

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

CHRISTOPHER BODISHBAUGH, *Applicant*

vs.

**SOUTHERN MARYLAND BLUE CRABS; MIAMI MARLINS;
SPACE COAST SURGE; VICTORIA SEALS; CALGARY VIPERS;
SIOUX CITY EXPLORERS; WINNIPEG GOLDEYES;
FARGO-MOOREHEAD REDHAWKS; SAN RAFAEL PACIFICS;
and SOUTHSORE RAILCATS, *Defendants***

**Adjudication Number: ADJ13364587
Van Nuys District Office**

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Defendant State Compensation Insurance Fund (SCIF), workers' compensation insurance carrier for the San Rafael Pacifics (SCIF/San Rafael Pacifics), seeks reconsideration of the Findings and Order and Award (F&O), issued by the workers' compensation administrative law judge (WCJ) on November 24, 2021, wherein the WCJ found in pertinent part that the Compromise and Release (C&R) filed and approved on October 16, 2020 (OACR) is limited to the settlement of applicant's claim against the Southern Maryland Blue Crabs and Chesapeake Employers Insurance Company.

Defendant SCIF/San Rafael Pacifics contends that the parties intended to settle the entire claim against all defendants by way of the C&R between applicant on one hand and defendant Southern Maryland Blue Crabs and Chesapeake Employers Insurance Company on the other.

Defendant Travelers Indemnity Company, workers compensation carrier for the Gary Southshore Railcats (Travelers/Gary Southshore Railcats), also seeks reconsideration of the F&O. Travelers/Gary Southshore Railcats also contends that the parties intended to settle the entire claim against all defendants by way of the C&R.

We have not received an answer from any party.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petitions and the contents of the Report with respect thereto.

Based on our review of the record and for the reasons discussed below, as our decision after reconsideration, we affirm the F&O.

BACKGROUND

Applicant claimed injury to various body parts while employed by defendants as a baseball player, during the period from June 5, 2008 to August 1, 2015. Applicant claims employment by the following employers in the following timeframes: Florida Marlins: 2008; Space Coast Surge: 2009; Victoria Seals: 2009-2010; Calgary Vipers: 2011; Sioux City Explorers: 2012 - 2015; Winnipeg Goldeyes: 2012; Fargo Moorhead Redhawks: 2013; San Rafael Pacifics: 2015; Gary Southshore Railcats: 2015; Southern Maryland Blue Crabs: 2015.

Applicant entered into a compromise and release with Southern Maryland Blue Crab and insurer Chesapeake Employers Insurance Company (C&R). (C&R, pp. 1-3.) The body parts being settled were described in Paragraph No. 1 as head, face, neck, upper extremities, and “multiple.” (C&R, ¶ 1, p. 3.) The dates of injury are during the period from June 5, 2008 to August 1, 2015. (*Id.*)

Paragraph No. 2 states:

Upon approval of this compromise agreement by the Workers’ Compensation Appeals Board or a workers’ compensation administrative law judge and payment in accordance with the provisions hereof, the employee releases and forever discharges *the above-named employer(s) and insurance carrier(s)* from all claims and causes of action, whether now known or ascertained or which may hereafter arise or develop as a result of the above-referenced injury(ies), including any and all liability of the employer(s) and the insurance carrier(s) and each of them to the dependents, heirs, executors, representatives, administrators or assigns of the employee. Execution of this form has no effect on claims that are not within the scope of the workers’ compensation law or claims that are not subject to the exclusivity provisions of the workers’ compensation law, unless otherwise expressly stated. (C&R, ¶ 2, p. 5 (emphasis added).)

Paragraph No. 3 reads as follows:

This agreement is limited to settlement of the body parts, conditions, or systems and for the dates of injury set forth in Paragraph No. 1 and further explained in Paragraph No. 9 despite any language to the contrary elsewhere in this document or any addendum. (C&R, ¶ 3, p. 5.)

The parties to the C&R agreed to settle the above claims listed in Paragraph No. 1, by the payment of \$35,000.00, less \$5,250.00 attorney's fees, leaving a balance of \$29,750.00. (C&R, ¶ 7, p. 6.)

In pertinent part, Paragraph No. 9 states:

Significant disputes between the parties exist as to injury AOE/COE, nature and extent, jurisdiction, post termination and statute of limitations, this settlement is intended to settle all issues of TD, PD, future medical care, wage loss, mileage and out of pocket expenses. This settlement is intended to settle and/or resolve any and all claims of PD and TD to the body parts referenced in the application and DWC1. Applicant understands and agrees that he is resolving all claims against the employer/carrier related to all body parts mentioned herein, specific or cumulative, pled or unpled. Nothing in this agreement shall constitute an admission of liability. The parties wish to forego discovery and buy their peace. Defendants *reserve their right to seek contribution against the Miami Marlins and/or any other joined defendants*. No penalties or interest if paid within 30 days of order approving. (C&R, ¶ 9, comments, p. 7 (emphasis added).)

On October 6, 2020, applicant and his attorney signed the C&R between applicant and Southern Maryland Blue Crabs.

On October 7, 2020, attorney for Southern Maryland Blue Crabs signed the C&R.

On October 15, 2020, defendant Southern Maryland Blue Crabs submitted the signed C&R to the WCJ for approval by way of e-filing and served it by way of mail.

On October 16, 2020, the WCJ issued an Order approving the C&R (OACR), which was served on October 28, 2020.¹

The Compromise and Release is limited to settlement of body parts and dates of injury set forth in paragraph number one and explained in paragraph number nine despite any language to the contrary elsewhere in the compromise and release. Any attachments claiming to continue paragraph one are explicitly excluded from this order approving the compromise and release. The court cannot approve any language that says the Applicant did not sustain any other injuries but those listed in paragraph one without a medical opinion and any such language is invalid and void.

¹ The WCJ delegated service of the OACR on October 19, 2020 and it was served on October 28, 2020.

On December 1, 2020, applicant filed an amended application and added defendant SCIF/San Rafael Pacifics.

On or about January 6, 2021, Travelers/Gary Southshore Railcats filed a petition for dismissal, contending that the C&R appears to encompass the entire claim.²

On January 6, 2021, the WCJ denied Travelers/Gary Southshore Railcats' petition to dismiss without a hearing, stating: "The compromise and release reserved jurisdiction over liens. There are also potential contribution issues." (Order denying petition to dismiss, dated January 6, 2021, p. 1 (served on January 12, 2021).)

On October 13, 2021, the matter proceeded to trial on the issue of whether the Compromise and Release settles the entire claim against all defendants with reservation for liens. (Minutes of Hearing/Summary of Evidence (MOH/SOE), October 13, 2021 trial, at 2:21-22.)

At trial, the parties³ stipulated as follows:

1. Christopher Bodishbaugh, born [], while employed during the period June 5, 2008 to August 1, 2015, as a professional baseball player, at various locations, by Southern Maryland Blue Crabs, San Rafael Pacifics, and Gary Southshore Railcats, claims to have sustained injury arising out of and in the course of employment (nature and extent of injury is reserved and deferred).
2. At the time of injury, the employer's workers' compensation carriers were: State Compensation Insurance Fund for the San Rafael Pacifics; Travelers for Gary Southshore Railcats; Chesapeake Employers for Southern Maryland Blue Crabs.
3. Other stipulations: a) Parties stipulate that no election has been made in this case.
(MOH/SOE, at 2:11-19.)

The minutes reflect that no exhibits were entered into evidence. (MOH/SOE, at 3:1-3: "LET THE MINUTES FURTHER REFLECT that the parties are not entering any exhibits.")

Applicant, SCIF/San Rafael Pacifics, and Travelers/Gary Southshore Railcats filed trial briefs, whereupon the matter was submitted. On November 24, 2021, the WCJ made the following findings:

² On November 13, 2020, defendant Miami Marlins aka Florida Marlins filed a petition for dismissal, contending that applicant stipulated to its dismissal as a party defendant. There is no order in EAMS regarding this petition, and we do not consider this issue.

³ Attorneys for applicant, SCIF/San Rafael Pacifics, and Travelers/Gary Southshore Railcats appeared at trial.

1. Applicant Christopher Bodishbaugh, born [], while employed during the period June 5, 2008 to August 1, 2015, as a professional baseball player, at various locations, by Southern Maryland Blue Crabs, San Rafael Pacifics, and Gary Southshore Railcats, claims to have sustained injury arising out of and in the course of employment.
2. At the time of injury, the employer's workers' compensation carriers were: State Compensation Insurance Fund for the San Rafael Pacifics; Travelers for Gary Southshore Railcats; Chesapeake Employers for Southern Maryland Blue Crabs.
3. No election pursuant to Labor Code § 5500.5 has been made.
4. The Compromise and Release filed and approved on October 16, 2020 is limited to the settlement of the claim against the Southern Maryland Blue Crabs and Chesapeake Employers Insurance Company.
5. All other issues are reserved and deferred.

(F&O, pp. 1-2.)

DISCUSSION

We observe that contract principles apply to settlements of workers' compensation disputes. The legal principles governing compromise and release agreements are the same as those governing other contracts. (*Burbank Studios v. Workers' Co. Appeals Bd.* (1982) 134 Cal.App.3d 929, 935.) For a compromise and release agreement to be effective, the necessary elements of a contract must exist, including an offer of settlement of a disputed claim by one of the parties and an acceptance by the other. (*Id.*) The essential elements of contract include the mutual consent of the parties. (Civ. Code, §§ 1550, 1565, 1580.) There can be no contract unless there is a meeting of the minds and the parties mutually agree upon the same thing. (Civ. Code, §§ 1550, 1565, 1580; *Sackett v. Starr* (1949) 95 Cal.App.2d 128; *Sieck v. Hall* (1934) 139 Cal.App.279, 291; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App. 133, 137.) The essential elements of contract also include consideration. (Civ. Code, §§ 1550, 1584, 1595, 1605, et seq., 1659.) Since a compromise and release is a written contract, the parties' intention should be ascertained, if possible, from the writing alone, and the clear language of the contract governs its interpretation if an absurdity is not involved. (Civ. Code, §§ 1638, 1639; *TRB Investments, Inc. v. Fireman's Fund Ins. Co.* (2006) 40 Cal.4th 19, 27 (*TRB Investments*)). A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as

the same is ascertainable and lawful. (Civ. Code, § 1636; *TRB Investments, supra*, at 27; *County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].) The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other. (Civ. Code, § 1641.) The words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage. (Civ. Code, § 1644.)

Here, the parties to the C&R agreement were applicant and Southern Maryland Blue Crabs, insured by Chesapeake Employers Insurance Company. (C&R, pp. 1-3.) Neither SCIF/San Rafael Pacific or Travelers/Gary Southshore Railcats were parties to the C&R. (*Id.*) Southern Maryland Blue Crabs/Chesapeake Employers Insurance Company paid consideration, whereas there is no evidence of any consideration made on the part of any other defendant(s).

The C&R was drafted on the May 2020 version of DWC-CA Form 10214(c), as required by WCAB Rule § 10500. (Cal. Code Regs., tit. 8, § 10500(b).) The body parts being settled were described in Paragraph No. 1 as head, face, neck, upper extremities, and “multiple.” (C&R, ¶ 1, p. 3.) The dates of injury are during the period from June 5, 2008 to August 1, 2015. (*Id.*) Pursuant to the plain language of Paragraph No. 9, applicant is resolving claims against the employer/carrier named in the C&R. Based on the principles of contract law generally and the evidence in the record, including DWC-CA Form 10214(c), applicant intended to resolve claims as to the defendant(s) with whom he entered into the C&R agreement, i.e., Southern Maryland Blue Crabs and Chesapeake Employers Insurance Company.

The limiting language in Paragraph No. 3 states that “[T]his agreement is limited to settlement of the body parts, conditions, or systems and for the dates of injury set forth in Paragraph No. 1 and further explained in Paragraph No. 9 *despite any language to the contrary elsewhere in this document or any addendum.*” (C&R, ¶ 3, p. 5, emphasis added.) Although Paragraph No. 3 contains limiting language, it is instructive here to the extent that it lays out what is included in the settlement agreement, e.g., the C&R agreement is intended to settle Paragraph No. 1 and Paragraph No. 9 despite any language to the contrary elsewhere in this document or any addendum.

Here, the parties stipulated, and the WCJ found, that no election pursuant to Labor Code⁴ section 5500.5 has been made. While that issue is not currently before us, we note that subject to the limitations of section 5500.5(a), an employee may choose to obtain an award for their entire cumulative injury from one or more employers for whom they have worked within the preceding year. (Lab. Code, § 5500.5(c); *Flesher v. Worker's Comp. Appeals Bd.* (1979) 23 Cal.3d 322, 325-326 [44 Cal.Comp.Cases 212]; *Industrial Indemnity Co. v. Workers' Comp. Appeals Bd. (Garcia)* (1997) 60 Cal.App.4th 548 [62 Cal.Comp.Cases 1661]; *Rex Club v. Workers' Comp. Appeals Bd. (Oakley-Clyburn)* (1997) 53 Cal.App.4th 1465, 1472 [62 Cal.Comp.Cases 441].) The employer or employers held liable may thereafter institute separate proceedings to determine apportionment of liability and the right of contribution. (Lab. Code, § 5500.5(e); *Flesher, supra*, at 327; *Oakley-Clyburn, supra*, at 1472; *Raischell & Cottrell, Inc. v. Workers' Comp. Appeals Bd.* (1967) 249 Cal.App.2d 991, 995 [32 Cal.Comp.Cases 135].) This procedure is intended to promote a prompt determination of an injured worker's entitlement to workers' compensation benefits. (*Garcia, supra*, at 556.) Here, Southern Maryland Blue Crabs/Chesapeake Employers Insurance Company explicitly reserved their right to seek contribution against any other joined defendants. As such, an evaluation of apportionment of liability and/or the right of contribution is premature. (Lab. Code, § 5500.5.)

Travelers/Gary Southshore Railcats' attempt to apply *Appleton v. Waessil* (1994) 27 Cal.App.4th 551 here is misplaced. The question of the admissibility of parol evidence in *Appleton* only arose because of a potential ambiguity in the contract language. We find no such ambiguity here. Pursuant to section 5001, no release of liability or compromise agreement is valid unless it is approved by the WCJ. (Lab. Code, § 5001.) There are references in the pleadings to a stipulation to dismiss defendant Miami Marlins, but we see no record of an order approving any such dismissal. As the issue is not before us, we do not address it further.

Accordingly, as our decision after reconsideration, we affirm the F&O.

⁴ All statutory references are to the Labor Code unless otherwise specified.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order and Award issued by the workers' compensation administrative law judge on November 24, 2021 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 18, 2022

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**CHRISTOPHER BODISHBAUGH
MADANS LAW GROUP
STATE COMPENSATION INSURANCE FUND
SAN RAFAEL PACIFICS
DIMACULANGAN & ASSOCIATES
TRAVELERS INDEMNITY COMPANY
GARY SOUTHSORE RAILCATS
GOLDBERG SEGALA
MIAMI MARLINS
SEDGWICK CMS
MISA, STEFEN, KOLLER & WARD
CHESAPEAKE EMPLOYERS INSURANCE COMPANY
SOUTHERN MARYLAND BLUECRABS**

JB/abs

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
CS