

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 01-50523
Summary Calendar

BRUCE H. WITHERS,

Plaintiff-Appellant,

VERSUS

CNA INSURANCE COMPANIES; CONTINENTAL
CASUALTY COMPANY,

Defendants-Appellees.

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

(EP-0-CV-3-EP)

December 3, 2001

Before DeMOSS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:*

This lawsuit arose out of an injury sustained by the plaintiff, Bruce H. Withers (Withers), when he was struck by a vehicle operated by an uninsured motorist. Just prior to the accident, Withers was traveling in a vehicle owned by his employer,

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Stan's Frozen Foods, during the course and scope of his employment. Withers stopped at a roadside rest stop to use the facilities. Withers parked the vehicle in the parking lot, exited the vehicle, and had taken about three or four steps across the parking lot toward the restroom facilities when he was struck by the uninsured vehicle. The vehicle which Withers had been driving was insured by his employer through the Defendants, CNA Insurance Companies and Continental Casualty Company. After the accident Withers filed a claim for uninsured motorist benefits under his employer's policy. The Defendants denied the claim. Withers then sued the Defendants, claiming that he qualified as "an insured" under the policy and that the Defendants breached their contractual duty to him by denying coverage. Withers also claimed that the Defendants' refusal to cover his injuries violates the Texas Deceptive Trade Practice Act (DTPA) and the Texas Insurance Code and constitutes a violation of the Defendants' duty of good faith and fair dealing to him. The Defendants moved for summary judgment on the grounds that Withers is not entitled to recover because he was not an insured under the policy. The district court conducted a summary judgment hearing and concluded that the Defendants' motion should be granted. Withers appeals to this Court.

We have read the briefs, the record excerpts, and relevant portions of the record. For the reasons stated by the district judge in his Order filed under date of May 7, 2001, we affirm the Final Judgment entered of even date therewith.

AFFIRMED.