

NO. 126730

In the
Supreme Court of Illinois

CLIFTON ARMSTEAD,

Plaintiff-Appellant

v.

NATIONAL FRIEGHT, INC. d/b/a FIY INDUSTRIES, INC. et al.,

Defendants-Appellees

On Appeal from the Illinois Appellate Court, Third District
Case Nos. 3-17-0777 & 3-18-0009

There Heard on Appeal from the Circuit Court of the Thirteenth Judicial Circuit
Grundy County, Illinois Case No. 2016 L 21.
Honorable Lance Peterson, Judge Presiding.

**BRIEF OF AMICUS CURIAE
WORKERS' COMPENSATION LAWYERS ASSOCIATION
IN SUPPORT OF CLIFTON ARMSTEAD**

Vitas J. Mockaitis
Costa & Ivone
311 N. Aberdeen, Suite 100B
Chicago, IL 60607
(708) 568-0656
vmockaitis@costaivone.com

Michelle L. LaFayette
Ganan & Shapiro, P.C.
120 N. LaSalle Street, Suite 1750
Chicago, IL 60602
(312) 822-0040
miafayette@gananlaw.com

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INTERESTS OF AMICUS CURIAE

The Illinois Workers' Compensation Lawyer's Association (WCLA) submits this brief *amicus curiae*, in support the Plaintiff-Appellant, Clifton Armstead. The WCLA is a bipartisan organization established to (a) promote fellowship among members of the Bar engaged in the trial of workers' compensation matters; (b) promote, foster and sponsor legislation relating to workers' compensation and its administration; (c) aid, assist and cooperate with judicial tribunals and administrative bodies in matters relating to the administration of workers' compensation laws; and (d) improve the quality of service to general public for workers' compensation legal services. Members of the organization represent injured workers or employers in workers' compensation cases. The over 700 members of the WCLA are uniquely qualified to understand and comment on the functions of the Illinois Workers' Compensation Commission, including how settlement agreements are negotiated and executed by parties to a workers' compensation matter.

ARGUMENT

The purpose of the Illinois Workers' Compensation Act (the "Act") is to provide employees with prompt, sure and definite compensation, together with a quick and efficient remedy, for injuries or death suffered by such employee in the course of their employment. *O'Brien v. Rautenbush*, 10 Ill.2d 167 (1957). The Act took effect in 1912 for this purpose and has withstood multiple challenges over the last 109 years. The Act was enacted to replace traditional personal injury litigation in an attempt to remove risk for both the employee and the employer. An employee need not prove the employer was negligent, but instead must demonstrate the accidental injury arose out of and occurred in the course and scope of the employment.

It is important to acknowledge the historical background and the nature of practice at the Illinois Workers Compensation Commission (the "Commission"). The practice has historically avoided and cautioned against the use of settlement agreement language in a collateral fashion. Even more significant is the system has historically discouraged employees from vigorously litigating their claims, while encouraging a prompt and efficient process of settlement.

The Commission processes tens of thousands of settlements annually, utilizing a limited number of arbitrators and commissioners functioning as hearing officers. It is common knowledge that well over 80% of the claims filed are resolved through settlement. In 2019, 37,707 new claims were filed, 30,797 settlements were approved by the Commission and 1,815 claims were tried. *See*, p. 6-7 of *FY 2019 Annual Report from the Illinois Workers Compensation Commission*. Significantly, the terms of settlement agreements are drafted by lawyers and non-lawyers. Settlement agreements are signed by

non-attorneys without attorney review on behalf of the party in many instances, including by *pro se* employees, who settle their claims without attorney representation, and insurance claims adjusters. A broad application of the doctrine of collateral estoppel, as was applied by the Appellate Court in this case, risks upending the day-to-day practice before the Commission, clogging the arbitration dockets at a time when it is already difficult for meritorious cases to be heard and fundamentally alters how settlement agreements are negotiated and executed by the parties.

Collateral estoppel is an equitable doctrine to be used in very limited circumstances. Even though collateral estoppel purportedly reduces litigation by preventing a party from rearguing an issue lost in earlier litigation, courts must carefully apply this doctrine to avoid unfair results. Fairness concerns are particularly heightened in the *Armstead* case, where National Freight, who was not a party in the earlier litigation, sought to affirmatively assert collateral estoppel.

This Court outlined the minimum threshold requirements for the application of collateral estoppel. Under this test, the doctrine can be applied when: (1) the issue decided in the prior adjudication is identical to 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. Illinois State Chamber of Com. v. Pollution Control Bd., 78 Ill. 2d 1, 7 (1979). In particular, the second threshold requirement was not met in the *Armstead* case as the language in the Pennsylvania settlement agreement clearly stated the following:

“This Decision was entered into without adoption or litigated determination on the merits of the matters agreed upon, and is not to alter the rights or obligations of any third party not a signatory to the Agreement. C102 (emphasis added).”

The Pennsylvania settlement agreement clearly stated the agreement was not intended to be a judgment on the merits of the case. Despite the agreement's language, the Appellate Court improperly applied the doctrine of collateral estoppel to limit damages to a right knee strain in the subsequent tort claim against National Freight. Neither party to the Pennsylvania settlement could have anticipated such an unjust result. If collateral estoppel is truly an equitable tool to avoid unnecessary re-litigation of particular issues, it should only be applied after a particular issue is fully litigated by the parties rather than compromised to effectuate the purpose of a workers' compensation statute for a swift remedy and prompt access to benefits for an injured employee.

The Pennsylvania settlement agreement specifically stated it did not alter the obligations of a third party who was not a party to the agreement, namely National Freight. The Appellate Court ignored the plain language of the agreement and went so far as to penalize Armstead and Manfredi Mushroom Company, the employer, by limiting the potential recovery in the third party suit based solely on how the injuries were identified on the agreement and without delving into the merits of the claim. Even though National Freight's obligations were not altered according to the language of the agreement, the Appellate Court altered their obligations and effectively rewarded National Freight by finding the nature of Armstead's injuries had been litigated already due to language in the Pennsylvania settlement agreement. This yields an inequitable result, harming both Armstead and Manfredi Mushroom Company.

There was a compromise regarding the issue of permanency when Armstead and Manfredi Mushroom entered into the settlement agreement and resolved the workers' compensation claim efficiently and without litigation. Compromises were reached by the

parties on all issues, including the injuries sustained and the extent of the injuries. Such compromises are encouraged by the processes and procedures in place for resolving workers' compensation claims. Manfredi Mushroom preserved its rights to subrogation in full, waived no portion of its lien and in doing so prevented Armstead from making a double recovery for his injuries. (A-12). Armstead then logically filed suit against the party actually responsible for all of his injuries, National Freight.

The resulting litigation was not an example of Armstead trying to take advantage of the court system to re-litigate issues already decided. Armstead was actually litigating the issue for the first time; thus, collateral estoppel cannot be applied. In fact, there is no need to apply the doctrine of collateral estoppel in this case as there were already safeguards in place to prevent Armstead from obtaining a double recovery when he filed his tort claim in Illinois. Any recovery would be subject to Manfredi Mushroom's lien. It makes no sense to apply collateral estoppel to references made in settlement contracts.

Section 5(b) of the Act gives rights to both the employee and the employer. The Act gives the employee the right to initiate legal proceedings against a person or entity, other than the employer, who caused the injury. 820 Ill. Comp. Stat. Ann. 305/5(b). The employer, in turn, is given the right to reimbursement with some limitation as to the amount to recover monies it paid for the employee's injuries. Id. The employers' lien is absolute and is to be protected by the courts, unless expressly waived by the employer. Gallagher v. Lenart, 226 Ill. 2d 208 (2007). Both employees and employers will be hurt by the Appellate Court's decision and the application of the doctrine of collateral estoppel in this case. If the Court's decision stands, both employees and employers would have no incentive to settle the workers' compensation claim and would be forced to hearing on the

merits whenever a third-party was or potentially was at fault for the injury. With a limited number of hearing officers at the Commission, the result will be additional delays in cases proceeding to hearing and injured workers being left without swift access to benefits.

Collateral estoppel must be grounded in fairness and equity and only applied in limited cases. In *Armstead*, the Appellate Court's application of collateral estoppel in favor of National Freight is contrary to the intent of collateral estoppel, resulting in an unjustifiable outcome. National Freight is allegedly responsible for Armstead's injuries and not a party to the original Pennsylvania settlement agreement. Therefore, justice is not accomplished by applying the equitable doctrine of collateral estoppel to benefit National Freight in this situation. Instead, if National Freight can stand behind the doctrine of collateral estoppel, it can avoid a full account of the liability its negligence caused and the outcome frustrates the purposes of Section 5(b) to make the employee whole and reimburse the employer for benefits paid due to the negligence and actions of a third-party. Employers would be hesitant to make immediate payments for injuries, body parts and conditions it might later have reason to dispute. This would result in a delay in the payment of benefits under the Act because the parties are too concerned with how their admissions, objections and waivers might be interpreted and used against them in the anticipated civil litigation.

When deciding whether collateral estoppel applies in this instance, the Court should keep in mind not only the purpose for the Act, but also the processes under which settlements are contemplated, negotiated and reached. While the Commission created a

settlement contract from¹ and requires its use by the parties and counsel, if counsel is involved, the terms and how the forms are completed are not standardized. The two page form contains identification information on the first page such as the caption of the case, case number, parties, parties' addresses, accident date(s), part(s) of body injured, temporary compensation benefits paid, medical benefits paid, return to work status or reason for no return to work and prior award information, if any. The Illinois settlement form, similar to the Pennsylvania contract involved in this case, includes a requirement the parties list the "nature of the injury." *Id.* In practice, though, the parties can be as vague as may be needed in a particular case or as specific as might be needed for the case. The second page contains the terms of settlement, listing the rights waived by the parties, signature lines and space for the Commission to approve the agreement. *Id.*

Before a settlement agreement is approved by the Commission, neither the Act nor Commission rules require a hearing take place, unless specifically requested by a party. *See*, Ill. Admin. Code tit. 50, § 9070.10 (d). A hearing on the record before approval of a settlement agreement is very unusual and happens infrequently. Written findings of fact and conclusions of law based on the merit of the case are not part of the settlement process. Even when a hearing precedes approval of the settlement, such findings and conclusions are not made in a written decision or on the record. Instead, an arbitrator or a commissioner has authority to summarily approve or reject the contract. *Id.* Inevitably, the parties use boilerplate language in the contract, but without any standardization of language.

¹ See, <http://www.iwcc.il.gov/forms.htm> for the "Illinois Workers' Compensation Commission Settlement Contract Lump Sum Petition and Order."

This Court in *Gallagher* referenced two workers' compensation contracts with similar boilerplate language when trying to determine whether an employer's 5(b) lien can be implicitly waived:

Compare:

"[Employer] agrees to pay and [plaintiff] agrees to accept \$ 16,634.25 in a lump sum in full and final settlement of all claims for compensation, medical, hospital and other expenses, past, present or future, arising out of the accident described and under the terms of the [Act]. *** Review under section 19(h) and all rights under Sections 4, 8, 16, and 19 of the Act are expressly waived by the parties hereto" Gallagher, 226 Ill. 2d 208

With:

"Respondent [Rail Terminal] to pay the petitioner [Gallagher] \$ 150,000 in full and final settlement of all claims under the Workers 'Compensation Act for injuries allegedly incurred on or about August 10, 2001 and any and all results, developments or sequale [sic], past, present, or future resulting from this accident." Gallagher, 226 Ill. 2d 208.

As is evident from the examples, the employer and employee involved in a workers' compensation claim have no active interest, or frankly any need to litigate a claim over specific terms of a contract. Under the "terms of settlement" section, the parties delineate the amount of the settlement, the description of liability attributable to the settlement and the provisions of the Act waived. The arbitrators and commissioners generally do not adjudicate or render a judgment on the terms and only approve or reject the agreement. Ill. Admin. Code tit. 50, § 9070.40 (a).

Settlements in workers' compensation cases intentionally include terms intended to minimize the parties' obligations to certain third-parties, including short or long term disability carriers, group health carriers, and Medicare and Medicaid programs. All is done to promote the primary purpose of the Act and to promote prompt and efficient resolution

of the cases. In many instances, there is no acknowledgment or concession by the employer of compensability and the settlement agreed to is highly disputed.

Application of collateral estoppel regarding the language or terms in a lump-sum settlement contract impinges detrimentally on the protections of Section 5(b). 820 Ill. Comp. Stat. Ann. 305/5(b). As this Court affirmed in *Gallagher* “section 5(b) serves the important purpose of allowing ‘both the employer and the employee an opportunity to reach the true offender while preventing the employee from obtaining a double recovery.’” *Gallagher*, 226 Ill. 2d 208. A waiver of the 5(b) lien must be explicit and cannot be implied. The current case deals with the rights of the employee and employer against a third-party tortfeasor, and it therefore reasonably follows a limitation as to the right of recovery against the third-party cannot be implied or negated based on equitable doctrines. Without the ability of the parties to enter into highly disputed settlements without adversely affect the employee’s rights against a third-party tortfeasor, parties to workers’ compensation cases would be forced to hearing, circumventing the purpose of the Act and creating a backlog for hearings at the Commission.

Applying collateral estoppel based upon language in a compromised settlement agreement entered into under the provisions of the Act renounces the protections and rights of both employer and employee while the true offender avoids liability by an inadvertent application of the doctrine. Whether a third-party case is contemplated or not by the injured employee, applying collateral estoppel to boilerplate terms will require the employer and employee to engage in linguistic dexterity to avoid an unintended result. Often, the parties will avoid such semantics all together and litigate an otherwise compromised claim defeating the purpose of the Act to encourage settlement and prompt administration of the

Act. The legislature pronounced this intent by inserting in the Act “(t)he process and procedure before the Commission shall be as simple and summary as reasonably may be.”

820 Ill. Comp. Stat. Ann. 305/16.

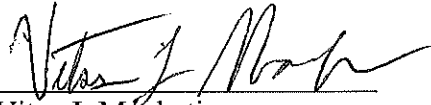
Taking into account the number of settlement agreements being processed through the Commission in any given year, entries on compromised settlement agreements should not be given preclusive effect. One of the accepted safeguards which protects against the unfair application of collateral estoppel is the incentive to vigorously litigate. See, Talarico v. Dunlap, 177 Ill. 2d 185 (1997); Herzog v. Lexington Twp., 167 Ill. 2d 288, 296 (1995) (inadequacy of the forum can also result in unfairness). When examining how the Commission has historically resolved the vast majority of claims filed, it becomes obvious the system results in litigation primarily for those matters which have disputed issues of fact or law. The incentive to resolve cases by a prompt and efficient settlement process is beneficial to both the injured worker and the employer. The fear of possible detrimental consequences resulting from the application of the collateral estoppel doctrine to the language and terms of settlement contracts, which have historically been immune from estoppel issues, would now result in the parties having no choice but to litigate their cases in order to protect their 5(b) interests.

CONCLUSION

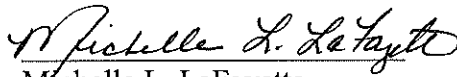
On behalf of its member, attorneys practicing in the area of workers' compensation law daily, the WCLA urges the Court to reverse the decision of the Appellate Court and not apply the doctrine of collateral estoppel to terms and language negotiated on a disputed basis. A decision to the contrary adverts the purpose of the Act, will result in increased litigation and delays at the Commission and will result in a delay in the payment of benefits to injured employees. A decision to the contrary also enables the party at-fault for the injury to avoid the full extent of its liability and leaves not only the employee, but also the employer, without a remedy under Section 5(b) of the Act.

Respectfully Submitted,

ON BEHALF OF THE WORKERS' COMPENSATION
LAWYERS ASSOCIATION.



Vitas J. Mockaitis
(President of the WCLA and Petitioner's Attorney)
Costa & Ivone
311 N. Aberdeen, Suite 100B
Chicago, IL 60607
(708) 568-0656
vmockaitis@costaivone.com



Michelle L. LaFayette
(Vice-President of the WCLA and Respondent's Attorney)
Ganan & Shapiro, P.C.
120 N. LaSalle Street, Suite 1750
Chicago, IL 60602
(312) 822-0040
mlafayette@gananlaw.com

CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding pages or words contained in the Rule 341(c) cover, the Rule 341(h)(1) table of contents and the 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 Rules 342(a) is 11 pages.

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By: Michelle L. LaFayette

Michelle L. LaFayette
Ganan & Shapiro, P.C.
120 N. LaSalle Street, Suite 1750
Chicago, IL 60602
(312) 822-0040
mlafayette@gananlaw.com