STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 22, 2026)

RUSSELL A. PAONE, Individually and On behalf of the beneficiaries of the Estate of OLIVIA MORGAN PAONE, ***Plaintiff*****,**	:	
v.	:	**C.A. No. PC-2023-01104**
PROSPECT CHARTERCARE SJHSRI, LLC D/B/A FATIMA HOSPITAL; R.I. EAR, NOSE AND THROAT PHYSICIANS, INC.; MARTIN PAPAZIAN, M.D.; JOHN DOE; JANE DOE; CONNECTICUT HEALTHCARE INSURANCE COMPANY; LEXINGTON INSURANCE COMPANY; THE MEDICAL PROTECTIVE COMPANY; BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY; BERKLEY INSURANCE COMPANY; CONTINENTAL CASUALTY COMPANY, ***Defendants***.	:	

DECISION

LICHT, J. On March 3, 2023, Plaintiff, Russell A. Paone ("Mr. Paone") brought this action individually and on behalf of the beneficiaries of the Estate of Olivia Morgan Paone against Prospect Chartercare SJHSRI, LLC D/B/A Fatima Hospital ("Prospect"), R.I. Ear, Nose and Throat Physicians, Inc., Martin Papazian, M.D., and John and Jane Doe. (Compl.)

On January 11 and 12, 2025, Prospect filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"). (Pl.'s Mot. to Amend Compl. Ex. 1.) On January 27, 2026, pursuant to G.L. 1956 § 27-7-2.4, as amended, Mr. Paone amended his complaint to substitute Connecticut Healthcare Insurance Company

("CHIC"), Lexington Insurance Company, Berkley Insurance Company ("Berkley"), Berkshire Hathaway Specialty Insurance Company ("Berkshire"), Continental Casualty Company ("Continental"), and The Medical Protective Company ("Medical Protective") for Prospect. *See* Am. Compl. However, on May 5, 2026, subsequent to the filing of the Amended Complaint, CHIC also filed for bankruptcy. (Pl.'s Mem. in Opp'n to Defs.' Mot. to Dismiss ("Pl.'s Mem. in Opp'n") at 3.) Both bankruptcies were filed in the United States District Court for the Northern District of Texas. (Reinsurers' Mem. in Supp. of Mot. to Dismiss ("Reinsurers' Mem..") at 3.)

On March 30, 2026, Defendants Medical Protective, Berkshire, Berkley, and Continental (collectively referred to as "Reinsurers") moved to dismiss the amended complaint against them. Mr. Paone objected to the motion to dismiss on June 1, 2026. The Reinsurers submitted their reply in support of their motion on June 15, 2026. The Court heard oral argument on August 17, 2026. The Court reserved decision and subsequent to oral argument, *sua sponte*, raised the issue of the relevance of § 27-7-1 to this case and afforded the parties the opportunity to submit memoranda on the subject, which they did.

The Court heard oral argument on that issue on October 5, 2026.

I

Standard of Review

"'The sole function of a motion to dismiss is to test the sufficiency of the complaint.'" *EDC Investment, LLC v. UTGR, Inc.*, 275 A.3d 537, 542 (R.I. 2022) (quoting *Pontarelli v. Rhode Island Department of Elementary and Secondary Education*, 176 A.3d 472, 476 (R.I. 2018)). In ruling on a motion to dismiss, the trial justice is "confined to the four corners of the complaint and must assume all allegations are true, resolving any doubts in plaintiff's favor." *Narragansett Electric Co. v. Minardi*, 21 A.3d 274, 278 (R.I. 2011). "A Rule 12(b)(6) motion 'does not deal with the likelihood of success on the merits, but rather with the viability of a plaintiff's bare-bones

allegations and claims as they are set forth in the complaint.'" *Ferreira v. Child and Family Services*, 222 A.3d 69, 75 (R.I. 2019) (quoting *Hyatt v. Village House Convalescent Home, Inc.*, 880 A.2d 821, 823-24 (R.I. 2005)). '"A motion to dismiss may be granted only when it is established beyond a reasonable doubt that a party would not be entitled to relief from the defendant under any set of conceivable facts that could be proven in support of its claim."' *Chase v. Nationwide Mutual Fire Insurance Company*, 160 A.3d 970, 973 (R.I. 2017) (quoting *Tri-Town Construction Co. v. Commerce Park Associates 12, LLC*, 139 A.3d 467, 478 (R.I. 2016)).

"Ordinarily, when ruling on a motion to dismiss brought under Rule 12(b)(6) or Rule 12(c), 'a court may not consider any documents that are outside of the complaint, or not expressly incorporated therein, unless the motion is converted into one for summary judgment."' *Chase,* 160 A.3d at 973 (quoting *Alternative Energy, Inc. v. St. Paul Fire & Marine Insurance Co.,* 267 F.3d 30, 33 (1st Cir. 2001)). However, "[t]he *submission* of additional materials does not automatically result in conversion of a motion for judgment on the pleadings into a motion for summary judgment." *Payette v. Mortgage Electronic Registration Systems,* No. PC-2009-5875, 2011 WL 3794701, at *2 (R.I. Super. Aug. 22, 2011) (emphasis added). There is '"a narrow exception for documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiff's claim; or for documents sufficiently referred to in the complaint."' *Chase,* 160 A.3d at 973 (*quoting Alternative Energy, Inc.,* 267 F.3d at 33) (further internal quotation omitted); *see also* Robert B. Kent, et al., *Rhode Island Civil and Appellate Procedure with Commentaries,* § 10:3 at 115-16 (2021-2021 ed.) . "To be more precise, if 'a complaint's factual allegations are expressly linked to—and admittedly dependent upon—a document (the authenticity of which is not challenged), [then] that document effectively merges into the pleadings and the trial court can review it in deciding a motion to dismiss under Rule 12(b)(6).'" *Mokwenyei*

v. Rhode Island Hospital, 198 A.3d 17, 22 (R.I. 2018) (quoting *Jorge v. Rumsfeld*, 404 F.3d 556, 559 (1st Cir. 2005) (further quoting *Beddall v. State Street Bank and Trust Co.*, 137 F.3d 12, 17 (1st Cir. 1998)).

II

Findings of Fact and Conclusions of Law

A

Reinsurance

One of Prospect's insurers is CHIC. CHIC, in turn, sought facultative reinsurance contracts with the Reinsurers on Prospect. *See* Pl.'s Mot. to Amend Compl. Exs. 7, 8, 9, 10. "In a facultative reinsurance transaction, . . . the cedent [CHIC] sells 'all or a portion of the risk under a *single* insurance policy to the reinsurance provider.'" *National Indemnity Co. v. Global Reinsurance Corp. of America*, 803 F. Supp. 3d 789, 806 (D. Neb. 2025) (quoting *Global Reinsurance Corp. of America v. Century Indemnity Co.*, 22 F.4th 83, 88 (2d Cir. 2021)) (emphasis added).[1] The reinsurance "relationship created is strictly one of indemnification." *Travelers Indemnity Co. v. Scor Reinsurance Co.,* 62 F.3d 74, 76 (2d Cir. 1995) (internal citations omitted). "One insurer (a

[1] There are two basic kinds of reinsurance – treaty and facultative insurance.

> "'Under a reinsurance treaty, the cedent transfers to the reinsurer its risk under an entire line of business spanning multiple insurance policies[.]' *Global Reinsurance Corp. of America v. Century Indemnity Co.*, 30 N.Y.3d 508, 513, 91 N.E.3d 1186 (2017). 'Once a treaty is written, a reinsurer is bound to accept all of the policies under the block of business, including those as yet unwritten. Because a treaty reinsurer accepts an entire block of business, it does not assess the individual risks being reinsured; rather, it evaluates the overall risk pool.' *Pacific Employers Insurance Co. v. Global Reinsurance Corp. of America,* 693 F.3d 417, 421 (3d Cir. 2012)." *National Indemnity Co. v. Global Reinsurance Corp. of America*, 803 F. Supp. 3d 789, 806 (D. Neb. 2025).

'ceding insurer') 'cedes' all or part of the risk relating to a policy, or a group of policies, to a reinsurer." *Id.* "A portion of risk not 'ceded' is 'retained.'" *Id.* "The reinsurer indemnifies the ceding insurer for any liability incurred that is covered by the reinsurance." *Id.*

The Reinsurers contend they cannot be sued directly under § 27-7-2.4 because their policies are indemnity policies and thus they are not liability insurers. The Reinsurers submitted their reinsurance contracts with CHIC. Prospect is not a party to any of the contracts.

Continental's Certificate of Casualty Facultative Reinsurance to CHIC, the ceding company, in Section L, entitled Insolvency, states, "[i]n the event of the insolvency of [CHIC], the reinsurance provided by this Certificate shall be payable by the Reinsurer on the basis of the liability of the Company under the policy(ies) reinsured without diminution because of such insolvency *directly to the Company or its receiver, liquidator or statutory successor*." (Reinsurers' Mem. Ex. 2, at 6 (emphasis added).) It also provides, "[i]n no event shall anyone other than [CHIC] or, in the event of [CHIC's] insolvency, its liquidator, have any rights under this Certificate." *Id.* at 3.

Berkley's reinsurance contract with CHIC, Section C, entitled Insolvency, states "[e]xcept as may otherwise be agreed, in the event of the insolvency of the Reinsured, the reinsurance provided by this Certificate shall be payable by the Reinsurer *to the Reinsured's receiver, liquidator or statutory successor* as if the Reinsured Contracts had remained in full force and effect[.]" (Reinsurers' Mem. Ex. 1, at 5 (emphasis added).)

Berkshire's certificate included an Insolvency provision that explained, "[i]n the event of the insolvency of the Reinsured, the reinsurance provided by this Certificate shall be payable by the Reinsurer directly to the Reinsured or its liquidator, conservator, receiver or statutory successor ('Liquidator') on the basis of the liability of the Reinsured under the Policy(ies) without diminution

because of such insolvency." (BHSI Casualty Facultative Reinsurance Agreement and Conditions at 2.) The certificate also explains that it "is solely between the Reinsured and the Reinsurer. In no event shall anyone other than the Reinsured (or in the event of the Reinsured's insolvency its receiver, liquidator or statutory successor) have any rights under this Certificate." *Id*. at 3.

Medical Protective's insurance certificate states "[i]n the event of the insolvency of the Company, the reinsurance provided by this Certificate shall be payable directly to the Company, its liquidator, receiver, conservator or statutory successor on the basis of the liability of the Company without diminution because of the insolvency . . ." (Medical Protective's Certificate of Facultative Reinsurance at 8.)

B

Procedural Issues

Mr. Paone argues that additional discovery as to whether Reinsurers effectively functioned as liability insurers is required and thus the Court should deny the motion to dismiss. However, Mr. Paone did not file an affidavit pursuant to Rule 56(f) of the Superior Court Rules of Civil Procedure attesting that additional "facts essential to justify the party's opposition" were required to be found. *See* Super. R. Civ. P. 56(f). Mr. Paone did not request a continuance to allow for discovery.

As stated above, the Reinsurers submitted their certificates of insurance. The Court has not converted the Reinsurers' motion to dismiss into a motion for summary judgment because the reinsurance contracts submitted with the Reinsurers' motion to dismiss are central to Mr. Paone's claims. Mr. Paone asserts in his Amended Complaint that "[p]ursuant to R.I.G.L. § 27-7-2.4, Plaintiff substitutes Defendant Connecticut Healthcare Insurance Company; and . . . Defendant Berkley Insurance Company; and Defendant Berkshire Hathaway Specialty Insurance Company;

and Defendant Continental Casualty Company; and The Medical Protective Company for defendant PROSPECT CHARTERCARE SJHSRI, LLC D/B/A/ FATIMA HOSPITAL." (Am. Compl. ¶¶ 31, 39, 54, 58.) "This Court consistently has declared that central to the resolution of an insurance-coverage dispute is the interpretation of the policy as a whole." *Empire Fire & Marine Insurance Companies v. Citizens Insurance Co. of America/Hanover Insurance*, 43 A.3d 56, 60 (R.I. 2012) (internal citations omitted). Mr. Paone's allegations that the Reinsurers are liability insurers "are expressly linked to—and admittedly dependent upon—a document (the authenticity of which is not challenged), [then] that document effectively merges into the pleadings and the trial court can review it in deciding a motion to dismiss under Rule 12(b)(6)" of the Superior Court Rules of Civil Procedure. *See Mokwenyei*, 198 A.3d at 22 (internal quotation omitted). No one has challenged the reinsurance contracts' authenticity. Therefore, the Court can look at these documents and still proceed under the Rule 12(b)(6) standard and is not required to convert the motion into one for summary judgment.

C

Sections 27-7-2.4 and 27-7-1

Section 27-7-2.4 states "[a]ny person, having a claim because of damages of any kind caused by the tort of any other person, may file a complaint directly against the ***liability insurer*** of the alleged tortfeasor seeking compensation by way of a judgment for money damages whenever the alleged tortfeasor files for bankruptcy[.]" Section 27-7-2.4 (emphasis added). In this instance, Prospect is the alleged tortfeasor. Prospect filed for bankruptcy on January 11 and 12, 2025. (Pl.'s Mot. to Amend Compl. Ex. 1.) Further, as previously stated, Prospect's liability insurer, CHIC, filed for bankruptcy on May 5, 2026. (Pl.'s Mem. in Opp'n at 3.) "Although the [bankruptcy] code's purpose is to protect individual debtors from continuing liability upon

discharge, § 27–7–2.4 merely provides recourse to injured plaintiffs through the debtor's liability insurance coverage policy." *D'Amico v. Johnston Partners*, 866 A.2d 1222, 1228 (R.I. 2005).

Based on their certificates of insurance submitted to the Court, the Reinsurers contend their policies are indemnity policies and not liability policies, and that they could not make any payment to Mr. Paone, but only to CHIC's trustee in bankruptcy to indemnify CHIC if it is found liable for a loss. Thus, they argue that they are not "liability" insurers and cannot be sued directly pursuant to § 27-7-2.4. While the Court concedes that the policies are indemnity policies and not liability policies, its inquiry does not end there.

Liability insurer is not defined in chapter 7 of title 27. However, in § 27-7-1, entitled "Direct liability of insurer to person injured," it states, "[e]very policy written insuring against liability for property damage or personal injuries or both, and *every policy written indemnifying any person by reason of that liability* . . . shall contain provisions to the effect that the insurer shall be directly liable to the injured party and, in the event of that party's death, to the party entitled to sue for that death, to pay that party the amount of damages for which the insured is liable." Section 27-7-1 (emphasis added).

Subsequent to the initial oral argument, the Court *sua sponte* raised the issue of the applicability of § 27-7-1 to this case and then requested the parties to respond. Briefs and reply briefs were filed and the Court held additional oral argument on October 5, 2026.

Before addressing the parties' arguments, the background to the enactment of § 27-7-1 in its current form is relevant. On November 27, 1935, a United States District Court judge issued his opinion in *Martin v. Zurich General Accident & Liability Insurance Co., Limited,* 13 F. Supp.162 (D.R.I. 1935). In that case, the plaintiff sustained injuries as a result of a fire at an oil and gasoline plant through the alleged negligence of Graver Tank & Manufacturing Corporation

(Graver) which was insured by Zurich General. The plaintiff sued Zurich General directly because Graver was not qualified to do business in Rhode Island. The suit was based on the predecessor to § 27-7-1, namely section 7 of chapter 258 of the General Laws of Rhode Island 1923. The District Court judge found that the statute was inapplicable because the policy was an indemnity policy, and the case was dismissed. Less than six months later, on May 5, 1936, and undoubtedly in response to the federal judge's decision, the General Assembly amended section 7 of chapter 258 by adding the words "and every policy hereinafter written *indemnifying* any person *by reason of such liability.*" Ch. 2422 of the Public Laws, January Session, 1936 (emphasis added).[2]

Notwithstanding that the Reinsurers' argument that they are not covered by § 27-7-2.4 because they write indemnity policies, in their supplemental memorandum submitted in response to the Court's inquiry, they argue that the indemnity policies referred to in § 27-7-1 are "a subset of indemnity policies in which an insurer's coverage requires it to indemnify its insured for its insured's liability for property damage, personal injury, or both." (Reinsurers' Suppl. Mem. at 3.) The Court finds the argument unconvincing. CHIC's policy insured Prospect against liability for personal injury. The Reinsurers indemnify CHIC for payments made as a result of that liability of CHIC in excess of the retention limit in the policy. Consequently, the Court concludes that the

[2] On June 29, 1936, about eight weeks after the General Assembly's action, the First Circuit reversed the trial judge and found that the policy was one of liability. *See Martin v. Zurich General Accident & Liability Insurance Co.,* 84 F.2d 6 (1st Cir. 1936). However, when the First Circuit decided this case in 1936, it decided the case based on the version of the statute prior to its amendment which did not include the language regarding indemnity and only provided for policies written insuring against liability. At the time, the court noted that Rhode Island courts had held this section does not apply to indemnity policies, only those insuring against liability (*see Degnan v. Rhode Island Mutual Liability Insurance Co.*, 51 R.I. 366, 154 A. 912, 913 (1931)). Interestingly, in commenting on the amended statute, the annotations to the General Laws of 1938 state, "[f]ormer statute inapplicable to indemnity policy." G.L. 1938 ch. 155 § 1 (Annotated). This implies that the amended statute is now applicable to indemnity policies, while the former statute was not.

Reinsurers' policies should comply with § 27-7-1 and they do not. Section 27-7-3 provides that "[a]ll policies described in this chapter shall be deemed to be made subject to the provisions of this chapter, and all provisions of policies inconsistent with this chapter shall be void." Accordingly, those provisions of the Reinsurers' policies that state that in the event of CHIC's bankruptcy their only obligation would be to CHIC's trustee in bankruptcy are void.

Having found that the Reinsurers' policies fail to comply with § 27-7-1, the Court still must determine if they are a "liability insurer" which allows them to be sued directly pursuant to § 27-7-2.4. The Court has found guidance in the First Circuit's decision in *Rosciti v. Insurance Co. of Pennsylvania*, 659 F.3d 92, 96 (1st Cir. 2011). In that case, the Roscitis sued the manufacturer of their mobile home for alleged defects which developed mold and rendered the home uninhabitable, and thus their claims were for both property damage and personal injury. *Rosciti,* 659 F.3d at 93. The manufacturer had excess coverage for its liability in excess of $500,000. After the complaint was filed, the manufacturer filed for bankruptcy so the Roscitis amended their complaint to add the excess carrier pursuant to § 27-7-2.4. *Id.* at 94. The excess carrier moved for summary judgment on the grounds that its liability had not been triggered because the policy with the manufacturer required the retention limit to be exhausted before it could be liable. The District Court granted the motion and found that exhaustion limits were not prohibited by § 27-7-2.4. *Id.* at 96.

The First Circuit reversed based on its view of public policy in Rhode Island. *Id.* at 98. The court, sitting in diversity, applied Rhode Island substantive law. *Id.* at 96. It stated, "[u]nder Rhode Island law, a contract term will not be enforced if it violates public policy. *Gorman v. St. Raphael [Academy],* 853 A.2d 28, 39 (R.I. 2004). If a contract provision frustrates a right created by statute, a court will void that provision as against public policy. *Cf. Pepin v. [American] Universal*

[Insurance] Co., 540 A.2d 21, 22–23 (R.I. 1988) (voiding contract provision that was found to frustrate statutory right to binding arbitration)." *Id*. at 97.

The court found that to enforce the Retained Limit Provision would be to allow the insurer to avoid its obligations because of the manufacturer's bankruptcy. *Id.* "Nevertheless, it is clear that Rhode Island's public policy is to prevent insurance companies from avoiding their obligations when an insolvent insured cannot make an expenditure towards discharging liability. As noted above, the passage of § 27–7–2.4 reflects the Legislature's intent to preserve a tort victim's right of recovery when the insured became insolvent. Additionally, the Rhode Island Supreme Court has recognized the generally agreed rule that the debtor's discharge does not affect the liability of the debtor's insurer for damages caused by the debtor. In light of this public policy, we conclude that the Retained Limit Provision cannot be enforced here. To do so would have the ultimate effect of allowing ICSOP to avoid its obligations thanks to Monaco's bankruptcy, a result which is contrary to the public policy of Rhode Island." *Id*. at 98 (internal quotations omitted).

As the First Circuit noted in *Rosciti,* our Supreme Court has expressed the public policy behind § 27-7-2.4. "Although the [bankruptcy] code's purpose is to protect individual debtors from continuing liability upon discharge, § 27–7–2.4 merely provides recourse to injured plaintiffs through the debtor's liability insurance coverage policy." *D'Amico*, 866 A.2d at 1228.

Absent the applicability of § 27–7–2.4 to the Reinsurers, Mr. Paone would have to obtain relief from the CHIC Bankruptcy Court stay to sue CHIC directly pursuant to § 27–7–2.4 in this case. If granted and if Mr. Paone was successful and obtained a judgment in this action, the Trustee in the CHIC bankruptcy would have to seek indemnification from the Reinsurers pursuant to the terms of the policies. However, Mr. Paone would just be a general unsecured creditor of CHIC and

would have to compete with other creditors of CHIC to see any recovery at all. Such a scenario does not provide recourse to an injured plaintiff.

The Court does not believe the General Assembly would have contemplated putting such a burden on an injured person. That is why ninety years ago it amended the predecessor to § 27-7-1 to include policies that indemnify for a liability for personal injury. Following principles of statutory construction, the Court must give effect to the intent of the Legislature and avoid construing a statute "to achieve meaningless or absurd results." *Ryan v. City of Providence,* 11 A.3d 68, 71 (R.I. 2011). The Court must "consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." *Sorenson v. Colibri Corp.,* 650 A.2d 125, 128 (R.I. 1994). Reading §§ 27-7-1, 27-7-3 and 27-7-2.4 together leads the Court to conclude that where both the tortfeasor and its insurer file for bankruptcy an indemnifier of the bankrupt insurer is a liability insurer for purposes of § 27-7-2.4.

Having concluded that Mr. Paone can sue the Reinsurers pursuant to § 27-7-2.4, the Court agrees with the First Circuit in *Rosciti* that the statute cannot increase the Reinsurers' liability under their respective policies. The Reinsurers might argue that they will have increased defense costs that they never anticipated. In *Rosciti,* the First Circuit reasoned, "even assuming *arguendo* that our decision forces ICSOP to pay more in defense costs than it had anticipated when calculating the premium, we cannot say that this result violates Rhode Island public policy. The limit on claims specified in the direct action statute [§ 27-7-2.4] is a limit based on 'coverage available'. . . This clearly means that an insurer cannot be required to pay more than the policy limits—or drop down below a retained limit—if the insured is bankrupt. However, nothing in the statute suggests that an insurer cannot be put into a position that might require it to spend more

money than it had anticipated to defend against a claim. Indeed, one would expect that in most cases under the direct action statute, the insurer will be shouldering all of the defense costs without being able to share them with the insured; the Legislature surely recognized this when it passed § 27–7–2.4." *Rosciti,* 659 F.3d at100–01.

III

Conclusion

Based on the foregoing, the Court denies the Reinsurers' Motions to Dismiss. Counsel shall confer and present an order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Russell A. Paone v. Prospect Chartercare SJHSRI, LLC, et al.**
CASE NO:	**PC-2023-01104**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 22, 2026**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
For Plaintiff:	**Jane R. Duket, Esq.** **Douglas E. Chabot, Esq.**
For Defendant:	**Christopher M. Reilly, Esq.** **Gail M. Ryan, Esq.** **Kurt Rocha, Esq.** **Krystle G. Tadesse, Esq.** **Joseph C. Mayotte, Esq.** **Syd A. Saloman, Esq.** **Sean E. Capplis, Esq.**