

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

Law Court Docket No. PEN-24-66

**DONALD GREENWOOD
Plaintiffs/Appellants**

v.

**BENJAMIN LILIAV, M.D., EASTERN MAINE MEDICAL CENTER AND
EASTERN MAINE HEALTHCARE SYSTEMS
Defendants/Appellees**

On Appeal from a Civil Judgment of the Penobscot County Superior Court

**Brief of the Appellees
Benjamin Liliav, M.D., Eastern Maine Medical Center and Eastern Maine
Healthcare Systems**

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Statement of Facts and Procedural History

While employed by Blue Diamond Transportation, LLC, as a truck driver, Plaintiff Donald Greenwood rolled his truck over on August 21, 2018 and suffered various bodily injuries. He was transported to Defendant Eastern Maine Medical Center. While hospitalized, and at various dates after his discharge, Defendant Benjamin Liliav, M.D., treated injuries to two fingers on his left hand. App. 39 - 41.

Plaintiff received workers' compensation benefits as a result of his injuries. On October 24, 2019, the Workers' Compensation Board approved a settlement of Plaintiff's claim. In return for the receipt of \$190,000, Plaintiff executed several documents. App. 189 - 199. In addition to and in supplement of the release contained in the Lump Sum Settlement form submitted to the Board, App. 192, Plaintiff signed a separate and more extensive release. App. 195 - 197. This broader release contained the following provision:

I, the undersigned, DONALD M. GREENWOOD, ... release, acquit and forever discharge and agree to hold harmless BLUE DIAMOND TRANSPORTATION, LLC, ... and its agents, insurers, predecessor and affiliated companies, *and any other person, partnership, firm or corporation charged or chargeable with responsibility for any and all actions, causes of action, claims or demands for damages, costs, expenses, loss of services, contribution, indemnification or any other claim whatsoever, including claims under the Maine Workers' Compensation Act... or any other claims which I now have or which*

may hereafter accrue to me on account of, or in any way growing out of, any and all known and unknown personal injury to include claims for mental or emotional injury, death, property damage or damages of whatever kind resulting or claimed to result from any and all injuries sustained or claimed to have been sustained by me while in the employ of BLUE DIAMOND TRANSPORTATION, LLC...

App. 192. (Emphasis added). None of the settlement documents reserved the right of any party to pursue the present claim.

Subsequent to his settlement, Plaintiff pursued the instant medical malpractice claim against Defendants, alleging negligent treatment of his broken fingers by Defendant Liliav. App. 39.

During discovery, Plaintiff produced his workers' compensation file, including the settlement documents, to Defendants. Defendants filed a motion for summary judgment relying on this Court's decision in *Steeves v. Irwin*, 233 A.2d 126 (Me. 1967), contending that, in consideration for his acceptance of \$190,000, Plaintiff released all parties responsible for any injuries suffered in his accident, including the Defendants. Defendants pointed to the broad and inclusive language of the release as evidence that, as the *Steeves* holding requires, Plaintiff intended to release the Defendants as part of his settlement. Plaintiff filed a cross-motion for summary judgment seeking to preclude Defendants from asserting the defense of release and preclude introduction of the settlement at trial. App. 77 - 119.

The Trial Court denied both motions, finding ambiguity in the release. App.

30 - 31.

The role the release and settlement would play at trial arose again in pre-trial motions *in limine*. Plaintiff sought to exclude evidence of the settlement and consideration for the settlement while Defendants sought to establish the admissibility of the evidence in order to pursue their defense under *Steeves*. In consideration of Plaintiff's arguments that knowledge of the settlement and amount could prejudice his case, the Trial Court bifurcated the trial into two phases. During Phase 1, the jury would consider only the question of whether Defendants were negligent and, if so, the amount of any damages caused by that negligence. If the jury found for the Plaintiff in Phase 1, the Court ruled that the two questions posed by *Steeves*, whether Plaintiff intended to release the Defendants and whether the settlement fully compensated him for all of his damages would be submitted to the jury.¹

At the conclusion of Phase 1, the jury found Defendants negligent and found his damages to total \$180,000. App. 10. At the conclusion of Phase 2, the jury found both that Plaintiff intended to release the Defendants when he settled his workers' compensation case and that the settlement constituted full compensation for the harm suffered in the original accident and from the

¹ The Trial Court further ruled that, if the jury awarded damages exceeding the settlement amount of \$190,000, the question of the sufficiency of the settlement would not go to the jury.

negligence of the Defendants. App. 11.

After the Trial Court denied Plaintiff's post-trial motions, this appeal followed.

Statement of the Issues

1. Whether the Trial Court properly submitted the question of whether Plaintiff intended to release any and all claims against third parties to the jury.
2. Whether the Trial Court properly instructed the jury regarding the scope of Plaintiff's workers' compensation settlement pursuant to the settled law set forth in *Steeves v. Irwin*, 393 A.2d 1329 (Me. 1967).
3. Whether, under the circumstances of this case, the consideration for Plaintiff's workers' compensation settlement represented a collateral source payment.
4. Whether any error in permitting the jury to consider the amount of Plaintiff's settlement was harmless in light of the jury's finding that he intended to release third parties.
5. In the event that this Court determines that the Trial Court committed reversible error in permitting the jury to consider Plaintiff's workers' compensation settlement, whether the appropriate remedy is to remand the case for retrial of Phase 2 or enter judgment based on the jury's findings in Phase 1 of the trial.

Argument

A. Plaintiff's Intent to Release Defendants Was a Question of Fact Properly Submitted to the Jury for Determination.

A basic canon of contract interpretation is that determination of whether a contract is ambiguous is a question of law for the court to decide. *Portland Valve, Inc. v. Rockwood Systems*, 460 A.2d 1383, 1387 (1983); see *Eskimo Pie Corp. v. Whitelawn Dairies, Inc.*, 284 F.Supp. 987, 995 (S.D.N.Y.1968). Once a court finds a contract to be ambiguous, resolution of that ambiguity is a determination left solely within the province of the jury. *Portland Valve* at 1387. Resolution of the affirmative defense of release raised by the Defendants required interpretation of the documents signed by Plaintiff when he received his workers' compensation settlement. Once the Trial Court found the settlement documentation to be ambiguous, the determination of the effect of the ambiguous documentation had to be accomplished by the jury.

The Trial Court properly instructed the jury how to resolve any ambiguity in Plaintiff's settlement documentation. First, the Trial Court instructed the jury to consider all of the documents executed by the Plaintiff to determine the scope of the release:

A release is a contract. When a contract refers to other documents, those other documents become a part of the contract, and, in that respect, the documents form a single instrument. All documents referenced in the release should be considered as part of the release as

if they were all one document.

App. 183.

Next, the Trial Court instructed the jury regarding determination of the intent behind the release:

The law provides that if a person receives worker's compensation benefits from his employer, and then settles his worker's compensation claim and signs a release, he does not release any medical providers unless, number 1, he actually intended to release the medical providers...

Id. While the Trial Court derived this language from *Steeves v. Irwin*, 393 A.2d 1329 (Me. 1967), it does not substantively differ from the provisions of Subsection (1)(b) of Restatement (Second) of Contracts § 302:

(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...

(b) the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.

The Trial Court's instruction told the jury that it could find that the release signed by the Plaintiff discharged any liability of the Defendants *if they found that was his intent*. That instruction was a correct explanation of the applicable law under either *Steeves* or Section 302 (1)(b).

The omission of any specific reference to the intent of the Employer and Insurer does not render the instruction erroneous. First, this record contains no

evidence that the Employer and Insurer did not intend the release to discharge all third parties who may have caused Plaintiff's damages. To the contrary, the record contains the plain language of the release discharging any other person responsible for all personal injuries suffered by the Plaintiff during his employment. That language, whether drafted by counsel for the Plaintiff, or more likely, counsel for the Employer and Insurer, reflects a clear intent by *both* parties to discharge Defendants for any liability for his injuries. Plaintiff called no witnesses to support any contention that the Employer and Insurer intended any contrary result, elicited no testimony to support any such intention and offered no exhibits which could support any such finding by the jury. Plaintiff relied solely upon his own testimony that *he* did not intend such a result, testimony which was rejected by the jury.

Absent evidence which would place the Employer and Insurer's intent in issue, no instruction regarding their intent was necessary.² *See Toole v. Bearce*, 39 A. 558, 91 Me. 209, 213 - 214 (1898). This record generated no issue of fact regarding the intent of the Employer and Insurer. The jury was entitled to accept the plain language of the Release to establish the intent of *both* parties to

² Plaintiff did not submit proposed jury instructions to the Trial Court specifically requesting that they be instructed pursuant to Restatement Section 302. Indeed, Plaintiff did not raise any issue regarding the failure to instruct the jury pursuant to Restatement Section 302 in his post-trial motions. App. 65 - 76.

discharge Defendants and Plaintiff submitted no evidence to the contrary.

B. The Trial Court Properly Applied *Steeves v. Irwin* When it Submitted the Issue of the Scope of the Release to the Jury.

1. *Submitting the Question of Plaintiff's Intent in Executing the Release to the Jury Did Not Interfere with the Ability of a Workers' Compensation Carrier to Enforce its Lien.*

Plaintiff suggests that allowing the jury to interpret the scope of the release creates “a chance doing so would forfeit the automatic lien to which [the employer/insurer] are entitled under the Workers’ Compensation Act,” Plaintiff’s Brief, p. 22, and thus violates their rights under the Act. This argument ignores the record below.

The task for the jury in Phase 2 of the trial was to determine the scope of the release signed by the Plaintiff. The settlement documents were either prepared by or, at a minimum, consented to by the Employer and Insurer. Had they not intended the release to have the clear effect of releasing all persons responsible for Plaintiff’s injuries, they would have been well within their rights to include clear and unambiguous limiting language in the release reserving the rights of any party to pursue a claim against third parties. The jury was well within its province to consider the omission of such language a choice by the parties to extend the scope of the release to others, a consequence that both parties were well within their rights to intend.

The Employer and Insurer further took no steps to preserve this important right by moving the Trial Court to intervene in Phase 2. The Employer and Insurer failed to seek either intervention of right or permissive intervention pursuant to Me.R.Civ.P. 24. As Plaintiff's counsel represented to the Trial Court, the Employer and Insurer were aware this issue was in dispute at this trial and intended to assert a lien.³ App. 149 - 150. Despite notice that an important right which they claimed was in dispute in this case, the Employer and Insurer took no action to protect that right to move pursuant to Rule 24 to intervene.⁴

The Trial Court's submission of the question to the jury thus did not interfere with any right to enforce a lien against any proceeds of this action. It simply asked the jury to interpret the wording of a release voluntarily negotiated by the Employer and Insurer which they took no action to enforce at trial.

2. *The Approval of the Settlement by the Workers' Compensation Board Did Not, as a Matter of Law, Preclude Release of Defendants.*

Plaintiff argues, without support, that the approval of his settlement by the Workers' Compensation Board forecloses release of any third parties. Plaintiff

³ At trial, Defendants raised the issue of whether the failure of the insurer to reserve any right of redress against third parties constituted a waiver of that right under this Court's holding in *Butters v. Kane*, 347 A.2d 602 (1975). The Trial Court did not need to reach that issue below.

⁴ The \$180,000 damage award by the jury leaves the Employer and Insurer as the only party with any interest in pursuit of the present appeal. If, in fact, the Employer and Insurer have not waived their lien against any recovery by Plaintiff, the \$190,000 settlement plus the value of all benefits extended to Plaintiff prior to settlement of his claim far outstrips the jury's award.

relies upon two documents included as part of the settlement, the WCB-10 form and the Hearing Officer's findings of fact in support of his argument. This argument cherry picks documents from the entire package of documents which constituted the agreement and ignores the instruction of the Trial Court that the jury should consider all of the documents which become part of the contract.⁵ App. 183.

Plaintiff correctly notes that any waiver of rights under the Workers' Compensation Act must be approved by the Board. However, no provision of the Workers' Compensation Act prevents the parties from reaching an agreement broader than the four corners of the Act. In addition to the WCB-10 and Findings of Fact, the documents making up this settlement included the release which contains the language interpreted by the jury. All of those documents make up the entirety of the agreement between the parties and all of them represent the agreement approved by the Hearing Officer. Plaintiff cannot carve off two of the documents which contained different language and contend that those two documents stand alone and bar any release of third parties.

3. *Plaintiff's Workers' Compensation Settlement Encompassed Damages for Pain and Suffering.*

Plaintiff contends that the Trial Court erred when it instructed the jury to

⁵ Plaintiff did not object to this instruction at trial; in fact, Plaintiff submitted substantially the same instruction as one of his proposed jury instructions for Phase 2.

determine whether his settlement fully compensated him for all of his damages.

His argument ignores both the plain language of *Steeves* and the plain language of the release which he signed. In determining whether a workers' compensation settlement discharges any subsequent claim for malpractice, the *Steeves* decision unambiguously holds that the question of whether "the compensation received was in fact full compensation of the whole injury," *Steeves*, 233 A.2d at 136, is a factual question for the jury depending on proof at trial. The Workers' Compensation Act did not provide benefits for pain and suffering when this Court decided *Steeves*, yet that fact did not keep the Court from instructing the lower courts to have the jury determine whether the settlement compensated for all injuries.

Further, the language of the release itself contemplates compensating Plaintiff for injuries not covered under workers' compensation. When he executed the release, Plaintiff discharged all claims for "*all known and unknown personal injury to include claims for mental or emotional injury, death, property damage or damages of whatever kind.*" App. 192. (Emphasis added). The Workers' Compensation Act does not provide benefits for mental or emotional injury and property damage, and the release broadly covers "damages of whatever kind." The plain language of the release covers damages in addition to benefits under the Act. The Court properly instructed the jury in this regard.

C. Admission of the Amount of Plaintiff’s Workers’ Compensation Settlement Did Not Violate the Collateral Source Rule.

1. Plaintiff Mischaracterizes His Workers’ Compensation Settlement as a Collateral Source Payment.

Throughout his brief, Plaintiff refers to his workers’ compensation settlement as a “collateral source” payment.⁶ Collateral source payments are payments made by a third party *in mitigation of* damages which the Defendant may also be found liable to pay. “[C]ollateral payments are not to be subtracted from the plaintiff’s recovery...” *Werner v. Lane*, 393 A.2d 1329, 1335 (Me. 1978). In this case, the jury found Plaintiff’s damages to be \$180,000 in Phase 1 without reference to *any* collateral payments as *no* evidence of Plaintiff’s workers’ compensation payments or even evidence of any workers’ compensation claim was admitted during that stage of the trial. When considering a reasonable amount of damages to award Plaintiff, the jury was left wholly in the dark regarding whether he had received payments from any collateral source. Plaintiff’s claims of prejudice from the admission of the amount of his workers’ compensation settlement are entirely unfounded as the jury had no knowledge of any such

⁶ Although Plaintiff represents that “All Workers’ Compensation Evidence Is Admitted over Plaintiff’s Objection,” Plaintiff’s Brief at 12, in fact the only workers’ compensation payment admitted was his \$190,000 settlement. No evidence of other benefits paid through the course of his claim was admitted.

payments when it determined Plaintiff's damages.⁷

The jury had already determined Plaintiff's damages when it first learned that he had received workers' compensation benefits and had settled his claim. They could not have used this evidence to mitigate any award of damages and thus the \$190,000 settlement, by definition, did not represent a collateral source payment.

2. *Even If Considered a Collateral Source, the Trial Court Properly Admitted the Settlement Amount for an Unrelated Purpose.*

This Court has long recognized that collateral source payments may still be admitted into evidence for purposes other than to reduce an award of damages. "Courts have recognized that evidence of receipt of benefits from a collateral source under certain circumstances might be admissible for purposes other than to mitigate damages recoverable from the tortfeasor." *Werner*, 393 A.2d at 1336, *Grover v. Boise Cascade Corp.*, 860 A.2d 851, 859 (Me. 2004). As noted above, the jury had already fixed Plaintiff's damages when the settlement amount was admitted into evidence and thus could not have been used to mitigate his damages. The evidence was admitted instead to allow the jury to determine the scope of the release signed in consideration of that payment and to determine whether, under

⁷ The reason the Trial Court bifurcated the trial was precisely to avoid any possibility that the jury could be influenced by knowledge of receipt of workers compensation benefits by Plaintiff and to avoid the prejudicial effect of the introduction of collateral source payments. Bifurcation accomplished the Trial Court's goal.

Steeves, Plaintiff had received full compensation for his damages through the settlement.

The settlement amount was both relevant and probative of the issues the jury needed to determine in Phase 2. Clearly, the jury needed to know the amount of the settlement to consider whether it represented full compensation for his injuries under *Steeves*. The question of adequate compensation is a wholly different determination than the damages finding made by the jury in Phase 1. The jury was not asked to reduce Plaintiff's damages as he argues in his brief. Plaintiff's Brief at 30. The question for the jury in Phase 2 was whether the settlement accepted by Plaintiff in return for the release represented full compensation for his injuries. *Steeves*, 233 A.2d at 136.

Admission of the settlement amount was also relevant for the jury's determination of the intent of the parties. If the amount paid in consideration for the release was only a nominal amount, the jury may well have made a different finding regarding intent. The Trial Court appropriately admitted this evidence for those purposes.

3. *Steeves Was Neither Implicitly Overruled by Werner, Nor by Revision of the Workers' Compensation Act.*

This Court's ruling in *Werner*, issued eleven years after this Court decided *Steeves*, did not implicitly overrule that decision. *Steeves* addressed a very narrow

issue: whether settlement and release of a workers' compensation claim could also operate to discharge the liability of a subsequent medical provider who negligently treated the injuries suffered by a worker in an industrial accident. This Court reviewed the issues in *Steeves* after entry of summary judgment by the Superior Court. The Court did not address issues relating to collateral source payments as the case had not yet been presented to a jury. As in this case, *Steeves* addressed the scope of the worker's settlement and found that it could discharge a claim for subsequent malpractice if the parties so intended or if the settlement represented full compensation for his injuries. Any issue regarding collateral payment was left for later determination.

Werner, of course, directly addressed the effect of collateral source payments and ruled that they would not be admissible for purposes of mitigating damages awarded by the jury. As noted *supra*, such payments may be admitted for other purposes. *Werner* thus does not conflict with *Steeves*. Evidence of the settlement in *Steeves* was probative on the issue of the scope and effect of the settlement. That trial court could avoid all concerns regarding collateral payments raised in *Werner* by following the same procedure as this Trial Court: bifurcation of the trial. *Werner* did not implicitly overrule *Steeves*.

Further, *Werner* did not make new law. The concept of the collateral source rule in Maine pre-dated *Steeves*. While *Werner* explicitly adopted the collateral

source rule, it noted that as early as 1960 the Law Court had recognized and adopted the concept underlying the collateral source rule in *Johnson v. Rhuda*, 156 Me. 370, 164 A.2d 675 (1960). *Werner*, 393 A.2d at 1336. This Court did not raise any concern in *Steeves* that its holding would run afoul of that concept which predated its holding.

The 1969 amendments to the Workers' Compensation Act also did not legislatively overrule *Steeves*. *Steeves*, like the present case, addresses the scope of the settlement reached by the parties. The 1969 amendments changed the timing and manner in which claims against third parties responsible for workplace injuries could be asserted. They did not address whether the parties could agree that their settlement would discharge third parties, the issue resolved by this Court in *Steeves*. Those amendments left *Steeves* unaffected.

D. Any Error in Admitting the Amount of Plaintiff's Lump Sum Settlement Was Harmless.

Since the jury found that Plaintiff intended to release Defendants when he signed the broadly worded release, any error in admitting the amount of his settlement was harmless. The jury in Phase 2 made two separate and independent findings. It found first that Plaintiff intended to discharge the Defendants when he signed the release and, second, that he was fully compensated for all of his damages when he settled his workers' compensation claim. The jury's determination of Plaintiff's intent turned on its interpretation of the plain language

of the release and was made independently of the amount of the settlement. They did not need to know the amount of the settlement in order to find Plaintiff's intent. "An error is harmless if competent evidence other than the challenged evidence supports the court's findings." *Capelety v. Estes*, 2023 ME 50, ¶ 19, citing *In re Sarah C.*, 2004 ME 152, ¶ 14. Thus, even if the Trial Court should have excluded evidence of the amount of Plaintiff's settlement, there was sufficient independent evidence in the record to support the jury's finding on intent.

E. If the Trial Court Committed Reversible Error in Phase 2 of the Trial, this Court Should Remand the Case to Superior Court for a New Trial to Determine the Scope of Plaintiff's Settlement Or, Alternatively, Enter Judgment on the Jury's Phase 1 Findings.

In his conclusion, Plaintiff claims that admission of evidence of the workers' compensation settlement "irredeemably" tainted the trial and asks that the case be remanded for a new trial. Plaintiff, however, makes no claim of error in Phase 1 of the trial. His only claim of error is that Phase 2 was tainted by the admission of the "collateral source" payment to Plaintiff. If that ruling was reversible error, Defendants are still entitled to have the jury consider their affirmative defense of release and the case should be remanded for the jury to determine the intent of the parties in executing the settlement documents.

Alternatively, given the lack of any error in Phase 1, the Trial Court should enter judgment on the jury's findings on negligence and damages.

F. Conclusion.

After full consideration of the evidence and after having an opportunity to consider the credibility of Plaintiff's testimony, the jury accepted the plain language of the release and found that Plaintiff intended to release any third party responsible for his injuries, including the Defendants, when he signed the settlement documents and accepted \$190,000 as consideration for his release. The jury's determination that the payment fully compensated Plaintiff for his injuries was a factual determination left entirely to their sound discretion. The Trial Court acted prudently in bifurcating the trial to avoid any possibility that knowledge of the settlement would taint their consideration of Plaintiff's damages. The Trial Court then properly instructed the jury regarding the findings it needed to make in the second phase of the trial in full accordance with settled law.

For the foregoing reasons, the Court should deny Plaintiff's appeal.

Dated: August 7, 2024

Respectfully submitted,

/s/ Edward W. Gould, Esq.

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Certificate of Service

I, Edward W. Gould, hereby certify that I have filed ten (10) copies of the Brief of the Appellees, Benjamin Liliav, M.D., Eastern Maine Medical Center, and Eastern Maine Healthcare Systems with the Clerk of the Law Court on this date and have also, this date, transmitted an electronic copy of this brief to the Clerk of the Law Court. In addition, I have caused two copies, each, of the foregoing brief of the Appellees to be served upon the attorneys of record listed below, by depositing those copies in the United States mail, first-class postage prepaid, addressed for delivery below and have also, this date transmitted an electronic copy of this brief to counsel listed below:

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Dated: August 7, 2024

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