STATE OF MAINE
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO: WCB-24-163

KATHERINE STOVALL

Appellee/Employee

v.

NEW ENGLAND TELEPHONE CO./
VERIZON

Employer

&

SEDGWICK CLAIMS MANAGEMENT SERVICES

Appellant/Insurer

WCBN: 96017313
Date of Injury: 9/12/1996

On Appeal of a Decision of the Appellate Division
of the Workers' Compensation Board

REPLY BRIEF OF APPELLANT

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I. INTRODUCTION

The Appellee's brief raises several arguments to which the Appellant wishes to respond. First, the Appellee argued that this Court lacks the authority to apply the well-founded principles of res judicata to administrative proceedings. Next, the Appellee claimed that there was contemporaneous notice that payments on the 2001 injury were necessitated in part by the 1996 injury. Finally, the Appellee is incorrect that a remand was not required or necessary to decide whether and in what amount an offset for post-injury earnings was allowed.

II. ARGUMENT

a. The Appellee erroneously argues that this Court lacks the authority to apply the well-founded principles of res judicata to apply to administrative proceedings.

The Appellee argues that res judicata is a judicial doctrine that is applied in administrative proceedings only by analogy (Appellee's Br., 15) and that this Court lacks the authority to enforce the principles of res judicata due to the separation of powers. (Appellee's Br., 15). Specifically, the Appellee claims, "the judicial branch has no authority to impose any rule of res judicata that would abrogate the role of an administrative agency or contravene an agency's enabling statute." (Appellee's Br., 16).

Res judicata serves to promote judicial economy, the stability of final judgments, and fairness to litigants. *Blance v. Alley*, 1997 ME 125, ¶ 4, 697 A.2d

828, 829. As the Appellants noted previously, the Appellate Division's holding that res judicata only bars claims that were actually litigated rather than the "may have been litigated" standard as relied on by this Court repeatedly frustrates the intent behind the aforementioned principles of res judicata. In fact, the erroneous standard used by the Appellate Division does not just "frustrate" the principles of res judicata – It obliterates the principles and leads to situations exactly like this one where an employee can split their claim, arising from the same nucleus of operative facts, and litigate in pieces for the next twenty years despite having a clear opportunity to raise and litigate the exact same grounds and relief sought in the earlier litigation. The procedural history of this claim demonstrates the very inefficiency and problematic patterns that res judicata seeks to avoid.

b. The Appellee incorrectly argues that there was contemporaneous notice that payments on the 2001 injury were necessitated in part by the 1996 injury.

The only argument the Appellee raised with respect to the statute of limitations is that the issue is barred by issue preclusion. Arguably, the Appellee has long since waived this argument as she did not raise it at any point prior to the Appellee's Brief. In fact, she readily argued the merits of contemporaneous notice in the underlying appeal at the Appellate Division level. The failure to raise this issue timely is objectionable.

Further, the Appellee's Brief states, "the notice issue undoubtedly was decided by a valid, final decision of the Workers' Compensation Board in 2006," yet fails to cite any particular portion of that decree specifically. (Appellee's Br., 21). While it is unclear which part the Appellee contends "undoubtedly" decided the issue of contemporaneous notice, the 2006 decree specifically states, "The Board finds that Ms. Stovall suffered a new gradual injury as of June 29, 2001. Her injury was supported by evidence which demonstrated much more serious symptoms than in the past and included both her shoulders hurting, dropping items, unable to perform simple everyday tasks. . ." (App. 6). This in no way suggests that the Appellants had contemporaneous notice that payments made on the 2001 injury related to the 1996. In fact, the 2006 decree ultimately granted benefits only on the 2001 injury based on the average weekly wage associated with the 2001 injury. (*See* App. 10). Not only did the findings and ultimate decision in that 2006 decree not put the Appellants on any sort of contemporaneous notice regarding ongoing payment allocations, but it simultaneously highlights that the 1996 claim was absolutely litigated, or at the very least, should have been and is therefore barred by the principles of res judicata.

The Appellee cannot have it both ways – She cannot argue that the 2006 decree put the Appellants on contemporaneous notice (and also decided such notice) such that the payments on the 2001 injury related in part to the 1996 injury while arguing

in the same breath that the 1996 was never litigated and therefore is not barred by res judicata.

c. The Appellee is incorrect that a remand was not required or necessary to decide whether and in what amount an offset for post-injury earnings was allowed.

As an initial matter, the Appellee stated that the Appellants "presumably [have] no compelling argument . . . and instead may be bringing this appeal solely for the purposes of delaying its payment obligations as long as possible." (Appellee's Br., 23). The Appellants wish to note that a calculation of the average weekly wage and the period of time ordered by the Appellate Division effectively required a payment to the Appellee of nearly $600,000. For the Appellee to suggest that the Appellants filed a frivolous appeal to avoid payment obligations and yet leave out the amount already paid to the Appellee before the Petition for Appellate Review was even filed is disingenuous, at best.

To recap the procedural history of this claim, the Appellee filed a Petition for Restoration of Benefits in 2017. (App. 74). The January 17, 2019 decree denied the Petition for Restoration stating that the Petition for Review of Incapacity filed in 2010 satisfied the termination of benefits on both injuries and that the claim was further barred by laches. (App. 25). After the appeals process, the Appellate Division issued a decision on December 21, 2021 remanding for further analysis of whether the 1996 injury was barred by res judicata, and if so, whether the claim was barred

by the statute of limitations and whether the Appellants complied with 39-A M.R.S.A. §205(9)(B)(2) in terminating payments. (App. 34-35). On remand in a decree dated January 10, 2023, a contract ALJ again denied the Petition for Restoration, this time due to the statute of limitations. (App. 50). The underlying appeal to the Appellate Division then followed. The Appellee's post injury employment started after the Petition for Restoration litigation, and because that petition remained denied entirely on legal grounds up until the most recent Appellate Division decision, the Appellants were under no obligation to file any petitions nor present any arguments to obtain an offset for post-injury earnings. Moreover, any such request for the Appellee's wages would likely have been objected to as irrelevant where the Appellants were not obligated to make any payments at that time. However, once the Appellate Division reversed the contract ALJ's denial and the Appellants were obligated to make a payment for the first time in more than a decade, post-injury earnings became relevant, and the Appellate Division was obligated to remand for further proceedings with respect to the offset amount.

III. CONCLUSION

The Appellee's plea for relief asks this Court to issue a summary order indicating that the appeal was improvidently granted. However, there are clear questions of law and/or errors on questions of law that should be addressed as the errors will continue without correction given the Appellate Division's narrow and erroneous

interpretation of res judicata and its failure to hold that an intervening Board decree not only served as an adequate discontinuance of a prior payment scheme, but it also supports that the Appellants could not have had contemporaneous knowledge that payments on one injury related to another as required to toll the statute of limitations on the earlier injury.

For the aforementioned reasons, as well as the arguments already outlined in our initial brief, the Appellants respectfully request that this Court decline to dismiss this appeal and ultimately reverse the decision of the Appellate Division due to the clear legal errors raised by the Appellants.

Dated at Bangor, Maine this 2nd day of January, 2025.

/s/ Travis C. Rackliffe

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CERTIFICATE OF SERVICE

I, Travis C. Rackliffe Esq., attorney for the Appellants, New England Telephone Company/Verizon and Sedgwick Claims Management Services, have this date made service of the Appellant's Reply Brief by placing a conformed copy of the same in the United States mail, postage prepaid, addressed as follows:

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Dated at Bangor, Maine this 2nd day of January, 2025.

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