STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. PEN-24-66

DONALD M. GREENWOOD,

Plaintiff-Appellant

v.

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

Defendants-Appellees

On Appeal from the Superior Court
Civil Docket, Penobscot County

BRIEF OF APPELLANT DONALD M. GREENWOOD

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I. INTRODUCTION

The jury in this medical malpractice case found Defendants liable in negligence for injuring Plaintiff and awarded Plaintiff $180,000 for pain, suffering, loss of enjoyment of life and permanent injury. But after the verdict was read, the jury learned that its job was not done. Instead, there would be a second trial phase to determine whether Plaintiff's workers' compensation ("comp") settlement and release applied to Defendants in tort. At the close of phase two, the trial court instructed the jurors to determine whether Plaintiff's separate workers' comp settlement "constituted full compensation" for the injuries the tortfeasors caused. (A183 at 105:19-23). Finding that it did, the jury reduced the award to zero. (A10-12).

Defendants acknowledged they had no role in the settlement of the underlying workers' compensation claim, paid no money towards the settlement, and were not even aware of the settlement when it occurred. All the same, they sought to escape their tort liability by claiming to be third-party beneficiaries of the workers' comp settlement. Defendants not only lacked standing to enforce the release, but the court failed as a matter of law to determine their status under modern third-party beneficiary jurisprudence. Beyond Defendants' lack of standing, the court's admission of the settlement and release at trial violated the collateral source rule.

A settled principle of Maine law for decades, the collateral source rule provides that "a plaintiff compensated in whole or in part for his damages by some source independent of the tortfeasor . . . is still permitted to have full recovery against him." *Werner v. Lane*, 393 A.2d 1329, 1335 (Me. 1978). Practically, the rule means courts generally exclude collateral source evidence because it invites the jury to speculate on whether the tort victim has been paid enough for their injuries instead of whether the tortfeasor has paid enough for the injuries it caused. The jury here was improperly instructed to do exactly what the collateral source rule is intended to prevent.

Defendants are expected to argue, as they did at trial, that they introduced collateral source evidence not to reduce their own liability but to determine whether Plaintiff's workers' comp release applied to them. But whatever the purpose in introducing the evidence, the practical result of doing so required the jury to consider whether a collateral source had compensated Mr. Greenwood for all his injuries, including the injuries Defendants caused after the crash.

Making matters worse, the $0 recovery prevented Mr. Greenwood's employer from recouping its statutory lien on any third party tort recovery, in direct contravention of public policy considerations central to the purposes of the Workers' Compensation Act. In essence, the trial court permitted Defendants to shift financial responsibility for their own negligence to the workers' compensation insurer, by

claiming the protection of a contract to which they lacked privity.

For these errors, and others set forth below, Plaintiff-Appellant respectfully requests that this Court vacate the verdict and remand for a new trial. In the alternative, Plaintiff requests that the Court vacate the second phase of the trial and affirm the verdict of the first phase, finding for Plaintiff in the amount of $180,000. (A10-12).

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

1. Donald Greenwood Is Hurt On The Job And Settles His Workers' Comp Claim.

Donald Greenwood worked as a truck driver for Blue Diamond Transportation, LLC ("Blue Diamond") in August 2018 when he was seriously injured in a car crash. (A40; A190). Because the injury happened on the job, he received workers' comp benefits. Mr. Greenwood hired an attorney and negotiated a lump-sum settlement with Blue Diamond and its workers' comp insurer. (A188-99). The settlement was memorialized in four documents: (1) a Worker's Compensation Board Lump-Sum Settlement Form (Form WCB-10) (A189); (2) a Release of claims (the "Release") (A192-94); (3) an Affidavit by Mr. Greenwood outlining his understanding of the terms of the settlement (A195-98); and (4) a Resignation form resigning his position as a Blue Diamond employee. (A199).

The relevant part of the Release, for this appeal, states that in exchange for

$190,000, Mr. Greenwood would:

> release, acquit and forever discharge and agree to hold harmless BLUE DIAMOND TRANSPORTATION, LLC, of PRESQUE ISLE, MAINE, (hereinafter releasees) and its agents insurers predecessor and affiliated companies, *and any other person, partnership, firm or corporation charged or chargeable with responsibility or liability from any and all actions, causes of action, claims or demands for damages, costs, expenses, loss of services, contribution, indemnification or any other claim whatsoever*. . . .

(A192) (emphasis supplied).

The Release specified that the Workers' Compensation Board WCB-10, the Release, the Affidavit, and the Resignation together constituted "the ENTIRE AGREEMENT between the releasees" and Mr. Greenwood.[1] (A194) (emphasis in original). The WCB-10 memorialized the terms of the settlement and specifically released "the employer and insurer above named from all further liability for this injury, except as otherwise approved by the Board." (A189).

Similarly, Mr. Greenwood's Affidavit showed that he understood this settlement agreement (a) to be between himself, his employer, and its workers' comp insurer, and (b) concern only his rights with respect to workers' comp claims. (A195-98). For example, his Affidavit states:

- 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, as well as "any claim [he] may have as against the employer and insurer resulting from their adjustment or

[1] Per the terms of the Release, the only party identified as the "releasees" was Blue Diamond Transportation, LLC, Mr. Greenwood's employer. (A147).

investigation" of the claim. (A196 at ¶ 6). There is no mention of other releasees or tort claims.

- The settlement meant he would "no longer be entitled to any benefits under the Maine Workers' Compensation Act or any other Workers' Compensation law for any and all injuries sustained" during his employment. (A196 at ¶ 7). There is no mention of releasing or otherwise not being entitled to pursuing tort claims.

- If his condition worsened after the settlement, he would still "be barred from any further Workers' Compensation claim against" Blue Diamond or its insurer. (A197 at ¶ 9). There is no mention of being barred from pursuing tort claims.

The Administrative Law Judge presiding over the hearing issued Findings of Fact and Conclusions of Law, which confirmed the settlement concerned only Mr. Greenwood's workers' comp claims: "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). The Administrative Law Judge also allocated the $190,000 settlement as follows: $19,000 for future medical expenses related to the work injury; $20,000 for vocational rehabilitation; $13,297.45 for attorneys' fees and costs, and $137,702.55 for future wage loss. (A191 at ¶ 5).

Read as a whole, and as approved by the Administrative Law Judge, the settlement agreement established that Mr. Greenwood was settling his workers' comp claims with his employer and its workers' comp insurer and he was giving up only his right to pursue any other workers' comp claims.

2. Donald Greenwood Files A Medical Malpractice Claim After His Left Hand Becomes Permanently Disabled From Negligent Medical Treatment.

The crash that injured Mr. Greenwood caused several injuries[2], but the injuries relevant to this appeal are the fractures he suffered on two fingers of his left hand. (A40). Following the crash, he was admitted to Eastern Maine Medical Center ("EMMC") for treatment. *Id.* One of his treating physicians was Defendant Dr. Benjamin Liliav, who treated Mr. Greenwood's injured fingers with an immobilizing splint and sent him on his way. *Id.* Over the next few months, Mr. Greenwood continued to experience pain, swelling, and lack of mobility in those fingers, despite repeated visits with Dr. Liliav and diligent work in rehabilitation therapy. (A41).

Three months after his first visit with Dr. Liliav and no improvement, Mr. Greenwood looked for a second opinion. Dr. S. Craige Williamson noticed several things right away: the image the hospital took of his hand one month after the crash showed serious long-term damage to Mr. Greenwood's fingers; the damage to those fingers had worsened because of the incorrect treatment, and the damage was irreparable, as the two fingers on his left hand could not benefit from corrective surgery. (A42). Effectively, Mr. Greenwood's hand was stuck like that. The only possible surgical option was fusion, which would cost Mr. Greenwood the little

[2] His injuries included a nasal fracture, a significant hematoma on his leg, exploratory abdominal surgery to address a potential bowel injury, and fractured fingers.

mobility he had left.

Once it became clear Dr. Liliav's negligence caused permanent disability to his hand, Mr. Greenwood hired a lawyer to explore a potential medical malpractice suit against Dr. Liliav. Mr. Greenwood ultimately filed suit against Dr. Liliav and his employers, EMMC and Eastern Maine Healthcare Systems (collectively, the Defendants), for medical malpractice. (A39).

3. The Trial Court Denies The Parties' Cross-Motions For Summary Judgment On Whether The Release Provides A Defense As A Matter Of Law.

Dr. Liliav treated Mr. Greenwood during the last few months of 2018. Mr. Greenwood settled his workers' comp claim in October 2019. (A188). He filed the Complaint in July 2021, once he had stopped treating his injuries. (A39). Defendants answered a week later. They did not raise release as an affirmative defense. Almost a year after that, Defendants filed a Motion for Summary Judgment arguing that Mr. Greenwood's workers' comp Release had also released his tort claims against them. (A77).

Mr. Greenwood opposed Defendant's motion and cross-moved for Partial Summary Judgment, arguing that the settlement and release of his workers' comp claim did not shield Defendants from liability and were inadmissible as a matter of law. (A92). He argued that: (a) Defendants' did not assert Release as an affirmative defense (A95); (b) the settlement agreement as a whole did not unambiguously

release Defendants (A96); and (c) Defendants could not enforce the settlement agreement because they were neither parties nor third-party beneficiaries to the contract, nor were they in privity of contract, nor did they have standing. (A97).

At the hearing on the cross-motions for summary judgment, counsel for Defendants argued that this Court's decision in *Steeves v. Irwin*, 233 A.2d 126 (Me. 1967) controlled the resolution of the case. Defendants argued that *Steeves* controlled because it also involved a medical malpractice defendant who argued the plaintiff's workers' comp release applied to him. (A18-20). There, the Court held that the defendant doctor could not avail himself of the plaintiff's workers' compensation settlement unless he could show *either* (1) "the settlement award and release were intended by the injured plaintiff to release the defendant doctor," *or* (2) "compensation received was in fact full compensation of the whole injury suffered by the plaintiff." *Steeves*, 233 A.2d at 136. Defendants did not mention, however, that this Court decided *Steeves* (a) two years before the legislature overhauled the Workers' Compensation Act (the "Act") to significantly alter its functions and purpose, and (b) eleven years before it officially adopted the collateral source rule in *Werner*, 393 A.2d at 1329.

After briefing and argument, the trial court denied both motions and granted Defendants' the opportunity to amend their Answer to assert the affirmative defense of release. (A14). The trial court denied Defendants' motion for summary judgment

because it reasoned that the language of the release was ambiguous.

> THE COURT: I do find the release to be ambiguous. And the reason why I'm doing that is because of the next to the last paragraph. I think that that particular paragraph is, while close, sufficient to muddy the waters enough to make me find that the agreement is ambiguous. And therefore . . . defendant's motion for summary judgment is denied, as is the plaintiff's motion for personal summary judgment denied as well.

(A30:24-A31:6).

The "next to the last paragraph" to which the court referred is the paragraph in the Release that reads: "I understand that this 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. . . ." (A194). Because the Affidavit and Lump-Sum Settlement form narrowed the scope of the Release, reasoned the trial court, the agreement was ambiguous.

The question of whether the workers' comp settlement could come into evidence remained unanswered.

4. The Trial Court Denies Plaintiff's Motions To Exclude His Workers' Compensation Settlement And Admits The Collateral Source Evidence Over The Course Of Two Hearings.

The parties raised the same issues before trial, in contested Motions in Limine. On top of the arguments raised at the Summary Judgment stage, Plaintiff also argued the workers' compensation settlement was inadmissible collateral source evidence

that would be far more prejudicial than probative. (A58). He argued that asking the jury to decide whether he had been fully compensated by workers' comp would require him to try to tease out which comp payments went towards which injuries at trial, an unnecessary and prejudicial burden. *Id.* Finally, even if the settlement documents were admissible, the jury could determine intent in signing the release without introducing the specific dollar amount of the settlement. (A49).

The trial court held two hearings on the parties' motions *in limine*. In the first, the parties argued both Mr. Greenwood's motion to exclude workers' compensation evidence and Defendants' motion to admit it. At that hearing, Defense counsel largely focused on this Court's opinion in *Steeves*, 233 A.2d at 126, arguing that it outlined the proper procedure to determine whether the release applied. (A128-131).

At the end of the hearing, the trial court suggested that if it followed the ruling in *Steeves*, it would probably bifurcate the trial. (A142:17-22). The court proposed a first phase to decide the negligence and liability issues, and a second phase to determine whether the Release applied to Defendants. Counsel for Mr. Greenwood summed up some of her hesitations to the logistics of the bifurcation, including her concern that the jurors would hear the first phase of the trial, issue a verdict and assume they were finished, only to be told, "so sorry, you're not actually done." [3]

[3] This is exactly what happened. The jury reached a verdict in stage 1 on Friday afternoon. (Day 4 Tr. at 121). After reading the verdict, they learned for the first time that they had to return the following week to continue with stage 2. (Day 4 Tr. at 122).

(A143:16-21).

At a second hearing, four days after the first hearing, Plaintiffs raised additional reasons the collateral source evidence was inadmissible. (A152-58). First, Plaintiff argued the statutory lien in the Act, created after *Steeves*, abrogated the *Steeves'* analysis because *Steeves* allowed a third-party tortfeasor to shift the financial burden to the workers' compensation insurer, essentially eliminating the insurer's right of recovery. (A152:9-A153:24). Plaintiff's counsel assured the court that the employer in this case fully intended to assert a lien on whatever Mr. Greenwood recovered in tort based on telephone calls she had with insurer's counsel. (A150:18-24).

As for the collateral source rule, the court said that although the caselaw "seems to say that the workers' comp payment wouldn't be admissible on damages," it understood Defendants were seeking the evidence to be admitted "on the release issue," i.e., the evidence was being admitted so the jury could decide whether the Release applied. (A154:1-4). Although both uses of the evidence asked the jury to consider whether Plaintiff had been fully compensated by a collateral source, the court appeared to create a distinction between making that assessment to determine whether the Release applied to Defendants as opposed to using it to reduce Plaintiff's damages.

Ultimately, the court bifurcated the trial, with stage 1 being a "straight med

mal case," and "if the plaintiff prevails, we'll go to stage 2." (A158:21-159:1). If the trial reached stage 2, the court reasoned that, based on *Steeves*, the first question the jury would answer is "did Mr. Greenwood intend to release the defendants? . . . And then the second question would be, has Mr. Greenwood been fully compensated for the injuries he sustained as a result of the defendants' malpractice?" (A159:20-160:1). Plaintiff's counsel again pointed out that *Steeves* had been overruled by this Court's line of collateral source caselaw because it calls for the admission of collateral source evidence. (A165:19-166:1).

The court took the arguments under advisement, and the parties headed for trial.

5. In The Bifurcated Trial, All Workers' Compensation Evidence Is Admitted Over Plaintiff's Objections.

A. The jury found the Defendants liable in Phase I.

At the start of trial, outside the hearing of the jury, the court announced that it would bifurcate the liability phase from the release phase. (Day 1 Tr. at 3-5). Stage 1, the liability phase, lasted four days. At the end of stage 1 the jury found that Defendants had negligently treated Mr. Greenwood, the negligent treatment had caused harm to Mr. Greenwood, and Mr. Greenwood's total damages for "Pain, Suffering, Loss of Enjoyment of Life, and Permanent Injury" were $180,000. (A10). Following the reading of the verdict on Friday afternoon, the Court notified the

jurors that they needed to return on Monday morning for a second phase of the trial. (Day 4 Tr. at 122).

B. The court admitted the workers' comp evidence while allowing Plaintiff to preserve all objections.

Stage 2 of the trial lasted one day. Before the jury was seated, Plaintiff's counsel preserved all of its objections to the admission of collateral source evidence, challenged the admission of workers' comp evidence and further:

(a) argued that admitting the workers' comp evidence violated the collateral source rule (Day 5 Tr. at 12:19-21);

(b) renewed the motion for partial summary judgment and the motions *in limine* regarding the workers' compensation evidence (Day 5 Tr. at 13:9-19);

(c) argued that the ruling in *Steeves* had been abrogated by *Werner* and the adoption of the collateral source rule (Day 5 Tr. at 13:15-19);

(d) argued that Defendants were shifting their own financial burden to the employer, which violated Maine's Workers' Compensation Act as expressed through the employer's automatic statutory lien (Day 5 Tr. at 13:20-22; 14:7-10); and

(e) argued that Defendants did not have standing to assert the release because they provided no consideration for the contract, nor were they third-party beneficiaries. (Day 5 Tr. at 14:2-6).

The court denied all of the objections. It reasoned that it could not make the *Steeves* decision "consistent" with a modern third-party beneficiary analysis,[4] so it

[4] Whether someone is a third-party beneficiary with an enforceable right to a contract depends on whether "the contracting parties intended that the third party have an enforceable right" or whether the

had to make a choice between what it viewed as controlling case law or the modern understanding of third-party beneficiary contract interpretation. (Day 5 Tr. at 16:6-18:11). The court decided *Steeves* would rule the day, and the jury would consider whether (a) Mr. Greenwood intended to release Defendants when he released his workers' comp claims, **and** (b) whether the workers' comp settlement fully compensated Mr. Greenwood for the injuries Defendants negligently caused. (Day 5 Tr. at 16:6-18:11). Although the two questions were independent of each other, the jury would hear all evidence relevant to both before it decided on either.

C. In stage 2, Defendants used collateral source evidence to argue that Mr. Greenwood had been paid enough for his injuries.

Because Defendants had affirmatively raised the issue of the Release, they carried the burden of persuasion in stage 2. *See Bean v. City of Bangor*, 2022 ME 30, ¶ 6, 275 A.3d 324, 327 ("As a general rule, the party opposing a claim, usually a defendant, has the burden of proof on . . . an affirmative defense or other issues to avoid or reduce liability.") (*internal quotation omitted*). And from the opening statement, defense counsel immediately invited the jury to consider whether Mr. Greenwood had already been paid enough.

MR. GOULD: . . . People make choices, and we're all responsible for the choices that we make. Mr. Greenwood was offered $190,000. The claim against Dr. Liliav at that point in time was very early. He had no

circumstances indicate that the promise intends to give the beneficiary the benefit of the promised performance. *Davis v. R C & Sons Paving, Inc.*, 2011 ME 88, ¶ 12, 26 A.3d 787, 790.

> reassurance that that would generate any recovery for him. But the $190,000 was a sure thing, and he took it. And he signed these documents that you're going to read in order to receive that money. And it's going to be your job to determine *whether or not he was taking the bird in the hand at that point in time*.

(Day 5 Tr. at 30:16-24) (emphasis supplied).

He continued with this theme at closing.

> MR. GOULD: . . . So fair question for you to ask is well, okay, if he'd already hired an attorney [to pursue his medical malpractice claim], then, you know, why go forward afterwards unless he intended to do that? That's a fair question. You should ask yourselves that when you're deliberating. And the answer is because it's a *bird in the hand*. And *I'm not a gambler*, but, you know, I'm familiar with stuff – you hear gambling ads on TV all the time now – and – but so I'm familiar with gambling phrases like *play with house money*.
>
> In October of 2019 when he settled the case, he had $190,000 that was a sure thing, and he had nothing to lose at that point in time to pursue a claim against Dr. Liliav. Nothing to lose. *$190,000 in the bank and had a chance for more. That's a no-lose proposition*.

(Day 5 Tr. at 93:4-17) (emphasis supplied).

Bird in the hand. Playing with house money. A no-lose proposition. Although Defendants will contend that these statements explained to the jury how to view the evidence of Mr. Greenwood's intent, they were introduced so Defendants could say one thing: Mr. Greenwood has already been paid enough for his injuries, so we

should not have to pay him more.

D. The jury in stage 2 determined (a) Mr. Greenwood intended to release the Defendants and (b) workers' comp paid Mr. Greenwood for the injuries the Defendants caused.

Defendants' strategy worked. The court first instructed the jury based on this Court's holding in *Steeves*, explaining that an employee's workers' comp settlement does not release medical providers "unless, number 1, he actually intended to release the medical providers, or number 2, the amount paid to secure the release constituted full compensation for the harm to the plaintiff." (Day 5 Tr. at 105:18-21). The jury found both that Mr. Greenwood intended to release Defendants, and the amount paid to him constituted "full compensation" for the harm he suffered from both the original truck accident and the negligence for which the defendants had been judged liable. (A11). Despite prevailing in the liability phase for damages of $180,000, that verdict was zeroed, and the court entered judgment for Defendants. (A9).

6. The Trial Court Denies Plaintiff's Post-Trial Motions.

Mr. Greenwood moved for judgment as a matter of law, amending the judgment, and a new trial, raising all of his prior arguments. (A71).

The court denied the motion. (A12). It explained the decision in *Steeves* was still good law that "addressed the interplay between a medical malpractice claim and a settled workers' compensation claim." *Id.* It then stated the "Release, associated

documents, and testimony permitted in phase two of the trial" were not admitted in violation of the collateral source rule, but instead "for the jury's determination of whether Plaintiff's settlement with his employer/insurer acted as a Release" against Defendants. (A13). The court finally stated the decision of whether Defendants were third-party beneficiaries[5] of the settlement agreement was in the jury's hands, and it was "free to accept or reject" the evidence and testimony the parties presented on that subject. *Id.*

Plaintiff timely filed his notice of appeal.

III. STATEMENT OF THE ISSUES

1. Whether the Court erred as a matter of law when it allowed Defendants to be third-party beneficiaries to a contract without proving the intent of both parties to the contract.
2. Whether the trial court erred as a matter of law and abused its discretion in relying on this Court's decision in *Steeves v. Irwin*, 393 A.2d 1329 (Me. 1968) to admit prejudicial collateral source evidence.
3. Whether the trial court erred as a matter of law when it instructed the jury to determine whether a collateral source fully compensated Plaintiff for the injuries the tortfeasor caused.

[5] This was puzzling, since the Court had already determined the Steeves analysis and third-party beneficiary analysis were incompatible and had chosen to follow *Steeves.* (Day 5 Tr. at 16:6-18:11)

4. Whether the trial court erred as a matter of law in allowing the jury to consider whether Plaintiff was fully compensated for Defendants' tort damages by workers' compensation when workers' compensation specifically does not apply to damages for pain and suffering.
5. Whether the trial court erred in relying on this Court's decision in *Steeves v. Irwin*, 393 A.2d 1329 (Me. 1967) and shifted the tortfeasor's burden to the employer in conflict with the automatic statutory lien that has since been provided in the Maine Workers' Compensation Act.

IV. STANDARD OF REVIEW

This Court reviews evidentiary rulings for abuse of discretion and clear error. *Foster v. Oral Surgery Assocs., P.A.*, 2008 ME 21, ¶ 15, 940 A.2d 1102, 1106. It reviews denials of motions for a new trial "deferentially for a clear and manifest abuse of discretion." *In re Child of Erica H.*, 2019 ME 66, ¶ 15, 207 A.3d 1197, 1201 (internal quotation omitted). Jury instructions are reviewed "in their entirety to determine whether they fairly and correctly apprised the jury in all necessary aspects of governing law." *Wood v. Bell*, 2006 ME 98, ¶ 20, 902 A.2d 843, 851. Errors in jury instructions to which a party has preserved an objection are "reversible" if they result "in prejudice." *Wahlcometroflex, Inc. v. Baldwin*, 2010 ME 26, ¶ 14, 991 A.2d 44, 47-48.

V. ARGUMENT

1. The Trial Court Erred In Determining Whether Defendants Were Third-Party Beneficiaries As A Matter Of Law.

Defendants admitted both in their responses to Requests for Admission and at multiple hearings before the trial court that they were not parties to the workers' comp settlement, they had no influence on the workers' comp settlement, and they were not involved in the workers' comp settlement in any way. As a general proposition, non-parties to contracts cannot enforce their terms. Of course, Defendants would stand to benefit if the Release applied to them, because then they would not owe money for their negligence. But a person cannot enforce a contract just because they happen to benefit from it. *See Devine v. Roche Biomedical Labs.*, 659 A.2d 868, 870 (Me. 1995) ("An incidental beneficiary cannot sue to enforce third party beneficiary rights.") (*quoting F.O. Bailey Co. v. Ledgewood, Inc.*, 603 A.2d 466, 468 (Me. 1992)).

A. Maine has adopted the Restatement's rule for determining whether a non-party to a contract is still a third-party beneficiary.

This Court has long "relied on RESTATEMENT (SECOND) OF CONTRACTS § 302 in deciding whether a third party was an intended beneficiary who could enforce a contract." *Perkins v. Blake*, 2004 ME 86, ¶ 8, 853 A.2d 752, 754 (*citing F.O. Bailey*, 603 A.2d at 468-69). Section 302 is "the controlling law" to

determine whether a party can proceed as a third-party beneficiary to a contract. *Davis v. R C & Sons Paving, Inc.*, 2011 ME 88, ¶ 15, 26 A.3d 787, 791.

Section 302 provides:

> (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 promisee 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.

Restatement (Second) of Contracts § 302 (1981).

This Court has thus interpreted Section 302 to require an alleged third-party beneficiary to prove *both* parties to a contract intended to provide a benefit for the third party or to prove the third party's right to enforce the contract effectuates the intent of the contracting parties. *See, e.g., Perkins*, 2004 ME 86 at ¶ 9 (holding that "applying section 302" to the case required the Court to determine whether the third-party's right to enforce the contract was "appropriate to effectuate the intention of the parties" to the release and whether both parties to the release intended to provide the third-party benefit); *Devine*, 659 A.2d at 870 (noting the "circumstances" surrounding the contract must "indicate with clarity and definiteness" that both

contractors intended the third-party to receive an enforceable benefit).

When courts in Maine need to determine whether litigants are third-party beneficiaries of a contract, the "controlling" law requires they follow Section 302 to do it. The trial court did not rely on Section 302 to determine whether Defendants were third-party beneficiaries of the Release; it followed the procedure outlined in *Steeves*, 233 A.2d at 136. This was error.

B. The trial court legally erred when it followed the holding in Steeves instead of Section 302.

Section 302 and *Steeves* differ in a few critical ways. While Section 302 demands that a third-party beneficiary's right to enforce a contract be "appropriate to effectuate the intention of the parties" and result from intent of <u>both</u> contracting parties, *Steeves* requires only that the injured employee intend the third party to benefit from the release or that the employee be "fully compensated" for the tortfeasor's damages by the workers' comp he received.[6] *See Steeves*, 233 A.2d at 136.

Because the defense of Release is an affirmative defense, the Defendants bore the burden of proof in stage 2 of the trial. And for Defendants, *Steeves* provides a lesser burden of proof for them to prove that they are third-party beneficiaries than

[6] As will be set forth below, the "full compensation" prong of *Steeves* is a violation of the collateral source rule and an insufficient basis to find that Defendants here were third-party beneficiaries of Plaintiff's workers' comp release.

Section 302 does. Rather than requiring a purported third party to show that both parties to the Release intended the third-party benefit under Section 302, *Steeves* requires only that they show one party intended it. Rather than requiring a purported third party to show the right to enforce the Release "appropriately effectuates the intent" of the parties under Section 302, *Steeves* just makes them show the injured employee got enough money out of workers' comp. So Defendants preferred their status to be determined under *Steeves*, and persuaded the Court to go along.

But that is not the law. Section 302 is the "controlling law" when determining third-party beneficiary status. *Davis*, 2011 ME 88 at ¶ 15, 26 A.3d at 791. The intent of both contracting parties must be "clear and definite." *F.O. Bailey*, 603 A.2d at 468. The parties' intent can be determined "from language of the written instruments and the circumstances under which they were executed." *DiMillo v. Travelers Prop. Cas. Co. of Am.*, 789 F. Supp. 2d 194, 207 (D. Me. 2011) (*citing F.O. Bailey*, 603 A.2d at 468). The only testimony taken regarding the parties' intent was Mr. Greenwood's emphatic insistence that he never intended to release Defendants. (Day 5 Tr. at 70:21-24). And the "circumstances" under which the employer executed the Release lean heavily toward a finding that the employer/insurer did not intend to release Defendants because there is a chance doing so would forfeit the automatic lien to which they are entitled under the Workers' Compensation Act. It would be like giving away free money.

In its order denying Plaintiff's post-trial motions, the trial court suggested the application of the third-party beneficiary analysis, and as if to explain, indicated the "jury found that the Plaintiff 'actually intended' to release the Defendants in this case by signing the Release with his employer/insurer." (A13). No mention of the intent of the employer as the other party to the contract, which is integral to the third-party beneficiary analysis. No mention of whether Defendants' right to enforce the contract "effectuated the intent of the parties." Although the Court tried to justify the outcome after the fact by claiming the jury found Defendants to be third-party beneficiaries, they did not, nor were they instructed to. The trial court applied the wrong law to this question, lowering the burden of proof for Defendants. This error of law requires that the matter be retried.

2. The Trial Court Erred In Relying On This Court's Holding In *Steeves V. Irwin*, 393 A.2d 1329 (Me. 1968) To Admit Collateral Source Evidence Because That Case Was Overruled By Maine's Adoption Of The Collateral Source Rule.

The collateral source rule "has been the settled law of the state of Maine" since 1978. *Hinton v. Outboard Marine Corp.*, 1:09-cv-00554-JAW, 2012 WL 215183, *1 (D. Me. Jan. 24, 2012). The rule directs trial courts to exclude evidence of collateral source payments because of the substantial likelihood of prejudice. *Werner*, 393 A.2d at 1337 (recognizing "that the revelation to the jury of the receipt by the plaintiff of benefits from a collateral source . . . involves a substantial likelihood of

prejudicial impact.”). Put differently, the collateral source rule can be viewed as a strict application of Maine Rule of Evidence 403’s balancing test[7] to a particular kind of evidence—payments from sources independent of the tortfeasor. Here, even if the workers’ comp settlement were relevant for a reason other than reducing Plaintiff’s damages, its prejudicial impact nevertheless rendered it inadmissible.

A. The Steeves decision does not address the collateral source rule because it was decided eleven years before the Court adopted the collateral source rule.

This Court adopted the collateral source rule in 1978. Eleven years earlier, this Court ruled in *Steeves* that a workers’ compensation release could discharge a medical malpractice defendant under one of two conditions: either (1) the injured employee intended his workers’ comp settlement to also release a medmal tortfeasor; or (2) the amount workers’ comp paid the injured employee constituted “full compensation of the *whole injury* suffered by the plaintiff.” *Steeves*, 233 A.2d at 136 (emphasis supplied). The opinion did *not* discuss how the admission of the workers’ comp evidence might implicate the collateral source rule because Maine did not recognize the collateral source rule when it was published. *See Werner*, 393 A.2d at 1336 (adopting the collateral source rule).

In *Werner*, the Court recognized that the philosophy underpinning the

[7] “The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” M.R. Evid. 403.

collateral source rule matched the goals of Maine tort law: "[E]ither the injured party or the tortfeasor is going to receive a windfall" if the injured party receives compensation from a collateral source, and "it is more just that the windfall should inure to the benefit of the injured party than that it should accrue to the tortfeasor." *Id.* at 1335-36. With that philosophy in mind, the Court understood that the admission of collateral source payments to the jury runs counter to the goals of tort law and therefore "involves a substantial likelihood of prejudicial impact." *Id.* at 1337.

The ruling in *Steeves* instructs the factfinder to consider collateral source payments and determine whether those payments, made independently of the tortfeasor, are inured to the benefit of the injured party. *See Steeves*, 233 A.2d at 134 ("Whether the . . . [workers'] compensation received was in fact full compensation of the whole injury suffered by the plaintiff are factual jury questions. . . ."). This violates the collateral source rule. Worse, nowhere does *Steeves* consider or discuss even the possibility that such evidence could have a "substantial likelihood of prejudicial impact," or that courts in any other way should be wary of its introduction.

B. This Court has repeatedly identified workers' comp as an inadmissible collateral source that is more prejudicial than probative, with almost no exceptions.

Evidence of workers' comp payments is classic collateral source evidence. *See*

Nason v. Pruchnic, 2019 ME 38, ¶ 22, 204 A.3d 861, 869 ("[T]he collateral source doctrine typically precludes the admission of evidence of workers' compensation. . . .")[8]; *see also Pine v. Cole's Exp., Inc.*, 523 A.2d 1001, 1002 (Me. 1987) ("The collateral source rule was properly applied to prevent the introduction of evidence of the husband's workers' compensation benefits."); 25 C.J.S. Damages § 181 ("In the application of the collateral-source rule, it is generally recognized that a wrongdoer may not set up in mitigation of damages that the injured person has received payments made under a workers' compensation act.").

Since it adopted the collateral source rule, this Court has warned trial courts to be exceedingly cautious with respect to the introduction of workers' comp evidence. Indeed, something as slight as a mere "reference to a plaintiff's workers' compensation claim has as much potential for prejudice as a reference to a defendant's liability insurance coverage and is generally improper." *Theriault v. Swan*, 558 A.2d 369, 371 (Me. 1989) (*citing Pine*, 523 A.2d at 1002); *see also Pierce v. Central Me. Power Co.*, 622 A.2d 80, 84 (Me. 1993) ("A party's receipt of worker's compensation benefits . . . poses a great danger of creating unfair prejudice if admitted.").

Collateral source evidence *may* be admitted where its probative value is not

[8] *Nason* involved an appeal from the same Justice as this appeal, and it involved the same Plaintiff and Defense counsel.

outweighed by the "danger of unfair prejudice, confusion of the issues, or misleading the jury." *Grover v. Boise Cascade Corp.*, 2004 ME 119, ¶ 25, 860 A.2d 851, 859. Workers' comp evidence is no different. But, this Court has identified only one situation in which evidence of workers' comp benefits "may be relevant and admissible for specific limited purposes," and that is "whether those benefits may have affected a plaintiff's efforts to seek work and mitigate damages." *Theriault*, 558 A.2d at 371 n.3. Maine courts have not identified any other exception for the collateral admission of workers' comp evidence.

Here, even if the court accepted Defendants' proffered reasons for admitting the evidence, it did not weigh the probative value of the evidence versus its prejudicial effect because the ruling in *Steeves* did not say that it should. Given that collateral source evidence has such a substantial likelihood of prejudicial impact, failing to weigh that prejudice versus its probative value was error and an abuse of discretion.

C. Evidence of collateral source payments is prejudicial and inadmissible where it risks misuse by the jury.

The collateral source rule has such few exceptions because courts must be cautious not to admit a "wolf in sheep's clothing." "[E]vidence as to collateral payments is inadmissible in the absence of evidence of malingering or exaggeration, or where the real purpose of the evidence offered as to collateral sources is the

mitigation of liability for damages of the defendant." *Kelch v. Mass Transit Admin.,* 42 Md. App. 291, 400 A.2d 440, 444 (1979). Collateral source evidence is therefore not only "inadmissible to . . . mitigate damages," but also "involves a substantial likelihood of prejudicial impact" if admitted for other purposes because "evidence of collateral benefits is readily subject to misuse by a jury." *Eichel v. N.Y. Cent. R.R. Co.*, 375 U.S. 253, 254-55 (1963).

Even where the proponent of collateral source evidence can articulate a benign purpose for its use, the court must still carefully balance its probative value with its prejudicial effect under Rule 403. *See, e.g., David v. Kelly*, 178 N.E.3d 878, 885 (Mass. App. Ct. 2021) ("A judge must weigh the probative value of collateral source evidence against its prejudicial effect.").

Indeed, collateral source evidence carries with it such a risk of prejudice that its introduction is routinely found to be an abuse of discretion, particularly where a party can prove its case with other less prejudicial means. *Jones v. Bowie Indus., Inc.*, 282 P.3d 316, 326 (Alaska 2012) ("Our case law suggests that collateral source evidence is presumptively prejudicial and should be excluded absent a showing that the evidence is more probative than other available evidence."); *David*, 178 N.E.3d at 885 (holding that trial court abused its discretion to admit evidence that workers' comp benefits had been paid because the medical bills and lost wage damages were provable by other means); *Cyr v. J.I. Case Co.*, 652 A.2d 685, 689 (N.H. 1994)

(holding that the trial court "plainly abused its discretion in admitting" workers' comp evidence because the "minimal probative value" of the evidence to rebut the plaintiff's lost wages claim "was substantially outweighed by the dangers of unfair prejudice, confusion of issues, and misleading the jury.").

The trial court's introduction of the workers' comp settlement here, without balancing its prejudicial effect against its probative value, was an abuse of discretion.

3. The Trial Court Abused Its Discretion When Instructing The Jury To Determine Whether Workers' Comp Fully Compensated Plaintiff.

The trial court's decision to follow the procedure outlined in *Steeves* tainted every other decision that came after. Once the court admitted the evidence, its instructions to the jury regarding the evidence's role in the case compounded the error. As explained above, the prejudicial nature of collateral source evidence requires courts to carefully consider whether to admit it for a limited purpose. As the U.S. Supreme Court noted, courts need to exercise care because "evidence of collateral benefits is readily subject to misuse by a jury." *Eichel*, 375 U.S. at 255.

This Court also recognized the risk of misuse, recommending that where "evidence of a collateral source comes to the attention of the jury," the court should at least issue "a curative instruction . . . to avert the danger of prejudice." *Nason*, 2019 ME 38 at ¶ 22, 204 A.3d at 869 (internal quotation omitted); *see also Werner*, 393 A.2d at 1335 ("[I]t was the duty of the presiding Justice to take positive steps to

minimize the prejudicial effect" of the introduction "of benefits from a collateral source."). In *Nason*, the trial court responded to references to workers' compensation by instructing the jury to "completely disregard" them, and that the jury could "not consider what benefits were received, what they amounted to, or what rights existed based upon the payments of those benefits." *Nason*, 2019 ME 38 at ¶ 23, 204 A.3d at 869.

Here, on the other hand, the trial court instructed the jury directly to consider the existence of the workers' comp settlement and its value. Instructing the jury to decide whether the payments from a collateral source sufficiently compensated Plaintiff for the tortfeasor's harms is a *per se* violation of the collateral source rule. The instruction stresses the compensation received by the injured party instead of the damages paid by the tortfeasor. Said differently, the court's instruction invited the jury to consider whether the injured party received a windfall without considering whether the tortfeasor was receiving one. "[A] plaintiff who has received compensation for his damages from sources independent of the tortfeasor remains entitled to a full recovery *from the tortfeasor*." *Nason*, 2019 ME 38 at ¶ 22, 204 A.3d at 869 (*citing Grover*, 2004 ME 119 at ¶ 24, 860 A.2d 851) (emphasis supplied).

The trial court's instruction to the jury to consider Mr. Greenwood's workers' comp settlement payments to determine whether he had been fully compensated by

a collateral source was plain error.

4. The Trial Court Erred In Instructing The Jury To Consider Whether Mr. Greenwood's Workers' Comp Settlement Fully Compensated Him For His Tort Damages Because Workers' Comp Does Not Provide Relief For Pain And Suffering.

The jury found in favor of Mr. Greenwood in stage 1 of the trial. (A10). More precisely, it found Defendants liable to Mr. Greenwood for "Pain, Suffering, Loss of Enjoyment of Life, and Permanent Injury" damages in the amount of $180,000. *Id.* Damages for pain, suffering, and loss of enjoyment of life are sometimes called "intangible" damages and are typically the type of damages recoverable in tort.

Damages for pain and suffering are not compensable under Maine's Workers' Compensation Act. *See Perry v. Hartford Acc. and Indem. Co.*, 481 A.2d 133, 137-38 (Me. 1984) (holding that the employer's lien under workers' compensation "extends to the entire amount of an employee's recovery against a third-party tortfeasor for bodily injury, including those portions allocable to pain and suffering . . . not compensable under the Workers' Compensation Act"). Workers' comp is an exclusive remedy between employer and employee because it was never "intended to make the employee whole—it excludes benefits for pain and suffering, for loss of consortium, and it provides a cap on wage benefits." *Breton v. Travelers Ins.,* 147 F.3d 58, 63 (1st Cir. 1998) (citation omitted).

This division of damages scheme supports the statutory lien that workers'

comp law provides[9]: The employer provides compensation for lost wages and medical expenses, the tortfeasor provides compensation for pain and suffering and intangible damages, and the employer can recoup some of its expenses with a lien on whatever the employee recovers in tort.[10]

Here, the jury first awarded tort damages for pain and suffering in stage 1 of the trial. Then in stage 2, the jury was instructed to determine whether the workers' compensation settlement Mr. Greenwood received "constituted full compensation" for all of Mr. Greenwood's damages, including the Defendants' tort damages. (A94, 105:15-23). But if the jury found Defendants liable in stage 1 for "Pain, Suffering, Loss of Enjoyment of Life, and Permanent Injury,"[11] then the workers' comp settlement cannot, as a matter of law, "constitute full compensation" for those same damages in stage 2 because workers' comp does not compensate for pain and suffering.[12] Moreover, the Administrative Law Judge's Findings of Fact and Conclusions of Law specifically enumerated each element of the workers' compensation settlement, none of which included "Pain, Suffering, Loss of Enjoyment of Life, and Permanent Injury," (A190-91). The jury was instructed to

[9] 39-A M.R.S. § 107 (1991).

[10] The bottom line being—in accordance with tort law and the collateral source rule—the tortfeasor should pay for the damages it caused.

[11] As stated on the verdict form itself. (A10).

[12] This is an apples and oranges comparison. Imagine if tort damages paid only in apples (pain and suffering), while workers' comp paid only in oranges (lost wages and medicals). The trial court's instruction to the jury is akin to it asking whether the oranges that workers' comp paid the plaintiff provided him enough apples to cover the tortfeasor's damages. The damages are different in kind and not compatible; the question makes no sense.

answer a question based on a false premise. This was error.

The instructions to the jury were thus incorrect as a matter of law. The court should have prevented the jury from ever considering whether workers' comp fully compensated Mr. Greenwood, particularly in light of the prejudicial nature of the collateral source evidence. The court's instructions otherwise were erroneous as a matter of law.

5. The *Steeves* Decision Contradicts The Purpose Of The Automatic Lien Provided Under The Workers' Compensation Act On Damages The Employee Recovers In Tort.

This Court's decision in *Steeves* in 1967 regarding workers' comp and collateral source evidence was issued before both (a) the adoption of the collateral source rule, and (b) major amendments to Maine's Workers' Compensation Act in 1969. The amendments to the Act were critical. When *Steeves* was decided before the amendment, workers' compensation law did not provide an automatic lien for employers to recoup their losses from negligent tortfeasors. Instead of the injured employee deciding initially whether to pursue an action against the tortfeasor, the law granted that right to the employer, who could sue a third-party tortfeasor within 90 days of the injury, and failing that, the employee could then file suit. *See Dionne v. Libbey-Owens Ford Co.*, 621 A.2d 414, 417 (Me. 1993).

A. The Legislature Amended the Workers' Compensation Act to Protect Injured Workers' Rights to Bring Third-Party Claims.

The legislature overhauled the Act in 1969 in part because unscrupulous businesses and tortfeasors were taking advantage of injured workers. The amendments addressed a scheme that had developed among several employers, "namely, employers or their insurance carriers, settling with third party tortfeasors for an amount which merely approximated their compensation liability, thereby denying the injured employee full recovery since the employer was under a duty to remit any excess recovery to the employee." *Id.* The amendment gave the employee priority to sue immediately, and as "a compromise, the employer was given a lien on any damages subsequently recovered against the third party liable for the injury." *Id.*; *see also Campbell v. Sch. Admin. Dist. No. 59*, 658 A.2d 1094, 1096 (Me. 1995) ("The purpose of this [1969] amendment was to prevent the employer from settling with the third-party for the bare minimum of the employer's liability, and thereby preventing the employee from receiving the benefit of a full recovery against the party responsible for the injury.").

This Court has stated the purposes of the automatic lien were threefold:

> (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*.

Nichols v. Cantera & Sons, 659 A.2d 258, 262-63 (1995) (*quoting Overend v. Elan*

I Corp., 441 A.2d 311, 314 (Me. 1982)) (emphasis supplied). In contrast, here the Defendants essentially requested that the court (i) give the injured worker the lesser of any tort recovery and workers' compensation award, (ii) relieve the tortfeasor of the compensation burden that it had caused and place it on the employer, and (iii) prevent tort recovery by the employee and provide immunity to the tortfeasor.

The ruling in *Steeves* thus directly contradicts the purpose of the Workers' Compensation Act. The opinion was written when employers routinely settled claims with tortfeasors for bottom dollar, worried only about prompt recovery of their own losses. So common was the practice that the legislature overhauled the entire Act to address the problem. The statute was amended to ensure injured employees and innocent employers were not paying for injuries negligent tortfeasors caused. The opposite happened here. The trial court erred as a matter of law in relying on *Steeves* because it robbed the employer of the lien to which it is entitled and provided immunity to a negligent tortfeasor.

B. In the Lump-Sum Settlement Context, All Rights Are Reserved Except Those Explicitly Recognized in the Administrative Law Judge's Order Approving the Settlement.

The Defendants below repeatedly argued that Mr. Greenwood should have explicitly reserved his right to pursue a third-party claim in the Release if he had intended to reserve it. *See, e.g.,* Memorandum in Support of Summary Judgment at 8 (A86). Although this argument may apply to standard release forms in other

contexts, it is flatly opposite to the way that the legislature has structured the Workers' Comp Board's and the Administrative Law Judge's (ALJ) role in approving workers' comp settlements. In that context, parties waive only the rights that the Comp Board or the ALJ specifically recognize and approve as waived, and only then when it is in the parties' best interests.

For example, 39-A M.R.S. § 106 (1991), enacted after this Court's opinion in *Steeves*, requires any agreement by an employee to "waive . . . rights to compensation under this Act" is valid *only* with the approval of the Workers' Compensation Board. Here, the only settlement agreement approved by the Comp Board was reflected in the WCB-10 form signed by the ALJ in which Mr. Greenwood released only "the employer and insurer named above from all further liability for this injury. . . ." (A189). Similarly, the ALJ's Findings of Fact and Conclusions of Law included the Comp Board's findings that Mr. Greenwood settled the case "for all future claims . . . and any other benefits provided by the Workers' Compensation Act." A190.

Because the ALJ and Comp Board approved the settlement only with respect to Mr. Greenwood's workers' comp claim, as a matter of law his settlement cannot act to release other parties, especially not tortfeasor defendants unrelated to Mr. Greenwood's workers' comp claim. Only the Workers' Comp Board and the ALJ have the authority to approve the waiver of rights in a workers' comp settlement.

Additionally, they can only approve the waiver if they determine the settlement is "in the best interests of the parties" and "in the employee's best interests." 39-A M.R.S. § 352(5) (1991).

A settlement that (a) forecloses the employer's right to enforce his statutory lien on comp payments and (b) prevents an injured employee from seeking full compensation from a negligent tortfeasor, is not in either party's "best interests." The result in *Steeves* is anathema to the stated purpose and enforcement mechanisms of the Act. The trial court erred as a matter of law in holding otherwise.

VI. CONCLUSION

At the outset, the trial court applied the incorrect standard for determining third-party beneficiary status, easing Defendants' burden of proof and failing to apply the "controlling law" of the state to the question. As a result, Defendants improperly claimed the protection of a workers' compensation settlement to which they had no connection.

This error was compounded by the admission of prejudicial collateral source evidence. The decision to admit Mr. Greenwood's workers' compensation settlement value was wrong as a matter of law and an abuse of discretion. Moreover, instructing the jury to consider whether a collateral source fully compensated Mr. Greenwood was a facial violation of the collateral source rule. The trial court's reliance on the

decision in *Steeves* was legal error because the opinion has since been overruled, both by modern collateral source rule jurisprudence, and the amended Workers' Compensation Act.

The trial was irredeemably tainted by inadmissible evidence and incorrect procedure. Plaintiff respectfully requests the Court vacate the trial court's judgment and remand for a new trial. Alternatively, Plaintiff asks the Court to vacate the verdict of stage 2 below and reinstate the negligence verdict reached by the jury in stage 1 of the trial.

Dated at Lewiston, Maine this 19th day of June 2024.

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CERTIFICATE OF SERVICE

I, Jodi L. Nofsinger, Esq. Attorney for Plaintiff-Appellant Donald Greenwood, hereby certify that I have served two copies of the Brief of Appellants upon all counsel of record via email and by depositing the same in the United States Mail, postage prepaid, on June 19, 2024, as follows:

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