

**IN THE  
COURT OF APPEALS OF MARYLAND**

**No. 44, September Term, 2018**

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**MICHELLE GALLAGHER,**

**Petitioner/Appellant,**

**v.**

**MERCY MEDICAL CENTER, INC.,**

**Respondent/Appellee.**

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Appeal from the Court of Special Appeals of Maryland  
No. 634, September Term, 2017

and

Circuit Court for Baltimore City, Maryland  
(The Honorable Wanda Keyes Heard, Judge)

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**BRIEF OF *AMICI CURIAE*  
AMERICAN MEDICAL ASSOCIATION AND  
MEDCHI, THE MARYLAND STATE MEDICAL SOCIETY**

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**QUESTIONS PRESENTED**  
**ADDRESSED BY AMICI CURIAE**

1. Whether the One Satisfaction Rule permits a plaintiff who has sought and obtained recovery for medical expenses stemming from an automobile accident *through a settlement* to seek additional compensation for the same injuries through a medical malpractice action?
2. Whether a comparison of the initial lawsuit and settlement and subsequent lawsuit to determine whether the One Satisfaction Rule applies is undertaken by a court on summary judgment based on a thorough evaluation of the record in each case or requires a jury trial?

**INTEREST OF AMICI CURIAE**

The American Medical Association (AMA) is the largest professional association of physicians, residents and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all United States physicians, residents and medical students are represented in the AMA's policymaking process. The AMA was founded in 1847 to promote the science and art of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every state, including Maryland, and in every medical specialty.

MedChi, The Maryland State Medical Society, is a statewide, non-profit association of Maryland physicians. It is the largest physician organization in Maryland. MedChi, formally known as The Medical and Chirurgical Faculty of Maryland, was founded in 1799 by an act of the Maryland General Assembly. Today, MedChi's mission

is to serve as Maryland's foremost advocate and resource for physicians, their patients, and the public health.

The AMA and MedChi appear on their own behalf and as representatives of the AMA Litigation Center. The Litigation Center is a coalition among the AMA and the medical societies of every state. The AMA Litigation Center is the voice of America's medical profession in legal proceedings across the country. The mission of the Litigation Center is to represent the interests of the medical profession in the courts. It brings lawsuits, files amicus briefs and otherwise provides support or becomes actively involved in litigation of general importance to physicians.

*Amici* are concerned that Plaintiff's arguments, if accepted by this Court, would undermine the One Satisfaction Rule and encourage unwarranted litigation against physicians stemming from their care of patients who have suffered injuries as a result of someone else's tortious conduct.

### **STATEMENT OF THE CASE**

This appeal arises out of a medical malpractice action, which the Plaintiff brought against the hospital that treated her after she sustained injuries in an automobile accident. Before bringing this claim against Mercy Medical Center, Plaintiff had filed a lawsuit against the driver of the vehicle that caused the accident, the driver's employer, and her own insurer for underinsured motorist coverage. This lawsuit and the resulting settlement with her insurer included compensation for injuries that Plaintiff seeks in this separate medical malpractice action against the hospital. The Circuit Court granted summary judgment for Mercy Medical Center, finding that the One Satisfaction Rule did not

permit Plaintiff to seek additional damages for these same injuries. The Court of Special Appeals affirmed.

### **STATEMENT OF FACTS**

Following a car accident, healthcare providers at Mercy Medical Center treated Plaintiff Michele Gallagher, who required surgery and developed a post-operative infection. To recover for her injuries, Plaintiff brought a negligence claim against the driver of the other car and a respondeat superior claim against his employer, which she quickly settled for their insurance policy limits, \$25,000. In the same action, Plaintiff asserted a claim against her own insurer, State Farm Mutual Auto Insurance Company, under the underinsured motorist (UIM) provision of her auto insurance policy, which ultimately settled for \$125,000.

In a separate action, Plaintiff sued Mercy Medical Center, the hospital that treated her injuries after the car accident, alleging that she experienced harm as a result of negligent medical care. Plaintiff's medical malpractice claim against the hospital sought damages for the same complications that arose during treatment for which she sought compensation from her insurer. These included injuries sustained to her brachial artery during placement of a Peripherally Inserted Central Catheter (PICC) for administration of antibiotics. Plaintiff attributes her development of Reflect Sympathetic Dystrophy (RSD) to the surgery to repair the injury from the PICC procedure.

### **SUMMARY OF THE ARGUMENT**

Each day, doctors are called upon to provide care to people who have experienced serious injuries. Often, these injuries result from another person's tortious conduct—

careless driving that results in a car accident, failure to address a hazard that leads to a slip-and-fall, or an assault, for example. A patient who is harmed by such conduct can seek compensation for his or her injuries, including any complications that arise as a result of medical care, from that tortfeasor or an insurer. Should a plaintiff obtain compensation for injuries related to the resulting treatment, the One Satisfaction Rule provides that he or she cannot seek more money for these same injuries from others. Here, the lower courts properly applied this doctrine to find that the Plaintiff, who had settled with the other driver, his employer, and her own insurer after a car accident, could not seek additional compensation for some or all of the same injuries through separately alleging a medical malpractice claim against the hospital at which she was treated.

The Plaintiff invites this Court to restrict the One Satisfaction Rule in a manner that would effectively nullify it. Her position on appeal would not permit the rule to apply when a prior case seeking compensation for the same injuries resulted in an ordinary settlement, which is the typical outcome in most automobile accidents and other tort claims. Plaintiff would also have a jury decide, as a question of fact, whether a prior settlement satisfied a plaintiff's subsequent claim. That position is contrary to Maryland law that consistently regards determining the preclusive effect of prior litigation as within the traditional role and expertise of the trial court based on a comparison of the record in each case. If this Court adopts Plaintiff's approach, then Maryland law will encourage plaintiffs to file multiple, successive lawsuits seeking compensation for some of all of the same injuries. Doctors and medical facilities may be looked upon as deep pockets for

additional funds even after a plaintiff has, through settlements, already received compensation for their alleged injuries.

## ARGUMENT

### **I. A PERSON WHO IS COMPENSATED FOR INJURIES RESULTING FROM A CAR ACCIDENT MAY NOT LATER SEEK RECOVERY FOR THE SAME INJURIES FROM A HEALTHCARE PROVIDER**

Unless the One Satisfaction Rule is properly applied, healthcare providers will face lawsuits of dubious merit seeking damages that a plaintiff has already recovered. The One Satisfaction Rule provides that a plaintiff is entitled to be compensated once for his or her loss and prevents further litigation against additional parties. *See Underwood-Gary v. Mathews*, 366 Md. 660, 669 (2001). This rule bars double recovery, preserves judicial resources, and avoids unnecessary litigation. *See id.* Adherence to this rule is particularly important to physicians because they often treat patients who have experienced injuries as a result of the tortious conduct of others.

A person who commits a tort is subject to liability not only for the harm he or she directly caused but also for any additional injuries that result through the efforts of third parties to render aid. *See id.* at 668. For this reason, it is common for a plaintiff to seek all of his or her medical expenses from the original tortfeasor or an insurer, even if some of the cost arguably can be attributed to complications stemming from negligent medical care. This situation frequently arises in the context of automobile accidents, as here, but may also occur with respect to any personable injury that may have resulted from tortious conduct—from ordinary slip-and-falls to product-related harms.



A plaintiff may also seek compensation from a healthcare provider for harm allegedly caused by medical negligence. *See id.* However, a plaintiff is entitled to be compensated only once for her injuries, whether that payment comes from a joint or concurrent tortfeasor, a successive tortfeasor, or a “stranger to the action.” *See id.* at 668-69; *Morgan v. Cohen*, 309 Md. 304, 311-12 (1987). What a plaintiff cannot do is obtain compensation from one party for all of her injuries, then seek compensation for some or all of these same injuries from another party.

Contrary to Plaintiff’s contention, whether the One Satisfaction Rule applies cannot hinge on whether the initial lawsuit ended in a judgment following a full jury trial. Maryland law has long favored resolution of claims. *See Chertkof v. Harry C. Weiskittel, Co.*, 251 Md. 544, 550 (1968) (“Courts look with favor upon the compromise or settlement of law suits in the interests of efficient and economical administration of justice and the lessening of friction and acrimony.”). Settlements may occur at a relatively early stage in the litigation, on the eve of trial (as Plaintiff’s settlement with State Farm), or during or after trial.

While precise statistics are not available for Maryland cases, research indicates that the vast majority of personal injury cases are resolved before trial; only about three percent of tort cases filed in state court reach a trial. *See* U.S. Dep’t of Justice, Bureau of Justice Statistics, Civil Bench and Jury Trials in State Courts, 2005, at 9 (2009), <https://www.bjs.gov/content/pub/pdf/cbjtsc05.pdf> (based on 2005 survey of the nation’s 75 most populous counties). Over the years, the number of civil trials has significantly decreased. Between 1992 and 2005, for example, the number of tort cases that went to trial fell by an

estimated 39.6% with a 28.8% reduction in trials of automobile accident claims. *Id.* Cases decided through a jury trial represent a minuscule portion of state court dispositions. *See* Brian J. Ostrom et al., *Examining Trial Trends in State Courts: 1976-2002*, 1 J. Empirical Legal Stud. 755, 768 (2004) (finding jury trials in 2002 constituted less than one percent of all state court dispositions and documenting a substantial decline in civil bench and jury trials). In this environment, limiting the One Satisfaction Rule to amounts awarded only after a full jury trial would mean that rule would hardly ever apply.

Nor can the rule be restricted to cases in which a settlement resulted in a “full” recovery. Settlements, by their nature, are based on compromise. A plaintiff may not recover the full amount he or she sought, but the settlement satisfies the claim. When a settlement of the earlier litigation resulted in a meaningful exchange of value for the injuries sought by the plaintiff, it bars a subsequent lawsuit. *See Underwood-Gary*, 366 Md. at 674 (recognizing that “[w]hile the amount of the auto negligence settlement may not have been ‘satisfactory’ to [the plaintiff], when the damage claim that she had been asserting was ‘satisfied’ as a matter of law, she was thereafter prohibited from recovering more funds for the same injuries”) (quoting *Mathews v. Underwood-Gary*, 133 Md. App. 570, 583 (2000)).

Here, the trial court found that the Plaintiff sought and obtained a significant amount of compensation from her insurer for the same injuries at issue in this lawsuit. Thus, based on its evaluation of the record, the trial court properly found that the One Satisfaction Rule did not permit the claim at bar.

## **II. REQUIRING A JURY TRIAL TO DETERMINE WHETHER A PLAINTIFF RECEIVED COMPENSATION FOR THE SAME INJURY THROUGH A PRIOR LAWSUIT WOULD UNDERMINE THE EFFECTIVENESS OF THE ONE SATISFACTION RULE**

If evaluation of whether a prior judgment or settlement compensated the plaintiff for the same harm sought in a subsequent lawsuit requires a jury trial, as Plaintiff here argues, then the One Satisfaction Rule will invite unnecessary litigation against healthcare providers and others. Treating the rule in this manner would be inconsistent with how Maryland law traditionally determines the preclusive effect of prior litigation. A jury trial cannot be required to determine whether a plaintiff is entitled to a jury trial.

This Court has held that whether compensation from one tortfeasor covers only those injuries caused by the initial tort (the car accident) or also includes injuries attributed to medical negligence is “for the trial court” to decide. *Morgan*, 309 Md. at 320-21. More recently, the Court reaffirmed in *Underwood-Gary* that “[t]he preclusive effect of a satisfied judgment in a prior case is properly a question for the trial court, not the jury.” 366 Md. at 673. There, the Court of Appeals found that comparing the records in the two cases to determine whether the first action stemming from a car accident encompassed all the injuries in the second action, including those later attributed to alleged medical malpractice, may be properly decided by a trial court on a motion for summary judgment. *See id.* at 672-73.

Indeed, determining the preclusive effect of prior litigation firmly falls within the traditional role and expertise of the trial court, not the jury. Courts are called upon to decide whether claims are barred by *res judicata*, which precludes the same parties from

re-litigating any suit based upon the same causes of action decided in the original lawsuit as well as matters that could have been litigated in that suit. *See Bank of New York Mellon v. Georg*, 456 Md. 616, 625 (2017). When doing so, courts, not juries, decide whether the parties are identical or in privity with the parties to the earlier action, whether the claim in the current action is identical to the prior action, and whether there was a final judgment on the merits. *See id.* Likewise, courts decide whether the doctrine of collateral estoppel bars a subsequent action, similarly considering whether the new litigation raises an issue identical to that decided in a prior action and whether the party against whom the doctrine is asserted had a fair opportunity to be heard in the prior action. *See id.* at 626. Courts also decide judicial estoppel, which, in some circumstances, precludes a party from taking a position in a subsequent action that is inconsistent with a position taken in prior litigation. *See id.* at 653-54.

Each of these doctrines, like the One Satisfaction Rule, promotes judicial economy, deters unnecessary litigation, and avoids inconsistent outcomes. *See id.* at 625-26; *see also Standard Fire Ins., Co. v. Berrett*, 395 Md. 439, 457 (2006) (recognizing that the purpose of collateral estoppel is “to avoid the expense and vexation of multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibilities of inconsistent judicial decisions”). Application of each of these doctrines requires a comparison of the record in the earlier litigation and its outcome with subsequent litigation. Each doctrine is evaluated and decided by the trial court, not a jury.

When applying the One Satisfaction Rule, a trial court can determine whether the initial suit led to recovery for only injuries stemming from the initial tort or all of the

plaintiff's injuries, including those stemming from subsequent medical malpractice. A court can make this determination by comparing the record in each case. *See Underwood-Gary*, 366 Md. at 673. A court can undertake this review regardless of whether the compensation resulted from a settlement or jury verdict. In cases resolved through settlement, the court may compare the allegations and relief sought in each complaint. The court may also consider the plaintiff's answers to interrogatories, deposition testimony, medical records produced, and the amount of the settlement compared with the amount of the medical bills sought in the initial action. In cases that go to trial, the court may consider additional available evidence, such as trial testimony, opening and closing statements of counsel, and the charge of the court. *See id.*

When a court finds that the plaintiff in the initial litigation sought compensation for the injury later asserted and obtained compensation through a settlement that included the medical expenses sought, then it should rule that the One Satisfaction Rule precludes additional litigation. By way of contrast, where a plaintiff did not seek the same compensation as the prior action, the case should proceed to trial. *See, e.g., Suess v. Champion Indus., Inc.*, No. 06-cv-851, 2010 WL 115489554, at \*3 (D. Md. May 26, 2010) (holding plaintiff's settlement of workers' compensation claim provided recovery for loss of earning capacity due to workplace injury and did not preclude intentional tort claim seeking damages for pain, suffering, and humiliation, which excluded reimbursement of medical bills paid as a result of the settlement). Likewise, where a plaintiff settled a claim stemming from the same incident, but did not receive a meaningful exchange of value, a court may permit a subsequent claim to advance. For

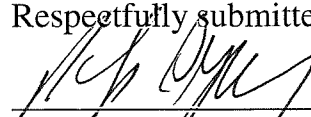
example, in *Trieschman v. Eaton*, 224 Md. 111, 113, 119 (1981), the plaintiff's settlement of her automobile accident claim with a driver provided that \$10,000 would be paid at the rate of \$40 per month over a twenty-year period and was largely unpaid. In that situation, this Court held that there was no satisfied judgment and the plaintiff could proceed with a medical malpractice claim. *See id.*

If this Court reverses and requires a jury trial to evaluate application of the One Satisfaction Rule, then the law will incentivize filing multiple lawsuits seeking recovery for the same injury. Creative plaintiffs' lawyers will opt for a daisy-chain of successive lawsuits against joint and subsequent tortfeasors. They will bank on juries finding that the amount of the earlier settlements was less than they might have been after a full trial and will add on to that award. Alternatively, after receiving a settlement, they will file lawsuits for the same damages against other parties to pressure additional settlements. Physicians and their insurers, facing a lengthy and expensive process that will include the need for expert witnesses, may be compelled to settle these claims regardless of whether a doctor shares any responsibility for a plaintiff's injury and even when a plaintiff has already received full compensation for the alleged harm. It is this type of double recovery and waste of judicial resources that the One Satisfaction Rule is intended to prevent.

**CONCLUSION**

For these reasons, this Court should affirm the ruling of the Court of Special Appeals.

Respectfully submitted,



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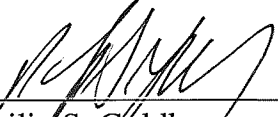
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Dated: December 13, 2018

**CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-504**

1. This brief contains 3,003 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

  
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Philip S. Goldberg



**CERTIFICATE OF SERVICE**

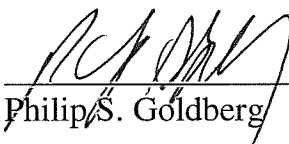
I hereby certify that on this 13th day of December, 2018, two copies of the foregoing Brief of *Amici Curiae* were sent by first class U.S. mail, postage prepaid, to the following:

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