# COMMENT

## CONFLICT OF LAWS AND THE INDIANA WORKMEN'S COMPENSATION ACT

When an employment contract involving both Indiana and foreign elements comes before the Indiana Appellate Court, two particularly vexatious problems of conflict of laws may confront that body in applying the Indiana Workmen's Compensation Act. The more frequent question involves a determination of whether a particular employment relationship is covered by the Indiana statute, a determination made more difficult by the failure of that statute to define the contracts to which its coverage extends. A second and less familiar question concerns the possibility of an employee's recovering successive awards for the same injury, under both the Indiana Workmen's Compensation Act and a similar statute of another state.

This comment will examine these two distinct, although related, questions. First an attempt will be made to discover those judicial principles which have determined what contracts of employment are covered by the Indiana act and if the statutory coverage is found to be inadequate to propose methods by which that coverage can be extended. Secondly, attention will be directed to the extraterritorial effects which the act of one state, or an award thereunder, may have on compensation awards of other states.

### I

The Indiana Workmen's Compensation Act[1] provides that "Every contract of service between any employer and employee *covered by this act* . . . shall be presumed to have been made subject to the provisions of this act."[2] Because the statute does not further describe the contracts of service involved, the task of formulating legal principles which will single out those contracts has fallen to the Indiana Appellate

1. IND. STAT. ANN. §§ 40-1201 to 40-1704 (Burns Repl. 1940). The first workmen's compensation act was passed in Indiana in 1915 (Ind. Acts 1915, c. 106, §§ 1-82). Numerous amendments were made to the act, and in 1929 it was totally revised (Ind. Acts 1929, c. 172, §§ 1-76).
2. IND. STAT. ANN. §§ 40-1204 (Burns Repl. 1940). (Italics supplied).

Court.[3] The problem of coverage arises of course only when extraterritorial factors are present (*e.g.*, formation of the contract outside the state, or performance outside the state, or residence of the parties outside the state[4]) since a contract made and performed wholly within Indiana between Indiana residents clearly falls within the act and presents no conflict of laws question.

In a typical conflict of laws case involving contract litigation[5] the problem of determining which state's laws will govern can be solved by applying one of the following rules: (1) That jurisdiction's law which the parties intended should apply is the governing law; (2) The law of that jurisdiction wherein the contract was performed is the governing law; (3) The law of that jurisdiction in which the contract was formed is the governing law.[6] Although the Indiana Appellate Court has not always been consistent in its choice of one of these rules in its workmen's compensation decisions, the cases indicate the court favors the second rule —that the law of place of performance controls.[7]

In the leading case of *Hagenbeck & Great Wallace Show Co. v. Randall*[8] an employment contract was formed in Ohio by the circus company, an Indiana corporation, for work to be performed in Indiana and certain other states. The em-

3. The Workmen's Compensation Act provides for an appeal from an award of the Industrial Board "to the Appellate Court for errors of law under the same terms and conditions as govern appeals in ordinary civil actions." IND. STAT. ANN. § 40-1512 (Burns Repl. 1940). The Supreme Court of Indiana held, in Warren v. Indiana Telephone Co., 217 Ind. 93, 26 N. E.2d 399 (1939), that the jurisdiction of the appellate court was not exclusive, and that a transfer to the supreme court was possible. See 16 IND. L. J. 397 (1941). However, as a matter of practice, the appellate court is the judicial body which handles the preponderance of the appealed compensation cases.

4. The Indiana act expressly provides that in order to recover an award in Indiana it is not necessary that the injury or death resulting from the injury occur in Indiana. IND. STAT. ANN. § 40-1220 (Burns Repl. 1940). *See* Ben Wolf Truck Lines v. Bailey, 102 Ind. App. 208, 1 N. E.2d 660 (1935).

5. Workmen's compensation statutes are generally phrased in terms of contract liability.

6. STUMBERG, CONFLICT OF LAWS 201-211 (1937); GOODRICH, CONFLICT OF LAWS 274-280 (2d ed. 1938). See also Beale, *What Law Governs the Validity of a Contract*, 23 HARV. L. REV. 260 (1910).

7. Elkhart Sawmill Co. v. Skinner, 111 Ind. App. 695, 42 N. E.2d 412 (1942); Calkins v. Service Spring Co., 103 Ind. App. 257, 7 N. E.2d 549 (1936); Bement Oil Corp. v. Cubbison, 84 Ind. App. 22, 149 N. E. 919 (1925).

8. 75 Ind. App. 417, 126 N. E. 501 (1920).

ployee was killed in Indiana while performing his duties. Although the parties had stipulated that the law of the District of Columbia should govern the terms of the contract the Indiana court affirmed the compensation award, finding that the Indiana act was superimposed upon the Ohio contract because the employer was an Indiana corporation. In refusing to accept the rule that the intention of the parties determined the governing law the court indicated its preference for the place of performance rule. Subsequently that rule was affirmatively applied in *Johns-Manville v. Thrane,*[9] where an award was allowed under a contract formed in Illinois to be performed in Indiana. In a third case recovery

9. 80 Ind. App. 432, 141 N. E. 229 (1923). ". . . we hold that a contract made in one state in contemplation of performance in another, is subject to the law of the state in which it is to be performed." *Id.* at 434.

An inclination to depart from this principle appears in the case of Leader Specialty Co. v. Chapman, 85 Ind. App. 296, 152 N. E. 872 (1926). There the court said by way of dictum that where a contract of service is to be performed wholly outside the state a stipulation by the parties that the provisions of the Indiana act should apply will be effective. This statement was a complete gratuity since there was no such stipulation in the contract. In its absence the court assumed the parties contracted with reference to the law of the place of performance—an application of the conflicts rule of "intent of the parties."

And an uncritical allegiance to the rule was responsible for the unusual invocation of the "privileges and immunities" clause of the United States Constitution in Bement Oil Corp. v. Cubbison, 84 Ind. App. 22, 149 N. E. 919 (1925). The court held the Indiana act inapplicable to an employee injured outside the state in the course of his employment under a contract neither made nor to be performed within Indiana. The employer's principal place of business was in Indiana and the employee was an Indiana resident, but the court refused to allow that fact to control. To do so, the court said, would be granting rights to a citizen of this state which would not, under the same facts, be granted to a citizen of another state; *i.e.*, an Illinois resident, for example, could not recover under the Indiana act if no work was performed in Indiana and the contract was not made in Indiana. The court's only authority for its conclusion that a nonresident employee would be barred from recovery under the Indiana act, absent execution or performance of the contract in Indiana, was the case of Quong Ham Wah Co. v. Ind. Acci. Comm'n, 184 Cal. 26, 192 Pac. 1021 (1920). That case only holds that a workmen's compensation act cannot deny its benefits to nonresidents who are injured within the state and at the same time grant its benefits to residents who are injured outside the state without violating the privileges and immunities clause of the Federal Constitution. Not only is that case itself supported by very slight authority, see Note, 12 A. L. R. 1207 (1921), but there was no showing before the Indiana court that the Indiana act was discriminatory. Moreover, the Indiana act specifically provides for compensation even though the injury occurs outside the state. *Cf.* note 4 *supra.*

was denied on the sole ground that no performance within Indiana was contemplated.[10] It therefore appears that the conflict of laws rule requiring partial performance within the state has been adopted by the Indiana court as one of the principles which determines whether an award will be available under the Indiana act for a given contract of service.[11] Under this rule if no performance occurs within Indiana the Indiana act will not apply even though both parties to the contract were Indiana residents.

The Indiana court apparently has not considered the performance principle alone a sufficient basis to justify application of the act. Instead the court has created a second principle which requires that the employer be "localized" in Indiana before the act will apply. This requirement is defined in an appellate court exposition of its reasons for holding localization necessary: ". . . Indiana cannot regulate the conduct of citizens of foreign states . . . and the language of said section as to employers and employees who shall be deemed to have accepted its provisions, manifestly was intended only to apply to such persons as were residents of this state . . . or, maintained an office and place for doing business within the state."[12] The requirement of localization has

10. Elkhart Sawmill Co. v. Skinner, 111 Ind. App. 695, 42 N. E.2d 412 (1942). There the employee was a Michigan resident, the contract was formed in Michigan, and the employer was a resident of Indiana.

11. *See* Shelby M'f'g Co. v. Harris, 112 Ind. App. 627, 44 N. E.2d 315 (1942); Calkins v. Service Spring Co., 103 Ind. App. 257, 7 N. E.2d 54 (1936). This requirement need not be as restrictive as it seems since "performance" could be broadly interpreted. At least one case has held that a salesman whose territory was in Michigan but who was required to attend a sales meeting in Indiana was covered by the act. *See* Fisher v. Mossman-Yarnelle Co., 105 Ind. App. 22, 13 N. E.2d 343 (1938). On this point, one Indiana case is either inconsistent or it broadens the requirement to include performance outside the state if it is "adjunct" to performance in Indiana. In Premier Construction Co. v. Grinstead, 91 Ind. App. 163, 170 N. E. 561 (1930), a resident of Kentucky contracted in Indiana to do work in Indiana, Kentucky, Illinois and elsewhere. The injury occurred in Kentucky, and in a proceeding under the Indiana act the court held that the Indiana Industrial Board did not have jurisdiction because the work in Kentucky was not "adjunct" to an Indiana project. There has been no further definition of the meaning of "adjunct."

12. Darsch v. Thearle Duffield Co., 77 Ind. App. 357, 360, 117 N. E. 531 (1922). *Cf.* Bishop v. International Sugar Feed Co., 87 Ind. App. 509, 162 N. E. 71 (1928); Norman v. Hartman Furniture Co., 84 Ind. App. 173, 150 N. E. 416 (1926). *But see* Johns-Manville, Inc. v. Thrane, 80 Ind. App. 432, 141 N. E. 229 (1923). There a contract was formed in Illinois for performance in Illi-

also been justified on the ground that a foreign employer could not be presumed to have accepted the act's provisions.[13] However, no reason has been given which would explain why one who contracts either within or without Indiana for performance in Indiana should not be presumed to have accepted the provisions of an Indiana statute regulating this vital aspect of an employer-employee relationship. The effect of this judicially interpolated requirement of localization is to restrict the coverage of the act so that an award will be denied an Indiana employee who performs all his work within Indiana but whose employer is not localized in Indiana. Moreover the requirement has placed Indiana in the inconsistent positions of affirming the conflicts rule of place of performance in order to hold the Indiana act inapplicable to a contract performed wholly without the state,[14] yet denying the appropriateness of that same rule when the contract is to be performed within Indiana if the employer is not localized in Indiana.[15]

This brief analysis of the opinions dealing with the coverage of the Indiana Workmen's Compensation Act reveals that that act fails to protect resident employees in two situations:

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nois, but the employee was later sent to Indiana to perform. The employer, a New York corporation, had complied with the statutes permitting foreign corporations to do business in Indiana. The court implied a new contract when the employee was sent to perform in Indiana and held that that contract was covered by the Indiana act because the employer's qualification to do business in Indiana provided sufficient localization. The earlier *Darsch* case was distinguished on the ground that there one employer ". . . had not localized itself, or qualified to do business in the state, and, as far as the record shows, had no place of business in the state." *Id.* at 435.

The cases have said that "localized" means qualification to do business in Indiana; appointment of a legal agent; maintenance of a place of business within the state; or, perhaps, ownership of property within the state. But the term at best is indefinite. It is arguable that hiring a salesman to perform in Indiana should be sufficient to localize the employer.

13. Smith v. Menzies Shoe Co., 98 Ind. App. 132, 188 N. E. 592 (1934). Here the employer was a foreign corporation with an office in Chicago where the contract was made. The employee, a salesman, had Indiana as his territory. In a proceeding under the Indiana act he was held to be outside its coverage.

14. *See* Johns-Manville v. Thrane, 80 Ind. App. 432, 141 N. E. 229 (1923).

15. *See* Darsch v. Thearle Duffield Co., 77 Ind. App. 357, 117 N. E. 531 (1922).

(1) A resident employee is not within the scope of the statute, even if all the performance of the contract is to take place in Indiana, if his employer is not localized.[16]

(2) A resident employee is not within the scope of the statute, even if his employer is localized, if all the performance is to take place outside the state.[17]

The court has frequently announced its appreciation of the Workmen's Compensation Act's purpose.[18] Failure to accord all resident employees protection would seem to have stemmed from the court's wish to avoid any possible question which might be presented by the conceded due process requirement that Indiana must have some connection with the parties affected by the compensation act before that act can be imposed upon a contract of employment.[19] But it is difficult to accede to any position which would maintain that Indiana cannot grant the protection of its statute to all resident employees without being guilty of insufficient deference to the requirements of due process. It therefore becomes pertinent to inquire how the two foregoing gaps in the Indiana act may be remedied. Postponing consideration of the obvious possibility of legislative amendment, the merits of several devices available to the appellate court may be examined.

Accepting the requirements of performance within the state and localization of the employer, resident employees who perform within the state can be brought within the act's coverage by giving new content to the word "localization." Operating within traditional concepts of agency the court might reason that since the employee is performing *for* his employer, his performance is sufficiently attributable to

16. *Cf.* Smith v. Menzies Shoe Co., 98 Ind. App. 132, 188 N. E. 592 (1934). It need hardly be pointed out that in such a situation the employee would likewise be unable to recover under the act of his employer's state if it, like the Indiana act, required at least partial performance within the state.

17. Similarly, here, the employee will be precluded from any award if the state of performance requires something more than that performance for its act te apply, as, for example, that the contract be formed within that state.

18. *See e.g.*, Kunkler v. Mauck, 108 Ind. App. 98, 103, 27 N. E.2d 97, 99 (1939); *In re* Bowers, 65 Ind. App. 128, 132, 116 N. E. 842, 843 (1917).

19. *See* Home Insurance Co. v. Dick, 281 U. S. 397 (1930).

his employer-principal[20] to justify a holding that the employer is localized. But this modification of the localization requirement would not cure the second of the two situations of non-coverage, *i.e.*, the resident employee whose performance was wholly outside Indiana would not be covered by the act.

To provide for the employee performing outside Indiana the court might discard the place of performance rule and adopt the rule of place of formation.[21] An early Indiana case points in this direction.[22] In that case the contract was formed in Indiana between a resident employer and a resident employee. The case does not indicate whether performance in Indiana was contemplated. The court stated that ". . . the employee's right to compensation arises out of the contract. This right, being contractual, accompanies the employee wherever he goes and abides with him until the contract of service is terminated."[23] But this rule would protect the resident employee who performs out of state only if he entered into his contract within the state. Further, it would not protect a resident employee who contracted outside the state for performance within. Hence endorsement of the rule of place of formation would not work a satisfactory solution, but would only succeed in substituting new inadequacies for those which now exist.

Another possible means of extending the act's coverage while still permitting adherence to the place of performance rule would be the adoption of Wisconsin's fiction of "constructive status." As worked out by Wisconsin courts, this device gives a resident employee a constructive status within the state until he has acquired an "actual status as an employee in some other state."[24] But this fiction will not protect the resident who performs outside the state since he thereby loses his constructive status. The fiction then is

20. *Cf.* International Shoe Co. v. Washington, 326 U. S. 310 (1945).
21. See discussion *supra* p. 3.
22. Hagenbeck & Great Wallace Show Co. v. Leppert, 66 Ind. App. 261, 117 N. E. 531 (1917).
23. *Id.* at 267, 117 N. E. 533.
24. Dwan, *Workmen's Compensation and the Conflict of Laws—The Restatement and Other Recent Developments*, 20 MINN. L. REV. 19, 29 *et seq.* (1935). Constructive status was later said to mean that the services were being constructively performed within Wisconsin.
"Status" as a test of sufficient state interest was formulated by the United States Supreme Court in Cudahy Packing Co. v. Paramore, 263 U. S. 418 (1923).

unsatisfactory because it fails to remedy the second of the gaps which exists in the act's coverage.

Finally, if the problem of coverage is to be solved judicially, the theory which makes choice of law depend upon a state's "contacts" may be suggested.[25] Indeed there is precedent in Indiana under which this concept could be applied to workmen's compensation cases, bringing the presently excluded situations within the act's protection. In a rather recent conflicts-contract case involving a cognovit note[26] the Indiana Supreme Court tentatively stated the contact theory as follows: "The Court will consider all acts of the parties touching the transaction in relation to the several states involved and will apply as the law governing the transaction the law of that state with which the facts are in most intimate contact."[27] Under this theory the Indiana act undoubtedly could be held to cover those very situations which at present the appellate court deems without the scope of the act.

Since the deficiencies of the act *can* thus be remedied by judicial use of the contact device, it would seem that the matter might be left in the court's hands. But several factors lead to the conclusion that the problem ought to be dealt with by the General Assembly by way of amendment. In the first place curative action, particularly in the workmen's compensation field, is most appropriately a legislative problem. Before the enactment of workmen's compensation laws an estimated 80 per cent of employee's personal injury actions were unsuccessful.[28] Even in the successful cases a substantial part of the recovery was consumed in lawyers' fees, doctors' bills and other expenses. Legislative action was necessary to shift the financial burden from the individual to industry as a whole because the courts, bound by stare decisis and the common law defenses to tort actions, refused to take the initiative in molding the law to meet the demands of a highly industrialized society. Additional legislative action is necessary again today because statutorily or judi-

25. See CHEATHAM, DOWLING, GOODRICH AND GRISWOLD, CASES AND MATERIALS ON CONFLICT OF LAWS, 440 *et seq.* (2d ed. 1941).
26. Barber v. Hughes, 223 Ind. 570, 63 N. E.2d 417 (1945).
27. *Id.* at 586, 63 N. E.2d 423. The court stated the rule merely as a test of the correctness of its conclusion and did not adopt it.
28. HOROWITZ, INJURY AND DEATH UNDER WORKMEN'S COMPENSATION LAWS, v (1944).

cially created exclusions, exemptions and exceptions have limited the scope of present workmen's compensation acts so that half the normal working population is still not protected.[29] Thus the legislature is the traditional body to provide reform. Further the limited coverage accorded compensation acts in part results from the fact that courts, as has the Indiana court, deal with workmen's compensation cases as a contract problem, and are therefore faced with the complexities abounding in the contract area of conflict of laws. The legislature is not so likely to be hampered by the limiting impact of legal doctrines upon the central social fact involved, *viz.*, the fact that some employees are not given the protection they are entitled to demand. Finally, legislative revision may be more efficacious than judicial revision, since apparently[30] only a small percentage of the compensation cases go beyond the Industrial Board to the appellate court. As a consequence it is quite possible that many claimants do not receive awards because of the Board's misinterpretations or misapplications of the sometimes confusing and inarticulate decisions of the appellate court. Legislative amendment, explicitly extending coverage, would provide the Industrial Board with clearer, more authoritative, and more expeditious standards to guide it in granting awards to those employees in the two categories which are at present unprotected by the Indiana statute.

## II

A draftsman who would undertake to amend the Indiana Workmen's Compensation Act in an effort to give it the greatest possible coverage would do well to remember that he operates in a field which may not be solely domestic. Other states, too, grant awards under their statutes. As the coverage of a state's act is extended the possibility of conflicting awards increases, and the effect of an award by one state on the potential award of another state must be considered. The problem may be illustrated by asking two questions: Can an "Indiana employee"[31] who has recovered an

29. *Id.* at v. The estimate was presumably valid as of 1944, the date of publication of the book.

30. No information could be obtained from the Indiana Industrial Commission on the number of awards which are appealed.

31. By "Indiana employee" is meant one who comes under the Indiana act as presently judicially defined.

award in another state, for example Illinois,[32] recover an additional award for the same injury in Indiana, if a credit is given for the amount of compensation received in Illinois?[33] And, conversely, can an Indiana employee who has received an award in Indiana be precluded by the Indiana award from recovering an additional award for the same injury in Illinois?

These questions have particular pertinence for Indiana lawyers because, so far as can be learned,[34] no cases raising these issues have come before the Industrial Board; nor are there any Indiana judicial decisions on the subject. The final determination of the extraterritorial effects of workmen's compensation statutes and awards thereunder lies with the United States Supreme Court and its application of the full faith and credit clause of the Federal Constitution.[35] That Court's most recent consideration of the problem occurred in the now familiar *McCartin* case.[36]

The *McCartin* case held that a prior Illinois award of

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32. Illinois, of course, must have a connection with the employment contract or employee-employer relationship. *Cf.* note 19 *supra.* An "Indiana employee" would be within the Illinois Workmen's Compensation Act if his Indiana employer was a corporation which also did business in Illinois, and if the contract of employment was made in Illinois. See ILL. STAT. ANN. c. 143, § 20 (Cum. Supp. 1947).

33. For example, the maximum award in Illinois for the loss of a thumb is 50% of the average weekly wage for 70 weeks, while in Indiana it is 55% of the average weekly wage for 60 weeks. Conceivably the Indiana award may be for a larger amount. *Compare* ILL. STAT. ANN. c. 143, § 23(e) (Cum. Supp. 1947) *with* IND. STAT. ANN. § 40-1303(a) (Burns Repl. 1940).
If the employee has received an award in another state from a different employer, this problem does not, of course, arise. *See* Shelby M'f'g Co. v. Harris, 112 Ind. App. 627, 44 N. E.2d 315 (1942).

34. Inquiries made to the Indiana Industrial Board elicited no information either as to whether these problems have been presented to the board or as to how it might deal with them should they be presented.

35. ". . . [no state] is bound, apart from the compulsion of the full faith and credit clause, to enforce the laws of the other. . . . This Court must determine for itself how far the . . . clause compels the qualification or denial of rights asserted under the laws of one state, that of the forum, by the statute of another stato. . . . But there would seem to be little room for exercise of that function when the statute of the forum is the expression of domestic policy, in terms declared to be exclusive in its application to persons and events within the state." Pacific Employers Ins. Co. v. Industrial Acci. Comm'n, 306 U. S. 493, 500-503 (1939).

36. Industrial Commission of Wisconsin v. McCartin, 330 U. S. 622 (1947), 23 IND. L. J. 214 (1948).

compensation did not, as a matter of constitutional law, bar the injured employee from recovering an additional award for the same injury from the Wisconsin Industrial Commission, where a credit was given for the previous Illinois award. In the earlier *Magnolia* case[37] an award had been recovered under the Texas act, which award was held to bar subsequent proceedings brought under the Louisiana act for the same injury. Although *McCartin's* result was directly contrary, *Magnolia* was not overruled. Instead the Court distinguished the cases primarily on an alleged difference in statutory terminology.[38] The Court said that, unlike the Texas statute, neither the Illinois statute nor the decisions under it evidenced an intention that the Illinois award be exclusive, so as to preclude recovery in another state for injuries received there in the course of the Illinois employment.[39]

Assuming the distinction in statutory terminology relied upon by the Supreme Court is determinative, to which statute does the Indiana act correspond, and what effect does it, and an award thereunder, have?

The Texas, Illinois and Indiana statutes include within their coverage an employee whose injury is received outside the state.[40] Each statute provides that an election to recover an award under its provisions precludes any other form of action against the employer.[41] But in none of the statutes, not even the Texas statute, is there express language of "exclusiveness" which the Supreme Court in *McCartin* said had been the controlling factor in the decision in the *Magnolia* case.[42] The one obvious distinction between the Texas statute

37. Magnolia Petroleum Co. v. Hunt, 320 U. S. 430 (1943), 19 IND. L. J. 268 (1943).

38. The secondary ground of distinction was the employee's reservation, in the Illinois award, of any rights which he might have under the Wisconsin act. No such reservation had been made in the *Magnolia* case.

39. 330 U. S. 622, 628 (1947).

40. TEX. REV. CIV. STAT. ANN. Art. 8306, § 19 (1936); ILL. STAT. ANN. c. 143, § 20 (Cum. Supp. 1947); IND. STAT. ANN. § 40-1220 (Burns Repl. 1940).

41. TEX. REV. CIV. STAT. ANN. Art. 8306, § 3 (1936); ILL. STAT. ANN. c. 143, § 21 (Cum. Supp. 1947); IND. STAT. ANN. § 40-1206 (Burns Repl. 1940).

42. See the Court's explanation of its *Magnolia* decision in the *McCartin* case: "The Court there found that the compensation award under the Texas Workmen's Compensation Law was made explicitly in lieu of any other recovery for injury to the employee, precluding even a recovery under the laws of another state. . . . And since the Texas award had the degree of finality contem-

on the one hand and the Illinois and Indiana statutes on the other, is the unusual Texas provision which prohibits recovery under the Texas act by an employee who has recovered in the state where the injury occurred.[43] It has been suggested that this provision was an influential factor in determining the Court's decision in *Magnolia*,[44] *i.e.*, since Texas considered a foreign award a bar to recovery under its statute, it must also consider its award a bar to a subsequent foreign recovery. On the level of this distinction, then, the *McCartin* rule applies with equal force to an Indiana award. Indiana can by judicial or statutory pronouncement interpolate into the Indiana act a policy favoring exclusiveness, and an Indiana award will thereby bar additional awards in all other states. If Indiana makes no such policy statement, then other states may, if they choose,[45] give an additional award under their own statutes with a credit for the prior Indiana award.[46] And, conversely, Indiana should be free to grant or refuse to grant an additional award to an employee who has recovered in a foreign jurisdiction if that foreign award is not "exclusive."[47]

Numerous explanations have been given for the *McCartin* decision,[48] the most realistic, if least "legal," implying that the Court of 1947 regarded workmen's compensation cases more favorably than did the Court of 1943.[49] The line of Supreme Court cases[50] culminating in the *McCartin* doctrine may be explained on a ground advanced by the Court itself in *Magnolia*. There the Court suggested a distinction under the full faith and credit clause between the effect to be given a *statute* of a state as compared with a *judgment*.

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plated by the full faith and credit clause, it was held that Louisiana was constitutionally forbidden from entering a subsequent award under its statute." 330 U. S. 622, 626, 627 (1947).

43. TEX. REV. CIV. STAT. ANN. Art. 8306, § 19 (1936).

44. Note, 33 CORN. L. Q. 310, 315 n.29 (1947).

45. Such a choice rests entirely within that state's domestic policy and is not a constitutional question. Hence the Illinois court's refusal to apply its own statute where a proceeding was also pending under the Indiana statute would probably not occur again. *See* Cole v. Industrial Commission, 353 Ill. 415, 187 N. E. 520 (1933).

46. See 23 IND. L. J. 214, 218 (1947); 33 CORN. L. Q. 310, 313 (1947); 60 HARV. L. REV. 993 (1947).

47. See note 34 *supra*.

48. See note 45 *supra*. And see 47 COL. L. REV. 846 (1947).

49. 33 CORN. L. Q. 310, 312 (1947).

The forum need not give credit to an allegedly exclusive foreign statute which is raised as a defense to a proceeding under the forum's own workmen's compensation statute.[51] Although the statutes may conflict, the interest of the foreign state is not superior to the interest of the state of the forum. But where an *award* has been given, the interest of the state which gave the award may override the interest of the forum. Therefore even though the forum favors an additional award, it will be precluded from granting it by virtue of the full faith and credit clause.[52] This distinction the Court drew both from the language of the full faith and credit clause and the Statute of 1790,[53] and from the Court's then conception of the office of the full faith and credit clause.[54] As to most litigation the distinction may make sense. However as the dissent in *Magnolia* pointed out, the broad coverage intended to be given under workmen's compensation statutes is partly defeated if the distinction between a workmen's compensation statute and an award under that statute is made explicit.[55] The dissent of *Magnolia* may, through *McCartin*, represent the view of the Court today.

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50. For a good brief analysis of these cases see 33 CORN. L. Q. 313 *et seq.* (1947).

51. *Compare* Alaska Packers Association v. Industrial Acci. Comm'n, 294 U. S. 532 (1935) (where California, the state of employment, gave an award to an employee injured in Alaska) *with* Pacific Employers Ins. Co. v. Industrial Acci. Comm'n, 306 U. S. 493 (1939) (where California, the state of injury, gave an award to a Massachusetts employee).

52. Industrial Commission of Wisconsin v. McCartin, 330 U. S. 622 (1947); Magnolia Petroleum Co. v. Hunt, 320 U. S. 430 (1943).

53. *See* 320 U. S. 430 at 437 (1943).

54. The Court said the purpose of the full faith and credit clause, like the commerce clause, was that of a nationally unifying force, establishing the "salutary principle" of the common law that a litigation once pursued to judgment is conclusive of the rights of the parties in every other court, so that a cause of action merged in a judgment in one state is likewise merged in every other. *Id.* at 439. *Cf.* 60 HARV. L. REV. 993 (1947).

55. "The argument of state interest is hardly less compelling when Louisiana chooses to reject as decisive of the issues of the case a foreign judgment than when it rejects a foreigu statute. . . . Where two states both have a legitimate interest in the outcome of workmen's compensation litigation, the question of whether the second state . . . should abide by the decision of the first is a question of policy which should be decided by the state legislatures and courts. . . . State laws vary, and uniformity is not the highest value in the law of workmens' compensation. . . ." 320 U. S. 430, 456, 459 (1943).