

# WORK-INJURIES AND THE CONSTITUTION: CARROLL v. LANZA\*

CHARLES EDWARD CLARK†

Industrial accidents produce millions of work-injuries every year; they also produce a host of litigated cases involving issues of varying degrees of merit spawned by fertile legalistic thought (for the purpose of establishing or escaping liability). The great bulk of the cases may be included within the self-descriptive category of "Workmen's Compensation," for the legislatures of all forty-eight states,<sup>1</sup> as well as Congress,<sup>2</sup> have enacted statutes specifically addressed to the solution of the social problems resulting from industrial accidents. Sometimes, however, the industrial accident may occur under such circumstances, and the case be presented in such manner, as to cause the issues involved to escape the confines of the customary category and to appear within the limits of some other familiar legal category not normally viewed as a suitable receptacle for the problems posed by work-injuries. Thus, while the circumstances of occurrence of the injury may clearly be such as to bring it within the scope of the workmen's compensation statute and justify the imposi-

---

\* 349 U.S. 408 (1955).

† Professor of Law, St. Mary's University and Ass't Editor-in-chief, NACCA Law Journal.

1. ALA. CODE tit. 26, §§ 253-325 (1940); ARIZ. CODE ANN. §§ 56-901 to -977 (1939); ARK. STAT. ANN. §§ 81-1301 to -1349 (1947); CAL. LAB. CODE ANN. §§ 3201-6149 (1937); COLO. STAT. ANN. c. 81, §§ 81-1-1 to -19-8 (1953); CONN. GEN. STAT. §§ 7416-88 (1949); DEL. CODE ANN. §§ 2301-97 (1953); FLA. STAT. ANN. §§ 440.01-57 (1952); GA. CODE ANN. §§ 114-101 to -9901 (1937); IDAHO CODE §§ 72-1001 to -1025 (1947); ILL. REV. STAT. c. 48, § 138.1-28 (1955); IND. STAT. ANN. §§ 40-1201 to -1228 (Burns 1952); IOWA CODE ANN. c. 85, §§ 85.1-62 (1949); KAN. GEN. STAT. §§ 44-501 to -572 (1949); KY. REV. STAT. ANN. §§ 342.001-990 (Baldwin 1955); LA. REV. STAT. ANN. § 23:1021-1143 (1950); ME. REV. STAT. c. 31, §§ 1-47 (1954); MD. ANN. CODE GEN. LAWS art. 101 (1951); MASS. ANN. LAWS c. 152 (1950); MICH. STAT. ANN. §§ 17.140-230 (1950); MINN. STAT. ANN. §§ 176.01-81 (West 1947); MISS. CODE ANN. §§ 6998.01-59 (1952); MO. REV. STAT. §§ 287.010-800 (1949); MONT. REV. CODE ANN. §§ 92-101 to -1222 (1947); NEB. REV. STAT. §§ 48-101 to -190 (1952); NEV. COMP. LAWS §§ 2680-2823 (1929); N.H. REV. STAT. ANN. c. 281, §§ 1-54 (1955); N.J. STAT. ANN. §§ 34:15-1 to -120 (1940); N.M. STAT. ANN. §§ 59-10-1 to -35 (1953); N.Y. WORKMEN'S COMP. LAW §§ 1-401; N.C. GEN. STAT. §§ 97-1 to -122 (1950); N.D. REV. CODE §§ 65-0101 to -1003 (1943); OHIO CODE ANN. §§ 1465-37 to -112 (1940); OKLA. STAT. ANN. tit. 85, §§ 1-175 (1951); ORE. REV. STAT. c. 656; PA. STAT. ANN. tit. 77, §§ 1-28 (1952); S.C. CODE §§ 72-1 to -504 (1952); S.D. CODE tit. 64 (1939); TENN. CODE ANN. tit. 50, c. 9-12 (1955); TEX. REV. CIV. STAT. ANN. arts. 8306-09 (1941); UTAH CODE ANN. §§ 35-1-1 to -106 (1953); VT. REV. STAT. §§ 8048-8164 (1947); VA. CODE §§ 65-1 to -134 (1950); WASH. REV. CODE tit. 51; W. VA. CODE ANN. §§ 2494-2545 (1955); WIS. STAT. §§ 102.01-65 (1953); WYO. COMP. STAT. ANN. §§ 72-101 to -149 (1945).

2. See Longshoremen's and Harbor Workers' Compensation Act, 44 STAT. 1424 (1927), as amended, 33 U.S.C. §§ 901-50 (1952); Federal Employer's Compensation Act, 39 STAT. 742 (1916), as amended, 5 U.S.C. §§ 751-801 (1952), as amended, 5 U.S.C. §§ 800-01 (Supp. III, 1956).

tion of the resulting economic loss upon the industry which "set the stage" for the injury, it may nevertheless have also been brought about by and through the fault of some person or agency not immediately associated in the industry. In such instance, the single work-injury involves both a workmen's compensation claim, in which questions of fault are immaterial, and a tort claim which normally rests upon a concept of some form of fault. This collision of basic theories of liability presents a policy question: Should the industry charged with the economic burden of work-injuries regardless of fault continue to bear that cost where the work-injury is demonstrably due to the fault of an "outsider"?

If this single work-injury was suffered in an employment relationship with an industry extending beyond the jurisdictional boundaries of policy-making bodies, and the policies made in the respective affected jurisdictions were diametrically opposed, the simple work-injury problem, complicated by overtones of tort, has truly become a conflict-of-laws problem. Furthermore, because of the due process<sup>3</sup> and full faith and credit<sup>4</sup> clauses of the United States Constitution (leaving aside others)<sup>5</sup> the final resolution of this conflict-of-laws problem may not necessarily rest with the "last word" of the judiciary of a sovereign state, but may become the subject of determination by the Supreme Court of the United States. Thus the simple work-injury, normally thought of only as a matter falling within the limits of "Workmen's Compensation," complicated with a policy question because of its tort overtones and confused with conflict of laws because of its response to economic pressures irrespective of jurisdictional bounds, has become, also, a constitutional law problem. If, then, the parties to a controversy arising from a simple work-injury peradventure were citizens of different states and had resort to a federal court, bound by all of the rules applicable thereto, still another familiar legal category, judicial administration, has been drawn into the legalistic vortex of what appeared to be a simple work-injury.

This is *Carroll v. Lanza*.

Carroll, a resident of Missouri, was hired in Missouri by Hogan, a

3. U.S. CONST. amend. XIV.

4. U.S. CONST. art. IV, § 1.

5. *E.g.*, the commerce clause, U.S. CONST. art. I, § 8. The recent decision, *Collins v. American Buslines, Inc.*, 350 U.S. 528 (1956), determining that the exercise of jurisdiction to award compensation for death within the state would not impose an "undue burden" upon interstate commerce, is thought to lend indirect support to the conclusions of this article. In this case it was stated:

Whatever dollars-and-cents burden an eventual judgment for claimants in the position of petitioners may cast either upon a carrier or the State's fund is insufficient, compared with the interest of the State in affording remedies for injuries committed within its boundaries, see *Carroll v. Lanza*, 349 U.S. 408, to dislodge state power.

*Id.* at 531. See also 17 NACCA L.J. 118-21 (1956), reporting and criticizing the contra decision of the Supreme Court of Arizona (286 P.2d 214) in the same case.

Missouri painting contractor. Lanza, a Louisiana electrical contractor who had a government construction contract for work on a dam in Arkansas, subcontracted with Hogan to furnish labor and materials for part of the work. While working for Hogan in Arkansas, Carroll was injured in the course of his employment. Carroll's injury was due to the negligence of Lanza's employees. Without any formal proceedings or award in either Arkansas or Missouri, Hogan's workmen's compensation insurance carrier voluntarily began making weekly compensation payments of \$30 per week, pursuant to the Missouri law. Carroll had no knowledge of any rights which he might have under Arkansas law, but the maximum compensation benefits available under that law were only \$25 per week.<sup>6</sup> Carroll received thirty-four weekly compensation payments of \$30 each under the Missouri law. Thereafter he notified Hogan's carrier that he wanted to receive compensation under the Arkansas law, and appropriate papers were filed with the Arkansas Commission and compensation benefits of \$25 per week were then paid to Carroll. While receiving weekly payments under the Arkansas law, Carroll filed a tort action against Lanza, based upon the negligence of his employees. Hogan and his insurance carrier intervened, seeking to recoup, by lien on any recovery, for the amount they had paid to Carroll as compensation. Under the law of Missouri, a subcontractor's employee cannot take compensation from his immediate employer and also sue the general contractor as a third party;<sup>7</sup> however, such a suit is permissible under Arkansas law.<sup>8</sup> Both states' laws have similar provisions to the effect that benefits under the workmen's compensation law shall be exclusive.<sup>9</sup> Lanza removed Carroll's suit to the federal court on diversity of citizenship and moved for summary judgment, asserting that the Missouri workmen's compensation law was applicable to Carroll and that it afforded him his exclusive remedy. The trial court rejected this contention and entered judgment for \$18,000 in favor of Carroll and the intervenors. The court of appeals, relying upon *Magnolia Petroleum Co. v. Hunt*,<sup>10</sup> reversed on the ground that full faith and credit required the Arkansas courts, and the federal courts in Arkansas exercising jurisdiction by reason of diversity of citizenship, to give effect to what the court of appeals regarded as a final and exclusive award to Carroll under the Missouri law. The Supreme Court reversed the decision of the court of appeals and reinstated the

---

6. ARK. STAT. ANN. §§ 81-1312,-1313 (1947).

7. *Bunner v. Patti*, 343 Mo. 274, 121 S.W.2d 153 (1938).

8. ARK. STAT. ANN. § 81-1340 (1947).

9. Compare ARK. STAT. ANN. § 81-1304 (1947) with MO. REV. STAT. § 287.120 (1949).

10. 320 U.S. 430 (1943).

judgement of the district court.<sup>11</sup> *Full faith and credit does not compel a forum in the state of injury to enforce a sister-state statute ostensibly applicable to the injury which reflects a policy contrary to that of the forum state.*

The majority opinion, ably written by Mr. Justice Douglas, includes a critical evaluation of those decisions whose thrust being misconceived led to the erroneous decision of the court of appeals. Here no adjudication had been sought or obtained in Missouri; hence *Magnolia Petroleum Co. v. Hunt*, which dealt with a final award of compensation, was inapplicable.<sup>12</sup> Furthermore, this was not a case where an employee, knowing of two remedies which purported to be mutually exclusive, chose one as against the other and was thereby precluded by the law of the forum.<sup>13</sup> In *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*,<sup>14</sup> there was a "departure" from the rule of *Bradford Elec. Light Co. v. Clapper*<sup>15</sup> and the Court allowed the compensation act of the place of the injury to override the compensation act of the home state, where that act was obnoxious to forum-state policy. Thus, while a statute is a "public act" within the meaning of the full faith and credit clause, that provision of the Constitution does not require a state to substitute for its own statute, applicable to persons and events within its jurisdiction, the statute of another state, reflecting a conflicting and opposed policy. The fact that here it was a common-law action that was asserted against the exclusiveness of the remedy of the home state does not present a material difference: "[I]n these personal injury cases the State where the injury occurs need not be a vassal to the home State and allow only that remedy which the home State has marked as the exclusive one."<sup>16</sup> The state in which the tort is committed certainly has a concern in the problems following in the wake of the injury, and its legislation concerning such problems is a traditional exercise of powers of sovereignty. Therefore, Arkansas has a legitimate interest in opening her courts to suits of this nature, even though in this case Carroll's injury may have cast no burden on the state or on its institutions. This is not a case like *Hughes v. Fetter*,<sup>17</sup> for Arkansas, the state of the forum, is not adopting any policy of hostility to the public acts of

11. The opinion of the District Court, 116 F. Supp. 491 (W.D. Ark. 1953), is reported with approval by Dean Roscoe Pound in 13 NACCA L.J. 131-33 (1954). The decision of the Eighth Circuit is at 216 F.2d 808 (1954).

12. *Carroll v. Lanza*, 349 U.S. 408, 410-11 (1955).

13. *Ibid.* The language of "mutually exclusive remedies" seems referable to a case such as *Chicago, R.I. & Pac. Ry. v. Schendel*, 270 U.S. 611 (1926), and to a choice between the Federal Employers' Liability Act or a state's workmen's compensation act.

14. 306 U.S. 493 (1939).

15. 286 U.S. 145 (1932).

16. 349 U.S. at 412.

17. 341 U.S. 609 (1951). See also *First Nat'l Bank v. United Air Lines, Inc.*, 342 U.S. 396 (1952).

Missouri. It is choosing to apply its own rule of law to give affirmative relief for an action arising within its own borders.

Missouri can make her Compensation Act exclusive, if she chooses, and enforce it as she pleases within her borders. Once that policy is extended into other States, different considerations come into play. Arkansas can adopt Missouri's policy if she likes. Or, as the *Pacific Employers Insurance Co.* case teaches, she may supplement it or displace it with another, insofar as remedies for acts occurring within her boundaries are concerned.<sup>18</sup>

Mr. Justice Frankfurter, joined by Justices Burton and Harlan, dissented.<sup>19</sup> In presenting an extensive review of decisions concerning the constitutional requirement of full faith and credit, Mr. Justice Frankfurter agreed that *Magnolia Petroleum Co. v. Hunt* had been misapplied by the court of appeals.<sup>20</sup> Contending that the instant case squarely presented the *Clapper* problem, he urged: "[I]f *Clapper* is to be overruled . . . it should be done with reasons making manifest why Mr. Justice Brandeis' long-matured, weighty opinion in that case was ill-founded."<sup>21</sup> His principal thesis, however, bottomed on the *Erie* rule,<sup>22</sup> was that the full faith and credit question could be avoided because the court of appeals had misread the Missouri law as to the immunity offered prime contractors from common-law suits by employees of subcontractors under Missouri workmen's compensation law. His interpretation of the Missouri case law was that Missouri courts would allow the instant suit to be maintained against Lanza since the ordinary third-party immunity would not extend to him because he was not subject to Missouri workmen's compensation law as an employer. Justice Frankfurter also argued that the 1948 amendment of section 1738 of title 28, U.S.C., supplied added force to compulsory extraterritorial enforcement of state statutes—a force not present when earlier decisions of the Court were handed down.<sup>23</sup> His recommendation, however, was that the case be remanded "to the Court of Appeals with instructions to determine whether our reading of Missouri law is wrong."<sup>24</sup>

When it is recalled that the Supreme Court has rather consistently followed a policy of not passing upon constitutional questions if the case before it can be determined on other grounds, it would appear, at

---

18. 349 U.S. at 413-14. This admits that the minimal formal contact of injury alone is sufficient for constitutional purposes.

19. *Id.* at 414-26.

20. *Id.* at 420 n.2.

21. *Id.* at 421-22.

22. *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938). See 349 U.S. at 422-26 for Mr. Justice Frankfurter's argument.

23. This point loses force, however, in light of the decisions in *Clapper* and *John Hancock Mut. Life Ins. Co. v. Yates*, 299 U.S. 178 (1936). *Cf. Aetna Life Ins. Co. v. Dunken*, 266 U.S. 389 (1924).

24. 349 U.S. at 426.

least superficially—and viewed as a problem in judicial administration—that there is considerable merit to Mr. Justice Frankfurter's dissent. However, before attempting to evaluate the respective merits of the views of the majority and dissenting opinions, despite the risk of undue repetition, it would seem in order to consider the past decisions of the Supreme Court which, conceivably, may be thought controlling in the instant case.

Space limitations preclude detailed analysis of the several bases upon which state workmen's compensation laws are given extra-territorial effect. Industrial enterprise and employment-relation activities are conducted in accord with economic opportunities and without undue regard for state lines. In recognition of this fact, virtually every state's compensation law will, in some instances, be applicable to provide compensation for injuries sustained outside its borders.<sup>25</sup> But while it is commonplace to find definitive statutes or decisions on the question of extraterritorial applicability of a given state's law, it is not common to find a similarly definitive ruling as to whether or not a given state's law will be applicable to a work-injury within its own borders although some other state's law might also be applicable.<sup>26</sup> It has been common practice to regard the occurrence of the employment-related injury within state lines, by itself, sufficient to permit applicability of the local workmen's compensation statute.<sup>27</sup> The result has been that more than one state's law may be applicable to a single injury. Where this is so, and simply because under our federal system a court in a state is not wholly sovereign, the Supreme Court of the United States has been called upon to deliver the "last word" on such questions as "which state" and "how many states" may provide compensation for a single work-injury.

Foremost among such cases was *Clapper*<sup>28</sup>—a diversity jurisdiction case decided prior to the adoption of the *Erie* rule. This case involved the death of a Vermont employee temporarily performing services in New Hampshire. Under New Hampshire law at that time, the claimant could elect, after injury or death, between common-law employers' liability or workmen's compensation.<sup>29</sup> The Vermont act,

---

25. See, e.g., *Finkel v. Onli-Wa Fixture Co.*, 101 N.E.2d 719 (Ind. App. 1951); *Horton v. Baruch*, 217 S.C. 48, 59 S.E.2d 545 (1950); *Western Condensing Co. v. Industrial Comm'n*, 262 Wis. 458, 55 N.W.2d 363 (1952); GOODRICH, *CONFLICT OF LAWS* § 100 (3d ed. 1949); STUMBERG, *CONFLICT OF LAWS* 189-91 (1937); 11 NACCA L.J. 106 (1953).

26. Oregon is one of the few states which has such a provision. ORE. COMP. LAWS ANN. § 102-1731 (1940).

27. See, e.g., *Bagnet v. Springfield Sand & Tile Co.*, 144 F.2d 65 (1st Cir. 1944); *Coble v. Williams*, 177 Kan. 743, 282 P.2d 425 (1955). For a comprehensive discussion of the entire conflicts compensation problem, see 2 LARSON, *WORKMEN'S COMPENSATION LAW* c. xvi (1952). See also Horovitz, reviewing the compensation aspects of *Carroll v. Lanza* in 16 NACCA L.J. 38 (1955).

28. See note 15 *supra*.

29. N.H. Pub. Laws 1926, c. 178, § 11.

which included an express extraterritorial provision, made compensation the exclusive remedy of an employee or his beneficiary against the employer.<sup>30</sup> At this time substantive workmen's compensation laws and their administration had not long passed the experimental stage, and *Swift v. Tyson*<sup>31</sup> was still the symbolic philosophy of the Supreme Court. The decedent's administratrix had instituted in New Hampshire a common-law employers' liability action against the Vermont employer and the Supreme Court held that the action was barred by operation of the full faith and credit clause on the exclusive Vermont statute. In so holding, Mr. Justice Brandeis stressed the "casual" nature of New Hampshire's interest in the case. Mr. Justice Stone concurred on the ground that in the absence of any local decisions expressing a contrary policy, the Court's decision should be rested upon the assumption that the New Hampshire court would give effect to the Vermont act as a bar to the tort suit in New Hampshire, rather than find an inexorable command for this conclusion in the full faith and credit clause.

If decision of that question could not be avoided, I should hesitate to say that the Constitution projects the authority of the Vermont statute across state lines into New Hampshire, so that the New Hampshire courts, in fixing the liability of the employer for a tortious act committed within the state, are compelled to apply Vermont law instead of their own.<sup>32</sup>

Without change in the membership of the Court, the *Clapper* rule was "relaxed" in *Ohio v. Chattanooga Boiler & Tank Co.*,<sup>33</sup> a case in which the philosophical connotations of *Swift v. Tyson* were not directly pertinent. This was an original proceeding by the State of Ohio to secure reimbursement for compensation paid to the widow of a Tennessee employee. Both the employee and the employer, a Tennessee corporation, were subject to the Tennessee compensation law. In allowing the State of Ohio to recover, the Court without consideration of "differences in phraseology between the Tennessee statute and that of Vermont,"<sup>34</sup> held that there was no issue of full faith and credit in any event if the statute in question did not purport to be exclusive of remedies in other states. Yet in this case, as well as in *Clapper*, the issue was whether the workmen's compensation law of the state in which the injury occurred was constitutionally applicable, in the face of the assumed applicability of that of the state of employment.

The *Alaska Packers* case<sup>35</sup> is one of the most important in this

30. Vt. Gen. Laws 1917, c. 241, § 5774.

31. 41 U.S. (16 Pet.) 1 (1842).

32. 286 U.S. at 163.

33. 289 U.S. 439 (1933).

34. *Id.* at 444.

35. *Alaska Packers Ass'n v. Industrial Accident Comm'n*, 294 U.S. 532 (1935).

series of decisions. Both due process and the full faith and credit clause were involved in this decision. A unanimous Court, speaking through Mr. Justice Stone, recognized that more than one state might have a sufficient legitimate governmental interest in a single work-injury to sanction its adjudication of compensability, *vel non*, under local law, without violation of due process, and that the full faith and credit clause had sufficient flexibility to permit any state possessing such jurisdiction, dependent only upon the forum,<sup>36</sup> to apply its own law in total disregard of any other. This case involved the seasonal employment of a non-resident alien in Alaska under a California contract calling for application of Alaska law. The work-injury occurred in Alaska. California was the base of operations, however, and that state was allowed to provide compensation in accord with its own law. The Supreme Court sustained this award against due process and full faith and credit objections. The rationale was that California had a sufficient legitimate governmental interest in the economic consequences of this work-injury to justify its exercise of jurisdiction and the application of its own laws without violation of due process. The clear intimation was that full faith and credit required nothing more.

In *Pacific Employers*,<sup>37</sup> a compensation case very similar on its facts to *Clapper*, the application of California law was approved. The Court's reasoning was that while the Massachusetts law would apparently be applicable to the injury suffered in California by the Massachusetts resident, an employee of a Massachusetts employer, full faith and credit did not preclude the application of California law because the Massachusetts law was "obnoxious." One of the reasons offered for this characterization of the sister-state statute was that doctors in California who had rendered medical aid in that state might experience difficulty in the collection of their bills if there was no remedy available in California. Mr. Justice Stone's restatement of the rule in *Clapper*, now qualified by the term "obnoxious," should leave no doubt but that his views as expressed in the concurring opinion in *Clapper*, should from this time forth be regarded as the correct statement of the law. The inexorable command of the full faith and credit clause was here withdrawn in work-injury cases in favor of a more flexible rule capable of accommodating the competing interests of several states in accord with the realities of industrial enterprise and economic endeavor. It should further be noted that

---

36. This should not be regarded as a novel concept, nor as one peculiar to the work-injury problem. See *Pink v. A.A.A. Highway Express*, 314 U.S. 201 (1941); *Griffin v. McCoach*, 313 U.S. 498 (1941); *Union Trust Co. v. Grosman*, 245 U.S. 412 (1918).

37. *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493 (1939).

this "departure" from *Clapper* took place in the first work-injury decision involving full faith and credit handed down by the Supreme Court subsequent to abandonment of the philosophy of *Swift v. Tyson* by adoption of the *Erie* rule; however, the precise point of decision in *Erie*—the law to be applied in federal courts exercising diversity jurisdiction—was not here involved.

The criterion of the existence of a sufficient legitimate governmental interest in either the state of the injury or that of its consequences was unquestionably established as the sole controlling test under the full faith and credit clause as well as the due process clause by *Cardillo v. Liberty Mut. Ins. Co.*<sup>38</sup> In this case the District of Columbia act was held applicable to a fatal injury sustained in Virginia after the employee had been working in that state for a period in excess of three years for the same employer because the employer-employee relation had been created, between residents, in the District. Under *Pacific Employers*, it is submitted, there would similarly have been no constitutional objection to application of Virginia law, by its proper adjudicatory branch, to this same injury, had application for compensation been made to that forum. An injury within a state, arising out of and in the course of an employment relationship operative or "localized" within that state for a period of time in excess of three years, is unquestionably as great a basis for a finding of sufficient legitimate governmental interest as was the fact that California doctors might experience difficulty in collecting their fees for services rendered in California. Furthermore, under *Carroll v. Lanza*, the majority of the Supreme Court of the United States is now committed to the sensible rule that *the fact that the injury occurred within the state, without more, is a sufficient legitimate governmental interest to permit constitutional application of the laws of that state to the work-injury.*<sup>39</sup>

If the problem of the extraterritorial work-injury is regarded as presenting questions pertinent to jurisdiction within the category of conflict of laws, the Supreme Court's test of sufficient legitimate gov-

---

38. 330 U.S. 469 (1947).

39. [I]n these personal injury cases the State where the injury occurs need not be a vassal to the home State . . . . The State of the forum also has interests to serve and to protect. . . . Her interests [Arkansas] are large and considerable and are to be weighed not only in the light of the facts of this case but by the kind of situation presented. For we write not only for this case and this day alone, but for this type of case. . . . Arkansas therefore has a legitimate interest in opening her courts to suits of this nature, even though in this case *Carroll's* injury may have cast no burden on her or on her institutions. (Emphasis added.)

349 U.S. at 412-13. Furthermore, it must be noted that the foregoing is recited as based upon familiar and traditional concepts of legislative jurisdiction pertinent to acts and events within the state. If such jurisdiction exists, consonant with the requirements of the due process clause, does full faith and credit require still more?

ernmental interest is of sufficient breadth to encompass and approve the three state-recognized bases of jurisdiction for application of local law to injuries sustained outside the state: (1) a contract of employment, or employment relation, made within the state; (2) the "localization" of the employer-employee relation within the state; or, (3) the occurrence of the injury within the state.<sup>40</sup> Due process is afforded by application of local law in any of these instances, and the full faith and credit clause raises no additional impediment to the applicability of a state law based upon any one of the three. And this is true without regard to the incidental fact that the compensation law of some other state, basing its jurisdiction upon another of the three given grounds, might similarly be invoked if that state had been selected as the forum.

This conclusion, as well as the language of *Carroll v. Lanza*, poses consideration of the problem of successive awards. The Supreme Court has addressed itself to the constitutional aspects of this problem in two decisions—*Magnolia Petroleum Co. v. Hunt*<sup>41</sup> and *Industrial Comm'n v. McCartin*.<sup>42</sup> *Hunt* involved the issue as to the effect of a final award of compensation by the Texas Industrial Accident Board upon a court-initiated compensation suit in Louisiana for the excess of compensation recoverable under the laws of the second state. *Hunt* sought and received compensation in Texas and, after the Texas award had become final by lack of appeal to the courts from the Board's award, filed suit against the employer in the Louisiana courts pursuant to Louisiana law. He was awarded judgment for the amount of compensation fixed by Louisiana law less the amount of payments made under the Texas law. This award was reversed by the Supreme Court; a decision in which four opinions were written. The opinion of the court might be summarized as a proposition that the full faith and credit clause compelled the Louisiana courts to accept the finality of the Texas Board's award as determinative of the whole of the employee's rights. Chief Justice Stone reasoned that as the Texas courts considered the Board's award conclusive and entitled to *res judicata* effect in Texas, full faith and credit required the Louisiana courts to do likewise, and that there could be no award whatsoever. Justice Jackson wrote that he felt compelled to concur

---

40. HOROVITZ, *WORKMEN'S COMPENSATION* 34-38, 36 n.9 (1944); 2 LARSON, *WORKMEN'S COMPENSATION LAW* § 86.10 (1952), lists six grounds on which the applicability of a local act has been asserted and agrees that the place of injury, the place of making the contract, and the place where the employment relation exists or is carried out have received constitutional sanction. In addition, he concludes that applicability of local law based on employee residence or business localization might also be constitutionally valid.

41. 320 U.S. 430 (1943).

42. 330 U.S. 622 (1947).

by reason of the controlling effect of *Williams v. North Carolina*.<sup>43</sup> In a vigorous dissent, Mr. Justice Black argued that the strong legitimate governmental interest on the part of Louisiana in the affairs of its residents and the employer-employee relationship located in that state should be sufficient to allow its courts to disregard the res judicata effect of the Texas award except to give it recognition by making a credit or deduction from the total amount of compensation recoverable in Louisiana for the amount of the Texas award. This position expressed the view of the *Restatement*<sup>44</sup> and a considerable number of states.<sup>45</sup> Justice Douglas, in his opinion concurring with Justice Black, contended that the *Williams* case was not in point and that an award by one state should constitute a bar to an award by a second state only if the workmen's compensation policies of the two states could not be reconciled.<sup>46</sup>

By implication, this decision cast some doubt upon the extent to which the legitimate governmental interest of several states might simultaneously or successively be manifested by an additional or supplementary award of compensation. These doubts, however, were dispelled by the decision in *McCartin*. *McCartin* did not expressly overrule *Hunt*; but it did so severely limit *Hunt* as to give rise to the inference that it had no continued vitality apart from the exact case then before the Court.<sup>47</sup> In *McCartin*, the employee initiated compensation proceedings before the proper agencies in both Wisconsin, the state of injury, and Illinois, the state of the employment contract. Pending the adjudication of the Wisconsin claim, the Illinois Commission entered an award based upon a settlement contract, which provided that the settlement was not to affect any rights of the employee under Wisconsin law, and this award was paid. The Wisconsin proceedings in *McCartin*, unlike those in *Hunt*, did not involve a court-instituted suit against the employer; and the reservation in the Illinois award could be regarded only as a disclaimer of any intent on the part of Illinois that its "exclusive remedy" clause should operate beyond its own borders. Acting under the supposed strength of the decision in *Hunt*, however, the Wisconsin courts reversed its Commission's award in favor of the employee, which had credited the carrier

---

43. 317 U.S. 287 (1942), dealing with the effect of the full faith and credit clause upon a Nevada divorce decree in North Carolina.

44. RESTATEMENT, CONFLICT OF LAWS § 403 (1934).

45. See cases cited by Justice Black in dissent, 320 U.S. at 457-58.

46. As indicated by the dissent of Justice Black, and demonstrated by the decisions cited in note 49 *infra*, state policies as to awards are, in most instances, susceptible of ready reconciliation by simply deducting or crediting the award made by the first state against the successive award. This statement is, therefore, not to be viewed as inconsistent with Justice Douglas' language of approval for the free play of policy in the forum, in the absence of an award, appearing in *Carroll v. Lanza*.

47. 2 LARSON, *op. cit. supra* note 40, § 85.30; 6 NACCA L.J. 111-12 (1950).

with the sum awarded and paid under the Illinois award. This action was reversed by a decision of the Supreme Court which held that *Hunt* was distinguishable and, therefore, not controlling.<sup>48</sup>

State courts have consistently taken the position that successive awards of compensation, as sanctioned by *McCartin*, are perfectly proper and the Supreme Court has not again assumed jurisdiction to pass upon this question.<sup>49</sup> And, in *Carroll v. Lanza*, there was total agreement that *Hunt* was not applicable, even if it were to be inaccurately assumed that the tort recovery against Lanza could be taken as in the nature of "supplemental compensation." The inaccuracy of such an assumption is patent: liability for payment of workmen's compensation arises, without regard to fault concepts, from the statutorily-regulated status of employer and employee, to which Lanza was a stranger; liability for the tort arises *ex delicto* from the fault of Lanza and his servants, which would be actionable without regard to the employment-related position of the injured party; and the carrier liable for the payment of compensation is entitled to recoup his losses from the party at fault. However, in the light of *McCartin*, as well as the total agreement of inapplicability of *Hunt* in *Carroll v. Lanza*, it seems but natural to inquire: Has *Hunt* been silently overruled?

Insofar as the question of successive or supplemental awards of compensation may be concerned, generally speaking, the answer of the later cases is a positive "Yes." However, more than that question was involved in the *Hunt* decision. Under Texas law, in the absence of an appeal from a final determination by the Board, the award becomes final and the courts have no jurisdiction to pass upon the controversy unless, where applicable, the award is set aside in a separate

---

48. The crucial statement is the paragraph beginning:

But there is nothing in the 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 for injuries received there in the course of an Illinois employment.

330 U.S. at 627-28. Nor, it is submitted, is there anything to necessarily so indicate in the Texas statutes, with their judicial gloss, for the exclusiveness denominated is as to the elimination of common-law rights against the employer and a statutory bar to compensation in Texas after the employee has sought and received compensation in some other state. TEX. REV. CIV. STAT. ANN. art. 8306, §§ 3, 19 (1941); see *Standard Acc. Ins. Co. v. Skidmore*, 222 S.W.2d 344 (Tex. Civ. App. 1949). If the statutes were so designed as to bar a sister-state remedy for an injury in that state, would such a provision be constitutional? See Justice Black's dissent in *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 454-55 (1943), and the reservations of Justice Stone in *Bradford Elec. Co. v. Clapper*, 286 U.S. 145, 163-65 (1932) (concurring opinion). Thus, a search for some other reason to conclude that *McCartin* is "distinguishable" seems proper.

49. *Cline v. Byrne Doors, Inc.*, 324 Mich. 540, 37 N.W.2d 630 (1949); *Cook v. Minneapolis Bridge Const. Co.*, 43 N.W.2d 792 (Minn. 1950); *Baduski v. S. Gumpert Co.*, 277 App. Div. 591, 102 N.Y.S.2d 297 (3d Dep't 1951); cf. *Standard Acc. Ins. Co. v. Skidmore*, 222 S.W.2d 344 (Tex. Civ. App. 1949). See also 1 NACCA L.J. 29-31 (1948).

suit brought for that limited purpose.<sup>50</sup> This eventuality did not take place in *Hunt*. If it had, the trial in the court would have been de novo, and there would have been no award, for the effect of an appeal to the courts in Texas is to vacate, rather than to suspend, the award.<sup>51</sup> As in most states, the Texas statute expressly makes compensation the "exclusive remedy" for a work-injury; the compensation is to be collected from the carrier and the employee is precluded from bringing any suit against his employer.<sup>52</sup> Thus, for lack of proper appeal, the Texas award was not only a final determination of the employee's rights to compensation based upon this law, but was also a determinative adjudication by the proper body over which no court in Texas could exercise jurisdiction. In Louisiana, on the other hand, there is no administrative counterpart to the Texas Board—compensation proceedings are initiated against the employer in the courts.<sup>53</sup> The res judicata effect of a sister-state judgment, when entitled to extra-territorial effect under the full faith and credit clause, has long been recognized as a bar to relitigation of decided matters in even the most extreme cases.<sup>54</sup> Yet when Hunt filed suit against his employer in the Louisiana court, may it not be said that he was seeking to "relitigate" an action against his employer which was expressly barred by the Texas statute, pursuant to which there had been a final adjudication on the merits, and over which no court in Texas could exercise jurisdiction on review? Small wonder, then, that Chief Justice Stone held the suit was barred, even for the excess of compensation otherwise recoverable in Louisiana, by the full faith and credit clause, and that Justice Jackson was constrained to concur by the decision in the *Williams* case. It is submitted that it is precisely this set of local peculiarities in the substance and procedure of the workmen's compensation laws of Texas and Louisiana which led to the use of the language of "exclusiveness" in *Hunt*, an "exclusiveness" of the Texas Board's award over which no court in Texas could exercise jurisdiction, which under full faith and credit barred any application of the court-administered Louisiana law, and that the majority would never have reached their conclusion in *Hunt* if the Texas award had been vacated by appeal to the courts in Texas or if it had been sub-

50. TEX. REV. CIV. STAT. ANN. art. 8307, § 5 (Supp. 1955); *Pacific Employers Ins. Co. v. Brannon*, 150 Tex. 441, 242 S.W.2d 185 (1951); *O'Quinn v. Texas Employers' Ins. Co.*, 219 S.W.2d 119 (Tex. Civ. App. 1949); *Southern Cas. Co. v. Fulkerson*, 45 S.W.2d 152 (Tex. Com. App. 1932); *Southern Surety Co. v. Arter*, 44 S.W.2d 913 (Tex. Com. App. 1932); *Washington v. Travelers' Ins. Co.*, 290 S.W. 738 (Tex. Com. App. 1927).

51. TEX. REV. CIV. STAT. ANN. art. 8307, § 5 (Supp. 1955), *Zurich Gen. Acc. & Liab. Ins. Co. v. Rodgers*, 128 Tex. 313, 97 S.W.2d 674 (1936).

52. TEX. REV. CIV. STAT. ANN. art. 8306, § 3 (1941). *But see* *Riesefeld, Forty Years of American Workmen's Compensation*, 7 NACCA L.J. 15, 19-23 (1951).

53. MALONE, *LOUISIANA WORKMEN'S COMPENSATION* 41 (1951).

54. See, e.g., *Roche v. McDonald*, 275 U.S. 449 (1928); *Fauntleroy v. Lum*, 210 U.S. 230 (1908).

ject to and set aside in a proper separate suit. The decision in *Hunt* should not be strained to apply out of its own extremely limited context; nor should it be regarded as a repudiation by Chief Justice Stone of his views as expressed in *Clapper*, which are reiterated in substance by Justice Black, dissenting in *Hunt*.<sup>55</sup>

*Hunt* has not been overruled insofar as it stands for the proposition that where a court lacks jurisdiction to review by trial de novo, after compensation has been awarded by a board, full faith and credit precludes relitigation in the courts of a sister-state when the party would be immune from such suit in the first state. This, however, is a far cry from the proposition hitherto suggested—that the full faith and credit clause compelled the Louisiana courts to accept the finality of the Texas Board's award as determinative of the whole of the employee's rights—and is a rule of extremely limited applicability. But this construction of *Hunt* is one which is wholly consistent with the philosophy of accommodation of the interests of competing states recognized in *Alaska Packers*, is in accord with the spirit of *Erie*, and is one which makes *McCartin* readily "distinguishable" from *Hunt*. So regarded, there is no question but that *Hunt* was not applicable in *Carroll v. Lanza*, for, even assuming that the unique aspects of *Hunt* might be duplicated in some set of states other than Texas and Louisiana, there was no adjudication of compensation in either Missouri or Arkansas to plague the court in *Carroll v. Lanza*. Thus, it might be said that *Hunt* has enjoyed no greater vitality since *McCartin* than *Clapper*, in its broad sense, enjoyed after the *Ohio* decision.<sup>56</sup>

Did *Carroll v. Lanza* so "squarely" present the *Clapper* problem as to call for the protest that, "[I]f *Clapper* is to be overruled . . . it should be done with reasons making manifest why Mr. Justice Brandeis' long-matured, weighty opinion in that case was ill-founded?"<sup>57</sup> Both cases involved common-law suits arising out of work-injuries to which the compensation laws of more than one state, apparently, would be applicable and both were tried in federal courts exercising jurisdiction by reason of diversity of citizenship. But there all similarity ceases. *Clapper* was decided in an atmosphere redolent of *Swift v. Tyson*, and, whatever the reasons therefor might be,<sup>58</sup> the prevailing

55. 320 U.S. at 455.

56. It is submitted that, in the sense that *Clapper* might be taken as holding that where, by the law of the state of the employment contract, the workmen's compensation law of that state affords the "exclusive" remedy, full faith and credit requires recognition of that state's remedy as "exclusive" by every other state, the "departure" occurred in the *Ohio* case, where the State of Ohio, in which the injury occurred, was permitted to recoup compensation benefits paid pursuant to its law from an employer who had workmen's compensation coverage and immunity from common-law suits by his employees under the "exclusive" law of the state of the employment contract.

57. 349 U.S. at 421-22.

58. To speculate, some of the Justices then on the Supreme Court might have concluded, on the merits of a policy choice, that where an employer had by his

philosophy was one which lent itself naturally to the advocacy of any principle which the Supreme Court might regard as meritorious. This is certainly not true at the present time, *i.e.*, in *Carroll v. Lanza*. *Clapper* was a common-law employers' liability suit, permissible as an alternative to the compensation remedy under the law of only a single state.<sup>59</sup> Like *Hunt*, as it is here viewed, *Clapper* did not have general applicability, for this right of the employee to elect between the compensation law and the common-law remedy after the injury was peculiar to New Hampshire. In its broad sense, *Clapper* answered to the description, by reason of the existence in the state in which the employment contract was entered, of an applicable exclusive-remedy workmen's compensation statute, that the full faith and credit clause compelled the courts of the state of injury to deny the injured employee the remedy available under the local law. In this sense, *Clapper* had no greater vitality than *Hunt*, for, just as *McCartin* severely limited *Hunt*, the *Ohio* case severely limited *Clapper*: The conclusion of *Ohio*, reached without considering the "differences in phraseology between the Tennessee statute and that of Vermont,"<sup>60</sup> was that there is no issue of full faith and credit if the statute in question does not purport to be exclusive of remedies in other states. The language clearly indicates that *Ohio* marked a "departure" from *Clapper*, but one which may have passed unobserved because of the great difference in facts as well as of law. If this "departure" in *Ohio*, abandoning *Clapper* in its broad sense just as *McCartin* abandoned *Hunt*, had not occurred, how then could *Alaska Packers*, to say nothing of *Pacific Employers*, have been decided? Nor does it necessarily seem per-

---

subscription to workmen's compensation purchased an immunity from common-law suits by his employees in his home state, sound national policy required that such immunity be recognized in every other state. Justice Brandeis might conceivably have espoused the view that the principle of workmen's compensation represented the sole hope of salvation for injured workmen and that a contrary ruling—that the employer's immunity from common-law suits by his employees could disappear whenever his enterprise and a work-injury resulting therefrom chanced to cross a state line—would not only lend no impetus but also might erect barriers to wide-spread acceptance of the principle of workmen's compensation. Furthermore, the apparent economic overtones should not be overlooked insofar as adoption of a contrary rule in *Clapper* might conceivably tend to discourage the free play of industrial enterprise in accord with economic opportunities and without regard to state lines. The fact that these considerations no longer seem relevant may well be ascribed to the now-universal acceptance of the workmen's compensation principle in all of the United States.

59. See text supported by notes 28-32 *supra*. No other state, even then, made such a general election available to the injured employee, although, even today, under the laws of many states there are exceptional circumstances where the employer may be held liable at common law to his injured employee. Such circumstances, however, are truly the exception; the rule is that the workmen's compensation law provides the "exclusive" remedy for the work-injury.

60. 289 U.S. at 444. See note 56 *supra*. Yet, if these "differences in phraseology"—which it is submitted had no existence for any legal consequence—were not considered, how may *Ohio* be distinguished from *Clapper*, in the sense under discussion? Does it not seem manifest that, taking *Clapper* in this sense, *Ohio* destroyed it?

suasive to argue that *Clapper* stands only for the rule that an employee who suffers a work-injury cannot maintain a common-law action against his compensation-insured employer, even in the forum of a state other than that in which the employment relation is located. General adherence to this principle could better be ascribed to adoption of this rule as local law by every other state—a policy determination on a state-wide basis—rather than to the compulsion of full faith and credit via *Clapper*, and policy on a nationwide basis.<sup>61</sup> Furthermore, the marked “departure” in *Pacific Employers* came after the national uniformity philosophy of *Swift v. Tyson* had been repudiated by *Erie*. This “departure,” as marked by the majority in *Carroll v. Lanza*, is simply tacit recognition of the fact that *there would be no real difference between the Supreme Court making an open and free choice of policy in promulgating a rule of law for nationwide adoption under Swift v. Tyson and its selection of the policy of some single state and enforcing its nationwide adherence under the full faith and credit clause.*

But despite the indistinguishable similarity of the multi-state facts in *Clapper* and *Pacific Employers*, there were two significant differences between those cases which properly allowed the Supreme Court to follow the principle recognized in *Alaska Packers* of accommodation of several states' competing interests, contrary to *Clapper* in its broadest sense, without overruling *Clapper*. *Pacific Employers* was a compensation case, not a common-law suit against the employer, and neither Massachusetts nor California offered a “New Hampshire” common-law alternative remedy, although at that time New Hampshire, alone, still did. Thus, if *Clapper* can be said to have been overruled, it was “overruled” only by the New Hampshire legislature's action<sup>62</sup> in repealing the elective feature in that singular state law and virtually eliminating the possibility of a recurrence of *Clapper*.<sup>63</sup> Furthermore, and contrary to Justice Frankfurter's assertion, *Carroll v. Lanza* did not present the *Clapper* problem squarely because the employer was not the defendant in this common-law action. To now announce that *Clapper* was overruled would be in the nature of a purely gratuitous edict.

In the sense that either *Clapper* or *Hunt* might be regarded as establishing constitutional support for a concept of single-state “exclusiveness” of the compensation remedy for a single work-injury, those authorities were abandoned by the *Ohio* and *McCartin* cases.

61. This seems borne out by the fact that the same policy determination is reflected by the provisions of all 48 states' laws (see generally note 1 *supra*) and there is no “national” workmen's compensation law of *general applicability*.

62. N.H. REV. STAT. ANN. c. 281, § 12 (1955).

63. Assuredly, there can be but little reason to speculate as to the possibility that legislatures would amend the present laws to create such an election between the compensation and the common-law remedies today.

The contrary rule—that both the due process clause and the full faith and credit clause had sufficient breadth to admit of the competing interests of several states—was affirmatively established by the *Alaska Packers* decision. *Pacific Employers* did no more than reaffirm the principle of that decision upon a fact situation so similar to *Clapper* as to put all scholars of the law upon notice that *Clapper* was no longer to be strained out of context. *Carroll v. Lanza* acknowledged that *Clapper* now rests in a state of suspended animation—but it goes further.

*Carroll v. Lanza* was a tort suit. The majority puts it that the Supreme Court's decision in *Hughes v. Fetter* was not controlling.<sup>64</sup> The *Hughes* case, a suit for the wrongful death of a Wisconsin resident killed in Illinois by a Wisconsin defendant, insured by a Wisconsin insurance company, was brought in Wisconsin under an Illinois statute. The Wisconsin court refused to entertain jurisdiction because of a local policy against entertaining suits brought under the wrongful death statutes of other states. This inhospitable policy on the part of Wisconsin's courts, otherwise fully competent to entertain jurisdiction, was eradicated by the Supreme Court. It reversed the decision on the ground that full faith and credit precluded the Wisconsin courts from closing their doors to a suit for wrongful death simply because the cause of action arose in another state and went on to point out that it would not abide a similar conclusion "put off" on the ground of forum non conveniens because all the parties in interest were Wisconsin residents. However, in writing for the majority, Mr. Justice Black was most careful to point out that the ruling as to the force of the full faith and credit clause was limited to the Wisconsin policy in attempting to make its courts inaccessible as the proper and appropriate forum for the trial of a foreign wrongful death suit. The decision was not to be taken as an inexorable command with respect to choice-of-law problems on the part of a court which had opened its doors to such litigation.<sup>65</sup> Thus the criticism in the *Hughes* dissent, that the majority had imposed a "state of vassalage" on the forum, seems to miss the mark and, for reasons subsequently discussed, the statement in *Carroll v. Lanza* that *Hughes* is not apposite seems incontestably correct.

While there are tort policy considerations in *Carroll v. Lanza*, they are all purely local in character; the negligence, the injury, and the suit brought thereon arose in Arkansas. Consequently, viewing this work-injury as a conflict of laws problem, the sole choice of law problem to which the full faith and credit clause might be applicable is that of the two states' workmen's compensation laws and their potential

---

64. 349 U.S. at 413.

65. 341 U.S. at 612 n.10.

effect upon the propriety of entertaining the local tort action. As to this aspect, *Hughes* is of no moment since it involved a foreign tort, and the courts in that case, unlike the Arkansas courts in *Carroll v. Lanza*, sought to refuse to hear the action. Assuming, as the Court did in *Carroll v. Lanza*, that both the Arkansas and the Missouri workmen's compensation laws were equally applicable to provide a remedy for the injury, and further assuming, as only the majority did, that the Missouri law would erect a complete defense to this tort action whereas the Arkansas law would not, the sole conflict of laws problem is presented by the conflicting provisions of the respective states' local workmen's compensation laws. The characterization or classification of a conflict of laws problem has almost universally been left to be determined by the law of the forum.<sup>66</sup> Whether or not the victim of a work-injury brought about by the interference and fault of a stranger to the employment relationship should be entitled to recourse against the third party in addition to receiving compensation from or through his employer, as well as defining the scope of the employment relation and identifying those who are "strangers," would patently seem to be susceptible of no classification other than that of workmen's compensation policy.<sup>67</sup> Missouri and Arkansas, under the decided cases, clearly have competing interests in the disposition of this policy problem.<sup>68</sup> Either state, as the forum, would be confronted with no constitutional impediment in making its own policy determination as to whether a workmen's compensation-inspired immunity should or should not be available as a defense in a tort action. "[A]s the *Pacific Employers Insurance Co.* case teaches, [Arkansas] may supplement [Missouri policy] or displace it with another . . ."<sup>69</sup> and Missouri, as the "base

---

66. This, necessarily, for only the forum can give any vitality to any of the concepts of characterization or classification, and once any such concept is announced by the forum it then is a part of the forum's law. GOODRICH, *CONFLICT OF LAWS* § 9 (3d ed. 1949), openly supports general adherence to the resolution of characterization problems by resort to the law of the forum as the most feasible. See also STUMBERG, *CONFLICT OF LAWS* 8 n.18 (1937). Whether this should be the rule or not has stimulated much discussion by the continental writers, because of the sharp differences in classifications occurring from state to state among the European nations. The laws of the states of the United States are not so similarly dissimilar. Bearing this in mind, see DICEY, *CONFLICT OF LAWS* § 3 (6th ed. 1949), wherein five views are set forth as to which law should govern characterization. Although this English authority does not reach the conclusion here made, it acknowledges that "the great majority of continental writers think that the process of characterization must be performed in accordance with the domestic law of the forum." *Id.* at 66.

67. This, assuredly, at least among the 48 states, which have all adopted similar workmen's compensation laws for resolution of the primary problem, the method of relieving the economic pressures of industrial injuries. How the included questions within this single characterization should be answered, however, presents a different problem, and one which has been answered solely upon the basis of each state's policy determinations made only for itself.

68. Missouri, the local relation of employer-employee there created between Hogan and Carroll; Arkansas, the work-injury within her borders.

69. 349 U.S. at 413-14.

of operations," is equally free to apply its own policy if it is the forum; and the fact that "here it is a common-law action that is asserted against the exclusiveness of the remedy [does not present] a material difference."<sup>70</sup>

What, then, are the respective merits of the majority and dissent in *Carroll v. Lanza*? To test the validity of these two positions concerning a work-injury which might be categorized in a number of "legalistic pigeonholes," fairness decrees that, wherever the assumption has been made that the majority was correct, a similar assumption now be made that the dissent was correct. Assuming it is true that, had Missouri been the forum for the third-party tort suit, Missouri law would have afforded no protection by immunity to Lanza, who was not a Missouri-insured employer,<sup>71</sup> should this case have been determined upon constitutional grounds or should it have been remanded to the court of appeals for their re-examination of the Missouri law?

In all probability, no single conclusion could be established if the problem is viewed as the simple policy question: Should this particular employer, in the position of a general contractor with the injured workman's employer, be granted the same immunity as is universally afforded to the immediate employer?<sup>72</sup> As an exercise in the field of conflict of laws, the position of the majority seems preferable, for the jurisdiction of the Arkansas courts, aside from the removal to the federal court, was never questioned. The characterization or classification of the nature of the problem is for the forum—Arkansas. Considered as a tort case, there is no choice of law problem here because the tort case is purely local. On the other hand, addressing the issue as one of judicial administration of the federal courts, and assuming, as Justice Frankfurter argued, that the Missouri law offered no comfort to Lanza as an "immunized" employer, there would seem to be no justification for the majority's deciding a constitutional question which palpably could be avoided in a case where the lower courts were obligated to follow state law and had incorrectly construed the meaning and effect of that law. With the presentation of the constitutional question for decision thus left in doubt, it would serve no useful purpose to review the prior constitutional determinations which would, necessarily, rest upon the assumption that the constitutional question had been presented.

To evaluate the relative merits of the majority and dissent upon the

---

70. *Id.* at 412.

71. Compare *Liddle v. Collins Constr. Co.*, 283 S.W.2d 474 (Mo. 1955), with Justice Frankfurter's views in the dissent, 349 U.S. at 422-26.

72. While a clear negative is indicated if the problem is approached as a matter of regulation of a status (employer-employee) or by testing the immunity upon the basis of a *quid pro quo*, the writer believes that, in the main, most answers would only reflect the long-standing policy determination of some particular state. See RIESENFELD & MAXWELL, *MODERN SOCIAL LEGISLATION* 416-19 (1950).

fullest possible basis for analysis, it might be useful to assume a hypothetical case presenting a converse fact situation. Assuming the employment contract and all aspects of localization had been in Arkansas and the work-injury, the fault of the general contractor's servants, had been sustained in Missouri, and Arkansas was the forum for the third-party suit after payment of compensation, does the view of the majority or that of the dissent provide the better guiding set of principles for certainty of proper adjudication of the issues involved?

This setting of a hypothetical case roughly approximates the parallel facts in the *Williamson* case<sup>73</sup> recently decided by the Ninth Circuit Court of Appeals. The apparent facts were: An Oregon employer-employee relationship was created in that state between an Oregon resident and an Oregon corporation. This corporation's economic endeavor extended into Washington as well as Oregon, and the employee was killed through the negligence of a third party while in the course of his employment in Washington. The employer had complied not with the Washington law, but with the Oregon compensation act, although he had been advised that he was subject to the former. Both states have wrongful death statutes; but while actions for damages at common law by compensated employees may be maintained against third parties in Oregon, the Washington compensation law precludes such suits against Washington employers. The widow had filed claims for compensation under both states' laws and was receiving compensation under the Oregon law. No action had been taken upon the Washington claim. She filed suit in the Federal District Court in Oregon against the third party for damages for wrongful death under the provisions of the wrongful death statute of Washington. Jurisdiction was based on diversity of citizenship. The Oregon compensation law has an extraterritorial provision which authorizes its applicability to an out-of-state work-injury if the employee was not subject to the workmen's compensation law of the jurisdiction in which he was injured. The trial court dismissed the complaint on the ground that Washington law—both its wrongful death statute as pleaded by plaintiff and that part of the compensation law which precludes tort suits against third parties such as this defendant—governed. The appellate court agreed that the law of the place of injury governed, but vacated the lower court's action because there was no finding that the deceased employee was acting in the course of his employment at the time of his death according to Washington law; hence the case was remanded for submission of additional evidence and a finding upon this issue as a predicate for final judgment. In arriving at this conclusion, the court first decided that Oregon policy was not opposed to applying the law of a foreign state, and then cited and dis-

---

73. *Williamson v. Weyerhaeuser Timber Co.*, 221 F.2d 5 (9th Cir. 1955).

cussed decisions of the Supreme Court concerned with applications of the full faith and credit clause to work-injuries. However, the opinion leaves some doubt as to whether its ruling was that full faith and credit compels the Oregon courts to apply the Washington compensation law defense in a wrongful death action brought under the Washington statute, or whether, following *Erie*, its conclusion was that the Oregon courts themselves would regard the entire case as controlled by the law of Washington.

A transposition of Justice Frankfurter's views in *Carroll v. Lanza* to *Williamson* would limit the inquiry to the question whether the court of appeals had misread the Oregon law. As the federal court has jurisdiction only by reason of diversity of citizenship, the *Erie* doctrine applies to govern the choice of substantive law, and *Klaxon*<sup>74</sup> has defined choice of law problems as substantive within the meaning of *Erie*. The federal court in Oregon is thus bound to look to the Oregon law of conflict of laws to determine how an Oregon court would dispose of the choice-of-law problems. Review by the Supreme Court would then be limited to the question whether the lower federal court's adherence to the philosophy of *Erie* succeeded in deciding the litigation just as a state court would have decided it.

It is generally conceded that the law of the place of injury is to govern all substantive aspects of a tort suit.<sup>75</sup> This conflict-of-laws rule might be described as a general policy, adopted by all courts, designed to minimize divergence of results occasioned solely by reason of the accident of the forum.<sup>76</sup> However, this policy is local and

74. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487 (1941).

75. GOODRICH, *op. cit. supra* note 25, at 260-303; STUMBERG, *op. cit. supra* note 25, at 160-89.

76. This basic purpose and policy underlying all rules of conflict of laws, common to all courts within their own jurisdictions, is to obtain a uniformity of result regardless of the fortuity of the forum and to apply a system of law closely connected with the fact situation. But the local adoption of any rule or set of rules of conflict of laws, in any jurisdiction, tending toward minimizing divergence of results due only to the accident of the forum is not done for the reason that uniformity is necessarily good per se. Rather, these rules leading toward uniformity are adopted because it is thought necessary to apply some system of law closely and substantially connected with the fact situation in order to do justice in the particular case. See DICEY, *op. cit. supra* note 66, at 6-7.

It is clear that the motive for giving effect to, e.g., French law as regards a contract made in France is not the desire to show courtesy to the French Republic, but the impossibility of determining the rights of the parties to the contract justly if that law be ignored.

*Ibid.* However, if the fact situation in the particular case might be shown to have a close and substantial connection with separate jurisdictions, each with its own system of law, each applicable because of the factual connection, does it not follow that the choice of law in a forum in any such jurisdiction—a choice between the local conflict-of-laws rule leading toward uniformity and the local domestic-law rule which might conceivably lead to a different result—should, ultimately, be made by the local court upon its own weighing according to the balance of justice, as locally understood, rather than to an unquestioning adherence to an academic rule whose application would produce a result which the court would regard as unpalatable or "obnoxious," as a matter of local domestic policy? To suggest an affirmative answer is not to "fly in the face" of all reason and precedent; neither

sometimes has been abandoned in favor of some other local policy which, as regarded by the forum, outweighs the value of the policy favoring uniformity of result.<sup>77</sup> Such departures from the general rule that the law of the place of injury governs the tort are most frequently found in cases where non-tort legal considerations are presented in a personal injury case, and the forum regards the non-tort considerations as of greater moment under the law of the forum than the forum's policy in favor of the general desire to secure the same result in a tort case as if the action were tried in the state where it arose.<sup>78</sup> This weighing of the respective merits of the non-tort considerations in the particular personal injury case against the general tort policy of referring to the law of the place of the tort can only be done by the forum in which the case is presented according to its own law and, if there is a sufficient legitimate governmental interest present to satisfy the requirements of due process, there would seem to be no constitutional objection to the forum making a free and final choice, even though it is recognized that if the forum were elsewhere, a different result might well follow.<sup>79</sup> Thus, leaving aside the constitu-

---

can it be described as an attack upon the basic principles of conflict of laws, for it should be apparent that relatively few "foreign-fact" cases will have a close and substantial connection with the systems of law of more than one jurisdiction, and even then, perchance, not with the forum's system. Thus, in the great bulk of "foreign-fact" cases, the choice-of-law problem for the forum is between its local conflict-of-laws rule which will refer to a foreign system of law having a close and substantial connection to the fact situation before it and its local domestic law which has no such connection with the facts and therefore, in simple justice, should not be applied. However, if any single class of cases might be said to present an exception to this order, it is the "foreign-fact" work-injury case as it is raised within our federal system of states. For, as virtually all courts and commentators agree, no court confronts the choice-of-law question until after it has answered the question of existence of jurisdiction in the affirmative; and jurisdiction, in our federal system, as tested by application of the due process clause, rests upon the existence of a substantial connection between the forum and the fact situation.

77. Classic examples are: *Siegman v. Meyer*, 100 F.2d 367 (2d Cir. 1938); *Hudson v. Von Hamm*, 85 Cal. App. 323, 259 Pac. 374 (1927); *Kyle v. Kyle*, 210 Minn. 204, 297 N.W. 744 (1941), in all of which the customary conflict-of-laws rule of referring to the system of law prevailing at the place of the tort was rejected by the forum in favor of the local domestic relations policy which local weighing of justice regarded as preponderant. See also *Levy v. Daniels' U-Drive Auto Renting Co.*, 108 Conn. 333, 143 Atl. 163 (1928), where the same familiar conflict-of-laws rule was rejected in favor of a local statutory policy respecting the liabilities of bailors of automobiles for hire.

78. Cases cited note 77 *supra*. The problem is one of characterization or classification of the choice-of-law issue. Who is better qualified than the forum to determine questions of this kind? Does "justice," as that term may be given substance by some local forum, preponderate in favor of the local policy upon matters of domestic relations or the bailment of automobiles for hire, respecting local domiciliaries, or does it favor disregard of such policies in order to effectuate the equally-local policy to obtain uniformity of result regardless of fortuity of the forum? May it not be said that in such cases the fundamental purpose of the law of conflict of laws—to achieve justice by the application of some system of law closely and substantially connected with the fact situation—is, indeed, well-served by either choice?

79. See *Griffin v. McCoach*, 313 U.S. 498 (1941); *Union Trust Co. v. Grosman*, 245 U.S. 412 (1918); *cf. Bogen v. Bogen*, 219 N.C. 51, 12 S.E.2d 649 (1941).

tional questions, the Oregon courts might regard the Oregon policy in favor of uniform results in tort cases as controlling in *Williamson* and, in effect, decide the case as a Washington court would apparently decide it on the basis of Washington law, including the Washington compensation-law defense. On the other hand, as the case is one arising from a work-injury for which compensation was being paid under the Oregon law, the Oregon courts might regard the Oregon policy in favor of allowing the compensated party to maintain the third-party action as more important than the Oregon policy favoring uniformity of result in tort cases, and proceed to decide the case without regard to any Washington law.<sup>80</sup> Or, as would seem more probable here since the plaintiff's pleading in *Williamson* specifically sets up the Washington wrongful death statute as the basis of suit, the Oregon courts might follow the Oregon policy favoring uniformity of results in tort cases as to the action and apply the Washington death statute, but refuse to recognize the defense arising from the Washington compensation law on the ground that the question of the compensated party's ability to sue the particular defendant as a third party is a workmen's compensation matter, rather than a tort matter, and that it is to be governed by the Oregon workmen's compensation law under which compensation has been paid. Assuming that there would be no constitutional objection to any of the foregoing alternatives, the task of the federal court sitting in Oregon in a diversity case is to determine which alternative the Oregon courts would select and then to decide the case before it upon that basis.

Two of the four Oregon decisions cited in *Williamson* by the court of appeals<sup>81</sup> involve applications of local Oregon policy in conflict-of-laws cases dealing with the problem of a compensated employee's ability to maintain a common-law tort suit against a third party. While both involved injuries in Oregon,<sup>82</sup> the Oregon courts allowed both suits for damages based on fault and recoveries were had in both despite previous awards of compensation in other states whose compensation law, apparently no less exclusive than that of Washington, prohibited such third-party actions. The Oregon courts treated these prohibitions as contrary to Oregon public policy and the thrust of these decisions is in the direction of a similar conclusion with respect to the Washington compensation policy involved in *Williamson*. The court of appeals discussed these cases briefly, but dismissed them as inapplicable to the

---

80. Under the pleadings, this position seems most unlikely.

81. *Personius v. Ashbury Transp. Co.*, 152 Ore. 286, 53 P.2d 1065 (1936); *Rorvik v. North Pac. Lumber Co.*, 99 Ore. 58, 190 Pac. 331 (1920), *sustained on rehearing*, 195 Pac. 163 (1921).

82. And, as neither was a suit for wrongful death under a sister-state law, they were not directly in point except insofar as they might be regarded as expressions by the highest court in Oregon as to its local policy respecting work-injury suits.

question in *Williamson*, which it described as being whether defendant's acts gave rise to a cause of action. It is submitted that this classification of the question is erroneous. A complaint alleging defendant's negligence proximately causing the death of the proper party and that plaintiff's decedent was within the provisions of the Washington wrongful death statute, would clearly seem sufficient to state a cause of action and support a judgement for plaintiff even in Washington; the bar in that state based upon its local compensation law would logically seem to be proper matter for an affirmative defense to be set up by the defendant in his answer. It is submitted that the real question in *Williamson* was this: Is the cause of action arising under the Washington wrongful death statute subject to the prohibition of the Washington workmen's compensation law in the Oregon forum? A negative answer to this question is indicated by several factors: The open contradiction between the statutory policy of the two states as to allowing suits by compensated parties against such third parties as the defendant in *Williamson*; the two Oregon decisions previously discussed; and the force of the Oregon award of compensation to this plaintiff under a law authorizing such award only if the injured employee was not subject to the jurisdiction of some other state's compensation law.<sup>83</sup> Furthermore, while not part of the "law of the case," the opinion of the court of appeals recites that, in the argument before that court, amici curiae disclosed that about four years after the accident the Washington commission had rejected the widow's Washington claim for compensation because the employer did not have Washington coverage but did have Oregon coverage and the Oregon commission had assumed jurisdiction.<sup>84</sup> This occurred after the lower court's ruling in *Williamson*. For the foregoing reasons, Justice Frankfurter, following the same line of reasoning expressed in the dissent in *Carroll v. Lanza*, might well conclude that the court of appeals had misread the Oregon law and remand the case to that court for further study.

But with the case in this posture, what would the court of appeals be called upon to decide? A remand pursuant to Justice Frankfurter's rationale would present two issues—not only that as to what the

---

83. ORE. COMP. LAWS ANN. § 102-1731 (1940). While there would be no res judicata against the third-party defendant, could it assert that Oregon lacked jurisdiction to apply its own compensation policies in the face of an Oregon award of compensation conditioned upon an implied finding that the deceased was not subject to the compensation law of the state of injury? Here there is an award by the same state whose courts are now opened to an action wholly permissible therein, in which it was found that the law of the state in which the injury occurred did not apply. Cf. *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943). Nor would the contrary determination by Washington, as indicated by the notice to *Williamson*'s employer, necessarily be fatal. See *Treinius v. Sunshine Mining Co.*, 308 U.S. 66 (1939).

84. 221 F.2d at 7 n.4.

Oregon courts *would* decide, but also that as to what the Oregon courts, as bound by the Constitution, *could* decide. This second issue would seem to be of sufficient weight and general importance to merit a definitive adjudication by the Supreme Court, for this is the same issue, presented upon converse facts, decided by the majority in *Carroll v. Lanza*. The consequence of such a supposed second review by the Supreme Court would be still further delay in already protracted litigation. The alternative would be to leave the question open for the piecemeal determination of any and every court confronted with the issue, running the risk of possible erroneous and differing determinations by such courts until such time as the Supreme Court would adjudicate the issue. If these alternatives be correct, then—wholly aside from the merits of the problem of legislative and judicial treatment of work-injuries—as a matter of sound judicial administration and definitive adjudication of federal constitutional questions, the position of the majority in *Carroll v. Lanza* is much to be preferred.

As has heretofore been suggested, there is presently little reason to hope for unanimous agreement as to the merits of the legal treatment of work-injury problems such as those presented in *Carroll v. Lanza* and *Williamson*, involving tort policy considerations, knotty problems in the field of conflict of laws, and questions of the judicial administration of our federal courts. However, in the face of the acknowledged risk of straining that decision out of context, *Carroll v. Lanza* and the line of decisions discussed therein and here presents a stimulus to evaluate the role of the Supreme Court of the United States in its interpretation and application of the Constitution to those fields of law in which the work-injury problem has sometimes appeared. It is possible that by applying the rationale of the series of decisions culminating in *Carroll v. Lanza* to the *Williamson* case, some conclusions may be drawn as to future constitutional developments in the area of the work-injury problem. Assuming that the Supreme Court were to decide *Williamson* on the merits under the full faith and credit clause in accordance with its prior interpretive decisions dealing with work-injuries, how might it be decided? *Could* the Oregon courts constitutionally apply their own local work-injury policy in *Williamson*?<sup>85</sup>

Assuming that it was erroneous to relegate *Clapper* to the limbo of

---

85. A negative answer is indicated by the RESTATEMENT, CONFLICT OF LAWS § 401 (1934), even as altered by the 1948 SUPPLEMENT, as necessitated by the "reconciliation of *Clapper* in *Pacific Employers*." However, despite the complete adherence of all American states to the principle of workmen's compensation as the primary body of laws explicitly addressed to the solution of problems predicated upon work-injuries, wholly without regard to notions of fault, it may be of some significance to note that in the *Restatement* this sociological problem is still discussed under the heading of "Wrongs." Cf. *Cudahy Packing Co. v. Paramore*, 263 U.S. 418 (1923).

decisions which are circulated long after any circumstance to which they might apply has ceased to exist, it may nevertheless be stated that any remnants of the inexorable command of "full faith and credit" which might have endured beyond the *Ohio* case would erect no barriers to Oregon's entertaining the Washington wrongful death statute action in *Williamson* stripped of the Washington compensation-law defense, because *Williamson* does not involve a common-law action against the employer who sought to purchase immunity from such suits by subscription to workmen's compensation insurance. *Williamson* involves a third-party tortfeasor—a stranger to the employer-employee relationship for which compensation was designed. The best that might be said of the defendant in *Williamson* is that his treatment by legislative provisions in workmen's compensation laws, like that of *Lanza*, has varied from state to state. Even assuming that the Washington compensation law should be held applicable to *Williamson*, for reasons subsequently discussed, it is certainly much more "obnoxious" to Oregon than the Massachusetts statute which the California courts were permitted to disregard in *Pacific Employers*.

There is no known constitutional barrier to the Oregon court's classification of the cause of action as a tort problem and accepting the reference to the law of Washington while viewing the tendered defense thereto as a work-injury policy question as to which Oregon policies might be accepted in disregard of Washington policy.<sup>86</sup>

Assuming that the facts are as stated, and leaving aside the tort aspects of the case, the only conflict of laws problem to which constitutional provisions conceivably might be thought applicable in *Williamson* is presented by the collision of the respective compensation laws of Washington and Oregon. The Washington compensation law creates an immunizing defense to this suit which the Oregon compen-

---

86. The writer is not aware of any decision by the United States Supreme Court in which it has been held that any constitutional provision compels a state court having proper jurisdiction to characterize or classify an issue in the same category for conflict-of-laws purposes as would some other state, where both states' systems of law have a close and substantial connection with the fact situation. In the light of its decisions (in addition to *Carroll*, see notes 14, 35, 38, and 79 *supra*) such a decision would seem unlikely. *But cf.* *Slater v. Mexican Nat'l R.R.*, 194 U.S. 120 (1904). However, the *Slater* case involved the law of a foreign nation, not that of a sister-state, and its authority may go no further than to hold that at common law there is no just and proper method of reducing a periodic-future-benefit-payment civil-law award (similar to an "open" award for alimony) to a lump sum for final judgment purposes. Or it may mean no more than that there is no judicial machinery available in the common-law forum to provide the type of relief afforded as part of the right under the civil law of the foreign nation. *Cf.* *Weidman v. Weidman*, 274 Mass. 113, 174 N.E. 206 (1931). It is apparent, however, that the description of the issue for adjudication in *Williamson* is consistent with the "obligatio" theory expressed by Holmes in the *Slater* case. However, the *Slater* case was not predicated upon a wrongful death statute; the defense on damage difficulties was drawn from the statutes recognizing the right of recovery, and there were no competing non-tort policy problems involved. Therefore it need not be regarded as a barrier.

sation law would not allow. This is precisely the same policy conflict which the majority postulates in *Carroll v. Lanza*, and while *Williamson* presents the converse situation as to the locale of the injury, the factual connection between the state and the relationship of employer and employee is at least as strong to support a sufficient legitimate governmental interest on the part of Oregon as were the facts which supported application of local compensation policy to extraterritorial injuries in *Alaska Packers* and *Cardillo*, and stronger than in *Carroll v. Lanza*. Furthermore, the Oregon compensation law was in fact applied in this case.

Even if greater validity were attributed to *Hunt* than what, as has been submitted, was left after *McCartin*, it would present no greater impediment to the unrestricted application of Oregon law in *Williamson* than it did to Arkansas law in *Carroll v. Lanza*. Taking the *Williamson* case as presented in the trial court, there was no Washington award. Taking judicial notice of the subsequent action, this was at best a determination that no award would be made pursuant to Washington law and a recognition that an award had in fact been made under Oregon law.

Do the tort aspects of *Williamson* require that a different treatment be given in application of the full faith and credit clause to a case involving a conflict between the policy determinations of two states' workmen's compensation laws? *Hughes v. Fetter* raises no barrier to the application by Oregon of Oregon policy because the Oregon courts have opened, not closed, their doors to a suit for wrongful death arising under a sister-state statute. Furthermore, the question so carefully reserved in *Hughes v. Fetter* is foreclosed in *Williamson*, because the plaintiff here by her pleadings has set up her right of action under the Washington wrongful death statute—not under the Oregon counterpart. Even conceding the customary conflict-of-laws rule to which Justice Black refused to lend constitutional force, that it is the wrongful death statute of the place of injury which governs the action and defenses thereto, it does not follow that the same underlying concepts for choice of law, which might be thought to embrace the ordinary defenses to wrongful death actions which are drawn from the common law, would also necessarily apply to a special defense to such an action when drawn from one particular local workmen's compensation law.<sup>87</sup> It may be significant to note that this defense to a

---

87. The policies upon which wrongful death statutes are predicated are tort policies. Workmen's compensation laws are based upon completely different policy, the social policy applicable to the status of employer-employee relations, which holds that the burdens and costs of industrial injuries are to be borne, without regard to fault and like the costs of repair and replacement of industrial machinery, by the industry in which they were sustained. DOWNEY, WORKMEN'S COMPENSATION 21 (1924); HOROVITZ, WORKMEN'S COMPENSATION 1-16 (1944); 1 LARSON, WORKMEN'S COMPENSATION LAW § 2 (1952). Wholly aside from the philosophical

tort action is cast in the form of an "immunity," and that, at this time, both by legislation and judicial reconsideration, "immunity" defenses in the law of torts have fallen into ever-increasing disfavor.<sup>88</sup> Whether or not such a special defense is or should be available depends, in the final analysis, upon the local concept of workmen's compensation law. The Oregon cases, previously discussed, disclose that the Oregon courts regard their local workmen's compensation law as designed primarily for the purpose of giving compensation to the injured Oregon employee. The law has the admitted incidental effect of providing immunity from common-law liability for the employer, who by bearing the costs gets a *quid pro quo*—but it is not a law otherwise designed to curtail any additional rights which an injured employee might have.<sup>89</sup> Furthermore, where the workmen's compensation laws of other states have emphasized what Oregon regards as the "incidental" effect of providing immunity for employers, the Oregon courts have quite properly regarded such laws as "obnoxious" to their local policy.<sup>90</sup> On the other hand, at least one Washington case<sup>91</sup> cited and discussed by the court of appeals in *Williamson*, seems to indicate that the Washington courts regard their local workmen's compensation law as designed for the purpose of providing immunity for employers from common-law suits, even though the consequence of affording such immunity is the complete denial of any and all remedies to an injured employee. It is this Washington law which creates a special defense for only some of the suits brought under its own death statute, as urged in the Oregon courts, which presents the only choice-of-law problem in the case—a problem of choosing between conflicting workmen's compensation law provisions promulgated by states which have competing interests in a single work-injury. Workmen's compensation law, a law of status, is not tort law; common-law tort principles have no legitimate place in its interpretation and application.<sup>92</sup> In fact, it is generally conceded by both courts and commentators that the choice-of-law rules worked out for the resolution of tort

---

inquiry as to the propriety of resorting to a humanitarian-purpose statute enacted to give the injured workman a remedy in order to deprive him of substantial rights, the question of the right of an injured workman to recover additional recompense for his injury from a stranger to the relationship between his employer and himself, under a system of law predicated upon a different basis and neither designed nor satisfactory to regulate that relationship and its consequences, would seem clearly to be a matter to be resolved by that law which is primarily addressed to work-injury policy, i.e., the workmen's compensation law.

88. Contemporary legal literature is full of discussions of the inroads upon ancient, outmoded immunities for the sovereign, the charity, etc., and citations seem superfluous.

89. For an excellent recent statement fully substantiating this position, see the opinion of Justice Tooze in *Johnson v. Timber Structures, Inc.*, 203 Ore. 670, 281 P.2d 723 (1955).

90. *Ibid.* See also cases cited note 81 *supra*.

91. *Koreski v. Seattle Hardware Co.*, 17 Wash. 2d 421, 135 P.2d 860 (1943).

92. 1 LARSON, *op. cit. supra* note 87, § 1.20.

problems are not at all suitable for application to problems involving choice of workmen's compensation laws.<sup>93</sup>

Viewed as a conflict-of-tort-laws problem, *Carroll v. Lanza* sheds no more light directly upon the *Williamson* case than does *Hughes v. Fetter*, for in *Carroll*, Arkansas, the forum, was also the place of injury. But if the language employed by Mr. Justice Douglas means anything, it means that there is a greater degree of flexibility in the full faith and credit clause when it relates to a work-injury problem than may be true with reference to other types of cases, such as are discussed in the dissent. If it is true that Oregon has "yielded tort law its due" when it opened its courts to this action for wrongful death in a sister-state and accepted that state's statute creating the action as its predicate, is it unreasonable to conclude: (1) There is no conflict-of-tort-laws problem presented, no more than in *Carroll v. Lanza*; (2) The sole conflict-of-laws problem raised by the asserted defense to a tort action is one which cannot be distinguished from those in the series of decisions recognizing the competing interests of several states in work-injury cases, culminating in *Carroll v. Lanza*; and (3) The fact that "here it is a common-law action that is asserted against the exclusiveness of the remedy . . ." <sup>94</sup> against a party other than the immediate employer in a forum where such an action is wholly proper, against the asserted defense of an "obnoxious" immunity drawn from a sister-state statute, does not present a material difference between *Williamson* and these other work-injury cases?

If the analysis of the prior decisions by the Supreme Court is sound and the facts in *Williamson* stand as "assumed," it might be concluded:

(1) In *Williamson*, Oregon courts could entertain this suit under the Washington wrongful death statute, giving it full recognition as pleaded, but might, nevertheless, give equally full effect to the local Oregon policy respecting the liability of third parties for work-injuries, without regard for the defense bottomed upon the "obnoxious" Washington workmen's compensation law.<sup>95</sup>

(2) If the assumptions on Oregon policy are wrong, or if its courts would not go beyond a simple "tort problem" classification, it would be free to give full recognition to both the cause of action and the defense thereto bottomed upon Washington law.<sup>96</sup>

---

93. *Ibid.* GOODRICH, CONFLICT OF LAWS 202-06 (1927); STUMBERG, CONFLICT OF LAWS 188-91 (1937).

94. 349 U.S. at 412.

95. As a matter of local Oregon policy, there is no hostility to entertaining wrongful death suits even though the death occurred in a sister-state (*cf.* *Hughes v. Fetter*, 341 U.S. 609 (1951)), but the defense arising from a sister-state's compensation statute is wholly inconsistent with the policy reflected by the Oregon workmen's compensation law.

96. *Cf.* *Buchereri v. Montgomery Ward & Co.*, 118 A.2d 21 (N.J. 1955), a suit for supplemental compensation under the *McCartin* rule, where the court con-

(3) In neither event would the Supreme Court of the United States be constrained to interfere with the Oregon court's choice of local policy because: (a) In this class of cases—work-injuries—every state now has, to some extent, addressed itself to establishing its own similar form of remedy for providing simple and certain prompt payment of compensation, but because of local variations in the measure of such relief the Supreme Court does not regard constitutional compulsion towards uniformity as a suitable medium for increasing the certainty that the salutary purpose of workmen's compensation laws can be effectuated;<sup>97</sup> (b) Accordingly, the decisions culminating in *Carroll v. Lanza* clearly show that the full faith and credit clause, in this class of cases, requires no more than the same sufficient legitimate governmental interest which will satisfy the requirements of due process; (c) Irrespective of how any extensively legalistic definition may seek to recategorize the problem into alien areas of law not particularly well-suited for the disposition of litigation stemming from a common<sup>98</sup> work-injury, there is but one basic policy classification applicable to these work-injuries, as all states now have enacted workmen's compensation laws as the primary body of rules addressed to the resolution of the attendant problems, and the area is one in which there is no longer any reason to question the state's jurisdiction to legislate.<sup>99</sup>

---

cluded, upon the basis of a careful and thorough comparison of its local workmen's compensation policy with that of the sister-state, that the great similarity of policies negated the assertion of "obnoxiousness," and that it would give full faith and credit to the sister-state award as final and conclusive. The court's reading of decisions of the United States Supreme Court closely parallels that presented in this article. The conclusion was not based upon any supposed lack of local power to enter the supplemental award sought, nor upon the existence of any constitutional impediment to such action. The court found that the local workmen's compensation policy was in close accord with that of the sister-state in which the prior award had been made, and concluded that justice, as locally regarded, dictated that full faith and credit should be given to the sister-state award. While agreement on this definition of "justice" is not to be expected, the propriety of this ruling seems beyond reproach on the basis of the analysis hereinbefore set forth. However, it should be noted that this decision would not be authoritative in regard to a suit for supplemental compensation under the *McCartin* rule with reference to a prior award from any other state, unless and until a like finding upon similarity of policies was made.

97. 1 LARSON, *op. cit. supra* note 87, § 86.50. And see the statement of the late Mr. Justice Jackson, *Full Faith and Credit—The Lawyer's Clause of the Constitution*, 45 COLUM. L. REV. 1, 25 (1945):

This seems to be a field of law which calls in conspicuous measure for certainty and order, for an administration of justice that is strict and in a sense mechanical. . . . The Full Faith and Credit Clause would not seem to lend itself to sociological, ethical, or economic ends or implications, except that "certainty and order are themselves constituents of the welfare which it is our business to discover."

98. Maritime work-injuries and the federal acts are, of course, beyond the scope of this inquiry.

99. Injury alone in Arkansas is sufficient:

For we write not only for this case and this day alone, but for this type of case. . . . A state that legislates concerning [the problems that follow in the wake of a work-injury] is exercising traditional powers of sovereignty. *Carroll v. Lanza*, 349 U.S. 408, 413 (1955).

In the opinion of the writer, the majority in *Carroll v. Lanza* intended that decision to mark the "end of the road" for Supreme Court "supervision" of work-injury problems by resort to the full faith and credit clause in much the same manner as *Railroad Comm'n v. Rowan & Nichols Oil Co.*<sup>100</sup> and *Burford v. Sun Oil Co.*<sup>101</sup> terminated federal court supervision of another state administrative law problem frequently urged under constitutional provisions. This conclusion is wholly consistent with the philosophy of *Erie* and, with the adoption of workmen's compensation laws as the "specific" for the "treatment" of work-injuries, it does no violence to the basic policies of all American states in the conflict of laws area. However, it should be taken to mean no more than that the full faith and credit clause is no longer to be regarded as a haven for one seeking to escape the liability for a work-injury duly imposed by the law of the forum in any state acting in accordance with the requirements of due process. State workmen's compensation laws, as the recognized solution for the determination of the multifarious legal aspects of work-injuries, have come "of age," and the present majority of the Supreme Court has again disavowed any design to be drawn into the making of policy determinations within that framework.

---

100. 310 U.S. 573, *as amended*, 311 U.S. 614, (1940).

101. 319 U.S. 315 (1943). To paraphrase Mr. Justice Jackson's statement quoted in note 97 *supra*, the majority no longer regards it to be the court's business to discover certainty and order in the work-injury law area because it is persuaded that the full faith and credit clause, as an instrument of constitutional compulsion, does not lend itself to the sociological, ethical, or economic implications of work-injuries.

# WASHINGTON UNIVERSITY LAW QUARTERLY

Member, National Conference of Law Reviews

---

---

Volume 1956

June 1956

Number 3

---

---

Edited by the Undergraduates of Washington University School of Law, St. Louis.  
Published in February, April, June, and December at  
Washington University, St. Louis, Mo.

---

---

## EDITORIAL BOARD

EDWARD BEIMFOHR, *Editor-in-Chief*

KENT D. KEHR

*Associate Editor*

ROBERT L. MUELLER

*Associate Editor*

ROBERT R. YOUNG

*Associate Editor*

RONALD M. BELT

JAMES W. STARNES

W. LAYTON STEWART

DOMINIC TROLANI

JAMES L. VIANI

S. SHELDON WEINHAUS

JOHN A. MCCARTY, *Business Manager*

JEROLD B. KATZ, *Assistant Business Manager*

## STAFF

BENSON CYTRON

WILLIAM JACK FLETCHER

A. JANE WEBSTER

## FACULTY ADVISOR

WILLIAM E. WALLACE

## ADVISORY BOARD

CHARLES C. ALLEN III  
ROBERT L. ARONSON  
FRANK P. ASCHEMEYER  
G. A. BUDER, JR.  
RICHARD S. BULL  
REXFORD H. CARUTHERS  
DAVE L. CORNFELD  
SAM ELSON  
ARTHUR J. FREUND  
WARNER FULLER  
JOSEPH J. GRAVELY

JOHN RAEBURN GREEN  
FORREST M. HEMKER  
GEORGE A. JENSEN  
LLOYD R. KOENIG  
ALAN C. KOHN  
HARRY W. KROEGER  
FRED L. KUHLMANN  
WARREN R. MAICHEL  
DAVID L. MILLAR  
ROSS E. MORRIS  
RALPH R. NEUHOFF  
NORMAN C. PARKER

CHRISTIAN B. PEPPER  
ORVILLE RICHARDSON  
W. MUNRO ROBERTS  
STANLEY M. ROSENBLUM  
A. E. S. SCHMID  
EDWIN M. SCHAEFER, JR.  
GEORGE W. SIMPKINS  
KARL P. SPENCER  
MAURICE L. STEWART  
JOHN R. STOCKHAM  
WAYNE B. WRIGHT

---

---

Subscription Price \$4.00; Per Current Copy \$1.25. A subscriber desiring to discontinue his subscription should send notice to that effect. In the absence of such notice, the subscription will be continued.

## CONTRIBUTORS TO THIS ISSUE

ARTHUR T. VANDERBILT—Chief Justice, Supreme Court of New Jersey. A.B. 1910, A.M. 1912, Wesleyan University; LL.B. 1913, Columbia University; numerous honorary degrees. Professor of Law, New York University Law School, 1914-18; Dean, 1943-48. Judge Circuit Court of New Jersey, 1947-48. Chairman or member of many governmental and bar association committees dealing with judicial and legal topics. President, American Bar Association, 1937-38. Author of several books and articles. Member of New Jersey Bar since 1913.

WARREN A. SEAVEY—Distinguished Visiting Professor of Law, Washington University. A.B. 1902, LL.B. 1904, Harvard University. American Law Institute Reporter, RESTATEMENTS: AGENCY, RESTITUTION. Professor of Law: Imperial Pei Yang University, Tientsin, China, 1906-11; Oklahoma State University Law School, 1912-14; Tulane University Law School, 1914-16, Indiana University, 1916-20. Dean, University of Nebraska College of Law, 1920-26. Professor of Law: University of Pennsylvania, 1926-27; Harvard University Law School since 1927. President, Association of American Law Schools, 1947. Author or co-author of numerous books and articles relating to legal topics. Editor, American Casebook Series. Member, American Bar Association.

PAUL A. FREUND—Fairchild Professor of Law, Harvard University. A.B. 1928, Washington University; LL.B. 1931, Harvard Law School; S.J.D. 1932, Harvard Law School. Law secretary to Mr. Justice Brandeis, 1932-33; with Treasury Dep't and Reconstruction Finance Corp., Washington, D. C., 1933-35; Dep't of Justice (Solicitor General's Office), 1935-39, 1942-46. Lecturer in Law, Harvard University, 1939-40. Author, ON UNDERSTANDING THE SUPREME COURT (Rosenthal Lectures, Northwestern University); co-author, CONSTITUTIONAL LAW: CASES & OTHER PROBLEMS; contributor to various law reviews. Admitted to practice in District of Columbia, 1935.

CHARLES EDWARD CLARK—Professor of Law and Assistant Dean, St. Mary's University. Presently on leave of absence from his post at St. Mary's University to serve as Assistant Editor-in-Chief, NACCA LAW JOURNAL. LL.B. 1948, University of Texas. Co-author, CASES AND MATERIALS ON TEXAS WORKMEN'S COMPENSATION LAW; contributor to various legal periodicals. Member of the Texas State Bar, San Antonio Bar, and the American Bar Associations.