

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 24-0048

SUZANNE QUIROZ-GREENE)
(Widow of LEJON C. GREENE))

Claimant-Petitioner)

v.)

BAE SYSTEMS SAN FRANCISCO SHIP)
REPAIR, INCORPORATED)

and)

SIGNAL MUTUAL INDEMNITY)
ASSOCIATION, LIMITED)

Employer/Carrier-)
Respondent)

and)

BAE SYSTEMS SAN DIEGO SHIP)
REPAIR, INCORPORATED f/k/a)
SOUTHWEST MARINE, INCORPORATED)

Employer-Respondent)

and)

CALIFORNIA INSURANCE GUARANTEE)
ASSOCIATION o/b/o INDUSTRIAL)
INDEMNITY and LEGION INSURANCE)
COMPANY)

Carrier-Respondent)

NOT-PUBLISHED

DATE ISSUED: 01/13/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Christopher Larsen,
Administrative Law Judge, United States Department of Labor.

Alan R. Brayton and John R. Wallace (Brayton Purcell LLP), Novato,
California, for Claimant.

James P. Aleccia and Marcy K. Mitani (Aleccia & Mitani), Long Beach,
California, for BAE Systems San Francisco Ship Repair, Incorporated and
Signal Mutual Indemnity Association, Limited.

John E. Kawczynski (Field & Kawczynski, LLC), Jamesburg, New Jersey,
for BAE Systems San Diego Ship Repair, Incorporated f/k/a Southwest
Marine, Incorporated.

Jordan Khajerian (Laughlin, Falbo, Levy & Moresi, LLP), Sacramento,
California, for California Insurance Guarantee Association.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE and JONES,
Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Christopher Larsen's Decision and Order Denying Benefits (2013-LHC-01612) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law.¹ 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

This is the third time this case has been before the Benefits Review Board. Simplifying its protracted history, LeJon C. Greene (Decedent) was allegedly exposed to asbestos while working for various employers through 2010 when he succumbed to metastatic lung cancer. BAE Systems San Francisco Ship Repair Exhibit (BAESFX) 19.

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit because Decedent worked in and died in California. 33 U.S.C. §921(c); *see Roberts v. Custom Ship Interiors*, 35 BRBS 65, 67 n.2 (2001), *aff'd*, 300 F.3d 510 (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); 20 C.F.R. §702.201(a).

On September 1, 2011, Decedent's widow (Claimant), on behalf of herself, her and Decedent's then-minor daughter (Serena Lorraine Greene), and Decedent's estate, filed a survival and wrongful death complaint in the San Francisco County Superior Court, seeking damages against multiple, third-party defendants relating to Decedent's alleged asbestos exposure and death. BAESF 4. On September 12, 2011, the court appointed Claimant as guardian ad litem for Serena Greene in Serena Greene's cause of action for wrongful death. BAESFX 5 at 166-167.

On May 3, 2012, Claimant executed two disclaimers: one disclaiming her participation and interest in any third-party lawsuits in favor of a Longshore Act claim and the other disclaiming her interest in "[a]ll current and future net proceeds from lawsuits and claims filed by LeJon Greene and/or LeJon Greene's estate in connection with LeJon Greene's exposure to asbestos" in favor of the Longshore Act claim. BAESFX 3 at 1-2. On May 25, 2012, Claimant, in her individual capacity, filed death benefit claims under the Act against BAE Systems San Francisco Ship Repair (BAE-SF), BAE Systems San Diego Ship Repair (BAE-SD), SSA Terminals, LLC, Matson Terminals, Triple A Machine Shop, and Southwest Marine of San Francisco.² Claimant Exhibit (CX) 1. She subsequently filed longshore claims against The Marine Group, Service Engineering Company, and San Francisco Welding and Fabrication.³ BAESFX 17.

On August 6, 2012, Claimant requested to be dismissed as a wrongful death heir in the third-party lawsuit but to remain as guardian ad litem for Serena Greene. The court

² On June 5, 2015, the ALJ granted BAE-SF's motion to join Serena Greene as a claimant in the longshore proceedings. Order Regarding Discovery and Joinder Motions (ALJ June 11, 2014). Because he found Claimant was not legally permitted to unilaterally waive Serena Greene's claim under the Act, he appointed Martina Navarro as guardian ad litem for Serena Greene. Order Appointing Guardian ad Litem (ALJ Aug. 4, 2014). In January 2015, Serena Greene turned eighteen years old and could then appear on her own behalf.

³ Claimant settled her claims against Service Engineering Company, San Francisco Welding and Fabrication, Matson Terminals, and SSA Terminals under Section 8(i), 33 U.S.C. §908(i), but they remained parties in the case as it related to Serena Greene's potential entitlement to benefits. See Order Approving Partial Settlement and Order Denying Request for Dismissal (ALJ Jan. 20, 2023). The Marine Group was later dismissed from the case by the ALJ's order granting summary decision. See Order Granting Summary Decision in Favor of The Marine Group, LLC (ALJ Feb. 2, 2023) (finding no genuine dispute that The Marine Group did not employ Decedent or provide longshore coverage to any of Decedent's longshore employers).

granted the request on August 10, 2012. BAESFX 5 at 143-149. Meanwhile, on August 1, 2012, Claimant, as guardian ad litem for Serena Greene, had executed settlement agreements with Sun Ship, LLC/Sun Ship, Incorporated and Parker-Hannifin Corporation. BAESFX 1 at 2-21. She executed settlement agreements with Western MacArthur Company (The Western Asbestos Settlement Trust) on October 17, 2012, and with Hopeman Brothers Incorporated on November 10, 2012. BAESFX 1 at 22-36, 45-52. On April 22, 2013, Claimant requested court approval of the settlements with Sun Ship, Parker-Hannifin, and Western MacArthur.⁴ BAESFX 5 at 150-175. On June 18, 2013, the court approved the settlements, ordered disbursement of the settlement proceeds into a blocked bank account in Serena Greene's name and the filing of receipts confirming such amounts had been deposited,⁵ and authorized Claimant to accept future settlements proceeds from other defendants in the lawsuit on Serena Greene's behalf and deposit those proceeds into the blocked bank account without further application to the court.⁶ BAESFX at 176-178.

At the same time, Claimant filed asbestos exposure claims against several asbestos trusts that were not named as defendants in the survival and wrongful death action. On April 15, 2013, she executed agreements to release claims against C.E. Thurston & Sons Asbestos Trust (Thurston Release) and Raytech Corporation Asbestos Personal Injury Settlement Trust (Raytech Release). BAESFX 1 at 37-44. She later executed agreements to release claims against Keene Creditors Trust (Keene Release) on July 2, 2013, and H.K. Porter Company Incorporated Asbestos Trust (Porter Release) on September 5, 2013.⁷ BAESFX 1 at 53-62.

⁴ While her request for approval of the settlements was pending before the court, Claimant, as guardian ad litem, executed a settlement agreement with J.T. Thorpe Settlement Trust on May 20, 2013. BAESFX 1 at 22-36, 45-52.

⁵ Claimant filed receipts with the court acknowledging settlement proceeds deposited into the accounts on December 31, 2013, in the amount of \$200,000, on January 14, 2014, in the amount of \$115,551.66, and on January 21, 2014, in the amount of \$360. BAESFX 5 at 198-204.

⁶ Per Claimant's request, the court amended the terms of the order on December 3, 2013, to allow Claimant to deposit settlement proceeds into three separate blocked bank accounts in Serena Greene's name. *See* BAESFX 5 at 179-197.

⁷ In addition to the settlements and release agreements mentioned here, Claimant and/or Serena Greene resolved claims against Celotex, Eagle-Picher Industries, Inc.,

As for the longshore claim, in 2015, the ALJ denied BAE-SF's motion for summary decision on the question of whether any of the third-party settlements and releases barred Claimant's and Serena Greene's death benefit claims under Section 33(g) of the Act, 33 U.S.C. §933(g). Order Denying Motion for Summary Decision (Order Deny M/SD) (ALJ Jan. 27, 2015). He specifically rejected BAE-SF's argument that a person entitled to compensation may not act in any other legal capacity under the Act and found there was a genuine dispute of material fact as to whether Claimant executed the asbestos trust fund release agreements in her individual capacity, received valuable consideration for releasing the claims, and whether Serena Greene ratified her mother's actions. Having found several of the settlements included only Serena Greene and not Claimant, the ALJ denied BAE-SF's motion for reconsideration and granted Claimant's motion to exclude BAE-SF's expert witness reports as to apportionment of the third-party proceeds because he found apportionment under *Force v. Director, OWCP*, 938 F.2d 981 (9th Cir. 1991) was not relevant as to particular settlements. Order Continuing Hearing, Modifying Pre-Hearing Deadlines, and Denying Motion for Reconsideration (Order Deny. M/Recons.) (ALJ Feb. 4, 2015); *see also* Order on Motion to Exclude Expert Witnesses (ALJ Feb. 10, 2015).

The Board accepted Employer's interlocutory appeal of all three orders and ultimately affirmed the ALJ's denial of summary decision. However, the Board vacated the ALJ's preliminary finding that Claimant signed certain settlement agreements only in her capacity as guardian ad litem for Serena Greene and remanded the case to the ALJ to determine if the settlement agreements – when considered as a whole – resolved Claimant's and/or Serena Greene's claims and to allow Employer to submit apportionment evidence if necessary. *Quiroz-Greene v. BAE Sys. S.F. Ship Repair [Quiroz-Greene I]*, BRB No. 15-0194 (April 18, 2016).⁸

Pfizer, Inc., The Manville Trust, Philadelphia Asbestos Corporation, and UNR Asbestos-Disease Claims Trust in 2014.

⁸ On remand from the Board, the ALJ was concerned there was an actual conflict between Claimant and Serena Greene given the Section 33(g) bar and therefore issued an order to show cause directing Claimant and her counsel, Brayton Purcell (BP), to produce documents memorializing Claimant's and Serena Greene's informed written consent to BP's continuous and simultaneous representation of them in their longshore claim and third-party action. Unpersuaded by Claimant's and BP's response, the ALJ disqualified BP from continuing to represent Claimant and Serena Greene. The Board accepted Claimant's and BP's interlocutory appeal, vacated the ALJ's disqualification of BP as too harsh a remedy at that stage in the proceedings, and remanded the case to the ALJ to consider the merits. *Quiroz-Greene v. BAE Sys. S.F. Ship Repair [Quiroz-Greene II]*, BRB No. 20-0190 (April 29, 2021). In that regard, the Board specifically instructed the ALJ to

Following the second remand from the Board, the ALJ held a formal hearing on the merits. Afterwards, he issued an order bifurcating the issues and instructed the parties to address whether Claimant forfeited her entitlement to benefits by executing the Thurston Release, Raytech Release, Keene Release, and Porter Release. On July 31, 2023, the ALJ issued his decision and order denying Claimant's and Serena Greene's claims for benefits, finding both claims barred by Section 33(g). In pertinent part, he found the Thurston, Raytech, Keene, and Porter release agreements were settlement agreements that Claimant executed in her individual capacity and without Employers' and Carriers' prior written approval. As the settlement proceeds were less than the amount of compensation Claimant would be entitled to under the Act, the ALJ determined she forfeited her entitlement to death benefits under the Act pursuant to Section 33(g), 33 U.S.C. §933(g). Decision and Order (D&O) at 5-6.

Claimant appeals the ALJ's denial of her claim for death benefits. BAE-SF, BAE-SD, and California Insurance Guarantee Association (CIGA) each respond, urging affirmance.

On appeal, Claimant challenges the ALJ's denial of her claim on two grounds. She first contends the ALJ erroneously characterized the Thurston, Raytech, Keene, and Porter release agreements as settlements instead of judgments in contravention of the Board's holding in *Williams v. Ingalls Shipbuilding, Inc.*, 35 BRBS 92 (2001). Alternatively, she asserts that even if the releases are settlements for purposes of Section 33(g), she signed them in her capacity as Serena Greene's guardian ad litem and not on her own behalf.⁹ We reject Claimant's contentions.

Section 33 of the Act allows a claimant to pursue damages against a third party she believes is liable for the same injury or death for which compensation is owed under the Act without sacrificing her entitlement to benefits under the Act. 33 U.S.C. §933(a).¹⁰ If

receive briefing regarding the significance of the holding in *Hale v. BAE Sys. S.F. Ship Repair, Inc.*, 801 F. App'x 600 (9th Cir. 2020) on the pending Section 33(g) issue. *Quiroz-Greene II*, slip op. at 9.

⁹ We affirm as unchallenged on appeal the ALJ's finding that Claimant executed settlement agreements with Sun Ship, Parker-Hannifin, Western MacArthur, Hopeman Brothers, and J.T Thorpe as guardian ad litem for Serena Greene and his dismissal of Serena Greene's death benefit claim under Section 33(g) of the Act, 33 U.S.C. §933(g). *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

¹⁰ Section 33(a) of the Act states:

a claimant “enters into a settlement” with a third party for less than what she would be entitled to under the Act, before executing the settlement she must obtain the employer’s and carrier’s written approval of the settlement and file the approval with the district director within thirty days. 33 U.S.C. §933(g); 20 C.F.R. §702.281. If the claimant fails to obtain the requisite written approval from the employer and carrier, she forfeits any compensation and medical benefits to which she is otherwise entitled under the Act. 33 U.S.C. §933(g)(2); 20 C.F.R. §702.281(b); *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469 (1992).¹¹

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.

33 U.S.C. 933(a).

¹¹ Section 33(g) of the Act reads:

(1) If the person entitled to compensation (or the person’s representative) enters into a settlement with a third person referred to in subsection (a) 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) 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.

(2) If no written approval of the settlement is obtained and filed as required by paragraph (1), or if the employee fails to notify the employer of any settlement obtained from or judgment rendered against a third person, all rights to compensation and medical benefits under this chapter shall be terminated, regardless of whether the employer or the employer’s insurer has made payments or acknowledged entitlement to benefits under this chapter.

33 U.S.C. §933(g)(1)-(2). Section 33(g)’s implementing regulation, 20 C.F.R. §702.281(b), states:

There is no dispute that Claimant is a “person entitled to compensation” under the Act, that she did not obtain prior written approval from the Employers and Carriers before executing release agreements with Thurston, Raytech, Keene, and Porter, and that the amounts paid by the asbestos trusts in exchange for Claimant releasing claims against the trusts were individually and collectively less than her potential entitlement under the Act. Rather, the parties dispute whether the release agreements were, as the ALJ found, “settlement[s]” within the meaning of Section 33(g) of the Act. Claimant asserts the release agreements lack the “hallmarks of settlement” because there was no compromise, no possibility of individual litigation, and the amounts offered by the trusts were predetermined according to reorganization plans approved by a bankruptcy court. Based on the Board’s rationale in *Williams*, 35 BRBS 92, she contends the release agreements are more akin to “judgments” rather than “settlements” and, therefore, required only notice under Section 33(g)(2) and not prior approval under Section 33(g)(1).

In *Williams*, the claimant filed personal injury claims against two asbestos bankruptcy trust funds. One trust fund sent a letter to the claimant’s attorney setting forth the bankruptcy court-approved payout schedule and a check to cover the payout amount for all the attorney’s clients’ claims against the trust, including the claimant’s. The letter specified the payout amounts for each type of personal injury claim for which the trust was potentially liable under the Chapter 11 bankruptcy reorganization plan and stated that the act of cashing the check constituted a full release from all the clients’ claims against the trust unless payment attributable to a particular client’s claim was returned to the trust.

Upon receipt of the check, the claimant’s attorney deposited it into the attorney’s law firm’s trust account but eventually returned the amount attributable to the claimant’s claim back to the asbestos trust fund. The second trust fund sent a check to the claimant’s

Where the claim or legal action instituted against a third party results in a settlement agreement which is for an amount less than the compensation to which a person would be entitled under this Act, the person (or the person’s representative) must obtain the prior, written approval of the settlement from the employer and the employer’s carrier before the settlement is executed. Failure to do so relieves the employer and/or carrier of liability for compensation described in section 33(f) of Act, 33 U.S.C. 933(f) and for medical benefits otherwise due under section 7 of the Act, 33 U.S.C. 907, regardless of whether the employer or carrier has made payments of acknowledged entitlement to benefits under the Act. The approval must be on a form provided by OWCP and must be filed, within thirty days after the settlement is entered into, with the district director who is administering the claim.

attorney as an offer of settlement and gave the claimant 180 days to accept or reject the offer. The claimant's attorney received and held the check but did not deposit it into the attorney's law firm's trust account or return it to the trust fund. *Williams*, 35 BRBS at 93. Although the claimant did not know her attorney had received payments from the trust funds on her behalf, and neither she nor her attorney executed any agreements to release the claims against the trust funds, the ALJ found the claimant's attorney's actions of accepting and depositing the first check and holding the second check were sufficient to constitute fully executed settlements between the claimant and third parties. Therefore, he determined the claimant forfeited her right to benefits under Section 33(g). *Id.* at 93-94.

On review, the Board vacated the ALJ's finding that payments made by the asbestos trust funds and actions taken by the claimant's attorney regarding those payments constituted fully executed settlements. *Williams*, 35 BRBS at 95-97. Reviewing facts in the record about the asbestos trust fund bankruptcy proceedings and reorganization plans, and the automatic nature of the disbursements made to the claimant, the Board stated: "[t]he absence of compromise, the impossibility of individual litigation, and the predetermined nature of the disbursements" supported the conclusion that the trust fund disbursements were judgments as opposed to settlements. *Id.* at 97. The Board further held that even if the payments constituted settlements, the ALJ did not adequately consider factors relevant to determining whether the settlements were fully executed, such as: "whether the claimant agreed to a settlement, whether she signed a release, whether she obtained and retained money from the third-party defendant, whether conditions precedent to any settlement were satisfied, whether the claimant's attorney had the authority to settle a claim on her behalf, whether any third-party suits had been dismissed, and whether any settlement had been rescinded." *Id.* Consequently, it remanded the case for the ALJ to consider whether the sums the claimant received "were indeed in 'settlement' of her claims against the third parties" and, if so, "whether the settlements were fully executed." *Id.*

Contrary to Claimant's contentions, *Williams* does not establish a categorical rule applicable to all asbestos bankruptcy trust payments or settlements. It instead requires a factual, record-specific determination of whether a claimant entered into a settlement within the meaning of Section 33(g) based on the particular transaction and evidence presented rather than the mere fact that a payment was made by an asbestos bankruptcy trust. Critically, the record in *Williams* lacked evidence that the claimant entered into a settlement, as there were no settlement or release agreements executed by the claimant and there was no proof she exercised discretion over any settlement terms, engaged in negotiation, or compromised a disputed claim. In addition, the ALJ did not address whether the trust fund payments, which bore indicia of an administrative distribution as opposed to a negotiated compromise, reflected anything more than automatic distributions pursuant to trust distribution procedures. The Board therefore remanded the case to the

ALJ for further factual findings. But the Board did not, as Claimant suggests, categorically convert asbestos bankruptcy trust payments into judgments.

Unlike in *Williams*, the record in this case contains four fully-executed release agreements that by their terms make clear there was “an agreement among the parties involving mutual concessions.” *Banks v. Chi. Grain Trimmers Ass’n*, 390 U.S. 459, 467 (1968). While the Act does not define the term “settlement” as it is used in Section 33(g), the Board has held that evidence of “acceptance, surrender, mutual consent, or consideration” may support finding a settlement was entered into for purposes of Section 33(g). *Chavez v. Todd Shipyards Corp.*, 24 BRBS 71, 76 (1990), *aff’d in pertinent part and rev’d on other grounds*, *Chavez v. Director, OWCP*, 961 F.2d 1409, 1413 (9th Cir. 1992); *Williams*, 35 BRBS at 95; *see also Barnes v. Gen. Ship Service*, 30 BRBS 193 (1996); *Pool v. Gen. Am. Oil Co.*, 30 BRBS 183, 187 (1996) (negotiations following non-final judgment that led to satisfaction of judgment agreement was a settlement under Section 33(g)); *Broussard v. Houma Land & Offshore*, 30 BRBS 53, 58 & n.7 (1996) (offer of judgment made pursuant to Rule 68 of Federal Rules of Civil Procedure was a settlement agreement under Section 33(g)(1)).

Here, Claimant filed claims against four asbestos bankruptcy trust funds related to Decedent’s alleged exposure to asbestos.¹² Each of the trust funds offered her a settlement amount as consideration for her releasing her claims. Claimant then executed a release agreement with each trust fund as consideration for the settlement amount offered. By executing the release agreement and accepting the offer of payment, Claimant agreed to release claims against each of the trust funds in exchange for the amount specified in the respective agreements.¹³

¹² The Raytech, Thurston, and Porter agreements explicitly state the underlying claims were disputed. The Raytech Release confirms Claimant “understand[s], represent[s], and warrant[s]” the agreement “is a compromise of disputed claims.” BAESFX 1 at 43. The Thurston Release confirms Claimant “understand[s] and agree[s] that this settlement is a compromise of a disputed claim.” *Id.* at 39. The Porter Release confirms Claimant “understands, represents and warrants” the agreement “to be a compromise of a disputed claim.” *Id.* at 56. The Keene Release does not state whether the Claimant’s claims were disputed. Instead, it appears Claimant submitted information in support of her claim against Keene which met certain medical and exposure criteria that the trust’s resolution and distribution procedures required. *Id.* at 53.

¹³ By executing the Porter Release, Claimant “agree[d] forever to refrain from bringing any suit or proceeding at law or in equity” against the trust with respect to personal injury claims released in the executed agreement. BAESFX 1 at 55. She further agreed to

Nothing in the record required Claimant to accept the settlement amounts offered or indicated she was prevented from negotiating the terms of the settlements or pursuing her legal rights in any manner she desired.¹⁴ On the contrary, Claimant agreed to dismiss any pending civil actions she may have filed against the trust funds and agreed not to file any actions or claims against the trust funds in the future. BAESFX 1 at 38-40 (Thurston Release), 42-43 (Raytech Release), 53, 55-56. Regarding her legal rights, she stipulated she relied upon her personal knowledge and information and the advice of her attorney and understood the legal consequences of entering into the release agreements. BAESFX 1 at 40 (Thurston Release), 43 (Raytech Release), 56-57 (Porter Release). In all of the agreements, she certified it was her decision to accept the settlement offers and enter into the release agreements. BAESFX 1 at 40 (Thurston Release: “I sign the [Release] as my own free act.”), 42 (Raytech Release: Claimant “desires to accept the Settlement Payment and has agreed to enter into this Release of Claimant and Indemnity Agreement.”), 53 (Keene Release: “It is the Claimant’s decision to accept the offer and enter into this Release.”), 58 (Porter Release: “I sign the [Release] as my own free act.”).

Distinct from the automatic disbursements present in *Williams*, the release agreements here were not mere administrative payment notices or unilateral trust determinations; rather, they reflected Claimant’s affirmative acceptance of payment in

dismiss with prejudice any civil actions she may have filed against the trust. *Id.* at 56. By executing the Thurston Release, Claimant agreed to “release, waive and discharge all rights or claims of any kind against the [trust] allegedly resulting from [Decedent’s] exposure to asbestos.” *Id.* at 38. She further agreed to dismiss any pending lawsuits or appeals against the trust. *Id.* at 40. By executing the Keene Release, Claimant agreed to “fully release the Trust . . . from all claims . . . resulting from any exposure to asbestos.” *Id.* at 53. By executing the Raytech Release, Claimant agreed to “fully release, acquit, and forever discharge the Trust . . . from any and all actions, causes of action, claims, demands, damages, costs, expenses, and compensation . . . arising from exposure to asbestos” and “forever to refrain from bringing any suit or proceeding at law or in equity against the [trust]” with respect to personal injury claims released in the executed agreement. *Id.* at 42.

¹⁴ All the release agreements acknowledged a negotiation process and good faith dealing, as each contained a merger clause or similar provision that incorporated or superseded all prior and contemporaneous agreements and promises made between the parties. BAESFX 1 at 40 (Thurston Release), 43 (Raytech Release), 53 (Keene Release), 57 (Porter Release). The Thurston Release explicitly contemplated changed or altered terms if “agreed to and acknowledged in writing” by the trust and Claimant or her attorney. *Id.* at 40.

exchange for the release of personal and spousal claims against the trusts. Therefore, the ALJ had executed agreements before him evidencing a bargained-for exchange, and his reliance on the express terms of those agreements in order to determine whether Claimant entered into a settlement with third-parties does not conflict with *Williams* and is consistent with Section 33(g)'s text and purpose. *Banks*, 390 U.S. at 467; *Chavez*, 24 BRBS at 76.

Based on the terms contained in the four release agreements, the ALJ rationally found they “demonstrate the underlying settlements involve the compromise of a disputed claim” and rationally rejected Claimant’s argument that they are, as a matter of law, judgments as opposed to settlements for purposes of Section 33(g). D&O at 5 n.5. As the language in the release agreements established an offer, acceptance, and consideration and there is no evidence showing Claimant or her attorney rescinded the executed and notarized release agreements and returned the settlement funds, substantial evidence supports the ALJ’s conclusion that the release agreements constitute fully-executed settlements within the purview of Section 33(g)(1) of the Act, 33 U.S.C. §933(g)(1). *Williams*, 35 BRBS at 95, 97-98; *Barnes*, 30 BRBS at 196-197. Accordingly, we affirm his findings.

Claimant argues in the alternative that even if the releases are “settlement[s]” under the Act, the ALJ erred in finding she entered into them in her individual capacity. She maintains that following her release from the civil wrongful death action and disclaiming her interest in any third-party proceeds, she acted solely in a representative role for Serena Greene and did not resolve any third-party claims on her own behalf. Thus, Claimant contends the ALJ erred by resolving the capacity issue exclusively based on the face of the release agreements and by applying state contract principles to foreclose consideration of extrinsic evidence bearing on whether she acted solely in a representative capacity for Serena Greene. She asserts the standardized nature of the release agreements, the absence of any estate proceedings or appointment of her as a personal representative for Decedent’s estate, and the payment of settlement proceeds into blocked accounts for Serena Greene’s benefit created ambiguity as to whose claims were resolved, thus requiring the ALJ to consider extrinsic evidence as to the legal effect of her signing the release agreements.¹⁵

¹⁵ Claimant contends the use of generic first-person language in the release agreements is ambiguous in the asbestos-trust context, where the documents are standardized and presume execution by the injured worker rather than a surviving spouse acting for a minor beneficiary. She asserts that under state contract laws, this ambiguity required consideration of extrinsic evidence demonstrating representative capacity, including the absence of any estate proceedings, the lack of any appointment of her as a personal representative of Decedent’s estate, the payment of proceeds into blocked accounts for Serena Greene, and the overall procedural posture of the civil case. According to Claimant, the ALJ committed legal error by treating capacity as conclusively resolved

Respondents counter substantial evidence supports the ALJ's finding that Claimant executed the four settlement agreements in her individual capacity, thereby triggering Section 33(g). They assert the release agreements are unambiguous under the governing law for each agreement; therefore, the ALJ appropriately rejected consideration of extrinsic evidence to contradict the plain terms of the release agreements.

In addressing whether Claimant personally entered into settlements, the ALJ examined the language of each of the four release agreements and applied the contract law of the state specified in each agreement.¹⁶ He found the agreements were clear and unambiguous, identifying Claimant as the "Claimant" or settling party and employing first-person release language that expressly encompassed personal, spousal, and derivative claims without limitation to a guardian ad litem or representative role. The ALJ further found that none of the agreements referenced Serena Greene, restricted Claimant's authority to act on behalf of Serena Greene alone, or otherwise indicated Claimant was executing the documents solely in a representative capacity.¹⁷ Based on these findings, he concluded that Claimant personally entered into the third-party settlements.

Substantial evidence thus supports the ALJ's conclusion that Claimant entered into settlements with the four asbestos trust funds in her individual capacity. The ALJ permissibly relied upon the plain language of the notarized release agreements which identified Claimant as the settling party, employed first-person release language, and expressly released personal and spousal claims without excluding Claimant's claims or limiting her role to that of guardian ad litem.¹⁸ Further, none of the release agreements

by the face of the documents and by refusing to consider evidence bearing on whether she personally entered into settlements within the meaning of Section 33(g).

¹⁶ The ALJ rejected Claimant's argument that California contract law applied and instead strictly construed the choice of law provision contained in each of the release agreements and interpreted the releases under the contract laws of the states specified in each agreement. D&O at 6; *see also* BAESFX 1 at 51 (Raytech Release governed by New York law), 56 (Thurston Release governed by Virginia law), 60 (Porter Release governed by Delaware law), 63 (Keene Release governed by New York law).

¹⁷ By contrast, the ALJ found Claimant executed five other settlement agreements as guardian ad litem for Serena Greene. D&O at 4.

¹⁸ The Raytech Release identified Decedent and Claimant separately and stated Claimant is the "court-appointed representative" of Decedent's estate. BAESFX 1 at 50-50, 52. The release covered Claimant's claims against the trust and extended to any claims held by Decedent's estate, heirs, representatives, administrators, executives, beneficiaries,

referenced Serena Greene or otherwise indicated Claimant was executing the agreements solely on behalf of Serena Greene. *Compare Siver v. Kaiser Aluminum & Chemical Corp.*, 57 BRBS 11, 19-20 (2022) (affirming ALJ’s finding that the claimant “entered into” settlements based on plain language of settlement agreements and express power of attorney), *aff’d mem.*, No. 22-2098, 2024 WL 705708 (9th Cir. Feb. 21, 2024), *with Hale v. BAE Sys. San Francisco Ship Repair, Inc.*, 801 F. App’x 600 (9th Cir. 2020) (unpublished) (determining the claimants did not personally “enter into” settlements because they did not sign settlement agreements and signatories did not act as the claimants’ agents).¹⁹ Under the governing state’s contract law, the ALJ rationally found the agreements to be clear and unambiguous and therefore properly declined to consider extrinsic evidence regarding Claimant’s asserted intent, litigation strategy, or post-settlement handling of the settlement proceeds in order to alter or contradict the terms of the clear and unambiguous agreements.²⁰ *Wilson Arlington Co. v. Prudential Ins. Co. of*

successors, assigns, subrogees, and any other person or entity asserting any claims “based in whole or in part on any asbestos related injury or death allegedly suffered by the Decedent.” *Id.* at 50. The Thurston Release identified Decedent as the “injured party” and specified the individual signing the release is the “Injured Party” or the “Personal Representative . . . who has a claim with the Trust pursuant to the TDP [trust distribution procedures].” *Id.* at 53. The release covered Decedent’s rights and claims against the trust, as well as those held by Decedent’s “spouse, heirs, representatives, successors or assigns.” It expressly included “personal injury and wrongful death claims” and “all spousal claims for loss of services and consortium.” *Id.* at 54. The Porter Release identified Decedent as the “injured party” and specified the individual signing the release is the “Injured Party” or the “Official Representative” signing on behalf of the injured party, the injured party’s estate, the injured party’s heirs, and anyone else claiming rights through the injured party. *Id.* at 58. The release covered all claims held by Decedent or filed under or on his behalf and expressly included “all spousal claims for the Injured Party’s claims.” *Id.* at 59. The Keene Release identified Decedent and Claimant separately and stated Claimant is the “court-appointed representative” of Decedent’s estate. *Id.* at 63. The release covered Claimant’s claims against the trust and extended to any claims held by Decedent’s estate, heirs, representatives, successors, assigns, and subrogees. *Id.* It expressly included “all claims for wrongful death, survivorship, funeral and medical expenses and all spousal claims for injury, loss of services or consortium.” *Id.*

¹⁹ The Ninth Circuit’s unpublished decisions are not precedent, except when relevant under the doctrine of the law of the case or the rules of claim preclusion or issue preclusion. 9th Cir. R. 36-3(a).

²⁰ The ALJ specifically declined to consider Claimant’s purported disclaimer of all third-party proceeds and facts surrounding her disposition of the settlement money because

Am., 912 F.2d 366, 370 (9th Cir. 1990) (construing Virginia contract law); *Koufakis v. Siglag*, 925 N.Y.S.2d 204, 205-206 (N.Y. App. Div. 2011) (construing release under New York contract law); *Riverbend Community, L.L.C. v. Green Stone Engineering, L.L.C.*, 55 A.3d 330, 334-335 (Del. 2012) (construing release under Delaware contract law); *see also Chavez*, 961 F.2d at 1413-1414. As the ALJ identified the relevant contract language, applied the governing law specified in the agreements, and explained his reasons for concluding the release agreements unambiguously reflected Claimant's personal participation in the settlements, we affirm his finding that Claimant personally entered into settlements with third parties. *Siver*, 57 BRBS at 19-20.

Because Claimant was a person entitled to compensation under the Act and entered into settlements with third parties for less than what she would be entitled to under the Act without obtaining Employers' and Carriers' prior written consent, we affirm the ALJ's conclusion that Section 33(g) bars her claim.

the agreements do not reference Claimant's disclaimers or contain terms regarding her disposition of the settlement money after she received it through her attorney, and there was no other evidence demonstrating the releasors had any knowledge of the facts pertaining to either. D&O at 4-6. Additionally, the ALJ found Claimant offered no factual evidence to support her "understanding" as to her capacity when signing the release agreements. *Id.* at 4 & n.4 (citing Hearing Transcript at 155-156, 159-163).

Accordingly, we affirm the ALJ's Decision and Order Denying Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge