

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50510

POTOMAC INSURANCE COMPANY OF
ILLINOIS,

Plaintiff-Appellee,

versus

ALFRED CASTELLANO and
FRED'S FISH FRY, INC.,

Defendants-Appellants.

Appeal from the United States District Court for
the Western District of Texas
(SA-93-CA-0970)

(April 6, 1995)

Before POLITZ, Chief Judge, REAVLEY and BARKSDALE, Circuit Judges.

PER CURIAM:*

The district court's judgment is affirmed because of the bar of limitations. Castellano cannot rely on the statement of Fitch, because under Texas law a recording agent has no authority to speak for the insurance company in the settlement of a claim.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The statement on the proof of loss form does not demonstrate actual authority; it merely states that by the company's acceptance of the proof of loss there was no agreement to pay the claim.

As for apparent authority, Castellano points to no act of Potomac demonstrating the appearance of authority. The record shows no act by Potomac except for the letter rejecting the claim.

The statements made by Fitch could not be attributed to Potomac. The Texas Supreme Court has held that a recording agent's statements made after a loss has occurred should not be imputed to a principal because a recording agent is "in the business of selling insurance, not the business of adjusting claims . . ." Royal Globe Ins. Co. v. Bar Consultants, Inc., 577 S.W.2d 688, 695 (Tex. 1979); see also Mid Century Ins. Co. v. H & H Meat Products Co., 822 S.W.2d 747, 750 (Tex.App.--Corpus Christi 1992, no writ). These facts should be contrasted with those in Celtic Life Ins. Co. v. Coats, 885 S.W.2d 96, 99 (Tex. 1994), where the recording agent made the representation prior to the loss.

AFFIRMED.