

New use for collateral estoppel

By Donald P. Eckler

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Attorneys who handle civil matters and those that handle workers’ compensation matters, whether on the plaintiff-petitioner side or the defendant-respondent side, rarely have reason to communicate except to fight over the lien in settling the civil matter.

However, after a recent decision from the 3rd District Appellate Court, in *Armstead v. National Freight, Inc.*, 2020 IL App (3d) 170777, that may change.

The plaintiff, who was employed by a Pennsylvania trucking company, was allegedly injured in a March 6, 2015, automobile accident in Grundy County that he claimed was caused by a vehicle driven by an employee of National Freight. *Armstead*, 2020 IL App (3d) at Para. 3-4. Shortly thereafter, the plaintiff filed a workers’ compensation claim in Pennsylvania and an independent medical exam found only injury to the plaintiff’s right knee was related to the alleged motor vehicle accident. The November 2018 oral argument on appeal disclosed that the plaintiff had a fusion surgery before the accident and another after the accident; the cause of this latter fusion was in dispute in the workers’ compensation matter. A settlement was reached in the workers’ compensation matter wherein the plaintiff agreed that the only injury was to his right knee.

However, in interrogatories answered in the 2016 civil case filed in Illinois, the plaintiff claimed injury to his back, shoulder, and right knee. The defendants moved for partial summary judgment for any injury beyond the right knee, asserting collateral estoppel, res judicata, and judicial admission. The trial court found that the plaintiff made a judicial admission in the settlement of the workers’ compensation matter and entered partial summary judgment in favor of the defendants on that issue.

After initially reversing the circuit court in February 2019, holding that there was no judicial admission because the statement made by the plaintiff as to the extent of his injury was not made in the same proceeding, the Appellate Court granted the defendants’ petition for rehearing in May 2019, and in November the court affirmed the judgment of the circuit court holding that the plaintiff was collaterally estopped from asserting any injury beyond that to his right knee.

The elements of the equitable doctrine 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*, citing *Illinois State Chamber of Commerce v. Pollution Control Board*, 78 Ill.2d 1, 7 (1979).

The first and third elements were easily met.

As to the second element, the court held that there was a final judgment because “[f]or collateral estoppel to apply, a prior adjudication is required. Litigation is not. Instead, only the incentive and opportunity to

litigate is required. This is true so that a failure to litigate the issue is, in fact, a concession of that issue.” *Armstead* Para. 27, citing *Talarico v. Dunlap*, 177 Ill. 2d 185, 192 (1997).

Comparing Pennsylvania and Illinois law, the court stated, “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. Para. 25, citing *Richter v. Village of Oak Brook*, 2011 IL App (2d) 100114, Para. 18, citing *Stromberg Motor Device Co. v. Industrial Comm’n*, 305 Ill. 619, 622 (1922).

There was some unique language present in the settlement agreement that, according to the oral argument, gave the circuit court the reason not to apply collateral estoppel and initially gave the appellate court reason not to consider it. The language included that the agreement is “appropriately approved as binding only on the signing Parties, and limited to their respective rights and obligations under the [Pennsylvania Workers’ Compensation Act]” and that “[t]his Decision is entered into without adoption or litigated determination on the merits of the matters agreed upon, and is not to alter the rights or obligations of any third party not a signatory to this Agreement.”

In the oral argument the question that seemed to cut through those arguments was the point made by one of the justices that the agreement was not with the defendants in the civil case. No such language is in Illinois workers’ compensation settlement agreements, but even if it is added in the future, this should be easily dispensed with by pointing out that it is not binding on civil defendants who are not parties to the settlement agreement in the workers’ compensation matter.

The Illinois Supreme Court has provided for the disclosure of information regarding an underlying workers’ compensation claim through its standard interrogatories to Rule 213, which states:

“Have you ever filed a claim for and/or received any workers’ compensation benefits? If so, state the name and address of the employer against whom you filed for and/or received benefits, the date of the alleged accident or accidents, the description of the alleged accident or accidents, the nature of your injuries claimed and the name of the insurance company, if any, who paid any such benefits?”

Defense counsel should take renewed interest in the injuries and parts of the body listed in the settlement of a related workers’ compensation claim. Further, defense counsel should consider making an additional argument, not made by the defendants in *Armstead*: judicial estoppel.

The Illinois Appellate Court, and creative lawyering by defense counsel, has opened a new avenue of defense to certain claims that the plaintiff previously agreed were not related to an accident.