1993

# The Anti-Injunction Act: Fending Off the New Attack On the Relitigation Exception

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## I. INTRODUCTION

The Anti-Injunction Act[1] generally prohibits a federal court from enjoining proceedings in state courts.[2] An exception to the Act, known as the relitigation exception, allows a federal court to issue an injunction to "protect or effectuate its judgments."[3] The exception is based on concerns about claim preclusion and collateral estoppel.[4]

Several courts of appeals have recently interpreted the Supreme Court's decision in *Chick Kam Choo v. Exxon Corp.*[5] to require a narrow interpretation of the relitigation exception.[6] They have held that the exception does not allow a federal court to protect the full claim preclusion effect of its judgment.[7] Ordinarily, the doctrine of claim preclusion can operate to bar claims that were actually litigated in a prior proceeding and claims that could have been but were not brought in that proceeding.[8] Despite this, several appellate courts have decided that the relitigation exception only allows them to enjoin claims which have actually been litigated or decided by the federal courts.[9] Thus, they have concluded that federal courts cannot enjoin claims that are barred by the doctrine of claim preclusion, but which were not actually litigated.[10] Only the Ninth Circuit has rejected the "actually litigated" test and held that federal courts can protect the

1. 28 U.S.C. § 2283 (1988).
2. *Id.* The Act provides that:
   > A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress or where necessary in aid of its jurisdiction or to protect or effectuate its judgments.
3. *Id.*
4. Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 147 (1988)(the relitigation exception "is founded in the well-recognized concepts of res judicata and collateral estoppel").
5. 486 U.S. 140 (1988).
6. *See* American Town Center v. Hall 83 Assoc., 912 F.2d 104 (6th Cir. 1990); Staffer v. Bouchard Transp. Co., Inc., 878 F.2d 638 (2d Cir. 1989); Texas Employer's Ins. Ass'n v. Jackson, 862 F.2d 491 (5th Cir. 1988).
7. American Town Center v. Hall 83 Assoc., 912 F.2d 104, 112 (6th Cir. 1990); Staffer v. Bouchard Transp. Co., Inc., 878 F.2d 638, 642 (2d Cir. 1989); Texas Employer's Ins. Ass'n v. Jackson, 862 F.2d 491, 498 (5th Cir. 1988).
8. *See, e.g.*, Federated Dep't Stores v. Moitie, 452 U.S. 394, 398 (1981)(under the doctrine of res judicata, "[a] final judgment on the merits of an action precludes the parties or their privies form relitigating issues that were or could have been raised in the action"); Cromwell v. County of Sac, 94 U.S. 351, 352 (1876)("In [an action upon the same claim], the judgment if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose").
9. *See supra* note 6.
10. *See supra* note 6.

full claim preclusion effect of their judgments.[11] In *Parsons Steel v. First Alabama Bank*,[12] the Supreme Court expressly left this question open.

The currently prevailing interpretation constitutes the latest attack on the relitigation exception. The first attack took place in 1941, when the Supreme Court eliminated the exception in *Toucey v. New York Life Ins. Co.*[13] Congress, however, restored the exception in 1948.[14] The new attack on the relitigation exception poses a number of significant problems in that the interpretation is not only contrary to Congressional intent, but also threatens to undermine the power of the federal courts. The interpretation risks displacing the federal courts from their role as the primary protectors of federal rights. It also threatens to undermine the integrity of federal judgments and the policies animating the federal law of res judicata. To correct this situation and resolve the conflict in the circuit courts, this article argues that the prevailing interpretation of the Act is mistaken and a federal court should be able to protect the full claim preclusion effect of its judgments by enjoining claims that were not actually litigated.

Section II of this article offers a brief history of the Anti-Injunction Act and the relitigation exception, while exploring the extent to which the federal courts have enjoined state court proceedings to enforce their judgments following the 1948 revision of the Act. In addition, it describes how most courts have read *Chick Kam Choo v. Exxon Corp.*,[15] to mean that federal courts cannot protect the full claim preclusion effect of their judgments and concludes that those courts have mistakenly interpreted that decision. Finally, Section III provides a comprehensive rationale for interpreting the Act which would allow federal courts to protect the full claim preclusion effect of their judgments.

## II. HISTORY OF THE RELITIGATION EXCEPTION

### A. Origins of the Act and the Relitigation Exception

For almost two hundred years, this country has had some form of Anti-Injunction Act. In 1793, Congress enacted the original version of the Anti-Injunction Act. The law provided that no "writ of injunction be granted [by any federal court] to stay proceedings in any court of a

11. *See* Western Sys., Inc. v. Ulloa, 958 F.2d 864, 870 (9th Cir. 1992).
12. 474 U.S. 518, 526 (1986)(leaving open the question whether the relitigation exception to the Anti-Injunction Act was "intended by Congress to allow the issuance of a federal court injunction in situations where the later state action involves claims that could have been litigated but where not actually litigated in the prior federal action").
13. 314 U.S. 118, 139-41 (1941).
14. 28 U.S.C. § 2283 (1988).
15. 486 U.S. 140 (1988).

state. . . ."[16] On its face, the law seemed to absolutely forbid federal courts from enjoining state proceedings. The courts, however, refused to strictly enforce the statute and recognized a number of exceptions to the statute.[17]

Early on, the courts acknowledged that Congress had created certain express or implied statutory exceptions to the Act.[18] Thus, courts could enjoin state court proceedings in certain cases dealing with (1) bankruptcy proceedings,[19] (2) removal of actions to federal court,[20] (3) limitations of shipowner liability,[21] (4) interpleader[22], and (5) the Frazier-Lemke Act.[23]

Beyond these statutory exceptions, the courts created three categories of judicial exceptions to the Act. One of these was known as the "in rem" exception. This exception covered cases in which both a federal court and a state court sought to adjudicate rights to property already in the custody of the federal courts. In such cases, the federal courts had power to enjoin state court proceedings.[24] In addition, federal courts created an exception to cover fraudulent judgment cases. This exception allowed federal courts to enjoin individuals from en-

16. Act of March 2, 1793, 1 Stat. 335.

17. *See* ERWIN CHEMERINSKY, FEDERAL JURISDICTION § 11.2, at 556 (1989)("The Supreme Court did not treat the prohibition against injunctions as an absolute bar to such relief. Quite the contrary, the court recognized a number of situations in which federal courts could stay state proceedings").

18. *See* CHARLES A. WRIGHT, LAW OF FEDERAL COURTS § 47, at 279 (1983) (noting that the Supreme Court recognized that certain statutes "authorized injunctions against state court proceedings and had to be regarded as implied statutory exceptions to the anti-injunction statute"); MARTIN H. REDISH, FEDERAL JURISDICTION: TENSIONS IN THE ALLOCATION OF JUDICIAL POWER 310 (1990)("One exception [to the Anti-Injunction Act] existed for cases arising under statutes which directly or indirectly authorized the stay of state proceedings").

19. *See* Toucey v. New York Life Ins. Co., 314 U.S. 118, 132-33 (1941).

20. French v. Hay, 22 U.S. (1 Wall) 250, 253 n.22 (1874).

21. Providence & N.Y.S.S. Co. v. Hill Mfg. Co., 109 U.S. 578, 599 (1883).

22. Dugas v. American Surety Co., 300 U.S. 414, 428 (1937).

23. Kalb v. Feurstein, 308 U.S. 433, 436 (1940). Agricultural Debt Relief (Frazier-Lemke) Act, 11 U.S.C. § 203(s), *repealed by* Act of Nov. 6, 1978, Pub. L. No. 95-598, Tit. IV, § 401(f), 1978 U.S.C.C.A.N. (92 Stat.) 2682. The Frazier-Lemke Act dealt with bankruptcy proceedings against farm property. *See id.*

24. *See, e.g.*, REDISH, *supra* note 18, at 310-311 ("Under the so-called "res" exception, a federal court could enjoin a subsequent state court proceeding that might interfere with the federal court's jurisdiction over a res"). Kline v. Burke Construction Co., 260 U.S. 226, 235 (1922)("The rule and authority of the [federal and state] courts are equal, but both courts cannot possess or control the same thing at the same time, and any attempt to do so would result in unseemly conflict"); Toucey v. New York Life Ins. Co, 314 U.S. 118, 135 (1941)("The role has become well settled, therefore, that the [Anti-Injunction Act] does not preclude the use of the injunction by a federal court to restrain state proceedings seeking to interfere with property in the custody of the court").

forcing judgments fraudulently obtained in the state courts.[25]

Finally, the courts developed what became known as the relitigation exception. This exception allowed a federal court to enjoin relitigation in a state court of matters already adjudicated by the federal court in order to protect its judgments or decrees.[26] This exception was so well established that by 1905, one leading treatise expressly stated that: "[A] federal court may grant an injunction against a proceeding in a state court when necessary to render effective its own decree."[27]

### B. *Toucey v. New York Life Ins. Co.*: The Demise of the Relitigation Exception

In *Toucey v. New York Life Ins. Co.*,[28] the Supreme Court rethought its approach to the Anti-Injunction Act and the relitigation exception. Toucey sued the New York Life Insurance Company in equity in a Missouri state court for payment of benefits and restoration of his policy on the ground that the company had fraudulently concealed disability provisions from him. The case was removed to federal court in Missouri. The federal court dismissed the case, finding that although the company had committed fraud, Toucey was not disabled.

Subsequently, Toucey assigned the policy to a person named Shay who brought an action at law against the company in Missouri state court. Shay alleged that Toucey's disability entitled him to a judgment. The defendant insurance company filed a "supplemental bill" in federal court seeking an injunction against state court proceedings to prevent Shay from readjudicating issues that had already been settled by the federal decree.

The court issued a preliminary injunction since the issue of Toucey's disability, which also formed the basis of Shay's suit, had already been resolved in the company's favor. The lower court held that federal courts have power to enjoin state court proceedings where an injunction is "necessary to preserve to litigants the fruits of, or to ef-

25. *See, e.g., Marshall v. Holmes*, 141 U.S. 589 (1891); *Simon v. Southern Ry.*, 236 U.S. 115 (1915).

26. *See, e.g.*, CHEMERINSKY, *supra* note 17, § 11.2, at 556-557 ("Nor did the Act prevent a federal court from enjoining state proceedings that threatened to undermine a previous federal judgment or harass successful litigants in federal court proceedings"). *See also* Julian v. Central Trust Co., 193 U.S. 93 (1904)(federal court could protect its decrees by enjoining state court proceedings). Riverdale Cotton Mills v. Alabama & Georgia Mfg. Co., 198 U.S. 188 (1905)(same).

27. 2 POMEROY'S EQUITABLE REMEDIES 1079 (1905). *See also* REDISH, *supra* note 18, at 311 ("Prior to the decision in *Toucey*, it had been thought by many that a federal court could enjoin a state proceeding that threatened to litigate an issue already decided by the federal court").

28. 314 U.S. 118 (1941).

fectuate the lawful decrees of the federal courts."[29]

The Supreme Court reversed.[30] The Court conceded that certain judicial exceptions had developed despite the unqualified language of the Act. Nevertheless, the Court eliminated the relitigation exception and held that the Act prohibits a federal court from enjoining state court proceedings on the ground that a claim had been previously adjudicated by the federal court. The Court recognized only two exceptions to the Anti-Injunction Act: (1) statutory exceptions and (2) the "in rem" exception.

In a strongly worded dissent, Justice Reed challenged the majority's conclusion. Reed analyzed the early relitigation cases and determined that they stood for the principle "that a court has the right to execute its decrees to avoid relitigation and forced reliance on res judicata."[31] He observed that "it may be accurately stated that for more than half a century there has been a widely accepted rule supporting the power of the federal courts to prevent relitigation."[32] In the wake of *Toucey*, the federal courts acknowledged that the relitigation exception was dead.[33]

### C. The 1948 Revision of the Act: The Revival of the Relitigation Exception

In 1948, Congress responded to the *Toucey* decision. Persuaded by the dissenting opinion of Justice Reed, Congress amended the Act so as to adopt the present form of the statute and allow a federal court to issue an injunction to protect and effectuate judgments.[34] The Reviser's Note to the 1948 revision states that Congress intended to overrule *Toucey* and restore the pre-*Toucey* law regarding the power of the federal courts to protect and effectuate their judgments.[35]

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29. *Id.* at 127.
30. *Id.* at 148.
31. *Id.* at 146.
32. Id. at 152-53. Reed reasoned that absent such an exception to the Act:
> a federal judgment entered perhaps after years of expense in money and energy and after the production of thousands of pages of evidence comes to nothing that is final. It is to be only the basis for a plea of res judicata which is to be examined by another court, unfamiliar with the record already made, to determine whether the issues were or were not settled by the former adjudication.

*Id.* at 144.
33. *See, e.g.*, Indemnity Ins. Co. v. Smoot, 152 F.2d 667, 671 (D.C. Cir. 1945).
34. 28 U.S.C. § 2283 (1988). "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, *or to protect or effectuate its judgments.*" (emphasis added).
35. The Reviser's Notes, H.R. Rep. No. 308, 80th Cong., 1st Sess., ft. A., at 181 (1947) *reprinted in* 1948 U.S.C.C.A.N. 1910, 1910. The Reviser's Note states in relevant part:

Thus, as one distinguished commentator explained shortly after the 1948 revision, the third exception regarding the protection or effectuation of judgments:

> [o]verrules the holding of the *Toucey* case and adopts the theory of the 'relitigation' cases, which *Toucey* had rejected. In other words where a federal court has adjudicated a matter, [the] court can protect or effectuate its judgment, whether in personam or in rem, by enjoining, at the instance of the prevailing party, relitigation of the matter.[36]

### D. Post-*Toucey*: Protecting Judgments by Enjoining Claims That Have Not Actually Been Litigated

Having set forth the general history of the Act and the relitigation exception, this section discusses the extent to which federal courts protected the claim preclusion effect of their judgments in the years following the 1948 revision to the Act, but prior to the Supreme Court's decision in *Chick Kam Choo v. Exxon Corp.*[37] In Section III.B. of this article, this history will form the basis of an argument that Congress, in the face of the almost uniform view that the federal courts have the power to protect the full claim preclusion effect of their judgments, has approved this interpretation of the Act through its silence.

In the years following the 1948 Revision, the federal courts clearly recognized that they could protect the full claim preclusion effect of their judgments by enjoining claims that had not actually been litigated. Three examples will suffice. The earliest case was *Lee v. Terminal Transport Co.*[38] The plaintiffs filed a lawsuit in federal district court and obtained a judgment against the defendant. The plaintiffs then asked the district court to amend the judgment to provide for interest. However, they withdrew their motion before the court could consider their request. The plaintiffs then brought another lawsuit in state court against the defendant in order to collect interest on the judgment. In response, the district court enjoined the state court ac-

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> The exceptions specifically include the words 'to protect or effectuate its judgments,' for lack of which the Supreme Court held that the Federal courts are without power to enjoin relitigation of cases and controversies fully adjudicated by such courts. (*See* Toucey v. New York Life. Co., 314 U.S. 118, 62 S.Ct. 139, 86 L.Ed. 100). A vigorous dissenting opinion (62 S.Ct. 148) notes that at the time of the 1911 revision of the judicial code, the power of the courts of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change).
>
> Therefore the revised section restores the basic law as generally understood and interpreted prior to the *Toucey* decision.

*Id.*

36. WILLIAM J. MOORE, COMMENTARY ON THE U.S. JUDICIAL CODE 410-11 (1949).
37. 486 U.S. 140 (1988).
38. 282 F.2d 805 (7th Cir. 1960).

tion.[39] The Seventh Circuit affirmed the injunction.[40] Emphasizing that the district court's judgment "terminated the case between plaintiffs and defendant,"[41] the court reasoned that

> an injunction was necessary to protect that judgment because otherwise the interest question which was incidental to the case litigated by plaintiffs in the federal courts would have been carved out of the federal court judgment by plaintiffs and submitted to the Illinois state court.

Thus, in *Lee*, the district court protected the full claim preclusion effect of its decree by enjoining plaintiff's claim for interest—a claim that could have been but which had not actually been litigated in federal court.[42]

The Fifth Circuit also protected the full claim preclusion effect of its judgment in the leading case of *Woods Exploration & Production Co. v. Aluminum Co. of America.*[43] In *Woods*, the plaintiffs filed state law claims arising out of the production of natural gas from a certain field in a state court.[44] Later, the plaintiffs filed a federal antitrust action in federal court against the same defendants but did not assert any state law claims.[45] The federal court rendered judgment for the defendants and enjoined the plaintiffs from further prosecution of the suit in state court.[46]

The Fifth Circuit affirmed the injunction.[47] The court explained that the relitigation exception to the Act "means simply that a federal court may enjoin a state proceeding which is precluded under the doctrine of *res judicata*."[48] The Fifth Circuit held that the "district court decision was res judicata of the state proceeding and thus justified the

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39. *Id.* at 806.
40. *Id.* at 807.
41. *Id.*
42. *Id.* The court also stated that "a failure to assert a right in a federal court when a case involving that right is adjudicated does not justify a litigant's assertion of that right in a state court." *Id.*
43. 438 F.2d 1286 (5th Cir. 1971).
44. *Id.* at 1289. The state court suit sought damages for: (1) state antitrust violations; (2) misrepresentation; (3) tortious interference with contract or advantageous business relationship and; (4) violation of Texas commerce purchaser's statute. *Id.*
45. *Id.* The lawsuits in both the state and federal court were based on the same acts of the defendants. *Id.*
46. *Id.* at 1292.
47. *Id.* at 1315-16.
48. *Id.* at 1312 (emphasis in original). The court observed:

> As one commentator has noted, this is a sensible solution to the problem of relitigation of federal decisions. It prevents multiple litigation of the same cause of action and it assures the winner in a federal court that he will not be deprived of the fruits of his victory by a later contrary state judgment which the Supreme Court may or may not decide to review.

*Id.* (quoting Note, *Federal Power to Enjoin State Court Proceedings*, 74 HARV. L. REV. 726, 734 (1961)).

issuance of an injunction."[49] As a result, in *Woods*, the district court protected the full claim preclusion effect of its judgment by enjoining the state law claims—claims that had not actually been litigated in the federal action.

The decision in *Chrysler Corp. v. E.L. Jones Dodge*,[50] provides another example of a court protecting the full claim preclusion effect of its judgment. In *Chrysler*, the plaintiff was injured in a car accident. He filed an action in federal court for personal injuries against Chrysler, the manufacturer of the car. After a trial, the jury returned a special verdict finding that the car was not defective "when it was sold by Chrysler Corporation."[51]

The plaintiff then brought a state court action against Jones, the retailer of the car. Jones joined Chrysler as an additional defendant. Chrysler sought to enjoin the state action on the ground that it was an attempt to litigate issues that had earlier been adjudicated by the federal court.[52] Finding that res judicata barred the state proceeding, the federal court enjoined the proceeding despite the fact that the state action involved negligence and breach of warranty claims which had not actually been litigated. "Refusal to afford federal injunctive relief in this situation would only be a cause for alarm that the battle was to be fought over again. We do not think the halls of justice should be used for this purpose."[53]

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49. 438 F.2d 1286, 1312 (5th Cir. 1971).
50. 421 F.Supp. 969 (W.D. Pa. 1976).
51. *Id.* at 970.
52. *Id.* at 972. In response, Jones argued that the federal court had actually decided only one issue—that the car was not defective at the time it came into the hands of the plaintiff. Jones argued that "no jury has answered the question of whether the car at anytime between the dates of its delivery to [the plaintiff] and the accident . . . became defective . . . and, if it did, whether any of the named defendants are legally responsible . . ." *Id.* at 971. Plaintiffs also asserted a number of claims that had not been raised in federal court including negligence and breach of warranty. *Id.*
53. *Id.* The Second Circuit considered the issue in *Browning Debenture Holders' Comm. v. Dasa Corp.*, 605 F.2d 35 (2d Cir. 1978). Plaintiffs brought an action in federal court which arose out of a proposal by defendant to reduce the conversion price of certain of its debentures. The district court dismissed the complaint. Plaintiffs then brought an action in a New York state court alleging the same claims that had been brought in federal court. In addition, plaintiffs alleged a new claim—a state law claim for breach of fiduciary duty. The defendants sought and obtained an order from the federal district court enjoining the state court proceeding. Browning Debenture Holders' Comm. v. Dasa Corp., 454 F. Supp. 88, 100 (S.D. N.Y. 1978).

The Second Circuit ruled that the district court had correctly enjoined the litigation of the state law claims since they were barred by res judicata. 605 F.2d 35, 38 (1978). The court of appeals rejected plaintiffs' argument that an injunction could not issue because the district court did not consider their claims based upon the applicable state law of fiduciary duty. The court explained: "res judicata is binding upon parties as to issues which might have been raised but were

In the years following the 1948 revision to the Act, there appears to

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not." *Id.* at 39. "Thus, even if the district court had not ruled explicitly on the state law fiduciary claims now sought to be raised in the state courts, litigation of such claims nevertheless would be barred by res judicata." *Id.*

The court also rejected the plaintiffs' contention that the district court had abused its discretion in granting the injunction because defendants could obtain sufficient relief by asserting res judicata as a defense in state court. The court reasoned:

> In a case such as this it would be a disservice not only to the defendants but also to the state judiciary to allow the entire record to be placed in the lap of the New York State courts to be argued over by lawyers and puzzled over by judges for years to come. While comity requires respect for the ability of the state courts to decide the issue of res judicata properly, it also requires sympathy for their calendar problems and for the task that would confront them were this litigation to be imposed upon them.

*Id.* at 40.

In *Harper Plastics v. Amoco Chemical Corp.*, 657 F.2d 939 (7th Cir. 1981), the Seventh Circuit again held that federal courts have power to protect the full claim preclusion effect of their judgments. In *Harper*, plaintiffs filed a federal antitrust lawsuit in the district court. Plaintiffs lost on summary judgment.

Plaintiffs then filed a complaint in an Illinois state court, based on the same conduct of the defendant as that alleged in the federal complaint. The state court complaint, however, asserted a new breach of contract claim. Defendants then returned to the federal court and obtained an injunction against the state court action. *Id.* at 942.

The question on appeal was whether an injunction could issue under the relitigation exception of the Act when the federal court had never actually decided whether defendant's conduct constituted a breach of contract. The Seventh Circuit explained that the "obvious import of [the relitigation exception] is that a federal court may enjoin state proceedings when res judicata would bar the same action in federal court." *Id.* at 947. Thus, although the breach of contract issue was never actually litigated in federal court, the court could enjoin litigation of the contract claim since it was barred by res judicata. The court reasoned:

> While [the Anti-Injunction Act] may be grounded in principles of comity and federalism . . . those principles do not supercede [sic] the doctrine of res judicata. The relitigation exception to [the Act] recognizes that much. Nor may those principles be invoked as a makeshift excuse for inadvertent pleading.

*Id.*

Similarly, federal courts protected the full claim preclusion effect of their judgments in *BGW Assoc., Inc. v. Valley Broadcasting Co.*, 532 F. Supp. 1115 (S.D. N.Y. 1982), and *In Re National Student Mktg. Litigation*, 655 F. Supp. 659 (D.D.C. 1987). In *BGW*, the court held that an injunction could issue to bar "any new issues of defenses to enforcement of [a] contract" from being raised in a state court proceeding because they are "barred by the doctrine of res judicata since such defenses and claims might and should have been raised in this district court's trial of the issues." 532 F.Supp. 115, 1117 (S.D. N.Y. 1982). In *National Student Marketing*, the court protected the full res judicata effect of its judgment to preserve "the full fruits and advantages" of the court's judgment. 655 F.Supp. at 664.

Finally, in *First Alabama Bank of Montgomery v. Parsons Steel*, 825 F.2d 1475 (11th Cir. 1987), the Eleventh Circuit held that federal courts could protect the full claim preclusion effect of their judgments. Plaintiffs had filed suit in Alabama state court against First Alabama alleging that First Alabama fraudulently

be only one case where a court refused to issue an injunction to protect the full claim preclusion effect of its judgment. In *Delta Airlines, Inc. v. McCoy Restaurants, Inc.*,[54] Delta sought to enjoin the defendant from prosecuting a state court action challenging the legality of certain lease agreements involving the airlines and the local aviation authority under Florida law. Previously, the federal court had ruled against McCoy, holding that the lease agreements did not violate federal antitrust laws. The airlines argued that res judicata applied to bar the state law claims and a federal injunction should be issued to protect the preclusive effect of the federal judgment. The district court denied the injunction.

The Eleventh Circuit affirmed the denial, holding that no prior federal judgment needed protection.[55] The court explained: "Under the relitigation exception to the Anti-Injunction Act . . . a federal court may enjoin a state proceeding only if necessary to protect or effectuate its own judgment."[56] The court reasoned that a federal court's judgment is "far more threatened if the state proceeding involves the same issues than if it involves only issues that could have been, but were not, raised."[57] The court concluded that an injunction was not warranted, explaining that "we fail to see how a state court ruling that the airline agreements violate state constitutional law could undermine the integrity of the federal court ruling that the agreements do not violate federal antitrust law."[58] Significantly, although the court refused to enjoin the state court action, the court appears to have conceded that the district courts had the power to enjoin state proceedings involving claims that could have been raised in the federal court.[59] The court emphasized, however, that merely hav-

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forced plaintiff Parson to allow Michael Orange to take control of plaintiff Parsons-Montgomery company. Later, plaintiffs filed suit in federal court against First Alabama alleging that the same acts of First Alabama that gave rise to the state law suit violated the federal Bank Holding Act.

The federal court rendered judgment in favor of the defendants. *Id.* at 1478. Defendants then sought to enjoin further prosecution of the state action on the basis of res judicata. The district court enjoined the state court action. *Id.* at 1479. The Eleventh Circuit affirmed the injunction holding that the claims raised in the state court proceedings "should have been raised as pendent claims in the [federal proceeding] and therefore were barred under res judicata principles." *Id.* at 1485. The court further explained that "Precedent binding on this circuit clearly holds that 'a federal court may enjoin a state court proceeding which is precluded under the doctrine of res judicata.' " *Id.* (quoting Woods Exploration & Producing Co. v. Aluminum Co. of America, 438 F.2d 1286, 1312 (5th Cir. 1971)).

54. 708 F.2d 582 (11th Cir. 1983).

55. *Id.* at 586-87.

56. *Id.* at 586.

57. *Id.* at 586.

58. *Id.*

59. *Id.* (stating that Woods Exploration & Producing Co. v. Aluminum Company of America, 438 F.2d 1286 (5th Cir. 1971) "perhaps stands for the proposition that

ing such power did not require federal courts to issue injunctions.[60]

The *Delta Airlines* decision is poorly reasoned. In particular, the court's suggestion that the integrity of a federal court judgment would not be undermined by a failure to protect its full claim preclusion effect cannot withstand scrutiny. As discussed in Section III.C. below, allowing a claim to proceed that should have been barred by the doctrine of claim preclusion undermines the integrity of federal judgments by destroying the res judicata rights that were established by the judgment.[61]

In any event, the other post-1948 cases clearly demonstrate that for at least 30 years the federal courts exercised the power to protect the full claim preclusion effect of their judgments by enjoining claims that have not actually been litigated. In addition, leading commentators of the time also proclaimed that federal courts had this power.[62]

### E. *Chick Kam Choo v. Exxon Corp.* and Its Progeny

While for many years the federal courts recognized that they had the power to enjoin state proceedings to protect the full claim preclusion effect of their judgments, the Supreme Court's decision in *Chick Kam Choo v. Exxon Corp.*,[63] has called this rule into question.

#### *1.* Chick Kam Choo v. Exxon Corp.

In *Chick Kam Choo*, Leong Chong, a resident of Singapore, was accidentally killed in Singapore while repairing a ship. His widow, Chick Kam Choo, also a resident of Singapore, filed suit in the United States District Court for the Southern District of Texas in Houston, Texas. She alleged claims under: (1) the Jones Act, (2) the Death on the High Seas Act, (3) general maritime law of the United States and

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district courts may in some circumstances enjoin state proceedings involving claims that could have been raised in the federal court").

60. 708 F.2d 582, 586 (11th Cir. 1983).

61. *See infra* text accompanying notes 200-05.

62. For example, Professors Wright, Miller and Cooper summarized the law on this point in 1988 as follows:

> [T]here are many cases in which injunctions have been issued to prevent relitigation of matters that have been finally decided by a federal court. If the state action is an attempt to relitigate a claim that has been litigated in federal court, claim preclusion—or res judicata, in the older terminology—applies and the injunction may bar the state suit entirely. Claim preclusion bars state litigation on a part of the claim that could have been, but was not, heard in the federal action, and it bars suit in a state court on a state law claim that, under the doctrine of pendent jurisdiction, could have been joined with a claim under federal law in the federal action."

CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 4226, at 541-545 (1988).

63. 486 U.S. 140 (1988).

(4) the Texas wrongful death act. The defendants moved for summary judgment on the first three claims, and also moved for dismissal under the doctrine of forum non conveniens.

The district court granted the motion for summary judgment on the Jones Act and Death on the High Seas claims.[64] The court also dismissed the general maritime law claim on the ground that the law of Singapore, not that of the United States, controlled.[65] Finally, the district court granted the motion to dismiss on forum non conveniens grounds.[66]

The plaintiff then filed a lawsuit in a Texas state court. She asserted the same claims in state court as she had in the federal court. In addition, she alleged a new claim based on Singapore law. The plaintiff later voluntarily dismissed the federal law claims. This left the claims based on Texas and Singapore law. On motion of the defendants, the district court enjoined the state court proceedings.[67] The Fifth Circuit affirmed the injunction under the relitigation exception to the Act in order to prevent relitigation of the forum non conveniens issue.[68] The Fifth Circuit reached this conclusion despite the fact that the Texas "open forum" law suggested that the forum non conveniens doctrine was not applicable to the case.[69]

On review, the Supreme Court held that the Act precluded the issuance of an injunction.[70] The court observed that the purpose of the Act is to forestall "the inevitable friction between the state and federal courts that ensues from the injunction of state judicial proceedings by a federal court."[71] Addressing the exceptions to the Act, the court recognized that they "are designed to insure the effectiveness and supremacy of federal law."[72] However, the Court explained that "the exceptions are narrow and are 'not [to] be enlarged by loose statutory construction.' "[73]

Turning to the relitigation exception, the Court observed that it was designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court. The court illustrated the exception with its decision in *Atlantic*

64. *Id.* at 143.
65. *Id.*
66. *Id.*
67. *Id.* at 144.
68. Exxon Corp. v. Chick Kam Choo, 817 F.2d 307, 312 (5th Cir. 1987).
69. *Id.* at 314. Arguably, the Texas "open forum" law guaranteed foreign plaintiffs the right to bring personal injury actions in Texas without being subject to forum non conveniens dismissal. *See* Alfaro v. Dow Chem., 751 S.W.2d 208, 210-11 (Tex. 1988)(open forum law bars application of the doctrine of forum non conveniens to personal injury actions brought by foreign plaintiffs).
70. 486 U.S. 140 (1988).
71. *Id.* at 146.
72. *Id.*
73. *Id.*

*Coast Line Railroad Co. v. Locomotive Engineers.*[74] The court explained:

> Thus, as *Atlantic Coast Line* makes clear, an *essential prerequisite for applying the relitigation exception is that the claims or issues which the federal judgment insulates from litigation in state proceedings actually have been decided by the federal court.* Moreover, *Atlantic Coast Line* illustrates that this prerequisite is strict and narrow.[75]

Applying these principles, the Court observed that the district court did not resolve the merits of the Singapore claim. The only issue that the district court actually decided was that the plaintiff's claims should be dismissed under the federal forum non conveniens doctrine. The Court reasoned that because the Texas courts "might not apply the same, or indeed, any forum non conveniens analysis to the case," the district court did not actually decide whether the Texas courts were an appropriate forum under Texas law for plaintiff's claims under Singapore law.[76] Thus, the district court could not enjoin the state court and prevent consideration of whether Texas court were an appropriate forum.

In contrast, the Supreme Court held that the plaintiff's claim under the Texas wrongful death act had actually been litigated in the prior federal proceeding when the district court had ruled that Singapore law governed the case.[77] Thus, the district court could enjoin plaintiff's Texas law claim under the relitigation exception to the Act.

### 2. *Lower Court Interpretation of* Chick Kam Choo*: The New Attack on the Relitigation Exception*

In the years following *Chick Kam Choo*, several circuit courts have interpreted that decision and concluded that the relitigation exception only applies to claims or issues that have actually been litigated or decided by the federal courts.[78] Thus, three circuits have held that federal courts have no power to enjoin claims that were not actually litigated, but that are barred by claim preclusion.[79] Only the Ninth Circuit has rejected the "actually litigated" test and held that courts can protect the full claim preclusion effect of their judgments.[80] This

74. 398 U.S. 281 (1970).
75. 486 U.S. 140, 148 (emphasis added).
76. *Id.* at 145.
77. *Id.* at 150-51.
78. *See* In re G.S.F. Corp., 938 F.2d 1467, 1478 (1st Cir. 1991); Nationwide Mut. Ins. Co. v. Burke, 897 F.2d 734, 737-38 (4th Cir. 1990); American Town Ctr. v. Hall 83 Associates, 912 F.2d 104, 112 n.2 (6th Cir. 1990); Staffer v. Bouchard Transp. Co., 878 F.2d 638, 642-44 (2nd Cir. 1989); Texas Employers' Ins. Ass'n v. Jackson, 862 F.2d 491, 501 (5th Cir. 1988).
79. *See* American Town Ctr. v. Hall 83 Assoc., 912 F.2d 104 (6th Cir. 1990); Staffer v. Bouchard Transp. Co., Inc., 878 F.2d 638 (2d. Cir. 1989); Texas Employer's Ins. Ass'n v. Jackson, 862 F.2d 491 (5th Cir. 1988).
80. Western Systems, Inc. v. Ulloa, 958 F.2d 864 (9th Cir. 1992).

section discusses the four cases which have considered the question whether federal courts have the authority to protect the full claim preclusion effect of their judgments.

*a. Majority View Among the Circuits*

The circuits that have held that federal courts have no power to protect the full claim preclusion effect of their judgments have reached their conclusion without carefully reasoned analysis. They simply base their conclusion on the language in *Chick Kam Choo* which states that "an essential prerequisite for applying the relitigation exception is that the claims or issues" which a party is seeking to enjoin under the Act "actually have been decided by the federal court."[81] For example, in *Texas Employer's Insurance Ass'n v. Jackson*,[82] plaintiff Jackson filed a claim for permanent disability under the Longshore and Harbor Workers Compensation Act (LHWCA) against his employer's insurer, the Texas Employer's Insurance Association (TEIA).[83] An administrative law judge (ALJ) awarded Jackson disability benefits.

Jackson then sued TEIA in a Texas state court, alleging state law claims of bad faith and emotional distress arising out of TEIA's earlier suspension of Jackson's LHWCA compensation benefits. TEIA sought and obtained an injunction against the state court proceeding.[84]

The Fifth Circuit reversed.[85] In reaching its conclusion, the court emphasized the language in *Chick Kam Choo* which states that "an essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court."[86] Applying this rule, the court rejected TEIA's argument that the relitigation exception could be invoked because Jackson's state law claims were barred by the doctrine of claim preclusion. The court noted that the claims for bad faith and emotional distress were not resolved by the ALJ. Thus, the court had no power to enjoin the state law claims.[87]

The Second Circuit addressed the issue in *Staffer v. Bouchard*

81. 486 U.S. 140, 148 (1988).
82. 862 F.2d 491 (5th Cir. 1988).
83. *Id.* at 494. Prior to the lawsuit, TEIA paid some benefits to Jackson, but later suspended payments.
84. Texas Employer's Ins. Ass'n v. Jackson, 618 F. Supp. 1316, 1323-24 (E.D. Tex. 1985).
85. 862 F.2d 49, 500-01.
86. *Id.* at 500-01 (quoting Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 148).
87. The court explained that "TEIA's argument . . . appears to be inconsistent with *Chick Kam Choo's* admonishment that the relitigation exception 'is strict and narrow' so that only 'claims or issues which actually . . . have been decided' in the prior proceeding as reflected by what the prior 'order *actually said*' are protect-

*Transportation Co.*[88] Plaintiff Staffer filed a lawsuit in federal court against Bouchard to recover for personal injuries. Bouchard filed a third party complaint against Staten Island Hospital and a Doctor Suarez, alleging that medical malpractice had aggravated Staffer's injuries. With respect to Staffer's claim against Bouchard, the jury returned a judgment in favor of Staffer.[89] The jury returned a verdict against Suarez and in favor of the hospital in the third party action.[90]

Staffer then filed a malpractice action against the hospital and Suarez in a New York state court. The hospital and Suarez sought to enjoin the state court action under the relitigation exception on the ground of res judicata. The district court denied the motion.[91]

The Second Circuit affirmed the denial of an injunction. Quoting *Chick Kam Choo*, the court explained that for the relitigation exception to be properly exercised, it is "an essential prerequisite . . . that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court."[92] Since Staffer did not assert his malpractice claims against the hospital and Suarez in the federal proceeding, those claims could not be enjoined—even if they were barred under the doctrine of claim preclusion—because they were "not raised in or decided by the federal court."[93] Thus, the Second Circuit held that federal courts have no power to protect the full claim preclusion effect of their judgments.

Finally, the Sixth Circuit dealt with the question in *American Town Center v. Hall 83 Associates*.[94] Plaintiff American Town Center Association (ATCA) filed a three count complaint against Hall seeking specific performance of an agreement to sell real property.[95] The

able [under the relitigation exception]." *Id.* at 501 (quoting from Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 148 (1988)).

88. 878 F.2d 638 (2d Cir. 1989).

89. *Id.* at 641.

90. *Id.*

91. Staffer v. Bouchard Transp. Co., 697 F. Supp. 765, 767 (S.D.N.Y. 1988).

92. 878 F.2d 638, 642 (quoting Chick Kam Choo, 486 U.S. 140, 148 (1988)).

93. The court explained that:

> The language and facts of *Chick Kam Choo* make clear that the part of the relitigation exception to the Anti-Injunction Act that is based on concerns of res judicata is more narrowly tailored than the doctrine of res judicata. The relitigation exception does not protect the full res judicata effect of a federal court's judgment; rather, it protects only matters that actually have been decided by a federal court. . . . [U]ndoubtedly, res judicata can bar claims that might and should have been raised but were not, but, for Anti-Injunction Act purposes, only 'relitigation' can be enjoined.

*Id.* at 643.

94. 912 F.2d 104 (6th Cir. 1990).

95. *Id.* at 107. The complaint alleged that: (1) Hall breached a written contract; (2) Hall breached its oral contract; and (3) that Hall committed fraud and misrepresentation.

district court issued a judgment in favor of Hall on two of the claims.[96]

ATCA then filed a lawsuit arising out of the same transaction to sell real property in a Michigan state court against several partnerships managed by Hall.[97] Hall sought to enjoin the state court action on the theory that ATCA was seeking to relitigate claims. The district court refused to grant the injunction.[98]

The Sixth Circuit affirmed the denial of an injunction.[99] The court explained that under *Chick Kam Choo* the relitigation exception applied only to claims that "actually have been decided by the federal court."[100] Finding that the bad faith and estoppel claims in the state court action had not been litigated in the federal action, the court held that the district court's "refusal to enjoin the Michigan proceeding was proper."[101]

The decisions in *Texas Employer's*, *Staffer* and *American Town Center* are not persuasive because they fail to employ the traditional methods of statutory interpretation in construing the Act. Instead, they blindly rely on ambiguous language in *Chick Kam Choo* to support the proposition that federal courts have no power to protect the full claim preclusion effect of their judgments.

### *b. The Misinterpretation of* Chick Kam Choo

*Chick Kam Choo* should not be read to mean that federal courts can protect only *some* of the claim preclusion effect of their judgments. To be sure, the *Chick Kam Choo* court said that "an essential prerequisite for applying the relitigation exception is that the *claims* or issues which the federal injunction insulates from litigation . . . actually have been decided."[102] This language, however, is not dispositive. To the extent that the reference to "claims" suggests that federal courts can protect only some of the claim preclusion effect of their judgments—claims that have actually been litigated—the language must be regarded as unconsidered dicta.[103]

First, the *Chick Kam Choo* court did not directly address the question of whether a federal court can enjoin claims that were not actually litigated but which are barred by the doctrine of claim preclusion.

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96. *Id.* at 107.

97. *Id.* ATCA alleged several claims that had not been raised in the federal action, including claims based on the doctrines of promissory estoppel and the duty to act in good faith. The defendants moved for summary judgment on the ground of res judicata. The state court denied the motion. *Id.*

98. *Id.* at 107-08.

99. *Id.* at 111.

100. *Id.* at 112 n.2 (quoting Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 148 (1988)).

101. *Id.* at 112 n.2.

102. Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 148 (1988)(emphasis added).

103. *See* Western Sys. Inc. v. Ulloa, 958 F.2d 864, 869 (9th Cir. 1992); 17 WRIGHT, ET AL., *supra* note 62, § 4226, at 85 n.12.1 (the *Chick Kam Choo* opinion is ambiguous).

The defendants did not argue that the state court action should be enjoined on the basis of claim preclusion on the theory that plaintiffs could have raised, in the federal action, the issue of whether under Texas law the Texas courts were an appropriate forum. Instead, the defendants argued that the state court action should be enjoined because the question of whether Houston was a convenient forum had already been decided by the federal court and a Texas state court could not redetermine the issue.[104] The court simply rejected that argument.

Beyond this, *Chick Kam Choo* should not be read to limit a Federal Court's capacity to issue an injunction in order to preserve its judgements for another reason. "A dismissal on forum non conveniens grounds does not establish claim preclusion."[105] At most, such a dismissal can work an issue preclusion.[106] *Chick Kam Choo* involved primarily a dismissal on grounds of forum non conveniens. Thus, the most plausible reading of *Chick Kam Choo* is that the court was setting forth a requirement for enjoining state actions on the basis of issue preclusion and not claim preclusion. In the context of issue preclusion, *Chick Kam Choo*'s language to the effect that actual litigation of an issue is an essential prerequisite for the application of the relitigation exception makes perfect sense. It is, of course, well established that an issue has no collateral estoppel effect if it has not been actually litigated.[107] For these reasons, *Chick Kam Choo* does not answer the question whether federal courts can protect the full claim preclusion effect of their judgments.

Nor does *Atlantic Coastline Railroad Co. v. Locomotive Engineers*,[108] the case upon which the *Chick Kam Choo* court relied, require a different conclusion. In *Atlantic Coastline*, a union picketed a railroad. The railroad filed a complaint asserting three federal claims and sought to enjoin the picketing. The district court refused the railroad's request and issued an order stating that the union was "free to engage in self-help."[109] The railroad then went to state court and obtained an injunction against the picketing based on state law.[110] The union sought to enjoin the railroad's state court action. The federal district court held that its determination was based on the union's fed-

104. Exxon Corp. v. Chick Kam Choo, 817 F.2d 307, 310 (5th Cir. 1887).

105. 18 WRIGHT, ET AL., *supra* note 62 § 4436, at 346.

106. *See id.* (dismissal on forum non conveniens grounds can work an issue preclusion "if the issue actually remains the same").

107. *See, e.g.*, FRIEDENTHAL, KANE & MILLER, CIVIL PROCEDURE 14.11, at 671-72 (1985)("In addition, the person asserting estoppel must show that the issue to be precluded actually was litigated and decided in the prior action and that it was necessary to the court's judgment").

108. 398 U.S. 281 (1970).

109. *Id.* at 289.

110. *Id.* at 283.

erally protected right to picket, and the railroad was precluded from obtaining an injunction under state law.[111] Thus, the federal district court enjoined the state court proceeding to protect its judgment.

The Supreme Court reversed the decision of the district court, holding that the district court's order did not determine the issue of whether federal law pre-empted an injunction based on state law.[112] The Court emphasized that the pre-emption issue had not actually been presented or argued to the district court and the language of the order did not clearly demonstrate that the issue had been decided. Thus, the injunction was not necessary to protect the judgment.

*Atlantic Coastline*, however, does not answer the question of whether a federal court can protect the full claim preclusion effect of its judgment. As in *Chick Kam Choo*, the Court did not address the question whether the state action should be enjoined on the ground that the state law claims were barred by the doctrine of claim preclusion. Thus, *Atlantic Coastline* does not answer the question whether federal courts can enjoin claims that were not actually litigated but which are barred by the doctrine of claim preclusion.

In sum, neither *Chick Kam Choo* nor *Atlantic Coastline*, answer the question whether federal courts can protect the full claim preclusion effect of their judgments. We must look elsewhere in order to properly interpret the Act.

### *c. The View of the Ninth Circuit*

Only the Ninth Circuit has rejected the actual litigation test and ruled that federal courts can protect the full claim preclusion effect of their judgments. In *Western Systems, Inc., v. Ulloa*,[113] Western Systems and the Ulloas filed suits against each other in a federal court in Guam. The suits involved the validity of an agreement giving the Ulloas a right to ownership of stock in Western Systems. Western Systems won both lawsuits.[114] Later, the Ulloas filed two additional suits in Guam's territorial court, alleging claims which were closely related to the original 1972 federal lawsuit, including a claim that the Ulloas had the right to repurchase certain stock. Western Systems sought and obtained a federal court injunction against the territorial court proceedings.[115]

The question on appeal was whether the federal court could issue an injunction to bar the claim to repurchase stock—a claim which had not actually been litigated in federal court, but was barred by the doc-

111. *Id.* at 284.
112. *Id.* at 291-93.
113. 958 F.2d 864 (9th Cir. 1992).
114. After substantial effort by Western Systems to collect on its judgment, the case was settled in 1989.
115. *Id.* at 866.

trine of claim preclusion. The Ninth Circuit affirmed the injunction.[116] The court first noted that "[f]or years the prevailing rule in the Ninth Circuit and elsewhere has been that [the Anti-Injunction Act] does not prohibit injunctions against any claim that would be barred by res judicata."[117] The Ninth Circuit acknowledged that this doctrine had been thrown into doubt by the Supreme Court's decision in *Chick Kam Choo v. Exxon Corp.* and those circuits that had concluded that the relitigation exception was now limited to issues which had actually been litigated by the federal court. Despite this, the court rejected that narrow interpretation of the Act. The court observed that the *Chick Kam Choo* Court had stated that the relitigation exception is "founded in the well recognized concepts of *res judicata* and collateral estoppel."[118] The court reasoned that to read *Chick Kam Choo* as had other circuits "would in essence be to read res judicata entirely out of [the Anti-Injunction Act]."[119] The court understood that "any claim which was 'actually litigated' by the parties in a prior proceeding will be barred by collateral estoppel ('issue preclusion') without any need to rely on res judicata ('claim preclusion')."[120] The court rejected that result as contrary to the purposes of the Act. Thus, the court held that the relitigation exception allowed the court to enjoin the Guam litigation on the ground that it was barred by res judicata.[121]

The decision in *Western Systems* represents a significant advance over the reasoning in the other circuits. Unlike the other circuits, *Western Systems* does not rely uncritically on the troublesome language in *Chick Kam Choo* which suggests that actual litigation is an essential prerequisite for enjoining a claim under the Act. Instead, the court analyzed the issue on the merits and correctly concluded that federal suits have the power to protect the full claim preclusion effect of their judgments. The court's decision, however, was not as well reasoned as it might have been. In particular, the court did not thoroughly consider the traditional methods of statutory construction and did not consider the pre-*Toucey* law in reaching its conclusion.

## III. THE PROPER INTERPRETATION OF THE ACT

While the circuit courts are currently split concerning the question of whether the federal courts have power to protect the full claim preclusion effect of their judgments, this section attempts to resolve the conflict. The better interpretation of the Anti-injuncion Act allows

116. *Id.*
117. *Id.* at 869.
118. *Id.* at 870 (quoting Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 147 (1988)).
119. *Id.*
120. *Id.*
121. *Id.* at 871.

federal courts to protect the full claim preclusion effect of their judgments by enjoining claims that have not actually been litigated as the Ninth Circuit and the majority of courts prior to *Chick Kam Choo* recognized. This section goes beyond those decisions to provide a comprehensive rationale for that interpretation.

First, this section contends that Congress intended to reestablish pre-*Toucey* understandings in the 1948 revision to the Act, and that the pre-*Toucey* cases support the proposition that federal courts can protect their judgments by enjoining claims that have not actually been litigated. Second, this section explains that Congress, through its silence and inaction, has ratified the view among the federal courts prior to *Chick Kam Choo* that courts can protect the full claim preclusion effect of their judgments. Finally, the section argues that it is necessary to interpret the Act to allow protection of the full claim preclusion effect of the judgment in order to accomplish other important policies.

### A. Congressional Intent: Restoring the Pre-*Toucey* Law

One of the shortcomings of *Western Systems, Inc. v. Ulloa*[122] and the pre-*Chick Kam Choo* cases, is that they fail to thoroughly consider and employ the standard methods of statutory construction in attempting to answer the question of whether the Act allows federal courts to protect the full claim preclusion effect of their judgments. The argument in this and the following sections seeks to remedy this deficiency. In this regard, it is axiomatic that courts are to construe legislation so as to effectuate legislative intent.[123]

As discussed in Part II.C. above, the available legislative material, particularly, the Reviser's Note to the 1948 Revision of the Act, clearly reveals the relevant legislative intent. The Reviser's Note states that by enacting the relitigation exception, Congress intended to restore pre-*Toucey* law regarding the power of the courts to protect and effectuate their judgments.[124] Thus, to properly interpret the Act, we must look to see how pre-*Toucey* cases resolved the issue of whether claims had to be actually litigated in order to invoke the relitigation exception.[125] The best interpretation of the pre-*Toucey* cases supports the proposition that the federal courts can protect the full claim preclu-

122. 958 F.2d 864 (9th Cir. 1992).

123. Philbrook v. Glodgett, 421 U.S. 707, 713 (1975)("Our objective in a case such as this is to ascertain the congressional intent and give effect to the legislative will.") Ray v. Sec. Mut. Fin. Corp. (In re Arnett), 731 F.2d 358, 361 (legislative intent may be ascertained from the clear language of the statute itself or from available legislative materials which clearly reveal this intent").

124. *See supra* note 37.

125. *See* T. Smith & Son, Inc. v. Williams, 275 F.2d 397, 404 (5th Cir. 1960)(examining pre-*Toucey* case law in order to interpret the Anti-Injunction Act).

sion effect of their judgments by enjoining claims that have not actually been litigated.

At the outset, the pre-*Toucey* cases show that it was well understood that federal courts could issue injunctions to protect the claim preclusion or res judicata effect of a judgment. For example, in *Supreme Tribe of Ben Hur v. Cauble*,[126] the plaintiff brought a class action lawsuit against the Supreme Tribe of Ben Hur to enjoin what was alleged to be an unlawful use of trust funds. The court entered a final decree dismissing the plaintiff's complaint.

Subsequently, certain persons who were members of the original class, but who had not been named plaintiffs in the earlier federal action, filed suit in an Indiana state court against the Supreme Tribe and sought to assert the same claims that were resolved in the earlier federal action. In response, the Supreme Tribe filed a bill in the federal district court to enjoin the state court proceedings. The district court refused to enjoin the state court action on the ground that "the decree in (the federal class action) was and is not *res adjudicata* [sic] as to (the state court plaintiffs)."[127]

The Supreme Court reversed, holding that the district court could enjoin the state court action inasmuch as the plaintiffs were adequately represented in the class action and, therefore, "their rights were concluded by original the decree."[128] Because the federal judgment was res judicata as to the state court plaintiffs, the Supreme Court held that the state court proceedings could be enjoined to "protect the rights secured to all in the class by the decree rendered."[129]

*Supreme Tribe* clearly supports the proposition that, before *Toucey*, it was recognized that federal courts could enjoin state court proceedings to protect the res judicata or claim preclusion effect of their judgments.[130] *Supreme Tribe*, however, involved claims that had actually been litigated in the earlier federal proceeding. There are, however, other pre-*Toucey* cases in which courts protected their decrees by enjoining claims that had not actually been litigated. Accordingly, these cases support the proposition that a federal court can

126. 255 U.S. 356 (1921).

127. *Id.* at 362.

128. *Id.* at 366.

129. *Id.* at 367.

130. *See* PAUL M. BATOR, ET AL., HART & WECHLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 1322 (3d ed. 1988)(recognizing that Supreme Tribe of Ben Hur v. Cauble, 255 U.S. 356 (1921), supported the view "that the federal courts had authority to enjoin state relitigation of issues settled in a prior federal action"); Note, *Federal Power To Enjoin State Court Proceedings*, *supra* note 48, at 732 (After Supreme Tribe, "it was thought that despite the anti-injunction statute the federal courts would enjoin state proceedings attempting to relitigate questions already determined by a decision in federal court").

protect the full claim preclusion effect of a judgment and enjoin claims that have not actually been litigated.

For example, in *United States v. Reading Co.*,[131] preferred stockholders filed a suit in federal court to enforce the dividend rates set forth in a stockholder agreement. The common stockholders of the company had denied the right of the preferred stockholders to participate equally in the profits of the company. The court held that the stockholder agreement provided that the preferred stockholders were entitled to "dividends at the rate of, but not exceeding, 4 percent per annum, in each and every fiscal year."[132]

Later, the preferred shareholders filed a suit in state court to obtain additional stock dividends.[133] In response, the common stockholders sought to enjoin the state court action. The district court enjoined the state court action explaining that:

> To our mind, this matter is *res adjudicata* as between the parties to the original proceeding, and if allowed to proceed would involve a reexamination and review by the state court of the decree of this court entered in pursuance of the directions of the Supreme Court of the United States.[134]

Thus, the court protected the full claim preclusion effect of the judgment by enjoining the preferred shareholders from litigating their claims to additional rights to dividends—claims that had not actually been litigated in the federal action.

The Fifth Circuit's decision in *Wilson v. Alexander*[135] also is instructive. Wilson filed an action in federal court alleging that he was entitled to foreclose on a deed to real estate securing certain bonds.[136] Pursuant to stipulation by the parties, the court entered a final decree which provided that Wilson owned the bonds and was entitled to foreclose on the deed. In addition, the decree declared that the defendants "and all persons claiming under them, be and they are hereby fore-

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131. 300 F. 477 (E.D. Pa. 1924).

132. *Id.* at 478 (quoting from Continental Ins. Co. v. Prosser, 259 U.S. 156, 177 (1922)). The court further held that:

> if after providing for the payment of full dividends for any fiscal year on the first preferred stock, there shall remain any surplus undivided net profits, the board out of such surplus may declare and pay dividends for such year, first to the second preferred stockholders, and thereafter to the other stockholders of the company.

*Id.*

133. They sought a decree that, after the payment to all shareholders of the Reading Company of 4 percent per annum dividends, the preferred stockholders should be "entitled to share equally pro rata in any other or further dividends which may be declared or paid on any stock of the company in and for each year. . . ." *Id.* at 479.

134. *Id.* at 479 (emphasis added).

135. 276 F. 875 (5th Cir. 1921).

136. By written stipulation, the parties agreed that a final decree should be entered on Wilson's claim "for all the relief therein prayed, the allegations of said [counterclaim] being taken as true. . . ." *Id.* at 877.

closed of all right, title, claim and interest in or to the said real estate."[137]

Later, Alexander filed suit against Wilson in Texas state court, alleging that the same bonds and deed were void under Texas law. Alexander also alleged that prior to the entry of the earlier federal judgment he had entered into a side agreement with Wilson by which Alexander held an equitable interest in the real estate and Wilson held the property as a trustee for Alexander. Wilson filed a bill in federal court to enjoin Alexander's state court suit. The district court enjoined Alexander from prosecuting the state court suit.[138]

The Fifth Circuit affirmed the district court's decision.[139] In so doing, the court expressly rejected Alexander's argument that an injunction could not be issued because the claims that the bonds and deed were void and that Wilson was holding the property as trustee for Alexander had not been litigated in the federal proceeding. The court held that a decision by the state court in favor of Alexander would change the effect of the federal decree, which was to declare that Wilson had absolute title to the real estate.[140] Thus, the federal court protected the full claim preclusion effect of its judgment by refusing to allow Alexander to litigate his claims that the bonds and deed were void and that there was a collateral agreement by which Alexander held an equitable interest in the property—claims which could have been but which were not actually litigated in the federal action.

So far, this article argues that in cases like *Reading Co.* and *Wilson* the pre-*Toucey* courts protected the full claim preclusion effect of their judgments. Thus, the article rejects the proposition that pre-*Toucey* courts applied the relitigation exception only to claims that had actually been litigated. For an additional reason, *Wilson* supports the proposition that before *Toucey*, it was understood that federal courts had power to protect their decrees by issuing injunctions to bar claims that had not been actually litigated. In that case, Wilson's claims had not been actually litigated inasmuch as they had only been

137. *Id.*

138. *Id.* at 879.

139. *Id.* at 882.

140. The court stated: "If this [federal] decree was incorrect, and if at the time Alexander had a right to redeem from foreclosure, and if Wilson was to hold only as mortgagee in possession, it should have been so declared in the decree. Certainly, it cannot be attempted in proceedings in another court to in graft a trust, claimed to exist at the time, on the decree, which expressly debars Alexander, the party claiming as the beneficiary, of all right, title interest, or claim." *Id.* at 881-82. The court also rejected Alexander's argument that an injunction could not issue because Wilson could assert the defense of res judicata in the state court. The court explained: "The right to plead the decree in federal court in defense to Alexander's suit in the state court is no reason why a resort should not be had to the equitable jurisdiction of the federal court." *Id.* at 881.

resolved by stipulation.[141] Nevertheless, the court had power to issue an injunction to protect its decree even though the claims encompassed by that decree had not actually been litigated between the parties.[142]

This article's contention is likewise supported by the pre-*Toucey*

141. *See* FRIEDENTHAL, KANE & MILLER, *supra* note 106, § 14.11 at 672 ("[I]t generally is agreed that . . . stipulations made prior to trial should not be a basis for according issues collateral estoppel treatment since in none of these situations were the issues actually tried, that is, subject to an adversary presentation and consequent judgment. By requiring that the issues be litigated, not stipulated or conceded, the courts foster the ability of parties to agree on certain issues before trial without concern that an agreement not to contest a particular issue will have an adverse impact in ways not foreseen at the time. For these reasons, consent judgments or judgments entered as a result of a settlement typically cannot be used as the basis for issue preclusions"); Sekaquaptewa v. McDonald, 575 F.2d 239, 247 (9th Cir. 1978); Environmental Defense Fund, Inc. v. Alexander, 467 F.Supp. 885, 904-5 (N.D. Miss. 1979), aff'd on other grounds, 614 F.2d 474 (5th Cir. 1980) cert. denied, 449 U.S. 919 (1980).

142. As to the last point, to the same effect is the Supreme Court's decision in *Prout v. Starr*, 188 U.S. 537 (1903). Plaintiffs filed a lawsuit in Nebraska federal court against certain railroad companies in which plaintiffs held shareholder interests and certain Nebraska state officials, including the attorney general of Nebraska. The lawsuit challenged the constitutionality of a Nebraska statute which set maximum rates to be charged for the transportation of freights.

Subsequently, stockholders in several other railroad companies filed complaints in the same federal district court against other railroad companies and the same State of Nebraska officials that were defendants in the original case, in which the "same facts and circumstances were alleged and the same relief was prayed for as in the bill in the present case." *Id.* at 540. Those cases were tried and final decrees were rendered against the defendants. *Id.* The Supreme Court affirmed those judgments. *Id.*

No testimony was ever taken in the first action. However, the parties had entered into a stipulation while the other cases were pending "that the proofs taken in them should be accepted with the same force and effect as if taken in this case" and that "a decree should be entered conformable to those entered by the Supreme Court in the other three cases." *Id.*

Subsequently, the attorney general of Nebraska brought a state court action seeking to enforce the Act against the original defendant railroads. The original plaintiffs then sought an injunction against the state court action. The federal district court issued the injunction. *Id.* at 541.

The Supreme Court affirmed the injunction. *Id.* at 544-45. The Supreme Court viewed the stipulation as a federal decree, and enjoined the state suit in order to protect that decree. The court explained, "The jurisdiction of the circuit court could not be defeated or impaired by the institution by one of the parties, of subsequent proceedings, whether civil or criminal, involving the same legal questions in the state court." *Id.* Thus, in *Prout*, the Supreme Court enjoined claims that had been resolved by stipulation but not actually litigated.

Similarly, the Eighth Circuit enjoined a claim that had been resolved by stipulation but had not actually been litigated in *Mississippi Valley Trust Co. v. Franz.* 51 F.2d 1047 (8th Cir. 1931). In *Mississippi Valley*, Mississippi Valley Trust Com-

case of *Gunter v. Atlantic Coastline Railroad Co.*[143] In *Gunter*, a federal court enjoined a state tax on the ground that it was unconstitutional.[144] Subsequently, the state brought an action in state court seeking to collect the state tax that the federal court had previously held was unconstitutional. The federal court enjoined the state court action.[145]

On review, the Supreme Court affirmed the injunction.[146] In so

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pany was appointed administrator for the heirs of Franz. As such, Mississippi Valley represented the heirs of Franz in extensive federal court litigation.

Subsequently, Franz filed an action in Missouri probate court alleging that the appointment of Mississippi Valley had been null and void.

Mississippi Valley sought to enjoin Franz from prosecuting the state court action. The district court granted the injunction. *Id.* at 1048. On review, the Eighth Circuit noted (1) that Franz failed to raise a question of the validity of the appointment of Mississippi Valley as administrator in the federal litigation and (2) that Franz had admitted the validity of the appointment in that litigation. The court affirmed the injunction explaining that

> It might throw some doubt upon the entire course and the results of this litigation if any question could now be tolerated in the federal courts and for the purposes of this litigation which could affect the standing of the company as administrator. . . The sole interest of the federal court, brought about by this litigation, is to protect is jurisdiction, action, *and decrees* in this litigation.

*Id.* at 1049 (emphasis added). To protect its decree, the federal court enjoined Franz from bringing a state court action that "in any way attack[ed] the validity of the appointment of the company. . . ." despite the fact that the validity of the appointment had not actually been litigated in federal court. *Id.* at 1048.

The Supreme Court's decision in *Julian v. Central Trust Co.*, 193 U.S. 93 (1904), is another example of a pre-*Toucey* case where the court enjoined claims that had not actually been litigated. In *Julian*, a federal court in North Carolina entered a decree foreclosing a second mortgage of the Western North Carolina railroad company. *Id.* at 94. Under the decree, the property of the Western North Carolina Railroad was to be sold to the Southern Railway Company free of all claims of parties.

More than two years later, two women brought separate actions against the Western North Carolina Railroad for the wrongful death of their husbands. In neither of these suits was the Southern Railway named as a defendant. Both plaintiffs won their lawsuits. *Id.* at 97. After winning these judgments, they caused the sheriff to levy upon the property which had been conveyed by the federal decree to Southern Railway in order to satisfy the judgments rendered in the state courts. As a result, the Southern Railway Company sought to enjoin the state court proceedings. The lower court granted the injunction. *Id.* at 100.

The United State Supreme Court affirmed the injunction against the state court proceedings in order to protect "the prior jurisdiction of the Federal court and to render effectual its decree." *Id.* at 112.

In *Julian*, the Supreme Court recognized that federal courts can protect judgments by issuing an injunction against claims that had not actually been litigated. Plaintiffs' claims had not been litigated in the federal proceeding. Yet those claims could be enjoined to protect the earlier federal decree.

143. 200 U.S. 273 (1906).
144. *Id.* at 278.
145. *Id.* at 282.
146. *Id.* at 291-93.

doing, the Court expressly rejected the state's argument that an injunction could not issue because the defendants in the state action could simply plead res judicata.[147] The Court reasoned that "[h]aving acquired by [the earlier federal] decree a right which the [defendant] was entitled to enforce" the court had "the power to protect the [defendant] in the enjoyment of rights previously secured under a decree of the court."[148]

This case supports the proposition that a federal court can protect the full claim preclusion effect of judgment. Absent such power a party would be forced to rely on res judicata as a defense in state court in those cases where a party seeks to enjoin claims that are barred by claim preclusion but have not been litigated. Since *Gunter* rejected the idea that a party should be forced to rely on res judicata as a defense, the best interpretation of the pre-*Toucey* cases is that they would allow a court to protect the full claim preclusion effect of its decrees—whether or not a claim had actually been litigated.

The reasoning of *Dietzsch v. Huidekoper*,[149] also is relevant. Although *Dietzsch* may be read as authorizing an injunction based on the statutory exception dealing with the removal of actions, the case has also been persuasively interpreted as one of the cases establishing the relitigation exception.[150] Given this, the rationale of *Dietzsch* is important to consider. In *Dietzsch*, the plaintiff brought an action in replevin in an Illinois state court. Later, the defendant's removed the case to an Illinois federal court. After losing in the federal court, the plaintiffs brought a state court action on a replevin bond. The Supreme Court affirmed the lower court's injunction against the state court suit explaining that:

> A court of the United States is not prevented from enforcing its own judgments by the statute which forbids it to grant a writ of injunction to stay proceedings in a state court . . . . [If the court lacked such power, defendants] would find themselves in precisely the same plight as if the judgment of the United States Circuit Court in the replevin suit had been against them, instead of for them. The judgment in their favor would settle nothing. Instead of terminating the strife between them and their adversaries, it would leave them under the necessity of engaging in a new conflict elsewhere. This would be contrary to the plainest principles of reason and justice.[151]

The rationale of *Dietzsch* supports the use of injunctions against claims which are barred by claim preclusion but have not actually been litigated. As in *Dietzsch*, if a federal court is without such power, the judgment in a party's favor would settle nothing. A federal court could not prevent an unhappy plaintiff from attempting to litigate

147. *Id.* at 293.
148. *Id.* at 293.
149. 103 U.S. 494 (1880).
150. *See* Toucey v. New York Life Ins. Co., 314 U.S. 118, 148 (1941).
151. Dietzsch v. Huidekoper, 103 U.S. 494, 497 (1880).

claims in state court that were barred by the doctrine of claim preclusion, but which had not actually been decided. Instead of terminating litigation, the judgment would leave such party under the necessity of engaging in a new litigation elsewhere.

For all these reasons, the pre-*Toucey* cases support the proposition that federal courts have the power to protect the full claim preclusion effect of their judgments.[152]

### B. Ascertaining Congressional Intent: The Significance of Congressional Silence and Inaction

There are other important reasons to suppose that Congress intended that federal courts could protect the full claim preclusion effect of their judgments. For one reason, Congress has ratified this interpretation of the Act through its silence. There are two separate arguments to support this point. First, the Supreme Court has recognized that where over a number of years federal courts have taken an almost uniform view in interpreting an Act of Congress, Congress' failure to change that view with new legislation amounts to congressional approval of that interpretation.[153] The Supreme Court's recent decision in *Evans v. United States*,[154] is instructive on this point. In *Evans*, the issue was the proper interpretation of the Hobbs Act. The court observed that for over twenty years, the lower federal courts had taken an almost uniform view when interpreting the Hobbs Act. Accordingly, Congress was or should have been aware of the prevailing view of the Act.[155] The Supreme Court concluded that Congress' failure to alter that view with additional legislation meant that Congress has ratified that view with its silence.[156]

Similarly, in *NLRB v. Bell Aerospace Co.*,[157] the Supreme Court relied on Congressional silence and inaction in interpreting the National Labor Relations Act. At issue was whether Congress intended "managerial employees" to be excluded from the protections of the Act. The court observed that following the passage of the Act, the National La-

152. *See* RONALD DWORKIN, A MATTER OF PRINCIPLE 143 (1985)(arguing that a proposition of law is sound if it provides the best justification of available legal materials).

153. *See* William N. Eskridge, Jr., *Overruling Statutory Precedents*, 76 GEO. L.J. 1361, 1403 (1988)(observing that the Supreme Court has developed the following approach to statutory interpretation: "if Congress is aware of the Court's prior statutory interpretation and does not change it, the Court should presume that Congress has 'acquiesced' in the interpretation"). Professor Eskridge notes that this approach "has proved to be particularly robust in the 1970s and 1980s." *Id.* at 1367.

154. 112 S.Ct. 1881 (1992).

155. *See id.* at 1889-90.

156. *Id.*

157. 416 U.S. 267 (1974).

bor Relations Board and the lower federal courts for more than two decades had consistently construed the Act to exclude "managerial employees" from coverage under the Act. In holding that Congress intended that "managerial employees" would not be covered by the Act, the court accorded "great weight to the longstanding interpretation placed on [the Act] by [the National Labor Relations Board]."[158] The court explained: "[i]n these circumstances, congressional failure to revise or repeal [this] interpretation is persuasive evidence that the interpretation is the one intended by Congress."[159]

The principle of statutory interpretation established by *Evans* and *NLRB* is applicable to whether federal courts can protect the full claim preclusion effect of their judgments. For three decades the federal courts have almost uniformly interpreted the 1948 revision to the Act to allow federal courts to protect the full claim preclusion effect of their judgments.[160] Congress is or should have been aware of this prevailing view.[161] Given this, Congress ratified this interpretation of the Act through its silence.

So far, the argument based on Congressional silence and inaction has focused on Congress' failure to revise or repeal the interpretation placed on the Act by the federal courts *following* the 1948 Revision to the Act as persuasive evidence of Congress' intent. Another argument based on Congressional silence and inaction can be made to support the proposition that Congress intended that federal courts could protect the full claim preclusion effect of their judgments. The argument is based on the congressional reenactment theory[162] and emphasizes the legal context in which Congress revised the Anti-Injunction Act in 1948.

The Supreme Court explained the congressional re-enactment theory in *Merrill Lynch, Pierce, Fenner & Smith v. Curran*.[163] In *Curran*, the Court ruled that Congress intended to allow a private right of action under the Commodity Exchange Act (CEA). In interpreting the Act, the court explained that the "focus must be on the state of the law at the time the legislation was enacted."[164] The court reasoned:

158. *Id.* at 275.
159. *Id.*
160. *See supra* text accompanying notes 40-64.
161. *See* Lindahl v. Office of Personnel Management, 470 U.S. 768, 782 n.15 (1985)("Congress is presumed to be aware of . . . [a] judicial interpretation of a statute. . . .")
162. *See* Marc I. Steinberg, *The Propriety and Scope of Cumulative Remedies Under the Federal Securities Laws*, 67 CORNELL L. REV. 557, 560-71 (1982)(discussing congressional reenactment theory); MARC I. STEINBERG, UNDERSTANDING SECURITIES LAW § 8.02, at 159-60 (1989)(discussing congressional reenactment theory in the context of securities law).
163. 456 U.S. 353 (1982).
164. *Id.* at 378.

> [w]e must examine Congress' perception of the law that it was shaping or reshaping. When Congress enacts new legislation, the question is whether Congress intended to create a private remedy as a supplement to the express enforcement provisions of the statute. When Congress acts in a statutory context in which an implied private remedy has already been recognized by the courts, however, the inquiry logically is different. Congress need not have intended to create a new remedy, since one already existed; the question is whether Congress intended to preserve the pre-existing remedy.[165]

Thus, the Court inquired into the contemporary legal context in which Congress legislated when it revised the CEA in 1974. The Court explained that in the years prior to the 1974 revision of the CEA, the lower federal courts "routinely and consistently" recognized an implied private cause of action under the CEA.[166] Given this, the Court concluded that "an implied cause of action under the CEA was a part of the 'contemporary legal context' in which Congress legislated in 1974.[167] In that context, the fact that Congress did not amend the Act so as to eliminate a private cause of action when it revised the CEA in 1974 was evidence that Congress intended to preserve that remedy.[168]

The Supreme Court also employed the congressional re-enactment theory in *Lindahl v. Office of Personnel Management*.[169] At issue was whether Congress intended that there should be judicial review of disability retirement decisions made by the Office of Personnel Management under the Civil Service Retirement Act. Prior to the amendment of the Act in 1980, courts had interpreted the Act to allow for judicial review. The Court presumed that Congress was aware of this interpretation at the time it amended the Act in 1980.[170] The Court held that "the fact that Congress amended [the Act] in 1980 without explicitly repealing the established [interpretation] itself gives rise to a presumption that Congress intended to embody [that interpretation] in the amended version of [the Act]."[171]

Given all this, it is appropriate to consider the legal context at the

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165. *Id.* at 378-79.

166. The Supreme Court observed that "it is always appropriate to assume that our elected representatives, like other citizens, know the law." *Id.* at 379 (quoting Canon v. University of Chicago, 44 U.S. 677, 696-97 (1979)).

167. *Id.* at 381-82.

168. *Id.* at 381-382. The Supreme Court also applied the congressional reenactment theory in *Herman & MacLean v. Huddleston*, 459 U.S. 375 (1983). The Court observed that "when Congress comprehensively revised the securities laws in 1975, a consistent line of judicial decision had permitted plaintiffs to sue under Section 10(b) regardless of the availability of express remedies." *Id.* at 384. Given this "well-established judicial interpretation, Congress' decision to leave Section 10(b) intact suggests that Congress ratified the cumulative nature of the Section 10(b) action." *Id.* at 386.

169. 470 U.S. 768 (1985).

170. *Id.* at 782.

171. *Id. See also* 2 KENNETH C. DAVIS, ADMINISTRATIVE LAW TREATISE § 7:14, at 64 (1979)(statutory reenactment without change has been held to imply congressional approval of interpretation of statutes).

time the Anti-Injunction Act was revised in 1948. As discussed above, the Supreme Court eliminated the relitigation exception in 1941 in *Toucey v. New York Life Ins. Co.*[172] The Reviser's Note to the 1948 revision states that Congress intended the 1948 revision to restore the pre-*Toucey* law regarding the power of the federal courts to protect judgments.[173] Thus, Congress enacted the 1948 Revision of the Act against the background of pre-*Toucey* law. As demonstrated above, the pre-*Toucey* courts interpreted the Act to allow federal courts to protect the full claim preclusion effect of their judgments. Congress is presumed to have been aware of this judicial interpretation. Since Congress did not expressly repeal this interpretation of the Act when it revised the Act in 1948, Congress is presumed to have preserved the interpretation that federal courts can protect the full claim preclusion effect of their judgments.

### C. Carrying Out the Purposes of the Act

To interpret the Act properly, the policies behind the Act also must be considered. The Supreme Court has directed federal courts to not "construe statutory phrases in isolation."[174] Courts are to consider "the design of the statute as a whole and . . . its object and policy."[175] In *Chick Kam Choo v. Exxon Corp.*,[176] the Supreme Court stated that the relitigation exception "is founded in the well-recognized concepts of res judicata and collateral estoppel." The *Chick Kam Choo* Court also recognized that the exceptions to the Act "are designed to ensure [sic] the effectiveness and supremacy of federal law."[177] Thus, the purposes of the relitigation exception are to promote the policies behind res judicata, including ending litigation, upholding the integrity and stability of federal judgments and insuring the effectiveness and supremacy of the federal res judicata law.[178]

In *Federated Department Stores v. Moitie*,[179] the Supreme Court

172. 314 U.S. 118 (1941).
173. *See supra* note 37.
174. United States v. Morton, 467 U.S. 822, 828 (1984).
175. Crandon v. United States, 494 U.S. 152, 158 (1990). *See also* Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 608 (1979)("As in all cases of statutory construction, our task is to interpret the words of these statutes in light of the purposes Congress sought to serve.").
176. 486 U.S. 140, 147 (1988).
177. *Id.* at 146.
178. *See* Chrysler Corp. v. E.L. Jones Dodge, Inc., 421 F. Supp. 969, 972 (W.D. Pa. 1976)("Informed public policies require that the judgment of this court and federal actions be accorded stability and certainty, and these same policies underlie [the relitigation exception. . . .]"); Hayward v. Clay, 456 F. Supp. 1156, 1160 (D.S.C. 1977)("the principles embodied in [the relitigation exception]" are "designed to uphold the integrity of federal court judgments and effectuate the policy of ending litigation").
179. 452 U.S. 394 (1981).

recently discussed the important policies promoted by the doctrine of res judicata. The Court explained that the "doctrine of res judicata serves vital public interests."[180] In the Court's view, "[p]ublic policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties."[181] The Court stressed that "[t]he doctrine of res judicata is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts."[182]

Given this, courts should interpret the Act so as to carry out the highly significant federal policies served by the doctrine of res judicata and insure the effectiveness of federal res judicata law. Clearly, interpreting the Act so as to allow courts to protect only some of the claim preclusion effect of their judgments would not promote the policies of res judicata or guarantee the effectiveness and supremacy of the federal res judicata law as well as an interpretation that allows a federal court to protect the full claim preclusion effect of its judgment. Only with such power can the court bring litigation to an end and insure the integrity of federal judgments. Without such power, a federal court would be helpless to prevent a disgruntled plaintiff from attempting to litigate claims in state court that were barred by the doctrine of claim preclusion, but which had not actually been litigated.[183] As the Supreme Court explained over one hundred years ago in *Dietzsch v. Huidekoper*,[184] this situation would mean that the judgment in a party's favor "would settle nothing."[185] A federal judgment would represent only "cause for alarm that the battle was to be fought over again."[186] Moreover, only with such power can the federal courts carry out the Supreme Court's direction in *Moitie* that the doctrine of res judicata should be "cordially regarded and enforced."[187] Thus, the purposes of the relitigation exception are best served by interpreting the Act so as to allow courts to protect the full claim preclusion effect

180. *Id.* at 401.
181. *Id.* (quoting Baldwin v. Traveling Men's Ass'n, 283 U.S. 522, 525 (1931)).
182. *Id.* (quoting Hart Steel Co. v. Railroad Supply Co., 244 U.S. 294, 299 (1917)).
183. *See* Allan D. Vestal, *Protecting a Federal Court Judgment*, 42 TENN. L. REV. 635, 647 (1975)("It is not unusual to find in state court an attempt to relitigate a claim already considered on the merits in federal court. Just as a losing party in a state court may attempt to try his case a second time in federal court, the reverse is true; unhappy with the result in federal court, the litigant may seek a second 'bite of the apple' in a state forum").
184. 103 U.S. 494 (1881).
185. *Id.* at 497.
186. Chrysler Corp. v. E.L. Jones Dodge, 421 F.Supp. 969, 972 (W.D. Pa. 1976).
187. 425 U.S. 394, 394 (1981)(quoting Hart Steel Co. v. Railroad Supply Co., 244 U.S. 294, 299 (1917)).

of their judgments.[188]

In response, one might offer the following two objections. First, one might contend that state courts could be relied on to enforce the claim preclusion effect of a judgement which would promote the policies of res judicata and insure the supremacy of federal res judicata law.[189] This argument cannot withstand scrutiny. It is highly unlikely that the state courts could promote the policies of res judicata as effectively as the federal court which originally rendered the judgment. Courts have recognized that the judge rendering the original judgment—here, the federal judge—is in the best position to assess whether the state court claims are barred by res judicata.[190] As the Eleventh Circuit has explained, that judge "knows best what he did and did not decide."[191]

Given this familiarity with the record, a federal district court judge—as opposed to a state court judge—is more likely to accurately determine whether a claim is barred by res judicata. Thus, to best effectuate the policies behind the doctrine of res judicata and insure the effectiveness and supremacy of the federal res judicata law, courts should interpret the Act to allow a federal court to protect the full claim preclusion effect of its judgment.

Beyond this, there is an even more important reason why courts should not adopt an interpretation of the Act which forces federal courts to rely on state courts to enforce the claim preclusion effect of their judgments. Forced reliance on state courts to determine the res judicata effects of federal judgments is contrary to the important federal policy that federal courts should be able to determine the scope of their own judgments. This argument finds support in the reasoning of cases that have concluded that federal res judicata rules should govern the preclusive effect of judgments on state law claims rendered by the federal courts in diversity cases. For example, in *Kern v. Hettinger*,[192] the question for decision was whether the preclusive effect of a diver-

188. *Cf.* Graven v. Fink, 936 F.2d 378, 385 (8th Cir. 1991)(interpreting the Bankruptcy Code so as to promote its "broad purpose").

189. *See* Delta Airlines, Inc. v. McCoy Restaurants, Inc., 708 F.2d 582, 585-86 (11th Cir. 1983)("A state court is as well qualified as a federal court to protect a litigant by the doctrines of res adjudicata and collateral estoppel.")(quoting Southern California Petroleum Corp. v. Harper, 273 F.2d 715, 719 (5th Cir. 1960).

190. *See, e.g.*, Bechtel Petroleum, Inc. v. Webster, 796 F.2d 252, 253 n.2 (9th Cir. 1986)("Judge Orrick was in the best position to assess the strength of this relitigation allegation as he was the same judge who presided over the Federal FLSA enforcement proceeding which is the alleged basis for res judicata preclusion."); Southern California Petroleum Corp. v. Harper, 273 F.2d 715, 719 (5th Cir. 1960)("The trial judge was the same trial judge who sat on Harper's 1955 suit. He was peculiarly qualified to compare the issues, determine the question of relitigation, and decide the propriety of an injunction.").

191. Delta Airlines, Inc. v. McCoy Restaurants, Inc., 708 F.2d 582, 586 (11th Cir. 1983).

192. 303 F.2d 333 (2d Cir. 1962).

sity judgment should be governed by federal law or California law. In holding that the preclusive effect of the diversity judgment was to be governed by federal law, the court reasoned:

> [O]ne of the strongest policies a court can have is that of determining the scope of its own judgments. It would be destructive of the basic principles of the Federal Rules of Civil Procedure to say that the effect of a judgment of a federal court was governed by the law of the state where the court sits simply because the source of Federal jurisdiction is diversity. The rights and obligations of the parties are fixed by state law.... But we think it would be strange doctrine to allow a state to nullify the judgments of federal courts. . . .[193]

In an influential article, Professor Degnan has explained why it is essential that federal courts have the power to determine the scope of their own judgments.[194] The importance of this power is rooted in Article III of the United States Constitution—the constitutional provision which describes the federal judicial power.[195] "[T]he power to decide the force of federal adjudications is . . . a defining element of Article III judicial power."[196] Thus, without the power to determine the scope of its own judgments, a federal court "is less than a court."[197]

This reasoning is applicable to the question of whether federal courts have the power to protect the full claim preclusion effect of their judgments. Absent such power, a federal court would lack the power to determine the force and binding effect of its judgments. This would mean that the federal court would not possess full federal judicial power because "it is in the nature of the judicial power to determine its own boundaries."[198] Without the power to determine the scope of its own judgments, the federal court "is less than a court."[199] Thus, the Act should be construed to allow a federal court to protect the full claim preclusion effect of its judgments so as to not deprive the courts of the power to determine the scope of their own judgments.

Second, one might argue that one of the key policies behind res judicata—promoting the integrity of federal court judgments—would not be undermined if federal courts had no power to protect the full claim preclusion effect of their judgments. In *Delta Airlines, Inc. v. McCoy Restaurants, Inc.*,[200] the Eleventh Circuit suggested such an argument when it observed that "a federal court's judgment is presumably far more threatened if the state proceeding involves the same

193. *Id.* at 340 (citation omitted).
194. *See* Ronald E. Degnan, *Federalized Res Judicata*, 85 YALE L.J. 741 (1976).
195. *Id.* at 768.
196. *Id.* at 770 n.138.
197. *Id.* at 769.
198. *Id.*
199. *Id.*
200. 708 F.2d 582 (11th Cir. 1983).

issues than if it involves only issues that could have been, but were not, raised."[201] In *Delta Airlines*, the court refused to protect the full claim preclusion effect of judgment reasoning that the state court proceeding would not "undermine the integrity of the federal court ruling" since the state law claims had not actually been decided in the federal proceeding.[202]

This argument should be rejected. A federal court judgment is undermined if a state court is permitted to nullify the claim preclusion effect of the judgment. "[A] federal judgment is regarded as a repository of federal substantive rights."[203] One of the rights contained in a federal judgment is the right granted "by operation of res judicata to be protected from harassing multiple suits on the same claim."[204] "[R]es Judicata creates substantive rights in both litigants by allowing the plaintiff his one day in court, and the defendant the assurance of protection from multiple suits."[205] Thus, if a state court allows a claim to proceed that should have been barred by res judicata, that lawsuit undermines the integrity of the federal judgment by nullifying the res judicata rights that were established by it.

### D. The Protection of Federal Rights

In interpreting the Act, it seems fair to consider whether the interpretation would displace the federal courts from their traditional role as the protectors of the people's federal rights. In 1875, Congress enacted a statute which provided the lower federal courts with general federal question jurisdiction over civil suits based on the Constitution and laws of the United States.[206] Following this enactment, the Supreme Court stated in *Steffel v. Thompson*[207] that "the lower federal courts . . . became the *primary* and powerful reliances for vindicating every right given by the Constitution, the laws, and treaties of the United States."[208] Similarly, in *Mitchum v Foster*,[209] the Supreme Court recognized that the federal courts were to be the "guardians of the people's federal rights."[210] This view is based in part on the notion

201. *Id.* at 586.
202. *Id.*
203. Stephen B. Burbank, *Interjurisdictional Preclusion, Full Faith and Credit and Federal Common Law: A General Approach*, 71 CORNELL L. REV. 733, 771 (1986); Deposit Bank v. Frankfort, 191 U.S. 499, 520 (1903)(recognizing that federal judgments are repositories of federal rights).
204. Mark G. Emerson, Note, *Res Judicata in the Federal Courts: Federal or State Law?*, 17 IND. L. REV. 523, 539 (1984)(Footnote omitted).
205. *Id.*
206. Judiciary Act of March 3, 1875, 18 Stat. 470.
207. 415 U.S. 452 (1974).
208. *Id.* at 464 (quoting FRANKFURTER & LANDIS, THE BUSINESS OF THE SUPREME COURT 65 (1926)(emphasis in original)).
209. 407 U.S. 225 (1972).
210. *Id.* at 242. *See also* England v. Louisiana State Board of Medical Examiners, 375

that state courts are not as fair or competent as federal courts in the adjudication of federal rights.[211] These considerations are significant.

The res judicata effect of federal judgments is a matter of federal law.[212] Thus, a party's right to the claim preclusion effect of a judgment is a federal right.[213] Accordingly, if the federal courts are to be the primary guardians of our federal rights, the Act should be interpreted to allow the federal courts to issue injunctions to protect the full claim preclusion effect of the judgments. Otherwise, state courts will be the primary decision makers regarding a party's federal right to claim preclusion.[214]

One might contend in response that the failure of a state court to protect the full claim preclusion effect of a judgment would present a federal question, which could be reviewed by the United States Supreme Court pursuant to a writ of certiorari.[215] Given this availa-

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U.S. 411, 415-16 (1964)(recognizing "the primacy of the federal judiciary in deciding questions of federal law"); Anthony G. Amsterdam, *Criminal Prosecutions Affecting Federally Guaranteed Civil Rights: Federal Removal and Habeas Corpus Jurisdiction to Abort State Court Trial*, 113 U. PA. L. REV. 793, 828 (1965)(Following the Civil War, "[t]he assumption was abandoned that the state courts were the normal place for enforcement of federal law save in rare and narrow instances where they affirmatively demonstrated themselves unfit or unfair. Now the federal courts were seen as the needed organs, the ordinary and natural agencies, for the administration of federal rights.").

211. *See* CHEMERISKY, *supra* note 17, § 1.5, at 29-30 (Those favoring federal court availability to adjudicate federal claims "argue that state courts are not to be trusted to adequately safeguard federal rights"); Burt Neuborne, *The Myth of Parity*, 90 HARV. L. REV. 1105, 1124-27 (1977). In *Stone v. Powell*, 428 U.S. 465 (1976), which held that fourth amendment search and seizure claims could not be relitigated in federal habeas corpus proceedings, the Court appeared to reject arguments that questioned the fairness and competency of the state courts in adjudicating federal rights. *See id.* at 493-94 n.35. However, the Court's reasoning in *Stone* on this point has been severely criticized. *See* CHEMERINSKY, *supra* note 17, § 15.5, at 715. For example, Gary Peller has argued that the *Stone* Court's assumption of parity between the state and federal courts is unjustified. *See* Gary Peller, *In Defense of Federal Habeas Corpus Litigation*, 16 HARV. C.R.-C.L. L. REV. 579, 663-69 (1982). Peller notes that even the *Stone* Court conceded that "state courts have often been insensitive to various" federal rights, and the "Court presented no evidence that such insensitivity had been erased." *Id.* at 667. *See also* Burt Neuborne, *The Myth of Parity*, 90 HARV. L. REV. 1105, 1105 (1977)("[T]he assumption of parity is . . . a dangerous myth, fostering forum allocation decisions which channel constitutional adjudication under the illusion that state courts will vindicate federally secured constitutional rights as forcefully as would the lower federal courts.")

212. Dupasseur v. Rochereau, 88 U.S. 130, 134 (1874); Robi v. Five Platters, Inc., 838 F.2d 318, 322 (9th Cir. 1988).

213. *See* Dupasseur v. Rochereau, 88 U.S. 130, 134 (1874).

214. *Cf.* REDISH, *supra* note 18, at 313 (suggesting that the relitigation exception may reflect mistrust of the state courts' ability to accord proper respect to federal judgments).

215. *See Dupasseur v. Rochereau*, 88 U.S. 130, 134 (1874)("where a state court refuses to give effect to the judgment of a court of the United States rendered upon the point in dispute, and with jurisdiction of the case and the parties, a question is

bility of Supreme Court review, arguably, the federal courts would remain the primary decision makers regarding a party's res judicata rights.

This argument cannot withstand analysis. The availability of Supreme Court review is simply not a satisfactory method of protecting federal judgments. Because an appeal of right no longer exists from a state court's failure to give res judicata effect to a federal decision, and since the Supreme Court's decisions to grant writs of certiorari are based more upon considerations of general public interest than of the interests of the individual litigants, it is unlikely that the Supreme Court would decide to review a state court's refusal to give res judicata effect to a federal judgment.[216] Thus, the availability of Supreme Court review would not insure that federal courts will be the primary decision makers regarding a party's federal res judicata rights.[217]

### E. The Protection of Consent Decrees

This article argues that federal courts can protect the full claim preclusion effects of their judgments. Thus, it rejects the proposition that the relitigation exception applies only to claims that have been actually litigated. An additional reason for accepting the proposed interpretation of the Act, is that it is the only interpretation consistent with allowing federal courts to protect their consent decrees under the

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undoubtedly raised which . . . may be brought to this court for revision. The case would be one in which a title or right is claimed under an authority exercised under the United States, and the decision is against the title or right so set up. It would thus be a case arising under the laws of the United States, establishing the Circuit Court and vesting it with jurisdiction; and hence it would be within the judicial power of the United States, as defined by the Constitution; and it is clearly within the chart of the appellate power given to this Court, over cases arising in and decided by the state courts."); *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 129 n.1 (1941)("Pleading a federal decree as res judicata raises . . . a federal question reviewable in this Court. . . .").

216. *See* Note, *Federal Power to Enjoin State Court Proceedings*, 74 HARV. L. REV. 726, 734 (1961); Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387, 392-93 (1923)("[I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties. . . ."); WRIGHT, ET AL. *supra* note 62, § 4004, at 507-08 ("As the number of cases seeking review has grown, the [Supreme Court] docket has had to be devoted more and more to constitutional and statutory questions that are likely to have widespread general impact.").

217. *Cf.* England v. Louisiana State Board of Medical Examiners, 375 U.S. 411, 415-16 (1964)(recognizing that the possibility of Supreme Court review of a state court decision on a federal claim would not insure "the primacy of the federal judiciary in deciding questions of federal law" because it was uncertain that the Supreme Court would actually review the federal claim).

relitigation exception.[218]

Many federal courts have considered whether they can enjoin state court actions to protect their consent decrees. Several courts have invoked the relitigation exception to protect such decrees.[219] Only the Seventh Circuit has rejected this view, holding that such judgments do not have the same effect "as do fully litigated judgments."[220] If the relitigation exception applies only to claims that have been actually litigated, then federal courts will not be able to protect consent decrees since those decrees are resolved by settlement and do not involve actually litigated claims.[221] Courts should not adopt an interpretation of the Act which allows such a result. As one commentator has explained, "when a complex, negotiated decree that terminates federal court litigation can be undercut or frustrated by competing state court litigation (often brought by unnamed class representatives or others affected by the first case) it seems reasonable to read the Act to permit protective injunctions."[222]

In addition, an interpretation of the Act that would allow federal courts to protect consent decrees is supported by the pre-*Toucey* case law. As discussed in Section III.A. above, the pre-*Toucey* courts enjoined state court proceedings in order to protect federal decrees that had been entered pursuant to stipulation or agreement by the parties. Thus, to insure that federal courts have the power to protect consent decrees we should reject the proposition that the Act applies only to claims that have actually been litigated.

## IV. CONCLUSION

Most courts have read the Supreme Court's decision in *Chick Kam Choo v. Exxon Corp.*[223] to mean that the relitigation exception to the Anti-Injunction Act does not permit the federal courts to enjoin state court proceedings to protect the full claim preclusion effect of their judgments. That interpretation of *Chick Kam Choo* is mistaken. In addition, that interpretation of the Act should be rejected because it is contrary to Congressional intent and threatens to undermine the federal judicial power. The interpretation risks displacing the federal

218. *See* Kifer v. Liberty Mut. Ins. Co., 777 F.2d 1325, 1332 (8th Cir. 1985)("To ascertain . . . legislative intent, we may properly consider . . . the consequences of various interpretations.").

219. *See, e.g.*, Battle v. Liberty Nat'l Life Ins. Co., 877 F.2d 877 (11th Cir. 1989); Brooks v. Barbour Energy Corp., 804 F.2d 1144 (10th Cir. 1986); United States v. District of Columbia, 654 F.2d 802 (D.C. Cir. 1981); United States v. ASCAP, 442 F.2d 601 (2d Cir. 1971).

220. Dunn v. Carey., 808 F.2d 555, 559 (7th Cir. 1986).

221. *See supra* note 145.

222. Diane P. Wood, *Fine Tuning Judicial Federalism: A Proposal for Reform of the Anti-Injunction Act*, 1990 B.Y.U. L. REV. 289, 307 (1990).

223. 486 U.S. 140 (1988).

courts from their traditional role as the primary protectors of federal rights. It also threatens to undermine the integrity of federal judgments and the policies animating the federal law of res judicata.

In response to this situation, the foregoing analysis has sought to establish that the Anti-Injunction Act should be construed to allow federal courts to protect the full claim preclusion effect of their judgments. Interpreting the Act in such a manner, will effectuate Congressional intent and preserve the power of the federal courts. The proposed interpretation will also promote the policies behind the federal law of res judicata.