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VIRGINIA TRIAL LAWYERS ASSOCIATION ANNUAL CONVENTION - INSURANCE LAW UPDATE, APRIL 1, 2011

MAXIMIZING RECOVERY - RESIDENT OF THE HOUSEHOLD - THE GATEWAY TO FIRST CLASS UNINSURED MOTORIST AND UNDERINSURED MOTORIST COVERAGE

By: Gerald A. Schwartz
Alexandria, Virginia

Being a resident of the named insured's household allows a relative of either the named insured or spouse to fit the definition of "family member" in the standard personal auto policy and become a first class UM/UIM insured under the named insured's auto policy. As a first class insured, the relative need not be occupying the named insured's "covered auto," to obtain UM/UIM coverage.

Example: Harold is a resident of his parents' household. His parents own a 2010 Honda insured with GEICO. While a passenger in a friend's uninsured Chevy, Harold is injured by an uninsured motorist. Harold need not be occupying his parents' 2010 Honda to obtain uninsured motorist coverage under his parents' policy since he is a first class insured by being a resident of his parents' household -- a "family member."

"You and Your" & "Family Member"

The standard uninsured motorist endorsement (effective July 1, 2008, Attachment No. 2), uses the term "**you and your**" to refer to the "named insured" and his/her spouse "if a resident of the same household."

The endorsement defines a "**family member**" as:

> "A person related to you [the named insured or spouse] by blood, marriage or adoption who is a **resident of your household**. This includes a ward or foster child."

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The Standard Personal Auto Policy Defines Two Classes of Insureds

The new standard Insurance Service Office personal auto policy defines two classes of UM/UIM insureds:

First Class Insured

1. The named insured;
2. The spouse of the named insured if resident of the same household; and,
3. Any "family member".

Note: A first class insured need not be occupying the "covered auto" and is covered wherever he/she is injured by the negligence of an uninsured or underinsured motorist in the operation, maintenance, or use of a motor vehicle.

Second Class Insured

"Any other person occupying or using "your covered auto".

Example: Any driver or passenger in Harold's dad's car is entitled to UM/UIM coverage from GEICO when injured by an uninsured/underinsured motorist just by occupying or using the auto with permission since it is a "covered auto" under the policy.

A covered auto is defined as any vehicle shown in the Declarations; a newly acquired auto; any trailer owned by the named insured; or a temporary substitute auto.

Most Recent Decision - The Automobile Insurance Company of Hartford Connecticut v. Aaron Robert Argenbright, (June 17, 2010)

The most recent case to address who is a resident of the named insured's household was decided on June 17, 2010. In The Automobile Insurance Company of Hartford Connecticut v. Argenbeight, Civil Action No. 5:09cv00088, the U.S. District Court for the Western District of Virginia held that the son of the policyholder was living at his father's house only on a temporary and transitional basis. Therefore, he was not

a resident of his father's household and was not entitled to first class UM/UIM coverage under his father's auto policy while occupying a friend's auto. The Argenbright case is discussed at pages 11 and 12 of this outline and is Attachment No. 3.

Spouse of the Named Insured

The spouse of the named insured (policyholder) also has first class insured status under the UM/UIM endorsement to the standard auto policy:

> "If a resident of the same household [as the named insured]."

If resident of the named insured's household, the spouse need not be occupying a "covered auto" to be entitled to UM/UIM coverage under the named insured's policy.

Example: Brenda is a resident of her husband, Alan's household. While driving the neighbor's uninsured Toyota Brenda is injured by the negligence of an uninsured motorist. Even though she was not occupying a "covered auto" Brenda is entitled to first class UM coverage under her husband's policy as the wife of the named insured because she is a resident of his household. She is covered wherever she is injured, in any motor vehicle or as a pedestrian.

When a Spouse Ceases to be a Resident of the Household Does He/She Loses Her First Class UM/UIM Coverage?

Answer: Yes, but coverage is extended only for a **short** time.

The standard auto policy still considers the spouse to have first class insured status only for a short time after he/she ceases to be a resident of the household until the earlier of:

- 90 days following change of residency;
- The effective date of another policy listing the spouse as a named insured; or,

- The end of the policy period.

After this time period ends, the non-resident spouse is no longer a first class insured since he/she is no longer “a resident of the name insured’s household.”

Example: Alan and Brenda are married and live in the same household. Alan owns a car insured with Allstate. Alan is the named insured. One day Brenda leaves, telling Alan, “I never intend to come back.”

The household is “broken.” Brenda is no longer a resident of Alan’s household since she left with no intent to return. If Brenda is injured by an uninsured drunk driver while walking to work within 90 days of leaving Alan’s household, the policy still grants her first class insured status. She is entitled to uninsured motorist coverage under Alan’s Allstate policy. If she were injured after 90 days, Brenda would not be entitled to uninsured motorist coverage under the Allstate policy.

After Death of the Husband, Does the Surviving Widow Lose Her Status as Spouse for Purposes of Coverage?

Answer: No.

In Campbell v. Panicali, 151 N.Y.S. 2d 524 (1956), the court held:

> “Policies should not be written as a trap, and yet that is what the insurance company [Allstate] contends should be the determination in the case… Although Mr. Panicali died, she [Mrs. Panicali] was an insured from the inception of the policy, and she remained an insured as the date of the accident, and she is entitled to coverage.”

Is a Fiance A “Spouse” or “Relative” for Purposes of First Class UM/UIM Coverage?

Answer: Generally, no. “A fiancé is not a relative.” Widiss and Thomas, Uninsured and Underinsured Motorist Coverage, 3rd Edition, §4.6.

In Mercury Ins. Co. v. Pearson, 169 Cal. App. 4th 1064 (Cal. Ct. App. 2008), Pearson was listed as an additional driver under his fiance's auto policy. He was injured while crossing the street by an uninsured motorist. The Court of Appeals denied first class UM coverage to Pearson since, as the fiancé of the named insured, he was **not** a **spouse** of the named insured nor a **relative** residing in her household.

Cohabitating Couple Holding Themselves Out as Married: Is the Partner Entitled to First Class UM/UIM Coverage Under the Named Insured's Policy?

Answer: Generally , no. See 36 A.L.R. 4th 588 §5 - Cohabitating Persons Not Formally Married, see also, State Farm Mut. Auto Ins. Co. v. Pizzi, 208 N.Y. Sup. 152, 502 A.2d 160 (1986), holding that an adult woman cohabitating with a man was neither a "spouse," "relative," nor "family member" entitled to first class uninsured motorist coverage from the man's auto policy.

In Harford Ins. Co. v. Cline, 139 P.3d 176 (N.M. Supreme Ct. 2006), Charles Cline and Judith Davis lived together for several years holding themselves out as husband and wife in a state that did not recognize common law marriage. While driving an auto not covered on Charles' auto policy, Judith was seriously injured by an underinsured motorist. The New Mexico Supreme Court denied first class UM/UIM coverage to Judith since she was neither a "named insured" nor a "family member" under the partner's policy which defined "family member" as a "person **related** by blood, marriage or adoption to the named insured…" Even though New Mexico, by executive order, allowed domestic partners of state employee to have the same benefits as married couples, the court held it was not against the public policy of New Mexico to exclude domestic partners from the definition of "family member" in an auto insurance policy.

The Two Requirements for Being a "Family Member"

To be a first class insured under the named insured's policy, the injured person must fit the policy definition of "family member" by satisfying two policy requirements:

1. Be related to the named insured or spouse and
2. Be a resident of the named insured's household.

Related to the Named Insured

The policy definition of "family member" requires that the injured person be "related to you" [named insured or spouse] by:

1. blood;
2. marriage;
3. adoption; or
4. ward or foster child.

The injured person may be the child, parent, niece/nephew or cousin of the named insured or spouse. In addition, the injured person may be an "in-law" of the named insured, such as the son-in-law because he is related to his mother-in-law by marriage and vice-versa.

THE INTENT REQUIREMENT TO BE A RESIDENT OF THE NAMED INSURED'S HOUSEHOLD

Courts hold that a relative must intend to be a resident of the named insured's household. To prove intent, courts require that the relative seeking coverage "must clearly evidence that intention through his actions." Allstate Insurance Co. v. Patterson, 231 Va. 358 (1986). "Actions" include:

1. Participating in household tasks and activities; and
2. Having regular and quality residential contacts with the household.

Definition of "Household"

The Supreme Court of Virginia first defined "household" in State Farm Mutual v. Smith, 206 Va. 280 (1965) as follows:

> "Whether the term 'household" or 'family' is used, the term embraces a collection of persons as a single group, with one head, living together, a unit of permanent and domestic character, under one roof; a 'collective body of persons' living together within one curtilage, subsisting in common and directing their attention to a common object, the promotion of their mutual interests and social happiness."

The court noted:

> "The word 'household' which has been defined… connotes a settled status; a more settled or permanent status is indicated by 'resident of the same household' than would be indicated by resident of the same house or apartment."

The Supreme Court of Virginia and the U.S. District Court cases discussing who is a resident of the household have consistently quoted, with approval, the old definition of "household" used by the Supreme Court of Virginia in State Farm Mutual v. Smith, supra.

1. The Facts of State Farm v. Smith

Elaine Mellow, who was four months pregnant, left her residence in California with her two infant sons, after her husband died to stay with her sister and brother-in-law in Norfolk, Virginia. She intended to return to California after the birth of her third baby. Elaine Mellow took her family's clothing with her when she moved to Norfolk but did not bring any furniture or appliances, leaving them in California along with her automobile. Two months after her arrival in Norfolk, Elaine Mellow was involved in an auto accident. One week after the accident, Elaine Mellow left Norfolk at the suggestion of her mother-in-law and returned to California to stay with her.

The Supreme Court of Virginia held that Elaine Mellow was not a resident of her sister and brother-in-law's household because she intended only to live with them for a **limited and temporary period of time** intending to return to California after the birth of her baby. The court held:

> "The proper conclusion to be drawn from the facts in this case is that Elaine R. Mellow was **a visitor or sojourner** in the Frost home… **She came to Norfolk for a limited period of time, limited to the remaining period of her pregnancy**. Her original plan was altered by another invitation; she left the Frost home upon receiving the invitation to live with her mother-in-law. Had she originally intended to be, or subsequently become, a resident of the Frost household, it is unlikely she would have agreed to change her settled status upon receiving another invitation… The evidence as a whole does not support a finding that Elaine R. Mellow was a resident of the Frost household." (206 Va. 285-286). (emphasis added)

Using State Farm v. Smith In Reverse to Obtain First Class UM/UIM Coverage

The key fact relied upon by the Supreme Court in Smith was Elaine Mellow's intent to stay in Norfolk temporarily -- a limited period of time measured by the happening of a specific event -- the birth of her third child. When that event happened, she intended to return home to California.

If you represent a relative of the named insured, who intends to be temporarily away from home for a period of time measured by completion of a specific event, such as college, an internship, a stint in the armed forces, rely on State Farm v. Smith and point out that your client intended to be away from home only temporarily until completion of the event.

2. <u>William Patterson - Member of the "Renegades" Motorcycle Group</u>

William Patterson was unemployed and stayed at his parents' home only when he wasn't staying at one of the many Renegade club houses or visiting about. He led a nomadic existence, staying at his parents' house only 10% of the time. The court held Patterson's actions showed he had only **casual, erratic contacts** with his parents' household with **no degree of regularity** and therefore was not a resident of his parents' household as a matter of law. <u>Allstate Insurance Co. v. Patterson</u>, 231 Va. 358 (1986).

3. <u>Ernest Dawson - Long-Haul Truck Driver</u>

Ernie Dawson worked as a long-haul truck driver. His job required him to be on the road for several weeks residing in his truck or in motels while on the road. When off work, Ernie Dawson returned to his mother's house for periods ranging from four days to a week. Ernie kept his personal belongings at his mother's house, including clothes, personal records, tools and his motorcycle. Ernie assisted his mother by cleaning, cooking and doing maintenance work. He also helped his mother by purchasing groceries and paying household bills on occasion. Ernie received his mail not at his mother's house, but at a P.O. box. His daughter collected his mail from the P.O. box while he was on the road because Ernie did not want to burden his mother with getting his mail due to her advanced age.

Ernie was injured in a motor vehicle crash and sought UIM coverage under his mother's policy with Auto Owners Insurance Company. If Ernie was a member of his mother's household, he would be a first class insured under her policy and entitled to UIM coverage. Auto Owners Insurance Company argued that Ernie Dawson's contacts with his mother's household were casual and erratic, just like James Patterson, the

nomadic member of the motorcycle group who regularly stayed at Renegade club houses - rather than his parents' household.

The court denied the insurance carrier's motion for summary judgment distinguishing Allstate v. Patterson, supra. on the ground that Ernie Dawson was away from his mother because he was **working** as a long-haul truck driver spending the majority of his **free time** at his mother's home, while James Patterson spent his free time at Renegade club houses. The court distinguished the Patterson case and denied summary judgment for the insurer holding:

> "Although there are significant similarities between this case and Patterson, there is a key difference that renders summary judgment inappropriate. The majority of the time Dawson was away from his mother's home he was **working**. While he was on the road Dawson spent most of his time in his truck or occasionally in hotel rooms. By contrast, Patterson had no regular employment and lived in various club houses by choice. Dawson's time spent on the road does not necessarily undercut his claim that he used his mother's home as his home because **he spends the majority of his free time at his mother's home**. Patterson, who was unemployed, had virtually unlimited free time and yet chose to spend 90% of his time at various club houses and apartments, contradicting his claim that he viewed himself as residing in his parents' household. The amount of time spent at a claimed residence is an important factor to be weighed, but is not dispositive. For example, in Phelps v. State Farm Mutual Automobile Insurance Company, 426 S.E.2d 484 (Va. 1993), the Supreme Court of Virginia indicated that a college student may still reside in her parents' household even though she spends most of the year away at school. The import of Patterson and Phelps is that regularity and quality of contacts, not duration alone, are the most significant factors determining residence in a household." (emphasis added)

Dawson v. Auto-Owners Insurance Co., No. 6:07cv00037, 2008 WL1836506 (W.D. Va. April 23, 2008) (Attachment No. 4).

4. Donna Elizabeth Price Staying With Mother - In Transition Between Boyfriends

Donna Elizabeth Price died from injuries she suffered in an auto collision. Nine days before her accident, Donna left the trailer where she, her child and boyfriend lived to return to her mother's residence. She intended to move in with a new boyfriend. Her mother testified that Donna did not want to live in Ironto, but wanted to "get away." The court held that Donna was **in transition from one boyfriend to another, and was merely staying temporarily with her mother**. Therefore, Donna was not a resident of her mother's household, and not entitled to first class UM/UIM coverage under her mother's auto policy. Furrow, Adm. v. State Farm Mutual Auto Ins. Co., 237 Va. 77 (1989).

5. The Case of Alan Argenbright (June 17, 2010) - In Transition With a Pregnant Girlfriend

In the summer of 2008, before his May, 2009 auto accident, Alan Argenbright had two girlfriends, Jelena and April. Alan spent some nights with Jelena at his father's residence and other nights at April's residence. When April became pregnant, Alan broke-up with Jelena and began staying with April at her father's house "pretty consistently." On occasion Alan would stay with a male friend or with his father.

One month before his May 3, 2009 auto accident, Alan and April signed a month-to-month lease on a Churchville, Virginia house. Before his auto accident, Alan set-up utility accounts in his name, furnished the house, and moved his personal belongings there. He also began giving the Churchville address as his permanent address before his accident. On the night of the accident, Alan gave that address to the police and his health care providers. Alan argued that he was a resident of his father's household and

entitled to UIM coverage under this father's policy. With regard to the Churchville house, Alan argued that when he signed the lease on the Churchville house, he intended merely to "test the waters" before deciding if he would live there permanently.

The court held that Alan was living on a temporary and transitional basis at his father's house while waiting for completion of repairs to the Churchville house. The court, citing Furrow v. State Farm, supra. (the nomadic motorcyclist case) held that Alan's temporary stay at his parents' house, during a transition period, was insufficient to make him a resident of his parents' household. The court further held that the evidence showed that Alan was in the process of starting his own "unit of permanent and domestic character" with his pregnant girlfriend, April, at the Churchville house when the accident occurred. The court held that Alan demonstrated an intent to be a resident of the Churchville house and a member of his own household, not a permanent, settled member of his father's household. The Automobile Insurance Company of Hartford Connecticut v. Argenbeight, Civil Action No. 5:09cv00088 (W.D. Va. June 17, 2010) (Attachment No. 3).

6. College Students - Generally Residents of the Family Household While Living Away From Home

In Phelps v. State Farm Mut. Auto. Ins. Co., 245 Va. 1 (1993), the Supreme Court of Virginia quoted, with approval, a Utah case, Am. States Ins. Co., Western Pac. Div. v. Walker, 486 P.2d 1042, 1044 (Ut. 1971), stating the general rule, "Ordinarily, when a child is away from home attending school, he remains a member of the family household…" The Utah case also stated, "It is a matter of intention and choice, rather than one of geography, whether a student remains a resident of his parents' household

while living away from home." The Supreme Court, in Phelps, supra. held that two daughters never intended to return to their mother's household once they left for college following their mother's wishes, "When you turn 18, you are on your own." The Supreme Court of Virginia was clear to note, in Phelps v. State Farm at 245 Va. 1, 10, that its decision did not alter the general rule that a child at school remains a member of the family household, stating, "This is not a typical college student case, and our decision to reverse is confined to the particular facts involved."

7. Members of the Military Generally Remain Residents of Their Original Household

The general rule is that members of the military, **particularly minors**, remain residents of their original household absent a manifest intent to change residences or establish a new household. Taylor v. United Services Auto Ass'n., 684 So.2d 890 (1966); Widiss and Thomas, Uninsured and Underinsured Motorist Insurance, 3rd Ed. Section 4.12. In Allen v. Maryland Cas. Co., 259 F.Supp. 505 (1966), the U.S. District Court for the Western District of Virginia held that a minor did manifest an intent not to be a resident of his parent's household before enlisting in the Navy by running away from home at age 17.

In Government Emp. Ins. Co. v. Erie Ins. Exchange, 222 Va. 342 (1981), the Supreme Court of Virginia held that a Marine stationed at nearby Quantico, who had military permission to live at home and stay there whenever his military duties permitted, was a resident of his father's household for insurance coverage purposes.

In Erie Ins. Co. v. Commerton, et al., Civil Action No. 98-0025-A, U.S. District Ct., W.D. Va. Abingdon Division (5-27-99), Judge Glen Williams held that a Marine recruit injured by an auto while at boot camp was a member of his parents' household and

entitled to first class UM/UIM coverage under his parents ‘ policy. The court declined to hold that “a person loses his or her status as a member of a household the instant he or she leaves home to embark on a new -- and uncertain -- career” holding:

> “A young person may travel to a new town or even a new country in the hope that plans for the future will be realized, all the while knowing that if the plans do not come to fruition by a certain date, he or she will simply return home to make new plans. Until an individual makes a more definite break with his parents’ household than is shown in this case, the court will not hold as a matter of law that the person is not still a resident of that household for insurance purposes.” Memorandum Opinion pp. 7-8.

8. Resident of Two Households at the Same Time

In Nationwide Mut. Ins. Co. v. Robinson, 36 Va. Cir. 193 (Circuit Court of City of Richmond, 1995), Judge Randall G. Johnson held that a 16-year old boy, in the joint custody of both parents, was a resident of each parent’s separate household. As such he would be entitled to first class UM/UIM coverage under both parents’ auto policies. Judge Johnson’s 9 page opinion, which reviewed existing case law is Attachment No. 5. The Robinson decision was cited, with approval, in Lester v. Nationwide Mut. Ins. Co., 586 F.Supp. 2d 559 (2008).

Listed Driver, Insured Driver or Operator

Occasionally, a person, who does not fit the policy definition of a “family member” is listed on the Declarations page as a “**driver,**” “**insured driver**,” or “**operator**.”

Example: Dad owns a Toyota insured with Travelers and allows his daughter and son-in-law to use it as their primary auto garaged at their separate residence. They are listed on the Travelers’ Declarations page as “additional drivers.” If the daughter or son-in-law were injured by an uninsured motorist while passengers in a friend’s car or

as pedestrians, are they covered under the dad's Travelers' policy insuring the Toyota?

In Lester v. Nationwide Mut. Ins. Co., 586 F.Supp.2d 559 (2008), the U.S. District Court, D. South Carolina, held Virginia law would not entitle a driver listed on the Declarations page as an "insured driver" to first class UIM coverage under the named insured's policy.

Quoting from a South Carolina case, In re Smith v. (Ex Parte) United Services Automobile Association, 365 S.C. 50, 614, S.E.2d 652 (Ct. App. 2005), the court in Lester held:

> "The issue was "whether an insured who is listed on the policy as an 'operator' can stack UIM coverage." *Id*. at 53, 614 S.E.2d at 653. "The Smiths' argument [was] essentially that USAA's inclusion of Smith as an 'operator' on the declarations page of the policy created an ambiguity as to whether she was a named insured and such ambiguity should be resolved in favor of coverage." *Id*. at 54, 614 S.E.2d at 654. While the court noted that some courts have found in favor of coverage in similar situations, the majority view "is that listing a driver on the declarations page… does not make that person a named insured." *Id*. at 54-55. The court stated,
>
> [E]ven though "operator" is not defined in the policy, the policy is not ambiguous. Where a term is not defined in a policy, it is to be defined according to the usual understanding of the term's significance to the ordinary person. The term "operator" has been construed somewhat more expansively than "driver" in this state, but has not been contemplated to extend beyond mere use of the vehicle. In addition, the policy defines "you" and "your" as "the named insured" shown in the declarations." The only person listed in the "Named Insured" box on the declarations page was Washnok. Thus, we see no ambiguity. *Id*. at 55-56, 614 S.E.2d at 654-55 (internal quotation marks and citations omitted). "Because Smith was not the named insured (or the named insured's spouse or resident relative), but was only using the vehicle with Washnok's permission, she is a Class

> II insured," and as such, the court concluded Smith was not entitled to stack coverage. *Id*. at 56, 614 S.E.2d at 655.
>
> While the court acknowledges it has found no Virginia case on point, the court concludes that Virginia would not determine Plaintiff is entitled to UIM coverage simply because he is listed as an "insured driver." Because the court finds no ambiguity in the Policy language, and because the Policy language does not provide UIM coverage for Plaintiff, the court grants Nationwide's Motion for Summary Judgment."

PROVING YOUR CLIENT'S INTENT TO BE A RESIDENT OF THE NAMED INSURED' HOUSEHOLD

As noted at page 6 of this outline, courts require the plaintiff to prove intent to be a resident of the named insured's household through his/her actions.

The secret to winning a resident of the named insured's household case is in the details. After a detailed interview with the plaintiff, his/her friends, family members, neighbors and even the mailman, make a list of the "good" and "bad" facts to prepare your case.

A checklist to prove the plaintiff's intent to be a resident of the named insured's household is set forth in Attachment No. 1.

VIRGINIA TRIAL LAWYERS ASSOCIATION ANNUAL CONVENTION - INSURANCE LAW UPDATE, APRIL 1, 2011

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ATTACHMENTS

No.

1. Proving Plaintiff's Intent To Be A Resident of the Named Insured's Household - A Checklist

2. UM Endorsement Personal Auto Policy and Definitions (effective July 1, 2008)

3. The Automobile Insurance Company of Hartford Connecticut v. Aaron Robert Argenbright, Civil Action No. 5:09cv00088, the U.S. District Court for the Western District of Virginia (June 17, 2010)

4. Ernest L. Dawson, II v. Auto-Owners Insurance Company, Civil No. 6:07cv00037 U.S. District Court for the Western District of Virginia, Lynchburg Division (April 23, 2008)

5. Nationwide Mutual Insurance Company v. William G. Robinson, III, et al., 36 Va. Cir. 193 (Circuit Court of City of Richmond, 1995)

ATTACHMENT NO. 1

VIRGINIA TRAL LAWYERS ASSOCIATION ANNUAL CONVENTION - INSURANCE LAW UPDATE, APRIL 1, 2011

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PROVING PLAINTIFF'S INTENT TO BE A RESIDENT OF NAMED INSURED'S HOUSEHOLD ("HOME") - A CHECKLIST

The vast majority of cases involve a relative (1) residing at the named insured's home at the time of the accident, after being away from home; or (2) residing elsewhere at the time of the accident. "Home" refers to the named insured's household.

- [ ] 1. Plaintiff has his/her own room at home vs. sleeps on the sofa.
- [ ] 2. Plaintiff has clothes remaining at home.
- [ ] 3. Plaintiff has important personal belongings at home. List all.
- [ ] 4. Plaintiff uses home appliances, i.e., washer/dryer and household sundries.
- [ ] 5. Plaintiff has keys and full use of the home without asking permission.
- [ ] 6. Plaintiff uses home mailing address on:
    - [ ] A. His/Her Driver' License
    - [ ] B. Motor Vehicle Registration
    - [ ] C. Bank Checks
    - [ ] D. Police Report - After Accident
    - [ ] E. Hospital Records - Accident Treatment
    - [ ] F. Billing Statements
    - [ ] G. Tax Returns

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- [ ] a. Dependent on Named Insured's Return
- [ ] b. Files In-State Tax Return

- [ ] 7. Receives Mail at Home
- [ ] 8. Registered to Vote - Home Address
- [ ] 9. Named Insured at Home Provides Financial Support
- [ ] 10. Divorced Parent (Named Insured) at Home Has Legal Custody of Plaintiff
- [ ] 11. If Away at Out-of-State College and Plaintiff Pays "In-State Tuition" - Explain
- [ ] 12. Plaintiff Receives Public Assistance Benefits at Home Address
- [ ] 13. Events After Accident; Recuperated at Home
- [ ] 14. Plaintiff is Away From Home For A Limited, Temporary Time With the Intent to Return Home Upon Completion of a Specific Event, i.e., Graduation, Internship, Job Assignment, Birth of a Child
- [ ] 15. Plaintiff is Experimenting With Independence Having His/Her Own Temporary Residence While Keeping the Named Insured's Home as "Home"
  - [ ] A. Short-Term Lease, Roommates
  - [ ] B. Named Insured Guarantor on Lease
  - [ ] C. Plaintiff Uses Second-Hand Furniture
  - [ ] D. Named Insured Reimburses Plaintiff for Rent, Utilities, Phone, Living Expenses
  - [ ] E. Plaintiff on Named Insured's Health Plan
  - [ ] F. Plaintiff Does Not Have His/Her Own Auto Insurance Policy
  - [ ] G. See Other Applicable Items on Checklist.
- [ ] 16. If at Home, Plaintiff Intends To Remain at Home Indefinitely - Not in Transition to Another Residence.

- [ ] 17. Describe How Often Plaintiff is at Home. If Away a Lot - Explain, e.g., Long Haul Trucker - Spends Free Time at Home.

- [ ] 18. Describe Plaintiff's Household Tasks While at Home

    - [ ] A. Cooking
    - [ ] B. Cleaning and Maintenance of House
    - [ ] C. Yard Work
    - [ ] D. Purchase Groceries
    - [ ] E. Helps Pay Household Bills
    - [ ] F. Other:

- [ ] 19. Describe Plaintiff's Participation in Household Group Activities and Recreational Activities With Household Members

    - [ ] A. Eats Meals Together With Household Members
    - [ ] B. Recreation Activities and Sporting Events Together
    - [ ] C. Attend Church and Community Events Together
    - [ ] D. Watch Favorite Television Shows and Videos Together
    - [ ] E. Go to Movie Theaters Together
    - [ ] F. Go to Favorite Restaurants Together
    - [ ] G. Go Shopping Together
    - [ ] H. Attend Family Events Together

- [ ] 20. Interview Household Members, Neighbors and the Mailman

ATTACHMENT NO. 2

VIRGINIA
PERSONAL AUTO POLICY

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy, we agree with you as follows:

DEFINITIONS

Throughout the policy, minimum limits refers to the following limits of liability as required by Virginia law, to be provided under a policy of automobile liability insurance.

1. $25,000 for each person, subject to $50,000 for each accident, with respect to **bodily injury;** and
2. $20,000 for each accident with respect to **property damage.**

The words and phrases defined below are used throughout this policy. They are in **boldface** when used.

B. Throughout this policy, **you** and **your** refer to:

1. The **named insured** shown in the Declarations; and
2. The spouse if a resident of the same household.

If the spouse ceases to be a resident of the same household during the policy period or prior to the inception of this policy, the spouse will be considered **you** and **your** under this policy but only until the earlier of:

1. The end of 90 days following the spouse's change of residency;
2. The effective date of another policy listing the spouse as a named insured; or
3. The end of the policy period.

B. **We, us,** and **our** refer to the Company providing this insurance.

C. For purposes of this policy, a private passenger type auto, pickup or van shall be deemed to be owned by a person if leased:

1. Under a written agreement to that person; and
2. For a continuous period of at least 6 months.

D. **Bodily injury** means bodily harm, sickness or disease, including death that results.

E. **Business** includes trade, profession or occupation.

F. **Family member** means a person related to **you** by blood, marriage, or adoption who is a resident of **your** household. This includes a ward or foster child.

G. **Occupying** means:

1. In;
2. Upon; or
3. Getting in, on, out or off.

H. **Property damage** means physical injury to, destruction of or loss of use of tangible property.

I. **Trailer** means a vehicle designed to be pulled by a:

1. Private passenger auto; or
2. Pickup or van; or
3. **miscellaneous type vehicle.**

(PART B Continued)

2. **Second Priority** The Medical Expense and Income Loss Benefits Coverage of the operator of the **motor vehicle** the **insured** was **occupying** at the time of the accident.

3. **Third Priority** The Medical Expense and Income Loss Benefits Coverage of the **insured.**

PART C - UNINSURED MOTORISTS COVERAGE

DEFINITIONS

A. **Insured** as used in this Part means:

1. You or any **family member.** **"First Class Insured"**
2. Any other person **occupying** or using **your covered auto.** **"Second Class Insured"**
3. Any person for damages that person is entitled to recover because of **bodily injury** to which this coverage applies sustained by a person described in **1.** or **2.** above.

B. **Property damage** as used in this Part means injury to or destruction of:

1. **Your covered auto;**
2. Tangible property contained in **your covered auto;** or
3. Any other tangible property, except a motor vehicle, owned by an **insured** and located in Virginia.

C. **Underinsured motor vehicle** means a land motor vehicle or **trailer** of any type for which the sum of:

1. The limits of liability under all liability bonds or policies; or
2. All deposits of money or securities made to comply with the Virginia Financial Responsibility Law;

that is **available for payment** is less than the sum of the limits of liability applicable to the **insured** for Uninsured Motorists Coverage under this policy or any other policy.

Available for payment as used in this Paragraph **(C.)** means the amount of liability coverage applicable to the claim of the **insured** as reduced by the payment of any other claims arising out of the same occurrence.

wever, **underinsured motor vehicle** does not include any vehicle or equipment to which a bodily injury or property damage liability bond or policy applies at the time of the accident but the bonding or insuring company:

1. Denies coverage; or
2. Is or becomes insolvent.

D. **Uninsured motor vehicle** means a land motor vehicle or **trailer** of any type:

1. To which no liability bond, policy, deposit of money or security applies at the time of the accident in at least the minimum limits required by Va. Code Ann. Section 46.2-472.
2. Which is a hit-and-run vehicle whose operator or owner is unknown and which hits or which causes an accident resulting in **bodily injury** or **property damage** without hitting:
   a. **You** or any **family member;**
   b. A vehicle which **you** or any **family member** are **occupying** or using;
   c. **Your covered auto;** or
   d. Any of **your** property.
3. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:
   a. Denies coverage; or

(PART C Continued)

b. Is or becomes insolvent.

4. For which the owner or operator is immune from liability for negligence under the laws of Virginia or the United States.

However, **uninsured motor vehicle** does not include any vehicle or equipment owned or operated by a qualified self-insurer under any applicable motor vehicle law, except a qualified self-insurer which is or becomes insolvent.

E. In addition, neither **uninsured motor vehicle** nor **underinsured motor vehicle** includes:

1. A farm type tractor or other equipment designed for use principally off public roads while not on public roads; or

2. Any vehicle:

   a. Operated on rails or crawler treads; or

   b. While located for use as a residence or premises.

INSURING AGREEMENT

A. **We** will pay, in accordance with Va. Code Ann. Section 38.2-2206, damages which an **insured** or an **insured's** legal representative is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** or an **underinsured motor vehicle** because of:

1. **Bodily injury** sustained by an **insured** and caused by an accident; and

2. **Property damage** caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance, or use of the **uninsured motor vehicle** or **underinsured motor vehicle.**

B. **We** will pay damages under this coverage caused by an accident with an **underinsured motor vehicle** only after the limits of liability under any applicable bodily injury liability or property damage liability bonds or policies have been exhausted by payment of judgments or settlements.

EXCLUSIONS

A. **We** do not provide Uninsured Motorists Coverage for **bodily injury** or **property damage** sustained by any **insured:**

1. If that **insured** or the legal representative settles the **bodily injury** or **property damage** claim with any person or organization who may be legally liable and such settlement prejudices **our** right to recover payment.

2. Using a vehicle without a reasonable belief that that **insured** is entitled to do so. This Exclusion **(A.2.)** does not apply to a **family member** using **your covered auto** which is owned by **you.**

3. For the first $200 of the total amount of **property damage** if the **property damage** results from an accident with an **uninsured motor vehicle** as defined in Section **2.** of the definition of **uninsured motor vehicle.**

B. This coverage shall not apply directly or indirectly to benefit:

1. Any self-insurer under any workers' compensation or similar law.

2. Any insurer of property.

LIMIT OF LIABILITY

A. The limit of Bodily Injury Liability shown in the Declarations for each person for Uninsured Motorists Coverage is **our** maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of **bodily injury** sustained by any one person in any one accident. Subject to this limit for each person, the limit of Bodily Injury Liability shown in the Declarations for each accident for Uninsured Motorists Coverage is **our** maximum limit of liability for all damages for **bodily injury** resulting from any one accident.

(PART C Continued)

The limit of Property Damage Liability shown in the Declarations for each accident for Uninsured Motorists Coverage is **our** maximum limit of liability for all **property damage** resulting from any one accident.

This is the most **we** will pay regardless of the number of:

1. **Insureds;**
2. Claims made; or
3. Vehicles or premiums shown in the Declarations.

B. Any damages payable under this coverage:

1. Shall be reduced by all sums paid because of **bodily injury** or **property damage** by or on behalf of persons or organizations who may be legally responsible.
2. With respect to:

   a. An employee of a self-insured employer shall be reduced by all sums paid or payable because of the **bodily injury** under workers' compensation or similar law.

   b. **Property damage** shall be excess over any other collectible insurance provided under:

      (1) Part D of this policy; or

      (2) Any other policy providing coverage for the **property damage.**

OTHER INSURANCE

If there is other similar insurance available under one or more policies or provisions of coverage and:

A. The damages are caused by an accident with an **uninsured motor vehicle, we** will pay only **our** share of the loss. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance **we** provide with respect to a vehicle:

1. **You** do not own including any vehicle while used as a temporary substitute for **your covered auto;** or
2. Owned by **you** or any **family member** which is not insured for this coverage under this policy;

Shall be excess over any collectible insurance.

B. The damages are caused by an accident with an **underinsured motor vehicle,** the following priority of policies applies and any amount available for payment shall be credited against such policies in the following order of priority.

1. **First Priority** — The policy applicable to the vehicle the **insured** was **occupying** at the time of the accident.
2. **Second Priority** — The policy applicable to a vehicle not involved in the accident under which the **insured** is a **named insured.**
3. **Third Priority** — The Policy applicable to a vehicle not involved in the accident under which the **insured** is other than a **named insured.**

If there is more than one policy providing coverage on the same level of priority, **we** will only pay **our** share of the loss that must be paid under that priority. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits of liability for coverage provided on the same level of priority.

ARBITRATION

A. If **we** and an **insured** do not agree:

1. Whether that **insured** is legally entitled to recover damages; or
2. As to the amount of damages which are recoverable by that **insured;**

from the owner or operator of an **uninsured motor vehicle** or an **underinsured motor vehicle,** then the matter may be arbitrated. However, disputes concerning coverage under this Part may not be arbitrated.

(PART C Continued)

Neither party is required to arbitrate. However, if both parties agree to arbitration, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.

B. **We** will pay all arbitration expenses if **we** request the arbitration.

C. If an **insured** requests the arbitration, each party will:

1. Pay the expenses it incurs; and
2. Bear the expenses of the third arbitrator equally.

D. Unless both parties agree otherwise, arbitration will take place in the county in which the **insured** lives. Local rules of law as to evidence and arbitration procedures will apply. Any decision of the arbitrators will not be binding.

PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

DEFINITIONS

A. **Collision** means the upset of **your covered auto** or a **non-owned auto** or their impact with another vehicle or object.

Loss caused by the following is considered other than **collision:**

1. Missiles or falling objects;
2. Fire;
3. Theft or larceny;
4. Explosion or earthquake;
5. Windstorm;
6. Hail, water or flood;
7. Malicious mischief or vandalism;
8. Riot or civil commotion;
9. Contact with bird or animal; or
10. Breakage of glass.

If breakage of glass is caused by a **collision, you** may elect to have it considered a loss caused by **collision.**

B. **Non-owned auto** means:

1. Any private passenger auto, pickup, van, **trailer,** or **miscellaneous type vehicle** not owned by or furnished or available for the regular use of **you** or any **family member** while in the custody of or being operated by **you** or any **family member;** or
2. Any auto, **miscellaneous type vehicle** or **trailer you** do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
   a. Breakdown;
   b. Repair;
   c. Servicing;
   d. Loss; or
   e. Destruction.

INSURING AGREEMENT

A. **We** will pay for:

1. Direct and accidental loss to **your covered auto** or any **non-owned auto,** including their equipment, minus any applicable deductible shown in the Declarations.

   When **your covered auto** is a motor home, equipment includes, but is not limited to:

   a. Cooking, dining, plumbing, or refrigeration facilities;
   b. Awnings or cabanas; or
   c. Any other facilities or equipment designed to be used with a motor home;

   while such equipment is in or attached to the motor home.

2. Loss to **your covered auto** or **non-owned auto** caused by:

ATTACHMENT NO. 5

Nationwide Mut. Ins. v. Robinson, 13 Cir. HE5634, 36 Va. Cir. 193 (1995)

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

NATIONWIDE MUTUAL INSURANCE COMPANY
v.
WILLIAM G. ROBINSON, III, WILLIAM G. ROBINSON, AND DERRICK ANTOINE LEWIS

Case No. HE-563-4
Decided: April 4, 1995

COUNSEL

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LETTER OPINION BY JUDGE RANDALL G. JOHNSON:

This is a declaratory judgment action in which Nationwide Mutual Insurance Company seeks a ruling that its automobile policy issued to William G. Robinson, Jr., and Elnora J. Robinson does not provide coverage for Mr. Robinson's son, William G. Robinson, III, ("William") in William's personal injury claim arising out of an accident which occurred on November 19, 1993. At issue is whether William was a member of his father's household on the date of the accident.[1]

The relevant facts are not in dispute. On November 19, 1993, William was a passenger in a car driven by Derrick Antoine Lewis. Allegedly due to Lewis' negligence, the car went off the right side of the highway and struck a tree. William, who was 16 years old at the time, has now filed suit by his father and next friend against Lewis for his injuries, and he has served Nationwide as an uninsured motorist carrier under a policy issued to Mr. Robinson and Mr. Robinson's mother, Elnora J. Robinson, William's grandmother.

Mr. Robinson and William's mother, Wanda J. Robinson, whose last name "Robinson" is strictly a coincidence, have never been married. By order entered by the Juvenile and Domestic Relations District Court of the City of Richmond when William was about ten months old, however, William's parents were awarded joint custody of him. Such order was entered at the request of both parents, and it remains

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in effect today. Before the age of 10 years, William lived with his mother and spent a substantial majority of his time with her. He did, however, spend "a lot" of time with his father, and was welcome in his father's house anytime. After age 10, William started spending more and more time with his father and, at the time of the accident, estimates that he lived in his mother's house 60% of the time, and in his father's house 40% of the time. In fact, as long as he told both parents where he was, he had complete freedom to stay in either parent's house at any time, although he usually spent school nights with his mother and weekends and holidays with his father. During the summer, he went "back and forth." William's Department of Motor Vehicles I.D. card lists his mother's address as his address.

With regard to the parents' houses, at the time of the accident they were twelve or thirteen blocks apart. William's mother has another son, not by Mr. Robinson, and each son had his own bedroom in their mother's house. William also had clothes, toys, video games, and other typical possessions there. He also, however, had his own bedroom at his father's house, and he also had clothes, toys, video games, and other typical possessions there. Also living in his father's house was Elnora J. Robinson, who was Mr. Robinson's mother and William's grandmother, and William's relationship with everyone in both households was great. As already noted, he had the complete run of both houses, and stayed in whichever one he chose at anytime at all.

The policy in question contains the following provision under its uninsured motorist coverage:

II. PERSONS INSURED

Each of the following is an Insured under this insurance to the extent set forth below:

(a) the Named Insured and, *while residents of the same household*, the spouse and relatives of either . . . .

Emphasis added.

From the evidence presented, this court has absolutely no problem in concluding that at the time of the accident, William was a resident of his mother's household. This is true for the simple reason that whatever fact can be cited in support of arguing that William was a resident of his father's household, the same fact applies with at least equal force to saying he was a resident of his mother's household. William had a bedroom at his father's house; he had a bedroom at his mother's house. William had clothes at his father's house; he had clothes at his mother's house. William had toys and games at his father's house; he had toys and games at his mother's house. Moreover, William spent more time at his mother's house than at his father's house-60% to 40%. It would simply defy logic to say that he was a resident of his father's household to the exclusion of his mother's. It is William's argument, however, that a person is not limited to being a resident of only one household at any given time, and that under the particular facts of this case, William was a resident of his mother's household *and* his father's household. I agree.

The precise question presented here has not been decided by our Supreme Court. It has long been held, however, that a person may have several residences at the same time:

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A man may be a resident of a particular locality without having his domicile there. He can have but one domicile at one and the same time, at least for the same purpose, although he may have several residences.

Long v. Ryan, 71 Va. (30 Gratt.) 718, 720 (1878).

While the above principle has thus far been applied only to the question of residence in a *locality*-that is, a city, county, state, or country-I see no reason why it does not also apply to residency of a household. In *State Farm Mutual v. Smith*, 206 Va. 280, 142 S.E.2d 562 (1965), the Court gave the following definition of the term household:

> Whether the term "household" or "family" is used, the term embraces a collection of persons as a single group, with one head, living together, a unit of permanent and domestic character, under one roof; a "collective body of persons living together within one curtilage, subsisting in common and directing their attention to a common object, the promotion of their mutual interests and social happiness."

206 Va. at 285 n.6 (*quoting Lumbermens Mutual Casualty Co. v. Pulsifer*, 41 F. Supp. 249 (D. Me. 1941)).

It is this court's opinion that there is nothing in the above definition which precludes simultaneous residency in two households. Particularly here, where William's parents had legal joint custody of him, William's relationships with the other members of his family in both houses very definitely made him a member of each household. Each house contained a "collective body of persons living together within one curtilage, subsisting in common and directing their attention to a common object, the promotion of their mutual interests and social happiness." Indeed, just as the court noted earlier that there is no fact which supports a finding that William was a resident of his father's household that does not also support a finding that he was a resident of his mother's household, the antithesis is also true with the exception of the amount of time spent at each house and the use of his mother's address on his I.D. card; that is, there is no fact which supports a finding that William was a resident of his mother's household that does not also support a finding that he was a resident of his father's household. The court rejects Nationwide's argument that spending 60% of his time at his mother's house, as opposed to 40% at his father's, and the resulting use of his mother's address on his I.D. card preclude William from being a resident of his father's household. If residency were determined only by the amount of time spent in a given place, the principle that a person can have several residences at the same time would mean absolutely nothing unless a person spent precisely the same amount of time in each place claimed as a residence. I do not believe that to be true.

The court also rejects Nationwide's argument that the use of the terms "*single* group," "*one* head," *one* roof," "*one* curtilage," and *common* object" (emphasis added) in *State Farm Mutual v. Smith, supra*, precludes the result now reached. There is nothing mutually exclusive about the use of those terms in *Smith* and dual residency here. Each household in this case *was* a single group; each *had* one head; each *was* under one roof and within one curtilage; and each *did* subsist in common and direct their attention

to a common object: the promotion of their mutual interests and social happiness. William just happened to be a member of each group. The court can think of no reason why the principle which allows a person to be a resident of two or more localities, each of which, to paraphrase *Smith*, is a collection of persons, as a single group, with one governing body, living in the same geographic area, a unit of permanent character, under one government; a collective body of persons living together within one border, subsisting in common and directing their attention to a common object, the promotion of their mutual interests and social happiness, does not apply with equal force to allow a person to be a resident of more than one household. I hold that it does.

The court has also reviewed the cases cited by Nationwide. They do not support Nationwide's position. In *State Farm Mutual v. Smith, supra*, the plaintiff, Elaine R. Mellow, was injured while driving an automobile owned by her sister's husband, Francis J. Frost. At the time of the accident, Mellow, whose husband had recently died, was living with her sister and brother-in-law in Norfolk, Mellow having come to Norfolk approximately two months earlier with the intention of staying with her sister until her, Mellow's, baby was born, the baby being due about five months after Mellow arrived in Norfolk. Mellow brought her two infant sons with her, as well as her family's clothing, but she did not bring any furniture, furnishings, or appliances. About two months after the accident and still before the baby was born, Mellow left Norfolk and went to live with her mother- in-law in California. In holding that Mellow was not a resident of her sister's household, which in that case meant that she *was* covered by insurance, the court stated:

> The meaning of "resident" or "residence," a prolific source of litigation, depends upon the context in which it is used. Here, we must interpret the meaning of "resident," when followed by "of the same household." The word "household," which has been defined as set forth in the footnote *[see* p.3, *supra*], connotes a settled status; a more settled or permanent status is indicated by "resident of the same household" than would be indicated by "resident of the same house or apartment." We interpret the language of the policy as excluding coverage if Elaine R. Mellow had assumed a residence and become so intertwined with the Frost family as to become a member of that family, and as extending coverage if she was a visitor or sojourner in the Frost home.
>
> The proper conclusion to be drawn from the facts in this case is that Elaine R. Mellow was a visitor or sojourner in the Frost home and, therefore, was driving a "Non-Owned Automobile" at the time of the accident. She came to Norfolk for a limited period of time, limited to the remaining period of her pregnancy. Her original plan was altered by another invitation; she left the Frost home upon receiving an invitation to live with her mother-in-law. Had she originally intended to be, or subsequently become, a resident of the Frost household, it is unlikely she would have agreed to a change of her settled status upon receiving another invitation. (There is no evidence of a strained relationship between Elaine R. Mellow and Frost or his sister, resulting from the accident.) The evidence as a whole does not support a finding that Elaine R. Mellow was a resident of the Frost household.

206 Va. 285-86 (footnotes omitted).

Unlike the situation in *Smith*, William G. Robinson, III, never intended to live in his father's house for a "limited period of time." He has lived in his father's house, and in his mother's house, from the time he was born. Indeed, the only alteration in his "original plan," if it can be called that, is that his living with his father *increased* after he was ten years of age, and he has never "forsaken" his father for another invitation. In other words, the "settled" status which the Court found lacking in *Smith* is unquestionably present here.

Similarly, in *St. Paul Ins. v. Nationwide Ins.*, 209 Va. 18, 161 S.E.2d 694 (1968), a car driven by Troy Leon Elkins, a serviceman on leave, was involved in an accident in which William R. Elkins, a passenger, was injured. At the time of his induction, Troy lived with his parents. While he was in the service, however, his parents separated, and they were living separate and apart at the time of the accident. After the accident, Troy's parents were divorced, and Troy, upon being discharged from the Army, lived with his mother until he was married approximately four months later. At issue was whether a policy of insurance issued to Troy's father, Tilden Elkins, and which covered relatives of Tilden's household, covered the accident. The Court held that it did not:

> In *State Farm Mut. Automobile Ins. Co. v. Smith*, 206 Va. 280, 285, 142 S.E.2d 562, 565, 566 (1965), we adopted one of the recognized definitions of the word "household," as used in such insuring provisions, as meaning "a collection of persons as a single group, with one head, living together, a unit of permanent and domestic character, under one roof." See also, 41 C. J. S. Household, p. 367. The evidence in the present case fails to show that at the time of the accident Tilden Elkins, the named insured, was maintaining such a household and that Troy was a resident thereof. On the contrary, the undisputed evidence is that at the time Troy's parents were separated and the former household had been broken up by the father's desertion. Moreover, in his testimony, Troy repeatedly speaks of his living "at home with my mother" after the separation, which refutes the claim that he was at that time a member of his father's household.

209 Va. at 22.

Those facts are not at all similar to the ones presented here.

In *Allstate Insurance Co. v. Patterson*, 231 Va. 358, 344 S.E.2d 890 (1986), William H. Patterson was injured when his motorcycle was struck by an automobile operated by an uninsured motorist. He claimed coverage under his father's policy. At the time of the accident, Patterson was 26. He had lived with his parents until he was 18 when he married and moved into an apartment with his wife. Approximately two years later, he and his wife were divorced, and he moved back in with his parents. Very soon thereafter he moved to an apartment complex owned by his father, where he worked as a maintenance man. When his father sold the complex three years later, he returned to live with his parents. Later that same year, he became a member of a motorcycle group known as the "Renegades," which maintained clubhouses throughout Virginia and in other states. From the time he joined the Renegades until the accident, he was "on the road traveling a lot" from clubhouse to clubhouse, and spent more and more time away from his parent's house, mostly with a female friend at one of the clubhouses or an apartment. He did, however, leave most of his personal belongings at his parents' house, and returned there "when [he] wasn't staying

at one of the clubhouses or visiting around." He maintained his parents' address with the Division (now Department) of Motor Vehicles, and used that address for banking purposes. He testified that for the two or three year period before the accident, he stayed at his parents' house approximately 10% of the time. The Court held that he was not a resident of his father's household:

> [W]e do not believe the evidence supports the conclusion that Patterson was a resident of his father's household at the time of the accident on April 15, 1979.
>
> The *State Farm Mutual v. Smith, supra,* definition speaks plainly in terms of a "settled or permanent status" as necessary to a finding that a person is a resident of the household of the named insured. The definition also speaks of a household as a "unit of permanent and domestic character." This definitional language imports the necessity of regularity as the basis of a person's status vis-a-vis the household of the named insured. Hence, while a person's intention to become a member of a particular household need not be coupled with continuous residence, the intention must be accompanied by a reasonable degree of regularity in the person's residential contacts with the household; casual, erratic contacts are not sufficient.
>
> Patterson's own words and conduct bespeak the casual, erratic nature of his residential contacts with his father's household and belie his professed intent to make that household his own. Patterson testified that he stayed at his parents' home only "when [he] wasn't staying at one of the [Renegades'] clubhouses or visiting around," and he estimated that he spent only about 10% of his time at his parents' home after early 1976. From the time Patterson became a member of the Renegades until the moment of the accident, he led an existence best described as nomadic, with no regular place of residence, either at his parents' home or elsewhere.

231 Va. at 363.

In the case at bar, William's existence, though split between his parents' two houses, cannot be described as "nomadic." While he more or less stayed where he chose, it was always with one of his parents, not with a motorcycle "group." Moreover, the court believes that there is a substantial difference between the residential "intent" of a person in his early to mid-twenties and that of a minor. Indeed, far from trying to get away from his parents to be with a wife, a girlfriend, or a motorcycle "group," William's purpose was to be with his parents. And since he could not be with both of them at the same time, he did the next best thing-he shared time with both. That was not the situation in *Patterson.*

In *Government Employees Ins. v. Allstate*, 235 Va. 542, 369 S.E.2d 181 (1988), Lloyd L. Menscer was awarded a judgment of $50,000 against Teresa L. Nighohossian for personal injuries he sustained as a result of Nighohossian's negligent operation of a car owned by James R. Luther. Allstate contended that Luther's automobile was covered under a policy issued by GEICO to Luther's wife, Wilhemina E. Luther, from whom Mr. Luther was estranged. In fact, James Luther and Wilhemina Luther had separated three and one-half months prior to the accident, and he had only returned to the marital home once during that time. While Ms. Luther entertained "some hope," at least "in [her] mind," of a

reconciliation, she and her husband never discussed it. After the accident, she decided that "the marriage was essentially lost," and a divorce was subsequently entered based on the original date of separation. In holding that Mr. Luther was not a resident of Ms. Luther's household on the date of the accident, the Court said:

> At the time of the accident, James had not resided in Wilhemina's household for approximately four months. James had removed virtually all his belongings from the marital home and, so far as the record discloses, had returned to the home on only one brief occasion. More important, nothing in the record suggests that James ever intended to reconcile and resume cohabitation with Wilhemina. "[A] person's intent is important in determining whether he qualifies as a resident of a particular household." *Patterson*, 231 Va. 363, 344 S.E.2d at 893.
>
> Based upon the undisputed evidence, the only reasonable inference to be drawn is that James was not a resident of Wilhemina's household at the time of the accident.

235 Va. at 548-49.

Again, the situation is vastly different here.

The situation in the present case is also vastly different from the one presented in *Furrow v. State Farm Mutual Auto Ins.*, 237 Va. 77, 37 S.E.2d 738 (1989). There, Donna Elizabeth Price, age 22, was fatally injured in an automobile accident. Her administrator made a claim on her mother's policy, alleging that decedent was a resident of her mother's household. The facts, however, showed otherwise. Specifically, the facts showed that when she was 17, decedent left her family's home in Ironto near Salem to live in Ironto with Albert W. Furrow. The couple, who never married, continued to live together during most of the remaining six years, during which time a daughter was born. At the end of six years, the relationship between the decedent and Furrow began to deteriorate. About the same time, she met Allen W. Hobbs, a coworker, and they began meeting secretly. About nine days before the accident, she left Furrow and went, with her child, to her mother's house. She brought only "a few clothes" of her own and "a few of the baby's things." She and her child shared a bedroom with her older sister. According to Hobbs, the decedent's stay at the mother's home "was a temporary arrangement; it wasn't permanent." In fact, according to Hobbs, he and decedent planned to be married. Decedent's mother testified that decedent did not want "to live nowhere in Ironto;" she just wanted "to get away." The trial court held that the decedent was not a resident of her mother's household, and the Supreme Court agreed:

> Manifestly, the evidence shows that the decedent never intended to become a member of the mother's "household." She did not plan to join the permanent, domestic, single group composed, according to the evidence, of her mother, her older sister, her younger brother, and the mother's husband, living at the home in Ironto. Instead, the decedent was in transition from Furrow's residence to Hobbs' residence. One relationship had ended and another had begun. The decedent merely was staying temporarily with her mother while she was making the change. As her mother said, the decedent did not want to live in Ironto; she wanted "to get away."

237 Va. at 81.

Finally, *United States Fidelity & Guaranty Company v. Hart*, ___ F. Supp. ___, Civil Action No. 92-0047-D (W.D. Va., decided July 19, 1993), not only does not support Nationwide's position, it actually helps William. In that case, Charlotte Hart's parents divorced in 1976 when Charlotte was eight years old. Under the terms of the separation agreement, custody of Charlotte was awarded to her mother, and Charlotte lived with her mother in North Carolina through the tenth grade. She spent approximately half her summers with her father in Virginia, but never any other time. Upon entering the eleventh grade, she transferred to a boarding school and upon graduation entered college, both in North Carolina. During this time, she lived at school for nine months a year, and spent breaks about "50/50" at each parent's home. However, she kept only a few belongings at her father's house and did not have a room there. Furthermore, she always used her mother's address for mailing purposes. The court concluded:

> Charlotte appears to have been more of a visitor than a resident at her father's home both before and after going away to school and, therefore, at the time of the accident. A number of facts support that conclusion. There is no evidence that her father ever had legal custody of her after the divorce, notwithstanding his considerable financial support. Furthermore, Charlotte did not have her own room at her father's house and kept few possessions there. She never used her father's home as a mailing address-a fact that belies any purported intent to be a resident of that household. Indeed, when applying to colleges, filing income tax returns, and dealing with other such important matters, Charlotte always gave her mother's address and never indicated that she was a resident of Virginia. She likewise possessed a North Carolina driver's license rather than a Virginia driver's license. Accordingly, in light of all the evidence, the court finds that Charlotte was not a resident of her father's household at the time of the accident.

Opinion at 4.

The above holding is significant for several reasons. First, the fact that the court considered it important to its holding that Charlotte's father never had legal custody of her seems to imply that where legal custody exists, so too may residency. Here, William's parents had (and have) joint custody. Similarly, the court's giving as a reason for its decision the fact that Charlotte did not have a room in her father's house seems to imply that if she had had a room, the court's decision might have been different. William had (and has) a room in his father's house. The same is true with regard to possessions. The court in *Hart* noted that Charlotte "kept few possessions" at her father's house. Here, the evidence is that William's possessions were nearly equally divided between the two houses. Moreover, while this court specifically does not rely on anything that happened *after* William's accident to determine residency at the time of the accident, there was evidence that William used his father's address as *his* mailing address after the accident so that he could continue to attend John Marshall High School after his mother had moved out of John Marshall's zone. This is different from the situation in *Hart*, where Charlotte *always* used her mother's address.[2] In other words, almost all of the facts relied on by the court in *Hart* to hold that residency did not exist in the father's household are exactly opposite of the facts in the case at bar. If anything, *Hart* implicitly supports William's argument that he was a resident of his father's household here.

In summary, the court finds that a person may be a resident of more than one household at the same time for purposes of the insurance policy provision at issue here. The court further finds that based on the evidence presented, William was a resident of his father's household at the time of his accident. He is covered by Nationwide's policy.

A copy of an order consistent with this opinion, and which I have entered today, is enclosed.

FOOTNOTES

[1] Although the pleadings identify William's father as "William G. Robinson," his name is actually William G. Robinson, *Jr.*

[2] The court is not sure that it is appropriate to rely on post- accident events to determine residency on the day of the accident. This particular post-accident event is mentioned, however, because the Supreme Court appears to have at least *considered* post-accident events in determining residence in *State Farm Mutual v. Smith, St. Paul Ins. v. Nationwide Ins.*, and *Government Employees Ins. v. Allstate*, all *supra.*