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SUPREME COURT OF NEW JERSEY REJECTS INSURED'S ARGUMENT THAT THERE IS NO RIGHT TO A JURY TRIAL IN ROVA FARMS CASES

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On June 14, 2011, the Supreme Court of New Jersey unanimously ruled in *Wood v. New Jersey Manufacturers Insurance Co.* that a claim against a liability insurer alleging that the insurer acted in bad faith by refusing to settle an underlying tort action within the policy limits was a traditional breach of contract claim to which the right to a jury trial attached. Such claims are commonly referred to in New Jersey as *Rova Farms* claims after the Supreme Court's 1974 decision in *Rova Farms Resort, Inc. v. Investors Insurance Co. of America*, 65 N.J. 474, 323 A.2d 495 (1974).

Plaintiff, Karen Wood, a letter carrier for the U.S. Postal Service, was delivering mail to a condominium complex when she was severely injured during an attack by a dog kept by Caruso, one of the condo owners. Wood's injuries required at least two separate spinal surgeries. Wood sued the condominium association, Caruso and others for her injuries. Caruso tendered her defense to N.J. Manufacturers.

In a pretrial nonbinding arbitration, the arbitrator determined Wood's total economic and non-economic damages were $600,000 and apportioned liability 90 percent to Caruso and 10 percent to the condominium association. Thereafter and prior to trial, Wood made a policy limits settlement demand of $500,000 on Caruso. N.J. Manufacturers responded with a $300,000 settlement offer. During jury deliberations, Wood offered to settle for $450,000 and told the insurer that she would look to Caruso for recovery should there be an excess verdict. The insurer refused to increase its offer.

The jury awarded Wood $2,422,000 allocating liability 51 percent to Caruso and 49 percent to the condominium association. A molded judgment was entered against Caruso for $1,408,320. Thereafter, the insurer tendered its $500,000 policy limits and Wood filed a *Rova Farms* action against the insurer for the excess award over the $500,000 paid. The trial judge in the underlying case also presided over the *Rova Farms* action and granted summary judgment to Wood on her *Rova Farms* claim.

On appeal to the Appellate Division of the Superior Court of New Jersey, the grant of summary judgment was reversed and the case was remanded to the trial court (the Law Division of the Superior Court) for further proceedings. The Appellate Division did not resolve the question of whether there is a right to a jury trial in a *Rova Farms* action, finding that there were no reported cases in New Jersey that "clarified" whether a *Rova Farms* claim should be tried by a judge or a jury. The Supreme Court granted certification on that issue. The New Jersey Association for Justice, the Insurance Council of New Jersey and the Property Casualty Insurers Association of America filed *amicus* briefs.

Wood argued to the Supreme Court of New Jersey that the right to a jury trial should not attach to a *Rova Farms* claim because the claim is basically equitable in nature arising out of the insurer's breach of its fiduciary obligation to its insured. In New Jersey, there is no right to a jury trial on equitable claims. The New Jersey Association for Justice joined in that argument and added that juridical economy also favored a

non-jury trial that could usually be tried by the same judge that presided over the underlying tort case.

The insurer, the Insurance Council of New Jersey and the Property Casualty Insurers Association of America argued that a *Rova Farms* claim is simply a breach of contract claim arising under the implied covenant of good faith and fair dealing that is contained in every contract in New Jersey. Therefore, the right to a jury trial must attach to a *Rova Farms* claim under Article I of the 1947 New Jersey Constitution.

The court agreed with the insurer holding that a "*Rova Farms* bad faith case presumptively is an action at law to which the right to a jury trial attaches." The court then noted that while the right to a jury trial has now been clarified, this does not mean that in the future all such cases must be tried to a jury. Viewing the issue going forward, the court stated that the parties will have the "flexibility" to waive a jury trial in those cases where "a bench trial would be more fitting."

To discuss any questions you may have regarding the opinion discussed in this alert, or how it may apply to your particular circumstances, please contact Thomas McKay, III (tmckay@cozen.com or 856.910.5012).