

## Supreme Court of Wisconsin Expands Bad Faith Law

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On June 22, 2010, the Supreme Court of Wisconsin issued a unanimous decision in *Roehl Transport, Inc. v. Liberty Mutual Insurance Co.*, 2010 WI 49 ("*Roehl Transport*"), in which the court held that an insurer "may be liable for the tort of bad faith when [it] fails to act in good faith and exposes the insured to liability for sums within the deductible amount." *Id.*, ¶157.

In *Roehl Transport*, the insured negotiated a \$2 million Truckers/Auto Insurance Policy with a \$500,000 deductible. After a personal injury claim against the insured resulted in a \$830,400 judgment, the insured brought a bad faith claim, asserting insurer mishandling of the claim resulted in a failure to settle for less than the deductible amount. The bad faith claim went to trial, with the jury finding the insurer's conduct was in bad faith and awarding the insured \$127,000 in compensatory damages. The jury verdict and resulting judgment were appealed directly to the supreme court.

On appeal, the *Roehl Transport* noted that Wisconsin law already recognized three types of bad faith claims:

- In the third-party context for failure to settle where the ultimate judgment exposes the insured to a judgment in excess of the policy limit;
- In the first party context for failure to satisfy the insured's claim; and
- In the worker's compensation context for failure to reimburse the claimant.

The supreme court rejected the argument that Wisconsin law of bad faith was limited to these three categories, and held that Wisconsin law recognizes a bad faith claim when a verdict against an insured in an underlying third-party liability claim is less than policy limits but costs the insured its deductible. The *Roehl Transport* court also determined that public policy did not preclude this type of bad faith claim, and found that the jury's verdict was supported by credible evidence in the record.

The court also made two additional rulings on damages. First, the *Roehl Transport* court held that the insured was entitled to attorney fees as a matter of law upon a jury finding of bad faith, and that the trial court had erred in not entering an award of attorney fees. In addition, the supreme court affirmed the trial court's dismissal of the punitive damages claim.

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