COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

DEBORA BEACH, et al.,	**:**	
Plaintiffs	**:**	**CASE NO. 2011 CVC 02156**
vs.	**:**	**Judge McBride**
WILLIE WATSON, et al.,	**:**	**DECISION/ENTRY**
Defendants	**:**	

Gary F. Franke Co., LPA, Michael D. O'Neill and Gary F. Franke, attorneys for the plaintiffs Debora and Harold Beach, 120 East 4th Street, Suite 1040, Cincinnati, Ohio 45202.

Willie Watson, defendant, 4420 Eastwood Drive #6313, Batavia, Ohio 45103.

Gallagher, Gams, Pryor, Tallan & Littrell, LLP, James R. Gallagher, attorney for the defendant State Farm Mutual Automobile Insurance Company, 471 East Broad Street, 19th Floor, Columbus, Ohio 43215-3872.

This cause is before the court for consideration of a motion for summary judgment filed by defendant State Farm Mutual Automobile Insurance Company and a cross-motion for partial summary judgment filed by the plaintiffs Debora and Harold Beach.

The court scheduled and held a hearing on the motions for summary judgment on November 26, 2012. At the conclusion of that hearing, the court took the issues raised by the motions under advisement.

Upon consideration of the motions, the record of the proceeding, the evidence presented for the court's consideration, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

WHAT IS THE STANDARD FOR REVIEW ON A MOTION FOR SUMMARY JUDGMENT?

The court must grant summary judgment, as requested by a moving party, if "(1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) the evidence demonstrates that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party opposing the motion."[1]

The court must view all of the evidence, and the reasonable inferences to be drawn therefrom, in a light most favorable to the non-moving party.[2] Furthermore, the court must not lose sight of the fact that all evidence must be construed in favor of the nonmoving party, including all inferences which can be drawn from the underlying facts contained in affidavits, depositions, etc.[3]

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[1] Civ. R. 56(C); *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267; *Davis v. Loopco Indus., Inc.* (1993), 66 Ohio St.3d 64, 65-66, 609 N.E.2d 144.

[2] *Engel v. Corrigan* (1983), 12 Ohio App.3d 34, 35, 465 N.E.2d 932; *Viock v. Stowe-Woodward Co.* (1983), 13 Ohio App.3d 7, 12-13, 467 N.E.2d 1378; *Welco Indus. Inc. v. Applied Cas.* (1993), 67 Ohio St.3d 344, 356, 617 N.E.2d 1129; *Willis v. Frank Hoover Supply* (1986), 26 Ohio St.3d 186, 188, 497 N.E.2d 1118; *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150, 152, 309 N.E.2d 924.

[3] *Hannah v. Dayton Power & Light Co.* (1998), 82 Ohio St.3d 482, 485, 696 N.E.2d 1044, citing *Turner v. Turner* (1993), 67 Ohio St.3d 337, 341, 617 N.E.2d 1123.

Determination of the materiality of facts is discussed in *Anderson v. Liberty-Lobby Inc.* (1986), 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202, 211:

> "As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment."[4]

Whether a genuine issue exists meanwhile is answered by the following inquiry: Does the evidence present "a sufficient disagreement to require submission to a jury" or is it "so one-sided that the party must prevail as a matter of law[?]"[5] "The inquiry performed is the threshold inquiry of determining whether there is the need for a trial–whether, in other words, there are any genuine factual issues that can properly be resolved only by a finder of fact because they may reasonably be resolved in favor of either party."[6]

The burden is on the moving party to show that no genuine issue exists as to any material fact, and that the moving party is entitled to judgment as a matter of law.[7] This burden requires the moving party to "specifically delineate the basis upon which summary judgment is sought in order to allow the opposing party a meaningful opportunity to respond."[8]

A party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate the absence

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[4] *Anderson v. Liberty-Lobby Inc.* (1986), 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202, 211.
[5] Id. at 251-52, 106, S.Ct. at 2512, 91 L.Ed.2d at 214.
[6] Id. at 250, 106 S.Ct. at 2511, 91 L.Ed.2d at 213.
[7] *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3fd 157, 161, 553 N.E.2d 597; *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66, 375 N.E.2d 46.
[8] *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, 526 N.E.2d 798, syllabus.

of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims.[9] The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case.[10] Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) which affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims.[11]

If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied.[12] However, if the moving party satisfies this burden, then the nonmoving party has a "reciprocal burden" to set forth specific facts, beyond the allegations and denials in his pleadings, demonstrating that a "triable issue of fact" remains in the case.[13] The duty of a party resisting a motion for summary judgment is more than that of resisting the allegations in the motion.[14] Instead, this burden requires the nonmoving party to "produce evidence on any issue for which that (the nonmoving) party bears the burden of production at trial."[15]

The nonmovant must present documentary evidence of specific facts showing that there is a genuine issue for trial and may not rely on the pleadings or unsupported allegations.[16] Opposing affidavits, as well as supporting affidavits, must be based on personal knowledge, must set forth facts as would be admissible into evidence, and

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[9] *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293, 662 N.E.2d 264; *Vahila v. Hall* (1997), 77 Ohio St.3d 421, 429, 674 N.E.2d 1164.
[10] Id.
[11] Id.
[12] Id.
[13] Id.
[14] *Baughn v. Reynoldsburg* (1992), 78 Ohio App.3d 561, 563, 605 N.E.2d 478.
[15] *Wing v. Anchor Media Ltd. Of Texas* (1991), 59 Ohio St.3d 108, 570 N.E.2d 1095, paragraph three of the syllabus; *Welco Indus., Inc. v. Applied Companies* (1993), 67 Ohio St.3d 344, 346, 617 N.E.2d 1129; *Gockel v. Ebel* (1994), 98 Ohio App.3d 281, 292, 648 N.E.2d 539.
[16] *Shaw v. J. Pollock & Co.* (1992), 82 Ohio App.3d 656, 659, 612 N.E.2d 1295.

must show affirmatively that the affiant is competent to testify on the matters stated therein.[17]

"Personal knowledge" is defined as "knowledge of the truth in regard to a particular fact or allegation, which is original and does not depend on information or hearsay."[18]

Accordingly, affidavits which merely set forth legal conclusions or opinions without stating supporting facts are insufficient to meet the requirements of Civ.R.56(E), which sets forth the types of evidence which may be considered in support of or in opposition to a summary judgment motion.[19]

Under Civ.R.56(C), the only evidence which may be considered when ruling on a motion for summary judgment are "pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action." These evidentiary restrictions exist with respect to materials which are submitted both in support of and in opposition to a motion for summary judgment.

Where the copy of a document falls outside the rule, the correct method for introducing such items is to incorporate them by reference into a properly framed affidavit.[20] Thus, Civil Rule 56(E) also states that "[s]worn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith."

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[17] Civ.R.56(E); *Carlton v. Davisson* (1995), 104 Ohio App.3d 636, 646, 662 N.E.2d 1112; *Smith v. A-Best Products Co.* (Feb. 20, 1996), 4th Dist. No 94 CA 2309, unreported.
[18] *Carlton v. Davisson*, 104 Ohio App.3d at 646, 662 N.E.2d at 1119; *Brannon v. Rinzler* (1991), 77 Ohio App.3d 749, 756, 603 N.E.2d 1049.
[19] *Stamper v. Middletown Hosp. Assn.* (1989), 65 Ohio App.3d 65, 69, 582 N.E.2d 1040.
[20] *Martin v. Central Ohio Transit Auth.* (1990), 70 Ohio App.3d 83, 89, 590 N.E.2d 411; *Biskupich v. Westbay Manor Nursing Home* (1986), 33 Ohio App.3d 220, 222, 515 N.E.2d 632.

Because summary judgment is a procedural device designed to terminate litigation where there is nothing to try, it must be awarded with caution, and doubts must be resolved in favor of the nonmoving party.[21] Summary judgment is not appropriate where the facts are subject to reasonable dispute when viewed in a light favorable to the nonmoving party.[22]

However, the summary judgment procedure is appropriate where a nonmoving party fails to respond with evidence supporting his claim(s). While a summary judgment must be awarded with caution, and while a court in reviewing a summary judgment motion may not substitute its own judgment for the trier of fact in weighing the value of evidence, a claim to survive a summary judgment motion must be more than merely colorable.[23]

In deciding a summary judgment motion, the court may, even if summary judgment is not appropriate upon the whole case, or for all the relief demanded, and a trial is necessary, grant a partial summary judgment, such that a trial will remain necessary as to the remaining controverted facts.[24]

FACTS OF THE CASE

On December 24, 2009, the plaintiff Debora Beach was employed as a school bus driver by Peterman Bus Company.[25] On that date, Beach was operating a 2002

[21] *Davis v. Loopco Indus., Inc.*, 66 Ohio St.3d at 66, 609 N.E.2d at 145.
[22] *Mers v. Dispatch Printing Co.* (1985), 19 Ohio St.3d 100, 105-06, 483 N.E.2d 150.
[23] *Wing v. Anchor Media Ltd. Of Texas*, 59 Ohio St.3d at 111, 570 N.E.2d at 1099.
[24] Civ.R.56(D); *Holeski v. Lawrence* (1993), 85 Ohio App.3d 824, 834, 621 N.E.2d 802.
[25] Affidavit of Debora Beach at ¶ 3 and Answer to Interrogatories No. 19(a).

International School Bus that was struck by a vehicle operated by the defendant Willie Watson, causing injuries to Beach.

In her employment as a school bus driver, Beach picked up and dropped off school-aged children in the morning and afternoon during the school year but not during the summer months.[26] She worked an average of 25 hours per work and 36 weeks per year.[27]

At the time of the accident, Beach had a personal insurance policy which was issued to her husband, Harold Beach, by the defendant State Farm Mutual Automobile Insurance Company (hereinafter "State Farm").[28] The Declarations Page of the policy indicates that it covers a 2005 Chevrolet Trailblazer.[29] The parties do not dispute that the school bus driven by Debora Beach at the time of the accident was not a motor vehicle insured by the State Farm policy.

Endorsement 6083VV of the policy provides Uninsured Motor Vehicle coverage, referred to as "Coverage U," and states in relevant part as follows:

> "When Coverage U Does Not Apply
>
> THERE IS NO COVERAGE
>
> * * *
>
> 2. FOR DAMAGES ARISING OUT OF AND DUE TO *BODILY INJURY* TO ANY *INSURED*:
>
> a. WHILE ANY INSURED IS OPERATING OR *OCCUPYING* A *MOTOR VEHICLE* OWNED BY, LEASED TO, FURNISHED TO, OR AVAILABLE FOR THE REGULAR USE OR *YOU, YOUR SPOUSE*, OR ANY *RELATIVE* IF

[26] Answer to Interrogatories Nos. 20(b) and (c).
[27] Answer to Interrogatories No. 27.
[28] Motion for Summary Judgment Submitted by Defendant State Farm, Exhibit B.
[29] Id.

> THAT *MOTOR VEHICLE* IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY."[30] (original italics)

In her affidavit, Debora Beach avers that she was not allowed to take the school bus home between the morning and afternoon runs or in the evening and that she was not permitted to use the school bus for personal use, such as shopping or transporting her friends or family members.[31]

LEGAL ANALYSIS

Pursuant to R.C. 3937.18(I):

> "Any policy of insurance that includes uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages may include terms and conditions that preclude coverage for bodily injury or death suffered by an insured under specified circumstances, including but not limited to any of the following circumstances:
>
> (1) While the insured is operating or occupying a motor vehicle owned by, furnished to, or available for the regular use of a named insured, a spouse, or a resident relative of a named insured, if the motor vehicle is not specifically identified in the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of the policy under which the uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages are provided[.]"

[30] Id.
[31] Affidavit of Debora Beach at ¶ 4.

An insurance policy is a contract and the interpretation of clear and unambiguous language within an insurance policy is a matter of law.[32] "When confronted with an issue of contract interpretation, the role of a court is to give effect to the intent of the parties to the agreement."[33] "An insurance contract must be examined as a whole and it is presumed that the intent of the parties is reflected in the language used in the policy."[34] "Courts look to the plain and ordinary meaning of the language used in the policy unless another meaning is clearly apparent from the contents of the policy."[35]

"The words 'regular use' in an automobile liability insurance policy are unambiguous and are to be given their ordinary meaning."[36] " 'Regular use' refers to use that is 'frequent, steady, constant or systematic.'"[37] "Determination of regular use is a fact-specific inquiry to be determined on a case-by-case basis."[38]

In the case of *Kenney v. Employers' Liability Assur. Corp.* (1966), 5 Ohio St.2d 131, 214 N.E.2d 219, the court held as follows:

> "1. Where a city police officer sustains bodily injury while occupying a police cruiser and where such police officer had been working on general police duty but had been assigned to work in a police motor vehicle on 122 of the 164 working days during which a family automobile policy had been in force on his own automobile, such bodily injury is excluded from the coverage of such policy by the provisions therein that such 'policy does not apply * * * to bodily injury * * * sustained by the named insured * * * while occupying an automobile * * * furnished for the regular use of * * * the named insured * * * other than an automobile defined * * * as

[32] *Roos v. Roos* (Nov. 13, 2012), 12th Dist. No. CA2012-02-033, 2012-Ohio-5243, ¶ 12, citing *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 797 N.E.2d 1256, 2003–Ohio–5849, ¶ 9; and *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108, 652 N.E.2d 684 (1995).
[33] Id., citing *Westfield* at ¶ 9.
[34] Id., citing *Kelly v. Med. Life Ins. Co.*, 31 Ohio St.3d 130, 132, 509 N.E.2d 411 (1987).
[35] Id., citing *Westfield* at ¶11.
[36] Id. at ¶ 13, citing *Barnickel v. Auto Owners Ins. Co.*, 186 Ohio App.3d 722, 930 N.E.2d 364, 2010–Ohio–1100, ¶ 24 (12th Dist.).
[37] Id., citing *Sanderson v. Ohio Edison Co.*, 69 Ohio St.3d 582, 589, 635 N.E.2d 19 (1994).
[38] Id., citing *Barnickel* at ¶ 24.

> an 'owned automobile" *i.e.*, an 'automobile * * * owned by the named insured, and' including 'a temporary substitute automobile.'
>
> 2. An automobile will be excluded under such policy provisions although it is only one of a group of automobiles from which an automobile is regularly furnished to the named insured by his employer.
>
> 3. Where a city police officer working on general police duty is assigned to work in a police motor vehicle on 122 of 164 working days, such a vehicle is as a matter of law 'an automobile * * * furnished for' his 'regular use' within the meaning of such policy provisions."[39]

In *Sanderson v. Ohio Edison Co.* (1994), 69 Ohio St.3d 582, 635 N.E.2d 19, the court distinguished the facts of *Kenney* and found that a truck supplied to an employee by his employer Ohio Edison was not furnished for his regular use because he had possession of the truck "only sporadically, when he was called upon to act as foreman in the absence of the regular foreman[,]" and his "possession of the truck did not exceed ten occasions in one year, as opposed to the one hundred twenty-two of one hundred sixty-four working days in *Kenney*."[40]

The Sixth District Court of Appeals has set forth five factors to consider when determining whether a vehicle was provided for an insured's regular use, and those factors are as follows:

> " '(1) whether the vehicle was available most of the time to the insured; (2) whether the insured made more than mere occasional use of the vehicle; (3) whether the insured needed to obtain permission to use the vehicle; (4) whether there was an express purpose conditioning use of the

[39] *Kenney v. Employers' Liability Assur. Corp.* (1966), 5 Ohio St.2d 131, 214 N.E.2d 219, at paragraphs one through three of the syllabus.
[40] *Sanderson v. Ohio Edison Co.* (1994), 69 Ohio St.3d 582, 590, 635 N.E.2d 19.

> vehicle; and (5) whether the vehicle was being used in an area where its use would be expected.'"[41]

Applying this test, the Sixth District has found that an automobile mechanic's one-time test drive of a vehicle, which was at a dealership for repairs, was not regular use.[42]

The Twelfth District Court of Appeals, which is this court's immediate appellate district, has examined at least two "regular use" cases using these factors, however it should be noted that this analysis was in response to use of these factors by the insureds in their arguments to the court.[43]

In *Roos v. Roos* (Nov. 13, 2012), 12th Dist. No. CA2012-02-033, 2012-Ohio-5243, the Twelfth District held that the subject vehicle was furnished or available for regular use to the injured party pursuant to a shared parenting plan which required the father to transport his son, the injured party, to various activities and exchanges during his parenting time, which amounted to approximately ten days each month.[44] The court noted that the shared parenting plan resulted in the boy riding in his father's vehicle almost every day during his father's parenting time.[45] During its discussion, the court noted as follows:

> "Our finding that the vehicle was 'furnished or available for regular use' by [the injured party] is also further supported by the purpose of the regular-use exclusion. The Tenth District has noted that '[t]he overriding purpose of the regular-use exclusion is to protect insurance companies from insured individuals purchasing coverage on one vehicle and then using that coverage for protection while continually driving

[41] *Roeser v. State Farm Ins. Cos.*, 183 Ohio App.3d 168, 916 N.E.2d 533, 2009-Ohio-3395, ¶ 21 (Ohio App. 6th Dist., 2009), quoting *Auto–Owners Ins. Co. v. Merillat*, 167 Ohio App.3d 148, 2006-Ohio-2491, 854 N.E.2d 513, ¶ 44 (Ohio App. 6th Dist., 2006).
[42] Id. at ¶¶ 22-26.
[43] See, *Roos*, supra, at ¶¶ 20-21; and *Barnickel*, supra, at ¶ 31 and 34.
[44] Id. at ¶¶ 5 and 18-23.
[45] Id. at ¶ 18.

> nonowned vehicles for which no premium was paid. * * * In this case, allowing insurance coverage to [the injured party] under his mother's policy for an accident that occurred in his father's vehicle would achieve this exact result.'"[46]

In *Barnickel v. Auto Owners Ins. Co.,* 186 Ohio App.3d 722, 930 N.E.2d 364, 2010–Ohio–1100, the Twelfth District Court of Appeals concluded that there was a genuine issue of material fact because there was disagreement as to why the motorcycle at issue was garaged with the appellant.[47] The court held that, if the motorcycle was garaged with the appellant for a prolonged period of time for the purpose of repairs, it was not available for frequent, steady, constant or systematic use, as the appellant would not have been free to use the vehicle as he pleased.[48] If the motorcycle was in the appellant's possession based on his interest in purchasing it, an issue of fact existed as to whether he would have been authorized to frequently, steadily, constantly, or systematically use the vehicle or if permission was necessary.[49]

Other appellate courts have found that the regular use exclusion applied in cases where the insured was a full-time driver for a van-service provider which provided transportation to its customers to and from doctor visits[50], a city sanitation service employee who rode on the back of a garbage truck each day in order to perform his job duties,[51] and a mail carrier for the United States Postal Service who used a mail truck to deliver mail on his route each day.[52] In the mail carrier case, the court noted that the "fact that [the insured] did not have unlimited use of the vehicle for both work-related

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[46] Id. at ¶ 22.
[47] *Barnickel* at ¶ 34.
[48] Id.
[49] Id.
[50] *Coleman v. Progressive Preferred Ins. Co.* (July 18, 2008), 1st Dist. No. C-070779, 2008-Ohio-3568. See, also, *Sullivan v. Williams*, 196 Ohio App.3d 759, 965 N.E.2d 373, 2011-Ohio-6131, ¶¶ 9-10.
[51] *McCall v. State Farm Mut. Auto. Ins. Co.* (Sept. 28, 2007), 9th Dist. No. 23601, 2007-Ohio-5109, ¶¶ 2 and 13-18.
[52] *Pickering v. Nationwide Mut. Ins. Co.* (July 31, 2003), 8th Dist. No. 82512, 2003-Ohio-4076, ¶¶ 22-24.

and personal purposes is irrelevant" to the determination of whether a vehicle was available to an insured for his regular use.[53]

In *Liggins v. White* (Sept. 1, 2011), 8th Dist. No. 96167, 2011-Ohio-4417, the insured was provided with a vehicle from her employer, AT&T, each day to perform her job duties.[54] The insured argued that the vehicle was not available for her regular use because she only had access to the vehicle during work hours and only for work-related purposes.[55] The court disagreed, noting that "regular use" has not been "interpreted to mean unfettered access to the vehicle[,]" and finding that "[s]ystematic and continuous use of a vehicle during work hours is sufficient."[56]

Finally, in *Fleetwood v. Doe* (Aug. 1, 2002), 8th Dist. No. 80877, 2002-Ohio-3907, the insured was employed as a bus driver for the Regional Transit Authority when a bus he was driving was struck by another vehicle.[57] The bus driver sought UM benefits under his personal automobile policy issued by State Farm.[58] The insured argued that the regular use exclusion in the State Farm policy should not apply because he was not assigned to the same bus every day.[59] The court disagreed finding that, because the insured used any one of a group of buses as a part of his employment on a daily basis, the holding in *Kenney* clearly applied.[60] The court concluded that the regular use exclusion in the State Farm policy operated to prevent the insured from collecting under the policy.[61]

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[53] Id. at ¶ 22. Accord, *Liggins v. White* (Sept. 1, 2011), 8th Dist. No. 96167, 2011-Ohio-4417, ¶ 10.
[54] *Liggins* at ¶ 2.
[55] Id. at ¶ 12.
[56] Id.
[57] *Fleetwood* at ¶ 2.
[58] Id.
[59] Id. at ¶ 11.
[60] Id.
[61] Id. at ¶ 13.

In the present case, the plaintiff Beach was a school bus driver employed by Peterman Bus Company. A school bus was regularly provided to her each day so that she could perform her job of picking up and dropping off children at home and school and such use of the bus was essential to the performance of her job duties. While she was not allowed to use the bus for personal excursions, such as going home or transporting her friends and family, as discussed above, this fact is irrelevant to the consideration of whether she had regular use of the vehicle during working hours. As a school bus driver, the plaintiff had frequent, steady, and systematic use of the vehicle during working hours.

The court finds that, under the facts of this case, the "regular use" exclusion contained in the State Farm policy is applicable and operates to prevent Debora Beach from receiving UM/UIM benefits under the policy for the accident that occurred on December 24, 2009.

CONCLUSION

The motion for summary judgment filed by defendant State Farm is well-taken and is hereby granted.

The cross-motion for partial summary judgment filed by the plaintiffs Debora and Harold Beach is not well-taken and is hereby denied.

IT IS SO ORDERED.

DATED:_____ _____
Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile/E-Mail/Regular U.S. Mail this 4th day of February 2013 to all counsel of record and unrepresented parties.

_____
Administrative Assistant to Judge McBride