STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Law Court Docket No. CUM-24-82

PETER MASUCCI, et al.

Plaintiffs/Appellants/Cross-Appellees

v.

JUDY'S MOODY, LLC, et al.

Defendants/Appellants/Cross-Appellees

On Appeal from the Cumberland County Superior Court

BRIEF OF *AMICI CURIAE* OWNERS OF FIFTY-ONE (51) BEACHFRONT PROPERTIES ON MOODY BEACH IN SUPPORT OF APPELLEES

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INTRODUCTION

Pursuant to M.R. App. P. 7(A)(e) and this Court's May 15, 2024, Order Modifying Briefing Rules, the owners of fifty-one (51) beachfront properties on Moody Beach in the Town of Wells and State of Maine who were not named or served in this Action file this brief as *Amici Curiae*.

In 1984, a group of plaintiffs who owned beachfront property on Moody Beach brought suit to quiet title and obtain guidance from the courts as to their property rights—including the rights of the public thereover (hereinafter, the "*Bell Action*"). Recognizing the broad impact, scope, and importance of the lawsuit, this group of plaintiffs properly named the Town of Wells, the State, and all users of their property who may claim some right, title, or interest therein. (*See* A. 1416-1445.) This group of plaintiffs sought, and obtained, permission from the trial court to carry out alternative service by publishing notice of the lawsuit in a newspaper once a week for three successive weeks to ensure that all who claimed an interest or right over their property would be notified of the lawsuit and could protect and/or pursue their rights accordingly. (A. 1380.) Thanks to these actions: two environmental organizations sought, and received, permission to intervene; a *guardian ad litem* was sought and appointed to represent unnamed or unknown defendant; and a group of approximately 40 parties who owned property behind Moody beach (the "Tier Two Group") intervened, claiming easement rights thereover.

Following years of costly, highly-contested litigation in which all of the above-referenced parties were served, this Court issued *Bell v. Wells*, 557 A.2d 168 (Me. 1989) ("*Bell II*").[1] In *Bell II*, this Court declared: 1) the plaintiffs owned title in fee to the intertidal portions of their property; 2) the intertidal portions were subject to a public easement for fishing, fowling, and navigation, which did *not* include bathing, sunbathing, and recreational walking; 3) the 1986 Public Trust in Intertidal Land Act constituted an unconstitutional taking; and 4) the Town of Wells did not have a public easement over the dry sand or intertidal portions of plaintiffs' property. *Bell II* also noted the availability, if the Town or the State deemed it necessary, for the public to obtain additional property rights over the plaintiffs' property by seeking to purchase those rights or in pursuing eminent domain proceedings where just compensation is required.

Bell II has been the law of the land ever since and multitudes of decisions have been made throughout the State in reliance on *Bell II.* Nowhere has this reliance been greater or more pronounced than on Moody Beach itself, especially for beachfront property owners, like *Amici*, who have made personal, financial, and legal decisions on the understanding that the years of litigation culminating in *Bell II* resolved once-

[1] This Court issued "*Bell I*" in 1986 reversing the York County Superior Court's determination that the plaintiffs' claims were barred by the doctrine of sovereign immunity. *Bell v. Wells*, 510 A.2d 509, 510 (Me. 1986).

and-for-all their rights as to Moody Beach and the intertidal portions of their property.

Now, a group of 24 individuals (hereinafter "Appellants") asserting grandiose claims that begin with reference to Emperor Justinian are attempting to overturn *Bell II* through a lawsuit brought against a handful of defendants who, between them, own only three beachfront lots on Moody Beach (and four lots elsewhere) (hereinafter, the "Named Defendants"). Appellants elected not to name or serve all necessary parties, including *Amici*, owners of fifty-one beachfront properties on Moody Beach. Unlike the plaintiffs in the *Bell Action*, Appellants did not serve the Town of Wells, did not serve all owners of beachfront property on Moody Beach, and did not serve all individuals who may claim rights to the intertidal zone of Moody Beach through publication.[2]

Thankfully, the underlying Named Defendants retained counsel and were able to successfully oppose Appellants' suit, but the fact that the trial court ultimately reached the right end result was by no means a foregone conclusion. The Named Defendants could have chosen not to respond, done a poor job responding, or been supportive of the relief sought in Appellants' suit. In all cases *and especially those touching on matters of State-wide importance*, the Law does not leave matters like

[2] Resultingly, Appellants did not seek appointment of a *guardian ad litem* to represent the interests of those who were served, but did not appear.

this to chance. Instead, the law requires *all* necessary parties be joined to assure that a complete record, in which all interested parties can participate, is created so that questions of law and fact can be fully, finally, and appropriately determined. That was not done here, and *Amici* respectfully contend that this failure prevents the Court from entering any judgment in favor of the Appellants without first remanding the entire lawsuit with instructions to join *all* necessary parties, including—at least—all owners of beachfront property on Moody Beach.

On the unique facts of this case, remand and further litigation is not necessary because the Trial Court correctly entered judgment against Appellants' claims pursuant to the doctrine of res judicata. Specifically, the Trial Court correctly determined that *all* of the issues Appellants sought to re-open had already been vigorously litigated and decided on this exact beach in the *Bell Action*. While Appellants—and the State—may not like the result of the *Bell Action*, they have not presented any plausible basis to deviate from application of res judicata, a doctrine of public policy, private peace, and fundamental and substantial justice.

Were this Court to rule otherwise, it would open the floodgate to dissatisfied losing parties, encourage calculated, cherry-picked lawsuits, subject beachfront property owners, owners of private easement rights in the beach, and the public to interminable litigation, and create massive uncertainty, upheaval, and confusion not just on Moody Beach, but to the broader rule of law. Put simply, application of res

judicata on the facts of this specific appeal—where the issues raised by Appellants were, or could have been, litigated in the *Bell Action*—sends the correct, necessary message that unsuccessful parties with resources cannot retain skilled counsel and bring suit after suit to challenge unfavorable rulings.

INTEREST OF *AMICI CURIAE*

Amici are the following owners of fifty-one (51) beachfront properties in the Town of Wells on Moody Beach:

Number of Properties	Listed Owner	Property Address
1.	James A. Statires	255 Ocean Avenue, Wells, Maine
2.	Michael John Murphy and Eileen Ryan Murphy, Trustees of the Murphy Family Trust dated June 27, 2015	251 Ocean Avenue, Wells, Maine
3.	Beverly Bell Collins, Trustee of the Collins 2017 Trust and Janet Bell Hicks, Trustee of the Collins 2017 Trust	65 Ocean Avenue, Wells, Maine
4.	Ada H. Wong	95 Ocean Avenue, Wells, Maine
5.	Patricia F. Clancey, her successors and assigns, Trustee of the Patricia F. Clancey Revocable Trust, dated October 28, 1999	461 Ocean Avenue, Wells, Maine
6.	Harvey-Wood, LLC	291 Ocean Avenue, Wells, Maine
7.	Pamela A. W. Avedisian Family Trust Pamela A. W. Avedisian and Edward Avedisian, Trustees	295 Ocean Avenue, Wells, Maine
8.	Carol V. Steingart	287 Ocean Avenue, Wells, Maine
9.	Michael A. Tamposi, Trustee of the Michael A. Tamposi	147 Ocean Avenue, Wells, Maine

	2007 Revocable Trust, created October 25, 2007	
10.	Gary E. Nelson and Kathleen H. Nelson	243 Ocean Avenue, Wells, Maine
11.	Susan G. Kline, Trustee of the Susan G. Kline 1999 Revocable Trust	481 Ocean Avenue, Wells, Maine
12.	Peter G. Fulton and Phyllis D. Fulton	217 Ocean Avenue, Wells, Maine
13.	Mitchell J. Adamek and Linda U. Adamek, Trustees of the Adamek Family Revocable Trust	385 Ocean Avenue, Wells, Maine
14.	Robert P. MacInnis, Trustee of the R.P. MacInnis Realty Trust	441 Ocean Avenue, Wells, Maine
15.	Kenneth D. Boivin and Laurel L. Boivin, Trustees of the Kenneth and Lauren Boivin 2017 Trust, by trust agreement created November 3, 2017	317 Ocean Avenue, Wells, Maine
16-17.	Michael A. Razzano and Lisa F. Razzano	207 & 209 Ocean Avenue, Wells, Maine
18.	423 Ocean Ave, LLC	423 Ocean Avenue, Wells, Maine
19.	Donald K. Piatt, Trustee of the Donald K. Piatt Trust, a trust created u/d/t dated November 22, 1988 and Gail L. Piatt, Trustee of the Gail L. Piatt Trust, a trust created u/d/t dated November 22, 1988	321 Ocean Avenue, Wells, Maine
20.	Camelot, LLC	303 Ocean Avenue, Wells, Maine
21-22.	Debra J. Serino	341 Ocean Avenue, Unit 3, Wells, Maine 79 Ocean Avenue, Unit 10, Wells, Maine

23.	Moody Magic LLC	79 Ocean Avenue, Unite 8, Wells, Maine
24.	David F. Cain and Jean C. Cain, Trustees of the Cain Family Ocean Avenue Trust under a Declaration of Trust dated February 5, 2009	327 Ocean Avenue, Wells, Maine
25.	Lori A. Gallivan, Sharon Serino, and Christine M. Connolly	341 Ocean Avenue, Unit 2, Wells, Maine
26.	Moody 279 LLC	279 Ocean Avenue, Wells, Maine
27.	Joseph T. McCullen, Jr., Trustee of the Seaedge Realty Trust, u/i/t dated November 28, 2007	357 Ocean Avenue, Wells, Maine
28.	Douglas W. Kennan and Jean P. Kennan, Trustees of the Douglas W. Kennan Revocable Trust of 2011, and Douglas W. Kennan and Jean P. Kennan, Trustees of the Jean P. Kennan Revocable Trust of 2011	203 Ocean Avenue, Wells, Maine
29.	JAL Group LLC	395 Ocean Avenue, Wells, Maine
30.	Carole A. Littlefield, Trustee, Carole A. Littlefield Revocable Living Trust, U/A dated October 27, 2000	367 Ocean Avenue, Wells, Maine
31.	257 Ocean Ave, LLC	257 Ocean Avenue, Wells, Maine
32.	Bruce M. Walker and Nancy A. Walker	223 Ocean Avenue, Wells, Maine
33.	Douglas Keith and David Keith, Trustees of the Sandra D. Keith Irrevocable Trust under Declaration of Trust dated November 30, 2016	315 Ocean Avenue, Wells, Maine
34.	Frederick A. Anderson, Jr. and Wei Huang, Trustees of the Frederick A. Anderson, Jr.	307 Ocean Avenue, Wells, Maine

	Family Trust under trust document dated October 9, 2019	
35.	Grand Canal, LLC	449 Ocean Avenue, Wells, Maine
36.	Dale S. Baker and Mary E. Baker	363 Ocean Avenue, Wells, Maine
37.	Sea-Esta LLC	425 Ocean Avenue, Wells, Maine
38.	Joan M. Tilton	171 Ocean Avenue, Wells, Maine
39.	Noah's Ark LLC	175 Ocean Avenue, Wells, Maine
40.	Susan F. Shumway, Trustee of the Susan F. Shumway 1994 Trust dated May 12, 1994	445 Ocean Avenue, Wells, Maine
41.	Kellie J. Lally, Trustee of the Richard F. Kalagher Trust GST Exempt Fund F/B/O Richard Scott Kalagher and Kellie J. Lally, Trustee of the Richard F. Kalagher Trust GST Exempt Fund F/B/O Kellie J. Lally	391 Ocean Avenue, Wells, Maine
42.	Paul L. Haseltine	353 Ocean Avenue, Wells, Maine
43.	Heather B. Gerson, Trustee of the HLB Trust	215 Ocean Avenue, Wells, Maine
44.	55 Ocean Ave, LLC	55 Ocean Avenue, Wells, Maine
45.	John P. Lauring and Kathleen R. Lauring	399 Ocean Avenue, Wells, Maine
46.	Enfield Family Irrevocable Trust created July 29, 2015	283 Ocean Avenue, Wells, Maine
47.	Paul J. McCullough, Trustee of the Paul J. McCullough Revocable Trust of 2004 and Rita B. McCullough, Trustee of the Rita B. McCullough Revocable Trust of 2004	419 Ocean Avenue, Wells, Maine
48.	Harry Thomas Hall, IV and Susan Ann Hall	577 Ocean Avenue, Wells, Maine
49.	Gregory M. Telge, Trustee of the Gregory M. Telge	381 Ocean Avenue, Wells, Maine

	Revocable Trust of 2005 U/D/T 2/23/05	
50.	Chelsey A. Remington, Trustee of the Chelsey A. Remington Irrevocable Trust-2012	61 Ocean Avenue, Wells, Maine
51.	Alice B. Hogan Trustee of the Hogan Maine Revocable Trust	93 Ocean Avenue, Wells, Maine

Eight of the properties owned by *Amici* were owned by plaintiffs in the *Bell Action*.[3]

None of the *Amici* were served with process in the underlying case. (*See* A. 120-141 (Appellants' Complaint not naming any of the *Amici*); *see also* A. 1-52 (docket entries reflecting same); A. 442 at ¶ 33 *and* A. 446 at ¶ 33 (admitting Appellants did not serve or join in the action all of the prevailing plaintiffs in *Bell II* or their successors in interest).)

Because *Amici* were not served with process in the underlying case, they were not provided notice of the underlying suit and did not have opportunity to participate,

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[3] Specifically:
1) Chelsea Remington as Trustee of the Chelsey A. Remington Irrevocable Trust-2012 succeeded to the interest held by *Bell* plaintiff Chelsey C. Remington (*see* A. 1536);
2) Gregory Telge as Trustee of the Gregory M Telge Revocable Trust of 2005 succeeded to the interest held by *Bell* plaintiff Gregory Telge (*see* A. 1536);
3) The Enfield Family Trust as successor to the interest held by *Bell* plaintiffs Lois E. Enfield and Gordon M. Enfield (*see* A. 1534);
4) Paul L. Haseltine as successor to the interest held by *Bell* plaintiff Edward J. Haseltine (*See* A. 1537);
5) Bruce M Walker as successor to the interest held by *Bell* plaintiff Nancy A. Walker (*See* A. 1547);
6) Douglas W. Kennan and Jean Kennan as successor to the interest held by *Bell* plaintiff Jean P. Kennan (*see* A. 1534); and
7) Beverly Bell Collins, Trustee of the Collins 2017 Trust as successor to the interest held by *Bell* plaintiff Edward B. Bell (*see* A. 1532).
8) Alice B. Hogan Trustee of the Hogan Maine Revocable Trust succeeded to the interest held by *Bell* plaintiffs Alice B. Hogan and Francis X. Hogan (*see* A. 1461.)

create a factual record, and develop legal arguments. For example, had the *Amici* been served with process, they would have set forth facts explaining the importance of this Court's Decision in *Bell II* on a host of decisions regarding their respective properties. For example, *Amici* would have set forth a factual record explaining *Bell II's* impact on, among other things:

- For those who purchased after *Bell II*, their decisions to purchase their respective property, including a wide array of factors such as the price paid for the property, the desirability of the property, the loans they were willing to incur to finance the purchase, and planned uses of the property;

- For those who purchased prior to *Bell II*, the impact the ruling had on their decisions to retain their property;

- The scope and cost of title insurance for properties purchased after *Bell II;*

- The scope and cost of homeowner's insurance they purchased after *Bell II;* and

- The knowledge that their rights regarding Moody Beach had already been litigated and resolved.

Similarly, had *Amici* been served, they would have had the opportunity to participate in the years long proceedings before the Trial Court, including the opportunity to conduct discovery and craft legal arguments and motions of their own. Because *Amici* were not served, they were deprived of this opportunity and a complete record was never created.

STATEMENT OF THE FACTS

As stated in *Bell II*: "Moody Beach is a sandy beach located within the Town of Wells. It is about a mile long and lies between Moody Point on the north, the Ogunquit town line on the south, the Atlantic Ocean on the east, and a seawall on the west. Moody Beach has a wide intertidal zone with a strip of dry sand above the mean high-water mark. More than one hundred privately owned lots front on the ocean at Moody Beach. In addition, the Town of Wells in the past has acquired by eminent domain three lots which it uses for public access to the ocean. Each plaintiff now before the court owns a house or cottage situated on one of 28 private oceanfront lots. Each lot is about 50 feet wide and is bordered on the west by Ocean Avenue. At trial, the parties stipulated that the plaintiff oceanfront owners hold title to the parcels described in their deeds in fee simple absolute and that their parcels were bounded on the Atlantic Ocean. A public beach, now known as Ogunquit Beach, lies immediately to the south of Moody Beach; the Village of Ogunquit acquired that beach by eminent domain in 1925." *Bell II*, 557 A.2d at 170.

1. This Court Issues *Bell II* Following Years of Vigorous Litigation Where All Necessary Parties Were Served.

As indicated at the outset, a group of plaintiffs who owned beachfront property on Moody Beach initiated the *Bell Action* to quiet title and obtain guidance from the courts as to their property rights, including the rights of the public thereover. *E.g. Bell II*, 557 A.2d at 169. In the *Bell Action*, the State was an actual party and

represented the public interest. *Id.* In the *Bell Action*, the Town of Wells was also a party to the lawsuit and represented the interests of its inhabitants. *Id.* Additionally, the plaintiffs in the *Bell Action* carried out alternative service through publication in the local newspaper on all those who had an interest in the intertidal properties at Moody Beach so they could intervene, if they wished. (A. 441 at ¶ 30; A. 446 at ¶ 30 (admitted).) Thanks to the service by publication, a group of approximately 40 parties who owned property behind Moody beach (the "Tier Two Group") intervened claiming easement rights thereover. *Bell v. Inhabitants of Wells,* Dkt. No. CV-84-125, 1987 Me. Super. LEXIS 256, *2 (Sept. 14, 1987).[4] Thanks to the service by publication, the Conservation Law Foundation and Maine Natural resources Council received notice of the *Bell Action* and sought—and obtained—intervenor status. *Bell v. Inhabitants of Wells,* Dkt. No. CV-84-125, 1985 Me. Super. LEXIS 111 *1-2 (Apr. 30, 1985). Finally, at the request of the State, a *guardian ad litem* was appointed pursuant to 14 M.R.S. § 6656 "to represent the private rights of all unnamed and unknown defendants who have not actually been served with process and who have not appeared in this action." (A. 439 at ¶ 16 (admitted).) In short, the parties and the courts in the *Bell Action* took the required steps to ensure that all interested and

[4] Further, Appellant Orlando Delogu was among the *amici* in *Bell II*, but chose not to seek formal party status despite opportunity to intervene. *See Bell II*, 557 A.2d 168.

necessary parties were served, provided notice, and received opportunity to participate in the weighty decisions raised by the litigation.

Following a four week trial in which all parties and/or intervenors thereto had opportunity to participate, the Trial Court in the *Bell Action* issued a judgment. *Bell*, 1987 Me. Super. LEXIS 256, *4. At trial, the plaintiffs in the *Bell action* sought to invalidate the Intertidal Lands Act as unconstitutional and to have the court declare the public does not have general recreational rights on Moody Beach, either above or below the high water mark and that the public's rights were limited to fishing, fowling, and navigation in the intertidal zone. *Id.* at *2. The Attorney General disputed the plaintiffs' interpretation of the Colonial Ordinance and argued the public has general recreational rights in the intertidal zones of all beaches. *Id* at *2-3. The Town of Wells claimed affirmative rights over Moody Beach including the intertidal zone and the upland for general recreational purposes. *Id.* at * 3-4. The Tier Two Group also claimed they had easement rights over Moody Beach. *Id.* at *4.

The Trial Court's determination was affirmed in *Bell II*, which explained and clarified, among other things:

- Pursuant to established principles of property law, the Colonial Ordinance, and the Equal Footing Doctrine, the plaintiffs owned title in fee to the portions of their property consisting of intertidal land (557 A.2d at 170-173);
- The intertidal portions of the plaintiffs' property were subject to a public easement for fishing, fowling, and navigation, which does *not* include bathing, sunbathing, and recreational walking (*Id.* at 173-176);

- The 1986 Public Trust in Intertidal Land Act constituted an unconstitutional taking (*Id.* at 176-179); and
- The Town of Wells failed to prove a public easement over the dry sand area of plaintiffs' property or the intertidal land (*Id.* at 179-180).

In conclusion, *Bell II* also noted that if the Town or the State deemed it necessary to obtain additional property rights over the plaintiffs' property, those rights could be purchased or sought through eminent domain and its requirement of paying just compensation (*Id.* at 180).[5]

2. Appellants Bring Suit in 2021 Seeking to Overturn *Bell II* Without Serving All Necessary Parties.

In 2021, Appellants brought suit against owners of three beachfront properties on Moody Beach as well as the Attorney General for the State of Maine. (A. 128-130.) Aside from these entities, neither Appellants, the Attorney General, nor the Named Defendants attempted or sought to include or serve any other necessary parties. (*See* A. 120-141 (Appellants' Complaint only naming the above-referenced parties); *see also* A. 1-52 (docket entries reflecting same); A. 442 at ¶ 33 *and* A. 446 at ¶ 33 (admitting Appellants did not serve or join in the action all of the prevailing plaintiffs in *Bell II* or their successors in interest, such as the *Amici* discussed *supra* p. 9 n. 3).)

[5] Prior to trial, the Law Court decided *Bell I*, which explained, in pertinent part, that the Colonial Ordinance was so rooted in Maine's common law that doing away with any part of it would be an impermissible act of judicial legislation. *Bell v. Wells*, 510 A.2d at 514 (quoting *Barrows v. McDermott*, 73 Me. 441, 448-49 (1882)).

In their lawsuit—and appeal—Appellants expressly seek to overturn *Bell II* and obtain declaratory judgments that:

- The State holds title to all intertidal land in trust for the public;
- The State holds title to its intertidal land pursuant to the equal footing doctrine;
- Only the State had authority to alienate intertidal land and it was not done on Moody Beach; and
- This Court's "alienation of intertidal land" in *Bell II* and other decisions was improper "judicial legislation."

(*See* A. 56; *see also* A. 137-141.) Appellants pursued these theories through five counts: Count I notice pleaded declaratory judgment; Counts II, III, and V aimed to establish the State's fee ownership of the Named Defendants' intertidal lands; and Count IV sought to expand the scope of the public's permissible activities within the intertidal zone beyond fishing, fowling, and navigation. (*See* A. 96, 137-141.)

The Trial Court—correctly—dismissed Counts II, III, and V of Appellants' Complaint for failure to state a claim because: 1) the Law Court has not revisited the equal footing doctrine's application to the issue of intertidal ownership since *Bell II* and a declaration to the contrary fails to state a claim (A. 73-75); 2) the Law Court, in the *Bell Action*, was not engaging in judicial legislation, but performing the "very essence of the judicial function" by identifying and explaining the common law (A. 75-76); and 3) even viewed in the light most favorable to Appellants, their attempt to quiet title to the intertidal lands was brought 120 years too late (A. 76-77.)

Thereafter, the Trial Court granted summary judgment against Appellants' remaining claim, Count IV,[6] in which they sought to expand the scope of the public's permissible activities within the intertidal zone beyond fishing, fowling, and navigation. (A. 96, 101.) In so ruling, the Trial Court—correctly—determined that the claim preclusion component of res judicata barred Count IV because: 1) the same parties or their privies were involved in the underlying suit and the *Bell Action*; 2) the *Bell Action* resulted in a valid final judgment; and 3) the matters presented in the underlying suit "could easily have been—and was, largely—presented in *Bell*." (A. 97-99.) Because the Trial Court reached this determination it declined to address whether judgment should be entered against Count IV for Appellants' failure to join indispensable parties. (A. 100.)

STATEMENT OF THE ISSUES

1. Whether all necessary parties were named in the underlying lawsuit such that the substance of Appellants' claims could be adjudicated in any means other than dismissal based on the doctrine of res judicata or remand with instructions to join all necessary parties; and

2. Whether the doctrine of res judicata, regardless of whether all necessary parties were served, precludes Appellants' lawsuit.

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[6] Count I, simply notice pled declaratory judgment. (A. 96, 137.)

SUMMARY OF ARGUMENT

Appellants brought suit against a handful of defendants as part of a blatant effort to overturn established Maine law that they dislike, while bringing before the Court only a select few of the more than 125 beachfront property owners on Moody Beach. In pursuing this action, Appellants elected not to serve all necessary parties—including *Amici*—and attempted to gloss over the indisputable fact that the claim preclusion component of res judicata clearly and unambiguously bars their claim. Although *Amici* join in and support the well-established substantive arguments raised below by the Named Defendants, this Court should not—and cannot—reach the merits, or lack thereof, of Appellants' claims because they are barred by res judicata and pursued in a lawsuit that failed to name all necessary parties.

ARGUMENT

1. Appellants' Failure to Join Indispensable Parties Prevents this Court From Entering Any Judgment Other than an Order Affirming the Trial Court's Judgment Against Appellants or an Order of Remand with Instructions to Join All Necessary Parties.

Appellants chose to pursue their lawsuit against the selected owners of three beach front properties on Moody Beach. Appellants did not join in this action all of the prevailing property owners in the *Bell Action* or their successors in interest. (*See* A. 120-141; *see also* A. 1-52; A. 442 at ¶ 33 *and* A. 446 at ¶ 33.) Appellants did not bring in all other beachfront, intertidal property owners of Moody Beach. (*Id.*) Appellants did not carry out service by publishing notice of its lawsuit so that all

unascertained persons with an interest in Moody Beach would receive notice. (*Id.*) This failure precludes the Court from entertaining any of Appellants' legal arguments, *but does not* prevent the Court from affirming the Trial Court's entry of judgment *against* Appellants.

This Court reviews the interpretation and application of the Maine Rules of Civil Procedure, including whether all necessary parties were joined, de novo. *See Gauthier v. Gerrish*, 2015 ME 60, ¶ 9 n.5, 116 A.3d 461.

"When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration and no declaration shall prejudice the rights of persons not parties to the proceeding." 14 M.R.S.A. § 5963. Similarly, lawsuits to quiet title require service "be made as in other actions on *all supposed known claimants* residing either in the State or outside the State, and notice to persons who are unascertained, not in being or unknown shall be given by publication as in other actions where publication is required, unless the court on motion permits positing in such public places as the court may direct in lieu of all or part of the publication ordinarily required." 14 M.R.S.A. § 6653 (emphasis added).[7] Consistent with this, M.R. Civ. P. 19 provides that "[a] person who is subject to service of process *shall be joined as a party* if (1) in the person's absence complete

[7] Although the underlying lawsuit was not *expressly pled* as a quiet title action, the relief sought is substantively the same, a declaration—in this case for purported "easement holders"—as to their title rights. *See e.g.* 14 M.R.S.A. § 6651.

relief cannot be accorded among those already parties, *or* (2) the person claims an interest relating to the subject matter of the situation and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. M.R. Civ. P. 19(a) (emphasis added).

In *Boothbay Harbor Condominiums, Inc. v. Department of Transp.*, this Court determined that the aspect of the plaintiff's lawsuit regarding fishing and flowage rights could not be properly adjudicated in the absence of neighboring waterfront property owners because a decision could adversely impact their rights. 382 A.2d 848, 853 (Me. 1978);[8] *see also e.g. Gauthier*, 2015 ME 60, ¶ 11, 116 A.3d 461 (interpreting M.R. Civ. P. 19(a) "to require the joinder of a party holding a property interest that will be affected by the litigation."); *Efstathiou v. Payeur*, 456 A.2d 891, 892 (Me. 1983) (determining the Town of Ogunquit was a missing, necessary party in action that ended up defining boundaries of a public way).

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[8] Specifically, *Boothbay Harbor Condominiums, Inc.* explained, "plaintiff's fishing and flowage rights may not properly be adjudicated in the absence of those persons, not here made parties to the action, required to be parties under 14 M.R.S.A. § 5963, i. e., those '...who have or claim any interest which would be affected by the declaration...' Plaintiff's flowage rights should not be determined in the absence of other owners of land surrounding Campbell's Cove whose interests would be affected thereby. Plaintiff's fishing rights should not be determined in a proceeding to which the appropriate State agencies are not parties, the State having responsibility to regulate all fishing activities in its waters." *Id.* at 853 (quoting 14 M.R.S.A. 5963 and citing *Woods v. Perkins*, 119 Me. 257, 110 A. 633 (1920).)

Mindful of this authority, in the analogous "Goose Rocks Beach" case, this Court, the trial court, and the parties to the underlying lawsuit understood the need to include all beachfront owners as necessary parties in lawsuits seeking to adjudicate rights over the dry beach and intertidal zone. Specifically, in *Almeder v. Town of Kennebunkport* ("*Goose Rocks*"), a group of beachfront owners—with markedly different underlying title than that of the beachfront owners in the *Bell Action*—brought suit to declare their rights to the dry sand *and* intertidal portions of Goose Rocks Beach. Given the scope and claims of the lawsuit, broad, sufficient notice including service by publication on all who may claim some right, title, or interest in Goose Rocks Beach *and* service on all owners of beachfront property on Goose Rocks Beach was carried out. *Almeder v. Town of Kennebunkport & All Persons Who Are Unascertained*, 2010 Me. Super. LEXIS 155, *3 (Aug. 17, 2010) ("At hearing, the parties agreed through counsel to collaboratively effect personal service on the sixty-five owners of property on Goose Rocks Beach who are not currently named in this litigation. These are necessary parties subject to personal service of process who must be joined pursuant to Rule 19 if feasible."); *Almeder v. Town of Kennebunkport*, 2014 ME 139, ¶ 3 n.3, 106 A.3d 1099 (noting the trial court's order that all 95 owners of beachfront parcels were necessary parties).[9]

[9] Similar to *Bell*, in *Goose Rocks*, the State *and* the Town became parties because resolution of the case "will affect the rights of the public at [this] beach and many through the persuasive authority of that decision affect public rights at other Maine beaches." *Almeder v. Town of Kennebunkport & All Persons Who Are Unascertained*, 2010 Me. Super. LEXIS 155, *4.

Here, it is beyond dispute that—at a bare minimum—the property interests of all owners of beachfront property on Moody Beach will be impacted by the declaration Appellants seek from this Court. This includes the underlying plaintiffs from the *Bell Action*, their successors in interest, and *all* beachfront property owners on Moody Beach. There are over 125 lots of land which comprise Moody Beach. Each of these lots, at some point in their history, have either operated, been sold, purchased, included in estate plans or college savings plans, or been preserved as irreplaceable long-standing family properties with an understanding of the certainty of their titles provided by the *Bell Action*. Each owner has a unique story to tell regarding the impact the *Bell Action* and *Bell II* has had on them regarding their properties. As discussed *supra* in the Interest of *Amici Curiae* section, by not serving all owners of beachfront property on Moody Beach, the factual record before the Court does not include critical facts setting forth the vast multitude of decisions that have been made in reliance on *Bell II*.

A court hearing from only three lot owners is in no position to assess and truly appreciate the impact of Appellants' request of the Court on Moody Beach as a whole and for that matter the entirety of similarly situated beachfront property owners across the State. Put simply, the magnitude of what is being requested cannot

be decided after hearing from only seven property owners.[10] Appellants' failure to include—at a minimum—the entirety of the Moody Beach owner community as parties prevents this Court from entering any judgment *in favor* of the Appellants without first remanding the entire lawsuit to join all necessary parties. As discussed in the following section, this failure does not, however, prevent the Court from entering judgment against Appellants' lawsuit because it is barred by res judicata.

2. Remand is Not Necessary, and the Trial Court's Order Should be Affirmed, Because the Claim Preclusion Component of Res Judicata Bars Appellants' Lawsuit in its Entirety.

The Trial Court correctly determined that judgment was warranted against Appellants because their claims had already been raised, rejected, and were barred by the claim preclusion component of res judicata. Appellants—including *pro se* Appellant Orlando Delogu—do not seriously challenge, or even address the Trial Court's application of res judicata. Perhaps because they recognize the Trial Court

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[10] As indicated, the decision sought by Appellants and the State has wide-ranging impacts on a variety of individuals, which cannot be properly contemplated in the present procedural posture. The greatest impact is on the three Moody Named Defendants, *Amici*, and other individuals with ownership interests in Moody Beach. These individuals are different from other beachfront property owners as they have already had their rights decided in the *Bell Action* and are entitled to rely on the doctrine of res judicata as set forth in greater detail in the following Section.

Arguably the second greatest impact will be on the rights of individuals with interests in beach front property throughout the State. Although the doctrine of res judicata may not be available to these individuals, when making decisions regarding their property, they still relied on *Bell II* pursuant to the doctrine of stare decisis.

By way of further example, and without limitation, the decision sought by Appellants and the State will also impact the rights of individuals living near beach front properties. Individuals with certain privacy or parking expectations—who bought their homes near private beaches and the reduced use associated therewith—may not have chosen to purchase their properties had *Bell II* not already adjudicated and articulated the rights of the public to Moody Beach and the intertidal zone.

Absent broad service through publication, these and other interests will not be adequately heard, represented, or provided with sufficient process.

was correct in its application of res judicata, the Appellants attempt to brush past the issue raising arguments instead about stare decisis and ignoring the unique public policy considerations behind res judicata. The State, in its Brief, *does* address res judicata, but only in a perfunctory, unpersuasive manner.

This Court reviews the application of res judicata de novo. *Portland Co. v. City of Portland*, 2009 ME 98, ¶ 22, 979 A.2d 1279.

"Res judicata has been characterized as 'serving vital public interests beyond any individual judge's ad hoc determinations of the equities in a particular case.... It is a rule of fundamental and substantial justice, of public policy and of private peace, which should be cordially regarded and enforced by the courts...." *Macomber v. Macquinn-Tweedie*, 2003 ME 121, ¶ 19, 834 A.2d 131 (quoting *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 401 (1981)). "Judicial economy, fairness to litigants and the strong public interest favoring finality in judicial proceedings demand that a plaintiff present all relevant aspects of his cause of action in a single lawsuit." *Camps Newfound/Owatonna Corp. v. Town of Harrison*, 1998 ME 20, ¶ 12, 705 A.2d 1109 (citation omitted). Even an "'erroneous conclusion' reached by the court in the first suit does not deprive the defendants in the second action 'of their right to rely upon the plea of res judicata.... A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another

action upon the same cause [of action].'" *Federated Dep't Stores*, 452 U.S. at 398 (citation omitted) (emphasis omitted). Indeed, "[the] indulgence of a contrary view would result in creating elements of uncertainty and confusion and in undermining the conclusive character of judgments, consequences which it was the very purpose of the doctrine of *res judicata* to avert." *Id.* (citation omitted). As a result, "res judicata is a protection afforded to the public, one safeguarding citizens from the anguish of being dragged through interminable litigation solely because an adversary has the will or means to continue endlessly." *Depianti v. Jan-Pre Franchising Int'l, Inc.*, 873 F.3d 21, 28-29 (1st Cir. 2017).

The doctrine of res judicata has two separate components, issue preclusion and claim preclusion. *Macomber*, 2003 ME 121, ¶ 22, 834 A.2d 131. Under Maine law, claim preclusion prevents the same matter from being litigated more than once when: "(1) the same parties or their privies are involved in both actions; (2) a valid final judgment was entered in the prior action; and (3) the matters presented for decision in the second action were, or might have been litigated in the first action." *Id.* (internal quotation marks omitted). As to this last inquiry, Maine courts look to the cause of action in the prior litigation, which is defined by a "transactional test" that evaluates "the aggregate of connected operative facts that can be handled together conveniently for purposes of trial[.]" *Wilmington Trust Co. v. Sullivan-Thorne*, 2013 ME 94, ¶ 8, 81 A.3d 371 (citation and quotation marks omitted). "Put

another way, [w]hat factual grouping constitutes a transaction [is] to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they [form] a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Id.*

Here, Plaintiffs' claim is plainly barred by claim preclusion and the strong policy reasons for recognizing res judicata hold especially true in this case.

A. There is No Challenge to the Trial Court's Correct Determination that the First Two Elements of Claim Preclusion Were Satisfied.

None of the Appellants—including Orlando Delogu, who submitted his own 66 page *pro se* brief and the State—challenge the Trial Court's determination that the first two elements of claim preclusion were satisfied: 1) the same parties or their privies are involved in both actions; and 2) a valid final judgment was entered in *Bell II*.

Indisputably, *Bell II* constitutes a valid, final judgment. Similarly, given the broad service of process required in *Bell II*, the same parties or privies were involved in both actions whether as plaintiffs in the *Bell Action*, through the Town, the State, the non-profit intervenors, appointed *guardian ad litem*, the parties served by publication, or privies to the aforementioned parties. Accordingly, the Trial Court correctly determined the first two elements of claim preclusion were satisfied.

B. Only the State Contends the Third Element of Claim Preclusion Was Not Satisfied, But Its Challenge is Legally Erroneous.

As the Trial Court properly recognized, the matter presented in the underlying suit "could easily have been—and was, largely—presented in *Bell*." (A. 99.) Indeed, the *Bell Action* involved the heated litigation of private and public rights in the intertidal zone of Moody Beach, the interpretation of the Colonial Ordinance, arguments regarding the Equal Footing Doctrine, and consideration of the scope of the public's easement rights to fish, fowl, and navigate the intertidal zone. *Bell II*, 557 A.2d at 170-176; *see also Bell*, 1987 Me. Super. LEXIS 256, at *2-4.

The State does not dispute that the subject matter of *Bell II* and Appellants' underlying lawsuit are the same or that many of Appellants' claims were already adjudicated. Instead, the State contends that the development of new authority after *Bell II* breathes new life into Appellants' claims because that new authority could not have been raised or litigated in *Bell II*. (*See* State's Br. 26-27.) Of course, if this argument were accepted it would swallow the entire doctrine of claim preclusion as any dissatisfied litigant could point to some arguably relevant new case law to reopen a lost case. More importantly, this argument ignores that fact that even an "erroneous conclusion reached by the court in the first suit does not deprive the defendants in the second action 'of their right to rely upon the plea of res judicata....'" *Federated Dep't Stores*, 452 U.S. at 398 (citation omitted). Accordingly, the "development" of

common law after *Bell II* does not demonstrate that the third element of claim preclusion was not also satisfied; it was.

C. The Policy Interests Behind Res Judicata Demand it Be Applied in this Action.

As set forth in greater detail in Section 1 of the Statement of the Facts, *Bell II* was the culmination of a years-long, vigorously disputed lawsuit in which all interested parties were served. The primary policy reasons behind res judicata—judicial economy, fairness to litigants, and the strong public interest favoring finality in judicial proceedings—all apply here and demand the doctrine be applied. *Camps Newfound/Owatonna Corp.*, 1998 ME 20, ¶ 12, 705 A.2d 1109. *Amici* and the Named defendants should be protected by res judicata "from the anguish of being dragged through interminable litigation solely because an adversary has the will or means to continue endlessly." *Depianti*, 873 F.3d at 28-29. Further this Court should—and must—view res judicata "cordially." *Macomber*, 2003 ME 121, ¶ 19, 834 A.2d 131 (quoting *Federated Dep't Stores, Inc.*, 452 U.S. at 401). Indeed, as the United States Supreme Court recognized, res judicata should apply *even if* the first action was the result of an erroneous view of the law. *Federated Dep't Stores*, 452 U.S. at 398 (citation omitted) (emphasis omitted). To rule otherwise would create uncertainty in the law, confusion, and undermine the conclusive character of judgments. *Id.*

As set out *supra* when discussing the Interests of Amici, a vast multitude of decisions have been made in reliance on *Bell II* that res judicata requires be protected. Members of the amici made critical personal, legal, and financial decisions based on this Court's thorough adjudication of rights over Moody Beach in *Bell II*. As such, entirely separate from the merits of Appellants' arguments—which *Amici* strongly dispute for the reasons articulated by the Named Defendants below—res judicata demands that Appellants' lawsuit be barred. *See also Loper Bright Enters. v. Raimondo*, Nos. 22-451, 22-1219, 2024 U.S. LEXIS 2882, at *60-61 (June 28, 2024) (recognizing that even though interpretive methodology in *Chevron* was overturned, prior lawful decisions were still subject to *stare decisis*—not to mention res judicata—and reliance on *Chevron* could not constitute a "special justification" to overrule such holdings because, at best, it would be an argument that the precedent was wrongly decided) (citations and quotation omitted).

The State's argument that claim preclusion should not apply pursuant to a narrow, equitable exception to claim preclusion recognized in the Restatement of Judgments is not persuasive as that exception requires a clear and convincing showing that the policies favoring preclusion are overcome for an extraordinary reason. The State and Appellants' argument that *Bell II* got it wrong simply does not

constitute such an extraordinary reason,[11] let alone a sufficient reason to ignore the critical policy reasons behind res judicata.[12]

As indicated, Appellants' Brief does not even address this issue. Instead, they attempt to brush past it by arguing that stare decisis should not prevent the Court from overturning *Bell II*. Appellants' focus on stare decisis, however, ignores the virtually undisputed fact that all three elements of claim preclusion—*on the unique facts of this case*—were satisfied. If and when a real controversy arises in some other location that has not *already* been litigated and resolved, this Court may choose to reexamine *Bell II*. This is not that case.

CONCLUSION

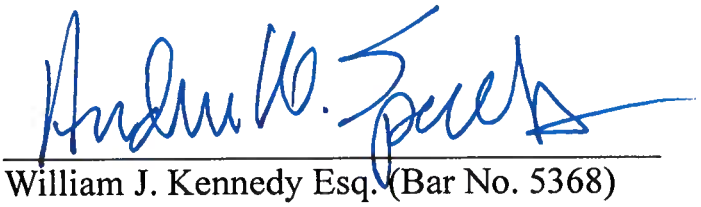
Appellants' decision not to serve all necessary parties, including *Amici*, owners of beachfront property on Moody Beach, prevents the Court from entering any judgment in favor of Appellants. While remand would ordinarily be necessary, on the unique facts of this case, that is not warranted because res judicata bars Appellants' claims. Although *Amici* strongly support the arguments raised by the Named Defendants below—and presumably raised on appeal—the Court should not

[11] Indeed, as this Court noted in *Bell II*, the specific property rights decided in *Bell II* is not a matter that can never be "reversed" as the State or the Town can pursue private negotiations to purchase additional rights and/or property or seek them through eminent domain. *Bell II*, 557 A.2d at 180.

[12] In an abundance of caution, the Court should not apply this equitable exception to res judicata here as the Appellants failed to name all necessary parties and hence deprived those parties of the opportunity to create a factual record that must be considered in this Court's weighing of the equities.

reach these because res judicata bars all of Appellants' claims against the Moody Beach owners.

Dated: August 2, 2024



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CERTIFICATE OF SERVICE

I, Andrew W. Sparks, hereby certify that on August 2, 2024, I caused to be served two copies of the Brief of *Amici Curiae* Owners of Fifty-One (51) Beachfront Properties on Moody Beach in Support of Appellees on counsel of record by electronic mail and U.S. mail, first class postage prepaid, at the following addresses:

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