

# Court Dismisses Insurer's Preemptive Declaratory Judgment Suit

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July 2000

A federal district court in New York has dismissed a professional liability insurer's suit for a declaratory judgment, ruling that it was anticipatory conduct designed to gain a procedural advantage and preempt the policyholder's forum choice. *Chicago Ins. Co. v. Holzer*, No. 00 Civ. 1062 (SAS), 2000 U.S. Dist. LEXIS 8327 (S.D. N.Y. June 16, 2000).

The case arose after an attorney who had purchased professional liability insurance from the insurer was sued in New Mexico federal court. When the insurer declined coverage, the policyholder's attorney warned that "if [the insurer's] decision not to defend [the policyholder] remains unaltered, we will commence suit in a court of appropriate jurisdiction in forty eight (48) hours." The next day the insurer sent a letter advising that it had filed a declaratory judgment action in New York state court. The policyholder then removed the case to a federal court.

The New York federal district court stated that although courts usually give the first-filed lawsuit priority, an exception existed "where a party files a declaratory judgment action in anticipation of a coercive suit." According to the court, the filing of a declaratory judgment action triggered by a notice letter is a persuasive indicator of anticipatory conduct. In this case, the insurer filed suit within twenty-four hours of receiving the notice letter, and the court concluded that it had responded to the notice letter by attempting to preempt the policyholder's action.

The court stated that "[p]recedence is not afforded to a declaratory judgment action filed specifically to gain the 'home field advantage' over an imminent coercive suit." The court thought the insurer's actions particularly egregious because "it had actual notice of [the policyholder's] intent to commence legal action. Thus, [the insurer] used the declaratory judgment action to preempt an imminent suit against it. Consequently, [the insurer's] declaratory judgment action was improper."

The New York federal court thus dismissed the declaratory judgment suit and stated that the federal district court in New Mexico could adjudicate the issues in the case.