

TOPIC 15 INVALID AGREEMENTS

15.1 SECTION 15(a) EMPLOYEE TO EMPLOYER AGREEMENTS ON INSURANCE

Section 15(a) of the LHWCA provides:

No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this Act shall be valid, and any employer who makes a deduction for such purposes from the pay of any employee entitled to the benefits of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000.

33 U.S.C. § 915(a). Section 15(a) prohibits agreements by an employee with the employer or carrier to contribute to an insurance policy or fund, the proceeds from which provide compensation or medical benefits under the LHWCA.

There are no reported cases under Section 15(a).

**15.2 SECTION 15(b) AGREEMENT TO WAIVE COMPENSATION INVALID
(See also Sections 8(i) and 33(g).)**

Section 15(b) of the LHWCA provides:

No agreement by an employee to waive his right to compensation under the Act shall be valid.

33 U.S.C. § 915(b).

Referring to this Section, the Board found that retirement benefits from a fund set up by a contract between the employer and the claimant's union and entirely funded by the employer cannot have any effect on the amount of compensation the claimant should receive for a work injury. Making compensation benefits depend on a contract of which the claimant was a third-party beneficiary would, in effect, force the claimant to waive his right to compensation. Adkins v. Safeway Stores, 6 BRBS 513 (1977).

Any stipulation constituting an agreement to waive the right to additional compensation under Section 14 of the LHWCA—for example, a stipulation that a timely notice of controversy was filed under Section 14(d), when in fact there was no clear indication such notice was filed—is invalid under Section 15(b). Prolerized New England Co. v. Benefits Review Bd., 637 F.2d 30, 12 BRBS 809 (1st Cir. 1980), cert. denied, 452 U.S. 938 (1981); Harris v. Marine Terminals Corp., 8 BRBS 712 (1978); Moore v. Newport News Shipbuilding & Dry Dock Co., 7 BRBS 1024 (1978).

In Brown v. Forest Oil Corp., 29 F.3d 966 (5th Cir. 1994), the employee had signed an “Insurance Waiver Agreement” with the employer who did not have LHWCA coverage. The evidence was to the effect that neither party knew that the work in question was covered under the LHWCA rather than under a state workers compensation act. The employee sued under Section 905(a) and also filed a federal breach of contract suit against the employer. However, the Fifth Circuit found that the breach of contract claim must fail because the contract was void under the LHWCA.

Section 15(b) prohibits an employer from refusing to approve a third-party settlement under Section 33(g), unless the claimant agreed to waive his right to compensation under the LHWCA. Rodriguez v. California Stevedore & Ballast Co., 16 BRBS 371 (1984).

[ED. NOTE: Under Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 26 BRBS 49 (CRT) (1992), an employer can refuse to approve, in writing, a third-party settlement and discontinue/deny payment of benefits until an adjudication of the claim.]

Withdrawal of a claim for a sum of money may not be sustainable under the regulation requiring that withdrawal be for a “proper purpose,” as such an act could violate Section 15(b).

O'Berry v. Jacksonville Shipyards, 21 BRBS 355, 359 (1988); Gutierrez v. Metropolitan Stevedore Co., 18 BRBS 62 (1986); Rodman v. Bethlehem Steel Corp., 16 BRBS 123 (1984).

Where a claimant seeks to terminate his compensation claim for a sum of money, Section 8(i) settlement procedures must be followed. A claimant cannot merely accept a sum of money and withdraw his claim. Norton v. National Steel & Shipbuilding Co., 25 BRBS 79, 83 (1991). See also Oceanic Butler, Inc. v. Nordahl, 842 F.2d 773, 21 BRBS 33, 37 (CRT) (5th Cir. 1988), wherein the court stated that Sections 15(b) and 16 render invalid a claimant's agreement to waive or compromise accrued or future benefit rights without Section 8(i) approval.

Section 15(b), however, does not prohibit a voluntary stipulation as to average weekly wage where the average weekly wage stipulated to is based on a reasonable method of computation pursuant to the LHWCA and no inconsistency with the LHWCA has been shown. Fox v. Melville Shoe Corp., 17 BRBS 71 (1985).