

Civil Cases

TABLE OF CONTENTS

Rhode Island Supreme Court 2016-2017 Term

<u>Ajax Construction Company, Inc. v. Liberty Mutual Insurance Company et al.,</u> 154 A.3d 913 (R.I. 2017)	1.
<u>Deborah Bates-Bridgmon et al. v. Heong’s Market, Inc. d/b/a Roch’s Market et al.,</u> 152 A.3d 1137 (R.I. 2017)	3.
<u>Bellevue-Ochre Point Neighborhood Association v. Preservation Society of Newport County,</u> 151 A.3d 1223 (R.I. 2017)	4.
<u>Cashman Equipment Corporation, Inc. v. Cardi Corporation, Inc. et al.,</u> 139 A.3d 379 (R.I. 2016)	6.
<u>Sergio A. DeCurtis v. Visconti, Boren & Campbell, Ltd. et al.,</u> 152 A.3d 413 (R.I. 2017)	7.
<u>Jeanne Jackson, Executrix of the Estate of Anthony J. Esposito, Jr. et al. v.</u> <u>Quincy Mutual Fire Insurance Company et al.,</u> No. 2016-19-Appeal., 2017 WL 1843873 (R.I. May 5, 2017)	9.
<u>Kenlin Properties, LLC et al. v. City of East Providence et al.,</u> 139 A.3d 491 (R.I. 2016)	10.
<u>Stephen F. Limoges et al. v. Nalco Company et al.,</u> No. 2016-36-Appeal, 2017 WL 1230153 (R.I. Apr. 4, 2017)	11.
<u>Mark Mancini v. City of Providence et al.,</u> 155 A.3d 159 (R.I. 2017)	12.

<u>Kathryn Manning et al. v. Peter J. Bellafiore, M.D. et al.,</u> 139 A.3d 505 (R.I. 2016)	13.
<u>Nappa Construction Management LLC et al. v. Caroline Flynn et al., Caroline Flynn</u> et al. v. Nappa Construction Management, LLC et al., 152 A.3d 1128 (R.I. 2017)	15.
<u>Louis Paolino et al. v. Joseph Ferreira et al., 153 A.3d 505 (R.I. 2017)</u>	16.
<u>Anthony Pullar v. Louis Cappelli, 148 A.3d 551 (R.I. 2016)</u>	18.
<u>Victoria Roach v. State of Rhode Island, et al. No. 2014-204-Appeal, 2017 WL 1390861</u> (R.I. April 18, 2017)	19.
<u>Dawn K. Roy, in her capacity as the administratrix of the estate of Brett A. Roy et al.</u> v. The State of Rhode Island et al., 139 A.3d 480 (R.I. 2016)	21.
<u>Eunique Williams v. Chicara Alston et al., 154 A.3d 456 (R.I. 2017)</u>	22.

CIVIL CASE SUMMARIES

RHODE ISLAND SUPREME COURT

2016 – 2017

Ajax Construction Company, Inc. v. Liberty Mutual Insurance Company et al., 154 A.3d 913 (R.I. 2017)

Ajax Construction Company and Beacon Mutual Insurance Company came before the Supreme Court on writs of certiorari following a decree by the Appellate Division of the Workers' Compensation Court in favor of Liberty Mutual Insurance Company. Ajax originally petitioned the Rhode Island Workers' Compensation Court to determine which insurer was required to pay benefits to an injured Ajax employee. On appeal, the Appellate Division found Beacon solely responsible to pay the benefits. The court determined that Liberty was not liable because the Ajax employee, who worked primarily in Massachusetts, did not qualify as a "Massachusetts employee" under the Liberty policy. The Appellate Division further interpreted the phrase "entire liability of the employer" in G.L. 1956 § 28-36-5 to require Beacon to pay the entire amount of the benefits.

The Supreme Court quashed the Appellate Division's decree. First, the Court determined that the Appellate Division erred in interpreting the term "Massachusetts employee" and in relying on extrinsic evidence to define the term. The Supreme Court deemed the term clear and unambiguous, and it held that the Ajax employee qualified as a "Massachusetts employee" under the term's plain meaning.

The Supreme Court further found the Appellate Division's interpretation of § 28-36-5 erroneous and held that the phrase "entire liability of the employer" was ambiguous. The Court

concluded that the statute's legislative intent and purpose was to ensure that an employer provided coverage for all employees, but not that it had to do so with one insurer and one policy. Thus, the Supreme Court concluded that Beacon was not liable under § 28-36-5 to pay the benefits. The Court held that Liberty was wholly responsible for the payment of benefits and ordered it to reimburse Beacon for any payments that Beacon had made.

Deborah Bates-Bridgmon et al. v. Heong's Market, Inc. d/b/a Roch's Market et al., 152 A.3d 1137 (R.I. 2017)

The incident underlying this appeal was a fall that occurred at Roch's Market in West Warwick. The plaintiffs, Deborah Bates-Bridgmon and her husband, Jackie Bridgmon, appealed the Superior Court judgment in favor of the defendant, Heong's Market, Inc., d/b/a Roch's Market, following a jury trial. On appeal, the plaintiffs argued that the trial justice erred by denying their motion for a new trial and not instructing the jury on the theory of "mode of operation." They further asked this Court to adopt that theory.

The Supreme Court concluded that the trial justice properly conducted the new-trial analysis and did not err in denying the plaintiffs' motion. The Court held that the argument concerning the jury instructions was waived because the plaintiffs' counsel did not request an instruction on mode of operation or object when the trial justice did not give an instruction on that theory. The Court further declined to adopt that theory under its supervisory powers. Accordingly, the Supreme Court affirmed the judgment of the Superior Court.

Bellevue-Ochre Point Neighborhood Association v. Preservation Society of Newport County, 151 A.3d 1223 (R.I. 2017)

The plaintiff, Bellevue-Ochre Point Neighborhood Association, appealed the Superior Court's dismissal of its declaratory judgment complaint. This case arose from an application by the defendant, the Preservation Society of Newport County, for the construction of a Welcome Center near the entrance to the Newport mansion, the Breakers. The plaintiff sought declarations that the Newport Zoning Ordinance prohibited the proposed Welcome Center. A justice of the Superior Court declined to enter declaratory relief and dismissed the action. He found that the issues the plaintiff raised in its complaint were within the authority and jurisdiction of the Newport Zoning Board and, thus inappropriate for a declaratory judgment action. The hearing justice also found that the plaintiff failed to exhaust administrative remedies.

On appeal, the plaintiff argued that the zoning board lacked authority to decide the issues raised in its complaint, and that the hearing justice was required to hear and decide its declaratory relief request. It asserted that the doctrine of exhaustion of administrative remedies was not applicable because two exceptions applied. The plaintiff also asked the Supreme Court to determine the underlying issues of its complaint.

Because the parties disputed which standard of review applied, the Supreme Court first resolved this issue. The Court applied a de novo standard because the hearing justice's consideration of matters outside the pleadings converted the motion to dismiss into a summary judgment motion. The Court then held that the zoning board had the authority to decide the issues raised in the plaintiff's complaint. It also concluded that neither exception to the doctrine of exhaustion of administrative remedies, which the plaintiff raised, applied. Finally, the Court

declined to decide the issues presented in the plaintiff's action, as they were within the zoning board's authority. Accordingly, the Supreme Court affirmed the Superior Court's decision.

Cashman Equipment Corporation, Inc. v. Cardi Corporation, Inc. et al., 139 A.3d 379 (R.I. 2016)

Cashman Equipment Corporation, Inc. (Cashman) filed a petition for issuance of a writ of certiorari, in which it stated that it was seeking review of the May 13, 2014 denial in Providence County Superior Court of its motion to compel the production from Cardi Corporation, Inc. (Cardi) of the following: “all materials and documents, less core attorney work product, including all computer models and drafts of materials and documents, developed and considered by [Cardi’s] testifying expert * * * in the process of formulating his written expert opinions * * *.” In a November 20, 2014 order, the Supreme Court granted Cashman’s petition. Cashman contended before the Supreme Court that the hearing justice erred in denying its motion because, in Cashman’s view, materials which are considered by a testifying expert in formulating his or her opinion are discoverable, with the exception of “core attorney work product.” According to Cashman, it was, therefore, error for the hearing justice to refuse to compel Cardi to produce the requested documents.

The Supreme Court held that the case was controlled by the clear and unambiguous language of Rule 26(b)(4)(A) of the Superior Court Rules of Civil Procedure, which does not provide for any document discovery with respect to testifying experts. Therefore, it was the judgment of the Supreme Court that, under the language of the rule, Cashman was not entitled to the discovery it sought. As such, the Supreme Court quashed the writ and affirmed the decision of the hearing justice.

Sergio A. DeCurtis v. Visconti, Boren & Campbell, Ltd. et al., 152 A.3d 413 (R.I. 2017)

The defendants, Visconti, Boren & Campbell, Ltd. (Visconti, Boren & Campbell) and Richard A. Boren (Attorney Boren) (collectively, defendants), cert. appealed from a Superior Court discovery order in favor of the plaintiff, Sergio A. DeCurtis (plaintiff), compelling production of any antenuptial or postnuptial agreements drafted, prepared, or negotiated by Attorney Boren from 2005 through 2009 and in 2013, while employed at Visconti, Boren & Campbell. The defendants argue that the documents sought exceed the scope of permissible discovery and are protected under the attorney-client privilege, the marital privilege, and the work product doctrine.

The Supreme Court held that the antenuptial and postnuptial agreements were discoverable under Rule 26 of the Superior Court Rules of Civil Procedure as they were reasonably calculated to lead to discoverable evidence under Rule 407 of the Rhode Island Rules of Evidence, which permits evidence of subsequent remedial measures to prove negligence. The Court was satisfied that the agreements were not confidential communications protected by the attorney-client privilege. Moreover, the Court noted that the privilege was not properly asserted by the clients and was potentially waived by the presence of adverse third parties during negotiations and execution of the agreements. The Court was additionally convinced that the marital privilege was not applicable because the agreements were not testimonial, as required by G.L. 1956 § 9-17-13. Finally, the Court determined that the work product doctrine did not apply as the agreements were not prepared in anticipation of litigation within the meaning of the doctrine. Even if the work product doctrine did apply, the Court declared that the plaintiff

overcame the qualified immunity by sufficiently demonstrating substantial need and undue hardship. Accordingly, the Court affirmed the Superior Court discovery order.

Jeanne Jackson, Executrix of the Estate of Anthony J. Esposito, Jr. et al. v. Quincy Mutual Fire Insurance Company et al., No. 2016-19-Appeal, 2017 WL 1843873 (R.I. May 5, 2017)

The plaintiff, Jeanne Jackson (plaintiff), as Executrix of the Estate of Anthony J. Esposito, Jr. (decedent), appeals from a grant of summary judgment in favor of the defendant, Quincy Mutual Fire Insurance Company (defendant or Quincy Mutual), in this uninsured motorist claim case. The Superior Court granted summary judgment in favor of Quincy Mutual after concluding that the decedent was “occupying” his owned-but-not-insured motorcycle at the time of the fatal injury, and therefore, was precluded from recovery under the terms of an automobile policy issued by the defendant.

This case was the first occasion on which the Supreme Court interpreted the terms of an automobile policy provision that is designed to exclude an owner from the protections of his policy. In addition, this case was the first occasion on which the Supreme Court was called upon to interpret the policy term “occupying” in the context of two collisions.

The Supreme Court held that summary judgment in favor of the defendant was erroneous because the record evinced genuine issues of material fact. Accordingly, the Supreme Court vacated the judgment of the Superior Court and remanded the case for further proceedings.

Kenlin Properties, LLC et al. v. City of East Providence et al., 139 A.3d 491 (R.I. 2016)

The Supreme Court granted a petition for writ of certiorari filed by the City of East Providence and the East Providence Zoning Board of Review (zoning board) (collectively, the city) seeking review of a judgment of the Superior Court. The zoning board had affirmed a notice of violation issued by the East Providence zoning officer finding several violations of a use variance that had been granted in 1998 to the owner and operator of a facility known as Pond View Recycling (Pond View). Kenlin Properties, LLC and TLA-Providence, LLC, as the owner and operator of Pond View, had appealed to the Superior Court from the zoning board's decision upholding the notice of violation. A trial justice of the Superior Court reversed the zoning board's decision after concluding that the zoning board's decision was clearly erroneous and made upon unlawful procedure because the zoning board erred as a matter of law by reviewing material outside of the decision granting the variance.

The Supreme Court held that the determination of the scope of a use variance is a question of fact entrusted in the first instance to the zoning board and that in determining the scope of a variance, the zoning board may refer to the entire public record. The Supreme Court concluded that the record supported the zoning board's decision that Pond View was in violation of the 1998 use variance by exceeding the scope of the variance. Thus, the Supreme Court quashed the judgment of the Superior Court and remanded the case to the Superior Court with instructions to enter judgment for the city.

Stephen F. Limoges et al. v. Nalco Company et al., No. 2016-36-Appeal, 2017 WL 1230153 (R.I. Apr. 4, 2017)

This case arose out of a chemical leak that, according to Stephen Limoges, one of the plaintiffs, caused him to suffer respiratory injuries. The plaintiffs brought suit against three defendants and then appealed the Superior Court's grant of summary judgment in favor of one of the defendants, Arden Engineering Constructors, LLC. Before the Supreme Court, the plaintiffs argued that the hearing justice erred because he made an improper credibility assessment about the affidavit of their expert and because he overlooked material issues of fact that were in dispute.

The Supreme Court held that summary judgment was inappropriately granted because the plaintiffs' expert's affidavit was, for the purpose of summary judgment, sufficient to establish a standard of care and a breach thereof. Accordingly, the Supreme Court vacated the Superior Court's judgment because issues of material fact remained in dispute.

Mark Mancini v. City of Providence et al., 155 A.3d 159 (R.I. 2017)

This case came before the Supreme Court pursuant to an order of the United States District Court for the District of Rhode Island, which certified a question to the Supreme Court in accordance with Article I, Rule 6(a) of the Supreme Court Rules of Appellate Procedure. The certified question reads as follows:

“Does Section 28-5-7(6) of the Rhode Island Fair Employment Practices Act, R.I. Gen. Laws § 28-5-1 et seq. (‘FEPA’), provide for the individual liability of an employee of a defendant employer and, if so, under what circumstances?”

The Supreme Court answered the certified question in the negative, holding that G.L. 1956 § 28-5-7(6) does not provide for the individual liability of an employee of a defendant employer. The Court remanded the case to the United States District Court for the District of Rhode Island for further proceedings.

Kathryn Manning et al. v. Peter J. Bellafiore, M.D. et al., 139 A.3d 505 (R.I. 2016)

This case originated as a negligence and wrongful death action brought by the plaintiff Kathryn Manning, individually and as administratrix of the estate of Michael Manning and on behalf of her four minor children, against Peter J. Bellafiore, M.D., but has since evolved into extensive litigation regarding sanctions. The issue in this case as it related to sanctions was whether Dr. Bellafiore's trial testimony differed from his pretrial discovery disclosures and, if so, who was at fault for the inconsistencies. The Superior Court sanctioned both Dr. Bellafiore and the law firm that represented him at trial, White & Kelly, P.C., for their failure to have made certain pretrial disclosures. Both parties appealed their sanctions to the Supreme Court. On appeal, Dr. Bellafiore argued that any failure during discovery to disclose certain conversations which he had with the decedent was attributable to his attorney, as he had informed his attorney that such conversations occurred. Meanwhile, the White & Kelly defendants maintained that Dr. Bellafiore had not disclosed any conversations that he claimed to have had with the decedent to them prior to trial, and that, accordingly, they should not be held responsible for failing to disclose statements of which they had no prior knowledge.

After extensive review of the voluminous record, which included all pretrial discovery materials, trial transcripts and exhibits, as well as materials related to the sanction proceedings, the Supreme Court held that: (1) Rule 11 sanctions were not appropriate for discovery violations, but instead, the Superior Court could rely on its inherent power to fashion an appropriate sanction when a party acted in bad faith, vexatiously, wantonly, or for oppressive reasons; (2) the Superior Court did not overlook or misconceive material evidence in finding that Dr. Bellafiore engaged in sanctionable conduct based upon his failure to disclose certain conversations he had had with the decedent during discovery and that a finding of bad faith could be inferred from the

Superior Court's decision, but the trial justice abused his discretion in sanctioning Dr. Bellafiore a sum of \$122,398.86 for this conduct and, therefore, lowered the amount to \$38,398.53; and (3) a sanction against trial counsel was not appropriate where the trial justice did not make any finding that counsel acted in bad faith, vexatiously, wantonly, or for oppressive reasons, nor could such a finding be inferred. Accordingly, the Supreme Court affirmed in part and vacated in part the judgment of the Superior Court, and instructed the Superior Court to enter an order sanctioning Dr. Bellafiore in the amount of \$38,398.53.

Nappa Construction Management, LLC et al. v. Caroline Flynn et al., Caroline Flynn et al. v. Nappa Construction Management, LLC et al., 152 A.3d 1128 (R.I. 2017)

Caroline Flynn and Vincent Flynn (the Flynns), appealed from a Superior Court order, denying their motion to vacate an arbitration award and granting a joint application of Nappa Construction Management, LLC (Nappa) and Service Insurance Company, Inc. (Service Insurance) to confirm the award. The Flynns also appealed from a correlative judgment in favor of Nappa and Service Insurance. On appeal, the Flynns contended that the arbitrator exceeded his authority under G.L. 1956 § 10-3-12(4) for several reasons. The Superior Court held that the arbitrator did not exceed his authority. The Supreme Court held that the arbitrator indeed exceeded his authority because the arbitration award failed to draw its essence from the parties' agreement and manifestly disregarded a provision of the parties' contract.

Accordingly, the Supreme Court reversed the order of the Superior Court and vacated the judgment.

Louis Paolino et al. v. Joseph Ferreira et al., 153 A.3d 505 (R.I. 2017)

This dispute generated two separate appeals. The first was the appeal of the prevailing plaintiffs, Louis Paolino and Marie Issa, from adverse rulings made by the trial justice in favor of the defendants, Joseph I. Ferreira, LKQ Corporation, the Joseph I. Ferreira Trust, and J.F. Realty, LLC. The second was the appeal of Attorney Brian Wagner, who appealed sanctions that were imposed against him by the trial justice.

In the first appeal, the plaintiffs argued that the trial justice erred when she (1) failed to order injunctive relief sought by the plaintiffs; (2) refused to allow the plaintiffs to amend their pleadings to conform to the trial evidence regarding a punitive damages claim against the defendant, J.F. Realty, LLC; (3) did not permit the plaintiffs' expert to testify that storm water runoff from the defendants' property caused the seepage of oil along a man-made ditch located on the plaintiffs' property; and (4) failed to grant a new trial based upon the plaintiffs' newly discovered evidence.

In the second appeal, Attorney Wagner contended that the Superior Court's decision to impose sanctions was based on an erroneous assessment of the facts and an erroneous application of the law to those facts. Furthermore, he argued that, even if sanctions were warranted under the facts and law, the sanction imposed was not appropriate to the facts and circumstances of this case, was excessive when compared to previous decisions regarding Rule 11 of the Superior Court Rules of Civil Procedure, and did not reflect the reasonable expenses incurred by the defendants' counsel in responding to the allegedly misleading statement.

In the first appeal, the Supreme Court held that the trial justice did not err when she declined to order injunctive relief sought by the plaintiffs. The Court concluded that the trial justice did not misapply the law, misconceive or overlook material evidence, nor make factual

findings that were clearly wrong, and thereby, did not stray beyond the broad discretion she was afforded. Nonetheless, the Supreme Court held that the trial justice impermissibly limited the testimony of the plaintiffs' expert and ordered a new trial on all issues, excluding the issue of injunctive relief.

In the second appeal, the Supreme Court held that the facts did not support the imposition of sanctions, reasoning that Attorney Wagner's interpretation of the jury's findings was not interposed for an improper purpose. The Court concluded that the trial justice exceeded the bounds of discretion afforded to her.

Accordingly, the Supreme Court affirmed in part, and vacated in part, the judgment of the Superior Court. The Court remanded for a new trial on all issues, with the exception of the prayer for injunctive relief.

Anthony Pullar v. Louis Cappelli, 148 A.3d 551 (R.I. 2016)

The plaintiff, Anthony Pullar (plaintiff), appeals from a judgment of the Superior Court dismissing his complaint for lack of personal jurisdiction over the defendant, Louis Cappelli (defendant). The plaintiff argued that the defendant forfeited the defense of lack of personal jurisdiction by failing to assert the defense for more than three and a half years and by actively participating in litigation, including depositions and court-annexed arbitration.

This case presented the Supreme Court with an issue of first impression: whether a defendant may forfeit the defense of lack of personal jurisdiction through delay or conduct even when the defendant asserted the defense in its answer. The Supreme Court adopted the doctrine of forfeiture developed by the federal courts and concluded that a defendant may forfeit the jurisdictional defense by failing to seasonably assert it or by conduct that demonstrates intent to litigate.

The Supreme Court vacated the judgment of the Superior Court and held that the defendant forfeited the jurisdictional defense by participating in discovery, pretrial proceedings, and arbitration for more than three and a half years before moving to dismiss based on lack of personal jurisdiction.

Victoria Roach v. State of Rhode Island et al., No. 2014-204-Appeal, 2017 WL 1390861
(R.I. Apr. 18, 2017)

This civil matter came before the Court on appeal from a Superior Court judgment in favor of the plaintiff, Ms. Victoria Roach. The plaintiff slipped and fell during a shift as a per diem contract nurse at the Rhode Island Veterans Home on November 10, 2008. The state moved for judgment as a matter of law, a new trial, and to amend judgment and grant a remittitur. The trial justice denied the motion for judgment as a matter of law and a new trial, but granted a remittitur. The remittitur lessened the plaintiff's award from \$500,000 to \$382,000; however, the prejudgment interest award increased the judgment to \$631,373.66.

On appeal, the state argued that: (1) the public-duty doctrine shielded the state from liability; (2) the statutory tort cap in G.L. 1956 § 9-31-2 limited damages to \$100,000; (3) the prejudgment interest award was improper; (4) the trial justice erred in denying the state's motion for judgment as a matter of law; and (5) the trial justice erred in failing to instruct the jury on comparative negligence.

The Supreme Court held that the public-duty doctrine did not shield the state from tort liability nor did the statutory tort cap limit damages to \$100,000. The Court also deemed the award of prejudgment interest appropriate. Under the public-duty doctrine, the Court concluded that the relevant function at issue—care for nursing home resident-patients—was not a discretionary governmental function incapable of private-party performance, and thus, the state was not immune in tort. With respect to the statutory tort cap, the Court deemed resident-patient care a proprietary function, such that damages against the state were not capped at \$100,000. Similarly, because the state engaged in a proprietary function, the Court deemed the prejudgment interest award appropriate. The Court reiterated that a party is not required to request

prejudgment interest by motion because the award of prejudgment interest is a ministerial act by the clerk of court.

Additionally, the Court held that the trial justice properly denied the state's motion for judgment as a matter of law pursuant to Rule 50 of the Superior Court Rules of Civil Procedure and that the trial justice appropriately declined to instruct the jury on comparative negligence. Therefore, the Supreme Court affirmed the judgment of the Superior Court.

Dawn K. Roy, in her capacity as the administratrix of the estate of Brett A. Roy et al., v. The State of Rhode Island et al., 139 A.3d 480 (R.I. 2016)

Tragically, on July 10, 2008, twenty-nine-year-old Brett A. Roy broke his neck when diving into the pond at World War II Memorial Park in Woonsocket. Roy and his wife, Dawn K. Roy (plaintiffs), individually and as the parents of their two children, filed this action against the State of Rhode Island, the Rhode Island Department of Environmental Management (DEM), and two individuals in their official capacities as DEM employees (collectively, the state), alleging theories of negligence and premises liability. After a multi-week trial, the jury returned a verdict for the state, finding that the state did not “fail to warn or guard against a dangerous condition, use, structure or activity” or against a “non-obvious, latent dangerous condition” at the pond. Subsequently, both parties filed renewed motions for judgment as a matter of law, which the trial justice denied. However, the plaintiffs also filed a motion for a new trial, which the trial justice granted. Thereafter, the state brought the instant appeal arguing that the trial justice erred in granting the plaintiffs’ motion for a new trial and in denying its motion for judgment as a matter of law. The plaintiffs filed a cross-appeal arguing that their motion for judgment as a matter of law should have been granted.

The Supreme Court concluded that that the state bore no liability for Roy’s injuries—either because diving is an open and obvious danger or because the state was protected under the Recreational Use Statute. Consequently, the Supreme Court reversed the decision of the trial justice denying the state’s motion for judgment as a matter of law.

Eunique Williams v. Chicara Alston et al., 154 A.3d 456 (R.I. 2017)

This case arose out of a two-vehicle collision that resulted in the plaintiff, Eunique Williams, sustaining severe bodily injuries when one of the automobiles involved struck her while she was standing at her post as a crossing guard. The plaintiff appealed from the Superior Court's grant of summary judgment in favor of Rick M. Ford, a co-defendant. The plaintiff argued that the hearing justice erred when he concluded that there were no genuine issues of material fact in dispute.

The Supreme Court held that summary judgment was inappropriately granted because genuine issues of material fact remained in dispute.