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Extraterritorial Effect of the Washington Workmen's Compensation Act and Constitutional Implications

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COMMENTS

EXTRATERRITORIAL EFFECT OF THE WASHINGTON WORKMEN'S COMPENSATION ACT AND CONSTITUTIONAL IMPLICATIONS

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The extraterritorial effect of workmen's compensation acts offers problems of a complex nature which have often led to confusion and excessive litigation. Problems involved include not only the application of substantive and procedural workmen's compensation law, but also constitutional considerations of due process and full faith and credit. The general area is usually treated under the subject of conflict of laws.[1]

The nature of the problems involved can best be illustrated by a hypothetical situation. W, a resident of Washington, is a worker in the heavy construction industry. He is hired in Washington by C. During the course of his employment W is sent to Montana. While working on the job in Montana he is injured. May W claim compensation under the law of Washington or Montana or both? Assuming the law of one state permits a common law action in tort, may W seek a compensation award in one state and a common law remedy in another?

The answers to these questions under Washington law and the decisions of the United State supreme court comprise the subject matter of this article. It must be noted at the outset that definite answers in many instances cannot be given from the existing Washington law. In these situations the maximum limits imposed by the decisions of the supreme court are set forth, along with pertinent decisions of other jurisdictions indicating possible results and trends.

CAN THE WASHINGTON ACT BE APPLIED CONSTITUTIONALLY?

In order to determine whether the Washington workmen's compensation act may constitutionally be applied, in cases where the contract of employment was entered into in Washington but the injury occurred

[1] For a general survey of the area see GOODRICH, CONFLICTS, § 100 (3d ed. 1949); STUMBERG, CONFLICTS, Chap. VII (2d ed. 1951); HOROVITZ, INJURY AND DEATH UNDER WORKMEN'S COMPENSATION LAWS, Part I, III (1944). For a more comprehensive coverage see 2 LARSON, WORKMEN'S COMPENSATION LAW, Chap. XVI (1952); I SCHNEIDER, WORKMEN'S COMPENSATION, Chap. 5 (3d ed. 1941). Both of these works are kept current by the use of annual supplemental materials.

outside the state, or in cases where the employment contract was created outside of Washington but the injury occurred within the state, it is necessary to look to decisions of the United States supreme court.

Injury Occurring Outside the State

Bradford Electric Light Company v. Clapper,[2] decided in 1932, was the first major case to consider the question of the extraterritorial effect of a workmen's compensation act. In that case all the incidents of employment, such as the making of the contract, the principal place of employment, and the employee's residence, were in the state of Vermont. The employee was killed while on temporary duty in New Hampshire. New Hampshire's law allowed a claimant to elect either compensation or common law remedies. The decedent's administratrix undertook a common law action against the employer in New Hampshire. The defense was a provision of the Vermont act forbidding common law suits when the injury fell within the terms of the Vermont compensation act. The case was removed to a federal district court, where the administratrix recovered. The supreme court reversed the district court and the court of appeals and held that the New Hampshire action was barred, since the full faith and credit clause applies to statutes as well as judgments of sister states. The court said the fact that the injury occurred in New Hampshire gave that state only a "casual" interest in the action. The claimant was remitted to relief under the Vermont act.

The *Clapper* case indicated, then, that Vermont could apply its compensation act even if the injury occurred outside the state—if all the incidents of employment occurred within the state. The case also held that the mere fact of occurrence of the injury within a state did not give that state sufficient interest to apply its own act, where another state was shown to have a greater interest in the action.

The question of application of a state's compensation act where the injury occurred outside the state reached the supreme court three years later in *Alaska Packers Association v. Industrial Accident Comm.*[3] In that case the contract was entered into in California, but the work was to be performed in Alaska. The employee was to return to California after completion of the work. The parties agreed in the contract of employment that the Alaska act should apply. The California act provided that the commissioner would have jurisdiction where the injured employee was a resident of the state at the time of injury and

[2] 286 U.S. 145 (1932).
[3] 294 U.S. 532 (1935).

the contract of hire was made in the state. The employee, after being injured in Alaska, returned to California and was awarded compensation under the California act. The supreme court affirmed the California courts by weighing the "governmental" interests of the two jurisdictions and finding that of California's to be superior to Alaska's. Much of the supreme court's reasoning seemed to be based on the fact that the claimant, if not compensated in California, might well become a public charge there, since he would not have the money to return to Alaska to seek compensation under Alaska's act. California seemed to have a substantial interest in forestalling that event by utilizing its own compensation act.

The controlling constitutional test seemed to be evolving into the existence of a legitimate interest in the injury and its consequences. Greater finality to this test was given in *Cardillo v. Liberty Mutual Insurance Co.*[4] In that case the employee's residence, the employer's place of business, and the original place of hiring were all in Washington, D.C. The worker was killed while in the course of employment in Virginia. The supreme court upheld the constitutional right of the District of Columbia to apply its own compensation law. This was on the rationale that the District's legitimate interest in providing adequate compensation measures did not turn on the fortuitous circumstances of the place of injury or work. Rather, it depended on some substantial connection between the District and the particular employee-employer relationship, as was present in the case.

Injury Occurring Within the State

Until *Pacific Employers Ins. Co. v. Industrial Accident Comm.*[5] it had not been conclusively decided whether the state of injury could constitutionally apply its compensation act as a matter of due process and full faith and credit. In that case the injured employee was a resident of Massachusetts and was regularly employed in that state. He was sent by his employer to California, where he was injured. The supreme court upheld the application of the California act, saying that "few matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power" than the bodily safety and economic protection of employees injured within it.[6] A practical note was sounded when the court pointed out that refusal to apply the California act might require California doc-

[4] 330 U.S. 469 (1947).
[5] 306 U.S. 493 (1939).
[6] 306 U.S. at 503.

tors and hospitals to go to another state to collect their fees for professional services and care.

Carroll v. Lanza,[7] decided two years ago, involved the following factual pattern. C was employed by H, who in turn was a subcontractor for L. C. and H were residents of Missouri and C was hired in that state. Injury occurred while C was working in Arkansas. C, unaware of any remedies under Arkansas law, received thirty-four weekly payments which were voluntarily paid under the Missouri compensation act. That act is applicable to injuries received inside or outside the state. Under the act there is a conclusive presumption of election of coverage unless contrary notice is filed before the injury. No such notice was filed. The act purported to exclude all other rights and remedies. C then decided to sue L in tort, and brought suit in Arkansas. The case was removed to the federal district court, where C recovered. The supreme court, reversing the court of appeals, upheld this recovery. The majority rejected the argument that full faith and credit must be given to the Missouri act as the law exclusively controlling rights under the Missouri contract of employment. The holding was not that Missouri or another state must necessarily have enforced the Arkansas tort right had suit been brought on it elsewhere. It stated merely that it was permissible for Arkansas to enforce the claim despite the Missouri assertion of exclusive control over rights arising out of the hiring in Missouri.

The most recent decision in this field was *Collins v. American Buslines*.[8] C, a busdriver, was killed in the course of his employment in Arizona. He was a resident of California who was regularly employed in driving between Phoenix and Los Angeles. The contract of employment was entered into in California and the driver was covered under the California act. Arizona rejected a claim under the Arizona act, saying that to allow recovery would put an undue burden on interstate commerce. The supreme court held that this burden would not be an undue one, and the case was remanded to have Arizona apply its compensation act if it wished to do so. The *Lanza* case was cited as permitting this result.

What conclusions may be drawn from these two lines of decisions? It would seem clear from the *Lanza* case, the *Collins* case and the *Pacific Employers* case that the occurrence of the injury within a state

[7] 349 U.S. 408 (1955). *Cf.* Williamson v. Weyerhaeuser Timber Company, 221 F.2d 5 (9th Cir. 1955). Oregon looks to Washington law to see if tort right exists for Washington death in course of employment contracted for in Oregon.

[8] 350 U.S. 528 (1956).

gives that state sufficient interest to apply its act without violation of full faith and credit or due process. The holding of the *Clapper* case on this point, if not completely abrogated by the newer decisions, has been so eroded that it has little force today.[9] The *Lanza* case allows the forum to apply a rigid rule and refuse to apply the statute of another state if the forum is the state of injury. The forum, if it wishes, may apply its own law in an employer-employee tort action whenever the injury occurs within its borders. Thus the *Clapper* case is overruled insofar as it compels application of the contract-state's statute. The fact that in both of these cases recovery was sought in a tort action rather than under a compensation act would not seem to be important. In the *Pacific Employers* case recovery was sought under the California act and was allowed even though the place of contracting was Massachusetts. California was not required to give full faith and credit to the Massachusetts act, though of course it could have done so if it had desired. The *Clapper* case was distinguished in *Pacific Employers* on the ground that California considered the Massachusetts act obnoxious to its policy. This seems to be a specious distinction, since the policy differences in the Vermont and New Hampshire acts, in the *Clapper* case, were far more acute than the differences in the acts involved in the *Pacific Employers* case. Adding up all the evidence, it is apparent that the rule of the *Clapper* case is dead.

As to the cases where the injury has occurred outside the state, it is somewhat less clear that the state in which the contract of employment was entered may apply its compensation act in every case. Although the court permitted the state of employment to apply its act in both the *Alaska Packers* case and the *Cardillo* case, the court grounded its decisions on additional factors which, it felt, gave those states a legitimate interest in the action. And, in the *Clapper* case, where the court required New Hampshire to give full faith and credit to the Vermont act, all of the major incidents of employment had occurred in Vermont. Therefore, there may well be in the future a decision where the court will find that the *bare fact of contracting* within a state, without anything else, may be an inferior interest to that of another state. In such a case the state of contracting may be required to give full faith and credit to the act of another state with a greater interest in the employment relationship.[10]

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[9] For a discussion of the Clapper rule today see Comment, 23 U. CHI. L. REV. 515 (1956).

[10] Current law review articles in this area include Hogan, *Constitutional Implica-*

Injury and Contract of Employment Both Occurring Outside the State

The Restatement of Conflicts has recognized that it might be possible in certain factual situations for a state to constitutionally apply its workmen's compensation act when it is neither the state of injury nor the state of contracting, if there are other elements present that give the state a sufficient interest in the employment relationship.[11] The two most likely possibilities would seem to be the domicile of the worker and the place of business of the employer.

WILL THE WASHINGTON ACT BE APPLIED?

The majority of states now have express statutory provisions on conflicts questions. These statutes fall into two general classes, depending on whether the injury occurred within or outside the state. It is not possible in an article of this length to examine the effect of these various statutory provisions.[12] For present purposes it is sufficient to state that Washington is one of those minority states whose acts make no mention of extraterritorial effect or coverage.

Injury Occurring Outside the State

The first case to deal with the extraterritorial effect of the Wash-

tions of Workmen's Compensation and Choice of Law, 7 HASTINGS L. J. 268 (1956); Langschmidt, *Choice of Law In Workmen's Compensation,* 24 TENN. L. REV. 322 (1956).

[11] RESTATEMENT, CONFLICTS § 400 (1948 supp.) reads as follows:

> No recovery can be had under the Workmen's Compensation Act of a state if neither the harm occurred nor the contract of employment was made in the state unless the Act confers in specific words, or is interpreted to confer, a right of action because of the extent of the activities of the employer or employee within the state.

Comment *a* in the 1948 supplement provides:

> The right of recovery because of the employment relation must be based on an applicable statute. Normally, Workmen's Compensation Acts do not purport to apply if neither the harm occurred nor the contract of employment was made in the state. The interest of the state, however, in the employer-employee relationship or in the regulation of local enterprises, is sufficient to empower the state to allow recovery, even though the contract of employment and the place of injury took place outside the state.

[12] For an extensive discussion of the various statutory provisions and their application, see 2 LARSON, WORKMEN'S COMPENSATION LAW, supra footnote 1. In lieu of express statutory provisions various liability theories were propounded by the courts. Some held the worker's rights to be contractual and thus that the law of the place of hiring should govern. Others argued that the tort theory of place of injury should govern. Other proposed solutions were the locale of the employer's business and the law of the place of performance. The matter was settled in Cudahy Packing Co. v. Parramore, 263 U.S. 418 (1923), where it was declared that: "Workmen's Compensation legislation rests upon the idea of status, not upon that of implied contract.... The liability is based, not upon any act or omission of the employer, but upon the existence of the relationship which the employee bears to the employment because of and in the course of which he has been injured." For a thorough and up-to-date analysis of the complete area see comment by Horovitz, 16 NACCA L. J. 38 (1955).

ington act was *Hilding v. Dept. of Labor and Industries.*[13] In that case the plaintiff's husband was employed at Asotin, Washington, as a lumber grader and mill foreman. In the course of his employment the husband was sent to Spokane. The shortest route that is convenient for automobile travel between these two cities extends for ten miles through the state of Idaho. As the husband was returning to Asotin from his work in Spokane, he encountered heavy fog while within Idaho and ran off the road, fatally injuring himself. The court held that the Washington act should be liberally construed in favor of its beneficiaries and that a recovery should be allowed.

The next case to consider this question was *Gustavson v. Dept. of Labor and Industries.*[14] This case was in many respects similar to the *Hilding* case. The workman was employed by an Illinois corporation doing business in Washington. He was sent in the course of his employment to Boise, Idaho, to install an elevator. While on the job the worker fell down the shaft and was killed. In allowing recovery under the Washington act the court reaffirmed its holding in the *Hilding* case and stated:

> We are not persuaded that we should recede from our position in the *Hilding* case. Upon the question of the extraterritorial application of the industrial insurance act, comparing that case with this, we can see no distinction in principle between an injury sustained by an employee while moving in an automobile in the course of his employment and the injury to an employee while engaged in his employer's work in an immovable building.[15]

The *Hilding* case was distinguished, however, in *Sherk v. Dept. of Labor and Industries.*[16] The plaintiff in that case was employed in Washington, by contractors not doing business in the state, to work on a construction job in Oregon. The injury to the plaintiff occurred in Oregon. In holding that the plaintiff could not be compensated under the Washington act, the court said:

> Here, while the appellant was a resident of Washington, his employers were not engaged in any business in the state covered by the workmen's compensation act. The mere fact that appellant was hired in the state of Washington would not bring his employment under the act; he was not employed to do any work in the state, but to work exclusively on a job lying wholly within the limits of the state of Oregon,

[13] 162 Wash. 168, 298 Pac. 321 (1931).
[14] 187 Wash. 60 P.2d 46 (1936).
[15] 187 Wash. at 301.
[16] 189 Wash. 460, 65 P.2d 1269 (1937).

his employment being in no way incidental to a business carried on within the state of Washington.[17]

The last case to deal directly with this problem was *Thompson v. Dept. of Labor and Industries*.[18] In that case the husband of the plaintiff was killed in the course of his employment while in Idaho. The decedent worked primarily in Washington and the case is similar factually, even as to the place of death, to the *Hilding* and *Gustavson* cases. The only material difference was that here the decedent was covered under the elective adoption provisions of the act rather than the compulsory provisions.[19] The court reaffirmed the *Hilding* rule, saying that the distinction made no difference as regards the extra-territorial effect of the act.

From the existing Washington law it is evident that the Washington act will be applied where injuries occur out of state, but where the state has a sufficient interest in the employment relationship, as was found in the *Hilding, Gustavson* and *Thompson* cases. In each of these cases the employer was doing business within the state, the employee was a resident of the state, the contract of employment was entered into within the state, and the performance of services outside the state was incidental to a general employment within the state. It is not clear from the decisions whether all of these elements *must* be present before the Washington act will be applied. The *Sherk* case establishes, however, that where the employer is not doing business within Washington and the employment outside the state is not at all connected to some general employment within the state, the act will not be applied.

Injury Occurring Within the State

There are no Washington cases involving a person injured in this state who is also covered under the act of another jurisdiction. Whether the Washington act would be applied is a subject for speculation. It would seem clear from the *Lanza* and *Collins* cases that the state of injury may always apply its compensation act, since the fact of injury alone gives it a sufficient "interest" to do so. If the question is presented at a later date to the Washington court there is no doubt that the Washington act may be constitutionally applied. This, of

[17] 189 Wash. at 462. In accord with this holding see RESTATEMENT, CONFLICTS, § 398, comment *a* (1934).

[18] 192 Wash. 501, 73 P.2d 1320 (1937).

[19] RCW 51.12.110 sets forth the criteria under which any employer engaged in an occupation not "extrahazardous" under RCW 51.12.010 may elect to come within the provisions of the act.

course, is discretionary; the state of injury is not compelled to apply its own act but may give effect to the foreign act if it so desires.

SUCCESSIVE RECOVERIES UNDER THE ACTS OF MORE THAN ONE STATE

Now to return to the hypothetical with which this article began: suppose W, who was injured in Montana, received compensation under the Montana act. Could he also recover under the Washington act? There is no direct authority on this point in Washington,[20] but the United States supreme court has conclusively settled the full faith and credit question in two decisions.

The first case in point of time was *Magnolia Petroleum Co. v. Hunt.*[21] There a workman, hired in Louisiana, was injured in Texas where he had been sent in the course of his employment. He applied for and received compensation in Texas, whose statute provided that the award was conclusive upon the claim. The worker, returning home, found the Louisiana act more liberal and applied for compensation under it, asking only for the difference between what he had already received in the other state and what Louisiana allowed. The supreme court, in a five to four decision, reversed an award under the Louisiana act, saying that the Texas award was intended to be conclusive and that therefore the award was *res judicata* and entitled to full faith and credit in other jurisdictions. The case received considerable criticism from the commentators.[22]

Four years later this decision was tested in *Industrial Comm. v. McCartin.*[23] An Illinois employee of an Illinois employer was injured while on a construction job in Wisconsin. He applied for compensation in Wisconsin and subsequently in Illinois. While the Wisconsin proceedings were pending, the Illinois commission issued a formal order approving a settlement agreement, and full payment was made under the order. The settlement, however, contained this sentence: "This settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin." The supreme court, in a unanimous decision, reinstated the Wisconsin award, distinguishing the *Magnolia* case. The grounds for the decision and the distinction were the express reservation in the Illinois award and the absence in Illinois case and statute law of an

[20] But cf. Reutenk v. Gibson Packing Co., 132 Wash. 108, 231 Pac. 773 (1924).
[21] 320 U.S. 430 (1943).
[22] See for example Freund, *Chief Justice Stone and the Conflict of Laws*, 59 HARV. L. REV. 1210 (1946); Wolkin, *Workmen's Compensation Award—Commonplace of Anomaly in Full Faith and Credit Pattern*, 92 U. PA. L. REV. 401 (1944).
[23] 330 U.S. 622 (1947).

express prohibition against seeking additional or alternative compensation under the laws of another state.[24] To bring the Restatement of Conflicts in accord with these decisions it was necessary to amend § 403 to read as follows:

> Award already had under the Workmen's Compensation Act of another state will not bar a proceeding under an applicable Act, unless the Act where the award was made was designed to preclude the recovery of an award under any other Act, but the amount paid on a prior award in another state will be credited on the second award.[25]

The essential question to be resolved out of the two decisions is: does the statute of a state, as construed, forbid relief under the laws of another state? It is clear from the *McCartin* decision that the usual exclusive-coverage clause in a compensation act does not have this effect.[26] The usual interpretation that is placed on such clauses is that the act is merely exclusive as to other statutory and common law remedies within the state itself.[27] To reach the result of the *Magnolia* case,[28] the exclusive coverage of the act must be such as to permit no other recovery in any manner either within or without the state. This policy may be evidenced by express statutory language or by judicial decisions of the state in question.

The Washington act does not purport to be exclusive as to remedies which may be sought in the courts of another jurisdiction,[29] nor are

[24] The writers seem to be in disagreement as to just what the supreme court relied on in deciding the case. Goodrich thinks the distinction is to be found in the express reservation of the Illinois award. Larson believes that the court reached its decision on the fact that under the law of Illinois the award was not intended to be exclusive as to awards in other states. The Illinois statute, similar to statutes in just about every other state, is exclusive only in the sense that no other common law or statutory action can be brought under the law of the forum.

[25] RESTATEMENT, CONFLICTS, § 403 (1948 Supplement).

[26] LARSON, § 85.30, gives an extensive discussion of this point. In general that writer believes that the Magnolia doctrine as limited by the McCartin case might only apply in the state of Maryland and there only because of an express statute. He suggests that the Magnolia doctrine would not even be applied in Texas today if the Texas law were realistically construed.

[27] In re Lavoie's Case, —Mass.—, 135 N.E. 2d 750 (1956), is a recent decision upholding the doctrine of the McCartin case. Here the contract of employment was made in Rhode Island, the domicile of the worker. Rhode Island was the principal place of work, but the injury occurred in Massachusetts. The employee received compensation under a Rhode Island award which he did not appeal. This award did not preclude a later recovery under the Massachusetts act since the Rhode Island award did not purport to be exclusive so as to preclude the recovery of an award under any other act. The case is noted with extensive comment on related problems in 18 NACCA L. J. 49 (1956). The Supreme Court denied certiorari in 352 U.S. 927 (1956).

[28] In Carroll v. Lanza, supra note 6, the Magnolia case was distinguished on the ground that there was no final award under the Missouri act. The payments were made voluntarily and no adjudication was sought or obtained in Missouri.

[29] RCW 51.04.010 provides in so far as here relevant: "...all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this title provided."

there any decisions evidencing such a policy. In this state we should expect to reach the result of the *McCartin* decision. However, the Washington attorney would be wise, in any situation where it may be possible to seek an additional award under the act of another state, to have the award contain a reservation of other remedies such as was found in the *McCartin* case. This is probably not essential, but it can do no harm and is the safest procedure possible.

There is a difference of opinion on whether it is desirable to allow successive recoveries under more than one act. On one hand it is said that it subjects the employer to protracted litigation on repeated claims in different jurisdictions, making it impossible for the employer to know when a claim has been fully satisfied. On the other side, the argument is raised that employees as a class are at a disadvantage in learning of their rights under different acts. This is especially true owing to the complexity of the problem. Many employees make a poor choice when the first claim is filed. Moreover, the worst that can happen to the employers, aside from the inconvenience, is that they will have to pay no more than if the claimant had made the best informed choice the first time.

ENFORCEMENT OF STATUTORY RIGHTS UNDER ACT OF ONE STATE IN OUT-OF-STATE COURTS

Another problem in this area is whether the compensation act of one state may be applied in the courts of another state. For the Washington practitioner, two questions may be raised: (1) Can the Washington act be applied in another state? (2) Could the act of another state be enforced in a Washington court?

This writer has not discovered any cases in which the Washington act was considered by a court of another state. It is generally held, however, that rights created by the compensation act of one state cannot be enforced in another state.[30] The basis for this is that a claim, to be valid, must follow the procedure designated in the act, and that usually only the special tribunal created by the particular act can administer claims thereunder. As the Washington compensation act sets forth a procedure to be applied in a specially-created tribunal, it is not likely to be enforced in another state.

For the same reasons, it is not likely that the usual compensation act of another state will be enforced by Washington courts. It has been held, however, that where the compensation rights are not tied to a

[30] LARSON, § 84.20.

particular administrative procedure, but are enforceable generally in the home state's courts, there is no obstacle to their being enforced in the courts of another state.[31]

The only Washington case in which this question has been raised was *Davis v. Harris & Co.*[32] In that case an attempt was made to recover in a Washington court under the Alaska workmen's compensation act. The Alaska act is not an industrial insurance act, being elective in nature. The workman may retain his common law remedies, or he may elect to come under the act. The act merely gives the workman a new statutory remedy, enforceable in territorial courts.

Although the rights under the act were not tied to a particular administrative procedure, the Washington court refused to enforce the Alaska act. The basis for the decision, however, was a clause in the Alaska act which provided that actions under the act could be brought only in Alaska courts, except where it was not possible to obtain service of summons on the defendant. Here the plaintiff could have served the defendant's statutory agent in Alaska. Said the Washington court:

> It seems to us unjust to allow a plaintiff to come here, absolutely depending upon the law of Alaska for the foundation of his case, and yet to deny the defendant the benefit of whatever limitations on his liability that law would impose.[33]

As the basis for the court's decision was the limitation in the Alaska act, the *Davis* case does not preclude the possibility that a foreign act, not tied to any particular administrative tribunal, may be enforceable in Washington.

Applicability of Statutory Disabilities Under the Act of One State in Out-of-State Courts

Almost all workmen's compensation acts bar common-law suits against the employer when compensation is available. However, common-law actions may be permitted under special conditions which differ from state to state, or where death or injury occurs outside the United States.[34]

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[31] Floyd v. Vicksburg Cooperage Co., 156 Miss. 567, 126 So. 395 (1930). Though as a general rule relief must be sought under a particular state tribunal, it does not follow that one commission cannot hear and transcribe evidence for another state's commission as a matter of comity.

[32] 25 Wn.2d 664, 171 P.2d 1016 (1946).

[33] 25 Wn.2d at 671.

[34] See Spelar v. American Overseas Airlines, 80 Fed. 344 (S.D.N.Y. 1947).

If a common-law action is available against the employer in the state of injury but is barred by the exclusive remedy statute of the state of contract or employment relation, the state of injury will usually enforce the bar.[35] We have seen that the state of injury may apply its own compensation act, but it does not follow that a foreign statute will be disregarded when the employee is trying to "dodge" the compensation act entirely and recover under a common law remedy. To summarize the situation, the state of injury may apply its own act to make certain that the employee receives the benefits to which he is entitled. It does no harm to the employer not to enforce the affirmative benefits of the foreign act, since if rights exist thereunder, they are still enforceable after a prior award. However, if the defenses of the foreign act are not allowed, the employer is subjected to irremediable harm.

The Washington court was faced with a comparable situation in the *Davis* case.[36] There the claimant was not allowed to pursue his Alaskan cause of action in a Washington court. The reason advanced by the court was the inherent injustice in allowing a plaintiff to sue on a statutory cause of action while denying the defendant the benefit of any defenses he might have under Alaskan law.

While there is no case in Washington involving suit against an employer who is covered under a foreign act where the injury occurred in this state, it seems reasonable to assume that the reasoning of the *Davis* case would be followed and a common-law recovery refused. This result would follow the general rule as laid down by a leading writer.[37]

Very intricate problems arise where a common-law recovery is sought not from the employer but from a third party. In a comment of this scope nothing more will be attempted than to state the black-letter rule, with a reference to authorities. In general, if compensation has been paid in a foreign state and suit is commenced against a third party in the state of injury, substantive rights of the parties are governed by the law of the foreign state. If compensation has not been paid, but could be properly awarded in the state in which the third party action is brought, the law of the forum will control the incidents of the action.[38]

[35] LARSON, § 88.
[36] *Supra* note 32.
[37] LARSON, § 88.10.
[38] *Id*, §§ 88.20 et seq. Bagnel v. Springfield Sand & Tile Co., 144 F.2d 65 (1st cir. 1944), is the leading case involving the stiuation where compensation has not yet been awarded in a foreign state.

CONCLUSION

In summary it must be noted again that many of the problems in this area go unanswered under Washington case and statutory law. However, the Washington practitioner should not suppose that because of the lack of Washington cases the subject matter is esoteric. In fact, the general lack of knowledge regarding successive recoveries and extraterritorial effect of workmen's compensation acts could well serve to explain the absence of appellate litigation in this state. The Washington attorney should be aware that the avenues of possible recovery are broadened where more than one state has a legitimate interest in the worker and his injury. The interests involved cut across workmen's compensation acts and common law tort actions against employers and third parties. It is beyond the scope of this article to discuss possible improvements through amendments to the Washington act,[39] or the feasibility of a uniform act affecting conflicts of law and workmen's compensation acts.[40] This comment does not purport to be an exhaustive treatment, but is merely intended to point up the most commonly litigated patterns. The constitutional limitations seem to have taken form, and probable results, at least in most situations, can be anticipated.

[39] See Rieke, *Conflict-of-Laws Problems in the Washington Industrial Insurance Laws* (Unpublished manuscript in University of Washington Law School Library).

[40] For an article opposing such a uniform law see Evans, *Is a Uniform Law Affecting the Application of Extraterritorial Workmen's Compensation Claims Desirable,* 21 ALBANY L. REV. 171 (1957).