

# FAST FIVE

## RHODE ISLAND APPELLATE PRACTICE

With the dog days of summer upon us, the Rhode Island Supreme Court has concluded its Spring 2014 term, leaving practitioners with new guidance on a variety of trial and appellate practice issues. In one of its last decisions this term, the Supreme Court has provided practitioners with wisdom on issues of first impression concerning class action litigation, motions to strike, injunctions and the Deceptive Trade Practices Act. See [\*Long v. Dell, Inc.\*, No. 2012-248-Appeal](#).

### **(1) MOTION FOR CLASS CERTIFICATION MUST BE TIMELY FILED.**

Rule 23(c)(1) of the Rhode Island Superior Court Rules of Civil Procedure governs the timeliness of a motion for class certification in a class action case. The rule provides that “[a]s soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained.” R.I. Super. Ct. R. 23(c)(1). Looking to federal cases on the issue of timeliness of requests for class certification, the Rhode Island Supreme Court has long recognized that each motion for certification must be reviewed on the facts and circumstances of the particular case and there is no set deadline by which the court must act. *Zarella v. Minnesota Mutual Life Insurance, Co.*, 824 A.2d 1249, 1263 n.16 (R.I. 2003).

This term, the Rhode Island Supreme Court reminded litigants that it has not adopted the 2003 amendments to Federal Rule 23 or its more liberal timeliness requirement. [\*Long v. Dell\*](#),

[Inc., No. 2012-248-Appeal](#) at 11-12. Compare R.I. Super. R. Civ. P. 23(c)(1) (“As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained.”) with Fed. R. Civ. P. 23(c)(1)(A) (“At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.”).

**(2) PLAINTIFF CLASS MUST BE TREATED AS CERTIFIED FOR PURPOSES OF A PRECERTIFICATION MOTION FOR SUMMARY JUDGMENT.**

The Rhode Island Supreme Court held this term that when a defendant files a motion for summary judgment before the plaintiff class is certified, the court must treat the case as though it were certified as a class action. [Long v. Dell, Inc., No. 2012-248-Appeal](#) at 10-11. Such a rule is consistent with the Court’s summary judgment jurisprudence, which requires the court to view the evidence in the light most favorable to the non-moving party. *Id.* By treating a case as a certified class action at the motion for summary judgment stage, the court may consider the injury or damages sustained by the class, and is not restricted to considering only the injury or damages of the named plaintiff. *Id.* at 11 (noting that “if the class is treated as certified, for purposes of viewing the evidence in the light most favorable to the nonmoving party on summary judgment, an inference of class-wide injury should be drawn when competent evidence permits”).

**(3) AN INJUNCTION IS NOT A CAUSE OF ACTION.**

In *Long*, the Rhode Island Supreme Court for the first time made clear that “[a]n injunction is a remedy, not a cause of action.” [Long v. Dell, Inc., No. 12-248-Appeal](#) at 23-24 (holding that the Superior Court justice properly dismissed the plaintiff’s request for injunctive relief). In so holding, the Court recognized authority from other jurisdictions holding that injunctive relief is not a cause of action. See *Thompson v. JPMorgan Chase Bank, N.A.*, No. 13-

2230, 2014 WL 1586992, at \*1 n.1 (6th Cir. Apr. 22, 2014); *Koufos v. U.S. Bank, N.A.*, 939 F. Supp. 2d 40, 46 (D. Mass. 2013)). The Supreme Court’s ruling is consistent with the Superior Court’s recognition in *State v. Lead Ind. Assn., Inc.* that injunctive relief is not a standalone cause of action. *See State v. Lead Ind. Assn., Inc.*, C.A. No. 99-5226, 2001 R.I. Super. LEXIS 37 (R.I. Super. Ct. Apr. 2, 2001) (concluding that “absent controlling case law establishing that a request for injunctive relief constitutes an independent cause of action, injunctive relief is a remedy and, can not, in itself, be recognized as a substantive claim.”).

#### **(4) MOTIONS TO STRIKE REVIEWED FOR ABUSE OF DISCRETION.**

Addressing another issue of first impression, the Rhode Island Supreme Court held this term that a trial justice’s decision on a motion to strike brought pursuant to Rule 12(f) of the Rhode Island Superior Court Rules of Civil Procedure is reviewed for abuse of discretion. *Long v. Dell, Inc.*, No. 2012-248-Appeal at 24-25. In so holding, the Court reviewed case law interpreting the substantially similar Rule 12(f) of the Federal Rules of Civil Procedure and concluded that because a the trial court enjoys liberal discretion when ruling on a motion to strike, the trial justice’s decision should be reviewed only for an abuse of discretion. *Id.*

#### **(5) DID YOU KNOW?**

To prove that a trade practice is deceptive under the Deceptive Trade Practices Act, R.I. Gen. Laws § 6-13.1-1 et seq., a plaintiff must demonstrate three elements “[1] a representation, omission, or practice, that [2] is likely to mislead consumers acting reasonably under the circumstances, and [3], the representation, omission, or practice is material.” *Long v. Dell, Inc.*, No. 2012-248-Appeal at 21 (adopting the FTC’s interpretation of § 5(a) of the Federal Trade Commission Act).

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