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Workmen's Compensation Act - Conflict of Laws

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WORKMEN'S COMPENSATION ACT—CONFLICT OF LAWS

The case of *Magnolia Petroleum Company* v. *Hunt,* 320 U. S. 430, 64 Sup. Ct. 483, 88 L.ed. 161, (1943) raises the question of full faith and credit, in so far as it applies to a judgment under the Workmen's Compensation Act of a sister state.

In the aforementioned litigation, one Hunt, a resident of Louisiana, was employed by the Magnolia Petroleum Company, a Louisiana corporation. He removed to Texas in accord with his contract of employment. While thus engaged, he suffered injuries caused by a falling drill stem. He brought an action in the Texas court to recover for his injury under the provisions of the Texas Workmen's Compensation Act. This action was uncontested. Shortly thereafter, Hunt commenced an action in the Louisiana courts, under the provisions of the Louisiana Workmen's Compensation Act and for the same cause of action. The Magnolia Petroleum Company, petitioner, filed exceptions to respondent Hunt's petition on the ground that the recovery sought was barred by the Texas award which, according to the constitutional provision, section 1, Article IV, was entitled to full faith and credit in the Louisiana courts. The Louisiana District Court overruled these exceptions and awarded compensation in the amount fixed by Louisiana statute, less the amount of the Texas award. The Louisiana Court of Appeals affirmed, and the Supreme Court of Louisiana refused writs of certiorari. The Supreme Court of the United States granted certiorari because of the importance of the constitutional question involved.[1]

In its decision, the United States Supreme Court held that, under the full faith and credit clause, the Texas award barred further recovery for the same injury under the Workmen's Compensation Act of Louisiana.

The Magnolia Petroleum Company case bases the right to recovery under the Workmen's Compensation Act on the theory that the right arises out of the injury. In other words, the right to compensation belongs to the injured party or his representatives as a result of the injury received. Since there is one injury, there is one cause of action, and a judgment on that cause is entitled to full faith and credit. The law of the Magnolia Petroleum Company case, although probably not the most logical interpretation placed upon the Workmen's Compensation Act

[1] Chicago, R. I. & P. R. Co. v. Schendel, 270 U.S. 611, 46 Sup. Ct. 420, 7 L.Ed. 757 (1926); Williams v. North Carolina, 317 U.S. 287, 63 Sup. Ct. 207, 87 L.Ed. 279 (1942).

in its relation to the Constitutional provisions, serves to prevent a multiplicity of lawsuits, and, in practice, seems the better law.[2]

The Wisconsin court, previous to the decision in the Magnolia Petroleum Company case, held that the right to compensation arises out of the status of employer-employee, regardless of whether or not the employee comes under the Workmen's Compensation Act of more than one state. Thus, each act creates a right to compensation, provided that the requisite employer-employee relationship is established. Under this interpretation, recovery under the Workmen's Compensation Act of another state does not bar recovery under the Wisconsin Workmen's Compensation Act. In logic, the award of another state is a judgment on another cause of action. The amount of the award given in another state was deducted from the award given by the Wisconsin court, in fairness, to prevent unjust enrichment.

In the Wisconsin case of *Salvation Army* v. *Industrial Commission*,[3] the court said: "The proceeding and award of the Industrial Commission of Illinois are not a bar to the proceedings and award under the the Workmen's Compensation Act of Wisconsin. However, the amount received by the respondent under the Illinois award must be credited on the award made in the instant case."

These elements must be present for recovery under the Wisconsin Workmen's Compensation Act: (a) both employer and employee must be subject to the provisions of the act; (b) employee must sustain an injury; (c) employee, at the time of sustaining the injury, must have been performing services growing out of and incidental to his employment; (d) the injury must be accidental, not intentionally self-inflicted; (e) the accident or disease causing the injury arises out of his employment.[4] The act clearly defines "employer" and "employee" in order to establish the requisite relationship,[5] but, in general, to be an "employee" within the Compensation Act, one must have a superior, the "employer", under whose direction the work involved in the employment is done.[6]

What, if anything, has been provided in the way of extra-territorial operation of the Wisconsin Workmen's Compensation Act? The in-

[2] On the question of full faith and credit, the Wisconsin case of Salvation Army v. Industrial Commission, 219 Wis. 343, 263 N.W. 349 (1935) held *contra*. In that case an Illinois resident, employed under an Illinois contract, and working for an Illinois corporation, was killed in Wisconsin while engaged in the performance of his duties in accord with his contract of hire. An award was granted under the Illinois Workmen's Compensation Act, and application was made for an award under the provisions of the Wisconsin Workmen's Compensation Act. In that case the court granted the award but said that the amount received in Illinois would be deducted from the Wisconsin award.

[3] 219 Wis 343, 263 N.W. 349 (1935).

[4] Chapter 102, § 102.03(1), WIS. STAT. (1941).

[5] *Ibid.*, §§ 102.04 and 102.07.

[6] Fritz v. Industrial Commission, 218 Wis. 176, 260 N.W. 459 (1935).

terpretation of the Wisconsin courts has been that, if the employer-employee status arises in Wisconsin, the injured party is subject to the Wisconsin act. The difficulty arises, however, in the interpretation of this all-important question of status.

There are three elements to be considered in determining the status of the parties—residence of the parties, the place where the contract was made, and the place where the injury occurred. Where the employer and employee are both residents of Wisconsin, and the contract is made therein, the employee is entitled to the benefits of the Wisconsin Workmen's Compensation Act, no matter where the injury is sustained.[7] Where the employee neither lives, nor performs service nor is injured, in Wisconsin, he is not under the Workmen's Compensation Act of Wisconsin, although the employer resides and the contract of employment is made therein.[8] In the case of *Wandersee* v. *Moskewitz*,[9] *the* court held that the Wisconsin Workmen's Compensation Act did not apply to services rendered in another state under a Wisconsin contract, where no services were rendered in Wisconsin. Again, in the later case of *McKesson-Fuller-Morrison Co.* v. *Industrial Commission*,[10] the court held that the dominant consideration in determining the right to compensation under the Workmen's Compensation Act for the death of an employee from an injury sustained while absent from the state on a mission incidental to his main employment was whether he had obtained the status of an employee in the state. In the case of *Anderson* v. *Miller Scrap Iron Company*,[11] the court said: "Where a contract of employment was made in Wisconsin and both parties thereto were residents of this state and were subject to our Workmen's Compensation Act, their rights and liabilities in case of injury to the employee must be determined in the courts of this state in accordance with the provisions of this act, whether the injury occurred within or without the state."

When the contract is intended to be performed outside this state, Wisconsin courts have consistently held that our Compensation Act applies to such resident until he acquires status as an employee in another state.[12]

Where the employer and employee are both Wisconsin residents, the Wisconsin courts have held, in *Interstate Power Co.* v. *Industrial Com-*

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[7] Interstate Power Co. v. Industrial Commission of Wisconsin, 203 Wis. 466, 234 N.W. 889 (1931).

[8] *Ibid.*

[9] 198 Wis. 345, 223 N.W. 837 (1929).

[10] 212 Wis. 507, 250 N.W. 396 (1933).

[11] 169 Wis. 106, 170 N.W. 275 (1919); rehearing denied 169 Wis. 106, 171 N.W. 935 (1919).

[12] Val Blatz Brewing Co. v. Gerard, 201 Wis. 474, 230 N.W. 622 (1930); Threshermen's Nat. Ins. Co. v. Ind. Comm. of Wisconsin, 201 Wis. 303, 230 N.W. 67 (1930); Schooley v. Industrial Commission, 233 Wis. 631, 290 N.W. 127 (1940).

mission,[13] that, if the contract is made in this state also, the employee is entitled to the benefits of the Wisconsin Workmen's Compensation Act, regardless of where the injury is sustained.

Numerous states, by operation of statute, have provided for extra-territorial application of their Workmen's Compensation Acts. This extra-territorial operation is based upon the theory that when the contract of hire is consummated within the state, the incident of compensation benefits thereby becomes a part of the contract of hire, regardless of the time or place of performance. This extra-territorial application by one state to its act must not contravene the public policy of the sister state in which the judgment is sought to be recovered. This was decided in the case of *Cameron* v. *Ellis Construction Company,*[14] in which an employee entered into a contract in New York with performance to be had in Canada, such work being incidental to a road construction job being performed in New York. The New York court refused to apply its compensation law, saying:

> "Nothing in the statute suggests that the state of New York has attempted to stretch forth its arm to draw within he scope of its own regulations the relations of employer and employee in work conducted beyond its borders. Hazardous employment here is regulated by the Workmen's Compensation Law; hazardous employment elsewhere, though connected with a business conducted here, does not come within its scope."[15]

Many states have made express provision regarding application of their respective Workmen's Compensation Acts. For example, the law of Missouri states that its Workmen's Compensation Law applies to all injuries received in the state of Missouri, and to all contracts of hire made in Missouri regardless of where the injury was sustained, unless the contract of hire in any case shall otherwise provide.[16]

Virginia has provided by statute that, where an accident occurs while the employee is employed outside the state, which would entitle him or his dependents to compensation if it had occurred in that state, the employee or his dependents shall be entitled to compensation if the contract of hire was made in the state, if the employer's place of business is in the state, and, if the residence of the employee is in the state, provided the contract of hire was not expressly for service exclusively outside the state. The statute, however, also provides that if the employee shall receive compensation or damages under the laws of any

[13] 203 Wis. 466, 234 N.W. 889 (1931).
[14] 252 N.Y. 394, 169 N.E. 622 (1930).
[15] For detailed discussion of "Workmen's Compensation Act—Full Faith and Credit—Application of the Workmen's Compensation Act of the Forum Where the Injury is Sustained Therein and the Contract of Hire is Consummated in a Foreign State," see CHICAGO-KENT LAW REVIEW, Vol. 19, 397-403, S. '41.
[16] Section 3310(b), p. 8245, MISS STAT. ANNO.

other state, nothing within the statute shall be construed so as to permit total compensation for the same injury greater than is provided in the Virginia Workmen's Compensation Act.[17]

Other states having similar provisions in their respective Workmen's Compensation Acts are North Dakota and Vermont.[18]

The question has oftentimes been raised as to whether the injured employee may sue under the act of one state in the courts of a sister state. The California courts, in the case of *Quong Ham Wah* v. *Industrial Accident Commission,*[19] said: "Right created by one state may be recognized by another state at its pleasure and enforced by that state at its pleasure, and likewise a status attached to a person by one state may be recognized by another state, into which that person may travel, at the pleasure of the latter state; but as law, the mandates of the sovereign of a given state can have no effect beyond the territorial limits to which his rule is extended." Thus, the recognition of a law such as the Workmen's Compensation Act is a power which may, but need not, be exercised by a state, subject only to the restrictions of the state and federal Constitution. The proceedings may be brought in a state under the Workmen's Compensation Act of that state, if it is applicable, although the act of another is also applicable.[20]

It will be extremely interesting to note the effect of the United States Supreme Court's decision in the Magnolia Petroleum Company case on the future decisions of our state courts and industrial commissions in compensation cases. The two lines of reasoning, clearly irreconcilable, will undoubtedly give rise to much controversy.

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[17] § 1887(37)a, b. VIRGINIA CODE OF 1936.
[18] § 396a 10, N.D. Supp. to 1913 Compiled Laws; §§ 6506, 6507, 6510, PUBLIC LAWS OF VERMONT, 1933.
[19] 184 Cal. 26, 192 Pac. 1021, 12 A.L.R. 1190 (1920).
[20] RESTATEMENT OF THE LAW, Conflict of Laws, c. 9, § 402.