

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 98-40664  
Summary Calendar

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HEAD & ENGQUIST EQUIPMENT LLC,

Plaintiff-Appellant,

VERSUS

ST. PAUL FIRE AND MARINE INSURANCE COMPANY, ET AL.,

Defendants,

ST. PAUL FIRE AND MARINE INSURANCE COMPANY,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas

(1:97-CV-190)

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April 29, 1999

Before EMILIO M. GARZA, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Dawn Michelle Garcia (hereinafter referred to as "Claimant") filed suit in the District Court of Jefferson County, Texas against Head & Engquist Equipment, Inc. (hereinafter referred to as "Employer") and Martin Victor Kennedy (hereinafter referred to as

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

"Supervisor") asserting claims arising out of sexual derogatory statements, verbal sexual advances and sexually-motivated touching and physical contacts upon the Claimant by the Supervisor during the course and scope of their employment with Employer. Employer tendered the defense of this lawsuit to St. Paul Fire and Marine Fire Insurance Company (hereinafter "Insurer") who declined to defend or indemnify Employer from liability on the grounds that express provisions of its policy excluded coverage as to the claims asserted in this lawsuit. Employer settled the lawsuit without participation from Insurer and filed suit against Insurer in the United States District Court for the Eastern District of Texas, asserting that Insurer breached its duty to defend and indemnify Employer with respect to the claims asserted by Claimant in the underlying lawsuit. Insurer moved for a summary judgment on the grounds that there was no material issue of fact and it was entitled to judgment as a matter of law. The District Court granted such Motion for Summary Judgment and the Employer timely appealed.

We have carefully reviewed the briefs, the record excerpts and relevant portions of the record itself. For the reasons stated by the District Court in its Order Granting St. Paul's Motion for Summary Judgment filed under date of April 16, 1998, we AFFIRM the grant of summary judgment in favor of Insurer and the entry of a Final Judgment that the Employer take nothing.

AFFIRMED.