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## **NJ Supreme Court Affirms Dismissal Of First-Party Bad Faith Claim Against Insurer In Second Filed UM Action On Res Judicata Principles-Avoids Discussion Of Whether Entire Controversy Doctrine Mandated Inclusion Of Bad Faith Claim In Initial UM Action**

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The Supreme Court in *Kwabena Wadeer v. N.J. Mfrs. Ins. Co.* (A-54-12) (072010), considered whether the entire controversy doctrine, codified at Rule 4:30A, mandates that a first-party “bad faith” claim against an insurer be brought concurrently with an action for UM benefits.

While acknowledging that the goals of the entire controversy doctrine are to promote equity and judicial economy and to avoid piecemeal litigation, the Supreme Court did not invoke the “harsh application of this rigid doctrine,” and instead, upheld the trial court’s determination that the plaintiff’s “bad faith” claim was properly dismissed under principles of res judicata. Because the “bad faith” claim was properly dismissed on other grounds, the Supreme Court did not resolve the issue regarding the applicability of the entire controversy doctrine, and instead, referred the issue to the New Jersey Civil Practice Committee for a determination of whether Rule 4:30A needs to be modified “to permit an insured to bring a bad faith cause of action against an insurer after the underlying UM claim is resolved.”

Plaintiff initially filed an action with a four-count complaint against NJM seeking to compel NJM to provide UM benefits after NJM rejected a UM arbitration award in plaintiff’s favor and demanded a trial. During the course of the action, a non-binding arbitration award pursuant to Rule 4:21A was entered in favor of plaintiff, and NJM rejected that award and demanded a trial de novo. Following a jury trial, a verdict was entered in favor of plaintiff in an amount that was twice the limits of the UM coverage of the NJM policy. The trial court refused to enter judgment in the full amount of the verdict and, instead, molded the verdict to the limits of the UM coverage of the NJM policy. In doing so, the trial court decided that NJM had not committed “bad faith” because there were “fairly debatable”

reasons to support NJM's position that it was not obligated to provide UM benefits to plaintiff. The Appellate Division affirmed the trial court's ruling.

Plaintiff then commenced a second action, alleging that NJM had acted in "bad faith" by failing to provide UM benefits and failing to attempt to resolve plaintiff's claims within the UM limits of the NJM policy. NJM moved for summary judgment on the grounds that the second complaint was barred by the entire controversy doctrine, res judicata and/or collateral estoppel. NJM's motion was granted, in part based on the entire controversy doctrine, and the Appellate Division affirmed the trial court's decision. The Supreme Court granted plaintiff's petition for certification and affirmed the Appellate Division decision. It did so, however, based on res judicata principles as opposed to the entire controversy doctrine. The Supreme Court held that plaintiff's "bad faith" claims had been fully and fairly litigated in the first action and plaintiff accordingly had no right to commence the second action. Having determined that plaintiff's second action was barred under res judicata principles, the Court chose not to decide the issue of whether the entire controversy doctrine required plaintiff to include his "bad faith" claim in his original UM complaint. As noted, the Court did refer the issue to the New Jersey Civil Practice Committee for consideration.

For additional information regarding the New Jersey Supreme Court's holding in *Wadeer v. NJM*, please contact Kevin E. Wolff, Esq. or Mark S. Hanna, Esq.