

## **New Jersey Supreme Court Ruling Regarding Insolvent Insurers Could Have Significant Impact On Allocation Of Long-Tail Claims**

On September 24, 2013, in *Farmers Mut. Fire Ins. Co. v. NJPLIGA*, \_\_ N.J. \_\_\_, 2013 WL5311272 (2013), the New Jersey Supreme Court ruled that policy limits of solvent insurers must be exhausted before the New Jersey Property-Liability Insurance Guaranty Association ("NJPLIGA") could be responsible for long-tail claims under policies issued by insolvent insurers. NJPLIGA is a statutory entity created to provide New Jersey policyholders with protection when insurers become insolvent. Historically, NJPLIGA would step into the shoes of the insolvent insurer and, subject to statutory limits, pay for damages allocated to the insolvent insurers in accordance with the allocation schemes adopted in *Owens-Illinois, Inc. v. United Ins. Co.*, 138 N.J. 437 (1994) and *Carter-Wallace v. Admiral Ins. Co.*, 154 N.J. 312 (1998). The issue presented in *Farmers* was the impact on such allocations of a 2004 amendment to the NJPLIGA Act requiring "exhaustion" of all "other coverages" before NJPLIGA was obligated to pay.

Initially, the Court stated that the 2004 amendment must be construed liberally to achieve its purpose-to ensure that the NJPLIGA is the insurer of last resort for New Jersey policyholders. Applying this principle, the Court concluded that "other coverages" refers to policies issued by solvent insurers and that all such policies must be exhausted before NJPLIGA would be allocated any portion of a loss under long- tail claims.

Significantly, the Court stated that the policyholder should not bear the burden for the portion of loss allocated to insolvent insurers. Presumably, the practical effect of *Farmers* is that solvent insurers will be tasked with picking up the insolvent insurers' allocated share of damages up to the applicable policies' limits.

## **UPDATE**

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