

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3294

MURPHY EXPLORATION &
PRODUCTION COMPANY,

Plaintiff-Appellant,

versus

WILLIE EARL DAVIS,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(92-CV-2957)

(November 17, 1994)

Before HIGGINBOTHAM and WIENER, Circuit Judges, and KAUFMAN*,
District Judge.

PER CURIAM:**

Murphy Exploration & Production Company paid Willie Earl Davis insurance benefits for nonwork-related injuries. Murphy sought to set off these amounts against Davis's later claim for damages and maintenance and cure from Murphy. The district court denied any setoff and denied leave to counterclaim on grounds of untimeliness.

* District Judge of the District of Maryland, sitting by designation.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

We affirmed. Murphy, in the present suit, seeks recovery of the benefits it claims were erroneously paid. The district court ruled that the claim is barred by issue preclusion. We affirm on the grounds of claim preclusion.

Davis argues that Murphy's current claim is barred because it was a compulsory counterclaim in the earlier proceeding. A counterclaim is compulsory "if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." Fed. R. Civ. P. 13(a). In applying this transactional test, courts consider the similarity of issues of fact in the original claim and the counterclaim. See 6 Charles A. Wright et al., Federal Practice and Procedure § 1410, at 52-55 (2d ed. 1990). Davis's claim for repayment of the insurance benefits arises out of the same accident that gave rise to the negligence and unseaworthiness claims in the original suit. Therefore, the claim to recover benefits was a compulsory counterclaim. Because Davis did not timely assert this claim in the first proceeding, claim preclusion bars this suit.

AFFIRMED.