

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7723

Summary Calendar

JOHN MCFADDEN, M.D.,

Plaintiff-Appellant,

v.

FIREMAN'S FUND INSURANCE
COMPANY and THE AMERICAN
INSURANCE COMPANY,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
CA EC90 205 D D

April 19, 1993

Before KING, DAVIS, and WIENER, Circuit Judges.

PER CURIAM:*

Dr. John McFadden appeals from the district court's dismissal of his action against various workers' compensation insurers for refusing to pay his medical charges. We affirm the dismissal.

I.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

On or about April 11, 1990, Martha Reece filed a petition to controvert before the Mississippi Workers' Compensation Commission, thereby putting into issue medical treatments claimed by her treating physicians, one of which was Dr. McFadden. The carrier, The American Insurance Company, filed an answer to Reece's petition and filed the employer and carrier's petition to controvert.

While the workers' compensation case was still pending, Dr. McFadden brought an action in state court¹ asserting, inter alia, a claim for payment of medical bills and bad faith refusal to pay medical bills. Presented with defendants' motion to dismiss and alternative motion to stay, the district court stayed the proceedings on November 12, 1991, pending final administrative action by the Mississippi Workers' Compensation Commission.

On October 7, 1992, the district court ruled in McFadden v. Liberty Mutual Ins. Co., 803 F. Supp. 1178 (N.D. Miss. 1992), aff'd on other grounds, ___ F.2d ___, No. 92-7725 (5th Cir. 1993), that a medical provider had no standing to bring an independent tort action for bad faith refusal to pay amounts due for medical services provided to a workers' compensation claimant. Based on this ruling, the district court lifted the stay, granting defendant's motion to dismiss. In its final judgment and order of dismissal, the district court observed that Dr. McFadden had not utilized available administrative remedies,

¹ The action was removed to federal court on the basis of diversity of citizenship between Dr. McFadden and Fireman's Fund.

but cited its recent opinion in McFadden, 803 F. Supp. 1178, for the rule that McFadden had no standing to bring the current lawsuit. The district court dismissed plaintiff's claims with prejudice.

The parties to this action extensively brief the issue of standing, and would have us decide the case on this basis. It is, however, unnecessary for us to do so. Based on the record before us, plaintiff has not exhausted his administrative remedies. As a result, this matter is not ripe for decision. The court cannot entertain any such action until all available proceedings before the Commission and any subsequent appeals to the Mississippi Supreme Court have been fully pursued and resolved. See Dial v. Hartford Accident & Indemnity Co., 863 F.2d 15 (5th Cir. 1988).

II.

We AFFIRM the district court's dismissal and MODIFY the judgment to provide that such dismissal be without prejudice.