

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 : Reply Brief

Utah Court of Appeals

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IN THE COURT OF APPEALS  
FOR THE STATE OF UTAH

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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
	)	

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ORAL ARGUMENT IS REQUESTED **FILED**  
**UTAH APPELLATE COURTS**  
**APR - 5 2004**

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## ARGUMENT

### **I. Ms. Acosta's Occupational Disease Claim Should Be Heard Because The Claim Preclusion Requirements Were Not Satisfied.**

#### **A. Ms. Acosta's Occupational Disease Claim Is Not Barred Because It Was Not the Same Claim As Her Industrial Accident Claim.**

The “same claim” requirement was not met because occupational diseases and industrial accidents are not the same claims. As more fully set forth in Ms. Acosta's brief, the Utah Occupational Disease Act (“UODA”) gives rise to occupational disease claims, while the Utah Worker's Compensation Act (“UWCA”) gives rise to industrial accident claims, and each claim has its own unique requirements. Aplt. Brief at 7-9. The facts show that Ms. Acosta plead an industrial accident claim in 2000, then plead an occupational disease claim in 2002, and that she plead different material facts in both claims. Aplt. Brief at x-xi (Compare para.1 with para.9).

In contrast, Appellee's brief spends eight pages laboring over the “same claim” requirement, suggesting that industrial accident claims and occupational disease claims may be the same claim. Respondent's mistakes stem from mischaracterizing Ms. Acosta's cause of action for occupational disease.

Respondent argued that Ms. Acosta's occupational disease claim "relates to the same subject matter or legal right – Ms. Acosta's entitlement to workers' compensation medical and disability benefits as part of her work at Salt Lake Regional" Aple. Brief at 15-16 (statutory citation omitted).

This statement embodies two fundamental flaws in Respondent's position:

1) The award of compensation and benefits is the same for both industrial accident and occupational disease claims, so the claim must be the same; and, 2) Because the award is the same, the requirements for entitlement the award are the same. As to the first faulty premise, it is tantamount to arguing that personal injury claims are the same as breach of contract claims because both claims may result in an award of money damages. As to the second faulty premise, Ms. Acosta has no right to compensation "as part of her work" for Appellees. Instead, Ms. Acosta only has a right to compensation if she can plead and prove entitlement under either statute, because she was injured in an industrial accident, or because she was injured from an occupational disease; Ms. Acosta has no separate right to compensation as part of her work for Appellees.



Appellee's brief concluded that the claims were the same because they "litigate the same subject matter . . . simply under a different theory of relief." Aple. Brief at 21. In contrast, the subject matter at issue is statutory, and the Legislature has created two separate claims – industrial accidents and occupational diseases – over which the Labor Commission has jurisdiction. That does not make Ms. Acosta's two separate claims the "same claim."

This Court should recognize that the Legislature created two causes of action with separate requirements, that Ms. Acosta plead separate material facts under each, and that they were not the "same claim." Because Ms. Acosta's occupational disease claim was not the "same claim" as her occupational disease, the claim was not barred by the doctrine of claim preclusion.

B. Ms. Acosta's Occupational Disease Claim Could Not Have Been Plead Under the Facts of Her First Application For Industrial Accident.

Nor do Ms. Acosta's facts meet the "could have" been raised requirement of claim preclusion. The facts show that Ms. Acosta's first application for hearing described a single injury event – lifting a baby out of an isolette. Aplt. App. at 1.

As set forth in her brief, occupational disease claims happen gradually over time. Aplt. Brief at 7-9.<sup>1</sup> Ms. Acosta “could [not] have” raised an occupational disease theory under the facts she plead.

Nor could Ms. Acosta have plead an occupational disease claim on the Commission’s own “Industrial Accident Only” Form. Aplt App at 1. The Commission’s arguments about an unarticulated “custom or practice” of permitting alternative pleading is simply post-hoc justification for denying her current application without a hearing on the merits. Instead, the facts show that Ms. Acosta could not have raised an occupational disease theory without pleading different material facts, and therefore the claim preclusion requirements are not satisfied. This Court should remand Ms. Acosta’s occupational disease claim for a hearing on the merits.

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<sup>1</sup> There are exceptions that do not apply here. For example, a single injurious exposure to asbestos may give rise to an occupational disease claim. Luckau v. Board of Review of Indus. Comm’n, 840 P.2d 811 (Utah App 1992), cert. denied, 853 P.2d 897 (Utah 1983).

C. Ms. Acosta's Facts Do Not Show That She "Should Have" Raised An Occupational Disease Claim When She Filed Her Accident Claim.

Ms. Acosta "should [not] have" raised an occupational disease claim because it arose out of separate facts not at issue in her first hearing. Appellee suggests that all theories arising out of the same operative facts must be plead at once. Aple. Brief at 25. Ms. Acosta does not dispute that general principle, but it does not apply to her case. Instead, the facts of her industrial accident case did not give rise to an occupational disease claim. Consequently there is no factual basis to argue that she "should have" plead an occupational disease claim.

Moreover, Appellee's brief concedes that neither the UWCA, nor the UODA require injured workers to simultaneously file all claim against the same employer. Aple. Brief at 25. Yet, this is precisely Appellee's position. Appellee suggests that injured workers should file all claims that arise out of the same "transaction or occurrence." But the only common "transaction or occurrence" between Ms. Acosta's two separate claims was her employment with the same employer. As set forth more fully below, requiring employees to simultaneously file all potential claims with the same employer would be unworkable, and create

new problems that do not presently exist.

D. Appellant's Position Is Poorly Defined, Would Violate The Statute,  
And Would Make Litigation More Complex and Burdensome.

Appellee's implicit suggestion to simultaneously bring all claims between the employee and the employer is confusing and ill-defined. Appellee suggests that employees must file all claims arising out of the same "transaction or occurrence," Aplt. Brief at 19 and 25, but in Ms. Acosta's case, the only common transaction or occurrence between her industrial accident and occupational disease was her employment relationship. If there is another common "transaction or occurrence" between Ms. Acosta's industrial accident and occupational disease claims, Appellees have failed to identify it for this Court. But if that is Appellee's position, it would violate the Act and create new problems for litigants and Judges at the Labor Commission.

Under Appellee's position, employees would have to file all claims with the same employer, even where there were no disputes. Presently, the statute only requires injured workers to file "[t]o contest an action of the employee's employer or insurer." Utah Code Ann. § 34A-2-801(1)(a). Requiring employees to file all

claims against the same employer, regardless of the dispute, would increase the complexity of litigation, and unnecessarily consume limited judicial resources.

Also, where an employee failed to list a claim or potential claim, Appellee's position would require Judges to dismiss claims on the merits without a hearing, in violation of the Act. Utah Code Ann. § 34A-2-417(4)(b) states: "The Division of Adjudication may dismiss a claim: (i) without prejudice; or, (ii) with prejudice only if: (A) the Division of Adjudication adjudicates the merits of the employees' entitlement to the compensation claimed in the Application for Hearing; or (B) the employee fails to comply with (2)(a)(ii)." Respondent's argument is incompatible with the plain language of the statute, and contrary to the legislature's stated requirement that workers' compensation claims must be heard on the merits.

For all of the foregoing reasons, this Court should ignore Respondent's suggestion that mandatory claim filing should be triggered by a "transaction or occurrence" outside the industrial accident or occupational disease claim that is plead by the injured worker.

II. There Is A Single Rule of Liberal Statutory Construction In Workers' Compensation Cases, And It Is Irrespective Of Legal Counsel.

Appellees cite no authority for its argument that liberal construction should differ based on who represented the injured worker. Aple. Brief at 26. This argument ignores the purpose of the Act, which is to interpret the statute so that it pays benefits to injured workers, if the statute permits. Vigos v. Mountainland Builders, Inc., 993 P.2d 207, 213 (Utah 2000). This Court should refrain from adopting a sliding scale of statutory construction based on which lawyer represented the injured worker, or if the injured worker proceeded pro se.

## **CONCLUSION**

This Court should reverse the Commission's conclusion that Ms. Acosta's occupational disease claim was barred by the doctrine of claim preclusion. All three requirements must be present to apply the doctrine, but none are present in Ms. Acosta's case: 1) Her industrial accident and her occupational disease claim are not the "same claim" because they arise from separate statutes with different operative facts; 2) She "could [not] have" and "should [not] have" raised her occupational disease claim under the facts she plead in her industrial accident claim because her occupational disease claim arose under different material facts that were not at issue. There is no "transaction or occurrence" that was common to Ms. Acosta's claims except for her continued employment with Appellant, and mere employment can not form the basis for filing workers' compensation claims.

Ms. Acosta's occupational disease claim should be heard on the merits, as required by the statute. Her claim should not be barred for technical reasons that are based on common law that does not apply, or that violates the UODA.

DATED this 5<sup>th</sup> day of April, 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

*Attorneys for Petitioner/Appellant*



CERTIFICATE OF MAILING

I certify that on the 5<sup>th</sup> day of April, 2004, I mailed a true and correct copy of the foregoing REPLY BRIEF, first class postage prepaid, to the following:

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