

NICHOLAS F. DIMARINO	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SUN SHIP INCORPORATED	)	DATE ISSUED:
	)	
Self-Insured	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS,	)	
UNITED STATES DEPARTMENT	)	
OF LABOR	)	
	)	
Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order Adopting Settlement Agreement of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Steven A. Reed (Pepper, Hamilton & Scheetz), Philadelphia, Pennsylvania, for self-insured employer.

Janet R. Dunlop (Thomas S. Williamson, Jr., Solicitor of Labor; Carol DeDeo, Associate Solicitor; Janet R. Dunlop, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order Adopting Settlement Agreement (90-LHC-2214) of Administrative Law Judge Ainsworth H. Brown 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 findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant worked for employer as a marine rigger and shipfitter from 1942 until his retirement in 1976. On April 13, 1989, claimant filed a claim for benefits for an occupational lung

disease, which he contended was caused by asbestos exposure during the course of his more than 34 years of employment with employer. Employer disputed the causal relationship between claimant's disability and his employment, and the extent of claimant's disability.

After the case was referred to the Office of Administrative Law Judges, claimant and employer reached a compromise agreement that provided for a lump sum payment to claimant of \$30,000 in settlement of his pending compensation claim. Employer also agreed to pay claimant reasonable medical expenses pursuant to Section 7 of the Act, 33 U.S.C. §907, and attorney's fees and costs as approved by the court, not to exceed \$3031.25 and \$129.50 respectively. Claimant and employer then requested approval of the settlement from the administrative law judge pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i). Finding the parties' agreement to be reasonable and legally adequate, the administrative law judge approved the agreement, incorporating and adopting the proposed settlement<sup>1</sup> by reference into his Decision and Order.

The Director appeals the administrative law judge's approval of the parties' settlement agreement, contending that the language approved by the administrative law judge violates Section 8(i) of the Act and its implementing regulations inasmuch as it discharges employer's potential liability for claims not yet in existence. Employer responds, urging affirmance. Claimant has not responded to this appeal.

The Director specifically challenges the language in paragraph 14 of the settlement agreement which provides, *inter alia*:

. . . Claimant understands and agrees that this settlement will terminate all claims under the LHWCA on his behalf against Sun Ship . . .

The Director maintains that this language violates the provisions of Section 8(i) of the Act and Section 702.241(g) of the regulations. 33 U.S.C. §908(i)(1988); 20 C.F.R. §702.241(g). According to the Director, the challenged wording attempts to preclude claimant from commencing a claim against employer for injuries that may arise in the future. The Director also asserts that the settlement violates Section 15(b) of the Act. 33 U.S.C. §915(b). We reject the Director's contentions.

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<sup>1</sup>The parties' agreement indicated that the settlement was in claimant's best interest and was not procured under duress.

Section 8(i)(3) of the Act, 33 U.S.C. §908(i)(3)(1988), provides that a settlement approved under this section shall discharge the employer's liability. The parties' settlement is limited to the rights of the parties and to the claims then in existence.<sup>2</sup> See *Cortner v. Chevron International Oil Co., Inc.*, 22 BRBS 218 (1989); see generally *Abercrombia v. Chaparral Stevedores*, 22 BRBS 18 (1988), *order on recon.*, 22 BRBS 18.4 (1989); 20 C.F.R. §702.241(g). Section 15(b) of the Act prohibits an employee from waiving his rights to compensation and invalidates any attempts to do so. 33 U.S.C. §915(b). A claimant's agreement to accept compensation pursuant to a submitted but unapproved settlement agreement is invalid under Section 15(b) because it is an agreement to waive compensation. See *Kelly v. Ingalls Shipbuilding, Inc.*, 27 BRBS 117, 119 (1993). Once approved, pursuant to Section 8(i), however, settlement agreements are binding and Section 15(b) no longer applies. See generally *Gutierrez v. Metropolitan Stevedore Co.*, 18 BRBS 62 (1986) (Section 8(i) is a narrow exception to Section 15(b). Settlement procedures must be followed to effect a waiver of compensation).

In the present case, neither the language challenged by the Director, nor any other language contained in the parties' agreement, expressly precludes claimant from filing a claim in the future, or his spouse from filing a claim for death benefits. As the agreement as a whole clearly evidences the parties' intent to limit the settlement to the pending occupational lung disease claim,<sup>3</sup> we will construe the settlement as being limited to claimant's claim for the existing diseases listed therein. See *Kelly*, 27 BRBS at 119. Under this construction, we conclude that the administrative law judge's approval of the settlement is in accordance with law.

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<sup>2</sup>20 C.F.R. §702.241(g) states, in relevant part:

An agreement among the parties to settle a claim is limited to the rights of the parties and to claims then in existence....

<sup>3</sup>Paragraph 10 of the approved settlement expressly states:

Sun Ship shall pay the total sum of Thirty Thousand Dollars (\$30, 000) to the claimant in full satisfaction of the claimant's pending claim for compensation.

Accordingly, the Decision and Order Adopting Settlement Agreement of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Acting Chief  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge