

April 14, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-20071

HUMBLE INDEPENDENT SCHOOL DISTRICT,

Plaintiff-Appellant,

versus

CGU INSURANCE CO.; GENERAL ACCIDENT INSURANCE COMPANY;

ROBERT WITKOWSKI; COST MANAGEMENT, INC.;

WILLIAM L. McGRATH, Individually doing business as

Cost Management, Inc.;

POTOMAC INSURANCE COMPANY OF ILLINOIS,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Texas
H-00-CV-3420

Before GARWOOD, JOLLY, and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

Humble Independent School District filed this suit in state district court against its insurance carrier, CGU Insurance Company, and other defendants, including an adjuster working for CGU, Robert Witkowski. CGU removed the case to the United States

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

District Court on the basis of diversity. The district court denied HISD's motion to remand the case, apparently persuaded that HISD stated no claim under Article 21.21 of the Texas Insurance Code against Witkowski, a local defendant whose joinder as a party would preclude diversity jurisdiction.

The Texas Supreme Court in *Liberty Mutual Insurance Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482 (Tex. 1998), held that Section 16 of Article 21.21, Texas Insurance Code, provides a cause of action against employees of companies arising from their servicing of insurance policies, including employees acting within the scope of their employment.

We are persuaded that the district court was in error in its apparent decision that the school district stated no claim against Witkowski and in denying the motion to remand the case to state court. We must therefore remand the case to the district court with instructions to remand the case to the state court from which it was removed. The judgment below is vacated for want of subject matter jurisdiction.

VACATED and REMANDED with instructions.