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Roy v. Bath Iron Works: Three Different Perspectives on an Unfortunate Situation

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Erik Black

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ROY V. BATH IRON WORKS: THREE DIFFERENT PERSPECTIVES ON AN UNFORTUNATE SITUATION

Erik Black*

I. INTRODUCTION

Joseph Roy was an employee of Bath Iron Works (BIW) who suffered work-related injuries to his lower back in 1987 and to his neck in 1994.¹ In 2005, Roy filed a petition for review of his workers' compensation benefits and sought, among other benefits, total incapacity benefits because his neck injury had worsened.² A hearing officer from the Workers' Compensation Board found that Roy's work-related injuries had totally incapacitated him, but denied Roy total incapacity benefits after March 6, 2006, because a non-work-related liver condition had also caused him to become totally incapacitated.³ Roy appealed the decision to the Maine Supreme Judicial Court, sitting as the Law Court, and argued that under Maine law,⁴ subsequent non-work-related injuries in workers' compensation cases do "not relieve the employer of responsibility for a co-existing total incapacity caused by work-related injuries."⁵

In *Roy v. Bath Iron Works*,⁶ the Law Court vacated and remanded the hearing officer's decision.⁷ Writing for the majority, Justice Alexander found that the language of title 39-A, section 201(5) of the Maine Revised Statutes⁸ was unambiguous and that the statute said nothing about eliminating workers' compensation due to subsequent non-work related injuries.⁹ Justices Levy and Clifford, concurring with the majority, asserted that recent amendments to Maine's workers' compensation law subsumed the "independent intervening cause" doctrine.¹⁰ Furthermore, the concurrence found that even if the statutes had not eliminated the doctrine, the hearing officer's decision was still incorrect because Roy's work-related injury remained a "substantial cause" of his incapacity.¹¹ In her dissent, Justice Gorman contended that the hearing officer's determination should be affirmed because (1) the underlying purpose of workers'

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1. *Roy v. Bath Iron Works*, 2008 ME 94, ¶ 2, 952 A.2d 965, 966.

2. *Id.* ¶ 3, 952 A.2d at 966.

3. *Id.* ¶ 5, 952 A.2d at 966. However, Roy was awarded total incapacity benefits between June 9, 2005, and March 6, 2006. *Id.* ¶ 6, 952 A.2d at 966.

4. See ME. REV. STAT. ANN. tit. 39-A, § 201(5) (2001).

5. *Roy*, 2008 ME 94, ¶ 8, 952 A.2d at 966.

6. 2008 ME 94, 952 A.2d 965.

7. *Id.* ¶ 16, 952 A.2d at 968.

8. The statute states: "If an employee suffers a nonwork-related injury or disease that is not causally connected to a previous compensable injury, the subsequent nonwork-related injury or disease is not compensable under this Act." ME. REV. STAT. ANN. tit. 39-A, § 201(5) (2001).

9. *Roy*, 2008 ME 94, ¶ 11, 952 A.2d at 967.

10. *Id.* ¶ 24, 952 A.2d at 970 (Levy, J., concurring). An "independent intervening cause" in cases such as *Roy* is an event that severs the causal chain initiated by any prior work-related injury. See e.g., *Richardson v. Robbins Lumber, Inc.*, 379 A.2d 380, 383 (Me. 1977).

11. *Roy*, 2008 ME 94, ¶ 30, 952 A.2d at 972.

compensation is to replace wages when an employee is unable to earn income after a work injury, and (2) Roy's liver condition was an independent intervening cause that cut off a prior award for total incapacity benefits.¹²

The court's narrow four-to-three decision turned on which legal concept—statutory interpretation or underlying purpose and independent intervening causes—should be applied to the facts of this case to produce the fairest result. Of course, the question remains: Which analysis is best?

This Note will review the history of section 201(5) and the independent intervening cause doctrine in Maine. After examining the majority, concurring, and dissenting opinions, this Note concludes that the concurring opinion offers the best analysis of the issues presented in this case. The concurring opinion provides a more thorough analysis than the majority, and its analysis is more consistent with the current state of the law than the dissent's analysis.

II. BACKGROUND OF WORKERS' COMPENSATION IN MAINE AND THE INDEPENDENT INTERVENING CAUSE DOCTRINE

In general, workers' compensation statutes in all states give employees who are injured on the job "an administrative remedy, without regard to fault, in exchange for employer immunity from civil damages for the injury."¹³ Various forms of workers' compensation statutes have existed in Maine since 1916.¹⁴

In earlier forms, Maine's workers' compensation statutes did not address independent intervening causes.¹⁵ In 1977, the Law Court addressed the independent intervening cause doctrine for the first time in *Richardson v. Robbins Lumber, Inc.*,¹⁶ where the court established a two-part test for causation in workers' compensation cases.¹⁷ First, a commissioner of the Industrial Accident Commission had to determine whether a work-related injury occurred; second, assuming an affirmative answer, the commissioner had to determine whether the work-related injury remained a "substantial factor" in causing the disability.¹⁸ In formulating this test, the court left open the possibility that an employee's incapacity may be compensable even if it resulted from a non-work-related incident. In 1989, the Law Court extended this test further in *Brackett v. A.C. Lawrence Leather Co.*,¹⁹ when it found that subsequent non-

12. *Id.* ¶ 44, 952 A.2d at 975 (Gorman, J., dissenting).

13. Stephen W. Moriarty, *Workers' Compensation and Employer Immunity: The "Theoretical Superstructure" Endures*, 13 ME. B.J. 290, 290 (1998). Every state has a workers' compensation statute. VINCENT R. JOHNSON & ALAN GUNN, *STUDIES IN AMERICAN TORT LAW* 658 (3d ed. 2005).

14. Moriarty, *supra* note 13, at 290.

15. *See Roy*, 2008 ME 94, ¶ 18, 952 A.2d at 968.

16. 379 A.2d 380 (Me. 1977). In *Richardson v. Robbins Lumber, Inc.*, Robert Richardson was struck on his right side and his back in separate incidents while working for Robbins Lumber, Inc. *Id.* at 382. Later that year, Richardson was involved in an automobile accident that triggered a recurrence of the pain from the earlier incidents, totally disabling him. *Id.*

17. *Id.* at 383.

18. *Id.*

19. 559 A.2d 776 (Me. 1989). In *Brackett v. A.C. Lawrence Leather Co.*, Jeffrey Brackett received total disability for a work-related back injury for several months. *Id.* at 778. Several years after his benefits had ended and he returned to work, he injured his back again in a motor vehicle accident and a "sneezing incident." *Id.* Following back surgery, he was totally incapacitated. *Id.*

work-related injuries had no significance and that the commissioner only needed to find that an original injury remained “a cause” of the employee’s disability in order for the employee to collect benefits.²⁰ Justice Glassman filed a dissenting opinion and argued that the majority was placing a heavy monetary burden on employers.²¹ Instead, Justice Glassman suggested that the Workers’ Compensation Commission should apportion an employee’s incapacity between non-work-related injuries and work-related injuries.²²

With “a cause” replacing “a substantial factor” as the standard for compensation in light of subsequent non-work injuries, there was a possibility that employees could receive a windfall as a result of their non-work-related injuries.²³ The Maine Legislature responded two years later by overruling *Brackett* and enacting a law, L.D. 1981, with the same statutory language as the current version of section 201(5).²⁴ L.D. 1981 stated, “If an employee suffers a nonwork-related injury or disease that is not causally connected to a previous compensable injury, the subsequent nonwork-related injury or disease is not compensable under this Act.”²⁵ Shortly thereafter, the legislature passed the Workers’ Compensation Act of 1992 (the 1992 Act),²⁶ in part to reduce the costs of the workers’ compensation system.²⁷ Upon passage, the language of L.D. 1981 was transferred into section 201(5).

Under the 1992 Act, an employee’s remedy is limited in most circumstances²⁸ to either \$441 a week or 90 percent of the worker’s average weekly wage, whichever is higher.²⁹ If an employee wants a determination of his or her rights under the Workers’

20. *Id.*

21. *Id.* (stating that “an employer would be responsible for an employee’s total incapacity even though a work-related injury caused one percent or less of the incapacity” and that the legislature did not intend for employers to be “general disability insurers for non-work-related injuries suffered by an employee”).

22. *Id.* at 779.

23. *Roy*, 2008 ME 94, ¶ 22, 952 A.2d 965, 969 (Levy, J., concurring).

24. *Id.* ¶ 23, 952 A.2d at 970. Compare P.L. 1991 ch. 615, § D-3 with ME. REV. STAT. ANN. tit. 39-A, § 201(5) (2001). The language in section 201(5) first appeared in L.D. 1957 in 1991. Thus, the debate concerning this provision took place during the debate over L.D. 1957. L.D. 1957 was ultimately vetoed by Governor John McKernan, Jr. 4 Legis. Rec. S-1475 (1991). However, the statute’s language appeared again in L.D. 1981, which eventually became the public law later codified into section 201(5). The only difference between the language in L.D. 1957 and L.D. 1981 is that “which” became “that.” Rep. Anne Rand noted the intent of the legislature during debate on L.D. 1957:

One problem that did arise . . . was that, if someone was out on a work-related injury and sustained another totally separate . . . type of injury . . . they could . . . receive Workers’ Compensation. It was primarily left up to the decision of different commissioners. We took a very serious look at this and decided that we would redefine compensability to that limited extent, that if the injury or illness was not causally related to a work injury, there would be no compensation paid.

2 Legis. Rec. H-1255 (1991).

25. See P.L. 1991, ch. 615, § D-3.

26. P.L. 1991, ch. 885, pt. A, § 8.

27. *Ray v. Carland Constr., Inc.* 1997 ME 206, ¶ 16, 703 A.2d 648, 654.

28. There are some exceptions. For instance, payment of burial expenses may be awarded if the employee dies as a result of a compensable injury. See ME. REV. STAT. ANN. tit. 39-A, § 216 (2001).

29. See ME. REV. STAT. ANN. tit. 39-A, § 211 (2000). Workers’ compensation is meant to provide employees with means to pay their medical bills and recover compensation for lost wages, but recovery is not awarded for pain and suffering. JOHNSON & GUNN, *supra* note 12, at 658. “The amount of the award is computed according to schedules, which typically take into account the nature of the injury and the resulting degree of disability.” *Id.* at 29.

Compensation Act he or she must file a petition with the Workers' Compensation Board,³⁰ which must then be set for mediation.³¹ If mediation does not solve all of the disputed issues, the matter is referred to the Board, which fixes a time for a hearing before a hearing officer.³² Any dissatisfied party in interest may seek a discretionary appeal of the hearing officer's decision to the Law Court.³³

Since the 1992 Act's passage, the Law Court has interpreted section 201(5) to require that a hearing officer separate the effects of a subsequent non-work-related injury from a work-related injury when calculating benefits and determining the compensation level of an employee seeking relief.³⁴ In *Bernier v. Data General Corp.*,³⁵ the Law Court decided that a hearing officer had erred by applying *Brackett* in lieu of section 201(5), in a case that involved a subsequent non-work-related injury.³⁶ As a result, the court found that the officer should have separated the effects of the work-related and non-work-related injuries to calculate the benefit amount.³⁷ In other cases, the court has not hesitated to enforce the statute's "causally connected" requirement. For example, in *Mushero v. Lincoln Pulp & Paper Co.*,³⁸ the court denied total incapacity benefits to an employee who had been felled by a non-work-related heart attack after having a previous work-related heart attack, because it found that the two heart attacks were not causally connected.³⁹

However, in *Roy*, the court faced a question of first impression: may an employer permissibly terminate total incapacity benefits when the employee was declared totally incapacitated by both a work-related injury and a subsequent non-work-related injury?

III. THE ROY DECISION

Claimant Joseph Roy was an employee of BIW when he suffered work-related injuries to his lower back in 1987 and to his neck in 1994.⁴⁰ He was awarded partial

30. ME. REV. STAT. ANN. tit. 39-A, § 307(1) (2001).

31. *Id.* § 307(4).

32. *Id.* § 315.

33. *Id.* § 322. Although, if a hearing officer decides that an issue "is of significance to the operation of the workers' compensation system," they may request a review by the full board, which would stay an appeal to the Law Court. *Id.* § 320.

34. See *Pratt v. Fraser Paper, Ltd.*, 2001 ME 102, ¶ 12, 774 A.2d 351, 355. In *Pratt*, an employee suffered a work-related knee injury in 1990, for which he received total incapacity benefits, and a non-work-related injury, a heart attack, one year later. *Id.* ¶ 2, 774 A.2d at 353. Fraser Paper filed a petition seeking to reduce benefits after it discovered that the condition of the employee's knee had improved. *Id.* ¶ 5, 774 A.2d at 353. The court reversed the hearing officer's decision, finding that the employee was only entitled to partial incapacity benefits, rather than total incapacity benefits. *Id.* ¶ 15, 774 A.2d at 356.

35. 2002 ME 2, 787 A.2d 144.

36. *Id.* ¶ 12, 787 A.2d at 148. Delores Bernier suffered a work-related injury to her wrist, and reinjured the wrist in a non-work-related accident two years later. *Id.* ¶ 2, 787 A.2d at 146. Her wrist worsened over the years, eventually leading to surgery and an attempt to reinstate her workers' compensation benefits. *Id.* ¶¶ 3-4, 787 A.2d at 146.

37. *Id.* ¶ 12, 787 A.2d at 148.

38. 683 A.2d 504 (Me. 1996).

39. *Id.* at 506. Though the case was decided in 1996, the court examined the pre-1992 provision in making this decision because "the proceeding was pending on the effective date of Title 39-A." *Id.* at 505 n.1. However, as previously mentioned, the language in the two statutes is the same. See *supra* note 24.

40. *Roy*, 2008 ME 94, ¶ 2, 952 A.2d 965, 966.

incapacity benefits for these injuries.⁴¹ Alleging that his injuries had worsened, in 2005, Roy filed a petition for review with the Workers' Compensation Board (the Board) seeking total incapacity benefits after June 9, 2005.⁴² The hearing officer determined that Roy had become totally incapacitated as of June 9, 2005, as a result of the work-related injuries.⁴³ However, the officer also decided that, as of March 6, 2006, Roy's liver condition, a non-work-related injury, had also caused him to become totally incapacitated.⁴⁴ Citing section 201(5), the hearing officer determined that "as long as Mr. Roy is totally incapacitated for his non-work-related liver condition, he is not entitled to workers' compensation benefits."⁴⁵ Accordingly, the officer awarded Roy total incapacity benefits from June 9, 2005, to March 6, 2006, terminating all benefits thereafter.⁴⁶ Roy then filed a petition for additional findings of fact and conclusions of law.⁴⁷

In response, the hearing officer adopted BIW's findings in her amended decree.⁴⁸ These findings detailed that the result in *Roy* was consistent with earlier workers' compensation cases in Maine in that benefits would cease if an ongoing disability was the result of an independent intervening cause.⁴⁹ The Board then proceeded to list several decisions of the former Workers' Compensation Commission where compensation was decreased because an unrelated subsequent event, condition, or disease had arisen and had become totally disabling.⁵⁰ Citing *Costales v. S.D. Warren Co.*,⁵¹ the Board then stated that workers' compensation benefits are designed to replace wages that would have been earned but for a work-related injury, and the benefits are no longer payable if the employee would not have been earning them.⁵² The Board then cited *Mathieu v. Bath Iron Works*,⁵³ *Pendexter v. Tilcon of Maine, Inc.*,⁵⁴ and *Bernier*

41. *Id.* Specifically, he was awarded a 38 percent impairment rating. *Id.*

42. *Id.* ¶ 3, 952 A.2d at 966. He also asked for increased partial incapacity benefits "at varying rates" between November 1, 2004, and June 9, 2005. *Id.*

43. *Id.* ¶ 5, 952 A.2d at 966.

44. *Id.* March 6, 2006, marks the date upon which Roy underwent an independent physical examination upon request by BIW. Joint Appendix at 17, *Roy*, 2008 ME 94, 952 A.2d 965 (No. WCB-07-201). Giving the results of the examination, Alexander Mesrobian, M.D., stated that "it is primarily the severe liver disease and its associated components that would lead me to the conclusion that Mr. Roy does not have any meaningful work capacity at this point in time." *Id.* at 22.

45. *Roy*, 2008 ME 94, ¶ 5, 952 A.2d at 966 (quoting Joint Appendix, *supra* note 44, at 29).

46. *Id.* ¶ 6, 952 A.2d at 966.

47. *Id.* ¶ 7, 952 A.2d at 966.

48. *Id.*

49. Joint Appendix, *supra* note 44, at 43.

50. *Id.*

51. 2003 ME 115, 832 A.2d 790.

52. Joint Appendix, *supra* note 44, at 45.

53. 667 A.2d 862 (Me. 1995). Mathieu suffered a work-related injury in 1988, for which he received partial incapacity benefits. *Id.* at 864. In 1991, he was involved in a non-work-related automobile accident from which he became totally incapacitated. *Id.* The Law Court affirmed the Workers' Compensation Commission's findings that evidence indicated that Mathieu's non-work-related injuries were causally unrelated to his work-related injuries and, thus, noncompensable. *Id.*

54. 1999 ME 34, 724 A.2d 618. Pendexter suffered work-related back and leg injuries in 1985, for which he received short-term incapacity benefits. *Id.* ¶ 2, 667 A.2d at 619. Though this case involved a subsequent non-work-related injury, the injury was not contested. Rather, the case dealt with section 223 of the Workers' Compensation Act that concerned benefits upon retirement. *Id.*

as illustrative cases where employees were denied workers' compensation benefits because of non-work-related injuries.⁵⁵ For instance, in *Mathieu*, the Law Court affirmed a finding of the Workers' Compensation Commission that an employee's non-work-related automobile accident that occurred subsequent to his work-related injury was causally unrelated and not compensable.⁵⁶ The Board also quoted from the opinion of Dr. Alexander Mesrobian, the physician who served as an independent medical examiner and diagnosed Roy with severe liver disease.⁵⁷ Dr. Mesrobian wrote, "the reason he cannot work . . . is for other medical problems which are severe."⁵⁸ After the Board denied Roy total incapacity benefits, he filed a petition for appellate review, which the court granted.⁵⁹

On appeal, Roy argued that, although section 201(5) does relieve an employer of liability for a subsequent non-work-related injury, it does not relieve the employer of liability for any disability that continues to be caused by a previously compensable injury.⁶⁰ To support this proposition, Roy cited *Mushero* and *Pratt v. Fraser Paper, Ltd.*,⁶¹ and argued that although the Law Court found the subsequent non-work-related injuries in these cases to be non-compensable, in neither case did it strip away the award for partial incapacity benefits from the work-related injury.⁶² Next, Roy argued that the Board's analogous cases were inapplicable to this case. In distinguishing the Board's application of *Costales* and *Pendexter*, Roy argued that these cases were both about retirement, and not about subsequent work injuries that prompted the cessation of workers' compensation benefits.⁶³ Roy argued that *Mathieu* actually supported his case because the Law Court did not cut off all benefits in that decision, as the Board had done in the present case, but rather only those related to the non-work-related injury.⁶⁴ Roy further argued that the Workers' Compensation Commission cases cited by the Board were inapplicable because "none of the cases addressed a situation where an employee was found totally disabled by virtue of work related injuries and then . . . became afflicted by a non work related medical condition that was itself totally incapacitating."⁶⁵ Concluding his argument, Roy emphasized that section 201(5) required the hearing officer to separate out the effects of his injuries to see what was compensable and, if the hearing officer had done so, she would have concluded that the work injuries were totally disabling and that the subsequent medical condition did not further harm his earning capacity, which was already nil.⁶⁶

55. Joint Appendix, *supra* note 44, at 45-46.

56. *Mathieu*, 667 A.2d at 864.

57. Joint Appendix, *supra* note 44, at 46-47.

58. *Id.*

59. *Roy*, 2008 ME 94, ¶ 8, 952 A.2d at 966.

60. Brief of the Appellant/Employee at 3, *Roy v. Bath Iron Works*, No. WCB-07-201 (Me. 2008).

61. 2001 ME 102, 774 A.2d 351.

62. Brief of the Appellant/Employee, *supra* note 60, at 3-4.

63. *Id.* at 5-7.

64. *Id.* at 6. The Law Court did not specifically address whether the benefits from the work-related injury should remain. Nonetheless, by not addressing the issue, the outcome was an affirmation of partial incapacity benefits. Roy explained, "In effect, the court ratified the decision of the hearing officer not to increase the employee's level of partial incapacity from 31%." *Id.*

65. *Id.* at 8.

66. *Id.* at 11.

BIW was represented by two different law firms for its defense because AIG was the insurer for the 1987 back injury, but BIW was self-insured during the time of Roy's 1994 neck injury.⁶⁷ In BIW's brief as self-insured, it argued that the language of section 201(5) "clearly intends to relieve an employer of liability for payment of benefits for disability resulting from a subsequent non-occupational injury or disease."⁶⁸ BIW stated that the Board, in fact, followed the rule laid down in *Pratt* and established a level of incapacity attributed to the work injury in its analysis.⁶⁹ However, BIW claimed that although the Board had established this level of incapacity, it "subsequently terminated benefits based on the overwhelming disabling effects of the non-occupational condition."⁷⁰ BIW next looked for support in Dr. Mesrobian's report and his finding that 100 percent of Roy's current incapacity is attributable to his liver condition.⁷¹ BIW contended that the Board correctly applied section 201(5) because Roy's current disability had been "entirely caused" by his liver condition.⁷² BIW defended the Board's application of *Mathieu* by arguing that the procedural posture of the case never allowed the Board to address whether a reduction of benefits for Mathieu's work-related injury would have been appropriate.⁷³ BIW also maintained that Roy should be denied compensation because the liver condition was an independent intervening cause that cut off compensation for the previous injuries.⁷⁴ In support of this argument, BIW argued that *Miller v. Penley Corp.*⁷⁵ stands for the proposition that severe, subsequent non-work-related injuries or conditions can sever a causal connection between a work injury and an employee's incapacity, even if the work injury still causes some form of impairment.⁷⁶ Citing *Morrissey v. Babcock & Wilcox*,⁷⁷ BIW asserted that an employee's condition can sometimes be "so radically transformed" by a subsequent non-work-related injury that the impact of the work injury becomes irrelevant.⁷⁸ Additionally, BIW argued that the above cases are

67. Brief of Appellee Bath Iron Works/Self-Insured at 1, *Roy v. Bath Iron Works*, No. WCB-07-201 (Me. 2008).

68. *Id.* at 6.

69. *Id.* at 8.

70. *Id.*

71. *Id.* at 9.

72. *Id.*

73. *Id.* at 12 n.1. The only pending petition before the Law Court in *Mathieu* was a petition for restoration of total incapacity benefits.

74. *Id.* at 13. BIW asserted the proposition that "[a] change of circumstances justifying reduction, suspension or termination of compensation may consist of a change in the cause of the employee's continuing disability, such as, for example, through the occurrence of an independent supervening cause." *Id.* at 10 (quoting *Lowe v. C.N. Brown*, 448 A.2d 1358, 1364 (Me. 1982) (Dufresne, A.R.J., dissenting) (citation omitted)).

75. Me. W.C.C. App. Div. 93-07 (1993). In *Miller*, the Workers' Compensation Commission had found that the effects of a compensable work-related injury had ceased as of May 30, 1989. *Id.* The claimant was later denied total incapacity benefits stemming from a non-work-related heart attack of May 31, 1989. *Id.*

76. Brief of the Appellee Bath Iron Works/Self-Insured, *supra* note 67, at 13.

77. Me. W.C.C. App. Div. 745 (Me. 1991).

78. Brief of the Appellee Bath Iron Works/Self-Insured, *supra* note 67, at 15 (quoting *Morrissey v. Babcock & Wilcox*, Me. W.C.C. App. Div. 745 (Me. 1991)). In *Morrissey*, an employee suffered a left arm fracture that resulted in long-term aching and weakness. *Id.* Afterward, the employee developed Alzheimer's Disease. *Id.* The Appellate Division of the Workers' Compensation Commission found that

consistent with the principle behind workers' compensation law: to replace wages that would have been earned if the work-related injury had not occurred.⁷⁹ Thus, BIW concluded that "an employer's liability for any ongoing benefits ceases when an employee is out of work for reasons unrelated to the work injury."⁸⁰

Through the attorneys representing AIG as BIW's insurer, BIW repeated some of the same arguments it advanced in its brief as self-insured. However, it put additional emphasis on Dr. Mesrobian's report. BIW argued that Dr. Mesrobian's opinion provided the Board with a sufficient foundation for its conclusion in this case.⁸¹ Specifically, Dr. Mesrobian found that "it is primarily the severe liver disease and its associated components that would lead me to the conclusion that Mr. Roy does not have any meaningful work capacity at this time."⁸² BIW also noted that the Board's findings are generally given deference, especially with respect to the evaluation of medical evidence.⁸³

In his reply brief, Roy contended that it was likely that the independent intervening cause doctrine did not survive the enactment of section 201(5).⁸⁴ Alternatively, Roy argued that even if the doctrine survived, it did not function to automatically relieve the employer of its liability to compensate for the work-related injury.⁸⁵ Roy asserted that the last time the Law Court mentioned the doctrine in a workers' compensation case was in *Mathieu*, where the court found that "the presence of an intervening independent cause of incapacity *will not remove* the Employer's liability for workers' compensation as long as the prior injury remains a 'cause' of the Employee's ongoing condition."⁸⁶ Roy argued that the court should not allow BIW to receive a windfall simply because a totally-disabling work-related injury was followed by the "fortuitous" occurrence of a totally-disabling non-work-related condition.⁸⁷ Roy also reminded the court that his work-related injuries never ceased to be disabling and continued to be "a cause" of his disability, as evidenced by the fact that he was given total incapacity benefits by the Board prior to the diagnosis of his liver condition.⁸⁸

After considering the arguments of the parties, the Law Court vacated the hearing officer's decision and remanded the case for further proceedings.⁸⁹ Essentially, the basis for the majority's short opinion was that the language of section 201(5) did not require termination of total incapacity benefits simply because a totally incapacitating non-work-related injury had occurred.⁹⁰ In reaching this conclusion, the court first

a Commissioner had erred in concluding that the employee remained entitled to partial incapacity benefits.
Id.

79. *Id.* at 17.

80. *Id.* at 5.

81. Appellee's Brief at 5, Roy v. Bath Iron Works, No. WCB-07-201 (Me. 2008).

82. *Id.* at 4.

83. *Id.* at 5 (citing *Mathieu*, 667 A.2d at 864).

84. Reply Brief of the Employee/Appellant at 1, Roy v. Bath Iron Works, No. WCB-07-201 (Me. 2008).

85. *Id.* at 2.

86. *Id.* (quoting *Mathieu*, 667 A.2d at 864 (emphasis added)).

87. *Id.* at 3.

88. *Id.*

89. *Roy*, 2008 ME 94, ¶ 16, 952 A.2d at 968.

90. *Id.*

made the determination that the language of section 201(5) is not ambiguous, and, therefore, the court should interpret the statute directly, without any reference to legislative history or other administrative interpretation.⁹¹ Interpreting the statute directly, the majority found that section 201(5) “says nothing about reducing or eliminating payments to disabled workers for their work-related injuries.”⁹² The court reasoned that if the Maine Legislature had intended for such a provision, it would have been written in the statute.⁹³ For further support, the court referenced its previous opinions in *Mushero*, *Pratt*, and *Bernier*, which indicated that the purpose of section 201(5) is to separate the impact of non-work-related injuries from work-related injuries.⁹⁴ Ultimately, the court held that there is nothing in the statute that requires termination of workers’ compensation benefits because of a subsequent non-work-related injury.⁹⁵

Justice Levy, joined by Justice Clifford, authored a concurring opinion that addressed the arguments concerning the independent intervening cause doctrine and the underlying purpose of workers’ compensation that were elucidated in Justice Gorman’s dissent.⁹⁶ First, Justice Levy traced the history of the independent intervening cause doctrine and the history of section 201(5).⁹⁷ He concluded that the statute does not support the argument that a totally incapacitating subsequent non-work-related injury completely eliminates employee benefits for a work-related injury that continually plays a substantial role in the employee’s incapacity.⁹⁸ Justice Levy stated that the process of separating out the effects of the work-related injury, as required by section 201(5), likely subsumed the independent intervening cause doctrine.⁹⁹ Citing *Mathieu* for support, Justice Levy argued that even prior to section 201(5), the court “never held that an independent intervening cause always cuts off liability for an injured employee’s ongoing work incapacity.”¹⁰⁰ Justice Levy also noted that neither the Workers’ Compensation Commission nor the court cut off *Mathieu*’s partial incapacity benefits from his work-related injury while he was totally incapacitated due to his subsequent non-work-related injury.¹⁰¹ Next, Justice Levy addressed the value of Workers’ Compensation Commission cases cited by the Board, contending that they were distinguishable because the prior work-related injuries in these cases, unlike *Roy*’s work-related injuries, did not remain a substantial cause of

91. *Id.* at ¶ 10, 952 A.2d at 967.

92. *Id.* at ¶ 11, 952 A.2d at 967.

93. *Id.*

94. *Id.* ¶ 15, 952 A.2d at 968. The *Mushero* court “affirmed the reduction of . . . benefits by the percentage of incapacity attributable to the subsequent nonwork heart attack.” *Id.* ¶ 12, 952 A.2d at 967. In *Pratt*, the Law Court held that hearing officers must separate the effects of a subsequent non-work-related injury to calculate the amount of benefits and compensation level. 2001 ME 102, ¶ 12, 774 A.2d at 355. Similarly, in *Bernier*, the court stated that a hearing officer should have separated out the effects of a non-work injury in making an award determination. 2002 ME 2, ¶ 12, 787 A.2d at 148.

95. *Roy*, 2008 ME 94, ¶ 15, 952 A.2d at 968.

96. *Id.* ¶ 17, 952 A.2d at 968 (Levy, J., concurring).

97. *Id.* ¶¶ 18-23, 952 A.2d at 968-70.

98. *Id.* ¶ 23, 952 A.2d at 970.

99. *Id.* ¶ 24, 952 A.2d at 970.

100. *Id.* ¶ 25, 952 A.2d at 970.

101. *Id.* ¶ 26, 952 A.2d at 971.

the employee's total incapacity.¹⁰² Justice Levy singled out *Miller*, noting that the effects of the work-related injury had ended the day before his non-work-related heart attack.¹⁰³ Justice Levy stated that if the work-related injury had remained a cause of Miller's incapacity, "we can infer that the employee would have been entitled to continue receiving partial incapacity benefits."¹⁰⁴ In response to the dissent's arguments concerning the basis for workers' compensation, Justice Levy noted that section 201(5) is unambiguous and, as a result, it is unnecessary to attempt to discern legislative intent.¹⁰⁵ Justice Levy concluded, "As long as Roy's work-related injury causes him to be totally incapacitated, he should remain entitled to total incapacity benefits."¹⁰⁶

In her dissenting opinion, Justice Gorman analyzed the case differently from the majority opinion.¹⁰⁷ Justice Gorman agreed with the majority that the language of section 201(5) does not require a reduction or elimination in Roy's benefits.¹⁰⁸ However, she asserted that the statute did not answer the question posed in this case, and thus, the court should look at the underlying purpose of workers' compensation.¹⁰⁹ Justice Gorman contended that the underlying purpose is to replace wages, lost by an individual due to a work-related injury,¹¹⁰ and that an individual who is no longer working is not entitled to wage loss benefits because there are no wages to replace.¹¹¹ Thus, Justice Gorman argued that the majority has "chang[ed] the benefits received from wage replacement benefits to disability payments."¹¹² Justice Gorman also asserted that there was a substantial amount of case law that demonstrated the proposition that a causally unrelated injury or illness may create an independent intervening cause that removes liability from the employer.¹¹³ Though Roy contended that his work-related injuries remained a cause of his incapacity, Justice Gorman noted that the commissioner in *Mathieu* did not conclude that Mathieu had ever ceased to be affected by his work-related injuries, but rather that the work-related injuries were not the cause of Mathieu's total incapacity.¹¹⁴ Lastly, Justice Gorman reminded the majority that the decisions of the Board interpreting section 201(5) are "entitled to great deference and will be upheld on appeal unless the statute plainly compels a different result" and that this statute did not compel a different result.¹¹⁵ For these

102. *Id.* ¶ 27, 952 A.2d at 971.

103. *Id.*

104. *Id.* ¶ 28, 952 A.2d at 971.

105. *Id.* ¶ 31, 952 A.2d at 972.

106. *Id.* ¶ 32, 952 A.2d at 972.

107. Justice Gorman is a former member of the Workers' Compensation Commission. Me. Judicial Branch, Supreme Court Justices (2008), http://www.courts.state.me.us/maine_courts/supreme/justices_bios.html.

108. *Roy*, 2008 ME 94, ¶ 33, 952 A.2d at 972 (Gorman, J., dissenting).

109. *Id.* ¶ 34, 952 A.2d at 973.

110. *Id.* ¶ 35, 952 A.2d at 973.

111. *Id.* ¶ 36, n.5, 952 A.2d at 973.

112. *Id.* ¶ 36, 952 A.2d at 973.

113. *Id.* ¶ 39, n.8, 952 A.2d at 974 (collecting cases).

114. *Id.* ¶ 43, 952 A.2d at 975.

115. *Id.* ¶ 44, 952 A.2d at 975 (quoting *Jordan v. Sears, Roebuck & Co.*, 651 A.2d 358, 360 (Me. 1994)).

reasons, Justice Gorman concluded that she would have affirmed the hearing officer's decision.¹¹⁶

IV. THE COURT'S ANALYSES

This case is fascinating because the majority, concurrence, and dissent applied different analyses under the same facts. The majority saw this case as an issue of statutory interpretation, the dissent attacked the majority's holding by analyzing the issue through the lens of legislative intent and the independent intervening cause doctrine, and the concurrence wrote separately to rebut the logic of the dissenting justices.¹¹⁷ Though all three sides make compelling arguments, it appears that the concurring opinion contains the most thorough analysis of the law as it currently stands.

Section 201(5) is unambiguous. None of the justices, including those who dissented, argued otherwise. Rather, the plain language of the statute provides little guidance for the set of facts in *Roy* and the division between the opinions in this case concerned whether there should be another step in the legal analysis. Though the majority declared the language of section 201(5) to be unambiguous and accordingly interpreted the statute's plain meaning,¹¹⁸ the majority did not address the independent intervening cause doctrine, which the hearing officer based her decision upon.¹¹⁹ Considering that this doctrine has played an important role in Maine workers' compensation law,¹²⁰ and that it is debatable whether section 201(5) subsumed the doctrine, the majority's opinion would have been strengthened by an examination of the issues mentioned in the concurrence. In fact, all of the justices agreed that the statute does not explicitly authorize a termination of benefits for *Roy*.¹²¹

If the underlying purpose of workers' compensation is wage replacement, then surely section 201(5), by limiting the class of those who can recover under the statute, works toward that end. However, if one looks at the underlying purpose of this provision according to the Maine Legislature, it is evident that the legislature's remarks do not strengthen the case for the dissent. After all, this is a case of first impression because it has an unusual set of facts. Thus, this scenario was never debated by legislators.¹²²

In fact, the floor debate¹²³ more closely supports the view of the concurring justices. Representatives and senators supported this statute in order to trim the costs

116. *Id.*

117. *Id.* ¶ 17, 952 A.2d at 968 (Levy, J., concurring).

118. *Id.* ¶ 11, 952 A.2d at 967 (majority opinion). The majority stated, "When a statute is not ambiguous, we interpret the statute directly, without applying rules of construction or examining legislative history or administrative interpretation." *Id.* ¶ 10, 952 A.2d at 967.

119. See Joint Appendix, *supra* note 44, at 43.

120. See, e.g., *Richardson*, 379 A.2d 380 (Me. 1977).

121. *Roy*, 2008 ME 94, ¶ 33, 952 A.2d at 972.

122. The fact that this provision was merely a small part of a much larger package of legislation reforming workers' compensation makes it even more difficult to decipher the legislative intent of this provision.

123. See *supra* note 24 and accompanying text (noting that L.D. 1981, which eventually became public law, contained nearly the exact same language as L.D. 1957, which had been vetoed by the Governor).

of the workers' compensation system and maintain efficiency within the system.¹²⁴ Rep. Harriet Ketover stated, "Entry into the Workers' Comp. system should be limited to those events, those occasions that are truly work-associated and work-related."¹²⁵ In explaining the need to eliminate coverage for non-work-related injuries, Rep. Peter Hastings argued:

I will tell you that access to our system has been so broadened by rule and by court interpretation that people who get hurt on the one job and then go out and get hurt on a baseball game in a second job, can collect again. . . . Our system is out-of-whack.¹²⁶

As the concurrence in *Roy* made clear, the injury for which Roy is receiving workers' compensation is not his liver condition, but the work-related neck and back injuries from which he still suffers.¹²⁷ However, ultimately there is nothing in the legislative record to indicate that the legislators would have supported termination of benefits because of a subsequent non-work-related injury when an employee remained disabled due to work-related injuries.

Likewise, case law from other states appears to more closely parallel the concurrence's logic. In *DuPont Hosp. for Children v. Haskins*,¹²⁸ a Delaware court held that an employer's liability for partial disability was not terminated by an intervening, independent, non-work-related accident.¹²⁹ The *DuPont* court followed "the [*Mathieu*] court's holding . . . that an intervening independent cause of incapacity will not remove the employer's liability for benefits as long as the prior injury remains a 'cause' of the claimant[']s ongoing condition."¹³⁰ In *Childers v. Georgia-Pacific Corp.*,¹³¹ the Arkansas Court of Appeals laid out a standard for termination of workers' compensation benefits that was similar to the concurrence's standard. The *Childers* court held that "[i]n order to be entitled to temporary total disability benefits, an injured employee must prove that he remained within his healing period The healing period does not end until the claimant's condition is stable."¹³² Pennsylvania has a similar standard for an employer seeking termination of existing benefits. The Commonwealth Court of Pennsylvania held that "the employer seeking a modification of benefits is only required to show that the claimant's work-related injury has

124. See 2 Legis. Rec. H-1255 (1991). Rep. Rand stated, "If we are going to include factors such as the normal aging process in defining compensability . . . we would spend the next ten or fifteen years in court for every injured worker who was over the age of 38 or 40." *Id.*

125. *Id.* at H-1258.

126. *Id.* at H-1261.

127. *Roy*, 2008 ME 94, ¶¶ 30-32, 952 A.2d at 972 (Levy, J., concurring).

128. No. Civ.A. 01A-01-009JEB, 2001 WL 1198938 (Del. Super. Ct. Oct. 2, 2001).

129. *Id.* at *4. In this case, Vivienne Haskins injured her lower back and hip in a work-related accident, from which she became totally disabled and later partially disabled. *Id.* at *1. She later worsened her previous injuries in a non-work-related accident and was placed back on total disability status. *Id.* The Industrial Accident Board's decision to deny employer DuPont's petition to terminate Haskin's partial incapacity benefits after her second accident was affirmed by the Superior Court of Delaware. *Id.* at *5.

130. *Id.* at *4.

131. No. CA 06-576, 2007 WL 466801 (Ark. Ct. App. Feb. 14, 2007).

132. *Id.* at *3. This case concerned an employee who received a work-related injury to his right shoulder followed by non-work-related injuries as a result of an automobile accident. *Id.* at *1. The Arkansas Court of Appeals affirmed a denial of compensation for injuries stemming from the employee's second accident. *Id.* at *5.

improved.”¹³³ As noted previously, Roy’s work-related injury never improved. Thus, a survey of law in other states supports the concurrence, but not the dissent.

In her dissent, Justice Gorman focused on a series of analogous cases from Maine. However, a close examination of these cases reveals that they are distinguishable from *Roy*. Justice Gorman cited *Miller*¹³⁴ for the proposition that a “when a subsequent injury would have caused the incapacity *by itself* and the employee would have suffered the same level of capacity *in the absence* of the prior work injury, the independent event will sever the causal link.”¹³⁵ The problem with using *Miller* for support is that the Workers’ Compensation Commission found that Miller’s incapacity for his work-related injuries had ceased one day before he suffered a non-work-related heart attack.¹³⁶ Thus, *Miller* is distinguishable because he was no longer suffering from his work-related injuries at the time of his subsequent illness, as opposed to Roy, who remained totally incapacitated by both his work-related injuries and his non-work-related condition.

Justice Gorman also cited a number of cases decided by the former Workers’ Compensation Commission where subsequent illnesses, conditions, or injuries served as independent intervening causes that cut off compensation for workers who were receiving partial incapacity benefits.¹³⁷ However, upon further investigation, it becomes clear that the standard for termination of benefits that the Workers’ Compensation Commission utilized was one where the subsequent injury was so severe in comparison with the work-related injury, that the work-related injury could no longer be considered “a cause” of the employee’s disability.

For example, in *Helie v. Fisher*,¹³⁸ an employee received workers’ compensation benefits when she sustained work-related injuries to her hand, neck, and back.¹³⁹ The employer later sought a review after the employee’s self-inflicted gunshot wound to her head resulted in paralysis and diminished intellectual functioning.¹⁴⁰ The review was allowed and workers’ compensation benefits were terminated.¹⁴¹ In *Morrissey*,¹⁴² cited by BIW, an employee suffered a work-related arm fracture and received workers’ compensation.¹⁴³ Later, the employee developed Alzheimer’s disease and had to be admitted to a nursing home.¹⁴⁴ The Appellate Division found that the Workers’

133. *Sheehan v. Workmen’s Comp. Appeal Bd.*, 600 A.2d 633, 637 (Pa. Commw. Ct. 1991). In this case, an employee suffered a work-related back injury and a subsequent non-work-related heart attack. *Id.* at 635. His employer filed a Suspension Petition that alleged the employee had partially recovered from his work-related back injury and was able to return to his job. *Id.* at 635. The court reversed the Workers’ Compensation Appeals Board’s decision to grant the petition on the basis that the employee was never notified that he was medically cleared for his job. *Id.* at 638-39.

134. *Miller*, Me. W.C.C. App. Div. 32 (Me. 1993).

135. *Roy*, 2008 ME 94, ¶ 39, 952 A.2d at 974 (Gorman, J., dissenting).

136. *Id.* ¶ 27, 952 A.2d at 971 (Levy, J., concurring) (citing *Miller*, Me. W.C.C. App. Div. at 32-33 (Me. 1993)).

137. *Roy*, 2008 ME 94, ¶ 39, n.8, 952 A.2d at 974 (Gorman, J., dissenting).

138. Me. W.C.C. App. Div. 400 (Me. 1992).

139. *Id.* at 400-01.

140. *Id.* at 402.

141. *Id.* at 404.

142. Me. W.C.C. App. Div. 744 (Me. 1991).

143. *Id.* at 745.

144. *Id.*

Compensation Commission erred in concluding that the employee remained entitled to partial incapacity benefits. The Appellate Division explained, “In some cases the employee’s condition after the work injury becomes so radically transformed that the impact of the work injury becomes irrelevant.”¹⁴⁵

However, these cases can be distinguished from *Roy* by noting that Roy’s disabled condition was not “so radically transformed” by the onset of liver disease. Simply put, the above cases apply to an extreme change in the condition of the employee. Roy, on the other hand, was already totally incapacitated from neck and back injuries. He then developed a totally disabling liver disease. There was no significant change in his condition: he was totally disabled due to work-related injuries before being diagnosed with liver disease.

Furthermore, Roy should continue to be compensated for his work-related injuries despite a subsequent non-work-related injury. Though there has been much discussion about the holding of *Mathieu*, it does not appear to authorize a termination of employer liability for workers’ compensation as long as a work-related injury continues to cause an employee’s condition.¹⁴⁶

Ultimately, there is simply not enough support in section 201(5), its legislative history, case law from other states, or analogous cases in Maine to support the propositions that the dissent asserts. In addition to rebutting the dissent’s arguments, the concurrence is particularly valuable because it correctly asserts a proposition that the majority left out of its analysis of the law: Roy should be entitled to total incapacity benefits as long as his work-related injuries cause him to be totally incapacitated. In a review of the applicable law, there is no authority that states otherwise. Thus, according to the law as it currently stands, Roy should continue to receive workers’ compensation benefits despite the diagnosis of a subsequent liver condition as long as his work-related injuries cause total incapacity.

V. CONCLUSION

Roy v. Bath Iron Works is a case of first impression in Maine. As written, section 201(5) does not authorize the termination of Roy’s workers’ compensation benefits. Likewise, there is not enough support in its legislative history, Maine case law, or analogous cases from other states for underlying legislative purposes or the independent intervening cause doctrine to mandate a different result. Of course, if the Maine Legislature is not satisfied with the result in *Roy*, it can amend the Workers’ Compensation Act.

145. *Id.*

146. *See supra* note 86 and accompanying text.