

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. DANIEL PALMIERI**  
**Acting Justice Supreme Court**

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**DAWN STEIERT, an infant over the age of 14 years,  
by her mother and natural guardian, DEBORAH  
STEIERT,**

**Plaintiffs,**

**-against-**

**ERICH JOHN BOHN, ERICH A. BOHN, s/h/a  
ERICH M. BOHN and KEMPER AUTO AND  
HOME GROUP,**

**Defendant.**  
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**TRIAL PART: 32**

**NASSAU COUNTY**

**INDEX NO: 6314/03**

**MOTION DATE: 12-17-03**

**SUBMIT DATE: 2-13-04**

**MOTION SEQ. NO: 001  
& 002**

**The following papers having been read on this motion:**

<b>Notice of Motion, dated 11-11-03 .....</b>	<b>1</b>
<b>Affirmation in Opposition, dated 1-17-04.....</b>	<b>2</b>
<b>Reply Affirmation, dated 2-12-04.. .....</b>	<b>3</b>
<b>Notice of Cross-Motion, dated 1-17-04 .....</b>	<b>4</b>

In this action, defendant Kemper Auto and Home Group, herein after KAHG, moves pursuant to § CPLR 3212 seeking an Order granting summary judgment dismissing the complaint of Diane Steiert on the grounds they do not provide liability coverage to the vehicle involved in the underlying action and therefore do not have a duty to defend or indemnify Erich John Bohn in this action. Plaintiff, Dawn Steiert cross-moves for summary judgment compelling KAHG to provide excess coverage to the defendants in this action. The motion is granted and the cross motion is denied.

In this action the defendant, Erich John Bohn, was the operator of a vehicle owned by his father, defendant, Erich M. Bohn, who was involved in an automobile accident, resulting in personal injuries to Dawn Steiert. It is undisputed that at the time of this accident, Eric John Bohn was residing with his grandfather, Erich A. Bohn. At the time of the accident, Erich A. Bohn owned a 1999 Mercedes Benz, which was insured under a policy with KAHG. It is the plaintiff's contention that this KAHG policy of insurance is applicable to the underlying action and as a result KAHG is obligated to indemnify Erich John Bohn in the related underlying action. Kemper has disclaimed

coverage on grounds set forth in a letter sent on February 27, 2002. The letter basically provides that a family member who lived in the household was driving a car not listed on the policy and was operating a vehicle owned by a family member which had coverage under another liability policy.

The applicable provision of the KAHG policy states

Part A - Liability Coverage-

Exclusions-

B. We do not provide Liability Coverage for the ownership, maintenance or use of:

3. Any vehicle, other than "your covered auto" which is:

b. Furnished or available for the regular use of any "family member"

An additional portion of the policy states:

This exclusion does not apply to you while you are maintaining or occupying any vehicle which is

- a. Owned by a "family member" or
- b. furnished or available for the regular use of a family member."

The term "you" is defined elsewhere in the policy as meaning the named insured and spouse.

The deposition testimony of Erich John Bohn was that he drove his father's car on a regular basis and that it was available to him for his regular use for work and pleasure without restriction. It is undisputed that Erich John Bohn was a "family member" within the meaning of the Kemper policy. As Erich John Bohn was operating a car provided for his regular use, and that he is a family member, KAHN is not obligated to indemnify him or to provide coverage for the accident or to provide excess insurance coverage to the defendants. *Jerge v. Buettner*, 90 NY 2d 950 (1997), *GEICO v. Kolodny*, 269 AD2d 564 (2<sup>nd</sup> Dept. 2000).

This constitutes the Decision and Order of this Court.

DATED: March 22, 2004

ENTERED

MAR 23 2004

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

  
HON. DANIEL PALMIERI  
Acting J.S.C.

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