

# THE DAILY RECORD

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*Continued ...*

Court Justice Peter E. Corning granted defendants' motion for summary judgment and dismissed all causes of action against all three defendants. Judge Corning found that plaintiff had been apprised in over 20 publications and mailings of his duty to obtain Medicare benefits prior to his 65th birthday.

Plaintiff's federal claims were also dismissed on the grounds that plaintiff was not eligible for relief under those laws because plaintiff had not been subjected to a "qualifying event" under those laws.

The Appellate Division, Fourth Department unanimously affirmed Judge Corning's decision on June 8, 2001. The New York Court of Appeals denied Regan's motion for leave to appeal, and the U.S. Supreme Court denied certiorari on February 22, 2002.

## Federal Court

On May 7, 2002, the plaintiff filed the instant action in federal court, contending that as a "vestee" under the NYSHIP plan, he was entitled to full benefits under the NYSHIP plan for the period he was considered a vestee and that the defendants' attempt to make him enroll in Medicare and refusal to pay benefits as his primary insurers violates the Medicare as a Secondary Payer law.

## Motion To Dismiss

Defendants move to dismiss plaintiff's complaint based on the doctrine of *res judicata*.

Plaintiff asserts that *res judicata* does not apply because the relief he sought in state court was declaratory and

injunctive and the state court action was materially different from the instant case. Plaintiff further contends that state courts are not authorized to hear challenges to the Medicare as a Secondary Payer Act, so he was unable to fully and fairly litigate his claims in state court.

## Res Judicata

Does the doctrine of *res judicata* apply? Is plaintiff's federal court action precluded by his state court case?

Citing numerous cases that represent the meaning and purpose of *res judicata*, Judge Telesca wrote, "The purpose of the doctrine is to provide finality to parties who have come before the courts to resolve their disputes. Accordingly, the doctrine prevents relitigation of claims asserted in a previous action, as well as claims (as in this case) that could have been asserted in that action. See *Cromwell v. County of Sac*, 94 U.S. 351, 351 (1876)."

Explaining his reasoning further, Judge Telesca noted that "the court must determine whether or not the judgment in the previous action was '(1) a final judgment on the merits, (2) by a court of competent jurisdiction, (3) in a case involving the same parties or their privies, and (4) involving the same cause of action.' *Stephenson v. Dow Chemical Co.*, 273 F3d 249 (2d Cir. 2001)."

Looking at the record in the instant case, Judge Telesca noted that a final judgment by a court of competent jurisdiction was issued, and it involved the same parties. The only question to be resolved was whether or not the

state court action involved the "same cause of action."

"Based on the state court complaint, and the entire record from the state court proceedings," wrote Judge Telesca, "I find that the allegations raised in this complaint could have been raised in the state court action. The claims in this case ... arise out of the exact facts that were alleged in the state court action, and arise out of the same transactions and occurrences that were alleged in the state proceedings. The fact that plaintiff is asserting a new legal theory as a basis of recovery is of no moment."

## Exceptions To Doctrine

In *Harborside Refrigerated Services, Inc. v. Vogel*, 959 F2d 368 (2d Cir. 1992) the court recognized an exception to the application of *res judicata* where the plaintiff sought only declaratory relief in the previous action.

However, Judge Telesca points out that Regan sought not only injunctive and declaratory relief, but monetary damages in his previous state court action. Thus, "the declaratory judgment exception to the application of the doctrine of *res judicata* does not apply in this case," concluded the court.

Similarly, plaintiff's other contentions to avoid the effect of *res judicata* were considered to be without merit.

"The fact that plaintiff lost on every level does not indicate that he did not have a full and fair opportunity to litigate his claims," concluded the court in ruling for the defendants and dismissing the complaint with prejudice.