

BAD FAITH BLOG

# New Jersey Rejects Strict Liability Standard for Bad Faith

AUTHOR: SANDBERG PHOENIX

**Summary:** New Jersey Manufacturers Insurance Company ("NJM") appealed the ruling that it breached its duty of good faith by failing to settle a claim against its insured which was within its policy limits. The New Jersey Superior Court, Appellate Division, applied the reasonableness standard in assessing whether the claim for bad faith was proper.

*Wood v. New Jersey Manufacturers Insurance Company*

Karen Wood, a letter carrier for the U.S. Postal Service, was attacked by a dog while delivering mail to the Alfred Vail Mutual Association ("AVMA"). The dog was owned by John Crittelli and kept on AVMA's premises by his grandmother Alfonzia Caruso. Caruso's NJM insurance policy had a policy limit of \$500,000. Crittelli qualified as an insured under the policy for any damages caused by his dog.

Wood brought suit against Crittelli, Caruso and AVMA. After assuming the defense of Crittelli and Caruso, NJM would only provide defense counsel with \$300,000 of settlement authority even though defense counsel anticipated the case may be valued at an amount greater than the policy limits. NJM justified this refusal by pointing to Wood's untruthfulness in one of her interrogatory responses and the fact one of her experts had reversed his opinion regarding the causal link between her injuries and the dog bite.

Defense counsel offered the full \$300,000 for settlement, which Wood rejected. Wood later offered to settle for the policy limits of \$500,000, but NJM refused to extend any additional settlement authority. The case proceeded to trial. Prior to jury deliberations, Wood again attempted to settle the case, this time making an offer of \$450,000. NJM again rejected the offer. The jury returned a verdict in favor of Wood, awarding her \$2,422,000. NJM's insureds were found 51 percent at fault and judgment was entered against them in the amount of \$1,408,320.33.

The insureds assigned to Wood any bad faith claims they may have against NJM. Wood filed suit alleging that NJM acted in bad faith when it refused to settle the underlying action within the policy limits. The trial court granted Wood's motion for summary judgment and ordered NJM to pay the amount of the verdict in excess of the policy limits.

On NJM's appeal, the Superior Court of New Jersey, Appellate Division, reversed the grant of summary judgment. The court provided a detailed background of the seminal cases that shaped the bad faith cause of action in New Jersey. The claim was first recognized in *Radio Taxi Serv. Inc. v. Lincoln Mut. Ins. Co.* in which the Supreme Court of New Jersey held an insurer could be liable for an excess judgment if "the [insurer] was unduly venturesome at the expense of the insured;" or "that the danger of an adverse verdict in the accident case was so great as to create an inference of bad faith in rejecting the settlement offer;" or "that the decision not to meet the [injured driver's] settlement demand sprang from optimism unrelated to the realities of the case." This tort was addressed again in *Rova Farms Resorts v. Investors Ins. Co.*, where the Court held that an insurer has the "positive fiduciary duty to take the initiative and attempt to negotiate a settlement within the policy coverage." However, the insurer will not be liable for bad faith unless it is found to be "actually dishonest, unreasonably optimistic or otherwise in bad faith, or infected with negligence such as to impede the reaching, or having the capacity to reach, a good faith decision." In both *Radio Taxi* and *Rova Farms*, the Supreme Court refused to create strict liability for an excess judgment whenever an insurer fails to settle for within policy limits.

In *Wood*, the Superior Court rejected Wood's argument in favor of strict liability. The Court also indicated its skepticism towards summary judgment motions in bad faith cases since the issue turns on the insurer's state of mind. To determine that state of mind, the Court emphasized the importance of a "multi-faceted analysis" that considers the range of verdicts the insurer anticipates, the strengths and weaknesses of the evidence, prior verdicts in similar cases, and the credibility of the witnesses and parties to the case. Here, questions regarding the plaintiff's credibility, disputed causation, and the likely amount of damages that would be apportioned to AVMA gave rise to a question of fact regarding NJM's optimism of its ability to obtain a verdict within policy limits. Importantly, strict adherence to internal claims review protocols cannot, standing alone, be sufficient to extricate an insurer from bad faith liability. A bad faith claim must therefore be judged on a case-by-case basis. Because there was sufficient evidence for a jury to find that NJM's optimism was well-founded, the Superior Court reversed the grant of summary judgment and remanded the case for trial.

By Anthony Martin & Brett Simon

Martin, A  
Image not found or type unknown