

## SECTION 16

Section 16 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 benefits 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. *See* Sections 8(i), 15(b). Section 17 creates an exception to Section 16, providing that a lien may be granted in favor of a trust fund established under a collective bargaining agreement in compliance with 29 U.S.C. §186(c) where that trust fund has paid benefits to claimant for a disability under the Act.

Where claimants voluntarily assigned to the Veteran's Administration the rights to reimbursement for medical expenses from employer's carrier, the Fifth Circuit held that the VA was entitled to recover the cost of the care as a subrogee to the employee's rights. *U.S. v. Bender Welding & Mach. Co.*, 558 F.2d 761 (5<sup>th</sup> Cir. 1977), *rev'g Simmons v. Bender Welding & Mach. Co.*, 3 BRBS 222 (1976), and *Love v. Bender Welding & Mach. Co.*, 3 BRBS 183 (1976).

The Louisiana Supreme Court held that a wife could not have the benefits her husband received under the Act 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 the statute's anti-attachment clause, which the strong language of the Act does not permit. *Thibodeaux v. Thibodeaux*, 454 So.2d 813, 16 BRBS 142(CRT) (La. 1984), *cert. denied*, 469 U.S. 1114 (1985). *Cf. Moyle v. Director, OWCP*, 147 F.3d 1116, 32 BRBS 107(CRT) (9th Cir. 1998), *cert. denied*, 526 U.S. 1064 (1999) (Social Security Act amendment allowing garnishment for spousal support amends Section 16 to allow such garnishment where payments are made by the U.S., *i.e.*, the Special Fund).

With regard to the provision that compensation and benefits under the Act are exempt from all claims of creditors, the Third Circuit held that an insurance carrier providing coverage for non-occupational injuries or illnesses is not a creditor and may intervene in proceedings under the Act to recover amounts erroneously paid out for injuries or illnesses that are found to be work-related. *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 that while 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 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.

### Digests

The Ninth Circuit vacated the Board's decision requiring employer, rather than claimant, to reimburse the state for payments it made, stating that this holding contradicted the state provision providing that benefits shall be "repaid by the worker" if recovery is made under the maritime laws. The court rejected the Director's argument that Section 16 precluded the Board from ordering either employer or claimant to repay the state. The court concluded that the state is not a "creditor" within the meaning of Section 16, in that the state sought to recoup payments that were improperly paid, and its claim to reimbursement arose solely because claimant was found to be entitled to compensation under the Act. The court therefore modified the Board's order to require employer to pay claimant an amount equal to the state payments and to require claimant to pay that amount to the state. *E.P. Paup Co. v. Director, OWCP*, 999 F.2d 1341, 27 BRBS 41(CRT) (9th Cir. 1993), *aff'g and modifying McDougall v. E.P. Paup Co.*, 21 BRBS 204 (1988).

The Eleventh Circuit held that claimant's assignment to a bank of insurance payments he received under an annuity purchased after a settlement under the Act was valid and not barred by the anti-assignment clause of Section 16. The court noted that the payments received by claimant were not due and payable under the Act, but were payments made by a third-party insurance company. The court concluded that the purpose of the anti-assignability provision of Section 16 was served and no longer applied once the amount of the award was paid to claimant and the annuity was purchased on claimant's behalf. *In Re Sloma*, 43 F.3d 637 (11th Cir. 1995).

The Board held that the administrative law judge properly rejected claimant's claim to recover interest awarded by a bankruptcy court to employer on the amount of its lien against the proceeds of a third-party settlement that were part of the bankruptcy estate. Claimant settled his claim under the Act and subsequently settled a third party suit. At the same time, claimant was in bankruptcy. Because claimant's benefits under the Act had been paid via settlement, employer went to the bankruptcy court to recover its lien on the third party proceeds, which included interest. See 33 U.S.C. §933(f). Claimant's contention that the interest was "compensation," and therefore exempt from creditors' claims under Section 16, was rejected as none of the funds distributed was a present or

future payment of compensation, and the lien was on a third party award for “damages” under Section 33. *Hudson v. Puerto Rico Marine, Inc.*, 27 BRBS 183 (1993), *aff’d mem.*, 41 F.3d 668 (11th Cir. 1994) (table).

The Board held that the plain language of Section 33(f) provides employer an offset against future compensation due in the amount of the entire third-party net recovery, notwithstanding the fact that an unrelated pre-existing judgment creditor attached a portion of the net recovery. As there was no direct attempt to attach claimant’s benefits under the Act, the Board rejected claimant’s contention that Section 16 is applicable on these facts. Claimant’s argument that allowing employer a full credit is an “indirect” or “de facto” lien in violation of Section 16 is without merit. *Hernandez v. Nat’l Steel & Shipbuilding Co.*, 32 BRBS 109 (1998).

In a case involving garnishment for spousal support, the Ninth Circuit held that the later-enacted Social Security Act garnishment provision, 42 U.S.C. §659, impliedly repealed the Anti-Alienation provision of Section 16 of the Longshore Act insofar as such support is concerned. The court concluded that the two statutes are irreconcilable, the plain language and definitions of the garnishment provision in the SSA suggest that it applies to the Longshore Act, and the legislative history of the garnishment provision explicitly states that benefits under the Longshore Act are subject to garnishment when the payments are made by the United States. Consequently, the Ninth Circuit affirmed the administrative law judge’s determination that claimant’s benefits, which were being paid by the Special Fund (which the court determined are payments by the United States), were properly being garnished pursuant to an Oregon court order to satisfy claimant’s delinquent spousal support payments. *Moyle v. Director, OWCP*, 147 F.3d 1116, 32 BRBS 107(CRT) (9th Cir. 1998), *cert. denied*, 526 U.S. 1064 (1999).

The court held that, under Florida law, a claim for child support is not the claim of a creditor, nor is a child support obligation a “debt,” as opposed to child support arrearages. Thus, the Section 16 anti-alienation provision is not applicable to the ongoing obligation to pay child support. The court ordered the carrier to withhold money from the claimant’s disability benefits and to remit the funds as child support payments to claimant’s ex-wife. *Cigna Prop. & Cas. v. Ruiz*, 834 So. 2d 234 (Fla. Dist. Ct. App. 2002).

The Pennsylvania Superior Court held that Section 16 does not preclude a wife from attaching her former husband’s LHWCA benefits in order to recover alimony due. Relying on the Ninth Circuit’s decision in *Moyle*, 147 F.3d 1116, 32 BRBS 107(CRT), the court concluded that because the husband’s LHWCA benefits are paid to him pursuant to federal law, and because the wife is not a “creditor” and the alimony obligation is not a “debt” under Section 16, the LHWCA benefits may be attached. The court rejected the husband’s argument that the *Moyle* holding is limited to those cases in which the LHWCA benefits are paid by the Special Fund, rather than by an employer/carrier. The court reasoned that the SSA garnishment provision defines the term “remuneration for employment” to include

workers' compensation benefits paid or payable under federal or state law, and, thus, in this case, because the husband's LHWCA benefits are workers' compensation benefits paid pursuant to federal law, they may be attached in order to meet his alimony obligation. *Uveges v. Uveges*, 103 A.3d 825 (Pa. Super. Ct. 2014), *cert. denied*, 577 U.S. 1007 (2015).

The court rejected the father's contention that Section 16 of the Act precludes his compensation benefits from being included as his assets under state law for purposes of determining the amount of child support he must pay. *State ex rel. Bass v. Gonzalez-Perez*, No. W2016-00655-COA-R3-JV, 2017 WL 2210758, 51 BRBS 11(CRT) (Tenn. Ct. App. May 19, 2017).

The Board reversed the administrative law judge's decision granting employer's motion for summary decision and consequent denial of benefits. The Board held that claimant's claim under the DBA is not barred by application of judicial estoppel. Claimant did not gain an advantage over her creditors by failing to disclose her DBA claim to the bankruptcy court because, pursuant to Section 16 of the Act, any benefits she receives from the DBA claim cannot be attached by her creditors. As a necessary element of judicial estoppel was absent from this case, and in light of the plain language of Section 16, the Board held that judicial estoppel does not apply. The case was remanded for proceedings on the merits. *Sparks v. Serv. Employees Int'l, Inc.*, 44 BRBS 11, *aff'd on recon.*, 44 BRBS 77 (2010).

The Board denied employer's motion for reconsideration, rejecting its argument that the Board erred in reversing the administrative law judge's application of judicial estoppel. The Board affirmed its conclusion that the "motive" element was absent in this case and, therefore, all factors necessary to apply judicial estoppel are not present. Because Section 16 precludes the attachment of compensation, there was no motive to conceal the claim. Additionally, the Board rejected as speculative employer's assertion that had the bankruptcy court known of the DBA claim the court may have denied claimant's discharge. Rather, as claimant was not receiving "income" pursuant to this DBA claim, she had no income from employer which would have affected the bankruptcy abuse analysis. Moreover, because neither the court nor the trustee was compelled to re-open the bankruptcy case upon learning of the DBA claim, there is no evidence of bankruptcy abuse. Accordingly, the Board affirmed its decision. *Sparks v. Serv. Employees Int'l, Inc.*, 44 BRBS 77, *aff'g on recon.* 44 BRBS 11 (2010).

The Board vacated the administrative law judge's summary approval of the parties' stipulation that claimant has a seven percent permanent leg impairment since there was neither substantial evidence nor a legal foundation for such a stipulation. The Board rejects the contention that the parties can "compromise" via stipulation the degree of permanent impairment. *Bomback v. Marine Terminals Corp.*, 44 BRBS 95 (2010).

The Board vacated the administrative law judge's order which accepted a stipulation that waived claimant's entitlement to interest on past-due benefits. The Board held that, as this

case does not involve a Section 8(i) settlement, interest is mandatory and cannot be waived. Permitting such a waiver would violate Sections 15(b) and 16 of the Act. Accordingly, the Board remanded the case to the administrative law judge to make findings of fact or accept a proper stipulation that reflects claimant's entitlement to interest as appropriate. *Aitmbarek v. L-3 Communications*, 44 BRBS 115 (2010).