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Liberty Mutl Ins Co v. James Sweeney

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 08-1353

____

LIBERTY MUTUAL INSURANCE COMPANY,
d/b/a LIBERTY MUTUAL PROPERTY AND
CASUALTY INSURANCE COMPANY,
Appellant

v.

JAMES E. SWEENEY

____

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 06-cv-02227)
District Judge: Honorable Petrese B. Tucker

____

Submitted Under Third Circuit LAR 34.1(a)
March 3, 2009

Before: SCIRICA, *Chief Judge*, SLOVITER and HARDIMAN, *Circuit Judges*.

(Filed: March 23, 2009)

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OPINION

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HARDIMAN, *Circuit Judge*.

Liberty Mutual Insurance Company appeals the District Court's grant of summary judgment in favor of James Sweeney and its denial of Liberty Mutual's cross-motion for summary judgment.

Liberty Mutual denied Sweeney's insurance claim following an automobile accident, citing three exclusions in Sweeney's automobile policy: (1) the vehicle was being used in an auto business at the time of the accident; (2) the vehicle was being used in a way that was not intended by the owner; and (3) Sweeney was driving a vehicle that he did not own, but used regularly. Liberty Mutual filed a declaratory judgment action and the parties filed cross-motions for summary judgment.

On November 21, 2007, the District Court denied Liberty Mutual's motion for summary judgment, finding that "there remains [sic] disputed issues of material fact" which prevented an order of summary judgment at that time.

In apparent contradiction to its prior finding that disputed issues of material fact existed, on January 4, 2008, the District Court granted summary judgment in favor of Sweeney. The District Court did not explain what changed since November 21, 2007 such that summary judgment became proper. Moreover, the District Court addressed only one of the three policy exclusions asserted by Liberty Mutual: the non-intended-use exception. This was improper. As an insurer seeking to deny coverage under a policy, Liberty Mutual need only prove that one of its asserted policy exclusions applies. *See, e.g.*, *Britamco Underwriters, Inc. v. C.J.H., Inc.*, 845 F. Supp. 1090, 1094 (E.D. Pa.),

aff'd, 37 F.3d 1485 (3d Cir. 1994). The District Court's determination that the insured should prevail on one of the policy's exclusions does not bear on the applicability of the other two exclusions. Therefore, the District Court erred in failing to address the other exclusions asserted by Liberty Mutual.

For the foregoing reasons, we will summarily remand the case to the District Court for consideration and analysis of the two exclusions cited by Liberty Mutual and further proceedings consistent with this opinion.