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New Jersey Appellate Division Requires Court To Conducts In Camera Review and Bifurcate Discovery In Case Involving Breach of Contract And Breach Of The Covenant Of Good Faith and Fair Lending

July 29, 2015

In *Alden Leeds, Inc. v. QBE Specialty Ins. Co.*, A-2013-14T1, decided July 27, 2015, the New Jersey Superior Court, Appellate Division, in an unpublished decision, reaffirmed New Jersey law that a court should conduct an *in camera* review of an insurer's documents to determine whether the attorney-client or work-product privileges apply, and that discovery relating to a claim of breach of the covenant of good faith and fair dealing should be separated from discovery relating to whether there is insurance coverage in the first instance.

The plaintiff filed a suit against two insurers alleging that the insurers had breached their respective insurance contracts and breached the implied covenant of good faith and fair dealing by refusing to provide coverage for a loss resulting from Hurricane Sandy. Following motion practice, the Law Division ordered the insurers to produce documents and privilege logs for documents they had withheld or redacted. The privilege logs identified, among other privileges, the attorney-client and work-product privileges as grounds for redacting and withholding documents. After further motion practice, the Law Division ordered the insurers to produce documents previously withheld without performing an *in camera* review of the documents despite the fact that the documents may have related to the breach of the implied covenant of good faith and fair dealing claim.

The Appellate Division reversed, holding that "it was inappropriate in a case such as this to decide questions of privilege without a thorough *in camera* review." Moreover, the Appellate Division held that in cases involving both the breach of the covenant of good faith and fair dealing and breach of contract under an insurance policy, a court should bifurcate discovery and stay discovery on the breach of the covenant of good faith and fair dealing claim until the coverage claim is resolved. The Appellate Division ordered the Law Division to review the documents *in camera* and determine whether a document relates to the breach of contract claim or the breach of the covenant of good faith and fair dealing claim, and if to the former, whether any privilege applies.

Should you have any questions concerning the decision, or the issues discussed above, please call us.