IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO: 08-CA-16336

TORRONCE BASKERVILLE,

Plaintiff,

vs.

GEICO GENERAL INSURANCE COMPANY,

Defendants.
_____ /

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY FINAL JUDGMENT

COMES NOW Plaintiff, TORRONCE BASKERVILLE, by and through his undersigned attorneys, and pursuant to Rule 1.510, Fla. R. Civ. P. and submits to this Honorable Court the following Memorandum of Law In Support of Plaintiff's Motion for Summary Final Judgment on Plaintiff's claims against Defendant, GEICO GENERAL INSURANCE COMPANY, on the declaratory action count that is set for trial before this court on bifurcation:

ISSUES FOR TRIAL ON THE DECLARATORY RELIEF CLAIM

Whether Plaintiff is an "insured" entitled to uninsured motorist coverage under his mother's Maryland issued policy of automobile insurance for damages and injuries sustained in the accident of October 13, 2004 while a passenger in a car owned and operated by his friend, David Tangredi, in Florida.

STATEMENT OF THE CASE AND FACTS

Plaintiff was living with his mother in Maryland and was having some medical and psychological issues in Maryland which caused him to have severe panic attacks in 2001. He was unable to finish his education at Tesst College where he was attending under a Stafford Loan listing his mother's Maryland address. In March 2004, Plaintiff continued to have psychological and medical problems, including depression, anxiety and suicidal thoughts. During March 2004, he spent two weeks in Walter P. Carter Center in Baltimore for anxiety and depression and was told a warmer sunnier client may help him.

David Tangredi, a childhood friend, was visiting Maryland from Florida in about April 2004 and visited Plaintiff at his mother's home in Maryland. The following week, Plaintiff made the decision to go to Florida to get away for a while. He packed some clothing and drove to Florida, leaving behind the majority of his belongings in his room at his mother's home. Those belongings were still at his mother's home in Maryland on the date of the subject accident, just a few months later in October 2004. At the time of the accident, he still had his room at his mother's home, along with his bed, computer, guitar, clothing and the like. He drove to Florida in his car, an Acura insured by his mother's GEICO policy, and he still owned and regularly operated that car at the time of the accident.

Through the date of the accident, Mr. Baskerville still had a Maryland driver's license, had his car registered in Maryland with a Maryland license plate, and was registered to vote in Maryland. He left his computer, his winter clothes, a guitar, his stereo and his other belongings at his room at his mother's address in Maryland. At no time before the accident occurred did Plaintiff abandon his Maryland residence, manifest any intent to do so, or make Florida his permanent residence. In fact he was registered to vote in Maryland on the date of the accident and has never registered to vote in Florida. At no time did Plaintiff or his mother have him or his

car removed from the policy of automobile insurance issued by Defendant in Maryland, and both he and his car were insured by the GEICO policy issued to his mother in Maryland on the date of the accident.

Defendant relies upon certain documentation, mostly generated AFTER the accident, to support its contention that Plaintiff was not a resident of his mother's household under the GEICO General Insurance Company policy issued in Maryland to his mother. He did share rent with David Tangredi and another roommate at a house in Orlando at the time of the accident and was earning some money at a valet service. He had no intention of abandoning his home with his mother at the time of the accident and no intent to remain in Florida permanently.

About six months after coming to visit Florida, on October 13, 2004, Plaintiff was a passenger in a motor vehicle being driven by his roommate at that time, David Tangredi. Plaintiff's own vehicle was under repair or being serviced at the time and was insured by his mother's policy purchased from Defendant, GEICO General Insurance Company. Mr. Tangredi had recently picked Plaintiff up to give him a ride and was leaving the parking lot of McDonald's at 10287 State Road 423 (Lee Road) at the Lee Road Shopping Center onto Lee Road. Mr. Tangredi made a right turn onto Lee Road in front of an Orange County Sheriff's cruiser being operated by a deputy sheriff, violating the deputy's right of way. The violent impact resulted in severe and disabling injuries to Mr. Tangredi, as well as the injuries to Mr. Baskerville which are the subject of this lawsuit for uinsured motorist benefits under the GEICO General Insurance Company policy issued to his mother in Maryland and which covered his vehicle and listed him as a driver at the time of the accident.

Defendant contends that Plaintiff is not an "insured" under the GEICO General Insurance Company policy issued to his mother because he was not a "resident" of her household at the

time of the accident and was living here in Florida. Plaintiff contends that his mother's home was his permanent address at the time of the accident and that he was in Florida temporarily with roommates with no subjective or manifested intent to make Florida his permanent address and abandon his Maryland address at the time of the accident.

GEICO's underwriting file listed him as a driver at the time of the accident and thereafter. The policy listed the car he regularly drove as an insured vehicle. His car was registered in Maryland. He had a Maryland driver's license at the time of the accident. He received mail at his mother's address in Maryland and had mail forwarded to him from there at the time of the accident. He had left all his other belongings at his mother's home, including computer, stereo, guitar and winter clothes. He was and is registered to vote in Maryland, and he was never registered to vote in the State of Florida. Finally, Plaintiff had only been in Florida for approximately six months.

MARYLAND UNINSURED MOTORIST LAW

Public Policy and Purpose:

The purpose of the uninsured motorist statute is to provide minimum protection for individuals injured by uninsured motorists and should be liberally construed to ensure that innocent victims of motor vehicle collisions are compensated for their injuries. *See DeHaan,* 393 Md. 163, 900 A.2d 208; *Johnson v. Nationwide Mut. Ins. Co.,* 388 Md. 82, 878 A.2d 615 (2005); *Yarmuth v. Gov't Employees Ins. Co.,* 286 Md. 256, 407 A.2d 315 (1979). The primary purpose of uninsured motorist insurance "is to assure financial compensation to the innocent victims of motor vehicle accidents who are unable to recover from financially irresponsible uninsured motorists." *Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Gartelman,* 288 Md. 151, 157, 416 A.2d 734

(1980); *see also Nationwide Mut. Ins. Co. v. Webb*, 291 Md. 721, 737, 436 A.2d 465 (1981) (stating that the purpose of uninsured motorist statutes is to ensure "that each insured under such coverage have available the full statutory minimum to exactly the same extent as would have been available had the tortfeasor complied with the minimum requirements of the financial responsibility law.") (quoting *Webb v. State Farm Mut. Auto. Ins. Co.,* 479 S.W.2d 148, 152 (Mo.App.1972)).

The uninsured motorist statute is remedial in nature, and therefore, should be construed liberally. *See Gartelman,* 288 Md. at 160, 416 A.2d 734. Indeed, the remedial nature of the uninsured motorist statute has led "[t]he courts ... to favor the interests of the insureds to a greater degree than was previously true in regard to any other insurance coverage." 1 Alan I. Widiss, Uninsured and Underinsured Motorist Insurance § 3.6 (2d ed.1987).

Maryland's uninsured motorist statute requires that every insurance policy contain coverage for damages that "[t]he insured is entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injuries sustained in a motor vehicle accident arising out of ownership, maintenance or use of such uninsured motor vehicle." Md.Code (1997 Repl.Vol.) Insurance (Ins.), § 19-509(c)(1). Moreover, it is settled that "the remedial nature" of the uninsured motorist statute "dictates a liberal construction in order to effectuate its purpose of assuring recovery for innocent victims of motor vehicle accidents." *State Farm v. Md. Auto. Ins. Fund*, supra, 277 Md. 602, 356 A.2d 560.

Uninsured Motorist Statute:

Maryland's uninsured motorist statute, MD Code, Insurance, § 19-509 provides, *inter alia,* as follows:

> (a) In this section, "uninsured motor vehicle" means a motor vehicle:
> (1) the ownership, maintenance, or use of which has resulted in the bodily injury or death of an insured; and
> (2) for which the sum of the limits of liability under all valid and collectible liability insurance policies, bonds, and securities applicable to bodily injury or death:
> (i) is less than the amount of coverage provided under this section; or
> (ii) has been reduced by payment to other persons of claims arising from the same occurrence to an amount less than the amount of coverage provided under this section.
> …
> (c) In addition to any other coverage required by this subtitle, each motor vehicle liability insurance policy issued, sold, or delivered in the State after July 1, 1975, shall contain coverage for damages, subject to the policy limits, that:
> (1) the insured is entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injuries sustained in a motor vehicle accident arising out of the ownership, maintenance, or use of the uninsured motor vehicle; and
> …

General Definitions In Maryland Insurance Code:

Art. 48A, § 538, containing the definitions for the required motor vehicle insurance coverage subtitle of **the Maryland Insurance Code, defines a "named insured"** in subsection (c) as "the person denominated in the declarations in a policy of motor vehicle liability insurance." Now renumbered MD Code, Insurance, § 19-501(d) identically provides:

> **"Named insured" means the person denominated in the declarations in a motor vehicle liability insurance policy.**

What is an Insured or Named Insured Under Maryland Law:

Section 538(c) **does not require that the person be denominated "as a 'named insured' " or specifically designated as such**. *Forbes v. Harleysville Mutual Insurance Company,*589 A.2d 944 (Md. App. 1991). In *Forbes,* the court observed the following:

Preliminarily, **a strong argument could be made that Carol Forbes was a "named insured" for purposes of uninsured motorist coverage regardless of the definitions in the insurance policy**. Art. 48A, § 538, containing the definitions for the required motor vehicle insurance coverage subtitle of the **Maryland Insurance Code, defines a "named insured" in subsection (c) as "the person denominated in the declarations in a policy of motor vehicle liability insurance**." **Section 538(c) does not require that the person be denominated "as a 'named insured' " or specifically designated as such. As previously noted, both Robin and Carol Forbes were co-owners of the insured vehicle, were both designated in the policy as the two operators**, and both names were listed on the declaration page of the policy. Only Robin Forbes, however, was expressly designated as "named insured." Harleysville acknowledged in the circuit court that, in the situation where the husband and wife were co-owners and co-operators of the insured vehicle, the insurance premium would have been the same regardless of whether both spouses or one spouse was designated as "named insured." Harleysville further stated that sometimes its policies designated both spouses as named insureds and sometimes only one; the insurer indicated that there was no particular reason for the difference in designations.

> Under these circumstances, it could be persuasively argued that Carol Forbes was a "named insured" under the definition in Art. 48A, § 538(c). Nonetheless, for purposes of this case, we shall assume that Carol Forbes was not a "named insured."

The first class of insured persons, which we will call **"first clause insured persons,"** consists of **the named insured, the named insured's spouse, and any resident relative** of the named insured. **The coverage granted to first clause insureds is personal and comprehensive**. *See* Andrew Janquitto, Maryland Motor Vehicle Insurance, § 8.6(A) 288 (1992); *see also* Andrew Janquitto, *Uninsured Motorist Coverage in Maryland*, 21 U. Balt. L.Rev. 171, 222 (Spring 1992). *Young v. Allstate Insurance Company,* 706 A.2d 650 (Md. App. 1998).

Maryland Uninsured Motorist Law Does Not Define "resident relative" and Maryland case law applies a "totality of the circumstances" test to determining whether a relative is a "resident" and insured for uninsured motorist coverage:

"Resident relative" is not defined in the Maryland uninsured motorist statute specifically, nor is "resides" defined specifically in the uninsured motorist statutes. "Insured" is not defined in the Maryland uninsured motorist statute.[1]

It is clear under Maryland law that the legislature intended for uninsured motorist coverage to be extended to the "named insured" and all family members residing with the named

[1] "Named insured" is defined in the general definitions of the Maryland Code pertaining to motor vehicle insurance as described above in *Md. Code, Insurance, § 19-501(d).*

insured. *Mundey v. Eerie Insurance Group,* 914 A.2d 1167 (Md. App. 2007).[2] Maryland courts follow the "totality of the circumstances" test in determining whether a whether a person is a resident of the household for insurance coverage purposes. *Id. See also Forbes v. Harleysville Mutual Insurance Company, supra.* The totality of the circumstances test emphasizes "that residence under '[a] common roof is not the controlling element.' It is rather a conclusion based on the aggregate details of the living arrangements of the parties." Id. at 705-06, 589 A.2d 944 (quoting *Davenport v. Aetna Cas. & Sur. Co.,* 144 Ga.App. 474, 241 S.E.2d 593, 594 (1978)). It is generally stated that residence under " '[a] common roof is not the controlling element.' It is rather a conclusion based on the aggregate details of the living arrangements of the parties." *Forbes v. Harleysville Mutual Insurance Company, supra; Davenport v. Aetna Casualty & Surety Co.,* 144 Ga.App. 474, 475, 241 S.E.2d 593, 594 (1978); *Aetna Life & Casualty Co. v. Carrera,* 577 A.2d 980, 985 (R.I.1990).

In *American Casualty Co. v. Walzl,* 238 Md. 322, 208 A.2d 597 (1965) in a case involving separated spouses with a stormy marriage, the trial court held that Mrs. Baker was a resident of her husband's household, and this Maryland Appeals Court affirmed, stating that

> "temporary absences are quite frequent in a normal household due to emergencies or other reasons, and if narrow interpretations were applied, then there would be no coverage during these temporary separations.... Where marital difficulties existed, it could not be assumed that the separation was irreconcilable and the difficulties existing could not be resolved.... The facts presented before us

[2] It is anticipated that Defendant will cite *Mundey* in support of denying coverage in this case; the case is distinguishable significantly both on the facts and the policy language.

> show the insurer's risk was no greater under the circumstances than was originally contemplated at the time of the issuance of the policy."

238 Md. at 326, 208 A.2d at 599.

Forbes cited numerous cases providing guidance for application of the "totality of circumstances" test in separated spouses cases, stating:

> Numerous other cases which have considered the issue have held that a separated spouse remains a resident of the insured spouse's household. *See e.g., Mathis v. Employers' Fire Ins. Co.*, 399 So.2d 273 (Ala.1981) (evidence existed that wife was a resident in her estranged husband's household at the time of the accident where there had been prior separations and reconciliations between them); *Lumbermens Mut. Cas. Co. v. Continental Cas. Co.*, 387 P.2d 104, 106-107 (Alaska 1963) (although the wife had instituted a divorce action, there was evidence that she was still a resident of her husband's household at the time of the accident); *Reserve Ins. Co. v. Apps,* 85 Cal.App.3d 228, 149 Cal.Rptr. 223 (1978) (**wife was resident of husband's household even though parties were involved in a trial separation**); ***Row v. United Services Auto. Ass'n,* 474 So.2d 348 (Fla.App.1985)**; ***Sanders v. Wausau Underwriters Ins. Co.,* 392 So.2d 343, 344 (Fla.App.1981) ("The**

test for whether a wife is no longer a member of her husband's household is not just physical absence, but physical absence coupled with an intent not to return"); *United Farm Bur. Mut. Ins. Co. v. Brantley,* 176 Ind.App. 178, 375 N.E.2d 235 (1978) (coverage existed for wife even though parties were divorced when the accident occurred, where at the time the parties obtained insurance they were joint titleholders of the car, and they intended that each would be covered while operating the vehicle); *Bearden v. Rucker*, 437 So.2d 1116, 1121-1122 (La.1983) (**while the husband had obtained a legal separation and the parties had been living apart for nine months prior to the accident, under the facts of the case the wife was still a resident of her husband's household**); *Miroff v. State Farm Fire and Cas. Co.,* 122 Misc.2d 811, 471 N.Y.S.2d 807 (1984); *Southern Farm Bur. Cas. Ins. Co. v. Kimball,* 552 S.W.2d 207 (Tex.Civ.App.1977); *Hawaiian Ins. & G. Co., Ltd. v. Federated Amer. Ins. Co.,* 13 Wash.App. 7, 534 P.2d 48 (1975).

GEICO GENERAL UININSURED MOTORIST POLICY LANGUAGE

"Relative" is defined in the Uninsured Motorist section of the GEICO General Insurance Company policy on page 11 as follows: "7. 'Relative' means a person related to **you** who resides in **your** household." "Relative" is defined identically in the Liability Coverage section of the GEICO General Insurance Company policy on page 3. "Relative" is not defined in the

Persona Injury Protection section of the GEICO General Insurance Company policy, but PIP coverage is provided to any "injured person" defined on page 6 to include "you" and any "relative".[3] "You" is defined on page 3 in the Liability Coverage portion of the GEICO General Insurance Company policy as "the policyholder named in the declarations and his or her spouse if a resident of the same household." "You" is defined identically on page 12 in the Uninsured Motorist Coverage portion of the GEICO General Insurance Company policy.

The Uninsured Motorist Coverage portion of the policy promises that it provides uninsured motorist coverage to "persons insured" which is defined on page 12 as including "you" and "your relatives".

"Reside" or "resides" is not given any special definition in the GEICO General Insurance Company policy.

PERTINENT LAY TESTIMONY

Mr. Baskerville (affidavit):

Mr. Baskerville was deposed by Defendant's counsel but was asked no questions at the deposition by his own counsel. Mr. Baskerville has filed an affidavit which establishes the following:

1. While living in Maryland with his mother, Mr. Baskerville was a college student with an anticipated graduation date of October 2004.
2. Prior to March 2004, he was having some medical and psychological issues in Maryland, including panic attacks, anxiety, suicidal thoughts, and alcohol abuse.

[3] PIP benefits were fully extended by GEICO to Plaintiff following the accident, and coverage was never contested. The same precise definitions of "relative" applied to PIP benefits as apply to the UM benefits at issue in this case.

3. He was admitted to Walter P. Carter Center, a psychiatric facility in Maryland, in approximately March 2004 and dropped out of school.
4. He continued to owe on student loans that he had received to pay for his education and received bills for those loans at his mother's address where he lived, i.e. 9360 Canterbury Riding, Laurel, Maryland, where he had lived with his mother for many years.
5. In approximately April 2004 he was visited in Maryland by his childhood friend, David Tangredi, who was living in Florida at the time.
6. After recovering from that psychiatric admission, he decided it would be a good idea to come to Florida for an undetermined period of time to get away from everything and be in a warmer climate.
7. In or about April 2004, he went to Orlando, Florida and moved in with Mr. Tangredi and another roommate and contributed to rent.
8. He still considered his mother's home is permanent address.
9. He packed some clothing to take with him to Florida, but otherwise, he left the majority of his belongings behind in his room at his mother's house including a computer, stereo, television set, guitar, bed, winter clothes and footwear.
10. He continued to receive mail at his mother's address throughout 2004, including bills for his existing student loan, and the like.
11. Throughout 2004, his 1995 Acura was insured under his mother's policy by GEICO General Insurance Company. The Acura was the car he regularly drove and was brought by him to Florida in 2004.

12. The Acura was registered and licensed in the State of Maryland throughout 2003 and at the time of the accident in October 2004.
13. He was listed as a driver on his mother's GEICO General Insurance Company policy.
14. Mr. Baskerville had a Maryland driver's license at the time of the accident. He did not apply for a Florida driver's license until March 2005, almost a year after the accident.
15. Mr. Baskerville was registered to vote in Maryland at the time of the accident, and he never registered to vote in the State of Florida.
16. After being involved in the accident with Mr. Tangredi in October 2004, he received treatment in Florida and decided to remain in Florida hoping his presence in Florida would help resolve his insurance and injury claims that had arisen as a result of this accident..
17. Eventually, he returned to Maryland in 2008 where he continued to live with his mother and where he lives today.
18. Mr. Baskerville is registered to vote in Maryland, and he has never been registered to vote anywhere other than Maryland. He never registered to vote in the State of Florida.
19. Mr. Baskerville was not on good terms with David Tangredi at the time of the accident and intended to end the roommate relationship with him at the end of the lease term which I recall was a six month term lease. He does not have a copy of the lease. Within weeks of the accident, the lease was terminated with the

permission of the landlord since Mr. Tangredi was unable to live there and live up to the lease obligations.

20. Mr. Baskerville remained in Florida for treatment after the accident and the termination of the lease, but eventually returned to Maryland and continued treatment, including surgery and pain management.
21. Mr. Baskerville had no intent to permanently change his residence to Florida before the accident, and had the accident not occurred, he would have returned to Maryland earlier. Before the accident occurred, his stay in Florida was meant to be a break from Maryland and his surroundings there, and he had no intention of remaining in Florida permanently or long term.

Mrs. Baskerville (affidavit):

1. Mrs. Baskerville resides at 9360 Canterbury Riding in Laurel, Maryland, and was residing there on October 13, 2004 and for many years before that date.
2. She is the natural mother of Torronce Baskerville.
3. In 2001, Torronce lived with her.
4. Torronce applied for loans to attend college and secured loans with Stafford Loan with Sallie Mae. The Notice of Loan Guarantee And Disclosure Statement indicated Torronce's residence as her address at the time.
5. Torronce's anticipated graduation date was October 1, 2004.
6. Torronce continued to receive mail regarding this student loan at her home throughout 2004.

7. In March 2004, Torronce had some medical problems that caused him to spend two weeks in the Walter P. Carter Center in Baltimore for anxiety and depression.
8. In April 2004, David Tangredi, with whom Torronce had attended school, was visiting Maryland and stopped in to visit Torronce at their home on Canterbury Riding in Laurel, Maryland.
9. After this visit, Torronce decided to go to Florida to get away for a while, hoping it would help him over the depression.
10. Torronce packed some clothing and drove to Florida in a vehicle insured under her GEICO insurance policy which also insured him as a driver.
11. Torronce left behind in their Maryland home the majority of his belongings, including computer equipment, television set, stereo, guitar, bed, winter clothes, and footwear.
12. Torronce continued to receive mail at their home in Maryland throughout 2004 including student loan bills, credit card bills, and the like.
13. Torronce used their Maryland home as his permanent residence, never indicated to her that he intended to move to Florida permanently, maintained his room and personal belongings in the Maryland home just as he had before he traveled to Florida with David Tangredi, and eventually returned to their home in Maryland and lives with there today.

Mary Alice Hinkle (GEICO Underwriter) Deposition:

Page 5

Q. Could you state your name for the record,

17 please?

18 A. Alice May, M-a-y, Hinkle, H-i-n-k-l-e.

Page 6 through 8

Q. And where do you work?

2 A. Geico Insurance Companies.

3 Q. Geico?

4 A. Geico, G-e-i-c-o, Insurance Companies.

18 Q. What is your job title?

19 A. Underwriting hearing specialist.

Page 12

1 Q. And the first page is the insurance

2 application, applying for insurance for two drivers; is

3 that correct?

4 A. Yes.

5 Q. Including Torronce Baskerville, correct?

6 A. Yes.

Page 17

16 Q. Very well. Can you tell me now when

Mr. Baskerville, Torronce Baskerville, was removed from the policy?

A. That's what I'm looking for right now.

Q. Why don't you take a look since I'm not there to go through those documents.

A. I'm doing that, yes. He was canceled from the policy on October 12th of 2009.

Q. And up until that time, he was a covered driver under the policy, correct?

A. He was a listed driver and a covered driver as long as he was living in the household of Mrs. Baskerville, or if he was riding in one of her vehicles at the time of the loss.

Q. **Where, in your application, does it say anything about him having to be a resident to be covered as a driver?**

A. **That's actually a Maryland statute**, that I don't have with me and is also covered in the Maryland insurance laws, which I don't have with me either, but in the State of Maryland, to be covered, if he's not in the insured car or a resident relative, then he wouldn't be covered under the policy in another

14 vehicle.

Page 19

5 Q. Okay. But **he was a listed driver on this**
6 **policy for almost 10 years, correct?**
7 A. **That's correct.**
16 Q. **So Geico would have certainly charged her a**
17 **premium during the time he was on the policy, correct?**
18 **A. That's correct.**
19 Q. **And in calculating the premiums Geico charged**
20 **Ms. Baskerville, they took into consideration the**
21 **number of drivers on the policy, correct?**
22 **A. That is correct.**

Page 20

16 **Q. On the insurance application, he was the**
17 **owner of a '96 Nissan Maxima when the policy was**
18 **issued, and you would certainly have charged a premium**
19 **for that policy, wouldn't you?**
20 **A. We would have charged a premium for the car**
21 **and, because he was under the age of 25, and then when**

you get to 25 to 30, there is a premium too. We would have charged a premium up to that date, but then we don't. But at that time that he was driving the vehicle that was originally put on there that he owned,

we were rating that for the usage, as well as him as a driver under the age of 25 to 30. '77 to '97 would have been 20 years, yes, he would have been under 25 when they first took this policy out, I believe. I'm not a very good mathematician, believe me, that's why I do what I do, but '77 from '98 would have been 21 years old, if I calculate that correctly.

Q. And Geico would have charged a premium for him as an additional driver at that age?

A. We would have charged a premium for him because he was under the age of 25 and when he gets to 25, there is still a premium for single male operators up until they're 30, as long as they're principal operators, and we would have charged a premium for that as well.

Q. So my point is that at least for single male drivers, up to the age of 30, Geico charges an additional premium for the policy to cover them as additional drivers even if they don't own a car that's insured by the policy?

A. It's not really an additional premium. What it is, is the premium on the vehicle, with the age of the driver taken into account, and that's how it's rated.

Q. So the premium is higher for Ms. Baskerville if Torronce Baskerville was a driver under the policy than if he wasn't, as long as he is a single male and under 30, correct?

A. It would be higher, yes, but it would also be higher if he were a single male occasional operator, but not as high as that of a single male principal operator.

Q. Understood. And as far as you can tell, from reviewing the underwriting file, Ms. Baskerville never notified Geico that her son was not using her residence, as his permanent residence, did she?

A. In my review of the file, no.

Q. There's no indication that Ms. Baskerville or Mr. Baskerville ever notified Geico that his intention was to abandon this policy and move to another state, was there?

A. No.

Page 25

Q. Right. I understand. **And so my question was, therefore, on October 12th, 2004, Mr. Baskerville was a listed driver under Mrs. Baskerville's policy, correct?**

A. Yes.

Page 26

Q. Ms. Hinkle, would you please tell us what Exhibit C is?

A. It's a letter dated April 8th of 2009 to Virginia Baskerville, 9360 Canterbury Riding, Laurel, Maryland 20723-1429.

Q. And who authored that letter?

A. Do you want the policy number, as well?

Q. Is that the same policy that this underwriting file pertains to?

A. Yes.

Q. Who wrote that letter to Ms. Baskerville?

A. Emily Church.

Q. And do you know Emily Church?

A. I do not.

Q. Is she in the underwriting department at Geico?

A. That's what it says here, yes.

Q. And that letter is a record kept in Geico's ordinary course of business, is it not?

A. Yes.

Q. Was that letter in your underwriting file?

A. This is the first time I've seen this letter.

Q. You don't remember seeing that as part of the underwriting file that I asked you to bring?

A. No. I didn't go into the imaging area. I didn't know that there was a letter and I can go into the imaging area and pull this out and anything else that's relevant to this particular issue.

Torrance Baskerville Depostion:

Page 8

24 Did you live in the Orlando area from April
25 of 2004 until September 2008?

Page 9

1 A. Yes, sir.
2 Q. On October 13th, 2004, where did you reside?
3 A. I believe it was Lake Destiny.
4 Q. What was that address?
5 A. I cannot remember the address. It's --
6 Q. Would that be 871 Lake Destiny Drive in
7 Maitland, Florida?
8 A. Yes, sir.

Page 11

1 Q. Do you remember the landlord's name?
2 A. T.S. Gerard?
3 Q. He was not a family member?

A. No, sir.

Q. So you paid rent directly to Mr. Gerard?

A. Yes, sir.

Q. It's my understanding that on October 13th, 2004, you lived with David Tangredi at that residence at 871 Lake Destiny Drive in Maitland, Florida?

A. Yes, sir.

Q. You also had another roommate; correct?

A. Yes, sir.

Q. What was his name?

A. Grayson Garrett.

Q. All right. So you had two roommates at 871 Lake Destiny Drive in Maitland, Florida on the day of the accident?

A. Yes, sir.

Page 12

Q. Is it true that had the Defendants in this litigation paid you money in settlement, you would have moved back to Maryland sooner?

A. Yes, sir.

Q. That is sooner than September 2008?

A. Yes, sir.

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Q. As of the date of the accident, October 13th, 2004, you lived at 871 Lake Destiny Drive?

A. Yes, sir.

Q. That was a house?

A. Yes, sir.

Q. And you were renting that house?

A. Yes, sir.

Q. Did you rent it yourself from the owner or did you just kind of pay David Tangredi and Grayson Garrett?

A. Dave mostly dealt with the landlord. We just gave Dave money and he would take it to the landlord.

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Q. What did you consider your permanent residence?

A. 9360 Canterbury Riding, Laurel, Maryland.

Q. At the time of the accident you had been living in Florida for six months?

A. Yes, sir.

Q. Did you receive your mail at the 871 Lake Destiny Drive?

A. I believe I had the mail forwarded. I cannot recall whether it was at Lake Destiny or Aluthra Way.

Q. And you had been in Florida -- at the time of the accident you had been in Florida approximately six months?

A. Somewhere in there.

Q. Yeah, you moved down in approximately April of 2004 and the accident was October 2004?

A. Yes, sir.

Q. When you moved down, what was your intent?

A. I was really just trying to -- there was a lot of stress and strife and that was causing a lot of

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problems for my family at the time because of the whole -- been through the whole episode, so it was in my

opinion best to be away for a while.

Q. And you alluded to the fact that David Tangredi suggested it to you somehow or --

A. Yeah, Dave and I were friends since we were in high school and he was up on a break and I saw him. And I was telling him the whole situation. He was like: You should just come to Florida for a while and see how you like it.

Q. So you came to Florida, got the job at Bag and Cars; correct?

A. Yes, sir.

Q. And ended up staying until 2008?

A. Yes, sir.

Q. Sometime after the accident you obtained a Florida driver's license?

A. Yes, sir.

Q. You don't dispute that at the time of the accident you were physically residing at 871 Lake Destiny Drive; correct?

A. Yes, sir, I do not dispute that.

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Q. Now, did you own a car -- well, you owned a car that you had taken to get the brakes fixed on; correct?

A. Yes, sir.

Q. What kind of car was that?

A. A '96 Acura Integra.

Q. Did you have that car insured --

A. Yes, sir.

Q. -- at the time of the accident?

A. Yes, sir.

Q. Who was it insured with?

A. Geico. The insurance policy was in the car and the insurance policy was in Virginia Baskerville's name.

Q. So did you own the car or did your mom own the car?

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A. It was my car, but she got it for me so I could have some transportation when I came down here.

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Q. Do you know whether you're a named insured on the policy insuring that Integra?
A. Yes.
Q. Whether you were a named insured at the time of the accident?
A. Yes, sir, I was on the policy.
Q. You believe you are on the policy as a named insured?
A. Yes.
Q. Do you know the distinction between a named insured and listed driver?
A. No, sir.

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future?
A. I really had no intention of staying in Florida one way or another. It was meant to be a break

from the situation I was dealing with.

Q. Okay. You were kind of in a wait-and-see mode?

A. Really a break from Maryland, from my home situation.

Q. Okay. Had you placed any time frame on it or was it just kind of wait and see?

A. It was open-ended.

Q. How old were you when this accident happened?

A. How old am I now? I believe 25, 26.

Q. 27?

A. That was right.

Q. So at the time of the accident you considered Orlando to be your residence, but you considered Maryland to be your permanent address?

A. Yes, sir.

Q. Did you continue to receive any mail in Maryland that your mom had to send down to you?

A. Yes, sir.

Q. What kind of mail did you continue to receive in Maryland?

A. Student loan papers. There were a couple of

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other things. I can't remember specifics.

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Q. And just to clarify, the Integra, the '95 or '96 Integra you owned at the accident, your mother owned that car; correct?

A. Yes.

Q. She was just allowing you to drive it?

A. Yes, sir.

Q. Okay. Was that for all intents and purposes your car that you used --

A. Yes, sir.

Q. -- day in and day out?

A. Yes, sir, I lived here and she lived in Maryland and I had the car here in Florida.

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Q. Even before you moved was that the case?

A. Yes, sir, I got it -- yes, sir, that was the

case.

Q. Did you personally ever inform Geico that that vehicle was no longer being maintained in Maryland?

A. I really hadn't decided to move to Maryland, so I did not -- decided to stay in Florida, so that's why I did not inform Geico that it was being maintained in Florida because I had not made the decision to move here. And I really didn't want to move here.

I was trying to stay here so we didn't have to go through things like the other attorney had to do earlier with the -- having to subpoena -- not being able to subpoena anybody, having to go through Maryland. It's a big nightmare. I tried to stay as long as I could in Florida for the case to be done, but I just couldn't wait any longer.

ARGUMENT

1. *GEICO has legally admitted Plaintiff was an insured and a "resident relative" under the policy of insurance by its conduct in making payments under the PIP portion of the policy under precisely the same language defining "relative" language that is applicable to the Uninsured Motorist sections of the policy. At a minimum, the payment of PIP benefits is relevant and admissible evidence that Plaintiff is an "insured" under the policy.*

GEICO paid the full limits of its PIP coverage under this policy toward medical bills related to the accident. GEICO never contested Mr. Baskerville's status before making these payments, even when the invoices bore Mr. Baskerville's roommates' Florida address. The definitions of "insured" and "relative" at issue in this uninsured motorist claim are precisely the same definitions that would have determined Plaintiff's entitlement to PIP benefits. By paying PIP benefits, GEICO admitted and acknowledged that Mr. Baskerville was an "insured" and a "relative" at the time of this accident. The GEICO policy definitions of "relative" were precisely the same for both PIP and UM coverage purposes.

An admission may be either in the form of an oral or written statement or the conduct of the adverse party. *C. Erhardt, Florida Evidence, § 803.18* (2009) citing *Farina v. State,* 679 So.2d 1151 (Fla. 1996)(Defendant's statements concerning codefendant's and his own actions were admissible under section 90.803(18)); *Matalon v. Lee,* 847 So.2d 1077 (Fla. 4th DCA 2003)(Deposition of defendant was admissible during plaintiff's case in chief); *Metropolitan Dade County v. Yearby,* 580 So.2d 186, 189 (Fla. 3d DCA 1991)(Statement in accident report by defendant, a Dade County employee, was admissible against Dade County as an admission: "An admission by a party opponent may be made in writing, as here, as well as orally…"). If **conduct** is assertive, i.e. intended to communicate, it is hearsay. When assertive **conduct** is offered against an adverse party, it is an admission. If the party's conduct is not intended as an assertion, it is not hearsay and is thus admissible if relevant. For example, flight from the scene of a crime is not assertive **conduct**; therefore it is not an admission. However, it is admissible against the party who fled as relevant evidence of guilt. *C. Erhardt, Florida Evidence, § 803.18* (2009) citing various cases.

It has always been understood that the inference, indeed, is one of the simplest in human experience - that a party's *falsehood* or *other fraud* in the preparation and presentation of his cause, his fabrication or suppression of evidence by bribery or spoliation, and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and *from that consciousness may be inferred the fact itself of the cause's lack of truth and merit*. [emphasis supplied]. *Busbee v. Quarrier,* 172 So.2d 17 (Fla. 1st DCA 1965), citing *Wigmore on Evidence*, Vol. 2 (3rd ed.), Section 278, page 120. For example, person driving an automobile does not ordinarily run down bicyclists or pedestrians on the highway, and if he does, he takes some notice of it, even if he ultimately decides on flight or falsehood to protect himself. If he decides on flight, it calls into operation the presumption of conscious guilt, commonly inferred therefrom in criminal cases **and properly to be considered in civil cases**. *Id.* In other words, admissions can be by **conduct**, as well as by words or statements.

In this case, Defendant paid personal injury protection benefits under the same policy of insurance at issue and under precisely the same policy definitions of "insured" and "relative." The PIP portion of the policy did not define "relative" residing in the household; therefore, Defendant necessarily determined that Mr. Baskerville met the policy definition of a "relative" by reference to either the liability or uninsured motorist portions, which are identical. Defendant should not be heard now to disavow their apparent earlier determination that Plaintiff was insured under the policy. At minimum, the payment of PIP benefits was an admission against interest, given the lack of any separate definitions of "relative" under the PIP portion of the policy. This admission by conduct is relevant and material to the fact finder as an admission against interest. At minimum, the payment of PIP benefits by GEICO under the precise policy terms at issue in determining whether Mr. Baskerville was a "relative" residing in his mother's

household is powerful and persuasive evidence that he was indeed a relative residing in his mother's household for purposes of automobile insurance coverage his mother paid premiums for, at the time of this accident.

Defendant is expected to cite *Nationwide Mutual Fire Insurance Company v. Race,* 508 So.2d 1276 (Fla. 3rd DCA 1987) and *USAA Casualty Insurance Company v. Shelton,* 932 So.2d 605 (Fla. 2nd DCA 2006) as authority for the proposition that payment of PIP benefits is not admissible or an estoppel against the same insurance company on a claim for uninsured motorist benefits on the same policy. Any such argument is a completely inaccurate reading of those cases. Moreover, both cases are distinguishable on the facts, as well as the law. Both *Race* and *Shelton* involve Florida policies, Florida policy language, and Florida Insurance Code statutory language. Both cases also involve entirely different legal issue than those at issue here.

Shelton involved a claim in uninsured motorist litigation that the insurer was estopped from denying that certain medical bills were reasonable or related to the accident when the same insurer paid PIP benefits for those bills under the Florida No Fault Law. In *Shelton*, the insured sued for uninsured motorist benefits. During discovery, two USAA adjusters testified about the company's standards for paying PIP claims and UM claims. The insurer had paid certain medical bills under the PIP coverage but denied in the UM litigation that the medical bills were reasonable, necessary, and related to the accident. Unlike Mr. Baskerville's situation, the case did not involve any questions of coverage; rather, it was an evidentiary issue on the amount of damages recoverable. It also involved the Florida Motor Vehicle No Fault Law statutes, not Maryland law. Finally, it obviously did not involve the language in the policy at issue which involves **precisely the same definitions in both the liability and UM sections of the GEICO General policy**.

In *Race*, the court merely held that the litigation of the PIP claim in the insured's favor did not operate as a collateral estoppel so as to bind the insurer to pay UM benefits for the same accident. This was because the issues were different and the policy language in the PIP and UM sections of the policy were different. *Race* involved the interpretation of two separate and distinct insurance clauses under the PIP and uninsured motorist sections of the policy. Justice Jorgenson reasoned in *Race* as follows:

> Each type of coverage was controlled by a separate clause specifically delineating the scope of protection. The PIP provision covered injuries from accidents flowing from the ownership, maintenance, or use of a motor vehicle. The UM clause covered injuries from accidents flowing from the ownership, maintenance, or use of an uninsured or underinsured motor vehicle. Pursuant to these respective provisions, it cannot be said that the coverage issues were identical. The collateral estoppel requirement that the issues be identical is completely lacking from this situation.

In Mr. Baskerville's case, the issue before this Court is not whether his medical bills were reasonable, necessary, or related to the accident. Unlike *Shelton*, the issue before this Court in Mr. Baskerville's case is whether or not UM coverage exists for Mr. Baskerville. In addition, unlike *Race*, the issue before this Court is not two distinct and different insurance policy provisions or clauses. On the contrary, **precisely the same language is at issue**. "Relative" is defined in GEICO's Uninsured Motorist section on page 11 as follows: "7. 'Relative' means a person related to **you** who resides in **your** household." "Relative" is defined identically in the Liability Coverage section of the GEICO General Insurance Company policy on page 3.

"Relative" is not defined in the PIP section of the GEICO General Insurance Company policy, but PIP coverage is provided to any "injured person" defined on page 6 to include "you" and any "relative". Unlike *Race*, GEICO, in making the determination that Mr. Baskerville was entitled to PIP benefits, made that decision based upon precisely the same policy language as it relies upon here in denying UM benefits. The PIP section of the policy had no definition of "relative", but the UM and liability sections did define "relative" in precisely the same words.

For all of the above reasons, both *Shelton* and *Race* are distinguishable and of no precedential value in determining relevancy, admissibility and effect of GEICO General's decision in this case to pay PIP benefits under precisely the same policy language and definitions under which it now denies UM benefits. The reasoning of the *Shelton* and *Race* courts is simply inapplicable to the coverage issue before this Court, and the cases involve interpretations of Florida law, rather than Maryland law.

This case involves Maryland law, not Florida law. In addition, this uninsured motorist case involves precisely the same policy language that applied to Defendant's determination that Plaintiff was entitled to PIP benefits for the policy: the clauses defining "relative" found in both the liability and UM sections of GEICO General Insurance Company's policy.

Having previously admitted by its own **conduct in paying PIP benefits**, which would only be paid to a "relative", Defendant thereby admitted Plaintiff was a "resident" as defined by the policy, i.e. a resident relative of the household of Plaintiff's mother. At a minimum, the payment of PIP benefits under the precise policy language now being used to deny UM benefits is powerful and persuasive evidence that Plaintiff met the definition of "relative" and was an insured under the policy. The Court should therefore enter judgment for Plaintiff on the

declaratory action and find as a matter of both law and fact that Plaintiff was a resident relative under the policy entitled to uninsured motorist benefits.

2. *Plaintiff was a "named insured" or first class insured under the Maryland policy on October 13, 2004; therefore his living arrangements were immaterial.*

According to Defendant's underwriting file and the application for the subject policy of insurance and other documents, Plaintiff was a "named insured" under the policy under Maryland law. In addition, a higher premium was paid because he was an insured driver under the policy according to the testimony of Ms. Hinkle, the underwriting hearing specialist. Given that Plaintiff is a named insured, it is of no moment whether he was "residing" in his mother's household.

Defendant contends he was only a "listed driver", but this is a distinction without a difference under Maryland law which does not require that the person be denominated as a "named insured" or specifically designated as such. Rather, the person must simply be denominated in the declarations. In this case, Mrs. Hinkle, the GEICO underwriting representative, has testified that he was a "listed driver" in her underwriting file and that Mrs. Baskerville paid a higher premium to insure him. In addition, he is mentioned by name throughout the application for the policy and the underwriting file. Thus, under Maryland law, he is a named insured and the debate over whether he was insured under the uninsured motorist provisions of the policy ends there.

Article 48A, § 538(c) **does not require that the person be denominated "as a 'named insured' " or specifically designated as such**. *Forbes v. Harleysville Mutual Insurance Company,*589 A.2d 944 (Md. App. 1991). In *Forbes,* the court observed the following:

Preliminarily, **a strong argument could be made that Carol Forbes was a "named insured" for purposes of uninsured motorist coverage regardless of the definitions in the insurance policy**. Art. 48A, § 538, containing the definitions for the required motor vehicle insurance coverage subtitle of the **Maryland Insurance Code, defines a "named insured" in subsection (c) as "the person denominated in the declarations in a policy of motor vehicle liability insurance**." **Section 538(c) does not require that the person be denominated "as a 'named insured' " or specifically designated as such. As previously noted, both Robin and Carol Forbes were co-owners of the insured vehicle, were both designated in the policy as the two operators**, and both names were listed on the declaration page of the policy. Only Robin Forbes, however, was expressly designated as "named insured." Harleysville acknowledged in the circuit court that, in the situation where the husband and wife were co-owners and co-operators of the insured vehicle, the insurance premium would have been the same regardless of whether both spouses or one spouse was designated as "named insured." Harleysville further stated that sometimes its policies designated both spouses as named insureds and sometimes only one; the insurer indicated that there was no particular reason for the difference in designations.

> Under these circumstances, it could be persuasively argued that Carol Forbes was a "named insured" under the definition in Art. 48A, § 538(c). Nonetheless, for purposes of this case, we shall assume that Carol Forbes was not a "named insured."

The first class of insured persons, which we will call **"first clause insured persons,"** consists of **the named insured, the named insured's spouse, and any resident relative** of the named insured. **The coverage granted to first clause insureds is personal and comprehensive**. *See* Andrew Janquitto, Maryland Motor Vehicle Insurance, § 8.6(A) 288 (1992); *see also* Andrew Janquitto, *Uninsured Motorist Coverage in Maryland*, 21 U. Balt. L.Rev. 171, 222 (Spring 1992). *Young v. Allstate Insurance Company,* 706 A.2d 650 (Md. App. 1998).

Since Plaintiff was a "named insured" and listed in the underwriting file of the GEICO policy, his living arrangements are immaterial and he is entitled to uninsured motorist benefits for the accident of October 13, 2004.

3. *Plaintiff was a "relative" residing in his mother's household and an "insured" under the Maryland policy on October 13, 2004, under* ***the totality of the circumstances test*** *applied by Maryland courts.*

It is clear under Maryland law that the legislature intended for uninsured motorist coverage to be extended to the "named insured" and all family members residing with the named insured. *Mundey v. Eerie Insurance Group,* 914 A.2d 1167 (Md. App. 2007). Maryland courts follow the **"totality of the circumstances" test** in determining whether a whether a person is a resident of the household for insurance coverage purposes. *Id. See also Forbes v. Harleysville*

Mutual Insurance Company, supra. The totality of the circumstances test emphasizes "that residence under '[a] common roof is not the controlling element.' It is rather a conclusion based on the aggregate details of the living arrangements of the parties." *Id.* at 705-06, 589 A.2d 944 (quoting *Davenport v. Aetna Cas. & Sur. Co.,* 144 Ga.App. 474, 241 S.E.2d 593, 594 (1978).

As mentioned above, Maryland law does not define "resident relative". "Relative" is defined in the Uninsured Motorist section of the GEICO General Insurance Company policy on page 11 as follows: "7. 'Relative' means a person related to **you** who resides in **your** household." "Relative" is defined identically in the Liability Coverage section of the GEICO General Insurance Company policy on page 3. The policy does not define "reside" or "resident". Rather, Maryland follows the "totality of the circumstances" test for determining whether a person is an "insured" for purposes of determining residency under a policy of insurance. The totality of the circumstances test emphasizes "that residence under '[a] common roof is not the controlling element.' It is rather a conclusion based on the aggregate details of the living arrangements of the parties."

Plaintiff had only been away from his mother's home approximately six months at the time of the accident. At the time of the accident, there was no evidence, other than Plaintiff living with roommates and holding a valet job in Florida where he provided his Florida rented address as his home, upon which to base any conclusion that he had abandoned his Maryland home for Florida as a permanent residence. There is no evidence that he ever manifested any intent to abandon his Maryland home for Florida at the time of or before the accident. In fact, like a college student, he had two residences, and there is uncontroverted evidence that he maintained his mother's home as his permanent address. He had a room there and he maintained many belongings there. His car was still registered in Maryland and insured under his mother's

GEICO General Insurance Company policy. He still even had a Maryland driver's license and remained registered to vote in Maryland.

After the accident, Mr. Baskerville gave his health care providers his Florida address, and he remained in Florida for some time after the accident, undergoing treatment, as well as hoping his presence here would facilitate the resolution of his insurance claims arising from the accident. Little did he know that remaining here would, rather, complicate those claims and be used as his own insurance company's primary defense in denying him uninsured motorist benefits. Mrs. Baskerville not only listed Plaintiff and his car on her policy, but she also paid a higher premium for it, both before and for several years after the accident. Defendant took her money each and every year, and even paid personal injury protection benefits under the same policy language defining who is/was insured under the policy.

This case is analogous to the other Maryland cases where living arrangements were complicated and reflective of everyday life in 21st Century America, such as where spouses are separated. The Maryland "totality of the circumstances" test emphasizes "that residence under '[a] common roof is not the controlling element.' It is rather a conclusion based on the aggregate details of the living arrangements of the parties." *Id.* at 705-06, 589 A.2d 944 (quoting *Davenport v. Aetna Cas. & Sur. Co.,* 144 Ga.App. 474, 241 S.E.2d 593, 594 (1978)).

In *American Casualty Co. v. Walzl*, 238 Md. 322, 208 A.2d 597 (1965) in a case involving separated spouses with a stormy marriage, the trial court held that Mrs. Baker was a resident of her husband's household, and this Maryland Appeals Court affirmed, stating that

> "…temporary absences are quite frequent in a normal household due to emergencies or other reasons, and if narrow interpretations

> were applied, then there would be no coverage during these temporary separations.... Where marital difficulties existed, it could not be assumed that the separation was irreconcilable and the difficulties existing could not be resolved...The facts presented before us show the insurer's risk was no greater under the circumstances than was originally contemplated at the time of the issuance of the policy."

238 Md. at 326, 208 A.2d at 599. Clearly, in Mr. Baskerville's case, the risk to GEICO was no more than contemplated at the time the policy was issued. A higher premium was paid for listing Mr. Baskerville as a driver on the policy according to Ms. Hinkle.

Forbes cited numerous cases providing guidance for application of the "totality of circumstances" test in separated spouses cases, stating:

> Numerous other cases which have considered the issue have held that a separated spouse remains a resident of the insured spouse's household. *See e.g., Mathis v. Employers' Fire Ins. Co.*, 399 So.2d 273 (Ala.1981) (evidence existed that wife was a resident in her estranged husband's household at the time of the accident where there had been prior separations and reconciliations between them); *Lumbermens Mut. Cas. Co. v. Continental Cas. Co.*, 387 P.2d 104, 106-107 (Alaska 1963) (although the wife had instituted a divorce action, there was evidence that she was still a resident of

her husband's household at the time of the accident); *Reserve Ins. Co. v. Apps,* 85 Cal.App.3d 228, 149 Cal.Rptr. 223 (1978) (**wife was resident of husband's household even though parties were involved in a trial separation**); ***Row v. United Services Auto. Ass'n,* 474 So.2d 348 (Fla.App.1985)**; ***Sanders v. Wausau Underwriters Ins. Co.,* 392 So.2d 343, 344 (Fla.App.1981) ("The test for whether a wife is no longer a member of her husband's household is not just physical absence, but physical absence coupled with an intent not to return")**; *United Farm Bur. Mut. Ins. Co. v. Brantley,* 176 Ind.App. 178, 375 N.E.2d 235 (1978) (coverage existed for wife even though parties were divorced when the accident occurred, where at the time the parties obtained insurance they were joint titleholders of the car, and they intended that each would be covered while operating the vehicle); *Bearden v. Rucker,* 437 So.2d 1116, 1121-1122 (La.1983) (**while the husband had obtained a legal separation and the parties had been living apart for nine months prior to the accident, under the facts of the case the wife was still a resident of her husband's household**); *Miroff v. State Farm Fire and Cas. Co.,* 122 Misc.2d 811, 471 N.Y.S.2d 807 (1984); *Southern Farm Bur. Cas. Ins. Co. v. Kimball,* 552 S.W.2d 207 (Tex.Civ.App.1977); *Hawaiian Ins. & G. Co., Ltd. v. Federated Amer. Ins. Co.,* 13 Wash.App. 7, 534 P.2d 48 (1975).

The facts surrounding Mr. Baskerville's situation reflect the times. He was a young man, residing with his mother, suffering from growing pains and psychological stressors. He was a young man "testing the waters" in Florida on his own, much like a college student. He had only been away from home for six months after a hospitalization for severe psychological problems, and GEICO seeks to use facts arising primarily AFTER the accident and AFTER he was injured to overwhelm and prejudice this Court into finding he had abandoned his mother's home at the time of the accident.

The uninsured motorist statute is remedial in nature, and therefore, should be construed liberally. *See Gartelman,* 288 Md. at 160, 416 A.2d 734. Indeed, the remedial nature of the uninsured motorist statute has led "[t]he courts ... to favor the interests of the insureds to a greater degree than was previously true in regard to any other insurance coverage." 1 Alan I. Widiss, Uninsured and Underinsured Motorist Insurance § 3.6 (2d ed.1987). Moreover, it is settled that "the remedial nature" of the uninsured motorist statute "dictates a liberal construction in order to effectuate its purpose of assuring recovery for innocent victims of motor vehicle accidents." *State Farm v. Md. Auto. Ins. Fund*, supra, 277 Md. 602, 356 A.2d 560.

A liberal construction of the statute and policy language in this case dictates only one result. Plaintiff was a named insured and resident relative under his mother's GEICO policy that insured his regularly driven vehicle and listed him as an insured driver. Mr. Baskerville still had a room at his mother's home with many of his belongings, had a Maryland driver's license, had a Maryland registered vehicle bearing a Maryland license plate, and was a registered voter in Maryland. He was a Maryland resident and resided in his mother's household. Otherwise, Mrs.

Baskerville would not have continued to list her son as a driver on her GEICO policy and insure his car for him.

CONCLUSION

For the foregoing reasons and for purposes of uninsured motorist coverage under the Defendant's policy of insurance, Plaintiff was an "insured" and is entitled to uninsured motorist benefits. The facts are not in material dispute and what remains is a question of law and interpretation of the policy of insurance. Plaintiff requests that this Court enter summary final judgment in his favor. Plaintiff further specifically requests that the Court retain and reserve jurisdiction to determine reasonable attorneys' fees to award Plaintiff on the declaratory judgment count.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by U.S. Mail – postage paid, this _____ day of October, 2011, to: Patrick J. Formella, Esquire, Law Office of Stephen F. Lanosa, Suite 804, First Union Tower 20 North Orange Avenue, Orlando, FL 32801.

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