

ALERT

# Bankruptcy Court Exercises Jurisdiction Over Trustee's Adversary Proceeding Against Insurer

---

January 18, 2013

The United States Bankruptcy Court for the Eastern District of New York held that it had subject matter jurisdiction over a bankruptcy trustee's adversary proceeding against the bankrupt entity's insurer because the policy and policy proceeds were part of the policyholder's bankruptcy estate. *EMS Financial Services, LLC. v. Federal Ins. Co.*, 2013 WL 64755 (Bankr. E.D.N.Y. Jan. 4, 2013).

Two claimants filed separate suits against a policyholder, a third-party escrow agent for financial services transactions, for purported negligent performance of escrow services. The escrow agent later filed for Chapter 7 bankruptcy, and a Chapter 7 bankruptcy trustee was appointed. The underlying claimants filed proofs of claim in the escrow agent's bankruptcy proceeding in excess of the \$5 million limit of liability of the escrow agent's insurance and were granted relief from the automatic stay to pursue default judgments against the policyholder. While the underlying actions were pending, the bankruptcy trustee filed an adversary proceeding against the escrow agent's insurer seeking a determination that the underlying actions were covered by the policy and requiring the insurer to turn over the policy's limit of liability for *pro rata* distribution to the escrow agent's creditors.

The court held that it had jurisdiction over the adversary proceeding because both the policy and its proceeds were property of the bankruptcy estate. The court held that the policy was property of the bankruptcy estate because the escrow agent was an insured under the policy and the policy was paid for and owned by the escrow agent. Further, the court held that the bankruptcy estate had a

## Practice Areas

---

D&O and Financial Institution Liability  
E&O for Lawyers, Accountants and Other Professionals  
Insurance  
Professional Liability Defense

property interest in the policy proceeds because the escrow agent was an insured under the policy and claims were filed against the escrow agent for which coverage may be available under the policy. The court therefore held that it had subject matter jurisdiction over the trustee's adversary proceeding but stayed the proceeding pending adjudication of the underlying actions as a matter of judicial efficiency.

The opinion is available [here](#).