

Court of Appeals

STATE OF NEW YORK

MARIA AUQUI, as Guardian of the Property
of JOSE VERDUGO, and MARIA VERDUGO,

Plaintiffs-Respondents,

against

SEVEN THIRTY ONE LIMITED PARTNERSHIP,
BOVIS LEND LEASE LMB, INC. and
NORTH SIDE STRUCTURES, INC.,

Defendants-Appellants.

BRIEF ON BEHALF OF THE DEFENSE ASSOCIATION OF NEW YORK, INC. AS *AMICUS CURIAE*

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TABLE OF CONTENTS

	<u>PAGE (S)</u>
TABLE OF AUTHORITIES.....	i
CORPORATE DISCLOSURE STATEMENT.....	1
PRELIMINARY STATEMENT.....	2
STATEMENT OF FACTS.....	4
a. Nature Of The Action.....	4
b. Verdugo's Injury And The Workers' Compensation Proceedings.....	4
c. Court Proceedings.....	6
 POINT I	
THIS COURT PROPERLY HELD THAT THE DECISION OF THE WORKERS' COMPENSATION BOARD WAS ENTITLED TO COLLATERAL ESTOPPEL EFFECT.....	8
 POINT II	
SUFFICIENT SAFEGUARDS EXIST IN PROCEEDINGS BEFORE THE WORKERS' COMPENSATION BOARD TO WARRANT THE APPLICATION OF COLLATERAL ESTOPPEL.....	16
CONCLUSION.....	23

TABLE OF AUTHORITIES

PAGE (S)

CASES

Academic Health Pro. Ins. Assoc. v. Lester,
30 A.D.3d 328 (1st Dep't 2006)8

Altegra Credit Co. v. Tin Chu,
29 A.D.3d 718 (2d Dep't 2006).....8

Alvarez v. Brown,
256 A.D.2d 530 (2d Dep't 1998).....10

Barnett v. Ives,
265 A.D.2d 865 (4th Dep't 1999)13

Bernstein v. Birch Wathen Sch.,
71 A.D.2d 129, aff'd, 51 N.Y.2d 932 (1980).....9

Botwinick v. Ogden,
59 N.Y.2d 909 (1983).....16

Camperlengo v. Barell,
78 N.Y.2d 674 (1991).....16

D'Arata v. New York Cent. Mut. Fire Ins. Co.,
76 N.Y.2d 659 (1990).....9,15

Halyalkar v. Bd. of Regents,
72 N.Y.2d 261 (1988).....19,20

Hughes v. Gibson Courier Serv. Corp.,
218 A.D.2d 684 (2d Dep't 1995).....9,10

Jeffreys v. Griffin,
1 N.Y.3d 34 (2003).....19

Kaufman v. Eli Lilly & Co.,
65 N.Y.2d 449 (1985).....8,9,15

<u>Kaufman v. Vil. of Mamaroneck,</u> 18 A.D.3d 505 (2d Dep't 2005)	8,9
<u>Liss v. Trans Auto Sys., Inc.,</u> 68 N.Y.2d 15 (1986)	10
<u>Martin v. Geico Direct Ins.,</u> 31 A.D.3d 505 (2d Dep't 2006)	14
<u>Matter of Eaton v. Dellapenna Assoc.,</u> 91 A.D.3d 1008 (3d Dep't 2012)	12,13
<u>Matter of Harrington v. L.C. Whitford Co.,</u> 302 A.D.2d 645 (3d Dep't 2003)	11
<u>Matter of Sillitti v. Liberty Travel, Inc.,</u> 83 A.D.3d 1169 (3d Dep't 2011)	11
<u>McCrae v. Sears, Roebuck & Co.,</u> 2 A.D.3d 419 (2d Dep't 2003)	10
<u>O'Gorman v. Journal News Westchester,</u> 2 A.D.3d 815 (2d Dep't 2003)	9
<u>O'Rourke v. Long,</u> 41 N.Y.2d 219 (1976)	16
<u>Patco Homes, Inc. v. Boyle,</u> 260 A.D.2d 455 (2d Dep't 1999)	8
<u>Pommells v. Perez,</u> 4 N.Y.3d 566 (2005)	21
<u>Ryan v. New York Telephone Co.,</u> 62 N.Y.2d 494 (1984)	8,9,16
<u>Werner v. State,</u> 53 N.Y.2d 346 (1981)	10,11

REGULATIONS

12 NYCRR § 324.3(a)(1)	19
Workers Compensation Board Guidelines	18,19

CORPORATE DISCLOSURE STATEMENT

The Defense Association of New York, Inc. is a not-for-profit corporation which has no parent companies, subsidiaries or affiliates.

PRELIMINARY STATEMENT

This brief is respectfully submitted on behalf of the Defense Association of New York, Inc. (hereinafter "DANY") as amicus curiae in relation to the appeal which is before this Court in the above-referenced action.

DANY is a bar association, whose purpose is to bring together by association, communication and organization attorneys and qualified non-attorneys in the State of New York who devote a substantial amount of their professional time to the handling of litigated civil cases and whose representation in such cases is primarily for the defense; to continue to improve the services of the legal profession to the public; to provide for the exchange among the members of this association of such information, ideas, techniques, procedures and court rulings relating to the handling of litigation as are calculated to enhance the knowledge and improve the skills of defense lawyers; to elevate the standards of trial practice and develop, establish and secure court adoption or approval of a high standard of trial conduct in court matters; to support and work for the improvement of the adversary system of jurisprudence in our courts and facilitate and expedite the trial of lawsuits; to initiate a program of education and information in law schools in emphasizing trial practice for defense attorneys; to inform its members and their clients of developments in the courts and legislatures affecting their practice and by proper and

legitimate means to aid in such developments when they are in the public interest; to establish an educational program to disseminate knowledge by means of seminars and other pedagogical methods on trial techniques for the defense; to promote improvements in the administration of justice; to encourage prompt and adequate payment of every just claim and to present effective resistance to every non-meritorious or inflated claim; and to take part in programs of public education that promote safety and help reduce losses and costs resulting from accidents of all kinds.

This is the second time that this appeal is being heard by this Court. At issue is the crucial question of whether the determination of the Workers' Compensation Board in this matter should collaterally estop the plaintiff from claiming an accident-related disability after January 24, 2006.

The issues raised in this appeal are a matter of concern to DANY, since the Workers' Compensation Board performs a valuable societal function in rendering its determinations. DANY respectfully submits that the Workers' Compensation Board would be seriously undermined if its decisions, such as the one at issue in the case at bar, are not afforded the collateral estoppel respect they deserve.

STATEMENT OF FACTS

a. Nature Of The Action

Plaintiff Jose Verdugo (hereinafter "Verdugo") was injured as a result of being struck on the head by a piece of plywood that fell from a building located at 731 Lexington Avenue, New York, New York (R 302). Alleging a number of injuries, Verdugo filed suit against the premises owner, Seven Thirty One Limited Partnership, the construction management company, Bovis Lend LMB, Inc., and a subcontractor, North Side Structures, Inc. in April 2004 (R 6, 300). Verdugo alleged that the negligence of these defendants caused him to suffer numerous physical and psychological injuries (R 300-04) and claimed that he was entitled to recovery for his losses (R 305).

b. Verdugo's Injury And The Workers' Compensation Proceedings

On December 24, 2003, while making a food delivery, Verdugo was struck in the head by a piece of plywood that became dislodged from the 50th floor of a construction site (R 140, 154, 174). He sustained multiple injuries for which he was treated initially at New York Presbyterian Hospital (R 175), and subsequently underwent therapy (R 140). Verdugo began receiving Workers' Compensation benefits from the date of his injury (R 129).

The Workers' Compensation carrier eventually moved for the discontinuance of the benefits claiming that Verdugo was no longer disabled. On January 23, 2006, a hearing on this motion

was held before a Workers' Compensation Administrative Law Judge (hereinafter "ALJ") (R 132). The ALJ reserved ruling at that point and directed the submission of further medical testimony on Verdugo's condition (R 132).

The ALJ thereafter received testimony from of a number of doctors (R 134-35). An orthopedist, Dr. Robert Zaretsky, testified that following an examination of Verdugo, he did not believe him to be disabled (R 143). Dr. Jean Francois, a neurologist, testified that following an initial evaluation, he believed Verdugo to be totally disabled (R 156). Dr. Francois further testified that he saw Verdugo every four to eight weeks since that initial evaluation (R 156), and that by February 2006, most of the evaluations he could make were "within normal limits" (R 160). A psychiatrist, Dr. Daniel Kuhn, testified that he believed Verdugo to be totally disabled due to a brain injury he sustained when the board hit him in the head (R 177-78). Finally, the ALJ noted that he received the testimony of a psychiatrist/neurologist named Dr. Martin Doft, but that Dr. Doft's testimony would be stricken because it was untimely (R 134).

On June 30, 2006, the ALJ issued a ruling concluding that Verdugo was no longer disabled as of January 24, 2006 (R 135). In issuing this ruling, the ALJ discussed the testimony, and stated his reasons for finding Dr. Zaretsky more credible than Drs. Francois or Kuhn (R 134-35). Verdugo appealed this ruling

to a Workers' Compensation Board panel. By decision on February 1, 2007, the Workers' Compensation Board stated the following:

The Board Panel initially finds that the claimant's attorney is correct that the only issue before the WCLJ was further causally related disability subsequent to January 24, 2006, and that the case had already been established for post-traumatic stress disorder. Therefore, the Reserved Decision requires modification to rescind the denial of the claim for post-traumatic stress disorder. The Board Panel now turns to the issue of further causally related disability subsequent to January 24, 2006.

(R 130)

The Board then went on to affirm the findings of the ALJ.

c. Court Proceedings

In April 2009, the Defendants in Verdugo's civil suit moved the court to preclude Verdugo from relitigating the duration of his injury based on the proceedings before the ALJ and the Workers' Compensation Board (R 110-11). The Supreme Court (Edmead, J.), granted the Defendants' motion, stating that "[t]he issue of ongoing disability was key to the WCB proceeding and is key to the personal injury action herein." (R 22). The Supreme Court continued that "at the WCB hearing, plaintiffs were represented by counsel and were afforded the opportunity to litigate, and introduced evidence in support of, plaintiff's claim of ongoing disability." (R 22).

Verdugo appealed the Supreme Court's decision, and on April 5, 2011, the Appellate Division, First Department reversed the Supreme Court's preclusion decision. Auqui v. Seven Thirty One

Ltd. Partnership, 83 A.D.3d 407, 920 N.Y.S.2d 79 (1st Dep't 2011).

Appeal was taken to this Court, and on February 14, 2013, the decision of the Appellate Division was reversed. Auqui v. Seven Thirty One Ltd. Partnership, 20 N.Y.3d 1035 (2013). This Court framed the issue before it as "whether the WCB decided a necessary issue of fact about the duration of Jose Verdugo's disability and, if so, whether the plaintiffs had a full and fair opportunity to contest the determination," Auqui, 20 N.Y. at 1037, and it answered both of those questions affirmatively. On June 27, 2013, this Court granted the motions of both parties for reargument. Auqui v. Seven Thirty One Ltd. Partnership, 21 N.Y.3d 995 and 21 N.Y.3d 998 (2013).

POINT I

THIS COURT PROPERLY HELD THAT THE DECISION OF THE WORKERS' COMPENSATION BOARD WAS ENTITLED TO COLLATERAL ESTOPPEL EFFECT

Collateral estoppel—a narrower species of res judicata—precludes parties from re-litigating an issue in a subsequent action that was clearly raised in a prior action and decided against them. See, Ryan v. New York Telephone Co., 62 N.Y.2d 494 (1984); see also, Academic Health Pro. Ins. Assoc. v. Lester, 30 A.D.3d 328 (1st Dep't 2006). It rests upon the premise that once a party has had a full and fair opportunity to litigate a particular issue, that party may not re-litigate that same question. See, Patco Homes, Inc. v. Boyle, 260 A.D.2d 455 (2d Dep't 1999).

Collateral estoppel requires that party seeking to estop the other party from re-litigating an issue demonstrate that the identical issue necessarily must have been decided in the prior action and that the party to be precluded must have had a full and fair opportunity to contest the prior determination. See, Kaufman v. Eli Lilly & Co., 65 N.Y.2d 449, 455 (1985); see also, Altegra Credit Co. v. Tin Chu, 29 A.D.3d 718 (2d Dep't 2006). Once the claim is finally concluded, "all other claims arising out of the same transaction or series of transactions are barred, even if based on different theories or if seeking a different remedy." Kaufman v. Vil. of Mamaroneck, 18 A.D.3d

505, 505 (2d Dep't 2005) (citations and internal quotation marks omitted).

The goal of collateral estoppel is intended to "reduce litigation and conserve the resources of the courts and litigants, and it is based on the general notion that it is not fair to permit a party to relitigate an issue that has already been decided against it." Kaufman, supra, 65 N.Y.2d at 455. It is an equitable doctrine that is "grounded on concepts of fairness and should not be rigidly or mechanically applied". D'Arata v. New York Cent. Mut. Fire Ins. Co., 76 N.Y.2d 659, 664 (1990) (citations omitted).

Collateral estoppel is available from determinations of administrative agencies when rendered under the adjudicatory authority of the agency to decide the issues brought before its tribunals employing procedures similar to those used in a court of law. Ryan, supra at 499.

When final, the determinations of administrative agencies become "conclusive and binding on the courts." Bernstein v. Birch Wathen Sch., 71 A.D.2d 129, 132, aff'd, 51 N.Y.2d 932 (1980) (citations omitted); see also, O'Gorman v. Journal News Westchester, 2 A.D.3d 815 (2d Dep't 2003). Similar to the holdings of the courts, the decisions of an administrative agency will be given collateral-estoppel effect only where the parties have been given a full and fair opportunity to contest the matter. See, Hughes v. Gibson Courier Serv. Corp., 218

A.D.2d 684 (2d Dep't 1995). In order to avoid the decision of an administrative agency being given collateral-estoppel effect, a party must establish that they did not have a full and fair opportunity to litigate the issue before the administrative law judge. See, Alvarez v. Brown, 256 A.D.2d 530 (2d Dep't 1998).

The Workers' Compensation Board ("WCB") is an administrative agency, and its rulings are entitled to collateral-estoppel effect. See, McCrae v. Sears, Roebuck & Co., 2 A.D.3d 419 (2d Dep't 2003). Indeed, this Court previously ruled that determinations by the Board can have estoppel effect. Where a WCB decision finally determines the controversy between the parties to the hearing, who are normally the injured party and the employer, Workers' Compensation Law § 25(3)(b) will preclude any party participating from relitigating the issues necessarily decided by the Administrative Law Judge ("ALJ"). See, Liss v. Trans Auto Sys., Inc., 68 N.Y.2d 15 (1986). In McCrae, supra, the Second Department gave collateral-estoppel effect to the WCB's determination that the plaintiff failed to prove that the injuries she sustained arose out of her fall from the ladder. Id., 2 A.D.3d at 419.

As to finality, as noted in Werner v. State, 53 N.Y.2d 346, 352, n.2 (1981), "[u]ntil the [Workers' Compensation] [B]oard exercises its powers under [Workers' Compensation Law] §123 . . . its decision is final and conclusive . . ." Accepting the arguments of plaintiffs and amici would undermine years of

jurisprudence concerning collateral estoppel being afforded to the determination of the Workers' Compensation Board.

While the hearing before the ALJ may not have all of the procedural niceties of a trial, it is akin to a trial in court as there are threshold requirements and burdens of proof that a party must satisfy in order to succeed. And the findings of the ALJ and WCB must be based upon the facts before it. As the Third Department held in Matter of Sillitti v. Liberty Travel, Inc., 83 A.D.3d 1169, 1170 (3d Dep't 2011), a WCB's ruling must be supported by "substantial evidence".

The issue of disability in this case was a factual determination. Both sides presented their cases, and the ALJ made a finding. Contrary to the assertions of plaintiffs, this was not a mixed question of law and fact; it was a factual determination. In Matter of Sillitti, supra, the Appellate Division concluded that the "degree and duration of claimant's disability was a factual issue for the Board to resolve and the resolution of any conflict between the medical opinions presented is similarly within the Board's province." (emphasis added) (citations omitted) Id., 83 A.D.3d at 1170. And where the WCB's decision is supported by substantial evidence, the courts will not disturb these findings even if other evidence existed that "would support a different result." In Matter of Harrington v. L.C. Whitford Co., 302 A.D.2d 645, 648 (3d Dep't 2003) (citations omitted).

Plaintiff in this case had a full and fair opportunity to present his case before the ALJ and WCB. He was represented by counsel at all stages. He presented expert medical evidence to support his claims, and his counsel cross-examined the opposing medical experts. And, after the parties presented their cases, the ALJ made the determination that the carrier's witnesses were more credible (R 135).

Significantly, this was not a scenario where it was only the ruling of the ALJ that was given collateral-estoppel effect in a subsequent proceeding. Plaintiff was able to appeal the ALJ's factual findings to the full WCB. He made his arguments on appeal, but the WCB affirmed the ALJ's determination. And it was the WCB that "affirmed the finding that plaintiff's disability ended on January 24, 2006." (emphasis added) The WCB also affirmed the factual conclusion of the ALJ that the carrier's witnesses were more credible (R 6).

Contrary to the insinuations lodged by plaintiffs, hearings before a Workers' Compensation ALJ are not akin to a kangaroo court. There are burdens of proof, and the parties are entitled to present their case, whether it is on the issue of employment or injuries. And the courts are to accord "great deference to the Board's resolution of issues concerning conflicting medical evidence and witness credibility, and the Board may accept or reject portions of a medical expert's opinion." Matter of Eaton v. Dellapenna Assoc., 91 A.D.3d 1008, 1009 (3d Dep't

2012) (citations and internal quotation marks omitted).

The ruling of the ALJ herein, which was affirmed on appeal by the WCB, is akin to the no-fault ruling in Barnett v. Ives, 265 A.D.2d 865 (4th Dep't 1999). In Barnett, the plaintiff was involved in a car accident. His no-fault carrier asked him to submit to an independent medical examination, and he complied. The physician concluded that the plaintiff was no longer suffering from an injury that was causally related to the incident, and denied him benefits for medical expenses effective May 25, 1994. The plaintiff was represented by counsel, and he submitted to no-fault arbitration. The arbitrator agreed with the carrier and concluded that the plaintiff was not entitled to medical expenses after May 1994. The arbitrator determined that the plaintiff suffered from a preexisting, degenerative condition. While the accident produced temporary acute symptoms, the arbitrator ruled the plaintiff's "continuing disability after the temporary aggravation has to be attributed to the pre-existing back pathology." 265 A.D.2d at 865. A Master Arbitrator affirmed this award.

The plaintiff in Barnett then commenced a personal injury action against the defendants. The defendants sought to have the arbitrator's decision given preclusive effect. The Fourth Department agreed, gave the arbitration award collateral-estoppel effect, and dismissed the plaintiff's claims for damages after May 25, 1994. Id., 265 A.D.2d at 866. The

Appellate Division found that the plaintiff's claims for injuries after that date should have been dismissed because the arbitrator ruled that any injuries occurring after May 25, 1994 were not causally related to the accident. Id. Therefore, the plaintiff was collaterally estopped from proving he sustained permanent injuries. Id.

The Second Department similarly ruled in Martin v. Geico Direct Ins., 31 A.D.3d 505 (2d Dep't 2006). In Martin, a no-fault arbitrator concluded that the plaintiff was not entitled to further no-fault benefits. The plaintiff challenged this denial, which was affirmed. The Second Department gave this finding collateral-estoppel effect because the issues raised in the arbitration – concerning the plaintiff's medical condition – were identical and decisive of her present complaint. Id., 31 A.D.3d at 506.

No party will claim that a no-fault arbitration is the equivalent of a trial. Similar to the determinations of the WCB, however, the courts accord the findings of the arbitrator deference when they are based upon substantial evidence. Here, plaintiff made his case before the ALJ. The ALJ heard testimony from plaintiff's experts. In the end, the ALJ made a factual and credibility determination against plaintiff. Plaintiff appealed this decision, and the WCB affirmed. Respectfully, the holding of the WCB was properly found to have collateral-estoppel effect in the subsequent personal injury action filed

by plaintiffs. The WCB is well-equipped to consider issues concerning medical care and injuries, and there was substantial evidence supporting the WCB's ruling. This Court's ruling furthers the goals identified in Kaufman v. Eli Lilly and D'Arata of conservation of resources and fairness, and it should deny plaintiffs' motion to reargue and affirm its prior holding.

POINT II

SUFFICIENT SAFEGUARDS EXIST IN
PROCEEDINGS BEFORE THE WORKERS'
COMPENSATION BOARD TO WARRANT THE
APPLICATION OF COLLATERAL ESTOPPEL

The established jurisprudence of this Court accords the determinations of administrative tribunals collateral estoppel effect in subsequent court proceedings. See, Camperlengo v. Barell, 78 N.Y.2d 674, 680 (1991) ("under long-settled principles of collateral estoppel, the determination of administrative agencies are entitled to preclusive effect" [citations omitted]); Ryan v. New York Tel. Co., 62 N.Y.2d 494, 502 (1984) (Unemployment Insurance Appeal Board determination that plaintiff "was guilty of unauthorized removal and possession of company property, and that he was discharged for that reason" given collateral estoppel effect). In fact, with respect to the Workers' Compensation Board, this Court has recognized that the Board has primary jurisdiction to determine "the applicability of the Workers' Compensation Law . . ." Botwinick v. Ogden, 59 N.Y.2d 909, 911 (1983); see also, O'Rourke v. Long, 41 N.Y.2d 219, 224 (1976) (where questions of fact exist as to employment, court should "await a conclusive determination by the Workmen's Compensation Board." [citations omitted]). Still, plaintiffs and their supporting amici have attacked the reliability of Workers' Compensation hearings in general and of the particular hearing at issue with respect to the duration of plaintiff's

alleged neuropsychiatric injuries, claiming the Board's findings are unworthy of the respect generally accorded the determinations of other administrative tribunals.

DANY respectfully submits that the administrative determinations of the Workers' Compensation Board are entitled to collateral estoppel effect and further submits that the general and specific attacks leveled at the determination in this case are without merit. Furthermore, denying collateral estoppel in this case would undermine established rules without increasing fairness. Therefore, this Court should adhere to its prior decision that the "determination of the WCB should be given preclusive effect as to the duration of plaintiff's disability, relevant to lost earnings and compensation for medical expenses." Auqui v. Seven Thirty One L.P., 20 N.Y.3d 1035, 1037 (2013).

Plaintiffs and supporting amici argue that the Workers' Compensation Board's finding that Mr. Verdugo's disability ended on January 24, 2006 does not bind plaintiffs because the realities of the Workers' Compensation Board hearing process indicate the Board's findings are not reliable. They cite the Board's 1996 Medical Guidelines as well as the Board's current treatment guidelines arguing that they result in inaccurate diagnoses, either in general or in relation to Mr. Verdugo's specific injuries.

Initially, as noted in the brief for defendants-appellants

on reargument, any contention concerning the guidelines is not preserved. In any event, any general attack on the Board's Medical Guidelines lacks merit. A review of the provisions of the Workers' Compensation Board Medical Guidelines (1996)¹ reveals that by no means are they inadequate or incomplete so as to justify disregarding the Board's determinations regarding when a worker's disability ended. The guidelines are based in contemporary medicine since they were developed in consultation with medical professionals utilizing medical references such as the "American Medical Association's guides [to] the Evaluation of Permanent Impairment."²

With respect to brain injury, a review of the 1996 guidelines concerning the sequellae of craniocerebral trauma shows the guidelines anticipate a wide range of possible outcomes including personality and behavioral disorders.³ The guidelines also anticipate the necessity of psychological testing "to ascertain the type and degree of dementia, as well as behavioral changes present."⁴ In addition, in the case of post traumatic neurosis, post traumatic stress disorder and other causally related psychiatric conditions, "neuro-psychiatric and psychological evaluations and opinions" as well as "court hearing testimonies of psychiatrists and

¹The June 1996 Workers' Compensation Board Medical Guidelines are available in PDF form at <http://www.wcb.ny.gov/content/main/hcpp/mdguide.pdf>. The renamed Workers' Compensation Board "New York State Guidelines for Determining Permanent Impairment and Loss of Wage Earning Capacity" (December 2012) are available in PDF form at <http://www.wcb.ny.gov/content/main/hcpp/ImpairmentGuidelines/2012ImpairmentGuide.pdf>.

² WCB Guidelines (1996), p. vii

³ WCB Guidelines (1996), p. 32

⁴ WCB Guidelines (1996), p. 35

psychologists"⁵ are mandated. Indeed, Dr. Kuhn, plaintiffs' neuropsychiatrist, testified at the hearing to determine whether Mr. Verdugo had a continuing disability.

Criticism of the Board's current Medical Treatment Guidelines,⁶ is not relevant to the current action (the present Medical Treatment Guidelines only cover neck, shoulder, back, knee, and carpal tunnel injuries), and is, in any event, without merit. The treatment recommendations are, with few exceptions, those promulgated by the American College of Occupational and Environmental Medicine.⁷ Furthermore, the Board's regulations permit a medical provider to request variances for most treatment recommendations.⁸

Moreover, neither Jeffreys v. Griffin, 1 N.Y.3d 34 (2003) nor Halyalkar v. Bd. of Regents, 72 N.Y.2d 261 (1988) are relevant to the issues raised in this appeal. This Court's ruling in Jeffreys, 1 N.Y.2d at 42-43, turned on the fact that there was "no way to disentangle the Hearing Committee members' non unanimous determination of sexual misconduct from their contemporaneous awareness of the outcome of defendant's first criminal" conviction, a conviction that was later overturned. Here, of course, plaintiffs and supporting amici identify no

⁵ WCB Guidelines (1996), p. 42.

⁶ See Brief for Amicus Curiae Workers' Injury Law & Advocacy Group, pp. 7-8.

⁷ See, e.g., Workers' Compensation Board Mid and Low Back Injury Medical Treatment Guidelines (2013), p. 66.

⁸ 12 NYCRR § 324.3 ("(a) (1) When a Treating Medical Provider determines that medical care that varies from the Medical Treatment Guidelines, such as when a treatment, procedure, or test is not recommended by the Medical Treatment Guidelines, is appropriate for the claimant and medically necessary, he or she shall request a variance from the insurance carrier or Special Fund by submitting the request in the format prescribed by the Chair for such purpose.").

similar circumstance that could have unfairly influenced the Board.

In Halyalkar, 72 N.Y.2d at 268, this Court ruled that a New Jersey consent order would not be given collateral estoppel effect in New York because "if preclusive effect were given to issues not truly adjudicated the result would be to discourage compromises and to accord them consequences which the parties neither intended nor foresaw." (citations omitted). Here, by contrast, plaintiffs fully litigated the issue of continuing disability before the Workers' Compensation Law Judge and, on appeal, before the Board. Thus, neither plaintiffs nor supporting amici have offered any evidence, precedent, or rationale to negate the respect traditionally accorded administrative findings of fact.

DANY further submits that the dire consequences of according collateral estoppel effect to Workers' Compensation Board findings envisioned by plaintiffs and supporting amici are simply unfounded. First, these consequences would only occur if one assumes the Board's findings are always wrong. Second, they implicitly assume that the Workers' Compensation Board acts in the interests of insurers rather than as a neutral arbiter of disputes between insurers and workers. Since neither of these assumptions bears any relation to reality and in fact flies in the face of this Court's established jurisprudence, this Court should reject plaintiffs' and supporting amici's speculations

and adhere to its prior decision affording collateral estoppel effect to the Workers' Compensation Board finding that Mr. Verdugo had no further injury after January 24, 2006.

To the extent the Workers' Compensation Board correctly finds that a plaintiff is not suffering from a permanent partial or total disability, any further treatment received is not compensable, and unwarranted. Medical providers then would exercise care in prescribing treatment, knowing that unwarranted treatment would not be reimbursed. Thus, giving collateral estoppel effect to the Board's determinations that a disability ended would tend to lower costs.

Of course, refusing to accord Board findings collateral estoppel effect would encourage workers to pursue treatment even after their injuries have healed since continuing medical treatment is consistent with continuing injury. See, Pommells v. Perez, 4 N.Y.3d 566, 574 (2005) ("While a cessation of treatment is not dispositive - the law surely does not require a record of needless treatment in order to survive summary judgment - a plaintiff who terminates therapeutic measures following the accident, while claiming 'serious injury,' must offer some reasonable explanation for having done so."). Unethical or gullible workers might agree to bear the risk of having to repay medical providers for unnecessary treatment where a jury is likely to award enhanced money damages for an injury that initially appeared catastrophic but resolved after

treatment. That is, refusing collateral effect would tend to increase costs.

Finally, implicit in all of plaintiffs' and supporting amicus' arguments is the unstated notion that the Workers' Compensation Board is in league with insurers and the adversary of injured workers, rather than the impartial arbiter of disputes between workers, medical providers, and insurers. Absent from plaintiffs' and supporting amicus' submissions, however, is any evidence that the Board or its Law Judges are adverse to workers. Moreover, this implicit assumption, if generally applicable, would require courts to disregard the findings of all administrative proceedings. This is not the law of New York and would instead upend this Court's established jurisprudence. Therefore, this Court should adhere to its prior decision affording collateral estoppel effect to the Workers' Compensation Board finding that Mr. Verdugo had no further injury after January 24, 2006.

CONCLUSION

For the foregoing reasons, this Court's prior determination should be affirmed.

Dated: Jericho, New York
September 27, 2013

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