

## No Second Bite at the Apple: Claiming Collateral Estoppel based on a Prior Workers' Compensation Judgment

March 1, 2012 by [Daniel "Casey" Jones](#) and [Michael Gray](#)

### As seen in *Best's Review*.

It is said that in law you only get one bite at the apple. However, in the course of a products liability lawsuit, plaintiffs will often try to get as many bites as they can. When plaintiffs file both a workers' compensation claim and products liability lawsuit based on the same injury, this can potentially serve to benefit defendants. Indeed, an unfavorable workers' compensation ruling against a plaintiff could be used as a vehicle to get summary judgment through the doctrine of collateral estoppel.

Collateral estoppel is defined as the "binding effect of a judgment as to matters actually litigated and determined in one action on later controversies between the parties involving a different claim from that on which the original judgment was based." (Black's Law Dictionary). Collateral estoppel is a form of res judicata, and the terms frequently overlap.

Normally, collateral estoppel is asserted based on a prior ruling by a court of law, but sometimes courts apply the doctrine based upon the prior judgments of administrative law panels. In 1940, the Supreme Court first permitted the application of res judicata based on the rulings of administrative bodies. (*Sunshine Anthracite Coal Co. v. Adkins*). Then, in 1966, the Supreme Court expanded the application of collateral estoppel by holding that administrative rulings preclude later suits when the administrative body is acting in a judicial capacity and resolves issues that the parties had an adequate opportunity to litigate. (*United States v. Utah Constr. & Mining Co.*) Based upon these Supreme Court precedents, courts around the country began to apply both res judicata and collateral estoppel to the burgeoning crops of administrative law rulings.

Workers' compensation is an administrative system for providing benefits to injured employees in exchange for the employee waiving their right to sue the employer for tort. Though state laws vary, disputes arising from workers' compensation decisions are not normally heard in a court of law, but rather by administrative agencies and adjudicated by administrative law judges. The decisions of administrative law judges are binding on both the employee and the employer. As such, these decisions can form the basis for a claim of collateral estoppel in a later proceeding.

For many years, collateral estoppel remained limited in application because of the requirement of mutuality. A party could only assert collateral estoppel if it was party to the original action. In other words, the parties to the original suit and the parties to the suit where collateral estoppel was asserted had to be the same. Under this approach, a workers' compensation decision was of little benefit to anyone besides the plaintiff's employer. In 1971, the Supreme Court eliminated the requirement of mutuality in collateral estoppel when used defensively, and many state courts followed suit. (*Blouder-Tongue Laboratories, Inc. v. University of Ill. Found.*). The effect of this decision permitted defendants in subsequent lawsuits that were not a party to the workers' compensation case to prevent a plaintiff from re-litigating an issue that the plaintiff had already sustained an adverse ruling.

Courts generally apply collateral estoppel when four factors are met. First, the issue decided in the prior adjudication must be identical with the issue in the present action. Second, the prior adjudication must have resulted in a final judgment on the merits. Third, the party

against whom collateral estoppel is asserted must have been a party or in privity with a party to the prior adjudication. Fourth, the party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue in the prior proceeding.

Upon meeting these four requirements, courts have held that a defendant may assert collateral estoppel to terminate a product liability suit based on a prior adverse workers' compensation ruling against the plaintiff. A recent Ohio decision litigated by the authors' law firm is illustrative. Beverly Mitchell claimed that her lungs were injured by exposure to artificial butter flavoring while working at a factory that made machines that dispensed popcorn. (*Mitchell v. International Flavors & Fragrances, Inc. et al.*). Based on her alleged injury, Mitchell filed a workers' compensation action against her employer.

Mitchell's workers' compensation claim was denied. The Ohio Bureau of Workers' Compensation concluded, "[t]here is no causal relationship between the condition and the alleged source, popcorn flavoring." After numerous appeals, Mitchell dismissed her workers' compensation claim with prejudice and reserved the right to re-file within one year.

Mitchell subsequently filed a products liability suit against the manufacturers of the artificial butter flavoring. After Mitchell failed to re-file her workers' compensation case within a year, a defendant in the products liability suit filed a motion for summary judgment arguing that the prior ruling in Mitchell's workers' compensation case precluded her from proceeding with the same claim in her civil case. The Hamilton County, Ohio Court of Common Pleas agreed and granted the motion for summary judgment. Mitchell's workers' compensation judgment met the four factors required for collateral estoppel because: 1) The issues regarding the cause of the lung injury were identical; 2) the decision of the Ohio Bureau of Workers' Compensation was final after Mitchell failed to re-file her workers' compensation claim; 3) Mitchell was a party to the prior workers' compensation ruling; and 4) Mitchell had a full opportunity to show that her injury was caused by artificial butter flavoring during the workers' compensation proceedings and failed to make such a showing.

On appeal, the Ohio First District Court of Appeals upheld the trial court's decision as a proper application of the doctrine of collateral estoppel. Mitchell's main argument on appeal was that the forum of a workers' compensation hearing did not give her a full opportunity for her claim to be heard. However, the appellate court rejected this argument and held that the workers' compensation panel had the opportunity to review medical research and reports regarding her alleged condition before making its decision: the exact evidence the civil court would review at trial.

Other courts have applied collateral estoppel in the same fashion as the *Mitchell* court. A New Hampshire court affirmed the use of collateral estoppel to dismiss a products liability suit against the maker of a chair where a workers' compensation board already concluded that the plaintiff's injury was caused by an earlier accident. (*Roy v. Jasper Corp.*). Similarly, a Texas court used collateral estoppel to reject a medical malpractice claim alleging that a doctor's advice had caused the plaintiff to have a heart attack. (*Hardy v. Fleming*). The workers' compensation board found that the plaintiff, in fact, had not had a heart attack. In another case, the Eighth Circuit concluded that a man could not sue a chemical manufacture for his low sperm count after a workers' compensation appellate panel concluded that there was not enough evidence to link his problem to the suspected chemical. (*Brown v. Dow Chemical Co.*). However, caution should be taken from these decisions as some courts reject the application of collateral estoppels as to prior workers' compensation rulings, believing that the procedure varies too much from a civil trial.

To make use of a prior workers' compensation ruling in a products liability suit, defendants must be aware of a couple common pitfalls. First, the workers' compensation decision must be final. Defendants cannot assert res judicata or collateral estoppel based on rulings that are not final. To determine if a ruling is final, courts consider whether it is "sufficiently firm to be accorded conclusive effect." The

determination of whether a workers' compensation ruling is "final" can be a tricky question of state administrative law. Obviously, there is room to argue whether a ruling is, in fact, final.

Second, the workers' compensation ruling must directly specify that the product in question did not cause the injury. This is a common deficiency because there are many ways to reject a workers' compensation claim aside from concluding that the plaintiff was not injured. For example, the injury may not be work related. While the issues in each case do not need to be exact, the closer the similarity of issues, the more likely a court is to apply collateral estoppel.

One may wonder whether a goose/gander rule applies such that a plaintiff could turn the tables and offensively use collateral estoppel against a defendant after prevailing on a workers' compensation claim. In fact, the Supreme Court has approved the use of offensive collateral estoppel in some situations. (*Parklane Hosiery Co., Inc. v. Shore*). However, the application of offensive collateral estoppel is limited such that it may only be asserted in a case in which the issue in question was previously litigated in a matter in which the defendant was a party. Therefore, in a products liability context, offensive collateral estoppel could only, theoretically, be asserted against a defendant that was both the plaintiff's employer and a defendant in the underlying products liability action.

Collateral estoppel is an often overlooked and misunderstood area of the law, but a good understanding of it can be a powerful weapon in a products liability defendant's arsenal. Knowledge of collateral estoppel is particularly crucial when facing plaintiffs with prior workers' compensation judgments. Under the proper circumstances, a favorable workers' compensation ruling can be the silver bullet that quickly brings to an end a plaintiff's product liability suit.