

**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 in Reply to Brief of Amicus Curiae, Maine Trial Lawyers
Association**

Edward W. Gould, Maine Bar No. 2603
Cameron J. Ouellette, Maine Bar No. 10262
Gross, Minsky & Mogul, P.A.
23 Water Street, P.O. Box 917
Bangor, ME 04402-0917
(207) 942-4644
Attorneys for Defendants/Appellees

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Argument

A. This Court Should Disregard the Argument of *Amicus Curiae* MTLA Regarding Ambiguity in the Release as the Parties Did Not Raise the Issue on Appeal

In its brief, *Amicus Curiae* Maine Trial Lawyers Association argues that the release at the heart of this appeal was unambiguous and its interpretation should not have been submitted to the jury for determination. Brief of *Amicus Curiae* MTLA at 6. Plaintiff, however, did not contest this issue on appeal and MTLA cannot now raise it before this Court.

This Court has consistently held that it will not consider an issue raised by an *amicus curiae* unless the issue was raised by the parties and preserved on appeal. “We consider the contentions of an *amicus curiae* only to the extent that the contentions concern issues properly preserved and pursued by the parties themselves.” *Atlantic Salmon Federation v. Board of Environmental Protection*, 662 A.2d 206, 211 (Me. 1995), citing *Jacobs v. Jacobs*, 507 A.2d 596, 597 n. 1 (Me. 1986). “Ordinarily, we will recognize a contention raised by an *amicus curiae* only if the issue was raised in the trial court and at least one of the parties also pursues the argument on appeal.” *State v. Sloboda*, 2020 ME 103, ¶ 19, n. 8. Here, neither Plaintiff nor Defendants have contended on this appeal that the release was not ambiguous; *Amicus Curiae* MTLA cannot now raise the issue for this Court’s

determination.

Further, Plaintiff failed to raise this issue before the Trial Court. In fact, in his objection to Defendants' Motion for Summary Judgment, Plaintiff argued,

Finally, the language of the release is neither as clear nor as unambiguous as Defendants contend. For example, the release itself identifies Blue Diamond as the releasee, but also goes on to list "its agents, insurers, predecessor and affiliate companies, and any other person, partnership, form or corporation charged or chargeable with responsibility or liability...

App. 99. In the Trial Court, Plaintiff took a position entirely contrary to the position now advanced by MTLA - that the release, in fact, was ambiguous on the issue of what parties were entitled to claim the protection of the release. While *Defendants* asserted below that the release was *not* ambiguous, they cited the language of the release to establish that its clear and unambiguous language discharged their liability.

No party to this appeal has raised the issue of the ambiguity of the release in this Court. MTLA cannot now raise the issue here.

B. If This Court Considers Whether the Release Was Unambiguous, the Clear Language of the Document Compels a Finding That Plaintiff Discharged Any Claim Against Defendants.

If this Court determines that the Trial Court erred in finding any ambiguity in the release, its clear and unambiguous language compels a finding that Plaintiff

discharged any potential liability of third parties such as the Defendants. If the plain meaning of the language is not ambiguous, it must be interpreted in accordance with that plain meaning. *Bibeau v. Concord General Mutual Insurance Co.*, 2021 ME 4 ¶ 12, 244 A.3d 712, 716 (2021). A release or a contract is only ambiguous if the language used is “reasonably susceptible of different interpretations.” *Id.*, quoting, *Geyerhahn v. U.S. Fidelity and Guaranty Company*, 1999 Me 40 ¶ 12, 724 A. 2d 1258.

Contrary to the assertions of Plaintiff and MTLA, the language of the release and settlement documents does not limit their scope to Plaintiff’s workers’ compensation claim. The settlement includes compensation for Plaintiff’s resignation from employment. App. 195. It releases claims under the Americans with Disabilities Act. App. 196. It releases claims *in tort* or otherwise against the employer and any persons involved in the adjustment or investigation of his claim. App. 196. Most particularly, the agreement released “any person” for “any claims whatsoever” that he then had, or any claim that he might accrue after the signing of the release, so long as the claims resulted ‘or claim to have resulted’ from “any and all injuries sustained or claimed to have been sustained while in the employ of Blue Diamond Transportation, LLC.” App. 192. The plain and unambiguous language of the settlement documents clearly address claims not covered under the

Workers' Compensation Act and persons or parties other than the employer and insurer. This language must be interpreted in accordance with its plain meaning, *Bibeau, supra*, namely, that the release discharges any claim whatsoever against any person arising out of his accident. If the Trial Court erred at all, it erred in failing to find that the release unambiguously discharged any claim that Plaintiff may have had against the Defendants.

C. The Decision of the Trial Court Does Not Threaten the Public Interest Nor the Broad Policy Considerations Which Underlie the Workers' Compensation Act.

MTLA urges this Court to reverse the decision of the Trial Court because affirming the decision "would abandon for the present case and countless future cases" the purposes which underlie the Workers' Compensation Act. MTLA Brief p. 22. The decision of the Trial Court poses no such threat.

MTLA argues, in part, that the Trial Court's decision to bifurcate the trial and submit the question of the intent of the parties to the jury "ignores each of the... premises of Maine's WC Act," MTLA Brief pp. 20-21, including the preservation of the employer's lien against a recovery for "overlapping damages." Plaintiff did not, however, submit any claim for damages to the jury which overlapped with compensable benefits under the Act. Plaintiff limited his claim to pain, suffering, loss of enjoyment of life and permanent injury. App. 186. Whether

Plaintiff could have successfully warded off any lien claim by the employer and insurer on the grounds that he did not receive “overlapping benefits” as part of his jury award is not an issue before this Court. It does, however, support the jury’s determination under *Steeves v. Irwin*, 233 A.2d 126 (Me. 1978) that Plaintiff’s \$190,000 settlement fully compensated him for his injuries.

At its heart, this case presents a simple question of contract interpretation - did the parties to the settlement agreement intend it to discharge potential claims against third parties? Determining the intent of the parties to this particular release as evidenced by the language of the documents themselves and the testimony adduced at trial presents no threat to the legislative scheme embodied in the Act. Had the release here at issue contained a simple clause reserving the rights of the parties to pursue claims against third parties potentially responsible for the covered injury and subsequent damages that resulted from it, the intent of the parties *not* to release claims against third parties would have been abundantly clear, resolving the issue at the heart of this appeal. Lacking such clarity, the Trial Court submitted that question to the jury for determination. That decision by the Trial Court, and the jury’s finding of the intent of the parties, affect the rights only of the parties to this case, not the rights of future potential injured workers and their employers and insurers. The foundations of the Workers’ Compensation Act

remain strong.

Conclusion

For the foregoing reasons, and for the reasons set forth in the Brief of the Appellees, this Court should affirm the judgment of the Trial Court.

Dated: August 20, 2024

Respectfully submitted,

/s/ Edward W. Gould, Esq.

Edward W. Gould, Esq. Bar No. 2603

Cameron J. Ouellette, Esq. Bar No. 10262

Attorneys for Appellees

Benjamin Liliav, M.D., Eastern Maine Medical
Center and Eastern Maine Healthcare Systems

GROSS, MINSKY & MOGUL, P.A.

23 Water Street, P.O. Box 917

Bangor, ME 04402-0917

Tel. (207) 942-4644

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 in Reply to the Brief of *Amicus Curiae* Maine Trial Lawyers Association 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:

Counsel for the Plaintiffs/Appellants

Jodi L. Nofsinger, Esq.
Berman & Simmons, P.A.
PO Box 961
Lewiston, ME 04243-0961

Counsel for *Amicus Curiae* Maine Trial Lawyers Association

Stephen W. Koerting, MBN 5820
Kelley, Remmel & Zimmerman
53 Exchange Street
Portland, ME 04101

Thomas L. Douglas
Douglas, McDaniel & Campo
490 Walnut Hill Road
North Yarmouth, ME 04097

Dated: August 20, 2024

/s/ Edward W. Gould, Esq.
Edward W. Gould, Esq.