

Bankruptcy Trustee Lacks Standing to Sue D&O Insurers until Insureds' Liability Is Determined

October 2001

The United States District Court for the District of Maine has dismissed a declaratory judgment action against two D&O insurers because their insureds' liability was not yet determined. *Health Care Accounting & Consulting Servs., LLC v. Executive Risk Indem., Inc.*, No. 01-103-P-C, 2001 U.S. Dist. LEXIS 9609 (D. Me. July, 11 2001).

The D&O insurers in this action provided coverage to certain directors and officers of a corporation that had since gone bankrupt. The directors and officers were named as defendants in several adversary proceedings brought in bankruptcy court. The insurers disclaimed coverage, and the bankruptcy trustee instituted this action seeking a declaration regarding the insurers' coverage obligations. The insurers moved to dismiss the action based on Maine's "reach and apply" statute, which bars direct actions by claimants against a defendant's insurers until the insured's liability is established.

The district court granted the insurers' motion and found that the trustee did not have standing to bring the declaratory judgment action. In so holding, the court rejected the trustee's argument that federal Declaratory Judgment Act, 28 U.S.C. § 2201, and not the Maine statute applied. The court noted that "[I]tigators may not use federal declaratory judgment jurisdiction to avoid the effect of substantive and otherwise applicable state law."