

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50657
Summary Calendar

HOWARD D. AUSTIN,
Plaintiff-Appellant,

VERSUS

THE TRAVELERS INSURANCE COMPANY, et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(A-94-CA-017)

(March 9, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

In this diversity case consensually decided by a magistrate judge, the plaintiff appeals a summary judgment rejecting his duty-to-defend claim. We affirm, essentially for the reasons stated by the magistrate judge in his comprehensive opinion order of August 12, 1994.

It is undisputed that the policy covers "personal injury," which is defined to include, inter alia, "malicious prosecution."

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.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 magistrate judge correctly concluded, however, that although the complaint mentions, as part of the factual recitation, the filing of baseless criminal charges, the underlying suit is only for commercial damages, and the factual statement is surplusage insofar as the duty to defend is concerned. That is to say, the suit by no means states, or even attempts to state, a cause of action for malicious prosecution.

AFFIRMED.