

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: July 6, 2017]

SHIRLEY D’AMICO, Individually :  
and as Executrix for the ESTATE :  
OF FRANK D’AMICO, :  
*Plaintiff,* :

v. :

C.A. No. PC-12-0403

A.O. SMITH CORPORATION, et al., :  
*Defendants.* :

**DECISION**

**GIBNEY, P.J.** The Defendant—Grover S. Wormer Company (the Defendant or Grover Wormer) and Plaintiff Shirley D’Amico (the Plaintiff) presented oral argument before this Court on June 26, 2017. At that hearing, the Defendant brought its motion for summary judgment under Super. R. Civ. P. 56, but the parties also provided argument regarding discovery issues. The Plaintiff moved the Court to compel discovery regarding Defendant’s insurer, who retained defense counsel to bring and argue the motion for summary judgment originally before the Court. Since a critical portion of the arguments related to discovery issues, this Court will treat the arguments as a Motion to Compel pursuant to Super. R. Civ. P. 37.

**I**

**Parties’ Arguments**

The Plaintiff asks this Court to compel the name and information of Defendant’s insurer—an insurer that retained counsel in order to bring and argue a motion for summary judgment. The Plaintiff contends that such information is necessary for the Plaintiff to assess

whether or not a valid, direct claim exists against the insurer. Further, the Plaintiff maintains that such information is needed for her to properly brief arguments regarding potential liability of the insurer and whether such a claim against the insurer of a dissolved company is allowed under Rhode Island law.

On oral argument, defense counsel stated that he was retained by the unnamed insurer to bring a motion for summary judgment on Grover Wormer's behalf. Defense counsel maintains that the Plaintiff's request to compel the information of the insurer should be denied because such discovery is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Further, defense counsel argues that Plaintiff's direct claims against the insurer are not legally tenable under Rhode Island law and therefore, the request for the name and information of said insurer should be denied.

## II

### Standard of Review

The trial court is afforded broad discretion in handling discovery requests. Pastore v. Samson, 900 A.2d 1067, 1073–74 (R.I. 2006) (citing Cullen v. Town Council of Lincoln, 850 A.2d 900, 903 (R.I. 2004)). Underlying our discovery rules is the philosophy that “prior to trial, all data relevant to the pending controversy should be disclosed unless the data is privileged.” Cabral v. Arruda, 556 A.2d 47, 48 (R.I. 1989) (citing 8 Wright & Miller, Federal Practice and Procedure, Civil § 2001 at 15 (1970)). Rhode Island Rules of Civil Procedure 26(b)(1) states that, in general, the scope of discovery should be limited to matters “relevant to the subject matter involved in the pending action[.]” Super. R. Civ. P. 26(b)(1). Additionally, Rule 26(b)(1) states that “[i]t is not ground for objection that the information sought will be inadmissible at the

trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” See id.

### III

#### Analysis

Defense counsel contests the relevance of the insurer’s information and argues that—since the Plaintiff cannot sustain a direct claim against the insurer under Rhode Island law—such information is not reasonably calculated to lead to admissible evidence and, thus, should not be compelled. The Plaintiff maintains that such information is relevant and necessary for the Plaintiff to evaluate a potential direct claim against the insurer and to prepare legal arguments that such a claim is viable.

Rule 26(b) allows for the discovery of any relevant, unprivileged material. See Super. R. Civ. P. 26(b). Indeed, the Rhode Island Supreme Court has stated that such discovery rules are afforded a liberal application. See DeCarvalho v. Gonsalves, 106 R.I. 620, 627, 262 A.2d 630, 634 (1970). In DeCarvalho, the Court ordered the requested production of information and documents because the “proof required to adjudicate” the plaintiff’s claims could only be secured via the production of the documents requested. See id. at 628, 635. Additionally, the Rhode Island Supreme Court has stated that “[t]o be sure, the admissibility of evidence is not wholly irrelevant when determining discoverability; however, Rule 26(b)(1) requires only that the materials sought be ‘reasonably calculated to lead to the discovery of admissible evidence.’” See DeCurtis v. Visconti, Boren & Campbell, Ltd., 152 A.3d 413, 420 (R.I. 2017). With respect to the discovery of insurer information, Rule 26(b)(2) states that “[a] party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an

insurance business may be liable to satisfy part or all of a judgment . . . .” See Super. R. Civ. P. 26(b)(2).

In the present matter, the Plaintiff requests the name of the insurer who brought the original motion for summary judgment in order to amend her Complaint to include a direct action against the insurer; the Plaintiff asks for that information in order to brief and argue the issue of liability before the Court. The requested name and information regarding the insurer are relevant under Rhode Island’s liberal discovery rules and under Rule 26(b)(2)’s language relating to the discovery of insurer information. See Super. R. Civ. P. 26(b)(2) (stating that a party may obtain discovery of the existence of an insurance agreement when said insurance business may be liable); see also Henderson v. Newport Cty. Reg’l Young Men’s Christian Ass’n, 966 A.2d 1242, 1246 (R.I. 2009) (stating that the rules of civil procedure are specifically designed to promote broad discovery among parties).

While the requested information is clearly relevant to the Plaintiff’s claims, the Plaintiff cannot even brief the issue of a direct action against an insurer under Rhode Island law without first knowing the identity of the party actively opposing the present discovery request. This Court is satisfied that under Rhode Island’s liberal discovery rules, the requested information is discoverable. See id. Such discovery is permissible, and indeed necessary, under Rule 26(b)(2) in order for Plaintiff to present arguments on the liability of a dissolved corporation’s insurer under Rhode Island law. See Super. R. Civ. P. 26(b)(2).

#### IV

#### Conclusion

For these reasons, this Court grants the Plaintiff’s Motion to Compel regarding the name and information of Defendant’s insurer. The Defendant’s motion for summary judgment is

premature since the Court has ordered additional discovery; therefore, the Court will not address it at this time. Counsel shall submit the appropriate order for entry.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Shirley D’Amico, Individually and as Executrix for the Estate of Frank D’Amico v. A.O. Smith Corporation, et al.

**CASE NO:** PC-2012-0403

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** July 6, 2017

**JUSTICE/MAGISTRATE:** Gibney, P.J.

**ATTORNEYS:**

For Plaintiff: Vincent L. Greene, IV, Esq.; Robert J. McConnell, Esq.;  
Donald A. Migliori, Esq.

For Defendant: Brian D. Gross, Esq.; Andrew R. McConville, Esq.