

California Court Refuses To Compel Consolidated Arbitration, Ruling That Consolidation Is Issue For Panel To Decide

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A California federal district court granted a reinsurer's motion to compel appointment of an arbitrator and denied an insurer's cross-motion to compel consolidated arbitration, ruling that the question of whether multiple disputes should be consolidated should be decided by an arbitration panel. *Employers Ins. Co. of Wausau v. The Hartford*, 2018 WL 6330425 (C.D. Cal. Dec. 3, 2018).

Hartford billed Wausau under nineteen reinsurance treaties that Hartford and several of its affiliates had purchased from Wausau. When Wausau refused to pay, Hartford and its affiliates collectively demanded arbitration. In its demand, Hartford requested that Wausau name one arbitrator to serve on a single panel for a consolidated arbitration. In response, Wausau argued that three arbitrations needed to take place (one for each Hartford entity) and appointed three party arbitrators. Wausau argued that a single consolidated arbitration was not warranted because Hartford's demand involved multiple contracts, each with its own arbitration provision. Wausau moved to compel arbitration of one particular contract ("Treaty 2718"), seeking an order directing Hartford to proceed with the umpire selection process set forth in the arbitration clause of that contract. Hartford cross-moved for an order directing Wausau to select one arbitrator to participate in a single consolidated arbitration.

The court granted Wausau's motion to compel, noting that it was bound to enforce the operative arbitration agreement in Treaty 2718, which does not contemplate consolidation. The court directed the two party-appointed arbitrators to select an umpire pursuant to the procedures set forth in the arbitration provision in Treaty 2718. The court further held that once a panel was in place, it would have authority to decide the issue of consolidation, noting that a majority of courts have ruled that such questions are arbitration panel decisions.

In denying Hartford's cross-petition for consolidation, the court rejected Hartford's assertion that all of the companies collectively demanding arbitration were acting as a single party for the purpose of seeking reimbursement from Wausau for the same underlying settlement payment. The court explained that each Hartford affiliate was a distinct entity and that the arbitration provisions in various treaties differed as to umpire selection process and venue. The court stated: "the Court cannot compel Wausau to form a single arbitration panel based on the fact that the parties demanding arbitration are all Hartford affiliates. . . . Hartford's cross-motion to compel is a de facto request for the Court to fashion a new procedure in contravention of the terms of the agreements."

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