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is consistent with *Exxon Corp. v. Governor of Maryland* and reflects the Supreme Court's reluctance to strike down state statutes involving economic regulation.[43]

JAMES S. MCNIDER III

VI. CONFLICT OF LAWS

State workmen's compensation statutes cover most employers and employees and facilitate quick and efficient damage recoveries for workers injured on the job.[1] Individual state compensation acts, however, often vary as to available benefits and procedures,[2] thus creating conflicts of law questions when an injured worker's employment spans two or more states.[3] Most courts confronted with a conflict between compensations act grant

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ute would presumably be recouped by other manufacturers. 89 Cal. App. 3d at 1045, 153 Cal. Rptr. at 141. Prior to the *Exxon* decision, the Georgia Supreme Court ruled a Georgia automobile franchise statute unconstitutional under the commerce clause. General GMC Trucks v. General Motors Corp., 239 Ga. 373, 376, 237 S.E.2d 194, 196 (1977). The Georgia statute prohibited additional dealerships unless the manufacturer or the potential franchisee could demonstrate that an existing franchise dealer was not providing adequate representation or that the addition of another dealer could be accomplished without reducing the business of the existing dealer. *Id.*; GA. CODE ANN. § 84-6610(f) (10) (1979) (superseded 1979).

[43] *See* 592 F.2d at 223-24; notes 30, 37 & 38 *supra.*

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[1] Workmen's compensation refers to the system of providing cash-wage benefits to victims of work related injuries. Basic features of most workmen's compensation acts include automatic recovery of benefits with minimal procedural requirements, little inquiry into negligence or fault, restriction of coverage to employees, restriction of common law actions by employees against employers, a right to sue responsible third parties, administration by state government agencies, and provisions for insurance of employers against losses under the acts. *See* 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION §§ 1.00, 1.10 (rev. perm. ed. 1978) [hereinafter cited as LARSON]. *See generally* THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS, COMPENDIUM ON WORKMEN'S COMPENSATION 29-39 (1973) [hereinafter cited as COMPENDIUM].

[2] A special federal commission has concluded that because of the varying nature of state workmen's compensation acts, all acts should have certain minimum benefits and basic claims procedures. *See* THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS, REPORT 15-27 (1972).

[3] *See, e.g.*, Daniels v. Trailer Transport Co., 327 Mich. 525, 42 N.W.2d 828 (1950). *Daniels* is indicative of the potential conflicts problem in actions for workmen's compensation recovery. The claimant, a resident of Illinois, made an employment contract in Texas with a trucking firm headquartered in Michigan. The claimant, after working for the firm in a number of states, was injured in Tennessee. A Michigan court held that the claimant was ineligible for recovery under Michigan workmen's compensation statutes. *Id.* at ____, 42 N.W.2d at 828-30. *See generally* Larson, *Conflicts of Laws in Workmen's Compensation*, in 1 SUPPLEMENTAL STUDIES FOR THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS 129 (1973) [hereinafter cited as Larson, *Conflicts*].

relief under as many statutes as the injured worker may be eligible.[4] The Fourth Circuit in *Pettus v. American Airlines, Inc.*,[5] however, prevented a worker's recovery of benefits under the District of Columbia Workmen's Compensation Act (D.C. Act)[6] because the Virginia Industrial Commission had terminated the worker's benefits[7] under the Virginia Workmen's Compensation Act (Virginia Act).[8] The *Pettus* court ruled that the Industrial Commission's action barred subsequent recovery under the D.C. Act.[9]

In *Pettus*, the defendant employed the plaintiff at Washington National Airport near Alexandria, Virginia. Three years after being hired, the plaintiff, a District of Columbia resident,[10] injured his back while working at the Virginia facility.[11] The Virginia Industrial Commission ruled that the plaintiff was temporarily totally disabled as a result of the injury and awarded benefits under the Virginia Act.[12] A year later American Airlines and its workmen's compensation insurance carrier terminated the benefits

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[4] *See, e.g.*, deCancino v. Eastern Air Lines, 239 So. 2d 15, 17 (Fla. 1970) (Florida Workmen's Compensation Act construed to give full coverage to all injuries in which Florida has an interest, despite interest in the injury by other states); Wood v. Aetna Cas. & Sur. Co., 260 Md. 651, 664, 273 A.2d 125, 133 (1971) (recovery awarded under both Maryland and District of Columbia Workmen's Compensation Acts). *See also* 4 LARSON, *supra* note 1, § 85.30; note 73 *infra*.

When a worker seeks workmen's compensation recovery in two or more states, any recovery in the first state is credited against recovery in the second or later states, thus preventing double recovery for a particular injury. *See* Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 460 (1943) (Black, J., dissenting); 4 LARSON, *supra* note 1, § 85.60.

[5] 587 F.2d 627 (4th Cir. 1978), *cert. denied*, 100 S.Ct. 172 (1979).

[6] 36 D.C. CODE §§ 501-02 (1973). The Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950 (1976), serves as the District of Columbia's workmen's compensation statute. 36 D.C. CODE § 501.

[7] *See* text accompanying notes 13-15 *infra*.

[8] VA. CODE §§ 65.1-1 to 152 (Cum. Supp. 1979).

[9] 587 F.2d at 628.

[10] The location of a workmen's compensation claimant's residence is one factor in determining where the claimant may seek compensation. Other factors include location of injury, principal location of employment, location of employment contract execution, location from which employee's activities were supervised, and choice of a particular compensation act under which the employer and employee have agreed to be governed. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 181 (1971). *See generally* 4 LARSON, *supra* note 1, §§ 86-87. In *Pettus*, the claimant was not only a resident of the District of Columbia at the time of his hiring and of his injury, but also had been interviewed and employed through a District of Columbia employment agency. 587 F.2d at 628. *See* text accompanying notes 25-28 *infra*.

[11] 587 F.2d at 628. The injury to the *Pettus* claimant is clearly within the realm of the Virginia Act because the injury occurred in Virginia at the claimant's regular work location. Further, the injury clearly occurred in the performance of work related duties. *See* VA. CODE § 65.1-7 (1973). *See also* Graybeal v. Board of Supervisors, 216 Va. 77, 78-80, 216 S.E.2d 52, 53-54 (1975) (Virginia Act eligibility requirements discussed); JOINT COMMITTEE ON CONTINUING LEGAL EDUCATION OF THE VA. STATE BAR AND THE VA. BAR ASS'N, WORKMEN'S COMPENSATION FOR THE EMPLOYER'S ATTORNEY AND CLAIMANT'S ATTORNEY 9-41 (1976) [hereinafter cited as VA. WORKMEN'S COMPENSATION]; note 10 *supra*.

[12] 587 F.2d at 628. *See* Brief for Respondent Director, Office of Workers' Compensation Programs at 7, Pettus v. American Airlines, Inc., 587 F.2d 627 (4th Cir. 1978) [hereinafter cited as Brief for Director, O.W.C.P.].

after the plaintiff refused to undergo corrective surgery.[13] Following hearings, the Virginia Industrial Commission upheld the termination of benefits.[14] The plaintiff did not appeal the Commission's decision to Virginia courts,[15] but subsequently applied for benefits under the D.C. Act.[16] The Benefits Review Board of the Department of Labor[17] awarded D.C. Act benefits to the plaintiff,[18] after reversing an administrative law judge's finding that the plaintiff was ineligible for recovery under the D.C. Act.[19] American appealed the award of D.C. Act benefits to the Fourth Circuit.[20]

The Fourth Circuit addressed three issues in overturning the Benefits Review Board. The court first considered the question of whether the plaintiff's contacts with the District of Columbia were sufficient for recovery

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[13] Brief for Director, O.W.C.P., *supra* note 12, at 9. The Virginia Act allows employers to discontinue benefits in certain circumstances when claimants refuse to undergo recommended treatment. VA. CODE § 65.1-88 (Cum. Supp. 1979). *See* text accompanying notes 32-35 *infra.*

The attending orthopedic surgeon recommended that the *Pettus* plaintiff undergo surgery after a period of conservative treatment failed to alleviate the plaintiff's disability. The plaintiff refused to undergo the surgery for several reasons. First, the plaintiff contended the surgeon told him that the surgery, a spinal fusion, involved considerable risk. The plaintiff also alleged that his pre-existing asthmatic condition posed special dangers to undergoing anesthesia during surgery. The plaintiff further noted that he was the sole support for his two children and that if he were to die during surgery the children would be orphaned. Finally, the plaintiff contended he had a morbid fear of hospitals based on his wife's death from pneumonia while recuperating in a hospital after an accident. Brief for Respondent Pettus at 5, Pettus v. American Airlines, Inc., 587 F.2d 627 (4th Cir. 1978) [hereinafter cited as Brief for Pettus].

[14] 587 F.2d at 628.

[15] *Id. See* text accompanying notes 38-41 *infra.*

[16] 587 F.2d at 628. Applications for workmen's compensation in the District of Columbia are filed through the same system provided for recoveries arising under the federal Longshoremen's Act. *See* note 6 *supra.* The procedures for filing claims are set forth in 33 U.S.C. §§ 913, 919 (1976). If an interested party in a workmen's compensation action requests a hearing on the claim, the hearing is held before a Department of Labor administrative law judge. *Id.* § 919(d).

[17] The Department of Labor's Benefits Review Board, a three member commission established in 1972, hears appeals of administrative law judge decisions. 33 U.S.C. § 921(b). *See* note 16 *supra. See generally* Washington, *Benefits Review Board's New Appellate Process Under the Longshoremen's Act,* 11 FORUM 686 (1976). The D.C. Circuit has confirmed that the Benefits Review Board's jurisdiction includes appeals arising under the D.C. Act. *See In re* District of Columbia Workmen's Compensation Act, 554 F.2d 1075, 1077 n.1 (D.C. Cir.), *cert. denied,* 429 U.S. 820 (1976).

[18] Pettus v. American Airlines, Inc., 6 BEN REV. BD. SERV. 461, 466 (B.R.B. No. 77-115, Aug. 22, 1977).

[19] Pettus v. American Airlines, Inc., 3 BEN. REV. BD. SERV. 315, 320 (B.R.B. No. 75-197, March 19, 1976), *rev'g* 2 BEN. REV. BD. SERV. 93 (ALJ) (1975). An administrative law judge found Pettus' business and personal connections with the District of Columbia too remote to qualify Pettus for benefits under the D.C. Act. 2 BEN. REV. BD. SERV. at 93 (ALJ), but the Benefits Review Board found sufficient contacts with the District of Columbia both on the part of Pettus and on the part of American Airlines. 3 BEN. REV. BD. SERV. at 317. *See* text accompanying notes 25-28 *infra.*

[20] 587 F.2d at 628. A final Benefits Review Board decision is appealable to the United States court of appeals for the circuit in which the injury occurred. 33 U.S.C. § 921(c) (1976).

under the D.C. Act.[21] Second, the court explored whether the principles of full faith and credit and res judicata bound the Benefits Review Board to find that the plaintiff unjustifiably refused to have surgery.[22] Finally, the Fourth Circuit considered whether any recovery under the Virginia Act barred subsequent recovery under the D.C. Act regardless of the justifiability of the refusal to undergo surgery.[23] The court decided only the eligibility issue in the plaintiff's favor, effectively denying compensation under the D.C. Act.[24]

In finding that the plaintiff was within the jurisdiction of the D.C. Act, the Fourth Circuit solely relied upon *Cardillo v. Liberty Mutual Insurance Co.*[25] In *Cardillo,* the Supreme Court liberally interpreted the D.C. Act to give workmen's compensation benefits to most District of Columbia residents working in other jurisdictions.[26] The Court concluded the District of Columbia had a significant interest in ensuring that employers adequately compensated D.C. residents injured on the job.[27] The *Pettus* court gave no support other than the cite of *Cardillo* for finding the plaintiff within the D.C. Act's jurisdiction.[28]

The Fourth Circuit next considered whether under the doctrine of res judicata[29] the withdrawal of benefits by the Virginia Industrial Commis-

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[21] *See* text accompanying notes 25-28 *infra.*

[22] *See* text accompanying notes 29-52 *infra.*

[23] *See* text accompanying notes 53-88 *infra.*

[24] 587 F.2d at 628. *See* note 28 *infra.*

[25] 330 U.S. 469 (1947).

[26] *Id.* at 475. *See* Ekar v. International Union of Operating Eng'rs, 1 BEN. REV. BD. SERV. 406, 413 (B.R.B. No. 74-209, April 11, 1975), *rev'd on other grounds sub. nom.,* Director, Office of Workers' Compensation Programs v. Boughman, 545 F.2d 210 (D.C. Cir. 1976) (claimant's widow eligible for recovery under D.C. Act because claimant's employer was headquartered in Washington, although claimant resided and was killed in California).

[27] 330 U.S. at 476. The District of Columbia had a significant interest in ensuring that American Airlines adequately compensated the *Pettus* plaintiff. Even though the plaintiff was injured in Virginia, he underwent rehabilitative vocational training at the expense of the District of Columbia. Also, in the period after Virginia terminated the plaintiff's workmen's compensation benefits, the plaintiff relied solely on District of Columbia public assistance payments for financial support. *See* Brief for Director, O.W.C.P., *supra* note 12, at 9. *See generally* 4 LARSON, *supra* note 1, §§ 86.34, 87.60.

[28] 587 F.2d at 628. The Fourth Circuit in *Pettus* did not actually state that the claimant's contacts with the District of Columbia were sufficient to merit coverage under the D.C. Act. Rather, the court phrased the issue of eligibility under the D.C. Act in terms of whether the Benefits Review Board had jurisdiction to hear the claimant's case. *Id.* However, if the claimant did not have sufficient contacts with the District of Columbia to merit recovery under the D.C. Act, the Benefits Review Board could not decide the merits of the claimant's action. *See* notes 16-17 *supra.* Further, if the Benefits Review Board lacked jurisdiction in the case, the Fourth Circuit also would have lacked jurisdiction and thus would have been unable to dispose of the case by interpreting Virginia law. *See* notes 21-24 *supra.*

[29] The doctrine of res judicata provides that a valid final judgment rendered on the merits by a court of competent jurisdiction is an absolute bar to a subsequent action between the same parties, or those in privity with them, upon the same claim or demand. 1B MOORE'S FEDERAL PRACTICE ¶ 0.405[1], at 621-22 (2d ed. 1974) [hereinafter cited as 1B MOORE'S]. Some courts also hold that under the doctrine of res judicata a valid final judgment rendered

sion bound the Benefits Review Board to find that the plaintiff unjustifiably refused surgery.[30] In establishing that the Virginia decision also precluded D.C. Act benefits the court first recognized that the same parties were involved in both the Virginia and D.C. actions.[31] The court next determined that the Benefits Review Board had considered the same issue as the Virginia Industrial Commission, whether Pettus' refusal to undergo surgery was justified.[32] The court compared the sections of the Virginia[33] and D.C.[34] Acts dealing with refusal of a workmen's compensation recipient to undergo treatment and concluded that the justifiability standards under both acts were, in fact, the same.[35] The Fourth Circuit then considered whether the Virginia proceedings met due process standards sufficient to accord the decision res judicata effect.[36] The court concluded the two

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on the merits constitutes an estoppel in a second action as to matters that were necessarily litigated in the first action although the second action involves a different claim or demand. *See, e.g.*, Aetna Life Ins. Co. v. Martin, 108 F.2d 824, 826 (8th Cir. 1940) (res judicata effect of state decision limited). Many courts, however, refer to the estoppel aspect of res judicata as collateral estoppel. *See, e.g.*, Lawlor v. National Screen Serv. Corp., 349 U.S. 322, 326 (1955) (res judicata and collateral estoppel distinguished); Cromwell v. County of Sac, 94 U.S. 351, 352-53 (1876) (principles of collateral estoppel considered). *See generally* 1B MOORE'S, *supra* ¶ 0.441.

[30] 587 F.2d at 628-29.

[31] *Id.* at 628. Under the doctrines of res judicata and collateral estoppel the parties in both actions must be identical or in privity with one another. *See generally* 1B MOORE'S, *supra* note 29, ¶ 0.411.

[32] 587 F.2d at 628-29. *See generally* Southern Pac. R.R. v. United States, 168 U.S. 1, 48 (1897) (similarity of issue in two proceedings considered); 1B MOORE'S, *supra* note 29, ¶ 0.442.

[33] VA. CODE § 65.1-88 (1973) (amended 1975). The Virginia Act, at the time of the *Pettus* case, provided that workmen's compensation recipients were required to accept surgical and hospital service deemed necessary by the attending physician or by the Virginia Industrial Commission. The Act further provided, "The refusal of the employee to accept such service when provided by the employer shall bar the employee from further compensation until such refusal ceases . . . unless, in the opinion of the Industrial Commission, the circumstances justified the refusal." *Id. See* Stump v. Norfolk Shipbuilding & Dry Dock Corp., 187 Va. 932, 938-39, 48 S.E.2d 209, 212 (1948) (workmen's compensation refused for amputated leg because employee refused to undergo medical treatment).

[34] 33 U.S.C. § 907(d) (1976). The Longshoremen's Act provides in part, "If at any time the employee unreasonably refuses to submit to medical or surgical treatment, . . . the Secretary [of Labor] may, by order, suspend the payment of further compensation during such time as such refusal continues . . . unless the circumstances justified the refusal." *Id. See* Ryan Stevedoring Co. v. Norton, 50 F. Supp. 221, 222-23 (E.D. Pa. 1943) (workmen's compensation granted although treatment had been refused earlier).

[35] 587 F.2d at 629.

[36] *Id. See generally* 1B MOORE'S, *supra* note 29, ¶ 0.406 [2]. The Fourth Circuit in *Pettus* stated that whether a judicial decision is made by an administrative agency is of no consequence in according the decision res judicata effect. 587 F.2d at 628 n.1. The court inappropriately cited Mitchell v. National Broadcasting Co., 553 F.2d 265, 268-69 (2d Cir. 1977), to support the position that courts should not treat administrative agency decisions differently in according res judicata effect. In *Mitchell*, the Second Circuit actually refused to accord res judicata effect to an administrative agency's decision. The court applied res judicata effect to the case only because the administrative agency's decision was affirmed by the New York Supreme Court, Appellate Division. *Id.* at 276-77. The United States Supreme Court

hearings of the *Pettus* case before the Virginia Industrial Commission provided the plaintiff ample opportunity to justify his refusal to undergo surgery.[37] Next, the Fourth Circuit noted the plaintiff had not appealed the Industrial Commission's decision to a Virginia court.[38] The Commission's decision was therefore considered a final judgment in Virginia and accorded res judicata effect within the state.[39] Finally, the Fourth Circuit reasoned that since the Industrial Commission's decision on justifiability had res judicata effect in Virginia, the Benefits Review Board was required to give the decision res judicata effect in the District of Columbia under the full faith and credit provisions of the United States Constitution[40] and the United States Code.[41] The Fourth Circuit thus concluded that the Virginia Industrial Commission, by deciding that the plaintiff's refusal to undergo surgery was unjustified under the Virginia Act, effectively had decided that the refusal also was unreasonable under the D.C. Act.[42]

The Fourth Circuit's according of res judicata effect and application of the full faith and credit doctrine to the Industrial Commission's finding of unjustifiability can be criticized on at least two grounds. First, whether the issue of justifiability to refuse surgery is the same under the Virginia and D.C. Acts is questionable.[43] The *Pettus* dissent concluded the D.C. Act favored the plaintiff in three ways.[44] First, the D.C. Act requires a two step rather than one step consideration of whether a workmen's compensation claimant justifiably refused surgery.[45] Second, under the D.C. Act the initial burden of proving that the claimant unreasonably refused treatment falls upon the employer, while under the Virginia Act the entire burden of proving justifiability falls under the claimant.[46] Finally, under the D.C.

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has noted that while courts may give res judicata effect to decisions of administrative agencies, such effect should not be automatic. United States v. Utah Constr. & Mining Co., 384 U.S. 394, 421-22 (1966).

[37] 587 F.2d at 629.

[38] *Id. See* VA. CODE § 65.1-98 (Cum. Supp. 1979) (setting forth procedures for appealing Industrial Commission decisions). *See generally* VIRGINIA WORKMEN'S COMPENSATION, *supra* note 11, at 158-59.

[39] 587 F.2d at 629. *See* Sykes v. Stone & Webster Eng'r Corp., 186 Va. 116, 126-28, 41 S.E.2d 469, 474-75 (1947); VA. CODE § 65.1-98 (Cum. Supp. 1979); VA. WORKMEN'S COMPENSATION, *supra* note 11, at 204.

[40] U.S. CONST. art. IV, § 1 provides, "Full Faith and Credit shall be given in each state to the public Acts, Records and Judicial Proceedings of every other State."

[41] 28 U.S.C. § 1738 (1976) (full faith and credit accorded to state statutes and decisions). *See generally* Riley v. New York Trust Co., 315 U.S. 343, 349 (1942); 1B MOORE'S, *supra* note 29, ¶ 0.406[1].

[42] 587 F.2d at 629.

[43] *See* text accompanying notes 32-35 *supra.*

[44] 587 F.2d at 634 (Hall, J., dissenting).

[45] *See id.* Under the Virginia Act the Virginia Industrial Commission only considers whether the refusal to undergo surgery was reasonable. The Department of Labor under the D.C. Act first makes an objective decision whether the refusal was unreasonable and then decides whether refusal was justified under the circumstances. *Id. See* notes 33-34 *supra.*

[46] *See* 587 F.2d at 634 (Hall, J., dissenting); notes 33-34 *supra. See also* Newport News Shipbuilding & Dry Dock Co. v. Director, O.W.C.P., 583 F.2d 1273, 1278-79 (4th Cir. 1978),

Act the Secretary of Labor has the discretion to continue benefits even if the refusal is judged unreasonable, while termination of benefits under the Virginia Act is mandatory if the refusal is found unjustified.[47] The *Pettus* majority did not consider these differences between the D.C. and Virginia Acts.

The *Pettus* court's application of the full faith and credit doctrine also is questionable.[48] Courts often do not give full faith and credit effect to workmen's compensation actions.[49] Unlike considerations of most legal actions for damages, tribunals hearing workmen's compensation cases have little chance to apply the law of another jurisdiction. Administrative agencies, rather than courts, consider most workmen's compensation applica-

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cert. denied, 440 U.S. 915 (1979) (doctrine of collateral estoppel does not preclude relitigation of issue in workmen's compensation action when party against whom doctrine is imposed has heavier burden of persuasion in first action than in second); Young & Co. v. Shea, 397 F.2d 185, 188-89 (5th Cir. 1968), *cert. denied*, 395 U.S. 920 (1969) (issues decided in common law action for employment related injuries are not collaterally estopped in action under Longshoreman's Act because of differences in standard of proof).

[47] *See* 587 F.2d at 634-35 (Hall, J., dissenting); 6 BEN. REV. BD. SERV. at 464; notes 33-34 *supra*. Both the Virginia Act and Longshoremen's Act provisions on justifiability to refuse treatment have been construed by only one reported court case. *See* Ryan Stevedoring v. Norton, 50 F. Supp. 221, 222-23 (E.D. Pa. 1943) (Longshoremen's Act construed); Stump v. Norfolk Shipbuilding & Dry Dock Corp., 187 Va. 932, 938-39, 48 S.E.2d 209, 212 (1948) (Virginia Act considered). *See also* notes 33-34 *supra*.

[48] *See* text accompanying notes 40-41 *supra*.

[49] *See, e.g.*, Carroll v. Lanza, 349 U.S. 408, 413-14 (1955) (full faith and credit clause does not require state of injury to apply sister state's prohibition of common law workmen's compensation actions); Alaska Packers Ass'n v. Industrial Accident Comm'n, 294 U.S. 532, 544-50 (1935) (workmen's compensation act of place of contract may govern benefits recovery even though employment contract stated that another state's law should govern). *See also* 4 LARSON, *supra* note 1, §§ 86.20-35; Cheatham, *Res Judicata and the Full Faith and Credit Clause: Magnolia Petroleum Co. v. Hunt*, 44 COLUM. L. REV. 330, 332-41 (1944) [hereinafter cited as Cheatham]; Reese & Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 COLUM. L. REV. 153, 161-65 (1949) [hereinafter cited as Reese & Johnson].

There are four principal bases for restricting application of full faith and credit in workmen's compensation actions. Cheatham, *supra* at 342. First, injured workmen, considered a necessitous class, have received special treatment in many aspects of the law. Second, as the Supreme Court recognized in Cardillo v. Liberty Mut. Ins. Co., 330 U.S. 469 (1947), workmen's compensation statutes concern support of injured persons and multiple jurisdictions may have an interest in such support. *Id.* at 476. Third, workmen's compensation cases differ from most full faith and credit applications as they are heard by an administrative agency which is the only tribunal allowed to enforce a particular state's workmen's compensation act. *See* text accompanying notes 50-52 *infra*. Finally, adherence to a strict policy of single state recovery through full faith and credit would allow unscrupulous employers and insurance carriers to lower their costs by suggesting that injured employees apply for benefits in a jurisdiction with low benefits. Cheatham, *supra* at 343-45.

The *Pettus* case demonstrates that full faith and credit can acquire various meanings in workmen's compensation actions. The *Pettus* majority uses full faith and credit to justify ordering the Benefits Review Board to give res judicata effect to the decision of justifiability by the Virginia Industrial Commission. 587 F.2d at 629. *See* text accompanying notes 40-41 *supra*. The *Pettus* dissent, however, uses full faith and credit to refer to the issues of whether any workmen's compensation recovery in Virginia bars a recovery in the District of Columbia. 587 F.2d at 632-33 (Hall, J., dissenting). *See* text accompanying notes 53-78 *infra*.

tions and these agencies may order recovery only under the workmen's compensation act of their own jurisdiction.[50] Development of the case law for a particular state's compensation act thus emanates from the state's administrative agency. To require this administrative agency to accord full faith and credit to decisions of law and fact made in other states under different compensation acts would be inappropriate.[51] The *Pettus* dissent concluded that while the Industrial Commission's decision should be considered final as to recovery under the Virginia Act, the Commission's decision should not affect recovery under the D.C. Act.[52]

The majority in *Pettus* may not have been convinced that a finding of res judicata eliminated all recovery under the D.C. Act. While the court declared that the basis for overturning the Benefits Review Board was the finding of res judicata effect,[53] the court also concluded that any recovery under the Virginia Act precluded recovery under the D.C. Act.[54] A finding of automatic preclusion would seem unnecessary if the res judicata decision truly eliminated recovery for Pettus under the D.C. Act.[55] The Fourth Circuit's finding of automatic preclusion is questionable since the finding is inconsistent with most decisions in similar situations.[56]

The Fourt Circuit relied upon *Magnolia Petroleum Co. v. Hunt*[57] in deciding that any recovery under the Virginia Act automatically precluded recovery under the D.C. Act.[58] In *Magnolia,* an oil driller who resided in

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[50] *See* COMPENDIUM, *supra* note 1, at 188-89; 4 LARSON, *supra* note 1, § 84.20, at 16-7 to 8; *see, e.g.,* Green v. J.A. Jones Constr. Co., 161 F.2d 359, 359-60 (5th Cir. 1947) (only Georgia State Board of Workmen's compensation and not federal court or a Mississippi circuit court can order benefits under Georgia Workmen's Compensation Act); *cf.* Semler v. Psychiatric Inst., Inc., 575 F.2d 922, 929-30 (D.C. Cir. 1978) (wrongful death statutes differ materially from workmen's compensation acts in that courts hearing wrongful death actions are allowed to choose which jurisdiction's law to apply to particular case).

[51] *See, e.g.,* deCancino v. Eastern Airlines, Inc., 283 So. 2d 97, 98 (Fla. 1973) (Florida Industrial Relations Commission should not give res judicata effect to decision of New York Compensation Board to dismiss a workmen's compensation claim on the merits).

[52] 587 F.2d at 634 (Hall, J., dissenting). *See* text accompanying note 39 *supra. See also* Pettus v. American Airlines, Inc., 3 BEN REV. BD. SERV. 315, 319 (B.R.B. No. 75-197, March 19, 1976).

[53] 587 F.2d at 628.

[54] *Id.* at 629-32. *See* text accompanying notes 57-88 *infra.*

[55] *See* text accompanying note 42 *supra.*

[56] *See* text accompanying notes 4 *supra* & 73 *infra.* The *Pettus* court's finding that recovery under the Virginia Act precluded recovery under the D.C. Act may have contradicted another Fourth Circuit ruling. *See* Newport News Shipbuilding & Dry Dock Co. v. Director, O.W.C.P., 583 F.2d 1273, 1276 (4th Cir. 1978) (Virginia Industrial Commission's refusal to grant workmen's compensation benefits under Virginia Act did not preclude recovery under Longshoremen's Act). *See also* text accompanying notes 79-88 *infra.*

[57] 320 U.S. 430 (1943).

[58] 587 F.2d at 630-31. The Fourth Circuit in *Pettus* found that "precedent of last resort" refuted the plaintiff's contention that recovery under the D.C. Act was possible after recovery under the Virginia Act. *Id.* at 630. No recently reported federal or state decision contains the phrase "precedent of last resort." Apparently the Fourth Circuit meant to say that precedent from a court of last resort refuted Pettus' contention. *See* Embree Uranium Co. v. Liebel, 169 Cal. App. 2d 256, ____, 337 P.2d 159, 161 (1959).

Louisiana was injured in Texas and awarded benefits under the Texas Workmen's Compensation Act (Texas Act).[59] The worker subsequently sought additional benefits under the applicable Louisiana statute and the Louisiana Supreme Court affirmed the award of benefits.[60] The United States Supreme Court overturned the Louisiana decision concluding that the Texas award was the claimant's only workmen's compensation recovery because of the exclusive remedy provision[61] of the Texas Act.[62]

Four years later, the Supreme Court decided *Industrial Commission of Wisconsin v. McCartin*[63] in which the Court effectively limited the *Magnolia* decision. The *McCartin* Court allowed a Wisconsin resident injured in Illinois to recover under the Wisconsin Act subsequent to recovery under the Illinois Act.[64] The Illinois Act contained an exclusive remedy provision similar to the Texas provision in *Magnolia.*[65] The *McCartin* Court, however, ruled that the Illinois exclusive remedy provision only precluded common law recovery for work related injuries, and not recovery

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The Fourth Circuit's exclusive use of cases from the Supreme Court, a court of last resort, to support a finding of preclusion is significant. While the *Magnolia* decision supports the Fourth Circuit's position that recovery under Virginia Act precludes recovery under the D.C. Act, *see* text accompanying notes 59-62 *infra*, the *Magnolia* decision has been severely limited and restricted. *See* text accompanying notes 67-73 *infra*. Virtually every court that has considered a state workmen's compensation act with provisions similar to Virginia's has refused to follow *Magnolia*. *See* text accompanying note 73 *infra*. If the Fourth Circuit had cited decisions other than Supreme Court decisions, the inadvisability of following *Magnolia* would have been apparent.

[59] 320 U.S. at 432-33.

[60] *Id.* at 433-34.

[61] TEX. REV. CIV. STAT. ANN. art. 8306, § 3 (Vernon 1927) (amended 1953) provides that a worker injured on the job does not have a common law cause of action for personal injuries against his employer. Rather, the employer compensates the employee solely through workmen's compensation insurance. A provision making statutory recovery the injured worker's exclusive remedy against his employer is a major feature of workmen's compensation legislation. *See* note 1 *supra*. Under workmen's compensation acts, an employer assumes a liability to compensate the injured worker generally without inquiry as to fault. Through exclusive remedy provisions, the employer receives in exchange for this guarantee of automatic reasonable compensation, relief from the prospect of large common law damage verdicts. *See* 2A LARSON, *supra* note 1, § 65.10 at 12-1 to 4. *See also,* Note, *Employer Liability in West Virginia: Compensation Beyond the Law,* 36 WASH. & LEE L. REV. 151 (1979) (discussing exemption from exclusive remedy provisions for certain injuries).

[62] 320 U.S. at 435-46. The Court in *Magnolia* noted the claimant's award of benefits in Texas was a final award in the state and thus took on res judicata effect. The Court reasoned that the res judicata effect of the award also barred recovery under the compensation act of any other state through the full faith and credit doctrine. *Id.* at 436-44. *See* text accompanying notes 40-41 & 49-52 *supra*.

[63] 330 U.S. 622 (1947).

[64] *Id.* at 630.

[65] 4 LARSON, *supra* note 1, § 85.20 at 16-20. Like the Texas statute in *Magnolia, see* note 61 *supra*, the Illinois statute in *McCartin* provided that any employee covered by the Illinois Act did not have a common law or statutory right to recover damages for his on-the-job injuries other than the benefits provided in the workmen's compensation act itself. *See* Illinois Workmen's Compensation Act § 6, ILL. ANN. STAT. ch. 48, § 143 (Smith-Hurd 1942) (current version at ch. 70, § 138.5(a) (Supp. 1979)).

under the compensation act of another state.[66] Although *McCartin* specifically did not overrule *Magnolia*,[67] the decisions are difficult to reconcile because there are no significant differences between the exclusive remedy provision interpreted in each decision.[68] Apparently the decisions are reconcilable only because the Texas Act contains a provision prohibiting recovery in Texas if a worker injured outside of the state first recovers benefits under another state's compensation act.[69] The Supreme Court in *Magnolia* appeared to read the provision also to prohibit recovery outside of Texas if the claimant first recovers benefits in Texas.[70] The Illinois Act, like most state compensation acts,[71] does not contain an analogous provi-

[66] 330 U.S. at 627-28. The Supreme Court in *McCartin* found no indication in the Illinois exclusive remedy provision, *see* note 65 *supra*, or in decisions construing the Illinois provision that the provision was intended to preclude recovery by proceedings brought in another state. 330 U.S. at 627-28.

[67] 330 U.S. at 626-27, 630. The *McCartin* Court concluded that the Illinois award was different in nature and effect than the Texas award in *Magnolia*. *Id.* at 626-27. The *McCartin* Court, however, did not explain exactly how the awards were different. *See* text accompanying notes 68-73 *infra*.

[68] *See* note 65 *supra*. At first glance, *McCartin* may be distinguished from *Magnolia* because the original Illinois workmen's compensation settlement in *McCartin* expressly provided that the settlement did not preclude recovery under the Wisconsin Act. The *McCartin* Court, however, ignored this distinction and concluded that the absence in Illinois statutes or case law of an explicit prohibition against seeking additional or alternative relief under the laws of another state mandated reversal of the Seventh Circuit. 330 U.S. at 630. *See* Larson, *Constitutional Law Conflicts and Workmen's Compensation*, 1971 DUKE L.J. 1037, 1048 [hereinafter cited as Larson, *Constitutional*].

[69] TEX. REV. STAT. ANN., art. 8306, § 19 (Vernon 1931) (amended 1977).

[70] The *Magnolia* Court noted the Texas Act's prohibition of workmen's compensation recovery in Texas after recovery in another state when the Court discussed the various provisions of the Texas Act. 320 U.S. at 435. Also, the Court specifically refused to determine what effect would be given to the *Magnolia* award if Texas courts had not prohibited recovery in Texas after recovery in other states. *Id.* at 443. The *Pettus* dissent found significance in the *Magnolia* Court's citing several Texas cases prohibiting recovery in other states. 587 F.2d at 632 (Hall, J., dissenting).

[71] *See* 4 LARSON, *supra* note 1, § 85.30 at 16-20 n.40. Apparently Nevada and North Dakota are the only states other than Texas which refuse workmen's compensation benefits to a worker injured out of state when the injured worker has sought benefits elsewhere. *Id.* at 6 n.40 (Cum. Supp. 1979). *See* NEV. REV. STAT. § 616.530(1) (1973); N.D. CENT. CODE § 65-05-05 (Pocket Supp. 1979). *See also* Nevada Indus. Comm'n v. Underwood, 79 Nev. 496, ____, 387 P.2d 663, 666 (1963) (Nevada statute precludes recovery under Nevada Act once benefits have been received in Idaho); Bekkedahl v. North Dakota Workmen's Comp. Bureau, 222 N.W.2d 841, 846 (N.D. 1974) (North Dakota statute should not apply where impossible for injured worker to make knowing choice between recovery under Montana or North Dakota Acts). *But see* United States Fidelity & Guar. Co. v. North Dakota Workmen's Comp. Bureau, 275 N.W.2d 618, 622 (N.D. 1979) (*Bekkedahl* should be limited to the facts of that case).

The Minnesota Supreme Court has held that initial recovery under the North Dakota Workmen's Compensation Act does not bar subsequent recovery under compensation acts of other states. Cook v. Minneapolis Bridge Constr. Co., 231 Minn. 433, ____, 43 N.W.2d 792, 797-98 (1950). Actually, *Magnolia* may bar recovery in other states once an injured worker recovers compensation in North Dakota. The North Dakota Act, like the Texas Act in *Magnolia*, has a provision barring recovery in North Dakota if a worker injured elsewhere recovers under another state compensation act. The *Magnolia* Court apparently relied on the

sion on single state recovery.[72] Virtually every court interpreting a compensation act without a single state recovery provision similar to the Texas statute has followed *McCartin* rather than *Magnolia* and allowed recovery under more than one compensation act.[73]

The Fourth Circuit in *Pettus,* however, applied *Magnolia* rather than *McCartin,* and denied recovery, even though the Virginia Act does not have a section similar to the single state provision in the Texas Act.[74] The Fourth Circuit justified the application of *Magnolia* on the similarity of the basic exclusive remedy provisions of the Texas and Virginia Acts.[75] However, the Virginia exclusive remedy provision also is similar to the Illinois statute interpreted in *McCartin.*[76] Numerous cases have interpreted the Virginia exclusive remedy provision's effect on common law recovery for work related accidents,[77] yet no Virginia case has considered application of the provision to workmen's compensation recovery under the compensation acts of other jurisdictions.[78]

Texas Act provision to bar recovery elsewhere once an injured worker recovered in Texas. *See* text accompanying note 70 *supra.*

[72] *See* 4 LARSON; *supra* note 1, § 85.30 at 16-20 to 21.

[73] *See* Larson, *Conflicts, supra* note 3, at 132; *see, e.g., In re* Lavoie's Case, 334 Mass. 403, ____, 135 N.E.2d 750, 753-54, *cert. denied* 350 U.S. 927 (1956) (*Magnolia* exclusivity provision not read into Rhode Island law allowing Massachusetts recovery); Spietz v. Industrial Comm'n, 251 Wis. 168, ____, 28 N.W.2d 354, 359 (1947) (*McCartin* applied to Montana law); *cf.* Cofer v. Industrial Comm'n, 24 Ariz. App. 357, ____, 538 P.2d 1158, 1159-60 (1975) (*Magnolia* applicable to case because original award was in Texas but criticizing *Magnolia* Court's interpretation of Texas statute). *See also* BLAIR, REFERENCE GUIDE TO WORKMEN'S COMPENSATION § 23.00 (1974); 4 LARSON, *supra* note 1, § 85.40; Reese & Johnson, *supra* note 49, at 159-60; Note, *Workmen's Compensation,* 60 HARV. L. REV. 993, 993-94 (1947); Note, *Conflict of Laws, Workmen's Compensation,* 23 IND. L.J. 214, 214-18 (1948); notes 4 & 65 *supra.*

The only decision, other than *Pettus,* precluding recovery in a second jurisdiction when the first jurisdiction did not have a single state recovery provision similar to the Texas Act provision is Gasch v. Britton, 202 F.2d 356 (D.C. Cir. 1953). *Gasch* held the Maryland Act and Maryland case law precluded subsequent recovery in other states. *Id.* at 360-61. *See* Larson, *Conflicts, supra* note 3, at 132. The Maryland Court of Appeals, however, has held that *Gasch* misconstrued an earlier Maryland decision and misinterpreted the Maryland statute. Wood v. Aetna Cas. & Sur. Co., 260 Md. 651, 658-64, 273 A.2d 125, 129-31 (1971).

[74] 587 F.2d at 631. *See id.* at 633 (Hall, J. dissenting).

[75] *Id.* at 631.

[76] *See* text accompanying note 65 *supra.* The Virginia Act provides that the remedies granted in the Act itself exclude all other remedies of the injured employee at common law or otherwise. VA. CODE § 65.1-40 (1973). *See* notes 61 & 65 *supra.*

[77] *See, e.g.,* Snead v. Nello L. Teer Co., 353 F. Supp. 434, 435-37 (W.D. Va. 1973) (common law action against main contractor on construction job refused where plaintiff was employee of subcontractor); Holt v. Bowie, 343 F. Supp. 962, 965-66 (W.D. Va. 1972) (cause of action granted against city of Bristol for which plaintiff's employer was building bus garage). *See generally* VA. WORKMEN'S COMPENSATION, *supra* note 11, at 183-201; *Workmen's Compensation, Eighteenth Annual Survey of Developments in Virginia Law: 1972-1973,* 59 VA. L. REV. 1632, 1632 & n.6 (1973).

[78] *See* 587 F.2d at 633 (Hall, J., dissenting); VA. WORKMEN'S COMPENSATION, *supra* note 11, at 183-201 (no mention of recovery under other states' compensation acts during discussion of Virginia Act exclusivity provision). No reported Virginia decision has cited either

The only case considering the applicability of the Virginia exclusive remedy provision to other workmen's compensation acts is the recent Fourth Circuit decision in *Newport News Shipbuilding and Dry Dock Co. v. Director, O.W.C.P.*[79] In *Newport News,* the Fourth Circuit found that the Virginia Act's exclusive remedy provision did not preclude an injured worker from recovering under the Federal Longshoremen's Act[80] after the Virginia Industrial Commission denied compensation to the claimant.[81] The *Newport News* court concluded that the reasoning of *McCartin* was more applicable to the Virginia exclusive remedy provision than the reasoning of *Magnolia.*[82]

Based on the *Newport News* decision, which was issued after oral arguments in *Pettus,*[83] the *Pettus* appellees sought a rehearing claiming the *Newport News* and *Pettus* interpretations of the Virginia exclusive remedy provision were contradictory.[84] The Fourth Circuit denied the *Pettus* rehearing.[85] In a supplemental opinion, the *Pettus* majority distinguished *Newport News* by concluding that the *Newport News* plaintiff received Longshoremen's Act benefits solely because proof of injury requirements in the Virginia Act made state recovery impossible.[86] By contrast, the *Pettus* plaintiff would have received Virginia Act benefits had he not refused to undergo corrective surgery.[87] A thorough reading of *Newport News* shows the *Pettus* court seriously misinterpreted the reasoning in *Newport News.* The *Newport News* court did not compare or discuss the proof of injury requirements in the Virginia and Longshoremen's Acts. Rather, the *Newport News* opinion discussed five separate issues, three involving the possibility of recovery under two compensation acts, and resolved all the issues in the claimant's favor.[88]

McCartin or *Magnolia* in a workmen's compensation context. *See* Osborne v. Osborne, 215 Va. 205, 207-08, 207 S.E.2d 875, 879 (1974) (*Magnolia* applicable in divorce case).

[79] 583 F.2d 1273 (4th Cir. 1978).

[80] In *Newport News,* unlike *Pettus,* the Longshoremen's Act was directly applied because the claimant was employed in an eligible maritime occupation. *See* note 6 *supra.*

[81] 583 F.2d at 1276.

[82] *Id.* at 1278. The *Newport News* court did not find a conflict with the Virginia exclusivity provision, *see* note 76 *supra,* when the claimant sought recovery under the Longshoremen's Act. 583 F.2d at 1278.

[83] *Pettus* was argued June 8, 1978. 587 F.2d at 627. *Newport News* was argued May 1, 1978, and decided September 21, 1978. 583 F.2d at 1273.

[84] 587 F.2d at 635.

[85] *Id.*

[86] *Id.* at 635-36. In *Newport News* the claimant originally applied for benefits under the Virginia Act. The Virginia Industrial Commission denied benefits because the Commission found insufficient proof that the claimant's injuries were work related. The claimant then applied for and received benefits under the Longshoremen's Act. 583 F.2d at 1276.

[87] 587 F.2d at 635.

[88] 583 F.2d at 1276-81. The *Newport News* court considered whether the election of remedies doctrine applies to the Virginia Act, *id.* at 1276-78, whether res judicata effect should be applied to the decision of the Virginia Commission, *id.* at 1278, whether *McCartin* or *Magnolia* should be applied to recoveries under the Virginia Act, *id.* at 1278-79, and two procedural issues, *id.* at 1279-81.

The Supreme Court may soon resolve the apparent conflict between *Pettus* and *Newport News* as to whether the Virginia Act precludes subsequent recovery under other compensation acts. The Court has granted certiorari in *Thomas v. Washington Gas Light Co.*[89] in which the Fourth Circuit reversed the award of D.C. Act benefits to a District of Columbia resident injured in Virginia.[90] As in *Pettus*, the *Thomas* plaintiff originally received Virginia Act benefits and subsequently applied for D.C. Act benefits.[91] The Benefits Review Board granted the D.C. Act benefits, citing its own *Pettus* decision.[92] The Fourth Circuit reversed the Benefits Review Board.[93] If the Supreme Court in deciding *Thomas* follows the generally accepted readings of the *Magnolia* and *McCartin* decisions, the Court should reverse the Fourth Circuit and conclude that the Virginia Act does not preclude subsequent recovery under other compensation acts.[94]

By overturning *Thomas*, the Court would effectively overturn the *Pettus* interpretation of the Virginia Act thus affirming the *Newport News* position that workers injured in Virginia may recover under more than one compensation act.[95] Until *Thomas* is decided, however, recipients of Virginia Act benefits are precluded from recovery under other compensation acts even though eligibility standards under other acts are met.[96] Therefore, injured workers eligible for recovery in Virginia and in other jurisdictions should survey available benefits under each compensation act before applying for benefits. Such a survey of benefits, however, may be impractical or incomplete. The consideration of statutorily mandated benefits may not guarantee the highest possible recovery because compensation acts

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[89] 9 BEN. REV. BD. SERV. 760 (B.R.B. No. 77-182, Feb. 28, 1978), *rev'd mem.*, 598 F.2d 617 (4th Cir. 1979), *cert. granted*, 100 S. Ct. 447 (1979). *See Court Will Decide D.C. Workmen's Benefit Law Case*, Wash. Post, Nov. 27, 1979, at E-1, col. 6 [hereinafter cited as *Workmen's Benefit Law Case*].

[90] In *Thomas*, the plaintiff, an employee of the defendant, was hired in Washington, D.C. but worked in Virginia and Maryland as well as in Washington. The plaintiff injured his back while working in Virginia and was granted temporary total disability. 9 BEN. REV. BD. SERV. at 761.

[91] Following the injury, the *Thomas* plaintiff and defendant voluntarily agreed that compensation would be awarded under the Virginia Act. The Virginia Act, however, has a statutorily mandated maximum for total benefits so compensation was subsequently sought under the D.C. Act which has no limit on total benefits. *Workmen's Benefit Law Case, supra* note 89, at E-1, col. 6.

[92] 9 BEN. REV. BD. SERV. at 763. *See* text accompanying notes 17-18 *supra*. The Benefits Review Board decision in *Thomas* was issued after the Board decided *Pettus* but before the Fourth Circuit overturned *Pettus* and held that the Virginia Act precluded subsequent recovery under the D.C. Act. 9 BEN. REV. BD. SERV. at 766.

[93] 598 F.2d at 617.

[94] *See* text accompanying notes 58-72 *supra*.

[95] *See* text accompanying notes 79-88 *supra*. If the Supreme Court overturns *Thomas* and thus finds that the *Pettus* court misinterpreted the Virginia Act, Pettus still will be prevented from recovering D.C. Act benefits. The Fourth Circuit in *Pettus* also found that the Virginia Industrial Commission's ruling that the plaintiff unjustifiably refused surgery under the Virginia Act obligated the Department of Labor to find that the plaintiff unreasonably refused surgery under the D.C. Act. *See* text accompanying notes 29-52 *supra*.

[96] *See* text accompanying notes 53-56 *supra*.