

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 24, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Nos. 99-1903
00-0662**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

No. 99-1903

WAUSAU STEEL CORPORATION,

**PLAINTIFF-APPELLANT-CROSS-
RESPONDENT,**

v.

UNITED CAPITOL INSURANCE COMPANY,

**DEFENDANT-RESPONDENT-CROSS-
APPELLANT.**

No. 00-0662

WAUSAU STEEL CORPORATION,

**PLAINTIFF-APPELLANT-CROSS-
RESPONDENT,**

v.

**RESOURCE CONSULTANTS, INC. AND
UNITED CAPITOL INSURANCE COMPANY,**

**DEFENDANT-RESPONDENT-CROSS-
APPELLANT.**

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Marathon County: VINCENT K. HOWARD, Judge. *Affirmed.*

APPEAL from a judgment of the circuit court for Marathon County: GREGORY E. GRAU, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Wausau Steel Corporation appeals summary judgments dismissing its actions against Resource Consultants, Inc., and its insurer, United Capitol Insurance Company.¹ The trial courts concluded that the insurance company could not be sued under the direct action statute and that the claim against Resource Consultants was barred by a previous order of the bankruptcy court. Wausau Steel argues that United Capitol should be estopped from asserting the limitation of the direct action statute and that Resource Consultants' voluntary dismissal of its bankruptcy proceedings extinguishes the consent order previously entered by the bankruptcy court. We reject these arguments and affirm the judgments.

¶2 Wausau Steel hired Resource Consultants to supervise remediation of contaminated wetlands. After the initial remediation efforts aggravated the

¹ United Capitol filed a notice of cross-appeal and argues that the economic loss doctrine precludes Wausau Steel from asserting the professional malpractice claims regardless whether the direct action statute applies. Because we affirm the conclusion that the direct action statute does not permit this lawsuit, we need not decide that issue.

contamination, Wausau Steel hired another firm to finish the job. When Resource Consultants filed a petition for ch. 11 bankruptcy in Tennessee, Wausau Steel filed a claim. Resource Consultants commenced an adversary proceeding against United Capitol and Wausau Steel challenging Wausau Steel's claim. Before adjudication on the merits, Wausau Steel elected to forego its claim against Resource Consultants and sought an order dismissing the claim in its entirety. The bankruptcy court entered a consent order prohibiting Wausau Steel from filing an action against Resource Consultants, but reserving Wausau Steel's right to commence a state court action directly against United Capitol.

¶3 Wausau Steel's action against United Capitol is not allowed under the direct action statute. WISCONSIN STAT. §§ 631.01, 632.24 and 803.04(2)(a)² allow direct action against an insurance company only for policies that were delivered or issued for delivery in this state. See *Kenison v. Wellington Ins. Co.*, 218 Wis. 2d 700, 710, 582 N.W.2d 69 (Ct. App. 1998). Because the insurance policy in this case was not delivered or issued for delivery in this state, the trial court correctly concluded that direct action against United Capitol is not allowed.

¶4 Relying on *Kirchen v. Orth*, 390 F. Supp. 313 (E.D. Wis. 1975), Wausau Steel argues that United Capitol has benefited from the protection of Wisconsin laws and therefore should be estopped from asserting that the direct action statute does not apply. The argument combines separate holdings in *Kirchen* regarding personal jurisdiction under the long-arm statute with the holding relating to estoppel. The fact that an insurance company has sufficient contact with this State to allow personal jurisdiction does not estop the insurer

² All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

from enforcing the limitations of the direct action statute. The estoppel applied in *Kirchen* referred to a “no-action clause” in the insurance policy, not the direct action statute. The insurance company was estopped from asserting that provision of the contract based on its conduct during negotiations that lulled the plaintiffs’ attorney into a false sense of security and led him to believe it would not invoke the “no-action clause” in the policy. Wausau Steel’s brief does not identify any action or non-action by United Capitol that reasonably induced Wausau Steel’s reliance to its detriment. See *Milas v. Labor Ass’n of Wisconsin, Inc.*, 214 Wis. 2d 1, 11-12, 571 N.W.2d 656 (1997). This court will not abandon its neutrality by developing Wausau Steel’s argument for it. See *Barakat v. DHSS*, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995).

¶5 The trial court properly dismissed Wausau Steel’s subsequent action against Resource Consultants and United Capitol because the action is barred by the bankruptcy court’s order that Wausau Steel “shall not make any further claims against [Resource Consultants] that were or could have been brought in this case, whether now known or hereinafter discovered, in this Court or any other forum” Wausau Steel argues that the subsequent voluntary dismissal of the bankruptcy proceeding extinguished that order. The orders that are extinguished upon dismissal of a bankruptcy action are itemized in 11 U.S.C. § 349(b). A consent order is not one of them. See *In Re Searles*, 70 B.R. 266 (D.R.I. 1987). The cases Wausau Steel relies on involve liens that are extinguished upon dismissal under 11 U.S.C. § 349(b). Because Wausau Steel has not sought relief from the consent order in the bankruptcy court, the order remains in effect and bars any action against Resource Consultants.

By the Court.—Judgments affirmed. Costs to the respondents on appeal. No costs on the cross-appeal.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5.

