

Illinois Federal Court Rejects Dismissal Based on Abstention Doctrine

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In its recent decision in *Hartford Cas. Ins. Co. v. Construction Builders In Motion, Inc.*, 2012 U.S. Dist. LEXIS 25240 (E.D. Ill. Feb. 28, 2012), the United States District Court for the Northern District of Illinois, applying Illinois law, considered whether a declaratory judgment action should be dismissed on the basis of the *Wilton/Brillhart* abstention doctrine.

The *Construction Builders* case involved coverage litigation arising out of allegedly defective construction of a single home in Chicago. In the underlying action, the homeowner sued the general contractor, Kaiser, which in turn asserted third-party claims against several subcontractors, including Construction Builders. Hartford, as the insurer of Construction Builders, brought suit in the Northern District of Illinois, seeking a declaration that it had no duty to defend its own insured or Kaiser. Hartford also named as defendants a number of other insurers under which Kaiser qualified as an insured or as an additional insured. Hartford sought a declaration that if it did owe a defense obligation to Kaiser, then this obligation should be shared equally with each of the other insurers.

Among the insurers sued by Hartford were Rockford Mutual and Pekin Insurance, both of which were insurers of Kaiser's subcontractors. Kaiser claimed to be an additional insured under the policies issued by these insurers. Rockford Mutual and Pekin had each brought separate lawsuits in Illinois state court seeking declarations that they owed no coverage obligations with respect to their own insureds or to Kaiser. Rockford Mutual and Pekin Insurance, therefore, moved to dismiss Hartford's lawsuit on the basis of the *Wilton/Brillhart* abstention doctrine, arguing that the court should abstain from hearing Hartford's claims in light of their already filed state court actions.

The *Construction Builders* court acknowledged that as a general proposition, abstention pursuant to this doctrine is appropriate "in a diversity case where a declaratory judgment action is sought and a parallel state court proceeding also exists." Matters are considered "parallel" when "there is a substantial likelihood that the state court litigation will dispose of all claims presented in the federal case." With these principles in mind, the *Construction Builders* court rejected the argument that Hartford's federal court action was parallel to the lawsuits pending in state court, explaining:

While this case includes some of the parties and issues that will be decided in the state court actions, at best the state cases will resolve the coverage dispute as to one or two of the insurers, leaving this case to decide remaining issues of contribution or allocation, as well as any of the coverage as to the insurers who have not brought a state declaratory action. In short, this case is not parallel to the state court case and this litigation, not a web of state court cases, will be the best way to sort out the coverage obligations and, if necessary, apportion defense costs and damages.

In reaching its holding, the court rejected the argument that Rockford Mutual and Pekin would be forced to incur extra costs by litigating in multiple suits. The court stated that Rockford Mutual and Pekin were free to dismiss their own state court litigations and prosecute their claims in Hartford's lawsuit. The court further reasoned that because the issues bearing on the duty to defend were relatively straightforward and required little discovery, there would be only minimal extra costs imposed on the insurers by having to litigate in multiple suits should they opt not to discontinue their state court claims.