

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK, by
ELIOT SPITZER, Attorney General of the
State of New York,

VERIFIED PETITION

Petitioner,

Index No.

-against-

ELRAC, INC., SNORAC, INC. and
ENTERPRISE RENT-A-CAR COMPANY, INC.,

Respondents.

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The People of the State of New York, by their attorney, Eliot Spitzer, Attorney General of the State of New York, respectfully allege upon information and belief:

INTRODUCTION

1. Respondents ELRAC, Inc., SNORAC, Inc. and Enterprise Rent-A-Car Company, Inc. (collectively "Enterprise") operate one of the largest automobile rental businesses in New York State and throughout the United States under the name Enterprise Rent-A-Car.

2. In this petition, the People complain of Enterprise's unlawful practice, formalized in its rental contracts, of requiring its renters to pay and defend claims brought by third parties for personal injury and property damage allegedly suffered as a result of the negligent operation of its rented vehicles. Although Enterprise is obligated by statute to provide minimum liability protection and defend its renters against such claims, it refuses to do so. Moreover, by leaving its renters without coverage, Enterprise forces its renters to **purchase from it** the coverage that it should have provided in the first instance.

3. As set forth below, Enterprise's practice violates the New York Vehicle and Traffic Law, Article 22-A of the General Business Law (§§349 and 350-d), Executive Law §63 (12), and the common law anti-subrogation rule, as well as the public policies of this state.

4. Petitioners bring this special proceeding to enjoin respondents' deceptive, fraudulent and illegal practices. Petitioners also seek restitution and damages for individuals who were victimized by respondents' practices, and civil penalties and costs, as authorized by statute, to be paid to the State of New York.

PARTIES AND JURISDICTION

5. Petitioners are the People of the State of New York by their attorney, Eliot Spitzer, Attorney General of the State of New York. Petitioners bring this special proceeding pursuant to (a) Executive Law §63(12), which empowers petitioners to seek injunctive relief, restitution, damages, and costs against any person or business that engages in persistent fraud or illegality in the conduct of business, and (b) General Business Law ("GBL") Article 22-A, §§349 and 350-d, which empower the Attorney General to seek injunctive relief, restitution, civil penalties and costs against any person or business that engages in deceptive acts and practices in the conduct of business.

6. Respondents ELRAC, Inc. and SNORAC, Inc. are Delaware corporations. Respondent Enterprise Rent-A-Car Company, Inc. is a Missouri corporation. ELRAC, Inc. has its principal office at 155 Polifly Road, Hackensack, New Jersey. SNORAC, Inc. has its principal office at 1320 Brooks Avenue, Rochester, New York. Enterprise Rent-A-Car Company has its principal offices at 600 Corporate Drive, St. Louis, Missouri 63105. Respondents are the largest automobile rental company in the United States with more than 500,000 cars in their fleet and more than 3,700 rental locations. Respondents have more than 15,000 automobiles registered in New York and more than one hundred rental locations in the state.

7. Petitioners sent respondents a pre-litigation notice pursuant to GBL §§349(c) and 350-c. A copy of the prelitigation notice is attached hereto as Exhibit A.

STATUTORY SCHEME

8. New York Vehicle and Traffic Law §388 provides that the owner of a motor vehicle is liable and responsible for death or injuries to persons or property resulting from the negligence of the operators of the vehicle.

9. Vehicle and Traffic Law §370 requires that all owners of vehicles must either purchase the minimum levels of bodily injury and property damage liability insurance as set forth in the statute (currently \$25,000 per person/\$50,000 per accident if there is no loss of life, \$50,000 per person/\$100,000 per accident if there is, plus \$10,000 for property damage), or obtain from the commissioner of motor vehicles a certificate of self-insurance upon satisfying the commissioner that it is financially able to respond to any judgments obtained against it pursuant to §388.

10. This statutory scheme is designed to increase the owner's responsibility for the operation of its vehicle, and to ensure that injured third parties will be compensated for their losses by a financially responsible individual or entity.

11. The New York State Court of Appeals, the Appellate Division, 4th Department, several New York State trial courts, along with the United States District Court for the Southern District of New York, all have determined that an owner of a rental vehicle cannot shift its vicarious liability under §§370 and 388 to the renter of the vehicle, nor can it avoid its obligation to defend the driver or secure indemnification from the driver of the vehicle for liability stemming from the driver's negligence up to the statutory minimum.

FACTS

12. Respondent Enterprise rents thousands of automobiles out of its rental locations in

New York every day. When it does, it uses contracts which include the following language:

6. BODILY INJURY AND PROPERTY DAMAGE

RESPONSIBILITY: Enterprise provides no BODILY INJURY or PROPERTY DAMAGE LIABILITY INSURANCE or coverage to renter or any other operator or user for bodily injury or property damage to renter, operator, user, passengers or any third party. Renter's insurance applies. Renter represents and warrants that they have and will maintain in force during the term of this rental agreement, BODILY INJURY and PROPERTY DAMAGE LIABILITY INSURANCE for renter, other operators, users, passengers and third parties equal to the financial responsibility limits required by the applicable Motor Vehicle Financial Responsibility Laws of the state where the vehicle is operated or used. **Renter agrees to defend, indemnify, and hold enterprise harmless from any claims, liabilities, costs, and expenses arising from renter's use, operation or possession of the rented vehicle....**

(Emphasis in the original.) See Copy of rental contract attached as Exhibit 2 to the affirmation of Melvin L. Goldberg, dated May 5, 2000 ("Goldberg affirmation").

13. When consumers who rent from Enterprise get into accidents with its automobiles, Enterprise vigorously enforces the terms of its contracts by steadfastly refusing to provide any defense or any liability coverage if the renter is sued by a third party. In addition, if Enterprise is also sued, it seeks indemnification from the renter, in accordance with the terms of its contracts.

14. Enterprise's contractual provisions violate Vehicle and Traffic Law §§370 and 388, as well as the common law anti-subrogation rule, and are unconscionable.

15. Although in provision after provision of its rental contracts Enterprise disclaims the minimum protection that it is required to afford to its renters, it repeatedly swears to the contrary in its annual applications to the commissioner of motor vehicles for a certificate of self-insurance. See Copies of the Enterprise Certificate of Self Insurance, attached as Exhibit 1 to the Goldberg affirmation. The application for a Certificate of Self-Insurance contains a declaration that the applicant's self-insurance "will provide **primary** coverage at all times;" (emphasis in the original). Enterprise's corporate officials sign the sworn annual application each year before a notary, submit it to the New York Department of Motor Vehicles and receive the Certificate of Self-Insurance.

16. Following its unlawful attempts to shift its vicarious liability under §388 back to its renters, Enterprise deceptively offers its renters for a fee the "basic" liability protection that it is statutorily mandated to provide them, calling such coverage "supplemental liability protection." By this unlawful attempt to shift its liability, Enterprise is able to convince renters at its sales counters that because Enterprise provides no insurance whatsoever, renters would be smart to purchase supplemental liability insurance, currently costing \$6.95 per day. Under the circumstances, Enterprise's sales of supplemental insurance in this manner are fraudulent and deceptive, and its contract provisions governing the sale of such supplemental insurance are unconscionable.

**FIRST CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW §63(12) --
VIOLATION OF VEHICLE AND TRAFFIC LAW §§370 and 388**

17. Vehicle and Traffic Law §388 requires owners of motor vehicles in the State of New York to provide insurance coverage for the negligent acts of the operators of those vehicles, up to the statutorily mandated minimum established in Vehicle and Traffic Law §370.

18. By reason of the acts and practices alleged in this petition, respondents repeatedly and persistently violate Vehicle and Traffic Law §§370 and 388.

19. As a consequence, respondents are engaging in repeated and persistent illegality in violation of Executive Law §63(12).

**SECOND CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW §63(12) --
VIOLATION OF GENERAL BUSINESS LAW §349
DECEPTIVE BUSINESS PRACTICES**

20. GBL Article 22-A, §349 declares unlawful any deceptive acts or practices in the conduct of any business, trade or commerce in the state.

21. By reason of the acts and practices alleged in this petition, respondents repeatedly and persistently engage in deceptive business practices in violation of GBL §349.

22. As a consequence, respondents are engaging in repeated and persistent illegality in violation of Executive Law §63(12).

**THIRD CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW §63(12) --
VIOLATION OF THE COMMON LAW ANTI-SUBROGATION RULE**

23. Under the common law of this state, an insurer is prohibited from asserting subrogation claims against its own insureds.

24. Pursuant to Vehicle and Traffic Law §§370 and 388, respondents, which have obtained Certificates of Self-Insurance from the Department of Motor Vehicles, are obligated to provide the same minimum liability insurance coverage for their renters as if respondents had instead purchased minimum liability insurance from a New York licensed insurance company. As such, respondents are insurers of their renters' liability up to the statutorily mandated minimums set forth in §370.

25. By reason of the acts and practices alleged in this petition, respondents repeatedly and persistently violate the common law of the State of New York by asserting subrogation claims against their insureds, and are engaging in repeated and persistent illegality in violation of Executive Law §63(12).

**FOURTH CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW §63(12) --**

FRAUD

26. By reason of the acts and practices and unconscionable contract provisions alleged in this petition, respondents are engaging in repeated and persistent fraud and illegality in violation of Executive Law §63(12).

WHEREFORE, petitioners request the Court grant relief pursuant to Executive Law §63(12) and GBL Article 22-A by issuing an order and judgment as follows:

1. Permanently enjoining respondents and any other entity through which they may act, from engaging in the fraudulent, deceptive and illegal practices alleged herein, including but not limited to enjoining respondents from enforcing their unlawful contract provisions;

2. Directing respondents to make full monetary restitution and pay damages to aggrieved consumers, known and unknown;

3. Directing that a money judgment be entered against respondents in the sum of five hundred dollars (\$500.00) in penalties for each violation of GBL §349 pursuant to GBL §350-d;

4. Awarding petitioners the costs of this proceeding, including additional costs in the amount of \$2,000.00 against each respondent pursuant to CPLR §8303(a)(6); and.

5. Granting petitioners such other and further relief as this Court deems just and proper.

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of New York
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By: _____
Melvin L. Goldberg, Esq.

BUREAU OF CONSUMER

FRAUDS AND PROTECTION

THOMAS G. CONWAY
Assistant Attorney General in Charge

JOY FEIGENBAUM
MELVIN L. GOLDBERG
Assistant Attorneys General
Of Counsel

V E R I F I C A T I O N

State of New York)

ss.:

County of New York)

MELVIN L. GOLDBERG, being duly sworn, deposes and says:

I am an Assistant Attorney General in the office of Eliot Spitzer, Attorney General of the State of New York, and am duly authorized to make this verification.

I have read the foregoing petition and know the contents thereof, which is to my knowledge true, except as to matters stated to be alleged on information and belief, and as to those matters I believe them to be true. The grounds of my beliefs as to all matters stated upon information and belief are investigatory materials contained in the files of the Bureau of Consumer Frauds and Protection.

The reason this verification is not made by petitioners is that petitioners are a body politic and the Attorney General is their duly authorized representative.

Melvin L. Goldberg

Sworn to before me this
____ day of May, 2000

Assistant Attorney General