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Benedict on Admiralty

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APPENDIX A

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Volume 1A: Longshore and Harbor Worker Compensation Act Chapters I-V, Apps. A-E
APPENDIX A

1A Benedict on Admiralty

LONGSHORE AND HARBOR WORKER COMPENSATION ACT

§ 901 Short title.

This Act may be cited as "Longshore and Harbor Workers' Compensation Act."

Legislative History

(March 4, 1927, ch 509, § 1, 44 Stat. 1424; Sept. 28, 1984, P.L. 98-426, § 27(d)(1), 98 Stat. 1654.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Effective date of section:

Act March 4, 1927, ch 509, § 52 [51] 44 Stat. 1446, as redesignated by Act Oct. 27, 1972, P.L. 92-576, § 19, 86 Stat. 1263, provided: "Sections 39 to 51 [39 to 48, 50 to 52, as redesignated by such § 19 of Act Oct. 27, 1972], inclusive [*33 USCS §§ 939 to 948*, *949*, and *950*], shall become effective upon the passage of this Act [March 4, 1927], and the remainder of this Act shall become effective on July 1, 1927.".
Amendments:

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as a note to this section), substituted "Longshore" for "Longshoremen's".
Short titles:

Act Oct. 27, 1972, P.L. 92-576, § 1, 86 Stat. 1251, provides: "This Act [which amended this chapter generally; for full classification, consult USCS Tables volumes.] may be cited as the 'Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972.'."

Act Sept. 28, 1984, P.L. 98-426, § 1(a), 98 Stat. 1639, provides: "This Act may be cited as the 'Longshore and Harbor Workers' Compensation Act Amendments of 1984'.". For full classification of such Act, consult USCS Tables volumes. Other provisions:

Reference to Longshoremen's and Harbor Workers Compensation Act deemed reference to Longshore and Harbor Workers' Compensation Act. Act Sept. 28, 1984, P.L. 98-426, § 27(d)(2), 98 Stat. 1654, effective upon enactment on Sept. 28, 1984, as provided by § 28(e)(1) of such Act, which appears as a note to this section, provides: "Reference in any other statute, regulation, order, or other document to the Longshoremen's and Harbor Workers' Compensation Act [*33 USCS §§ 901 et seq.*, generally; for full classification, consult USCS Tables volumes] shall be deemed to refer to the Longshore and Harbor Workers' Compensation Act [*33 USCS §§ 901 et seq.*, generally; for full classification, consult USCS Tables volumes].".

Effective dates and application of amendments made by Act Sept. 28, 1984. Act Sept. 28, 1984, P.L. 98-426, § 28(a)-(g) 98 Stat. 1655, provides:

"Except as otherwise provided in this section, the amendments made by this Act [amending this section, among other things; for full classification, consult USCS Tables volumes] shall be effective on the date of enactment of this Act [Sept. 28, 1984] and shall apply both with respect to claims filed after such date and to claims pending on such date.

(b) The amendments made by sections 7(a), 7(e), 8(f), 11(b), 11(c), and 13 [amending *33 USCS §§ 907*, *908*, *912*, and *914*] shall be effective 90 days after the date of enactment of this Act [Sept. 28, 1984] and shall apply both with respect to claims filed after such 90th day and to claims pending on such 90th day.

(c) The amendments made by sections 2(a), 3(a), 5, and 8(b) [amending *33 USCS §§ 902*, *903*, *905*, and *908*] shall apply with respect to any injury after the date of enactment of this Act [Sept. 28, 1984].

(d) The amendments made by sections 6(a), 8(d), and 9 [amending *33 USCS §§ 906*, *908*, and *909*] shall apply with respect to any death after the date of enactment of this Act [Sept. 28, 1984].

(e)

(1) The amendments made by sections 2(c), 8(c)(1), 8(e)(4), 8(e)(5), 8(g), 10(b), 15 through 20, and 22 through 27 [enacting *33 USCS §§ 901* note and 942, amending *33 USCS §§ 901*, *902*, *908*, *to 910*, *914*, *918*, *919*, *921 to 923*, *928 to 932*, *934*, *935*, *938 to 940*, *944*, and *948a*, and repealing *33 USCS §§ 945 to 947*, among other things; for full classification, consult USCS Tables volumes] shall be effective on the date of enactment of this Act [Sept. 28, 1984].

(2) The amendments made by sections 7(b), 7(c), 7(d), and 8(h) [amending *33 USCS §§ 907* and *908*] shall be effective 90 days after the date of enactment of this Act [Sept. 28, 1984].

(f) The amendments made by section 6(b) [amending *33 USCS § 906*] shall apply with respect to any injury, disability, or death after the date of enactment of this Act [Sept. 28, 1984].

(g) For the purpose of this section--

(1) in the case of an occupational disease which does not immediately result in a disability or death, an injury shall be deemed to arise on the date on which the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the disease; and

(2) the term 'disability' has the meaning given such term by section 2(10) of the Act [*33 USCS § 902(10)*] as amended by this Act [as amended by Act Sept. 28, 1984, P.L. 98-426, § 2(b), 98 Stat. 1639]."

§ 902 Definitions.

When used in this Act--

(1) The term "person" means individual, partnership, corporation, or association.

(2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

(3) The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include--

(A) individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;

(B) individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;

(C) individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);

(D) individuals who (i) are employed by suppliers, transporters, or vendors, (ii) are temporarily doing business on the premises of an employer described in paragraph (4), and (iii) are not engaged in work normally performed by employees of that employer under this Act;

(E) acquaculture workers;

(F) individuals employed to build any recreational vessel under sixty-five feet in length, or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel;

(G) a master or member of a crew of any vessel; or

(H) any person engaged by a master to load or unload or repair any small vessel under eighteen tons net;

if individuals described in clauses (A) through (F) are subject to coverage under a State workers' compensation law.

(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

(5) The term "carrier" means any person or fund authorized under section 32 [*33 USCS § 932*] to insure under this Act and includes self-insurers.

(6) The term "Secretary" means the Secretary of Labor.

(7) The term "deputy commissioner" means the deputy commissioner having jurisdiction in respect of an injury or death.

(8) The term "State" includes a Territory and the District of Columbia.

(9) The term "United States" when used in a geographical sense means the several States and Territories and the District of Columbia, including the territorial waters thereof.

(10) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment; but such term shall mean permanent impairment, determined (to the extent covered thereby) under the guides to the evaluation of permanent impairment promulgated and modified from time to time by the American Medical Association, in the case of an individual whose claim is described in section 10(d)(2) [*33 USCS § 910(d)(2)*];

(11) "Death" as a basis for a right to compensation means only death resulting from an injury.

(12) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this Act, and includes funeral benefits provided therein.

(13) The term "wages" means the money rate at which the service rendered by an employee is compensated by an employer under the contract of hiring in force at the time of the injury, including the reasonable value of any advantage which is received from the employer and included for purposes of any withholding of tax under subtitle C of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 3101 et seq.*] (relating to employment taxes). The term wages does not include fringe benefits, including (but not limited to) employer payments for or contributions to a retirement, pension, health and welfare, life insurance, training, social security or other employee or dependent benefit plan for the employee's or dependent's benefit, or any other employee's dependent entitlement.

(14) "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child", "grandchild", "brother", and "sister" include only a person who is under eighteen years of age, or who, though eighteen years of age or over, is (1) wholly dependent upon the employee and incapable of self-support by reason of mental or physical disability, or (2) a student as defined in paragraph (19) [(18)] of this section.

(15) The term "parent" includes step-parents and parents by adoption, parents-in-law, and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

(16) The terms "widow or widower" includes only the decedent's wife or husband living with or dependent for support upon him or her at the time of his or her death; or living apart for justifiable cause or by reason of his or her desertion at such time.

(17) The terms "adoption" or "adopted" mean legal adoption prior to the time of the injury.

(18) The term "student" means a person regularly pursuing a full-time course of study or training at an institution which is--

(A) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof,

(B) a school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body,

(C) a school or college or university not so accredited but whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited, or

(D) an additional type of educational or training institution as defined by the Secretary,

but not after he reaches the age of twenty-three or has completed four years of education beyond the high school level, except that, where his twenty-third birthday occurs during a semester or other enrollment period, he shall continue to be considered a student until the end of such semester or other enrollment period. A child shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed five months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately following the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A child shall not be deemed to be a student under this Act during a period of service in the Armed Forces of the United States.

(19) The term "national average weekly wage" means the national average weekly earnings of production or nonsupervisory workers on private nonagricultural payrolls.

(20) The term "Board" shall mean the Benefits Review Board.

(21) Unless the context requires otherwise, the term "vessel" means any vessel upon which or in connection with which any person entitled to benefits under this Act suffers injury or death arising out of or in the course of his employment, and said vessel's owner, owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer, or crew member.

(22) The singular includes the plural and the masculine includes the feminine and neuter.

Legislative History

(March 4, 1927, ch 509, § 2, 44 Stat. 1424; June 25, 1938, ch 685, § 1, 52 Stat. 1164; Oct. 27, 1972, P.L. 92-576, §§ 2(a)(b) 3, 5(b), 15(c), 18(b), 20(c), 86 Stat. 1251, 1262; Sept. 28, 1984, P.L. 98-426, §§ 2, 5(a)(2), 27(a)(1), 98 Stat. 1639, 1641, 1654.)

(As amended Feb. 17, 2009, P.L. 111-5, Div A, Title VIII, § 803, 123 Stat. 187.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult the USCS Tables volumes.
Explanatory notes:

"1986" has been inserted in brackets in para. (13) pursuant to § 2 of Act Oct. 22, 1986, P.L. 99-514, which redesignated the Internal Revenue Code of 1954 (Act Aug. 16, 1954, ch 736) as the Internal Revenue Code of 1986. In redesignating the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986, Congress provided, in Act Oct. 22, 1986, P.L. 99-514, § 2(b), 100 Stat. 2095, for construction of references to the Internal Revenue Code as follows: except when inappropriate, any reference in any law, Executive Order, or other document to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986 and any reference to the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

The bracketed designation "(18)" was inserted in para. (14) as the reference probably intended by Congress.
Amendments:

1938. Act June 25, 1938, in para. (14), inserted "a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury", and substituted "are under eighteen years of age, and also persons who, though eighteen years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability" for "at the time of the death of the deceased employee are under eighteen years of age".

1972. Act Oct. 27, 1972 (effective 30 days after enactment on 10/27/72, as provided by § 22 of such Act, which appears as a note to this section), substituted para. (3) for one which read: "The term 'employee' does not include a master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net."; in para. (4), substituted "(including any adjoining pier, wharf, dry dock, terminal, building way, maritime railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel)" for "(including any drydock)"; in para. (14), substituted the last sentence for one which read: "'Child,' 'grandchild,' 'brother,' and 'sister' include only persons who are under eighteen years of age, and also persons who,

though eighteen years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability."; redesignated former para. (19) (construing singular and masculine terms) as para. (20): and added a new para. (19) (defining "Student"); redesignated para (20), as redesignated, (construing singular and masculine terms), as para. (21); and added a new para. (20) (defining "national average weekly wage"); redesignated para. (21), as redesignated, (construing singular and masculine terms) as para. (22); and added a new para. (21) (defining "Board"); redesignated para. (22), as redesignated, (construing singular and masculine terms), as para. (23); and added a new para. (22) (defining "vessel"); substituted para. (16) for one which read: "The term 'widow' includes only the decedent's wife living with or dependent for support upon him at the time of his death; or living apart for justifiable cause or by reason of his desertion at such time."; deleted para. (17), which read: "The term 'widower' includes only the decedent's husband who at the time of her death lived with her and was dependent for support upon her."; and redesignated paras. (18) through (23) (as previously redesignated) as paras. (17) through (22).

1984. Act Sept. 28, 1984, § 2(a) (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), substituted para. (3) for one which read: "The term 'employee' means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.".

Section 2(b) of such Act further (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), in para. (10), inserted "; but such term shall mean permanent impairment, determined (to the extent covered thereby) under the guides to the evaluation of permanent impairment promulgated and modified from time to time by the American Medical Association, in the case of an individual whose claim is described in section 10(d)(2)".

Sections 2(c) and 27(a)(1) of such Act further (effective upon enactment on 9/28/84 as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note), substituted para. (6) for one which read: "The term 'commission' means the United States Employees' Compensation Commission.", and and, in para. (21), substituted "Unless the context requires otherwise, the" for "The".

Section 5(a)(2) of such Act further (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), substituted para. (13) for one which read: " 'Wages' means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer.".

2009. Act Feb. 17, 2009, in para. (3)(F), deleted ", repair or dismantle" following "build", and inserted ", or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel".
Other provisions:

Application of amendments made by Act Oct. 27, 1972. Act Oct. 27, 1972, P.L. 92-576, § 20(c), 86 Stat. 1265, provided: "The amendments made by this subsection [which, among other things, amended this section; for full classification of such section, consult USCS Tables volumes] shall apply only with respect to deaths or injuries occurring after then enactment of this Act [Oct. 27, 1972].".

Effective date of amendments made by Act Oct. 27, 1972. Act Oct. 27, 1972, P.L. 92-576, § 22, 86 Stat. 1265, provided: "The amendments made by this Act [which, among other things, amended this section; for full classification of this Act, consult USCS Tables volumes] shall become effective thirty days after the date of enactment of this Act [Oct. 27, 1972].".

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 903 Coverage.

(a) Disability or death; injuries occurring upon navigable waters of United States. Except as otherwise provided in this section, compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel).

(b) Governmental officers and employees. No compensation shall be payable in respect of the disability or death of an officer or employee of the United States, or any agency thereof, or of any State or foreign government, or any subdivision thereof.

(c) Intoxication; willful intention to kill. No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

(d) Small vessels.

(1) No compensation shall be payable to an employee employed at a facility of an employer if, as certified by the Secretary, the facility is engaged in the business of building, repairing, or dismantling exclusively small vessels (as defined in paragraph (3) of this subsection), unless the injury occurs while upon the navigable waters of the United States or while upon any adjoining pier, wharf, dock, facility over land for launching vessels, or facility over land for hauling, lifting, or drydocking vessels.

(2) Notwithstanding paragraph (1), compensation shall be payable to an employee--

(A) who is employed at a facility which is used in the business of building, repairing, or dismantling small vessels if such facility receives Federal maritime subsidies; or

(B) if the employee is not subject to coverage under a State workers' compensation law.

(3) For purposes of this subsection, a small vessel means--

(A) a commercial barge which is under 900 lightship displacement tons; or

(B) a commercial tugboat, towboat, crew boat, supply boat, fishing vessel, or other work vessel which is under 1,600 tons gross as measured under *section 14502 of title 46, United States Code*, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title.

(e) Credit for benefits paid under other laws. Notwithstanding any other provision of law, any amounts paid to an employee for the same injury, disability, or death for which benefits are claimed under this Act pursuant to any other workers' compensation law or section 20 of the Act of March 4, 1915 (38 Stat. 1185, chapter 153; *46 U.S.C. 688* [*46 USCS §§ 30104, 30105*]) (relating to recovery for injury to or death of seamen) shall be credited against any liability imposed by this Act.

Legislative History

(March 4, 1927, ch 509. § 3, 44 Stat. 1426; Oct. 27, 1972, P.L. 92-576, §§ 2(c), 21, 86 Stat. 1251, 1265; Sept. 28, 1984, P.L. 98-426, § 3, 98 stat. 1640.)

(As amended Oct. 19, 1996, P.L. 104-324, Title VII, § 703, 110 Stat. 3933.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of such Act, consult USCS Tables volumes.
Explanatory notes:

In subsec. (e), "*46 USCS §§ 30104, 30105*" has been inserted in brackets pursuant to § 18(c) of Act Oct. 6, 2006, P.L. 109-304, which appears as a note preceding *46 USCS § 101*. Section 2 of such Act completed the codification of Title 46 as positive law, and § 18(c) of such Act provided that a reference to a law replaced by such Act is deemed to refer to the corresponding provision enacted by such Act.
Amendments:

1972. Act Oct. 27, 1972 (effective 30 days after enactment, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), substituted "(including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employee in loading, unloading, repairing, or building a vessel)" for "(including any drydock) and if recovery for the disability or death through workmens compensation proceedings may not validly be provided by State law", and substituted "or" for "nor" preceding "any person engaged by the master".

1984. Act Sept. 28, 1984, § 3(a) (effective upon enactment, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), substituted subsecs. (a)-(d) for subsecs. (a) and (b) which read:

(a) Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any

adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employee in loading, unloading, repairing, or building a vessel). No compensation shall be payable in respect of the disability or death of--

(1) A master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

(2) An officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof.

(b) No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.".

Section 3(b) of such Act further (effective upon enactment, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), added subsec. (e).

1996. Act Oct. 19, 1996, in subsec. (d)(3)(B), inserted "as measured under *section 14502 of title 46, United States Code*, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title".
Other provisions:

Application to District of Columbia. The Longshoremen's and Harbor Workers' Compensation Act [*33 USCS § 901 et seq.*] was made applicable in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia by Act May 17, 1928, ch 612, 45 Stat. 600. See D. C. laws 3-77 [D.C. Code §§ 36-301 et seq.].

Application of Oct. 27, 1972 amendments. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of Sept. 28, 1984 amendments. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 904 Liability for compensation.

(a) Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 7, 8, and 9 [*33 USCS §§ 907, 908,* and *909*]. In the case of an employer who is a subcontractor, only if such subcontractor fails to secure the payment of compensation shall the contractor be liable for and be required to secure the payment of compensation. A subcontractor shall not be deemed to have failed to secure the payment of compensation if the contractor has provided insurance for such compensation for the benefit of the subcontractor.

(b) Compensation shall be payable irrespective of fault as a cause for the injury.

Legislative History

(March 4, 1927, ch 509, § 4, 44 Stat. 1426; Sept. 28, 1984, P.L. 98-426, § 4(a), 98 Stat. 1641.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
Amendments:

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), substituted subsec. (a) for one which read: "Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 7, 8, and 9. In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payment.".

§ 905 Exclusiveness of liability.

(a) Employer liability; failure of employer to secure payment of compensation. The liability of an employer prescribed in section 4 [*33 USCS § 904*] shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this Act, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under the Act, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee. For purposes of this subsection, a contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to secure the payment of compensation as required by section 4 [*33 USCS § 904*].

(b) Negligence of vessel. In the event of injury to a person covered under this Act caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 33 of this Act [*33 USCS § 933*], and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this Act.

(c) Outer Continental Shelf. In the event that the negligence of a vessel causes injury to a person entitled to receive benefits under the Act by virtue of section 4 of the Outer Continental Shelf Lands Act (*43 U.S.C. 1333*), then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel in accordance with the provisions of subsection (b) of this section. Nothing contained in subsection (b) of this section shall preclude the enforcement according to its terms of any reciprocal indemnity provision whereby the employer of a person entitled to receive benefits under this Act by virtue of section 4 of the Outer Continental Shelf Lands Act (*43*

U.S.C. 1333) and the vessel agree to defend and indemnify the other for cost of defense and loss or liability for damages arising out of or resulting from death or bodily injury to their employees.

Legislative History

(March 4, 1927, ch 509, § 5, 44 Stat. 1426; Oct. 27, 1972, P.L. 92-576, § 18(a), 86 Stat. 1263; Sept. 28, 1984, P.L. 98-426, §§ 4(b), 5(a)(1), (b), 98 Stat. 1641.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of such Act, consult USCS Tables volumes.
Amendments:

1972. Act Oct. 27, 1972 (effective 30 days after enactment on 10/27/72, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), substituted this section for one which read: "The liability of an employer prescribed in section 4 shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this Act, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this Act, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.".

1984. Act Sept. 28, 1984, § 4(b) (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), in subsec. (a), inserted the sentence beginning "For purposes of this subsection, ...".

Sections 5(a)(1) and 5(b) of such Act further (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), in subsec. (b), substituted "If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer." for "If such person was employed by the vessel to provide ship building or repair service, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing ship building or repair services to the vessel."; and added subsec. (c).
Other provisions:

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 906 Compensation.

(a) Time for commencement. No compensation shall be allowed for the first three days of the disability, except the benefits provided for in section 7 [*33 USCS § 907*]: Provided, however, That in case the injury results in disability of more than Fourteen days the compensation shall be allowed from the date of the disability.

(b) Maximum rate of compensation.

(1) Compensation for disability or death (other than compensation for death required by this Act to be paid in a lump sum) shall not exceed an amount equal to 200 per centum of the applicable national average weekly wage, as determined by the Secretary under paragraph (3).

(2) Compensation for total disability shall not be less than 50 per centum of the applicable national average weekly wage determined by the Secretary under paragraph (3), except that if the employee's average weekly wages as computed under section 10 are less than 50 per centum of such national average weekly wage, he shall receive his average weekly wages as compensation for total disability.

(3) As soon as practicable after June 30 of each year, and in any event prior to October 1 of such year, the Secretary shall determine the national average weekly wage for the three consecutive calendar quarters ending June 30. Such determination shall be the applicable national average weekly wage for the period beginning with October 1 of that year and ending with September 30 of the next year. The initial determination under this paragraph shall be made as soon as practicable after the enactment of this subsection.

(c) Applicability of determinations. Determinations under subsection (b)(3) with respect to a period shall apply to employees or survivors currently receiving compensation for permanent total disability or death benefits during such period, as well as those newly awarded compensation during such period.

(d) [Redesignated]

Legislative History

(March 4, 1927, ch 509, § 6, 44 Stat. 1426; June 24, 1948, ch 623, § 1, 62 Stat. 602; July 26, 1956, ch 735, § 1, 70 Stat. 654; July 14, 1961, P.L. 87-87, § 1, 75 Stat. 203; Oct. 27, 1972, P.L. 92-576, §§ 4, 5(a), 86 Stat. 1252; Sept. 28, 1984, P.L. 98-426, § 6, 98 Stat. 1641.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Amendments:

1948. Act June 24, 1948, in subsec. (b), substituted "$ 35" for "$ 25"; substituted "and compensation for total disability shall not be less than $ 12 per week" for "nor be less than $ 8 per week"; and substituted "average weekly wages, as computed under section 10, are less than $ 12 per week, he shall receive as compensation for total disability his average weekly wages" for "wages at the time of injury are less than $ 8 per week he shall receive his full weekly wages".

1956. Act July 26, 1956, in subsec. (a), substituted "three days" for "seven days", and substituted "twenty-eight days" for "forty-nine days"; in subsec. (b), substituted "$ 54" for "$ 35", and substituted "$ 18" for "$ 12" in two places.

1961. Act July 14, 1961, substituted subsection (6) for one that read: "(b) Compensation for disability shall not exceed $ 54 per week and compensation for total disability shall not be less than $ 18 per week: Provided, however, That if the employee's average weekly wages, as computed under section 10, are less than $ 18 per week he shall receive as compensation for total disability his average weekly wages.".

1972. Act Oct. 27, 1972 (effective 30 days after enactment on 10/27/72, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), in subsec. (a), substituted "more than fourteen days" for "more than twenty-eight days"; substituted subsec. (b) for one which read: "Compensation for disability shall not exceed $ 70 per week and compensation for total disability shall not be less than $ 18 per week: Provided, however, That, if the employee's average weekly wages, as computed under section 10, are less than $ 18 per week, he shall receive as compensation for total disability his average weekly wages."; and added subsecs. (c) and (d).

1984. Act Sept. 28, 1984, § 6(a) (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), in subsec. (b), substituted para. (1) for one which read:

(1) Except as provided in subsection (c), compensation for disability shall not exceed the following percentages of the applicable national average weekly wage as determined by the Secretary under paragraph (3):

(A) 125 per centum of $ 167, whichever is greater, during the period ending September 30, 1973.

(B) 150 per centum during the period beginning October 1, 1973, and ending September 30, 1974.

(C) 175 per centum during the period beginning October 1, 1974, and ending September 30, 1975.

(D) 200 per centum beginning October 1, 1975.".

Section 6(b) of such Act further (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), deleted subsec. (c), which read: "The maximum rate of compensation for a nonappropriated fund instrumentality employee shall be equal to 66 2/3 per centum of the maximum rate of basic pay established for a Federal employee in grade GS-12 by *section 5332 of title 5, United States Code*, and the minimum rate of compensation for such an employee shall be equal to 66 2/3 per centum of the minimum rate of basic pay established for a Federal employee in grade GS-2 by such section."; redesignated subsec. (d) as subsec. (c), and in subsec. (c) as as redesignated, substituted "under subsection (b)(3)" for "under this subsection".

Other provisions:

Application of amendments made by Act June 24, 1948. Act June 24, 1948, ch 623, § 6, 62 Stat. 604, provided: "Provisions of this Act [which, among other things, amended this section; for full classification of this Act, consult

USCS Tables volumes] shall be applicable only to injuries or deaths occurring on or after the effective date hereof [June 24, 1948].".

Application of amendments made by Act July 26, 1956. Act July 26, 1956, ch 735, § 9, 70 Stat. 656, provided: "The amendments made by the first section, and sections 2, 4, and 5 of this Act [which, among other things, amended this section; for full classification of this Act, consult USCS Tables volumes] shall be applicable only with respect to injuries and death occurring on or after the date of enactment of this Act [July 26, 1956] notwithstanding the provisions of the Act of December 2, 1942, as amended (*42 U.S.C. sec. 1701* and following).".

Application of amendments made by Act July 14, 1961. Act July 14, 1961, P.L. 87-87, § 4, 75 Stat. 204, provided: "The amendments made by the foregoing provisions of this Act [which, among other things, amended this section; for full classification of this Act, consult the USCS Tables volume] shall become effective as to injuries or death sustained on or after the date of enactment [July 14, 1961].".

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 907 Medical services and supplies.

(a) General requirement. The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require.

(b) Physician selection; administrative supervision; change of physicians and hospitals. The employee shall have the right to choose an attending physician authorized by the Secretary to provide medical care under this Act as hereinafter provided. If, due to the nature of the injury, the employee is unable to select his physician and the nature of the injury requires immediate medical treatment and care, the employer shall select a physician for him. The Secretary shall actively supervise the medical care rendered to injured employees, shall require periodic reports as to the medical care being rendered to injured employees, shall have authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished, and may, on his own initiative or at the request of the employer, order a change of physicians or hospitals when in his judgment such change is desirable or necessary in the interest of the employee or where the charges exceed those prevailing within the community for the same or similar services or exceed the provider's customary charges. Change of physicians at the request of employees shall be permitted in accordance with regulations of the Secretary.

(c) Physicians and health care providers not authorized to render medical care or provide medical services.

(1)

(A) The Secretary shall annually prepare a list of physicians and health care providers in each compensation district who are not authorized to render medical care or provide medical services under this Act. The names of physicians and

health care providers contained on the list required under this subparagraph shall be made available to employees and employers in each compensation district through posting and in such other forms as the Secretary may prescribe.

(B) Physicians and health care providers shall be included on the list of those not authorized to provide medical care and medical services pursuant to subparagraph (A) when the Secretary determines under this section, in accordance with the procedures provided in subsection (j), that such physician or health care provider--

(i) has knowingly and willfully made, or caused to be made, any false statement or misrepresentation of a material fact for use in a claim for compensation or claim for reimbursement of medical expenses under this Act;

(ii) has knowingly and willfully submitted, or caused to be submitted, a bill or request for payment under this Act containing a charge which the Secretary finds to be substantially in excess of the charge for the service, appliance, or supply prevailing within the community or in excess of the provider's customary charges, unless the Secretary finds there is good cause for the bill or request containing the charge;

(iii) has knowingly and willfully furnished a service, appliance, or supply which is determined by the Secretary to be substantially in excess of the need of the recipient thereof or to be of a quality which substantially fails to meet professionally recognized standards;

(iv) has been convicted under any criminal statute (without regard to pending appeal thereof) for fraudulent activities in connection with any Federal or State program for which payments are made to physicians or providers of similar services, appliances, or supplies; or

(v) has otherwise been excluded from participation in such program.

(C) Medical services provided by physicians or health care providers who are named on the list published by the Secretary pursuant to subparagraph (A) of this section shall not be reimbursable under this Act; except that the Secretary shall direct the reimbursement of medical claims for services rendered by such physicians or health care providers in cases where the services were rendered in an emergency.

(D) A determination under subparagraph (B) shall remain in effect for a period of not less than three years and until the Secretary finds and gives notice to the public that there is reasonable assurance that the basis for the determination will not reoccur.

(E) A provider of a service, appliance, or supply shall provide to the Secretary such information and certification as the Secretary may require to assure that this subsection is enforced.

(2) Whenever the employer or carrier acquires knowledge of the employee's injury, through written notice or otherwise as prescribed by the Act, the employer or carrier shall forthwith authorize medical treatment and care from a physician selected by an employee pursuant to subsection (b). An employee may not select a physician who is on the list required by paragraph (1) of this subsection. An employee may not change physicians after his initial choice unless the employer, carrier, or deputy commissioner has given prior consent for such change. Such consent shall be given in cases where an employee's initial choice was not of a specialist whose services are necessary for and appropriate to the proper care and treatment of the compensable injury or disease. In all other cases, consent may be given upon a showing of good cause for change.

(d) Request of treatment or services prerequisite to recovery of expenses; formal report of injury and treatment; suspension of compensation for refusal of treatment or examination; justification.

(1) An employee shall not be entitled to recover any amount expended by him for medical or other treatment or services unless--

(A) the employer shall have refused or neglected a request to furnish such services and the employee has complied with subsections (b) and (c) and the applicable regulations; or

(B) the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide or authorize same.

(2) No claim for medical or surgical treatment shall be valid and enforceable against such employer unless, within ten days following the first treatment, the physician giving such treatment furnishes to the employer and the deputy commissioner a report of such injury or treatment, on a form prescribed by the Secretary. The Secretary may excuse the failure to furnish such report within the ten-day period whenever he finds it to be in the interest of justice to do so.

(3) The Secretary may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee.

(4) If at any time the employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the Secretary or administrative law judge may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time

during the period of such suspension, unless the circumstances justified the refusal.

(e) Physical examination; medical questions; report of physical impairment; review or reexamination; costs. In the event that medical questions are raised in any case, the Secretary shall have the power to cause the employee to be examined by a physician employed or selected by the Secretary and to obtain from such physician a report containing his estimate of the employee's physical impairment and such other information as may be appropriate. Any party who is dissatisfied with such report may request a review or reexamination of the employee by one or more different physicians employed or selected by the Secretary. The Secretary shall order such review or reexamination unless he finds that it is clearly unwarranted. Such review or reexamination shall be completed within two weeks from the date ordered unless the Secretary finds that because of extraordinary circumstances a longer period is required. The Secretary shall have the power in his discretion to charge the cost of examination or review under this subsection to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk, in appropriate cases, or to the special fund in section 44 [*33 USCS § 944*].

(f) Place of examination; exclusion of physicians other than examining physician of Secretary; good cause for conclusions of other physicians respecting impairment; examination by employer's physician; suspension of proceedings and compensation for refusal of examination. An employee shall submit to a physical examination under subsection (e) at such place as the Secretary may require. The place, or places, shall be designated by the Secretary and shall be reasonably convenient for the employee. No physician selected by the employer, carrier, or employee shall be present at or participate in any manner in such examination, nor shall conclusions of such physicians as to the nature or extent of impairment or the cause of impairment be available to the examining physician unless otherwise ordered, for good cause, by the Secretary. Such employer or carrier shall, upon request, be entitled to have the employee examined immediately thereafter and upon the same premises by a qualified physician or physicians in the presence of such physician as the employee may select, if any. Proceedings shall be suspended and no compensation shall be payable for any period during which the employee may refuse to submit to examination.

(g) Fees and charges for examinations, treatment, or service; limitation; regulations. All fees and other charges for medical examinations, treatment, or service shall be limited to such charges as prevail in the community for such treatment, and shall be subject to regulation by the Secretary. The Secretary shall issue regulations limiting the nature and extent of medical expenses chargeable against the employer without authorization by the employer or the Secretary.

(h) Third party liability. The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party not in the same employ, or that suit has been brought against such third party. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment in like manner as provided in section 33(b) of this Act [*33 USCS § 933(b)*].

(i) Physicians' ineligibility for subsection (e) physical examinations and reviews because of workmen's compensation claim employment or fee acceptance or participation. Unless the parties to the claim agree, the Secretary shall not employ or select any physician for the purpose of making examinations or reviews under subsection (e) of this section who, during such employment, or during the period of two years prior to such employment, has been employed by, or

accepted or participated in any fee relating to a workmen's compensation claim from any insurance carrier or any self-insurer.

(j) Procedure; judicial review.

(1) The Secretary shall have the authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out the provisions of subsection (c), including the nature and extent of the proof and evidence necessary for actions under this section and the methods of taking and furnishing such proof and evidence.

(2) Any decision to take action with respect to a physician or health care provider under this section shall be based on specific findings of fact by the Secretary. The Secretary shall provide notice of these findings and an opportunity for a hearing pursuant to *section 556 of title 5, United States Code,* for a provider who would be affected by a decision under this section. A request for a hearing must be filed with the Secretary within thirty days after notice of the findings is received by the provider making such request. If a hearing is held, the Secretary shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse the findings of fact and proposed action under this section.

(3) For the purpose of any hearing, investigation, or other proceeding authorized or directed under this section, the provisions of section [sections] 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act (*15 U.S.C. 49, 50*) shall apply to the jurisdiction, powers, and duties of the Secretary or any officer designated by him.

(4) Any physician or health care provider, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision, but the pendency of such review shall not operate as a stay upon the effect of such decision. Such action shall be brought in the court of appeals of the United States for the judicial circuit in which the plaintiff resides or has his principal place of business, or the Court of Appeals for the District of Columbia. As part of his answer, the Secretary shall file a certified copy of the transcript of the record of the hearing, including all evidence submitted in connection therewith. The findings of fact of the Secretary, if based on substantial evidence in the record as a whole, shall be conclusive.

(k) Refusal of treatment on religious grounds.

(1) Nothing in this Act prevents an employee whose injury or disability has been established under this Act from relying in good faith on treatment by prayer or spiritual means alone, in accordance with the tenets and practice of a recognized church or religious denomination, by an accredited practitioner of such recognized church or religious denomination, and on nursing services rendered in accordance with such tenets and practice, without suffering loss or

diminution of the compensation or benefits under this Act. Nothing in this subsection shall be construed to except an employee from all physical examinations required by this Act.

(2) If an employee refuses to submit to medical or surgical services solely because, in adherence to the tenets and practice of a recognized church or religious denomination, the employee relies upon prayer or spiritual means alone for healing, such employee shall not be considered to have unreasonably refused medical or surgical treatment under subsection (d).

Legislative History

(March 4, 1927, ch 509, § 7, 44 Stat. 1427; May 26, 1934, ch 354, § 1, 48 Stat. 806; June 25, 1938, ch 685, §§ 2, 3, 52 Stat. 1165; Sept. 13, 1960, P.L. 86-757, 74 Stat. 900; Oct. 27, 1972, P.L. 92-576 § 6, 86 Stat. 1254; Sept. 28, 1984, P.L. 98-426, § 7, 98 Stat. 1642.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of such Act, consult USCS Tables volumes.
Explanatory notes:

The bracketed word "sections" was inserted in subsec. (j)(3) as the word probably intended by Congress.
Amendments:

1934. Act May 26, 1934, in subsec. (a), added the last sentence.

1938. Act June 25, 1938, in subsec. (a), capitalized the word "commission" and inserted the fourth sentence; and added subsec. (d).

1960. Act Sept. 13, 1960, substituted this section for one which read:

(a) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for such period as the nature of the injury or the process of recovery may require. If the employer fails to provide the same, after request by the injured employee, such injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide the same; nor shall any claim for medical or surgical treatment be valid and enforceable, as against such employer, unless within twenty days following the first treatment the physician giving such treatment furnish to the employer and the deputy commissioner a report of such injury and treatment, on a form prescribed by the Commission. The deputy commissioner may, however, excuse the failure to furnish such report within twenty days when he finds it to be in the interest of justice to do so, and he may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee. If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment, the deputy commissioner may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal.

(b) Whenever in the opinion of the deputy commissioner a physician has not impartially estimated the degree of permanent disability or the extent of temporary disability of any injured employee, the deputy commissioner shall have the power to cause such employee to be examined by a physician selected by the deputy commissioner and to obtain from such physician a report containing his estimate of such disabilities. If the report of such physician shows that the estimate of the physician has not been impartial from the standpoint of such employee, the deputy commissioner shall have the power in his discretion to charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk.

(c) All fees and other charges for such treatment or service shall be limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living, and shall be subject to regulation by the deputy commissioner.

(d) The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party, not in the same employ, unless and until notice of election to sue has been given as required by section 33(a) or suit has been brought against such third party without the giving of such notice. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment in like manner as provided in section 33(b) of this Act.".

1972. Act Oct. 27, 1972 (effective 30 days after enactment on 10/27/72, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), substituted this section for one which read:

(a) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require.

(b) The employee shall have the right to choose an attending physician from a panel of physicians to be named by the employer subject to the provisions of subsection (c) of this section. If, due to the nature of the injury, the employee is unable to select his physician from a panel and the nature of the injury requires immediate medical treatment and care, the employer shall select a physician for him from the panel. Nothing contained in this section shall limit the right of the employee to make a second choice of physician from such panel. The deputy commissioner may, under rules prescribed by the Secretary, permit an injured employee to select a physician not on the panel when specialized services are needed or in unusual circumstances. The deputy commissioner shall have authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished and shall have authority to order a change of physicians or hospitals when in his judgment such change is desirable or necessary.

(c) The deputy commissioner shall approve the qualifications of the panel of physicians named by the employer and shall determine the number of physicians to be named. In determining the size of the panel, he shall take into account the number of competent, suitable, and impartial physicians conveniently available to the community in which the medical service is required. Every employer shall post the names and addresses of the physicians on his panel in such manner as to afford his employees reasonable notice thereof.

(d) If the employer fails to provide the medical or other treatment, services, and supplies required to be furnished by subsection (a), after request by the injured employee, or fails to maintain a panel of physicians as required by subsection (c), or fails to permit the employee to choose an attending physician from such panel, such injured employee may procure such medical or other treatment, services, and supplies and select a physician to render treatment and services at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide the same; nor shall any claim for medical or surgical treatment be valid and enforceable, as against such employer, unless within twenty days following the first treatment the physician giving such treatment furnish to the employer and the deputy commissioner a report of such injury and treatment, on a form prescribed by the Commission. The deputy commissioner may, however, excuse the failure to furnish such report within twenty days when he finds it to be in the interest of justice to do so, and he may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee. If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment, the deputy commissioner may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal.

(e) Whenever in the opinion of the deputy commissioner a physician has not impartially estimated the degree of permanent disability or the extent of temporary disability of any injured employee, the deputy commissioner shall have the power to cause such employee to be examined by a physician selected by the deputy commissioner and to obtain from such physician a report containing his estimate of such disabilities. If the report of such physician shows that the estimate of the physician has not been impartial from the standpoint of such employee, the deputy commissioner shall have the power in his discretion to charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk.

(f) All fees and other charges for such treatment or service shall be limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living, and shall be subject to regulation by the deputy commissioner.

(g) The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party not in the same employ, or suit has been brought against such third party. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment in like manner as provided in section 33(b) of this Act.".

1984. Act Sept. 28, 1984, § 7(a), (e) (effective 90 days after enactment on 9/28/84, as provided by § 28(b) of such Act, which appears as *33 USCS § 901* note), in subsec. (b), inserted "or where the charges exceed those prevailing within the community for the same or similar services or exceed the provider's customary charges"; and added subsec. (k).

Section 7(b)-(d) of such Act further (effective 90 days after enactment on 9/28/84, as provided by § 28(e)(2) of such Act, which appears as *33 USCS § 901* note), substituted subsec. (c) for one which read: "The Secretary may designate the physicians who are authorized to render medical care under the Act. The names of physicians so designated in the

community shall be made available to employees through posting or in such other form as the Secretary may prescribe."; substituted subsec. (d) for one which read: "An employee shall not be entitled to recover any amount expended by him for medical or other treatment or services unless he shall have requested the employer to furnish such treatment or services, or to authorize provision of medical or surgical services by the physician selected by the employee, and the employer shall have refused or neglected to do so, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide or authorize the same; nor shall any claim for medical or surgical treatment be valid and enforceable, as against such employer, unless within ten days following the first treatment the physician giving such treatment furnish to the employer and the Secretary a report of such injury and treatment, on a form prescribed by the Secretary. The Secretary may, however, excuse the failure to furnish such report within ten days when he finds it to be in the interest of justice to do so, and he may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee. If at any time the employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the Secretary may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal."; and added subsec. (j)
Other provisions:

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of amendments made by Act Sept. 28, 1984, generally. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

Application of amendments made by Act Sept. 28, 1984 to *30 USCS §§ 901 et seq.* claims. Act Sept. 28, 1984, P.L. 98-426, § 28(h)(1), 98 Stat. 1655, provides: "The amendments made by section 7 of this Act [amending subsecs. (b)-(d) and adding subsecs. (j), (k) of this section] shall not apply to claims filed under the Black Lung Benefits Act (*30 U.S.C. 901 et seq.*).".

§ 908 Compensation for disability.

Compensation for disability shall be paid to the employee as follows:

(a) Permanent total disability: In case of total disability adjudged to be permanent 66 2/3 per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

(b) Temporary total disability: In case of disability total in character but temporary in quality 66 2/3 per centum of the average weekly wages shall be paid to the employee during the continuance thereof.

(c) Permanent partial disability: In case of disability partial in character but permanent in quality the compensation shall be 66 2/3 per centum of the average weekly wages, which shall be in addition to compensation for temporary total

disability or temporary partial disability paid in accordance with subdivision (b) or subdivision (e) of this section, respectively, and shall be paid to the employee, as follows:

(1) Arm lost, three hundred and twelve weeks' compensation.

(2) Leg lost, two hundred and eighty-eight weeks' compensation.

(3) Hand lost, two hundred and forty-four weeks' compensation.

(4) Foot lost, two hundred and five weeks' compensation.

(5) Eye lost, one hundred and sixty weeks' compensation.

(6) Thumb lost, seventy-five weeks' compensation.

(7) First finger lost, forty-six weeks' compensation.

(8) Great toe lost, thirty-eight weeks' compensation.

(9) Second finger lost, thirty weeks' compensation.

(10) Third finger lost, twenty-five weeks' compensation.

(11) Toe other than great toe lost, sixteen weeks' compensation.

(12) Fourth finger lost, fifteen weeks' compensation.

(13) Loss of hearing:

(A) Compensation for loss of hearing in one ear, fifty-two weeks.

(B) Compensation for loss of hearing in both ears, two-hundred weeks.

(C) An audiogram shall be presumptive evidence of the amount of hearing loss sustained as of the date thereof, only if

(i) such audiogram was administered by a licensed or certified audiologist or a physician who is certified in otolaryngology,

(ii) such audiogram, with the report thereon, was provided to the employee at the time it was administered, and

(iii) no contrary audiogram made at that time is produced.

(D) The time for filing a notice of injury, under section 12 of this Act [*33 USCS § 912*], or a claim for compensation, under section 13 of this Act [*33 USCS § 913*], shall not begin to run in connection with any claim for loss of hearing under this section, until the employee has received an audiogram, with the accompanying report thereon, which indicates that the employee has suffered a loss of hearing.

(E) Determinations of loss of hearing shall be made in accordance with the guides for the evaluation of permanent impairment as promulgated and modified from time to time by the American Medical Association.

(14) Phalanges: Compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange shall be one-half of the compensation for loss of the entire digit.

(15) Amputated arm or leg: Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of the arm or leg; but, if amputated between the elbow and the wrist or the knee and the ankle, shall be the same as for loss of a hand or foot.

(16) Binocular vision or per centum of vision: Compensation for loss of binocular vision or for 80 per centum or more of the vision of an eye shall be the same as for loss of the eye.

(17) Two or more digits: Compensation for loss of two or more digits, or one or more phalanges of two or more digits, of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot.

(18) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(20) Disfigurement: Proper and equitable compensation not to exceed $ 7,500 shall be awarded for serious disfigurement of the face, head, or neck or of other normally exposed areas likely to handicap the employee in securing or maintaining employment.

(21) Other cases: In all other cases in the class of disability, the compensation shall be 66 2/3 per centum of the difference between the average weekly wages of the employee and the employee's wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of partial disability.

(22) In any case in which there shall be a loss of, or loss of use of, more than one member or parts of more than one member set forth in paragraphs (1) to (19) of this subdivision, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subdivision shall apply.

(23) Notwithstanding paragraphs (1) through (22), with respect to a claim for permanent partial disability for which the average weekly wages are determined under section 10(d)(2) [*33 USCS § 910(d)(2)*], the compensation shall be 66 2/3 per centum of such average weekly wages multiplied by the percentage of permanent impairment, as determined under the guides referred to in section 2(10) [*33 USCS § 902(10)*], payable during the continuance of such impairment.

(d)

(1) If an employee who is receiving compensation for permanent partial disability pursuant to section 8(c)(1)-(20) [subsec. (c)(1)-(20) of this section] dies from causes other than the injury, the total amount of the award unpaid at the time of death shall be payable to or for the benefit of his survivors, as follows:

(A) if the employee is survived only by a widow or widower, such unpaid amount of the award shall be payable to such widow or widower,

(B) if the employee is survived only by a child or children, such unpaid amount of the award shall be paid to such child or children in equal shares,

(C) if the employee is survived by a widow or widower and a child or children, such unpaid amount of the award shall be payable to such survivors in equal shares,

(D) if there be no widow or widower and no surviving child or children, such unpaid amount of the award shall be paid to the survivors specified in section 9(d) [*33 USCS § 909(d)*] (other than a wife, husband, or child); and the amount to be paid each such survivor shall be determined by mul-tiplying such unpaid amount of the award by the appropriate percentage specified in section 9(d) [*33 USCS § 909(d)*], but if the aggregate amount to which all such survivors are entitled, as so determined, is less than such unpaid amount of the award, the excess amount shall be divided among such survivors pro rata according to the amount otherwise payable to each under this subparagraph.

(2) Notwithstanding any other limitation in section 9 [*33 USCS § 909*], the total amount of any award for permanent partial disability pursuant to section 8(c)(1)-(20) [subsec. (c)(1)-(20) of this section] unpaid at time of death shall be payable in full in the appropriate distribution.

(3) An award for disability may be made after the death of the injured employee. Except where compensation is payable under section 8(c)(21) [subsec.(c)(21) of this section], if there be no survivors as prescribed in this section, then the compensation payable under this subsection shall be paid to the special fund established under section 44(a) of this Act [*33 USCS § 944(a)*].

(4) [Redesignated]

(e) Temporary partial disability: In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be two-thirds of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or another employment, to be paid during the

continuance of such disability, but shall not be paid for a period exceeding five years.

(f) Injury increasing disability:

(1) In any case in which an employee having an existing permanent partial disability suffers injury, the employer shall provide compensation for such disability as is found to be attributable to that injury based upon the average weekly wages of the employee at the time of the injury. If following an injury falling within the provisions of section 8(c)(1)-(20) [subsec. (c)(1)-(20) of this section], the employee is totally and permanently disabled, and the disability is found not to be due solely to that injury, the employer shall provide compensation for the applicable prescribed period of weeks provided for in that section for the subsequent injury, or for one hundred and four weeks, whichever is the greater, except that, in the case of an injury falling within the provisions of section 8(c)(13) [subsec. (c)(13) of this section], the employer shall provide compensation for the lesser of such periods. In all other cases of total permanent disability or of death, found not to be due solely to that injury, of an employee having an existing permanent partial disability, the employer shall provide in addition to compensation under paragraphs (b) and (e) of this section, compensation payments or death benefits for one hundred and four weeks only. If following an injury falling within the provisions of 8(c)(1)-(20) [subsec. (c)(1)-(20) of this section], the employee has a permanent partial disability and the disability is found not to be due solely to that injury, and such disability is materially and substantially greater than that which would have resulted from the subsequent injury alone, the employer shall provide compensation for the applicable period of weeks provided for in that section for the subsequent injury, or for one hundred and four weeks, whichever is the greater, except that, in the case of an injury falling within the provisions of section 8(c)(13) [subsec. (c)(13) of this section], the employer shall provide compensation for the lesser of such periods.

In all other cases in which the employee has a permanent partial disability, found not to be due solely to that injury, and such disability is materially and substantially greater than that which would have resulted from the subsequent injury alone, the employer shall provide in addition to compensation under paragraphs (b) and (e) of this section, compensation for one hundred and four weeks only.

(2)

(A) After cessation of the payments for the period of weeks provided for herein, the employee or his survivor entitled to benefits shall be paid the remainder of the compensation that would be due out of the special fund established in section 44 [*33 USCS § 944*], except that the special fund shall not assume responsibility with respect to such benefits (and such payments shall not be subject to cessation) in the case of any employer who fails to comply with section 32(a) [*33 USCS § 932(a)*].

(B) After cessation of payments for the period of weeks provided for in this subsection, the employer or carrier responsible for payment of compensation shall remain a party to the claim, retain access to all records relating to the claim, and in all other respects retain all rights granted under this Act prior to cessation of such payments.

(3) Any request, filed after the date of enactment of the Longshore and Harbor Workers' Compensation Amendments of 1984 [Sept. 28, 1984], for apportionment of liability to the special fund established under section 44 of this Act [*33*

USCS § 944] for the payment of compensation benefits, and a statement of the grounds therefore, shall be presented to the deputy commissioner prior to the consideration of the claim by the deputy commissioner. Failure to present such request prior to such consideration shall be an absolute defense to the special fund's liability for the payment of any benefits in connection with such claim, unless the employer could not have reasonably anticipated the liability of the special fund prior to the issuance of a compensation order.

(g) Maintenance for employees undergoing vocational rehabilitation: An employee who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the Secretary as provided by section 39(c) of this Act [*33 USCS § 939(c)*], is being rendered fit to engage in a remunerative occupation, shall receive additional compensation necessary for his maintenance, but such additional compensation shall not exceed $ 25 a week. The expense shall be paid out of the special fund established in section 44 [*33 USCS § 944*].

(h) The wage-earning capacity of an injured employee in cases of partial disability under subdivision (c)(21) of this section or under subdivision (e) of this section shall be determined by his actual earnings if such actual earnings fairly and reasonably represent his wage-earning capacity: Provided, however, That if the employee has no actual earnings or his actual earnings do not fairly and reasonably represent his wage-earning capacity, the deputy commissioner may, in the interest of justice, fix such wage-earning capacity as shall be reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition, including the effect of disability as it may naturally extend into the future.

(i)

(1) Whenever the parties to any claim for compensation under this Act, including survivors benefits, agree to a settlement, the deputy commissioner or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress. Such settlement may include future medical benefits if the parties so agree. No liability of any employer, carrier, or both for medical, disability, or death benefits shall be discharged unless the application for settlement is approved by the deputy commissioner or administrative law judge. If the parties to the settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within thirty days after submission for approval.

(2) If the deputy commissioner disapproves an application for settlement under paragraph (1), the deputy commissioner shall issue a written statement within thirty days containing the reasons for disapproval. Any party to the settlement may request a hearing before an administrative law judge in the manner prescribed by this Act. Following such hearing, the administrative law judge shall enter an order approving or rejecting the settlement.

(3) A settlement approved under this section shall discharge the liability of the employer or carrier, or both. Settlements may be agreed upon at any stage of the proceeding including after entry of a final compensation order.

(4) The special fund shall not be liable for reimbursement of any sums paid or payable to an employee or any beneficiary under such settlement, or otherwise voluntarily paid prior to such settlement by the employer or carrier, or both.

(j)

(1) The employer may inform a disabled employee of his obligation to report to the employer not less than semiannually any earnings from employment or self-employment, on such forms as the Secretary shall specify in regulations.

(2) An employee who--

(A) fails to report the employee's earnings under paragraph (1) when requested, or

(B) knowingly and willfully omits or understates any part of such earnings, and who is determined by the deputy commissioner to have violated clause (A) or (B) of this paragraph, forfeits his right to compensation with respect to any period during which the employee was required to file such report.

(3) Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee in any amount and on such schedule as determined by the deputy commissioner.

Legislative History

(March 4, 1927, ch 509, § 8, 44 Stat. 1427; May 26, 1934, ch 354, §§ 2, 3, 48 Stat. 806; June 25, 1938, ch 685, §§ 4, 5, 52 Stat. 1165; June 24, 1948, ch 623, § 2, 62 Stat. 602; July 26, 1956, ch 735, §§ 2, 3, 70 Stat. 655; Oct. 27, 1972, P.L. 92-576, §§ 5(c), 7, 9, 20(a), 86 Stat. 1253, 1255, 1257, 1264; Sept. 28, 1984, P.L. 98-426, §§ 8, 27(a)(2), 98 Stat. 1644, 1654.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Amendments:

1934. Act May 26, 1934, in subsec. (c), inserted "which shall be in addition to compensation for temporary total disability paid in accordance with subdivision (b) of this section,", substituted "two hundred and eighty" for "three hundred and twelve", "two hundred and forty-eight" for "two hundred and eighty-eight", "two hundred and twelve" for "two hundred and forty-four", "one hundred and seventy-three" for "two hundred and five", "one hundred and forty" for "one hundred and sixty", "fifty-one" for "seventy-five" "twenty-eight" for "forty-six", "twenty-six" for "thirty-eight", "eighteen" for "thirty", "seventeen" for "twenty-five", "eight" for "sixteen", and "seven" for "fifteen", and amended para.

(22) in its entirety.

1938. Act June 25, 1938, in subsec. (c)(22), inserted added "except that where the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subdivision shall apply"; and added subsecs. (h) and (i).

1948. Act June 24, 1948 (applicable to deaths and injuries occurring after 6/24/48, as provided by § 6 of such Act, which appears as *33 USCS § 906* note), in subsec. (c), inserted "or temporary partial disability", "or subdivision (e)", and "respectively".

1956. Act July 26, 1956 (applicable to deaths and injuries occurring after 7/26/56, as provided by § 9 of such Act, which appears as *33 USCS § 906* note), in subsec. (c), substituted "three hundred and twelve" for "two hundred and eighty-eight", "two hundred and eighty-eight" for "two hundred and forty-eight", "two hundred and forty-four" for "two hundred and twelve", "two hundred and five" for "one hundred and seventy-three", "one hundred and sixty" for "one hundred and forty", "seventy-five" for "fifty-one", "forty-six" for "twenty-eight", "thirty-eight" for "twenty-six", "thirty" for "eighteen", "twenty-five" for "seventeen", "sixteen" for "eight", and "fifteen" for "seven"; and, in subsec. (g), substituted "$ 25" for "$ 10".

1972. Act Oct. 27, 1972 (effective 30 days after enactment on 10/27/72, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), in subsec. (c), substituted para. (20) for one which read: "Disfigurement: The deputy commissioner shall award proper and equitable compensation for serious facial or head disfigurement, not to exceed $ 3,500."; substituted subsec. (d) for one which read:

(d) Any compensation to which any claimant would be entitled under subdivision (c) excepting subdivision (c-21) shall, notwithstanding death arising from causes other than the injury, be payable to and for the benefit of the persons following:

(1) If there be a surviving wife or dependent husband and no child of the deceased under the age of eighteen years, to such wife or dependent husband.

(2) If there be a surviving wife or dependent husband and surviving child or children of the deceased under the age of eighteen years, one half shall be payable to the surviving wife or dependent husband and the other half to the surviving child or children.

(3) The deputy commissioner may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child. In the absence of such a requirement the appointment for such a purpose shall not be necessary.

(4) If there be a surviving child or children of the deceased under the age of eighteen years, but no surviving wife or dependent husband, then to such child or children.

(5) An award for disability may be made after the death of the injured employee.";

Such Act further substituted subsec. (f) for one which read: "(f) Injury increasing disability:

(1) If an employee receive an injury which of itself would only cause permanent partial disability but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall provide compensation only for the disability caused by the subsequent injury: Provided, however, That in addition to compensation for such permanent partial disability, and after the cessation of the payments for the prescribed period of weeks, the employee shall be paid the remainder of the compensation that would be due for permanent total disability. Such additional compensation shall be paid out of the special fund established in section 44.

(2) In all other cases in which, following a previous disability, an employee receives an injury which is not covered by (1) of this subdivision, the employer shall provide compensation only for the disability caused by the subsequent injury. In determining compensation for the subsequent injury or for death resulting therefrom, the average weekly wages shall be such sum as will reasonably represent the earning capacity of the employee at the time of the subsequent injury.";

And, such Act further substituted subsec. (i) for one which read: "In cases under subdivision (c)(21) and subdivision (e) of this section, whenever the deputy commissioner determines that it is for the best interests of an injured employee entitled to compensation, he may, with the approval of the Commission, approve agreed settlements of the interested parties, discharging the liability of the employer for such compensation, notwithstanding the provisions of section 15(b) and section 16 of this Act: Provided, That the sum so agreed upon shall be payable in installments as provided in section 14(b), which installments shall be subject to commutation under section 14(j): And provided further, That if the employee should die from causes other than the injury after the Commission has approved an agreed settlement as provided for herein, the sum so approved shall be payable, in the manner prescribed in this subdivision, to and for the benefit of the persons enumerated in subdivision (d) of this section.".

1984. Act Sept. 8, 1984, § 8(a), (c)(2), (e)(1)-(3) (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), in subsec. (c) substituted para. (13) for one which read: "Loss of hearing: Compensation for loss of hearing of one ear, fifty-two weeks. Compensation for loss of hearing of both ears, two hundred weeks.", and added para. (23); in subsec. (f), in para. (1), inserted ", except that, in the case of an injury falling within the provisions of section 8(c)(13), the employer shall provide compensation for the lesser of such periods" wherever appearing, and, in para. (2), designated the existing provisions as subpara. (A), and inserted ", except that the special fund shall not assume responsibility with respect to such benefits (and such payments shall not be subject to cessation) in the case of any employer who fails to comply with section 32(a)".

Section 8(b) of such Act further (effective as provided above), in subsec. (c), in para. (20), substituted "$ 7,500" for "$ 3,500".

Sections 8(c)(1), (e)(4), (e)(5), (g), 27(a)(2) of such Act further (effective as provided above), in subsec. (c), substituted para. (21) for one which read: "Other cases: In all other cases in this class of disability the compensation shall be 66 2/3 per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the deputy commissioner on his own motion or upon application of any party in interest."; in subsec. (f), in para. (2), added subpara. (B), and added para. (3); in subsec. (i), added para. (4); and, in subsec. (g), substituted "Secretary" for "commission".

Section 8(d) of such Act further (effective as provided above), substituted subsec. (d)(3) for one which read: "If an employee who was receiving compensation for permanent partial disability pursuant to section 8(c)(21) dies from causes other than the injury, his survivors shall receive death benefits as provided in section 9(b)-(g) except that the percentage figures therein shall be applied to the weekly compensation payable to the employee at the time of his death multiplied by 1.5, rather than to his average weekly wages.".

Section 8(f) of such Act further (effective 90 days after enactment on 9/28/84, as provided by § 28(b) of such Act, which appears as *33 USCS § 901* note), substituted subsec. (i)(1)-(3) for former subsec. (i), which read:

(i)

(A) Whenever the deputy commissioner determines that it is for the best interests of an injured employee entitled to compensation, he may approve agreed settlements of the interested parties, discharging the liability of the employer for such compensation, notwithstanding the provisions of section 15(b) and section 16 of this Act: Provided, That is the employee should die from causes other than the injury after the deputy commissioner has approved an agreed settlement as provided for herein, the sum so approved shall be payable, in the manner prescribed in this subsection, to and for the benefit of the persons enumerated in subsection (d) of this section.

(B) Whenever the Secretary determines that it is for the best interests of the injured employee entitled to medical benefits, he may approve agreed settlements of the interested parties, discharging the liability of the employer for such medical benefits, notwithstanding the provisions of section 16 of this Act: Provided, That if the employee should die from causes other than the injury after the Secretary has approved an agreed settlement as provided for herein, the sum so approved shall be payable, in the manner prescribed in this subdivision, to and for the benefit of the persons enumerated in subdivision (d) of this section.".

Section 8(h) of such Act further (effective 90 days after enactment on 9/28/84 as provided by § 28(e)(2) of such Act, which appears as *33 USCS § 901* note), added subsec. (j).
Other provisions:

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 909 Compensation for death.

If the injury causes death, the compensation therefore shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(a) Reasonable funeral expenses not exceeding $ 3,000.

(b) If there be a widow or widower and no child of the deceased, to such widow or widower 50 per centum of the average wages of the deceased, during widowhood, or dependent widowerhood, with two years' compensation in one sum upon remarriage; and if there be a surviving child or children of the deceased, the additional amount of 16 2/3 per centum of such wages for each such child; in case of the death or remarriage of such widow or widower, if there be one surviving child of the deceased employee, such child shall have his compensation increased to 50 per centum of such wages, and if there be more than one surviving child of the deceased employee, to such children, in equal parts, 50 per centum of such wages increased by 16 2/3 per centum of such wages for each child in excess of one: Provided, That the total amount payable shall in no case exceed 66 2/3 per centum of such wages. The deputy commissioner having jurisdiction over the claim may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement the appointment of a guardian for such purposes shall not be necessary.

(c) If there be one surviving child of the deceased, but no widow or widower, then for the support of such child 50 per centum of the wages of the deceased; and if there be more than one surviving child of the deceased, but no widow or dependent husband, then for the support of such children, in equal parts 50 per centum of such wages increased by 16 2/3 per centum of such wages for each child in excess of one: Provided, That the total amount payable shall in no case exceed 66 2/3 per centum of such wages.

(d) If there be no widow or widower or child, or if the amount payable to a widow or widower and to children shall be less in the aggregate than 66 2/3 per centum of the average wages of the deceased; then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of the injury, and any other persons who satisfy the definition of the term "dependent" in *section 152 of title 26 of the United States Code*, but are not otherwise eligible under this section, 20 per centum of such wages for the support of each such person during such dependency and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the injury, 25 per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between 66 2/3 per centum of such wages and the amount payable as hereinbefore provided to widow or widower and for the support of surviving child or children.

(e) In computing death benefits, the average weekly wages of the deceased shall not be less than the national average weekly wage as prescribed in section 6(b) [*33 USCS § 906(b)*], but--

(1) the total weekly benefits shall not exceed the lesser of the average weekly wages of the deceased or the benefit which the deceased employee would have been eligible to receive under section 6(b)(1) [*33 USCS § 906(b)(1)*]; and

(2) in the case of a claim based on death due to an occupational disease for which the time of injury (as determined under section 10(i) [*33 USCS § 910(i)*] occurs after the employee has retired, the total weekly benefits shall not exceed one fifty-second part of the employee's average annual earnings during the 52-week period preceding retirement.

(f) All questions of dependency shall be determined as of the time of the injury.

(g) Aliens: Compensation under this chapter to aliens not residents (or about to become nonresidents) of the United States or Canada shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the injury, and except that the commission [Secretary of Labor] may, at its option or upon the application of the insurance carrier shall, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the commission [Secretary of Labor].

Legislative History

(March 4, 1927, ch 509, § 9, 44 Stat. 1429; June 25, 1938, ch 685, § 6, 52 Stat. 1166; June 24, 1948, ch 623, § 3, 62 Stat. 602; July 26, 1956, ch 735, § 4, 70 Stat. 655; July 14, 1961, P.L. 87-87, § 2, 75 Stat. 203; Oct. 27, 1972, P.L. 92-576, § 5(d), 10, 20(c)(2), 86 Stat. 1253, 1257, 1265; Sept. 28, 1984, P.L. 98-426, § 9, 98 Stat. 1647.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
Explanatory notes:

The bracketed words "Secretary of Labor" were inserted in subsec. (g) on the authority of Act Sept. 2, 1984, P.L. 98-426, § 2(c), which amended *33 USCS § 902* by revising para. (6) to refer to the Secretary of Labor rather than the United States Employees' Compensation Commission. See also *5 USCS § 8145*.
Amendments:

1938. Act June 25, 1938, in subsecs. (b), (c), and (d), deleted "under the age of eighteen years" and "until he shall reach the age of eighteen years" relating to surviving child or children of deceased wherever such words appeared.

1948. Act June 24, 1948 (applicable to deaths and injuries occurring after 6/24/48, as provided by § 6 of such Act, which appears as *33 USCS § 906* note), in subsec. (a), substituted "$ 400" for "$ 200", in subsec. (b), inserted "surviving" preceding "wife", and substituted "15 per centum" for "10 per centum" following "the additional amount of"; in subsec. (c), substituted "one surviving child" for "a surviving child or children", "such child 35 per centum" for "each such child 15 per centum", inserted "and if there be more than one surviving child of the deceased, but no widow or dependent husband, then for the support of such children, in equal parts 35 per centum of such wages increased by 15 per centum of such wages for each child in excess of one", and substituted "total amount payable" for "aggregate"; and, in subsec. (e), substituted "$ 52.50" for "$ 37.50" and "$ 18" for "$ 12".

1956. Act July 26, 1956 (applicable to deaths and injuries occurring after 7/26/56, as provided by § 9 of such Act, which appears as *33 USCS § 906* note), in subsec. (e), substituted "$ 81" for "$ 52.50" and "$ 27" for "$ 18".

1961. Act July 14, 1961 (applicable to deaths and injuries occurring after 7/14/61, as provided by § 4 of such Act, which appears as *33 USCS § 906* note), substituted subsec. (e) for one which read: "In computing death benefits the average weekly wages of the deceased shall be considered to have been not more than $ 81 nor less than $ 27 but the total weekly compensation shall not exceed the weekly wages of the deceased.".

1972. Act Oct. 27, 1972 (effective 30 days after enactment on 10/27/72, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), substituted the preliminary matter of this section for "If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:"; in subsec. (a), substituted "$ 1,000" for "$ 400"; in subsecs. (b) and (c), substituted "50" for "35" and "16 2/3 " for "15" wherever such terms occurred; in subsec. (c), substituted "widow or widower" for surviving wife

or dependent husband; substituted the first sentence of subsec. (d) for one which read: "If there be no surviving wife or dependent husband or child or if the amount payable to a surviving wife or dependent husband and to children shall be less in the aggregate than 66 2/3 per centum of the average wages of the deceased; then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of the injury, 15 per centum of such wages for the support of each such person and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the injury, 25 per centum of such wages during such dependency."; and substituted subsec. (e) for one which read: "In computing death benefits the average weekly wages of the deceased shall be considered to have been not more than $ 105 nor less than $ 27 but the total weekly compensation shall not exceed the weekly wages of the deceased.".

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), substituted the introductory matter for matter which read: "If the injury causes death, or if the employee who sustains permanent total disability due to the injury thereafter dies from causes other than the injury, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:"; in subsec. (a), substituted "$ 3,000" for "$ 1,000"; and substituted subsec. (e) for one which read: "In computing death benefits the average weekly wages of the deceased shall be considered to have been not less than the applicable national average weekly wage as prescribed in section 6(b) but the total weekly benefits shall not exceed the average weekly wages of the deceased.".
Other provisions:

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 910 Determination of pay.

Except as otherwise provided in this Act, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

(a) If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same or another employer, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary for a six-day worker and two hundred and sixty times the average daily wage or salary for a five-day worker, which he shall have earned in such employment during the days when so employed.

(b) If the injured employee shall not have worked in such employment during substantially the whole of such year, his average annual earnings, if a six-day worker, shall consist of three hundred times the average daily wage or salary, and, if a five-day worker, two hundred and sixty times the average daily wage or salary, which an employee of the same class working substantially the whole of such immediately preceding year in the same or in similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed.

(c) If either of the foregoing methods of arriving at the average annual earnings of the injured employee can not reasonably and fairly be applied, such average annual earnings shall be such sum as, having regard to the previous

earnings of the injured employee in the employment in which he was working at the time of the injury, and of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, or other employment of such employee, including the reasonable value of the services of the employee if engaged in self-employment, shall reasonably represent the annual earning capacity of the injured employee.

(d)

(1) The average weekly wages of an employee shall be one fifty-second part of his average annual earnings.

(2) Notwithstanding paragraph (1), with respect to any claim based on a death or disability due to an occupational disease for which the time of injury (as determined under subsection (i)) occurs--

(A) within the first year after the employee has retired, the average weekly wages shall be one fifty-second part of his average annual earnings during the 52-week period preceding retirement; or

(B) more than one year after the employee has retired, the average weekly wage shall be deemed to be the national average weekly wage (as determined by the Secretary pursuant to section 6(b) [*33 USCS § 906(b)*]) applicable at the time of the injury.

(e) If it be established that the injured employee was a minor when injured, and that under normal conditions his wages should be expected to increase during the period of disability the fact may be considered in arriving at his average weekly wages.

(f) Effective October 1 of each year, the compensation or death benefits payable for permanent total disability or death arising out of injuries subject to this Act shall be increased by the lesser of--

(1) a percentage equal to the percentage (if any) by which the applicable national weekly wage for the period beginning on such October 1, as determined under section 6(b) [*33 USCS § 906(b)*], exceeds the applicable national average weekly wage, as so determined, for the period beginning with the preceding October 1; or

(2) 5 per centum.

(g) The weekly compensation after adjustment under subsection (f) shall be fixed at the nearest dollar. No adjustment

of less than $ 1 shall be made, but in no event shall compensation or death benefits be reduced.

(h)

(1) Not later than ninety days after the date of enactment of this subsection [Oct. 27, 1972], the compensation to which an employee or his survivor is entitled due to total permanent disability or death which commenced or occurred prior to enactment of this subsection shall be adjusted. The amount of such adjustment shall be determined in accordance with regulations of the Secretary by designating as the employee's average weekly wage the applicable national average weekly wage determined under section 6(b) [*33 USCS § 906(b)*] and (A) computing the compensation to which such employee or survivor would be entitled if the disabling injury or death had occurred on the day following such enactment date and (B) subtracting therefrom the compensation to which such employee or survivor was entitled on such enactment date; except that no such employee or survivor shall receive total compensation amounting to less than that to which he was entitled on such enactment date. Notwithstanding the foregoing sentence, where such an employee or his survivor was awarded compensation as the result of death or permanent total disability at less than the maximum rate that was provided in this Act at the time of the injury which resulted in the death or disability, then his average weekly wage shall be determined by increasing his average weekly wage at the time of such injury by the percentage which the applicable national average weekly wage has increased between the year in which the injury occurred and the first day of the first month following the enactment of this section [Oct. 27, 1972]. Where such injury occurred prior to 1947, the Secretary shall determine, on the basis of such economic data as he deems relevant, the amount by which the employee's average weekly wage shall be increased for the pre-1947 period.

(2) Fifty per centum of any additional compensation or death benefit paid as a result of the adjustment required by paragraphs (1) and (3) of this subsection shall be paid out of the special fund established under section 44 of this Act [*33 USCS § 944*], and 50 per centum shall be paid from appropriations.

(3) For the purposes of subsections (f) and (g) an injury which resulted in permanent total disability or death which occurred prior to the date of enactment of this subsection [Oct. 27, 1972] shall be considered to have occurred on the day following such enactment date.

(i) For purposes of this section with respect to a claim for compensation for death or disability due to an occupational disease which does not immediately result in death or disability, the time of injury shall be deemed to be the date on which the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability.

Legislative History

(March 4, 1927, ch 509, § 10, 44 Stat. 1431; June 24, 1948, ch 623, § 4, 62 Stat. 603; Oct. 27, 1972, P.L. 92-576, § 11, 86 Stat. 1258; Sept. 28, 1984, P.L. 98-426, § 10, 98 Stat. 1647.) HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS*

§§ 901 et seq. For full classification of this Act, consult USCS Tables volumes.
Amendments:

1948. Act June 24, 1948 (applicable to deaths and injuries occurring after 6/24/48, as provided by § 6 of such Act, which appears as *33 USCS § 906* note), in subsec. (a), inserted "for a six-day worker and two hundred and sixty times the average daily wage or salary for a five-day worker,"; in subsec. (b), substituted "if a six-day worker, shall consist of three hundred times the average daily wage or salary, and, if a five-day worker, two hundred and sixty times the average daily wage or salary" for "shall consist of three hundred times the average daily wage or salary"; and in subsec. (c), substituted "average annual" for "annual average", "the injured" for "an injured", and "such average annual earnings" for "such annual earnings", added "in the employment in which he was working at the time of the injury" and "or other employment of such employee, including the reasonable value of the services of the employee if engaged in self-employment", and deleted "in the employment in which he was working at the time of the injury" following "earning capacity of the injured employee".

1972. Act Oct. 27, 1972 (effective 30 days after enactment on 10/27/72, as provided by § 22 of such Act), added subsecs. (f)-(h).

1984. Act Sept. 28, 1984, § 10(a) (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears an *33 USCS § 901* note), in subsec. (d), designated the existing provisions as para. (1) and added para. (2); and added subsec. (i).

Section 10(b) of such Act further (effective on enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note) substituted subsec. (f) for one which read: "Effective October 1 of each year, the compensation or death benefits payable for permanent total disability or death arising out of injuries sustained after the date of enactment of this subsection shall be increased by a percentage equal to the percentage (if any) by which the applicable national weekly wage for the period beginning on such October 1, as determined under section 6(b) exceeds the applicable national average weekly wage, as so determined, for the period beginning with the preceding October 1.".
Other provisions:

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 911 Guardian for minor or incompetent.

The deputy commissioner may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this Act and to exercise the powers granted to or to perform the duties required of such person under this Act.

Legislative History

(March 4, 1927, ch 509, § 11, 44 Stat. 1431.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.

§ 912 Notice of injury or death.

(a) Time limitation. Notice of an injury or death in respect of which compensation is payable under this Act shall be given within thirty days after the date of such injury or death, or thirty days after the employee or beneficiary is aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of a relationship between the injury or death and the employment, except that in the case of an occupational disease which does not immediately result in a disability or death, such notice shall be given within one year after the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability. Notice shall be given

(1) to the deputy commissioner in the compensation district in which the injury or death occurred, and

(2) to the employer.

(b) Form and content. Such notice shall be in writing, shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and shall be signed by the employee or by some person on his behalf, or in case of death, by any person claiming to be entitled to compensation for such death or by a person on his behalf.

(c) Delivery requirements. Notice shall be given to the deputy commissioner by delivering it to him or sending it by mail addressed to his office, and to the employer by delivering it to him or by sending it by mail addressed to him at his last known place of business. If the employer is a partnership, such notice may be given to any partner, or if a corporation, such notice may be given to any agent or officer thereof upon whom legal process may be served or who is in charge of the business in the place where the injury occurred. Each employer shall designate those agents or other responsible officials to receive such notice, except that the employer shall designate as its representatives individuals among first line supervisors, local plant management, and personnel office officials. Such designations shall be made in accordance with regulations prescribed by the Secretary and the employer shall notify his employees and the Secretary of such designation in a manner prescribed by the Secretary in regulations.

(d) Failure to give notice. Failure to give such notice shall not bar any claim under this Act

(1) if the employer (or his agent or agents or other responsible official or officials designated by the employer pursuant to subsection (c)) or the carrier had knowledge of the injury or death,

(2) the deputy commissioner determines that the employer or carrier has not been prejudiced by failure to give such notice, or

(3) if the deputy commissioner excuses such failure on the ground that

(i) notice, while not given to a responsible official designated by the employer pursuant to subsection (c) of this section, was given to an official of the employer or the employer's insurance carrier, and that the employer or carrier was not prejudiced due to the failure to provide notice to a responsible official designated by the employer pursuant to subsection (c), or

(ii) for some satisfactory reason such notice could not be given; nor unless objection to such failure is raised before the deputy commissioner at the first hearing of a claim for compensation in respect of such injury or death.

Legislative History

(March 4, 1927, ch 509, § 12, 44 Stat. 1431; Oct. 27, 1972, P.L. 92-576, § 12(a), 86 Stat. 1259; Sept. 28, 1984, P.L. 98-426, § 11, 98 Stat. 1648.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Amendments:

1972. Act Oct. 27, 1972 (effective 30 days after enactment on 10/27/72, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), substituted subsec. (a) for one which read: "Notice of an injury or death in respect of which compensation is payable under this Act shall be given within thirty days after the date of such injury or death (1) to the deputy commissioner in the compensation district in which such injury occurred and (2) to the employer.".

1984. Act Sept. 28, 1984, § 11(a) (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), substituted subsec. (a) for one which read: "Notice of an injury or death in respect of which compensation is payable under this Act shall be given within thirty days after the date of such injury or death, or thirty days after the employee or beneficiary is aware or in the exercise of reasonable diligence should have been aware of a relationship between the injury or death and the employment. Such notice shall be given (1) to the deputy commissioner in the compensation district in which the injury occurred, and (2) to the employer.".

Section 11(b), (c) of such Act further (effective 90 days after enactment on 9/28/84, as provided by § 28(b) of such Act, which appears as *33 USCS § 901* note), in subsec. (c), inserted the sentences beginning "Each employer shall designate ... ." and "Such designations ... ."; in subsec. (d), substituted "(or his agent or agents or other responsible official or officials designated by the employer pursuant to subsection (c))" for "(or his agent in charge of the business in the place where the injury occurred)", substituted "injury or death, (2)" for "injury or death and", substituted "or (3)" for "or (2)", and inserted "(i) notice, while not given to a responsible official designated by the employer pursuant to subsection (c) of this section, was given to an official of the employer or the employer's insurance carrier, and that the employer or carrier was not prejudiced due to the failure to provide notice to a responsible official designated by the employer pursuant to subsection (c), or (ii)".
Other provisions:

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 913 Filing of claims.

(a) Time to file. Except as otherwise provided in this section, the right to compensation for disability or death under this Act shall be barred unless a claim therefore is filed within one year after the injury or death. If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or death occurred. The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment.

(b) Failure to file.

(1) Notwithstanding the provisions of subdivision (a) failure to file a claim within the period prescribed in such subdivision shall not be a bar to such right unless objection to such failure is made at the first hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(2) Notwithstanding the provisions of subsection (a), a claim for compensation for death or disability due to an occupational disease which does not immediately result in such death or disability shall be timely if filed within two years after the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability, or within one year of the date of the last payment of compensation, whichever is later.

(c) Effect on incompetents and minors. If a person who is entitled to compensation under this Act is mentally incompetent or a minor, the provisions of subdivision (a) shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(d) Tolling provision. Where recovery is denied to any person, in a suit brought at law or in admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and that the defendant was an employer within the meaning of this Act and that such employer had secured compensation to such employee under this Act the limitation of time prescribed in subdivision (a) shall begin to run only from the date of termination of such suit.

Legislative History

(March 4, 1927, ch 509, § 13, 44 Stat. 1432; Oct. 27, 1972, P.L. 92-576, § 12(b), 86 Stat. 1259; Sept. 28, 1984, P.L. 98-426, § 12, 98 Stat. 1649.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act consult USCS Tables volumes.
Amendments:

1972. Act Oct. 27, 1972 (effective 30 days after enactment on Oct. 27, 1972 as provided by § 22 of such Act), substituted subsec. (a) for one which read: "The right to compensation for disability under this Act shall be barred unless a claim therefor is filed within one year after the injury, and the right to compensation for death shall be barred unless a claim therefor is filed within one year after the death, except that if payment of compensation has been made without an award on account of such injury or death a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or such death occurred.".

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), in subsec. (b), designated the existing provisions as para. (1) and added para. (2).
Other provisions:

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 914 Payment of compensation.

(a) Manner of payment. Compensation under this Act shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(b) Period of installment payments. The first installment of compensation shall become due on the fourteenth day after the employer has been notified pursuant to section 12 [*33 USCS § 912*], or the employer has knowledge of the injury or death, on which date all compensation then due shall be paid. Thereafter compensation shall be paid in installments, semimonthly, except where the deputy commissioner determines that payment in installments should be made monthly or at some other period.

(c) Notification of commencement or suspension of payment. Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the deputy commissioner, in accordance with a form prescribed by the commission, that payment of compensation has begun or has been suspended, as the case may be.

(d) Right to compensation controverted. If the employer controverts the right to compensation he shall file with the deputy commissioner on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the commission, stating that the right to compensation is controverted, the name

of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

(e) Additional compensation for overdue installment payments payable without award. If any installment of compensation payable without an award is not paid within fourteen days after it becomes due, as provided in subdivision (b) of this section, there shall be added to such unpaid installment an amount equal to 10 per centum thereof, which shall be paid at the same time as, but in addition to, such installment, unless notice is filed under subdivision (d) of this section, or unless such nonpayment is excused by the deputy commissioner after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(f) Additional compensation for overdue installment payments payable under terms of award. If any compensation, payable under the terms of an award, is not paid within ten days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20 per centum thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in section 21 [*33 USCS § 921*] and an order staying payment has been issued by the Board or court.

(g) Notice of payment; penalty. Within sixteen days after final payment of compensation has been made, the employer shall send to the deputy commissioner a notice, in accordance with a form prescribed by the commission [Secretary of Labor], stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the deputy commissioner within such time the commission [Secretary of Labor] shall assess against such employer a civil penalty in the amount of $ 100.

(h) Investigations, examinations, and hearings for controverted, stopped or suspended payments. The deputy commissioner

(1) may upon his own initiative at any time in a case in which payments are being made without an award, and

(2) shall in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation, or from the employer, that the right to compensation is controverted, or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examinations to be made, or hold such hearings, and take such further action as he considers will properly protect the rights of all parties.

(i) Deposit by employer. Whenever the deputy commissioner deems it advisable he may require any employer to make a deposit with the Treasury of the United States to secure the prompt and convenient payment of such compensation,

and payments therefrom upon any awards shall be made upon order of the deputy commissioner.

(j) Reimbursement for advance payments. If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.

(k) Receipt for payment. An injured employee, or in case of death his dependents or personal representative, shall give receipts for payment of compensation to the employer paying the same and such employer shall produce the same for inspection by the deputy commissioner, whenever required.

(l) [Redesignated]

Legislative History

(March 4, 1927, ch 509, § 14, 44 Stat. 1432; May 26, 1934, ch 354, § 4, 48 Stat. 807; June 25, 1938, ch 685, § 7, 52 Stat. 1167; June 24, 1948, ch 623, § 5, 62 Stat. 603; July 26, 1956, ch 735, § 5, 70 Stat. 655; July 14, 1961, P.L. 87-87, § 3, 75 Stat. 203; Oct. 27, 1972, P.L. 92-576, §§ 5(e), 15(d), 86 Stat. 1254, 1262; Sept. 28, 1984, P.L. 98-426, § 13, 98 Stat. 1649.) HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.

Explanatory notes:

The bracketed words "Secretary of Labor" were inserted in subsec. (g) on the authority of Act Sept. 2, 1984, P.L. 98-426, § 2(c), which amended *33 USCS § 902* by revising para. (6) to refer to the Secretary of Labor rather than the United States Employees' Compensation Commission. See also *5 USCS § 8145*.

Amendments:

1934. Act May 26, 1934, in subsec. (j), substituted "in the interest of justice," for "for the best interests of a person entitled to compensation,"; inserted "or any part thereof as determined by the deputy commissioner with the approval of the commission,"; substituted "the present value of future compensation payments commuted," for "the present value of all future payments of compensation,"; and added "and the probability of the remarriage of the surviving wife shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution.".

1938. Act June 25, 1938, in subsec. (f), added the clause beginning "and an interlocutory injunction ... .".

1948. Act June 24, 1948 (applicable to deaths and injuries occurring after 6/24/48, as provided by § 6 of such Act, which appears as *33 USCS § 906* note), substituted subsec. (m) for one which read: "The total compensation payable under this Act for injury or death shall in no event exceed the sum of $ 7,500.".

1956. Act July 26, 1956 (applicable to deaths and injuries occurring after 7/26/56, as provided by § 9 of such Act, which appears as *33 USCS § 906* note), substituted subsec. (m) for one which read: "The total compensation payable under this Act for injuries shall in no event exceed the sum of $ 11,000: Provided, That this subdivision shall not apply to cases of permanent total disability or death: And provided further, That in cases of disability compensable under

paragraph (21) of subdivision (c) of section 8 the total compensation for such disability, and for any temporary total disability or temporary partial disability sustained in addition thereto, shall not exceed in the aggregate the sum of $ 10,000.".

1961. Act July 14, 1961 (applicable to deaths and injuries occurring after 7/14/61, as provided by § 4 of such Act, which appears as *33 USCS § 906* note), substituted subsec. (m) for one which read: "The total money allowance payable to an employee as compensation for an injury under this Act shall in no event exceed in the aggregate the sum of $ 17,280: Provided, That this limitation shall not apply to cases of permanent total disability or death: And provided further, That in applying this limitation there shall not be taken into account any amount payable under section 8(g) for maintenance during rehabilitation or any amount of additional compensation required to be paid under section 14 for delay or default in the payment of compensation or any amount accruing as interest upon defaulted compensation collectible under section 18.".

1972. Act Oct. 27, 1972 (effective 30 days after enactment on 10/27/72, as provided by § 22 of such Act), in subsec. (f), substituted "and an order staying payment has been issued by the Board or court." for "and an interlocutory injunction staying payment is allowed by the court as provided therein."; and deleted subsec. (m), which read: "The total money allowance payable to an employee as compensation for an injury under this Act shall in no event exceed in the aggregate the sum of $ 24,000: Provided, That this limitation shall not apply to cases of permanent total disability or death: And provided further, That in applying this limitation there shall not be taken into account any amount payable under section 8(g) of this title for maintenance during rehabilitation or any amount of additional compensation required to be paid under this section for delay or default in the payment of compensation or any amount accruing as interest upon defaulted compensation collectible under section 18.".

1984. Act Sept. 28, 1984 (effective 90 days after enactment on 9/28/84, as provided by § 28(b) of such Act, which appears as *33 USCS § 901* note), in subsec. (b), substituted "employer has been notified pursuant to section 12, or the employer" for "employer"; deleted subsec. (j), which read: "Whenever the deputy commissioner determines that it is in the interest of justice, the liability of the employer for compensation, or any part thereof as determined by the deputy commissioner with the approval of the Commission may be discharged by the payment of a lump sum equal to the present value of future compensation payments commuted, computed at 4 per centum true discount compounded annually. The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which he is entitled to compensation shall be determined in accordance with the American Experience Table of Mortality, and the probability of the remarriage of the surviving wife shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded."; and redesignated subsecs. (k) and (l) as subsecs. (j) and (k) respectively.
Other provisions:

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 915 Invalid agreements.

(a) No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this Act shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $ 1,000.

(b) No agreement by an employee to waive his right to compensation under this Act shall be valid.

Legislative History

(March 4, 1927, ch 509, § 15, 44 Stat. 1434.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.

§ 916 Assignment and exemption from claims of creditors.

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.

Legislative History

(March 4, 1927, ch 509, § 16, 44 Stat. 1434.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.

§ 917 Lien against compensation.

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 Act has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under this Act 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.

Legislative History

(March 4, 1927, ch 509, § 17, 44 Stat. 1434; June 25, 1938, ch 685, § 8, 52 Stat. 1167; Oct. 27, 1972, P.L. 92-576, § 20(b), 86 Stat. 1264; Sept. 28, 1984, P.L. 98-426, § 14, 98 Stat. 1649.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Amendments:

1972. Act Oct. 27, 1972 (effective 30 days after enactment on 10/27/72, as provided by § 22 of such Act, which appears

as a note preceding *11 USCS § 101*), inserted "(a)"; and added subsec. (b).

1978. Act Nov. 6, 1978 (effective 10/1/79, as provided by § 402(a) of such Act) deleted subsec. (a), which read: "Any person entitled to compensation under provisions of this Act shall have a lien against the assets of the carrier or employer for such compensation without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both, be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both.".

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), deleted "(b)" preceding "Where", substituted "covered under this Act" for "entitled to compensation under this Act", and substituted "this Act or under a settlement, the Secretary shall authorize" for "this Act, the Secretary may authorize".
Other provisions:

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 918 Collection of defaulted payments; special fund.

(a) In case of default by the employer in the payment of compensation due under any award of compensation for a period of thirty days after the compensation is due and payable, the person to whom such compensation is payable may, within one year after such default, make application to the deputy commissioner making the compensation order or [for] a supplementary order declaring the amount of the default. After investigation, notice, and hearing, as provided in section 19 [*33 USCS § 919*], the deputy commissioner shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award, the deputy commissioner may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the employer has his principal place of business or maintains an office, or for the judicial district in which the injury occurred. In case such principal place of business or office or place where the injury occurred is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the Supreme Court of the District of Columbia [United States District Court for the District of Columbia]. Such supplementary order of the deputy commissioner shall be final, and the court shall upon the filing of the copy enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the court.

(b) In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the Secretary of Labor may, in his discretion and to the extent he shall determine advisable after consideration of current commitments payable from the special fund established in section 44 [*33 USCS § 944*], make payment from such fund upon any award made under this Act and in addition, provide any necessary medical, surgical, and other treatment required by section 7 of the Act [*33 USCS § 907*] in any case of disability where there has been a

default in furnishing medical treatment by reason of the insolvency of the employer. Such an employer shall be liable for payment into such fund of the amounts paid therefrom by the Secretary of Labor under this subsection; and for the purpose of enforcing his liability, the Secretary of Labor for the benefit of the fund shall be subrogated to all the rights of the person receiving such payment or benefits as against the employer and may by a proceeding in the name of the Secretary of Labor under section 18 [this section] or under subsection (c) of section 21 of this Act [*33 USCS § 921(c)*], or both, seek to recover the amount of the default or so much thereof as in the judgment of the Secretary is possible, or the Secretary may settle and compromise any such claim.

Legislative History

(March 4, 1927, ch 509, § 18, 44 Stat. 1434; July 26, 1956, ch 735, § 6, 70 Stat. 655; Sept. 28, 1984, P.L. 98-426, § 27(b), 98 Stat. 1654.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Explanatory notes:

The bracketed word "for" was inserted in subsec. (a) as the word probably intended by Congress.

The bracketed words "United States District Court for the District of Columbia" were inserted in subsec. (a) on the authority of Act June 25, 1948, as amended by Act May 24, 1949. See *28 USCS §§ 43* and *451* note.
Amendments:

1956. Act July 26, 1956, inserted "(a)"; and added subsec. (b).

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note), in subsec. (b), deleted ", including the right of lien and priority provided for by section 17 of this Act," following "payment or benefits".

§ 919 Procedure in respect of claims.

(a) Filing of claim. Subject to the provisions of section 13 [*33 USCS § 913*] a claim for compensation may be filed with the deputy commissioner in accordance with regulations prescribed by the commission [Secretary of Labor] at any time after the first seven days of disability following any injury, or at any time after death, and the deputy commissioner shall have full power and authority to hear and determine all questions in respect of such claim.

(b) Notice of claim. Within ten days after such claim is filed the deputy commissioner, in accordance with regulations prescribed by the commission [Secretary of Labor], shall notify the employer and any other person (other than the claimant), whom the deputy commissioner considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer or other person, or sent to such employer or person by registered mail.

(c) Investigations; order for hearing; notice; rejection or award. The deputy commissioner shall make or cause to be made such investigations as he considers necessary in respect of the claim, and upon application of any interested party shall order a hearing thereon. If a hearing on such claim is ordered the deputy commissioner shall give the claimant and

other interested parties at least ten days' notice of such hearing, served personally upon the claimant and other interested parties or sent to such claimant and other interested parties by registered mail or by certified mail, and shall within twenty days after such hearing is had, by order, reject the claim or make an award in respect of the claim. If no hearing is ordered within twenty days after notice if given as provided in subdivision (b), the deputy commissioner shall, by order, reject the claim or make an award in respect of the claim.

(d) Provisions governing conduct of hearing; administrative law judges. Notwithstanding any other provisions of this Act, any hearing held under this Act shall be conducted in accordance with the provisions of *section 554 of title 5 of the United States Code*. Any such hearing shall be conducted by a [an] administrative law judge qualified under section 3105 of that title. All powers, duties, and responsibilities vested by this Act, on the date of enactment of the Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972 [Oct. 27, 1972], in the deputy commissioners with respect to such hearings shall be vested in such administrative law judges.

(e) Filing and mailing of order rejecting claim or making award. The order rejecting the claim or making the award (referred to in this Act as a compensation order) shall be filed in the office of the deputy commissioner, and a copy thereof shall be sent by registered mail or by certified mail to the claimant and to the employer at the last known address of each.

(f) Awards after death of employee. An award of compensation for disability may be made after the death of an injured employee.

(g) Transfer of case. At any time after a claim has been filed with him, the deputy commissioner may, with the approval of the Commission [Secretary of Labor], transfer such case to any other deputy commissioner for the purpose of making investigation, taking testimony, making physical examinations or taking such other necessary action therein as may be directed.

(h) Physical examination of injured employee. An injured employee claiming or entitled to compensation shall submit to such physical examination by a medical officer of the United States or by a duly qualified physician designated or approved by the commission [Secretary of Labor] as the deputy commissioner may require. The place or places shall be reasonably convenient for the employee. Such physician or physicians as the employee, employer, or carrier may select and pay for may participate in an examination if the employee, employer, or carrier so requests. Proceedings shall be suspended and no compensation be payable for any period during which the employee may refuse to submit to examination

Legislative History

(March 4, 1927, ch 509, § 19, 44 Stat. 1435; June 25, 1938, ch 685, § 9, 52 Stat. 1167; June 11, 1960, P.L. 86-507, § 1(30), (31), 74 Stat. 202; Oct. 27, 1972, P.L. 92-576, § 14, 86 Stat. 1261; March 27, 1978, P.L. 95-251, § 2(a)(10), 92 Stat. 183.) HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Explanatory notes:

The bracketed words "Secretary of Labor" were inserted in subsecs. (a), (b), (g) and (h) on the authority of Act Sept. 2, 1984, P.L. 98-426, § 2(c), which amended *33 USCS § 902* by revising para. (6) to refer to the Secretary of Labor rather than the United States Employees' Compensation Commission. See also *5 USCS § 8145*.

The bracketed word "an" was inserted in subsec. (d) as the word probably intended by Congress.
Amendments:

1938. Act June 25, 1938, substituted subsec. (g) for one which read: "After a compensation order has issued in any case the deputy commissioner may transfer such case to any other deputy commissioner for the purpose of taking testimony or making physical examinations.".

1960. Act June 11, 1960, in subsecs. (c) and (e), inserted "or by certified mail".

1972. Act Oct. 27, 1972 (effective 30 days after enactment on Oct. 27, 1972, as provided by § 22 of such Act), substituted subsec. (d) for one which read: "At such hearing the claimant and the employer may each present evidence in respect of such claim and may be represented by any person authorized in writing for such purpose.".

1978. Act March 27, 1978, in subsec. (d), substituted "administrative law judge" for "hearing examiner" and "administrative law judges" for "hearing examiners".
Other provisions:

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

§ 920 Presumptions.

In any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary--

(a) That the claim comes within the provisions of this Act

(b) That sufficient notice of such claim has been given.

(c) That the injury was not occasioned solely by the intoxication of the injured employee.

(d) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

Legislative History

(March 4, 1927, ch 509, § 20, 44 Stat. 1436.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.

§ 921 Review of compensation orders.

(a) Effectiveness and finality of orders. A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 19 [*33 USCS § 919*], and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) Benefits Review Board; establishment; members; chairman; quorum; voting; questions reviewable; record; conclusiveness of findings; stay of payments; remand.

(1) There is hereby established a Benefits Review Board which shall be composed of five members appointed by the Secretary from among individuals who are especially qualified to serve on such Board. The Secretary shall designate one of the members of the Board to serve as chairman. The Chairman shall have the authority, as delegated by the Secretary, to exercise all administrative functions necessary to operate the Board.

(2) For the purpose of carrying out its functions under this Act, three members of the Board shall constitute a quorum and official action can be taken only on the affirmative vote of at least three members.

(3) The Board shall be authorized to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions with respect to claims of employees under this Act and the extensions thereof. The Board's orders shall be based upon the hearing record. The findings of fact in the decision under review by the Board shall be conclusive if supported by substantial evidence in the record considered as a whole. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the Board. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier.

(4) The Board may, on its own motion or at the request of the Secretary, remand a case to the administrative law judge for further appropriate action. The consent of the parties in interest shall not be a prerequisite to a remand by the Board.

(5) Notwithstanding paragraphs (1) through (4), upon application of the Chairman of the Board, the Secretary may designate up to four Department of Labor administrative law judges to serve on the Board temporarily, for not more

than one year. The Board is authorized to delegate to panels of three members any or all of the powers which the Board may exercise. Each such panel shall have no more than one temporary member. Two members shall constitute a quorum of a panel. Official adjudicative action may be taken only on the affirmative vote of at least two members of a panel. Any party aggrieved by a decision of a panel of the Board may, within thirty days after the date of entry of the decision, petition the entire permanent Board for review of the panel's decision. Upon affirmative vote of the majority of the permanent members of the Board, the petition shall be granted. The Board shall amend its Rules of Practice to conform with this paragraph. Temporary members, while serving as members of the Board, shall be compensated at the same rate of compensation as regular members.

(c) Court of appeals; jurisdiction; persons entitled to review; petition; record; determination and enforcement; service of process; stay of payments. Any person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the United States court of appeals for the circuit in which the injury occurred, by filing in such court within sixty days following the issuance of such Board order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court, to the Board, and to the other parties, and thereupon the Board shall file in the court the record in the proceedings as provided in *section 2112 of title 28, United States Code*. Upon such filing, the court shall have jurisdiction of the proceeding and shall have the power to give a decree affirming, modifying, or setting aside, in whole or in part, the order of the Board and enforcing same to the extent that such order is affirmed or modified. The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier. The order of the court allowing any stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that irreparable damage would result to the employer, and specifying the nature of the damage.

(d) District court; jurisdiction; enforcement of orders; application of beneficiaries of awards or deputy commissioner; process for compliance with orders. If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the United States District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(e) Institution of proceedings for suspension, setting aside, or enforcement of compensation orders. Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 18 [*33 USCS § 918*].

Legislative History

(March 4, 1927, ch 509, § 21, 44 Stat. 1436; Oct. 27, 1972, P.L. 92-576, § 15(a), (b), 86 Stat. 1261, 1262; March 27, 1978, P.L. 95-251, § 2(a)(10), 92 Stat. 183; Sept. 28, 1984, P.L. 98-426, § 15, 98 Stat. 1649.) HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Amendments:

1972. Act Oct. 27, 1972 (effective 30 days after enactment, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), substituted subsecs. (b) and (c) for former subsec. (b), which read: "(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court or the judicial district in which the injury occurred (or in the United States District Court for the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceedings unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specified finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage."; and redesignated former subsecs. (c) and (d) as subsecs. (d) and (e), respectively.

1978. Act March 27, 1978, in subsec. (b), substituted "administrative law judge" for "hearing examiner".

1984. Act Sept. 28, 1984 (effective upon enactment, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note), in subsec. (b), in para. (1), substituted "five" for "three" and inserted "The Chairman shall have the authority, as delegated by the Secretary, to exercise all administrative functions necessary to operate the Board.", in para. (2), substituted "three" for "two" wherever appearing, and added para. (5).
Other provisions:

Application of Oct. 27, 1972 amendments. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of Sept. 28, 1984 amendments. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

Prohibition against use of funds to participate in review of certain Benefits Review Board decisions; finality of certain decisions. Act Dec. 8, 2004, P.L. 108-447, Div F, Title I, 118 Stat. 3121, provided

(1) that no funds made available by such Act might be used by the Solicitor of Labor to participate in a review in any United States court of appeals of any decision made by the Benefits Review Board under *33 USCS § 921* where such participation was precluded by the decision of the *United States Supreme Court in Director, Office of Workers' Compensation Programs v. Newport News Shipbuilding, 115 S. Ct. 1278 [131 L. Ed. 2d 160] (1995)* , notwithstanding any provisions to the contrary contained in *Rule 15 of the Federal Rules of Appellate Procedure*;

(2) that no funds made available by such Act might be used by the Secretary of Labor to review a decision under the Longshore and Harbor Workers' Compensation Act (*33 U.S.C. 901 et seq.*) that had been appealed and that had been pending before the Benefits Review Board for more than 12 months;

(3) that any such decision pending a review by the Benefits Review Board for more than 1 year should be considered affirmed by the Benefits Review Board on the 1-year anniversary of the filing of the appeal, and should be considered the final order of the Board for purposes of obtaining a review in the United States courts of appeals; and

(4) that these provisions should not be applicable to the review or appeal of any decision issued under the Black Lung Benefits Act (*30 U.S.C. 901 et seq.*). Such provisions, which were from the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2005, were not repeated in subsequent appropriations acts.

Similar provisions were contained in Acts April 26, 1996, P.L. 104-134, Title I [Title I], 110 Stat. 1321-218, as amended May 2, 1996, P.L. 104-140, § 1(a), 110 Stat. 1327; Sept. 30, 1996, P.L. 104-208, Div A, Title I, § 101(e) [Title I], 110 Stat. 3009-241; Nov. 13, 1997, P.L. 105-78, Title I, 111 Stat. 1475; Oct. 21, 1998, P.L. 105-277, Div A, § 101(f) [Title I], 112 Stat. 2681-345; Nov. 29, 1999, P.L. 106-113, Div B, § 1000(a)(4), 113 Stat. 1535 (enacting into law Title I of H.R. 3424 (113 Stat. 1501A-224), as introduced on Nov. 17, 1999); Dec. 21, 2000, P.L. 106-554, § 1(a)(1), 114 Stat. 2763 (enacting into law Title I of H.R. 5656 (114 Stat. 2763A-10), as introduced on Dec. 14, 2000); Jan. 10, 2002, P.L. 107-116, Title I, 115 Stat. 2185; Feb. 20, 2003, P.L. 108-7, Div G, Title I, 117 Stat. 306; Jan. 23, 2004, P.L. 108-199, Div E, Title I, 118 Stat. 234.

§ 921a Appearance of attorneys for Secretary, deputy commissioner, or Board.

Attorneys appointed by the Secretary shall represent the Secretary, the deputy commissioner, or the Board in any court proceedings under section 21 [*33 USCS § 921*] or other provisions of this Act except for proceedings in the Supreme Court of the United States.

Legislative History

(May 4, 1928, ch 502, 45 Stat. 490; Oct. 27, 1972, P.L. 92-576, § 16, 86 Stat. 1262.) HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.

Explanatory notes:

This section was not enacted as part of Act March 4, 1927, ch 509, 44 Stat. 1424, commonly known as the Logshore and Harbor Workers' Compensation Act, which generally comprises this chapter.

Amendments:

1972. Act Oct. 27, 1972 (effective 30 days after enactment on Oct. 27, 1972, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), substituted this section for one which read: "In any court proceedings under section 21 or other provisions of the Longshoremen's and Harbor Workers' Compensation Act, it shall be the duty of the district attorney of the United States in the judicial district in which the case is pending to appear as attorney or counsel on behalf of the United States Employees' Compensation Commission or its deputy commissioner when either is a party to the case or interested, and to represent such commission or deputy in any court in which such case may be carried on appeal.".

Other provisions:

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

§ 922 Modification of awards.

Upon his own initiative, or upon the application of any party in interest (including an employer or carrier which has been granted relief under section 8(f) [*33 USCS § 908(f)*]), on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case (including a case under which payments are made pursuant to section 44(i) [*33 USCS § 944(i)*]) in accordance with the procedure prescribed in respect of claims in section 19 [*33 USCS § 919*], and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner with the approval of the Secretary. This section does not authorize the modification of settlements.

Legislative History

(March 4, 1927, ch 509, § 22, 44 Stat. 1437; May 26, 1934, ch 354, § 5, 48 Stat. 807; June 25, 1938, ch 685, § 10, 52 Stat. 1167; Sept. 28, 1984, P.L. 98-426, §§ 16, 27(a)(2), 98 Stat. 1650, 1654.) HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1934. Act May 26, 1934 amended this section generally.

1938. Act June 25, 1938 inserted "or at any time prior to one year after the rejection of a claim" and "or award compensation.".

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note), inserted "(including an employer or carrier which has been granted relief under section 8(f))", inserted "(including a case under which payments are made pursuant to section 44(i))", and inserted "This section does not authorize the modification of settlements.", and and substituted "Secretary" for "commission".

Other provisions:

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 923 Procedure before deputy commissioner or Board.

(a) In making an investigation or inquiry or conducting a hearing the deputy commissioner or Board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this Act; but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or

inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(b) Hearings before a deputy commissioner or Board shall be open to the public and shall be stenographically reported, and the deputy commissioners or Board, subject to the approval of the Secretary, are authorized to contract for the reporting of such hearings. The Secretary shall by regulation provide for the preparation of a record of the hearings and other proceedings before the deputy commissioners or Board.

Legislative History

(March 4, 1927, ch 509, § 23, 44 Stat. 1437; Oct. 27, 1972, P.L. 92-576, § 15(e), 86 Stat. 1262; Sept. 28, 1984, P.L. 98-426, § 27(a)(2), 98 Stat. 1654.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Amendments:

1972. Act Oct. 27, 1972 (effective 30 days after enactment on Oct. 27, 1972, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), inserted "or Board" each place it appears.

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note), in subsec. (b), substituted "Secretary" for "commission" wherever it appears.

§ 924 Witnesses.

No person shall be required to attend as a witness in any proceeding before a deputy commissioner at a place outside of the State of his residence and more than one hundred miles from his place of residence unless his lawful mileage and fee for one day's attendance shall be first paid or tendered to him; but the testimony of any witness may be taken by deposition or interrogatories according to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the Supreme Court of the District of Columbia [United States District Court for the District of Columbia] if the case is pending in the District).

Legislative History

(March 4, 1927, ch 509, § 24, 44 Stat. 1437.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
Explanatory notes:

The bracketed words "United States District Court for the District of Columbia" were inserted on the authority of Act June 25, 1948, as amended by Act May 24, 1949. See *28 USCS §§ 43* and *451* note.

§ 925 Witness fees.

Witnesses summoned in a proceeding before a deputy commissioner or whose depositions are taken shall receive the same fees and mileage as witnesses in courts of the United States.

Legislative History

(March 4, 1927, ch 509, § 25, 44 Stat. 1437.)

§ 926 Costs in proceedings brought without reasonable grounds.

If the court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

Legislative History

(March 4, 1927, ch 509, § 26, 44 Stat. 1438.)

§ 927 Powers of deputy commissioners or Board.

(a) The deputy commissioner or Board shall have power to preserve and enforce order during any such proceedings; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable him effiectively [effectively] to discharge the duties of his office.

(b) If any person in proceedings before a deputy commissioner or Board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the deputy commissioner or Board shall certify the facts to the district court having jurisdiction in the place in which he is sitting (or to the Supreme Court of the District of Columbia [United States District Court for the District of Columbia] if he is sitting in such District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

Legislative History

(March 4, 1927, ch 509, § 27, 44 Stat. 1438; Oct. 27, 1972, P.L. 92-576, § 15(e), 86 Stat. 1262.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
Explanatory notes:

The bracketed word "effectively" was inserted in subsec. (a) as the word probably intended by Congress.

The bracketed words "United States District Court for the District of Columbia" were inserted in subsec. (b) on the authority of Act June 25, 1948, as amended by Act May 24, 1949. See *28 USCS §§ 43* and *451* note.
Amendments:

1972. Act Oct. 27, 1972 (effective 30 days after enactment on Oct. 27, 1972, as provided by § 22 of such Act) inserted

"or Board" each place it appears.

§ 928 Fees for services.

(a) Attorney's fee; successful prosecution of claim. If the employer or carrier declines to pay any compensation on or before the thirtieth day after receiving written notice of a claim for compensation having been filed from the deputy commissioner, on the ground that there is no liability for compensation within the provisions of this Act, and the person seeking benefits shall thereafter have utilized the services of an attorney at law in the successful prosecution of his claim, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee against the employer or carrier in an amount approved by the deputy commissioner, Board, or court, as the case may be, which shall be paid directly by the employer or carrier to the attorney for the claimant in a lump sum after the compensation order becomes final.

(b) Attorney's fee; successful prosecution for additional compensation; independent medical evaluation of disability controversy; restriction of other assessments. If the employer or carrier pays or tenders payment of compensation without an award pursuant to section 14(a) and (b) of this Act [*33 USCS § 914(a)* and *(b)*], and thereafter a controversy develops over the amount of additional compensation, if any, to which the employee may be entitled, the deputy commissioner or Board shall set the matter for an informal conference and following such conference the deputy commissioner or Board shall recommend in writing a disposition of the controversy. If the employer or carrier refuse to accept such written recommendation, within fourteen days after its receipt by them, they shall pay or tender to the employee in writing the additional compensation, if any, to which they believe the employee is entitled. If the employee refuses to accept such payment or tender of compensation, and thereafter utilizes the services of an attorney at law, and if the compensation thereafter awarded is greater than the amount paid or tendered by the employer or carrier, a reasonable attorney's fee based solely upon the difference between the amount awarded and the amount tendered or paid shall be awarded in addition to the amount of compensation. The foregoing sentence shall not apply if the controversy relates to degree or length of disability, and if the employer or carrier offers to submit the case for evaluation by physicians employed or selected by the Secretary, as authorized in section 7(e) [*33 USCS § 907(e)*] and offers to tender an amount of compensation based upon the degree or length of disability found by the independent medical report at such time as an evaluation of disability can be made. If the claimant is successful in review proceedings before the Board or court in any such case an award may be made in favor of the claimant and against the employer or carrier for a reasonable attorney's fee for claimant's counsel in accord with the above provisions. In all other cases any claim for legal services shall not be assessed against the employer or carrier.

(c) Approval; payment; lien. In all cases fees for attorneys representing the claimant shall be approved in the manner herein provided. If any proceedings are had before the Board or any court for review of any action, award, order, or decision, the Board or court may approve an attorney's fee for the work done before it by the attorney for the claimant. An approved attorney's fee, in cases in which the obligation to pay the fee is upon the claimant, may be made a lien upon the compensation due under an award; and the deputy commissioner, Board, or court shall fix in the award approving the fee, such lien and manner of payment.

(d) Costs; witnesses' fees and mileage; prohibition against diminution of compensation to claimant. In cases where an attorney's fee is awarded against an employer or carrier there may be further assessed against such employer or carrier as costs, fees and mileage for necessary witnesses attending the hearing at the instance of claimant. Both the necessity for the witness and the reasonableness of the fees of expert witnesses must be approved by the hearing officer, the

Board, or the court, as the case may be. The amounts awarded against an employer or carrier as attorney's fees, costs, fees and mileage for witnesses shall not in any respect affect or diminish the compensation payable under this Act.

(e) Unapproved fees; solicitation; penalty. A person who receives a fee, gratuity, or other consideration on account of services rendered as a representative of a claimant, unless the consideration is approved by the deputy commissioner, administrative law judge, Board, or court, or who makes it a business to solicit employment for a lawyer, or for himself, with respect to a claim or award for compensation under this Act, shall, upon conviction thereof, for each offense be punished by a fine of not more than $ 1,000 or be imprisoned for not more than one year, or both.

Legislative History

(March 24, 1927, ch 509, § 28, 44 Stat. 1438; Oct. 27, 1972, P.L. 92-576, § 13, 86 Stat. 1259; Sept. 28, 1984, P.L. 98-426, § 17, 98 Stat. 1650.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Amendments:

1972. Act Oct. 27, 1972 (effective 30 days after enactment on Oct. 27, 1972, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), substituted this section for one which read:

(a) No claim for legal services or for any other services rendered in respect of a claim or award for compensation, to or on account of any person, shall be valid unless approved by the deputy commissioner, or if proceedings for review of the order of the deputy commissioner in respect of such claim or award are had before any court, unless approved by such court. Any claim so approved shall, in the manner and to the extent fixed by the deputy commissioner or such court, be a lien upon such compensation.

(b) Any person

(1) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the deputy commissioner or such court, or

(2) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor, and upon conviction thereof, shall, for each offense, be punished by a fine of not more than $ 1,000 or by imprisonment not to exceed one year, or by both such fine and imprisonment.".

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note), substituted subsec. (e) for one which read: "Any person who receives any fees, other consideration, or any gratuity on account of services rendered as a representative of a claimant, unless such

consideration or gratuity is approved by the deputy commissioner, Board, or court, or who makes it a business to solicit employment for a lawyer, or for himself in respect of any claim or award for compensation, shall upon conviction thereof, for each offense be punished by a fine of not more than $ 1,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.".
Other provisions:

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 929 Record of injury or death.

Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disease, other disability, or death in respect of such injury as the Secretary may be regulation require, and shall be available to inspection by the Secretary or by any State authority at such times and under such conditions as the Secretary may by regulation prescribe.

Legislative History

(March 4, 1927, ch 509, § 29, 44 Stat. 1438; Sept. 28, 1984, P.L. 98-426, § 27(a)(2), 98 Stat. 1654.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
Amendments:

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note) substituted "Secretary" for "commission" wherever appearing.

§ 930 Reports to Secretary.

(a) Time for sending; contents; copy to deputy commissioner. Within ten days from the date of any injury, which causes loss of one or more shifts of work, or death or from the date that the employer has knowledge of a disease or infection in respect of such injury, the employer shall send to the Secretary a report setting forth

(1) the name, address, and business of the employer;

(2) the name, address, and occupation of the employee;

(3) the cause and nature of the injury or death;

(4) the year, month, day, and hour when and the particular locality where the injury or death occurred; and

(5) such other information as the Secretary may require. A copy of such report shall be sent at the same time to the deputy commissioner in the compensation district in which the injury occurred. Notwithstanding the requirements of this subsection, each employer shall keep a record of each and every injury regardless of whether such injury results in the loss of one or more shifts of work.

(b) Additional reports. Additional reports in respect of such injury and of the condition of such employee shall be sent by the employer to the Secretary and to such deputy commissioner at such times and in such manner as the Secretary may prescribe.

(c) Use as evidence. Any report provided for in subdivision (a) or (b) shall not be evidence of any fact stated in such report in any proceeding in respect of such injury or death on account of which the report is made.

(d) Compliance by mailing. The mailing of any such report and copy in a stamped envelope, within the time prescribed in subdivisions (a) or (b), to the Secretary and deputy commissioner, respectively, shall be a compliance with this section.

(e) Penalty for failure or refusal to send report. Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by this section or knowingly or willfully makes a false statement or misrepresentation in any such report shall be subject to a civil penalty not to exceed $ 10,000 for each such failure, refusal, false statement, or misrepresentation.

(f) Tolling provision. Where the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge, of any injury or death of an employee and fails, neglects, or refuses to file report thereof as required by the provisions of subdivision (a) of this section, the limitations in subdivision (a) of section 13 of this Act [*33 USCS § 913(a)*] shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the employer or the carrier, until such report shall have been furnished as required by the provisions of subdivision (a) of this section.

Legislative History

(March 4, 1927, ch 509, § 30, 44 Stat. 1439; June 25, 1938, ch 685, § 11, 52 Stat. 1167; Sept. 28, 1984, P.L. 98-426, §§ 18, 27(a)(2), 98 Stat. 1650, 1654.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
Amendments:

1938. Act June 25, 1938, added subsec. (f).

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note), in subsec. (a), inserted ", which causes loss of one or more shifts of work," added the sentence

beginning "Notwithstanding ... .", and substituted "Secretary" for "commission" wherever it appears; in subsecs. (b) and (d), substituted "Secretary" for "commission" wherever it appears; and substituted subsec. (e) for one which read: "Any employer who fails or refuses to send any report required of him by this section shall be subject to a civil penalty not to exceed $ 500 for each such failure or refusal.".

§ 931 Penalty for misrepresentation.

(a) Felony; fine; imprisonment.

(1) Any claimant or representative of a claimant who knowingly and willfully makes a false statement or representation for the purpose of obtaining a benefit or payment under this Act shall be guilty of a felony, and on conviction thereof shall be punished by a fine not to exceed $ 10,000, by imprisonment not to exceed five years, or by both.

(2) The United States attorney for the district in which the injury is alleged to have occurred shall make every reasonable effort to promptly investigate each complaint made under this subsection.

(b) List of persons disqualified from representing claimants.

(1) No representation fee of a claimant's representative shall be approved by the deputy commissioner, an administrative law judge, the Board, or a court pursuant to section 28 of this Act [*33 USCS § 928*], if the claimant's representative is on the list of individuals who are disqualified from representing claimants under this Act maintained by the Secretary pursuant to paragraph (2) of this subsection.

(2)

(A) The Secretary shall annually prepare a list of those individuals in each compensation district who have represented claimants for a fee in cases under this Act and who are not authorized to represent claimants. The names of individuals contained on the list required under this subparagraph shall be made available to employees and employers in each compensation district through posting and in such other forms as the Secretary may prescribe.

(B) Individuals shall be included on the list of those not authorized to represent claimants under this Act if the Secretary determines under this section, in accordance with the procedure provided in subsection (j) of section 7 of this Act [*33 USCS § 907(j)*], that such individual--

(i) has been convicted (without regard to pending appeal) of any crime in connection with the representation of a claimant under this Act or any workers' compensation statute;

(ii) has engaged in fraud in connection with the presentation of a claim under this or any workers' compensation statute, including, but not limited to, knowingly making false representations, concealing or attempting to conceal material facts with respect to a claim, or soliciting or otherwise procuring false testimony;

(iii) has been prohibited from representing claimants before any other workers' compensation agency for reasons of professional misconduct which are similar in nature to those which would be grounds for disqualification under this paragraph; or

(iv) has accepted fees for representing claimants under this Act which were not approved, or which were in excess of the amount approved pursuant to section 28 [*33 USCS § 928*].

(C) Notwithstanding subparagraph (B), no individual who is on the list required to be maintained by the Secretary pursuant to this section shall be prohibited from presenting his or her own claim or from representing without fee, a claimant who is a spouse, mother, father, sister, brother, or child of such individual.

(D) A determination under subparagraph (A) shall remain in effect for a period of not less than three years and until the Secretary finds and gives notice to the public that there is reasonable assurance that the basis for the determination will not reoccur.

(3) No employee shall be liable to pay a representation fee to any representative whose fee has been disallowed by reason of the operation of this paragraph.

(4) The Secretary shall issue such rules and regulations as are necessary to carry out this section.

(c) False statement or representation to reduce, deny, or terminate benefits. A person including, but not limited to, an employer, his duly authorized agent, or an employee of an insurance carrier who knowingly and willfully makes a false statement or representation for the purpose of reducing, denying, or terminating benefits to an injured employee, or his dependents pursuant to section 9 [*33 USCS § 909*] if the injury results in death, shall be punished by a fine not to exceed $ 10,000, by imprisonment not to exceed five years, or by both.

Legislative History

(March 4, 1927, ch 509, § 31, 44 Stat. 1439; Sept. 28, 1984, P.L. 98-426, § 19, 98 Stat. 1650.) HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.

Amendments:

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note), substituted this section for one which read: "Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this Act shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed $ 1,000 or by imprisonment of not to exceed one year, or by both such fine and imprisonment.".

Other provisions:

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 932 Security for compensation.

(a) Every employer shall secure the payment of compensation under this Act--

(1) By insuring and keeping insured the payment of such compensation with any stock company or mutual company or association, or with any other person or fund, while such person or fund is authorized

(A) under the laws of the United States or of any State, to insure workmen's compensation, and

(B) by the Secretary, to insure payment of compensation under this Act; or

(2) By furnishing satisfactory proof to the Secretary of his financial ability to pay such compensation and receiving an authorization from the Secretary to pay such compensation directly. The Secretary may, as a condition to such authorization, require such employer to deposit in a depository designated by the Secretary either an indemnity bond or securities (at the option of the employer) of a kind and in an amount determined by the Secretary, based on the employer's financial condition, the employer's previous record of payments, and other relevant factors, and subject to such conditions as the Secretary may prescribe, which shall include authorization to the Secretary in case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this Act. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer.

(b) In granting authorization to any carrier to insure payment of compensation under this Act, the Secretary may take into consideration the recommendation of any State authority having supervision over carriers or over workmen's compensation, and may authorize any carrier to insure the payment of compensation under this Act in a limited territory. Any marine protection and indemnity mutual insurance corporation or association, authorized to write

insurance against liability for loss or damage from personal injury and death, and for other losses and damages, incidental to or in respect of the ownership, operation, or chartering of vessels on a mutual assessment plan, shall be deemed a qualified carrier to insure compensation under this Act. The Secretary may suspend or revoke any such authorization for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred.

Legislative History

(March 4, 1927, ch 509, § 32, 44 Stat. 1439; Sept. 28, 1984, P.L. 98-426, §§ 20, 27(a)(2), 98 Stat. 1652, 1654.)
HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Amendments:

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note), in subsec. (a), in para. (1), substituted "Secretary" for "commission", and, in para. (2), substituted "Secretary" for "commission" wherever it appears and inserted "based on the employer's financial condition, the employer's previous record of payments, and other relevant factors," after "in an amount determined by the commission,"; and, in subsec. (b), substituted "Secretary" for "commission" wherever it appears.
Other provisions:

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 933 Compensation for injuries where third persons are liable.

(a) Election of remedies. If on account of a disability or death for which compensation is payable under this Act, the person entitled to such compensation determines that some person other than the employer or a person or persons in his employ is liable in damages, he need not elect whether to receive such compensation or to recover damages against such third person.

(b) Acceptance of compensation acting as assignment. Acceptance of compensation under an award in a compensation order filed by the deputy commissioner, an administrative law judge, or the Board shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within six months after such acceptance. If the employer fails to commence an action against such third person within ninety days after the cause of action is assigned under this section, the right to bring such action shall revert to the person entitled to compensation. For the purpose of this subsection, the term "award" with respect to a compensation order means a formal order issued by the deputy commissioner, an administrative law judge, or Board.

(c) Payment into section 944 fund operating as assignment. The payment of such compensation into the fund established in section 44 [*33 USCS § 944*] shall operate as an assignment to the employer of all right of the legal representative of the deceased (hereinafter referred to as "representative") to recover damages against such third person.

(d) Institution of proceedings or compromise by assignee. Such employer on account of such assignment may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding.

(e) Recoveries by assignee. Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to--

(A) the expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney's fee as determined by the deputy commissioner or Board);

(B) the cost of all benefits actually furnished by him to the employee under section 7 [*33 USCS § 907*];

(C) all amounts paid as compensation;

(D) the present value of all amounts thereafter payable as compensation, such present value to be computed in accordance with a schedule prepared by the Secretary, and the present value of the cost of all benefits thereafter to be furnished under section 7 [*33 USCS § 907*], to be estimated by the deputy commissioner, and the amounts so computed and estimated to be retained by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due, and to pay any sum finally remaining in excess thereof to the person entitled to compensation or to the representative; and

(2) The employer shall pay any excess to the person entitled to compensation or to the representative.

(f) Institution of proceedings by person entitled to compensation. If the person entitled to compensation institutes proceedings within the period prescribed in section 33(b) [subsec. (b) of this section] the employer shall be required to pay as compensation under this Act, a sum equal to the excess of the amount which the Secretary determines is payable on account of such injury or death over the net amount recovered against such third person. Such net amount shall be equal to the actual amount recovered less the expenses reasonably incurred by such person in respect to such proceedings (including reasonable attorneys' fees).

(g) Compromise obtained by person entitled to compensation.

(1) If the person entitled to compensation (or the person's representative) enters into a settlement with a third person referred to in subsection (a) for an amount less than the compensation to which the person (or the person's representative) would be entitled under this Act, the employer shall be liable for compensation as determined under subsection (f) only if written approval of the settlement is obtained from the employer and the employer's carrier, before the settlement is executed, and by the person entitled to compensation (or the person's representative). The approval shall be made on a form provided by the Secretary and shall be filed in the office of the deputy commissioner within thirty days after the settlement is entered into.

(2) If no written approval of the settlement is obtained and filed as required by paragraph (1), or if the employee fails to notify the employer of any settlement obtained from or judgment rendered against a third person, all rights to compensation and medical benefits under this Act shall be terminated, regardless of whether the employer or the employer's insurer has made payments or acknowledged entitlement to benefits under this Act.

(3) Any payments by the special fund established under section 44 [*33 USCS § 944*] shall be a lien upon the proceeds of any settlement obtained from or judgment rendered against a third person referred to under subsection (a). Notwithstanding any other provision of law, such lien shall be enforceable against such proceeds, regardless of whether the Secretary on behalf of the special fund has agreed to or has received actual notice of the settlement or judgment.

(4) Any payments by a trust fund described in section 17 [*33 USCS § 917*] shall be a lien upon the proceeds of any settlement obtained from or judgment recorded against a third person referred to under subsection (a). Such lien shall have priority over a lien under paragraph (3) of this subsection.

(h) Subrogation. Where the employer is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer under this section.

(i) Right to compensation as exclusive remedy. The right to compensation or benefits under this Act shall be the exclusive remedy to an employee when he is injured, or to his eligible survivors or legal representatives if he is killed, by the negligence or wrong of any other person or persons in the same employ: Provided, That this provision shall not affect the liability of a person other than an officer or employee of the employer.

Legislative History

(March 4, 1927, ch 509, § 33, 44 Stat. 1440; June 25, 1938, ch 685, §§ 12, 13, 52 Stat. 1168; Aug. 18, 1959, P.L. 86-171, 73 Stat. 391; Oct. 27, 1972, P.L. 92-576, § 15(f)-(h), 86 Stat. 1262; Sept. 28, 1984, P.L. 98-426, § 21, 98 Stat. 1652.) HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Amendments:

1938. Act June 25, 1938, in subsec. (b), inserted "under an award in a compensation order filed by the deputy commissioner" and deleted "whether or not the person entitled to compensation has notified the deputy commissioner of his election"; in subsec. (e), redesignated para. (1)(C) as para. (1)(C) and (D) and, in para. (1)(D), inserted "and the present value of the cost of all benefits thereafter to be furnished under section 7 to be estimated by the deputy commissioner" and inserted "and estimated" following "computed"; and added subsec. (i).

1959. Act Aug. 18, 1959, in subsec. (a), inserted "or a person or persons in his employ" and substituted "he need not elect whether" for "he may elect, by giving notice to the deputy commissioner in such manner as the commission may provide"; in subsec. (b), inserted "within six months after such award", in subsec. (e), in para. (1)(d), substituted "Secretary" for "Commission", in para. (2), inserted "less one-fifth of such excess which shall belong to the employer"; in subsec. (f), deleted "or the representative elects to recover damages against such third person and notifies the commission of his election and" and substituted "section 33(b)" for "Section 13(b)" and "Secretary" for "Commission"; in subsec. (g), substituted "subdivision (f)" for "subdivision (e)"; substituted subsec. (h) for one that read: "The deputy commissioner may, if the person entitled to compensation under this Act is a minor, make any election required under subdivision (a) of this section, or may authorize the parent or guardian of the minor to make such election"; and substituted subsec. (i) for one that read: "Where the employer is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer under this section.".

1972. Act Oct. 27, 1972 (effective 30 days after enactment on Oct. 27, 1972, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), added "or Board" wherever such words appear; and substituted subsec. (g) for one which read: "If compromise with such third person is made by the person entitled to compensation or such representative of an amount less than the compensation to which such person or representative would be entitled to under this Act, the employer shall be liable for compensation as determined in subdivision (f) only if such compromise is made with his written approval.".

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(a) of such Act, which appears as *33 USCS § 901* note), substituted subsec. (b) for one which read: "Acceptance of such compensation under an award in a compensation order filed by the deputy commissioner of Board shall operate as an assignment to the employer of all right of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within six months after such award."; in subsec. (e)(2), deleted ", less one-fifth of such excess which shall belong to the employer" following "representative"; in subsec. (f), inserted "net" preceding "amount recovered against" and added "Such net amount shall be equal to the actual amount recovered less the expenses reasonably incurred by such person in respect to such proceedings (including reasonable attorneys' fees)."; and substituted subsec. (g) for one which read: "If compromise with such third person is made by the person entitled to compensation or such representative of an amount less than the compensation to which such person or representative would be entitled to under this Act, the employer shall be liable for compensation as determined in subdivision (f) only if the written approval of such compromise is obtained from the employer and its insurance carrier by the person entitled to compensation or such representative at the time of or prior to such compromise on a form provided by the Secretary and filed in the office of the deputy commissioner having jurisdiction of such injury or death within thirty days after such compromise is made.".
Other provisions:

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 934 Compensation notice.

Every employer who has secured compensation under the provisions of this Act shall keep posted in a conspicuous place or places in and about his place or places of business typewritten or printed notices, in accordance with a form prescribed by the Secretary, stating that such employer has secured the payment of compensation in accordance with the provisions of this Act. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of compensation and the date of the expiration of the policy.

Legislative History

(March 4, 1927, ch 509, § 34, 44 Stat. 1441; Sept. 28, 1984, P.L. 98-426, § 27(a)(2), 98 Stat. 1654.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Amendments:

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note) substituted "Secretary" for "commission".

§ 935 Substitution of carrier for employer.

In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this Act may be most effectively discharged by the employer, and in order that the administration of this Act in respect of such liability may be facilitated, the Secretary shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer in respect of such liability, imposed by this Act upon the employer, as it considers proper in order to effectuate the provisions of this Act. For such purposes (1) notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier, (2) jurisdiction of the employer by a deputy commissioner, the Board, or the Secretary, or any court under this Act shall be jurisdiction of the carrier, and (3) any requirement by a deputy commissioner, the Board, or the Secretary, or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

Legislative History

(March 4, 1927, ch 509, § 35, 44 Stat. 1441; Oct. 27, 1972, P.L. 92-576, § 15(i), 86 Stat. 1262; Sept. 28, 1984, P.L. 98-426, § 27(a)(2), 98 Stat. 1654.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Amendments:

1972. Act Oct. 27, 1972 (effective 30 days after enactment on Oct. 27, 1972, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), inserted "the Board, or" wherever it appears.

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note), substituted "Secretary" for "commission" wherever it appears.

§ 936 Insurance policies.

(a) Every policy or contract of insurance issued under authority of this Act shall contain (1) a provision to carry out the provisions of section 35 [*33 USCS § 935*], and (2) a provision that insolvency or bankruptcy of the employer and/or discharge therein shall not relieve the carrier from payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

(b) No contract or policy of insurance issued by a carrier under this Act shall be canceled prior to the date specified in such contract or policy for its expiration until at least thirty days have elapsed after a notice of cancellation has been sent to the deputy commissioner and to the employer in accordance with the provisions of subdivision (c) of section 12 [*33 USCS § 912(c)*].

Legislative History

(March 4, 1927, ch 509, § 36, 44 Stat. 1441.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.

§ 937 Certificate of compliance with this Act.

No stevedoring firm shall be employed in any compensation district by a vessel or by hull owners until it presents to such vessel or hull owners a certificate issued by a deputy commissioner assigned to such district that it has complied with the provisions of this Act requiring the securing of compensation to its employees. Any person violating the provisions of this section shall be punished by a fine of not more than $ 1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Legislative History

(March 4, 1927, ch 509, § 37, 44 Stat. 1442.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.

§ 938 Penalties.

(a) Failure to secure payment of compensation. Any employer required to secure the payment of compensation under this Act who fails to secure such compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall be

punished by a fine of not more than $ 10,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such fine or imprisonment as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under the said Act in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by section 32 of this Act [*33 USCS § 932*].

(b) Avoiding payment of compensation. Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this Act, and with intent to avoid the payment of compensation under this Act to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $ 10,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(c) Effect on other liability of employer. This section shall not affect any other liability of the employer under this Act.

Legislative History

(March 4, 1927, ch 509, § 38, 44 Stat. 1442; June 25, 1938, ch 685, § 14, 52 Stat. 1168; Sept. 28, 1984, P.L. 98-426, § 22, 98 Stat. 1653.) HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.

Amendments:

1938. Act June 25, 1938 designated the former first sentence of this section as subsec. (a), inserted the second and third clauses of subsec. (a); added subsec. (b); and designated the former second sentence of this section as subsec. (c).

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note), in subsecs. (a) and (b), substituted "$ 10,000" for "$ 1,000".

Other provisions:

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 939 Administration by Secretary.

(a) Prescribing rules and regulations; appointing and fixing compensation of employees; making expenditures. Except as otherwise specifically provided, the Secretary shall administer the provisions of this Act, and for such purpose the Secretary is authorized

(1) to make such rules and regulations;

(2) to appoint and fix the compensation of such temporary technical assistants and medical advisers, and, subject to the provisions of the civil service laws, to appoint, and, in accordance with the Classification Act of 1923 [*5 USCS §§ 5101 et seq.* and *5331 et seq.*], to fix the compensation of such deputy commissioners (except deputy commissioners appointed under subdivision (a) of section 40 [*33 USCS § 940(a)*]) and other officers and employees; and

(3) to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books, books of reference, periodicals, and for printing and binding) as may be necessary in the administration of this Act. All expenditures of the Secretary in the administration of this Act shall be allowed and paid as provided in section 45 upon the presentation of itemized vouchers therefor approved by the Secretary.

(b) Establishing compensation districts. The Secretary shall establish compensation districts, to include the high seas and the areas within the United States to which this Act applies, and shall assign to each such district one or more deputy commissioners, as the Secretary deems advisable. Judicial proceedings under sections 18 and 21 of this Act [*33 USCS §§ 918* and *921*] in respect of any injury or death occurring on the high seas shall be instituted in the district court within whose territorial jurisdiction is located the office of the deputy commissioner having jurisdiction in respect of such injury or death (or in the Supreme Court of the District of Columbia [United States District Court for the District of Columbia] if such office is located in such District).

(c) Furnishing information and assistance; directing vocational rehabilitation.

(1) The Secretary shall, upon request, provide persons covered by this Act with information and assistance relating to the Act's coverage and compensation and the procedures for obtaining such compensation and including assistance in processing a claim. The Secretary may, upon request, provide persons covered by this Act with legal assistance in processing a claim. The Secretary shall also provide employees receiving compensation information on medical, manpower, and vocational rehabilitation services and assist such employees in obtaining the best such services available.

(2) The Secretary shall direct the vocational rehabilitation of permanently disabled employees and shall arrange with the appropriate public or private agencies in State or Territories, possessions, or the District of Columbia for such rehabilitation. [The Federal Board for Vocational Education shall cooperate with the Secretary in such educational work.] The Secretary may in its discretion furnish such prosthetic appliances or other apparatus made necessary by an injury upon which an award has been made under this Act to render a disabled employee fit to engage in a remunerative occupation. Where necessary rehabilitation services are not available otherwise, the Secretary of Labor may, in his discretion, use the fund provided for in section 44 [44 USCS § 944] in such amounts as may be necessary to procure such services, including necessary prosthetic appliances or other apparatus. This fund shall also be available in such

amounts as may be authorized in annual appropriations for the Department of Labor for the costs of administering this subsection.

Legislative History

(March 4, 1927, ch 509, § 39, 44 Stat. 1442; July 26, 1956, ch 735, § 7, 70 Stat. 656; Oct. 27, 1972, P.L. 92-576, § 17, 86 Stat. 1262; Sept. 28, 1984, P.L. 98-426, § 27(a)(2), (c), 98 Stat. 1654.) HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.

"Section 45", referred to in subsec. (a), was classified to *33 USCS § 945* and was repealed by Act Sept. 28, 1984, P.L. 98-426, § 25. For similar provisions, see *33 USCS § 944*.

Explanatory notes:

In subsec. (a), "*5 USCS §§ 5101 et seq.* and *5331 et seq.*" has been inserted in brackets pursuant to § 7(b) of Act Sept. 6, 1966, P.L. 89-554, which appears as a note preceding *5 USCS § 101*. Section 1 of such Act enacted Title 5 as positive law, and § 7(b) of such Act provided that a reference to a law replaced by § 1 of such Act is deemed to refer to the corresponding provision enacted by such Act. (The Classification Act of 1923 had previously been supplanted by the Classification Act of 1949, § 1106(a) of which provided that a reference to the 1923 Act was to be held and considered to mean the 1949 Act.)

The bracketed words "United States District Court for the District of Columbia" were inserted in subsec. (b) on the authority of Act June 25, 1948, as amended by Act May 24, 1949. See *28 USCS §§ 43* and *451* note.

In subsec. (c)(2), the sentence beginning "The Federal Board for Vocational Education shall . . ." has been enclosed in brackets as obsolete. The functions of the Board were transferred to the Department of the Interior by Ex. Or. No. 6166 of June 10, 1933, and then to the Federal Security Agency by Reorg. Plan No. 1 of 1939 (*5 USCS § 903* note). The Federal Board for Vocational Education was abolished by Reorg. Plan No. 2 of 1946 (*5 USCS § 903* note).

Amendments:

1956. Act July 26, 1956, in subsec. (c), substituted "rehabilitation" for "education" following "for such", and substituted the last two sentences for one that read: "If any surplus is left in any fiscal year in the fund provided for in section 44, such surplus may be used in subsequent fiscal years for the purposes of this section except for the purposes of administration and investigation."

1972. Act Oct. 27, 1972 (effective 30 days after enactment, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), redesignated subsec. (c) as paragraph (2) of subsec (c) and added para. (1).

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note), in subsec. (a), substituted "Secretary" for "United States Employees' Compensation Commission" and substituted "Secretary" for "commission" wherever it appears; and, in subsecs. (b) and (c)(2), substituted "Secretary" for "commission" wherever it appears.

Other provisions:

Application of Oct. 27, 1972 amendments. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of Sept. 28, 1984 amendments. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 940 Deputy commissioners.

(a) Appointment; use of personnel and facilities of boards, commissions, or other agencies; expenses and salaries. The Secretary may appoint as deputy commissioners any member of any board, commission, or other agency of a State to act as deputy commissioner for any compensation district or part thereof in such State, and may make arrangements with such board, commission, or other agency for the use of the personnel and facilities thereof in the administration of this Act. The Secretary may make such arrangements as may be deemed advisable by it for the payment of expenses of such board, commission, or other agency, incurred in the administration of this Act pursuant to this section, and for the payment of salaries to such board, commission, or other agency, or the members thereof, and may pay any amounts agreed upon to the proper officers of the State, upon vouchers approved by the Secretary.

(b) Appointment in Territories and District of Columbia; compensation. In any Territory of the United States or in the District of Columbia a person holding an office under the United States may be appointed deputy commissioner and for services rendered as deputy commissioner may be paid compensation, in addition to that he is receiving from the United States, in an amount fixed by the Secretary in accordance with the Classification Act of 1923 [*5 USCS §§ 5101 et seq.* and *5331 et seq.*].

(c) Transfers to other districts; temporary details. Deputy commissioners (except deputy commissioners appointed under subdivision (a) of this section) may be transferred from one compensation district to another and may be temporarily detailed from one compensation district for service in another in the discretion of the Secretary.

(d) Maintaining offices. Each deputy commissioner shall maintain and keep open during reasonable business hours an office, at a place designated by the Secretary, for the transaction of business under this Act, at which office he shall keep his official records and papers. Such office shall be furnished and equipped by the Secretary, who shall also furnish the deputy commissioner with all necessary clerical and, other assistants, records, books, blanks, and supplies. Wherever practicable such office shall be located in a building owned or leased by the United States; otherwise the Secretary shall rent suitable quarters.

(e) Records and papers. If any deputy commissioner is removed from office, or for any reason ceases to act as such deputy commissioner, all of his official records and papers and office equipment shall be transferred to his successor in office or, if there be no successor, then to the Secretary or to a deputy commissioner designated by the Secretary.

(f) Conflict of interest. Neither a deputy commissioner or Board member nor any business associate of a deputy commissioner shall appear as attorney in any proceeding under this Act, and no deputy commissioner or Board member shall act in any such case in which he is interested, or when he is employed by any party in interest or related to any party in interest by consanguinity or affinity within the third degree, as determined by the common law.

Legislative History

(March 4, 1927, ch 509, § 40, 44 Stat. 1443; Oct. 27, 1972, P.L. 92-576, § 15(j), 86 Stat. 1262; Sept. 28, 1984, P.L. 98-426, § 27(a)(2), 98 Stat. 1654.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of such Act, consult USCS Tables volumes.
Explanatory notes:

In subsec. (b), "*5 USCS §§ 5101 et seq.* and *5331 et seq.*" has been inserted in brackets pursuant to § 7(b) of Act Sept. 6, 1966, P.L. 89-554, which appears as a note preceding *5 USCS § 101*. Section 1 of such Act enacted Title 5 as positive law, and § 7(b) of such Act provided that a reference to a law replaced by § 1 of such Act is deemed to refer to the corresponding provision enacted by such Act. (The Classification Act of 1923 had previously been supplanted by the Classification Act of 1949, § 1106(a) of which provided that a reference to the 1923 Act was to be held and considered to mean the 1949 Act.)
Amendments:

1972. Act Oct. 27, 1972 (effective 30 days after enactment on Oct. 27, 1972, as provided by § 22 of such Act, which appears as *33 USCS § 902* note) inserted "or Board member" wherever it appears.

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note), in subsec. (a), purported to substitute "Secretary" for "commission" wherever it appears; however, in order to effectuate the intent of Congress, the substitution was only executed for the phrase where it referred to the "United States Employees Compensation Commission".

Such Act further (effective as above), in subsecs. (b)-(e), substituted "Secretary" for "commission" wherever it appears.

§ 941 Safety rules and regulations.

(a) Safe place of employment; installation of safety devices and safeguards. Every employer shall furnish and maintain employment and places of employment which shall be reasonably safe for his employees in all employments covered by this Act and shall install, furnish, maintain, and use such devices and safeguards with particular reference to equipment used by and working conditions established by such employers as the Secretary may determine by regulation or order to be reasonably necessary to protect the life, health, and safety of such employees, and to render safe such employment and places of employment, and to prevent injury to his employees. However, the Secretary may not make determinations by regulation or order under this section as to matters within the scope of title 52 of the Revised Statutes and Acts supplementary or amendatory thereto, the Act of June 15, 1917 (ch. 30, 40 Stat. 220), as amended or section 4(e) of the Act of August 7, 1953 (ch. 345, 67 Stat. 462), as amended [*43 USCS § 1333(e)*].

(b) Studies and investigations by Secretary. The Secretary, in enforcing and administering the provisions of this section, is authorized in addition to such other powers and duties as are conferred upon him--

(1) to make studies and investigations with respect to safety provisions and the causes and prevention of injuries in employments covered by this Act, and in making such studies and investigations to cooperate with any agency of the

United States or with any State agency engaged in similar work;

(2) to utilize the services of any agency of the United States or any State agency engaged in similar work (with the consent of such agency) in connection with the administration of this section;

(3) to promote uniformity in safety standards in employments covered by this Act through cooperative action with any agency of the United States or with any State agency engaged in similar work;

(4) to provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe working conditions in employments covered by this Act, and to consult with and advise employers as to the best means of preventing injuries;

(5) to hold such hearings, issue such orders, and make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of this section, and for such purposes the Secretary and the district courts shall have the authority and jurisdiction provided by section 5 of the Act of June 30, 1936 (ch. 881, 49 Stat. 2036), as amended [*41 USCS § 39*], and the Secretary shall be represented in any court proceedings as provided in the Act of May 4, 1928 (ch. 502, 45 Stat. 490), as amended [*33 USCS § 921a*].

(c) Inspection of places and practices of employment. The Secretary or his authorized representative may inspect such places of employment, question such employees, and investigate such conditions, practices, or matters in connection with employment subject to this Act, as he may deem appropriate to determine whether any person has violated any provision of this section, or any rule or regulation issued thereunder, or which may aid in the enforcement of the provisions of this section. No employer or other person shall refuse to admit the Secretary or his authorized representatives to any such place or shall refuse to permit any such inspection.

(d) Requests for advice; variations from safety rules and regulations. Any employer may request the advice of the Secretary or his authorized representative, in complying with the requirements of any rule or regulation adopted to carry out the provisions of this section. In case of practical difficulties or unnecessary hardships, the Secretary in his discretion may grant variations from any such rule or regulation, or particular provisions thereof, and permit the use of other or different devices if he finds that the purpose of the rule or regulation will be observed by the variation and the safety of employees will be equally secured thereby. Any person affected by such rule or regulation, or his agent, may request the Secretary to grant such variation, stating in writing the grounds on which his request is based. Any authorization by the Secretary of a variation shall be in writing, shall describe the conditions under which the variation shall be permitted, and shall be published as provided in section 3 of the Administrative Procedure Act (ch. 324, 60 Stat. 237), as amended [*5 USCS § 552*]. A properly indexed record of all variations shall be kept in the office of the Secretary and open to public inspection.

(e) Jurisdiction to restrain violations. The United States district courts, [together with the District Court for the Territory of Alaska], shall have jurisdiction for cause shown, in any action brought by the Secretary, represented as provided in the Act of May 4, 1928 (ch. 502, 45 Stat. 490), as amended [*33 USCS § 921a*], to restrain violations of this section or of any rule, regulation, or order of the Secretary adopted to carry out the provisions of this section.

(f) Violations and penalties. Any employer who, willfully, violates or fails or refuses to comply with the provisions of subsection (a) of this section, or with any lawful rule, regulation, or order adopted to carry out the provisions of this section, and any employer or other person who willfully interferes with, hinders, or delays the Secretary or his authorized representative in carrying out his duties under subsection (c) of this section by refusing to admit the Secretary or his authorized representative to any place, or to permit the inspection or examination of any employment or place of employment, or who willfully hinders or delays the Secretary or his authorized representative in the performance of his duties in the enforcement of this section, shall be guilty of an offense, and, upon conviction thereof, shall be punished for each offense by a fine of not less than $ 100 nor more than $ 3,000; and in any case where such employer is a corporation, the officer who willfully permits any such violation to occur shall be guilty of an offense, and, upon conviction thereof, shall be punished also for each offense by a fine of not less than $ 100 nor more than $ 3,000. The liability hereunder shall not affect any other liability of the employer under this Act.

(g) Inapplicability to certain employments.

(1) The provisions of this section shall not apply in the case of any employment relating to the operations for the exploration, production, or transportation by pipeline of mineral resources upon the navigable waters of the United States, nor under the authority of the Act of August 7, 1953 (ch. 345, 67 Stat. 462) [*43 USCS §§ 1331 et seq.*], nor in the case of any employment in connection with lands (except filled in, made or reclaimed lands) beneath the navigable waters as defined in the Act of May 22, 1953 (ch. 65, 67 Stat. 29) [*43 USCS §§ 1301 et seq.*] nor in the case of any employment for which compensation in case of disability or death is provided for employees under the authority of the Act of May 17, 1928 (ch. 612, 45 Stat. 600), as amended, nor under the authority of the Act of August 16, 1941 (ch. 357, 55 Stat. 622), as amended [*42 USCS §§ 1651 et seq.*].

(2) The provisions of this section, with the exception of paragraph (1) of subsection (b), shall not be applied under the authority of the Act of September 7, 1916 (ch. 458, 39 Stat. 742), as amended [*5 USCS §§ 8101 et seq.*].

Legislative History

(March 4, 1927, ch 509, § 41, 44 Stat. 1444; Aug. 23, 1958, P.L. 85-742, § 1, 72 Stat. 835; Dec. 21, 1982, P.L. 97-375, Title I, § 110(b), 96 Stat. 1820.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, which appears generally as *33 USCS §§ 901 et seq.* For full classification of such Act, consult USCS Tables volumes.

"Title 52 of the Revised Statutes", referred to in subsec. (a), was R.S. §§ 4399-4500. For full classification of such sections, consult USCS Tables volumes.

The "Act of June 15, 1917", referred to in subsec. (a), is Act June 15, 1917, ch 30. For full classification of such Act, consult USCS Tables volumes.

The "Act of May 17, 1928", referred to in subsec. (g)(1), is Act May 17, 1928, ch 612. See D.C. law 3-77 (D.C. Code §§ 36-301 et seq.).
Explanatory notes:

In subsec. (d), "*5 USCS § 552*" has been inserted in brackets, and, in subsec. (g)(2), "*5 USCS §§ 8101 et seq.*" has been inserted in brackets, pursuant to § 7(b) of Act Sept. 6, 1966, P.L. 89-554, which appears as a note preceding *5 USCS § 101*. Section 1 of such Act enacted Title 5 as positive law, and § 7(b) of such Act provided that a reference to a law replaced by § 1 of such Act is deemed to refer to the corresponding provision enacted by such Act.

The words "together with the District Court for the Territory of Alaska" were enclosed in brackets as obsolete pursuant to Act July 7, 1958, P.L. 85-508, 72 Stat. 339 (which appears as a note preceding *48 USCS § 21*), which admitted Alaska into the union as a state and enacted *28 USCS § 81A*, constituting Alaska as one judicial district, and *28 USCS § 132*, providing for a court known as the United States District Court for the district in each judicial district.
Amendments:

1958. Act Aug. 23, 1958 amended this section generally.

1982. Act Dec. 21, 1982, in subsec. (b)(1), deleted "and from time to time make to Congress such recommendations as he may deem proper as to the best means of preventing such injuries" following "covered by this Act.".

§ 942 Annual report.

The Secretary shall make to Congress at the end of each fiscal year, a report of the administration of this Act for the preceding fiscal year, including a detailed statement of receipts of and expenditures from the fund established in section 44 [*33 USCS § 944*], together with such recommendations as the Secretary deems advisable. Such report shall include the annual report required under section 426(b) of the Black Lung Benefits Act (*30 U.S.C. 936(b)*) and shall be identified as the Annual Report of the Office of Workers' Compensation Programs.

Legislative History

(March 4, 1927, ch 509, § 42, as added Sept. 28, 1984, P.L. 98-426, § 23, 98 Stat. 1653.)

(As amended Dec. 21, 1995, P.L. 104-66, Title I, Subtitle J, § 1102(b)(1), 109 Stat. 722.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1425, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Explanatory notes:

A prior § 942 (Act March 4, 1927, ch 509, § 42, 44 Stat. 1444) was repealed by Act Sept. 6, 1966, P.L. 89-554, § 8, 80 Stat. 632. Such section provided for traveling expenses. Similar provisions appear as *5 USCS §§ 5701 et seq.*
Effective date of section:

This section is effective upon enactment on Sept. 28, 1984, as provided by Act Sept. 28, 1984, P.L. 98-426, § 28(e)(1),

98 Stat. 1655, which appears as *33 USCS § 901* note.
Amendments:

1995. Act Dec. 21, 1995 substituted "end of each fiscal year" for "beginning of each regular session, commencing at the beginning of the second regular session after the enactment of the Longshore and Harbor Workers' Compensation Act Amendments of 1984" and added "Such report shall include the annual report required under section 426(b) of the Black Lung Benefits Act (*30 U.S.C. 936(b)*) and shall be identified as the Annual Report of the Office of Workers' Compensation Programs.".

§ 943 [Repealed] HISTORY; ANCILLARY LAWS AND DIRECTIVES
This section (Act March 4, 1927, ch 509, § 43, 44 Stat. 1444) was repealed by Act Nov. 8, 1965, P.L. 89-348, § 1(15), 79 Stat. 1311. This section provided for an annual report to Congress by the Secretary of Labor on the administration of the Longshoremen's and Harbor Workers' Compensation Act.

§ 944 Special fund.

(a) Establishment; administration; custody, trust. There is hereby established in the Treasury of the United States a special fund. Such fund shall be administered by the Secretary. The Treasurer of the United States shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be money or property of the United States.

(b) Disbursements; bond of custodian. The Treasurer is authorized to disburse moneys from such fund only upon order of the Secretary. He shall be required to give bond in an amount to be fixed and with securities to be approved by the Secretary of the Treasury and the Comptroller General of the United States conditioned upon the faithful performance of his duty as custodian of such fund.

(c) Payments into fund. Payments into such fund shall be made as follows:

(1) Whenever the Secretary determines that there is no person entitled under this Act to compensation for the death of an employee which would otherwise be compensable under this Act, the appropriate employer shall pay $ 5,000 as compensation for the death of such an employee.

(2) At the beginning of each calendar year the Secretary shall estimate the probable expenses of the fund during that calendar year and the amount of payments required (and the schedule therefor) to maintain adequate reserves in the fund. Each carrier and self-insurer shall make payments into the fund on a prorated assessment by the Secretary determined by--

(A) computing the ratio (expressed as a percent) of (i) the carrier's or self-insured's workers' compensation payments under this Act during the preceding calendar year, to (ii) the total of such payments by all carriers and self-insureds under this Act during such year;

(B) computing the ratio (expressed as a percent) of (i) the payments under section 8(f) of this Act [*33 USCS § 908(f)*] during the preceding calendar year which are attributable to the carrier or self-insured, to (ii) the total of such payments during such year attributable to all carriers and self-insureds;

(C) dividing the sum of the percentages computed under subparagraphs (A) and (B) for the carrier or self-insured by two; and

(D) multiplying the percent computed under subparagraph (C) by such probable expenses of the fund (as determined under the first sentence of this paragraph).

(3) All amounts collected as finds and penalties under the provisions of this Act shall be paid into such fund.

(d) Investigations; records, availability; recordkeeping; provisions of sections 49 and 50 of title 15 applicable to Secretary.

(1) For the purpose of making rules, regulations, and determinations under this section under and for providing enforcement thereof, the Secretary may investigate and gather appropriate data from each carrier and self-insurer. For that purpose, the Secretary may enter and inspect such places and records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate.

(2) Each carrier and self-insurer shall make, keep, and preserve such records, and make such reports and provide such additional information, as prescribed by regulation or order of the Secretary, as the Secretary deems necessary or appropriate to carry out his responsibilities under this section.

(3) For the purpose of any hearing or investigation related to determinations or the enforcement of the provisions of this section, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (*U.S.C., title 15, secs. 49* and *50*), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary of Labor.

(e) Depositories; investments. The Treasurer of the United States shall deposit any moneys paid into such fund into such depository banks as the Secretary may designate and may invest any portion of the funds which, in the opinion of the Secretary, is not needed for current requirements, in bonds or notes of the United States or of any Federal land bank.

(f) Limitation of liability. Neither the United States nor the Secretary shall be liable in respect of payments authorized under section 8 [*33 USCS § 908*] in an amount greater than the money or property deposited in or belonging to such fund.

(g) Audit by Comptroller General; finality of payment determinations; credits of disbursing officers. The Comptroller General of the United States shall audit the account for such fund, but the action of the Secretary in making payments from such fund shall be final and not subject to review, and the Comptroller General is authorized and directed to allow credit in the accounts of any disbursing officer of the Secretary for payments made from such fund authorized by the Secretary.

(h) Civil actions for civil penalties and unpaid assessments. All civil penalties and unpaid assessments provided for in this Act shall be collected by civil suit brought by the Secretary.

(i) Proceeds available for certain payments. The proceeds of this fund shall be available for payments:

(1) Pursuant to sections [section] 10 [*33 USCS § 910*] with respect to certain initial and subsequent annual adjustments in compensation for total permanent disability or death.

(2) Under section 8(f) and (g), under section 18(b), and under section 39(c) [*33 USCS §§ 908(f)* and *(g)*, *918(b)*, and *939(c)*].

(3) To repay the sums deposited in the fund pursuant to subsection (d).

(4) To defray the expense of making examinations as provided in section 7(e) [*33 USCS § 907(e)*].

(j) Audit to Congress. The fund shall be audited annually and the results of such audit shall be included in the annual report required by section 42 [*33 USCS § 942*].

(k) [Redesignated]

Legislative History

(March 4, 1927, ch 509, § 44, 44 Stat. 1444; July 26, 1956, ch 735, § 8, 70 Stat. 656; Oct. 27, 1972, P.L. 92-576, § 8, 86 Stat. 1256; Sept. 28, 1984, P.L. 98-426, § 24, 27(a)(2) in part, 98 Stat. 1653, 1654.) HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.

The reference to "subsection (d)" in subsec. (i)(3) should probably be a reference to subsection (e), as enacted by § 8(b) of Act Oct. 27, 1972, providing in part for repayment.

Explanatory notes:

The bracketed word "section" was inserted in subsec. (i)(1) as the word probably intended by Congress.

Amendments:

1956. Act July 26, 1956, in subsec. (a), inserted "of subsection (b) of section 18, and of (c) of section 39"; and in subsec. (c)(1), substituted the second sentence and proviso beginning "The proceeds of this fund . . ." for a former second sentence which read "Fifty per centum of each such payment shall be available for the payments under subdivision (f) of section 8, and 50 per centum shall be available for payments under subdivision (g) of section 8.".

1972. Act Oct. 27, 1972 (effective 30 days after enactment on Oct. 27, 1972, as provided by § 22 of such Act, which appears as *33 USCS § 902* note), in subsec. (a), added a period after the word "fund" in the first sentence and deleted the remainder of the sentence, which read: "for the purpose of making payments in accordance with the provisions of subsections (f) and (g) of section 8, of subsection (b) of section 18, and of (c) of section 39 of this Act."; and redesignated subsecs. (d)-(g) as subsecs. (f)-(h); added subsecs (c)-(e); and deleted former subsec. (c), which read:

"(c) Payments into such fund shall be made as follows:

"(1) Each employer shall pay $ 1,000 as compensation for the death of an employee of such employer resulting from injury where the deputy commissioner determines that there is no person entitled under this Act to compensation for such death. The proceeds of this fund shall be available for payments under subsections (f) and (g) of section 8 under subsection (b) of section 18 [§ 918 (b) of this title], and under subsection (c) of section 39: Provided, That payments authorized by subsection (f) shall have priority over other payments authorized from the fund: Provided further, That at the close of each fiscal year the Secretary of Labor shall submit to the Congress a complete audit of the fund.

"(2) All amounts collected as fines and penalties under the provisions of this Act shall be paid into such fund.".

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note), in subsecs. (a) and (b), substituted "Secretary" for "commission"; in subsec. (c), substituted para. (2) for one which read: "At the beginning of each calendar year the Secretary shall estimate the probable expenses of the fund during that calendar year and each carrier or self-insurer shall make payments into the fund on a prorated assessment by the Secretary in the proportion that the total compensation and medical payments made on risks covered by this Act by each carrier and self-insurer bears to the total of such payments made by all carriers and self-insurers under the Act in the prior calendar year in accordance with a formula and schedule to be determined from time to time

by the Secretary to maintain adequate reserves in the fund."; deleted subsec. (e), which read: "There is hereby authorized to be appropriated to the Secretary the sum of $ 2,000,000 which the Secretary shall immediately deposit into the fund. Upon deposit in the fund such moneys shall be treated as the property of such fund. This sum, without additional payments for interest, shall be repaid from the money or property belonging to the fund on a schedule of repayment set by the Secretary: Provided, That full repayment must be made no later than five years from the date of deposit into the fund. Each such repayment, as made, shall be covered into the Treasury of the United States as miscellaneous receipts."; redesignated subsecs. (f)-(k) as subsecs. (e)-(j) respectively; in subsecs. (e)-(g) as so redesignated, substituted "Secretary" for "commission" wherever it appears; in subsec. (h), as so redesignated, inserted "and unpaid assessments" and substituted "Secretary for "commission"; in subsec. (i), as so redesignated, in para. (1), deleted "and 11" following "10", inserted "certain", and deleted "which occurred prior to the effective date of this subsection" following "death", and, in para. (4), inserted "(e)"; and substituted subsec. (j) as so redesignated for one which read: "At the close of each fiscal year the Secretary shall submit to the Congress a complete audit of the fund.".
Other provisions:

Application of amendments made by Act Oct. 27, 1972. For application of amendments made by Act Oct. 27, 1972, see § 20(c)(3) of such Act, which appears as *33 USCS § 902* note.

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 945-947 [Repealed] HISTORY; ANCILLARY LAWS AND DIRECTIVES
These sections (Act March 4, 1927, ch 509, §§ 45-47, 44 Stat. 1445) were repealed by Act Sept 28, 1984, P.L. 98-426, § 25, 98 Stat. 1654, effective upon enactment on Sept. 28, 1984, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note. Section 945 provided for a fund for expenses in the administration of *33 USCS §§ 901 et seq.*; § 946 appropriated $ 250,000 for administration expenses for fiscal years ending June 30, 1927 and June 30, 1928 and such section had expired; and § 947 provided for availability of appropriations.

§ 948 Laws inapplicable

Nothing in sections 4283, 4284, 4285, 4286, or 4289 of the Revised Statutes, as amended [*46 USCS §§ 30501, 30502, 30505, 30506, 30507, 30508, 30510,* or *30511*], nor in section 18 of the Act entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, as amended [*46 USCS § 30505*], shall be held to limit the amount for which recovery may be had

(1) in any suit at law or in admiralty where an employer has failed to secure compensation as required by this Act, or

(2) in any proceeding for compensation, any addition to compensation, or any civil penalty.

Legislative History

(March 4, 1927, ch 509, § 48, 44 Stat. 1446.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS*

§§ 901 et seq. For full classification of this Act, consult USCS Tables volumes.
Explanatory notes:

"*46 USCS §§ 30501*, *30502*, *30505*, *30506*, *30507*, *30508*, *30510*, or *30511*" and "*46 USCS § 30505*" have been inserted in brackets pursuant to § 18(c) of Act Oct. 6, 2006, P.L. 109-304, which appears as a note preceding *46 USCS § 101*. Section 2 of such Act completed the codification of Title 46 as positive law, and § 18(c) of such Act provided that a reference to a law replaced by such Act is deemed to refer to the corresponding provision enacted by such Act.

§ 948a Discrimination against employees who bring proceedings; penalties; deposit of payments in special fund; civil actions; entitlement to restoration of employment and compensation, qualifications requirement; liability of employer for penalties and payments; insurance policy exemption from liability.

It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim compensation from such employer, or because he has testified or is about to testify in a proceeding under this Act. The discharge or refusal to employ a person who has been adjudicated to have filed a fraudulent claim for compensation is not a violation of this section. Any employer who violates this section shall be liable to a penalty of not less than $ 1,000 or more than $ 5,000, as may be determined by the deputy commissioner. All such penalties shall be paid to the deputy commissioner for deposit in the special fund as described in section 44 [*33 USCS § 944*], and if not paid may be recovered in a civil action brought in the appropriate United States district court. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising out of such discrimination: Provided, That if such employee shall cease to be qualified to perform the duties of his employment, he shall not be entitled to such restoration and compensation. The employer alone and not his carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from the liability for such penalties and payments shall be void.

Legislative History

(March 4, 1927, ch 509, § 49, as added Oct. 27, 1972, P.L. 92-576, § 19, 86 Stat. 1263; Sept. 28, 1984, P.L. 98-426, § 26, 98 Stat. 1654.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Effective date of section:

Act Oct. 27, 1972, P.L. 92-576, § 22, 86 Stat. 1265, provided that this section shall become effective thirty days after the date of its enactment (Oct. 27, 1972). See *33 USCS § 902* note.
Amendments:

1984. Act Sept. 28, 1984 (effective upon enactment on 9/28/84, as provided by § 28(e)(1) of such Act, which appears as *33 USCS § 901* note) inserted "The discharge or refusal to employ a person who has been adjudicated to have filed a fraudulent claim for compensation is not a violation of this section.", substituted $ 1,000" for "$ 100", and substituted "$ 5,000" for "$ 1,000".
Other provisions:

Application of amendments made by Act Sept. 28, 1984. For application of amendments made by Act Sept. 28, 1984, see § 28 of such Act, which appears as *33 USCS § 901* note.

§ 949 Effect of unconstitutionality.

If any part of this Act is adjudged unconstitutional by the courts, and such adjudication has the effect of invalidating any payment of compensation under this Act, the period intervening between the time the injury was sustained and the time of such adjudication shall not be computed as a part of the time prescribed by law for the commencement of any action against the employer in respect of such injury; but the amount of any compensation paid under this Act on account of such injury shall be deducted from the amount of damages awarded in such action in respect of such injury.

Legislative History

(March 4, 1927, ch 509, § 50 [49], 44 Stat. 1446; Oct. 27, 1972, P.L. 92-576, § 19, 86 Stat. 1263.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Redesignation:

This section, enacted as § 49 of Act March 4, 1927, was redesignated as § 50 of such Act by Act Oct. 27, 1972, P.L. 92-576, § 49, 86 Stat. 1624.

§ 950 Separability provision.

If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons and circumstances shall not be affected thereby.

Legislative History

(March 4, 1927, ch 509, § 51 [50], 44 Stat. 1446; Oct. 27, 1972, P.L. 92-576, § 19, 86 Stat. 1263.) HISTORY; ANCILLARY LAWS AND DIRECTIVES
References in text:

"This Act", referred to in this section, is Act March 4, 1927, ch 509, 44 Stat. 1424, which appears generally as *33 USCS §§ 901 et seq.* For full classification of this Act, consult USCS Tables volumes.
Redesignation:

This section, enacted as § 50 of Act March 4, 1927, was redesignated as § 51 of such Act by Act Oct. 27, 1972, P.L. 92-576, § 49, 86 Stat. 1624.

§ 951-980 [Reserved] HISTORY; ANCILLARY LAWS AND DIRECTIVES
Explanatory notes:

No laws are presently classified to these sections, which are designated as "Reserved" to provide numerical continuity throughout the title.

3 of 8 DOCUMENTS

Benedict on Admiralty

Volume 1A: Longshore and Harbor Worker Compensation Act Chapters I-V, Apps. A-E
APPENDIX A

1A Benedict on Admiralty

THE CONFERENCE REPORT ON S. 38

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 38) entitled the "Longshoremen's and Harbor Workers' Compensation Act" submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes. *Senate Bill*

The Senate bill adds to the current express exemptions contained in section 2 of the Act the following: (1) Employees exclusively performing office clerical, secretarial, security, or data processing work; (2) club, camp, restaurant, museum, retail outlet and marina personnel; (3) personnel of suppliers, transporters or vendors temporarily doing business with covered employers; (4) aquaculture workers; (5) certain personnel employed in specified grain elevator loading operations; and (6) persons engaged in the construction or repair of recreational vessels under 65 feet in length and certain shipbuilding and ship repairmen building specified barges and vessels.

These exemptions are conditioned upon an employee being subject to coverage under a State workers' compensation law.

Also, the bill specifically exempts the following employers: (1) clubs, camps, restaurants, museums, retail outlets, and marinas; (2) aquaculture farms; and (3) builders or repairers of certain small vessels.

House Amendment

The House amendment generally follows the Senate bill, but provides further qualifications. Individuals employed by a restaurant, museum, retail outlet, or marina are exempt if they do not engage in construction, replacement, or

expansion of such facilities (with an exception being made for routine maintenance work). With respect to personnel of suppliers, transporters, or vendors temporarily doing business on the premises of covered employers, the House amendment restricts the exemption to personnel performing work not normally done by the covered employer. The exemption for individuals who build or repair recreational boats under 65 feet is subject to qualifications where the employer is working on both exempt and non-exempt boats.

The House amendment does not contain an exemption for certain grain elevator operations. Nor does the amendment contain the exemption for individuals building or repairing certain small vessels.

The House amendment prescribes rules for granting limited exemption to individuals performing land-based fabrication of offshore oil production platforms.

Conference Substitute

The Conference substitute exempts the following individuals from coverage under the Act (by excluding them from the definition of employee in section 2(3)): (1) individuals employed exclusively to perform office clerical, secretarial, security, or data processing work; (2) individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet; (3) individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance); (4) individuals who (a) are employed by suppliers, transporters or vendors, (b) are temporarily doing business on the premises of a covered employer, and (c) are not engaged in work normally performed by employees of that employer under this Act; (5) aquaculture workers; and (6) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length.

These exemptions are conditioned upon an individual being subject to coverage under a State workers' compensation law. Thus, if a State law exempts from coverage an individual who otherwise falls within any of the above exemptions of the Longshore Act, the Longshore exemption would not apply. It is noted that the Conference substitute incorporates the exemptions contained in the current statute (for a master or member of a crew of any vessel, and for any person engaged by a master to load or unload or repair any small vessel under 18 tons net); these exemptions are, of course, not conditioned upon coverage under a State workers' compensation law.

In developing the Conference substitute, the conferees reached certain understandings regarding the new exemptions.

The Senate bill and the House amendment contain identical language for exempting individuals employed exclusively to perform office clerical, secretarial, security or data processing work. As noted in both the accompanying Senate and House reports, this exemption reflects that these individuals are land-based workers otherwise covered under a State workers' compensation law, and their duties are performed in an office. However, the conferees expressly adopt a qualification contained in both reports: The Conference substitute does not exempt employees classified as longshore cargo checkers and clerks. Therefore, cargo checkers and clerks remain fully within Longshore Act jurisdiction.

With respect to club employees, the report accompanying the House amendment (House Report 98-570, 98th Cong., 1st Session, at 4 (1983)) drew a distinction between profit and nonprofit clubs, suggesting that the exemption applies only to the latter. Neither the Senate bill nor the language of the House amendment recognize such a distinction. Nor is it the intention of the Conference substitute to limit the exemption to nonprofit clubs.

The Senate report (Senate Report 98-81, 98th Cong., 1st Session, at 29 (1983)) describes what activities are included within the meaning of aquaculture operations. The conferees understand that, to date, the definition of maritime employment has never been interpreted to mean the cleaning, processing, or canning of fish and fish products. But to foreclose any future problem of interpretation, the term "aquaculture operations" should be understood as including such activities.

The Conference substitute also incorporates an exemption from coverage (through an amendment to section 3 of

the Act) for employees employed by facilities engaged in the business of building, repairing, or dismantling exclusively small vessels. The substitute defines what is meant by "small vessels", and also specifies the circumstances where the exemption would not apply. *Senate Bill*

The Senate bill addresses several issues growing out of the liability of employers and third parties for damages or compensation. First, it provides that an employer's liability for compensation or benefits under the Longshore Act would preclude liability under any other workers' compensation law or the Jones Act. Second, the bill deals with what has not been exclusive liability for shipbuilders under current law; Section 5(b) of the Act now allows maritime negligence actions against shipbuilders, in addition to compensation otherwise available under the Act. The Senate bill removes that dual liability in two respects. It bars the maritime tort action, thus respecting the principle of workers' compensation being an exclusive remedy. Further, the bill, anticipating that a shipbuilder may be indirectly exposed to liability above compensation through actions by third parties grounded on theories of contractual or tort indemnity or contribution, bars those actions as well.

Finally, the Senate bill provides an exemption to the Longshore Act's current proscription of indemnity agreements under Section 5(b) of the Act. That section is made applicable currently to situations on the Outer Continental Shelf by virtue of Section 4 of the Outer Continental Shelf Lands Act (*43 U.S.C. § 1333*). The bill would legalize those indemnity agreements insofar as they apply to the Outer Continental Shelf and would further preempt the application of state laws prohibiting such indemnity agreements.

House Amendment

The House amendment incorporates the exclusive liability rule for shipbuilders enunciated in the Senate bill. But the amendment did not address the other issues in the Senate bill.

Conference Substitute

The Conference substitute deals with the issues of overlapping and indirect liability and of exclusive remedy as follows:

First, the substitute adopts, without change, the rule of exclusive liability for shipbuilders proposed in the Senate bill.

Second, the substitute removes the current proscription with respect to mutual indemnity agreements between employers and vessels as applied to the Outer Continental Shelf by virtue of the Outer Continental Shelf Lands Act.

Third, the substitute addresses that issue of immunity in the situation where an employee of a subcontractor brings a third party action against the contractor for a work-related injury. The Supreme Court in *Washington Metropolitan Area Transit Authority v. Johnson, 104 S. Ct. 2827 (1984)* , changed key components of what had widely been regarded as the proper rules governing contractor and subcontractor liability and immunity under the Longshoremen's and Harbor Workers' Compensation Act.

The Conference substitute, in disapproving *WMATA v. Johnson,* achieves the following: First, the obligation of the contractor to secure compensation for the employee of the subcontractor is a contingent one, which is triggered only upon the failure of the subcontractor to secure compensation for its own employees. Second, the contractor remains amendable [sic] to suit by its subcontractors' employees in those instances where the subcontractor-employer has fulfilled its statutory obligation to secure compensation for its employees. Third, however, where the subcontractor defaults in securing compensation, thus triggering the contractor's obligation, and the latter fulfills that obligation, the contractor is deemed an "employer" for purposes of section 5(a) and therefore entitled to immunity from suit by the subcontractor's employees. Fourth, if the contractor utilizes a "wrap-up" insurance policy to provide insurance coverage for the benefit [of] satisfying the subcontractor's primary obligation to secure compensation, the contractor still remains amenable to suit by employees of the subcontractor; the contractor does not enjoy the immunity afforded by Section

5(a) of the Act.

The Conference substitute also provides a special effective date, so that these amendments apply to pending suits. This will avoid the dismissal, under *WMATA*, of third-party suits which were pending or on appeal on the date of enactment. (Any suit which has gone to final judgment from which no appeal lies as of date of enactment would not be subject to the amendments). *WMATA*, the conferees believe, does not comport with the legislative intent of the Act nor its interpretation from 1927 through 1983. The case should not have any precedential effect.

(a) Change of Physicians.

Senate Bill

The Senate bill authorizes the Secretary to order a change in physicians or hospitals if charges exceed those prevailing in the community.

House Amendment

No provision.

Conference Substitute

The House recedes but adds that the doctor cannot charge more for Longshore clients than for other patients.

(b) Debarment of Medical Providers.

(1) **Senate Bill**

The Senate bill mandates the Secretary to prepare a list of medical providers not authorized to render medical care or provide services under the Act.

House Amendment

The House amendment contains similar language.

Conference Substitute

The Senate recedes.

(2) **Senate Bill**

The Senate bill sets out criteria under which the Secretary is required or permitted to refuse to authorize a physician to render medical care under the Act.

House Amendment

The House amendment contains criteria under which physicians and health care providers shall be excluded from providing medical care when the Secretary makes certain determinations.

Conference Substitute

The Senate recedes. The conferees do not intend to bar the use of fee schedules by the Secretary.

(3) Senate Bill

No provision.

House Amendment

The House amendment provides specifically for reimbursement of employee's medical expenses rendered by a non-qualified physician or provider in an emergency.

Conference Substitute

The Senate recedes.

(4) Senate Bill and House Amendment

The Senate bill and the House Amendment both prohibit employees from selecting a physician on the Secretary's list and restrict an employee's selection of a subsequent physician, where the initial choice was a specialist. Furthermore, both delete the requirement in the Act for an injured employee to request permission from the employer prior to seeking medical treatment and lengthen from 10 days to 21 days the period within which a treating physician must provide an employer with the report of injury or treatment.

Conference Substitute

The Conference agreement makes two technical amendments. One is to make explicit the current requirement that the employee must *request* the employer to provide medical services in order to be entitled to reimbursement. The other is to retain the current law requirement that a treating physician provide an employer with the report of injury or treatment within 10 days. This is to conform with the current law requirements in § 14(b) and (d) for the employer to begin payments or controvert a claim.

(5) Senate Bill

The Senate bill lists in subsections (j)(1) and (2) the mandatory and permissive grounds to debar physicians under Longshore.

House Amendment

The House amendment incorporates these in an earlier provision.

Conference Substitute

Senate recedes.

(6) Senate Bill

The Senate bill requires certain providers to furnish the Secretary such data as is needed to enforce debarment.

House Amendment

No provision.

Conference Substitute

House recedes.

(7) Senate Bill

The Senate bill provides authority for the Secretary subsequently to review a decision debarring a medical provider for possible reinstatement. The Senate bill also provides the basis for a determination to remain in effect.

House Amendment

No provision.

Conference Substitute

House recedes, but the conferees provide for a minimum debarment period of three years.

(8) Senate Bill

The Senate bill grants the Secretary authority to make rules and regulations necessary to carry out the debarment procedures.

House Amendment

The House amendment grants the same right but with changes. The House would require certain procedures, including hearings on the record pursuant to *section 556 of title 5, United States Code,* and appeal of Secretarial determination to the U.S. circuit court of appeals.

Conference Substitute

The Senate recedes but the Conference agreement would add that the physician or health care provider would be debarred after the Secretary's decision, pending appeal.

(c) Justifiable Refusal.

Senate Bill

The Senate bill clarifies the grounds for justifiable refusal to submit to medical or surgical treatment. The Senate bill states that religious tenets may excuse refusal to undergo vocational rehabilitation.

House Amendment

The House amendment states that such grounds may excuse refusal to undergo physical rehabilitation.

Conference Substitute

Senate recedes, and references to either vocational or physical rehabilitation are deleted.

(a) Apportionment of Liability.

Senate Bill

The Senate bill specifically authorizes apportionment of hearing loss liability between or among employers.

House Amendment

The House amendment makes no specific reference to apportionment authority.

Conference Substitute

The Senate recedes, maintaining current law, whereby an employer can apportion its liability through the special fund. However, the conferees correct what the *Benefits Review Board in Primc v. Todd Shipyards Corporation, 12 BRBS 190, 195 (1980)* , views as "... a gap in the statutory scheme ..." of section 8(f). Currently, if an employee's aggravation of a pre-existing permanent partial disability results in a subsequent permanent partial or permanent total disability compensable under section 8(c)(1)-(20), "[t]he employer shall provide compensation for the applicable period of weeks provided for in that section for the subsequent injury or for one hundred and four weeks, whichever is the greater" with the balance assumed by the special fund.

This statutory scheme produces an inequity where the employer's liability for the subsequent injury translates into less than 104 weeks, in that the employer is still obligated to provide benefits for 104 weeks before special fund relief commences.

For this reason, the conferees amend section 8(f) by substituting "less" for "greater" in hearing loss cases compensated under section 8(c)(13). Thus, where the subsequent injury results in either a permanent partial disability or a permanent total disability for which the employer is responsible for less than 104 weeks' compensation, the employer will be obligated to pay only for the number of weeks attributable to the subsequent injury. If the subsequent injury translates into more than 104 weeks' compensation, the employer will pay only 104 weeks.

The conferees emphasize that in retaining current law with respect to apportionment of liability, the Conference substitute does not disturb the liability allocation and insurance coverage rules articulated by *Travelers Insurance Company v. Cardillo*, 225 F.2d 137 (2d Cir.), cert. denied, 50 U.S. 913 (1955), and the acceptance of any theory of injury aggravation by which an entire injury may be compensable.

(b) Audiograms.

Senate Bill

The Senate bill and the House amendment both afford audiograms special status. The Senate bill states they are conclusive evidence of hearing loss.

House Amendment

The House amendment affords audiograms presumptive weight if a three-part test is met and provides that the time period for filing a claim does not begin running until an employee is given a copy of the audiogram.

Conference Substitute

The Senate recedes to the House. In requiring audiograms to be administered by certified audiologists or otolaryngologists, the conferees wish to assure that audiogram results are certified by competent medical personnel. In promulgating regulations under this section the conferees expect that the Department of Labor will incorporate audiometric testing procedures consistent with those required by hearing conservation programs pursuant to the Occupational Safety and Health Act.

(c) AMA Guides.

The Senate bill, the House amendment, and the Conference substitute all require determinations of hearing loss in accordance with the Guides to the Evaluation of Permanent Impairment as promulgated and modified from time to time by the American Medical Association. The conferees view the AMA Guides to be the most widely accepted medical standards and wish to assure that determinations will always be in accordance with the most recently revised edition.

The Senate bill, House amendment, and Conference substitute impose a cap on death benefits of 200% of the national average weekly wage, the same maximum applicable to disablility cases. The conferees intend that the national average weekly wage subjected to the cap shall be the national average weekly wage applicable on the date of death. *Senate Bill*

The Senate bill did not specifically address the issue of occupational disease.

House Amendment

The House amendment amended the current law in numerous instances with respect to claims related to occupational diseases.

Conference Substitute

The Conference substitute provides that:

Section 2.

The conferees agree to a definition of "disability" in section 2(10) with respect to a case in which an occupational disease manifests itself subsequent to the claimant's date of retirement. In all such cases, the term "disability" shall mean permanent impairment, as determined by the *Guides to the Evaluation of Permanent Impairment* as periodically published by the American Medical Association. If those Guides do not evaluate the impairment, the conferees intend that other professionally recognized standards be utilized in the determination of impairment.

Section 9(e).

In the case of a death benefit for an individual whose occupational disease did not manifest itself prior to one year following retirement, the conferees intend that the death benefit shall be the lesser of (a) the applicable percentage of the national average weekly wage on the date of death, or (b) the last average annual earnings of the deceased prior to retirement.

Section 10.

The House amendment establishes that the time of injury in the case of a claim due to occupational diseases shall be the date of the onset of the disabling condition. The House amendment additionally establishes that in cases where the claimant was not employed, or not employed on a full-time basis, prior to onset of the disabling condition, the average weekly wage shall be established in accordance with subsections (a) through (d) of section 10, but in no case less than the current national average weekly wage.

The Senate has no comparable provision.

The Senate recedes, with a clarification that the "time of injury" for cases involving an occupational disease shall be the time when the claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware of the relationship between the employment, the disease, and the death or disability. The conferees specifically reject the date of last exposure to the injurious substance as the time of injury for determination of pay purposes. None of the amendments to sections 9, 10, 12, and 13 relating to an occupational disease disturb interpretations of existing insurance contracts.

The conferees note, however, that a claimant may have suffered a wage loss attributable to an occupational disease prior to recognizing its relationship to employment. In such case, the conferees intend that the phrase of section 10(c), "other employment of such employee", shall be interpreted so that compensation shall be based upon the claimant's wages prior to any reduction attributable to the disability.

In a case in which the claimant retired one year or less prior to the time of injury, the conferees intend that the claimant's last wage serve as the basis for determining compensation, in accordance with subsections (a) through (d)(1) of section 10, as amended. In cases where the time of injury occurs more than one year after retirement, the national average weekly wage at the time of injury shall be used for determining the level of benefits.

In adopting this section, the conferees specifically reject the holdings of the *Benefits Review Board in Dunn v. Todd Shipyards, 13 BRBS 647 (1981)* , and *Aduddell v. Owens-Corning Fiberglass, 16 BRBS 131 (1984)* .

Section 12.

The Senate bill deletes "reasonable diligence" as a basis for triggering the running of the 30-day notice period and adds in lieu thereof the communication of medical advice.

The House amendment retains the "reasonable diligence" basis while adding the "medical advice" basis, but states that no notice is required for occupational disease cases.

The conference substitute requires that, in the case of a disability resulting from an occupational disease, an employee or beneficiary shall provide notice of the injury to the employer within one year after the employee or the beneficiary was aware, or by exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the disability or death.

Time for Filing Claim Based on Occupational Disease.

Section 13.

The House amendment clarifies when the one year period for filing a claim begins to run in a occupational disease case.

The Senate has no comparable provision.

The Senate recedes, with an amendment providing the claimant two years to file a claim after the claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability.

(a) Retention Period.

Senate Bill

The Senate bill increases an employer's retention period on section 8(f) special fund cases to four years.

House Amendment

The House amendment increases the period to six years.

Conference Substitute

The conferees retain the current two-year retention period, but in order to address more comprehensively the fund liability problem, the conferees adopt a new fund assessment formula, amending section 44(c).

(b) Unauthorized Insurers.

The conferees further amend section 8(f) by barring an uninsured employer or a carrier not authorized to write Longshore Act coverage, in violation of section 32(a), from special fund relief and, thereby, preclude such employer or carrier from realizing a benefit by avoiding the insurability requirements of the Act. This change does not alter the employer/carrier's underlying obligation to pay compensation or the Secretary's right to seek relief under section 18(b).

(c) Fund Liability Issue.

Senate Bill

The Senate bill requires an employer to raise any section 8(f) special fund issues prior to consideration by an administrative law judge.

House Substitute

The House amendment requires notification prior to the deputy commissioner's consideration, but affords the Secretary discretion in excusing notice where an employer could not reasonably have known of its basis for special fund relief.

Conference Substitute

The Senate recedes to the House.

The conferees intend by this provision to encourage employers to raise the special fund issue early in the claims adjudication process, in order to assure the deputy commissioner and the Director of OWCP the opportunity to examine the validity of the employer's basis for seeking special fund relief.

(d) Technical Amendments.

Senate Bill

No provisions.

House Amendment

The House amendment makes several technical and conforming changes to payments under the special fund.

Conference Substitute

The Senate recedes to the House with further technical amendments and clarifies that the results of the annual fund audit will be incorporated into the annual report required in new section 42.

(e) Conservator.

Senate Bill

The Senate bill repeals existing section 45 and in lieu thereof adds new language creating a conservation committee, appointed by the Secretary, with the authority to protect the assets of the special fund. The committee would appoint a conservator who would be a party in every case in which the liability of the fund is raised and in every case for which the fund has already begun payment. The conservator would be empowered to order medical examinations and seek modification of benefit payments.

House Amendment

No comparable House provision.

Conference Substitute

The Senate recedes, with the conferees adopting amendments to sections 8(f) and 22 granting an employer/carrier continuing status as a party in interest in special fund disability and death cases attributable to them for the life of the claim. This authority would apply to all current fund cases. The conferees believe this provision to be necessary to address an inability by the Labor Department to monitor the existing fund case load and is consistent with employers' greater direct liability stemming from the amended assessment formula.

By permitting an employer or carrier to remain a party in a special fund case, the conferees do not intend to expand or contract the rights of an employer or carrier beyond those prevailing in a non-special fund case. The conferees note that under existing procedures, no benefits may be reduced or terminated without the employer or carrier incurring a potential penalty. *Senate Bill*

The Senate bill provides a means to expedite settlements by requiring the deputy commissioner or administrative law judge to approve a settlement within 30 days, absent inadequacy or duress. If the deputy commissioner disapproves a settlement, a written statement containing the reasons for such disapproval must be issued within 30 days after submission. If the parties are represented by counsel, the agreements shall be deemed approved unless specifically disapproved within 30 days after submission. Settlements of death benefits and future medical benefits are permitted, and a settlement is a complete discharge of the employer's obligation.

House Amendment

The House amendment is technical in deleting a specific provision granting automatic approval unless a settlement is specifically disapproved within 30 days after submission.

Conference Substitute

The Senate recedes. Further, the conferees would prohibit an employer/carrier, after reaching a settlement with a claimant in a case which would otherwise be assigned to the special fund, from subsequently seeking relief from the special fund. A settlement shall operate as a release from further liability as the employer and carrier. The fund, furthermore, shall not be liable for the reimbursement of the costs of any settlement or for the costs of any voluntary payments of compensation made by the employer prior to a settlement. This provision is intended specifically to overturn the administrative law judge's decision in *Brady v. J. Young & Company, 16 BRBS 31 (ALJ)* (1983).

Finally, settlements are specifically not subject to modification under section 22.

Both the Senate bill and the House amendment included identical language authorizing employers to require employees receiving compensation to submit a statement of earnings not more frequently than semi-annually. An employee who fails to report earnings when requested, or omits or understates such earnings forfeits the compensation to which he was entitled during the period of noncompliance.

The conferees retain this language unamended but clarify that where compensation already has been paid, necessitating a credit in payments of future benefits, the deputy commissioner may use discretion in scheduling repayments of forfeited amounts so as to avoid burdening the employee with repayment of the full amount over an unduly brief period.

Senate Bill

The Senate bill codifies the Supreme Court's decision in *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP, 455 U.S. 608 (1982)* , that the mere existence of a physical impairment is insufficient to raise the presumption of coverage.

House Amendment

The House amendment is silent.

Conference Substitute

The Senate recedes to the House. Senate language originally proposed was prior to the Supreme Court's reversal of the appeals court decision holding that an impairment itself would trigger the presumption. With the Supreme Court's decision the conferees agree the issue need not be addressed by the statute. *Senate Bill*

The Senate bill grants the Secretary authority to appoint up to four administrative law judges temporarily to the Benefits Review Board.

House Amendment

The House amendment expands the Board's permanent membership from three to five, authorizes appointment of up to three administrative law judges for 18-month terms when the case backlog exceeds 1,000, requires a study of Board operations, and grants the Chairman of the Board authority over all administrative functions of the Board, as delegated by the Secretary.

Conference Substitute

The conferees agree to expand the Board's membership to nine, combining the House's addition of two permanent members with the Senate's authority providing for discretionary appointment of up to four administrative law judges as

temporary members upon recommendation of the Chairman of the Board.

However, given the Board's current backlog, the conferees expect the Secretary expeditiously to appoint four temporary and two permanent judges, and to provide the Board with the necessary support staff.

The conferees also accept the House's language granting the Chairman the authority to exercise all administrative functions necessary for the Board's operation, authorizing the Board to sit in panels of three (such panels constituting two permanent members) designating two members as a panel quorum and three permanent members as a Board quorum, and authorizing discretionary review of panel decisions but requiring any such vote to be taken by permanent members only.

Eliminated are the House's case-backlog threshold necessary for triggering appointment of temporary members and authority to conduct a study of Board operations.

Last, temporary members' terms are limited to one-year, the maximum permitted by the Office of Personnel Management. *Senate Bill*

The Senate bill imposes a civil penalty of up to $25,000 if an employer "willfully fails or refuses to send any report."

House Amendment

The House amendment reduces this to $10,000 and utilizes a test of "knowingly and willfully."

Conference Substitute

The Senate recedes with an amendment extending the penalty to the falsification or misrepresentation of information submitted in reports required by the Secretary. *Senate Bill*

The Senate bill raises the penalty for misrepresentation from a misdemeanor to a felony and imposes a $25,000 fine/3 years imprisonment.

House Amendment

The House amendment raises the penalty to a felony but imposes $10,000 fine/5 years imprisonment.

Conference Substitute

Senate recedes.

Senate Bill

The Senate bill provides that a United States Attorney shall make every reasonable effort to investigate promptly each complaint under this subsection.

House Amendment

No provision.

Conference Substitute

House recedes.

Senate Bill

The Senate bill seeks to restrict the claimant's representatives who may represent employees in obtaining a benefit under the Act. Grounds for disqualifying representation activities are provided. The Secretary is required to license claimant representatives.

House Amendment

The House amendment requires the Secretary to publish a list of individuals not authorized to represent claims based on their falling within one of the grounds stated for disqualification. The House amendment conforms this debarment procedure to that afforded medical providers.

Conference Substitute

Senate recedes.

Senate Bill

The Senate bill penalizes an employer or carrier for false statements or representations in denying or terminating benefits. The Senate bill imposes $25,000 fine/3 years imprisonment.

House Amendment

The House amendment retains the penalties but imposes $10,000/5 years imprisonment.

Conference Substitute

Senate recedes. *Senate Bill and House Amendment*

The Senate bill and the House amendment both provide for a reversion to the employee of a right to file an action against a third person. The Senate bill affords this right following a "reasonable time" after such right passes initially from the employee to the employer without the employer filing such action. The House amendment requires ruling within 90 days.

The Senate bill and the House amendment also address when the 6-month period, within which period the employee has an initial right to file an action against a third party, begins to run. The Senate bill states that this period begins running at the issuance of a formal compensation order. The House amendment states that the period begins running either on issuance of a formal order or on payment [of] compensation voluntarily by an employer.

The Senate bill and the House amendment both alter the priority for distribution of proceeds in a recovery by judgment or settlement where the employee brings an action against a third party. The Senate bill gives priority to the employer's lien on compensation and medical benefits paid, with the employee retaining any excess first for payment of attorney fees and costs. In a recovery by judgment only, the House amendment guarantees the employee 15 percent of any recovery remaining after reduction for attorney fees and costs, before exercise by the employer of its subrogation lien rights.

Conference Substitute

The Conference substitute provides that the 6-month period within which a person entitled to compensation can file a third party suit commences only upon the entry of a formal order awarding compensation. This is in accord with the decision in *Pallas Shipping Agency v. Duris, 103 S. Ct. 1991 (1983)* . The conferees expect that an employer who does make voluntary payments will be able to obtain without delay the necessary compensation order constituting the formal award, so that the 6-month period may commence. Once the assignment occurs, the employer has 90 days within which to file suit; otherwise, the right to sue reverts back.

The Conference substitute establishes the following priority for distribution of proceeds in a recovery by an employee: First, the litigation expenses, including reasonable attorney fees, are satisfied. This may require that the court exercise its discretion to adjust the attorney fee to assure equity for both the employee and his attorney. The compensation lien on the net recovery remains inviolable, consistent with *Bloomer v. Liberty Mutual Insurance, Co., 445 U.S. 74 (1980)* .

Senate Bill

The Senate bill terminates the employer's liability for payment of compensation and medical benefits if the employee fails to notify the employer of any settlement obtained from a judgment rendered against a third party. In a case in which the special fund will be liable for payments, the fund has a lien on the proceeds of any settlement or judgment.

House Amendment

The House amendment makes a technical amendment to change "Conservator" notice to "Secretary" since the provisions establishing such a Conservator are not contained in the House amendment.

Conference Substitute

The Senate recedes with an amendment making the fund's lien subject to a priority lien which complies with section 302(c) of the Labor-Management Relations Act of 1947 (*29 U.S.C. § 186(c)*).

GUS HAWKINS,
WILLIAM CLAY,
GEORGE MILLER,
DALE KILDEE,
MATTHEW G. MARTINEZ,
MAJOR OWENS,
FRANK HARRISON,
SALA BURTON,
JOHN N. ERLENBORN,
THOMAS E. PETRI,
RON PACKARD,
JOHN MCCAIN,

Managers on the Part of the House.

ORRIN G. HATCH,
DON NICKLES,
EDWARD M. KENNEDY,

Managers on the Part of the Senate.

4 of 8 DOCUMENTS

Benedict on Admiralty

Volume 1A: Longshore and Harbor Worker Compensation Act Chapters I-V, Apps. A-E
APPENDIX A

1A Benedict on Admiralty

HOUSE REPORT ON CONFERENCE REPORT ON S. 38

LONGSHOREMEN'S AND HARBOR WORKER'S COMPENSATION ACT AMENDMENTS OF 1984 (SEPTEMBER 18, 1984)

CONFERENCE REPORT ON S. 38, LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT AMENDMENTS OF 1984

Mr. MILLER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it has been 4 years since the Subcommittee on Labor Standards began its work on legislation to amend the "Longshoremen and Harbor Workers' Compensation Act." The conference report before us today is the product of thorough, exhaustive, and thoughtful consideration.

This is a consensus report. It received the unanimous support of every member of the conference committee, from both parties and every ideology. To make certain that there is no grounds for misinterpretation or abuse, either by those charged with enforcing the law, the courts, or others, we have spoken very clearly both in the statutory language and in the statement of managers.

We meant what we said, and we said what we meant. We do not want to see protracted court battles over the intent of Congress. If it isn't in the statute or clarified in the statement of managers, it should be accorded little if any legislative intent.

This is a complicated bill, but its underlying principle is really quite simple. Some employers and employees who were never supposed to be covered by the Longshore Act have been included in its coverage; some of the benefits have been excessive.

By the same token, individuals who should receive Longshore Act compensation, medical assistance, death and survivor benefits have found the law and the courts unresponsive to their legitimate claims for assistance, as documented in yesterday's Washington Post.

S. 38 addresses both of these situations: First, by narrowly excluding from coverage certain places of employment and certain employees who are not exposed to maritime hazards, and who are covered by State workers' compensation law. These workers are not in need of the Longshore Act. Second, S. 38 modernizes the Longshore Act to assure that the victims of occupational diseases receive the compensation to which they, as maritime workers covered by the Longshore Act, should always have received.

occupational disease claims

Like many States, the Longshore program has failed the victims of occupational diseases. In a recent case, the Benefits Review Board went so far as to confess that "[T]he act is poorly suited to occupational disease cases." The Board noted that amendment [of] the act to assure that victims of occupational disease cases are adequately compensated is solely within the discretion of Congress. [*Aduddell v. Owens-Corning, 16 BRBS 131 (1984)* .] S. 38 does just that.

The conference report closely follows the House amendment in modifying the Longshore Act to assure that eligible disease victims and their survivors receive compensation, regardless of when in the worker's life the work-related disease manifests itself. In addition, we assure that specific conditions of the law, such as the notice and filing timetables, are modified in the case of disease victims.

In the case of an occupational disease, a claimant is given 1 year after manifestation to notify the responsible employer of the disability. By choosing the period of manifestation, the conferees clearly reject the date of last exposure to an injurious substance as the time of injury. Manifestation, in the context of these 1984 amendments, means that time when the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability.

The claimant is provided 1 year after that date of manifestation to file notice of an injury, and 2 years after manifestation to file a claim under the act. These periods are longer than those for traumatic injuries because of the subtleties of occupational disease, as well as the difficulties of linking a disease to a job or substance decades in the past.

In determining benefits for occupational disease victims, S. 38 again looks to the manifestation date, not the date of last exposure. We recognize that an active worker may become ill before becoming eligible for compensation, as in the case of asbestos-related plaques, without suffering an immediate loss of wages. In those cases, the clock would not begin to run on the notice or filing statutes of limitation until an actual wage loss was suffered. Nor in general would we look to the wage at the onset of the illness, but rather the wage immediately prior to wage loss in determining benefit levels.

As the statement of managers notes, there may be instances when a claimant takes a lesser paying job because of circumstances which he or she attributes to aging or other normal conditions of life. Only subsequently does that worker realize that the condition which necessitated a lesser paying job is, in fact, a job-related disease. In such cases, we would obviously want the administrative law judge to look to the wage prior to wage loss in determining benefits rather than to the lower wage at the time of manifestation. The Deputy Commissioner, under section 10(c), is given the authority to look to other employment of such employee when establishing the wage base, and the conferees believe that this is one of those circumstances where such consideration should certainly be given.

The conference report also assures that a claimant whose disease manifests itself subsequent to retirement will not be denied benefits. The retired claimant is just as disabled, his or her health is just as impaired, the disease just as related to employment, and the individual just as much in need of financial support and medical benefits as an active worker. In fact, because of advanced years, the need may be even greater.

S. 38 therefore provides that retirees may qualify for benefits under the Longshore Act for injuries attributable to

exposure which occurred in covered employment. Because a retiree has no current wages, and thereby suffers no disability in the limited meaning of that word under current law, S. 38 establishes a wage based upon the national average weekly wage at the time of the manifestation of the disability, for the purposes of calculating benefits for claimants who have been retired more than 1 year.

The report also modifies the definition of disability to mean, in the case of a retiree, a permanent impairment as determined under the most up-to-date guides of the American Medical Association. Thus, a retiree would not be obligated to prove wage loss to earn entitlement to compensation, but rather prove impairment of bodily function and capacity, according to standards developed by the AMA or other professionally recognized standards.

intent to overrule decisions

These provisions in S. 38 are intended to overrule the finding of the *Benefits Review Board in Aduddell v. Owens-Corning, 16 BRBS 131 (1984)* , which denied benefits to retirees, *Dunn v. Todd Shipyards, 13 BRBS 647 (1981)* , which set compensation for disease victims at outrageously low rates, and *Worrell v. Newport News, 16 BRBS 216 (ALJ)* (1983), which denied survivor's benefits to a spouse when the retired covered employee died prior to receiving disability benefits. As the conference report and the statement of managers state, we believe these decisions are absolutely and totally wrong.

The provisions of S. 38 which address occupational disease cases, including those affecting retirees and the survivors of retirees, should be applied broadly, not only to future cases, but to any case which has not yet reached a final adjudication as of the date of enactment.

Several other important modifications are made by S. 38. Some of the most critical involve jurisdiction and coverage. Because of the extensive amount of litigation in this area following enactment of the 1972 amendments, we have spoken very clearly with respect to the jurisdictional issues in this legislation.

coverage and jurisdiction

Ever since the last Longshore amendments were passed in 1972, the scope of coverage under the act has generated considerable litigation. A major cause of these disputes has been a fundamental failure to recognize that longshore workers have traditionally engaged in a full range of activities respecting the handling of ocean cargo. These have never been limited to the vessel or to the immediate vicinity of the pier or stringpiece. They include documentation and verification of the cargo as it proceeds through various stages of handling in, out and about the waterfront facility, which may be a private dock or a huge terminal. These functions are performed by those members of the deepsea longshore workforce who are classified as checkers and clerks for the receipt, delivery and processing of the cargo.

The cargo handling industry has also taken advantage of the many benefits of modern technology. For example, carriers and stevedores now utilize computers to keep track of containers and their contents, for which longshoremen have been retrained as computer operators or data processors. It is foreseeable that longshore workers will continue to be reassigned to new tasks in order to develop necessary documentation and other work related to cargo movements. Like checkers and clerks, their presence is required shipside or elsewhere--even in office meetings--on the terminal premises, where longshore work is performed. Moreover, they must, at times, move about the facility in order to properly and accurately complete their own work.

The definition in the conference report assures coverage of all these employees. They are to be distinguished from those other employees of waterfront employers, such as office clerical, secretarial, security or data processing workers, who are not intimately concerned with the movement and processing of ocean cargo and who themselves are confined, physically and by function, to the administrative areas of the employer's operations. The report thus avoids continuing disagreements over job classifications being covered, by focusing on the substance and purpose of the work being

performed as integral to overall longshore operations falling under Federal jurisdiction.

A very limited exemption is permitted to certain small facilities which are engaged in the building, repairing or dismantling of exclusively small vessels, as defined in the bill. No exemption is permitted for any worker engaged in work in such a yard if an employee is upon any adjoining pier, wharf, dock, facility over land for launching vessels, or facility over land for hauling, lifting, or drydocking vessels. These sites remain covered, and employees working at such a situs remain fully covered.

The intent of this amendment is to allow these smaller yards the opportunity to conduct nonmaritime fabrication work, which is essential to their economic viability given the limited amount of maritime work which is available to them. These small facilities cannot compete for nonmaritime fabrication work with noncovered employers. The intent of this provision is to permit the Secretary to certify that these small yards do, in fact, work only on small boats and barges and are therefore entitled to this limited exemption for employees not working at a covered situs in the yard.

third party liability

Mr. Speaker, this legislation reverses a recent and very harmful ruling by the U.S. Supreme Court in *Washington Metropolitan Area Transit Authority v. Johnson, 104 S. Ct. 2827 (1984)* . This decision altered the proper rules governing contractor and subcontractor liability and immunity under the Longshore Act. The courts have uniformly held that immunity from common law negligence suits is the quid pro quo for the satisfaction of the employer's primary and mandatory duty to provide workers' compensation coverage.

The conferees feel that, in appearing to grant immunity to general contractors in the WMATA case, the Supreme Court disturbed the clear intent of Congress. Only when the contractor has secured compensation benefits for the subcontractor's employees because of a default on the part of the subcontractor-employer is the contractor acting as an employer and therefore entitled to immunity from third party suits.

S. 38 expressly disapproves the Supreme Court's decision in WMATA. A contractor will remain liable to suit by its subcontractors' employees in those instances where the subcontractor-employer has fulfilled its statutory obligation to secure compensation for its employees. A general contractor who institutes a wrap-up arrangement will remain amenable to suit by employees of his contractors, since under wrap-up it is the subcontractor-employees who are securing the compensation within the meaning of section 4(a). Therefore, the wrap-up insurance plan is recognized as a legitimate business tool, but does not confer immunity on the general contractor. As the statement of managers and the effective dates of the statute make clear, this policy is to apply to any case which has not reached final adjudication as of the date of enactment.

antifraud, abuse provisions

One of the key goals of this legislation is to reduce unnecessary and unwarranted costs to employers and industries which are covered by the Longshore Act. S. 38 accomplishes these goals by establishing ceilings on the levels by which benefits may increase in any year, by placing a cap on compensation for disability and death. In addition, this legislation establishes very strict penalties for physicians, health care providers, and claimants' representatives who knowingly make false statements regarding services and claims.

These are key provisions of this bill. Support for the Longshore Act, and support for those who, because of their disabilities, need compensation and medical benefits, should never be misinterpreted as sanctioning misrepresentation, fraud, or abuse of the system. Neither should these enforcement provisions be viewed as licenses to torment or nitpick legitimate service providers, or claimants.

special fund

The conferees have agreed to make a significant reform in the special fund which assumes payment responsibility for workers who have suffered prior injuries, and other claimants. In the past, each employer's contribution to the fund has been based upon that employer's participation in the overall Longshore program. However, in the course of our subcommittee's investigation into the Longshore Act, we found that some employers have taken steps to assign hundreds, even thousands, of cases to the fund, knowing that no matter how many cases they assigned, their proportion of payments to the fund would not grow. In effect, they knew that they could pass along their costs to all other participants in the program.

The new formula in S. 38 bases an employer's assessment in part on his overall program participation, and half on his past utilization of the fund. This formula will, at once, dissuade the dumping of cases into the fund, and will more equitably apportion the responsibility of paying for the fund.

An additional change is that an employer who assigns a case to the fund will now continue as a party in interest after the fund assumes payment responsibility. In the past, this role was ineffectually played by the Deputy Commissioner. It is our intention that the employer have no greater or lesser responsibility in this new role than had the case remained solely that employer's responsibility. Moreover, as the statement notes, any action by an employer to reduce the benefits of a claimant in payment status runs the risk of a substantial penalty. I, therefore, expect that employers will not view this new status as an invitation to contest claims or to harass claimants, but rather as an extension of the existing right to periodically review claims and the status of claimants.

benefit review board

The conference report also revamps the Benefit Review Board, which is the appeals unit for processing claims under the Longshore and Black Lung Acts. Currently, there are only three BRB judges, a number wholly inadequate to process the number of appeals which reach the Board. According to information provided the conferees by the BRB, the current three-person Board is capable of processing about 1,800 cases each year. According to the Board, by the end of this month, there will be 6,745 cases pending, a backlog which would increase to nearly 8,000 cases by next October. The current backlog, assuming a three judge Board, will take nearly 4 years to erase.

S. 38 expands the Board to nine members--five permanent judges, supplemented by four temporary administrative law judges [ALJ's] whom the Secretary is given the discretion to appoint for terms not to exceed 1 year. It is the clear intention of the conferees that the Secretary appoint the permanent members expeditiously, and that he also name the temporary judges quickly, so that we can eliminate the crushing backlog which is making a mockery of the Longshore Program. The conference report also permits the Board to sit in panels, in order to expedite the appeals process.

According to the Board, adding an additional six members will reduce the time needed to eliminate the backlog from 3.7 years to 1.6 years. It will also result in an improvement in attorney productivity. Clearly, a more efficient board serves the interests of employers and employees alike, and we certainly expect that the Secretary will not delay in appointing an appropriate number of judges and moving ahead to clear the backlog.

Mr. Speaker, there are numerous other provisions of this conference report which will have a meritorious effect on the operation of the Longshore Program and will serve the best interests of employers and employees alike.

I am very grateful for the cooperation and support offered this legislation by all of my colleagues on the conference committee, which unanimously approved this report.

I am also pleased that associations representing shipyards, marinas, and other employers, insurance associations, and the AFL-CIO have enthusiastically endorsed this legislation.

After 4 years of work, the time has come to make this important legislation law. I urge my colleagues to suspend the rules and pass the conference report on S. 38.

Mr. ERLENBORN. Mr. Speaker, I rise in support of the conference report.

This legislation marks the culmination of an extraordinarily difficult effort to amend the Longshoremen's and Harbor Workers' Compensation Act, probably the worst workers' compensation law in the country. It corrects manifold inequities and abuses stemming from Congress' hastily considered and ill-advised 1972 amendments.

Rarely, if ever, in my 28 years' experience as a legislator has the record of abuse and inequity been so voluminous, so overwhelming, and efforts to remedy these abuses and inequities been so often exasperating, frustrating, and protracted. The hearing record extends over 8 years, encompassing two House subcommittees, two Senate committees, and seven volumes of testimony totaling 5,470 pages.

Today, Mr. Speaker, we write the final chapter to the dismal and destructive legacy of the 1972 amendments. Those amendments may have provided new protections to injured workers, but at an unacceptably high cost to employers and insurers and, thereby, further eroded the economic competitiveness of the maritime industry.

Today, unlike in 1972, when the amendments were crafted in the dead of night by Senate staff, the House has before it a balanced product, one which retains important and needed protections for injured workers and their families, tempered by added employer, insurer, and Labor Department controls which will assure workers' compensation benefits to those deserving of them while also affording the means to better control program costs and abuse.

I commend, first, the gentleman from California [Mr. MILLER] for agreeing on the need for changes and for persevering to the end. I also want to recognize the unflagging efforts of the Longshore Action Committee--the employer and insurer coalition of over 70 members which persisted, often in the face of adversity, and which has withstood the test of disappointment. That such a group could remain unified for so long, I believe, is a testament to the rightness of their cause.

I would be remiss, however, if I failed to mention the efforts of Senators NICKLES and HATCH, and their staffs, who in early 1981 began the process we complete today, and of former Deputy Under Secretary of Labor, Robert Collyer, and his staff, who focused a young administration on the necessity for revamping the act.

With enactment of these longshore amendments only the Federal Employees' Compensation Act [FDCA] remains among the Department of Labor's so-called terrible trilogy of workers' compensation programs still untouched.

In 1981 Congress amended the Black Lung Benefits and Revenue Acts to address the burgeoning black lung disability trust fund deficit and made several cosmetic changes in entitlement. Much more needs to be done but, at least, a first, if faint-hearted, attempt has been made.

Today, Congress corrects the abysmal record of the 1972 Longshore Act Amendments. Next year, it should remedy the 1974 FECA amendments which have driven annual program costs to over $1 billion. The troubled FECA program has been a frequent subject of comment by the General Accounting Office and the Department's Inspector General.

So I would encourage the gentleman from California to move ahead.

The conference substitute embodies the core changes necessary to better guarantee the insurability of the act which has become virtually uninsurable since 1972. The annual adjustment in disability and death benefits is capped at 5 percent; death benefits are capped at twice the national average weekly wage, the same maximum applicable to disability benefits; survivor benefits where the employee dies of causes unrelated to his injury have been repealed; and the

definition of "wages" has been amended to exclude fringe benefits, to prevent injured workers from realizing a premium on injury and severe cost and insurability problems for the maritime industry. This provision endorses the Supreme Court's so-called Hilyer decision and precludes the modification of any award, pre- or post-Hilyer, for recalculating benefits to include fringe benefits as "wages."

Importantly, as well, the substitute offsets longshore benefits for any other workers' compensation or Jones Act benefits concurrently received for the same injury. The conferees amended section 3(b) by substituting the words "to an employee" for "by an employer" in the phrase "any amounts paid by an employer for the same injury, disability, or death ..." This change clarifies the conferees' intent that the scope of this section be read broadly.

The offset would, therefore, apply not only to instances where the employee received State workers' compensation, but also where he received benefits under the Federal Employees' Compensation Act, and where the employee's nonlongshore claim is against an employer other than the one against whom he has filed a longshore claim. Accordingly, the court's decision on this point in *Melson v. United Brands Corporation, 594 F.2d 1068 (5th Cir. 1979)* is overruled.

The offset applies, as well, to cases paid by the special fund for any purpose for which the fund is authorized to make payment under the act.

The conference substitute tailors jurisdiction by excluding certain employer categories from coverage, including clerical workers and employees of camps, recreational operations--such as white-water rafting and scuba diving--museums, retail outlets, marinas, vendors, aquaculture operations, recreational vessel construction and repair of vessels under 65 feet long, and certain commercial barge fabrication operations.

The substitute also exempts clubs. The House report's limitation on this exemption to nonprofit clubs is expressly rejected (H. Rep. 98-570, p.4). A club would be exempt as long as the purpose of the organization embodies a social, athletic, or sporting purpose.

The consensus among the conferees was to reaffirm the purposes of the 1972 jurisdictional changes, and in that light, the substitute narrowed its focus to certain fairly identifiable employers and employees who, although by circumstance happened to work on or adjacent to navigable waters, lack a sufficient nexus to maritime navigation and commerce. The conferees' attention was directed to specified activities which were singled out for criticism by numerous witnesses before House and Senate committees. Under this case-specific approach, the conferees have determined that certain activities do not merit coverage under the act and that the employees involved are more aptly covered under appropriate State compensation laws.

However, because of concern that injured employees could inadvertently fall between jurisdictional cracks in coverage, these exemptions are conditioned on an employee's coverage under the applicable State workers' compensation law. In this connection, the conferees intend that the phrase in section 2(a), "subject to coverage under a State workers' compensation law" be read only in a jurisdictional context. Although the conferees wre concerned that an injured employee could be denied benefits because a State might not extend coverage to him, the conferees firmly reject any interpretation of this language which would permit an employee whose State claim for benefits is denied on nonjurisdictional grounds--such as his not being disabled within the terms of that act--to file a subsequent longshore claim and, therefore, enjoy a second bit [sic] of the compensation apple.

The small vessel exemption is available only to facilities engaged in the business of building, repairing, or dismantling exclusively a small vessel--as "small vessel" is defined in the exemption. Thus, a facility, in order to avail itself of the exemption, must, in its shipyard operations, be engaged in working on only small vessels. If such a facility engages in the construction, repair, or dismantling of a vessel larger, or of a type other than those defined in the provisions, those employees who would be subject to the exemption would be covered by the act during the period of activity on the

nonqualifying vessel. Once the facility is again engaged in exclusively small vessel operations, the exemption would apply. The Secretary is expected to develop appropriate regulations consistent with this legislative intent to help effectuate this exemption.

Similarly, if a facility which normally engages in building, repairing, or dismantling recreational vessels under 65 feet long works on a nonqualifying vessel, those employees at such facility would be covered by the act for the period of activity on the nonqualifying vessel. After such work is completed and the facility is again engaged in work on only vessels under 65 feet long, the exemption would apply.

The conferees wish to distinguish the nature of the commercial vessel exemption from that provided to recreational vessels. The commercial vessel exemption is predicated on a certification by the Secretary that the facility is engaged in exempt work under the act; the recreational vessel exemption is not so conditioned and, therefore, would apply automatically according to its terms. Thus, although the commercial vessel exemption would not apply until a finding by the Secretary, the recreational vessel exemption would apply automatically, with jurisdiction determined on a case-by-case basis.

The conferees clearly intend, however, that the exemption for recreational vessels be enjoyed only by employers who as a general business practice work on vessels under 65 feet long. In permitting a case-by-case approach to jurisdiction the conferees clearly do not intend, however, to allow facilities to work on nonqualifying recreational vessels on a regular basis, so that employees are subject to constantly shifting coverage. At the same time, the conferees foresee situations, such as an emergency, which could require an otherwise exempt employer to work on a vessel 65 feet or longer and do not intend that employer to lose the exemption forever under such circumstance.

As with the commercial vessel exemption, the conferees expect the Secretary to develop regulations consistent with this intent.

In sum, by carving out these exclusion [s], the conferees stress what this amending process does not involve. It is the intention that these amendments not be interpreted to enlarge the present scope of the act's coverage. Nor is it the intention to include classes of employers not already subject to the act. Finally, in making only limited changes it is obvious that a large body of decisional law relative to traditional maritime employers and harbor workers remains undisturbed. The decision not to evaluate, endorse, or reject, explicity or implicitly, the lower court and agency decisions in these areas was made deliberately in conjunction with the limited changes that are being made.

The conference substitute also gives the Secretary of Labor new authority to control fraud and abuse so well-documented by the Senate Permanent Subcommittee on Investigation in its report earlier this year on waterfront corruption (S. Rep. 98-369). The subcommittee found that the act "makes it too easy for longshoremen to feign or exaggerate injuries," citing one Brooklyn stevedoring company which saw its workers' compensation claims cost rise from $230,000 to $1.4 million in 2 years and that only with monthly $5,000 payoffs to ILA local president Anthony Scotto did costs return to a more reasonable level. Another company's workers' compensation claims put it out of business.

The report recommended the act be amended to restrict the employee's right to a free choice of physician by limiting the selection to a list of physicians authorized by the Secretary.

The bill achieves this purpose by requiring the Secretary to maintain a list of physicians not authorized to render medical care, by providing grounds and procedures for barring medical providers from program participation, and by placing new limits on an employee's ability to change physicians without employer approval.

Importantly, as well, listing and debarment authorities are extended to claimant representatives--attorneys as well as nonattorneys.

To further augment the Secretary's authority to control medical costs the bill envisions development of a medical fee schedule. The interpretation in the House report (H. Rep. 98-570, p.13-14) barring the Secretary from use of fee schedules is, accordingly, expressly rejected.

The penalty for misrepresentation is raised from a misdemeanor to a felony, punishable by a maximum imprisonment for 5 years and a fine of $10,000.

Additionally, employers can require employees receiving compensation for permanent total or permanent partial disability benefits to submit semiannually a statement of any earnings. Failure or refusal to do so would result in forfeiture of all compensation for the period of noncompliance. The conferees emphasize that the Deputy Commissioner's discretion in cases where compensation has already been paid extends only to scheduling repayment by crediting future compensation and not to whether and in what amounts compensation is forfeited. Such compensation is always forfeited in its entirety.

Accordingly, the conferees expressly reject the interpretation contained in the House report (H. Rep. 98-570, p.18) granting the Deputy Commissioner discretion in withholding future compensation and in such amounts as he deems appropriate.

The conference substitute makes several changes in the manner in which hearing loss claims are compensated. Hereafter, determinations of hearing loss will be grounded on a uniform external and professionally acceptable basis--the AMA Guides to the Evaluation of Permanent Impairment. Currently, there is no single formula by which hearing loss claims under the act can be evaluated; and deputy commissioners and administrative law judges are free to use whatever formula they desire. This has produced unpredictibility and nonuniform impairment determinations among the various compensation districts.

Moreover, difficulties in ascribing audiograms probative weight are resolved by according audiograms presumptive validity in most circumstances. The conferees emphasizes that the bill's requirement that audiograms be "administered" by certified audiologists or otolaryngologists should not be read literally. Rather the conferees expect the Department of Labor to take cognizance of the prevailing practice in administering audiograms. The conferees understand that often the tests are actually conducted by certified technicians. However, a certified audiologist, otolaryngologist, or physician must ultimately interpret and certify the results.

Accordingly, the conferees expect audiograms to be accorded presumptive validity where the results are certified by audiologists or otolaryngologists but actually administered by any other physician or technician certified by the Council of Accreditation in Occupational Hearing Conservation, or any other person deemed qualified by a hearing conservation program authorized pursuant to the Occupational Safety and Health Act.

By now according audiograms presumptive validity, the conferees also intend to render preenactment audiometric tests presumptively valid, where the employer has complied with the bill's procedures for administering audiograms.

The conference substitute is notable, as well, for the comprehensive manner in which it addresses the rapidly escalating liabilities of the special fund. In 1973 the annual assessment on employers and insurance carriers was $1.7 million, representing just over 5 percent of all workers' compensation payments. By 1982 the assessment had risen to over $30 million, representing 11.5 percent of workers' compensation payments.

As employers experienced the excessive costs of the 1972 amendments, many looked to the fund as a means of limiting their liability and, thereby, spreading their losses to other covered employers. The fund's caseload of 44 in 1977 had skyrocketed to about 1,200 in 1982. Moreover, the monthly rate of growth had climbed from 2 in 1977 to about 30 in 1982.

These distributing [sic] trends have not abated. The Labor Department recently sent assessment notices to employers and insurers asking for over $40 million for 1984, an assessment rate of over 12.5 percent.

Assuming a 6-percent growth rate, the Department estimates an annual assessment in 1992 of $113.3 million or a total industry burden over the intervening decade of over $632.6 million.

Employers' attempts to limit their liability have stretched interpretations of the elements necessary for qualifying for special fund relief. Although the preexisting disability need not have been work-related, the nature of a qualifying preexisting disability has shifted to now include chronic obstructive pulmonary disease along with cigarette smoking, hypertension, alcoholism, arteriosclerosis, and obesity. Qualifying these maladies as preexisting injuries has permitted employers to gain fund relief for numerous back conditions, asbestos disease cases and strokes. This result is all the more astounding when considering that the original purpose of a special fund in workers' compensation was to encourage the hiring of the handicapped, at a time when State and Federal laws did not prohibit employment discrimination against the handicapped. Today, of course, there is a panoply of laws, led by the Rehabilitation Act, which prohibits such discrimination.

Because the Longshore Act covers disparate categories of maritime employment, the nature and extent of injuries vary with each industry. In addition, the Secretary has been unable to defend the fund from dubious claims and to monitor the existing caseload. Moreover, some employers have proven more adept than others in securing fund relief. Current law does not effectively penalize an employer for dumping dubious cases into the fund, because the Secretary's annual fund assessment formula does not account for an individual employer's use of the fund.

Thus a Labor Department survey of fund participation done at my request indicated that the 1982 assessment of the fund's largest user, having 149 cases, was over $1.1 million, while another company with only 16 cases in the fund paid an assessment of over $3 million.

These, then, are the reasons for excessive fund growth and for the misallocation of fund liability among employers subject to the act, not because some employers hire more handicapped workers than others, as one employer recently suggested.

Against this backdrop, the Senate bill and House amendment both increase the employer's retention period on section 8(f) cases beyond the current 2 years' compensation. The Senate bill, furthermore, provided for a conservation committee to defend the fund's assets.

The conferees adopt a comprehensive package whose goal is the same as, though differing in specifics from, the House and Senate provisions--holding down rising fund liabilities and granting employers greater control over fund cases.

The conferees decided to retain the current 104 week retention period. Increasing the retention period would have increased compensation costs across the board which, in turn, would have perhaps discouraged settlements and encouraged litigation. Additionally, in cases successfully prosecuted, the fund would be subject to additional liability.

In lieu of raising the retention period, however, the conferees adopt a new assessment formula for the fund, amending section 44(c), which would account for a [n] individual employer's/insurance carrier's use of the fund.

The formula also corrects the inequitable misallocation of liabilities among employer [s] and carriers, whereby a nonuser or an infrequent user of the fund may pay a disproportionally high assessment and a frequent user of the fund, a disproportionately low assessment. The impact of the formula change is indicated in the survey of self-insureds and carriers following my statement.

Although both the formula and increased retention periods would impose greater direct liability on an employer, the conferees view the dual-pronged thrust of the new formula as more equitably addressing the fund liability problem and better vindicating generic workers' compensation policy of expeditiously providing benefits to injured employees.

In lieu of a conservation committee, the conferees would effectively permit each employer to be its own conservator, by assuring its retention of authority over fund cases for the life of the claim, granting the employer party status in section 22 modification proceedings and applying these changes to current fund cases.

Third, the conferees would prohibit an uninsured employer or a carrier not authorized to write Longshore Act coverage in violation of section 32(a) from seeking special fund relief. To the extent an employer or carrier believes it in its competitive interest to avoid the insurability requirements of the act, it should not be able to avail itself of relief under the special fund. Such otherwise bona fide section 8(f) claims should be paid directly by the employer.

This restriction does not alter the employer's underlying obligation to pay compensation or the Secretary's right to seek relief under section 18(b).

Fourth, the conferees would authorize the Secretary to levy a $10,000 civil penalty against an employer/carrier who knowingly and willfully falsifies any report required by the Secretary. Although this provision covers any report so required, its genesis lies in allegations that some employers/carriers are understating their workers' compensation and medical costs as a means of lowering their special fund assessments.

The conferees would prohibit an employer/carrier, after reaching a settlement with a claimant in a case which would otherwise be assigned to the special fund, from subsequently seeking relief from the special fund. A settlement shall operate as a release from further liability as to the employer and carrier, and the fund is not liable for reimbursement of either the costs of the settlement or any voluntary payments by the employer prior to the settlement. This provision is intended specifically to overturn the administrative law judge's decision in *Brady v. Young & Company, 16 BRBS 31 (ALJ)* (1983).

The conferees substitute, furthermore, addresses the enormous case backlog at the Benefits Review Board by increasing the Board's permanent membership to five and authorizing the Secretary to appoint up to four administrative law judges for temporary terms. The conferees are aware of the Secretary's recent use of administrative law judges as temporary members but consider the backlog sufficiently disturbing to augment the Secretary's existing authority to make such appointments.

Given the current backlog, I would urge the Secretary to promptly appoint the six additional judges and provide them with the necessary support staff. An adjudicatory delay of over 3 years serves no one's interest.

Mr. Speaker, the conference substitute also incorporates important protections to workers afflicted by occupational diseases. It codifies existing case law and practice by recognizing manifestation of disease as the event which establishes the time of injury for determining an employee's average weekly wage on which benefits are based, and which triggers the time periods for filing notice and a claim. The bill's inclusion of identical language in the time of injury, notice, and claim-filing sections articulating the manifestation concept should lend greater internal statutory consistency to the act.

The substitute, moreover, clarifies and refines retiree and retiree-survivor rights to occupational disease benefits. If the occupational disease manifests within 1 year of retirement, benefits are to be based on disability and calculated on the retiree's average weekly wage during the year immediately preceding retirement; benefits are subject to sections 10(a), (b), and (c), or the schedule, as the case may be.

If the occupational disease manifests more than 1 year following retirement, the benefit is to be based on a percentage of

the national average weekly wage at the time of injury (manifestation), predicated on the degree of impairment, determined by the AMA Guides to the Evaluation of Permanent Impairment, to the extent they evaluate the impairment.

The conferees believe that a benefit based on impairment rather than disability is more appropriate. It is difficult to measure a retired employee's lost wage-earning capacity in any meaningful sense. Therefore, the conferees redefine "disability," in the cases of retirees, as a permanent impairment; and, for purposes of calculating benefits, classifies the condition as a permanent partial disability. Therefore, benefit calculations are treated as if the impairment were a permanent partial disability. Even if the impairment becomes so substantial that it might render a person permanently totally disabled under section 8(a) were he not retired, the amendment is not designed to permit this. Furthermore, while a retiree may seek an adjustment in benefits if his impairment increases, such benefits are not subject to annual escalation under section 10(f).

Regarding payment of death benefits, the conferees make no change in the rules governing payment of death benefits where the employee is receiving disability benefits prior to retirement. First, the claimant must prove that death was caused by the occupational disease under the established rules of burden of proof and medical evidence. Second, where eligibility is established, the benefit levels are subjected to section 9(e)(1), as amended.

Where the employee has retired, however, and whether or not he has received a postretirement [sic] benefit based on his occupational disease impairment, survivors' benefits are payable based on the lesser of the applicable percentage of the national average weekly wage at death or the decedent's average annual earnings in the year immediately preceding retirement.

In approving eligibility to [sic] death benefits in these circumstances the conferees interpret a claim for survivor benefits as separate and nonderivative of a claim for disability benefits. Therefore, a legal rationale denying death benefits because the retired employee had no wage-earning capacity is not supportable. In this connection, the conferees specifically reject the administrative law judge's holding in *Worrell v. Newport News Shipbuilding and Dry Dock Company, 16 BRBS 216 (ALJ)* (1983).

Finally, in establishing this new eligibility to death benefits, the conferees intend that the claimant still demonstrate with a reasonable medical certainty that the disease was occupational and caused death.

Mr. Speaker, the conference substitute does not include all I would have preferred. It is not a perfect product. Nevertheless, I firmly believe it to be a comprehensive and balanced compromise; and I urge my colleagues to vote "yes."

summary of conference substitute to s. 38, September 18, 1984

i. jurisdiction

Exempted are:

(a) Office clerical, secretarial, security, or data processing workers;

(b) Club, camp, recreational operation, museum, and retail outlet employees;

(c) Marina employees not engaged in marina construction, replacement or expansion;

(d) Employees of vendors, transporters, and suppliers temporarily on a covered situs and not engaged in work normally done by the covered employer;

(e) Aquaculture employees;

(f) Individuals building, repairing, or dismantling any recreational vessel under 65 feet; and

(g) Employees employed at a facility who are building, repairing, or dismantling certain small commercial vessels, if the facility is used exclusively for work on such vessels, and unless such work is upon an adjoining area over land for launching, hauling, lifting, or drydocking vessels, or while upon navigable waters.

These exemptions are conditional on an individual's coverage, for jurisdictional purposes, under State workers' compensation laws.

ii. insurability

(a) Defines wages as excluding fringe benefits;

(b) Repeals unrelated death benefits;

(c) Caps death benefits (200%/NAWW at time of death) and annual benefit escalator (maximum 5%);

(d) Offsets concurrent receipt of any other workers' compensation or Jones Act benefits.

iii. third party liability

(a) Limits shipbuilding employee's ability to circumvent exclusivity by suing employer on a dual capacity theory;

(b) Overturns Supreme Court decision in *WMATA v. Johnson* which held that a general contractor's securing of compensation under section 4(a) on behalf of a subcontractor extended third party tort immunity to the general contractor, as well;

(c) Exempts vessels on the Outer Continental Shelf from section 5(b)'s prohibition on indemnification;

(d) Clarifies when six-month period begins running for the purposes of employee assignment in third party cases by defining "award" as a formal order issued by the deputy commissioner, and provides for reversion of third party rights to employee after 90-day assignment to employer;

(e) Repeals employer's rights to 20% of any excess recovery, where the employer brings a third party action on the employee's behalf;

(f) Clarifies priority of distribution of third party awards where the employee brings the action, adopting current law with respect to the priority but permitting a judge to consider reasonableness of attorney fees.

iv. medical services

(a) Requires the Secretary to maintain a list of physicians not qualified to render medical care and prohibits reimbursement to any employee for use of a disqualified physician;

(b) Authorizes the Secretary to debar medical providers for at least three years, following hearing, for fraud, misrepresentation, excessive charges or treatment, or exclusion from any other State or Federal program;

(c) Authorizes the Secretary to order changes of physicians where either the charges exceed those prevailing in the

community or exceed those customarily charged by that physician;

(d) Retains employee's requirement to request medical treatment from employer and ten-day limitation on physician submission of medical reports;

(e) Prevents employee from changing physicians without employer/carrier or deputy commission [sic] consent, where the employee's initial choice was specialist; and

(f) Permits employee good faith reliance on prayer or spiritual means without loss of benefits;

v. occupational disease

(a) Incorporates discovery-based rule for notice, claim-filing, and time of injury purposes;

(b) Authorizes (and refines right to) benefits for retirees by basing entitlement on permanent physical impairment (determined in accordance with the AMA Guides to the Evaluation of Permanent Impairment) and benefits on the NAWW at the time of discovery. Death benefits provided based on the lesser of the applicable percentage of the NAWW at time of death or average annual earnings during year prior to retirement;

(c) Lengthens the notice-filing period to one year and the claim-filing period to two years.

vi. hearing loss claims

(a) Clarifies probative value of audiograms by lending them presumptive validity where performed by certified audiologists or otolaryngolists;

(b) Clarifies when statute of limitations begins running (when the employee is given a copy of the audiogram);

(c) Requires determinations of hearing loss to be in accordance with the AMA Guides to the Evaluation of Permanent Impairment;

(d) Provides in special fund cases that the employer will be directly liable of [sic] the degree of hearing loss for which he is responsible or 104 weeks, whichever is less.

vii. special fund

(a) Retains employer's retention period in current law (two years);

(b) Authorizes employer to retain party status over claim after special fund begins payment;

(c) Requires employers to raise special fund liability issue before deputy commissioner issues order, subject to good faith excuse;

(d) Prohibits unauthorized insurer of [sic] self-insurer from obtaining special fund relief;

(e) Precludes special fund liability for reimbursement of settlements or voluntary payments made prior to settlement;

(f) Amends assessment formula to account for an employer/carrier's use of the fund;

(g) Grants lien in favor of special fund on any third party award, subject to priority of lien by a labor-management trust

fund.

viii. settlement

(a) Provides means to expedite settlements where parties are represented by counsel and requires deputy commissioner to state grounds for disapproval of a settlement;

(b) Clarifies finality of settlements, as against the employer/carrier and the special fund, and specifically bars reopening of a settled case by a petition for modication of award;

(c) Permits settlement of death and future medical benefits;

(d) Terminates employer's liability for compensation for employee's failure to secure employer's approval of a third party settlement or to notify employer of same.

ix. claims representatives

(a) Requires the Secretary to maintain a list of claimant representatives not authorized to represent claimants under the Act;

(b) Authorizes the Secretary to debar claimant representatives for fraud, accepting fees not approved by the Secretary, or for debarment by another workers' compensation agency.

x. penalties

(a) Increases penalty for misrepresentation from misdemeanor to a felony (5 years/$10,000);

(b) Imposes penalty (5 years/$10,000) for fraudulently attempting to reduce or terminate an employee's or dependent's benefits;

(c) Increases penalty for failure to secure compensation from $1,000 to $10,000;

(d) Imposes civil penalty of $10,000 on employers/carriers for refusal or failure to send reports required by the Secretary or for submitting falsified or misrepresented data in same;

(e) Permits employer to require injured employee to submit semi-annual wage statements; failure or refusal to comply results in forfeiture of compensation for period of non-compliance.

xi. benefits review board

(a) Increases permanent membership from three to five and authorizes the Secretary to appoint up to four ALJ's, as temporary members, for terms up to one year;

(b) Authorizes the Board to sit in panels of three, with discretionary authority for review by the permanent members of the Board.

xii. labor-management trust fund liens

Converts Secretary's discretionary lien on compensation in favor of trust funds to mandatory lien and extends lien to third party recoveries.

xiii. repeals

Repeals obsolete provisions (sections 45, 46, and 47).

effective dates

I. EFFECTIVE ON ENACTMENT, AS TO CLAIMS FILED AFTER ENACTMENT AND TO CLAIMS PENDING ON ENACTMENT

(a) New definition of disability (§ 2(b));

(b) Offset for other workers' compensation or Jones Act benefit (§ 3(b));

(c) Overturning WMATA case (§ 4);

(d) Hearing loss claims (audiograms and AMA Guides (§ 8(a));

(e) Occupational disease retiree entitlement (§ 8(c));

(f) Occupational disease retiree time of injury determination (§ 10(a));

(g) Notice in occupational disease cases (§ 11(a));

(h) Time for filing claim in an occupational disease case (§ 12);

(i) Hearing loss claims subject to special fund relief (§ 8(e)(1));

(j) Special fund bar for unauthorized insurers (§ 8(e)(2));

(k) Labor-management trust fund liens (§ 14);

(l) Third party liability (rules on assignments, deletion of employer-retained one-fifth of excess recovery under § 33(e), reasonableness of attorney fees under § 33(f), notice to employer or [sic] third party settlements and judgments under § 33(g), and labor-management trust fund liens under § 33(d) (§ 21).

II. EFFECTIVE 90 DAYS AFTER ENACTMENT, AS TO CLAIMS FILED AFTER SUCH DATE AND PENDING ON SUCH DATE

(a) Additional authority for Secretary to order a change in physicians (§ 7(a));

(b) Healing by spiritual means (§ 7(e));

(c) Expedited settlement procedures (§ 8(f));

(d) Designation by employer of agents to whom employee must give notice of injury (§ 11(b), (c) and § 13).

III. EFFECTIVE AS TO INJURIES AFTER ENACTMENT

(a) Jurisdictional exemptions (§ 2(a));

(b) Commercial barge fabrication exemption (§ 3(a));

(c) Limitations on dual capacity liability and OCS indemnification (§ 5);

(d) Increase in facial disfigurement allowance (§ 8(b)).

IV. EFFECTIVE AS TO DEATHS AFTER ENACTMENT

(a) 200% cap on death benefits (§ 6(a)).

(b) Repeal of unrelated death benefits in permanent partial disability cases (§ 8(d));

(c) Repeal of unrelated death benefits in permanent total disability cases, and increase in funeral allowance (§ 9).

V. EFFECTIVE ON ENACTMENT

(a) Definition of wages as excluding fringe benefits (§ 2(c));

(b) Employer control of special fund cases (§ 8(e)(4));

(c) Employer requirement to raise special fund issue before deputy commissioner (applicable to requests for apportionment of liability after enactment) (§ 8(e)(5));

(d) Precluding special fund liability for settlements (§ 8(g));

(e) Five percent cap on annual benefit escalator (§ 10(b));

(f) Expansion of Benefits Review Board (§ 15);

(g) Conforming changes to § 22's petitions for modification provision, granting employer party status over special fund cases and clarifying that settlements are not subject to modifications (§ 16);

(h) Reincorporating § 28(e)'s provision of fees for services (§ 17);

(i) Employer reports, report penalties (§ 18);

(j) Penalties for misrepresentation, authorizing Secretary to develop list of disqualified claimant representatives, debarment authority, penalty for false statements intended to reduce or eliminate benefits (§ 19);

(k) Self-insurance requirements (§ 20);

(l) Increased penalty for failure to secure compensation (§ 22);

(m) Annual report (§ 23);

(n) Special fund assessment formula (§ 24);

(o) Repeals (§ 25);

(p) Discharge for filing a false claim (§ 26);

(q) Conforming amendments (§ 27).

VI. EFFECTIVE 90 DAYS AFTER ENACTMENT

(a) Secretary's authority to develop list of disqualified physicians and to debar such physicians; restriction on employee's right to change physicians, and reincorporating current law on employee's obligation to request medical treatment from the employer and physician's obligation to provide employer with medical reports in 10 days (§ 7(b), (c), (d));

(b) Obligation of employee to submit wage statements to employer (§ 8(h));

VII. EFFECTIVE AS TO ANY INJURY, DISABILITY, OR DEATH AFTER ENACTMENT

Change in benefits for employees of Non-Appropriated Fund Instrumentalities (§ 6(b)).

SURVEY OF SELF-INSUREDS AND CARRIERS

			Percent
Shipbuilders:			
A.....	Up.....	$48,391	(81.1)
B.....	Down.....	165,381	(43.6)
C.....	Up.....	126,086	(14.5)
D.....	Up.....	106,180	(4.8)
E.....	Down.....	6,648	(3.2)
F.....	Down.....	25,524	(9.1)
G.....	Down.....	112,326	(30.1)
H.....	Up.....	1,118,847	(122.8)
Insurance carriers:			
A.....	Up.....	424,136	(60.3)
B.....	Up.....	204,085	(84.9)
C.....	Down.....	434,014	(43.4)
D.....	Down.....	83,162	(6.4)
E.....	Up.....	43,380	(5.8)
F.....	Down.....	322,755	(41.6)
G.....	Down.....	195,431	(10.7)
H.....	Up.....	474,685	(160.0)
I.....	Down.....	693,452	(42.9)
J.....	Up.....	424,622	(68.3)
Stevedores:			
A.....	Up.....	28,557	(8.9)
B.....	Down.....	30,525	(14.8)

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Mr. Speaker, I have no further requests for time, and yield back the balance of my time.

Mr. MILLER of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore [Mr. COLEMAN of Texas]. The question is on the motion offered by the gentleman from California [Mr. MILLER] that the House suspend the rules and agree to the conference report on the Senate bill, S. 38.

The question was taken; and (two thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

Benedict on Admiralty

Volume 1A: Longshore and Harbor Worker Compensation Act Chapters I-V, Apps. A-E
APPENDIX A

1A Benedict on Admiralty

SENATE REPORT ON CONFERENCE REPORT ON S. 38

LONGSHOREMEN AND HARBOR WORKER'S COMPENSATION ACT AMENDMENTS OF 1984 (SEPTEMBER 20, 1984)

LONGSHOREMEN AND LONGSHORE AND HARBOR WORKERS COMPENSATION ACT AMENDMENT-CONFERENCE REPORT

Mr. NICKLES, Mr. President, on May 14, 1981, S. 1182, a bill to amend the Longshoremen's and Harbor Workers' Compensation Act was first introduced by myself with Senator NUNN cosponsoring. Since that time, the Senate Labor Subcommittee, which I chair, has held 4 days of hearings and the bill has undergone any number of rewritings. We thought that one compromise would become public law at the end of the 97th Congress. That did not happen.

At the beginning of the 98th Congress, I reintroduced amendments to the Longshore Act as S. 38. I am pleased that a compromise version is finally out of conference, has passed the House, and is before the Senate for a vote today. In my opinion, this compromise, taken as a whole, is worthy of final passage and provides many needed reforms to the Longshore Act. There are some provisions which, taken alone, cause me some philosophical problems. These concerns, however, are greatly outweighed by the benefits in the entire package.

The section which concerns me philosophically are [sic] the ones [sic] on occupational disease. My problem is providing benefits to retirees through a wage replacement system. I have consented to doing this in the longshore bill because of the benefits of the other provisions. This is not an endorsement of future efforts to federalize workers' compensation for occupational disease.

The conferees were also concerned over the effect of the Supreme Court's decision in *Lockheed Aircraft Corp. v. United States* et al.--U.S.--, which decided that the Federal Employees; Compensation Act did not bar third party claims for indemnification. Because section 5(a) of the Longshore Act contains nearly identical language to FECA, we considered an amendment to section 5(a). However, the plain meaning of the existing language indicates that there should be no third party liability. In addition, the clear congressional intent of the 1972 amendments to the act was to eliminate the problem of "circular suits" whereby employers paid workers compensation and then through suits by third parties

became liable for additional amounts.

In amending the act today, we are strengthening further the language in section 905(b) to provide statutory immunity to shipyards against such negligence action. We believe this achieves the goal of the conferees of making workers' compensation under the Longshore Act the exclusive remedy against an employer and insulating the latter from multiple liability.

Many months were spent in an attempt to draw a bright line differentiating Longshore and State workers' compensation coverage. Such an effort was necessitated by the 1972 amendments which extended coverage shoreward without providing definite guidelines. Attempts to draw a more definite legislative line failed.

As a result, the bill carves out certain categories of workers and specifically excludes them from the definition of "employees" covered under Longshore. To assure there are no cracks, that is, that a worker is subject to either Federal or State coverage, the amendment conditions the Longshore exemption on these claimants being subject to State workers' compensation coverage. These exemptions and this approach is not intended in any way to extend coverage to any employees not currently under Longshore.

The need to amend the section dealing with medical services and supplies was made clear in hearings conducted by the Permanent Subcommittee on Investigations. I am pleased that this bill contains a method to debar certain physicians from providing medical care under the Longshore Act. The intention is to put a stop to certain fraudulent activities identified by the permanent subcommittee which developed under Longshore.

In addition, other sections dealing with fraudulent activities identified by the permanent subcommittee were addressed. Penalties for misrepresentation to obtain benefits and for false statements to deny or terminate benefits were increased from a misdemeanor to a felony. Provisions to restrict claimant's representatives and grounds to disqualify these representatives were inserted into Longshore. Also employers are given the authority to obtain wage statements from claimants receiving benefits to monitor these cases.

I want to thank Senator NUNN and his staff for their cooperation, support and assistance in bringing this matter to the Labor Subcommittee's attention and in making these much needed changes in the law.

Under section 44 of the Longshoremen's and Harbor Workers' Compensation Act, self-insured employers and insurance carriers pay into the special fund on an assessment basis moneys necessary for the fund to meet its obligations. The present formula is prorata based on company/carrier losses during the year and all employer/carrier payments. The more cases an employer can put into the fund each year, the lower its assessment becomes.

The House and Senate committees attempted to rectify the problems as described in the two committee reports. (H. Rep. 98-570, pgs. 20-21 and S. Rep. 98-81, pgs. 34-35.) While considering the differences, an alternative approach in the form of a new assessment formula was devised and agreed to by most concerned employers/carriers. The new formula takes into account the amount of fund cases each employer/carrier has and strikes an average between the actual payouts of the old formula and use of the fund. Under this formula, abuse of the Fund will be discouraged and assessments to all concerned will be equitable. There will be changes up or down in every industry, but all will be treated equally. The new formula is section 24(a) of the conference reported S. 38.

Under these amendments, settlements will be much easier to obtain than under current law. If the parties agree and are represented by counsel, a settlement shall be deemed approved unless specifically disapproved by the Deputy Commissioner within 30 days after submission. Such settlement may also include future medical benefits if the parties agree.

The Benefits Review Board is increased from 3 to 5 permanent members. Four temporary members are allowed if

requested by the chairman. There is concern over the growing backlog at the BRB and it is intended that the new members will be appointed quickly and the temporary members will be utilized in decreasing this growing backlog.

Death benefits are capped at 200 percent of the national average weekly wage, unrelated death benefits are repealed, and annual escalation of benefits is capped at 5 percent. These provisions are intended to make the Longshore Act insurable by providing some degree of certainty of future benefits. Further, any benefits received by a claimant are offset by any other workers' compensation or Jones Act benefits received for the same injury, disability, or death.

Overall, this package of amendments addresses the major problems identified under Longshore. The benefits greatly outweigh any perceived disadvantages.

I want to encourage the Senate to adopt these amendments today so that we can send them to the President for his signature.

In closing, I want especially to thank not only Senator NUNN but also Senators HATCH and KENNEDY for their assistance in bringing this compromise to the floor today. Also, I want to thank [R]epresentatives MILLER and ERLENBORN for their work in the House.

Thank you.

Mr. HATCH. Mr. President, it is with a great sense of accomplishment and satisfaction that I join Senator NICKLES in urging the adopting of this conference report to S. 38--a bill which I had the privilege of cosponsoring. This measure is the product of literally a decade of intense debate, close scrutiny, and hard negotiation.

It is not the handiwork of a select few, fashioned duping [sic] some midnight hour. Many people contributed to the development of this bill, some of whom deserve special recognition. Senator NICKLES is to be commended for his diligent pursuit of these amendments. As a freshman Senator 3 1/2 years ago, he tackled the Longshore Act as one of his first issues. And despite the disappointment of the 97th Congress, he pressed ahead in the 98th Congress for reform. As students of geography will attest, Senator NICKLES' home State of Oklahoma does not have many deep water ports and thus his State was more of an indirect, rather than direct, concern over the Longshore Act. Some might therefore have wondered whether after the discouragements of the 97th Congress, he should have turned his attention to interests closer to home. Yet, in mark of true leadership, as chairman of the Labor Subcommittee, he pressed ahead in this Congress.

I would also like to commend Senator KENNEDY, whose support of a consensus bill in the Senate provided a great boast [sic] to the legislation. Senator NUNN and Senator ROTH are deserving of recognition for their early work on the Permanent Subcommittee on Investigations. Their aggressive and thorough investigation of waterfront corruption brought to light the manner in which the current law was being abused by corrupt individuals. Their recommendations for enacting more stringent sanctions were invaluable contributions, and the conference report contains many of their recommendations.

I acknowledge also the tremendous contributions of Representative MILLER and Representative ERLENBORN, who led the House conferees. It is undisputed that without their dedication, and the tireless and highly professional work of their staffs, there would be no Longshore Amendments of 1984.

Because the legislation was so technical and complicated, the conferees had to rely heavily upon the assistance of the Department of Labor as well as the Office of Legislative Counsel. Among those who deserve commendation are Ms. Susan Meisinger. Mr. Cornelius Donoghue, Mr. Peter D. Galvin, Mr. Larry Rogers, Mr. Neil Montone, Mr. Irwin M. Wolkow, Mr. James Demarce, Ms. June Robinson, Mr. Carvin Cook, Judge Robert L. Ramsey, and Ms. Sydnee Schwartz. Also I express my thanks to Mr. Steven Cope in the Office of Legislative Counsel, who oversaw the final

crafting of the statutory language. Finally, I would like to pay tribute to Mr. Robert Collyer, former Deputy Under Secretary of Labor for Employment Standards Administration, whose early leadership and contribution were instrumental in developing this measure.

The Longshore Act is like other workers' compensation laws in that it is not static. It is a dynamic one, continually evolving. The Congress, of course, has established the statutory framework, enunciating the major policy objectives toward compensating work-related injuries and deaths. However, the courts and the Department of Labor interpret and administer this law, and they must continually apply this law to unique situations which Congress did not envision. In many instances, the results are in keeping with congressional intent and purpose. But in other instances this interstitial lawmaking is clearly out of bounds and is disruptive of the consensus reached by employer and employee interest groups. In addition, it must be candidly acknowledged that Congress itself often sows the seeds for future legislative reform. The 1972 amendments are a case in point. Although to its credit it solved many problems, its craftsmanship has prompted Chief Justice Burger to observe that the act was "about as unclear as any statute could conceivably be ...." The stage is thus set for congressional action when the collective product of judicial and administrative action finally activates a broad spectrum of interest groups to seek legislative change.

The Longshore Act does not lend itself to amendment easily or often. Like other labor laws, the act has been forged in the heat of political controversy, between the inherently adversarial forces of business and labor. It embodies compromises not easily reached, which are often then euphemistically described as "delicate balances." That internal balance could be easily destroyed if the act were subject to continual amendment.

S. 38 reflects a fragile consensus, carefully crafted over the last several years. It is a bill which provides benefits for all the affected interest groups. It benefits workers by facilitating the processing of occupational disease claims. It also benefits retired workers who become impaired as a result of a late manifesting occupational disease by affording an opportunity to obtain compensation. It enhances the insurability of the program, thus benefiting both insurers and self-insurers, by making the costs more predictable. It benefits certain employers in the shipbuilding industry by restoring an original purpose of workers' compensation, namely to immunize employers from tort suits as the quid quo pro [sic] for paying compensation. It benefits the Department of Labor, which administers this program, by providing greater manpower resources by which to adjudicate longshore cases. Finally, it benefits all participants in the compensation system by establishing new sanctions to deter those who have defrauded and abused it.

I would like now to discuss some of the important aspects of the conference report.

jurisdiction

One of the most hotly contested areas of this act has been jurisdiction. Professor Larson has observed that prior to the 1972 amendments the act had "achieved a unitary and almost litigation-free rule of coverage." Injuries and death occuring over navigable waters were compensated under the act. But coverage stopped at water's edge. And, for those workers whose duties took them both on land and over navigable water, they found themselves literally walking in and out of coverage.

The 92d Congress, however, sacrificed the administrative ease of "water's edge" rule. The 1972 amendments enacted a generous boast [sic] in compensation, and Congress did not want to deprive amphibious workers and their land-based fellow workers of these benefits simply because their injuries occurred on land. But in extending coverage onto shore, the 1972 amendments adopted appallingly ill-defined rules of jurisdiction. In Professor Lawson's view, the rules have been a "double prolific generator of litigation," as the courts have endeavored to flesh out what Congress meant by "maritime employment" and adjoining areas. Employers for almost a decade have called for a retreat of coverage to water's edge. But as the Senate Labor Committee finally concluded, it was neither desirable nor possible to stage a complete retreat to the sea. Instead, the Senate committee fell back on what was politically feasible, namely singling out several specific categories of occupations and activities for exemption. If there is a common thread running through the

changes, it is probably the belief that these activities and occupations either lack a substantial nexus to maritime navigation and commerce or do not expose employees to the type of hazards normally associated with longshoring, shipbuilding, and harbor work.

Most but not all of these exemptions survived intact through conference.

Also surviving through conference are the understanding [s] articulated in the Senate report to S. 38 (S. Rep. 98-81, 98th Cong., 1st Sess. at 26 (1983)):

It is the committee's intention that these amendments not be interpreted to enlarge the present scope of the act's coverage. Nor is it the committee's intention to include classes of employers not already subject to the act. Finally, with the committee making only limited changes to section 2(3), [] and section 3 of the act, it is obvious that a large body of decisional law relative to traditional maritime employers and harbor workers remains undisturbed. The decision not to evaluate, endorse, or reject, explicitly or implicitly, the lower court and agency decisions in these other areas was made deliberately by the committee in conjunction with the limited changes that are being made.

These views are pertinent to the conferees' decision not to include in the Conference Report the exemption for grain elevators, found in the Senate bill, and the exemption for fabrication of offshore oil production platforms, included in the House amendment. This latter proposal was prompted by a recent decision from one circuit. *Thornton v. Brown & Root, Inc., 707 F.2d 149 (5th Cir. 1983)* . Though some might be tempted to argue otherwise, the absence of these exemptions in no way constitutes congressional endorsement of any judicial pronouncements of coverage. Neither the Senate nor the House attempted to revisit the concept of maritime employment which governs the definition of employee. Accordingly, the conferees did not attempt an articulation of criteria for determining what is maritime employment. In short, there emerged no political consensus either to affirm or to disaffirm the jurisprudence developing with respect to employees not covered by the exemptions in the conference report.

Without firm direction from Congress, courts must continue to grapple with defining the parameters of maritime employment. Conflicts among the circuit courts of appeals no doubt will continue to arise, and the Supreme Court will have to resolve these conflicts. This therefore admits to the possibility, for example, that another circuit may disagree with the fifth circuit's decision in Thornton as to coverage of offshore oil drilling fabrication yards. The stage would then be set for final review by the Supreme Court.

It should be noted that the exemptions in the conference report are predicated upon the availablility of coverage under a State workers' compensation law. Where a State does not extend coverage to an employee otherwise deemed exempt under the Longshore Act, the latter exemption would not apply.

I would observe that there may be cases where an employee, in an effort to nullify the application of a Longshore exemption, will challenge whether State workers' compensation is available. There may be very rare cases where an employee unsuccessfully challenges an employer's assertion of a Longshore coverage exemption only to find that, upon application for State workers' compensation, procedural, as opposed to jurisdictional, bars threaten to deny benefits. The conferees do not contemplate that the employee will be able to reapply for Longshore benefits under the guise that State coverage is not available. Rather, the employee when confronted with the assertion of his exempt status is best advised to file a simultaneous claim under State law. In this way he can protect his State rights in the event that the Longshore claim is dismissed for jurisdictional grounds. This is no more burdensome than the current practice of some employees in some jurisdictions to file concurrently claims under State law and Longshore.

A variation on the above example should be noted. There may be equally rare instances where, following dismissal of a Longshore claim under an exemption, the State tribunal authoritatively interprets its law to deny coverage. In such cases, it is anticipated that the claimant will be able to renew his claim before the Department of Labor, showing that the employer is not entitled to the Longshore exemption after all. This will avoid the catch-22 situation of an employee

being deprived of an opportunity to claim compensation under any system.

I would now like to comment briefly on one specific exemption.

small vessel exemption

The conference report provides generally that an employee employed at a facility engaged in the business of building, repairing, or dismantling small vessels--as small vessels are defined in the provision--is not covered under the Federal Longshore Act unless his injury occurs while upon the navigable waters of the United States or while upon any adjoining pier, wharf, dock, facility over land for launching vessels, or facility over land for hauling, lifting, or drydocking vessels. This provision parallels that provided under the Senate-passed bill. A significant variation between the two, however, is that the conference report defines additional workplace areas adjoining the navigable waters where the exemption from Federal coverage is not available; injuries occurring on a pier or wharf, for instance, were exempt areas under the Senate-passed bill but not under the conference report. With respect to explaining the exemption, and in tracing its development, discussions upon introduction of S. 38, those contained in the Senate committee report (S. Rep. 98-81), and those held during its passage in the Senate, are a part of the legislative history of the provision and are relevent to its present meaning unless, of course, expressly superseded by language in this conference report, some of which I earlier referenced.

Eligibility for the small vessel exclusion depends upon whether the employer's facility is engaged in the business of building, repairing, or dismantling:

First, commercial barges under 900 lightship displacement tons (long); or

Second, commercial tugboats, towboats, crew boats, supply boats, fishing vessels, or other work vessels under 1,600 tons gross.

For purposes of the second small vessel category, the conference report specifies some types of workboats; for example, tugboats but also includes other work vessels within the small vessel definition so long as they are under 1,600 tons gross. This generic reference was preferred over attempting to identify and list every conceivable workboat description; for example, utility vessels, ferries, Corps of Engineers dredges, patrol boats, pressure barges. A shipyard operation may qualify for exclusion from Longshore Act coverage under one or both of the small vessel categories discussed above depending upon the types and sizes of vessels involved. A shipyard facility may, for instance, be in the business of building and repairing commercial barges under 900 lightship displacement tons (long) and towboats under 1,600 tons gross and qualify for exemption from Longshore Act coverage.

The commercial barge exception is expressed in terms of vessel weight measurement; for example, lightship displacement tons (long); one long ton equals 2,240 pounds, and the general commercial workboat exception is expressed in terms of vessel volume measurement; for example, gross tons; one gross ton equals 100 cubic feet. It is our intent that this gross tonnage measurement remain at 1,600 gross tons as determined by the current formula contained in the act of May 6, 1864, as amended through 1974 (*46 U.S.C. 77*), and that the measurement for purposes of the Federal Longshore Act should not be altered because of any future amendment to the act of May 6, 1864, or any recommendation of the International Conference on Tonnage Measurement.

There are additional limitations to the availability to a facility of the exemption. A shipyard operation, for instance, must be in the business of building, repairing, or dismantling exclusively small vessels in order to qualify for the exemption. If a shipyard operation is engaged in work on a vessel larger than the sizes specified in the provision, the exemption from Longshore Act coverage is inapplicable and the otherwise excluded small vessel activity would be subject to Longshore Act coverage during the period the shipyard facility is engaged in work on the large vessel; that is, a motorized utility boat more than 1,600 tons gross. In the case of repair activity, this period would run from the time

the large or otherwise ineligible vessel arrives at the shipyard for repair until the repair work is completed. In the case of new construction, it would run from the time the construction first takes on the characteristics of a vessel; that is, the keel is laid until the construction is completed.

Thus, a facility, in order to avail itself of the exemption, must in its shipyard operations be engaged in working on only small vessels. If such a facility engages in the construction or repair of a vessel larger or of a type other than those defined in the provision, those employees who would be subject to the exemption would be covered under the Federal Longshore Act during the period of activity on the nonqualifying vessel. Once the facility is again engaged in exclusively small vessel operations, the exemption would apply. We expect the Secretary to develop appropriate regulations consistent with this legislative intent to help effectuate the exemption in this respect. We also expect the Secretary to certify that these facilities are, insofar as Longshore Act coverage is concerned, engaged in the business of building, repairing, or dismantling only small vessels and therefore are eligible for the exemption to the extent it applies.

Additionally, the exemption applies only to facilities that are in the business of building, repairing, or dismantling commercial barges, tugboats, towboats, crew boats, supply boats, fishing vessels, or other work vessels. The emphasis is on the use in commerce of these vessels being built or repaired. Shipyard operations that are in the business of noncommercial vessel work; for example, military patrol boat construction on these vessels are not entitled to the exemption during the period of that activity regardless that the noncommercial vessel may be small under the terms of the provision.

Two additional limitations on the availability of the small vessel builder and repairer exemption involve facilities receiving Federal maritime subsidies and the requirement that the exemption is applicable only to employees subject to coverage under a State workers' compensation law. With respect to the first limitation, the particular shipyard facility may not receive Federal maritime subsidies and be entitled to the coverage exclusion. This restriction is intended to continue within Federal coverage operations of employers that receive the direct maritime subsidies contained in the Merchant Marine Act, 1936, as amended; specifically, the construction differential subsidy program [CDS] and the operating differential subsidy program.

For example, if an employer's facility enters into a CDS contract with the Government and receives a subsidy for the construction of a vessel, the operation would not be eligible for exclusion from Longshore Act coverage regardless of the nature of vessel work undertaken at the operation. Facilities that may benefit indirectly or nonvolitionally from the operation of various Government policies and programs, for example, special tax treatments, cabotage laws, financing guarantees--are not affected by this maritime subsidy limitation. With respect to the second limitation referenced, if an employee within the scope of this exemption from Federal coverage is not subject to coverage under a State workers' compensation law, the employee remains under Federal coverage. The objective here simply is to ensure that an employee does not fall between Federal and State coverage. Clearly, the exemption defers to State coverage but if such coverage cannot reach the subject employee, then that employee must remain subject to the Federal law.

occupational disease claims

Probably no issue has received more attention, or generated more controversy in recent years, in the area of workers' compensation than the adequacy of the current systems to compensate victims of occupational disease.

The problems of making a correct assessment of this controversy are manifold. The first is our limited understanding of the dimensions of the problem in this country. Although the media gives the distinct impression that occupational diseases pervade the entire population, the scientific data does not tend to support that impression. Second, while there is evidence that the workers' compensation systems are not being deluged by a great number of occupational disease cases, it is not possible to draw an unambiguous inference from these statistics. It is arguable that the low percentage reflects a true prevalence of the problem and that the current system is dealing adequately with the relatively few cases.

In contrast, critics charge that the paucity of cases demonstrate how the current system has erected procedural and substantive bars to the many victims of work-related diseases, thus discouraging the filing of claims.

The 1984 Amendments to the Longshore Act do not pretend to resolve this debate. Rather, in a straight forward manner, they address several specific issues which have been drawn to the committee [']s attention concerning the capacity of the Longshore Act to compensate occupational disease cases in a fair, adequate and expeditious manner. At the outset, it should be stressed that the Longshore Act has unqualifiedly compensated for occupational disease for decades. We are not confronted with a statute which by its terms is hostile to certain occupational diseases, or limited by unrealistic exposure limitation rules, or discriminatory in establishing benefit levels.

Yet, the statute has been interpreted in certain circumstances to frustrate the purposes of the act. Current law adopts a manifestation rule that tolls the prescriptive periods under sections 12 and 13. These sections even include provisions allowing either waiver or further tolling in particular situations. Yet, there was evidence presented to the committee that certain employers were able to utilize these rules, without showing material prejudice to themselves, to bar otherwise legitimate occupational disease claims. The Conference substitute lays down special time limitations for occupational disease cases; claimants have up to two years from date of manifestation to file a claim. This comports with the rule adopted in many States, including the recent amendment to the New York law, which has often served as a model to the Longshore Act. Second, the notice requirement has been extended from 30 days to 1 year.

It is noted that both the notice and time limitation rules incorporate a medical advice trigger, which is activated when a claimant receives medical advice as to the manifestation of the disease and its link to employment. This is essentially a presumptive evidence standard which operates for the benefit of the claimant. But the statute still retains the reasonable diligence standard, which is essentially an objective, "reasonable man" guideline.

The medical advice standard is designed to temper the operation of the reasonable diligence standard. Physicians still today commonly fail to recognize many occupational disease symptoms or their relationship to employment. Thus, it may not be reasonable to expect that a worker at a certain point in time will recognize symptons or their relationship to employment. In such cases, the medical advice rule will prevent the defeat of the claim. Yet, there still may be certain specific cases where the subjective factors convincingly establish that a claimant knew, or should have known, he had an occupational disease and that it was employment-related. Such factors would include the workers' [sic] education, his age, the length of time he is exposed to a particular industrial process, an understanding of the manufacturing process, his awareness of workers' compensation, and past medical history.

Obviously, the limitations periods embody a balancing of competing interests. A claimant deserves every reasonable opportunity to prosecute a legitimate claim, even one that takes years to ripen. But there are other worthwhile policy objectives. Prescriptive rules are designed to discourage claimants from "sleeping on their rights." Further, people are entitled to settle their affairs, without fear that at some ill-defined point in the future-when documentary evidence is unavailable and memories are dim--they will have to account for past injurious conduct. The Longshore Act as amended reaffirms this balancing of interests. But the conferees clearly expect the act to take account of the unique nature of occupational diseases. Medical knowledge, and common understanding, of the etiology, the symptoms, and the nature of occupational diseases are still maturing. Victims of occupational diseases should not be unfairly penalized because of contemporary limitations of medical science and the latency of some such diseases.

retirees

The second issue addressed with respect to occupational disease is whether retirees, or their survivors, should be entitled to compensation where the disease does not manifest itself until after retirement. Assuming that they should be, a further question arises as to the level of benefits.

The Longshore Act does not contain express rules governing compensation for retirees. Yet, since the beginning, it has

been beyond cavil that benefits paid to a worker disabled during employment could continue throughout his retirement years. The Senate bill took this for granted as it added an offset provision authorizing an employer to reduce its compensation liability by a percentage of the amounts an employee became eligible to receive Social Security benefits. The theory behind this proposal was that workers' compensation and Social Security are both an income-replacement merchanism [sic] and that there should be some coordination of benefits. It will be recalled that workers' compensation developed and matured during a time that antedated Social Security. And generally workers' compensation laws have not been amended to take account of Social Security.

The House Labor Committee flatly rejected any Social Security offset. While the issue was joined in conference, a series of controversial rulings at the agency level came to the attention of the conferees. In *Abuddell v. Owens-Corning Fiberglas, [sic] 16 BRBS 131 (Feb. 28, 1984)* , the Benefits Review Board denied compensation benefits to a worker who had manifested an occupational disease--asbestosis--after permanently retiring from the work force. The Board viewed the retiree as, by definition, being without a wage-earning capacity. Therefore, the disease could not diminish that capacity for purposes of computing compensation. An identical result was reached in *Redick v. Bethlehem Steel Corporation, 16 BRBS 155 (Mar. 20, 1984)* . Similarly, in *Worrell v. Newport News Shipbuilding and Dry Dock Company, 16 BRBS 216 (ALJ)* (Mar. 15, 1983), an administrative law judge ruled that a widow was not entitled to death benefits where her retired husband died from mesothelioma. The judge reasoned that the retiree's average weekly wage at the time of death was zero, which must be regarded as the ceiling placed on such benefits by virtue of section 9(e).

The conferees concluded that these interpretations of the Longshore Act did not represent equitable policy. A person's eligibility for compensation should not necessarily be dependent upon the fortuity of when he becomes disabled. Moreover, it is arguable that the Aduddell decision ironically sows the seeds for mischief against employers in the future. It will be remembered that workers' compensation embodies a social contract between employers and employees. One commentator summarized it as follows:

Workmen's compensation acts are in the nature of a compromise or quid pro quo between employer and employee. Employers relinquish certain legal rights which the law affords to them and so, in turn, do the employees. Employers give up the common-law defenses of the fellow servant rule and assumption of risk. Employees are assured hospital and medical care and subsistence during the convalescence period. In return for a fixed schedule of payments and a fixed amount in the event of the worker's death, employers are made certain that irrespective of their fault, liability to an injured workman is limited under workmen's compensation. Employees, on the other hand, ordinarily give up the right of suit for damages for personal injuries against employers in return for the certainty of compensation payments as recompense for those injuries. 1 M. Norris, The Law of Maritime Personal Injuries § 55, p. 102 (3d ed. 1975).

The effect of Aduddell and Worrell, it seems to me, is to deny to employees and their survivors part of the benefit of the bargain. It would not take a great leap in logic for a court to conclude that the deprivation of the right to compensation should vitiate the employer's immunity for tort liability. The conference substitute forecloses this possibility by reaffirming that a retiree retains his employee status for purposes of compensation.

The conference substitute therefore makes express provision for the payment of benefits to retirees who become disabled during retirement as a result of an occupational disease. It should be noted, however, that the type of benefit paid to a retiree whose disease manifests itself during retirement will be an impairment benefit and will be considered a species of permanent partial disability, if it indeed is permanent. This impairment will be evaluated under guidelines of the American Medical Association. It should also be noted that by being considered a form of permanent partial disability, no matter its extent, a retiree's impairment cannot legally ripen into a permanent, total disability, for purposes of the act.

Where a retiree manifests an occupational disease impairment over a year after retirement, and otherwise establishes eligibility under the act, his benefit will be calculated by a formula which is keyed to the national average weekly wage at the time of manifestation.

I would also point out where a retiree receiving an impairment benefit dies, any survivor claims for death benefits under section 9 of the act must still satisfy the existing rules of evidence and burdens of proof. A claimant will have to establish to a reasoned medical certainty that the decedent's "injury" caused his death.

exclusive liability of shipbuilders

The conference report adopts the Senate proposal, left unchanged by the House, to bar certain tort suits against shipyards which are otherwise liable for workers' compensation. As explained in the Senate report, section 5(b) of the act, added in 1972, has been judicially interpreted to allow a shipyard employee to bring a maritime negligence action against its employer in the latter's capacity as owner of a vessel being built or repaired. The Shipbuilder's Council of America testified during hearings in 1981 that these actions for maritime negligence, when combined with the Longshore Act's generous compensation benefits, placed an impossible burden on shipyard employers. It urged that employers should be responsible for workers' compensation exclusive of any theory of tort recovery.

The legislation addresses this dual capacity problem in two respects. First, it bars the direct maritime tort action against the employer in its capacity as a "vessel" as the term as defined in the Longshore Act; that is, vessel owner, owner pro hac vice, et cetera. Second, the amendment addressed the situation where the injured employee may bring an action against a third party which is deemed a "vessel" as defined by the act. An example is an oil company which owns a tanker and brings it in for repairs at the shipyard-employer. In response to the suit, the oil company as "vessel" may attempt to implead the shipyard-employer under contractual or tort theoriers [sic] of indemnity or contribution. The amendment bars any such liability against the employer. This is in keeping with the policy, contained in the first sentence of section 5(b), against exposing an employer to liability to a vessel for the latter's tortious injury to an employee. Thus, shipyards are afforded the same immunity from suits by vessels which stevedores enjoy under the 1972 amendments.

It should be noted that the amendment to section 5(b) does not reach the sensitive issue of whether the exclusive remedy rule of section 5(a) generally bars an unrelated third party from obtaining contribution or indemnity from the employer where the employer's negligence has caused or contributed to the employee's injury. As Professor Larson has concluded, as a general matter, third-party actions over against an employer present "perhaps the most evenly balanced controversy in all of workers' compensation. ..." (*A. Larson, Third Party Over Against Workers' Compensation Employer, 1982 Duke L.J. 483, 484 (1984)*). And, last year, the Supreme Court spoke to the issue in the context not of the Longshore Act, but rather of the Federal Employee's Compensation Act. In *Lockheed Aircraft Corporation v. United States (460 U.S. 190 (1983))* . The court held that *section 8116(c) of title 5, United States Code*--the counterpart to section 5(b)--did not bar an unrelated third party's indemnity action against the United States for injuries to a Federal employee. Since then, questions have been raised as to the decision's impact on the Longshore Act. In fact, one district court has recently ruled that, under the rationale of Lockheed, section 5(a) does not bar an unrelated third party's action against a longshore employer. In re *All Maine Asbestos Litigation* (BIW cases) (D. Me. March 9, 1984).

Neither the Senate bill nor the House amendment specifically addresses this issue. And, thus to the extent it is a problem, the conference report leaves it unresolved. I personally doubt, however, whether Lockheed poses a serious threat to longshore employers. The courts have long recognized that a longshore employer whose concurring negligence contributed to an employee's injury cannot be sued as a joint tortfeasor by the third party seeking contribution. See, for example, *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., (342 U.S. 282 (1952))* . Moreover, on the question of indemnification, the courts generally have not sustained a third party defendant's claim over against a longshore employer for noncontractual indemnity. See, for example, *White v. Johns-Manville Corp. (662 F.2d 243 (4th Cir. 1981))* . And, even in Lockheed, the Court did not resolve the underlying substantive claim for indemnity: it considered only whether the exclusive liability provision was a statutory bar. See *Lockheed,* (*460 U.S. at 197 n.8*).

No doubt, convincing arguments can be made that the principle of exclusive liability under workers' compensation

should shield employers from further liability, whether directly or indirectly under any theory of contract or tort law. But S. 38 did not set out to resolve the issue in a comprehensive manner. To do so properly, the committee would have had to examine all sides of the triparte relationship between the employer, the employee, and third parties. For example, it is arguably unfair to proscribe third party indemnity actions against an employer without considering the abrogation of, or at least limitation on, employer's subrogation rights and its compensation lien. Moreover, in certain circumstances, an employer has recognized rights against third parties, growing out of workplace injuries to an employe [e]. See, for example, *Federal Marine Terminals v. Burnside Shipping Co., (394 U.S. 404 (1969))* . These rights perhaps should undergo modification. Similarly, any limitation on the employer's rights would have to be accompanied by rule changes designed to prevent an employee from enjoying double recovery against his employer and a third party. Any overall review of these questions must wait for another day. In the meantime, we can perhaps benefit from the experience [to] be gained from enactment of a uniform product liability proposal [,] S. 44, which the Commerce Committee reported earlier this year. That measure does propose some major modifications of the triparte rights and liabilities of employers' employees, and third parties.

third party actions by employees

The Senate bill amended section 33(f) to establish that compensation paid by an employer shall be a first lien on any proceeds obtained by an employee in a tort suit against a third party. Implicit in this proposal was that the legal expenses of the employee, including attorney fees, would be totally subordinated to the compensation lien. The House amendment essentially reversed the order of priority. It would have permitted the employee to pay his attorney fees and litigation expenses first, before satisfaction of the compensation lien. This would be important where an employer's lien equalled or exceeded the amount recovered in the third party action. The House committee was concerned that an employee might conceivably be worse financially after incurring the expense of a suit than if he never had brought an action at all. In addition, the House committee believed that the employee was entitled to shelter a portion of recovery [15 percent] from any compensation lien. That committee viewed the 15 percent set-aside as comparable to the employer's right under section 33(e)(2) to retain 20 percent of any recovery in excess of litigation expense and compensation liability.

The conference agreement adopts a middle ground. First, it rejects the 15-percent set-aside in the House amendment and modifies current law by eliminating the employer's 20-percent set-aside in section 33(e)(2). Second, it requires that the employee's litigation expenses incuding reasonable attorney fees, be paid out of any recovery prior to the satisfaction of the compensation lien. It should be stressed though how this rule has special application in the cases where the aggregate of the litigation expenses, the employee's legal fees, and the compensation lien leave the employee with little, if any, recovery. In such circumstances, the conferees found merit in the approach articulated by the court in *Ochoa v. Employers National Insurance Company, 724 F.2d 1171 (5th Cir. 1984)* . That case held that where an employee's third party recovery was insufficient to cover both his attorney fee and the compensation lien, the lien was payable out of the net recovery, after costs of litigation, including reasonable attorney fees, were subtracted. The court of appeals emphasized that only reasonable attorney fees were allowed. Thus, where the recovery is insufficient to cover both the attorney fees and the compensation lien, leaving the employee with nothing, the court must evaluate the reasonableness of the fees and make an equitable adjustment as between the employee and his attorney. As noted in Ochoa, this approach attempts to do justice to the employee while upholding *Bloomer v. Liberty Mutual Life Insurance Company, 445 U.S. 74 (1980)* , which forecloses an adjustment of an employer's lien in order to underwrite the attorney fees of the employee.

benefits review board

The Senate bill and House amendment both responded to the overwhelming backlog of cases burgeoning at the Benefits Review Board. It is estimated that the current 3-member Board will see its docket expand from over 6,700 cases in fiscal year 1984 to an excess of 9,100 cases by fiscal year 1986. Roughly 20 percent of the cases are appeals under the Longshore Act, while the remainder are black lung cases. This backlog translates in an average disposition time of 3.7

years as of fiscal year 1984, and it will protract to 5.1 years by fiscal year 1986.

Clearly and unfortunately, the situation gives contemporary meaning to the maxim that "justice delayed is justice denied." Equally clear additional manpower must be made available. The Senate bill gave discretionary authority to the Secretary of Labor to appoint up to four administrative law judges temporarily to the Board. The House amendment expanded the Board's permanent membership from three to five members, and it mandated the appointment to [sic] three administrative law judges for 18-month terms when the case backlog exceeds one thousand cases.

The conference substitute expands the Board's permanent membership to five members. It also gives the Secretary authority to appoint up to four temporary members from the ranks of the ALJ's. The conferees believe that the prerogative of the Secretary should be preserved; hence appointment authority was made discretionary rather than being automatically mandated as a function of case backlog. At the same time, the conferees fully expect the Secretary to act with dispatch and to take full advantage of his authority to allocate sufficient manpower and resources toward reducing the backlog. This is a priority which should not be subordinate to other considerations.

I anticipate that the Labor Committees of both Houses will follow this problem closely. And they will be prepared to work in concert with the Appropriations Committees to assure that the Department of Labor allocates sufficient resources to reduce this unconscionable backlog.

In conclusion, I would like to emphasize that this is a compromise bill. It does not contain everything which the employer community wanted. It does not contain all the changes which employee representatives sought. Yet, the conference substitute has been reviewed by various members of both the business community and organized labor. They support the bill. In addition, we have received letters of support from the National Association of Stevedores, Bethlehem Steel Corp., the Alliance of America Insurers, the U.S. Chamber of Commerce, Bath Iron Works Corp., Ogden Corp., and the AFL-CIO.

Mr. QUAYLE. Mr. President, I would like to commend Senator NICKLES, my very distinguished colleague from Oklahoma for his tireless efforts to reform the Longshoremen's and Harbor Workers' Compensation Act. We have before us the conference report to S. 38, the Longshoremen's and Harbor Workers' Compensation Act Amendments of 1983. The conference report makes many needed changes to this act. Senator NICKLES, Senator HATCH, and many others on the Labor Committee have been working for some years to forge this compromise. I am extremely pleased to be able to support Senator NICKLES and I urge my colleagues to do so as well.

In 1917 the Supreme Court held that the worker's compensation law of the State of New York could not be constitutionally applied to an injury suffered by a longshoreman while unloading a cargo ship. The Court invalidated application of the State law to an injury occurring over the navigable waters on the ground that the State worker's compensation act conflicted with the general maritime law and would [lead] to the application of dissimilar laws in a field which required national uniformity.

In 1927, Congress filled the void which was left in the wake of the early Longshore decisions; it enacted the Longshoreman's and Harbor Workers' Compensation Act, providing coverage to employees injured-including injury by occupational disease--while engaged in maritime employment over the navigable waters of the United States.

By 1961, the Longshore Act was deemed a leader in the field of workers' compensation with only four State compensation laws affording greater protection to injured workers and their families. By 1971, however, 20 States afforded injured workers greater protection, at least in terms of wage loss benefits. During this time that the act was falling behind in providing adequate income replacement benefits, the courts were seriously undermining one of the cornerstones of worker's compensation law--that it should be an exclusive remedy against employers for work related injuries and death. Many of the significant cases had the effect of exposing employers, typically stevedores, to multiple liability, commonly through first a workers' compensation claim and then in a lawsuit predicated on rules of strict

liability under the doctrine of unseaworthiness.

Thus, the 92d Congress in 1972 faced a very unsatisfactory state of affairs. Injured employees covered under the act were not receiving adequate benefits. Employers would not agree to substantial increases and revisions in the benefit structure as long as they faced significant liability in lawsuits brought outside the compensation system. The 92d Congress eventually was able to forge a comprehensive set of revisions.

The 1972 amendments were designed to eliminate the weaknesses of the act. Benefits were greatly improved. Changes were made in the administration and adjudication of claims. Limitations were placed on third party liability. Finally, the act was extended to shoreside areas. This constituted a change of a fairly serious nature from the original act's coverage, which was recognized as ending at the water's edge.

The 1972 amendments to the law have pushed the Longshore Program beyond reasonable limits. Coverage is now extended to nearly a million workers who, during a workday may come near the water's edge. Even workers in the pleasure boating industry and in summer camps, marinas, and maritime museums have been deemed to be covered by the Longshore Act.

Just 5 years after the passage of the 1972 amendments, reported injuries jumped 185 percent and the number of claims increased along with them, from 72,000 in 1972 to 205,000 by 1977. Similarly the cost of benefits has increased more than 551 percent since 1972. This rise in the cost of benefits has meant a rise in the cost of premiums to covered employers. At great cost to themselves, those covered employers have been forced to self-insure, because coverage under the Longshore Act is simply unaffordable.

The benefits provided under this act are among the highest paid by any federally mandated workmen's compensation program and are much higher than under State worker's compensation programs. In fact, the high benefit structure of the Longshore Act has made this not only a worker's compensation program, it has grown into a life insurance and pension program as well.

The Longshore Act has not proved to be the model and uniform compensation program it was represented to be when the 1972 amendments were passed, but when the Senate passes the conference report to S. 38, I strongly believe that we will be closer to the goal of providing fair and equitable compensation to longshoremen and harbor workers who are injured while working over the navigable waters of the United States.

In closing, I would like to commend my colleagues who labored so long to bring this conference report to the Senate. Senator NICKLES first and foremost has shown his good will and commitment in getting this act reformed. Also I commend Senator SAM NUNN for his leadership in reforming this act. I know that he has spent countless hours in support of this compromise. I give Senator NICKLES, Senator HATCH, Senator NUNN, and all the cosponsors of this legislation my personal thanks and I urge my colleagues to support this conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. STEVENS. Is there an amendment that must be agreed to, Mr. President?

The PRESIDING OFFICER. There are no amendments in this report.

Mr. STEVENS, I move to reconsider the vote.

Mr. BYRD, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

6 of 8 DOCUMENTS

Benedict on Admiralty

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APPENDIX A

1A Benedict on Admiralty

DEFENSE BASE ACT

42 U.S.C. §§ 1651-1654

An Act To provide Compensative for disability or death to persons employed at military, air and naval bases outside the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

section 1. compensation authorized

(a) Places of employment.

Except as herein modified, the provisions of the longshoremen's and Harbor Workers' Compensation Act, as amended, shall apply in respect to the injury or death of any employee engaged in any employment--

(1) at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government; or

(2) upon any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone); or

(3) upon any public work in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone), if such employee is engaged in

employment at such place under the contract of a contract of a contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) with the United States; but nothing in this paragraph shall be construed to apply to any employee of such a contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(4) under a contract entered into with the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract, or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States and at places not within the areas described in subparagraphs (1), (2), and (3) of this subdivision, for the purpose of engaging in public work, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (1) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in such public work under such contract the payment of compensation and other benefits under the provisions of this Act, and (2) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(5) under a contract approved and financed by the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States, under the Mutual Security Act of 1954, as amended (other than title II of chapter II thereof unless the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States, determines a contract financed under a successor provision of any successor Act should be covered by this section), and not otherwise within the coverage of this section, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (A) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in work under such contract the payment of compensation and other benefits under the provisions of this Act, and (B) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(6) outside the continental United States by an American employer providing welfare or similar services for the benefit of the Armed Forces pursuant to appropriate authorization by the Secretary of Defense;

irrespective of the place where the injury or death occurs, and shall include any injury or death occurring to any such employee during transportation to or from his place of employment, where the employer or the United States provides the transportation or the cost thereof.

(b) Definitions.

As used in this section--

(1) the term "public work" means any fixed improvement or any project, whether or not fixed, involving construction, alteration, removal or repair for the public use of the United States or its allies, including but not limited to projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well preparatory and ancillary work in connection therewith at the site or on the project;

(2) the term "allies" means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance;

(3) the term "war activities" includes activities directly relating to military operations;

(4) the term "continental United States" means the States and the District of Columbia.

(c) Liability as exclusive.

The liability of an employer, contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) under this Act shall be exclusive and in place of all other liability of such employer, contractor, subcontractor, or subordinate contractor to his employees (and their dependents) coming within the purview of this Act, under the workmen's compensation law of any State, Territory, or other jurisdiction, irrespective of the place where the contract of hire of any such employee may have been or entered into.

(d) Definition of contractor.

As used in this section, the term "contractor" means any individual, partnership, corporation, or association, and includes any trustee, receiver, assignee, successor, or personal representative thereof, and the rights, obligations, liability, and duties of the employer under such Longshoremen's and Harbor Workers' Compensation Act shall be applicable to such contractor.

(e) Contracts within section; waiver of application of section.

The liability under this Act of a contractor, subcontractor, or subordinate contractor engaged in public work under subparagraphs (3) and (4), subdivision (a) of this section, and the conditions set forth therein, shall become applicable to contracts and subcontracts heretofore entered into but not completed at the time of the approval of this Act, and the liability under this Act of a contractor, subcontractor, or subordinate contractor engaged in performance of contracts, subcontracts, or subordinate contracts specified in subparagraph (5), subdivision (a) of this section, and the conditions set forth therein, shall hereafter be applicable to the remaining terms of such contracts, subcontracts, and subordinate contracts entered into prior to but not completed on the date of enactment of any successor Act to the Mutual Security Act of 1954, as amended, and contracting officers of the United States are authorized to make such modifications and

amendments of existing contracts as may be necessary to bring such contracts into conformity with the provisions of this Act. No right shall arise in any employee of his dependent under subparagraphs (3) and (4) of subdivision (a) of this section, prior to two months after the approval of this Act. Upon the recommendation of the head of any department or other agency of the United States, the Secretary of Labor, in the exercise of his discretion, may waive the application of this section with respect to any contract, subcontract, or subordinate contract, work location under such contracts, or classification of employees. Upon recommendation of any employer referred to in paragraph (6) of subsection (a) of this section, the Secretary of Labor may waive the application of this section to any employee or class of employees of such employer, or to any place of employment of such an employee or class of employees.

(f) Liability to prisoners of war and protected persons.

The liability under this Act of a contractor, subcontractor, or subordinate contractor engaged in public work under paragraphs (1), (2), (3), and (4), of subsection (a) of this section or in any work under subparagraph (5) of subsection (a) of this section does not apply with respect to any person who is a prisoner of war or a protected person under the Geneva Conventions of 1949 and who is detained or utilized by the United States.

section 2. computation of benefits: application to aliens and nonnationals

(a) The minimum limit on weekly compensation for disability, established by section 6(b), and the minimum limit on the average weekly wages on which death benefits are to be computed, established by section 9(e) of the Longshoremen's and Harbor Workers' Compensation Act, shall not apply in computing compensation and death benefits under this Act.

(b) Compensation for permanent total or permanent partial disability under section 8(c)(21) of the Longshoremen's and Harbor Workers' Compensation Act, or for death under this Act to aliens and nonnationals of the United States not residents of the United States or Canada shall be in the same amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one year immediately prior to the date of the injury, and except that the Secretary of Labor may, at his option or upon the application of the insurance carrier shall, commute all future installments of compensation to be paid to such aliens or nonnations of the United States by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the Secretary.

section 3. compensation districts: judicial proceedings

(a) The Secretary of Labor is authorized to extend compensation districts established under the Longshoremen's and Harbor Workers' Compensation Act, or to establish new compensation districts, to include any area to which this Act applies; and to assign to each such district one or more deputy commissioners, as the Secretary may deem necessary.

(b) Judicial proceedings provided under sections 18 and 21 of the Longshoremen's and Harbor Workers' Compensation Act in respect to a compensation order made pursuant to this Act shall be instituted in the United States district court of the judicial district wherein is located the office of the deputy commissioner whose compensation order is involved if his office is located in a judicial district, and if not so located, such judicial proceedings shall be instituted in the judicial district nearest the base at which the injury or death occurs.

section 4. persons excluded from benefits

This Act shall not apply in respect to the injury or death of (1) an employee subject to the provisions of the Federal Employees' Compensation Act; (2) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, or profession of the employer; and (3) a master or member of a crew of any vessel.

section 5. this act may be cited as the "defense base act"

Benedict on Admiralty

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APPENDIX A

1A Benedict on Admiralty

WAR HAZARDS COMPENSATION ACT

42 U.S.C. §§ 1707-1717

An Act To provide compensation for the injury, disability, death, or enemy detention of employees of contractors with the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

section 101. injury or death: detention: limitation of benefits: exclusion

(a) Persons covered.

In case of injury or death resulting from injury--

(1) to any person employed by a contractor with the United States, if such person is an employee specified in the Act of August 16, 1941 (Defense Base Act), as amended, and no compensation is payable with respect to such injury or death under such Act; or

(2) to any person engaged by the United States under a contract for his personal services outside the continental United States; or

(3) to any person employed outside the continental United States as a civilian employee paid from nonappropriated funds administered by the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Store Ashore, Navy exchanges Marine Corps exchanges, officers' and noncommissioned officers' open messes, enlisted men's clubs, service clubs, special service activities, or any other instrumentality of the United States under the

jurisdiction of the Department of Defense and conducted for the mental, physical, and morale improvement of personnel of the Department of Defense and their dependents; or

(4) to any person who is an employee specified in section 1(a)(5) of the Defense Base Act, as amended, if no compensation is payable with respect to such injury or death under such Act, or to any person engaged under a contract for his personal services outside the United States approved and financed by the United States under the Mutual Security Act of 1954, as amended (other than title II of chapter II thereof unless the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States Government, determines a contract financed under a successor provision of any successor Act should be covered by this section): *Provided,* That in cases where the United States is not a formal party to contracts approved and financed under the Mutual Security Act of 1954, as amended, the Secretary, upon the recommendation of the head of any department or agency of the United States, may, in the exercise of his discretion, waive the application of the provisions of this subparagraph with respect to any such contracts, subcontracts, or subordinate contracts, work location under such contracts, subcontracts, or subordinate contracts, or classification of employees; or

(5) to any person employed or otherwise engaged for personal services outside the continental United States by an American employer providing welfare or similar services for the benefit of the Armed Forces pursuant to appropriate authorization by the Secretary of Defense;

and such injury proximately results from a war-risk hazard, whether or not such person then actually was engaged in the course of his employment, the provisions of the Act entitled "Federal Employees' Compensation Act", n1 approved September 7, 1916 (5 U.S.C., ch. 15), as amended, and as modified by this Act, shall apply with respect thereto in the same manner and to the same extent as if the person so employed were a civil employee of the United States and were injured while in the performance of his duty, and any compensation found to be due shall be paid from the compensation fund established pursuant to section 35 of said Federal Employees' Compensation Act, as amended. This subsection shall not be construed to include any person who would otherwise come within the purview of such Federal Employees' Compensation Act, as amended.

(b) Missing persons considered as totally disabled.

(1) Any person specified in subsection (a) of this section who--

(A) is found to be missing from his place of employment, whether or not such person then actually was engaged in the course of his employment, under circumstances supporting an inference that his absence is due to the belligerent action of a hostile force or person, or

(B) is known to have been taken by a hostile force or person as a prisoner, hostage, or otherwise, or

(C) is not returned to his home or to the place where he was employed by reason of the failure of the United States or its contractor to furnish transportation,

until such time as he is returned to his home, to the place of his employment, or is able to be returned to the jurisdiction of the United States, shall, under such regulations as the Secretary may prescribe, be regarded solely for the purposes of this subsection as totally disabled, and the same benefits as are provided for such disability under this Act shall be credited to his account and be payable to him for the period of such absence or until his death is in fact established or can be legally presumed to have occurred: *Provided,* That if such person has dependents residing in the United States or its Territories or possessions (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone), the Secretary during the period of such absence may disburse a part of such compensation, accruing for such total disability, to such dependents, which shall be equal to the monthly benefits otherwise payable for death under this Act, and the balance of such compensation for total disability, to such dependents, which shall be equal to the monthly benefits otherwise payable for death under this Act, and the balance of such compensation for total disability shall accrue and be payable to such person upon his return from such absence. Any payment made pursuant to this subsection shall not in any case be included in computing the maximum aggregate or total compensation payable for disability or death, as provided in section 102(a): *Provided further,* That no such payment to such person or his dependent, on account of such absence, shall be made during any period such person or dependent, respectively, has received, or may be entitled to receive, any other payment from the United States, either directly or indirectly, because of such absence, unless such person or dependent refunds or renounces such other benefit or payment for the period claimed.

Benefits found to be due under this subsection shall be paid from the compensation fund established pursuant to section 35 of the Federal Employees' Compensation Act, as amended: *Provided,* That the determination of dependents, dependency, and amounts of payments to dependents shall be made in the manner specified in the Federal Employees' Compensation Act: *Provided further,* That claim for such detention benefits shall be filed in accordance with and subject to the limitation provisions of such Act, as modified by section 106(c) of this Act: *Provided further,* That except in cases of fraud or willful misrepresentation, the Secretary may waive recovery of money erroneously paid under this subdivision whenever he finds that such recovery would be impracticable or would cause hardship to the beneficiary affected: *And provided further,* That where such person is found to be missing from his place of employment, whether or not such person then actually was engaged in the course of his employment, under circumstances supporting an inference that his absence is due to the belligerent action of a hostile force or person or is known to have been taken by a hostile force or person as a prisoner, hostage, or otherwise, the amount of benefits to be credited to the account of such person under this subsection, and for the purposes of this subsection only, shall be 100 per centum of the average weekly wages of such person, except that in computing such benefits such average weekly wages (a) shall not exceed the average weekly wages paid to civilian employees of the United States in the same or most similar occupation in the area nearest to the place of employment where such person was last employed, and (b) shall not exceed the average weekly wages of such absent person at the time such absence began; and 70 per centum of such average weekly wage so determined shall be disbursed to the dependent or dependents of such persons, irrespective of the limitations of section 9 of the Longshoremen's and Harbor Workers' Compensation Act, as amended, but should there be more than one such dependent, the distribution of such 70 per centum shall be proportionate to the percentages allowed for dependents by section 9 of the Longshoremen's and Harbor Workers' Compensation Act, and if such manner of disbursement in any case would result in injustice or excessive allowance for a dependent, the Secretary may, in his discretion, modify such percentage or apportionment to meet the requirements of the case, and in such cases benefits for detention shall accrue from January 1, 1942, unless the beginning of absence occurred upon a later date in which event benefits shall accrue from such later date, and for the period of such absence shall be 100 per centum of the average weekly wages, determined as herein provided: *And provided further,* That compensation for disability under this subsection (except under allowance for scheduled losses of members or functions of the body, within the purview of section 102(a) of this Act) shall not be paid in any case in respect to any period of time during which benefits for detention any accrue under this subsection in the same case, and should a person entitled to benefits for detention also be entitled to workmen's

compensation or similar benefits under any other law, agreement, or plan (except allowances for scheduled losses of members or functions of the body), where such other benefits are paid or to be paid directly or indirectly by the United States, the amount thereof accruing as to the period of absence shall be taken into account and the benefits credited to the account and the benefits credited to the account of the detained person reduced accordingly: *And provided further*, That where through mistake of fact, absence of proof of death, or error through lack of adequate information or otherwise, payments as for detention have in any case been erroneously made or credited, any resulting overpayment of detention benefits (the recovery of which is not waived as otherwise provided for in this section) shall be recouped by the Secretary in such manner as he shall determine from any unpaid accruals to the account of the detained person, and if such accruals are insufficient for such purpose, then from any allowance of compensation for injury or death in the same case (whether under this Act or under any other law, agreements, or plan, if the United States pays, or is obligated to pay, such benefits, directly or indirectly), but only to the extent of the amount of such compensation benefits payable for the particular period of such overpayment, and in cases of erroneous payments of compensation for injury or death, made through mistake of fact, whether under this Act or under any other law, agreement, or plan (if the United States is obligated to pay such compensation, directly or indirectly), the Secretary is authorized to recoup from any unpaid benefits for detention, the amount of any overpayment thus arising; and any amounts recovered under this section shall be covered into such compensation funds and for the foregoing purposes the Secretary shall have a right of lien, intervention, and recovery in any claim or proceeding for compensation.

(2) Upon application by such person, or someone on his behalf, the Secretary may, under such regulations as he may prescribe, furnish transportation or the cost thereof (including reimbursement) to any such person from the point where his release from custody by the hostile force or person is effected, to his home, the place of his employment, or other place within the jurisdiction of the United States; but no transportation, or the cost thereof, shall be furnished under this paragraph where such person is furnished such transportation, or the cost thereof, under any agreement with his employer or under any other provision of law.

(3) In the case of death of any such person, if his death occurred away from his home, the body of such person shall, in the discretion of the Secretary, and if so desired by his next of kin, near relative, or legal representative, be embalmed and transported in a hermetically sealed casket or other appropriate container to the home of such person or to such other place as may be designated by such next of kin, near relative, or legal representative. No expense shall be incurred under this paragraph by the Secretary in any case where death takes place after repatriation, unless such death proximately results from a war-risk hazard.

(4) Such benefits for detention, transportation expenses of repatriated persons, and expenses of embalming, providing sealed or other appropriate container, and transportation of the body, and attendants (if required), as approved by the Secretary, shall be paid out of the compensation fund established under section 35 of the Federal Employees' Compensation Act, as amended.

(c) Persons not citizens or residents of United States.

Compensation for permanent total or permanent partial disability or for death payable under this section to persons who are not citizens of the United States and who are not residents of the United States or Canada, shall be in the same amount as provided for residents; except that dependents in any foreign country shall be limited to surviving wife or husband and child or children, or if there be no surviving wife or husband or child or children, to surviving father or

mother whom such person has supported, either wholly or in part, for the period of one year immediately prior to the date of the injury; and except that the Secretary, at his option, may commute all future installments of compensation to be paid to such persons by paying to them one-half of the commuted amount of such future installments of compensation as determined by the Secretary.

(d) Persons excepted from coverage.

The provisions of this section shall not apply in the case of any person (1) whose residence is at or in the vicinity of the place of his employment, and (2) who is not living there solely be virtue of the exigencies of his employment, unless his injury or death resulting from injury occurs or his detention begins while in the course of his employment, or (3) who is a prisoner of war or a protected person under the Geneva Conventions of 1949 and who is detained or utilized by the United States.

section 102. application of longshoremen's and harbor workers' compensation act

(a) In the administration of the provisions of subchapter I of chapter 81 of Title 5, with respect to cases coming within the purview of section 1701 of this title, the scale of compensation benefits and the provisions for determining the amount of compensation and the payment thereof as provided in sections 908 and 909 of Title 33, so far as the provisions of said sections can be applied under the terms and conditions set forth therein, shall be payable in lieu of the benefits, except medical benefits, provided under subchapter I of chapter 81 of Title 5: *Provided*, That the total compensation payable under this Act for injury or death shall in no event exceed the limitations upon compensation as fixed in section 914(m) of Title 33 as such section may from time to time be amended except that the total compensation shall not be less than that provided for in the original enactment of this chapter.

(b) For the purpose of computing compensation with respect to cases coming within the purview of section 101, the provisions of sections 906 and 910 of Title 33 shall be applicable: *Provided*, That the minimum limit on weekly compensation for disability, established by section 906(b) of Title 33, and the minimum limit on the average weekly wages on which death benefits are to be computed, established by section 909(e) of Title 33, shall not apply in computing compensation under this Act.

section 103. definition

As used in this Act, the term "contractor with the United States" includes any subcontractor or subordinate subcontractor with respect to the contract of such contractor.

section 104. reimbursement

(a) Where any employer or his insurance carrier or compensation fund pays or is required to pay benefits--

(1) to any person or fund on account of injury or death of any person coming within the purview of this Act or section 1-4 of the Defense Base Act, if such injury or death arose from a war-risk hazard, which are payable under any workmen's compensation law of the United States or of any State, Territory, or possession of the United States, or other jurisdiction; or

(2) to any person by reason of any any agreement outstanding on December 2, 1942, made in accordance with a contract between the United States and any contractor therewith to pay benefits with respect to the death of any employee of such contractor occurring under circumstances not entitling such person to benefits under any workmen's compensation law or to pay benefits with respect to the failure of the United States or its contractor to furnish transportation upon the completion of the employment of any employee of such contractor to his home or to the place where he was employed; or

(3) to any person by reason of an agreement approved or authorized by the United States under which a contractor with the United States has agreed to pay workmen's compensation benefits or benefits in the nature of workmen's compensation benefits to an injured employee or his dependents on account of detention by a hostile force or person or on account of injury or death arising from a war-risk hazard; such employer, carrier, or fund shall be entitled to be reimbursed for all benefits so paid or payable, including funeral and burial expenses, medical, hospital, or other similar costs for treatment and care; and reasonable and necessary claims expense in connection therewith. Claim for such reimbursement shall be filed with the Secretary under regulations promulgated by him, and such claims, or such part thereof as may be allowed by the Secretary, shall be paid from the compensation fund established under section 8147 of Title 5. The Secretary may, under such regulations as he shall prescribe, pay such benefits, as they accrue and in lieu of reimbursement, directly to any person entitled thereto, and the insolvency of such employer, insurance carrier, or compensation fund shall not affect the right of the beneficiaries of such benefits to receive the compensation directly from the said compensation fund established under section 8147 of Title 5. The Secretary may also, under such regulations as he shall prescribe, use any private facilities, or such Government facilities as may be available, for the treatment or care of any person entitled thereto.

(b) No reimbursement shall be made under this Act in any case in which the Secretary finds that the benefits paid or payable were on account or injury, detention, or death which arose from a war-risk hazard for which a premium (which included an additional charge or loading for such hazard) was charged.

(c) The provisions of this section shall not apply with respect to benefits on account of any injury or death occurring within any State.

section 105. receipt of workmen's compensation benefits

(a) No benefits shall be paid or furnished under the provisions of this Act for injury or death to any person who recovers or receives workmen's compensation benefits for the same injury or death under any other law of the United States, or under the law of any State, Territory, possession, foreign country, or other jurisdiction, or benefits in the nature of workmen's compensation benefits payable under an agreement approved or authorized by the United States pursuant to which a contractor with the United States has undertaken to provide such benefits.

(b) The Secretary shall have a lien and a right of recovery, to the extent of any payments made under this Act on account of injury or death, against any compensation payable under any other workmen's compensation law on account of the same injury or death; and any amounts recovered under this subsection shall be covered into the fund established under section 35 of the Federal Employees' Compensation Act, as amended.

(c) Where any person specified in section 101(a), or the dependents, beneficiary, or allottee of such person, receives or claims wages payments in lieu of wages, insurance benefits for disability or loss of life (other than workmen's compensation benefits), and the cost of such wages, payments, or benefits is provided in whole or in part by the United States, the amount of such wages, payments or benefits shall be credited, in such manner as the Secretary shall determine, against any payments to which any such person is entitled under this Act.

Where any person specified in section 101(a), or any dependent, beneficiary, or allottee of such person, or the legal representative or estate of any such entities after having obtained benefits under this Act, seeks through any proceeding, claim, or otherwise, brought or maintained against the employer, the United States, or other person, to recover wages, payments in lieu of wages or any sum claimed as for services rendered, or for failure to furnish transportation, or for liquidated or unliquidated damages under the employment contract, or any other benefit, and the right in respect thereto is alleged to have accrued during or as to any period of time in respect of which payments under this Act in such case have been made, and in like cases where a recovery is made or allowed, the Secretary shall have the right of intervention and a lien and right of recovery to the extent of any payments paid and payable under this Act in such case, provided the cost of such wages, payment in lieu of wages, or other such right, may be directly or indirectly paid by the United States; and any amounts recovered under this subsection shall be covered into the fund established under section 8147 of Title 5.

(d) Where a national of a foreign government is entitled to benefits on account of injury or death resulting from a war-risk hazard, under the laws of his native country or any other foreign country, the benefits of this Act shall not apply.

(e) If at the time a person sustains an injury coming within the purview of this Act said person is receiving workmen's compensation benefits on account of a prior accident or disease, said person shall not be entitled to any benefits under this Act during the period covered by such workmen's compensation benefits unless the injury from a war-risk hazard increases his disability, and then only to the extent such disability has been so increased.

section 106. administration

(a) The provisions of this Act shall be administered by the Secretary of Labor, and the Secretary is authorized to make rules and regulations for the administration thereof and to contract with insurance carriers for the use of the service facilities of such carriers for the purpose of facilitating administration.

(b) In administering the provisions of this Act the Secretary may enter into agreements or cooperative working arrangements with other agencies of the United States or of any State (including the District of Columbia, Hawaii, Alaska, Puerto Rico, and the Virgin Islands) or political subdivision thereof, and with other public agencies and private persons, agencies, or institutions, within and outside the United States, to utilize their services and facilities and to compensate them for such use. The Secretary may delegate to any officer or employee, or to any agency, of the United States or of any State, or of any political subdivision thereof, or Territory or possession of the United States, such of his powers and duties as he finds necessary for carrying out the purposes of this Act.

(c) The Secretary, in his discretion, may waive the limitation provisions of subchapter I of chapter 81 of Title 5, with respect to notice of injury and filing of claims under this Act, whenever the Secretary shall find that, because of circumstances beyond the control of an injured person or his beneficiary, compliance with such provisions could not have been accomplished within the time therein specified.

section 107. effective date

This Act shall take effect as of December 7, 1941.

section 201. definitions

When used in this Act--

(a) The term "Secretary" means the Secretary of Labor.

(b) The term "war-risk hazard" means any hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring within any country in which a person covered by this Act is serving; from--

(1) the discharge of any missile (including liquids and gas) or the use of any weapon, explosive, or other noxious thing by a hostile force or person or in combating an attack or an imagined attack by a hostile force or person; or

(2) action of a hostile force or person, including rebellion or insurrection against the United States or any of its allies; or

(3) the discharge or explosion of munitions intended for use in connection with a war or armed conflict with a hostile force or person as defined herein (except with respect to employee of a manufacturer, processor, or transporter of munitions during the manufacture, processing, or transporting thereof, or while stored on the premises of the manufacturer, processor, or transporter); or

(4) the collision of vessels in convoy or the operation of vessels or aircraft without running lights or without other customary peacetime aids to navigation; or

(5) the operation of vessels or aircraft in a zone of hostilities or engaged in war activities.

(c) The term "hostile force or person" means any nation, any subject of a foreign nation, or any other person serving a foreign nation (1) engaged in a war against the United States or any of its allies, (2) engaged in armed conflict, whether or not war has been declared, against the United States or any of its allies, or (3) engaged in a war or armed conflict between military forces of any origin in any country in which a person covered by this Act is serving.

(d) The term "allies" means any nation with which the United States is engaged in a common military effort or with which the Unites States has entered into a common defensive military alliance.

(e) The term "war activities" includes activities directly relating to military operations.

(f) The term "continental United States" means the States and the District of Columbia.

section 202. disqualification from benefits

No person convicted in a court of competent jurisdiction of any subversive act against the United States or any of its allies, committed after the declaration by the President on May 27, 1941, of the national emergency, shall be entitled to compensation or other benefits under title I, nor shall any compensation be payable with respect to his death or detention under said title, and upon indictment or the filing of an information charging the commission of any such subversive act, all such compensation or other benefits shall be suspended and remain suspended until acquittal or withdrawal of such charge, but upon conviction thereof or upon death occurring prior to final disposition thereof, all such payments and all benefits under said title shall be forfeited and terminated. If the charge is withdrawn, or there is an acquittal, all such compensation withheld shall be paid to the person or persons entitled thereto.

section 203. fraud: penalties

Whoever, for the purpose of causing an increase in any payment authorized to be made under this Act, or for the purpose of causing any payment to be made where no payment is authorized hereunder, shall knowingly make or cause to be made, or aid or abet in the making of any false statement or representation of a material fact in any application for any payment under title I, or knowingly make or cause to be made, or aid or abet in the making of any false statement, representation, affidavit, or document in connection with such an application, or claim, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

section 204. legal services

No claim for legal services or for any other services rendered in respect of a claim or award for compensation under title I of this Act to or on account of any person shall be valid unless approved by the Secretary; and any claim so approved shall, in the manner and to the extent fixed by the said Secretary, be paid out of the compensation payable to the claimant; and any person who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is so approved, or who solicits employment for another person or for himself in respect of any claim or award for compensation under title I shall be guilty of a misdemeanor and upon conviction thereof shall, for each offense, be fined not more than $1,000 or imprisoned not more than one year, or both.

section 205. finality of secretary's decisions

The action of the Secretary in allowing or denying any payment under title I shall be final and conclusive on all questions of law and fact and not subject to review by and other official of the United States or by any court by mandamus or otherwise, and the Comptroller General is authorized and directed to allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.

section 206. presumption of death or detention

A determination that an individual is dead or a determination that he has been detained by a hostile force or person may be made on the basis of evidence that he has disappeared under circumstances such as to make such death or detention appear probable.

section 207. assignment of benefits; execution, levy, etc., against benefits

The right of any person to any benefit under title I shall not be transferable or assignable at law or in equity except to the United States, and none of the moneys paid or payable (except money paid hereunder as reimbursement for funeral expenses or as reimbursement with respect to payments of workmen's compensation or in the nature of workmen's compensation benefits), or rights existing under such title, shall be subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

section 208. titles i and ii of this act may be cited as the "war hazards compensation act"

FOOTNOTES:
(n1)Footnote 1. This Act is also administered by the U.S. Department of Labor, Bureau of Employees' Compensation.

8 of 8 DOCUMENTS

Benedict on Admiralty

Volume 1A: Longshore and Harbor Worker Compensation Act Chapters I-V, Apps. A-E
APPENDIX A

1A Benedict on Admiralty

OUTER CONTINENTAL SHELF LANDS ACT

43 U.S.C. § 1333

An Act

To establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes.

The pertinent parts of the law as revised by the Outer Continental Shelf Lands Act Amendments of 1978 are reproduced below, *43 U.S.C. § 1333(a)* and *(b)*:

(a)

(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2)

(A) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State now in effect or hereafter adopted, amended, or repealed are hereby declared to be the law of the United States for that portion

of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(B) Within one year after the date of enactment of this subparagraph [enacted Sept. 18, 1978], the President shall establish procedures for setting [settling] any outstanding international boundary dispute respecting the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

(b) With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act [*33 U.S.C.A. § 901 et seq.*]. For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act under this section--

(1) the term"employee' does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term"employer' means an employer any of whose employees are employed in such operations; and

(3) the term"United States' when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structure thereon."

The term "outer Continental Shelf" is defined in the Act, section 1331, as follows:

(a) The term"outer Continental Shelf' means all submerged lands lying seawind and outside of the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to United States and are subject to its jurisdiction and control";

Section 1301 of the "Submerged Lands Act" defines "lands beneath navigable waters" as follows:

"When used in this chapter--

(a) The term"lands beneath navigable waters' means--

(1) all lands within the boundaries of each of the respective States which are covered by non-tidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable water, as hereinabove defined;

(b) The term"boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 1312 of this title but in no event shall the term"boundaries' or the term"lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term"coast line' means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters; ... ."