

M.K.)	BRB No. 08-0392
)	
Claimant-Respondent)	
)	
v.)	
)	
CALIFORNIA UNITED TERMINALS)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION)	DATE ISSUED: <u>AUG 28, 2009</u>
)	
Employer/Carrier-Respondents)	
)	
ILWU-PMA WELFARE PLAN)	
)	
Intervenor-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Respondent)	
)	
M.K.)	BRB No. 08-0450
)	
Claimant-Respondent)	
)	
v.)	
)	
MAERSK PACIFIC/APM TERMINALS PACIFIC LIMITED)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION)	

)	
Employer/Carrier-)	
Respondents)	
)	
ILWU-PMA WELFARE PLAN)	
)	
Intervenor-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	
)	
R.B.)	BRB No. 08-0606
)	
Claimant-Respondent)	
)	
v.)	
)	
YUSEN TERMINALS, INCORPORATED)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION)	
)	
Employer/Carrier-)	
Respondents)	
)	
ILWU-PMA WELFARE PLAN)	
)	
Intervenor-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER on
)	RECONSIDERATION

Appeals of the Orders Approving Partial Settlements and Attorney Fees of Russell D. Pulver, Administrative Law Judge, United States Department of Labor, and the Decision and Order Approving Settlement of Steven B. Berlin, Administrative Law Judge, United States Department of Labor.

James M. McAdams (Pierry & McAdams, LLP), San Pedro, California, for claimant M.K.

Alexa A. Socha (Aleccia, Conner & Socha), Long Beach, California, for California United Terminals and Signal Mutual Indemnity Association.

James P. Aleccia (Aleccia, Conner & Socha), Long Beach, California, for Maersk Pacific/APM Pacific, Yusen Terminals, Incorporated, and Signal Mutual Indemnity Association.

Shawn C. Groff (Leonard Carder, LLP), Oakland, California, for ILWU-PMA Welfare Plan.

Kathleen H. Kim (Carol A. DeDeo, Deputy Solicitor; Rae Ellen Frank James, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employers, California United Terminals, Maersk Pacific, APM Terminals Pacific Limited, and Yusen Terminals, Incorporated, have filed timely motions for reconsideration of the Board's Decision and Order in *M.K. v. California United Terminals*, 43 BRBS 1 (2009). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employers contend that the Board erroneously held that ILWU-PMA's claims for reimbursement of medical benefits arising under Section 7 of the Act, 33 U.S.C. §907, must be resolved simultaneously with the Section 8(i) settlement agreements entered into by the claimants and their respective employers. Claimant M.K. responds, contending that she does not support that part of the Board's decision which grants ILWU-PMA reimbursement rights from her settlement proceeds, and she further maintains that reasonable settlements between the claimants and employers should not require the approval or signature of ILWU-PMA.¹ ILWU-PMA and the Director, Office of Workers' Compensation

¹ M.K. contends that ILWU-PMA should not be entitled to automatic reimbursement from her settlement proceeds. ILWU-PMA's lien right on claimant's

Programs (the Director), also respond urging the Board to deny the employers' motion for reconsideration. The Director agrees that the claimant's claims and ILWU-PMA's reimbursement claims must be addressed simultaneously in these cases. However, he also seeks clarification of the Board's holding so that it reflects that only those parties whose financial interests are at stake must have their rights resolved simultaneously with a claimant's claim.

To recapitulate, the claimants filed claims seeking benefits under the Act for injuries allegedly resulting from their work for employers. ILWU-PMA, which paid disability and medical benefits to the claimants while their claims under the Act remained in dispute, intervened or attempted to do so, in the claims, seeking to recover the compensation and medical benefits it paid to the claimants. Both claimants reached agreements with their respective employer(s) to settle the claims arising under the Act, and the claimants and employers thereafter filed Section 8(i) settlement applications with administrative law judges. The settlement agreements stated that the employers would "agree to pay, adjust or litigate" ILWU-PMA's liens but did not specifically resolve any issues relating to those liens. The presiding administrative law judge in each instance approved the settlement agreements without resolving ILWU-PMA's lien and claims.

Relevant to the issue raised by employers on reconsideration,² the Board held that since ILWU-PMA is a party-in-interest to the claims, and since its right to reimbursement of medical expenses is derivative, based on claimant's entitlement to and employer's liability for medical benefits under Section 7 of the Act, 33 U.S.C. §907, "ILWU-PMA's rights to reimbursement of medical costs must coincide with the determination of claimant's entitlement." *M.K.*, 43 BRBS at 6; *see also* 33 U.S.C. §§907(a), (d)(3), 919. Employers argue that they should be allowed to exclude ILWU-PMA from any settlement agreement regarding medical benefits negotiated with the claimants since ILWU-PMA's Section 17 rights are not impaired if its medical reimbursement claim is bifurcated. Employers maintain that unlike Section 702.162 of the regulations, which

disability compensation is governed by Section 17, 33 U.S.C. §917, and Section 702.162; 20 C.F.R. §702.162. *See M.K.*, 43 BRBS at 5-7. *M.K.* also contends it should not have to reimburse employers for sums paid pursuant to the now-vacated settlements. The amounts already disbursed to the claimants pursuant to the settlements are advance payments of compensation under Section 14(j), 33 U.S.C. §914(j). Under Section 14(j), the employers are entitled only to a credit for those payments against any future compensation owed. *See Ceres Gulf v. Cooper*, 957 F.2d 1199, 25 BRBS 125(CRT) (5th Cir. 1992); *Stevedoring Services of America v. Eggert*, 953 F.2d 552, 25 BRBS 92(CRT) (9th Cir. 1992), *cert. denied*, 505 U.S. 1230 (1992).

² Employers have not challenged the Board's holding that ILWU-PMA's Section 17 lien claims for amounts paid for claimant's disability, 33 U.S.C. §917, must be resolved simultaneously with the Section 8(i) settlements, 33 U.S.C. §908(i). *M.K.*, 43 BRBS at 6-7.

requires that a Section 17 lien be resolved simultaneously with any compensation order issued on the claim, Section 7(d)(3) is silent as to when an award for the reasonable value of the medical treatment should be made.

We reject employers' contention. Claimants filed claims under the Act for medical benefits, as well as disability compensation. ILWU-PMA's right to reimbursement of amounts paid for claimants' medical treatment rests on the claimants' claims for medical benefits under Section 7 of the Act. Thus, ILWU-PMA's right to reimbursement of medical benefits is derivative of the claimants' rights to receive those benefits under Section 7. *See Hunt v. Director, OWCP*, 999 F.2d 419, 423-424, 27 BRBS 84, 91(CRT) (9th Cir. 1993).³ As ILW-PMA's financial interests and claimants' rights to medical benefits rest on the same claims, these rights cannot be resolved separately. Under Section 8(i), approval of a settlement agreement fully discharges an employer's liability.⁴ As Director asserts, since a settlement would discharge employer's liability for all of claimants' past medical expenses, if employer and claimant are allowed to settle these claims separately, ILWU-PMA would have no legal recourse under the Act's claims process to recover the monies it disbursed for the claimants' medical benefits. Thus, ILWU-PMA's right to reimbursement of medical benefits is impaired if its claims are not adjudicated simultaneously with claimants' claims for medical benefits. *Hunt*, 999 F.2d 423-424, 27 BRBS at 91(CRT). Because ILWU-PMA's claims for reimbursement of medical benefits are entirely derivative of claimants' claims for medical benefits, ILWU-PMA's claims must be resolved simultaneously with the claimants' claims.

Additionally, the fact that settlements can be reached and approved pursuant to Section 8(i) under which the compensation portion of a claim is settled and the medical portion of the claim is left "open," or vice versa, *see* 20 C.F.R. §702.243(d),⁵ does not alter the result on the facts presented. In these cases, the parties submitted settlement applications for "compensation and medical benefits combined," such that the claimants' claims for medical benefits were not left open. Thus, in these cases, claimants' claims for medical benefits and ILWU-PMA's derivative right to reimbursement of amounts

³ In *Hunt*, the Ninth Circuit agreed with the Director that Section 7(d)(3) "does not confer any 'benefits' on medical providers as such" but it allows providers to seek recovery of an injured claimant's medical benefits to the extent that benefits are owed in satisfaction of unpaid bills. *Hunt*, 999 F.2d 423-424, 27 BRBS at 91(CRT).

⁴ Section 8(i)(3) states: "A settlement approved under this section shall discharge the liability of the employer or carrier, or both." 33 U.S.C. §908(i)(3).

⁵ Section 702.243(d), 20 C.F.R. §702.243(d), states: "The parties may submit a settlement application solely for compensation, or solely for medical benefits or for compensation and medical benefits combined."

expended for medical costs must be resolved at the same time. Therefore, the Board properly held that the settlements in these cases infringe on ILWU-PMA's derivative right to reimbursement, and thus, had to be vacated. *See M.K.*, 43 BRBS at 5-6.

Additionally, at the Director's urging, we clarify our holding to reflect that only those parties with a financial interest in the claim must have their rights resolved simultaneously with the rights of the other parties whose financial interests are also at stake. It is the existence of a party's financial interest in the outcome of a claimant's claim against his/her employer which gives that entity the right to have its reimbursement claims simultaneously resolved with the parties' settlement agreement.⁶ Clearly, ILWU-PMA has, via its valid Section 17 liens, a financial interest in the disability aspect of the settlements in these cases. As for medical benefits, ILWU-PMA's financial interests, premised on its Section 7(d)(3) reimbursement claims, arose because the settlement agreements included releases for both past and future medical benefits.⁷ Thus, claimants and employers cannot settle claimants' disability and past medical benefits claims without ILWU-PMA's agreement. In this case, as the Board previously held, ILWU-PMA's "lien and reimbursement claims must be resolved simultaneously with the claimants' claims." *M.K.*, 43 BRBS at 8.

⁶ As the Director asserts, he is not a required participant in a settlement unless he has a financial interest. In cases involving medical insurers where Section 17 is not at issue, the parties may still settle disability claims as well as future medicals claims where the insurer intervenes only to recover past payments for medical treatment.

⁷ In these cases, ILWU-PMA does not have an interest in the issue of claimants' entitlement to future medical benefits. Thus settlement agreements resolving only future medical benefits claims do not require ILWU-PMA's participation. 33 U.S.C. §908(i)(1); 20 C.F.R. §702.243(d).

Accordingly, employers' motions for reconsideration are denied. The Board's decision is affirmed, as clarified herein, and the cases are remanded for further consideration consistent with that opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge