

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-30465

LOUISIANA FIBER CORPORATION
and
RICHARD K. HOWARD, JR.,

Plaintiffs-Appellants,

VERSUS

FIREMAN'S FUND INSURANCE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(94-CV-1085)

December 19, 1996

Before HIGGINBOTHAM, SMITH, and BARKSDALE, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

Louisiana Fiber Corporation ("Louisiana Fiber") and Richard Howard, Jr., appeal a summary judgment in favor of Fireman's Fund Insurance Company ("Fireman's Fund") on a duty-to-defend claim arising out of various allegations of business torts. Finding no

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

error, we affirm.

I.

This duty-to-defend suit arises out of a business relationship between Louisiana Fiber and Howard, who is one of its executives, and Leo Miller, Jr., an attorney, and Tommy Condrey, a 50% shareholder in Dixie River Cotton Products, Inc. ("Dixie River"). Condrey and Howard formed Dixie River in 1985 to buy and sell cottonseed; Miller was Dixie River's outside counsel and a director of the corporation.

In separate state and federal lawsuits, Condrey alleged that Howard, Miller, and Louisiana Fiber had conspired, among other things, to defraud Dixie River of corporate assets.² Of particular interest is Condrey's allegation that Howard, acting on behalf of Dixie River, submitted a bid to the Port Authority of Lake Providence to obtain a leasehold at the Port Authority. After the bid had been approved by the Port Authority, however, Howard, Miller, and Louisiana Fiber allegedly conspired to transfer, and did transfer, the leasehold to Louisiana Fiber.

Louisiana Fiber was covered by two substantially similar commercial general liability policies issued by Fireman's Fund that provided certain coverage for bodily injury, property damage,

² Because the first amended federal complaint and the first amended state complaint contain substantially similar recitations of the facts relevant to the duty to defend claims, we need not address each separately.

personal injury, and advertising injury. After receiving notice of Condrey's state and federal actions, Louisiana Fiber filed the instant action, claiming that Fireman's Fund had a duty to defend against Condrey's allegations. The district court granted Fireman's Fund's motion for summary judgment, finding that, although the commercial general liability coverage insurance arguably covered the conversion claims, Fireman's Fund was released from a duty to defend by other applicable policy exclusions.

II.

A.

We review a grant of summary judgment *de novo*. See *Hanks v. Transcontinental Gas Pipe Line Corp.*, 953 F.2d 996, 997 (5th Cir. 1992). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c).

B.

Under Louisiana law, an insurer's duty to defend is broader than its liability for damage claims. See *Yount v. Maisano*, 627 So. 2d 148, 153 (La. 1993). The insurer is obligated to defend a suit unless the allegations described in the complaint unambigu-

ously exclude coverage. See *id.* "Thus, the insurer is obligated to defend if the complaint discloses even a *possibility* of liability under the policy." *Jensen v. Snellings*, 841 F.2d 600, 612 (5th Cir. 1988). Even if the main thrust of the complaint falls outside policy coverage, the duty to defend arises if there are any facts that support a claim that is not unambiguously excluded. See *id.* Ambiguities are construed against the insurer. See *ADA Resources, Inc., v. Don Chamblin & Assocs., Inc.*, 361 So. 2d 1339, 1343 (La. App. 3d Cir. 1978). The insurer's duty to defend is determined solely from the plaintiff's pleadings and the policy, without consideration of extraneous evidence. See *Selective Ins. Co. of Southeast v. J.B. Mouton & Sons, Inc.*, 954 F.2d 1075, 1078 (5th Cir. 1992).

According to *Louisiana Fiber*, Condrey's conversion claims are subsumed under the provisions of the comprehensive general liability insurance policy dealing with "personal injury." Among other things, the policy covers "personal injury" arising out of "wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies." *Louisiana Fiber* argues that, because it is impossible to convert or wrongfully take possession of a leasehold interest^{SS}which is the substance of the Condrey allegations^{SS}without "wrongful entry into" the premises, the policy plainly encompasses Condrey's complaint.

Cognizant of the liberal duty-to-defend construction rules and

our directive to look only to the allegations in the complaint, we conclude that the insurance policy unambiguously excludes coverage for the allegations outlined in Condrey's complaints. Although Condrey alleged in his *original* federal complaint that the lease had been executed first by Dixie River before being transferred wrongfully to Louisiana Fiber, Condrey made no such allegations in his first *amended* federal complaint. An amended complaint supersedes the original complaint and renders it of no legal effect, unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading. See *Boelens v. Redman Homes, Inc.*, 759 F.2d 504, 508 (5th Cir. 1985). Condrey's first amended federal complaint neither alleges nor refers to or incorporates by reference the original complaint's allegations that the lease had in fact been executed in Dixie River's name prior to being transferred to Louisiana Fiber. Accordingly, any alleged entry by Louisiana Fiber or Howard onto the leasehold premises was not "wrongful" under the terms of the policy.

AFFIRMED.