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## The New Jersey Supreme Court Holds That Bad Faith Claims Under *Rova Farms* Are To Be Decided By A Jury

Tuesday, June 15<sup>th</sup> - Under the rubric that every dog has his day, the New Jersey Supreme Court yesterday definitively decided that a bad faith claim under *Rova Farms* is to be decided by a jury rather than a judge.

The case, *Wood v. New Jersey Mfrs. Ins. Co.*, No. A-44-10 (066643) (N.J. Jun. 14, 2011), had humble beginnings. It involved personal injuries that a mail carrier sustained because of being attacked by a dog. At the time of the incident, the dog was housed at the owner's grandmother's condominium. The grandmother (Grand Mom) was insured by New Jersey Manufacturers Insurance Company (New Jersey) who assigned defense counsel and submitted the matter to non-binding arbitration. The arbitrator allocated liability to Grand Mom that exceeded her policy limits. New Jersey rejected the award and demanded a jury trial.

Here's where the wheels fell off - both defense counsel and the assigned adjuster concluded that plaintiff's damages would either exceed or meet policy limits. New Jersey's Major Claims Committee felt otherwise, and offered \$300,000 to settle the claim. Plaintiff rejected this, but countered that she would accept policy limits. When New Jersey rejected plaintiff's counteroffer, plaintiff invoked *Rova Farms*. Under *Rova Farms*, a bad faith cause of action against an insurer exists where: (i) a probability exists that an adverse verdict will exceed policy limits; and (ii) the matter could be settled through exercise of good faith and fair dealing, but is not. *Rova Farms Resort, Inc. v. Investors Ins. Co. of Am.*, 65 N.J. 474 (1974).

During jury deliberations, plaintiff lowered her demand to \$50,000 below policy limits, but was rebuffed again by New Jersey. You can see where this is going.... The jury verdict against Grand Mom, which was molded to add prejudgment interest, totaled \$1,408,320.33. Gee, Grand Mom - what big eyes you have and, by the way, where or where is my reinsurance policy???

After the trial court denied New Jersey's motion for a new trial, Grand Mom assigned her *Rova Farms* claim to the mail carrier, who instituted a declaratory judgment action against New Jersey. The trial court granted the mail carrier's summary judgment motion on the bad faith claim, finding that New Jersey's analysis had failed to consider properly its insured's interests and had essentially "gambled" with those interests at trial. New Jersey appealed. The Appellate Division reversed, finding that "pivotal questions of reasonableness and bad faith [should] be decided in this case after a full-blown evidentiary hearing." After remanding the case, the plaintiff sought certification from the Supreme Court as to who the fact finder in such a situation should be.

Interestingly, plaintiff, who had initially demanded a jury trial, reversed course and sought a bench trial. New Jersey, apparently could not make up its mind, and equivocated on the issue. The Court, however, made short shift of the issue, finding that plaintiff's claim was a garden-variety breach of contract claim. Its decision considered the historical basis for the cause of action and the requested relief, since under New Jersey's Declaratory Judgment Act, a claim

could be considered either equitable - no jury trial; or legal - jury trial. Here, since: (i) the plaintiff claimed that New Jersey had breached its insurance contract by failing to pay the underlying claim; (ii) the damages sought were monetary in nature; and (iii) plaintiff failed to demonstrate that she lacked an adequate remedy at law, the Court determined that the claim was an action at law to which a right to a jury trial attaches.

Thus, a question left outstanding for almost forty years has been given finality. Under the rubric of "be careful what you ask for," the question will be invariably: how will jury trials affect bad faith claims in New Jersey? Unlike Pennsylvania, New Jersey has no bad faith statute as a guide. Rather New Jersey's Unfair Claims Practices statute provides what some consider a standard of care for insurer's conduct. Absent consent by both parties, or a waiver of a jury trial by plaintiff, it will now be up to a jury to decide what is and is not bad faith under *Rova Farms*.

A copy of the decision can be found [here](#).



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