

BRB No. 06-0593

JEFFREY BOCKMAN )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 PATTON-TULLY TRANSPORTATION ) DATE ISSUED: 04/27/2007  
 COMPANY )  
 )  
 and )  
 )  
 LIBERTY MUTUAL INSURANCE )  
 COMPANY )  
 )  
 Employer/Carrier- )  
 Respondents ) DECISION and ORDER

Appeal of the Decision and Order of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

Mark Zimmerman, Lake Charles, Louisiana, for claimant.

John Elliott and Ryan Perdue (Fitzhugh, Elliott & Ammerman, P.C.), Houston, Texas, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2005-LHC-572, 2005-LHC-2274) of Administrative Law Judge Patrick M. Rosenow rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the administrative law judge's

findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked for employer as a mechanic, crane operator, and welder and then became a foreman. On April 3, 2001, he fell while working on the M/V YOCONA, a barge owned by employer, and sustained injuries to his low back, requiring multiple surgeries. Emp. Ex. 2; Tr. at 71, 86; see Decision and Order at 7-12. Liberty Mutual, employer’s longshore carrier, began paying benefits immediately following the accident. Cl. Ex. 1; Tr. at 34. On April 2, 2002, claimant filed a suit in Mississippi state court against employer for benefits under the Jones Act, and on August 30, 2002, Liberty Mutual suspended claimant’s benefits under the Longshore Act. Emp. Ex. 3; Tr. at 34. Following negotiations with employer, claimant agreed to settle his Jones Act case for \$50,000. Tr. at 133-135. The judge signed the order dismissing the case on January 6, 2003. Emp. Ex. 17 at 10. Claimant filed a claim for compensation under the Act, Emp. Ex. 2, and Liberty Mutual reinstated benefits. Tr. at 37. Because employer wanted claimant to execute a formal release of the Jones Act claim, negotiations related to that case continued. On May 16, 2003, claimant executed the release prepared by employer.<sup>1</sup> Emp. Ex. 19. Three days later, the attorney for Liberty Mutual, Mr. Elliott, sent a letter to claimant’s Jones Act attorney, Mr. Soileau, stating Liberty Mutual did not approve of any settlement but that claimant should notify it when the matter with employer is resolved. Emp. Ex. 23. On May 20, 2003, Mr. Lane, employer’s attorney, sent a check for \$50,000 to Mr. Soileau which was put in trust for claimant. Emp. Ex. 21; see also Cl. Ex. 2; Emp. Ex. 43. Mr. Soileau testified there were continuing discussions with Mr. Elliott after which Mr. Soileau ultimately concluded that all parties were in agreement that there was no third party involved in the Jones Act case, that therefore an LS-33 form need not be executed, and that Liberty Mutual would continue to pay claimant’s longshore benefits, seeking only a credit for the amount paid to claimant by employer in settlement of the Jones Act case. 33 U.S.C. §903(e); Emp. Ex. 34; Tr. at 115-204. On February 2, 2004, Mr. Soileau disbursed the settlement check, paying \$21,549.67 in attorney fees and \$28,450.33 to claimant. Emp. Exs. 22, 42. On August 8, 2004, Liberty Mutual ceased paying claimant’s longshore benefits, contending that claimant had settled a third-party suit without its prior written approval. Emp. Exs. 10, 44. Claimant filed a claim to reinstate his benefits.

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<sup>1</sup>The Release submitted into evidence is signed only by claimant, his attorney, and the notary public. Emp. Ex. 19.

The administrative law judge found, *inter alia*, Decision and Order at 22-27: a) there is no dispute that claimant is a “person entitled to compensation” (PETC); b) claimant settled the claim filed in state court with a party who was at least potentially liable for damages for the same injury covered by Act; c) employer,<sup>2</sup> as owner of the YOCONA, is a “third party;” thus, claimant settled with a third party; d) claimant settled for an amount less than his entitlement under Act, as both the gross settlement proceeds, \$50,000, and the net proceeds, \$28,450.33, are less than the benefits Liberty Mutual had paid under the Act, which exceeded \$100,000; e) employer was directly involved in the negotiations and settlement, but Liberty Mutual was not sufficiently involved in the negotiations or settlement to overcome the requirements of Section 33(g); and f) Liberty Mutual did not sign an LS-33 form or give written approval of the settlement. The administrative law judge then determined that claimant was not entitled to equitable relief based on his reliance on Mr. Elliott’s/Liberty Mutual’s statements, and, in any event, equitable estoppel is not available under Section 33(g). Therefore, the administrative law judge dismissed the longshore claim because claimant settled a third-party claim for less than the amount to which he is entitled under the Act without obtaining Liberty Mutual’s prior written approval. Claimant appeals the dismissal of his claim on several grounds, and employer/Liberty Mutual responds, urging affirmance.<sup>3</sup>

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<sup>2</sup>There are three Patton-Tully companies, at least one of which was claimant’s employer, and all were identified as defendants in the Jones Act complaint. Tr. at 98-99. Patton-Tully Transportation Company (PTTCo) was created in 1906, ceased business in 1998, and was claimant’s original employer. Emp. Ex. 24 at exh. 1; Tr. at 214, 227. Patton-Tully Transportation, LLC (PTT) was created on December 22, 1997, is owned entirely by a company called Anderson-Tully Veneers, L.P., and is the only Patton-Tully entity still doing business after May 29, 2001. Emp. Ex. 24 at exh. 1; Emp. Exs. 31-32; Tr. at 224, 227. Patton-Tully Salvage Services, LLC (PTSS) was created on June 30, 1998, is owned entirely by PTT, and was claimant’s employer at the time of his injury. Emp. Ex. 24 at exh. 1; Emp. Ex. 27; Tr. at 226. PTSS sold its assets to J.O. Smith Towing Company on May 29, 2001, and, though the company still exists, it is no longer doing business. Emp. Ex. 9; Emp. Ex. 24 at exh. 1; Tr. at 212, 223. The administrative law judge found that all parties referred to employer, in general, as “Patton-Tully,” that the companies used common bank accounts, shared administrative costs, and were covered by a single insurance contract; nevertheless, he found that they complied with corporate formalities, and there was no reason under Mississippi law to pierce the corporate veil and consider them as one entity. Decision and Order at 23-24.

<sup>3</sup>On September 12, 2006, the Board granted employer’s motion to file a rejoinder following claimant’s reply to employer’s response brief. On September 19, 2006, claimant filed a response to the rejoinder. The Board accepts claimant’s response into the

Section 33(g) of the Act, 33 U.S.C. §933(g)(1), provides:

If the person entitled to compensation (or the person's representative) enters into a settlement with a third person referred to in subsection (a) of this section for an amount less than the compensation to which the person (or the person's representative) would be entitled under this chapter, the employer shall be liable for compensation as determined under subsection (f) of this section only if written approval of the settlement is obtained from the employer and the employer's carrier, before the settlement is executed, and by the person entitled to compensation (or the person's representative). The approval shall be made on a form provided by the Secretary and shall be filed in the office of the deputy commissioner within thirty days after the settlement is entered into.

Claimant agrees that he is a PETC and that he did not obtain Liberty Mutual's prior written approval of the settlement. He contends that Section 33(g)(1) is not applicable, however, because there was no third party involved in the Jones Act case and because he did not settle that claim for less than his longshore entitlement. Alternatively, claimant contends Liberty Mutual participated in the negotiations to a sufficient degree to overcome the requirements of Section 33(g)(1).

We reject claimant's argument that there was no third party involved in the settlement of the claim filed in state court. In doing so, we need not address the issue of "piercing the corporate veil," to determine which entity is claimant's true employer, *see* n.2, *supra*, as we affirm the administrative law judge's alternate finding that the vessel YOCONA, even if owned by employer, was a "third party" pursuant to *Bundens v. J.E. Brenneman Co.*, 46 F.3d 292, 29 BRBS 52(CRT) (3<sup>d</sup> Cir. 1995). Decision and Order at 24. Section 33(a) of the Act, 33 U.S.C. §933(a) (emphasis added), provides:

If on account of a disability or death for which compensation is payable under this chapter the person entitled to such compensation determines that *some person other than the employer* or a person or persons in his employ is liable in damages, he need not elect whether to receive such compensation or to recover damages against such third person.

Section 5(b) of the Act provides, in pertinent part:

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record; however, claimant's request for oral argument is denied. 20 C.F.R. §§802.215, 802.305, 802.306.

In the event of injury to a person covered under this chapter caused by the negligence of vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, *may bring an action against such vessel as a third party in accordance with the provisions of section 933* of this title, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer.

33 U.S.C. §905(b) (emphasis added).

The administrative law judge found that the vessel YOCONA is a third party. Claimant challenges this finding, asserting that *Bundens*, 46 F.3d 292, 29 BRBS 52(CRT), was incorrectly decided and, in any event, is not controlling law in the jurisdiction of the United States Court of Appeals for the Fifth Circuit, wherein this case arises. We reject claimant's argument. *Bundens* accords with the plain language of Section 5(b), 33 U.S.C. §905(b), stating that an action against the vessel is a third-party action. In *Bundens*, the claimants argued that Section 33(f), 33 U.S.C. §933(f), did not apply to allow the employer to obtain a credit for payments made under the third-party settlement. They argued that the employer could not be a "third person" within the meaning of Section 33(f); thus, the question before the United States Court of Appeals for the Third Circuit was "whether an employer who settles a negligence suit under §905(b), when it is acting in its capacity as a vessel owner, is considered a third person under §933(f)." *Bundens*, 46 F.3d at 303, 29 BRBS at 69(CRT). The court held that the employer is a third party whenever the employee recovers funds from the employer, as vessel owner, in other legal proceedings. It stated that to hold otherwise would result in the employer's having to pay claimant twice, *i.e.*, as vessel owner and as the party liable for compensation, without being able to offset money paid. Section 33(f) provides that the employer is liable for any compensation benefits owed in excess of the amount recovered by claimant from a third party. 33 U.S.C. §933(f). The court reasoned that if the employer, as the vessel owner, was not treated as a third party, the provision would not apply, and the claimant would get double recovery from the employer. *Id.*

Claimant asserts that the Third Circuit erred in so holding because the employer has a lien against the settlement proceeds that cannot be destroyed; therefore, the employer does not need to be designated as a “third party” in order to recover monies it has paid. In support of his argument, claimant cites *Taylor v. Bunge Corp.*, 845 F.2d 1323 (5<sup>th</sup> Cir. 1988). While an employer’s lien rights are inviolable, *Peters v. N. River Ins. Co. of Morristown, N.J.*, 764 F.2d 306 (5<sup>th</sup> Cir. 1985), an employer’s offset rights are derived from Section 33(f) which is applicable only if a third party is involved. See *Petro Weld, Inc. v. Luke*, 619 F.2d 418, 12 BRBS 338 (5<sup>th</sup> Cir. 1980); see also 33 U.S.C. §903(e) (credit for benefits claimant receives under the Jones Act). The decision in *Taylor* is premised on the fact that both admiralty law and the Longshore Act treat vessels as third parties, which is consistent with the result reached in *Bundens*. The court held that a compensation carrier could assert the employer’s lien against a settlement the employer, as vessel-owner, reached with the claimant in the negligence suit because while the insurer, owes a duty to the employer, it owes no duty to the third-party vessel. *Taylor*, 845 F.2d at 1329-1330. The Fifth Circuit relied on the Supreme Court’s decision in *Jones & Laughlin Steel Corp. v. Pfeifer*, 462 U.S. 523 (1983) (employer who has paid longshore benefits has a lien in that amount against tort recovery from third parties), as well as its own decision in *Peters*, 764 F.2d 306 (a longshoreman and a third party cannot settle around the employer’s lien), to reach its conclusion.

In this case, claimant filed his claim in state court against PTSS, PTT and PTTCo. Emp. Ex. 7; Tr. at 98. Although he did not name the vessel as a defendant, claimant asserted he was injured on the vessel YOCONA and that PTT, PTTCo and PTSS owned, operated or otherwise possessed the vessel. Emp. Ex. 7 at 2. Similarly, the YOCONA was not identified as a separate party in the Order of Dismissal signed by the judge. Emp. Ex. 17 at 10. However, the Release and Acknowledgment, drafted by employer and executed by claimant on May 16, 2003, specifically states that claimant, in exchange for consideration received,

releases Patton-Tully Transportation, LLC, Patton-Tully Transportation Company and Patton-Tully Salvage Services, LLC, and its protection and indemnity underwriters, including The Center Marine Managers, Inc., and the M/V YOCONA from any and all Jones Act, General Maritime Law, maintenance and cure, Section 905(b), and American Disabilities Act claims of any nature he may have, whether now known or not, arising out of his employment with Patton-Tully Transportation, LLC, Patton-Tully Transportation Company, and Patton-Tully Salvage Services, LLC.

Emp. Ex. 17 at 5 (emphasis added); Emp. Ex. 19. As claimant specifically released the YOCONA from liability pursuant to Section 5(b), and as the vessel, even though owned by employer, was a third party under plain language of the Act, the administrative law judge properly found that claimant settled his claim with a third party. *Pfeifer*, 462 U.S.

523; *Taylor*, 845 F.2d at 1329-1330. Therefore, claimant cannot avoid the Section 33(g) provisions on this basis.<sup>4</sup>

Claimant next argues that if he settled with a third party, then Section 33(g) does not apply because the settlement was not for an amount less than his entitlement under the Act. Specifically, claimant asserts that the purpose of the agreement was to establish and reserve his rights under the Act. Thus, he asserts that the “valuable consideration” employer gave in return for claimant’s settling the third-party case was \$50,000 *plus* the amount of benefits he was entitled to receive under the Act, and this amount could not be less than his entitlement under the Act.<sup>5</sup> The administrative law judge found that claimant had received greater than \$100,000 under the Act and \$50,000 in exchange for executing the Release. Decision and Order at 24. He found that Section 33(g) is part of the Act and if claimant simply reserved his rights “under the Act,” then those rights could be subject to forfeiture under the provisions of the Act. The administrative law judge found that claimant received \$50,000 in exchange for dismissing the Jones Act case and waiving his Section 905(b) and general maritime rights. This amount was less than claimant’s entitlement under the Act. Decision and Order at 24.

To determine whether Section 33(g) applies, it must be determined whether claimant, the PETC, settled for an amount less than his entitlement under the Act. The Board has held that, in making the comparison between the settlement recovery and the amount of compensation, the aggregate gross settlement figure should be compared with the total amount of compensation to which a claimant would be entitled over his lifetime, excluding medical benefits. *Harris v. Todd Pacific Shipyards Corp.*, 30 BRBS 5 (1996), *aff’d and modifying on recon. en banc* 28 BRBS 254 (1994) (Brown and McGranery, JJ., concurring and dissenting); *Linton v. Container Stevedoring Co.*, 28 BRBS 282 (1994); *see Bundens*, 46 F.3d 292, 29 BRBS 52(CRT); *see also Brown & Root, Inc. v. Sain*, 162 F.3d 813, 32 BRBS 205(CRT) (4<sup>th</sup> Cir. 1998).

Contrary to claimant’s argument, the “valuable consideration” employer gave claimant to settle the claims did not include future benefits under the Act. The communications between employer and Mr. Soileau expressly discussed the \$50,000

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<sup>4</sup>To the extent claimant argues that he was a borrowed employee of PTT, we decline to address the argument, as claimant did not raise it before the administrative law judge. *See generally Hite v. Dresser Guiberson Pumping*, 22 BRBS 87 (1989).

<sup>5</sup>Contrary to employer’s assertion, claimant is not disputing a stipulation. Rather, as claimant and the stipulation state, claimant agreed only that \$28,450.33, the net amount he received in settlement, is less than his entitlement under the Act. Decision and Order at 2.

settlement funds and employer's "promise" through its attorney, Mr. Lane, to submit claimant's medical bills to Liberty Mutual, but Mr. Lane did not guarantee anything, as he expressly stated that he has no control over Liberty Mutual's approval or payment of medical expenses.<sup>6</sup> Emp. Ex. 17 at 1-2.<sup>7</sup> The cover letter for the draft Release, sent to Mr. Soileau on December 13, 2002, discussed Mr. Lane's receipt of the \$50,000 check from employer, and his January 7, 2003, letter noted the deposit of the check into the trust account. Emp. Ex. 17 at 3, 8. There is no evidence to show that the parties discussed or agreed that amounts previously paid by Liberty Mutual under the Act would constitute additional consideration, and Liberty Mutual did not waive its offset rights. The Release document specifically stated:

[Claimant] acknowledges that he is a maritime worker and a covered employee under the Longshore and Harbor Workers' Compensation Act, and he reserves and excepts from this release any rights he may have against [employer] and its longshore carrier. . . .

Emp. Ex. 19. Thus, claimant reserved only "any rights he may have" and if, as the administrative law judge found, his rights are forfeited by virtue of the provisions of the Act, then he has no rights. Because claimant's right to retain benefits under the Act was not explicitly part of the consideration given by employer or Liberty Mutual in return for settling the claim, we affirm the administrative law judge's finding that claimant settled his third-party case for an amount less than his entitlement under the Act.

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<sup>6</sup>Claimant had outstanding medical expenses that Mr. Lane agreed to submit to Liberty Mutual as part of the settlement. After Liberty Mutual paid those expenses, claimant's net recovery from the \$50,000 settlement proceeds was greater than Mr. Soileau had first predicted, and this accounted for the difference between the amount claimant recovered and the amount reported on the unsigned LS-33 form. Emp. Ex. 14 at 2; Emp. Ex. 22; Tr. at 185-186.

<sup>7</sup>Mr. Lane wrote:

I represent Patton-Tully and its P&I insurer and cannot speak for Liberty Mutual. Patton-Tully and its P&I insurer strongly believe that Mr. Bockman's claim is a longshore, rather than a Jones Act claim; however, it is willing to pay \$50,000 to terminate the cost of defense and potential exposure if its position is later deemed to be incorrect. Patton-Tully will, however, affirmatively submit all [medical] claims to Liberty Mutual with the understanding that Mr. Bockman is a longshoreman and is a covered employee under the Act.

Next, claimant argues that, if Section 33(g) is invoked, Liberty Mutual's participation in the settlement negotiations constituted constructive approval and was sufficient to overcome the need for claimant to obtain Liberty Mutual's prior written approval of the settlement on the designated form under Section 33(g)(1). Specifically, claimant contends that Liberty Mutual was aware of the discussions and agreements between employer and claimant, that it conveyed to employer's and claimant's counsel its agreement that there was no third party in the Jones Act case, eliminating the need for an LS-33, and that it sought only to receive an offset for any monies employer paid against its liability under the Act. *See* Tr. at 113-121. Claimant argues that Section 33(g) should not give an employer or carrier license to change its position to the detriment of a claimant. Liberty Mutual argues that a "simple phone call" is insufficient to overcome the provisions of Section 33(g).

The administrative law judge found:

When approached by Mr. Soileau and informed of the terms of the proposed settlement, Mr. Elliott was not certain that a third-party was involved. Given what appeared to be Employer's involvement in the settlement, he was more concerned with Liberty Mutual's ultimate costs, rather than Patton-Tully's possible non-longshore liability. In the course of their discussions, Mr. Elliott led Mr. Soileau to believe that once Patton-Tully was out of the case, Liberty Mutual was more interested in reaching a lump sum settlement of the longshore claim than obtaining a signed LS-33 releasing any third parties regarding non-longshore claims. Consequently, Mr. Soileau proceeded to execute the release. In an effort to keep its options open, Liberty Mutual ultimately told Claimant that it did not approve of the settlement but asked to be informed when it was concluded. Indeed, Liberty Mutual's actions in reinstating and continuing Claimant (sic) benefits were consistent with Mr. Soileau's understanding. It reinstated benefits with the consent dismissal. [The Board's decision in *Mapp v. Transocean Offshore USA, Inc.*, 38 BRBS 43 (2004)] was released in June of 2004, clarifying that active involvement of an employer was not sufficient to obviate the need for the longshore carriers' (sic) written approval of a third party settlement. Liberty Mutual ceased benefit payments shortly thereafter.

Decision and Order at 25-26.<sup>8</sup> The record contains substantial evidence to support the administrative law judge's findings. Emp. Exs. 10-14, 18-19, 21-23, 44; Tr. at 102, 121, 171, 182, 203.

Where an employer/carrier is a party to a third-party suit, participates in settlement negotiations and agrees to the settlement, Section 33(g) may be inapplicable and the claimant is relieved of the requirement to obtain a signed LS-33. See *I.T.O Corp. of Baltimore v. Sellman*, 954 F.2d 239, 25 BRBS 101(CRT), *vacated on other grounds on reh'g*, 967 F.2d 971, 26 BRBS 7(CRT) (4<sup>th</sup> Cir. 1992), *cert. denied*, 507 U.S. 984 (1993); *Gremillion v. Gulf Coast Catering Co.*, 31 BRBS 163 (1997); *Deville v. Oilfield Industries*, 26 BRBS 123 (1992). However, this precedent does not apply where the employer/carrier participates in a third-party suit but does not approve the settlement. See *Pool v. General American Oil Co.*, 30 BRBS 183 (1996) (Smith and Brown, JJ., separately concurring and dissenting). The plain language of the Act states that, for an employer to remain liable for compensation, a claimant must obtain prior written approval from both the employer and the carrier. 33 U.S.C. §933(g)(1); *Mapp v. Transocean Offshore USA, Inc.*, 38 BRBS 43 (2004).

In *Esposito v. Sea-Land Service, Inc.*, 36 BRBS 10 (2002), the employer was involved in the discovery aspect of the third-party case but was then dismissed from the case. There was conflicting evidence as to whether the employer was kept abreast of the settlement negotiations. The administrative law judge found that employer was not involved, and it did not sign or consent to the general release. The Board affirmed the administrative law judge's finding that the employer's participation did not rise to the level that would constitute constructive approval and render the Section 33(g) bar inapplicable. *Esposito*, 36 BRBS at 14. In *Pool*, the Board held that an intervenor-carrier who participated in the third-party settlement process only to later refuse to sign the documents and distance itself from the negotiations did not participate to a sufficient degree to preclude application of the Section 33(g) bar. *Pool*, 30 BRBS 183. In *Perez v. Int'l Terminal Operating Co.*, 31 BRBS 114 (1997)(Smith, J., concurring), the Board affirmed the finding that the Section 33(g) bar applied even though employer participated in the third-party suit. Employer was impleaded by another defendant and agreed to compromise its lien, but specifically stated that this action was not to be construed as approval of the settlement.

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<sup>8</sup>Mr. Soileau testified at the hearing about his communications with Mr. Elliott during the process of resolving the Jones Act case. Mr. Elliott retained his role as carrier's counsel under the Longshore Act and did not take the stand to dispute or affirm Mr. Soileau's statements.

In light of this precedent, the administrative law judge properly concluded that Liberty Mutual's communications with Mr. Soileau and Mr. Lane did not constitute sufficient participation in the settlement to preclude application of the Section 33(g) bar. Though the administrative law judge deemed Mr. Soileau credible and accepted his version of how this case unfolded, Liberty Mutual's "participation" is limited to Mr. Elliott's May 19, 2003, letter stating that Liberty Mutual did not approve any settlement. In view of Liberty Mutual's express statement that it was not approving the settlement and the lack of any other participation on its part, we affirm the administrative law judge's finding that the Section 33(g) bar applies, as claimant did not obtain Liberty Mutual's prior written approval of the settlement. *Esposito*, 36 BRBS 10; *Perez*, 31 BRBS 114; *Pool*, 30 BRBS 183.

This case illustrates the Supreme Court's statement that the Section 33(g) "forfeiture penalty creates a trap for the unwary." *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 483, 26 BRBS 49, 53(CRT) (1992). Regardless of Liberty Mutual's original intent, the representations made in the discussions between counsel, or the influence of the *Mapp* decision on Liberty Mutual's decision to cease benefits and challenge the longshore claim,<sup>9</sup> the fact remains that claimant did not obtain carrier's prior written approval of the settlement. As Section 33(g) applies and claimant did not obtain the required approval of the third-party settlement from Liberty Mutual, Decision and Order at 26, and as equitable considerations are inapplicable, *see generally Henderson v. Ingalls Shipbuilding, Inc.*, 30 BRBS 150 (1996), the administrative law judge properly found claimant's claim barred by Section 33(g). We, therefore, affirm the administrative law judge's decision.<sup>10</sup> *Mapp*, 38 BRBS 43; *Esposito*, 36 BRBS 10.

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<sup>9</sup>The Board's decision in *Mapp* was issued two months before Liberty Mutual terminated claimant's benefits herein.

<sup>10</sup>We reject claimant's argument that employer remains liable for claimant's longshore benefits because it participated in the negotiations and settlement of the third-party claim. As employer correctly argues, it has a viable longshore insurer, Liberty Mutual, which is liable by contract for employer's longshore compensation obligations. Failure to comply with Section 33(g)(1) relieves an employer, and by contract, its carrier, of liability for compensation altogether.

Accordingly, the administrative law judge's Decision and Order dismissing claimant's claim is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge