



Subrogating On The *Waterfront*

Longshore and Harbor Worker's Compensation Subrogation

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The 1954 classic and award-winning film *On the Waterfront*, starring Marlon Brando takes a realistic look at the problems of trade unionism, corruption, and racketeering on New York's suppressive waterfront docks. Although the movie didn't address it, the injuries sustained by some of the characters in the movie would probably have been covered by longshore and harbor workers' compensation, and perhaps would have been subrogable. While we shouldn't hold our breath waiting for a Hollywood blockbuster about subrogation, we should take the time to look at an area of recovery which is often lost in the shuffle.

Generally

Understanding longshore and harbor workers' compensation subrogation will go a long way in enabling claims handlers, subrogation personnel, and supervisors alike to maximize their recoveries regardless of the venue. Longshore and harbor workers' compensation subrogation is a second cousin to traditional state workers' compensation subrogation. Like its distant relative, subrogation rights under the Longshore and Harbor Workers' Compensation Act ("LHWCA")¹ are derived solely from statute. The LHWCA was passed in 1927 to compensate injured maritime workers, without regard to fault.² Its "manifest purpose" is to assure prompt aid to the employee when the need is the greatest.³ The Act grants the compensation carrier a right of subrogation when it assumes the duty of payment for compensation to an injured employee (usually a longshoreman) of the insured employer (usually a stevedore).⁴ This is because the Act preserves an injured worker's right to recover damages from third parties (usually a vessel owner) other than his employer, when he has made a claim for LHWCA benefits.⁵

Statutory Subrogation Rights

Following acceptance of an award of compensation, the employee has six months to commence an action against a third party.⁶ If the employee fails to initiate a claim, this right shifts to the carrier for a period of 90 days.⁷ After 90 days, if no claim has been filed by the carrier, the right reverts back to the injured employee.⁸ Therefore, it can be seen why prompt subrogation recognition is critical in LHWCA subrogation scenarios. If the employee is dilatory in

filing suit, the carrier must be prepared to do so. During the 90-day assignment period, the employer's control of the worker's cause of action is exclusive. The worker is forbidden from commencing a suit on the claim during this time period.⁹ Note, however, that if a formal compensation award is not entered, this assignment provision of the Act does not apply, even if the employer/carrier has voluntarily made compensation payments, and the right to assert the third party cause of action remains with the worker.¹⁰ It should also be remembered that a carrier, even though it is not contesting liability under the Act, may request cause entry of a compensation award, solely for the purpose of triggering the 6-month period on the statutory assignment.¹¹

If the injured employee commences a third party action, the carrier may intervene into the third party suit to protect its subrogation rights.¹² If for some reason the carrier fails to intervene into an existing third party action, its right to reimbursement may still be protected if the carrier notifies the third party tortfeasor that payment of benefits has been made to the plaintiff.¹³ However, notice must occur prior to a settlement and thereupon will operate as a lien on any recovery by the employee.¹⁴

Third Parties

Quite similar to state workers' compensation scenarios, the LHWCA provides that the injured worker or longshoreman may proceed with a third party action against some person other than the employer or a person or persons in the employer's employ, who may be "liable in damages."¹⁵ However, unlike state court workers' compensation subrogation, under the LHWCA, a stevedore may have its own cause of action for indemnity against the vessel owner where the vessel owner has breached a duty of care owed to the stevedore.¹⁶ The employee might not have this cause of action and would not be pursuing it. Therefore, it is always important in LHWCA cases for the workers' compensation carrier to look at possible liability of the vessel as well as other third parties. The longshoreman's lawyer won't do it for you. In cases where the vessel owner may be responsible, the employer is free to assert its independent cause of action against the third party ship owner, based on the third party's

duty owed to the employer, not the worker.¹⁷

In general, the LHWCA lien may be asserted against any defendant from whom the plaintiff seeks recovery for the injury giving rise to the compensation lien. However, this lien can be complicated by waivers of subrogation. Typically, and particularly in the Outer Continental Shelf development, the foreign LHWCA employer sends its employees to a job site, and must sign a master service agreement with its customer, the contractor. Frequently, this contract provides for a waiver of subrogation of compensation liens, requires additional named insured status and requires indemnification. Indemnification and additional named insured status issues are beyond the scope of this article. Just know that when the contractor/defendant asserts that a waiver of subrogation is set forth in the master service agreement, a LHWCA employer/carrier may be prohibited from recovering its lien.¹⁸ Even in such situations, the entire lien may be recovered from any remaining third party defendants who have not obtained a contractual waiver of subrogation from the employer.¹⁹ In addition, the insured must obtain the approval of the carrier in order to obtain the waiver of subrogation. If the employer fails to obtain this consent, the carrier has an independent cause of action to recover the complete LHWCA lien from any third party defendant, including the contractor which obtained the contractual waiver of subrogation from the employer.²⁰ The third party defendant/contractor may have a breach of contract action against the employer, but their subrogation rights will be intact. In addition, even if there is a valid waiver, with consent given by the carrier, the carrier is still entitled to a credit or offset for the net recovery by the worker from the third party suit, which is applied toward any future LHWCA benefits which are to be paid to the worker.²¹ In addition, a waiver of subrogation does not negate the worker's obligation to obtain the prior written approval of the carrier for any third party settlement as set forth later in this article.

Vessel owners are typical third party defendants. However, vessel owners may also be the owners of the stevedoring companies which employ longshoremen. If this is the case, a third party defendant has a dual capacity: (1) employer of the

longshoreman; and (2) a vessel owner.

Because of this dual capacity, a carrier may intervene into a third party suit to recover its lien against its own insured under these circumstances.²²

Unfortunately, a LHWCA carrier is not subrogated to an injured employee's legal malpractice claim filed by him against his attorney in a situation where an attorney has mishandled the third party case.²³ This is because the lien extends only to third parties who have "caused the underlying injury."²⁴

On the other hand, medical malpractice does cause distinct personal injuries and will extend the period of time compensation and medical benefits are owed. Therefore, a carrier is subrogated to the rights of an injured worker against a malpracticing doctor for damages asserted in a medical malpractice third party suit.²⁵

Allocation Of Third Party Recovery

If the statutory assignment to the carrier occurs because the employee does not file suit, the carrier is free to file suit and prosecute the case to judgment or to compromise the claim.²⁶ In such a situation, the carrier is entitled to retain from the recovery:

- (1) its expenses and attorneys' fees;
- (2) the medical and compensation benefits that the employer has already paid to the worker; and
- (3) the present value of all amounts thereafter payable as compensation and the present value of the costs of all medical benefits thereafter to be furnished.

The employer retains the present value of future compensation benefits "as a trust fund to pay such compensation and the cost of such benefits as they become due."²⁷ The carrier must then pay whatever is left, if anything, to the worker.²⁸ However, if the worker prosecutes the third party claim and obtains a judgment, the LHWCA provides that the carrier's liability for compensation under the Act shall be reduced by the worker's net recovery.²⁹ Although an employer to whom a worker's claim has been assigned has exclusive control over the settlement decisions,³⁰ the LHWCA does not give this same degree of control where it is the worker asserting the third party action. The LHWCA makes no provision for a situation in which the worker desires to settle the third party case for *more* than the total compensation owed by the employer, and case law has established that he is free to do so, after which the employer's liability for any unpaid benefits will be extinguished.³¹ If, on the other hand, the worker desires to settle the claim for *less* than the total compensation owed by the employer, the worker must obtain the written approval of both the employer and its insurance carrier.³² If approval is obtained, the net amount of the settlement reduces the carrier's liability to the same extent that a judgment would. If approval is not obtained, all rights to compensation and medical benefits under the LHWCA are terminated, regardless of whether the employer or the employer's carrier has made payments or acknowledged entitlement to benefits under the LHWCA.³³

Clearly, these provisions only benefit the carrier if it hasn't fully discharged its compensation obligation. While the LHWCA does not expressly provide for reimbursement to the carrier from a

judgment or settlement obtained by the worker, courts have uniformly held that the carrier has a subrogation right to be reimbursed from the worker's net recovery for the full amount of compensation benefits it has paid.³⁴ The carrier's lien on these third party recoveries is intended to remain inviolable, and does not depend on any proof that the third party breached a duty to the employer. Therefore, a combination of the expressed provisions of the Act and the cases construing it establish that, when the worker recovers from a third party by judgment or compromise, at least where the settlement agreement does not specifically mention the compensation lien, the funds are distributed as follows:

- (1) The worker retains his litigation expenses and a reasonable attorney's fee;
- (2) The carrier receives from the recovery a credit for any compensation liability not yet satisfied and reimbursement for compensation already paid; and
- (3) The worker retains whatever is left, if anything.³⁵

The subrogation rights of the carrier extend to any amount recovered from the third party by the worker, and are not simply limited to amounts awarded for compensation and medical benefits.³⁶ Therefore, the carrier would be subrogated to any amounts awarded for pain and suffering³⁷, or punitive damages.³⁸

Customarily, a LHWCA carrier files an intervention into an existing third party action once it has paid benefits. The purpose of the intervention is to assert its "LHWCA lien." As may be pointed out to you from time to time by plaintiffs' attorneys, the LHWCA does not specifically reference such a lien or the carriers' right to intervene. They are correct in that there is no statutory basis for the LHWCA lien. As one federal court puts it, "the Act does not expressly provide for the distribution of the amounts recovered in the suit brought by the longshoreman."³⁹

The lack of statutory authority for LHWCA lien and a carrier's intervention does not mean that they don't exist. As one supreme court noted in a recent decision, "the courts have long imposed equitable liens in favor of employers on recoveries their injured employees might reap from third party tortfeasors . . . the creation of the equitable lien naturally engendered a concomitant right to intervene in the litigation between the employee and the third party tortfeasor."⁴⁰ The lien/intervention mechanism is so ingrained into our common law that even Congress doesn't consider it necessary to amend the LHWCA to provide a statutory basis for the process.⁴¹

Attorneys' Fees/Costs

For a long time, the tail wagged the dog. The United States Supreme Court had held that the carrier was entitled to recover its entire lien without paying for any portion of the injured workers' attorneys' fees and costs.⁴² In 1984, Congress amended the LHWCA and provided that the injured worker which pursues litigation was entitled to costs, as well as reasonable attorneys' fees.⁴³ However, the carrier has the right to a total satisfaction of its "LHWCA lien" from the amount remaining after deduction of costs and attorneys' fees.⁴⁴

Statutory Credit

Instead of a traditional credit, the LHWCA gives the carrier something even better. Although it frequently operates as a

credit, it also actually gives the carrier the right to recover the present value of all future benefits which it may be obligated to pay in the future.⁴⁵ The present value of the future benefits is to be computed in accordance with a schedule prepared by the Secretary of Labor, and the present value of the cost of all benefits thereafter is to be estimated by the Deputy Commissioner, in the amounts so computed and estimated are kept by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due.⁴⁶

The LHWCA requires the employer to pay as compensation a sum equal to the excess of the amount of benefits payable over the net amount recovered in the third party action.⁴⁷ This is a simple matter if the compensation involves only medical benefits and the employee is the only person entitled to compensation. However, if benefits for a spouse or children are involved, issues such as apportionment of benefits or gerrymandering of settlements come into play. Where a settlement involves family members, it is important to make sure that the apportionment of benefits are specified in the settlement agreement. The burden is on the employer to prove the amount to be offset.⁴⁸ If the apportionment of a settlement in a third party action does not appear to be an accurate allocation of the benefits to the various family members based on the prevailing judgments or settlements of such claims, the Administrative Law Judge and/or the Board may set aside the apportionment and require a different allocation.⁴⁹

Related Issues

Unlike many state workers' compensation subrogation scenarios, the injured worker and the third party defendant can settle the third party case independent of the carrier's participation, and may even actually agree, among themselves, who is responsible for repayment of the lien.⁵⁰ In situations where defense counsel agrees with plaintiff's counsel that the defendant would "take care of" the lien, the entire lien is owed by the defendant to the carrier, in addition to the settlement.⁵¹ This is because the carrier's right is vested and automatic, and the carrier cannot be required to try the case to see how much of its lien it can "prove up."⁵² This is, of course, where the carrier does not approve in writing of the settlement under the LHWCA.⁵³ Section 933(g)(2) provides that a worker who fails to secure approval of the employer/carrier before settling his third party action, forfeits his or her right to recover future benefits from the carrier.⁵⁴ If the carrier does not approve in writing, but does acknowledge and participate in the settlement, the courts are split. The Benefit Review Board has held that the §933(g)(2)

bar is inapplicable with regard to medical benefits when a claimant settles a third party suit without the carrier's permission, if the third party settlement is greater than what the claimant was entitled to under the LHWCA.⁵⁵ Under such circumstances, compensation benefits are terminated, but medical benefits continue. Within the 5th Circuit, the barred provisions will be enforced, while outside of the 5th Circuit, they generally will not be.⁵⁶

If you run across a situation where the worker quickly settles with the third party, leaving a large lien unattended to, the carrier has several options. In such circumstances, where the employee settled for less than the carrier's subrogated interest and/or past lien, the release issued to the defendant does not bar the carrier's future claim against the third party. The carrier may sue the employee and owner asserting the third party cause of action.⁵⁷ The carrier may pursue the owner if it was aware of the workers' compensation payments, and it can sue the employee, alleging that the employee is the trustee of the money and has received a double recovery.⁵⁸ Under these facts, the carrier may recover from the employee the settlement proceeds, less the attorney's fees and costs.

Summary

As you can see, the LHWCA presents workers and their attorneys with uncomfortable problems with regard to filing and managing a third party action subject to its lien. The plaintiff cannot settle the case without potentially forfeiting his or her right to future benefits, and the compensation and medical benefits are relatively high under the Act as compared with various states' compensation schemes. In approving a settlement, a carrier is not constrained by any reasonableness or good faith standard.⁵⁹ Yet, the carrier's written consent is clearly required under all applicable law. The carrier wields great power with its ability to force the plaintiff to dismiss its third action, if the proposed settlement is less than the value of the future potential compensation and medical entitlement. This leverage is tremendous. A corresponding insistence on maximum subrogation recoveries involving LHWCA benefits should always be the carrier's first and best strategy.

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Where a settlement involves family members, it is important to make sure that the apportionment of benefits are specified in the settlement agreement. The burden is on the employer to prove the amount to be offset.

Longshore And Harbor Workers Terms And Definitions

Apron: The area immediately in front of or behind a wharf shed on which cargo is lifted. On the “front apron,” cargo is unloaded from or loaded onto a ship. Behind the shed, cargo moves over the “rear apron” into and out of railroad cars.

Barge: A large, flat-bottomed boat used to carry cargo from a port to shallow-draft waterways. Barges have no locomotion and are pushed by tugboats.

Berth: The place where a vessel lies at a wharf. A wharf may have two or three berths, depending on the length of incoming ships.

Bill of Lading: A contract between a shipper and carrier listing the terms for moving freight between specific points.

Bollard: A line-securing device on a wharf around which mooring and berthing lines are fastened.

Bulk Cargo: Loose cargo (dry or liquid) that is loaded (shoveled, scooped, forked, mechanically conveyed or pumped) in volume directly into a ship’s hold (e.g., grain, coal and oil).

Cargo: The freight (goods, products) carried by a ship, barge, train, truck or plane.

Carrier: An individual, partnership or corporation engaged in the business of transporting goods or passengers.

Common Carrier: Trucking, railroad or ocean carriers that are licensed to transport goods or people nationwide are called common carriers.

Container: A 20, 35, 40 or 45 foot box made of aluminum, steel or fiberglass which can be handled interchangeably among trucks, railcars, barges and ocean going vessels.

Customs Broker: This person prepares the needed documentation for importing goods (just as a freight forwarder does for exports). The broker is licensed by the

Treasury Department to clear goods through U.S. Customs.

DWT: Dead Weight Tonnage; Maximum weight of a vessel including the vessel, cargo and ballast.

Deadhead: When a truck returning from a delivery has no return freight on the back haul, it is said to be a deadhead.

Demurrage: A penalty fee assessed when cargo isn’t moved off a wharf before the free time allowance ends.

Dock: (Verb) - To bring in a vessel to tie up at a wharf berth. (One parks a car, but docks a ship.) (Noun) - A dock is a structure built along, or at an angle from, a navigable waterway so that vessels may lie alongside to receive or discharge cargo. Sometimes, the whole wharf is informally called a dock.

Dunnage: Wood or other material used in stowing ship cargo to prevent its movement.

Duty: A government tax on imported merchandise.

Forwarder: Consultant in logistics and international traffic. The forwarding agent assists the exporter in finding the most economic and efficient methods of transporting and storing cargo.

Harbor: A port of haven where ships may anchor.

Interchange: Point of entry/exit for trucks delivering and picking up containerized cargo. Point where pickups and deposits of containers in storage area or yard are assigned.

Intermodal: Relating to cargo which can be handled interchangeably among different transportation modes, i.e., truck, rail, ocean and air.

LCL: The acronym for “less than container load.” It refers to a partial container load that is usually consolidated with other goods to fill a container.

Longshoremen: Individuals who perform services under the direction of a stevedoring company such as operating equipment, rigging cargo or administrative tasks associated with loading and unloading of a vessel.

Manifest: The ship captain's list of individual goods that make up the ship's cargo.

Marine Surveyor: Person who inspects a ship hull or its cargo for damage or quality.

Master: The officer in charge of the ship. "Captain" is a courtesy title often given to a master.

Maritime: (Adjective) Located on or near the sea. Commerce or navigation by sea. The maritime industry includes people working for transportation (ship, rail, truck and towboat/barge) companies, freight forwarders and custom brokers; stevedoring companies; labor unions; chandlers; warehouses; ship building and repair firms; importers/exporters; pilot associations, etc.

Marshaling Yard: Any open area for assembly of cargo for export or placement of imported cargo awaiting inland transport. Container terminals may use a grounded or wheeled layout. If the cargo box is placed directly on the ground, it is called a grounded operation. If the box is on a chassis/trailer, it is a wheeled operation.

NVOCC: A non-vessel-owning common carrier that buys space aboard a ship to get a lower volume rate. An NVOCC then sells that space to various small shippers, consolidates their freight, issues bills of lading and books space aboard a ship.

Ocean Carrier: Diesel-fueled vessels have replaced the old steamships of the past, although many people still refer to modern diesel ships as steamships. Likewise, the person who represents the ship in port is still often called a steamship agent.

On-Dock Rail: Direct shipside rail service. Includes the ability to load and unload containers/breakbulk directly from rail car to vessel.

On-Terminal Rail: Rail service and trackage provided by a railroad within a designated terminal area.

Piggyback: A rail transport mode where a loaded truck trailer is shipped on a rail flatcar.

Port: This term is used both for the harbor area where ships are docked and for the agency (port authority), which

administers use of public wharves and port properties.

Quay: A wharf, which parallels the waterline.

Steamship Line: Organization that operates ocean carriers/vessels to transport cargo.

Steamship Agent: The local representative who acts as liaison among the ship owners, local port authorities, terminals and supply/service companies.

Stevedore: Labor management companies that provide equipment and hire workers to transport cargo between ships and docks. Stevedore companies may also serve as terminal operators. The laborers hired by the stevedoring firms are called longshoremen.

Tariff: Schedule, system of duties imposed by a government on the import/export of goods; also charges, rates and rules of a transportation company as listed in published industry tables.

Terminal: The place where cargo is handled is called a terminal (or a wharf).

Toplift: A piece of equipment similar to a forklift that lifts from above rather than below. Used to handle containers in the storage yard to and from storage stacks, trucks, and railcars.

Transshipment: The unloading of cargo at a port or point where it is then reloaded, sometimes into another mode of transportation, for transfer to a final destination.

Transtainer: A type of crane used in the handling of containers, which is motorized, mounted on rubber tires and can straddle at least four railway tracks, some up to six, with a lifting capacity of 35 tons for loading and unloading containers to and from railway cars.

Vessel: A ship or large boat.

Vessel Operator: A firm that charters vessels from its service requirements, which are handled by their own offices or appointed agents at ports of call. Vessel operators also handle the operation of vessels on behalf of owners.

Way Bill: The document used to identify the shipper and consignee, present the routing, describe the goods, present the

applicable rate, show the weight of the shipment, and make other useful information notations.

Wharf: The place at which ships tie up to unload and load cargo. The wharf typically has front and rear loading docks (aprons), a transit shed, open (unshedded) storage areas, truck bays and rail tracks.

ENDNOTES

¹ LHWCA refers to the Longshore and Harbor Worker's Compensation Act, 44 Stat. 1424 as amended, 33 U.S.C. ?§ 901 et seq. (1984).

² Louviere v. Shell Oil Company, 509 F.2d 278 (5th Cir. 1975), *cert. denied*, 423 U.S. 1078 (1976).

³ Louviere, 509 F.2d at 283.

⁴ 33 U.S.C. § 933(h) (2003).

⁵ 33 U.S.C. § 933(a) (2003).

⁶ 33 U.S.C. § 933(b) (2003).

⁷ *Id.*

⁸ *Id.*

⁹ Rodriguez v. Compass Shipping Co., Ltd., 451 U.S. 596 (1981).

¹⁰ Pallas Shipping Agency, Ltd. v. Duris, 461 U.S. 529 (1983).

¹¹ 20 C.F.R. § 702.315 (1984).

¹² Travelers Insurance Company v. Hayden, 418 A.2d 1078 (D.C. App. 1980); Allen v. Texaco, Inc., 510 F.2d 977 (5th Cir. 1975).

¹³ Hayden, at 1081.

¹⁴ *Id.*

¹⁵ U.S.C. § 933(a) (2003).

¹⁶ Teters v. North River Insurance Company, 764 F.2d 306 (5th Cir. 1985). (This cause of action is known as a "Burnside Action").

¹⁷ *Id.*

¹⁸ Allen v. Texaco, Inc., 510 F.2d 977 (5th Cir. 1975).

¹⁹ LeBlanc v. Petco, Inc., 647 F.2d 617 (5th Cir. 1981), *cert. den ied*, 454 U.S. 1085 (1981).

- ²⁰ Stewart v. Cran-vela Rental Co., Inc., 510 F.2d 982 (5th Cir. 1975).
- ²¹ Petro-weld, Inc. v. Luke, 619 F.2d 418 (5th Cir. 1980).
- ²² Taylor v. Bunge Corp., 845 F.2d 1323 (5th Cir. 1988).
- ²³ Moores v. Greenberg, 834 F.2d 1105 (1st Cir. 1987).
- ²⁴ This is one of the few instances in which LHWCA subrogation is less favorable than state workers' compensation subrogation. Many states allow a carrier to be subrogated to a legal malpractice action under such circumstances.
- ²⁵ Mills v. Marine Repair Service, 21 BRBS 115 (1998), *on reconsideration overruled in part by* 22 BRBS 335 (1989).
- ²⁶ 33 U.S.C. § 933(d) (2003).
- ²⁷ 33 U.S.C. § 933(e)(1)(D) (2003).
- ²⁸ *Id.*
- ²⁹ This means the actual amount recovered less the expenses reasonably incurred in respect to such proceedings, including reasonable attorneys' fees. Peters v. North River Insurance Co., *supra*.
- ³⁰ 33 U.S.C. § 933(d) (2003).
- ³¹ Peters, *supra*.
- ³² 33 U.S.C. § 933(g)(1) (2003).
- ³³ 33 U.S.C. § 933(g)(2) (2003).
- ³⁴ Allen v. Texaco, Inc., 510 F.2d 977 (5th Cir. 1975); Peters v. North River Insurance Co., 764 F.2d 306 (5th Cir. 1985).
- ³⁵ Ochoa v. Employers National Insurance Company, 724 F.2d 1171 (5th Cir.), *vacated*, 105 S.Ct. 583 (1984), *adhered to on remand*, 754 F.2d 1196 (1985).
- ³⁶ Haynes v. Rederi A/S Aladdin, 362 F.2d 345 (5th Cir. 1966).
- ³⁷ Haynes, *supra*.
- ³⁸ Jacques v. Calmar Industries, AB, 8 F.3d 272 (5th Cir. 1993) (in this case, argued by Gary Wickert on behalf of the subrogated carrier, Alabama law applied. Alabama law set forth that the only damages recoverable in a death action were punitive damages. The plaintiffs argued that the carrier, Hartford Insurance Company, was not entitled to recover because there were no compensatory damages recovered. The circuit court held that the carrier was subrogated to the recovery of punitive damages).
- ³⁹ Bloomer v. Liberty Mutual Insurance Company, 445 U.S. 74 (1980).
- ⁴⁰ Lewis v. United States, 812 F.Supp. 629 (E. D. Va. 1993).
- ⁴¹ 105 Cong. Rec. 12, 674 (1959) (Comments of Sen. Bartlett to the Committee on Labor and Public Welfare).
- ⁴² Bloomer, *supra*.
- ⁴³ 33 U.S.C. § 933(e)(f) (2003).

- ⁴⁴ Edward A. White. Longshore Liens in Third Party Litigation – Plaintiff’s Aspect, 6 U.S.F. Mar. L.J. 117 (1993).
- ⁴⁵ 33 U.S.C. § 933(e)(1)(D) (2003).
- ⁴⁶ Id.
- ⁴⁷ 33 U.S.C. § 933(f) (1988).
- ⁴⁸ Force v. Director, OWCP, Department of Labor, 938 F.2d 981 (9th Cir. 1991).
- ⁴⁹ Brisco v. American Cyanamid Corp., 22 Ben. Rev. Bd. Serv. (MB) 389 (1989).
- ⁵⁰ Speaks v. Trihora Lloyd P.T., 838 F.2d 1436 (5th Cir.1988).
- ⁵¹ Speaks, *supra*.
- ⁵² Peters v. North River Insurance Company, 764 F.2d 306 (5th Cir. 1985).
- ⁵³ 33 U.S.C. § 933(g)(1) (2003).
- ⁵⁴ Cowart v. Nicklos Drilling Company, 907 F.2d 1552 (5th Cir. 1990).
- ⁵⁵ Glenn V. Todd Pacific Ship Yards Corporation, 26 BRBS 186 (1993).
- ⁵⁶ Monette v. Chevron USA, Inc., 25 BRBS 267 (1992); Lewis v. Chevron USA, Inc., 25 BRBS 10 (1991).
- ⁵⁷ Liberty Mutual v. Emeta, 564 F.2d 1097 (4th Cir. 1977).
- ⁵⁸ Emeta, *supra*.
- ⁵⁹ Atkinson v. Gates, 838 F.2d (5th Cir. 1988). ■