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2000 Survey of Rhode Island Law: Cases: Contract Law

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Contract Law. *Fraioli v. Metropolitan Property and Casualty Insurance Co.*, 748 A.2d 273 (R.I. 2000). A carrier providing underinsured motorist (UIM) coverage must honor its policy commitments regardless of specific language in the policy requiring prior consent to any settlement agreements between the insured and the tortfeasor when such a settlement does not prejudice the UIM carrier.

FACTS AND TRAVEL

On May 11, 1994, the plaintiff, Mario Fraioli (plaintiff) and Vincent DiPippo (DiPippo) were involved in an automobile accident with Stephen Hay (tortfeasor).[1] At the time of the accident, the plaintiff was driving and DiPippo was in the passenger seat.[2] Both men were injured by the tortfeasor.[3] The plaintiff had uninsured/underinsured motorist coverage through AMICA Mutual Insurance Company (Amica) and DiPippo carried insurance from Prudential Insurance Company (Prudential).[4] The tortfeasor was insured though Metropolitan Property and Casualty Insurance Company (Metropolitan) with a $25,000 limit of liability.[5]

Both the plaintiff and DiPippo were represented by Charles Casale (Casale).[6] In 1995, Casale sought permission from both Amica and Prudential to settle the respective claims against the tortfeasor for the tortfeasor's policy limit of $25,000 per single person.[7] Only Prudential gave permission to settle, thus ending DiPippo's claim.[8] Casale continued until May 1995 to attempt to obtain Amica's consent to settle the plaintiff's claim for the same $25,000 limit.[9] Due to Casale's repeated requests, Amica conducted an asset check on the tortfeasor to determine the benefits of going to trial rather than settling for the $25,000.[10]

In May 1995, Casale, for an unexplained reason, believed that Amica had consented to settle the plaintiff's claim against the

1. *See* Fraioli v. Metro. Prop. & Cas. Ins. Co., 748 A.2d 273, 274 (R.I. 2000).
2. *See id.*
3. *See id.*
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*
10. *See id.*

tortfeasor and Metropolitan for the $25,000 policy limit.[11] In fact, Amica had not consented to settle the claim.[12] Metropolitan had never offered to settle with the plaintiff until Casale approached them with Amica's apparent willingness to settle the claim for the policy limits.[13] Metropolitan accepted Casale's unauthorized settlement offer.[14] Under the plaintiff's policy with Amica, Amica would now be liable to pay the plaintiff for the damages not covered by the underinsured tortfeasor, up to the plaintiff's policy limits.

ANALYSIS AND HOLDING

The Rhode Island Supreme Court has previously held that when both Rhode Island General Laws section 27-1-2.1(h)[15] and "a consent exclusion in the insurance policy requir[ing] that a plaintiff obtain the consent of his or her underinsured insurance carrier before settling with the tortfeasor" are read together, the failure to get consent from one's underinsured insurance carrier will "render the un[der]insured motorist's coverage inapplicable."[16] The Amica policy contained such a consent clause.[17] The court explained that such consent requirements "safeguard the insurer's right of subrogation" thus providing insurers some financial protection.[18] However, Amica conceded that had Metropolitan made an offer to settle the plaintiff's claim for the policy limit, Amica would have had to

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11. *See id.*
12. *See id.*
13. *See id.*
14. *See id.* at 275.
15. Section 27-7-2.1(h) of the Rhode Island General Laws states, in pertinent part:

> [i]n the event that the person entitled to recover against an underinsured motorist recovers from the insurer providing coverage pursuant to this section, that insurer shall be entitled to subrogation rights against the underinsured motorist and his or her insurance carrier. Release of the tortfeasor *with* the consent of the company providing the underinsured coverage shall not extinguish or bar the claim of the insured against the underinsurance carrier regardless of whether the claim has been liquidated.

R.I. Gen. Laws § 27-7-2.1(h) (1956) (1999 Reenactment) (emphasis added).

16. *Fraioli,* 748 A.2d at 275 (citing Pickering v. Am. Employers Ins. Co., 282 A.2d 584, 591 (R.I. 1971)).

17. *See id.* "We do not provide Uninsured Motorist Coverage for bodily injury sustained by any person . . . if that person or the legal representative settles a bodily injury claim without our consent." *Id.*

18. *Id.*

accept since Amica's own asset check of the tortfeasor revealed no appreciable assets.[19]

The Rhode Island Supreme Court seized on the maxim "'cessante ratione, cessat ipsa lex' (when there is no longer a reason for a rule, the rule ceases to be effective)" in order to demonstrate that the specific facts of this case were inapplicable to the general rule that an insurance company must consent before being bound to a settlement agreement.[20] In this case, since Amica acknowledged that the tortfeasor had no appreciable assets it was not prejudiced by the settlement with the tortfeasor's insurance company.[21]

Concurring Opinion

Justice Flanders concurred with the majority opinion, expressing his opinion as to the rights of the insured and the insurance carrier depending upon the specifics of each case.[22] Justice Flanders reiterated the concerns of both the insurance companies and those insured.[23] The concurrence sought to balance the needs of the respective parties while agreeing that insureds should be able to settle with a tortfeasor without prior approval from their UIM carrier when such an agreement will not prejudice the UIM carrier.[24]

CONCLUSION

In *Fraoli v. Metropolitan Property and Casualty Insurance Co.*, the Rhode Island Supreme Court allowed recovery by an insured on the UIM portion of their policy even though the insured settled with the tortfeasor without the consent of their UIM carrier in the limited situation where the UIM carrier was not prejudiced by such a settlement.

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19. *See id.*
20. *Id.*
21. *See id.*
22. *See id.* at 276-77.
23. *See id.*
24. *See id.* at 276-77.

Contract Law. *Hilton v. Fraioli*, 763 A.2d 599 (R.I. 2000). When a duration term for an employment contract is clear, is unambiguous and is not susceptible to more than one interpretation, the intent of the parties is irrelevant.

FACTS AND TRAVEL

In *Hilton v. Fraioli*,[1] the defendant, Vincent Fraioli (Fraioli), who was in the process of opening a real estate agency, offered the plaintiff, Margaret Hilton (Hilton), a position as the new agency's sales manager.[2] Hilton drafted an employment contract that included compensation figures, a job description and the duration provision: "This agreement is for one year from the time of signatures and to be reviewed and renegotiated before the year end."[3] The parties signed the contract on January 9, 1995.[4]

Hilton worked part-time until the agency officially opened for business in mid-March 1995, then worked full-time.[5] Subsequently, Fraioli informed Hilton of his dissatisfaction with her job performance.[6] On May 9, 1995, Fraioli informed Hilton that because of his dissatisfaction with her performance, he would not pay the plaintiff her salary.[7] On June 1, 1995, Hilton refused to continue her duties as sales manager, but stated that she would continue as an associate broker.[8] On June 7, 1995, Hilton resigned.[9] Hilton then commenced this action against Fraioli for breach of contract.[10]

After a bench trial, the trial justice determined that the employment contract unambiguously provided for a one-year term of duration.[11] The trial justice concluded that Fraioli breached the contract and owed Hilton damages of $12,333.[12] Fraioli appealed.

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1. 763 A.2d 599 (R.I. 2000).
2. *See id.* at 601.
3. *Id.* (quoting the compensation agreement).
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*
10. *See id.*
11. *See id.*
12. *See id.*

ANALYSIS AND HOLDING

The court stated that findings of fact by a trial justice in a bench trial are given great weight and will not be disturbed except for "a showing that the trial justice overlooked or misconceived material evidence or was otherwise clearly wrong."[13] The court found no errors of fact in the case.[14]

In regard to interpreting the contract, it is a question of law unless the terms are ambiguous, that is if the terms are reasonably susceptible to more than one meaning.[15] Here, the court agreed with the trial justice's determination that by applying ordinary, plain meaning to the language, the contract as a whole and the one-year duration term, are unambiguous and reasonably open to only one interpretation.[16] Since the contract is unambiguous, the intent of the parties is irrelevant.[17] Thus, the defendant's claims that the trial justice erred in considering the plaintiff's unilateral expectations or that the contract should be construed against the drafter are irrelevant.[18]

The defendant next argued that the plaintiff's actions either changed the terms of the contract or caused a breach of the contract.[19] The defendant asserted that the plaintiff, by working only part-time before the agency officially opened, changing her position from manager to broker, and then resigning from the agency altogether, had transformed the contract to an at-will employment contract.[20]

The court concurs with the trial justice's determination that it was the defendant's own actions that prompted the actions of the plaintiff.[21] First, in regard to the plaintiff's working part-time, there was no open office to manage when the contract was signed in January.[22] The agency did not officially open until March. Sec-

13. *Id.* at 602 (quoting Casco Indem. Co. v. O'Connor, 755 A.2d 779, 782 (R.I. 2000)).
14. *See id.*
15. *See id.* at 602 (citing Rotelli v. Catanzaro, 686 A.2d 91, 94 (R.I. 1996)).
16. *See id.* at 602.
17. *See id.* (citing Vincent Co. v. First Nat'l Supermarkets, Inc., 683 A.2d 361, 363 (R.I. 1996)).
18. *See id.* at 602.
19. *See id.*
20. *See id.*
21. *See id.*
22. *See id.*

ond, the defendant refused to pay the plaintiff the salary called for by the contract before the plaintiff changed her position or resigned.[23] The plaintiff's actions occurred only after the defendant himself breached the contract.[24] Thus, what the plaintiff did at the agency after the defendant breached the contract was inconsequential.[25]

The defendant also argued that the trial justice erred by denying his motion for a new trial based on the argument that his termination of the plaintiff was justified because of her unsatisfactory job performance.[26] The instances in which a new trial may be granted include manifest error of law or newly discoverable evidence of sufficient importance to merit a new trial.[27] Here, the trial justice concluded that the defendant did not offer any new evidence that was not discoverable to him at trial nor was there manifest error of law in the judgment.[28] The court found that the trial justice did not err in denying the defendant's motion for a new trial and denied the defendant's appeal.[29]

CONCLUSION

In *Hilton v. Fraioli*, the court stated that the sales manager's actions, after the owner had breached the employment contract, have no bearing on the unambiguous, one-year duration term provided for in the contract.

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23. *See id.* at 602-03.
24. *See id.* at 603.
25. *See id.*
26. *See id.*
27. *See id.* (citing Finkelstein v. Finkelstein, 502 A.2d 350, 356 (R.I. 1985)).
28. *See id.* at 603.
29. *See id.*

Contract Law. *Imperial Casualty & Indemnity Co. v. Bellini*, 746 A.2d 130 (R.I. 2000). In an action alleging a statutory, reformation and/or estoppel and waiver claim, and a claim of bad faith, the claim of bad faith should be severed so that the possibility of having acted in bad faith is eliminated if the defendant prevails on the initial claims against it.[1] Accordingly, discovery should be limited to that information relevant to the underlying litigation separate and apart from claims of bad faith. The more extensive discovery needed to investigate claims of bad faith should only be allowed if and when the accused party fails at defending against the underlying causes of action which represent the origins of the bad faith claim.[2]

FACTS AND TRAVEL

On April 30, 1985, the defendant, Amitie Bellini (Bellini) conveyed her interest in a piece of property located on Atwood Avenue to Norbell Realty Corporation (Norbell Realty).[3] While not conclusively established, the plaintiff, Imperial Casualty and Indemnity Corporation (Imperial) stated its belief that Bellini was the principal officer and sole shareholder of Norbell Realty Corp.[4] On May 12, 1985, Imperial issued a comprehensive liability insurance policy on multiple properties, including the Atwood Avenue parcel.[5] The policy was issued to Bellini. Norbell Realty was not listed as an insured on the May 12th policy.[6]

On October 8, 1985, Michael DeSantis (DeSantis), a United States postal worker, was injured while on duty when he fell at the Atwood Avenue property.[7] In January 1986, Imperial received a claim relating to DeSantis's injuries.[8] Soon thereafter, DeSantis filed an action against Norbell Realty seeking compensation for his injuries.[9] Imperial (after exercising a reservation of rights) unsuc-

1. *See* Imperial Cas. & Indem. Co. v. Bellini, 746 A.2d 130 (R.I. 2000).
2. *See id.* at 135.
3. *See id.* at 131.
4. *See id.* at 131 n.1.
5. *See id.*
6. *See id.* However, on October 31, 1985 Norbell Realty was added to the policy as an "additional insured" on a property on Pocasset Avenue in Providence.
7. *See id.*
8. *See id.*
9. *See id.*

cessfully defended Norbell Realty.[10] The jury returned a verdict for DeSantis in the amount of $235,000.[11]

Subsequent to the favorable judgment, DeSantis filed a claim against Imperial.[12] This action consisted of three claims. The first claim alleged that DeSantis was a judgment creditor of Imperial's insured, namely Norbell Realty;[13] the second claim alleged that Norbell Realty was in fact an implied insured at the time of the accident and thus the policy should be reformed to reflect such;[14] and the third claim alleged that Imperial was estopped from denying that Norbell Realty was an insured, and thus acted in bad faith when it unreasonably denied coverage to Norbell Realty.[15] In response, Imperial moved to dismiss the complaint[16] and consolidate the declaratory judgment action seeking clarification of its liability[17] and DeSantis's suit against Imperial.[18]

The motion justice denied the motion to dismiss but granted the consolidation.[19] DeSantis then sought answers to interrogatories and the production of Imperial's entire case file in order to establish the requisite connection between Imperial and Norbell Realty.[20] Imperial objected and asked that DeSantis's claim for bad faith be severed from the remaining litigation and that discovery be limited to information not privileged as work product produced for the Norbell Realty injury case.[21] Both of Imperial's requests were denied by the superior court.[22]

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10. *See id.* Imperial, naming Bellini and Norbell Realty as parties (with DeSantis intervening), asked the superior court for a declaratory judgment in order to determine its liabilities under the terms and conditions of the policy covering the Atwood Avenue property with Bellini and not Norbell Realty as the named insured. This has not yet been adjudicated. Norbell Realty Corp. has since gone out of business.

11. *See id.* at 132. The trial justice reduced the award to $155,000.

12. *See id.*

13. *See id.* (citing R.I. Gen. Laws § 27-7-2 (1956) (1998 Reenactment) as the basis for Imperial's liability for the judgment).

14. *See id.*

15. *See id.*

16. *See id.*

17. *See id.* at 131.

18. *See id.* at 132.

19. *See id.*

20. *See id.*

21. *See id.*

22. *See id.*

Imperial filed a petition for certiorari, asking that the Rhode Island Supreme Court review: 1) the denial of its motion to dismiss the actions against it; 2) the denial of its motion to limit discovery; and 3) the denial of its motion to sever the claim of bad faith from the remaining litigation.[23]

ANALYSIS AND HOLDING

Motion to Dismiss, Standard of Review

Ordinarily the Rhode Island Supreme Court will refuse to grant certiorari in interlocutory decisions.[24] However, when the court agrees to offer such review it applies the same standard as the lower court when it decides whether or not to grant the motion in the first instance.[25] In this case, Imperial needed to show that regardless of any of the facts that DeSantis could prove to support his claims, DeSantis was still not entitled to relief.[26]

Ultimately, DeSantis had four claims against Imperial. First, DeSantis claimed that Imperial was liable to him as a judgment creditor under section 27-7-2 of the Rhode Island General Laws.[27] Second, DeSantis requested that the insurance policy be reformed to include Norbell Realty as an insured at the time of the accident.[28] Third, DeSantis asserted that Imperial was estopped from denying insurance coverage to Norbell Realty.[29] Fourth, DeSantis alleged that Imperial acted in bad faith when it denied coverage to Norbell Realty.[30] Given that Imperial itself sought a declaratory judgment from the superior court to "construe and interpret the terms and conditions of the policy it issued"[31] it is clear that even Imperial was uncertain as to its financial liability under its own policy. The resolution of Imperial's declaratory judgment and DeSantis's claims could result in relief for DeSantis. Thus, the court held that Imperial's motion to dismiss all of the claims against it must fail.[32]

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23. *See id.*
24. *See id.* (citing Boucher v. McGovern, 639 A.2d 1369, 1373 (R.I. 1994)).
25. *See id.*
26. *See id.* (citing Garganta v. Mobile Vill., Inc., 730 A.2d 1, 3 (R.I. 1999)).
27. *See id.* at 133.
28. *See id.*
29. *See id.*
30. *See id.*
31. *Id.* at 132.
32. *See id.* at 133.

Motion to Sever Claim of Bad Faith

Imperial argued that the court erred in not granting the motion to sever the bad faith claim from the remaining litigation.[33] Imperial suggested that *Bartlett v. John Hancock Mutual Life Insurance Co.*[34] was directly on point and the court agreed.[35] The Rhode Island Supreme Court had declared in *Bartlett* that when confronted with a breach of contract and bad faith claim simultaneously, the courts must sever the causes of actions pursuant to Rule 42(b) of the Rhode Island Superior Court Rules of Civil Procedure.[36]

The case at hand extended *Bartlett's* mandatory severance of simultaneous bad faith and breach of contract claims to include severance of bad faith claims from statutory, reformation, estoppel and waiver claims.[37] In this instance, since the duty of Imperial to Norbell Realty was in controversy, the legal obligations between Imperial and Norbell Realty had to be determined before assessing any claim of bad faith.[38]

Motion to Limit Discovery

Since the bad faith claim should be separated and heard only if still applicable after the other claims are resolved, so too should the extent of discovery be limited to the matters actually being litigated. Therefore, any discovery relevant to only the bad faith claim is impermissible. First, allowing such an open-ended discovery of bad faith claims would encourage the misuse of allegations of bad faith as a device to access otherwise undiscoverable information.[39] Secondly, the right of the defendant to defend against the underlying litigation outweighs the plaintiff's claim of bad faith which may be eliminated by the successful defense by the accused of the underlying litigation.[40]

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33. *See id.* at 134.
34. 538 A.2d 997 (R.I. 1988).
35. *See Imperial Cas.*, 746 A.2d at 134.
36. *See id.*
37. *See id.*
38. *See id.*
39. *See id.* (citing *Bartlett*, 538 A.2d at 1002).
40. *See id.* at 135.

CONCLUSION

In *Imperial Casualty & Indemnity Co. v. Bellini*, the Rhode Island Supreme Court extended the rule regarding the severance of bad faith claims from other causes of action that could possibly be the basis of the bad faith claim. The court also bifurcated the discovery relating to the claim of bad faith and discovery related to other claims. Presumably, if a plaintiff succeeds against the defendant on the underlying claims, the issue of discovery for the purposes of adjudicating the bad faith claim is reopened. Thus, previously undiscoverable information can be disclosed in an attempt to establish the elements required to prove a claim of bad faith.

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Contract Law. *Lamoureaux v. Merrimack Mutual Fire Insurance Co.*, 751 A.2d 1290 (R.I. 2000). The Rhode Island Supreme Court held that the plaintiff's acceptance and retention of a conditional settlement check for a breach of contract claim against a defendant insurance company was binding even though the plaintiff refused to sign the settlement stipulation, and ordered the claim dismissed with prejudice as the stipulation required. The court also held that this dismissal of the plaintiff's breach of contract claim precluded the plaintiff from pursuing her second claim that the defendant had acted in bad faith, and directed that judgment on the pending bad faith claim be entered for the defendant by the superior court.

FACTS AND TRAVEL

The plaintiff in this case, Debra L. Lamoureaux (Lamoureaux), was the owner of rental property on Cleveland Street in Providence.[1] Lamoureaux's rental building was insured by the defendant-insurer, Merrimack Mutual Fire Insurance Company (Merrimack).[2] On February 26, 1995, Lamoureaux informed Merrimack that her property on Cleveland Street had been vandalized in early February.[3] Two days later an insurance adjuster from Merrimack was sent to inspect Lamoureaux's building and determine the extent of the reported damages.[4] While examining the premises and evaluating the damages, the adjuster noted that the building appeared vacant and unoccupied.[5] According to a clause in Merrimack's insurance policy with the plaintiff, coverage for loss caused by vandalism or theft is excluded if a building is found to have been left vacant by the insured for thirty consecutive days preceding the loss.[6] As a result of the insurance adjuster's observations, Merrimack required Lamoureaux to produce sufficient evidence that the building was in fact occupied for the required period of time before the date of the alleged vandalism.[7] Lamoureaux submitted an electric bill for the second-floor apartment in her building indicating that the electricity had been dis-

1. *See* Lamoureaux v. Merrimack Mut. Fire Ins. Co., 751 A.2d 1290, 1291 (R.I. 2000).
2. *See id.*
3. *See id.*
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.*

continued to that apartment on January 3, 1995.[8] Merrimack did not find this bill adequate in establishing that the first-floor apartment of Lamoureaux's building was occupied for the required thirty-day period before the incident.[9] Additionally, the two parties disagreed on the amount of damages Lamoureaux suffered to her property from the vandalism: Merrimack placed the total amount of damages at $8,000, while Lamoureaux estimated the figure to be around $39,000.[10]

Lamoureaux filed suit against Merrimack in January 1996, alleging both that the insurance company had breached its contract with her by failing to acknowledge the claimed vandalism losses and that Merrimack had acted in bad faith in denying coverage.[11] Merrimack denied that it was in breach or had acted in bad faith, pointing out as an affirmative defense that it had not yet denied Lamoureaux's claim and that Lamoureaux had failed to satisfy the policy exclusion regarding the vacancy of her building for the thirty days preceding the incident of theft or vandalism.[12]

After unproductive settlement negotiations between the parties and one mistrial, Lamoureaux and Merrimack agreed to settle the breach of contract claim for $12,000.[13] Merrimack conditioned this settlement on Lamoureaux signing a stipulation characterizing the breach of contract claim as dismissed with prejudice.[14] Lamoureaux, however, wanted to have the stipulation indicate that the breach of contract claim had been resolved in her favor.[15] Merrimack was unwilling to agree to this stipulation because there had never been a judicial determination made in her favor regarding the breach of contract claim.[16] "Although the exact language of the stipulation remained an open and ongoing question between the parties," Lamoureaux did in fact obtain a settlement check from Merrimack for $12,000.[17] This check indicated that it was intended to be "in full settlement of all claims" between the parties.

8. *See id.*
9. *See id.*
10. *See id.*
11. *See id.*
12. *See id.*
13. *See id.* at 1292.
14. *See id.*
15. *See id.*
16. *See id.*
17. *Id.*

Lamoureaux's attorney changed this line to read "in full settlement of all contract claims."[18] Lamoureaux then refused to sign the dismissal-with-prejudice stipulation agreement or return the check to Merrimack, and instead filed a motion in the superior court seeking to have Merrimack produce certain documents relating to her breach of contract claim so that she could pursue her pending bad faith claim against Merrimack.[19] The hearing judge granted Lamoureaux's motion to compel these documents, and Merrimack filed a petition for a writ of certiorari from the supreme court, asserting that Lamoureaux's breach of contract claim was settled by Lamoureaux's acceptance of the settlement check, and that no basis existed to support her pending claim of bad faith against the defendant insurer.[20] Merrimack contended that the court-ordered discovery regarding this claim was baseless.[21]

ANALYSIS AND HOLDING

The Rhode Island Supreme Court held that the court-ordered discovery relating to Lamoureaux's bad faith claim was indeed baseless, as the bad faith claim depended on a finding that the insurer was in breach for a positive resolution.[22] As the court said, quoting *Lewis v. Nationwide Mutual Insurance Co.*,[23] "Before a bad-faith claim can even be considered, a plaintiff must prove that the insurer breached its obligation under the insurance contract."[24] Here, the supreme court determined that Lamoureaux's breach of contract claim was settled in such a way as to preclude the plaintiff from continuing her bad faith claim against her insurer.[25] The court took "particular notice of Lamoureaux's negotiation of the $12,000 settlement check from Merrimack, conditioned upon its being in full settlement of all claims, and her counsel's unilateral and unauthorized modification of the full-settlement notation contained on Merrimack's check and, as well, her continued retention of the settlement amount."[26]

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18. *Id.*
19. *See id.*
20. *See id.* at 1292-93.
21. *See id.* at 1293.
22. *See id.*
23. 742 A.2d 1207 (R.I. 2000).
24. *See Lamoureaux*, 751 A.2d at 1293 (quoting *Lewis*, 742 A.2d at 1209).
25. *See id.*
26. *Id.*

The court quoted *Pelletier v. Phoenix Mutual Life Insurance Co.*,[27] which held that "a release or a contract of settlement of a disputed claim when timely pleaded is a bar to an action on such claim, so long as it is not rescinded or avoided by a return or offer to return the money or other valuable consideration given for it."[28] This holding supports the contention that Lamoureaux, in accepting Merrimack's $12,000, precluded herself from being able to raise a bad faith action rising from the settled breach of contract claim. The court also gave deference to the holding in *Hull v. H.A. Johnson & Co.*[29] that "[the] one who takes money offered on condition, thereby accepts the condition, and in the absence of fraud or other excuse, he [or she] is bound by [that] act."[30] The Court concluded that Lamoureaux's acceptance and negotiation of the settlement check, especially including her counsel's unauthorized attempt to insert the word "contract" into the document indicate her intention to settle the breach of contract claim.[31] Since there was no judicial determination in favor of Lamoureaux on this claim, its absence "served to undercut and preclude her bad-faith claim against Merrimack."[32]

CONCLUSION

In *Lamoureaux v. Merrimack Mutual Fire Insurance Co.*, the Rhode Island Supreme Court held that a party's acceptance and retention of a conditional settlement offer constitutes an intention to settle the claim, and such settlement precludes the adjudication of pending claims arising out of the previously settled matter. Accordingly, the court granted the petition for certiorari, quashed the discovery order relating to the bad faith claim and remanded the case to the superior court. The supreme court directed the superior court to dismiss Lamoureaux's breach of contract claim with prejudice and enter judgment in favor of Merrimack for the pending claim of bad faith.

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27. 141 A. 79 (R.I. 1928).
28. *See Lamoureaux*, 751 A.2d at 1293 (quoting *Pelletier*, 141 A. at 80).
29. 46 A. 182 (R.I. 1900).
30. *See Lamoureaux*, 751 A.2d at 1293 (quoting *Hull*, 46 A. at 182).
31. *See id.* at 1294.
32. *Id.*

Contract Law. *Lewis v. Nationwide Mutual Insurance Co.*, 742 A.2d 1207 (R.I. 2000). Before any claim of bad faith can be raised, the plaintiff must first demonstrate that there was in fact a breach of contract. Additionally, so long as there is any debatable issue regarding defendant insurer's conduct there can be no finding of bad faith.

FACTS AND TRAVEL

The plaintiff, Frank L. Lewis (Lewis) was the unfortunate victim of two automobile accidents in two months resulting in various head, neck and back injuries.[1] Both accidents involved uninsured motorists. On September 4, 1992, Lewis requested $200,000 from his insurance company, the defendant (Nationwide).[2] Apparently, pursuant to the insurance contract,[3] Nationwide requested that Lewis furnish them with tax, medical and other information.[4] Nationwide alleged that by December 21, 1993, they had not received all of the requested information.[5] Lewis contended that all existing documents had been turned over to Nationwide.[6]

Lewis filed suit against Nationwide on December 7, 1993, claiming breach of contract, negligence and bad faith.[7] On May 3, 1994, Nationwide offered to settle the first accident for $100,000 and the second for $10,000.[8] Lewis accepted the first accident offer and submitted to binding arbitration for settlement of the second.[9] In April 1995, the arbitrators awarded Lewis $42,000 for the second accident.[10]

On April 28, 1998, Nationwide moved for, and the superior court granted, summary judgment concerning claims of bad faith stemming from any delay of payment for injuries sustained in the second accident.[11] The court based its decision on the following

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1. *See* Lewis v. Nationwide Mut. Ins. Co., 742 A.2d 1207, 1208 (R.I. 2000).
2. *See id.*
3. *See id.* at n.1 (the court never saw a copy of the insurance policy at issue in the case).
4. *See id.* at 1208.
5. *See id.* at 1209.
6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*
10. *See id.*
11. *See id.*

grounds: (1) the court never received a copy of the insurance policy and therefore could not determine if there was any needless delay on the part of Nationwide; (2) since the medical records could not definitely determine the extent of injuries attributable to the second accident rather than the first, some delay was reasonable; and (3) there was no "demand" for arbitration that might require Nationwide to act more quickly.[12] The Rhode Island Supreme Court was then faced with the question as to whether summary judgment was appropriate in this case.[13]

ANALYSIS AND HOLDING

Lewis claimed on appeal that a summary judgment decision was inappropriate since there were material issues of fact in dispute.[14] The Rhode Island Supreme Court affirmed the superior court's summary judgment decision.[15] The supreme court agreed with two of the points made by the superior court. First the court repeated that Lewis's failure to provide a copy of the insurance policy in question made it impossible for the lower court to determine if Nationwide had breached any provision of the contract.[16] The court explained that to proceed on any claim of bad faith, the plaintiff must first demonstrate that there had been an actual breach of the underlying contract.[17] Lewis relied on section 9-1-33 of the Rhode Island General Laws named *"Insurer's bad faith refusal to pay a claim made under an insurance policy,"* which states "the question of whether . . . an insurer has acted in bad faith in refusing to settle a claim [is] a question to be determined by the trier of fact."[18] This reliance was misplaced since the plaintiff ultimately failed to prove any underlying breach of contract.[19]

The court went on to explain that since there were material issues in dispute about which injuries were caused by each acci-

12. *See id.*

13. *See id.*

14. *See id.*

15. *See id.*

16. *See id.* at 1209-10.

17. *See id.* at 1209 (citing Bartlett v. John Hancock Mut. Life Ins. Co., 538 A.2d 997 (R.I. 1988)).

18. *Id.* (quoting R.I. Gen. Laws § 9-1-33 (1956) (1994 Reenactment)).

19. *See Lewis*, 742 A.2d at 1209.

dent, there was no unnecessary delay on the part of Nationwide.[20] Further the court noted that Nationwide paid the claim at the close of the arbitration and that Lewis was responsible for much of the delay in the arbitration.

CONCLUSION

In order to proceed with a claim of bad faith, the plaintiff must show that there was both a breach of contract and that there was no debatable issue between the parties. In the instant case, the plaintiff failed on both counts. He failed to provide the court with the contract, depriving the court of the ability to determine the existence of any breach of contract. Further, the court found a reasonable dispute between the parties that justified a delay in the arbitration.

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20. *See id.* at 1209-10 (citing Bibeault v. Hanover Ins. Co., 417 A.2d 313, 319 (R.I. 1980).

Contract Law. *Pilot's Point Marina v. Cazzani Power Boat Manufacturing*, 745 A.2d 782 (R.I. 2000). In a case in which an affirmative defense of lack of corporate capacity is not plead prior to trial because the corporation did not lose its corporate status until almost a year after the inception of the action, the pleading may be amended during trial. Furthermore, although the trial justice failed to grant a continuance to allow the defendant to regain corporate status, the defendant's rights were not prejudiced because defendant could bring an action under section 9-1-22 of the Rhode Island General Laws. Additionally, the trial justice did not overlook or misconstrue material evidence in its findings of fact.

FACTS AND TRAVEL

In November 1982, Pilot's Point Marina, Inc. (Pilot's Point) and Cazzani Power Boat Manufacturing, Inc. (Cazzani) contracted for Pilot's Point to manufacture a deck mold and hull mold using Cazzani's prototype.[1] Cazzani took delivery of the hull mold several months later, after having made partial payment on the contract.[2] Cazzani claimed to have difficulty using the hull mold and refused to make additional payments on the contract or accept delivery of the deck mold.[3] Pilot's Point filed a breach of contract action against Cazzani in July 1994.[4] One month later, Cazzani counterclaimed, alleging breach of express and implied warranties and failure to satisfactorily perform the contract.[5]

During the course of a bench trial held in February and March 1998, Pilot's Point learned that Cazzani's certificate of incorporation had been revoked in August 1995.[6] The trial justice took judicial notice of the revocation.[7] Counsel for Pilot's Point sought permission, during closing arguments, to amend its response in order to include the affirmative defense of Cazzani's lack of corporate capacity.[8] The trial justice granted the motion over Cazzani's ob-

1. *See* Pilot's Point Marina v. Cazzani Power Boat Mfg., 745 A.2d 782, 783 (R.I. 2000).
2. *See id.*
3. *See id.*
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.*
8. *See id.*

jection.[9] The trial justice then denied Cazzani's request for a continuance in order to have time to get the revocation vacated.[10] Ultimately, the trial justice entered judgment in favor of Pilot's Point and dismissed Cazzani's counterclaim, finding that Cazzani lacked capacity to sue.[11]

ANALYSIS AND HOLDING

Cazzani appealed on the basis that the trial justice erred in three respects by: 1) permitting Pilot's Point to amend its response to the counterclaim, 2) denying its motion for a continuance and 3) overlooking and misconstruing material evidence concerning the quality of workmanship with regard to the deck mold.[12]

Permission to amend counterclaim

In support of its argument that Pilot's Point should not have been allowed to amend its response to the counterclaim, Cazzani cited *World-Wide Computer Resources, Inc. v. Arthur Kaufman Sales Co.*[13] In that case, the Rhode Island Supreme Court held that the trial justice erred by permitting a defendant to amend an answer when the suit had been filed four years after commencement of the action in order to plead lack of corporate capacity as a defense.[14] The trial justice in the case at bar found that case inapplicable due to the fact that in *World-Wide* the lack of corporate capacity defense could have been made when the suit had been filed. Here, however, Cazzani was a valid corporation at the commencement of the action and did not lose its corporate status until August 1995, almost a year after suit was brought, and almost three years before the trial.[15] Since Pilot's Point could not have made the affirmative defense sooner, the trial justice was not in error for allowing the amendment of the response.[16]

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9. *See id.*
10. *See id.*
11. *See id.*
12. *See id.* at 783-84.
13. *See id.* at 784 (citing World-Wide Computer Resources v. Arthur Kaufman Sales, 615 A.2d 122 (R.I. 1992)).
14. *See id.*
15. *See id.*
16. *See id.* (citing *World-Wide*, 615 A.2d at 124-25).

Denial of motion for continuance

Cazzani argued that the trial justice should have granted its motion for continuance because it might have been able to reinstate the certificate of incorporation had the continuance been granted and the counterclaim would then not have been dismissed.[17] The Rhode Island Supreme Court found no prejudice against Cazzani because Cazzani could proceed on a separate claim after regaining its corporate capacity.[18] Cazzani would have one year to commence a new action from the time of the termination.[19] The court conceded that defendant would not be allowed to relitigate facts supporting its claim in this new action. However, the court noted that the dismissal of the counterclaim did not take place until after Cazzani had rested its case. The court reasoned that Cazzani had been given a full and fair opportunity to litigate the facts of the case. The court held, therefore, that there was no error in the trial justice's denying the continuance because of Cazzani's failure to show any legal harm.[20]

Interpretation of material evidence

The appellant argued that the trial justice had erred by "overlooking and misconstruing material evidence" with regard to the deck mold manufactured by Pilot's Point.[21] The trial justice found that the deck mold was constructed in a "workmanlike manner."[22] As a result, the trial justice included the cost of storing the deck mold in the damages awarded to Pilot's Point.[23] The Rhode Island Supreme Court has consistently deferred to the factual findings of a trial justice in a bench trial "unless the justice has overlooked or misconceived material evidence or was otherwise clearly wrong."[24] The trial justice clearly articulated on the record his reasons for finding that the deck mold was constructed in a "workmanlike manner."[25] In addition, the trial justice included the storage costs

17. *See id.*
18. *See id.*
19. *See id.* (citing R.I. Gen. Laws § 9-1-22 (1956) (1997 Reenactment)).
20. *See id.* at 785.
21. *Id.*
22. *See id.*
23. *See id.*
24. *Id.* at 785 (quoting State v. Collins, 679 A.2d at 862, 865 (R.I. 1996)).
25. *See id.* at 785-86.

in the damage award due to the testimony that Cazzani never formally rejected the deck mold.[26]

After reviewing each of the defendant's three claims, the Rhode Island Supreme Court held that there was no error.[27] Therefore, the defendant's appeal was denied and dismissed and the judgment of the superior court was affirmed.[28]

CONCLUSION

In this case, the Rhode Island Supreme Court held that the trial justice had not erred in allowing plaintiff to amend its reply to defendant's counterclaim to plead defendant's lack of corporate capacity. Because the defendant had not lost its corporate status until almost a year after the action had been brought, plaintiff could move to amend its reply at trial nearly three years later. Additionally, the defendant failed to show that its rights had been prejudiced when the trial justice refused to grant defendant's motion for a continuance so that defendant could regain its corporate status. Although defendant's counterclaim was dismissed, section 9-1-22 of the Rhode Island General Laws allowed defendant to bring a new action to press its claims. Finally, because the defendant had not formally rejected the deck mold, the court affirmed the trial court's award of costs the plaintiff incurred in storing the rejected mold.

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26. *See id.* at 786.
27. *See id.*
28. *See id.*