IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 22-0329

MICHAEL D. RUBLE et al.

Petitioners

v.

RUST-OLEUM CORPORATION et al.

Respondents

Hon. Paul T. Farrell, Judge
Circuit Court of Cabell County
Civil Action No. 19-C-127

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INTRODUCTION

Notwithstanding exhaustive administrative workers' compensation proceedings in which it was definitively determined that Petitioner Michael Ruble[1] did not suffer any workplace injury, Ruble seeks to relitigate the same claim against nearly two dozen third-party chemical companies. He has already had his full and fair opportunity to litigate his case, so collateral estoppel precludes relitigation. In the prior proceedings, Ruble could not prove that he suffered any injuries that were caused by exposure to chemicals in his workplace. His workers' compensation claim was rejected three times at the administrative level as detailed in the exhaustive record. His claim was rejected a fourth time when the circuit court dismissed his same claim based on collateral estoppel, which is the subject of this appeal. Ruble wants to relitigate causation, but he does not contest any elements of collateral estoppel. He instead insists that workers' compensation proceedings cannot have any collateral estoppel effect. Ruble wants this Court's ruling to do three things for him—(1) nullify motions to dismiss, motions for summary judgment, and collateral estoppel based on his claimed entitlement to a jury trial under all circumstances, (2) interpret West Virginia Constitution based upon Arkansas' state constitution, despite this Court's prior rejection of similar constitutional language, and (3) drastically alter judicial notice.

[1] Petitioners are Michael Ruble and Brenda Ruble. This brief mostly refers to Michael Ruble as "Ruble," which is intended to include both Michael and Brenda unless otherwise indicated or clear from context.

ASSIGNMENTS OF ERROR

This appeal involves a single set of circumstances producing three questions. After getting a full and fair opportunity to litigate his claim that alleged injuries were caused by chemical exposure in the workplace in workers' compensation proceedings, which resulted in the issuance of detailed findings and rulings that there was no workplace injury:

1. Can a party relitigate the identical causation case—despite the doctrine of collateral estoppel—based on the jury trial provision of the West Virginia Constitution? *The party cannot.*

2. Can a party relitigate the identical causation case—despite the doctrine of collateral estoppel—against non-employers? *The party cannot.*

3. Can a circuit court take judicial notice of the causation-based ruling that there was no workplace injury when applying collateral estoppel? *The circuit court can.*

STATEMENT OF THE CASE

While his workers' compensation claim against his employer was pending, Ruble filed a virtually identical circuit court action against his employer and nearly two dozen third-party chemical companies that alleged the same workplace exposure, time frame, and injuries.[2] Ruble jointly and voluntarily agreed to stay the circuit court litigation pending a final decision in the workers' compensation proceedings.[3] When the workers' compensation claim was denied for lack of causation—meaning that he failed to prove that he suffered any workplace injury—Ruble voluntarily

[2] *See, e.g.*, JA 5–34, 167–197, 535–568, 805–862.

[3] JA 3, 789, 810.

dismissed his employer from the circuit court proceedings.[4] The third-party chemical company defendants—including Respondent Matrix Chemical LLC—then filed a motion to dismiss the case, arguing that the doctrine of collateral estoppel barred Ruble from relitigating the same causation case that he had definitively lost.[5] Ruble now tries to turn this into a case of constitutional proportions, and he asks this Court for a constitutional or evidentiary ruling that will end collateral estoppel.

1. RUBLE IS DENIED WORKERS' COMPENSATION BENEFITS BECAUSE WORKPLACE EXPOSURE DID NOT CAUSE INJURIES.

Based on his claimed exposure to chemicals while employed at RPM International Inc.'s facility in Lesage, West Virginia, between 1996 and 2018, Ruble applied for workers' compensation benefits.[6] That exposure, he claimed, caused him to develop sensory peripheral polyneuropathy, tremors, and weakness of distal arms and legs, dermatitis, and pneumonia.[7]

In the workers' compensation proceedings, Ruble was given a full and fair opportunity to present his claim. He had counsel, took depositions, gave his own testimony, offered witness statements, provided documentary evidence, submitted

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[4] JA 533–34.

[5] Matrix is not alone in responding to Ruble. E. I. du Pont de Nemours and Company, The Early Construction Company, Bayer Corporation, Bayer Crop Science, LP, Monsanto Company, Nouryon Functional Chemicals LLC, incorrectly named as "Akzo Nobel Functional Chemicals, LLC, a Delaware limited liability company," and Nouryon Chemicals LLC, as successor to Akzo Nobel Chemicals LLC, formerly known as Akzo Nobel Chemicals Inc., incorrectly named as "Akzo Nobel Chemicals, Inc., a Delaware corporation joins in this response. For the sake of brevity, this brief refers to "Matrix," which is meant to include all Respondents.

[6] JA 585–89, 593.

[7] *See, e.g.*, JA 589–93, 596–97.

medical records and reports, and made closing arguments, among other things.[8] Based on the evidence and arguments presented and reviewed, the claims administrator denied Ruble's application.[9] Ruble challenged the claims administrator's decision before the Office of Judges.

After considering the entire record, the Office of Judges affirmed, denying the claim. It concluded, in part, that Ruble "did not prove by a preponderance of the evidence that he developed sensory neuropathy and dermatitis in the course of and as a result of employment."[10] In fact, the Office of Judges issued a detailed twenty-five-page ruling explaining the denial of Ruble's claim for lack of causation as there was no workplace injury. Affixed to that ruling were an additional four pages that listed all the information and evidence submitted by the parties.[11] Ruble next appealed to the Board of Review. It, too, affirmed the denial of his claim.[12] Ruble did not exhaust his right to appeal to this Court, concluding the workers' compensation proceedings.

2. RUBLE IS DENIED A SECOND OPPORTUNITY TO LITIGATE CAUSATION IN THE CIRCUIT COURT PROCEEDINGS.

While the workers' compensation proceedings unfolded, Ruble filed a complaint alleging negligence, breach of warranty, strict liability, and loss of consortium claims against his former employer and a menagerie of companies—in all,

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[8] *See, e.g.*, JA 610–13 (listing record considered).

[9] JA 585.

[10] JA 609.

[11] JA 585–613.

[12] JA 616.

nearly two dozen third-party, non-employer defendants with no responsibility for the goings on at the Lesage facility—which he amended a year later to add more.[13] Meanwhile, Ruble was part of a stipulation that asked the circuit court to stay its proceedings while the workers' compensation proceedings ran their course.[14]

More than seven months after the workers' compensation proceedings ended with the denial of Ruble's claim by the Board of Review, the circuit court and Matrix finally received copies of the decision of the Office of Judges and the Board of Review's order.[15] After learning that the workers' compensation proceedings ended in an adjudication on the merits based on the lack of causation, Matrix moved to dismiss Ruble's amended complaint based on the doctrine of collateral estoppel.

A flurry of additional joinders in Matrix's motion to dismiss and motions that incorporated the arguments and authorities raised in Matrix's motion to dismiss followed.[16] In the end, all the third parties who filed joinders and motions, which constituted nearly every third party, sought dismissal based on collateral estoppel. The circuit court heard arguments on Matrix's motion—and upon consideration of the arguments, pleadings, and entire record—decided that Ruble had already been

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[13] *See* JA 5–22, 167–85.

[14] *See* JA 3, 789, 810.

[15] Ruble did not provide these rulings. Matrix learned about these rulings after it had objected to a proposed dismissal order and only because Rust-Oleum Corporation and RPM International Inc. attached these rulings to a letter relative to Matrix's objections. JA 535–68.

[16] *See, e.g.*, JA 844–45.

afforded a full and fair opportunity to argue causation in the workers' compensation proceedings and that collateral estoppel barred him from doing so again.[17]

Ruble now appeals the circuit court's decision.

SUMMARY OF ARGUMENT

Ruble does not take umbrage with the fullness or fairness of his workers' compensation proceedings. Nor does he address collateral estoppel's prerequisites. Instead, he makes three arguments that, if given effect, would nullify collateral estoppel.

He begins with a constitutional attack, saying that applying collateral estoppel to an administrative or other proceeding that does not include a jury is inconsistent with the jury trial provision of the West Virginia Constitution. But he bases that on an Arkansas case of questionable value that considered a distinct Arkansas constitutional provision that made the right to a jury trial "inviolate." Importantly, this Court has already decided that cases dealing with constitutions mandating the right to a jury trial "inviolate"—as in Arkansas—are not persuasive when analyzing West Virginia's constitution. Ruble also ignores that the United States Supreme Court has affirmed using administrative decisions to effect collateral estoppel.

Then Ruble turns to the application of collateral estoppel—a doctrine already well-established in West Virginia. The circuit court explained that Matrix had established each of the doctrine's prerequisites, but Ruble ignores that in his brief. According to him, individuals will have to choose to either apply for workers'

[17] *See, e.g.*, JA 854–55, 859.

compensation or bring a lawsuit against third parties, but that presents a false dilemma. He also claims that Matrix seeks immunity under the workers' compensation statute. It does not. Instead, Matrix simply explains—like this Court has accepted—that administrative decisions—like those produced in the workers' compensation proceedings—can collaterally estop a party from revisiting issues that have been decided. Further, Ruble drags a red herring, ignoring the common element of causation that justifies collateral estoppel and demanding the opportunity to prove the other elements of his tort claims. None of this justifies the outcome Ruble seeks.

Lastly, Ruble raises a perceived evidentiary problem with the circuit court's judicial notice of the outcome of the workers' compensation proceedings. Yet he ignores that collateral estoppel is necessarily based on the judicial notice of another proceeding's outcome.

At bottom, Ruble invites this Court to end collateral estoppel. This Court should decline that invitation.

STATEMENT REGARDING ORAL ARGUMENT & DECISION

Despite Ruble's characterization of this case, oral argument is unnecessary. This case is about collateral estoppel, which is neither novel nor constitutionally problematic. Moreover, while the specific application in the workers' compensation context by a third party may not have been before this Court before, there is nothing new about using administrative rulings to effect collateral estoppel in the context of workers' compensation cases. And the circuit court properly applied this Court's collateral estoppel framework.

ARGUMENT

Ruble raises three issues on appeal. *First*, he asserts that collateral estoppel is inconsistent with the jury trial provision of the West Virginia Constitution. *Second*, he believes that the circuit court's decision forces individuals to choose between workers' compensation claims and litigation against third parties *and* ignores that three administrative decisions found he could not prove that he suffered any injuries that were caused by his workplace exposure to chemicals. *Third*, he contends that the circuit court improperly took judicial notice of the outcome of his workers' compensation proceedings. This Court should disagree with Ruble on all grounds and preserve the doctrine of collateral estoppel.

For the most part, this Court's review is de novo, but not entirely. Evidentiary issues—like Ruble's third issue, which concerns judicial notice—are reviewed for an abuse of discretion.[18]

1. THE CIRCUIT COURT CORRECTLY CONCLUDED THAT COLLATERAL ESTOPPEL IS CONSISTENT WITH THE JURY TRIAL PROVISION OF THE WEST VIRGINIA CONSTITUTION.

Ruble begins with constitutional contentions. In his opinion, collateral estoppel is inconsistent with the jury trial provision of the West Virginia Constitution. He bases this belief on a single Arkansas case of questionable value that is problematic for several reasons.[19]

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[18] *See, e.g., Arnold Agency v. W. Va. Lottery Comm'n*, 206 W. Va. 583, 593, 526 S.E.2d 814, 824 (1999) ("Absent a few exceptions, this Court will review evidentiary and procedural rulings of the circuit court under an abuse of discretion standard.")

[19] *See Craven v. Fulton Sanitation Serv. Inc.*, 206 S.W.3d 842 (Ark. 2005).

For one, that case considered a provision in Arkansas' constitution that meaningfully differs from West Virginia's. That case was also based on Arkansas statutes that vary from West Virginia's. And the administrative proceedings in Arkansas did not make findings concerning the relevant injury. Further, Ruble's arguments are inconsistent with decisions from the Supreme Court of the United States and the regular practice of deciding cases before impaneling a jury under other doctrines and rules. Ruble claims that a jury trial is guaranteed by filing a lawsuit, but that would nullify motions to dismiss, motions for summary judgment, and collateral estoppel.

A constitutional jury trial provision does not erase the doctrine of collateral estoppel. For example, like the West Virginia Constitution, the United States Constitution preserves a party's "right of trial by jury."[20] But, the federal jury trial provision "does not negate the issue-preclusive effect of a judgment, even if that judgment was entered by a juryless tribunal."[21] The Supreme Court of Alabama came to the same conclusion—based partly on decisions from the Supreme Court of the

[20] U.S Const. amend. VII. The jury trial provisions of the West Virginia Constitution and the United States Constitution are substantially similar. *Compare* W. Va. Const. art. III, § 13 ("In suits at common law, where the value in controversy exceeds twenty dollars exclusive of interest and costs, the right of trial by jury, if required by either party, shall be preserved; and in such suit in a court of limited jurisdiction a jury shall consist of six persons. No fact tried by a jury shall be otherwise reexamined in any case than according to the rule of court or law."), *with* U.S. Const. amend. VII ("In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.").

[21] *B&B Hardware Inc. v. Hargis Indus. Inc.*, 575 U.S. 138, 150 (2015).

United States—when asked whether collateral estoppel conflicted with its constitutional jury trial provision.[22]

In fact, collateral estoppel is one of many procedural devices used to decide a case before a jury is impaneled.[23] For example, a directed verdict or summary judgment order resolves a case without a jury.[24] A bench trial does, too.[25] These common tools are not constitutionally questionable.

Still, Ruble would have this Court take away these standard tools based on a single case from the Supreme Court of Arkansas—*Craven*. However, *Craven* is unavailing for multiple reasons.

In that case, the Supreme Court of Arkansas refused to give a workers' compensation determination preclusive effect under the state's constitutional promise that a jury will determine factual issues. It also considered the state's workers' compensation statute that expressly preserved third-party claims.[26] But *Craven* hardly provides a solid foundation for Ruble.

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[22] *Caton v. City of Pelham*, 329 So. 3d 5, 27 (Ala. 2020). That provision reads, "That the right of trial by jury shall remain inviolate." Ala. Const. art. I, § 11.

[23] *See, e.g., Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 336 (1979) ("Many procedural devices developed since 1791 that have diminished the civil jury's historic domain have been found not to be inconsistent with the Seventh Amendment." (cleaned up)).

[24] *See id.*

[25] *See Caton*, 329 So. 3d at 26.

[26] *Craven* relied on section 11-9-410(a)(1)(A) of the Arkansas Code, which broadly provides that the "making of a claim for compensation against any employer . . . shall not affect the right of the employee . . . to make a claim or maintain an action in court against any third party." In marked contrast, section 23-2A-1(a) of the West Virginia Code preserves only third-party claims when there is a "compensable injury or death" caused by a third party. Since Ruble did not have a workplace injury, our statute suggests that he cannot pursue a third-party action—in contrast to the Arkansas statute relied on in *Craven* and by Ruble.

For instance, one justice in *Craven* noted that the workers' compensation proceedings had not considered the relevant injury—an alleged lumbar-strain injury—making collateral estoppel inapplicable.[27] As a result, the concurring justice noted, the constitutional issue should not have been considered.[28]

Furthermore, the jury trial provision at issue in *Craven* is meaningfully distinct from the relevant West Virginia provision. While Arkansas makes the right to a jury trial "inviolate," West Virginia promises its "preservation."[29] Importantly, this Court has previously held that a case involving a foreign state's constitution's jury trial provision using "inviolate" is not persuasive when analyzing West Virginia's constitutional jury trial provision.[30] That alone renders *Craven*'s analysis useless to this Court.

Additionally—and relatedly—Arkansas had to adopt a workers' compensation amendment to its constitution "before the legislature could establish [the state's] workers' compensation laws" because of the constitutional language.[31] On the other

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[27] *Craven*, 206 S.W.3d at 848–49 (Imber, J., concurring) ("The issue of whether appellant's lumbar-strain injury was caused by the automobile accident has yet to be determined . . . In the absence of any such finding, collateral estoppel does not preclude subsequent litigation on whether the lumbar-strain injury was caused by the automobile accident." (cleaned up)).

[28] *Id.* at 849.

[29] *Compare* Ark. Const. art. II, § 7, *with* W. Va. Const. art. III, § 13.

[30] *MacDonald v. City Hosp. Inc.*, 227 W. Va. 707, 717, 715 S.E.2d 405, 415 (2011) ("The Georgia Constitution states plainly that the right to trial by jury shall remain inviolate. Our state constitutional provision regarding the right to trial by jury differs substantially, and accordingly, the Georgia court's analysis is not persuasive." (cleaned up)). Of course, this lessens the persuasive value of *Caton*. This is inconsequential, however, since it bolsters the persuasive value of the cases from the Supreme Court of the United States upon which *Caton* was based because of the similarity of West Virginia's provision and the federal provision.

[31] *Craven*, 206 S.W.3d at 847.

hand, West Virginia did not have to amend its constitution to establish its workers' compensation laws, highlighting the differences between the states' jury trial provisions.

While *Craven* found a constitutional conflict with collateral estoppel, it used an unreliable map to get there. It did not mention any decisions from the Supreme Court of United States,[32] choosing instead to follow the guidance of an intermediate court of appeals.[33] But *Heine*—the decision *Craven* followed—is unreliable because it did not involve a constitutional question. Collateral estoppel did not apply "because the issues were not identical and the workers' compensation proceedings did not afford [the plaintiff] a full and fair opportunity to be heard on the wage-loss issue."[34] It was not a jury trial provision that precluded collateral estoppel in *Heine*; instead, it was the failure to satisfy collateral estoppel's requirements.

Because collateral estoppel does not offend a jury trial provision—except apparently in Arkansas per an unpersuasive opinion—this Court should reject Ruble's constitutional contentions.

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[32] The Supreme Court of Alabama found collateral estoppel applicable based on decisions from the Supreme Court of the United States. *Caton*, 329 So. 3d at 24–25 (discussing *B&B Hardware Inc.* along with *Astoria Federal Savings & Loan Association v. Solimino*, 501 U.S. 104 (1991)).

[33] *Craven*, 206 S.W.3d at 846–47 (relying on *Heine v. Simon*, 674 N.W.2d 411 (Minn. Ct. App. 2004), *affirmed in part and reversed in part*, 702 N.W.2d 752 (Minn. 2005)).

[34] *Heine*, 674 N.W.2d at 421. On appeal, the Supreme Court of Minnesota also decided that collateral estoppel was inapplicable—not for constitutional reasons, but because the wage loss issues in the workers' compensation proceedings were not identical to the issues in the civil case. *Heine v. Simon*, 702 N.W.2d 752, 763 (Minn. 2005).

2. THE CIRCUIT COURT CORRECTLY APPLIED COLLATERAL ESTOPPEL.

In broad terms, Ruble's second assignment of error challenges the circuit court's application of collateral estoppel by third-party non-employers. Ruble explicitly agrees with Matrix that the circuit court "correctly identified West Virginia's four-part test concerning the application of collateral estoppel."[35] Moreover, he implicitly agrees with another—that is, the circuit court correctly found each part had been satisfied—because, beyond that single passing reference to the test, he does not again discuss it, its components, or the circuit court's assessment of those parts. Still, a brief review of that assessment is in order.

Under West Virginia law, collateral estoppel prevents reconsideration of a claim or issue if the prior issue is identical to the present issue, the prior issue was resolved on the merits, the party defending against the doctrine was also a party in the prior action or in privity with a party in that action, and that party "had a full and fair opportunity to litigate the issue in the prior action."[36] Each condition is met in this case.

The prior issue in the workers' compensation claim is identical to the present issue in Ruble's litigation. In the workers' compensation proceedings, Ruble claimed that he was exposed to chemicals while working at the Lesage facility between 1996

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[35] Br. 14.

[36] Syl. Pt. 1, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995) ("(1) The issue previously decided is identical to the one presented in the action in question, (2) there is a final adjudication on the merits of the prior action; (3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior action; and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.").

and 2018.[37] That exposure, he argued, caused him to develop sensory peripheral polyneuropathy, tremors, and weakness of distal arms and legs, dermatitis, and pneumonia.[38] In the circuit court proceedings, Ruble alleged that the same chemical exposure during the same time frame during the same employment at the same work location caused the same injuries.[39]

The prior issue was resolved on the merits. The Office of Judges concluded that Ruble did not develop his injuries "in the course of and as a result of employment."[40] The Board of Review then affirmed that merits adjudication.[41] Ruble did not appeal to this Court, so he concedes—as he must—that "the Board of Review's order is a final decision on the merits of the related workers' compensation proceedings."[42]

The party defending against the doctrine was also a party in the prior action or in privity with a party in that action. Michael Ruble was a party in the workers' compensation proceedings, so collateral estoppel would apply to him. It would also apply to Brenda Ruble because her loss of consortium claim depends on and is derivative of Michael's claims.[43] Michael and Brenda thus "shar[e] the same legal

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[37] *See* JA 585–89, 594.

[38] *See, e.g.*, JA 589–93, 596–97 (noting alleged ailments).

[39] *See* JA 174 (alleging "exposure to toxic chemicals at the Lesage facility" while employed from 1996 to 2018 "was proximate cause of his development of sensory peripheral polyneuropathy, tremors and weakness of distal arms and legs, dermatitis, and pneumonia").

[40] JA 609.

[41] JA 616.

[42] Br. 10.

[43] *S. Env't Inc. v. Bell*, 244 W. Va. 465, 473, 854 S.E.2d 285, 298 (2020) ("A claim for loss of consortium cannot be maintained independent of a cognizable personal injury claim.").

right," so Brenda's interest was "adequately represented because of [her] purported privity with a party at the initial proceedings."[44]

That party had a full and fair opportunity to litigate the issue in the prior action. The workers' compensation proceedings provided a full and fair opportunity to litigate causation, and Ruble took full advantage of that opportunity. He was represented throughout the workers' compensation proceedings by the same counsel in this case. Through counsel, Ruble presented his own testimony and presented closing arguments.[45] He provided medical records and reports and other documentary evidence.[46] He deposed witnesses and presented their testimony.[47] He presented his claim to a claims administrator.[48] He secured further review with the Office of Judges, which produced a detailed, twenty-five-page opinion weighing and measuring each shred of evidence—accompanied by four additional pages listing the detailed record considered.[49] He even asked the Board of Review to give his case another look, and they did.[50] He had the chance to come to this Court, but he decided against it. Suffice it to say, based on the administrative record, Ruble had a full and fair

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[44] *Miller*, 194 W. Va. at 13, 459 S.E.2d at 124.

[45] *See* JA 586–89, 605 (detailing Ruble's testimony and noting closing).

[46] *See* JA 590–99, 603–05 (detailing those documents).

[47] *See* JA 602–03 (discussing deposition of production manager who submitted affidavit).

[48] JA 585.

[49] *See* JA 585–613.

[50] *See* JA 614–16.

opportunity to have the evidence weighed and measured, and at each turn, his claim was found wanting.

Again, Ruble does not discuss any of that. Rather than calling the prior proceedings empty and unfair, he circumnavigates. But he ties his argument to informal fallacies—a false dilemma, a red herring, and a strawman.[51]

Leading off with a false dilemma, Ruble warns that, if the circuit court decision is affirmed, individuals will be forced to choose between pursuing a workers' compensation claim against their employer or alleging common law claims against third parties. Not so. An individual who can prove causation could succeed against her employer in workers' compensation proceedings *and* against third parties in later litigation. The individual would not be forced to make a choice.

Ruble's problem is that he could not previously prove causation—as decided at all three steps of the administrative process—so he wants to try again. To him, the workers' compensation proceedings were a practice round. He can take a mulligan and bring his claim to another forum—the circuit court—for a rematch. But this is what collateral estoppel was designed to stop.[52]

Ruble follows by dragging a red herring across the issue. He begins by pasting section 23-4-1(f) to show the statutory elements of a workers' compensation claim,

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[51] *See generally* Ali Almossawi, *An Illustrated Book of Bad Arguments* (2013), *available at* https://bookofbadarguments.com.

[52] *See Solimino*, 501 U.S. at 107 (explaining that collateral estoppel "is justified on the sound and obvious principle of judicial policy that a losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on an issue identical in substance to the one he subsequently seeks to raise").

which requires a "causal connection."[53] He then notes the elements of a negligence claim—duty, breach, and causation—and that a strict liability claim asks whether a product is defective.[54] Finally, Ruble focuses on the different elements of these three claims. He believes that a jury still needs to address whether he was owed a duty, whether that duty was breached, and whether products were defective.

But the different elements are irrelevant. A similar element—causation—is relevant as he must prove causation for each claim. Each claim of the trio requires, in this context, proof that Ruble's injuries were caused by his workplace exposure to chemical. Ruble ignores that element. Yet that common element has already been decided against Ruble.[55] So, neither this Court, the circuit court, or a jury needs to debate duty, breach, or defect, as Ruble requests.

Next is the straw man. Ruble recharacterizes Matrix's position, saying Matrix is trying to secure workers' compensation immunity. Yet Matrix has not claimed immunity under the statutory framework of workers' compensation. Instead, Matrix has argued only that Ruble must prove causation, that he previously failed to prove causation, and that he does not get a do-over.[56] The workers' compensation

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[53] W. Va. Code § 23-4-1(f); *see also* Br. 23.

[54] *See* Syl. Pt. 2, *C.C. v. Harrison Cty. Bd Educ.*, 245 W. Va. 594, 859 S.E.2d 762 (2021) (negligence); Syl. Pt. 4, *Morningstar v. Black & Decker Mfg. Co.*, 162 W. Va. 857, 253 S.E.2d 666 (1979) (strict liability).

[55] See JA 609 (concluding Ruble's injuries were not caused "in the course of and as a result of employment").

[56] *See Carter v. Monsanto Co.*, 212 W. Va. 732, 737, 575 S.E.2d 342, 347 (2002) ("Before one can recover under a tort theory of liability, he or she must prove each of the four elements of a tort: duty, breach, causation, and damages." (cleaned up)).

proceedings decided that Ruble's alleged injuries were not caused by exposure to chemicals at his workplace. Without causation and damages, there can be no liability, and all of Ruble's claims crumble.

While Ruble has relied on logical fallacies, Matrix relies on reality. State and federal courts of West Virginia have already recognized that workers' compensation decisions can result in collateral estoppel.[57] In fact, in a memorandum decision, this Court based collateral estoppel on a workers' compensation decision to prevent providing "a second bite at the apple."[58] Thus, collateral estoppel attaches to administrative decisions, like workers' compensation decisions.

The framework for applying workers' compensation decisions to collateral estoppel is effectively in place in West Virginia. While this Court has not expressly extended collateral estoppel to proceedings involving third-party, non-employer defendants, others have.

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[57] *See, e.g., White v. SWCC*, 164 W. Va. 284, 290, 262 S.E.2d 752, 756 (1980) ("We think it is clear that res judicata operates to bar the relitigation of the . . . nonmedical finding of no harmful exposure as of May 29, 1973." (cleaned up)); *Corley v. E. Associated Coal Corp.*, 2009 WL 723120, at *6 (N.D. W. Va. Mar. 18, 2009) ("The Court agrees that findings of the Office of Judges and the Board of Review constitute quasi-judicial decisions that can be given preclusive effect." (cleaned up)). The final outcomes of *White* and *Corley* were not based on collateral estoppel. But the reasons for that are not present here. For one, in *White*, this Court concluded that the relevant exposure occurred outside the timeframe at issue in the prior proceedings. *White*, 164 W. Va. at 290, 262 S.E.2d at 756. And in *Corley*, collateral estoppel did not apply because the workers' compensation proceedings did not result in a decision on the merits. *Corley*, 2009 WL 723120, at *7. This case is different on both counts. Unlike in *White*, here, Ruble's prior and present claims are based on the same exposure to the same chemicals during the same period. And unlike in *Corely*, here, Ruble's workers' proceedings resulted in a final merits adjudication.

[58] *Steel of W. Va. Inc. v. W. Va. Office of Ins. Comm'r*, 2012 WL 5834646, at *2 (W. Va. Nov. 16, 2012) (mem.).

Using a workers' compensation decision to prevent redundant litigation is neither new nor novel. A bus driver who is not injured in an accident with another vehicle cannot recover for a non-existent injury.[59] If an elevator doesn't malfunction, its rider cannot collect damages based on an elevator malfunction.[60] A motorist who walks away from an accident without any injuries can't walk off an administrative loss and head to court for a different result.[61] Examples are abundant.[62] These

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[59] *Young v. Gorski*, 2004 WL 540944, at *2 (Ohio Ct. App. Mar. 19, 2004) (workers' compensation decision barred bus driver's claim against non-employer motorist because an employee "cannot be permitted to waive the adverse finding of one case when another party or cause of action appears more opportunistic").

[60] *Lennon v. 56th & Park (NY) Owners LLC*, 199 A.D.3d 64, 77 (N.Y. App. Div. 2021) ("The plaintiff's workers' compensation hearing was professionally conducted in an adversarial setting, and his counsel was a capable advocate. On this record, there is no reason to conclude that the plaintiff's workers' compensation hearing was conducted in a manner that was anything less than full and fair, without restriction upon his entitlement to present and challenge evidence, and to be heard as to result. That the result is not what the plaintiff might have hoped for does not undermine the validity of the administrative proceeding. As the plaintiff is barred by the doctrine of collateral estoppel from arguing the core of his case in this matter, the Supreme Court properly granted the defendants' motion . . . .").

[61] *Frederick v. Action Tire Co.*, 744 A.2d 762, 767 (Pa. Super. Ct. 1999) (workers' compensation decision that accident was not cause of medical problems barred negligence action because "courts have consistently held findings in workers' compensation cases may bar relitigation of identical issues in collateral civil actions, even third party tort actions").

[62] *See, e.g., Cheatwood v. Roanoke Indus.*, 891 F. Supp. 1528, 1534–38 (N.D. Ala. 1995) (applying estoppel where prior workers compensation determination involved hearing with live sworn testimony by plaintiff); *Denisco v. 405 Lexington Ave. LLC*, 203 A.D.3d 1025, 1026 (N.Y. App. Div. 2022) ("The moving defendants met their prima facie burden of establishing that the issue decided in the workers' compensation proceeding, that the injuries the plaintiff sustained on July 30, 2015, were not work-related, was identical to that presented in this action to recover damages for personal injuries." (cleaned up)); *Duncan v. Lone Star Indus. Inc.*, 2019 WL 3997290, at *9 (E.D. Mo. Aug. 23, 2019) ("As stated above, the issue raised in this suit is identical to the issue litigated in the TDWC action. The TDWC's decision was based solely on Duncan's inability to prove that exposure to chemical fumes at Buzzi's Cape Girardeau facility caused any of his alleged injuries other than a sore throat. Moreover, the issue was fully and fairly litigated in the previous action. As such, the Court finds that the application of collateral estoppel in this case is both legally proper and equitable."); *Roserie v. Alexander's Kings Plaza LLC*, 171 A.D.3d 822, 823–24 (N.Y. App. Div. 2019) ("Here, Schindler Elevator met its prima facie burden of establishing that the issue decided in a

examples reveal a theme—a failure to agree upon reality. The bus driver and the motorist did not suffer a scratch, and the elevator never malfunctioned, but one party wanted to continue to disagree with those realities and try again against new defendants in a different venue. This case is no different. Chemical exposure in the workplace didn't injure Ruble, but he wants to take his disagreement to another forum to sue different parties.

The circuit court decided that Matrix satisfied each collateral estoppel prerequisite. Ruble does not challenge that determination. Instead, he contests the collateral estoppel doctrine itself, which is predicated on the outcome of workers' compensation proceedings. His contentions lack merit, and workers' compensation proceedings can result in collateral estoppel—as they have in many other cases.

3. THE CIRCUIT COURT CORRECTLY TOOK JUDICIAL NOTICE OF THE OUTCOME OF THE WORKERS' COMPENSATION PROCEEDINGS.

In closing, Ruble raises a perceived evidentiary problem with the circuit court's judicial notice of the outcome of the workers' compensation proceedings. This argument ignores that collateral estoppel is based on the judicial notice of another

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Workers' Compensation Board proceeding, that the plaintiff did not sustain a causally related exacerbation of her Chiari malformation from the elevator accident, was identical to that presented in this action to recover damages for personal injuries. Furthermore, Schindler Elevator established that the plaintiff had a full and fair opportunity to litigate that claim before the Workers' Compensation Board." (cleaned up); *Brown v. Dow Chemical Co.*, 875 F.2d 197, 199 (8th Cir. 1989) (affirming district court's grant of summary judgment by collateral estoppel in products liability suit when Arkansas Workers' Compensation Commission denied plaintiff's claim for benefits on the basis he failed to prove his injuries were caused by the chemicals with which he worked on the job); *Rutter v. Rivera*, 74 Fed. App'x182, 187–88 (3d Cir. 2003) (workers' compensation judge's decision that Rutter was not disabled because of work-related accident collaterally estopped her from litigating her claim for lost wages in negligence action).

proceeding's outcome. Ruble also cannot explain how the circuit court abused its discretion.

Without question, courts take judicial notice of the contents of a document or the holding of a decision. Take *Arnold Agency*, for example. In the circuit court proceedings, the Lottery Commission submitted an indictment and judgment convicting its director of mail fraud.[63] The circuit court "implicitly" took judicial notice of the indictment and judgment.[64] And this Court determined that "it was certainly within the circuit court's prerogative to use these records for the purpose of ascertaining that [the director] had, in fact, been convicted of mail fraud."[65] Thus, this Court has given circuit courts the authority to take judicial notice of the contents of an indictment and judgment—which is what the circuit court did here with the workers' compensation decision and order.[66]

Understanding that the *Arnold Agency* decision is detrimental to his argument against the circuit court taking judicial notice of the workers' compensation ruling, Ruble asks this Court to clarify *Arnold Agency*. No need for that. There is nothing to clarify—this Court has determined that a circuit court can, in its discretion, take judicial notice of the outcome in another case. Unsurprisingly, this is how collateral estoppel is given effect in every instance. Here is what Ruble really wants but won't

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[63] *Arnold Agency*, 206 W. Va. at 596, 526 S.E.2d at 827.

[64] *Id.*

[65] *Id.* (cleaned up.)

[66] In the end, collateral estoppel did not apply because the issues in the federal criminal proceedings were not identical to the issue of fraud in the state civil proceedings. *Arnold Agency*, 206 W. Va. at 597, 526 S.E.2d at 828.

say out loud—he wants this Court to revise judicial notice in a way that relegates collateral estoppel to the history books. That revision would be inconsistent with this Court's precedent and jurisprudence from coast to coast.

State and federal courts across this country exercise their discretion to take judicial notice of other cases and then use those cases' findings and conclusions to support the application of collateral estoppel.[67] Of these cases, *Yamamoto* is particularly instructive. In that case, the trial court took judicial notice of "factual findings of intentional conduct made in the juvenile court" and used them to apply collateral estoppel.[68] Like Ruble, Yamamoto argued that the trial court improperly took "judicial notice of the truth of the factual assertions made in the documents of a previous case."[69] But that court explained "that is not what occurred" because the trial court "merely determined that a particular issue . . . had been previously adjudicated . . . then, in accordance with collateral estoppel doctrines, did not permit the same issue to be litigated again."[70]

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[67] *See, e.g.*, *Paul v. Dade Cnty.*, 419 F.2d 10, 13 (5th Cir. 1969) (refusing to reconsider whether evidence supported establishment of religion claim among other things); *Mandarino v. Pollard*, 718 F.2d 845, 849–50 (7th Cir. 1983) (using state court ruling to bar relitigation of termination-related issue); *Horne v. Potter*, 392 F. App'x 800, 804–05 (11th Cir.) (per curiam) (applying collateral estoppel because claim "arose out of the same nucleus of operative facts and was based on the same factual predicate" as previous claim); *W. Mut. Ins. v. Yamamoto*, 29 Cal. App. 4th 1474, 1485 (Cal. Ct. App. 1994) (approving trial court's reliance on prior opinion to determine intent issue had been decided before); *Morgan Cty. Bd. of Tax Assessors v. Vantage Prods Corp.*, 748 S.E.2d 468, 471 (Ga. Ct. App. 2013) (preventing party "from relitigating the issue of whether vaults . . . are subject to ad valorem taxes").

[68] *Yamamoto*, 29 Cal. App. 4th at 1477.

[69] *Id.* at 1485.

[70] *Id.*

That is what happened here. First, the circuit court took judicial notice of the workers' compensation proceedings that decided Ruble's injuries were not caused by workplace exposure. The circuit court then concluded that Ruble could not relitigate that issue after being given a full and fair opportunity to do so.

This case and *Yamamoto* are textbook examples of the relationship between collateral estoppel and judicial notice. To decide whether an issue was already decided, a circuit court must take note of the other case's consideration of the issue. Ruble proposes that this is impermissible, but that proposal is problematic—it ends collateral estoppel. How can a circuit court determine that an issue was decided in another case if it cannot take notice of the case's decision on the issue?

It cannot. And for that reason, this Court should reject Ruble's evidentiary argument and the notion that the circuit court abused its discretion.

In any event, a circuit court has significant discretion when making an evidentiary ruling—like deciding to take judicial notice of something—and this Court gives the ruling "substantial deference."[71] Ruble argues that the circuit court could not, under the West Virginia Rules of Evidence, "adopt, as settled, the conclusions reached by the factfinder in the statutory workers' compensation system."[72] But that is what *Arnold Agency*—and the evidentiary rules *and* collateral estoppel *and* courts

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[71] *Arnold Agency*, 206 W. Va. at 592, 526 S.E.2d at 823; *see also, e.g.*, Syl. Pt. 1, *McDougal v. McCammon*, 193 W. Va. 229, 455 S.E.2d 788, (1995) (discussing discretion allocated by evidentiary and procedural rules).

[72] Br. 25.

from Atlantic to Pacific—allow. Ruble does not explain how the circuit court abused its discretion, nor could he, nor does he mention that standard of review.

Collateral estoppel is effective only if a circuit court can take judicial notice of the issues that were considered and what was decided in another proceeding. That is why this Court—and every court—allows the circuit court to exercise its discretion the way it did.

CONCLUSION

When an individual has a full and fair opportunity to present his claims and the issues underlying those claims in one forum, under the collateral estoppel principles, he cannot go to another forum for a do-over if he is unhappy with the results of the first proceedings. That is how collateral estoppel works. And it applies whether the issues were presented in workers' compensation proceedings or a civil suit, and whether the issue was resolved with or without a jury. The circuit court came to the correct conclusion, and this Court should affirm.

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