

CONFORMED COPY

STATE OF VERMONT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 303-5-10 Wrcv

Ryan Rediker
Plaintiff

v.

Toyota Motor Sales, U.S.A, Inc. et al.
Defendant

DECISION ON MOTIONS TO DISMISS AND TO AMEND COMPLAINT

Plaintiff has attempted to bring a claim against Acadia Insurance Company (named in the complaint as Acadia Insurance Group, LLC). The basis of the complaint is that Acadia allegedly insures an entity, Drake Builder, Inc., which Plaintiff contends was responsible for damages he sustained in an auto accident.

Leaving aside any controversy over the correct Acadia entity responsible for issuing insurance policies, the complaint fails to state a claim against any of them. In Vermont there is no direct action statute. That is, an insurer may not be directly sued by a party who claims he was injured at the hands of the insurance policy holder. Moreover, to the extent Plaintiff's complaint attempts to assert an action for failure of the insurer to authorize repairs to Plaintiff's vehicle, those claims sound in bad faith, which does not exist on a third-party basis in Vermont. *Meyers v. Ambassador Insurance Co.* 146 Vt. 552 (1986). Plaintiff is a stranger to the contract of insurance which exists or may exist between Acadia and its insured. As a result the claims against Acadia are **DISMISSED**.

Plaintiff has attempted to amend his complaint by adding a claim against Drake Builders, Inc. In Vermont, amendments to complaints are liberally granted. V.R.C.P. 15. However, an amendment should not be allowed if it is futile. In determining whether to allow a party to amend its complaint, the trial court considers a number of factors, including any undue delay in bringing the motion, prejudice to the party opposing, and whether under the circumstances such an amendment would be futile. *Colby v. Umbrella, Inc.* 184 Vt. 1 (2008).

In this instance, the proposed amendment does not state a cause of action against Drake Builders, Inc. The proposed amendment merely asserts Drake was the owner of a vehicle involved in a collision with Plaintiff's vehicle and that Drake was insured by Acadia. This does not state a claim. Accordingly, the proposed amendment is **DENIED**. Plaintiff may seek to

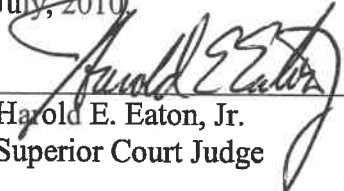
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amend his complaint to add parties or claims, but such amendments must state a cause of action to be granted.

Dated at Woodstock this 20th day of July, 2010.



Harold E. Eaton, Jr.
Superior Court Judge

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