2020 Noteworthy Rhode Island Supreme Court Cases for Civil Litigation Insurers and Practitioners

Frazier v. Liberty Mutual, 229 A.3d 56 (R.I. 2020): Overruling prior holding regarding R.I.G.L. § 27-7-2 (direct action against insurer).

On June 12, 2020, the Rhode Island Supreme Court overruled its previous holding in *Luft v. Factory Mut. Liability Ins. Co. of America* and held that the plaintiff's claim against an insurance company, based on R.I.G.L. § 27-7-2, was not time barred. In this case, the plaintiff slipped and fell at a fast food restaurant. That restaurant was insured by Liberty Mutual. Weeks before the statute of limitations expired, the plaintiff filed suit against the restaurant. However, the restaurant had since gone out of business and the plaintiff was unable to effectuate service. The attorney provided by Liberty Mutual had the case dismissed. Under R.I.G.L. § 27-7-2, the plaintiff was entitled to directly proceed against the restaurant's insurance company, Liberty Mutual. However, § 27-7-2 only extends the statute of limitations by 120 days and that time had long since passed. The plaintiff sought to use the savings statute, § 9-1-22, which gives a party an additional year after his complaint is dismissed without prejudice to refile suit regardless of the statute of limitations so long as it is based upon the same claim. However, the court precedence in *Luft* barred applying the savings clause to claims against a party who was not a defendant in the original action. In a marketed shift, the court overruled its holding in *Luft* and held that the savings statute could apply to a defendant's insurance carrier in a lawsuit brought under § 27-7-2. This ruling opens the door to claims brought under § 27-7-2 regardless of whether the statute of limitations had run on the original claim.
https://www.courts.ri.gov/Courts/SupremeCourt/SupremeOpinions/18-288.pdf

Nelson v. Allstate Insurance Co., 228 A.3d 983 (R.I. 2020): Insurance policy exclusion interpreted

On June 11, 2020, the Rhode Island Supreme Court held that a policy exclusion of water damage includes water damage caused by a malfunctioning appliance in the dwelling. The plaintiff's house was damaged when a water heater malfunctioned and caused extensive water damage. The insurance company denied coverage under the policy exclusion dealing with sudden or accidental loss caused by water damage. The court held that although the policy exclusions did not mention water damage caused by a malfunctioning appliance, the unambiguous language of the policy still excludes such damage. The court combined this fact with the language of the policy which did not explicitly include such a loss. In this case, the fact that the policy exclusion did not specifically mention water damage caused

by a malfunctioning appliance was not fatal because the policy did not clearly state that it covered water damage at all. Of note, the court in construing policy exclusions looks to what the policy actually covers in making its determination.
https://www.courts.ri.gov/Courts/SupremeCourt/SupremeOpinions/19-166.pdf

Banki v. Fine, 224 A.3d 88 (R.I. 2020): Subject-matter jurisdiction and agency appeal

On January 22, 2020, the Rhode Island Supreme Court held that the court's subject matter jurisdiction over an agency appeal is not defeated if the plaintiff fails to meet the statutory requirements concerning judicial review of agency's actions. In this case, two dentists were charged by the Rhode Island Department of Health with various infractions. During the agency hearing process, a discovery dispute arose concerning the department's failure to respond to plaintiff's discovery requests. After repeated failures to comply with the hearing officer's order compelling the department to respond, the hearing officer entered a conditional order of dismissal. However, despite the fact that the department failed to respond in time, the hearing officer denied the plaintiff's motion to dismiss the charges. The plaintiffs then sought judicial review of that decision. Pursuant to R.I.G.L. § 42-35-15(a), the court has jurisdiction to review an agency's final order or an agency's interlocutory order. To review an agency interlocutory order, the court should only exercise jurisdiction if the court's later review of the agency's final order would not provide an adequate remedy. The Supreme Court held that any failure to meet these statutory requirements does not deprive the court of subject matter jurisdiction. Instead, the issue becomes whether the court should exercise its authority to review the agency appeal. In light of that, the court found that the agency order under review was interlocutory because a denial of a motion to dismiss in inherently interlocutory in nature and therefore the court should not exercise its authority in this case. Of important note in this case, the Supreme Court relied heavily on federal precedent governing administrative appeals and went so far as to adopt the definition of an agency final order as set forth by the United States Supreme Court in *Bennet v. Spear*, 520 U.S. 154 (1997). This decision highlights a trend in the court's jurisprudence to rely more heavily on federal decisions in this area.
https://www.courts.ri.gov/Courts/SupremeCourt/SupremeOpinions/15-96,%2017-17.pdf

Colpitts v. W.B. Mason, 227 A.3d 996 (R.I. 2020): employment-drug test

On May 29, 2020, the Rhode Island Supreme Court held that an employer had a reasonable ground to require an employee to take a drug test and thus the employee's termination was not unlawful. The plaintiff was employed as a delivery driver for W.B. Mason. After failing to make deliveries and claiming he had been injured, the plaintiff returned to the warehouse without any prior advanced warning. At that time, the employee's behavior was described as being "odd" by the fact that the plaintiff repeatedly shouted obscenities, slumping over and acting entirely out of character. The court held that this testimony was sufficient to create a reasonable ground to demand an employee take a drug test under § 28-6.5-1. The court concluded that the employee's behavior does not need to be such that it only leads to a conclusion that the employee is under the influence of a controlled substance. Further, the court held that the employer did not need either actual knowledge of an employee's intoxication or point to specific symptoms usually associated with being

under the influence. Importantly, the court noted that employers need not be medical professionals with the ability to diligently sort through the behavior of their employees in mandating a drug test. All that is need is some reasonable grounds to suspect drug use.
https://www.courts.ri.gov/Courts/SupremeCourt/SupremeOpinions/18-337.pdf

State v. Mulcahey, 219 A.3d 735 (R.I. 2019): authentication of text messages under Rhode Island Rules of Evidence 901

On November 21, 2019, the Rhode Island Supreme Court in the matter of first impression determined the facts needed to authenticate text messages under Rule 901. Although not a civil case, the case has general applicability to the authentication of text messages generally. In this case, the defendant was accused of sexual assault. In proving its case, the state sought to introduce test messages on the victim's cellphone sent by the defendant. In these text messages that occurred soon after the assault, the defendant made several incriminating statements. The victim testified that the defendant had given her this cell phone number and that she and the defendant regularly communicating via this method for over a year. The Court adopted the federal jurisprudence dealing with this issue and held that the party seeking to introduce text messages must establish via circumstantial or direct evidence that "the true author is who the [party] claims it to be." In reviewing the facts presented, the court found that the state had easily met this burden with witness testimony concerning the history of communication between the two parties. Importantly, the court's holding does not set a high burden for authenticating text messages.
https://www.courts.ri.gov/Courts/SupremeCourt/SupremeOpinions/18-20.pdf