

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

ROBERT PATTON,

Plaintiff,

v.

**TWIN CITY FIRE INSURANCE CO.,
et al.,**

Defendants.

No. 11-0564-DRH

MEMORANDUM and ORDER

HERNDON, Chief Judge:

I. Introduction

Now before the Court is defendant Hartford Financial Services Group, Inc.'s motion to dismiss (Doc. 19). Defendant argues that plaintiff does not have a cause of action against it as it did not issue any policy to plaintiff under which he could recover. Plaintiff opposes the motion arguing that his cause of action against defendant is based on agency. Based on the following, the Court denies the motion to dismiss.

On May 25, 2011, plaintiff Robert Patton filed suit against Twin City Fire Insurance Co., Hartford Financial Services Group, Inc., GEICO General Insurance Co., GEICO Indemnity Co., and GEICO Casualty Co. ("the GEICO defendants") in the Madison County, Illinois Circuit Court (Doc. 4-2). Patton's complaint contains claims

based on breach of contract: third party beneficiary; vexatious refusal; agency, breach of contract and breach of duty of good faith and fair dealing. Plaintiff's complaint seeks underinsured motorist benefits under several insurance policies issued by defendants. On July 1, 2011, the GEICO defendants removed this case to this Court based on diversity jurisdiction, 28 U.S.C. § 1332 (Doc. 4).

II. Analysis

Defendant maintains that it did not issue any policy under which plaintiff is seeking recovery and, thus, plaintiff does not have a cause of action against it. Plaintiff responds that his complaint states a cause of action based on agency because he alleges that Hartford engaged in the improper claims handling practices on behalf of Twin City Fire Insurance Company while acting as principal to its agent and did so with Twin City Fire Insurance Company's express permission. The Court agrees with plaintiff. Under Missouri law, which the parties agree applies, plaintiff has stated a cause of action against Hartford based on agency. *See Bach v. Winfield-Foley Fire Prot. Dist.*, 257 S.w.3d 605, 611 (Mo. 2008).

III. Conclusion

Accordingly, the Court **DENIES** the motion to dismiss (Doc. 19).

IT IS SO ORDERED.

Signed this 5th day of August, 2011.

 David R. Herndon
2011.08.05 06:40:25
-05'00'

**Chief Judge
United States District Court**