

N.D. Ill. Refuses to Dismiss Rescission Action under Burford Abstention Doctrine but Stays Case

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The United States District Court for the Northern District of Illinois has refused to abstain from hearing an insurance rescission action simply because an Illinois liquidation proceeding was pending against the insured. *QBE Int'l Ins. Ltd. v. Shapo*, No. 01-C-0508, 2002 U.S. Dist. LEXIS 3298 (N.D. Ill. Feb. 26, 2002). The district court did stay the action, however, under its discretionary powers until the completion of the liquidation proceedings.

The insured in this action was a trust comprised of employers who united to provide workers' compensation, occupational disease, and employer's liability insurance. The insurer provided errors and omissions coverage for the trustees of the insurance plan. In late 1999, the Illinois insurance commissioner filed a complaint for conservation against the insured, and the court entered a liquidation order that enjoined the prosecution of claims against the insured, its property, or the commissioner. Thereafter, the commissioner sued the trustees for breach of fiduciary duties and negligence in Illinois state court. The insurer denied coverage for the claim and filed this action to rescind the errors and omissions policy. The commissioner moved to dismiss the rescission action based on the *Burford* abstention doctrine.

The district court held that the *Burford* abstention doctrine did not apply because the rescission action was a simple contract action that did not interfere with Illinois's liquidation proceedings. The court observed that *Burford* abstention is "an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it." Thus, a district court should only abstain in "exceptional circumstances" where the exercise of federal jurisdiction will frustrate a complex state administrative proceeding. The court, however, did decide to exercise its inherent discretionary power to enjoin the action until the conclusion of the liquidation proceeding.