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Second Circuit 2005 Res Judicata Developments

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Second Circuit Survey

SECOND CIRCUIT 2005 RES JUDICATA DEVELOPMENTS

*By Jay Carlisle**

During the 2005 survey year, federal courts in the Second Circuit decided a number of important res judicata matters.[1] Several district courts applied the doctrines of claim preclusion[2] and issue preclusion[3] to administrative and arbitral determinations.[4] Several courts also expanded the "actually litigated" requirement for collateral estoppel[5] and liberally applied the doctrine of defensive claim preclusion for counterclaims.[6] Finally, the United States Court of Appeals for the

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1. *See infra* notes 2, 6, 8, 11, 14, 21, 27, 30, 34, 37, 39, 41, 44, 47, 48, 50, 52, 58 and accompanying text.

2. Claim preclusion is sometimes referred to as res judicata. Claim preclusion has been defined by the United States Court of Appeals for the Second Circuit as follows: after a final judgment on the merits rendered by a court of competent jurisdiction, res judicata "precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Legnani v. Alitalia Linee Aeree Italiane, S.P.A., 400 F.3d 139, 141 (2d Cir. 2005); *see also* St. Pierre v. Dyer, 208 F.3d 394, 399 (2d Cir. 2000); *see generally* 18 JAMES WM. MOORE ET AL, MOORE'S FEDERAL PRACTICE ¶ 131.10(1)(a) (3d ed. 2005).

3. Issue preclusion is sometimes referred to as collateral estoppel. The Second Circuit defined issue preclusion in Rezzonico v. H & R Block, Inc., 182 F.3d 144, 148 (2d Cir. 1999). If subsequent litigation arises from a different cause of action, the prior judgment bars only those matters or issues common to both actions that were expressly or by necessary implication adjudicated in the prior litigation. This prong of res judicata is referred to as issue preclusion. The United States Supreme Court stated that issue preclusion means when an issue has been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. *Id.* (quoting Schiro v. Farley, 510 U.S. 222, 232 (1994)).

4. *See infra* notes 44, 47, 48, 50, 52, 58, 60 and accompanying text.

5. *See infra* notes 21, 27 and accompanying text.

6. *See* Neshewat v. Salem, 305 F. Supp. 2d 508, 517-18 (S.D.N.Y. 2005). In Neshewat, Judge William C. Conner held that the defendant's counterclaim was barred by

Second Circuit issued seven res judicata decisions.[7] In one, *Vargas v. City of New York*,[8] the Second Circuit refined the standards for applying the *Rooker-Feldman* doctrine.[9] This survey article will review some of the Second Circuit's significant res judicata decisions and will critique those giving preclusive effect to administrative and arbitral determinations.

I. INTRODUCTION

The term res judicata has been used by the Second Circuit in reference to a variety of concepts focusing on the preclusive effects of a judgment on subsequent litigation. Claim preclusion occurs pursuant to "merger" and "bar" principles[10] and operates to preclude all other claims

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claim preclusion. Defendant previously brought an action against the plaintiff wherein he asked the court to overturn a state court default judgment entered against him. That was exactly the relief defendant sought to assert in his counterclaim based on the same set of facts. Judge Conner stated:

> Changing the legal theory upon which the request for relief is based does not bar the applicability of res judicata. Furthermore, the previous action involved an adjudication on the merits, involved both parties involved in the present action, and the claims asserted in this action were or could have been asserted in the prior action.

Id.

7. *See infra* notes 21, 27, 30, 34, 37, 39, 41 and accompanying text.

8. 377 F.3d 200 (2d Cir. 2004).

9. The *Rooker-Feldman* doctrine takes its name from two Supreme Court cases, Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983). The *Rooker-Feldman* doctrine holds that lower federal courts "lack subject matter jurisdiction 'over cases that effectively seek review of judgments of state courts and that federal review, if any, can occur only by way of certiorari petition to the Supreme Court.'" Phifer v. City of New York, 289 F.3d 49, 55 (2d Cir. 2002) (quoting Moccio v. N.Y. State Office of Court Admin., 95 F.3d 195, 197 (2d Cir. 1996)). In *Rooker*, the Supreme Court held that "no federal court, other than the Supreme Court, can consider a claim to reverse or modify a state court judgment." *Phifer*, 289 F.3d at 55 (citing *Rooker*, 263 U.S. at 416). In *Feldman*, *supra*, the U.S. Supreme Court expanded the principal and held that if plaintiff's claims are inextricably intertwined with the state court's determination, the district court does not have jurisdiction to entertain those claims. *Feldman*, 460 U.S. at 483 n.16.

10. *See* OSCAR G. CHASE & ROBERT A. BARKER, CIVIL LITIGATION IN NEW YORK § 23.01, at 927 (4th ed. 2002) ("Claim preclusion, which includes the doctrines of 'merger' and 'bar' is operative 'when a judgment is rendered in an action and a second action is sought to be maintained on the same claim. Ordinarily, if the judgment was rendered for the plaintiff, the claim is held to be extinguished and merged in the judgment; if the judgment was rendered for the defendant . . . the judgment is a bar to a second action on the same claim.'").

arising out of the same transaction or series of transactions, even if based upon different theories or if seeking a different remedy.[11] Issue preclusion precludes a party or his privy from relitigating in a subsequent action an issue that was actually litigated and necessary to judgment in the prior action.[12] It occurs when one party to a civil action argues that preclusive effect should be given to one or more issues determined in an earlier civil action, administrative proceeding, or arbitration between the same parties in the same jurisdiction. The United States Supreme Court explained the difference between claim preclusion and issue preclusion in *Parklane Hosiery Company v. Shore*:

> Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action. Under the doctrine of collateral estoppel, on the other hand, the second action is upon a different cause of action and the judgment in the prior suit precludes relitigation of issues actually litigated and necessary to the outcome of the first action.[13]

Application of claim and issue preclusion requires a valid, final judgment on the merits. A valid judgment is one issued by a court with subject matter and personal jurisdiction. A final judgment usually does not contemplate the full completion of the appellate process.[14] Moreover, the term "on the merits" includes dismissals on statute of limitations grounds[15] and default judgments.[16] Because there are few statutory justifications for applications of claim and issue preclusion, public policy justifications are determinative and underlie each of the Circuit's res judicata 2005 decisions. Such public policy justifications for claim and issue preclusion include society's desires to promote fairness,[17] prevent inconsistent judgments, achieve uniformity and

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11. Legnani v. Alitalia Linee Aeree Italiane, S.P.A., 400 F.3d 139, 141 (2d Cir. 2005).

12. Parklane Hosiery Co. v. Shore, 439 U.S. 322, 327 n.5 (1979).

13. *Id.*

14. *But see* Doctor's Assocs., Inc. v. Bickel, 123 F. App'x 416, 417 (2d Cir. 2005) (explaining that, in some jurisdictions (Illinois), a judgment is not final for claim preclusive effect until the time for appeal has expired or until appeals have been exhausted).

15. *See* CHASE & BARKER, *supra* note 10, at 940-41 (citing Smith v. Russell Sage College, 429 N.E.2d 746 (N.Y. 1981)).

16. Reich v. Cochran, 45 N.E. 367 (N.Y. 1896). *See generally* DAVID D. SIEGEL, NEW YORK PRACTICE 726 (3d student ed. 1999).

17. Concepts of fair play and due process have consistently been important policy considerations for district courts in the Second Circuit and for the circuit court when considering whether to apply claim and issue preclusion. S.E.C. v. Monarch Funding Corp., 192 F.3d 295, 303-04 (2d Cir. 1999).

certainty,[18] finalize disputes among the parties,[19] and conserve judicial resources.[20]

II. SECOND CIRCUIT APPELLATE DECISIONS

In *Vargas v. City of New York*,[21] a former New York City police officer was tried on departmental charges of using excessive force in effectuating an arrest. After charges were sustained, Vargas was dismissed from the NYPD and sought review in a state court pursuant to Article 78 of the New York Civil Practice Law and Rules.[22] The state court concluded the charges were supported by substantial evidence.[23] Vargas then sued in the United States District Court for the Southern District of New York under 42 U.S.C. § 1983, alleging his dismissal violated equal protection and due process. The district court dismissed the complaint for lack of jurisdiction under the *Rooker-Feldman* doctrine. This doctrine provides that inferior federal courts have no subject matter jurisdiction over some cases that seek review of state court judgments. The Second Circuit applies the doctrine to claims and issues that would be barred under principles of preclusion.[24]

In *Vargas*, the circuit court stated: "Under the *Rooker-Feldman* doctrine, inferior courts have no subject matter jurisdiction over suits that seek direct review of judgments of state courts, or that seek to resolve issues that are 'inextricably intertwined' with earlier state court determinations."[25] The circuit court pointed out that the U.S. Supreme Court provides few standards or guidance for determining when claims are inextricably intertwined with prior state court judgments, but noted, at a minimum, that it was necessary that a federal plaintiff had an opportunity to litigate the claim in the state proceeding. Because Vargas could not have brought his § 1983 claim in a state Article 78 proceeding, the circuit court stated that "only issue preclusion triggers the *Rooker-*

18. *See Id. See also* Brainerd Currie, *Mutuality of Collateral Estoppel: Limits of the Bernhard Doctrine*, 9 STAN. L. REV. 281, 289 (1957).
19. *See Monarch*, 192 F.3d at 303-04.
20. *See* Leather v. Eyck, 180 F.3d 420, 424-25 (2d Cir. 1999).
21. 377 F.3d 200 (2d Cir. 2004).
22. *See* Vargas v. Safir, 717 N.Y.S.2d 562 (App. Div. 2000).
23. *Id.* at 563.
24. *Vargas*, 377 F.3d at 203.
25. *Id.* at 205.

Feldman bar."[26] The court then explained that, under New York law, issue preclusion will be applied if there is identity of issue (the issue in question was actually litigated and necessary to the judgment in the prior action) and if the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the first action. The Second Circuit held that the issue in Vargas's federal action, alleging individual and department-wide racial discrimination, was not actually and necessarily decided in the state proceeding. Thus, the court reversed the district court's dismissal of plaintiff's claims and stated:

> While it is true that the Article 78 court passed upon the propriety of Vargas's termination, this acknowledgement does not demonstrate that the court 'actually and necessarily' decided an issue that was never presented to it, even if that issue touched, in a general sense, on the propriety of the termination.[27]

In another Second Circuit case, *Grant v. City of New Haven*,[28] the plaintiff brought a pro se action against the City of New Haven. Grant had previously sued the city in Connecticut Superior Court. The state court held against Grant. The United States District Court for the District of Connecticut dismissed the action on grounds of res judicata and pursuant to the *Rooker-Feldman* doctrine. The Second Circuit affirmed the district court's decision and stated: "Grant cannot seek reversal of the state court judgment simply by recasting his complaint in the form of a civil rights complaint."[29] The circuit court's dismissal was final and the plaintiff was not given an opportunity to amend his complaint because the circuit believed it was "unlikely" that an amended complaint would succeed.[30] The Second Circuit's decision is questionable because, generally, pro se plaintiffs are given at least one opportunity to amend a complaint subject to dismissal.[31]

Conversely, in *Legnani v. Alitalia Linee Aeree Italiane, S.P.A.*,[32] the Second Circuit reversed the district court's dismissal of a retaliatory discharge claim on the grounds that it was not barred by the doctrine of claim preclusion. In 1995, Legnani filed a Title VII action against the

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26. *Id.*
27. *Id.* at 206.
28. 115 F. App'x 475 (2d Cir. 2004).
29. *Id.* at 476.
30. *Id.*
31. *See* JACK H. FRIEDENTHAL ET AL., CIVIL PROCEDURE § 5.7, at 267-68, § 5.15, at 293-94 (4th ed. 2005). *See also* Dioguardi v. Durning, 139 F.2d 774 (2d Cir. 1944).
32. 400 F.3d 139 (2d Cir. 2005).

defendant and in 1998, while the 1995 action was pending, the defendant fired Legnani. The plaintiff sought leave to amend her 1995 complaint to add a retaliatory discharge claim based on this event, but the district court denied the request. Legnani did not appeal the ruling, and the court awarded judgment for the defendant on the 1995 claim.

Legnani then brought the retaliatory discharge claim in a complaint filed in 1999. The district court dismissed the complaint as time-barred, but the Second Circuit reversed.[33] On remand, the defendant moved for summary judgment, arguing that Legnani's discharge claim was barred by the doctrine of claim preclusion. The district court dismissed the action. The circuit court first noted, "[w]e review de novo the district court's application of the principles of res judicata,"[34] and then held the plaintiff's retaliatory discharge action was not barred by claim preclusion because it occurred after the commencement of the prior action. The court stated, "'[c]laims arising subsequent to a prior action need not, and often perhaps could not, have been brought in that prior action; accordingly, they are not barred by res judicata regardless of whether they are premised on facts representing a continuance of the same course of conduct.'" The circuit court pointed out that when a plaintiff's motion to amend a complaint is denied, and the claim is brought later as a separate lawsuit, the decision denying leave to amend is irrelevant to the claim preclusion analysis.[35]

In three other summary order cases, the Second Circuit affirmed the district court's use of claim preclusion to bar plaintiff's actions. In *Bettis v. Kelly*,[36] a wrongful termination claim by a former police department employee against city and police commissioners was brought subsequent to a prior federal claim that was dismissed on summary judgment.[37] In the second action, Bettis contended that his claims were based on different legal theories and that the appellees had inappropriately withheld information during the prior litigation. Nevertheless, the Second Circuit stated, "res judicata bars relitigation of issues that 'could have been raised' in a prior action. Similarly, any allegations of misconduct in the prior litigation should have been raised

33. *See* Legnani v. Alitalia Linee Aeree Italiane, S.P.A., 274 F.3d 683, 685-87 (2d. Cir. 2001). In 1995, Legnani filed an action under Title VII and the New York City Human Rights Law against her employer, defendant appellee. The action was dismissed as time-barred under 42 U.S.C. § 2000e-5(e)(1). The Second Circuit reversed and remanded.

34. *Legnani*, 400 F.3d at 141.

35. *Id.* at 141-42.

36. 137 F. App'x 381 (2d Cir. 2005).

37. *See* Bettis v. Safir, No. 97-CV-1908, 2000 WL 1336055 (S.D.N.Y. Sept. 15, 2000).

in an appropriate challenge to that judgment."[38] Similarly, in *Moss v. E. on AG*,[39] the Second Circuit affirmed the district court's dismissal of plaintiff's claims on res judicata (claim preclusion) grounds. The court stated, "Moss raised his present claims in prior proceedings. The fact that he titles his complaint differently in this case does not allow him to avoid the preclusive effect of res judicata."[40] Also, in *Virgo v. U. S. Customs Service*,[41] the Second Circuit affirmed the district court's dismissal of plaintiff's actions on res judicata grounds. The court stated:

> We acknowledge that Virgo changed his legal argument between the 2001 suit and the 2004 motion—in the former, Virgo claimed that he had received inadequate notice of seizure; in the latter, he argued that the seizure was invalid on criminal procedure grounds. But it is clear that Virgo's 2004 claims for the same funds from the same federal agency were or could have been raised in the complaint he filed in 2001.[42]

In *Doctor's Associates, Inc. v. Bickel*,[43] the Second Circuit affirmed the district court's decision not to give a prior judgment issue preclusion effect.[44] The circuit court based its decision on a determination that, under Illinois law, a judgment is not final until the time for appeal has expired or until appeals have been exhausted. This decision reminds the bench and bar that, under *Erie* principles, the law of the forum where the first judgment was granted should be used to determine if issue preclusion is applicable. Under New York state law, a judgment is final when entered, but Illinois case law applies different standards for deciding when a judgment is final for res judicata purposes.[45]

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38. *Bettis*, 137 F. App'x at 382 (citations omitted). *See generally* FED. R. CIV. P. 60(b) (the court may "relieve a party or a party's legal representative from a final judgment, order, or proceeding" resulting from "fraud . . . misrepresentation, or other misconduct of an adverse party . . . .").

39. 118 F. App'x 553 (2d. Cir. 2004).

40. *Id.* at 554.

41. 123 F. App'x 418 (2d Cir. 2005).

42. *Id.* at 420 (internal quotations omitted).

43. 123 F. App'x 416 (2d Cir. 2005).

44. *Id.* Appellants appealed from a decision of the district court confirming an arbitration award that resolved their dispute with the appellee. On appeal, appellants argued that the arbitrator failed to afford res judicata effect to a prior default judgment obtained by the appellants and to a prior judgment obtained by their landlord. The Second Circuit rejected these arguments.

45. *See* Doctor's Assocs. v. Distajo, 66 F.3d 438 (2d Cir. 1995), wherein the Second Circuit concluded that a default judgment could not be given res judicata effect because it would not be considered final under Illinois law.

III. SELECTED DISTRICT COURT DECISIONS

A. Administrative Determinations

There are five significant district court decisions that apply the doctrines of claim preclusion and issue preclusion to administrative determinations. These decisions indicate that some of the Second Circuit's trial judges may be inclined to conserve judicial resources and reduce burdensome caseloads by relaxing their demands on traditional requirements of fairness and due process.

In *Light Sources, Inc. v. Cosmedico Light, Inc.*,[46] an administrative determination by the Trademark Trial and Appeals Board ("TTAB") was given claim preclusion effect by the district court.[47] The court pointed out, "[g]enerally, administrative proceedings may have res judicata effect if they are adjudicative in nature."[48] The court noted that the TTAB acted in a judicial capacity because it was an adversarial proceeding. Thus a fraud claim, which could have been brought in the administrative hearings, was barred. However, in *Stepheny v. Brooklyn Hebrew School for Special Children*,[49] the district court refused to apply issue preclusion to a prior administrative determination because the administrative law judge did not consider the issues brought before the federal court. Judge Glasser held that the administrative law judge had considered only the limited issue of whether the plaintiff was entitled to unemployment law benefits based upon her alleged misconduct in connection with her employer. The employer had not sent a representative or submitted any evidence to the administrative tribunal, which supported its position in the federal lawsuit.

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46. 360 F. Supp. 2d 432 (D. Conn. 2005).

47. The Trademark Trial and Appeals Board was acting as an administrative agency. *Id.* at 438.

48. *Id. See also, e.g.*, United States v. Utah Constr. Co., 384 U.S. 394, 421-22 (1966) ("When an administrative agency is acting in a judicial capacity and resolved disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." (citations omitted)).

49. 356 F. Supp. 2d 248 (E.D.N.Y. 2005) (Former employees of a private school brought an action under Title VII, the New York City Human Rights law, and the New York State Human Rights Law alleging a racially hostile work environment, race discrimination, and retaliation. The School moved for summary judgment on collateral estoppel grounds, arguing that the issue determinations of a state administrative law judge should be given preclusive effect.).

In *Greenberg v. New York City Transit Authority*,[50] the District Court for the Eastern District of New York held that findings of the New York State Workman's Compensation Board ("WCB") had preclusive effect in New York courts under the doctrine of collateral estoppel. The court explained the critical questions of determining whether the WCB findings had preclusive effect were whether there was an identity of issue and whether the defendant had a full and fair opportunity to contest the decision. The court reasoned that the burden of proving identity of the issue rested on the party invoking issue preclusion, while his opponent had the burden of proving that he did not have a full and fair opportunity to litigate the issue. The court found that the plaintiff satisfied the burden of showing identity of issue that had been necessarily decided in the prior administrative action and was decisive of the federal action. The full and fair opportunity requirement was not raised or briefed by the defendants and was therefore waived.[51] Under the circumstances, the district court should have conducted its own inquiry into whether the defendant had an opportunity to litigate the issue of whether he unlawfully discriminated against the plaintiff based on a disability within the definitions of WCB regulations.

Similarly, in *Barna v. Morgan*,[52] the district court concluded that a New York state agency's finding of no probable cause was res judicata as to the plaintiff's claim under 42 U.S.C. § 1981. The plaintiff argued that he was not given an adequate opportunity to litigate the issue of probable cause because he did not appear before the agency. Nonetheless, the district court defined the full and fair opportunity aspect of issue preclusion in terms of a party's failure to take advantage of an opportunity to litigate. Because Barna was notified of the need to respond to the agency's charges in a timely manner and failed to do so, he waived the opportunity, and issue preclusion could be asserted against him.[53]

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50. 336 F. Supp. 2d 225 (E.D.N.Y. 2004).

51. *Id.* at 250 ("Thus, plaintiff satisfies the burden of showing that defendant unlawfully discriminated against him based on a disability within the meaning of both NYSHRL and NYCHRL. Summary judgment in plaintiff's favor on these claims should be granted.").

52. 341 F. Supp. 2d 164 (N.D.N.Y. 2004) (Plaintiff filed a complaint with the New York State Department of Human Rights and the Equal Employment Opportunity Commission. He was notified by the Department of a probable cause hearing and warned that if he failed to respond, a determination would be made on the record. The plaintiff failed to respond and then filed his federal action under 42 U.S.C. § 1983.).

53. *Id.* at 167. The district court stated that a state agency's resolution of factual issues adverse to the complainant will bar a federal civil rights action "if (1) the state agency was acting in a judicial capacity; (2) the disputed issues of fact were properly before the agency

In *Levich v. Liberty Central School District*,[54] administrative determinations were given issue preclusion effect to preclude the plaintiff from litigating his First Amendment claims in federal court. The District Court for the Southern District of New York recognized that the plaintiff did not choose to bring his First Amendment claim in the administrative forum, but, because he faced the possibility of losing his job, he had a strong incentive to litigate the issue as thoroughly as possible. The district court then found that the administrative hearing officer conducted the same balancing test that would be applied to plaintiff's claims in a 42 U.S.C. § 1983 action in federal court. The court stated: "Simply because plaintiff is unhappy with the hearing officer's evidentiary ruling does not mean that plaintiff did not have a full and fair opportunity to litigate the issue and does not entitle him to a second chance for a more favorable outcome in another forum."[55] The court's reliance on *People v. Plevy*[56] is misplaced here because, in that case, the highest court of New York State made it clear that the full and fair opportunity requirement is more than traditional notions of due process.[57] As a matter of first impression, the *Levich* court also dealt with whether federal district courts adjudicating § 1983 actions should apply issue preclusion to unreviewed legal determinations by state administrative bodies. The district court reviewed two leading decisions from other circuits[58] and declined to extend preclusive effect to unreviewed agency determinations of law.[59]

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and the parties were given an adequate opportunity to litigate them; and (3) the courts of the particular state would give the agency's fact-finding determinations preclusive effect." *Id.* at 168. Plaintiff agreed that the first and third requirements were met, but argued that he was not given an adequate opportunity to litigate. The district court held this requirement was satisfied because the plaintiff was not deprived of an opportunity to be heard. The court stated: "Barna's failure to take advantage of the opportunity does not demonstrate a deprivation of it." *Id.*

54. 361 F. Supp. 2d 151 (S.D.N.Y. 2004).

55. *Id.*

56. *Id.* at 158.

57. *See* 417 N.E.2d 518 (N.Y. 1980).

58. *Levich*, 361 F. Supp. 2d at 160-61. *See also* Eilrich v. Remas, 839 F.2d 630, 634 n.2 (9th Cir. 1988), and Edmundson v. Borough of Kennet Square, 4 F.3d 186, 192 (3d Cir. 1993).

59. *Levich*, 361 F. Supp. 2d at 160. The district court relied on Univ. of Tenn. v. Elliot, 478 U.S. 788 (1986), wherein the U.S. Supreme Court discussed whether issue preclusion is applicable to unreviewed state agency determinations. In *Edmundson*, the Third Circuit held that unreviewed determinations of law could not be given preclusive effect under *Elliot* because of the Supreme Court's very specific use of the word "factfinding" throughout the opinion. *Edmundson*, 4 F.3d at 192. The district court relied on *Edmundson's* interpretation of the law.

B. Arbitral Determinations

In *In re Appel*,[60] the District Court for the Eastern District of New York held that a prior arbitration proceeding precluded a debtor from relitigating issues of the debtor's fraud. The arbitration panel had issued an award against the debtor and in favor of the appellees. The debtor never appealed the award, and a bankruptcy court granted appellees' motion for summary judgment and stated that the debtor was collaterally estopped from relitigating issues previously determined after years of litigation in the arbitration proceeding. On appeal, the district court noted it must refer to the applicable state law where the arbitration was held. Thus, Florida law governed the applicability of issue preclusion. The debtor argued he did not have a full and fair opportunity to litigate the issue at the arbitration hearing because the panel precluded him from testifying or offering evidence on his own behalf at the hearing. The district court reasoned that because the debtor failed to respond to prior orders from the arbitration panel he had been given a full opportunity to defend himself and the "actually litigated" requirement under Florida law was satisfied.[61] The court stated, "In the instant case, the Court finds that the actually litigated element is met, because Debtor had the full opportunity to defend himself at the Arbitration Proceeding and voluntarily chose not to comply with several orders."[62]

In *Dujardin v. Liberty Media Corp.*,[63] the district court noted that "[i]t is well settled that collateral estoppel or issue preclusion applies to issues resolved by a prior arbitration."[64] The court refused to apply the doctrine because Dujardin failed to satisfy his burden of establishing that the damages issue decided by the arbitrator was identical to the issue presented before the district court.[65] Thus, the plaintiff's motion for summary judgment was denied to the extent it sought a determination as to damages based on the collateral estoppel effect of the arbitrator's ruling.[66]

60. 315 B.R. 645 (E.D.N.Y. 2004).
61. *Id.* at 648.
62. *Id.* at 649.
63. 359 F. Supp. 2d 337 (S.D.N.Y. 2005).
64. *Id.* at 340.
65. *Id.* at 359.
66. *Id.*

C. Administrative and Arbitral Unfairness

When federal courts give preclusive effect to decisions by administrative and arbitral bodies, they assume fairness and the opportunity to litigate can be satisfied without pre-trial discovery, formal application of the rules of evidence, or fact-finding juries. This raises the question of whether litigants should be deprived of rights guaranteed to them by federal courts.

There are many advantages to extensive discovery in federal courts: it assures fairness to the litigants, prevents surprises, encourages settlements, and improves the efficiency of a trial or hearing and the quality of the decisions made. Administrative and arbitral determinations are usually made without discovery.[67] This means that litigants are not given access to relevant and nonprivileged information that is in the custody of their adversaries. They are unable to formulate issues as they would in a court of law and cannot fully present constitutional claims. Also, administrative and arbitral forums are not bound by the rules of evidence. This means determinations can be made based on hearsay, testimony that would be prohibited in courts of law, and pursuant to inferences not permitted in courts of law. The plaintiff's burden of proof and the preponderance of evidence standards in arbitral and administrative forums differ from those in federal courts. Justice and fairness in judicial forums are viewed in terms of formal rituals supervised by an impartial and independent judiciary. Rules of evidence, procedure, and case law govern the development and application of these rituals. Justice and fairness in administrative and arbitral forums focus, primarily, on giving citizens access to simplified dispute resolution systems that do not feature the procedural protections provided in federal courts. In addition, many administrative and arbitral hearing officers are employed by the same agencies that establish the regulations the officials are applying. Based on these concerns, application of res judicata principles to administrative and arbitral determinations should be limited.

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67. Jay C. Carlisle, *Getting a Full Bite of the Apple: When Should the Doctrine of Issue Preclusion Make an Administrative or Arbitral Determination Binding a Court of Law*, 55 FORDHAM L. REV. 63, 84-88 (1986).

IV. CONCLUSION

Published 2005 Second Circuit res judicata decisions demonstrate that courts in the Second Circuit have immense respect for the doctrine of res judicata. As demonstrated above, courts within the Second Circuit rely on the doctrine to achieve finality, to prevent inconsistent judgments, and to allocate judicial resources.