

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANK AND PAMELA MULLER
Individually, and as husband and wife

v.

FRANK REIS III

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NO. 02-1006

O'NEILL, J.

JULY 30, 2002

MEMORANDUM

Plaintiffs move under Fed. R. of Civ. P. 15 to amend their complaint to name State Farm Mutual Automobile Insurance Company, the plaintiffs' insurer, as a defendant.

Plaintiffs allege that on September 22, 2000, at approximately 2:30 A.M., plaintiff Frank Muller was a pedestrian in the parking lot of the Inn at Plymouth Meeting, located in Montgomery County, Pennsylvania and that defendant, highly intoxicated, was operating his motor vehicle in the lot. Plaintiff alleges that defendant negligently struck and ran over plaintiff Frank Muller with his vehicle.

In their proposed amended complaint, plaintiffs allege that the insurance policy issued to them by State Farm provides under insured motorist coverage. Plaintiffs allege that State Farm has breached its contractual obligation to plaintiffs by "negligently, intentionally, wantonly, and/or without regard for the health and well-being of plaintiff Frank Muller, refusing to provide the required under insured motorist protection available," (Pl.'s Amended Compl. ¶ 19).

Plaintiffs' motion does not include a copy of the policy.

Plaintiffs have invoked the wrong rule. Rule 15 is not applicable. Plaintiffs seeking to join a party to an action should proceed under Rule 20(a), which governs the permissive joinder of parties. Accordingly, plaintiffs' motion will be denied.

Plaintiffs may file a Rule 20(a) motion, but must attach a copy of the insurance policy. I suspect that the policy provides for compulsory arbitration in the event of disagreement as to the amount to be paid by State Farm. If there is an arbitration clause, plaintiffs will be required to exhaust the arbitration remedy before bringing suit against State Farm. See Miller v. Allstate Insurance Company, 238 F.Supp. 565, 568 (W.D. Pa 1965)(“to permit a lawsuit rather than arbitration under the circumstances is to affirm a frivolous sidestepping of the plain terms of the policy.”)

An appropriate Order follows.

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ORDER

AND NOW, this 30th day of July, 2002, plaintiffs' motion to amend is DENIED.

THOMAS N. O'NEILL, JR., J.