

ALERT

Sixth Circuit Finds No Bankruptcy Exception to Prohibition Against Direct Actions In Tennessee

February 24, 2014

The Court of Appeals for the Sixth Circuit held that no exception exists to Tennessee's general prohibition on direct actions against an insurer, even in cases where the insured has declared bankruptcy triggering an automatic stay before a judgment in the underlying action. *Mauriello v. Great American E&S Insurance Co.*, 2014 WL 321921 (6th Cir. Jan. 30, 2014). In so holding, the Sixth Circuit reasoned that an adequate remedy remains notwithstanding the automatic stay for a claimant to obtain a judgment against a bankrupt insured.

The insurer issued various professional liability insurance policies to two real estate management companies. The claimant filed an action alleging fraud against the insureds in relation to certain real estate purchases. The insureds filed for bankruptcy protection, triggering an automatic stay of the fraud action. The claimant sought relief from the automatic stay to continue the action, and the bankruptcy court granted such relief "only if there is available insurance" and directed that the claimant "shall not obtain in personam relief against the [insureds] but rather shall only obtain in rem relief against [the insureds] to the extent of available insurance." The claimant voluntarily dismissed the fraud action prior to obtaining a judgment against the insureds, and instead filed a direct action against the insurer seeking a declaration that the claimant was the intended third party beneficiary of the insurance policies and that the insurer had defense and indemnity obligations under the policies for the fraud action. The insurer filed a motion for summary judgment, arguing that the direct action was barred under Tennessee law.

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The Sixth Circuit concluded that Tennessee law does not permit direct actions by third party claimants against an insurer, even in the event that an insured files for pre-judgment bankruptcy protection. According to the appellate court, “[the claimant’s] circumstances are not unique, and parties in [the claimant’s] situation typically request relief from the automatic stay to the extent of available insurance and proceed against the debtor as a nominal defendant for the purpose of establishing the debtor’s liability.” Moreover, the Sixth Circuit noted that it is well-settled that a claimant may sue the insured debtor once the bankruptcy proceedings conclude as long as the suit is purposed solely to establish the debtor’s liability. In this case, the bankruptcy court granted the claimant relief from the automatic stay to the extent of available insurance. According to the Sixth Circuit, “[the claimant] now attempts to circumvent [the bankruptcy court’s order] collaterally by asking this court to rewrite Tennessee state law.”

The opinion is available [here](#).