No. 126730

In the Supreme Court of Illinois

CLIFTON ARMSTEAD,

Plaintiff-Appellant,

v.

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

Defendants-Appellees.

Appeal from the Illinois Appellate Court,
Third District Case Nos. 3-17-0777 consolidated with 3-18-0009.
There heard on 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 AND APPENDIX OF DEFENDANTS-APPELLEES

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Oral Argument Requested

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Introduction

Plaintiff Clifton Armstead was parked in his truck cab in Illinois in March 2015, when he was rear-ended by a NFI Interactive Logistics LLC truck driven by Derrick Roberts. Armstead filed a workers' compensation claim in Pennsylvania in November 2015, against his employer Manfredi Mushroom. Armstead pleaded injury to his knee, shoulder, and back.

Over the course of a year, he litigated his workers' compensation claim. In July 2016, an independent medical examiner concluded that only Armstead's knee injury was caused by the vehicle accident. In November 2016, the Pennsylvania workers' compensation claim was resolved in a Compromise and Release Agreement (C&R) and adjudicated in a final Decision by the Pennsylvania workers' compensation judge.

The C&R stated – and Armstead confirmed under oath – that the only injury sustained was a right knee strain. In his Decision, the workers' compensation judge found that Armstead understood the full legal significance of the C&R.

After filing his Pennsylvania workers' compensation claim, Armstead filed suit in Grundy County, Illinois, against National Freight, Inc., d/b/a NFI Industries, Inc. (National Freight) and Derrick Roberts. In 2017, the circuit court granted partial summary judgment to Defendants, which barred Armstead from alleging an injury beyond a right knee strain.

After filing his notice of appeal, Armstead voluntarily dismissed his case before the circuit court. He never re-filed. The Appellate Court affirmed partial summary judgment for Defendants holding that Armstead was collaterally estopped from alleging an injury beyond a right knee strain.

The issue of mootness of this appeal is raised on the pleadings.

Issues Presented for Review

This appeal raises the following issues for this Court's consideration:

1. After the circuit court granted partial summary judgment to Defendants, Armstead voluntarily dismissed his case pending before the circuit court. He never refiled pursuant to 735 ILCS 5/13-217. Is Armstead's appeal moot?
2. Armstead affirmatively stated under oath in a Pennsylvania workers' compensation Compromise & Release Agreement that his injury was limited to a right knee strain. That C&R agreement was approved after a hearing and adjudicated in a Decision by Pennsylvania workers' compensation Judge Joseph Hakun. If Armstead's appeal is not moot, is Armstead collaterally estopped from alleging an injury beyond a right knee strain?
3. Alternatively, if collateral estoppel does not operate to bar Armstead from alleging an injury beyond a right knee strain, should partial summary judgment be affirmed on the basis of judicial estoppel?

Statement of Jurisdiction

On November 14, 2017, Armstead timely filed a notice of appeal pursuant to Illinois Supreme Court Rule 304(a) of the circuit court's partial summary judgment decision in Defendants' favor. C512.

On December 7, 2017, the circuit court granted Armstead's motion to voluntarily dismiss his case. C522. Armstead never refiled his lawsuit.

On January 3, 2018, Armstead filed a second notice of appeal (C523), and the two appeals were consolidated.

The Appellate Court issued a ruling on January 17, 2019. Defendants timely petitioned for rehearing. On November 20, 2020, the Appellate Court issued an opinion affirming partial summary judgment for Defendants.

Plaintiff then timely petitioned this Court for leave to appeal pursuant to Illinois Supreme Court Rule 315.

Because Armstead never refiled his voluntarily dismissed lawsuit, Defendants moved to dismiss this appeal on mootness grounds. See Appendix at A1. Armstead objected (Appendix at A18), and Defendants replied (Appendix at A27). This Court took that motion with the case (Appendix at A33). Because this appeal is moot, there is no jurisdiction. *In re Marriage of Eckersall*, 2015 IL 117922, ¶ 10.

Statute Involved

735 ILCS 5/13-217 (emphasis added) of the Code provides as follows:

> **In** . . . **actions** . . . **where** the time for commencing an action is limited, if judgment is entered for the plaintiff but reversed on

> appeal, or if there is a verdict in favor of the plaintiff and, upon a motion in arrest of judgment, the judgment is entered against the plaintiff, **or the action is voluntarily dismissed by the plaintiff**, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue, then, whether or not the time limitation for bringing such action expires during the pendency of such action, **the plaintiff** . . . **may commence a new action within one year or within the remaining period of limitation**, whichever is greater, after such judgment is reversed or entered against the plaintiff, or **after the action is voluntarily dismissed by the plaintiff**, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue.

Statement of Facts

On March 6, 2015, 49-year-old Clifton Armstead of Newark, Delaware, was employed by Manfredi Mushroom Co., Inc. C114, C121. On that date, Armstead was in a vehicular accident in Minooka, Illinois, with Derrick Roberts, who was driving a truck for National Freight. C9.

The Pennsylvania Workers' Compensation Claim

In November 2015, Armstead 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 (Pennsylvania workers' compensation case file documents).

During the litigation of the workers' compensation dispute, Manfredi Mushroom petitioned for a physical examination or expert interview. C215. Armstead failed to appear for the physical examination or expert review in January 2016 and March 2016. *Id.*; C262, C264. He did appear for his appointment in April 2016. C266.

On May 16, 2016, Armstead gave deposition testimony. C336. He explained that on the day of the accident, he was parked behind a Trader Joe's. C337. He was moving from the sleeper compartment to the driver's seat when his truck was hit from behind. *Id.* He testified that he injured his back, knee, and shoulder. *Id.*

Mediation was set and then cancelled in June 2016. C232. In July 2016, an independent medical examination was conducted of Armstead by Dr. Christian Fras at The Institute for Spinal Surgery and Research. C372-379. Dr. Fras submitted a report, which included his opinion that Armstead sustained an injury to the right knee including a right knee contusion and strain as a result of his March 6, 2015, accident. C372.

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.* In addition, 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.*

In August 2016, the Pennsylvania workers' compensation dispute was again scheduled for mediation. C236. On August 31, 2016, Manfredi Mushroom petitioned to terminate workers' compensation benefits due to Armstead's full recovery as of July 6, 2016. C239. A notice of deposition was then issued to take Armstead's deposition on September 15, 2016. C270.

On September 29, 2016, a notice of hearing change was issued setting a hearing for "Compromise and Release." C255. Armstead and Manfredi Mushroom reached a Compromise and Release Agreement by Stipulation on November 9, 2016. C104-112. A Decision was rendered after a hearing on November 9, 2016, by Judge Joseph Hakun (the Decision). C102-03. The Decision, approving the C&R, was an "ADJUDICATION UNDER SECTION 449" of the Pennsylvania Workers' Compensation Act. C102. Under oath, Armstead "acknowledged an understanding of [the C&R's] terms." C102.

Pursuant to the Decision approving and adjudicating the C&R, Armstead was awarded $110,000 in total compensation. C105.[1] Furthermore, as to Armstead, his employer Manfredi Mushroom, and the workers

[1] Of the $110,000 in total compensation, $22,279.80 was paid to his attorneys. C106-C107. Litigation costs were paid by Manfredi Mushroom or its insurer. C107.

compensation insurer, the adjudicated C&R "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. The C&R provides with particularity:

> 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.

Armstead certified that he had read the "entire agreement," that he understood "all the contents" of the C&R, and that he understood "the full legal significance of entering" the C&R. C109. Armstead certified that his attorney "explained to [him] the content of this agreement and its effect upon [his] rights." *Id.* Prior to Armstead's signature on the C&R, the agreement reads, "DO NOT SIGN THIS DOCUMENT UNLESS YOU UNDERSTAND

THE FULL LEGAL SIGNIFICANCE OF THIS AGREEMENT." *Id.* Following this admonition, Armstead and his counsel signed the agreement on November 9, 2016, (C109) which Judge Hakun approved after a hearing (C103).

Armstead's Illinois Circuit Court Claim

Armstead filed a complaint against National Freight and Derrick Roberts on May 5, 2016, in Grundy County. C9. The complaint alleged Roberts was driving a tractor trailer in Minooka, Illinois, that struck Armstead's vehicle. C9. Armstead alleged that Roberts acted negligently, and that National Freight was liable for the acts of its agent. C10.

During discovery, Armstead 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." C122.

On March 13, 2017, Defendants moved for partial summary judgment, and argued that Armstead's action against them was limited to a claimed right knee strain. C82 *et seq.* After a hearing on June 14, 2017, the circuit court granted Defendants' motion for partial summary judgment on the basis that 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. C288; R 31-32. The circuit court held in part:

> 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.

R33-34.

Armstead moved to reconsider. C301. The motion was heard by the circuit court on September 29, 2017. R 38. In response to Armstead's contention that nothing was litigated in the Pennsylvania workers' compensation dispute, the circuit 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 [that argument] 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?

R51.

Subsequently the circuit court entered a written order denying the motion for reconsideration of partial summary judgment on October 18, 2017. C511. The order included Rule 304(a) language. C511. On November 14, 2017, Armstead filed a notice of appeal of the October 18, 2017, order. C512.

About two weeks later on November 29, 2017, Armstead moved to voluntarily dismiss his lawsuit pending before the circuit court in Grundy

County. C517. That motion was granted on December 7, 2017. C522. Armstead then filed a second notice of appeal on January 3, 2018. C523. Subsequently, the Appellate Court consolidated the two appeals.

The Appellate Court's Decision

On January 17, 2019, the Third District Appellate Court issued an order reversing partial summary judgment because it found that Armstead had not judicially admitted that his injury was limited to a right knee strain in the Pennsylvania workers' compensation dispute.

Defendants petitioned for rehearing because the Appellate Court did not consider certain arguments including whether Armstead was collaterally estopped from alleging an injury beyond a right knee injury. See Defs' Pet. for Reh'g (also filed with this Court). The Appellate Court granted the petition for rehearing and ordered full briefing of the petition.

On November 20, 2020, the Appellate Court issued its opinion affirming partial summary judgment for Defendants because Armstead was collaterally estopped from alleging an injury beyond a right knee strain. *Armstead v. National Freight*, 2020 IL App (3d) 170777, ¶ 21.

The Appellate Court reviewed the three elements of collateral estoppel including (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. *Id.* at ¶ 23.

The Appellate Court observed that there was no dispute that the first element of collateral estoppel was met. *Id.* at ¶ 24.

The second element of collateral estoppel was satisfied, too. *Id.* at ¶ 25. In particular, the Appellate Court found that the Pennsylvania C&R "set the parties' rights and liabilities based upon the agreed facts stated" in the C&R. *Id.* Put another way, the Decision "qualified as a judgment on the merits." *Id.* The court noted that, under Pennsylvania law, a Decision by the workers' compensation judge adjudicating a C&R is a final adjudication of all matters in dispute. *Id.* at ¶ 25, fn. 1. The court further analogized that in Illinois a settlement entered by the Workers' Compensation Commission is a final adjudication of all matters in dispute. *Id.* at ¶ 25.

The Appellate Court rejected as "meritless" Armstead's contention that nothing was litigated in the Pennsylvania workers' compensation dispute. *Id.* at ¶¶ 26-27, 29. The Appellate Court explained that Armstead had "both the incentive and opportunity to litigate the full extent of his injuries in the Pennsylvania workers' compensation proceedings" and the approved C&R was "an adjudication on the merits." *Id.* at ¶¶ 28, 30.

The Appellate Court also rejected Armstead's argument that Defendants could not use the C&R language to bar Armstead's recovery in the Illinois tort action. *Id.* at ¶ 30. The court held that the C&R did not alter

Defendants' rights, thus, Defendants were free to raise the prior adjudication as a bar to re-litigation of the scope of Armstead's injuries. *Id.*

Next, the Appellate Court found that the third element of collateral estoppel – identity of parties – was satisfied. *Id.* at ¶ 31. Unequivocally, Armstead was the plaintiff in both the Pennsylvania workers' compensation dispute and this Illinois tort action, and that is all that is required to apply collateral estoppel against Armstead. *Id.*

Lastly, the Appellate Court rejected Armstead's contention that applying collateral estoppel would be unfair. *Id.* at ¶ 32. In other words, the Pennsylvania workers' compensation Decision was neither inadequate nor did Armstead lack a full and fair opportunity to litigate the issue of the extent of his injuries. *Id.* at ¶¶ 32-33.

Summary of Argument

As an initial matter, this appeal is moot. Even if resolution of the issues presented by Armstead might possibly guide future litigation, this appeal should go no further. See *In re Marriage of Eckersall*, 2015 IL 117922, ¶ 9. Ultimately, Armstead seeks an advisory opinion, which this Court does not render. See *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2016 IL 118129, ¶ 10.

After partial summary judgment was granted to Defendants, Armstead filed a notice of appeal in November 2017. Two weeks later, instead of continuing with that litigation, Armstead moved to voluntarily dismissed the

lawsuit pending in Grundy County. The voluntary dismissal was entered on December 7, 2017. As a result, Armstead had one year to refile his lawsuit according to the savings provisions of section 13-217 of the Code. 735 ILCS 5/13-217. He never refiled. Because Armstead did not refile his lawsuit pursuant to 735 ILCS 5/13-217 within one year of the December 7, 2017, voluntary dismissal order, Armstead lacks the ability to pursue any claim against Defendants related to the March 6, 2015, accident.

This appeal did not toll the time for refiling according to section 13-217. See *Wade v. Byles*, 295 Ill. App. 3d 545, 547-48 (1st Dist. 1998) (explaining that the one-year time to re-file pursuant to section 13-217 begins with the date of dismissal of the cause from the trial court and that one-year refiling window of time is not tolled by the filing of an appeal). Consequently, this appeal is moot because even if partial summary judgment were reversed by this Court, there would be no viable lawsuit to remand this appeal. *In re Marriage of Eckersall*, 2015 IL 117922, ¶ 9 (appeal dismissed as moot where intervening events made it impossible for the reviewing court to grant plaintiff effectual relief).

If this Court does not dismiss the appeal as moot, partial summary judgment should be affirmed. Armstead cannot relitigate the extent of his injuries in Illinois after conceding under oath in an adjudicated Pennsylvania workers' compensation Decision that his injuries were limited to a right knee strain. This Court frowns on parties relitigating issues previously

adjudicated. And rightfully so. Collateral estoppel serves to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *United States v. Mendoza*, 464 U.S. 154, 158 (1984) quoting *Allen v. McCurry,* 449 U.S. 90, 94 (1980).

This Court has decided that collateral estoppel, or *res judicata* issue preclusion, applies to adjudicatory administrative decisions. *Arvia v. Madigan*, 209 Ill. 2d 520, 534 (2004) citing *Bagnola v. SmithKline Beecham Clinical Laboratories,* 333 Ill. App. 3d 711, 717 (1st Dist. 2002). There is no sound reason to divert from this authority. All three elements of collateral estoppel are satisfied in this dispute and collateral estoppel should be applied because the issue of the extent of Armstead's injury was decided by the Pennsylvania workers' compensation judge on November 9, 2016.

Armstead and his amici complain about perceived wider impacts of this case as to Illinois workers' compensation disputes. But this case is about a Pennsylvania workers' compensation Compromise & Release adjudicated after a hearing in a Decision by a Pennsylvania workers' compensation judge. The Decision was a final adjudication that Armstead's injuries were limited to a right knee strain. Thus, Armstead is collaterally estopped from pursuing back and shoulder injuries in Illinois. Any other conclusion would unconstitutionally disrespect the Pennsylvania workers' compensation process and final Decision.

The Appellate Court unanimously found that all three requirements of collateral estoppel were met. Application of collateral estoppel promoted fairness and judicial economy. See *Kessinger v. Grefco, Inc.*, 173 Ill. 2d 447, 460 (1996). This Court should affirm.

Alternatively, if this Court does not apply collateral estoppel, it should affirm partial summary judgment for Defendants based upon judicial estoppel to protect the integrity of the judicial process. See *Seymour v. Collins*, 2015 IL 118432, ¶ 36.

Argument

I. This Appeal is Moot and Should Be Dismissed.

Defendants filed a motion to dismiss this appeal on May 6, 2021. See Appendix at A1. Plaintiff responded (Appendix at A18) and then, with leave of Court, Defendants filed a reply (Appendix at A27). The Court issued an order taking the motion with the case. See Appendix at A33. For the reasons stated in Defendants' motion and reply, and as outlined in this brief's summary of argument, this Court should now dismiss this appeal as moot.

II. All three elements of collateral estoppel are satisfied. Armstead was properly precluded from alleging an injury beyond a right knee strain.

Res judicata 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). 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); see also

Hayes v. State Tchr. Certification Bd., 359 Ill. App. 3d 1153, 1161 (5th Dist. 2005) (stating that collateral estoppel applies "to administrative decisions that are adjudicatory, judicial, or quasi-judicial"). In other words, Illinois courts do not allow plaintiffs "two bites out of the same apple." *Purmal v. Robert N. Wadington & Assocs.*, 354 Ill. App. 3d 715, 726 (1st Dist. 2004) quoting *Arvia,* 209 Ill. 2d at 534.

The Appellate Court enforced issue preclusion, also called collateral estoppel. As the Appellate Court observed, the threshold requirements for the application of collateral estoppel are (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. *Armstead*, 2020 IL App (3d) 170777, ¶ 23 citing *Illinois State Chamber of Commerce v. Pollution Control Board,* 78 Ill. 2d 1, 7 (1979).

All elements of collateral estoppel are satisfied here.

A. The extent of Armstead's injury adjudicated in the Pennsylvania workers' compensation Decision is identical to the issue of the extent of Armstead's injury relitigated in this dispute.

First, the Appellate Court correctly and unequivocally found that the issue decided in the prior adjudication is identical with the one presented in this dispute. *Id.* at ¶ 24. In other words, the issue in the Pennsylvania workers' compensation case is identical to the issue in the present case: the extent of Armstead's injuries following the March 6, 2015, motor vehicle

accident. *Id.* See also *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").

The Appellate Court found this issue of identity requirement to be of "no dispute," and the record reflects that Armstead did not argue to the Appellate Court that this element was not satisfied. See P's Resp. to Pet. for Reh'g. Armstead thus waived the issue and should not be permitted to attempt to introduce an objection here. See *Dineen v. City of Chicago*, 125 Ill. 2d 248, 263-64 (1988). In any event, any objection is doomed.

Armstead unequivocally conceded in the C&R that his injury was limited to a right knee strain:

> 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).

To make matters unequivocal, prior to Plaintiff's signature on the C&R, the agreement reads, "DO NOT SIGN THIS DOCUMENT UNLESS YOU UNDERSTAND THE FULL LEGAL SIGNIFICANCE OF THIS AGREEMENT." C109. After that purposefully obvious instruction, Armstead and his counsel signed the C&R on November 9, 2016. C109.

The exact same issue is being relitigated here – whether Armstead's injury was limited to a right knee strain injury. The first element of collateral estoppel is satisfied.

B. The Pennsylvania workers' compensation Decision was an adjudication and final judgment on the merits.

Second, the Pennsylvania workers' compensation Decision was a final judgment on the merits after the hearing on November 9, 2016, before Pennsylvania workers' compensation Judge Hakun during which Judge Hakun approved and adjudicated the C&R. C102-103. As the Appellate Court noted, the "Agreement entered in the workers' compensation proceedings set the parties' rights and liabilities based upon the agreed facts stated in the Agreement." *Armstead*, 2020 IL App (3d) 170777 at ¶ 25. The Appellate Court reiterated that "in Illinois, a settlement award entered by the Workers' Compensation Commission is a final adjudication of all matters in dispute up to the time of the agreement." *Id.* quoting *Richter*, 2011 IL App (2d) 100114, ¶ 18 (citing *Stromberg Motor Device Co. v. Industrial Comm'n*, 305 Ill. 619, 622 (1922)); see also *J & R Carrozza Plumbing Co. v. Indus. Comm'n of Illinois*, 307 Ill. App. 3d 220, 223 (1st Dist. 1999) (reiterating that "when a settlement is approved by the Commission, it becomes *res judicata* as to matters adjudicated and agreed upon") citing *Industrial Commission of Wisconsin v. McCartin,* 330 U.S. 622, 628–29 (1947) (interpreting Illinois law).

Armstead complains that the Appellate Court's decision on this final judgment issue changed the legal "playing field." P's Br. at 28. It did not. The

Appellate Court's opinion, relying on *Richter* and *Stromberg*, was a sound statement of Illinois law dating back 99 years. Four years after *Richter*, the Appellate clarified that "it is axiomatic that a settlement contract approved by the Commission has the same legal effect as an award entered by the Commission." *Loyola Univ. of Chicago v. Illinois Workers' Comp. Comm'n*, 2015 IL App (1st) 130984WC, ¶ 14.

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 v. Kelly*, 207 Ill. App. 3d 488, 491 (4th Dist. 1991); 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*, 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").[2]

Armstead strains to argue from multiple angles that the Pennsylvania workers' compensation dispute, and the Decision adjudicating the C&R, was

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[2] Armstead's amici contends collateral estoppel should not be applied to "consent judgments." See ITLA brief at 10. However, this is not a case like *Arizona v. California*, 530 U.S. 392, 418 (2000), where the consent judgment is "too opaque to serve as a foundation for issue preclusion." Here, as the circuit court noted, the C&R's explicit identification of knee injury as the only injury caused by the accident "was as contemplative of a statement that you're going to find." R33-34.

not litigated. P's Br. at *passim*. Armstead contends the circuit court decided there was no litigation. Pl's Brief at 14 citing R31-32. But that inexcusably ignores the circuit court's subsequent determination that there *was* litigation. R51. The Appellate Court concurred. *Armstead*, 2020 IL App (3d) 170777, ¶¶ 28-30.

In part, it may be that Armstead's confusion about satisfaction of this collateral estoppel element arises from his conflation of the terms "litigation" and "prior adjudication." The Appellate Court noted this likelihood and explained that "for collateral estoppel to apply, a prior adjudication is required. Litigation is not. Instead, only the incentive and opportunity to litigate is required." *Armstead*, 2020 IL App (3d) 170777, ¶ 27.

In the Pennsylvania workers' compensation dispute, Armstead most certainly had the incentive and opportunity to litigate, and the Decision adjudicated the C&R and the extent of Armstead's injury. Armstead's denial is specious at best. The Appellate Court pierced through Armstead's denial and noted that, even if Armstead failed "to litigate the issue [that] is, in fact, a concession of that issue." *Armstead*, 2020 IL App (3d) 170777, ¶ 27 citing *Talarico v. Dunlap*, 177 Ill. 2d 185, 192 (1997).

As a consequence, Armstead takes exception to the Appellate Court's application of *Talarico*. Pl's Brief at 13, *passim*. But Armstead distorts *Talarico's* holding. *Talarico* has no bright line requirement of "actual litigation" like Plaintiff contends. *Id.*

Talarico explained that collateral estoppel may be applied when the party had a "full and fair opportunity to litigate" the issue. *Talarico*, 177 Ill. 2d at 192. *Talarico* did not even require a finding that the issue was "vigorously" litigated. *Id.* On the other hand, the *failure* to litigate may be a concession of the issue. *Id.*

Not only did Armstead have the incentive to vigorously litigate, but more importantly he had the full and fair opportunity to litigate the extent of his injuries in the Pennsylvania workers' compensation dispute. If Armstead failed to further litigate the extent of his injury after the independent medical examiner concluded that Armstead's injuries were limited to a right knee strain, *Talarico* does not give Armstead a pass for failing to litigate the issue. The opposite is true: *Talarico* refuses to excuse Armstead's failure to litigate.

Over the course of a year,[3] Armstead was examined, deposed, examined again by an independent medical examiner, and noticed for a second deposition. C266, C336, C269, C270. The Pennsylvania workers' compensation dispute was set for mediation (C236), and the parties then came to an agreement memorialized in the C&R (C255, C104). After a hearing approving the C&R and entry of Judge Hakun's Decision, which

[3] The record at C167-168 summarizes the procedural history. The corresponding documents in the Pennsylvania workers' compensation dispute appear in the record on C184-270.

explicitly adjudicated the claim (C102-03), Armstead received $88,000 and his attorney received $22,000 (C106-07).

To suggest that there was no incentive for Armstead or his attorney to litigate ignores reality. Litigation of the extent of Armstead's injury was no "side show." There is nothing in the record to suggest that Armstead did not treat the issue with seriousness. See *Talarico*, 177 Ill. 2d at 196 (explaining the inference that a plaintiff treated the issue with seriousness in the first litigation). Not only was there a full and fair opportunity to litigate the Pennsylvania workers' compensation dispute, but the record shows the issue of the extent of Armstead's injury was fully and fairly litigated. The Appellate Court opinion does not conflict with *Talarico* as Armstead contends.

As the Appellate Court explained, the Pennsylvania workers' compensation proceedings "lasted more than a year. During which, an independent medical examiner opined that plaintiff suffered an injury to the right knee as a result of the March 6, 2015, accident." *Armstead*, 2020 IL App (3d) 170777, ¶ 27. Armstead says the independent medical examiner in Pennsylvania cannot be trusted. Pl's Brief at 25-26. This accusation is desperate and unsupported.

Apparently, Armstead would have this Court discount the Pennsylvania medical examiner's Hippocratic Oath because Armstead's employer paid the medical examiner's bill as required by statute. 77 P.S. § 651. Based on supposition and conspiracy theory rather than record support,

Armstead accuses the medical examiner of being a hired gun. Pl's Brief at 25-26. That suggestion should be rejected.

So, to the extent *Talarico's dicta* that "the person to be bound must have actually litigated the issue in the first suit" places any burden on Defendants, that burden is satisfied. See *Talarico*, 177 Ill. 2d at 191. Armstead's contention that the workers' compensation dispute was not litigated is belied by the record. C167-68, C184-261, C262-270, C372-379.

Armstead also omits discussion that he was represented by counsel in the Pennsylvania workers' compensation dispute. In reality, Armstead had every incentive to litigate – he was looking for the most compensation he could obtain in the Pennsylvania workers' compensation proceedings, and the record demonstrates he litigated the matter and extent of his injuries. C167-68, C184-261, C262-270, C372-379.

As the Appellate Court concluded, Armstead's "failure to proceed with any additional injury claims acted as a concession of those issues." *Armstead*, 2020 IL App (3d) 170777, ¶ 28. Ultimately, the Appellate Court adroitly concluded, "plaintiff's argument that he had no incentive to pursue compensation for his back injuries is meritless." *Id.* at ¶ 29. In other words, Armstead could have contested the independent medical examiner's determination that Armstead's complaints of back and shoulder injury were unrelated to the March 6, 2015, accident. Armstead could have – and should have – contested or appealed the extent of his injury. He did not. He

understood the legal significance of the C&R terms, he certified those terms, and Judge Hakun adjudicated those terms in his Decision pursuant to Section 449 of the Pennsylvania Workers' Compensation Act. C102-103.

C. Armstead was the complaining party in the Pennsylvania workers' compensation dispute and is the complaining party here, thus, Defendants have correctly asserted defensive collateral estoppel against him.

Third, the Appellate Court found the final element of collateral estoppel, identity of parties, to be satisfied because Armstead is the plaintiff in this action and was the complaining party in the Pennsylvania workers' compensation case. See *Armstead*, 2020 IL App (3d) 170777 at ¶ 31 citing *Todd v. Katz*, 187 Ill. App. 3d 670, 674 (2d Dist. 1989) (only the party against whom estoppel is asserted must be the same or in privity with the party in the prior adjudication). Although National Freight and Roberts were not parties to the Pennsylvania workers' compensation dispute, these defendants may assert collateral estoppel as a defense against Armstead. See *United States v. Mendoza*, 464 U.S. 154, 158-59 (1984) (explaining that nonmutual collateral estoppel may be asserted by a nonparty to the prior dispute); *Illinois State Chamber of Commerce*, 78 Ill. 2d at 7.

III. Armstead's arguments against application of collateral estoppel are misguided.

Armstead argues the Decision limits Defendants' collateral estoppel defense. He also contends the Decision did not decide anything. Both arguments are meritless, and Defendants respond to each. Defendants also address why Pennsylvania law warrants affirmance of partial summary

judgment, and why application of collateral estoppel is consistent with public policy.

A. Neither the language of the C&R nor the Decision limits Defendants' right to assert issue preclusion.

Armstead tries to contend that the workers' compensation settlement language prevents defendants from using the award as a bar to his recovery in this civil action. Pl's Brief at 19-22. Put another way, Armstead contends that his confirmation that his injury was limited to a right knee strain was only applicable to a dispute with his employer Manfredi Mushroom. The Appellate Court rejected that idea, too. *Armstead*, 2020 IL App (3d) 170777, ¶ 30.

Armstead misconstrues the meaning and impact of the language in the Decision. The Decision states that it does not "alter the rights or obligations of *any third party* not a signatory to this Agreement." *Id.* (emphasis original) citing the Decision (C102). Stated differently, the Decision limits Armstead's rights, but not those of a nonparty like National Freight or Roberts. In other words, just as the Appellate Court observed, the Decision does not "alter defendants' right to raise the prior adjudication to bar plaintiff from relitigating the issue in this case." *Id.*

Armstead tries to twist the meaning of the Decision, but that interpretation does violence to the plain meaning of the Decision text. See C102. The Decision was indeed binding only on the signing parties. See *id.* That means that Armstead cannot avoid the legal impact of that prior

adjudication. It does not mean that the Decision exists in a void so that Armstead can relitigate the extent of his injuries elsewhere. More broadly, Armstead's suggestion that parties to an agreement can foreclose a nonparty from exercising its legal rights and defenses is antithetical to our system of justice.

Contrary to Armstead's interpretation, the Decision did alter Armstead's rights in numerous ways:

- The Decision adjudicated and approved the Compromise and Release Agreement. C102-03.
- The Decision unequivocally provides that "under oath," Plaintiff "acknowledged an understanding of its terms." C102.
- It was upon entry of the Decision that the Compromise and Release Agreement "fully resolve[d] all issues relating to Claimant's 03/06/2015 work injury[.]" C108.
- Plaintiff swore under oath that he understood the terms of the Compromise and Release Agreement and its "full legal significance." C102.
- This was after Plaintiff was previously advised that he should not sign the Compromise and Release Agreement unless he understood "THE FULL LEGAL SIGNIFICANCE OF THIS AGREEMENT." C109.

Defendants agree that the Decision does not alter the rights "*of any third party.*" C102 (emphasis added). Stated differently, the Decision did not alter Defendants right to assert issue preclusion. On the other hand, the Decision does alter Armstead's rights – and when collateral estoppel is correctly applied, Armstead is barred from alleging an injury beyond a right

knee strain whether that was in another workers' compensation claim or tort claim against Defendants in Illinois.

Contrary to Armstead's contention, there was no "proscriptive language" in the Decision that somehow exempted the Decision from collateral estoppel. The Decision was "binding only on the signing Parties." That remains true here because the Decision limits Armstead's claim in Illinois. The Decision did not "alter the rights or obligations of any third party," which is why Defendants were fully capable and legally entitled to argue the application of collateral estoppel. Armstead's reading of the text of the Decision is flawed.

B. The Pennsylvania workers' compensation Decision approving the C&R was a prior adjudication that finally decided the extent of Armstead's injuries.

Armstead contends the Pennsylvania workers' compensation Decision did not decide anything. Pl's Brief at 14-16. Armstead's argument contradicts Illinois law.

First, Armstead's new argument is that the Pennsylvania workers' compensation Decision is like a default judgment. Pl's Brief at 15-16 citing *Pinkerton Sec. & Investigation Services v. Illinois Dept. of Human Rights*, 309 Ill. App. 3d 48, 58 (1st Dist. 1999). Not so. The issue in *Pinkerton* was limited to whether a default judgment entered by the Illinois Department of Human Rights was a final order under the Human Rights Act to confer appellate jurisdiction. *Id.* at 52. The decision there has no bearing on whether

the Pennsylvania workers' compensation Decision was a prior adjudication on the extent of Armstead's injury for purposes of collateral estoppel.

A default judgment is "a judgment entered against a defendant who has failed to plead or otherwise defend against the plaintiff's claim." DEFAULT JUDGMENT, Black's Law Dictionary (11th ed. 2019). No default judgment was at issue in Armstead's Pennsylvania workers' compensation dispute. And the Decision entered after a hearing before Judge Hakun on the facts and allegations of the dispute and adjudicating the C&R is not remotely akin to a default judgment. *Pinkerton* has no application here.

Second, Armstead argues that there was no prior adjudication in the Pennsylvania workers' compensation dispute. Pl's Brief at 16-19. Armstead's argument is meritless. Judge Hakun's Decision was the required prior adjudication and final judgment. Armstead provides no authority stating that the Pennsylvania workers' compensation Decision was not a final adjudication. It was according to Illinois law. See *Richter*, 2011 IL App (2d) 100114, ¶¶ 18-19.

Armstead contends *Richter* is "strategically different" and doesn't apply here. Pl's Brief at 17-18. He is mistaken. In a *res judicata* dispute, the Appellate Court barred 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." *Richter,* 2011 IL App (2d) 100114, ¶ 24 quoting

Kinn v. Prairie Farms/Muller Pinehurst, 368 Ill. App. 3d 728, 730 (2d Dist. 2006) (emphasis added). Illinois law is clear on this point.

This Court should reject Armstead's attempt to differentiate the Pennsylvania Decision adjudicating a C&R from a non-settled award. Nowhere does Armstead allege that a Commission award is not a prior adjudication. As a Commission award is a prior adjudication, so is an approved settlement contract. The binding nature of the adjudication was not limited to somehow avoid the rule of collateral estoppel.

Plaintiff takes aim at the workers' compensation practice as a whole in Pennsylvania – and by extension Illinois – by suggesting Judge Hakun gave the C&R a rubber stamp of approval. Defendants suggest Judge Hakun would be surprised to learn that he was an automaton lacking attention to detail because of the "sheer volume" of cases before him. Pl's Brief at 20. The record tells a different story.

In an open hearing, Judge Hakun reviewed the C&R with Armstead in the presence of his attorney. C102. Judge Hakun found that Armstead acknowledged an understanding of its terms, which included agreement on the extent of his injury. *Id.* This was no technical or pro forma approval as Armstead suggests.

By approving the C&R, Judge Hakun adjudicated Armstead's employer's liability, the extent of Armstead's injury, and the damages to be awarded to Armstead. Armstead suggests that the Appellate Court "did not

appreciate what actually occurred in Pennsylvania." Pl's Br. at 20. In reality, Armstead simply wants to ignore what occurred in Pennsylvania. The Decision was an adjudication under Pennsylvania law and Illinois law.

C. Pennsylvania law holds that a Pennsylvania workers' compensation decision is a final adjudication.

Armstead previously contended that Pennsylvania law applies to this dispute. C137; RP Vol. 1 at 16-17. Like Illinois law, Pennsylvania law supports application of collateral estoppel in this case. Pennsylvania courts have "consistently held findings in workers' compensation cases may bar relitigation of identical issues in collateral civil actions, [including] even third party tort actions." *Frederick v. Action Tire Co.*, 744 A. 2d 762, 767 (Pa. Super. Ct. 1999); *McConnell v. Delprincipe*, 2014 Pa. Dist. & Cnty. Dec. LEXIS 1308 at *16 (2014)[4] ("It is well established in Pennsylvania that findings in a workers' compensation case preclude the relitigation of identical issues in collateral matters."). Collateral estoppel may be applied to foreclose relitigation of issues of fact or law. *Hebden v. Workmen's Compensation Appeal Board (Bethenergy Mines, Inc.),* 632 A.2d 1302, 1304 (Pa. 1993).

Like Illinois courts, Pennsylvania courts explain that the purpose of judicial estoppel is to ensure the parties do not play fast and loose with the facts in order to suit their interests in different actions before different tribunals. *Marazas v. Workers' Comp. Appeal Bd. (Vitas Healthcare Corp.)*,

[4] A copy of the *McConnell* opinion can be found in the record at C177-183.

97 A.3d 854, 859 (Pa. Cmwlth. 2014). To hold otherwise would invite dishonesty and unending litigation.

In Pennsylvania, a valid compromise and release agreement approved by a workers' compensation judge is final, conclusive, and binding. *Commonwealth, Dept. of Labor & Indus., Bureau of Workers' Comp. v. W.C.A.B.*, 932 A.2d 309, 314 (Pa. Cmwlth. 2007); see also *Holts v. Thyssenkrupp Elevator, Corp.*, 2011 Phila Ct. Com. Pl. LEXIS 235 at *8 (Pa. C.P. Aug. 4, 2011)[5] citing *Capobianchi v. BIC Corp.*, 666 A.2d 344 (Pa. Super. 1995) and *Grant v. GAF Corp.*, 608 A. 2d 1047 (Pa. Super. 1992). The doctrine of collateral estoppel applies to administrative disputes; where the agency is acting in a judicial capacity and resolves disputed issues of fact which the parties had an opportunity to litigate, preclusion principles are applied. *Grant*, 608 A.2d at 1056, aff'd sub nom. *Gasperin v. GAF Corp.*, 639 A.2d 1170 (Pa. 1994). See also *Papa v. Franklin Mint Corp.,* 583 A.2d 826, 827 (Pa. Super. 1990) (for injuries allegedly occurring during course of employment, claimant's remedy is limited to those provided by Workmen's Compensation Act, and any failure to prove compensable injury in workmen's compensation proceedings will not support second attempt to prove injury in common law tort action).

As a further illustration of this principle, a claimant stipulated to the extent of his injuries, which was approved in a workers' compensation

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5 A copy of the *Holts* opinion can be found in the record at C271-278.

decision. The claimant then filed another workers' compensation petition for additional injuries. Relitigation of the nature and extent of injuries was collaterally estopped. *Weney v. WCAB (Mac Sprinkler Systems, Inc.)*, 960 A.2d 949, 955-57 (Pa. Cmwlth. 2008).

Pennsylvania law permits issue preclusion to be asserted as either a "sword or a shield" by a stranger to the prior action as long as the party against whom it is asserted was a party or in privity with a party. *Calesnick v. Board of Finance & Revenue,* 538 A.2d 989, 991 (Pa. Cmwlth. 1988), (quoting *Day v. Volkswagenwerk Aktiengesellschaft,* 464 A.2d 1313, 1318–19 (Pa. Super. Ct. 1983)); see also *In re Estate of Ellis,* 333 A.2d 728, 731 (Pa. 1975) (discarding "mutuality of parties" requirement for application of issue preclusion, and adopting the position of Justice (later Chief Justice) Traynor in *Bernhard v. Bank of America National Trust and Savings Assoc.,* 19 Cal.2d 807, 122 P.2d 892 (1942), that issue preclusion prevents relitigation of an issue where the party against whom it is used or one in privity with that party had a full and fair opportunity to litigate the issue in a prior action).

Collateral estoppel is often used as a "shield" by a third party after an administrative decision. For instance, collateral estoppel was held to apply against a claimant whose benefits had been terminated by a workers' compensation judge. The decision had collateral estoppel effect in the claimant's subsequent claim to secure no-fault motor vehicle insurance benefits from her own carrier, which was a non-party to the workers'

compensation proceedings. *Wisnewski v. Home Mutual Ins. Co.*, 42 Pa. D. & C.3d 207, 1986 WL 3344 at *2 (Pa. C.P. 1986). In another example, the determination of the workers' compensation judge that a claimant did not suffer from asbestos-related cancer was *res judicata* in a subsequent negligence and products liability action (asserted by a widow) against the employer. Summary judgment motions were granted on the basis of collateral estoppel to multiple defendants, who had been producers of asbestos products and who had not been parties to the original workers' compensation proceedings. *Grant*, 608 A.2d 1047.

For direct application here, an approved and adjudicated C&R has the force of a judgment. Thus, principles of collateral estoppel and *res judicata* may bar actions that follow in the wake of C&R approval. See *Holts*, 2011 Phila. Ct. Com. Pl. LEXIS 235 (C271-278). Ms. Holts was injured on an elevator. She was paid workers' compensation benefits voluntarily. When the original accident report was filled out, she wrote upon the document that she had hurt her forehead, lip, finger, and knee.

Subsequently, a workers' compensation judge approved a stipulation, pursuant to claimant's review petition, to the effect that Ms. Holts not only suffered those injuries but also low back and neck injuries. Then, Ms. Holts entered into a C&R. She signed the release which stipulated that her injuries were "contusions of the head, right knee, and left 2nd finger." A workers' compensation judge approved the C&R. *Id.* at *2-5.

Meanwhile, Ms. Holts had filed a personal injury action against the contractor that maintained the elevators. The trial date approached after the approval of the C&R. The defendant filed a motion *in limine* seeking to prevent plaintiff from presenting evidence that she had also injured her left shoulder in the accident. The trial court granted the motion. In post-trial motions, the trial court ratified its prior ruling that plaintiff was not permitted to present evidence of left shoulder injuries. *Id.* at *7-11. In other words, Ms. Holts was collaterally estopped from arguing that she had hurt her shoulder on the day in question because the extent of her injury had been decided by the approved C&R.

In a 2020 case, a residential counselor at an inpatient mental health center, had sustained an injury and was paid benefits voluntarily. *Grabowski v. Carelink Community Support Services, Inc.*, 230 A.3d 465, 468 (Pa. Super. 2020). After about two years of payments, the parties entered a C&R. *Id.* at 469. The claimant accepted a lump sum and provided the employer with a full release. *Id.* However, she then sued the employer in a separate action for failure to provide a safe workplace. *Id.* In her workers' compensation complaint she had alleged that the injury did arise out of her employment. *Id.* at 473. In the C&R, while represented by counsel, she agreed to be bound by the terms of the Workers' Compensation Act and a workers' compensation judge had adjudicated the claim in a final order approving the C&R. *Id.* Consequently, she was then estopped from alleging that she had sustained an

injury not arising in the course of her employment. *Id.* at 474.

If Armstead had filed his complaint against National Freight and Roberts in Pennsylvania, the Decision approving the C&R would have barred relitigation of the extent of his injuries. There is no reason for this Court to disagree with the collateral estoppel effect of adjudicated workers' compensation Decisions approving a C&R in Pennsylvania. To do so would ignore this Court's full faith and credit constitutional obligations. See *Morris B. Chapman & Assocs., Ltd. v. Kitzman*, 193 Ill. 2d 560, 565 (2000) (confirming that full faith and credit clause of the United States Constitution "requires Illinois courts to give the judgment of a sister state at least the *res judicata* effect that the sister state rendering the judgment would give to it."). Resolutions of factual matters underlying a judgment must be given the same *res judicata* effect in the forum State as they have in the rendering State. See *Chicago, R. I. & P. R. Co. v. Schendel*, 270 U.S. 611, 616 (1926) ("The Iowa proceeding was brought and determined upon the theory that Hope [the deceased worker] was engaged in intrastate commerce; the Minnesota action was brought and determined upon the opposite theory that he was engaged in interstate commerce. The point at issue was the same."); *Du Page Forklift Serv., Inc. v. Material Handling Servs., Inc.*, 195 Ill. 2d 71, 79 (2001).

The Pennsylvania workers' compensation Decision adjudicated the factual limits of Armstead's injury. An Illinois court should not reconsider that finding.

D. Fairness requires adherence to the tenets of collateral estoppel.

Armstead suggests that collateral estoppel should not be applied based upon workers' compensation prior adjudications. Pl's Brief at 27. Otherwise, Armstead contends workers' compensation settlement agreements in Illinois will need to be written differently. *Id.* at 27-28. This argument is far, far afield. This case is about a Pennsylvania workers' compensation Decision and its collateral estoppel effect in Illinois. The Court's ruling in this dispute has no need to be a pronouncement upon the practice of workers' compensation law in Illinois.

But even examining Armstead's contentions, parties should draft accurate settlement agreements. And, if the text of the settlement agreement is not accurate, parties should not swear to their acknowledgment and understanding of those terms like Armstead did.

Next, Armstead contends – without citation to any authority – parties to workers' compensation settlement agreements in Illinois do not pay attention to the contents of those agreements. *Id.* at 28. This argument is vacuous. If true, the entire workers' compensation system in Illinois would be exposed as a farce. That notion should come as quite a surprise to the thousands of licensed Illinois attorneys practicing in the workers' compensation field as well as the workers' compensation judges.

Unfinished, Armstead contends Pennsylvania (or Illinois) workers' compensation Decisions should have no *res judicata* effect because there are

so many claims and settlements every year. Pl's Brief at 29. Does Armstead then contend that because the docket in the Circuit Court of Cook County is so congested that decisions there should have no *res judicata* effect? The idea is wholly misguided.

Applying collateral estoppel to adjudicated workers' compensation settlements is not dangerous. It simply requires the text of those agreements to be accurate. Certainly, they should be so now. Here, Armstead swore and certified "the precise nature of the injury" was a "right knee strain." C104, C109. He read and agreed to the contents of the C&R. C104. The contents of the C&R were then re-explained to him in an open hearing. C102. Again, under oath, Armstead acknowledged an understanding of the C&R terms. *Id.*

Holding Armstead to his sworn representations and the prior adjudication in Pennsylvania does not result in any windfall to National Freight like Plaintiff complains. Pl's Brief. at 30. Armstead could have continued with his claim for a right knee injury against Defendants. He decided not to do so when he voluntarily dismissed his claims.

This is not a situation where the administrative decision was unfair or unreliable, or where applying collateral estoppel would be incompatible with other legal or contractual policies. See *Taylor v. Peoples Gas Light & Coke Co.*, 275 Ill. App. 3d 655, 660 (4th Dist. 1995). The Decision was not against the manifest weight of the evidence. See *Lo Russo v. Industrial Comm'n*, 258 Ill. App. 3d 59, 71 (1st Dist. 1994) (applying collateral estoppel after a

workers' compensation adjudication). Applying collateral estoppel would not do any injustice here. Failure to apply collateral estoppel would not promote fairness but duplicity.

Public policy requires application of collateral estoppel to protect the integrity of the judicial system. A ruling otherwise would simply invite unending litigation, encourage second bites at the apple, allow parties to blur the lines of fact and fiction even while under oath, and erode the public's confidence in our state and federal system of laws.

IV. Alternatively, partial summary judgment should be affirmed by application of judicial estoppel.

Judicial estoppel applies when a party has (1) taken two positions, (2) that are factually inconsistent, (3) in separate judicial or quasi-judicial administrative proceedings, (4) intending for the trier of fact to accept the truth of the facts alleged, and (5) have succeeded in the first proceeding and received some benefit from it. *Seymour v. Collins*, 2015 IL 118432, ¶ 37. All five elements of judicial estoppel are met here.

The Appellate Court did not address judicial estoppel, but the issue was raised before it. This Court can affirm on any basis supported by the record. *Schultz v. Northeast Illinois Reg'l Commuter R.R. Corp.*, 201 Ill. 2d 260, 281 (2002). While the objective of equitable estoppel is to ensure fairness in the relationship between the parties, judicial estoppel focuses on the relationship between the litigant and the judicial system. *Id.* at 551 citing Comment, *Precluding Inconsistent Statements: The Doctrine of Judicial*

Estoppel, 80 Northwestern University L. Rev. 1244, 1248–49 (1986). Judicial estoppel protects the integrity of the courts in considering inconsistent statements made by the same party in different judicial proceedings. *Id.* at 550-551.

Here, Armstead took two factually inconsistent positions. In the C&R and as adjudicated in the Decision, he swore under oath that his only injury was a right knee injury. C102, C109. He intended Judge Hakun to accept the truth of his representations, which Judge Hakun did. C102.

Then in Grundy County, he verified interrogatories that his injury included a back injury. C122. Because Armstead took the position of an injury limited to a knee injury in the Pennsylvania workers' compensation dispute, he received the benefit of a $110,000 settlement. C105. Stating under oath in the C&R that his injury was limited to a right knee injury is totally inconsistent with his verified interrogatory answer that his injury was more than a right knee injury and included a back injury.

Judicial estoppel has been applied based upon Illinois workers' compensation settlement representations. For instance, a plaintiff cannot settle his workers' compensation dispute on the basis of permanent disability and then claim in a subsequent dispute that he could return to work in a less-physically stressful job. See *Brummel v. Grossman*, 2018 IL App (1st) 170516, ¶ 77. See also *Department of Transportation v. Coe*, 112 Ill. App. 3d 506, 508 (4th Dist. 1983) (holding employee judicially estopped from claiming he could

return to work after settling a workers' compensation dispute on the basis that he was 20% permanently disabled and unable to perform his job).

As this Court recognized, "the uniformly recognized purpose of the doctrine is to protect the integrity of the judicial process by prohibiting parties from "deliberately changing positions" according to the exigencies of the moment. (Internal quotation marks omitted.) *Seymour v. Collins*, 2015 IL 118432, ¶ 36 quoting *New Hampshire v. Maine,* 532 U.S. 742, 749–50 (2001). Application of judicial estoppel would correctly prevent Armstead from playing "fast and loose" with the court. *Seymour*, 2015 IL 118432, ¶ 36 citing *People v. Runge*, 234 Ill. 2d 68, 133 (2009).

Conclusion

This Court should dismiss this appeal as moot. If the appeal is not dismissed, this Court should affirm partial summary judgment in favor of Defendants.

Respectfully submitted,

NFI INTERACTIVE LOGISTICS, LLC AND DERRICK ROBERTS

By: */s/ Garrett L. Boehm, Jr.*
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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) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the Appellee Brief under Rule 342(a), is 40 pages.

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APPENDIX

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No. 126730

IN THE
SUPREME COURT OF ILLINOIS

CLIFTON ARMSTEAD,	)
	)
Plaintiff-Petitioner,	)
vs.	)
	)
NATIONAL FREIGHT, INC., d/b/a ,	)
NFI INDUSTRIES INC., and	)
DERRICK ROBERTS	)
	)
Defendants-Respondents.	)

On Leave to Appeal from the Appellate Court of Illinois,
Third Appellate District Case No. 3-17-0777 cons. with Case No. 3-18-0009.
There Heard on Appeal from the Circuit Court of the Thirteenth Judicial Circuit,
Grundy County, Illinois, No. 16 L 21
The Honorable Lance R. Peterson, Judge Presiding.

DEFENDANTS-RESPONDENTS' MOTION TO DISMISS APPEAL AS MOOT

Defendants-Respondents, NFI Interactive Logistics, LLC (incorrectly sued herein as National Freight, Inc., d/b/a NFI Industries, Inc.) and Derrick Roberts, by and through their attorneys, move to dismiss this appeal as moot.

SUMMARY OF ARGUMENT

After partial summary judgment was granted for Defendants, the scope of Plaintiff's damages for his singular negligence cause of action was limited to a knee injury. Plaintiff appealed that partial summary judgment pursuant to Rule 304(a). Although his cause of action could have continued before the circuit court, Plaintiff

subsequently voluntarily dismissed his cause of action. He then filed another notice of appeal. The two appeals were consolidated.

Because Plaintiff voluntarily dismissed his cause of action, the saving statute allowed Plaintiff a year to refile. Plaintiff never refiled his cause of action, and this appeal did not toll the time for refiling his cause of action. Plaintiff's cause of action cannot now be refiled because the statute of limitations has expired. As a consequence, any decision by this Court as to what damages Plaintiff could have recovered in that cause of action is now moot. Put another way, because the entire action was voluntarily dismissed and cannot be refiled, the appeal of the narrow issue of recoverable damages should be dismissed as moot.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Incident

On March 6, 2015, Plaintiff Clifton Armstead 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.

Plaintiff's Pennsylvania 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. C100-112, 184.

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 "[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.*

On November 9, 2016, Mr. Armstead signed a Compromise and Release Agreement by Stipulation. That same day, a decision was rendered by Judge Joseph Hakun (the Decision). C102. The Decision adjudicated and approved the Compromise and Release Agreement (the Adjudicated Agreement). *Id.* The only injury compensated was a "right knee injury." C105. Moreover, the Adjudicated Agreement provided that the parties agreed "that Claimant did not sustain any other injury or medical condition as a result of his 03/06/2015 work injury." C104.

Illinois Circuit Court Proceedings

On May 5, 2016, Plaintiff filed a negligence action with one count against National Freight and one count against Derrick Roberts. C9-12. The complaint alleged that on March 6, 2015, Roberts was driving a tractor trailer in Minooka, Illinois, that struck Plaintiff's vehicle. C9. 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." C122. On March 13, 2017, Defendants moved

for partial summary judgment and argued that Plaintiff's action against them was limited to a claim for damages sustained by a right knee strain. C82.

On June 14, 2017, the circuit court granted Defendants' motion for partial summary judgment and dismissed claimed damages for shoulder and back injuries because Plaintiff had judicially admitted that his injury resulting from the March 6, 2015, incident was limited to a right knee strain. C288, R 31-34. The circuit court made a Supreme Court Rule 304(a) finding with respect to the June 14, 2017 Order. C288.

On July 13, 2017, Plaintiff moved to reconsider. C301. On October 18, 2017, the circuit court denied Plaintiff's motion to reconsider. C511; R60-61. The circuit court made a Supreme Court Rule 304(a) finding with respect to the October 18, 2017 Order. C511.

On November 14, 2017, Plaintiff filed a notice of appeal from the orders entered June 14, 2017 and October 18, 2017, which granted Defendants' motion for partial summary judgment and denied Plaintiff's motion to reconsider. C512.

On November 29, 2017, Plaintiff moved to voluntarily dismiss his case pursuant to 735 ILCS 5/2-1009(a). C517. On December 7, 2017, the circuit court granted Plaintiff's motion to voluntarily dismiss his case. C522. Plaintiff then filed a second notice of appeal on January 3, 2018. C523.

Appellate Court Proceedings

On January 17, 2019, the Third District Appellate Court issued a Supreme Court Rule 23 Order reversing summary judgment previously granted to Defendants

National Freight, Inc. and Roberts. On February 5, 2019, the Third District Appellate Court granted Plaintiff's motion to publish the Rule 23 Order and released an opinion the same day. *Armstead v. National Freight, Inc.*, 2019 IL App (3d) 170777.

On February 7, 2019, Defendants filed a Rule 367 Petition for Rehearing. On March 5, 2019, the Third District Appellate Court allowed the Petition for Rehearing.

On November 20, 2020, the Third District Appellate Court issued a new opinion on rehearing affirming the circuit court's Order granting partial summary judgment on the ground that Plaintiff's claim for injuries beyond a knee injury is barred under the doctrine of collateral estoppel. *Armstead v. National Freight, Inc.*, 2020 IL App (3d) 170777.

Supreme Court Proceedings

On January 8, 2021, Plaintiff filed a Petition for Leave to Appeal to the Illinois Supreme Court. On March 24, 2021, the Illinois Supreme Court allowed Plaintiff's Petition for Leave to Appeal.

A Summary of Pertinent Events

For the Court's convenience, and due to the relevance of event dates to this motion to dismiss, a summary of events follows:

March 6, 2015	Plaintiff's alleged injury occurred. (C9).
November 2015	Plaintiff filed Pennsylvania workers' compensation claim. (C100-112).
May 5, 2016	Plaintiff filed Illinois negligence complaint. (C9).
November 9, 2016	Pennsylvania workers' compensation Decision entered. (C102).

June 14, 2017	Partial summary judgment entered in favor of Defendants. (C288).
November 14, 2017	Plaintiff filed Notice of Appeal. (C512).
December 7, 2017	**Circuit Court granted Plaintiff's motion to voluntarily dismiss his case. (C522).**
January 3, 2018	Plaintiff filed second Notice of Appeal. (C523).
December 7, 2018	**Plaintiff failed to refile his lawsuit within one year of voluntarily dismissing his case.**
January 17, 2019	Third District Appellate Court issued Rule 23 Order reversing Circuit Court's partial summary judgment order.
February 7, 2019	Defendants filed a Rule 367 Petition for Rehearing.
November 20, 2020	Third District Appellate Court issued a new opinion on rehearing affirming the Circuit Court's partial summary judgment order.
January 8, 2021	Plaintiff filed a Rule 315 Petition for Leave to Appeal to the Illinois Supreme Court.
March 24, 2021	Illinois Supreme Court allowed Plaintiff's Rule 315 Petition for Leave to Appeal.

ARGUMENT

THIS APPEAL IS MOOT BECAUSE PLAINTIFF FAILED TO REFILE HIS LAWSUIT WITHIN ONE YEAR OF THE DECEMBER 7, 2017, VOLUNTARY DISMISSAL ORDER

Plaintiff Armstead appeals orders entered June 14, 2017 and October 18, 2017, which limited the scope of damages Plaintiff could claim in a voluntarily dismissed lawsuit. Plaintiff did not refile his lawsuit within the one-year extended statute of

limitations under section 13-217 after the December 7, 2017, voluntary dismissal order. Plaintiff's negligence cause of action is time barred – Plaintiff cannot timely refile his lawsuit now or after this appeal. Therefore, this appeal is moot and should be dismissed.

This Court Will Not Issue Advisory Opinions Where No Relief Can Be Granted to the Appealing Party

An appeal becomes moot where events subsequent to the filing of the appeal have occurred which render it impossible for the reviewing court to grant the complaining party effective relief. *In re Marriage of Eckersall*, 2015 IL 117922, ¶ 9; *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 291 (2005). This Court will not review cases "merely to establish a precedent or guide future litigation." *In re Marriage of Eckersall*, 2015 IL. 117922, ¶ 9; *Commonwealth Edison Co. v. Illinois Commerce Commission*, 2016 IL 118129, ¶ 10 ("courts of review in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided"). "'The fact that a case is pending on appeal when the events which render an issue moot occur does not alter this conclusion.'" *Felzak v. Hruby*, 226 Ill. 2d 382, 392 (2007), quoting *Dixon v. Chicago & North Western Transportation Co.*, 151 Ill. 2d 108, 116-17 (1992).

Plaintiff Failed to Refile His Voluntarily Dismissed Cause of Action Within the Statutory Savings Period of One Year

As applied here, section 13-217 of the Illinois Code of Civil Procedure provides that Plaintiff's voluntarily dismissed personal injury lawsuit must have been refiled within one year or within the remaining period of limitations, whichever is greater:

> **In . . . actions . . . where** the time for commencing an action is limited, if judgment is entered for the plaintiff but reversed on appeal, or if there is a verdict in favor of the plaintiff and, upon a motion in arrest of judgment, the judgment is entered against the plaintiff, or **the action is voluntarily dismissed by the plaintiff**, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue, then, whether or not the time limitation for bringing such action expires during the pendency of such action, **the plaintiff . . . may commence a new action within one year or within the remaining period of limitation**, whichever is greater, after such judgment is reversed or entered against the plaintiff, or **after the action is voluntarily dismissed by the plaintiff**, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue.

735 ILCS 5/13-217 (emphasis added) (West 1994).[1]

Section 13-217 is a "saving" or "revival" statute which operates as an extension of the statute of limitations. *Aranda v. Hobart Mfg. Corp.*, 66 Ill. 2d 616 (1977). The Illinois "saving statute, as it is now written, is very specific and clear." *DeClerck v. Simpson*, 143 Ill. 2d 489, 495 (1991). Moreover, "[t]he savings statute, as it now exists, is a plain, unambiguous statute." *Id.* at 496. Section 13-217 has been interpreted narrowly. It allows a plaintiff whose original action has been dismissed on specific grounds to file an action again even though the statute of limitations has run. *Id.* at 493-94, citing *Conner v. Copley Press, Inc.*, 99 Ill. 2d 382 (1984).

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[1] This version of section 13-217 is currently in effect because it precedes the amendments of Public Act 89-7, § 15 (eff. March 9, 1995), which the Illinois Supreme Court found unconstitutional in its entirety in *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 467 (1997). See *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 44, n. 1.

Section 13-217 specifically provides that where a plaintiff has voluntarily dismissed a complaint, the plaintiff may refile the complaint within one year after the dismissal, or the remaining period of limitations, whichever is greater. 735 ILCS 5/13-217; *Aranda*, 66 Ill. 2d at 620. The one-year refiling period commences on the date of the circuit court's order granting the voluntary dismissal. *Richter*, 2016 IL 119518, ¶ 45 ("after plaintiffs voluntarily dismissed *Richter I* on September 7, 2012, section 13-217 conferred on plaintiffs the right to refile within one year even if the statute of limitations had expired"); *Suslick v. Rothschild Securities Corp.*, 128 Ill. 2d 314, (1989) ("the one-year period for refiling under section 24 of the Limitations Act . . ., the predecessor to section 13-217, runs from the date of dismissal").

Here, Plaintiff's cause of action accrued on March 6, 2015 at the time of the incident. C9. Plaintiff filed his complaint on May 5, 2016. C9. Plaintiff voluntarily dismissed his complaint on December 7, 2017. C522. Since there was no remaining time in the two-year period of limitation for bringing his personal injury action (735 ILCS 5/13-202), his one-year re-filing period under section 13-217 began to run on December 7, 2017.

According to section 13-217, Plaintiff had until December 7, 2018, to refile his action against Defendants NFI and Roberts. However, Plaintiff failed to do so. As a consequence of Plaintiff's failure to refile his action within one year of his voluntary dismissal, Plaintiff's lawsuit against Defendants is time barred by the statute of limitations. Therefore, regardless of this Court's decision on appeal of the partial summary judgment, which limited Plaintiff's claimed damages, Plaintiff cannot

pursue his previously voluntarily dismissed action before the circuit court because the time for refiling his action has expired.

This Appeal Did Not Toll the Time for Timely Refiling of Plaintiff's Lawsuit Pursuant to Section 13-217

Plaintiff's appeal did not toll the time for refiling allowed by section 13-217. See *Wade v. Byles*, 295 Ill. App. 3d 545, 546 (1st Dist. 1998). In *Wade*, the Appellate Court considered whether the plaintiff's refiled action was timely pursued according to section 13-217. In that case, on September 28, 1992, the plaintiff filed a three-count complaint against the defendants in the United States District Court for the Northern District of Illinois. *Id.* On May 25, 1995, the district court granted the defendants' motion for summary judgment on the federal claim and dismissed the state law claims for lack of federal supplemental subject matter jurisdiction. *Id.*

The plaintiff then appealed the district court's decision to the Seventh Circuit Court of Appeals. *Id.* On May 13, 1996, the decision was affirmed. *Id.* On November 1, 1996, almost a year and a half after the dismissal in the federal district court, the plaintiff refiled his state law claims in the circuit court of Cook County. *Id.* The circuit court dismissed the refiled action as untimely under section 13-217. *Id.*

On appeal, the *Wade* court held that the federal case was no longer "pending" for purposes of section 13-217, which gave plaintiff one year to refile an action in state court following a United States District Court's dismissal for lack of jurisdiction. *Id.* at 546-47. The *Wade* court held that plaintiff's unsuccessful appeal in the federal appellate court did not change the clear instructions in section 13-217 that allowed plaintiff one year to refile his action in state court following the federal district court's

dismissal of the action. *Id.* at 546. In other words, the *Wade* court held that a party must refile their complaint within a year even while a federal appeal is pending in order to preserve their claims under section 13-217. *Id.* at 547-48.

As the Appellate Court explained, the issue of whether the one-year refiling requirement under section 13-217 is tolled during the pendency of the federal appellate process has been decided twice by the Illinois Supreme Court. *Id.* at 546. In *Hupp v. Gray*, 73 Ill. 2d 78 (1978), and *Suslick v. Rothschild*, 128 Ill. 2d 314 (1989), this Court held that under the language of section 13-217 and its predecessor, "there is no tolling while a case dismissed for lack of jurisdiction is on appeal." *Id.* Thus, "once the district court judge dismissed the plaintiff's action it no longer was 'pending,' appeal or not." *Id.* at 546-47. Thus, *Wade* stands for the proposition that the one-year limitation imposed by section 13-217 is not tolled or extended even where an appeal has been timely filed.

The reasoning of *Wade* controls the disposition of this case. Nothing contained in the language of section 13-217 provides for the refiling of Plaintiff's complaint in the circuit court even if the circuit court's partial summary judgment order is reversed by this Court. See 735 ILCS 5/13-217. In other words, there is no statutory language that tolls the period between voluntary dismissal of Plaintiff's complaint and the ruling by this Court regarding the trial court's entry of partial summary judgment (and the appellate court's affirmance of the trial court's ruling). The *Wade* decision explains that an appeal does not toll the one-year savings provision for statute of limitations purposes. *Wade*, 295 Ill. App. 3d at 545-46.

Defendants' position is also supported by this Court's decisions in *Hupp* and *Suslick*. In *Hupp v.* Gray, 73 Ill. 2d 78 (1978), this Court held that a plaintiff's appeal from a federal court's dismissal of its federal claims did not toll the applicable savings provision for statute of limitations. In *Hupp,* plaintiffs brought suit in federal district court, which dismissed their federal claims as barred by the applicable statute of limitations and dismissed their state claims for lack of pendent jurisdiction. *Id.* at 81. The federal appellate court affirmed the dismissal of the federal claims. *Id.* After the federal appeal concluded, plaintiffs filed suit in state court within one year of the federal appellate decision, not the federal district court dismissal. *Id.* This Court held that plaintiffs had not complied with the one-year limitations period established by the predecessor to section 13–217 because plaintiffs failed to file the action in state court within one year of the dismissal by the federal district court. *Id.* at 84-89.

In *Suslick v. Rothchild Securities Corp.*, 128 Ill. 2d 314 (1989), plaintiffs filed their suit in federal district court. As in *Hupp,* only after the federal appellate court affirmed the district court dismissal did plaintiffs file suit in state court. *Id.* at 318. The *Suslick* court held that the one-year period to refile pursuant to section 13–217 ran from the date of the district court's dismissal and not from the date of the affirmance of that dismissal by the federal appellate court. *Id.* at 320-21. The *Suslick* court reasoned that once a district court dismisses a case, the case is no longer pending in that court, even if it has been appealed. *Id.* at 320. In other words, "it cannot be reasonably argued that, following the dismissal of the plaintiff's Federal action by the district court . . ., the action was still 'pending' in that court." *Id.* Thus,

both *Hupp* and *Suslick* clearly hold that the one-year savings period provided by section 13–217 begins to run when the court dismisses the case and is not tolled until the resolution of an appeal. See also *Giesler v. Benken,* 328 Ill. App. 357, 361 (3d Dist. 1946) ("the mere pendency of an appeal does not postpone the commencement date of the running of the statute [of limitations]").

Because Plaintiff's Cause of Action Cannot Be Revived, the Dispute Over the Extent of Plaintiff's Injury and Damages Is Moot

If the Illinois legislature had wished to extend the section 13-217 savings provision for statutes of limitations beyond a year from the voluntary dismissal date to allow for a refiling after the resolution of an appeal, it could have provided for that in the statute. However, courts are not to rewrite the statute; rather they are obligated to enforce the statute as written. *DeClerck*, 143 Ill. 2d at 492 (citing *Franzese v. Trinko*, 66 Ill. 2d 136 (1977)). Section 13–217 contains no language permitting or authorizing the tolling of the one-year period for refiling voluntarily dismissed cases which are on appeal.

The plain language of section 13-217 and consistent interpretation of its terms informed Plaintiff that the one-year period for any use of the savings statute began once the circuit court entered an order of voluntary dismissal on December 7, 2017. Section 13-217 establishes a bright-line commencement date. Section 13-217 allowed Plaintiff to file a new action within one year after the December 7, 2017 voluntarily dismissal. See 735 ILCS 5/13-217. Thus, any refiling today or after resolution of this appeal would be time barred by the statute of limitations. Consequently, even if this Court were to decide partial summary judgment was incorrectly awarded, there is no

viable case to remand this appeal. *Eckersall*, 2015 IL 117922, ¶ 9 (appeal dismissed as moot where events have occurred that make it impossible for the reviewing court to grant plaintiff effectual relief). Thus, this appeal is moot.

CONCLUSION

This case involves a single cause of action sounding in negligence against Defendants. After the circuit court entered summary judgment limiting the scope of Plaintiff's claimed damages, Plaintiff filed an appeal. Plaintiff's complaint remained pending in the circuit court during the appeal of the narrow issue of what damages were recoverable in the action until Plaintiff chose to voluntarily dismiss the action in the circuit court.

Plaintiff's cause of action cannot now be refiled as the statute of limitations has expired, and the decision as to what damages would have been recoverable in that action is now moot. In other words, the right to recover damages for alleged injuries to Plaintiff's back and shoulder is not a stand alone cause of action separate and apart from the cause of action arising from the motor vehicle accident. It is simply a part of that action. Now that the entire action has been voluntarily dismissed and cannot be refiled, an appeal examining a separate part thereof – the issue of recoverable damages – must be dismissed as moot.

Accordingly, Defendants NFI Interactive Logistics, LLC and Derrick Roberts request that this Honorable Supreme Court dismiss this appeal as moot.

Respectfully submitted,

NFI INTERACTIVE LOGISTICS, LLC AND
DERRICK ROBERTS

By: */s/ Garrett L. Boehm, Jr.*
One of Defendants' attorneys

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Garrett L. Boehm, Jr. (boehmg@jbltd.com)
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NOTICE OF FILING AND CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2021, I electronically filed the foregoing **Defendants-Respondents NFI Interactive Logistics, LLC, and Derrick Roberts' Motion to Dismiss Appeal as Moot,** with the Clerk of The Supreme Court using the Odyssey eFileIL System and served a copy thereof upon the attorneys of record listed below via electronic mail.

Michael W. Rathsack
10 South LaSalle Street, Suite 1420
Chicago, IL 60603

mrathsack@rathsack.net

Adam J. Zayed
Zayed Law Offices
54 North Ottawa Street, Suite 360
Joliet, IL 60432

azayed@zayedlaw.com

/s/ Garrett L. Boehm, Jr.

Under penalties as provided by law pursuant to Illinois Code of Civil Procedures (735 ILCS 5/1-109), I certify that the statements set forth herein are true and correct.

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IN THE SUPREME COURT OF ILLINOIS

CLIFTON ARMSTEAD, Plaintiff-Petitioner, vs. NATIONAL FREIGHT, INC., d/b/a , NFI INDUSTRIES INC., and DERRICK ROBERTS Defendants-Respondents.	)	No. 126730

ORDER

This Cause coming to be heard on the motion of Defendants-Respondents, ***NFI Industries Inc. and Derrick Roberts***, to Dismiss Appeal as Moot, all parties having notice, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED:

That Defendants-Respondents Motion to Dismiss Appeal as Moot is hereby allowed / denied.

Dated:_____

_____
Justice

_____
Justice

_____
Justice

_____
Justice

_____
Justice

_____
Justice

_____
Justice

_____
Justice

Order Prepared by:
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Chicago, Illinois 60603
boehmg@jbltd.com

No. 126730

IN THE
SUPREME COURT OF ILLINOIS

CLIFTON ARMSTEAD,	)
	)
Plaintiff-Appellant,	)
	)
	)
vs.	)
	)
NATIONAL FREIGHT, INC., and DERRICK ROBERTS,	)
	)
	)
Defendants-Appellees.	)

On Leave to Appeal from the Appellate Court of Illinois,
Third Judicial District, Nos. 3-17-0777, cons. No. 3-18-0009.
There Heard on Appeal from the Circuit Court of the
13th Judicial Circuit, Grundy County, 16-L-21.
The Honorable Lance R. Peterson, Judge Presiding.

OBJECTION TO DEFENDANTS' MOTION TO DISMISS

Plaintiff-appellant Clifton Armstead, by his attorney Michael W. Rathsack, objects to Defendants' Motion to Dismiss, and in support states:

1. Defendants move to dismiss on the ground that the procedural situation in the circuit court makes the case before this Court moot despite the appellate court opinion now pending for review in this Court. Defendants raised the same point in the appellate court by way of a motion for leave to file a supplement containing this argument, more than a year ago; the motion was denied. That motion, objection and order are in re:SearchIL.

E-FILED
5/11/2021 8:43 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

2. With respect to this appeal, Plaintiff filed his appeal from the partial summary judgment order in 2017. C512, C523. The appellate court, after originally reversing, granted Defendants' Petition for Rehearing on March 5, 2019, and affirmed the summary judgment on November 20, 2020. Plaintiff filed a petition for leave to appeal which this Court granted and the case is pending here.

3. Defendants' motion to dismiss posits that even if this Court reverses the appellate court and reinstates Plaintiff's claim, Plaintiff would not be able to refile his case in the circuit court because he did not refile the part of the case that remained in the appellate court after the summary judgment which he voluntarily dismissed after filing his first notice of appeal. C522.

4. The relevant trial court history is that the circuit court granted summary judgment as to plaintiff's claim for injuries to his back and knee, leaving only his claim for a knee strain. Plaintiff voluntarily dismissed the remaining claim but with leave to refile, thus properly splitting his claims under the procedure provided by this Court in *Hudson v. City of Chicago*, 228 Ill.2d 462 (2008) and confirmed in *Quintas v. Asset Mgmt. Group, Inc.*, 395 Ill. App. 3d 324, 328 (1st Dist. 2009).

5. As noted, Plaintiff appealed from the summary judgment, but did not refile the knee strain claim that had been voluntarily dismissed. Defendants argue that because that latter part of the case was not refiled, Plaintiff will not be able to refile even if he prevails in this Court and that the entire matter is therefore moot.

6. Defendants' motion to dismiss is premised on a misunderstanding of the procedural posture of Plaintiff's claims. Defendants rely on *Wade v. Byles*, 25 Ill.App.3d 545 (1998), but that case is critically different in both its facts and its procedural path. The plaintiff there filed multiple claims in federal district court. The district court granted summary judgment on the civil rights claims and then dismissed the state law claim for want of jurisdiction because the dismissal of the civil rights claims destroyed federal jurisdiction. The plaintiff appealed the summary judgment order to the federal circuit court but unlike Armstead's case, that judgment was affirmed on appeal, ending the civil rights claims. That is the critical difference; that plaintiff's claim on appeal was over. Armstead's appeal remains pending.

7. The plaintiff in *Wade* did not refile the dismissed state law claims until more than a year after the district court had dismissed those claims for lack of jurisdiction, so that appellate court ruled that he was barred from refiling those claims by virtue of Section 13-217. The reviewing court's point there was that taking an appeal on the federal claims did not toll the time for refiling state law claims dismissed for want of jurisdiction, the part of the case not on appeal there. However, if the plaintiff in *Wade* had prevailed in his appeal to the federal circuit court, that claim would have been remanded and proceeded to trial in the district court regardless of what had occurred in the state court with the part of his claim refiled there.

8. In this case, Armstead similarly will have no need to refile after this Court rules on the appeal. If Armstead prevails, the Court will remand this case and he will prosecute this case in the trial court. If he loses the claim on appeal, i.e., if this Court affirms the partial summary judgment, he will be in the same position as the plaintiff in *Wade*.

9. That is compatible with the reasoning in *Sager Glove Corp. v. Cont'l Cas. Co.*, 37 Ill. App. 2d 295, 301, 185 N.E.2d 473, 475–76 (1962), where the court said "A litigant may choose one or both courses of action. If an appeal is chosen and suit is not refiled within a year, should the judgment appealed from be affirmed, then the litigant has played and lost." The court clearly meant that alternatively, if the litigant prevailed on appeal, his case would proceed.

10. By way of analogy, assume Plaintiff had immediately refiled the knee strain claim he voluntarily dismissed but then dismissed it because he did not believe that claim was worth pursuing. That would not have affected the part of the claim on appeal to this court for the other injuries. After this Court's opinion issued, the claim on appeal would still be remanded (if Armstead prevailed) and proceed to trial. That should be what occurs now.

Wherefore, plaintiff-appellant requests that the motion to dismiss be denied.

/s/ ***Michael W. Rathsack***

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#3657

No. 126730

IN THE
SUPREME COURT OF ILLINOIS

CLIFTON ARMSTEAD,	)
	)
Plaintiff-Appellant,	)
	)
	)
vs.	)
	)
NATIONAL FREIGHT, INC., and DERRICK ROBERTS,	)
	)
Defendants-Appellees.	)

AFFIDAVIT

1. Affiant is the attorney in charge of prosecuting this matter on appeal.

2. The statements in the attached motion are true and correct.

/s/ *Michael W. Rathsack*

Under penalties as provided by law pursuant to Section 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ *Michael W. Rathsack*

MICHAEL W. RATHSACK
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(312) 726-5433
mrathsack@rathsack.net

#3657

No. 126730

IN THE
SUPREME COURT OF ILLINOIS

CLIFTON ARMSTEAD,	)
	)
Plaintiff-Appellant,	)
	)
	)
vs.	)
	)
NATIONAL FREIGHT, INC., and DERRICK ROBERTS,	)
	)
Defendants-Appellees.	)

NOTICE OF FILING

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PLEASE TAKE NOTICE that Plaintiff's Objection to Motion to Dismiss in the above matter was electronically submitted to the Clerk of the Supreme Court on May 11, 2021, via the courts e-filing system and Odyssey eFileIL and also via email to Kurt Niermann and Nicholas Nepustil. A copy of said document is attached.

/s/ *Michael W. Rathsack*

CERTIFICATE OF SERVICE

Michael W. Rathsack, an attorney, certifies that he served the foregoing Objection to Motion to Dismiss on the above-named attorney(s) at the above addresses on May 11, 2021, via the courts e-filing system and Odyssey eFileIL. Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies the statements set forth in this instrument are true and correct.

/s/ *Michael W. Rathsack*

No. 126730

IN THE
SUPREME COURT OF ILLINOIS

CLIFTON ARMSTEAD,	)
	)
Plaintiff-Petitioner,	)
vs.	)
	)
NATIONAL FREIGHT, INC., d/b/a ,	)
NFI INDUSTRIES INC., and	)
DERRICK ROBERTS	)
	)
Defendants-Respondents.	)

On Leave to Appeal from the Appellate Court of Illinois,
Third Appellate District Case No. 3-17-0777 cons. with Case No. 3-18-0009.
There Heard on Appeal from the Circuit Court of the Thirteenth Judicial Circuit,
Grundy County, Illinois, No. 16 L 21
The Honorable Lance R. Peterson, Judge Presiding.

DEFENDANTS-RESPONDENTS' REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL AS MOOT

Defendants-Respondents, NFI Interactive Logistics, LLC (incorrectly sued herein as National Freight, Inc., d/b/a NFI Industries, Inc.) and Derrick Roberts, by and through their attorneys, submit this reply in support of their motion to dismiss this appeal as moot.

PROCEDURAL HISTORY

1. In his objection, Plaintiff states that Defendants are raising the same argument before this Court that was raised "in the appellate court by way of a motion for leave to file a supplement . . ., more than a year ago; the motion was denied." Pl. Objection at ¶ 1.

2. Technically, Plaintiff is correct that, in the appellate court, Defendants' filed a motion to supplement their Petition for Rehearing, and in their attached supplement they raised the argument that Plaintiff's appeal should be dismissed as moot because he failed to refile his cause of action within one year after voluntarily dismissing his case during the pendency of his appeal, and that his cause of action was now barred by the statute of limitations. However, the appellate court denied Defendants leave to file their proposed supplement, and never considered or ruled upon the merits of whether Plaintiff's appeal is now moot because his cause of action is barred by the statute of limitations.

3. Accordingly, Defendants' motion to dismiss Plaintiff's appeal as moot is being presented as a dispositive motion before this Court.

ARGUMENT

4. Plaintiff claims that "Defendants' motion to dismiss posits that even if this Court reverses the appellate court and reinstates Plaintiff's claim, Plaintiff would not be able to refile his case in the circuit court because he did not refile the part of the case that remained in the appellate court [sic] after the summary judgment which he voluntarily dismissed after filing his first notice of appeal." Pl. Objection at ¶ 3. Plaintiff claims, however, that he "will have no need to refile after this Court rules on the appeal" because if he prevails, this "Court will remand this case and he will prosecute this case in the trial court." *Id.* Plaintiff is mistaken.

5. Defendants' argument is simple: There is but one cause of action for personal injury arising from alleged negligence, not a separate negligence cause of

action for each injured part of the body. Plaintiff voluntarily dismissed that cause of action shortly after he filed his first notice of appeal. C522. Pursuant to section 13-217 (735 ILCS 5/13-217), Plaintiff had one year from the date of the voluntary dismissal to refile his cause of action of negligence against Defendants. Plaintiff failed to do so and is now barred by the statute of limitations from refiling regardless of how this Court rules on his appeal.

6. Plaintiff apparently is now taking the position that his alleged separate injuries to his knee and back give rise to distinct causes of action. However, Section 2-603 (735 ILCS 5/2-603) requires that each separate cause of action be stated in a separate count, and Section 2-613 (735 ILCS 5/2-613) requires that each cause of action shall be separately designated and numbered. Here, Plaintiff pleaded a cause of action for negligence arising out of a single motor vehicle accident. C9. Count I was directed against Defendant National Freight for the acts or omissions of its employee and/or agent, Derrick Roberts; and Count II was directed against Defendant Roberts who was operating the vehicle at the time of the accident. C9-11. Plaintiff did not assert separate counts or causes of action for a back injury and a knee injury. However, even if he had that would not change the result here.

7. To elaborate, there are not separate causes of action for an injury to each part of the body as Plaintiff seemingly claims. That is akin to saying there are separate causes of action for each element of damages – pain and suffering, lost wages, and medical bills. However, that is not the law. See *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 315 (1998) (While "a single group of operative facts may give rise

to the assertion of more than one kind of relief or more than one theory of recovery, assertions of different kinds of theories of relief arising out of a single group of operative facts constitute but a single cause of action.").

8. As Plaintiff's complaint in this action demonstrates, there was only one cause of action sounding in negligence for the personal injuries he allegedly sustained. *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶¶ 21-23 (Pedestrian's insurer's negligence complaint against motorist for personal injury was the same cause of action as insurer's prior voluntarily dismissed complaint against motorist for property damage; both complaints alleged negligence arising out of a single automobile accident, both complaints alleged that motorist carelessly and negligently operated her vehicle causing the collision, and *differences regarding the relief sought* had no bearing on the fact that the factual allegations in the two complaints arose from a single group of operative facts). The circuit court, in granting Defendants' motion for partial summary judgment, found that the claim for a certain portion of the damages sought was not recoverable. While there is a claim for certain damages arising from the motor vehicle accident, that claim is not a separate cause of action. It is part and parcel of the cause of action which was voluntarily dismissed and is now barred by the expiration of the statute of limitations.[1]

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[1] Plaintiff cites to *Hudson v. City of Chicago*, 228 Ill. 2d 462 (2008), and *Quintas v. Asset Mgmt. Group, Inc.*, 395 Ill. App. 3d 324, 328 (1st Dist. 2009), as support for his action in voluntarily dismissing his case with leave to refile after he had filed his appeal. Pl. Objection at ¶ 4. However, those cases do not support the notion that a trial court granting plaintiff leave to refile may excuse a plaintiff's compliance with the applicable statute of limitations.

9. On appeal before this Court is the limited issue of whether Plaintiff is collaterally estopped from seeking damages, as part of a viable cause of action, for injuries other than a knee injury. That narrow issue is not the equivalent of a separate cause of action. Once the cause of action for recovery of damages under a negligence theory was voluntarily dismissed and the statute of limitations expired, there was no longer a cause of action pending. No matter how this Court rules on the narrow issue of the extent of damages to which Plaintiff would be entitled to recover in the action, there must be a pending action for that issue to be resolved. As there is no such action, and as the viability of that action is not the subject of this appeal, the issue before the Court is now moot.

10. Put another way, Plaintiff's right to recover damages for an alleged injury to his back and shoulder is part of the cause of action for negligence which Plaintiff voluntarily dismissed and did not timely refile. Because Plaintiff's entire cause of action has been voluntarily dismissed and cannot be refiled, the appeal of a separate part thereof – the issue of recoverable damages – must be dismissed as moot.

Respectfully submitted,

NFI INTERACTIVE LOGISTICS, LLC AND DERRICK ROBERTS

By: */s/ Garrett L. Boehm, Jr.*
One of Defendants' attorneys

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2021, I electronically filed the foregoing **Defendants-Respondents NFI Interactive Logistics, LLC, and Derrick Roberts' Reply in Support of Motion to Dismiss Appeal as Moot,** with the Clerk of The Supreme Court using the Odyssey eFileIL System and served a copy thereof upon the attorneys of record listed below via electronic mail.

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/s/ Garrett L. Boehm, Jr.

Under penalties as provided by law pursuant to Illinois Code of Civil Procedures (735 ILCS 5/1-109), I certify that the statements set forth herein are true and correct.

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126730

IN THE

SUPREME COURT OF ILLINOIS

Clifton Armstead,	)	
	)	
Appellant	)	
	)	Petition for Leave to Appeal from
v.	)	Appellate Court
	)	Third District
National Freight, Inc., d/b/a NFI Industries, Inc., and Derrick Roberts,	)	3-17-0777
	)	3-18-0009
	)	16L21
Appellees	)	
	)	
	)	
	)	
	)	
	)	

O R D E R

On this Court's own motion;

IT IS ORDERED: IT IS ORDERED that the motion to dismiss appeal as moot is taken with the case.

Order entered by the Court.

Carter, J., took no part.

FILED
May 25, 2021
SUPREME COURT
CLERK

NOTICE OF FILING AND CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2021, I electronically filed the foregoing **Defendants-Appellees NFI Interactive Logistics, LLC, and Derrick Roberts' Appellee Brief,** with the Clerk of the Supreme Court using the Odyssey eFileIL System and served a copy thereof upon the attorneys of record listed below via electronic mail.

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Under penalties as provided by law pursuant to Illinois Code of Civil Procedures (735 ILCS 5/1-109), I certify that the statements set forth herein are true and correct.

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6/30/2021 2:49 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK