

# TOPIC 16      ASSIGNMENT AND EXEMPTION FROM CLAIMS OF CREDITORS

## 16.1            GENERALLY

Section 16 of the LHWCA provides:

**No assignment, release, or commutation of compensation or benefits due or payable under this Act, except as provided by this Act, shall be valid, and such compensation and benefit shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.**

33 U.S.C. § 916.

## 16.2 COMPENSATION CANNOT BE ASSIGNED

Section 16 provides that compensation or benefits under the LHWCA may not be assigned, released, or their value commuted, except as provided by other sections of the LHWCA. See Sections 8(i) and 33(b). The **Fifth Circuit**, however, in United States v. Bender Welding & Machine Co., 558 F.2d 761 (**5th Cir.** 1977), rev'g Simmons v. Bender Welding & Machine Co., 3 BRBS 222 (1976) and Love v. Bender Welding & Machine Co., 3 BRBS 183 (1976), held that the claimant could voluntarily assign to the Veteran's Administration his rights to reimbursement for medical expenses against employer's carrier.

In E.P. Paup Co. v. Director, OWCP, 999 F.2d 1341 (**9th Cir.** 1993), the LHWCA carrier was not required to reimburse the State of Washington directly for compensation benefits paid to the claimant under Washington State law after the claimant was determined to be eligible for benefits under the LHWCA. Instead, the **carrier was required to pay the claimant an amount equal to the state payments and the claimant was required to pay that amount to the state.**

The **Ninth Circuit** found that the State of Washington was not a “creditor,” for purposes of Section 16 of the LHWCA. Thus, the LHWCA did not prohibit the state’s recovery of compensation benefits paid to the claimant under the state law after the claimant was found to be entitled to compensation under the LHWCA, where the state was seeking to recover payments that were improperly paid.

## 16.3 COMPENSATION IS EXEMPT FROM CREDITOR CLAIMS

Section 16 further provides that compensation and benefits under the LHWCA are exempt from all claims of creditors. The **Third Circuit**, however, has held that an **insurance carrier** providing coverage for non-occupational injuries or illnesses is not a creditor and may **intervene** in proceedings under the LHWCA to recover amounts erroneously paid out for injuries or illnesses that are found to be work-connected. Aetna Life Ins. Co. v. Harris, 578 F.2d 52 (**3d Cir.** 1978), rev'g Harris v. Sun Shipbuilding & Dry Dock Co., 6 BRBS 494 (1977); Pilkington v. Sun Shipbuilding & Dry Dock Co., 14 BRBS 119 (1981).

The Board has held, however, that although it may be appropriate for the **sickness and health insurer to intervene** to recover monies erroneously paid, there is no authority to allow a credit to employer for monies paid under a sickness and health policy. Jacomino v. Sun Shipbuilding & Dry Dock Co., 9 BRBS 680 (1979); Pilkington v. Sun Shipbuilding & Dry Dock Co., 9 BRBS 473 (1978).

Where, however, the insurance company's claim for reimbursement is not based on the same set of facts as the claimant's claim for compensation, the insurance company cannot intervene and claim reimbursement. Del Vacchio v. Sun Shipbuilding & Dry Dock Co., 16 BRBS 190 (1984). In Del Vacchio, Aetna's claim for reimbursement was based on monies mistakenly paid for an injury sustained in 1973. At the time Aetna made its claim, however, Del Vacchio was seeking benefits for a 1978 injury.

The court in Oceanic Butler, Inc. v. Nordahl, 842 F.2d 773, 21 BRBS 33, 37 (CRT) (**5th Cir.** 1988), stated that Sections 15(b) and 16 render invalid a claimant's agreement to waive or compromise accrued or future benefit rights under the LHWCA without Section 8(i) approval.

Where a Section 8(i) settlement has been fully executed and the money is already an asset of the claimant's (and therefore part of a bankruptcy estate), none of the funds distributed to creditors is a present or future payment of compensation. Hudson v. Puerto Rico Marine, Inc., 27 BRBS 183, 186 (1993) (the award of interest by a bankruptcy court does not conflict with either Section 16 or 33 of the LHWCA).

In Hudson, the employer had settled a Section 8(i) claim, reserving a right to a lien on the proceeds on any third party action. After executing the joint petition for settlement, the employer discovered that the claimant was in bankruptcy and had accepted a third party settlement greater than the Section 8(i) settlement. The employer filed proofs of claim with the bankruptcy court and was awarded principal and interest. The Board held that the claimant is not entitled to recover the interest awarded by the bankruptcy court as the award of interest by the bankruptcy court does not conflict with the LHWCA. Moreover, the claimant had the opportunity to challenge the order of distribution in the bankruptcy court but failed to do so.

In E.P. Paup Co. v. Director, OWCP, 999 F.2d 1341 (9<sup>th</sup> Cir. 1993), the LHWCA carrier was not required to reimburse the State of Washington directly for compensation benefits paid to the claimant under Washington State law after the claimant was determined to be eligible for benefits under the LHWCA. Instead, the **carrier was required to pay the claimant an amount equal to the state payments and the claimant was required to pay that amount to the state.**

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## 16.4 GARNISHMENT

In Moyle v. Director, OWCP, 147 F.3d 1116 (9th Cir. 1998), the Ninth Circuit upheld the ALJ's finding that garnishment of a claimant's compensation benefits paid by the Trust Fund is permitted. The 1975 Social Security Garnishment provision impliedly repealed the LHWCA Alienation provision.

The Louisiana Supreme Court has held that a wife could not have her husband's LHWCA benefits garnished for past due child support since it was Congress' intent that the benefits should go to the disabled worker directly, without any attachment. Applying the supremacy clause, the court reasoned that to allow a wife to garnish these benefits would have required carving out a jurisprudential exception to Congress' anti-attachment clause, which the strong language of the LHWCA does not permit. Thibodeaux v. Thibodeaux, 16 BRBS 142 (CRT) (1984), 454 So. 2d 813, cert. denied, 469 U.S. 1114 (1985)..

*[ED. NOTE: Benefits received under the LHWCA and paid by the United States government, i.e., the Longshore Trust Fund, appear to be garnishable for purposes of child support and alimony. See 5 C.F.R. §§ 581.101-103, especially 5 C.F.R. § 581.103(c)(5) which specifically lists "Benefits received under the Longshoremen's and Harbor Workers' Compensation Act." Section 5 C.F.R. § 581.101 et seq. was enacted to implement the objectives of 42 U.S.C. 659 and 666(a)(1) and (b), to make the United States or the District of Columbia subject to legal process brought for the enforcement of an individual's legal obligations to provide child support and/or to make alimony payments. See Moyle v. Jones Oregon Stevedoring Co., 28 BRBS 73 (ALJ) (1994), *aff'd sub nom. Moyle v. Director, OWCP*, 147 F.3d 1116 (9th Cir. 1998) (Circuit Judge Pregerson thoroughly explores the authorities and legislative history regarding the garnishment issue).*

*This regulation seemingly carves out an exception to Section 16 of the LHWCA. Thus, a distinction can be drawn between compensation benefits payable by an employer/carrier and compensation benefits payable by the Trust Fund. Only the latter benefits would be garnishable. There are currently no published cases on this issue.]*