

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

<hr/>	
METROMILE INSURANCE COMPANY	:
690 Folsom Street, Suite 200	:
San Francisco, CA 94107	:
	:
	:
	:
v.	: NO.
	:
ABRAHAM FELIZ-POLANCO aka	:
ABRAHAM FELIZ	:
1011 Columbia Avenue	:
North Bergen, NJ 07047	:
	:
	:
<hr/>	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Metromile Insurance Company (“Metromile”), by and through its undersigned counsel hereby requests that this Honorable Court grant it declaratory relief as follows:

INTRODUCTION AND JURISDICTION

1. This is an action seeking a declaratory judgment pursuant to 28 U.S.C. § 2201 *et seq.* to determine whether Metromile is obligated to defend and/or indemnify Abraham Feliz-Polanco aka Abraham Feliz against an underlying claim arising out of motor vehicle accident on January 13, 2019 in Oyster Bay, New York.
2. In this action Metromile seeks a declaration that the claims asserted against its insured arising out of the subject motor vehicle accident are not covered claims and therefore there is no duty to defend its insured for those claims.
3. Metromile is a corporation incorporated under the laws of the State of Delaware, with a principal place of business located at 690 Folsom Street, Suite 200, San Francisco, California, 94107.
4. Abraham Feliz-Polanco aka Abraham Feliz is a resident and citizen of the State of New Jersey.

5. The amount in controversy exceeds \$75,000.00 in that the underlying motor vehicle accident involved a 2017 Lamborghini Huracan Spyder (“Lamborghini”) with a value in excess of \$100,000.00 in its undamaged condition and with more than \$100,000.00 in alleged damages as a result of the motor vehicle accident. Thus, this court has jurisdiction pursuant to 28 U.S.C. § 1332(a).

THE UNDERLYING CLAIM

6. On January 12, 2019, Abraham Feliz-Polanco aka Abraham Feliz rented a 2017 Lamborghini, bearing a New Jersey registration, from Cloud 9 Exotics.

7. On January 13, the Lamborghini, while allegedly being operated by Abraham Feliz-Polanco aka Abraham Feliz, was involved in a single vehicle accident in Oyster Bay, New York.

8. It is specifically alleged that the vehicle collided into a tree.

9. At the time of the accident, Abraham Feliz was insured by Metromile pursuant to Metromile’s New Jersey Standard Auto Policy.

10. Upon information and belief, at the time of the accident Cloud 9 Exotics insured the Lamborghini with Prime Insurance Company.

11. Metromile received a demand from Prime to pay for the property damage to the Lamborghini on behalf of its insured Abraham Feliz.

THE METROMILE POLICY

12. METROMILE issued a New Jersey Standard Auto Policy to named insured Abraham Feliz of 1011 Columbia Avenue, North Bergen, New Jersey for a Chevrolet Camaro with an effective date of December 16, 2018 and an expiration date of June 16, 2019 and bearing the policy number 03-065768-01-04 (hereinafter “the policy”). A true and correct copy of the policy is attached as Exhibit “A”.

13. The policy contains the following insuring agreement in **PART I – LIABILITY TO OTHERS:**

If **you** pay the premium for this coverage, **we** will pay damages for ... **property damage** for which an **insured person** becomes legally responsible because of an accident.

14. There is also an Out-of-State Coverage extension in the Part I-Liability Coverage section of the Metromile policy, which states:

[Emphasis added].

OUT-OF-STATE COVERAGE

If an accident to which this Part I applies occurs in any state, territory or possession of the United States of America or any province or territory of Canada, other than the one in which a covered auto is principally garaged, and that state, province, territory or possession has:

...

- 2. a compulsory insurance or similar law requiring a *non-resident* to maintain insurance whenever the non-resident uses an auto in that state, province, territory or possession, this policy will provide the greater of:
 - a. the required minimum amounts and types of coverage or
 - b. the limits of liability under this policy. [Emphasis added].

15. The liability portion of the Metromile policy also contains a section on exclusions which states in part:

Coverage under this Part I, including **our** duty to defend, will not apply to any **insured person** for:

* * *

- 2. any liability assumed under any contract or agreement by **you**, a **relative**, or a **rated resident**;

* * *

- 9. **property damage** to any property:

* * *

b. rented to, used by, or in the charge of that **insured person**, other than a residence or a private garage not owned by that **insured person**.

16. The policy also contains the following insuring agreement in **PART IV – DAMAGES TO A VEHICLE:**

INSURING AGREEMENT-COLLISION COVERAGE

If **you** pay the premium for this coverage, **we** will pay for sudden, direct and accidental loss to a:

1. **covered auto**, including an attached **trailer**; or
2. **non-owned auto**;

And its **custom parts or equipment**, resulting from **collision**.

17. Part IV of the policy also provides:

INSURING AGREEMENT-COMPREHENSIVE COVERAGE

If **you** pay the premium for this coverage, **we** will pay for sudden, direct and accidental loss to a:

1. **covered auto**, including an attached **trailer**; or
2. **non-owned auto**;

And its **custom parts or equipment**, that is not caused by **collision**....

18. According to the NEW JERSEY AUTO STANDARD POLICY COVERAGE SELECTION FORM, Feliz elected not to purchase Collision Coverage.

COUNT I

**DECLARATORY JUDGMENT
“Liability to Others” Coverage**

19. Metromile incorporates by reference paragraphs 1 through 21 of this complaint as if fully set forth here at length.

20. The “Liability to Others” coverage is found in Part I of the policy.

21. According to the applicable policy language, this coverage is only triggered if an accident occurs in a state that has a compulsory insurance requirement or law requiring a non-resident “to maintain insurance whenever the non-resident uses an auto in that state.”

22. There is no New York statute requiring an out of state resident to provide insurance for a car he does not own while operated in New York.

23. There is also an exclusion stating that coverage is not provided for liability for damage caused to the vehicle that is “rented to, used by, or in the charge of that **insured person...**”.

24. Metromile therefore seeks a declaration that there is no coverage for damage to the Lamborghini under Part I of the policy and therefore Metromile has no duty to defend or indemnify its insured under Part I in connection with the subject motor vehicle accident.

COUNT II

DECLARATORY JUDGMENT New York’s Deemer Statute

25. Metromile incorporates by reference paragraphs 1 through 27 of this complaint as if fully set forth here at length.

26. New York has a “deemer” statute (New York Consolidated Laws, Insurance Law – ISC §5107, Coverage for Non-resident Motorists) which in general terms requires an out-of-state insurer to provide its insureds with certain required coverages when the insured vehicle is operated in New York.

27. The deemer statute is limited by its terms to regulating insurers that are authorized to or which transact business in New York

28. Metromile is authorized to transact business in New York, although it does not and has not transacted business in New York.

29. The deemer statute applies because Metromile is authorized to transact business in New York.

30. The applicable regulation to the deemer statute with respect to the required coverages is Part 60 - Minimum Provisions for Automobile Liability Insurance Policies and Supplementary Uninsured Motorists Insurance - Subpart 60-1. Minimum Provisions for Automobile Liability Insurance Policies - Section 60-1.1. Mandatory provisions.

31. The relevant parts of this regulation state:

An "owner's policy of liability insurance", as defined in section 311 of the Vehicle and Traffic Law, shall contain in substance the following minimum provisions or provisions which are equally or more favorable to the insured and judgment creditors, so far as such provisions relate to judgment creditors:

- (a) Insurance against loss from the liability imposed by law upon the insured for damages, including damages for care and loss of services, because of bodily injury, sickness, disease or death sustained by any person and because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, use or operation of a specific motor vehicle or motor vehicles within the State of New York, or elsewhere in the United States, in North America or Canada, subject to limits, exclusive of interest and costs, with respect to each such motor vehicle of \$25,000 because of bodily injury, sickness or disease of any one person who does not die as a result of any one accident and \$50,000 because of bodily injury, sickness or disease of any one person who dies as the result of any one accident; and, subject to said limits for any one person, to limits of \$50,000 because of bodily injury, sickness or disease of two or more persons who do not die as the result of any one accident and \$100,000 because of bodily injury, sickness or disease of two or more persons who die as the result of any one accident; and to a total limit of \$10,000 because of injury to or destruction of property of one or more persons or organizations as the result of any one accident; provided that a motor vehicle and a trailer or trailers attached thereto shall be held to be one motor vehicle as respects such limits of liability.
- (b) With respect to such insurance as is afforded, the insurer, subject to the policy terms shall: defend any suit, with the right to make such investigation, negotiation and settlement as it deems expedient; pay all premiums on attachment bonds and appeal bonds; pay all expenses incurred by the company, all costs taxed against the insured in any such suit, and all interest accruing after entry of judgment until the insurer has paid or tendered or deposited in court such part of such judgment as does not exceed

the applicable policy limits; pay expenses incurred by the insured for first aid to others at the time of accident; and reimburse the insured for reasonable expenses other than loss of earnings, incurred at the company's request. The amounts so incurred under this subdivision, except settlement of claims and suits, shall be payable by the company in addition to the applicable policy limits

* * *

(d)(1) A provision that, if the named insured is an individual or husband or wife and the policy affords insurance with respect to a private passenger automobile owned by either, **such policy shall afford bodily injury and property damage liability insurance for:**

* * *

(iii) **the incidental use** in other than a business or occupation of such insured or his spouse **of automobiles not owned by such named insured** or a member of his household, nor furnished or available for their regular use, provided the actual operation or other actual use thereof is with the permission of the owner and is within the scope of such permission. [Emphasis added].

32. Subparagraph (d)(1)(iii) requires Metromile to afford the minimum mandatory \$10,000.00 coverage for property damage.

33. Metromile therefore seeks a declaration that its obligation to indemnify its insured for the subject motor vehicle accident is \$10,000.00.

COUNT III

DECLARATORY JUDGMENT “Damages to a Vehicle” Coverage

34. Metromile incorporates by reference paragraphs 1 through 36 of this complaint as if fully set forth here at length.

35. Part IV of the policy contains the coverage provisions and exclusions for property damage to a vehicle operated by an insured.

36. Mr. Feliz, however, did not elect to purchase Collision Coverage.

37. Collision Coverage is not mandatory in New Jersey. See <https://www.state.nj.us/mvc/vehicles/insurancerequirements.htm>.

38. As a result, Mr. Feliz is not entitled to coverage under the Collision Coverage language in the policy.

39. Mr. Feliz is likewise not entitled to coverage under the Comprehensive Coverage.

40. Although he purchased this coverage as part of the policy, as he was operating a “non-owned” auto at the time of the accident, coverage is only triggered in the absence of a “collision”. On the date of loss the Comprehensive Coverage was suspended because Mr. Feliz did not have his auto inspected pursuant to New Jersey’s auto insurance inspection law.

41. “Collision” is defined in the policy as “the upset of a vehicle or its impact with another vehicle or object.”

42. The allegation here is that Mr. Feliz lost control while driving, striking a tree.

43. These allegations, if proven, support that Mr. Feliz was involved in a collision as that term is defined in the policy.

44. Metromile therefore seeks a declaration that there is no coverage for damage to the Lamborghini under Part IV of the policy and therefore Metromile has no duty to defend or indemnify its insured under Part IV in connection with the subject motor vehicle accident.

WHEREFORE, Metromile Insurance Company respectfully requests that this court enter declaratory judgments in its favor as set forth in each count of the complaint and, on the basis of the averments set forth in Counts I and II of the complaint, to enter an order declaring that Metromile has no duty to defend or indemnify its insured and, on the basis of the averments set forth in Count III of the complaint, to enter an order declaring that Metromile’s obligation to indemnify its insured for the subject motor vehicle accident is \$10,000.00.

COUNT IV

DECLARATORY JUDGMENT

Lack of Cooperation

45. Metromile incorporates by reference paragraphs 1 through 44 of this complaint as if fully set forth here at length.

46. Part VI of the policy sets forth duties in case of an accident or loss.

47. It states that a person seeking coverage must cooperate with Metromile in any matter concerning a claim or lawsuit.

48. Metromile has attempted to contact Mr. Feliz via written correspondence and has requested that he contact Metromile.

49. Mr. Feliz has not responded to any of Metromile's correspondence.

50. Part VII of the policy sets forth a duty to promptly report all changes to the policy, including any changes to the insured's mailing or residential address, no later than 30 days after the changes occur.

51. Mr. Feliz has not reported a new mailing or residential address to Metromile.

52. Mr. Feliz's breach of his duty to cooperate with Metromile is substantial and has caused Metromile prejudice.

53. Metromile therefore seeks a declaration that there is no coverage for damage to the Lamborghini because Mr. Feliz has failed to cooperate concerning the claim and, to the extent Mr. Feliz has changed his mailing or residential address, he has failed to report such changes to Metromile so it may contact him with respect to the claim.

WHEREFORE, Metromile Insurance Company respectfully requests that this court enter declaratory judgments in its favor as set forth in each count of the complaint and, on the basis of the averments set forth in Counts I through III of the complaint, to enter an order declaring that

Metromile has no duty to defend or indemnify its insured and, on the basis of the averments set forth in Count IV of the complaint, to enter an order declaring that Metromile's obligation to indemnify its insured for the subject motor vehicle accident is \$10,000.00.

BENNETT, BRICKLIN & SALTZBURG LLC

BY: /s Michael Dolich
MICHAEL DOLICH
IDENTIFICATION NO. 011771993
6000 SAGEMORE DRIVE, SUITE 6103
MARLTON, NJ 08053
(856) 673-3462
(856) 751-5281 (Facsimile)
dolich@bbs-law.com
Attorney for Plaintiff
Metromile Insurance Company

Date: 9/6/19