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Should Federal Courts Give Greater Effect to State Judgments than Would the Courts that Rendered Them?

by Gene R. Shreve

American courts have traditionally fashioned and administered rules which help put an end to the filing of claims in civil litigation. These rules are embodied in claim preclusion or, to use the older term, res judicata doctrines. Under these doctrines, a final judgment precludes the same parties from relitigating the same claim and may also preclude them from litigating some claims not previously raised. Disappointed parties clearly need to be stopped from relitigating the same claims, but it is a more difficult matter to decide when claims not actually raised in the proceeding should also be precluded. This is the problem posed in Marrese v. American Academy of Orthopaedic Surgeons.

ISSUES

In Marrese, the Supreme Court will consider whether a federal statute (28 U.S.C. 1738) prevents federal courts from going farther than Illinois courts would go in giving preclusive effect to an Illinois state judgment. Should the Supreme Court conclude that section 1738 leaves federal courts free to augment the preclusive effects of state judgments, it must further consider whether, as a matter of federal law and policy, the facts of Marrese present an appropriate occasion for precluding claims. The broader policy questions include: Should federal courts ever give preclusive effect to a judgment when the court which rendered it would not have been competent to adjudicate the precluded claim? Would using a state court judgment to preclude a subsequent claim brought within the federal court's exclusive jurisdiction frustrate the very purpose of exclusive jurisdiction?

FACTS

Dr. Marrese and a co-petitioner were denied membership in the American Academy of Orthopaedic Surgeons (Academy)—a professional organization. They sued in Illinois state court, alleging that the Academy had breached a duty which arises under the Illinois Constitution and common law—the duty to fairly consider their applications. The Illinois proceedings were dismissed for failure to state a claim. Marrese then brought the present suit in federal district court in Illinois under the Sherman Act, invoking the federal court's exclusive jurisdiction over the antitrust claims. The Academy moved to dismiss these claims on the ground that they were precluded by the final judgments in the prior Illinois state proceeding. After several decisions at the district and circuit levels, the Seventh Circuit decided, en banc, that the claims were precluded (726 F.2d 1150 (1984)).

Writing for a plurality of the court, Judge Posner stated that the purpose of the federal claim preclusion doctrine was to avoid claim-splitting. Judge Posner acknowledged that the federal antitrust claims in this case could not have been joined with claims filed in the state proceeding because of the federal courts' exclusive jurisdiction over antitrust issues. He noted, however, that petitioners could have presented an antitrust claim under Illinois state law in the state proceeding. Judge Posner suggested that if the state antitrust claim had initially been joined with the claims actually raised in the state case and if the state antitrust claim had been finally adjudicated there, that would have precluded subsequent federal adjudication of the federal antitrust claims. He reasoned that the result should not be different because the state antitrust claim was not actually raised in the Illinois proceeding.

The court's decision commanded only a bare majority. The dissenters noted that the Illinois claim preclusion doctrine followed the general principle that courts, by their judgments, are unable to preclude claims which they were not competent to adjudicate. They argued that, because the authority of the judgment was limited under Illinois law and because 28 U.S.C. 1738 bound federal judges to respect state law limitations, the federal antitrust claims raised here were not precluded. The dissenters further argued that, even if federal courts were free to entertain the possibility of giving greater force to a state judgment, Marrese presented an inappropriate occasion for doing so for several reasons. The dissent noted material differences between the state and federal antitrust causes of action. As a more basic matter, the dissenters questioned the propriety of the
plurality's comparison of the Illinois and federal antitrust actions when the state antitrust claim had not been presented in the Illinois proceeding. They also questioned the wisdom of regarding the court which originally heard the case to have more power to preclude than to adjudicate. The dissenters were especially concerned that the approach of the plurality in Marrese could lead to trial in absentia of federal antitrust claims in state proceedings. This, they felt, would undermine the goal of uniform interpretation and application of federal antitrust law intended by exclusive federal jurisdiction.

BACKGROUND AND SIGNIFICANCE

Preclusion doctrines have been expanded in recent years, and the Supreme Court has placed federal courts in the forefront of this movement. Maximum use of preclusion doctrines makes particular sense in the federal court system for two reasons. First, preclusion doctrines promote conservation of severely taxed federal judicial resources. Second, liberal pleading and liberal claim and party joinder requirements in federal court should help dispose of as many controversies as possible in the first instance. Preclusion doctrines advance this objective by penalizing piecemeal litigation and delay. The Supreme Court's tendency to be sympathetic to preclusion arguments in the past cannot be ignored. At the same time, Marrese raises new and perplexing issues.

In two recent opinions, the Supreme Court held that 28 U.S.C. 1738 required federal courts to give state judgments as much claim-preclusive effect as would the courts which rendered them (Migra v. Warren City School District Board of Education, 104 S. Ct. 892, 896 (1984) and Kremer v. Chemical Construction Corp., 102 S. Ct. 1883, 1897-1899 (1982)). In neither of the cases, however, was the Court required to consider whether federal courts were free to give greater preclusive effect to state judgments. Depending on how it reads Illinois state claim preclusion law, the Supreme Court may find it necessary to resolve this issue in Marrese.

Should the Supreme Court conclude that section 1738 leaves the federal court free to arrive at its own answer concerning further possibilities of claim preclusion, it may pass on several additional matters. First, the Court may have to resolve the Seventh Circuit's disagreement with the American Law Institute's Restatement of Judgments, Second section 26(c) (1982), which states that courts without the power to hear claims should not be able to render judgments which extinguish them. The comment following section 26 notes where the principle has been applied to cases subsequently brought within the exclusive jurisdiction of the federal court and offers a hypothetical case and decision which directly contradicts the Seventh Circuit's decision in Marrese. Second, the Supreme Court may have to decide whether contravailing federal policies require it to sacrifice the efficiencies of claim preclusion. In another context, the Supreme Court recently found it necessary for preclusion to yield to strong federal policy (United States v. Mendaza, 104 S. Ct. 568 (1984)). In Marrese, the Court may have to gauge the effect of its decision on policies underlying exclusive federal jurisdiction. Finally, the Supreme Court may see in Marrese a further outlet for its concern that federal judges display deference toward their state counterparts. However, preclusion issues do not yield to federalism analysis as easily as Eleventh Amendment or abstention issues did in previous Court decisions. It is not obvious in Marrese which result best assures the integrity of the Illinois state judicial process. Judge Posner maintained in his opinion that preclusion would. The Attorney General of Illinois as amicus in the case disagrees.

ARGUMENTS

For Marrese (Counsel of Record, John J. Casey, Jr., 111 W. Washington Street, Chicago, IL 60602; telephone (312) 346-6650)
1. Illinois' claim preclusion law, applicable by mandate of the full faith and credit statute (28 U.S.C. 1738), prohibits precluding this exclusively federal claim.
2. Exclusively federal claims are an implied exception to the full faith and credit statute and may never be precluded by a prior state court judgment.
3. The Seventh Circuit's decision must be reversed because of the plurality's erroneous approach to determining the "material identity" of the hypothetical corresponding state and federal claims.

For American Academy of Orthopaedic Surgeons (Counsel of Record, D. Kendall Griffith, 69 W. Washington Street, Chicago, IL 60602; telephone (312) 630-4400)
1. This action is barred by the full faith and credit statute (28 U.S.C. 1738) because the prior Illinois court judgments preclude a subsequent suit in Illinois based on the same cause of action.
2. There is no exception to the full faith and credit statute for a party who voluntarily chooses to litigate its cause of action in a state forum, loses, and then attempts to relitigate the matter under a federal antitrust theory.
3. This action is barred under federal claim preclusion law.

AMICUS ARGUMENTS

In Support of Marrese

The States of the Seventh Circuit: Illinois, Indiana and Wisconsin
1. The plurality opinion places unwarranted obstructions in the path of state law enforcement. State courts will be unable to gauge the effects of their own judgments and the policies of state law enforcement agencies will be disrupted.