CASE NO. 5942 CRB-2-14-6 : COMPENSATION REVIEW BOARD
CLAIM NO. 200168631

ROSE LAROCQUE, Widow
Estate of RAYMOND LAROCQUE
(Deceased)
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: JULY 2, 2015

ELECTRIC BOAT CORPORATION
SELF-INSURED
EMPLOYER

and

ACE USA and TRAVELERS
INSURERS
RESPONDENTS-APPELLEES
and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES:

The claimant was represented by Amity L. Arscott, Esq., Embry and Neusner, 118 Poquonnock Road, Groton, CT 06340.

The respondent Electric Boat Corporation as a self-insured employer was represented by Peter D. Quay, Esq., Law Office of Peter D. Quay, LLC, PO Box 70, Taftville, CT 06380.

The respondent Electric Boat Corporation and its insurers Ace USA and Travelers were represented by Lucas D. Strunk, Esq., Strunk Dodge Aiken Zovas, LLC, 100 Corporate Place, Suite 300, Rocky Hill, CT 06067.

The respondent Second Injury Fund was represented by Lawrence G. Widem, Esq., Assistant Attorney General, Office of the Attorney General, 55 Elm Street, Hartford, CT 06141-0120.

This Petition for Review[1] from the May 28, 2014 Finding and Dismissal of the Commissioner acting for the Eighth District was heard December 19, 2014 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Stephen B. Delaney and Michelle D. Truglia.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant, Rose Larocque, dependent widow of the decedent Raymond Larocque, has appealed from a Finding and Dismissal of her claim for § 31-306 C.G.S. benefits. She argues that the death of her husband can be causally linked to his employment at the Electric Boat shipyard and further argues that an award to her pursuant to the federal Longshore and Harbor Workers' Compensation Act. 33 U.S.C. § 901, *et seq.* ("Longshore Act") should be given the force of collateral estoppel as to proceedings under Chapter 568. We have reviewed the trial commissioner's decision and find that he reached reasonable conclusions as to the cause of the decedent's death being unrelated to his employment; and these conclusions are supported by the factual record herein. Moreover, we concur with the trial commissioner's legal conclusion that the Longshore Act award in this matter did not estop the respondents from disclaiming liability under our Act. Therefore, we affirm the Finding and Dismissal.

The trial commissioner engaged in a detailed review of the evidence presented which included 79 factual findings and 20 conclusions. We may summarize them as

[1] An extension of time was granted during the pendency of this appeal.

follows. The decedent was born on December 5, 1942, died on November 30, 2009[2], Findings, ¶ 2, and from March 17, 1969 until February 26, 1996 he was an employee of Electric Boat and worked at the company's Groton shipyard. The dependent spouse Rose Larocque married the decedent in 1964 and was married to him at the time of his death. During the entirety of his adult life the decedent was a heavy cigarette smoker and at some points in his life, he smoked as many as four to five packs a day. Excepting a brief period where the decedent worked as an estimator, the entirety of the decedent's work at Electric Boat was as a painter or a painting foreman. He was exposed to fumes, solvents and dust in this work, as well as the dust, fumes and debris created by workers in other trades, such as grinders, laggers and welders. During certain periods in the 1960's and 1970's the laggers were using asbestos at Electric Boat to insulate pipes. The trial commissioner noted that the protective gear used by painters early in the decedent's career was rudimentary, but improved later in his career.

The decision reviewed the decedent's health history, which included treatment for frequent and severe sinus infections and ear infections after 1972; an acute myocardial infarction in 1983; heart-related chest pain in 1991 which necessitated a cardiac catheterization; and a persistent cough that developed in the early 1990's. In 1994 the claimant's cardiologist, Steven Fera, MD, diagnosed him as having: "1. Progressive exertional dyspnea. 2. Essential hypertension, suboptimally controlled. 3. Probable vasospasitc coronary artery disease. 4. History of hypercholesterolemia." Findings, ¶ 18. Significantly, Dr. Fera opined the claimant's dyspnea was not due to his heart, but was likely due to "chronic underlying lung disease on the basis of severe tobacco abuse and

[2] We have identified scrivener's errors in the Finding and Dismissal in regards to the date of various events and documents. We have cited the correct dates in this opinion.

prolonged occupational exposure as a painter." Id. He urged the claimant to stop smoking. In 1995 the claimant started seeing Leon Puppi, MD, a pulmonologist, for "bronchial asthma and allergic rhinitis." Findings, ¶ 19. That same year he filed claims for benefits under both the Connecticut workers compensation law and the federal Longshore Act, alleging lung injury as a result of exposure "to asbestos and/or other carcinogens and lung irritants." Findings, ¶ 20. On November 29, 1995 Electric Boat filed a Form 43 notice of contest of claim. CIGNA Property and Casualty (now ACE USA) filed a Form 43 on December 8, 1995. Aetna Life & Casualty (now Travelers) filed a Form 43 on December 11, 1995.

Two physicians offered opinions which were considered in the decedent's Longshore claim. Electric Boat had Dr. Thomas Godar examine Mr. Larocque in 1996. Dr. Godar diagnosed him with COPD, which was attributable to cigarette smoking. Dr. Godar did not find evidence of asbestosis in this examination. Dr. Godar found that work did temporarily exacerbate Mr. Larocque's lung symptoms, but was not the cause of his lung impairment. At that time Dr. Godar opined that Mr. Larocque had a 35% permanent partial impairment of his lungs. Mr. Larocque was also examined by a pulmonologist, Dr. John Pella. Dr. Pella concurred that he had COPD and this had led to a "cough syncope" where Mr. Larocque could not stop coughing. Findings, ¶ 29. This cough syncope had led to a car wreck, and Dr. Pella disabled the patient from driving or climbing on scaffolds. Dr. Pella attributed two-thirds of the causation behind Mr. Larocque's condition to his cigarette smoking, and one third to his work activities. On February 26, 1996, Mr. Larocque stopped working for Electric Boat.

On July 6, 1998 an Administrative Law Judge granted Mr. Larocque an award under the Longshore Act for his lung condition (the "1998 Award"). The ALJ applied the statutory presumption of compensability under the Longshore Act and determined that the respondents had failed to rebut this presumption. Mr. Larocque was deemed totally disabled as of his last day of work at Electric Boat. The respondent Electric Boat assigned its responsibility for the award to a special fund as provided for in the statute.

After leaving work at Electric Boat, Mr. Larocque continued his heavy cigarette use. In March 2004 he underwent a chest X-ray which prompted further investigation. On July 22, 2004 he underwent a CT scan which identified a likely bronchogenic carcinoma. Biopsies of his lymph nodes performed at Rhode Island Hospital on August 27, 2004 identified "[m]etastatic neuroendocrine carcinoma." Findings, ¶ 38. Mr. Larocque decided not to undergo surgery in response to this condition, but commenced radiation treatment for his cancer. On November 5, 2004 he filed a Form 30C seeking benefits under Chapter 568, asserting his lung cancer was a work related injury. The respondents all filed disclaimers denying liability for the illness.

Mr. Larocque treated for his cancer and was examined by various physicians. Dr. Pella examined him in April 2005 and confirmed that he had bronchogenic carcinoma. Dr. Pella further opined that the claimant has been exposed to asbestos at work and this work exposure served as a carcinogen. He attributed 80% of the causation for the cancer to Mr. Larocque's cigarette smoking, and 20% to his work exposure. Electric Boat had their expert, Dr. Milo Pulde of Brigham & Women's Hospital in Boston, perform a records review. Dr. Pulde opined in a detailed report that there was no causal relationship between Mr. Larocque's cancer and his employment. He found no evidence

that there were asbestos related fibrosis present, and that any exposure Mr. Larocque had over the years to asbestos was not clinically significant.

Subsequent to his cancer diagnosis Mr. Larocque also had coronary problems. In 2006 he was admitted to South County Hospital for myocardial infarction and pneumonia. He was given clot buster therapy and admitted to the ICU. On discharge his various diagnoses included the heart attack, pneumonia, the history of lung cancer, COPD with acute bronchitis, aortic valve disorder, coronary atherosclerosis, diabetes mellitus, hypertension, hyperlipidemia, and "tobacco use disorder." Findings, ¶ 53. On January 9, 2008 Mr. Larocque was admitted once again to the South County Hospital with a diagnosis of unstable angina. After several days of observation it was determined he was not having a myocardial infarction and he was released from the hospital with instructions to follow up with his pulmonologist and his cardiologist.

Mr. Larocque was admitted to the hospital for a final time on November 26, 2009 with complaints of increasing dyspnea over the previous two weeks, as well as occasional chest pain. He also noted Dr. Puppi had recently noted a "spot on the lung" and had scheduled a PET scan. Findings, ¶ 55. After being admitted it was determined his cancer had progressed and it was suggested he be evaluated by a radiation oncologist. However, on that day Mr. Larocque died. On his death certificate, the immediate cause of death was listed as "myocardial infarction," which had occurred over the last nine hours of his life. Findings, ¶ 57. For underlying causes of the fatal condition, the death certificate listed: "coronary artery disease, hypertension and hyperlipidemia." Id. Under the heading for other significant conditions contributing to death but not resulting in the underlying cause, the physician listed: "pneumonia, lung cancer with metastases to liver,

chronic obstructive pulmonary disease, insulin-dependent diabetes mellitus." Id. No autopsy was performed on Mr. Larocque. No lung tissue samples were taken or preserved and, as such, there is no direct evidence of the presence of asbestos fibers in the lungs or the concentrations of any such fibers.

Mrs. Larocque filed a Form 30D on December 7, 2009 seeking benefits under Chapter 568 alleging that her late husband's death was due to workplace exposure to carcinogens; and asserting an August 1, 2004 date of injury. A second notice of claim, asserting a 1996 date of injury, was filed on February 5, 2010. The respondents filed disclaimers to this claim. In support of this claim, Dr. Pella opined on February 2, 2010 that while myocardial infarction may have been the immediate proximal terminal event Mr. Larocque's death was essentially a respiratory death due to his lung cancer. Dr. Pella further opined that the decedent's "occupational exposure to asbestos and his cigarette smoking were co-causal in the development of his inoperable bronchogenic carcinoma. These conditions caused severe respiratory compromise and contributed to and hastened his death." Findings, ¶ 63.

Rose Larocque also pursued a claim for widow's benefits under the federal Longshore Act. On March 24, 2010 the parties to the widow's claim under the Longshore Act entered into a "Joint Stipulation of Facts and Proposed Order." Findings, ¶ 64. Under the stipulation, the widow and Electric Boat stipulated that Mr. Larocque's death was the result of the work-related lung injury for which Judge DiNardi had awarded total disability benefits in 1998. Accordingly, on May 19, 2011 the District Director for the U.S. Department of Labor's Office of Workers' Compensation Programs (OWCP) issued an order directing the Special Fund to begin paying widows benefits to

the claimant widow. ("2011 Award") At the same time, Electric Boat was ordered to pay $1,470.00 in funeral allowance. While Electric Boat had conceded causation in the federal forum, where liability for the claim had already transferred to the Special Fund, Electric Boat and its insurers maintained their denial of the widow's claim under Chapter 568.

The trial commissioner noted three experts offered evidence in regards to the claim for § 31-306 C.G.S. benefits. Dr. Pella ascribed the death of Mr. Larocque to lung cancer in a February 3, 2011 letter. He found that asbestos exposure and cigarette smoking were both causal co-factors in the development of this cancer. Dr. Pella was deposed on April 19, 2013. He testified that a significant component of the decedent's COPD was occupational exposure to asbestos. He said that his allocation of causation as a 80/20 split between the decedent's cigarette smoking and his work activities was a "professional guess." Findings, ¶ 74. Dr. Pella did not actually state a diagnosis of "asbestosis" at this deposition, however he did identify that x-rays showed signs of mild interstitial scarring at the base of the lungs, along with mild pleural thickening which he stated was "a marker for significant asbestos exposure." Findings, ¶ 75. The respondents had Dr. Daniel Gerardi, who had been in practice with the now retired Dr. Godar, conduct a records review. In his June 28, 2012 (see fn.2 of this opinion) report, Dr. Gerardi wrote that there was "no information that is consistent with asbestos related disease." Findings, ¶ 68. He specifically noted that the report of the various CT scans did not show evidence of asbestos-related disease, and while there was small plaque on CT scans, there was no evidence of pulmonary fibrosis. He attributed the decedent's COPD to cigarette smoking, as he wrote "[a]lthough it is difficult to exclude asbestos

exposure entirely as contributing to the patient's lung cancer, it would seem unlikely to have contributed to his cancer in any significant way given the lack of asbestos findings." Findings, ¶ 70. At his deposition on March 4, 2013 Dr. Gerardi reiterated those opinions, noting that the decedent's records showed no evidence of asbestosis and attributing the decedent's cancer to his heavy cigarette smoking. The respondents also presented the testimony of Dr. Pulde, who was deposed on July 25, 2013. He reiterated his opinion that Mr. Larocque's lung cancer was unrelated to any asbestos exposure and was, rather, caused by his extensive smoking history. In support of his opinion Dr. Pulde testified that neuroendocrine type tumors, such as Mr. Larocque had, are almost invariably related to tobacco abuse, and that he had seen no evidence of non-malignant asbestos –related disease. While in the absence of pathologic evidence it is impossible to accurately quantify the asbestos burden in someone's lungs, Dr. Pulde was confident that Mr. Larocque's exposure to asbestos was rather limited and well below any reasonable threshold for ascribing cancer risk.

Based on these factual findings the trial commissioner concluded that the decedent was a "remarkably heavy smoker of cigarettes." Conclusion, ¶ C. The commissioner acknowledged his exposure to asbestos fibers at work, Conclusion, ¶ D, but found no evidence that his sinus problems and chronic rhinitis were caused by his employment at Electric Boat, citing Dr. Godar's testimony as persuasive. Conclusion, ¶ F. The trial commissioner deemed evidence that workplace exposure caused the decedent's COPD or chronic bronchitis insufficient. Conclusion, ¶ G. He found Dr. Godar's opinion that workplace exposure only temporarily aggravated the decedent's

symptoms persuasive. Conclusion, ¶ H. The trial commissioner also considered the circumstances of the two Longshore Act awards in some detail.

> I. The administrative law judge who in 1998 found that Mr. Larocque had sustained a work-related injury to his lungs did so based on a statutory presumption favoring compensability, a presumption that does not exist under our workers' compensation act, where the claimant bears the burden of proof and burden of persuasion from the outset, and must prove his case by a preponderance of evidence. That judge found that Electric Boat had failed to rebut the statutory presumption based on Dr. Godar's opinion that Mr. Larocque would suffer aggravation of his respiratory symptoms when working as a painter at Electric Boat, where he would be exposed to dust. I am satisfied that the inability to perform one's usual work due to a medical condition not related to the employment does not, under Connecticut law, amount to a personal injury or occupational disease. The determination of the administrative law judge in the 1998 Longshore case is not binding on these proceedings.
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> J. The stipulation of facts entered into by Rose Larocque and Electric Boat in March 2010 [Exh. A] (see fn.2 of this opinion) were made expressly for the purposes of the widow's claim being pursued under the Longshore and Harbor Worker's Compensation Act. The financial liability resulting from those stipulated facts rested on the Special Fund and not directly Electric Boat. I find no reason to think that Electric Boat or its carrier's were agreeing to be bound by those stipulations in this forum where, in fact, they have consistently and actively defended the death claim.

Conclusions, ¶¶ I & J.

Considering the issue of asbestosis on the merits the trial commissioner concluded it was likely the decedent's exposure to asbestos was intermittent, crediting the opinions of Dr. Gerardi and Dr. Pulde and concluding the weight of expert medical opinion is that Mr. Larocque did not have asbestosis. Conclusions, ¶¶ K & L. The commissioner noted that the only witness who presented epidemiological evidence on cancer was Dr. Pulde. He credited the opinions of Dr. Pulde and Dr. Gerardi that Mr. Larocque's remarkably heavy history of cigarette smoking amply explains his development of lung cancer.

Conclusion, ¶ P. After reviewing the evidence the trial commissioner found any connection between asbestos exposure at Electric Boat and Mr. Larocque's lung cancer to be speculative. Conclusion, ¶ Q. Since the claimant widow failed to prove that the decedent's employment with Electric Boat was a significant factor contributing to his death, Conclusion, ¶ R, the trial commissioner dismissed the claim.

The claimant filed a Motion to Correct seeking a ruling that the stipulated judgment in the 2011 Award was binding upon this Commission based on the concepts of collateral estoppel and res judicata. The trial commissioner granted only one correction, which did not materially alter the Finding and Dismissal. He also provided a detailed rationale for denying relief based on the theories of collateral estoppel and res judicata.[3]

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[3] The relevant portions of this decision are as follows.

"**Request 4 (re: binding effect of Longshore stipulation of fact):**

In her fourth request the claimant seeks the addition of a finding/conclusion to the effect that the respondent Electric Boat is bound by the stipulations made in the Longshore case and is precluded from contesting those fact in this action.

DENIED. It is noted at the outset that the claimant did not argue that these stipulations were binding when she submitted her proposed findings and brief on the merits of the claim. That said, none of the cases cited in claimant's motion stand for the proposition that a respondent who stipulates to facts in a Longshore case is bound by those facts in a subsequent claim for compensation under the Connecticut act. On the contrary, one of the cited cases makes it clear that "[a] stipulation is a contract, and, as such, the construction of that contract is controlled by the parties' intent." *Connecticut Bank & Trust v. Reckert*, 33 Conn. App. 702, 706 (1994). Not only is there no evidence in this case that Electric Boat intended the stipulations in the Longshore case to apply to this state claim, it is an inescapable conclusion that exactly the opposite was true. The respondent intended to continue defending the state claim.

To be "binding" on the trier of fact stipulated facts must be deemed to be judicial admissions. Judicial admissions are voluntary and knowing concessions of fact made by a party in the course of a judicial proceeding. *Kanopka v. Kanopka,* 113 Conn. 30, 38-39 (1931). The effect of a judicial admission is to relieve the opposing party from having to offer proof on the matter conceded. *State v. Rodriquez,* 180 Conn. 382, 396 (1980), *Jones Destruction, Inc. v. Upjohn,* 161 Conn. 191, 199 (1971). It is true that a formal stipulation of facts by the parties constitutes a judicial admission and should normally be adopted by the court deciding the case. *King v. Spencer,* 115 Conn. 201 (1932). However, the stipulated fact is only a judicial admission for purposes of the action in which the admission was made. The existence of the stipulation may be admissible evidence in a subsequent action, but it is only an evidentiary admission and is not binding on the trier of fact in that subsequent action, even if the action is between the same parties. See, e.g., *Perry v. Simpson Manufacturing Co.,* 40 Conn. 313, 317 (1873).

While facts stipulated to by Electric Boat in 2010 may have been binding on the District Director in the Longshore case, they are not binding in our case. That stipulation is, at best, admissible evidence in support of the facts in question, and in that regard, those stipulated facts are really no evidence at all in our

case. The respondent made those stipulations in another action, in another forum that is governed by different case law, in order to allow the widow to obtain benefits from a third party (Special Fund). Under the circumstances, the notion that Electric Boat intended to be bound by those stipulated facts in this forum is not only unsupported by the record, it defies all logic.

Request 5 (re: res judicata):
In Request 5, the claimant seeks a finding that "The Department of Labor previously found, based upon the aforementioned stipulation, that Mr. Larocque's death arose out of and in the course of his employment as the result of his work-related lung injuries due to his exposure to asbestos dust and particles." The claimant also seeks the following conclusion: "Thus, the doctrine of res judicata prevents the parties from relitigating the claim."
DENIED. It is noted that the claimant did not raise the argument of res judicata in her brief/proposed findings. If the claimant truly believed that the respondents had no legal right to litigate their liability to pay benefits on account of Mr. Larocque's death, this seems like something that ought to have been raised *before* the case was litigated, and certainly before the case was decided in the Respondents' favor. Res judicata is a doctrine of judicial administration, not a matter of subject matter jurisdiction. (For example, even if all the tests for applying res judicata are satisfied, a judge is not obligated to apply the doctrine if to do so would work an injustice on one of the parties. *Powell v. Infinity Insurance Co,* 282 Conn. 594, 602 (2007). The right of the claimant to raise this argument after a finding and dismissal has entered is questionable. However, since a motion to correct is a trial-level motion, I will consider the substance of the claimant's argument.

In order for res judicata to apply the following conditions must exist: (1) the prior case must have ended in a final judgment; (2) the prior judgment must have been rendered on the merits; (3) the prior judgment must have been rendered by a court of competent jurisdiction; (4) the prior action must have been between the same parties; and (5) the prior case must have been an action on the same claim.

While the order of the OWCP District Director likely qualifies as final judgment, it was a stipulated judgment. A stipulated judgment is not an adjudication on the merits of a claim. Rather, it is a contract between parties to litigation that is approved by a court. *Owsiejko v. American Hardware,* 137 Conn. 185, 187 (1950). It may have binding effect in future litigation between the two parties in the same forum. See, *Connecticut Pharmaceutical Assn., Inc. v. Milano*, 191 Conn. 555 (1983). However, the terms of an approved stipulated judgment "may not be extended beyond the agreement entered into." *Owsiejko,* at 187-188. In this case, Electric Boat and the widow entered into a stipulated judgment that allowed her to receive of Longshore benefits from the Special Fund, nothing more.

The notion of applying res judicata across the jurisdictional lines in this case raises another issue. The matter before me is a claim for an award of statutorily created benefits under Connecticut law. The benefits awarded under the federal law may arise from the same facts as pertain to our case (death due to cancer allegedly caused by exposure to dust and fumes at Electric Boat) but entitlement to 31-306 benefits must be determined under Connecticut law, and can only be ordered by a Connecticut workers' compensation commissioner. Neither the District Administrator nor any federal Administrative Law Judge has jurisdiction to award benefits under the Connecticut Workers' Compensation Act.

Finally, even if I were convinced that all the elements of res judicata applied to the federal award, ours is not a case where the doctrine could be applied without working an injustice upon the respondents. To begin with, because the claimant waited until after the finding and dismissal to raise this issue, the respondents were denied the opportunity to bring in evidence regarding the circumstances of the 2011 stipulated judgment. Even had the issue been raised in a timely fashion, there is ample evidence already in the record to make it clear that applying res judicata in this situation be unreasonable and improper. At the time Electric Boat entered into the stipulated judgment with the widow it knew that its exposure for ongoing benefits under the Longshore act had already transferred to the Special Fund. It had no motivation to fight the widow's claim under the Longshore act and, by entering into the stipulated award, Electric Boat was in a position to provide the widow with an income without having to incur direct pecuniary liability for same. On the other hand, Electric Boat and all its insurers had clearly denied liability under the

The claimant has now pursued this appeal. Her argument is that since her husband's death was litigated in the Longshore Act proceedings, and Electric Boat stipulated to a judgment in that forum that his death was work related; that this determination is binding on the Commission. Electric Boat disputes that they ever conceded the issue of an award for § 31-306 C.G.S. benefits by resolving the Longshore Act claim. The other respondents vigorously argue that since they were not parties to any Longshore Act proceedings that they cannot be bound by the outcome reached in that forum.

On appeal, we generally extend deference to the decisions made by the trial commissioner. "As with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us

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Connecticut act (where liability to pay widow's benefits awarded would fall directly on the respondents, themselves) and were defending that claim. The claimant has offered nothing to suggest that the respondents ever suggested any intention to abandon their defense of the state claim. To apply the doctrine of res judicata against the respondents in this case would be an injustice.

Request 6 (re: collateral estoppel):
The claimant seeks addition of a conclusion that the respondents are precluded from contesting the findings in the 2011 Longshore award by the doctrine of collateral estoppel.
DENIED. Again, it is noted that the claim of collateral estoppel was not raised by the claimant until after the finding and dismissal was issued. Nevertheless, I will consider the merits of the argument.

Collateral estoppel, or "issue preclusion," applies to specific issues or facts that have actually been litigated in a prior case, and then only when the litigation of that issue or fact was indispensable to the determination of the prior case. Calinescu v. CFD Associates, 4144 CRB-08-99-11 (November 7, 2000). An issue is "actually litigated" if it is properly raised in the pleadings, submitted for determination, and in fact determined." Crochiere v. Board of Education, 227 Conn. 333, 343 (1993), citing 1 Restatement (Second), Judgments 27 (1982). Moreover, if the issue that was determined in the prior action was not indispensible to the outcome of the case "the parties may relitigate the issue in a subsequent action. Scalzo v. Danbury, 224 Conn. 124, 128-129 (1992).

In this case, the issue that matters is the question of whether Mr. Larocque's work at Electric Boat can be found to be a substantial factor in his having developed cancer. That was certainly a prerequisite to the widow's claim under the Longshore act. However, the issue was never actually litigated in the federal forum. The question of whether Ms. Larocque is entitled to Longshore dependent benefits was never decided by an administrative law judge. Rather, the May 19, 2011 "Compensation Order Awarding Death Benefits and Section 8F Relief" was issued by David Groeneveld, District Director of the U.S. Department of Labor's Office of Workers' Compensation Programs (First District). There was no trial, and the facts "found" in that Order were entirely those stipulated to by the Electric Boat and the widow. Certainly, the stipulated award contains no analysis of the burdens of proof or governing definitions of causation."

is whether the trial court could have reasonably concluded as it did." Daniels v. Alander, 268 Conn. 320, 330 (2004). The Compensation Review Board cannot retry the facts of the case and may only overturn the findings of the trial commissioner if they are without evidentiary support, contrary to the law, or based on unreasonable or impermissible factual inferences. Kish v. Nursing & Home Care, Inc., 248 Conn. 379 (1999) and Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Nonetheless, while we must provide deference to the decision of a trial commissioner, we may reverse such a decision if the commissioner did not properly apply the law or reached a decision unsupported by the evidence on the record. Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

We note that both in her brief and in the oral argument her counsel presented to this appellate tribunal the claimant focused almost exclusively on the issue of collateral estoppel. In her opinion, as a matter of law the trial commissioner erred in not deeming the determination in her Longshore Act claim, i.e. the 2011 Award, binding on a claim for

§ 31-306 C.G.S. benefits. The trial commissioner did not agree and after review of the facts and the law we find he reached a reasonable determination. In Birnie v. Electric Boat Corp., 288 Conn. 392 (2008) the Supreme Court held that when the award under the Longshore Act is determined under a less stringent standard of proof than would be necessary to prove compensability under Chapter 568, this Commission can reasonably determine such an award lacks the force of collateral estoppel in our forum. Based on the precedent in Birnie, we conclude the trial commissioner reasonably denied the claimant's

bid in this matter. We therefore find that the trial commissioner's ruling on the claimant's Motion to Correct was legally correct. [4]

In reaching this conclusion we have reviewed the precedent governing collateral estoppel. In Cumberland Farms, Inc. v. Groton, 262 Conn. 45 (2002) the Supreme Court made these statements as to collateral estoppel.

> Application of the doctrine of collateral estoppel is neither statutorily nor constitutionally mandated. The doctrine, rather, is a judicially created rule of reason that is "enforced on public policy grounds." Accordingly, as we have observed in regard to the doctrine of res judicata, the decision whether to apply the doctrine of collateral estoppel in any particular case "should be made based upon a consideration of the doctrine's underlying policies, namely, the interest of the defendant and of the courts in bringing litigation to a close …and the competing interest of the [claimant] in the vindication of a just claim.

Id., 58-59 (Internal citations omitted.)

The interest the trial commissioner must vindicate in our proceedings is the maintenance of consistent, equitable standards in the adjudication of claims before our Commission. In doing so, we believe a trial commissioner must consider other points raised in the aforementioned Cumberland Farms opinion.

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[4] We note that the issue of collateral estoppel, which is the claimant's sole argument on appeal, was not raised in the initial Brief submitted by the claimant at the formal hearing. See "Claimant's Brief And Proposed Findings Of Fact And Order" dated September 6, 2013; also January 28, 2014 Transcript, p. 8. In her argument she cited the documents relate to the 2011 Longshore Award (Claimant's Exhibits A & C) only for their evidentiary value. The claimant did not seek a ruling on this issue until **after** the trial commissioner ruled against her on the merits of her claim for benefits under Chapter 568 on May 28, 2014. See Motion to Correct, dated June 9, 2014. This essentially constitutes piecemeal litigation, which is against our precedent. See Gibson v. State/Department of Developmental Services-North Region, 5422 CRB-2-09-2 (January 13, 2010), Hines v. Naugatuck Glass, 4816 CRB-5-04-6 (May 16, 2005) and Schreiber v. Town & Country Auto Service, 4239 CRB-3-00-5 (June 15, 2001). Parties should not proceed under the belief this appellate body will remedy an unfavorable result resulting from an advocate's ineffective factual presentation. As the Appellate Court held in McGuire v. McGuire, 102 Conn. App. 79, 83 (2007), "[w]e have made it clear that we will not permit parties to anticipate a favorable decision, reserving a right to impeach it or set it aside if it happens to be against them, for a cause which was well known to them before or during the trial." See also O & G Industries, Inc. v. All Phase Enterprises, Inc., 112 Conn. App. 511, 523 (2009).

> We also have recognized, however, that "the application of the collateral estoppel doctrine has dramatic consequences for the party against whom the doctrine is applied [Consequently] [c]ourts should be careful that the effect of this doctrine does not work an injustice …Thus '[t]he doctrines of preclusion…should be flexible and must give way when their mechanical application would frustrate other social policies based on values equally or more important than the convenience afforded by finality in legal controversies.'

Id., 59-60.

The Appellate Court in recent years has also opined on the proper scope of collateral estoppel. In Bridgeport Harbour Place I, LLC v. Ganim, 131 Conn. App. 99 (2011) certain defendants argued that they were entitled to a directed verdict on this state action as the plaintiff's claims were previously litigated in a federal action. The Appellate Court, pointed out, citing Birnie, supra, that the trial court did not err in declining to apply collateral estoppel to the federal decision.

> ''The application of the collateral estoppel doctrine may not be proper when the burden of proof or legal standards differ between the first and subsequent actions. See, e.g., *Bath Iron Works Corp*. v. *Director, Office of Workers' Compensation Programs*, 125 F.3d 18, 22 (1st Cir. 1997) ('[c]ertainly a difference in the legal standards pertaining to two proceedings may defeat the use of collateral estoppel . . . [b]ut this is so only where the difference undermines the rationale of the doctrine' [citations omitted]); *Newport News Shipbuilding & Dry Dock Co*. v. *Director, Office of Workers' Compensation Programs*, 583 F.2d 1273, 1279 (4th Cir. 1978) ('[r]elitigation of an issue is not precluded by the doctrine of collateral estoppel where the party against whom the doctrine is invoked had a heavier burden of persuasion on that issue in the first action than he does in the second, or where his adversary has a heavier burden in the second action than he did in the first'), cert. denied, 440 U.S. 915, 99 S. Ct. 1232, 59 L. Ed. 2d 465 (1979); see also *Purdy* v. *Zeldes*, 337 F.3d 253, 260 n.7 (2d Cir. 2003) ('Collateral estoppel in this context is a fact intensive inquiry that is best determined on a case-by-case basis. As the [D]istrict [C]ourt stated, the collateral estoppel effect of the prior proceeding may depend on the specific approach taken by the courts addressing the petition in a particular case.' [Internal quotation

> marks omitted.]).'' *Birnie* v. *Electric Boat Corp*., 288 Conn. 392, 406–407, 953 A.2d 28 (2008). The standards of each proximate cause element must be examined in detail to determine whether a difference exists and collateral estoppel bars the plaintiff's state causes of action.

Id., 155.

The Appellate Court evaluated the proximate cause standard applied in the prior federal proceeding against the standard to be applied in the state court proceeding which had been appealed. Since "we conclude that the trial court correctly determined that the RICO and common-law proximate cause standards are different" id., 156, the Appellate Court held the prior action did not enable the defendants to bar the plaintiff's state remedies through the use of collateral estoppel. Id., 161.

Subsequently, in Coyle Crete, LLC v. Nevins, 137 Conn. App. 540 (2012) the Appellate Court explained why claim preclusion may not lie in a subsequent action regarding similar issues. "We also are mindful that collateral estoppel is a flexible doctrine; *Corcoran* v. *Dept. of Social Services*, 271Conn. 679, 697, 859 A.2d 533 (2004); whose 'crowning consideration' is fairness. *Aetna Casualty & Surety Co*. v. *Jones*, supra, 220 Conn. 306. The scope of matters precluded by that doctrine 'necessarily depends on what has occurred in the former adjudication.' *State* v. *Ellis*, supra, 197 Conn. 467." Id., 556. While noting there are many cases applying collateral estoppel the Appellate Court also noted "[i]n other cases, however, there may be compelling reasons why preclusion should not apply. The scope of review in the first action may have been very narrow.'' Id. In Coyle Crete the court concluded that the trial court improperly rendered summary judgment on collateral estoppel grounds. Id., 559.

We note that the Supreme Court in Birnie stated that due to the differing standards involved in proving a Longshore Act claim as opposed to a claim under Chapter 568, that a trial commissioner must review the evidence presented in the prior proceeding and the standards applied to that evidence before granting the prior decision the force of collateral estoppel. Id., fn.2.[5] The trial commissioner did so in this case, and determined, consistent with the Birnie precedent, that collateral estoppel could not be applied in this case. We need not elaborate at length on his detailed explanation for discounting the claimant's argument; see Ruling on Claimant's Motion to Correct, dated June 16, 2014; except to note that we are not persuaded by the claimant's legal arguments that as a matter of law they are in error. See Footnote 3 of this opinion. We reach this conclusion as we are required to afford the trial commissioner a reasonable presumption in favor of his or her decision, Daniels, supra. More importantly; we have reviewed the relevant precedent promulgated since Birnie. These cases stand for the proposition that if anything, the standard of proof as to causation in a contested Chapter 568 case has been clarified as far more stringent than the standard in the Longshore Act proceedings herein.

One year after Birnie, the Appellate Court affirmed our decision which upheld a Finding and Dismissal of a § 31-306 C.G.S. claim where the claimant asserted that workplace asbestos exposure caused her husband's death. In Voronuk v. Electric Boat Corp., 118 Conn. App. 248 (2009) the Appellate Court rejected the claimant's argument

[5] "As an initial matter, we noted that, for purposes of determining whether the defendant properly was estopped from relitigating the issue of causation, we are not concerned with whether the federal administrative law judge in the underlying Longshore Act proceeding applied the *correct* legal standard for causation…but rather, whether the standard *as applied by* the federal administrative law judge differs from the substantial factor standard to such an extent that the application of the collateral estoppel doctrine would '[undermine] the rationale of the doctrine."' (Emphasis in original, internal citations omitted.)

that, pursuant to the standard in Birnie, once she presented evidence of *some* workplace exposure to a carcinogen that she had met her evidentiary burden before the Commission.

> The plaintiff's argument that this language, read in the context of the applicable precedential guidance, somehow removed from the commissioner the discretion to deny the plaintiff's claim once he decided that workplace exposure caused, in part, the decedent's death, simply is untenable. Nowhere does the *Birnie* opinion expressly state such to be the case, and such a reading cannot, in light of established precedent, reasonably be inferred.

Voronuk, supra, 255.

In reviewing the evidence presented in Voronuk, the Appellate Court noted that the claimant's expert witness stated that while the decedent's exposure to asbestos was a cause of death, the witness did not evaluate how significant a cause this was in relation to other contributory factors. This meant a reasonable fact finder could determine the opinion failed to satisfy the "substantial contributing factor" standard required to award benefits under our law. "We agree with the board that Cullen's 'report lack[ed] any evaluation as to the relative weight of the [various] factors [that contributed to the decedent's death], and it would be conjecture to infer [that the plaintiff's expert] had an opinion as to the relative significance of any specific risk factor from the text of the report.''' Id., 257.

The fact that conjecture cannot be the basis for a reliable opinion on causation under Chapter 568 was the fulcrum of the Supreme Court's opinion in DiNuzzo v. Dan Perkins Chevrolet Geo, Inc., 294 Conn. 132 (2009). In DiNuzzo, the trial commissioner in a claim for § 31-306 C.G.S. benefits accepted the opinion as to the decedent's cause of death from a family physician who had not performed an autopsy. While this tribunal affirmed that decision, DiNuzzo v. Dan Perkins Chevrolet Geo, Inc., 4911 CRB-3-05-1

(January 13, 2006), the Appellate Court reversed this decision, 99 Conn. App. 336 (2007). The Supreme Court affirmed the Appellate Court and dismissed the claim. They cited the claimant's obligation to establish proximate cause in order to be awarded benefits.

> [T]he test of proximate cause is whether the defendant's conduct is a substantial factor in bringing about the plaintiff's injuries. . . . Further, it is the plaintiff who bears the burden to prove an unbroken sequence of events that tied his injuries to the [defendant's conduct]. . . . The existence of the proximate cause of an injury is determined by looking from the injury to the negligent act complained of for the necessary causal connection. . . . This causal connection must be based [on] more than conjecture and surmise. . . .

Id., 142.

The Supreme Court in DiNuzzo further pointed out that when establishing proximate cause any expert opinion supporting the claim "must be based [on] reasonable probabilities rather than mere speculation or conjecture if they are be admissible in establishing causation…." Id. Moreover, the Supreme Court held "[t]he right of a claimant to compensation must be based [on] more than speculation and conjecture.'' Id., 143. Finding the claimant's expert offered testimony that was riddled with evidentiary deficiencies, id., 147-148, the Supreme Court found an insufficient basis to award the claimant benefits.

Finally, in 2012 the Supreme Court clarified the standard of "proximate cause" in Sapko v. State, 305 Conn. 360 (2012). In Sapko a claimant whose claim for § 31-306 C.G.S. benefits was dismissed appealed the dismissal, arguing that the trial commissioner should not have considered nonemployment factors behind the decedent's death and that she presented sufficient evidence under the standard delineated in Birnie to secure

compensation. Id., 388-389. The Supreme Court, however, rejected the position that in Birnie it had lessened the burden on claimants to establish a nexus of proximate cause between employment and injury in order to prevail on a claim for benefits under Chapter 568.

> ....in reaching our conclusion in *Birnie*, we undertook an in-depth examination of the contributing and substantial factor standards to facilitate a comparison of the two tests. It was in this context that we observed that the substantial factor test requires that the employment contribute to the injury ''in more than a de minimis way.'' Id., 413. The ''more than . . . de minimis'' language is preceded, however, by statements explaining that ''the substantial factor standard is met if the employment *materially or essentially contributes* to bring about an injury''; (emphasis in original) id.,412; which, by contrast, ''does *not* connote that the employment must be the *major* contributing factor in bringing about the injury . . . nor that the employment must be the *sole* contributing factor in development of an injury.'' (Citation omitted; emphasis in original.) Id. Thus, it is evident that we did not intend to lower the threshold beyond that which previously had existed.

Sapko, supra, 391.[6]

The Supreme Court in Sapko then cited the Appellate Court's opinion in Voronuk, which the respondent believed delineated the appropriate standard to determine causation under Chapter 568. This citation pointed out that Birnie, supra, was a case dealing with the federal Longshore Act, and hence, dealt with a different standard of proof than those claims based on Connecticut law.

> As a result, it is clear that the court's aim was not to clarify - much less alter - the substantial factor test but to explicate it in such a way as to facilitate a fair comparison with the federal test in question. The

[6] The Supreme Court in Sapko v. State, 305 Conn. 360 (2012) also cited DiNuzzo v. Dan Perkins Chevrolet Geo, Inc., 294 Conn. 132 (2009) for the following proposition, "it is the plaintiff who bears the burden to prove an unbroken sequence of events that tied [the employee's] injuries to the [employer's conduct]. . . . The existence of the proximate cause of an injury is determined by looking from the injury to the negligent act complained of for the necessary causal connection." Id., 372.

> substantial factor test remains as it was prior to *Birnie* . . . . *Voronuk v. Electric Boat Corp*., 118 Conn. App. 248, 255, 982 A.2d 650 (2009).

Id., 391-392.

Viewing the precedent in Voronuk, DiNuzzo and Sapko together as a whole, it is clear that since Birnie our appellate courts have restated the need for claimants seeking an award under Chapter 568 to present reliable, nonspeculative evidence and to carry their burden of proof that there is a clear nexus of proximate cause between employment and injury. The trial commissioner determined that the claimant failed to present such a case. We must review the evidence on the record to determine if the trial commissioner was correct in his assessment.

We note that the trial commissioner concluded that the respondents' expert witnesses, Dr. Gerardi and Dr. Pulde, were more credible and persuasive as to the etiology of the decedent's lung cancer than the claimant's expert witness, Dr. Pella. See Conclusions, ¶¶ G, K, O & P. After reviewing Dr. Pella's testimony we are not satisfied that standing on its own it would have compelled granting an award for the claimant in a Chapter 568 case even if unrebutted by the respondents' expert witnesses. While Dr. Pella's February 3, 2011 report labeled the decedent's asbestos exposure as a "significant contributing causal cofactor" behind the decedent's fatal lung cancer, Claimant's Exhibit F, this report does not offer any relative weight between the decedent's exposure at carcinogens at work as opposed to his volitional lifelong cigarette habit. The trial commissioner noted in his findings that witnesses who reviewed various objective medical tests stated they were inconsistent with Dr. Pella's opinion as to causation. See Findings, ¶¶ 25, 51-52, 68, 72, and 77-79. Dr. Pella had an opportunity to address these

issues at his April 19, 2013 deposition, Claimant's Exhibit T. The witness was asked if he had ever had found evidence of asbestosis. He replied "I found what I felt was evidence of asbestos related lung disease. I'm not sure if that's the same thing as asbestosis." Id., p. 16. The witness further associated the increased interstitial markings found in the decedent's lungs as due to "[p]redominately radiation." Id., p. 17. Dr. Pella was asked to elaborate on a 2005 medical report (Claimant's Exhibit I) where he attributed 80% of the cause of Mr. Larocque's lung cancer to cigarette smoking and 20% to asbestos dust exposure. The witness described this allocation of causation as a "professional guess." Claimant's Exhibit T, p. 14.

The trial commissioner could review this evidence and reasonably conclude it did not prove that the decedent's employment was a substantial factor behind his demise. The trial commissioner noted the absence of pathologic evidence in this claim (Findings, ¶ 79 and Conclusion, ¶ K) and the absence of an autopsy on the decedent (Findings, ¶ 58). Therefore, the evidence supportive of this § 31-306 C.G.S. claim has many of the same deficiencies that caused the Supreme Court to rule against the claimant in DiNuzzo, supra. We believe that the trial commissioner also could have found some of the opinions rendered by Dr. Pella "speculative" insofar as the links between his opinions and objective test findings were not definitive. Id. The trial commissioner also could have concluded that the methodology used by the claimant's witness to allocate the weight of causation was not rendered to the standards required under Struckman v. Burns, 205 Conn. 542 (1987) or Strong v. UTC/Pratt & Whitney, 4563 CRB-1-02-8 (August 25, 2003). Finally, even assuming the trial commissioner was willing to credit Dr. Pella's opinion that work exposure was 20% responsible for the decedent's fatal

illness, this would not, as a matter of law, compel the trial commissioner to award benefits. See Weir v. Transportation North Haven, 5226 CRB-1-07-5 (April 16, 2008).[7]

Since we have identified reasonable grounds based on the claimant's evidence in the Chapter 568 action that support the trial commissioner's decision, we now review the evidence presented in the Longshore Act proceedings, particularly in light of the Birnie precedent. We have reviewed the 1998 Award which was reached at the end of a contested hearing. We note that in the proceedings the claimant had the benefit of a statutory presumption that his injury was work related. Claimant's Exhibit K, p.13. The claimant could meet this presumption solely through his own credible testimony. Id. In addition, a prima facia case for the claimant "need not affirmatively establish a connection between work and harm." Id., p. 14. This decision further noted the employer did not introduce evidence "severing the connection between such harm and Claimant's maritime employment." Id. We further note that the terms of the 1998 Award focus on Mr. Larocque's respiratory ailments; and do not focus on the cancer that led to his death. It is also axiomatic that the Administrative Law Judge in 1998 only ruled on whether Mr. Larocque met the standards necessary for a disability award under the Longshore Act; and could reach no findings on the issue as to whether his subsequent death was work related. In addition, due to the concurrent impact of the claimant's

[7] In Weir v. Transportation North Haven, 5226 CRB-1-07-5 (April 16, 2008) we determined that when a commissioner's examiner allocated 70% of the need for a claimant's surgery to preexisting conditions and 15% to a work accident, the trial commissioner was not obligated as a matter of law to find the work injury was a substantial factor in the claimant's need for surgery. We noted in Weir "[w]e also have been presented with no precedent that states any threshold percentage of causation is as a matter of law, 'substantial.'"

"massive" cigarette smoking the employer was able to assign its obligation under the 1998 Longshore disability award to a "Special Fund." Id., pp. 26-31.

The terms of the 2011 Award under the Longshore Act and the stipulation that led to that award are also in our view, rather conclusory. The stipulation dated March 24, 2010 (Claimant's Exhibit A) references no medical evidence supportive of its stated conclusion that the death of Mr. Larocque was due to work-related illnesses. The Compensation Order issued on May 19, 2011 which implemented the terms of the stipulation (Claimant's Exhibit C) did not reference any other possible grounds for causation for Mr. Larocque's death other than the conditions referenced in the 1998 Award. It does not appear the District Director who approved the stipulation considered the weight of any other contributing factor to the decedent's death prior to granting the claimant benefits, as the four corners of the document are silent on this point. The sole medical evidence cited in support of the 2011 Award was Dr. Pella's February 2, 2010 medical report relating the decedent's death to work-related pulmonary/lung disease.

Viewing the claimant's evidence in its totality, we cannot conclude that it establishes as a matter of law that the claimant was entitled to an award under § 31-306 C.G.S. In reviewing the totality of the evidence supportive of the 1998 Award and the 2011 Award, we also believe the record herein is insufficient to extend collateral estoppel to these awards. In regards to the evidence and causation standards in the 1998 Award we concur with Conclusion, ¶ I in the Finding and Dismissal. As for the 2011 Award, there was no specific finding weighing the relative impact of work-related causation factors versus the impact of other factors behind the decedent's death. This indicates pursuant to Birnie, supra, that collateral estoppel should not be extended to the 2011

award. Id., 416-417, and fn.14. In addition, the sole medical evidence cited in the 2011 Award supportive of compensability, Dr. Pella's report, could, as we previously explained, be discounted by the trial commissioner as insufficiently reliable to sustain an award of benefits. See DiNuzzo, supra, and O'Reilly v. General Dynamics Corp., 52 Conn. App. 813 (1999). This is particularly true in the absence of an autopsy supportive of this witness's conclusions. DiNuzzo, supra. The clear nexus of proximate cause between employment and fatal injury required for an award under the Sapko precedent could reasonably be found lacking by the trier of fact. See Conclusion, ¶ Q. Simply put, if the claimant's evidence in the Longshore Act proceeding was insufficient to award benefits under the standards of Chapter 568, a trial commissioner has every right to determine an award reliant on such evidence is not sufficient to merit the force of collateral estoppel.

Notwithstanding the evidence herein the claimant argues essentially that since Electric Boat stipulated as to compensability prior to the 2011 Award that our Commission must grant this stipulation essentially full faith and credit in a claim for Chapter 568 benefits. We do not believe that stipulations reached between parties in other proceedings are entitled to such conclusive effect in proceedings before our Commission. The Supreme Court has made abundantly clear in Leonetti v. MacDermid, Inc., 310 Conn. 195 (2013) that **no** agreement between parties purporting to establish an enforceable right to compensation or to bargain away such rights is legally effective unless and until it is approved by one of our Commissioners. Id., 206, citing § 31-296(a) C.G.S.. In Leonetti, the Supreme Court concluded that enforcement of the stipulation in that case would work an injustice to the claimant. In the present case, the trial

commissioner could reasonably determine the respondents would not receive equitable consideration were such a weakly supported stipulation given the force of collateral estoppel. See Cumberland Farms, supra, and Coyle Crete, supra. In any event, this is a decision within the province of a finder of fact.

> Regardless of whether the agreement entered into by the parties might be enforceable at common law, ''[a]s in the case of a voluntary agreement, no stipulation is binding until it has been approved by the commissioner.'' *Muldoon* v. *Homestead Insulation Co.*, 231 Conn. 469, 480, 650 A.2d 1240 (1994). Thus, in the present case, the agreement signed by the parties had no effect on the claimant's workers' compensation claim unless and until the commissioner approved the agreement.

Leonetti, supra, 207.

The Supreme Court further pointed out that pursuant to § 31-298 C.G.S. trial commissioners have great latitude as to evaluating the evidentiary weight of a stipulation presented for enforcement. Id., 212. The Leonetti decision cited Dzienkiewicz v. Dept. of Correction, 291 Conn. 214 (2009) as authority on this point. In Dzienkiewicz the claimant had received a disability retirement award from the State Medical Examining Board and argued that this constituted a binding evidentiary admission as to his eligibility for temporary total disability under Chapter 568. "The defendant objected to the admission of this decision on the ground of relevance, asserting that the medical board was a different administrative body than the workers' compensation commission (commission) and was charged with determining pension eligibility under a different standard." Id., 217. After considering precedent such as Bidoae v. Hartford Golf Club, 91 Conn. App. 470 (2005) the Supreme Court found that there was no error on the part of the trial commissioner choosing to exclude the medical examining board decision from the evidence considered in the claimant's bid for workers' compensation benefits. Id.,

220-224.[8] See also O & G Industries, Inc. v. All Phase Enterprises, Inc., 112 Conn. App. 511, 523 (2009) as to the circumstances under which a court may consider an evidentiary admission binding. While under proper circumstances it may still be possible for a trial commissioner to extend the force of collateral estoppel to an award reached in a Longshore Act proceeding, see Lafayette v. General Dynamics Corp., 255 Conn. 762 (2001) and Levarge v. Electric Boat Corp., 5747 CRB-1-12-4 (January 13, 2014), the trial commissioner was not compelled to do so in this case.

Having concluded that collateral estoppel should not be extended to the sole respondent in the Longshore Act proceedings, Electric Boat, we could gloss over the arguments presented by ACE and Travelers that since the employer's insurers were not parties to the 2011 Award that they should not be bound to the results of this action due to a lack of privity. We choose not to gloss over this argument as the insurers, citing Mazziotti v. Allstate Ins. Co., 240 Conn. 799 (1997) raise a credible issue of equity. Since Electric Boat in the 2011 Award anticipated assigning its financial obligations to a Special Fund, there is no indication on the record that they anticipated binding their insurers to the outcome of that stipulation.[9] This presents an issue where the insurers' interests may be inconsistent with that of Electric Boat and even were Electric Boat to be estopped, such a determination might not be binding on their insurers. See Wiacek

[8] In Bidoae v. Hartford Golf Club, 91 Conn. App. 470 (2005) the Appellate Court promulgated the standard that awards for social security disability benefits are not binding in proceedings as to whether the claimant is entitled to a disability award under Chapter 568.

[9] The Special Fund that assumed responsibility for the 1998 Award and the 2011 Award appears, based on the text of the decision granting the 1998 Award, to have jurisdiction due to the claimant sustaining concurrent lung injury from nonoccupational factors. See Claimant's Exhibit K, pp. 26-31. We note congruence with the Supreme Court's rationale in Deschenes v. Transco, Inc., 288 Conn. 303 (2008) where a case where an occupational disease (asbestosis) and a nonoccupational disease (emphysema due to cigarette smoking) were concurrently developing rendered the award subject to apportionment between the occupational and nonoccupational factors.

Farms, LLC v. Shelton, 132 Conn. App. 163 (2011)[10] and Coyle Crete, supra, 559-560, where an identity of parties between two different legal decisions was an important factor in determining whether claim preclusion should lie. As noted in Wianek Farms, supra, when a party's interests were not represented in the prior proceeding preclusion may not lie. The respondent Second Injury Fund also argues that the absence of privity bars the application of collateral estoppel against it, citing Sikorsky Aircraft Corp. v. Commissioner of Revenue Services, 297 Conn. 540, 544-546 (2010). The Second Injury Fund argues that in absence of mutuality that the state cannot be bound by collateral estoppel to a prior judgment. As previously noted, Electric Boat was the sole respondent to stipulate in the Longshore Act proceedings and the state was not a party to these proceedings. Since we denied collateral estoppel against any respondent in this case, however, we need not directly address the merits of these arguments in this decision.

We fully understand that the principle of collateral estoppel is an effort to be equitable to claimants who have already proven their case in another forum, and should not be required to relitigate the same issues before a trial commissioner to receive an award under Chapter 568. On the other hand, there is no statutory or appellate authority that stands for the principle that a claimant who previously received a Longshore Act award should be afforded a lesser burden on the issue of causation than a claimant who

[10] In Wiacek Farms, LLC v. Shelton, 132 Conn. App. 163 (2011) the Appellate Court held, "Because the parties to the injunction action and the parties to the present action are not precisely identical, we review the applicable principles governing who may invoke the doctrine of collateral estoppel to preclude an opposing party from relitigating a claim or issue. The defensive use of the doctrine of collateral estoppel by one who was not a party to the initial proceeding was approved in *Aetna Casualty & Surety Co.* v. *Jones*, 220 Conn. 285, 596 A.2d 414 (1991). [T]he 'crowning consideration' in collateral estoppel cases and the basic requirement of privity [is] that the *interest of the party to be precluded* must have been sufficiently represented in the prior action so that the application of collateral estoppel is not inequitable.'' (Emphasis added.) *Mazziotti* v. *Allstate Ins. Co*., 240 Conn. 799, 818, 695 A.2d 1010 (1997). Here, collateral estoppel is being invoked against a party to the prior proceeding, and, therefore, the privity requirement is not an issue." Id., fn.3.

was not eligible for relief under the Longshore Act. A fundamental principle of equity is equality under the law. Were a trial commissioner not to apply the causation standard promulgated in Sapko, and most recently restated in Turrell v. State/DMHAS, 144 Conn. App. 834, 845 (2013), to a claim such as this one, the principle of equity between claimants before our tribunal would be eroded. Since collateral estoppel is essentially a doctrine rooted in public policy, we cannot endorse its application to contravene what we regard as a more paramount public policy.

We find the trial commissioner's decisions herein consistent with the evidence and the law. Accordingly, we affirm the Finding and Dismissal.

Commissioners Stephen B. Delaney and Michelle D. Truglia concur in this opinion.