

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 01-10467

FIRST TEXAS HOMES, INC.,

Plaintiff-Appellee,

VERSUS

MID-CONTINENT CASUALTY COMPANY,

Defendant-Appellant.

Appeal from the United States District Court
For the Northern District of Texas

(3:00-CV-1048-P)

February 19, 2002

Before SMITH and DeMOSS, Circuit Judges, and LAKE, District Judge.*

PER CURIAM:**

In 1997, Grant Wu purchased a house from First Texas Homes. Wu sued First Texas in 1999—under numerous theories—complaining that the house had foundation problems. First Texas tendered the defense of the lawsuit to its insurance company, Mid-Continent Casualty Company. However, Mid-Continent refused to provide a

* District Judge of the Southern District of Texas, sitting by designation.

**Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

defense, claiming Wu's suit was not covered by First Texas' policy. Thus, First Texas sued Mid-Continent in state court seeking a declaratory judgment as to the parties' respective rights and duties under the policy. Relying on federal diversity jurisdiction, Mid-Continent removed the action to federal court. The parties then filed cross-motions for summary judgment.

The district court granted summary judgment in First Texas' favor, declaring Mid-Continent has a duty to defend First Texas against Wu's suit. Mid-Continent now appeals to this Court.

Having carefully reviewed the entire record of this case and having fully considered the parties' respective briefing on the issue in this appeal, we find no error in the district court's conclusion that Mid-Continent has a duty to defend First Texas against Wu's suit. Accordingly, we AFFIRM the district court's judgment. Of course we express no opinion about the ultimate issue of whether, if First Texas' liability is established, Mid-Continent has a duty to indemnify First Texas under its policy.