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## 1995 Supreme Court of Rhode Island Survey : Insurance Law

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**Insurance Law.** *CPC Int'l, Inc. v. Northbrook Excess & Surplus Ins. Co.*, 668 A.2d 647 (R.I. 1995). Coverage is triggered under a general liability "occurrence-based" insurance policy when property damage manifests itself, is discovered or in the exercise of reasonable diligence is discoverable.

Insurers commonly predicate policy coverage on the occurrence of an act during the policy period.<sup>1</sup> Under such policies coverage is provided if an insured event takes place within the policy period, regardless of when a claim is filed. However, these policies often provide nettlesome questions as to whether the event did occur within the policy period.

In *CPC Int'l, Inc. v. Northbrook Excess & Surplus Ins. Co.*,<sup>2</sup> the Rhode Island Supreme Court was asked to determine at what point a triggering occurrence took place under an occurrence-based excess-liability insurance policy where a chemical spill occurred in 1974, but damage was not detected until 1979.<sup>3</sup> The insurance policy at issue only covered the plaintiff company for occurrences in 1979 through 1980.<sup>4</sup> The court reasoned that the occurrence that triggered policy coverage took place when the contamination was detected in 1979 rather than when the spill immediately occurred.<sup>5</sup>

#### FACTS AND TRAVEL

On June 21, 1974, a massive chemical spill occurred in Cumberland, Rhode Island at Peterson/Puritan, an aerosol-packaging plant and former subsidiary of plaintiff CPC International, Inc. (CPC).<sup>6</sup> No immediate damage to the well fields that fed the municipal water supplies of the towns of Cumberland and Lincoln was detected.<sup>7</sup> However, in October 1979 both towns discovered chemical contamination in their water supplies and the wells were subsequently shut down.<sup>8</sup>

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1. Robert E. Keeton & Alan I. Widiss, *Insurance Law* § 5.10(d)(1) (1988).
  2. 668 A.2d 647 (R.I. 1995).
  3. *Id.*
  4. *Id.*
  5. *Id.* at 650.
  6. *Id.* at 647-48.
  7. *Id.* at 648.
  8. *Id.*

In 1982 the town of Lincoln (Town) and the Board of Water Commissioners of Lincoln (Board) sued Peterson/Puritan for contamination of the water supplies. This suit was ultimately settled between the town, Board and CPC's primary insurer, Northwestern National Insurance Company (Northwestern).<sup>9</sup> Northwestern subsequently notified CPC and CPC's excess-liability insurer, Northbrook Excess & Surplus Insurance Co. (Northbrook) that coverage under its \$1 million policy was exhausted.<sup>10</sup>

CPC sued Northbrook in 1987 in New Jersey state court for a declaration that Northbrook must indemnify CPC for cleanup costs and other damages incurred.<sup>11</sup> The case was removed to federal court on the basis of diversity jurisdiction and was then transferred to the United States District Court for Rhode Island in 1989 where it was tried.<sup>12</sup> Ultimately the question of whether CPC had shown an occurrence within the policy period was certified to the Supreme Court<sup>13</sup> pursuant to Rule 6 of the Supreme Court Rules of

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9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* The United States District Court for Rhode Island granted summary judgment in favor of Northbrook on the theory that the pollution exclusion clause contained in the policy precluded coverage under New Jersey law. *CPC Int'l, Inc. v. Northbrook Excess & Surplus Ins. Co.*, 759 F.Supp. 966 (D.R.I. 1991). The Court of Appeals for the First Circuit reversed and remanded. *CPC Int'l, Inc. v. Northbrook Excess & Surplus Ins. Co.*, 962 F.2d 77 (1st Cir. 1992). On remand the district court applied Rhode Island law to the dispute because of a change in New Jersey choice of law provision and decided that since Rhode Island courts have not construed the language "sudden and accidental" the question must be decided by the Rhode Island Supreme Court. 839 F.Supp. 124 (D.R.I. 1993). The district court held that under "general principles of insurance law" the appropriate trigger theory was at the point when the aquifer was actually damaged. *CPC*, 668 A.2d at 648. The court of appeals affirmed, but found the law of Rhode Island unclear with respect to trigger-of-coverage issues and certified the question to the Rhode Island Supreme Court under Rule 6 of the Supreme Court Rules of Appellate Procedure. *CPC Int'l, Inc. v. Northbrook Excess & Surplus Ins. Co.*, 46 F.3d 1211 (1st Cir. 1995).

13. The certified question asked:

What trigger-of-coverage standard would the Rhode Island Supreme Court use for determining at what point an 'occurrence' causing 'property damage' took place, within the meaning of the insurance policy provisions provided in the separate opinion in this case, where an insured alleges that a spill of hazardous contaminants in 1974 migrated through the groundwater, causing immediate injury to the pertinent property, which was not, in fact, discovered, however, until at least 1979?

*CPC*, 668 A.2d at 647.

Appellate Procedure.<sup>14</sup> The Rhode Island Supreme Court agreed that no prior opinion of the Rhode Island Supreme Court provided guidance.<sup>15</sup>

#### BACKGROUND

Typically insurers issue policies that predicate coverage on an "occurrence-based" basis or a "claims-made" basis.<sup>16</sup> The latter method requires that an insured file a claim for recovery within the policy term.<sup>17</sup> The former insists that a triggering act occur within the policy term.<sup>18</sup> Because of the difficulty inherent in determining when a coverage triggering event has occurred in many environmental disaster cases,<sup>19</sup> it has been suggested that courts will follow one of several theories of trigger to decide when an occurrence took place.<sup>20</sup>

Prior to its decision in *CPC*, the Rhode Island Supreme Court had not adopted a particular trigger theory as a statement of Rhode Island law. Previously, in *Bartholomew v. Ins. Co. of North America*,<sup>21</sup> the United States District Court for Rhode Island had

14. R.I. Sup. Ct. R. App. P. 6.

15. *CPC*, 668 A.2d at 649.

16. See *Textron, Inc. v. Liberty Mut. Ins. Co.*, 639 A.2d 1358 (R.I. 1994); Richard C. Tinney, Annotation, *Event as Occurring within Period of Coverage of "Occurrence" and "Discovery" or "Claims Made" Liability Policies*, 37 A.L.R. 4th 382, 390 (1985).

17. *Textron*, 639 A.2d at 1361 n.2; Tinney, *supra* note 16, at 390.

18. Tinney, *supra* note 16, at 390; See also *St. Paul Fire and Marine Ins. Co. v. Barry*, 438 U.S. 531, 535 n.3 (1978) (distinguishing occurrence-based and claims-made policies).

19. Several commentators have noted this difficulty. See e.g., Jerry B. Edmonds, et al. *Trigger of CGL Coverage in the Environmental Context: Perspective of Insurers' Counsel*, 28 Gonz. L. Rev. 523, 524 (1993) ("In environmental coverage cases, the time period between the first release of pollutants and the clean up of a site may be quite long, covering several policy periods. Thus, the question often arises as to which of a series of policies, if any, is triggered.")

20. One commentator has suggested four theories: 1.) the exposure theory, which triggers coverage when the property covered is exposed to the damage causing element; 2.) the manifestation theory, which triggers coverage when the property becomes reasonably capable of being discovered; 3.) the continuous or multiple trigger theory, which triggers those policies in effect from the time of exposure through manifestation, and; 4.) the injury-in-fact theory which triggers coverage at the time the actual property damage occurred. Edmonds, *supra* note 19, at 525. The author distinguishes application of these theories from allowing the factfinder to simply apply the policy language to the facts of the case. *Id.* See also, *CPC*, 46 F.3d at 1219-22 (1st Cir. 1995) (describing various trigger of coverage theories).

21. 502 F. Supp. 246 (D.R.I. 1980).

decided that a liability triggering occurrence takes place when the insured knew or reasonably should have known of the damage.<sup>22</sup> However, because the Rhode Island Supreme Court had never before addressed this issue, or approvingly cited *Bartholomew*, that case was of little guidance in assessing Rhode Island law.<sup>23</sup> And while in *Textron*<sup>24</sup> the Rhode Island Supreme Court had mentioned occurrence-based policies in a footnote,<sup>25</sup> the helpfulness of this footnote in indicating the trigger-theory adopted by Rhode Island<sup>26</sup> was dubious at best. Thus, the case law leading up to *CPC* was unclear and the time was ripe for the issue of trigger of coverage to be addressed by Rhode Island's highest court.

#### ANALYSIS

In *CPC*, the Rhode Island Supreme Court acknowledged that its case law did not provide guidance to the certified question. *CPC* argued that the triggering contamination occurred it was discovered that when the chemicals reached the wells in 1979.<sup>27</sup> Conversely, Northbrook argued that the occurrence took place prior to 1979, pointing to evidence that Peterson/Puritan employees had dumped chemicals into the drains and septic systems of the plant prior to 1979 and alternatively urging that the occurrence took place in the year of the spill.<sup>28</sup> The court acknowledged the availability of various theories of trigger, citing the theory proposed in *Bartholomew* where the district court held that coverage was triggered when the insured knew or reasonably should have known of the damage, and looking at the wrongful act theory, the injury-in-fact theory and the exposure theory.

The court then examined the exact wording of the policy.<sup>29</sup> It reasoned that under the policy an "occurrence" cannot occur without "property damages" and that such damages did not occur until

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22. *Id.* at 254.

23. *CPC*, 46 F.3d 1211, 1221 (discussing *Bartholomew* and questioning its validity as an indicator of Rhode Island law).

24. *Textron*, 639 A.2d 1358.

25. *Id.* at 1361 n.1.

26. *CPC*, 46 F.3d at 1221-22 (calling the footnote dictum and ambiguous).

27. *CPC*, 668 A.2d at 648.

28. *Id.*

29. The policy defined "property damage" as a "[l]oss of or direct damage to or destruction of tangible property (other than property owned by any insured) and which results in an Occurrence during the policy period." *CPC*, 668 A.2d at 649.

It defined "occurrence" as

the damages were discovered or manifested themselves. Thus, an occurrence could not take place under the policy until manifestation.

In construing the insurance contract as it did, the court approvingly looked to two decisions decided by the First Circuit Court of Appeals,<sup>30</sup> both of which have been identified as examples of the manifestation theory.<sup>31</sup> In *Eagle-Picher Industries, Inc. v. Liberty Mutual Inc. Co.*, the court of appeals construed language similar to that present in *CPC* and decided that the policy distinguished between an accident and damage and that it was the actual damage that was the triggering event.<sup>32</sup> The court went on to hold that the policy was triggered when asbestosis became clinically evident or reasonably capable of medical diagnosis. Similarly, in *American Home Assurance Co. v. Libby-Owens-Fund Co.*, the court of appeals adopted the theory that an occurrence took place when a "reasonable person would be aware that a defect exists that may give rise to a cause of action."<sup>33</sup>

Following the analysis of these decisions the court in *CPC* implicitly adopted a manifestation theory by holding that "coverage under a general liability policy is triggered by an occurrence that takes place when property damage, which includes property loss, manifests itself or is discovered or in the exercise of reasonable diligence is discoverable."<sup>34</sup>

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[A]n accident, event or happening including continuous or repeated exposure to conditions which results, during the policy period, in Personal Injury, Property Damage or Advertising Liability neither expected nor intended from the standpoint of the Insured.

*Id.*

30. *Eagle-Picher Industries, Inc. v. Liberty Mutual Insurance Co.*, 682 F.2d 12 (1st Cir. 1982) and *American Home Assurance Co. v. Libbey-Owens-Ford Co.*, 786 F.2d 22 (1st Cir. 1986).

31. *CPC*, 46 F.3d at 1220; Edmonds, *supra* note 19, at 540-43.

Other examples of the manifestation theory in the environmental context include *Mraz v. Canadian Universal Insurance Co.*, 804 F.2d 1325 (4th Cir. 1986) (coverage is not triggered by the release of chemicals but by the result of damage); *Hartford County v. Hartford Mutual Insurance Co.*, 610 A.2d 286 (Md. 1992).

32. *Eagle-Picher*, 682 F.2d at 24.

33. *American Home*, 786 F.2d at 30.

34. *CPC*, 668 A.2d at 650.

## CONCLUSION

In *CPC*, the Rhode Island Supreme Court appears to have adopted the manifestation theory for answering questions of trigger of coverage. This theory has been described as analytically similar to the discovery rule in the statute of limitations context. When loss manifests itself in a way that is discovered or reasonably discoverable under an occurrence-based insurance policy, coverage has been triggered.

**Insurance Law.** *Mallane v. Holyoke Mut. Ins. Co.*, 658 A.2d 18 (R.I. 1995). A named insured's sibling, listed as driver on a declarations page of insurance policy, is treated as "insured" entitled to uninsured motorist coverage.

By enacting the Uninsured Motorist Statute<sup>1</sup> the legislature intended that protection be given to named insureds against economic loss or injuries resulting from the negligent operation of uninsured motor vehicles.<sup>2</sup> In *Mallane v. Holyoke Mut. Ins. Co.*,<sup>3</sup> the court held that the listing of a driver's name on the declarations page gave rise to an ambiguity as to which drivers were covered, because a typical subscriber would believe that named drivers were covered insureds. Accordingly, the named sibling was determined to be a named insured entitled to uninsured motorist benefits.<sup>4</sup>

#### FACTS AND TRAVEL

Defendant, Holyoke Mutual Insurance, (Holyoke) issued an automobile policy to plaintiff's brother, Gregory Mallane, as the "named insured" set forth on the declaration page, for the policy period February 15, 1992 to August 15, 1992. The other individual named on the declaration page was the plaintiff, Anthony Mallane (Plaintiff). The policy also contained a heading entitled "driver's name." Under this heading, both Anthony and Gregory Mallane were listed. Apparently, Plaintiff's name was placed on the declaration page at the request of the agent for the insurance policy. This listing of Plaintiff did not, however, increase the policy premiums.<sup>5</sup>

On March 13, 1992, Plaintiff sustained severe personal injuries while riding as a passenger in a vehicle operated by James W. Donahue. Donahue's vehicle was uninsured, and consequently, Plaintiff claimed uninsured-motorist benefits under the policy issued to Gregory Mallane.<sup>6</sup> Thereafter, Holyoke refused to pay

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1. R.I. Gen. Laws § 27-7-2.1 (1979).

2. *Aldcroft v. Fidelity & Cas. Co.*, 259 A.2d 408, 413 (R.I. 1969); *Malo v. Aetna Cas. & Sur. Co.*, 459 A.2d 954, 956 (R.I. 1983).

3. 658 A.2d 18 (R.I. 1995).

4. *Id.* at 21.

5. *Id.* at 19.

6. *Id.*



Plaintiff's claim and Plaintiff filed a declaratory judgment action against Holyoke in superior court.<sup>7</sup>

The superior court granted Plaintiff's summary judgment motion, holding that he was an insured because he was listed as a driver on the declarations page of the policy.<sup>8</sup> The issue on appeal was whether Plaintiff was entitled to uninsured-motorist coverage under the insurance policy.<sup>9</sup>

#### BACKGROUND

The Uninsured Motorist Legislation was enacted so that, as a matter of public policy, protection would be given to the named insured against economic loss resulting from injuries sustained by reason of the negligent operation of uninsured motor vehicles or hit-and-run motor vehicles.<sup>10</sup> It has been held that the primary object of the uninsured legislation is to indemnify the insured's loss rather than defeat his claim.<sup>11</sup> As such, in reaching their decision, the court was faced with a presumption of coverage in favor of Plaintiff.<sup>12</sup>

In 1994, the Supreme Court of New Jersey was faced with a similar situation in *Lehroff v. Aetna Casualty and Surety Company*.<sup>13</sup> In *Lehroff*, the declarations page of an automobile policy listed the plaintiff as a driver, and the definition of "covered person" mirrored the policy at issue in this matter.<sup>14</sup> "Although the plaintiff in *Lehroff* did not fit the definition of a "covered person" under the policy, he was entitled to recover under uninsured motorist coverage because he was listed as a driver on the declarations page."<sup>15</sup> Furthermore, the New Jersey Supreme Court stated that a "typical automobile policyholder would understand and expect from the declarations page of this policy that each of the listed

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7. *Id.*

8. *Id.*

9. *Id.* at 20.

10. *Aldcroft v. Fidelity & Cas. Co.*, 259 A.2d 408 (R.I. 1969); *Malo v. Aetna Cas. & Sur. Co.*, 459 A.2d 954 (R.I. 1983) (interpreting R.I. Gen. Laws. § 27-7-2.1 (1979)).

11. *Ditata v. Aetna Cas. & Sur. Co.*, 542 A.2d 245, 247 (R.I. 1988); R.I. Gen. Laws § 27-7-2.1 (1979).

12. *Mallane*, 658 A.2d at 20; see also, *Aldcroft*, *supra* note 11; *Ditata*, *supra* note 12.

13. 638 A.2d 889, 892-893 (N.J. 1994).

14. *Mallane*, 658 A.2d at 21 (citing *Lehroff*, 638 A.2d at 891).

15. *Id.* (citing *Lehroff*, 638 A.2d at 891-893.)

drivers was entitled to all of the coverages and all of the protections afforded by the policy."<sup>16</sup>

#### ANALYSIS AND HOLDING

Initially, the court, utilizing traditional rules of insurance policy construction, stated that in order to determine whether an insurance policy is ambiguous, the policy is read in its entirety, giving words their plain, ordinary, and usual meaning.<sup>17</sup> Secondly, if insurance policy terms are ambiguous or capable of more than one meaning, the policy will be strictly construed in favor of the insured and against the insurer.<sup>18</sup>

In *Mallane*, the court concluded that the listing of the drivers' names on the declarations page, without more, gives rise to an ambiguity in respect to whether such drivers are in fact covered under the terms of the policy.<sup>19</sup> Having concluded that the policy was ambiguous, the court next determined that the trial court properly construed the contract and, in doing so, gave the words their plain and ordinary meaning while resolving all ambiguities against the insurer.<sup>20</sup> Finally, the court, relying upon public policy, stated that the reasonable expectations of coverage raised by the declarations page cannot be contradicted by the policy's boilerplate language unless the declarations page itself clearly warns the insured party.<sup>21</sup>

16. *Id.* (quoting *Lehroff*, 638 A.2d at 893.)

17. *Aetna Casualty & Sur. v. Sullivan*, 633 A.2d 684, 686 (R.I. 1994); *Amica Mut. Ins. Co. v. Streicker*, 583 A.2d 550, 551-552 (R.I. 1990); *Bush v. Nationwide Mut. Ins. Co.*, 448 A.2d 782, 784 (R.I. 1982); *Nagy v. Lumbermens Mut. Cas. Co.*, 219 A.2d 396, 398 (R.I. 1966); *Gleason v. Merchants Mut. Ins. Co.*, 589 F.Supp. 1474, 1481 (D.R.I. 1984) (court will not employ "mental gymnastics" in order to find ambiguity in policy where none is present).

18. *Aetna Cas. & Sur. Co. v. Sullivan*, 633 A.2d 684, 686 (R.I. 1993); *Bartlett v. Amica Mut. Ins. Co.*, 593 A.2d 45, 47 (R.I. 1991); *Bush v. Nationwide Mut. Ins. Co.*, 448 A.2d 782, 784 (R.I. 1990).

19. *Mallane*, 658 A.2d at 20; see *Sentry Ins. Co. v. Grenga*, 556 A.2d 998, 999 (R.I. 1989) (ambiguity in policy where term "underinsured coverage" used on declarations page was not mentioned or defined in policy or in "plain talk" pamphlet).

20. *Mallane*, 658 A.2d at 21.

21. *Id.*; see also *Elliot Leases Cars, Inc. v. Quigley*, 373 A.2d 810, 812 (R.I. 1977) (holding that an "ordinary reader," in the face of such detail, would be warranted in concluding that any significant limitation on collision insurance would have been explicitly noted).

## CONCLUSION

In as much as this case is one of first impression for Rhode Island, it is of substantial significance to state insurance law practitioners. The court sets out how "covered person" and "named drivers" relate on uninsured motorist coverage questions. In adopting a decision based upon well-settled laws of policy construction as well as public policy, the court held that a reasonable person would assume coverage under the facts presented and, as such, a driver listed on the declarations page is "insured" and entitled to uninsured motorist coverage.

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**Insurance Law.** *Peerless Ins. Co. v. Doyle*, 653 A.2d 70 (R.I. 1995). Loss-payee clause in an automobile insurance policy entitled secured lender to recover under policy for theft of automobile, despite the fact that the insured misrepresented the true state of ownership of vehicle.

Prior to *Peerless Ins. Co. v. Doyle*,<sup>1</sup> the Rhode Island Supreme Court had declared that with respect to insurance policies, namely fire insurance policies, that a loss-payee clause creates a separate agreement between an insurance company and a mortgagee.<sup>2</sup> In *Peerless*, the court was to determine whether the loss-payee clause entitled a secured lender to recover under a policy for the theft of an automobile when the insured misrepresented the true state of ownership of the vehicle. The court held that, despite the misrepresentation, the secured lender was entitled to recovery under the clause.<sup>3</sup>

#### FACTS AND TRAVEL

Paul and Doris Doyle were the named insureds in an insurance policy provided by the Peerless Insurance Company (Peerless).<sup>4</sup> The policy covered *inter alia* losses for fire and theft. During the coverage period, the subject vehicle was stolen from the Lincoln Mall while under the control of Gregory Doyle (the son of the named insured), who was not named in the policy.<sup>5</sup> Apparently, Paul and Doris Doyle had concealed Gregory's interest in the automobile when obtaining the policy from Peerless.<sup>6</sup>

Thereafter, Peerless sought declaratory judgment from the superior court, seeking to deny recovery under the policy issued to the Doyles and Citizen Savings Bank ("Citizens") as loss payee<sup>7</sup> because of the misrepresentations made by the named insureds in applying for the policy. Citizens moved for summary judgment re-

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1. 653 A.2d 70 (R.I. 1995).

2. *Greater Providence Trust Co. v. Nationwide Mut. Fire Ins. Co.*, 355 A.2d 718 (R.I. 1976); *Old Colony Co-Op Bank v. Nationwide Mut. Fire Ins. Co.*, 332 A.2d 434 (R.I. 1975).

3. *Peerless*, 653 A.2d at 71.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* It was undisputed that Citizens had financed the purchase of the automobile and was not party to any misrepresentation made by the named insured.

lying upon the loss-payee clause contained in the insurance policy, which provided that the rights of the loss-payee should not become invalid because of the insured's fraudulent acts or omissions.<sup>8</sup> The superior court granted Citizens' motion and Peerless appealed. The issue presented on appeal was whether the loss-payee clause entitled Citizens, a secured lender, to recover under a policy for the theft of an automobile when the insured misrepresented the true state of ownership of the vehicle.

#### BACKGROUND

The Rhode Island Supreme Court in *Greater Providence Trust Co. v. Nationwide Mut. Fire Ins. Co.* declared that with respect to fire insurance policies, a loss-payee clause created a separate agreement between the insurance company and a mortgagee.<sup>9</sup>

In *Greater Providence Trust*, the Apex Auto Body, Inc. ("Apex") owned an apartment house located in Coventry.<sup>10</sup> The apartment house served as the headquarters of Apex's business and was subject to a first mortgage held by Centreville Savings Bank ("Centreville") and a second mortgage which had been given to the Greater Providence Trust Company ("Greater Providence").<sup>11</sup> The first mortgage was granted on June 4, 1969, and in September of 1970, Nationwide Insurance ("Nationwide") issued its fire policy on the premises listing Centreville as mortgagee.<sup>12</sup> Greater Providence's mortgage was executed on October 19, 1970.<sup>13</sup>

In September of 1971, a fire destroyed a portion of the apartment house.<sup>14</sup> Nationwide covered the fire loss by paying Apex.<sup>15</sup> Thereafter, Apex went into receivership and the controversy arose as to whether Nationwide should have paid Centreville as mortgagee, instead of Apex.<sup>16</sup> Subsequently, Centreville transferred its mortgage and note to Greater Providence an action to recover the amount lost which Nationwide had paid Apex, notwithstanding the

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8. *Peerless*, 653 A.2d at 71.

9. *Greater Providence Trust Co. v. Nationwide Mut. Fire Ins. Co.*, 355 A.2d 718 (R.I. 1976).

10. *Id.* at 719.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

standard mortgagee clause in the policy.<sup>17</sup> The supreme court held that the insurer was entitled to rely on a one year limitation in the insurance policy and that the conduct of the insurer in negotiating with the assignee did not estop the insurer from relying on the limitation.<sup>18</sup>

Similarly, in *Old Colony Co-Op Bank v. Nationwide Mut. Inc. Co.*,<sup>19</sup> an action was brought by the mortgagee directly against the fire insurer after a fire destroyed the mortgaged real property. The supreme court held that the statutory mortgagee notice requirement gave rise to a separate contract between the mortgagee and the insurer as well as the mortgagor and the insurer.<sup>20</sup> These two cases provided the requisite authority from which the court affirmed the granting of summary judgment in favor of Citizens.<sup>21</sup>

#### ANALYSIS AND HOLDING

The supreme court, in reaching their decision, stated that:

the public-policy principles involved in the foregoing cases are similar to those in respect to an agency or institution that has provided financing for the purchase of an automobile and who is named as loss payee in such policy. Consequently, we believe that those cases are persuasive in resolution of the instant controversy.<sup>22</sup>

Accordingly, the court affirmed the superior court's granting of summary judgment and held that Citizens, as loss payee, may recover under the policy for theft of the automobile despite the fact that the purchasers of the policy may have misrepresented the true state of ownership of the vehicle.<sup>23</sup>

#### CONCLUSION

While the state legislature has regulated the relationship between the loss payee and the insurer in fire insurance policies, no

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17. *Id.*

18. *Id.*

19. 322 A.2d 434 (R.I. 1975).

20. *Id.* at 436.

21. *Greater Providence Trust Co. v. Nationwide Mut. Fire Ins. Co.*, 355 A.2d 718 (R.I. 1975); *Old Colony Co-Op Bank v. Nationwide Mut. Fire Ins. Co.*, 332 A.2d 434 (R.I. 1975).

22. *Peerless*, 653 A.2d at 71.

23. *Id.*

such regulation existed for automobile policies. The supreme court, in holding that the loss-payee clause entitled the secured lender to recover under the policy for the theft of an automobile despite the insured's misrepresentations, addressed this gap concerning the loss-payee and insurer relationship.

Joseph T. Healey

**Insurance Law.** *Whitehouse v. Rumford Property and Liab. Ins. Co.*, 658 A.2d 506 (R.I. 1995). Superior Court lacks discretion to permit late claim against Insurers' Insolvency Fund Act.

The Insurers' Insolvency Fund Act<sup>1</sup> was passed in order "to provide a mechanism for the payment of covered claims under certain insurance policies . . . because of the insolvency of an insurer. . . ."<sup>2</sup> In *Whitehouse v. Rumford Property and Liab. Ins. Co.*,<sup>3</sup> the Rhode Island Supreme Court was asked to determine whether the superior court properly exercised discretion to allow Sprint Systems of Photography to file a claim beyond the bar date. The court held that the language of the statute was unambiguous and clearly evidenced a legislative intent to exclude any claim filed after the bar date. Accordingly, the court reversed the superior court's order stating that the court lacked discretion to permit a late claim.<sup>4</sup>

#### FACTS AND TRAVEL

Rumford Property and Liability Company (Rumford) provided multiperil insurance to Sprint Systems of Photography (Sprint) on an occurrence basis from September of 1989 through September of 1990.<sup>5</sup> On June 18, 1990, the superior court entered a decree declaring Rumford insolvent and canceling all service contracts as of July 18, 1990.<sup>6</sup> The court also ordered each creditor and claimant to file a written statement of any claim against Rumford with the appointed receiver by June 18, 1991.<sup>7</sup>

In November of 1992, Jill Englehardt (Englehardt) brought an action against Sprint, alleging that she sustained personal injuries in November of 1989, during the period Sprint was covered by the

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1. R.I. Gen. Laws § 27-34-2 (1994) states:

The purpose of this chapter is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, and to create an entity to assess the cost of such protection and distribute it equitably among member insurers.

2. *Id.*

3. 658 A.2d 506 (R.I. 1995).

4. *Id.* at 509.

5. *Id.* at 507.

6. *Id.*

7. *Id.*



occurrence policy.<sup>8</sup> Sprint received notice of Englehardt's suit for the first time in April of 1993 and forwarded notice to its agent. Thereafter, the agent forwarded notice to Rumford, in receivership, on May 5, 1993. After Rumford forwarded notice to the insolvency fund on May 13, 1993, the insolvency fund declined coverage on the basis that the time for filing had expired on June 18, 1991.<sup>9</sup>

When the receiver declined coverage for the claim, Sprint petitioned the superior court.<sup>10</sup> The insolvency fund intervened, and along with the receiver, objected to the petition.<sup>11</sup> "After a hearing, the superior court granted Sprint's petition in October of 1993, more that two years after the original bar date of June 18, 1993."<sup>12</sup> The issue, one of first impression for the court, was whether the superior court abused its discretion in allowing Sprint to file a claim beyond the bar date when Rhode Island General Laws section 27-34-8(a)(1)(iii) specifically prohibits any such late claim.<sup>13</sup>

#### BACKGROUND

The purpose of the Insurers' Insolvency Fund Act<sup>14</sup> is to provide a means for the payment of claims under certain insurance policies and to avoid financial loss to claimants or policyholders due to the insolvency of an insurer.<sup>15</sup> Furthermore, the act creates an entity to assess the cost of this protection and to distribute it among member insurers.<sup>16</sup> However, as the court in *Whitehouse* later held, such protection requires a degree of finality.<sup>17</sup>

Other jurisdictions with similar insolvency statutes have held that their courts lack jurisdiction to allow out-of-time claims.<sup>18</sup>

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*; R.I. Gen. Laws § 27-34-8(a) (iii) (1994) states, in part:

Notwithstanding any other provision of this chapter, a covered claim shall not include any claim filed with the fund after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

14. R.I. Gen. Laws § 27-34-1 *et seq.* (P.L.1970, ch. 166 § 1; P.L.1988, ch. 407, § 1).

15. R.I. Gen. Laws § 27-34-2 (1994).

16. *Id.*

17. *See infra* text and accompanying notes.

18. *See eg.*, *Kinder v. Pacific Public Carriers Co-op, Inc.*, 105 Cal. App. 3d 657, 663-664, 164 Cal. Rptr. 567, 570 (1980)(court holds third party liability claim

These decisions hold that although an insolvency act serves to eliminate risk for policyholders of doing business with an insolvent insurer, "there must be some degree of finality to the liquidation proceedings."<sup>19</sup> Otherwise, the allowance of claims after the set bar date would "unnecessarily prolong distribution of the insolvent insurer's assets to the detriment of other claimants and the guaranty association."<sup>20</sup>

#### ANALYSIS AND HOLDING

The court's final decision rested upon their construction of the statute and their determination of legislature's intent regarding the Insolvency Act. The particular section to be construed, Rhode Island General Laws section 27-34-8(a)(1)(iii), provides: "Notwithstanding any other provisions of this chapter, a covered claim shall not include any claim filed with the fund after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer."

The court in reaching its decision, followed well settled rules of statutory construction, effectuating the intent of the legislature by examining the statute in its entirety and giving words their plain and ordinary meaning.<sup>21</sup> Furthermore, the court stated, that when a statute is plain and clear, no interpretation by the court is required.<sup>22</sup>

From the clear language of the statute, the court held that there was "an unambiguous legislative intent to exclude any claim after the bar date."<sup>23</sup> Accordingly, the court rejected the arguments of Sprint and the Receiver because they contradicted the

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against insurer could not be extended beyond statutory deadline); *Satellite Bowl, Inc. v. Michigan Prop. & Cas. Guar. Assoc.*, 165 Mich. App. 768, 771-72, 419 N.W.2d 460, 462 (1988)(property and casualty guaranty association is obligated to accept only timely filed claims); *Jason v. Superintendent of Insurance*, 67 A.D.2d 850, 850-851, 413 N.Y.S.2d 17, 18 (1979)(physician not entitled to order deeming late proof of claim to be timely filed *nunc pro tunc* as of deadline); *Lake Hosp. Sys., Inc. v. Ohio Ins. Guar. Assoc.*, 69 Ohio St. 3d 521, 524-26, 634 N.E.2d 611, 614-15 (1994)(Ohio Insurance Guaranty Association has no discretion to entertain claims filed after final date set for filing in liquidation proceeding).

19. *Whitehouse*, 658 A.2d at 508 (quoting *Satellite Bowl*, 419 N.W.2d at 462).

20. *Id.* (quoting *Lake Hosp. Sys., Inc.*, 634 N.E.2d at 615).

21. *In re Falstaff Brewing Corp.*, 637 A.2d 1047, 1049 (R.I. 1994).

22. *Krupa v. Murray*, 557 A.2d 868, 869 (R.I. 1989).

23. *Whitehouse*, 658 A.2d at 508.

clear terms of the statute.<sup>24</sup> As such, there existed no basis upon which the superior court could exercise discretion under its equitable powers or under Rhode Island Superior Court Rule of Civil Procedure 6(b)<sup>25</sup> to permit a claim to be filed beyond the bar date of June 18, 1991.<sup>26</sup>

Consequently, notwithstanding the fact that the purpose of the act is to avoid financial loss because of the insolvency of the insurer,<sup>27</sup> the court was forced to give effect to the clear legislative intent of Rhode Island Gen. Laws section 27-34-8(a)(1)(iii), which prohibits any claim from being filed after the bar date.<sup>28</sup> Thus, the superior court lacked discretion to permit a claim against the insolvency fund when that claim was filed out of time.<sup>29</sup>

#### CONCLUSION

This case was one of first impression for the Rhode Island Supreme Court. Its holding, that a judge's equitable powers do not include the discretion to allow a late claim under the insolvency fund, will be of some consequence to Rhode Island insurance law practitioners. The court's conclusion was in accordance with well settled laws of statutory construction, and similar views have been adopted in several jurisdictions.

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24. *Id.*

25. *Id.*; R.I. Super. Ct. R. Civ. P. 6(b) states:

When by these rules or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was a result of excusable neglect or (3) permit the act to be done by stipulation of the parties; but it may not extend the time for taking action under Rules 52(b), 59(b), (d), and (e), 60(b), and 73(a) [repealed] except to the extent and under the conditions stated in them.

26. *Whitehouse*, 658 A.2d at 508.

27. R.I. Gen.Laws § 27-34-2 (1994).

28. *Whitehouse*, 658 A.2d at 509.

29. *Id.*