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1999 Survey of Rhode Island Law: Cases: Tort Law

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Tort Law. *Commercial Union Insurance Co. v. Pelchat,* 727 A.2d 676 (R.I. 1999). Because a surviving spouse is not legally entitled to recover damages in a wrongful death action where he or she negligently caused the decedent's death, the surviving spouse does not take priority over the decedent's next of kin pursuant to section 10-7-2 of the Rhode Island General Laws. In addition, section 33-1.1 of the Rhode Island General Laws (the Slayer's Act), does not apply where the surviving spouse did not willfully and unlawfully take the decedent's life.

FACTS AND TRAVEL

Raymond Pelchat (Raymond) and Bonnie Lynn Pelchat (Bonnie Lynn) were married on May 13, 1989.[1] After leaving their wedding reception in the early morning hours of May 14, 1989, the two were in an automobile accident that killed Bonnie Lynn.[2] Raymond, who was driving the car, subsequently pled nolo contendere to a charge of driving under the influence, death resulting, on June 3, 1991.[3]

A wrongful death suit was filed by the administrator of Bonnie Lynn's estate, pursuant to section 10-7-1.1 of the Rhode Island General Laws,[4] naming Raymond and others as defendants.[5] Commercial Union Insurance Company (Commercial Union), the plaintiff in the instant case, insured the car, which was owned by Bonnie Lynn.[6] Pursuant to Bonnie Lynn's policy, Commercial Union defended Raymond in the wrongful death suit.[7] Meanwhile, the probate court denied any inheritance to Raymond by invoking the Slayer's Act.[8]

Subsequently, in November of 1992, Commercial Union filed a declaratory judgment action hoping to relieve themselves of representing or indemnifying Raymond in the wrongful death suit filed by Bonnie Lynn's estate.[9] In response, both parties filed motions for summary judgment, which were both denied by a superior court

1. *See* Commercial Union Ins. Co. v. Pelchat, 727 A.2d 676, 687 (R.I. 1999).
2. *See id.*
3. *See id.*
4. *See id.* at 679; R.I. Gen. Laws § 10-7-1.1 (1956) (1997 Reenactment).
5. *See id.*
6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*

judge.[10] In denying the motions, the court relied on *O'Leary v. Bingham*,[11] which states that a trial court can "not make a determination as to the identity of beneficiaries until a judgment has been entered awarding damages."[12]

Preceding a hearing on the wrongful death action, a settlement was reached between Raymond and Bonnie Lynn's estate.[13] As required by the terms of the settlement, Raymond admitted to liability in Bonnie Lynn's death and submitted to judgment.[14] This judgment, however, was stayed so that the proper beneficiaries of the wrongful death proceeds could be determined.[15]

Commercial Union then renewed the motion for summary judgment before a different justice.[16] This motion was also denied by the trial justice, who ruled in favor of Bonnie Lynn's estate.[17] Although the trial justice found that Raymond and Bonnie Lynn were legally married at the time of the accident, he rejected Commercial Union's argument that the marriage terminated any rights Bonnie Lynn's parents had to damages in the wrongful death action.[18] Moreover, the trial justice accepted the administrator's argument that the Slayer's Act was applicable, denying Raymond recovery of benefits under the Act.[19] Therefore, the trial justice determined that Bonnie Lynn's parents were her legal next of kin and were entitled to recover the wrongful death benefits.[20]

ANALYSIS AND HOLDING

The wrongful death act "confers a right of action on certain enumerated individuals to recover damages for the death of a family member."[21] Sections 10-7-1[22] and 10-7-2[23] describe the reasons for allowing such recovery and denote who is entitled to such a re-

10. *See id.*
11. 159 A.2d 619 (R.I. 1960).
12. *Commercial Union*, 727 A.2d at 679 (quoting *O'Leary*, 159 A.2d at 619).
13. *See id.* at 679.
14. *See id.*
15. *See id.*
16. *See id.*
17. *See id.*
18. *See id.*
19. *See id.*
20. *See id.*
21. *Id.* (citing Presley v. Newport Hospital, 365 A.2d 748, 749-50 (R.I. 1976)).
22. *See* R.I. Gen. Laws § 10-7-1 (1956) (1997 Reenactment).
23. *See* R.I. Gen. Laws § 10-7-2 (1956) (1997 Reenactment).

covery.[24] Section 10-7-1 states that when the death of a person is the result of a negligent act of another, the actor is liable for damages resulting from the negligence.[25] Section 10-7-2 prescribes who may recover from the negligent acts of another when a wrongful death ensues.[26] This statute gives first priority to spouses and children of the decedent.[27] If no children are in existance at the time of death, the spouse then recovers the entire amount.[28] If no spouse exists, the recovery belongs to the decedent's next of kin, as if she had died intestate.[29]

The critical inquiry for the supreme court was whether a spouse "existed" for purposes of the statute where that spouse caused the decedent's death. Under section 10-7-2, Bonnie Lynn's parents are the next of kin.[30] Therefore, they would be entitled to the proceeds of the wrongful death action if, for purposes of the statute, Raymond did not qualify as an "existing spouse."[31] However, Commercial Union argued that since Raymond was alive at the time of his wife's death, the language of the statute directed that he was the only legal beneficiary of the wrongful death award.[32]

To guide its interpretation of section 10-7-2, the supreme court looked to the purpose of the wrongful death act, which was enacted to avoid the "harsh [common law] rule" that prevented a decedent's family from recovering damages for a wrongful death.[33] The court also looked to its prior holding in *Aetna Casualty and Surety Co. v. Curley*.[34] In *Curley*, a sole heir was prohibited from recovering damages in a wrongful death action because she was the proximate cause of the decedent's death.[35] Public policy dictates that when a beneficiary is the proximate cause of the death, he or she is precluded from recovering under the act.[36] A contrary reading of the

24. *See Commercial Union Ins. Co.*, 727 A.2d at 680-81.
25. *See id.* at 680.
26. *See id.* at 681.
27. *See id.*
28. *See id.*
29. *See id.*
30. *See id.*
31. *See id.*
32. *See id.*
33. *Id.*
34. 585 A.2d 640 (R.I. 1991).
35. *See Commercial Union*, 727 A.2d at 681-82.
36. *See id.*

statute would result in an absurd result, since "a negligent wrongdoer [would] benefit from his or her own wrongful act."[37]

While *Curley* held that the person who negligently caused the death of the decedent should not be able to recover under section 10-7-2, it did not address whether "decedent's next of kin recover if the decedent's husband is alive, but not legally entitled to recover?"[38] Looking at the plain language of the statute, the supreme court interpreted "if there is no husband" to mean "if there is no husband legally entitled to recover."[39] Consequently, the supreme court affirmed the judgment of the trial court, and held that as next of kin, Bonnie Lynn's parents were entitled to recover benefits from the wrongful death action.[40]

Although reaching the same result as the trial court, the Rhode Island Supreme Court refused to apply the Slayer's Act to the present case.[41] The Slayer's Act prohibits "slayers from benefiting from their own wrongful conduct."[42] The language of section 33-1.1-1(3) of the Rhode Island General Laws defines slayer to be "any person who willfully and unlawfully takes or procures to be taken the life of another."[43] The court read this language in a conjunctive manner and concluded that Raymond's actions were not willful and unlawful.[44] Based on this determination, the court found the Slayer's Act to be inapplicable.[45] The court further stated that the Slayer's Act "is relevant to our holding here only insofar as it contributed to and informed the doctrine that we established in *Curley*."[46]

CONCLUSION

In *Commercial Union Insurance Co. v. Pelchat*, the Rhode Island Supreme Court held that, for purposes of section 10-7-2 of the Rhode Island General Laws, a spouse must be legally entitled to recover damages in a wrongful death action before he or she takes

37. *Id.* at 682 (quoting *Curley*, 585 A.2d at 643).
38. *Commercial Union*, 727 A.2d at 682.
39. *Id.* (quoting R.I. Gen. Laws § 10-7-2).
40. *See id.*
41. *See id.* at 682-83.
42. *Id.* (citing R.I. Gen. Laws § 33-1.1-15 (1956) (1994 Reenactment)).
43. *Id.* (quoting R.I. Gen. Laws §33-1.1-1(3) (1956) (1994 Reenactment)).
44. *See id.* at 683.
45. *See id.* at 682-83.
46. *Id.* at 683.

priority over the decedent's next of kin. The court rejected the application of the Slayer's Act in a wrongful death action, and instead employed a public policy analysis to conclude that the decedent's next of kin should recover damages under a wrongful death action where the decedent's husband was the proximate cause of her death.

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Tort Law. *Dias v. Cinquegrana*, 727 A.2d 198 (R.I. 1999). The owner of a car is liable under Rhode Island General Laws section 31-33-6 for the intentional acts of his/her agents. Therefore, the lessee of an automobile is responsible for the intentional acts of other drivers permitted to operate that vehicle.

FACTS AND TRAVEL

On June 12, 1993, plaintiff Michael R. Dias (Dias) and some friends were riding their motorcycles on Route 146 North.[1] As Dias and his friends traveled down the road, a black Nissan driven by the defendant, Richard Cinquegrana (Richard), passed between the riders "at a high rate of speed."[2] When Dias and his friends later saw Richard at a stop sign, they exchanged words with him.[3] As the plaintiff pulled away from the stop sign, Richard intentionally drove into his motorcycle, causing serious injury to Dias.[4]

Dias filed a personal injury complaint against Richard, but quickly amended the complaint to include Nissan Motor Acceptance Corporation and Virginia Cinquegrana (Virginia), Richard's mother and the lessee of the vehicle.[5] At the conclusion of the trial, Virginia moved for a judgment notwithstanding the verdict, asserting "that she was not liable because the word 'accident' in section 31-33-6 did not encompass intentional torts."[6] Following a jury verdict for the plaintiff, the trial justice determined that section 31-33-6 of the Rhode Island General Laws included both intentional and unintentional acts, and denied Virginia's motion for a judgment in her favor.[7]

After her renewed motion was denied, Virginia promptly appealed to the Rhode Island Supreme Court, arguing that the statute only imposes liability on an automobile owner where the driver's accidental conduct causes injury.[8]

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1. *See* Dias v. Cinquegrana, 727 A.2d 198, 199 (R.I. 1999).
2. *Id.*
3. *See id.*
4. *See id.* "At trial, the parties stipulated that 'the action of Richard Cinquegrana in striking, using the 1993 Nissan Maxima to strike the motorcycle and person of the Plaintiff, Michael Diaz [sic] was intentional.'" *Id.* at 199 n.1.
5. *See id.* at 199.
6. *Id.* (citing R.I. Gen. Laws § 31-33-6 (1956) (1994 Reenactment)).
7. *See id.*
8. *See id.*

ANALYSIS AND HOLDING

The Rhode Island Supreme Court recognized that section 31-33-6 of the Rhode Island General Laws modifies the common law by "extending the liability of an automobile owner to situations in which no common law agency relationship existed."[9] In relevant part, statute 31-33-6 states:

> Owners liability for acts of others.—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, or lessee, or bailee, thereof, expressed or implied, the driver thereof, if other than the owner, or lessee, or bailee, shall in the case of an accident be deemed to be the agent of the owner, or lessee, or bailee, of the motor vehicle unless the driver shall have furnished proof of financial responsibility . . . prior to the accident . . . .[10]

The court emphasized the purpose of section 31-33-6 "is to ensure that a victim of a car injury has an avenue of recovery."[11] The court then set forth to determine whether the term "accident" in this statute includes intentional acts.[12] Because section 31-33-6 does not provide an explicit definition of the term "accident," the Rhode Island Supreme Court considered the public policy goals of the legislature in interpreting this statute.[13] Reviewing section 31-33-6 in this context, the court held that the term encompasses intentional as well as accidental acts.[14] Realizing the breadth of its interpretation, the court highlighted the consistency of this decision "with the purpose of § 31-33-6, namely, to protect an innocent victim from having to shoulder the expense of an injury."[15]

The Rhode Island Supreme Court also relied upon its previous interpretation of the term "accident" in *State v. Smyth*.[16] In that case, which involved a statute "requiring a participant in a highway accident to render aid to persons injured in the collision, [the

9. *Id.* (citing Ostrosky v. Sczapa, 739 F. Supp. 715, 717 (D.R.I. 1990)).
10. R.I. Gen. Laws § 31-33-6 (1956) (1994 Reenactment)).
11. *Dias*, 727 A.2d at 199.
12. *See id.*
13. *See id.* at 200.
14. *See id.*
15. *Id.*
16. 397 A.2d 497 (R.I. 1979). *See generally* R.I. Gen. Laws § 31-26-1 (1956) (Supp. 1999) (requiring drivers to stop when involved in an accident resulting in injury).

court] determined that 'the Legislature intended the term 'accident' to include all automobile highway collisions—intentional as well as unintentional—where personal injury occurs.'"[17] Additionally, the court mentioned its decision in *General Accident Insurance Company of America v. Olivier*,[18] where it cited a Florida case that reasoned "'from the perspective of the injured party, an intentional shooting constituted 'a most unexpected and unfortunate accident.'"[19]

Likewise, from Dias' perspective, Richard Cinquegrana's intentional conduct resulted in an unfortunate accident. Therefore, the Rhode Island Supreme Court concluded that Richard's conduct was covered by the term "accident" in section 31-3-6, and held that the lessee of the car was liable for the injuries caused by Richard's conduct.[20]

CONCLUSION

In *Dias v. Cinquegrana*, the Rhode Island Supreme Court determined that the term "accident" in Rhode Island General Laws section 31-33-6 includes intentional acts. Therefore, the owner or lessee of an automobile is liable for the intentional as well as accidental acts of persons allowed to operate that vehicle.[21]

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17. *Dias*, 727 A.2d at 200 (quoting *Smyth*, 397 A.2d at 499).
18. 574 A.2d 1240 (R.I. 1990).
19. *Dias*, 727 A.2d at 200 (quoting *Olivier*, 574 A.2d at 1242).
20. *See id.*
21. The court points out that its decision only "affects the liability of a vehicle owner for the acts of the driver under § 31-33-6; it does not delineate what is or is not covered under any particular insurance policy." *Id.*

Tort Law. *Gelsomino v. Mendonca*, 723 A.2d 300 (R.I. 1999). Where a defendant-employer contributed to an injured plaintiff's disability payments and/or a pension fund, the collateral source doctrine does not bar a deduction from loss of earnings or other expenses to the extent of the defendant-employer's contributions. The burden is upon the defendant-employer to prove the proportion of a plaintiff-employee's benefits, resulting from the defendant-employer's contributions.

In *Gelsomino v. Mendonca*,[1] the plaintiff, a school teacher employed by the City of Central Falls, sued the City of Central Falls and a Central Falls police officer. The Rhode Island Supreme Court held that although the police officer was prevented by the collateral source doctrine from deducting the plaintiff's employment-related disability compensation from the damages owed to the plaintiff, the doctrine did not prevent the City of Central Falls from deducting from the plaintiff's damages the amount of plaintiff's disability or pension payments funded by the City of Central Falls.

FACTS AND TRAVEL

On October 7, 1991, while pursuing an automobile that ran a red light, Officer James Mendonca (Officer Mendonca), of the Central Falls Police Department, lost control of his police cruiser and slammed into a temporary trailer where Marie Gelsomino (Gelsomino), a Central Falls school teacher, was conducting class.[2] Gelsomino sued Officer Mendonca and the City of Central Falls (City) for negligence, claiming that as a result of the accident she suffered pain in her lower back and leg, preventing her from discharging her responsibilities as an elementary school teacher as well as participating in her daily and leisure activities.[3]

In a court-annexed arbitration, Gelsomino was awarded $120,000.[4] Gelsomino rejected the award, preferring to send the case to trial.[5] Thereafter, a jury awarded Gelsomino $25,000 in

1. 723 A.2d 300 (R.I. 1999).
2. *See id.* at 301.
3. *See id.*
4. *See id.*
5. *See id.*

damages.[6] Prejudgment interest was added to the verdict against Officer Mendonca, but was not added to the verdict against the City.[7] Officer Mendonca moved to strike the award of prejudgment interest, arguing that as a city employee, he was exempted from such an award.[8] Gelsomino moved for a new trial and/or additur.[9] The trial justice granted Officer Mendonca's motion, and denied Gelsomino's motion.[10]

Gelsomino filed an appeal, raising several issues.[11] She argued that the admission of evidence regarding her disability pension violated the collateral source doctrine, and that the jury should have been instructed to not consider the disability pension when computing damages.[12] Gelsomino also argued that the trial justice erred by granting Officer Mendonca's motion to strike the award of prejudgment interest.[13]

ANALYSIS AND HOLDING

The collateral source doctrine declares that compensation for an injured party made by sources other than the tortfeasor is inadmissible evidence and does not reduce the tortfeasor's liability.[14] The purpose of the rule is to prevent the tortfeasor from receiving the benefit of compensation paid to the plaintiff by a third party by reducing the damages owed to the plaintiff in the amount of compensation provided by the third party.[15] Since it is the tortfeasor's responsibility to make the injured person whole again, it is irrele-

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6. *See id.*

7. *See id.*

8. *See id.*

9. *See id.*

10. *See id.*

11. *See id.* Gelsomino also appealed the trial justice's denial of a "thin skull" jury instruction, and the denial of her motion for a new trial and/or additur. Since the court concluded that Gelsomino was entitled to a new trial for a proper application of the collateral source doctrine, it did not reach Gelsomino's arguments regarding the trial justice's denial of her motion for a new trial. *See id.* at 303. The court also held that a "thin skull" jury instruction should be given if Gelsomino presented evidence that the accident affected her pre-existing herniated disk. *See id.* at 302.

12. *See id.* at 301.

13. *See id.*

14. *See id.* (citing Moniz v. Providence Chain Co., 618 A.2d 1270, 1272 (R.I. 1993)).

15. *See id.* (citing Oddo v. Cardi, 218 A.2d 373, 377 (R.I. 1966)).

vant that an independent party has made payments to the injured person.[16]

Applying the collateral source doctrine to the present case, the supreme court concluded that because Officer Mendonca did not provide any pecuniary benefits to the plaintiff, the collateral source doctrine prevented any deduction from damages owed to Gelsomino as a result of Officer Mendonca's negligence.[17]

The court then considered the application of the doctrine with regards to the liability of the City. The court first cited its earlier opinion of *Colvin v. Goldberg*,[18] where it suggested that when a plaintiff sues her employer, the employer may be entitled to deduct from the plaintiff's damages any sums or benefits paid to the plaintiff by the employer.[19] While acknowledging that the majority rule is to refuse to deduct from the plaintiff's damages the amount of a plaintiff's pension fund paid for by the employer,[20] the court concluded "that the better rule would be to allow a deduction from loss of earnings or other expenses to the extent that the disability payments and/or pension or other disbursements have been funded by or are attributable to contributions by the employer, in this case the City of Central Falls."[21]

The court also held that the burden is on the employer to show the portion of the plaintiff's disability pension or other benefits paid to the plaintiff by the employer.[22] Noting that a new trial was required, the court suggested that the City be directed to show that portion of employee benefits and/or pension, which resulted from employer contributions, prior to the admission of evidence concerning the plaintiff's receipt of such benefits and/or pension.[23] In the event that the City is unable to provide proof of its contribution to Gelsomino's disability pension, the collateral source doctrine bars any evidence of the disability pension or other benefits.[24]

Finally, the court addressed Gelsomino's argument that the trial justice erred by striking the prejudgment interest added to

16. *See id.* (citing Colvin v. Goldenberg, 273 A.2d 663, 666 (R.I. 1971)).
17. *See id.* at 302.
18. 273 A.2d 663 (R.I. 1971).
19. *See Gelsomino*, 723 A.2d at 302.
20. *See id.*
21. *Id.*
22. *See id.*
23. *See id.*
24. *See id.*

the award against Officer Mendonca. The court agreed that the ruling of the trial justice was in error. In *Pridemore v. Napolitano*,[25] the Rhode Island Supreme Court held that government employees who are liable in tort are not entitled to the same exemption for prejudgment interest as are municipalities.[26] Therefore, the ruling of the trial justice was impermissible, and any award against Officer Mendonca must be enlarged by the appropriate amount of prejudgment interest.[27]

CONCLUSION

In *Gelsomino v. Mendonca*, the Rhode Island Supreme Court carved out an exception to the collateral source doctrine. Where a defendant-employer can show that it contributed to the disability payments, pension payments, or any other disbursements made to the plaintiff, the defendant-employer is entitled to deduct an amount equal to the contributions it made from the damages owed to the plaintiff. However, the burden of proving the portion of the disability fund or pension paid by the defendant-employer for the benefit of the plaintiff is on the defendant-employer. An inability to prove what portion of those benefits are attributable to the defendant-employer renders the exception inapplicable.

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25. 689 A.2d 1053 (R.I. 1997).
26. *See id.* at 1056.
27. *See Gelsomino*, 723 A.2d at 302-03.

Tort Law. *Hawkins v. Scituate Oil Co., Inc.*, 723 A.2d 771 (R.I. 1999). A plaintiff in a negligence action alleging harm to real property may recover damages for any resulting inconvenience, discomfort, and annoyance. There is a distinction between cases involving a tortious interference with real property and those claiming an intentional or negligent infliction of emotional distress. In those cases pertaining to real property, potentially frivolous allegations of personal injuries are less of an evidentiary concern; therefore, it is unnecessary to require medical or physical evidence prior to allowing a recovery of damages for discomfort and annoyance.

FACTS AND TRAVEL

In October 1993, a Scituate Oil Co., Inc. delivery man made a mistake. He "pumped 100 gallons of home heating oil down the wrong pipe" at the plaintiffs' Glocester residence.[1] As a result of their flooded basement and uninhabitable home, the plaintiffs moved into a small trailer until a new house was built on the same property.[2] In September of 1996, there was a partial settlement but the plaintiff's remaining claims were set for a damages trial.[3]

The trial justice granted the defendant's motion for judgment as a matter of law, relying "upon the lack of expert medical testimony to buttress plaintiffs' damage claims for the alleged inconvenience, discomfort, and annoyance they suffered as a result of their oleaginous eviction."[4] The plaintiffs appealed to the Rhode Island Supreme Court, alleging that the trial justice had committed reversible error in granting the defendant's motion for judgment as a matter of law.[5]

ANALYSIS AND HOLDING

The Rhode Island Supreme Court began its analysis by noting that it has permitted the recovery of damages for tortious interference with possessory interests in real property.[6] Additionally, the

1. 723 A.2d 771 (R.I. 1999).
2. *See id.*
3. *See id.* at 772.
4. *Id.*
5. *See id.*
6. *See id.* (citing Harris v. Town of Lincoln, 668 A.2d 321 (R.I. 1995); Vogel v. McAuliffe, 18 R.I. 791 (1895)).

majority rule from other jurisdictions allows the recovery of damages for the annoyance and irritation caused by the tortious interference with the use and enjoyment of real property.[7] Finally, the court looked to section 929 of the Restatement (Second) Torts, which states in relevant part: "(1) If one is entitled to a judgment for harm to land resulting from a past invasion and not amounting to a total destruction of value, the damages include compensation for . . . (c) discomfort and annoyance to him as an occupant."[8]

Having established the clear legal precedent for awarding damages in cases involving a tortious interference with real property interests, the court distinguished this type of case from those asserting an intentional or negligent infliction of emotional distress.[9] In cases alleging an intentional or negligent infliction of emotional distress, the plaintiff must show that he has suffered physical symptoms related to the emotional distress, and that expert medical evidence corroborates the existence of a nexus between the defendant's tortious conduct and the plaintiff's injuries.[10] However, in diminution of property cases like this one,

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7. *See id.* (citing Board of County Comm'r v. Slovek, 723 P.2d 1309 (Colo. 1986); Evans v. Mutual Mining, 485 S.E.2d 695 (W.Va. 1997); Piorkowski v. Liberty Mut. Ins. Co., 228 N.W.2d 695 (Wis. 1975)).

8. *Id.* (quoting Restatement (Second) Torts § 929 (1979)). Comment (e) to this section further explains this rule:

> Discomfort and other bodily and mental harms. Discomfort and annoyance to an occupant of the land and to the members of the household are distinct grounds of compensation for which in ordinary cases the person in possession is allowed to recover for his own serious sickness or other substantial bodily harm but is not allowed to recover for serious harm to other members of the household, except so far as he maintains an action as a spouse or parent. . . .

Id. at 772-73.

9. *See Hawkins*, 723 A.2d. at 773. For cases discussing intentional or negligent infliction of emotional distress, see Swerdlick v. Koch, 721 A.2d 849, 862-64 (R.I. 1998) (neighbor's surveillance and photographing of landowners and reporting violation did not constitute intentional or negligent infliction of emotional distress); Vallinoto v. DiSandro, 688 A.2d 830, 838-40 (R.I. 1997) (expert testimony concerning physical syptoms allegedly resulting from improper sexual conduct of attorney failed to establish claim for intentional infliction of emotional distress); Clift v. Narragansett Television L.P., 688 A.2d 805, 812-14 (R.I. 1996) (unsupported conclusory assertions of physical ills caused by a television station did not prove a claim for intentional infliction of emotional distress); Reilly v. United States, 547 A.2d 894 (R.I. 1988) (parents of a severely brain damaged child could not recover damages against the obstetrician for negligent infliction of emotional distress unless they suffered verifiable physical symptoms).

10. *See id.*

it is not required to demand "evidence of physical symptomatology plus medical causation expertise before allowing such plaintiffs to recover damages for their resulting discomfort and annoyance."[11] In sum, the court took notice of the fact that property-loss victims like the plaintiffs will certainly encounter inconvenience and displeasure, which may not be supported by physical symptoms or medical testimony, and unlike mere emotional distress claims, there is no public policy requirement to deter disingenuous claims.[12]

CONCLUSION

The Rhode Island Supreme Court found that the trial justice erred in approving the defendant's motion for judgment as a matter of law because a claim for tortious interference of one's enjoyment of property does not necessitate proof of physical injuries supported by medical expertise. On retrial, the plaintiffs will be permitted to proffer evidence of their discomfort and annoyance, and to recover for such injuries without the requirement for concurring medical verification of physical symptoms.

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11. *Id.*
12. *See id.*

Tort Law. *Kelly v. Rhode Island Public Transit Authority*, 740 A.2d 1243 (R.I. 1999). In an action alleging premises liability, a common carrier owes a potential passenger a duty to exercise the highest degree of care that is consistent with the orderly conduct of its business. The duty is triggered when the potential passenger enters the common carrier's premises with the intention of becoming a passenger.

FACTS AND TRAVEL

The Rhode Island Public Transit Authority (RIPTA) owned a parcel of real estate that was used as a turnaround where passengers were permitted to board its buses.[1] Approximately 200 passengers passed through this turnaround each day.[2] No signs were posted in the area warning passengers of a possible safety hazard.[3]

On June 8, 1995, the plaintiff, seventy-seven year old Jean Kelly (Kelly), walked across the property in order to reach the bus shelter where a bus was to stop.[4] When Kelly crossed the turnaround area, two RIPTA buses were waiting for passengers to board.[5] As the plaintiff continued to traverse the turnaround area, one of the buses started its engine and pulled away, hitting the plaintiff and running over her leg.[6] At trial, the RIPTA bus driver testified that he did not see the plaintiff until after the accident occurred.[7]

Initially, Kelly brought an action in superior court alleging negligence only on the part of the bus driver; RIPTA was joined as a defendant under the doctrine of respondeat superior.[8] After trial, the jury found in favor of both defendants.[9] The trial justice then granted Kelly's motion for a new trial, reasoning that no reasonable jury could have found that Kelly was 100% responsible for

1. *See* Kelly v. Rhode Island Public Transit Authority, 740 A.2d 1243, 1245 (R.I. 1999).
2. *See id.*
3. *See id.*
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.* at 1246.
8. *See id.*
9. *See id.*

her own injuries.[10] In addition, the trial justice found that a portion of the bus driver's testimony was not credible.[11]

In the second trial, a jury awarded Kelly $340,293.93 plus interest, finding RIPTA liable for the maintenance and management of its premises, but finding RIPTA and the driver were not liable for negligent operation of the bus.[12] Both parties appealed and accordingly, the case was presented to the Rhode Island Supreme Court on cross-appeals from the superior court.[13]

ANALYSIS AND HOLDING

Motion to Recuse

The Rhode Island Supreme Court first considered the trial justice's denial of RIPTA's motion for recusal. After the trial justice granted Kelly's motion for a new trial in the superior court, RIPTA moved that the trial justice recuse himself from the second trial on the ground that he could not be impartial.[14] This claim stemmed from the trial justice's finding that a portion of the bus driver's testimony was not credible.[15]

The court denied the motion to recuse because both defendants failed to establish any personal bias or prejudice on the part of the trial justice.[16] The court cited the well-recognized rule that a trial justice should recuse himself when he is unable to render a fair decision.[17] Moreover, the court declared that a party seeking recusal of a trial justice must show that the justice has a "personal bias or prejudice by reason of a preconceived or settled opinion of a character calculated to impair his impartiality seriously and to sway his judgment."[18] In the case at bar, the fact that the trial justice commented on the "credibility of the bus driver and the weight of the evidence in respect to liability" does not determine

10. *See id.*

11. RIPTA and the bus driver appealed the granting of the new trial. The appeal was denied and dismissed by the Rhode Island Supreme Court in Kelly v. Rhode Island Public Transit Authority, 703 A.2d 1123 (R.I. 1997).

12. *Id.* at 1245.

13. *See id.*

14. *See id.* at 1246.

15. *See id.*

16. *See id.* at 1246-47.

17. *See id.* at 1246 (citing *In re* Antonio, 612 A.2d 650, 653 (R.I. 1992)).

18. *Id.* (quoting Cavanagh v. Cavanagh, 375 A.2d 911, 917 (R.I. 1977)).

that he was personally biased or partial.[19] Thus, the defendants' appeal from the denial of the motion to recuse was without merit.[20]

Motion for Judgment as a Matter of Law

The supreme court affirmed the denial of RIPTA's motion for a judgment as a matter of law.[21] The court dismissed the motion notwithstanding RIPTA's contention that Kelly did not present sufficient evidence to support her premises liability claim, such that a reasonable jury could find for the plaintiff.[22] First, the trial justice ruled as a matter of law that the plaintiff was a passenger of RIPTA, and thus, RIPTA owed her a duty to exercise the highest degree of care that is consistent with the regular operation of its business.[23] RIPTA argued that Kelly was not a passenger since she had not actually boarded the bus.[24] The court disagreed, however, because the plaintiff entered the premises with the intention of becoming a passenger.[25] Therefore, Kelly was a passenger "for all practical purposes to whom the highest degree of care was owed."[26]

In light of the testimony and evidence presented at trial, the supreme court held that the trial justice was correct in denying the motion.[27] Both Kelly and RIPTA presented evidence to show that a large number of RIPTA's potential passengers crossed the turnaround each day.[28] Moreover, it was undisputed that there were no warning signs or markers to direct pedestrians away from potentially dangerous areas.[29] From this evidence, the court stated that the trial justice was correct in denying the motion.[30]

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19. *Id.*
20. *See id.* at 1247.
21. *See id.* at 1248.
22. *See id.* at 1247. When ruling on the defendant's motion for judgment as a matter of law, the court is obliged to apply the same standard as the trial justice and to view the evidence in the light most favorable to the non-moving party. *See id.* (citing DeChristofaro v. Machala, 685 A.2d 258, 262 (R.I. 1996)).
23. *See id.*
24. *See id.*
25. *See id.*
26. *Id.* (citing Aschenbrenner v. United States Fidelity & Guar. Co., 292 U.S. 80 (1934)).
27. *See id.* at 1248.
28. *See id.*
29. *See id.*
30. *See id.*

RIPTA's Motion for a New Trial

The Rhode Island Supreme Court denied RIPTA's appeal of the denial of its motion for a new trial.[31] RIPTA argued that Kelly failed to sustain her burden of proof on the premises liability claim because she did not introduce expert testimony "to determine whether RIPTA complied with the applicable standard of care."[32] The court cited the well-established rule that expert testimony is not required when the jury can easily understand and draw conclusions from the facts and circumstances of the case.[33] The trial justice concluded that expert testimony was unnecessary because the issue was one of fundamental safety and "the jury could from its collective experience determine whether a bus-turnaround area held open to the public is safe and properly maintained."[34] Thus, the court affirmed the trial justice's ruling because such issues were neither complex nor beyond the understanding of a reasonably prudent juror.[35]

Plaintiff's Motion for a New Trial

Finally, the court also rejected Kelly's motion for a new trial on the claim of the bus driver's negligence.[36] In the first trial, the superior court ruled that no reasonable jury could have found that the bus driver was completely without fault.[37] In the second trial, the trial justice reversed his position, finding that a reasonable jury could have found that Kelly walked into a spot that was not visible to the bus driver.[38] In short, the trial justice found it entirely reasonable for a jury to conclude that the bus driver was not at fault in the accident.[39]

The supreme court accorded the trial justice the usual deferential standard of review even though his ruling in the second trial

31. *See id.* at 1245.
32. *Id.* at 1248.
33. *See id.* (citing Allen v. State, 420 A.2d 70 (R.I. 1980)). Indeed, this principle has been codified in Rule 702 of the Rhode Island Rules of Evidence. *See* R.I. R. Evid. 702.
34. *Kelly*, 740 A.2d at 1248.
35. *See id.* at 1248-49.
36. *See id.* at 1245.
37. *See id.* at 1250.
38. *See id.*
39. *See id.*

directly opposed his earlier findings.[40] The supreme court declared that it would not disturb such findings unless the trial justice overlooked or misconstrued evidence, or was clearly wrong in his ruling.[41] The supreme court found that the trial justice did not misconstrue material evidence; the evidence at the second trial was more persuasive than that which was presented at the first trial.[42] Accordingly, the supreme court sustained the denial of the plaintiff's motion for a new trial on the issue of the bus driver's negligence.[43]

CONCLUSION

In *Kelly v. Rhode Island Public Transit Authority*, the Rhode Island Supreme Court declared that a person who enters the premises of a common carrier with the intention of becoming a passenger is for all practical purposes a passenger of the common carrier. As such, the highest degree of care is owed to the passenger. This rule extends the duty that a common carrier owes to the public by requiring the common carrier to ensure the safety of those persons who have not yet boarded the carrier.

Rory Z. Fazendeiro

40. *See id.*
41. *See id.* at 1250 (citing Morrocco v. Piccardi, 674 A.2d 380, 382 (R.I. 1996)).
42. *See id.*
43. *See id.*

Tort Law. *Rousseau v. K.N. Construction, Inc.*, 727 A.2d 190 (R.I. 1999). The economic loss doctrine, which generally prohibits a plaintiff from suing in tort for monetary loss alone, does not apply to consumer transactions.

FACTS AND TRAVEL

In 1989, plaintiffs Robert and Claire Rousseau (the Rousseaus) bought a parcel of land from K.N. Construction, Inc. (K.N.).[1] K.N. hired Alfred P. Ferreira, now deceased,[2] to conduct a percolation test on the land to determine its suitability for a septic system.[3] Ferreira's report approved the installation of a septic system capable of serving a three or four bedroom home.[4] The Rousseaus alleged that they relied on the results when purchasing the land.[5] The Rousseaus obtained the approval of the Department of Environmental Management (DEM) to construct the septic system, but decided to put off building the house.[6] When the plaintiffs restarted the project in 1992, DEM notified them that the 1989 septic system approval had expired, and that they would need to have the percolation tests redone.[7] The new engineering firm hired by the Rousseaus reported that the land could not sustain a septic system and that Ferreira's 1989 report was incorrect.[8]

The Rousseaus sued K.N. on several contract claims and sued Ferreira for negligence and fraud, seeking damages solely for their economic loss.[9] Prior to trial in superior court, Ferreira moved for summary judgment, alleging that the economic loss doctrine precluded the plaintiffs' recovery.[10] The trial justice agreed with Ferreira's statement of the economic loss rule, and entered summary

1. *See* Rousseau v. K.N. Constr., Inc., 727 A.2d 190, 191 (R.I. 1999).
2. Joan Ferreira, on behalf of Alfred Ferreira's estate, was substituted as defendant. *See id.* at 191 n.1.
3. *See id.* at 191.
4. *See id.*
5. *See id.*
6. *See id.* at 191-92.
7. *See id.* at 192.
8. *See id.*
9. *See id.*
10. *See id.* The economic loss rule is defined as "[t]he principle that a plaintiff cannot sue in tort to recover for purely monetary loss—as opposed to physical injury or property damage—caused by the defendant." Black's Law Dictionary 531 (7th ed. 1999).

judgment in favor of the defendant.[11] The Rousseaus appealed this decision to the Rhode IslandSupreme Court.[12]

ANALYSIS AND HOLDING

Before addressing Ferreira's argument that the economic loss doctrine barred the Rousseaus' claim, the supreme court noted that the privity of contract requirement in tort actions has been abrogated in Rhode Island.[13] The Rhode Island Supreme Court has previously recognized that abrogation of the rule would expose engineer subcontractors to third party liability.[14] The supreme court then addressed the economic loss doctrine argument.[15]

The economic loss doctrine bars a plaintiff from recovering purely economic damages in a tort action.[16] The rationale is that:

> the parties to a contract may allocate their risks by agreement and do not need the special protections of tort law to recover for damages caused by breach of contract. To recover in tort, there must be a showing of harm above and beyond disappointed commercial expectation, and thus the mere existence of physical harm to other property should not make a claim compensable in tort where the resultant harm flows only from disappointed commercial expectations.[17]

In *Boston Investment Property #1 State v. E.W. Burman, Inc.*,[18] the Rhode Island Supreme Court applied this rule to bar a building purchaser from recovering economic damages from a developer.[19] In *Burman*, the court reasoned that both parties were sophisticated in commercial transactions, and possessed equal bargaining power.[20] Therefore, the plaintiff's disappointment was foreseeable and protection by tort law would be inappropriate.[21]

The supreme court held that Ferreira's reliance on this case to support his argument for application of the economic loss doctrine

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11. *See Rousseau*, 727 A.2d. at 191.
12. *See id.*
13. *See id.* at 192 (citing Walsh v. Gowing, 494 A.2d 543, 548 (R.I. 1985)).
14. *See id.* (citing *Walsh*, 494 A.2d at 548).
15. *See id.*
16. *See id.*
17. 86 C.J.S. *Torts* § 26 (1997).
18. 658 A.2d 515 (R.I. 1995).
19. *See Rousseau*, 727 A.2d at 192 (citing *Burman*, 658 A.2d at 518).
20. *See Burman*, 658 A.2d at 517.
21. *See id.* at 517-18.

was misplaced, and expressly limited the holding of *Burman* to commercial transactions.[22] However, in the instant case, the transaction between the Rousseaus and Ferreira was not commercial in nature because the Rousseaus were consumer purchasers.[23] Since consumers are less experienced than commercial parties, the justifications for allowing the harsh result of the ecomonic loss doctrine to fall on a party to the transaction are absent.[24] Accordingly, consumers should be afforded a greater degree of protection against loss, even if that loss is purely economic.[25] Therefore, the economic loss doctrine should not apply to consumer transactions.

CONCLUSION

In *Rousseau v. K.N. Construction, Inc.*, the Rhode Island Supreme Court limited the proper scope of the economic loss rule. Since the doctrine should only be applied against parties to a transaction that can adequately anticipate the economic ramifications of a deal gone bad, and therefore protect themselves in the event of that contingency, it should apply only to commercial transactions, and not to consumers.

Carly E. Beauvais

22. *See Rousseau*, 727 A.2d at 193.
23. *See id.*
24. *See id.*
25. *See id.*

Tort Law. *Russo v. Baxter Healthcare Corp.*, 51 F. Supp.2d 70 (D.R.I. 1999). A prevailing party is not entitled to attorney's fees under the Rhode Island Uniform Trade Secrets Act unless the prevailing party can establish that the party claiming misappropriation made the claim in subjective bad faith.

In *Russo v. Baxter Healthcare Corp.*,[1] the United States District Court for the District of Rhode Island determined that Rhode Island law requires a finding of subjective bad faith before sanctions can be imposed under the Rhode Island Uniform Trade Secrets Act.[2] Such a finding can be made from direct or circumstantial evidence. In addition, the court held that where a party objects to a request for admission under the Federal Rules of Civil Procedure, the objecting party cannot be sanctioned unless a motion to test the validity of the objection is filed by the discovering party.

FACTS AND TRAVEL

Ronald Russo (Russo) invented a new type of medical catheter in 1989, while working for Superior Healthcare Corporation (Superior) under an arrangement where he received royalties based upon the success of his inventions.[3] David Brodsky, the President of Superior, felt that his company lacked the ability to market such a product, and sought Baxter Healthcare (Baxter) to fill that role.[4] Baxter evaluated the product, and without informing Russo, sent prototypes of the device to clinicians so they could conduct bench trials.[5] Baxter did not require that these clinicians sign confidentiality agreements prior to involving them in the bench trials.[6]

Shortly thereafter, Russo stopped working for Superior over issues not related to this action.[7] However, he apparently retained some access to Superior's offices, and noticed that they continued to develop his catheter.[8] In June of 1990, Russo learned that Supe-

1. 51 F. Supp.2d 70 (D.R.I. 1999).
2. R.I. Gen. Laws § 6-41-4 (1956) (1992 Reenactment).
3. *See Russo*, 51 F. Supp.2d at 73.
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.*
8. *See id.*

rior and Baxter entered into an Exclusive Distribution Agreement that granted Baxter an option to obtain rights in the catheter.[9]

Immediately following this discovery, Russo sent letters to Baxter claiming that he held the rights to the catheter.[10] He also filed an application to patent the catheter with the United States Patent and Trademark Office.[11] Russo then filed suit against Superior and Baxter, seeking an injunction to prevent the companies from implementing the distribution agreement.[12]

Thereafter, Baxter and Superior submitted their own application for a patent.[13] In addition, Baxter conducted additional field trials, sending out samples of the device to hospitals, and not requiring that they keep the catheter confidential.[14] Again, Russo was not notified that the catheter had been sent out, this time to the hospitals.[15]

In October of 1991, Russo's patent attorney, Robert Doherty, received a notice of allowance from the Patent and Trademark Office, and paid the issuance fee.[16] During the next month, Russo discussed filing patent applications in foreign countries with Doherty.[17] In December 1991, Baxter displayed the catheter at a trade show, during which time it took sales leads on the catheter and included it in Baxter's sales brochure.[18] Russo had not authorized those activities and did not learn about them until several days after the show.[19] Russo immediately told Doherty about these findings, although Russo did not know about the earlier bench trials.[20]

Doherty advised Russo that Baxter's disclosures at the trade show had destroyed the novelty of his invention and made it unpatentable in any foreign country.[21] He further advised that no

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9. *See id.*
10. *See id.*
11. *See id.*
12. *See id.*
13. *See id.* at 73-74.
14. *See id.* at 74.
15. *See id.*
16. *See id.*
17. *See id.*
18. *See id.*
19. *See id.*
20. *See id.*
21. *See id.* Doherty did tell Russo that foreign patents were a possibility in Canada and Australia. *See id.*

foreign patent applications should even be filed because he believed that no patents could issue after Baxter's publication at the show, or that any patents that might issue would be invalid.[22]

Despite the fact that he advised Russo to abandon all hope of acquiring a foreign patent, Doherty did not research the issue or consult an attorney specializing in foreign patents.[23] Unfortunately for Russo, Doherty's legal advice was incorrect.[24] However, Russo relied upon Doherty's incorrect advice and decided not to seek foreign patents.[25] In early 1992, the Patent and Trademark Office issued Russo a patent, which unquestionably barred Russo from obtaining any foreign patents.[26]

In October of 1994, Russo filed suit against Baxter, alleging that Baxter's publication of the catheter at the 1991 trade show barred Russo from obtaining a foreign patent.[27] Russo amended his complaint after he learned in discovery that Baxter had previously publicized the catheter in the bench trials and field tests.[28] Russo based his complaint on the Rhode Island Uniform Trade Secrets Act (RIUTSA).[29]

At trial, Baxter moved for judgment as a matter of law under Federal Rule of Civil Procedure 50(a) at the close of Russo's case.[30] Baxter's motion was granted on the grounds that Russo did not show "that Baxter had either caused his injury or disclosed his trade secret."[31]

Thereafter, Baxter moved for an award of attorney's fees. Baxter argued that it was entitled to attorney's fees on two grounds.[32] First, Baxter argued that Russo filed suit in bad faith under the RIUTSA, and second that Russo failed to admit the

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22. *See id.*

23. *See id.*

24. *See id.* In fact, Russo's foreign patent applications would have been barred only if Russo failed to file the application until six months after the date of disclosure. Therefore, Russo's applications would have been timely as long as they were filed before early June, six months from the December 9, 1991 trade show date. *See id.*

25. *See id.*

26. *See id.*

27. *See id.* at 75.

28. *See id.*

29. R.I. Gen. Laws § 6-41-4 (1956) (1992 Reenactment).

30. *See Russo*, 51 F. Supp.2d at 75.

31. *Id.*

32. *See id.* at 73.

truth of matters contained in several requests for admissions.[33] On December 2, 1998, a magistrate denied Baxter's motion in part and granted it in part, and both parties appealed that decision.[34]

ANALYSIS AND HOLDING

In order to receive attorney's fees under the RIUTSA, the prevailing party must show that "a claim of misappropriation is made in bad faith."[35] The court noted that because it had diversity jurisdiction over the instant case, Rhode Island law guided the court's interpretation of "bad faith."[36] The court also noted that no cases decided under the RIUTSA had previously interpreted the term "bad faith."[37] Therefore, the court looked to Rhode Island Supreme Court cases for analogies.[38]

The Rhode Island Supreme Court uses a subjective test for bad faith.[39] In *Quill Co. v. A.T. Cross*,[40] the Rhode Island Supreme Court held that subjective bad faith cannot exist if the claimant reasonably believes that the claim has a legal and factual basis.[41] However, a court can rely on circumstantial evidence to find bad faith.[42]

The United States District Court for the District of Rhode Island held that under Rhode Island law, a court must find subjective bad faith before it can impose sanctions under the Rhode Island Uniform Trade Secrets Act.[43] Here, there was ample direct evidence to suggest that Russo reasonably believed his claim had a legal and factual basis.[44] Summary judgment had twice been denied to Baxter, and the district court believed the case should go to trial.[45] Furthermore, there was direct evidence at trial that Russo was surprised by the fact that Doherty did no research on foreign patents before advising Russo not to pursue filing an application.

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33. *See id.*
34. *See id.*
35. *Id.* at 76 (quoting R.I. Gen. Laws § 6-41-4 (1956) (1992 Reenactment)).
36. *See id.* at 75-76.
37. *See id.* at 76.
38. *See id.*
39. *See id.*
40. 477 A.2d 939 (R.I. 1993).
41. *See id.* at 944.
42. *See Russo,* 51 F. Supp.2d at 76.
43. *See id.*
44. *See id.* at 77.
45. *See id.*

This direct evidence was sufficient to evidence the absence of subjective bad faith on Russo's part, and also defeats Baxter's argument that bad faith could be inferred from the absence of proof presented by Russo at trial.[46] Russo acted in good faith, and was entitled to have the court evaluate his claims even though he was ultimately unsuccessful.[47]

The court then held that Baxter was not entitled to attorney's fees under Federal Rule of Civil Procedure 37(c)(2).[48] Rule 37 (c)(2) provides that sanctions can be imposed if a party fails to admit the truth of a matter and the requesting party later proves the matter to be true.[49] However, the burden is on the requesting party to compel a response where the other party objects to the request.[50]

Here, Russo objected to one of Baxter's requests for admission, but Baxter never sought to compel a response from Russo. The court concluded that sanctions should not be imposed on the objecting party unless the requesting party moves to "test the validity of the objection."[51] Otherwise, sanctions could be imposed on an objecting party even if the objection had merit.[52]

CONCLUSION

In *Russo v. Baxter Healthcare Corp.*, the United States District Court for the District of Rhode Island held sanctions cannot be imposed under the Rhode Island Uniform Trade Secret Act absent a finding of subjective bad faith. Under Rhode Island law, a claimant's reasonable belief that there is a legal and factual basis for his claim must be evaluated before the court can determine whether

46. *See id.* The court stated that while bad faith can be inferred from a party's failure to prove its claim where reasonable investigation would have discovered the flaw in the party's case, such recourse is not necessary where there is direct evidence of lack of bad faith. *See id.* (citing VSL Corp. v. General Tech., Inc., 46 U.S.P.Q.2d 1356, 1359 (N.D. Cal. 1998)).

47. *See id.*

48. *See id.* at 79.

49. *See* Fed. R. Civ. P. 37(c)(2).

50. *Russo*, 51 F. Supp.2d at 78.

51. *Id.*

52. *See id.*

the claimant filed a misappropriation claim in bad faith. However, bad faith can be shown by direct or circumstantial evidence.

Sarah K. Heaslip

Tort Law. *Terry v. Central Auto Radiators, Inc.*, 732 A.2d 713 (R.I. 1999). During an ongoing snowstorm, a business invitor's duty to keep the premises in a reasonably safe condition for his invitees is suspended until the storm has ended. However, where unusual circumstances are present, the duty to remove snow and ice will not be suspended.

In *Terry v. Central Auto Radiators, Inc.*,[1] the Rhode Island Supreme Court approved the use of the "Connecticut Rule," which permits a landlord or business invitor to wait a reasonable period of time after a storm clears to maintain in a reasonably safe condition the portion of its business premises expected to be used by invitees. However, the court held that where a customer was ordered to retrieve her car from 100 feet behind the company's premises, unusual circumstances existed and prevented the postponement of the business invitor's duty to maintain the premises in a reasonably safe condition.[2]

FACTS AND TRAVEL

On January 9, 1991, in the snow and freezing rain, the plaintiff parked her automobile in front of the defendant's shop in order that it could be repaired.[3] The plaintiff returned at approximately 4:00 p.m., in the inclement weather, to retrieve her automobile.[4] At that time she could not see her automobile, but was told by one of the employees that it was located 100 feet behind the defendant's premises and that she could retrieve it there.[5] After being instructed to be careful due to the icy conditions, she walked out to her car and slipped and fell.[6] As a result, she filed a civil action in superior court for damages.[7]

Following the presentation of the plaintiff's case to a jury, the defendant moved for judgment as a matter of law.[8] The trial justice granted the motion, relying on *Fuller v. Housing Authority*.[9]

1. 732 A.2d 713 (R.I. 1999).
2. *See id.* at 717.
3. *See id.* at 714.
4. *See id.* at 714-15.
5. *See id.* at 715.
6. *See id.*
7. *See id.*
8. *See id.*
9. 279 A.2d 438 (R.I. 1971).

The trial justice concluded that, according to *Fuller*, the defendant did not owe an immediate duty to the plaintiff to shovel, ice, sand or salt any of the premises in the middle of a storm, but could wait a reasonable time after the storm had ceased before doing so.[10] The plaintiff then filed an appeal to the Rhode Island Supreme Court.[11]

ANALYSIS AND HOLDING

The supreme court first addressed whether or not the defendant owed a duty to the plaintiff.[12] Although the court acknowledged that there is no clear-cut formula that can be applied to resolve whether a duty exists in negligence cases,[13] it concluded that a business invitor does owe a duty to maintain the premises in reasonable condition for its invitees.[14] The court came to this conclusion by deciding that the "Connecticut Rule" adopted in *Fuller* extends beyond a landlord-tenant situation to a business invitor-invitee situation.[15] In *Fuller*, the court held that "during a snow storm, a landlord has no immediate duty to shovel snow, or remove or salt and sand ice, because such duty is postponed for at least a reasonable period after the storm has abated."[16]

The court next determined whether any *unusual circumstances* existed which served to remove the postponement of defendant's duty to remove snow and ice.[17] The court concluded that because the plaintiff's automobile was not where she left it and the defendant knew the path from his building to where he parked the car 100 feet behind his premises was icy, an unusual circumstance did arise.[18] In addition, because the defendant ordered the plaintiff to retrieve her car from the rear of his business premises 100 feet away, he exacerbated the situation.[19] Therefore, the court sustained the plaintiff's appeal, vacated the superior court's judg-

10. *See Terry*, 732 A.2d at 715.
11. *See id.*
12. *See id.*
13. *See id.* (citing Kenney Mfg. Co. v. Starkweather & Shepley, Inc., 643 A.2d 203, 206 (R.I. 1994); Ferreira v. Strack, 636 A.2d 682 (R.I. 1994)).
14. *See id.* at 716.
15. *See id.* at 716-17.
16. *See id.* at 716 (citing *Fuller*, 279 A.2d at 441).
17. *See id.* at 717.
18. *See id.* at 717-18.
19. *See id.* at 718.

ment, and ordered a new trial so that the law could be applied properly.[20]

CONCLUSION

In *Terry v. Central Auto Radiators, Inc.*, the Rhode Island Supreme Court expanded the definition and scope of the "Connecticut Rule" previously adopted in Rhode Island. The court held that although the "Connecticut Rule" allows a landlord or business invitor to wait a reasonable time after the end of a storm to clear snow, this duty will not be postponed where there are unusual circumstances. The court also held that the Connecticut Rule, which originally only applied to landlord-tenant situations, is also applicable to business invitor-invitee situations.

Melissa Coulombe Beauchesne

20. *See id.* at 718-19.