

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NATIONWIDE MUTUAL INSURANCE CO.	:	
Plaintiff	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 98-3350
HEIDI KRAUSE, STEPHEN KRAUSE, and	:	
TRAVELERS PROPERTY CASUALTY CORP.	:	
Defendants	:	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

YOHN, J. March , 2000

Nationwide Mutual Insurance Co. [“Nationwide”] brought this suit against Heidi Krause,¹ her father Stephen Krause, and Travelers Property Casualty Corp. [“Travelers”] seeking a declaratory judgment² that Nationwide has no duty under a policy issued to Stephen Krause to defend or indemnify Heidi Krause with respect to a lawsuit arising out of an automobile accident on June 23, 1995. The parties agree that Stephen Krause’s Nationwide policy was in effect on that date and that it covers damages for which a “relative” of Stephen Krause is liable as a result of operating an automobile owned by a non-member of Stephen Krause’s household. Moreover, the parties agree that “relative” is defined in the Nationwide policy as a relation “who regularly lives in **your** household.” Compl. for Declaratory J. (Doc. No. 1) [“Compl.”] Ex. A at 2. The contested issue is whether or not Heidi Krause regularly lived in Stephen Krause’s household at

¹Heidi Krause is now married and has changed her name to Heidi Sasso. For the purposes of these findings of fact and conclusions of law, she will be referred to by her maiden name.

²See 28 U.S.C. § 2201(a).

the time of the accident. After denying the parties' cross-motions for summary judgment, the court conducted a bench trial to resolve this issue.

Having considered all of the testimony and exhibits offered at trial, I now, pursuant to Fed. R. Civ. P. 52(a), make the following findings of fact and conclusions of law:

I. Findings of Fact

A. Background

1. Stephen Krause is an adult individual who resides in a house at 239 Mercer Mill Road in Landenberg, Pennsylvania, and has resided there since 1985. *See* Pl. Nationwide Mut. Ins. Co. & Def. Travelers Property Cas. Corp.'s Agreed Upon Statements of Material Facts and Conclusions of Law (Doc. No. 21) ["Agreed Facts"] ¶ 1.
2. Heidi Krause is the natural daughter of, and is related by blood to, Stephen Krause and Rena Earnhardt. *See* Agreed Facts ¶¶ 2, 13.
3. Stephen Krause and Rena Earnhardt separated in 1982 and were divorced in 1982 or 1983. *See id.* ¶ 3; Stephen Krause Test., Nov. 29, 1999.
4. After Stephen Krause and Rena Earnhardt separated, Heidi Krause lived with her mother. She has not lived with her father since 1982. *See* Stephen Krause Test., Nov. 29, 1999.
5. Stephen Krause never made any child support payments for Heidi Krause. *See id.*
6. Stephen Krause never claimed Heidi Krause as a dependent. *See id.*

7. When Stephen Krause and Rena Earnhardt separated in 1982, Stephen Krause moved to Kane, Pennsylvania. In 1985, he moved to Landenberg, Pennsylvania, where he lived with his mother in the house in which he and his siblings grew up. After his mother's death in 1992, Stephen Krause continued to live in this house. *See id.*
8. During the summer of 1995, Stephen Krause and Rena Earnhardt lived at separate residences. *See Agreed Facts ¶ 4.*
9. On June 23, 1995, Heidi Krause was operating an automobile owned by her mother in Newark, Delaware, when the vehicle was involved in an accident with a vehicle operated by Joseph Woolman. *See id.* ¶ 5.
10. On June 23, 1995, Heidi Krause was 19 years old. *See id.* ¶ 6.
11. Norma and Joseph Woolman filed suit against Heidi Krause in the Superior Court of the State of Delaware in and for New Castle County (C.A. No. 96C-10-070 VAB) [*“Woolman”*] seeking damages for injuries allegedly sustained as a result of the June 23, 1995, accident. *See id.* ¶ 7.
12. The Woolmans had underinsured motorist coverage through Travelers. *See id.* ¶ 7.
13. The automobile operated by Heidi Krause on June 23, 1995, was insured under her mother's policy with Peninsula Insurance Co. [*“Peninsula”*]. *See id.* ¶ 8.
14. Peninsula has defended Heidi Krause in *Woolman*. *See id.* ¶ 9.

15. The Woolmans have alleged that damages for their injuries resulting from the June 23, 1995, accident exceed the limits of the Peninsula policy that covered Heidi Krause. *See id.* ¶ 10.
16. On June 23, 1995, an automobile insurance policy issued by Nationwide to Stephen Krause was in effect under policy number 54 37 A 768658 [“Nationwide policy”] with bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence. *See id.* ¶ 11.
17. Under the auto liability section of the Nationwide policy, Nationwide is required to provide bodily injury liability insurance to a relative of Stephen Krause’s for damages for which the relative is legally liable as a result of operating an automobile owned by a non-member of Stephen Krause’s household. *See id.* ¶ 12.
18. The Nationwide policy defines “relative” as follows: “‘Relative’ means one who regularly lives in **your** household, related to **you** by blood, marriage or adoption (including a ward or foster child). A **relative** may live temporarily outside **your** household.” Compl. Ex. A at 2; *see* Agreed Facts ¶ 12.

B. School Year 1994-1995

1. Heidi Krause attended college in St. Augustine, Florida. *See* Heidi Krause Test., Nov. 29, 1999.

2. Heidi Krause did not go home for Thanksgiving in 1994 and stayed in Florida for her spring break in 1995. *See id.*
3. Heidi Krause visited her father at his house over winter break in 1994, but she did not spend the night. *See Heidi Krause Test.*, Nov. 29, 1999; *Stephen Krause Test.*, Nov. 29, 1999.

C. Summer 1995

1. When Heidi Krause's 1995 summer vacation began in late April, she returned to her mother's house on the outskirts of Wilmington, Delaware. *See Heidi Krause Test.*, Nov. 29, 1999.
2. Heidi Krause's 1995 summer vacation lasted through August. *See id.*
3. Heidi Krause was registered to vote in Delaware. *See id.*
4. Heidi Krause worked six days a week at three jobs in Newark, Delaware. *See id.*
5. Heidi Krause ate most of her meals either at her mother's house or at work. *See id.*
6. Heidi Krause spent the night with friends in Newark approximately 50% of the time. For the remaining 50% of the time, she spent the night at either her father's house or her mother's house. *See id.*
7. Heidi Krause paid neither rent nor utilities when staying at either her father's house or her mother's house. *See id.*

8. Heidi Krause did not receive mail at her father's house. *See* Heidi Krause Test., Nov. 29, 1999; Stephen Krause Test., Nov. 29, 1999.
9. Heidi Krause was storing between one and three boxes of personal property in the attic of her father's house because he had more room in his house than her mother did in hers. *See id.*
10. Heidi Krause kept no clothes at her father's house. *See id.*
11. Heidi Krause did not have a key to her father's house. If she needed to come over when Stephen Krause was absent, he would hide a key and tell her the location. *See id.*
12. Heidi Krause did not have a key to either of her father's automobiles and did not borrow them. *See id.*
13. Heidi Krause did not regularly visit her father's house. *See id.*
14. Heidi Krause did not need permission to visit her father, but she usually telephoned first because he was often out of town. *See id.*
15. When he was at home, Stephen Krause slept in the room known to family as the "Girls' Room." It had this name because it was Stephen Krause's sisters' room when they were growing up. *See* Stephen Krause Test., Nov. 29, 1999.
16. Stephen Krause worked as a charter bus operator. *See id.*
17. Stephen Krause's job sometimes required him to be away from home for two to three days. *See id.*

18. When Stephen Krause's job required him to be away from home overnight, his neighbor usually took care of Stephen Krause's pets. *See id.*
19. When Stephen Krause's job required him to be away from home overnight and his neighbor could not care for his pets, he asked Heidi Krause to care for the pets. *See id.*
20. Heidi Krause was never paid for taking care of her father's pets. *See id.*
21. At one point in the summer, Stephen Krause was out of town for approximately eight days, during which time Heidi Krause stayed at her father's house and took care of the pets. *See Heidi Krause Test., Nov. 29, 1999; Stephen Krause Test., Nov. 29, 1999.*
22. In addition to the eight-day period, Heidi Krause stayed at her father's house overnight or for the weekend while taking care of the pets on no more than three other occasions. *See id.*
23. Heidi Krause may have gone to her father's house to visit or to take care of the pets on other occasions without spending the night. *See id.*
24. The maximum amount of time Heidi Krause spent at her father's house over the course of the summer (May through August) was eighteen days. This eighteen days included overnight stays, non-overnight visits, and non-overnight trips to care for the pets. *See id.*
25. Other than the time Stephen Krause spent giving Heidi Krause instructions on feeding the pets, Stephen Krause's time at his house did not significantly overlap with Heidi Krause's time there. At no point during

the summer of 1995 did Heidi Krause spend the night in Stephen Krause's house while Stephen Krause was also spending the night there. *See id.*

26. Heidi Krause did not have her own room in her father's house. When staying there, she slept in either the "Girls' Room" or her grandmother's old room. *See id.*
27. When staying at her father's house, Heidi Krause had the run of the house. *See id.*
28. When staying at her father's house, Heidi Krause could eat whatever food was there and could socialize there, although big parties were not allowed. *See id.*

II. Conclusions of Law

A. Jurisdiction and Applicable Law

1. The court is properly exercising diversity jurisdiction over this case. *See* 28 U.S.C. § 1332(a)(1).
2. The parties agree that Pennsylvania law applies. *See* Mem. of Law in Supp. of Pl. Nationwide's Mot. for Summ. J. (Doc. No. 13) at 7; Def. Travelers' Br. in Supp. of Mot. for Summ. J. (Doc. No. 11) at 5.

B. Heidi Krause's Coverage Under the Nationwide Policy

1. If Heidi Krause "regularly lived" in Stephen Krause's household at the time of the accident at issue, then she was his "relative," as that term is

defined in the Nationwide policy. *See supra* Parts I.A.2, I.A.18. If Heidi Krause were a “relative” of Stephen Krause, then she would have been covered under the Nationwide policy. *See supra* Parts I.A.9, I.A.11, I.A.15, I.A.16, I.A.17. If Heidi Krause were not a “relative” of Stephen Krause, then she would not have been covered under the Nationwide policy. *See id.*

2. In *Nationwide Mut. Ins. Co. v. Budd-Baldwin*, 947 F.2d 1098 (3d Cir. 1991), the Third Circuit applied Pennsylvania law and addressed the meaning of “regularly lives,” as that term was used in a similar Nationwide policy. The *Budd-Baldwin* court defined “regularly living” somewhere as (1) occupying a particular home (2) at fixed intervals. *See id.* at 1102. The Third Circuit explained the meaning of “occupying a particular home” in the following manner:

When we combine the dictionary definition with the facts of everyday life, it is clear that to occupy a home means to be able to call that place one’s own, to claim it as a place where one has a right to be. The word home itself connotes a place where one belongs and can always go with the certainty that he will be taken in. It connotes not only a physical place, i.e. the place where one eats meals, sleeps, socializes and generally spends time when not otherwise engaged with the activities of life, but a sense of belonging. This definition clearly excludes persons who are mere visitors to the residence, however frequently they may visit and however certain they may be that they will always be taken in. Temporary visits, however frequent or regular, are simply insufficient to establish residency.

Id. at 1102 (internal quotation marks omitted).

3. The *Budd-Baldwin* court also noted that a child of divorced parents may “occupy” two homes if that child “routinely spend[s] a portion of each week or month at the residence of the non-custodial parent.” *Id.* at 1103.

In describing how this was possible, the Third Circuit explained:

In such cases, the child usually, for the sake of convenience if nothing else, has a room to call his or her own in each residence, keeps clothes, books, games, etc. in each residence, and visits at the non-custodial parent’s home at regularly scheduled intervals. What distinguishes that situation from the one before us is that the child “belongs” at the other parent’s residence, i.e. has a place there to call his or her own, and that the central purpose of the visit is to spend time with the parent. The child is as much a part of that household as he or she is of the household of the parent with primary custody.

Id.

4. The determination of whether or not a person regularly lives in another person’s household is qualitative in nature. *See id.* at 1102-1103; *St. Paul Fire & Marine Ins. Co. v. Lewis*, 935 F.2d 1428, 1431-33 (3d Cir. 1991) (determining whether or not a person was covered by his parent’s insurance policy by engaging in a qualitative analysis of whether the person was “living with” his parent).
5. Although some of the facts suggest that Heidi Krause “occupied” her father’s home during the summer of 1995, *see supra* Parts I.B.3, I.C.7, I.C.9, I.C.14, I.C.20, I.C.21, I.C.22, I.C.23, I.C.27, I.C.28, the weight and quality of the evidence as a whole suggest otherwise. That summer, Heidi Krause neither truly belonged at her father’s home nor had a right to be

there. *See supra* Parts I.A.4, I.C.1, I.C.3, I.C.5, I.C.6, I.C.8, I.C.10, I.C.11, I.C.12, I.C.13, I.C.18, I.C.19, I.C.24, I.C.25. Therefore, I conclude that Heidi Krause did not “occupy” her father’s home during the summer of 1995. *See Budd-Baldwin*, 974 F.2d at 1102-03. Thus, Heidi Krause’s time at her father’s house in the summer of 1995 fails to satisfy the first part of the Third Circuit’s definition of “regularly lives.” *See id.*; *supra* Part II.B.2.

6. Even if Heidi had been “occupying” her father’s home during the summer of 1995, I conclude that such occupation was not at fixed intervals. *See supra* Parts I.A.4, I.C.13, I.C.18, I.C.19, I.C.21, I.C.22, I.C.23, I.C.24. Thus, Heidi Krause’s time at her father’s house in the summer of 1995 fails to satisfy the second part of the Third Circuit’s definition of “regularly lives.” *See Budd-Baldwin*, 947 F.2d at 1102-1103; *supra* Part II.B.2.
7. Because Heidi Krause’s time at her father’s house in the summer of 1995 fails to satisfy either part of the Third Circuit’s definition of “regularly lives,” I conclude that at that time she did not regularly live in her father’s household during that period of time.
8. Because Heidi Krause was not regularly living in Steven Krause’s household when the accident occurred, she was not his “relative,” as that term is defined in the Nationwide policy. Thus, she is not covered by the

Nationwide policy. Therefore, Nationwide has no duty to defend or indemnify Heidi Krause with respect to *Woolman*. See *supra* Part II.B.1.

III. Conclusion

Heidi Krause was not regularly living with her father when the accident at issue occurred, so she was not Stephen Krause's "relative," as that term is used in the Nationwide policy. Thus, Heidi Krause was not covered by the Nationwide policy on June 23, 1995. Consequently, the court will enter a declaratory judgment that Nationwide has no duty to defend or indemnify her with respect to *Woolman*. An appropriate order follows.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NATIONWIDE MUTUAL INSURANCE CO.	:	
Plaintiff	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 98-3350
HEIDI KRAUSE, STEPHEN KRAUSE, and	:	
TRAVELERS PROPERTY CASUALTY CORP.	:	
Defendants	:	

ORDER

YOHN, J.

AND NOW, this day of March, 2000, upon consideration of the plaintiff's complaint (Doc. No. 1), defendant Travelers Property Casualty Corp.'s answer (Doc. No. 10), and after trial, in accordance with the aforesaid findings of fact and conclusions of law, IT IS HEREBY DECLARED that Nationwide Mutual Insurance Co. has no duty under a policy issued to Stephen Krause to defend or indemnify Heidi Krause with respect to a lawsuit arising out of an automobile accident on June 23, 1995, and judgment is entered in favor of the plaintiff and against the defendants.

William H. Yohn, Jr.