

ALERT

# Under New York Law, Claimant Has No Direct Action Against Insurer Prior to Obtaining Judgment Against Insured

March 6, 2014

Applying New York law, the U.S. District Court for the Eastern District of New York has held that a claimant has no direct cause of action against an insurer prior to obtaining a judgment against the insured. *Commonwealth Land Title Ins. Co. v. Am. Signature Servs., Inc.*, 2014 WL 672926 (E.D.N.Y. Feb. 20, 2014).

Two title insurance companies filed a lawsuit against their insurance agent for alleged failure to perform properly certain tasks under the parties' agency agreements. The agent was insured under a title agent's professional liability policy, and the professional liability insurer denied coverage for the claim by the title insurers. Thereafter, the title insurers named the agent's insurer as a defendant in their claim against the agent. The title insurers contended that they are third-party beneficiaries of the insurance policy issued to the title agent, and thus they sought indemnification directly from the agent's insurer. Alternatively, the title insurers sought a declaratory judgment that the agent's insurer is required to defend and indemnify the agent in the title insurers' claim.

The court granted the liability insurer's motion to dismiss the claim against it, holding that New York law does not permit claimants to file a direct action against an insurer prior to the claimants obtaining a judgment against the insured. The title insurers had argued that New York Insurance Law Section 3420, which provides a mechanism for a claimant to pursue an action against an insurer in certain circumstances, does not apply to them because it governs only claims for personal injury or property damage and not claims for professional liability. The court disagreed, finding that Section 3420 is

## Practice Areas

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

not a limitation on direct actions but rather is an expansion of the right of a claimant to file a direct action in certain circumstances. Because the title insurers admittedly did not meet the statutory requirements of Section 3420, the court held that the provision does not apply here and instead common law controls. According to the court, under New York common law, a claimant cannot pursue a claim against an insurer until the claimant has obtained a judgment against its insured.