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Article IV, section 1 of the United States Constitution provides that each state shall give full faith and credit to the public acts, records and judicial proceedings of its sister states.\(^1\) Pursuant to this constitutional mandate, each sovereign state is obligated to respect the laws and judicial determinations of the other states. The full extent of this obligation, however, is not clearly defined in the Constitution or the congressional implementation of the clause.\(^2\) The United States Supreme Court, through numerous applications of the full faith and credit clause, has played a significant role in

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1. "Full Faith and Credit shall be given in each state to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." U.S. CONST. art. IV, § 1.

This provision was adopted by the framers of the Constitution with only brief debate or explanation. A general unwillingness of the individual colonies to subordinate their laws and judgments in the interest of justice prompted concern on the part of the framers. The full faith and credit clause was the product of their concern. The records kept of the constitutional convention suggest that the clause was designed particularly to give a judgment rendered in one state some effect in a related action brought in another state.

The full faith and credit clause had appeared in somewhat similar form in the Articles of Confederation. In the Articles, however, reference was made only to full faith and credit to state judgments. ARTICLES OF CONFEDERATION, art. IV. The brief debate held at the Constitutional Convention of 1787 did not explain the significance of the additions of statutes and records to the clause. See 2 The Records of the Federal Convention of 1787, 135, 174, 188, 445, 447-48, 483-84, 486, 488-89 (Max Farrand ed. 1911). For a brief account of the constitutional history surrounding the clause, see Reese and Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 COLUM. L. REV. 153, 153-55 (1949) [hereinafter cited as Reese and Johnson].

2. The precise effect to be given a judgment was not articulated in the Constitution, but was deferred to Congressional deliberation. U.S. Const. art. IV, § 1. Congress promptly responded to the constitutional directive, and during its first session passed legislation pursuant to article IV which provided that records and judicial proceedings of any state should have such full faith and credit given to them in every court within the United States as they had by law or usage in the courts of the state of origin. See 1 Stat. 122 (1790), 28 U.S.C. § 687 (1946). This provision remains the only express congressional statement on the matter. In 1948, in a general rewording of the implementing act, state statutes were added to the list of protected state interests covered under the clause. This addition was made without debate and has been accorded little significance to date. See 62 Stat. 947 (1948), 28 U.S.C. § 1738. Reese, *Full Faith and Credit to Statutes: The Defense of Public Policy*, 19 U. CHI. L. REV. 339 (1952) [hereinafter cited as Reese].
defining the scope of the constitutional obligation.\textsuperscript{3}

In \textit{Thomas v. Washington Gas Light Co.},\textsuperscript{4} the United States Supreme Court examined the effect of the full faith and credit clause upon state workers' compensation awards. In this case, the Court was asked to determine whether an injured employee previously compensated under the Virginia Workmen's Compensation Act was entitled to supplementary recovery in another jurisdiction.

\textsuperscript{3} With little constitutional or congressional guidance, the United States Supreme Court assumed responsibility for determining the scope of the full faith and credit clause. The congressional implementation of the mandate proposed that states strictly adhere to the judicial determination of its sister states, affording those judgments the same effect and validity in its courts as they received in the courts of their origin. At an early stage, the Court adopted this approach in decisions applying the full faith and credit clause to state money judgments. \textit{See generally Cheatham, Res Judicata and the Full Faith and Credit Clause: Magnolia Petroleum Co. v. Hunt, 44 COLUM. L. REV. 330, 331 (1944)} [hereinafter cited as Cheatham].

In \textit{Mills v. Duryee}, 11 U.S. (7 Cranch) 481 (1813), a creditor sought to enforce a judgment in the District of Columbia which he had obtained against a debtor in a New York court. The Supreme Court was called upon to decide whether the debt must be relitigated in the District. Justice Story, writing for the Court, found that the only inquiry necessary in light of the 1790 statutory implementation concerned the effect of the judgment in the state where the judgment was rendered. The Court held that since the judgment was conclusive upon the parties in New York, it was equally conclusive in the District of Columbia.

Chief Justice Marshall enunciated a similar interpretation of full faith and credit in \textit{Hampton v. McConnell}, 16 U.S. (3 Wheat) 234 (1818). In this case, the Chief Justice found that a New York debt judgment was enforceable in South Carolina. The full faith and credit clause required that the judgment of a state court be given the same credit, validity and effect in every other court as it had in the state of pronouncement.

Subsequently, the United States Supreme Court has applied the full faith and credit clause to other types of state judgments in the same strict manner. Judgments held enforceable in sister states include tax judgments, \textit{Milwaukee County v. M.E. White Co.}, 296 U.S. 268 (1935); determinations of title to personal property, \textit{Titus v. Wallick}, 306 U.S. 282 (1939); divorce decrees, \textit{Williams v. North Carolina}, 317 U.S. 287 (1942); and child support decrees, \textit{Yarborough v. Yarborough}, 290 U.S. 202 (1933). Defenses once offered to avoid enforcement outside the state of pronouncement have gradually been rejected under the Court's decisions. A state can no longer avoid its full faith and credit obligations because of a conflicting public policy, \textit{Fauntleroy v. Lum}, 210 U.S. 230 (1908); a conflicting statute of limitations, \textit{Christmas v. Russell}, 72 U.S. (5 Wall) 290 (1866); or a procedural difficulty, \textit{Kenny v. Supreme Lodge of the World}, 252 U.S. 411 (1920). As the Supreme Court observed in \textit{Williams}, the exceptions to the full faith and credit clause are few and far between. 317 U.S. at 295.

In advancing a strict application of the clause, the Supreme Court has placed great emphasis upon the clause's significance as a national unifying force. \textit{See Thomas v. Washington Gas Light Co.}, 448 U.S. 261, 272 (1980); \textit{Sherr er v. Sherr er}, 334 U.S. 343, 355 (1948); \textit{Williams v. North Carolina}, 317 U.S. 287, 295 (1942); \textit{Magnolia Petroleum Co. v. Hunt}, 320 U.S. 430, 439 (1943); \textit{Milwaukee County v. M.E. White Co.}, 296 U.S. 268, 276 (1935). As interpreted by the Supreme Court, the full faith and credit clause unites the fifty sovereign states into a single nation and ensures that one state's interest does not develop into a force capable of dominating the interest of another.

\textsuperscript{4} 448 U.S. 261 (1980).
The Court found that the full faith and credit clause permitted the District of Columbia to grant a second award, even though the initial award was intended by Virginia as a final adjudication of the parties' rights. Seven members of the Court agreed on this result. The Court was seriously divided, however, over the proper rationale for the decision. Consequently, supplemental workers' compensation awards remain in a confusing and uncertain position.

This article will examine the potential impact of the *Thomas* decision upon supplemental workers' compensation awards and upon the operation of the full faith and credit clause in other contexts. It will first provide an explanation of how previous workers' compensation decisions have resolved the full faith and credit clause issue raised by the grant of a supplemental award. Next, the *Thomas* decision will be discussed and critically analyzed. Finally, this article will explore the ramifications of *Thomas* when applied to future supplemental workers' compensation awards and to other state judicial determinations.

**THE WORKERS' COMPENSATION CASES**

*Background*

A workers' compensation award is a unique statutory remedy available to employees injured while acting in the scope of their employment. In its basic form, this remedy provides an injured employee with a no-fault recovery against his employer. The employer, under the provisions of the state compensation statute, agrees to pay a set amount irrespective of culpability, and waives the traditional defenses available to him at common law. The employee, for his part, accepts his compensation award in lieu of any other claims he may have against the employer arising from the

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5. *Id.* at 285-86.
6. *See* notes 94-102 *infra* and accompanying text.
8. "A compensation system, unlike a tort recovery, does not pretend to restore to the claimant what he has lost; it gives him a sum which, added to his remaining earning ability, if any, will presumably enable him to exist without being a burden to others." 1 A. Larson, *supra* note 7, § 2.50 at 11.

Under workers' compensation, an award may be granted even though the employer's conduct is flawless and the employee's action is negligent. The right to compensation is strictly dependent upon whether the employee was injured in the scope of his employment. *Id.*, § 2.20 at 5. In exchange for limited liability, the employer agrees to forego the common law defenses generally available to him in tort: assumption of risk, contributory negligence, and the fellow-servant defense. *Id.*, § 4.50 at 30.
same injury.\textsuperscript{9}

Unlike a common law claim for damages, a compensation claim is generally brought before a state administrative commission.\textsuperscript{10} The state agency is statutorily required to apply the workers’ compensation law of the state in which it presides.\textsuperscript{11} A state court of general jurisdiction becomes involved only in the event that one party wishes to appeal the commission’s decision.\textsuperscript{12} The commission proceeding generally entails an informal adjudication of the issues arising out of the injury. This informality permits an expeditious determination of the employer’s obligation and the employee’s compensation needs.\textsuperscript{13}

Under certain circumstances, an injured employee has a choice of states in which to bring his compensation claim. This situation typically arises when the employee enters into the contract of employment in one state but is injured in another state.\textsuperscript{14} Both states, by virtue of their association with the employee, are empowered to

\textsuperscript{9} The employee covered under a state compensation statute forfeits not only his common law action for negligence, but also any other statutory remedy which may be available to him under state or federal law. E.g., Federal Employers’ Liability Act, 45 U.S.C. §§51-59; Federal Tort Claims Act, 28 U.S.C. §§1346(b), 2671 et seq.; Public Vessel Act, 46 U.S.C. §§781-790; a defective machinery act, an automobile owner’s liability act, or a scaffold act. See generally 2A A. LARSON, supra note 7, §65.00 et seq.

\textsuperscript{10} 3 A. LARSON, supra note 7, §78.10 at 15-2.

\textsuperscript{11} This characteristic of compensation statutes is an essential component of the plurality’s rationale in Thomas. See notes 82-91 infra and accompanying text. State legislatures have, with virtual unanimity, restricted the choice of laws decision of a state industrial commission to the compensation law of the home state. The policy underlying this characteristic involves the special nature of a compensation remedy. A compensation award is more than the granting of a lump sum award. Larson describes the remedy as follows:

[A] highly developed compensation scheme ... stays with the claimant from the moment of the accident to the time he is fully restored to normal earning capacity. This may involve supervising an ongoing rehabilitation program, perhaps changing or extending it, perhaps providing, repairing and replacing prosthetic devices, and supplying vocational rehabilitation. Apart from rehabilitation, optimum compensation administration may require reopening of the award from time to time for change of condition or for other reasons. ... 4 A. LARSON, supra note 7, §84.20 at 16-9.

A compensation remedy is potentially quite difficult to administer from outside the state which creates the remedy. The cost and administrative burden that would fall upon a commission applying another state’s compensation scheme is prohibitive. As a result of this circumstance, the only law which a commission is authorized to apply is the compensation scheme of its own state.

\textsuperscript{12} 3 A. LARSON, supra note 7, §80.10 at 15-339.

\textsuperscript{13} Id., §78.10 at 15-2.

\textsuperscript{14} The circumstances necessary to apply a particular state compensation statute are, however, generally more complex than this example suggests. For a full discussion of state limits upon applicability of a state compensation statute, see 4 A. LARSON, supra note 7, §87.00 et seq.
resolve the employee's claim and compel the proper relief. The full faith and credit issue surfaces when the employee, having received workers' compensation in one state, seeks to supplement this award in the other state. The issue raised in this context is whether the full faith and credit clause prohibits the second state from granting supplemental relief. The resolution of this issue has historically been marked by confusion and uncertainty.

**Early Approach**

During the developmental stages of workers' compensation relief, a majority of state courts approved the granting of supplemental awards to employees who had previously recovered compensation in another state. The full faith and credit clause did not proscribe additional benefits. Calculation of the second award included a crediting in the amount of the award rendered in the first compensation proceeding. The fact that the first state had granted compensation exclusive of any other claim at common law was not controlling in the second jurisdiction.

The justifications offered for granting supplemental awards va-

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These latter cases which prohibited supplementary awards did so on non-constitutional grounds.

17. Restatement of the Conflicts of Laws § 403 (1934): "Award already had under the Workmen's Compensation Act of another state will not bar a proceeding under an applicable Act, but the amount paid on a prior award in another state will be credited on the second award." See also 2 Beale, The Conflict of Laws § 403.1 (1935); Dodd, Administration of Workmen's Compensation, at 819, 820 (1936). The courts that enforced second compensation awards unanimously accepted the practice of crediting the second award by an amount equal to the initial award. In Hughey v. Ware, 34 N.M. 29, 276 P. 27 (1929), the court refused to enforce a second award because the industrial commission granting it had failed to give credit to the first award.

18. See note 9 supra. The employee's waiver of any additional common law or statutory relief apparently did not have effect beyond the borders of the first state.
ried from state to state. Many jurisdictions took the view that a compensation proceeding was an action on the contract,\textsuperscript{19} with the workers' compensation statute of the contract state serving as an additional term to the employment agreement. These states viewed a compensation award granted by a state other than the contract state as a voluntary agreement between the parties.\textsuperscript{20} Although such an arrangement was entitled to enforcement in other jurisdictions, it did not serve as a final determination of the employee's rights. The law of the contract state was superior\textsuperscript{21} and only the state of the contract had the power to apply that law.\textsuperscript{22}

Other states considered the situs of the injury as an important factor in granting supplemental awards. These jurisdictions claimed an interest in any employee injured within the state borders.\textsuperscript{23} This interest was not extinguished when another state granted compensation benefits. The state in which the injury occurred was entitled to supplement the employee's recovery to insure the welfare of a worker injured within its borders.\textsuperscript{24}

As further justification for grants of supplemental awards, some states relied upon the fact that a state administrative agency, not a state court, determined compensation claims.\textsuperscript{25} Compensation awards did not merit the same full faith and credit effect traditionally afforded to state court judgments because compensation


\textsuperscript{21} The decision in Miller v. National Chair Co., 127 N.J.L. 414, 22 A.2d 804 (1941), typified the attitude taken by many states toward prior awards. In this instance, the North Carolina Industrial Commission had awarded compensation to a New Jersey resident employed under a New Jersey contract. The New Jersey court upheld the supplemental award granted there, finding that "[i]t is the undoubted function of the state to decree the legal consequences that shall attach to such a contract made within its borders." \textit{Id.} at 808.

\textsuperscript{22} See note 11 \textit{supra} and accompanying text.

\textsuperscript{23} Salvation Army v. Industrial Comm'n, 219 Wis. 343, 263 N.W. 349 (1935); Interstate Power Co. v. Industrial Comm'n, 203 Wis. 466, 234 N.W. 889 (1931).

\textsuperscript{24} \textit{Id.} See generally R. LaFlar, \textit{Conflicts of Law}, at 327 (3d ed. 1979). During the developmental stages of the workers' compensation remedy, many jurisdictions considered the compensation proceeding an action in tort. \textit{In re Gould}, 215 Mass. 480, 102 N.E. 693 (1913). Under the doctrine of \textit{lex loci delicti}, these jurisdictions determined that the law of the situs of the injury was controlling in a compensation proceeding. This approach may have influenced later courts which held that the state of the injury retained an interest in the employee after he was granted relief in another state.

\textsuperscript{25} See note 11 \textit{supra} and accompanying text.
awards were not judicially determined. An administrative decision, though final in the state of its origin, was not necessarily final in other states under the full faith and credit clause.

The Magnolia Decision

In its initial application of the full faith and credit clause to supplemental awards, the Supreme Court rejected the state level trend favoring supplemental benefits. In *Magnolia Petroleum Co. v. Hunt*, a majority of five Supreme Court justices refused to enforce a supplemental award on full faith and credit grounds. In this case, a Louisiana district court granted supplemental compensation relief to an oil field laborer who had previously recovered under the Texas compensation statute. The Texas statute provided that a compensation award was granted in lieu of other recoveries arising from the same injury. The Court majority found that although Texas lacked the power to impose this statutory restriction upon other states, the determination of the Texas commission was entitled to full faith and credit in sister states to the same degree as a state court judgment. The *Magnolia* Court considered the decisions of a state commission and a state court equivalent for

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27. In Miller v. National Chair Co., 127 N.J.L. 414, 22 A.2d 804 (1941), the New Jersey court held that the doctrine of res judicata had no application in the workers' compensation context. The court found that the prior award granted by a North Carolina commission was an administrative act and did not constitute a final judgment of a court of competent jurisdiction. *Id.* at 809. This rationale, also adopted in Massachusetts, foreshadowed the reasoning employed by the Supreme Court in *Thomas* to permit supplemental awards.


29. TEX. REV. CIV. STAT. ANN. tit. 8306 § 3 (Vernon) provides, in pertinent part, that employees subject to the Texas Workmen's Compensation Act "shall have no right of action against their employer or against any agent, servant or employee of said employer for damages for personal injuries . . . but such employees . . . shall look for compensation solely to the association [the insurer]."

30. 320 U.S. at 440. A state has the authority to enforce its laws with respect to persons and events within its borders. As the Court pointed out, however, a state is without power to give extraterritorial effect to its laws. Home Insurance Co. v. Dick, 281 U.S. 397 (1930); New York Life Ins. Co. v. Head, 234 U.S. 149 (1914). The Court noted that the full faith and credit clause rather than the Texas Workers' Compensation Statute, determined the effect of Texas laws and judgments in other jurisdictions. 320 U.S. at 440.

31. "A compensation award which has become final 'is entitled to the same faith and credit as a judgment of a court.'" *Id.* at 435. This assumption by the Court of the equivalence of a commission and a judicial determination was later rejected by the same Court in similar contexts. Industrial Comm'n of Wisconsin v. McCartin, 330 U.S. 622 (1947); Thomas v. Washington Gas Light Co., 448 U.S. 261 (1980).
purposes of the full faith and credit clause.\textsuperscript{32} The Court determined that the national unifying policy underlying the clause dictated equal treatment of commission and judicial decisions.\textsuperscript{33} The Court had consistently given state judgments res judicata effect in sister states, and commission decisions warranted similar treatment. Therefore, the Texas commission decision, final in the state of Texas, was final in all other jurisdictions as well. The supplemental award granted by Louisiana was unenforceable as a violation of the full faith and credit clause.\textsuperscript{34}

In a dissenting opinion, Justice Black argued that the intent of the Texas legislature was not to exclude supplemental recovery in other states, but only to limit the remedies available in Texas.\textsuperscript{35} Black contended that by focusing upon statutory intent, the Court could avoid the constitutional issue.\textsuperscript{36} The Texas award was intended as a final determination of the employee's rights within the state. Louisiana was free to provide its own remedy.

\textit{McCartin and Its Aftermath}

Pursuant to the principles enunciated by the Supreme Court, state courts after \textit{Magnolia} refused to enforce supplemental com-

\begin{footnotesize}
\begin{enumerate}
\item Chief Justice Stone, writing for the majority, noted that the injured employee had a choice of states (Texas or Louisiana) in which to bring a compensation proceeding. The same choice, however, was not available once an award was granted because of the effect of the full faith and credit clause. 320 U.S. at 444. See note 31 supra.
\item Id. at 439. Although the Court recognized that a compensation award was not identical to a court judgment, it stressed by its application of the full faith and credit clause that national policy compelled granting full faith and credit to both. See note 3 supra.
\item Id. at 434.
\item 320 U.S. at 453-55 (Black, J., dissenting).
\item "In the absence of compelling language this Court should not construe the statutes of Texas in such a manner that grave questions of their constitutionality are raised." Id. at 455. This statement indicates Justice Black's belief that the involvement of the commission in the first award did not elevate the issue to one of constitutional dimensions.
\item Nonetheless, Justice Black did directly address the full faith and credit issue. In this argument, he contended that Louisiana's interest in the employee's welfare was sufficient to overcome any constitutional barrier preventing supplemental awards. The full faith and credit clause did not compel Louisiana to respect the finality of the Texas award regardless of the intent of the Texas statute. Louisiana's concern for the injured employee outweighed the constitutional mandate. The decision to supplement a compensation award belonged to state legislatures and courts designed to determine this type of policy issue. Id. at 459.
\item Many commentators shared in Justice Black's disapproval of the majority's reasoning. \textit{E.g.}, Freund, \textit{Chief Justice Stone and the Conflict of Law}, 59 Harv. L. Rev. 1210, 1227-30 (1946); Wolkin, \textit{Workmen's Compensation Award—Commonplace or Anomaly in Full Faith and Credit Pattern}, 92 U. Pa. L. Rev. 401, 405-11 (1944) [hereinafter cited as Wolkin]; 48 Dick. L. Rev. 194 (1944); 12 Geo. Wash. L. Rev. 487 (1944); 19 Ind. L.J. 268 (1944); 17 S. Cal. L. Rev. 315 (1944); 18 Tul. L. Rev. 509 (1944).
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pensation awards. The refusal by the Supreme Court of Wisconsin, an otherwise strong supporter of dual recovery, to enforce a second award, prompted the Supreme Court to once again intervene in the area. In Industrial Commission of Wisconsin v. McCartin, the Court unanimously upheld a Wisconsin award which supplemented an injured employee’s recovery under the compensation law of Illinois. The Illinois Compensation Act prohibited an employee receiving workers’ compensation from exercising any additional common law or statutory rights to recovery. The Court determined, however, that the Illinois compensation award was not intended to foreclose an additional recovery under the laws of another state. According to the Court, the intent of the Illinois statute was presumed to favor supplemental awards in the absence of “unmistakable language” to the contrary. The relief granted by the State of Wisconsin was a permissible addition to the Illinois award, and therefore entitled to enforcement.

In further support of the Court’s holding, the settlement agreement entered into by the parties pursuant to the Illinois compensation statute contained a stipulation stating that the settlement did not affect the rights of the applicant under the Workmen’s Compensation Act of Wisconsin. The Court majority, however, minimized the significance of the stipulation upon the outcome of

38. See note 16 supra.
40. ILL. REV. STAT. ch. 48, § 143 (1943) provided, in pertinent part: “No common law or statutory right to recover damages for injury or death sustained by any employee while engaged in the line of his duty as such employe, other than the compensation herein provided, shall be available to any employe who is covered by the provisions of this act.”
41. 330 U.S. at 630.
42. [T]here is nothing in [the Illinois workmen’s compensation statute] or in the decisions thereunder to indicate that it is completely exclusive, that it is designed to preclude any recovery by proceedings brought in another state . . . [a]nd in light of the rule that workmen’s compensation laws are to be liberally construed in furtherance of the purpose for which they were enacted, . . . we should not readily interpret such a statute so as to cut off an employee’s rights to sue under legislation passed for his benefit. Only some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction.
Id. at 627-28 (citations omitted).
43. Id. at 629.
the case. The stipulation was not the distinguishing factor which permitted the Court to reach a result contrary to the Magnolia decision. The reservation was noteworthy to the Court because it expressed what was implicit in the Illinois Compensation Act, i.e., supplemental recovery was not precluded by Illinois law.

The Supreme Court in McCartin thus shifted its attention away from the constitutional controversy that had been addressed by the Court in Magnolia. The decisive question was not whether the first award was conclusive of the employee's rights under the full faith and credit clause, but whether the compensation act supporting the first award contained unequivocal language prohibiting a second recovery. The Court in McCartin apparently had adopted Justice Black's approach in Magnolia. The intent of the state legislature was considered to be of controlling significance. The policy of national unity embodied in the full faith and credit clause, and stressed by the majority in Magnolia, did not compel the McCartin Court to strike down the supplemental award granted by Wisconsin.

In theory, the Magnolia decision survived to a certain extent the McCartin decision. Arguably, the language of the statutes involved in each case served to rationalize the different results. Commentators agreed, however, that in practical effect Magnolia was all

44. Commentators agree that the McCartin opinion went beyond the award language, although the language would have provided the distinction necessary to reach the result obtained. See Larson, Constitutional Law Conflicts and Workmen's Compensation, 1971 Duke L.J. 1037, 1048-50 (1971); Reese and Johnson, supra note 1, at 159-60; 33 Cornell L.Q. 310 (1947); 41 Geo. L.J. 559 (1953).
45. 330 U.S. at 630.
46. The Court in Magnolia had directly rejected this type of approach to the controversy. Whether the compensation statute of the initial award permitted additional recovery was irrelevant. The first state had no authority to permit or prohibit other states from supplementing awards. 320 U.S. at 440. See notes 30 supra.
47. See notes 35-36 supra and accompanying text.
48. See note 34 supra and accompanying text. The policy stressed by the Court in Magnolia received no mention in the McCartin opinion.
49. In order to preserve the Magnolia decision after McCartin, a legitimate distinction must exist between the cases. Because the McCartin Court failed to expressly overrule the Magnolia decision, it may be argued that the difference exists in the language of the statutes involved. McCartin upheld a supplemental award because the Illinois statute did not contain unmistakable language prohibiting additional awards. Presumably, Magnolia rejected the supplemental award granted in Louisiana because the Texas statute contained language which prohibited supplemental awards. This distinction fails, however, when the Texas and Illinois statutes are compared. The difference between the two is not so obvious. See 4 A. Larson, supra note 7, § 85.30 at 16-19.
but overruled. Then existing workers' compensation statutes did not contain the unmistakable language required by *McCartin*. Moreover, it was doubtful that states would act to prevent supplemental awards even if it were within their power. After *McCartin*, courts consistently upheld the granting of supplemental awards absent unequivocal statutory language to the contrary. Until the Court again addressed the issue in *Thomas v. Washington Gas Light Co.* the controversy appeared to be settled.

**THOMAS V. WASHINGTON GAS LIGHT CO.**

**Factual Background**

Halley L. Thomas, a resident of the District of Columbia, was employed by Washington Gas Light Co. under an employment agreement made in the District of Columbia. In the course of his employment, Thomas worked in the District of Columbia, Virginia and Maryland. On January 22, 1971, while working in Arlington, Virginia, he suffered a back injury.

Thomas immediately sought compensation for his injury under the Virginia Workmen's Compensation Statute. Within two weeks

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50. *See* R. LAFLAR, *CONFLICTS OF LAW*, at 334 (3d ed. 1979); G. STUMBERG, *PRINCIPLES OF CONFLICT OF LAW*, at 221 (3d ed. 1963); 4 A. LARSON, *supra* note 7, §§ 85.10, 85.20 at 15-16, 16-17; Reese and Johnson, *supra* note 1; 49 COLUM. L. REV. at 159. Accord, *RESTATEMENT OF CONFLICTS OF LAW* § 403 (as amended 1947): “Award already had under 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 will be credited on the second award.”


52. 448 U.S. 261 (1980).

53. *Id.* at 264.

54. *Id.*
of the injury, Thomas began receiving benefits pursuant to an “Industrial Commission of Virginia Memorandum of Agreement as to Payment of Compensation.” Several weeks later, the agreement was approved by the Virginia Industrial Commission, which issued an award directing that payments continue during incapacity, subject to various contingencies set forth by Virginia law.

In 1974, Thomas initiated a workers’ compensation claim arising from the same injury in the District of Columbia. In an administrative hearing, Washington Gas Light Co. opposed the claim on the ground that the Virginia Compensation Act excluded any recovery at common law or otherwise, and that the full faith and credit clause extended this exclusion to the District of Columbia. The administrative law judge granted a supplemental workers’ compensation award to Thomas. He agreed that the Virginia award was entitled to the same res judicata effect in the District of Columbia as it had in Virginia. The first award, however, which by its terms was subject to modification, was not final in Virginia. Moreover, the Virginia statute prohibiting other forms of recovery pertained only to remedies available under Virginia law.

55. Virginia law provided that after the occurrence of an injury, an employer and an employee could enter into an agreement with respect to the proper compensation damages. VA. CODE § 65.1-93 (1973). A memorandum of this agreement was then submitted to the industrial commission for approval. This procedure permitted the injured party to promptly receive benefits while remaining under supervision of the industrial commission.

56. 448 U.S. at 264.

57. Id.


VA. CODE § 65.1-40 (1973) provides:

The rights and remedies herein granted to an employee when he and his employer have accepted the provisions of this Act respectively to pay and accept compensation on the account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin, at common law or otherwise, on account of such injury, loss of service or death.

59. 448 U.S. at 265-66.

60. Under traditional principles of res judicata, a judgment, to be conclusive, must be final. If it is not, the issues litigated remain subject to modification. Although the administrative law judge relied in part upon this principle in permitting a second recovery, this question of the finality of the compensation award was not discussed by the Supreme Court in Thomas.

61. Basically, this is the same rationale used by Justice Murphy in McCartin. The Illinois exclusive recovery provision was interpreted to exclude only Illinois remedies. See notes
fore, upon the introduction of medical evidence at the hearing, Thomas was awarded permanent total disability benefits, payable from the date of injury, with credit given for amounts previously paid under the Virginia award.62

On review, the Benefits Review Board63 upheld the District of Columbia award. Washington Gas subsequently appealed the Board's decision to the Court of Appeals for the Fourth Circuit.64 In a brief, unpublished opinion, the Fourth Circuit reversed the Board's decision. In support of its reversal, the court adopted the rationale of a similar case which had interpreted the *McCartin* opinion as focusing on the language of the compensation award and not the language of the compensation statute.65 Under this interpretation, the Supreme Court had permitted the second recovery in *McCartin* because the initial Illinois award contained a stipulation preserving the employee's rights to recover in a second state.66 The *Magnolia* doctrine remained good law to the extent it prohibited supplemental awards without similar stipulations.67 The circumstances in *Thomas* were controlled by the *Magnolia* decision because the Virginia award did not contain a stipulation permitting additional recovery.68 Consequently, Thomas was unable to supplement his compensation under the laws of the District of Columbia.

The *Supreme Court Decision*

The Supreme Court in *Thomas* was confronted with the uneasy co-existence of the *Magnolia* and *McCartin* doctrines. The Fourth

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41-42 *supra* and accompanying text.
62. 448 U.S. at 266.
63. The Benefits Review Board is the first level of appeal in a compensation proceeding in the District of Columbia. See note 58 *supra*.
64. Under the District of Columbia workmen's compensation statute, a party to an award is entitled to seek review in the United States Court of Appeals for the circuit in which the injury occurred. 36 D.C. CODE ANN. §§ 501-502 (1973); 33 U.S.C. §§ 901 et seq. (1976).
67. *Id.*
68. In further support of its position, the Fourth Circuit cited Gasch v. Britton, 202 F.2d 356 (D.C. Cir. 1953). In *Gasch*, the court found the *Magnolia* and *McCartin* decisions consistent, and held that a Maryland award precluded a supplemental award in the District of Columbia. This interpretation contrasts with the majority understanding of the *Magnolia* and *McCartin* co-existence before *Thomas*. See notes 50-51 *supra* and accompanying text.
Circuit's decision underscored the quandary presented by these doctrines. The conflict furnished the Court with the opportunity to re-examine Magnolia and McCartin, and to offer a new interpretation of the proper application of the full faith and credit clause to workers' compensation awards.

**Magnolia and McCartin Revisited**

The Court in Thomas initially addressed itself to the Magnolia/McCartin conflict. In contrast to the court of appeals' interpretation, the Supreme Court found that the Magnolia decision did not survive intact the unanimous holding in McCartin. The plurality conceded that the McCartin court could have relied exclusively upon the Illinois contract provision preserving the employee's rights in Wisconsin to distinguish McCartin from Magnolia. The McCartin Court clearly indicated, however, that it instead chose the language of the Illinois Compensation Act as the basis for permitting supplemental recovery. This resulted in the "unmistakable language" test for supplemental recovery. Furthermore, McCartin was the controlling precedent in the Thomas case because the Virginia workers' compensation statute did not contain the "unmistakable language" required to prevent dual recovery.

After establishing the dominance of McCartin, the Thomas plurality re-examined the merits of the "unmistakable language" test. The Court concluded that the McCartin test was a constitutionally unsound basis on which to distinguish Magnolia. Full faith and credit principles required that a state judgment receive the same credit, validity, and effect in every other state as it has in the state of pronouncement. A state was entitled to directly determine the effect of its judgments within its borders, and in this manner indi-

69. The Supreme Court stated that the McCartin decision "severely curtailed the impact of Magnolia." 448 U.S. at 268. Further in the opinion, the Court declared that the "rule of construction announced in McCartin left only the narrowest area in which Magnolia could have any further precedential value." Id. at 274.

70. 448 U.S. 269.

71. Id. The Court compared the Illinois statute at issue in McCartin with the Virginia statute and found that though they were dissimilar, the Virginia statute contained no "unmistakable language" directed at precluding a supplemental compensation award in another state.

72. Id. at 269-70. The plurality noted that the Court, in its haste to retreat from Magnolia, had fashioned a rule which did not comply with normally accepted full faith and credit principles. These principles had been established early in the life of the clause by Justices Marshall and Story and had not subsequently changed. See note 3 supra.
rectly prescribe the effect of its judgment beyond its borders.\textsuperscript{73}

The \textit{McCartin} test gave the state more authority than the clause or its congressional implementation had proposed. It empowered a state to directly determine the extraterritorial effect of its workers' compensation awards by drafting or construing its statute in "unmistakable language" terms. Under \textit{McCartin}, the intent of the legislature, as manifest by its statutory language, determined the constitutional obligation of its sister states. This "unmistakable language" rule represented an unwarranted delegation to the states of the Court's responsibility for final arbitration of full faith and credit questions.\textsuperscript{74}

An Interest Analysis

With neither the \textit{Magnolia} nor \textit{McCartin} doctrines providing an acceptable basis for resolving the issue, the plurality embarked upon a fresh examination of the full faith and credit question. In so doing, the plurality adopted an interest analysis unprecedented in the area of state judgments.\textsuperscript{75} Under this analysis, the Court identified Virginia's interests in protecting its award from further proceedings in the District of Columbia. According to the plurality, Virginia had three distinct interests in the matter: (1) an interest in limiting the potential liability of the companies doing business within its borders, (2) an interest in the welfare of the injured employee, and (3) an interest in having the integrity of its formal determinations of contested issues respected by other sovereign states. The Court evaluated these interests to determine whether they were of such "controlling importance" as to prevent further proceedings in the District of Columbia. If the interests of Virginia were of such significance, the full faith and credit clause operated to prevent a supplemental award in the District.\textsuperscript{76}

\textsuperscript{73} An authorization . . . of this character is inconsistent with the rule established in \textit{Pacific Employers Ins. Co. v. Industrial Accident Commission}, 306 U.S. 493, 502, 59 S. Ct. 629, 83 L. Ed. 940: "This Court must determine for itself how far the full faith and credit clause compels the qualification or denial of rights asserted under the laws of one state, that of the forum, by the statute of another state."

\textit{Id.} at 271.

\textsuperscript{74} \textit{Id.}

\textsuperscript{75} \textit{Id.} at 277-86. Previously, the Court had used a straightforward \textit{res judicata} approach to full faith and credit problems. This approach mandated that the court of enforcement determine the effect of the judgment in the state of pronouncement. \textit{See} note 3 \textit{supra}.

\textsuperscript{76} Under the interest analysis, the burden falls upon the employer to show why a second proceeding should not be conducted. The traditional approach had in practice placed
The Court determined, however, that Virginia's interests were not substantial enough to prevent the District of Columbia from granting a supplemental compensation award. Virginia's policy of limiting the liability of the employer was not of a controlling nature because Thomas, the injured employee, had at the outset a choice of forums in which to bring his claim. Thomas had a right to bring a claim under one of two state compensation statutes because he had been injured in Virginia while executing an employment contract made in the District of Columbia. In practical effect, Washington Gas had to calculate the limit of its potential liability according to the greater of the two recoveries because it could not predict in advance which statute Thomas would invoke. Virginia was entitled to set a lower recovery rate than the District, but as long as the District's compensation rate was available to Thomas, Virginia's policy remained contingent upon Thomas' choice. The principle of full faith and credit did not require a state to subordinate its compensation policies to those of another. Consequently, it did not impose one state's policy of limiting liability upon another state's compensation scheme.

Virginia's second interest in the matter, that of providing adequate compensation to the injured employee, did not preclude supplemental recovery. This concern was furthered by a second award. The District of Columbia promised to enforce the award already granted to Thomas and to supplement his recovery through a second recovery. Any inadequacy in the initial recovery could thus be corrected in the later commission's proceeding.

The ultimate issue was whether Virginia's interest in the integrity of its tribunal's determinations prohibited a second proceeding in the District of Columbia. The Magnolia Court had placed the decision of a state administrative commission on equal ground with the burden on the employee to show why the first judgment should not be conclusive.

77. 448 U.S. at 277-86.

78. Alaska Packers Ass'n v. Industrial Accident Comm'n of Cal., 294 U.S. 532 (1935) had established that an employee who had entered into his employment contract in one state, but had been injured in another, was entitled to bring a claim in the state of the contract, even though the state of the injury claimed exclusive interest in the matter. Pacific Employers Ins. Co. v. Industrial Accident Comm'n, 306 U.S. 493 (1939), had established the converse, i.e., an injured employee was entitled to bring a claim in the state of the injury, even though the state of the contract claimed an exclusive remedy.

79. 448 U.S. at 279-80.


81. 448 U.S. at 280.
judgments rendered by state courts. Under the straightforward application of full faith and credit required in Magnolia, the integrity of the state commission was at stake in a second proceeding. The Thomas plurality, however, rejected this application of the full faith and credit clause to administrative awards. The supporting authority in Magnolia did not warrant elevating administrative determinations to the level of judicial determinations. Moreover, a

82. In finding that a compensation award was equivalent to a court judgment, the Magnolia Court assumed that a state commission and a state court are of an equal stature. Therefore, the integrity of the commission was threatened by a second proceeding to the same degree as would be a state court. In contrast, commentators had suggested that the nature of a state commission differs from that of a state court, and contended that a second proceeding does not have the same detrimental effect upon a state commission as upon a state court. See generally Cheatham, supra note 3, at 343-46; Reese and Johnson, supra note 1, at 176-77; Wolkin, supra note 36, at 405-08.

83. The Magnolia Court had relied on Chicago, Rock Island & Pac. Ry. Co. v. Schendel, 270 U.S. 611 (1926) for the proposition that a compensation award granted in one state barred further relief in sister states. The Thomas plurality did not share this interpretation. In Schendel, the Court found that an Iowa compensation award, which was grounded on a contested factual finding that the deceased employee was engaged in intrastate commerce, precluded a subsequent judgment rendered in Minnesota pursuant to the Federal Employers' Liability Act. Recovery under the terms of the FELA had required the Minnesota court to reach a contrary factual determination that the employee was engaged in interstate commerce. On this basis, the Court vacated the Minnesota judgment as to the issue of the activity's nature. Nonetheless, the Minnesota verdict for the injured employee was affirmed because the earlier award was not final and therefore not res judicata in Iowa.

The plurality interpreted Schendel as representing the unexceptional full faith and credit principle that resolution of factual matters underlying a judgment must be given the same res judicata effect in the forum state as in the state of origin. Further relief was barred in Schendel, not because the compensation award had extinguished all claims between the parties, but because Minnesota could not grant an FELA judgment and also respect prior factual determinations of Iowa.

In contrast, a second, supplemental workers' compensation award in Thomas and Magnolia did not call for a resolution or any factual finding contrary to the first state's determination. In both of these cases, a second recovery in full compliance with previously determined factual issues was possible. The Magnolia Court had ignored this difference and, in effect, broadened the application of full faith and credit so as to bar further relief under other workers' compensation statutes, regardless of the factual consistencies. The Thomas Court found this extension of the full faith and credit clause unwarranted.

The term "res judicata" generally denotes two things with regard to a valid final judgment: (1) that the judgment, if rendered on the merits, is an absolute bar to a subsequent action between the parties upon the same claim or demand; and (2) that the judgment constitutes an estoppel between the parties as to matters which were necessarily litigated and determined although the claim or demand in the subsequent action is different. Under the first proposition, the judgment operates to bar relitigation of all grounds for recovery that were available to the parties before the court rendering the judgment, regardless of whether all grounds for recovery were judicially determined. Under the second proposition, the judgment prevents the parties from relitigating those matters that were determined. 1B J. Moore, Federal Practice ¶ 0.405[1] (3d ed. 1974).

The Thomas plurality had apparently taken cognizance of this two-part definition, and
significant difference indeed existed between administrative proceedings and court judgments. Because the jurisdiction of a state court was far greater than that of a commission, and because a state court was competent to decide issues which a commission is not, the full faith and credit clause had greater impact upon a state judgment than upon a commission determination.84

As the Supreme Court emphasized, the determinations of a state court and state commission are not equivalent. While both a state court and a state industrial commission are empowered to resolve factual disputes that arise between the parties before them,85 only a state court of general jurisdiction is competent to determine the rights and liabilities of the parties which are created under the laws of other states.86 A state court performs this task through its choice of law determinations. At the outset of a proceeding, a court considering a matter involving the interests of more than one state must determine the appropriate law to be applied to the factual situation. The state tribunal may give another state's interest a higher priority and apply the law of that state.87 In so doing, the state tribunal determines the rights of the parties that exist both inside and outside of the forum state. When the determination reached by the state court is final, this judgment, like the factual determination, becomes conclusive in all future proceedings on the same matter. The full faith and credit clause renders this determination conclusive in other states and bars further relief upon the same claim.88

In contrast, a state industrial commission does not typically have the same authority to determine a party's extraterritorial rights.89 A state commission is limited by statute to applying the compensa-

interpreted *Schendel* as representing only the second proposition that a compensation proceeding, as it determines the facts of a case, estops a party from later challenging those facts in a second proceeding. The Magnolia Court attempted to take *Schendel* one step further by holding that a compensation award barred future claims brought under other states' workers' compensation statutes. The plurality viewed this as improper. See 448 U.S. at 280-81.

84. *Id.* at 282-83.
85. "To be sure, as was held in *Schendel*, the factfindings of state administrative tribunals are entitled to the same res judicata effect in the second State as findings by a court." *Id.* at 281.
86. *Id.* at 282.
87. *Id.*
88. *Id.*
89. "Although a Virginia court is free to recognize the perhaps paramount interests of another State by choosing to apply that State's law in a particular case, the Industrial Commission of Virginia does not have that power." *Id.*
tion scheme of the state in which it presides. A commission does not, therefore, resolve all the claims of the parties before it. The compensation award represents a resolution of the parties' rights in a single state. The Virginia award in this instance represented a conclusive determination of Thomas' claims in Virginia. In this respect, and to this degree, the award was entitled to full faith and credit protection. Since Thomas' rights to recovery in the District had not been considered, the full faith and credit clause did not prevent the District of Columbia from considering them in its own proceeding. Therefore, the supplemental award, granted under another state's compensation act, was a constitutionally acceptable form of dual recovery.

In its neoteric analysis, then, the plurality concluded that Virginia had no legitimate interest in preventing another state from supplementing its compensation award. The full faith and credit clause required only that the factual finding of Virginia be given the same effect outside the state. The plurality thus reached a result consistent with the prior determinations made pursuant to the *McCartin* doctrine. With the plurality's interest analysis providing the basis for permitting supplemental awards, the *McCartin* approach was no longer necessary. Furthermore, the plurality recommended that the *Magnolia* decision be overruled.

The three justices who concurred in the *Thomas* opinion shared in the plurality's conclusion that the full faith and credit clause permitted the granting of supplemental compensation awards. They chose, however, to retain the *McCartin* approach. The Virginia statute did not contain "unmistakable language" prohibiting a supplemental award. For the concurring justices, this fact entitled the District of Columbia to grant further relief. The two dissenting justices rejected both the interest analysis and the *McCartin* test. Consistent with the *Magnolia* decision, they argued that the Virginia award, final under the laws of Virginia, was

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90. "Full faith and credit must be given to the determination that the Virginia Commission had the authority to make; but by a parity of reasoning, full faith and credit need not be given to determinations that it had no power to make." *Id.* at 283 (footnote omitted).
91. The integrity of the Virginia Industrial Commission was threatened by a second proceeding only to the extent that the second proceeding might have reversed the determinations made by the commission. Since the supplemental award of the District complied with the factual determinations and the resolution of Thomas' rights in Virginia, the integrity of the Virginia Commission was preserved. The District of Columbia was able to resolve Thomas' rights in the District because they had not been previously decided. *Id.* at 284.
92. *Id.* at 286.
93. *Id.* at 286-90.
conclusive in all other jurisdictions including the District of Columbia.94

**RAMIFICATIONS**

In *Thomas*, the Supreme Court, for the second consecutive time, approved the granting of a supplemental compensation award. The Court thus appears committed to a consistent application of the full faith and credit clause. When all three opinions rendered in *Thomas* are considered, however, certainty and predictability fade. Inconsistency and contradiction permeate the decision. All members of the Court found the continued co-existence of the *Magnolia* and *McCartin* decisions to some degree objectionable. Yet, both decisions remain in effect after *Thomas*. Six justices of the Court rejected, as constitutionally unsound, the "unmistakable language" test of *McCartin*. Since it was not overruled, however, the *McCartin* approach remains a vital factor in enforcement of supplemental awards. As a result of the inconsistent rationales propounded in *Thomas*, the constitutional foundation of supplemental compensation awards remains unsettled.

**The Future of Supplemental Awards**

An injured employee after *Thomas* might have more difficulty enforcing a supplemental award before the Supreme Court than the result in *Thomas* initially indicates. The four members of the plurality, Justices Stevens, Brennan, Stewart and Blackmun, appear ready to enforce supplemental compensation awards irrespective of the statutory language authorizing the initial compensation award.95 The plurality's criticism of the *McCartin* test and its adoption of an interest analysis indicate a strong preference for the enforcement of supplemental awards in general. The plurality's inability to recommend that *McCartin* be overruled, however, casts some doubt upon the predictability of their votes.96 If the Court were asked to enforce a supplemental award which was prohibited under the statutory language supporting the initial award, the plurality would have to directly address the *McCartin* issue. A commitment to the principle of stare decisis might compel some jus-

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94. *Id.* at 290-96.
95. See notes 75-91 supra and accompanying text.
96. The plurality's strong criticism of the *McCartin* test is clearly inconsistent with their final recommendation that only the *Magnolia* test be overruled. Furthermore, the significance of the interest analysis is left in doubt by the plurality's failure to depict it as the only rationale for the result reached.
tices to abandon the interest analysis and invalidate the supplemental award.

The two dissenters in Thomas, Justices Rehnquist and Marshall, are the most predictable of the Court members. An injured employee could expect both dissenters to vote against enforcement of supplemental recovery regardless of the statutory language controlling the initial recovery. The dissenting justices found Magnolia to be the sounder doctrine, and thus favor a complete prohibition of supplemental compensation awards pursuant to a straightforward application of the full faith and credit clause.97

With four justices in favor of supplemental recovery and two clearly opposed, any determination of the status of a supplemental award necessarily rests with the concurring justices: Chief Justice Burger, Justice Powell and Justice White. Their opinion in Thomas assumes special significance because a supplemental award cannot be upheld without their support. For the concurring justices in Thomas, the status quo as represented by the "unmistakable language" test was the more appropriate basis for approving the District of Columbia's supplemental award.98 Presumably, an employee would have to demonstrate that supplemental recovery was statutorily permissible in the state of his initial recovery in order to secure the support of the three concurring justices. Assuming the absence of statutory language prohibiting such recovery, the final result would be a seven to two decision in favor of the supplemental award.

Should the statute controlling the original award specifically prohibit second recoveries in sister states, however, a curious transformation would occur. The three justices concurring in the Thomas decision would become the new plurality denying additional recovery. The dissenters, as supporters of the Magnolia approach, would concur in this result. Finally, the members of the Thomas plurality, favoring supplemental awards, irrespective of the statutory language, would assume the roles of dissenters.

Although the likelihood that such a case will arise is small, each

97. 448 U.S. at 290. The dissenting justices incorporated Justice Stone's rationale in Magnolia into their opinion. They stated that the injured party was free to pursue his remedy in Virginia or the District of Columbia, but once he had chosen a jurisdiction and obtained recovery, he was barred from recovering elsewhere for the same injury.

98. "McCartin, rather than Magnolia, is controlling as between the two precedents since the Virginia Workmen's Compensation Act lacks the 'unmistakable language' which McCartin requires if a workmen's compensation award is to preclude a subsequent award in another State." Id. at 289-90.
state has the opportunity to add "unmistakable language" to its workers' compensation statute and to contribute to the present confusion in the area.\textsuperscript{99} The \textit{McCartin} doctrine continues as the controlling test even after the \textit{Thomas} decision. Furthermore, the concurring justices accepted the \textit{McCartin} approach to supplemental awards on the basis of stare decisis and not upon a firm conviction in its merits.\textsuperscript{100} Justice White, writing the concurring opinion, found that \textit{McCartin} rested on questionable grounds. The concurring opinion found that the \textit{Magnolia} decision expressed the sounder rationale. To the three concurring justices, there was no overriding differences between workers' compensation awards and state court judgments that justify different treatment.\textsuperscript{101} The concurring opinion thus managed to multiply the confusion over supplemental awards. Today, if the appropriate arguments were brought before the Court, it appears that the three concurring justices would abandon the \textit{McCartin} test and support an application of the full faith and credit clause to bar supplemental recovery altogether. An injured employee seeking enforcement of his second recovery after \textit{Thomas} thus faces a very uncertain future.

\textit{The Future of the Interest Analysis}

The interest-balancing analysis adopted by the plurality in \textit{Thomas} marks a fresh approach to the full faith and credit clause with respect to state tribunals. Under traditional treatment of the clause, a court determines the res judicata effect of a judgment in the state of pronouncement and imposes the same effect upon the parties in the state of enforcement. The new analysis requires that the forum court evaluate the various interests of the state of pronouncement. If these interests weigh against secondary relief, the

\textsuperscript{99} At present, only Nevada appears to have included the language necessary to prevent supplemental awards:

\texttt{[I]f an employee who has been hired or is regularly employed in this state receives personal injury by accident arising out of and in the course of such employment outside this state, and he . . . accepts any compensation or benefits under the provisions of this chapter, the acceptance of such compensation shall constitute a waiver by such employee . . . of all rights and remedies against the employer at common law or given under the laws of any other state . . . . \texttt{Nev. Rev. Stat.} § 616.525 (1979) (emphasis added). Apparently, an employee who has initially recovered under the Nevada statute will be unable to seek supplemental recovery elsewhere even after the \textit{Thomas} decision.}

\textsuperscript{100} The concurring justices observed that "\textit{McCartin} has been on the books for over 30 years and has been widely interpreted by state and federal courts as substantially limiting \textit{Magnolia}. 448 U.S. 289."

\textsuperscript{101} \textit{Id.}
second state is prohibited from supplementing the judgment.

Future application of the interest analysis is doubtful because the majority of the Court was not persuaded of its merits. The concurring and dissenting opinions both rejected the new approach. Although Justice White agreed that a re-examination of the clause's significance was necessary, he viewed the plurality's method of analysis as incompatible with the function of the clause as a national unifying force. In permitting a court of enforcement to weigh the various interests of the state of pronouncement, the balancing analysis offered a non-neutral state the opportunity to advance its own interests in the matter. The full faith and credit clause was intended to eliminate this opportunity.

The dissenting justices found no need for a new approach to the full faith and credit clause. For them, the Magnolia decision set forth the appropriate method of applying the constitutional clause to workers' compensation awards. Furthermore, an interest-balancing test was undesirable in any context. Inherent in this approach, they contended, was the risk that a court might undervalue and overlook important concerns.

Other Full Faith and Credit Contexts

The Supreme Court's decision in Thomas represents an exception to well established full faith and credit principles. After

102. Id. at 288.

103. The concurring opinion noted that the new analysis proposed by the plurality contained the same weakness of the McCartin test. The Thomas plurality found that the "unmistakable language" test permitted the first state, through its legislature, to advance its own interests by declaring the extraterritorial effect of its award. Justice White viewed the balancing test as permitting the second state, through its judiciary, to advance its interests by deciding the extraterritorial effect of another state's award. Both tests were contrary to the national unifying policy underlying the full faith and credit clause. See notes 3 and 48 supra and accompanying text.

104. See note 3 supra.

105. 448 U.S. at 292-93. The dissent argued that the plurality undervalued Virginia's interest in limiting the liability of a business operating in its jurisdiction. Furthermore, the plurality also discounted Virginia's effort and expense in rendering the initial award. Virginia had, in effect, unnecessarily expended both because the District of Columbia was permitted to award a duplicate remedy.

106. See note 3 supra. Exceptions to the full faith and credit clause as applied to state judgments are rare. State penal judgments, Huntington v. Attrill, 146 U.S. 657 (1892), and state judgments purporting to convey property in another state, Fall v. Eastin, 215 U.S. 1 (1909), are among the few state judgments which are not given full faith and credit in sister states. The Restatement (Second) of Conflicts of Laws § 103 (1969) proposes:

A judgment rendered in one State of the United States need not be recognized or enforced in a sister State if such recognition or enforcement is not required by
Thomas, the rule that a state tribunal's decision is entitled to the same res judicata effect in every state is not applicable to workers' compensation decisions. When the Court carves out such an exception to a well-established principle of law, the question arises whether the exception marks a new trend in the law or serves as precedent for future exceptions.

All three opinions in Thomas suggest that the exception to the full faith and credit clause recognized in this case is of limited scope. In the process of applying its interest analysis, the plurality created a very narrow exception to the traditional application of full faith and credit to state determinations. To the plurality, the workers' compensation exception turned on the fact that a compensation commission, unlike a court of general jurisdiction, was restricted to applying its own law in a compensation proceeding. In drawing this distinction, the plurality affirmed the principle that a decision made by a court of general jurisdiction is safely harbored by the full faith and credit clause. Thus, only administrative determinations made through a legislative choice of laws rule are affected by the exception. And even these determinations are entitled to full faith and credit with respect to the resolution of factual issues. The extent of the exception is, therefore, severely restricted.

The remaining justices, a majority of the Court, were uncomfortable even with this narrow exception. The concurring opinion criticized this distinction, in part, because it suggested further exceptions to the clause. The concurring justices also found the plurality's sanction of a second compensation proceeding to be in direct conflict with the underlying purposes of the full faith and

the national policy of full faith and credit because it would involve an improper interference with important interests of the sister State.

The reporters suggest that at some point the national policy of full faith and credit may be overridden by a state's important interests. There is little case support for this proposition, however. The comment accompanying § 103 cites for support Williams v. North Carolina, 325 U.S. 226 (1945). In Williams, the Supreme Court allowed North Carolina to re-examine the jurisdictional foundation for a Nevada ex parte divorce proceeding. The North Carolina court determined that the Nevada court did not have jurisdiction to grant the divorce, and then found the divorced party guilty of bigamy in North Carolina. Lack of jurisdiction, however, is not a true exception to the clause's strict enforcement policy; nor does it support the Restatement's "important state interest" approach. For further criticism of the Restatement proposal, see Ehrenzweig, The Second Conflicts Restatement: A Last Appeal For Its Withdrawal, 113 U. Pa. L. Rev. 1230, 1240 (1965).

107. See notes 82-91 supra and accompanying text.
108. See note 83 supra.
109. Id. at 286-90.
credit clause. The exception ignored the principle of finality em-
body in the clause, resulting in a gross injustice to the defendant
who was thus burdened with multiple lawsuits based upon the
same facts. Furthermore, the Thomas exception undermined the
unifying effect of the constitutional clause. The Magnolia deci-
dion, which recognized no exception for supplemental awards, was cited
by the concurring justices as the better approach.

The dissent was equally antagonistic toward the Thomas excep-
tion. It maintained that an exception to the traditional full faith
and credit approach results in duplication of effort and expenses
rendered in the applicant's behalf. The restricted jurisdiction of
the compensation commission did not justify the waste caused by
duplication. The injured employee, according to the dissent, was
not forced to choose one state's compensation scheme over an-
other. He was free to choose the applicable scheme by selecting the
forum in which to file his initial claim. Finally, the dissent ex-
pressed concern that the Thomas exception would inject confusion
into the modern trend toward quasi-judicial resolutions by tribu-
nals of limited jurisdiction. This hostility directed by the dis-
senting and concurring opinions at an already narrowly drawn ex-
ception, indicates that the use of Thomas as precedent for future
exceptions to the full faith and credit is quite unlikely.

CONCLUSION

Historically, application of the full faith and credit clause to
supplemental workers' compensation awards has been plagued by
pendulation. In two earlier decisions, the Supreme Court stated
discordant rationales and came to opposite conclusions. In
Thomas, the Court sought to inject a degree of certainty into the
area, finding for a second time that the full faith and credit clause
did not prohibit a supplemental compensation award. Through an
uneasy mixture of old and new law, however, the Court spawned
further inconsistencies. The new law suggested by the plurality,
the interest balancing analysis, was not well received by the major-
ity of the Court. Its future junction is therefore questionable. The
old law, the McCartin “unmistakable language” test, received the

110. Id. at 289.
111. Id.
112. Id. at 293-94. See note 105 supra.
113. Id. at 295-96. The dissenting justices noted that this trend in the law warns against
not only the development of the Thomas exception to the clause in other areas, but also
even the narrow application of the plurality's exception.
tentative support of only three members of the Court. Its future, then, is also doubtful. Furthermore, with the Court's holding precariously rooted in such unstable ground, the effective use of *Thomas* as precedent in other full faith and credit arenas appears improbable. In the end, the *Thomas* decision merely luminates the oscillation which the Court sought to eliminate.

EDWARD J. MCGILLEN