Depo. at 41).
4. Visitors to the home place, park in the same driveway. Indeed, all vehicles at the home are principally garaged at the same physical location. (Denise Bowen Depo. at 42).
5. Because of his illness and her affection for her father, Ms. Bowen lives in his trailer about half the time. (Denise Bowen Depo. at 31).
6. Their relationship is very intimate. Ms. Bowen baths Mr. Thrasher, and helps him with his catheter. (Denise Bowen Depo. at 40-41)
7. Ms. Bowen has a room there, and clothing. (Denise Bowen Depo. at 45-46; Exhibits 7-9)
8. Ms. Bowen has open access to enter and leave and to use the trailer number 207 whenever she would like to do so. (Denise Bowen Depo. at 46-47; see Affidavit of Ms. Bowen and Larry Thrasher).
9. At the time of the collision, she was staying overnight at 207 on a daily basis. She continued to live with her father in 207 half the time after April 2010. (Bowen Depo. at 53)

If the court has instructed Mr. Rheney to rule in favor of State Farm, and now believes these facts would make a difference in whether to deny Ms. Bowen's motion for summary judgment, I would be happy to draft a fair order finding in favor of Ms. Bowen and against the insurance company.

Thank you for considering our position on Mr. Rheney's draft order.

Sincerely,



EDWIN L. TURNAGE

elt@harrisgraves.com

cc: T. David Rheney, Esq.

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Alexander S. Macaulay, Presiding Judge, 10th Judicial Circuit

Case No. 2010-CP-04-2124

DENISE F. BOWEN

Appellant,

v.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY

Respondent.

NOTICE OF APPEAL

Denise F. Bowen appeals the judgment and Order Granting Summary Judgment to State Farm Mutual Automobile Insurance Company of the Honorable Alexander S. Macaulay dated October 17, 2011. Appellant received written notice of entry of the judgment and Order Granting Summary Judgment to State Farm Mutual Automobile Insurance Company on October 18, 2011.

11/14/2011

Date

Other Counsel of Record:

Gallivan, White & Boyd, PA
T. David Rheney, Esq.
One Liberty Square
55 Beattie Place, Suite 1200
Greenville, SC 29601
(864) 271-9580
Attorney for Respondent

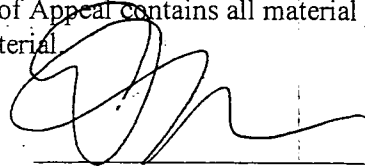


Edwin L. Turnage
Harris & Graves, P.A.
P.O. Box 6263
Greenville, SC 29606
Attorney for Appellant
(864) 235-1331

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record of Appeal contains all material proposed to be included by any of the parties and not any other material.

May 17, 2012



Edwin L. Turnage
HARRIS & GRAVES, P.A.
812 Laurens Road
Greenville, SC 29607
(864) 235-1331

Attorney for Appellant

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS**

**Alexander S. Macaulay
Circuit Court Judge**

CASE No. 2010-CP-02124

DENISE S. BOWEN Appellant,

vs.

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, ... Respondent.**

Brief of Appellant

**Edwin L. Turnage
HARRIS & GRAVES, P.A.
812 Laurens Road
Greenville, SC 29607
(864) 235-1331**

Attorney for Appellant

I. TABLE OF CONTENTS

I.	TABLE OF AUTHORITIES	ii
II.	STATEMENT OF ISSUES ON APPEAL	1
III.	STATEMENT OF THE CASE.....	1
IV.	FACTS	2
V.	ARGUMENT.....	4
	A. The factual record here proved that at the time of the collision Bowen intended a substantial residency in her father's dwelling.	4
	B. The trial court did not carefully analyze this Court's resident relative factors of <u>Smith v. Auto Owners</u> . Instead, the trial court placed improper weight to a clearly erroneous and unnecessary finding that Bowen's primary residence at the time of the collision was with her husband.....	9
	C. The term "resides" in State Farm insurance policy is ambiguous, must be broadly construed. If the trial court had reasonably construed "resides" in favor of Bowen, then it would have been compelled to conclude she was a covered resident relative of the State Farm policy's UIM provisions.	14
	D. State Farm's insurance policy improperly limits the scope of the statutory term "insured" and violates South Carolina public policy.....	16
VI.	CONCLUSION	18

II. TABLE OF AUTHORITIES

Statutes

S.C. Code Ann. § 38-77-10.....	11
S.C. Code Ann. § 38-77-20.....	11
S.C. Code Ann. § 38-77-30.....	11, 17

Cases

<u>Auto Owners Ins. Co. v. Horne</u> , 356 S.C. 52, 586 S.E.2d 865 (Ct. App. 2003).....	12
<u>Baril v. Aiken Reg'l Med. Ctrs.</u> , 352 S.C. 271, 280, 573 S.E.2d 830, 835 (Ct. App. 2002).....	5
<u>Bayle v. South Carolina Dep't of Transp.</u> , 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).....	4
<u>Buddin v. Nationwide Mut. Ins. Co.</u> , 250 S.C. 332, 157 S.E.2d 633 (1967).....	12, 13, 15
<u>Davis v. Maryland Casualty Co.</u> , 76 N.C. App. 102, 106, 331 S.E.2d 744, 746 (Ct. App. 1985)	13
<u>Ferguson v. Charleston Lincoln Mercury, Inc.</u> , 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002).....	5
<u>Ferguson v. State Farm Mut. Ins. Co.</u> , 261 S.C. 96, 100, 198 S.E.2d 522 (1973).....	17
<u>Forner v. Butler</u> , 319 S.C. 275, 277, 460 S.E.2d 425, 427 (Ct. App. 1995).....	14
<u>Glasscock, Inc. v. United States Fid. & Guar. Co.</u> , 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).....	5
<u>Hall v. Fedor</u> , 349 S.C. 169, 173-74, 561 S.E.2d 654, 656 (Ct. App. 2002)	5
<u>Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers</u> , 355 S.C. 104, 584 S.E.2d 375 (2003).....	5
<u>Laidlaw Env. Serv. (TOC) v. Aetna Cas. & Sur. Co. of Ill.</u> , 338 S.C. 43, 47, 524 S.E.2d 847, 849 (Ct. App. 1999).....	14
<u>Nationwide Mut. Ins. v. Howard</u> , 288 S.C. 5, 339 S.E.2d 501 (1985)	17
<u>Redwend Ltd. P'ship v. Edwards</u> , 354 S.C. 459, 468, 581 S.E.2d 496, 501 (Ct. App. 2003).....	5
<u>Russell v. Wachovia Bank, N.A.</u> , 353 S.C. 208, 578 S.E.2d 329 (2003)	4
<u>Schmidt v. Courtney</u> , 357 S.C. 310, 319, 592 S.E.2d 326 (Ct. App. 2003)	5
<u>Smith v. Auto Owners</u> , 377 S.C. 512, 516, 660 S.E.2d 271 (Ct. App. 2008).....	7, 9
<u>State Farm Fire and Cas. Co. v. Breazell</u> , 324 S.C. 228, 478 S.E.2d 831 (1996).....	9

<u>Stewart v. State Farm Mut. Auto. Ins. Co.</u> , 341 S.C. 143, 533 S.E.2d 597 (Ct. App. 2000)	5
<u>Sutherland v. Glens Falls Ins. Co.</u> , 493 S.O. 2d 87 (Fla. Dist. Ct. App. 1986)	13
Other Authorities	
<u>Webster's Third New International Dictionary. Unabridged. Merriam-Webster, 2002.</u> http://unabridged.merriam-webster.com (6 Dec. 2010)	15

III. STATEMENT OF ISSUES ON APPEAL

- A. Did the trial court apply the correct summary judgment standard to review undisputed facts about Bowen's resident relative status?
- B. Did the trial court err by carelessly analyzing the resident relative factors of Smith v. Auto Owners, and by basing its Order, in part, on a clearly erroneous and unnecessary finding that Bowen was a "primary" resident of her husband's dwelling?
- C. Does the State Farm policy's term "reside" include family members who live together in two trailers, closely proximate to one another, at one dwelling place?
- D. Does State Farm's policy violate South Carolina public policy by attempting to limit coverage of family members to those who reside "primarily" with the named insured.

IV. STATEMENT OF THE CASE

On or about June 18, 2010, Appellant Denise Bowen (hereinafter "Bowen") filed a Summons and Complaint seeking declaratory relief that Larry Thrasher's automobile insurance policy covered her as a "resident relative" insured entitled to underinsured motorist coverage. On or about July 12, 2010, Bowen filed an Amended Summons and Amended Complaint seeking the same declaratory relief.

On or about September 20, 2010, Respondent State Farm Mutual Automobile Insurance Company (hereinafter "State Farm") filed an Answer to the Amended Complaint, denying Bowen's claim, and asserting a Counter-Claim seeking a judgment that Bowen was not insured by Thrasher's policy.¹

On or about September 22, 2010, Bowen filed a Reply.

¹ Bowen's Amended Complaint failed to properly identify Respondent. Consequently, on or about November 9, 2010, Bowen filed a motion to amend the caption and stipulation of the parties to correctly identify Respondent. On or about November 18, 2010, the Court granted Bowen's motion to correct the caption.

On or about October 28, 2010, Bowen filed a Motion for Summary Judgment. On or about November 19, 2010, State Farm filed a Motion for Summary Judgment. On October 17, 2011, the Court issued an Order denying Bowen's motion and granting summary judgment to State Farm Mutual Automobile Insurance Company. Contemporaneously, the trial court issued a Judgment in favor of Respondent.

On November 15, 2011, Bowen timely filed her Notice of Appeal.

V. FACTS

The case arises from a January 16, 2010, motor vehicle collision. Bowen was a passenger in a Ford Truck driven by Rebecca Gilliam. Gilliam's Ford truck was stopped on Cherry Road at the intersection of South Carolina Highway 24 near Anderson. Gilliam failed to verify she could clear highway traffic and she drove her vehicle onto Highway 24 attempting to execute a left turn. Meanwhile, a Toyota pickup truck driven by Timothy Arndt was coming down Highway 24. When Gilliam pulled out, Arndt's Toyota crashed into the Ford. (R. p. 55)

In the T-bone collision, Bowen sustained serious, debilitating physical injuries. A hospital CT Scan of Bowen's abdomen revealed a splenic laceration with free intra-abdominal and pelvic fluid, undoubtedly blood from the spleen. Bowen was admitted to the hospital and remained hospitalized through January 19, 2010. On January 29, 2010, Bowen developed sudden pain in her abdomen and a repeat CT scan showed worsening fluid around the liver and spleen and pelvis suggestive of a sub-acute hemorrhage. Bowen was again hospitalized for five days until February 2, 2010. Bowen's medical costs for symptoms caused by the collision were at least \$45,428.57. (R. pp. 55-56)

returned home, Bowen moved into Thrasher's trailer (207) and lived there on a daily basis, continuously, up until April 10, 2010. (R. p. 107). Thrasher faced grave danger due to his breathing tube frequently becoming clogged. He needed Bowen to stay with him in 207, in part, to make sure he did not choke to death. (R. pp. 67, and 79-80).

Since April 10, 2010, because of Thrasher's ongoing serious medical condition and Bowen's love and affection for her father, Bowen lived in his trailer (207) about half the time. (R. p. 86). The relationship between Bowen and Thrasher is very intimate. Bowen baths Thrasher, and even inserted a catheter. (R. pp. 95-96) She has her own room in Thrasher's trailer, and keeps some clothing in its closet. (R. pp. 100-01, 61; and 156-57) Bowen has open access to enter and leave Thrasher's trailer. She has a key and free reign to use the trailer and its appliances or utilities whenever she would like to do so. (R. pp. 101-02, 142-48).

VI. ARGUMENT

A. The factual record here proved that at the time of the collision Bowen intended a substantial residency in her father's dwelling.

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003); Regions Bank v. Schmauch, 354 S.C. 648, 659, 582 S.E.2d 432, 438 (Ct. App. 2003); Rule 56(c), SCRCP. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); see also

² The Bowen's automobile insurance policy did not provide for UIM coverage.

Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002) ("On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.").

Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Schmidt v. Courtney, 357 S.C. 310, 319, 592 S.E.2d 326 (Ct. App. 2003); Redwend Ltd. P'ship v. Edwards, 354 S.C. 459, 468, 581 S.E.2d 496, 501 (Ct. App. 2003); Baril v. Aiken Reg'l Med. Ctrs., 352 S.C. 271, 280, 573 S.E.2d 830, 835 (Ct. App. 2002); Hall v. Fedor, 349 S.C. 169, 173-74, 561 S.E.2d 654, 656 (Ct. App. 2002); Glasscock, Inc. v. United States Fid. & Guar. Co., 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001); Stewart v. State Farm Mut. Auto. Ins. Co., 341 S.C. 143, 533 S.E.2d 597 (Ct. App. 2000); see also Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers, 355 S.C. 104, 584 S.E.2d 375 (2003) (noting that summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is dispute as to conclusions to be drawn therefrom).

The trial court did not follow the proper standard of review under Rule 56. It ruled in favor of State Farm based upon its erroneous conclusion the, "undisputed evidence establishes the plaintiff did not reside with her father on the day of the accident." (R. p. 10). Considering the undisputed facts, that finding was clearly erroneous.

Those undisputed facts are these. On December 10, 2009, Thrasher returned home from the MUSC hospital following cancer surgery. His condition is so dire he could not live alone without somebody to care for him. "[H]is whole top of his leg was

bleeding with gauze. His whole arm had to be done. I had to clear the tube. He couldn't be left because he was in such severe pain and nobody – I had to take care of him. I had to be the nurse.” (R. p. 84, line 2-6) Bowen testified she, “had to sleep in the room beside him so if he quit breathing – I would have to keep up all hours of the night . . . listening to make sure he didn't choke.” (R. p. 85, line 5-13). More than a month before her January 16 motor vehicle collision, Bowen moved into Thrasher's trailer (207) and spent the nights there with him “every night” until April 10, 2010. (R. p. 83, line 7-8) The factual record is undisputed that at the time of the collision (January 16, 2010) Bowen resided in Thrasher's trailer.

The Court's ruling to the contrary was apparently based upon another erroneous and unnecessary factual determination that Bowen intended to reside with her husband in 209. The Order incorrectly stated Bowen, “had no intention of residing at both addresses on the day of this accident.” (R. p. 10)³ Bowen's undisputed testimony, however, showed that her intent was to live in 207 with her father, Thrasher. As noted above, she lived with Thrasher on a daily basis between December 10, 2009, until April 10, 2010. After April, Bowen still lived with Thrasher “about half and half.” (R. pp. 86, 89, and 105) Contrary to the trial court's finding about Bowen's intent, several times during her deposition Bowen testified she intended to live with, “both my father and my husband.” (R. pp. 94, 96, and 105)

Thrasher has undergone four throat cancer operations, and he has survived prostate cancer. Bowen testified that his condition periodically worsens because Thrasher's, “skin graft . . . closed down his throat . . . and he can't breath.” (R. p. 87) On the date of her deposition (taken on January 6, 2011), Bowen related his skin graft,

“closed back up again.” (R. p. 88) Bowen testified that she loves Thrasher with all her heart, “and he will not go to a nursing home over my dead body.” (R. p. 95).

The implication and inference properly drawn from Bowen’s undisputed testimony is that Bowen intended to remain substantially resident with Thrasher in 207 until he dies.⁴ Other uncontroverted facts also prove Bowen intended to reside with Thrasher on a substantial basis.⁵ Thus, the Court’s finding about Bowen’s alleged intent not to live with her daddy in 207 was clearly erroneous.

In Smith v. Auto Owners, 377 S.C. 512, 516, 660 S.E.2d 271 (Ct. App. 2008), this Court held a son was not the resident relative of his father because their living arrangement was one of “mere convenience.” Citing the Smith case and referencing Thrasher’s medical needs, the trial court erroneously concluded that Bowen’s residential relationship with her father was also one of “mere convenience.” However, if the terms “mere convenience” are to have any meaning, then they certainly cannot include the

³ There appears to be no factual support whatsoever for this finding.

⁴ Even State Farm’s defense counsel recognized the clear implication of Bowen’s testimony—that she intended to remain with Thrasher until he died. Read the following exchange between the lawyer and Bowen from Bowen’s deposition transcript:

Q. Well, I hate to bring up an unpleasant subject.

A. Okay.

Q. I am trying to think of a polite way to ask this, but I don’t know any way, and I apologize. Your dad is very sick.

A. Yes.

Q. And when he passes away, you will go –209 will be your home?

A. Yes.

(R. p. 89)

sacrificial love it takes for a person to care for a serious injured relative. Anyone who has been in that position, whether as a beneficiary or a supplicant of care, knows such ongoing acts of human kindness are far more than a “mere convenience.”

The trial court also made factually inaccurate rulings related to Bowen’s alleged primary residence with her husband, Raymond (209). The trial court focused inordinately on technical issues such as separate property tax assessments, mailboxes, water bills, and whether Thrasher reimbursed Bowen when she bought his food at the grocery store while running errands. At the same time, the trial court ignored certain important facts. All the vehicles for both trailers were principally garaged in the same driveway. Thrasher paid Bowen no rent. Bowen had free access to the residence. The property shared the same power and water bills, and property taxes. Bowen could take food from the refrigerator and use the shower without Thrasher’s permission. (R. pp. 101-02)

The trial court’s selectively picking and choosing of certain facts from the record while overlooking other important and obviously relevant facts, created the appearance of result-oriented jurisprudence.⁶ That type of flawed legal analysis, led the trial court to make the clearly erroneous finding that Bowen was primarily a resident of Raymond’s trailer (209) at a time when Bowen was a daily resident in Thrasher’s trailer (207), spending every night under Thrasher’s roof taking care of him in the months before and after the collision.

⁵ Bowen has a room in Thrasher’s dwelling. She keeps clothing in a chest of drawers and closet there. (R. pp. 100-01; and 156-58)

⁶ The Order was initially drafted by State Farm’s lawyer and sent to the trial judge’s chambers. (R. pp. 180-82)

- B. The trial court did not carefully analyze this Court's resident relative factors of Smith v. Auto Owners. Instead, the trial court placed improper weight on a clearly erroneous and unnecessary finding that Bowen's primary residence at the time of the collision was with her husband.

In Smith v. Auto Owners, 377 S.C. 512, 516, 660 S.E.2d 271 (Ct. App. 2008), this Court provided South Carolina trial courts clear guidance on how to properly evaluate the resident relative coverage issue for an automobile insurance policy case. The trial court here did not follow Smith's guidance and its evaluation of the resident relative issue is muddled and unclear.⁷

Under the Smith, a trial court must first determine the substance of where each person resided. Second, the court should consider the quality of the residency. To consider quality, a court must evaluate three factors about the relatives' living arrangement as follows:

1. liv[es] under the same roof;
2. in a close, intimate, and informal relationship, and
3. where the intended duration of the relationship is likely to be substantial, where it is consistent with the informality of the relationship and from which it is reasonable to conclude that the parties would consider the relationship in contracting about such matters as insurance or in their conduct in reliance thereon.

Smith v. Auto Owners, 377 S.C. at 517.

⁷ The trial court cited Smith and even quoted the three factors. (R. p. 7). However, the trial court then cited State Farm Fire and Cas. Co. v. Breazell, 324 S.C. 228, 478 S.E.2d 831 (1996), for the proposition that, "there is no bright line test for determining when a person is a resident relative of another." (R. p. 7). The trial court undertook no analysis of the Smith factors.

Here, at the time of the January 16, 2010, collision, Bowen was living with Thrasher on a daily basis in 207. We will now undertake a clear analysis of the quality of their residency considering the three Smith factors.

First, as noted above, it was undisputed that Bowen lived in both trailers. During the months before and after the January 16, 2010, collision, Bowen lived only in Thrasher's trailer (207). Even later in April, when she was able to return part-time to her husband Raymond's trailer (209), Bowen still spent the nights with Thrasher several times per week and lived with Thrasher in 207 about "half and half." Because Bowen lived "under the same roof" as Thrasher, she satisfied the first Smith factor.

The second Smith factor is whether Bowen and Thrasher lived, "in a close, intimate, and informal relationship." Bowen calls Thrasher, "daddy." (R. p. 94) She does his laundry, runs his errands, cleans for him and feeds him. Bowen also provides nursing care, including bathing and even inserted a catheter. (R. pp. 95-96). Bowen testified, "I do everything for my father. It doesn't matter how intimate it is." (R. p. 96, line 2-3) The relationship is informal. Bowen had her own room, bed, and clothing in Thrasher's trailer. (R. pp. 100-01) Bowen has a key, and could come and go as she pleased. (R. pp. 101-02) Bowen and Thrasher live in a close, intimate, and informal relationship. The second Smith factor goes to Bowen.

The third Smith factor is whether intended duration of the living relationship is likely to be substantial. Thrasher is in poor health. Bowen indicated that she intends to continue to live with her daddy for as long as possible. She said she loves Thrasher with all her heart, "and he will not go to a nursing home over my dead body." (R. 95). You cannot get a more substantial duration than living with somebody for the rest of their life. Bowen knocks the third Smith factor out of the park.

Rather than analyzing the three Smith factors to evaluate the substance of Bowen's residency with Thrasher, the trial court was pre-occupied with the question of whether an emancipated adult might be resident of more than one place. "No South Carolina court has held that an emancipated adult can be a resident of multiple households." (10) Despite this factual record, the perceived absence of such South Carolina cases constrained the trial court to determine Bowen was not a resident relative of Thrasher's trailer (207). The Order stated: "To reach such a conclusion the Court would have to conclude that the plaintiff was not a resident of 209. Such a finding is illogical. . . . It would be illogical, when required to pick between which of the two homes the plaintiff resided in on the day of the accident, to conclude that she resided anywhere other than 209." (R. p. 11).

The problem with the trial court's emancipated adult, single-residency analysis is that it is inconsistent with the South Carolina automobile insurance statute, our case law, and our public policy. Each clearly establishes that a person can be resident of more than one residence for insurance purposes.

The South Carolina automobile insurance statute defines "insured" to include the insured person (or persons named in a policy) and "[w]hile resident of the same household, the spouse of any named insured and relatives of either." S.C. Code Ann. § 38-77-30 (definitions). The statutory purpose of the automobile insurance statute is to provide that, "every automobile insurance risk which is insurable on the basis of the criteria established in this chapter is entitled to automobile insurance." S.C. Code Ann. § 38-77-10. The statute directs the trial courts to "liberally construe[]" the statutory language "in order to achieve its purposes." S.C. Code Ann. § 38-77-20. Therefore, under our statute, a person's residency (whether adult or child) should be considered

broadly and not constrained to one “primary” place. The trial court’s interpretation limiting the residency of emancipated adults to one place is not a liberal construction of our statute.

Evaluation of resident relative case law also contradicts the trial court’s narrow interpretation. In Auto Owners Ins. Co. v. Horne, 356 S.C. 52, 586 S.E.2d 865 (Ct. App. 2003), this court thoroughly reviewed a multiple residence issue and confirmed that an insured may have more than one. The Horne court decided the minor child in that case was not covered because she was not a substantial resident of her grandparent’s household. However, the Horne case, in *dicta*, stated that a person may be a resident relative of multiple residences for purposes of automobile insurance coverage. “[I]mplicit . . . , is the recognition that a child of divorced parents may be a resident of two households.” Id. at 69, n.8. The Horne Court quoted Cook v. Fed. Ins. Co., 263 S.C. 575, 582, 211 S.E.2d 881, 884 (1975), for the proposition that, a “person may have one domicile, but may have severed residences.” Id.

In Buddin v. Nationwide Mutual Insurance Company, 250 S.C. 332, 157 S.E.2d 633 (1967), the Supreme Court found automobile insurance resident relative coverage for a young man who lived in multiple residences. The young man lived simultaneously on and off with his uncle in Greenville, and a sister in Shelby, North Carolina. The Buddin Court found the young man was covered as a resident relative under his uncle’s policy even though the nephew had more than one residence and did not intend to permanently live with his uncle in Greenville. Id., 250 S.C. at 339-40. Therefore, the young man’s multiple residencies with relatives did not disqualify him from coverage.

Case law from other states also shows that, "it is generally recognized that a person may be a resident of more than one household for insurance purposes." Davis v. Maryland Casualty Co., 76 N.C. App. 102, 106, 331 S.E.2d 744, 746 (Ct. App. 1985) (citing Travelers Insurance Co. v. Mixon, 118 Ga. App. 31, 162 S.E. 2d 830 (1968)); see also Sutherland v. Glens Falls Ins. Co., 493 S.O. 2d 87 (Fla. Dist. Ct. App. 1986) ("it is possible to have a residence as opposed to domicile in more than one place at the same time.") Therefore, case law favors a broad construction of coverage to include people living in multiple residences.

Finally, there is the South Carolina public policy. It favors a broadly inclusive interpretation of resident relative. See Buddin 250 S.C. at 337 ("The policy here is one that extends coverage and includes as an insured any relative resident of the same household and is not a clause excluding from coverage a relative resident of the same household").

There are many practical situations in which an individual may have multiple residences with relatives, one primary and one secondary. Some examples include a kid in college, a child living with two separated parents, a soldier deployed away from home, a judge riding a circuit in a remote county, a missionary helping provide long-term disaster relief, or person helping a seriously ill relative. Those are just a few examples of circumstances where people might live in multiple residences. The trial court's narrow way of interpreting our statute would allow insurance companies to deny coverage based upon an underwriter's belief the potential insured was not "primarily" a resident of here or there at the time of a collision. Adverse coverage determinations are harsh, and create unintended automobile insurance coverage lapses for people in South Carolina. An

absence of expected insurance coverage for people seriously injured in automobile accidents is potentially disastrous in those individuals' lives. Therefore, the trial court's determination that a resident relative's insured status should be limited to just one primary residence was clearly erroneous and must be rejected.

- C. **The term "resides" in State Farm insurance policy is ambiguous and must be broadly construed. If the trial court had reasonably construed "resides" in favor of Bowen, then it would have been compelled to conclude she was a covered resident relative of the State Farm policy.**

The underinsured motorist section of the State Farm policy defines "relative," in relevant part, as follows:

Relative – means a person related to you or your spouse by blood, marriage or adoption who resides primarily with you. . . .

(Policy at Page 4). It is undisputed that Bowen is related to Thrasher by blood. She is his daughter. The key language limits coverage to a relative, "who resides primarily with you." (emphasis added)

The State Farm policy term "resides" is nowhere defined in its policy. Therefore, a trial court must give the word "resides" its widest reasonable construction. "Where the words of an insurance policy are capable of two reasonable interpretations, we will adopt the construction most favorable to the insured. Forner v. Butler, 319 S.C. 275, 277, 460 S.E.2d 425, 427 (Ct. App. 1995) (citing Greenville County v. Insurance Reserve Fund, 313 S.C. 546, 443 S.E.2d 552 (1994)). 'Furthermore, exclusions in an insurance policy are to be construed most strongly against the insurer.' Forner, 319 S.C. at 277, 460 S.E.2d at 427. 'Rules of construction require clauses of exclusion to be narrowly interpreted, and clauses of inclusion to be broadly construed.' Laidlaw Env. Serv. (TOC) v. Aetna Cas. & Sur. Co. of Ill., 338 S.C. 43, 47, 524 S.E.2d 847, 849 (Ct. App. 1999)

(quoting McPherson v. Mich. Mut. Ins. Co., 310 S.C. 316, 319, 426 S.E.2d 770, 771 (1993)).”

In Buddin v. Nationwide Mut. Ins. Co., 250 S.C. 332, 157 S.E.2d 633 (1967), the Supreme Court addressed a policy exclusion limiting relative residency. The Court stated as follows:

The courts have uniformly held that where the clause is one of inclusion it should be broadly construed for the benefit of the insured while in exclusion cases the same clause is given a more restricted interpretation. This is necessary because in both situations the courts favor an interpretation in favor of coverage. The touchstone is that the phrase "resident of the same household" has no absolute or precise meaning, and, if doubt exists as to the extent or fact of coverage, the language used in most policies will be understood in its most inclusive sense.

Id. (citations omitted). When such a standard of interpretation is applied to “resides,”

Bowen is covered by this State Farm policy because the two trailers (207 and 209) constitute one residence under this policy.

The dictionary defines “reside” as follows: “to settle oneself or a thing in a place : be stationed.” See Webster's Third New International Dictionary, Unabridged.

Merriam-Webster, 2002, <http://unabridged.merriam-webster.com> (6 Dec. 2010). Another defines “household” as follows:

1 *obsolete* a : the maintaining of a house : HOUSEKEEPING b : household goods and chattels
2 : those who dwell under the same roof and compose a family : a domestic establishment; specifically : *a social unit comprised of those living together in the same dwelling place*

Webster's Third New International Dictionary, Unabridged. Merriam-Webster, 2002.

<http://unabridged.merriam-webster.com> (6 Dec. 2010) (emphasis added). The term

“household,” as defined by the dictionary, consists of a social unit living together in the same dwelling place.

Here, it is undisputed that both Bowen and Thrasher live on the same single family residential lot. (R. pp. 153 and 177) The buildings where they sleep are in very close proximity. (R. p. 154) The driveway where the Bowens' and Thrasher's cars are principally garaged are under the same car port and in the same driveway. (R. p. 155) Bowen testified that their family unit included the entire family (Raymond, Thrasher, and Bowen) and both dwellings (207 and 209).

The particular place where Thrasher and the Bowens stay, live, or *reside* is the same. While, it is reasonable from their perspective to say from State Farm's perspective that there are two residences on the lot, it is also reasonable from the Bowens' and Thrasher's to say that all live at the same dwelling place. The policy term "reside" must be broadly construed inclusively in favor of the Bowens and Thrasher, and therefore, must include both trailers (207 and 209).

Finally, at the time of this collision, Bowen was primarily residing with Thrasher. He was in serious jeopardy, and Bowen was spending every night with him to take care of him. As between the two places on the day of the collision, there is no dispute that the primary residence for Bowen then was with Thrasher.

D. State Farm's insurance policy improperly limited who are "insured" relatives and it violated South Carolina public policy. The policy provision limiting coverage of relatives to "primary" residents is void.

The State Farm policy attempts to limit UIM coverage to a relative who "resides primarily with you."

Relative – means a person related to you or your spouse by blood, marriage or adoption who resides primarily with you. . . .

(R. p. 163). However, the South Carolina automobile insurance statute mandates coverage to a statutory "insured." Section 38-77- 30(7) defines "insured" to include both

the insured person or persons named in a policy and “while resident of the same household, the spouse of any named insured and relatives of either.” S.C. Code Ann. § 38-77-30 (definitions). The statutory definition of insured does not limit the scope of residents to a “primary” residence. If the Legislature had intended a limitation it would have included it in the definition section. Thus, the State Farm policy here improperly attempts to exclude coverage of resident relatives substantially living in secondary residences. If State Farm’s limiting provision is viable, it would even exclude coverage of minors living primarily away from home in dormitories while attending college. Fortunately, State Farm’s policy language limiting coverage of resident relatives must be declared void. “[A]ny limiting language in an insurance contract which has the effect of providing less protection than made obligatory by the statute is contrary to public policy and is of no force and effect.” See Ferguson v. State Farm Mut. Ins. Co., 261 S.C. 96, 100, 198 S.E.2d 522 (1973); see also Nationwide Mut. Ins. v. Howard, 288 S.C. 5, 339 S.E.2d 501 (1985).

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Anderson County
Court of Common Pleas

Alexander S. Macaulay
Circuit Court Judge

Case No. 2010-CP-04-2124

Denise E. Bowen

Appellant

vs.

State Farm Mutual Automobile
Insurance Company

Respondent

RESPONDENT'S FINAL BRIEF

F. David Rhency, Esq.
Stephanie G. Flynn, Esq.
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 10589
Greenville, SC 29603
(864) 271-9580

Attorneys for Respondent

TABLE OF CONTENTS

Table of Authorities	ii-iii
Statement of Issues on Appeal.....	1
Statement of the Case	1
Statement of Facts	3
Argument.....	9
I. Because the only reasonable inference to be drawn from the evidence is that Bowen established and maintained her residence separate and apart from that of her father, summary judgment was appropriately granted and should be affirmed.....	9
II. Implicit in the lower court's consideration and discussion of the undisputed facts of this case was a proper analysis and application of the factors adopted by South Carolina courts in assessing whether Appellant was an insured resident of her father's household.....	16
III. Because the lower court reasonably construed the term "resides," an undefined term in the State Farm policy, giving the term its plain, ordinary and popular meaning, the lower court came to the appropriate conclusion that Appellant was not a resident relative of her father.....	22
IV. State Farm's policy, in defining a relative as a person related to you or your spouse by blood, marriage or adoption "who resides primarily with you," does not violate South Carolina public policy by limiting statutory coverage mandated by the underinsured motorist statutes.....	24
Conclusion	26

TABLE OF AUTHORITIES

CASES

<u>Auto-Owners Ins. Co. v. Horne</u> , 356 S.C. 52, 586 S.E.2d 865 (Ct. App. 2003).....	19, 20, 21
<u>Auto Owners Ins. Co. v. Langford</u> , 330 S.C. 578, 500 S.E.2d 496 (Ct. App. 1998).....	14
<u>Bloom v. Ravoira</u> , 339 S.C. 417, 529 S.E.2d 710 (2000).....	10
<u>Buddin v. Nationwide Mut. Ins. Co.</u> , 250 S.C. 332, 157 S.E.2d 633 (1967).....	19, 22
<u>Cook v. Fed. Ins. Co.</u> , 263 S.C. 575, 211 S.E.2d 881 (1975).....	22
<u>Cook v. State Farm Auto. Ins. Co.</u> , 376 S.C. 426, 656 S.E.2d 784 (Ct. App. 2008).....	11-12, 22, 25-26
<u>Dawkins v. Fields</u> , 354 S.C. 58, 580 S.E.2d 433 (2003).....	10
<u>Elder v. Metro. Prop. & Cas. Co.</u> , 851 S.W.2d 557 (Mo. Ct. App. 1993).....	20
<u>Ferguson v. State Farm Mut. Ins. Co.</u> , 261 S.C. 96, 198 S.E.2d 522 (1973).....	24
<u>Jamestown Mut. Ins. Co. v. Nationwide Mut. Ins. Co.</u> , 266 N.C. 430, 146 S.E.2d 410 (1966).....	21
<u>Loadholt v. South Carolina State Budget and Control Bd.</u> , 339 S.C. 165, 528 S.E.2d 670 (Ct. App. 2000).....	10
<u>Main v. Corley</u> , 281 S.C. 525, 316 S.E.2d 406 (1984).....	10-11
<u>Nationwide Mut. Ins. v. Howard</u> , 288 S.C. 5, 339 S.E.2d 501 (1985).....	24
<u>Pye v. Estate of Fox</u> , 369 S.C. 555, 633 S.E.2d 505 (2006).....	9
<u>Smith v. Auto-Owners Ins. Co.</u> , 377 S.C. 512, 660 S.E.2d 271 (Ct. App. 2008).....	11, 16, 18
<u>State Farm Fire and Cas. Co. v. Breazell</u> , 324 S.C. 228, 478, S.E.2d 831 (1996).....	16, 18
<u>State Farm Mut. Auto. Ins. Co. v. Boyd</u> , 377 F.Supp.2d 511 (D.S.C. 2005).....	26

<u>State Farm Mut. Auto. Ins. Co. v. Calcutt</u> , 340 S.C. 231, 530 S.E.2d 896 (Ct.App.2000).....	22, 25
<u>Torrington Co. v. Aetna Cas. & Sur. Co.</u> , 264 S.C. 636, 216 S.E.2d 547 (1975).....	19, 22, 25
<u>Tupper v. Dorchester County</u> , 326 S.C. 318, 487 S.E.2d 187 (1997).....	10
<u>Ward v. Zelinski</u> , 260 S.C. 229, 195 S.E.2d 385 (1973).....	11
<u>Wells v. City of Lynchburg</u> , 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998).....	10

STATUTES AND RULES

Rule 56(c), SCRCF.....	9-10
S.C. Code Ann. §38-77-10.....	19
S.C. Code Ann. §38-77-20.....	19
S.C. Code Ann. §38-77-30(7).....	18, 19

STATEMENT OF ISSUES ON APPEAL

- I. Did the lower court properly analyze the undisputed facts of the case to draw the only logical and reasonable inference and conclusion that Appellant was not a resident relative of her father for purposes of obtaining UIM benefits under her father's automobile insurance policies?
- II. Did the lower court properly apply the factors adopted and set forth by South Carolina courts in evaluating whether Appellant was a resident relative of and with her father at the time of the accident?
- III. Did the lower court reasonably construe the term "resides," giving the term its plain, ordinary and popular meaning, in determining Appellant was not a resident relative of her father?
- IV. Does the policy of insurance issued by State Farm violate South Carolina public policy in defining a relative to include those persons related by blood, marriage or adoption who reside "primarily with you?"

STATEMENT OF THE CASE

On June 18, 2010, the Appellant, Denise F. Bowen, ("Appellant" or "Bowen") initiated this matter by filing a Summons and Complaint for declaratory judgment in the Anderson County Court of Common Pleas. (R. pp. 16-18). In her Complaint, Appellant contended she was a resident relative with her father, Larry Thrasher ("Thrasher"), on January 16, 2010, when she was involved in an automobile accident. She therefore sought a ruling from the lower court establishing she was entitled to recover underinsured motorist benefits under insurance policy number 40-8552-371, issued by State Farm Mutual Automobile Insurance Company ("State Farm") to Thrasher. On or about July 13, 2010, in an effort to properly identify State Farm, Appellant filed an Amended Summons and Complaint¹ seeking the same declaratory relief. (R. pp. 20-22).

¹ While Appellant's Amended Summons and Complaint still did not correctly identify State Farm, the caption was corrected upon motion made by Bowen and granted on November 18, 2010. The Consent Order filed by the lower court on November 19, 2010, amended the caption to reflect State Farm Mutual Automobile Insurance Company as the proper party to the action. (R. pp. 14-15).

In response to Appellant's Amended Complaint, State Farm filed an Answer and Counter-Claim, denying Bowen was entitled to any underinsured motorist benefits under Thrasher's policy, asserting multiple affirmative defenses, and asserting a Counter-Claim, seeking a judicial declaration that the policy at issue provides no coverage to Appellant, who is not an insured under the terms of the policy. (R. pp. 23-26). Bowen filed a Reply to the Counter-Claim on September 22, 2010. (R. p. 27).

On October 28, 2010, Appellant filed a Motion for Summary Judgment, seeking judgment as a matter of law. (R. p. 28). On November 19, 2010, State Farm also filed a Motion for Summary Judgment seeking dismissal of Appellant's Amended Complaint as a matter of law and entry of judgment in its favor. (R. pp. 29-30). A hearing on the cross-motions for summary judgment was held before the Honorable Alexander S. Macaulay in the Anderson County Court of Common Pleas on March 10, 2010. After considering the initial memoranda of law in support of the cross-motions for summary judgment submitted by both parties (R. pp. 31-47), arguments of counsel, and supplemental memoranda submitted by the parties (R. pp. 48-54), the lower court granted State Farm's motion for summary judgment. Judge Macaulay executed the Order Granting Summary Judgment to State Farm Mutual Automobile Insurance Company on October 14, 2011, which was subsequently filed on October 17, 2011. (R. pp. 2-12).

On November 14, 2011, Appellant timely served a Notice of Appeal from the Order entered by the lower court. The Notice of Appeal was filed with the Court of Appeals on November 15, 2011. (R. p. 183).

STATEMENT OF FACTS

This declaratory judgment action arises from an automobile accident that occurred near Anderson, South Carolina on January 16, 2010. On that date Appellant, Denise F. Bowen, was riding as a passenger in an automobile driven by Rebecca Gilliam. Just before the accident Gilliam stopped at the intersection of Cherry Drive and S.C. Highway 24, intending to make a left turn onto Highway 24 to travel toward Anderson. Gilliam apparently failed to see a vehicle driven by Timothy Michael Arndt, traveling from her left, and entered the intersection directly in front of Arndt's vehicle, thereby causing the accident and injuries sustained by Appellant.

Following the accident, Appellant first made a claim against Gilliam for Appellant's alleged injuries and damages. Gilliam's automobile liability insurance carrier paid its liability limits to Appellant in exchange for a covenant not to execute against Gilliam. While Appellant had purchased and maintained her own automobile insurance policy, issued by Travelers for a 1994 Saturn² she owned, Appellant's policy did not provide for underinsured motorist coverage. Appellant therefore made a claim against State Farm, seeking recovery of \$25,000 in underinsured motorist benefits under a policy issued by State Farm to Appellant's father, Larry Thrasher. State Farm denied Appellant's claim for UIM benefits under her father's policy on grounds that Appellant was not a resident relative as defined under the terms of the policy and, therefore, was not an insured. Appellant filed this declaratory judgment action to determine whether the policy provides coverage applicable to the accident.

² Bowen maintained her 1994 Saturn, and her insurance coverage through Travelers on the vehicle, until approximately six months prior to her deposition in September 2010, when the motor blew up. (Bowen Depo., R. p. 70, line 19-p. 71, line 19).

Appellant and her father presently live in two separate mobile homes that are not physically connected³ in any respect, although they are located on the same parcel of land in Anderson County. (Bowen Depo. R. p. 61, line 18-p. 62, line 2). The genesis of this living arrangement developed in 2006 after Appellant's father, Thrasher, who was living in Greenville, South Carolina, developed various forms of cancer and became increasingly ill. (Thrasher Depo. R. p. 121, lines 4-5). During that time, Appellant was traveling to Greenville from her mobile home at 207 Cherry Seed Lane in Anderson, SC, where she lived with her husband, Raymond Bowen, in order to take care of Thrasher's physical needs. (Bowen Depo. R. p. 62, line 22-p. 63, line 2). Eventually it was decided Thrasher should move to Anderson to be closer to Appellant in light of his medical needs. (Bowen Depo. R. p. 63, lines 3-19; p. 103, line 18-p. 104, line 8). Rather than moving Thrasher into the same mobile home in which Appellant was living, Appellant and her husband purchased, in or around May 2006, a used double-wide mobile home, which they moved to the same parcel of land on which they were living. (Bowen Depo. R. p. 64, line 10-p. 65, line 10; p. 66, lines 18-20). In order to have two dwellings located on the same property, Appellant and her husband sought a special variance from the Anderson County Codes Office. (Thrasher Depo. R. p. 121, lines 6-13; Bowen Depo. R. p. 65, lines 11-19; p. 66, line 21-p. 67, line 7). The variance to locate two separate mobile homes on the same parcel was granted only to accommodate Thrasher's medical needs, the request for which was supported by a statement from Thrasher's doctor that he needed to live close to Appellant. (Thrasher Depo. R. p. 121, line 11-p. 122, line 12). Each of the mobile homes had to have separate mailing addresses and separate

³ Appellant's Brief (p.3) states Appellant's lot has two "adjoining" mobile home trailers, which would seem to imply they are connected, but which is not an accurate depiction. There is no dispute in this case that the mobile homes are not connected to each other.

mailboxes. (Thrasher Depo. R. p. 123, lines 7-12; Bowen Depo. R. p. 67, lines 8-10). Hence, the new mobile home was designated as 209 Cherry Seed Lane and the existing mobile home was designated as 207 Cherry Seed Lane. (Bowen Depo. R. p. 63, lines 7-19). In the event Thrasher improves, dies, or has to move to a nursing home or other facility, the mobile home at 207 Cherry Seed Lane will not be permitted to remain on the property. (Thrasher Depo. R. p. 122, line 13-p. 123, line 2; Bowen Depo. R. p. 89, line 20-p. 90, line 2). If or when that occurs, Appellant and her husband have no intention of moving into the mobile home designated as 207 Cherry Seed Lane, but will remain living in their current mobile home and remove Thrasher's home within 30 days as required by the variance. (Bowen Depo. R. p. 90, lines 3-9; p. 90, line 11-p. 91, line 8).

Appellant and her husband spent a year upfitting the newer mobile home for their use while continuing to live in and receive their mail at 207 Cherry Seed Lane. In approximately May 2007, Appellant and her husband moved to the new/upfitted mobile home, immediately changing their mailing address to 209 Cherry Seed Lane, which remains their mailing address to this date. (Bowen Depo. R. p. 67, lines 11-25; p. 69, lines 11-23). At about the same time, Appellant gave Thrasher Appellant's old mobile home, designated as 207 Cherry Seed Lane, which remained on the same parcel of land. According to Bowen, when Thrasher moved to 207 Cherry Seed Lane, the intention was that he have his own home and that Bowen have her own home. (Bowen Depo., R. p. 91, lines 13-16). Thrasher also agreed 209 Cherry Seed Lane, where Appellant's husband lives full-time, is Appellant's primary address and residence, to which she always returns when not caring for him. (Thrasher Depo. R. p. 127, lines 9-21). While Appellant had some of her personal items at 207 around the time of the accident in January 2010,

including a bed and some articles of clothing, most of her belongings remained at 209. (Thrasher Depo. R. p. 132, lines 9-12).

While Appellant has not required Thrasher to pay rent to live in the mobile home at 207 Cherry Seed Lane since he moved there⁴, they did have a verbal understanding regarding payment and handling of expenses relating to the mobile home. (Bowen Depo. R. p. 68, lines 1-6). As described by Thrasher, he treats the trailer completely as his own in terms of expenses and has paid all of the expenses for the upkeep of the home, including for the food consumed in the home, the utilities, the former telephone land line⁵, his cell phone, and the power, heat and air-conditioning. (Thrasher Depo. R. p. 125, lines 3-16; p. 125, line 22-p. 126, line 7; p. 133, lines 5-7; Bowen Depo. R. p. 76, line 17-p. 77, line 1; p. 77, line 24-p. 78, line 15; p. 78, line 25-p. 80, line 9; p. 81, lines 4-6). Finances are also managed separately. (Thrasher Depo. R. p. 127, lines 4-8). While only one water bill is issued for both mobile homes because they are located on the same parcel of land, the cost of the bill is split, such that Thrasher essentially pays for the water he uses in the mobile home at 207 Cherry Seed Lane and Appellant pays for hers. (Thrasher Depo. R. p. 126, line 11-p. 127, line 3; Bowen Depo. R. p. 77, lines 3-22). Similarly, Thrasher and Appellant split the taxes so that Thrasher pays the taxes on the mobile home designated as 207 Cherry Seed Lane. (Bowen Depo. R. p. 73, line 24-p. 75, line 1). On only a single occasion, in October 2009, did Appellant and her husband pay the taxes on Thrasher's mobile home when, due to his surgery and medical expenses, Thrasher did not have the money to pay the taxes. Hence, Appellant's husband paid them out of the "goodness of his heart." (Bowen Depo. R. p. 75, lines 2-12). At no time has

⁴ The mobile home is paid for and does not have any type of monthly mortgage or bank line on it. (Bowen Depo. R. p. 80, lines 10-20).

⁵ Thrasher no longer maintains a telephone land line. (Thrasher Depo. R. p. 126, lines 3-4).

Appellant been dependent on her father in any way for food, clothing or care since he has lived at 207 Cherry Seed Lane. (Bowen Depo. R. p. 91, lines 9-12).

According to Thrasher, he underwent surgery on or about November 28, 2009, in Charleston, South Carolina, after which he remained hospitalized for another couple of weeks before returning home. (Thrasher Depo. R. p. 113, lines 1-9). After being discharged from the hospital, Thrasher was told by his medical provider he was required to have someone present to care for him, particularly when he was trying to sleep, due to the presence of tubes in his airways and the possibility he might encounter difficulty breathing. (Thrasher Depo. R. p. 118, lines 10-24; p. 130, lines 1-17). While nurses came to check on Thrasher for a period of four weeks, Appellant filled the necessary role of staying during the night with her father because of his condition and to be present in case he choked or encountered a medical emergency. (Thrasher Depo. R. p. 118, lines 19-24; p. 119, line 25-p. 120, line 2; p. 129, line 22-p. 131, line 9; p. 131, lines 7-9; Bowen Depo. R. p. 83, line 19-p. 84, line 8; p. 84, line 25-p. 85, line 16; p. 86, lines 13-15; p. 87, lines 3-19; p. 88, lines 22-24; p. 106, lines 12-14). Prior to Thrasher's surgery, Appellant had never stayed the night with her father at 207 Cherry Seed Lane. (Thrasher Depo. R. p. 132, lines 15-25; Bowen Depo. p. 82, line 23-p. 83, line 7). Thrasher estimated Appellant had stayed about seven or eight days with him by the time Appellant was involved in the automobile accident at issue herein. (Thrasher Depo. R. p. 118, lines 7-9). During that time, Appellant did not sleep on those nights, but would stay up to address any medical needs Thrasher encountered. (Bowen Depo. R. p. 84, line 25-p. 85, line 23).

After Appellant's accident in January 2010, and as Thrasher continued to recover and improve, Appellant needed only to stay the night with her father when he was having a "bad night" in terms of pain and breathing difficulty. (Thrasher Depo. R. p. 128, line 6-p. 129, line 4; p. 129, lines 20-24; Bowen Depo. R. p. 85, lines 17-23). Otherwise, Appellant returned to her residence at 209 Cherry Seed Lane. (Thrasher Depo. R. p. 127, lines 20-21; p. 129, lines 2-7; p. 136, line 24-p. 137, line 4). This pattern of Appellant staying with her father when he was having some medical difficulty or a "bad night," while returning home when her assistance was not needed, remained consistent through September 2010, when Thrasher was deposed. (Thrasher Depo. R. p. 131, line 14-p. 132, line 5; p. 133, line 8-p. 134, line 3; p. 135, lines 4-10, 14-20). At that time, he expected some additional need for Appellant's periodic assistance until he was able to secure removal of tubes from his nose. (Thrasher Depo. R. p. 135, lines 17-20). As attested to by Thrasher, the reason Appellant stayed with him was not for the purpose of living with him or to make 207 Cherry Seed Lane her residence, but only to help him, always with the "intention" of returning to 209 Cherry Seed Lane. (Thrasher Depo. R. p. 133, line 21-p. 134, line 3; p. 135, lines 21-24; p. 136, lines 22-23).

While Appellant did not install a separate driveway on the parcel of land to allow each mobile home to have its own driveway, she maintained her own vehicle and accompanying insurance coverage thereon until approximately six months prior to her deposition, taken in September 2010 (which would equate to a couple of months following the accident at issue), when the motor of her 1994 Saturn "blew." (Bowen Depo. R. p. 70, line 19-p. 71, line 16). Appellant has since been using Thrasher's car, which remains registered in his name, because Thrasher is no longer able to drive and

Appellant is required to take Thrasher to his doctor's appointments and to run errands for him. (Bowen Depo. R. p. 70, lines 6-24). Both Appellant and her husband maintained their own insurance coverage on their vehicles through Travelers Insurance. (Bowen Depo. R. p. 71, lines 17-19). They did not depend on Thrasher, who had his own vehicle and who purchased and paid for his own automobile insurance through State Farm, to purchase coverage for them. (Bowen Depo. R. p. 71, line 20-p. 72, line 20; p. 89, lines 5-6; Thrasher Depo. R. p. 139, lines 8-12).

Given the above, there was very little to no intermingling of the households, financial matters and/or insurance as between Appellant and Thrasher, making it abundantly clear, as further set forth below, that summary judgment was appropriately granted in favor of State Farm.

ARGUMENT

- I. Because the only reasonable inference to be drawn from the evidence is that Bowen established and maintained her residence separate and apart from that of her father, summary judgment was appropriately granted and should be affirmed.

Based on the undisputed facts of this case, the lower court appropriately granted summary judgment to State Farm after Appellant failed to establish evidence she was a resident relative of her father at the time of the accident at issue entitled to claim UIM benefits under her father's automobile policy. In reviewing the grant of summary judgment, this Court applies the same standard of review as the lower court under Rule 56, SCRCP. See Pye v. Estate of Fox, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006). A trial court may properly grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is

entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. See also Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997); Loadholt v. South Carolina State Budget and Control Bd., 339 S.C. 165, 169, 528 S.E.2d 670, 673 (Ct. App. 2000).

Here, while some of Appellant’s rhetoric may appear to suggest otherwise⁶, Appellant does not seem to contend there remains a genuine issue of material fact or that the lower court erred in setting forth the undisputed facts, but rather that the lower court erred in the conclusions and/or inferences drawn from those facts. Specifically, Appellant finds fault in the conclusion reached by the lower court that Appellant was not a resident relative of her father. A simple review of the undisputed facts, however, clearly establishes the lower court drew the only logical and reasonable inference it could draw from those facts, making summary judgment in favor of State Farm proper.

While the court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party, see Wells v. City of Lynchburg, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct. App. 1998), the inferences to be drawn from the evidence must be logical and reasonable in looking at the record as a whole. See Dawkins v. Fields, 354 S.C. 58, 70, 580 S.E.2d 433, 439 (2003) (discussing the only logical inferences that could be drawn from the record); Bloom v. Ravoir, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000) (“[A] court ‘cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.’”); Main v. Corley, 281 S.C. 525, 526–27, 316

⁶ Appellant’s assertions on page 6 of her Brief that “[t]he factual record is undisputed that at the time of the collision (January 16, 2010) Bowen resided in Thrasher’s trailer” is patently false and confuses what constitutes the undisputed facts of the case with the conclusion that the lower court was tasked to reach in drawing inferences from the undisputed facts (i.e., where Appellant resided for purposes of insurance coverage).

S.E.2d 406, 407 (1984) (a “judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine”). Where the evidence is susceptible of only one *reasonable* inference, the question is no longer one for the jury but one of law for the court. See Ward v. Zelinski, 260 S.C. 229, 232, 195 S.E.2d 385, 387 (1973).

As an initial matter, Appellant’s statement that “[t]he factual record is undisputed that at the time of the collision (January 16, 2010) Bowen resided in Thrasher’s trailer,” confuses the undisputed facts with the conclusions and inferences made by the lower court. Whether Appellant was a resident relative with her father is the conclusion or inference that the lower court was asked to draw from the undisputed facts. It is the inference made by the lower court that Appellant challenges. Under the circumstances of this case, the undisputed facts establishing all of the true indicia of residency, including receipt of mail, location of the vast majority of Appellant’s personal effects, financial obligations, payment of bills, maintenance of separate insurance coverages, and representations to local, state and federal governments for tax purposes, clearly support the inference reached by the lower court that Appellant was not a resident relative of or with her father, but was a resident of 209 Cherry Seed Lane. These indicia of residency considered by the lower court are not, as alleged by Appellant, inordinately technical matters, but are factors considered by other courts in analyzing resident relative status. See, e.g., Smith v. Auto-Owners Ins. Co., 377 S.C. 512, 660 S.E.2d 271 (Ct. App. 2008) (among factors considered were purchase of homeowners and automobile insurance, filing of joint tax returns, receipt of mail and payment of bills); Cook v. State Farm Auto. Ins. Co., 376 S.C. 426, 656 S.E.2d

784 (Ct. App. 2008) (considering handling of bills and expenses, including payment of property tax assessments, electrical services, phone services, septic tanks, and insurance policies).

While Appellant contends the lower court cherry picked among the undisputed facts and ignored certain "important" facts in reaching its conclusion⁷, a review of the "important" facts Appellant contends were ignored makes clear that they were non-determinative and trivial rather than being probative in evaluating the residency issue. Among those "important facts," Appellant first notes the vehicles used by Thrasher, Appellant and her husband all parked in the same driveway. It is axiomatic, however, that the mere location in which one chooses to park a vehicle does not establish where that person resides. Appellant certainly makes no contentions that her husband resides in both of the mobile homes by virtue of the fact he uses a driveway that services both homes. Moreover, it is undisputed that the placement and maintenance of two separate mobile homes on the same parcel of land was never intended to be permanent. Hence, it stands to reason why a separate driveway would not be installed for a structure that was expected to be removed as soon as it was no longer occupied by Thrasher.

Appellant further cites as important the fact that single bills were issued for water⁸ and for property taxes on both 207 and 209 Cherry Seed Lane,⁹ while ignoring the

⁷ In connection with Appellant's argument that the lower court only focused on certain facts while ignoring other "important" facts, Appellant boldly adds the lower court made "factually inaccurate" rulings relating to Bowen's alleged primary residence with her husband. (Appellant's Brief, p. 8) Despite Appellant's assertions in that regard, she then wholly fails to identify any of the alleged factual inaccuracies the lower court set forth, instead arguing the court focused too heavily on some facts while ignoring others.

⁸ Only one water bill was issued by the provider to the homes located on the parcel of land based on the fact that both used a single septic tank. (Bowen Depo. R. p. 77, lines 19-20).

⁹ While Appellant also stated the mobile homes shared a power bill, this statement is wholly contradicted by Appellant's own testimony and unsupported by any other evidence appearing in the record. As attested by Appellant, there is a separate electric bill for 207 Cherry Seed Lane, which Thrasher pays. (Bowen Depo. R. p. 78, lines 2-15)

undisputed fact that she and her father went through the trouble of splitting payment of those bills. The mere fact that bills were issued singly for all of the structures located on the same parcel of land is inconsequential to the determination of residency and attempts to shift the focus to what utility companies and tax authorities were doing from a billing standpoint rather than properly focusing on the actions of Thrasher and Appellant in the handling and payment of those bills, which is the telling and determinative factor.¹⁰ It is undisputed that all bills, whether received jointly or separately, were nonetheless paid separately. Finally, the mere fact Bowen had "free access" to the residence and did not have to obtain prior permission to take a shower or take food from the refrigerator is non-determinative. It could hardly be said that a person who visits the home of another and stays in that home for one or more days establishes residency simply because that person does not have to ask permission to shower or open the refrigerator during their stay. As Appellant points to no other facts she believes to be significant in establishing residency, it is abundantly clear the lower court considered all of the appropriate issues to reach the only reasonable inference it could draw from the evidence.

In addition to her contention that the lower court ignored certain important facts, Appellant believes the decision of the lower court was influenced and informed by "erroneous and unnecessary factual determination[s]" that Appellant intended to reside with her husband and that Appellant's stays with her father were a matter of temporary convenience. To the extent Appellant's intention regarding where she would reside is

¹⁰ Appellant even attested she had a verbal agreement with Thrasher regarding use of the residence to which Thrasher moved and as to division of expenses pertaining to the homes and property. (Bowen Depo. R. p. 68, lines 1-14).

determinative of resident relative status¹¹, a review of both Appellant's actual testimony and her actions both belie her arguments that she intended to reside either with her father or with both her father and husband.¹² To the contrary, it is abundantly clear Appellant's intent was to establish two separate residences and that she had to go through a fair amount of trouble to do so, beginning with her efforts to obtain variances and separate addresses from Anderson County. While Thrasher, Appellant and her husband certainly could have opted to reside in the same home, Appellant and her husband spent a year remodeling an older mobile home they purchased so that Appellant and her husband could live in one home and Thrasher could live in the other.

In none of the testimony cited by Appellant on page 6 of her Brief did she ever, as she has argued, testify she "intended" to live with either her father or with both her husband and father. Rather, Appellant specifically agreed that the "intention" was for Thrasher to have his own home and for Appellant to have her own home when Thrasher moved to 207 Cherry Seed Lane in May 2007. (Bowen Depo. R. p. 66, lines 15-17; p. 91, lines 13-16). This arrangement and intent was borne out by the fact that Bowen *never* stayed the night with her father prior to her father's surgery in November 2009. (Thrasher Depo. R. p. 132, lines 13-25). Hence, they lived separately in their respective mobile homes, without Bowen ever staying the night with her father, for approximately 2 ½ years prior to Thrasher's surgery of November 2009. Moreover, Appellant agreed she has "no intention" of returning to live at 207 Cherry Seed Lane should it be vacated by

¹¹ A person's intent is not necessarily determinative on the issue of whether a person qualifies as a resident relative for insurance purposes. See Auto Owners Ins. Co. v. Langford, 330 S.C. 578, 500 S.E.2d 496 (Ct. App. 1998) (a person may be a resident relative even though he does not have an intent to permanently reside with the insured).

¹² Appellant's brief on this point is muddled. In one sentence, she states her undisputed testimony showed her intent was to live in 207 with her father. (Appellant's Brief, p. 6). A mere two sentences later, Appellant states that several times during her deposition she "testified she intended to live with, 'both [her] father and [her] husband.'"

her father for any number of reasons. (Bowen Depo. R. p. 90, lines 3-9; p. 90, line 11-p. 91, line 8).

It was only after Thrasher's surgery and discharge from the hospital, with the accompanying instruction from Thrasher's medical provider that someone *had* to be present to care for him, particularly when he was sleeping, that Bowen first *stayed*¹³ with her father. (Thrasher Depo. R. p. 118, lines 10-18; p. 130, lines 1-17). Even when she did so, Appellant did not sleep on those nights, but would stay up to address any medical needs Thrasher encountered. (Bowen Depo. R. p. 135, line 25-p. 136, line 23). When Thrasher began to recover and improve, Appellant did not continue to stay at 207 Cherry Seed Lane at night with her father, but would only stay when needed, *i.e.*, when Thrasher was having a "bad night." (Thrasher Depo. R. p. 128, line 6-p. 129, line 4; p. 129, lines 20-24; Bowen Depo. p. 85, lines 17-23). Otherwise, Appellant returned to her own home. As Thrasher testified, Appellant did not stay with Thrasher in order to establish a residence or live with him, but only to help Thrasher and always, as Thrasher agreed, with "the intention of going back to 209." (Thrasher Depo. R. p. 133, line 21-p. 134, line 3; p. 135, lines 21-24; p. 136, lines 22-23). While Appellant takes issue with any reference to the arrangement between Appellant and her father as a matter of "convenience," it is abundantly clear their relationship and interactions were borne out of an acute need and temporary necessity and, in that sense, was designed to be of a use and benefit to Thrasher during his recovery.

When the record is viewed as a whole, it is overwhelmingly clear the lower court properly focused on the appropriate and probative facts indicative of residency and drew

¹³ While Appellant states in her Brief, p. 6, she "*moved into* Thrasher's trailer" more than a month before the accident, those terms are not actually borne out by Appellant's deposition testimony, in which discussions focused on those times Appellant was required to stay with her father for medical purposes.

the only logical and reasonable inference it could from the record, to wit, that Appellant was not a resident relative with her father. That ruling should be affirmed.

II. Implicit in the lower court's consideration and discussion of the undisputed facts of this case was a proper analysis and application of the factors adopted by South Carolina courts in assessing whether Appellant was an insured resident of her father's household.

Appellant's assertion that the lower court failed to follow the test first adopted by the South Carolina Supreme Court in State Farm Fire and Cas. Co. v. Breazell, 324 S.C. 228, 478, S.E.2d 831 (1996), and later applied in Smith v. Auto Owners Ins. Co., 377 S.C. 512, 660 S.E.2d 271 (Ct. App. 2007), in evaluating whether Appellant was a resident relative of her father is unfounded. As an initial matter, the applicable law set forth by the lower court included a discussion of both the Breazell factors as well as a discussion of the factual background and holdings of the Smith case. (See Order, R. pp. 7-9). In that regard, it is important to note that all of the factors set forth by the court in Breazell must be met in order for a person to qualify as a resident relative. Specifically, the person must be "1) living under the same roof, 2) in a close, intimate and informal relationship, and 3) where the intended duration of the relationship is likely to be substantial, where it is consistent with the informality of the relationship, and from which it is reasonable to conclude that the parties would consider the relationship in contracting about such matters as insurance or in their own conduct in reliance thereon." Breazell, 324 S.C. at 231, 478 S.E.2d at 832.

Here, it is evident the lower court's focus was on the third element in particular, which included an assessment of the intended duration of the relationship, formality versus informality of the relationship, and an assessment of the extent to which the parties considered their relationship in the intermingling of their households and/or personal affairs.

(See Order, R. pp. 10, 11). Specifically, as set forth by the lower court, the intended duration of the relationship between Appellant and her father was expected to be limited to assisting Thrasher during his acute phase of recovery from surgery and as needed for healthcare assistance.¹⁴ This is borne out and further supported by the fact that Appellant never once stayed in her father's trailer during the first 2 ½ years after he moved in before his November 2009 surgery. When Appellant did stay nights with her father following his surgery, she admittedly did not sleep, but would have to stay up to address Thrasher's medical needs. (Bowen Depo. R. p. 84, line 25-p. 85, line 23). Finally, as Thrasher began to recover, Appellant only stayed with him as needed when he was having a "bad night" and needed medical attention or monitoring. (Thrasher Depo. R. p. 128, line 6-p. 129, line 4; p. 129, lines 20-24; Bowen Depo. R. p. 85, lines 17-23). Otherwise, Appellant returned to her residence at 209 Cherry Seed Lane. (Thrasher Depo. R. p. 127, lines 20-21; p. 129, lines 2-7; p. 136, line 24-p. 137, line 4). Hence, while Thrasher's recovery was fairly prolonged and required diligent attention at times by Appellant, the evidence does not suggest Appellant intended to stay with Thrasher at any time, unless specifically needed for healthcare assistance.¹⁵

The lower court further noted that, based on the undisputed facts, it was abundantly clear the households were run completely separate and apart from one another. All finances to operate each of the households were kept separate. Even on the occasion a joint bill was received due to the fact that both trailers were located on the

¹⁴ As stated by the lower court, Appellant spent nights in her father's home solely for the purpose of assisting with his healthcare, which, while certainly important, was a matter of convenience for Appellant and Thrasher during Thrasher's acute phase of recovery. (See Order, R. p. 10).

¹⁵ The fact Appellant stayed with Thrasher only during those specific times when she was needed for healthcare purposes also negates that the relationship between Thrasher and her father, pursuant to which Appellant would stay in her father's trailer, was informal in nature. To the contrary, it is clear Appellant only stayed there by necessity and that she otherwise returned to her own home.

same parcel of land, Appellant and her father divided payment so that each paid for their respective portion of the bill. Moreover, in no way does the evidence establish or even suggest that Appellant and Thrasher considered their relationship in contracting about such matters as insurance, evidenced by the fact that they maintained their own automobile insurance through separate companies, even 2 ½ years after they began living on the same parcel of land. Hence, given the above-referenced analysis, it is abundantly clear Appellant fails to meet the third prong set forth by the courts in Breazell and Smith.

In light of the above, it becomes clear the absence of any South Carolina cases supporting the proposition that an emancipated adult can be a resident of more than one household in no way constrained the lower court in reaching the conclusion that Appellant was not a resident relative with her father, as argued by Appellant. Under the facts of this case, Appellant would not qualify as a resident of her father's home even if South Carolina recognized the principle of law that a person can be a resident of multiple households. However, the lack of any ruling by a South Carolina court that an emancipated adult can be a resident of multiple households does serve to bolster the lower court's conclusions regarding Appellant's residency.

Appellant's contentions that the South Carolina insurance statute, case law, and public policy do not support the lower court's finding that a person cannot be a resident of more than one household for purposes of recovering UIM benefits are without support. As an initial matter, Appellant contends that a broad construction of S.C. Code Ann. §38-77-30(7), which defines "insured" to mean a named insured and, "while resident of the same household, the spouse of any named insured and relatives of either . . ." somehow implies a person does not have to be limited to a single residence. While South Carolina

statutory law indeed provides that the automobile insurance statutory law is to be liberally construed in order to achieve its purposes, one of which is to provide that every automobile insurance risk that is insurable is entitled to automobile insurance, see S.C. Code Ann. §§38-77-10 and 38-77-20, the definition of an “insured,” as set forth in S.C. Code Ann. §38-77-30(7), in no way addresses the issue of whether an emancipated adult can reside in more than one household, nor does it imply multiple residences are possible. Moreover, while South Carolina statutes and public policy both favor liberal construction in favor of coverage, South Carolina courts also recognize that the parties have a right to make their own contract and that it is not the function of the courts to extend coverage never intended by the parties. See Torrington Co. v. Aetna Cas. & Sur. Co., 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975).

Not only is there no support in any South Carolina statute for the position advocated by Appellant, but there is also no South Carolina case that has adopted a rule that a person can be a resident of multiple households. To the extent any South Carolina court can be said to have even potentially held open the possibility that a person could be considered a resident of more than one household under appropriate circumstances, it has not been under any factual scenario even remotely similar to the circumstances of this case. While Appellant relies on the cases of Auto Owners Ins. Co. v. Horne, 356 S.C. 52, 586 S.E.2d 865 (Ct. App. 2003), and Buddin v. Nationwide Mut. Ins. Co., 250 S.C. 332, 157 S.E.2d 633 (1967), to establish that South Carolina courts have endorsed the principle that an insured may be a resident relative of multiple households, neither of those cases stand for such a broad proposition.

In Horne, the court was presented with *only* the question of whether “a minor unemancipated child can be a resident of two households.” Id., 356 S.C. at 69 n.8, 586 S.E.2d at 875. The court held that it did *not* need to reach that issue because the facts of the case established the minor child was not a resident of her non-custodial father’s home on the day of her accident, and therefore, she did not qualify for UIM coverage under her father’s policy. Moreover, every single case cited in Horne, *regardless of the position taken on the issue*, involved an unemancipated minor¹⁶ claiming to be a resident of the households of both parents who were divorced or separated from each other. While Appellant points to a statement made by the court in Horne in dicta to argue that the court endorsed the concept that a person may be a resident relative of multiple residences for purposes of insurance coverage, the statement made by the court was expressly limited to “recognition that a child of divorced parents” could be a resident of two households. Id., 356 S.C. at 69 n.8, 586 S.E.2d at 875. (emphasis added). Those circumstances are wholly removed from the factual scenario at issue here. Appellant in this instance was 49 years old on the day of the accident and was not only emancipated, but was married and had virtually all of her belongings in her own home, located just a short distance from the separate trailer in which her father resided. While Appellant may have been staying overnight in her father’s home around the time of the accident, the clear intent behind her actions in doing so was to comply with the mandates of her father’s medical providers and to assist and care for her father during the acute phase of his recovery from surgery. Appellant had never stayed with her father prior to that time and began returning to her

¹⁶ In the only case cited in Horne involving a minor over the age of 18, Elder v. Metro. Prop. & Cas. Co., 851 S.W.2d 557 (Mo. Ct. App. 1993), the twenty year old son of the insured claimed he was an unemancipated minor and should be permitted to recover under his non-custodial father’s policy. As in Horne, the court resolved the case on the grounds that the son was simply not a resident of his father’s household.

own home on those nights she was not needed. . The case quoted by the court in Horne and recited by Appellant to lend support to the concept of simultaneous residency in multiple households, Cook v. Fed. Ins. Co., 263 S.C. 575, 582, 211 S.E.2d 881, 884 (1975), is also not on point as it did not address the issue in the context of determining availability of insurance coverage, but rather in the context of determining residency for service of process.

Appellant's reliance on Buddin v. Nationwide Mut. Ins. Co., 250 S.C. 332, 157 S.E.2d 633 (1967), is likewise wholly misplaced. Contrary to Appellant's description of the facts in Buddin, which are entirely inaccurate, the sole issue for the court was whether or not the named insured's nephew was entitled to liability coverage as an additional insured under his uncle's automobile policy on the grounds he was a resident relative with his uncle. While Appellant states that the nephew had more than one residence, a review of the facts reveals the nephew had moved into his uncle's home at least two months prior to the accident, was not staying anywhere else during that time, and was not, in fact, even looking for another place to live. Appellant's representations that the nephew was living simultaneously on and off with his uncle in Greenville and a sister in North Carolina are simply wrong. It appears Appellant has erroneously drawn in facts from the case of Jamestown Mut. Ins. Co. v. Nationwide Mut. Ins. Co., 266 N.C. 430, 146 S.E.2d 410 (1966), which were discussed by the court in Buddin. Hence, Buddin, which focused solely on determining the residency issue in a single household does nothing to support Appellant's position.

Accordingly, for the *additional* reason that South Carolina courts have not held that an emancipated adult can be a resident of multiple households simultaneously for the

purpose of recovering UIM benefits, the lower court's grant of summary judgment should be affirmed.

III. Because the lower court reasonably construed the term "resides," an undefined term in the State Farm policy, giving the term its plain, ordinary and popular meaning, the lower court came to the appropriate conclusion that Appellant was not a resident relative of her father.

Appellant contends the undefined term "resides" in the underinsured motorist section of Thrasher's State Farm automobile policy is ambiguous and should have been more broadly construed by the lower court in favor of Appellant. Specifically, Appellant argues that the two separate mobile homes, located at 207 and 209 Cherry Seed Lane, constitute one "residence." However, only a tortured and unconventional construction of the term "resides," as proposed by Appellant, would allow the lower court to conclude Appellant was a resident of 207 Cherry Seed Lane with her father and also at 209 Cherry Seed Lane with her husband. While in South Carolina, clauses of inclusion should be broadly construed in favor of coverage, see Buddin v. Nationwide Mut. Ins. Co., 250 S.C. 332, 337-38, 157 S.E.2d 633, 635 (1967), courts should not "torture the meaning of policy language in order to extend" or defeat coverage that was "never intended by the parties." Torrington Co. v. Aetna Cas. & Sur. Co., 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975). "The contract must be interpreted in the light of the whole agreement in such a way as to carry out the intentions of the parties." Id. "Insurance policies are subject to general rules of contract construction." State Farm Mut. Auto. Ins. Co. v. Calcutt, 340 S.C. 231, 234, 530 S.E.2d 896, 897 (Ct. App.2000). Accordingly, courts "should give policy language its plain, ordinary and popular meaning." Id.; Cook v. State Farm Auto. Ins. Co., 376 S.C. 426, 430, 656 S.E.2d 784, 786-87 (Ct. App. 2008).

In support of her contention that the mobile homes at 207 and 209 Cherry Seed Lane constitute a single "residence," Appellant notes the trailers are located on the same, undivided parcel of land, are in close proximity to each other, and share a driveway. She gratuitously adds that she considers herself, her husband and her father to be one "family unit." The undisputed facts of the case, however, clearly establish Appellant and her father consistently treated the two mobile homes as completely separate and distinct households. From the day Thrasher moved into his home until the present day, he has paid for the upkeep of his home, including electrical service, his portion of the water bill, the telephone land line for the home (until it was removed), his own cell phone, taxes and every other significant financial matter necessary to run a home. Even in such instances when a single bill was issued to cover services for both of the mobile homes located on the same parcel of property, Appellant and her father divided the bill so as to pay separately for their own usage. Moreover, it is obvious that the proximity of the mobile homes to each other and use of a single driveway were a matter of necessity rather than some conscious decision to turn the separate mobile homes into a single residence. As Appellant testified, the property was "only 0.9 acres," which was just not enough property to try to divide. (Bowen Depo. R. p. 66, lines 1-11). Given the size of the property and the fact Thrasher's mobile home at 207 Cherry Seed Lane will have to be moved if and when Thrasher no longer lives there, the fact that a separate driveway has not been installed is not only not surprising, but is certainly not evidence of residency in all physical dwellings serviced by the driveway.

Hence, because only a tortured interpretation of the term "resides" can be used to establish that Appellant's residency was in two separate and distinct mobile homes, there

is no other conclusion but that the lower court reasonably construed the terms of the policy and its decision should be affirmed.

IV. State Farm's policy, in defining a relative as a person related to you or your spouse by blood, marriage or adoption "who resides primarily with you," does not violate South Carolina public policy by limiting statutory coverage mandated by the underinsured motorist statutes.

Appellant's contention that State Farm's policy language, which defines a relative as "a person related to you or your spouse by blood, marriage or adoption, who resides primarily with you," somehow violates public policy is wholly unsupported. As an initial matter, while the South Carolina automobile insurance statute defines the term "insured" for purposes of use of that term in the Automobile Insurance Chapter, the term "relative" is *not* defined by South Carolina statute. Nor can defining the term "relative" as someone residing primarily with you be said to be inconsistent with any South Carolina statutory provisions. Moreover, while Appellant offers as an unintended effect of defining a relative as someone residing "primarily with you" the potential for exclusion of coverage of minors living primarily away from home in dormitories, the example falls flat. Here, the State Farm policy specifically addresses that issue and provides that the definition of relative *includes* married and unemancipated children who are away at school.

In addition to the above, the cases cited by Appellant to support the proposition that limiting language in a policy that provides less protection than made mandatory by statute is contrary to public policy and has no force and effect are inapposite. Both Ferguson v. State Farm Mut. Ins. Co., 261 S.C. 96, 198 S.E.2d 522 (1973) and Nationwide Mut. Ins. v. Howard, 288 S.C. 5, 339 S.E.2d 501 (1985), address the issue of set-offs to or reduction in uninsured and/or underinsured motorist benefits otherwise available under the applicable policies at issue in those cases. While the issue in those

cases is the *amount* of benefits available and, specifically, whether those benefits may be reduced or diminished below statutory minimums due to set-offs or limitations based on the existence of other insurance, the issue here is *to whom* the underinsured motorist benefits are available based on the definitions set forth in the policy. Defining a relative to mean someone residing “primarily with you” does not serve as a limitation on the amount of statutory coverage required to be available by the underinsured motorist statutes.

Finally, it is important to note that South Carolina courts have addressed similar language in determining the resident relative issue. In Cook v. State Farm Auto. Ins. Co., 376 S.C. 426, 656 S.E.2d 784 (Ct. App. 2008), for instance, the South Carolina Court of Appeals was tasked with determining whether the lower court erred in finding a daughter was not a resident-relative of her grandfather. Three automobile insurance policies issued to the grandfather all contained language extending coverage to the grandfather, his spouse, and his relatives. As here, a relative was defined in each of the grandfather’s policies as “a person related to you or your spouse by blood, marriage or adoption who resides primarily with you.” The Court of Appeals recited the often stated principles that insurance policies are subject to general rules of contract construction and that policy language should not be tortured to extend or defeat coverage never intended by the parties, but rather should be given its plain, ordinary and popular meaning. See id., 376 S.C. at 430, 656 S.E.2d at 786-87 (citing Torrington Co. v. Aetna Cas. & Sur. Co., 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975); State Farm Mut. Auto. Ins. Co. v. Calcutt, 340 S.C. 231, 234, 530 S.E.2d 896, 897 (Ct. App.2000)). The court then noted the determinative issue was whether the daughter resided “primarily with” her grandfather at

the time of the accident and undertook an analysis of the facts determining the daughter's primary residence. The Court of Appeals ultimately affirmed the ruling of the lower court that the daughter did not primarily reside with her grandfather and was, therefore, not entitled to UIM benefits under her grandfather's insurance policies. See also State Farm Mut. Auto. Ins. Co. v. Boyd, 377 F.Supp.2d 511 (D.S.C., 2005) (noting that the policy's definition of "relative," defined as "a person related to you or your spouse by blood, marriage or adoption who resides primarily with you," was unambiguous).

Hence, because no support is offered, nor can any be found, for the proposition that defining a relative as a person who "resides *primarily* with you" is contrary to public policy, the definition is not voidable and should be upheld.

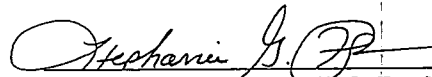
CONCLUSION

Based on the foregoing authorities and arguments, Respondent, State Farm Mutual Automobile Insurance Company, respectfully submits the lower court's grant of summary judgment to it and denial of summary judgment to Appellant should be affirmed.

Respectfully submitted,

May 22, 2012

Greenville, SC



T. David Rheney, Esq. (S.C. Bar No. 13148)

Stephanie Flynn (S.C. Bar No. 16653)

GALLIVAN, WHITE & BOYD, P.A.

55 Beattie Place, Suite 1200

P.O. Box 10589

Greenville, SC 29603

(864) 271-9580

(864) 271-7502 FAX

drheney@gwblawfirm.com

sflynn@gwblawfirm.com

Attorneys for Respondent

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS**

**Alexander S. Macaulay
Circuit Court Judge**

CASE No. 2010-CP-02124

DENISE S. BOWEN Appellant,

vs.

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, ... Respondent.**

Reply of Appellant

**Edwin L. Turnage
HARRIS & GRAVES, P.A.
812 Laurens Road
Greenville, SC 29607
(864) 235-1331**

Attorney for Appellant

I. TABLE OF CONTENTS

I. ARGUMENT.....	1
A. The factual record here proved that at the time of the collision Bowen intended a substantial residency in her father's dwelling.	1
B. State Farm Seeks to Conform South Carolina Law to its Restrictive Policy Language.	4
II. CONCLUSION	7

II. TABLE OF AUTHORITIES

Cases

<u>Bayle v. South Carolina Dep't of Transp.</u> , 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).....	1
<u>Ferguson v. State Farm Mut. Ins. Co.</u> , 261 S.C. 96, 100, 198 S.E.2d 522 (1973).....	5
<u>Smith v. Auto Owners</u> , 377 S.C. 512, 516, 660 S.E.2d 271 (Ct. App. 2008).....	3

Statutes

S.C. Code Ann. § 38-77-30.....	6
--------------------------------	---

III. ARGUMENT

A. The factual record here proved that at the time of the collision Bowen intended a substantial residency in her father's dwelling.

1. The lower court failed to follow Rule 56 and construe the factual record most favorably for the non-moving party.

Appellant disagrees with State Farm's attempt to characterize our argument as one that forecloses the possibility of remand to the trial court for trial. State Farm asserts, "Appellant does not seem to contend there remains a genuine issue of material fact" (Appellant's Brief at p. 9) It then jumps on our contention, which was the basis of Appellant's motion for summary judgment, that the factual record was undisputed.

We *believe* that the factual record here allows for only one reasonable interpretation of this factual record . . . that Denise Bowen was a resident relative of her father at the time of the collision. However, we *also believe* there are only two viable alternatives on this factual record. First, an outright reversal and Order instructing the trial court to enter judgment for Plaintiff. Or second, if this court disagrees with our argument that this factual record establishes Bowen's resident relative status, then the case must be remanded for trial. There is no question that this factual record *at least* establishes there was a genuine issue of material fact which precludes a summary judgment in favor of State Farm.

Even though both parties have argued there is no genuine issue of material fact for trial, the possibility still exists for remand or trial because on a motion for summary judgment, all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001). Here, Denise Bowen did not

receive the benefit of a deferential standard of review from the lower court when it issued summary judgment for State Farm.

2. The lower court made many errors and factual mistakes in construing the undisputed record.

State Farm's Brief urged this Court to uphold the lower court finding that the, "undisputed evidence establishes the plaintiff did not reside with her father on the day of the accident." (R. p. 10). That factual finding by the lower court was clearly erroneous. The *undisputed* record overwhelming proves the mistake.

On December 10, 2009, Thrasher returned home from the MUSC hospital following cancer surgery. His condition is so dire he could not live alone without somebody to care for him. "[H]is whole top of his leg was bleeding with gauze. His whole arm had to be done. I had to clear the tube. He couldn't be left because he was in such severe pain and nobody – I had to take care of him. I had to be the nurse." (R. p. 84, line 2-6) Bowen testified she, "had to sleep in the room beside him so if he quit breathing – I would have to keep up all hours of the night . . . listening to make sure he didn't choke." (R. p. 85, line 5 to 11). More than a month before her January 16 motor vehicle collision, Bowen moved into Thrasher's trailer (207) and spent the nights there with him "every night" until around April 10, 2010, well after the collision. (R. p. 83) Thus, contrary to State Farm's repeated claim to the contrary, this factual record unquestionably demonstrated that at the time of the collision (January 16, 2010) Bowen resided in Thrasher's residence.

The Court's ruling that Bowen was not resident with her father at the time of the collision was apparently based on a related, inaccurate, (and unnecessary) factual finding that Bowen allegedly intended to reside with her husband in 209. The Order at

page 9 incorrectly stated Bowen, "had no intention of residing at both addresses on the day of this accident." (R. p. 10)

The factual record contains no direct factual support for the trial court's finding of fact about Bowen's intent. Bowen's direct testimony about her intent totally contradicts the court's finding. First, Bowen's undisputed testimony about her intent was that she intended to live in 207 with her father, Thrasher, as long as he needed her. Even months after her collision, Bowen still lived with Thrasher "about half and half." (R. pp. 86, 89, and 105) Bowen testified multiple times during her deposition that she intended to live with, "both my father and my husband." (R. pp. 94, 96, and 105)

The only arguable evidence for a finding she did not intend to live with her father on the day of the collision is State Farm's rather sketchy interpretation of circumstantial evidence. But even if the circumstantial evidence in this record could be stretched to more than a mere mole hill, it merely creates a factual dispute about intent (assuming intent is relevant) and the case must be remanded for a trial.

State Farm's Brief repeats the inaccurate factual statement about Bowen's alleged intent not to reside with her father again and again and again at pages 13, 17, and 20. However, repeating a lie over and over again does not make the lie truth.

The trial court also made a factual error in finding that Bowen lived with her father as a "mere convenience." In Smith v. Auto Owners, 377 S.C. 512, 516, 660 S.E.2d 271 (Ct. App. 2008), this Court held a son was not the resident relative of his father because their living arrangement was one of "mere convenience."

However, if the terms "mere convenience" are to have any meaning under South Carolina law, then the terms certainly cannot include this circumstance involving a

sacrificial love associated with a person's care for a seriously sick relative. The lower court got that finding this residency was one of "mere convenience" really wrong.

The final factual error of substance was the trial court's inaccurate ruling related to Bowen's alleged primary residence with her husband, Raymond (209). The trial court, ignored important facts establishing Bowen's primary residence with her father on the day of the collision. State Farm's Brief characterizes the substantially contradictory factual record as "trivial" and "non-determinative" or not "probative" facts. However, the weight of the evidence is ordinarily reserved for the judgment of a finder of fact. State Farm's attempt to characterize evidence in this manner reinforces the notion that it should never have been the beneficiary of an order awarding it summary judgment.

B. State Farm Seeks to Conform South Carolina Law to its Restrictive Policy Language.

At page 17 of the State Farm Brief we find out State Farm's ulterior purpose in this appeal. There State Farm asserts that there is an alleged, "absence of South Carolina cases supporting the proposition that an emancipated adult can be a resident of more than one household" (Brief at 17). Limiting a South Carolina insured's to a "primary" residence is the nub of State Farm's effort in this appeal. It now seeks to persuade you that in South Carolina a person cannot have multiple residences simultaneously. That attempt to narrow residency to a primary place is reflected by State Farm's policy language.ⁱ Therefore, in the perversity of its position, State Farm now seeks to conform South Carolina law to its narrow policy language. See Ferguson v. State Farm Mut. Ins. Co., 261 S.C. 96, 100, 198 S.E.2d 522 (1973) ("[A]ny limiting language in an insurance contract which has the effect of providing less protection than made obligatory by the statute is contrary to public policy and is of no force and effect.") .

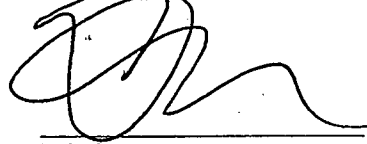
Fortunately, the South Carolina automobile insurance statute is broader than State Farm's policy. Our public policy mandates coverage to statutory "insured." Section 38-77-30(7) defines "insured" to include both the insured person or persons named in a policy and "while resident of the same household, the spouse of any named insured and relatives of either." S.C. Code Ann. § 38-77-30 (definitions). The South Carolina Legislature did not place State Farm's limitation on residents of our State to a "primary" residence. If the Legislature had intended a narrow construction of insured it would have included State Farm's proposed limitation in the definition section.

In a telling example of why its untenable position limiting residency to a primary location is contrary to our State policy, State Farm discounts the example of an adult child living primarily in a college dormitory. State Farm argues that example is not valid because *its policy* gratuitously provides such coverage. (See Respondent's Brief at page 23). However, this Court should ask State Farm whether the day after this Court publishes its ruling affirming the trial court, whether or not State Farm could call a Board Meeting and change the definition to *exclude* kids away in school. The answer is obvious. Suddenly, kids away in college may be no longer covered. State Farm's policy language is simply irrelevant to the issue of our public policy. State Farm's narrow construction of residence to a "primary" place destroys the residential coverage of many people who would otherwise constitute "insureds" under South Carolina law. Those people stripped of insurance coverage by the narrow construction would include our client Denise Bowen, a daughter who was permanently living with her very sick father out of affection and love.

I. CONCLUSION

For the foregoing reasons, the Court must reverse the order, and remand the case to the Circuit Court with instructions to enter Judgment in favor of Bowen.

Very respectfully submitted,



Edwin L. Turnage
HARRIS & GRAVES, P.A.
812 Laurens Road
Greenville, SC 29607
(864) 235-1331

Attorney for Appellant

¹ It defines "resident relative" as one who, "resides primarily with you." (R. p. 163).

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Denise F. Bowen, Appellant,

v.

State Farm Mutual Automobile Insurance Company,
Respondent.

Appellate Case No. 2011-203546

Appeal From Anderson County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2013-UP-084
Heard January 15, 2013 – Filed February 20, 2013

AFFIRMED

Edwin L. Turnage, of Harris & Graves, PA, of
Greenville, for Appellant.

Stephanie G. Flynn and T. David Rheney, both of
Gallivan, White & Boyd, PA, of Greenville, for
Respondent.

PER CURIAM: Denise Bowen argues the trial court erred in finding she is not a resident relative for the purpose of collecting underinsured motorist (UIM) coverage from her father's State Farm insurance policy. On appeal she argues (1)

the record proves at the time of her collision she intended to have a substantial residency in her father's dwelling and the trial court erred in granting summary judgment and misapplied the resident relative factors, (2) the term "resides" is ambiguous in the policy, and (3) State Farm's insurance policy violates South Carolina's public policy. We affirm the trial court.

1. As to summary judgment and whether the trial court properly analyzed the resident relative factors, we find the trial court properly granted summary judgment to State Farm. *See George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (holding the purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder); *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) ("When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRPC; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."); *State Farm Fire & Cas. Co. v. Breazell*, 324 S.C. 228, 231, 478 S.E.2d 831, 832 (1996) (determining one is a resident relative where the parties are "1) living under the same roof; 2) in a close, intimate and informal relationship, and 3) where the intended duration of the relationship is likely to be substantial, where it is consistent with the informality of the relationship, and from which it is reasonable to conclude that the parties would consider the relationship in contracting about such matters as insurance or in their conduct in reliance thereon").
2. As to the interpretation of the term "resides," we find the trial court correctly reviewed the term. *Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 71, 310 S.E.2d 814, 816 (1983) ("Insurance policies are subject to general rules of contract construction."); *Torrington Co. v. Aetna Cas. & Sur. Co.*, 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975) (finding parties to an insurance policy have a right to make their own contract and courts should not "rewrite it or torture the meaning of a policy to extend coverage never intended by the parties"); *Gambrell*, 280 S.C. at 71, 310 S.E.2d at 816 (holding courts should "give policy language its plain, ordinary and popular meaning").
3. As to whether the State Farm insurance policy violates South Carolina public policy, we find this issue is not preserved for review. This issue was neither raised to nor ruled upon by the trial court. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (noting to be preserved for review, an issue must be raised to and ruled upon by the trial court); *id.* (finding an issue cannot be raised for the first time on appeal).

AFFIRMED.

SHORT, KONDUROS, and LOCKEMY, JJ., concur:

RECEIVED
FEB 21 2013
BY:

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS**

**Alexander S. Macaulay
Circuit Court Judge**

CASE No. 2010-CP-02124

DENISE S. BOWEN Appellant,

vs.

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, ... Respondent.**

Appellant's Petition for Rehearing

**Edwin L. Turnage
HARRIS & GRAVES, P.A.
812 Laurens Road
Greenville, SC 29607
(864) 235-1331**

Attorney for Appellant

Petitioner seeks a rehearing on the grounds that the Court overlooked or misapprehended the following issues or facts in issuing its Unpublished Opinion No. 2013-UP-084.

- a. The Petitioner did raise or argue before the trial court the issue that State Farm's policy violated South Carolina public policy in how it limited resident relatives to one primary residence.
- b. The trial court did specifically hear argument on the issue described above, and it did rule on the resident relative public policy issue; and
- c. The trial court misapplied the summary judgment standard of Rule 56 of the South Carolina Rules of Civil Procedure and made several mistaken findings of fact on key factual issues.

a. **Petitioner raised the resident relative public policy issue with the trial court.**

The February 20, 2013, Unpublished Opinion stated the issue of whether the State Farm insurance policy violated South Carolina public policy was, "not preserved for review." (§ 3) The reason for this conclusion was because the court misapprehended and said, "[t]his issue was neither raised to nor ruled upon by the trial court." (§ 3)

The heading of Section B of Petitioner's February 16, 2011, Memorandum in Support of Plaintiff's Motion for Summary Judgment raised the resident relative public policy issue:

"South Carolina Public Policy Requires the Policy, if Read to Limit Coverage, cover Ms.

Bowen as a "resident relative." (Record 36) In Section B of that memorandum of law, Petitioner argued to the trial court as follows:

It is well-settled under South Carolina public policy that policy provisions regarding resident relatives must be interpreted broadly to provide coverage to potential insureds. Exclusionary and restrictive interpretations of resident relative policy provisions are disfavored by law in South Carolina.

(Record 37) Petitioner then argued that the undisputed facts demonstrated that “Bowen resides in both trailers on the property.” (Record 37).

On March 16, 2011, Petitioner filed with the trial court Plaintiff’s Supplemental Memorandum in Support of Plaintiff’s Motion for Summary Judgment. This brief was filed at the request of the trial court as to whether the “statutory definition of the term ‘insured’ limits a person to a single primary residence.” (Record 48) Petitioner’s entire memorandum of law addressed the resident relative public policy issue. (Record 48 – 50) The Petitioner’s conclusion stated as follows:

In view of the Legislature’s statutory definition of “insured,” together with the remedial purpose of underinsured motorist coverage and the well-settled guidance that insurance provisions of exclusion must be narrowly construed, it is apparent that under this unique case Denise Bowen [Petitioner] was a resident relative of more than one household.

(Record 50).

Therefore, the Unpublished Opinion is erroneous to the extent it denied review to Petitioner on her appeal because she allegedly did not raise the resident relative public policy issue with the trial court.

b. The trial court entertained argument about the resident relative public policy issue and made a ruling about it.

The court overlooked the fact that the trial court specifically considered and addressed the resident relative public policy question.

As noted in the section above, the parties argued the case before the trial court at a hearing. Following the hearing, the trial court requested both parties brief the resident relative public policy issue. The Respondent’s brief filed with the trial court stated as follows:

This matter is before the court on cross motions for summary judgment. During a hearing on March 10, 2011 Judge Macaulay raised the issue of applicable South Carolina case law on whether a person can be a resident of multiple households. He invited counsel to research the issue and if they wished to submit supplemental briefs.

(Record 51) Thus, the trial court specifically considered argument about the resident relative public policy.

In the October 17, 2011, Order Granting Summary Judgment to State Farm Mutual Automobile Insurance Company (Order), the trial court stated, “The issue of whether a person may be a resident of two households seems to have only been addressed in cases, or at least the vast majority of cases, involving a minor child in a divorced or separated parent scenario.”

(Record 9) Later in the same Order, the trial court said, “[T]here is no authority in South Carolina supporting the proposition that an emancipated adult can be a resident of two households for the purpose of seeking recovery of UIM benefits.” (Record 10) Thus, the trial court specifically considered the resident relative public policy issue that was raised and argued by both parties.

The trial court then ruled on the resident relative public policy issue, albeit in a somewhat convoluted manner: The Order stated: “The only way the plaintiff can qualify for UIM benefits under her father’s policy is if she actually resided with him on the day of the accident. The undisputed facts, as noted above, establish that she did not. To reach such a conclusion the Court would have to conclude that the plaintiff was not a resident of 209. Such a finding is illogical.” (Record 10-11)

Thus, the trial court implicitly concluded that an emancipated adult cannot be a resident relative in two domiciles. This is evident by the court’s statement that a finding of fact that Bowen resided with her father was “illogical” because it would compel the court to find she was not a resident of her husband’s home (209).

However, a finding of fact that Bowen resided with her father at the time of the collision would only be illogical if it were impossible for a person to live in multiple residences. (As

noted in this undisputed record, Bowen resided in both residences, her husbands and her fathers.) Therefore, the trial court concluded that an automobile “insured” cannot have multiple residences for the purpose of resident relative UIM coverage.

Therefore, the Unpublished Opinion is erroneous to the extent it denied review to Petitioner on her appeal because the trial court did not rule upon the resident relative public policy issue.

c. **The trial court did not follow the correct Rule 56 standard because it did not review undisputed facts about Bowen’s resident relative status in a light most favorable to Appellant.**

Rule 220 of the South Carolina Appellate Court Rules requires that in every decision rendered by the court the important points fairly arising in the record must be stated in writing with reasons for the court’s decisions. Rule 220 was implemented to prevent a miscarriage of justice. It forces the appellate court to closely examine a party’s points fairly arising in an appeal. It precludes the appellate court from dodging the party’s points because it requires the court to address those points in writing with reasons for its decision-making.

The Unpublished Opinion ruled summarily that the “trial court properly granted summary judgment to State Farm.” (¶ 3) But Appellant raised specific points related to the trial court’s erroneous factual findings, including the factual error that she was not residing with her father at the time of the collision. (Brief of Appellant 4-8; Reply 2-4) Ms. Bowen is a citizen of South Carolina and deserves to have the Court fairly address her points about the trial court’s factual errors.

At the oral argument, the court was focused on the procedural summary judgment standard because cross motions for summary judgment were filed in the trial court. Much of the oral argument time was spent arguing on that procedural issue and whether that it meant that

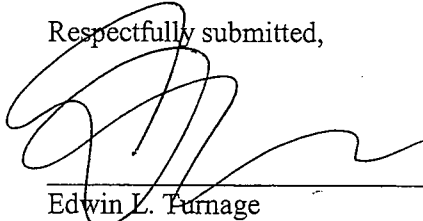
Appellant must concede there were no factual issues under review. Appellant asserted that even though both parties have argued before the trial court that there were no genuine issue of material fact for trial, the possibility of remand for trial still exists because on a motion for summary judgment, all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001). Appellant asked the court to review several key factual errors in the record. (Brief of Appellant at 5 to 8)

Here, Denise Bowen did not receive the benefit of a deferential standard of review from the lower court when it issued summary judgment for State Farm. Nor did this Court address the points of error that were specifically raised on her appeal. There were obvious, important factual errors in the record which were not addressed by the Unpublished Opinion. One example, was when the trial court ruled that Bowen was not a resident of her father's home at the time of the motor vehicle collision. However, at the time of the collision it was undisputed that Bowen resided with her father on a daily basis. The trial court failed to apply the deferential summary judgment standard to the substantial evidence in this record that showed Appellant was a resident with her father at the time of the collision. This court overlooked or misapprehended the fact that Appellant resided with her father (the policy-holder) at the time of the collision. Appellant requests that the court grant a rehearing so that it might review her points about the trial court's key factual errors, providing reasons why her points are being rejected.

CONCLUSION

For the foregoing reasons, Petitioner prays that the Appellate Court will rehear this matter and then reverse the trial court order and remand with instructions that it issue summary judgment in Appellant's favor.

Respectfully submitted,



Edwin L. Turnage
HARRIS AND GRAVES, P.A.
Attorney for Plaintiff
SC Bar No. 12842
Post Office Box 6263
Greenville, SC 29606
(864) 235-1331
(864) 235-1741
elt@harrisgraves.com

Greenville, South Carolina

Dated: Mar 4, 2013

The South Carolina Court of Appeals

Denise F. Bowen, Appellant,

v.

State Farm Mutual Automobile Insurance Company,
Respondent.

Appellate Case No. 2011-203546

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.

[Signature] J.

James E. Kelly J.

Columbia, South Carolina

cc:

Stephanie G. Flynn

T. David Rheney

Edwin L. Turnage

FILED

20 MAR 2013