Comments

CONFLICTS OF LAW

FLEXIBLE USE OF THE COMITY DOCTRINE RESOLVES TENSION IN THE WORKER'S COMPENSATION ARENA

In *Fremont Indemnity Co. v. Industrial Comm'n of Arizona*,[1] the Arizona Supreme Court considered the effect the Arizona judiciary may give to an industrial disability judgment rendered in another state. The court refused to apply the doctrine of collateral estoppel through the full faith and credit clause of the United States Constitution.[2] Instead, the court accorded the New Jersey disability judgment a rebuttable presumption of validity as a matter of comity.[3]

The claimant in *Fremont,* Brian Mingin, injured his back in 1973 while working in New Jersey.[4] In 1975, the New Jersey Workman's Compensation Division awarded him worker's compensation benefits based upon its findings that he had suffered an eleven percent permanent partial disability. While working in Arizona in 1980, Mingin sustained a second injury. His employer's insurance carrier, Fremont Indemnity Company (Fremont), awarded him benefits based upon its finding that he had incurred a scheduled[5] fifteen percent permanent partial disability.

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1. 144 Ariz. 339, 697 P.2d 1089 (1985).

2. *Id.* at 342, 697 P.2d at 1092. U.S. Const. art. IV, § 1, states: "Full faith and credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

The full faith and credit clause nationalizes the doctrine of res judicata. Durfee v. Duke, 375 U.S. 106, 109 (1963). Res judicata is a doctrine which prevents parties to an action from relitigating the same cause of action in a later proceeding. Lawlor v. National Screen Serv. Corp., 349 U.S. 322, 326 (1955). The full faith and credit clause also includes the doctrine of collateral estoppel. Braselton v. Clearfield State Bank, 606 F.2d 285, 287 (10th Cir. 1979). Collateral estoppel is a principle which bars parties to an action from relitigating the issues necessary to a determination in that action in a later proceeding. *Lawlor,* 349 U.S. at 326. Collateral estoppel should not be confused with the doctrine of res judicata. In *Lawlor,* the Court observed:

> Under the doctrine of res judicata a judgment "on the merits" in a prior suit involving the same parties or their privies bars the second suit based on the same cause of action. Under the doctrine of collateral estoppel, on the other hand, such a judgment precludes relitigation of issues actually litigated and determined in the prior suit, regardless of whether it was based on the same cause of action as the second suit.

Id.

The *Fremont* court noted that the issue before it was one of collateral estoppel rather than of res judicata. *Fremont,* 144 Ariz. at 342, 697 P.2d at 1092. When an administrative agency acts in a judicial capacity courts can appropriately apply collateral estoppel principles to its determination. Yavapai County v. Wilkinson, 111 Ariz. 530, 532, 534 P.2d 735, 737 (1975). *See infra,* notes 33-47 and accompanying text.

3. *Fremont,* 144 Ariz. at 345, 697 P.2d at 1095.

4. The facts of *Fremont* are set forth in 144 Ariz. at 341, 697 P.2d at 1091.

5. ARIZ. REV. STAT. ANN. § 23-1044(B) (1983) enumerates the injuries for which the legislature has determined the rate and the period of allowable compensation. A worker sustaining one of

Mingin's first injury would have been an unscheduled disability if it had occurred in Arizona.[6] Under Arizona's worker's compensation law, a prior unscheduled disability can act to convert a subsequent scheduled disability into an unscheduled disability.[7] For such a conversion to occur, however, the claimant must show that, at the time of the time of the second injury, he still suffers an actual loss of earning capacity as a result of the first disability.[8] Following the insurance carrier's scheduled award, Mingin requested a hearing. At the hearing, he argued that his earlier unscheduled back injury

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these scheduled injuries receives a fixed amount of compensation for the period the statute specifies. *Id.*

Where § 23-1044(B) does not list the injury in question, § 23-1044(C) applies and the injury is unscheduled. Workers sustaining unscheduled injuries receive compensation commensurate with the loss of earning power they have suffered under § 23-1044(C). Relevant factors in determining the loss of earning power are the injured worker's age and occupational history, the type of work the worker is able to perform subsequent to the injury, and the nature and extent of the physical disability. *Id.*, § 23-1044(D) (1983). Under an unscheduled disability award, the compensation period continues until the disability ends or until the injured worker dies. *Id.*, § 23-1044(C) (1983).

To qualify for unscheduled disability benefits, a worker must show an actual loss of earning power. Langbell v. Industrial Comm'n, 111 Ariz. 328, 332, 529 P.2d 227, 231 (1974). Scheduled injury awards, on the other hand, do not require a showing of a loss of earning power because § 23-1044(B) specifies the amount of the award for each type of injury enumerated therein.

6. *Fremont,* 144 Ariz. at 341, 697 P.2d at 1091.

7. Ronquillo v. Industrial Comm'n, 107 Ariz. 542, 544, 490 P.2d 423, 425 (1971) (presumption that a prior industrial injury has some effect on subsequent injury).

In Ossic v. Verde Central Mines, 46 Ariz. 176, 49 P.2d 396 (1935), the court stated that the legislature had recognized that the combination of two or more separately scheduled injuries could result in a greater actual loss of earning power than the amount reached by simply adding the scheduled amounts. *Id.* at 187, 49 P.2d at 401.

ARIZ. REV. STAT. ANN. § 23-1044(E) (1983) directly bears on the issue of converting a scheduled disability into an unscheduled disability:

> In case there is a previous disability, as the loss of one eye, one hand, one foot or otherwise, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

Id.

Courts have construed paragraph E to mean that where there is a previous injury, a later otherwise-scheduled injury will be unscheduled rather than scheduled. Alsbrooks v. Industrial Comm'n, 118 Ariz. 480, 483, 578 P.2d 159, 162 (1978) (citing Woods v. Industrial Comm'n, 91 Ariz. 14, 16, 368 P.2d 758, 759 (1962)). *See also* Gallardo v. Industrial Comm'n, 16 Ariz. App. 491, 492-93, 494 P.2d 391, 392-93 (1972) (scheduled injury following a previous scheduled injury becomes an unscheduled injury); 2 A. LARSON, WORKMEN'S COMPENSATION LAW § 59.00 (1983) (total effect of two injuries can be greater than the sum of the scheduled allowances for each injury). The underlying philosophy of this rule is that the scheduled injury scheme presumes a normal worker. *Id.*, § 59.10. For example, the loss of an eye, which would only partially disable a normal person, results in a total disability to one who has already, from whatever cause, lost the other eye. *Id.*

Arizona compensation law requires apportionment between the "entire disability" and the "previous disability." ARIZ. REV. STAT. ANN. § 23-1044(E) (1983). Therefore, in making an award in subsequent injury cases, the Industrial Commission will determine the entire disability and will reduce it by the percentage of disability that the previous injury caused. Bozman v. Industrial Comm'n, 20 Ariz. App. 390, 392, 513 P.2d 679, 681 (1973).

8. Modern Indus., Inc. v. Industrial Comm'n, 125 Ariz. 283, 287, 609 P.2d 98, 102 (Ct. App. 1980). A prior scheduled disability raises a rebuttable presumption of actual loss of earning capacity. Ronquillo v. Industrial Comm'n, 107 Ariz. 542, 544, 490 P.2d 423, 425 (1971). If the prior disability was unscheduled, however, the claimant does not have the aid of such a presumption and must demonstrate a present loss of earning capacity. Asbestos Eng'g & Supply Co. v. Industrial Comm'n, 131 Ariz. 558, 561, 642 P.2d 903, 906 (Ct. App. 1982).

In *Fremont,* the back injury Mingin sustained in New Jersey would have been unscheduled if it had occurred in Arizona. *Fremont,* 144 Ariz. at 341, 697 P.2d at 1091. Mingin therefore had to show a present loss of earning capacity resulting from the New Jersey injury. *Id.* at 342, 697 P.2d at 1092. The court held that he had satisfied his burden of proving lost earning capacity at the time of the second injury. *Id.* at 346, 697 P.2d at 1095-96.

resulted in an actual loss of earning capacity that should convert the present knee injury into an unscheduled disability.[9] In making this argument, Mingin relied on the New Jersey judgment to prove his previous unscheduled injury.[10]

The administrative law judge gave res judicata effect to the New Jersey judgment and awarded Mingin unscheduled permanent partial disability benefits.[11] The Arizona Court of Appeals set the award aside.[12] The court held that under collateral estoppel principles, the New Jersey judgment could not bind the Arizona employer and its insurance carrier because they were not parties to the New Jersey action.[13]

The Arizona Supreme Court vacated the decision of the court of appeals and accorded the New Jersey disability judgment presumptive validity as a matter of comity.[14] The supreme court agreed with the court of appeals that collateral estoppel could not preclude strangers to the previous action from litigating issues determined therein.[15] However, the court also recognized that Arizona cases had allowed judgments of the Industrial Commission and of the Veteran's Administration to bind strangers to issues thereby determined.[16] By establishing a rebuttable presumption of validity for worker's compensation judgments rendered in other states, the court resolved some of this tension. The decision relieves employees of the burden of proving injuries "remote in place and time."[17] At the same time, it preserves the right of employers and their insurance carriers to rebut findings made in actions to which they were strangers.[18]

This Comment will discuss the background for the court's holding. It will then examine the current problem of applying res judicata and collateral estoppel principles to administrative agency judgments. Finally, it will suggest that the principle of comity, while not without faults, may be the most effective way to deal with the administrative agency judgments of other states.

SHOULD PREVIOUS DISABILITY JUDGMENTS RAISE PRESUMPTIONS AGAINST NON-PARTIES?

Before *Fremont*, Arizona courts allowed prior disability judgments to raise presumptions[19] that converted scheduled industrial injuries into unscheduled injuries without considering whether the parties then before the

9. *Id.* at 341, 697 P.2d at 1091.
10. *Id.*
11. *Id.*
12. Fremont Indemn. Co. v. Industrial Comm'n, 144 Ariz. 350, 355, 697 P.2d 1100, 1105 (Ct. App. 1984).
13. *Id.* at 353-54, 697 P.2d at 1103-04. After noting that the petitioner mischaracterized the issue as one of res judicata rather than of collateral estoppel, the court cited Hansberry v. Lee, 311 U.S. 32, 40 (1940), for the proposition that a judgment cannot bind persons who are not parties to the litigation. *Fremont*, 144 Ariz. at 353, 697 P.2d at 1103.
14. *Fremont*, 144 Ariz. at 345, 697 P.2d at 1095.
15. *Id.* at 342, 697 P.2d at 1092.
16. *Id.* at 345, 697 P.2d at 1095.
17. *Id.*
18. *Id.*
19. *See supra* note 8.

court were the same parties that the prior disability judgments bound.[20] Such a result is contrary to the outcome that the United States Supreme Court decisions of *Hansberry v. Lee*[21] and *Blonder-Tonque Laboratories, Inc. v. University of Illinois Foundation* dictate.[22]

In *Blonder-Tonque,* the Court reasoned that collateral estoppel should not preclude persons who have not appeared in prior actions from litigating the issues determined therein.[23] This principle applies, the Court stated, even where the earlier actions resolved particular issues squarely against the position that strangers to those actions now wish to advance.[24] Moreover, collateral estoppel does not apply unless the party which the litigants are seeking to estop had a full and fair opportunity to litigate the issues in question in an earlier action.[25]

The *Fremont* court pointed out that the litigants in the previous Arizona cases[26] binding strangers to earlier disability judgments never raised the collateral estoppel issue.[27] When the litigants in *Fremont* raised the issue, they forced the court into a difficult position. On one hand, the employer and its carrier were entitled to due process as articulated in *Hansberry,*[28] *Blonder-Tonque,*[29] and previous Arizona decisions.[30] On the

20. For example, in Morris v. Industrial Comm'n, 81 Ariz. 68, 299 P.2d 652 (1956), the claimant sustained an industrial injury in 1950. In addition to other compensation, he received scheduled injury benefits under ARIZ. REV. STAT. ANN. § 23-1044(B). 81 Ariz. at 69, 299 P.2d at 653. The claimant suffered another injury in 1954 while working for a different employer. *Id.* The Industrial Commission again awarded him compensation under the scheduled injury compensation scheme. *Id.* at 70, 299 P.2d at 653-54. The Arizona Supreme Court reversed, holding that where successive accidents occur, the second injury must be unscheduled and actual loss of earning capacity must determine compensation. *Id.* at 73, 299 P.2d at 656. Thus, the employer in the second suit had no opportunity to contest the issue of the employee's original injury.

In Borsh v. Industrial Comm'n, 127 Ariz. 303, 306, 620 P.2d 218, 221 (1980) and Alsbrooks v. Industrial Comm'n, 118 Ariz. 480, 484, 578 P.2d 159, 163 (1978), the Arizona Supreme Court relied on prior determinations of non-industrial injuries by the Veteran's Administration to unschedule later industry-related scheduled injuries. In both instances, the prior determinations bound the employers and their insurance carriers, even though they were not parties to the earlier proceedings. 118 Ariz. at 484, 578 P.2d at 163.

See also Rogers v. Industrial Comm'n, 109 Ariz. 216, 508 P.2d 46 (1973) and Duron v. Industrial Comm'n, 16 Ariz. App. 71, 491 P.2d 21 (1972). In neither case does the court discuss whether the party that the prior judgment will bind was in fact a party to the judgment.

The *Fremont* court contrasts this line of cases with Artrip v. Califano, 569 F.2d 1298 (4th Cir. 1978). In *Artrip,* the court reiterated the general rule that a judgment cannot bind strangers to the litigation. *Id.* at 1300. The *Artrip* facts were similar to the *Fremont* facts. The *Artrip* claimant sought to bind the Secretary of Health, Education, and Welfare to the Virginia Industrial Commisson's determination that he had pneumoconiosis. *Id.* at 1299. Holding that the determination did not bind the secretary, the court stated that the party against whom collateral estoppel is sought to be imposed must have been a party when the issue was first litigated. *Id.*

The *Morris* line of cases on one hand and *Artrip* on the other represent the possible extremes in dealing with the issue of binding strangers to previous agency determinations. *Fremont,* 144 Ariz. at 345, 697 P.2d at 1095.

21. 311 U.S. 32 (1940). *See supra* note 13.

22. 402 U.S. 313 (1971).

23. *Id.* at 329.

24. *Id.*

25. *See* Ferris v. Hawkins, 135 Ariz. 329, 333, 660 P.2d 1256, 1260 (Ct. App. 1983) (judgment in an unemployment compensation proceeding does not have preclusive effect in a subsequent personnel proceeding where the state did not have a full and fair opportunity to litigate its personnel case in the prior proceeding).

26. *See supra* note 20.

27. *Fremont,* 144 Ariz. at 345, 697 P.2d at 1095.

28. *See supra* notes 13 and 21.

other hand, the claimant justifiably relied upon Arizona decisions admitting previous agency determinations of injuries as proof of such injuries in later actions.[31] Moreover, the claimant in a worker's compensation action is entitled to a simple, expeditious mechanism to vindicate his rights.[32] Furthermore, the United States Supreme Court ruling in *Thomas v. Washington Gas Light Company*[33] recently added another dimension to this problem.

ADMINISTRATIVE AGENCY DECISIONS: SHOULD THEY RECEIVE THE SAME TREATMENT AS COURT JUDGMENTS?

Thomas[34] involved an employee who sustained injuries in Virginia and subsequently received an award of benefits from the Virginia Industrial Commission. Three years after Virginia awarded him benefits, the employee sought additional compensation under the District of Columbia Workmen's Compensation Act. The issue before the Court was whether the full faith and credit clause precluded a supplemental award by the District of Columbia.[35]

The Court held that the full faith and credit clause did not preclude successive worker's compensation awards when the second state, here the District of Columbia, would have been entitled to apply its worker's compensation law from the outset.[36] In reaching this conclusion, the Court distinguished courts of general jurisdiction from administrative agencies with limited statutory authority, stating that because of the "critical differences" between the two, the constitutional rules applicable to court judgments do not necessarily apply to worker's compensation awards.[37]

The *Fremont* court noted that *Thomas* raised doubts as to the applica-

29. *See supra* notes 22-24 and accompanying text.

30. *See supra* note 25 and accompanying text.

31. *See supra* note 20 and accompanying text.

32. *See* ARIZ. CONST., art. 18, § 8, which states in pertinent part that the legislature shall enact a Workmen's Compensation Law "in order to assure and make certain a just and humane compensation law in the State of Arizona, for the relief and protection of such workmen, their widows, children or dependents, as defined by law, from the burdensome, expensive and litigious remedies for injuries to or death of such workmen . . . "

33. 448 U.S. 261 (1980).

34. The facts of *Thomas* are set forth in 448 U.S. at 264-65.

35. *Id.* at 264.

36. *Id.* at 286. The Court specifically overruled Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943). In *Magnolia,* the Court held that once a claimant receives an award of benefits in one state, the full faith and credit clause precludes a second supplemental award in another state. *Id.* at 444. The claimant in *Magnolia* worked in Louisiana but injured himself in Texas. *Id.* at 432. After receiving an award in Texas, he sought to recover a second supplemental award in Louisiana. *Id.* at 433. The Court refused to allow the second award, noting that Texas law precluded recovery in Texas if an individual had recovered in another state. *Id.* at 436. Louisiana did not allow a second recovery for one injury either. *Id.* Despite its denial of full faith and credit to the Texas worker's compensation award, the Court reaffirmed the principle that the award stood on the same footing as a court judgment. *Id.* at 446.

Within five years of rendering the *Magnolia* decision, the Court sharply limited its effect in Industrial Comm'n v. McCartin, 330 U.S. 622 (1947). There, the Court held that an Illinois award did not preclude a second recovery in Wisconsin. *Id.* at 630. The Court distinguished *McCartin* from *Magnolia* on the ground that Illinois, unlike Texas, did not have "unmistakable language" in its statute precluding supplemental recoveries in other states. *Id.* at 628. The *McCartin* Court did not retreat, however, from the position that final administrative adjudications are entitled to the same full faith and credit as court judgments. *Id.* at 629.

37. *Thomas,* 448 U.S. at 281-82.

bility of the full faith and credit clause to worker's compensation and other administrative agency determinations.[38] The court also noted, however, that commentators have severely criticized *Thomas.*[39] As a result, the court based its refusal to apply collateral estoppel through the full faith and credit clause upon the stronger ground that the New Jersey and Arizona actions involved different parties.[40]

However, even if the parties had been the same, there are some indications that courts should treat worker's compensation judgments the same as court judgments. In a case more recent than *Thomas, Kremer v. Chemical Constr. Co.,*[41] the United States Supreme Court equated state administrative tribunals having "specialized competence" and engaging in judicial factfinding with state courts.[42] This indicates that in determining whether an administrative agency determination is to receive the same treatment as a court judgment, the proper focus is on the decision-making process of the administrative body.[43] If the agency's decision-making process has the procedural safeguards found in the judicial system, its determination may properly receive the same treatment as a court judgment.[44] Traditional res judicata and collateral estoppel principles will then prevent the unfair or unconstitutional enforcement of such a determination.[45] Moreover, despite the express language to the contrary in the plurality opinion,[46] both the concurring and dissenting opinions in *Thomas* indicate that state administrative agency de-

38. *Fremont,* 144 Ariz. at 342, 697 P.2d at 1092.

39. *See* Sterk, *Full Faith and Credit, More or Less, To Judgments: Doubts About* Thomas v. Washington Gas Light Co., 69 GEO. L.J. 1329 (1981). The author defines the policy basis of the full faith and credit clause as the need for national unification within the context of a federal system. *Id.* at 1355. He then adds: "As long as a state employs a method of resolving disputes that is constitutionally adequate, the state's resolutions should be no less binding because the rendering tribunal is not a traditional court. It is the determination, not the determiner, that requires full faith and credit." *Id.* at 1355-56.

40. *Fremont,* 144 Ariz. at 342, 697 P.2d at 1092. *See supra* notes 21-25 and accompanying text.

41. 456 U.S. 461 (1982).

42. *Id.* at 478 (quoting from Alexander v. Gardner-Denver Co., 415 U.S. 36, 37 (1974)). *Kremer* involved an employment-discrimination suit brought before a New York agency responsible for enforcing New York employment-discrimination law. *Kremer,* 456 U.S. at 464. The agency determined that the claim was without merit and the Appellate Division of the New York Supreme Court affirmed. Kremer v. State Div. of Human Rights, 61 A.D.2d 888, 402 N.Y.S. 699 (N.Y. Ct. App. 1978). The plaintiff then attempted to bring the same action in federal district court. *Kremer,* 456 U.S. at 465. The district court dismissed the action on res judicata grounds. *Id.* at 466. The United States Supreme Court affirmed, holding that 28 U.S.C. § 1738 required federal courts to give preclusive effect to the state court ruling. 456 U.S. at 465.

43. See RESTATEMENT (SECOND) OF JUDGMENTS § 131 (Tent. Draft No. 7, 1980), which provides in part:

> A determination by an administrative tribunal is conclusive under the rules of res judicata only insofar as the proceeding resulting in the determination entailed the essential elements of adjudication, including: (a) Adequate notice to persons who are to be bound by the adjudication; (b) The right on behalf of a party to present evidence and legal argument in support of the party's contentions and fair opportunity to rebut evidence and argument by opposing parties; (c) A formulation of issues and law and fact in terms of the application of rules with respect to specified parties concerning a specific transaction, situation, or status, or a specific series thereof; (d) A rule of finality, specifying a point in the proceeding when presentations are terminated and a final decision is rendered; and (e) Such other procedural elements as may be necessary to constitute the proceeding a sufficient means of conclusively determining the matter in question. *See also supra* note 39.

44. RESTATEMENT (SECOND) OF JUDGMENTS § 131, comment b (Tent. Draft No. 7, 1980).

45. *Sterk, supra* note 39, at 1356.

46. *See supra* note 37 and accompanying text.

terminations should stand on equal footing with state court decisions.[47]

THE *FREMONT* COURT'S DILEMMA

Although the previous disability determination could not bind Fremont,[48] the *Fremont* court was reluctant to require the employee to relitigate the prior injury issue.[49] The court believed that such a requirement would not be in keeping with the liberal construction that courts traditionally give Arizona's worker's compensation laws.[50] These laws aim at shifting the costs of industrial injuries from the injured workers to the industries themselves and to those the industries serve.[51]

A decision requiring a claimant to relitigate the issue of an injury "remote in place and time" would not effectuate the broad, remedial purposes underlying the worker's compensation laws.[52] On the other hand, the court could not denigrate the due process rights of the employer and its insurer in the interest of liberally construing these laws.[53] Facing this dilemma, the court turned to the doctrine of comity.[54]

COMITY: A MIDDLE ROAD

Comity, the court noted, is a principle that permits the courts of one state or jurisdiction to recognize the judgments and laws of another state or jurisdiction.[55] This discretionary[56] recognition has its basis in the respect that similar institutions accord one another.[57] Consequently, state courts may recognize foreign judgments as a matter of comity where the full faith and credit clause would not compel them to do so.[58] This recognition helps

47. In a concurring opinion in which Chief Justice Burger and Justice Powell joined, Justice White stated: "I do not see any overriding differences between workmen's compensation awards and court judgments that justify different treatment for the two." *Thomas,* 448 U.S. at 289 (White, J., concurring).

In a dissenting opinion in which Justice Marshall joined, Justice Rehnquist stated that he "fail[ed] to see" why the first award "should not be given the same full faith and credit as would be afforded a judgment entered by a court of general jurisdiction." *Id.* at 294. (Rehnquist, J., dissenting).

48. *See supra* note 40 and accompanying text.

49. *Fremont,* 144 Ariz. at 345, 697 P.2d 1095.

50. *Id.* at 345, 697 P.2d at 1095. *See* Flamingo Motor Inn v. Industrial Comm'n, 133 Ariz. 200, 201, 650 P.2d 502, 503 (Ct. App. 1982) (due to the remedial nature of the Worker's Compensation Act, courts should construe it liberally); Pottinger v. Industrial Comm'n, 22 Ariz. App. 389, 393, 527 P.2d 1232, 1236 (1974) (courts should construe terms of Worker's Compensation Act liberally so as to effectuate the principle of placing the burden of death and injury on industry).

51. *See* Hannon v. Industrial Comm'n, 9 Ariz. App. 231, 232, 451 P.2d 44, 45 (1969) (purpose of worker's compensation statute is to place the burden of injury upon industry and the community as a whole).

52. *Fremont,* 144 Ariz. at 345, 697 P.2d at 1075. *See supra* notes 50-51 and accompanying text.

53. Salmi v. Industrial Comm'n, 3 Ariz. App. 411, 412, 415 P.2d 126, 127 (1966).

54. *Fremont,* 144 Ariz. at 345, 697 P.2d at 1095.

55. *Id.*

56. *See* Mast, Foos & Co. v. Stover Mfg., 177 U.S. 485, 488 (1900) (Court stated: "Comity persuades; but it does not command.").

57. Strobl v. Sowicki, 41 Misc. 2d 923, 247 N.Y.S.2d 12 (1964).

58. *Fremont,* 144 Ariz. at 345, 697 P.2d at 1095, *citing* Milwaukee County v. M.E. White Co., 296 U.S. 268 (1935). In *Milwaukee County,* the Court observed: "A state court, in conformity to state policy, may, by comity, give a remedy which the full faith and credit clause does not compel." 296 U.S. at 272.

to secure uniformity of decision and to minimize repetitious litigation.[59]

The principle of comity enabled the *Fremont* court to reach a decision that fairly accommodated both the interests involved. On one hand, the previous New Jersey determination that Mingin had suffered an injury could not bind Fremont under collateral estoppel principles because Fremont was a stranger to that proceeding.[60] On the other hand, the court acknowledged that evidence of the existence and the extent of previous injuries may be vital in determining worker's compensation awards for subsequent injuries.[61] The court further noted that administrative law judges have the discretion to admit evidence in worker's compensation proceedings that the rules of evidence would otherwise bar.[62]

The court determined that the rule that a judgment cannot bind strangers to the action thereby determined must yield to a certain extent in the worker's compensation area.[63] Under the principle of comity, the court accorded the New Jersey judgment a rebuttable presumption of validity.[64]

This result is in keeping with the employee-oriented goals of the worker's compensation system.[65] In this context, employees trade their right to pursue a civil damages claim against the employer for a simple, expeditious method of obtaining disability benefits. The price of this certainty and efficiency is lower potential recoveries under the worker's compensation statutes. The presumption established by the *Fremont* court effectuates the general policies of the worker's compensation system by removing from the claimant's shoulders the burden of relitigating an injury "remote in place and time."[66] Moreover, the presumption does not unfairly bind the employer and its insurance carrier because they can rebut the validity of the earlier determination to which they were strangers.[67]

CONCLUSION

In *Fremont,* the Arizona Supreme Court applied the doctrine of comity to accord a New Jersey judgment in a worker's compensation case a rebuttable presumption of validity in Arizona judicial proceedings.[68] The doctrine of comity enabled the court to avoid any difficulties *Thomas* engendered by raising doubts concerning the treatment of agency decisions under the full faith and credit clause.[69] The doctrine of comity also enabled the court to

59. *Mast, Foos & Co.*, 177 U.S. at 488. The Court recognized that comity "is something more than mere courtesy, which implies only deference to the opinion of others, since it has a substantial value in securing uniformity of decision, and discouraging repeated litigation of the same question." *Id.*

See also supra note 39. Note the similarity in the values supporting comity on the one hand and full faith and credit on the other.

60. *See supra* notes 13 and 22-23 and accompanying text.

61. *Fremont*, 144 Ariz. at 345, 697 P.2d at 1095.

62. *Id.*

63. *Id.*

64. *Id.*

65. ARIZ. REV. STAT. ANN. §§ 23-901 to 23-1091. *See supra* notes 50-52 and accompanying text.

66. *Fremont*, 144 Ariz. at 345, 697 P.2d at 1095.

67. *Id.*

68. *Id.*

69. *See supra* notes 33-47 and accompanying text.

effectuate the broad remedial purposes of Arizona's worker's compensation laws without needlessly mutating collateral estoppel principles as they apply to administrative judgments.[70] Finally, the comity doctrine enabled the court to accommodate the competing interests of employees and of employers and their insurance carriers.[71]

Brent Michael Ghelfi

70. *Id.*
71. *See supra* notes 55-67 and accompanying text.