VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case Nos. 22-CV-2256/2270

MAXWELL'S PHARMACY, INC., Plaintiff v. MMG INSURANCE COMPANY, Defendant	DECISION ON MOTION

RULING ON POST-JUDGMENT MOTIONS

Following a jury trial and entry of judgment, Plaintiff Maxwell's Pharmacy, Inc. ("Maxwell") now seeks a new trial pursuant to Rule 59 of the Vermont Rules of Civil Procedure, or, in the alternative, to renew its motion for judgment as a matter of law under Rule 50(b). For the reasons discussed below, the motions are DENIED.

I. Motion for a New Trial.

The Court "may on motion grant a new trial . . . on all or part of the issues for any of the reasons for which new trials or rehearings have heretofore been granted in actions at law or in suits in equity in the courts of this state." V.R.C.P. 59(a). On the other hand, "[t]he law favors upholding jury verdicts." *Watrous v. Porter Med. Ctr.*, 2025 VT 47, ¶ 7 (quotation omitted). As such, "[r]ulings on motions for new trial are within the discretion of the trial court." *Smedberg v. Detlef's Custodial Serv., Inc.*, 2007 VT 99, ¶ 5, 182 Vt. 349. On a Rule 59 motion, "[t]he trial court must view the evidence in the light most favorable to the jury verdict and may only exercise its discretion to set aside the verdict if 'the verdict is shown to be clearly wrong and unjust because the jury disregarded the reasonable and substantial evidence, or found against it, because of passion, prejudice, or some misconception of the matter.'" *Watrous*, 2025 VT 47, ¶ 7 (quoting *Pirdair v. Med. Ctr. Hosp. of Vt.*, 173 Vt. 411, 416 (2002)).

Maxwell's basis for a new trial is its contention that Defendant MMG's contractual subrogation/reimbursement claim was not properly adjudicated. Maxwell asserts that the Court misconstrued the parties' partial settlement agreement in ruling on the motion in limine by interpreting Maxwell's defense against MMG's subrogation/reimbursement claim as a live "claim" for uninsured losses. Maxwell argues that, while ordinarily the insurer has the burden to prove a subrogation or reimbursement claim, the Court's decision improperly flipped the burden such that Maxwell had to prove its defense to MMG's claim.

As the Court observed in its summary judgment ruling, "[a] jury verdict constitutes full recovery for purposes of determining whether an insurer is entitled to subrogation." Decision on

Mot. for Summ. J. at 4 (Dec. 18, 2026) (quoting 16 Couch on Ins. § 223:161). In denying Maxwell's motion in limine, the Court prohibited any explanations to the jury that "mention[ed] the settlement, the funds held in escrow, subrogation, or the 'made-whole' doctrine" as "unduly prejudicial and confusing." Decision on Mots. in Limine at 2 (Jan. 13, 2026). At trial, the Court instructed the jury that it "must decide whether Maxwell's Pharmacy sustained additional lost business income resulting from the July 2020 fire, beyond those damages covered by the MMG insurance policy" and that "Maxwell's Pharmacy has the burden to prove the existence and amount of any such additional losses by a preponderance of the evidence." Jury Instr. at 8-9. On the special verdict form, the Court posed the following question: "Do you find that Plaintiff Maxwell's Pharmacy has proven by a preponderance of the evidence that it sustained additional lost business income resulting from the July 2020 fire, beyond the amounts covered by the MMG insurance policy?"

The jury answered that question in the negative. Based on that verdict, the Court concluded that Maxwell's had been made whole. *See* Entry Order re: Proposed Judgment Orders at 2 (Mar. 20, 2026). While an insurer "usually" has the burden to prove that an insured has been made whole,[1] "[w]hen the issue of damages has been fully litigated before a jury, an insured is collaterally estopped from denying that the insured was made whole by the jury verdict. Thus, a jury verdict is a full recovery for the purposes of the made-whole doctrine." 16 Couch on Ins. § 223:161 n.1; *see also Bartunek v. Geo. A. Hormel & Co.*, 513 N.W.2d 545, 554 (Neb. 1994) ("The evidence in the instant case establishes that issues of medical expenses and lost wages were previously litigated and were part of the tort verdict. Therefore, Bartunek is collaterally estopped from claiming that the jury's verdict is not 'full recovery' for purposes of determining whether Hormel can recover its subrogation."); *State Farm Mut. Auto. Ins. Co. v. Perkins*, 216 S.W.3d 396, 403 (Tex. App. 2006) ("Based on the sound reasoning of [other] courts, we conclude that the jury's verdict awarding $53,000 to Perkins determined the amount of money necessary to make Perkins whole. The made whole doctrine does not preclude State Farm from recovering subrogation or reimbursement."); *United Pac. Ins. Co. v. Boyd*, 661 P.2d 987, 990 (Wash. Ct. App. 1983) ("The jury was instructed to fully compensate Mr. Boyd for these and determined he sustained injuries of $14,550.91. The jury determined the money necessary to make Mr. Boyd 'whole.' The fact Mr. Boyd has placed a greater value on his damages than the jury did does not allow him to relitigate the issue in a subsequent proceeding. We hold Mr. Boyd is collaterally estopped from denying that he was made whole by the jury verdict."); *Rimes v. State Farm Mut. Auto. Ins. Co.*, 316 N.W.2d 348, 354 (Wisc. 1982) (court "obliged to conclude" that damages found by a jury would make plaintiff whole). Similarly, as a Florida federal district court explained, in a bench trial, where "the issue of [plaintiff]'s damages has been fully litigated before the court, [plaintiff] is precluded from claiming that the court's award did not make it whole." *Tampa Port Auth. v. M/V Duchess*, 65 F. Supp. 2d 1299, 1301-02 (M.D. Fla. 1997) (noting that "appellate courts in other states which have considered this issue have held that a jury verdict constitutes full recovery for purposes of determining whether an insurer is entitled to

[1] This rule "does not appear to be universal, however." Couch on Ins. § 223:151 & nn.2-3; *see, e.g.*, *Washington Nat'l Ins. Co. v. Brown*, 654 So. 2d 724, 729 (La. Ct. App. 1995) ("Since Mrs. Brown asserts that the settlement she received failed to compensate her for her total damages, she must carry the burden of proving that fact by a preponderance of the evidence."); *Abbott v. Blount Cnty.*, 207 S.W.3d 732, 735 (Tenn. 2006) ("insured has the burden of proof").

subrogation"), *aff'd*, 184 F.3d 822 (11th Cir. 1999). Thus, in *Tampa Port Authority*, the court concluded that the plaintiff's "claim that it should recover for additional repair costs above $151,642 was previously considered and rejected by this court. [It] is thus collaterally estopped from arguing that it must recover for these additional costs in order to be made whole." *Id*.

To the extent Maxwell contends that the Court misconstrued the parties' settlement agreement, the Court notes that it is not bound by the parties' stipulations on the applicable law. *See*, *e.g.*, *State v. Mary*, 368 N.W.2d 166, 170 (Iowa 1985) ("the stipulation of litigants cannot be invoked to bind or circumscribe a court in its determination of questions of law"); *Matter of Est. of Finlay*, 424 N.W.2d 272, 275 (Mich. 1988) ("It is well established that a court is not bound by the parties' stipulations of law. It is within the inherent power of a court, as the judicial body, to determine the applicable law in each case." (citations and footnote omitted)); *Williams v. Mann*, 388 P.3d 295, 305 (N.M. Ct. App. 2016) (courts are "[o]rdinarily . . . not [] bound by parties' stipulations as to applicable law"); 73 Am. Jur. 2d Stipulations § 4 ("stipulations as to the law are invalid and ineffective"). In any event, the Court rejects Maxwell's argument because the process here was fully consistent with the parties' settlement agreement:

> Maxwell and MMG agree to first submit their first-party insurance contract claims at trial *including Maxwell's uninsured loss damages* . . . . At the conclusion of such trial, Maxwell and MMG agree to submit their subrogation arguments (i.e. their equitable distribution of the $1,000,000 policy arguments) to the trial judge to ultimately decide on the distribution of the $1,000,000 . . . .

Settlement Agreement ¶ 5 (emphasis added).[2] Moreover, as the Court observed in a prior ruling: "Where the parties dispute whether the injured party has been fully compensated in a settlement with tortfeasors, 'an objective valuation of the party's injuries by a trier of fact would be required when determining whether the insurer was entitled to equitable subrogation from the settlement proceeds.'" Entry Order re: Proposed Judgment Orders at 2 (quoting 16 Couch on Ins. § 223:150). The jury verdict provided the required objective valuation. Maxwell had to prove its own claimed damages, just as it would have had it gone to trial on its claims against the tortfeasor, Pearl Street Beverage.[3]

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[2] Indeed, Maxwell's current argument seems disingenuous in light of its representations as to the following undisputed facts at summary judgment: "Per the Settlement, the parties anticipate submitting both Maxwell's breach of contract-based damages/losses and Maxwell's damages/losses that occurred outside the contractual policy limits and term to the jury at trial. After receiving the jury's determination of Maxwell's total, non-contractual, uncompensated losses, Maxwell and MMG would then present their competing arguments for who should receive the escrowed PSB Funds to the trial judge." *See* Decision on Mot. for Summ. J. at 2; Pl.'s Stmt. of Facts ¶¶ 5-6 (filed Sept. 25, 2025).

[3] Maxwell's reliance on *GEICO Ins. Co. v. Bernheim*, 2013 VT 77, ¶ 13, 195 Vt. 73, is not persuasive. The Court there explained that, where an insured had settled with a tortfeasor, the insurer was not limited to subrogation and that it could seek reimbursement under a trustee theory against the insured. *Id.* ¶ 13. That is what MMG sought here, successfully, and the *Bernheim* decision does not compel a different result.

Moreover, Maxwell has waived any argument about the burden of proof by failing to object to that part of the jury instructions or the verdict form. "No party may assign as error the giving or the failure to give an instruction unless that party objects thereto either at a charge conference or before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection." V.R.C.P. 51(b); *see also Kilburn v. Simmon*, 2025 VT 32, ¶ 39, 342 A.3d 887 (holding that "plaintiffs implicitly waived their joint-and-several-liability claim by failing to object to the jury instructions or the verdict form"); *Shaffer v. N.E. Kingdom Hum. Servs., Inc.*, 2025 VT 31, ¶ 14, 346 A.3d 892 (same).

Maxwell contends that it was somehow not required to object to the jury instructions on burden of proof because it had previously sought to introduce evidence of the settlement agreement, subrogation, and the "made whole" doctrine, which the Court denied. *See* Pl.'s Mot. at 10 n.4 (filed Apr. 16, 2026). Maxwell relies on *Billings v. Billings*, 2011 VT 116, ¶ 14, 190 Vt. 487, which held that a party against whom a motion in limine has been granted need not "further contest the decision by seeking to admit the excluded evidence at trial." But Maxwell's contention is incorrect. Its motion in limine did not relate to the burden of proof. Further, the burden of proof is not evidence, but a legal concept on which the Court must instruct the jury. *Billings* addressed the trial court's exclusion of evidence through a motion in limine, rather than the content of jury instructions, and is therefore inapposite. Consequently, Maxwell waived any argument that the Court erred in assigning the burden of proof in this case.

Accordingly, the Court DENIES Maxwell's motion for a new trial.

II. Renewed Motion for Judgment as a Matter of Law.

Alternatively, Maxwell renews its motion for judgment as a matter of law that the Court denied at trial. "Judgment as a matter of law is appropriate where 'there is no legally sufficient evidentiary basis for a reasonable jury to find for the nonmoving party on that issue.'" *J.A. Morrissey, Inc. v. Smejkal*, 2010 VT 66, ¶ 8, 188 Vt. 245 (quoting V.R.C.P. 50(a)(1)). The Court must "view the evidence in the light most favorable to the nonmoving party and exclude the effects of any modifying evidence." *Murphy v. Sentry Ins.*, 2014 VT 25, ¶ 24, 196 Vt. 92 (quotation omitted).

Maxwell contends that the jury's finding that it sustained no lost business income outside the policy coverage period was "objectively incorrect" and "patently unreasonable, given the undisputed facts of the case, and not a shred of actual evidence supported such a finding." Pl.'s Mot. at 10. Maxwell argues that the evidence presented to the jury regarding July and August 2021 compel a finding that it sustained at least $148,294.45 in lost business income during those two months. *Id*. at 15. While MMG's expert accountant, John Ducey, testified that he was never presented any reliable information indicating that Maxwell sustained business losses beyond the policy coverage period, Maxwell maintains that this testimony was "verifiably false" because Plaintiff's Trial Exhibit 58 – a document prepared by Ducey – shows a specific amount of lost business income.

In opposing the Rule 50 motion, MMG asserts that Maxwell "relied solely on the testimony of its expert," that defense counsel "effectively cross-examined" that expert on whether Maxwell had lost business income resulting from the fire, and that the jury therefore "did not credit her testimony . . . that Maxwell's had lost business income for July–August 2021." Def.'s Opp'n at 5.

As the Court stated on the record in denying the Rule 50 motion at trial:

> [V]iewing the evidence in the light most favorable to the nonmoving party, as we must, the jury is also entitled [to] completely [reject][4] the evidence of an expert or any witness. And if they do that, they would find that no loss has been established. So I think, therefore, I have to deny the Rule 50 motion.

Tr. at 159:17-22 (Ex. 2). Credibility determinations are solely within the province of the jury. *See Lorrain v. Ryan*, 160 Vt. 202, 209, 628 A.2d 543 (1993) ("It is the province of the jury to decide on which evidence it will rely in awarding damages. The weight of the evidence and the witnesses' credibility are for the jury, and . . . all conflicts are to be resolved against the excepting party." (quotation omitted)). Here, the jury could well have rejected some or all of the testimony of either or both expert witnesses on the issue of lost business income for July and August 2021. And the excerpt of Mr. Ducey's testimony filed by Maxwell fails to demonstrate that his testimony unequivocably established the value of the purported lost business income that Maxwell seeks.

Moreover, as defense counsel observed during argument on the initial Rule 50 motion, based on the evidence presented, the jury could have reasonably determined that lost business income from that time period resulted from reasons other than the fire. "If [the amount of damages awarded] can be justified upon any reasonable view of the evidence, considered in the light most favorable for the defendant, the ruling must stand." *Harsch Props., Inc. v. Nicholas*, 2007 VT 70, ¶ 21, 182 Vt. 196 (quotation omitted). Accordingly, the Court must DENY the renewed motion for judgment as a matter of law.

<u>Order</u>

Both of Plaintiff's post-judgment motions (Mot. # 24) are DENIED.

Electronically signed on August 12, 2026 at 8:47 AM pursuant to V.R.E.F. 9(d).

Megan J. Shafritz
Superior Court Judge

[4] The written transcript omits the word "reject," but it is clear from the recording.