

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

UNITED STATES OF AMERICA, for  
the use and benefit of  
TRIPLE S ALARM CO., INC.

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Plaintiff

NO: 4:10CV01505 SWW

VS.

WESTFIELD INSURANCE  
COMPANY

Defendant

**ORDER**

Before the Court is Defendant’s motion for a declaration regarding Plaintiff’s ability to recover attorney fees in this case (docket entry #34). The Court will not issue an advisory opinion regarding a controversy which has not arisen and thus declines to grant the requested declaration. However, in the interest of resolving this dispute without the necessity of a trial, the Court directs the parties to *F.D. Rich Co. v. United States ex rel. Indus. Lumber Co.*, 417 U.S. 116, 94 S.Ct. 2157 (1974), where the Supreme Court held that “the Miller Act provides a federal cause of action, and the scope of the remedy as well as the substance of the rights created thereby is a matter of federal not state law.” *Id.* at 127, 94 S.Ct. 2157.

IT IS THEREFORE ORDERED that Defendant’s motion for a declaration (docket entry # 34) is *DENIED*.

IT IS SO ORDERED THIS 1<sup>st</sup> DAY OF MARCH, 2012.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE