

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-60105
Summary Calendar

SHELTER INSURANCE COMPANIES,

Plaintiff-Appellee,

VERSUS

JAMES E. SHERMAN; ET AL.,

Defendants,

FRANCES HOWARD; SHIRLEY J. SMITH; CHUCH EASLEY,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Mississippi
(1:97-CV-417-S-A)

September 17, 1999

Before HIGGINBOTHAM, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Shelter Insurance Companies (Shelter) filed its complaint for declaratory judgment in the district court seeking a determination that it had no obligation to defend or indemnify James E. Sherman (Sherman), its insured, because Shelter had no knowledge that Sherman had been sued until after a default judgment was entered against him. In September 1991, Sherman was riding as a guest

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

passenger in his own automobile which was being driven by Clinton Howard. Shelter had previously issued a standard automobile insurance policy to Sherman covering his vehicle. As a result of a one car accident, the driver, Clinton Howard, was killed. The sisters of Clinton Howard filed a wrongful death action against Sherman in the Circuit Court of Oktibbeha County, Mississippi, and service of process was made on Sherman in this lawsuit in 1994. However, Sherman failed to notify Shelter or to file an answer in this lawsuit. Ultimately, a default judgment was entered against Sherman for \$808,450. In December 1997, the attorney for the sisters in the wrongful death action made demand upon Shelter to pay the default judgment. Shelter filed this lawsuit and the district court entered summary judgment in its favor for its declaratory relief. The sisters and their attorney brought this appeal.

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 Opinion filed January 22, 1999, we affirm the Final Judgment of the district court that no coverage is available under the automobile policy issued by Shelter in this case.

AFFIRMED.