Original

In the

Supreme Court of the United States

HALLEY I. THOMAS

PETITIONER

V.

WASHINGTON GAS LIGHT COMPANY, ET AL.,

No. 79-116

Washington, D. C.
March 19, 1980

Pages 1 thru 47

Hoover Reporting Co., Inc.
Official Reporters
Washington, D. C.
546-6666

IN THE SUPREME COURT OF THE UNITED STATES

HALLEY I. THOMAS,

Petitioner,

v. No. 79-116

WASHINGTON GAS LIGHT COMPANY, ET AL.,

Respondents.

Washington, D. C.,

Wednesday, March 19, 1980.

The above-entitled matter came on for oral argument at 1:14 o'clock p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

JAMES F. GREEN, ESQ., Suite 303, 2101 L Street, N. W., Washington, D. C. 20037; on behalf of the Petitioner

ALAN I. HOROWITZ, ESQ., Office of the Solicitor General, Department of Washington, D. C. 20530; on behalf of Federal Respondent supporting the Petitioner

KEVIN JEFFREY BALDWIN, ESQ., Washington Gas Light Company, 1100 H Street, N. W., Washington, D. C. 20080; on behalf of the Respondent WGLC

C O N T E N T S

- - -

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear argument next in Thomas v. Washington Gas Light Company.

Mr. Green, you may proceed whenever you are ready.

ORAL ARGUMENT OF JAMES F. GREEN, ESQ.,

ON BEHALF OF THE PETITIONER

MR. GREEN: Mr. Chief Justice, and may it please the Court:

Halley I. Thomas, a resident of the District of Columbia since 1949, was hired in 1970 as a heavy laborer by the Washington Gas Light Company in their employment office in Washington, D. C. Although Mr. Thomas occasionally worked in the neighboring jurisdictions of Virginia and Maryland, approximately 60 percent of his duties were performed in the District of Columbia. For his endeavors, Mr. Thomas received a paycheck drawn upon a District of Columbia bank. On January 22, 1971, Mr. Thomas was breaking concrete with an air hammer in Arlington, Virginia, when he sustained a disabling injury to his back. Since that date, Mr. Thomas has been unable to return to his occupation.

Prior to his being represented by counsel, Mr. Thomas, while still hospitalized, signed a Virginia agreement for temporary total disability benefits under the

Virginia Workmen's Compensation Act. Mr. Thomas received the Virginia benefits until the maximum amount payable under Virginia law. Mr. Thomas is currently without any disability compensation and medical coverage. Mr. Thomas pursued permanent and total disability benefits in the District of Columbia and received an award which has never been honored.

The Court is today presented with two independent statutory schemes, each of which has as its purpose the compensation of injured workers. The statutes concerned are those of Virginia and the District of Columbia. The compensation statutes in both of these jurisdictions create administrative remedies. The respective administrative fora do not look north or south or east or west to determine whether a given person is entitled to compensation in that forum.

QUESTION: Let me back up a little bit, Mr. Green.

MR. GREEN: Yes, Mr. Chief Justice.

QUESTION: In Virginia, he received compensation for total but not permanent disability, is that right?

MR. GREEN: That is correct, Mr. Chief Justice.

QUESTION: Totaly but not permanent.

MR. GREEN: That is correct.

QUESTION: The claim now is that he is permanently

disabled.

MR. GREEN: That is correct. That claim was presented to the District of Columbia.

QUESTION: Is his claim foreclosed in Virginia for permanent disability? In other words, has he no residual rights when it developed that his temporary disability was apparently a permanent disability?

MR. GREEN: Your Honor, the question of permanent and total disability was never resolved in the Commonwealth of Virginia. That claim --

QUESTION: Why not?

MR. GREEN: Because the benefits in the District of Columbia after Mr. Thomas obtained counsel were more generous to Mr. Thomas, and a claim was initiated in the District of Columbia for permanent and total disability benefits.

QUESTION: I perhaps misunderstood this situation, but I thought the fact was that he has now been paid all that he could be paid under the Virginia Workmen's Compensation Act for -- even for total permanent disability.

MR. GREEN: Mr. Justice Stewart, you do not misunderstand what he has been paid. He has been paid the extent of the Virginia award as it was then enacted in 1971.

QUESTION: Even if one concedes that he was

totally and permanently disabled?

MR. GREEN: That is correct, Mr. Justice.

QUESTION: That is what I thought.

MR. GREEN: He has been paid that amount, the point being that they continue to pay the Virginia award even after the District of Columbia had granted Thomas' claim for permanent and total disability; an award was entered, they never paid the award.

QUESTION: I am having a little difficulty reconciling your two answers just on the factual situation.

MR. GREEN: Let me see if I can --

QUESTION: That is why I put the question, because I was confused as to the reality. Could he have got an award for total and permanent in Virginia if he had ignored the District of Columbia entirely?

MR. GREEN: And my answer to your question, Mr. Chief Justice, would have been he could have pursued such a remedy in Virginia. The Virginia statutory scheme left open to Thomas a claim for additional relief beyond temporary total disability. He elected not to pursue the permanent total disability claim in Virginia and pursued that claim in the District of Columbia to a judgment which has never been honored. The Virginia award continued to be paid until it ran out in the summer of 1978, July of 1978.

QUESTION: And what would it have been open to him to pursue in Virginia after his initial award?

MR. GREEN: He would have been able in Virginia to pursue under a separate statutory policy permanent disability, that is permanent and total disability, although it is not captioned as such in Virginia, under their statute he could have --

QUESTION: Well, what did he get an award for?

MR. GREEN: He received an award, a voluntary award for temporary total disability.

QUESTION: Temporary total.

MR. GREEN: Yes.

QUESTION: So he could have pursued another award for permanent in Virginia?

MR. GREEN: It would be our position that he could have, Mr. Justice White, yes.

QUESTION: But would he have obtained a single dime more than he had already obtained?

MR. GREEN: Mr. Justice Blackmun, he would not have obtained any more money because the Virginia statute at that time --

QUESTION: Precisely, therefore why go to Virginia?

MR. GREEN: That is why he came to D.C., sir, that was the election and he made it and came to the

District of Columbia and brought his action and received the award which has not been honored.

QUESTION: It seems to me we are making a lot of fuss over nothing here. You went to the District of Columbia because there was more money available. He had wrung Virginia dry of all its funds under the statute.

MR. GREEN: Not just the money --

QUESTION: Whether it is total or whether it is permanent.

MR. GREEN: Correct, Mr. Justice Blackmun, not just the money but also the medical benefits. In Virginia, the statutory scheme in 1971 allowed for a termination of medical care to an injured worker when the money ran out. The District of Columbia has no such statutory policy. Under section 907 of Title 33 of the U.S. Code, the man could obtain his benefits for medical care in the District of Columbia as long as he was still disabled from that industrial accident.

The petitioner would state that you do not have to reach a question of full faith and credit in order to determine this case, because the controversy involved does not bring the full faith and credit clause of the Constitution to bear on these issues. What it does do is it suggests that this Court's holding in McCartin is correct, that the Virginia statute is not so exclusive as

to preclude Thomas' claim in the District of Columbia.

QUESTION: What do you consider to be the holding as you described it in McCartin?

MR. GREEN: Mr. Justice Rehnquist, I consider the holding to be that in a statutory scheme where a state allows for recovery by an injured worker having only limited demands prior common law right to sue his employer through that statutory scheme, he can bring an additional action in any state or any forum in which he desires to do so, allowing certain constitutional contacts that would give him the right to bring that claim.

QUESTION: Isn't a good deal of what you have just said dicta rather than a holding?

MR. GREEN: I don't believe that it is. I believe that the Court repeated twice in McCartin, after discussing the reservation of the contractual right that they found that the Illinois statute or a statutory scheme similar to Illinois, like those, we would allow those statutory schemes to not be preclusive and to not be exclusive so that the man cannot bring additional claim for benefits.

QUESTION: But a court can write a ten-page opinion and say we hold that in every paragraph and that still doesn't make each paragraph a holding.

MR. GREEN: I would agree with that, but I would

urge that it is not dicta in McCartin, that it is the rule of McCartin and has been so interpreted. Since this Court came with the McCartin decision, the proginy of McCartin are throughout this country and, as we have cited on brief, they are numerous. They understand the Court to have said in that decision that unless a statutory scheme is exclusive, the man can bring an additional claim for relief in any forum in which he has a right to bring such a claim. The aggregate of that claim is a set amount. It cannot be more generous than the most generous forum.

That is what we would urge this Court to consider, that your announcement in McCartin controls this case, not Magnolia. And because it does, the Virginia exclusive remedy provision is only exclusive as to a common law right to sue your employer and is exclusive for no other purpose. And because it is not, a man has a right to bring a claim in multiple jurisdictions.

I would reserve the remainder of my time.

MR. CHIEF JUSTICE BURGER: Mr. Horowitz.

ORAL ARGUMENT OF ALAN I. HOROWITZ, ESQ.,

ON BEHALF OF THE PETITIONER

MR. HOROWITZ: Mr. Chief Justice, and may it please the Court:

I would like to speak briefly about the point raised by Mr. Justice Blackmun about going back to

Virginia for a permanent disability award. As Mr. Justice Blackmun pointed out, the petitioner was not entitled to any further benefits under the Virginia statute. It would just have been a question of whether they were called temporary or permanent. But even under permanent disability, his benefits would have run out. These are benefits that are not paid by Virginia. They are paid by the employer, the respondent in this case.

QUESTION: So the fact is that he has gotten all that he could possibly get under the Virginia system and all that somebody who didn't have even a potential choice of going into another jurisdiction system, all that such a person could possibly get.

MR. HOROWITZ: That's correct.

QUESTION: He has received, hasn't he?

MR. HOROWITZ: Correct. Virginia provides fewer benefits than the District of Columbia.

QUESTION: Right.

MR. HOROWITZ: Had he gone to the District of Columbia initially --

QUESTION: And if he had a Virginia employer and been injured in Virginia and had no connection with any other jurisdiction and had been totally and permanently disabled, this is all he could ever get under the Virginia system, isn't that correct?

MR. HOROWITZ: That's right, under the statute as it was written at the time.

QUESTION: As it was then written.

MR. HOROWITZ: That's correct. Now, the question in this case is simply whether as a consequence of a Virginia Workmen's Compensation award the full faith and credit clause bars the District of Columbia from making an award to petitioner under its own worker's compensation statute.

Now, we believe that this Court has already answered the constitutional question presented here in the McCartin case, and that that decision compels reversal in this case.

McCartin held two things: First, it held that a worker's compensation award in one state was not necessarily preclusive of a worker's compensation award in a second state that supplemented the first award, but that the preclusive effect depended upon the intent of the first state in granting its award.

QUESTION: That is wholly at odds with accepted full faith and credit doctrine, isn't it?

MR. HOROWITZ: No, I don't believe it is.

QUESTION: It is not the intent, it is what effect the home state would give that judgment --

MR. HOROWITZ: That's correct.

QUESTION: -- and the foreign state must give the same effect.

MR. HOROWITZ: That's correct, but it does not have to give any greater effect. Virginia did not intend to --

QUESTION: It has nothing to do with -- you wouldn't concede that the statement of the Court in McCartin was a little bit at odds with normally accepted full faith and credit?

MR. HOROWITZ: I don't believe so. If I understand what is troubling you, Mr. Justice Stewart, it is the question of whether we look at the preclusive effect of the Virginia award in Virginia or the preclusive effect of the Virginia award in the District of Columbia. Is that accurate?

The District of Columbia only has to give the Virginia award the preclusive effect that Virginia would give it. Virginia --

QUESTION: It only has to give it that and under full faith and credit it must give it that.

MR. HOROWITZ: That's quite correct. Now, in this case there is a question of whether the Virginia award is intended by Virginia to preclude awards under the District of Columbia statute.

QUESTION: Under ordinary full faith and credit

doctrine, it is not that the law of Virginia says we want to make very clear that this must be given effect in other jurisdictions. That has nothing to do with full faith and credit.

MR. HOROWITZ: I agree, but the question is what does the Virginia award mean in Virginia.

QUESTION: Precisely.

MR. HOROWITZ: But in Virginia, the Virginia courts would not hear a claim under the District of Columbia statute, so there is no way to tell, there is not going to be any case law to tell --

QUESTION: Virginia courts would hear a petition for a permanent disability award. It may not give him any more money, but they would hear the case, we were just told.

MR. HOROWITZ: Well, I think for the purposes of this case we can treat it as if he had gotten his award in Virginia and it had been called a permanent disability award.

QUESTION: I would think you would want to treat it that way, but the fact is he was given a temporary permanent disability award and Virginia did not bar his seeking a permanent disability award.

MR. HOROWITZ: Well, suppose he had gone to Virginia and gotten a permanent disability award --

QUESTION: Well, the Fourth Circuit certainly knows more about Virginia law than we do.

MR. HOROWITZ: Well, first of all, on the question of Virginia law, there is a dispute. The Fourth Circuit did not hold that under McCartin the Virginia statute possessed the unmistakable language referred to in McCartin and that it thereby barred second awards. What we contend is that the Fourth Circuit misinterpreted McCartin. The Fourth Circuit's opinion in Pettus does not deal with McCartin in much detail but simply says that McCartin had no effect whatsoever on Magnolia.

QUESTION: And for what it is worth, the Fourth Circuit was divided in Pettus.

MR. HOROWITZ: That's true, the Fourth Circuit was divided on Pettus. Moreover, another panel of the Fourth Circuit has stated in a case that is distinguishable on its facts that the intent of the Virginia statute is not to preclude a District of Columbia award. Moreover, the D.C. Circuit has also held that the Virginia statute does not have that effect, explicitly rejecting the decision in Pettus.

QUESTION: If we have to choose between the Fourth Circuit's interpretation of Virginia law and the D.C. Circuit's interpretation of Virginia law, ordinarily we would defer to the Fourth Circuit rather than the D.C.

Circuit, wouldn't we?

MR. HOROWITZ: I don't think the Court has to defer to the Fourth Circuit because the Court specified in McCartin what the rule of construction was for interpreting these worker's compensation statutes when they don't specifically address the question of an award under another state's statute, and that rule of construction is that the state must specify by unmistakable language that it intends to bar such an award.

Now, the Fourth Circuit did not consider that. The Fourth Circuit did not deal with McCartin's injunction on that point. The Fourth Circuit simply said that McCartin has no application here.

QUESTION: But we have three judges sitting down in Richmond who are presumably familiar with the cases they are talking about, they talk about McCartin and they say McCartin does not control this case.

MR. HOROWITZ: Right, and I think --

QUESTION: They may be wrong, but if you are saying that they misinterpreted Virginia law, I think you are leading on a rather weak reed.

MR. HOROWITZ: I am saying that they misinterpreted McCartin.

QUESTION: Well, that may be another question, but they didn't understand what McCartin told them they

had to find in order to do what they did.

MR. HOROWITZ: That's right, and so they did not interpret -- they made no attempt to interpret the Virginia statute in line as prescribed by this Court in McCartin. So I don't think that the decision in Pettus as far as the interpretation of Virginia law is entitled to much deference by this Court.

QUESTION: Mr. Horowitz, something slipped my mind here. Why did this case go to the Fourth Circuit rather than the District of Columbia courts?

MR. HOROWITZ: Well, there is a provision in the Longshoremen's Act that appeal should be to the circuit where the injury occurred. There is some dispute over exactly what that means, whether it means the District of Columbia Circuit or to interpret it literally, where the injury occurred, but that was not disputed in this case.

Again, McCartin sets out a rule of construction that the Virginia statute must state in unmistakable language that it intends to preclude the District of Columbia award. Now, the Virginia statute here contains no unmistakable language. Indeed, it is very similar to the statute that was construed by this Court in McCartin, the Illinois statute.

Moreover, to the extent that the Virginia

statute gives us any suggestion at all about its views on supplemental awards, we understand that Virginia permits supplemental awards in its own courts. That is, if the petitioner here had gone to the District of Columbia first and gotten an award that was less than what he was entitled to in Virginia, it is clear from the Virginia statute that he could have gone to Virginia and supplemented that award up to the benefits that Virginia allows under its statute.

So what respondent is asking for is an extremely arrogant interpretation of the Virginia statute and that is that Virginia expects other states to honor the limitations that Virginia puts on its awards, but Virginia will not honor such limitations by other states, and that Virginia expects other states to permit Virginia to give supplemental awards, yet Virginia will not permit other states to give their supplemental awards.

QUESTION: What you are saying by that is that there is no interest of the Commonwealth of Virginia that is really implicated here.

MR. HOROWITZ: Well, to the extent that there is an interest -- it is conceivable that Virginia might have decided that it was better not to have supplemental awards, that they prefer the limitations, but to the extent that they have expressed themselves on that, they have

shown that their interest is in providing supplemental awards, that is that the stronger interest is to compensate the injured employees.

QUESTION: But if Virginia is not concerned about awards elsewhere, one would think that it isn't concerned about its own allocation of awards.

MR. HOROWITZ: That's correct, that it just would not want to restrict it. That's correct.

QUESTION: Does Virginia have any economic interest or any other kind of interest in being concerned about how much money someone else pays out?

MR. HOROWITZ: It certainly has no direct economic interest. To the extent that --

QUESTION: Whatever some other state -- whatever is achieved in some other state relieves any tension or pressure for Virginia to expand its awards, is that not so?

MR. HOROWITZ: That's correct, in a case where there is jurisdiction of both states.

QUESTION: But that 90 percent or more of the industrial accidents in Virginia, an injured person wouldn't have a choice of two jurisdictions. Isn't that your guess?

MR. HOROWITZ: That's correct. Now, to the extent that Virginia might have an interest and somehow

having a limitation where there is jurisdiction in two states, which is what the respondent is suggesting, that is an interest that they cannot vindicate unless the injured employee makes a mistake in the first instance and goes to Virginia. I mean there is no dispute in this case that petitioner could have gone directly to the District of Columbia and gotten all the benefits that he is entitled to under the District of Columbia act.

QUESTION: Because he was a resident or --

MR. HOROWITZ: Because he was a resident and because the respondent is an employer in the District of Columbia. It is the Washington Gas Light Company.

QUESTION: But in fact he went to Virginia.

MR. HOROWITZ: That's right, in fact he went to Virginia. As it happened, he signed a memorandum agreement with respondent after two weeks and that award was just approved by the Virginia Industrial Commission and it then takes on the force of an award in Virginia. He didn't -- it is true that he went to Virginia. The way the worker's compensation system works, it is not the same kind of choice that a litigant makes when he chooses to go to a particular court.

QUESTION: But no one forced him to sign the award, did they?

MR. HOROWITZ: There is no evidence that he was

forced to sign the award. It is certainly probable that he had no idea that he had any rights under the District of Columbia statute at that time.

QUESTION: Is the issue here constitutional or not?

MR. HOROWITZ: Well, we think the constitutional issue has been settled by McCartin if this Court --

QUESTION: So there is one?

MR. HOROWITZ: If the Court is going to reconsider McCartin.

QUESTION: Was there a statutory issue in the case?

MR. HOROWITZ: In this case?

QUESTION: Yes.

MR. HOROWITZ: Well, there is always a statutory issue as to whether the Virginia statute intends to preclude a D.C. award.

QUESTION: Well, what about the Longshoremen's Act?

MR. HOROWITZ: I'm afraid I don't understand the question.

QUESTION: The two first arguments made by your brother.

MR. HOROWITZ: Oh, I'm sorry. The respondent --

QUESTION: The second of them.

MR. HOROWITZ: As to the scope of the Longshoremen's Act.

QUESTION: Whether the Longshoremen's Act permits a longshoremen's award if a state has granted an award.

MR. HOROWITZ: Well, that --

QUESTION: Was that ever presented?

MR. HOROWITZ: That was apparently presented in the Court of Appeals. It was conceded --

QUESTION: Was it passed on?

MR. HOROWITZ: No, it was not passed on.

QUESTION: Why wasn't it?

MR. HOROWITZ: I don't know. The Court of Appeals ruled on full faith and credit.

QUESTION: It certainly would have avoided the constitutional question, wouldn't it?

MR. HOROWITZ: Well, the court --

QUESTION: Maybe, if it had been decided one way.

MR. HOROWITZ: The Court of Appeals may have felt that it wasn't raised below, they didn't say.

QUESTION: Well, was it? You ought to know.

MR. HOROWITZ: Well, it was not raised in the administrative hearing. It was conceded in the administrative hearing.

QUESTION: Well, you don't usually raise those

in an administrative hearing.

MR. HOROWITZ: Well, there was a contention that the D.C. law did not apply becauseof the full faith and credit clause and at the administrative hearing they --

QUESTION: How about the claim that the D.C. law didn't apply because it is the Longshoremen's Act and the Longshoremen's Act does not permit awards where a state has awarded?

MR. HOROWITZ: That was conceded at the administrative hearing, that there was no contention that the District of Columbia act would not have applied if it were not for the Virginia award.

QUESTION: Is there any possibility here that if a total and permanent award were made in the District of Columbia, Virginia could recover from what it has paid out?

MR. HOROWITZ: Well, all the monies that are paid out are paid out by the employer. The state is not the employer.

QUESTION: Well, I meant to say the employer.

MR. HOROWITZ: Yes, the District of Columbia award would give credit for the monies paid out in Virginia. There is no issue of double recovery here. The employee is only receiving what he would have gotten had he gone to the District of Columbia in the first place.

QUESTION: Let's assume that an issue had been raised that no longshoremen's style recovery may be had because the state has already entered an award, and you read something out of the Longshoremen's Act to that effect. Suppose the Court of Appeals, it had been presented to the Court of Appeals and the Court of Appeals said that is absolutely right, the District of Columbia award is barred because Virginia has made an award. Would that have been a correct ruling?

MR. HOROWITZ: Well, under the --

QUESTION: Would that have been a correct ruling or not?

MR. HOROWITZ: No, under the Longshoremen's Act, no, that is not a correct ruling.

QUESTION: Why wouldn't it have been?

MR. HOROWITZ: Because the Longshoremen's Act does not restrict its recoveries to cases that are not covered under other state laws, and that contention of respondents is incorrect. It was rejected back in the 1940's by the D.C. Circuit and --

QUESTION: But the Court of Appeals didn't rule on the question.

MR. HOROWITZ: The Court of Appeals didn't say anything about it. I think perhaps they implicitly rejected it. They may have thought it was insubstantial.

QUESTION: Well, you just had a two-paragraph opinion in the Court of Appeals because they sat on the Pettus result.

MR. HOROWITZ: That's right.

QUESTION: So really what is challenged here is the Pettus case and not this one.

MR. HOROWITZ: Yes, but technically this case.

QUESTION: Which perhaps we should have taken.

QUESTION: If the statutory question was implicitly rejected, we should reach it first here? Is that it?

MR. HOROWITZ: Well, the Court might want to remand to the Court of Appeals for consideration of the statute.

QUESTION: Well, you told me they rejected it.

MR. HOROWITZ: I don't know if they rejected it. They didn't consider it apparently.

QUESTION: Certainly this Court has never decided it.

MR. HOROWITZ: No, this Court has not decided it.

QUESTION: Mr. Horowitz, before you sit down, you said there was a constitutional question. What provision of the Constitution is involved?

MR. HOROWITZ: Well, there was a question prior to McCartin as to whether the full faith and credit clause

would bar this award simply because an award was made in Virginia and Virginia has a general exclusivity provision that makes that award exclusive.

QUESTION: Is the District of Columbia a state within the meaning of the full faith and credit clause?

MR. HOROWITZ: Well, I think for these purposes it would be.

QUESTION: Has that ever been held? I was just wondering if it is a statutory question rather than a constitutional question.

QUESTION: It is a statutory question identical to --

MR. HOROWITZ: Well, the full faith and credit clause ties both the Constitution implementing statute to the full faith and credit clause, and they are practically coextensive.

QUESTION: But if it is not a constitutional question, we may not have the problem Mr. Justice White suggests of needing to address some other statutory question before this statutory question.

QUESTION: It is like a 1983 case, a purely statutory claim but reads right on the Constitution.

QUESTION: That's right, but this one does not read on the Constitution and that is why you needed the statute.

MR. HOROWITZ: Well, the main issue in this case is also simply a statutory question and that is what does the Virginia statute say. It is only if the Court is going to reconsider McCartin that it has to worry about the constitutional question.

QUESTION: But you also suggest in your brief that we might reconsider both Magnolia and McCartin to the extent of being persuaded that the full faith and credit clause of the Constitution and its supplementary statute have nothing to do with workmen's compensation awards or that workmen's compensation awards are an exception.

MR. HOROWITZ: Well, I certainly don't think the Court has to reconsider Magnolia in this case. Whether it is possible in another case that --

QUESTION: You suggest it on page 26 of your brief.

MR. HOROWITZ: Well, we suggested that other -- we were trying to have the Court not step back from the McCartin rationale and in support of that we have noted that some commentators have suggested that even Magnolia was wrong and that is not really an issue in this case.

QUESTION: Exactly, and that the full faith and credit clause of the Constitution or its equivalent statute are simply inapplicable to workmen's compensation actions.

MR. HOROWITZ: Because of the nature of workmen's compensation actions --

QUESTION: Exactly.

MR. HOROWITZ: -- that the state never considers the --

QUESTION: And that would require reexamination of both Magnolia and McCartin, at least as to their underlying premises.

MR. HOROWITZ: Yes, if you were to reach that argument, but there is no need to do so.

QUESTION: Then why did you put it in your brief?

MR. HOROWITZ: Because I thought it was supportive of the notion that McCartin was correct. McCartin sets up a rule of construction that permits the Magnolia result only when the state has made it quite it quite explicit.

QUESTION: Which is quite contrary, as I suggested at the outset in my question, from ordinarily accepted doctrine under the full faith and credit clause.

MR. HOROWITZ: Except that --

QUESTION: It is the duty of a foreign jurisdiction to give precisely the same effect as the local jurisdiction would give to that judgment.

MR. HOROWITZ: That's right, and so the

question of --

QUESTION: Regardless of what the legislature might have said.

MR. HOROWITZ: And so the question is whether the Virginia award would preclude the D.C. award.

QUESTION: That's the question.

MR. HOROWITZ: And because Virginia never considers D.C. awards, you can't tell that from what happens in Virginia.

QUESTION: May I ask a question. I have before me section 65.1-40 of the Virginia Code and I will read this language and then ask you a question. I have it at page 4a I think of respondents' brief, in the appendix in the back of the brief: "The rights and remedies herein granted to an employee...shall exclude all other rights and remedies of such employee...at common law or otherwise..."

Now, you rely on the McCartin case as holding that a state statute must explicitly exclude all other remedies. What language would you suggest to meet your own standard beyond what is presently in the Virginia law?

MR. HOROWITZ: Well, the provision that is in the Virginia law is practically identical to the provision that was in the Illinois law that was considered in McCartin.

QUESTION: The Court of Appeals for the Fourth Circuit said, if I recall, in Pettus that it was practically identical with the statute before the Court in Magnolia.

MR. HOROWITZ: That's correct, although the Magnolia case had the extra feature which the Court specifically relied on, that the state of Texas did not permit its own courts to give supplemental awards, whereas here Virginia does permit its courts to give supplemental awards.

QUESTION: You rely solely on that distinction?

MR. HOROWITZ: Well, I think that is what was at the bottom of the Magnolia finding, that Texas -- in Magnolia, the Court did not specifically on this language but they found that Texas did not permit its awards -- did not permit another state to give supplemental awards.

QUESTION: Putting that aside, could a state statute be any more explicit than 65.1-40?

MR. HOROWITZ: Yes, it could. We cited the Nevada statute in our brief which is quite explicit. It says --

QUESTION: What would you suggest in summary as to --

QUESTION: Well, the Nevada statute is unique, isn't it?

MR. HOROWITZ: Yes, it is unique.

QUESTION: Among the fifty states.

MR. HOROWITZ: It is unique because states have no interest in restricting supplemental awards in other states, and some of the state haven't done that.

QUESTION: Mr. Horowitz, despite the language that Justice Powell mentioned to you, you just answered him that after this temporary permanent disability award in Virginia, he could have gone back and got a permanent disability award. That is what you just said.

MR. HOROWITZ: In Virginia.

QUESTION: But it wouldn't give him any more money is your --

QUESTION: But that language that Justice Powell read to you wouldn't bar his again proceeding in the --

MR. HOROWITZ: No, because that was under the worker's compensation statute. What this language does is bar other remedies other than worker's compensation, and the question is does that bar other remedies other than the Virginia worker's compensation or does it not bar remedies under another state's workers compensation.

QUESTION: It bars all other remedies at common law or otherwise.

MR. HOROWITZ: That's right.

QUESTION: That is pretty broad language.

MR. HOROWITZ: That is what it states. Now, I would point out that this language bars other remedies even before there is an award. What this does is it forces the employee to go within the worker's compensation system. He can't sue in tort. He can't bring any other remedy. It really has nothing to do with the effect of the Virginia award.

Now, it is not intended, because it is clear that Virginia would not have the power to prevent the employee from going to D.C. initially and getting an award, yet theoretically this language would also prevent that. So I do think it is clear that this language is not specifically aimed at an award under another state's statute and that is what McCartin --

QUESTION: When you talk about an award, you are talking about something that is ultimately paid for by a tax on his employer, are you not?

MR. HOROWITZ: Well, in this case it is paid directly by his employer.

QUESTION: Could the worker go to Nevada, for instance, and get an award?

MR. HOROWITZ: No, there would be no jurisdiction under the Nevada statute.

QUESTION: Mr. Horowitz, you may have answered this, but I want to be sure. As I read your brief, you

are not particularly eager to have Magnolia overruled.

MR. HOROWITZ: No.

QUESTION: You think you can live with it.

MR. HOROWITZ: Yes.

QUESTION: Yet the commentators in the academic world think there is a bit of tension between Magnolia and McCartin.

MR. HOROWITZ: Yes, that's true.

QUESTION: Do you agree with that?

MR. HOROWITZ: Well, there is some tension, they are not satisfied as a theoretical conflicts of law problem. They have some of the difficulty that Mr. Justice Stewart has, and that is that it should not make that much of a difference what Virginia says about the extraterritorial --

QUESTION: There was a change in the Chief Justice and the later case was unanimous with only one Justice concurring in the result. The other one was a very bare majority and a tenuous one at that.

MR. HOROWITZ: The McCartin case severely limited Magnolia and the Magnolia case can still come up, it can still come up in Nevada, but the fact is there is no policy for a state to have such a statute so it is unlikely that this Court will ever be faced with the need to overrule Magnolia or with that question.

Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Baldwin.

ORAL ARGUMENT OF KEVIN JEFFREY BALDWIN, ESQ.,
ON BEHALF OF THE RESPONDENT

MR. BALDWIN: Mr. Chief Justice, and if it please the Court:

The court below could have and should have dismissed this case on the non-constitutional grounds that the District of Columbia did not have jurisdiction in this case and independent of that the claim was untimely filed.

We have learned that Mr. Thomas was employed by the gas company out of our Springfield, Virginia offices. He was injured in Arlington, Virginia in January of '71. In February, the parties executed a memorandum agreement, they submitted it to the Virginia Industrial Commission. A month and a half later the commission comes down with an award. Two years later he retains counsel and three and a half years later a claim is made in the District of Columbia.

In regard to jurisdiction, in 1928, Congress incorporated the Federal Longshoremen's Act in toto as the District of Columbia Workmen's Compensation Act. The act provides coverage for jurisdiction for injuries on navigable waters and if compensation cannot be validly

had in a state.

Another provision provides that coverage is available irrespective of the place of injury. This provision can be read and harmonized with the federal coverage to read that coverage is afforded irrespective of the place of injury and if compensation cannot validly be had in the state.

Thomas was injured in Virginia, he received and validly received compensation from Virginia. Congressional hearings tell us that the D.C. act was to fill a void. There was no recovery for D.C. employees working for D.C. employers who were injured on the job in the District of Columbia. If they were injured outside the District of Columbia, they were covered by state compensation laws.

Congress filled this void with a mutually exclusive federal act. It was a very restrictive act and it clearly intended to give the employees of the District of Columbia one remedy, not as suggested by our opponents, two remedies.

In regard to timeliness --

QUESTION: That isn't the usual rule under the Longshoremen's Act though, is it?

MR. BALDWIN: Your Honor, in 1928 the Longshoremen's Act came in after a rather hard line of cases, the

Jensen case and then back up to 1942 where this Court, speaking through Justice Black, described these early cases as employees being caught in a twilight zone, that is pursuing a state remedy and then being unable to recover under a one-year statute.

Also in this time era the cases were thought to be maritime national versus maritime local.

QUESTION: But isn't there now currently an overlap between the state laws and the Longshoremen's --

MR. BALDWIN: By overlap do you mean today or do you mean when this accident happened?

QUESTION: Well, when it happened.

MR. BALDWIN: I would say that --

QUESTION: Your argument is that getting a recovery under state law precluded a recovery under the Longshoremen's Act.

MR. BALDWIN: There is no overlap in this case, Your Honor. There is not -- this Court decided in 1969 the Nacirema case where an employee fell off a ship onto a pier and it refused to extend the jurisdiction to the pier. There is a border some place, but in this case it really doesn't apply because Mr. Thomas was injured in Arlington, Virginia, and the overlap question doesn't pertain to this case.

QUESTION: Well, was this question presented to

the Court of Appeals?

MR. BALDWIN: Yes, it was in brief, Your Honor. The court --

QUESTION: And they didn't decide it?

MR. BALDWIN: They did not decide it.

In regard to timeliness, Your Honor, the employee has a year to file, and ten years later, in 1938, Congress enacted a different provision that said time is not going to run against the employee until the employer also files, but the purpose of this enactment was to prevent employer overreaching, which is certainly not an issue in this case. It also provided the employee his one remedy, that if he were to pursue compensation in a state or any other jurisdiction and not get it, he would still have it in the District of Columbia.

For either reason, this Court -- that is, for either one of these reasons, this case should be dismissed and should be dismissed.

With regard to the federal question, if there were no Constitution, if there were no Magnolia case, if there were no McCartin case, the result reached below would still be correct for reasons dating back to Roman law where it is said no one ought twice be sued for the same cause of action, plus it is in the interest of the state that there shall be an end to litigation.

But there is a Constitution, and Article 4 says that full faith and credit shall be given in each state to the public acts and records and judicial proceedings of every other state. In the act of Congress implementing, it says that such proceedings shall have the same full faith and credit in every court within the United States as they have by law and by usage in the courts of such states from which they are taken.

In effect, this is a litigant's bill of rights. It brings an end to litigation. We have this Court in Magnolia telling us the clear purpose of the full faith and credit clause establishes throughout the federal system a salutory principle of common law. A litigation once pursued to a judgment shall be conclusive for the rights of the parties and --

QUESTION: And why is the full faith and credit clause involved here?

MR. BALDWIN: It is involved, Your Honor, because we have in this --

QUESTION: But the --

MR. BALDWIN: -- we have the Constitution, we have an act implementing it, and that is the act of Congress gives the effect of a judgment in one state the same effect in every other state.

QUESTION: Like the District of Columbia?

MR. BALDWIN: That is correct, Your Honor, so the rights that are -- when the parties have their rights concluded, the cause of action is merged in the first state and it is merged in every other state.

We have this Court saying again in Magnolia that a workmen's compensation award that has been final is entitled to full faith and credit in a court. From the above, we learn that no state has the power to legislate beyond its borders. No state can bind within its borders and unbind outside and thus no state can give or intend to give an award or judgment within its borders one effect and a different effect outside. The state does not have any power to do so.

QUESTION: Now you are going to mention McCartin?

MR. BALDWIN: When am I going to?

QUESTION: I say you are going to, are you not?

MR. BALDWIN: Yes, Your Honor, I intend to and let me get to --

QUESTION: It is the later of the two cases, and I would like to know how you --

MR. BALDWIN: I am familiar with both cases, Your Honor.

One more principle is that the full faith and credit clause of the Constitution is what tives extra-territorial effect, by giving an award or judgment in a

rendering state the same effect in every other state.

The problem in this case is what effect is to be accorded a workmen's compensation award in Virginia by the full faith and credit clause.

We are shown in Dillard v. Virginia Industrial Commission, a 1974 case before this Court, what effect an award in Virginia has. It concludes the rights of the parties. It binds the parties and it binds the courts in Virginia. Virginia accords a workmen's compensation award the same status as that of a judgment.

QUESTION: But you could go back in Virginia and get an award for permanent disability?

MR. BALDWIN: Your Honor, I am not going to mislead you. I do not believe he could. He received an award for total incapacity. There is a separate paragraph in 65.1-56, paragraph 18, which describes what total and permanent incapacity is, but the dollars are the same.

QUESTION: The dollars are the same.

MR. BALDWIN: Yes, it is the same --

QUESTION: Assume, rightly or wrongly, we agreed with your colleagues that even though the money is the same, he could have gone back -- Virginia just didn't bar going back and getting an award for permanent disability, even though there had been an award for temporary total disability. Suppose --

MR. BALDWIN: I don't know why one would.

QUESTION: I know, but suppose -- I heard that from the other side, and you heard it, too.

MR. BALDWIN: Yes.

QUESTION: And you say that is wrong.

MR. BALDWIN: It is under subparagraph 18, Your Honor --

QUESTION: But suppose they were right in what they said?

MR. BALDWIN: Your Honor, they don't.

QUESTION: So you don't want to suppose? All right.

QUESTION: But don't you have supporting you the decision of the Court of Appeals in Pattus at 631 of deciding where they say, turning to the Virginia statute, we find it as exclusive of the second proceeding as the Chief Justice in Magnolia found the Texas law?

MR. BALDWIN: Yes, Your Honor. I would like to get into a discussion of McCartin, what is good about it, what is right about it, what is constitutional, but I would say that, although we don't recommend, I can't tell you to go into looking at the extraterritorial effect of the state legislature of the state statute where it has no power. I cannot lead you that way.

What I can tell you is that the Pettus review

-- Pettus v. American Airlines -- reviewed Magnolia and it reviewed McCartin. It reviewed the statute and the Fourth Circuit interpreted the Virginia statute to be exclusive. This Court, in Butner v. United States in 1979, and Bishop v. Wood, said it gives great deference to the Fourth Circuit in interpreting state laws. The state laws in those two cases were North Carolina. The two judges that decided the Pettus case are not only Virginia lawyers but they were educated, they received their legal education in Virginia. On that ground alone, the Fourth Circuit should be upheld.

But in Virginia, by law and by usage, Virginia treats a workmen's compensation award exactly the same as it does a judgment, and by law and by usage in Virginia a judgment is res judicata unless timely appealed. It was never appealed.

If Virginia wanted to make an award something less than a judgment, it could easily do so, but it did not.

QUESTION: What would the consequence of an appeal of the Virginia award, if I understood you correctly --

MR. BALDWIN: How would you do it? Your Honor, you have --

QUESTION: No, what would be the consequence

of it? What would have been appealed from the Virginia --

MR. BALDWIN: There is nothing to be appealed.

QUESTION: That is what I am asking you. There is no consequence --

MR. BALDWIN: There are no facts that you can put on the bones to make an appeal. He has a final award, he has got his judgment, and the time for appeal has gone, it is final.

QUESTION: Isn't the Virginia statute almost identical with the Illinois statute in McCartin?

MR. BALDWIN: Your Honor, I am not the greatest one for interpreting statutes, but the Illinois statute says -- it replaces common law and statutory law, actions against the employer. In Texas, it says this is your sole remedy. In Virginia, it says common law or otherwise, so --

QUESTION: I am talking about --

MR. BALDWIN: -- is the word "otherwise" greater than "statutory" --

QUESTION: I am talking about Illinois. Texas isn't --

MR. BALDWIN: Illinois says common law or statutory. Virginia says common law or otherwise. Is "otherwise" greater --

QUESTION: Does "otherwise" include "statutory"?

MR. BALDWIN: Pardon, Your Honor?

QUESTION: Does "otherwise" include "statutory"?

MR. BALDWIN: Your Honor, "otherwise" --

QUESTION: Well, let me ask you, what is the otherwise designated?

MR. BALDWIN: I am not interpreting the act, Your Honor.

QUESTION: You don't agree that they are similar?

MR. BALDWIN: I would take the position of the court in the Fourth Circuit that if they think that the Virginia act is more similar to the Texas act, fine, but it is a matter of degree, Your Honor. I cannot draw the line for you.

In McCartin, the Court said if it were apparent that an Illinois award was intended to be final and conclusive of all the rights of the employee against the employer, then Magnolia would control. Beyond its decisive facts, the Magnolia court looked at three things. It looked at the award, its nature and effect, statutory construction and legislative intent, and cases to interpret it. What are the decisive facts in McCartin?

The decisive facts show that there are two simultaneous proceedings going on, one in Illinois and one in Wisconsin. Wisconsin was studied while awaiting a lump-sum agreement without prejudice to be approved in

Illinois. What did Illinois do? Illinois agreed with this arrangement through one of its commissioners, Mr. Granada, who had apparent authority to approve the express intent of the parties. The nature of the award was that it was expressly without prejudice to proceed to Wisconsin. The effect of the award was that it was not final, it was expressly not final, and so the court in Illinois could not bind the parties.

I should note that an agreement of this type comes within the exception of res judicata from the restatement of judgments. At this point, had the McCartin court given the Illinois award its expressly intended effect, the result would have been the same. But the Court went further. It went into the extraterritorial legislative intent, it found no cases on point, which is not surprising, and it read the statute as non-exclusive to the extent that the McCartin court turned its opinion on the state legislature's intent not to bind a party extraterritorially. We disagree. No state policay can be greater than that of the Constitution.

And so it is we believe a strange concept that would permit the Constitution of this country to turn on a state legislature's extraterritorial intent. Such intent is constitutionally meaningless. The department and Mr. Thomas in their brief and intheir reply briefs

imply or wish that a state cannot bind a workmen's compensation case. There would be no finality at all. Or alternatively, workmen's compensation cases should be taken out of the full faith and credit clause. If that is so, then the same arguments can be made for any other common law judgment.

All of these arguments -- and there is not one argument before the Court --

QUESTION: You say "any other common law judgment," this is not a common law judgment, is it? It is a workmen's compensation award.

MR. BALDWIN: It has the same effect as a common law judgment.

QUESTION: But it precludes common law remedies.

MR. BALDWIN: That's right, and what I am talking about is the arguments that have been made in tax cases, the wrongful death cases, the gambling cases, bigamy, child support, Winds v. North Carolina, a long line of hard decisions. And Magnolia said that we cannot say that a workmen's compensation award would not stand on any different footing.

What I am saying is that every argument, every social policy argument that you have heard today has been expressly rejected by this Court.

Thank you, Your Honor.

MR. CHIEF JUSTICE BURGER: Very well. I think all the time is consumed. Thank you, gentlemen. The case is submitted.

(Whereupon, at 2:08 o'clock p.m., the case in the above-entitled matter was submitted.)

- - -