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Alert

New Jersey Supreme Court Concludes That the Right to Trial by Jury Attaches to a Bad Faith Claim for Failure to Settle Within the Policy Limits

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On June 14, 2011, the Supreme Court of New Jersey clarified whether an insured's claim of bad faith against its insurer pursuant to the cause of action recognized in *Rova Farms Resort, Inc. v. Investors Insurance Co. of America*, 65 *N.J.* 474 (1974), should be decided by a judge or a jury.

In *Wood v. New Jersey Manufacturers Insurance Co.*, — *N.J.* — (2011), A-44-10, the Supreme Court held in a unanimous opinion that the right to a jury trial attaches to claims asserted under *Rova Farms*.

In *Wood*, a U.S. Postal Service letter carrier was delivering mail at a condominium complex when she was attacked by a dog and seriously injured. She filed suit against Caruso, the woman who lodged the dog in her condo unit, her grandson, who was the owner of the dog, and the condominium association. Caruso tendered the claim to her liability insurer under a policy with limits of $500,000. The insurer agreed to defend and indemnify Caruso and her grandson. Although the defense attorney retained by the insurer recommended that the insurer settle on behalf of its insureds for the full policy limit, and despite the fact that the plaintiff offered to settle the case for $450,000, the insurer refused to settle for more than $300,000. The case was tried and the jury entered a verdict against the defendants that resulted in a $1.4 million judgment against Caruso. Caruso assigned her rights under *Rova Farms* to the plaintiff in exchange for an agreement by the plaintiff that she would not execute against Caruso on the excess judgment.

The plaintiff then filed a declaratory judgment action against the insurer seeking to recover the amount of the excess judgment under *Rova Farms*. The trial court granted summary judgment in favor of the plaintiff, and the insurer appealed. In an unpublished opinion, the Appellate Division reversed and remanded for trial. It held that the evidence on whether the insurer had proceeded in bad faith was not so one-sided as to justify summary judgment in favor of the plaintiff. The Appellate Division concluded that the trial judge on remand could determine whether the factfinder should be a

judge or a jury. The plaintiff sought certification to the Supreme Court, which was granted solely on the issue of whether claims under *Rova Farms* should be decided by a judge or a jury.

After noting that the mere existence of an excess verdict does not automatically make the insurer liable under *Rova Farms* based on the insurer's prior refusal to settle within the policy limits, the Supreme Court rejected the plaintiff's argument that no jury trial attaches to *Rova Farms* claims because such claims are equitable in nature. It stated:

At its core, a *Rova Farms* bad faith claim is a simple breach of contract claim, one that perforce must assert that, by failing in bad faith to compromise a claim within the policy limits prior to a verdict, the insurer has breached the implied contractual covenant of good faith and fair dealing and, therefore, should be liable for the entire judgment and not just to the extent of the policy limits.

The Court explained that because a breach of contract claim was one to which the right to a jury trial attached at common law, that right attaches to all breach of contract claims, including claims brought under *Rova Farms*. The Court noted, however, that even though the right to a jury trial attaches to *Rova Farms* claims, not every suit containing *Rova Farms* claims must be tried to a jury. As in every civil case, the parties may consent to a bench trial if they so choose.

For additional information regarding the holding in *Wood* or its impact on *Rova Farms* claims, please contact Kevin E. Wolff or Conor T. Mulcahy.