



BRB No. 18-0018  
Case Nos. 2016-LHC-00880, 2017-LHC-00526  
OWCP Nos. 13-105262, 18-305410

RICARDO CORRALES	)	
	)	
Claimant	)	
	)	
v.	)	
	)	
INTERACT PMTI, INCORPORATED	)	
	)	
and	)	
	)	
SEABRIGHT INSURANCE COMPANY	)	DATE ISSUED: <u>Nov. 6, 2017</u>
	)	
Employer/Carrier-	)	
Respondent	)	
	)	
AMERICAN LONGSHORE MUTUAL	)	
ASSOCIATION, LIMITED	)	
	)	
Carrier-Petitioner	)	ORDER

The Board acknowledges the timely notice of appeal and request for stay, filed September 28, 2017, by American Longshore Mutual Association, Limited (ALMA), challenging the Order Denying Motion to Dismiss and Motion for Summary Decision of Administrative Law Judge Christopher Larsen. 33 U.S.C. §921(b); 20 C.F.R. §§802.205, 802.207. ALMA’s appeal is assigned the Board’s docket number 18-0018. All correspondence relating to this appeal must bear this number. 20 C.F.R. §802.210.

ALMA appeals the administrative law judge’s Order denying its motion to be dismissed from the claim. ALMA’s motion was based on contractual and equitable defenses that, it contends, would relieve it of any liability it has under the Act. Seabright opposes ALMA’s appeal and motion for stay.

In this case, ALMA moved the administrative law judge to dismiss claimant’s claim against it, citing a number of defenses, including contractual ones. Relying on *Temporary Employment Services v. Trinity Marine Group, Inc.*, 261 F.3d 456, 35 BRBS

92(CRT) (5th Cir. 2001), the administrative law judge concluded he has no jurisdiction to address ALMA's contractual defenses because they are not "questions in respect of" a longshore claim pursuant to Section 19(a) of the Act, 33 U.S.C. §919(a). Order at 2. Because ALMA admitted it provided longshore coverage to employer, the administrative law judge concluded he has jurisdiction to address questions that implicate ALMA's longshore liability under the Act. Therefore, the administrative law judge denied ALMA's motion. Order at 3.

The administrative law judge's order denying ALMA's motion to dismiss is interlocutory in that it neither awards nor denies benefits. The Board generally does not undertake interlocutory review of orders granting or denying pre-hearing motions because the orders may be reviewed upon the appeal of a final decision and order. *See, e.g., Newton v. P & O Ports Louisiana, Inc.*, 38 BRBS 23 (2004); *Tignor v. Newport News Shipbuilding & Dry Dock Co.*, 29 BRBS 135 (1995); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). The Board will undertake interlocutory review if the non-final order conclusively determines a disputed question, resolves an important issue which is completely separate from the merits of the action, and is effectively unreviewable on appeal from a final judgment. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988) ("collateral order doctrine"); *Newton*, 38 BRBS 23. The Board also will undertake interlocutory review if it is necessary to address the course of the adjudicatory process or if a party alleges it has been denied due process of law. *See, e.g., Pensado v. L-3 Communications Corp.*, 48 BRBS 37 (2014); *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1989); *Niazy v. The Capital Hilton Hotel*, 19 BRBS 266 (1987).

We reject ALMA's contention that the Board should decide this interlocutory appeal because it has been denied its right to due process. It appears the administrative law judge has rescheduled the formal hearing,<sup>1</sup> giving ALMA sufficient opportunity to prepare its defense of the claim under the Act. *See generally General Constr. Co. v. Castro*, 401 F.3d 963, 39 BRBS 13(CRT) (9th Cir. 2005), *cert. denied*, 546 U.S. 1130 (2006); *Shell Offshore, Inc. v. Director, OWCP*, 122 F.3d 312, 31 BRBS 129(CRT) (5th Cir. 1997), *cert. denied*, 523 U.S. 1095 (1998) (the Act protects procedural due process rights by affording a pre-deprivation hearing and post-deprivation review). There is no need for the Board to direct the course of the adjudicatory process in this case. *Newton*, 38 BRBS 23. Further, because the administrative law judge's order is reviewable

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<sup>1</sup> A review of the OALJ case status reveals that the administrative law judge issued an order on October 11, 2017, "re-setting" the hearing. 20 C.F.R. §702.337(c). Therefore, the Board need not address ALMA's motion to stay the proceedings below. Additionally, as ALMA did not request a stay of payments, we need not address Seabright's contentions in this regard.

following a decision on the merits, it does not satisfy the elements of the collateral order doctrine. *See generally Rhine v. Stevedoring Services of America*, 596 F.3d 1161, 44 BRBS 9(CRT) (9th Cir. 2010); *J.T. [Tracy] v. Global Int'l Offshore, Ltd.*, 43 BRBS 92 (2009), *aff'd sub nom. Keller Foundation/Case Foundation v. Tracy*, 696 F.3d 835, 46 BRBS 69(CRT) (9th Cir. 2012), *cert. denied*, 133 S.Ct. 2825 (2013).

Accordingly, ALMA's appeal of the administrative law judge's interlocutory order is dismissed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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RYAN GILLIGAN  
Administrative Appeals Judge

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JONATHAN ROLFE  
Administrative Appeals Judge