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## Connecticut Superior Court Holds That Consolidation Is a Procedural Question to Be Considered by an Arbitrator

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The Hartford and Employers Insurance Co. of Wausau entered into a Non-Obligatory Casualty Excess of Loss Reinsurance Agreement (the “Agreement”). The Agreement contained an arbitration provision that provides that the arbitration panel should consist of three arbitrators, one chosen by each party and then the third chosen by the two chosen.

Hartford demanded arbitration under the Agreement and 18 other contracts arising out of eight different reinsurance programs between Wausau and four subsidiaries of Hartford. Wausau responded to the arbitration demand arguing that each contract required separate arbitrators and to avoid this Wausau proposed consolidating the arbitrations into three separate proceedings against Hartford and its subsidiaries. Hartford would not proceed with Wausau’s proposal, arguing that any consolidation was for the arbitrators to determine, not the parties.

Wausau filed a summons with the Connecticut Superior Court demanding that Hartford appoint an arbitrator under the Agreement, and Hartford responded by filing a cross-motion to compel arbitration in this action. The court explained that if the parties have an agreement to arbitrate and one of the parties refuses to submit to arbitration, the party seeking arbitration may petition a court for an order compelling arbitration. Whether a dispute is subject to arbitration is a question for the court; however, “procedural questions which grow out of the [parties’] dispute and bear on its final disposition are presumptively *not* for the judge, but for an arbitrator, to decide.” Further, whether an arbitration proceeding should be consolidated with one or more other arbitration proceedings is a question for the arbitrator.

In this case, the parties did not dispute that they entered into a valid arbitration agreement and that their dispute fell within the scope of the agreement. Therefore, the court held that the procedural question of consolidation is for the arbitrators and not for the court to decide.

[\*Employers Ins. Co. of Wausau v. The Hartford\*](#), No. HHD CV 18 6099158 S (Conn. Super. Ct. Feb. 13, 2019)

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