

## SECTION 17

Section 17 provides an exception to Section 16. It states,

Where a trust fund which complies with section 302(c) of the Labor-Management Relations Act of 1947 (29 U.S.C. 186(c)) established pursuant to a collective-bargaining agreement in effect between an employer and an employee covered under this chapter has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under this chapter or under a settlement, the Secretary shall authorize a lien on such compensation in favor of the trust fund for the amount of such payments.

33 U.S.C. §917. Section 702.162 of the regulations, 20 C.F.R. §702.162, provides the procedures for a trust fund to obtain its lien.

The lien under this section is authorized only in favor of such a trust fund. Thus, in *Harris v. Sun Shipbuilding & Dry Dock Co.*, 6 BRBS 494 (1977), *vacated on other grounds sub nom. Aetna Life Ins. Co. v. Harris*, 578 F.2d 52 (3d Cir. 1978), the Board denied a recovery by Aetna of benefits paid claimant under a group sickness and accident plan as not falling within this section. The Third Circuit held that a private insurer who pays benefits is entitled to intervene and obtain reimbursement of the amounts paid.

Prior to a 1978 Amendment, current Section 17 was numbered Section 17(b), and Section 17(a) provided that a person entitled to compensation had a lien on the assets of a carrier or employer, and that lien was entitled to preference in an insolvency, bankruptcy, or reorganization in bankruptcy proceeding. This provision was repealed in 1978.

### Digests

The Board stated that the administrative law judge properly allowed a pension fund to intervene to recover benefits paid as it is a Taft-Hartley trust fund entitled to a statutory lien on claimant's compensation under Section 17. *MacDonald v. Trailer Marine Transp. Corp.*, 18 BRBS 259 (1986), *aff'd mem. sub nom. Trailer Marine Transp. Corp. v. Benefits Review Board*, 819 F.2d 1148 (11th Cir. 1987).

The Board vacated settlement agreements between claimants and employers which did not include the ILWU-PMA, which intervened to obtain reimbursement of disability and medical benefits paid. The Board held that under the plain language of Section 17 and its implementing regulation, 20 C.F.R. §702.162, ILWU-PMA's Section 17 lien was limited to amounts it paid to the claimants for *disability* covered by the Act, and its right to recoup the medical expenses it paid on behalf of the claimants falls under Section 7 and is derivative of claimant's right to receive medical benefits. The Board held that ILWU-

PMA's Section 17 lien claims and claims for reimbursement of medical expenses under Section 7 must be resolved simultaneously with claimant's entitlement. By intervening in these cases in pursuit of its Section 17 lien and reimbursement of medical benefits, ILWU-PMA became "a party" to the claim under Section 8(i), and claimant and employer could not settle without the ILWU-PMA's involvement. Moreover, the administrative law judge's orders approving the Section 8(i) settlements were "compensation order(s) in favor of the claimant" within Section 702.162(f), as claimants received compensation in settlement of their claims. Thus, the administrative law judges also were required to "establish a lien in favor of the trust fund" in these orders pursuant to Section 17 and Section 702.162(f). As the settlement agreements did not resolve the existing lien and reimbursement claims, the administrative law judges erred in approving the settlements. The settlements were vacated and the cases remanded. *M.K. [Kellstrom] v. California United Terminals*, 43 BRBS 1, *aff'd on recon.*, 43 BRBS 115 (2009).

On reconsideration, the Board reiterated that since ILWU-PMA's claims for reimbursement of medical benefits are derivative of claimants' claims for medical benefits under Section 7, ILWU-PMA's claims must be resolved simultaneously with the claimants' claims. If employers and claimants were permitted to settle the claim for medical benefits without ILWU-PMA's participation, employers' liability for medical benefits would be extinguished and the Plan would be without recourse. Thus, the Board properly held that since the settlements in these cases infringe on ILWU-PMA's derivative right to reimbursement of medical benefits, they must be vacated. At the Director's urging, the Board clarified its holding to reflect that only those parties with a financial interest in the claim must have their rights resolved simultaneously with the rights of the other parties whose financial interests are also at stake. In these cases, ILWU-PMA had, via its valid Section 17 liens, a financial interest in the disability aspect of the settlements in these cases. As for medical benefits, ILWU-PMA's financial interests, premised on its Section 7(d)(3) reimbursement claims, arose because the settlement agreements included releases for past medical benefits. Thus, the Board reiterated that claimants and employers cannot settle claimants' disability and past medical benefits claims without ILWU-PMA's agreement. The Board stated, however, that the parties could settle any claims for future medical benefits without the Plan's participation as it has no financial interest in such claims. *M.K. [Kellstrom] v. California United Terminals*, 43 BRBS 115, *aff'g on recon.* 43 BRBS 1 (2009).