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The New York Court of Appeals Visits (and Then Revisits) the Preclusive Impact of Administrative Findings of Fact in Subsequent State Court Actions

BY PROFESSOR JAY C. CARLISLE
AND NATIA DAVITI, ESQ.

In *Auqui v. Seven Thirty One Limited Partnership* (22 N.Y.3d 246, 980 N.Y.S.2d 345, 2013 N.Y. Slip Op. 08192 [December 10, 2013]), the New York Court of Appeals, for the first time in many years, reversed itself and overruled a prior decision issued in February 2013, that had granted issue preclusion or *collateral estoppel* to an administrative finding by a Workman's Compensation Board.

In *Auqui*, the Court examined whether a fact determination by an administrative board should bear preclusive weight in a subsequent state court action.

For *collateral estoppel*, or issue preclusion, to take effect in a subsequent action, two requirements must be met: first, that the identical issue must have been determined in the prior action, and second, that the plaintiff had a full and fair opportunity to litigate the issue therein.

In *Auqui*, the Workers' Compensation Board ("WCB") determined that the plaintiff, Jose Verdugo, a food service deliveryman, no longer had

any disability that was causally related to his workplace accident, when a sheet of plywood fell from a construction site and hit him. Mr. Verdugo claimed that this accident caused him depression and post-traumatic stress disorder as well as injuries to his head, back and neck. The WCB found that he no longer required medical treatment for these injuries and discontinued his Workers' Compensation benefits.

The claimant, while still receiving disability-related compensation, brought a third-party state court action in Supreme Court, New York County. Relying on case law that has long held administrative and arbitral determinations to bear preclusive weight in later state court actions, the defendants in the personal injury case moved to preclude the plaintiff from relitigating the issue regarding the extent of his work injury, arguing that it was already litigated and decided in full in the WCB hearing.

The plaintiff appealed, and the issue was scrutinized by the Court of Appeals first in February of 2013,

where the majority found that the WCB ruling on the duration of the plaintiff's injuries precluded relitigation of the issue in his personal injury lawsuit.

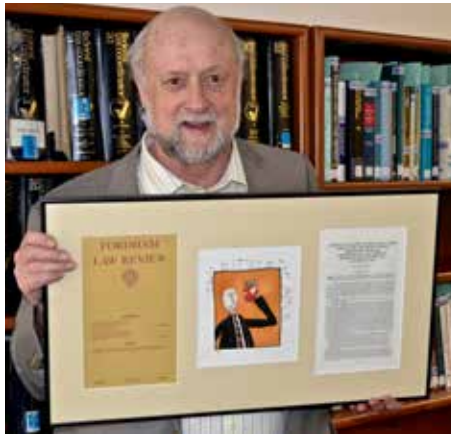
The Court initially reasoned that the plaintiff had a full and fair opportunity to litigate the issue of his continuing disability during the WCB proceeding, as he was represented by attorneys, submitted medical evidence, reports and expert testimony and cross-examined the defendants' experts. The defendants' motion to preclude the plaintiff from litigating the issue of his injury was thereby granted. In a rare move, the Court granted a rehearing of the plaintiff's appeal in December 2013, and then, in an even more atypical fashion, unanimously reversed itself.

Largely due to public policy concerns, the Court held that the earlier decision of the WCB did not have identity of issue with the plaintiff's negligence claims in the state court lawsuit against the premises owner, construction manager, and subcontractor.

The Court reasoned that the plaintiff's negligence claims focused on a larger question of the impact of his injury over the course of his lifetime, while the main purpose of the Workers' Compensation hearing, where the rules of evidence are virtually non-existent, was to provide funds on a quickened basis to substitute for lost wages incurred by the plaintiff due to his debilitating accident.

Notably, the Court determined that a Workers' Compensation hearing focuses on a question of the claimant's ability to perform the tasks related to his employment, whereas a state court negligence action relates to the plaintiff's overall health and the physical, emotional, and mental toll of the injury suffered.

Since the claimant in this case did not obtain the necessary neuropsychiatric testing during his Workers' Compensation Board hearings (which his physicians deemed vital in order to diagnose his particular injury), his subsequent state court action was ruled not to have identity of issue as related



Professor Carlisle displays the plaque awarded to him in 1986 celebrating publication of his first article on *res judicata* entitled "Getting A Full Bite of the Apple: When Should Issue Preclusion Be Given to Administrative and Arbitral Determinations." The article has been cited many times by state and federal courts throughout the United States and by the Restatement 2d of Arbitration Law.

to the extent of the plaintiff's disability and medical treatment.

CONCLUSION

The Court of Appeals decision in *Auqui* recognizes that administrative proceedings which take the form of "quasi-judicial" determinations may

sometimes be given preclusive impact in subsequent judicial proceedings provided that the identity of issue and full and fair opportunity requirements of collateral estoppel or issue preclusion are satisfied.

The decision also recognizes that administrative determinations made without the benefit of rules of evidence, pre-trial disclosure and motion practice should be given very limited affect in subsequent judicial proceedings. The fact that the Empire State's highest court unanimously reversed itself within one year is a reminder of how confusing the doctrines of *res judicata* and *collateral estoppel* are to the bench and bar of New York.

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