

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

EURIPIDES PANTS

PLAINTIFF

V.

NO. CV 2008-5432

LAST CHANCE AUTOMOBILE  
INSURANCE COMPANY

DEFENDANT

**MEMORANDUM OPINION  
ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

Before the Court are cross-Motions for Summary Judgment. Both Plaintiff Euripedes Pants and Defendant Last Chance Automobile Insurance, have filed Motions for Summary Judgment. The motions have been fully briefed.

This case presents questions of insurance law, to be resolved by application of Arkansas law. After considering the entire summary judgment record, the Court grants Last Chance's motion.

On June 6, 2007, at approximately 6:30 in the evening, Peter Borracho borrowed a 1974 Ford Pinto from his cousin, Michaelangelo Sobrio. Sobrio warned Borracho to be careful with the car, not to speed, drive carelessly, or to violate any traffic laws. Borracho promised to behave, but according to witnesses, within half an hour, he was already intoxicated. At approximately 8:00 p.m. Borracho drove into the rear of a vehicle driven by Plaintiff Euripedes Pants. The accident occurred while Pants was waiting at a red light. Borracho was legally intoxicated at the time of the accident, and his blood alcohol level was .18%. Borracho was later charged with driving while intoxicated and failure to yield to the forward vehicle.

Pants sued Borracho in state court and received a judgment in the amount of \$79,538.00. Borracho failed to pay. Borracho then brought this action against Last Chance. Last Chance, an Indiana Corporation, removed this case to the United States District Court.

Last Chance was the insurer of the motor vehicle Borracho was driving at the time of the accident. The limits of liability were \$100,000 per person, \$300,000 per accident. The insurance policy contained an omnibus clause, as required by Arkansas law. The omnibus clause provided that any person operating the motor vehicle with the permission of the named insured was also an insured driver under the policy. Last Chance denied coverage on the ground that Borracho was no longer a permissive user at the time of the accident. The scope of the permission given by Sobrio was limited.

The Court finds that: (1) no facts are disputed; (2) Borracho's initial use of the car was permissive; (3) Borracho's driving the car while he was intoxicated was outside the scope of the initial permission; and (4) pursuant to the scope of the permission granted, Borracho's permission to use the motor vehicle was withdrawn when he knowingly operated the motor vehicle in violation of the law, contrary to the express instructions of the owner.

For this reason, the Court grants summary judgment to the insurer.

/s/  
Elmer T. Gantry  
United States District Judge