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CONFLICT OF LAWS—THE SCOPE OF THE FULL FAITH AND CREDIT CLAUSE IN SUCCESSIVE WORKERS' COMPENSATION AWARDS—Thomas v. Washington Gas Light Co., 448 U.S. 261 (1980)

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CONFLICT OF LAWS—THE SCOPE OF THE FULL FAITH AND CREDIT CLAUSE IN SUCCESSIVE WORKERS' COMPENSATION AWARDS—*Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980).

I. INTRODUCTION

Workers' compensation law has been characterized as an enlightened social policy designed to provide a comprehensive system of financial and medical benefits to workers injured while in the course of employment.[1] Because of their unique substantive and procedural characteristics, the aims of workers' compensation schemes often are frustrated when juxtaposed with preexisting legal doctrines on the state and federal level. In *Thomas v. Washington Gas Light Co.*,[2] the United States Supreme Court addressed difficult questions involving the role of res judicata, full faith and credit, and choice of law doctrines in workers' compensation judgments. The role of these doctrines in the workers' compensation field has been the source of fervent debate throughout the relatively brief history of workers' compensation law,[3] and *Thomas* represents the Court's third attempt to resolve this debate.

On January 22, 1971, Halley I. Thomas sustained a disabling injury to his back while in the course of his employment.[4] Thomas was employed by the Washington Gas Light Company (WGL), a public utility with its principal place of business in the District of Columbia (District). Although he worked primarily in the District, it was not uncommon for Thomas to perform his duties in Virginia,

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1. *See* 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 2.20, at 5-9 (1978 & Cum. Supp. Nov. 1981).

2. 448 U.S. 261 (1980).

3. Justice Douglas perhaps best characterized this area of workers' compensation law when he noted that "[w]e are dealing here with highly controversial subjects where honest differences of opinion are almost certain to occur." Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 447 (1943) (Douglas, J., dissenting). *Compare* Wolkin, *Workmen's Compensation Award—Commonplace or Anomaly in Full Faith and Credit Pattern*?, 92 U. PA. L. REV. 401 (1944) *with* Cheatham, *Res Judicata and the Full Faith and Credit Clause*: Magnolia Petroleum Co. v. Hunt, 44 COLUM. L. REV. 330 (1944) *and* Reese & Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 COLUM. L. REV. 153 (1949).

4. 448 U.S. at 264.

the site of his injury.[5] On February 5, 1971, Thomas agreed to accept temporary disability benefits under the Virginia Workmen's Compensation Act.[6] Thomas received the maximum amount of compensation available under the Virginia Act[7] and then notified the United States Department of Labor that he would seek compensation under the District of Columbia Workmen's Compensation Act.[8]

WGL objected to the claim filed by Thomas. WGL's objection was based primarily[9] on the assertion that the Virginia award was exclusive of any other recovery[10] and that the District had an obliga-

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5. Brief of Petitioner at 5, Thomas v. Washington Gas Light Co., 448 U.S. 261 (1980) [hereinafter cited as Brief of Petitioner].

6. VA. CODE §§ 65.1-1 to 65.1-163 (1968) (current version at VA. CODE §§ 65.1-1 to 65.1-163 (Rep. Vol. 1980 & Supp. 1981)).

7. Under the agreement, Thomas received $62 per week, retroactive to January 30, 1971, Brief for Washington Gas Light Co. at 4, Thomas v. Washington Gas Light Co., 448 U.S. 261 (1980) [hereinafter cited as Brief for WGL], " 'until terminated in accordance with the provisions of the Workmen's Compensation Law of the State of Virginia.' " *Id.* (quoting memorandum of agreement as to payment of compensation). These weekly benefits were terminated in 1978 when they totalled the maximum amount payable under Virginia law. Thomas was not receiving disability benefits at the time of this decision. Brief of Petitioner at 5, *supra* note 5.

8. D.C. CODE ENCYCL. §§ 36-501 to 502 (West 1968). This statute adopts the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950 (1976) [hereinafter referred to as LHWCA]. Claims filed under the District of Columbia Workmen's Compensation Act are administered by the United States Department of Labor. 448 U.S. at 264 n.2.

9. Washington Gas Light also asserted that Thomas' claim was barred because he did not file his claim within one year of his injury as required under 33 U.S.C. § 913(a) (1976), and that the LHWCA forbade the granting of an award when a worker could have obtained an award under a state compensation program. Brief for WGL at 7, *supra* note 7. The Court of Appeals did not consider either of these statutory arguments and they remained open on rehearing before the Fourth Circuit. The Fourth Circuit, relying on Travelers Ins. Co. v. Cardillo, 141 F.2d 362 (D.C. Cir. 1944), held that the coverage of the District of Columbia Workmen's Compensation Act was not limited to navigable waters and was therefore applicable to Thomas' injury. Washington Gas Light Co. v. Thomas, 649 F.2d 275, 277 (4th Cir. 1981). Furthermore, the Fourth Circuit held that Thomas' claim was not barred by the statute of limitations because the limitation period does not begin to run until the employer forwards a report of injury to the Department of Labor as required by 33 U.S.C. § 930(f) (1976). The fact that Washington Gas Light filed similar reports with the Virginia Industrial Board was deemed insufficient for the purpose of commencing the one year statutory period. 649 F.2d at 277.

10. VA. CODE § 65.1-40 (Rep. Vol. 1980 & Supp. 1981) provides:

> Employee's rights under Act exclude all others.—The rights and remedies herein granted to an employee when he and his employer have accepted the provisions of this Act respectively to pay and accept compensation on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin, at common law or otherwise, on account of such injury, loss of service or death.

tion to give the Virginia award full faith and credit,[11] precluding a successive recovery in the District for the same injury.[12] The Administrative Law Judge for the United States Department of Labor ruled that the Virginia award must be given the same res judicata[13] effect in the District that it had in Virginia. Because the Virginia award itself would not preclude a second claim in Virginia, the judge concluded that res judicata could not bar a supplemental award in the District.[14]

WGL appealed, but the decision of the Administrative Law Judge was affirmed by the Benefits Review Board of the United States Department of Labor.[15] WGL then sought review before the United States Court of Appeals for the Fourth Circuit. Relying on the authority of *Pettus v. American Airlines, Inc.*,[16] which had interpreted the Virginia Act to be exclusive of supplemental awards

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11. U.S. CONST. art. IV, § 1: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." 28 U.S.C. § 1738 (1976) provides in part:

> "Such Acts, records and judicial proceedings or copies thereof . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

12. 448 U.S. at 265.

13. The term res judicata generally refers to the manner in which a judgment in one action affects subsequent litigation. Typically, when a judgment is rendered in favor of the plaintiff, the claim asserted is said to be merged into the judgment. Thus, the plaintiff may not bring a second suit on the same cause of action. When a judgment is rendered in favor of the defendant, the claim sued upon as well as those matters related to the claim but not actually litigated become extinguished. Thus, the original claim is barred by a judgment rendered in favor of the defendant. The doctrine of res judicata is based essentially on the concept of finality in litigated matters. In simple terms, res judicata stands for the proposition that what was or what should have been litigated in a prior action cannot form the basis of some subsequent action. *See generally* F. JAMES & G. HAZARD, CIVIL PROCEDURE 527-99 (2d ed. 1977); Polasky, *Collateral Estoppel—Effects of Prior Litigation*, 39 IOWA L. REV. 217 (1954); *Developments in the Law—Res Judicata—*, 65 HARV. L. REV. 818 (1952).

14. Thomas v. Washington Gas Light Co., No. 76-DCWC-4 at 13 (ALJ, Sept. 24, 1975) (unpublished Interlocutory Decision and Order). In addition to his conclusion that the Virginia award did not affect a final settlement of all of the rights and liabilities of the parties because the award itself contemplated further awards, the judge also expressed concern for the policies which underlie workers' compensation schemes in general. He recognized that the emphasis of such acts was to ensure employee welfare and that the mandate for liberal construction of such statutes in the employee's favor supported his conclusion regarding the intent of the Virginia Act. *Id.* at 14.

15. Thomas v. Washington Gas Light Co., 9 BEN. REV. BD. SERV. (MB) 760, 766 (Feb. 28, 1978) (No. 77-182).

16. 587 F.2d 627 (4th Cir. 1978), *cert. denied*, 444 U.S. 883 (1979).

under the statutes of sister states,[17] the Fourth Circuit vacated the award granted under the District of Columbia Act.[18]

The United States Supreme Court, in a plurality opinion by Justice Stevens,[19] reversed the Fourth Circuit and held that "a State has no legitimate interest within the context of our federal system in preventing another State from granting a supplemental compensation award when that second State would have had the power to apply its workmen's compensation law in the first instance."[20]

The *Thomas* plurality distinguished the relatively informal nature of workers' compensation proceedings and the limited powers of state compensation tribunals from civil actions before a court of general jurisdiction.[21] In view of that distinction, the plurality concluded that the application of typical choice of law concepts under such conditions would require a more carefully considered choice of forum on the part of the injured employee than may be possible or desirable because an expeditious remedy may be essential.[22] Moreover, the plurality emphasized the substantial interests of the District in having its residents fully compensated under its own statutes and concluded that such interests should not be subordinated by an unnecessarily aggressive application of the full faith and credit clause.[23]

This note will analyze the Court's application of the doctrines of res judicata, full faith and credit, and choice of law to workers' compensation law. The Court's treatment of these doctrines will be analyzed in view of two competing concepts: (1) The underlying principles of finality and conclusiveness embodied in the full faith and credit clause as applied to the judgments of sister states; and (2) the concomitant choice of law principle that a state may not be

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17. *See* note 10 *supra* and accompanying text.

18. Washington Gas Light Co. v. Thomas, 598 F.2d 617 (4th Cir. 1979), *rev'd*, 448 U.S. 261 (1980).

19. 448 U.S. at 261.

20. *Id.* at 286.

21. *Id.* at 281-83. *See* notes 110-11 *infra* and accompanying text.

22. 448 U.S. at 285. The plurality supported its determination that a more careful choice of law is required in such cases by pointing out that compensation proceedings are often initiated without advice of counsel who would presumably guide the injured worker to the most favorable forum. Additionally, the plurality pointed out that many times the employee still is hospitalized when compensation proceedings are instituted by the employer or its insurance carrier. *Id.* at 284. The plurality also expressed concern for the fact that typically, state compensation tribunals may apply only their own state's statutes and may not take into account the more generous remedies available under another applicable workers' compensation act. *Id.* at 282-83. *See* notes 110-11 *infra* and accompanying text.

23. 448 U.S. at 285.

prevented from applying its own workers' compensation laws to those injured workers in whom the state has a legitimate interest. After tracing the historical evolution of these two principles, this note will examine the *Thomas* plurality's emasculation of the first of these principles through its application of a choice of law "interest analysis" to workers' compensation judgments. Moreover, through a close examination of pre-*Thomas* case law, this note will demonstrate that the plurality has unnecessarily upset a series of cases that essentially had accommodated the competing full faith and credit and choice of law principles. Finally, the possible abuses of the plurality's rationale and the confusion that *Thomas* has caused in the lower courts will be discussed.

II. BACKGROUND

The framers of the Constitution promulgated one of the basic tenets of American federalism when they proclaimed in simple and precise language that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."[24] A rigid and literal interpretation of this language leads to the inescapable conclusion that statutes and judgments must be given the same force and effect throughout the union that they enjoy in the rendering state. Such an inflexible interpretation of the full faith and credit clause and its implementing statute[25] has never been fully accepted and applied in cases dealing with this constitutional mandate.[26]

A. *The Application of Full Faith and Credit to Statutes*

In an effort to construct a conceptual framework, the *Thomas* plurality looked to a well developed series of Supreme Court decisions that dealt with a state's interest in applying its own workers' compensation statutes to injured employees in which the state has an interest.[27]

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24. U.S. CONST. art. IV, § 1.

25. 28 U.S.C. § 1738 (1976). *See* note 11 *supra*.

26. As two commentators have noted, "the language of the [full faith and credit] clause, taken together with that of the implementing statute, is so sweeping as to make inevitable the existence of some exceptions to its literal command." Reese & Johnson, *supra* note 3, at 178. *See generally* 4 A. LARSON, *supra* note 1, §§ 84.00-86.50 at 16-1 to 16-47; Cheatham, *supra* note 3, at 341-46; Wolkin, *supra* note 3, at 405-07. *See also* Freund, *Chief Justice Stone and the Conflict of Laws*, 59 HARV. L. REV. 1210, 1219-25 (1946).

27. 448 U.S. at 227-86.

The first of these cases, *Bradford Electric Light Co. v. Clapper*,[28] represents the early full faith and credit rule as applied to statutes. In *Bradford*, the employee was fatally injured while working for his employer in New Hampshire.[29] The employee's residence, his principal place of employment, and the place of the employment contract were in Vermont. The employee's administratrix brought an action in New Hampshire for damages under New Hampshire's workers' compensation scheme.[30] The Court held that New Hampshire must give full faith and credit to the provisions in the Vermont Act that prohibited such actions; therefore, the action by the administratrix was barred.[31]

Three years after *Bradford*, the Court began the development of what has become the "substantial legitimate interest" rule[32] in *Alaska Packers Association v. Industrial Accident Commission*.[33] In *Alaska Packers*, the employee, a nonresident alien, signed a contract in California to perform work in Alaska, the site of his injury.[34] Although the parties had agreed in their contract that the Alaska statute would apply in the event of such an injury,[35] the Court held that California's interest in compensating the employee was sufficient to justify application of its own statute when the employee sought compensation upon his return to California.[36] In addressing the full

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28. 286 U.S. 145 (1932).

29. *Id.* at 151.

30. *Id.* At the time of the action, the New Hampshire statute permitted the employee or his representative to elect, after the injury, to sue for damages at common law. *Id.* at 152 (citing N.H. Pub. L. ch. 178:11 (1926) (current version at N.H. REV. STAT. ANN. § 281:12 (Rep. Vol. 1955 & Supp. 1981)). The Vermont statute, however, acted as an exclusive remedy for the employee unless an express written statement to the contrary was made by one of the parties. *Id.* at 152-53 (citing VT. GEN. LAWS ch. 241, § 5774 (1917)) (current version at VT. STAT. ANN. tit. 21 § 622 (1978 & Supp. 1981)).

31. *Id.* at 163. The Court in *Bradford* rejected the assertion that New Hampshire had an interest in the injury and that to compel its courts to apply another state's statute would be obnoxious to its own public policy of allowing such actions. The Court described New Hampshire's interest as "only casual" since the employee was not a New Hampshire resident. *Id.* at 162. Moreover, the employee was not employed continuously in New Hampshire and it did not appear that he had any dependents there. Under such circumstances, the Court concluded that it was difficult to see how New Hampshire's interests would be served by burdening its courts with this litigation. *Id.*

32. Professor Larson refers to this as the "legitimate interest" rule. 4 A. LARSON, *supra* note 1, § 86.30 at 16-36. The plurality in *Thomas*, however, appears to qualify this by referring to the "substantial interests" that the District of Columbia had in providing a supplemental recovery. 448 U.S. at 285. *See* notes 103-14 *infra* and accompanying text.

33. 294 U.S. 532 (1935).

34. *Id.* at 538.

35. *Id.*

36. *Id.* at 549-50. Justice Stone, writing for the majority, expressed his concern

faith and credit challenges[37] to California's application of its own law, the Court specifically rejected an inflexible application of the full faith and credit clause:

> A rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own.[38]

Four years after *Alaska Packers*, the Court expanded the "substantial legitimate interest" rule in *Pacific Employers Insurance Co. v. Industrial Accident Commission*.[39] In *Pacific Employers*, the Court confronted the same basic factors that were present in *Bradford*; the place of injury was in California while the employee's residence, principal place of employment, and the place of the employment contract were in Massachusetts.[40] In affirming California's application of its own law, despite the purported exclusivity of the Massachusetts Act, the Court recognized that the purpose of the full faith and credit clause "was to preserve rights acquired or confirmed under the public acts and judicial proceedings of one state by requiring recognition of their validity in other states."[41] The Court, however, refused to apply a rigid full faith and credit standard, stating:

> [T]he very nature of the federal union of states, to which are re-

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over the fact that the injured workman would not be able to return to Alaska to prosecute his claim as was agreed in the employment contract. Thus, without a remedy in California, there was a fear that the injured workman might become a public charge in California. The Court concluded, therefore, that California had a legitimate interest in providing the employee a remedy under California law. *Id.* at 542.

37. The employer asserted that the Alaska statute afforded an exclusive remedy for the injury which occurred within its borders, and that California had an obligation to give full faith and credit to the Alaska statute so as to recognize it as a defense to the claim for an award under the California remedy provisions. *Id.* at 539.

38. *Id.* at 547. Justice Stone alluded to a balancing approach in resolving problems such as the conflict between the Alaska and California statutes. He asserted that, in such cases, automatic effect should not be given to the full faith and credit clause because it would compel the courts of each state to subordinate its statutes to those of another. Instead, Justice Stone deemed it appropriate that the Court appraise the governmental interests of each state "turning the scale of decision according to their weight." *Id.* The Court, however, has abandoned such a balancing approach in subsequent cases in favor of simply finding a legitimate interest. *See* note 102 *infra*. The plurality in *Thomas*, however, appears to employ such a balancing of interests in analyzing the conflicts between the District of Columbia and Virginia statutes. *See* text accompanying notes 103-11 *infra*.

39. 306 U.S. 493 (1939).

40. *Id.* at 497-98.

41. *Id.* at 501.

> served some of the attributes of sovereignty, precludes resort to the full faith and credit clause as a means for compelling a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.[42]

Culminating this series is *Carroll v. Lanza*,[43] in which a Missouri resident, hired in that state by a Missouri subcontractor, was injured while working in Arkansas.[44] While the employee was receiving weekly benefits under the Missouri Act, he sued the general contractor for common-law damages in Arkansas.[45] The Court held that the full faith and credit clause could not prevent Arkansas from applying its own remedy provisions, which permitted such suits against third parties, even though Missouri had expressly prohibited them.[46] Thus, the Court once again seized the opportunity to reiterate its retreat from *Bradford*'s rigid application of the full faith and credit clause to statutes.[47]

Each of these cases involved situations in which the statute of the forum was in conflict with a statute of another state that was applicable to the existing operative facts. In such a choice of law situation, *Alaska Packers* and its progeny demonstrate that statutory

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42. *Id.* The Court expressly refused to permit the full faith and credit clause to be used as a vehicle through which a state may give extra-territorial effect to its legislation so as to preclude other states from prescribing for themselves the legal consequences of the acts occurring within their borders. *Id.* at 504-05.

43. 349 U.S. at 408 (1955).

44. *Id.* at 409.

45. *Id.* at 410. Under the Missouri workmen's compensation act in effect at the time of this decision, payments started automatically on receipt of notice of the injury. *Id.* at 411 (citing MO. REV. STAT. §§ 287.380, 287.400 (1949)).

46. *Id.* at 413-14. The Missouri Act contained an exclusive remedy provision which "provide[d] that the rights and remedies granted by it 'shall exclude all other rights and remedies . . . at common law or otherwise,' on account of injury or death." *Id.* at 409 (quoting MO. REV. STAT. § 287.120 (1949)). The Arkansas exclusive remedy provision, however, applied only to employee actions against his employer but not against a third party such as a general contractor. *Id.* at 410 (citing ARK. STAT. ANN. § 81-1340 (1947)).

47. The Court concluded:

> [I]n these personal injury cases the State where the injury occurs need not be a vassal to the home State and allow only that remedy which the home State has marked as the exclusive one. The State of the forum also has interests to serve and protect . . . . Arkansas therefore has a legitimate interest in opening her courts to suits of this nature. . . .

Id. at 412-13.

As one commentator has noted, the *Carroll* decision essentially destroyed what little remained of the early full faith and credit rule as set forth originally by the Court in *Bradford*. 4 A. LARSON, *supra* note 1, § 86.32 at 16-38.

conflicts are not to be resolved by resorting to a blanket application of the full faith and credit clause. Instead, such statutory conflicts should be resolved by appraising the interests of the forum to insure that the forum has a legitimate interest in applying its own law to those who have availed themselves of its courts.

B. *The Application of Full Faith and Credit to Judgments*

The Court traditionally has applied a more rigid interpretation of the full faith and credit clause to the judgments rendered by sister states. This more rigid approach is a manifestation of the Court's attempt to place the common-law doctrine of res judicata within the constitutional mandate of full faith and credit as applied to judgments.[48] The relatively inflexible application of the clause is evident from several decisions outside the realm of workers' compensation law.

In *Hampton v. M'Connel*,[49] Chief Justice Marshall announced the constitutional standard by declaring that "the judgment of a state court should have the same credit, validity and effect, in every other court of the United States, which it had in the state where it was pronounced. . . ."[50] In analyzing the scope of the full faith and credit clause it is crucial to recognize the judicial distinction between the measure of faith and credit accorded to statutes, and that accorded to judgments pursuant to the sweeping language of Justice Marshall and the clause itself. While *Alaska Packers* and its progeny placed emphasis on the importance of state interests when a court must make a choice of law decision, quite the opposite has been true when a sister state's judgment is involved.

In *Fauntleroy v. Lum*,[51] the Court held that a Missouri judgment, based on a contract that was illegal under Mississippi law, must be enforced by Mississippi despite that state's prohibition of such activity.[52] Justice Edward White, in dissent, criticized the majority's literal application of the full faith and credit clause to the

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48. *See generally* R. LEFLAR, AMERICAN CONFLICTS LAW § 75, at 148 (3d ed. 1977); R. CRAMTON, D. CURRIE, & H. KAY, CONFLICT OF LAWS ch. 5 (3d ed. 1981).

49. 16 U.S. (3 Wheat.) 234 (1818). *See also* Mills v. Duryee, 11 U.S. (7 Cranch) 481 (1813). These early cases are generally considered to be the starting point of a full faith and credit analysis respecting judgments. *See* Thomas v. Washington Gas Light Co., 448 U.S. 261, 270 (1980).

50. 16 U.S. at 235.

51. 210 U.S. 230 (1908).

52. The law of Mississippi had made illegal certain forms of dealing in futures and it prohibited its courts from enforcing any contract made in violation of that law. *Id.* at 238.

facts before the Court. He asserted that the majority had sanctioned the residents of Mississippi to perform acts within that state that violate that state's public policy by compelling Mississippi to enforce a judgment rendered in another state.[53] Despite this astute observation, however, the majority chose to follow the more rigid full faith and credit pronouncement by Chief Justice Marshall in *M'Connel*.[54]

Yarborough v. Yarborough[55] is perhaps one of the best illustrations of the Court's rigid full faith and credit approach to judgments. In *Yarborough*, the Court held that a Georgia judgment limiting a father's support obligations pursuant to a divorce decree must be honored in South Carolina, where his daughter then resided.[56] What is perhaps most important in *Yarborough* is Justice Stone's dissenting opinion which, as some commentators have suggested, represents the archetype for future attempts to read exceptions into the literal mandate of the clause with respect to judgments.[57] Justice Stone thought it dubious that the Georgia divorce decree was intended to bind the parties outside of Georgia and that the full faith and credit clause, as applied in this instance, permitted one state to control the internal affairs of another.[58] Justice Stone stated that "there comes a point beyond which the imposition of the will of one state beyond its own borders involves a forbidden infringement of some *legitimate domestic interest* of the other."[59] Furthermore, Justice Stone stated that the statute implementing the full faith and

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53. *Id.* at 240 (White, J., dissenting).

54. The majority's reliance on a rigid and literal meaning of the full faith and credit clause is manifested in the Court's determination that since the jurisdiction of the Missouri court was not open to dispute, its judgment could not be impeached even in the event that the judgment was rendered through a misinterpretation of Mississippi law. *Id.* at 237.

55. 290 U.S. 202 (1933).

56. In *Yarborough*, the daughter brought an action in South Carolina to require her father, a resident of Georgia, to provide her with funds for her college education and maintenance. The Georgia divorce decree, which had been entered several years earlier and modified on various occasions, had provided for monetary sums to be paid by the father for his daughter's general support and maintenance. The father had faithfully followed the provisions of the Georgia decree. *Id.* at 204-05, 207.

57. *See* Reese & Johnson, *supra* note 3, at 156. *See generally* Freund, *supra* note 26, at 1226-27.

58. 290 U.S. at 213-14 (Stone, J., dissenting). Justice Stone argued that there was nothing in the decree itself or in the history of the proceedings in Georgia that would suggest that the decree was intended to control the parent-child relationship in places outside the state. *Id.*

59. *Id.* at 215 (emphasis added). Perhaps Justice Stone's use of the phrase "legitimate domestic interest" in *Yarborough* foreshadowed what was to become the legitimate interest rule as first articulated by him in *Alaska Packers* two years later. *See* notes 32-47 *supra* and accompanying text.

credit clause[60] had never been applied with absolute rigidity and, in the absence of more specific terms, the Court must determine for itself the degree to which South Carolina could qualify or deny the rights claimed under the proceedings or records of Georgia.[61]

The traditionally inflexible and rigid application of the full faith and credit clause and the underlying principles of res judicata[62] were carried over into the workers' compensation field in *Magnolia Petroleum Co. v. Hunt*.[63] In *Magnolia*, the employee, a Louisiana resident, was injured while in the course of his employment in Texas. While confined to a hospital bed, the employee was presented with workers' compensation forms. He signed the forms, and the Texas insurance carrier began payment under the Texas compensation scheme.[64] Upon his return to Louisiana, the employee learned that his interests would be better served by the Louisiana statute. He then notified the Texas compensation board of his intent to collect compensation under the Louisiana Act.[65] After a hearing in Texas in which the employee did not participate, the Texas award became final.[66]

In disallowing a successive compensation claim under the Louisiana Act, the Court recognized that under Texas law, the award granted to the employee was exclusive of any other recovery for injury.[67] The Court therefore reasoned that the doctrines of res judicata and full faith and credit precluded Louisiana from granting a

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60. 28 U.S.C. § 1738 (1976). *See* note 11 *supra*.

61. 290 U.S. at 215. *See, e.g.*, Williams v. North Carolina, 325 U.S. 226 (1945) (North Carolina court was permitted to find that the parties to a divorce action had not acquired domicile in Nevada despite the finding of a Nevada court to the contrary); Fall v. Eastin, 215 U.S. 1 (1909) (in a dispute over marital property in a divorce action, the full faith and credit clause did not extend jurisdiction of a court of one state over property situated in another, but only compelled the judgment to be given conclusive effect on the merits and subject matter of the action).

62. *See* note 13 *supra*.

63. 320 U.S. 430 (1943).

64. *Id.* at 450 (Black, J., dissenting). These facts, as set forth in the dissenting opinion of Justice Black, reflect the various policy arguments made on behalf of a rule which would permit successive workers' compensation claims. Such policy considerations have been persuasive in subsequent cases and rest at the foundation of the plurality's holding in *Thomas*. *See* notes 103-11 & 185-92 *infra* and accompanying text.

65. 320 U.S. at 450 (Black, J., dissenting).

66. *Id.* at 433 n.2. The employee had received notice of the hearing before the Texas Industrial Accident Board and was aware that he was to supply the Board with medical evidence of his continued disability at the hearing. Upon his failure to appear before the Board, an award was made and the employee was notified as to the appeal process. No appeal was made by the employee and the award became final under Texas law. *Id.*

67. *Id.* at 434-35.

supplemental recovery for the same injury.[68] The majority in *Magnolia* was persuaded by the discovery that the Texas legislature recently had repealed the right of successive recoveries under the Texas Act when an award was granted previously under another state's law.[69] This finding was grounded primarily upon Texas judicial decisions.[70] Thus, by analogy, the Court concluded that Texas additionally must have intended that an award granted pursuant to its laws would preclude a successive compensation award under the laws of another jurisdiction.[71] The Court, however, expressly reserved judgment regarding the application of the full faith and credit clause to situations in which the courts of the first forum would not construe their statute as a bar to successive claims.[72] The rule that the full faith and credit clause as applied to judgments overrides local policy considerations appeared to be an established Supreme Court doctrine. Within four years of *Magnolia*, however, the Court articulated a less rigid approach to the application of full faith and credit to workers' compensation judgments.

Commentators[73] have suggested that the dissenters[74] in *Magnolia* saw their position vindicated in *Industrial Commission of Wisconsin v. McCartin*.[75] In *McCartin*, the employee, an Illinois resident employed in that state, was injured in Wisconsin during the course

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68. *Id.* at 437, 444. Justice Stone, writing for the majority, noted that this consequence was necessitated by the clear purpose of the full faith and credit clause that "a plaintiff may not for his single cause of action secure a second or greater recovery." *Id.* at 439-40. Furthermore, the Court expressly rejected the expansion of the legitimate interest approach, as set forth in *Alaska Packers* and its progeny, to judgments. *See* notes 32-46 *supra* and accompanying text. In so doing, the Court noted that Louisiana certainly had no greater interest in the injury to its resident than South Carolina had in requiring a father to support his child residing within that state, 320 U.S. at 440-41 (citing *Yarborough*, 290 U.S. 202 (1933)), or Mississippi in eliminating certain forms of gambling within its borders, *id.* (citing *Fauntleroy*, 210 U.S. 230 (1908)). *See* notes 51-61 *supra* and accompanying text.

69. 320 U.S. at 434-35.

70. *Id.* Justice Black asserted that the Texas statute at issue only pertained to the rights granted under Texas law and did not purport to affect the right to a successive claim under the laws of another state. *Id.* at 454 (Black, J., dissenting). Furthermore, he rejected the res judicata assertions made by the majority by pointing out that the employee, had he failed to recover initially under the act of another state, would still be able to recover under the Texas Act. *Id.*

71. *Id.* at 442. *See* Brief for Petitioner at 16, *supra* note 5.

72. 320 U.S. at 443.

73. *See* Reese & Johnson, *supra* note 3, at 159. *See generally* R. LEFLAR, *supra* note 48, at 333-34.

74. The dissenters in *Magnolia* were Justices Douglas, Murphy, Black, and Rutledge. 320 U.S. at 450, 462.

75. 330 U.S. 622 (1947).

of his employment.[76] The employee filed compensation claims under both the Illinois and Wisconsin Acts.[77] While the employee's claim was pending in Wisconsin, a settlement contract was entered into by the employer and the employee under the Illinois Act.[78] The contract contained a clause that purported to " 'not affect any rights that [the] applicant may have under the Workmen's Compensation Act of the State of Wisconsin.' "[79] The Wisconsin commission subsequently granted an award under the Wisconsin Act that then was set aside by the Supreme Court of Wisconsin on the authority of *Magnolia*.[80]

The matter then was presented to the United States Supreme Court, and the Wisconsin award was reinstated.[81] The Court distinguished *Magnolia* by stating that the nature and effect of the Illinois award in *McCartin* lacked the measure of finality, contemplated by the full faith and credit clause, which had been present in the Texas award in *Magnolia*. In analyzing the Illinois statute under which the judgment was rendered, the Court answered the question that it had expressly left open in *Magnolia*:[82]

> [T]here is nothing in the statute or in the decisions thereunder to indicate that it is completely exclusive, that it is designed to preclude any recovery by proceedings brought in another state for injuries received there in the course of an Illinois employment. . . . *Only some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction*.[83]

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76. *Id.* at 623.

77. *Id.* at 623-24. The employer had objected to the jurisdiction of the Wisconsin Commission to hear the claim filed by the employee. *Id.*

78. *Id.* at 624.

79. *Id.*

80. *Id.* at 626-27 (citing McCartin v. Industrial Comm'n, 248 Wisc. 570, 22 N.W.2d 522 (1946)).

81. *Id.* at 630.

82. *See* text accompanying note 72 *supra*.

83. 330 U.S. at 627-28 (emphasis added). While the Court in *McCartin* may not have rested its decision solely on the basis of its interpretation of the Illinois statute, it is clear from the Court's language that it was of paramount importance in the ultimate result:

> [W]hen the reservation in this award is read against the background of the Illinois Workmen's Compensation Act, it becomes clear that the reservation spells out what we believe to be implicit in that Act—namely, that an Illinois workmen's compensation award of the type here involved does not foreclose an additional award under the laws of another state. And in the setting of this case, that fact is of decisive significance.

Id. at 630.

The Court's holding[84] had a two-pronged effect: Not only did it answer the question expressly left open by the Court in *Magnolia*, but it also promulgated a rule which, in effect, virtually overruled that decision.[85]

Such was the state of the law with regard to the scope of the full faith and credit clause in workers' compensation judgments. For over thirty years the degree of faith and credit to be accorded to such judgments was embodied in two Supreme Court holdings. These two decisions, however, did not settle the debate over the role of res judicata, full faith and credit, and choice of law doctrines in workers' compensation judgments. *Thomas* represents the Court's third attempt to resolve the debate.

III. THE *THOMAS* DOCTRINE

A. *The Demise of* Magnolia *and* McCartin

The narrow issue before the Court in *Thomas* was whether the award granted to the employee under the Virginia Act precluded a successive award under the compensation law of the District by operation of the principles of res judicata and full faith and credit.[86] In addressing this issue, each of the three opinions rendered by the Court[87] reflected the necessity to deal with *Magnolia* and *McCartin*.

The plurality opinion of Justice Stevens posed a most interesting approach to the *Magnolia* and *McCartin* doctrines. In applying those doctrines to the facts of *Thomas*, the plurality tentatively held[88] that *McCartin* was controlling because the Virginia Act did not contain the unmistakable language necessary to preclude a successive award.[89] The plurality, however, was not satisfied with the threshold test of unmistakable language promulgated in *McCartin*. The plu-

84. There is some debate as to whether the unmistakable language test was actually part of the Court's holding. Significantly, virtually all courts have considered that test as the Court's holding for over thirty years. *See* Transcript of Oral Argument at 9-10, Thomas v. Washington Gas Light Co., 448 U.S. 261 (1980); Brief of Petitioner at 15 n.2, *supra* note 5.

85. *See* 448 U.S. at 274 n.20, 275 n.22; 4 A. LARSON, *supra* note 1, § 85.30 at 16-21; R. LEFLAR, *supra* note 48, at 334.

86. 448 U.S. at 265-66.

87. The plurality opinion of Justice Stevens was joined by Justices Brennan, Stewart, and Blackmun. 448 U.S. at 263. The concurring opinion of Justice White was joined by Chief Justice Burger and Justice Powell. *Id.* at 286. The dissenting opinion of Justice Rehnquist was joined by Justice Marshall. *Id.* at 290.

88. Although the plurality concluded early in its opinion that *McCartin* was controlling, its ultimate holding essentially contained no reliance on that decision. *See* notes 103-14 *infra* and accompanying text.

89. 448 U.S. at 269. *See* note 10 *supra*.

rality thought it inappropriate that, under *McCartin*, the Court found itself comparing the language of the Virginia Act, under which Thomas first received compensation, with the Illinois Act from *McCartin*[90] in order to resolve a federal question concerning the full faith and credit clause.[91] Such a rule, according to the plurality, inappropriately focused on the extraterritorial intent of the rendering state, by authorizing that state to determine the extraterritorial effect of its judgments by drafting or construing their statutes in unmistakable language.[92] The plurality therefore concluded that the *McCartin* rule permitted an unwarranted infringement on the Court's ultimate responsibility for determining the degree of faith and credit to be accorded to the statutes and judgments of the several states.[93]

As a result of its criticisms of the *McCartin* rule, the plurality then addressed the ultimate fate of the *Magnolia* and *McCartin* doctrines. In examining the effect of overruling one or both of those decisions, the plurality reflected its deep concern for the practical values underlying the doctrine of *stare decisis*. The plurality recognized that the granting of successive compensation claims had been settled practice since *McCartin*.[94] The plurality reasoned that the salutary principles of certainty and predictability in the administra-

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90. The Illinois statute which the Court in *McCartin* held not to have unmistakable language provided in pertinent part: "No common law or statutory right to recover damages for injury or death sustained by any employe[e] while engaged in the line of his duty as such employe[e], other than the compensation herein provided, shall be available to any employe[e] who is covered by the provisions of this act, ..." 330 U.S. at 627 (quoting 1913 Ill. Laws, § 6 at 335 (current version at ILL. REV. STAT. ch. 48, § 138.5 (Smith-Hurd 1969 & Supp. 1981)).

91. 448 U.S. at 269.

92. *Id.* at 270.

93. *Id.* at 271. The plurality determined that the *McCartin* rule was inconsistent with Justice Stone's mandate in the *Pacific Employers* decision that the " 'Court must determine for itself how far the full faith and credit clause compels the qualification or denial of rights asserted under the laws of one state, that of the forum, by the statute of another state.' " *Id.* (quoting *Pacific Employers*, 306 U.S. at 502).

94. *Id.* at 274-75. As the plurality pointed out, the only example of the unmistakable language contemplated by *McCartin* appears to be present in the Nevada Act. *Id.* at 275 n.21.

> [I]f an employee who has been hired or is regularly employed in this state . . . accepts any compensation or benefits under the provisions of this chapter, the acceptance of such compensation shall constitute a waiver by such employee . . . of all rights and remedies against the employer at common law or *given under the laws of any other state* . . . .

Id. (quoting NEV.REV. STAT. § 616.525 (1979)) (emphasis by the Court). *See* notes 84-85 *supra* and accompanying text.

tion of the law, which are the cornerstones of *stare decisis*,[95] would not be served by reviving *Magnolia* or preserving *McCartin* as an unacceptable limitation on *Magnolia*.[96] Overruling *Magnolia*[97] would not violate those principles in that there had been no significant reliance on its rule.[98] In view of the reliance on the practical results of *McCartin*, however, the plurality felt constrained by the principles underlying *stare decisis* not to expressly overrule that decision.[99]

The plurality thus found itself left with *Magnolia*, which appeared to rest upon sound traditional full faith and credit principles in not allowing successive claims, and the *McCartin* rule, which permitted successive claims but in an inappropriate manner. Through this analysis the plurality determined that the full faith and credit issue deserved a fresh examination.[100]

B. *Application of the Legitimate Interest Rule*

After expressing its dissatisfaction with the *Magnolia*[101] and *McCartin* doctrines, the plurality assumed the task of formulating a new constitutional rule governing the successive claims practice. The plurality formulated this new rule through its application of the legitimate interest rule, as delineated by *Alaska Packers* and its progeny, and by weighing the interests of the District and Virginia in Thomas' claim.[102] The plurality identified three different state inter-

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95. 448 U.S. at 272. *See generally* R. POUND, LAW FINDING THROUGH EXPERIENCE AND REASON (1960); Douglas, *Stare Decisis*, 49 COLUM. L. REV. 735 (1949).

96. 448 U.S. at 277.

97. It is emphasized that the plurality did not overrule *Magnolia* solely because its rationale had seldom been followed. The plurality, rather, overruled *Magnolia* on more specific grounds through its fresh examination of the full faith and credit issue. *See* note 112 *infra* and accompanying text.

98. 448 U.S. at 277.

99. *Id.*

100. *Id.*

101. *Id.* at 280-81, 284-86. *See* note 112 *supra* and accompanying text.

102. The plurality alluded to a weighing of interests approach in examining the interests of the District and Virginia in the successive compensation claim by Thomas. 448 U.S. 227-86. Such a weighing approach, although mentioned by Justice Stone in *Alaska Packers, see* note 38 *supra*, was abandoned by the Court in subsequent cases. *See, e.g.*, Allstate Ins. Co. v. Hague, 449 U.S. 302, 308 n.10 (1981); Carroll v. Lanza, 349 U.S. 408, 413 (1955); Cardillo v. Liberty Mut. Ins. Co., 330 U.S. 469, 476 (1947); Director, Office of Workers' Comp. Programs v. Nat'l Van Lines, Inc., 613 F.2d 972, 981 (D.C. Cir. 1979), *cert. denied*, 448 U.S. 907 (1980).

Professor Larson points out that "the entire development of the successive award practice . . . confirms the irrelevance of 'weighing,' since if only the state with the greater interest could constitutionally apply its law, it would be logically impossible for two

ests that were affected by the potential conflict between the District and Virginia.[103] These interests were identified as Virginia's interest in limiting the liability of companies transacting business there, the concurrent interests of Virginia and the District in the welfare of the employee, and Virginia's interest in the finality of its judgments.[104]

In the plurality's view, the first two of these conflicts were resolved by the *Alaska Packers* line of cases. The plurality reasoned that *Alaska Packers* and its progeny stood for the proposition that a state should not be compelled to subordinate its own compensation statutes to those of another state through the operation of the full faith and credit clause.[105] The plurality determined that because Thomas initially could have sought a compensation award in either jurisdiction,[106] the employer and its insurance carrier logically would measure their potential liability based upon the more generous of the two compensation remedies.[107] Moreover, the plurality concluded that the concurrent interests in compensating the injured worker were fully served by permitting successive awards and, therefore, such interests did not give rise to any significant conflict.[108]

The ultimate issue for determination by the plurality was whether Virginia's interest in the finality of its judgments should pre-

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states to make an award for the same injury." 4 A. LARSON, *supra* note 1, § 86.35 at 16-43. *See also* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 182 (1971).

103. Presumably, the potential conflict that concerned Justice Stevens was the one which would arise if it were determined that the Virginia statute contained some unmistakable language which purported to preclude the subsequent claim under the District of Columbia Act.

104. 448 U.S. at 277.

105. *Id.* at 279.

106. There would appear to be no significant dispute over whether Thomas could have sought compensation in either jurisdiction in the first instance, even if one compensation scheme purported to be an exclusive remedy for the injury. When taken as a whole, *Alaska Packers* and its progeny stand for the proposition that a state may constitutionally apply its own compensation act when that state is the site of the injury, the residence of the employee, the place of the employment contract, the location of the employment relationship, or the place where the parties have stipulated by contract to be the forum for any claims. *See* 4 A. LARSON, *supra* note 1, § 86.10 at 16-33; RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 181 (1971).

107. *Id.* at 280.

108. This is clear from the policies which originally gave rise to workers' compensation laws. These statutes are designed primarily to provide benefits to an injured worker, without the burden of proving fault or negligence, placing the burden of support on the employer and indirectly on those consumers who purchase the employer's products. That this social policy is preferable to placing the burden on the state and its taxpayers to support injured workers is implicit in the very existence of these statutory schemes. *See* Brief for the Federal Respondent at 22-23, Thomas v. Washington Gas Light Co., 448 U.S. 261 (1980) [hereinafter cited as Brief for Fed. Respondent].

clude a successive award in the District.[109] The plurality resolved this issue by examining the peculiar mechanics of the workers' compensation claims process. The plurality observed that a compensation tribunal typically may apply only its own state's statutes.[110] From this the plurality concluded that because the Virginia tribunal lacked the power and authority to determine Thomas' rights under the statutes of another jurisdiction, full faith and credit need be given only to those determinations that the Virginia tribunal had the authority to make. Therefore, because the Virginia tribunal could not pass on Thomas' rights under the District Act, there could be no constitutional objection to an adjudication of those rights by a successive claim in the District.[111]

Additionally, the plurality expressly dismissed the straightforward application of the full faith and credit clause by the Court in *Magnolia*. The plurality concluded that the constitutional mandate of the clause was satisfied because supplemental claims must give full effect to the factual determinations made during the first hearing, and the first award must be credited toward the second so as to prevent a complete double recovery.[112]

The new rule articulated by the plurality essentially mandates that a state may not be precluded from granting a supplemental award under its own compensation act when that state would have

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109. 448 U.S. at 280.

110. *Id.* at 282. Compensation tribunals are typically limited to applying their own state statutes. This is grounded on practical reason in view of the contrasts among the various statutory schemes. The rights granted under such acts involve more than just the award of monetary sums. Tribunals are responsible for maintaining continuous supervision over the entire award process to assure that claimants receive the full compliment of available benefits, often making adjustments in those benefits when appropriate under that scheme. Such benefits are tied so closely with the particular state's administrative process, that it would be impractical for the forum to apply and administer the statutory provisions of the workers' compensation act of another state. *See* 4 A. LARSON, *supra* note 1, § 84.20 at 16-7 to 16-8.

111. 448 U.S. 282-83.

112. *Id.* at 281. The plurality, in analyzing the *Magnolia* decision, examined its reliance on Chicago, R.I. & P.R. Co. v. Schendel, 270 U.S. 611 (1926), which dealt with the res judicata effect of findings of fact in workers' compensation proceedings. The plurality asserted that *Schendel* did not compel the holding in *Magnolia* in that it "involved the unexceptionable full faith and credit principle that resolutions of factual matters underlying a judgment must be given the same res judicata effect in the forum state as they have in the rendering state." 448 U.S. at 281. It is clear that the underlying premise of *Schendel* would have been appropriately dispositive of the full faith and credit issue in *Magnolia* had there been a reexamination of the factual findings made by the Texas tribunal. No such reexamination took place, however, when the Louisiana courts attempted to fix additional compensation under its Act. *See* Wolkin, *supra* note 3, at 409-10.

had an initial opportunity to apply its own law.[113] Thus, the full faith and credit clause no longer may be construed to prevent successive workers' compensation claims.[114] Significantly, such a fresh approach to the full faith and credit issue was not persuasive to five members of the Court. Justice White, in his concurring opinion, conceded that Thomas should be permitted to receive a supplemental claim,[115] yet found himself unable to join the plurality's sweeping rationale. Justice White thought it grossly unfair that a claimant should be given the additional advantage of a second adjudication after having had the initial choice of forum.[116] Justice White would not overrule either *Magnolia* or *McCartin* even though in his mind the former stated the sounder doctrine while the latter rested on "questionable foundations."[117] Additionally, Justice White was critical of the plurality's analysis. He stated that the plurality's rationale, unlike the *McCartin* analysis, was susceptible to application beyond the realm of workers' compensation law.[118] Despite the plurality's determination that factual matters decided by a compensation tribunal would be entitled to collateral estoppel effect, Justice White asserted that the plurality's broad holding would have implications for common tort actions.[119] Finally, Justice White was not

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113. 448 U.S. at 286.

114. *Id.* It is emphasized that the broad language in the plurality's holding is inconsistent and confusing in view of the weighing of interests approach that the plurality used in reaching its decision. *See* notes 101-11 *supra* and accompanying text. Thus, it remains unclear whether lower courts also should employ a weighing of interests approach or simply determine whether the forum state of the second compensation claim initially could have applied its own law. *See* notes 161-84 *infra* and accompanying text.

115. 448 U.S. at 286. Justice White agreed with the plurality's tentative conclusion that *McCartin* was the controlling precedent "since the Virginia Workmen's Compensation Act lacks the 'unmistakable language' which *McCartin* requires if a workmen's compensation award is to preclude a subsequent award in another State." 448 U.S. at 289-90 (White, J., concurring).

116. *Id.* at 289.

117. *Id.*

118. *Id.*

119. *Id.* at 287. Justice White also expressed concern for the underlying principle of the finality of judgments embodied in the full faith and credit clause, and asserted that the plurality's analysis was at odds with that principle. *Id.* at 288. Justice White hypothesized that the plurality's rationale may be applicable to those wrongful death actions in which a court enters a judgment against the defendant after choosing to apply the law of the forum which has set a limit on the recovery allowed. In such cases, according to Justice White, "[t]he plurality's analysis would seem to permit the plaintiff to obtain a subsequent judgment in a second forum for damages exceeding the first forum's liability limit." *Id.* at 287. An excellent illustration of this situation is presented in Semler v. Psychiatric Inst. of Washington, D.C., 575 F.2d 922 (D.C. Cir. 1978), in which the plaintiff, after receiving a favorable judgment in a wrongful death action in a federal court in Virginia, sued the same defendant on the same facts under the District of Columbia

persuaded by the plurality's conclusion that a judgment may be denied full res judicata effect pursuant to the full faith and credit clause merely because a state's tribunal was empowered only to apply the law of the forum. Justice White doubted that Virginia, by empowering its tribunal to apply only Virginia law to Thomas' injury, intended that its judgments would not include claims arising under the statutory schemes of other states.[120]

Justice Rehnquist, in his dissenting opinion, not only criticized the plurality for its failure to return to what he considered "the eminently defensible position adopted in *Magnolia*"[121] after having destroyed the *ratio decidendi* of *McCartin*, but he also considered the plurality's application of an interest analysis to be unjustifiable.[122] Justice Rehnquist questioned the appropriateness of applying the interest analysis of *Alaska Packers* and its progeny and emphasized that the plurality had overlooked the distinction traditionally recognized by the Court between the degree of faith and credit to be given to statutes and that which is to be given to judgments.[123] In view of this oversight, Justice Rehnquist asserted that the plurality's analysis ignored Virginia's interest in the finality of its judgments. According to Justice Rehnquist, such interests "lie at the very heart of the divergent constitutional treatment of judgments and statutes,"[124] and

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Wrongful Death and Survival Act. D.C. CODE ENCYCL. §§ 16-2701 to 2703 (West 1968 & Supp. 1979). In *Semler*, the court followed the traditional applications of res judicata and full faith and credit in denying a second recovery, citing *Magnolia* as controlling. *Id.* at 929. The court noted that the res judicata effect of the Virginia judgment in the first action was clearly conclusive as to all of the rights and duties of the parties arising from the operative facts, thus distinguishing *McCartin*. *Id.* at 929 n.41, 930-31. The court, however, noted that the plaintiff had an opportunity to litigate the choice of law issue as to whether a more generous statute could be applied to the court's determination of liability. *Id.* at 929 n.41. The plurality in *Thomas* emphasized that such an opportunity is not available to workers' compensation claimants, thus removing workers' compensation judgments from normal choice of law concepts. *See* notes 110-11 *supra* and accompanying text. Because the plurality has expressly drawn such a distinction, it appears that its rationale will be limited to those situations in which the forum had no power to apply choice of law principles. Further, it appears that the Court itself wishes to limit the broad pronouncements of the *Thomas* plurality to workers' compensation cases. In Underwriters Nat'l Assurance Co. v. North Carolina Life & Accident & Health Ins. Guaranty Assoc., 102 S. Ct. 1357 (1982), the Court addressed the application of res judicata and full faith and credit principles to determinations made by the Indiana Rehabilitation Court. No reference was made to *Thomas*.

120. 448 U.S. at 287.

121. *Id.* at 291-92 (Rehnquist, J., dissenting).

122. *Id.* at 292.

123. *Id.* at 293.

124. 448 U.S. at 294. Justice Rehnquist expressed his concern that Virginia's efforts and expense to provide employees with a remedy for their injury, and a forum to

thus, an interest balancing approach to the competing interests of Virginia and the District is unacceptable in a scenario in which the full faith and credit clause is applied to judgments.[125]

Finally, Justice Rehnquist was not persuaded by the plurality's distinction between compensation tribunals and courts of general jurisdiction with regard to the choice of law issue in *Thomas*.[126] While conceding that this distinction would be of some significance if Thomas somehow had been subjected to Virginia law against his will, Justice Rehnquist emphasized that Thomas made his own choice of law by selecting the forum in which he filed his initial claim.[127] Justice Rehnquist concluded that such an election, which resulted in an award under Virginia law, should be given the same constitutional treatment as a judgment awarded by a court of general jurisdiction.[128]

IV. ANALYSIS

A. *A Refined* McCartin *Analysis*

Although it did not expressly overrule *McCartin*, the plurality's rationale, if adopted in subsequent cases,[129] should render *McCartin* a virtual nullity in view of the fresh examination of the full faith and credit issue in *Thomas*.[130] The plurality superficially was correct in its assertion that the *McCartin* rule clashed with traditionally accepted full faith and credit principles. Its reliance on *Alaska Packers* and its progeny to strike down the *ratio decidendi* of *McCartin*, however, was misplaced.

While the plurality correctly asserted that Thomas could have sought a compensation award in the first instance in the District, the plurality overlooked the distinctions traditionally drawn by the Court between the scope of the full faith and credit clause as applied to statutes and the scope of the clause as applied to judgments.[131] The question presented in *Thomas* was one concerning the faith and credit that one state must give to another state's judgments, as Thomas already had received a judgment granting him an award of

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resolve their disputes with their employers, are wasted when successive workers' compensation claims are permitted. *Id.* at 293-94.

125. *Id.* at 296. *See* note 102 *supra* and accompanying text.

126. 448 U.S. at 294 (Rehnquist, J., dissenting).

127. *Id.*

128. *Id. See* notes 48-50 *supra* and accompanying text.

129. *See* notes 162-84 *infra* and accompanying text.

130. *See* notes 103-14 *supra. See also* notes 172-80 *infra* and accompanying text.

131. *See* text accompanying notes 32-61 *supra*.

compensation under the Virginia Act. The decisions relied on by the plurality, however, concerned the faith and credit that one state must give to another state's statutes.[132] While an interest analysis is familiar to the latter, it certainly is new and strange to the former in that state interests traditionally are ignored with respect to judgments.[133] While Justices White and Rehnquist focused on this distinction, the plurality seemed to ignore it.[134] Furthermore, it appeared to the plurality that the distinction between state compensation tribunals and courts of general jurisdiction was sufficient to carve out an exception to the traditional applications of the full faith and credit clause to judgments, thus paving the way for the application of an interest analysis approach.

The plurality in *Thomas* broadly interpreted Justice Stone's *Pacific Employers* opinion, in which he stated that "[t]his Court must determine for itself how far the full faith and credit clause compels the qualification or denial of rights asserted under the laws of one state, that of the forum, by the statute of another state."[135] The context in which that statement was made, however, is of great significance and should not be disregarded. *Alaska Packers* and its progeny were decisions that dealt with the scope of the full faith and credit clause when two conflicting state statutes were applicable to the same operative facts. In those cases, each of the conflicting statutes was deemed to have an invalid extraterritorial effect in that each purported to be exclusive of all other remedies available to the employee. To apply a literal mandate of full faith and credit under such circumstances would force each state to enforce within its borders the conflicting statutes of another state without giving the forum the opportunity to enforce its own.[136]

The *McCartin* rationale, however, does not fit within this extraterritorial mold. Rather, it is directed toward the intent of the rendering state as to the res judicata effect of the compensation award granted pursuant to its own statutes. The res judicata effect of a judgment[137] significantly depends on the law of the state that renders the judgment.[138]

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132. *See* notes 101-14 *supra* and accompanying text.

133. *See* text accompanying notes 48-72 *supra*.

134. *See* notes 115-26 *supra*.

135. 306 U.S. at 502.

136. *See* text accompanying notes 33-47 *supra*.

137. *See* note 13 *supra*.

138. *See* R. LEFLAR, *supra* note 48, at 148-49; RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 107-09 (1971); Annot., 9 A.L.R. 984 (1950). *See generally* R. CRAMTON, *supra* note 48, at 727-32.

In the *McCartin* context, under a compensation act devoid of any unmistakable language, State *A* determines the rights of the employee arising only under that state's laws. *McCartin* held that it is implicit from the lack of such unmistakable language that State *A* does not intend to adjudicate the full compliment of the employee's rights to all available compensation before its tribunals so as to render that judgment res judicata with regard to other available remedies. Rather, it has chosen to adjudicate only the rights of the employee available under its own laws, while leaving open the possibility of a supplemental recovery under another, applicable act. It follows, therefore, that its judgment was not intended to be final and conclusive, but rather, that it contemplated further awards and modifications if available.[139]

On the other hand, if the statute of State *A* contains some unmistakable language,[140] that state has decided to adjudicate the full compliment of the rights of the employee before that state's tribunal. The *Thomas* plurality maintained that this is an extraterritorial effect. The basic purpose of the full faith and credit clause, however, is to effectuate such extraterritorial results with regard to judgments so as to create some unifying force among the several states.[141] It therefore follows that there is no real extraterritorial infringement in the *McCartin* rationale but for the res judicata effect of the final judgment by the subsequent application of the full faith and credit clause itself.

Furthermore, the application of a refined *McCartin* analysis accommodates the plurality's concern with the peculiar mechanics behind the granting of workers' compensation awards. The plurality observed that typically a compensation tribunal may apply only its own state's statutes. Because such tribunals lack the power to determine the employee's rights under the statutes of another jurisdiction, the plurality concluded that this places workers' compensation proceedings outside the realm of normal choice of law concepts.[142] This conclusion overlooked an important concept. There is no constitutional requirement that the court of the forum state address itself to

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139. This is made clear in the *McCartin* decision by the Court's determination that "[s]ince this Illinois award is final and conclusive only as to rights arising in Illinois, Wisconsin is free under the full faith and credit clause to grant an award of compensation in accord with its own laws." 330 U.S. at 630. *But see* Cheatham, *supra* note 3, at 340; Reese & Johnson, *supra* note 3, at 161-62.

140. *See, e.g.*, NEV. REV. STAT. § 616.525 (1979). *See* note 94 *supra*.

141. *See* Sherrer v. Sherrer, 334 U.S. 343, 355 (1948); Milwaukee County v. M.E. White Co., 296 U.S. 268, 276-77 (1935).

142. *See* text accompanying notes 110-11 *supra*.

vindicating the interests that other jurisdictions may have in the matter, provided that the forum has a significant interest in the controversy.[143] Thus, the distinction drawn by the plurality between compensation tribunals and courts of general jurisdiction is one of limited substance when relied upon to conclude that no real choice of law has been made. As Justice Rehnquist asserted, a choice of law is made when the claimant selects the forum.[144] Moreover, it may be said that in limiting the power of its tribunals, the forum state has made its choice of law, that being its own statute.[145]

The limited power of workers' compensation tribunals does have significance, but in a different context than that set forth by the plurality. The forum may be aware of the additional rights that a claimant may have under another act, but because its tribunals are empowered only to apply its own remedies, the forum may not want to foreclose the employee's right to take advantage of those rights. The forum may make this choice by drafting or construing its statutes without some unmistakable language, as required by the *McCartin* rule. If the forum, however, does not wish to recognize these additional rights, it expresses this choice by using some unmistakable language. Justice White criticized this scenario as "grant[ing] state legislatures the power to delimit the scope of a cause of action for federal full faith and credit purposes merely by enacting choice-of-law rules binding on the State's workmen's compensation tribunals."[146] What the forum actually is doing is articulating the finality and conclusiveness of its judgments, which are determined by the law of the forum rendering the judgment.[147]

In conclusion, this reexamination of the *McCartin* rule gives credence to the presumption that the *McCartin* Court was cognizant of the traditional scope of the full faith and credit clause as applied to judgments. *McCartin* did not overrule *Magnolia*, but rather, it simply recognized the state's role in determining the finality and conclusiveness of its judgments. The unanimous Court in *McCartin* correctly set forth a rule that remained essentially within the parameters of the traditional scope of the full faith and credit clause, as

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143. *See* Allstate Ins. Co. v. Hague, 449 U.S. 302, 314-16 (1981); Clay v. Sun Ins. Office, Ltd., 377 U.S. 179, 181 (1964); Watson v. Employers Liab. Assurance Corp., 348 U.S. 66, 73 (1954); Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 436 (1943). *See generally* R. CRAMTON, *supra* note 48, at 421-26.

144. *See* text accompanying notes 126-28 *supra*.

145. *See* Brief for WGL at 44-45 *supra* note 7.

146. 448 U.S. at 287.

147. *See* text accompanying notes 138-41 *supra*.

applied to judgments, in that it successfully upheld the salutary common-law doctrine of res judicata which lies at the foundation of the clause itself.

B. *A Caveat Concerning the Interest Analysis*

It is emphasized that the Court has yet to determine the precise parameters of the legitimate interest rule.[148] It therefore is possible that lower courts and state compensation tribunals may be overzealous in finding what they consider to be legitimate interests that perhaps are beyond the contemplation of the rule as it typically has been interpreted. This is especially significant in light of the laudable public policy desires to fully compensate normally productive workers who are injured in the course of employment.

Two cases preceding *Thomas* are persuasive. In *Director, Office of Workers' Compensation Programs v. Boughman*,[149] the District of Columbia Circuit upheld the applicability of the District of Columbia Workmen's Compensation Act when the employee, a representative of a national labor union, was murdered while at a union hall in California.[150] The employee's duties were directed by a regional officer in the Western United States.[151] The court, however, concluded that as the employer's national headquarters, the origin of the employee's paychecks, and the administration of the union pension fund occurred in the District, these contacts gave rise to a legitimate interest on the part of the District.[152]

In *Director, Office of Workers' Compensation Programs v. National Van Lines*,[153] the employee was injured in a highway accident while acting within the course of employment in New York State. The employee's residence and the employer's business were located in Virginia.[154] While the court noted the absence of the common indicia of a substantial connection between the parties and the District which would give rise to the District having a legitimate interest in the injury,[155] it still upheld the applicability of the District com-

148. *See* note 106 *supra*.

149. 545 F.2d 210 (D.C. Cir. 1976).

150. *Id.* at 211.

151. The facts of *Boughman* are set forth in Director, Office of Workers' Comp. Programs v. Nat'l Van Lines, 613 F.2d 972, 982 (D.C. Cir. 1979), *cert. denied*, 448 U.S. 907 (1980).

152. *Id.*

153. 613 F.2d 972 (1979).

154. *Id.* at 978.

155. *Id.* at 979. The court stated that such common indicia of a substantial con-

pensation scheme to the injury.[156] In doing so, the court determined that the usual indicia of a legitimate interest were of little relevance for two reasons. First, the court noted that the employer's headquarters were located in a metropolitan area consisting of Virginia, Maryland, and the District, and that in view of the policies behind the statutes, the exact location of the employer's headquarters should not be determinative.[157] Second, the court thought that the interstate nature of the employer's business made it difficult to determine one specific place as constituting the place of the employment relationship.[158] As the employer serviced the District, the court concluded that the District had an interest in the outcome of the controversy.[159]

In light of this potential for an overzealous search to find a legitimate interest, it is clear that the plurality's holding in *Thomas* falls prey to its own criticism of *McCartin*. The plurality in *Thomas* asserted that the *McCartin* rule delegated to the states the Court's ultimate authority to arbitrate federal questions concerning the full faith and credit clause.[160] The holding of the plurality, however, permits the states through their courts and administrative tribunals to determine when a legitimate interest exists so as to render a forum state's compensation act applicable to a given injury. Therefore, until the Court determines the parameters of the legitimate interest rule, *Thomas* also may be criticized as placing upon the states the Court's responsibility for determining the scope of the full faith and credit clause.

C. *Application of the* Thomas *Doctrine*

Nearly thirty years ago one judge noted: "Perhaps it is not too much to hope the Court which rendered the *Magnolia* and *McCartin* opinions will, when the opportunity is presented, clarify them, or perhaps state an easily understood rule to be applied in such

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nection are the place of the employee's residence, headquarters of the employer and the place of contracting. *Id.* *See* note 106 *supra*.

156. 613 F.2d 982-83.

157. *Id.* at 979. The court added that the Washington, D.C. area constituted the most significant geographical division and it used this fact in liberally granting to the District of Columbia authorities jurisdiction over the injury. *Id.*

158. *Id.* The employer, Eureka Van & Storage Company was a small operation serving the metropolitan Washington, D.C. area. The employer served as an agent for National Van Lines and operated trucks displaying the colors and emblems of that company. *Id.* at 978.

159. *Id.* at 981. The court emphasized the interest that the District had in assuring those who may work within its borders that they would be adequately protected if injured. *Id.*

160. 448 U.S. at 271.

cases."[161] While the Court clearly was presented with such an opportunity in *Thomas*, it appears that the initial reactions of state and federal courts are composed of confusion and unfulfilled hopes.

The Fifth Circuit recently dealt with the successive compensation claim dilemma in *Landry v. Carlson Mooring Service*.[162] In *Landry*, the employee suffered a heart attack in Texas and filed compensation claims against his employer under the Longshoremen's and Harbor Workers' Compensation Act (LHWCA)[163] and the Texas Workmen's Compensation Act.[164] The parties then decided to settle the case and submitted their settlement to a Texas court as required under Texas law. The settlement resulted in a lump sum award to the employee.[165] After receiving the award, the employee executed a general release purporting to discharge the liability of the employer's insurer for all claims arising from the employee's injury.[166] The employee then withdrew his claim under the LHWCA. The employee subsequently reopened his claim under the LHWCA and was granted a supplemental award.[167] This award was vacated on appeal on res judicata and full faith and credit grounds.[168] The Fifth Circuit reinstated the award, noting that *Thomas* seemed to be dispositive of the issue.[169] The Fifth Circuit, however, ultimately applied the *McCartin* unmistakable language test in rendering its decision. The court characterized the precedential impact of *Thomas* as being unclear in view of the three, contrasting opinions rendered by the Court and determined that a majority of the Justices would agree that the *McCartin* rule should control.[170]

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161. LaRue v. El Paso Natural Gas Co., 57 N.M. 93, 97, 254 P.2d 1059, 1062 (1953).

162. 643 F.2d 1080 (5th Cir. 1981).

163. 33 U.S.C. §§ 901-950 (1976).

164. TEX. REV. CIV. STAT. ANN. art. 8306 (Vernon 1956 & Supp. 1981). Initially, the Texas Industrial Accident Board dismissed the employee's claim, but on review, the state district court held that the claim was not barred by the employee's additional LHWCA claim. 643 F.2d at 1082.

165. 643 F.2d at 1082.

166. *Id.* The release stated, in part, that the insurer would be discharged from liability for all " 'claims . . . or kind of action whether at common law or under any statute, state or federal . . . growing out of . . . personal injuries alleged to have been sustained and suffered' " by the employee. *Id.*

167. *Id.*

168. *Id.* In vacating the award, the Benefits Review Board reasoned that the Texas courts would have given the judicially approved award under the Texas Act res judicata effect and that *Magnolia* required that full faith and credit be given to that final judgment. *Id.*

169. *Id.* at 1084.

170. *Id.* at 1085. The Fifth Circuit came to this conclusion by asserting that " 'the

In applying the *McCartin* rule, the Fifth Circuit concluded that the Texas Act did not contain the necessary unmistakable language to preclude a successive award. In reaching this decision, the court used the commentary of the plurality opinion in *Thomas* regarding the strictness of the *McCartin* rule and used Nevada's compensation statute as the paradigm for determining when a statute contains the preclusive unmistakable language contemplated by the *McCartin* rule.[171]

Another enlightening application of *Thomas* was presented by the New Mexico Court of Appeals in *Webb v. Arizona Public Service Co*.[172] In *Webb*, the injured employee received temporary benefits under the Arizona Workmen's Compensation Act pursuant to a claim filed by his employer.[173] While his requested hearing to determine whether his injuries entitled him to permanent benefits was pending, the employee filed a compensation claim in New Mexico under its Act.[174] The Industrial Commission of Arizona subsequently found that the employee was not entitled to permanent disability benefits, and the employee filed a petition for review of that finding with the Court of Appeals of Arizona.[175] While the employee's appeal was pending, the trial of the New Mexico claim was held wherein the New Mexico District Court, over res judicata and full faith and credit objections by the employer, found that the employee was permanently disabled.[176] On appeal, the New Mexico Court of Appeals, in addressing the full faith and credit issue, stated that it was compelled to apply the *Magnolia* and *McCartin* doctrines in view of the divergent and confusing opinions rendered by the Court in *Thomas*.[177] The court, however, never expressly analyzed the language of the Arizona compensation statute under which the

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holding of the Court may be viewed as that position taken by those Members who concurred in the judgment on the narrowest grounds.' " *Id.* (quoting Gregg v. Georgia, 428 U.S. 153, 169 n.15 (1976) (plurality opinion of Justice Stewart)). The court concluded, therefore, that it was judicially sound to reach its decision on the more limited grounds provided in the concurring opinion rather than on the broad holding of the plurality in *Thomas*. *Id.* The court emphasized, however, that "at best our determination of the precedential value of *Thomas* is premised on an educated guess concerning what view a majority of the Court *could* agree upon." *Id.* at 1085 n.3 (emphasis in original).

171. *Id.* at 1085-86. *See* note 94 *supra*.

172. 95 N.M. 603, 624 P.2d 545 (Ct. App. 1981).

173. *Id.* at 606, 609, 624 P.2d at 548, 551. *See* note 190 *infra*.

174. *Id.* at 605, 624 P.2d at 547.

175. 95 N.M. at 606, 624 P.2d at 548.

176. *Id.* The employer asserted that the same hearing between the same parties involving the same issues litigated previously in Arizona precluded such a hearing in New Mexico. *Id.*

177. *Id.* at 607, 624 P.2d at 549.

first award was granted to determine whether it contained some unmistakable language that would preclude the successive claim under *McCartin*.[178] The court simply paraphrased the plurality's holding in *Thomas*[179] and summarily concluded that the Arizona award was final and conclusive only as to the rights granted under Arizona law.[180]

Of additional interest in *Webb* is what the court identified as the ultimate issue: whether New Mexico could disregard any of the determinations made by the Arizona compensation tribunal.[181] The court clearly was referring to the factual determination made by the Arizona Commission that the employee was not permanently disabled.[182] The *Thomas* plurality emphasized the unexceptionable full faith and credit principle that factual determinations of state tribunals are entitled to the same res judicata and full faith and credit effect in the second state as that accorded to findings by a court of general jurisdiction.[183] The court in *Webb*, however, was able to avoid this restriction. As the employee's appeal regarding the sufficiency of the findings of fact made by the Arizona Commission was pending, the court determined that those findings did not demand res judicata effect in New Mexico.[184]

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178. The only statute analyzed by the court was the applicable New Mexico statute, N.M. STAT. ANN. § 52-1-65 (1978). 95 N.M. at 606, 624 P.2d at 548. That statute, however, addresses only whether New Mexico will permit successive claims within its own jurisdiction under its Act. The proper *McCartin* analysis requires scrutiny of the Arizona statute to determine if it contained some unmistakable language so as to preclude New Mexico from applying its Act in view of a final judgment in Arizona.

179. 95 N.M. at 608, 624 P.2d at 550.

180. *Id.* at 609, 624 P.2d at 551. The court's injection of the *McCartin* rationale at the end of its opinion is inconsistent with the actual thrust of the opinion itself. The court, based upon the rationale of the *Thomas* plurality, determined that it was extremely doubtful that Arizona could preclude New Mexico from granting a successive award "by any legal device." *Id.* If such a premise was fully accepted, the *McCartin* decision would become a virtual nullity in that under its rationale, a state could, by using some unmistakable language, prevent another state from awarding a supplemental claim. *See* notes 103-14 *supra* and accompanying text. The application of the *McCartin* test by the court in *Webb*, therefore, clearly indicates the confusion which has been generated by the divergent opinions rendered by the Court in *Thomas*.

181. 95 N.M. at 608, 624 P.2d at 550.

182. *Id.* at 606, 624 P.2d at 548.

183. 448 U.S. at 281.

184. 95 N.M. at 608, 624 P.2d at 550. *See* Chapman v. St. John Drilling Co., 73 N.M. 261, 266, 387 P.2d 462, 465 (1963) (res judicata effect not required to be given to an award under the Texas Workmen's Compensation Act when an appeal of the award was pending in Texas).

D. *The Favorable Policy of Permitting Successive Claims*

It is apparent that the *Thomas* plurality was concerned with what may legitimately be labeled an imbalance of bargaining power that often exists between employers and employees. Perhaps one of the best illustrations of this imbalance was articulated by Justice Black in *Magnolia*:

> Confined to a hospital bed [the employee] was told that he could not recover compensation unless he signed two forms presented to him. As found by the Louisiana trial judge there was printed on each of the forms "in small type" the designation "Industrial Accident Board, Austin, Texas." To get his compensation [he] signed the forms and the Texas insurer began to pay.[185]

The *Thomas* plurality emphasized the informal nature of workers' compensation proceedings. The plurality noted that such proceedings often are initiated while the employee still is in the hospital and without advice of counsel, who presumably would guide the employee to the most favorable forum.[186] In view of this informality, the plurality concluded that a rule forbidding successive compensation recoveries requires a more formal and careful choice of law than may be possible or desirable when an expeditious remedy may be essential.[187]

An additional factor behind a policy that favors successive awards is that the benefits themselves often are settled through informal agreements that are encouraged under many statutory schemes to expedite a subsistence level of benefits to the injured employee.[188] In view of this informality, it often is asserted that the acceptance of benefits by the typical employee is often an uninformed decision and should not constitute a choice of law decision invoking the full faith and credit clause.[189]

Furthermore, there is the threat that employers and their insur-

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185. 320 U.S. at 450 (Black, J., dissenting).

186. 448 U.S. at 284; *see* note 22 *supra*.

187. 448 U.S. at 284-85. *See, e.g.*, Bekkedahl v. North Dakota Workmen's Compensation Bureau, 222 N.W.2d 841 (N.D. 1974), in which the court noted that had the injured employee been informed of the comparative merits of the two applicable state schemes, he would have easily noted the superior benefits of one over the other. In addition, the court noted that the employee had very recently undergone serious brain surgery and was still recovering when asked to file his claim. *Id.* at 845-46.

188. Brief for Petitioner at 20, *supra* note 5.

189. *Id.* In *Thomas*, the employee, without the advice of counsel and within two weeks of his injury, executed an agreement to accept compensation benefits under the Virginia statute. *Id.* at 5.

ance carriers, who generally are more aware of the comparative advantages and disadvantages of the statutory schemes involved, may engage in overreaching by steering the injured employee toward the less favorable forum.[190]

The policy considerations that favor the successive claims practice no doubt are a manifestation of the strong public policy of providing medical benefits and financial assistance to those injured in the course of employment. Justice Rehnquist, however, properly questioned whether the broad holding of the plurality was necessary to fulfill these policy considerations. Justice Rehnquist correctly noted that there was no evidence of employer overreaching in *Thomas* and that had there been any " 'fraud, imposition, [or] mistake' " in the filing of Thomas' claim, the award could have been vacated upon timely motion.[191]

The threshold question with regard to the policies that underlie the successive claims practice is whether they may be given such weight so as to override the relatively inflexible constitutional mandate requiring that full faith and credit be given to the judgments of sister states. Prior to *Thomas*, it had been well established that local policy interests could not be used as a tool to carve exceptions out of that constitutional mandate.[192] Today, however, it is clear that at least four members of the Court are persuaded that policy considerations must be taken into account in the realm of workers' compensation judgments.

V. CONCLUSION

In *Thomas v. Washington Gas Light Co.*,[193] the Supreme Court was asked to determine the degree of faith and credit constitutionally required to be given throughout the union to workers' compensation judgments. In tracing the historical treatment given to this issue, it is

190. Brief for Fed. Respondent at 29-30, *supra* note 108. It is often the employer or his insurance carrier who initiates the compensation claim pursuant to many statutory schemes. Such was the situation in *Webb*, 95 N.M. 603, 624 P.2d 545. *See* notes 172-84 *supra* and accompanying text. In *Webb*, the court expressed concern over this fact when it noted that the complexities involved in the application of full faith and credit and res judicata doctrines in workers' compensation cases result in a "race to the courthouse" between the parties, with the employer often initiating proceedings in the least favorable forum before the employee could select his own forum with the assistance of counsel. 95 N.M. at 606, 609, 624 P.2d at 548, 551.

191. 448 U.S. at 295 (Rehnquist, J., dissenting) (quoting Harris v. Diamond Constr. Co., 184 Va. 711, 720, 36 S.E.2d 573, 577 (1946)).

192. *See* text accompanying notes 48-61 *supra*.

193. 448 U.S. 261 (1980).

clear that workers' compensation judgments represent what may be called a pigeonhole exception to the relatively literal mandate of the full faith and credit clause of the Constitution and its implementing statute.[194]

The Court had encountered the issue presented in *Thomas* on two previous occasions. In *Magnolia Petroleum Co. v. Hunt*,[195] the Court dramatically changed the accepted practice of permitting successive workers' compensation claims by applying a rigid and literal interpretation of the clause to workers' compensation judgments. In *Industrial Commission of Wisconsin v. McCartin*,[196] the Court permitted a return to the successive claims practice by focusing on the statutory construction of the compensation act through which the first judgment was rendered. Under *McCartin*, a successive claim was permissible unless the first state, through some unmistakable language, expressed its desire to make its judgment final and conclusive.

The *Thomas* plurality, although recognizing that the successive claims practice had been accepted by virtually every jurisdiction, was dissatisfied with the *McCartin* test and characterized it as permitting the states to give their statutes extraterritorial effect. Moreover, as the Supreme Court is the final arbiter of full faith and credit questions, the plurality concluded that the *McCartin* rule permitted an unwarranted state infringement on that exclusive role of the Court. Thus, the *Thomas* plurality found it necessary to promulgate a new constitutional standard. In concluding that the full faith and credit clause could no longer be construed to preclude successive workers' compensation claims, the plurality was influenced by the various policy justifications which lie at the foundation of a rule permitting such claims. The plurality determined that such policy considerations outweigh a state's interest in the finality of its judgments, notwithstanding that such an interest is the cornerstone of the full faith and credit clause as applied to judgments.

To reach this conclusion, the *Thomas* plurality relied on a well developed series of choice of law decisions that had applied an interest analysis test in determining the degree of faith and credit to which the statutes of sister states were entitled. The *Thomas* plurality applied this more flexible interpretation of the clause, traditionally applied to statutes, to workers' compensation judgments.

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194. *See* note 11 *supra*.

195. 320 U.S. 430 (1943).

196. 330 U.S. 622 (1947).

While *Thomas* may not significantly change the outcome of formal challenges to supplemental claims, the plurality was successful in fashioning a rule that is tailored to remain constant with the practical results of *McCartin*. In reaching this goal, however, the plurality has promulgated a rule that now mandates an ostensibly mechanical application of the interest analysis doctrine. In the successive workers' compensation claim scenario, therefore, one need only to find that the forum could have applied its law to the operative facts of an injury in the first instance in order to give the forum the power to grant a supplemental award, despite any purported finality of the first judgment.

It was unnecessary for the plurality to paint with such a broad brush. A more careful look at the *McCartin* rationale leads to the conclusion that it is not subject to the plurality's criticisms. *McCartin* simply recognized the sovereign rights of the several states to determine the finality and conclusiveness of the judgments granted under their own laws. Thus, the *McCartin* doctrine itself is not within the extraterritorial mold in which the plurality has placed it; rather, it is the subsequent triggering of the literal mandate of the full faith and credit clause that gives extraterritorial effect to statutory rights ripened into judgments. The *McCartin* rule recognized the right of the rendering state to determine the finality of its judgments while still remaining within the traditional parameters of the full faith and credit clause.

In view of the reservations expressed by the concurring and dissenting opinions over the plurality's new approach to the successive claims practice, the precedential value of *Thomas* is yet to be determined. Nevertheless, it is clear from the lower court decisions it has spawned, that the lack of significant judicial harmony among the members of the Court on this highly controversial issue can breed only uncertainty and confusion.

John D. Miletti