

In November, 1998, the plaintiffs settled with St. Paul. The settlement agreement released, among others, “Peter L. Murray, Murray, Plumb & Murray . . . and its insurer, St. Paul Fire & Marine Insurance Company, of and from any and all claims, causes of action, or actions which any of the Releasors [the plaintiffs] has against any of the Releasees, except as provided below.” The exception was that “the Releasors expressly reserve and do not release any and all claims, causes of action, or actions against Peter L. Murray, Peter L. Murray Law Offices, and their insurer, Zurich-American Insurance Company, with respect to any acts or omissions committed or performed by him in his legal representation of the Releasors, or any of them, from the date of May 1, 1993 to the present. . . .”

In April, 2000, the plaintiffs also settled with Attorney Murray for any claims insured by Zurich-American.

Now the plaintiffs have brought this lawsuit against St. Paul, seeking a declaration of coverage¹ and damages for breach of contract and the covenant of good faith and fair dealing, as well as penalties for unfair claim practices. They assert that the earlier settlement with St. Paul did not cover St. Paul’s liability for alleged malpractice by Attorney Murray after May 1, 1993, in his capacity as “of counsel” to the firm of Murray, Plumb & Murray.

¹ The plaintiffs have taken an assignment of any claims that Attorney Murray might have against St. Paul.

St. Paul's motion to dismiss² is **GRANTED**. The November 1998 General Settlement and Indemnification Agreement is a broad and general surrender of all claims against St. Paul and against Attorney Murray and the Murray, Plumb & Murray firm for malpractice within St. Paul's coverage.³ The exception—for claims against "Peter L. Murray, Peter L. Murray Law Offices, and their insurer, Zurich-American Insurance Company . . ."—does not encompass additional claims against Attorney Murray for St. Paul-insured work. The only reasonable reading of the exception is that it saved claims for the plaintiffs to assert against the Zurich-American insurance coverage. The plaintiffs argue that the exception also permits them to sue Attorney Murray for work that he did "of counsel" to the Murray, Plumb & Murray firm—and that St. Paul is the malpractice carrier for *that* firm. But the plaintiffs offer no reason why St. Paul would "settle" with them while still leaving open liability issues under its policy or policies. Instead, the

² The plaintiffs complain that the defendant has introduced evidentiary materials on the 12(b)(6) motion and that I should strike them. I have considered only the 1998 settlement agreement, which is a document specifically referred to and relied upon in the plaintiffs' First Amended Complaint and the contents of which are undisputed. That is permitted under the relevant caselaw and does not turn the motion into a summary judgment motion. See Clorox Co. Puerto Rico v. Proctor & Gamble Commercial Co., 228 F.3d 24, 32 (1st Cir. 2000) (considering documents outside the complaint that were integral to accessing the sufficiency of the complaint's allegations); Beddall v. State St. Bank & Trust Co., 137 F.3d 12, 17 (1st Cir. 1998) (considering an agreement where the factual allegations in the complaint are expressly linked to and dependant upon it); Watterson v. Page, 987 F.2d 1, 4 (1st Cir. 1993) (considering official public documents outside of the complaint). As the First Circuit noted, "[w]hen, as now, a complaint's factual allegations are expressly linked to—and admittedly dependent upon—a document (the authenticity of which is not challenged), that document effectively merges into the pleadings and the trial court can review it in deciding a motion to dismiss under Rule 12(b)(6)." Beddall, 137 F.3d at 17. I **GRANT** the plaintiff's motion to strike the 1997 Complaint and the insurance policy from the record. The 1997 Complaint is irrelevant because the plaintiffs amended the complaint to include the "of counsel" claims. The insurance policy is excluded because the plaintiffs dispute whether St. Paul has furnished the applicable policy.

³ It covers malpractice "by the Releasees, or any attorney or other employee of Murray, Plumb & (continued on next page)

language of the General Settlement and Indemnification Agreement demonstrates that the parties thought they were laying matters to rest—specifying, for example, that “freedom from costs of future litigation represents an important item of consideration bargained for by the parties to the settlement reflected in this General Release and Indemnity Agreement.” As the Maine Law Court has said, “A contract need not negate every possible construction of its terms in order to be unambiguous.” Waxler v. Waxler, 458 A.2d 1219, 1224 (Me. 1983). This settlement agreement unambiguously released St. Paul. The motion to dismiss is **GRANTED.**

SO ORDERED.

DATED THIS 19TH DAY OF DECEMBER, 2000.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

Murray” subject to the stated exception.

ALTERNATIVE ENERGY, INC.
plaintiff

JEFFREY BENNETT, ESQ.
BENNETT, BENNETT & TROIANO, P.A.
P.O. BOX 7799
PORTLAND, ME 04112-7799
(207) 773-4775

BEAVER CADILLAC
plaintiff

JEFFREY BENNETT, ESQ.
(See above)

GP INC.
plaintiff

JEFFREY BENNETT, ESQ.
(See above)

BEAVER PLANT OPERATIONS INC.
plaintiff

JEFFREY BENNETT, ESQ.
(See above)

CHRISTOPHER HUTCHINS
plaintiff

JEFFREY BENNETT, ESQ.
(See above)

v.

ST PAUL FIRE AND MARINE
INSURANCE COMPANY
defendant

KAREN FRINK WOLF, ESQ.
FRIEDMAN, BABCOCK & GAYTHWAITE
P. O. BOX 4726
PORTLAND, ME 04112-4726
(207) 761-0900

RICHARD A. SIMPSON, ESQ.
JEFFREY WARD, ESQ.
ROSS, DIXON & BELL LLP
601 PENNSYLVANIA AVE. N.W.
NORTH BLDG.
WASHINGTON, DC 20004-2688
(202) 662-2000