

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
(Trenton Vicinage)**

EMPIRE FIRE & MARINE INSURANCE	:	
COMPANY	:	
Plaintiff	:	Civil Action No.
v.	:	
	:	
JOHN BENNETT, JR. and RICHARD AMATO	:	
Defendants	:	
_____	:	

**COMPLAINT FOR DECLARATORY JUDGMENT
AND JURY TRIAL DEMAND**

Plaintiff Empire Fire & Marine Insurance Company, by way of complaint for declaratory judgment, avers as follows:

1. Plaintiff Empire Fire & Marine Insurance Company (Empire) is an insurance company incorporated in the State of Nebraska with its principal place of business located in Omaha, Nebraska.
2. Defendant John Bennett, Jr. is an individual residing in Brick, New Jersey.
3. Defendant Richard Amato is an individual believed to reside in Lakewood, New Jersey.
4. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) as the plaintiff and defendants are citizens of different states, and the amount in controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

COUNT ONE

5. Elrac, Inc., the owner of the vehicle, maintained insurance coverage for the mandatory financial responsibility limits with companies other than Empire Fire & Marine Insurance Company and/or was self-insured.

6. The Empire Fire & Marine Insurance Company provided supplemental rental liability protection coverage pursuant to the terms and provisions of a written contract.

7. On or about March 16, 2004, defendant John Bennett Jr. rented a motor vehicle from Elrac, Inc.

8. At the time of the aforesaid rental, defendant John Bennett Jr. purchased supplemental liability protection (SLP).

9. The rental agreement specifically excluded supplemental liability protection coverage where the terms of the rental agreement have been violated.

10. The terms and provisions of the rental agreement specifically define a violation of the rental agreement as follows:

1. If the car is used or driven:

In violation of any term or condition of this agreement

by any person if there is reasonable evidence they were under the influence of narcotics, intoxicants or drugs.

11. The jacket of the rental agreement further placed the renter on notice of the following limitations of the supplemental liability protection:

Supplemental Liability Protection

... Exclusions. All exclusions are stated in the policy, however, the following are a few key exclusions.

- (a) loss arising out of an accident which occurs while the renter or authorized driver is under the influence of alcohol or drugs or other substances unless prescribed by a physician
- (b) loss arising out of the use of a rental vehicle when such use is in violation of the terms and conditions of the rental agreement.

... This is a summary only and is subject to all provisions, limitations, exceptions and exclusions of the SLP policy issued by Empire Fire and Marine Insurance Company. Upon request, a copy of the policy is available for review.

12. Empire issued a supplemental rental liability insurance excess policy bearing policy number SI226451 to Elrac, Inc., providing supplemental rental liability insurance excess coverage where purchased to provide coverage for the difference between the underlying coverage, including but not limited to the financial responsibility limits, and \$1 million, and further subject to a deductible of \$250,000.00.

13. The policy of insurance defines insured as follows:

B. WHO IS AN INSURED

- 1. Only the following are "insureds" under this policy:
 - a. The "Rentee" who has:
 - (1) Entered into a "rental agreement" with the "policyholder" shown in the Declarations; and
 - (2) Elected under the "rental agreement" to purchase optional "supplemental rental liability insurance"; and
 - (3) Paid for optional "supplemental rental liability insurance".
 - b. Additional authorized drivers whose names appear on the "rental agreement", where the "rentee" has complied with a. (1), (2), and (3) above.
- 2. The following are not insureds under this policy:
 - a. The "policyholder", "certificate holder" or owner of the "rental vehicle", or
 - b. Any employee, agent or family member of the "policyholder" or "certificate holder"; or

- c. Any driver who is not an authorized driver under the terms of the "rental agreement", or whose name does not appear on the "rental agreement".

14. The supplemental rental liability insurance excess policy further contains the following applicable exclusions from coverage:

D. EXCLUSIONS

In addition to the exclusions contained in the "underlying insurance", this insurance does not apply to the following:

1. Loss arising out of an "accident" which occurs while the "Insured" is under the influence of alcohol or drugs, or other substances unless prescribed by a physician.
2. Loss arising out of the use of a "rental vehicle" when such use is in violation of the terms and conditions of the "rental agreement".

15. On or about March 18, 2004 John Bennet, Jr. was involved in a one vehicle motor vehicle accident while defendant Richard Amato was a passenger in the vehicle.

16. At the time of the aforesaid accident, John Bennett, Jr. was operating the aforesaid rental vehicle while under the influence of alcohol in violation of the terms and provisions of the rental agreement.

17. John Bennett, Jr. pled guilty to violation of N.J.S.A. 39:4-50 as a result of his operation of his vehicle at the time of this accident.

18. Defendant Richard Amato has asserted a claim to Empire Fire & Marine Insurance Company for personal injury as a result of the aforesaid accident and made a settlement demand of \$335,000.00.

19. The Empire Fire & Marine Insurance Company formally disclaimed coverage to John Bennett, Jr. by letter dated November 15, 2004.

20. Pursuant to the terms and provisions of the contract, no supplemental liability coverage is provided for the aforesaid accident which occurred on March 18, 2004.

WHEREFORE, plaintiff Empire Fire & Marine Insurance Company requests that this court enter judgment in its favor and against the defendants, declaring that Empire Fire & Marine Insurance Company has no duty to provide supplemental liability insurance coverage to defendant John Bennett, Jr. for any claims which may be asserted as a result of the March 18, 2004 motor vehicle accident, together with such other and further relief the court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff Empire Fire & Marine Insurance Company hereby demand a trial by jury on all issues.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

By: /S/ Steven J. Polansky
STEVEN J. POLANSKY
Attorney for Plaintiff