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2002 Survey of Rhode Island Law: Cases: Insurance

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Insurance. *Geremia v. Allstate Insurance Co.*, 798 A.2d 939 (R.I. 2002). The interest computation formula set forth in *Merrill v. Trenn*, 706 A.2d 1305 (R.I. 1998) must apply to all future and pending underinsured/uninsured motorist cases as well as to joint tortfeasors.

FACTS AND TRAVEL

On April 23, 1994, the plaintiff, Lisa Geremia, who was insured by Allstate Insurance Company (Allstate), sustained injuries when an underinsured driver rear-ended her car.[1] The plaintiff recovered $25,000 from the underinsured motorist's insurance company, and pursued a claim against her insurance company for the damages she incurred over that amount.[2] Notably, plaintiff's insurance policy mandated arbitration.[3] On May 30, 2000, after assessing the damages to be $31,800, the arbitration panel made an award of $6,800 after subtracting the $25,000 paid by the underinsured driver's insurance company.[4] The arbitrators then added 12 percent interest per annum, creating a total award of $11,764.[5] In response to the plaintiff's petition to modify the award and to alter the calculation of interest, Allstate filed its own petition to confirm the arbitration award.[6] The hearing justice denied the plaintiff's petition and confirmed the award, whereby the plaintiff appealed.[7]

ANALYSIS AND HOLDING

A "mistake of law" is not grounds for overturning an arbitration award, but an arbitrator's "manifest disregard of the law" is.[8] Here, the plaintiff's contention was that the arbitration award was miscalculated because it did not apply the computation formula utilizing the pre-judgment interest, set forth in *Merrill v. Trenn*.[9]

1. Geremia v. Allstate Ins. Co., 798 A.2d 939, 939-40 (R.I. 2002).
2. *Id.*
3. *Id.*
4. *Id.* at 940.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.* at 941 (citing Merrill v. Trenn, 706 A.2d 1305, 1313-14 (R.I. 1998) (holding despite earlier settlement of one joint tortfeasor, the remaining tortfeasor would be charged the statutory interest on the full amount due to the plaintiff from the time of the accrual of the cause of action to the time of the earlier settlement)).

However, since that case applied to joint tortfeasors, the arbitrators believed that it did not apply to non-tortfeasors.[10] Although the court made explicit the requirement that the *Trenn* formula also be applied in all pending and future underinsured/uninsured motorist contexts, the court found that the arbitrators' prior belief that *Trenn* did not apply "did not rise to the level of a manifest error of law," and found that the arbitrators had discretion to award interest in the way in which they did.[11] Guided by section 10-3-12 of the Rhode Island General Laws,[12] the court found insufficient "evidence of any material miscalculation of figures or impropriety," and that "the award [was] sufficiently clear as to provide a final and definite award."[13] Furthermore, absent any finding that the trial judge's ruling was clearly wrong, the court upheld that decision and confirmed the arbitration award.[14]

CONCLUSION

Absent a finding that an arbitration award amounts to a manifest disregard of the law, a court will not overturn such an award unless their jurisdiction to do so is otherwise prescribed by section 10-3-12. The interest calculation formula set forth in *Merrill v. Trenn* now applies to the underinsured/uninsured motorist context.

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10. *Id.*

11. *Id.*

12. R.I. GEN. LAWS § 10-3-12 (1997) provides in pertinent part:

> In any of the following cases, the court must make an order vacating the award upon the application of any party to the arbitration: . . . 4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

Id.

13. *Geremia*, 798 A.2d at 941.

14. *Id.*

Insurance. *LaBonte v. National Grange Mutual Insurance Co.*, 810 A.2d 250 (R.I. 2002). An insurance company does not act in bad faith by bringing a declaratory judgment action in order to clarify coverage terms. Also, the possibility of a future conflict between insurer and insured does not relieve the insured from a duty to cooperate with the insurance company's investigation of a potential claim.

FACTS AND TRAVEL

LaBonte, a painting contractor, sanded and painted a portion of the exterior of a condominium in the summer of 1998.[1] The following September, he read an article in a newspaper in which one of the residents of the condominium alleged that her son had developed lead poisoning as a result of the sanding LaBonte had performed at the job site.[2] LaBonte sent a letter to his insurance company (defendant) asking them to cover any claims that may arise from the allegations.[3] In its response to LaBonte's letter, defendant reserved its right to deny coverage.[4] In October 1998, the Rhode Island Department of Environmental Management informed defendant of a complaint filed by the resident of the condominium alleging LaBonte's sanding was the cause of her son's lead poisoning.[5] In January 1999, defendant sent a letter requesting LaBonte submit to an "examination under oath."[6] LaBonte then requested that defendant provide him with independent counsel for the examination, but the defendant refused.[7] LaBonte, in turn, declined to submit to the examination.[8]

Defendant then filed suit against LaBonte in federal court.[9] Defendant's suit sought a declaratory judgment that LaBonte's policy excluded coverage of tort claims filed against him as a result of lead paint contamination.[10] The declaratory judgment also sought a determination that LaBonte's failure to participate in the

1. LaBonte v. Nat'l Grange Mut. Ins. Co., 810 A.2d 250, 252 (R.I. 2002).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.* at 252-53.
6. *Id.* at 253.
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*

requested examination was a breach of contract.[11] LaBonte then commenced this action in state court claiming that defendant acted in bad faith, in violation of section 9-1-33 of the Rhode Island General Laws, when it brought the declaratory judgment action in federal court.[12] LaBonte also argued that defendant's actions constituted an abuse of process because the goal of their federal suit was to acquire information that defendant had hoped to gain from the requested interview.[13] The trial justice then heard, and denied, two additional motions brought by LaBonte and, subsequently, granted defendant's motion for summary judgment on four counts, including the two discussed here.[14] LaBonte then filed this appeal with the Rhode Island Supreme Court.[15]

ANALYSIS AND HOLDING

The supreme court held that defendant, by seeking a declaratory judgment, was only seeking to clarify the coverage owed to LaBonte.[16] In order to bring a bad faith claim against an insurer, there must be evidence the insurer refused in bad faith to settle a claim or otherwise refused to perform its obligations under the insurance contract.[17] However, at the time LaBonte brought this action, there had been no claim filed against him.[18] The court also held that an insurer may bring a declaratory judgment action to clarify coverage terms without that action being viewed as bad faith.[19] LaBonte provided no evidence the defendant was doing anything other than clarifying coverage.[20]

LaBonte also argued defendant's actions constituted abuse of process because they had admitted one of their goals of bringing the federal suit was to obtain the information they had originally sought to obtain in the interview with LaBonte regarding the origi-

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11. *Id.*
12. *Id.* at 252-53. The statute allows a claim when the insurance company wrongfully, or in bad faith, refused to pay, settle a claim, or perform its obligations under the contract. *Id.* at 254 (quoting R.I. GEN. LAWS § 9-2-33 (1997)).
13. *Id.* at 252, 254.
14. *Id.* at 253.
15. *Id.* at 252-53.
16. *Id.* at 253-54.
17. *Id.* at 254.
18. *Id.*
19. *Id.*
20. *Id.*

nal lead paint issue.[21] However, defendant claimed in the federal suit that LaBonte had breached his insurance contract by refusing to participate in the interview.[22] The supreme court agreed with defendant and held that defendant's actions were not ulterior or wrongful, but were instead, straightforward, and legitimate.[23] The court held that an insured has a duty to cooperate with his or her insurance carrier and this duty is not diminished by the possibility of future conflict with the carrier.[24] Accordingly, the supreme court denied LaBonte's appeal and affirmed the judgment of the lower court.[25]

CONCLUSION

An insurance company does not act in bad faith by bringing a declaratory judgment action in order to clarify coverage terms. An insurer wishing to avoid liability may bring a declaratory judgment action in order to clarify coverage. Also, the possibility of a future conflict between insurer and insured does not relieve the insured from a duty to cooperate with the insurance company's investigation of a potential claim.

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21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.* at 255.
25. *Id.*

Insurance: *Skaling v. Aetna Insurance Co.*, 799 A.2d 997 (R.I. 2002). In a first-party claim of bad faith refusal of coverage, the insured need not obtain a judgment as a matter of law on the underlying breach-of-contract claim. This holding overrules *Bartlett v. John Hancock Mutual Life Insurance Co.*, 538 A.2d 997 (R.I. 1988).

FACTS AND TRAVEL

On October 20, 1995, plaintiff Robert Skaling was permanently injured when he fell from a railroad trestle bridge while attempting to rescue Matty Webber, a passenger in a Jeep driven by the underinsured tortfeasor, Shaun Menard.[1] Skaling endured two months of hospitalization and incurred medical expenses in excess of $50,000.[2] He subsequently received $25,000 (the limit of Menard's policy) in a settlement with Menard's insurance carrier.[3] Plaintiff sought to receive underinsured insurance benefits from his own insurance carrier, Aetna Insurance Company (Aetna).[4] Aetna denied the claim based on a finding that the injury did not arise out of the ownership, maintenance, or use of the vehicle.[5] In the complaint in superior court, plaintiff alleged breach-of-contract for failure to pay underinsured motorist benefits, and insurer bad faith.[6] The claim of insurer bad faith was severed, and summary judgment was granted upon Aetna's motion.[7] Defendant urged that Skaling's failure to obtain a directed verdict on the breach-of-contract claim precluded him from recovering on the insurer bad faith claim according to *Bartlett*.[8] On appeal here, Skaling maintained that reversal of the grant of summary judgment is mandated by section 9-1-33 of the Rhode Island General Laws,[9] and that the standard of proof in *Bartlett* is inappropriate and insurmountable.[10]

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1. Skaling v. Aetna Ins. Co., 799 A.2d 997, 1001 (R.I. 2002).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.* at 1000.
7. *Id.*
8. *Id.* at 1001.
9. Section 9-1-33 provides, in pertinent part, "the question of whether or not an insurer has acted in bad faith in refusing to settle a claim shall be a question to be determined by the trier of fact." R.I. GEN. LAWS § 9-1-33 (1997).
10. *Skaling*, 799 A.2d at 1002.

BACKGROUND

In *Bartlett,* the Rhode Island Supreme Court placed a heavy burden on the plaintiff attempting to establish a claim of bad faith refusal to settle by requiring the litigant to establish entitlement to a directed verdict on the contract claim.[11] In other words, the plaintiff must demonstrate breach-of-contract as a matter of law.[12]

ANALYSIS AND HOLDING

The Rhode Island Supreme Court had to decide "whether, in the context of first-party claims, an insurer is insulated from a claim of bad faith simply because plaintiff was unable to obtain a judgment as a matter of law in the underlying breach-of-contract action."[13] The court held it did not.[14] The court illustrated many situations where the determination of the underlying contract claim could not be determined as a matter of law.[15] It found particularly compelling the instance where the validity of a contract claim rests on a disputed fact such as an oral conversation between the insured and insurer.[16] Those "factual disputes cannot be determined as a matter of law."[17] If a jury accepts plaintiff's version of events, the defendant should not be insulated from a bad faith claim.[18] The court further points out that if this standard of proof were to apply, then a defendant in this situation would be insulated from a bad faith claim notwithstanding a showing of reckless conduct and oppressive tactics.[19] After a thorough examination of other jurisdictions,[20] the court held that "the directed verdict standard of proof in this context is unworkable and unjust."[21] It declined, however, to "abandon the rule that an insurer has the right to debate a claim that is fairly debatable."[22]

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11. *Id.* at 1003 (citing Bartlett v. John Hancock Mut. Life Ins. Co., 538 A.2d 997, 1001 (R.I. 1988)).
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.* at 1006-10.
21. *Id.* at 1003.
22. *Id.* at 1010.

Additionally, the directed verdict standard did not comport with section 9-1-33 of the Rhode Island General Laws.[23] Consistent with section 9-1-33, the court announced that bad faith is established when the "proof demonstrates that the insurer denied coverage or refused payment without a reasonable basis in fact or law."[24] It further noted the significance of this new rule in this jurisdiction where claims of insurer bad faith are severed from the underlying breach-of-contract claim.[25]

Finally, the court's decision comports with Rhode Island public policy, which imposes implied-in-law obligations of good faith and fair dealing on an insurer doing business in the state.[26]

> It makes little sense that an insurance company may . . . behave in a manner inconsistent with its implied duties of fair dealing and be insulated from tort liability for its bad faith conduct because it fortuitously survives a motion for judgment as a matter of law, yet is ultimately found to have breached the insurance contract.[27]

CONCLUSION

The Rhode Island Supreme Court overruled *Bartlett*, and announced the new standard that a plaintiff claiming bad faith need not establish breach-of-contract as a matter of law. Proof that the insurer denied coverage without a reasonable basis can be established in either law or fact.

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23. *Id.* at 1003 (citing R.I. GEN. LAWS § 9-1-33 (1997)).
24. *Id.* at 1010.
25. *Id.*
26. *Id.* at 1005.
27. *Id.*