
IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 920429

ANNA L. PHELPS,

Appellant,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE CO., et al.,

Appellees.

JOINT APPENDIX
VOLUME 2

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920429

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF BEDFORD, VIRGINIA

ANNA L. PHELPS,
GOVERNMENT EMPLOYEES INSURANCE COMPANY,
ANNA FETHERSTONE, GENEVA TREVEY, and
MARY C. PHELPS

Plaintiffs,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.,
UNITED STATES AUTOMOBILE ASSOCIATION,
and
NATIONWIDE MUTUAL INSURANCE COMPANY,

Defendants.

THE HONORABLE WILLIAM W. SWEENEY PRESIDING

Bedford, Virginia
September 10, 1991

* * * * *

BRENDA B. ALGER
Court Reporter
P. O. Box 956
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(804) 929-4312

255

16th Jan. 1992
Angie L. Sweeney, Clerk
D.C.

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20 (uninsured carrier for Plaintiff Jennifer Trevey)

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1 THE COURT: Ladies and gentlemen, how are you?
2 May I see the file, Ms. Black? Let's start off by telling
3 me who represents whom for my notes here.

4 MR. HARRISON: That itself could be challenged.

5 THE COURT: Oh, I see.

6 MR. HARRISON: I'm Louis Harrison and I
7 represent Anna L. Phelps and Mary C. Phelps.

8 THE COURT: Anna Phelps and Mary C. Phelps?

9 MR. HARRISON: Correct.

10 THE COURT: All right, I have that. Now other
11 representation?

12 MS. BAUN: Your Honor, my name is Dianne Baun
13 and I represent GICO Insurance Company which is the
14 uninsured motorist coverage for Anna Fetherston, the
15 passenger in the car who was injured.

16 THE COURT: What's Ms. Fetherston's name?

17 MS. BAUN: Anna Fetherston.

18 THE COURT: Anna Fetherston, all right,
19 passenger in car. How do you spell your name?

20 MS. BAUN: My name is Dianne Baun, B as in boy,
21 a-u-n.

22 THE COURT: Thank you, Ms. Baun. Who do you
23 represent Mr. Sackett?

24 MR. SACKETT: I represent State Farm, Your
25 Honor.

1 THE COURT: Okay, you represent State Farm. Is
2 that all of your representation?

3 MR. SACKETT: Yes, sir.

4 THE COURT: And who else do we have representing
5 parties?

6 MR. ANDERSON: Phillip Anderson, Your Honor,
7 from Gentry, Lock, Rakes & Moore in Roanoke.

8 THE COURT: All right, Mr. Anderson.

9 MR. ANDERSON: We represent U.S.A.A. who is
10 named as a defendant. U.S.A.A. is the U.M. carrier for
11 one of the plaintiffs, Jennifer Trevey, whose name is a
12 plaintiff in this case. So we represent U.S.A.A.

13 THE COURT: All right. Now on whose motion are
14 we here today?

15 MR. HARRISON: This is on my motion for a
16 declaratory judgment.

17 THE COURT: All right. We're going to put on
18 evidence today?

19 MR. HARRISON: Yes, we will, sir.

20 THE COURT: All right, fine. Let's swear
21 witnesses who will testify.

22 THE CLERK: All witnesses please stand. Raise
23 your right hands. Do you solemnly swear or affirm that
24 the testimony you will give will be the truth, the whole
25 truth and nothing but the truth, so help you God?

1 THE WITNESSES: (Answered collectively in the
2 affirmative.)

3 THE COURT: Do we want the witnesses to go out
4 or shall they stay?

5 MR. SACKETT: Two of the witnesses are parties.

6 THE COURT: Well, of course, they may stay.

7 MR. SACKETT: I would move to separate the one
8 who is not a party.

9 THE COURT: All right. The witness who is not a
10 party will just step outside and we'll call you as soon as
11 we can. I'd like to have a brief opening statement so
12 that the issues could be narrowed a little bit for me.

13 MR. ANDERSON: While we wait for that, I think
14 you will find in the file a set of briefs by all parties
15 and I will be referring to certain exhibits and I want to
16 make sure that the Court has -- There should be three
17 briefs in the file that we'll be referring to. The first
18 is a Memorandum of Law. The second would be the reply
19 brief from Mr. Sackett and then there would be a response
20 to the brief, and then there would be a reply brief with
21 five exhibits which I have filed.

22 THE COURT: Okay.

23 MR. ANDERSON: Does the Court have those briefs?

24 THE COURT: Well, I can't tell you. I honestly
25 can't tell you. I have not had a chance to read them.

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MR. ANDERSON: Okay.

THE COURT: But we will check that before we leave today. If you want to check now, I don't know that --

MR. ANDERSON: I can give the Court a copy of this one.

THE COURT: All right.

MR. SACKETT: We might as well be sure that they're in here, Your Honor. If not, we'll get you other copies.

THE COURT: Sure.

MR. ANDERSON: Okay.

THE COURT: Obviously I've got to do some work after today and write an opinion.

MR. ANDERSON: Yes. Okay. You have this brief already in there. I'll save it for this file.

THE COURT: All right, fine. That's good. I have everything in here.

MR. SACKETT: Did you want to give the Judge that file?

MR. ANDERSON: That's fine, that's fine.

MR. SACKETT: Judge, this will help you follow us, I think.

THE COURT: Sure. Did you want to start off, Mr. Harrison?

1 MR. ANDERSON: Before we get started, may I make
2 one statement on the record?

3 THE COURT: Yes, sir.

4 MR. ANDERSON: As I indicated, we represent
5 U.S.A.A. and we are named as a co-defendant with State
6 Farm although our positions are not aligned. We'll be
7 taking a position adversely to State Farm and similar
8 positions that will be taken by the plaintiff. I don't
9 know, just a matter of procedural -- I did not want you to
10 be confused by that.

11 THE COURT: Yes, I see.

12 MR. ANDERSON: If you'd like for us to be
13 realigned, we have no problem with that, being realigned
14 as a party plaintiff in the case.

15 THE COURT: Well, I don't know that that'll make
16 a lot of difference. I could hear you right after I heard
17 him and then go to Mr. Sackett, because that's the way it
18 lines up. Well, let's see now, who are you aligned with,
19 Ms. Baun?

20 MR. SACKETT: Judge, they are all against me,
21 there's no question about that.

22 THE COURT: Oh, is that right? Okay. It's Mr.
23 Sackett and everybody else is sort of on the other side?

24 MR. SACKETT: That's right.

25 THE COURT: I've got it. Well, that's all I

1 really need to know. It's a very complicated situation
2 here, isn't it? You know, I like novel cases, I really
3 do. I don't always do too well on them, but I really like
4 them and I'll enjoy getting into this, I'm sure. Later on
5 I'll really have to study it, but I want to know what the
6 issues are before I come away from here today and what
7 evidence you have, and then probably, probably I'm going
8 to need a transcript of the testimony taken today. As a
9 matter of fact, I know I will. Just that part of the
10 testimony, not necessarily the statements of counsel
11 although I don't have any objections to including that.
12 Whatever counsel want to do.

13 MR. SACKETT: I hope they will be brilliant
14 enough by the time we finish you won't want to read them,
15 Judge.

16 THE COURT: Well, whatever.

17 MR. SACKETT: Maybe we can wait until we finish
18 to decide.

19 THE COURT: All right. We can wait until we
20 finish. That'll be fine. Did you want to go first, Mr.
21 Harrison?

22 MR. HARRISON: Yes, Your Honor.

23 THE COURT: All right. Go ahead, sir.

24 MR. HARRISON: This is the case -- The issue
25 before the Court today will be whether or not this was a

1 non-owned automobile under the terms of the policy.

2 THE COURT: Just a minute. I'm making notes.
3 The car -- Describe the vehicles.

4 MR. HARRISON: I don't really remember the
5 vehicle.

6 THE COURT: Okay, just one car.

7 MR. HARRISON: There was one car, a single-car
8 accident.

9 THE COURT: All right. Go ahead.

10 MR. HARRISON: And to get to that issue, you
11 have to understand quite a few facts.

12 THE COURT: Was the car a -- What was it, a
13 non-owned --

14 MR. HARRISON: Automobile under the terms of the
15 State Farm insurance policy.

16 THE COURT: Wait a minute. All right. Now tell
17 me right off. What difference does that make? You say it
18 turns on that point.

19 MR. HARRISON: If it was a non-owned automobile
20 within the terms of that exclusion, that coverage, then it
21 would be entitled to coverage. If it were not, then it
22 would not be entitled to coverage.

23 THE COURT: From State Farm?

24 MR. HARRISON: Right.

25 THE COURT: All right. Let me make a note of

1 that. If non-owned, you would be entitled.

2 MR. HARRISON: And this is for collision, Your
3 Honor. The reason the other parties are here is because
4 this particular issue would affect another piece of
5 litigation going on.

6 THE COURT: All right.

7 MR. SACKETT: For clarification, you say
8 collision. This is liability coverage purposes.

9 MR. HARRISON: Well, my suit is for collision,
10 but it will also control --

11 MR. SACKETT: But it's liability coverage.

12 MR. HARRISON: If we decide that there's
13 coverage under collision, it will decide the issue as to
14 liability and that's why the other parties are here.

15 THE COURT: I expect you'd have liable estoppel
16 or at least something similar to that, wouldn't you? I
17 mean, my decision here is going to have some effect on the
18 liability phase of the case, isn't it?

19 MR. HARRISON: It will.

20 THE COURT: All down the line.

21 MR. HARRISON: It will decide whether there is
22 coverage.

23 THE COURT: Right. All right. I'll try to keep
24 quiet now and let you talk a little.

25 MR. HARRISON: Okay. The issues or the facts

1 before the Court, I think, are basically undisputed. Anna
2 L. Phelps at the time was a 19-year-old college student.
3 On June 10, 1989, Anna was driving her sister's car and
4 was involved in a single-car accident in Bedford County,
5 Virginia.

6 THE COURT: What was the date, the date of the
7 accident?

8 MR. HARRISON: June 10, 1989.

9 THE COURT: Okay.

10 MR. HARRISON: At the time she was covered by a
11 certain policy of automobile insurance with State Farm
12 Mutual Automobile Insurance Company, the defendant herein.
13 A copy of the policy has been provided to the Court today
14 and there's no disputed coverage or as to language of the
15 policy or that the policy was in good standing, and it's
16 undisputed that Anna Phelps followed the proper reporting
17 procedures of the policy.

18 The claim was denied. The claim was denied
19 specifically because this was not a non-owned automobile
20 under the terms of the policy. Under Part III, Physical
21 Damage Coverage for collision, the policy requires that
22 State Farm should pay for the loss caused by collision if
23 the owned automobile or to a non-owned automobile. A
24 non-owned automobile is later defined in Part III as "A
25 private passenger automobile or trailer not owned or

1 furnished for regular use for either the named insured or
2 any relative other than a temporary substitute automobile
3 while said automobile or trailer is in the possession or
4 custody of the insured or being operated by him."

5 It is undisputed -- There are two languages, or
6 any relative. It is undisputed that she was driving her
7 sister's car. So the first question, it seems to be a
8 relative's car. However, a relative is defined in the
9 policy as "A relative of the named insured who is a
10 resident of the same household." This case will turn on
11 whether or not the two girls were residents of the same
12 household.

13 THE COURT: I see.

14 MR. HARRISON: Okay. At the time of the
15 accident they were both living at 8319 Brookville Court,
16 Springfield, Virginia, an apartment complex in Northern
17 Virginia. They were both -- I think they were both going
18 to school at the time and they were living in the
19 townhouse as a boarding house arrangement. I'll let the
20 girls go into that later about that, but we will say that
21 they were basically living in it as a boarding house.
22 They each fixed their own meals. They paid their own
23 bills and they each lived their own lives.

24 Now, surprisingly, there is quite a bit of law
25 on this subject and seldom do you have such accurate law,

1 such law on point. The word "household" has been defined
2 in no less than five Supreme Court cases dealing with
3 automobile insurance and those cases are attached to the
4 reply brief in the file. Two of the cases deal with the
5 same State Farm automobile insurance policy as the one in
6 question here.

7 In each of the five cases, the Supreme Court
8 will define household as "A collection of persons as a
9 single group with one head living together. A unit of
10 permanent and domestic character under one roof. A
11 collective body of persons living together within one
12 curtilage, subsisting in common and directing their
13 attention to a common object, the promotion of their
14 mutual interests and personal habits." That's going to be
15 the law the court will attempt to apply to these facts
16 today.

17 Your Honor, we're going to be able to show the
18 Court today that these girls will meet none of those
19 requirements set by the Supreme Court. They were not
20 living together at their home in Springfield, but they
21 were living in the same household apart. I'm sorry, in
22 the house apart, but not in the same household. You will
23 find that there were boyfriends who lived there at
24 different times, that they each paid their separate bills,
25 that they each fixed their own meals. They were separate

1 as they could be in the same house and in no way meet this
2 definition.

3 I think that you will see that State Farm, in
4 recognition that the girls were so far apart, has
5 retreated from that position. I'm not sure I can say
6 retreated when they never took it, but they are going to
7 say that she was, that Anna was of the household of her
8 mother. I think that you will find that Anna spent only
9 weekends at her mother's house before the accident, a
10 brief period of convalescing after the accident and has
11 since moved away, that her mother exercises no control
12 over her, offers her only minimal support on sporadic
13 occasions and that in no way would they be deemed of the
14 same household, and that will be our argument and the
15 evidence we will be presenting.

16 THE COURT: Very good, sir. Thank you. All
17 right, who would like to proceed next? Let's see. Ms.
18 Baun, would you like to proceed next?

19 MS. BAUN: Your Honor, I'm going to defer to Mr.
20 Harrison to a large extent; at this point I don't feel
21 like I have anything to contribute.

22 THE COURT: Okay. Let me make a note. So your
23 position is pretty much the same as --

24 MS. BAUN: My position is in line with Mr.
25 Harrison's.

1 THE COURT: All right. Let me make a note of
2 that. Mr. Anderson?

3 MR. ANDERSON: Yes, Your Honor, we would like to
4 make an opening statement.

5 THE COURT: All right.

6 MR. ANDERSON: Judge, our position is also in
7 line with Mr. Harrison's, but I think it would be helpful
8 to outline for the court precisely why we're here since
9 Mr. Harrison has referred to a number of cases relating to
10 coverage. Petitions of declaratory judgment and amended
11 petitions have been filed and asked the court to declare
12 coverage for Anna Phelps. As Mr. Harrison has indicated,
13 on June 10, 1989, Ms. Phelps, Anna Phelps, was driving a
14 vehicle, I think it was a 1988 Nissan Sentra, which was
15 owned by her sister, Mary Phelps, at the time there was an
16 accident. And also involved in that accident, although it
17 was a single-vehicle accident, there were two other
18 passengers in that vehicle that was being operated by Anna
19 Phelps. One was Jennifer Trevey, who is a plaintiff in
20 this case and one was Anna Fetherston. Now Anna
21 Fetherston had U.M. or U.I.M., or uninsured motorist
22 coverage through GICO, who Ms. Baun represents. Jennifer
23 Trevey had uninsured motorist coverage and underinsured
24 motorist coverage with U.S.A.A., whom we represent.

25 Now there is at least one court action pending

1 in this court. Jonathan Kurtin from Roanoke has filed a
2 Motion for Judgment on behalf of Jennifer Trevey against
3 Anna Phelps and therein lies our reason for being here,
4 Your Honor. They have alleged that Ms. Phelps was
5 negligent in the operation of the vehicle, thereby giving
6 rise to the injuries on behalf of Ms. Trevey. We believe
7 that they are entitled to coverage not only from
8 Nationwide, who insured the vehicle and is providing
9 defense for Ms. Phelps in that court action, but is also
10 entitled to either excess liability coverage from State
11 Farm or that they are entitled to underinsured motorist
12 coverage through U.S.A.A.. That's why we are here.

13 I don't dispute anything Mr. Harrison has said.
14 I think the question for this court will be today whether
15 or not State Farm provides either collision or excess
16 liability coverage to Anna Phelps for any claims that
17 might arise out of that accident on June 10, 1989. I
18 think, I'm not sure that all of the policies are in the
19 record. I think the evidence will be that Nationwide had
20 a basic liability policy on the '88 Nissan Sentra which is
21 owned by Mary Phelps. It was \$25,000 to \$50,000 coverage
22 on that.

23 I think that those are the same limits which
24 State Farm provided Anna Phelps on another vehicle. This
25 is where the facts get a little bit difficult and

1 sometimes in reviewing this case for today where I got off
2 and got sidetracked. At the time of the accident Ms.
3 Phelps was insured with State Farm, but she was driving a
4 vehicle which her sister owned that was insured through
5 Nationwide.

6 THE COURT: All right. Let me make a note of
7 that. At the time of the accident Anna Phelps was,
8 personally now, she was insured --

9 MR. ANDERSON: The named insured under a State
10 Farm Policy.

11 THE COURT: All right. Named insured under a
12 State Farm policy. All right, now what --

13 MR. ANDERSON: That insured a Honda vehicle, I
14 think.

15 THE COURT: Which was not involved here?

16 MR. ANDERSON: Not involved in the accident
17 here.

18 THE COURT: Okay, got you. Now what is the
19 other --

20 MR. ANDERSON: She was driving a Nissan Sentra
21 that was owned by her sister, Mary Phelps, which was
22 insured for liability coverage through Nationwide.

23 THE COURT: I see.

24 MR. ANDERSON: And Mary Phelps, the owner of
25 that vehicle, was named insured of the Nationwide policy.
So the only question is, is there excess liability

1 coverage for Ms. Anna Phelps for the operation of this
2 non-owned vehicle? In other words, was it a non-owned
3 vehicle? Now, that's where we'll have to get into the
4 policy and I'm sure Mr. Sackett, Mr. Harrison and the rest
5 of the parties will get into this --

6 THE COURT: And, of course, we look at it at the
7 time of the accident. That's the time.

8 MR. ANDERSON: That's correct, Your Honor.

9 THE COURT: All right.

10 MR. ANDERSON: Now at the time of the accident,
11 as Mr. Harrison indicated, both Anna Phelps and Mary
12 Phelps were living in Springfield, Virginia. Their mother
13 lived here in Bedford County. Both of them were in school
14 at George Mason University. They had entered into a lease
15 agreement for the townhouse in Springfield.

16 I am sure there will be a lot of evidence about
17 the nature of their relationships there. They shared
18 rooms at the townhouse with several other roommates. They
19 shared the rent and utilities on an equal basis. They
20 were all working. They were receiving some financial
21 assistance from a trust fund that had been established by
22 their grandfather. It was helping pay college tuition and
23 maybe some of their living expenses, but as a practical
24 matter, they were out on their own.

25 They were living in Springfield. They had taken

1 -- at least with Anna, she had taken all of her personal
2 belongings to Springfield when she, for all practical
3 purposes, had moved out of the home and taken everything
4 with her, first to go to High Point, North Carolina, to
5 school and then she decided she wanted to go to George
6 Mason and transferred to George Mason to live with her
7 sister and signed on the lease. She took everything she
8 had with her. Even though they would come back to visit
9 in the home for holidays and vacation, but even then they
10 didn't come back for any extended length of time because
11 they had jobs and other obligations out of town so they
12 were there, out on their own, more or less, independent.

13 Not your typical college situation where
14 sometimes the parents will go rent an apartment or a
15 townhome in a particular area for the kids to live in.
16 They were doing this themselves. I think the mother has
17 testified and will probably testify again today that she
18 didn't even see the lease before they rented the townhome
19 in Northern Virginia.

20 But anyway, while they were there, under those
21 circumstances, living in that situation, they came back
22 home for a weekend for a family wedding and that's when
23 the accident occurred. It was just that chain of events
24 that required Anna Fetherston (sic) to drive her sister's
25 vehicle rather than driving her own vehicle when they had

1 the accident.

2 The policy language, Your Honor, talks about
3 what is an owned versus a non-owned vehicle. I'm sure the
4 court is very familiar with the varied policy language
5 that deal with these kind of questions, and State Farm
6 does provide excess liability coverage, or liability
7 coverage, to its named insureds, if they are driving a
8 non-owned vehicle with permission. Therein lies the
9 question: What is a non-owned vehicle under State Farm's
10 policy? There is a definition section both in the
11 collision portion of the policy that Mr. Harrison referred
12 to, as well as in the liability section which defines a
13 non-owned vehicle as "A non-owned vehicle is an automobile
14 or trailer not owned by or furnished for the regular use
15 of either the named insured," in this case Anna Phelps,
16 "or any relative."

17 Now relative is also defined in the policy.
18 It's no questions that they were sisters, biological
19 sisters. In first blush you would say that's the end of
20 the inquiry, but relative is defined in the policy as "A
21 relative of the named insured," Anna Phelps, "who is a
22 resident of the same household." So if Anna Phelps and
23 Mary Phelps are residents of the same household, they are
24 relatives, they are blood sisters, then they would be
25 relatives under the policy. If they are relatives under

1 the policy, then the vehicle which Mary Phelps owned and
2 furnished for her regular use, would not qualify as a
3 non-owned vehicle under the definition of the policy.

4 So that takes us to the next step of what the
5 inquiry is going to be, were they residence of the same
6 household? Were Mary and Anna Phelps residents in the
7 same household either in Northern Virginia or down here in
8 Bedford? I think State Farm has conceded in their brief
9 they filed, and Mr. Sackett can correct me if I'm wrong,
10 that they are not really taking the position that Mary and
11 Anna were residents of the same household in Northern
12 Virginia. Their position is they were residents of the
13 same household back here in Bedford County with their
14 mother.

15 That's really going to the focus of the court's
16 inquiry today and the evidence that will be presented.
17 Were Mary and Anna Phelps, both at the same time,
18 residents of their mother's household in Bedford County or
19 were they residents in some other location? That will
20 really be the critical --

21 THE COURT: I see.

22 MR. ANDERSON: The evidence, we believe, Your
23 Honor, is going to demonstrate that they had parted ways.
24 They had left home. They had gone out on their own. They
25 rented their own apartments. They paid their own bills.

1 They were working their own jobs. And if the Court were
2 aware of all the cases that deal with this issue, it's not
3 only "household" that has a certain legal term of art that
4 it has to be a single unit for the purpose, head, and so
5 forth, but the cases also say that there has to be intent
6 on the part of the individuals in question to be a part of
7 that household. The question is what was the intent of
8 Mary and Anna Phelps at this time. Was their intent to be
9 a part of the household or had they severed that
10 relationship and actually moved on out on their own to do
11 their own thing and was that their intent at this time of
12 the accident?

13 We believe that once the court hears the
14 evidence presented today in terms of how these young
15 ladies were living and how their mother looked at that
16 relationship as well, I think the court will conclude that
17 at the time of the accident in June of '89 that they had
18 expressed intentions to be out on their own and not
19 continue to be residents of the household with their
20 mother. This is kind of an unusual situation because you
21 never want to be in the situation where you say you're
22 severing your family ties, not that that's not what it
23 means in the policy. They will always be mother and
24 daughters and they will always be part of the family, but
25 the question is whether they are part of that household.

THE COURT: What was the age, respectively, of

1 the two sisters at the time of the accident?

2 MR. ANDERSON: They were at the accident, I
3 think late teens or early twenties, thereabouts, nineteen
4 or twenty.

5 THE COURT: Oh, we've got it right here. Well,
6 they know, don't they? Now let's see, who's nineteen?

7 MR. HARRISON: Anna.

8 THE COURT: All right, Anna would have been
9 nineteen, and I'm talking about as of June whatever that
10 date was.

11 MR. HARRISON: June 10, 1989.

12 THE COURT: June 10, 1989. Not as of now, but
13 as of June 10, 1989, Anna was nineteen and how old were
14 you?

15 MS. MARY PHELPS: At the time of the accident I
16 was twenty.

17 THE COURT: Twenty, okay.

18 MR. ANDERSON: That in essence is our position,
19 Judge, and at the end of the evidence we will ask the
20 Court to find that Ms. Phelps is insured under the State
21 Farm policy and that they do provide excess liability
22 coverage under this policy.

23 THE COURT: Thank you. Mr. Sackett?

24 MR. SACKETT: Your Honor, the issue has been
25 fairly well stated already. There's no question that the

1 only way Anna Phelps qualified for coverage under the
2 State Farm policy I've highlighted the pages of the policy
3 outlining the applicable coverage provision, but the only
4 way she is qualified as an insured under the State Farm
5 policy is if the vehicle she was driving at the time of
6 this accident was a non-owned automobile as that term is
7 defined in the policy.

8 In order for it to be a non-owned automobile,
9 she has to be a relative, she has to not be a relative of
10 the same household as her sister, Mary, who was the owner.
11 So that's what the issue is in this case. There are a
12 number of Virginia Supreme Court cases that are dealt with
13 at length and the briefs that have been filed and are
14 already in the Court's file, that deal with a definition
15 the Supreme Court has used of household, and we can speak
16 to that in closing and it's been spoken to in the briefs.
17 But, basically, our position will be that these two young
18 ladies, who had been living with their mother until they
19 graduated from high school and who had then both gone on
20 to college, who were living away from home while attending
21 college, who were working their way through college with
22 help from a trust fund, remained residents of their
23 mother's household at the time this accident occurred and
24 that because they were residents of their mother's
25 household at the time of this accident, and the mother

1 lived and still does live, I believe, in Goode, in Bedford
2 County, that because they were residents of that household
3 at the time of this accident, they qualify as relatives
4 and that phrase is defined under the policy which means
5 that the vehicle that Anna was driving at the time of the
6 accident was not a non-owned automobile.

7 It's a little bit of a convoluted process to get
8 to the bottom line and that's why I outlined it for the
9 court and highlighted it on the copy of the policy that I
10 gave the court. I think the issue in this case deals --
11 That issue will resolve not only the collision coverage
12 question, but the liability coverage question. Both are
13 at issue in this case. The liability coverage question
14 was raised in the amended motion for declaratory judgment
15 that was filed in this case and State Farm has denied
16 coverage for both collision and liability because this was
17 not a non-owned vehicle. And because the liability
18 coverage issue is part of this case and that is the reason
19 that we've got so many parties involved.

20 The only issue that affects those other parties
21 is the liability coverage issue. The collision coverage
22 question is only whether the vehicle that was damaged in
23 this accident was covered under the collision coverage.
24 That would affect only Anna Phelps, but the liability
25 coverage question affects GICO, U.S.A.A. and the two

1 potential plaintiffs.

2 THE COURT: But the ruling, my ruling as far as
3 State Farm is concerned will control both the collision
4 and liability as far as coverage of State Farm.

5 MR. SACKETT: Yes, it will and the issue is the
6 same for both --

7 THE COURT: The same, and also there's no
8 problem with any fault issue here. In other words, all
9 I'm deciding is coverage.

10 MR. SACKETT: That's the whole --

11 THE COURT: So nobody can be laterally estopped
12 as far as any fault by any ruling I make.

13 MR. SACKETT: That's a totally different issue.

14 THE COURT: Sure. I understand.

15 MR. SACKETT: The girls had been to a party and
16 there's evidence of drinking and there are all kinds of
17 liability issues not --

18 THE COURT: Right. I'm not concerned with that.

19 MR. SACKETT: Right. So as I've said, the
20 evidence, we believe, will support the contention that
21 these girls, after they went away to college, remained
22 residents of their mother's household, were residents of
23 their mother's household at the time this accident
24 occurred, and that therefore the use by Anna of Mary's car
25 did not qualify for coverage under the State Farm policy

1 because it didn't meet the definition of non-owned
2 vehicle.

3 THE COURT: Well, from what I've heard all of
4 you say, it seems to me that this case boils down to just
5 a single issue and that issue being whether or not the two
6 sisters were residents of their mother's household at the
7 time of the accident within the meaning of the State Farm
8 policy.

9 MR. SACKETT: Yes, sir.

10 THE COURT: And all the other things are really
11 not contested, the blood relationship and all that. Would
12 everybody agree that that basically is the issue?

13 MR. HARRISON: Yes, sir.

14 MR. ANDERSON: It's agreed, Your Honor.

15 MS. BAUN: Yes, sir.

16 THE COURT: Fine. All right. Then I'm prepared
17 to -- Do you want to make a rebuttal, Mr. Harrison, of any
18 kind?

19 MR. HARRISON: No, Your Honor.

20 THE COURT: All right. Let's hear some
21 evidence.

22 MR. HARRISON: Anna Phelps.
23
24
25

1 The witness, ANNA L. PHELPS, having first been
2 duly sworn, testifies as follows:

3
4 DIRECT EXAMINATION

5
6 BY MR. HARRISON:

7 Q Would you state your name for the Court?

8 A Anna Leigh Phelps.

9 Q And, Anna, how old are you now?

10 A Twenty.

11 Q And I believe you got your age wrong as you
12 stated to the court, didn't you?

13 A Yeah, I think I was eighteen at the time.

14 Q You were born December 28, 1970, is that
15 right?

16 A Yes.

17 Q Now --

18 THE COURT: So you would have been eighteen
19 in 1989?

20 THE WITNESS: 1989.

21 THE COURT: Okay, fine.

22
23 BY MR. HARRISON: (Continuing)

24 Q Now, Anna, you lived with your mother in
25 Goode, Virginia, for a period of time, is that correct?

1 A Yes.

2 Q When did you leave home?

3 A When I went away to school right after I
4 graduated from high school.

5 Q When was that?

6 A That would have been the summer of 1988.

7 Q When you left, what did you take with you?

8 A Everything

9 Q What did you leave at the house?

10 A Well, there was still furniture. I took
11 all of my clothes, pictures, everything I could stuff in
12 my car.

13 Q Okay. What did you leave at your mother's
14 house?

15 A Nothing important. Nothing that I can
16 think of. I have not gone and retrieved anything.

17 Q Now, did you have a room at your mother's
18 house when you left?

19 A Yes.

20 Q Tell me about that.

21 A About the room?

22 Q Yes.

23 A It's just a bedroom having a bed, dresser.
24 Normal stuff.

25 Q Which of those items did you leave?

1 A The bed and the dresser. The heavy
2 furniture stayed.

3 Q Did you make any claim to those items?

4 A No.

5 Q They were your mother's?

6 A Yes.

7 Q Now, did you thereafter purchase some items
8 of that sort?

9 A Yes.

10 Q Where did you move to?

11 A I went to school in High Point, North
12 Carolina.

13 Q How long were you there?

14 A For one semester.

15 Q Did you thereafter move?

16 A Yes.

17 Q Where did you move to?

18 A To Northern Virginia to Springfield.

19 Q That would be 813 --

20 A 8319 Brookville Court.

21 Q 8319. That's where you were living at the
22 time of the accident, would that be right?

23 A Yes.

24 Q Now who was present with you in that
25 apartment?

1 A Living there?

2 Q Yes.

3 A There was Mary Catherine, myself, a girl
4 named Michelle Panzarino and there were other people in
5 and out.

6 Q I want you to tell us when you moved in the
7 apartment. Tell me the history of the apartment. Who
8 lived there?

9 A Mary Catherine had originally moved in with
10 a guy.

11 Q And Mary Catherine is your sister?

12 A Yes. She had moved in with a guy whom I
13 never met. He signed the lease. Mary Catherine -- His
14 name was Tony, I believe.

15 Q Tony Bezacquea?

16 A Yes, something weird like that. The two of
17 them signed a lease for the townhouse and he defaulted on
18 his part of the rent because he took off. I don't know if
19 she ever heard from him again. So Mary Catherine needed a
20 roommate. Her boyfriend was staying there some of the
21 time, and I wanted to transfer schools so I moved up
22 there.

23 Q When you say that she moved in with a guy.
24 Were they boyfriend and girlfriend at the time?

25 A No.

1 Q So you took position in the apartment,
2 correct?

3 A Yes, we signed a new lease. Me and Mary
4 Catherine signed a new lease when I moved in in January.

5 Q Now describe the townhouse for us.

6 A It was three levels; small. It had a
7 master bedroom, a full bath, a small bedroom upstairs, a
8 dining and a living room down on the middle floor and the
9 basement level had a large rec room and laundry room and
10 half bath.

11 Q Which room did you get?

12 A I was in the master bedroom upstairs.

13 Q Okay.

14 A And Mary Catherine was using the basement
15 as a bedroom.

16 Q Now, who paid the bills then?

17 A It varied from month to month, just whoever
18 wrote the check wrote the check.

19 Q Did the others contribute or did one person
20 pay everything?

21 A Yes, it was divided equally between me and
22 Mary Catherine and whoever else was living there.

23 Q Now there were other people that moved into
24 the house after the two of you were there, is that
25 correct?

1 A Yes.

2 Q Tell me about the other people.

3 A There was a girl named Michelle Panzarino
4 and she moved in at the same time I did in January and she
5 stayed there. And Rob Johnson, who was Mary Catherine's
6 boyfriend, he was in and out.

7 Q When you say in and out, what do you mean?

8 A Well, he would stay there for periods of
9 time.

10 Q How long?

11 A It varied. A month or two months, however
12 long it took for him and her to get sick of each other.
13 Then we had another guy named Donnie. He slept on our
14 sofa for a month and gave us some money.

15 Q Were there any girls in the apartment at
16 times?

17 A Just me and Mary Catherine and Michelle.

18 Q Okay. Now, what were the eating
19 arrangements like?

20 A Eating arrangements?

21 Q Yes.

22 A Well, all of us worked in restaurants. You
23 know, we were all waiting tables so I know for my part I
24 mostly ate at work and I wasn't into any grocery shopping
25 or cooking at home and stuff. You know, it was McDonald's

1 or go to Giant and grab a salad and stuff like that.

2 Q How about the other two girls?

3 A Same thing

4 Q Did you ever fix dinner for each other?

5 A I can't remember ever doing that, no.

6 Usually the refrigerator was empty and the cupboards bare.

7 Q Now, did you ever go home or visit home?

8 A Yes.

9 Q How often would you do that?

10 A Not real often. Maybe once a month, I
11 would go for a weekend or holiday. I went home for
12 Christmas.

13 Q How long did you stay at Christmas?

14 A I think a total of probably about two
15 weeks. However long break was from school.

16 Q Now when you were at home, where did you
17 sleep?

18 A I don't remember.

19 Q Was it in your room?

20 A I think one of my little sisters moved into
21 the bedroom that had been mine at that point.

22 Q Was there a bedroom for you?

23 A I don't remember. I don't remember. I
24 must have stayed in a bed. I don't remember sleeping on
25 the floor, but my grandmother was also there in the

1 wintertime.

2 Q Was there on June 10, 1989, an allotted
3 place that you knew that there was a bed would be waiting
4 for you back home? Was there, basically, a bed with your
5 name on it back here?

6 A Well, I can't remember if one of my little
7 sisters had moved in, you know, into my room or not. I
8 mean, they, because one of my little sisters, when I moved
9 out, they started hanging their clothes and stuff in my
10 room. I don't know if they were sleeping in there or not.

11 Q Was there a room for Mary Catherine?

12 A Well, if we were both there at the same
13 time then one of us was on the sofa, because there were
14 not enough beds for everyone in the wintertime. Actually,
15 my grandmother took over the room that belonged to my
16 little sister so I think Margie moved into my old room at
17 that point. She has since changed rooms. I don't know.
18 I'm a little confused on it.

19 Q Now, you said that you worked as a
20 waitress?

21 A Yes.

22 Q Tell me about your income. What income did
23 you get?

24 A It was mainly tips.

25 Q Tips. And I want you to not tell me how

1 much basically, but list all the sources of income that
2 you had.

3 A Well, when I was in school we had a trust
4 fund that gave us a certain amount of money to use towards
5 our rent and --

6 Q Whose trust fund was this?

7 A It was set up by my grandfather and it was
8 a trust fund for me and all of my sisters. It paid for
9 part of our schooling and because it would pay for us to
10 live in a dorm, they would give us some money for rent.
11 Since we were not living on a college campus it gave us
12 money to help pay our rent.

13 Q What other sources of income did you have?

14 A Just working.

15 Q What money did your mother give you?

16 A I don't remember. We paid all the rent and
17 all the bills ourselves. Mom didn't pay any of that.

18 Q Had your mother tried to keep you at home
19 or did she want you back at the house?

20 A Well, she didn't want me moving up to
21 Northern Virginia. She wanted me to stay in High Point,
22 if anything.

23 Q Had she tried to encourage you to move back
24 in the house with her at Goode?

25 A Oh, no, never.

1 Q What did she tell you about that again?
2 A About what?
3 Q About coming back to the house in Goode?
4 A Once we were eighteen we were on our own.
5 Q Now, when you moved up to Northern
6 Virginia, what was your intent at that time as far as your
7 living arrangements?
8 A Well, to move into the townhouse with Mary
9 Catherine.
10 Q Did you ever intend to move back to your
11 Mom's?
12 A No.
13 Q Did you intend to live forever with Mary
14 Catherine?
15 A No.
16 Q You did not. Tell me where you were in
17 Springfield. How many hours is that from here?
18 A Three and a half.
19 Q Did your Mom send you food or clothes up or
20 anything like that?
21 A No.
22 Q Was she exercising control over you as far
23 as telling you what to do?
24 A No.
25 Q Did she try?

1 A Not really. You know, sometimes I would
2 call and ask her advice about things, but --

3 Q Did she exercise any control over Mary
4 Catherine?

5 A No.

6 Q Was that a sore subject in the family?

7 A What, Mary Catherine?

8 Q Yes.

9 A Well, not Mary Catherine so much as her
10 boyfriend.

11 Q Did your Mom ever have time to comment on
12 this?

13 A What, that?

14 Q Mary Catherine's boyfriend, yes.

15 A Oh, she, yes, she objected. She --

16 MR. SACKETT: Judge, I would object to
17 any testimony as -- Her mother is here as a
18 witness and can --

19 THE COURT: Yes, sustained.

20
21 BY MR. HARRISON: (Continuing)

22 Q What kind of social activities did you do
23 with Mary Catherine?

24 A I don't know. I don't remember.

25 Q What social activities do you remember

1 doing, if anything?

2 A Maybe going out to dinner.

3 Q How often?

4 A I don't know. Not on a regular basis.

5 MR. HARRISON: That's all the questions
6 I have.

7 THE COURT: Who would like to go next?
8 Would either of you two or just Mr. Sackett?

9 MR. ANDERSON: Your Honor, I have a few
10 questions.

11 THE COURT: All right.

12
13 DIRECT EXAMINATION

14
15 BY MR. ANDERSON:

16 Q Ms. Phelps, my name is Phillip Anderson and
17 I represent the uninsured motorist carrier. When you left
18 and went to High Point, at some point in time you bought a
19 car, a Honda?

20 A I already had that car.

21 Q You had that before?

22 A Yes.

23 Q Was that vehicle titled in your name?

24 A Not in 1988 when I moved out, no.

25 Q Was it later titled in your name?

1 A Yes.

2 Q When was that? Do you remember?

3 A Yes, when I moved up to Northern Virginia.

4 Q When you moved to Northern Virginia. Now,

5 Isn't it true that you had insurance coverage with State

6 Farm?

7 A When I moved up to Northern Virginia I got

8 that as well.

9 Q Who did you purchase that insurance from?

10 A The agent I talked to was named Tom

11 Sullivan.

12 Q Was he in Northern Virginia?

13 A Yes.

14 Q It was not a State Farm agent in Bedford,

15 but it was a State Farm agent in Northern Virginia?

16 A Yes.

17 Q And that's where you were living at the

18 time?

19 A Yes.

20 Q When you moved in with your sister in

21 Northern Virginia did you have your address on your

22 license plate, your driver's license, changed?

23 A Yes, at some point I did.

24 Q Was it changed at the time of the accident

25 in June of '89?

1 A Yeah, it should have been. I'm pretty sure
2 it was.

3 Q Did you have a checking account in Northern
4 Virginia?

5 A Yes, I did.

6 Q Was that just your account?

7 A Yes.

8 Q Nobody else's name was on that account?

9 A No.

10 Q I think you said when you moved into the
11 apartment with your sister the two of you signed a new
12 lease?

13 A Yes.

14 Q And you signed that lease yourself?

15 A Yes.

16 Q Did either one of you show that lease to
17 your mother before signing?

18 A I didn't.

19 Q Do you know whether or not your sister did?

20 A I don't think she did.

21 Q When you paid your bills, did you pay your
22 rent with your sister?

23 A Yes.

24 Q In Northern Virginia?

25 A Yes.

1 Q Did you pay utilities or phone?
2 A Yes, phone, power and water.
3 Q You paid that in Northern Virginia as well?
4 A Yes.
5 Q Mr. Harrison asked you if you purchased
6 some furniture after you left home?
7 A Uh-huh.
8 Q Did you take that with you when you went to
9 Northern Virginia?
10 A I didn't purchase it until after I went
11 there, because I was in a dorm room.
12 Q So when you went up there and after you
13 left the dorm room and you went to Northern Virginia to
14 live with your sister, you had to purchase some furniture?
15 A Uh-huh.
16 Q All the financial resources that you had
17 were resources that either you earned or came by way of
18 your trust fund and you received no support from your
19 mother?
20 A I didn't receive any support from her.
21 Q And I think your testimony was that when
22 you and your sister both were back in Goode that only one
23 of you would be able to have a bedroom and one of you
24 would have to sleep on the couch?
25 A Yes.

1 Q And that would not necessarily be the
2 bedroom that you had grown up in as a child?

3 A Correct.

4 Q When did your sister Mary move out or leave
5 home?

6 A In 1987 when she went away to college.

7 Q Had she been back for any period of time
8 longer than a few days from the time she moved out up
9 until the time, well, up and through the time of the
10 accident?

11 A For school vacations and things like that.

12 Q Break and brief visits?

13 A Yeah, maybe come down for a weekend.

14 Q And even after you moved to Northern
15 Virginia or before you moved to Northern Virginia, after
16 you left home and went to college at High Point, during
17 your school vacations were you working during those
18 periods of time?

19 A I was working part of the time I was down
20 there.

21 Q And what about in Northern Virginia during
22 holidays, would you be working part of the time there?

23 A I was working full-time once I moved to
24 Northern Virginia.

25 Q Was there ever an occasion after you left

1 home in the summer of '88 and you went to High Point to
2 college, was there ever a time when the two of you, Mary
3 Catherine and yourself, lived in your mother's house
4 together at the same time for any time longer than just a
5 day or so?

6 A No.

7 Q Do you know how Mary Catherine's -- Did she
8 have bank accounts and so forth in Northern Virginia?

9 A Yes, she had a checking account.

10 Q But received no financial support from your
11 mother?

12 A Not that I know of.

13 Q Before you purchased your State Farm
14 Insurance in Northern Virginia from Mr. Sullivan, the
15 agent I think in Fairfax, did you have insurance on your
16 Honda?

17 A I was on my mother's policy before that.

18 Q Before that you were on your mother's
19 policy?

20 A Uh-huh.

21 Q And then at some point in time you were
22 taken off of your mother's policy and you purchased your
23 own insurance?

24 A Right. When I moved up there, she told me
25 to have the title transferred into my name and get my own

1 Insurance.

2 Q And that's what you did?

3 A Yes.

4 THE COURT: Did you pay for it?

5 THE WITNESS: The insurance?

6 THE COURT: Yes.

7 THE WITNESS: At that point I started
8 paying for it myself.

9 MR. ANDERSON: I think that's all I have,
10 Your honor.

11 THE COURT: All right. Mr. Sackett.
12 Before he starts, what year were you all in
13 school when the accident happened? The
14 freshman or sophomore?

15 THE WITNESS: I was a freshman and Mary
16 was a sophomore.

17 THE COURT: All right. You were a
18 freshman at the time.

19 THE WITNESS: We were on our summer break
20 at the time. We'd just finished school.

21 THE COURT: Summer break?

22 THE WITNESS: Yes.

23 THE COURT: You had just finished your
24 freshman -- Well, had you just finished your
25 freshman year or what?

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THE WITNESS: Well, break-wise or --

THE COURT: No, I don't know. Maybe the year doesn't run from September to June.

THE WITNESS: I had just finished spring semester and school was out for the summer.

THE COURT: When would you have finished your freshman year, according to the schedule up there? When was your first year over?

THE WITNESS: In May. When school was out in May.

THE COURT: So you had finished the first year, is that right?

THE WITNESS: Yes.

THE COURT: I'm just trying to get it straight in my mind. And your sister had finished two years?

THE WITNESS: Uh-huh.

THE COURT: Okay.

MR. SACKETT: Judge, I didn't hear all of that so I may repeat a little bit of it and I apologize if I do.

CROSS EXAMINATION

BY MR. SACKETT:

Q Ms. Phelps, when you graduated from high school you were how old, seventeen?

A Yes.

Q You went to Jefferson Forest High School in Bedford County?

A Yes.

Q And you lived at home with your mother all of your life?

A Uh-huh.

Q Until you went away to college?

A Yes.

Q So when you left home in the fall of 1988, you went to High Point to college and stayed there through the first semester?

A Yes.

Q You lived in a dormitory while you were there and took your clothes with you when you went. In a furnished dormitory room, you didn't take anything but your clothes with you when you went?

A Right.

Q And you were going as a college freshman?

A Yes.

1 Q After one semester there you decided you
2 didn't want to stay there that you wanted to transfer to
3 George Mason, correct?

4 A Yes.

5 Q Which is where your older sister, Mary, was
6 already a student?

7 A Yes.

8 Q Was that the reason you decided you wanted
9 to go to George Mason because she was there?

10 A Well, I knew I didn't want High Point at
11 all and Mary Catherine had called me and approached me
12 with the idea of moving in the townhouse with her because
13 she needed a roommate and she wanted someone to live with
14 her that she knew.

15 Q She was having some rent problems with the
16 boy who was living there?

17 A Well, he took off.

18 Q So she called you. She needed somebody to
19 help with the rent and you wanted to leave High Point and
20 the combination of those two is why you elected to go to
21 George Mason, correct?

22 A Uh-huh.

23 Q So you at that time turned eighteen shortly
24 before you went to George Mason, correct?

25 A Right.

1 Q And you went up there and entered as a
2 what, a second-semester freshman?

3 A I --

4 Q Or could you transfer your grades from High
5 Point at all?

6 A I could transfer some of them, but not all
7 of them.

8 Q I guess your dilemma in answering Judge
9 Sweeney's question was --

10 A Right.

11 Q -- you really didn't complete the freshman
12 year at the end of the first year, did you?

13 A Right.

14 Q You still had some more to do grade wise?

15 A I needed more credits.

16 Q But in terms of the time you had spent
17 there, you had been one semester at High Point and one
18 semester at George Mason before this accident occurred?

19 A Yes.

20 Q And you were eighteen years old when the
21 accident occurred?

22 A Yes.

23 Q Between the time you entered school at
24 George Mason in January of '89, and at the time this
25 accident happened on June 10, 1989, you and Mary lived in

1 the same townhouse together?

2 A Yes.

3 Q And were living there together until school
4 was over?

5 A Well, we were on a lease through October.

6 Q You had signed a lease through October?

7 A Yes.

8 Q Now when the accident occurred, you and
9 Mary had come back home to go to a wedding that weekend?

10 A Yes.

11 Q You were actually at that time, both of
12 you, staying at home with your mother, for that weekend,
13 correct?

14 A Yes.

15 THE COURT: Were you on your way or going
16 back when it occurred?

17 THE WITNESS: Well, we had come down -- It
18 happened -- The accident was on a Friday.

19 THE COURT: So while you were here it
20 happened?

21 THE WITNESS: Right.

22 THE COURT: You were neither on your way
23 from school nor were you on your way back, but
24 it happened here?

25 THE WITNESS: Right.

1 THE COURT: I have it.

2
3 BY MR. SACKETT: (Continuing)

4 Q In fact, you had borrowed Mary's car to go
5 to a party the night this accident occurred, right?

6 A Yes.

7 Q The reason you borrowed her car is because
8 yours wasn't big enough to take both Jennifer Trevey and
9 Anna Fetherson to the party?

10 A Yes.

11 Q You needed a car that would seat three
12 people and yours only sat two?

13 A Right.

14 Q And that's the reason you borrowed Mary's
15 car. The accident occurred on the way when you were
16 leaving the party that night, is that correct?

17 A Yes.

18 Q Now after the accident occurred, you did
19 not go back to Springfield and you stayed at your mother's
20 home for another six weeks or so, didn't you?

21 A For about a month. Well, I couldn't work
22 because I had broken ribs and my knees were messed up and
23 I couldn't wait tables so I stayed at my mother's for a
24 month until I was recovered and then went back up.

25 Q And the only reason you were up there for

1 the summer was because you had a job, correct?

2 A Right. I was working.

3 Q You were working to help send yourself to
4 college?

5 A Right.

6 Q That was the purpose of working?

7 A Yes.

8 Q The reason for being up there was because
9 that was where you were going to school and that's where
10 the job was?

11 A Right.

12 Q You were a full-time student at the time
13 this accident occurred at George Mason, but you were
14 between semesters?

15 A Yes.

16 Q You were on summer break from school when
17 the accident occurred?

18 A Yes.

19 Q And the same was true with Mary Catherine.
20 She was also a full-time student at George Mason on summer
21 break when the accident occurred?

22 A Yes.

23 Q Both of you had jobs to help send
24 yourselves through college in the Springfield area?

25 A Yes. We weren't paying for the college.

1 Like I said, our trust fund was paying that. We were
2 working to pay the rent and the bills.

3 Q I mean you had to have a place to live in
4 Springfield to go to George Mason?

5 A Well, we could have lived in the dorm on
6 campus and we wouldn't have had to pay for it, but we
7 chose not to.

8 Q Well, you elected this form of living
9 arrangements while you were attending college and that's
10 the reason you had all these other people in and out?
11 They were students, too, weren't they?

12 A No.

13 Q None of them?

14 A No, just us.

15 Q Well, that's the reason you and Mary were
16 there was because you were full-time students at George
17 Mason?

18 A Yes.

19 Q Now the address to which the college,
20 George Mason, sent your individual communications, for
21 instance your grades, went to your mother's address,
22 wasn't it? I mean as the time of this accident?

23 A Yes, sir, I believe so.

24 Q And when you got a break from school such
25 as vacations and on some weekends, you came back home to

1 your mother's, correct?

2 A I came home for Christmas and that's about
3 it. I came home for the wedding. It would depend on when
4 I was working, when I could get off work.

5 Q But as you told us earlier, you came home
6 sometimes as often as once a month?

7 A Sometimes.

8 Q When you could get away you came home?

9 A Sometimes.

10 Q Now as far as the trust fund was concerned,
11 your mother handled all of the communications with the
12 trust? You didn't do anything?

13 A No.

14 Q You didn't?

15 A No, I didn't.

16 Q And your mother took care of having your
17 tax returns filed for your earnings at the job?

18 A That year, yes.

19 Q So as of the time that this accident
20 happened, your mother was handling the tax returns as a
21 part of your financial affairs and you indicated your
22 communication was with the trustee that was paying the
23 college?

24 A Well, the reason that she did our taxes
25 that year was because of the income from the trust fund.

1 I'm not real clear on it, but --

2 Q But the point is, she did it though?

3 A Yes.

4 Q She did it. She handled the communications
5 with the trustee who paid the tuition and part of the
6 rent?

7 A Yes.

8 Q The trust paid rent only while you were in
9 school?

10 A Yes.

11 Q Are you still in school?

12 A No.

13 Q When did you drop out of school?

14 A It's been less than a year. I don't
15 remember exactly when.

16 Q Where do you live now?

17 A In Alexandria, Virginia.

18 Q Were you working?

19 A Yes.

20 Q So you remained a full-time student for
21 what, another six to eight months after this accident
22 happened?

23 A Another year, I think.

24 Q And then you dropped out?

25 A Yes.

1 Q And have not gone back to school?
2 A No.
3 Q And when you dropped out of school, you
4 lost the trust fund benefits, is that correct?
5 A Yes.
6 Q When you left home to go to college at High
7 Point, your intentions at that point were simply to go to
8 High Point to go to college, right? That's the reason for
9 that move?
10 A Yes.
11 Q And when you transferred from High Point to
12 George Mason, the reason you moved to Springfield was to
13 be a student at George Mason, correct?
14 A Yes.
15 Q That was the only reason you were up there,
16 wasn't it?
17 A Yes.
18 Q Now didn't your grandmother help you with
19 some of the expenses of books and buying furniture after
20 you got to George Mason?
21 A No, she never bought anything for me.
22 Q Mary had bought some?
23 A She bought stuff for Mary Catherine.
24 Actually, she did buy a table. I forgot about that.
25 Q From your grandmother?

1 A She bought a table and chairs for us.
2 Q For the apartment down there or for
3 Springfield?
4 A Yes.
5 Q Did your grandmother buy your car for you?
6 A No.
7 Q Was that Mary's car she bought?
8 A Right.
9 Q Who bought your car?
10 A That was paid for with money that was in
11 the trust for us.
12 Q You didn't pay for it yourself?
13 A No. It wasn't money I earned, no.
14 MR. SACKETT: That's all the questions I
15 have.
16 THE COURT: Mr. Harrison, do you have any
17 further questions?
18 MR. HARRISON: A couple, Your Honor.
19
20 REDIRECT EXAMINATION
21
22 BY MR. HARRISON:
23 Q Why did you move back with your mother
24 after the accident?
25 A Why

1 Q Why did you not go back to Springfield?

2 A Well, I was -- Yeah, because I had a job
3 and I didn't want to be in Lynchburg. Actually, I didn't
4 have a job at that point.

5 THE COURT: I don't understand that
6 answer. Let's start over. I don't get that
7 answer.

8
9 BY MR. HARRISON: (Continuing)

10 Q I didn't either. Okay. You received some
11 injuries?

12 A Right.

13 Q Tell us what injuries?

14 A I had cracked my ribs and I had some severe
15 lacerations on my knee.

16 Q And what was it, why was it you stayed with
17 your mother instead of convalescing in Springfield?

18 A Because I couldn't work. I couldn't work
19 to make money and pay my bills for like a month. I had a
20 leg brace so I couldn't walk very well so I would not have
21 been able to work.

22 Q What kind of care did you receive at your
23 mother's?

24 A I went to the doctor. You know, I had
25 stitches and everything and I was seen by a doctor.

1 Q Which doctor?

2 A It was the emergency room doctor at
3 Lynchburg General Hospital. I don't know his name, but I
4 just rested.

5 MR. HARRISON: That's all I have.

6 MR. ANDERSON: Just one or two brief ones,
7 Your Honor.

8
9 REDIRECT EXAMINATION

10
11 BY MR. ANDERSON:

12 Q The grade situation in school. You said
13 your grades went to your mother's. Do you have any
14 control over that or --

15 A I don't really know. I don't remember
16 filling anything out or putting a mailing address on it or
17 anything.

18 Q To follow up on Mr. Harrison's question,
19 after the accident you said you had injuries and you
20 stayed at your Mom's for a while, for a month or so, then
21 went back to Springfield?

22 A Yes.

23 Q That would have been when then?

24 A July.

25 Q July of '89? You weren't in school July of

1 '89, were you?

2 A No.

3 Q So that summer of '89 you were not in
4 school?

5 A No.

6 Q But yet and still you still went back to
7 Springfield to live with your sister following this
8 accident, isn't that correct?

9 A Yes.

10 Q And you got back on your feet and your ribs
11 healed and your knee got okay?

12 A Yes.

13 Q Did you continue to go back to school in
14 the fall of '89?

15 A Right, yeah.

16 Q But you chose to go back to Springfield to
17 live during the summer of '89 rather than staying with
18 your mother?

19 A Yes.

20 Q You chose to live up there where your
21 sister and you had signed a lease and that's where you
22 were living?

23 MR. ANDERSON: Thank you.

24 THE COURT: Anybody else want to ask any
25 questions of this witness?

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RECROSS EXAMINATION

BY MR. SACKETT:

Q While you were at home after the accident,
your mother supported you, fed you and housed you?

A Yes, I wasn't working.

Q You weren't working so you didn't have any
income at that point, right?

A No.

Q Once you went back to Springfield you went
back to work?

A Yes.

MR. SACKETT: That's all my questions.

THE COURT: Anybody else want to ask any
questions of this witness? All right. Thank
you. You may step down. We're going to take a
recess.

The witness stands aside.

THE COURT: This hearing has been very
helpful because you all have narrowed the issues
for me and it will save me some time. Who is
your next witness?

MR. HARRISON: Mary Phelps.

1 THE COURT: All right.

2 The witness, MARY CATHERINE PHELPS, having first
3 been duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5
6 BY MR. HARRISON:

7 Q State your name for the court.

8 A Mary Catherine Phelps.

9 Q How old are you?

10 A I'm now twenty-two years old.

11 Q How old were you at the time of the
12 accident?

13 A I was twenty years old.

14 Q And you listened to Anna's testimony,
15 correct?

16 A Yes.

17 Q Were there any disagreements you had with
18 that?

19 A No.

20 Q Now I'd like to direct your attention to
21 the time you left home. When was that?

22 A The fall of '87 to go to George Mason.

23 Q And when you left, what did you leave at
24 home?

25 A I left a box of Junk.

Q Have you been back to pick it up?

1 A No.

2 Q When you say a box of junk, what's there?

3 A Things that I didn't want to throw away and

4 I didn't want to drag with me.

5 Q Did you keep clothes there?

6 A No.

7 Q Is there a bedroom that's yours there?

8 A No.

9 Q Is there a bed that's yours there?

10 A Our bedrooms are pretty interchangeable.

11 If there is a space, I can sleep in any bed, it doesn't

12 matter. If there's no space, I sleep on the sofa quite

13 frequently.

14 Q What would cause there not to be space?

15 A Well, like Anna was saying, in the winter

16 months my grandmother comes down to live with us and in

17 the past -- We have two younger sisters and there are four

18 bedrooms in the house so when Anna and I would go home and

19 visit at the same time we would both be out of a bed

20 because there are four bedrooms and four people including

21 my grandmother living there.

22 Q I'd like to draw your attention to the time

23 of the accident for the court's information. What Mr.

24 Anderson said about Anna taking the vehicle was because

25 hers was a two-seater and yours was a four-seater, is that

1 correct?

2 A Yes.

3 Q How many other times had she had the
4 vehicle?

5 A That was the first time she'd ever borrowed
6 the car.

7 Q Now, what insurance company did you have?

8 A At that time, Nationwide.

9 Q Did your mother tell you which insurance
10 company to get?

11 A No.

12 Q Could you be on her policy?

13 A No.

14 Q Why?

15 A Because basically Mom told us when we
16 turned eighteen we were on our own and we had to take care
17 of our own things. And at that time I had acquired many
18 speeding tickets and so I was definitely on my own as far
19 as paying for insurance.

20 Q Now when did you move to Springfield? When
21 was that?

22 A You mean off of campus from George Mason?

23 Q Right.

24 A Let's see.

25 Q How long before --

1 A I lived at George Mason one semester and
2 then for the next semester I was living in Alexandria with
3 a friend so I think it was the fall of '88 when I moved
4 into the Springfield townhouse.

5 Q Now, you had a boyfriend during this
6 period, right?

7 A Yes.

8 Q What was his name?

9 A Robert Johnson.

10 Q And you were living together during some of
11 this period?

12 A Yes.

13 Q Tell me about that. What periods did you
14 live together?

15 A When he was feeling financially
16 responsible, which was very infrequent

17 Q Give me dates as much as you can. What
18 period of time?

19 A Well, when I moved into the townhouse and
20 signed the lease with Tony, Rob was with me then at that
21 point. Then Tony left on the lease and then it was just
22 Rob and me. And then Anna moved in.

23 THE COURT: Who was Rob now?

24 THE WITNESS: Rob, my boyfriend.

25 THE COURT: And Tony was?

1 THE WITNESS: Tony was just a friend. He
2 actually worked with Rob and he had enough
3 credit for when we did the credit check that
4 he could sign the lease. Rob couldn't.

5 THE COURT: I see.

6
7 BY MR. HARRISON: (Continuing)

8 Q Now, did your mother approve of Rob?

9 A No.

10 Q Did she ever try to, did she ever try to
11 exercise her influence over you or tell you what to do?

12 A No.

13 Q And I believe this was covered a little bit
14 so I would like to go through it fairly quickly. What
15 income did you have?

16 A I had the income from the trust fund paying
17 for all my school and a minimal part of my rent and then I
18 had various waitressing jobs, but I was working full-time
19 all the time.

20 Q Other than you, who paid bills for you?

21 A Nobody ever paid my bills.

22 Q Including Rob, I take it?

23 A Oh, including Rob.

24 Q Now, how often did you go home?

25 A Oh, it varied. I'd probably say about once

1 every two months.

2 Q Did you always go at the same time as Anna?

3 A No.

4 Q Why not?

5 A For one thing we had conflicting schedules
6 and I didn't go home as much because my Mom didn't care
7 for my boyfriend and our relationship was not that good at
8 the time, my Mom's and mine.

9 Q How did it come about -- There's been
10 testimony that your grandmother bought the car?

11 A What happened was my grandmother paid for
12 the car, but I was making payments to her to pay her back.
13 The reason for that was because if I had to go out and
14 finance the car myself I would have had to pay full
15 coverage insurance and after six or seven speeding tickets
16 it would have been outrageous. So I had to have a car
17 completely paid for so I could only put liability
18 insurance on it so I could afford it myself, the
19 insurance.

20 THE COURT: In other words, so the bank
21 wouldn't be involved in the financing at all
22 because that could create problems?

23 THE WITNESS: Yes.

24 THE COURT: I see.
25

1 BY MR. HARRISON: (Continuing)

2 Q Did your mother pay any of your bills?

3 A No.

4 Q Did she do your tax returns?

5 A Yes.

6 Q Why was that?

7 A Because of the trust fund. Anna and I
8 really, we didn't have all of the paperwork and forms and
9 everything to do our own taxes. We didn't have the
10 information there and know what was going on with our
11 finances with the trust fund.

12 Q Where did your grades go to?

13 A It changed. I think they went to my Mom's
14 house for a couple semesters and on other occasions or
15 other semesters would come straight to me.

16 Q What did you do as far as work?

17 A I was waitressing.

18 Q Are you still doing that?

19 A Yes.

20 Q Are you still a student?

21 A Yes.

22 Q Are you still at George Mason?

23 A No. I'm at Northern Virginia Community
24 College now.

25 MR. HARRISON: That's all the questions I

1 have.

2 THE COURT: One question: Did you all vote
3 while you were up there by chance?

4 THE WITNESS: No, I didn't.

5 THE COURT: Do you know whether your
6 sister did?

7 THE WITNESS: I'm not sure if she did or
8 not.

9 THE COURT: All right. Who wants to go
10 next?

11 MR. ANDERSON: I just have a couple
12 questions, Your Honor.

13 THE COURT: All right.

14
15 DIRECT EXAMINATION

16
17 BY MR. ANDERSON:

18 Q Ms. Phelps, after you left the townhome,
19 where are you living now?

20 A Now I'm living in another townhouse in
21 Springfield.

22 Q From the time you left in the fall of '87
23 and went to school up and through June of 1989, did you
24 ever come back and live at your mother's house in Goode,
25 Virginia, for anything other than just a weekend visit or

1 for a few days?

2 A Yes, I did move there briefly during a
3 transition period when I was trying to decide where I
4 wanted to go. I was considering moving to California with
5 some friends and so I wasn't exactly sure at that point
6 what I wanted to do with myself and so I stayed at my
7 Mom's for about two months.

8 Q When was this?

9 A That was January of '90.

10 Q '90?

11 A Yes.

12 Q I'm sorry. You misunderstood my question.
13 I said up and through June of '89.

14 A Oh, right, no.

15 Q The fall of '87 up through June of '89 and
16 the accident involving your sister, did you ever live, did
17 you ever go back home for anything other than just a brief
18 weekend visit?

19 A No, I'm sorry. I didn't --

20 Q You were living then in Northern Virginia
21 and had your own townhouse or apartment and were paying
22 your own rent and utilities at the time of the accident?

23 A Yes.
24
25

CROSS EXAMINATION

BY MR. SACKETT:

Q Mary Catherine, when you left home in 1987, you went to George Mason?

A Yes.

Q You lived in the dormitory for the first semester?

A Yes.

Q And you took with you only your own clothes because the dormitory was a furnished room?

A Right.

Q You didn't stay in the dormitory but one semester?

A Yes.

Q Were you working at that time?

A Yes, I was.

Q You worked to help pay for college, didn't you?

A Well, mostly for my living expenses and enjoyment expenses and that sort of thing.

Q Your college tuition was paid for by the trust?

A Yes.

Q And when you lived on campus a portion of

1 the rent -- As long as you remained a student a portion of
2 the rent was paid by the trust?

3 A Yes.

4 Q Your mother handled all communications with
5 the trustee, didn't she?

6 A Yes.

7 Q And your mother filed your tax returns?

8 A Yes.

9 Q And during summer vacations from school
10 you'd go home?

11 A Yes.

12 Q And sometimes on weekends you would go
13 home?

14 A Yes.

15 Q You were a full-time student at George
16 Mason from 1987 until after this accident happened in June
17 of 1989?

18 A Right.

19 Q In fact your reason for living in Northern
20 Virginia was because you were a student at George Mason?

21 A Besides I preferred Northern Virginia to
22 this area.

23 Q But you didn't even know Northern Virginia
24 until you moved up there to go to school, did you?

25 A No.

1 Q That's something you found out after you
2 got up there to go to school?

3 A Yes.

4 Q And then after this accident you dropped
5 out of school in January of 1990?

6 A Right, I took a break from school.

7 Q How long were you out of school?

8 A I took a year off from college.

9 Q And when you dropped out of school, you
10 moved back home, didn't you?

11 A Yes.

12 Q And stayed in your mother's home?

13 A Yes.

14 Q And you got a job working at J. Crew here
15 in Lynchburg, didn't you?

16 A Yes.

17 THE COURT: I'm sorry. I cannot understand
18 that. Is that immediately after the accident?
19 That period of a year that she didn't go back to
20 school, is that the period she stayed here?

21
22 BY MR. SACKETT:

23 Q I think it started in January of 1990?

24 A Yes.

25 Q You went back to school for six months, for

1 the first semester after the accident?

2 A Yes.

3 Q Most of it anyway?

4 A Yes.

5 THE COURT: Then just go ahead forward
6 and tell me then what happened. When did you
7 come back here?

8 THE WITNESS: I moved back here five
9 months or about six months after the accident.

10 THE COURT: Well, what month do you think
11 that was?

12 THE WITNESS: January.

13 THE COURT: Okay. In January of '90 you
14 got a job with J. Crew?

15 THE WITNESS: Yes.

16 THE COURT: Can you tell me how long you
17 stayed here?

18 THE WITNESS: I stayed around eight months.

19 THE COURT: You stayed here eight months,
20 and during the time you were staying here were
21 you staying at your mother's home?

22 THE WITNESS: No, I got my own apartment
23 in Lynchburg.

24 THE COURT: Okay. I'll let you continue
25 with that. I need to know more about that.

1 BY MR. SACKETT: (Continuing)

2 Q You stayed at your mother's home for most
3 of that time, didn't you?

4 A For most of the eight months?

5 Q Yes.

6 A No, I did not.

7 Q You dropped out in January of 1990?

8 A Right.

9 Q And moved back to your mother's home in
10 Goode, right?

11 A Right.

12 Q When I took your deposition on May 17,
13 1990, you were still living with your mother in Goode at
14 that time, right?

15 A I'm sorry. You're right. That's right.

16 Q So most of the eight months you did, in
17 fact, live with your mother, live in the family home in
18 Goode?

19 A I believe I made a mistake. I was -- I
20 lost a sense of time there. I was in Lynchburg back here
21 until just last month. I moved back to Northern Virginia,
22 but the whole time that I was here -- I lived with my Mom
23 from January of 1990 until probably June 5th to be exact,
24 almost, of 1990, but then I went to California for a
25 couple of months and then I came back and got my own place

1 in Lynchburg.

2 Q When you came back from California,
3 initially you came back to your mother's?

4 A I didn't stay at my mother's. I stayed
5 with friends in Lynchburg?

6 Q Then you got an apartment in Lynchburg?

7 A Yes.

8 THE COURT: Now when did you get an
9 apartment in Lynchburg, if you can remember?

10 THE WITNESS: It was I believe in
11 September.

12 THE COURT: Of 1990?

13
14 BY MR. SACKETT: (Continuing)

15 Q Of 1990?

16 A Right. So between the time I moved out of
17 my mother's and moved into my apartment in Lynchburg I was
18 traveling. I was in California and traveling around.

19 Q And you got an apartment in Lynchburg in
20 September?

21 A Right.

22 Q And you stayed there until when?

23 A I stayed all through -- I stayed until just
24 a month and a half ago, until I moved back to Northern
25 Virginia.

1 Q And now you've gone back to school in
2 Northern Virginia?

3 A Yes.

4 Q Which makes you eligible to have the trust
5 benefits again?

6 A Right.

7 Q Now when you moved into the townhouse in
8 Springfield, your mother gave you some money to help you
9 out initially, didn't she?

10 A She loaned us money for a deposit.

11 Q At least up to that time your grades and
12 official communications from the college were mailed to
13 your mother?

14 A Some of the time.

15 THE COURT: Do you really know whether
16 your grades were being mailed home to here
17 or to you just before the accident?

18 THE WITNESS: No, I can't remember.

19
20 BY MR. SACKETT: (Continuing)

21 Q Your tuition bill didn't come to you, did
22 it?

23 A No, not to me.

24 Q It went either to your mother or the trust
25 fund?

1 A It went to the trust.
2 Q And the same is true as to Anna's?
3 A Yes.
4 Q You did leave some clothes at your mother's
5 house, didn't you?
6 A The clothes I didn't want to throw away
7 that any of my sisters, my younger sisters, would, may
8 use.
9 Q What you took with you when you left home
10 to go to college was basically your clothing?
11 A My clothing and my personal belongings.
12 Q The things that you used, that you needed,
13 when you were a student at school?
14 A Yes.
15 Q And you remained covered under your
16 mother's health insurance while you were a student?
17 A Yes.
18 Q You were covered while you were a student
19 under your mother's health insurance as of the time this
20 accident occurred?
21 A Yes.
22 Q And so was Anna?
23 A Yes.
24 Q And the reason that you and Anna were
25 living in the townhouse in Springfield at the time of this

1 accident was because you were both students at George
2 Mason?

3 A Yes.

4 MR. SACKETT: That's all the questions I
5 have.

6 THE COURT: Any further questions?

7 MR. ANDERSON: Judge, I have some
8 follow-up questions.

9 THE COURT: All right.

10
11 REDIRECT EXAMINATION

12
13 BY MR. ANDERSON:

14 Q Ms. Phelps, when you moved back -- Your
15 testimony was that when you moved back in January of 1990
16 to your mother's home for a few months, where was your
17 sister, Anna, living?

18 A Anna was still in Northern Virginia.

19 Q So the two of you weren't living together
20 at that time?

21 A No.

22 MR. ANDERSON: That's all.

23 THE COURT: Thank you. Anything else?

24 MR. HARRISON: Yes, sir.
25

REDIRECT EXAMINATION

BY MR. HARRISON:

Q When you came back to your mother's house, did you work at that time?

A No, I had quit my job in Northern Virginia.

Q Was Anna living there at the time?

A In Northern Virginia?

Q No, at your mother's house?

A No, Anna was not.

MR. HARRISON: That's all the questions I have.

THE COURT: Thank you. Is that all? Thank you very much. You may step down.

The witness stands aside.

THE COURT: Now, anybody else?

MR. HARRISON: Marjorie Phelps.

THE COURT: Is this the mother?

MR. HARRISON: Yes.

THE COURT: All right.

1 The witness, MARJORIE HUNT PHELPS, having
2 first been duly sworn, upon examination, testified as
3 follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. HARRISON:

8 Q Could you state your name for us?

9 A Marjorie Hunt Phelps.

10 Q And Mrs. Phelps, you're the mother of these
11 two girls. Is that correct?

12 A That's true.

13 Q Tell us about how they came to leave home.

14 A Mary Catherine left home first to go to
15 college at George Mason University and Anna left a year
16 after that to go to school at High Point College in North
17 Carolina.

18 Q What indication, if any, did they give you
19 that they might be coming back?

20 A Coming back home to stay?

21 Q Yes.

22 A They didn't.

23 THE COURT: Before we get into that,
24 could you set up the family situation for me?
25 I mean who was living at the home before they

1 left. I just want to get the picture.

2
3 BY MR. HARRISON (continuing):

4 Q Tell us about the family situation before
5 they left.

6 A All right. I have four daughters. Mary
7 Catherine is the eldest, Anna is the second and I have
8 another daughter, Rosa, and another daughter, Marjorie.

9 We live in Goode and what else would you like to
10 know? I'm a widow.

11 THE COURT: That's what I wanted to know.
12 I hadn't heard anything about the father and
13 so that's the reason I wanted to find
14 out the family situation.

15 You're a widow and were living there with
16 four girls.

17 THE WITNESS: Right.

18 THE COURT: All right. I've got it.

19 THE WITNESS: I've been widowed since 1979.

20 THE COURT: All right. And as the girls
21 graduated they've one by one gone off to
22 college.

23
24 BY MR. HARRISON (continuing):

25 Q Now at the time that Anna moved out, did

1 she leave anything of importance in the house?

2 A No.

3 Q Did she leave anything at the house?

4 A Not that I recall. She took her personal
5 possessions.

6 Q What expenses have you paid for her?

7 A Nothing that I can recall. I buy her
8 Christmas gifts and that type of thing but she's been self
9 supporting except what she has received from the trust
10 fund while in North Carolina.

11 Q Now what automobile insurance policy did
12 you have at the time?

13 A At the time of the accident? I believe I
14 was insured by GICO at the time.

15 Q Now did you invite Anna to stay on that
16 policy with you?

17 A No, sir.

18 Q Did you invite Mary Catherine to stay on
19 it?

20 A No.

21 Q What did you tell them about automobile
22 insurance?

23 A I told them to both get automobile
24 insurance as soon as they left home.

25 Q What control did you exert over the two

1 girls after they left home?

2 A None.

3 Q Did you approve of the living arrangements
4 in northern Virginia, first of Anna?

5 A I knew she was moving in with Mary
6 Catherine. I didn't approve. I wanted her to stay in
7 High Point, North Carolina.

8 Q Why was that?

9 A Why did I want her to stay in High Point,
10 North Carolina?

11 Q Yes.

12 A I wanted her to continue on where she
13 started in college. I didn't like the idea of her
14 switching colleges so early in her college career.

15 Q Did you let that be known to her?

16 A Yes.

17 Q It obviously didn't have any effect, I take
18 it?

19 A That's correct.

20 Q Did you approve of Mary Catherine's living
21 arrangements?

22 A Not really.

23 Q Why not?

24 A Well, I would have preferred her to have
25 stayed in the dormitory at the college. I thought that

1 would be more conducive to a studious atmosphere. And
2 also, I didn't approve of the young man she had staying
3 with her at the time.

4 Q Did you let it be known to her?

5 A Yes, sir.

6 Q And it did not have any effect I take it?

7 A To no avail.

8 Q Tell us how this trust fund was set up.

9 A The trust fund was set up by my
10 father-in-law. When he died, the trust fund was set up.
11 It was set up for the educational needs of the children as
12 long as they were still in school and the monies were
13 dispursed at the discretion of the bank, the trust
14 department at the bank. They would have to approve of any
15 money that came out of the trust fund.

16 Q Do you exercise any control over that
17 trust fund?

18 A Not really. In the past I've presented
19 what bills were there for their education of all four of
20 the children. It would go before a board and they would
21 approve or disapprove payment of the money.

22 Q Have you put any money in the trust fund?

23 A No.

24 Q Do you receive any money from the trust
25 fund?

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A No.

Q At the time of the accident, was either Mary Catherine or Anna living with you?

A No.

Q What was the longest period that they both had visited there together?

A Together?

Q Yes.

A I would say probably the time of the accident. As it turned out, they both were there for probably two weeks together. No, Mary Catherine had to go back to work. I'm sorry. They were there for three or four days together at that time. I think the Christmas before they were probably there for maybe a week together but Mary Catherine always had to go back and work. So I'd say never more than a week at most, if that long.

Q What percentage of time did the girls spend in your home?

A After they left for college?

Q After they left for college. Before the accident.

A I would say Anna probably spent ten days there during that year after she left, maybe, counting all the vacation.

Q How about Mary Catherine?

1 A Mary Catherine, I'd say it was less time
2 because she was working. She would come home for one or
3 two days, let's say for Christmas and/or Thanksgiving.

4 Q That's all the questions I have.

5 MR. ANDERSON: No questions.

6
7 CROSS EXAMINATION

8
9 BY MR. SACKETT:

10 Q Mrs. Phelps, when Mary Catherine left home
11 in 1987, she left home to attend college.

12 A That's correct.

13 Q And she got a job to help pay for her
14 college expenses. The trust did not pay for all the
15 college expenses. It paid the tuition and a portion of
16 the rent.

17 A That's correct.

18 Q It did not pay anything for meals or any of
19 the other incidental expenses she would have to live on
20 wherever she was living.

21 A After she left the dorm, that's true.

22 Q And she needed to work in order to be able
23 to go to college, didn't she?

24 A That's right.

25 Q So she went to George Mason and she got a

1 Job in northern Virginia to help put herself through
2 college.

3 A Correct.

4 Q And when Anna left home she left home to go
5 to college--

6 A That's correct.

7 Q --Initially at High Point and then
8 transferred to George Mason?

9 A That's correct.

10 Q And she got a job to help put herself
11 through college like Mary Catherine did.

12 A That's correct.

13 Q And when they both left home they took with
14 them the things they needed to have in college which would
15 basically have been their clothes. Is that correct?

16 A Initially, until they both moved into an
17 apartment.

18 Q Did you provide them with furniture when
19 they moved into the apartment?

20 A No. My mother bought Mary Catherine a
21 table.

22 Q And they were living in the apartment or
23 townhouse together in Springfield at the time for what,
24 six months before this accident happened?

25 A That's correct.

1 Q From the time of Anna's transfer and the
2 accident?

3 A That's correct.

4 Q And they were living there because they
5 were both students at George Mason?

6 A That's correct.

7 Q And a portion of their rent for that
8 townhouse was paid by the trust only because they were
9 students.

10 A That's correct.

11 Q If they had not been going to school the
12 trust would not have paid them anything.

13 A That is correct.

14 Q Now you took care of filling their income
15 tax returns?

16 A I had them send their W2 forms down and I
17 had Charlotte Mason take care of it because she had always
18 done the taxes and knew our situation.

19 Q And you claimed them both as dependents on
20 your own income tax return in 1988 and 1989, didn't you?

21 A Yes.

22 Q Let me ask you if these are copies of your
23 1988 and 1989 tax returns?

24 A It appears so, yes.

25 Q Your Honor, I would offer these as

1 Defendant's Exhibits 1 and 2.

2 THE COURT: All right. The 1988 income
3 tax return will be number 1 and the '89 will
4 be number 2.

5
6 (Tax returns were offered into evidence and marked
7 for identification as Defendant's Exhibits 1 & 2.)

8
9 BY MR. SACKETT: (Continuing)

10 Q Now you also had, as you told us, Mary
11 Catherine's '89 tax return prepared by the same person who
12 prepared your returns. Isn't that right?

13 A That's right. Yes.

14 Q And this is a copy of that return, isn't
15 it?

16 A Yes.

17 Q Now we didn't obtain from you all a copy of
18 Anna's return for 1989. It just didn't come with the
19 request for production of documents, but you did the same
20 thing for Anna. There's a 1989 return for Anna that you
21 had prepared for her as well, isn't there?

22 A That's right.

23 MR. SACKETT: The Mary Catherine Phelps
24 '89 return will be exhibit number 3.

25 THE COURT: All right.

1 (Mary's '89 tax return was introduced into evidence
2 and marked for identification as Defendant's Exhibit 3.)

3
4 BY MR. SACKETT (continuing):

5 Q Those returns show Mary's address in '89 as
6 being the Goode address, correct?

7 A I guess. I don't recall.

8 Q I'll show you. I'm not asking you to
9 remember. I'll show it to you. Number 3, which is Mary
10 Catherine's return, it shows her address as the Goode
11 address, doesn't it?

12 A These are mine. If you say so, I assume
13 so. I'm trying to keep my years straight.

14 Q I don't want to confuse you. Exhibit
15 number 3 is Mary Catherine's '89 return, correct?

16 A Yes.

17 Q And shows her address as Goode, correct?

18 A That's right.

19 Q And your 1988 and '89 returns list Mary and
20 Anna as dependents, correct? They list them as number of
21 months lived in your home in 1989 as 12. That's what the
22 return says, doesn't it?

23 A I didn't look at it that closely.

24 Q Well, that's what it says, doesn't it?

25 A I claimed them as dependents. That's all I

1 know.

2 Q In fact, they were your dependents in '89,
3 weren't they?

4 A I guess as far as taxes go they were. I
5 don't know what that includes.

6 Q And you handled all of the communication
7 with the trust as far as Mary and Anna's benefits from the
8 trust, didn't you?

9 A I did at that time. Mary Catherine now
10 handles her own.

11 Q But as of that time, the time of this
12 accident --

13 A Yes.

14 Q -- you had always handled it all and they
15 had no communication with the trust whatsoever, did they?

16 A Not that I recall.

17 Q And when they came home they didn't pay you
18 any rent or pay for the food they ate while at home, did
19 they?

20 A When Mary Catherine moved back home she
21 worked.

22 Q I'm talking about before the accident.

23 A No.

24 Q Now when she initially moved back with you,
25 Mary Catherine, after the accident, she did not pay you

1 rent, did she?

2 A She worked for me to pay her room and
3 board.

4 Q She did chores around the house?

5 A Well, we actually assigned a monetary value
6 to painting and that type of thing that she did for me.

7 Q When they were at home you had some general
8 family rules that you expected them to abide by, did you
9 not?

10 A That is correct.

11 Q Did they do it?

12 A Sometimes.

13 Q Nothing unusual about that, is there?
14 Sometimes children do what their parents want them to do
15 and sometimes they don't. There was nothing different in
16 your situation as in anyone else's as far as that's
17 concerned.

18 A I guess not. I can only speak of my
19 situation.

20 Q Once they left home to go to college, you
21 did not stop telling them what you thought they should do,
22 did you?

23 A No.

24 Q And sometimes they did and sometimes they
25 didn't?

1 A That's correct.

2 Q But you continued to make your feelings
3 known and your opinions, and you expressed your opinions
4 to them as their mother, didn't you?

5 A For a short time. After a while I didn't
6 say anything because I knew they knew what I felt.

7 Q And it had all been said by then I take it.

8 A Yes, sir.

9 THE COURT: The only reason you got a smile
10 is because I've been all through it myself and
11 everybody here who has had children have been
12 through it, so that's why we were all smiling.

13 THE WITNESS: I don't know when you ever
14 stop telling them what you think. My mother
15 still tells me what she thinks.

16 MR. SACKETT: That's all right. So does
17 mine.

18
19 BY MR. SACKETT (continuing):

20 Q Up through the time this accident occurred,
21 both Mary Catherine and Anna were covered on your health
22 insurance, weren't they?

23 A Yes.

24 Q And Anna had an eye doctor that she came
25 back periodically to in Bedford, didn't she?

1 A That's correct.

2 Q And when she came to see the doctor he

3 would send the bill to you and it was paid.

4 A My insurance paid it.

5 Q But the bill was sent to you and you turned

6 it into your insurance.

7 A Yes.

8 Q So as of the time this accident happened,

9 both Anna and Mary were still full time students at George

10 Mason, were they not?

11 A That's correct.

12 Q They were just on summer break at the time?

13 A That's correct.

14 Q And they were both working to help pay

15 their college expenses?

16 A Their living expenses.

17 Q Their living expenses. They had to live

18 there to go to college.

19 A That's correct.

20 Q In fact, they would not have been able to

21 go to college if they had not worked.

22 A That's correct.

23 Q Because you couldn't yourself have done it?

24 A That's correct.

25 Q And they were both at home the weekend this

1 accident happened to go to a wedding of a family friend?

2 A That's correct.

3 Q And the accident happened while Anna was
4 driving Mary's car coming back from a party that she and
5 Anna Fetherston and Jennifer Trevey had been to at a
6 friend's home.

7 A That's correct.

8 Q After the accident, Anna came back and
9 lived with you for a month or six weeks, didn't she?

10 A That's correct.

11 Q And then went back to Springfield when she
12 could go back to work?

13 A That's correct.

14 MR. SACKETT: That's all the questions I
15 have.

16
17 DIRECT EXAMINATION

18
19 BY MR. ANDERSON:

20 Q Mrs. Phelps, I am Phillip Anderson and I
21 have a couple of questions for you.

22 After Anna left home in the fall of '88 and
23 before the accident of June of '89, would it be fair to
24 say that her visits to your home in Goode were at best
25 very casual and not on a regular basis?

1 A That's correct.

2 Q And likewise, with regard to Mary
3 Catherine, after she left home in the fall of '87 up and
4 through June of '89, would it likewise be fair to say that
5 her contacts with your home in Goode were at best casual
6 and erratic?

7 A Yes, sir.

8 Q And at no time did either one of them ever
9 stay there at the same time from the fall of '87 until
10 June of '89 for anything more than a couple of days
11 together at Christmas time?

12 A That's correct.

13 Q And they took everything they had of
14 importance to them with them when they left home?

15 MR. SACKETT: I'm going to object to Mr.
16 Anderson leading the witness. He is not adverse
17 so it's really direct examination.

18 THE COURT: Certainly the question is
19 leading and if he does not have the right to
20 lead then certainly you are sustained.

21 MR. ANDERSON: Your Honor, I'll rephrase
22 my question.

23
24 BY MR. ANDERSON (continuing):

25 Q With regards to the eye doctor situation,

1 how many times or do you know how many times you submitted
2 a bill for one of your daughter's appointments? Was that
3 more than once, twice or--

4 A I can't even say for sure if she went
5 during that particular year. She does have eye problems
6 and she has gone to that eye doctor but for that
7 particular year I'm not sure if she did go. I would have
8 to check with him.

9 Q Was there a time with regard to Anna that
10 her insurance coverage on her vehicle was switched from
11 your policy?

12 A Was there a time?

13 Q Did a time arise when at some point in time
14 Anna's car was no longer insured on your policy?

15 A Yes, sir.

16 Q Do you know when that was?

17 A I believe it was February.

18 Q Of?

19 A Right after she moved to Springfield.

20 Q Prior to the accident?

21 A Right.

22 Q February of '89?

23 A Right.

24 Q Was there a reason for that?

25 A Well, as I remember that's when my policy

1 was to be renewed for the year and she had changed her
2 residence and she was eighteen and she could be on her own
3 policy.

4 Q And did you tell her that?

5 A Yes.

6 Q And did you have any involvement in her
7 securing any insurance on that car?

8 A No, I told her to go and find some
9 insurance up there.

10 Q And you left it up to her?

11 A Yes.

12 Q That's all the questions I have.

13 THE COURT: Any further questions?

14 MR. HARRISON: Yes, Your Honor.

15
16 REDIRECT EXAMINATION

17
18 BY MR. HARRISON:

19 Q Do you have any background in accounting or
20 law?

21 A No, sir.

22 Q What do you understand about what it is to
23 be a tax dependent under the internal revenue code?

24 A I just-- Charlotte Mason does my taxes and
25 I don't know for sure but I believe she said as long as

1 they were students I could claim them. That's all I know.

2 Q The health insurance is provided by your
3 employment, correct?

4 A That's correct.

5 Q And I believe it's a fairly comprehensive
6 package provided by Food Lion?

7 A Yes, and it will cover my children up to
8 age twenty-three if they are full time students.

9 Q And it did not cost you extra, did it?

10 A No.

11 MR. HARRISON: That's all the questions I
12 have.

13
14 RECROSS EXAMINATION

15
16 BY MR. SACKETT:

17 Q I just have a very brief follow up. The
18 question that Mr. Anderson asked you about the visits that
19 Anna and Mary made to your home after they went to
20 college, their visits were consistent with college
21 vacations, weren't they?

22 A Yes.

23 Q Otherwise, they were full time students and
24 they would have had to leave school when they were
25 supposed to be at school, would they not?

1 A Yes.

2 Q And as far as medical bills, after the
3 accident, Anna was living at your home and the medical
4 bills for those injuries were submitted to and paid by
5 your insurance?

6 A Yes.

7 MR. SACKETT: That's all the questions I
8 have.

9
10 The witness stands aside.

11
12 THE COURT: All right. I'm going to give
13 each side five minutes to sum up any points you may have.
14 The reason I'm making it short, number 1: I've got other
15 matters to hear and number 2: I've got your briefs and I
16 don't really need a lot of oral argument but it's helpful
17 to me to get what you consider are your main points here.

18 Now I would like for you to be thinking about
19 this because I'd like for somebody to answer it. I'd like
20 to know who has the burden of proof on this issue.

21 All right, Mr. Harrison?

22 MR. HARRISON: Your Honor, I'm afraid I do.

23 THE COURT: I thought you did, but I wanted that
24 to be said.

25 MR. HARRISON: I would have to admit to that.

1 I'd like to go back very quickly to the definition of the
2 word 'household'. It's said no less than five times in
3 the Virginia Supreme Court in a string of cases beginning
4 in 1965 and ending in 1989, both with cases interpreting
5 the same policy of State Farm Insurance before the court.
6 A collection of persons as a single group with one head
7 living together; a unit of permanent and domestic
8 character under one roof; a collective body of persons
9 living together within one curtilage subsisting in common,
10 directing their attention to a common object to the
11 promotion of a mutual interest and social happiness.

12 In that definition I would submit these three
13 people, Anna, Mary Catherine, and their mother met none of
14 those requirements. They needed to meet them all. They
15 were not a collection of persons living as a single group,
16 but as you could tell from their testimony, they were
17 going in every direction. They went down to High Point,
18 to Springfield, living in the dorms. Their mother was
19 staying down here. Mary Catherine went to California. At
20 no time during this were they all living together as a
21 single group. Even more clear was that they were never
22 under one roof during the period in question. They were
23 never living within one curtilage under their mother's
24 roof. Instead, they were living off in different places.
25 It was not a permanent unit, not a unit of domestic

1 character. It was a boarding house while they were going
2 to school.

3 There's been a lot said about the going to
4 school part and certainly there are people who go to
5 school and come back to their parents' house. The
6 vacations they talked about were not only school vacations
7 when they could get off but a school vacation as well as a
8 work vacation. Both spent the summer in their home and
9 the only thing was Anna, when she was hurt, spent some
10 time convalescing in her mother's house, but then
11 immediately went back in July long before classes started,
12 to pick up her work and continue on. She was not living
13 in her mother's house.

14 And I think it's particularly important to note
15 the cases in this area and the facts therein. In the
16 first State Farm case, 1965, the plaintiff had been
17 residing with her sister in the same house for eight
18 months prior to the automobile accident. But she was
19 intending to stay with her sister only until the baby was
20 born. At the time of the accident she was driving her
21 brother - her brother-in-law's car. The court found that
22 as a matter of law the plaintiff was not a resident of her
23 sister's household and that there had been no permanency
24 there.

25 In the case of ---

1 THE COURT: I reserve to ask questions.

2 MR. HARRISON: Sure.

3 THE COURT: Do you think that supports your
4 position or could it possibly support the other position
5 that that's paramount to your first being in college?
6 See what I'm saying? Do you see that case as full support
7 for your position?

8 MR. HARRISON: Yes, I do. What we're trying to
9 say is that they were not residents of the same household.

10 THE COURT: I know that. The State Farm case is
11 that the person, although living there, was not a resident
12 of the household because the person was there on a
13 temporary basis.

14 MR. HARRISON: Right. The key thing is, the
15 sisters were not going to return to their parent's
16 household. Any time that they were spending in their
17 parent's household was only temporary.

18 THE COURT: Would you argue, and you may be
19 correct, I'm not arguing with you, but under your
20 definition of living under the same household, is it
21 possible that children who are away at college would fall
22 within that definition?

23 MR. HARRISON: I doubt it because one of the
24 other cases I think was going away into the Navy in Allen
25 verses Maryland Casualty Company, a federal case

1 interpreting Virginia law. It said he joined the Navy with
2 the intent to come back. If they were in the Navy at the
3 time, that's not living in the same household under the
4 same roof. It does not count. I don't think there is a
5 particular case on college.

6 In All State Insurance versus Patterson,
7 Patterson was a member of a motorcycle group which
8 traveled throughout Virginia and other states. Now when
9 he was not traveling, he stayed in his parents' house. He
10 stayed there only ten percent of the time, however. The
11 trial court put the case to the jury and the jury found
12 that he was a resident of his parents' house and no other
13 place. The Supreme Court reversed it as a matter of law
14 saying that ten percent of the time was not enough. The
15 Patterson case would tend to show that even if you can't
16 establish another residence any place else, it does not
17 necessarily mean they are residents of their parent's
18 household.

19 In all five times, the Supreme Court has held
20 against the person being the driver as a member of the
21 household both for and against the insured.

22 And while I have the burden of proof, this, as
23 the court knows, is a contract of insurance construed
24 strictly against the insurance company, and on this issue,
25 the case of White versus Nationwide told or instructed the

1 court that one might be a member of a household for the
2 purpose of extended coverage though not for the purposes
3 of policy exclusion. Inconsistent rulings could be --
4 While I have the burden of proof, I think Mr. Sackett has
5 the burden of proving the language is clear and concise
6 and makes the exclusion.

7 Your Honor, that would be all.

8 THE COURT: Thank you.

9 MS. BAUN: Your Honor, I know that I have sat
10 here quietly and that kills a lawyer and I have to get in
11 my two cents worth.

12 THE COURT: All right.

13 MS. BAUN: Your Honor, I would just submit to
14 you that clearly the evidence you've heard here today is
15 not a case where two young women were residents of their
16 mother's household. The evidence you have heard today
17 indicates that they very much considered themselves
18 independent and supporting themselves. They received some
19 trust money to go to school but everything else was on
20 their own. Their mother provided them with no support
21 whatsoever and they were making their way in the world as
22 young women. I think that's commendable and something to
23 their credit. I believe that they insured themselves and
24 acted responsibly and considered themselves outside of the
25 domain of their mother. I think that's what the evidence

1 has to show today.

2 Clearly in some circumstances you could find
3 that college students dependent on their parents could be
4 considered members of the parents' household. However, I
5 would submit to you that that would be a different fact
6 situation than from what you have here. That would be a
7 situation where they are dependent for all their support
8 on their parents and were actually just kind of extensions
9 of the parents. I believe both of these young women have
10 testified today they considered themselves on their own
11 and independent from their mother, and therefore, I submit
12 to you, they would not be members of their parent's
13 household and there should be coverage for them.

14 THE COURT: All right. Thank you very much.
15 Mr. Anderson?

16 MR. ANDERSON: Your Honor, I will be very brief
17 and echo what Mr. Harrison and Ms. Baun have said.

18 I think that if there's anything that can be
19 said, what's consistent about all the cases addressing
20 this particular issue is that the statements of law are
21 consistent in the cases and the court's analogy has always
22 been consistently fact specific.

23 One of the most recent cases, the 1986 case of
24 All State, the court said what was very important is the
25 person's intent. What is the insured person or person who

1 is seeking coverage, what is their intent? That's what
2 was the key in all those cases and in order to get at each
3 individual insured's intent of course, you have to look
4 at the facts.

5 So to respond to your question of Mr. Harrison
6 as to whether a student who leaves home and goes away to
7 college could be insured under the parents' policy,
8 absolutely, under some circumstances and it can happen
9 that he might not be under some circumstances and that's
10 the case here.

11 I would predict to the court that if you picked
12 up an ALR cite , you could pick up an equal number of
13 cases going on either way, depending on how the facts
14 break. In this particular case we think looking at the
15 facts of the case, based upon the testimony of Mrs. Phelps
16 as well as her two daughters, the question put to them was
17 what was their intent and how many contacts did they have
18 in the home in Goode as of the time of the accident? At
19 best, she said they were both there at the same time only
20 a matter of a few days, the days extended over a period of
21 time.

22 It's critically important to keep in mind the
23 way the policy language was drafted. They both have to be
24 residents of Mrs. Phelps' home at the same time. It's
25 not sufficient to find Anna was a resident nor is it

1 sufficient to find that Mary was a resident at any given
2 time. The inquiry is, were they residents at the same
3 time of their mother's household as of June of '89 when
4 the accident occurred.

5 The testimony has been that Mary Catherine felt
6 that she left home in the fall of '87 to go to school and
7 from that time up to June of '89 she was only there a few
8 days at a time. Including, she was not in school the
9 entire time. We're dealing with a summer break in there
10 when she was not in classes and she was still in
11 Springfield, Virginia or Northern Virginia and not back at
12 home in Goode.

13 We think the Court's focus has got to be what
14 was their intention. Both of these ladies have testified
15 when they left home they were on their own.

16 Now Mr. Sackett has done a very able job of
17 trying to portray it as a typical college student case
18 where the kids go off to college and come back home in the
19 summer time and get a summer job and then go back and
20 maybe they live in an apartment or something like that
21 where really they're not severing the ties. In this
22 particular case I think the evidence demonstrates they had
23 severed their ties, not with the family but with their
24 household, that they went out and struck out on their own
25 and tried to do on their own and paid their own bills and

1 insurance and owned their own vehicles. And
2 notwithstanding the fact that there may be some tax
3 returns or something like that that were filed, they
4 exerted no control over that.

5 What was their intent? I think they
6 demonstrated very clearly their intention was to leave
7 home. They left home and struck out on their own and even
8 to that they took their vehicles off their mother's policy
9 and got their own insurance. They purchased their own
10 insurance, purchased this very policy that we're here
11 talking about today, through an agent in Northern
12 Virginia. She has paid the premium for herself, found the
13 agent, purchased coverage and paid for it and now we are
14 here today saying there's no coverage under the policy she
15 purchased because at some point in time they lived
16 together in the same house.

17 There's no evidence that from the fall of '87 to
18 June of '89 they ever lived together in the same house
19 with their mother for anything more than a few days.
20 That's the evidence and we would submit there is coverage
21 under the policy.

22 THE COURT: Thank you. Mr. Sackett?

23 MR. SACKETT: Your Honor, despite Mr. Anderson's
24 efforts to portray it otherwise, this is in fact the
25 typical college student and I think the evidence quite

1 clearly demonstrates that.

2 Mr. Harrison's position would require and his
3 brief advocates a position that would require the court to
4 rule that once a child leaves home he is no longer a
5 resident if he goes to college or away to school anywhere.
6 It could be high school or boarding school, he is no
7 longer a resident of his parents' household. And he
8 reaches that position by arguing in his brief a literal
9 and strict reading of a definition of household that the
10 Supreme Court adopted in a footnote and has referred to
11 since then in other cases that stated a household is a
12 situation where there is one head under one roof. Well,
13 if you literally, strictly applied that, when a child goes
14 to college, he is no longer a resident of the household. I
15 submit that is not what the Supreme Court intended and it
16 is not a fact situation which is what the Virginia Supreme
17 Court presented.

18 We have cited other cases that did deal with the
19 college situation and I have copies of opinions and will
20 tender them to the Court. We have cited them in the brief
21 in which they found that a student was still a resident of
22 the parents' household.

23 THE COURT: Is that for purposes of insurance
24 coverage under this particular clause?

25 MR. SACKETT: It's not dealing with exactly the

1 same language, but I submit it's dealing with the same
2 principle. And that's what I really ask the Court to do
3 when you review the briefs and the five Virginia Supreme
4 Court cases. Those cases are fact specific and it's clear
5 in those cases that the person who was trying to find
6 coverage or exclude it, the person had evidence of clear
7 intent not to be a resident of the household, and one case
8 they found there was simply no household because his
9 parents were divorced and had separated and the child had
10 gone off to be in the service and came back to live with
11 his mother. It's a St. Paul case. But by the time he
12 came back, his mother and father had separated and had
13 finally been divorced and there was no household. The
14 coverage they were claiming was under the father's policy
15 and they weren't residents of the same household and the
16 Supreme Court easily found that.

17 The issue the Supreme Court has dealt with in
18 these cases was what the intent was at that time and not
19 whether it was a household or not except in the St. Paul
20 case. I submit the evidence in this case is there was a
21 household. It was the same household that these two girls
22 had lived in all of their lives. The fact that they went
23 away to school did not make them become nonresidents of
24 that household. It simply meant that they were living in
25 a different place physically because they had to do that

1 to go to college. And it's also important to note that in
2 the State Farm verses Smith case which is the case that
3 originated these definitions, there are two footnotes with
4 two definitions, both quoted with approval by the Supreme
5 Court. The one that Mr. Harrison has referred to and was
6 subsequently cited by the Supreme Court in other cases is
7 in footnote 6.

8 In footnote number 7 the court goes on to say
9 since household is usually taken to refer to a group of
10 persons rather than a building, it appears appropriate
11 to interpret the term resident of the same household as
12 meaning resident of the same homestead and member of the
13 same household. And I think that is a definition that
14 can easily be applied to this fact situation. The Court
15 was not talking about a structure of one roof or one head.
16 If you literally applied the one head of household
17 definition that Mr. Harrison has advocated, it would mean
18 that a husband and wife who lived together and both
19 worked, who shared decisions and expenses and contributed
20 equally, they don't have a head and therefore they don't
21 reside in the same household. And that would be
22 ridiculous. And I submit it is no less ridiculous to say
23 that these children who had been residents of their
24 mother's household all of their lives, have suddenly
25 ceased to be members of that household just because

1 they've gone away to college and because they needed to
2 work in order to put themselves through college, which is
3 what both of these girls were doing at the time of the
4 accident.

5 And I submit that this evidence fully supports
6 and requires a finding by the Court that they were
7 residents of the same household, that is, their mother's
8 household, and with that finding, the vehicle that Anna
9 was operating at the time of this accident would not
10 qualify as a non-owned automobile under the State Farm
11 policy and therefore there would be no coverage, collision
12 or liability.

13 THE COURT: All right. Anything else, Mr.
14 Harrison?

15 MR. HARRISON: Very briefly, Your Honor. I
16 think this is a case where they not only moved to college
17 but they signed their own lease and paid their own bills,
18 got their own jobs and moved in with boyfriends and did
19 everything they possibly could to sever those ties. They
20 were not members of the same household. It's not a case
21 of going off to college, it's a case of very physically
22 severing those ties, monetarily.

23 You saw what effect the mother had as far as
24 being able to control the girls or their situation. The
25 only thing or tread State Farm has is that they were going

1 to college and that sometimes people go to college and
2 do come back home. But these girls were not and we would
3 therefore assert they were not members of the same
4 household, and for reasons stated in our brief previously,
5 we're asking for coverage in this case.

6 THE COURT: All right. This is not an easy
7 case. I've been here long enough to know when I see a
8 case that's not clearly apparent. This case is a close
9 case. It really is. There have been good arguments made
10 on both sides of the case. If counsel find any cases in
11 or out of state involving college students away from home
12 where the issue involves automobile insurance coverage, I
13 would be interested in seeing any additional cases on
14 that.

15 Therefore, I am going to give you two weeks from
16 today if you care to submit any additional cases but I am
17 only interested in cases involving policies away from home
18 where the issue is the same as the one we have here and
19 preferably where the issue involves the non-owner vehicle
20 provisions of the policy.

21 Then after a period of fourteen days I will feel
22 free to rule in this case by written opinion any time
23 after fourteen days from today. Would that be agreeable
24 with counsel?

25 MS. BAUM: Yes, sir.

1 MR. SACKETT: Yes, sir.

2 MR. HARRISON: Yes, sir.

3 MR. ANDERSON: Sure, Your Honor.

4 THE COURT: It is not necessary that counsel do
5 anything within the fourteen days. It's just that finding
6 additional cases in that narrow category and I feel that
7 those cases would be very, very important.

8 MR. SACKETT: Your Honor, I have some cases to
9 tender to the court that are cited in my brief that deal
10 with coverage questions in the college student context.

11 THE COURT: Well, I'd like that. Thank you.
12 I'll certainly read those.

13 MR. SACKETT: These are the cases cited, Judge.

14 MR. ANDERSON: Your Honor, we have not filed any
15 brief on behalf of our client. I'm not sure whether we
16 could find any authority that would fit the court's
17 definition or not, but could we have leave within that two
18 weeks to file a memo that we might --

19 THE COURT: Oh, yes, that'll be fine. It's just
20 that I need to set an outside limit, because with a case
21 like this it's difficult for the court to know when to
22 decide and I have on occasion decided a case and found
23 that somebody was working on their rebuttal brief when
24 they got my opinion and that's embarrassing for a Judge so
25 I've learned my lesson. So I will rule anytime after the

1 24th of September and I'm going to make a note for my
2 file.

3 MR. SACKETT: Let me be sure I understand what
4 Mr. Anderson has asked for. I thought the case had been
5 fully briefed already. Obviously I don't have any
6 objection to submitting additional cases, but if another
7 is filed by a party who has not filed one so far and it's
8 adverse to State Farm, I mean, first of all I would object
9 to that, but if the court is going to permit it over my
10 objection, then I would ask leave to respond.

11 THE COURT: Well, I see the problem. I see the
12 problem because if you filed a brief on the thirteenth day
13 if that's what's allowed, my time schedule allows you no
14 time to answer.

15 MR. SACKETT: What I understood the court was
16 asking for us to do was just submit cases that may deal
17 with the college student situation.

18 THE COURT: Well, I think I'm going to go back
19 to that. I don't think I can allow you to file a brief
20 after you've argued the case and I'm not really interested
21 in a brief. I'm interested in the cases on specific
22 point, because now we have narrowed the issue.

23 MR. ANDERSON: Well, Your Honor, the cases Mr.
24 Sackett has submitted, I would take it the court would
25 give us leave to respond to those cases he represented to

1 the court addressed the very question you have mentioned.
2 They are not Virginia cases that deal with this situation
3 he argued in his brief and submitted to the court.

4 THE COURT: Well, that's a little different.

5 MR. SACKETT: Those are cases that have been
6 cited in my brief for months. They are not new cases.
7 These are the cases cited in my brief that aren't Virginia
8 cases.

9 MR. ANDERSON: Your Honor, I think the situation
10 here what we are dealing with, obviously, is what
11 everybody knew the case would be before we got here today
12 based upon deposition transcripts. But today we've heard
13 evidence, some evidence which I'm not submitting
14 completely different than the deposition transcript, but
15 certainly the evidence that has been presented here today,
16 upon which the court will make its decision, is these
17 parties did not have available to them at the time. These
18 depositions were even taken before my client was even a
19 party to this lawsuit and we were not able to or permitted
20 to be a part of this deposition. I think it's a little
21 bit unfair to our client not to even be able to be
22 permitted to respond to the brief based on the evidence
23 that's been presented here today when the court indicated
24 that's the basis from which the decision is to be made.

25 THE COURT: Well, there's something to that,

1 too. It really is.

2 MR. ANDERSON: We've gone through two amended
3 petitions for declaratory judgment and Mr. Sackett's brief
4 certainly has been of record for a certain period of time,
5 but we were not a party to this case at the time those
6 depositions were taken.

7 THE COURT: All right. I --

8 MR. ANDERSON: At least I don't think we were.
9 I received no notice of depositions.

10 THE COURT: I understand. I think what I will
11 do in order to be as fair as possible to all sides, I
12 think I will change my time limitations here and provide
13 that if anybody wants to file any additional memos that
14 they must do so within two weeks from today, which is
15 September 24th, and then further provide that if anyone
16 wishes to respond to anything that's filed within the two
17 weeks' period that they have one additional week within
18 which to do so, which moves my ruling date, my earliest
19 ruling date up to October 1st. Does everybody understand?

20 MR. ANDERSON: That's fine. Yes, Your Honor.

21 THE COURT: Okay. Thank you very much. That's
22 all. By the way, now that I've heard you I don't think
23 that I need to have the transcript typed up. That's an
24 additional expense. I have taken about six pages of
25 notes. I really do understand the narrow issue and the

1 only thing I would be interested in that I don't have is
2 the specific cases on point. Do as you wish, but I am not
3 requiring that the evidence be typed for my purposes at
4 this stage.

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6 Whereupon the proceedings were concluded.)
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1 STATE OF VIRGINIA

2 AT LARGE: TO-WIT,

3 I, Brenda B. Alger, Notary Public in and for the
4 Commonwealth of Virginia at Large, do certify that the
5 foregoing pages represent an accurate transcript of the
6 proceeding to the best of my ability.

7 My commission expires September 30, 1993.

8 Given under my hand this 4th day of November,
9 1991.

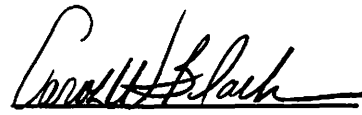
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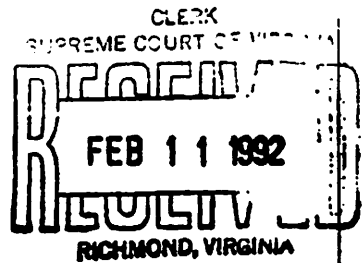
Certificate

I, Carol W. Black, Clerk of the Circuit Court of the County of Bedford, Virginia, do hereby certify that the foregoing stenographic case of Anna L. Phelps, et. al. vs. State Farm Mutual Automobile Insurance Co., et. al. was filed with me as Clerk of said Court on the 16th day of January, 1992, being within 60 days of final order.

Carol W. Black, Clerk

 Clerk
of the Circuit Court of the
County of Bedford, Virginia

920429



1 **VIRGINIA:**

2 **IN THE CIRCUIT COURT FOR THE COUNTY OF BEDFORD**

3 -----
4
5 **ANNA L. PHELPS,**

Plaintiff,

6 **v.**

7 **STATE FARM MUTUAL AUTOMOBILE**
8 **INSURANCE COMPANY,**

Defendant
9 -----
10
11
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14 **DEPOSITION OF ANNA L. PHELPS**

15 **Bedford, Virginia**
16 **January 22, 1990**
17
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19
20

21 * * * * *

22 **BRENDA B. ALGER**
23 **Court Reporter**
24 **P.O. Box 956**
25 **Lynchburg, Virginia 24505**
(804) 929-4312

378

Filed in the Bedford County Circuit Court
The 10th day of September, 1991
CLERK: Clark W. Black Clerk
BY _____ Deputy Clerk

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The deposition of ANNA L. PHELPS, taken before Brenda B. Alger, Notary Public in and for the State of Virginia at Large, at the law offices of Edmunds & Williams, 800 Main Street, Lynchburg, Virginia, on January 22, 1990, for the purposes of discovery and to be used under the Rules of the Supreme Court in the above-styled case.

APPEARANCES:

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Representing the Defendant

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1 The witness, ANNA L. PHELPS, having first been
2 duly sworn, deposes as follows:
3

4 DIRECT EXAMINATION
5

6 BY MR. SACKETT:

7 Q Anna, as I told you before, my name is
8 Henry Sackett. I represent State Farm and I am going to
9 ask you some questions about this case. If I ask you
10 anything you don't understand, if you need to take a break
11 at any time or anything like that, just let me know.

12 A Okay.

13 Q State your name, please?

14 A Anna Lee Phelps.

15 Q And your age?

16 A Nineteen

17 Q Where's your home?

18 A Springfield, Virginia.

19 Q What's the address?

20 A 8319 Brookvale Court.

21 Q Brookvale? B-r-o-o-k-v-a-l-e?

22 A Right.

23 Q And how long have you lived there?

24 A A year.

25 Q Are you a student?

1 A I was.

2 Q Were you a student at the time this

3 accident happened?

4 A I was on summer break, but I was still

5 enrolled.

6 Q Where does your mother live?

7 A In Goode.

8 Q In Goode? What's that address?

9 A Box 495, Goode, Virginia.

10 Q Did you ever live there?

11 A Yes.

12 Q How long did you live there?

13 A Eighteen years.

14 Q So you lived there until you went off to

15 college?

16 A Yes.

17 Q Where did you go to high school?

18 A Jefferson Forest.

19 Q And graduated when?

20 A '88.

21 Q What college did you attend?

22 A I've been at High Point, North Carolina and

23 George Mason.

24 Q Where did you start out at college?

25 A High Point.

1 Q In the fall of '88?
2 A Right.
3 Q You stayed there how long?
4 A One semester.
5 Q That's in North Carolina?
6 A Uh-huh.
7 Q And then did you transfer?
8 A Yes.
9 Q To George Mason?
10 A Yes.
11 Q And that would have been what month?
12 A January.
13 Q Of '89?
14 A Yes.
15 Q And when you went to George Mason, did you
16 move into 8319 Brookvale Court?
17 A Yes.
18 Q How old is your sister, Mary?
19 A She's twenty.
20 Q Is she a student?
21 A Not at the moment.
22 Q Was she a student at George Mason?
23 A Yes.
24 Q Was she a student in school there when you
25 transferred there in January of '89?

1 A Yes.
2 Q When did she enter George Mason?
3 A Fall of '87.
4 Q Do you live with your sister?
5 A Not now.
6 Q Did you in June of '89 at the time of the
7 accident?
8 A We shared a townhouse together.
9 Q Was your sister, Mary, already living in
10 the townhouse when you transferred to George Mason or did
11 you all move in to it together?
12 A She was already living there.
13 Q Had she been there since she had been a
14 student there?
15 A No, she had been there about three months
16 when I moved in.
17 Q Was anyone else living there other than
18 Mary before you moved in?
19 A Yes.
20 Q Who else?
21 A She had a roommate.
22 Q And what was the roommate's name?
23 A Rob Johnson.
24 Q Rob Johnson? Did the roommate move out
25 when you moved in?

1 A Not immediately.

2 Q Now was this an apartment on which there

3 was a lease or was it a condominium?

4 A It was a townhouse.

5 Q A townhouse apartment?

6 A Yes, with a lease.

7 Q Who signed the lease?

8 A Me and my sister.

9 Q When did you sign the lease?

10 A She signed one when she moved in and we--

11 they, like, renewed it so that I could sign it also in

12 January.

13 Q So when you signed then, you and Mary

14 signed a new lease?

15 A Yes.

16 Q For what period of time?

17 A A year.

18 Q And were both of you full time students for

19 the balance of that school year?

20 A Yes.

21 Q When was school over that spring?

22 A The end of May.

23 Q What were your plans for the townhouse that

24 summer? Did you all intend to continue living there?

25 A Yes.

1 Q Did you have a job up there?
2 A Yes.
3 Q Where was your job?
4 A I worked at Brennegan's.
5 Q Is that a--
6 A Restaurant.
7 Q Restaurant. What about Mary, where did she
8 work?
9 A She was, at that time, working at Kilroys.
10 Q Is that also a restaurant?
11 A Yes.
12 Q Did you both continue to live in the
13 townhouse throughout the summer?
14 A She did, but I was at my mother's house for
15 a while because I couldn't work.
16 Q After the accident?
17 A Yes.
18 Q Other than the time you had to stay home
19 after the accident, did you live in the apartment?
20 A Yes.
21 Q How long were you at home after the
22 accident before you went back up there?
23 A About a month.
24 Q And then how long did you and Mary continue
25 to live there?

1 A Until November.
2 Q And then what happened?
3 A She moved out.
4 Q And where did she go?
5 A She got an apartment in D. C.
6 Q I see the lease ran through--
7 A October.
8 Q Through October? Do you still live there?
9 A Yes.
10 Q So when this accident occurred on June 10,
11 1989, you and Mary were both living at the townhouse at
12 8319 Brookvale Court, is that right?
13 A Yes.
14 Q Did you own a car?
15 A Yes.
16 Q What kind of car was it?
17 A A Honda CRX.
18 Q Do you know the year?
19 A 1987.
20 Q Was the title in your name?
21 A Yes.
22 Q Did you buy the car or was it given to you?
23 A I guess I bought it-Trust Fund.
24 Q Is that a Trust Fund that you are the
25 beneficiary of?

1 A Me and my sisters, yeah.
2 Q Do you have other sisters?
3 A Yes.
4 Q How many?
5 A Three.
6 Q Three? Five of you all together?
7 A Four all together.
8 Q Who are the other two besides Mary?
9 A Rosa and Margie.
10 Q How old is Rosa?
11 A Sixteen.
12 Q And Margie?
13 A Fourteen.
14 Q Do they both live at home?
15 A Uh-huh, with my mother.
16 Q Does Mary have a car or did Mary have a car
17 In June of '89?
18 A Yes.
19 Q What kind of car did she have?
20 A Nissan Sentra.
21 Q Do you know the year?
22 A It was an '88.
23 Q And was that her car titled in her name?
24 A I believe so.
25 Q How long had you had your car?

1 A About a year and a half.
2 Q Did you buy it new?
3 A Yes.
4 Q Had it been insured with State Farm the
5 whole time?
6 A No.
7 Q Who was it originally insured with?
8 A It was originally insured with my mother's
9 insurance company.
10 Q Do you know what company that was?
11 A No.
12 Q What was the reason for changing to State
13 Farm?
14 A Because my rates were so high and when I
15 was eighteen and moved out of the house, my mother wanted
16 me to get my own insurance.
17 Q Do you know who Mary had insurance with?
18 A Nationwide, I believe.
19 Q What was the occasion for you and Mary to
20 be at home on June 10, 1989?
21 A A cousin of ours was getting married.
22 Q And what was her name?
23 A Sue Hunt.
24 Q Sue Hunt?
25 A Uh-huh.

1 Q Do you remember what day of the week June
2 ninth was?
3 A The ninth would have been a--
4 Q I mean the tenth?
5 A Friday.
6 Q According to this it would have been a
7 Saturday.
8 A The accident happened after midnight.
9 Q Okay. And was Mary driving when the
10 accident happened?
11 A No.
12 Q You were driving?
13 A Yeah.
14 Q But it was Mary's car you were driving?
15 A Yes.
16 Q How did you happen to be driving Mary's
17 car?
18 A I had-- My car only seats two and I had
19 three, well, I had two other girls with me.
20 Q Who else was with you?
21 A Anna Featherston and Jenny Trevey.
22 Q Mary was not with you?
23 A No.
24 Q How long had you had the car that day?
25 A Since about six that evening.

1 Q Do you know where Mary was?
2 A She was in Roanoke.
3 Q Tell me how you got the car from Mary?
4 A We were at my mother's house and I was
5 making plans to go out and when I realized there was going
6 to be more than two of us, I asked her if I could use her
7 car that night.
8 Q Did she use yours?
9 A Yes.
10 Q Did you all just trade cars?
11 A We did that night.
12 Q Do you know what Mary's plans were? You
13 said she was in Roanoke at the time?
14 A Yes. My cousin was getting married the
15 next day and she was over at some of our relatives' house.
16 They were getting together.
17 Q But the relatives lived in Roanoke?
18 A Yes.
19 Q And the two people who were with you, Anna
20 Featherston and Jenny Trevey, were they people who were
21 going to be in the wedding or just friends?
22 A Oh, they're friends of mine.
23 Q Where do they live?
24 A At the time, Anna lived in Goode, and Jenny
25 was living in Lynchburg.

1 Q And what were the plans that you all had
2 for that night?
3 A We were just going to go out. We went to a
4 party.
5 Q Did you go to a party?
6 A Yes.
7 Q Where was the party?
8 A In Meadowood.
9 Q At who's house?
10 A Deanna Daniels.
11 Q Was this anything in connection with the
12 wedding or was this just separate?
13 A No.
14 Q Now tell me how the accident happened?
15 A We left the party and we were just going
16 down the road. There was a planter in the middle of the
17 road which I didn't see. I hit it head on.
18 Q Does the road go on both sides of the
19 planter?
20 A Right.
21 Q Is this a private road?
22 A Yes.
23 Q A road that leads to--
24 A Yes.
25 Q Whoever the people's house was. All right,

1 you were, of course, driving. Tell me where the other two
2 people were in the car?

3 A Anna Featherston was in the passenger seat
4 and Jenny Trevey was in the back.

5 Q Had you driven Mary's car before?

6 A Yes.

7 Q Do you know how often?

8 A I had only driven it once before.

9 Q ~~What was the occasion for driving it~~
10 before?

11 A She came to Lynchburg for the weekend and
12 she wanted to take my car because it got better mileage
13 and so we traded for the weekend.

14 Q You stayed up there and she drove to
15 Lynchburg in your car?

16 A Yes.

17 Q Did you have any other insurance on that
18 car other than the policy with State Farm at the time of
19 the accident?

20 A No.

21 Q Do you know when you first became insured
22 with State Farm?

23 A In January of '89.

24 Q And who was the agent that you bought the
25 policy from?

1 A Tom Sullivan.
2 Q In Bedford?
3 A No, it was in Fairfax.
4 Q The suit papers that were filed on your
5 behalf in this suit alleged, paragraph sixteen, that Anna
6 L. Phelps and Mary C. Phelps were not residents of the
7 same household within the meaning of that term. Do you
8 know what the basis for that allegation is?
9 MR. HARRISON: I'm going to object. You
10 are asking her a legal question there.
11 MR. SACKETT: What I'm asking is if she
12 knows the basis for it. It may be a legal--.
13 MR. HARRISON: I'll let her answer if she
14 knows the basis for it. That's fine.
15 Q Do you know the basis for that allegation?
16 A Yes, because we lived in the same house but
17 we weren't sharing-- One of us was not in charge of the
18 other one, it was a roommate situation.
19 Q Tell me what the living arrangement was?
20 A Well, me and Mary Catherine lived in the
21 same house with another roommate.
22 Q Who was the third roommate?
23 A Michelle Panzarino. And Rob Johnson was
24 also there.
25 Q So at the time, well at the time the

1 accident happened, were there three or four people living
2 there?

3 A Three.

4 Q Rob was no longer there at that time?

5 A Right.

6 Q Did anyone sign the lease other than you
7 and Mary?

8 A No.

9 Q What was the rent?

10 A Seven fifty.

11 Q Seven hundred fifty dollars a month?

12 A Right.

13 Q Who paid it?

14 A It was divided three ways.

15 Q You paid a third, Mary paid a third, who
16 paid--

17 A Michelle.

18 Q What about when Rob lived there, did he
19 contribute?

20 A Sometimes he did, sometimes he didn't.

21 Q What about utilities? How were they
22 handled?

23 A Also divided three ways.

24 Q How long did Michelle continue to live
25 there?

1 A Until June. The end of June.
2 Q Shortly after the accident?
3 A Yeah.
4 Q And then she moved out?
5 A Yes.
6 Q And from that time on did you and Mary
7 split the rent one half, one half?
8 A No. She had Rob move back in and another
9 guy named John Osh.
10 Q John --
11 A Osh.
12 Q O-s-h?
13 A I guess so. And they split it three ways
14 until I moved back in.
15 Q That was what, July?
16 A Yes.
17 Q Once you moved back in, what happened?
18 A We got another roommate, David Braun.
19 Q B-r-a-u-n?
20 A Yes.
21 Q Did Rob and John move out?
22 A Yeah.
23 Q Did David pay the other third?
24 A Yes.
25 Q For how long?

1 A He still lives there.
2 Q Did he take over the lease? Did you say
3 you've moved out?
4 A No, I still live there.
5 Q So you and David live there now?
6 A Yes.
7 Q Splitting it fifty fifty?
8 A We have another girl that's living there
9 with us. Gloria Hartic.
10 Q When the lease ran out, who signed the new
11 lease?
12 A Me and Mary Catherine renewed it, but she
13 moved out anyway.
14 Q So the only people who are on the lease,
15 even today, are you and Mary.
16 A Right.
17 Q What other expenses are shared by the
18 people who live there, if any?
19 A Phone, electric, cable, water, that's it.
20 Q So is it your contention that while you all
21 were living in the same apartment it didn't constitute a
22 household?
23 MR. HARRISON: I will object to that.
24 MR. SACKETT: I think I'm entitled to know
25 what she contends.

1 MR. HARRISON: I think what we contend is
2 spoken for in the pleadings itself. I don't
3 want to get her into a legal argument that she
4 does not understand.

5 MR. SACKETT: Well, if she doesn't
6 understand, she can tell me that. But I think
7 if that's the contention that I'm entitled to
8 know that so I--- or you can answer the legal
9 contention for that matter.

10 MR. HARRISON: Okay. That is our
11 contention. I'll let her answer that far.

12 MR. SACKETT: So the contention is that it
13 wasn't a household?

14 MR. HARRISON: That it was not a
15 household, within that definition.

16 Q Who paid the rent? Not where the money
17 actually came from, but who actually took the money to the
18 landlord or mailed the check or however it was done?

19 A I would write checks sometimes, I write the
20 checks now. Mary Catherine did sometimes.

21 Q But you all would send one check for seven
22 hundred fifty dollars to the landlord?

23 A Yes.

24 Q And whoever wrote the check would get
25 reimbursed by the other two?

1 A We would collect from whoever was living
2 with us at the time and go from there.

3 Q But either you or Mary would write the rent
4 check?

5 A Yeah.

6 Q If Mary wrote it, she would then collect
7 from you and whoever else was there. If you wrote it, you
8 would collect from whoever else was there?

9 A Right.

10 Q And did you handle the utilities the same
11 way?

12 A Uh-huh.

13 Q During the time between January and June,
14 when this accident happened in 1989, was there one of you
15 that normally handled writing the checks and the finances
16 for the group?

17 A I'm trying to think. I really don't
18 remember during that period. I believe I was. But I
19 think Mary Catherine would write checks sometimes also.

20 Q Did you all have any kind of special
21 account that you used for paying the living expenses or
22 did you just write it out of your regular personal
23 checking account?

24 A Out of our checking.

25 Q Where did you and Mary get your money?

1 What was the source of the income?

2 A We both worked full time.

3 Q While you were students?

4 A Uh-huh. And we have a trust fund that
5 would give us a certain amount of money each month for
6 rent while we were in school.

7 Q How much per month on the trust fund?

8 A We're getting two hundred each a month now.

9 Q Were you then?

10 A At that time we were getting three hundred.

11 Q During that time before the accident, was
12 your job, the same at Brennegan's and Mary's at whatever
13 the place was you told me--

14 A Well, she worked a couple different places
15 during that time.

16 Q Between your job and the trust fund, did
17 that account for all of the money you used to pay for your
18 living expenses?

19 A Except for the money from our roommates.

20 Q Whatever they contributed too?

21 A Yes.

22 Q Did they pay anything other than a share of
23 the rent and utilities?

24 A No.

25 Q What about your school expenses? Who paid

1 for that?

2 A My mother.

3 Q That would be your tuition, your books,
4 things like that?

5 A Yes.

6 Q She didn't contribute anything to your
7 living expenses?

8 A No.

9 Q So at the time this accident happened, the
10 car you were driving was the car owned by Mary who is your
11 sister?

12 A Yes.

13 Q And with whom you lived at 8319 Brookvale
14 Court?

15 A Yes.

16 MR. SACKETT: That's all the questions I
17 have.

18 MR. HARRISON: Okay, I have no questions.
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1 MR. SACKETT: Anna, the court reporter is
2 going to type this up and you have the right to
3 read it and make any corrections that you feel
4 are necessary and sign it yourself, or you can
5 waive that right and authorize her to sign it
6 for you.

7 THE WITNESS: I'd like to sign it.

8
9 AND FURTHER THIS DEPONENT SAITH NOT.

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12 _____
Deponent
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1 **STATE OF VIRGINIA**

2 **AT LARGE: TO WIT,**

3 I, Brenda B. Alger, Notary Public in and for the
4 State of Virginia at Large, do certify that the within
5 deponent appeared before me, was sworn by me, and that the
6 foregoing transcript was taken by me and transcribed under
7 my direction and is complete and accurate to the best of
8 my ability.

9 My commission expires September 30, 1993.

10 Witness my hand this 30th day of January, 1990.

11
12 Brenda B. Alger

13 Notary Public
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1 I, the undersigned, MARY CATHERINE PHELPS,
2 do hereby certify that I have read my foregoing deposition
3 and that, to the best of my knowledge, said deposition is
4 true and accurate (with the exception of the following
5 corrections listed below.)
6

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Signature

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Notary

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CLERK
SUPREME COURT OF VIRGINIA

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1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE COUNTY OF BEDFORD, VIRGINIA

3 -----
4 ANNA L. PHELPS,

5 Plaintiff,

6 v.

7 STATE FARM MUTUAL AUTOMOBILE
8 INSURANCE COMPANY,

9 Defendant
10 -----

11
12
13
14 DEPOSITION OF MARY CATHERINE PHELPS

15 Bedford, Virginia
16 January 22, 1990

17
18
19
20
21 * * * * *

22 BRENDA B. ALGER
23 Court Reporter
24 P.O. Box 956
25 Lynchburg, Virginia 24505
(804) 929-4312

Filed in the Bedford County Circuit Court
The 10th of September 1991

404

_____, Clerk
_____, Deputy Clerk

1 The deposition of MARY CATHERINE PHELPS, taken before
2 Brenda B. Alger, Notary Public in and for the State of
3 Virginia at Large, at the law offices of Edmunds &
4 Williams, 800 Main Street, Lynchburg, Virginia, on January
5 22, 1990, for the purposes of discovery and to be used
6 under the Rules of the Supreme Court in the above-styled
7 case.

8 **APPEARANCES:**

9
10 R. LOUIS HARRISON, ESQUIRE
11 P.O. Box 1008
12 Bedford, Virginia 24523
13 Representing the Plaintiff

14 HENRY M. SACKETT, III, ESQUIRE
15 800 Main Street, Suite 400
16 Lynchburg, Virginia 24504
17 Representing the Defendant

18
19 **INDEX:**

	Page
20 MARY CATHERINE PHELPS	
21 Direct Examination by Mr. Sackett-----	3

1 The witness, MARY CATHERINE PHELPS, having first
2 been duly sworn, deposes as follows:
3

4 DIRECT EXAMINATION
5

6 BY MR. SACKETT:

7 Q Mary, my name is Henry Sackett. I
8 represent State Farm in this case, and I'm going to ask
9 you some questions about the case. If you don't
10 understand any of my questions, let me know and I'll try
11 to make it clear. If you need to take a break or anything
12 like that just speak up.

13 A Okay.

14 Q State your name for the record, please.

15 A Mary Catherine Phelps.

16 Q Is that spelled with a C or a K?

17 A A "C".

18 Q How old are you?

19 A I'm twenty years old.

20 Q You are the sister of Anna L. Phelps?

21 A Yes.

22 Q Where do you live now?

23 A I'm presently living at my mother's house.

24 Q In Goode?

25 A Yes.

1 Q How long have you lived there?
2 A I moved home the first of January.
3 Q Before that, where did you live?
4 A I lived in Springfield at 8319 Brookvale
5 Court.

6 Q How long did you live there?
7 A I'd been living there since October of
8 1988.

9 Q Now at the time you moved in there, in
10 October of '88, were you a student at George Mason?

11 A Yes, I was.

12 Q Were you also working?

13 A Yes, I was.

14 Q Where were you working?

15 A Bennegan's Restaruant.

16 Q When you moved in, did you have to sign a
17 lease?

18 A Yes, I did.

19 Q Were you the only one who signed the lease?

20 A No. I had another roommate, Tony Bezacqua,
21 who also signed the lease, and I had my boyfriend, at that
22 time, also move in, but he did not sign the lease.

23 Q Spell Tony's last name.

24 A B-e-z-a-c-q-u-a. He was only there for two
25 and a half weeks.

1 Q He didn't last very long?
2 A No, he didn't. He forfeited his deposit
3 and got out of the lease.
4 Q What was the rent?
5 A For the whole place, it was seven hundred
6 fifty dollars a month.
7 Q So the original lease was signed by you and
8 Tony?
9 A Yes.
10 Q But there were three people living there.
11 You and Tony and--?
12 A Robert Johnson.
13 Q Robert Johnson. Who was the landlord?
14 A At that time it was Michael and Valerie
15 Bagby. B-a-g-b-y.
16 Q Were there any payments required by the
17 lease other than the seven hundred fifty dollars a month?
18 A No.
19 Q You mentioned the security deposit.
20 A Oh, yes. The deposit and credit checks.
21 Q How much of a security deposit?
22 A That was also seven hundred fifty dollars.
23 Q When you originally moved in, how was that
24 paid?
25 A Tony did put in two hundred fifty dollars.

1 My mother gave me some money, she loaned me some money and
2 I did the rest from what I earned.

3 Q Robert didn't pay anything?

4 A No.

5 Q Do you still have a copy of the lease?

6 A I believe-- Yes, I'm pretty sure I do.

7 Anna has a copy also.

8 Q Describe the layout of the apartment for
9 me?

10 A Well, there are three floors. The basement
11 is just a large open room and there's a laundry room right
12 off of that and a small half bathroom. Then there's the
13 middle floor, the living floor which has the kitchen. It
14 has a small dining area and a small living room area, all
15 in one room, except the kitchen is offset. Then the
16 upstairs has a full bath and two bedrooms.

17 Q So it's a two bedroom apartment?

18 A Yes. We turned it into three. The
19 basement's always been a bedroom.

20 Q So you all used it as a three bedroom?

21 A Yes.

22 Q Now what did you do when Tony moved out?

23 A Well, Rob was staying there and we-- and it
24 was just Rob and I for about two months and then Anna and
25 her friend Michelle also moved in and I guess it was

1 toward the end of January 1989.

2 Q Who paid the rent up until then?

3 A Just Rob and I.

4 Q Did Rob help with the rent?

5 A Yeah. As much as he could. And then Anna
6 signed the lease. Michelle didn't. So it was Anna, Rob,
7 Michelle and I. Rob came and went over the past year.

8 Q What's Michelle's last name?

9 A Panzarino. P-a-n-z-a-r-i-n-o.

10 Q Where is she from?

11 A She's from Lynchburg originally.

12 Q So when Anna moved in, in what, January?

13 A Uh-huh.

14 Q Did you all sign a new lease?

15 A Uh-huh. Yes, we did.

16 Q Was it the same as the old lease?

17 A Same thing. Uh-huh.

18 Q Same rent? Did you have to pay a security
19 deposit?

20 A No. The security deposit stayed the same.

21 Q So Anna didn't have to pay any security
22 deposit?

23 A Let's see when Tony-- there was confusion
24 with the landlord. I had talked to Michael about Tony's
25 relinquishing his deposit for his month's rent and it got

1 confused with his wife. He didn't communicate that to his
2 wife so that I believe we did have to put another two
3 hundred fifty--

4 Q Who's wife?

5 A Valerie.

6 Q Not Tony?

7 A No, no, no. I think my mother did give us
8 another two hundred fifty dollars. I think that's how it
9 ended up.

10 Q Now tell me how the payment of the rent and
11 utilities was handled?

12 A Since I was-- it was Tony, Rob and I when
13 we first moved in and Rob and I didn't realize this, but
14 ever since the beginning, Tony was trying to get out of it
15 because it was just too much responsibility for him but he
16 was never straight forward with us but I went and put the
17 power bill in mine and Tony's name, that were both on the
18 bill and he was going to take care of the phone, and we
19 gave him money to do that and he never did it, so he
20 packed up and left one day while I was at work. So he
21 took off with my money for the phone and I was without a
22 phone for a few weeks until I could save enough money and
23 I got it all put in my name because they require a hundred
24 fifty dollar--the phone company and the power company. I
25 put them in my name because I knew Rob was a very unstable

1 character and he wasn't going to be responsible for a
2 deposit or anything, so I figured it'd better go in my
3 name since I was more responsible than he.

4 Q By the time Anna moved in, was everything
5 in your name?

6 A Yes.

7 Q What about the-- was the water provided?

8 A Right. That was also in my name.

9 Q I mean did you have to pay?

10 A No. We do get a water bill, but we didn't
11 have to do a deposit for that.

12 Q But you do get a water bill and that's in
13 your name?

14 A Oh, yes.

15 Q What about your heat? Is that electric?

16 A Uh-huh.

17 Q So by the time Anna moved in, all the
18 utilities were in your name?

19 A Yes.

20 Q And then Anna and you were the only two
21 people who signed that new lease?

22 A Yes.

23 Q How did you go about paying the rent?

24 A We divided the rent up. Depending on how
25 many people were there that month evenly. Everybody paid

1 the same rent, no matter what the size of the bedroom or
2 whatever.

3 Q What was the largest number of people you
4 had there?

5 A Four.

6 Q And the least?

7 A Two.

8 Q Who wrote the rent check?

9 A It always varied because I was having a
10 flight with Holiday Spa and I had to close out my bank
11 accounts because they would automatically take payments
12 from my bank account while I was trying to get my
13 membership cancelled. So it started off with me writing
14 the checks and then Anna would write the checks sometimes,
15 Michelle would write check sometimes. It varied. We
16 also, part of Anna's and my rent was covered through our
17 trust fund since we were students at the time. So part of
18 it would be sent automatically to the landlord.

19 Q So the part that your trust fund paid was
20 not sent to you and you wrote a check to the landlord--

21 A Yes, it was.

22 Q How much went direct to the landlord out of
23 the trust?

24 A Four hundred dollars.

25 Q Two hundred for each?

1 A Yes.

2 Q How about the utilities, who paid those?

3 A Whoever was writing the checks for that
4 month wrote them out for the utilities but the phone bill
5 of course we went through and sorted out who owed what and
6 the power bills and water bills were all divided evenly
7 between how many people were there.

8 Q Were there any other expenses of the
9 apartment that the group shared in any way?

10 A No, there were no community fees.

11 Q You didn't buy food as a group?

12 A No, we were all on our own. We all had
13 different work patterns and eating patterns. We found
14 that it wasn't very economical to all go in on a bunch of
15 groceries and only have one person home that week to eat
16 them.

17 Q Did you all eat at home?

18 A Rarely. I was usually just there for
19 coffee and maybe something quick in the morning. I was
20 working a lot at that time. Anna and I both worked in
21 restaurants so our food was provided.

22 Q After the accident in June of '89, how long
23 was it before Anna moved back in?

24 A It was probably towards the end of July.

25 Q Who was living there at that time?

1 A Rob, once again, and one of his friends
2 named John Osh.

3 Q O-s-h?

4 A I believe. That was very temporary. I was
5 there by myself for a little while after that.

6 Q Who paid the rent?

7 A Me.

8 Q By yourself?

9 A Yes.

10 Q I guess the trust continued to send Anna's
11 share, or did it?

12 A No. In the summer it did not pay our rent.
13 I believe it was for the months of June, July and August
14 we were on our own.

15 Q So you had to be in school for it to pay
16 your rent?

17 A Oh, yes.

18 Q Are you in school now?

19 A I'm presently not.

20 Q How long did you remain in school?

21 A Three years.

22 Q You left school when?

23 A Well, school-- this semester doesn't start
24 until the end of January so I could go back. I haven't
25 quite made that decision but I believe I'm taking this

1 semester off. I'm almost positive.

2 Q Did you complete the last semester?

3 A Oh, yes.

4 Q Did you live at the apartment there until
5 school was out?

6 A Yes. I'm sorry I did make a mistake. I
7 moved out at the end of November. I lived in Washington,
8 D.C. Just for the month of December and the last week of
9 November. Rob and I got a place there.

10 Q What did you do about the rent when you
11 moved out?

12 A Well, the trust fund did send my portion of
13 the rent to Anna and I just didn't-- I let her keep that
14 to help them, to help her financially since my move was a
15 little bit abrupt. I paid for the rent at this one place.
16 Rob and I split that. There was no lease, it was just a
17 favor from my boss.

18 Q When did the lease expire, run out?

19 A Well, it was a one year lease, so it went
20 from October of 1988 to October of 1989 and then Anna and
21 I renewed it with the new landlord. The townhouse was
22 sold.

23 Q So you are still on that lease?

24 A Yes, I am.

25 Q What are you all doing about the rent now?

1 A Well, the trust fund did keep sending the
2 rent for December and January so that helped. There's
3 another person named Dave who moved in, I believe August,
4 and he did not sign the lease. So it was Anna, Dave and I
5 until November and then Rob came back into the picture.
6 Rob and I got our own place, that didn't work out, I moved
7 home. Dave and Anna are still there.

8 Q Now the accident happened on June the 10th
9 of '89, as I understand it, and from what Anna has told me
10 in her deposition, you and she had come home for a
11 cousin's wedding?

12 A Yes.

13 Q Tell me how Anna came to be driving your
14 car at the time of the accident?

15 A Well, Anna has a best friend in Lynchburg
16 named Anna Featherston and whenever Anna comes home to
17 Lynchburg she likes to go out with her friend, Anna
18 Featherston. So, the family making the plans for the day
19 and Anna was on the phone with the other Anna making plans
20 for that evening and Anna Featherston suggested that they
21 go out with some other girls. They were all going to a
22 party. I believe there were going to be three or four
23 girls planning on going out and Anna Phelps has a car
24 that's only a two seater, a Honda CRX, and they all wanted
25 to out and they wanted my sister to drive and so she asked

1 if she could borrow my car which was a four seater and I
2 let her take it.

3 Q What kind of car was yours?

4 A Mine was a Nissan Sentra XE.

5 Q Who were you insured with?

6 A Nationwide.

7 Q Do you know what time Anna left in your
8 car, approximately?

9 A No. I believe what happened that day was
10 my other sister, Rosa and my mother, we went to Roanoke
11 where the family was having a party, a pre-wedding party.
12 And Anna left after we had already left.

13 Q Did you take Anna's car to Roanoke?

14 A Well, Rosa drove Anna's car. I rode with
15 my mom to Roanoke.

16 Q To your knowledge, who was in the car with
17 Anna when the accident happened?

18 A Anna Featherston and a girl named Jenny.
19 I'm not sure of her last name.

20 Q What has Anna told you about how it
21 happened?

22 A She said that she was going away from the
23 party and I guess there's a dip in the road before-- and
24 there's the tree with the planter around it and I'm not
25 exactly sure what she was doing right before-- I'm not

1 ~~she~~ what she was doing to cause the accident, but she
2 obviously did not see the planter or the tree and hit it.
3 I have a feeling, knowing what the two Anna's are like,
4 they were probably talking.

5 Q To your knowledge, has your insurance
6 company, Nationwide, provided coverage to Anna for that
7 accident?

8 A Anna Featherston?

9 Q No, to your sister, Anna.

10 A No. I don't think so, to my knowledge.

11 Q Have they paid Anna Featherston anything to
12 your knowledge?

13 A Yes. I believe they covered up to
14 twenty-five thousand dollars of her medical bills.

15 Q Was Anna Featherston seriously hurt?

16 A She dislocated her hip and there was some
17 facial damage and she needed some plastic surgery.

18 Q How about the other passenger? Was she
19 hurt?

20 A I believe she had her jaw wired shut and I
21 remember seeing her in the emergency room and she had
22 crutches, I really don't remember the damage exactly.

23 Q Do you know what the coverage limits were
24 on the Nationwide policy on your car?

25 A I believe it was twenty-five thousand

1 ~~dollars~~ per person.

2 Q Do you know if there was any medical
3 payments coverage on that? Do you know what that means?

4 A No, I don't.

5 Q Okay. Do you have anything with you that
6 shows what the coverage is on that car?

7 A No.

8 Q Well, is it accurate to say that at the
9 time that accident happened, Anna was driving, Anna, your
10 sister, was driving your car and at that time you and Anna
11 both lived at 8319 Brookvale Court in Springfield,
12 Virginia?

13 A Yes.

14 Q And the only other place that either of you
15 had to call home at that time would have been your
16 mother's home in Goode?

17 A Yes.

18 Q Did you own any other vehicle?

19 A No. Previous, prior?

20 Q No, at the same time as this one?

21 A No.

22 Q Did you have any insurance, automobile
23 liability insurance, other than the Nationwide policy?

24 A No.

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MR. SACKETT: That's all the questions I
have.

MR. HARRISON: No questions.

MR. SACKETT: Do you want her to read and
sign.

MR. HARRISON: Yes I want her to read and
sign.

AND FURTHER THIS DEPONENT SAITH NOT.

Deponent

1. **STATE OF VIRGINIA**

2. **AT LARGE: TO WIT,**

3. I, Brenda B. Alger, Notary Public in and for the
4. State of Virginia at Large, do certify that the within
5. deponent appeared before me, was sworn by me, and that the
6. foregoing transcript was taken by me and transcribed under
7. my direction and is complete and accurate to the best of
8. my ability.

9. My commission expires September 30, 1993.

10. Witness my hand this 30th day of January, 1990.

11. _____
12. **Notary Public**
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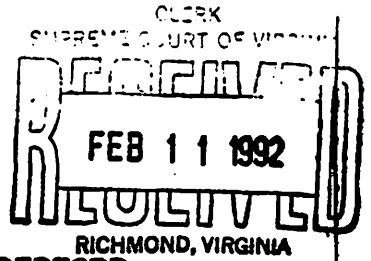
1 I, the undersigned, MARY CATHERINE PHELPS,
2 do hereby certify that I have read my foregoing deposition
3 and that, to the best of my knowledge, said deposition is
4 true and accurate (with the exception of the following
5 corrections listed below.)
6

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920429



1 **VIRGINIA:**

2 **IN THE CIRCUIT COURT FOR THE COUNTY OF BEDFORD**

3 -----
4 **ANNA L. PHELPS,**

5 **Plaintiff,**

6 **v.**

7 **STATE FARM MUTUAL AUTOMOBILE**
8 **INSURANCE COMPANY,**

9 **Defendant**

10
11
12
13
14 **DEPOSITION OF MARY CATHERINE PHELPS**

15 **Bedford, Virginia**
16 **May 17, 1990**

17
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19
20 * * * * *

21 **BRENDA B. ALGER**
22 **Court Reporter**
23 **P.O. Box 956**
24 **Lynchburg, Virginia 24505**
25 **(804) 929-4312**

Filed in the Bedford County Circuit Court
The 10 day of September, 1991
TESTE: James W. Black, Clerk
By: _____, Deputy Clerk

1 The deposition of MARY CATHERINE PHELPS, taken before
2 Brenda B. Alger, Notary Public in and for the State of
3 Virginia at Large, at the law offices of Radford &
4 Wandrei, 112 S. Bridge Street, Bedford, Virginia, on May
5 17, 1990, for the purposes of discovery and to be used
6 under the Rules of the Supreme Court in the above-styled
7 case.

8 **APPEARANCES:**

9 R. LOUIS HARRISON, JR., ESQUIRE
10 P.O. Box 1008
11 Bedford, Virginia 24523
12 Representing the Plaintiff

13 HENRY M. SACKETT, III, ESQUIRE
14 800 Main Street, Suite 400
15 Lynchburg, Virginia 24504
16 Representing the Defendant

17	INDEX:	
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19	MARY CATHERINE PHELPS	
20	Direct Examination by Mr. Sackett-----	3

1 The witness, MARY CATHERINE PHELPS, having first
2 been duly sworn, deposes as follows:

3
4 DIRECT EXAMINATION

5
6 BY MR. SACKETT:

7 Q State your name for the record, please.

8 A Mary Catherine Phelps.

9 Q And your age?

10 A Twenty.

11 Q Your date of birth?

12 A June 13, 1969.

13 Q And your Social Security number?

14 A 228-17-1132.

15 Q Now I took your deposition before on
16 January 22nd of this year. Have you had a chance to read
17 the transcript of that deposition?

18 A Yes, I have.

19 Q Having read it, is there anything in it
20 that you felt like you needed to change or correct in
21 order to make it more accurate?

22 A No.

23 Q When you first moved into the townhouse in
24 Springfield, was there already somebody living there that
25 you knew or was this a place that you picked out and

1 ~~lease~~ when Anna moved in?

2 A The landlord did.

3 Q You didn't decide, he did then?

4 A Right.

5 Q How did he even know that Anna had moved
6 in?

7 A I called him and told him that I was having
8 my sister move in with me.

9 Q Was there any requirement in the lease that
10 you notify the landlord of who was living there?

11 A Yes.

12 Q Did you always do that?

13 A No.

14 Q When we speak of the landlord, are you
15 talking about the realtor that handled it or the actual
16 owner?

17 A No. Originally, it was Valerie and Michael
18 Bagby that were my landlords and they sold the townhouse
19 to someone else. And, let's see, it was last summer, it
20 was right after the accident, in, it must have been June
21 or July they sold it, and then Ken Vick took over handling
22 the property for the new owner.

23 Q And the new owner was Steven Hurtzberg?

24 A Yes, that was the name.

25 Q But he was not the owner at the time of the

1 started with afresh?

2 A Yes. I started with my boyfriend at the
3 time, Rob Johnson.

4 Q Was he already in it or you all signed a
5 lease and moved in anew? You didn't take it over from
6 somebody else?

7 A No, we signed the lease and moved in brand
8 new.

9 Q Now did he sign the lease, too?

10 A No.

11 Q So the lease was solely in your name?

12 A My name and Tony Bezacqua's, and Tony
13 lasted two weeks and then it was just me.

14 Q Did he sign the --

15 A Rob Johnson did not sign the lease.

16 Q Did Tony?

17 A Tony signed the lease, yes.

18 Q When he moved out, did you sign a new lease
19 or did it just stay the way it was?

20 A It stayed with his name on it until Anna
21 moved in and then we met with the landlord, Anna and I,
22 and Anna and I resigned the same lease.

23 Q Why did you do that?

24 A Why did we do --

25 Q Why did you decide you needed to sign a new

1 accident?

2 A No.

3 Q So up until the time of the accident, who
4 did you all deal with as far as --

5 A The Bagbys.

6 Q Okay. Give me their names again.

7 A Valerie and Michael Bagby. B-a-g-b-y.

8 Q How did you find the townhouse in the first
9 place?

10 A The newspaper.

11 Q It was advertised in the newspaper?

12 A Yes.

13 Q Did the Bagbys live nearby?

14 A Half an hour away.

15 Q Was the rent paid directly to them or was
16 there some realtor or somebody who was managing it for
17 them?

18 A It was paid directly to them.

19 Q Between the time that Anna moved in, which
20 was what, January of '89 --

21 A Yes.

22 Q -- and the accident in June of '89, the
23 lease would have been in yours and Anna's names, correct?

24 A Yes.

25 Q And during that time was the rent always

1 paid by check?

2 A Well, the trust fund paid for it partially,
3 and that partial amount was being sent directly to Ken
4 Vick and then the rest was written in a check either by
5 Anna or Michelle Panzarino, who was living there also, or
6 Matt and somebody else I was dating for a month or two.

7 Q I thought you said Ken Vick didn't become
8 involved with it until after the accident and that the
9 Bagbys were the owners before the accident?

10 A Okay. Let me think. You're right. It was
11 to the Bagbys then that the difference was sent to in our
12 checkbook and then when Ken, the same procedure when Ken
13 took over. The trust fund was sending their part to him
14 and then we'd send the rest in check.

15 Q But it always paid by check?

16 A Yes.

17 Q Now do you know who actually wrote the
18 checks?

19 A It varied. I'd say most of the time it was
20 Anna.

21 Q Now Anna has told us in her deposition that
22 during that time between when she moved in and the
23 accident, that all of the utilities were in your name, is
24 that correct?

25 A Yes.

1 Q Were they always paid by check?

2 A Or money order.

3 Q Who wrote those checks?

4 A Either Anna, Michelle or Matt.

5 Q Or you?

6 A No. I did not have a checking account. I
7 was having problems with Holiday Spa.

8 Q When did you close out your checking
9 account?

10 A I believe it was in May of '89.

11 Q Up to that point, would you have
12 occasionally written checks for the utilities?

13 A Yes, until I closed out my account, I
14 would've.

15 Q Did you simply not have any checking
16 account at all after that?

17 A No. No banking account whatsoever.

18 Q Do you know what address was on your
19 driver's license at that time, back in the first half of
20 1989?

21 A When I closed out my account, checking
22 account, I got my driver's license changed back to Route
23 2, Box 170 in Goode, and that was for reasons because of
24 Holiday Spa, my cancellation. And then I changed it back
25 to 8319 Brookvale Court a couple months later.

1 Q Well, up until May, what was the address on
2 the license?

3 A 8319 Brookvale.

4 Q What address is on it now?

5 A Now it's Route 2, Box 170.

6 Q Do you know when you changed it to the
7 Springfield address?

8 A I'm not real sure.

9 Q You left home to go to college in what, the
10 fall or late summer of '87?

11 A Yes.

12 Q Where did you live when you first went to
13 college?

14 A At the college.

15 Q You lived in a dorm?

16 A Yes.

17 Q For how long?

18 A One semester.

19 Q And then where did you go?

20 A I moved to Alexandria and lived with a
21 friend.

22 Q During that time what address was on the
23 driver's license?

24 A When I was living in Alexandria?

25 Q Up until that point?

1 A Until I moved to Alexandria, it was still
2 my Goode address.

3 Q Did you ever have the Alexandria address on
4 your driver's license?

5 A Yes, briefly, and I got that changed when I
6 moved.

7 Q To?

8 A Alexandria, 431 North Armistead.

9 Q And then did you change it to the
10 Springfield address when you moved there?

11 A Yes.

12 Q Was any mail still being sent, of any kind,
13 still being sent to you at your mother's address after you
14 left the school?

15 A I believe just my grades were mailed to my
16 mom's address.

17 Q What about your tuition bills from the
18 school?

19 A They were sent to the trust fund, North
20 Carolina.

21 Q Now that you are not in school, do you
22 receive anything from the trust fund?

23 A No.

24 Q It's an educational benefit only?

25 A Exactly.

1 Q Do you have any health or medical insurance
2 of your own?

3 A No. I just became eligible at J. Crew for
4 my benefits and I plan on doing that this week.

5 Q Your mother has said that as long as you
6 were a student you were covered under hers?

7 A Right.

8 Q Since you left school, have you had any at
9 all?

10 A No.

11 Q And your mother has told us that she took
12 care of filling your tax return and Anna's and had those
13 prepared by her accountant here in Bedford, is that
14 correct?

15 A Yes.

16 Q So she took care of all of that. You
17 didn't have anything to do with that?

18 A No.

19 Q When you were attending school at George
20 Mason, did you have any personal possessions of any kind
21 that you kept at your mother's home?

22 A Nothing important. Maybe some clothes.

23 Q For instance, did you keep winter clothes
24 there during the summer and, I mean, the clothes you
25 weren't using, did you keep there, the things that were

1 out of season?

2 A Or things I didn't like, yes.

3 Q What about furniture and things like that,
4 do you own any?

5 A No. Not at that time.

6 Q Do you now?

7 A I have a microwave and chair and bed and
8 dresser. That's about it.

9 Q While you were still in school, when you
10 were out on holiday breaks, Thanksgiving, Christmas,
11 things like that, would you come home?

12 A Most of the time.

13 Q Did you receive any kind of financial
14 assistance from your mother, directly from her?

15 A No.

16 Q Did she pay any of the expenses of school?

17 A Yes.

18 Q What did she pay?

19 A She would pay for, she would loan me the
20 money for my books and then my aunt would reimburse me.
21 As far as when I was in school, I would take care of
22 myself, but if I was ever in a spot, she would loan me
23 some money, which maybe happened once or twice and I'd pay
24 her back.

25 Q Where would you get the money to pay her

back?

1

2

A Personal.

3

Q From a job?

4

A I was working, yes.

5

Q Do you know how much you earned?

6

A I'd say about fifteen thousand a year.

7

Q You were doing what?

8

A Waitressing.

9

Q The car that Anna was driving at the time
10 this accident occurred was your car, right?

11

A Yes.

12

Q How long had you owned that car?

13

A Approximately six months.

14

Q Where did you get the money to buy it?

15

A My grandmother paid for it in full.

16

Q It was a gift?

17

A No, I was paying her back as I could afford
18 it. No structured payments.

19

Q Have you paid her?

20

A No.

21

Q Have you paid anything?

22

A I paid her, I believe, about six hundred
23 dollars on it.

24

Q Do you know what she paid for the car?

25

A I think she wrote the check and it came out

1 to about twelve thousand. I'm not sure.

2 Q Did you pay for the insurance on the car?

3 A Yes, I was paying for my own insurance.

4 Q How often would Anna drive the car?

5 A I believe the day she wrecked was the first
6 or second time she had driven it.

7 Q When you all were living together in
8 Springfield she didn't ever drive your car?

9 A No.

10 Q Did you drive hers?

11 A No.

12 Q Now other than you and Anna, who else lived
13 in that townhouse between the time that Anna moved in and
14 the time of the automobile accident?

15 A Michelle Panzarino and Rob Johnson.

16 Q And they are the only ones?

17 A Yes.

18 Q Were they both there the whole time?

19 A Michelle was and Rob would come and go.

20 Q But neither one of them were ever signers
21 of the lease?

22 A No.

23 Q And none of the utilities were ever in
24 either one of their names?

25 A No.

1 Q Did Michelle move in before or after Anna?
2 A It was approximately the same time within a
3 week or two.
4 Q How did you get hooked up with Michelle?
5 Did you know her from Lynchburg before?
6 A Anna did. She was Anna's friend.
7 Q How were the arrangements made for Michelle
8 to move in?
9 A I think at the time I wasn't sure if I was
10 going to be there and I knew I needed three people there
11 to pay for the rent. And so Anna suggested having
12 Michelle move in when Anna did, and I agreed.
13 Q Did you know Michelle at all yourself?
14 A Briefly.
15 Q And if you hadn't liked her, you would have
16 said no, wouldn't you?
17 A Yes.
18 Q I mean, you wouldn't have agreed to
19 somebody moving in there that you didn't want to live
20 with, would you?
21 A No.
22 Q Now the apartment was unfurnished, is that
23 right?
24 A Yes.
25 Q Did it have any basic furnishings, like was

1 a stove and refrigerator in it?

2 A Oh, yes. Also, the Bagbys gave me a sofa
3 and the love seat.

4 Q Who owned whatever furniture was in there?

5 A My grandmother bought Anna and I a kitchen
6 table and the rest of the stuff was given to us,
7 basically. My grandmother bought the bedroom stuff for
8 me.

9 Q Did Rob own any of it?

10 A His aunt had given us another bed and
11 that's it.

12 Q When you said he was kind of in and out
13 did he really, when he left did he take anything with him?

14 A No. He didn't own anything to take with
15 him except his clothes.

16 Q And what about Michelle? What did she own
17 that was there? Anything?

18 A No, just her bedroom stuff.

19 Q When she left, who moved in when Michelle
20 left?

21 A Dave Braun.

22 Q Did he move any furniture in?

23 A His bedroom furniture and a table.

24 Q He occupied the space that Michelle had
25 vacated?

1 A He took over the basement where I had been
2 previously, and I went upstairs to where Anna had been
3 prior to the accident.

4 Q And Anna was not there then because she was
5 at home with her injuries, is that correct?

6 A And then she came back, she came back right
7 before Dave moved in and she took a smaller bedroom.

8 Q And he was in the basement?

9 A He was in the basement and I was in the
10 master bedroom.

11 Q When Anna came, how did you all decide who
12 got the master bedroom?

13 A There was no question. When I was in the
14 townhouse by myself, right after the accident, I took the
15 large bedroom.

16 Q When you were there before she was, I
17 wonder how you let her get it away from you?

18 A Because Rob had talked me into moving into
19 the basement with him.

20 Q So she just lucked out on that?

21 A Yeah.

22 Q When she moved back in, did you give the
23 master bedroom back to her?

24 A Nope.

25 Q Did she ask for it?

1 A Nope.

2 Q And you stayed there how long after that?

3 A Until the end of November.

4 Q What made you decide to move out then?

5 A Rob came back from Florida.

6 Q Did you give any kind of notice to the
7 landlord that you were moving out?

8 A No.

9 Q Did you continue to contribute anything to
10 the rent after you moved out?

11 A No, although the trust fund was still
12 paying for \$150.00 -- I'm sorry, \$200.00 of my rent.

13 Q Continued to pay the same thing it had been
14 paying?

15 A Right. For December and January.

16 Q Is that because you just didn't tell the
17 trustee you'd moved either?

18 A No. My mom didn't notify them. They had
19 previously said they were not going to pay for my rent
20 when we were on school vacation, but they went ahead and
21 did it anyway. It was their mistake.

22 Q Your mother has told us that she handles
23 all the communications with the trustee herself?

24 A Yes.

25 Q You never communicated directly with the

1 trustee yourself?

2 A I did once, to request money to buy my
3 first car.

4 Q And they said no?

5 A Oh, no, they gave it to me.

6 Q They did? I thought you said it was purely
7 an educational --

8 A It was, except I think this was a different
9 account. I think there are two different accounts.

10 MR. SACKETT: I don't have any other
11 questions. Do you want her to read and sign?

12 MR. HARRISON: Yes.

13

14 AND FURTHER THIS DEPONENT SAITH NOT.

15

16

17

Deponent

18

19

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21

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25

1 **STATE OF VIRGINIA**

2 **AT LARGE TO WIT,**

3 I, Brenda B. Alger, Notary Public in and for the
4 State of Virginia at Large, do certify that the within
5 deponent appeared before me, was sworn by me, and that the
6 foregoing transcript was taken by me and transcribed under
7 my direction and is complete and accurate to the best of
8 my ability.

9 My commission expires September 30, 1993.

10 Witness my hand this 31st day of May, 1990.

11
12 Brenda B. Alger

13 Notary Public
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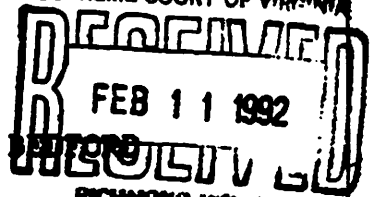
1 I, the undersigned, MARY CATHERINE PHELPS,
2 do hereby certify that I have read my foregoing deposition
3 and that, to the best of my knowledge, said deposition is
4 true and accurate (with the exception of the following
5 corrections listed below.)
6

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Notary

920429

CLERK
SUPREME COURT OF VIRGINIA



1 **VIRGINIA:**

2 **IN THE CIRCUIT COURT FOR THE COUNTY OF BEDFORD**

3 -----
4 **ANNA L. PHELPS,**

5 **Plaintiff,**

6 **v.**

7 **STATE FARM MUTUAL AUTOMOBILE**
8 **INSURANCE COMPANY,**

9 **Defendant**

10
11
12
13
14 **DEPOSITION OF MARJORIE HUNT PHELPS**

15 **Bedford, Virginia**
16 **May 17, 1990**

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20 * * * * *

21 **BRENDA B. ALGER**
22 **Court Reporter**
23 **P.O. Box 956**
24 **Lynchburg, Virginia 24505**
25 **(804) 929-4312**

Filed in the Bedford County Circuit Court
The 10th day of September, 19 91
TESTE: Carol W. Black Clerk
By: _____, Deputy Clerk

1 The deposition of MARJORIE HUNT PHELPS, taken before
2 Brenda B. Alger, Notary Public in and for the State of
3 Virginia at Large, at the law offices of Radford &
4 Wandrel, 112 S. Bridge Street, Bedford, Virginia, on May
5 17, 1990, for the purposes of discovery and to be used
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8 APPEARANCES:

9 R. LOUIS HARRISON, JR., ESQUIRE
10 P.O. Box 1008
11 Bedford, Virginia 24523
12 Representing the Plaintiff

13 HENRY M. SACKETT, III, ESQUIRE
14 800 Main Street, Suite 400
15 Lynchburg, Virginia 24504
16 Representing the Defendant

17 INDEX:

18 MARJORIE HUNT PHELPS

19 Direct Examination by Mr. Sackett-----3

Page

1 The witness, MARJORIE HUNT PHELPS, having first
2 been duly sworn, deposes as follows:

3
4 DIRECT EXAMINATION

5
6 BY MR. SACKETT:

7 Q State your name for the record, please.

8 A Marjorie Hunt Phelps.

9 Q And your address?

10 A Route 2, Box 170, Goode.

11 Q And you've lived there for how long?

12 A Since 1972.

13 Q Who lives there now?

14 A Myself, Mary Catherine Phelps, Rosalie
15 Phelps and Marjorie A. Phelps, my other daughter.

16 Q Who is Rosalie?

17 A She is my seventeen year old daughter.

18 Q Anna just told us that her grandmother has
19 lived there at some point?

20 A She stays with me in the wintertime.

21 Q What's her name?

22 A Mary Hunt.

23 Q What part of the year, months, does she
24 live with you?

25 A Usually November until the first of May.

1 Q And then where does she go?
2 A Cambridge, New York.
3 Q Now Anna and Mary have both told me that
4 they are beneficiaries of a trust of some sort. Can you
5 tell me a little of the details of the trust?
6 A Yes. It was set up by my father-in-law,
7 William B. Phelps, upon his death and it provides them
8 with funds for basically educational needs.
9 Q Is it a trust that terminates at any
10 particular age?
11 A When my youngest daughter turns thirty.
12 Q Are any of your children, other than Anna
13 and Mary, now receiving any funds from the trust?
14 A Periodically they receive funds for
15 tuition. They are in private school.
16 Q The other children are?
17 A Yes.
18 Q What's your understanding of what Mary and
19 Anna were receiving from the trust while they were both
20 attending college?
21 A They received payment for tuition and
22 assistance with rent money.
23 Q Does it pay for the tuition in full?
24 A Yes.
25 Q Would that have been true without

1 limitation of where they went to college?

2 A Yes. Every time they got a payment though,
3 it had to be approved by the trust. But it always did pay
4 their full tuition, upon approval. Each time it had to be
5 approved.

6 Q Who is the trustee?

7 A Wachovia in Wilmington, North Carolina.

8 Q Do you have any control over the trust
9 yourself?

10 A No.

11 Q Do you work?

12 A Yes, I do.

13 Q Where do you work?

14 A Food Lion, Amherst.

15 Q What do you do there?

16 A I'm the store manager.

17 Q How long have you worked there?

18 A At that store or for Food Lion?

19 Q Well, at that store, first?

20 A Almost two years.

21 Q And for Food Lion, how long?

22 A Almost eight years.

23 Q What in the way of expenses of any kind do
24 you pay for your daughter's or did you pay when they were
25 both in school?

1 A Nothing, unless they came home for a
2 vacation. I would feed them, of course, and once in a
3 while I'd buy them some clothes, but nothing on a regular
4 basis.

5 Q Did the trust cover all of their books and
6 all of those expenses?

7 A Their books were covered by my husband's
8 cousin. She gave the girls a graduation gift of paying
9 for their books for college. And everything else, their
10 food, their clothing and the rest of the rent, they paid
11 for themselves with their jobs.

12 Q If they weren't working, would there be
13 income or money to pay those expenses with?

14 A I couldn't afford it. That's why they were
15 working.

16 Q Do they have to work?

17 A Yes.

18 Q Are you -- Is your husband with you?

19 A I'm a widow.

20 Q You're a widow. When did he die?

21 A Eleven years ago. 1979.

22 Q Now Mary is living with you now, correct?
23 You need to say yes or no.

24 A Yes. I'm sorry.

25 Q How long has she been with you this time?

1 A Since January, 1990.

2 Q What was the occasion for her moving back
3 home?

4 A She said she was going to take a semester
5 off from school and she wanted to move home for a short
6 period of time.

7 Q Is she working at all?

8 A Yes, she is.

9 Q Where does she work?

10 A J. Crewe.

11 Q Is she applying to go back to school or has
12 she so far?

13 A She's expressed an interest in going to
14 CVCC.

15 Q But not back to, was it George Mason?

16 A Right. Not at --

17 Q Not at this point, anyway.

18 A Not this month.

19 Q One of those who changes from time to time.
20 Anna has told us this morning that her communications from
21 George Mason come addressed to her at your address. Is
22 that accurate as far as you know?

23 A I know they did when she first went up
24 there. I haven't received anything in quite a while so I
25 don't know if they still have that as her address or not.

1 Q Do they send you her grades, for instance?
2 A When she last attended, yes.
3 Q I'm talking about Anna, now. She's --
4 A Yes.
5 Q Is she not in school?
6 A She's not in this semester, no.
7 Q When did she stop attending?
8 A In January.
9 Q So she and Mary both dropped out in
10 January?
11 A That's correct.
12 Q Well, while she was in school up there,
13 which was what, two semesters?
14 A That's correct.
15 Q Her grades and other communications came
16 addressed to you?
17 A Yes.
18 Q And was the same true of Mary while she was
19 there?
20 A Hers did not.
21 Q Have you ever seen the lease that Mary and
22 Anna signed on the townhouse that they lived in?
23 A Yes.
24 Q Did you see it before they signed it?
25 A No, I did not.

1 Q They didn't ask you to look at it and
2 anything of that nature?

3 A No.

4 Q What was the occasion for your seeing it?

5 A After the car accident.

6 Q What brought it up then?

7 A I asked to see the lease.

8 Q Did you want to see if they could get out
9 of it?

10 A No.

11 Q What made you decide you wanted to see it?

12 A I wanted to see if it was -- I just wanted
13 to see how the signatures were on it.

14 Q Whose signatures were on it when you saw
15 it?

16 A Anna and Mary Catherine's.

17 Q To your knowledge, have either Anna or Mary
18 Catherine ever filed an individual state or federal tax
19 return in their own name?

20 A It's always filed individually.

21 Q I asked that, because when I asked Anna
22 that, she didn't know.

23 A That's because I have Charlotte Mason do
24 everybody's taxes, but each child has an individual tax
25 return.

1 Q Do you have copies of all of those at home?
2 A Yes, I do.
3 Q And Charlotte Mason is --
4 A She's an accountant in Bedford.
5 Q And these are all done by her at your
6 request?
7 A Yes.
8 Q Do you claim either Mary or Anna as
9 dependents on your tax returns?
10 A Up until this year, yes.
11 Q Up until?
12 A 1990.
13 Q 1990, so in 1989 you claimed them both as
14 dependents?
15 A Yes.
16 Q Were separate tax returns filed for both of
17 them in 1989 also?
18 A Yes.
19 Q Do you know if either of them had to pay
20 any tax? I mean, was anything paid with the return or was
21 there any refund?
22 A Everybody paid. All the children -- I had
23 to pay taxes on all the children.
24 Q And you paid it?
25 A Yes. I'm going to try to get the trust to

1 reimburse me on that.

2 Q Do you have a copy of the Trust Agreement?

3 A At home, yes.

4 Q Does the trustee have to approve the rent
5 or the lease or anything to do with those types of living
6 arrangements?

7 A He has to approve all money given. They do
8 question, you know, what it's for, whether it's for rent,
9 tuition, et cetera.

10 Q But, for instance, when they signed this
11 lease for the place in Fairfax or Springfield, did the
12 trustee have to approve the lease in advance?

13 A No.

14 Q They just have to satisfy the trustee that
15 they are, in fact, paying rent?

16 A That's correct. He did actually send the
17 checks to the owner of the townhouse.

18 Q Do you know how the trustee got the
19 information to do that? Did you give it to them?

20 A Yes.

21 Q Now it's my understanding that Mary went to
22 George Mason first and was living in this townhouse before
23 Anna moved up there?

24 A That's correct.

25 Q Anna first went to High Point and then

1 transferred?

2 A That's correct.

3 Q So when Mary moved in, did you then at that
4 point notify the trustee of the living situation and where
5 the rent should be sent?

6 A I'm trying to remember when the trust
7 actually started helping her pay her rent.

8 Q Was there a time when it did not?

9 A I don't remember if there was a month or
10 two when they did not. It would have been a short period
11 of time when they did not, but --

12 Q Well, what I'm really getting at is how did
13 they know to start doing it?

14 A I told them.

15 Q You told them. Do you have any regular
16 communication with the trustee?

17 A Only when I need money.

18 Q When questions come up about what the trust
19 is going to pay for Mary and Anna, are you the one that
20 communicates with the trustee about that?

21 A Usually.

22 Q To your knowledge, have either Mary or Anna
23 had any direct communication with the trustee themselves?

24 A No.

25 Q So all of that's been handled by you?

1 A That's correct.

2 Q While Mary and Anna were both at George
3 Mason before this accident happened, up to the time of the
4 accident, did they still have their bedrooms maintained
5 for them at your home?

6 A What do you mean by maintained?

7 Q Well, did they --

8 A The rooms were still there.

9 Q They had had their own bedrooms when they
10 were living at home, I take it?

11 A That's correct.

12 Q Once they left, did that change or did
13 their bedrooms remain as they were and when they came home
14 they stayed right where they had been before?

15 A Oh, no. Mary Catherine had to sleep on the
16 sofa. Margie moved into her bedroom.

17 Q Did that open up another bedroom?

18 A No. My mother took it.

19 Q Okay, but when she's not there, Mary
20 Catherine doesn't sleep on the sofa, does she?

21 A Only by choice. I mean, if she wants to.

22 Q If she wants to, she can --

23 A She has a bedroom, yes.

24 Q Right. It's not the same one that she had
25 before?

1 A That's correct.

2 Q So Mary Catherine's living there now. Is
3 she staying in a different bedroom than she did before she
4 left home the first time?

5 A That's right.

6 Q And is Anna's bedroom, when she comes home,
7 still the same one it was when she lived there?

8 A No.

9 Q Where does she stay?

10 A She stays on the sofa in the winter and in
11 the summer she can stay in Granny's room.

12 Q While they were both students up at George
13 Mason, did they keep any of their clothes there at your
14 home?

15 A They took everything.

16 Q They didn't leave clothes of a different
17 season at home and trade them off?

18 A No.

19 Q Did they keep any of their personal
20 belongings at your home?

21 A Anna left her stuffed animals, but that's
22 it.

23 Q Does Mary pay you anything for room or
24 board now that she's living at home?

25 A Not monetary. She helps me.

1 Q She doesn't give you any money out of what
2 she earns?

3 A Just labor.

4 Q Do you give her any money?

5 A No.

6 Q Do you have any kind of medical or health
7 insurance?

8 A I have it on myself and my two younger
9 daughters.

10 Q Does it cover Mary or Anna?

11 A No.

12 Q Did it before this accident happened?

13 A When they were students, yes.

14 Q When they were both students. So up
15 through at least the time of this accident in June of
16 1989, both Mary and Anna were covered under your health
17 insurance?

18 A That's correct.

19 Q And were eligible to remain covered as long
20 as they continued to be students, I take it?

21 A Until they were twenty-six, as long as they
22 were full-time students.

23 Q And once they dropped out of school --

24 A They are on their own.

25 Q -- they were on their own and couldn't be

1 covered?

2 A That's correct.

3 Q Now is this a group plan that you have
4 through Food Lion?

5 A Yes, sir.

6 Q When Mary and Anna were both students at
7 George Mason, when they had school breaks, would they come
8 home, come to your home? Thanksgiving, Christmas, things
9 like that?

10 A Sometimes. Other times they would have to
11 stay and work.

12 Q If they didn't have to work, did they come
13 to your home?

14 A Sometimes.

15 Q Well, for Anna, for instance, we're just
16 talking about a year really from the time she left home,
17 wasn't it? She graduated in '88 from high school?

18 A (Witness nods head.)

19 Q You need to say --

20 A Yes. I'm sorry. Yes.

21 Q So then she was at High Point through the
22 first semester?

23 A That's correct. She came home for
24 vacations.

25 Q She came home for vacations while she was

1 there. Did she work while she was attending school there?

2 A For a short period of time, yes.

3 Q Why did she transfer?

4 A She said she did not like the school and
5 she did not like living in a dormitory.

6 Q Was this something that you agreed with?

7 A In what respect, agreed with?

8 Q Did you want her to transfer to George
9 Mason or did you want her to stay where she was?

10 A I would have preferred to have her stay
11 where she was.

12 Q When she applied to attend George Mason
13 did you have to sign anything for her to be enrolled?

14 A The only thing I recall is that she had to
15 fill out an application. I don't recall if I had to sign
16 it or not. I'm not sure.

17 Q Do you remember whether you had to sign
18 anything for Mary Catherine when she attended?

19 A I don't really recall. I remember the
20 applications being filled out, but I don't remember if
21 they required my signature or not.

22 Q Now when Anna moved up there, of course,
23 she just moved into the apartment that Mary Catherine
24 already had, correct?

25 A That's correct.

1 Q When Mary Catherine moved into that
2 apartment, did you have anything to do with helping her
3 pick it out or helping her move or anything like that?

4 A No, sir. I never saw it.

5 Q When either Anna or Mary or staying in your
6 home, do you have any rules or regulations or restrictions
7 of any kind that they have to abide by or are supposed to
8 abide by?

9 A Yes.

10 Q But not necessarily the same thing.

11 A I have general house rules, yes, for
12 everyone.

13 Q Such as? Give me an example.

14 A Not having boys stay overnight, no drinking
15 and pot smoking, letting me know where they are so I
16 wouldn't worry.

17 Q When they were at school those types of
18 regulations are a little harder to enforce, obviously.
19 Did you make any effort to see that those kinds of
20 behavior rules were carried on in the schools??

21 A No. What good would it do?

22 Q Well, it may not do any good, but that
23 doesn't necessarily keep you from trying and that's what I
24 was asking.

25 A They know what my feelings are and what my

1 standards are. Whether they abide by them --

2 Q Did you approve of the living arrangements
3 that prevailed in this apartment or townhouse where they
4 lived?

5 A Not all of them.

6 Q Did you express your disapproval to them?

7 A On occasion.

8 Q In what respect?

9 A Well, I didn't approve of the young man
10 that Mary Catherine was seeing.

11 Q Him, personally, or just the fact that
12 there was a male living there?

13 A Both.

14 Q When Mary Catherine moved out, was that
15 something that she discussed with you first? When she
16 moved out of the Springfield apartment?

17 A When she moved back to Goode?

18 Q No. I understood she moved to --

19 A Oh, to Washington?

20 Q -- Washington first.

21 A That was not discussed with me, no.

22 Q When Mary and Anna were living at home with
23 you before they left for college, but after they got their
24 driver's licenses, were they covered under your automobile
25 insurance, listed on your policy?

1 A Yes.

2 Q How long did they remain listed on your
3 policy?

4 A I'm not sure the exact dates, but when they
5 made their permanent addresses in Northern Virginia, I had
6 them get their own insurance.

7 Q Why was that?

8 A They weren't living with me and I didn't
9 want the responsibility. They were on their own, so I
10 thought they should have their own insurance.

11 Q Who were you insured with?

12 A At which time?

13 Q Up until they --

14 A There's been several.

15 Q Okay. Well, let's say up until they went
16 off of your policy or at the time they went off of your
17 policy, who were you insured with?

18 A When Anna went off I was with GEICO. I'm
19 not sure, but I believe I was with GEICO when Mary
20 Catherine went off.

21 Q Do you know when it was that Anna went off?

22 A I believe it was -- This may not be
23 accurate, but it was either January or February of '89.

24 Q Sometime shortly after she moved to
25 Springfield?

1 A That's correct.

2 Q Have either Anna or Mary Catherine gotten
3 any regular medical care from physicians in this area
4 since they left for college?

5 A Anna comes to her eye doctor in Bedford.

6 Q Who is that?

7 A Dr. Gladwell.

8 Q How often does she go to him?

9 A Once or twice a year.

10 Q Does he bill you for that?

11 A When she was on my insurance, yes.

12 Q Has she been to him since she went off of
13 your insurance?

14 A No.

15 Q So at the time up until this accident
16 happened, she would have been on your insurance?

17 A That's correct.

18 Q And when she came home --

19 A Health insurance. Not car insurance.

20 Q Health insurance. And when she came home
21 to go to Dr. Gladwell, he would bill you for that?

22 A Yes.

23 Q And you would pay for it?

24 A Yes.

25 Q What about Mary, did she have any regular

CASE?

A No. She attended the doctor once in Bedford last year. She paid for it. An office visit.

Q Were there any occasions, when Mary and Anna were at George Mason before this accident happened, that you would get the call that parents get, "I've run out of money. Can you help me?"

A Not that I recall.

Q You're lucky.

A That's why they worked.

MR. SACKETT: I don't have any more questions.

MR. HARRISON: I don't have any questions.

MR. SACKETT: Do you want her to read and sign?

MR. HARRISON: I want her to sign.

MR. SACKETT: Okay.

AND FURTHER THIS DEPONENT SAITH NOT.

Deponent

1 **STATE OF VIRGINIA**

2 **AT LARGE: TO WIT,**

3 I, Brenda B. Alger, Notary Public in and for the
4 State of Virginia at Large, do certify that the within
5 deponent appeared before me, was sworn by me, and that the
6 foregoing transcript was taken by me and transcribed under
7 my direction and is complete and accurate to the best of
8 my ability.

9 My commission expires September 30, 1993.

10 Witness my hand this 31st day of May, 1990.

11 
12

13 Notary Public
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1 I, the undersigned, MARJORIE HUNT PHELPS,
2 do hereby certify that I have read my foregoing deposition
3 and that, to the best of my knowledge, said deposition is
4 true and accurate (with the exception of the following
5 corrections listed below.)
6

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IN THE CIRCUIT COURT FOR THE COUNTY OF BEDFORD

ANNA L. PHELPS,

Plaintiff,

v.

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,**

Defendant

DEPOSITION OF ANNA LEE PHELPS

**Bedford, Virginia
May 17, 1990**

*** * * * ***

**BRENDA B. ALGER
Court Reporter
P.O. Box 956
Lynchburg, Virginia 24505
(804) 929-4312**

Filed in the Bedford County Circuit Court
The 10 day of September 1991
Law D. Belach Clerk
_____, Deputy Clerk

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The deposition of ANNA LEE PHELPS, taken before
Brenda B. Alger, Notary Public in and for the State of
Virginia at Large, at the law offices of Radford &
Wandrei, 112 S. Bridge Street, Bedford, Virginia, on May
17, 1990, for the purposes of discovery and to be used
under the Rules of the Supreme Court in the above-styled
case.

APPEARANCES:

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Representing the Plaintiff

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Representing the Defendant

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1 The witness, ANNA LEE PHELPS, having first been
2 duly sworn, deposes as follows:

3
4 DIRECT EXAMINATION

5
6 BY MR. SACKETT:

7 Q State your name, please.

8 A Anna Lee Phelps.

9 Q Anna, of course, I've take your deposition
10 once in this case already. Have you had a chance to read
11 over that deposition, the transcript of it?

12 A Yes.

13 Q In reading over what you've already told
14 me, did you find anything in there that you felt like
15 needed to be changed or corrected?

16 A No.

17 Q Where do you live now?

18 A 8319 Brookvale Court.

19 Q The same place?

20 A Yes.

21 Q Let's see. I last took your deposition on
22 January 22nd. Has anything changed about the living
23 arrangements at that address since January?

24 A No.

25 Q Who lives there now?

1 A Me, David Braun and Laurie Erhartic.
2 Q David -- ?
3 A Braun.
4 Q B-r-a-u-n?
5 A Right.
6 Q And Laurie --?
7 A Erhartic. E-r-h-a-r-t-i-c.
8 Q Did she live there then?
9 A Yes.
10 Q Who is the owner of the apartment?
11 A That would be Steven Hertzberg, I believe.
12 Q And I believe you told me last time that
13 the people who had signed the current lease were you and
14 Mary?
15 A Yes.
16 Q Is that still accurate or has there been a
17 new lease signed?
18 A No.
19 Q Do you have a copy of that lease? I don't
20 necessarily mean with you, but in your possession
21 somewhere?
22 A Yes.
23 Q Do you know what the term of the lease is?
24 A One year.
25 Q I mean, from when to when?

1 A October of --
2 Q '89 to October of '90?
3 A Right.
4 Q Now whose name are the utilities in now?
5 A Let me think. I believe they're all in my
6 name except for the phone bill and that's still under Mary
7 Catherine's.
8 Q Now going back to the time when this
9 accident happened in June of '89. Whose name were the
10 utilities in at that time?
11 A Mary Catherine's.
12 Q When were the ones that are not longer in
13 her name changed?
14 A When she moved out in November.
15 Q Now we're talking about what - electricity?
16 A Phone, cable, water.
17 Q How about gas, do you have gas?
18 A No.
19 Q So the electricity, the cable and the water
20 are now in your name?
21 A The cable might still be under hers. I'm
22 not sure about that one.
23 Q But the electricity and the water are
24 definitely in your's?
25 A Yes.

1 Q What did you have to do to change the name
2 that the utility bill came to, was addressed to?

3 A The water bill, I never, we never did
4 anything to change that one. They just started billing it
5 to me, I guess, because the checks were from me. The
6 power bill, we had to, I had to give them a deposit and
7 fill out a form. The phone bill, we had to fill out a
8 form and give them a deposit, but we lost the form so
9 that's why it didn't get changed over.

10 Q You never got the form to them?

11 A Right.

12 Q I take it then that as of June of '89, as
13 you've said, when the accident happened, all of those were
14 in Mary's name?

15 A At that time, yes.

16 Q Had that been true since you had lived
17 there?

18 A Yes.

19 Q And that had been since --

20 A January.

21 Q -- January of '89?

22 A Right.

23 Q For five or six months?

24 A Uh-huh.

25 Q Now how was the rent actually paid? Was

1 there a rent bill that was received or did you just
2 automatically send a check each month?

3 A Just sent the check each month.

4 Q Now this Steven Hurtzberg, is he somebody
5 who lives up there in that area?

6 A I've never met him. We deal with the real
7 estate company.

8 Q Who is this realtor that you rent from?

9 A It's East-West Realty. Ken Vick is the
10 realtor there.

11 Q Do you know what that address is?

12 A I believe it's 1062 -- Actually, I have a
13 card. 10625 Jones Street, Fairfax, Virginia, 22030.

14 Q The rent does not include any utilities,
15 does it?

16 A No.

17 Q Is there any requirement in the lease that
18 you are aware of that the landlord or the realtor has to
19 have any written notification of who's living in the
20 apartment?

21 A I don't know.

22 Q When you all have changed the people who've
23 lived in there, have you, in fact, given any notice to the
24 owner or the realtor?

25 A No.

1 Q Is the apartment furnished or unfurnished?

2 A Unfurnished.

3 Q Who owns the furniture that's in the
4 apartment?

5 A Gloria owns the living room set. I own the
6 dining room set. Everyone has their own bedroom sets.

7 Q When you lived in it with Mary, did she
8 have furniture of her own in there?

9 A Yes.

10 Q Did she move some things out when she left?

11 A Yes.

12 Q What did she take when she left?

13 A She had a sofa, a bed, a dresser, a
14 bookcase.

15 Q Do you keep any of your belongings,
16 possessions of any kind, at your mother's home?

17 A No.

18 Q For instance, clothes, do you keep all of
19 your clothes, winter, summer, all seasons, with you or do
20 you have any at your mother's?

21 A Yes, sir. None at my mother's.

22 Q When you and Mary were living at home with
23 your mother, was it in the same house that she lives in
24 now?

25 A Yes.

1 Q Did you all each have your own bedroom or
2 did you share a bedroom?

3 A Separate, we had separate.

4 Q Are those bedrooms still maintained as your
5 bedrooms for when you come back?

6 A No.

7 Q What use is made of them now?

8 A Well, my little sister moved into what used
9 to be Mary Catherine's room. Mary Catherine is staying in
10 the room that used to be my bedroom now.

11 Q Where do you stay when you are there?

12 A The sofa.

13 Q How many bedrooms are in the house?

14 A Five, there's five.

15 Q Tell me who occupies them.

16 A My grandmother is there through the winter.
17 My mother. My younger sisters, Margie and Rosa, and Mary
18 Catherine.

19 Q Was your grandmother living there while you
20 and Mary were there?

21 A Not at first. But the last year or two
22 that I was there, she was living there.

23 Q Have any of the people who've lived in the
24 apartment, other than you and Mary, been signers of the
25 lease at anytime?

1 A No.

2 Q And have the utilities always been paid by
3 either you or Mary? I mean, the actual writing of the
4 check?

5 A I think that Michelle Panzarino, she used
6 to live there, might have paid them once or twice.

7 Q When did she live there?

8 A She lived there from January of '89 until
9 June of '89.

10 Q The same time you lived there before the
11 accident?

12 A Yes.

13 Q Were these bills always paid by check, as
14 opposed to cash?

15 A We used a money order once or twice.

16 Q Have you ever gotten any notices of any
17 kind for being late with any of your utility payments?

18 A Not that I can recall.

19 Q How about the rent? Have either you or
20 Mary always written the rent checks?

21 A Yes.

22 Q Was that something that Mary did until she
23 moved out?

24 A No. I wrote the checks.

25 Q Most of the time, part of the time? Who

1 wrote them when?

2 A I know for sure that I wrote them starting
3 from May of '89. Before that, before that, I'm not sure.

4 Q What was there about in May that caused you
5 to start writing them?

6 A Because Mary, my sister closed out her
7 checking account.

8 Q She didn't have a checking account to write
9 it on, did she?

10 A No, sir.

11 Q Was there any particular reason that she
12 closed out her checking account?

13 A It had something to do with a spa
14 membership she had. They were billing her straight
15 through her account and she didn't want them to do that
16 anymore.

17 Q So she just closed the account to avoid
18 that?

19 A Uh-huh.

20 Q Do you know what address is on your
21 driver's license?

22 A 8319 Brookvale Court.

23 Q Do you have it with you?

24 A My driver's license?

25 Q Uh-huh.

1 A No.

2 Q Do you know how long that address has been
3 on it?

4 A Since January of '89.

5 Q What address was on it before that?

6 A My mother's.

7 Q Did you have the address on the driver's
8 license changed when you moved into the apartment?

9 A Yes.

10 Q Do you know what address the school, the
11 college you attend, uses to send your communications to
12 you, whatever communications they have?

13 A My mother's.

14 Q So, for instance, when they mail out
15 anything that's addressed to you it actually goes to your
16 mother's address? Does that mean that things with your
17 name have her address on them?

18 A Only from school.

19 Q That's what I mean, from school?

20 A Yes.

21 Q How often do you come back to your mother's
22 home?

23 A Every couple of months.

24 Q What about during breaks at school,
25 Christmas, vacation, things like that?

1 A I stay in Springfield.
2 Q Do you come home for Christmas?
3 A Uh-huh.
4 Q How long do you spend at home at Christmas?
5 A I was here for three days at Christmas.
6 Q Are you still working?
7 A Yes.
8 Q Where do you work?
9 A Barston's Restaurant.
10 Q Where did you work prior to the accident?
11 A Brennigan's.
12 Q Do you know how many hours a week you
13 worked?
14 A Now or then?
15 Q Then, worked at that time?
16 A Between fifty and sixty, I would say, on
17 the average.
18 Q Do you know how much you earned?
19 A Not off the top of my head.
20 Q Was it primarily tips?
21 A Uh-huh.
22 Q Did you file a tax return?
23 A My mother did that.
24 Q You didn't file one yourself?
25 A No.

1 Q Do you know if you were claimed as a
2 dependent on your mother's tax return?

3 A I don't know.

4 Q Was there any withholding from your
5 earnings for taxes or anything like that?

6 A They claim eight percent of my tips and
7 take taxes out for that.

8 Q Do you know if you ever filed for any kind
9 of a tax refund?

10 A I don't get any money back.

11 Q What I'm really getting at, do you know if
12 you ever filed a tax return in your name at all or if one
13 was done for you in your name?

14 A I don't know.

15 Q What expenses do you pay out of your
16 income?

17 A As of now?

18 Q As of the time of the accident, what
19 expenses were you paying out of your income?

20 A Rent, utilities, groceries, clothes.

21 Q What did you get from your mother in the
22 way of financial help?

23 A None. I have a trust fund that gave two
24 hundred dollars a month while I was in school towards
25 rent.

1 Q And did you support yourself fully for the
2 balance of your needs?

3 A Yes.

4 Q Now your mother paid for the school
5 expenses, though, didn't she?

6 A No. My trust fund pays for the school.

7 Q Do you know what the source of the trust
8 is, who established the trust?

9 A My grandfather.

10 Q Do you know who the trustee is?

11 A I think it's Wachovia Bank.

12 Q Do you receive anything from the trust, or
13 were you at that time receiving anything from the trust
14 other than the two hundred dollars a month towards the
15 rent?

16 A Just the school.

17 Q And they paid that direct or did they pay
18 that to you and then you paid it to the school?

19 A No, that went directly to the school, I
20 believe, as far as I know.

21 Q But none of it came through your hands at
22 all?

23 A No.

24 Q What is your date of birth?

25 A December 28, 1970.

1 Q What's your Social Security number?

2 A 228-17-1027.

3 Q When did you first move your possessions,
4 whatever they may have been, clothes, furniture, out of
5 your mother's home?

6 A In August of '88 when I went away to
7 college.

8 Q When you went to High Point?

9 A Right.

10 Q When you attended school down there, did
11 you live in a dorm or did you have --

12 A Yes.

13 Q You lived in a dorm. Well, the dorm was
14 furnished, wasn't it?

15 A Uh-huh.

16 Q So did you take furniture?

17 A Nothing big.

18 Q What about the furniture that's in the
19 apartment that you live in now? Was that something that
20 came from home or is that something that you bought after
21 you moved up here?

22 A Some of it I bought. My grandmother bought
23 a table for me.

24 Q Did any of it come from your home, from
25 your mother's home?

1 A No.

2 Q You've already told me that the mail that
3 comes to you from college goes to your mother's address.
4 Is there any other mail that regularly comes to you from
5 any source that goes to your mother's address, rather than
6 yours?

7 A No.

8 Q Do you have a physician, a regular
9 physician of any kind that you see?

10 A Yes.

11 Q Who is that?

12 A I don't remember his name. I just went to
13 him for the first time last week.

14 Q Was it somebody in Bedford or somebody up
15 in Springfield?

16 A In Springfield.

17 Q Did you have a regular physician in the
18 Bedford area when you were here?

19 A Yes.

20 Q Who was that?

21 A Dr. Cohen.

22 Q At Physician Associates in Bedford?

23 A Yes.

24 Q Did you continue to see him on any regular
25 basis at all after you went away to college?

1 A No.

2 Q Have you been back to him at all since you

3 went away to college?

4 A No.

5 Q Tell me again the name of the girl who

6 lived in the apartment before the accident. Panzarino?

7 A Michelle Panzarino.

8 Q Yes. Is she from Lynchburg?

9 A Yes.

10 Q Do you know where she is now?

11 A She's in Lynchburg.

12 Q Did she live there at all after the

13 accident?

14 A She was there for about a week after the

15 accident.

16 Q Did she move out because the school term

17 was over?

18 A No. She just -- I don't remember her exact

19 reason. She had found another townhouse with some other

20 people.

21 MR. SACKETT: That's all I have.

22 MR. HARRISON: I have one question.

23

24

25

CROSS EXAMINATION

BY MR. HARRISON:

Q Was there ever an occasion that you or Mary Catherine paid the utilities that you weren't reimbursed by shares from the other people?

A No.

MR. HARRISON: That's all.

MR. SACKETT: The Court Reporter is going to type this deposition up. You've got the right to read it and sign it and make any corrections you wish yourself, or you can waive that right and authorize her to sign it for you.

MR. HARRISON: I want her to sign it.

AND FURTHER THIS DEPONENT SAITH NOT.

Deponent

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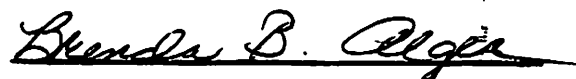
STATE OF VIRGINIA

AT LARGE: TO WIT,

I, Brenda B. Alger, Notary Public in and for the State of Virginia at Large, do certify that the within deponent appeared before me, was sworn by me, and that the foregoing transcript was taken by me and transcribed under my direction and is complete and accurate to the best of my ability.

My commission expires September 30, 1993.

Witness my hand this 31st day of May, 1990.



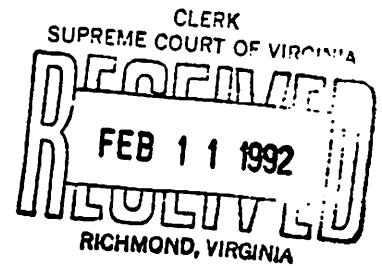
Notary Public

1 I, the undersigned, ANNA LEE PHELPS, do
2 hereby certify that I have read my foregoing deposition
3 and that, to the best of my knowledge, said deposition is
4 true and accurate (with the exception of the following
5 corrections listed below.)

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920429



VIRGINIA:

IN THE CIRCUIT COURT OF BEDFORD COUNTY

ANNA L. PHELPS

Plaintiff,

v.

)(

PLAINTIFF'S REPLY BRIEF

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant.

R. Louis Harrison, Jr.
RADFORD & WANDREI
112 South Bridge Street
P. O. Box 1008
Bedford, Virginia 24523
(703) 586-3151

Counsel for Plaintiff

FILED IN THE CLERK'S OFFICE
The 11th day of Dec, 1990
TESTED: _____ Clerk
Nigel O. Knight D.C.

VIRGINIA:

IN THE CIRCUIT COURT OF BEDFORD COUNTY

ANNA L. PHELPS

Plaintiff,

v.

)(

PLAINTIFFS REPLY BRIEF

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant,

The Plaintiff, Anna L. Phelps, by counsel hereby submits this Brief in reply to the Defendants Response to Plaintiffs Memorandum of Law. While the plaintiff disagrees with several points in the brief, the plaintiff limits her response to the items set out below and will rely on her original memorandum of law to contest the remaining items.

1. DEFENDANT STATE FARM SEEKS TO INEQUITABLY
AVOID PAYING A CLAIM.

In its brief, on page 8, State Farm attempts to cast any payment by it as an additional risk in the coverage of a vehicle which it did not intend to insure. State Farm seems to imply that its risk would be increased two-fold if Anna ever drove another vehicle. In fact, the opposite is true, whether Anna drove her own car or Mary's, State Farm's risk was essentially the same. Anna can only drive one car at a time. Had Anna been able to drive her car that night, all other factors being the same, she would have hit the same barricade and destroyed her own automobile. There would have been no question that State Farm

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would have had to pay that claim. State Farm now wishes to assert a windfall to itself when in actuality this is exactly the sort of a situation that the substitute automobile coverage was designed to insure.

2. STATE FARM'S BRIEF AVOIDS THE PROPER DEFINITION
WHICH WOULD CONTROL THIS CASE

The Supreme Court has clearly, repeatedly and uniformly set out one standard by which Courts in Virginia should determine whether a person is a member of a household. That test defines a "household" as follows:

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.

State Farm Mutual v. Smith, 206 Va. 280 (1965), St. Paul Insurance v. Nationwide Insurance, 209 Va. 18 (1968), Allstate Insurance Company v. Patterson, 231 Va. 358 (1986), Government Employees Insurance Company v. Allstate, 235 Va. 542 (1988), Furrow v. State Farm Mutual, 237 Va. 77 (1989). This test recited in a long line of cases beginning and ending with a case interpreting the SAME STATE FARM INSURANCE POLICY before this Court should be the clear focus of the Courts attention in deciding this matter. It is certainly telling that the defendants brief does not mention this test. Instead the entire purpose and thrust of the defendant's brief is to divert the Court's attention away from the Supreme Court's test.

RADFORD & WANDRENA L. PHELPS WAS NOT A RESIDENT OF THE SAME HOUSEHOLD

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AS HER MOTHER.

The reason State Farm wishes to draw the Courts attention away from the test is that it clearly and unambiguously cannot meet the plain language of the test, flunking in several respects.

a. One Head. The test requires a household with "one head". On page 9 of the brief, State Farm places all their eggs in the basket that Anna's mother was the head of the household and that both girls were members of their mother's household. Mrs. Phelps could hardly qualify as the head of the girls in that the clear evidence shows that she had no control over their daily lives. Her wishes as to boyfriends and other matters of the girl's living went ignored. She did not control their money, as each had their own jobs and trust income and, in fact, controlled no aspect of their lives.

b. Living together, living under one roof, living under one curtilage. In the most apparent flaw in State Farms's case, three times within the test the Supreme Court sets out a requirement that the parties must be physically living together to-wit: "living together", "under one roof", "in one curtilage". The undisputed evidence shows that the girls were living hundreds of miles away from their mother, the alleged head of household. The two girls were not "living together" with their mother, they were not "living under the same roof" and they were not living within "one curtilage". In its brief State Farm has no defense to this argument except to ignore it.

c. Subsisting in common. The test requires the household to be "subsisting in common". The two girls subsisted independently of each other and their mother, in a separate house, buying their own food and providing for themselves individually, with only minimal and separate aid from their mother.

d. Directing their attention to a common object, the promotion of their mutual interests and social happiness. The clear inference of all three depositions is that each of the individuals was pursuing their own life individually and that there was no common object to their lives. Yet the test makes the opposite requirement.

In sum, it is clear that the Virginia Supreme Court is envisioning a household in the traditional sense of a strong head controlling spouse and children who all residing within a single three bedroom house. While State Farm needed to meet every part of the test, in fact, it can meet none of the parts of the test.

e. Both Anna and Mary Catherine renounced their mother's household as their residence. Even if the law were different when a child went to college and did not renounce her childhood residence, the facts at hand would not support the deviation from the State Farm Mutual v. Smith standard for which State Farm argues. In order to assert, as they do on page 10, that there is no evidence of an intent by Anna and Mary Catherine to alter the fact that they were residents of their mother's home, State Farm must ignore multiple facts. The more accurate characterization of these facts is that there is no evidence to indicate an intent

by Anna and Mary Catherine to continue as residents of the Goode household.

Unlike State Farm proposes, Anna and Mary Catherine did not remain "an active part of their family while away at school." Anna testified that her visits to Goode were irregular at best. She stated that although she came home "every couple months", she stated that she stayed in Springfield for breaks and vacation and only spent three days at home for Christmas. (Deposition of 5/17/90, 12-13). Anna also stated that her old bedroom was not occupied by a sibling, and she slept on the sofa during her infrequent visits. (Deposition 5/17/90, 9). She also stated that when she went to college, she took all of her personal belongings with her and did not even leave a remnant of summer or winter clothing behind. (Deposition of 5/17/90, 8). Finally, Anna clearly testified that she changed her mailing address and her driver's license to reflect her residence in Springfield. (Deposition of 5/17/90, 11).

Mary Catherine's intent to renounce her Goode residence is equally as evident. For the most part, her driver's license contained either an Alexandria or Springfield address and only her grades were mailed to Goode. (Deposition of 5/17/90, 8-10). Mary Catherine kept no furniture in Goode and only stored some clothes which were out of season or for which she did not care at her mother's home. (Deposition 5/17/90, 11-12). When she was out of school on holiday breaks, excluding summer vacation, she

came home most of the time, but she did not stay in her childhood bedroom. (Deposition of 5/17/90, 12).

State Farm implies that a college student cannot sever her relationship with her childhood household. Interestingly, it cites no Virginia authority for this proposition. Factually, what more could Anna and Mary have done to establish that they intended to be residents of Springfield, Virginia, and not Goode, Virginia?

4. STATE FARM CITES CASES OUT OF CONTEXT

State Farm goes through the collection of cases which has reviewed this issue and tries to pull out nuggets here and there for their use in defending this case. There is indeed little to be found. What State Farm emphasizes is that the high Court has held several times that particular individuals were not entitled to coverage. What they do not emphasize is that in each of these cases it was because the Supreme Court found that the individual was not a member of the same household. WHETHER RULING FOR OR AGAINST THE INSURANCE COMPANY THE SUPREME COURT HAS NEVER HELD THE DRIVER TO BE A MEMBER OF THE SAME HOUSEHOLD AS THE OWNER OF THE CAR. Despite its heavy backlog of cases, the Supreme Court has taken time to assert and reassert this narrow issue of law in 1965, 1968, 1986, 1988 and 1989.

Further, each of the cases presented to the Supreme Court a far better case for being a resident of the claimed household than the one here. Most cases involved a situation where the

individual actually moved back into the same household but the

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Supreme Court still finding that, despite living under the same roof, the relationships did not meet the test.

In the case at bar, Anna's room had been given away to others and she visited only occasionally on breaks, staying only a short amount of time.

Allstate Insurance Company v. Patterson is the most factually analogous Virginia case supporting our arguments. Although the plaintiff in Allstate Insurance Company v. Patterson spent ten percent (10%) of his time at the home of his parents, he was not considered a "resident of the same household." Anna spent far less than ten percent (10%) of her time in Goode and demonstrated an intent to abandon Goode as her residence. Her decision to move back to Goode in order to obtain the care she needed after the accident is irrelevant to her status before the accident, and her "casual, erratic contacts are not sufficient" to satisfy factually the State Farm test.

5. OUT OF STATE CASES.

Anna and Mary Catherine do not meet the definition of "residents of the same household." State Farm Mutual v. Smith, 266 Va. 280 (1965), and the cases interpreting and applying it clearly set forth the definition of this phrase. As a result, there is no need to consult law from other jurisdictions. Moreover, even if consulted, these decision would be persuasive authority at best and clearly not binding in an area upon which the Supreme Court has so clearly pontificated.

CONCLUSION

Wherefore your plaintiffs renew their prayer that this Court grant their motion for declaratory judgment.

Respectfully submitted,

ANNA L. PHELPS

By RLH
Of Counsel

R. Louis Harrison, Jr.
RADFORD & WANDREI
P. O. Box 1008
Bedford, Virginia 24523

CERTIFICATE

I do hereby certify that a true and exact copy of the foregoing Reply Brief was mailed to Henry M. Sackett, Esquire, Edmunds & Williams, P. O. Box 956, Lynchburg, Virginia 24505, this the 11 day of December, 1990.

RLH
R. Louis Harrison

Richmond**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY V. ELBERT B. SMITH.**

June 14, 1965.

Record No. 5957.

Present, All the Justices.

(1) and (2) Automobile Liability Insurance—Disclaimer of Coverage
—Policy Construed.

(3) Evidence—Questions Calling For Legal Conclusions—Testimony
Lacks Probative Value.

1. Shortly after the death of her husband Elaine Mellow came to the home of her married sister in Norfolk, intending to stay some months. She brought her children and clothing but left in California her furniture and an automobile insured by State Farm Mutual. While driving the car of her brother-in-law she was involved in an accident in which Smith received injuries for which he recovered judgment against her. This judgment State Farm refused to pay on the ground that Elaine Mellow was not driving a vehicle covered by its policy, since the vehicle involved was owned by her relative who was a resident of the same household. But it was held that under the facts Elaine Mellow and her brother-in-law were not residents of the same household within the meaning of the policy term because she was a mere sojourner in his home; hence this exclusion clause was inapplicable.
2. State Farm further contended that coverage was excluded because the vehicle had been supplied Elaine Mellow for her regular use. This contention also was without merit. Though she had permission from her brother-in-law to use the vehicle, such permission was prompted by the needs of his own family, since he was in service and usually away on duty and his wife could not drive. Elaine Mellow's right to use it for her own purposes was incidental and was seldom exercised, and even then with special permission from her sister on each occasion.
3. Though on cross-examination Elaine Mellow responded affirmatively to inquiries whether she was residing in the same household with her sister's family and whether the automobile was left for her regular use, these questions called for legal conclusions and the resultant testimony had no probative value.

Error to a judgment of the Court of Law and Chancery of the city of Norfolk. Hon. J. Sydney Smith, Jr., judge presiding.

Affirmed.

Opinion.

The opinion states the case.

E. Page Preston (*Preston & Preston*, on brief), for the plaintiff in error.

J. Carroll Fears, Jr. (*Taylor, Gustin, Harris, Fears & Davis*, on brief), for the defendant in error.

GORDON, J., delivered the opinion of the court.

Elbert B. Smith, who had obtained a judgment for \$4,500 against Elaine R. Mellow for injuries sustained in an automobile accident, brought this action against State Farm Mutual Automobile Insurance Company ("State Farm") upon its automobile policy naming Elaine R. Mellow as the insured.¹

The automobile driven by Elaine R. Mellow and involved in the accident was owned by her sister's husband, Francis J. Frost. Therefore, and because of the policy provisions to be discussed, the questions involved are: (1) Was Elaine R. Mellow both a relative of Francis J. Frost and a resident of the same household? (2) Had the automobile driven by Elaine R. Mellow been furnished to her for regular use? If the answer to either question is yes, State Farm must win this appeal.

The accident happened in Norfolk, Virginia. The circumstances that led to Elaine R. Mellow's presence in Norfolk and her driving the automobile owned by her brother-in-law are most relevant and will be outlined.

Elaine R. Mellow was dwelling² on December 2, 1962, the day of the accident, in the trailer-home of her sister (Gertrude Marie Frost) and brother-in-law (Francis J. Frost) on Virginia Beach Boulevard. She had come to Norfolk with her two infant sons in October 1962, about eight weeks before the accident, intending to stay with her sister until her baby was born. Elaine R. Mellow's husband had

¹ When the policy was issued, the insured was the widow of one Smith, and the policy correctly named her as Elaine R. Smith. Before this suit was instituted, she married Donald G. Mellow. Her present name is used in this opinion—in part to avoid confusion with Elbert B. Smith, the plaintiff and appellee, who is not connected by marriage or blood with Elaine R. Mellow or her deceased husband, Smith.

² The verb "dwell" is used in the statement of facts to avoid the legal conclusion that would be implied by "reside" (since the word used in the policy under

died recently, and, upon her leaving California to travel to Norfolk, she was four months pregnant.³

Elaine R. Mellow brought her family's clothing with her, when she came to Norfolk, but she did not bring any furniture or furnishings or appliances. The record does not indicate whether she paid for food and lodging or defrayed any of the extra expenses involved in her family's stay with the Frost family. But she did "put" gas in Frost's automobile, at her expense.

The Mellow family dwelled with the Frost family—which included the husband, Francis J. Frost (who, for reasons stated later, was rarely at home), his wife, and their two young children—throughout her stay in Virginia, first in an apartment rented by Frost and, later, in the trailer-home to which the Frost family moved. About one week after the accident or two months after her arrival in Norfolk, and before the baby was born, Elaine R. Mellow left Virginia at the suggestion of her mother-in-law, returning to California to live with the mother-in-law.

When she came to Virginia, Elaine R. Mellow left her Ford automobile, which was described in the insurance policy issued by State Farm as the "Owned Automobile", in California. The only automobile available to her sister and her, while she was in Norfolk, was an Oldsmobile owned by Frost. It was not covered by insurance, unless covered, when driven by Elaine R. Mellow at the time of the accident, by the State Farm policy now under discussion.

As already indicated, Frost was rarely at home during the stay of his sister-in-law in Virginia. He was an enlisted man in the

³ Elaine R. Mellow's testimony, relating to her reasons for going to Norfolk and her intentions respecting the duration of her stay in Virginia, was as follows:

"Q. . . . And it was your intention to go back there [to Norfolk] to have your baby? A. Yes.

"

"Q. Mrs. Mellow, the express purpose of your going back to Virginia to stay with your sister was that you were pregnant at that time? A. Yes.

"Q. And you were going back there to have your baby in the company of your sister? A. Yes.

"Q. Did I understand you to say that you were approximately four months pregnant when you went back to Virginia? A. When I left, yes.

"Q. And I would take it from that, then, in the normal course of events, you anticipated staying back there for quite some time, did you not? A. Yes.

"Q. At least until you delivered your child, and then maybe for some time after that? A. Yes."

Gertrude Marie Frost testified:

"Q. Mrs. Frost, . . . when she came there to your home how long was she to stay? A. Until after her baby was born.

"Q. Then what was she to do? A. To go on back home."

United States Navy on sea duty, and returned to his home for brief visits while his sister-in-law was there. While at home before the accident, Frost gave permission to Elaine R. Mellow to use the Oldsmobile whenever it was needed; the permission given to use the automobile, according to her testimony, was "Whenever I needed to or my sister". Her sister could not drive. The keys to the automobile were left on a table in the Frost home.

The evidence supports the conclusion that only Frost drove the automobile while he was home on leave. Although Elaine R. Mellow was not positive that she did not drive the automobile while he was home for the second time, she expressed the belief that she did not; and there is no testimony that she did. Before using the automobile at any time, she asked and secured her sister's permission for the use.

Elaine R. Mellow drove the automobile on approximately ten occasions. On two or three occasions the automobile was used for her purposes, but on other occasions it was used for the benefit of her sister—for such purposes as transporting the Frost children to or from school, or transporting groceries. She never drove the car without passengers; her sister or a friend of her sister was with her on each occasion. At the time of the accident, Elaine R. Mellow, her sister and their children were going to a friend's apartment to wash clothes and stay over the weekend. (The supply of electricity had been cut off in the trailer-home.)

At the conclusion of the plaintiff's evidence in this case, the defendant (State Farm) having offered no evidence, the court discharged the jury and entered summary judgment for the plaintiff. State Farm does not contend that the court erred in failing to submit the issue to the jury. (Counsel for each party had taken the position that his client was entitled to a judgment as a matter of law.) Its contention, in the trial court and here, was that in view of the facts, which are not in dispute, error was committed in holding that Elaine R. Mellow was covered by the State Farm policy issued to her, while driving the Oldsmobile at the time of the accident in question.

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[1] State Farm contends, first, that the Oldsmobile driven by Elaine R. Mellow at the time of the accident was not covered by its policy; that coverage was afforded only with respect to an "Owned Automobile" or a "Non-Owned Automobile", and the Oldsmobile was neither an "Owned Automobile" nor a "Non-Owned Automobile". These terms are defined in the policy. We agree

that, since the Oldsmobile was obviously not an "Owned Automobile", coverage was afforded only if it was a "Non-Owned Automobile". If it was not a "Non-Owned Automobile" (as defined in the policy) and therefore not covered under Insuring Agreement II—Non-Owned Automobiles, the Oldsmobile fell within a third category not mentioned in or covered by the policy. We must determine, then, whether the Oldsmobile fell within the policy definition of a "Non-Owned Automobile", under the facts of this case.

Under the definition contained in the policy (see the relevant policy provisions set forth in the footnote⁴), the Oldsmobile was a "Non-Owned Automobile", if it was *not* owned by a "relative" of the insured, that is, if Francis J. Frost (the owner) was not a "relative" of Elaine R. Mellow (the insured). Since "relative", by the policy definition, means "a relative of the named insured who is a resident of the same household", the question is broken into two parts, whether Elaine R. Mellow and Francis J. Frost were relatives and whether they were residents of the same household.

Turning to the first part of the question, we find that the policy sets forth an *idem per idem* definition: a "relative" is defined as a

⁴ *Insuring Agreement I—The Owned Automobile. Coverages A and B—(A) Bodily Injury Liability and (B) Property Damage Liability (B coverage not involved in this case).*

(1) To pay all damages which the insured shall become legally obligated to pay because of (A) bodily injury sustained by other persons * * * caused by accident arising out of the maintenance, ownership or use * * * of the owned automobile." (Emphasis supplied)

* * * * *

Insuring Agreement II—Non-Owned Automobiles.

"Such insurance as is afforded by this policy under coverages A, B, Division 2 of C and M, D, D-50, F, G and H with respect to the owned automobile applies to the use of a non-owned automobile by the named insured * * * provided such use is with * the permission of the owner or person in lawful possession of such automobile.

Insuring Agreement II does not apply:

"(1) to a non-owned automobile * * * (b) hired by or furnished to the named insured or a relative for regular use * * *".

* * * * *

Definitions—Insuring Agreements I and II.

"Named Insured—means the individual so designated in the declarations and also includes his spouse, if a resident of the same household.

"Relative—means a relative of the named insured who is a resident of the same household.

"Owned Automobile—means the private passenger automobile * * * described in the declarations * * *".

"Non-Owned Automobile—under coverages A, B, D and M means an automobile * * * not owned by the named insured or any relative * * *".

"relative", with no indication of the sense in which the word is used. The meaning ascribed to the word by dictionaries may usually be a relative by blood or affinity (see *Webster's Third New International Dictionary*, p. 1916); but this may not be the common parlance or the legal meaning, particularly when interpreting a policy prepared by the insurer. (See *Preferred Accident Ins. Co. v. Onali*, 125 F.2d 580 (8th Cir.); *Indiana Lumbermens Mutual Insurance Company v. Richard Passalacqua*, 30 Misc.2d 626, 211 N.Y.S.2d 62.) We do not intimate, however, any future holding on this point. A holding here is unnecessary since, in our opinion, Elaine R. Mellow and Francis J. Frost were not residents of the same household and, therefore, not "relatives", as defined in the policy.

The meaning of "resident" or "residence", a prolific source of litigation, depends upon the context in which it is used.⁵ 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,⁶ 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,⁷ 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

⁵ For example, "residence", as used in the election laws, has substantially the same meaning as "domicile" (see *Dorson v. Commonwealth*, 192 Va. 565, 66 S.E.2d 490), whereas in other contexts "domicile" and "residence" have different meanings. (See *State-Planters Bank v. Commonwealth*, 174 Va. 289, 295, 6 S.E.2d 629, 631.)

⁶ "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'." See *Lumbermens Mut. Casualty Co. v. Pulsifer*, 41 F.Supp. 249, 251 (D. Me.).

⁷ The appellant contends that the term "member of the same household", used in certain automobile policies, is more limited than "relative who is a resident of the same household", though the appellant concedes that the Texas court apparently regarded the terms as synonymous in *State Farm Mutual Automobile Ins. Co. v. Walker*, 334 S.W.2d 458 (Tex. Civ. App.), 78 A.L.R.2d 1395. Since "household" is usually taken to refer to a group of persons, rather than a building, it appears appropriate to interpret the term, resident of the same household, as meaning: resident of the same homestead and member of the same household. See *State Farm Mutual Automobile Ins. Co. v. Walker*, *supra*

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 her 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.⁸

In *Goens v. Arinder*, 248 Miss. 806, 161 So.2d 509, it was held that a daughter, who, with her husband and child, was living in her father's home until her baby was born and her house completed, was a visitor or sojourner in her father's home and not "a resident of the same household" as her sister (who was a member of the father's household). In *Lumbermens Mut. Casualty Co. v. Pulsifer*, *supra*, 41 F.Supp. 249 (D. Me.), it was held that where two families came together as a temporary arrangement, there was no merger of the two families to make one family or one household, within the meaning of the language of the policy excluding coverage if the driver of the vehicle was a "member of the household" of the insured.

State Farm relies principally upon *Third National Bank v. State Farm Mut. Auto. Ins. Co.*, 334 S.W.2d 261 (Ky.). There, the policy excluded coverage for bodily injuries "to the insured or any member of the family of the insured residing in the same household as the insured". The court held that the persons in question were all of the same family and resided in the same household. The evidence in that case however, did not indicate a sojourn or visit for a limited period of time, but a joining of and melding with the family group for an indefinite period of time. (See *State Farm Mutual Automobile Insurance Co. v. Pennington*, 324 F.2d 340 (8th Cir.), wherein the

⁸ Counsel for State Farm contends that Elaine R. Mellow's unsettled residence before she came to Virginia supports its position that she became a resident of the Frost household. In March 1962 she lived in a friend's home in Manteca, California, where she stayed for one month, and she subsequently stayed at another address in Manteca and then in Modesto, California, before coming to Norfolk in October 1962. Migrations before coming to Virginia, however, do not tend to prove she was a resident of the Frost household while in Virginia. See *American Casualty Company v. Crook*, 301 F.2d 846 (4th Cir.).

court commented upon the *Third National Bank* case and upon other cases holding that coverage was excluded under the terms of the policies in issue, but declined to follow those cases, in part because of the different factual situation presented in the *Pennington* case.)

[2] Having found that Frost's automobile, when driven by Elaine R. Mellow, was a "Non-Owned Automobile", we turn to the remaining question, whether it was "furnished to the named insured [Elaine R. Mellow] . . . for regular use . . .". If so, coverage is excluded under the terms of the State Farm policy, even though she was driving a Non-Owned Automobile at the time of the accident (see footnote 4).

Elaine R. Mellow clearly had permission from the owner, Frost, to drive his automobile. But it is equally clear that to give "permission" is different from to "furnish". The two words usually convey different thoughts, and the insurer obviously did not intend that they be regarded as synonymous: "Permission" is used in Insuring Agreement II—Non-Owned Automobiles, and "furnished" in the exclusionary clause under consideration. It is appropriate, then, to consider Frost's principal purpose or intent, respecting the driving of the automobile by Elaine R. Mellow, to determine whether we have here a case of permission given, on the one hand, or of furnishing for regular use, on the other hand.

As indicated by the only direct testimony of the words used by Frost, in giving permission to Elaine R. Mellow, he coupled her use of the automobile with use for his wife's needs. Elaine R. Mellow testified that he gave permission for the use of the automobile "Whenever I needed to or my sister". The best evidence of the permission granted, moreover, is not Elaine R. Mellow's recollection of the precise words used by Frost, when her depositions were taken more than a year after the accident, but her actions or practical construction of the permission given. She testified, and her sister corroborated her testimony, that she never drove the automobile without first asking her sister's permission. Also, she did not have possession of the keys to the car; they were left on a table in the Frost home.

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The evidence in this case supports the finding that Frost's primary purpose or intention, in giving permission, was to provide transportation for the Frost family while he was at sea. The automobile would not have been available for the family's use, unless Elaine R. Mellow,

who alone could drive it, was given permission to drive the automobile. And she did not drive it while Frost was at home.

The permission for Elaine R. Mellow to drive the automobile for her own purposes was, in our opinion, incidental. It might be regarded as a courtesy to her for the service rendered to the Frost family. She drove the automobile only two or three times for her own purposes and, on those occasions, she was accompanied by her sister or her sister's friend.

We interpret the language "furnished to the named insured for regular use" as referring to the furnishing for the insured's own purposes, and not the furnishing for the owner's or his family's purposes, with incidental permission for use by the insured for her purposes. As was said by another court: "It is unnecessary to hold that the words 'regular use' as used in these policies referred to an exclusive use. But 'regular use' reasonably suggests a principal use as distinguished from a casual or incidental use." See *Pacific Automobile Ins. Co. v. Lewis*, 56 Cal.App.2d 597, 600, 132 P.2d 846, 848. This interpretation appears most apt where, as in this case, the terms of the permission required, or were interpreted by the insured to require, further permission from the owner's wife on each occasion when the automobile was driven.

This is a case of first impression in Virginia, and we have not been referred to a case from another jurisdiction involving like permission to use and like use of an automobile.

The plaintiff here relies principally upon *Giokaris v. Kincaid*, 331 S.W.2d 633 (Mo.), 86 A.L.R.2d 925, involving facts similar in certain respects to those in this case. One of the questions presented was whether a grandmother's automobile, driven by her grandson at the time of the accident, had been furnished to his mother for regular use. The grandmother, who could not drive, had delivered a set of keys to the mother. The trial court's finding that the automobile had not been furnished for the mother's regular use, based on evidence that the automobile was driven by her "when the grandmother wanted to go some place", was affirmed.

State Farm cites *Rodenkirk v. State Farm Mut. Automobile Ins. Co.*, 325 Ill.App. 421, 60 N.E.2d 269, in support of its position that the Frost automobile was furnished to Elaine R. Mellow for regular use. But the facts in that case are distinguishable from those in the case at bar. The owner of the automobile, upon being inducted into the Army, turned over the automobile to his fiancée, giving her the only set of keys. He stated that not only was his

fiancee to have the use of the automobile, but that her father, who was a mechanic and could keep it in proper condition, could use the automobile also. The automobile, therefore, was turned over to two persons—to the fiancee for her use, and to the father for maintenance and his use. It was held that the automobile had been furnished to the father, who was involved in an accident, for regular use. To the extent that the *Rodenkirk* case may be taken to imply that regular use, within the meaning of the policy, may be casual or incidental, the Illinois court apparently expressed the contrary view in a later case. See *Schoenknecht v. Prairie State Farmers Insurance Association*, 27 Ill.App.2d 83, 169 N.E.2d 148.

In *Rodenkirk v. State Farm Mut. Automobile Ins. Co.*, *supra*, the court stated that the purpose of the policy exclusion, in the case of automobiles furnished for regular use to the insured or members of his household, appeared to be: To protect the insurer "where an insured could pay for one policy and be covered by the insurance in driving any car that he decided to use whether owned by him or members of his family, or cars that had been furnished for his regular use; in other words, cars under his control that he could use at will and might use often." See 325 Ill.App. 421, 433. 60 N.E.2d 269, 274.

This purpose is not defeated by our holding in this case. We do not have here a case of two automobiles available to members of the same household, nor, even, of two automobiles available for driving by two persons dwelling together. Furthermore, as already indicated, the Frost automobile was not under Elaine R. Mellow's control nor, in view of the permission given by Frost as interpreted by her, could she use the Frost automobile at will.

We hold that the State Farm policy involved in this case afforded coverage to Elaine R. Mellow at the time of the accident, since she was not a resident of the household of the owner of the automobile, and since the automobile had not been furnished to her for regular use, within the meaning of the policy.

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[3] In reaching this conclusion we have not overlooked certain testimony, which was not mentioned in the statement of facts in this opinion. Elaine R. Mellow answered "yes" to these questions put to her by counsel for State Farm: "And correct me if I am wrong, but I take it that you intended to actually live in the same household with your sister during this time?"; "And from the time that you arrived there until the time of the accident, you and your

hold?"; "And that [the Frost automobile] was left there at the apartment for your regular use?"; "And he left it there for your regular and daily use?". The questions called for legal conclusions. They incorporated words used in the policy, and they were designed to determine, by the answers given by the witness, the issues between the plaintiff and the defendant in this case. This testimony, therefore, has no probative value. For cases disapproving the admission of expert testimony directed to the issue being litigated, see *United States v. Spaulding*, 293 U.S. 498, 55 S. Ct. 273, 79 L. ed. 617; *Va. Coal & Iron Co. v. Ison*, 114 Va. 144, 75 S.E. 782; *Sparks v. Ribicoff*, 197 F.Supp. 174 (W.D. Va.).

The judgment in this case is affirmed. In view of the stipulation of counsel that the decisions in the companion cases of *State Farm Mutual Automobile Insurance Company v. Marjorie Smith*, Record No. 5958, and *State Farm Mutual Automobile Insurance Company v. Cheryl Smith, an infant, etc.*, Record No. 5959, involving identical issues, will be controlled by the decision in this case, mandates affirming the judgments in those cases will be issued also.

Affirmed.

Richmond**ST. PAUL MERCURY INSURANCE COMPANY V. NATIONWIDE MUTUAL
INSURANCE COMPANY, TILDEN ELKINS, TROY LEON ELKINS
AND WILLIAM R. ELKINS.**

June 10, 1968.

Record No. 6721.

Present, All the Justices.

(1) Pleading and Practice—Summary Judgment—Failure to Answer.

(2) Insurance—Coverage—Relative Resident Same Household.

1. While failure of defendant to appear and answer constitutes admission of all material facts pleaded, it does not admit legal conclusions. Trial court must consider admitted facts and determine liability if any.
2. Plaintiff's assured was injured while riding as passenger in automobile operated by a driver as to whom defendant insurance company denies coverage. Driver who was not the named insured, was son of defendant's named assured but was not resident of his father's household. Driver's parents were separated and former household had been broken up by the father's desertion. Driver, although in the military service, made his home with his mother after the separation and at the time of the accident. No error to strike evidence of plaintiff insurance company and to enter summary judgment in favor of defendant insurance company, the effect of which is to say driver not covered by policy of defendant insurance company and plaintiff insurance company liable to its assured under uninsured motorist endorsement.

Error to a judgment of the Circuit Court of Dickenson County.
Hon. Raymond J. Boyd, judge presiding.

Affirmed.

*Andrew P. Miller (Penn, Stuart & Miller, on brief), for plaintiff
in error.*

*William J. Sturgill; Leslie M. Mullins (Greear, Bowen, Mullins,
Sturgill & Roberson, on brief), for defendants in error.*

EGGLESTON, C.J., delivered the opinion of the court.

St. Paul Mercury Insurance Company filed in the court below a motion for a declaratory judgment against Nationwide Mutual In-

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insurance Company, Tilden Elkins, Troy Leon Elkins and William R. Elkins to determine the liability, if any, of the two insurance companies for damages for injuries sustained by William R. Elkins in an automobile accident. The motion alleged that on or about May 29, 1965 William R. Elkins, a passenger in a car driven by Troy Leon Elkins, was injured and had subsequently filed a suit for damages against Troy; that at the time of the accident St. Paul had in effect a policy of automobile liability insurance in which William R. Elkins was the named insured and which contained a provision insuring him for bodily injuries caused by an uninsured motorist; and that at the same time Nationwide had in effect a policy of automobile liability insurance in which Tilden Elkins was the named insured and Troy Leon Elkins was also an insured.

The motion further alleged that Troy had notified Nationwide of the suit which William R. Elkins had instituted against him but that Nationwide had declined to defend that suit; that pursuant to the statute William R. Elkins had served on the plaintiff St. Paul a notice of his claim for coverage against Troy under the uninsured motorist provision of its policy; and that since the policy issued by Nationwide afforded coverage to Troy, the latter was not an uninsured motorist within the terms of the policy issued by the plaintiff St. Paul to William R. Elkins. Accordingly, the plaintiff St. Paul moved for a judgment declaring that Troy Leon Elkins "is an insured" under the terms of the policy issued by Nationwide, that the latter is under the duty to defend the suit which William R. Elkins had instituted against Troy and to pay any judgment which might be rendered therein against Troy within the limits of the policy, and that the plaintiff St. Paul is under no duty to make any payment to William R. Elkins.

Nationwide filed an answer and grounds of defense denying that Troy Leon Elkins was insured under the policy which it had issued to Tilden Elkins. The individual defendants, Tilden Elkins, Troy Leon Elkins and William R. Elkins, filed no responsive pleadings.

A jury was impaneled to try the issues presented by the pleadings. The policies issued by the respective companies were put in evidence and oral evidence on behalf of the parties was adduced. At the conclusion of all of the evidence the plaintiff St. Paul moved for a summary judgment by default against the individual defendants who had filed no responsive pleadings and for a nonsuit as to the defendant

wide the trial court struck the evidence of the plaintiff St. Paul and entered summary judgment in favor of the defendants, the effect of which was to say that Troy Leon Elkins was not an insured covered by the policy issued by Nationwide to Tilden Elkins and that St. Paul was liable to William R. Elkins under the uninsured motorist endorsement in the policy which it had issued to him.

On appeal St. Paul attacks the correctness of these rulings and the entry of this judgment.

The facts are not in dispute. On May 29, 1965 a car driven by Troy Leon Elkins was involved in an accident in which William R. Elkins, a passenger, was injured. At that time Troy was on leave from his post in the United States Army into which he had been inducted on January 13, 1963. At the time of his induction into the military service Troy was living with his parents near Clintwood in Dickenson county. On April 23, 1965, while he was in the service, his parents were separated and on October 4 of that year his mother was granted a decree of divorce on the ground of the father's desertion. At the time of the accident his parents were living apart. Troy was discharged from the service on January 13, 1966 and thereafter made his home with his mother until he was married on May 3, 1966.

On February 21, 1966, after Troy's discharge, William R. Elkins filed suit against him. On March 8 Troy delivered the suit papers to an agent for Nationwide which was the first notice that that insurance company had of the accident. Troy's excuse for the delay in reporting the accident to the company was, "I had forgotten about it until I got the suit papers" and "[b]esides not knowing there was any insurance to cover it." Indeed, he said, on March 8 an adjuster for St. Paul had suggested that he should inquire as to whether there might be a policy covering him with respect to the accident. This led to information of the prior issuance of Nationwide's policy to Troy's father.

Troy further testified that while he was in the military service he purchased from a dealer in New Providence, Tennessee, the automobile which he was driving at the time of the accident. He also testified that while he paid the entire price for the car, because he anticipated that he would shortly be sent to Vietnam, he had the title registered in Tennessee in the name of a military companion, Darrell Schlup, and that within the next day or two he had the title transferred to John Belfiore, another companion. At the time of the acci-

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dent the car was titled in the name of Belfiore with whose permission Troy was driving it. Troy said that his agreement with Belfiore was that the latter would pay him \$200 for the car "if he wanted to" but that if he did not want to complete the purchase he could give the car to his (Troy's) mother.

At the time of the accident Nationwide had in effect a "Family Automobile Policy" which it had issued to Tilden Elkins as the named insured. The policy contains a provision insuring the named insured from liability for personal injuries sustained by any person "arising out of the ownership, maintenance or use" of two specified automobiles "or any non-owned automobile." It includes within the "Persons Insured" with respect to a non-owned automobile "any relative, but only with respect to a private passenger automobile or trailer," provided its actual operation is with the permission of the owner. It defines "relative" as a "relative of the Named Insured who is a resident of the same household."

One of the stated "Conditions" of the policy is that in the event of an accident written notice containing particulars sufficient to identify the insured and the names and addresses of the injured shall be given by or for the insured to the company or any of its authorized agents "as soon as practicable."

[1] St. Paul first contends that the trial court erred in overruling its motion for a summary judgment as to the individual defendants, Tilden Elkins, Troy Leon Elkins and William R. Elkins, who filed no responsive pleadings to the motion for declaratory judgment. The argument is that by their failure to file responsive pleadings the individual defendants admitted the facts showing that Troy was covered by Nationwide's policy, that hence he was not an uninsured motorist, and that this relieved St. Paul of its obligation to William R. Elkins under the uninsured motorist provision in its policy.

We do not agree with this contention. While the failure of the individual defendants to appear and answer constituted an admission on their part of all material facts pleaded in the plaintiff's motion, it did not admit St. Paul's legal conclusion that Troy Leon Elkins was afforded coverage under Nationwide's policy or that St. Paul was not liable to William R. Elkins under the uninsured motorist endorsement in the policy which it had issued to the latter. Despite the default of these individual defendants, the trial court was required to consider the admitted facts and the provisions of the two policies

panies thereunder. This the court proceeded to do and entered judgment accordingly. See 22 Am. Jur. 2d, Declaratory Judgments § 94, p. 959; *Hall v. Hartley*, 146 W. Va. 328, 119 S. E. 2d 759, 762 (1961).

Error was also assigned to the refusal of the trial court to permit St. Paul to take a nonsuit as to Nationwide. But the motion for a nonsuit was conditioned upon the court's sustaining St. Paul's motion for a default judgment against the individual defendants. The motion was, "At this time I would like to move the court for judgment by default against the three individual defendants. *If this motion is granted by the court*, then I would further move the court that plaintiff be allowed to take a nonsuit as to the defendant Nationwide Mutual Insurance Company." (Emphasis added.)

Since the trial court did not grant the motion for a default judgment, upon which the motion for a nonsuit was conditioned, this assignment is not pressed on appeal. In its brief St. Paul says: "The plaintiff did not and does not request a nonsuit as to that defendant [Nationwide] if its motion for summary judgment is denied."

[2] The main contention of St. Paul is that the trial court erred in holding that Troy Leon Elkins was not covered by the policy which Nationwide had issued to his father, Tilden Elkins. Nationwide based its claim of lack of coverage on the ground, among others, that Troy was not the named insured in the policy nor was he at the time of the accident "a resident of the same household" of the named insured, his father. We agree with this position.

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 that 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.

Accordingly, the failure of the evidence to show that Nationwide's

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policy issued to Tilden Elkins afforded coverage to Troy for liability for the injuries to William R. Elkins fully warranted the action of the trial court in striking the evidence adduced on behalf of St. Paul.

This conclusion makes it unnecessary that we consider the other reasons advanced by Nationwide for the position that its policy did not cover Troy Leon Elkins with respect to this accident.

The judgment is

Affirmed.

ALLSTATE INSURANCE COMPANY

v.

WILLIAM H. PATTERSON, SR., ADMINISTRATOR OF THE
ESTATE OF WILLIAM H. PATTERSON, JR., DECEASED

Record No. 830058

June 13, 1986

Present: Carrico, C.J., Cochran, Compton, Stephenson, Russell, and Thomas, JJ., and
Gordon, Retired Justice

*Declaratory judgment holding an adult son an insured
under the terms of a parent's automobile liability insur-
ance policy is reversed where as a matter of law the son
was not a resident of his father's household on the date of
the accident.*

Insurance — Automobile — Scope of Coverage — Policyholder's Household
— Residence

An automobile liability policyholder had an adult son who had married and moved away from the family home but, after a divorce, moved his belongings back to the parents' home. The son lived a somewhat nomadic existence but returned to the family home when he was not traveling or staying with friends or at clubhouses owned by the motorcycle group of which he was a member. A jury responded affirmatively to a special interrogatory as to whether the son's sporadic presence at the family home constituted "residence" there. From judgment for the claimant, the insurance company appeals.

1. Resident of the same household connotes a more settled or permanent status and "household" or "family" means a collection of persons as a single group, with one head, living together, a unit of permanent and domestic character, under one roof, subsisting in common and directing their attention to a common object, the promotion of their mutual interests and social happiness. This definition from *State Farm Mutual v. Smith*, 206 Va. 280, 142 S.E.2d 562 (1965), applied.
2. Intent is important in determining whether a person is a resident of a particular household. Residence emphasizes membership in a group rather an attachment to a building, but even so the evidence does not support the conclusion here that the son was a resident of his father's household at the time of the accident.
3. A settled and permanent status is necessary to a finding that a person is a resident of the household of the named insured. The intention of being a member of a particular household must be accompanied by a reasonable degree of regularity in the person's residential contacts with the household; casual, erratic contacts are not sufficient.

4. Since the question of whether the son was a member of his father's household was a question upon which reasonable persons should not differ, given the facts and circumstances of the case, the trial court should not have submitted the question to the jury but should have decided as a matter of law that the son was not a member of the insured's household on the date of the accident.

Appeal from a judgment of the Circuit Court of the City of Virginia Beach. Hon. Henry L. Lam, judge presiding.

Reversed and final judgment.

John G. Crandley (Preston, Wilson & Crandley, on brief), for appellant.

C. Richard Cranwell (Cranwell, Flora and Moore, P.C., on brief), for appellee.

CARRICO, C.J., delivered the opinion of the Court.

This is an appeal in a declaratory judgment proceeding brought by Allstate Insurance Company (Allstate) for a determination whether William H. Patterson, Jr. (Patterson), was an insured under the terms of the uninsured motorist provisions of an automobile liability policy Allstate had issued to Patterson's father. Allstate sought the determination because Patterson had claimed the benefit of the uninsured motorist coverage for personal injuries he suffered on April 15, 1979, when his motorcycle was struck by an automobile operated by an uninsured motorist.

The uninsured motorist provisions of Allstate's policy defined the term "insured" to include "the named insured and, while residents of the same household, the spouse and relatives of either." The central question in the trial below was whether Patterson was a resident of the same household as his father, the named insured. This question was submitted to a jury by way of an interrogatory requiring a special verdict. The jury answered the question affirmatively. The trial court denied Allstate's motion to set aside the verdict and, in a final order, declared that Patterson was an insured under Allstate's policy.

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After the case reached this Court, Patterson died, and we substituted the administrator of his estate in his place as the appellee

Allstate has assigned a number of errors. In the view we take of the case, however, one question is dispositive: Did the trial court err in refusing to hold as a matter of law that Patterson was not a resident of his father's household on the date of the accident?

The record shows that Patterson was 26 years old at the time of the accident. He lived with his parents in the family home in Salem, Virginia, until 1971, when he married and moved into an apartment with his wife. Approximately two years later, the marriage ended in divorce, and Patterson returned to his parents' home. In 1973, he moved to an apartment complex owned by his father at Cloverdale, Virginia, where he worked as a maintenance man. In 1976, the father sold the apartment complex, and Patterson again returned to his parents' home.

On each of these occasions, Patterson took with him all his personal belongings when he moved from his parents' home, and he changed his mailing address and the address on his driver's license and motor vehicle registration. Then, each time he returned to his parents' home, he brought with him all his personal belongings, and he changed his mailing address and the address on his operator's license and registration card. On each return, he occupied the same room he used as a boy, and he resumed the chores he always performed while living with his parents.

In 1976, Patterson became a member and officer of a motorcycle group known as the "Renegades," which maintained clubhouses throughout Virginia and in other states. He was "on the road traveling a lot" from clubhouse to clubhouse during 1976 and 1977. In the fall of 1976, he "started staying at a cabin" on Bent Mountain, near Salem, which was "another Renegades clubhouse," and he shared living quarters there with Virginia Hinchey. He also stayed with Virginia Hinchey at the apartments of friends in Roanoke. He held his last fulltime job in Roanoke "[s]ometime in 1977 or '78."

The Renegades maintained a clubhouse at 108 Louisa Avenue in Virginia Beach. In 1978, Patterson began spending more time in Virginia Beach searching for employment. He used the clubhouse, which consisted of four bedrooms and a bar, for lodging, and he gave the clubhouse address on job applications. Virginia Hinchey moved to Virginia Beach in 1978 and secured employment. She and Patterson shared living quarters at the clubhouse and also at an apartment in the Windsor Woods section of Virginia Beach.

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When Patterson left his parents' home on trips for the Renegades, he took with him only a bedroll and "two or three changes of clothes," leaving the remainder of his personal belongings behind. He returned to his parents' home "when [he] wasn't staying at one of the clubhouses or visiting around." Each time he returned, he occupied the bedroom he used as a child, and his mother laundered his clothes and prepared his meals. He did not pay board or otherwise contribute toward household expenses. He did perform the chores he was customarily assigned when at his parents' home.

In addition to maintaining his parents' address with the Division of Motor Vehicles, Patterson used that address in connection with his banking activities. He gave the same address while in the emergency room at Bayside Hospital in Virginia Beach following the accident in question.* He later gave the hospital the address of the Renegades' clubhouse in Virginia Beach because he "would be staying around the Beach for several months for physical therapy."

While on the witness stand, Patterson admitted that "based on [his] own estimate," he had stayed at his parents' home approximately 10% of the time in the period between early 1976 and the date of the accident in 1979. He insisted, however, that his "father's home . . . was [his] home."

[1] As noted previously, Allstate's policy defined the term "insured" to include "the named insured and, while residents of the same household, the spouse and relatives of either." We considered similar policy language in *State Farm Mutual v. Smith*, 206 Va. 280, 142 S.E.2d 562 (1965). There, we said:

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", . . . 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".

*Virginia Hinchey was also injured in the accident in question. Her case was the subject of an earlier appeal involving different issues. *Hinchey v. Ogden*, 226 Va. 234, 307 S.E.2d

Id. at 285, 142 S.E.2d at 565-66. We also said:

“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’.”

Id. at 285 n.6, 142 S.E.2d at 565-66 n.6 (quoting *Lumbermens Mut. Casualty Co. v. Pulsifer*, 41 F. Supp. 249, 251 (D. Me. 1941)).

We also dealt with similar policy language in *St. Paul Ins. v. Nationwide Ins.*, 209 Va. 18, 161 S.E.2d 694 (1968). There, we quoted only a portion of the *State Farm* definition of the term “household,” viz., “‘a collection of persons as a single group, with one head, living together, a unit of permanent and domestic character, under one roof.’” *Id.* at 22, 161 S.E.2d at 697.

Patterson’s administrator says that our use in *St. Paul* of only a portion of the *State Farm* definition “reflects the most current thinking of the Virginia Supreme Court,” suggesting that we intended in *St. Paul* to abandon the unquoted portion of the *State Farm* definition. We disagree.

In *St. Paul*, we quoted only a portion of the *State Farm* definition because use of that portion effectively disposed of the question involved in the case. We intended neither to abandon the remainder of the definition nor to approve the use of a bobtailed version in a jury instruction, as occurred here. Accordingly, we reaffirm the *State Farm* definition in full.

In any event, Patterson’s administrator maintains that Patterson qualified as a resident of his father’s household even under the full *State Farm* definition. Patterson’s intent with respect to membership in the family group was important, it is argued, and his conduct reflected his intent. This conduct included “using the Salem address on his Virginia drivers license; using the Salem address with his banking institution; giving the Salem address in the Emergency Room at Bayside Hospital; keeping all but a few changes of clothes and all of his personal effects in his room in Salem; and performing certain chores as a part of his family obligation in Salem.” (Appendix references omitted.)

[2] We agree with Patterson's administrator that a person's intent is important in determining whether he qualifies as a resident of a particular household. We also agree with a statement Patterson's administrator quotes from a Utah case, where the court said that "[r]esidence emphasizes membership in a group rather than an attachment to a building." *American States Ins. Co., Western Pac. Div. v. Walker*, 26 Utah 2d 161, 164, 486 P.2d 1042, 1044 (1971). Even so, we 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.

[3] The *State Farm* 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.

[4] In our opinion, whether Patterson qualified as a resident of his father's household was a question upon which reasonable persons should not differ, given the facts and circumstances of this case. Hence, the trial court should not have submitted the question to the jury but should have decided as a matter of law that Patterson was not a resident of his father's household on the date of the accident. See *Byrd v. Life Ins. Co. of Va.*, 219 Va. 824, 828, 252 S.E.2d 307, 309 (1979); *Insurance Company v.*

Accordingly, we will reverse the judgment of the trial court and enter final judgment here declaring that Patterson was not an insured under the uninsured motorist provisions of Allstate's policy.

Reversed and final judgment.

GOVERNMENT EMPLOYEES INSURANCE CO., ET AL.

V.

ALLSTATE INSURANCE CO., ET AL.

Record No. 850529

June 10, 1988

Present: All the Justices

Since the only reasonable inference to be drawn from the evidence is that the estranged husband of the insured was not a resident of his wife's household at the time his automobile was involved in an accident, the trial court's judgment to the contrary is reversed.

Insurance — Automobile — Resident of the Same Household — Defined — Intent

An accident victim was awarded a judgment against an individual who was driving another's car. The victim's insurance carrier handled the personal injury action pursuant to the uninsured motorist clause in his policy. His insurer contended in the subsequent declaratory judgment action that the offending automobile was covered under a policy issued to its owner's estranged wife. In response, that insurer alleged that the owner was not a resident of the household of the insured at the time of the accident and that, therefore, he was not a named insured under the policy issued to his wife. The trial court decided that the car owner was a resident of the insured's household when the accident occurred and qualified as a named insured under her policy. The court further concluded that he had given the driver of the automobile permission to use it and held that primary coverage for the accident rested with the estranged wife's insurer. The court also ruled that the driver of the automobile (also estranged from her husband) was a resident of his household on the date of the accident and, therefore, was a named insured under his policy. Thus, the court decided that secondary or excess coverage for the accident rested on his insurer. The estranged wife and her insurer appeal on the question of whether the court erred in finding that her husband was a resident of her household at the time the accident occurred.

1. At the time of the accident the husband's car was an "owned automobile" under the terms of the wife's insurance policy because it was described in the policy for which a specific premium charge indicated that coverage was afforded.
2. The named insured and any resident of the same household are insured when using an owned automobile, as is any person using such automobile with the permission of the named insured. The policy defines named insured to include both the individual named in the policy and his or her spouse, if resident of the same household.

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3. Under the policy of the driver of the car, the estranged husband's car was a non-owned automobile and under the terms of that policy the coverage is excess over any other valid and collectible insurance, including owned automobile coverage.
4. The meaning of the term resident of the same household depends upon the context in which it is used; it connotes a settled status and has been defined as 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. *State Farm Mutual v. Smith*, 206 Va. 280, 142 S.E.2d 562 (1965).
5. In a factually similar case it was held that at the time of the accident a former household had been broken up by the father's desertion. *St. Paul Ins. v. Nationwide Ins.*, 209 Va. 18, 161 S.E.2d 694 (1968).
6. The evidence in the present case is that the estranged husband had not resided in the insured wife's household for four months, he had removed almost all of his belongings and, most importantly, he evidently had no intention of resuming cohabitation with his wife. A person's intent is important in determining whether he qualifies as a resident of a particular household.
7. Because reasonable minds could not differ on the question, as a matter of law, the husband was not a resident of his wife's household at the time the accident occurred, and therefore he was not covered under her insurance policy.

Appeal from a judgment of the Circuit Court of the City of Norfolk. Hon. Jerome James, judge presiding.

Reversed and final judgment.

Richard A. Saunders (Donnell P. Davis; Furniss, Davis and Rashkind, on briefs), for appellants.

Joseph M. Young (Reynolds, Smith & Winters, P.C., on brief), for appellee Allstate Insurance Company.

John G. Crandley (Preston, Wilson & Crandley, on brief), for appellee State Farm Mutual Automobile Insurance Company.

No briefs or arguments for appellees James Luther, Teresa L. Nigohossian and Lloyd L. Menscer.

STEPHENSON, J., delivered the opinion of the Court.

In this appeal of a declaratory judgment, we again consider the meaning and application of the term "resident of the same household" as used in an automobile liability insurance policy. Specifically, Government Employees Insurance Company (GEICO)

challenges the trial court's determination that a named insured spouse who had left the marital home was a resident of the named insured's household.

The declaratory judgment proceeding was brought by Allstate Insurance Company (Allstate) against GEICO and State Farm Mutual Automobile Insurance Company (State Farm),¹ seeking an adjudication of the rights and obligations of the parties with respect to certain automobile liability insurance policies. In a prior action, Lloyd L. Menscer was awarded a judgment of \$50,000 against Teresa L. Nighohossian (Teresa) for personal injuries he sustained as a result of Teresa's negligent operation of an automobile owned by James R. Luther (James). Allstate, Menscer's insurance carrier, defended Menscer's personal injury action pursuant to the uninsured motorist clause in the policy Allstate had issued to him.

Allstate contended in the subsequent declaratory judgment proceeding that James' automobile was covered under a policy issued by GEICO to Wilhemina E. Luther (Wilhemina), James' wife. Allstate also contended that Teresa was insured under a policy State Farm had issued to Samson Nighohossian (Samson), Teresa's husband.

In response, GEICO alleged that James was not a resident of the household of its insured, Wilhemina, at the time of the accident and, thus, James was not a "named insured" under the policy that GEICO had issued to Wilhemina. Consequently, GEICO asserted, Teresa could not have been operating the automobile with the permission of a named insured as required by GEICO's policy. Similarly, State Farm claimed that Teresa was not a resident of the household of its named insured, Samson, when the accident occurred and, thus, was not covered under State Farm's policy.

The trial court decided that James was a resident of Wilhemina's household when the accident occurred and, therefore, qualified as a named insured under GEICO's policy. The court further concluded that James had given Teresa permission to use his automobile. Accordingly, the court held that primary coverage for the accident rested with GEICO. The court also ruled that Teresa was a resident of Samson's household on the date of the accident and, therefore, was a named insured under the State Farm policy.

¹ Also named as parties defendant were Wilhemina E. Luther, James R. Luther, Samson Nighohossian, Teresa L. Nighohossian, and Lloyd L. Menscer.

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arm policy. Thus, the court decided that secondary or excess coverage for the accident rested with State Farm.

GEICO and Wilhemina have appealed from the trial court's judgment. The sole question on appeal is whether the court erred in finding that James was a resident of Wilhemina's household when the accident occurred.

The evidence is undisputed. Wilhemina was the only witness to testify at the trial of the present case, although Teresa's deposition was presented. James was present at the trial, but he did not testify.

The accident occurred on July 29, 1981. At that time, a liability insurance policy was in effect that had been issued by GEICO to Wilhemina, who resided on Foxdale Drive in the City of Norfolk. Two automobiles were listed in the policy: James' 1967 AMC Ambassador and a 1972 Chrysler owned by Wilhemina.

Until April 10, 1981, James and Wilhemina resided together in their jointly-owned residence on Foxdale Drive. On that date, however, James left the marital home and never moved back. When he left, he removed virtually all his personal belongings.²

James' and Wilhemina's separation was not sudden; marital problems had existed for a number of years. The basic problems were James' "heavy drinking and [his] not coming home after work." On April 10, James again failed to come home after work. Wilhemina, however, "knew where he was so [she] went there and asked him to either come home or don't come home." When James made no response, Wilhemina returned home and packed his belongings. James subsequently moved out of the house, taking his belongings with him. James never objected to his wife's actions.

James returned to the marital home only once between April 10 and the date of the accident. On that occasion, he and Wilhemina dined out with another couple. The occasion ended unpleasantly. While at dinner, Teresa "came over to the table and asked [James] to go outside and talk to her." James did, and when he returned, he immediately took Wilhemina home. 526

James and Wilhemina never discussed a reconciliation. Their infrequent telephone conversations "weren't usually pleasant."

² The only items belonging to James that remained in the marital home were a built-in

James continued to allow his retirement check of approximately \$500 to be deposited into his and Wilhemina's joint checking account until September or October 1981. From that account, Wilhemina paid the mortgage, "big bills [and other joint] expenses that [she] and [her] husband had incurred during [their] marriage." Wilhemina also used the account to maintain the household.

From April 10 to the date of the accident, Wilhemina entertained "some hope," at least "in [her] mind," of a reconciliation with James. After the accident, however, she decided that "the marriage was essentially lost." Wilhemina and James never reconciled after the April 10 separation and subsequently were divorced, based on a continuous, one-year separation from that date.

On July 24, 1981, Teresa took "a few change[s] of clothes, toothbrush, make-up, and enough to survive on" and moved into the house in which James resided. She remained there until "about three, four" days after the accident, at which time she returned to live with Samson. At the time of the accident, a State Farm policy issued to Samson was in effect.

GEICO was not notified that James had moved from the marital home until after the accident. Wilhemina took no steps to remove James' automobile from the GEICO policy until after the accident. She continued to pay GEICO the monthly premiums on her policy through May or June 1981. Wilhemina never demanded a refund of premiums paid to GEICO to insure James' automobile, and GEICO never refunded any premiums to Wilhemina for the period of coverage after April 10, 1981. On July 7, 1981, Wilhemina completed a GEICO questionnaire in which she listed James' automobile as a vehicle to be insured under her policy and indicated that James drove the 1967 AMC Ambassador 100 percent of the time.

[1-2] Under the terms of GEICO's policy, James' 1967 AMC Ambassador was an "owned automobile" at the time of the accident, because it was "a private passenger . . . automobile described in [the] policy for which a specific premium charge indicates that coverage is afforded." With respect to an "owned automobile," the policy provides that the following persons are insured:

- (1) the named insured and any resident of the same household,

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(2) any other person using such automobile with the permission of the named insured, provided his actual operation . . . is within the scope of such permission

The policy defines "named insured" to mean "the individual named in [the policy] and also includes his spouse, if a resident of the same household."

[3] Under the State Farm policy in effect at the time of the accident, James' car was a "non-owned automobile," because it was "an automobile . . . not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile." Under the terms of State Farm's policy, "non-owned automobile" coverage is excess over any other valid and collectible insurance, including "owned automobile" coverage.

[4] GEICO contends on appeal that James was not covered by the policy it had issued to Wilhemina because he was not a "resident of the same household" of Wilhemina at the time of the accident. We first defined the term "resident of the same household" in *State Farm Mutual v. Smith*, 206 Va. 280, 142 S.E.2d 562 (1965), where we said:

The meaning of "resident" or "residence" . . . 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", . . . 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".

Id. at 285, 142 S.E.2d at 565-66 (footnotes omitted). In *State Farm*, we also quoted from *Lumbermens Mut. Casualty Co. v. Pulsifer*, 41 F.Supp. 249, 251 (D. Me. 1941), 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

State Farm, 206 Va. at 285 n.6, 142 S.E.2d at 565-66 n.6. We recently reaffirmed this definition in *Allstate Insurance Co. v. Patterson*, 231 Va. 358, 361-62, 344 S.E.2d 890, 892-93 (1986).

[5] We also considered the term "resident of the same household" in *St. Paul Ins. v. Nationwide Ins.*, 209 Va. 18, 161 S.E.2d 694 (1968), a case that is factually similar to the present case. There, Nationwide Mutual Insurance Company had issued an automobile liability insurance policy to Tilden Elkins as the named insured. With respect to a non-owned automobile, the policy covered "any relative" of the "Persons Insured" and defined "relative" as "relative of the Named Insured who is a *resident of the same household*." *Id.* at 21, 161 S.E.2d at 696-97 (emphasis added).

An automobile operated by Troy Elkins, Tilden's son, was involved in an accident in which a passenger was injured. Although the automobile was purchased by Troy, it was titled in the name of a friend, with whose permission Troy was driving. The passenger sued Troy.

At the time of the accident, Troy was on leave from the Army. When Troy had been inducted into the Army, he was living with his parents. At the time of the accident, however, his parents were separated and later were divorced on the ground of the father's desertion. After Troy was discharged from the Army, he made his home with his mother until he was married.

In *St. Paul*, Nationwide contended that Troy was not covered by the policy it had issued to Troy's father because, at the time of the accident, Troy was not "a resident of the same household" of his father. *Id.* at 22, 161 S.E.2d at 697. We agreed with Nationwide's contention, stating that "the undisputed evidence is that at [the time of the accident] Troy's parents were separated and the former household had been broken up by the father's desertion." *Id.*, 161 S.E.2d at 697-98.

[6] We believe the undisputed evidence in the present case leads to the same conclusion. 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 impor-

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it in determining whether he qualifies as a resident of a particular household." *Patterson*, 231 Va. at 363, 344 S.E.2d at 893.

[7] 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. Because reasonable minds could not differ upon the question, we hold that, as a matter of law, James was not a resident of Wilhemina's household when the accident occurred and, therefore, was not covered by GEICO's policy.

Accordingly, we will reverse the trial court's judgment and enter final judgment for GEICO.

Reversed and final judgment.

ALBERT W. FURROW, ADMINISTRATOR, ETC.

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Record No. 860637

January 13, 1989

Present: Carrico, C.J., Compton, Stephenson, Russell, Thomas, and Whiting, JJ., and
Gordon, Retired Justice.

A declaratory judgment holding that decedent was not a resident of her mother's household at the time of a fatal accident and that therefore the mother's insurer had no obligation to provide uninsured or underinsured motorist coverage to satisfy any claim for the wrongful death of decedent, is upheld.

**Insurance — Coverage — Residents of the Insured's Household — Evidence
— Testimony of a Felon**

The decedent was fatally injured in an automobile accident while a passenger in a vehicle operated by another. At the time the decedent's mother was the named insured in a motor vehicle liability insurance policy containing an uninsured motorists endorsement with underinsurance provisions issued by defendant insurance company. The endorsement provided coverage to the named insured and to the spouse and relatives of the insured "while residents of the same household." Plaintiff, as personal representative of the decedent's estate, filed a declaratory judgment action against the insurer, asking the court to declare that the decedent was a resident of her mother's household at the time of the accident and that the insurer had an obligation to provide coverage pursuant to the underinsurance provisions of the endorsement to satisfy the plaintiff's claim of damages for the alleged wrongful death of his decedent. The trial court decided in favor of the insurance company and the decedent's personal representative appeals.

1. Under the provisions of Code § 8.01-680, the judgment of the trial court may not be set aside upon review unless it appears from the evidence that the judgment is plainly wrong or without evidence to support it. The evidence is considered in the light most favorable to the party prevailing below.

2. The trial court's finding that the decedent was a visitor and sojourner in her mother's home, in transition from a shared residence with one man to sharing a residence with another, is a factual determination which finds overwhelming support in the evidence.

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3. In defining the phrase "resident of the same household" the term "household" connotes a settled status and embraces a collection of persons living

together as a single group with one head under one roof, a unit of permanent and domestic character.

4. A person's intent is important in determining whether that person qualifies as a resident of a particular household.
5. The evidence shows that the decedent never intended to become a member of her mother's household, but rather that she was in transition from one residence to another and merely staying temporarily with her mother while making the change.
6. A person convicted of a felony is a competent witness, but the fact of conviction may affect his credit. Code § 19.2-269. Here the testimony was corroborated by other evidence and the trial court was entitled to give it such credit as it deemed proper and not required to disregard it. --
7. The trial court correctly ruled that the decedent was not a resident of the mother's household at the time of the accident and that the insurer had no obligation to provide coverage to satisfy any claim the plaintiff may have for the wrongful death of his decedent.

Appeal from a judgment of the Circuit Court of the City of Roanoke. Hon. Ernest W. Ballou, judge presiding.

Affirmed.

Gordon H. Shapiro (Lutins and Shapiro, on briefs), for appellant.

Neil C. Bonney (Robert M. White; White and Selkin, on brief), for appellee.

COMPTON, J., delivered the opinion of the Court.

The sole question for decision in this insurance case is whether there was credible evidence to support the trial court's conclusion that a decedent, at the time of a fatal accident, was not a resident of the household of her mother.

In April 1984, Donna Elizabeth Price, age 22, was severely injured in a single vehicle accident while a passenger in the vehicle operated by Deborah Kay Jackson. Several days later, Price died from the injuries. At the time, the decedent's mother, Georgia H. Dallas, was the named insured in a motor vehicle liability insurance policy containing an uninsured motorists endorsement with underinsured provisions issued by appellee State Farm Mutual Automobile Insurance Company. The endorsement provided cov-

age to: the named insured "and, while residents of the same household, the spouse and relatives of either."

In April 1985, appellant Albert W. Furrow, as the personal representative of the decedent's estate, filed the present declaratory judgment action against the insurer. The plaintiff asked the court to declare that the decedent was a resident of her mother's household at the time of the accident and that the insurer had an obligation to provide coverage pursuant to the underinsured provisions of the endorsement to satisfy the plaintiff's claim of damages for the alleged wrongful death of his decedent.

By agreement, the trial court considered the issue upon the pleadings; depositions of Furrow, the mother, and one Allen W. Hobbs; and argument of counsel. The court decided in favor of the insurer, and we awarded Furrow this appeal.

[1] According to Code § 8.01-680, the judgment of the trial court shall not be set aside upon review "unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it." Pursuant to settled appellate principles, we shall consider the evidence in the light most favorable to the insurer, which prevailed below. This will demonstrate that the trial court's decision is neither plainly wrong nor without supporting evidence.

In 1978, when the decedent was about 17 years of age, she left her family's home in Ironto near Salem to live in Ironto with Furrow, who was then 18 years old. The couple, who never married, continued to live together during most of the remaining six years of her life. A daughter was born to them in 1980.

During the relationship, the couple lived first with his parents in the parents' home. Later, they lived in a rented house. Finally, they lived in a trailer on his parents' property.

In 1984, the couple's relationship began to deteriorate. About the same time, she met Hobbs, a paroled felon who worked at the same place where she was employed. She and Hobbs began meeting secretly and developed, according to Hobbs, a close, "strictly platonic" relationship.

In April 1984, about nine days before the fatal accident, the decedent left the trailer where she and Furrow lived and, taking the child, went to her mother's home. She never returned to live in the trailer. According to Furrow, he and the decedent had "separated" at least once before, staying apart two or three days. The mother testified that her daughter had spent the night at her

home on four or five separate occasions earlier in 1984. Each time before the last separation, the decedent had returned to live with Furrow. He said that he did not know whether the last separation was to be the final one.

After the last separation, the decedent stayed at her mother's home during the week, spending the weekends with Hobbs at a local motel. The decedent brought only "a few clothes" of her own and "a few of the baby's things" to the mother's home. Some of her clothes and her furniture remained at the trailer. While at the mother's home, the decedent and the child shared a bedroom with the decedent's older sister due to space limitations at the house. According to Hobbs, the decedent's stay at the mother's home "was a temporary arrangement; it wasn't permanent." The mother testified that the decedent did not want "to live nowhere in Ironto"; she just wanted "to get away."

During the period immediately before the accident, Hobbs rented an apartment in Salem where the decedent spent the weekends. They intended to marry, even though Hobbs apparently was married to a woman who had "been gone since 1978." The decedent had brought to the Salem apartment various housewares, including silverware, glasses, plates, pots, bedspreads and shower curtains. According to the mother, the decedent wished to move to an apartment in Salem possibly "because of" a "guy" the mother knew only as "Allen."

[2] The trial court found that "Donna Price was a visitor and sojourner in her mother's home, in transition from Albert Furrow's shared residence to the proposed shared residence of Allen Hobbs." This factual determination finds overwhelming support in the evidence. Stated differently, the plaintiff utterly failed to carry his burden to establish coverage under the terms of the policy endorsement. See *Maryland Casualty Co. v. Cole*, 156 Va. 707, 716, 158 S.E. 873, 876 (1931).

[3-4] In defining the phrase "resident of the same household," we have said that use of the term "household" connotes a settled status which is more permanent and settled than would be indicated if the phrase were "resident of the same house or apartment." In the present context, the term "household" embraces a collection of persons living together as a single group with one head under one roof, a unit of permanent and domestic character. *Government Employees Ins. v. Allstate Insurance Co.*, 235 Va. 542, 547, 369 S.E.2d 181, 184 (1988); *Allstate Insurance Co.*

Patterson, 231 Va. 358, 361-62, 344 S.E.2d 890, 892-93 (1986); *State Farm Mutual v. Smith*, 206 Va. 280, 285, 142 S.E.2d 562, 565-66 (1965). Furthermore, a person's intent is important in determining whether she qualifies as a resident of a particular household. *Patterson*, 231 Va. at 363, 344 S.E.2d at 893.

[5] 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."

Furrow argues that the trial court was not entitled to rely on Hobbs' testimony in support of the finding that the decedent intended to establish a residence with him. Labelling Hobbs' testimony "outlandish" and "a grossly embellished description" of his relationship with the decedent, Furrow says the testimony was "incredible" and unworthy of belief. We disagree.

[6] The mere fact that a witness is a felon does not make his testimony incredible as a matter of law. A person convicted of a felony is a competent witness, but the fact of conviction may affect his credit. Code § 19.2-269. In the present case, much of Hobbs' testimony was corroborated by other evidence and the trial court was entitled to give it such credit as the court deemed proper and was not required to disregard it entirely.

[7] For these reasons, we hold the trial court correctly ruled that the decedent was not a resident of the mother's household at the time of the accident and that the insurer had no obligation to provide coverage to satisfy any claim the plaintiff may have for the wrongful death of his decedent. Therefore, the judgment appealed from will be

FAMILY

Automobile Policy

COMBINATION FORM



State Farm Mutual Automobile Insurance Company
HOME OFFICE/BLOOMINGTON, ILLINOIS

The address of the Regional Office issuing this policy is shown at the bottom of the Declarations Page.

Policy Form 9346F.8

DECLARATIONS

POLICY PERIOD: The policy period shall be as shown in the Declarations under "Policy Period" and for such succeeding periods of twelve months each thereafter as the required renewal premium is paid by the insured on or before the expiration of the current policy period. The policy period shall begin and end at 12:01 A.M., standard time at the address of the named insured as stated herein. The premium shown is for the policy period indicated in the Declarations.

COVERAGES, LIMITS OF LIABILITY, PREMIUMS: The insurance afforded is only with respect to such of the coverages as are indicated in the Declarations by specific premium charge or charges. The limit of the company's liability against each such coverage shall be as stated herein, subject to all terms of the policy having reference thereto.

GARAGED: The owned automobile will be principally garaged in the declared town and state, unless otherwise stated in the exceptions.

LOSS PAYEE: Any loss under Part III is payable as interest may appear to the named insured and the Loss Payee, if any, shown in the Declarations and this insurance as to such additional interest shall not be invalidated by any act or negligence of the mortgagor or owner, nor any change in the title or ownership, nor by any error, or inadvertence in the description of the automobile until after notice of termination of the policy shall be given to the mortgage owner, conditional vendor, mortgagee or assignee stating when not less than 10 days thereafter such termination shall be effective; provided, the lien-holder shall notify the company within 10 days of any change of interest or ownership which shall come to the knowledge of said lien-holder and failure to do so will render this policy null and void.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

BLOOMINGTON, ILLINOIS

A Mutual Insurance Company Herein Called The Company

Agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to all of the terms of this policy:

PART I — LIABILITY

COVERAGE A — Bodily Injury Liability;

COVERAGE B — Property Damage Liability. To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:

A. bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", sustained by any person;

B. injury to or destruction of property, including loss of use thereof, hereinafter called "property damage";

arising out of the ownership, maintenance or use of the owned automobile or any non-owned automobile, and the company shall defend any suit alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent; but the company may make such investigation and settlement of any claim or suit as it deems expedient.

Supplementary Payments. To pay, in addition to the applicable limits of liability:

(a) all expenses incurred by the company, all costs taxed against the insured in any such suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon;

(b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of an automobile insured hereunder, not to exceed \$100 per bail bond, but without any obligation to apply for or furnish any such bonds;

(c) expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of an accident involving an automobile insured hereunder and not due to war;

(d) all reasonable expenses, other than loss of earnings, incurred by the insured at the company's request.

Persons Insured. The following are insureds under Part I:

(a) with respect to the owned automobile,

(1) the named insured and any resident of the same household,

(2) any other person using such automobile with the permission of the named insured, provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission, and

(3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a)(1) or (2) above;

(b) with respect to a non-owned automobile,

(1) the named insured,

(2) any relative, but only with respect to a private passenger automobile or trailer, provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and

(3) any other person or organization not owning or hiring the automobile, but only with respect to his or its liability because of acts or omissions of an insured under (b)(1) or (2) above.

The insurance afforded under Part I applies separately to each insured against whom claim is made or suit is brought, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

Definitions. Under Part I:

"named insured" means the individual named as named insured in the declarations and also includes his spouse, if a resident of the same household;

"insured" means a person or organization described under "Persons Insured";

"relative" means a relative of the named insured who is a resident of the same household;

"owned automobile" means

(a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded.

(b) a trailer owned by the named insured.

(c) a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided

(1) it replaces an owned automobile as defined in (a) above, or

(2) the company insures all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such automobile, or

(d) a temporary substitute automobile;

"temporary substitute automobile" means any automobile or trailer, not owned by the named insured, while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;

"non-owned automobile" means an automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile;

"private passenger automobile" means a four wheel private passenger, station wagon or jeep type automobile;

"farm automobile" means an automobile of the truck type with a load capacity of fifteen hundred pounds or less not used for business or commercial purposes other than farming;

"utility automobile" means an automobile, other than a farm automobile, with a load capacity of fifteen hundred pounds or less of the pick-up body, sedan delivery or panel truck type not used for business or commercial purposes;

"trailer" means a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm or utility automobile, or a farm wagon or farm implement while used with a farm automobile;

"automobile business" means the business or occupation of selling, repairing, servicing, storing or parking automobiles;

"use" of an automobile includes the loading and unloading thereof;

"war" means war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

Exclusions. This policy does not apply under Part I:

(a) to any automobile while used as a public or livery conveyance, but this exclusion does not apply to the named insured with respect to bodily injury or property damage which results from the named insured's occupancy of a non-owned automobile other than as the operator thereof;

(b) to bodily injury or property damage caused intentionally by or at the direction of the insured;

(c) to injury, sickness, disease, death or destruction with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;

(d) to bodily injury or property damage arising out of the operation of farm machinery;

(e) to bodily injury to any employee of the insured arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the insured;

(f) to bodily injury to any fellow employee of the insured injured in the course of his employment if such injury arises out of the use of an automobile in the business of his employer, but this exclusion does not apply to the named insured with respect to injury sustained by any such fellow employee;

(g) to an owned automobile while used by any person while such person is employed or otherwise engaged in the automobile business, but this exclusion does not apply to the named insured, a resident of the same household as the named insured, a partnership in which the named insured or such resident is a partner, or any partner, agent or employee of the named insured, such resident or partnership;

(h) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in

(1) the automobile business of the insured or of any other person or organization,

(2) any other business or occupation of the insured, but this exclusion (h) (2) does not apply to a private passenger automobile operated or occupied by the

named insured or by his private chauffeur or domestic servant or a trailer used therewith or with an owned automobile;

(i) to injury to or destruction of (1) property owned or transported by the insured or (2) property rented to or in charge of the insured other than a residence or private garage;

(j) to the ownership, maintenance, operation, use, loading or unloading of an automobile ownership of which is acquired by the named insured during the policy period or any temporary substitute automobile therefor, if the named insured has purchased other automobile liability insurance applicable to such automobile for which a specific premium charge has been made.

Financial Responsibility Laws. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

Limits of Liability. The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person as the result of any one occurrence; the limit of such liability stated in the declarations as applicable to "each occurrence" is, subject to the above provision respecting each person, the total limit of the company's liability for all such damages arising out of bodily injury sustained by two or more persons as the result of any one occurrence.

The limit of property damage liability stated in the declarations as applicable to "each occurrence" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one occurrence.

Other Insurance. If the insured has other insurance against a loss covered by Part I of this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other and collectible insurance.

PART II — EXPENSES FOR MEDICAL SERVICES

Coverage C — Medical Payments. To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services;

Division 1. To or for the named insured and each relative who sustains bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", caused by accident,

(a) while occupying the owned automobile,

(b) while occupying a non-owned automobile, but only if such person has, or reasonably believe he has, the permission of the owner to use the automobile and the use is within the scope of such permission, or

(c) through being struck by an automobile or by a trailer of any type;

Division 2. To or for any other person who sustains bodily injury, caused by accident, while occupying

(a) the owned automobile, while being used by the named insured, by any resident of the same household or by any other person with the permission of the named insured; or

(b) a non-owned automobile, if the bodily injury results from

(1) its operation or occupancy by the named insured or its operation on his behalf by his private chauffeur or domestic servant, or

(2) its operation or occupancy by a relative, provided it is a private passenger automobile or trailer,

but only if such operator or occupant has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission.

Definitions. The definitions under Part I apply to Part II, and under Part II:

"occupying" means in or upon on entering into or alighting from.

Exclusions. This policy does not apply under Part II to bodily injury:

- (a) sustained while occupying (1) an owned automobile while used as a public or livery conveyance, or (2) any vehicle while located for use as a residence or premises;
- (b) sustained by the named insured or a relative while occupying or through being struck by (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, or (2) a vehicle operated on rails or crawler-treads;
- (c) sustained by any person other than the named insured or a relative,

- (1) while such person is occupying a non-owned automobile while used as a public or livery conveyance, or
- (2) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in the automobile business, or
- (3) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in any other business or occupation, unless the bodily injury results from the operation or occupancy of a private passenger

automobile by the named insured or by his private chauffeur or domestic servant, or of a trailer used therewith or with an owned automobile;

- (d) sustained by any person while is employed in the automobile business, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;
- (e) due to war.

Limit of Liability. The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of the company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury as the result of any one accident.

Other Insurance. If there is other automobile medical payments insurance against a loss covered by Part II of this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible automobile medical payments insurance; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible automobile medical payments insurance.

PART III - PHYSICAL DAMAGE

COVERAGE D - (1) Comprehensive - Excluding Collision, (2) Personal Effects.

(1) To pay for loss caused other than by collision to the owned automobile or to a non-owned automobile. For the purpose of this coverage, breakage of glass and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, or colliding with a bird or animal, shall not be deemed to be loss caused by collision.

(2) To pay for loss caused by fire or lightning to robes, wearing apparel and other personal effects which are the property of the named insured or a relative, while such effects are in or upon the owned automobile.

DEDUCTIBLE COMPREHENSIVE COVERAGE. To pay any loss payable under coverage D but it is agreed that the deductible amount, as shown on the declarations page by the number beside D, shall be deducted from the amount of each loss as to each automobile, other than loss by (a) fire or lightning, (b) smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment servicing the premises in which the automobile is located, or

(c) the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

If the policy affords insurance with respect to the collision coverage, breakage of glass caused by collision may, if the insured so elects, be treated as covered thereunder, subject to the terms thereof, instead of under the comprehensive coverage.

COVERAGE G - Collision. To pay for loss caused by collision to the owned automobile or to a non-owned automobile but only for the amount of each such loss in excess of the deductible amount stated in the declarations as applicable hereto.

COVERAGE H - Towing and Labor Costs. To pay for towing and labor costs necessitated by the disablement of the owned automobile or of any non-owned automobile, provided the labor is performed at the place of disablement.

Supplementary Payments. In addition to the applicable limit of liability:

- (a) to reimburse the insured for transportation expenses incurred during the period commencing 48 hours after a

theft covered by this policy of the entire automobile has been reported to the company and the police, and terminating when the automobile is returned to use or the company pays for the loss; provided that the company shall not be obligated to pay aggregate expenses in excess of \$10 per day or totaling more than \$300.

(b) to pay general average and salvage charges for which the insured becomes legally liable, as to the automobile being transported.

Definitions. The definitions of "named insured", "relative", "temporary substitute automobile", "private passenger automobile", "farm automobile", "utility automobile", "automobile business", "war" and "owned automobile" in Part I apply to Part III, but "owned automobile" does not include, under Part III, (1) a trailer owned by the named insured on the effective date of this policy and not described herein, or (2) a trailer ownership of which is acquired during the policy period unless the company insures all private passenger, farm and utility automobiles and trailers owned by the named insured on the date of such acquisition and the named insured notifies the company within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such trailer.

"insured" means

(a) with respect to an owned automobile,

(1) the named insured, and

(2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee for hire) maintaining, using or having custody of said automobile with the permission of the named insured and within the scope of such permission;

(b) with respect to a non-owned automobile, the named insured and any relative while using such automobile, provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission;

"non-owned automobile" means a private passenger automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile, while said automobile or trailer is in the possession or custody of the insured or is being operated by him;

"loss" means direct and accidental loss of or damage to (a) the automobile, including its equipment, or (b) other insured property;

"collision" means collision of an automobile covered by this policy with another object or with a vehicle to which it is attached or by upset of such automobile;

"trailer" means a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm or utility automobile, and if not a home, office, store, display or passenger trailer.

Exclusions. This policy does not apply under Part III:

(a) to any automobile while used as a public or livery conveyance;

(b) to loss due to war;

(c) to loss to a non-owned automobile arising out of its use by the insured while he is employed or otherwise engaged in the automobile business;

(d) to loss to a private passenger, farm or utility automobile or trailer owned by the named insured and not described in this policy or to any temporary substitute automobile therefor, if the insured has other valid and collectible insurance against such loss;

(e) to damage which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage results from a theft covered by this policy;

(f) to tires, unless damaged by fire, malicious mischief or vandalism, or stolen or unless the loss be coincident with and from the same cause as other loss covered by this policy;

(g) to loss due to radioactive contamination;

(h) under coverage G, to breakage of glass if insurance with respect to such breakage is otherwise afforded;

(i) to loss of or damage to any device or instrument designed for the recording, reproduction, or recording and reproduction of sound unless such device or instrument is permanently installed in the automobile;

(j) to loss of or damage to any tape, wire, record disc or other medium for use with any device or instrument designed for the recording, reproduction, or recording and reproduction of sound.

Limit of Liability. The limit of the company's liability for loss shall not exceed the actual cash value of the property, or if the loss is of a part thereof the actual cash value of such part, at time of loss, nor what it would then cost to repair or replace the property or such part thereof with other of like kind and quality, nor, with respect to an owned automobile described in this policy, the applicable limit of liability stated in the

declarations; provided, however, the limit of the company's liability (a) for loss to personal effects arising out of any one occurrence is \$100, and (b) for loss to any trailer not owned by the named insured is \$500.

Other Insurance. If the insured has other insurance against a loss covered by Part III of this policy, the

company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability of this policy bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance.

PART IV — AUTOMOBILE DEATH INDEMNITY, TOTAL DISABILITY COVERAGE AND SPECIFIC DISABILITY BENEFITS

INSURING AGREEMENTS

1. COVERAGES

Division 1 — Death Indemnity

To pay the principal sum stated in the exceptions in the event of the death of the insured which shall result directly and independently of all other causes from bodily injury caused by accident and sustained by the insured while in or upon, or while entering into or alighting from, or through being struck by, an automobile, provided the death shall occur (1) within ninety days after the date of the accident, or (2) within fifty-two weeks after the date of the accident and during a period of continuous total disability of the insured for which weekly indemnity is payable under the total disability coverage.

Division 2 — (a) Dismemberment and Loss of Sight Benefits

(b) Fractures and Dislocations Benefits

To pay the highest applicable amount stated in the following Tables for loss as enumerated therein, in the event of bodily injury, caused by accident and sustained by the insured while in or upon, or while entering into or alighting from, or through being struck by, an automobile, provided loss under Table I be sustained by the insured within ninety days from such accident.

As respects any insured, (1) any amount for which the company is obligated or has made payment under Division 2 shall apply in reduction of any amount for which the company is obligated under Division 1;

(2) payment of the principal sum shall terminate all obligation of the company under coverage S.

TABLE I

	If applicable principal sum is	If applicable principal sum is
For Loss of	\$5,000.00	\$10,000.00
Both Hands or Both Feet or Sight of Both Eyes	\$5,000.00	\$10,000.00

One Hand and One Foot	5,000.00	10,000.00
Either Hand or Foot and Sight of One Eye	5,000.00	10,000.00
Either Hand or Foot	2,500.00	5,000.00
Sight of One Eye	1,750.00	3,500.00
Thumb and Index Finger of Either Hand	1,250.00	2,500.00

"Loss" shall mean with regard to hands and feet, actual severance through or above wrist or ankle joints; with regard to eyes, entire and irrecoverable loss of sight; with regard to thumb and index finger, actual severance through or above metacarpophalangeal joints.

TABLE II

	If applicable principal sum is	If applicable principal sum is
For Fracture of Bones:	\$5,000.00	\$10,000.00
Skull (except bones of face or nose)	\$175.00	\$350.00
Thigh	150.00	300.00
Arm, between elbow and shoulder	150.00	300.00
Pelvis (except coccyx)	125.00	250.00
Vertebra or Vertebrae (except coccyx and vertebral processes)	125.00	250.00
Shoulder Blade	100.00	200.00
Leg	100.00	200.00
Kneecap	100.00	200.00
Collar Bone	75.00	150.00
Forearm, between wrist and elbow	75.00	150.00
Foot (except toes)	62.50	125.00
Hand (except fingers)	62.50	125.00
Sternum	50.00	100.00

Lower Jaw (except alveolar process)	37.50	75.00
One or more ribs, fingers or toes	25.00	50.00
Bones of face or nose	25.00	50.00
Coccyx or Vertebral Processes	25.00	50.00
For Complete Dislocations:		
Hip Joint	\$150.00	\$300.00
Knee Joint (except patella)	75.00	150.00
Bone or Bones of Foot (except toes)	75.00	150.00
Ankle Joint	75.00	150.00
Wrist Joint	62.50	125.00
Elbow Joint	50.00	100.00
Shoulder Joint	37.50	75.00
Bone or Bones of Hand (except fingers)	25.00	50.00
Collar Bone	25.00	50.00
One or more fingers or toes	12.50	25.00
For Loss by Removal:		
Of one or more entire toes	\$100.00	\$200.00
Of one or more fingers (at least one entire phalanx)	75.00	150.00
For a Hospital-confining Injury, except as an Outpatient:	\$25.00	\$50.00

COVERAGE T — Total Disability — Maximum 200 Weeks. To pay weekly indemnity at the rate stated in the exceptions for the period of continuous total disability of the insured which shall result directly and independently of all other causes from bodily injury caused by accident and sustained by the insured while in or upon or while entering into or alighting from, or through being struck by, an automobile, provided (1) such disability shall commence within twenty days after the date of the accident, and (2) any disability during the period of fifty-two weeks from its commencement shall be deemed total disability only if it shall continuously prevent the insured from performing every duty pertaining to his occupation, and (3) any disability after said fifty-two weeks shall be deemed total disability only if it shall continuously prevent the insured from engaging in any occupation or employment for wage or profit and (4) the weekly indemnity for total disability as provided hereinabove shall in no event extend beyond a period of 200 consecutive weeks from the date of commencement of disability as provided above.

2. Definition of Insured. With respect to coverages S and T, the unqualified word "insured" means the person or

persons so designated for each such coverage in the exceptions.

3. Automobile defined. With respect to this insurance the word "automobile" means a land motor vehicle or trailer not operated on rails or crawler treads, but does not mean: (1) a farm type tractor or other equipment designed for use principally off public roads, except while actually upon public roads, or (2) a land motor vehicle or trailer while located for use as a residence or premises and not as a vehicle.

4. Policy Period, Territory. This insurance applies only to accidents which occur during the policy period within the United States of America, its territories or possessions, or Canada.

EXCLUSIONS. This insurance does not apply:

(a) to bodily injury or death sustained in the course of his occupation by any person while engaged (1) in duties incident to the operation, loading or unloading of, or as an assistant on, a public or livery conveyance or commercial automobile, or (2) in duties incident to the repair or servicing of automobiles;

(b) to loss caused by or resulting from disease except pus forming infection which shall occur through bodily injury to which this insurance applies;

(c) to suicide, sane or insane, or to any attempt thereof;

(d) to injury or death due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing.

CONDITIONS.

1. Policy Provisions. None of the insuring agreements, exclusions or other provisions of Parts I, II and III of the policy or conditions of the policy shall apply to the insurance afforded by this Part IV except the conditions "Notice", "Action Against Company (Medical Payments)", "Changes", "Assignment", "Cancellation" and "Declarations".

2. Notice of Claim. When loss covered hereunder occurs, written notice thereof shall be given by or on behalf of the insured or the beneficiary to the company or any of its authorized agents as soon as practicable.

3. Proof of Claim; Medical Reports. As soon as practicable, the injured person, or the beneficiary in the event of death, or someone on his behalf, shall give to the company written proof of claim, under oath if required; and shall after each request from the company execute authorization to enable the company to obtain medical reports and copies of records.

Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to

furnish such forms within fifteen days after receiving notice of claim.

The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

4. Payment of Death Indemnity; Autopsy — Division 1 of Coverage S. If the decedent insured be survived by a spouse who was a resident of the same household at the time of the accident, indemnity for death is payable to such spouse; otherwise, if the decedent insured was a minor, indemnity for death is payable to any parent thereof who was a resident of the same household at the time of the accident; otherwise indemnity for death is payable to the decedent insured's estate.

The company shall have the right and opportunity to make an autopsy where it is not forbidden by law.

5. Payment of Indemnity — Coverage T. Weekly Indemnity for total disability is payable to the insured who is disabled. Subject to proof of claim, accrued

weekly indemnity is payable every four weeks and any balance at termination of the disability period for which the company is liable.

6. Beneficiary — Division 1 of Coverage S. Consent of beneficiary is not requisite to cancellation, assignment, change of beneficiary, or any other change in the policy.

7. Death of Named Insured. If the named insured dies, any insurance afforded under this Part IV with respect to any surviving insured shall be continued while the policy is in effect.

8. Other Insurance. If any insured under this Part IV also is an insured under other coverage of the same kind, issued by the company, any payment for loss under such other coverage shall serve to reduce, to the extent of such payment, the company's obligation under this Part IV as respects any loss to such insured, and the company will return the premium paid for such duplication of the insurance hereunder.

CONDITIONS

Conditions 3, 13 and 15 through 17 apply to all Parts.

Conditions 1, 2, 14 and 4 through 12, apply only to the Parts noted thereunder.

1. Policy Period, Territory (Parts I, II and III). This policy applies only to accidents, occurrences and loss during the policy period while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof.

2. Premium (Parts I, II and III). If the named insured disposes of, acquires ownership of, or replaces a private passenger, farm or utility automobile or, with respect to Part III, a trailer, any premium adjustment necessary shall be made as of the date of such change in accordance with the manuals in use by the company. The named insured shall, upon request, furnish reasonable proof of the number of such automobiles or trailers and a description thereof.

3. Notice. In the event of an accident, occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable. In the event of theft the insured shall also promptly notify the police. If claim is made or suit is brought against the insured, he

shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

4. Two or More Automobiles (Parts I, II and III). When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but an automobile and a trailer attached thereto shall be held to be one automobile as respects limits of liability under Part I of this policy, and separate automobiles under Part III of this policy, including any deductible provisions applicable thereto.

5. Assistance and Cooperation of the Insured (Parts I and III). The insured shall cooperate with the company and, upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury, property damage or loss with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The failure or refusal of the insured to cooperate with or assist the company which prejudices the company's defense of an action for damages arising out of the operation or use of an

automobile shall constitute non-compliance with the requirements of the policy that the insured shall cooperate with and assist the company. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

6. Action Against Company (Part I). No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the company as a party to any action against the insured to determine the insured's liability, nor shall the company be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

(Parts II, III and IV). No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor, under Part III, until thirty days after proof of loss is filed and the amount of loss is determined as provided in this policy.

7. Medical Reports; Proof and Payment of Claim (Part II). As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

The company may pay the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

8. Insured's Duties in Event of Loss (Part III). In the event of loss the insured shall:

(a) protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy; reasonable expenses incurred in affording such protection shall be deemed incurred at the company's request;

(b) file with the company, within 91 days after loss, his sworn proof of loss in such form and including such information as the company may reasonably require and shall, upon the company's request, exhibit the damaged property and submit to examination under oath.

9. Appraisal (Part III). If the insured and the company fail to agree as to the amount of loss, either may, within 60 days after proof of loss is filed, demand an appraisal of the loss. In such event the insured and the company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

10. Payment of Loss (Part III). The company may pay for the loss in money; or may repair or replace the damaged or stolen property; or may, at any time before the loss is paid or the property is so replaced, at its expense return any stolen property to the named insured, or at its option to the address shown in the declarations, with payment for any resultant damage thereto; or may take all or such part of the property at the agreed or appraised value but there shall be no abandonment to the company. The company may settle any claim for loss either with the insured or the owner of the property.

11. No Benefit to Bailee (Part III). The insurance afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire liable for loss to the automobile.

12. Subrogation (Parts I and III). In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and

papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

13. Changes. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by an executive officer of the company.

14. Limit of Liability — Coverage H. The company's liability shall not exceed \$25.00 for each disablement.

15. Assignment. Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the insured named as named insured in the declarations, or his spouse if a resident of the same household, shall die, this policy shall cover (1) the survivor as named insured, (2) his legal representative as named insured but only while acting within the scope of his duties as such, (3) any person having proper temporary custody of an owned automobile, as an insured, until the appointment and qualification of such legal representative, and (4) under division I of Part II any person who was a relative at the time of such death.

16. Cancellation. This policy may be canceled by the insured named as named insured in the declarations by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be canceled by the company by mailing to the insured named as named insured in the declarations at the address shown in this policy written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by such insured or by the company shall be equivalent to mailing.

If such insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

17. Declarations. By acceptance of this policy, the insured named as named insured in the declarations agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

MUTUAL CONDITIONS

1. Mutuals — Membership and Voting Notice. The first insured named in the declarations is notified that by virtue of this policy he is a member of the State Farm Mutual Automobile Insurance Company of Bloomington, Illinois, and while this policy is in force is entitled to vote at all meetings of members and to share in the earnings and savings of the company in accordance with the dividends declared by the Board of Directors on this and like policies.

2. No Contingent Liability. This policy is non-assessable.

3. Annual Meeting. The annual meeting of the members of the company shall be held at its home office at Bloomington, Illinois, on the second Monday of June at the hour of 10:00 A.M., unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be mailed each member at the address disclosed in this policy at least ten (10) days prior thereto.

In Witness Whereof, the State Farm Mutual Automobile Insurance Company has caused this policy to be signed by its President and Secretary at Bloomington, Illinois.

Laura P. Sullivan
SECRETARY

Edward B. Runtz, Jr.
PRESIDENT

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Note: The following endorsement applies when the endorsement number appears on the declarations page.

6460.2 VIRGINIA AUTOMOBILE INSURANCE PLAN

It is understood and agreed that in the event of cancellation of this policy by either insured or the company, the earned premium calculated in accordance with the cancellation condition of the policy, shall be subject to a minimum of \$25.00 as provided in Section 18 of the Virginia Automobile Insurance Plan.

Note: The following endorsement applies when the endorsement number appears on the declarations page.

6882AQ PREMIUM AND COVERAGE CHANGES ENDORSEMENT

It is agreed that, subject to all the provisions of the policy except where modified herein, the following provision is added:

PREMIUM AND COVERAGE CHANGES

A. Premium Changes

The premium for this policy is based on information the company has received from the named insured or other sources. The named insured agrees that if any of this information material to the development of the policy premium is incorrect, incomplete or changed, the company may adjust the premium accordingly during the policy period; and to cooperate with the company in determining if this information is correct and complete, and to advise the company of changes in this information.

Any adjustment of the policy's premium will be made using the rules in effect at the time of the change.

Premium adjustment made be made as the result of a change in:

1. automobiles insured by the policy, including changes in use.
2. driver, driver's age or driver's marital status.
3. coverages and coverage limits.
4. rating territory.
5. eligibility for discounts or other premium credits.

B. Coverage Changes

The company may revise the coverages under this policy to provide more protection without additional premium charge. If the company does this and the named insured has the coverage which is changed, this policy will automatically provide the additional coverage as of the date the revision is effective in this state. Otherwise, this policy contains all of the coverage agreements between the named insured and the company. Its terms may not be changed or waived except by an endorsement issued by the company.

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6191C DISTRICT OF COLUMBIA EMPLOYEES USING AUTOMOBILES IN GOVERNMENT BUSINESS

It is agreed that the policy does not apply under the Liability Coverages to the following insureds:

1. The District of Columbia or any of its Agencies.
2. Any person, including the named insured, with respect to bodily injury or property damage resulting from the operation of an automobile by such person as an employee of the District of Columbia while acting within the scope of his office or employment, if such person is relieved from liability because of the provisions of Public Law 86-654 (District of Columbia Employee Non-Liability Act), as amended.

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6256W.1 SOUND RECEIVING AND TRANSMITTING EQUIPMENT EXCLUDED

It is agreed that any Physical Damage Insurance afforded by the policy is subject to the following additional exclusion:

This insurance does not apply to loss of, or damage to any sound receiving or sound receiving and transmitting equipment designed for use as a citizen's band radio, two-way mobile radio or telephone, or scanning monitor receiver, including any accessories and antennas unless permanently installed in the opening of the dash or console of the automobile normally used by the motor vehicle manufacturer for the installation of a radio.

Note: This endorsement replaces any endorsement providing similar coverage. It applies when the endorsement number is shown on the declarations page.

6273H.5 SUPPLEMENTARY UNINSURED MOTORISTS INSURANCE (Bodily Injury - Property Damage - Limits - Underinsured Motorists) (Virginia)

It is agreed that, with respect to such insurance as is afforded by the policy for damages because of bodily injury and property damage caused by accident and arising out of the ownership, maintenance or use of an uninsured motor vehicle, subdivision (a) of the definition of "uninsured motor vehicle" is amended to include "underinsured" motor vehicle, subject to the following provisions:

1. If limits of liability for such insurance are stated in the schedule of this endorsement or in the declarations, and subject to 2. below:
 - (a) the split limits so stated as applicable to bodily injury for "each person"/"each accident" and property damage for "each accident" shall apply in lieu of any limits therefor stated elsewhere in the policy, and subject to all the terms of the policy having reference thereto, shall be the total limit of the company's liability for all damages because of bodily injury and property damage as the result of any one accident arising out of the ownership, maintenance or use of uninsured motor vehicles; or
 - (b) the single limit so stated as applicable to bodily injury and property damage for "each accident" shall apply in lieu of any limit therefor stated elsewhere in the policy, and subject to all the terms of the policy having reference thereto, shall be the total limit of the company's liability for all damages as the result of any one accident arising out of the ownership, maintenance or use of uninsured motor vehicles; provided such limit of liability shall first provide the separate limits required by the Virginia Motor Vehicle Safety Responsibility Act as stated in the schedule of this endorsement or in the declarations.
2. When used in reference to this insurance (including this and other endorsements forming a part of the policy):

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A motor vehicle is "underinsured" when, and to the extent that, the total amount of bodily injury and property damage coverage applicable to the operation or use of the motor vehicle and "available for payment" for such bodily injury or property damage, including all bonds or deposits of money or securities made pursuant to Article 6 of Chapter 6 of Title 46.1 of the Code of Virginia (Section 46.1-467 et seq.), is less than the total amount of uninsured motorist coverage afforded any person injured as a result of the operation or use of the vehicle.

"Available for payment" means the amount of liability insurance coverage applicable to the claim of the injured person for bodily injury or property damage reduced by the payment of any other claims arising out of the same occurrence.

If an injured person is entitled to underinsured motorist coverage under more than one policy, the following order of priority of policies applies and any amount available for payment shall be credited against such policies in the following order of priority:

1. The policy covering a motor vehicle occupied by the injured person at the time of the accident;
2. The policy covering a motor vehicle not involved in the accident under which the injured person is a named insured;
3. The policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.

Where there is more than one insurer providing coverage under one of the payment priorities set forth, their liability shall be proportioned as to their respective underinsured motorist coverages.

3. The company shall not be obligated to make any payment because of bodily injury or property damage to which this insurance applies and which arises out of the ownership, maintenance or use of an underinsured motor vehicle until after the limits of liability under all bodily injury and property damage liability bonds or insurance policies respectively applicable at the time of the accident to damages because of bodily injury or because of property damage have been exhausted by payment of judgments or settlements.
4. Exclusion (a) in the Uninsured Motorists Insurance endorsement does not apply to the underinsured motorists coverage afforded by this endorsement.
5. The second paragraph of the Other Insurance Condition in the Uninsured Motorists Insurance endorsement does not apply to the underinsured motorists coverage afforded by this endorsement.

SCHEDULE - LIMIT OF LIABILITY

Split Limits see amounts in declarations

Single Limit Bodily Injury and Property Damage \$ see amount in declarations each accident, provided such limit shall first be: Bodily Injury \$25,000 each person, \$50,000 each accident, Property Damage \$10,000 each accident.

Note: This endorsement replaces any similar coverage or endorsement printed in the policy. It applies when the endorsement number is shown on the declarations page.

6520.7 UNINSURED MOTORISTS INSURANCE (Virginia)

In consideration of the payment of premium and subject to all of the provisions of this endorsement and to the applicable provisions of the policy, the company agrees with the named insured as follows:

I. COVERAGE U - UNINSURED MOTORISTS (Damages for Bodily Injury and Property Damage)

The company will pay in accordance with Section 38.2-2206 of the Code of Virginia and all Acts amendatory thereof or supplementary thereto, all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured or property damage, caused by accident and arising out of the

ownership, maintenance or use of such uninsured motor vehicle.

Exclusions

This insurance does not apply:

- (a) to bodily injury or property damage with respect to which the insured or his legal representative shall, without written consent of the company, make any settlement with

any person or organization who may be legally liable therefor;

(b) to the first two hundred dollars of the total amount of all property damage as the result of any one accident. This exclusion does not apply if the owner or operator of the uninsured motor vehicle causing the damage can be identified;

(c) so as to inure directly or indirectly to the benefit of any insurer of property.

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;

(b) any other person while occupying an insured motor vehicle; and

(c) any person, with respect to damage he is entitled to recover because of bodily injury to which this insurance applies sustained by an insured under (a) or (b) above.

The insurance applies separately with respect to each insured, except with respect to the limits of the company's liability.

III. LIMITS OF LIABILITY

Regardless of the number of (1) persons or organizations who are insureds under this insurance, (2) persons or organizations who sustain bodily injury or property damage, (3) claims made or suits brought on account of bodily injury or property damage, or (4) motor vehicles to which this insurance applies,

(a) If the schedule or declarations indicate split limits of liability, the limit of liability for bodily injury stated as applicable to "each person" is the limit of the company's liability for all damages because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting "each person", the limit of liability for bodily injury stated as applicable to "each accident", is the total limit of the company's liability for all damages because of bodily injury sustained by two or more persons as the result of any one accident. The limit of liability for property damage stated as applicable to each accident is the total limit of the company's liability for all damages because of property damage to all property of one or more insureds as the result of any one accident.

(b) If the schedule or declarations indicate a single limit of liability, the limit of liability stated as applicable to "each accident" is the total limit of the company's liability for all damages as the result of any one accident; provided such limit of liability shall first provide the separate limits required by the Virginia Motor Vehicle

Safety Responsibility Act as stated in the schedule or declarations.

(c) If claim is made under this insurance and claim is also made against any person or organization who is an insured under the bodily injury liability or property damage liability coverage of the policy because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance, any payment made under this insurance to or for any such person shall be applied in reduction of any amount which he may be entitled to recover from any person or organization who is an insured under the bodily injury or property damage liability coverages.

(d) Any amount payable under this insurance because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance shall be reduced by all sums paid because of such bodily injury or property damage by or on behalf of the owner or operator of an uninsured motor vehicle.

(e) Any amount recoverable as damages because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance shall be reduced by all sums paid because of such bodily injury or property damage by or on behalf of any person or organization jointly or severally liable together with the owner or operator of an uninsured motor vehicle for such bodily injury or property damage including all sums paid under the bodily injury or property damage coverage of the policy.

IV. POLICY PERIOD: TERRITORY

This insurance applies only to accidents which occur during the policy period and within the United States of America, its territories or possessions, or Canada.

V. DEFINITIONS

When used in reference to this insurance (including endorsements forming a part of the policy):

bodily injury - means bodily injury, sickness or disease, including death, sustained by a person who is an insured under (a) or (b) of the Persons Insured provision;

hit-and-run vehicle - means a motor vehicle which causes an accident resulting in bodily injury to an insured or property damage, provided;

(a) there cannot be ascertained the identity of either the operator or the owner of such motor vehicle; and

(b) the insured or someone on his behalf shall have reported the accident promptly to either the company, or a law-enforcement officer.

insured motor vehicle - means a motor vehicle registered in Virginia with respect to which the bodily injury and property damage liability coverage of the policy applies but shall not

include a vehicle while being used without the permission of the owner;

motor vehicle — means a land motor vehicle or trailer other than

- (a) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads,
- (b) a vehicle operated on rails or crawler-treads, or
- (c) a vehicle while located for use as a residence or premises;

named insured — means the person named in the declarations of this policy and includes the spouse if a resident of the same household;

occupying — means in or upon or entering into or alighting from;

property damage — means injury to or destruction of (1) an insured motor vehicle owned by the named insured or his spouse, if a resident of the same household and the contents of such motor vehicle, and (2) any other property (except a motor vehicle) owned by an insured and located in Virginia;

relative — means a person related to the named insured by blood, marriage or adoption who is a resident of the same household;

uninsured motor vehicle — means:

- (a) a motor vehicle with respect to the ownership, maintenance or use of which there is, in at least the amounts specified in the Virginia Motor Vehicle Safety Responsibility Act, neither (i) cash or securities on file with the Virginia Commissioner of Motor Vehicles nor (ii) a bodily injury and property damage liability bond or insurance policy, applicable at the time of the accident with respect to any person or organization legally responsible for the use of such vehicle, or with respect to which there is such a bond or insurance policy applicable at the time of the accident but the company writing the same is or becomes insolvent or denies coverage thereunder; or
- (b) a hit-and-run vehicle as defined.

VI. CONDITIONS

A. Policy Provisions. None of the Insuring Agreements, Exclusions, Conditions or other provisions of the policy shall apply to the insurance afforded by this endorsement except the Conditions "Notice", "Insured's Duties in the Event of Loss", "Subrogation", "Changes", "Assignment", "Cancellation" and "Declarations".

B. Premium. If during the policy period the number of insured motor vehicles owned by the named insured or spouse and registered in Virginia changes, the named insured shall notify the company during the policy period of any change and the premium shall be adjusted in

accordance with the manuals in use by the company. If the earned premium thus computed exceeds the advance premium paid, the named insured shall pay the excess to the company; if less, the company shall return to the named insured the unearned portion paid by such insured.

C. Proof of Claim; Medical Reports; Proof of Loss. As soon as practicable, the insured or other person making claim shall give to the company written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable hereunder. Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to furnish such forms within 15 days after receiving notice of claim.

The injured person shall submit to physical examinations by physicians selected by the company when and as the company may reasonably require and he, or in the event of his incapacity his legal representative, or in the event of his death his legal representative or the persons or persons entitled to sue therefor, shall upon each request from the company execute authorization to enable the company to obtain medical reports and copies of records.

The insured or other person making claim for damage to property shall file proof of loss with the company within sixty days after the occurrence of loss, unless such time is extended in writing by the company, in the form of a sworn statement setting forth the interest of the insured and of all others in the property affected, any encumbrances thereon, the actual cash value thereof at time of loss, the amount, place, time and cause of such loss, and the description and amounts of all other insurance covering such property. Upon the company's request, the insured shall exhibit the damaged property to the company.

With respect to claims alleged to have arisen out of the ownership, maintenance or use of a hit-and-run vehicle if the insured has not obtained a judgment against John Doe, the liability of the uninsured motorist may be established, as between the insured and the company, by filing with the company within a reasonable time after the accident a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, setting forth the facts in support thereof, and shall present clear and convincing evidence that there was a hit-and-run vehicle involved in the accident.

D. Notice of Legal Action. If, before the company makes payment of loss hereunder, the insured or his legal representative shall institute any legal action for bodily injury or property damage against any person or organization legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to the company by the insured or his legal representative.

E. Other Insurance. With respect to bodily injury to an insured while occupying a motor vehicle not owned by the named insured, this insurance shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such vehicle as primary insurance.

Except as provided in the foregoing paragraph, if the insured has other similar bodily injury insurance available to him and applicable to the accident, the company shall not be liable for a greater proportion of any loss to which this coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this insurance and such other insurance.

With respect to property damage, this insurance shall apply only as excess insurance over any other valid and collectible insurance of any kind applicable to such property damage.

With respect to an accident wherein an employee of a self-insured employer receives a worker's compensation award for injuries resulting from an accident with an uninsured motor vehicle, such award shall be set off against

any judgment for damages awarded for personal injuries resulting from such accident.

F. Payment of Loss by the Company. Any amount due hereunder is payable

(a) to the insured, or

(b) if the insured be a minor to his parent or guardian, or

(c) if the insured be deceased to his surviving spouse, otherwise

(d) to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents;

provided, the company may at its option pay any amount due hereunder in accordance with division (d) hereof.

G. This endorsement replaces any other provisions of the policy, including any endorsement forming a part thereof, affording similar insurance with respect to any damages arising out of the ownership, maintenance or use of an uninsured motor vehicle or a hit-and-run vehicle.

SCHEDULE LIMIT OF LIABILITY

Split Limits

Limits of Liability stated in declarations

Single Limit

Limit of Liability stated in declarations provided such limit shall first be:

Bodily Injury	\$25,000 each person \$50,000 each accident
Property Damage	\$10,000 each accident

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6557 FEDERAL EMPLOYEES USING AUTOMOBILES IN GOVERNMENT BUSINESS

It is agreed that the policy does not apply under the Liability Coverages to the following as insureds:

1. The United States of America or any of its agencies;
2. Any person, including the named insured, with respect to bodily injury or property damage resulting from the operation of an automobile by such person as an employee of the United States Government while acting within the scope of his office or employment, if the provisions of Section 2679 of Title 28, United States Code (Federal Tort Claims Act), as amended, require the Attorney General of the United States to defend such person in any civil action or proceeding which may be brought for such bodily injury or property damage, whether or not the incident out of which such bodily injury or property damage arose has been reported by or on behalf of such person to the United States or the Attorney General.

Note: If both coverages D and G are provided under Part III endorsement 6259V applies but if only coverage D is provided, endorsement 6259Y applies.

6259V PHYSICAL DAMAGE ENDORSEMENT Part III

It is agreed that

1. With respect to such coverage as is afforded under the Comprehensive coverage, ** shall be deducted from the amount of each loss as to each automobile.
2. With respect to such coverage other than as enumerated in paragraph 1 above, *** shall be deducted from the amount of each loss as to each automobile.
3. The following exclusions are added:

This policy does not apply under Part III:

- (1) to loss to the automobile while being operated in any prearranged or organized racing or speed contest or in practice or preparation for any such contest;
- (2) to any loss to the automobile arising out of or during the use of such automobile for the transportation of any explosive substance, flammable liquid, or similarly hazardous materials, except such transportation as is incidental to ordinary household or farm activities of the named insured;

** See amount with coverage D in declarations.

*** See amount with coverage G in declarations.

6259Y PHYSICAL DAMAGE ENDORSEMENT Part III

It is agreed that

1. With respect to such coverage as is afforded under the Comprehensive coverage, ** shall be deducted from the amount of each loss as to each automobile.
2. The following exclusions are added:

This policy does not apply under Part III:

- (1) to loss to the automobile while being operated in any prearranged or organized racing or speed contest or in practice or preparation for any such contest;
- (2) to any loss to the automobile arising out of or during the use of such automobile for the transportation of any explosive substance, flammable liquid, or similarly hazardous materials, except such transportation as is incidental to ordinary household or farm activities of the named insured;

** See amount with coverage D in declarations.

Note: When Coverage R is shown in the declarations, this endorsement replaces any similar coverage in the policy.

6230.2L LOSS OF USE COVERAGE R

The company agrees to reimburse the named insured for any necessary transportation expense incurred not exceeding \$10 per day or totaling more than \$300, due to the loss of use of an insured motor vehicle because of damage caused by accident to such vehicle.

1. This endorsement does not apply in the event of a theft of such vehicle for which transportation expense reimbursement coverage is provided under the policy.

2. The total payment under this insurance shall not exceed the actual cash value of such vehicle at the time of loss.
3. As used herein insured motor vehicle means the vehicle described in the declarations and for which a specific premium for this coverage is charged.

This endorsement is subject to such exclusions, conditions, and other terms of the policy as are applicable to the Comprehensive, Fire, Windstorm, Theft, Etc., and/or Collision coverages which are not inconsistent herewith.