

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 00-31396  
Summary Calendar

---

JOHN E. PORTER

Plaintiff - Appellant

v.

ROBERT C KESSNER; ELTON JOHN BAIN; KESSNER, DUCA,  
UMEMAYASHI, BAIN & MATSUNAGA; AIU NORTH AMERICAN; JAMES  
CURREN; JOHNSON CONTROLS WORLD SERVICES; DYNACORP; INSURANCE  
COMPANY OF THE STATE OF PENNSYLVANIA; OFFICE OF WORKERS  
COMPENSATION PROGRAM, Director

Defendants - Appellees

- - - - -  
Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 00-CV-1537  
- - - - -

July 27, 2001

Before KING, Chief Judge, and HIGGINBOTHAM and BENAVIDES, Circuit  
Judges.

PER CURIAM:\*

John E. Porter appeals the district court's dismissal of his  
complaint alleging that the settlement agreement reached under  
the provisions of the Longshore and Harbor Workers' Compensation  
Act (LHWCA), as extended by the Defense Base Act, was procured  
under duress, was inadequate as a matter of law, and was not  
supported by substantial evidence. See 33 U.S.C. §901 *et seq.*;  
42 U.S.C. § 1651 *et seq.* He also challenged the LHWCA's attorney

---

\* Pursuant to 5TH CIR. R. 47.5, the court has determined  
that this opinion should not be published and is not precedent  
except under the limited circumstances set forth in 5TH CIR.  
R. 47.5.4.

fee provisions at 33 U.S.C. § 928 and alleged that the defendants defamed him by filing false documents and information with the FBI. The district court dismissed Porter's complaint for lack of subject-matter jurisdiction, concluded that the LHWCA did not prohibit claimants from procuring counsel, and dismissed without prejudice Porter's state law claim for defamation.

On appeal, Porter argues that his challenge to the settlement agreement has not been examined on its merits and that the LHWCA's attorney fee provisions severely limit his ability to contract with counsel. Porter also challenges the district court's award of costs to the defendants pursuant to Fed. R. Civ. P. 54(d)(1). Porter does not address in his brief the district court's decision not to exercise supplemental jurisdiction over his state law claims. Thus, the issue is waived. See *Carmon v. Lubrizol Corp.*, 17 F.3d 791, 794 (5th Cir. 1994).

The district court properly dismissed Porter's complaint for lack of subject-matter jurisdiction. He settled his LHWCA claim and sought review of the ALJ's 33 U.S.C. § 908(i) settlement order with the Benefits Review Board and the United States Court of Appeals for the Ninth Circuit. The district court had no jurisdiction under the LHWCA to review his settlement agreement further. See 33 U.S.C. § 921; *Fontenot v. AWI, Inc.*, 923 F.2d 1127, 1133 (5th Cir. 1991) (LHWCA provides the exclusive remedy for workers within its scope). Likewise, his alleged inability to obtain the services of an attorney under the LHWCA's provisions is not cognizable. Because the defendants prevailed, the district court did not abuse its discretion when it granted

costs to the defendants pursuant to Fed. R. Civ. P. 54(d)(1).  
*See Stearns Airport Equip. Co. v. FMC Corp.*, 170 F.3d 518, 536  
(5th Cir. 1999). Accordingly, the district court's judgment is  
AFFIRMED.