RHODE ISLAND

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I. MECHANICS' LIEN BASICS

Chapter 28 of Title 34 of the Rhode Island General Laws, Rhode Island's Mechanics' Lien law provides a statutory remedy for recovery to any person who has contributed either labor or materials used in the improvement of property upon consent of its owner. *See* R.I. Gen. Laws §§ 34-28-1 through 34-28-66. The Mechanics' Lien Law is in derogation of the common law and is therefore strictly construed. *Frank N. Gustafson & Sons v. Walek*, 599 A.2d 730, 732 (R.I. 1991); *Art Metal Construction Co. v. Knight*, 185 A. 136, 144 (R.I. 1936). It creates a lien in favor of contractors, subcontractors, engineers, architects, and material suppliers, among others, who contribute labor or materials used in the construction or improvement of property. §§ 34-28-1 through 34-28-3.1. The purpose of the mechanic's lien law is to provide a "liberal remedy to all who have contributed labor or material towards adding to the value of the property to which the lien attaches." *Roofing Concepts, Inc. v. Barry*, 559 A.2d 1059, 1061 (R.I. 1989)(quotations omitted). A bare rental of equipment will not serve as the basis for a mechanic's lien. *Logan Equipment Corp. v. Profile Constr. Co.*, 585 A.2d 73, 1991 R.I. LEXIS 9 (R.I. 1991). Liens may attach to all projects involving private property, but may not attach to public works projects. § 34-28-31.

A. REQUIREMENTS

A mechanics' lien attaches to the property "when the work begins or the materials are furnished." *Gem Plumbing & Heating Co., Inc. v. Rossi*, 867 A.2d 796, 803 (R.I. 2005). The lien is not self-executing. There are numerous statutory requirements for a mechanic's lien to be enforceable. To perfect a lien, the claimant must: (1) mail, within 200 days after performing the work or furnishing the materials, notice of intention to claim a mechanics' lien to the property owner; and (2) file a copy of the notice mailed to the property owner in the records of the land evidence in the city or town in which the land generally described in such notice is located. § 34-28-4(a). Section 34-28-4(b) lists the information required in the lien notice and Section 34-28-4(c) provides a model form of notice. A lien notice will cover all the work or all work performed in the 200 days preceding the lien notice's filing as well as work performed in the future. § 34-28-10(a). The 200-day restriction does not apply to retainage withheld. *See J.D. Cement Works, Inc. v. SBER Royal Mills, LLC*, 2010 WL 331966 (R.I. Super. Jan. 22, 2010) (holding that retainage is the portion of a contract's final payment withheld by the principal until the project is complete, satisfies all contract terms, and all mechanic's liens have either been released or expired.) Further, contractors, engineers, and architects contracting with the owner or lessee must give notice prior

to the commencement of work or delivery of materials for construction that a mechanics' lien may result in the event of non-payment. §§ 34-28-4.1; 34-28-7. Such notice may be either conspicuously included in a written contract, or mailed via certified mail, return receipt requested. § 34-28-4.1.

B. ENFORCEMENT AND FORECLOSURE

1. ENFORCEMENT

Following notice and recording, the lien-holder must take the following steps to enforce the lien. Within forty days of perfecting the lien, the lien-holder must file a complaint in the Superior Court. § 34-28-10; *see also Gem Plumbing & Heating Co., Inc.*, 867 A.2d at 804. The lien-holder must file a notice of *lis pendens* in the land records office of the city or town in which the land is located. § 34-28-10. Sections 34-28-13 and 34-28-11 provides forms for the complaint and *lis pendens.*

Upon filing the complaint, the clerk of the Superior Court places one advertisement in the newspaper notifying all persons who have a lien or any title, claim, lease, mortgage, attachment, or other encumbrance, or any unrecorded claim on any part of the same property, to respond to the court and make their demands against the property. § 34-28-14. To dismiss the complaint and release the lien, the landowner may pay into the registry of the court, in the county in which the land is located, cash equal to the total amount noticed by the lien-holder and accounts and demands of any person claiming a mechanics' lien as well as costs, interest and reasonable attorneys' fees. § 34-28-17. On proof of proper payment or deposit and upon motion by the owner of the property, any Superior Court justice can, by *ex parte* order, discharge the notice of intention and the *lis pendens* and dismiss the cause of action. *Id*. Payment of sums deposited in the registry to lien-holders are governed by the terms of § 34-28-17.

Section 34-28-17.1 provides the landowner additional safeguards in which they are able to petition for a 'prompt' show cause hearing, at which the lien-holder has the burden of establishing the lien's validity. *Gem Plumbing & Heating Co., Inc*., 867 A.2d at 812.

2. FORECLOSURE

The filing of a petition under the Mechanics' Lien Law suspends a mortgage holder's power of sale. § 34-28-10(b). Instead, following the filing of the complaint and *lis pendens* pursuant to § 34-28-10, a mortgage holder having priority over a mechanics' lien may petition, at any time, for foreclosure to exercise the power of sale after notice to all interested parties that the mortgage is valid, entitled to priority, and in default. § 34-28-16.1.

For holders of mechanics' liens, the court, upon motion by any party claiming to have a lien or encumbrance on the property, may direct that the property be sold under the direction of a special master appointed for that purpose, with the proceeds directed to all holders of interest according to their priority. § 34-28-21 (priority is determined pursuant to § 34-28-25). Directing costs of the proceedings between the parties is within the discretion of the court, and the court may also allow for attorneys' fees to a prevailing party. § 34-28-19.

C. ABILITY TO WAIVE AND LIMITATIONS ON LIEN RIGHTS

Contractual waiver of a party's right to file a mechanics' lien is expressly prohibited by statute, as such a waiver would be against public policy, and is therefore void and unenforceable. § 34-28-1(b).

II. PUBLIC PROJECT CLAIMS

A. STATE AND LOCAL PUBLIC WORK

The State of Rhode Island requires that all public works projects, in excess of fifty thousand dollars ($50,000) be bonded. § 37-13-14. The statute was enacted because Rhode Island law prohibits placing a mechanics' lien on a public works project. § 34-28-31. Instead, there are two alternative paths that a contractor, subcontractor, or supplier may take in pursuit of a remedy for non-payment on a state or local public work project: (1) a suit on the bond pursuant to R.I. Gen. Laws § 34-28-30; or (2) a suit on the bond pursuant to § 37-12-2.

1. SECTION 34-28-30

A mechanics lien cannot attach to any improvement to land if the state or any city or town is the owner of the land or is performing the construction. § 34-28-31. Instead, state laws require the general contractor to post a bond. All claims for unpaid labor must then be made against the bond. § 34-28-30. Any person or entity who does any work on a public project or provides materials may bring a lawsuit in his own name on the bond against any party to the bond. § 34-28-30. This is so despite the fact that no notice of intention was provided under § 34-28-4 and the claimant is not a party to the bond. *Id.* Section 34-28-30 "was clearly designed to remove several of the traditional impediments to recovery on a labor and material bond. Most significantly, the statute abrogates the privity and notice requirements of [§ 37-12-2]." *Vaudreuil v. Nelson Eng. & Constr. C.*, 399 A.2d 1220, 1222 (R.I. 1979). Additionally, the Rhode Island Supreme Court, recognizing that the statute contains no statute of limitations, upheld a one-year limitations period contained in the provisions of the bond. *Vaudreuil*, 399 A.2d at 1220; *H.W. Ellis, Inc. v. Ins. Co. of N.A.*, P.C. 87-1967, 1988 WL 1016819, at *2 (R.I. Super. Jan. 26, 1988).

a. NOTICES AND ENFORCEMENT

A claimant under R.I. Gen. Laws Ann. § 34-28-30 is not required to comply with the notice provisions of chapter 12 of title 37. *Air Distribution Corp.*, 973 A.2d at 541 (citing *Providence Electric Co., v. Donatelli Building Co.*, 356 A.2d 483, 486 (R.I. 1976). Section 34-28-30 "was clearly designed to remove several of the traditional impediments to recovery on a labor and material bond. Most significantly the statute abrogates the privity and notice requirements of [§ 37-12-2]." *Vandreuil*, 399 A.2d at 1222.

2. SECTION 37-12-2

Alternatively, a suit on a bond may be brought pursuant to § 37-12-2. With respect to any public project costing in excess of $50,000, the general contractor, construction or project manager is required to furnish a surety bond to the state. § 37-12-1; *Air Distribution Corp.*, 973 A.2d at 539 n.2. If a contractor, subcontractor, or supplier has not been paid in full on a public project, then, after ninety (90) days from the last labor or materials that were provided, he may sue on the payment bond for the amount due. § 37-12-2. If a person has a direct contractual relationship with a subcontractor, but no relationship with the contractor who furnished the bond, then written notice must be given to the contractor within ninety (90) days from the last date of labor or materials were furnished. *Id.* The notice must state with substantial accuracy the amount claimed and the name of the party who owes the money. *Id*. The notice must be served by certified mail on the contractor that secured the bond. *Id*. There is a two (2) year statute of limitation, or the maximum time limit contained in the bond, whichever is longer, for bringing a claim pursuant to this section. § 37-12-5.

b. NOTICES AND ENFORCEMENT

The Rhode Island Supreme Court has held that the notice provisions in the statute must be adhered to in order to recover against the bond. *Worthington Air Conditioning Co. v. Lincoln & Lien, Co.*, 261 A.2d 853,856 (R.I. 1970). If ninety days has lapsed from the last day of work performed, then a first-tier subcontractor or supplier has a right to bring suit against the bond. If a second-tier subcontractor or supplier wishes to pursue its claim against the bond, then the subcontractor or supplier (with no direct contractual relationship with the general contractor) must give written notice via certified mail to the general contractor of its claim within ninety days of the last date material or labor was supplied by it.

B. CLAIM TO PUBLIC FUNDS

There is no provision allowing for a claim to public funds under Rhode Island law.

III. STATUTES OF LIMITATION AND REPOSE

A. STATUTE OF LIMITATIONS

Section 9-1-13 of the Rhode Island General Laws provides for a ten-year statute of limitations on actions not involving personal injury. R.I. Gen. Laws § 9-1-13. The limitations period of 9-1-13 "begins to run when the evidence of injury to property, resulting from the negligent act upon which the action is based, is sufficiently significant to alert the injured party to the possibility of a defect." *Boghossian v. Ferland Corp*., 600 A.2d 288, 290 (R.I. 1991) (quoting *Lee v. Morin*, 469 A.2d 358, 360 (R.I. 1983)). For claims involving personal injury, Rhode Island has a three-year statute of limitations pursuant to § 9-1-14(b).

There is a two-year statute of limitations pursuant to § 37-12-5 against a contractor's bond, unless a longer period is provided for in the bond. There is a ten-year statute of limitations for actions against contractors, engineers, or architects based on design. § 9-1-29.

Contribution and indemnity claims must be brought within one year of the accrual of the cause of action. R.I. Gen. Laws § 10-6-4; *Hawkins v. Gadoury*, 713 A.2d 799, 805 (R.I. 1998). The limitations period begins to run "after the first payment made by a joint tortfeasor which has discharged the common liability or is more than his or her pro rata share thereof." *Id*. at 801.

B. STATUTE OF REPOSE

Constructors of real property are immune from liability for causes of action brought "more than ten (10) years after substantial completion of such an improvement." § 9-1-29; *see also Boghossian*, 60 A.2d at 290. Section 9-1-29 of the Rhode Island General Laws "provides that those who seek to recover damages for negligence from architects, professional engineers, contractors, subcontractors, or materialmen arising as a result of the design or construction of an improvement to real property must bring their action within ten years of the substantial completion of the improvement." *Leeper v. Hillier Group, Architects Planners, P.A.*, 543 A.2d 258, 259 (R.I. 1998); *see also Boghossian*, 600 A.2d at 290. The statute provides protection against certain classes of injuries from a workmanship deficiency, namely "injury to property, real or personal [, and] injury to the person . . . or [for] wrongful death." §§ 9-1-29(1)-(2). The statute also protects against suits "[f]or contribution or indemnification." § 9-1-29(3). Recently, the Court stated ten (10) year statute of limitations after substantial improvements applies to the original contracting owner and any subsequent purchasers. *Mondoux v. Vanghel,* 243 A.3d 1039, 1044 (R.I. 2021).

Importantly, § 9-1-29 does not protect against those actions "sounding in contract," even if brought more than ten years after substantial completion of the improvement. *Boghossian*, 600 A.2d at 290; *Nichols v. R.R. Beaufort & Associates*, 727 A.2d 174, 176-82, n. 6 (R.I. 1999). Thus, actions brought to enforce the implied warranty of habitability are not subject to the ten-year statute of repose. *Boghossian*, 600 A.2d at 290.

IV. PRE-SUIT NOTICE OF CLAIM AND OPPORTUNITY TO CURE

In the construction context, there is no specific statue under Rhode Island law that provides for a pre-suit notice of claim and opportunity to cure. If, however, a person is injured on a highway or bridge, they must within sixty (60) days, give to the town by law obliged to keep the highway, causeway, or bridge in repair, notice of the time, place, and cause of the injury or damage. 45 R.I. Gen. Laws Ann. § 45-15-9.

However, for contracts for the sale of goods, a buyer must provide notice of an alleged defect within a reasonable time to the seller in order to pursue a breach of warranty claim. R.I. Gen. Laws § 6A-2-605. Also, when the sale of goods are involved, and "where any tender or delivery by the seller is rejected because [it is] nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his or her intention to cure and may then within the contract time make a conforming delivery." § 6A-2-508. Additionally, if the buyer rejects a nonconforming tender that the "seller had reasonable grounds to believe would be acceptable…the seller may, if he or she seasonably notifies the buyer, have a further reasonable time to submit the nonconforming tender." *Id*.

V. INSURANCE COVERAGE AND ALLOCATION ISSUES

A. GENERAL COVERAGE ISSUES

Coverage under commercial general liability policies is "designed to protect the insured from losses arising out of business operations." *Industrial Water Park Co. v. National Fire Ins., Co.,* 2005 WL 372298 at *4 (R.I. Super. Ct. Feb. 9, 2005).

B. TRIGGER OF COVERAGE

Under Rhode Island law, "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 in the exercise of reasonable diligence is discoverable." *CPC International v. Northbrook Excess & Surplus Ins. Co.*, 668 A.2d 647, 650 (R.I. 1995). Accordingly, coverage is triggered when the property damage: "(1) manifests itself; (2) is discoverable; or (3) in the exercise of reasonable diligence is discoverable." *Truk-Away of Rhode Island, Inc. v. Aetna Casualty & Surety Co.,* 723 A.2d 309, 313 (R.I. 1999) (quoting *CPC International*, 668 A.2d at 649). Once triggered, an insurer's duty to defend "continues until the coverage question is resolved either by the establishment of facts showing no potential for coverage or by the conclusion of the underlying lawsuit." *Travelers Cas. & Sur. Co. v. Providence Washington Ins. Co.*, 685 F.3d 22, 25 (1st Cir. 2012) (citing *Shelby Ins. Co. v. Ne. Structures, Inc.*, 767 A.2d 75, 77 (R.I. 2001)).

Where a plaintiff asserts coverage based upon damage discoverable in the exercise of reasonable diligence, the plaintiff must have had some reason to discover the damage and must actually have been able to discover it in the exercise of reasonable diligence. *Id.* at 1114. Finally, a continuous activity constitutes only one occurrence for purposes of an insurance policy. *Truk-Away of R.I., Inc. v. Aetna Casualty & Surety Co.*, 723 A.2d 309, 313 (R.I. 1999).

C. ALLOCATION AMONG INSURERS

In circumstances where there are multiple potentially applicable insurance policies containing conflicting provisions, Rhode Island law, in general, allocates coverage on a *pro rata* basis. Thus, if each policy, among the multiple policies at issue, would provide primary coverage to an insured if it were the only applicable policy, and if they each contain conflicting insurance provisions, then the coverage responsibilities of all insurers are shared on a *pro rata* basis. *See Hindson v. Allstate Ins. Co.,* 694 A.2d 682, 683 (R.I. 1997); *see also, Irene Realty Corp. v. Travelers Property Casualty Co. of Am.*, 973 A.2d 1118, 1122 (R.I. 1997). Likewise, if each policy, among the multiple policies at issue, disclaims coverage on the basis of existence of another policy, then the coverage responsibilities of insurers are shared on a *pro rata* basis. *Ryan v. Knoller*, 695 A.2d 990, 995 (R.I. 1997). However, the "*pro rata* rule regarding apportionment of liability [among multiple insurance policies] should be restored to only if the *** insurance policies at issue are actually in conflict." *Irene Realty Corp*., 973 A.2d at 1123.

VI. CONTRACTUAL INDEMNIFICATION

Rhode Island law does not permit indemnification agreements in which the general contractor attempts to contract away liability for its own negligence. Any agreement that indemnifies a party for liability arising out of its own negligence is void. Section 6-34-1 of the Rhode Island General Laws states that any indemnification contract

> purporting to indemnify the promise [general contractor], the promisee's independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence of the promisee, the promisee's independent contractors, agents, employees, or indemnitees, is against public policy and is void.

R.I. Gen. Laws § 6-34-1.

"This statute, by its express terms, invalidates any agreement in which a party seeks indemnification from another for the consequences of its own or its agent's negligence." *Cosentino v. A.F. Lusi Const. Co.*, 485 A.2d 105, 107 (R.I. 1984).

Section 6-34-1, however, does not prohibit indemnification agreements in which the subcontractor agrees to indemnify the general contractor against the subcontractor's own negligence. *Cosentino v. A.F. Lusi Const. Co., Inc*., 485 A.2d 105, 107 (R.I. 1984). Therefore, because an indemnification agreement prohibited by 6-34-1 may nevertheless be enforceable in part, apportionment of fault between the contractor and subcontractor is critical to determining whether and to what extent such a mixed agreement is enforceable. *See id.* (remanding for apportionment of negligence). Finally, 6-34-1 "shall not affect the validity of any insurance contract, worker's compensation agreement, or an agreement issued by an insurer" regarding indemnification. §6-34-1.

VII. CONTINGENT PAYMENT AGREEMENTS

The Rhode Island Supreme Court has not ruled on this issue. Likewise, there are no statutory provisions in Rhode Island regarding contingent payment agreements or "pay-when-paid" clauses. Contingent payment agreements, or "pay-when-paid" clauses, are generally found in construction contracts and provide that a subcontractor will be paid for its work only if and when the general contractor receives payment. *See Allstate Interiors & Exteriors, Inc. v. Stonestreet Construction, LLC*, 907 F.Supp.2d 216, 226 (D.R.I. 2012).

Although neither Rhode Island state courts nor the Rhode Island General Assembly have yet addressed "pay-when-paid" clauses, the United States District Court for the District of Rhode Island has addressed them in several cases. *See id.* Notably, the District Court has followed well-established precedent that a "pay-when-paid clause . . . does not foreclose a subcontractor's right

to bring suit for payment under the Miller Act against a general contractor and its surety." *See United States ex rel. J.H. Lynch & Sons, Inc. v. Travelers Casualty & Surety Co.*, 783 F.Supp. 2d 294, 298 (D.R.I. 2011). In keeping with this and other established principals of law, Rhode Island state courts would likely find that "pay-when-paid" clauses are nonetheless valid "where the language of the contract in question is clear on its face" and unambiguous. *Universal Concrete Products Corp. v. Turner Construction Co.*, 595 F.3d 527, 529-30 (4th Cir. 2010) (applying Virginia law); *see also* Philip L. Bruner & Patrick J. O'Connor, JR., *Construction Law* §§ 8:48, 8:49 (2002).

VIII. SCOPE OF DAMAGE RECOVERY

A. PERSONAL INJURY DAMAGES VS CONSTRUCTION DEFECT DAMAGES

Rhode Island courts assess personal injury damages and construction defect damages in the same manner:

> The question of the amount of damages is important, as well as that of liability, and the trial court is * * * duty bound to give it serious consideration, keeping in mind that the burden upon the plaintiff to prove the damages by a preponderance of the evidence. A plaintiff should be compensated for all his damages of which the defendants' negligence was the proximate cause, but no claim for damages should be allowed to stand where such claim is not supported by the required degree of proof, or is speculative, or imaginary, or is clearly attributable to other causes.

Perroti v. Gonicberg, 877 A.2d 631, 636 (R.I. 2005)(internal citations omitted).

B. ATTORNEY'S FEES SHIFTING AND LIMITATIONS ON RECOVERY

Under Rhode Island law, absent contractual or statutory authorization, attorney's fees may not be awarded. *Pearson v. Pearson*, 11 A.3d 103, 108-09 (R.I. 2011); *Blue Cross & Blue Shield of R.I. v. Najaran*, 911 A.2d 706, 710 (R.I. 2006). Rhode Island subscribes to the "American rule," under which attorneys' fees are not available absent certain narrow exceptions: (1) pursuant to the "common fund" exception; and (2) "as a sanction for willful disobedience of a court order"; or (3) when a party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Najarian*, 911 A.2d at 711 (citations and internal quotation marks omitted). If there is a basis for awarding fees, the decision of whether to do so rests in the trial judge's discretion. *Id.*at 710.

Pursuant to 9-1-45 of the Rhode Island General Laws, a court "may award reasonable attorney's fees to the prevailing party in any civil action arising from a breach of contract in which the court: (1) [f]inds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party; or (2) [r]enders a default judgment against the losing party." § 9-1-45.

C. CONSEQUENTIAL DAMAGES

Consequential damages, for breach of contract, are not recoverable under Rhode Island law unless they are foreseeable. *Carter v. Nassif*, 2000 WL 1910047 at *3 (R.I. Super. December 8, 2000); *Mellow v. Medical Malpractice Joint Underwriting Association of R.I.*, 1991 WL 789775 at *2-*3 (R.I. Super. April 5 1991) (citing *Hadley v. Baxendale*, 9 Exch. 341, 156 Eng. Rep. 145 (1854)); *see also Greene v. Creighton*, 7 R.I. 1, 10-12 (1861). Consequential damages are damages that "do not flow directly and immediately from an injurious act but that result indirectly from the act." *Riley v. Stafford*, 896 A.2d 701, 703 (R.I. 2006) (citing Black's Law Dictionary 416 (8th ed. 2004)).

D. DELAY AND DISRUPTION DAMAGES

Rhode Island law allows for the recovery of delay and disruption damages in contract actions. *See Clark-Fitzpatrick, Inc./Franki Foundation Co. v. Gill*, 652 A.2d 440 (R.I. 1994). Such damages are recoverable under ordinary damages principles so long as they can be "proven with a reasonable degree of certainty," and "the plaintiff *** establish[es] reasonably precise figures and [does not] rely upon speculation." *National Chain Co. v. Campbell*, 487 A.2d 132, 134 (R.I. 1985). Courts will "not deny a claimant recovery because the damages are difficult to determine as long as they are proven with reasonable certainty." *Id.* (*Desimone Elec., Inc. v. CMG, Inc.,* No. C.A. PM 01-6077, 2004 WL 422908, at *14 (R.I. Super. Feb. 9, 2004), *aff'd sub nom. DeSimone Elec., Inc. v. CMG, Inc., et al.*, 901 A.2d 613 (R.I. 2006)). "Proof of the cost to repair or replace defective work or complete incomplete work is generally made by demonstrating the actual cost which the owner has expended or expects to expend to have another contractor perform the work." *Id*. (citing Steven G.M. Stein, *Construction Law*, § 11.02[2][a] (2003)).

E. ECONOMIC LOSS DOCTRINE

The economic loss doctrine, which Rhode Island has adopted, provides that a "plaintiff may not recover [purely economic] damages under a negligence claim when the plaintiff has suffered no personal injury or property damage." *Franklin Grove Corp. v. Drexel*, 936 A.2d 1272, 1275 (R.I. 2007). "When parties have contracted to protect against potential economic liability, as is the case in the construction industry, contract principles override tort principles, and, thus, purely economic damages are not recoverable." *Id.* at 1275. In the absence of a contract between entities, the recovery of economic damages that are proximately caused by one of the entities is unavailable. *Id.* The consumer exception to the economic loss doctrine provides that the doctrine only applies to disputes involving commercial entities—it does not apply when the parties are consumers. *Id.* at 1276-77.

F. INTEREST

In all civil actions in Rhode Island, a party is entitled to prejudgment interest by statute at the annual rate of twelve percent (12%), determined from the "date the cause of action accrued." R.I. Gen. Laws § 9-21-10. No interest accrues on a judgment for punitive damages. *De Leo v. Anthony A. Nunes, Inc.*, 546 A.2d 1344, 1348 (R.I. 1988). Post-judgment interest also accrues at the rate of twelve percent (12%) per annum. § 6-26-1. A contract provision may provide for interest

for the use of money, or it may waive interest. However, such a provision has no bearing on "interest which by legislative fiat or decisional law is added to a judgment of damages for default in the payment of money due under a contract." *Villa v. Hedge*, 96 R.I. 52, 59, 188 A.2d 904, 908 (1963).

G. PUNITIVE DAMAGES

In actions for breach of contract, "punitive damages should be awarded only where [the] 'defendant's conduct requires deterrence and punishment *over and above* that provided in an award of compensatory damages.'" *Cady v. IMC Mortgage Co.*, 862 A.2d 202, 220 (R.I. 2004) (quoting *Palmisano v. Toth*, 624 A.2d 314, 318 (R.I. 1993)) (emphasis in original). "The party seeking punitive damages has the burden of producing 'evidence of such willfulness, recklessness or wickedness, on the part of the party at fault, as amounts to criminality, which for the good of society and warning to the individual, ought to be punished.'" *Palmisano*, 624 A.2d at 318 (R.I. 1993) (quoting *Sherman v. McDermott*, 114 R.I. 107, 109, 329 A.2d 195, 196 (1974)). Thus, punitive damages are only appropriate where there is "a showing that the defendant acted with malice or in bad faith. *Id.* (citing *Morin v. Aetna Casualty & Surety Co.*, 478 A.2d 964, 967 (R.I. 1984)). In the context of determining whether punitive damages are appropriate, malice is defined as an "intention to cause harm." *Wilson Auto Enterprises, Inc. v. Mobil Oil Corp.*, 778 F. Supp. 101, 107 (D.R.I. 1991). Under Rhode Island law, punitive damages are not insurable. *See Allen v. Simmons*, 533 A.2d 541, 542-44 (R.I. 1987).

H. LIQUIDATED DAMAGES

"It is generally held that where a contract is not for the mere payment of money and there is no certain measure of damages which would naturally result from a violation of the agreement in question, the parties may fix upon a sum in the nature of liquidated damages which shall be paid as compensation for breach of the agreement." *Muirhead v. Fairlawn Enter., Inc.*, 48 A.2d 414, 419 (R.I. 1946). This rule is used to enforce a liquidated damages clause when (1) the amount of damages caused by a breach are difficult to ascertain in advance and (2) the amount set as liquidated damages is fair and not out of proportion with the damage the party would likely sustain. *Omni-Combined W.E., LLC v. 20/20 Communications, Inc*., No. PB10-2530, 2012 WL 1957733, at *4 (R.I.Super. May 18, 2012) (citing *Psaty v. Furhman, Inc. v. Hous. Auth. Of Providence*, 68 A.2d 32, 38 (R.I. 1949)).

IX. CASE LAW AND LEGISLATION UPDATE

The Rhode Island General Assembly introduced and adopted a bill that requires all electrical work performed in the state to be done in accordance with the latest edition of the National Electrical Code and requires that the state building commission adopt the latest edition of the National Electric Code. 23 R.I. Gen. Laws Ann. § 23-27.3-100.1.5.

The Rhode Island General Assembly also adopted a bill that allows local authority to appoint one or more local full-time or part-time inspectors to assist the building official in the performance of his or her duties and in the enforcement of this code. 23 R.I. Gen. Laws Ann. § 23-

27.3-107.1.1. The inspectors listed in this section now have the authority to affix their signature to permits that pertain to the work they inspect. *Id.*

The Rhode Island Supreme Court in *Mondoux v. Vanghel*, expanded the holding in *Nichols* to apply to the original owner that is in privity with the part constructing the improvement. 243 A.3d 1039, 1044 (R.I. 2021). Prior to this ruling, subsequent owners could bring an implied warranty claim against those contracted to make the improvements within ten (10) years after "substantial completion". *Id.* The Court found there is no reason to distinguish between original and subsequent homeowners. *Id.* Additionally, the Court also noted that the ten (10) year statute of limitations period is "sufficient enough" to discover a latent defect and public policy favors their position. *Id.* at 1045.