

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

MICHAEL X. LUCKEY,  
Personal Representative of the  
ESTATE OF KELLY A. LUCKEY,

Plaintiff,

- vs -

Case No.: 1:09-cv-01338 (PLF)

JOHN L. PROM, Personal Representative of the  
ESTATE OF ANTHONY J. PROM, SUKAI PROM-  
JACKSON, BALBOA INSURANCE COMPANY,  
ACE PRIVATE RISK SERVICES,

Defendants.

**DEFENDANTS' RESPONSE TO PLAINTIFF'S  
STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to LCvR 7(h) and 56.1, defendants, Balboa Insurance Company ("Balboa"), Sukai Prom-Jackson ("Ms. Prom-Jackson") and ACE American Insurance Company (sued as ACE Private Risk Services) ("ACE"), submit this response to plaintiff's statement of material facts as to which there is no dispute.

1. Balboa issued an automobile insurance policy to Ms. Prom-Jackson, at 17510 Ashton Forest Terrace, Sandy Spring, Maryland, 20860, for the policy period May 21, 2007 to May 21, 2008 ("the automobile policy").

**Response:** Undisputed.

2. The automobile policy insured one car: Ms. Prom-Jackson's 2002 Honda Accord.

**Response:** Undisputed.

3. The automobile policy insured two named drivers: Ms. Prom-Jackson and her son (M'Buram).

**Response:** Undisputed.

4. The automobile policy provides coverage to Ms. Prom-Jackson's family members if they are residents of her household:

**2. We Insure Your Family Members.**

Your *family members* are also *insured persons* under every coverage in this policy. This includes all of the following people, but **only** if they are residents of *your* household:

- *your* children;
- *your* other relatives; and
- other people under 21 years of age, such as wards, who are in the care of *you* or a *family member*.

**Response:** Undisputed.

5. Balboa also issued an umbrella insurance policy to Ms. Prom-Jackson for the same May 21, 2007-May 21, 2008 policy period ("the umbrella policy").

**Response:** Undisputed.

6. The umbrella policy was also issued to Ms. Prom-Jackson at 17510 Ashton Forest Terrace, Sandy Spring, Maryland 20860.

**Response:** Undisputed.

7. The umbrella insurance policy provides additional limits of liability coverage, and includes coverage to family members who are residents of Ms. Prom-Jackson's household:

**WHO WE INSURE**

Under *your* Personal Umbrella Policy, *insured person* includes *you, your family members* and . . .

\* \* \*

**Family Member** means any of these people, but **only** if they are residents of *your* household:

- *your* children;

- *your* other relatives; and
- other people under 21 years of age, such as wards, who are in the care of *you* or a *family member*.

**Response:** Undisputed.

8. Both the automobile and umbrella insurance policies were issued to Ms. Prom-Jackson at her home at 17510 Ashton Forest Terrace, Sandy Spring, Maryland 20860.

**Response:** Undisputed.

9. Balboa also issued a homeowners' insurance policy to Ms. Prom-Jackson for her house at 17510 Ashton Forest Terrace, Sandy Spring, Maryland 20860.

**Response:** Undisputed.

10. The Luckey Estate is not seeking coverage under the homeowners' policy issued by Balboa to Ms. Prom-Jackson and agrees that Anthony Prom was not an insured under that homeowners' policy because of an exclusion contained therein.

**Response:** Undisputed.

11. Ms. Prom-Jackson owns a house at 1208 Tewksbury Place, N.W., Washington, DC 20012.

**Response:** Undisputed.

12. In June 2007, Ms. Prom-Jackson's nephew, Anthony Prom, began residing at 1208 Tewksbury Place, N.W., Washington, DC 20012.

**Response:** Undisputed.

13. In March 2008, Anthony Prom was driving the car of his girlfriend (Kelly Luckey), when he was involved in an accident that killed both persons.

**Response:** Undisputed.

14. The car involved in the accident did not belong to Ms. Prom-Jackson.

**Response:** Undisputed.

15. The car involved in the accident belonged to, and was insured by, Kelly Luckey.

**Response:** Undisputed.

16. The car involved in the accident was not insured under any insurance policy issued by Balboa to Ms. Prom-Jackson.

**Response:** Undisputed.

17. By letter dated March 26, 2009, ACE advised the Luckey Estate that Anthony Prom was not an insured under Ms. Prom-Jackson's automobile or umbrella insurance policies.

**Response:** Undisputed.

### **Plaintiff's Separate Statement of Undisputed Facts<sup>1</sup>**

1. The Balboa auto policy states at page 2:

We Insure You-

You are an insured person under every coverage in your Auto Policy.

This includes your spouse if he or she lives with you.

We Insure Your Family Members-

Your family members are also insured persons under every coverage in this policy. This includes all the following people, but only if they are residents of your household:

- your children
- your other relatives; and
- other people under 21 years of age, such as wards, who are in the care of you or a family member.

**Response:** Undisputed.

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<sup>1</sup> Plaintiff's Memorandum of Points and Authorities in Support of Plaintiff's Motion for Summary Judgment contained a "Separate Statement of Undisputed Facts" which restarted the numbering at one.

2. The Balboa auto policy at issue provides no definition of the term “household” despite the fact that Ms. Prom-Jackson owned two houses at which her relatives resided during the time the policy was in effect.

**Response:** The statements in this paragraph are not statements of fact, but improper arguments of law. Notwithstanding the foregoing, defendants dispute plaintiff’s statement and state that the term “household” is defined by case law in Maryland to mean living together as a family. *See, e.g., Peninsula Ins. Co. v. Knight*, 255 A.2d 55 (Md. 1969); *Willis v. Allstate Ins. Co.*, 591 A.2d 896 (Md. Spec. App. 1991); *Forbes v. Harleysville Mut. Ins. Co.*, 589 A.2d 944 (Md. 1991); *American Cas. Co. v. Harleysville Ins., et al.*, 208 A.2d 597 (Md. 1965).

3. The Balboa auto policy at issue does not require “residents of [Sukai Prom-Jackson’s] household” to live with her at the Maryland house to be an insured person under the terms of the policy drafted by Balboa.

**Response:** The statements in this paragraph are not statements of fact, but improper arguments of law. Notwithstanding the foregoing, defendants dispute plaintiff’s statement and state that, under Maryland law, Anthony Prom must have lived with Ms. Prom-Jackson as a family to be a resident of her household. *See, e.g., Peninsula Ins. Co. v. Knight*, 255 A.2d 55 (Md. 1969); *Willis v. Allstate Ins. Co.*, 591 A.2d 896 (Md. Spec. App. 1991); *Forbes v. Harleysville Mut. Ins. Co.*, 589 A.2d 944 (Md. 1991); *American Cas. Co. v. Harleysville Ins., et al.*, 208 A.2d 597 (Md. 1965).

4. Ms. Sukai Prom-Jackson’s nephew, Anthony Prom resided in Ms. Prom-Jackson’s home in Washington, D.C. at the time of the automobile crash on March 16, 2008.

(See Affidavit of John L. Prom dated April 29, 2009, Exhibit A); (See Affidavit of Ida Fofana dated May 6, 2009, Exhibit B).

**Response:** Undisputed.

5. Ms. Ida Fofana (cousin) began working as a G5 domestic employee in Ms. Prom-Jackson's household in October of 2002 at the 1208 Tewksbury Place, N.W. property in Washington, D.C. She performed domestic work from October 2002 to June 2004 at the Washington, D.C. home, including but not limited to housekeeping, house maintenance, shopping, childcare, cooking, cleaning, laundry and errands. (See Sukai Prom-Jackson Answers to Interrogatories #2, Exhibit C.) Ida Fofana continued to perform domestic work at the Washington, D.C. home including caretaking of the property after June 2004 to the time of the crash that killed Anthony Prom. (Sukai Prom-Jackson Response to Production of Documents, G5 Domestic Contract dated June 25, 2004 Exhibit D, p 6-12.) See Sukai Prom-Jackson Deposition p. 19, 31-34, Exhibit E.)

**Response:** The statements in this paragraph are not material to resolution of this dispute.

Notwithstanding the foregoing, it is undisputed that Ms. Ida Fofana, a distant cousin of Ms. Prom-Jackson, began working as a G5 domestic employee in Ms. Prom-Jackson's household in October of 2002 at the 1208 Tewksbury Place, N.W. property in Washington, D.C., and that she performed domestic work from October 2002 to June 2004 at the Washington, D.C. home, including but not limited to housekeeping, house maintenance, shopping, childcare, cooking, cleaning, laundry and errands, all the while Ms. Prom-Jackson and her son lived there.

Defendants dispute the statement that Ms. Fofana continued to perform domestic work at the Washington, D.C. home after June 2004 and until the time of the crash that killed Anthony Prom. Ms. Fofana did not perform domestic work at the Washington, D.C. home after June 2004. *See* Exhibit J (Declaration of Sukai Prom-Jackson) at ¶ 2.

6. Ms. Fofana's caretaking duties for the Washington, D.C. household were assigned to her because Ms. Prom-Jackson moved from her Washington, D.C. house to her Maryland house in 2004 and Ms. Prom-Jackson needed Ms. Fofana's household assistance at both locations. (See Prom-Jackson Deposition, p 19, 31-34. Exhibit E.) The G5 Domestic Employee contract dated June 25, 2004, states that "I [Sukai Prom-Jackson] confirm that the following domestic is working exclusively in my household... Ida Fofana." (Sukai Prom-Jackson Response to Production of Documents. G5 Domestic contract dated June 25, 2004. Exhibit D, p.7.)

**Response:** The statements in this paragraph are not material to resolution of this dispute.

Notwithstanding the foregoing, it is undisputed that the G5 Domestic Employee contract dated June 25, 2004, states that "I [Sukai Prom-Jackson] confirm that the following domestic is working exclusively in my household . . . Ida Fofana."

Defendants dispute the statement that "Ms. Fofana's caretaking duties for the Washington, D.C. household were assigned to her because Ms. Prom-Jackson moved from her Washington, D.C. house to her Maryland house in 2004 and Ms. Prom-Jackson needed Ms. Fofana's household assistance at both locations." Ms. Prom-Jackson testified that she did not need Ms. Fofana's household assistance at the D.C. house after June 2004. *See* Exhibit J (Declaration of Sukai Prom-Jackson) at ¶ 2.

7. The Contract for G5 Domestic Employee dated June 25, 2004 states that Ms. Ida Fofana resided with Ms. Prom-Jackson at the Ashton Forest Terrace property in Maryland and also resided at her 1208 Tewkesbury Place household in Washington, D.C. (See Response to Request for Production of Documents, Exhibit D, p.6, paragraph 3.)

**Response:** The statements in this paragraph are not material to resolution of this dispute. Notwithstanding the foregoing, defendants state that it is undisputed that the G5 domestic contract dated June 25, 2004 stated that Ms. Fofana resided with Ms. Prom-Jackson at the Maryland house.

Defendants dispute the statement that the “Contract for G5 Domestic Employee dated June 25, 2004 states that Ms. Ida Fofana . . . resided at her 1208 Tewkesbury Place household in Washington, D.C.” The G5 contract stated that Ms. Fofana lived at the D.C. house, without Ms. Prom-Jackson. *See* Exhibit G (2004 G5 contract) at 1.

8. The same form represented in the section 2 entitled “Description of Duties” states that Ms. Prom-Jackson “‘agrees to employ the Employee at or in connection with the Employer’s residence in the position(s) of housekeeper (e.g. housekeeper, handyman, cook, babysitter, caretaker, chauffeur or other domestic employee) with the following duties: clean, cook, caretaker while on mission. The Employee shall only work for the Employer while in the U.S., unless the Employee’s G5 Visa is transferred to a different sponsor with the approval of the U.S. Department of State.” (See Response To Request For Production of Documents, Exhibit D. p.8 Section 2.)



**Response:** The statements in this paragraph are not material to resolution of this dispute. Notwithstanding the foregoing, the statements are undisputed.

9. Section 8 of the G5 Domestic Employee form, entitled “Meals and Lodging” states that “if the Employee resides in the Employer’s residence or another property owned or rented by the Employer, meals and lodging expenses will be paid by the Employer and will not be deducted from the Employee’s contractual wages.” (See Response to Request for Production of Documents, Exhibit D, p.10.)

**Response:** The statements in this paragraph are not material to resolution of this dispute. Notwithstanding the foregoing, the statements are undisputed.

11.<sup>2</sup> Subsequent renewal forms dated July 7, 2005, made no changes to the 2004 agreement but simply confirmed that “the employee’s duties shall be normal domestic work, including childcare, at the employer’s place of residence.” (See Sukai Prom-Jackson Response to Plaintiff’s First Request For Production Of Documents, Exhibit D, p.13) Ms. Ida Fofana had never ceased performing her domestic duties at Ms. Prom-Jackson’s houses in Maryland and Washington, D.C. at the time of the crash on March 16, 2008. (See Prom-Jackson Deposition, Exhibit E, p. 19, 32-33.)

**Response:** The statements in this paragraph are not material to resolution of this dispute.

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<sup>2</sup> “Plaintiff’s Separate Statement of Undisputed Facts” contains no paragraph ten.

Notwithstanding the foregoing, it is undisputed that the G5 renewal contract stated that “the employee’s duties shall be normal domestic work, including childcare, at the employer’s place of residence.”

Defendants dispute the statement that “Ms. Ida Fofana had never ceased performing her domestic duties at Ms. Prom-Jackson’s houses in Maryland and Washington, D.C. at the time of the crash on March 16, 2008.” Ms. Fofana was never directed to perform domestic duties at the D.C. house after June 2004. *See* Exhibit J (Declaration of Sukai Prom-Jackson) at ¶ 2.

12. No G5 Domestic contract for 2006 was produced by the defendant. The renewal forms dated July 25, 2007, indicate that the contract was between Sukai Prom-Jackson residing at 17510 Ashton Forest Terrace, Sandy Spring, Maryland and “Ida Fofana who presently resides at 1208 Tewksbury Pl. NW Washington, D.C. (See Exhibit D, p.15) The contract again confirmed that “the employee’s duties shall be normal domestic work, including childcare, at the employer’s place of residence.” Id. This admittedly included the Washington, D.C. property as caretaker of the employer’s residence. It also declares further that, “the Employee shall not accept any other employment while working for the Employer.” Id. Ms. Ida Fofana’s domestic duties as caretaker of the Washington, D.C. property were at or in connection with her employer’s residence. (See Prom-Jackson Deposition p. 19, 32-33, Exhibit E.), (Exhibit D, p.15).

**Response:** The statements in this paragraph are not material to resolution of this dispute.

Notwithstanding the foregoing, it is undisputed that Ms. Prom-Jackson was unable to locate a G5 contract for 2006; that the renewal form dated July 25, 2007 indicates that the

contract was between Sukai Prom-Jackson residing at 17510 Ashton Forest Terrace, Sandy Spring, Maryland and “Ida Fofana who presently resides at 1208 Tewksbury PI. NW Washington, D.C.”; that the renewal form dated July 25, 2007 stated that “the employee’s duties shall be normal domestic work, including childcare, at the employer’s place of residence”; and that “the Employee shall not accept any other employment while working for the Employer.”

Defendants dispute the statement that the 2007 G5 renewal form “included the Washington D.C. property as caretaker of the employer’s residence” and that “Ms. Ida Fofana’s domestic duties as caretaker of the Washington, D.C. property were at or in connection with her employer’s residence.” Ms. Prom-Jackson testified that, after she moved out of the D.C. house in 2004, she has lived in her Maryland house and has never lived at the D.C. house again, so that her Maryland house was, at all times relevant, the “employer’s residence.” *See* Exhibit J (Declaration of Sukai Prom-Jackson) at ¶¶ 3-5.

13. Ms. Prom-Jackson was “responsible for paying regular wages, social security taxes, workers’ compensation insurance, federal and state income taxes, and medical insurance.” (Sukai Prom-Jackson Answers to Interrogatories, #3(c), Exhibit C.) Ms. Prom Jackson also contributed room and board for her G5 domestic employee family member at the Washington, D.C. and the Maryland houses at the time of the incident in question. (Answers to Interrogatories, #5)(“From June 2004 until the present, Ms. Fofana had a room at 17510 Ashton Forrest Terrace, Sandy Spring, Maryland. From June 2004 until October 2008 Ms. Fofana contributed towards rent for a room at 1208 Tewksbury Place, N.W. Washington, D.C.”) (Response to Plaintiffs First Request for Production of Documents, Exhibit C, p. 10, 15.)

**Response:** The statements in this paragraph are not material to resolution of this dispute.

Notwithstanding the foregoing, it is undisputed that Ms. Prom-Jackson was “responsible for paying regular wages, social security taxes, workers’ compensation insurance, federal and state income taxes, and medical insurance” of Ms. Fofana; and that Ms. Prom-Jackson provided Ms. Fofana a room at her Maryland house from June 2004 to the present.

Defendants dispute the statement that Ms. Prom-Jackson contributed room and board for Ms. Fofana “at the Washington, D.C. house.” Ms. Prom-Jackson testified that Ms. Fofana and others rented the D.C. house after June 2004, and paid monthly rent. *See* Exhibit C (May 14, 2009 deposition) at 14:11-15:21.

14. Ms. Prom-Jackson has no evidence of rental payments or lease documents to show that Ms. Fofana “contributed towards rent” for a room at the Washington, D.C. property. (See Sukai Prom-Jackson Deposition p. 17-20, Exhibit B, Response to Plaintiff’s First Request for Production of Documents, #2, Exhibit D.)

**Response:** The statements in this paragraph are not material to resolution of this dispute. Notwithstanding the foregoing, the statements are undisputed.

15. Anthony Prom, Ms. Sukai Prom-Jackson’s nephew, resided at his aunt’s Tewkesbury Place home in Washington, D.C. with Ida Fofana (Ms. Prom-Jackson’s cousin) from July 2007 to the time of his death in March 2008. (See Answer to Interrogatory #5, Exhibit A), (Affidavit of John L. Prom, Exhibit A), (Affidavit of Ida Fofana, Exhibit B).

**Response:** Undisputed with the proviso that Ms. Fofana is a distant cousin of Ms. Prom-Jackson (Ms. Fofana's great-grandmother was the sister of Ms. Prom-Jackson's grandmother).

16. Ms. Prom-Jackson has no lease, rental agreement, or evidence of rental payments made by either Anthony Prom, her nephew, or Ida Fofana, her cousin, pertaining to their residence at the house she owned exclusively in Washington, D.C. (See Sukai Prom-Jackson Deposition, p. 19-20, Exhibit E) (See Response to First Request for Production of Documents, #2, Exhibit D.)

**Response:** The statements in this paragraph are not material to resolution of this dispute. Notwithstanding the foregoing, the statements are undisputed.

Dated: November 23, 2009

Respectfully submitted,

/s/ Leslie Paul Machado

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*Counsel for Defendants Sukai Prom-  
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ACE American Insurance Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 23, 2009, I caused a copy of the foregoing document to be filed with the Court, via the Court's ECF system, which will send copies to the following counsel of record:

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*/s/ Leslie Paul Machado*

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