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# Conflicts of Law:

## Maximizing your recovery when handling Workers' Compensation claims involving multiple jurisdictions

by Andrew J. Reinhardt, Esq.

Most workers' compensation attorneys who represent injured employees encounter, to a greater or lesser degree, cases having multistate implications, therefore presenting conflict-of-law questions. Endless factual complications can be present. Consider, for example, a case where an employee is a resident of state A, was hired in state B by a company having its principal place of business in state C, and is injured while working in state D.

It is important to be familiar with the typical requirements for any state to exercise jurisdiction over a claim. It should also be apparent that there are a number of cases that could be filed in one of several states or it could be that certain portions of a claim might be pursued in one state while another portion of the claim is pursued in another state.

States may have different rules in regards to allowing such multiple filings, depending upon whether there has been a binding election or acceptance of benefits from another state. It

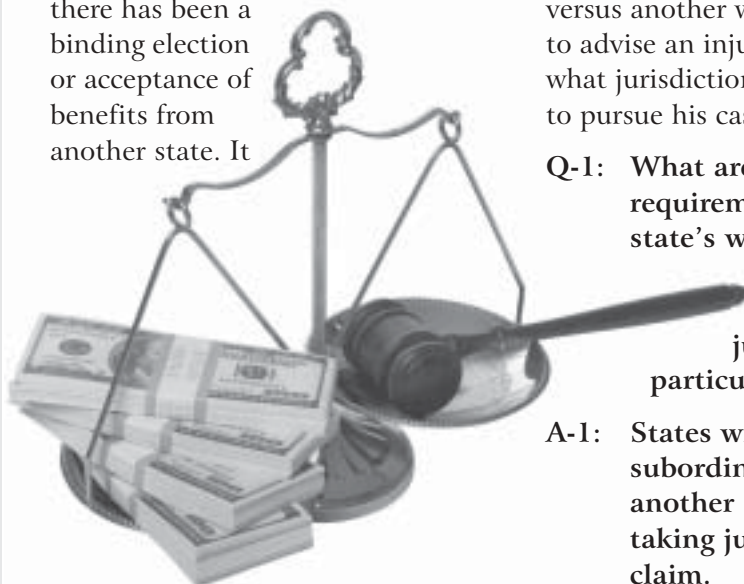
may also be important whether successive filings are for different benefits or periods of benefits.

Generally, while double recoveries are not favored, **on some occasions greater total recoveries may be obtained for an injured worker who pursues multiple state filings.** Also, regardless of whether a workers' compensation claim can or should be pursued in more than one state, familiarity with the types of recoveries that can be obtained from one state versus another would be important to advise an injured worker as to what jurisdiction he should choose to pursue his case.

**Q-1: What are the typical requirements for any state's workers'**

**compensation tribunal to assert jurisdiction over a particular claim?**

**A-1: States will typically not subordinate their law to another state in regards to taking jurisdiction over a claim.**



It is initially noted that the U.S. Supreme Court, in *Crider v. Zurich Ins. Co.*, 380 U.S. 39 (1965), held that the Full Faith and Credit Clause of the federal Constitution does not require that a state subordinate its workers' compensation policies to those of another state. *Crider* is frequently cited, and has been followed in such cases as *Robert M. Neff, Inc. v. Workmens Compensation Appeal Board (Burr)*, 155 Pa. Commw. 44, 624 A.2d 727 (1993).

In *Neff*, it was held that a Pennsylvania employee injured in the state while working for an Ohio employer, was entitled to all Pennsylvania compensation and medical benefits to which he would otherwise be entitled, regardless of the fact that he had contractually agreed to be covered by the Ohio workers' compensation law, even if Ohio law authorized such an agreement. 624 A.2d at 732-33.

Some states do, however, as a matter of state law, decline to hear compensation cases where doing so would require enforcement of the compensation law of a state which (as do the majority of states) has an administrative (rather than judicial) enforcement scheme. For example, in *Jerry v. Young's Well Service*, 375 So. 2d 186 (La. Ct. App. 1979), it was held first that Louisiana courts had no jurisdiction to apply Louisiana compensation where the employment contract was entered into, and the accident occurred outside the state, and then held that a Louisiana court was without jurisdiction to enforce the Arkansas



compensation act, which was enforced by an administrative commission, and under which

“any remedy [is] inextricably bound to the administrative procedures of that commission”. *Id.* at 188.

Similarly, in *Ray v. Aetna Casualty & Surety Co.*, 517 S.W.2d 194 (Tenn. 1974), it was held that, regardless of a lack of constitutional limitation on such power:

“The general rule is that courts of one state will not enforce the workmen’s compensation laws of another jurisdiction, where the other state has provided a special tribunal to administer claims thereunder.” *Id.* at 197.

The *Ray* Court quoted the approval of that principle in the leading academic authority on workers’ compensation, which presently appears at 9 Arthur Larson & Lex K. Larson, *Larson’s Workers’ Compensation Law* § 140.02(3), at 140-6, -7 (2000). Some jurisdictions, however, reject that principle. See, as illustrative, the Arizona statute providing:

“B. If a workman who has been hired without this state is injured while engaged in his employer’s business, and is entitled to compensation for the injury under the law of the state where he was hired, he may enforce against his employer his rights in this state if they are such that they can reasonably be determined and dealt with by the commission and the courts in this state.” Ariz. Rev. Stat. § 23-904(B).

### A-1B: Most states will take jurisdiction over claims for accidents in their state.

It appears that, at present, most states will take jurisdiction of compensation claims for injury resulting from in-state accidents. Larson suggests “place of injury as a basis for residual jurisdiction, thereby avoiding the danger of coverage by no state, explaining:

“The view that, whatever other arrangements it may make about applicability, each state should unreservedly take responsibility for injuries within its borders rests not on any survival of *delictual* conflicts rules but simply on statutory construction, on the unavoidable interest of the state in an injury that may affect its own citizens more than those of any other state, and on the desirability of providing a backstop liability to which claimants can turn when they find themselves on the wrong side of all other extraterritoriality rules.” 9 Larson & Larson, *supra*, §143.03(1), at 143-16.

Attention is called to *Rutledge v. Al G. Kelly & Miller Bros. Circus*, 18 N.Y.2d 464, 223 N.E.2d 334 (1966), where the New York Court of Appeals rejected a rule previously applied in that state which denied compensation coverage of in-state injuries in some circumstances, and held:

“New York has a primary public interest in industrial accidents happening here and it may take jurisdiction when an industrial accident occurs here *even though control of the work, payment of wages, and employment of the claimant all may have their roots elsewhere.*” 223 N.E.2d at 338 (emphasis added).

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The *Rutledge* Court applied that rule so as to hold that the New York Board had jurisdiction over a compensation claim by an Arkansas resident employed by an Oklahoma-based traveling circus, who was injured in New York.

**A-1C: Some states, including Virginia, require other contacts with the state besides simply an in-state accident or in-state residence.**

The following Connecticut provision is illustrative of statutory provisions excluding some nonresident employees injured in in-state accidents from compensation coverage:

“(B) ‘Employee’ shall not be construed to include.... (vi) Any person who is not a resident of this state but is injured in this state during the course of his employment, unless such person (I) works for an employer who has a place of employment or a business facility located in this state at which such person spends at least fifty per cent of his employment time, or (II) works for an employer pursuant to an employment contract to be performed primarily in this state.” Conn. Gen. Stat. Ann. § 31-275(9)(B)(vi).

In *Kluttz v. Howard*, 228 Conn. 401, 636 A.2d 816 (1994), the court took notice of this definition while holding that a nonresident employee injured in Connecticut

prior to its effective date was eligible for Connecticut compensation benefits. Assumption of jurisdiction over out-of-state accidents is a question subject to inconsistent statutory and case law. One approach is that taken in Virginia where it is provided by statute:

“A. When an accident happens while the employee is employed elsewhere than in this Commonwealth which would entitle him or his dependents to compensation if it had happened in this Commonwealth, the employee or his dependents shall be entitled to compensation, if: 1. The contract of employment was made in this Commonwealth; and 2. The employer’s place of business is in this Commonwealth; provided the contract of employment was not expressly for service exclusively outside of the Commonwealth.” Va. Code Ann. §65.2-508A.



In *Worsham v. Transpersonnel, Inc.*, 15 Va. App. 681, 426 S.E.2d 497 (1993), it was held that the statutory requirement that the employer’s place of business must be in the Commonwealth is not satisfied by its merely conducting business in the state, and that the WCC had no jurisdiction

where the employer was incorporated and maintained its principal place of business

elsewhere and the claimant was not required to live in the state. 426 S.E.2d at 499; see *CLC Construction, Inc. v. Lopez*, 20 Va. App. 258, 456 S.E.2d 155 (1995), as an example of cases where, in contrast to *Worsham*, the place of business in the Commonwealth requirement was met. 456 S.E.2d at 158.

**An employee working about 73 percent of his time in Florida qualified, rejecting the argument that the question to be determined was where the employer was principally localized.**

In *General Electric v. DeCubas*, 504 So. 2d 1276 (Fla. Dist. Ct. App. 1986), it was held that under a statute providing for payment of compensation for out-of-state injuries and deaths if, *inter alia*, the employment was principally localized in this state, even if the contract of employment was made elsewhere, *Id.* at 1277, an employee working about 73 percent of his time in Florida qualified, rejecting the argument that the question to be determined was where the employer was principally localized.

In *Johnson v. United Airlines*, 550 So. 2d 134 (Fla. Dist. Ct. App. 1989), it was held that an airline flight attendant’s employment was principally localized in Florida, where she was based, although the majority of her flight time was spent outside of Florida airspace. In *Ewing v. George A. Hormel & Co.*, 428 N.W.2d 674 (Iowa Ct. App. 1988), it was held that the Iowa Commission had no jurisdiction over a claim by an employee who, although an Iowa resident, had his employment localized in Nebraska

and was injured in that state. *Id.* at 675.

The applicable Alabama statute provides that an employee or his dependants, if otherwise entitled to compensation had the injury or death resulted from an in-state accident, are entitled to compensation for an out-of-state accidental injury, provided:

“(1) His employment was principally localized in this state;

(2) He was working under a

contract of hire made in this state in employment not

principally localized in any state;

(3) He was working under a contract of

hire made in this state in employment principally localized in another state whose workmen’s compensation law was not applicable to his employer; or

(4) He was working under a contract of hire made in this state for employment outside the United States.” Ala. Code §25-5-35(d)(1)-(4).

In *Ex parte Flint Construction Co.*, 775 So. 2d 805 (Ala. 2000), it was held the trial court (in a state utilizing the judicial rather than administrative method of enforcing its compensation act), had jurisdiction of a claim for out-of-state injuries, when his employment was not localized in any particular state, but his employment was pursuant to a contract for hire entered into in Alabama. *Id.* at 808.

*Murray v. Ahlstrom Industrial Holdings, Inc.*, 131 N.C. App. 294,

506 S.E.2d 724 (1998), is illustrative of cases turning on whether the contract of employment was made in the forum state. There, the employee was injured in Mississippi after having been telephoned at his North Carolina home by his former, out-of-state employer and offered a job in Mississippi. The *Murray* court held that, under the rule that for a contract to be made in North Carolina, the final act necessary to

make it a binding contract must be done here, 506 S.E.2d at 726. The offer, and following telephone negotiation, acceptance by the claimant in North Carolina, was

such final act, empowering the Commission to assume jurisdiction. In *D.L. People’s Group, Inc. v. Hawley*, 804 So. 2d 561 (Fla. 1st Dist. Ct. App. 2002), it was held that Florida had jurisdiction over a claim for an employee’s death in Missouri, where such employee signed the employment contract in Missouri and sent it to the employer’s president, who signed and executed it in Florida. *Id.* at 563.

*Ray* should be noted as illustrating the point that if other requisite factors are not present, the mere fact that the employee is a resident of the forum state will not be sufficient to permit assumption of jurisdiction over his compensation claim. There, the Tennessee Supreme Court held that when the employee, a Tennessee resident, was injured in Missouri, and the contract of employment was entered into in that state, contacts with Tennessee were insufficient to justify application of

Tennessee law. 517 S.W.2d at 197.

An interesting variation is presented by *Wartman v. Anchor Freight Co.*, 75 Ohio App. 3d 177, 598 N.E.2d 1297 (1991). The *Wartman* Court applied a section of the Ohio act providing:

“If an employee is a resident of a state other than this state and is insured under the workers’ compensation law or similar laws of a state other than this state, the employee and his dependents are not entitled to receive compensation or benefits under this chapter, on account of injury, disease, or death arising out of or in the course of employment while temporarily within this state and the rights of the employee and his dependents under the laws of the other state shall be the exclusive remedy against the employer on account of the injury, disease, or death.” 598 N.E.2d at 1300 (quoting Ohio Rev. Code Ann. § 4123.54(G) (which remains in effect)) to the case of a Kentucky resident employed by a Michigan corporation who was injured while driving a truck through Ohio.

The court held that the employee was not insured under the workers’ compensation law of another state, because he was not covered under Michigan law (as a nonresident of Michigan injured outside Michigan), and was also not covered under Kentucky law, regardless of his residency of that state. Therefore, he was not precluded from entitlement to Ohio compensation benefits. *Id.* at 1301-02.

**Q-2: Where more than one state may assert jurisdiction over a claim because the employer’s place of business is in one**

**In general, it can be stated that, absent a specific statutory provision, there is no obstacle to prevent a compensation claimant from filing his claim in any state having jurisdiction.**

state and the accident occurred in another, what limitations might be placed on the employee's ability to choose the jurisdiction in which to file?

**A-2: An injured worker will often have a choice of multiple jurisdictions in which to file claims.**

In general, it can be stated that, absent a specific statutory provision, there is no obstacle to prevent a compensation claimant from filing his claim in any state having jurisdiction. This point was recognized by the U.S. Supreme Court in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1960), which (while primarily dealing with

*Pacific Employers, supra*, or in the District of Columbia, where petitioner resided, his employer was principally located, and the employment relation was formed." *Id.* at 279 (citations omitted).

The *Thomas* Court further stated, citing, e.g., *Cardillo v. Liberty Mutual Ins. Co.*, 330 U.S. 469 (1947), and *Alaska Packers Ass'n v. Industrial Accident Commission*, 294 U.S. 532 (1935):

"[A]s those cases underscore, compensation could have been sought under either compensation scheme even if one statute or the other purported to confer an exclusive remedy on petitioner. Thus, for all practical purposes, respondent and its insurer would

resident, whose contract of employment was made in Alabama and who was employed there, and who died in a Tennessee accident. The court held that the claim was properly instituted in Tennessee:

"even though upon these facts the family of the deceased might also have had a claim under the Alabama statute, had they seen fit to pursue the matter in that state." *Id.* at 37.

In *Rutledge*, the New York Court of Appeals held that:

"[w]e ought not apply a rule of mutually exclusive jurisdiction and deny jurisdiction here because under the same facts jurisdiction would be taken elsewhere." 223 N.E.2d at 338.

In *Neff*, it was held that although the employee had a contractual right to claim benefits in Ohio, he had a right under Pennsylvania law to file for benefits there, and requiring [him] to first submit claims to the Ohio Bureau constitutes an unreasonable burden. 624 A.2d at 733. In *Johnson*, it was held by the Florida First District Court of Appeal that the pendency of the employee's claim in Illinois did not affect her entitlement to Florida compensation benefits." 550 So. 2d at 135.

**Q-3: What will be the impact on an employee's ability to pursue a workers' compensation claim in one state of his having filed for and/or been awarded compensation benefits in another state?**

**A-3A: States may disallow successive recoveries for the same injury depending upon the state's approach to their having been both a filing and election in a prior state.**

another issue, as discussed herein under Q-3, *infra*), held that it was perfectly clear that the employee there:

"could have sought a compensation award in the first instance either in Virginia, the State in which the injury occurred, *Carroll v. Lanza, supra*;

have had to measure their potential liability exposure by the more generous of the two workmen's compensation schemes in any event." 448 U.S. at 279-80 (emphasis added).<sup>1</sup>

In *Argonaut Ins. Co. v. Vanatta*, 539 S.W.2d 35 (Tenn. 1976), the deceased employee was a Tennessee



**The question of successive workers' compensation awards in different states has generated conflicting opinions, and cannot be regarded as completely settled.**

The question of successive workers' compensation awards in different states has generated conflicting opinions, and cannot be regarded as completely settled. Consideration of the question should begin with three U.S. Supreme Court opinions.

In *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1944), it was basically held that a final compensation award is entitled to the same full faith and credit as a court judgment, and that an employee therefore could not claim compensation in a second jurisdiction after claiming and recovering compensation in a first jurisdiction.

In *Industrial Commission v. McCartin*, 330 U.S. 622 (1947), *Magnolia* was modified so

as to permit an employee to file a compensation claim in a second state in the absence of some unmistakable language by a state legislature or judiciary, *Id.* at 627, of the first state cut[ting] off an employee's right to sue under other legislation passed for his benefit in the first state. *Id.* at 628.

In *Thomas*, the Court (in a plurality opinion) overruled *Magnolia*. *Id.* at 285. A majority of

the *Thomas* Court held that the employee there had a right to file for an additional award in the District of Columbia after obtaining an award in Virginia, because the Virginia statute alleged to bar successive D.C.



claim lack[ed] the 'unmistakable language' which *McCartin* requires. *Id.* at 289-90 (concurring opinion).

*Neff* is illustrative of cases following *Thomas*. 624 A.2d at 732-33. However, *Gray v. Holloway Construction Co.*, 834 S.W.2d 277 (Tenn. 1992), should be noted as illustrating the continuing, albeit minority, viability of *Magnolia*. In *Gray*, the court held that, under Tennessee law:

"an employee injured on the job in another state, who files a workers' compensation claim in that jurisdiction and obtains either an award or a court-approved settlement of the claim or who actively pursues a claim in a venue that has jurisdiction, is barred from filing a subsequent claim in Tennessee." *Id.* at 279 (citations omitted).

The court further stated:

"Although the basis for this rule is frequently expressed in the Tennessee cases in terms of an election of remedies on the part of the plaintiff-employee, it is also evident that an out-of-state judgment would be entitled to full faith and credit in the courts of Tennessee, and that a further recovery for the same injury under the Tennessee workers' compensation statute would be barred by the federal constitution." *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 64 S. Ct. 208, 88 L. Ed. 149 (1943). *Id.*

**A-3B: A binding election might occur with acceptance of benefits from one state.**

In *Perkins v. Beak, Inc.*, 802 S.W.2d 215 (Tenn. 1991), a case cited in *Gray*, it was held

that the employee's execution of an agreement for compensation providing that benefits would continue until terminated in accordance with the workmen's compensation law of Virginia, *Id.* at 216, constituted a binding election precluding him from obtaining Tennessee compensation benefits. The *Perkins* court held that:

"[t]he circumstances of each case must be considered in

determining *whether the employee has made a binding election*. The mere acceptance of benefits from another state does not constitute an election, but affirmative action to obtain or knowing and voluntary acceptance of benefits from another state will be sufficient to establish a binding election.” *Id.* at 217.

The *Gray* Court approved *Perkins* and held that the employee in its case did not make a binding election to receive Texas compensation benefits by, *inter alia*, accepting Texas temporary disability benefits paid voluntarily by an insurer. The *Gray* Court concluded:

“The palpable if unspoken principle underlying our decision in *Perkins* was a perceived need to guard against unfair manipulation of the Tennessee legal system and a possible double recovery by an injured worker who has already secured an adequate compensation award in another jurisdiction. That concern remains a valid one. Nevertheless, to invoke the rule applied in *Perkins* to Walter Gray’s case would produce just the opposite result instead of a double recovery, there would be no recovery at all. Clearly, that result would constitute a perversion of the otherwise sound policy developed in the line of cases culminating in *Perkins*.” 834 S.W.2d at 282.

**A-3C: The limitation caused by a binding election may depend upon a proper benefit comparison between states.**

The approach taken by Florida on the successive award issue can be contracted with the above-discussed Tennessee approach. It is provided in the Florida act:

“(d) If an accident happens while the employee is employed elsewhere than in this state, which would entitle the employee or his or her dependents to compensation if it had happened in this state, the employee or his or her dependents are entitled to compensation if the contract of employment was made in this state, or the employment was principally localized in this state. However, if an employee receives compensation or damages under the laws of any other state, the total compensation for the injury may not be greater than is provided in this chapter.” Fla. Stat. Ann. §440.09(1)(d).

compensation claim in Florida while her claim in New York was pending, the court held:

“The only pertinence which compensation proceedings in another state may have is concerned with offsetting the amount of benefits received so that total benefits do **not** exceed what might have been awarded in a Florida forum. So long as this limitation on recovery is observed, it is of no importance what the stage of proceedings may be in another state.” 239 So. 2d at 15.

In *Lee v. District of Columbia Department of Employment Services*, 509 A.2d 100 (D.C. 1986), it was



In *de Cancino v. Eastern Air Lines*, 239 So. 2d 15 (Fla. 1970), *appeal after remand*, 283 So. 2d 97 (Fla. 1973), where the employee filed a

held that under a section then providing that

“[n]o employee shall receive compensation under this chapter

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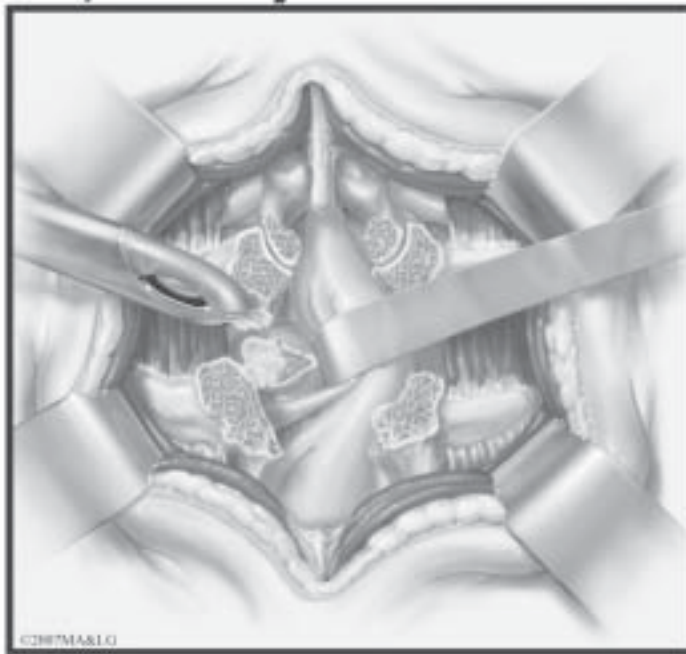
and at the same time receive compensation under the workers' compensation law of any other state for the same injury or death," *Id.* at 103,<sup>2</sup> precluded the employee's receipt of D.C. compensation benefits for the period for which he had already received Maryland benefits. The *Lee* court held that the administrative rejection of proposed construction of the language as barring only complete double recovery was reasonable." *Id.* at 104-05.

It is worth noting that *Larson* takes a position upholding the public policy desirability of successive awards, arguing:

"On the policy question whether the availability of the supplementary-award procedure is a desirable thing there is some difference of opinion. Against it is the argument that it may subject the employer and carrier to repeated claims in different jurisdictions, protracting litigation and making it impossible for the employer and carrier to know with assurance when a claim has been fully satisfied. On the other side it is urged that employees typically are at a disadvantage in learning of their potential rights under various statutes of other states, especially since complex conflict-of-laws issues may sometimes be involved; hence they may quite

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forgivably make an unfortunate choice at the time of filing the first claim.

...In any case, the worst that can happen to the defendants, apart from the inconvenience mentioned above, is that they will have to pay no more than the highest compensation allowed by any single state having an applicable statute—which is the same amount that would always be payable if the claimant made the best-informed choice the first time.” 9 Larson & Larson, *supra*, §141.06, at 141-10, -11 (2003) (emphasis added).

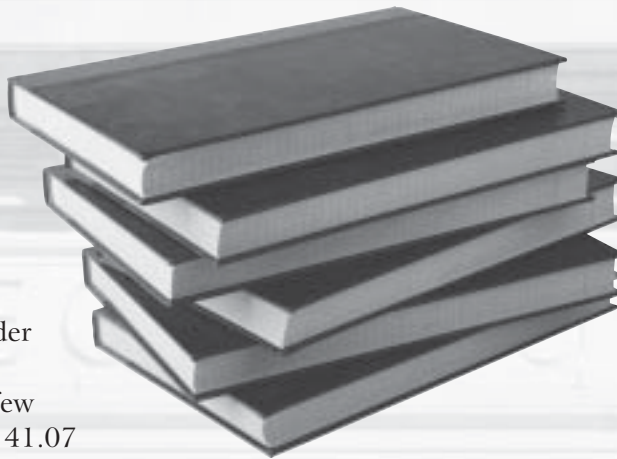
**Q-4: How can an injured worker maximize benefits when more than one state is available as a choice for filing a workers' compensation claim?**

**A-4: Double recoveries are not favored but greater total recoveries may be appropriate.**

As stated by Larson, a complete double recovery under the acts of two states is an impossible result except in a few rare fact combinations. *Id.* § 141.07

**It is urged that employees typically are at a disadvantage in learning of their potential rights under various statutes of other states, especially since complex conflict-of-laws issues may sometimes be involved.**

at 141-11 (2003). See, for example, as cases applying the general rule, *McGehee Hatchery Co. v. Gunter*, 234 Ark. 113, 350 S.W.2d 608, 610 (1961); *Johnson*, 550 So. 2d at 135; and *Brooks v. Eastern Airlines, Inc.*, 634 So. 2d 809 (Fla. Dist. Ct. App. 1994).



It was held in *Brooks* that the Florida statutory preclusion of award of total compensation benefits in two or more states greater than provided by Florida law applied not only to payments made in multiple states for coinciding periods of disability, but also to payments made during an altogether separate interval of disability. 634 So. 2d at 811.

**Focus, therefore, should be on the cases involving the rare exceptions to the general rule precluding double recovery.**

One such case is *Uninsured Employer's Fund v. Wilson*, 46 Va. App. 500, 619 S.E.2d 476 (2005). There, the employee was a Michigan resident, hired by his Michigan-based employer for a job in Virginia. He filed a claim with the Virginia WCC, which awarded the requested benefits. He also entered into a settlement with the employer in Michigan for payment of the Virginia award, plus \$75,000 and payment of all outstanding medical benefits, which settlement was approved in Michigan. The UEF (standing in the shoes of the employer) argued, *inter alia*, that it was entitled to a \$75,000 credit against the employee's medical claims, claiming that the employee would

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potentially one very large can of worms.

## Mental Conditions

Are mental conditions compensable? If so, how are they paid? How are they viewed by the court/commission/agency that enforces WC laws?

## Total Disability

Is it a lifetime benefit or limited by a fixed time or dollar amount?

If they are lifetime benefits, are cost of living adjustments made? Can a total permanent case be settled on a lump sum basis? Can lifetime medical benefits be left open if a lump sum settlement is made?

## Third Party Subrogation

What rights does the employer/insurer have? Who and how are disputes over subrogation resolved? What state law controls? Is limiting or defeating the subrogation claim an important factor?

## Speed of Dispute Resolution

How fast can the workers' compensation claim be resolved in the various states involved? Perhaps speed can make up for lower benefits.

## Settlement Considerations

Are lump sum settlements available? Does medical remain open or is it typically closed out in

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**A correct reading of the workers' compensation statute nonetheless results in the potential for undeserved benefits, the decision to rebalance the ledger lies solely within the province of the legislature, not the judiciary.**

“[w]hen a correct reading of the workers' compensation statute nonetheless results in the potential for undeserved benefits, the decision to

although married to a woman (Domenica) who lived in Florida with their minor child, he lived with his girlfriend (Donna), their minor child, and a minor child from the girlfriend's former marriage. The employee's fatal accident occurred in Virginia. Donna filed compensation claims in Maryland. Domenica filed claims in Virginia and was awarded survivors' benefits there for herself and her child. Domenica then filed a total dependency claim in Maryland, and the employer, *inter alia*, sought credit for the Virginia award. The *Ryder* Court, following discussion of the relevant statutes in both states, held that the Maryland statutory language:

otherwise be getting a double recovery. 619 S.E.2d at 479.

The court rejected that argument, holding that under the applicable statute settlement payments not approved by the Virginia WCC could only be deducted from the amount to be paid as *compensation* to the employee under Virginia law, *Id.* at 478 (court's emphasis), and that the Michigan settlement payments did not qualify. The court concluded:

“Voluntary payments made to a claimant pursuant to an unapproved out-of-state settlement may not be credited under Code §65.2-520 against an employer's liability to provide medical benefits.” *Id.* at 480.

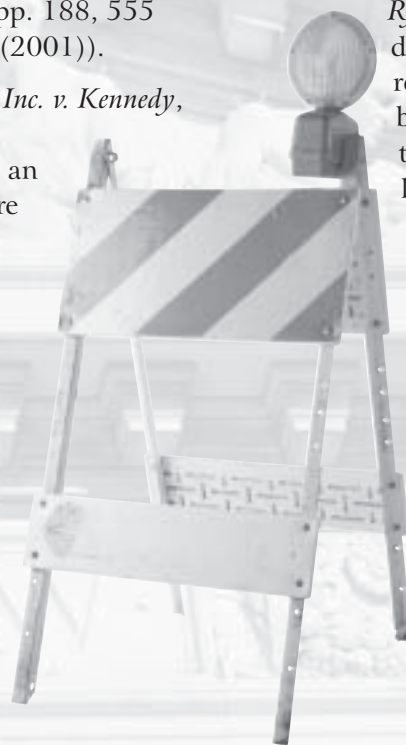
With respect to the double recovery argument, the *Wilson* Court held that:

rebalance the ledger lies solely within the province of the legislature, not the judiciary.” *Id.* at 479 (quoting *Newport News Shipbuilding & Dry Dock Co. v. Holmes*, 37 Va. App. 188, 555 S.E.2d 419, 422 (2001)).

*Ryder Truck Lines, Inc. v. Kennedy*, 296 Md. 528, 463 A.2d 850 (1983), is an additional case where statutory language, there ambiguous statutory language, was construed as requiring that there be what might be regarded as a double recovery.

There, the employee, a truck driver, was a resident of Maryland, where,

“[i]f an employee or the dependents of an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this article[,]”



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settlement? Which CMS region will you have to deal with? Etc., etc.

## Convenience and Location

We need to consider the convenience of the client and the expense of traveling to a distant jurisdiction. In some instances the benefit differences may be so dramatic that travel is absolutely necessary. However, this is not always the case. Multi-factorial

analysis, evaluation, and discussion are needed before advice is given and decisions are made.

## Co-Counsel & the Best Interests of Your Client

I strongly recommend working with co-counsel from the other state or states involved in your multi-state scenarios. Even if you are comfortable that your home state is the best choice for an out-of-state client, you ought to have help with treating physicians, impairment ratings, and other

matters a local attorney has experience with, for instance.

Splitting a fee from a case that is properly worked up is better than defending a malpractice action on 100% of the fee on an improperly worked-up case.

We must always remember to give the client's best interests our top priority.



CONFLICTS, continued from page 55

of Virginia supreme and binding in this State. They are not the same dependents and §21(c)(4) does not apply." *Id.* at 857.

The court held, however, that the Commission properly denied a partial dependency award in Maryland to Domenica and her daughter "when they had received an award of total compensation in Virginia." *Id.*

**A-3B:  
Associations with  
out-of-state counsel  
may facilitate better  
representation of injured  
workers.**

Obviously, claimant's counsel are not always able to handle the multiple state filing by themselves. Counsel may need to consider referring their clients to attorneys in other states when available benefits are potentially greater with such referrals.

Similarly, consideration may need to be given to co-representation of a client and

coordinated filings for different benefits and/or for successive periods of benefits that do not exceed allowable amounts in other states.<sup>3</sup> It is also maybe advisable to conduct a benefits and/or procedural comparison between states that considers, among other things, applicable statutes of limitations, maximum and minimum average weekly wages, the maximum number of weeks for which temporary total or temporary partial benefits are allowed, the body parts for which permanent partial benefits may be payable, the types of work related injuries or illnesses that are compensable, the laws affecting vocation rehabilitation, the length of times or type of medical benefits that may be awarded, the extent to which bad faith can be claimed against employers or workers compensation insurance companies, the interplay between the workers compensation claim and any third party claims as well as the total maximum value of a claim or settlement that might be possible.<sup>4</sup>

## Conclusion

There are general rules of thumb discussed above as to when a state's workers' compensation tribunal may exercise jurisdiction over a workers' compensation claim. The question of whether different or multiple filings may be made must also be considered. Multiple filings in different jurisdictions may result in a greater total recovery if the filings in each state are for different benefits or for different periods of time and the total benefits do not exceed that

463 A.2d at 855, was ambiguous because it does not clearly indicate whether the dependent receiving an award in a foreign state must be the same dependent in this State or may be a different and unrelated dependent before the operation of the statute is triggered." *Id.* at 855-56.

The court held that the employer could not receive credit in Maryland for the Virginia award to Domenica against the Maryland benefits due Donna and her children:

"To hold that Domenica and Teresa Grass' receipt of compensation under the laws of Virginia could bar Donna and her children from recovering in Maryland would in effect make the laws

**It was held the trial court (in a state utilizing the judicial rather than administrative method of enforcing its compensation act), had jurisdiction of a claim for out-of-state injuries, when his employment was not localized in any particular state, but his employment was pursuant to a contract for hire entered into in Alabama.**

allowed by the workers' compensation laws of the state in question. Failure to consider all of these issues may result in less than a total recovery for injured workers.

**Ambiguous statutory language was construed as requiring that there be what might be regarded as a double recovery.**

## Endnotes

1. While citation is to the plurality opinion in *Thomas*, the concurring and dissenting opinions did not indicate disagreement with that opinion on the point for which it is here cited.
2. The present equivalent section provides: (a-1) No employee shall receive compensation under this chapter and *at any time* receive compensation under the workers' compensation law of any other state for the same injury or death. D.C. Code Ann. § 32-1503(d)(2)(a-1) (emphasis added).
3. Among the sources of capable attorneys who handle workers' compensation claims around the country is the website of the Workers' Injury Law & Advocacy Group, a national organization of attorneys representing injured workers. See [www.wilg.org](http://www.wilg.org).
4. A benefits comparison is also available from a website sponsored by the United States Department of Labor. See [www.dol.gov/esa/regs/statutes/owcp/stwclaw/stwclaw.htm](http://www.dol.gov/esa/regs/statutes/owcp/stwclaw/stwclaw.htm).



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