JEFFERY J. ROBINSON, MARVIN DABNEY AND MARTIN AVILLA	*	**NO. 2014-CA-1027**
	*	**COURT OF APPEAL**
VERSUS	*	**FOURTH CIRCUIT**
COLON MOISES, EVENS BADIAU TRUCKING INC., PROTECTIVE INSURANCE COMPANY, FEDEX CUSTOM CRITICAL, INC., AND U-HAUL CO. OF LOUISIANA	*	**STATE OF LOUISIANA**
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LOVE, J., CONCURS IN PART AND DISSENTS IN PART AND ASSIGNS REASONS

I concur with the results reached by the majority except the finding that the Plaintiffs did not state a cause of action. I respectfully dissent from the majority's conclusion that the Plaintiffs failed to initially state a cause of action, but would also allow the opportunity to amend pursuant to La. C.C.P. art. 934.

The Plaintiffs filed suit against U-Haul in its alleged capacity as Mr. Robinson's "vehicle liability insurer under a written rental contract." Therefore, if FedEx's insurance does not cover all of the Plaintiffs' damages for some reason, as determined by the factfinder after a trial on the merits, then the uninsured/underinsured coverage allegedly purchased from U-Haul[1] by Mr. Robinson, could indeed be utilized. Further, the trial court sustained U-Haul's exception of no cause of action partially because no claim was asserted "to date" to hold U-Haul liable for contractual liability. I find that the Plaintiffs' original Petition for Damages stated a cause of action against U-Haul.

"When the grounds of the objection pleaded by the peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception shall order such amendment within the delay allowed by the court." La. C.C.P. art. 934. "The decision to allow amendment is within the trial court's

[1] U-Haul contends that it is self-insured.

discretion." *Insulation*, 13-0194, p. 9, 122 So. 3d at 1152. "The right to amend is not absolute", as "[a]mendment is not permitted when it would constitute a vain and useless act." *Smith v. State Farm Ins. Cos.*, 03-1580, p. 6 (La. App. 4 Cir. 3/3/04), 869 So. 2d 909, 913. While I find that the Plaintiffs' original Petition for Damages stated a cause of action against U-Haul as Mr. Robinson's alleged insurer, the infancy of the litigation supports the conclusion that additional claims, such as negligence on the part of Mr. Robinson, could be pled with an amendment and would not "constitute a vain and useless act." Therefore, I find that the trial court erroneously granted U-Haul's exception of no cause of action and abused its discretion in not ordering an amendment. *See* La. C.C.P. art. 934.