2011 IL App (1st) 102916-U

SECOND DIVISION
NOVEMBER 8, 2011

1-10-2916

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

S. ARNE CARLSSON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 09 M1 122157
	)	
AMERICAN FAMILY INSURANCE COMPANY,	)	Honorable
	)	James E. Snyder,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Quinn and Justice Harris concurred in the judgment.

ORDER

¶1 *Held*: The circuit court properly dismissed the plaintiff's first amended complaint with prejudice where the plaintiff, as a third-party claimant to a liability insurer, lacked standing to pursue a direct cause of action against the liability insurer.

¶2 This appeal arises from the June 15, 2010 and September 2, 2010 orders entered by the circuit court of Cook County, which dismissed, with prejudice, all counts of a complaint and a first amended complaint filed by the plaintiff, S. Arne Carlsson (Carlsson), against the defendant, American Family Insurance Company (American Family). On appeal, Carlsson argues that: (1) he has standing to maintain a lawsuit against American Family for its negligent and intentional

misconduct in handling his claim against American Family's insured; and (2) the allegations contained in the complaint and first amended complaint were adequately pled to survive American Family's motions to dismiss the cause of action. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶3 BACKGROUND

¶4 On January 7, 2008, a vehicle driven by William Finkel (Finkel) allegedly collided with Carlsson's car in Lake County, Illinois. At the time of the accident, Finkel was insured by American Family under an automobile insurance policy (the policy). Carlsson, however, was not an insured of American Family.

¶5 On September 25, 2009, Carlsson, through legal counsel, wrote a demand letter to a representative of American Family, requesting that American Family pay Carlsson $15,887.50 for the decreased value of his car as a result of his accident with Finkel (the settlement claim). Between September 2009 and December 2009, legal counsel for Carlsson engaged in several written correspondences with a representative of American Family. In a letter dated December 21, 2009, American Family denied Carlsson's claim for a cash settlement, stating that "[o]n the advice of our counsel, American Family will not be making an offer for diminished value. It is our position that as [Carlsson's] vehicle was repossessed, a diminished value claim on his part is negated."

¶6 On December 30, 2009, Carlsson filed a 4-count complaint against American Family in the circuit court of Cook County, seeking damages in excess of $30,000. Count I of the complaint alleged that American Family negligently denied his settlement claim for the diminished value of his vehicle by, *inter alia*, misrepresenting Illinois law as a basis to deny the claim, failing to engage

in good-faith attempts to settle the claim, and engaging in unreasonable delay in responding to Carlsson's claim. Count II alleged that American Family engaged in intentional misconduct in denying his settlement claim. Count III alleged that American Family's misconduct in denying his settlement claim entitled Carlsson to recovery under section 155 of the Illinois Insurance Code (215 ILCS 5/155 (West 2008)). Count IV alleged that American Family violated the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/2 (West 2008)) in denying his settlement claim. The complaint further asserted that, as a result of the misconduct committed by American Family, Carlsson "was required to file a case against [Finkel] to recover the decrease in fair market value of his vehicle."[1]

¶7 On April 14, 2010, American Family filed a motion to dismiss the complaint under sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2008)). On June 15, 2010, the circuit court dismissed counts I, III and IV of the complaint with prejudice, dismissed count II without prejudice, and granted Carlsson leave to file an amended complaint.

¶8 On July 9, 2010, Carlsson filed a "first amended complaint," which re-alleged counts I through IV of the original complaint, and added an additional count for intentional misconduct (count V). Subsequently, American Family filed a motion to dismiss the first amended complaint under sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2008)), asserting that Carlsson, as a third party, lacked standing to "[bring] an action against

[1]On January 4, 2010, Carlsson filed a separate personal injury lawsuit against Finkel in the circuit court of Lake County, alleging that Carlsson was injured and that his car was damaged as a result of Finkel's alleged negligent driving on January 7, 2008. This Lake County lawsuit is not before us in the instant appeal.

American Family arising out of the handling of his claim against American Family's insured," and that the allegations of count V were insufficiently pled.

¶9 On September 2, 2010, the circuit court granted American Family's motion to dismiss the first amended complaint, stating that its "previous rulings for counts I through IV stand," and that "[c]ount V is dismissed with prejudice on the bases of the allegations and *Scroggins v. Allstate Insurance Company*." See *Scroggins v. Allstate Insurance Company*, 74 Ill. App. 3d 1027, 393 N.E.2d 718 (1979).

¶10 On October 1, 2010, Carlsson filed a notice of appeal before this court.

¶11 ANALYSIS

¶12 We determine the following issues: (1) whether Carlsson has standing to maintain a direct cause of action against American Family for misconduct which allegedly arose out of the handling of his claim against Finkel; and (2) whether the allegations contained in the complaint and first amended complaint were sufficient to state a cause of action against American Family.

¶13 A motion to dismiss pursuant to section 2-615 of the Illinois Code of Civil Procedure "tests the legal sufficiency of a complaint, whereas a section 2-619 motion to dismiss admits the legal sufficiency of the complaint, but asserts an affirmative matter outside of the complaint which defeats the claim." *Rojas Concrete, Inc. v. Flood Testing Laboratories, Inc.*, 406 Ill. App. 3d 477, 479, 941 N.E.2d 940, 943 (2010). A dismissal under either section 2-615 or 2-619 of the Illinois Code of Civil Procedure is reviewed *de novo*. *Id.*

¶14 We first determine whether Carlsson has standing to maintain a direct cause of action against American Family for misconduct which allegedly arose out of the handling of his claim against

Finkel.

¶15 Carlsson argues that the circuit court improperly dismissed with prejudice his first amended complaint, in which he sought recovery under the legal theories of common law negligence and intentional misconduct, as well as statutory relief under section 155 of the Illinois Insurance Code (Code) and section 2 of the Consumer Fraud Act. Specifically, he contends that American Family owed him a "duty of reasonable care" in handling his claim, that the circuit court erroneously relied on *Scroggins* (74 Ill. App. 3d 1027, 393 N.E.2d 718) in dismissing his pleadings, and that the allegations in his pleadings were sufficient to state a cause of action against American Family.

¶16 American Family counters that Carlsson lacked standing to pursue a cause of action for any of its alleged misconduct arising from the handling of Carlsson's claim against its insured, Finkel, and thus, the circuit court properly granted its motions to dismiss Carlsson's complaint and first amended complaint.

¶17 In *Scroggins*, injured pedestrians sued the automobile driver and his father, both insureds, for negligence and willful and wanton conduct. *Scroggins*, 74 Ill. App. 3d at 1028-29, 393 N.E.2d at 719. In the complaint, the injured pedestrians also named the insurer, Allstate Insurance Company, as a defendant, asserting that the insurer intentionally breached its duty to negotiate in good faith with them as claimants against the insureds. *Id.* at 1029, 393 N.E.2d at 719. The injured pedestrians alleged damages by the insurer in the form of embarrassment, emotional and mental distress, and economic loss. *Id.* The circuit court, on the insurer's motion, dismissed the insurer from the lawsuit. *Id.* at 1028, 393 N.E.2d at 719. On appeal, the reviewing court affirmed the circuit court's dismissal of the insurer from the lawsuit, holding that the implied-in-law duty of good faith

and fair dealing is a duty owed only to the insured, such that an insured "may sue his insurer for damages resulting from the insurer's wrongful failure to settle a claim against him." *Id.* at 1030, 393 N.E.2d at 720. The *Scroggins* court noted that a third party injured by an insured may not bring a cause of action against the insured's liability insurer, unless the third-party claimant "has obtained an excess judgment against the insured [so as to] acquire and prosecute the insured's claim by virtue of an assignment." *Id.* Further, the *Scroggins* court held that, in the absence of statutory or contractual language sanctioning a direct action, "an injured third party has no action against the insurer for breach of the duty to exercise good faith or due care" by virtue of his standing as a judgment creditor of the insured or as a third-party beneficiary. *Id.* at 1031, 393 N.E.2d at 721.

¶18 We begin our analysis by noting that the entirety of Carlsson's arguments on appeal is premised on the presumption that a liability determination had been made against Finkel in favor of Carlsson in the Lake County lawsuit. We find nothing in the record or the allegations of the first amended complaint to indicate that the Lake County lawsuit had been resolved in favor of Carlsson or that an excess judgment against Finkel had been entered by the Lake County circuit court so as to allow Carlsson, by virtue of an assignment, to pursue the instant claim against American Family. See *McAnally v. Butzinger Builders*, 263 Ill. App. 3d 504, 510, 636 N.E.2d 19, 23 (1994) (Illinois public policy prohibits direct actions against insurers by injured parties prior to obtaining judgment against the insured). Rather, the only documentation pertaining to the Lake County negligence lawsuit in the record before us is a copy of the January 4, 2010 complaint filed by Carlsson against Finkel. It is the burden of Carlsson, as the appellant, to provide a complete record on appeal. See *United Automobile Insurance Co. v. Wilson*, 407 Ill. App. 3d 39, 44, 942 N.E.2d 717, 720 (2011).

Absent a complete record, " 'any doubts which may arise from the incompleteness of the record will be resolved against the appellant.' " *Id.*, quoting *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958, 959 (1984). Because no order of final judgment in the Lake County lawsuit appear to be part of the record, it remains speculative whether Carlsson is even entitled to the cash settlement for the alleged diminished value of his vehicle–the claim upon which the instant cause of action is based. Further, we note that the instant cause of action against American Family, filed on December 30, 2009, was initiated prior to Carlsson's January 4, 2010 complaint against Finkel in Lake County, and thus, prior to any liability determination had been made against Finkel. Although the July 9, 2010 first amended complaint in the instant case contained an assertion that Finkel "pleaded guilty in Traffic Court to failing to reduce his speed before the collision between his motor vehicle and [Carlsson's] motor vehicle," we find that this assertion, even accepting it as true, did not *per se* establish liability by Finkel where it is unclear what factual findings were established in the Lake County lawsuit against Finkel, including whether Carlsson was contributorily negligent, or whether another vehicle was involved in the collision. Moreover, Carlsson had not alleged any facts in his first amended complaint that would establish himself as an assignee or an insured of the policy at issue.

¶19 Because Carlsson is neither an assignee nor an insured of the policy at issue, his relationship to American Family is that of a third-party claimant. At best, he is a *potential* judgment creditor of the insured, Finkel. Thus, American Family owed no duty to Carlsson in the handling of his claim against Finkel, and Carlsson may not sue in his own right in a direct cause of action against American Family. See *Martin v. State Farm Mutual Automobile Insurance Co.*, 348 Ill. App. 3d

846, 850, 808 N.E.2d 47, 51 (2004) (the duty in the handling of claims is owed only to the insurance company's insured and does not extend to benefit an adversarial third-party claimant. "To extend that duty to third-party claimants would place the insurer in the untenable position of owing a duty of good faith to both the insured tortfeasor and his adversary"); *Cramer v. Insurance Exchange Agency*, 174 Ill. 2d 513, 524, 675 N.E.2d 897, 903 (implied duty of good faith and fair dealing "is not generally recognized as an independent source of duties giving rise to a cause of action in tort").

¶20 Nevertheless, despite the well-settled principle of law that an insurer owes no duty to a third-party claimant, Carlsson maintains that American Family owed a "duty of reasonable care" to him in handling his settlement claim against Finkel, and that case law supports his contention that third parties may bring tort actions against insurers for alleged misconduct in handling claims. In this regard, he cites *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 384 N.E.2d 353 (1978); *Ledingham v. Blue Cross Plan For Hospital Care of Hospital Service Corp.*, 64 Ill. 2d 338, 356 N.E.2d 75 (1976); *Robertson v. Travelers Insurance Co.*, 94 Ill. 2d 441, 448 N.E.2d 866 (1983); *Senesac v. Employer's Vocational Resources, Inc.*, 324 Ill. App. 3d 380, 754 N.E.2d 363 (2001); and *Eckenrode v. Life of America Insurance Co.*, 470 F. 2d 1 (7th Cir. 1972), for support.

¶21 We find Carlsson's cited cases to be inapposite to the facts of the case at bar. In *Kelsay*, a former employee brought suit against her former employer for retaliatory discharge after she filed a workers' compensation claim, seeking compensatory and punitive damages for the former employer's alleged misconduct. *Kelsay*, 74 Ill. 2d at 178, 384 N.E.2d at 355. The circuit court directed a verdict in the former employee's favor, and the jury assessed both compensatory and punitive damages. *Id.* The appellate court reversed the judgment of the circuit court, holding that

the former employee had no cause of action against an employer for retaliatory discharge. *Id.* On appeal, our supreme court reversed the appellate court's decision, holding that the former employee may maintain a cause of action against her former employer for retaliatory discharge because the exclusivity provision of the Workers' Compensation Act did not insulate the employer from independent tort actions, and reasoning that state public policy permits such causes of action under the Workers' Compensation Act. *Id.* at 184, 384 N.E.2d at 358. We find that the facts in *Kelsay* have no bearing on the issues or facts presented before us in this case.

¶22 In *Ledingham*, insureds of a health service policy filed a lawsuit against their insurer for alleged wrongful denial of medical expenses incurred by the insureds. *Ledingham*, 64 Ill. 2d at 338, 356 N.E.2d at 75. The trial court entered judgment awarding compensatory and punitive damages to the insureds. *Id.* The appellate court reversed the judgment for punitive awards in favor of the insureds, and apportioned 70% of the costs to the insureds and 30% of the costs to the insurer. *Id.* On appeal, our supreme court reversed the appellate court's decision, stating that the insureds had a valid claim for compensatory damages and thus, finding that the appropriate apportionment of costs required that the parties bear the costs incurred by each respective party. *Id.* at 343-43, 356 N.E.2d at 77-78. We find *Ledingham* to be inapposite to the case at bar, where the *insureds*, unlike Carlsson as a third-party claimant in the instant case, filed a lawsuit against their own insurer. Nor do we find persuasive that the excerpts quoted by Carlsson from the appellate court's decision in *Ledingham* somehow support his contention that he could maintain a private cause of action against American Family. Rather, in reading those excerpts in context, we find no indication that an insurer owes a duty of reasonable care to a third-party claimant such as Carlsson.

¶23 In *Robertson*, an employee filed a common law complaint against his employer's workers' compensation insurer for the tort of "outrage" or intentional infliction of emotional distress (IIED), based on the insurer's alleged vexatious delay and outrageous conduct in handling his workers' compensation claim. *Robertson*, 95 Ill. 2d at 445-46, 448 N.E.2d at 868-69. The jury found in favor of the employee, and awarded both compensatory and punitive damages. *Id.* at 446, 448 N.E.2d at 869. The appellate court affirmed the finding of liability, but reversed the award of punitive damages and remanded the cause for a new trial as to compensatory damages. *Id.* In reversing the judgment of the appellate court, our supreme court found that the employee's lawsuit was barred by the exclusivity provision of the Workers' Compensation Act. *Id.* at 447, 448 N.E.2d at 869. We find *Robertson* to be inapposite to the case at bar, and find nothing in the facts of that case to suggest that an insurer owes a duty of reasonable care to a third-party claimant, like Carlsson, who brings a cause of action under circumstances outside the realm of the Workers' Compensation Act.

¶24 In *Senesac*, an injured worker and his wife brought suit against his employer's workers' compensation insurer and job placement service providers, alleging negligence, malpractice and IIED. *Senesac*, 324 Ill. App. 3d at 380, 754 N.E.2d at 363. The trial court dismissed the complaint with prejudice, finding that the exclusivity provision of the Workers' Compensation Act barred the common law cause of action. *Id.* at 384, 754 N.E.2d at 367. On appeal, the reviewing court held that the exclusivity provision of the Workers' Compensation Act barred claims based on negligence and malpractice, but did not preclude the IIED claims because the defendants' alleged intentional misconduct resulted in a second injury that was distinct from the original work-related injury and which did not arise in the course of the employment. *Id.* at 388, 754 N.E.2d at 370. We find

Senesac to be inapposite to the instant case, and thus have no bearing on the issues or facts presented before us.

¶25 In *Eckenrode*, a widow, as a named beneficiary of her husband's life insurance policy, filed a lawsuit against the insurer for IIED, alleging that the insurer deliberately refused to pay her proceeds from the life insurance policy following her husband's death. *Eckenrode*, 470 F.2d at 2. The District Court for the Northern District of Illinois dismissed the cause of action on the basis that the complaint stated no claim on which relief could be granted. *Id.* On appeal, the Seventh Circuit Court of Appeals, applying Illinois law, reversed the district court's decision, finding that the widow had sufficiently pled the elements of an IIED claim but that punitive damages may not be awarded. *Id.* at 5. We find the facts in *Eckenrode* to be dissimilar to the facts of the case at bar, where, in that case, the widow was a named beneficiary of a life insurance policy. In contrast, the policy at issue here was an automobile liability insurance policy which insured Finkel, not Carlsson. Thus, we find *Eckenrode* to be inapplicable to the case at bar.

¶26 Based on our review of the case law authority cited by Carlsson, which are inapposite and legally irrelevant to the case at bar, we find no reason to deviate from the well-established principle, set forth by *Scroggins* and its progeny, that an injured third-party claimant cannot maintain a direct cause of action against an insurer for breach of the duty to exercise good faith or due care in handling his claims. See *Scroggins*, 74 Ill. App. 3d at 1030-31, 393 N.E.2d at 720-21; *Martin*, 348 Ill. App. 3d at 850, 808 N.E.2d at 51. Further, we reject the arguments which Carlsson makes in his reply brief in an effort to distinguish the facts of *Scroggins* and to avoid its application to the instant case. We find those arguments to be unpersuasive.

¶27 Carlsson further cites to various statutes, regulations and pattern jury instructions in an attempt to demonstrate that American Family owed a "duty of reasonable care" to him as a third-party claimant. See 215 ILCS 5/154.6(b), (d), (f), (n), (r) (West 2008); 50 Ill. Adm. Code 919.50, amended at 28 Ill. Reg. 9253 (eff. July 1, 2004); 50 Ill. Adm. Code 919.80, amended at 26 Ill. Reg. 11915 (eff. July 22, 2002); Illinois Pattern Jury Instructions, Civil, No. 60.01 (2008) (hereinafter, IPI Civil (2008) No. 60.01). Although unclear, he appears to argue that these statutes and regulations are "further evidence that the duty exists," and that they establish "evidence of negligence" in the instant case. We find these arguments to be without merit. While section 154.6 of the Code sets forth acts by an insurance company which constitute "improper claims practice," we find nothing in this statute to suggest that a duty of reasonable care is owed by an insurer to a third-party claimant who is neither an insured nor an assignee of the insured under the policy at issue. Moreover, neither section 154.6 of the Code nor Title 50 of the Illinois Administrative Code sanctions a direct cause of action against an insurer by a third-party claimant such as Carlsson. See *Scroggins*, 74 Ill. App. 3d at 1031, 393 N.E.2d at 721 (absent statutory or contractual language sanctioning a direct action, an injured third party has no action against the insurer for breach of the duty to exercise good faith or due care); see also *Weis v. State Farm Mutual Automobile Insurance Co.*, 333 Ill. App. 3d 402, 406, 776 N.E.2d 309, 311 (2002) ("a violation of the insurance rules contained in Title 50 of the Illinois Administrative Code does not give rise to a private cause of action"). Nor do we find IPI Civil (2008) No. 60.01 helpful in furthering Carlsson's contentions. As such, we find that Carlsson lacked standing to pursue a direct cause of action against American Family, and we decline to address Carlsson's arguments relating to the merits of his allegations that

American Family engaged in misrepresentation of law and unreasonable delay in denying his settlement claim.

¶28 Carlsson further contends that he had standing to maintain a statutory claim against American Family under section 155 of the Code, as alleged in count III of the first amended complaint.

Section 155 of the Code provides that:

> "[i]n *any* action by or against a company wherein there is in issue the liability of a company on a policy or policies of insurance or the amount of the loss payable thereunder, or for an unreasonable delay in settling a claim, and it appears to the court that such action or delay is vexatious and unreasonable, the court may allow as part of the taxable costs in the action reasonable attorney fees, other costs, plus an amount not to exceed any one of the following amounts [listed in this section]." (Emphasis added.) 215 ILCS 5/155 (West 2008).

¶29 Our supreme court has explicitly held that the remedy embodied in section 155 of the Code extends only to the party insured and assignees of the insurance policy, but not to third parties. *Yassin v. Certified Grocers of Illinois, Inc.*, 133 Ill. 2d 458, 466, 551 N.E.2d 1319, 1322 (1990); see also *Statewide Insurance Co. v. Houston General Insurance Co.*, 397 Ill. App. 3d 410, 426-27, 920 N.E.2d 611, 625 (2009) (same); *Scroggins*, 74 Ill. App. 3d at 1036-37, 393 N.E.2d at 724-25 (same); *Stamps v. Caldwell*, 133 Ill. App. 2d 524, 528, 273 N.E.2d 489, 492 (1971) (same); *Loyola*

University Medical Center v. Med Care HMO, 180 Ill. App. 3d 471, 480-82, 535 N.E.2d 1125, 1130-32 (1989) (same).

¶30 Carlsson concedes that *Yassin* and the cases listed above set forth the general principle that third parties are prohibited from bringing a cause of action against an insurer pursuant to section 155 of the Code. However, he argues that the term "any" in the first sentence of section 155 suggests that all causes of actions against insurers, including Carlsson's third-party claim against American Family, are permissible. He urges this court to depart from the well-established rule that third parties may not allege an action against an insurer under section 155 because the *Yassin* court did not specifically interpret the term "any" as stated in section 155. We disagree.

¶31 Although *Yassin* and prior case law did not directly analyze the specific definition and meaning of the term "any" as used in section 155, the decisions in those cases implicitly hold that the language of section 155 by no means suggests that *anyone* may bring a cause of action against an insurer. Moreover, given the well-established law that section 155 is intended to protect *insureds* and *assignees* of the insureds, and that Carlsson does not fall within this class of protected individuals under the statute, we decline to hold that the use of the term "any" in section 155 was meant to broaden the class of persons beyond what the statute was designed to protect. See *Statewide Insurance Co.*, 397 Ill. App. 3d at 426, 920 N.E.2d at 625 ("the remedy under section 155 is intended for the protection of both the insured and the assignee who succeeds to the insured's position"). Accordingly, we reject Carlsson's arguments that the entire line of cases culminating into the well-established principle in *Yassin* was a "classic legal house of cards" on the basis that the "any" language in section 155 had not been expressly interpreted.

¶32 Nevertheless, Carlsson contends that, even if the section 155 claim (count III) was properly dismissed by the circuit court, he was entitled to pursue a common law intentional misconduct claim against American Family so that he would not be left without a remedy for American Family's alleged intentional misconduct. We also reject this contention as without merit. Carlsson is essentially asking this court to allow him to assert another intentional misconduct claim against American Family, as a result of the dismissal of a section 155 claim against American Family which he had no standing to pursue in the first place. We decline to do so. As discussed, Carlsson may not maintain a direct cause of action against American Family unless and until he becomes an assignee under the policy at issue or an excess judgment has been entered in his favor in the Lake County lawsuit. Therefore, the circuit court properly dismissed count III of the first amended complaint.

¶33 Likewise, we reject Carlsson's argument that he had standing to maintain a statutory claim against American Family under section 2 of the Consumer Fraud Act (815 ILCS 505/2 (West 2008)), as alleged in count IV of the first amended complaint. Section 2 of the Consumer Fraud Act states in pertinent part that:

> "Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any

> practice described in Section 2 of the 'Uniform Deceptive Trade Practices Act,' *** in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby." 815 ILCS 505/2 (West 2008).

¶34 The Consumer Fraud Act is a " 'regulatory and remedial statute intended to protect consumers, borrowers and business people against fraud, unfair methods of competition, and other unfair and deceptive business practices.' " *Sanchez v. American Express Travel Related Services Company, Ltd.*, 372 Ill. App. 3d 449, 456, 865 N.E.2d 410, 416 (2007), quoting *Johnson v. Matrix Financial Services Corp.*, 354 Ill. App. 3d 684, 690, 820 N.E.2d 1094, 1099-1100 (2004). A "consumer" is defined as "any person who purchases or contracts for the purchase of merchandise not for resale in the ordinary course of his trade or business but for his use or that of a member of his household." 815 ILCS 505/1 (West 2008). The terms "trade" and "commerce" refer to "the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State." 815 ILCS 501/1 (West 2008). Here, Carlsson is not an insured of the policy issued by American Family and thus, could not qualify as a "consumer" within the meaning of the statute. Nor could Carlsson be considered a "borrower" or a "business" person under the statute, where he had no business relationship with American Family. As discussed, Carlsson is a third-party claimant whose relationship to American Family is purely adversarial. Thus, we find that Carlsson, as a third-party claimant, was not a member of the class for whose benefit the Consumer Fraud Act was

enacted. See generally *Metzger v. DaRosa*, 209 Ill. 2d 30, 36, 805 N.E.2d 1165, 1168 (2004) (a private cause of action may be maintained pursuant to a statute if the plaintiff satisfies four factors–including that the plaintiff be a member of the class for whose benefit the statue was enacted). Therefore, Carlsson had no standing to pursue a cause of action against American Family under the Consumer Fraud Act, and the circuit court properly dismissed count IV of the first amended complaint.

¶35 Accordingly, because Carlsson had no standing to maintain a direct cause of action against American Family for misconduct which allegedly arose out of the handling of his claim against Finkel, the circuit court properly dismissed his pleadings with prejudice. Thus, we need not address whether the allegations set forth in his complaint and first amended complaint were sufficient to state a cause of action against American Family.

¶36 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶37 Affirmed.