S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 03-074

"John Doe" Right to a Jury Trial; Waiver

QUESTIONS

1. Does a "John Doe" or a "Jane Doe" have a right to a jury trial?

2. If this right exists, may the right be waived?

3. If yes, under what conditions?

OPINIONS

1. Yes.

2. Yes, directly or impliedly.

3. The insurer that provides a defense for John Doe, the unknown motorist, may waive the right to a jury in writing, or may consent to the withdrawal jury trial demand or may, by action or inaction, waive the right.

ANALYSIS

The Tennessee Constitution preserves the right of trial by jury and makes it inviolable. Tenn. Const., Art. I § 6. The Tennessee Rules of Civil Procedure define the process by which an individual obtains a trial by jury. Usually, a party to a lawsuit demands a trial by jury in writing on the first pleading filed, although other methods are available. Tenn. R. Civ. Proc. 38.02 - 38.04. The constitutional right to a jury trial may be waived either directly or by implication. *Beal v. Doe*, 987 S.W.2d 41, 47 (Tenn. App. 1998). For example, if a party does not demand a jury, it waives the right. Tenn. R. Civ. Proc. 38.05. Tenn. R. Civ. Proc. 38.05 also states that a party may not withdraw a demand for a jury without the consent of all parties to whom issues have been joined. Current case law indicates, however, that in some instances, the party may impliedly waive the right to jury trial, even when the party had demanded a jury earlier in the proceedings, for example, by failing to appear at trial. *Beal v. Doe*, 987 at 47.

In some automobile accidents, the owner or operator of the motor vehicle that caused bodily injury or property damage is unknown. If the insured accident victim meets the requirements of

Tenn. Code Ann. § 56-7-1201(b) and (e), the insured may sue the unknown motorist by issuing a John Doe warrant and serving process on the insurance company that issued the policy providing the uninsured motor vehicle coverage. Thereafter the insurance company may file pleadings and take all lawful action, in the name of the uninsured motorist, or in its own name. Tenn. Code Ann. § 56-7-1206(a).[1]

Because the statute allows the insurance company to take any legal action necessary, the statute per force allows the insurance company to demand a jury trial or to waive a jury trial for a John Doe. A party[2] may either directly or by implication waive the constitutional right to trial by jury. *Russell v. Hackett*, 190 Tenn. 381, 383, 230 S.W.2d 191 (1950). "A waiver of a jury demand can occur by implication, such as where a party fails to appear at trial, where a party puts improper issues before the jury causing a mistrial, or where a party allows a non-jury trial to proceed without objection." *Freels v. Jones*, 2003 WL 104621, *1, citing *Beal v. Doe*, 987 S.W.2d 41 (Tenn. App. 1998) and other relevant cases.

We conclude that, through the insurance company providing uninsured motorist coverage, a John Doe may demand a jury trial and may directly or impliedly waive that right.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KATE EYLER
Deputy Attorney General

Requested by:

The Honorable Dewayne Bunch
State Representative
107 War Memorial Bldg.
Nashville, TN 37243

[1] The insurance company is under no obligation to defend but has the right to do so. *Witter v. Nesbit*, 878 S.W.2d 116, 119 (Tenn. App. 1993).

[2] In a "John Doe" situation, if the insurance company decides to defend, the insurance company is not actually a party defendant but may take action as if it were. Tenn. Code Ann. § 56-7-1206(a).