

NO. 126730

Supreme Court of Illinois

CLIFTON ARMSTEAD,

Plaintiff-Appellant

v.

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

Defendants-Appellees

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

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

**BRIEF OF AMICUS CURIAE
ILLINOIS ASSOCIATION OF DEFENSE TRIAL COUNSEL
IN SUPPORT OF NATIONAL FREIGHT, INC. d/b/a NFI INDUSTRIES, INC.**

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E-FILED
7/13/2021 11:28 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

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INTEREST OF AMICUS CURIAE

The Illinois Association of Defense Trial Counsel (IDC) submits this Brief *Amicus Curiae*, in support of Defendant-Appellee, National Freight, Inc. d/b/a NFI Industries. The IDC is an organization consisting of approximately 600 defense trial attorneys and has stated purposes of (a) promoting improvements in the administration of justice; (b) enhance the service and reputation of the legal profession to the public; (c) support and advocate for the improvement of the adversary system of jurisprudence in the operation of the Courts; (d) encourage the prompt, fair, and just disposition of litigation; (e) enhance the knowledge and improve the skills of civil defense trial lawyers; (f) advance the equitable and expeditious handling of disputes; (g) work for the elimination of Court congestion and delays in civil litigation; (h) foster communication among the IDC's members; and (i) carry on other related and similar activities in the public interest and in the interest of the defense bar. Members of the organization represent civil defendants, insurance carriers, and employers including those in Illinois Workers' Compensation cases.

IDC has a substantial interest in maintaining the continuity, uniformity, and predictability of Illinois law. IDC respectfully submits that established and well-reasoned precedent is jeopardized by the arguments set forth in support of Plaintiff-Appellant. Moreover, the Decision of this Court will directly affect the interests of IDC members who are called upon to defend individuals, employers, and insurance carriers in both workers' compensation cases and civil liability actions.

ARGUMENT

A. Decision of the Appellate Court

The Appellate Court's Decision in this case was a straight forward analysis of a collateral estoppel issue. The court explained the application of collateral estoppel is to preclude a party from re-litigating an issue decided in a prior proceeding. *Herzog v. Lexington Township*, 167 Ill.2d 288, 294 (1995). Citing this Court's Decision in *Illinois State Chamber of Commerce v. Pollution Control Board*, 78 Ill.2d 1, 7 (1979), the Appellate Court noted the minimum 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.

The Appellate Court determined there was no dispute as to the identical nature of the issue presented in the Pennsylvania workers' compensation settlement and the issue in the present case.

When assessing the element requiring a final judgment on the merits in the previous adjudication, the Appellate Court noted the issue had already been resolved when this Court determined in 1922 and reiterated in 2011 that a settlement or award entered by the Industrial Commission (now Illinois Workers' Compensation Commission) is a final adjudication of all matters in dispute up to the time of the agreement. *Richter v. Village of Oakbrook*, 2011 IL App (2d) 100114, citing *Stromberg Motor Device Co. v. Industrial Commission*, 305 Ill. 619, 622 (1922). The Appellate

Court also cited to a U.S. Supreme Court case which applied Illinois law and held an approved workers' compensation settlement becomes *res judicata* as to matters adjudicated and agreed upon therein. *Industrial Commission v. McCartin*, 330 U.S. 622, 628-629 (1947).

In reaching its decision on whether the issues were adjudicated in the Pennsylvania workers' compensation settlement, the Appellate Court stated Armstead's contention that the issue was not "litigated" was flawed in that only the incentive and opportunity to litigate is required. The Appellate Court determined Armstead had both the incentive and opportunity to litigate the full extent of his injuries in the Pennsylvania workers' compensation proceedings.

There was no real dispute that the third element of collateral estoppel requiring the party against whom estoppel is asserted must be the same party or in privity with the party in the prior adjudication.

IDC submits the Decision of the Appellate Court is consistent with established law, public policy, and reached a result fair to all parties.

B. Workers' compensation settlements have been determined to be binding in other proceedings

Notwithstanding the straight forward nature of the Appellate Court's analysis, Armstead, the Illinois Trial Lawyers Association (ITLA), and the Workers' Compensation Lawyer Association (WCLA) are asking this Court to reverse the Appellate Court's Decision based upon a misguided view of how the decision will impact the workers' compensation system.

The use of workers' compensation settlement agreements to bind parties to the terms set forth in the settlement agreement is not a new concept. Illinois Workers'

Compensation settlements have been utilized by way of collateral estoppel in cases involving applications for benefits under the Public Safety Employee Benefits Act (PSEBA) and the Public Employee Disability Act (PEDA). 820 ILCS 320/10 and 5 ILCS 345/1(b).

In *Richter v. Village of Oakbrook*, 2011 IL App (2d) 100114, the Appellate Court of Illinois held a workers' compensation settlement contract was appropriately utilized to collaterally estop the Village of Oakbrook from denying benefits under PSEBA and PEDA. In rendering its decision, the Appellate Court noted the Workers' Compensation Commission's Order as set forth on a settlement contract qualified as a judgment on the merits and had the same preclusive effect as an award based on the Commission's own fact-finding. *Richter*, 2011 IL App (2d) 100114 at ¶19.

Additionally, the Illinois Workers' Compensation Act provides for a credit to employers based upon a claimant's prior award. 820 ILCS 305/8(e)17. The credit is based entirely upon the listed body part and level of disability set forth on a prior settlement contract or in a prior Decision from the Workers' Compensation Commission. Clearly, the information on a settlement contract identifying the injured body part is known to be a crucial piece of information with impactful consequences.

Parties to a workers' compensation case routinely consider and negotiate the body parts to be identified on a settlement contract as employers want to be able to claim a credit for a previous injury should the claimant suffer a new accident involving the same injured body part, and employees want to minimize potential credits.

The arguments set forth by WCLA indicate the parties to a workers' compensation case inevitably use boilerplate language in a contract, but WCLA also

argues the language is not standardized, and the parties intentionally include terms intended to minimize the parties' obligations to certain third-parties including short or long term disability carriers, group health carriers, and Medicare and Medicaid programs. Notwithstanding the inconsistency as to whether the terms of a settlement contract are standard or customized, WCLA fails to mention the parties to a workers' compensation case contemplate and negotiate the language to be utilized on the settlement contract. The reason for the consideration and the negotiation is the information contained on the settlement contract is known to have an impact on concurrent and future proceedings.

C. The Appellate Court's collateral estoppel ruling has no impact on the large volume of cases in the workers' compensation system

Armstead, ITLA, and WCLA each contend the doctrine of collateral estoppel should not apply to workers' compensation settlements because of the high volume of settlements. The argument impugns the integrity and competence of all workers' compensation practitioners. Section 1.1 of the Illinois Rules of Professional Conduct provides a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. ITLA and WCLA apparently believe those who draft workers' compensation settlement contracts don't consider the ramifications of the language they choose to utilize on settlement contracts, ignore the potential impact of the contract language, and therefore violate the Rules of Professional Conduct.

The settlement agreement in Armstead's Pennsylvania workers' compensation claim included a limitation as to the nature of the injuries sustained. The settlement contract expressly states the precise nature of the injury is a right knee strain, and the

parties agree that claimant did not sustain any other injury or medical condition as a result of his 03/06/2015 work injury (C 104). Presumably, the parties contemplated the language to be utilized on the settlement contract in order to avoid payment for the medical bills associated with the disputed back treatment. Assuming that to be true, Armstead was not subject to any type of lien from the health insurance company for medical bills paid for the treatment on Armstead's back, because Armstead only made a recovery for the knee injury. Furthermore, the employer, Manfredi Mushroom Company (Manfredi) would be limited to only recovering an appropriate portion of the workers' compensation benefits paid for the knee strain from any recovery made by Armstead against National Freight, the alleged tortfeasor.

It is difficult to imagine that ITLA and WCLA are not acknowledging the consideration which goes into the terms and information contained on each and every workers' compensation settlement contract. In fact, the Rules of Professional Conduct require that the terms and information contained on each and every contract are considered.

Additionally, in contrast to the allegations of ITLA and WCLA, workers' compensation settlement contracts are not drafted by non-lawyers. When a represented claimant's case is settled directly with an insurance company, the claimant's attorney drafts the contract, and when a pro se claimant settles a workers' compensation case with an insurance company, the insurance company hires an attorney to draft the contract.

Either way, the terms of a settlement are presented to a Workers' Compensation Commission Arbitrator who reviews not only the contract but the medical records

supporting the claim. Only after the Arbitrator confirms with an unrepresented claimant that the claimant understands the terms of the settlement will the Arbitrator approve the settlement. It would be extremely rare for an unrepresented claimant to also be filing a third-party case against a tortfeasor. Cases which involve both a workers' compensation claim and a liability case are almost always handled by attorneys who know or should know the impact of terms utilized on a settlement contract.

Workers' Compensation Arbitrators are governed by the Canons of the Code of Judicial Conduct as adopted by the Supreme Court of Illinois. 820 ILCS 305/1.1(b). Canon 1 (Illinois Supreme Court Rule 61) provides a judge shall uphold the integrity and independence of the judiciary, and Canon 3 (Illinois Supreme Court Rule 63) requires judges to perform their duties impartially. To the extent Armstead, ITLA and WCLA are contending workers' compensation arbitrators will need to evaluate the terms of a settlement contract to assess potential collateral estoppel issues, they are also contending the arbitrators reviewing settlement contracts are going to provide legal advice to the parties which would violate the Canons requiring the court to be independent and impartial.

ITLA and WCLA further argue there is not enough time for attorneys to consider the language and information contained in a settlement contract, and Armstead argues parties and attorneys have not had to pay particular attention to the contents of settlement agreements. These claims are simply not true. ITLA acknowledged one of the reasons they are opposed to paying attention to contract language is petitioners' attorneys don't make enough money to do so. In contrast to the arguments of ITLA and WCLA, their members who practice in the workers' compensation arena do consider

the terms and language to be included in a settlement contract.

Furthermore, because the terms of workers' compensation settlement contracts are already contemplated and negotiated between the parties, and the risks and benefits of trial are already considered and analyzed, there will not be any impact on the efficiency of the workers' compensation system. There is absolutely no credible reason to believe either petitioners' attorneys or respondents' attorneys in workers' compensation cases will suddenly decide to proceed to trial because of a concern about collateral estoppel. They already proceed to trial on disputes relating to which body part is injured, which medical bills are related to a work accident, and whether additional treatment is necessary. Furthermore, when agreements cannot be reached as to the terms of a settlement such as which party is responsible for certain medical bills or which party will accept responsibility for conditional payments made by Medicare, or which body part should be listed on the contract, the parties proceed to trial. Those disputes and decisions to proceed to trial will not be impacted by the appellate court's decision on collateral estoppel, and the decisions to compromise the disputed issues will also not be impacted.

D. The Appellate Court's collateral estoppel ruling does not result in any unfairness to Armstead

Our colleagues raise an issue of fairness and point to the case of *Talarico v. Dunlap*, 177 Ill.2d 185 (1997), wherein this court stated collateral estoppel must not be applied to preclude parties from presenting their claims or defenses unless it is clear that no unfairness results to the party being estopped. *Talarico*, 177 Ill.2d at 191-192. They contend the application of collateral estoppel is somehow unfair to Armstead. However, they fail to consider the benefits Armstead received by choosing and/or agreeing to the

language in his workers' compensation settlement contract.

The parties to a workers' compensation case as in any other area of litigation balance the benefits and risks of settlement versus trial. In this case, Armstead balanced the risks and benefits of trial in the workers' compensation case by agreeing to limit the workers' compensation settlement to the knee part of the case presumably because he thought it was unlikely he would be successful at trial in establishing the back part of the case was causally related to the work accident, or alternatively, the risks of trial were outweighed by the assurance of a definitive settlement amount and the assurance of avoiding a subrogation lien from the health insurance company. The consequences for accepting the benefits of settlement include Armstead being barred from seeking benefits for the back claim in a subsequent proceeding against National Freight. This is a reasonable and contemplated result.

A common workers' compensation settlement involving an accepted injury to one body part and a disputed injury to a different body part, culminates in the employer paying more than full value for the accepted injury in exchange for contract language limiting the settlement to the accepted body part. The settlement results in the employee getting some value for the disputed injury without having to proceed to trial and risk getting nothing for the disputed injury. Additionally, the employee avoids any subrogation claims from a health insurance company which paid for the medical treatment for the disputed injury, the employer avoids paying for the disputed medical treatment, and both the employee and the employer avoid the time and expense of a trial.

This court has also determined it is not fair for a claimant to make a claim for

benefits in one setting and then a contrary claim for benefits in a different setting. *Auler Law Offices v. Industrial Commission*, 99 Ill.2d 395 (1984). In *Auler Law Offices*, a workers' compensation claimant executed a health insurance claim form stating his medical condition was not the result of a work accident. He then argued in the workers' compensation case that his medical condition was the result of a work accident. This Court stated, "Obviously, statements in formal written documents cannot be tendered at face value for the purpose of obtaining benefits, and then lightly explained away when they stand in the way of claims for other benefits of an inconsistent nature. *Auler Law Offices*, 99 Ill.2d at 399.

Here, Armstead executed a formal written document with the assistance of an attorney stating his injuries were limited to a knee strain, and now he is claiming entitlement to benefits for a back injury which is clearly of an inconsistent nature. If Armstead is allowed to disavow his back claim and avoid his medical bill obligations for the back claim in his workers' compensation settlement and then claim the back injury and the corresponding medical bills in the liability case, he will be able to make a double recovery, which is obviously not fair.

On pages 6-7 of ITLA's Brief, a concern is raised about the sufficiency of Armstead's workers' compensation settlement. They seem to be arguing that because Armstead's knee may get worse over time, the designation of a knee strain on the workers' compensation settlement contract should be ignored.

With every disputed settlement, each party assumes some risks. Here, Armstead accepted \$110,000.00 more than 20 months after the work accident occurred. It is reasonable to conclude he had a full understanding as to the condition of his knee and

the risks of his knee becoming worse over time. If this Court now says Armstead's reasoned decision to settle his workers' compensation case in the manner in which he did should not be binding on him, Armstead will gain an unfair windfall by arguing in his case against National Freight that the condition of his knee is worse than what he claimed in his workers' compensation case as well as receiving a windfall for claiming a back injury which was clearly waived in the workers' compensation settlement.

E. Armstead had every opportunity to litigate the prior workers' compensation adjudication

Another argument set forth by ITLA and WCLA is based on this court's discussion in *Talarico v. Dunlap* relating to collateral estoppel only being applied when the party being estopped had an incentive to litigate or even vigorously litigate the prior adjudication. This Court stated that in determining whether a party had a full and fair opportunity to litigate an issue in a prior action, those elements which comprise the practical realities of litigation must be examined. *Talarico*, 177 Ill.2d at 192. There must have been an opportunity to litigate, so that a failure to litigate the issue is in fact a concession on that issue. *Talarico*, 177 Ill.2d at 192.

It is important to note the distinction between the facts in *Talarico* and here. In *Talarico*, the prior adjudication was a criminal plea in which Talarico pled guilty to reduced charges. In doing so, he avoided any jail time when the original charges could have resulted in substantial prison time. Here, the issue relates to whether Armstead can claim he injured his back despite settling a workers' compensation case solely based on an injury to his knee. The benefits obtained by Talarico including avoiding prison time could justify allowing some inaccurate facts to be entered in the court record. The same is not true for Armstead who agreed to the terms of the workers' compensation

settlement because he believed he was maximizing his recovery and settlement was his best litigation strategy.

ITLA points out the average workers' compensation case value in 2013 was only \$2,389. Actually, that figure only related to the average indemnity. The average total cost of each case was \$7,138.¹ Annual reports by the Illinois Workers' Compensation Commission for 2015 when Armstead was injured and 2016 when Armstead settled his workers' compensation case do not set forth the average value for Illinois cases.² Armstead settled his workers' compensation case for \$110,000 more than 20 months after sustaining his injury. (C 104-105, C109). It is difficult to argue Armstead did not have an opportunity to litigate his workers' compensation case, when he ended up with an indemnity settlement more than forty times the average Illinois indemnity value. Armstead was not avoiding prison time when he executed his settlement contract. He made a reasoned decision with the assistance of counsel to forego trial in exchange for a large settlement.

As set forth in ITLA's Amicus Brief, their issue relates more to whether petitioners' attorneys have an incentive to litigate because of the amount of money they are making or not making rather than whether there is an incentive for their clients to litigate.

F. Public policy weighs in favor of the application of collateral estoppel based upon workers' compensation settlements.

This Court has clearly stated the collateral estoppel doctrine was created to prevent re-litigation of previously adjudicated claims and is founded in principals of

¹ <https://www2.illinois.gov/sites/iwcc/Documents/annualreportFY14.pdf>

² <https://www2.illinois.gov/sites/iwcc/Documents/FiscalYear2015AnnualReport.pdf>
<https://www2.illinois.gov/sites/iwcc/Documents/2016AnnualReport.pdf>

judicial economy. *Ballweg v. City of Springfield* 114 Ill.2d 107, 113 (1986). In order to make the judicial system efficient, it is necessary to eliminate re-litigation of previously adjudicated claims.

Here, each of the elements of collateral estoppel have been met, and not only will Armstead not suffer from any unfairness as a result of the application of collateral estoppel, the application of collateral estoppel will prevent a windfall to Armstead.

ITLA compares this case to a civil consent judgment. The undersigned was not able to find any case law equating a “civil consent judgment” with a workers’ compensation settlement agreement.

The First District Appellate Court discussed a split of authority in Illinois cases as to whether a dismissal with prejudice pursuant to a settlement agreement is sufficient to raise *res judicata*. *Jackson v. Callan Publishing, Inc.*, 356 Ill.App.3d 326 (1st Dist. 2005). The court in *Jackson* noted some cases concluded an order entered pursuant to a settlement constituted a final judgment on the merits for the purposes of *res judicata*, and other cases concluded an agreed order is not a judicial determination of the parties’ rights, but rather it is a recordation of the agreement between the parties. The modern view generally recognizes that a valid consent judgment is entitled to a *res judicata* effect, so as to preclude re-litigation of the same claim or cause of action as was covered by such judgment. See Annotation, Modern Views of State Courts as to Whether Consent Judgment is Entitled to *Res Judicata* or Collateral Estoppel Effect, 91 A.L.R. 3d 1170 (1979).

There is no dispute that in Illinois, this Court has held for 100 years a workers’ compensation settlement is an adjudication on the merits and can be utilized to preclude

re-litigation of the issues decided therein.

Our colleagues at ITLA suggest that in contrast to victims of crimes, parties to a civil action should not be entitled to utilize the doctrine of collateral estoppel, and therefore, they are not entitled to judicial economy and should be forced to re-litigate previously decided issues. This is contrary to the public policy interests set forth by this Court.

As such, public policy including judicial economy and the prevention of an inappropriate windfall support the Appellate Court's application of collateral estoppel based upon Armstead's workers' compensation settlement.

G. The Appellate Court's collateral estoppel ruling will not have any impact on employers paying workers' compensation benefits

Finally, WCLA argues if the Appellate Court's ruling stands, employers will be hesitant to make immediate payments for claimed injuries because of concerns about how their admissions, objections and waivers might be interpreted and used against them in the anticipated civil litigation. This argument demonstrates a surprising lack of understanding of the Workers' Compensation Act and the workers' compensation practice.

Sections 19(k) and 19(l) of the Illinois Workers' Compensation Act provide for penalties against an employer for not promptly paying compensation to injured workers. 820 ILCS 305/19(k) and 820 ILCS 305/19(l). The penalties include 50% of the amount of compensation which was not promptly paid and an additional \$30 per day up to \$10,000 for delayed temporary total disability benefits.

Furthermore, section 8(b)7 of the Illinois Workers' Compensation Act provides an employer's payment of compensation is not an admission of liability. 820 ILCS

305/8(b)7.

With the potential for penalties, the lack of an admission of liability, and considering the employer's right to recover up to 75% of benefits paid from a third-party tortfeasor pursuant to 820 ILCS 305/5(b), any argument claiming the use of collateral estoppel on a settlement contract will somehow cause employers to delay payments to an injured worker is misguided.

CONCLUSION

The Appellate Court's ruling finding collateral estoppel appropriately binds a workers' compensation claimant to the terms set forth in a workers' compensation settlement contract is consistent with current law, is fair to all parties involved, and will have no negative impact on the workers' compensation system. As such, the Illinois Association of Defense Trial Counsel urges this Court to affirm the Appellate Court's Decision.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I, R. Mark Cosimini, certify that this brief conforms to the Illinois Supreme Court Rules 341(a) and 341(b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents, statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 16 pages.



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