

# United States Court of Appeals

**For the Seventh Circuit  
Chicago, Illinois 60604**

April 21, 2005

## **Before**

Hon. Kenneth F. Ripple, *Circuit Judge*

Hon. Daniel A. Manion, *Circuit Judge*

Hon. Diane P. Wood, *Circuit Judge*

No. 04-2549

Premcor USA, Inc., and the Premcor  
Refining Group, Inc.,  
*Plaintiffs-Appellants,*

Appeal from the United States District  
Court for the Northern District of  
Illinois, Eastern Division.

v.

No. 03 C 7377

American Home Assurance  
Company,  
*Defendant-Appellee.*

John W. Darrah  
*Judge.*

## **ORDER**

The petition for rehearing filed by plaintiffs-appellants on March 22, 2005, is GRANTED. The panel decision issued on March 9, 2005, is amended as follows:

Page 2, line 1, after “. . . Illinois state court case.” insert: “Premcor also argues that AHA had a duty to indemnify it for any liability incurred.”

Page 12, insert paragraph as new subpart D: “Finally, Premcor argues that the district court should not have granted summary judgment on the issue of AHA’s duty to indemnify. As the underlying state action remains pending on appeal in the Illinois courts, Premcor is correct—the district court acted precipitously. *See, e.g., Outboard Marine Corp.*, 607 N.E. 2d at 1221 (“[T]he question of whether the insurer has a duty to indemnify the insured for a particular liability is only ripe for consideration if the insured has already incurred liability in the underlying claim against it.”). Therefore, we reverse the district court’s judgment on this point and remand for either dismissal

without prejudice of this issue or a stay of the proceedings relating to this issue until the underlying action in the Illinois state court has become final (and any liability is determined).”

Page 12, section III, revise last sentence to read: “Summary judgment for AHA on the duty to defend issues was correct. Summary judgment on the duty to indemnify issue was premature, and we remand that issue to the district court for proceedings consistent with this opinion.”