I. INTRODUCTION

Injured workers in Maine who essentially lose a body part, or, in this case, more than 80% of the vision in an eye, are entitled to receive "specific loss benefits" in accordance with a schedule set forth in Title 39-A M.R.S. §212(3). The Workers' Compensation Act mandates that interest on awards of benefits-including specific loss benefits-must be calculated and paid "from the date each payment was due." *39-A M.R.S. §205(6).*

Steve Michaud lost more than 80% of the vision in his left eye as a result of a work injury on December 14, 2014. Medical evidence makes clear that the injury "…immediately rendered Mr. Michaud effectively blind in the left eye." He was paid specific loss benefits on March 22, 2022. Notwithstanding the plain language of the statute, Mr. Michaud was awarded interest on his past due award of benefits calculated, not from the date of his loss, but from October 14, 2021, the date a medical expert confirmed that Mr. Michaud lost vision in his left eye permanently as of the date of his injury in 2014.

The Board's findings and order in this case are contradicted by the plain language of the statute. In addition, this Court's holding in *Scott vs. Fraser Papers, Inc.,* 65 A.3d 1191 (Me. 2013), makes clear that an employer cannot receive credit for weekly compensation payments made before the specific loss occurs that serve to reduce the payment obligation under the specific loss statute. Here, however, the Employer/Appellee received a credit for weekly workers' compensation benefits made between 2014 and 2019, contradicting the Board's conclusion that the loss did not occur until 2021. For an employer to receive credit, *Scott's* holding requires that a loss occur. Thus, allowing the Employer/Appellee a credit is tantamount to an affirmation that Mr. Michaud's vision loss did, in fact, occur on the date of the injury in 2014. Mr. Michaud maintains that, consistent with the evidence, interest on his award of specific

loss benefits should have been calculated from the date of his specific loss based on the medical evidence, the procedural facts of the case, and this Court's holding in *Scott*.

II. STATEMENT OF FACTS

Steve Michaud, the Employee/Appellant (hereinafter "Appellant"), sustained a traumatic loss of vision in his left eye on December 26, 2014. Mr. Michaud was working at Griffeth Ford, a car dealership and autobody shop owned by Caribou Ford Mercury, Inc. when, while performing a brake job, a piece of metallic spring struck his left eye. The injury caused a perforating laceration of the left globe, tearing the iris and lens. The laceration was closed, and the torn lens removed, at Cary Medical Center. The Appellant also suffered a vitreous hemorrhage which did not clear and he was subsequently transferred to The New England Eye Center for additional treatment.

Over the ensuing years, the Appellant underwent multiple surgeries and procedures in an attempt to salvage vision. *See Dr. Mainen's summary, Record (hereinafter "R."), 25-26.* Dr. Mainen opined that "(t)here is no question that the injury immediately rendered Mr. Michaud effectively blind in the left eye." *R.28*. He further asserted that visual loss would have been "…well in excess of the statutory 80%" at the time of injury on December 26, 2014. *R.28*

The Appellant filed a Petition for Award of Compensation and a Petition for Specific Loss Benefits with the Board on September 23, 2021. *Appendix (hereinafter "A") at 17-18.*

As required by statute, the parties attended mediation. The parties resolved a number of issues at mediation, and entered into a mediation agreement on March 22, 2022. *A.32.*

The mediation agreement also provided that the Employer/Appellee (hereinafter Appellee) would be credited with all weekly workers' compensation payments made from the date of injury through the date of the mediation agreement. The parties agree that the Appellee

would pay Appellant 162 weeks of specific loss benefits for the loss of his left eye as a result of Appellant losing 80% or more of the vision in his left eye as a result of the December 26, 2014 injury. With the credit for prior workers' compensation benefits paid, reducing the specific loss benefit payment to $59,905.33, the parties agreed that Appellant had been paid the full amount of specific loss benefits that he was entitled to under the Workers' Compensation Act. *A.32*.

Unresolved at mediation, and the issue presented for hearing before the Administrative Law Judge, was the question of whether and when interest was payable on Mr. Michaud's specific loss benefits.

The Board scheduled the matter for hearing. In lieu of a formal hearing, the parties jointly presented the Board with an agreed Statement of Facts. *R.255-259*. The parties submitted Mr. Michaud's medical records into evidence as well.

By decree dated December 1, 2022, Administrative Law Judge Pelletier issued a decree holding that the award of specific loss benefits was not due and payable to the Employee until the Employee presented medical evidence from Dr. Michael Mainen that he had sustained more than 80% loss of vision in his left eye and that he had reached maximum medical improvement. *A.9-13*. Dr. Mainen's opinion, dated October 14, 2021, was, in the Board's opinion, the operative date upon which interest began to accrue on the award of specific loss benefits.

The Employee moved for timely Findings of Fact and Conclusions of Law. The parties submitted proposed findings. By decree dated January 30, 2023, the Board declined to issue further findings, stating that "the initial Board decree contains separate Finding of Fact and Conclusion of Law which provide an adequate foundation for Appellate Review." *A.14-16*.

The Appellant subsequently filed an appeal of the Administrative Law Judge's decision to the Appellate Division of the Workers' Compensation Board.

By decree dated July 31, 2023, the Appellate Division upheld Judge Pelletier's decree. The Appellate Panel concluded that the ALJ's decision involved "no misconception of applicable law, is supported by competent evidence, and the application of law to the facts was neither arbitrary nor without rational foundation." *A.2-8.*

In a footnote, the Appellate Panel noted that the Law Court "…has held that an offset for lost time benefits cannot be taken before the date of the specific loss", citing *Scott*. *A.6* The Appellate Panel went on to state, however, that they did not read the mediation agreement as "…compelling of finding that the specific loss occurred as of the date of injury." *A.6.*

The Appellant subsequently petitioned this Court to review the Board's conclusions. By order dated December 8, 2023, this Court granted the Appellant's Petition for Appellate Review.

III. ISSUE ON APPEAL

Whether the Board erred in concluding that interest should not accrue on the specific loss benefits owed to Appellant as of the December 26, 2014 date of injury and instead started to accrue on October 14, 2021, the date of Dr. Mainen's report stating that Appellant had sustained a loss of 94% of his vision and had reached maximum medical improvement (MMI).

IV. LEGAL ARGUMENT

1. The Board incorrectly concluded that interest did not begin to accrue on Appellant's award of specific loss benefits on the December 26, 2014 date of injury.

Mr. Michaud became entitled to receive specific loss benefits when he lost at least 80% of his vision in his left eye and reached a reasonable medical endpoint, which according to Dr. Mainen's October 14, 2021 report occurred on December 26, 2014. *R.25-28*. *See* 39-A M.R.S. § 212(3)(M); *Tracy v. Hershey Creamery Company*, 720 A.2d 579 (Me. 1998).

The Board's decision correctly cites *Tracy* for the applicable standard of when a determination of total loss of an eye for purposes of specific loss benefits under §212(3)(M) should be made. In its decision, the Board found that specific loss benefits do not start to accrue until the date that a report is issued stating that the employee has reached maximum medical improvement. However, the language used by this Court in *Tracy* suggests that the Board applied the test incorrectly. *See Tracy v. Hershey Creamery Company*, 720 A.2d 579, 581 (Me.1998). The *Tracy* Court stated, "the determination as to whether an employee's loss of vision exceeds 80% for purposes of Paragraph 212(3)(M) should be made when the work-related condition has reached a reasonable medical endpoint." *Id*. This standard simply addresses the first moment in time that a determination for specific loss benefits can be made. However, it does not stand for the idea that even if an employee reached a reasonable medical endpoint, but does not obtain a medical report stating so for an extended period of time, that he is then not entitled to specific loss benefits for the period between reaching a reasonable medical endpoint and obtaining a medical report stating that is the case.

In the case at bar, it is apparent based on Dr. Mainen's reports that the Appellant had reached a reasonable medical endpoint on the date of his injury. He was effectively rendered blind at the time of injury. While Mr. Michaud did undergo four surgeries after the date of his injury, there was never a reasonable likelihood of restoring vision completely; the hope was to achieve some improvement. The Appellant lost 94% of his vision at the time of injury; even sight improvement would not improve vision to less than the 80% threshold for specific loss benefits. In fact, Mr. Michaud's vision did not recover at all from any of the surgeries and today he has lost the same 94% of his vision the Dr. Mainen's report states that he lost at the time of his injury. Based on these facts and the opinion expressed in Dr. Mainen's report, Mr. Michaud

reached a reasonable medical endpoint after initial repair efforts were made the day of Mr. Michaud's injury.

In light of the fact that Mr. Michaud reached a reasonable medical endpoint on the date of his injury and not the date Dr. Mainen's report was issued, Appellant respectfully requests that his appeal be granted, and that the Court conclude that the Appellee is required to pay pre-judgment interest on the specific loss benefits owed to Mr. Michaud which started accruing on the December 16, 2014 date of injury.

2. The Board erred when it allowed Appellee to offset the amount of pre-judgment interest owed to Appellant by the amount of incapacity benefits that were paid to Appellant before the Board found that Appellant had suffered a specific loss of his left eye.

The effect of the Board's decision completely ignores the clear import of *Scott* and allows the Appellee a credit from the date of injury, i.e. the date of specific loss, yet also finds that the loss did not occur and that specific loss benefits were not payable until the date of a medical report in 2021. These conclusions are entirely inconsistent and contrary to well-established caselaw.

The Appellee cannot be allowed to have it both ways—the employer receives a credit for benefits paid which per *Scott*, only occurs once the specific loss occurs, yet is not obligated to pay interest on the award of specific loss benefits until presented with a medical report in 2021.

This case is properly analyzed using the Court's framework as set forth in *Scott v. Fraser Papers, Inc.*, 65 A.3d 1191 (Me. 2013). In *Scott*, this Court held that "Fraser is not entitled to offset the incapacity benefits paid during the months after Scott's initial injury but before the amputation of his finger." *Scott*, 65 A.3d at 1195. The employee in *Scott* suffered a crush injury to his hand while working for the employer on May 23, 2003 and was out of work until December 3, 2003, during which time the employer voluntarily paid him incapacity benefits. *Id.*

at 1192. Mr. Scott was subsequently able to return to work for a short period of time before his condition deteriorated. *Id*. Mr. Scott was forced to have his finger amputated on April 23, 2004. *Id*. The Workers' Compensation Board found that Mr. Scott was entitled to specific loss benefits from the date of the injury, including the period between the initial injury and the amputation. *Id*. *at 1193*. The Board further held that the employer was entitled to offset the specific loss benefits owed to Mr. Scott by the amount of incapacity benefits the employer voluntarily paid to him. *Id*.

In reversing the Board's decision; the *Scott* Court reasoned that because Mr. Scott was not entitled to specific loss benefits during the period between his initial injury and the amputation it was as if Mr. Scott had two periods of incapacity, one before and one after the amputation. *Scott at 1195*. The Court determined that "[g]iven this construction of the statute, the Board erred in permitting an offset for the incapacity benefits paid before the amputation." *Id*.

By analogy to the case at bar, either the loss occurred as the Appellant argues (at the time of injury in 2014), at which point interest accrued until payment in full was made, or the Appellee is not entitled to a credit for incapacity benefits paid prior to the medical report in 2021 describing the specific loss (Appellee argues, and the Board concluded, that the obligation to pay specific loss benefits did not occur until 2021). The conclusion is inescapable that the Board's decree allowed the Appellee a credit for incapacity benefits paid ***before*** the specific loss, a conclusion that is directly contrary to the holding in *Scott.*

The argument that this issue is being raised for the first time on appeal as asserted in the Appellate Division *(see A at 7)* is fallacious. As this Court has long held, parties, the legislature, and the ALJ are expected to be aware of this Court's precedent and, indeed, the law. *See e.g., State v. Austin,* 131 A.3d 377, 380 (Me. 2016); *Freeland v. Prince,* 41 Me.105 (1856). It should

not come as a surprise to any of the parties that the Appellant fully expected the Board to recognize the principles set forth in *Scott* and to decide this case in conformity therewith.

In light of this Court's holding in *Scott* that employers are not entitled to offset specific loss benefit payments by voluntary incapacity benefit payments made before entitlement to specific loss benefits arose, Appellant respectfully request that his appeal be granted, and that the Court conclude that the Appellee is not entitled to an offset for voluntary incapacity benefit payments received by Mr. Michaud.

VI. CONCLUSION

In light of the foregoing, Appellant respectfully requests that this Court conclude that Appellant is entitled to interest on the award of specific loss benefits from the date of the specific loss, to wit, December 26, 2014. The medical evidence, combined with the stipulation that the Appellee receive a credit for compensation payments made, clearly establish that Appellant lost the vision in his left eye on December 26, 2014.

In the alternative, should this Court conclude that the Appellee's obligation to pay specific loss benefits did not accrue until the issuance of Dr. Mainen's medical report in 2021, the case should be remanded to the Board for a determination of the amount of specific loss benefits owed to the Appellant without giving the Appellee credit for weekly compensation payments made, together with an appropriate interest calculation.

The Appellant and undersigned appreciate the Court's attention to this matter.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Norman G. Trask, Esquire, Attorney for Appellant, Steve Michaud, do hereby certify that I have on this day made service of two (2) conformed copies of Appellant's Brief to the Law Court on Appellee, Caribou Ford Mercury, Inc. by placing said copies in the United States first class mail, postage prepaid, addressed to his counsel, John J. Cronan, Esquire, at his last known address as it appears following:

John J. Cronan, III, Esquire
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Dated at Presque Isle this 1st day of February, 2024.

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