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Overview of State of Rhode Island Court System

A. Trial Courts

The Superior Court is comprised of twenty-two (22) judges and five (5) magistrates. It is the forum for jury and non-jury trials of both civil and criminal matters.

The court has original jurisdiction in all felony proceedings, in civil cases where the amount in controversy exceeds $10,000, and in equity matters. (The court has concurrent jurisdiction with the District Court in civil matters in which the amount in controversy is between $5,000 and $10,000.)

The District Court has exclusive jurisdiction of all civil actions at law wherein the amount in controversy is under $5,000. The court has concurrent original jurisdiction with the Superior Court of all civil actions at law wherein the amount in controversy exceeds the sum of $5,000 and does not exceed $10,000. However, in any such action if one or more of the defendants in the answer to the complaint demand removal of the action to the Superior Court, in which event the action shall proceed as if it had been filed originally in the Superior Court, removal will be granted. Given the limited amount recoverable, limited to $10,000, the vast majority of cases are filed in Superior Court.

Appeals from District Court trials result in trials de novo, entirely new trials, in Superior Court. However, it is important to note that under §9-12-10 of the RI General Laws, a party only has two (2) days to appeal a judgment from a district Court. When computing the two-day appeal period, if the last day falls on a Saturday, Sunday, or legal holiday the appeal period continues to the next Court date. The court also hears agency, zoning board, and Probate Court appeals, among others.

B. Appellate Courts

The Rhode Island Supreme Court is the state's court of last resort. The Supreme Court has absolute appellate jurisdiction over questions of law and equity, supervisory powers over other state courts, and general advisory responsibility to the Legislative and the Executive branches of state government concerning the constitutionality of legislation. The Supreme Court is also responsible for regulating admission to the Rhode Island Bar and disciplining its members. Rhode Island has no separate Court of Appeals, like may jurisdictions.

Procedural

A. Venue

Personal or transitory actions and suits brought by or against corporations, if brought in the superior court, shall be brought in the court for the county, and if brought in a district court, shall be brought in the division in which the other party or some one of the other parties dwell, or in the court for the county or in the district court for the division in which the defendant or some one of the defendants shall be found, or in which the corporation is located by its charter, or if not located by its charter, in which the annual meetings of the corporation are required to be, or if not required to be, are actually held. R.I. Gen. Laws Ann. § 9-4-4 (West).

All other actions and suits, if brought in the superior court, shall be brought in the court for the county, or if brought in the district court, shall be brought in the division in which some one of the plaintiffs or defendants shall dwell, or in the superior court for the county or in the district court for the division in which the defendant or some one of the defendants shall be found; and if no one of the plaintiffs or defendants shall dwell in the state, the action, if brought in the superior court, may be brought in the court for any county, or if in a district court, in any division. R.I. Gen. Laws Ann. § 9-4-3 (West).

If no one of the plaintiffs or defendants dwell within the state, and a corporation established out of the state be a party, personal or transitory actions or suits by or against it may, if brought in the superior court, be brought in the court for any county, or if in the district court, in any division. R.I. Gen. Laws Ann. § 9-4-5 (West).

Except as otherwise provided herein, all actions and suits brought contrary to the provisions of § 9-4-2 shall be dismissed, and any action contrary to §§ 9-4-3--9-4-5, may be dismissed. In lieu of dismissal, any civil action brought in the wrong county, if brought in the superior court, or in the wrong division, if brought in the district court, may, in the discretion of the court, be transferred to a proper county or division. R.I. Gen. Laws Ann. § 9-4-6 (West).

B. Statute of Limitations

Slander – 1 year next after the words are spoken;

Injuries – 3 years next after the cause of action accrues;

Malpractice – action shall be commenced within three (3) years from the time of the occurrence , or date it is discovered. Exception: one who is under a disability by reason of age, mental incompetence or otherwise, and on whose behalf no action is brought within the 3 year period, shall bring the action within three (3) years from the removal of disability;

Legal Malpractice – 3 years from the date of the occurrence or date it is discovered;

Home Inspector Malpractice – 3 years of delivery of the written home inspection report, or 3 years from the discovery of the alleged damages.

Actions against State or Town – within 3 years of the accrual of any claim of tort;

Property damage: 3 years or 10 years for property damage caused by a defective product;

Written contract: 10 years; oral contract: 10 years; contract under seal: 20 years;

Product liability: 3 years;

Sexual molestation of a minor: 7 years from the date of the last alleged act, or the date of when the victim reasonably should have discovered that the last alleged act caused injury;

Wrongful death: 3 years from date of death, or date when wrongful act that caused death was or should have been discovered;

Breach of warranty: 3 years;

Fraud: 10 years;

Workers' Compensation: 3 years; and

Asbestos Exposure: 3 years from date of diagnosis.

C. Time for Filing an Answer

A defendant must respond to the complaint (file an answer) within 20 days of date of service. If no answer is filed within 20 days, the plaintiff may obtain a default judgment against the defendant for amount claimed in complaint.

D. Dismissal Re-Filing of Suit

If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff, or if he or she dies and the claim survives, his or her executor or administrator, may commence a new action upon the same claim within one year after the termination.

It is elementary that a dismissal without prejudice “prevent[s] the decree of dismissal from operating as a bar to a subsequent suit.” Black's Law Dictionary 421 (5th ed. 1979). Moreover, this Court previously has acknowledged that a dismissal granted “without prejudice” because of insufficient service of process does not preclude a plaintiff from refiling upon the same claim. *International Brotherhood of Police Officers, Local No. 302 v. Town of Portsmouth,* 506 A.2d 540, 542 (R.I.1986). Furtado v. Laferriere, 839 A.2d 533, 538 (R.I. 2004).

R.I. Gen. Laws Ann. § 9-1-22 (West) In certain limited circumstances, G.L.1956 § 9-1-22 (the savings statute) allows a party to recommence an action within one year after the dismissal of a prior lawsuit. The savings statute does not apply, however, when there has been a “voluntary discontinuance” of the first action or when the court has dismissed the first lawsuit for “neglect to prosecute the action.” Furtado v. Laferriere, 839 A.2d 533, 543 (R.I. 2004).

Rhode Island Superior Court Civil Procedure Rule 41 (b) Involuntary Dismissal:

The court may, in its discretion, dismiss any action for lack of prosecution where the action has been pending for more than 5 years, or, at any time, for failure of the plaintiff to comply with these rules or to proceed when the action is reached for trial. Notice that an action will be in order for dismissal on a day certain shall be mailed to the plaintiff's attorney of record and to the plaintiff if the plaintiff's address be known. If there be no attorney of record and if the plaintiff's address is not known, such notice shall be published as directed by the court in accordance with statutory provisions.

Liability

A. Negligence

To prevail on a claim of negligence, “a plaintiff must establish a legally cognizable duty owed by a defendant to a plaintiff, a breach of that duty, proximate causation between the conduct and the resulting injury, and the actual loss or damage.” *Mills v. State Sales, Inc.,* 824 A.2d 461, 467-68 (R.I.2003) (quoting *Jenard v. Halpin,* 567 A.2d 368, 370 (R.I.1989)). The crux of this appeal is whether defendant owed plaintiff a legal duty, which is a question of law. *Martin v. Marciano,* 871 A.2d 911, 915 (R.I.2005) (citing *Volpe v. Gallagher,* 821 A.2d 699, 705 (R.I.2003)). If no such duty exists, then plaintiff's claim must fail, as a matter of law. If the evidence establishes that a duty did run from defendant to plaintiff, then plaintiff is entitled to a determination of the remaining factual questions-did defendant breach the duty of care, and if so, was that breach the proximate cause of plaintiff's harm? *See Terry v. Central Auto Radiators, Inc.,* 732 A.2d 713, 718 (R.I.1999) (“Whether [defendant's] inaction amounted to a breach of the duty owed to [plaintiff] was a question of fact[,] which should have been put to the trial jury.”); *Splendorio v. Bilray Demolition Co.,* 682 A.2d 461, 467

(R.I.1996) ("Ordinarily the determination of proximate cause ... is a question of fact that should not be decided by summary judgment.").

***887** 567 This Court determines whether a duty exists on a "case-by-case basis," considering " 'all relevant factors, including the relationship between the parties, the scope and burden of the obligation to be imposed upon the defendant, public policy considerations,' ... and the 'foreseeability of harm to the plaintiff.'" *Martin,* 871 A.2d at 915 (quoting *Volpe,* 821 A.2d at 705, and *Banks v. Bowen's Landing Corp.,* 522 A.2d 1222, 1225 (R.I.1987)). The linchpin in the analysis of whether a duty flows from a defendant to a plaintiff is foreseeability. *Splendorio,* 682 A.2d at 466; *see Volpe,* 821 A.2d at 705. *Selwyn v. Ward*, 879 A.2d 882, 886-87 (R.I. 2005).

Defenses: accord and satisfaction, arbitration and award, assumption of risk, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. RI R RCP Rule 8.

Gen. Laws § 9-20-4: Pure Comparative Negligence
In all actions brought for personal injuries, or where personal injuries have resulted in death, or for injury to property, the fact that the person injured, or the owner of the property or person having control over the property, may not have been in the exercise of due care shall not bar a recovery, but damages shall be diminished by the finder of fact in proportion to the amount of negligence attributable to the person injured, or the owner of the property or the person having control over the property.

Gen. Laws Title 10, Chapter 6: Uniform Contribution Among Tortfeasors Act:
The right of contribution exists among joint tortfeasors; provided however, that when there is a disproportion of fault among joint tortfeasors, the relative degree of fault of the joint tortfeasors shall be considered in determining their pro rata shares.

A joint tortfeasor is not entitled to a final money judgment for contribution until he or she has by payment discharged the common liability or has paid more than his or her pro rata share of the final money judgment. Actions for contribution shall be commenced not later than one year next after the first payment made by a joint tortfeasor which has discharged the common liability or is more than his or her pro rata share thereof.

A release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides; but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.

B. Negligence Defenses

Include, but are not limited to, (1) Statute of limitation; (2) Lack of legal duty owed; (3) Assumption of the risk (must be pleaded an affirmative defense) G.L. 1956 § 9-20-4(c); and (4) Comparative negligence G.L. 1956 § 9-20-4(b) (must be pleaded as an affirmative defense).

Rhode Island has not established a cause of action for negligence based upon the "mode of operation" of the defendant's business, as many jurisdictions have in premises liability matters.

C. Gross Negligence, Recklessness, Willful and Wanton Conduct

A finding of gross negligence, recklessness, willful and wanton conduct may afford a claimant the right to punitive damages.

D. Negligent Hiring and Retention

An action for negligent hiring provides a remedy to injured third parties who would otherwise be foreclosed from recovery under the master-servant doctrine. *Welsh Mfg., Div. of Textron, Inc. v. Pinkerton's, Inc.*, 474 A.2d 436 (R.I. 1984).

Recognition of direct employer liability for its negligence in hiring is consistent with section 213 of the Restatement (Second) of Agency and comports with the general tort principles of negligence. *Welsh Mfg., Div. of Textron, Inc. v. Pinkerton's, Inc.*, 474 A.2d 436 (R.I. 1984). The standard of reasonable care requires an employer to guard against selecting a person who it knows or should have known was unfit or incompetent for the employment, thereby exposing third parties to an unreasonable risk of harm. *Welsh Mfg., Div. of Textron, Inc. v. Pinkerton's, Inc.*, 474 A.2d 436 (R.I. 1984).

We recognized the viability of a cause of action against an employer for the negligent retention and/or supervision of an employee when a third party is injured by the acts of unfit or incompetent employees. We held that an employer has a duty "to exercise reasonable care in selecting [and retaining] an employee who, as far as could be reasonably known, [is] competent and fit for the [employment]." *Welsh,* 474 A.2d at 440. The amount of care deemed to be "reasonable," depends on the risk of harm inherent in the employment- "[t]he greater the risk of harm, the higher the degree of care necessary to constitute ordinary care." *Id.* (citing *Leonard v. Bartle,* 48 R.I. 101, 104, 135 A. 853, 854 (1927)). *Rivers v. Poisson*, 761 A.2d 232, 235 (R.I. 2000).

E. Negligent Entrustment

To date, the Court has not recognized negligent entrustment as a basis for liability, and we decline to do so in this case.

Even if we did adopt negligent entrustment as a source of liability, plaintiff's argument would fail. According to plaintiff, negligent entrustment results when a plaintiff proves that (1) the entrustee was incompetent, inexperienced, or reckless; (2) the entrustor knew, or had reason to know, of the entrustee's condition or propensities; (3) there was an entrustment of chattel; (4) the entrustment created an appreciable risk of harm to others, and a duty on the part of the entrustor; and (5) the entrustor's negligence in entrusting the chattel caused the plaintiff's injury. 57A Am.Jur.2d *Negligence* § 332 (1989). *Regan v. Nissan N. Am., Inc.*, 810 A.2d 255, 257 (R.I. 2002)

Whenever any motor vehicle shall be used, operated, or caused to be operated upon any public highway of this state with the consent of the owner, lessee, or bailee, expressed or implied, the driver of it, if other than the owner, lessee, or bailee, shall in the case of an accident be deemed to be the agent of the owner, lessee, or bailee, of the motor vehicle unless the driver shall have furnished proof of financial responsibility in the amount set forth in chapter 32 of this title, prior to the accident. For the purposes of this section, the term "owner" shall include any person, firm, co-partnership, association, or corporation having the lawful possession or control of a motor vehicle under a written sale agreement. R.I. Gen. Laws Ann. § 31-33-6 (West).

F. Dram Shop

Under Rhode Island law, there is no common law cause of action for liquor liability. Rather, a plaintiff must proceed under the Rhode Island Liquor Liability Act. The Act provides that a defendant "who negligently serves liquor to a visibly intoxicated individual is liable for damages proximately caused by the individual's consumption of the liquor." R.I.G.L. § 3-14-6(b).

The statute builds in a potential defense. It provides that, "A defendant is not chargeable with knowledge of an individual's consumption of liquor or other drugs off the defendant's premises unless the individual's appearance and behavior, or other facts known to the defendant, would put a reasonable and prudent person on notice of that consumption." § 3-14-6(d).

A defendant, as described in § 3-14-5, who negligently serves liquor to a minor is liable for damages proximately caused by the minor's consumption of the liquor.

A defendant, as defined in § 3-14-5, who negligently serves liquor to a visibly intoxicated individual is liable for damages proximately caused by the individual's consumption of the liquor.

Punitive damages can be recovered where the service is "reckless." R.I.G.L. 3-14-7(b) provides that a defendant "who recklessly provides liquor to a visibly intoxicated individual is liable for damages proximately caused by that individual's consumption of the liquor." The statute provides that, "Service of liquor is reckless if a defendant intentionally serves liquor to an individual when the server knows that the individual being served is a minor or is visibly intoxicated, and the server consciously disregards an obvious and substantial risk that serving liquor to that individual will cause physical harm to the drinker or to others." 3-14-7(c)(1). Moreover, "the disregard of the risk, when viewed in light of the nature and purpose of the server's conduct and the circumstances known to him or her, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation." 3-14-7(c)(2).

The statute provides examples of "reckless conduct": "Specific serving practices that are admissible as evidence of reckless conduct include, but are not limited to, the following: (1) Active encouragement of intoxicated individuals to consume substantial amounts of liquor; (2) Service of liquor to an individual who is under twenty-one (21) years old when the server has actual or constructive knowledge of the individual's age; and (3) Service of liquor to an individual that is so continuous and excessive that it creates a substantial risk of death by alcohol poisoning." 3-14-7(d).

Finally, the statute provides that, "Damages may be awarded for all injuries recognized under Rhode Island common or statutory law." R.I.G.L. 3-14-8(a). Moreover, "Punitive damages may be awarded in all actions based on reckless conduct, as set forth in 3-14-7(c). Punitive damages may not be awarded for actions based on negligent conduct, as set forth in 3-14-6(c)." 3-14-8(b).

Proof of service of alcoholic beverages to a person under twenty-one (21) years of age without request for identification forms a rebuttable presumption of negligence. R.I. Gen. Laws Ann. § 3-14-6 (West).

Rhode Island dramshop statute must be applied to accidents that occur outside state when injury is proximately caused by violation of dramshop statute within state. Gen.Laws 1956, § 3-11-1. *Pardey v. Boulevard Billiard Club*, 518 A.2d 1349 (R.I. 1986).

Interpretation
Intoxication in many instances is a condition that may not be detected. It is unreasonable to hold the licensee liable for serving intoxicated persons unless the licensee or the licensee's agent knew or should have known that the consumer was inebriated. See Lawrence v. Anheuser-Busch, Inc., 523 A.2d 864, 871 (R.I. 1987).

"The server cannot be expected to make a determination of sobriety unless the server is familiar with the drinker's previous level of alcohol consumption or unless the drinker manifests such telltale signs of intoxication as swaying or slurred speech." Embry v. Ortiz, 538 A.2d 1002 (R.I. 1988).

G. Joint and Several Liability

Plaintiff may recover 100% of damages from joint tort-feasor who has contributed to injury in any degree and joint tort-feasor may then seek contribution pursuant to statute either by separate action or by impleading fellow joint tort-feasor under third-party practice. Gen.Laws 1956, § 10-6-1 *et seq*.

Roberts-Robertson v. Lombardi, 598 A.2d 1380 (R.I. 1991) It is a well-settled doctrine that a plaintiff may recover 100 percent of his or her damages from a joint tortfeasor who has contributed to the injury in any degree. *Sousa v. Casey,* 111 R.I. 623, 637-38, 306 A.2d 186, 194 (1973). The joint tortfeasor may then seek contribution pursuant to statute either by a separate action or by impleading the fellow joint tortfeasor under third-party practice.

Roberts-Robertson v. Lombardi, 598 A.2d 1380, 1381 (R.I. 1991) One of primary purposes of passage of the Uniform Contribution Among Tortfeasors Act of Rhode Island was to create a right of contribution among joint tort-feasors which did not exist at common law. Gen.Laws R.I.1956, §§ 10-6-1 *et seq*., 10-6-2. *New Amsterdam Cas. Co. v. Homans-Kohler, Inc.*, 1970, 310 F.Supp. 374, affirmed 435 F.2d 1232. Contribution 5(2).

Uniform Contribution Among Tortfeasors Act of Rhode Island applies only where there is a common liability in tort by joint tort-feasors for same injury to person or property; this common liability may be either joint or several, but there can be no contribution unless the injured person has a right of action in tort against both party who seeks contribution and the party from whom contribution is sought. Gen.Laws R.I.1956, §§ 10-6-1 et seq., 10-6-2. *New Amsterdam Cas. Co. v. Homans-Kohler, Inc.*, 1970, 310 F.Supp. 374, affirmed 435 F.2d 1232. Contribution 5(2).

R.I. Gen. Laws Ann. § 10-6-1 (West). For the purposes of this chapter, the term “joint tortfeasors” means two (2) or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them; provided, however, that a master and servant or principal and agent shall be considered a single tortfeasor. R.I. Gen. Laws Ann. § 10-6-2 (West).

The right of contribution exists among joint tortfeasors; provided however, that when there is a disproportion of fault among joint tortfeasors, the relative degree of fault of the joint tortfeasors shall be considered in determining their pro rata shares. R.I. Gen. Laws Ann. § 10-6-3 (West).

A joint tortfeasor is not entitled to a final money judgment for contribution until he or she has by payment discharged the common liability or has paid more than his or her pro rata share of the final money judgment. Actions for contribution shall be commenced not later than one year next after the first payment made by a joint tortfeasor which has discharged the common liability or is more than his or her pro rata share thereof. R.I. Gen. Laws Ann. § 10-6-4 (West).

Parties Subject to Joint and Several Liability

Gen. Laws § 9-1-3: Liability of parents for torts of minors:

The parent or parents of any unemancipated minor or minors, which minor or minors willfully or maliciously cause damage to any property or injury to any person, shall be jointly and severally liable with the minor or minors for the damage or injury to an amount not exceeding fifteen hundred dollars ($1,500) if the minor or minors would have been liable for the damage or injury if they had been adults; provided, nothing herein shall be construed to relieve the minor or minors from personal liability for the damage or injury. The liability herein provided for shall be in addition to and not in lieu of any other liability which may exist at law.

Gen. Laws § 31-34-4: Liability of owner for negligence of operator:

(a) Any owner of a for hire motor vehicle or truck who has given proof of financial responsibility under this chapter or who in violation of this chapter has failed to give proof of financial responsibility, shall be jointly and severally liable with any person operating the vehicle for any damages caused by the negligence of any person operating the vehicle by or with the permission of the owner. Nothing in this section shall be construed to prevent an owner who has furnished proof of financial responsibility or any person operating the vehicle from making defense in an action upon the ground of contributory negligence to the extent to which the defense is allowed in other cases.

Reapportionment of Uncollected Damages

"A joint tortfeasor may be compelled to pay more than his or her proportional liability if contribution cannot be collected fully from another joint tortfeasor and if the court reallocates the uncollectible portion of the damages to all the remaining joint tortfeasors." Calise v. Hidden Valley Condominium Ass'n, Inc., 773 A.2d 834, 846, n.13 (2001).

H. Wrongful Death and/or Survival Actions

Wrongful death actions are governed by R.I.G.L. 10-7-1 which simply provides that such claims may be made where "the death of a person [has been] caused by the wrongful act, neglect, or default of another" and the said wrongful conduct would have been actionable if death had not ensued.

The Wrongful Death Act also governs the amount and nature of damages that may be recovered in this action. Whenever the death of a person shall be caused by the wrongful act, neglect, or default of another, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who, or the corporation which, would have been liable if death had not ensued shall be liable to an action for damages. *Simeone v. Charron*, 762 A.2d 442, 445 (R.I. 2000) Although the original language of § 10–7–1 that established the right to bring a wrongful death action for damages has not been changed since 1896, the Legislature proceeded to define pecuniary damages and specify additional damages that may be claimed beyond the original baseline of compensatory damages. Other amendments relating to damages made possible the recovery of medical expenses and lost earning power, G.L.1923 ch. 477, § 1, established a minimum recovery for damages, P.L. 1949, ch. 2332, allowed damages for pain and suffering, P.L.1972, ch. 246, permitted unemancipated minors to seek recovery for the loss of consortium, P.L.1982, ch. 217, and allowed spouses recovery for loss of consortium, P.L.1984, ch. 64. A recent 2009 amendment also allows children and parents to make a claim for loss of parental society and companionship <u>regardless</u> of whether the child is under or over the age of 18.

R.I.G.L. 10-7-1.1 sets forth how pecuniary damages are to be calculated under the Wrongful Death Act in claims that do not involve minors. The measure of recovery is “the gross amount of the decedent’s prospective income or earnings over the remainder of his or her life expectancy . . .” Moreover, recovery may also be had for “the value of homemaker services lost as a result of the death of a homemaker.” From this sum, there shall be a deduction for “the estimated personal expenses that the decedent would probably have incurred for himself or herself.” The resulting figure shall then be reduced to its present value.

R.I.G.L. 10-7-5 provides a further recovery for the decedent’s “hospital, medical, and other expenses incurred, including diminution of earning power until time of death.”

Finally, R.I.G.L. 10-7-7 further allows a recovery for “pain and suffering.” In order to recover for the decedent’s pain and suffering, there must have been conscious pain and suffering. Therefore, a plaintiff must establish that the decedent did not die instantaneously but was momentarily conscious before dying. McAleer v. Smith, 791 F. Supp. 923 (D.R.I. 1992). Interspersed between the amendments have been court decisions, including early Rhode Island cases and a Federal appellate court case that interpreted the act to provide for compensatory “pecuniary” damages, but not punitive damages. *Simeone v. Charron*, 762 A.2d 442, 445-46 (R.I. 2000). However, the ban on awarding punitive damages in wrongful death cases has recently changed.

The Legislature initially intended to preclude the recovery of punitive damages in a wrongful death action. As of 2010, Rhode Island General Law, Chapter 10-7-7-1 "Death by Wrongful Act" now includes the following: “Punitive Damages. In an action commenced under section 10-7-5, recovery may be had for punitive damages if such damages would have been recoverable had the decedent survived.” Punitive damages are damages in addition to compensatory damages (medical bills, lost wages, pain and suffering, etc.) that are intended to deter the defendant from acting in a certain way. Punitive damages are typically awarded in cases where the defendant's negligence was egregious or his behavior reckless.

All of the above having been said, the Rhode Island Wrongful Death Act also provides for a minimal recovery of $250,000. In this respect, Section 10-7-2 states that, "Whenever any person or corporation is found liable under Sections 10-7-1 [to] 10-7-4 he or she or it shall be liable in damages in the sum of not less than two hundred fifty thousand dollars ($250,000)." Note that the statute speaks of a $250,000 minimum for "any person or corporation" that is found liable.

I. Vicarious Liability

Long-term lessors and financing corporations of motor vehicles were "lessors" for purposes of the lessor-liability statute, and thus were vicariously liable to persons injured by the drivers of those motor vehicles, even though they were not engaged in the business of renting motor vehicles pursuant to a written rental agreement; "lessor" was not limited to entities in the business of renting motor vehicles, but rather included such entities, "rented" vehicles included "leased" vehicles, and the lessors had provided proof of financial responsibility in accordance with the statute in order to gain their licenses to lease vehicles. Gen.Laws 1956, §§ 31-1-3(g), 31-34-4. *Oliveira v. Lombardi*, 794 A.2d 453 (R.I. 2002).

Whenever any motor vehicle shall be used, operated, or caused to be operated upon any public highway of this state with the consent of the owner, lessee, or bailee, expressed or implied, the driver of it, if other than the owner, lessee, or bailee, shall in the case of an accident be deemed to be the agent of the owner, lessee, or bailee, of the motor vehicle unless the driver shall have furnished proof of financial responsibility in the amount set forth in chapter 32 of this title, prior to the accident. For the purposes of this section, the term "owner" shall include any person, firm, co-partnership, association, or corporation having the lawful possession or control of a motor vehicle under a written sale agreement. R.I. Gen. Laws Ann. § 31-33-6 (West).

(a) Any owner of a for hire motor vehicle or truck who has given proof of financial responsibility under this chapter or who in violation of this chapter has failed to give proof of financial responsibility, shall be jointly and severally liable with any person operating the vehicle for any damages caused by the negligence of any person operating the vehicle by or with the permission of the owner. Nothing in this section shall be construed to prevent an owner who has furnished proof of financial responsibility or any person operating the vehicle from making defense in an action upon the ground of contributory negligence to the extent to which the defense is allowed in other cases.

(b) Notwithstanding the provisions of subsection (a) of this section, or any provisions contained under title 31 to the contrary, the valid and collectable liability insurance or self-insurance providing coverage or liability protection for third party liability claims arising out of the operation of the rental vehicle shall be primary for the lessor or any person operating the motor vehicle, with the express permission of the lessor unless otherwise stated in at least ten (10) point type on the face of the rental agreement. That insurance or self-insurance is primary only up to the limits required under § 31-31-7.

(c) "Lessor" includes any entity in the business of renting motor vehicles pursuant to a written rental agreement. R.I. Gen. Laws Ann. § 31-34-4 (West).

J. Exclusivity of Workers' Compensation

Employer, or employer's insurer, may assert a lien as against settlement or judgment against third-party tortfeasor. G.L. 28-35-58.

When employee receives workers' compensation benefits, such benefits are the exclusive remedy for any loss or harm allegedly caused by injured employee's employer or employer's directors, officers, agents, or employees; however, employee may seek further recovery from entity that has not been granted immunity. *Sorenson v. Colibri Corp.,* 650 A.2d 125 (R.I. 1994)

The right to compensation for an injury under chapters 29--38 of this title, and the remedy for an injury granted by those chapters, shall be in lieu of all rights and remedies as to that injury now existing, either at common law or otherwise against an employer, or its directors, officers, agents, or employees; and those rights and remedies shall not accrue to employees entitled to compensation under those chapters while they are in effect, except as otherwise provided in §§ 28-36-10 and 28-36-15. R.I. Gen. Laws Ann. § 28-29-20 (West)

A co-employee is immune from suit by an injured employee just as an employer is pursuant to § 28-29-20. *Boucher v. McGovern*, 639 A.2d 1369, 1377 (R.I. 1994).

Damages

A. Statutory Caps on Damages

In any tort action against the state of Rhode Island or any political subdivision thereof, any damages recovered therein shall not exceed the sum of one hundred thousand dollars ($100,000); provided, however, that in all instances in which the state was engaged in a proprietary function in the commission of the tort, or in any situation whereby the state has agreed to indemnify the federal government or any agency thereof for any tort liability, the limitation on damages set forth in this section shall not apply. R.I. Gen. Laws Ann. § 9-31-2 (West).

B. Compensatory Damages for Bodily Injury

Generally, measure of damages is such sum as will reasonably compensate person injured for loss sustained. *Psaty & Fuhrman v. Hous. Auth. of City of Providence*, 76 R.I. 87, 68 A.2d 32 (1949).

Generally, measure of damages for destruction of or injury to personal property is difference between its fair market value just before destruction or injury and its fair market value immediately thereafter. *DeSpirito v. Bristol Cnty. Water Co.,* 102 R.I. 50, 227 A.2d 782 (1967) In proving damages for injury to or loss of items of personal property, party generally is restricted to testimony evidencing difference between before and after fair market values. *DeSpirito v. Bristol Cnty. Water Co.,* 102 R.I. 50, 227 A.2d 782 (1967).

C. Collateral Source

The collateral source rule is a well-established principle of Rhode Island law." *Moniz v. Providence Chain Co.,* 618 A.2d 1270, 1271 (R.I.1993). Absent a statutory provision to the contrary, this common law rule prevents defendants in tort actions from reducing their liability with evidence of payments made to injured parties by independent sources. *Votolato v. Merandi,* 747 A.2d 455, 463 (R.I.2000). Although this rule may allow plaintiffs to recover damages in excess of their injuries, the rationale underlying the rule is that it is better for the windfall to go to the injured party rather than to the wrongdoer. *Colvin v. Goldenberg,* 108 R.I. 198, 202, 273 A.2d 663, 666 (1971); *Oddo v. Cardi,* 100 R.I. 578, 584–85, 218 A.2d 373, 377 (1966). *Esposito v. O'Hair*, 886 A.2d 1197, 1199 (R.I. 2005).

D. Pre-Judgment/Post-Judgment Interest

In Rhode Island, prejudgment interest runs from the date of loss not from the date of filing suit. For purposes of statute providing that prejudgment interest in a civil action is computed from the date the cause of action accrued, a cause of action accrues on the first date an injured party has a right to seek judicial relief. Gen.Laws 1956, § 9-21-10(a). *Metro. Prop. & Cas. Ins. Co. v. Barry*, 892 A.2d 915 (R.I. 2006) Dual purpose of prejudgment interest is to encourage early settlement of claims and to compensate an injured plaintiff for delay in receiving compensation to which he or she may be entitled. Gen.Laws 1956, § 9-21. *Metro. Prop. & Cas. Ins. Co. v. Barry*, 892 A.2d 915 (R.I. 2006)

This Court previously has declared that prejudgment interest "is not an element of damages but is purely statutory, peremptorily added to the award by the clerk." *Barbato,* 794 A.2d at 472 (citing *DiMeo v. Philbin,* 502 A.2d 825, 826 (R.I.1986)). *Metro. Prop. & Cas. Ins. Co. v. Barry*, 892 A.2d 915, 919 (R.I. 2006). With respect to mediation proceedings in Rhode Island, it should be noted that interest is an element that will be considered as an element of damages. As such, client's should be prepared to acknowledge and address the issue of interest as part of their defense or settlement strategy.

(a) In any civil action in which a verdict is rendered or a decision made for pecuniary damages, there shall be added by the clerk of the court to the amount of damages interest at the rate of twelve percent (12%) per annum thereon from the date the cause of action accrued (from the date of loss – not the date of filing suit), which shall be included in the judgment entered therein. Post-judgment interest shall be calculated at the rate of twelve percent (12%) per annum and accrue on both the principal amount of the judgment and the prejudgment interest entered therein. This section shall not apply until entry of judgment or to any contractual obligation where interest is already provided.

(b) Subsection (a) shall not apply in any action filed on or after January 1, 1987, for personal injury or wrongful death filed against a licensed physician, hospital, clinic, health maintenance organization, professional service corporation providing health care services, dentist, or dental hygienist based on professional negligence. In all such medical malpractice actions in which a verdict is rendered or a decision made for pecuniary damages, there shall be added by the clerk of the court to the amount of damages interest at the rate of twelve percent (12%) per annum thereon from the date of written notice of the claim by the claimant or his or her representative to the malpractice liability insurer, or to the medical or dental health care provider or the filing of the civil action, whichever first occurs.

R.I. Gen. Laws Ann. § 9-21-10 (West). In all uninsured/underinsured motorist (UM) arbitration cases, prejudgment interest shall accrue on the total damages fixed by the arbitrators, computed from the date of injury to the date of any partial payment, at which point the partial payment shall be deducted from the first calculation and prejudgment interest shall accrue on the reduced amount from the date of the partial payment to the date that the judgment is satisfied; abrogating *Liberty Mutual Insurance Co. v. Tavarez*, 797 A.2d 480, and *Geremia v. Allstate Insurance Co.*, 798 A.2d 939. Gen.Laws 1956, § 9-21-10(a). *Metro. Prop. & Cas. Ins. Co. v. Barry*, 892 A.2d 915 (R.I. 2006).

E. Damages for Emotional Distress

In order to prevail on that claim, Vallinoto was required to prove extreme and outrageous conduct that intentionally or recklessly resulted in causing her severe emotional distress. *See Reilly v. United States,* 547 A.2d 894 (R.I.1988). In Rhode Island, a plaintiff must prove physical symptomatology resulting from the alleged improper conduct. *Id.* at 898. *Vallinoto v. DiSandro*, 688 A.2d 830, 838 (R.I. 1997)

F. Wrongful Death and/or Survival Action Damages

Whenever the death of a person shall be caused by the wrongful act, neglect, or default of another, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who, or the corporation which, would have been liable if death had not ensued shall be liable to an action for damages. *Simeone v. Charron*, 762 A.2d 442, 445 (R.I. 2000)

The Wrongful Death Act also governs the amount and nature of damages that may be recovered in this action. Whenever the death of a person shall be caused by the wrongful act, neglect, or default of another, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who, or the corporation which, would have been liable if death had not ensued shall be liable to an action for damages. Simeone v. Charron, 762 A.2d 442, 445 (R.I. 2000) Although the original language of § 10–7–1 that established the right to bring a wrongful death action for damages has not been changed since 1896, the Legislature proceeded to define pecuniary damages and specify additional damages that may be claimed beyond the original baseline of compensatory damages. Other amendments relating to damages made possible the recovery of medical expenses and lost earning power, G.L.1923 ch. 477, § 1, established a minimum recovery for damages, P.L. 1949, ch. 2332, allowed damages for pain and suffering, P.L.1972, ch. 246, permitted unemancipated minors to seek recovery for the loss of consortium, P.L.1982, ch. 217, and allowed spouses recovery for loss of consortium, P.L.1984, ch. 64. A recent 2009 amendment also allows children and parents to make a claim for loss of parental society and companionship regardless of whether the child is under or over the age of 18.

R.I.G.L. 10-7-1.1 sets forth how pecuniary damages are to be calculated under the Wrongful Death Act in claims that do not involve minors. The measure of recovery is “the gross amount of the decedent’s prospective income or earnings over the remainder of his or her life expectancy . . .” Moreover, recovery may also be had for “the value of homemaker services lost as a result of the death of a homemaker.” From this sum, there shall be a deduction for “the estimated personal expenses that the decedent would probably have incurred for himself or herself.” The resulting figure shall then be reduced to its present value.

R.I.G.L. 10-7-5 provides a further recovery for the decedent’s “hospital, medical, and other expenses incurred, including diminution of earning power until time of death.”

Finally, R.I.G.L. 10-7-7 further allows a recovery for “pain and suffering.” In order to recover for the decedent’s pain and suffering, there must have been conscious pain and suffering. Therefore, a plaintiff must establish that the decedent did not die instantaneously but was momentarily conscious before dying. McAleer v. Smith, 791 F. Supp. 923 (D.R.I. 1992). Interspersed between the amendments have been court decisions, including early Rhode Island cases and a Federal appellate court case that interpreted the act to provide for compensatory “pecuniary” damages, but not punitive damages. Simeone v. Charron, 762 A.2d 442, 445-46 (R.I. 2000). However, the ban on awarding punitive damages in wrongful death cases has recently changed.

The Legislature initially intended to preclude the recovery of punitive damages in a wrongful death action. As of 2010, Rhode Island General Law, Chapter 10-7-7-1 "Death by Wrongful Act" now includes the following: “Punitive Damages. In an action commenced under section 10-7-5, recovery may be had for punitive damages if such damages would have been recoverable had the decedent survived.” Punitive damages are damages in addition to compensatory damages (medical bills, lost wages, pain and suffering, etc.) that are intended to deter the defendant from acting in a certain way. Punitive damages are typically awarded in cases where the defendant's negligence was egregious or his behavior reckless.

All of the above having been said, the Rhode Island Wrongful Death Act also provides for a minimal recovery of $250,000. In this respect, Section 10-7-2 states that, “Whenever any person or corporation is found liable under Sections 10-7-1 [to] 10-7-4 he or she or it shall be liable in damages in the sum of not less than two hundred fifty thousand dollars ($250,000).” Note that the statute speaks of a $250,000 minimum for “any person or corporation” that is found liable.

Determination of damages:
(1) Determine the gross amount of the decedent's prospective income or earnings over the remainder of his or her life expectancy, including all estimated income he or she would probably have earned by his or her own exertions, both physical and mental. Pecuniary damages shall include the value of homemaker services lost as a result of the death of a homemaker. The fair value of homemaker services shall not be limited to moneys actually expended to replace the services usually provided by the homemaker. In such a suit, the value of homemaker services may be shown by expert testimony, but expert testimony is not required.
(2) Deduct from the amount determined in subdivision (1) the estimated personal expenses that the decedent would probably have incurred for himself or herself, exclusive of any of his dependents, over the course of his or her life expectancy.
(3) Reduce the remainder thus ascertained to its present value as of the date of the award. In determining the award, evidence shall be admissible concerning economic trends, including but not limited to projected purchasing power of money, inflation, and projected increase or decrease in the costs of living.

G. Punitive Damages

Exemplary damages are warranted upon proof of willful, wanton, or malicious conduct to punish the offender and deter future misconduct, and although not insurmountable, this requirement sets the bar quite high for a plaintiff to recover punitive damages. *Castellucci v. Battista*, 847 A.2d 243 (R.I. 2004).

Appellate court gives great deference to a trial justice's ruling on a motion for a new trial which is conditioned on a remittitur in punitive damages. *Castellucci v. Battista*, 847 A.2d 243 (R.I. 2004).

Although not insurmountable, this requirement sets the bar quite high for a plaintiff to recover punitive damages. If adequate facts are presented, the fact-finder must decide whether a plaintiff is entitled to such an award. *Jenison,* 485 A.2d at 1244. Although a defendant's ability to pay may well play a role in the jury's estimation of the amount of damages to award, *see Palmisano,* 624 A.2d at 318, a punitive award is not *per se* void because such evidence is not present. *Castellucci v. Battista*, 847 A.2d 243, 248 (R.I. 2004).

Standard for imposing punitive damages is satisfied only if defendant's conduct requires deterrence and punishment over and above that provided in award of compensatory damages. *Palmisano v. Toth*, 624 A.2d 314 (R.I. 1993).

Requiring plaintiff to make prima facie showing that viable issue exists for awarding punitive damages is moderate and fair avenue for providing plaintiff with opportunity to discover relevant information while protecting defendant's right to privacy. *Palmisano v. Toth*, 624 A.2d 314 (R.I. 1993).

Once plaintiff establishes in evidentiary hearing before trial justice that prima facie case for punitive damages exist, plaintiff may then proceed with discovery into defendant's financial worth to extent necessary to address issue of punitive damages, namely, defendant's net worth or annual income. *Palmisano v. Toth*, 624 A.2d 314 (R.I. 1993). If defendant believes that punitive damage claim cannot be supported factually and legally, defendant may move to strike it. *Palmisano v. Toth*, 624 A.2d 314 (R.I. 1993). At hearing on motion to strike punitive damages claim, defendant may cross-examine witnesses and introduce evidence that tends to negate showing made by plaintiff. *Palmisano v. Toth*, 624 A.2d 314 (R.I. 1993).

Statutory Law

Gen. Laws § 10-7-7.1: Punitive damages:

In an action commenced for wrongful death, recovery may be had for punitive damages if such damages would have been recoverable had the decedent survived.

Deceptive Trade Practices

Gen. Laws § 6-13.1-5.2: Private and class actions:

(a) Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by § 6-13.1-2, may bring an action under Rules of Civil Procedure in the superior court of the county in which the seller or lessor resides, is found, has his or her principal place of business, or is doing business, or in the superior court of the county as is otherwise provided by law, to recover actual damages or two hundred dollars ($200), whichever is greater. The court may, in its discretion, award punitive damages and may provide other equitable relief that it deems necessary or proper.

Condominiums

Gen. Laws § 34-36.1-1.12: Remedies to be liberally administered:

(a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

H. Diminution in Value of Damaged Vehicle

Click to enter text.

I. Loss of Use of Motor Vehicle

Click to enter text.

Evidentiary Issues

A. Preventability Determination

The Rhode Island Rules of evidence generally allows the admission of any evidence that is “relevant.” §401.01. “Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. §401.01. In Rhode Island, the definition on “relevant” implies liberal admissibility. §401.02. To be admissible, evidence need only pass a low threshold of relevancy: there is no requirement of absolute proof. *Capezza v. Hertz*, 371 A.2d 269, 272 (R.I. 1977). However, although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence. §403.01.

“It is well established that the admissibility of evidence is within the sound discretion of the trial justice, and this Court will not interfere with the trial justice[']s decision unless a clear abuse of that discretion is apparent.” *Notarantonio v. Notarantonio*, 941 A.2d 138, 149 (R.I.2008) (quoting *DiPetrillo v. Dow Chemical Co.*, 729 A.2d 677, 690 (R.I.1999). According to the RI Supreme Court, they afford a “trial justice wide latitude to determine both the relevance and the admissibility of evidence.” *State v. Dominick,* 968 A.2d 279, 282 (R.I.2009) (citing *Accetta v. Provencal,* 962 A.2d 56, 60 (R.I.2009)). “If the record contains some grounds for supporting the trial justice's decision, we will not determine that the trial justice abused his or her discretion.” *Dominick,* 968 A.2d at 282

B. Traffic Citation from Accident

Click to enter – Discuss if admissible and under what circumstances; effect of plea; testimony at traffic hearing.

C. Failure to Wear a Seat Belt

All evidence relating to safety belt use or nonuse is irrelevant in products liability action against automobile manufacturer, and inadmissible on issues of comparative fault and proximate cause. *Swajian v. Gen. Motors Corp.*, 559 A.2d 1041 (R.I. 1989).

D. Failure of Motorcyclist to Wear a Helmet

Operators of motorcycles, motor scooters, and motor-driven cycles shall use eye protection of a type approved by the administrator of the division of motor vehicles when operating their vehicles on streets and highways. Every motorcycle, motor scooter, and motor-driven cycle shall be equipped with a rear view mirror. Any operator under the age of twenty-one (21) shall wear a helmet of a type approved by the administrator of motor vehicles. In addition, all new operators, regardless of age, shall be required, for a period of one year from the date of issuance of the first license pursuant to § 31-10.1-1, to wear a helmet of a type approved by said administrator. Any person deemed in violation of this provision shall be subject to the fines enumerated in § 31-41.1-4, which shall be paid in accordance with the provisions of chapter 41.1 of this title. The administrator of the division of motor vehicles is authorized to set forth rules and regulations governing the use of other equipment on those vehicles. All fines collected under this section shall be deposited in a general restricted receipt account for the use of the Rhode Island governor's office on highway safety in order to promote educational and informational programs encouraging helmet use.

R.I. Gen. Laws Ann. § 31-10.1-4 (West) Statute requiring operators of motorcycles to wear helmets and authorizing registrar of motor vehicles to prescribe types of helmets permitted was not invalid. Gen.Laws 1956, § 31-10.1-4. State v. Lombardi, 110 R.I. 776, 298 A.2d 141 (1972). R.I. Gen. Laws Ann. § 31-10.1-4 (West).

E. Evidence of Alcohol or Drug Intoxication

Admissible, subject to discretionary determination by the trial judge as to relevance and unfair prejudice.

F. Testimony of Investigating Police Officer

Admissible, but subject to hearsay limitations.

G. Expert Testimony

In DiPetrillo v. Dow Chemical Co. 729 A.2d 677, R.I.,1999, Rhode Island largely adopted the United States Supreme Court's ruling in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) (Daubert I). The adoption of the Daubert standard did away with the previously utilized "general acceptance" test of Frye v. United States, 293 F. 1013, 1014 (D.C.Cir.1923), under which expert opinion on a scientific method was admissible if the technique had been "generally accepted" by the relevant scientific community.

In such cases where the reliability of expert testimony is disputed, within discretion, the trial justice must control the gateway for expert scientific testimony by conducting pursuant to Rule 104 an early, preliminary assessment of the evidence. “Faced with a proffer of expert scientific testimony, then, the trial judge must determine at the outset, pursuant to Rule 104(a) whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine the fact in issue. This entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether the reasoning or methodology properly can be applied to the facts in issue.” DiPetrillo at 687, quoting Daubert I, 509 U.S. at 592-93. At a DiPetrillo/Daubert hearing, the trial judge must examine these “four factors for consideration: (1) whether the proffered knowledge can be or has been tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error; and (4) whether the theory or technique has gained general acceptance in the relevant scientific field.” Daubert I, at 593-94.

H. Collateral Source

Collateral source doctrine mandates that evidence of payments made to injured plaintiff from sources independent of tortfeasor is inadmissible and shall not diminish tortfeasor's liability to plaintiff. *Gelsomino v. Mendonca*, 723 A.2d 300 (R.I. 1999).

I. Recorded Statements

Recorded statements are only admissible, and only pursuant to the Court’s discretion, for the purposes of impeachment, to evidence a statement against interest, to evidence past inconsistent statements, evidence a party admission, or for a witness otherwise unavailable or deceased.

J. Prior Convictions

No person shall be deemed an incompetent witness because of his or her conviction of any crime, or sentence to imprisonment therefor; but shall be admitted to testify like any other witness, except that conviction or sentence for any crime or misdemeanor may be shown to affect his or her credibility.

R.I. Gen. Laws Ann. § 9-17-15 (West) Regarding the admissibility of the defendant's prior convictions for impeachment purposes, Rhode Island does not, unlike the federal system, draw a bright line at the ten-year period, particularly when there is a continuing period of misconduct. Gen.Laws 1956, § 9-17-15. State v. Walsh, 731 A.2d 696 (1999). Witnesses 337(28).

In determining whether to admit evidence of prior convictions for impeachment, the prejudicial effect of conviction evidence is balanced against its probative value, and if the prejudicial effect of the conviction substantially outweighs its probative effect, or if conviction is remote, the conviction is inadmissible. Gen.Laws 1956, § 9-17-15; Rules of Evid., Rule 609. *State v.*

Simpson, 606 A.2d 677 (1992), habeas corpus denied 1997 WL 837513. R.I. Gen. Laws Ann. § 9-17-15 (West).

K. Driving History

Admissible, subject to discretionary determination by the trial judge as to relevance and unfair prejudice.

L. Fatigue

Admissible, subject to discretionary determination by the trial judge as to relevance and unfair prejudice.

M. Spoliation

Essence of doctrine of spoliation is an inference that the missing evidence was in fact unfavorable to the defendant, and thus, a party is not required to establish that missing evidence would be admissible at trial, but rather must show that the evidence is relevant and that it is unavailable because of the conduct of the despoiler. *Tancrelle v. Friendly Ice Cream Corp.,* 756 A.2d 744 (R.I. 2000).

Under the doctrine *omnia praesumuntur contra spoliatorem,* "[a]ll things are presumed against a despoiler or wrongdoer," Black's Law Dictionary 1086 (6th ed.1990), the deliberate or negligent destruction of relevant evidence by a party to litigation may give rise to an inference that the destroyed evidence was unfavorable to that party. *Rhode Island Hospital Trust National Bank v. Eastern General Contractors, Inc.,* 674 A.2d 1227, 1234 (R.I.1996). This Court has held that although a showing of bad faith may strengthen the inference of spoliation, such a showing is not essential. *Farrell v. Connetti Trailer Sales, Inc.,* 727 A.2d 183, 186 (R.I.1999) (citing *Rhode Island Hospital Trust National Bank* at 1234). *Tancrelle v. Friendly Ice Cream Corp.,* 756 A.2d 744, 748 (R.I. 2000).

"The doctrine of spoliation merely *permits* an inference that the destroyed evidence would have been unfavorable to the despoiler," and is by no means conclusive. *Tancrelle v. Friendly Ice Cream Corp.,* 756 A.2d 744, 749 (R.I. 2000).

Settlement

A. Offer of Judgment

(a) Offer of Judgment. At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance and thereupon the clerk shall enter judgment.

(b) Payment Into Court. A party defending against a claim may pay into court by depositing with the clerk a sum of money on account of what is claimed, or by way of compensation or amends, and plead that the defending party is not indebted to any greater amount to the party making the claim or that the party making the claim has not suffered greater damages. The party making the claim may (1) accept the tender and have judgment for the party's costs, (2) reject the tender, or (3) accept the tender as part payment only and proceed with the action on the sole issue of the amount of damages.

(c) Offer Not Accepted. An offer under subdivision (a) or (b) above not accepted in full satisfaction shall be deemed withdrawn, i.e., shall not be disclosed to the jury, and evidence thereof is not admissible except in a proceeding to determine interest or costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted, or accepted only as part payment, does not preclude a subsequent offer. RI R RCP Rule 68.

B. Liens

Private insurance provider has a lien as against third-party tortfeasor and will ordinarily look to the entirety of the settlement proceeds for the purpose of enforcing its lien or right to reimbursement.

Plaintiff's are entitled to complete recovery of full amount of medical bills without setoff. No evidence of liens or insurance payments are admissible at the time of trial.

C. Minor Settlement

If settlement is for over $1,000, then: (1) there must be a court-appointed guardian ad litem; (2) the guardian must sign the release on behalf of the minor plaintiff; and (3) the court must approve of the release and settlement agreement.

D. Negotiating Directly with Attorneys

Permitted.

E. Confidentiality Agreements

Confidentiality agreements are permitted.

F. Releases

A release in a personal injury case is a contract. Persons of legal age and capacity must stand by any covenants they enter in effectuating a release.

As a general rule, a parent cannot compromise or release a minor child's cause of action absent statutory authority.

G.L. 1956 (1969 Reenactment) § 33-15-1(a) addresses release by parent on behalf of minor. Only releases that are less than $1,000 are valid under the statute.

Release must be approved by the court after it is executed on the minor's behalf by a court-appointed guardian ad litem.

Pre-accident waivers and releases between a commercial entity and a consumer/private citizen are generally unenforceable.

General release that provides for the release of "any and all other persons, firms and corporations," discharges only those joint tortfeasors whom contracting parties actually intended to release.

Releases with respect to multiple tortfeasors, must address the RI joint tortfeasor statute.

G. Voidable Releases

Click to enter – Discuss if unrepresented injured individual can unilaterally void a release under certain circumstance.

Transportation Law

A. State DOT Regulatory Requirements

Rhode Island DOT regulations (47-1-16:30) adopt FMCSA. (See also G.L. 1956 (1982 Reenactment) § 31-23-1).

The Commissioner of the Department of Transportation may adopt regulations which incorporate by reference the standards set forth in 49 CFR Part 390.

B. State Speed Limits

The maximum speed limit is 65 m.p.h.

C. Overview of State CDL Requirements

You must be at least 21 years old. However, you can receive a license valid for intrastate (within state) travel at age 18.
You must have had a regular Rhode Island driver's license for at least two years, with no suspensions or revocations.
You must earn a medical examiner's certificate.

Insurance Issues

A. State Minimum Limits of Financial Responsibility

$25,000/$50,000/$25,000 pd

B. Uninsured Motorist Coverage

Insurer is obliged to engage in settlement discussions with an insured in an effort to relieve the insured from the burden and expense of litigation against the insurer. *Metro. Prop. & Cas. Ins. Co. v. Barry*, 892 A.2d 915 (R.I. 2006) When faced with a claim for uninsured/underinsured motorist (UM) benefits, the insurance carrier is free to set its own course and may not seek a safe harbor against prejudgment interest by declining to settle a legitimate claim or requiring its insured to first proceed against the tortfeasor. Gen.Laws 1956, § 9-21-10(a). *Metro. Prop. & Cas. Ins. Co. v. Barry*, 892 A.2d 915 (R.I. 2006).

C. No Fault Insurance

Rhode Island is a “no-fault” state.

D. Disclosure of Limits and Layers of Coverage

By statute, the insurance limits must be disclosed upon request. Rule 26(b)(2) of the Rhode Island Superior Court Rules of Civil Procedure provides, in pertinent part, that “[a] party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.”

E. Unfair Claims Practices

Asermely Demand Letters. In *Asermely v. Allstate Insurance Co*. 728 A.2d 461 (1999), the Rhode Island Supreme Court announced that, regardless of their good faith, insurers who reject settlement demands within the insured's policy limits will be completely responsible for a subsequent judgment which exceeds the limits unless they can show the insured objected to the settlement. The Court based this rule on the insurer's fiduciary obligation to the insured. Asermely demand letters are a tactic used in Rhode Island to motivate settlement in cases that may approach the policy limits. However, due to the exposure to the carrier themselves, plaintiff’s attorneys tend to issue Asermely Demand Letters even in cases where the entire policy limits are not exposed.

F. Bad Faith Claims

General Laws 1956 § 9-1-33 provides in pertinent part:
“Notwithstanding any law to the contrary, an insured under any insurance policy as set out in the general laws or otherwise may bring an action against the insurer issuing the policy when it is alleged the insurer wrongfully and in bad faith refused to pay or settle a claim made pursuant to the provisions of the policy, or otherwise wrongfully and in bad faith refused to timely perform its obligations under the contract of insurance. In any action brought pursuant to this section, an insured may also make claim for compensatory damages, punitive damages, and reasonable attorney fees.”

G. Coverage – Duty of Insurer and Insured

In Rhode Island, the insurer's duty to defend a suit brought against one of its policyholders is determined by the allegations contained in the complaint. *Thomas v. American Universal Ins. Co.,* 93 A.2d 309. As a general rule, where the particular policy requires insurer to defend even if the suit is groundless, false or fraudulent, the insurer's duty to defend is ascertained by laying the tort complaint alongside the policy; if the allegations in the complaint fall within the risk insured against in the policy, the insurer is said to be duty-bound to provide a defense for the insured, regardless of the actual details of the injury or the ultimate grounds on which the insured's liability to the injured party may be predicated. *Employers' Fire Ins. Co. v. Beals,* 240 A.2d 397 (R.I.,1968). In other words, when a complaint contains a statement of facts which bring the case within or potentially within the risk coverage of the policy, the insurer has an unequivocal duty to defend. Id.

The mere fact that conflict might arise at some later point did not lessen duty of insured to cooperate with insurer's investigation. *Labonte v. National Grange Mut. Ins. Co*. 810 A.2d 250, R.I.,2002.

H. Fellow Employee Exclusions

A co-employee is immune from suit by an injured employee just as an employer is pursuant to § 28-29-20. *Boucher v. McGovern*, 639 A.2d 1369, 1377 (R.I. 1994).