

2/13/2009 "See News Release 009 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

NO. 08-CC-2874

GRACE R. HARPER, INDIVIDUALLY AND ON BEHALF OF  
HER MINOR CHILDREN, JEREMY JOHNSON, JARRELL JOHNSON  
JAVARIUS DORSEY AND KEILA DORSEY

V.

DIRECT GENERAL INSURANCE COMPANY OF LOUISIANA, ET AL.

PER CURIAM

This matter arises from an automobile accident involving a vehicle owned by Sears, Roebuck and Co. ("Sears"), which was driven by one of its employees, Billy Joe Ansel, Jr. As a result of the accident, Mr. Ansel made a claim against Sears' uninsured/underinsured ("UM") insurer, Liberty Mutual Insurance Co. ("Liberty Mutual").<sup>1</sup>

Subsequently, Liberty Mutual moved for summary judgment, arguing that Sears had rejected UM coverage. In support, it attached a copy of an "Uninsured/Underinsured Motorist Bodily Injury Coverage Form," showing that UM coverage had been rejected. Liberty Mutual also attached an affidavit from the person who signed the form, identified as Laurence Jenchel, the Director of Risk Management for Sears. In his affidavit, Mr. Jenchel attested he was "authorized to

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<sup>1</sup> The claims of all remaining parties have been dismissed and are not at issue.

execute the attached form rejecting uninsured/underinsured motorist coverage on behalf of Sears.”

Mr. Ansel opposed Liberty Mutual’s motion, arguing the UM rejection form was invalid because the person signing the form did not clearly and unmistakably identify his representative capacity and authority to sign the form on behalf of Sears.

After a hearing, the district court denied Liberty Mutual’s motion for summary judgment. Liberty Mutual applied for supervisory review of this ruling. The court of appeal denied the writ application.

Liberty Mutual then applied to this court. We granted the writ, and remanded the case to the court of appeal for briefing, argument, and full opinion. *Harper v. Direct General Ins. Co.*, 08-0738 (La. 6/6/08), 983 So.2d 907. On remand, the court of appeal again denied relief to Liberty Mutual. Liberty Mutual’s second application to this court followed.

The sole issue presented for our consideration is whether Sears properly rejected UM coverage. In *Duncan v. U.S.A.A. Ins. Co.*, 06-0363 (La. 11/29/06), 950 So. 2d 544, we identified six tasks which are required in order to complete the UM rejection form prescribed by the Commissioner of Insurance:

Before we determine whether the statute requires that all aspects of the form be complied with, let us now consider what the prescribed form entails. Essentially, the prescribed form involves six tasks: (1) initialing the selection or rejection of coverage chosen; (2) if limits lower than the policy limits are chosen (available in options 2 and 4), then filling in the amount of coverage selected for each person and each accident; (3) printing the

name of the named insured or legal representative; (4) signing the name of the named insured or legal representative; (5) filling in the policy number; and (6) filling in the date.

As Liberty Mutual points out, it is undisputed the form at issue is initialed to reject UM coverage (task #1), bears the correct policy number (task #5), and is dated (task #6). Therefore, the dispute revolves around tasks #3 and #4.

Liberty Mutual takes the position that both these tasks were satisfied, because the name of the named insured, Sears, is typed on the form (task #3), and the form is signed by Laurence Jenchel, Sears' legal representative (task #4). However, in finding the form invalid, the district court seemed to combine the printed name requirement (task #3) with the signature requirement (task #4), concluding that "a printed name must identify the signatory in order to clearly and unmistakably reject UM coverage."

We find the district court's reasoning is in error. A review of our opinion in *Duncan* reveals that we used the disjunctive "or" with regard to tasks #3 and #4: "(3) printing the name of the named insured **or** legal representative; (4) signing the name of the named insured **or** legal representative." [emphasis added] Nothing in *Duncan* links these two separate tasks into a single task, as the district court suggested. To the contrary, as long as the name of the named insured is printed and the legal representative signs the form, both tasks are satisfied. Any other interpretation would lead to absurd results, because if the name of the corporate insured is printed as the

named insured, it is obvious the corporate insured cannot sign its name, but must act through its legal representative.

Turning to the instant facts, it is undisputed that Sears' name was printed on the form as named insured, and its representative, Mr. Jenchel, initialed and signed the form to reject UM coverage. Liberty Mutual has further established through an unrefuted affidavit that Mr. Jenchel is the Director of Risk Management for Sears, and was authorized to reject UM coverage on behalf of Sears. It is further undisputed that the form satisfies all other requirements of our opinion in *Duncan*.

Under these circumstances, we find Liberty Mutual has established it is entitled to judgment as a matter of law. The district court erred in holding otherwise.

Accordingly, the writ is granted. The judgment of the district court is reversed, and summary judgment is rendered in favor of Liberty Mutual Insurance Co.