

## TORT NOTES

By: James J. Morici, Jr.

### **FINDING OF INDUSTRIAL COMMISSION ADVERSE TO PLAINTIFF IN WORKERS' COMPENSATION CASE CANNOT BE USED TO COLLATERALLY ESTOP PLAINTIFFS THIRD-PARTY LAWSUIT WHERE WORKER'S COMPENSATION MATTER WAS SETTLED BEFORE FINAL JUDGMENT.**

Defendants will often try to use adverse findings in workers' compensation claims or other administrative actions to prevent an injured worker from obtaining a trial by jury on the merits. Collateral Estoppel is the doctrine most often cited in support of these attempts.

Whether the doctrine should apply to a particular case is determined by application of a three-prong test:

1. Whether the issue decided in the prior litigation is identical to the one presented in the present case;
2. Whether there had been a final judgment on the merits; and,
3. Whether the party against whom estoppel is asserted is a party or in privity with a party to the prior adjudication.

Ballweg v. City of Springfield, 114 Ill.2d 107, 499 N.E.2d 1373 (1986). (Attached hereto as Exhibit F). See also, Marquez v. Gutierrez, 51 F.Supp.2d 1020 (E.D.Cal., 1999); Gray v. Lacke, 885 F.2d 399, (7<sup>th</sup> Cir.Wis., 1989); Ray v. Indiana & Michigan Elec. Co., 758 F.2d 1148, (7<sup>th</sup> Cir., Ind. 1985).

In Arnett v. Environmental Science & Engineering, 275 Ill.App.3d 938, 657 N.E.2d 668, 212 Ill.Dec.467 (3d, 1995), the Plaintiff, an asbestos abatement worker, brought a negligence suit against the project manager and an air sampling professional seeking damages for injuries sustained when he was exposed to fumes from mastic removers and chemical solvents. The Plaintiff additionally brought a claim under the Workers' Compensation Act. After a hearing,

Arnett's workers' compensation claim was denied by an arbitrator as not being causally connected to his work exposure, and the Industrial Commission affirmed. The Plaintiff appealed the Commission's decision to the circuit court, but before the court could rule the appeal was dismissed upon a settlement agreement of the parties. Defendants in Arnett's third-party lawsuit subsequently filed a motion to dismiss, arguing that they owed no duty to the Plaintiff and that the Plaintiff's claims were barred under the doctrine of collateral estoppel. They based the defense on the Plaintiff's alleged failure to prove proximate cause in his worker's compensation case.

The Third District, relying on Ballweg v. City of Springfield, found that the Defendants had not met the test set forth therein. In applying the Ballweg three-prong test, the Arnett court found that although the Defendants had met the first and third prongs of the test, the second prong as to finality of judgment had not been met. The court stated that the preclusive effect of a settlement or consent judgment rises to the level of collateral estoppel in only certain circumstances. A consent judgment is entitled to res judicata effect, thereby barring relitigation between the same parties or their privities for the same cause of action. (Citing, Elliot v. LRSL Enterprises, Inc., 226 Ill.App.3d 724, 589 N.E.2d 1074, 168 Ill.Dec. 674, (1992)). However, a consent judgment (i.e. settlement) does **not** collaterally estop relitigation of the same issue in a different claim or cause of action. (Citing, Sleck v. Butler Brothers, 53 Ill.App.2d 7, 202 N.E.2d 64, (1964)). The court reasoned that:

**Sound logic dictates the distinction as to when consent judgments are given preclusive effect. When a third party asserts collateral estoppel based upon a consent judgment, he is attempting to rely upon an administrative act of the court recording an agreement of the parties, rather than a judicial determination of the rights of the parties and the issues involved. (Citing, Sleck, 53 Ill.App.2d at 13). Courts are therefore reluctant to give preclusive effect to consent judgments because the extent to which the issues were actually litigated and resolved is uncertain. (Citing, Ekkert v. City of Lake Forest, 225 Ill.App.3d 702, 588 N.E.2d 48, 167 Ill.Dec. 841 (1992)).**

Arnett, 275 Ill.App.3d 938, 944; 657 N.E.2d 668, 673.

The Third District held that in the Plaintiff's workers' compensation case against his employer, the factual findings of the arbitrator and the Industrial Commission were not final because they were appealed to the Circuit Court and the appeal was dismissed pursuant to settlement. Accordingly, the circuit court's judgment could not serve as a basis for collaterally estopping Plaintiff's claim against the Defendant. See also, City of Matton v. Mentzer, 282 Ill.App.3d 628, 668 N.E.2d 601, 218 Ill.Dec. 117 (1996).

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