

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DOUGLAS HOLLAND,	:	NO. 07-00,318
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	
	:	
PENNSYLVANIA NATIONAL MUTUAL CASUALTY	:	
INSURANCE COMPANY, LYNETTE Y. BONNER	:	
and JOHN R. BONNER,	:	
Defendants	:	Motions for Summary Judgment

**OPINION AND ORDER**

Before the Court are cross-motions for summary judgment filed by Plaintiff and Defendant Pennsylvania National Mutual Casualty Insurance Company (hereinafter “Penn National”) on July 14, 2008, and July 21, 2008, respectively. Argument thereon was heard August 29, 2008.

Plaintiff was injured when he fell down some steps at the residence of his sister and brother-in-law, Defendants Lynette and John Bonner, who are insured by Defendant Penn National. The sole issue presented by the instant motions is whether Plaintiff was a resident in the household of the Bonners at the time of the accident, November 5, 2006, inasmuch as relatives of the insured (which Plaintiff indisputably is) who are also residents are excluded from coverage for personal injuries by the policy in question.<sup>1</sup>

In Amica Mutual Insurance Company v. Donegal Mutual Insurance Company, 545 A.2d 343 (Pa. Super. 1988), the Court determined that the term “resident” when used in policy language such as that in the instant case, has its common law meaning, that is, that it means those who actually live in the household. After reviewing the testimony of the various parties and witnesses deposed, as attached to Penn National’s motion, the Court finds that Plaintiff was not a resident of the Bonner’s household at the time of the accident.

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<sup>1</sup> At argument, the parties agreed that there is no dispute of fact, and that the Court could decide the issue based on the testimony presented by various parties and witnesses through depositions, attached to the motion filed by Penn National.

Plaintiff lived with his mother and step-father for about one year, which living arrangement terminated about the end of September 2006 when Plaintiff and his step-father had an argument respecting Plaintiff's transportation to and from work, which Plaintiff's step-father had been providing. Plaintiff's mother asked him to move out and give them a "cooling off period". Plaintiff took with him his work tools (Plaintiff is a painter by trade) and some clothing, leaving behind a few articles of furniture and other minimal clothing, and began staying with his father and step-mother. Plaintiff was working in South Williamsport at the time and his father lives in Montoursville; Plaintiff's sister, Defendant Lynette Bonner, began providing Plaintiff's transportation to work, although his father also provided some transportation. As it was archery season when Plaintiff began staying with his father, and as the job in South Williamsport was an outside job, on days when the weather was bad, Plaintiff stayed with his father and they hunted together. On days when the weather was good, Plaintiff worked. In mid-October, after about two weeks of providing the transportation, Mrs. Bonner, who lives in South Williamsport, about ¼ mile from Plaintiff's job site, offered to him that he stay overnight at her house on days when he was working, for her own convenience. Plaintiff accepted this offer<sup>2</sup> and began staying at the Bonner residence on days when the weather was good and he was working, sleeping on a Lazy-Boy recliner in their basement. His work tools remained at the job site and/or in a box he carried back and forth to the work site, his clothing remained in a small bag he carried for that purpose. He continued to stay with his father when the weather was bad, and had been at his father's residence for four to five consecutive nights just prior to the date of the accident. Plaintiff did not have a key to the Bonner residence; they did not ask him to pay rent or contribute to expenses, and he did not offer to do so, although he did help out a little when he was there (such as helping with dishes if he had eaten a meal with them, or feeding the dogs if asked to do so). Plaintiff was paying child support and was required by the Domestic Relations Office to notify them of any change of address; he provided that office with the Bonner address for convenience; as he explained it, he had to give them either his father's address or his sister's address and since he was planning to get his own apartment in South Williamsport, he chose his sister's address as she lived in South

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<sup>2</sup> It is also noted that Plaintiff had previously stayed in Eagle's Mere when working on a job there.

Williamsport. On the day of the accident, a Sunday, Plaintiff had gone to the Bonner residence to refinish a table for his sister; he had not slept there the night before.

Considering the circumstances, the Court believes Plaintiff was not a resident of the Bonner household; he did not live there but was, rather, merely a guest. Penn National argues that residency requires only “physical presence”. The Court believes, however, that while physical presence is required of residency, it cannot alone define it. Otherwise, an attorney staying in a hotel in Philadelphia the evening before an argument in Court the next morning would be considered a resident of the hotel, a result the Court finds absurd. And, with respect to Penn National’s argument that one can have two residences, while such is indeed the case, it nevertheless appears to the Court that Plaintiff did not have two residences, but instead had one residence (his father’s house) and was a temporary guest in another (his sister’s house) while he worked.

Accordingly, Plaintiff is entitled to summary judgment on his claim for declaratory judgment.

**ORDER**

AND NOW, this 9<sup>th</sup> day of September 2008, for the foregoing reasons, Plaintiff’s motion for summary judgment on his claim for declaratory judgment is hereby granted. Penn National’s motion for summary judgment is hereby denied.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Joseph F. Orso, III, Esq.  
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John Bonner, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson