

STATE OF MICHIGAN
COURT OF APPEALS

HAMILTON MUTUAL INSURANCE COMPANY,

UNPUBLISHED
March 6, 1998

Plaintiff-Appellant,

v

No. 202264
Genesee Circuit Court
LC No. 95-041595-CZ

RAYMOND VLIET, SR.,

Defendant-Appellee,

and

MICHAEL O. KRIBS,

Defendant.

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

PER CURIAM.

In this declaratory judgment action, plaintiff appeals by right a determination of the circuit court that plaintiff owed a duty to defend and indemnify defendant Kribs under the terms of a homeowner's policy Kribs purchased from plaintiff. We affirm.

The issue presented in this case is whether a motor vehicle exclusion contained in the homeowner's policy operates to relieve plaintiff of any duty to defend or indemnify Kribs in a negligence action brought by defendant Vliet.

A basic rule of insurance contract construction is that policy language creating exclusions from coverage be strictly construed against the insurer. *Farm Bureau General Ins Co of Michigan v Riddering*, 172 Mich App 696, 704; 432 NW2d 404 (1988). Nevertheless, policy language must be interpreted according to its commonly understood meaning. *Allstate Ins Co v Tomaszewski*, 180 Mich App 616, 619; 447 NW2d 849 (1989). Insurance contract language is given its ordinary and plain meaning. *Id.* If, after reading the entire contract, the language can reasonably be understood in

differing ways--one providing and the other excluding coverage--the ambiguity is to be construed against the insurer. *Id.*

For the motor vehicle exclusion found in Kribs' homeowner's policy to apply, two prerequisites must be established: (1) the bodily injury must arise out of the ownership, maintenance, use, loading or unloading of motor vehicles; and (2) the motor vehicle in question must be owned or operated by or rented or loaned to an insured, i.e. Kribs.

The second prerequisite has not been established on the facts of this case. The evidence contained in the record establishes that plaintiff's insured, Kribs, neither owned nor rented the van. Instead, Kribs was on the owner's premises to view the van and determine if he wished to purchase it. These circumstances also establish that the van was not loaned to Kribs. *Celina Mut Ins Co v Citizens Ins Co*, 136 Mich App 315, 323-325; 355 NW2d 916 (1984).

Finally, the evidence establishes that Kribs was not operating the vehicle. A necessary prerequisite for the operation of a motor vehicle is the actual engaging of the vehicle's engine. *Riddering*, 172 Mich App at 700-703; *State Farm Mut Automobile Ins Co v Liberty Mut Ins Co*, 883 SW2d 530, 533 (Mo App, 1994); Webster's New World Dictionary (3d college ed), p 949. In the instant case, the vehicle was wholly inoperable. Every attempt by Kribs to start the engine met with failure.

Accordingly, the trial court correctly determined that the motor vehicle exclusion contained in Kribs' homeowner's policy does not apply.

Affirmed.

/s/ Jane E. Markey
/s/ Martin M. Doctoroff
/s/ Michael R. Smolenski