

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5107
Summary Calendar

RALPH E. CHEVALIER,

Plaintiff-Appellant,

versus

RELIANCE INSURANCE CO. OF ILLINOIS,

Defendant-Appellee.

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

87 CV 1147 A

(March 23, 1993)

Before POLITZ, Chief Judge, JOLLY and EMILIO M. GARZA, Circuit Judges.

POLITZ, Chief Judge:*

Dissatisfied with his jury award, Ralph E. Chevalier attempts for the second time to overturn the resultant judgment. His current effort takes the form of a Fed.R.Civ.P. 60(b)(4) motion to void the judgment for lack of subject matter jurisdiction. The

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court denied Chevalier's motion. We affirm.

Background

The facts of this case were recited in our opinion disposing of Chevalier's previous appeal¹ and need not be repeated in full here. In brief, Chevalier was injured in a car accident while hauling material for his employer, L.H. Bossier, Inc. The driver of the other vehicle, Jerry D. Walters, had minimal liability insurance coverage so Chevalier sued his employer's insurer, Reliance Insurance Company of Illinois, to recover under the uninsured and underinsured motorist provisions of the policy. A jury found that Walters' negligence was the sole cause of the accident and awarded Chevalier \$85,373.54. As compensation carrier Reliance was entitled to a credit of \$82,024.30, leaving Chevalier with a net recovery of \$3,349.24. Chevalier appealed without success. Following affirmance of the judgment, he brought the instant Rule 60(b)(4) motion, contending that 28 U.S.C. § 1332(c)(1) precludes diversity of citizenship jurisdiction. The district court denied the motion and Chevalier again appealed.

Analysis

28 U.S.C. § 1332(c)(1) provides:

a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or

¹953 F.2d 877 (5th Cir. 1992).

unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business

Chevalier maintains that Reliance became Walters' liability insurer by providing uninsured motorist coverage to Bossier. Because Walters was a citizen of Louisiana, his argument goes, Reliance became a citizen of Louisiana by operation of 28 U.S.C. § 1332(c)(1). Because Chevalier was a Louisiana citizen, he insists that diversity of citizenship was lacking. We are not persuaded.

Congress added the direct-action proviso to 28 U.S.C. § 1332(c)(1) in response to burgeoning filings in the federal district courts of Louisiana, largely occasioned by Louisiana's direct action statute, La.R.S. 22:655.² According to the accompanying Senate Report,

The purpose of the proposed legislation is to . . . eliminate under the diversity jurisdiction of the U.S. district courts, suits on certain tort claims in which both parties are local residents, but which, under a State "direct action" statute, may be brought directly against a foreign insurance carrier without joining the local tort-feasor as a defendant.³

We construed the amendment to reach suits in which "a party claiming to have suffered injuries or damage for which another is legally responsible is entitled to sue the other's liability

²**Northbrook National Ins. Co. v. Brewer**, 493 U.S. 6, 110 S.Ct. 297, 107 L.Ed. 2d 223 (1989).

³S.Rep. No. 1308, 88th Cong., 2d Sess. 1 (1964), reprinted in 1964 U.S.C.C.A.N. 2778, 2778-79, quoted in **Rosa v. Allstate Ins. Co.**, 981 F.2d 669, 674 (2d Cir. 1992).

insurer without joining the insured"4 The instant suit does not fit that mold. Chevalier is suing Reliance as a person insured under Bossier's insurance policy. He is not suing the liability insurer of Walters, the person legally responsible for his injuries. The provisions of 28 U.S.C. § 1332(c)(1) therefore do not apply.

Louisiana uninsured motorist coverage reinforces this result. That coverage is governed by La.R.S. 22:1406D, which requires automobile liability insurers to provide uninsured motorist coverage to their insureds unless the insured rejects the protection in writing. The Louisiana Supreme Court repeatedly has recognized that the legislature intended such coverage "for the protection of persons injured by uninsured or underinsured tortfeasors, and not for the benefit of such wrongdoers."⁵ So understood, the statute cannot be construed to make coverage carried by and for the victim into insurance for the wrongdoer.

Chevalier invites our attention to a statement in our earlier opinion that "Reliance was Walters' negligent tortfeasor's de facto liability carrier."⁶ This statement is correct in the sense that

⁴**Hernandez v. Travelers Ins. Co.**, 489 F.2d 721, 723 (5th Cir.), cert. denied 419 U.S. 844 (1974) (internal quotation and citation omitted).

⁵**Johnson v. Fireman's Fund Ins. Co.**, 425 So.2d 224, 227 (La. 1982); see also **Egros v. Pempton**, 606 So. 2d 780 (La. 1992); **Bosch v. Cummings**, 520 So. 2d 721 (La. 1988); **Roger v. Estate of Moulton**, 513 So. 2d 1126 (La. 1987).

⁶953 F.2d at 884.

the tortfeasor and the uninsured motorist carrier share *in solido* responsibility to repair the damage wrought by the tortfeasor. The existence of the obligation, however, is totally separate and apart from the source of the obligation.⁷ Reliance's obligation to make Chevalier whole for losses caused by Walters' negligence did not arise from any duty owed Walters but from a duty owed Chevalier. There is no available legal legerdemain to make Walters the insured³ of Reliance.

This is not a suit against Walters' liability insurer. Accordingly, it is outside the parameters of 28 U.S.C. § 1332(c)(1).

AFFIRMED.

⁷Johnson.