Baker v Gen Motors

* Elwell employed for GM
* Appeared as witness of Ps against GM
* Suit between GM and Elwell
* *Settlement in MI state ct*
	+ Permanent injunction against testifying in litigation against GM
	+ Added agreement that if *ordered* (subpoenaed) to testify, he could, of course
* Started asking people to subpoena him
* Wrongful death action by Ps (Bakers) against GM in MO fed ct
	+ They subpoenaed Elwell
	+ GM asked for ct to refuse to allow him to testify (basically enforcing injunction)
	+ MO ct refused
	+ Eighth Cir reversed
	+ SCt reversed – OK for M) fed ct to refuse
	+ Notice about FF&C statute not FF&C clause
* Some basic points
	+ SCt says that injunctions (equitable decrees) are subject to FF&C
		- In general
	+ had been so accepted for a long time
		- Eg equity decrees for payment of money had always been
		- Or divorce decrees
	+ Note as well, that any factual finding in an equitable litigation would have issue preclusive effect in another jurisdiction
	+ Also concluded – no “roving public policy exception”
		- Not clear what that means though b/c sounds awfully like public policy was invoked by Ginsburg
* Start with Kennedy’s opinion
* Worried that Ginsburg’s opinion opens up too much of a hole in FF&C
	+ Wants to argue that the effect demanded in MO could not even be demanded in Mich
		- 1st - Injunction is modifiable in Mich
			* So is modifiable in MO
			* BUT is it a modification to ignore
				+ Is that FF&C??
	+ The more important point is that the Baker’s cannot be bound by a decision in Mich in which they did not participate
	+ Green is skeptical
	+ It is true that a party can be allowed to relitigate a decision that has an effect on them if they were not a party
		- * + African-American applicants to a fire dept sue the department
				+ The court enters a decree for an affirmative action program in hiring
				+ Subsequently white applicants to the fire department sue the department challenging the program
				+ Are they precluded?
				+ Not bound
				+ (Congress has solved this problem by statute)
			* But sometimes you are affected by a decision in which you were not a party and cannot challenge it
				+ Sealing of ct records
* Scalia’s opinion
	+ Think of money j
		- You cannot simply take the j and then get your money from another court
		- You must bring a suit in that court to collect a debt
			* The judgment will be conclusive evid of the debt
	+ Js of another state are not self-enforcing in recognizing state
		- Must brings suit on j
		- So Scalia would say the following
			* Sure there is an inj in Mich
				+ That can of course be backed up by the rendering ct
				+ If Elwell testifies, then rendering ct in Mich can throw in jail
			* But there is no suit by GM to enforce the inj in which the inj is evid
			* problem – what if there were?
			* What if GM sued for a declaratory j determining that Ewell can’t testify in Baker case?
				+ Wouldn’t it have to be enforced
			* Suggestion by Scalia that it is weird to ask for a form of enforcement in MO that even the rendering ct in Mich can’t do

Namely actually keep Elwell from appearing at all

* + - * + Greem: not clear why this is a problem
				+ It’s generally true that recognizing state can do things rendering state can’t
				+ eg get assets

Note:

The fact that a Mich j in MO is enforced according to MO law brings up a distinction betw substance (the j) and procedure (the way it is enforced)

* + - * + P sues D gets j
				+ In rendering state could attach house
				+ In recognizing state can’t
				+ No other asset in recognizing state, so can’t be enforced there
				+ Not a violation of FF&C

Notice that sometimes the recognizing state might put such impediments on its procedure (esp if they discriminate against sister state judgments) that would then violate FF&C

* + Problem of simply denying jurisd to suits on js from other state?
	+ When does that violate FF&C?
		- * Can’t use Public Policy Exception to deny jurisdiction to a suit on a judgment
				+ That’s suggested by Fauntleroy
			* What about forum non conveniens
			* Anglo-Am Provision v Davis says that’s OK
			* NY ct allowed to refuse suit on foreign judgment between 2 foreign corps when judgment arose from cause of action arising out of state
			* BUT Kenney v Supreme Lodge (US 1920)
* Ill ct refused jurisdiction for suit on Alabama wrongful death judgment against an Illinoisan
* basis was statute forbidding actions for death outside state
* SCt held it was a violation of FF&C
* Green thinks Anglo-Am is not good law anymore
	+ Really can’t have a legitimate objection on forum non conveniens grounds to a suit to enforce a judgment
	+ After all, there is a connection with the forum state, namely the defendant’s assets being there
		- **Finally – Ginsburg’s reasoning**
			* 1st said that FF&C does not require states to “adopt the practices of other states regarding the time manner and mechanisms for enforcing js”
				+ sounds like Scalia
			* But more important is idea that
				+ “orders commanding action or inaction have been denied enforcement in a sister state when they purported to accomplish an official act within the exclusive province of that other state (title) or interfered with litigation over which the ordering state had no authority (antisuit injs)

It is true that anti-suit injunctions between states are not generally given FF&C

Green worries how far this goes?

Assume that there is an in personam judgment in Wash ordering D to deed land in Neb

Is it contrary to Baker for the Neb ct to be bound to enforce the injunction?

Green thought that FF&C demanded it

Or is the problem in Baker the effect on third parties (the Bakers), something not true in our Wash-Neb hypo?

**Matsushita Elec. Indus. Co. v. Epstein (US 1996)**

Matsushita made tender offer for MCA

* Class action in Del by against MCA and directors
	+ Matsushita added as D
		- Conspiring to violate Del law
* Also Fed securities action in Cal
	+ Actions with exclusive federal SMJ
	+ Cal DCt declined to certify class
	+ Appeal
* During appeal
* Settlement to Del action
* As usual notice for opting out
* Judicial approval of settlement
* Final j pursuant to settlement precluded fed actions as well, incl fed sec’s actions

On appeal, Matsushita tried to use settlement to bar fed sec’s actions

9th Cir rejected, - FF&C statute inapplicable

* + Del j precludes only actions that Del court could have taken

SCt reverses

Let’s start with simpler example (no settlement and no class action)

P sues D in state ct for state law fraud concerning securities

J for P (not settlement)

P then sues D in fed ct for fed sec’s law violations

* independent of FF&C, is there an argument for claim precl?
	+ efficiency
	+ could have brought together in fed ct
* arg against claim precl?
	+ strips state ct of jurisd
* how about issue precl if fed action is allowed
	+ efficiency of avoiding relitigation of issues
	+ But it might be that Congress gave fed cts exclusive fed SMJ because it wanted fed cts to litigate the issues of the fed action
	+ Issue preclusion would frustrate that

Now what about FF&C

Marrese answered some of this

* If, under *state law*, federal action would not be precluded
	+ because it was not within the subject matter jurisdiction of the state court
	+ then the federal court may not preclude the action
* strange
	+ why can’t it give greater precl effect?
		- worries about due process?
* How can there be any law on the matter…?
* No state court will ever discuss it
* if, under *state law*, the federal action *would* be precluded
	+ even though it was not within the subject matter jurisdiction of the state court
	+ then the federal court must preclude the action
	+ unless the federal statute giving the federal courts exclusive federal subject matter jurisdiction for the federal action impliedly repealed federal courts' obligations under section 1738 to give full faith and credit to state court judgments.

BUT complications

* this was a *settlement*
* that might suggest broader precl possibilities
	+ settlement is a matter of the intention of the parties

Add problem of a class action

* NOW a class representative (and lawyer) are settling for other members of class
* Q is adequacy of representation of interest
* One problem is that ct must approve settlement
	+ But that means assessing merits of fed actions
	+ How can the court do that when the court has no SMJ for the fed claims?
* other worry is power of repr plaintiff to give away fed claims of unnamed Ps
	+ the power of the repr P is tied to the power of the ct
	+ how can it relinquish claims that it can’t litigate?