

ORIGINAL

**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.**

RECORD ON APPEAL

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Attorney for Respondent

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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

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

(2)

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.

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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

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[Signature]

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

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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.

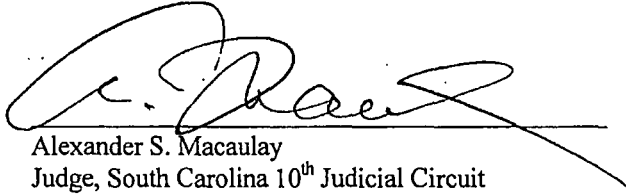
CONCLUSION

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.

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AND IT IS SO ORDERED.


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

Dated: Oct 14, 2011

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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

Feb

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), SCRPC: ☐ Rule 41(a),
SCRPC (Vol. Nonsuit): ☐ Rule 43(k), SCRPC (Settled): ☒ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC: ☐ 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.

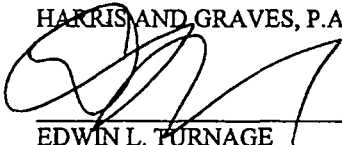

ADMINISTRATIVE JUDGE,
10th Judicial Circuit

November 19, 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

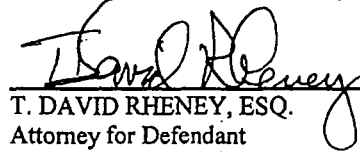
elt@harrisgraves.com

Greenville, South Carolina

Dated:

9/22/10

GALLIVAN, WHITE & BOYD, PA



T. DAVID RHENEY, ESQ.

Attorney for Defendant

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Greenville, SC 29601

(864) 271-9580

Greenville, South Carolina

Dated:

9/20/10

STATE OF SOUTH CAROLINA FILED-CLERK'S OFFICE
ANDERSON SC IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON 2010 JUN 18 A 9:02

DENISE F. BOWEN,

COMMON PLEAS AND
GENERAL SESSIONS
Plaintiff,

Civil Action No. ~~2010 CP-04-2124~~

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.

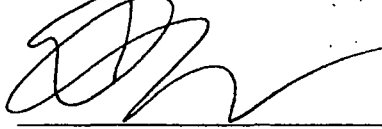
6. Plaintiff asserted an underinsured motorist claim against her father Larry Thrasher's State Farm Insurance Company policy number 40-8552-371. Plaintiff alleges she is a resident relative with Larry Thrasher (hereinafter "Thrasher") and is therefore covered under his policy.

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: 6/15/10

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
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June 9, 2010

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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

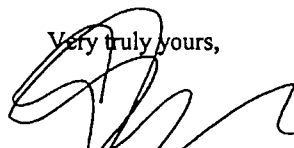
RE: *Denise F. Bowen vs. James Gilliam & Rebecca Gilliam & Timothy Michael Arndt & David Arndt*
Our File #: 201025316

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 PLEAS 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-

FILED-CLERK'S OFFICE
ANDERSON SC
2010 JUL 13 A 11:57

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.

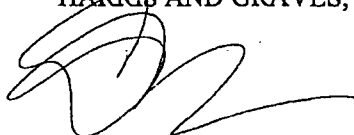
6. Plaintiff asserted an underinsured motorist claim against her father Larry Thrasher's STATE FARM MUTUAL INSURANCE COMPANY policy number 1465-886-40. Plaintiff alleges she is a resident relative with Larry Thrasher (hereinafter "Thrasher") and is therefore covered under his policy.

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.



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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.

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GENERAL SESSIONS

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.

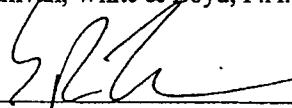
26. State Farm alleges that the plaintiff is not a resident relative under the policy at issue.

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)

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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.

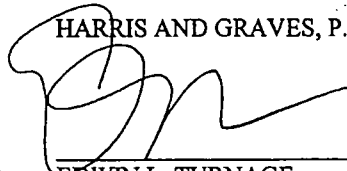
Civil Action No. 2010-CP-04-2124

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.



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Greenville, South Carolina

Dated: 9/20/10

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COMMON PLEAS AND
GENERAL SESSIONS

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

**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.


EDWIN L. TURNAGE
Attorney for Plaintiff
SC Bar No. 12842
P.O. Box 6263
Greenville, SC 29606
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Greenville, South Carolina

Dated: 10/18/10

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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,	)	
vs.	)	STATE FARM'S MOTION
State Farm Mutual Automobile	)	FOR SUMMARY JUDGMENT
Insurance Company,	)	
Defendant,	)	

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

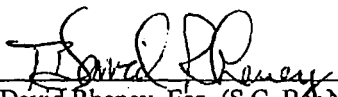
YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service hereof, or at such time and place as the court may deem appropriate, the defendant, State Farm Mutual Automobile Insurance Company, will move the court for an order, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, granting 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.

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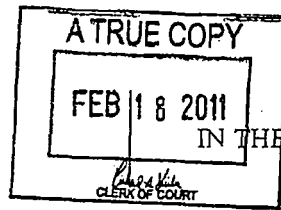
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Attorneys for State Farm Mutual Automobile
Insurance Company

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.

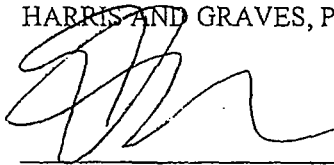
Smith v. AutoOwners, 377 S.C. 512, 517, 660 S.E.2d 271 (Ct. App. 2008)

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.

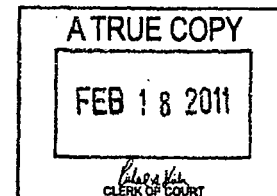
HARRIS AND GRAVES, P.A.



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Greenville, South Carolina

Dated: 2/16/11



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	C.A. NO.: 2010-CP-04-2124
	)	
Denise F. Bowen,	)	
	)	
Plaintiff,	)	MEMORANDUM IN SUPPORT
	)	OF MOTION FOR SUMMARY
vs.	)	JUDGMENT
	)	
State Farm Mutual Automobile	)	
Insurance Company,	)	
	)	
Defendant,	)	
	)	

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

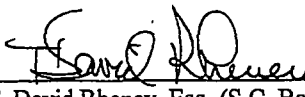
In this case, it is apparent from a review of the evidence that the plaintiff spent nights in Mr. Thrasher's home solely for the purpose of assisting with his healthcare. In short, she stayed there merely as a convenience, albeit an important one for Mr. Thrasher's purposes, rather than staying in her 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)

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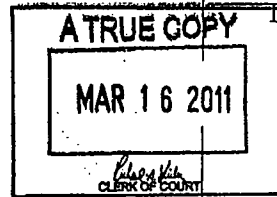
Attorneys for State Farm Mutual Automobile
Insurance Company

March 8, 2011

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

DENISE F. BOWEN,



Plaintiff,

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-04-2124

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

**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:

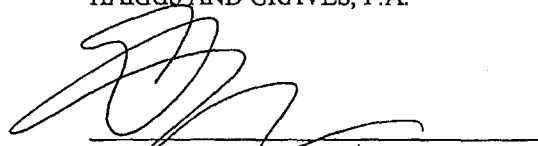
The analysis in cases of this type is generally fact specific and no bright line test exists for determining under what instances a child is a resident relative of a noncustodial parent.

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.



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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.

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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.

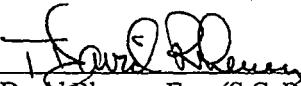
The only way the plaintiff can qualify for UIM benefits under her father's policy is if she actually resided with him on the day of the accident. The facts as noted above and in State Farm's Memorandum in Support of Summary Judgment establish that she was not. In addition, to reach such a conclusion, 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.


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

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

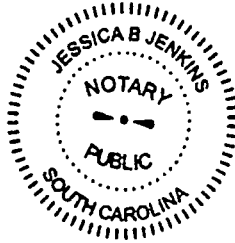
11-5-10

day of

2010
Notary Public for South Carolina

My Commission Expires:

10-27-2010



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

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

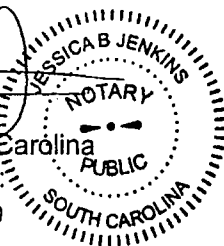
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Notary Public for South Carolina

My Commission Expires:

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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
7 STATE FARM MUTUAL AUTO)
8 INSURANCE COMPANY,)
9 Defendant.)

COPY

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Deposition of

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DENISE F. BOWEN

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Pursuant to Notice of Deposition and/or agreement in
the above-entitled case, a deposition was taken on the
6th day of January, 2011, commencing at approximately
2:30 p.m., attended as follows:

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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
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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.

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.)

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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?)?

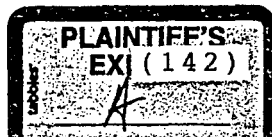
A. Yeah.

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

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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.

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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?)...

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- 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.

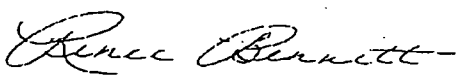
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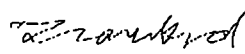
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I, Renee Bennett declare that:

- 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?).

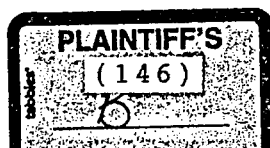
Q. Okay and then ah the residence that you refer to what is that address?

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
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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 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.

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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.

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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 l- same land.

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- 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

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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

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(1 5 1)

Statement of: Denise Bowen

Claim #: 408552371

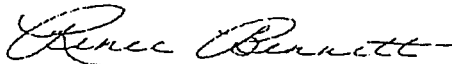
Page #: 6

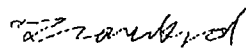
Claim Number: 408552371

Claim Office:

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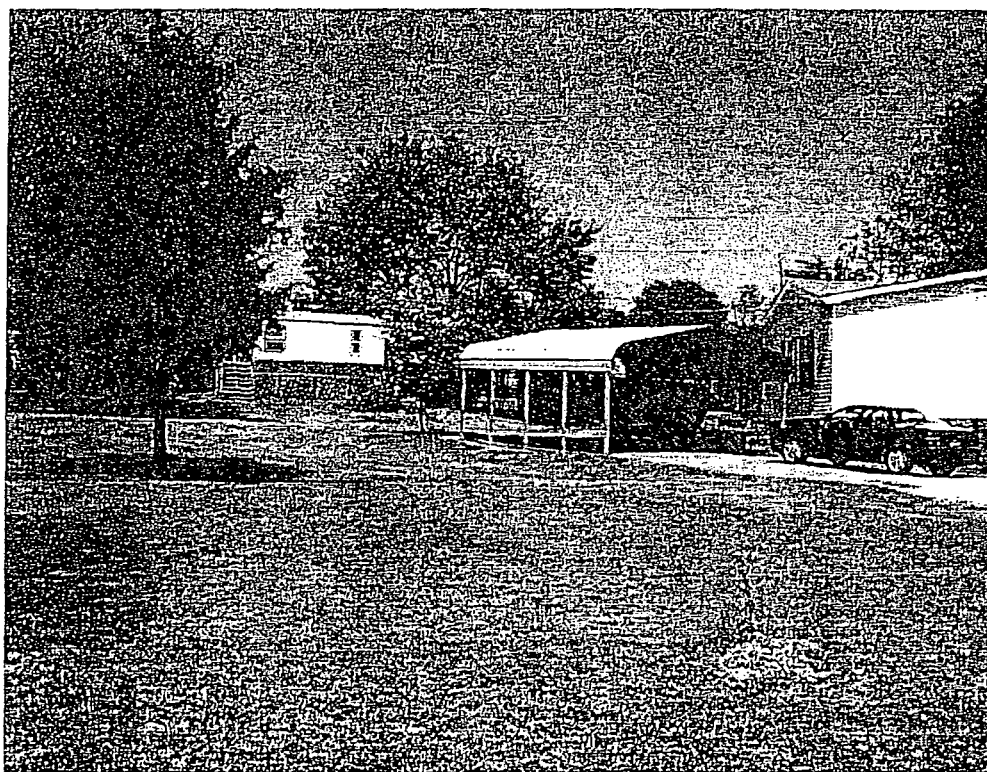
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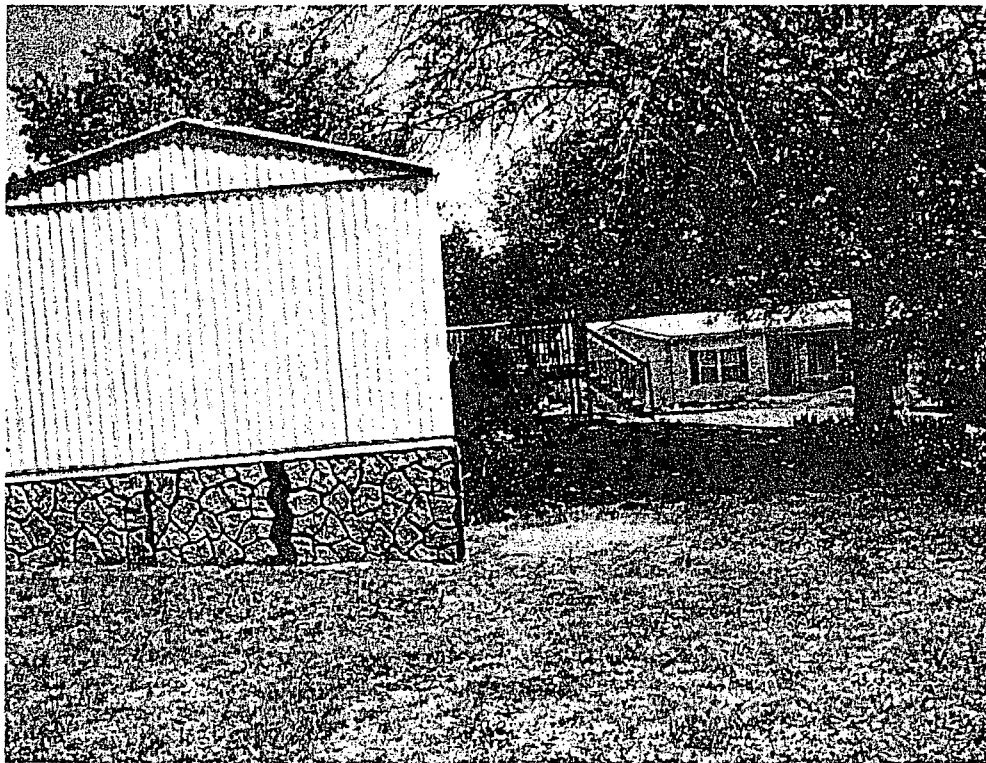

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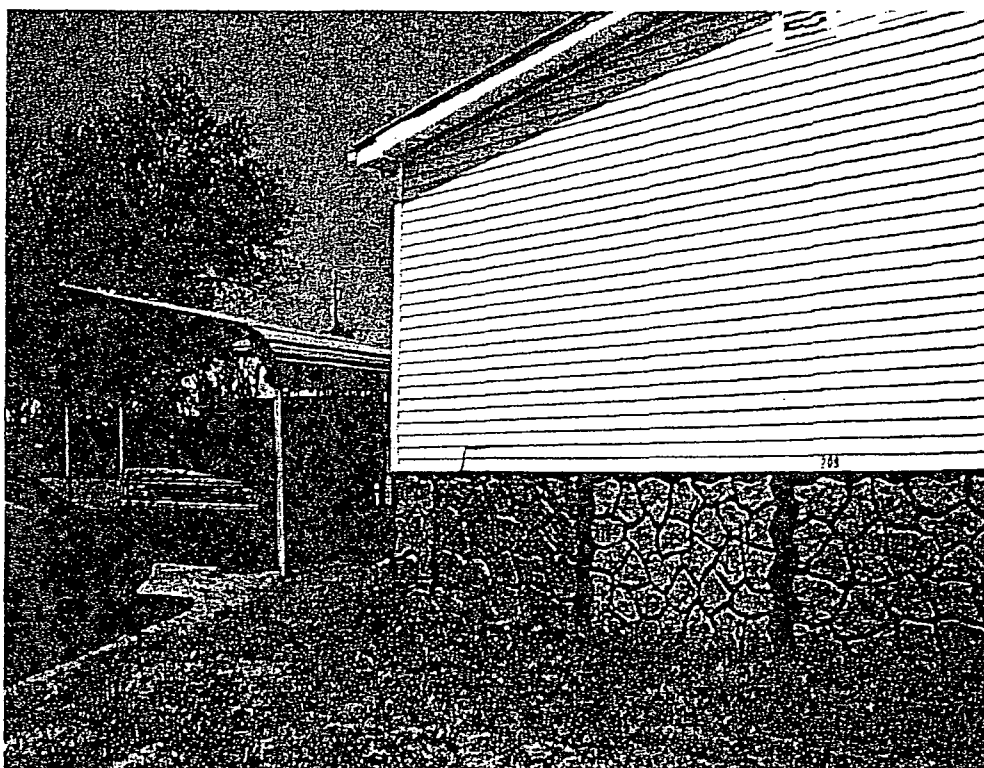

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Transcription Express, Inc., 925 N. McQueen Suite #106, Gilbert, AZ 85233

Received From: Greer
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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



6-4, V!

MARY

2000 E. Greenville Street, Suite 5000
Anderson, South Carolina 29621
Ph. (864) 224-5765 / Fax (864) 224-1449

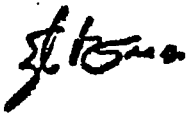
Anderson Area Cancer Center
Oncology - Hematology Clinic.P.A.

Board Certified
Medical Oncology & Internal Medicine
Rajeev Malik, M.D., FACP
Szabolcs G. Batizy, M.D.
John E. Doster, M.D.
Nandakishore Parchuri, M.D.

August 26, 2008
ATTENTION: MARY

Mr. Larry Thrasher is a patient of mine here at Anderson Area Cancer Center. His daughter Denise Bowen is his main caretaker for him. He has had to move down here to be taken care of by her and it is a necessity for him to have her care for him with cancer. If there are any further questions or concerns, please feel free to contact me here at my office.

Sincerely,



Szabolcs G. Batizy, M.D.

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				
METER READING		USED	CODE	NET AMOUNT OF BILL
PRESENT	PREVIOUS			
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	R	RATIO	.040	NO ACRES		NO LOTS	1	LAND ASSESSMENT	320	NO IMPS	1	IMP ASSESSMENT	160	CITY TAX	.00000	COUNTY TAX	.30350
MORT COMPANY	NO PARK	PROPERTY IDENTIFICATION										TOTAL ASSESSMENT	480	CITY TAX			
LT 29 CHERRY SEED RD																	
DORCO ID NUMBER																	
TAX MAP SHEET																	
MARKET VALUE																	
COUNTY TAX																	
690701008																	
12,000																	
145.68																	
REAL PROPERTY																	
REAL ESTATE																	
ASSESSMENT																	
TAX DISTRICT																	
TAX YEAR																	
ACCOUNT NUMBER																	
005																	
2010																	
2010																	
1704788																	

FEES:

COUNTY TAX 145.68
CITY TAX
FEE 83.38
LESS EXEMPTIONS
PENALTY ADDED
PREVIOUS PAYMENTS
REFUNDED
PAYMENT APPLIED***
OVER PAYMENT*****
TOTAL PAYMENTS 62.30

000000000

***** TAXPAYER COPY *****

BOWEN RAYMOND BRIAN

209 CHERRY SEED RD
ANDERSON

LOCKBOX

SC 296250000

BOWEN RAYMOND BRIAN
209 CHERRY SEED RD
ANDERSON

SC 296250000



TAX PAID

OCTOBER
21 2010

James P. Phillips
COUNTY TREASURER

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

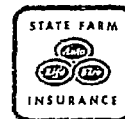
We may change the named insured's policy address as shown on the Declarations Page and in our records to the most recent address provided to us by:

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
11350 Johns Creek Parkway
Duluth, Georgia 30098-0001

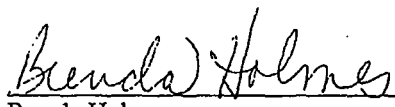
CERTIFICATE

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.

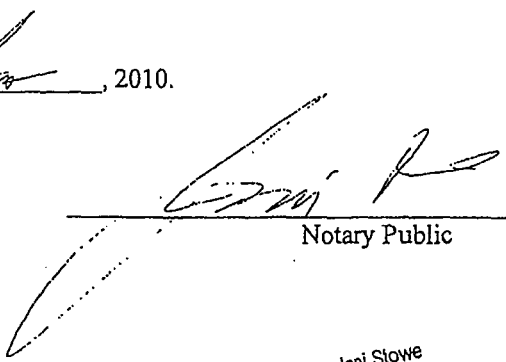
I further certify that the attached policy, number 146 5886-C04-40, is a copy of the policy issued to Larry T Thrasher, 2505 Highway 123 Lot 16, Greenville, SC 29611, together with endorsements issued subsequently and effective as follows, based on our available records:

6940.2 - Amendatory Endorsement -- Effective -- 3/04/08.

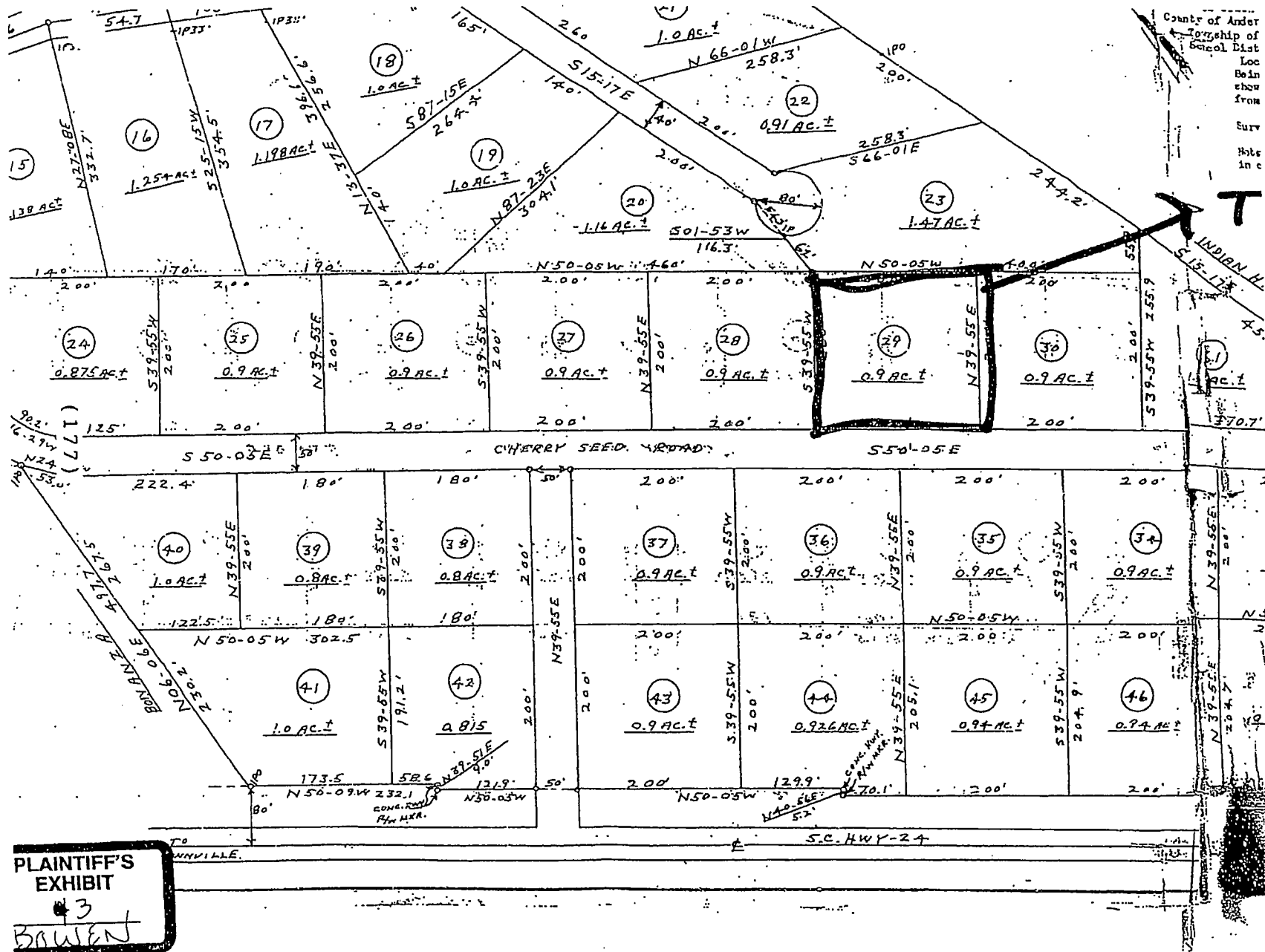
The policy is currently in effect on the loss date January 16, 2010.


Brenda Holmes
Underwriting Operations Team Manager

Dated this 15 day of May, 2010.


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 RFA CR L01



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



0704-01-01-1075593-0001-0089786

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 RFA CR L01



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



0704-01-01-1075594-0001-0099787

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.

076558

401

9912630524490000000000006946000000000000 88 0 88 0

#12T3 Y5DF 49CB IS00#

01 AV 0.133 **AUTO 17 0 0704 29625-553007

1075592 I 181A CR -CU1



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



0704-01-61-1075592-0001-0089785

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
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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:

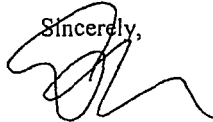
Omitted Facts

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 bathes 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:

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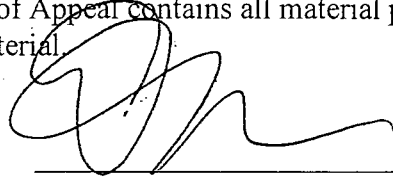
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CERTIFICATE OF COUNSEL

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



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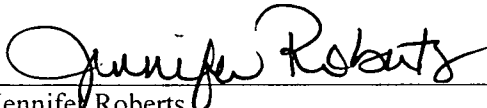
Attorney for Appellant

CERTIFICATE OF SERVICE

Jennifer Roberts says that she is the Paralegal for the Attorney for the Plaintiff, with offices at Greenville, South Carolina, and that on May 18, 2012, through Legal Eagle, she mailed by overnight delivery, in a sealed envelope, postage prepaid, a copy of Record on Appeal, Final Appellant's Brief and Final Reply Brief to:

Stephanie G. Flynn
One Liberty Square
55 Beattie Place, Suite 1200
Greenville, SC 29601

the name and address of counsel for the Respondent.



Jennifer Roberts

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