

Back to College: Still Covered?

Labor Day has come and gone, and the kids are all back at school. If you are old enough to have children in college and living away from home, you have by now hopefully recovered from the trauma inflicted by viewing the living conditions your precious offspring will be occupying for at least the next 10 months, and the inevitable—and very expensive—trips to Target, Walmart, Home Depot, Bed Bath and Beyond, and Costco, intended to improve those living conditions, if ever so slightly. Having managed to get through the long goodbyes, and feeling that poignant mixture of pride, vicarious excitement, anticipation, anxiety, melancholy, loneliness—and poverty—you get back into your car for the long ride home, and, of course, full of positive thoughts of the future, you immediately ask yourself the following critical question: Is “Junior” still covered as an “insured” under my automobile insurance policy while living at school?

Several recent decisions have addressed this issue, and we are pleased to report that this is one less thing that parents of college students, who do, indeed, have lots to be concerned with, need to be worried about.

Residency Status

It is well-settled that in order to recover benefits under an automobile liability insurance policy, including an Uninsured Motorist or Supplementary Uninsured/Underinsured Motorist (SUM) policy, the claimant must demonstrate his or her status as an “insured” under the applicable endorsement. It is not just the “named insured” who may qualify for benefits, but also any other person who falls within the definition of the term “insured” as contained in the policy. For example, under both the mandatory Uninsured Motorist endorsement and Regulation 35-D’s SUM endorse-

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ment (11 NYCRR §60-2.3), as well as most standard liability policies, the definition of an “insured” includes occupants of the insured vehicle or any other vehicle being operated by the named insured or spouse; derivative claimants, i.e., persons claiming damages as a result of bodily injury to another who qualified as an “insured”; and, as pertinent hereto, the named insured’s

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spouse, and relatives of the named insured and/or spouse who are residents of the same household as the named insured. (See also 11 NYCRR §60-1.1[c]) (setting forth mandatory provisions for defining “insured”).

Generally speaking, in the context of determining whether an individual is a “resident” of the named insured’s household for determining issues of coverage, “residency” requires “something more than temporary or physical presence and requires at least some degree of permanence and intent to remain.” See *State Farm Mut. Auto. Ins. Co. v. Jackson*, 31 AD3d 1171 (4th Dept. 2006); *Palazzo v. Hartford Ins. Co. of the Midwest*, 10 AD3d 711 (2d Dept. 2004); *New York Central Mutual Ins. Co. v. Kowalski*, 195 AD2d 940 (3d Dept. 1993), affd. after remand, 222 AD2d 859 (3d Dept. 1995); *Kradjian v. American*

Manufacturers Mut. Ins. Co., 206 AD2d 801 (3d Dept. 1994).

As aptly stated by one court, “If mere physical presence is sufficient to establish a residence, without more, one could change his residence by taking a vacation.” *Appleton v. Merchants Mut. Ins. Co.*, 16 AD2d 361, 364 (4th Dept. 1962); see also *Lamonsoff v. Hertz Corp.*, NYLJ, March 12, 1991, p. 26, col. 3 (Sup. Ct. Queens Co.). If, on the other hand, the physical presence element is missing, it must be established that such an absence does not manifest an intent not to return.

Military Service

It has been held that, as a matter of law, an individual remains a resident of a relative’s household even while temporarily absent to serve in the military.

Thus, in *Appleton v. Merchants Mut. Ins. Co.*, supra, the insured’s stepson, who was injured while a passenger in an uninsured automobile while on a three-year tour of military duty in Hawaii, was held to be entitled to the benefits of his stepfather’s uninsured motorist coverage because his legal residence prior to the accident, and, indeed, thereafter, upon his return from service, was the insured’s household. In so holding, the court expressly rejected the insurer’s contention that in order to qualify as a “resident of the household” within the meaning of the policy, “a person must at least dwell under the same roof as the named insured at the time of the accident.”

As noted by the court, “[i]n the present state of world affairs, there are few families which do not at some time have children temporarily absent serving their country. Many families also have children temporarily away at college or on vacation trips. These are everyday facts of life which insurance companies are, or should be, cognizant of when writing policies.”

Similarly, in *Allstate Ins. Co. v. Jahrling*, 16 AD2d 501 (3d Dept. 1962), app. dismissed, 12 NY2d 943 (1963), the 17-year-old son of the insured had enlisted in the Navy for an almost four-year » Page 9

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term, but left his personal possessions at the home of the insured, his mother, where he had resided prior to enlisting. He also frequently visited his mother at her home. Indeed, he was on his way to such a visit while on leave, when he was killed in an accident. On the basis of those facts (and the precedent of *Appleton*, supra), the court held that the decedent was an "insured" under his mother's policy.

See also *New York Central Mutual Fire Ins. Co. v. Peckey*, 298 AD2d 970 (4th Dept. 2002), in which claimant's active military duty was to end two weeks after an accident, which occurred two days after he moved back to the United States following a tour of duty in Guam. Claimant planned to leave the military and reside in his mother's home in New York for an indefinite period of time while he sought employment. He had a key to his mother's home and his driver's license listed his mother's home as his address. He maintained his voter registration in New York during his entire military service, and he had returned to his mother's house for periods of up to 30 days while on military leave. The court held the claimant was a resident of his mother's household at the time of his accident, and, thus, was entitled to seek coverage as an "insured" under his mother's policy.

Educational Institutions

Similarly, the courts have consistently held that an individual

remains a resident of a relative's (parent's) household even while temporarily absent to attend an educational institution.

In *New York Casualty Ins. Co. v. Enzinna*, 6 Misc.3d 199 (Sup. Ct. Erie Co. 2004), for example, the claimant, then 17 years old, left her mother's house in Elma, N.Y., in 1997 to attend Roberts Wesleyan College, outside of Rochester. While attending school there during the next two years, she lived in a dormitory, returning to her family home during summer and holiday recesses. Following her second year at Roberts Wesleyan, she lived for a while with her mother, who by then had moved to East Aurora, N.Y. Sometime during that summer, she decided to transfer to State University of New York at Buffalo. After the summer of 1999, the claimant moved into an apartment in Buffalo because it was much closer to the SUNY Buffalo campus than her mother's home. In early 2000, she and her roommate moved to Elma, where they remained until October, at which time she broke up with her roommate and returned for a brief period to her mother's home. A few weeks before her accident, she moved into a home owned by friends in Depew, N.Y., to again be closer to the SUNY campus.

The claimant testified that she continued to receive mail at her mother's house while she attended Roberts Wesleyan and thereafter, but acknowledged that she also received mail at the other addresses where she lived. She listed her mother's address as her home address on her 1998 federal

income tax return, and listed that address as her mailing address on her state income tax return. Her W-2 statements for 1998 listed both her dormitory address in Rochester and her mother's address in East Aurora.

Various communications to her in 1998 and 1999 concerning her student loans were addressed to her at her mother's addresses in Elma and East Aurora. Her 1999 income tax returns identified her home mailing address as her apartment in Buffalo, although in 1999 W-2 statements listed her mother's address in East Aurora. A W-2 state-

bed at that home, kept some of her clothes there, had a key to the house, did laundry there, and was allowed to come and go as she pleased. She further testified that she stayed with her mother at that home on some weekends, even while living in her own apartments, as well as on some weekdays. She had no intention of abandoning her mother's home as her permanent address.

In arguing that it was not required to afford SUM coverage to the claimant under her mother's policy, the insurer argued not that the claimant gave up residency at

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ment from 2000 listed her address as her apartment in Buffalo. Her 2000 state and federal income tax returns listed her mother's address in East Aurora. Bank statements were sent to the addresses of her various apartments. And, the records of SUNY Buffalo showed her permanent address as her mother's home in East Aurora, and her local address as her apartment in Depew.

The claimant testified that at the time of her accident, she considered her mother's home in East Aurora to be her permanent address. She stated that at all times while she was living away from her mother's home she maintained a

her mother's home when she lived in a dormitory at Roberts Wesleyan (conceding the transitory nature of that arrangement), but, rather, that her moving from place to place off campus, rather than living in a dormitory after she transferred to SUNY Buffalo, constituted an abandonment of her entitlement to SUM benefits under her mother's policy.

In rejecting the insurer's contention, the Supreme Court, Erie County, noted that "although there can be no doubt that thousands of students throughout this state and nation have lived off-campus rather than in dormitories while attending college, petitioner points

to no precedents supporting its argument." Thus, after noting that "The standard for determining residency for the purpose of insurance coverage 'requires something more than temporary or physical presence and requires at least some degree of permanence and intention to remain [citations omitted]," and that "An individual can have more than one residence for insurance purposes [citations omitted]," the court went on to observe that there is a "common expectation that a child away from home attending school remains a member of the household" and that "Clearly, the average person would not assume that a child insured under the parent's policy will lose coverage by living off-campus while attending college, any more than a child is deprived coverage under a parent's automobile insurance policy because he has had other residences during military service [citing *Peckey*, supra]."

Insofar as the evidence in that case did not support a finding that the claimant "desired or intended to cease being a resident of her mother's home or that her absence from that home was anything other than transient in nature," the court held that the claimant was still considered a resident of her mother's home, entitled to SUM coverage under her mother's policy.

More Recent Cases

In *Konstantinou v. Phoenix Ins. Co.*, 74 AD3d 1850 (4th Dept. 2010), mot. for leave to appeal denied 15 NY3d 712 (2010), the court noted that "A person is a resident of the

household for insurance purposes if he or she 'lives in the household with a certain degree of permanency and intention to remain.'" In this case, the court held that an individual who lived at college at the time of the accident was a resident of her mother's household, where she lived with her mother during summers, received mail, stayed every other weekend, and listed that address on the car's title and insurance.

Most recently, in *Waldron v. New York Central Mutual Fire Ins. Co.*, 84 AD3d 1480 (3d Dept. 2011), the court held that the injured party was a resident of her parents' household at the time of the accident. Although she was renting an apartment off-campus while attending college, she maintained a bedroom in her parents' house, where she kept her clothing, visited on weekends, and lived on school holidays and semester breaks. Moreover, her college considered her parents' address to be her permanent address, and she retained her parents address for voting and tax purposes.

Conclusion

It is clear that a child who attends school away from home or serves in the military can benefit from the coverage afforded by his or her parents' policy. And, indeed, it should be noted that such coverage works both ways—protection may also extend to parents who borrow an automobile that is registered and insured in a child's name, while that child is away at school or in the military.