EXCLUSIVE FEDERAL COURT JURISDICTION AND STATE JUDGMENT FINALITY—THE DILEMMA FACING THE FEDERAL COURTS

INTRODUCTION

For over fifty years federal courts have struggled to resolve the conflict which arises when claims or issues reduced to judgment in a state court arise again in a federal action over which Congress has granted exclusive jurisdiction to the federal courts. Most courts have viewed this conflict as between the congressional intent in granting exclusive jurisdiction to the federal courts and the policies behind the common law finality doctrines of res judicata and collateral estoppel.[1] The exclusive jurisdiction statutes require that certain federal claims must be litigated in federal court.[2] The judicial doctrines of res judicata and collateral estoppel are aimed at preventing needless litigation.[3] Courts have argued that the application of finality to a state judgment in an area of exclusive jurisdiction thwarts the goals behind the grant of that jurisdiction by precluding federal judge decision-making—federal issues, for all practical purposes, reach final determination in a state court.[4]

The federal courts, in exclusive jurisdiction cases, have arrived at conflicting results regarding the degree of finality to be accorded prior state court judgments. Several courts have applied the absolute "claim" finality of res judicata, which finalizes all matters that were

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[1] *See, e.g.*, Brown v. Felsen, 99 S. Ct. 2205 (1979); Lyons v. Westinghouse Elec. Corp., 222 F.2d 184 (2d Cir. 1955).

[2] Congress has the power to create exclusive jurisdiction in any federal area. Bowles v. Willingham, 321 U.S. 503, 511–12 (1944); The Moses Taylor, 71 U.S. (4 Wall.) 411, 429 (1866). Initially, exclusive jurisdiction was limited to

> "crimes and offenses cognizable under the authority of the United States," "seizures" on land or water, "suits for penalties and forfeitures, incurred under the laws of the United States," "suits against consuls or vice-consuls" and "civil causes of admiralty and maritime jurisdiction . . . saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it."

P. BATOR, P. MISHKIN, D. SHAPIRO, & H. WECHSLER, HART & WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 418 (2d ed. 1973) (quoting Act of Sept. 24, 1789, ch. 20, §§ 9, 11, 1 Stat. 76, 78). Today the class of exclusive federal areas has expanded and includes, *inter alia*, 28 U.S.C. § 1337 (West Cum. Supp. 1979) (antitrust); 28 U.S.C. § 1334 (1976) (bankruptcy); 28 U.S.C. § 1338 (1976) (patents); 15 U.S.C. § 77aa (1976) (securities).

[3] Parklane Hosiery Co. v. Shore, 99 S. Ct. 645, 649 (1979); *See* Blonder-Tongue Laboratories, Inc. v. University of Illinois Found'n, 402 U.S. 313, 328–29 (1971).

[4] *See, e.g.*, Lyons v. Westinghouse Elec. Corp., 222 F.2d 184, 186, 188–89 (2d Cir. 1955).

raised or could have been raised in a prior suit.[5] Others have applied the less severe "issue" finality of collateral estoppel.[6] Some others, while applying collateral estoppel, have held that the application of the doctrine must be limited in order to preserve the exclusive jurisdiction granted the federal courts.[7] Finally, some courts have completely rejected the application of both res judicata and collateral estoppel, concluding that any degree of state judgment finality violates the congressional purposes behind exclusive jurisdiction.[8]

This comment will examine the various approaches taken by the federal courts in resolving the conflict between the finality of state judgments and exclusive federal court jurisdiction. The examination will include an analysis of the recent decision in *Brown v. Felsen*,[9] in which the Supreme Court addressed this conflict in a bankruptcy setting.

RES JUDICATA AND COLLATERAL ESTOPPEL DEFINED

The common purpose underlying each of the repose doctrines of res judicata and collateral estoppel is the protection of individual litigants and the judicial system from needless litigation.[10] Res judicata finalizes all issues that can be subsumed under a particular cause of action, or claim, by preventing a claim adjudged on the merits from being relitigated between the same parties.[11] It applies to all matters that were presented or that could have been presented

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[5] Nash City Bd. of Educ. v. Biltmore Co., 464 F. Supp. 1027, 1032 (E.D.N.C. 1978); Connelly v. Balkwill, 174 F. Supp. 49, 55–56, 59–60 (N.D. Ohio 1959), *aff'd*, 279 F.2d 685 (6th Cir. 1960).

[6] Becher v. Contoure Laboratories, 279 U.S. 388, 391–92 (1929); *In re* Transocean Tender Offer Sec. Litigation, 427 F. Supp. 1211, 1220–23 (N.D. Ill. 1977).

[7] Lyons v. Westinghouse Elec. Corp., 222 F.2d 184, 186, 188–89 (2d Cir. 1955); Overseas Motors, Inc. v. Import Motors, Ltd., 375 F. Supp. 499, 519 (E.D. Mich. 1974), *aff'd*, 519 F.2d 119 (6th Cir. 1975).

[8] *In re* Burns, 357 F. Supp. 176, 177–78 (D. Kan. 1972); *see In re* Houtman, 568 F.2d 651, 653–54 (9th Cir. 1978).

[9] 99 S. Ct. 2205 (1979).

[10] Parklane Hosiery Co. v. Shore, 99 S. Ct. 645, 649 (1979); *see* Blonder-Tongue Laboratories, Inc. v. University of Ill. Found'n, 402 U.S. 313, 328–29 (1971).

[11] Parklane Hosiery Co. v. Shore, 99 S. Ct. 645, 649 n.5 (1979); Lawlor v. National Screen Serv. Corp., 349 U.S. 322, 326 (1955). The doctrine is said to operate as both a merger and a bar. *See, e.g.*, RESTATEMENT OF JUDGMENTS §§ 47–48 (1942). As there articulated, when a plaintiff receives a money judgment, "the original claim of the plaintiff is extinguished and a new cause of action on the judgment is substituted for it. In such a case the plaintiff's original claim is merged in the judgment." *Id.* § 47, Comment a; *see id.* § 64, Comment a. The term "bar," quite similar in actual effect, refers to the res judicata result when judgment is rendered in the defendant's favor. *See id.* § 48, Comment a.

in the prior suit.[12] For res judicata to apply, it is essential that both the same parties and the same claim be present in the second suit.[13]

Collateral estoppel prevents issues that were actually litigated and essential to a prior judgment from being relitigated.[14] The essence of collateral estoppel is that a party should not be allowed more than one full and fair opportunity to contest an issue.[15] Therefore, once a party has actually litigated an issue necessary to the resolution of a controversy, collateral estoppel may be asserted against him by either the other party to that controversy or by an unrelated third party.[16]

VARYING FINALITY ACCORDED STATE JUDGMENTS IN EXCLUSIVE CASES

Res Judicata Applied

Generally, the courts that have given prior state court judgments full res judicata effect failed to inquire into the congressional intent behind exclusive jurisdiction.[17] These courts overlooked the possibility that an exclusive federal claim may have different characteristics than state claims. Implicit in these decisions is the conclusion that the prior state claim and the subsequent, exclusive federal claim were part of the same cause of action.[18]

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[12] Commissioner v. Sunnen, 333 U.S. 591, 597 (1948); Heiser v. Woodruff, 327 U.S. 726, 735 (1946); 1B MOORE'S FEDERAL PRACTICE ¶ 0.405 [1], at 622 (3d ed. 1974).

[13] *See* cases cited in note 11 *supra*.

[14] Parklane Hosiery Co. v. Shore, 99 S. Ct. 645, 649 n.5 (1979); Commissioner v. Sunnen, 333 U.S. 591, 598 (1948). The Restatement (Second) of Judgments capsulizes some of the reasons for not estopping a party on issues previously unlitigated. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 68, Comment e at 7–8 (Tent. Draft No. 4, 1977).

[15] *See* Parklane Hosiery Co. v. Shore, 99 S. Ct. 645, 649–52 (1979).

[16] *E.g.*, *id.* at 649 n.4 (1979); Vanderveer v. Erie Malleable Iron Co., 238 F.2d 510, 514 (3d Cir. 1956).

[17] *See In re* Nicholas, 510 F.2d 160 (10th Cir. 1975); Connelly v. Balkwill, 174 F. Supp. 49 (N.D. Ohio 1959); Kaufman v. Schoenberg, 154 F. Supp. 64 (D. Del. 1957).

[18] Frequently in cases involving the exclusive jurisdiction of the federal courts, the parties have met in an earlier state action. In such situations, the determination of which of the two doctrines might apply, res judicata or collateral estoppel, depends upon whether the second suit involves the same claim as the first. Commissioner v. Sunnen, 333 U.S. 591, 597–98 (1948); United States v. Moser, 266 U.S. 236, 241 (1924). As a result, the definition that a court accords the term "claim" or "cause of action" is highly significant. *See* F. JAMES, CIVIL PROCEDURE § 11.9, at 549–51 (1965); Note, *Res Judicata: Exclusive Federal Jurisdiction and the Effect of Prior State-Court Determinations*, 53 VA. L. REV. 1360, 1360–61 (1967). It is clear that the definition of "cause of action" is not entirely settled. Moore's Federal Practice states "[w]hat is a 'cause of action' for the purposes of res judicata cannot be defined with precision." 1B MOORE'S FEDERAL PRACTICE ¶ 0.410 [1], at 1154 (3d ed. 1974).

Regardless of the definition one gives to the word "claim" or "cause of action," a prior judgment "cannot be given the effect of extinguishing claims which did not even then exist and

The 1959 case of *Connelly v. Balkwill*[19] is typical of the cases that have applied res judicata. There, the plaintiff filed a 10b-5 securities action in federal district court. The plaintiff had previously brought a state law action involving the same set of business transactions. The district court pointed out that the defendant in the state action had been found "not guilty of any fraud, actual or constructive, or of any fraudulent misrepresentation or concealment towards plaintiffs . . . in connection with the transaction involved in" the federal action.[20] Applying res judicata, the court found that the duty of disclosure under the state law on fraud was equal to that under 10b-5, and concluded that the exclusive federal action was not "necessarily a different cause of action than [that brought] in the state court based upon the same facts."[21]

One court, however, before applying res judicata, considered the intent behind the grant of exclusive jurisdiction. *Nash City Board of Education v. Biltmore Co.*[22] was a 1978 case involving an antitrust claim, "virtually identical" to a prior state action decided under state antitrust law.[23] The district court for the eastern district of North Carolina rejected the plaintiff's contention that exclusive jurisdiction meant a federal suit was, by definition, "a different cause of action from a state court action."[24] Employing res judicata,[25] the court stated that the purposes behind exclusive jurisdiction did not necessitate a federal court determination on all the issues of the exclusive federal claim. The court examined the salient features of exclusivity—treble damage recovery, the jury trial right, federal "expansive discovery" and uniformity, and concluded that all but one of these components had been fully available in the state law antitrust action.[26] While uniformity was not assured by a state court decision,

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which could not possibly have been sued upon in the previous case." Lawlor v. National Screen Serv. Corp., 349 U.S. 322, 327–28 (1955).

[19] 174 F. Supp. 49 (N.D. Ohio 1959), *aff'd*, 279 F.2d 685 (6th Cir. 1960).

[20] *Id.* at 52, 54–55. There were actually two prior state court actions; the pertinent findings in each case, however, were the same. *See id.* at 54.

[21] *Id.* at 55–56, 59–60. In the words of the court, "a breach of the duty to disclose material facts necessary to make the statements made not misleading is indistinguishable from concealment as that term is understood in Ohio law." *Id.* at 59.

[22] 464 F. Supp. 1027 (E.D.N.C. 1978).

[23] *Id.* at 1028, 1033.

[24] *See id.* at 1029–30.

[25] *Id.* at 1032. The court felt that the core question in deciding whether to apply res judicata to an exclusive federal claim was " 'whether for *policy reasons* an exception should be made to the general rule of finality of prior adjudication.' " *Id.* at 1031. No policy required an exception in this case. *Id.* at 1030–32.

[26] *Id.* at 1031–32.

the state antitrust statute was modeled after the federal law, and the state supreme court had stated that federal case law was " 'instructive in determining the full reach of that statute.' "[27] Concluding that the rationale supporting exclusive jurisdiction had been adequately met and the parties and claims were the same, the court relied on "the strong policy favoring finality."[28]

Another factor that influenced the *Nash* court was the plaintiff's initial choice of the state forum. Since both the federal and state cause of action arose simultaneously from the same alleged wrong, the plaintiff could have chosen to litigate in federal court. Equitable considerations indicated that the plaintiff should be bound by the result in his chosen forum.[29]

Collateral Estoppel Applied

Similar to the majority of those courts applying res judicata, the courts according prior state judgments full collateral estoppel effect gave little consideration to the goals of exclusive jurisdiction.[30] The first significant case in this area was the 1929 Supreme Court decision in *Becher v. Contoure Laboratories.*[31] An employee of an inventor had breached his promise of confidentiality and, without the inventor's knowledge, had sought and received a federal patent on the inventor's machine. The inventor obtained a state court judgment requiring the employee to assign him the patent and enjoining the employee from further use of the invention. Claiming that exclusive federal jurisdiction deprived the state court of jurisdiction to render a judgment demonstrating the invalidity of a patent, the employee sued in federal court alleging infringement by the inventor and seeking injunctive relief.[32] Justice Holmes pointed out that the state suit

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[27] *Id.* at 1032.

[28] *Id.* at 1032, 1036.

[29] *Id.* at 1030.

[30] *See* Becher v. Contoure Laboratories, 279 U.S. 388 (1929); Vanderveer v. Erie Malleable Iron Co., 238 F.2d 510 (3d Cir. 1956).

[31] 279 U.S. 388 (1929).

[32] *Id.* at 389–90. The state action was for "breach of contract or wrongful disregard of confidential relations." *Id.* at 391. The allegation of lack of state court jurisdiction was not clearly made by the employee, but the Court understood that to be his meaning. *Id.* at 390. Disagreeing with the contention that the state court lacked jurisdiction over these state law matters, Justice Holmes noted:

> [the employer's] right was independent of and prior to any arising out of the patent law, and it seems a strange suggestion that the assertion of that right can be removed from the cognizance of the tribunals established to protect it by its opponent going into the patent office for a later title.

Id. at 391.

involved the state law areas of contract and confidentiality, "both matters independent of the patent law."[33] Therefore, the state suit "did not arise under"[34] the federal patent laws, the state court's determination of the issues before it was proper, and an estoppel would apply.[35] Strictly construed, *Becher* stands for the proposition that necessarily determined state law issues should receive finality through collateral estoppel, even when the practical effect is to foreclose federal determination of exclusive federal claims.[36]

Relying on the Supreme Court's decision in *Becher*, one federal court has concluded that collateral estoppel applies to all state court determinations, regardless of whether the state court was determining a state law issue or an exclusive federal issue. The state court, in *Vanderveer v. Erie Maleable Iron Co.*,[37] had necessarily addressed the merits of a federal patent claim in order to resolve a state action.[38] The Third Circuit held that, since the prior state claim, a contract action "for royalties under a patent license agreement," was within the state's jurisdiction, the necessary determination of the ultimate fact of patent infringement acted as collateral estoppel.[39] In concluding that collateral estoppel properly applied to all state determinations, the court broadly interpreted Justice Holmes language.[40]

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[33] *Id.* at 391.

[34] *Id.* The Court explained that the action was not a patent action, but rather a state law action. It stated "that the jurisdiction of the Courts of the United States is exclusive in the case of suits *arising under* the patent laws," *id.* at 390 (emphasis added), but the state case arose under state law, "and . . . the subject matter of [the employer's] claim was an undisclosed invention which did not need a patent to protect it from disclosure by breach of trust." *Id.* at 391.

[35] *See id.* at 391–92. According to the Court, "[i]f the logical conclusion from the establishment of [the employer's] claim is that [the employee's] patent is void, that is not the effect of the judgment. Establishing a fact and giving specific effect to it by judgment are quite distinct." *Id.* at 391. Justice Holmes seemed to be pointing out that a direct judgment by a state court on an exclusive federal claim would be impermissible, but that an indirect effect on exclusive federal law, through collateral estoppel, is an entirely different matter and is permissible. *Id.* at 390–92.

[36] *Id.* at 390–92.

[37] 238 F.2d 510 (3d Cir. 1956).

[38] *Id.* at 512. An accounting was sought in state court pursuant to a contract for royalties derived from a patent. To resolve the state action, the same question relevant to federal patent infringement was at issue: whether certain products were included under the patent. *See id.* at 511–12.

[39] *See id.* at 511–14. The court reiterated the established law "that a state court is empowered to determine questions, as distinguished from cases arising under the patent laws . . . ." *Id.* at 513.

[40] In *Becher*, the state judge was not faced with any federal patent questions; the estoppel arose from a state court decision on state law. *See* 279 U.S. at 390–91. The *Vanderveer* court determined that state decisions on exclusive federal law were covered by the *Becher* rationale. *See* 238 F.2d at 513–14.

The federal district court in *In re Transocean Tender Offer Securities Litigation*[41] considered the applicability of both res judicata and collateral estoppel to a federal securities action. The plaintiffs alleged that the circular used in a tender offer contained misstatements and material omissions in violation of the federal securities laws. A previous state litigation concerning the tender offer "involving similar plaintiffs and similar claims" had concluded in judgment for the defendants.[42] Rejecting res judicata, the court explained that the federal securities action, due to exclusive jurisdiction, was "a different cause of action than that brought, or which *could have been brought*, in [the state court]."[43] Nonetheless, the court felt that multiple litigation of a single event was burdensome to the judiciary and unfair to the parties.[44] Finding identity of legal standards and issues, with sufficiently specific state court findings, the court applied collateral estoppel.[45]

Transocean was one of the few cases in the exclusive jurisdiction area to mention the federal full faith and credit statute.[46] In applying collateral estoppel, the court attempted to give the state action, as required by the statute, "the same force and effect it would have in the [state] courts."[47] Examining the law of the state where the judgment was entered, it determined that the state gave collateral estoppel effect to "broad issues in the securities area."[48]

The requirement that an issue have been "necessarily" determined in a prior state action in order for collateral estoppel to apply

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[41] 427 F. Supp. 1211 (N.D. Ill. 1977).

[42] *Id.* at 1213–14.

[43] *Id.* at 1218 (emphasis added).

[44] *Id.* at 1219. Due to these elements of judicial economy and fairness, finality was desirable and unavoidable. Furthermore, the court commented that "[t]he mere fact that [the prior action] was a state common law action and that this one is federal should not necessarily prevent the application of collateral estoppel." *Id.*

[45] *Id.* at 1220–23. Guided by section 68, Comment c, of the Restatement (Second) of Judgments, the court found an identity of issues because of similar legal claims and evidence, and because "pretrial preparation and discovery relating to the [state] action could reasonably have been expected to have embraced this action." 427 F. Supp. at 1221. The court rejected the plaintiff's contention that an exception to the finality of section 68 was applicable. *Id.* The exception occurs when "a new determination is warranted . . . by factors relating to the allocation of jurisdiction between [courts]." RESTATEMENT (SECOND) OF JUDGMENTS § 68.1, Comment c. (Tent. Draft No. 4, 1977). *See In re* Houtman, 568 F.2d 651, 653 n.2 (9th Cir. 1978) (exception found appropriate in dischargeability of specific debts in bankruptcy).

[46] 28 U.S.C. § 1738 (1976).

[47] 427 F. Supp. at 1219, 1223. Under full faith and credit, the court did not feel absolutely bound by the state's law of collateral estoppel, but it felt it "should give great consideration" to it. *Id.* at 1219.

[48] *Id.* at 1223.

can give rise to important distinctions. The federal district court in *In re Mountjoy*[49] affirmed a bankruptcy referee's order that had allowed pending state litigation to continue. Although the state claim, alleging fraud and conversion, was similar in substance to the federal dischargeability claim, the court refuted the allegation that its ruling would contravene the exclusive jurisdiction of the bankruptcy court.[50] Indicating the finality that might be accorded a future state court judgment, the court quoted extensively from Collier on Bankruptcy. The quoted provision initially explained that res judicata could not apply in any dischargeability case because the federal claim was separate from any claim that could be brought in state court.[51] Collateral estoppel of issues such as fraud was potentially applicable in a dischargeability action. It would not apply to those issues, however, if the prior state action had been on a debt, regardless of whether allegations of fraud had been made, because in the debt action proof of fraud was not "necessary" for relief.[52] When a state action had not involved a debt but, rather, fraud or other unlawful conduct, " 'and damages [had been] sought,' " collateral estoppel might apply but only as to the exact issues necessarily determined.[53] The requirement that the issues be exact was illustrated by a reference to the tort of conversion: if state relief had required proof of simple conversion, then there could be no estoppel in bankruptcy as to the maliciousness or willfulness of that conversion.[54]

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[49] 368 F. Supp. 1087 (W.D. Mo. 1973).

[50] *See id.* at 1093–94, 1096–97. The bankruptcy court's decision, in allowing the state action to continue, "did not constitute a delegation of exclusive jurisdiction." *Id.* at 1097. The court noted that the 1970 amendments to the Bankruptcy Act, which gave the federal courts exclusive jurisdiction to determine the dischargeability of a bankrupt's individual debts, were designed to protect bankrupts from state default judgments occurring after their receipt of a general discharge, not from state suits occurring before the grant of that discharge. *See id.* at 1094. After the state court renders a judgment, "the bankruptcy court can review the record, hear additional evidence if offered or desired, and then make a determination on the crucial issue of dischargeability." *Id.* at 1096. This "procedure provides for greater savings in time, resources and expenses of the courts and parties involved." *Id.* at 1096–97.

[51] *Id.* at 1095–96. In state court, although liability has been litigated, " 'nondischargeability of the liability has not been adjudicated.' " *Id.*

[52] *Id.* at 1095. In a debt action, allegations of fraud are not pertinent to the relief granted. Such allegations " 'become relevant only on the issue of dischargeability of the debt in bankruptcy and have no bearing on whether or not one is indebted to another.' " *Id.* For collateral estoppel to apply in any situation, the issue in the prior proceeding must have been actually and necessarily litigated. *See* note 14 *supra* and accompanying text.

[53] *See* 368 F. Supp. at 1095–96.

[54] *Id.*

Collateral Estoppel Given Limited Application

Several courts have determined that the congressional purpose behind grants of exclusive jurisdiction must be effectuated and, thus, have held that the application of collateral estoppel must be restricted. The 1955 Second Circuit case of *Lyons v. Westinghouse Electric Corp.*[55] is the earliest and most significant of these cases. In *Lyons,* the estoppel arose from a state court determination on the exclusive federal question of antitrust violation. The exclusive claim had been raised as an affirmative defense to the state action and the state court had rejected the defense on the merits.[56] The Second Circuit admitted that, absent antitrust exclusivity, an estoppel would apply.[57] Judge Learned Hand recognized, however, that such an estoppel could, as a practical matter, "end the jurisdiction of the district court."[58] With the grant of exclusive jurisdiction he found a congressional implication of "immunity of [federal] decisions from any prejudgment elsewhere; at least . . . where the putative estoppel includes the whole nexus of facts that makes up the wrong."[59] Since the prior state finding did not, consistent with the court's understanding of *Becher,* involve merely "one of the constituent facts that together make up" the antitrust action, but rather "the entire congeries of such facts, taken as a unit," the estoppel was rejected.[60]

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[55] 222 F.2d 184 (2d Cir. 1955).

[56] *Id.* at 185. Faced with the defense that the state plaintiffs had conspired in contravention of antitrust law, the state judge concluded "that the defense of illegality, based upon violation of antitrust laws, has neither been sustained nor established." *Id.*

[57] *Id.* at 188. Although Judge Hand rejected the application of collateral estoppel, because of the exclusive federal jurisdiction of the antitrust statutes, he fully agreed that violations of the statutes could be raised in defense of state actions. When a plaintiff attempts to enforce a state claim that he had acquired by violating the federal antitrust laws, "[i]t is appropriate to the underlying purpose of the Acts that such claims shall not succeed." *Id.* at 189–90.

[58] *Id.* at 186. As a defense to a state contract action, the state defendants alleged that the state plaintiffs had entered into a conspiracy in violation of the federal antitrust laws. The state court found no such antitrust violation. *See id.* at 185. Judge Learned Hand recognized that the district courts' jurisdiction would not literally terminate upon application of an estoppel. Realistically it would have that effect, however, "for it will conclude any further consideration of the existence of the conspiracy, and on that all else depends." *Id.* at 186.

[59] *Id.* at 189.

[60] *Id.* at 188–89. The court felt its conclusion was consistent with *Becher* and quoted the following language from that opinion:

> "even if the logical conclusion from the establishing of [the employer's] claim is that [the employee's] patent is void, that is not the effect of the judgment. Establishing a fact and giving a specific effect to it by judgment are quite distinct."

Id. at 188 (quoting Becher v. Contoure Laboratories, 279 U.S. 388 (1929)). *See* note 35 *supra.* The court further thought that both the above language from *Becher* and its own conclusion was

Judge Hand felt that the exclusive jurisdiction given the federal courts did not merely signify the forum in which the action was to be filed, but was further meant to ensure the uniform application of the federal treble damage recovery.[61] Achieving uniformity through certiorari from the Supreme Court was seen as burdensome; "an administration of the Acts, at once effective and uniform, would best be accomplished by an untrammeled jurisdiction of the federal courts."[62] A blind application of finality doctrines could unsatisfactorily affect otherwise adequate remedies.[63]

The district court for the eastern district of Michigan, in *Overseas Motors, Inc. v. Import Motors, Ltd.*,[64] influenced by *Lyons*, arrived at a similar result in considering the finality to be accorded an international arbitration ruling. In its analysis, the court considered factors similar to those relevant to determining the finality to be accorded a prior state court judgment. The plaintiff, by default, had refused to participate in arbitration proceedings on grounds that its allegations of antitrust violation could not be adequately heard.[65] The district court first summarily rejected the application of res judicata because the exclusive federal antitrust laws were "not subject to arbitration."[66] Conceding that the substantial identity of issues required the application of collateral estoppel, the court, limiting the doctrine's operation, pointed to the need to preserve exclusive federal jurisdiction.[67] The court discussed the distinction between eviden-

consistent with section 71 of the Restatement of Judgments, if one stipulated that " 'matter' " [in section 71] be read as all the 'operative' facts that together make up a right." 222 F.2d at 188. The Restatement provides:

> Where a court has incidentally determined a matter which it would have had no jurisdiction to determine in an action brought directly to determine it, the judgment is not conclusive in a subsequent action brought to determine the matter directly.

RESTATEMENT OF JUDGMENTS § 71 (1942).

[61] 222 F.2d at 189. Judge Hand admitted that determining whether Congress intended to indicate simply a federal forum, or an immunity from collateral estoppel effect of prior judgments, was difficult from the wording of the statute. *Id.* at 188. In rejecting collateral estoppel, the court stressed the national purpose of the treble damage recovery and the need for uniformity in its application. *Id.* at 189.

[62] *Id.* at 189. The Fifth Circuit had previously reached a contrary result, reasoning that the existence of Supreme Court review of state court decisions solved any problems that an application of res judicata might present. *See* Red Rock Cola Co. v. Red Rock Bottlers, Inc., 195 F.2d 406, 410 (5th Cir. 1952).

[63] 222 F.2d at 189. The public policy of repose must be tempered by " 'the even firmer established policy of giving every litigant a full and fair day in court.' " *Id.*

[64] 375 F. Supp. 499 (E.D. Mich. 1974), *aff'd*, 519 F.2d 119 (6th Cir. 1975).

[65] *Id.* at 507.

[66] *Id.* at 518.

[67] *Id.* at 519. The court reasoned that when identical issues become too numerous, the foreclosure effect interferes with federal exclusive jurisdiction and must be restricted. *Id.* It

tiary, mediate and ultimate facts, the latter being " 'those [facts] which the law makes the occasion for imposing its sanctions.' "[68] It determined that the ultimate and "central" facts of an exclusive federal case could not be foreclosed by collateral estoppel, while the less determinative issues should be.[69] Unlike earlier, nonfederal proceedings, an antitrust action contained a public interest which required full representation.[70] The "issues to whose determination a public interest attaches may be termed 'antitrust' issues, and as to them there can be no collateral estoppel."[71]

A dissent by Justice Brennan in a 1978, 10b-5 securities case, *Will v. Calvert Fire Insurance Co.*,[72] has addressed this finality problem. The plurality decision reinstated a district court ruling; the district court had stayed an exclusive federal action pending the result of a prior state proceeding in which an antitrust claim had been asserted

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recognized that the degree to which collateral estoppel should be limited, "in order to preserve a viable policy of pre-emption," is not easily determined. *Id.* at 518.

[68] *Id.* at 519. The court quoted at length from Judge Hand's decision in *The Evergreens v. Nunan*:

> "It is of course well-settled law that a fact, once decided in an earlier suit, is conclusively established between the parties in any later suit, provided it was necessary to the result in the first suit . . . . However, a 'fact' may be of two kinds. It may be one of those facts, upon whose combined occurrence the law raises the duty, or the right in question; or it may be a fact, from whose existence may be rationally inferred the existence of one of the facts upon whose combined occurrence the law raises the duty, or the right. The first kind of fact we shall for convenience call an 'ultimate' fact; the second, a 'mediate datum.' "

375 F. Supp. at 519 (quoting The Evergreens v. Nunan, 141 F.2d 297 (2d Cir.), *cert. denied*, 323 U.S. 720 (1944)). The court expanded on Judge Hand's analysis, explaining that a third category of facts exists, evidentiary facts, which are those that are completely nonlegal in nature. 375 F. Supp. at 519.

[69] 375 F. Supp. at 522–23. The court considered its approach at variance with established principles of collateral estoppel. "In the majority of cases . . . estoppel is applied to ultimate issues only." *Id.* at 523. The court thought that the original rationale of giving collateral estoppel effect only to ultimate facts was to prevent "the use of prior determinations to support inferences which were totally unforeseeable at the time of [that] litigation." *Id.* at 523 n.79. It suggested that "restrict[ing] . . . estoppel to those issues which were necessary to the prior judgment and whose future use was reasonably foreseeable serves the purpose far better." *Id.* at 524 n.79.

A major antitrust issue would not be affected by collateral estoppel, regardless of foreseeability, due to the federal courts' exclusive jurisdiction. *See id.* at 522, 523 n.79. In an antitrust context, a foreseeability standard could only apply when an initial proceeding "merely determines matters of fact and law which are incidental to the antitrust claim." *Id.* at 522.

[70] *Id.* at 520–21.

[71] *Id.* at 521. It arrived at this result by balancing the two public interests, the "enforcement of the antitrust laws," and "the finality of judgments." *Id.* The court felt that "[t]he range of foreclosable issues need only be narrowed sufficiently to assure plaintiff here a reasonable opportunity to vindicate the public interest in enforcement of the antitrust laws." *Id.*

[72] 437 U.S. 655 (1978).

as an affirmative defense.[73] The dissent recognized the possible res judicata/collateral estoppel problem inherent in such a result, and noted that the plurality "conveniently . . . avoids any discussion" of the future preclusive effect of the state determination.[74] Stating that exclusive federal jurisdiction "evinces a legislative desire for the uniform determination of such claims by tribunals expert in the administration of federal laws and sensitive to the national concerns underlying them," Justice Brennan admitted that the existence of the conflicting interest of state judgment finality presented "an unresolved and difficult issue."[75] He felt that federal courts deciding exclusive claims should not be prevented "from ruling *de novo* on purely legal questions surrounding such federal claims."[76] Quoting Judge Hand's language in *Lyons*, Justice Brennan stated that the grant of exclusive jurisdiction to the federal courts " 'should be taken to imply an immunity of their decisions from any prejudgment elsewhere.' "[77] He recognized the possibility of finality of "specific findings of historical facts," due to fairness and efficiency, when an exclusive claim is raised in state court as an affirmative defense.[78] Justice Brennan cautioned, however, that even this limited finality might contravene congressional intent due to the absence of broad federal discovery.[79]

The District of Columbia Circuit also discussed the significance of the *Lyons* decision, in *New York State Teamsters Conference v. Pension Benefit Guaranty Corp.*[80] Following the merger of two pen-

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[73] *Id.* at 664–67. On a petition for a writ of mandamus, the Seventh Circuit had ordered the district court to terminate its deferral awaiting the completion of a state action concerning the same matters, and "to proceed immediately with [the plaintiff's] claim for damages and equitable relief under the Securities Exchange Act." *Id.* at 659–60. The Supreme Court found that the district court's exercise of its discretion to defer the federal proceedings was proper and "ought not to be overridden by a writ of mandamus." *Id.* at 664–67.

[74] *Id.* at 669 (Brennan, J., dissenting).

[75] *Id.* at 670, 674 (Brennan, J., dissenting). Mindful that the exclusive claim had been raised as a defense in the state action, the Justice expressed "serious doubt that it is ever appropriate to accord res judicata effect to a state court determination of a claim over which the federal courts have exclusive jurisdiction." *Id.* at 674 (Brennan, J., dissenting).

[76] *Id.* at 674 (Brennan, J., dissenting).

[77] *Id.* at 675 (Brennan, J., dissenting).

[78] *Id.* (Brennan, J., dissenting). The concept of considering only nonlegal facts for purposes of collateral estoppel has also been contemplated by the Third Circuit. In Cotler v. Inter-County Orthopaedic Ass'n, 526 F.2d 537 (3d Cir. 1975), the court found inappropriate the stay of a federal securities case that had been instituted after a similar state action, declaring that only a federal court could decide a federal securities question. *Id.* at 542. A state court could, however, make a simple determination as to the historical facts of the controversy. *Id.*

[79] 437 U.S. at 675 (Brennan, J., dissenting).

[80] 591 F.2d 953 (D.C. Cir. 1979).

sion funds, the defendant fund was forced to cut back its contributions to the detriment of the plaintiff. The plaintiff's attempt to repudiate the agreement failed when the defendant successfully brought a state court action to uphold the merger.[81] An action was then brought under the Employees Retirement Income Security Act of 1974,[82] but the court of appeals affirmed a district court ruling that the controversy arose prior to the Act's passage.[83] The circuit court, nonetheless, commented on the finality solution formulated in *Lyons*, noting the mixed response it has received in the courts. It pointed out that the rationale of not giving a state judgment binding effect was strongest when the party to be estopped did not choose the non-federal forum, and "the federal claim . . . turns predominantly upon a legal rather than factual determination and involves the interpretation of federal rather than state law."[84]

State Judgment Finality Rejected

A final group of cases, those denying state judgments all finality in exclusive federal claims, successfully give full effect to the goals of exclusive jurisdiction. In *In re Burns*,[85] a prior state court action had determined that a debtor had induced a bank to make loans through "fraudulent statements." The bank felt this state finding was "conclusively binding" in bankruptcy,[86] and that the bankruptcy court must therefore deny the discharge of the debt. Rejecting res judicata and collateral estoppel, the federal district court expressed the opinion "that the question of dischargeability is exclusively and independently within the jurisdiction of the bankruptcy court regardless of judicial determinations of fraud in a state court."[87]

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[81] *Id.* at 954–55.

[82] 29 U.S.C. §§ 1001–1381 (1976).

[83] 511 F.2d at 957. The Employee Retirement Income Security Act (ERISA) was enacted in 1974, after the state suit had commenced. *Id.* at 955. Administrative proceedings under ERISA were begun in this case in 1976, well after the effective date of the Act. *See id.* at 956. However, the court pointed out that Congress intended "that the transition from state to federal regulation" of employment related benefit plans "would not preempt state law with respect to" either an action or an alleged wrong occurring prior to 1975. *Id.* at 955.

[84] *Id.* at 957. Even under these conditions, the court considered that a decision to disregard finality would be a difficult one. *Id.*

[85] 357 F. Supp. 176 (D. Kan. 1972).

[86] *Id.* at 177. Since fraud in creating a particular debt was grounds for preventing the discharge of a debt in bankruptcy, and the state court had found fraud on the part of the debtor, the bank felt that the bankruptcy court must accept that finding of fraud and declare the debt nondischargeable. *See id.*

[87] *See id.* at 177–78.

A similar result was reached by the Ninth Circuit in *In re Houtman*.[88] In state court, a judgment had been rendered on a complaint alleging "fraud and misrepresentation."[89] Affirming the bankruptcy court's determination that this debt was nondischargeable, the circuit court determined that the exclusive jurisdiction provisions covering the dischargeability of particular debts made collateral estoppel inapplicable.[90] The bankruptcy court was nonetheless free to consider the state record, along with "all [other] relevant evidence."[91] The court acknowledged that collateral estoppel was "not automatically" inapplicable with "a grant of exclusive jurisdiction."[92] However, citing *Lyons* as indirectly analogous, it stated that the doctrine "is inappropriate when 'a new determination is warranted . . . by factors relating to the allocation of jurisdiction between [the two courts].' "[93] Additionally, collateral estoppel would interfere with the goal of developing the expertise of bankruptcy courts in dischargeability determinations.[94]

The Third Circuit, in *In re McMillan*,[95] had to determine whether a state default judgment based upon an incomplete loan application was sufficient evidence of fraud to prevent discharge of a debt.[96] The majority did not address the exclusive jurisdiction issue;

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[88] 568 F.2d 651 (9th Cir. 1978).

[89] *Id.* at 652–53.

[90] *Id.* at 653. Although bankruptcy is exclusively federal, it wasn't until 1970 that bankruptcy courts were given exclusivity to litigate individual creditors' claims that their particular debts should be excepted from the bankruptcy court's general discharge. *See* Act of Oct. 19, 1970, Pub. L. No. 91-467, 84 Stat. 990. The Ninth Circuit observed that since "[t]he 1970 Amendments to the Bankruptcy Act imposed upon the bankruptcy courts the exclusive jurisdiction [in specified instances] to determine dischargeability . . . there is no room for the application of the technical doctrine of collateral estoppel in determining the nondischargeability of debts" under the ennumerated sections. 568 F.2d at 653. Reversal would be required if "the bankruptcy judge considered himself compelled by the state court documents presented to him to find the debt not dischargeable." *Id.*

[91] 568 F.2d at 654.

[92] *Id.* at 653 n.2. The court did not explain this possible application of collateral estoppel in exclusive jurisdiction cases, but simply cited *Becher* as support. *Id.* It could not be endorsing the concept from *Becher* that a state decision on state matters remains determinative, *see* notes 35 and 36 *supra* and accompanying text, for the court here is rejecting collateral estoppel of state court determinations on state law fraud. *See* 568 F.2d at 653.

[93] 568 F.2d at 653 n.2 (quoting RESTATEMENT (SECOND) OF JUDGMENTS § 68.1, Comment c (Tent. Draft No. 4, 1977)). The Restatement language would seem to make the court's view applicable to all areas of exclusive jurisdiction, as relitigation under exclusive jurisdiction is based on a jurisdictional matter.

[94] 568 F.2d at 654 n.2.

[95] 579 F.2d 289 (3d Cir. 1978).

[96] *Id.* at 290–91. The language of the state default judgment had specified "that said judgment is grounded in fraud and misrepresentation on the part of the defendants." *Id.* at 291 n.2.

rather, it determined that the normal requirements of collateral estoppel were not met since, *inter alia*, the parties "did not 'actually litigate' the [state action]."[97] Giving full collateral estoppel effect to a default judgment would ignore the variety of reasons for defaults and would " 'necessarily defeat a major federal policy of granting exceptions to discharge only in certain circumstances specified by the Bankruptcy Act.' "[98] The concurring opinion noted the correctness of the result reached, since it was in accord with New Jersey law on collateral estoppel of default judgments, which the full faith and credit statute required the federal court to follow.[99] The concurrence, however, viewed the enactment granting the federal bankruptcy courts exclusive jurisdiction in dischargeability cases as creating an exception to the full faith and credit requirement.[100] Consequently, he believed that collateral estoppel could not have been applicable in *McMillan*, even if the state collateral estoppel doctrine had required finality.

Brown v. Felsen and the Inapplicability of Res Judicata

The preceding case law illustrates the problems the federal courts have encountered concerning state judgment finality in areas of exclusive jurisdiction. They have perceived the problem as including

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Aside from the record and judgment from the state court, the creditor had introduced no evidence in the bankruptcy proceeding. It claimed that the state default judgment, which had determined "that the bankrupts had been guilty of fraud in failing to disclose the full amount of their indebtedness when applying . . . for a loan, as a matter of law, compelled a determination that the debt in question was nondischargeable." *Id.* at 291.

[97] *Id.* at 292. Since the state action ended in default, *id.* at 290, and thus no actual litigation occurred, collateral estoppel was clearly inapplicable. *See* note 14 *supra* and accompanying text; *cf.* note 105 *infra* and accompanying text (consent decrees do not have collateral estoppel effect because not actually litigated).

[98] 579 F.2d at 293. Both the court and the concurring judge recognized that applying collateral estoppel to prior default judgments in state courts, based on false loan applications, would perpetuate, in a slightly varying form, the precise abuse Congress eliminated by granting exclusive jurisdiction. *See id.* at 293–94.

[99] 579 F.2d at 293–94 (Gibbons, J., concurring).

[100] *Id.* at 294 (Gibbons, J., concurring). The question which Judge Gibbons answered in the negative was "whether . . . finance compan[ies] holding the same type of debt [debts from false loan applications which prompted the 1970 amendments] can evade the congressional intent by securing a state court judgment against a delinquent borrower in anticipation of his bankruptcy." *Id.* (Gibbons, J., concurring). He concluded, "when Congress expressly identifies an abuse, when it has the constitutional power to correct it, and when as here it exercises that power, then the courts should give the congressional act its full effect." *Id.* (Gibbons, J., concurring). The full faith and credit statute, he stated, should not present a bar to implementing congressional intent because that statute "is not without exceptions. Federal habeas corpus is one illustration of the proposition . . . . In my opinion, this is another." *Id.* (Gibbons, J., concurring).

a multitude of complicating factors, among them equitable considerations;[101] the policies behind the finality doctrines;[102] differences in the finality accorded legal and nonlegal facts;[103] and the congressional intent behind grants of exclusive jurisdiction.[104] The Supreme Court was recently presented with an opportunity to address this state judgment finality dilemma.

In *Brown v. Felsen*, a bankruptcy discharge case, the Court was faced with the question of whether res judicata could be accorded a state court judgment on a debt so as to preclude the bankruptcy court from independently determining the debt's dischargeability.[105] Following a settlement in state court between a debtor, the debtor's guarantor and a bank, the debtor entered bankruptcy. The guarantor, as creditor, claimed in bankruptcy court that the debtor had obtained the guarantee fraudulently, in contravention of the bankruptcy discharge provisions. The bankruptcy court, affirmed ultimately by the Tenth Circuit, determined that it was bound by the results of the state action; fraud was not mentioned in state court, therefore, the debtor's obligation to pay the guarantor was discharged.[106] After careful consideration, Justice Blackmun, writing for a unanimous Court, stated that the application of res judicata would be contrary to bankruptcy court determination of a debt's discharge.[107] Although

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[101] *See, e.g.*, New York State Teamsters Conference v. Pension Benefit Guar. Corp., 591 F.2d 953, 957 (D.C. Cir. 1979) (choice of forum).

[102] *See, e.g.*, Nash City Bd. of Educ. v. Biltmore Co., 464 F. Supp. 1027, 1029–30, 1032 (E.D.N.C. 1978) (res judicata); *In re* Transocean Tender Offer Sec. Litigation, 427 F. Supp. 1211, 1218, 1220–23 (N.D. Ill. 1977) (collateral estoppel).

[103] *See* Will v. Calvert Fire Ins. Co., 437 U.S. 655, 675 (1978) (Brennan, J., concurring); Cotler v. Inter-County Orthopaedic Ass'n, 526 F.2d 537, 542 (3d Cir. 1975).

[104] *See, e.g.*, Lyons v. Westinghouse Elec. Corp., 222 F.2d 184, 189 (2d Cir. 1955). Courts often view each grant of exclusive jurisdiction separately, instead of considering the possibility that grants of exclusive jurisdiction can be viewed as a class. *See, e.g.*, Nash City Bd. of Educ. v. Biltmore Co., 464 F. Supp. 1027, 1030–32 (E.D.N.C. 1978). The Restatement expressly suggests this approach. RESTATEMENT (SECOND) OF JUDGMENTS § 68.1, Comment e at 37–38 (Tent. Draft No. 4, 1977).

[105] *See* 99 S. Ct. at 2207–08. The Supreme Court did not address the applicability of collateral estoppel since the doctrine had not been raised by the parties. *See id.* at 2213 n.10. Even if it had been raised, however, by definition it could not have applied in that case. The prior state proceeding had concluded in a consent judgment—there was no "actual" litigation of issues. *See id.* at 2207. Consent judgments do not have collateral estoppel effect. *E.g.*, Lawlor v. National Screen Serv. Corp., 349 U.S. 322, 324, 326–27 (1955); United States v. International Bldg. Co., 345 U.S. 502, 504–06 (1953); 1B MOORE'S FEDERAL PRACTICE ¶ 0.444 [3], at 4022–24 (3d ed. 1974).

[106] 99 S. Ct. at 2207–09.

[107] *Id.* at 2213.

the court discussed various bases for its reversal,[108] the determinative factor was congressional intent. Congress intended dischargeability questions to be resolved exclusively in the federal bankruptcy courts.[109] These courts possessed the necessary expertise[110] to decide these issues and "it would be inconsistent with the philosophy of the 1970 amendments [granting exclusivity] to adopt a policy of res judicata which takes [dischargeability] questions away from bankruptcy courts and forces them back into state courts."[111] Unhindered by res judicata, bankruptcy courts could determine whether conduct such as fraud was "in fact committed."[112]

The applicability of collateral estoppel was not addressed by the Court since the doctrine had not been raised by the parties.[113] Justice Blackmun acknowledged, however, that in a prior state action issues of state law could arise "using standards identical to those" in dischargeability.[114] In such cases, collateral estoppel would apply "in the absence of countervailing statutory policy."[115] Since this collat-

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[108] *Id.* at 2209–12. The Court initially stated that the benefits of discharge in bankruptcy are intended solely for the honest debtor. *See id.* at 2208. In bankruptcy, the debtor "place[s] the rectitude of his prior dealings squarely in issue." *Id.* The appropriate inquiry into these dealings could be foreclosed, however, by the application of res judicata. The Court noted that, "[f]or the sake of repose, res judicata shields the fraud and the cheat as well as the honest person. It therefore is to be invoked only after careful inquiry." *Id.* at 2209–10.

The Court explained that, unlike the usual res judicata claim, the creditor was attempting to uphold and not to invalidate the prior decree, and was thus merely attempting to counter respondent's "new defense." *Id.* at 2210. The Court deemed inconsistent the respondent's attempt to seek the benefits of res judicata after having rejected, through bankruptcy, the repose res judicata is designed to ensure. *Id.* at 2210, 2213. In addition, the Court concluded that the application of res judicata would provoke unnecessary state litigation, aggravated by the fact that the issue litigated under state law "is likely to differ from that adopted in the federal statute." *Id.* at 2211.

[109] *See id.* at 2211–13.

[110] *Id.* at 2211.

[111] *Id.* at 2212. The Court also examined previous amendments to the dischargeability provisions, enacted in 1903, in which Congress had expanded the class of dischargeable debts. *Id.* at 2212–13. Prior to the 1903 amendments, the Bankruptcy Act provided that "[a] discharge in bankruptcy shall release a bankrupt from all of his proveable debts, except such as . . . are *judgments* in actions for frauds, or obtaining property by false pretenses or false representation, or for willful and malicious injuries . . . ." An Act to Establish a Uniform System of Bankruptcy Throughout the United States, ch. 541, § 17, 30 Stat. 544, 550 (1898) (emphasis added). In 1903, Congress decided that judgment need not have been rendered, a mere "liability" was sufficient. *See* Act of Feb. 5, 1903, ch. 487, § 5, 32 Stat. 797, 798. Since Congress no longer required a pre-existing judgment, the Court concluded that "all debts . . . specified in § 17 [debts incurred through proscribed conduct] should be excepted from discharge and the mere fact that a conscientious creditor has previously reduced his claim to judgment should not bar further inquiry into the true nature of the debt." 99 S. Ct. at 2212.

[112] 99 S. Ct. at 2212.

[113] *Id.* at 2213 n.10. *See generally* the discussion in note 105 *supra*.

[114] 99 S. Ct. at 2213 n.10.

[115] *Id.*

eral estoppel/"countervailing statutory policy" conflict was not directly presented, the Court articulated the problem without offering a solution.[116]

In light of its definitional requirements, the applicability of res judicata should not have been a serious issue in *Felsen*, nor, for that matter, should it be a factor in any exclusive jurisdiction case. The doctrine forecloses litigation of matters that were raised or could have been raised in a prior proceeding.[117] A party may not sue on an exclusive federal claim in state court and, therefore, res judicata of the state action cannot prevent federal court litigation of the exclusive claim.[118] Even where a state court, as in *Vanderveer* or *Lyons*, is faced with the necessity of examining exclusively federal claims,[119] such claims are not "raised" for purposes of res judicata because a state court cannot grant affirmative relief under the federal law. This inapplicability of res judicata remains true despite the fact that in many areas, distinct from bankruptcy,[120] the state and federal claims often come into existence at the same time.[121] In these exclusive jurisdiction areas, the state/federal plaintiff possibly could have initiated the federal action first, wherein full relief on both his state and federal claims might have been dispensed.[122] Nonetheless, when he has had a choice and chose to bring his state action first, it remains true that in the state action his federal claim could not have been raised — a prerequisite for res judicata.[123]

Although the Supreme Court erred in overlooking the simple nature of the res judicata question in *Felsen*,[124] the opinion is extremely

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[116] *Id.*

[117] *See* note 12 *supra* and accompanying text.

[118] A rule to the contrary would probably be unconstitutional. *Cf.* Parklane Hosiery Co. v. Shore, 99 S. Ct. 645, 649–50 (1979) (discussing collateral estoppel, Court notes "obvious difference . . . between a party who has never litigated an issue and one who has fully litigated and lost"). Extinguishment of a claim, without an opportunity to litigate, would appear to violate due process.

[119] *See* notes 38 and 56 *supra* and accompanying text.

[120] The question of the dischargeability of a debt does not come into existence when the debt is created, but when the debtor decides to enter bankruptcy. The fact of bankruptcy is a logical prerequisite before a creditor can allege that a specific debt should not be discharged. *See* 99 S. Ct. at 2207.

[121] For example, a state law fraud action and a federal 10b-5 securities action can arise simultaneously upon the commission of fraudulent conduct.

[122] *See* Note, *The Collateral Estoppel Effect of Prior State Court Findings in Cases Within Exclusive Federal Jurisdiction*, 91 HARV. L. REV. 1281, 1285 (1978).

[123] *See In re* Transocean Tender Offer Sec. Litigation, 427 F. Supp. 1211, 1218 (N.D. Ill. 1977); note 12 *supra* and accompanying text.

[124] *See* 99 S. Ct. at 2209–13.

significant because of the language stating that the congressional purposes behind the grant of exclusive jurisdiction act to defeat the doctrine's application. The Court's reliance on congressional intent was broad enough to suggest that a similar result might be reached in a discharge case involving collateral estoppel.[125] This indication could prove important not only for bankruptcy cases, but for other cases involving grants of exclusive jurisdiction as well.

A PROPOSED SOLUTION— APPLICATION OF COLLATERAL ESTOPPEL ANALYZED

The question the Supreme Court must address is whether a federal court hearing an exclusively federal claim can accord collateral estoppel effect to a prior state court judgment.[126] The answer necessarily rests upon whether Congress, in creating areas of exclusive jurisdiction, intends federal court decision-making to be impeded by state judgment finality. Several authorities have posited that a common thread running through grants of exclusive jurisdiction is a congressional desire to ensure the development of a uniform body of federal law and expert decision-making by federal judges.[127] Assuming the validity of this proposition, a single solution to the "state judgment finality/exclusive federal jurisdiction" conflict becomes possible.

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[125] *See id.* at 2211–13. The Court appears to have persuasively argued that Congress did not intend for state judgment finality to interfere with the bankruptcy determination of dischargeability. *See id.* (expertise of bankruptcy court; inconsistent with exclusive jurisdiction to place dischargeability back with state courts; 1903 "liability" amendments indicate bankruptcy court's inquiry should be unimpeded).

[126] When previously faced with this question in a patent case, the Court applied collateral estoppel. Becher v. Contoure Laboratories, 279 U.S. 388, 390–92 (1929).

[127] *E.g.*, Will v. Calvert Fire Ins. Co., 437 U.S. 655, 670 (1978) (Brennan, J., dissenting); Imperial Appliance Corp. v. Hamilton Mfg. Co., 430 F.2d 185, 188 (7th Cir. 1970); Nash City Bd. of Educ. v. Biltmore Co., 464 F. Supp. 1027, 1032 (E.D.N.C. 1978) (uniformity); Note, *supra* note 122, at 1282. The availability of federal procedures, especially federal discovery, is also considered important. *See, e.g.*, Will v. Calvert Fire Ins. Co., 437 U.S. 655, 675 (1978) (Brennan, J., dissenting); Comment, *Exclusive Federal Jurisdiction: The Effect of State Court Findings*, 8 STAN. L. REV. 439, 448 (1956).

Despite the recognition of the congressional purposes of uniformity and expertise, these purposes appear to have been determined mainly through judicial construction. *But see* Brown v. Felson, 99 S. Ct. 2205, 2211 (1979) (legislative history for discharge of individual debts in bankruptcy specified purpose of expertise). The cases and commentaries have found that the legislative hearings and debates concerning exclusive federal areas are generally not helpful in clarifying the intended definitional scope and meaning of "exclusive federal court jurisdiction." *See, e.g.*, *In re* Transocean Tender Offer Sec. Litigation, 427 F. Supp. 1211, 1219, 1221 (1977) (Securities Exchange Act of 1934); Comment, *supra*, at 447 (antitrust); *cf.* Note, *Exclusive Jurisdiction of the Federal Courts in Private Civil Actions*, 70 HARV. L. REV. 509, 510 n.13 (1957) (antitrust) (Sherman Act legislative history indicates exclusivity not intended).

The goals of uniformity and expertise indicate that collateral estoppel should not be applied in any exclusive jurisdiction case.[128] Giving collateral estoppel effect to state court judgments, whether involving purely state law questions or necessary determinations of federal law, is no different, for these purposes, than allowing state courts to give affirmative relief under federal law. Uniformity and expertise are jeopardized.[129] Though state decisions may be made on questions identical to federal law, state law remains state law and is decided in a state law context. Decisions of different states on issues which are identical may possibly be resolved without uniformity among the states themselves and could differ from the interpretation of federal law by the federal courts. In addition, preclusion of federal judge decision-making by giving collateral estoppel effect to state court determinations of state law actions prevents the application of the expertise Congress contemplated.

A cause of action which Congress has made exclusively federal cannot, consistent with congressional intent, be effectively extinguished by collateral estoppel prior to reaching the federal court. Factors such as choice of forum should have no effect on this determination of finality. It is not merely the individual who chose the state court first whose rights are at stake: a public interest is involved.[130] For instance, giving collateral estoppel effect to a state court determination on a state law antitrust matter would bind the public at large in future federal restraint-of-trade actions.[131] Such potentially far-reaching significance should be reserved for issue determinations that have taken place in federal court.

Consistent with the goals of uniformity and expertise, state judgment finality, through collateral estoppel, could be accorded state determinations of nonlegal, historical facts.[132] Finality of these facts,

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[128] The application of collateral estoppel, however, cannot be avoided absent an exception to 28 U.S.C. § 1738 (1976). *See* notes 137–39 *infra* and accompanying text.

[129] Because the federal issue is, in effect, predetermined at the state level when collateral estoppel is applied, the exclusive federal law is determined by a great number of judges. In exclusive federal jurisdiction, uniformity and expertise is sought through limiting jurisdiction to the federal bench. *See* Note, *supra* note 127, at 511–12.

[130] *See* Overseas Motors, Inc. v. Import Motors Ltd., 375 F. Supp. 499, 520–21 (E.D. Mich. 1974), *aff'd*, 519 F.2d 119 (6th Cir. 1975).

[131] *See* Comment, *Collateral Estoppel Effect of State Court Judgment in Federal Anti-trust Suits*, 51 CALIF. L. REV. 955, 966 (1963); Note, *supra* note 127, at 513–14.

[132] *See* Will v. Calvert Fire Ins. Co., 437 U.S. 635, 674–75 (1978) (Brennan, J., dissenting) (historical facts); Cotler v. Inter-County Orthopaedic Ass'n, 526 F.2d 537, 542 (3d Cir. 1975) (historical facts). Nonlegal facts are known as evidentiary facts in the evidentiary/mediate/ultimate fact conceptual scheme. *See, e.g.*, Overseas Motors, Inc. v. Import Motors Ltd., 375 F. Supp. 499, 519 (E.D. Mich. 1974), *aff'd*, 519 F.2d 119 (6th Cir. 1975).

as a threshold matter, might be allowable because federal law is neither being directly decided nor indirectly determined. As recently pointed out by Justice Brennan in his dissenting opinion in *Will*, however, even this nonlegal fact estoppel could be impermissible, since an important component of federal exclusivity may be the availability of federal court procedures, especially discovery.[133] Consequently, in complicated areas, such as patents and antitrust, the advantages of federal procedures could require factual relitigation in order to effectuate the grant of exclusivity.[134] In other areas this might not be necessary and nonlegal facts could be collaterally estopped.

To summarize, if one accepts the assumption of the congressional purposes of uniformity and expertise, it is possible to resolve the persistent problem of the conflict between state judgment finality and exclusive federal jurisdiction. These goals cannot be adequately fulfilled by according prior state court determinations finality in an exclusive federal case. It is submitted that Congress, in enacting exclusive jurisdiction statutes, inherently contemplates uniformity and expertise, and, therefore, intends that federal courts should not apply the judicial finality doctrine of collateral estoppel.[135]

One final point deserves mention. The majority of the cases that have addressed the state judgment finality/exclusive jurisdiction

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[133] Will v. Calvert Fire Ins. Co., 437 U.S. 655, 675 (1978) (Brennan, J., dissenting); Note, *supra* note 18, at 1381–82; *see* Comment, *supra* note 131, at 965; Comment, *supra* note 127, at 448.

[134] *See* Comment, *supra* note 131, at 965; Comment, *supra* note 127, at 448. Congressional intent would suggest relitigation even in uncomplicated areas if the state controversy was considered relatively unimportant to the party to be estopped. *Cf.* Parklane Hosiery Co. v. Shore, 99 S. Ct. 645, 651–52 (1979) ("nominal damages" sought in first suit could make application of offensive collateral estoppel unfair). In essence, the goals of exclusive jurisdiction would appear to require that nonlegal facts should be relitigated unless the quality of inquiry they received in the state court reasonably approached federal factfinding in the area of exclusivity involved.

[135] There is a close, logical connection between limiting the litigation of certain controversies to a small number of judges from the same jurisdiction (federal) and a probable desire to have those controversies decided in a consistent manner by judges practiced in applying the law in question. The promotion of uniform decisions on federal law by federal judges who have developed an expertise follows so directly from grants of exclusive jurisdiction that a strong argument is presented that uniformity and expertise constitute an ever present congressional intent in grants of exclusive jurisdiction. Justice Brennan, writing in dissent on a related matter, took such a conclusion as given, stating that a grant of exclusive jurisdiction "evinces a legislative desire for the uniform determination of such claims by tribunals expert in the administration of federal laws and sensitive to the national concerns underlying them." Will v. Calvert Fire Ins. Co., 437 U.S. 655, 670 (1978) (Brennan, J., dissenting). The belief that grants of exclusive jurisdiction entail a congressional purpose of uniformity and expertise has received considerable acceptance. *See* note 127 *supra* and accompanying text.

conflict failed to recognize which forum's finality doctrines were potentially applicable—state or federal.[136] The full faith and credit statute[137] requires that a federal court accord a prior state court determination the same res judicata and collateral estoppel effect it would enjoy in the rendering state.[138] As a result, the conclusion that Congress intends state determinations to have no effect on exclusive federal jurisdiction necessarily indicates that the full faith and credit requirement should not operate in exclusive federal areas.[139]

CONCLUSION

The Supreme Court, when hearing an appropriate exclusive jurisdiction case wherein collateral estoppel is directly presented, should acknowledge that the only relevant consideration is congressional intent. The goals of uniformity and expertise underlying all grants of exclusive jurisdiction should be recognized, as well as the inconsistency inherent in granting finality to prior state court judgments. The Court should reject state judgment finality in areas of exclusive jurisdiction, except for qualified finality of nonlegal, historical facts under collateral estoppel.

Cushing O'Malley Condon II

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[136] *But see In re* McMillan, 579 F.2d 289, 293–94 (3d Cir. 1978) (Gibbons, J., concurring) (state's doctrine applicable unless congressional intent indicates otherwise); *In re* Transocean Tender Offer Sec. Litigation, 427 F. Supp. 1211, 1219, 1223 (N.D. Ill. 1977) (state's doctrine examined).

[137] 28 U.S.C. § 1738 (1976). The statute requires that state judgments be given "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." *Id.*

The statute, though related, is distinguishable from the constitutional provision which governs the effect of state court judgments in subsequent state court proceedings. U.S. CONST. art. IV, § 1.

[138] *See, e.g.*, American Sur. Co. v. Baldwin, 287 U.S. 156, 166–67 (1932); Mitchell v. National Broadcasting Co., 553 F.2d 265, 274 (2d Cir. 1977); American Mannex Corp. v. Rozands, 462 F.2d 688, 690 (5th Cir. 1972); 1B MOORE'S FEDERAL PRACTICE ¶ 0.406 [1], at 901–03 (3d ed. 1974). *But see, e.g.*, Vestal, *Res Judicata/Preclusion by Judgment: The Law Applied in Federal Courts*, 66 MICH. L. REV. 1723, 1726–33 (1968) (complications in diversity cases).

[139] *See In re* McMillan, 579 F.2d 289, 293–94 (3d Cir. 1978) (Gibbons, J., concurring).