

New Jersey Supreme Court Rules That Claimants May Seek Recovery From Insurer Pursuant To Direct Action Statute But Subject To Arbitration Clause In Insurance Contracts (Insurance Law Alert)

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The Supreme Court of New Jersey ruled that underlying claimants were entitled to assert claims against an insurance company pursuant to New Jersey's Direct Action Statute, but that the dispute was subject to the arbitration clause in the insurance policies. *Crystal Point Condominium Assoc., Inc. v. Kinsale Ins. Co.*, 2022 WL 2793326 (N.J. July 18, 2022).

Crystal Point, a building management company, sued contractors after it discovered construction defects. The suit resulted in a default judgment and writs of execution against the contractors. Thereafter, Crystal Point sued Kinsale, the contractors' insurer, seeking a declaration of coverage, as allowed by the New Jersey Direct Action Statute (N.J.S.A. 17:28-2). Kinsale argued that the statute did not apply because Crystal Point had not demonstrated that the contractors were insolvent and alternatively, that the dispute was subject to arbitration pursuant to an arbitration clause in the insurance policies.

A New Jersey trial court ruled that the Direct Action statute did not apply because Crystal Point failed to establish that the insured contractors were insolvent or bankrupt, as required by the statute. In addition, the trial court granted Kinsale's motion to compel arbitration. An intermediate appellate court reversed. After considering supplemental evidence, the intermediate appellate court ruled that the contractors' failure to satisfy the writs of execution sufficiently established insolvency or bankruptcy. The court also reversed the arbitration ruling, finding that the arbitration clause in the policies did not encompass the claims.

The Supreme Court of New Jersey reversed in part and affirmed in part. The court ruled that while Crystal Point was entitled to assert direct claims against Kinsale, the claims must be arbitrated. The court agreed that the supplemental record established prima facie evidence of insolvency or bankruptcy based on the unsatisfied writs of execution. As to arbitration, the court explained that claims under Direct Action Statute are derivative, subject to "the terms of the policy," which, here, included an arbitration clause.

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