

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>GARY GRAY,<sup>1</sup></b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 96-229-B</b>
	)	
<b>W &amp; G ELECTRIC SERVICE, INC.,</b>	)	
<b>ET AL.,</b>	)	
	)	
<b>Defendants</b>	)	

***RECOMMENDED DECISION TO GRANT DEFENDANTS'  
MOTION FOR A SUMMARY JUDGMENT***

The plaintiff, Gary Gray, brought a complaint seeking damages pursuant to a theory of negligence against the defendants, W & G Electric Service, Inc.,<sup>2</sup> Allegheny Industrial Electrical Co., Inc., Combustion Engineering, Inc., Rust Engineering & Construction, Inc., Rust International Corp., and S.D. Warren Co., after he sustained injuries in a workplace accident. Defendants Allegheny Industrial Electrical Co., Inc., Rust Engineering & Construction, Inc., and Rust International Corp. (the defendants) have moved for a summary judgment on the plaintiff's complaint, contending, *inter alia*, that the plaintiff has released any and all claims he may have had against them, and that they are immune from liability pursuant to the exclusivity and immunity provisions of Maine's Workers' Compensation Act, 39-A M.R.S.A. §§ 104, 408 (Supp. 1996). The plaintiff has filed a cross-motion

---

<sup>1</sup> Pursuant to a stipulation filed by the parties on January 3, 1997, Martha Gray has been dismissed with prejudice as a party to this action.

<sup>2</sup> The Court was orally notified by the parties on April 28, 1997, that defendant W & G Electric Service, Inc. no longer will be a party to the underlying suit, and that a stipulation dismissing it without prejudice from the action will be forthcoming for filing with the Court.

for a summary judgment on his complaint, as well. The Court recommends that the defendants' motion be granted.

### **I. Summary Judgment**

A summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is genuine, for these purposes, if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record in the light most favorable to the nonmovant. *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995).

### **II. Background**

The summary judgment record reveals the following material facts. Gray was employed on August 6, 1990, as a senior inspector by Rust International Corp. On that date, while working at S.D. Warren Co.'s mill in Hinckley, Maine, he slipped and twisted his back after stepping on a piece of electrical conduit pipe. The accident occurred on the eighth floor of the boiler building then under construction at the site. While the plaintiff was walking on a wooden platform that had been placed over a grating, inspecting piping overhead, he stepped off the platform after it ended abruptly and slipped on the conduit lying on the floor. Although Gray slipped and his right leg was hyper extended as he fell backwards, he did not fall. Gray claims that he sustained injuries as a result of

the defendants' negligence, that he has experienced pain and suffering, and that he lost time from work and the earning capacity he had prior to the incident. Gray claims that his injury was the result of poor lighting, the four-inch drop in the platform, the lack of warning that the walkway ended abruptly, and the negligent placement of the conduit at the end of the platform. Gray received workers' compensation benefits from his employer from approximately August 13, 1990, until the end of July 1996, at which time he entered into a settlement agreement with his employer.

A settlement agreement and release of all claims arising from the above incident was entered into on July 31, 1996, between Gray and his employer, which, he thought at the time, had changed its name from "Rust International Corp." to "Rust Engineering." Gray received a lump settlement in the amount of \$175,000, in return for which he agreed:

[To] remise, release and forever discharge ***Rust Engineering, the Employer*** and American Fidelity/MGA, the Insurance Carrier, ***plus their subsidiaries, successors, and related companies***, present and former officers, agents, employees and attorneys (hereinafter referred to as "Releasees"), of and from any and all actions, claims and damages, including, but not limited to, claims to permanent impairment, compensation, rehabilitation, attorney's fees, medical and other expenses, . . . or any other action, of any kind, in law or equity, which Releasor now has or ever had against the Releasees arising out of or related in any way to the Releasor's employment at Rust Engineering, or to the claimed work-related injury of 8/6/90, . . . (Emphasis added.)

The settlement agreement subsequently was approved by the Workers' Compensation Board. Gray states that his understanding of the above agreement was that it merely released his employer, Rust Engineering, as well as his employer's insurance carrier, American Fidelity/MGA, and the *carrier's* subsidiaries, successors, and related companies, etc. from liability. Gray also contends that the agreement was rendered null and void because Rust Engineering failed to disclose to the plaintiff or his attorney that, at the time the agreement was entered into, Rust Engineering had been acquired

by Raytheon Engineers & Construction. In the alternative, Gray maintains that even if the agreement were valid, it is unenforceable because at the time of his injury, Rust Engineering Co. was a separate and distinct business entity from his actual employer, Rust Engineering & Construction, Inc.

Despite the above agreement, Gray brought the current action against the defendants. The defendants contend that the above language serves to bar the current claim because it expressly recites that no claim may be brought against "Rust Engineering" or the companies related to Rust Engineering Co. Gray contends that the above language was meant only to include his former employer, Rust Engineering Co., and the employer's insurance carrier; nowhere in the settlement agreement, he notes, is there any explicit reference to the current defendants. Gray maintains that, unlike Rust Engineering Co., none of the current defendants were obligated to pay workers' compensation benefits to him or other employees of their subsidiary, Rust Engineering Co., and thus, could not be parties to the settlement agreement.

### **III. Discussion**

The defendants contend that they are entitled to a summary judgment because Gray's claims against them are barred by the unambiguous release language of the settlement agreement. Gray responds that because it is unclear from the language of the agreement whether the release truly is intended to encompass the current defendants, a summary judgment is inappropriate in view of the ambiguities surrounding the document and the existing disputed material facts. Gray also contends that because the current action is brought not against his former employer but, rather, against related subsidiary corporations that are separate legal entities, he is entitled to maintain it. Moreover, because the defendants are not "employers" for purposes of liability under the Maine Workers'

Compensation Act, Gray contends that they have not surrendered their common law defenses to liability in exchange for immunity from an employee's common law rights of action.

The Court determines that the defendants' motion for a summary judgment should be granted. This case is remarkably similar to *Elliott v. Rust Engineering & Construction, Inc., et al.*, No. 96-206-B (D. Me. Mar. 6, 1997), in which this Court recommended that a summary judgment be granted in favor of the defendant employer and its related companies based on a settlement agreement worded almost exactly the same as the one at issue in the case at bar. The recommended decision later was affirmed by the District Court judge in an order dated April 14, 1997. In the recommended decision, the Court noted that:

"It is beyond cavil that a suit can be barred by the earlier settlement of another suit in either of two ways: res judicata or release." *Penobscot Indian Nation v. Key Bank of Maine*, 906 F. Supp. 13, 20 (D. Me. 1995) (quoting *Nottingham Partners v. Trans-Lux Corp.*, 925 F.2d 29, 32 (1st Cir. 1991) . . . .

The interpretation of unambiguous contractual language is an issue of law for the Court to decide. *Fowler v. Boise Cascade Corp.*, 739 F. Supp. 671, 673 (D. Me. 1990), *aff'd*, 948 F.2d 49 (1st Cir. 1991). "When there is an integrated contract, the parol evidence rule excludes from judicial consideration extrinsic evidence that alters or varies unambiguous contractual language." Contrary to the plaintiff's contention, the Court finds that the language of the settlement agreement is clear and decisive of this action. Here the clear language releasing Rust Engineering Co. and its insurance carrier and "their subsidiaries, successors, and related companies" has the effect of barring the instant action. The parties have expressly released one another from future liability concerning the workplace accident involving [the plaintiff] []. The Court is satisfied that the parties' use of the term "Rust Engineering," if not broad enough to encompass Rust Engineering & Construction, Inc. and Rust International Corp., certainly encompasses, in conjunction with the words "all related companies," the parent company defendants.

The Maine Supreme Judicial Court has taken the view that a general release such as the one at issue in the instant case will be construed and enforced according to its terms, and will not be deemed as reserving any rights unless the releasor clearly has specified his intent to make such a reservation. *Norton v. Benjamin*, 220 A.2d 248, 253 (Me. 1966). Furthermore, a compromise and settlement approved by a compensation board, where the liability or the extent of injury is uncertain or incapable of being satisfactorily established,

has been held, in the absence of fraud, accident or mistake, to be a bar to a claim for further compensation. See *Procise v. Electric Mutual Liability Ins. Co.*, 494 A.2d 1375, 1381-1382 (Me. 1985); 82 Am. Jur. 2d *Workmen's Compensation* § 463 (1976 & Supp. 1991). As the Law Court has noted: "Where the contract is in the nature of a full settlement and a release of all claims for a consideration agreed upon, one may discover on the basis of hindsight the unwisdom of his bargain. But the law deems that society gains most from the certainty and finality of such agreements . . . ." *Norton*, 220 A.2d at 251 (quoted in *Penobscot Indian Nation*, 906 F. Supp. at 20). Accordingly, the Court finds that the plaintiff's claims of ambiguity and subjective intent do not raise genuine issues of material fact regarding what the Court deems to be unambiguous contract language.

*Id.*, slip op. at 5-7 (footnote omitted).

Aside from the differences in the names and circumstances surrounding the accidents of the plaintiffs in the two cases, no evidence has been generated to change this Court's view that the above law and conclusions are correct and thus preclude Gray's complaint from surviving the defendants' motion for a summary judgment. This includes Gray's claim against Allegheny Industrial, a wholly owned subsidiary of Rust Engineering Co., which in turn is a wholly owned subsidiary of Rust Engineering & Construction, Inc. The Court also is unpersuaded by Gray's contention that Raytheon's acquisition of Rust Engineering & Construction, Inc. and its subsidiaries in the spring of 1996 necessarily must change the outcome of this matter. Accordingly, the Court recommends that the defendants' motion be granted.

#### **IV. Conclusion**

For the foregoing reasons, the Court recommends that the motion by defendants Allegheny Industrial Electrical Co., Inc., Rust Engineering & Construction, Inc., and Rust International Corp., for a summary judgment on the plaintiff, Gary Gray's, complaint be **GRANTED**. The Court also recommends that the plaintiff's cross-motion for a summary judgment in his favor be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

---

Eugene W. Beaulieu  
United States Magistrate Judge

Dated this 30th day of April, 1997.