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APPELLATE COURT 3RD DISTRICT

No. 3-17-0777 Consolidated with 3-18-0009

In the
Appellate Court of Illinois
Third Judicial District

CLIFTON ARMSTEAD,

Plaintiff-Appellant,

v.

NATIONAL FREIGHT, INC., d/b/a, NFI INDUSTRIES INC., and DERRICK ROBERTS,

Defendants-Appellees.

Appeal from the Circuit Court of the Thirteenth Judicial Circuit,
Grundy County, Illinois, No. 2016 L 21.
The Honorable **Lance R. Peterson,** Judge Presiding.

BRIEF OF DEFENDANTS-APPELLEES NFI INTERACTIVE LOGISTICS, LLC and DERRICK ROBERTS

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Oral Argument Requested

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POINTS AND AUTHORITIES

ISSUE PRESENTED

Plaintiff alleged damages for injuries to his knee, low back, and shoulder allegedly resulting from a March 6, 2015, vehicular accident with defendant Derrick Roberts. After the accident, Plaintiff filed a workers' compensation claim in Pennsylvania. That claim was resolved and an Agreement approved by the Pennsylvania workers' compensation judge. That Agreement stated that the only injury sustained was a right knee strain. Here, the Circuit Court entered a partial summary judgment order that Plaintiff's claim is limited to damages for a knee strain. Should the Circuit Court's partial summary judgment order be affirmed?

STATEMENT OF FACTS

On March 6, 2015, Plaintiff was employed by Manfredi Mushroom Co., Inc. C114. On that date, Plaintiff was in a vehicular accident with Derrick Roberts, who was driving a truck for National Freight, Inc. C9.

The Workers' Compensation claim

In November 2015, Plaintiff filed a workers' compensation claim in Pennsylvania before the Pennsylvania Department of Labor & Industry/Workers' Compensation Office of Adjudication. *See* C100-112, 184. The workers' compensation dispute was litigated over the course of a year. C184-270.

In July 2016, an independent medical examination was conducted of Plaintiff by Dr. Fras. C372-379. Dr. Fras submitted a report, which

included his opinion that Mr. Armstead sustained an injury to the right knee including a right knee contusion and strain as a result of his March 6, 2015 accident. C285. Dr. Fras further stated that "Mr. Armstead's ongoing subjective complaints of pain are unrelated to the March 6, 2015, work injury. There is nothing objective on today's evaluation that would preclude him from returning to work in a full and unrestricted capacity." *Id.* Furthermore, Dr. Fras stated that "[r]elative to Mr. Armstead's lower back condition, the information available to me today does not indicate within a reasonable degree of medical certainty any injury to have been sustained by Mr. Armstead relative to the lower back on or around March 6, 2015." *Id.*

Thereafter, a Compromise and Release Agreement by Stipulation was signed by Mr. Armstead on November 9, 2016. C104-112. A decision was rendered after a hearing on November 9, 2016, by Judge Joseph Hakun (the Decision). C102. The Decision adjudicated and approved a Compromise and Release Agreement (the Adjudicated Agreement). *Id.* Under oath, Plaintiff "acknowledged an understanding of its terms." *Id.* Pursuant to the Adjudicated Agreement, Plaintiff was awarded lump sum and periodic payments related to the March 6, 2015 incident. C105. Furthermore, as to Plaintiff, his employer, Manfredi, and the workers compensation insurer, the Adjudicated Agreement "fully resolve[d] all issues relating to Claimant's 03/06/2015 work injury[.]" C108.

The only injury compensated was a "right knee injury." C105. Moreover, the Adjudicated Agreement provides:

> 4. State the precise nature of the injury and whether the disability is total or partial.
>
> Right knee strain. *The parties agree that Claimant did not sustain any other injury or medical condition as a result of his 03/06/2015 work injury.*

C104 (emphasis added).

In the Decision's "Conclusions of Law", Judge Hakun stated:

> the Agreement … is appropriately approved as binding only on the signing Parties, and limited to their respective rights and obligations under the Act. This Decision is entered without adoption or litigated determination on the merits of the matters agreed upon, and is not to alter rights or obligations of any third party not a signatory to the Agreement, including any health insurance company or governmental agency.

C102.[1]

Plaintiff's Illinois Circuit Court claim

Plaintiff filed a complaint against National Freight and Derrick Roberts on May 5, 2016. *Id.* The complaint alleged Roberts was driving a tractor trailer in Minooka, Illinois, that struck Plaintiff's vehicle. C9.

[1] In Plaintiff's Statement of Facts, Plaintiff states "Settlement agreements processed in workers' compensation cases in Illinois do not contain that language." There is no admissible evidence in the record to support this assertion. Plaintiff's citation to attorney oral argument before the Circuit Court is not admissible evidence of fact. Accordingly, this statement of "fact" should be disregarded or stricken. *See* S. Ct. R. 341(h)(6).

Plaintiff alleged that Roberts acted negligently, and that National Freight was liable for the acts of its agent. C10.

During discovery, Plaintiff answered interrogatories and stated that he suffered injuries to his "knee, low back, and shoulder along with other injuries more fully reflected in [his] medical records."[2] C122.

On March 13, 2017, Defendants moved for partial summary judgment, and argued that Plaintiff's action against them was limited to a claimed right knee strain. C82 *et seq*. The motion was fully briefed. C132 (Plaintiff's response); C163 (Defendants' reply).

After a hearing on June 14, 2017, the Circuit Court granted Defendants' motion for partial summary judgment. C288. More specifically, the Circuit Court granted the motion because Plaintiff's workers' compensation claim representations constituted a judicial admission limiting Plaintiff's injury resulting from the May 5, 2016, incident to a knee injury. R 31-32. The Circuit Court ruled:

> [W]hen you read the [judicial admission] cases they look at the circumstances in which the statement was made, if there's any possibility of confusion, uncertainty, statements made might have been by mistake, courts go out of their way

[2] Plaintiff's brief includes as "fact" details regarding the knee injury diagnosis, where treatment occurred, and Plaintiff's argument about back injuries. *See* Pl's Br. at 3-4. These facts are not supported by admissible evidence in the record on appeal and were improperly included in Plaintiff's statement of facts. Those "facts" should be disregarded or stricken. Furthermore, Plaintiff's recitation of dialogue during a hearing on the motion for summary judgment is not "fact" relating to the merits of plaintiff's case that should be considered by this Court. *See* S. Ct. R. 341(h)(6).

> to avoid the drastic result of applying the judicial admission concept. That's clear to me and I actually found myself doing that because it is a drastic measure, but the problem is no matter how hard you try, no matter what you do, I believe the conclusion is inescapable that the words in that sentence that is at issue, and I will quote, the first sentence says, "State the precise nature of the injury and whether the disability is total or partial." The next statement is "Right knee strain. The parties agree that claimant did not sustain any other injury or medical condition as a result of the March 6, 2015 work injury." No matter what I did I could not get my brain to say that that was in any way equivocal. It is a clear, unequivocal statement about a concrete fact that is in the plaintiff's particular knowledge most certainly and there are no circumstances set forth in the pleadings that would cause the Court to conclude there was any confusion or mistake.
>
> This was a very specific statement made in a settlement agreement that was going to be approved by an administrative agency with counsel's advice. It required [Armstead] to actually put his signature on it. It wasn't even a statement that could be mistakenly made like in a deposition where something slips out. This was as contemplative of a statement that you're going to find.
>
> * * *
>
> I can't come to any other conclusion, so I'm going to grant the motion for partial summary judgment that the statement with regard to the injury, the damages, is a judicial admission.

R33-34.

On July 13, 2017, Plaintiff moved to reconsider. C301. Defendants responded on August 22, 2017. C353. And, Plaintiff filed his reply brief on September 13, 2017. C496. The motion was heard by the Circuit Court on September 29, 2017. R 38.

During that hearing, with regard to the judicial admission issue, the Court stated:

> Plaintiff repeatedly refers to the language in that order approving the settlement agreement as unlitigated, an unlitigated state.
>
> I think that's a complete misnomer. Every time I read it I cringed. It means nothing.
>
> It was litigated. It was a fully litigated case where they were battling back and forth over what the facts are, including the fact at issue in this case. And with counsel, he signed that settlement agreement and that was presented to a court for the purpose of approval. Okay?
>
> So this phrase that is throughout plaintiff's brief, I just – I'm just telling you this phrase unlitigated statement – A, I think it's a mischaracterization; and B, I don't think it matters under the law anyway for what that's worth.

R 51.

After hearing argument on September 29, 2017, the motion for reconsideration was then continued until October 18, 2017. R 57. The Circuit Court clarified that there were no changes in the law requiring reconsideration. R 58-59. As to "new evidence", the Circuit Court considered plaintiff's deposition testimony given months before the

Illinois action was filed. R 59. The Circuit Court held that Plaintiff's deposition testimony was not "newly discovered evidence." *Id.* With no change in the law or new evidence to consider, the Circuit Court denied the motion for reconsideration. R 60-61.

STANDARD OF REVIEW

A summary judgment decision is reviewed *de novo*. A motion for summary judgment should be granted when the pleadings, depositions, admissions, and affidavits show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). Plaintiff apparently would like to expand the statute to state "pleadings, depositions, admission, affidavits, *and representations of counsel at hearing*"; however, this construction is inconsistent with the plain reading of the statute.

ARGUMENT

First, it must be noted that Plaintiff has abandoned any appeal of the denial of his motion for reconsideration of the June 14, 2017 summary judgment decision. "According to Rule 341(h)(7), points not argued in the appellant's brief are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 23 quoting Ill. S. Ct. R. 341(h)(7).

Furthermore, in this case, the pleadings, depositions, admissions, and affidavits reveal Plaintiff's judicial admission in the Pennsylvania Workers' Compensation case: Plaintiff's injury incurred during the March 6, 2015 incident was limited to a right knee strain. Thus, the Circuit Court, as a matter of law, correctly determined that Defendants were entitled to partial summary judgment on Plaintiff's damage claim for shoulder and back injuries.

I. The circuit court's partial summary judgment that Plaintiff's claimed injury is limited to a right knee strain should be affirmed.

Judicial admissions are "deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge." *Hansen v. Ruby Constr. Co.*, 155 Ill. App. 3d 475, 480 (1st Dist. 1987). A judicial admission cannot be subsequently contradicted. *Id.* Judicial admissions are binding upon the party who made them thereby "dispensing with proof of a fact claimed to be true, and are used as a substitute for legal evidence at trial." *Meade v. City of Rockford*, 2015 IL App (2d) 140645. Consequently, a party cannot create a genuine issue of material fact by taking a contradictory position to a prior judicial admission. *Hansen*, 155 Ill. App. 3d at 480.

In *Hansen*, the plaintiff testified that the cause of his trip and fall was rubber bumpers near the edge of a loading dock. *Hansen*, 164 Ill. App. 3d at 477. These rubber bumpers prevented hand trucks from rolling off the loading dock. *Id.* at 478. However, after later returning to

the scene, the plaintiff attempted to change his testimony to contend that he tripped over metal plates and not a rubber bumper. *Id.* The Court rejected that effort. *Id.* at 481-82. The Court explained that, during his deposition, the plaintiff had testified that the rubber bumpers were the cause of his accident. *Id.* at 481. The plaintiff's testimony was unequivocal. *Id.* Accordingly, the plaintiff was bound by his deposition testimony. *Id.* at 482.

Acknowledgments in settlement contracts also constitute judicial admissions. *See Miller v. Miller*, 167 Ill. App. 3d 176 (4th Dist. 1988). In *Miller*, a settlement contract encompassed in an Industrial Commission Order, which stated that the settlement was in full payment of injuries, was a judicial admission. *Id.* at 180. On appeal, the Court determined that the employment status statement in the settlement contract "and the fact his injuries arose out of that status" were judicial admissions "determined by his actions in the workers' compensation action." *Id.*

In *Richter v. Village of Oak Brook*, 2011 IL App (2d) 100114, the Court held that a settlement contract approved by the Industrial Commission had the same legal effect as a Commission award. The Order approving the settlement "set the parties' rights and liabilities based upon agreed facts stated in the order, and it thus qualified as a judgment on the merits. That the order rested on the parties' agreement rather than an independent determination of the facts and issues is of no legal significance in analyzing whether it was 'on the merits': a settlement

order entered by the Commission has the same preclusive effect as an award based on the Commission's own fact-finding." *Id.* ¶19.

In this circumstance, the incident occurred on March 6, 2015. C9. Plaintiff then filed a workers' compensation claim in Pennsylvania in November 2015. C100-112. A year later, and as a result of extensive litigation, Plaintiff entered into a Settlement Agreement. *See* C102. That Settlement Agreement was then approved by the Pennsylvania Workers' Compensation judge. *Id.*

> Unequivocally, the approved Agreement provides the following:
>
> 4. State the precise nature of the injury and whether the disability is total or partial.
>
> Right knee strain. *The parties agree that Claimant did not sustain any other injury or medical condition as a result of his 03/06/2015 work injury.*

C104 (emphasis added).

Plaintiff signed the Agreement stating the "precise nature of the injury." C104. The Pennsylvania Workers' Compensation Judge Hakun specifically stated in his Order that the Agreement was explained to Plaintiff and that he acknowledged that he understood its terms. C102. The Agreement was signed by Plaintiff, and reviewed by his attorney. C109. The affirmative statement by Plaintiff in the Agreement that he did not sustain any injury other than a "right knee strain" as a result of the March 6, 2015, incident is a judicial admission.

Plaintiff contests the judicial admission on the mistaken premise that the Settlement Agreement and Judge Hakun's Order were "unlitigated." Pl's Brief at 10. This contention ignores the docket for the Pennsylvania workers compensation dispute, conducted medical examinations, and depositions. C167-68 (listing workers' compensation filings and discovery). The history of the workers' compensation dispute contradicts plaintiff's assertion and plainly exposes the litigated nature of that dispute. It is undisputed that after that workers' compensation litigation, the dispute was settled and the Settlement Agreement was approved by Judge Hakun in his Order. Judge Hakun's Order was a final adjudication of that dispute.

It is well settled in Illinois that a workers' compensation settlement is a final adjudication on the merits of issues in dispute. *Richter*, 2011 IL App (2d) 100114 ¶18; *Stromberg Motor Device Co. v. Industrial Comm'n*, 305 Ill. 619, 622 (1922).[3] Here, it is undisputed that Plaintiff executed the Pennsylvania Settlement Agreement, which was approved by Judge Hakun, and not appealed. That order then became a final adjudication. *See Richter*, 2011 IL App (2d) 10014 ¶24 (holding approved Industrial Commission settlement agreement became final 20 days after execution if neither party sought review).

[3] Similarly, Pennsylvania courts have "consistently held that findings in workers' compensation cases may bar relitigation of identical issues in collateral civil actions, including third party tort actions." *Frederick v. Action Tire Co.*, 744 A. 2d 762 (Pa. Super. Ct. 1999); *see also McConnell v. Delprincipe*, 41 Pa. D. & C. 5th 82 (C.P. 2014).

II. By failing to raise certain arguments in opposition to partial summary judgment on the basis of judicial admission before the circuit court, those arguments are waived or forfeited on appeal.

Plaintiff opposed partial summary judgment due to judicial admission on the sole basis that the knee injury admission was an evidentiary admission rather than a judicial admission because the knee injury admission related to something about which Plaintiff could have been mistaken. *See* C143-45. On appeal, other than a single sentence that the knee injury admission may be an evidentiary admission (*see* Pl's Brief at 9), and a passing reference that statements made in another proceeding can only be evidentiary admissions (*Id.* at 16), Plaintiff has abandoned this evidentiary admission argument. Points not argued in an appellant's brief are forfeited and may not be raised in the reply brief. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018).

Instead, Plaintiff now (improperly) argues that his knee injury admission is not a judicial admission because (1) his statement was not made in a judicial context (Pl's Brief. at 10-12); (2) the Decision limited the effect of his statement (*Id.* at 12-15); (3) his statement was not made in this proceeding (*Id.* at 15-17); (4) his statement was not made under oath (*Id.* at 17-19); and (5) his statement was not deliberate, clear and unequivocal (*Id.* at 19-21). However, these are all arguments that Plaintiff attempted to raise for the first time in his motion to reconsider before the Circuit Court rather than arguments raised in opposition to the

motion for partial summary judgment based on judicial admission. *Compare* C300-17 with C143-45.

Those arguments were improperly raised within the motion for reconsideration and are improperly raised now on appeal. "[A] litigant may not raise a new legal theory for the first time in a motion to reconsider." *Barth v. Kantowski*, 409 Ill. App. 3d 420, 426 (3rd Dist. 2011) citing *Holzer v. Motorola Lighting, Inc.*, 295 Ill. App. 3d 963, 977-78 (1st Dist. 1998) ("it is well-settled that one may not raise a legal theory for the first time in a motion to reconsider"); *see also Continental Cas. Co. v. Security Ins. Co.*, 279 Ill. App. 3d 815, 821 (1st Dist. 1996) (finding decision of trial court correct not to consider new argument raised for the first time in motion for reconsideration because it "could and should have been raised at the hearing on the motion for summary judgment").

Further, because none of Plaintiff's arguments were raised in opposition to partial summary judgment based on judicial admission (*see* C143-45), they are waived on appeal. *See Evanston Ins. Co. v. Riseborough*, 2014 IL 114271, ¶36 ("Arguments raised for the first time in a motion for reconsideration in the circuit court are forfeited on appeal."); *In re Liquidations of Reserve Ins. Co.*, 122 Ill. 2d 555, 568 (1991) (arguments not raised in the trial court are waived on appeal). *See also* Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) ("Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."). Thus, this Court need not address any of the five points

Plaintiff improperly raises on appeal, and this Court should affirm the partial summary judgment order.

III. Even if considered, the improperly raised arguments fail.

A. Plaintiff's statement that his injury was limited to a knee injury was indeed made in a judicial context.

On appeal, Plaintiff contends the statements of his executed and adjudicated Compromise and Release Agreement in the Pennsylvania workers' compensation dispute were not made in a judicial context. *See* Pl's Brief at 10-12. Plaintiff is mistaken.

Plaintiff cites to two Illinois cases. Neither case requires reversal here. First, in *Kandalepas v. Economou*, 269 Ill. App. 3d 245, 252 (1st Dist. 1994), the Court reiterated that, in Illinois, an "agreed order" is a "recordation of the agreement between the parties." *Id.* The *Kandalepas* Court was not evaluating any argument related to judicial admission. Moreover, the *Kandalepas* Court discussed that the agreed order in that case was subject to being cancelled, rescinded, or modified by operation of law or the explicit or implicit agreement of the parties. *Id.* However, Judge Hakun's order is not subject to being cancelled, rescinded, or modified, and the time for appealing his order passed long ago. In short, Plaintiff's reliance upon *Kandalepas* is misguided.

Next, Plaintiff relies upon *Ad-Ex, Inc. v. City of Chicago*, 207 Ill. App. 3d 163, 177 (1st Dist. 1990). In *Ad-Ex*, when considering the issue of appellate jurisdiction upon rehearing, the Court discussed that a consent decree is not a judicial determination of rights. *Id.* The Court further

characterized a consent decree as a recordation of a private agreement of the parties. *Id.* Here, however, neither is there a consent decree at issue nor is the Court addressing appellate jurisdiction. *Ad-Ex*, like *Kandalepas*, is inapplicable. In any event, neither *Ad-Ex* nor *Kandalepas* detract from the holding in *Miller* and *Richter* that a workers' compensation settlement is a final adjudication on the merits of issues in dispute. *Miller*, 167 Ill. App. 3d 180; *Richter*, 2011 IL App (2d) 100114 ¶18.

B. The judicial admission in the Pennsylvania workers' compensation case applies in this dispute.

Plaintiff delves into rhetoric devoid of authority to contend that the effect of Judge Hakun's order is somehow self-limited. *See* Pl's Brief at 12-15. Plaintiff contends that the clear limitation of Plaintiff's claim to a right knee sprain is not applicable to National Freight because Judge Hakun's order states that it does not alter the rights or obligations of a third party. However, this statement does not mean – and Plaintiff provides no supporting authority to suggest – that the adjudicated statements of the workers' compensation matter are not judicial admissions binding *Plaintiff* in any subsequent or related dispute.

Furthermore, Plaintiff tries to sow the seeds of doubt concerning the binding nature of the Adjudicated Agreement by arguing there was disagreement about the amount of compensation, which somehow suggests that the injury was more than a knee strain. *See* Pl's Br. at 13. This strained argument is belied by the plain reading of the Adjudicated Agreement. There is nothing ambiguous or confusing about the provision

"State the precise nature of the injury and whether the disability is total or partial." C104. Similarly, the response is equally plain and obvious: "Right knee strain." *Id.* In addition, the Adjudicated Agreement states: "The parties agree that Clamant did not sustain any other injury or medical condition as a result of his 03/06/2015 work injury." *Id.*

Plaintiff then mischaracterizes the Decision as a contract in an effort to cite contract law providing that contract terms should not be rendered mere surplusage. Pl's Br. at 14. But, the Decision is not a contract, it is an adjudication. Consequently, the cases cited by Plaintiff are inapposite.

The bottom line is that statements in a settlement agreement encompassed in an adjudicative order are judicial admissions. *Miller*, 167 Ill. App. 3d at 180. The Decision language to which Plaintiff objects does not change this law.

C. Illinois law does not require a statement to have been made in the same proceeding for the statement to be deemed a judicial admission.

Notably, Plaintiff cites to nary an Illinois authority to contend that judicial admissions can only be made and enforced in the same proceeding. *See generally* Pl's Br. at 15-17. Instead, Plaintiff principally relies upon Missouri cases. *See id.* This reliance is misplaced.

Plaintiff also cites to the Seventh Circuit Court of Appeals, but Plaintiff finds no safehaven there either. The *Higgins v. Mississippi*, 217 F.3d 951 (7th Cir. 2000), case referenced by Plaintiff cites to *Kohler v.*

Leslie Hindman, Inc., 80 F.3d 1181, 1185 (7th Cir. 1996), which explains that, under federal procedural law, a judicial admission in one dispute is not a judicial admission in another case. *See Kohler*, 80 F.3d at 1185 citing Fed. R. Civ. P. 36(b). This Court is not governed by federal procedural rules or law *Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶79 ("Illinois Courts, not federal courts, are the arbiters of State law."). Moreover, "[f]ederal cases are not binding authority in our state courts." *Ill. State Toll Hwy. Auth. v. Amoco Oil Co.*, 336 Ill. App. 3d 300, 317 (2d Dist. 2003).

Furthermore, in *Miller v. Miller*, the court noted plaintiff's acknowledgements that he was an employee and that the settlement was in full payment of his injuries, in a settlement contract, which was encompassed in the order of the Industrial Commission, constituted a judicial admission. 167 Ill. App. 3d at 180; *see also Holts v. Thyssenkrupp Elevator Corp.*, 2011 Phila. Ct. Com. Pl. LEXIS 235 (Pa. C.P. Aug 4, 2011) (also appearing at C271 of the Record). In *Holts v. Thyssenkrupp Elevator Corp.*, the plaintiff attempted to allege a shoulder injury in a civil suit after making no mention of a shoulder injury in the court approved workers' compensation Compromise and Release Agreement. *Holts*, 2011 Phila. Ct. Com. Pl. LEXIS 235 at *5. The trial judge found that allowing the plaintiff to introduce evidence of a left shoulder/rotator cuff injury in the personal injury matter would undermine the purpose for a workers' compensation review and decision process. *Id.* at *10. Thus, the plaintiff

was bound by the judicially stipulated injuries articulated during the workers' compensation proceeding; injuries which did not include the shoulder injury. *Id.*

D. Plaintiff's representation of understanding the full legal consequences of the Adjudicated Agreement was under oath and certified.

Plaintiff cites to a collateral estoppel case, rather than judicial admission cases, to contend that the Adjudicated Agreement representations are not judicial admissions because those statements were not made under oath. Pl's Br. at 17. Later, Plaintiff contends that whether the statement is made under oath is "a factor" when assessing if a statement is a judicial admission. *Id.* at 19.

Behind Plaintiff's argument is the suggestion that his statements in the Adjudicated Agreement may have been perjuriously given. *See Id.* citing *Herman v. Power Maint. & Constructors, LLC*, 388 Ill. App. 3d 352 (4th Dist. 2009). At the very least, Plaintiff's contention that he perjured himself is an odd position to take.

Amazingly, Plaintiff contends that he had "no reason to believe" that the Adjudicated Agreement statements needed to be accurate. *Id.* at 18. That contention is inconsistent with the terms of the Decision and the Adjudicated Agreement. The Decision plainly provides "under oath the Claimant acknowledged an understanding of its terms. And of its legal significance as related to the Act." C102. In addition, the Adjudicated Agreement includes an extensive "EMPLOYEE'S CERTIFICATION" section.

C109. Within that section, Plaintiff certified that he had "read this entire agreement, or to the best of my knowledge, information and believe (if applicable) this agreement has been read to me, and I understand all the contents of this agreement as well as the full legal significance and consequences of entering into this agreement." *Id.* Furthermore, prior to Plaintiff's signature, the Adjudicated Agreement reads, "DO NOT SIGN THIS DOCUMENT UNLESS YOU UNDERSTAND THE FULL LEGAL SIGNIFICANCE OF THIS AGREEMENT." *Id.* Thereafter, Plaintiff and his counsel signed the Adjudicated Agreement.

Plaintiff's acknowledgement under oath and repeated certifications within the Adjudicated Agreement removed Plaintiff's temptation to commit perjury consistent with the doctrine of judicial admissions. *See Herman*, 388 Ill. App. 3d at 361. Simply put, Plaintiff had no reasonable possibility of being mistaken about his representation that his injury was limited to a "right knee strain." C104.

E. Plaintiff's statement was deliberate, clear, and unequivocal.

To contend that Plaintiff's statement limiting his injury to a "right knee strain" was not unequivocal, Plaintiff cites to his motion to reconsider. *See* Pl's Br. at 20 citing to C337-339 and C341-342. However, as stated, *supra*, Plaintiff has not appealed the denial of his motion to reconsider. Moreover, as Appellant, Plaintiff has waived new issues on appeal not previously raised before the Circuit Court during litigation of

the motion for partial summary judgment. *See Evanston Ins. Co.*, 2014 IL 114271, ¶36; *Barth*, 409 Ill. App. 3d at 426.

Plaintiff cites *Robinson v. Boffa*, 402 Ill. App. 3d 401 (1st Dist. 2010), to contend the Adjudicated Agreement and Decision does not amount to a judicial admission. However, the *Robinson* case is not analogous to this case. In *Robinson*, the decedent had two surgeries to remove a cancerous tumor. The first surgery missed the tumor and removed an unrelated mass. The patient dies after the second surgery. The plaintiff contended on appeal that the defendant doctor had judicially admitted that he could not rule out the second surgery as a cause of decedent's death. *Id.* at 408. The defendant doctor's conflicting statements did not impact admissibility of the statements, and the jury was free to assign the appropriate weight to the conflicting statements. *Id.* Clearly, *Robinson* is not a case involving prior adjudicated settlement agreements. Plaintiff's citation to *Robinson* is unhelpful.

In any event, even considering prior statements concerning injury to his back and neck, those statements were not part of the Adjudicated Agreement and Decision – which was the culmination of that year-long worker's compensation litigation. As detailed in the prior section, Plaintiff's certifications and statements under oath were definitive, unequivocal, and final. It is the statements of the worker's compensation Adjudicated Agreement and Decision that are binding upon Mr. Armstead.

IV. The extent of Plaintiff's injury has already been adjudicated. Plaintiff's attempt to relitigate that issue is precluded by the doctrine of *res judicata*.

This Court can affirm partial summary judgment on any basis supported by the Record. *Barnes v. Lolling*, 2017 IL App (3d) 150157, ¶14. As Defendants argued below, partial summary judgment limiting Plaintiff's damage claim to a knee injury is warranted pursuant to the application of *res judicata*.

Res judiciata includes two distinct theories: (1) claim preclusion, and (2) issue preclusion. *Smith Trust & Sav. Bank v. Young*, 312 Ill. App. 3d 853, 858 (3d Dist. 2000) ("*Young*"). Both theories apply to adjudicatory administrative decisions. *Arvia v. Madigan*, 209 Ill. 2d 520, 534 (2004) citing *Bagnola v. SmithKline Beecham Clinical Labs.*, 333 Ill. App. 3d 711, 717 (1st Dist. 2002).

Issue preclusion, often referred to as collateral estoppel, precludes the relitigation of claims or issues previously decided. *Young*, 312 Ill. App. 3d at 858 citing *Osborne v. Kelly*, 207 Ill. App. 3d 488 (4th Dist. 1991). Collateral estoppel prevents relitigation of an issue decided when 1) the issue decided in the prior adjudication is identical with the one presented in the suit in question; 2) there was a final judgment on the merits in the prior adjudication; and 3) the party against whom estoppel

is asserted was a party or in privity with a party to the prior adjudication. *Gumma v. White*, 216 Ill. 2d 23, 38 (2005).[4]

All elements of collateral estoppel are satisfied here. First, the issue is identical in this case and in Plaintiff's Pennsylvania workers' compensation case: what was the extent of Plaintiff's injuries following the March 6, 2015 motor vehicle accident? That issue was settled and adjudicated by Judge Hakun in the Pennsylvania workers' compensation matter. Issues decided in administrative proceedings or issues decided in an adjudicated settlement are just as binding as issues decided in prior civil suits. *See Osborne*, 207 Ill. App. 3d at 491; *see also Rogers v. Industrial Comm'n*, 213 Ill. App. 3d 837, 841 (3d Dist. 1991) (barring claimant from seeking compensation for shoulder injury after entering settlement agreement for workers' compensation claim for a hand injury arising from the same accident); *Richter v. Vill. of Oak Brook*, 2011 IL App (2d) 100114 ¶24 (barring relitigation of the cause of a plaintiff's injury because "a settlement contract approved by the Commission has the same legal effect as a Commission award"); *Cf. Marquez v. Martorina Family, LLC*, 2016 IL App (1st) 153233 ¶15.

Second, the Pennsylvania workers' compensation Decision was a final adjudication on the merits. When a settlement is approved by the

[4] Notably, it is not necessary for the opposing party to be identical in the two disputes, but only the party against whom estoppel is asserted must be the same or in privity with the party in the prior adjudication. *See Todd v. Katz*, 187 Ill. App. 3d 670, 674 (2d Dist. 1989).

Industrial Commission, it becomes *res judicata* as to matters adjudicated and agreed upon. *Richter*, 2011 IL App (2d) 100114 ¶18. In the Pennsylvania worker's compensation dispute, Plaintiff was represented by counsel and had a full and fair opportunity to litigate the nature and extent of his injuries. After a year of litigation, Plaintiff settled his claims and that settlement was adjudicated. Plaintiff did not appeal. Thus, the Adjudicated Agreement and November 9, 2016 Decision are final.

Third, Plaintiff is the same party in both disputes. Thus, all three elements of collateral estoppel are met. *See Holts*, 2011 Phila. Ct. Com. Pl. LEXIS 235, at *7-10 (collateral estoppel applies to bar plaintiff from including a medical condition not previously identified during the workers' compensation proceedings). And, as a consequence, this Court should affirm the partial summary judgment that Plaintiff only sustained a right knee strain as a result of the March 6, 2015 motor vehicle accident. Plaintiff cannot relitigate the extent of his injuries.

CONCLUSION

National Freight and Derrick Roberts ask this Court to affirm partial summary judgment entered by the trial court finding that Plaintiff's damages claim is limited to a right knee strain. Affirmance of the partial summary judgment is warranted because the extent of the injury suffered was judicially admitted by Plaintiff in the Pennsylvania workers' compensation dispute, re-litigation of the issue of the injury resulting from the motor vehicle accident on March 6, 2015, is collaterally estopped, or both.

Respectfully submitted

NATIONAL FREIGHT AND DERRICK ROBERTS

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No. 3-17-0777 Consolidated with 3-18-0009

In the
Appellate Court of Illinois
Third Judicial District

CLIFTON ARMSTEAD,

Plaintiff-Appellant,

v.

NATIONAL FREIGHT, INC., d/b/a, NFI INDUSTRIES INC., and DERRICK ROBERTS,

Defendants-Appellees.

SUPREME COURT RULE 341(c) CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 341(c), I certify that this Appellee Brief conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this Appellee Brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 24 pages.

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Defendants-Appellees.

NOTICE OF FILING and PROOF OF SERVICE

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The undersigned, being first duly sworn, deposes and says that he filed electronically with the Clerk of the Appellate Court, Third Judicial District, Appellees ***NFI Interactive Logistics, LLC and Derrick Roberts'*** Appellee Brief. Digital copies were served by email upon counsel of record on the 7th day of June, 2018.

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PROOF OF SERVICE

The undersigned, a non-attorney, on oath states she caused to be served the attached pleadings and notice upon the attorney(s) listed below, via electronic mail to all counsel of record, on June 7, 2018, before 5:00 p.m.

/s/ Bridget Jarecki
[x] Under penalties as provided by law pursuant to Section 5/1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109, I certify that the states set forth herein are true and correct.