

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

January 24, 2008

Charles R. Fulbruge III
Clerk

No. 07-30035

ANTOINE PEREZ

Plaintiff

v.

DEAN EQUIPMENT, INC.

Defendant

LIMIT (NO. 2) LIMITED

Plaintiff - Appellant

v.

DEAN EQUIPMENT, INC.

Defendant - Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana, New Orleans
2:05-CV-6461

Before HIGGINBOTHAM, DAVIS, and SMITH, Circuit Judges..

PER CURIAM:*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Limit (No. 2) Limited(Limit) a marine insurer, sued its insured Dean Equipment, Inc. (Dean) seeking a declaratory judgment declaring that plaintiff had no obligation to defend Dean on a suit brought by an employee of Dean.

The district court dismissed Limit's suit on summary judgment concluding that Dean's insurer, Limit, waived its coverage defense by unqualifiedly defending Dean for almost nine months after Limit had notice that its policy likely afforded no coverage.

We agree with the district court that the Louisiana Supreme Court decision of *Steptore v. Masco Construction Co., Inc.*, 643 So. 2d 1213 (La. 1994), controls this case. In that case the Louisiana Supreme Court stated:

Accordingly, when an insurer, with knowledge of facts indicating noncoverage under the insurance policy, assumes or continues the insured's defense without obtaining a nonwaiver agreement to serve its coverage defense, the insurer waives such policy defense.

Id. at 1216.

The district court correctly granted summary judgment.

AFFIRMED.