STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. PEN-24-66

DONALD M. GREENWOOD

Appellant,

v.

BENJAMIN LILIAV, M.D., EASTERN MAINE MEDICAL CENTER, and EASTERN MAINE HEALTHCARE SYSTEMS

Appellees

On Appeal from the Penobscot County Superior Court Civil Docket
Docket No. BANSC-CV-20-84

AMICUS BRIEF OF MAINE TRIAL LAWYERS ASSOCIATION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

LEGISLATIVE HISTORY

TREATISES

STATEMENT OF INTEREST OF THE MAINE TRIAL LAWYERS' ASSOCIATION

The Maine Trial Lawyers' Association ("MTLA") is a voluntary bar association dedicated to advancing the cause of individuals that deserve *full* legal redress for *all* injuries suffered. Amicus MTLA is also committed to preserving the right to trial, the ability of Maine citizens to seek justice in Maine's state and federal courts, and the efficient operation of the civil justice system. Amicus MTLA has more than six-hundred attorney members who primarily represent plaintiffs in Maine's court system, including but not limited to victims of medical negligence, personal injury claimants, and employees entitled to worker's compensation. Amicus MTLA is an affiliate of the American Association for Justice ("AAJ"), a national association with attorney members that practice in every state, including Maine, which was established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured.

The clients frequently represented by Amicus MTLA's attorney members can often be victims of multiple layers and/or instances of tortious conduct, for which they are entitled to trial and justice through several legal venues, pursuant to statutory and common law. This appeal raises questions about the interpretation and application of collateral sources and the contractual release of third parties unrelated to subsequent claims against tortfeasors. It also raises questions about the overlap

(or lack thereof) between statutory workers' compensation rights and separate legal claims which might exist if the employee is also a victim of tortious conduct. MTLA, its members and their clients, have interest in Maine's courts ensuring correct and consistent application of the Maine Workers' Compensation Act as well as appropriate and reliable handling of collateral source information and/or prior third-party contractual releases consistent with prevailing law and policy.

INTRODUCTION

This case features a fairly routine situation – a plaintiff who has both workers' compensation and third-party injury/medical malpractice claims – with an unfortunate end result that runs afoul of several well-established principles of Maine law. As set forth below, the trial court's reliance on the outdated holding in *Steeves v. Irwin*, 233 A.2d 126, 136 (Me. 1967) was inappropriate, as *Steeves* is not consistent with the current state of Maine law in several important respects.

The MTLA respectfully suggests that the instant case affords this Court an opportunity to expressly abrogate/overturn certain aspects of the *Steeves* decision and to reaffirm the primacy of more recent, well-established principles of Maine law. At a minimum, the Court's decision should clarify that under Maine law: (1) the correct standard for determining third-party beneficiaries of a contract in this specific context is set forth in *F.O. Bailey Co., Inc. v. Ledgewood, Inc*., 603 A.2d 466 (Me. 1992), *Devine v. Roche Biomedical Laboratories*, 659 A.2d 868 (Me.

1995) and their progeny, not *Steeves*; (2) the admission of evidence regarding workers compensation benefits received by the plaintiff, based on the rationale articulated in *Steeves* or otherwise, is precluded by the collateral source rule; and (3) the *Steeves* holding is materially inconsistent with the provisions of Maine's Worker's Compensation Act and should be expressly abrogated/overturned in this regard.

ARGUMENT

I. DEFENDANTS ARE NOT THIRD-PARTY BENEFICIARIES OF THE WORKERS COMPENSATION RELEASE EXECUTED BY THE PLAINTIFF

A. The *Steeves* Holding Relied Upon by the Trial Court is Inconsistent with Well-Established Law Regarding Third-Party Beneficiaries

In *Steeves v. Irwin*, 233 A.2d 126 (Me. 1967), the plaintiff suffered a work-related injury, which was subsequently aggravated by his doctor's negligence in failing to properly diagnose and treat his injuries. The plaintiff filed a medical malpractice lawsuit against the doctor, who asserted plaintiff's prior receipt of benefits under the Workmen's Compensation Act as an affirmative defense. The trial court entered summary judgment in favor of defendant and the plaintiff appealed.

In sustaining plaintiff's appeal, the *Steeves* court held:

> [I]n accordance with the modern trend of the authorities, that the rule of unity of discharge does not apply in the instant case and that such settlement as the plaintiff made

> with his employer and such release as he gave in full discharge of the employer's liability under the Act do not of and in themselves release the defendant attending physician from damages proximately flowing from his negligent treatment of plaintiff's injury, ***and that such settlement and release may so operate to discharge the defendant doctor for his negligent aggravation of plaintiff's original injury only if it was the intention of the injured plaintiff so to release him or if the compensation received from the employer responsible for the original injury was in full compensation of the injury suffered as aggravated by the malpractice***.

Steeves, 233 A.2d. at 136 (emphasis added).

This Court's 1967 *Steeves* decision is inconsistent with the current state of Maine law in several respects. In the first place, it does not properly articulate the correct, well-established standard under Maine law for determining whether a person or entity can properly be considered a third-party beneficiary to a contract.

Maine has adopted the standard for third party beneficiaries set forth in section 302 of the Restatement (Second) of Contracts. *F.O. Bailey Co., Inc. v. Ledgewood, Inc*., 603 A.2d 466 (Me. 1992). Section 302 provides as follows:

> (1) Unless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and either
>
> (a) the performance of the promise will satisfy an obligation of the promise to pay money to the beneficiary; or

> (b) the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.
>
> (2) An incidental beneficiary is a beneficiary who is not an intended beneficiary.

This Court has construed section 302 to require an affirmative showing that the parties to the contract specifically intended to convey an ***enforceable right*** upon the third party. *Devine v. Roche Biomedical Laboratories*, 659 A.2d 868, 870 (Me. 1995), *citing F.O. Bailey Co., Inc. v. Ledgewood, Inc*., 603 A.2d 466, 468 (Me. 1992). It "is not enough that [the third party] benefitted or could have benefitted from the performance of the contract." *Id*. The intent [to convey an enforceable right] must be clear and definite, whether it is expressed in the contract itself or in the circumstances surrounding its execution." *Id*. If the parties to a contract did not intend to confer an enforceable right upon a third party, any benefit enjoyed by this person or entity as a result of the performance of the contract renders them a mere incidental beneficiary. "An incidental beneficiary cannot sue to enforce third party beneficiary rights." *Id*.

> In order to prevail on their third-party beneficiary contract claim, the plaintiffs have to demonstrate that the promisee . . . intended to give the plaintiffs the benefit of the performance. *Martin v. Scott Paper Co*., 511 A.2d 1048, 1049-50 (Me. 1986). Such an intention is gathered from the language of the written instruments and the circumstances under which they were executed. *Forbes v. Wells Beach Casino, Inc*., 307 A.2d 210, 216 (Me. 1973). When contract language is ambiguous or uncertain, its

> interpretation is a question of fact to be determined by the factfinder, but when the language is clear, it is a question of law and can be resolved by the court. *Hopewell v. Landgon*, 537 A.2d 602, 604 (Me. 1988); *Hare v. Lumbermens Mut. Cas. Co*., 471 A.2d 1041, 1044 (Me. 1984); *Portland Valve, Inc. v. Rockwood Sys. Corp*., 460 A.2d 1383, 1387 (Me. 1983).

F.O. Bailey, 603 A.2d at 468.

B. As a Matter of Law, the Contract is Unambiguous and Should Have Been Construed by the Court, Not the Jury

The trial court erroneously applied the *Steeves* standard in order to determine whether or not the contract was ambiguous, *i.e*. whether or not the plaintiff intended to release the defendants. Specifically, the trial court found the release to be ambiguous based on a paragraph that states as follows: "I understand that the release along with the Affidavit, Resignation and the Workers' compensation Board's Lump Sum Settlement Form (WCB-10) contains the ENTIRE AGREEMENT between the releasees and myself and that the terms of this release are contractual and not a mere recital." (A194).

Under the correct standard set forth in *F.O. Bailey* and *Devine*, which requires a clear and definite showing that the parties intended to create an ***enforceable right*** in favor of the medical malpractice defendants, the contract is unambiguous as a matter of law. The above-cited release language relied upon by the trial court in support of its ruling that the release is ambiguous has no bearing whatsoever upon

this required inquiry, and the MTLA respectfully submits that this issue should have been decided in plaintiff's favor by the trial judge, not the jury.

The issue of whether a contract is ambiguous is a question of law that this Court reviews *de novo*. *Richardson v. Winthrop School Dept*., 2009 ME 109, ¶ 9, 983 A.2d 400, *citing Whalen v. Down East Cmty. Hosp*., 2009 ME 99, ¶ 15, 980 A.2d 1252. Contract language is only "ambiguous if it is reasonably susceptible [to] different interpretations." *Id*., *citing Am Prot. Ins. Co. v. Acadia Ins. Co.*, 2003 ME 6, ¶ 11, 814 A.2d 989. When contract language is ambiguous or uncertain, its interpretation is a question of fact to be determined by the factfinder, but when the language is clear, it is a question of law and can be resolved by the court. *F.O. Bailey*, 603 A.2d at 468, *citing Hopewell v. Landgon*, 537 A.2d 602, 604 (Me. 1988); *Hare v. Lumbermens Mut. Cas. Co*., 471 A.2d 1041, 1044 (Me. 1984); *Portland Valve, Inc. v. Rockwood Sys. Corp*., 460 A.2d 1383, 1387 (Me. 1983).

In this case, there is no evidence whatsoever that the parties to the workers' compensation settlement intended to create an enforceable right in favor of the medical malpractice defendants. The workers compensation release at issue in this case confirms that the entire agreement between the parties comprises four documents: (1) a Worker's Compensation Board Lump Sum Settlement Form (Form WCB-10) (A189); (2) the release (A192-194); (3) an affidavit by Mr. Greenwood confirming his understanding of the settlement terms (A195-198); and (4) a form

whereby plaintiff resigned his position with his employer (A199). There is no specific mention of the medical malpractice defendants in *any* of these documents, let alone any provision in which the parties expressed any intent to create an enforceable right in favor of them. On the contrary, the workers compensation release specifically identifies plaintiff's employer "Blue Diamond Transportation LLC" as the sole "releasee" (A192) and does not appear to have an enforcement clause – for example a mediation or arbitration clause, *etc*. – of any kind. Page three of the release also expressly contemplates the fact that plaintiff might assert additional claims against third parties in the future:

> Further, in consideration of the payment of the aforementioned sum of money, I agree for myself and my heirs, executors, administrators, and next-of-kin, to hold harmless the releasees from all claims, demands, costs and compensation on account of or in any way arising from claims resulting from the matter which is the subject of this release and asserted by any party, including but not limited to claims for contribution or indemnification.

(A194). Needless to say, one of the most obvious ways in which a claim for contribution or indemnification would be asserted is in precisely the circumstances of the instant case, whereby the plaintiff seeks damages from a subsequent tortfeasor like the medical malpractice defendants in this action.

As pointed out in plaintiff's appellate brief, the other documents that comprise the entire agreement likewise confirm that the settlement was not intended to create any enforceable rights in third parties. For example, his affidavit confirms that the

settlement was "a full and final settlement of [his] claims against Blue Diamond and its insurer" that resulted "from any and all injuries sustained" during his employment at Blue Diamond. (A196 ¶ 6). Neither the medical malpractice attorneys nor any other third parties are referenced in this affidavit. Likewise, the Findings of Fact and Conclusions of Law issued by the Administrative Law Judge presiding over this matter confirm that the "settlement is for all future claims and entitlement to weekly compensation payments, medical expenses, vocational services, and any other benefits provided by the Workers' Compensation Act." (A190 at ¶1).

C. Under the Correct Legal Standard, Defendants are Not Third-Party Beneficiaries of Plaintiff's Workers' Compensation Release

Applying the correct legal standard set forth in *F.O. Bailey* and *Devine*, this Court has held under similar circumstances that a contract: (1) was not ambiguous; and (2) as a matter of law did not contain clear and definite evidence that the parties intended to create an enforceable right in a third party.

In *Devine v. Roche Biomedical Laboratories*, 659 A.2d 868 (Me. 1995), a prospective employee of Bath Iron Works ("BIW") failed a pre-employment drug test insofar as his test revealed the presence of opiates in his system. The plaintiff subsequently conveyed to BIW that his "daily poppy seed muffin consumption" may have caused the positive result, but the defendants rejected this contention, responding that while this might theoretically be true, plaintiff Devine's results were too high to suggest that this was the case. Plaintiff subsequently asserted breach of

contract claims against defendants Roche and NorDx, claiming that he was a third-party beneficiary of their contracts with BIW. The trial court granted the defendants' motion for summary judgment on these claims and plaintiff appealed.

In upholding the trial court's grant of summary judgment, this Court first noted that it "is not enough that he benefitted or could have benefitted from the performance of the contract. The intent must be clear and definite, whether it is expressed in the contract itself or in the circumstances surrounding its execution." *Devine,* 659 A.2d at 870, *citing F.O. Bailey Co., Inc.,* 603 A.2d at 468. If BIW did not intend to confer upon Devine an enforceable right, any benefit enjoyed by him as a result of the performance of the contract renders him a mere incidental beneficiary, who "cannot sue to enforce third party beneficiary rights." *Id*.

After confirming that the contract contained no language indicating that BIW intended to benefit third parties, as is the case here, this Court also concluded that there "is simply nothing in the circumstances of the contractual relationship between BIW and NorDx that accords Devine the status of a third-party beneficiary. ***This conclusion is required legally*** by the facts brought forth by Devine in response to the motions for summary judgment." *Devine,* 659 A.2d at 870 (emphasis added). Specifically, the *Devine* court found that the BIW contract at issue did not implicate an intent to benefit third parties, but rather "it engaged in drug testing of Devine and other employees to advance its economic objectives. Similarly, Devine did not

submit to the drug testing at BIW to address his health concerns. He submitted only because the drug testing was a condition of employment. For both BIW and Devine, the drug testing was incidental to their employment relationship." *Id*. at 870.

The same situation obtains here. Plaintiff entered into a workers' compensation settlement with his employer, the purpose of which was obviously to resolve his workers compensation claim and to release his employer from any future liability, not to release third parties. There is no evidence in this case even remotely suggesting that plaintiff or his employer intended to release third-party claims or to provide any third party with enforceable rights in the workers' compensation release. And, as indicated above, the language of the release expressly contemplates the assertion of additional claims. Although no evidence of the employer's intent was adduced at trial, as pointed out below and in plaintiff/appellant's brief, it would be directly contrary to Blue Diamond's interests to preclude itself from recovering on its statutory lien with respect to any third-party tort settlement/verdict.

This Court has already implicitly rejected the holding in *Steeves*, insofar as it only requires proof that the plaintiff intended to release a third party. In *Fleet Bank of Maine v. Harriman*, this Court decided as a matter of law that defendant borrowers who had defaulted on their loan to purchase a farm property were not third-party beneficiaries of a contract between their lender (Fleet Bank) and a guarantor of the loan (the Farmer's Home Administration), under which they asserted that they were

entitled to a 60 day forbearance with respect to foreclosure proceedings. *Fleet Bank of Maine v. Harriman*, 1998 ME 275, ¶ 9, 721 A.2d 658. Specifically, this Court held that there was "no indication that either [plaintiff] had a clear and definite intent to give the [defendants] an enforceable benefit," *citing F.O. Bailey*, 603 A.2d at 468. Notably, in *Fleet Bank of Maine*, this Court expressly declined to abrogate the standard set forth in *Devine* and *F.O. Bailey* requiring clear and definite evidence of the parties' intent to create an ***enforceable benefit*** in favor of an alternate construction of the law consistent with the *Steeves* holding, suggesting that third party beneficiaries need only demonstrate that the parties to the contract intended it to benefit them.

> In a case interpreting the same Conditional Commitment for Guarantee involved in this case, the Court of Federal Claims came to the opposite conclusion and held that the borrowers were entitled to enforce the conditions in the contract between FmHA and the Bank. *See Schuerman v. United States*, 30 Fed. Cl. 420, 427-433 (1994). To reach that conclusion, the Schuerman court **abandoned its precedents and held that a third-party beneficiary can enforce performance if the parties intended the contract to benefit him, whether or not they intended to give him an enforceable right to that benefit. That holding is directly contrary to the legal standard enunciated by this Court in *Devine* and *F.O. Bailey*, and we decline to adopt it in this case**.

Fleet Bank of Maine, 1998 ME 275, ¶ 10 (emphasis added). In a footnote, the *Fleet Bank of Maine* decision also recognizes that the "new test announced in *Schuerman* for third party beneficiaries has been rejected by the Federal District Court for the

District of Maine." *Id*. ¶ 10, n. 3, *citing Hodgdon v. U.S.*, 919 F.Supp. 37, 39-40 (D.Me. 1996) ("To entitle one to sue as a third party beneficiary of a contract to which he is not a party, the contract must reflect ***the intent not merely to benefit*** the third-party, but ***also*** to give him ***the direct right to compensation or to enforce that right*** against the promisor.") (emphasis added).

II. THE COLLATERAL SOURCE RULE PROHIBITS THE PRESENTATION OF THE WORKERS' COMPENSATION SETTLEMENT AT TRIAL

In phase two of the trial in this case, the trial judge, relying on this Court's 1967 *Steeves* decision, instructed the jury to determine whether or not plaintiff's workers compensation settlement fully compensated him for his injuries in this case. The trial court's admission of this evidence pursuant to *Steeves* clearly runs afoul of Maine's collateral source rule, which has been well-established law in Maine for nearly fifty years.

In 1978, eleven years after the *Steeves* decision was issued, this Court formally adopted the collateral source rule which precludes consideration of payments made by collateral sources other than the defendant, with respect to what constitutes reasonable value:

> The overwhelming weight of authority in the country is to the effect that the fact necessary medical and nursing services are rendered gratuitously to one who is injured as a result of the negligence of another should not preclude the injured party from recovering the reasonable value of those services as part of his compensatory damages in an

> action against the tortfeasor. This is known as the collateral source rule. Stated otherwise, it means that, if a plaintiff is compensated in whole or in part for his damages by some source independent of the tortfeasor, he is still permitted to have full recovery against him.

Werner v. Lane, 393 A.2d 1329, 1335 (Me. 1978). This Court has further stated that "we are unable to comprehend how the mere fact that medical and hospitalization care has been provided gratuitously has any bearing on the reasonable value of such care," citing with approval several cases from other jurisdictions in which the collateral source was applied when "the plaintiff pocketed social security benefits or his medical expenses were absorbed by medicare." *Id*. at 1336, *citing Stone v. City of Seattle*, 391 P.2d 179 (Wash. 1964)*; Rigby v. Eastman*, 217 N.W.2d 604 (Iowa 1974)*; Merz v. Old Republic Ins. Co.*, 191 N.W.2d 876 (Wis. 1971)*; Our Lady of Mercy Hosp. v. McIntosh*, 461 S.W.2d 377 (Ky. 1970).

The *Werner* court goes on to explain the fundamental rationale underlying the collateral source rule:

> Among the various rationales advanced in support of the collateral source rule, we find the following most persuasive:
>
> "The philosophy underlying the Collateral Source Rule seems to be that either the injured party or the tortfeasor is going to receive a windfall, if a part of the pecuniary loss is paid for by an outside source and that it is more just that the windfall should inure to the benefit of the injured party than it should accrue to the tortfeasor. This conclusion seems to be based on substantial justice. . . ."

Id. at 1335-1336, *quoting Olivas v. United States*, 506 F.2d 1158, 1163-1164 (9th Cir. 1974).

Werner remains the leading Maine case on the collateral source rule. To the MTLA's knowledge, *Werner* has been followed to in every subsequent case in which the Law Court has addressed the collateral source rule. In addition, Maine's leading treatise on civil jury instructions continues to cite *Werner* for the proper application of the collateral source rule:

> Medical expenses damages may be recovered for charges paid by and for the plaintiff, charges paid by a collateral source or a third party, or charges actually incurred but later written off or otherwise not collected. ***Mention to the jury of collateral source payments or writeoffs should be avoided***. *See Werner v. Lane*, 393 A.2d 1329, 1333-1337 (Me. 1978).

Alexander, *Maine Jury Instruction Manual*, cmt. §7-108 (emphasis added).

The trial court explained that in its view, the introduction of the collateral source payments in this case (the workers compensation settlement) was appropriate because, pursuant to *Steeves*, this evidence was admitted in order to determine Plaintiff's intent in executing the release and/or whether he had been fully compensated, not to reduce Plaintiff's claim for medical expenses. As set forth above, the determination as to whether the medical malpractice defendants are proper third-party beneficiaries should have been decided by the trial court as a matter of law, not the jury.

With respect to the question of full compensation, the trial court's stated rationale does not render the presentation of this evidence to the jury appropriate. In the first place, the law in Maine is clear – under the collateral source rule, a plaintiff is entitled to full recovery, despite the fact that a third party may have paid some or all of his expenses. In this case, the Defendants were essentially afforded a *complete* offset of plaintiff's damages claim by way of the workers' compensation settlement. Put another way, the unfortunate result in this case provided precisely the sort of inappropriate windfall to the medical malpractice tortfeasors who played no role in the workers compensation settlement, did not contribute a nickel to same, *etc*., that *Werner* purports to prevent.

As the Plaintiff/Appellant points out in his brief, it is well-established under Maine law that the workers' compensation benefits provided to plaintiff should have been excluded at trial pursuant to the collateral source rule. *Nason v. Pruchnic*, 2019 ME 38, ¶ 22, 204 A.3d 861, 869. Accordingly, the admission of this evidence constitutes a clear abuse of discretion on the part of the trial judge.

III. TO AFFIRM THE TRIAL COURT'S RULING WOULD BE INCONSISTENT WITH THE CLEAR LANGUAGE, HISTORY, AND PURPOSES OF MAINE'S WORKERS COMPENSATION ACT

The underlying settlement and release in question stemmed from Mr. Greenwood's lump sum settlement of his worker's compensation claim under Maine's Worker's Compensation Act (hereinafter "WC Act"). (A. 188-199). Often,

employees suffer tort damages from the fault of third parties which occur while "on the clock." In these common scenarios, the injured employee frequently receives -- and is entitled to receive -- workers' compensation benefits, settlement or awards. In these common scenarios, the injured employee ***then also pursues*** tort claims against third party tortfeasors for damages and/or injuries which might extend beyond the employment relationship or beyond the limited benefits available via the WC Act. When the Legislature enacted the WC Act, it explicitly provided for such claims and recovery while also included protections to prevent recovery of double damages or immunity of tortfeasors. This Court's holding in this matter is essential to ensuring preservation of the WC Act as the Legislature intended, the public policies it is meant to serve, and justice, fairness and consistency for future tort claimants who might be injured within the scope of their employment but as a result of fault of a third party.

A. The History and Purpose of Maine's Workers' Compensation Act is to Protect the Injured Worker and Avoid Immunity of Third-Party Tortfeasors.

In *Dionne v. Libbey-Owens Ford Co.*, 621 A.2d 414 (Me. 1993), this Court reviewed the history of Maine's Workers' Compensation Act. "The original form of the Act was enacted in 1915 and provided the injured worker with an election of remedies: he could either claim the statutory benefits or seek damages from the third-party tortfeasor, if one existed." *Dionne*, 621 A.2d at 417. In 1921, the Legislature

amended the Act "to restore to the employee his common law right of action against the third-party tortfeasor" only if the employer failed to bring such action. *Id*. The purpose of the 1921 amendment was to "prevent . . . allowing third party tortfeasors to enjoy an unintended immunity." *Id*. In 1969, after *Steeves*, the WC Act was "substantially overhauled" to prevent employers or their insurance carriers from entering into mere approximations of liability settlements with third party tortfeasors because that "den[ied] the injured employee full recovery since the employer was under a duty to remit any excess recovery to the employee." *Id*. "The 1969 amendments gave priority to the injured employee" and allowed him/her "to bring suit against the third party immediately." *Id*. It was at that time that the Legislature created the automatic lien on third party recovery now found in 39-A M.R.S. § 107.

One month after *Dionne* was argued before the Law Court, the Legislature in October 1992 enacted "An Act to Reform the Workers' Compensation Act and Workers' Compensation Insurance Laws," which became known as the "Maine Workers' Compensation Act of 1992." L.D. 2464, (115th Legis. 1992); 39-A M.R.S. § 101, *et. seq.* The preamble to the Act recognized the need "to protect the interests of injured workers, business and insurers," and that the act was further "necessary for the preservation of the public peace, health and safety." L.D. 2464, (115th Legis. 1992). As part of the 1992 Act, a Blue Ribbon Commission was established to provide recommendations, including the desire to deliver a workers' compensation

system that "can be operated in a manner that will provide injured workers with high-quality medical care, prompt delivery of benefits, and the income support that they require as a result of their injuries." Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System, Final Report to the 115th Legislature 3 (Aug. 31, 1992). Of note, the rights created during the 1969 amendments and codified at 39 M.R.S. § 68 – including the right to pursue claims against third party tortfeasors, the injured worker's ability to make the election him or herself, and the employer's lien – are each preserved at 39-A M.R.S. § 107.

B. Maine's Workers' Compensation Act Explicitly Anticipates Third Party Tort Claims Which May be More Expansive than the Benefits Which the Injured Employee Could Recover Through the Workers' Compensation Act Alone.

The WC Act preserves, under Section 107, actions an injured worker may have against third party tortfeasors:

> When an injury or death for which compensation or medical benefits are payable under this Act is sustained under circumstances creating in ***some person other than the employer a legal liability to pay damages***, the injured employee may, at the employee's option, either claim the compensation and benefits ***or obtain damages from or proceed at law against that other person to recover damages***.

39-A M.R.S.A. § 107 (emphasis added). Section 107 also allows the employer to "enforce liability [against the third party] in its own name or in the name of the injured party" if the employee fails to pursue the third-party remedy. *Id*. If the injured

employee recovers against the third party liable for the injury, Section 107 provides for an automatic lien so as to prevent recovery of double damages and to most appropriately saddle the liable party with the damages caused by the circumstances created by the liable third party, instead of the employer just because an injury was sustained during work hours.

Accordingly, the language and intentions of the Legislature in the WC Act provide at least three understandings: (1) an injured employee may have separate, additional, or simultaneous legal claims against a third party tortfeasor;[1] (2) the damages recoverable against the liable third party may extend beyond the workers' compensation benefits; and (3) where there is overlap in damages recovered from the employer and the third party tortfeasor, fairness and justice entitles the employer to a lien against the overlapping damages recovered by the employee from the third party tortfeasor or entitles the employer to enforce liability against the tortfeasor itself. [2]

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[1] Former 39 M.R.S. § 68 (now 39-A M.R.S. § 107) "thus permits, **and indeed encourages**, third party tort actions following a workers' compensation award or agreement." *Overend v. Elan I Corp.*, 441 A.2d 311 (Me. 1982) (emphasis added); *see also Perry v. Hartford Accident & Indemnity Co.*, 481 A.2d 133, 139 (Me. 1984) ("In the circumstance where a third party is liable for the employee's injury, section 68 allows the employee the **additional right** to proceed against the third party at the same time that he claims benefits under the Act. . . . Section 68 does not deprive the employee of his common law cause of action against the third party; it only limits him to a single recovery, the more generous one.") (emphasis added).

[2] In furtherance of each understanding above, this Court has confirmed that the "third party recovery obtained by a workers' compensation claimant [may contain] **elements of pain and suffering and other damages not compensable under the Act**." *Perry v. Hartford Accident & Indemnity Co.*, 481 A.2d 133, 137 (Me. 1984) (emphasis added).

In this matter presently before this Court, the Trial Court's denial of Plaintiff's Motion for Summary Judgment and Post-Trial Motions, as well as the decision to bifurcate the trial after the jury's verdict issued following phase one, ignores each of the three above premises of Maine's WC Act. Consistent with *Overland* and *Perry*, the jury after phase one of the trial determined that the Appellees were liable third-party tortfeasors and that Appellant's resulting damages included "[p]ain, [s]uffering, [and] [l]oss of enjoyment of life," (A. 10), which were subsequently and wrongly stripped from Mr. Greenwood contrary to Maine's WC Act.

C. This Court Should Preserve the Public Interests and Policies which Maine's Workers' Compensation Act is Meant to Serve.

On multiple occasions, this Court has identified the plain purposes of the WC Act, including 39-A M.R.S. § 107 (former 39 M.R.S. § 68):

> (i) to give the injured worker the benefit of the greater of any tort recovery and any workers' compensation award, (ii) to relieve the carrier of the compensation burden that the third party's fault has caused it to shoulder, and (iii) to prevent either a double recovery by the employee or an immunity for the third-party tortfeasor.

Overend v. Elan I Corporation, 441 A.2d 311, 314 (Me. 1982) (*citing Liberty Mutual Insurance Co. v. Weeks*, 404 A.2d 1006, 1012-1013 (Me. 1979). Further, and more generally to Maine's workers' compensation system, the WC Act "provides certain and speedy relief to those suffering injury in industry." *Perry*, 481 A.2d at 139 (*quoting Roberts v. American Chain & Cable Co.*, 259 A.2d 43, 49 (Me. 1969)).

Finally, the WC Act "is to be construed 'liberally and with a view to carrying out its general purpose.'" *Overend*, 441 A.2d at 314 (*quoting Delano v. City of South Portland*, 405 A.2d 222, 225 (Me. 1979)).

If the trial court result is affirmed, such a result would abandon for the present case and countless future cases each of the above purposes identified by the Legislature and this Court.

First, the result would penalize this and other injured workers for prompt resolution of workers' compensation claims by eliminating any tort recovery, even for damages explicitly unobtainable in the context of workers' compensation, instead of giving the worker the benefit of the greater of the two as intended by the WC Act.

Second, it would cause the employer or its carrier in this and other future cases to shoulder a greater burden for negligent actions or inactions of third parties, which may never be relieved. In this case, we know the jury determined that the third-party Appellees were at fault. Further, that fault increased the injured worker's damages. Although the employer or its carrier is shouldering a greater burden because of the fault of a third party, the employer and its carrier are provided no relief for their extra burden in contrast to the clear purposes of the WC Act. Such a result might have the unwanted future effect of encouraging employers and their carriers to deliberate extensively before providing benefits to an injured employee and/or issuing far more

conservative payments in case they or their employee would not be able to recover from the third party later, despite the "speedy" and "certain" intentions of the WC Act.

Third, the trial court result in this case undoubtedly provides blanket immunity for the third-party tortfeasor. To the extent that this and future trial courts are put in a position of interpreting workers' compensation settlement releases, any review of the releases must be mindful of the WC Act's liberal construction and the WC Act's clear purposes and intentions, including protection of the injured worker, preventing immunity of the third party tortfeasor and ensuring that the liable third party is appropriately, fairly, and justly assigned its portion of fault for damages it caused.

In the instant case, the purposes and public policies of the WC Act were not considered properly and appropriately. To affirm the trial court's ruling would clash with the plain language, stated purposes and intentions of the Legislature in enacting the WC Act, and would also conflict with the Law Court's consistent interpretation and application of the WC Act, at least since the 1969 amendments. Further, affirming the trial court's ruling would have broad and unwanted public policy ramifications, including, but not limited to: how employers and carriers might react to an employee's injury when a third party tortfeasor might be involved to the detriment of the suffering victim; lack of certainty or consistency for the employee

or employer who plans to subsequently pursue claims against third party tortfeasors; the need to every injured worker to retain counsel before settling a worker's compensation claim and/or signing a release; benefitting the only party to the injury who is most culpable and should be held most accountable; and benefitting the only party that has no involvement or role in the worker's compensation scheme.

CONCLUSION

Based on all of the reasons set forth above, the MTLA respectfully requests that this Court: (1) clarify the current state of Maine law with respect to this Court's prior holding in *Steeves v. Irwin* to the extent that this holding conflicts with the Court's decisions in *F.O. Bailey Co., Inc. v. Ledgewood, Inc*. and *Devine v. Roche Biomedical Laboratories* and the current version of Maine's Workers Compensation Act; (2) vacate the jury's decision following phase two of the trial in which the workers compensation settlement was improperly presented to the jury; and (3) grant the parties all other relief deemed by this Court to be just and appropriate.

Dated at Portland, Maine, this 8th day of August, 2024, on behalf of *Amicus Curiae* Maine Trial Lawyers' Association:

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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2024, I sent the original and ten (10) copies of the Brief of *Amicus Curaie* MTLA to the Law Court and two (2) copies via U.S. Mail, postage prepaid, to Jodi Nofsinger, Esq., 129 Lisbon Street, P.O. Box 961, Lewiston, ME 04243-0961 and two (2) copies to Edward W. Gould, Esq., 23 Water Street, Suite 400, P.O. Box 917, Bangor, ME 04402-0917. On August 7, 2024, I also sent an electronic copy of the Brief of *Amicus Curaie* MTLA in .pdf form to the Clerk of the Law Court via email.

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