Nos. 98-569C & 90-162C

(Filed June 6, 2005)
UNPUBLISHED

DAVID E. BROWN, et al.,[1]	*	
	*	Contracts; Enforcement of
Plaintiffs,	*	Settlement Agreements; Fair Labor
	*	Standards Act of 1938, 29 U.S.C.
v.	*	§§ 201-219 (2000); *Res Judicata*;
	*	Material Misrepresentation or
THE UNITED STATES,	*	Unilateral Mistake
	*	
Defendant.	*	

Jules Bernstein and *Edgar James*, Washington, D.C., for plaintiffs. *Linda Lipsett*, Washington, D.C., of counsel.

Shalom Brilliant, United States Department of Justice, with whom were *David W. Ogden*, Acting Assistant Attorney General, *David M. Cohen*, Director, Washington, D.C., for defendant. *Miguel A. Serrano*, United States Department of Justice, Washington, D.C., of counsel.

OPINION

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[1]/ On January 25, 1999, the subject matter of this case was consolidated with *Stephen S. Adams, et al. v. United States*, Case No. 90-162C. In an effort to avoid any potential confusion, the court issues this opinion under the lead case number 90-162C and the subject matter case number 98-569C. To distinguish the claims of plaintiffs who are listed in the captions of more than one case in these consolidated cases, the court refers to all of the consolidated cases as *Adams*, No. 90-162C and Consolidated Cases, or simply as *Adams*, and to the case presenting just the claims subject to the cross-motions here as *Brown*, No. 98-569C, or simply as *Brown*.

BUSH, *Judge*

Presently before the court are the parties' cross-motions for summary judgment. Defendant's (Corrected) Motion for Summary Judgment was filed on October 6, 1998. Plaintiffs' Cross-Motion for Summary Judgment was filed on January 19, 1999. The cross-motions have been fully briefed. The briefs were supplemented by the parties' Stipulation of Facts filed on February 3, 2004 (Jt. Facts). Oral argument was not requested by the parties and is deemed unnecessary.

BACKGROUND

Defendant asserts that the eleven plaintiffs in *Brown*, No. 98-569C, were among numerous other plaintiffs pursuing the same Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 (2000) (FLSA), claims in actions before this court or its predecessor, the United States Claims Court, in *Aamodt v. United States*, No. 623-89C or *Orcutt v. United States*, No. 95-229C. Defendant further asserts that *Aamodt* and *Orcutt* were ultimately dismissed with prejudice as a result of settlement agreements between the parties. When the parties in *Adams*, No. 90-162C and Consolidated Cases, subsequently entered into a settlement agreement in 1996 resolving FLSA claims arising from plaintiffs' employment as GS-11 and GS-12 criminal investigators in Immigration and Naturalization Service (INS) Border Patrol sectors, defendant states that it was not advised that among the plaintiffs asserting claims in this category were eleven individuals (who later filed *Brown*, No. 98-569C), whose claims had been dismissed with prejudice in the *Aamodt* and *Orcutt* settlements. The government argues that the *Adams* settlement agreement is unenforceable by these eleven plaintiffs because of fraud or material misrepresentation or, in the alternative, by reason of unilateral mistake. Plaintiffs maintain that defendant's arguments are ill-founded and that they should receive full benefit of the *Adams* settlement. These arguments require a brief review of the litigation history of the plaintiffs in *Brown*, No. 98-569C.

Brown, No. 98-569C, was filed on July 9, 1998, presenting the claims of eleven plaintiffs: David E. Brown, James D. Burns, Robert G. Champion, Louie Cross, Morris A. Ellis, Thomas M. Hampson, Jerry L. Jackson,[2] Alejandro Mahle,

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[2]/ Although Mr. Jackson is listed as Jerry J. Jackson in the 1998 complaint, the parties

(continued...)

Jr., James D. Marshall, Challis S. Orcutt and Richard H. Strait. These eleven plaintiffs were excluded by defendant from receiving payment from the July 12, 1996 partial settlement agreement in *Adams*, No. 90-162C and Consolidated Cases, which settled overtime pay claims of GS-11 and GS-12 criminal investigator plaintiffs in INS Border Patrol sectors. The essence of the *Brown* complaint is that these plaintiffs were unjustly excluded from payment under the 1996 agreement. It appears from the arguments of the parties that the *Brown* plaintiffs, but for their participation in either *Aamodt* or *Orcutt*, would have been paid by defendant pursuant to the 1996 agreement for claims arising from their employment at INS in the categories encompassed by the 1996 agreement. *See* Pls.' App. at 92 (Letter by Def.'s Counsel of June 5, 1997) (noting that the *Brown* plaintiffs had participated in either *Aamodt* or *Orcutt* and concluding that "[t]he claims of these plaintiffs, therefore, are *res judicata*, and cannot be pursued in this case"); Compl. Att. at 2 (Letter by Pls.' counsel of June 26, 1997) (stating that the *Brown* plaintiffs "are entitled to additional back pay under the INS settlement agreement [the 1996 agreement] entered into in *Adams*[, No. 90-162C and Consolidated Cases]"). The resolution of the parties' cross-motions turns on whether the *Brown* plaintiffs' participation in either *Aamodt* or *Orcutt* serves as a bar to their recovery under the 1996 agreement in *Adams*, No. 90-162C and Consolidated Cases.

All of the *Brown* plaintiffs had become plaintiffs in *Adams*, No. 90-162C and Consolidated Cases, by the beginning of 1991. None of the *Brown* plaintiffs were plaintiffs in the lead case, *Adams*, No. 90-162C, filed on February 16, 1990; rather, they became plaintiffs in related cases throughout 1990, which were then consolidated with the lead case. Seven of the *Brown* plaintiffs were among the plaintiffs filing *Adams v. United States*, No. 90-632C, on July 12, 1990: Messrs. Brown, Burns, Champion, Cross, Hampson, Orcutt and Strait. Another two of the *Brown* plaintiffs, Messrs. Ellis and Mahle, were among the plaintiffs filing *Adams v. United States*, No. 90-742C, on August 8, 1990. The remaining two *Brown* plaintiffs, Messrs. Jackson and Marshall, were among the plaintiffs filing *Aarons v. United States*, No. 90-3859C, on October 16, 1990. All of these cases, and others, were consolidated with the lead case, *Adams*, No. 90-162C, by orders of the United States Claims Court dated July 20, 1990 and January 2, 1991. All of these

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[2](...continued)
consistently identify Mr. Jackson as Jerry L. Jackson or Jerry Lee Jackson in subsequent briefing. Jt. Facts ¶ 2; Pls.' Facts ¶ 4.

cases sought overtime back pay under FLSA for federal criminal investigators. Plaintiffs' counsel in these related cases are Mr. Jules Bernstein and Mr. Edgar James, with Ms. Linda Lipsett of counsel. The *Adams* consolidated cases continue to be litigated in this court.

The *Aamodt* case had been filed on November 14, 1989 seeking overtime back pay under FLSA for federal criminal investigators. Seven of the *Brown* plaintiffs were added to that case as additional plaintiffs on October 21, 1993: Messrs. Brown, Cross, Ellis, Hampson, Jackson, Mahle and Marshall. Three more *Brown* plaintiffs were added to that case on December 1, 1993: Messrs. Burns, Champion and Strait. Plaintiffs' counsel in *Aamodt* was Mr. Thomas A. Woodley, with Mr. Gregory K. McGillivary of counsel. The *Aamodt* case is closed.

The *Orcutt* case was filed on March 13, 1995 seeking overtime back pay under FLSA for federal criminal investigators. One of the *Brown* plaintiffs, Mr. Orcutt, was the named plaintiff in *Orcutt*. Plaintiffs' counsel in *Orcutt* was Mr. Thomas A. Woodley, with Mr. Gregory K. McGillivary of counsel. The *Orcutt* case is closed.

Thus, these eleven *Brown* plaintiffs were among the thousands of *Adams*, No. 90-162C and Consolidated Cases, plaintiffs from 1991 onward. They later became plaintiffs in either *Aamodt* or *Orcutt*, pursuing claims very similar to their claims in the consolidated *Adams* cases. The *Aamodt* and *Orcutt* cases settled first, on November 23, 1994 and July 13, 1995, respectively. The pertinent *Adams*, No. 90-162C and Consolidated Cases, settlement for INS Border Patrol sectors overtime pay claims occurred on July 12, 1996. Both parties pursue summary judgment on these undisputed facts.

DISCUSSION

I. Standard of Review

The availability of summary judgment helps a federal court "'to secure the just, speedy, and inexpensive determination of every action.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. P. 1). Summary judgment is appropriate where there is no dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56 of the Rules of the United States

Court of Federal Claims (RCFC); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). A fact is material if it would affect the outcome of the suit. *Anderson*, 477 U.S. at 248. The moving party bears the burden of showing that there is an absence of any genuine issue of material fact. *Dairyland Power Coop. v. United States*, 16 F.3d 1197, 1202 (Fed. Cir. 1994) (citing *Celotex*, 477 U.S. at 325). All doubt over factual issues must be resolved in favor of the party opposing summary judgment. *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390 (Fed. Cir. 1987).

However, the non-moving party has the burden of producing sufficient evidence that there is a genuine issue of material fact in dispute which would allow a reasonable finder of fact to rule in its favor. *Anderson*, 477 U.S. at 256. Such evidence need not be admissible at trial; nevertheless, mere denials, conclusory statements or evidence that is merely colorable or not significantly probative is not sufficient to preclude summary judgment. *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 249-50; *Mingus*, 812 F.2d at 1390-91; *see also Barmag Barmer Maschinenfabrik AG v. Murata Machinery, Ltd.*, 731 F.2d 831, 835-36 (Fed. Cir. 1984) (in making a determination as to whether genuine issues of material fact exist, the court is not to accept a party's bare assertion that a fact is in dispute). "The party opposing the motion must point to an evidentiary conflict created on the record by at least a counter statement of a fact or facts set forth in detail in an affidavit by a knowledgeable affiant." *Barmag*, 731 F.2d at 836. Summary judgment must be granted against a party who fails to make a showing sufficient to establish the existence of an essential element to that party's case and for which that party bears the burden of proof at trial. *Celotex*, 477 U.S. at 322.

When the court considers cross-motions for summary judgment, each motion is evaluated under the same summary judgment standard. *Cubic Def. Sys., Inc. v. United States*, 45 Fed. Cl. 450, 457 (1999).

II. Analysis

A. No Double Recovery for Those Seven *Brown* Plaintiffs Who Previously Recovered in Either *Aamodt* or *Orcutt*

Although concern for double recovery has been alluded to by defendant, double recovery was purely a potential danger that has been averted because

defendant timely realized that plaintiffs here participated in either *Aamodt* or *Orcutt*, as well as in *Adams*, before defendant had paid the *Brown* plaintiffs according to the terms of the 1996 *Adams* settlement agreement. *See* Def.'s Mot. at 13 ("Had the Government not discovered this involvement prior to paying plaintiffs' claims, these [seven] plaintiffs would have been paid twice for the same claims."). There were periods of employment at INS that were the basis for the FLSA claims of seven *Brown* plaintiffs in either *Aamodt* or *Orcutt*, as well as in *Adams*. These might be referred to as overlapping claims periods.

There were also periods of employment at INS that could not have formed the basis for the claims of these seven plaintiffs in *Aamodt* or *Orcutt*, but which were the basis for a portion of their claims in *Adams*. These non-overlapping claims periods are due to the restrictions of a two-year statute of limitations for non-willful violations of FLSA.[3] 29 U.S.C. § 255(a). Because these plaintiffs filed[4] in *Adams* before they filed[5] in either *Aamodt* or *Orcutt*, their claims in *Adams* include claims based on an earlier period of employment than could possibly have been the subject of FLSA penalties in *Aamodt* or *Orcutt*.

To take but one example of the seven, Mr. Brown filed his FLSA claims in *Adams v. United States*, No. 90-632C, on July 12, 1990, and these claims became consolidated with *Adams*. His FLSA claims in *Adams* thus encompassed employment from July 16, 1988[6] through October 29, 1994. Jt. Facts ¶ 4. Mr.

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[3]/ Claims periods based on a three-year statute of limitations for willful FLSA violations are not argued by plaintiffs here; therefore, the court limits its analysis to a two-year limitations period.

[4]/ The relevant date for statute of limitations purposes and for this court's analysis is the date each plaintiff "commenced" an action in this court or its predecessor court. In some instances, the date is the date of the filing of a complaint. 29 U.S.C. § 256(a). In others, the date is fixed when a particular plaintiff becomes part of an already commenced suit through the filing of a written consent form with this court. *Id.* § 256(b).

[5]/ *See supra* note 4.

[6]/ This date is a pay period end date, and encompasses a few days of employment before that date that are within the two-year statute of limitations. *See* Jt. Facts ¶¶ 2, 4. All claims period dates used in this opinion are pay period end dates provided by the parties and do not necessarily reflect the exact beginning or end of a limitations period for that plaintiff's claims.

Brown's *Aamodt* FLSA claims were filed on October 21, 1993. His *Aamodt* claims encompassed employment from November 2, 1991 through October 29, 1994. *Id.* ¶ 2. Thus, his overlapping claims period that could have been compensated through either *Adams* or *Aamodt* was November 2, 1991 through October 29, 1994. His non-overlapping claims period, one that could only have been compensated through *Adams*, was from July 16, 1988 through November 1, 1991.

Returning to the above example of Mr. Brown, the parties note that Mr. Brown recovered through the *Aamodt* settlement for the overlapping claims period of November 2, 1991 through October 29, 1994. *Id.* Indeed, seven of the *Brown* plaintiffs recovered for the overlapping period of their claims in either *Aamodt* or *Orcutt*: Messrs. Brown, Champion, Ellis, Mahle, Marshall, Orcutt and Strait. *Id.* These seven plaintiffs have now abandoned any claims to compensation under the *Adams* settlement for the overlapping claims period for which they received compensation in either *Aamodt* or *Orcutt*. *Id.* ¶ 5.

The parties agree that the only recovery now sought by the *Brown* plaintiffs under the *Adams* settlement agreement is for pay periods for which they did not receive compensation in *Aamodt* or *Orcutt*. Thus, there is no danger of double recovery for any of the *Brown* plaintiffs. For each of the seven plaintiffs who recovered in either *Aamodt* or *Orcutt*, only the non-overlapping claims period is now at issue in *Brown*.

B. No Overlapping Claims Period for the Four *Brown* Plaintiffs Who Recovered Nothing in *Aamodt* and *Orcutt*

The situation of the other four *Brown* plaintiffs is slightly different, because these four plaintiffs received no compensation in *Aamodt* or *Orcutt*. An illustrative example is Mr. Burns. He was among the plaintiffs filing FLSA claims in *Adams v. United States*, No. 90-632C, on July 12, 1990, just like Mr. Brown. Like Mr. Brown, his claims were consolidated into *Adams*. Mr. Burns' FLSA claims in *Adams* encompassed employment from July 16, 1988 through July 1, 1989, a shorter period than Mr. Brown's. Jt. Facts ¶ 4. Mr. Burns filed his consent to participate in *Aamodt* on December 1, 1993. It is clear that Mr. Burns' claims periods in *Adams* and *Aamodt* are not coextensive, because his claims period in *Adams* ended on July 1, 1989, and his claims period in *Aamodt* could not have

begun until December 1, 1991, two years before he consented to join that suit. Thus, Mr. Burns had no overlapping claims period for his FLSA claims in *Adams* and *Aamodt*.

Unlike Mr. Brown, Mr. Burns received nothing from the *Aamodt* settlement. Thus, there is no danger of double recovery in Mr. Burns' FLSA claims. Like Mr. Brown, Mr. Burns now seeks compensation only for a non-overlapping claims period. All four of the *Brown* plaintiffs who received nothing in *Aamodt* and *Orcutt*, namely Messrs. Burns, Cross, Hampson and Jackson, seek compensation under the *Adams* settlement agreement for claims periods which have no overlap with their previously settled FLSA claims periods.

C. No *Res Judicata* Effect for a Settled Claim Which Does Not Overlap with a Second Claim

Defendant resists enforcement of the 1996 settlement agreement by relying on legal theories that depend entirely on the alleged absence of material information from the settlement negotiations preceding the 1996 *Adams* settlement. The first theory is that of fraud[7] or material misrepresentation. Def.'s Mot. at 10-14. The second theory is that of unilateral mistake. *Id.* at 14-16. Both of these theories require that material information has been either withheld from or unknown to defendant in order to succeed. See *id*. at 10 (citing *Roseburg Lumber Co. v. Madigan*, 978 F.2d 660, 667 (Fed. Cir. 1992) and *C & H Commercial Contractors, Inc. v. United States*, 35 Fed. Cl. 246, 256 (1996) for the elements of material misrepresentation), 14 (stating that a contract is voidable under certain conditions if "'a [mistaken unilateral] basic assumption . . . ha[s] a material effect on the agreed exchange of performances'" (quoting *Meek v. United States*, 26 Cl. Ct. 1357, 1362 (1992), *aff'd*, 6 F.3d 788 (Fed. Cir. 1993))). The material information alleged here by defendant is that the *Aamodt* and *Orcutt* dismissals were *res judicata* for the *Brown* plaintiffs' FLSA claims in *Adams*.

Plaintiff argues that it is too late for defendant to argue *res judicata* here. The court disagrees. Defendant is not attempting to void the 1996 *Adams* agreement as to these plaintiffs on a defense of *res judicata*. Rather, defendant

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[7]/ Defendant has not alleged fraud in its facts or briefing. Def.'s Mot. at 12 & n.4.

argues that *res judicata* would have barred plaintiffs' claims in *Adams*, if timely asserted. It is only because plaintiffs did not reveal their duplicative litigation of the same or similar FLSA claims, defendant argues, that defendant was deprived of the chance to assert *res judicata* and to exclude these plaintiffs from the *Adams* 1996 settlement agreement. It does not matter to defendant's legal theories of material misrepresentation or unilateral mistake that it is now untimely to argue *res judicata*. If *res judicata* was a valid defense in 1996, when that defense could have been timely asserted, the lack of information concerning the parallel litigation was material to the negotiations. If, on the contrary, the doctrine of *res judicata* was not applicable in 1996 and the information concerning the parallel litigation was immaterial, both of defendant's legal theories fail.

Unfortunately for defendant, that is precisely the case here. The doctrine of *res judicata* can be a powerful tool to defend against subsequent suits arising out of the same transaction:

> The doctrine of *res judicata*, in its claim preclusion form, provides that final judgment on a claim extinguishes "'all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.'" *Young Eng'rs, Inc. v. United States Int'l Trade Comm'n*, 721 F.2d 1305, 1314 (Fed. Cir. 1983) (quoting Restatement (Second) of Judgments § 24 (1982)).

Hornback v. United States, 405 F.3d 999, 1001 (Fed. Cir. 2005). In this case, the *res judicata* analysis would consider the *Aamodt* and *Orcutt* dismissals with prejudice as final judgments, and the FLSA claims in *Adams* as the subsequent claims which might potentially be barred by *res judicata*.[8]

"Th[e claim preclusion] form of res judicata applies if (1) the prior decision was rendered by a forum with competent jurisdiction; (2) the prior decision was a final decision on the merits; and (3) the same cause of action and the same parties

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[8]/ For *res judicata* purposes, the *Aamodt* or *Orcutt* claims, which were settled before the 1996 *Adams* settlement, must be considered to be the first claims, and the *Adams* claims must be considered to be the second, or subsequent, claims.

or their privies were involved in both cases." *Carson v. Dep't of Energy*, 398 F.3d 1369, 1375 (Fed. Cir. 2005) (citation omitted). In this case, there is no question that the dismissals with prejudice were issued by a court of competent jurisdiction, the United States Court of Federal Claims. There is also no question that the same parties were present in *Aamodt* or *Orcutt*, and *Adams*. The impediment to applying *res judicata* in this case lies in the requisite elements of "same cause of action" and "final decision on the merits," each of which the court will address in turn.

FLSA provides for penalties for the failure to pay overtime when due. 29 U.S.C. § 216(b). A separate cause of action accrues at the end of each pay period when overtime pay is claimed to have been due to the employee. *See, e.g.*, *Knight v. Columbus, Ga.*, 19 F.3d 579, 581 (11th Cir. 1994) ("Each failure to pay overtime constitutes a *new* violation of the FLSA.") (citations omitted); *Shandelman v. Schuman*, 92 F. Supp. 334, 335 (E.D. Pa. 1950) ("A separate cause of action for overtime compensation accrues at each regular payday immediately following the work period during which the services were rendered and for which the overtime compensation is claimed.") (citations omitted). Because separate causes of action are created during subsequent pay periods under FLSA, FLSA claims by these plaintiffs for non-overlapping claims periods are distinct claims, not identical claims.

The non-overlapping FLSA claims periods, those that were not adjudicated in *Aamodt* and *Orcutt* but are covered by the *Adams* 1996 settlement agreement, were claims that could not have been asserted in either *Aamodt* or *Orcutt*. The claim preclusive effect of *res judicata* does sweep in all claims that were or could have been asserted in the prior suit. *See, e.g.*, *Nesbit v. Indep. Dist. of Riverside*, 144 U.S. 610, 618 (1892) (stating that "when the second suit is upon the same cause of action, and between the same parties as the first, the judgment in the former is conclusive in the latter as to every question which was or might have been presented and determined in the first action . . . ."). But the earlier claims periods in the FLSA claims in *Adams*, the non-overlapping claims periods, could not have been asserted in *Aamodt* or *Orcutt* due to the two-year statute of limitations. The non-overlapping claims periods encompass separate, distinct claims which could not have been asserted in the suits that were settled first – thus the non-overlapping claims, the subsequent claims still at issue here, are not "the same cause of action" as the first claims that were settled in *Aamodt* and *Orcutt*. "[W]hen the second suit

is upon a different cause of action, though between the same parties, the judgment in the former action operates as an estoppel only as to the point or question actually litigated and determined, and not as to other matters which might have been litigated and determined." *Id.* Here, *res judicata* cannot be applied to the non-overlapping FLSA claims periods.

The compromise of claims in settlement may also limit the applicability of *res judicata*. A stipulation of dismissal with prejudice is normally considered a final decision on the merits. *See, e.g.*, *United States v. Parker*, 120 U.S. 89, 97 (1887) (holding that when the parties agree to a stipulated dismissal in open court that this "operates as a bar to [a subsequent] suit by way of estoppel"); *Wells Cargo, Inc. v. Wells Cargo, Inc.*, 606 F.2d 961, 963 (C.C.P.A. 1979) ("Default judgments generally operate as res judicata, as do judgments obtained through consent, and dismissals "with prejudice" or intended to dispose of claims on their merits.") (citations omitted). But for *res judicata* purposes, the stipulated dismissal in the first case must be for claims that are again at issue in the second case for the second claims to be precluded. *See Inland Steel Co. v. LTV Steel Co.*, 364 F.3d 1318, 1320 (Fed. Cir. 2004) (noting that a district court judgment dismissing the first case with prejudice "would have res judicata effect as to any claim brought against [the prevailing party] in the future with respect to the . . . claims *that were at issue* in the district court case.") (emphasis added) (citations omitted). A stipulated dismissal, for *res judicata* purposes, only is a final decision on the merits for the claims before the court. For the four *Brown* plaintiffs whose FLSA claims periods had no overlap between the first group of claims (in *Aamodt* or *Orcutt*) and the second group (in *Adams*), there can be no preclusive effect of the stipulated dismissal in *Aamodt* or *Orcutt* because the first group of claims are distinct and different from the second group.

For the seven *Brown* plaintiffs who had both overlapping claims and non-overlapping claims, it is clear that *res judicata* would bar the overlapping claims, because these have already been adjudicated (and paid). However, these claims are no longer at issue in *Brown*. Compl. at 5. For the non-overlapping claims of these seven plaintiffs, controlling precedent prevents the application of *res judicata*. For example, when a tax claim for certain years is dismissed with prejudice after a settlement between the taxing authority and the taxpayer, the judgment has no *res judicata* effect for tax liabilities in other years. *United States v. Int'l Bldg. Co.*, 345 U.S. 502, 506 (1953); *accord United States v. Bryant*, 15 F.3d 756, 758 (8th

Cir. 1994); *Erickson v. United States*, 309 F.2d 760, 768 (Ct. Cl. 1962). In addition, plaintiffs who have won a stipulated pay premium for a claimed period of employment pursuant to a stipulation that was arrived at through settlement of uncertain legal claims may not rely on *res judicata* to oblige a court to impose that stipulated pay premium on other periods of employment. *See Abarr v. United States*, 153 F. Supp. 387, 388-89 (Ct. Cl. 1957) (holding that a judgment derived from compromised claims has no *res judicata* or collateral estoppel effect for time periods other than the time periods claimed in the first suit). A judgment derived from compromise and settlement of claims arising out of one claims period does not have preclusive effect on claims based on other claims periods.

In another case, a military retiree, having won an increase in retirement pay as one of many plaintiffs in a prior lawsuit, was barred from additional pay increases for that same period of retirement covered by the judgment, because he should have advanced all rationales for all pay increases for that retirement period in the first suit. *Clark v. United States*, 281 F.2d 443, 446 (Ct. Cl. 1960). Yet, his second suit that asserted higher retirement pay claims for both the period previously compensated through the prior settlement and for a later period not covered by the prior settlement was not barred by *res judicata* as to the non-overlapping claims period. *See id*. ("A judgment based on a compromise is not res judicata as to an action for a later period, although it is as to the period covered by it."). The compromise and settlement of claims in a prior suit for a certain claims period is not *res judicata* for claims in a second suit for both overlapping and non-overlapping claims periods, as to the non-overlapping claims period.[9]

Applying the reasoning of these decisions to this case, *res judicata* would not have been a bar to the *Brown* plaintiffs' claims for non-overlapping claims

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[9]/ The *Clark* case did not review parallel, simultaneous litigation, as is the case here. There is no statutory bar, however, to filing two overlapping suits in the Court of Federal Claims. Duplicative filings would be disfavored, of course, if discovered in a timely fashion. But the doctrine of *res judicata* does not prevent such filings – it simply protects a party from further litigation once a decision has been reached on identical claims. *See* Robert C. Casad & Kevin M. Clermont, *Res Judicata: A Handbook on Its Theory, Doctrine and Practice* 21 (2001) (stating that "the pendency of parallel proceedings is a commonplace with no ready, general cure").

periods in *Adams*. The disclosure[10] or non-disclosure of the fact that these plaintiffs had participated in *Aamodt* or *Orcutt* was immaterial to the settlement negotiations in *Adams*. Defendant has not alleged fraud on the part of plaintiffs. For these reasons, defendant's contention that the settlement in *Adams* is voidable as it applies to these eleven plaintiffs is not supported by the facts before the court.

As discussed *supra*, the only remaining claims of the *Brown* plaintiffs are for non-overlapping claims periods. Because there is no reason to exclude these non-overlapping claims periods from the 1996 *Adams* settlement, plaintiffs' motion is granted, and defendant's motion is denied.

CONCLUSION

For these reasons, it is hereby **ORDERED** that:

(1) Defendant's (Corrected) Motion for Summary Judgment filed on October 6, 1998 is **DENIED**. Plaintiffs' Cross-Motion for Summary Judgment filed on January 19, 1999 is **GRANTED**.

(2) The parties are to **CONFER** and **FILE** a status report on or before August 5, 2005 indicating the amount of damages presently due these plaintiffs under the *Adams* 1996 settlement agreement, in order that judgment may be entered in *Brown*, No. 98-569C.

(3) Each party shall bear its own costs.

LYNN J. BUSH
Judge

[10]/ Although it is not essential to the court's analysis, plaintiffs assert that defendant knew that parallel litigation occurred in the *Aamodt* and *Orcutt* cases and the *Adams* cases before negotiations for settlement began in 1996. Defendant neither confirms nor denies this factual allegation.