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Alert

New Jersey's Appellate Division Rejects Exception to the "No Direct Action Rule" for Declaratory Judgment Claims

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In an issue of first impression, a unanimous panel of the Superior Court of New Jersey, Appellate Division, held that the common law prohibition on direct actions against insurers applies to claims for declaratory relief. See Chenault v. Victory Highlands Condo. Ass'n, No. A-3626-14T4 (N.J. Super. App. Div. Nov. 21, 2016).

In that case, a tort plaintiff (Mr. Chenault) sued his condominium association (Victory) and property manager (Marshall) for alleged injuries and damages caused by mold in his condominium. Following discovery, Mr. Chenault, Victory, and Marshall executed a settlement agreement acknowledging Mr. Chenault's right to search for insurance policies issued to the defendants and to retain rights under the insurance. No rights possessed by Victory or Marshall were assigned to Mr. Chenault, no judgment was entered against Victory or Marshall, and the settlement was executed without notice to or the consent of any insurer of Victory or Marshall. Mr. Chenault dismissed with prejudice his claims against Victory and Marshall.

Mr. Chenault located insurance policies issued to Victory and moved to reopen the suit against Victory and Marshall. The trial judge granted Mr. Chenault leave to file an amended complaint that would include his claim for injuries and damages against Victory and Marshall and claims for declaratory relief against the insurers. Following joinder of issue, the insurers sought summary judgment based on the common law prohibition on direct action claims, which the trial court denied based on the settlement agreement or, alternatively, the concept that the "no direct action rule" does not apply to declaratory judgment claims (as opposed to damages claims). The insurers sought and were granted leave to appeal on an interlocutory basis.

The Appellate Division confirmed that a tort plaintiff may not maintain a claim for declaratory relief against a tortfeasor's insurer under the "no direct action rule." The panel found "no principled reason for creating an exception to the time-honored common law rules that 'a stranger to an insurance policy has no right to recover the policy proceeds,' Ross v. Lowitz, 222 N.J. 494, 512 (2015), and that plaintiffs in tort actions may not directly sue a tortfeasor's insurer, Cruz-Mendez v. ISU/Ins. Serv., 156 N.J. 556, 566-67 (1999)." Mr. Chenault, Victory, and Marshall could not stipulate to "bypass" the rule,

and Mr. Chenault could not rely on Manukus v. Am. Ins. Co., 98 N.J. Super. 522 (App. Div. 1968), or Occhifinto v. Olivo Constr. Co., 221 N.J. 443 (2015), to bring a declaratory judgment claim in which his attorneys might seek "successful claimant" fees even if Mr. Chenault were unable to recover a monetary judgment on the tort claim. The court held that "[t]he common law rule upon which the insurers rely, which has stood in good stead in our jurisprudence for many years, and common sense as well, dictate that the claims against Victory and Marshall proceed to a conclusion before the insurers are put to the task of defending against the declaratory judgment claims."

If you have questions about the decision, please feel free to contact Lorraine M. Armenti, Esq. or Jonathan A. Messier, Esq.