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

BRIEF OF APPELLANT

Travis C. Rackliffe, Esq., Bar No. 009596
Kayla A. Estes, Esq., Bar No. 006549
TUCKER LAW GROUP
P.O. Box 696
Bangor, ME 04402
(207) 945-4720
Attorneys for the Appellants

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I. INTRODUCTION

Sedgwick Claims Management Services ("Sedgwick") and New England Telephone Co./Verizon ("Verizon") seek a reversal of the Workers' Compensation Board Appellate Division's ("the Appellate Division") March 28, 2024 decision with respect to the issues of res judicata and statute of limitations. However, should this Court agree with the Appellate Division on those issues and decline to reverse its holding awarding total incapacity benefits to Ms. Stovall, Verizon requests a remand for a determination of the period and degree of any benefits owed in order to prevent an inappropriate double recovery for receipt of total incapacity benefits while Ms. Stovall was (and remains) actively employed with the Workers' Compensation Board for the last several years.

The case before you involves a current employee of the Workers' Compensation Board – married to a long term Administrative Law Judge ("ALJ") with the Workers' Compensation Board – seeking total incapacity benefits for a claim barred by res judicata and the statute of limitations. In the underlying rounds of litigation, multiple Contract ALJs denied her claims (and notably, these contract judges only heard the case because of the conflict of interest with the Workers' Compensation Board due to Ms. Stovall's husband's status as a sitting ALJ with the Workers' Compensation Board). Yet, despite these denials, the Appellate Division

most recently vacated the underlying decisions and entered judgment in favor of Ms. Stovall.

This case involves three main issues. First, the Appellate Division's narrow interpretation of res judicata – finding only claims that were "actually litigated" are barred by the doctrine rather than those that "might have been litigated" – which is clearly inconsistent with this Court's jurisprudence and constitutes an error of law. Second, the Appellate Division erred by finding payments made on a 2001 injury tolled the statute of limitations on a 1996 injury despite the fact Ms. Stovall had withdrawn her pending petition on the 1996 injury and the resulting decree ordered Verizon to pay the employee only on the 2001 injury, meaning that Verizon would be without notice or knowledge that such payments were made pursuant to both claims as required to toll the statute of limitations. Finally, at a minimum, the Appellate Division erred in declining to remand the case to determine the total amount of benefits owed, thereby ordering retroactive total incapacity benefits without providing an offset for post-injury earnings, effectively providing Ms. Stovall with an improper double recovery. As the Appellate Division committed clear legal error, we respectfully request that this Court reverse the Appellate Division decision.

II. PROCEDURAL AND FACTUAL BACKGROUND

Katherine Stovall claimed two work-related bilateral upper extremity injuries while working for Verizon. The first occurred on September 12, 1996, for which she was paid lost time benefits through August 14, 2006. While being paid on the 1996 injury, Ms. Stovall then claimed she suffered a second injury on June 29, 2001 which she originally alleged was a significant aggravation of her 1996 injury. Ms. Stovall filed Petitions for Award in 2005 on both claims.

A hearing was held on February 27, 2006 before Contract ALJ James Smith. (Record on Appeal, Vol. I, p. 5). At that hearing, Ms. Stovall requested that the Board voluntarily dismiss her petition on the 1996 injury without prejudice and instead argued that she should be paid total incapacity benefits under the 2001 injury only (for which the average weekly wage was approximately $200 per week higher than the wage on the 1996 injury). (Record on Appeal, Vol. I, p. 5). No ongoing benefits were pursued under the 1996 injury, and neither Ms. Stovall nor her attorney raised the issue of apportionment.

The August 6, 2006 decree found that Ms. Stovall suffered a new gradual injury as of June 29, 2001. (App., p. 6). It ordered an award of total incapacity benefits for the 2001 injury, based upon the 2001 average weekly wage. (App., p. 10). More specifically, the decree ordered total and partial compensation benefits to be paid for the 2001 injury, based on the average weekly wage for the 2001 date of

injury, through the date of the decree and then an ongoing 40% partial benefit also based on the 2001 wage. (App., p. 10).

As Ms. Stovall had already been paid benefits between 2001 and 2006 on the 1996 injury based upon the 1996 wage, Verizon/Sedgwick was required to go back and make payments from June 29, 2001 through the date of the decree at the higher compensation rate associated with the 2001 injury, as specifically sought by Ms. Stovall. Because the decree ordered payments only on the 2001 injury, and because Ms. Stovall voluntarily dismissed her petition on the 1996 injury, benefit payments under the 1996 injury were discontinued by operation of law pursuant to that decree. This is the relief Ms. Stovall requested during that litigation and what the 2006 decree ultimately ordered. Verizon complied.

Verizon then continued to pay Ms. Stovall partial incapacity benefits pursuant to the decree language under the 2001 date of injury until the 520-week durational limit had been reached. Upon approaching the durational limit, on August 30, 2010, Verizon filed a Petition for Review pursuant to §205(9)(B)(2) to terminate benefit entitlement under the 2001 injury. (App., p. 73).

A brief hearing was held on June 7, 2011 where it was stipulated Ms. Stovall had been paid the requisite 520 weeks of benefits as of June 5, 2011 (just a few days prior to that hearing), and the remaining issue was whether or not permanent impairment was over the threshold which – if so – would entitle Ms. Stovall to

benefits beyond the 520 week cap for the 2001 injury. (Record on Appeal, Vol. I, p. 124-25). A decree, again by Contract ALJ James Smith, granted Verizon's Petition for Review on July 6, 2011, taking issue with Ms. Stovall's credibility, as well as the lack of ongoing symptoms and medical treatment relating to the bilateral upper extremities for the six years leading up to that decision. (*See generally,* App., p. 14-21). Upon the decree finding that Ms. Stovall was asymptomatic and not permanently impaired, Ms. Stovall's indemnity benefits were ultimately terminated.[1]

Notably, both the 2011 and 2006 decrees included the 1996 and 2001 dates of injury in the caption. Neither Ms. Stovall nor her attorney sought any correction to this inclusion, nor did Ms. Stovall pursue any claim for the 1996 injury until filing the Petition for Restoration claiming total incapacity (and notably, not a Petition for Review pursuant to 39-A M.R.S.A. §205(9)(C)) on June 28, 2017, which was ultimately the subject of the underlying appeal. (App., p. 74). Ms. Stovall argued the insurer had violated §205(9)(B)(2) and requested ongoing incapacity benefits be reinstated under the 1996 injury, more than a decade after the last payment on that claim.

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[1] After the final incapacity benefit payment was made in 2011, Ms. Stovall sought a medical expense reimbursement in February 2012 for wrist splints and medication. The receipt for the medication was dated March 18, 1998. Reimbursement checks were issued by Sedgwick with the 2001 date of injury listed, but Ms. Stovall did not cash the checks or pursue a claim for medical benefits within the applicable statute of limitations. The check was ultimately returned to the insurer once the check's 60-day void period was met, and no payment was ever completed. Thus, for the 1996 date of injury, the last payment of benefits made by the insurer was in 2006.

In the more recent round(s) of litigation, Ms. Stovall argued that incapacity benefits on the 1996 injury were improperly discontinued following the 2006 decree, despite the fact that she herself had voluntarily dismissed her pending petition on that 1996 claim, and by virtue of filing petitions for a new 2001 injury and making a claim for total incapacity benefits for that injury, claimed that her incapacity was then due to the 2001 injury which happened to have a higher wage. In other words, Ms. Stovall then accepted 10 years of indemnity benefits on the 2001 injury before making the current claim, almost six years after her entitlement to incapacity benefits for the 2001 aggravation injury ended.

A conference before Contract ALJ John McElwee was held regarding the recent Petition for Restoration on July 23, 2018. By stipulation, an evidentiary hearing was waived, and the parties requested that the decision be rendered on written position papers and agreed exhibits only. (*See* App., p. 23). The January 17, 2019 decree denied Ms. Stovall's claim, finding that the 1996 was subsumed by the 2001 injury, becoming the "same condition at the time of the second injury." (App., p. 25). It did not address Sedgwick/Verizon's statute of limitations or res judicata/collateral estoppel defenses, instead denying the claim pursuant to the doctrine of laches. A decision on Ms. Stovall's Motion for Findings of Fact and Conclusions of Law left the original decision unaltered, and an appeal to the Appellate Division followed.

Where the doctrine of laches does not apply to workers' compensation

proceedings, on December 21, 2021, the Appellate Division vacated and remanded for further analysis regarding whether the 1996 claim was litigated and adjudicated by prior board decisions and therefore barred by res judicata and if not, whether it was barred by the applicable statute of limitations. (App., p. 34-35). It is important to highlight that there was a difference of opinion among the ALJs on the Appellate Division panel regarding the appropriate standard to use with respect to res judicata – The concurring ALJ wrote,

> "While I agree that the Law Court has in some cases applied the doctrine of res judicata narrowly to preclude only issues actually litigated . . . I do not read these cases, however, as abandoning the third element of the standard set forth in *Johnson v. Shaw's Distribution Center* [citation omitted] that res judicata bars a cause of action when the matters presented for decision in the second action were, or might have been, litigated in the first action." (App., p. 35-36).

On remand, the Petition for Restoration was denied by a different Contract ALJ, Dawn Pelletier, a former Commissioner of the Maine Workers' Compensation Board and an experienced Workers' Compensation practitioner. (App., p. 38). In a decree dated January 10, 2023, the Contract ALJ found that res judicata did not apply based on a review of two of the three Appellate Division panel members' views, erroneously limiting the application of res judicata to issues "actually litigated." (App., p. 46). The Contract ALJ then found that the Petition for Restoration was barred by the statute of limitations because it was filed more than six years after benefits were stopped on the 1996 injury. (App., p. 50). Ms. Stovall filed a Motion for Findings of Fact on February 10, 2023 which was ultimately denied. Ms. Stovall

then filed a Motion to Correct Clerical Error on February 22, 2023, which was also denied. (*See* App., p. 53). On March 6, 2023, Ms. Stovall filed a Motion to Correct Clerical Error and Motion for Reconsideration. (*See* App., p. 54-55). She then filed a Notice of Intent to Appeal to the Appellate Division on March 13, 2023. (App., p. 83). Ms. Stovall appealed the statute of limitations finding, the relevance of medical causation under Section 205(9)(B)(2), and a violation of law. Verizon appealed – mainly to preserve defenses and arguments as the underlying decree already denied benefits based on the statute of limitations – the res judicata finding, the discontinuance as a matter of law, improper petition, failure to plead for proper release, and failure to meet the burden of proof. (App., p. 91). These appeals led to the Appellate Division decision which is the subject of the appeal before this Court.

On March 28, 2024, the Appellate Division found that the claim was not barred by res judicata, declining to apply the "actually litigated" standard of res judicata to workers' compensation proceedings. (App., p. 63). It also found that the statute of limitations did not bar a claim on the 1996 injury because – according to the Appellate Division – payments were made on the 2001 injury with notice or knowledge that they related in part to the 1996 injury, despite the intervening decree that specifically ordered payment on only the 2001. (App., p. 66). Absent the res judicata and/or statute of limitations defenses, the Appellate Division then ordered Verizon to pay benefits on the 1996 injury from August 6, 2006 to the present and

continuing, with a credit only for benefits already paid on the 2001 date of injury. (App., p. 66). The Appellate Division made no mention as to the post-injury earnings offset that Verizon is entitled to from approximately 2019 when Ms. Stovall began working for the Workers' Compensation Board as her husband's legal assistant. Instead, the Appellate Division reasoned that because Verizon's obligation to pay benefits (for the first time in over a decade) did not require the introduction of additional facts, judgement would be entered for Ms. Stovall without the need to remand for further proceedings. (App., p. 69-70).

III. ISSUES ON APPEAL

1. Whether the Appellate Division committed legal error in relying upon a narrow reading of res judicata to bar only claims that were "actually litigated" rather than "might have been litigated," and therefore, finding that the claim was not barred by the doctrine of res judicata.

2. Whether the Appellate Division erred by finding payments made on a 2001 injury tolled the statute of limitations on a 1996 injury despite the fact the employee had withdrawn her pending petition on the 1996 injury and the resulting decree ordered Verizon to pay the employee on the 2001 injury only.

3. Whether the Appellate Division committed legal error in declining to remand the case and instead awarding total incapacity benefits for a retroactive period without allowing an offset to be taken for post-injury earnings during the same period.

IV. ARGUMENT

1. The Appellate Division's interpretation of the res judicata language is too narrow and is inconsistent with the Law Court's interpretation of res judicata to additionally bar claims involving issues that "may have been tried."

In the underlying decision, the Appellate Division agreed that final decisions of the Workers' Compensation Board are subject to the rules of res judicata and issue preclusion. *Grubb v. S.D. Warren Co.,* 2003 ME 139, ¶ 9, 837 A.2d 117. However, while it also admitted that res judicata "generally bars the re-litigation of issues that were tried, or that may have been tried, between the same parties or their privies in an earlier suit on the same cause of action," the Appellate Division went on to unilaterally narrow the scope of res judicata in workers' compensation proceedings to preclude only the "re-litigation of issues actually litigated." *Blance v. Alley*, 1997 ME 125, ¶ 4, 697 A.2d 828.

This Court has held that the doctrine of res judicata may bar "the re-litigation of issues that were tried, *or that may have been tried*, between the same parties or their privies in an earlier suit on the same cause of action." [Emphasis added]. *Blance v. Alley*, 1997 ME 125, ¶ 4, 697 A.2d 828, 829. In *Blance*, this Court noted that because the plaintiff could have argued her alternative theory in one of the previous actions, her new claim was barred by res judicata. As such, this Court held that res judicata applied even if the second suit relied on a legal theory "not advanced in the first case, seeks different relief than that sought in the first case, or involves evidence

different from the evidence relevant to the first case" referencing the desire to avoid "clogging repetitious presentations of identical issues" and to promote judicial economy, the stability of final judgments, and fairness to litigants. *Id*. Similarly, this Court has held that a subsequent suit arising out of the same aggregate of operative facts is barred even when the subsequent claim relies upon a legal theory not advanced in the first case, seeks different relief than that sought in the first case, and involves evidence different from the evidence relevant to the first case. *Currier v. Cyr*, 570 A.2d 1205 (citing *Beegan v. Schmidt*, 451 A.2d 642, 644, 646 (Me. 1982).

There is absolutely no question that the precedent set by the Maine Supreme Judicial Court with respect to res judicata includes claims that "may have been" litigated. Despite Ms. Stovall's contention that "two injuries create two causes of action" and therefore, there was no error in the Appellate Division's rejection of Verizon's res judicata defense, that narrow interpretation is in direct conflict with the decades of cases in front of this Court which hold otherwise. Indeed, the fact that Ms. Stovall had a petition pending on the 1996 claim and chose to dismiss it on the day of the hearing on such claim and proceed only with the 2001 claim only supports Verizon's argument that her 1996 claim should be barred from the present litigation as it could have been (and perhaps was, to some extent) litigated previously.

In 2006, in order to determine whether or not Ms. Stovall was entitled to benefits for the 2001 date of injury, either initially or ongoing, it was necessary for

Contract ALJ Smith to determine whether or not she suffered a new injury or rather an aggravation of the 1996 injury, and whether or not she was entitled to compensation benefits as a result. The decision as to whether she was entitled to benefits was based on the same set of operative facts, and she was seeking redress for essentially the same "wrong" – i.e., entitlement to benefits for a bilateral upper extremity injury regardless of the date of injury. *See Bridgeman v. S.D. Warren*, Me. W.C.B. No. 16-35, ¶¶ 8-16 (App. Div. 2018).

The Appellate Division rejected Verizon's arguments on appeal that both *Somers v. S.D. Warren Co*., 2020 ME 137, ¶ 10, 242 A3.d 1091, and *Johnson v. Shaw's Distrib. Ctr*., 2000 ME 191, ¶ 6, 760 A.2d 1057, recite the correct interpretation of res judicata which includes the "might have been litigated" standard. The Appellate Division held that neither *Somers* nor *Johnson* addressed the Law Court's past reliance on the "actually litigated" standard in workers' compensation claims, and interestingly, failed to acknowledge any policy reason the "may have been tried" standard *should not* apply to workers' compensation proceedings. The Appellate Division went on to admit that it had relied "extensively" upon *Spencer's Case* and *Wacome* in deciding whether claims should be barred, noting that neither case has been overruled. However, the facts of this case are distinguishable. Unlike in *Wacome v. Paul Mushero Constr. Co.*, 498 A.2d 593 (Me. 1985) and *Spencer's Case*, 123 Me. 46, 121 A. 236 (1923), Ms. Stovall

originally claimed that the 2001 injury was an aggravation of her 1996 injury rather than an injury to two different body parts. Even if Ms. Stovall's injuries were distinct injuries like in *Wacome* and *Spencer's Case*, the Appellate Division's interpretation of res judicata in general constitutes an error as a matter of law.

In her objection to Verizon's Petition for Appellate Review, Ms. Stovall argued, "As a matter of logic, a date of injury would have to have been litigated in the first instance to be barred from re-litigation." (Employee Objection to Petition for Appellate Review, p. 9). That interpretation is entirely inconsistent with the principles and purpose behind the doctrine of res judicata as highlighted previously by this Court – "Issue preclusion is grounded in concern for judicial economy and efficiency, the stability of final judgments, and fairness to litigants." *See Gurski v. Culpovich,* 540 A.2d 764, 765 (Me. 1988); *Beegan v. Schmidt*, 451 A.2d 642, 646 (Me. 1982). The Appellate Division's holding that res judicata only bars claims that were actually litigated, despite the fact that they could and should have been litigated, clearly frustrates those principles. And despite Ms. Stovall's argument to the contrary that the Appellate Division "followed decades of legal precedent" in concluding that res judicata did not bar her claim, the fact that the Workers' Compensation Board and the Appellate Division have been interpreting res judicata too narrowly for "decades" does not nullify Verizon's request for this Court to

reverse such a decision. Instead, it highlights the need for the Court to step in and correct the errant course of the Board and Appellate Division.

2. **The Appellate Division committed legal error in finding that the statute of limitations did not bar the 1996 claim when payments were being made only on the 2001 date of injury pursuant to specific payment instructions by Board Decree.**

When there are multiple injuries, an employer's decision to record payments under only one date of injury will also extend the six-year statute for other dates of injury if the payments are made with contemporaneous notice or knowledge that the other dates of injury "contributed in some part" to the need for payment. *Pottle v. Bath Iron Works*, 551 A.2d 112, 114-15 (Me. 1988). In support of its holding, the Appellate Division cited *Klimas v. Great Northern Paper Co.,* 582 A.2d 256 (Me. 1990), although the facts in *Klimas* did not include an intervening decree that specifically ordered payments on one date of injury over another as is the case here. The Appellate Division held that a decision only needed to demonstrate that Verizon had contemporaneous notice that payments were in part necessitated by the 1996 injury, yet it ignored the premise that Verizon could not have contemporaneous notice when a decree ordered payments only on one date of injury, while the cover page and pre-hearing communications on the record between counsel included both claims.

It is interesting to note the duality of Ms. Stovall's arguments with respect to res judicata and statute of limitations. On one hand she argues that res judicata does

not bar her 1996 claim because that claim was "never litigated" below. On the other hand, she argues that Verizon must have had contemporaneous notice or knowledge that payments made pursuant to the 2006 decree, ordering payments only under the 2001injury, also related to the 1996 injury. Respectfully, Ms. Stovall cannot have it both ways.

The Appellate Division stated that Ms. Stovall was deemed to have given notice to Verizon of the involvement of the 1996 injury by virtue of their knowledge that the 2001 injury was an aggravation of the 1996 injury. Firstly, that finding completely ignores the fact that Ms. Stovall voluntarily withdrew her petition on the 1996 injury. Secondly, the resulting 2006 decree clearly awarded benefits solely on the 2001 injury. Thirdly, and perhaps most importantly, the 2006 decree found that the 2001 date of injury was a "new gradual injury," rather than an aggravation of the 1996 injury. Finally, the 2006 decree found that Ms. Stovall was totally disabled as a result of the 2001 date of injury only. There was no apportionment or incapacity attributed to the 1996 injury because, according to the 2006 decree, the 2001 injury was now the sole cause of incapacity. The Appellate Division has committed legal error in relying on *Klimas* and *Pottle* despite a significant distinguishing factor in the form of an intervening decree ordering payment on only one date of injury in this case.

The Appellate Division reasoned that nothing in the *Pottle* line of cases required an active pleading or a board decision specifically related to one date of injury to demonstrate contemporaneous notice that benefits were necessitated in part due to another work injury. However, this analysis is flawed. Verizon's position is not necessarily that an active pleading or board decision on a particular date of injury is *required* in order to demonstrate contemporaneous notice. Instead, a board decision ordering payments based on only one injury after the earlier claim was dismissed voluntarily serves as proof that Verizon *could not have* contemporaneous notice following the 2006 decree. If *Flanagin v. Dep't of Inland Fisheries & Wildlife* stands to allow a medical report to serve as an alternative manner of proving contemporaneous notice – as cited to by the Appellate Division – then it is only logical that a decree ordering payments based on only one date of injury can serve as evidence that an employer lacked contemporaneous notice. Me. W.C.B. No. 14-22, ¶ 3, 22 (App. Div. 2014).

The Appellate Division stated that the 2006 decision did not need to resolve a causation dispute, it only needed to demonstrate that Verizon had contemporaneous notice that payments made after the 2006 decision were in part necessitated by the 1996 injury, referencing both the 2005 Memorandum of Payment on the 1996 injury as well as that Ms. Stovall originally claimed that the 2001 injury was an aggravation of the 1996. However, both of these situations are irrelevant to whether or not

Verizon had contemporaneous notice *after the 2006 decree* so that any payments made on the 2001 injury were made with knowledge that the payments related in part to the 1996 injury. Verizon simply could not have had contemporaneous knowledge following the 2006 decree, and it would be irrational to hold that contemporaneous knowledge in this case is based upon pleadings and statements by the employee that pre-dated the ultimate decree that stated that the sole incapacity was related only to the 2001 injury going forward.

As a final note, the Appellate Division rejected Verizon's argument that the 2006 decree ended its obligation to make payments on the 1996 claim, stating that an employer may only discontinue benefits by filing a petition for review and receiving a decision from an ALJ allowing the discontinuance. While Verizon emphatically disagrees with whether or not an intervening decree is a sufficient alternative, it is also important to note portions of an exchange which occurred before the hearing held on February 27, 2006.

> **Contract ALJ Smith:** We had a brief discussion off the record about the status of the Petition for Award regarding the alleged September 12, 1996 bilateral arms injury. Counsel for Ms. Stovall has moved to withdraw that petition, although I understand that payments have been made on it. I'm just trying to establish what documentation there is in the record, although the employer states that Verizon has accepted the injury and made payments on it, but there should be some -- something to indicate that in the record so we can move along at least up to the next injury. (Record on Appeal, Vol. I, p. 5-6).

After a very lengthy discussion of arguments and procedural history by the parties, the following exchange continued.

> **Contract ALJ Smith:** Let -- let me ask this because this was something I was going to bring up anyways. These things are never what they seem to be. Unfortunately I think they're black and white with one or two issues and never see the mushroom, but there is no Petition for Review in here so there is -- is that your thinking that the Award covers the -- that the Award would take care of any filing for Review or, in other words, if I grant the Award, the Award would be obviously grant the Award, but at a certain rate of incapacity?
> **Employer Counsel:** Exactly.
> **Contract ALJ Smith:** All right. So –
> **Employer Counsel:** Because that's never been determined because it's never been a concern or -- or an order.
> **Contract ALJ Smith:** Do you follow that?
> **Employee Counsel:** Not really.
> **Contract ALJ Smith:** If they had -- if they had agreed to the Award and filed a MOP, then they would have had to file a Petition for Review to knock down the benefits that she's currently receiving.
> **Employee Counsel:** Hm-mm.
> **Contract ALJ Smith:** Because they didn't do that once the Award has been established I can find, I believe, that on the Award you're entitled to so much in benefits which I would have found pursuant to a review anyways.
> **Employee Counsel:** Hm-mm.
> **Contract ALJ Smith:** In other words, you get the same result. It's just the difference in paperwork.
> **Employee Counsel:** Hm-mm.
> **Contract ALJ Smith:** Except for the fact that I agree with you at this time that she's entitled to ongoing total until a decision comes out --
> **Employee Counsel:** Right.
> **Contract ALJ Smith:** -- whatever that may be.
> **Employee Counsel:** So you're saying your decision trumps the -- they won't -- they wouldn't need to file a Memorandum of Payment or Notice of Controversy once the --
> **Contract ALJ Smith:** That's right. The Award would take --
> **Employee Counsel:** I understand.
> **Contract ALJ Smith:** -- care of -- okay.
> **Employee Counsel:** Yeah, and --
> **Contract ALJ:** Is that your understanding?

> **Employer Counsel:** Yes, and I believe that she is being paid based on total incapacity --
> **Employee Counsel:** For '96.
> **Employer Counsel**: -- in connection with the '96.
> **Contract ALJ:** Is there a difference in rate that you -- she would get under the 2001 more or less?
> **Employee Counsel:** Yeah, definitely more.

(Record on Appeal, Vol. 1, p. 11-13). This entire exchange is further proof that the intent of Ms. Stovall was to proceed under the 2001 claim only, which had a higher average weekly wage, rather than the 1996 claim. This agreement between the parties, in essence, makes clear that there would be no need for Verizon to file a Petition for Review to terminate benefits on the 1996 claim and that the decree would "take care" of everything at once. For Ms. Stovall to now argue that Verizon must pay additional benefits on the 1996 claim because they did not file a Petition for Review is disingenuous, at best. And for the Appellate Division to penalize Verizon for complying with an agreement of the parties pursuant to what appears to be a discussion on the record with the Contract ALJ is an error of law.

There is simply no way that Verizon could have made payments on the 2001 injury pursuant to the 2006 decree with contemporaneous notice or knowledge that the payments related in part to the 1996 injury when Ms. Stovall dismissed her petition on the 1996 injury, counsel understood and agreed that no further filing would be required to discontinue benefits on the 1996 injury as the decree would

take the place of any filing, and the subsequent decree awarded benefits only on the 2001 claim, finding that it was a new injury rather than an aggravation of the 1996.

3. The Appellate Division committed legal error in awarding total incapacity benefits for a retroactive period rather than remanding the case to determine the period and degree of incapacity owed and a consideration of an offset for the employee's post injury earnings.

The Appellate Division held that there was an ongoing obligation to pay benefits on the 1996 injury, reasoning that once a compensation payment scheme – such as the accepted Memorandum of Payment on the 1996 claim – has been entered, an employer may only discontinue benefits by filing a petition and receiving a decision from an administrative law judge. (App., p. 67-68). Though Verizon maintains that the 2006 decree (ordering payments only on the 2001 injury) was sufficient to allow a discontinuance of benefits on the 1996 injury for reasons previously expressed, even if that were not the case, the Appellate Division erred by declining to remand the case for further proceedings to determine the period and degree of benefits owed as a result of the reversal of the decree which denied Ms. Stovall's claim on legal grounds, notably statute of limitations, without any analysis of benefits owed.

The Appellate Division held that because the payment obligation "does not require the introduction of additional facts, its proper resolution is clear, and a failure to consider it may result in a miscarriage of justice […]," no remand for further

proceedings was necessary. *Sebra v. Wentworth*, 2010 ME 21, ¶ 16, 990 A.2d 538 (quoting *Truman v. Browne*, 2001 ME 182, 788 A.2d 168). (App., p. 69). However, the language from the *Sebra* Court as quoted by the Appellate Division was used in support of the Law Court's decision to review an argument involving an award of attorney's fees, not to determine whether a case should be subsequently remanded. In fact, the *Sebra* Court did eventually remand the case for reconsideration of the award.[2]

Ms. Stovall has argued that Verizon cannot argue for a post-injury earnings offset because it "never argued for an offset during the litigation" and may only take an offset "upon the filing of a petition." (Employee Objection to Petition for Appellate Review, p. 11). However, this argument borders on peculiar as Verizon had not been making payments on any claim since the July 6, 2011 decree granting the Petition for Review to terminate benefits. As Verizon was not paying ongoing weekly indemnity benefits, it had no reason to request post injury earnings, and the employee likely had no obligation to provide them. In addition, a petition for review of incapacity would almost certainly be moot in a situation where the

[2] As we noted in our Petition for Appellate Review, the Appellate Division cited to *Sebra* in an effort to support its decision not to remand the case, yet made no mention of the *Sebra* holding with respect to claim preclusion, an interpretation of res judicata that the Appellate Division has explicitly deviated from – "Accordingly, because the [defendant's] affirmative defense requires interpretation of the same deed, involves the same nucleus of operative facts, and seeks redress for essentially the same basic wrong as the prior litigation, the court properly concluded that it is barred.") *Sebra*, 2010 ME 21, ¶ 16, 990 A.2d 538.

employer/insurer is not paying ongoing weekly indemnity benefits as a result of multiple decisions of the Workers' Compensation Board. It should also be noted that once the Appellate Division's decision reversing the denial of Ms. Stovall's claim on the basis of an affirmative defense was received, Verizon did file a Petition for Review as for the first time in over a decade, it suddenly had an obligation to pay Ms. Stovall benefits.

Employers and insurers are allowed a credit/offset for post-injury earnings – even in situations such as a 14-day violation. *See* 39-A M.R.S. § 205(2). To state that no additional facts are necessary and that the proper resolution is clear and then not allow for an offset for multiple years of post-injury earnings is an error of law that must be corrected. The Appellate Division should have remanded the case for an order regarding the specific payment that is due, as the current holding would result in a double recovery where Ms. Stovall would receive total incapacity benefits despite working as her husband's legal assistant with the Workers' Compensation Board for the last several years.

V. CONCLUSION

The Appellate Division committed clear legal errors which should be reviewed and corrected. The Appellate Division decision is inconsistent with this Court's previous interpretations regarding res judicata. It failed to consider that an intervening Board decree served as an adequate discontinuance of a previous

payment scheme. It improperly imputed knowledge to Verizon that payments on a 2001 injury were in part related to a 1996 injury despite Ms. Stovall's voluntary withdrawal of her petition on the 1996 injury just prior to hearing, the above-cited discussion on the record of that hearing that the decision in that case could address a discontinuance of benefits on the 1996 injury, and the resulting decree ordering payments solely on the 2001 injury. Finally, even if the Appellate Division did not commit clear legal error on the res judicata and statute of limitations issues, it improperly failed to remand the case for further findings regarding the period and degree of benefits owed, including an offset for post-injury earnings, resulting in an illogical and inequitable outcome.

We therefore respectfully request that the Law Court reverse the Appellate Division decision with respect to res judicata and statute of limitations. In the alternative, should this Court disagree with the arguments above and decline to reverse the Appellate Division's decision awarding total incapacity benefits to Ms. Stovall, Verizon requests a remand to determine the period and degree of any benefits owed to consider and prevent an inappropriate double recovery of incapacity benefits to an employee who has substantial post injury earnings.

Dated at Bangor, Maine this 10th day of December, 2024.

/s/ Travis C. Rackliffe

Travis C. Rackliffe, Esq. Maine Bar No. 009596
Kayla A. Estes, Esq. Maine Bar No. 006549
TUCKER LAW GROUP – 207-945-4720
P. O. Box 696
Bangor, ME 04402-0696
tcr@tuckerlawmaine.com
Attorneys for the Appellants

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 Brief by placing a conformed copy of the same in the United States mail, postage prepaid, addressed as follows:

Zachary J. Smith, Esq.
P.O. Box 1049
Bangor, ME 04402
Counsel for Katherine Stovall

Richard Hewes, Esq.
General Counsel of the Maine Workers' Compensation Board
Augusta Central Office
27 State House Station
Augusta, ME 04333-0027

Dated at Bangor, Maine this 10th day of December, 2024.

/s/ Travis C. Rackliffe

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Travis C. Rackliffe, Esq. Maine Bar No. 009596
Kayla A. Estes, Esq. Maine Bar No. 006549
TUCKER LAW GROUP – 207-945-4720
P. O. Box 696
Bangor, ME 04402-0696
tcr@tuckerlawmaine.com
Attorneys for the Appellants