

BRB Nos. 05-0665  
and 05-0666

RONALD AMBO	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
FRIEDE GOLDMAN HALTER	)	DATE ISSUED: 01/11/2007
	)	
and	)	
	)	
LOUISIANA INSURANCE GUARANTY ASSOCIATION	)	
	)	
Employer/Carrier- Petitioners	)	ORDER on MOTION for RECONSIDERATION

Louisiana Insurance Guaranty Association (LIGA) has filed a timely motion for reconsideration of the Board's decision in the captioned case, *Ambo v. Friede Goldman Halter*, BRB Nos. 05-0665, 05-0666 (May 8, 2006) (unpublished). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407(a). LIGA alleges error in the Board's affirmance of the attorney's fee awards of the district director and administrative law judge. Claimant seeks denial of LIGA's motion for reconsideration.

LIGA first contends that the Board erred in finding that claimant successfully prosecuted his claim before the administrative law judge, as LIGA paid permanent partial disability benefits all along, and the administrative law judge awarded benefits at a reduced average weekly wage. The Board fully addressed this issue in its decision. *Ambo*, slip op. at 4. LIGA contended before the administrative law judge that claimant was not disabled at all as of May 22, 2000 or as of June 2001. The administrative law judge awarded claimant total disability benefits until January 7, 2004. Although the administrative law judge rejected claimant's claim of ongoing total disability and his average weekly wage calculation, claimant also was awarded ongoing permanent partial disability benefits commencing January 8, 2004, which LIGA had contested. Therefore, claimant was successful before the administrative law judge. LIGA has not demonstrated error in the Board's holding in this regard, and LIGA's motion for reconsideration of this issue therefore is denied.

LIGA also contends that, pursuant to the state law that created LIGA, La. Rev. Stat. 22:1376, the Board erred in affirming the finding that LIGA is liable for post-insolvency attorney's fees. In its decision, the Board noted that the LIGA statute is silent as to its liability for post-insolvency attorney fees,<sup>1</sup> but that state case law establishes that LIGA is not liable for any attorney's fees under the state workers' compensation act unless the employer or carrier fails to pay benefits in a timely manner without probable cause or for arbitrary and capricious reasons. La. Rev. Stat. 23:1201. The Board held that this law did not prevent the assignment of post-insolvency attorney's fees against LIGA, as attorney's fees under the Act are not considered punitive in nature as they are under the Louisiana workers' compensation act. *Ambo*, slip op. at 5-6.

On reconsideration, LIGA again avers that attorney's fees are not "covered claims" under the Louisiana workers' compensation statute, and that, moreover, the Board's reading of the "post-insolvency" provision is too expansive as LIGA becomes involved in a claim only after the insolvency of a carrier. The former argument was fully addressed in the Board's decision, and it is sufficient for purposes of denying LIGA's motion in this regard to note that the two statutes have different approaches to the nature of attorney's fee awards. *See Ambo*, slip op. at 6. The latter argument is rejected as it is overbroad. While an *award* of an attorney's fee may come after LIGA has entered the case in the place of an insolvent insurer, it does not necessarily follow that the attorney's fees sought are post-insolvency obligations of the insolvent entity. In fact, the Board has previously addressed facts where fees were incurred prior to a carrier's insolvency, holding LIGA was not liable for such pre-insolvency fees. *See Marks v. Trinity Marine Group*, 37 BRBS 117 (2003).

LIGA's last argument is that because post-insolvency fees are not specifically included as a "covered claim" under state law, *see* La. Rev. Stat. 22:1379(3)(d), federal law may not be applied to fill the gap to permit liability for an attorney's fee. As support, LIGA cites *Quealy v. Paine Webber, Jackson & Curtis, Inc.*, 475 So.2d 756, 763 (La. 1985), in which the Supreme Court of Louisiana stated, "Attorney fees are not allowed in Louisiana except where authorized by statute or contract." Assuming such a holding applies to attorney's fees awardable under Federal law, Section 28 of the Act provides a statutory basis for an attorney's fee award in this case. LIGA has not identified any precedent demonstrating error in the Board's decision to affirm the liability of LIGA for the attorney's fees awarded. Therefore, its motion for reconsideration is denied.

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<sup>1</sup> The Louisiana statute provides that LIGA may not be held liable for pre-insolvency attorney's fees. La. Rev. Stat. 22:1379(3)(d); *see Marks v. Trinity Marine Group*, 37 BRBS 117 (2003).

Accordingly, employer's motion for reconsideration is denied. 20 C.F.R. §802.409. The Board's decision is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge