

M.K.)	BRB No. 08-0392
)	
Claimant-Respondent)	
)	
v.)	
)	
CALIFORNIA UNITED TERMINALS)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION)	DATE ISSUED: <u>2/12/2009</u>
)	
Employer/Carrier-Respondent)	
)	
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-)	
Respondent)	
)	
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-)	
Respondent)	
)	
ILWU-PMA WELFARE PLAN)	
)	
Intervenor-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

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 Michael 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 and Marcy K. Mitani (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.

Mark A. Reinhalter and Kathleen H. Kim (Carol A. DeDeo, Deputy Solicitor; Rae Ellen Frank James, Acting Associate Solicitor), 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:

ILWU-PMA Welfare Plan appeals two separate Order(s) Approving Partial Settlement and Attorney Fees (2007-LHC-0263, 0264, and 0265) of Administrative Law Judge Russell D. Pulver and the Decision and Order Approving Settlement (2007-LHC-0895) of Administrative Law Judge Steven B. Berlin rendered on claims filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act).¹ We must affirm the administrative law judges' findings of

¹ ILWU-PMA is a joint labor-management multi-employer welfare trust fund established and maintained by the International Longshore and Warehouse Union and the Pacific Maritime Association in compliance with Section 302(e) of the Labor-Management Relations Act of 1947 and 29 U.S.C. §186(c). Specifically, the ILWU-PMA plan is a welfare benefits plan which pays medical and disability benefits on behalf of its participants, including those involved in workers' compensation or third-party proceedings.

fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant M.K. initially filed a claim under the Act seeking benefits for alleged neck and back injuries which arose in the course of her work for Maersk Pacific (Maersk) on February 1, 1995. Maersk voluntarily paid M.K. compensation for periods of temporary total and temporary partial disability, and subsequently provided M.K. with an advance of \$5,000 for permanent partial disability benefits. M.K. and Maersk stipulated that M.K.’s injuries arose out of her employment with Maersk, and that M.K. was entitled to permanent partial disability benefits for a ten percent impairment of her right upper extremity, as well as an ongoing *de minimis* permanent partial disability award of \$1.00 per week from March 13, 1998.

The parties also agreed to resolve any issues pertaining to the payment, adjustment, or litigation of any lien claims made by medical providers or by ILWU-PMA. The parties, however, acknowledged that a viable dispute existed concerning the reasonableness and necessity of the medical care and treatment M.K. received for her alleged cervical spine and back injuries. Judge Mapes issued a compensation order in 1998 embodying the parties’ agreement. Maersk paid claimant benefits pursuant to the agreement. In addition, ILWU-PMA paid some of claimant’s disputed medical bills totaling \$23,542.25 between July 16, 1997, and July 25, 1998. These payments represent a part of the present lien claim of ILWU-PMA. M.K. sought modification of Judge Mapes’s 1998 compensation order on May 31, 2006.

Meanwhile, M.K. returned to longshore work as of January 5, 1998, without any loss in wage-earning capacity attributable to her February 1, 1995, work injury. She alleged she sustained additional injuries in the course of her employment: first, to her heart and cardiovascular system which she attributed to the stress and strain of her work for California United Terminals (CUT) on May 9, 2003, and then, a further injury to her back and neck as a result of her subsequent employment for APM Terminals Pacific Limited (APM) as of April 19, 2004.

As a result of her alleged May 9, 2003, injury with CUT, M.K. underwent coronary artery bypass graft surgery on May 16, 2003. She returned to work on August 4, 2003, but then stopped working altogether on April 19, 2004, due to her alleged work-related cervical and back injury. M.K. filed a claim against CUT on April 7, 2004, seeking benefits for her cardiovascular condition. CUT denied liability on the basis that M.K.’s cardiovascular condition was not caused by or related to her work. In the interim, ILWU-PMA paid medical benefits relating to M.K.’s cardiovascular condition for the period from May 15, 2003, through August 22, 2007, in the amount of \$80,194.60.

M.K. also filed a claim, on April 23, 2004, seeking compensation for cumulative traumatic injuries to her neck and back allegedly incurred in the course of her work for APM through April 18, 2004. M.K. specifically alleged that she was unable to work for the period between April 27, 2004, and May 31, 2005. APM did not pay any compensation and controverted M.K.'s claim on March 21, 2007. ILWU-PMA paid disability benefits totaling \$6,000 for this period of disability, as well as medical benefits for treatment M.K. received from April 23, 2004, through June 13, 2005, in the amount of \$66,683.06.

The district director subsequently joined M.K.'s claim for benefits relating to the cardiovascular condition allegedly caused by her work for CUT with her claims relating to her initial February 1, 1995, injury with Maersk pursuant to 33 U.S.C. §922, and her April 19, 2004, injuries with APM.² A calendar call for these cases was scheduled at the Office of Administrative Law Judges for November 5, 2007. Prior to that date, M.K., her attorney, and attorneys for CUT, Maersk/APM, and ILWU-PMA, attended a mediation session on August 31, 2007. The parties, however, were unable at that time to reach an accord.

CUT and Maersk/APM undertook additional settlement negotiations with M.K, culminating in a provisional settlement of all three claims on October 31, 2007. The parties, thereafter, submitted on December 17, 2007, a Section 8(i) settlement application on each claim to Judge Pulver. On January 10, 2008, ILWU-PMA submitted an application, previously filed with the district director on August 13, 2004, with Judge Pulver for: (1) intervention; and (2) recovery of a Section 17 lien, 33 U.S.C. §917. ILWU-PMA noted its opposition to the settlement application, specifically arguing that the parties should not be permitted to settle the outstanding claims of M.K. without also agreeing to a specific settlement amount as to its lien claims, which it alleged totaled \$176,919.91. In particular, ILWU-PMA cited a lien claim of \$6,500 for disability benefits paid to M.K. in relation to her claim against APM, and claims for reimbursement of medical benefits totaling \$170,419.91, in relation to M.K.'s claims against Maersk (\$23,542.25), APM (\$66,683.06) and CUT (\$80,194.60).

In his Orders dated January 15, 2008 (CUT), and January 17, 2008 (APM/Maersk), Judge Pulver approved the settlement agreements between employers

² Maersk and APM are, in essence, part of the same company. Specifically, APM Terminals was established as an independent organization in 2001 within the A.P. Moller – Maersk Group. *See generally* <http://www.apmterminals.com>.

and M.K., finding they were not inadequate or obtained as the result of duress.³ Additionally, Judge Pulver overruled ILWU-PMA's objections to the settlement, finding that its rights to a hearing on its lien claim are not affected by the parties' settlement. In this regard, Judge Pulver found that the settlement agreement, by its terms, confirmed the existence of ILWU-PMA's lien claim, as well as the other parties' obligation to pay such lien when required either by way of a direct settlement with ILWU-PMA, or by the entry of a subsequent order resolving this issue. ILWU-PMA's motion for reconsideration of both settlement approvals was denied by Judge Pulver on February 11, 2008. ILWU-PMA appeals the two orders approving settlements.

Claimant R.B. sustained cumulative traumatic injuries to her shoulders, neck, left arm and left hand while in the course of her work as a top handler for Yusen Terminals, Incorporated (Yusen) on December 24, 2005. R.B. filed a claim seeking benefits under the Act. Yusen voluntarily paid temporary total disability benefits from December 25, 2006, through August 23, 2006, totaling \$37,116.81, but subsequently controverted various aspects of the claim. ILWU-PMA paid R.B. disability benefits from August 30, 2006, until her return to work on April 30, 2007, in the amount of \$4,339.28, as well as medical benefits totaling \$37,087.67.

On June 12, 2007, ILWU-PMA filed with the district director its application for intervention to secure a lien for disability benefits, and for reimbursement of medical benefits, paid to R.B. in connection with her claim. ILWU-PMA reiterated its position regarding its right to reimbursement and a lien in pre-hearing statements submitted to the Office of Administrative Law Judges on September 4, 2007, and February 1, 2008. ILWU-PMA specifically sought a total of \$41,426.95, representing a lien of \$4,339.28 for disability benefits, and reimbursement of \$37,087.67 in medical benefits, paid to R.B.

Prior to any formal hearing in this case, R.B. and Yusen participated in a mediation session. ILWU-PMA's counsel made himself available for the session but was never contacted to discuss the issue of ILWU-PMA's lien. As a result of this mediation,

³ Maersk/APM agreed to pay M.K. a lump sum of \$268,500 to settle her claims for temporary total, temporary partial, and permanent partial disability benefits relating to the 1995 and 2003 injuries. Additionally, the settlement provided for an attorney's fee of \$20,000 for M.K.'s counsel. The settlement application also provided that Maersk/APM would pay, adjust or litigate the liens of "the ILWU-PMA Welfare Plan and Dr. David Morgan." CUT agreed to pay M.K. a lump sum of \$1,500 "to effectuate the settlement of the present claim for past and future disability and medical benefits against" it. CUT also agreed to "pay, adjust or litigate any lien asserted by the ILWU-PMA Welfare Plan with respect to this alleged cardiac/internal claim."

R.B. and Yusen reached a settlement, without any agreement to reimburse ILWU-PMA. R.B. and Yusen thus filed an application for a Section 8(i) settlement on or about March 14, 2008. Judge Berlin approved the settlement in his decision dated April 9, 2008, having found that it is reasonable, adequate and not the result of duress.⁴ Judge Berlin made no mention of ILWU-PMA's motion to intervene or its lien claim. ILWU-PMA appealed this decision.

ILWU-PMA has appealed Judge Pulver's Orders, representing M.K.'s separate claims against CUT and Maersk/APM and Judge Berlin's decision in the R.B. case. M.K., joined by CUT and APM, filed motions to dismiss ILWU-PMA's appeals in 08-0392 and 08-0450 on the ground that the orders appealed from are not final orders with respect to ILWU-PMA's lien claims. In its Order dated July 17, 2008, the Board denied the motions to dismiss, stating that ILWU-PMA's appeals of the orders approving settlement agreements are properly before the Board since, absent the appeals, the approvals of the settlements would become final, thereby potentially depriving ILWU-PMA of a remedy if Judge Pulver improperly approved the settlements without simultaneously addressing the lien claims. Additionally, the Board, at the request of the Director, Office of Workers' Compensation Programs (the Director), consolidated the three appeals for purposes of decision. Order dated September 12, 2008. ILWU-PMA's subsequent request for oral argument was granted by the Board and the proceeding was held on November 13, 2008, in Pasadena, California.

On appeal, ILWU-PMA alleges that the administrative law judges erred by not addressing its lien claims simultaneously with the parties' settlement applications. Claimant M.K. and employers CUT and APM each respond, urging affirmance of Judge Pulver's orders. Yusen similarly responds, urging affirmance of Judge Berlin's decision. Claimant R.B. has not responded. The Director responds in support of ILWU-PMA's appeals, maintaining that the administrative law judges' approval of the settlement applications, without a simultaneous resolution of ILWU-PMA's lien claims, is not in accordance with the Act and its regulations.

⁴ Pursuant to the settlement, Yusen agreed to pay claimant a lump sum of \$75,000 to effectuate the settlement of all disability and medical benefits claims arising from her December 24, 2005, cumulative traumatic injuries, as well as an additional \$20,000 in attorney's fees to R.B.'s counsel. The parties additionally agreed that \$2,000 of the proposed \$75,000 would be allocated for future medical care and treatment. Moreover, Yusen agreed "to pay, adjust or litigate outstanding liens of EDD, the ILWU-PMA Welfare Plan, and Dr. Michael Samuelson."

ILWU-PMA and the Director argue that the administrative law judges should not have approved the parties' settlement agreements without a simultaneous satisfaction of ILWU-PMA's claims relating to its Section 17 liens and reimbursement for payment of medical benefits to claimants for their work injuries. ILWU-PMA contends that the language of Section 8(i) and its implementing regulation, 20 C.F.R. §702.242(a), establishes that the Section 8(i) settlement process was intended to resolve all issues of all parties simultaneously. The Director maintains that the unambiguous language of 20 C.F.R. §702.162(f), which is the regulation implementing Section 17 of the Act, requires that an administrative law judge establish a lien in favor of a qualified trust fund at the same time as he issues a compensation order in favor of claimant. The Director also contends that ILWU-PMA's right to recoup the cost of medical expenses that ILWU-PMA has paid on behalf of the claimants falls outside the scope of Section 17, as the lien identified by that statutory provision does not cover such benefits.⁵ The Director avers that ILWU-PMA's right to reimbursement of medical expenses is governed by Section 7 of the Act, 33 U.S.C. §907.

Employers and claimant M.K. argue that the resolution of ILWU-PMA's lien claims is irrelevant to the question of whether the claimants and their employers can settle the claims. These respondents add that the Act contains no provision requiring that the ILWU-PMA's lien be settled within a certain time frame or simultaneously with a claimant's claim, and further maintain that the settlement agreements herein otherwise comply with Section 8(i) and Section 702.242(a) in that they adequately address the resolution of the outstanding lien claims, *i.e.*, the employers agree to pay, adjust or litigate ILWU-PMA's lien. Employers and M.K. further argue that the administrative law judges' approval of the settlements does not impair ILWU-PMA's liens, since ILWU-PMA remains able to adequately recoup its liens by way of a subsequent settlement with the respective employers or by proceeding to hearing(s) on the lien claims.

For the reasons that follow, we hold that ILWU-PMA's Section 17 lien claims and claims for reimbursement of medical expenses under Section 7 must be resolved simultaneously with the settlement agreements entered into by the claimants and their employers. Therefore, the settlement orders are vacated and the cases are remanded.

⁵ Alternatively, the Director argues that even assuming the employers and claimants could settle the claims without resolving ILWU-PMA's liens, the administrative law judges improperly approved the Section 8(i) settlement applications, as they did not comply with the requirements of Section 702.242(b). In light of our disposition of these cases, we need not address the Director's alternative argument.

Section 8(i) of the Act, provides, in pertinent part:

Whenever the parties to any claim for compensation under this chapter, including survivor's benefits, agree to a settlement, the deputy commissioner or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress. Such settlement may include future medical benefits if the parties so agree. No liability of any employer, carrier, or both for medical, disability, or death benefits shall be discharged unless the application for settlement is approved by the deputy commissioner or administrative law judge. If the parties to the settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within thirty days after submission for approval.

33 U.S.C. §908(i). Thus, Section 8(i) provides for the settlement of “any claim for compensation under this chapter” by “the parties” through a procedure in which an application for settlement is submitted for the approval of the district director or administrative law judge. 33 U.S.C. §908(i). The procedures governing settlement agreements are delineated in the Act’s implementing regulations. *See* 20 C.F.R. §§702.241-702.243. In particular, Section 702.242(a) states that the “settlement application shall be a self-sufficient document which can be evaluated without further reference to the administrative file,” and that it “shall be in the form of a stipulation signed by *all parties*.” 20 C.F.R. §702.242(a) [emphasis added]. Furthermore, Section 702.243(f) prescribes the manner by which an adjudicator “shall review the [settlement] application,” to discern whether, among other things, “the amount is adequate.” 20 C.F.R. §702.243(f). Thus, since ILWU-PMA is, by virtue of its intervention in these cases in pursuit of its Section 17 lien and reimbursement of medical benefits, “a party to any claim” as contemplated by Section 8(i), claimant and employer cannot settle under that statutory provision without the ILWU-PMA’s explicit involvement.

Section 17 of the Act states:

Where a trust fund which complies with section 186(c) of Title 29 established pursuant to a collective-bargaining agreement in effect between an employer and an employee covered under this chapter has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under this chapter or under a settlement, the Secretary shall authorize a lien on such compensation in favor of the trust fund for the amount of such payments.

33 U.S.C. §917. The implementing regulation states that “[a]n application for such a lien shall be filed on behalf of the trust fund with the district director.” 20 C.F.R. §702.162(b)(1). If neither the compensation claim nor the lien claim is contested, the district director is to enter an order awarding benefits and notifying the parties “of the amount of the lien and manner in which it is to be paid.” 20 C.F.R. §702.162(d). If the compensation claim and/or the lien claim are contested, the case is to be transferred to the Office of Administrative Law Judges;⁶ the administrative law judge is to rule on the application for a lien. 20 C.F.R. §702.162(e)-(g). Specifically, Section 702.162(f) states that “[i]f the administrative law judge issues a compensation order in favor of the claimant, such order shall establish a lien in favor of the trust fund if it is determined that the trust fund has satisfied all of the requirements of the Act and regulations.” 20 C.F.R. §702.162(f).

Initially, we must clarify the issue of what is covered by ILWU-PMA’s Section 17 lien claim. As noted above, Section 17 of the Act provides that if a claimant who has received disability benefits from a qualified trust fund is found to be entitled to compensation under the Act, the Secretary can authorize a lien on these benefits in favor of the trust fund.⁷ See generally *MacDonald v. Trailer Marine Transport Corp.*, 18 BRBS 259 (1986), *aff’d mem. sub nom. Trailer Marine Transport Corp. v. Benefits Review Board*, 819 F.2d 1148 (11th Cir. 1987). In particular, Section 17 of the Act and Section 702.162(a) of regulations discuss the lien in terms of the eligible trust fund’s having “paid *disability benefits* to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under the Act.” See 33 U.S.C. §917 [emphasis added]; 20 C.F.R. §702.162(a) [emphasis added]. Section 17 continues by noting that under these circumstances, “the Secretary shall authorize a lien on such compensation in favor of the trust fund for the amount of such [disability] payments.”⁸

⁶ If “the claim for compensation is not in dispute, but there is a dispute as to the right of the trust fund to a lien, or the amount of the lien,” Section 702.162(g) provides that “the district director shall transfer the matter together with all documents relating thereto to the [Office of Administrative Law Judges] for a formal hearing” on the lien issue. 20 C.F.R. §702.162(g).

⁷ As the Director observes, at no time in the course of the adjudication of these claims has any party disputed ILWU-PMA’s claim that it satisfies the requirements of the Act and regulations and thus that it qualifies as a Section 17 lien holder.

⁸ The language of Section 702.162(a) mirrors the language of this statutory provision, stating that under the aforementioned circumstances, “a lien shall be authorized on such compensation in favor of the trust fund for the amount of such payments.” *Id.*

Consequently, the plain language of Section 17 and its implementing regulation establishes that ILWU-PMA's Section 17 lien is limited to amounts it paid to the claimants for *disability* covered by the Act. Thus, as the Director argues, ILWU-PMA's right to recoup the cost of medical expenses that it paid on behalf of each claimant falls outside the scope of its Section 17 lien. Consequently, ILWU-PMA's Section 17 lien is limited to recovery of disability benefits provided to the claimants, and the repayment of those sums is intended to come from the compensation which the claimants are due under the Act.

ILWU-PMA's right to reimbursement for medical benefits, if any, falls under Section 7 of the Act, 33 U.S.C. §907. Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish such medical, surgical and other attendance or treatment . . . medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require." Section 7(d)(3) provides that "[t]he Secretary may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee." 33 U.S.C. §907(d)(3). Thus, Section 7(d)(3) grants a party in interest standing to seek reimbursement from employer where employer's liability for medical services rendered has been established. *See generally* *Hunt v. Director, OWCP*, 999 F.2d 419, 27 BRBS 84(CRT) (9th Cir. 1993); *Aetna Life Ins. Co. v. Harris*, 578 F.2d 52 (3^d Cir. 1978); *see also* *Quintana v. Crescent Wharf & Warehouse Co.*, 19 BRBS 52 (1986), *modifying on recon.*, 18 BRBS 254 (1986). ILWU-PMA, as a party-in-interest which bore the expense of the claimants' medical treatment, therefore has a derivative right to payment based on claimant's entitlement to recover medical benefits. Unlike Section 17, which imposes on claimant, not employer, the obligation to repay the trust fund out of compensation due under the Act, Section 7(a) renders employer liable for the reimbursement of the medical expenses, so long as claimant is otherwise entitled to medical benefits. *Id.*; *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989); *see also* *Pozos v. Army & Air Force Exchange Service*, 31 BRBS 173 (1997). ILWU-PMA was thus entitled to intervene and seek reimbursement from employer of medical expenses necessary for treatment of the work injuries at issue in these claims since ILWU-PMA's reimbursement claim under Section 7(d)(3) involves a "question in respect of" the claimants' longshore claims. *See* 33 U.S.C. §919. However, ILWU-PMA's derivative rights depend on an initial determination that claimant is entitled to medical benefits, *i.e.*, that the treatment provided was reasonable and necessary for a work injury. Thus, as a party-in-interest to the claims, and as its rights are derivative based on claimant's entitlement, ILWU-PMA's rights to reimbursement of medical costs must coincide with the determination of claimant's entitlement.

Turning to the Section 17 issue in these cases, we note that ILWU-PMA has timely filed Section 17 lien applications with both the district director and the

administrative law judges, that it has timely moved for and was granted the right to intervene in the M.K. proceedings,⁹ and that it has objected to the proposed Section 8(i) settlements on the basis that they do not resolve its Section 17 lien interests. Despite these actions taken by ILWU-PMA on behalf of its interests, the settlement agreements offered no resolution of the outstanding lien claims.¹⁰ Rather, the settlement agreements contained provisions wherein the employers agreed only to “pay, adjust, or litigate” any lien that ILWU-PMA might assert.

Addressing the procedural history of the claimants’ claims in terms of the applicable provisions of Section 702.162, it is clear that “the claimant[s]’ claim[s] for compensation [could not] be resolved informally” as evidenced by the fact that the district director, in compliance with the regulations, “transferred the case[s]” to the Office of Administrative Law Judges for a formal hearing. 20 C.F.R. §702.162(e).¹¹ After mediation, claimants and employers reached agreements and the administrative law judges subsequently issued “compensation order[s] in favor of the claimant,” albeit in the form of approvals of Section 8(i) settlement agreements. Pursuant to Section 702.162(f), therefore, the administrative law judges were also required to “establish a lien in favor of the trust fund if it is determined that the trust fund has satisfied all of the requirements of the Act and regulations.” 20 C.F.R. §702.162(f). Neither administrative law judge considered whether ILWU-PMA had satisfied all of the requirements of the Act and regulations, nor did they establish “a lien in favor of the trust fund.” *Id.*

Judge Pulver specifically rejected ILWU-PMA’s objection to the approval of the settlement without a resolution of its lien claims, “since the settlement agreement, by its terms, confirms the existence of [ILWU-PMA’s] lien claim as well as [employers’] obligation to pay such lien when required either by way of settlement with [ILWU-PMA], or by the entry of an Order by the undersigned.”¹² Pulver Order at 1. Judge

⁹ ILWU-PMA likewise moved for the right to intervene in the R.B. proceedings, but its motion was not addressed by Judge Berlin. The failure to address ILWU-PMA’s motion is, alone, sufficient error to require remand in that case.

¹⁰ ILWU-PMA claims liens for disability benefits of \$6,500 paid to M.K. and of \$4,339.28 paid to R.B. ILWU-PMA’s medical liens amount to \$170,419.91 paid on behalf of M.K. and \$37,087.67 paid on behalf of R.B.

¹¹ Pursuant to Section 702.162(e), the district director forwarded to the Office of Administrative Law Judges “the application[s] for the lien[s] and all documents relating thereto.”

¹² We note that Judge Pulver’s statement that the settlement agreement confirms employer’s “obligation to pay” ILWU-PMA’s lien is not an accurate assessment of that

Berlin approved the settlement agreement between R.B. and her employer, Yusen, without any indication of or reference to the existence of ILWU-PMA's intervention or lien application.

We agree with the Director that the administrative law judges' approval of the Section 8(i) settlement agreements are, in fact, "compensation order(s) in favor of the claimant" as contemplated by, and therefore subject to, Section 702.162(f), as claimants received compensation in settlement of their claims. *See also* 33 U.S.C. §919(c). Specifically, the Director avers that M.K. received a total of \$270,000 and that R.B. received a total of \$75,000 in compensation in order to settle their respective claims under the Act.

Section 702.243, which pertains to the approval of settlement agreements, explicitly states that "[t]he liability of an employer/insurance carrier is not discharged until the settlement is specifically approved by a *compensation order* issued by the adjudicator."¹³ Similarly, Section 702.348, entitled "Formal Hearing; preparation of final decision and order; content," states that upon "termination" of the formal hearing, "the administrative law judge shall have prepared a final decision and order, in the form of a *compensation order*, with respect to the claim." 20 C.F.R. §702.348. Thus, the Act and regulations describe the administrative law judges' orders in these cases as "compensation orders." As the administrative law judges issued "compensation orders" in favor of the claimants, the administrative law judges also were required to "establish a lien in favor of the trust fund" in these orders. 20 C.F.R. §702.162(f).

As the Director maintains, employers and M.K. are incorrect in their characterization of ILWU-PMA's Section 17 liens as essentially a separate cause of action that may be segregated from the claims' proceedings by an agreement between the claimants and the employers. A "lien" is defined as "[a] claim, encumbrance, or charge on property for payment of some debt, obligation or duty," and, in general, "includes liens acquired by contract or by operation of law." BLACK'S LAW DICTIONARY (6th ed. 1990) at 922. A "statutory lien," is "[a] lien arising solely by force of statute, upon specified circumstances or conditions." *Id.* at 1412. Section 17 creates a statutory lien, or claim, on an eligible claimant's disability compensation under the Act, in favor of a

agreement, for employer merely agreed to "pay, adjust, or litigate" ILWU-PMA's liens. As such, the language of the settlement agreement falls short of an actual acknowledgement by employer that it has an "obligation to pay" ILWU-PMA's liens.

¹³ Section 8(i) does not discuss the approval in terms of a compensation order. Rather, Section 8(i)(2) states that the administrative law judge "shall enter an order approving or rejecting the settlement." 33 U.S.C. §908(i)(2); *see also* 33 U.S.C. §919(c).

qualified trust fund. Thus, the Section 17 lien may be satisfied only through reimbursement by the claimant from those disability benefits she obtains based on her rights under the Act, whether they be obtained following a complete adjudication of her claim or as the result of a settlement agreement.

Furthermore, employers have no rights to or interests in the issues pertaining to a Section 17 lien. Rather, the Section 17 lien creates a legal relationship between the qualified trust fund and the claimant to whom it paid disability benefits. 33 U.S.C. §917. The fact that the trust fund's lien attaches to the compensation the claimant receives under the Act or "under a settlement" gives the trust fund a vested interest in that very compensation. The presence of the Section 17 statutory lien, and its requirement that the claimant "is legally obligated to repay [disability benefits paid on his/her behalf by a qualified trust fund] by reason of his entitlement to compensation under this chapter or under a settlement," 33 U.S.C. §917, thus mandates that the trust fund be involved in and agree to any settlement.

In this regard, there is a single claim for the claimants against their employers for each injury under the Act, and a resulting amount of disability compensation and medical benefits which is both the subject of the settlements and ILWU-PMA's Section 17 lien and medical reimbursement claims.¹⁴ In these cases, the claimants and employers have, in effect, attempted to circumvent ILWU-PMA's lien by agreeing, as part of the settlement, that the employers would pay, adjust or litigate ILWU-PMA's interests.¹⁵ This would compel ILWU-PMA to litigate independently the compensability of

¹⁴ The parties' settlement is limited to the rights of the parties and to the claims then in existence. See *J.H. v. Oceanic Stevedoring Co.*, 41 BRBS 135 (2008); *Cortner v. Chevron International Oil Co., Inc.*, 22 BRBS 218 (1980); 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). ILWU-PMA's Section 17 statutory lien, timely filed with both the district director and the administrative law judges, is certainly a claim in existence at the time of the settlement, further supporting the position that it should be resolved in conjunction with that agreement. Specifically, ILWU-PMA had a "right" to the compensation which the claimants may obtain via the settlement agreements they entered into with their employers.

¹⁵ The Act does not grant ILWU-PMA any avenue for enforcing a lien against a claimant who receives his or her full compensation from employer, and then evades repaying ILWU-PMA. Thus, an adjudicator could find that the Section 17 lien can be paid by employer to ILWU-PMA from the disability compensation it owes to claimant under the Act.

claimants' claims under the Act resulting in the bifurcation of proceedings.¹⁶ For these reasons, where ILWU-PMA has properly intervened, its lien and reimbursement claims must be resolved simultaneously with the claimants' claims.

By virtue of its intervention in these cases in pursuit of its Section 17 lien and claim for reimbursement of medical benefits, ILWU-PMA is a party-in-interest in this case. It follows that, as a party to the "claim[s] for compensation" it is entitled under Section 8(i)(1) to participate in any resolution of the claims by means of settlement agreements. Thus, in these cases, claimants and employers cannot settle "any claim for compensation under [the Act]" pursuant to Section 8(i) without ILWU-PMA's participation and agreement. Moreover, only after addressing ILWU-PMA's interests as they pertain to its Section 17 lien claims for disability benefits and Section 7 claims for medical reimbursement can an administrative law judge determine whether the amount of the settlement is "adequate," as is required for approval under Section 8(i). *See* 33 U.S.C. §908(i); 20 C.F.R. §702.243(f). Since ILWU-PMA was not a party to the settlements, the administrative law judges erred in approving them.

Therefore, we vacate the Orders of Judge Pulver and the Decision and Order of Judge Berlin approving the settlements in these cases. Moreover, as the settlement agreements in these cases do not resolve the outstanding Section 17 and Section 7 claims of ILWU-PMA, the settlements, in and of themselves, cannot stand as written. The cases are remanded to the administrative law judges for action necessary to resolve claimants' claims for benefits and ILWU-PMA's Section 17 lien and Section 7 derivative reimbursement claims. Additionally, on remand, we note that Judge Berlin must acknowledge ILWU-PMA's status as an intervenor in the R.B. case, and thereafter address both ILWU-PMA's Section 17 lien and medical reimbursement claim under Section 7.

¹⁶ Section 702.162(c) provides that only the claimant may dispute "the right of the trust fund to the lien or the amount stated." 20 C.F.R. §702.162(c). Thus, employer does not have any right to challenge the propriety of the Section 17 liens raised by ILWU-PMA in these cases. With regard to medical benefits, while employer is liable to ILWU-PMA for any reimbursement, ILWU-PMA's rights rest on claimant's entitlement under Section 7, and claimant must establish the treatment is reasonable and necessary for the work injury in order to establish entitlement. The provision in the settlement agreement providing that employer will pay, adjust or litigate the claims against ILWU-PMA would require ILWU-PMA to prove entitlement. As ILWU-PMA's rights are derivative of claimant's rights, they cannot be litigated separately.

Accordingly, the Orders Approving Partial Settlements and Attorney Fees of Judge Pulver, and the Decision and Order Approving Settlement of Judge Berlin, are vacated, and the cases are remanded for further consideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge