

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7041

VARMICON INDUSTRIES, INC.,

Plaintiff-Appellee,

versus

NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, ET AL.,

Defendants,

CALIFORNIA UNION INSURANCE COMPANY,

Defendant-Appellant.

Appeal from the United States District Court for
the Southern District of Texas
(CA-B-90-206)

(February 19, 1993)

Before REAVLEY, KING and WIENER, Circuit Judges.

PER CURIAM:*

This case was removed from state court by virtue of diversity jurisdiction. There is diversity jurisdiction and the federal court should accept the case unless Varmicon Industries, Inc. is an insured under the excess insurance policy of

*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

California Union Insurance Company, which policy requires the insurer to submit to the insured's choice of forum. The same question, whether Varmicon is an insured under the policy, will determine coverage and liability)) the central issue of the lawsuit.

The district judge remanded the case for the issue to be decided by the state court, but in doing so has not grounded the remand on any legal basis. We are forced to remand to the district court to proceed with it or to remand to the state court on some contractual or statutory ground. See McDermott Intern. v. Lloyds Underwriters of London, 944 F.2d 1199 (5th Cir. 1991).

VACATED AND REMANDED.