

2003

Linda R. Acosta v. Salt Lake Regional Medical Center and Liberty Mutual Ins. Co., American Manufacturers Mutual Ins., Sentry Insurance, and Workers Compensation Fund : Brief of Appellant

Utah Court of Appeals

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Recommended Citation

Brief of Appellant, *Acosta v. Salt Lake Regional*, No. 20030907 (Utah Court of Appeals, 2003).
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IN THE COURT OF APPEALS

FOR THE STATE OF UTAH

| | | |
|----------------------------|---|---------------------------|
| LINDA R. ACOSTA, |) | |
| |) | |
| Plaintiff/Appellant, |) | |
| |) | |
| vs. |) | |
| |) | |
| SALT LAKE REGIONAL MEDICAL |) | |
| CENTER and LIBERTY MUTUAL |) | |
| INS. CO., AMERICAN |) | |
| MANUFACTURERS MUTUAL |) | |
| INS., SENTRY INSURANCE, |) | |
| & WORKERS COMPENSATION |) | |
| FUND, |) | Trial Court No. 2002959 |
| |) | |
| Defendants/Appellees. |) | Appellate No. 20030907-CA |
| |) | |

ORAL ARGUMENT IS REQUESTED

FILED
Utah Court of Appeals
FEB - 2 2004
Paulette Stagg
Clerk of the Court

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INTRODUCTION

This Court should reverse the Labor Commission's Order, and hold that Ms. Acosta had no duty to simultaneously file her occupational disease claim with her industrial accident claim. The Utah legislature has purposely kept these causes of action separate, along with maintaining separate requirements for each, and providing for separate compensation. The statute does not require injured workers to simultaneously file these claims. The Labor Commission failed to recognize that these claims are separate, and dismissed Ms. Acosta's occupational disease claim based on the doctrine of claim preclusion. Claim preclusion does not bar litigation of separate unlitigated claims that arise from separate statutes. This Court should reverse the Labor Commission, and remand Ms. Acosta's occupational claim for a hearing on the merits.

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STATEMENT OF JURISDICTION

This Court has jurisdiction to hear Ms. Acosta's appeal because the Labor Commission has not decided all of the issues requiring resolution, namely, Ms. Acosta's occupational disease claim. Utah Code Ann. § 63-46b-16(4)(c). This Court also has jurisdiction to hear this appeal because the Labor Commission has errorronously interpreted or applied the law in denying Ms. Acosta's occupational disease claim. Id. at § 16(4)(d). Finally, this Court also has jurisdiction to hear Ms. Acosta's appeal because the Labor Commission has engaged in an unlawful procedure or decision making process or has failed to follow prescribed procedure, to the extent it has determined as a matter of Labor Commission policy that occupational disease claims must be filed simultaneously with industrial accident claims when they apply to the same employer. Id. at § 16(4)(e).

STATEMENT OF THE ISSUE

The issue in this case is whether an unlitigated claim for occupational disease, which arose under a separate statute, based on previously unlitigated material facts, and which was filed within the appropriate statute of limitations, was erroneously dismissed under the judicial doctrine of res judicata.

STANDARD OF REVIEW

This Court should review the Labor Commission's Order under a correction of error standard because it is a question of general law and the agency's decision making or procedure. *Questar Pipeline Co. v. State Tax Comm'n*, 817 P.2d 316 (Utah 1991). In that case, the Supreme Court stated that under UAPA, "agency determinations of general law . . . are to be reviewed under a correction of error standard, giving no deference to the agency's decision." *Id.* at 317. This Court should give no deference to the Labor Commission's decision because it is simply the agency's interpretation of general law.

PROVISIONS, STATUTES, ORDINANCES, AND RULES

Utah Code Ann. § 34A-3-101, et. seq., "The Utah Occupational Disease Act," or the "UODA."

Utah Code Ann. § 34A-2-101, et. seq., "The Utah Workers' Compensation Act," or the "UWCA."

STATEMENT OF THE CASE

Petitioner/Appellant, Ms. Linda Ms. Acosta, worked for Salt Lake Regional Medical Center ("SLRMC") for approximately eighteen years from December, 1980 through December, 1998. On approximately December 20, 1998, Ms.

Acosta was lifting a baby out of an isolet to hand to its mother, when she experienced sudden, severe low back pain. Ms. Acosta filed an Application for Hearing with the Labor Commission for workers compensation benefits arising out of the December, 1998 industrial accident. The medical evidence adduced during the proceeding demonstrated that Ms. Acosta likely had pre-existing degenerative changes before her December 20, 1998 lifting event, although her low back was asymptomatic. At a hearing, the ALJ found that Ms. Acosta sustained an accident under a cumulative trauma theory of industrial accident.

On appeal, the Labor Commission determined that because the cumulative trauma theory had not been plead, that the ALJ was barred from raising it sua sponte as a theory of recovery. The Labor Commission also held that Ms. Acosta was subject to the heightened standard of legal causation because she had an asymptomatic pre-existing condition. On appeal to this Court, this Court affirmed that the higher standard of causation applied to Ms. Acosta, and upheld the Commission's denial of compensation for industrial accident.

On approximately August, 2002, Ms. Acosta filed a new Application for Hearing alleging injury by occupational disease under the Utah Occupational

Disease Act.¹ Ms. Acosta alleged different material facts than she plead in her industrial accident Application. She also alleged that those activities occurred over her eighteen years of employment with SLRMC. SLRMC filed a Motion to Dismiss Ms. Acosta's occupational disease claim, and the ALJ granted its Motion.

Petitioner appealed her denial of occupational disease claim to the Labor Commission, and the Commission denied Ms. Acosta's Motion for Review. The Commission held that Ms. Acosta's claims were barred by the claim preclusion branch of the doctrine of *res judicata*. The Commission also held that applying the doctrine of claim preclusion served important public objectives that were (apparently) more important than liberally construing the Act in favor of providing compensation to injured workers. Ms. Acosta now appeals from the Labor Commission's Order Denying her Motion for Review.

¹ Ms. Acosta also alleged injury by accident under a cumulative trauma claim. Ms. Acosta later elected not to pursue that claim, and it is not before this Court.

FACTS

1. On or around 3/26/99, Petitioner filed an Application for Hearing for an industrial injury, she experienced at Salt Lake Regional Hospital on 12/20/98. The Application stated **“I was lifting a baby out of an isolet to hand it to it’s mother.”** See, Industrial Accident Application for Hearing, (Aplt App. at 1).
2. On 2/25/99, Dr. Fotheringham examined Ms. Acosta on behalf of Respondents. Dr. Fotheringham stated that her 12/20/98 work injury “caused her current work symptoms,” but noted that Ms. Acosta had significant pre-existing degeneration that contributed to her problems. MRE at 55 (Aplt App. at 29).
3. On 3/5/99, Dr. Robert Hood opined that Ms. Acosta had no prior history of low back problems until her 12/20/98 work injury, and that Ms. Acosta had significant pre-existing stenosis that contributed to her problems. MRE at 58-9 (Aplt App. at 14-15).
4. On 10/22/99, the ALJ entered his Findings of Fact, Conclusions of Law and Order awarding Workers Compensation benefits.
5. On 11/17/99, Respondents filed a Motion for Review with the Labor

Commission.

6. On 1/31/00, the Labor Commission issued a Order Granting Respondents Motion for Review, and reversed the ALJ's award of benefits to Petitioner.
7. Petitioner appealed the Commission's Order to the Court of Appeals.
8. The Court of Appeals upheld the Labor Commission's denial of benefits. The Utah Supreme Court denied Petitioner's request for writ of certiorari.
9. On or around 8/26/02, Ms. Acosta filed a new Application for Hearing alleging injury by occupational disease. Ms. Acosta alleged that she was **"lifting babies, assisting patients with activities of living, picking items up from the floor, and other activities."** Ms. Acosta also alleged that this occurred over eighteen years of work with Respondents, from approximately 12/80 to 12/20/98. See, Application for Hearing, Occupational Disease (Aplt App at 9).

SUMMARY OF ARGUMENT

This Court should reverse the Labor Commission and remand Ms. Acosta's occupational disease claim for a hearing on the merits. The Labor Commission errorously applied the doctrine of claimed preclusion to bar Ms. Acosta's occupational disease claim, because it believed that the Workers Compensation Act, and the Occupational Disease Act created only a single cause of action. Res judicata not only bars prelitigation of previously litigated claims, that arose from the same material facts. Ms. Acosta's occupational disease claim was not subject to claimed preclusion because it had not been litigated, and did arise from the same material facts as her industrial accident. Utah law has always recognized that occupational disease claims are different from industrial accident claims. The Labor Commission treated these separate Acts as a single cause of action, and wrongly held that Ms. Acosta should have filed her occupational disease claim along with her industrial accident claim. Neither Act required Acosta to simultaneously file her claims. The Labor Commission collapsed the dual requirements under the *Macris & Associates* case into a single requirement, contrary to establish law. The Labor Commission admitted plain legal error when

it upheld the dismissal of Ms. Acosta's occupational disease claim. Also, public policy favors treating the Acts separately, and to liberally construe Ms. Acosta's facts in favor of finding compensation.

ARGUMENT

MS. ACOSTA’S OCCUPATIONAL DISEASE CLAIM WAS A DIFFERENT CLAIM FROM HER INDUSTRIAL ACCIDENT CLAIM BECAUSE IT AROSE FROM A SEPARATE STATUTES WITH DIFFERENT REQUIREMENTS AND DIFFERENT COMPENSATION PAYABLE, AND THEREFORE WAS NOT BARRED BY THE DOCTRINE OF CLAIM PRECLUSION.

This Court should find that Ms. Acosta’s occupational disease claim is not barred by the doctrine of claim preclusion because her occupational disease claim was a different unlitigated claim from her industrial accident claim. The Labor Commission failed to recognize that occupational disease claims and industrial accidents arise from different statutes, with different requirements. The Commissions’s failure to recognize the differences between the two claims led it to erroneously apply the doctrine of res judicata to bar Ms. Acosta’s claims.

Both the occupational disease act and the workers compensation act are statutory creations, and neither statute required injured workers to simultaneously file disease and accident claims against the same employer. Nor did claim preclusion bar Ms. Acosta’s occupational disease claim because her claim did not arise out of the “same transaction or occurrence” as her industrial accident. To the contrary, Ms. Acosta’s occupational disease claim arose under a separate statute with different material facts. Claim preclusion does not bar previously unlitigated

claims that arose under different statutes with different material facts. Therefore, this Court should remand Ms. Acosta's case to the Labor Commission for a hearing on the merits.

A. Res Judicata Only Bars Relitigation of Previously Litigated Claims Arising Out of the Same Material Facts.

Generally, res judicata is judicially created doctrine that bars litigants from presenting the same claims or issues more than once. When applicable, the doctrine may bar either previously litigated claims or issues:

Although the term "res judicata" is often used to describe the overall doctrine of preclusion, a distinction should properly be made between that branch of the doctrine which precludes the relitigation of previously decided claims, called either res judicata or claim preclusion, and that branch which precludes the relitigation of previously decided issues, known as either collateral estoppel.²

In this case, the Commission concluded that Ms. Acosta's occupational disease claim was barred by res judicata or claim preclusion,³ and denied her occupational disease claim without a hearing on its merits.

² Career Serv. Rev. Bd. v. Dept. of Corr., 942 P.2D 936, 938 n.2 (citing Noble v. Noble, 761 P.2d 1369, 1374 n. 5 (Utah 1988)).

³ Respondent's Motion to Dismiss Applications for Hearing, at 3, Appellate App. at 33.

B. Ms. Acosta's Occupational Disease Claim Was Not Barred Because The Claim Preclusion Requirements Were Not Satisfied.

Ms. Acosta's occupational disease claim may proceed because her case did not satisfy the claim preclusion requirements. The Utah Supreme Court recently articulated the three claim preclusion requirements:

First, both cases must involve the same parties or their privies. **Second, the claim that is alleged to be barred must have been presented in the first suit or must be one that could and should have been raised in the first action.** Third, the first suit must have resulted in a final judgment on the merits.

Macris & Assoc. v. Neways, Inc., 2000 UT 93, 16 P.3d 1214 (emphasis added).

The second requirement is also known as the "same claim" requirement. The "same claim" requirement can be satisfied in one of two ways: 1) by presenting the claim in the first hearing; or 2) if the claim "must" be one that both *could* have been raised, and *should* have been raised in the first hearing. Ms. Acosta did not present an occupational disease claim at the first hearing, therefore, her claim may only be barred now if she both "could have" and "should have" been raised at the first hearing. Ms. Acosta's occupational disease claim may proceed unless Appellees can demonstrate that her claims met the "same claim" requirement.

C. Occupational Disease Claims Have Always Been Recognized As Different From Industrial Accident Claims, And Are Not the “Same Claim.”

Utah law has always recognized that occupational disease claims and industrial accident claims are wholly different claims. After passing the UWCA in 1917, injuries from industrial accidents were no longer governed by common law. Instead, industrial accident claims were the exclusive remedy for all accidental injuries between employees and their employers. Utah Courts recognized that only industrial accident claims were covered under the Act. In contrast, occupational disease claims were still common law claims that had to be brought in district court; the Industrial Commission had no jurisdiction over occupational disease claims. *See, e.g., Young v. Salt Lake City*, 97 Utah 123, 90 P.2d 174 (Utah 1939) (holding lead poisoning from inhaling vaporized paint was occupational disease, thereby depriving Industrial Commission of jurisdiction over common law claim.)

After the Utah legislature created the Utah Occupational Disease Act (“UODA”) in 1943, however, common law occupational disease claims ceased to exist. *See, e.g., Masich v. United States Smelting, Refining & Mining Co.*, 113 Utah 101, 191 P.2d 612 (Utah 1948) (holding common law occupational disease

claims abrogated by statutory occupational disease claims under UODA). History shows that even before occupational disease claims were codified in 1943, Utah law always recognized that occupational disease claims were different from industrial accident claims. Occupational disease claims have never been considered the “same claims” as industrial accident claims.

D. Ms. Acosta Had No Duty To Simultaneously File Different Claims Where Different Statutes Gave Rise To Different Causes Of Action.

Ms. Acosta had no duty to file her occupational disease claim when she filed her industrial accident claim. There is no duty to simultaneously bring different claims that arise under different statutes. For example, in *SMP v. Kirkland, Inc.*, 843 P.2d 531, 533 (Utah App. 1992), the doctrine of res judicata did not bar an employee from filing a later contractual offset claim arising under different statute. This Court reasoned that because “the claim adjudicated before the Industrial Commission was Kirkman’s [claim for back wages] [while] [t]he claim adjudicated by the circuit court was SMP’s [contractual offset claim]. It is readily apparent that the claims were not identical.” *Id.* at 533. The claims were not identical because they arose under separate statutes with different requirements. Similarly, this Court should permit Ms. Acosta to bring her

occupational disease claim separately because it arose under a different statute with different requirements.

Other courts have looked to the meaning and purpose of the statute in permitting separate statutory causes of action to proceed in different cases. For example, in *Tipler v. E.I. duPont deNemours and Co.*, 443 F. 2d 125 (1971), an employee who litigated a wrongful termination claim was not barred from bringing a later claim that alleged discharge for discrimination, because the second claim arose under a different statute. The court reasoned that the separate statutes that prevented wrongful termination and discrimination were separate causes of action with separate requirements that served distinct and important public purposes. *Id.* It is well settled that claims arising under separate statutes need not be filed simultaneously where each statute requires separate material facts to state a claim.

The same is true for Ms. Acosta: her separate occupational disease claim that arose out of a different statute and under different material facts was not barred by res judicata. In other words, the legislature has chosen to separate industrial accident claims and occupational disease claims, creating different requirements and different compensation for each cause of action; the Labor

Commission may not simply ignore the Legislature's decisions, and treat both Acts as giving rise to a single cause of action.

E. Neither Statute Required Injured Workers To Simultaneously File Occupational Disease Claims And Industrial Accident Claims.

Neither the Occupational Disease Act,⁴ nor the Workers' Compensation Act⁵ required injured workers to simultaneously bring both occupational disease and industrial accident claims. It is well settled that both Acts are governed by the language of their statutes, and the Commission is bound by the language contained in the Acts. The language of the Acts demonstrate that the legislature intended to keep the actions separate.

The legislature has determined that industrial accidents occur at a discrete time and place, while occupational diseases occur gradually over time, such as

⁴ See generally, Utah Occupational Disease Act, Utah Code Ann. §§ 34A-3-101 to 112.

⁵ See generally, Utah Workers' Compensation Act, Utah Code Ann. §§ 34A-2-101, et. seq.

silicosis⁶ and asbestosis.⁷ The reporting requirements are different for industrial accidents and occupational diseases.⁸ Employer liability requirements are different for occupational diseases than industrial accidents.⁹ Benefits are statutorily apportioned for occupational diseases,¹⁰ but not for industrial accident claims. Occupational disease and industrial accident claims are disjunctive claims, and can not arise from the same material facts. Applicants are specifically barred from recovering for both industrial accident and occupational disease claims.¹¹ The statute bars one set of operative facts from giving rise to an injury that is both occupational disease and an industrial accident. Finally, neither act requires that injured workers simultaneously file occupational disease claims with industrial accident claims. Given the legislature's efforts to maintain separate requirements

⁶ See, e.g., Kennecott Copper Corp. v. Industrial Comm'n, 115 Utah 451, 205 P.2d 541 (1949).

⁷ See, e.g., Tisco Intermountain & State Ins. Fund v. Industrial Comm'n, 744 P.2d 1340 (Utah 1987).

⁸ Compare Utah Code Ann. § 34A-2-407 with § 34A-3-108.

⁹ Utah Code Ann. § 34A-3-105.

¹⁰ Utah Code Ann. § 34A-3-110.

¹¹ Utah Code Ann. § 34-A-3-110(3).

and benefits for each type of claim, there was no statutory support for the Commission's conclusion that Ms. Acosta's occupational disease claim could have and should have been raised in her first application for hearing.

F. The Labor Commission's "Practices and Customs" Of Filing Alternative Claims Were Permissive, And Not Mandatory, And Did Not Justify Ms. Acosta's Dismissal On The Merits.

The Labor Commission's application for hearing forms did not permit alternative pleading when Ms. Acosta filed her first application. Ms. Acosta's application for hearing ("Form 001") was for "industrial accidents" only, not occupational diseases. Aplt. App. at 1. On its face, Form 001 did not permit injured workers to make alternative claims.¹² The Commission nonetheless argued that it had a "custom and practice" of permitting injured workers to make alternative claims for diseases and accidents.¹³ Order at 3. Aplt. App. at 117. But even if there was an unarticulated practice of letting injured workers maintain alternative claims, it did not justify mandatory dismissal when Ms. Acosta filed

¹² In July, 2001, over a year and a half after Ms. Acosta's first filing, the Commission revised its Form 001 to permit both industrial accidents and occupational diseases to be simultaneously plead. Aplt. App. at 9.

¹³ Apparently, this custom would only be available to those injured workers who knew they should ignore the restrictions on the Commission's forms.

her claim separately. The Commission's own forms did not permit alternative pleading, and there was no notice that failure to make alternative arguments would result in dismissal on the merits. There was no such requirement in the statutes or in the Commission's own rules, nor was it found on the Commission's own forms.

G. Contrary to Utah Law, The Commission's Decision Erroneously Collapsed The "Could Have" and "Should Have" Requirements Into A Single "Could Have" Requirement.

The Commission erroneously concluded that Ms. Acosta "should have" filed her occupational disease claim simply because she "could have" filed it earlier. Although the case law required the Commission to demonstrate that Ms. Acosta both "could have" and "should have" filed her occupational disease claim to later bar the claim under a claim preclusion theory, the Commission collapsed its analysis to a single "could have" requirement:

In this case, Ms. Acosta had the opportunity in the first adjudicative proceeding to present all theories she believed supported her claim for benefits. She is not entitled to pursue her claim for benefits "through piecemeal litigation, offering one theory to the court while holding others in reserve."

Order at 3. Aplt. App. at 117. In other words, because she "could have" raised her occupational disease claim earlier, she should have done so.

The Commission plainly ignored the “should have” requirement under Macris & Assoc., 2000 UT at 93, 16 P.3d at 1214. But Ms. Acosta only “should have” earlier plead an occupational disease if that claim arose out of the same material facts, or if there was a statutory requirement to do so. As shown above, Ms. Acosta’s claims arose from different material facts: Ms. Acosta did not need to raise her occupational disease claim where she had not plead facts that would give rise to an occupational disease claim. Moreover, there was no statutory, regulatory, or other Labor Commission requirement that Ms. Acosta simultaneously plead all possible claims. The Labor Commission’s failure to analyze the “should have” requirement for claim preclusion demonstrated that it failed to properly apply the law in dismissing Ms. Acosta’s case. This Court should find that Ms. Acosta had no duty to simultaneously file her occupational disease claim along with her industrial accident claim.

- H. This Court Should Hold That Ms. Acosta Had No Duty To File Her Occupational Disease Claim When She Filed Her Industrial Accident Claim And That Claim Preclusion Did Not Apply To Her Facts, But That Even If It Did, Public Policy Requires The Commission To Liberally Construe Ms. Acosta's Case In Favor Of Finding Compensation.

This Court should hold that Ms. Acosta had no duty to file her separate occupational disease claim when she filed her industrial accident claim. The legislature chose to create two separate causes of action for work injuries – occupational diseases and industrial accidents – with separate requirements and separate compensation. Until and unless the legislature creates a single statute for work injuries, or otherwise subsumes these separate statutes, the Commission can not treat these claims as a single cause of action. This Court should interpret these Acts consistent with Utah's stated public policies that favor liberal construction to provide compensation for injured workers.¹⁴ As separate causes of action, there was no basis for the Commission to apply claim preclusion, and this Court should remand Ms. Acosta's claim to the Commission for a hearing on the merits.

¹⁴ See, *Vigos v. Mountainland Builders, Inc.*, 993 P.2d 207, 213 (Utah 2000) ("The purpose of the Act is to provide relief from industrial accidents. To that end, we construe the Act liberally and in favor of coverage if the statutes reasonably permit.")(internal citations omitted).

But even if claim preclusion could apply to Ms. Acosta's facts, this Court should find that it did not. This Court should apply the test set forth in *Macris & Assoc.*, and hold that Ms. Acosta had no duty to file her occupational disease claim when she filed her industrial accident claim. She "should [not] have" filed an occupational disease claim because that claim arose from separate material facts, apart from her industrial accident claim.

Ms. Acosta's facts demonstrate that it would be unjust to apply claim preclusion to bar her occupational disease claim. Every doctor who has examined Ms. Acosta case attributed her injuries to her work with Appellees.¹⁵ The ALJ in her industrial accident case awarded benefits based on cumulative trauma, but the Commission reversed because Ms. Acosta had not articulated that specific theory of industrial accident – not because her injuries were unrelated to her work with Appellees. Ms. Acosta's facts demonstrate the importance of fulfilling the public policy and purpose of the workers compensation statutes, rather than adhering to technical doctrines that serve only to cut off claims before they may be heard. Ms. Acosta's case should be decided on its merits, and not dismissed on a technicality.

¹⁵ Facts ¶¶ 2-3.

The case law demonstrates that res judicata should not be applied when it thwarts public policy. For example, in *Jacobs v. Teledyne, Inc.*,¹⁶ the Ohio Supreme Court held that res judicata should be rejected when its application would contravene overriding public policy or result in manifest injustice. In that case, an applicant who applied for total disability benefits from silicosis and was denied, was not later barred from presenting the same claim where his condition had materially worsened. The Court emphasized the important public policy underlying its workers compensation statutes, and refused to apply res judicata to bar the applicants' claim:

[F]undamental fairness should dictate such a result. While res judicata does apply to administrative proceedings, it should be applied with flexibility. The doctrine would be qualified or rejected when its application would contravene an overriding public policy or result in manifest injustice. . . . Fundamental fairness requires that such a claim be determined on its facts, not on legal technicalities. This result is consistent with this state's public policy of construing the law liberally in favor of injured employees.¹⁷

¹⁶ 529 N.E.2d 1255, (Ohio 1988) (injured worker's previously adjudicated claim for total disability for silicosis did not bar later claim for total disability).

¹⁷ Id. at 1259 (citations omitted).

Simply put, rules of judicial construction must yield to the important public policy underlying the workers' compensation statutes. The interest in promoting judicial economy by avoiding additional hearings is far outweighed by denying injured workers lifetime benefits without a hearing on the merits of their claims.

The Commission did not weigh the interests at stake; it simply concluded that claim preclusion served "vital public interests." Order at 4, Aplt. App. at 118. The Commission concluded that its decision would "merely require that parties present all their available claims and defenses at one time," even if it was not required by either Act. *Id.* While this may be an admirable legislative goal, the Commission is still bound by both Acts, and neither presently require mandatory simultaneous filings as contemplated by the Commission. This Court should reverse the Commission and hold that there is no simultaneous filing requirement, and remand Ms. Acosta's claim to the Commission for a hearing on the merits.

CONCLUSION

This Court should reverse the Labor Commission, and remand Ms. Acosta's occupational disease claim for a hearing on the merits. Occupational disease claims are separate statutory creations from industrial accident claims. The legislature has kept these claims separate and Ms. Acosta had no duty to simultaneously file these claims. This Court should hold that as separate claims, claim preclusion does not apply to Ms. Acosta's facts. Further, even if claim preclusion could apply, it would be contrary to public policy to apply the doctrine to Ms. Acosta's facts. For these reasons, this Court should reverse the Labor Commission, and remand Ms. Acosta's occupational disease claim to the Commission for a hearing on the merits.

DATED this 20th day of February, 2004.

KING, BURKE & SCHAAP, P.C.

A handwritten signature in black ink, appearing to read "Richard R. Burke", written over a horizontal line.

Richard R. Burke

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CERTIFICATE OF MAILING

I certify that on the 20th day of February, 2004, I mailed a true and correct copy of the foregoing BRIEF, first class postage prepaid, to the following:

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