STATE OF MAINE

SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Docket No. Oxf-25-134

PATRICK R. O'BRIEN and LINDA LABAS
Appellant/Defendants

v.

CARISSA DANIELS
Appellee/Plaintiff

On Appeal from the Oxford County Superior Court

BRIEF OF INTERVENOR

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INTRODUCTION

This matter involves two principal issues. The first issue is whether defendants may force a plaintiff to continue prosecuting her claims against them when the plaintiff seeks to dismiss her claims with prejudice. The second issue is whether a liability insurer has the right to settle a claim against is insured over the insured's objection where the policy includes language, "We may investigate and settle any claim or suit that we decide is appropriate," and imposes the duty on an insured to, "Cooperate with us in the investigation, settlement or defense of any claim or suit" and "At our request, help us: a. To make settlement."

Appellants/Defendants Patrick O'Brien and Linda Labas (hereafter collectively "O'Brien") objected to a settlement entered by O'Brien's liability insurer, MMG Insurance Company, and Appellee/Plaintiff Carissa Daniels ("Daniels"), whereby MMG agreed to pay Daniels $25,000.00, Daniels agreed to release all claims against O'Brien, and Daniels agreed that O'Brien was not giving up any claims under the settlement. Daniels moved to dismiss her Complaint against O'Brien with prejudice and O'Brien objected seeking to retain the matter on the docket. The Superior Court granted the motion to dismiss with prejudice and held that MMG had the right to settle the claims against O'Brien.

O'Brien argues that they were harmed because a potential wrongful use of civil proceedings claim is no longer viable. However, that claim was not ripe at the

time the settlement was reached. Furthermore, MMG had the right under the Policies to settle the claim against O'Brien due to his tender of the matter to MMG once the Complaint was filed. Finally, Daniels was permitted to dismiss her Complaint with prejudice and cannot be forced to continue prosecuting claims against O'Brien in order to facilitate the creation of a cause of action against her for wrongful use of civil proceedings. As a result, the Superior Court Order dismissing Daniels' Complaint with prejudice and holding that MMG had the right to settle the claims against O'Brien should be affirmed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Background

This matter arises out of a civil action commenced by Daniels against O'Brien. (Appendix "A." 023-25 (Daniels Complaint).) Daniels filed a Complaint against O'Brien alleging that Daniels is the owner of property located at 273 Dunn Road, Norway, Maine, and O'Brien are owners of property located at 255 Dunn Road, Norway, Maine. (A. 023 (Daniels' Complaint at ¶¶1, 3).) Daniels' Complaint alleged that her and O'Brien's properties were marked with pins and boundary lines, the most recent boundary work taking place in July of 2022. (A. 024 (Daniels' Complaint at ¶¶5-7).) Daniels alleged that the boundary lines were readily apparent. (A. 024 (Daniels' Complaint at ¶8).) Daniels' alleged that she never gave O'Brien permission to enter her property to do anything or take products from her property. (A. 024 (Daniels' Complaint at ¶9).) It is alleged that in July of 2022, O'Brien entered Daniels' property and cut trees and other vegetation. (A. 024 (Daniels' Complaint at ¶12).) Daniels alleged that O'Brien caused injury to Daniels' land and forest products as described in 14 M.R.S.A. §7552, with intent and malice. (A. 024 (Daniels' Complaint at ¶¶16-17).) Daniels' Complaint sought the recovery of damages from O'Brien as set forth in 14 M.R.S.A. §7552, including, but not limited to, three times the fair market value of the injury to the land and forest products, replacement and regeneration costs,

punitive damages, costs of survey, other costs associated with the trespass, attorneys' fees, and court costs. (A. 024-25 (Daniels' Complaint prayer for relief).)

O'Brien retained personal counsel, Theodore Small, Esq., of Skelton, Taintor & Abbott, who filed O'Brien's Answer to Daniels' Complaint. (A. 005, 095 (Registry of Actions; and Affidavit of James Fowler, at ¶6).) Thereafter, O'Brien tendered the defense of Daniels' Complaint to their liability insurer, intervenor MMG, on or about August 14, 2023. (A. 095 (Affidavit of James Fowler, at ¶7.)

At all times pertinent to the allegations in Daniels' Complaint, MMG issued to O'Brien an Elite Homeowner Policy, policy no. HC13823959 with a policy period of 5/10/2023 to 5/10/2024 ("Homeowner" policy), as well as a Personal Umbrella Liability Policy, policy no. UC13309721 with a policy period of 4/1/2023 to 4/1/2024 ("Umbrella" policy). (A. 106-191 (Affidavit of Eric Tawfall, at ¶¶1-8 and Exhibits A and B attached thereto).) MMG agreed to provide O'Brien a defense under a reservation of rights to deny indemnification based on the allegations in Daniels' Complaint and the provisions of the Homeowner and Umbrella policies. (A. 096-105 (Affidavit of James Fowler, at ¶8 and Exhibit A attached thereto.) MMG assigned Paul Douglass, Esq., as defense counsel to O'Brien. (A. 096 (Affidavit of James Fowler, at ¶9.)

The civil action between Daniels and O'Brien proceeded to a mediation pursuant to M.R.Civ.P. 16B with Robert Hatch, Esq., of Thompson, Bowie &

Hatch, LLC, on January 4, 2024. (A. 096 (Affidavit of James Fowler, at ¶10.) Present at the mediation were: Daniels; O'Brien; Daniels' counsel, Nelson Larkins, Esq. of Preti Flaherty; O'Brien's counsel, Paul Douglass, Esq.; MMG's liability adjuster, Roland Cyr; MMG's coverage adjuster, James Fowler; and undersigned counsel for MMG, Matthew Mehalic, Esq. (A. 096 (Affidavit of James Fowler, at ¶11).) The matter did not settle at the mediation on January 4, 2024. (A. 096 (Affidavit of James Fowler, at ¶12).) Subsequent to the mediation, on January 10, 2024, MMG rescinded the reservation of rights letter and relayed the communication of such to O'Brien's counsel, Attorneys Paul Douglass and Theodore Small. (A. 096, 192-194 (Affidavit of James Fowler, at ¶13; and Affidavit of Matthew Mehalic, at ¶3 and Exhibit A attached thereto).)

On January 11, 2024, Daniels and MMG agreed to a settlement of Daniels' claims against O'Brien. (A. 096, 192, 195-196 (Affidavit of James Fowler, at ¶14; Affidavit of Matthew Mehalic, at ¶4 and Exhibit B attached thereto).) O'Brien objected to the settlement of the matter. (A. 026, 096, 192, 195-196, (O'Brien's Motion to Retain on the Docket; Affidavit of James Fowler, at ¶15; Affidavit of Matthew Mehalic, at ¶4 and Exhibit B attached thereto.) Daniels signed a settlement agreement releasing O'Brien from all claims in exchange for a settlement payment of $25,000, which was issued to Daniels by MMG on behalf of O'Brien. (A. 096, 192, 197-200 (Affidavit of James Fowler, at ¶16; Affidavit of

Matthew Mehalic, at ¶5 and Exhibit C attached thereto).) In addition, the settlement agreement expressly provided that all rights, claims or causes of action possessed by O'Brien were preserved and were not released or otherwise waived. *Id.*

The MMG Insurance Policies

The Homeowner policy provides in pertinent part,

> SECTION II – LIABILITY COVERAGES
>
> A. Coverage E - Personal Liability
>
> If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" to which this coverage applies, we will:
>
> 1. Pay up to our limit of liability for the damages for which an "insured" is legally liable; and (amended by Special Provisions – Maine, form MMG 01 18 04 18)
> 2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of liability for the "occurrence" has been exhausted by payment of a judgment or settlement.
>
> SECTION II – CONDITIONS
>
> C. Duties After "Occurrence"
>
> In case of an "occurrence", you or another "insured" will perform the following duties that apply. We have no duty to provide coverage under this policy if your

failure to comply with the following duties is prejudicial to us. You will help us by seeing that these duties are performed:

3. Cooperate with us in the investigation, settlement or defense of any claim or suit;

4. At our request, help us:
   a. To make settlement;
   b. To enforce any right of contribution or indemnity against any person or organization who may be liable to an "insured";
   c. With the conduct of suits and attend hearings and trials; and
   d. To secure and give evidence and obtain the attendance of witnesses;

(A. 106, 128, 132-133, 163 (Affidavit of Eric Tawfall, at ¶¶1-5, 8, and Exhibit A attached thereto.)

The Umbrella Policy includes similar provisions and provides in pertinent part,

II. Coverages

A. Insuring Agreement

We will pay damages, in excess of the "retained limit", for:

1. "Bodily injury" or "property damage" for which an "insured" becomes legally liable due to an "occurrence" to which this insurance applies; and
2. "Personal injury" for which an "insured" becomes legally liable due to one or more offenses listed under the definition of "personal injury" to which this insurance

applies. (Amended by Personal Umbrella Liability Policy Amendment of Policy Provisions – Maine, form DL 98 37 02 12.)

B. Defense Coverage

1. If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" or "personal injury" caused by an offense to which this policy applies, we:
   a. Will provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. However, we are not obligated to defend any suit or settle any claim if:
      (1) The "occurrence" or offense is covered by other "underlying insurance" available to the "insured"; or
      (2) There is no applicable "underlying insurance" in effect at the time of the "occurrence" or offense and the amount of damages claimed or incurred is less than the applicable deductible amount shown in the Declarations.

   b. May join, at our expense, with the "insured" or any insurer providing "underlying insurance" in the investigation, defense or settlement of any claim or suit which we believe may require payment under this policy.

      However, we will not contribute to the costs and expenses incurred by any insurer providing "underlying insurance"; and

c. Will pay any expense incurred for the "insured's" defense, with our written consent, in any country where we are prevented from defending an "insured" because of laws or other reasons.

2. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of liability for the "occurrence" or offense has been exhausted by payment of judgments or settlements.

V. Duties After Loss

In case of an "occurrence" or offense likely to involve the insurance under this policy, you or another "insured" will perform the following duties that apply. We have no duty to provide coverage under this policy if your failure to comply with the following duties is prejudicial to us. You will help us by seeing that these duties are performed:

B. If a claim is made or a suit is brought against an "insured", the "insured" must:
   1. Notify us immediately in writing;
   2. Cooperate with us in the investigation, settlement or defense of any claim or suit;

   4. At our request, help us:
      a. To make settlement;
      b. To enforce any right of contribution or indemnity against any person or organization who may be liable to an "insured";
      c. With the conduct of suits and attend hearings and trials; and

d. To secure and give evidence and obtain the attendance of witnesses.

(A. 106, 174, 177-178, 182 (Affidavit of Eric Tawfall, at ¶¶1-3, 6-8, Exhibit B attached thereto).)

Procedural History

Daniels filed a motion to dismiss her Complaint against O'Brien with prejudice following the above referenced settlement. (A. 006, 011 (Registry of Actions; Daniels' Motion to Dismiss).) The Superior Court initially granted Daniels' motion, but subsequently vacated the order. (A. 006, 007, 011-012 (Registry of Actions; Court Orders on Daniels' Motion to Dismiss).) MMG filed a motion to intervene in the matter, which was granted without objection. (A.007, 037, 080-094 (Registry of Actions; MMG Motion to Intervene and In Support of Daniels' Motion to Dismiss.) O'Brien filed a motion to retain the matter on the docket and subsequently a request for hearing. (A. 007, 026 (Registry of Actions; O'Brien Motion to Retain on the Docket).) A hearing was held at the Oxford County Superior Court on August 28, 2024. (A. 008 (Registry of Actions).) Following the hearing, the Superior Court issued an Order granting Daniels' Motion to Dismiss her Complaint against O'Brien with prejudice and holding that the MMG Policies gave MMG the right to settle the claims against O'Brien . (A. 009, 021 (Registry of Actions; Court Order dated 2/26/2025).)

O'Brien filed a motion for amended, specific and additional findings of fact. (A. 009, 030-033, 207-216 (Registry of Actions; O'Brien Motion for amended, specific and additional findings of fact).) Both Daniels and MMG filed oppositions to O'Brien's motion. (A. 009, 217-218, 219-232 (Registry of Actions; Daniels' Objection to O'Brien's Proposed Findings of Fact and Conclusions of Law; MMG's Opposition to O'Brien's Motion for amended, specific, and additional findings of fact and conclusions of law).) The Superior Court denied O'Brien's motion. (A. 022 (Court Order dated 5/5/2025).) Thereafter, O'Brien filed the pending appeal. (A. 009 (Registry of Actions).)

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether Daniels' Motion to Dismiss with prejudice should be affirmed?

2. Whether O'Brien is precluded from arguing that the Superior Court erred in not taking testimony at the hearing because no offer of proof was made?

3. Whether pursuant to the MMG Policies, MMG had the right to settle Daniels' claims against O'Brien?

4. Whether the Superior Court erred in refusing to grant O'Brien's motion for amended, specific, and additional findings of fact and conclusions of law?

5. Whether the settlement was reasonable and made in good faith?

ARGUMENT

I. Standard of Review

This Court conducts a de novo review of a Superior Court's interpretation of an insurance policy. *Kelley v. N. E. Ins. Co.*, 2017 ME 166, ¶ 4, 168 A.3d 779. Unambiguous policy language is interpreted consistent with its plain meaning. *Kelley*, 2017 ME 166, ¶ 5, 168 A.3d 779.

The Law Court also conducts a de novo review of a court's dismissal of an action. *Calnan v. Hurley*, 2024 ME 30, ¶ 7, 314 A.3d 267, 272.

The Law Court reviews the trial court's denial of a motion for findings of fact for abuse of discretion. *Dalton v. Dalton*, 2014 ME 108, ¶ 21, 99 A.3d 723, 728, *as corrected* (Nov. 13, 2014).

II. Daniels' Motion to Dismiss with prejudice should be affirmed.

Broken down to the simplest of terms, the pending appeal between the named parties, Daniels and O'Brien, concerns whether a plaintiff is able to dismiss his or her own complaint with prejudice during the pendency of the lawsuit over the objection of the defendant. O'Brien seeks to have the Court hold that a defendant can force a plaintiff to continue prosecuting claims against the defendant, even where the plaintiff does not want to.

M.R.Civ.P. 41(a)(2), provides,

> **(a) Voluntary Dismissal: Effect Thereof.**

> (2) *By Order of Court.* Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the counterclaim shall remain pending for independent adjudication by the court despite the dismissal of the plaintiff's claim. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

Me. R. Civ. P. 41. In the normal course, where there is a settlement the parties file with the Court a Stipulation of Dismissal with prejudice and without costs. Here, MMG settled Daniels' claims against MMG's insureds, O'Brien, but O'Brien objected to the settlement. Daniels, as the initiator of the civil action, did not seek dismissal without prejudice in this matter, but of her own accord sought dismissal with prejudice, precluding her from filing these same claims against O'Brien again. Permitting Daniels to dismiss her own complaint with prejudice in this matter should be granted without much consideration at all and the Superior Court's decision doing so should be affirmed.

Furthermore, this is not a case where O'Brien expended effort and expense preparing for a trial, there has been delay on the part of Daniels in prosecuting the action, there is an insufficient explanation for the need to take a dismissal, or O'Brien filed a motion for summary judgment. Those factors have been considered

by courts in determining whether dismissal should be with or without prejudice in past decisions. *See Doe v. Urohealth Sys., Inc.*, 216 F.3d 157, 160 (1st Cir. 2000) (whether dismissal should be with or without prejudice Court considered four factors, "the defendant's effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and the fact that a motion for summary judgment has been filed by the defendant.") In those decisions, the Plaintiff sought dismissal without prejudice to preserve the ability to file again at a later date. There is no such concern here where it is Daniels – the Plaintiff – seeking dismissal with prejudice. As such, Daniels dismissal should be affirmed.

O'Brien seeks to have the Court force Daniels to continue prosecuting her claims against them in order for them to have the basis to assert a wrongful use of civil proceedings claim against her.

> The tort of wrongful use of civil proceedings exists where (1) one initiates, continues, or procures civil proceedings without probable cause, (2) with a primary purpose other than that of securing the proper adjudication of the claim upon which the proceedings are based, and (3) the proceedings have terminated in favor of the person against whom they are brought.

Pepperell Tr. Co. v. Mountain Heir Fin. Corp., 1998 ME 46, ¶ 15, 708 A.2d 651, 656 (*citing* Restatement (Second) of Torts §674).[1] Under no circumstances would

[1] It should be noted that per comment j., Comment on Clause (b), to the extent O'Brien ever had a wrongful use of civil proceedings claims, that claim was not necessarily extinguished by the settlement.

a Court ever order a party to commit negligence resulting in damage to another party, in order to permit the injured party to be able to recover against the negligent party. Under no circumstances would a Court ever order a party to breach a contract resulting in damage to another party, in order to permit the non-breaching party to have a cause of action against the breaching party. O'Brien's argument against dismissal, in order to preserve their wrongful use of civil proceedings claim is nonsensical.

Furthermore, at no time has O'Brien proffered any evidence that they were damaged by Daniels' filing of a Complaint against them. In fact, it is likely that O'Brien never sustained damage and only would have sustained damage if MMG had not settled the case. When O'Brien tendered the defense of the complaint to MMG, MMG undertook the defense under a reservation of rights to deny indemnity for any judgment entered against O'Brien. If the matter had proceeded to trial and Daniels prevailed on her claims against O'Brien and there was no coverage, O'Brien would have been damaged due to having to pay a judgment

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> *j. Termination in favor of the person against whom civil proceedings are brought.* Civil proceedings may be terminated in favor of the person against whom they are brought under the rule stated in Clause (b), by (1) the favorable adjudication of the claim by a competent tribunal, or (2) the withdrawal of the proceedings by the person bringing them, or (3) the dismissal of the proceedings because of his failure to prosecute them.

Restatement (Second) of Torts § 674, comment j. (1977).

against them. However, missing from a wrongful use of civil proceedings claim would be the element of termination in O'Brien's favor. If the matter had proceeded to trial and O'Brien had prevailed, all while being defended by MMG under a reservation of rights, there would have been no damage to O'Brien. The fact remains that O'Brien is arguing that the settlement should not have taken place and Daniels' Complaint should not have been dismissed because permitting both deprived him of the ability to assert a wrongful use of civil proceedings claim that he never would have been able to establish the elements for. This Court should hold that it will not force a party to continue to prosecute actions that the party no longer has a desire to prosecute and it will not facilitate the creation of a cause of action for wrongful use of civil proceedings.

III. Appellant O'Brien is precluded from arguing that the Superior Court erred in not taking testimony at the hearing because no offer of proof was made.

O'Brien argues that the Superior erred when it declined to allow him to testify at the hearing. However, at the hearing, O'Brien made no offer of proof in order to preserve his claim for error on appeal. M.R.Evid. 103. Rulings on Evidence, provides in pertinent part,

> **(a) Preserving a claim of error.** A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

> **(2)** If the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

M.R.Evid. 103.

The Law Court has considered this issue on multiple occasions and held that an offer of proof is essential to preserve a claim of error for appeal when evidence is excluded. "An offer of proof should contain not only the facts that are sought to be elicited, but also reference to the facts, circumstances, or legal grounds on which the testimony is admissible." *State v. Adams*, 2014 ME 143, ¶ 12, 106 A.3d 413, 417 (*quoting* Field & Murray, *Maine Evidence* § 103.4 at 16 (6th ed.2007).) Where the trial court is not advised of the content, relevancy, and admissibility of the proposed testimony there is a lack of essential foundation and the appellate court is unable to determine if error occurred. *See State v. Albert*, 495 A.2d 1242, 1243 (Me. 1985). That is the case in the pending matter.

O'Brien's failure to make an offer of proof at the Superior Court hearing was a failure to comply with M.R.Evid. 103(a) and now eliminates his ability to argue that the Superior Court committed error in refusing his testimony. *See Anderson v. O'Rourke*, 2008 ME 42, ¶¶12-13, 942 A.2d 680, 683 (Estate's co-representatives failed to preserve for appellate review their contention that trial court's in limine decision constituted the "law of the case" such that it abused its discretion by reversing its in limine ruling, as the representatives had the opportunity to raise

their law of the case doctrine objection to the court's decision at trial not to admit the evidence, but failed to do so, and thus the Supreme Judicial Court would decline to consider the issue on appeal); and *Parker-Danner Co. v. Nickerson,* 554 A.2d 1193, 1195 (Me. 1989) (Any error in trial court's exclusion of defendant's expert witness for lack of notice was not preserved for appeal where neither pretrial order nor inapplicability of rule on which trial court relied were pointed out to the trial court and no offer of proof as to the expected testimony was made).

IV. Pursuant to the unambiguous language of the MMG Policies, MMG had the right to settle Daniels' claims against O'Brien.

A. The Policy language is unambiguous and is subject to only one reasonable interpretation.

The Policy language at issue in this matter is unambiguous. Both the Homeowners and Umbrella Policies permit MMG to settle a claim that MMG decides is appropriate. Both Policies also impose duties on the insured to cooperate with settlement and help to make settlement. (A. 128, 132, 174, 177-178.)

It is well established that even though an insurance policy may be complex, that does not automatically render it ambiguous. Although a policy may contain many words, paragraphs, or provisions that a first-time reader does not understand, that is not a ground to remove those provisions from the policy. *Patrons Oxford Mut. Ins. Co. v. Marois*, 573 A.2d 16, 19 (Me. 1990). The entire policy is evaluated

as a whole to determine whether it is ambiguous. *Found. for Blood Research v. St. Paul Marine & Fire Ins. Co.*, 1999 ME 87, ¶ 11, 730 A.2d 175. The Court reads the policy's language "from the perspective of an average person untrained in either the law or the insurance field in light of what a more than casual reading of the policy would reveal to an ordinarily intelligent insured." *Haskell v. State Farm Fire & Cas. Co.*, 2020 ME 88, ¶ 15, 236 A.3d 458 (quoting *Kelley*, 2017 ME 166, ¶ 5, 168 A.3d 779).

It is the Court's role to ascertain the meaning of the policy "*actually made*," not to create a new policy by "enlarging or diminishing its terms." *Philadelphia Indem. Ins. Co. v. Farrington*, 2012 ME 23, ¶ 7, 37 A.3d 305 (quoting *Apgar v. Commercial Union Ins. Co.*, 683 A.2d 497, 500 (Me. 1996)).

Other jurisdictions construing the provisions of the MMG Policies regarding the insurer's settlement rights have concluded that the provisions are unambiguous and permit an insurer the right to settle claims against its insureds where it is the insurer paying the settlement. *See infra.* The language at issue in the subject Policies is unambiguous. Interpreting the language as argued by O'Brien in the pending appeal is not a reasonable interpretation of the Policy language. The Court in the present matter should conclude that the policy language is unambiguous and subject only to the interpretations advanced by MMG.

B. MMG had the right to settle Daniels' claims against O'Brien and the Superior Court Order should be affirmed.

Both of the MMG Homeowners and Umbrella Policies issued to O'Brien expressly provide in two separate locations that MMG has the right to settle any claim or suit that MMG decides is appropriate and require the insureds to cooperate and/or assist with that settlement. (A. 106, 128, 132-133, 163, 174, 177-178, 182.) This language within the Policies permits MMG to settle the claims directly with Daniels over the objection of O'Brien, regardless of whether or not a reservation of rights existed, where it was MMG that was paying the settlement.

Case law from across the country is clear that insurers defending insureds under liability policies containing the same or similar language to that in the MMG Policies have the unilateral right to decide to settle a claim against their insureds over the objection of their insureds. *See Vintilla v. Safeco Ins. Co.*, 417 F. Supp. 2d 922, 925-28 (N.D. Ohio 2006) (insurer does not breach insurance contract by settling claim against insured even though insured instructed insurer not to settle, and even if the settlement resulted in an increase in premium, since (a) "the insurer's duty to defend its insured…includes the right to settle rather than litigate," and (b) the policy provided that the insurer could "settle or defend, as we consider appropriate"); *New Plumbing Contractors, Inc. v. Edwards, Sooy & Byron*, 99 Cal. App. 4th 799, 121 Cal. Rptr. 2d 472, 474 (4th Dist. 2002) ("Under a

policy provision giving an insurance company discretion to settle as it sees fit, the insurer is entitled to control settlement negotiations…, and generally, it has no liability to the insured for settling within the policy limits. (Citation omitted.) Thus, there is no cause of action where the insured claims the settlement injured its business reputation, nor any where the insured claims the settlement unfairly used up its deductibles"); *Cash v. State Farm Mut. Auto. Ins. Co.*, 137 N.C. App. 192, 201, 528 S.E.2d 372, 377, *aff'd*, 353 N.C. 257, 538 S.E.2d 569 (2000) ("we can deduce that settling a potentially fraudulent claim may cost an insurance company less than actually litigating it, and thus is in the insurer's best interest. Plaintiff has not indicated that State Farm acted illegally, as it was not under any obligation to gain his consent before settling the claims in question"); *New Hampshire Ins. Co. v. Ridout Roofing Co.*, 68 Cal. App. 4th 495, 505, 80 Cal. Rptr. 2d 286, 290 (1998), *as modified* (Dec. 28, 1998) (Implied covenant of good faith and fair dealing did not limit right of commercial general liability (CGL) insurer to settle claims over insured's objection and seek reimbursement of deductibles from the insured); *Caplan v. Fellheimer Eichen Braverman & Kaskey*, 68 F.3d 828, 835, (3d Cir. 1995) (Language in liability insurance policy stating that insurer may make such settlement within the applicable amount of insurance available as it thinks appropriate permits insurer to settle suit that presents no valid claim against insured and over the objection of the insured); *Shuster v. S. Broward Hosp. Dist.*

Physicians' Pro. Liab. Ins. Tr., 591 So. 2d 174, 176–77 (Fla. 1992) (policy provided: "The company may make such investigation and such settlement of any claim or suit as it deems expedient;" "The obvious intent behind placing the provision in the agreement was to grant the insurer the authority to decide whether to settle or defend the claim based on its own self-interest, and this authority includes settling for the nuisance value of the claim. Therefore, we interpret the provision as granting the insurer the discretion to settle cases for amounts within the policy limits, regardless of whether the claim is frivolous or not"); *Feliberty v. Damon*, 7212 N.Y.2d 112, 116, 527 N.E.2d 261, 262 (1988) (Malpractice insurer did not violate any implied obligation under policy when, without notice to insured, it settled malpractice case for sum within policy limits; insurer could not be held liable, on bad-faith theory, for damage to insured's medical practice allegedly resulting from publicity surrounding settlement); and *Marginian v. Allstate Ins. Co.*, 18 Ohio St. 3d 345, 348, 481 N.E.2d 600, 603 (1985) ("we hold that where a contract of insurance provides that the insurer may, as it deems appropriate, settle any claim or action brought against its insured, a cause of action alleging a breach of the insurer's duty of good faith will not lie where the insurer has settled such claim within the monetary limits of the insured's policy"). *Cf. Louque v. Allstate Ins. Co.,* 314 F.3d 776, 783 (5th Cir. 2002) (automobile liability insurance policy provision stating that "[insurer] may settle any claim if we believe

it is proper" conferred absolute discretion upon insurer over whether or not to settle claims against its insureds, precluding insured's breach of contract action against insurer alleging that insurer's alleged policy of refusing to settle minor-impact, soft-tissue injury claims breached that provision.)

In jurisdictions permitting the insurer to be reimbursed by the insured for defense costs and settlement amounts incurred by the insurer defending non-covered claims, i.e., under a reservation of rights, the insurer is still permitted to be reimbursed even when the insured objects to the settlement. *Cf. Blue Ridge Ins. Co. v. Jacobsen*, 25 Cal. 4th 489, 22 P.3d 313, *opinion after certified question answered*, 10 F. App'x 563 (9th Cir. 2001) (Liability insurer's right to reimbursement from the insured after reaching a reasonable settlement of an excluded claim is implicit in policy terms which provide indemnification only for covered claims; this is true even where insured objects to the settlement.)

O'Brien argues that by reserving rights under the Policies, MMG gave up the right to enter the settlement because it did not have control of the defense. The context of the decisions cited by O'Brien in support of this argument regards a challenge by the insurer to a stipulated judgment entered by the insured/defendant and plaintiff, where prior to the stipulated judgment the insurer has reserved rights to deny indemnification. In that context, this Court has agreed that the insured has the right to control the defense and enter the stipulated judgment with the plaintiff.

See Patrons Oxford Ins. Co. v. Harris, 2006 ME 72, 905 A.2d 819. The justification is to avoid financial catastrophe to the insured.

> If the insurer could continue to control the insured's defense despite reserving its rights to later deny coverage, it could assert a liability defense and insist on fully litigating the insured's case, thus exposing the insured to personal liability if there is a verdict favorable to the claimant. If the verdict is favorable to the claimant, the insurer still has another opportunity to avoid liability by doing exactly as Patrons did here, litigating coverage in a declaratory judgment action. Thus, we agree with the Arizona Supreme Court that the insured "risk[s] financial catastrophe if [he is] held liable, while the insurer may save itself by litigating both issues—the insured's liability and the coverage defense—and winning either." [*United Servs. Auto. Ass'n v. Morris,* 154 Ariz. 113, 741 P.2d 246, 252 (1987).]

Harris, 2006 ME at ¶ 15, 905 A.2d at 826. What the Court was concerned with avoiding and the underpinning of its holdings in *Harris* is exactly the opposite of what happened in the pending matter. Instead of exposing its insured to financial catastrophe, MMG agreed to pay the settlement in order to end the litigation against O'Brien and protect O'Brien from any financial exposure.

This is not to mention that although unnecessary, MMG pulled the reservation of rights and provided notice of such withdrawal of the reservation of rights to both O'Brien's personal counsel and MMG assigned defense counsel,[2] prior to entering the settlement with Daniels. No reservation of rights existed at

[2] This notice, dated January 10, 2024, was prior to either counsel's filing of the motion to withdraw. (A. 006, 034, 035, 193.)

the time the settlement was entered. MMG agreed to indemnify O'Brien for any judgment entered in favor of Daniels. As a natural consequence, refusing to settle the claim within the policy limits when MMG had the opportunity to do so, only would have exposed MMG to future liability. *See State Fire & Cas. Co. v. Haley*, 2007 ME 42, ¶¶ 15-16, 916 A.2d 952, 956–57 (Dana, J. dissenting) (citing *Johnson v. Tenn. Farmers Mut. Ins. Co.,* 205 S.W.3d 365, 370 (Tenn.2006) ("A majority of states have recognized that, in cases where the expected damages exceed the limits of a policy, an insurer has a good faith duty to settle the claim within the policy limits, and that a bad faith failure to do so subjects the insurer to liability for any judgment rendered against the insured in excess of the policy limits.")

In the present matter, the Homeowners and Umbrella Policies provides that "We may investigate and settle any claim or suit that we decide is appropriate." (A. 128, 174.) The conditions section of both policies require the insureds to cooperate with the settlement of any claim or suit, to help make settlement, and to help with the conduct of suits, hearings and trial. (A. 132, 177-178.) The clear, plain, and unambiguous language of the Policies gave MMG the right to settle Daniels' claims against O'Brien at MMG's own cost. Furthermore, upon settlement of

those claims, there was no longer a need or obligation for MMG to provide counsel to O'Brien, as the claims ceased to exist.[3]

The Settlement, Release, and Indemnification Agreement executed by Daniels in this matter is explicitly clear that O'Brien is giving up no rights in this matter and any claims they may have against Daniels are preserved.[4] In short, there is no basis for O'Brien to object to the settlement of Daniels claims against them. O'Brien is not required to pay any money, they maintain their claims against Daniels, and they are released of a potential liability against them as asserted by Daniels. For these reasons, O'Brien's objection to the settlement and dismissal of Daniels' complaint is unfounded and the Superior Court's dismissal of Daniels Complaint with prejudice should be affirmed.

[3] O'Brien raises that there was an offer to have O'Brien post a bond, agree to indemnify MMG, and assume the defense. However, O'Brien fails to identify that it was necessary to get Daniels to go along with this, as well, in order for MMG to avoid a potential reach-and-apply action, pursuant to 24-A M.R.S.A. §2904. O'Brien did not get this agreement from Daniels and there is no indication that Daniels would have agreed to such, given her desire to cease prosecution of her claims against O'Brien.

[4] At the time the settlement was entered, O'Brien did not even have a claim for wrongful use of civil proceedings. He lacked several elements of the claim, most importantly, a favorable determination in his favor. The settlement did not result in O'Brien giving up any claims because he did not have a claim for wrongful use of civil proceedings at the time of the settlement. There were a number of events that needed to take place in order for such a claim to materialize. The claim for wrongful use of civil proceedings was a possibility based on uncertain events in the future that never may have occurred. It cannot be said that any claim was given up by O'Brien, as a result of the settlement.

V. The Superior Court did not err in refusing to grant O'Brien's motion for amended, specific, and additional findings of fact and conclusions of law.

There was no need for the Superior Court to enter amended, specific, and/or additional findings of fact and conclusions of law in this matter due to the sufficiency of the findings of fact and conclusions of law in the Superior Court's February 26, 2025, Order. "Although the court has a duty to make sufficient findings to inform the parties of the reasons for its conclusions, and to allow for effective appellate review, there is no requirement that a court 'detail the rationale it uses to reach each finding of fact or conclusion of law.'" *Potter v. Potter*, 2007 ME 95, ¶ 8, 926 A.2d 1193, 1196 (*quoting Miele v. Miele,* 2003 ME 113, ¶ 11, 832 A.2d 760, 763.)

In the present matter, Daniels filed a Complaint against O'Brien. O'Brien tendered the defense of the Complaint to their homeowners and umbrella insurer, MMG. MMG agreed to provide a defense under a reservation of rights. The matter proceeded to discovery and a mediation. An agreement was not reached at the mediation. However, in the days following the mediation, first, although not necessary to settle the matter, MMG pulled its reservation of rights, and second, MMG and Daniels agreed to settle the matter in exchange for a release of O'Brien, that preserved any claims they had against Daniels. Both the homeowners and umbrella policies of insurance issued by MMG to O'Brien gave MMG the right to

settle claims asserted against its insureds. MMG exercised that right and settled the claims against its insureds protecting them from personal liability. Upon Daniels' execution of a settlement agreement that specifically preserved O'Brien's right to assert claims against Daniels, MMG issued payment to Daniels, and Daniels agreed to seek dismissal of her Complaint with prejudice.

The Superior Court found that this series of events was justified under the terms of the homeowners and umbrella policies issued by MMG, that the settlement was reasonable and made in good faith, that O'Brien's claims were not given up, and that O'Brien was free to litigate any claims on their own.

O'Brien would have the Court rewrite the insurance policies O'Brien agreed to and subjected themselves to when they tendered the defense of the Complaint against them to MMG. O'Brien would also have the Court force Daniels to continue litigating claims against O'Brien that she no longer has any interest in prosecuting. There is no foundation in the law for the Court to have the ability to rewrite the insurance policies previously entered by an insurer and an insured and/or force a party who commences a lawsuit to continue to prosecute the action when they no longer have an interest in doing so. *Cf. Johnson v. Allstate Ins. Co.*, 1997 ME 3, ¶ 9, 687 A.2d 642, 645 ("we will not rewrite the contract when the language of the policy is unambiguous. The terms of a policy cannot be enlarged or diminished by judicial construction.")

O'Brien's arguments against the sufficiency of the Superior Court's Order sought to introduce issues of law and facts that were irrelevant and superfluous to final disposition of this matter.[5]

"When, as here, a trial court's findings of fact and conclusions of law appear within the court's decision, the court need not grant a request for findings of fact and conclusions of law." *Kleinschmidt v. Morrow*, 642 A.2d 161, 164 (Me. 1994). *See also Bradford v. Harris*, 499 A.2d 159, 160, n.1 (Me. 1985) ("Plaintiff's contention that the Court's failure to grant his motion for findings of fact and conclusions of law constitutes reversible error is without merit. It is sufficient if those findings and conclusions appear in the Court's opinion, as is the case here. M.R.Civ.P. 52(a). Furthermore, the Court's findings and conclusions are stated intelligibly enough to permit the plaintiff to point to specific findings asserted to be erroneous.") Therefore, there should be no finding that the Superior Court erred in declining to issue amended, specific, and/or additional findings of fact and conclusions of law.

[5] O'Brien sought to have established a decision on the merits of Daniels' claims against O'Brien when determining the merits of Daniels' claims and O'Brien's defenses against those claims was never before the Superior Court. Determination of the merits of Daniels' Complaint was also not necessary or implicated in deciding if Daniels was entitled to dismiss her own Complaint with prejudice and whether MMG was permitted to enter the settlement with Daniels to resolve the claims against its insureds – O'Brien.

VI. The settlement was reasonable and made in good faith.

O'Brien argues that the record is bereft of materials of evidentiary quality to support the Superior Court's finding that the settlement was reasonable and made in good faith. In doing so, O'Brien ignores the sentences that follow that finding. The paragraph as a whole provides,

> In this case, the Court further finds that the settlement was reasonable and made in good faith. A settlement is permissible and enforceable even though the Defendants objected to the terms. In addition, the Defendants have not given up any claims they may have against the Plaintiffs. Their rights are preserved, and they are free to litigate any claims on their own.

(A. 021.) As can be seen, the Superior Court was supporting the conclusion that the settlement was reasonable and made in good faith through the addition of the three findings/sentences following that initial conclusion.

O'Brien proceeds to cite to case law, *Patrons Oxford Insurance Company v. Harris,* 2006 ME 72, 905 A.2d 819, issued in the context of an insured's entering a stipulated judgment with a plaintiff, with a covenant not to execute against the insured's personal assets, and permitting the plaintiff/judgment creditor the ability to seek to collect the judgment amounts directly from the insurer, in support of the argument that the settlement was unreasonable. *Harris* is inapplicable to the issues at hand in the pending matter.

In *Harris,* the insured entered a stipulated judgment with the plaintiff. The insurer had reserved rights under the policy to deny indemnity. The insured, in an

effort to protect his personal assets, agreed to a stipulated judgment with the plaintiff, whereby the plaintiff would not seek to collect the judgment amount directly from the insured, but instead would solely pursue the insurer for the stipulated judgment amount. The insurer had no say in the stipulated judgment amount. The insured and the plaintiff, potentially obligated the insurer to pay a judgment, subject to coverage being afforded under the policy. That is the reason the Court set forth the standard for determining the reasonableness of damages in *Harris*.

Here, in contrast, MMG did not enter a settlement that made O'Brien personally liable to Daniels. In fact, MMG entered a settlement that insulated O'Brien from any personal liability to Daniels, eliminated the risk of an excessive judgment against O'Brien that MMG would have been liable for, eliminated the ongoing defense costs associated with continuing to defend O'Brien against Daniel's Complaint, and made sure that O'Brien's claims against Daniels (to the extent they existed) were preserved. The settlement amount of $25,000 in light of all of these factors was reasonable and entered in good faith in order to protect O'Brien and MMG from further costs associated with litigation and a potential judgment.

O'Brien focuses on the value of the timber allegedly cut in order to assess the reasonableness of the settlement, but this completely misses the point. It is not

simply the potential recoverable damages available to Daniels under 14 M.R.S.A. §7552, it is also the costs of defense, potential reach-and-apply costs under 24-A M.R.S.A. §2904 should a judgment have been entered against O'Brien, and guaranteeing the outcome and finality of the matter.

In addition, the argument that the settlement was not reached in good faith is nonsensical. The only reason O'Brien thinks the settlement was not reach in good faith is because he may not be able to pursue a claim he never had – wrongful use of civil proceedings – at the time the settlement was reached.

O'Brien was not obligated to do anything by MMG's and Daniels' settlement of Daniels' claims against O'Brien. In exchange for Daniels' agreement to release her claims against O'Brien, MMG agreed to pay her $25,000, and Daniels also agreed that O'Brien was not giving up any claims they may have against Daniels. There was a meeting of the minds on those terms and the settlement agreement was enforceable. *See In re Estate of Snow*, 2014 ME 105, ¶ 11, 99 A.3d 278 (A binding settlement agreement exists where the parties mutually intend to be bound.) The MMG Homeowners and Umbrella Policies permitted MMG to enter the settlement once the defense was tendered and the settlement that was reached was reasonable and in good faith. *See supra.*

CONCLUSION

WHEREFORE, for the foregoing reasons, Intervenor MMG Insurance Company respectfully requests that this Court affirm the Superior Court's decision granting Plaintiff/Appellee Carissa Daniels' motion to dismiss with prejudice and denying Defendant/Appellants Patrick O'Brien and Linda Labas' motion to retain on the docket.

DATED at Portland, Maine this 31st day of July, 2025.

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CERTIFICATE OF SERVICE

The undersigned counsel for Intervenor MMG Insurance Company certifies that he has caused service of the Intervenor's Brief upon counsel of record for Appellants Patrick O'Brien and Linda Labas and Appellee Carissa Daniels, by causing an electronic copy to be emailed and two copies of the same to be mailed by United States first class mail, postage prepaid, addressed as follows:

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