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1995 Supreme Court of Rhode Island Survey: Workers' Compensation

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Workers' Compensation. *Cianci v. Nationwide Insurance Company*, 659 A.2d 662 (R.I. 1995). Section 9-1-33 of Rhode Island General Laws held not to apply to actions by employees against a workers' compensation carrier.

Under section 28-36-5 of the Rhode Island General Laws: "[E]very [workers' compensation] policy shall cover the entire liability of the employer under . . . [the Workers' Compensation Act] and shall contain an agreement by the insurer to the effect that the insurer shall be directly and primarily liable to the employee. . . ."¹ In addition, section 9-1-33 states that "an *Insured* under any insurance policy . . . may bring an action against the insurer . . . when it is alleged that said insurer wrongfully and in bad faith refused to pay or settle a claim . . . or otherwise wrongfully and in bad faith refused to timely perform its obligations under said contract of insurance."² In *Cianci*, the Supreme Court of Rhode Island determined that the term "insured," as used within the context of section 9-1-33, was attributable only to an employer and not to an employee, and that an employee could not maintain a third party claim under the statute³

FACTS AND TRAVEL

Raymond Cianci ("Cianci") was the owner and employee of Ray Cianci, Inc. ("Employer").⁴ The employer had contracted with Na-

1. *Cianci v. Nationwide Insurance Company*, 659 A.2d 662, 665 (R.I. 1995); R.I. Gen. Laws § 28-36-5, G.L. 1956 (1986 Reenactment) provides:

Every policy shall cover the entire liability of the employer under chapters 29 - 38 of this title, and shall contain an agreement by the insurer to the effect that the insurer shall be directly and primarily liable to the employee and, in the event of his death, to his or her dependents, to pay to him, her, or them the compensation, if any, for which the employer is liable.

2. *Cianci*, 659 A.2d at 665 (quoting R.I. Gen. Law § 9-1-33 (a) G.L. 1956 (1994 Reenactment)) which provides:

Notwithstanding any law to the contrary, an insured under any insurance policy as set out in the general laws or otherwise may bring an action against the insurer issuing said policy, when it is alleged said insurer wrongfully and in bad faith refused to pay or settle a claim made pursuant to the provisions of said policy, or otherwise wrongfully and in bad faith refused to timely perform its obligations under said contract of insurance. . .

3. *Cianci*, 659 A.2d at 666.

4. *Id.* at 663.

tionwide Insurance Company ("Nationwide") for workers' compensation insurance coverage.⁵ On September 19, 1983, during the course of his employment, Cianci sustained burns and was hospitalized.⁶ Cianci filed a claim with Nationwide to compensate him for his injuries and workers' compensation benefits were paid without contest.⁷

In 1989, Cianci began to experience problems with his liver.⁸ He sought coverage from Nationwide alleging that his liver problems were a result of the transfusions he had received in connection with his burn accident.⁹ Cianci also claimed that he had contracted Hepatitis C from the transfusions.¹⁰ Nationwide denied these claims on the grounds that there existed no causal relationship between the blood transfusions and Cianci's liver damage.¹¹

In May 1990, Cianci filed a petition with the Rhode Island Workers' Compensation Court to amend the description of his prior burn injuries to include the liver problem.¹² In July 1990, Cianci underwent a liver transplant.¹³ On November 21, 1991, the Workers' Compensation Court granted Cianci's petition to amend and ordered payment of his medical bills related to the liver injury.¹⁴ Nationwide did not appeal the decision.¹⁵

On June 2, 1993, Cianci filed a complaint in the United States District Court against Nationwide.¹⁶ Cianci alleged breach of contract, breach of covenant of good faith and fair dealing, breach of fiduciary duties, and intentional infliction of emotional distress.¹⁷ Nationwide filed a motion to dismiss for lack of subject matter jurisdiction¹⁸ and for failure to state a claim¹⁹ because it did not con-

5. *Id.* at 664.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. Fed. R. Civ. P. 12(b)(1) (lack of jurisdiction over the subject matter).

19. Fed. R. Civ. P. 12(b)(6) (failure to state a claim upon which relief can be granted).

sider the plaintiff to be an *insured* under section 9-1-33.²⁰ The motion was referred to the United States Magistrate who recommended dismissal.²¹ Cianci objected to this recommendation and a United States District Court judge ordered Cianci and Nationwide to prepare facts and issues for certification by the Supreme Court of Rhode Island.²²

BACKGROUND

The Rhode Island legislature enacted sections 9-1-33 and 28-36-5 to delineate the responsibilities of the insurer to the employer and the employee.²³ In the event that a conflict occurs between the insured and the insurer, the statutes allow for claims to be made against the insurer.²⁴

More specifically, section 9-1-33 permits an insured to file claims against an insurance carrier when it is alleged that the carrier "wrongfully and in bad faith refused to pay or settle a claim . . ." or wrongfully refuses to timely perform its contractual obligations.²⁵ However, the statute fails to define the term insured. Thus, the primary issue before the Court in *Cianci* was the definition of insured.²⁶

Section 28-36-5 states that every policy will contain an agreement by which the employee may claim against the insurance carrier for compensation for which the employer is liable.²⁷ This section does not use the word, "insured", but rather refers specifically to employee.²⁸

20. *Cianci*, 659 A.2d at 664; R.I. Gen. Laws § 9-1-33.

21. *Cianci*, 659 A.2d at 664.

22. *Id.*

23. R.I. Gen. Laws §§ 9-1-33 and 28-36-5, G.L. 1956 (1986 Reenactment); *See, eg.*, *Bitgood v. Allstate Ins. Co.*, 481 A.2d 1001 (R.I. 1984); *Mustapha v. Liberty Mut. Ins. Co.*, 268 F.Supp. 890 (D.R.I. 1967).

24. R.I. Gen. Laws § 9-1-33, G.L.1956 (1986 Reenactment); *see supra* note 2.

25. *Id.*

26. 659 A.2d 662.

27. *Id.*

28. *Cianci*, 659 A.2d at 665-666 (holding that the liability of the employer is put on the insurer, but that does not mean that the employee becomes the insured).

ANALYSIS AND HOLDING

The Supreme Court of Rhode Island held that the "Legislature, in explicitly restricting the right to sue for a bad-faith refusal to pay a claim to an 'insured,' intended section 9-1-33 to apply only to those claimants who meet the technical insurance contract meaning" of the term.²⁹ Because the plaintiff was not a party to the contract, he was not an insured under the statute, and cannot pursue a claim under section 9-1-33.³⁰

In reaching its decision, the court analyzed the language of sections 9-1-33 and 28-36-5. The court recognized that section 28-36-5 uses the term "employer" rather than "insured" when referring to the employer.³¹ Section 9-1-33³² uses the term "insured," but does not refer to "employer" or "employee."³³ The court acknowledged that section 28-36-5³⁴ equates the liability of the employer and insurer but it does not equate the employee with the employer as insureds.³⁵ As a result, the court noted section 28-36-5 is not helpful in determining the intent of the legislature in section 9-1-33.³⁶

The court next examined the definition of *insured* in Colorado's Workers' Compensation statute.³⁷ In *Travelers Ins. Co. v. Savio*,³⁸ the Colorado Supreme Court examined language in the Colorado Workers' Compensation Act which is similar to the language in section 9-1-33³⁹ and equated an employee with an insured.⁴⁰ The Supreme Court of Rhode Island distinguished *Savio*⁴¹ from the instant case on the basis that; (1) *Savio* was considered a first-party claim for benefits and (2) *Savio* never concluded that an employee was an insured.⁴² Thus, *Savio* could not help dispose of the issue.

29. *Id.*

30. *Id.*

31. R.I. Gen. Law § 28-36-5, G.L.1956 (1986 Reenactment).

32. R.I. Gen. Laws § 9-1-33, G.L.1956 (1986 Reenactment).

33. *Cianci*, 659 A.2d at 665.

34. R.I. Gen. Laws § 28-36-5 (1956, 1986 Reenactment).

35. *Cianci*, 659 A.2d at 666.

36. *Id.*

37. *Id.*; See Colo. Rev. Stat. Ann. § 8-40-101 *et seq* (West 1990).

38. 706 P.2d 1258 (Colo. 1985).

39. R.I. Gen. Laws § 9-1-33, G.L.1956 (1986 Reenactment).

40. *Cianci*, 659 A.2d at 666; *see also*, *Savio*, 706 P.2d at 1272.

41. *Savio*, 706 P.2d at 1258.

42. *Cianci*, 659 A.2d at 666.

The Supreme Court of Rhode Island ultimately based its decision on the relationship of the parties to the insurance contract. The court recognized that the employee is not a party⁴³ to the contract and thus, must be considered a "third-party beneficiary."⁴⁴ Because section 9-1-33⁴⁵ uses the term "insured" specifically, the court "believed" that the Legislature intended that term to refer only to the "technical insurance-contract meaning of the term."⁴⁶ As a result, the court held that Cianci could not pursue a claim under section 9-1-33 because he was a third-party beneficiary, not an insured.⁴⁷

The court went on to hold that any obligation to deal in good faith runs solely to the employer.⁴⁸ Therefore, the employee may not maintain a third-party claim against the insurer for failure to deal in good faith.⁴⁹ In addition, the court stated that the relationship between the employee and the insurer is most likely an adversarial relationship, one which carries no duty on the part of either party to deal in good faith.⁵⁰

Lastly, the court further clarified its position that there is no intentional tort exception to the exclusivity provisions⁵¹ of the Rhode Island Workers' Compensation Act.⁵² In resolving this aspect of Cianci's claim, the court noted that "[w]orkers' compensation benefits are meant as full compensation for any loss or harm that is alleged to have been caused by any entity to which immunity from suit is extended under section 28-29-20.⁵³ As such, an employee covered under the workers' compensation act has no cause of action against the insurance carrier "because the act expressly immunizes the carrier from liability under any common

43. The Court notes that a party to the insurance contract is one who participates in the making of the contract and its terms. *Cianci*, 659 A.2d at 666.

44. *Id.*

45. R.I. Gen. Laws § 9-1-33, G.L.1956 (1986 Reenactment).

46. *Cianci*, 659 A.2d at 666.

47. *Id.*

48. *Id.* at 667.

49. *Id.*

50. *Id.*

51. The exclusivity provisions state that the an employee's remedies for work related injuries are restricted to those within the Workers' Compensation Act. R.I. Gen. Laws § 28-29-17, G.L.1956 (1986 Reenactment).

52. *Cianci*, 659 A.2d. at 668.

53. *Id.* at 669 (quoting *DiQuinzio v. Panciera Lease Co.*, 612 A.2d 40, 42 (R.I. 1992)).

law suit."⁵⁴ This final holding grants the insurance carrier of the employer the same protections afforded the employer by the Act.⁵⁵

CONCLUSION

As a result of the court's holding in *Cianci*, section 9-1-33 is interpreted as pertaining solely to the parties of the insurance contract, namely the employer and the carrier. Although this interpretation is justified and in complete conformity with the letter of the statute, the result is that a mistreated employee's only available remedies fall under the purview of the workers' compensation court.

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54. *Cianci*, 659 A.2d at 669-70.

55. *Id.* at 668.