

ALERT

# Claimant May Use Connecticut Direct Action Statute to Sue Carrier After Compromising Claim with Policyholder

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April 9, 2013

The United States District Court for the District of Connecticut has held that a settlement agreement between the claimant and policyholder satisfies Connecticut's direct action statute's requirement regarding the need for an unsatisfied judgment. *Tucker v. American International Group, Inc.*, No. 3:09-cv-1499, 2013 WL 1294476 (D. Conn. Mar. 28, 2013). Accordingly, the court permitted the claimant's suit against the carrier to proceed.

The claimant received a \$4 million judgment in her underlying suit for wrongful discharge. After the policyholder media company filed for bankruptcy, the claimant and the policyholder entered an agreement in which the policyholder made a small payment toward the judgment, waived appellate rights and assigned its interest in insurance coverage for the judgment to the claimant. The claimant then filed suit against the carrier, bringing a cause of action for, among other things, subrogation under Connecticut's direct action statute, Connecticut General Statutes Section 38a-321.

In order for the claimant to proceed with a subrogation claim against a carrier, the direct action statute requires the claimant to recover "a final judgment" that is unsatisfied for at least 30 days. The carrier moved to dismiss the claimant's subrogation cause of action on the grounds that the settlement with the policyholder and the claimant's release of the policyholder meant that no final judgment remained unsatisfied.

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The court denied the carrier's motion. It reasoned that the Connecticut Supreme Court had by implication approved of a claimant's use of the direct action statute after compromising a claim with a policyholder. The court also cited a Connecticut lower court's allowance of such a claim. The district court held that a stipulated judgment may form the basis of an action under Connecticut's direct action statute. The court observed, however, that the carrier could assert any appropriate coverage defenses.

The opinion is available [here](#).