

New Jersey Appellate Court Rules That Claimant Has Standing To Sue Insurer And Broker Under State Statutory Law (Insurance Law Alert)

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Reversing a trial court decision, a New Jersey appellate court ruled that a claimant was entitled to sue his attorney's malpractice insurer and an insurance broker under New Jersey's direct action statute. *D'Agostino v. Colony Ins. Co.*, 2022 WL 1553717 (N.J. App. Div. May 17, 2022).

D'Agostino retained an attorney to represent him in an employment matter. When the matter resulted in an unfavorable judgment, D'Agostino filed a legal malpractice action against his former attorney and was awarded \$330,000 in damages. Unbeknownst to D'Agostino, the attorney was insured under a professional liability policy issued by Colony, which had refused to defend or indemnify the suit. When D'Agostino was not able to recover the judgment from the attorney, he filed a claim with the Lawyers' Fund for Client Protection. After the attorney died, D'Agostino discovered the existence of the Colony policy and sought reimbursement. When the broker informed him that Colony had previously denied coverage, D'Agostino sued, alleging wrongful denial of coverage and bad faith.

A trial court dismissed the suit, finding that D'Agostino lacked standing because he was not a third-party beneficiary of the policy nor an assignee of the rights to that policy. The appellate court reversed, ruling that D'Agostino had standing to file suit under N.J.S.A. 17:28-2, New Jersey's direct action statute. The appellate court acknowledged that Colony was entitled to assert several potential defenses to coverage, including that the claims were time-barred, but concluded that the statute provided a basis for standing against Colony.

The appellate court also held that D'Agostino stated a claim against the broker for negligent failure to procure appropriate professional liability coverage, noting that New Jersey recognizes the duty of care of brokers to "foreseeable third parties injured by the broker's negligence."

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