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COMMENTARY

# Why We Need a Bad-Faith Statute

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Since the seminal case of *Rova Farms v. Investors*, 65 N.J. 474 (1974), it had virtually been conceded by insurers that if they decided to try a case, and the verdict exceeded its insured's policy limits, the carrier would pay the judgment, assuming it was upheld.

The reasoning behind *Rova* was simple: If the carrier was going to treat any verdict, even an excess verdict, as its own, it must bear all the consequences of such a verdict.

Carriers, in almost all situations, never involve insureds in settlement negotiations, rarely advise them about the possibility of an excess verdict, and are often unreasonably optimistic about the potential jury verdict.

In *Rova*, the Supreme Court essentially stated that once a carrier did this, it breached its fiduciary duty to its insureds, and, as a result, was obligated to pay the full amount of the judgment. While *Rova* did not set forth a "strict liability" standard, stating that it was not before the Court, every carrier since 1974 has essentially treated *Rova* as setting forth such a standard.

In the past two years, some carriers have decided to challenge *Rova*. Their argument essentially is as follows: "We analyzed the case carefully, we looked at other verdicts throughout the state (even if there were few to which adequate comparisons could be made), and we made a thoroughly honest decision to not settle within the policy limits."

What they want is only to have to pay their policy limits, even if the verdict is many times the policy, leaving the insureds to fend for themselves against any collection attempt for the unpaid verdict. In almost all cases, the carriers never properly notified their insureds and certainly never asked them to contribute to a settlement, even if the insureds would have done so. In essence, the carriers want the courts to sanction their conduct of making decisions that ultimately do not harm them but instead harm their insureds.

The Supreme Court got it right with *Rova*. Insurers should not expose and jeopardize insureds. If they want to take the chance of a jury returning a verdict of less than the insureds' policy limits, they must also put their own money on the line, if in fact that chance does not materialize in their favor.

If the courts do not stop such behavior, other carriers will follow and many hundreds of insureds and citizens of New Jersey every year will be forced to liquidate their assets, or declare bankruptcy simply because their carrier did not adequately protect them. If the courts will no longer protect citizens, it is time for the Legislature and governor to do so. ■

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