COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 049971-98**

Raymond Williams	Employee
Material Handling Installations	Employer
Argonaut Insurance Company	Insurer

REVIEWING BOARD DECISION
(Judges Fabricant, McCarthy and Horan)

APPEARANCES
Michael C. Costello, Esq., for the employee
Pamela G. Smith, Esq., for the insurer

FABRICANT, J. The employee appeals an administrative judge's ruling that, as a matter of law, the employee's execution of a lump sum settlement agreement for a December 10, 1998 injury, and the approval of that agreement by an administrative judge pursuant to G.L. c. 152 § 48, precluded the subsequent filing of a § 28 claim for that injury. We agree with the decision, and therefore affirm.

The insurer accepted the employee's work injury and settled the claim on March 1, 2001. The employee subsequently filed a claim for § 28 benefits more than five years after the original date of injury, alleging serious and willful misconduct by the employer. The judge concluded the lump sum settlement agreement barred further litigation on the § 28 issue, because it contained no reservation of rights. He also concluded that § 28 provides for the payment of double or "extra" compensation, while § 48 provides that a lump sum agreement may redeem any liability for compensation "in whole or in part." (Dec. 2-4.)

The law is clear that payments under § 28 are "compensation." See CNA Ins. Co. v. Sliski, 433 Mass. 491, 493-495 (2001). Where § 48 allows for redemption of liability for payment of compensation "in whole or in part," we think it is incumbent upon the parties to articulate what is *not* intended to be covered by a lump sum settlement. Absence of such language necessarily means that the lump sum agreement redeems

liability for any and all compensation payable under the act.[1] See Sylvia v. Burger King Corp., 6 Mass. Workers' Comp. Rep. 272 (1992)(§ 36 compensation redeemed by § 48 agreement on shoulder injury). Moreover, there is no dispute here as to the existence of a potential § 28 claim for the employer's willful misconduct at the time of settlement, as the employee received a safety consultant's report more than two years prior to the March 1, 2001 execution of the § 48 agreement.

Finally, the fact that an insurer can recoup payment of double compensation under § 28 from the employer is simply not relevant to the scope of a lump sum settlement agreement. The employee's argument on that basis has no merit.

Accordingly, the decision is affirmed.

So ordered.

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Bernard W. Fabricant
Administrative Law Judge

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William A. McCarthy
Administrative Law Judge

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Mark D. Horan
Administrative Law Judge

Filed: **October 3, 2006**

[1] We do not here address the question of ongoing liability for payment of medical benefits under §§ 13 and 30, which may be redeemed or left open under the provisions and conditions set out in § 48(2).