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# 2000 Survey of Rhode Island Law: Cases: Insurance Law

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**Insurance Law.** *Fleet Construction Co. v. Aetna Life & Casualty Co.*, 746 A.2d 1247 (R.I. 2000). Absent a statutory or contractual duty to the contrary, an insurer is under no duty to its customers to charge them the lowest or most competitive bond premium rates. Furthermore, an insured cannot maintain a cause of action against its insurer merely for charging them unfavorable rates.

#### FACTS AND TRAVEL

In *Fleet Construction Co. v. Aetna Life & Casualty Co.*,<sup>1</sup> Fleet Construction Co. (Fleet), brought an action in superior court against its insurer, Aetna Life and Casualty Co. (Aetna), and insurance agent, Goodrich-Blessing Agency, Inc. (Goodrich).<sup>2</sup> As a prerequisite to performing certain construction projects, Fleet was required to obtain bonding and other insurance coverage. Goodrich placed the requisite coverage on behalf of Fleet with Aetna.<sup>3</sup> The defendants in this case relied on a rating system that provided for multiple contractor ratings based on the level of complexity and difficulty of projects performed by the contractor.<sup>4</sup> Fleet claimed that it was entitled to the less expensive Class A rating because of the less complex and difficult nature of the work it performed.<sup>5</sup> However, Fleet asserted that it was wrongly charged premiums at the more expensive Class B rate.<sup>6</sup>

Fleet filed a five-count complaint against the defendants seeking reimbursement for the amounts overcharged and for lost profits.<sup>7</sup> Counts one through four concerned overcharged premiums.<sup>8</sup> Count five concerned lost profits that Fleet claims to have suffered because it was not the low bidder on several projects as a result of the defendants' overcharges.<sup>9</sup> Goodrich filed a breach of contract counterclaim alleging that Fleet owed it \$42,784 for unpaid premium costs.<sup>10</sup>

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1. 746 A.2d 1248 (R.I. 2000).

2. *See id.*

3. *See id.*

4. *See id.*

5. *See id.* at n.1 (employing the rating system used by the Surety Association of America's *Rate Manual of Fidelity, Forgery and Surety Bonds* (March 2, 1987 and July 15, 1977 Revisions)).

6. *See id.*

7. *See id.* at 1248-49.

8. *See id.*

9. *See id.* at 1249.

10. *See id.*

Defendants, Goodrich and Aetna, moved for partial summary with respect to counts one through four.<sup>11</sup> The defendants claimed, and Fleet admitted, that all premium costs were reimbursed by the parties who awarded contracts to Fleet, hence, Fleet had suffered no damage as a result of any alleged overcharging.<sup>12</sup> A superior court motion justice agreed with the defendants and granted their motion for partial summary judgment.<sup>13</sup> Thereafter, the defendants moved for partial summary judgment with respect to count five, claiming that they owed no duty to Fleet to charge them the lowest premium rates for construction bonds or charge them Class A rather than Class B rates.<sup>14</sup> Fleet countered that the defendants' breach of duty was their misclassification of projects as Class B rather than Class A.<sup>15</sup> A different superior court motion justice agreed with the defendants and granted their motion.<sup>16</sup>

Goodrich then moved for summary judgment on its counterclaim for unpaid premiums.<sup>17</sup> The motion was identical to one that was filed and denied prior to the granting of partial summary judgments concerning counts one through five.<sup>18</sup> Fleet objected to the motion arguing that it was barred by the law of the case doctrine.<sup>19</sup> However, a superior court motion justice granted the motion because the granting of the defendants' earlier motions for summary judgment had dramatically changed the state of the record.<sup>20</sup> The granting of the summary judgment motions negated any of Fleet's possible defenses to Goodrich's breach of contract counterclaim. Accordingly, Goodrich's motion for summary judgment was granted.<sup>21</sup>

On appeal, Fleet argued that the motions below were erroneously granted.<sup>22</sup> Concerning counts one through four, Fleet claimed that the lower court's finding that the defendants owed

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11. *See id.* at 1248.

12. *See id.*

13. *See id.* at 1249.

14. *See id.*

15. *See id.*

16. *See id.*

17. *See id.*

18. *See id.*

19. *See id.*

20. *See id.*

21. *See id.*

22. *See id.*

them no duty to charge the lower rates was erroneous.<sup>23</sup> Fleet also claimed that it was in fact damaged by the defendants' overcharges by making its business less competitive and causing it to "lose at least one lucrative contract."<sup>24</sup> Relying on the collateral source doctrine, Fleet contended that the defendants, as tortfeasors, "should not be permitted to reap the benefit of an injured party's ability to recoup some of its losses from a third party."<sup>25</sup> Fleet asserted that it should not matter that its insurance costs were passed along to its customers and that the defendants should not escape liability merely because Fleet had received benefits from third parties.<sup>26</sup>

With respect to count five, Fleet again claimed that the lower court erroneously concluded that the defendants owed no duty to correctly classify its bond rates.<sup>27</sup> Finally, with respect to Goodrich's counterclaim, Fleet argued that an earlier denial of Goodrich's motion for summary judgment precluded a subsequent grant of the same motion.<sup>28</sup>

#### ANALYSIS AND HOLDING

The Rhode Island Supreme Court affirmed the superior court's granting of the defendants' motions for summary judgment.<sup>29</sup>

#### *Counts One Through Four—The "Wrong" Rates.*

The court held that an insurer, absent a statutory or contractual duty to the contrary, owes no duty to its clients to charge the lowest or best premium rates for bond coverage.<sup>30</sup> Without an express promise to do so, an insurer need not offer coverage at the most competitive rates.<sup>31</sup> As the established rates did not violate any law or contractual provision, the defendants breached no duty

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23. *Id.* at 1249-50.

24. *See id.* at 1249.

25. *Id.* at 1249.

26. *See id.* at 1249-50.

27. *See id.* at 1250.

28. *See id.* at 1251.

29. *See id.*

30. *See id.* at 1250.

31. *See id.*

owed to Fleet.<sup>32</sup> If Fleet was not happy with the rates offered by the defendants, they were free to obtain coverage elsewhere.<sup>33</sup>

Arguing that it should not matter that their insurance costs were passed on to its customers, Fleet claimed that the collateral-source doctrine should prevent the defendants from escaping liability merely because their customers had reimbursed them for the alleged overcharging.<sup>34</sup> The collateral source doctrine requires a negligent party to pay the full amount of damages suffered by the injured party regardless of any amounts received by the injured party from a third party.<sup>35</sup> While not questioning that the collateral source doctrine is followed in Rhode Island, the supreme court held it inapplicable in this case because the defendants had committed no tort.<sup>36</sup>

#### *Count Five—Lost Profits*

The supreme court held that the defendants owed no duty to Fleet to classify Fleet's projects as Class A and charge the corresponding lower rates.<sup>37</sup> The court noted that that imposition of such a duty would transform the insurance industry to one of public welfare.<sup>38</sup> Accordingly, the court held that the defendants had no duty to sell coverage at the most competitive rates or classify a project in any particular manner.<sup>39</sup> Further, an insurer is under no duty to charge "similarly situated" customers the same rate.<sup>40</sup>

#### *Counterclaim—Unpaid Premiums*

The supreme court upheld the superior court's grant of Goodrich's second motion for summary judgment with respect to its breach of contract counterclaim.<sup>41</sup> Although Goodrich's same motion had previously been denied, the subsequent events justified

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32. *See id.*

33. *See id.*

34. *See id.* at 1249-50

35. *See id.*

36. *See id.* at 1250.

37. *See id.* at 1250-51.

38. *See id.* at 1250 (quoting *Dubreuil v. Allstate Ins. Co.* 511 A.2d 300, 302 (R.I. 1986)).

39. *See id.* at 1250-51.

40. *Id.*

41. *See id.* at 1251.

the later grant.<sup>42</sup> The grant of summary judgment with respect to counts one through five sufficiently changed the status of the record when the second motion was filed and granted.<sup>43</sup> As the defendants had breached no duty owed to Fleet and Fleet suffered no damage as a result of the alleged overcharging, any possible defenses to Goodrich's breach of contract counterclaim necessarily vanished.<sup>44</sup>

#### CONCLUSION

In *Fleet Construction Co., Inc. v. Aetna Life & Casualty*, the Supreme Court of Rhode Island made clear that an insurer, absent a statutory or contractual duty to the contrary, is under no duty to its customers to charge the lowest or most competitive bond premium rates. Hence, an insured cannot maintain a cause of action against its insurer for charging unfavorable rates.

The court also made clear that the law of the case doctrine does not automatically prevent a previously denied motion for summary judgment from being granted. A trial court justice may reconsider and grant a previously denied motion if interim facts sufficiently change the record so as to justify the subsequent grant.

Michael J. Daly

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42. *See id.*

43. *See id.*

44. *See id.*

**Insurance Law.** *Lombardi v. Rhode Island Insurers*, 751 A.2d 1275 (R.I. 2000). Before recovering from the Insurers' Insolvency Fund, an insurance guarantee association, an insured is not required to first exhaust the insurance of his or her creditor or mortgagee. Where the insured is a stranger to those relationships he will derive no benefit from the creditor's policies, and will remain liable on the original promissory note. An insured's interests in an insurance policy are not forfeited merely because the insured's name did not appear as loss payee in the contract.

#### FACTS AND TRAVEL

Plaintiff Arlene D. Lombardi (Lombardi) was the owner of a two family dwelling located on Gendron Street in West Warwick, Rhode Island, when, in November 1990, the building was significantly damaged by a fire.<sup>1</sup> The premises was insured by a policy issued by American Universal Insurance Group (American).<sup>2</sup> The limit of insurance coverage under the policy was \$75,000 for property loss, plus \$5,000 for debris removal, less a \$500 deductible.<sup>3</sup> At the time of the fire, Colonial Bank (Colonial) held a mortgage on the premises in accordance with a promissory note and mortgage given by Lombardi in the amount of \$75,000, for which approximately \$68,540 remained outstanding.<sup>4</sup> Colonial was designated the loss payee under the terms of the insurance policy.<sup>5</sup> As a result of the fire, the premises incurred damage in excess of the policy limits.<sup>6</sup> Later, in January 1991, American was declared insolvent.<sup>7</sup>

In October 1991, Lombardi filed a breach of contract action against American.<sup>8</sup> Because of American's insolvency, the parties stipulated that the Rhode Island Insurers' Insolvency Fund (Fund) be substituted as a party defendant for American.<sup>9</sup>

Thereafter, Colonial was placed into receivership and its assets came under the control of the Resolution Trust Company (Res-

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1. *See Lombardi v. R.I. Insurers*, 751 A.2d 1275, 1275 (R.I. 2000).

2. *See id.*

3. *See id.* at 1275-76.

4. *See id.* at 1276.

5. *See id.*

6. *See id.*

7. *See id.*

8. *See id.*

9. *See id.*

olution).<sup>10</sup> Included in Colonial's assets was an insurance policy in the amount of \$1,000,000 issued by Lloyd's of London (Lloyd's) that purportedly covered the loss on Lombardi's note.<sup>11</sup>

The superior court, sitting without a jury, held that the clause in the mortgage pursuant to the standard Rhode Island fire insurance contract created two separate and independent contracts:<sup>12</sup> one contract between the mortgagor and the insurer, and one contract between the mortgagee and the insurer.<sup>13</sup> Therefore, Lombardi had a separate and independent cause of action against her insolvent insurer for breach of contract.<sup>14</sup> The trial justice ordered the Fund to pay Lombardi \$79,500, and subsequently denied defendant's motion to dismiss on the ground that Lombardi was not the real party in interest.<sup>15</sup>

The Fund appealed. Before the Rhode Island Supreme Court, the Fund argued that Lombardi was not the real party in interest and that her claim should be dismissed on the clause in the insurance contract that lists Colonial as the loss payee.<sup>16</sup> The defendant further argued that, although Colonial is the appropriate payee under the policy, pursuant to section 27-34-12(a) of the Rhode Island Insurers' Fund Act, Colonial must first exhaust its own insurance policies before it is entitled to recovery.<sup>17</sup> The Rhode Island Insurers Fund Act provides: "any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his or her right under that policy."<sup>18</sup> The Fund argued that since Colonial has \$1,000,000 worth of coverage available from Lloyd's, that coverage must first be exhausted.<sup>19</sup>

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10. *See id.*

11. *See id.*

12. *See id.*

13. *See id.*

14. *See id.*

15. *See id.*

16. *See id.*

17. *See id.*

18. *Id.* at n.2. (quoting R.I. Gen. Laws § 27-34-12(a) (1956) (1998 Reenactment)).

19. *See id.*



## ANALYSIS AND HOLDING

The court stated that the purposes of the Fund were to provide a mechanism for the payment of covered claims, to avoid excessive delay in payment, to avoid financial loss to claimants and to create an entity to assess the cost of the protection and distribute it equitably among member insurers.<sup>20</sup> The Fund is obliged to assume all the obligations that the insured would have had if not for its insolvency.<sup>21</sup> "The paramount responsibility of an insurer is to at all times act in the best interests of its insured to protect the insured from loss and excess liability."<sup>22</sup>

The court declined, as a matter of public policy, to extend section 27-34-12(a) to require an insured whose insurer has been declared insolvent to look to any outstanding policies of the insured's creditor merely because the creditor is the loss payee under the policy.<sup>23</sup> The court held that it will not require:

an insured who has made timely premium payments, and who suffers a loss under [a] policy, to first exhaust the insurance of his or her creditor or mortgagee where the insured is a stranger to those relationships, will derive no benefit from the creditor's policies, and will remain liable on the original promissory note.<sup>24</sup>

The court further held that Lombardi was a real party in interest.<sup>25</sup> At the time of the fire, Lombardi was insured up to \$79,500 and only \$68,540 was owing on the note, leaving a difference of approximately \$11,000.<sup>26</sup> Although Lombardi subsequently defaulted on the note because of her inability to continue making payments after losing the income that the property produced, at the time of the loss Lombardi was not in default.<sup>27</sup> Therefore, the court held, her interest in the insurance proceeds at the time was both real and significant, and Lombardi's interests were not forfeited simply because her name did not appear as a "loss payee" under the policy.<sup>28</sup>

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20. See *id.* at 1277.

21. See *id.*

22. *Id.*

23. See *id.*

24. *Id.*

25. See *id.*

26. See *id.*

27. See *id.*

28. See *id.* at 1277-78.

## CONCLUSION

In *Lombardi v. Rhode Island Insurers*, the Rhode Island Supreme Court held that the Rhode Island Insurers' Fund Act does not require an insured who has made timely premium payments, and who has suffered a loss under a policy, to first exhaust the insurance of his or her creditor or mortgagee where the insured is a stranger to those relationships, will derive no benefit from the creditor's policies, and will remain liable on the original promissory note. The court also held that an insured's interests in an insurance policy are not forfeited merely because the insured's name did not appear as loss payee in the contract.

Joseph Proietta