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LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

Seamen, in their various forms and functions, are not the only workers who are entitled to general recoveries in the area of maritime personal injury/death litigation. Longshore personnel, harbor workers, repair personnel, and offshore workers also perform a variety of vital functions in the maritime industry and have left their mark on the development of admiralty law. In the early 20th century, the Supreme Court prohibited longshore workers from recovering under state compensation schemes, fearing a disruptive effect upon the essential uniformity of maritime law. *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149 (1920); *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917). In 1926 the Supreme Court sought to give these workers maritime remedies by extending the Jones Act to include those workers injured aboard ship, *International Stevedoring Co. v. Haverty*, 272 U.S. 50 (1926); however, one year later, perhaps in response to the judiciary's invalidation of state compensation schemes to injuries in a maritime context as well as their extension of the Jones Act in *Haverty*, Congress enacted the Longshore and Harbor Workers' Compensation Act (hereafter referred to as the LHWCA), 33 U.S.C. §§ 901-950. The original LHWCA laid some basic principles which still are in effect today:

1. Workers were given a compensation award as an exclusive remedy against their employer, as well as preserving the injured party's right to a tort action against third parties such as a vessel owner. Although the act has been modified on several occasions since the original enactment, this original trade-off remains basically the same.
2. Workers covered by the LHWCA had no right to commence action under the Jones Act.

In 1972 Congress amended the LHWCA, bringing about three principal changes in the Act:

1. The compensation rate was increased, and is to be revised annually for inflation.
2. Third-party actions against vessel owners are to be based on a non-maritime definition of negligence, 46 U.S.C. 905(b), rather than the warranty of unseaworthiness or a standard (negligence) based upon the maritime concept of reasonable care under the circumstances. The formulation is fact intensive in order to define the duty or the vessel's interest to the injured longshore worker.
3. Indemnity, either express or implied by contract, sought by the vessel owner from the injured party's employer is prohibited. There is no remedy of tort indemnity or contribution on the part of the vessel's interest against the worker's employer.

It is in the areas of jurisdiction and claims against third parties that the amended LHWCA produced significant litigation and judicial interpretation. In regard to actions against third parties (e.g those at interest with the vessel), two areas have resulted in sharp judicial controversy; the vessel owner's standard of care owed to injured longshore workers and the absence of indemnity/contribution recovery from the injured party's employer.

STANDARD OF CARE

As is often the case, once Congress has engaged in the legislative process to pass compromise legislation such as the LHWCA, more time and money have been spent in the courts to determine Congressional intentions as a means to give definition to legislative conclusions. In the middle of the 20th century, the warranty of seaworthiness was the principal basis for longshore personal injury litigation against

vessel owners. In 1946, the U.S. Supreme Court held that an action for unseaworthiness was available to both seamen and longshore workers. *Seas Shipping Co. v. Sieracki*, 328 U.S. 85 (1946). In a decision that further expanded the vessel's liability, *Alaska S.S. Co. v. Petterson*, 347 U.S. 396 (1954), the Supreme Court concluded that the vessel owner's warranty of seaworthiness extended to conditions created by the stevedore/employer aboard the vessel during the course of cargo operations.

Actions for unseaworthiness became increasingly popular with longshore workers until prohibited by the 1972 Amendments to the LHWCA. Although Section 905(b), as amended, established negligence as the sole basis for an action against vessel owners, other than a collective reference to negligence as defined by collective state legal standards, Congress did not define the standard of care to be considered on the issue of the vessel owner's negligent conduct. Over the ensuing decade the courts of the various circuits reached different opinions regarding the applicable standard. The U.S. Supreme Court accepted certiorari in *De Los Santos* due to the conflict among the Circuits, *Scindia Steam Navigation v. De Los Santos*, 451 U.S. 156 (1981). The opinion written by Justice White, rejected the standard of "reasonable care under the circumstances," which has required only constructive knowledge by the owner of dangers and defects. The Court formulated a series of standards to apply at the moment the stevedore comes aboard.

INDEMNITY AND CONTRIBUTION

The other aspect of third party actions that has been dealt with by various courts is indemnity and contribution in actions by the vessel owner against the stevedore/employer. In 1956 the Supreme Court, in *Ryan v. Pan Atlantic Steamship Corp.*, 350 U.S. 124 (1956), held that an owner whose vessel was unseaworthy would seek indemnification from the stevedore (employer of the injured longshoreman) based upon an implied warranty of workmanlike performance. This theory developed in conjunction with the evolution of unseaworthiness to the point that in most actions indemnity was granted. In light of such decisions as this, three-sided actions composed of the employee-longshoreman against vessel owner, and the owner seeking indemnity from the stevedore-employer, became popular in the 1960's, resulting in significant profits for attorneys and congestion in the courts.

The 1972 Amendments abolished such three-sided actions by prohibiting any express contractual or implied warranties for indemnity, and re-affirmed the stevedore's exclusive liability to the injured employee. Section 905(b) provides that, in a third party action, the plaintiff's employer "shall not be liable to the vessel for such damages directly or indirectly and any such agreements to the contrary shall be void . . ."

Neither the 1972 Amendments nor prior decisions preclude actions for general damages by the maritime worker against the stevedore in a situation in which the employer is also a vessel owner. *See, Reed v. The YAKA*, 373 U.S. 410 (1963). The *Reed* type of action survived the 1972 Amendments. *See, e.g., Smith v. M/V CAPT. FRED*, 546 F.2d 119 (5th Cir. 1977); *Longmire v. Sea Drilling Corp.*, 610 F.2d 1342 (5th Cir. 1980).

The 1972 Amendments do not bar indemnity agreements between a plaintiff's employer and non-vessel entities, *Smith v. United States*, 980 F.2d 1479 (11th Cir. 1993); *Crutchfield v. Atlas Offshore Boat Serv., Inc.*, 403 F. Supp. 920 (E. D. La. 1975). In *Olsen v. Shell Oil Co.*, 595 F.2d 1099 (5th Cir.), *cert. denied*, 444 U.S. 979 (1979), the Fifth Circuit found neither statutory nor policy reasons to prohibit a drilling platform owner and a worker's employer from making a contract requiring the employer to indemnify the owner for liability due to injuries caused by the employer's negligence. The theory for this conclusion is that a fixed platform is not a vessel, and

it is only in vessel situations that 905(b) precludes indemnity agreements. The Court of Appeals for the Ninth Circuit held that a contractual agreement between a vessel owner and a stevedore to have the owner included as a co-insured on the stevedore's insurance policy was not prohibited by § 905(b). *Price v. Zim Israel Navigation Co., Ltd.*, 616 F.2d 422 (9th Cir. 1980).

To have a balanced view of this area of the LHWCA, consideration should also be given to the effects of proportionate fault of the plaintiff, the stevedore and the vessel owner. In *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256 (1979), the jury determined the relative fault of the parties as follows: plaintiff--10%, plaintiff's employer (the stevedore)--70%, and the vessel owner--20%. The trial court reduced the plaintiff's award by the proportion of this negligence, requiring the owner to pay the remainder. The Fourth Circuit reversed and held the owner responsible only for its percent of fault. The U.S. Supreme Court reversed and held that the vessel owner must pay for all damages not due to the plaintiff's own negligence. The stevedore remained immune from contribution or indemnity as per the exclusive remedy language of 905(b).

In 1984 the LHWCA was amended to allow mutual indemnity agreements in the context of operations on the Outer Continental Shelf. 33 USC 905(c).

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WHO IS COVERED BY THE LHWCA

Much of the litigation establishing coverage of the LHWCA has occurred subsequent to the 1972 Amendments. The original 1927 legislation applied only to employees injured on the seaward side of the line dividing land from navigable waters. Congress, in 1972, extended coverage shoreward of navigable waters, including "adjoining area(s) customarily used by an employer in loading, unloading, repairing, or building a vessel." 33 U.S.C.§ 903(a). This vague situs requirement was accompanied by an equally indefinite status standard in § 902(3). The purpose of the situs and status requirements, regardless of their vague definitions, was to lend certainty to coverage and prevent the appropriate employees from walking in and out of coverage. The coverage of the LHWCA is initially determined by an administrative law judge. Appeals must go to the Benefits Review Board, and then to the appropriate Court of Appeals, if necessary. The different Circuits, not surprisingly, have interpreted the situs and status requirements in a variety of ways.

The Supreme Court addressed the issue of status in *Northeast Marine Terminals Co. v. Caputo*, 432 U.S. 249 (1977). Basing its decision upon the expansive language of the LHWCA, the Court held coverage was extended to employees who "spend at least some of their time in undisputably longshoring operations" and "would be covered for only part of their activity" prior to the Amendments. *Id.* at 273. The Act extends to employees in less traditional jobs created by the modernization of cargo operations, who are "clearly an integral part of the unloading process as altered by the advent of containerization . . .". *Id.* at 271. The Court drew support for its decision from the Congressional intent to create a uniform compensation scheme. Subsequent decisions on this issue have found this line of reasoning highly persuasive.

In *P. C. Pfeiffer, Inc. v. Ford*, 444 U.S. 69 (1979), a warehouseman loading vehicles onto a railroad car, and another longshoreman loading cotton bales from a shoreside wagon to a storage area were held to be under the coverage of LHWCA. The Court held that a person engaged in some portion of the activity of moving goods from ship to land transport is within the scope of the Act. Once again the Court based much of its analysis upon a legislative desire for uniformity.

Express Container Services, Inc., 71 F.3d 1134 (4th Cir. 1995) (a mechanic injured at a container facility 4/5 of a mile from the water did not meet the situs requirement). *Sidwell v.*

The First Circuit, on an appeal from an adverse decision of the Longshore Benefits Review Board, held that a maintenance/mason employee at a shipbuilding and repair yard was covered by the statute. Once again, the Court cited the expansive language of Congress (as well as the now liberal judicial precedent), and held that personnel involved in secondary support work for shipbuilding and repair spent some of their time in harbor worker activity. *Graziano v. General Dynamics Corp.*, 663 F.2d 340 (1st Cir. 1981). In 1981 the Second Circuit, on remand from the Supreme Court, held that an employee must have a significant relationship to navigation and commerce on navigable waters, and that a construction worker at a sewage disposal plant was not covered even though his accident occurred on navigable waters. *Fusco v. Perini North River Ass'n*, 622 F.2d 1111 (2d Cir.), *cert. denied*, 449 U.S. 1131 (1981). However, a clerical worker who packed cargo (movie films for a cruise vessel) had status since this type of work was on a regular basis. *Lennon v. Waterfront Transport*, 20 F.3d 658 (5th Cir. 1994).

In 1983 the Supreme Court tackled this split in the Circuits regarding the application of the status requirement when the injury occurs on navigable waters. The case of *Director,*

OWCP v. Perini North River Ass'n, 459 U.S. 297, rejects the Second Circuit view and allows LHWCA coverage for other than traditional maritime workers as long as they are injured on navigable waters. When such a "situs" requirement is met, the Court has, in essence, done away with the statutory "status" requirement. The Fifth Circuit holds that if you have an injury on navigable water, you need not have status, but the reverse is not true, i.e., you must have status and situs if the injury does not occur on navigable water, *Munguia v. Chevron U.S.A.*, 999 F.2d 808 (5th Cir. 1993). *But note McGray Construction Co. v. Director, OWCP*, 181 F.3d 1008 (9th Cir. 1999) focused upon the "status" issue by holding that the "situs" requirement was satisfied with the accident occurring on a pier that "only looked like a pier." The claimant was not a maritime employee since he was between jobs as a diver. His status at the time of the accident was a pile driver and therefore covered by the California Worker's Compensation Act.

Both the Ninth and Fifth Circuits have extended LHWCA coverage to employees of recreational boat manufacturers. *Schwabenland v. Sanger Boats*, 683 F.2d 309 (9th Cir. 1982), *cert. denied*, 459 U.S. 1170 (1983). Benefits of the Act were awarded to beneficiaries of an airplane pilot who crashed into the Gulf of Mexico while spotting fish. It was held that the pilot was in maritime employment and unquestionably died in a maritime situs. He was not a member of a vessel's crew, *Ward v. Director, OWCP*, 684 F.2d 1114 (5th Cir. 1982), *cert. denied*, 459 U.S. 1170 (1983). A ship repairman injured/killed on a U.S. vessel on the high seas was covered by the Act, *Kollias v. D&G Marine Maintenance*, 29 F.3d 67 (2d Cir. 1994); *Cove Tankers Corp. v. United Ship Repair, Inc.*, 683 F.2d 38 (2d Cir. 1982).

The LHWCA's "situs" requirement and its roots in federal subject matter jurisdiction have become clouded. In *May v. Transworld Drilling Co.*, 786 F.2d 1261 (5th Cir. 1986), the Court held that the claim of a shipyard worker injured on land while building drilling vessels did not fall within admiralty jurisdiction because the injury took place on land. Noting that the test to determine the existence of a cause of action is identical to that used to determine admiralty jurisdiction, the Court applied *Formost Insurance* (see the jurisdiction section, *supra*) holding that the plaintiff's claim did not sound in maritime tort since it did not occur on navigable waters and denying recovery against the vessel on Plaintiff's 905(b) action. *Richendollar v. Diamond M Drilling Co., Inc.*, 819 F.2d 124 (5th Cir. 1987) (*en banc*), *cert. denied*, 484 U.S. 944 (1987), concluded that there could be no federal jurisdiction in litigation similar to *May*; further, there could be no 905(b) negligence action against the vessel owner. *Green v. Vermillion Corp.*, 144 F.3d 332 (5th Cir. 1998) concerns an injury to a club/camp employee aboard a skiff on navigable waters. Longshore and Harbor Workers' compensation was denied due to the statutory club/camp exclusion. Adjoining state compensation coverage was permitted, but the exclusive remedy provision of the statute could not oust general maritime law.

PROCEDURE:

Apart from the issues of third-party claims and jurisdiction, there ar a number of procedural aspects of the statute which should be considered and noted. The LHWCA does not give the right to a jury trial in non-diversity cases under § 905(b), *Julien v. Lykes Bros. S.S. Co.*, 1977 A.M.C. 241 (E. D. La. 1976); also, a cause of action under this statute is not grounds for removal from the state court to the federal court, *Masters v. Swiftships Freeport, Inc.*, 867 F. Supp. 555 (S.D. Tex. 1994). The plaintiff has a burden of proof greater than the lower standard of the Jones Act. The doctrine of *res ipsa loquitur* applies to Section 905(b) actions, but only to the extent of inferring negligence, not forcing inference. *Geotechnical Corp. of Del. v. Pure Oil Co.*, 196 F.2d 199 (5th Cir. 1952), *cert. denied*, 344 U.S. 874 (1952). Assumption of the risk is inapplicable to third-party negligence claims against the vessel, and recovery may be had in an instance in which open and obvious dangers "must be faced notwithstanding knowledge." *Gay v. Ocean Transp. & Trading Ltd.*, 546 F.2d 1233 (5th Cir. 1977); *Walker v. Blacksea S.S. Co.*, 637 F.2d 287 (5th Cir. 1981). Contributory negligence serves to reduce but not bar a Section 905(b) recovery, and the burden of proof rests upon the defendant shipowner, *United States v. Smith*, 229 F.2d 548 (5th Cir. 1955).

Negligence actions brought pursuant to Section 905(b) must be litigated within three years from the date the cause of action accrued, 46 U.S.C. § 763a. Once payments made pursuant to an administrative award of compensation have been accepted by an injured longshoreman, any Section 905(b) cause of action must be brought within six months or the right to bring such an action is assigned to his employer, 33 U.S.C. § 933(b); *Pallas Shipping Agency, Ltd. v. Duris*, 461 U.S. 529 (1983). However, the mere acceptance of voluntary compensation payments not paid pursuant to an award does not trigger the start of the Section 933(b)'s six-month period, however. *Id.* In *Rodriguez v. Compass Shipping Co.*, 451 U.S. 596 (1981), the Supreme Court held that in the absence of a clear and concise conflict between the employer and employee, an injured party is prohibited from bringing a third-party action after the expiration of the six-month period. Today by statutory amendment, after the option to pursue a third-party action shifts from employee to employer, the employer will have 90 days to initiate suit against the vessel.

As to the priority of claims to a plaintiff's Section 905(b) recovery, the U.S. Supreme Court has held that stevedore-employer paying compensation to the plaintiff was not required to share the plaintiff's litigation costs, *Bloomer v. Liberty Mutual Ins. Co.*, 445 U.S. 74 (1980).

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LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT AMENDMENTS OF 1984 [1]

An Act To provide compensation for disability or death resulting from injury to employees in certain maritime employment, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 1. This Act may be cited as the "Longshore and Harbor Workers' Compensation Act Amendments of 1984.

DEFINITIONS

SEC. 2. 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) aquaculture workers;

(F) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length;

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

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[1] Includes 1984 amendments made by P.L. 98-426 which are printed in italic.

(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 to insure 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).*

(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 (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) 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 term "adoption" or "adopted" means 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.

COVERAGE

SEC. 3. (a) 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) 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) 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)(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.

(e) 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) (relating to recovery for injury to or death of seamen) shall be credited against any liability imposed by this Act.

LIABILITY FOR COMPENSATION

SEC. 4. *(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. 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.

EXCLUSIVENESS OF REMEDY AND THIRD-PARTY LIABILITY

SEC. 5. (a) 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 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.*

(b) 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, 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 ship building, 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) In the event that the negligence of a vessel causes injury to 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), 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.

TIME FOR COMMENCEMENT OF COMPENSATION

STOP

Maximum and Minimum Compensation

SEC. 6. (a) No compensation shall be allowed for the first three days of the disability, except the benefits provided for in section 7: 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)(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) 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.

MEDICAL SERVICES AND SUPPLIES

SEC. 7. (a) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medi-

cine, 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 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)(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)(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) 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.

(f) 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) 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) 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.

(i) 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)(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 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)(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).

COMPENSATION FOR DISABILITY

SEC. 8. Compensation for disability shall be paid to the employee as follows:

(a) Permanent total disability: In case of total disability adjudged to be permanent 66⅔ 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 66⅔ 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 66⅔ 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, or a claim for compensation, under section 13 of this Act, 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 or 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 66⅔ 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), the compensation shall be 66⅔ 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), 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) 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) (other than a wife, husband, or child); and the amount to be paid each such survivor shall be determined by multiplying such unpaid amount of the award by the appropriate percentage specified in section 9(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, the total amont of any award for permanent partial disability, pursuant to section 8(c)(1)–(20) 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), if there be no survivors as prescribed in this section, then the compensation payable under the subsection shall be paid to the special fund established under section 44(a) of this Act.

(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), the employee is totally and permanently disabled, and the disability is found not 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), 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 section 8(c) (1)–(20), the employee has a permanent partial disability and the disability is found not 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), 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 in section 44, *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).*

(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, for apportionment of liability to the special fund established under section 44 of this Act 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 remunerative occupation and who, under the direction of the Secretary as provided by section 39(c) of this Act, 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.

(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.

COMPENSATION FOR DEATH

SEC. 9. *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 16⅔ per centum of such wages for each child; in the 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 16⅔ per centum of such wages for each child in excess of one: Provided, That the total amount payable shall in no case exceed 66⅔ 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 16⅔ per centum of such wages for each child in excess of one: Provided, That the total amount payable shall in no case exceed 66⅔ per centum of such wages.

(d) If there be no surviving wife or husband or child, or if the amount payable to a surviving wife or husband and to children shall be less in the aggregate than 66⅔ 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 66⅔ 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), 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); 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)) 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 Secretary 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 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.

DETERMINATION OF PAY

SEC. 10. 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 cannot 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)) 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), 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 for death benefits be reduced.

(h)(1) Not later than ninety days after the date of enactment of this subsection, 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) 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 en-

actment 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. 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, 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 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.

GUARDIAN FOR MINOR OR INCOMPETENT

SEC. 11. 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.

NOTICE OF INJURY OR DEATH

SEC. 12. (a) 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, 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 medic

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) 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) 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 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.

TIME FOR FILING OF CLAIMS

SEC. 13. (a) Except as otherwise provided in this section, the right to compensation for disability or death under this Act shall be barred unless a claim therefor 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) *(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) 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) 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.

PAYMENT OF COMPENSATION

SEC. 14. (a) 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) The first installment of compensation shall become due on the fourteenth day after the employer *has been notified pursuant to section 12, 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) Upon making the first payment, and upon suspension of payment for any case, the employer shall immediately notify the deputy commissioner, in accordance with a form prescribed by the Secretary, that payment of compensation has begun or has been suspended, as the case may be.

(d) 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 Secretary, 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) 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) 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 and an order staying payments has been issued by the Board or court.

(g) 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 Secretary, 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 Secretary shall assess against such employer a civil penalty in the amount of $100.

(h) 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) Whenever the deputy commissioner deems it advisable he may require any employer to make a deposit with the Treasurer 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) 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) 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.

INVALID AGREEMENTS

SEC. 15. (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.

ASSIGNMENT AND EXEMPTION FROM CLAIMS OF CREDITORS

SEC. 16. 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 benefit 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.

COMPENSATION A LIEN AGAINST ASSETS

SEC. 17. Where a trust fund which complies with section 302(c) of the Labor-Management Relations Act of 1947 (20 U.S.C. 186(c)) established pursuant to a collective-bargaining agreement in effect between an employer and 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.

DEFAULTED PAYMENTS

SEC. 18. (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 a supplementary order declaring the amount of the default. After investigation, notice, and hearing, as provided in section 19, a 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 dis-

trict 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 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 or 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, 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 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 this 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 be a proceeding in the name of the Secretary of Labor under section 18 or under subsection (c) of section 21 of this Act, 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.

PROCEDURE IN RESPECT OF CLAIMS

SEC. 19. (a) Subject to the provisions of section 13 a claim for compensation may be filed with the deputy commissioner in accordance with regulations prescribed by the Secretary 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) Within ten days after such claim is filed the deputy commissioner, in accordance with regulations prescribed by the Secretary, 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 per-

sonally upon the employer or other person, or sent to such employer or person by registered mail.

(c) 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 is 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) 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 hearing examiner 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 Amendments of 1972, in the deputy commissioners with respect to such hearings shall be vested in such hearing examiners.

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

(g) At any time after a claim has been filed with him, the deputy commissioner may, with the approval of the Secretary, 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) 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 Secretary 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.

PRESUMPTIONS

SEC. 20. 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.

REVIEW OF COMPENSATION ORDER

SEC. 21. (a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 19, 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)(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 hearing examiner 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) 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) 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) 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.

APPEARANCE OF ATTORNEYS FOR SECRETARY, DEPUTY COMMISSIONER, OR BOARD

SEC. 21a. Attorneys appointed by the Secretary shall represent the Secretary, the deputy commissioner, or the Board in any court proceedings under section 21 or other provisions of this Act except for proceedings in the Supreme Court of the United States.

MODIFICATION OF AWARDS

SEC. 22. 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))*, 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))* in accordance with the procedure prescribed in respect of claims in section 19, 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 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.*

PROCEDURE BEFORE THE DEPUTY COMMISSIONER

SEC. 23. (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, 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 commissioner or Board.

WITNESSES

SEC. 24. 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 ac-

cording to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the United States District Court for the District of Columbia if the case is pending in the District).

WITNESS FEES

SEC. 25. 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.

COSTS IN PROCEEDINGS BROUGHT WITHOUT REASONABLE GROUNDS

SEC. 26. 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.

POWERS OF DEPUTY COMMISSIONERS

SEC. 27. (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 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 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.

FEES FOR SERVICE

SEC. 28. (a) 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) If the employer or carrier pays or tenders payment of compensation without an award pursuant to section 14(a) and (b) of this Act, 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) 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) 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) 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) 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.

RECORD OF INJURY OR DEATH

SEC. 29. 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 by regulation require, and shall be available to inspection by the Secretary or by any State authority as such times and under such conditions as the Secretary may by regulation prescribe.

REPORTS

SEC. 30. (a) 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 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) 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 any such injury or death on account of which the report is made.

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

(e) 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) 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 any employee and fails, neglects, or refuses to file report thereof as required by the provisions of subdivision (a) of the section, the limitations in subdivision (a) of section 13 of this Act 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.

PENALTY FOR MISREPRESENTATION—PROSECUTION OF CLAIMS

SEC. 31. (a)(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)(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, 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, 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.

(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) 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 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.

SECURITY FOR COMPENSATION

SEC. 32. (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.

COMPENSATION FOR INJURIES WHERE THIRD PERSONS ARE LIABLE

SEC. 33. (a) 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 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) The payment in section 44 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) 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) 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;

(C) all amounts paid as compensation;

(D) the present value of all amounts thereafter payable as compensation, such present value to be computed as 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, 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.

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

(f) If the person entitled to compensation institutes proceedings within the period prescribed in section 33(b), 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)(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 compenation 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 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 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) 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) 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.

COMPENSATION NOTICE

SEC. 34. Every employer who has secured compensation under the provisions of this Act shall keep posted in a conspicuous place or places in and about this 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.

SUBSTITUTION OF CARRIER FOR EMPLOYER

SEC. 35. 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 to 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.

INSURANCE POLICIES

SEC. 36. (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, 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.

CERTIFICATE OF COMPLIANCE WITH THIS ACT

SEC. 37. 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.

PENALTY FOR FAILURE TO SECURE PAYMENT OF COMPENSATION

SEC. 38. (a) 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.

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

ADMINISTRATION AND VOCATIONAL REHABILITATION

SEC. 39. (a) 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, to fix the compensation of such

deputy commissioners (except deputy commissioners appointed under subdivision (a) of section 40) 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) 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 in respect to 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 United States District Court for the District of Columbia if such office is located in such District).

(c)(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 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 States or Territories, possessions, or the District of Columbia for such rehabilitation. The Secretary may in his 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 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 cost of administering this subsection.

DEPUTY COMMISSIONERS

SEC. 40. (a) 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

him 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) 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.

(c) 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) 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) 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) Neither a deputy commissioner or Board member nor any business associate of a deputy commissioner or Board member 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.

SAFETY RULES AND REGULATIONS

SEC. 41. (a) 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.

(b) 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, 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.

(c) 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) 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 hardship, 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. A properly indexed record of all variations shall be kept in the office of the Secretary and open to public inspection.

(e) The United States district courts shall have jurisdiction for cause shown, in any action brought by the Secretary, represented as provided in section 21a of this Act, 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) 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)(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), 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) 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.

(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.

ANNUAL REPORT

SEC. 42. The Secretary shall make to Congress at the 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, 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, together with such recommendations as the Secretary deems advisable.

NOTE.—Section 43 was repealed in 1965 by P.L. 39-348.

SPECIAL FUND

SEC. 44. (a) 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) 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 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 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 fines and penalties under the provisions of this Act shall be paid into such fund.

(d)(1) For the purpose of making rules, regulations, and determinations under this section 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) 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) Neither the United States nor the Secretary shall be liable in respect of payments authorized under section 8 in an amount greater than the money or property deposited in or belonging to such fund.

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

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

(1) Pursuant to section 10 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).

(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).*

(j) The fund shall be audited annually and the results of such audit shall be included in the annual report required by section 42.

NOTE.—Sections 45, 46, and 47 are repealed by P.L. 98-426, which did not change the numbering sequence for sections 48 through 52.

LAWS INAPPLICABLE

SEC. 48. Nothing in sections 4283, 4284, 4285, 4286, or 4289 of the Revised Statutes, as amended, 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, 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 com-

pensation as required by this Act, or (2) in any proceeding for compensation, any addition to compensation, or any civil penalty.

DISCRIMINATION AGAINST EMPLOYEES WHO BRING PROCEEDINGS

SEC. 49. 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, 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 liability for such penalties and payments shall be void.

EFFECT OF UNCONSTITUTIONALITY

SEC. (50) 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.

SEPARABILITY PROVISION

SEC. (51) 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.

EFFECTIVE DATE

SEC. (52) Sections 39 to 51, inclusive, shall become effective upon the passage of this Act, and the remainder of this Act shall become effective on July 1, 1927.

SECTION 422 OF THE BLACK LUNG BENEFITS ACT

SEC. 422. (a) *Subject to section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, during* any period after December 31, 1973, in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) of this part, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, and as may be amended from time to time (other than the provisions contained in sections 1, 2, 3, 4, 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof), shall (except as otherwise provided in this subsection or by regulations of the Secretary and except that references in such Act to the employer shall be considered to refer to the trustees of the fund, as the Secretary considers appropriate and as is consistent with the provisions of section 9501(d) of the Internal Revenue Code of 1954), be applicable to each operator of a coal mine in such state with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) of section 411(c). In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

* * * * * * *

Tex. Lab. Code § 401.012

LABOR CODE
TITLE 5. WORKERS' COMPENSATION
SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT
CHAPTER 401. GENERAL PROVISIONS
SUBCHAPTER B. DEFINITIONS

◆ GO TO TEXAS CODE ARCHIVE DIRECTORY

Tex. Lab. Code § 401.012 (2006)

§ 401.012. Definition of Employee

(a) In this subtitle, "employee" means each person in the service of another under a contract of hire, whether express or implied, or oral or written.

(b) The term "employee" includes:

(1) an employee employed in the usual course and scope of the employer's business who is directed by the employer temporarily to perform services outside the usual course and scope of the employer's business;

(2) a person, other than an independent contractor or the employee of an independent contractor, who is engaged in construction, remodeling, or repair work for the employer at the premises of the employer; and

(3) a person who is a trainee under the Texans Work program established under Chapter 308.

(c) The term "employee" does not include:

(1) a master of or a seaman on a vessel engaged in interstate or foreign commerce; or

(2) a person whose employment is not in the usual course and scope of the employer's business.

(d) A person who is an employee for the purposes of this subtitle and engaged in work that otherwise may be legally performed is an employee despite:

(1) a license, permit, or certificate violation arising under state law or municipal ordinance; or

(2) a violation of a law regulating wages, hours, or work on Sunday.

(e) This section may not be construed to relieve from fine or imprisonment any individual, firm, or corporation employing or performing work or a service prohibited by a statute of this state or a municipal ordinance.

NOTES:

DISPOSITION OF CIVIL STATUTES

See the note following the text of Texas Labor Code section 1.001.

History:

• Stats. 1997 75th Leg. Sess. Ch. 456, effective September 1, 1997.

LexisNexis (R) Notes:

Case Notes:

Labor & Employment Law > Employment Relationships > At-Will Employment > Employees
Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview
Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview
Workers' Compensation & SSDI > Compensability > Course of Employment > Going & Coming Rule
Workers' Compensation & SSDI > Compensability > Course of Employment > Place & Time
Workers' Compensation & SSDI > Coverage > Employment Relationships > General Overview
Workers' Compensation & SSDI > Coverage > Employment Relationships > Borrowed Employees
Workers' Compensation & SSDI > Coverage > Employment Relationships > Casual Employees
Workers' Compensation & SSDI > Coverage > Employment Relationships > Dual Employees
Workers' Compensation & SSDI > Coverage > Employment Relationships > Employers
Workers' Compensation & SSDI > Coverage > Employment Relationships > Executives & Partners
Workers' Compensation & SSDI > Coverage > Employment Relationships > Farm Laborers
Workers' Compensation & SSDI > Coverage > Employment Relationships > Nonbusiness Employees
Workers' Compensation & SSDI > Remedies Under Other Laws > Exclusivity

Labor & Employment Law > Employment Relationships > At-Will Employment > Employees

1. "Employee" within the meaning of Tex. Labor Code Ann. § 401.012(a) was not permitted to sue his employer in tort for exposure to toxic substances. The employee served as a dual employee for both the owner of the manufacturing facility and the company that leased space inside, and both entities were covered by workers' compensation. Neal v. Wis. Hard Chrome, Inc., 173 S.W.3d 891, 2005 Tex. App. LEXIS 7973 (Tex. App. Texarkana 2005).

2. For the purpose of workers' compensation law, the employer-employee relationship may be created only by

[432 US 249]

NORTHEAST MARINE TERMINAL COMPANY, INC., et al., Petitioners,

v

RALPH CAPUTO et al. (76–444)

INTERNATIONAL TERMINAL OPERATING COMPANY, INC., Petitioner,

v

CARMELO BLUNDO et al. (76–454)

432 US 249, 53 L Ed 2d 320, 97 S Ct 2348

[Nos. 76–444 and 76–454]

Argued April 18, 1977. Decided June 17, 1977.

OPINION OF THE COURT

Mr. Justice Marshall delivered the opinion of the Court.

In 1972 Congress amended the Longshoremen's and Harbor Workers' Compensation Act (LHWCA or Act), 33 USC §§ 901 et seq. [33 USCS §§ 901 et seq.], in substantial part to "extend [the Act's] coverage to protect additional workers." S Rep No. 92-1125, p 1 (1972) (hereinafter S Rep). In these consolidated cases we must determine whether respondents Caputo and Blundo, injured while working on the New York City waterfront, are

[432 US 252]

entitled to compensation. To answer that question we must determine the reach of the 1972 Amendments.

[1a, 2a, 3a, 4a] The sections of the Act relevant to these cases are the ones providing "coverage" and defining "employee." They provide, with italics to indicate the material added in 1972:

§ 903. "Coverage

"Compensation shall be payable . . . 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, or building a vessel)*. . . ." 33 USC § 903(a) (1970 ed Supp V).

"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." 33 USC § 902(3) (1970 ed Supp V) [33 USCS § 902(3)].

Specifically at issue here is whether respondents Caputo and Blundo were "employees" within the meaning of the Act and whether the injuries they sustained occurred on the "navigable waters of the United States."

I

At the time of his injury respondent Carmelo Blundo had been employed for five years as a "checker" by petitioner International Terminal Operating Co. (ITO) at its facility in Brooklyn, N.Y., known as the 21st Street Pier. As a checker he was responsible for checking and recording cargo as it was

[432 US 253]

loaded onto or unloaded from vessels, barges, or containers. Blundo was assigned his tasks at the beginning of each day and until he arrived at the terminal he did not know whether he would be working on a ship or on shore. He was reassigned during the day if he completed the task to which he was assigned initially. App 63–69, 112.

On January 8, 1974, ITO assigned Blundo to check cargo being "stripped" or removed from a container on the 19th Street side of the pier. The container Blundo was checking had been taken off a vessel at another pier facility outside of Brooklyn and brought overland unopened by an independent trucking company to the 21st Street Pier. It was Blundo's job to break the seal that had been placed on the container in a foreign port and show it to United States Customs Agents. After the seal was broken, Blundo was to check the contents of the container against a manifest sheet describing the cargo, the consignees, and the ship on, and port from which, the cargo had been transported. He was to mark each item of cargo with an identifying number. After the checking, the cargo was to be placed on pallets, sorted according to consignees, and put in a bonded warehouse pending customs inspection. Blundo was injured as he was marking the cargo stripped from the container, when he slipped on some ice on the pier. Id., at 69–74, 86–90.

Blundo sought compensation under the LHWCA. The Administrative Law Judge concluded that Blundo satisfied the

[432 US 254]

coverage requirements of the Act and the Benefits Review Board (BRB) affirmed.[3]

Respondent Ralph Caputo was a member of a regular longshoring "gang" that worked for Pittston Stevedoring Co.[4] When his gang

3. Under the 1972 Amendments, contested compensation claims are heard by an administrative law judge. 33 USC § 919(d) (1970 ed Supp V) [33 USCS § 919(d)]. Review is then available from the BRB, a three-member board appointed by the Secretary of Labor. The BRB, created by the 1972 Amendments, is empowered "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 [the LHWCA]." 33 USC § 921(b)(1), (3) (1970 ed Supp V) [33 USCS § 921(b)(1), (3)]; see generally 20 CFR §§ 801–802 (1976). The decisions of the BRB are subject to review in the courts of appeals. 33 USC § 921(c) (1970 ed Supp V) [33 USCS § 921(c)].

Prior to the 1972 Amendments, cases were heard in the first instance by deputy commissioners and review was then available in the district courts. 33 USC § 921 [33 USCS § 921]. There was no administrative review procedure for LHWCA claims.

The Benefits Review Board Service (BRBS) is the unofficial reporter of the Board's decisions. The BRB's decision in Blundo's case may be found at 2 BRBS 376 (1975) as well as in Pet for Cert App in No. 76–454, p 45a. The Administrative Law Judge's decision is reproduced id., at 49a. A synopsis of it may be found at 1 BRBS 71 (ALJ) (1975).

4. It is necessary, at this point, to introduce some terminology. "A stevedore or stevedore contractor is responsible for loading or unloading a ship in port by contract with a shipowner, agent, or charter operator." U.S. Dept. of Labor, Office of Workers' Compensation Programs Task Force Report, Longshore and Harbor Workers' Compensation Program 103 (1976). "[A] marine terminal operator, who may own or lease the terminal property, is responsible for the safe handling of the ship, the delivery and receipt of the ship's cargo, and all movement and handling of that cargo between the point-of-rest and any place on the marine terminal property except to shipside." Ibid.

Typically, the work of getting the cargo on and off the ship is done by a "gang" of longshoremen "distributed between the ship and the pier so they can move cargo in an uninterrupted flow." Id., at 104. A member of the gang may be designated by the equipment he operates, e.g., a winchman or hustler operator, or by the area in which he works, e.g., holdman. A typical longshore gang ranges from 12 to 20 workers. Because ship arrivals are irregular, the demand for a gang varies from day to day. Ibid.

was not needed, Caputo went to the

[432 US 255]

waterfront hiring hall, where he was hired by the day by other stevedoring companies or terminal operators with work available. He had been hired on some occasions by Northeast Stevedoring Co. to work as a member of a stevedore gang on ships at the 39th Street Pier in Brooklyn; on other occasions he had been hired by petitioner Northeast Marine Terminal Co., Inc. (Northeast), for work in its terminal operations at the same location. App 8–10, 14–16.

On April 16, 1973, Caputo was hired by Northeast to work as a "terminal labor[er]." Pet for Cert in No. 76–444, p 48a; App 8, 14. A terminal laborer may be assigned to load and unload containers, lighters, barges, and trucks. App 8; Brief for Petitioners in No. 76–444, p 4. When he arrived at the terminal, Caputo was assigned, along with a checker and forklift driver, to help consignees' truckmen load their trucks with cargo that had been discharged from ships at Northeast's terminal. Caputo was injured while rolling a dolly loaded with cheese into a consignee's truck. App 27–40.

The Administrative Law Judge found that Caputo satisfied the requirements of the Act and awarded him compensation. The BRB affirmed.

The employers in both cases filed petitions to review the

[432 US 256]

decisions and the Court of Appeals for the Second Circuit consolidated the cases. After thorough consideration of the language, history, and purposes of the 1972 Amendments, the court held, one judge dissenting, that the injuries of both respondents were compensable under the LHWCA. In view of the conflict over the coverage afforded by the 1972 Amendments, we granted certiorari to consider both cases. 429 US 998, 50 L Ed 2d 607, 97 S Ct 522 (1977). We affirm.

II

Congress enacted the Longshoremen's and Harbor Workers' Compensation Act in 1927, 44 Stat 1424, after this Court had thwarted the efforts of the States and of Congress

[432 US 257]

to provide compensation for maritime workers injured on navigable waters through state compensation programs. In 1917, the Court, in Southern Pacific Co. v Jensen, 244 US 205, 61 L Ed 1086, 37 S Ct 524, held that the States were without power to extend a workmen's compensation remedy to longshoremen injured on the gangplank between a ship and a pier. The decision left longshoremen injured on the seaward side of a pier without a compensation remedy while longshoremen injured on the pier were protected by state compensation acts. State Industrial Commission v Nordenholt Corp. 259 US 263, 66 L Ed 933, 42 S Ct 473, 25 ALR 1013 (1922). Dissatisfied with the gap in coverage thus created, and recognizing that the amphibious nature of longshoremen's work made it desirable to have "one law to cover their whole employment, whether directly part of the process of loading or unloading a ship or not," Congress sought to authorize States to apply their compensation statutes to injuries seaward of the Jensen line.[12] Its attempts to allow such uniform state systems, however, were struck down

12. HR Rep No. 639, 67th Cong, 2d Sess, 2 (1922). More fully, the Report noted:

"It is easy to understand the reason why the representatives of the workmen ask for compensation under State laws. The longshoremen are no more peripatetic workmen than are the repair men. They do not leave the port in which they work; they do not go into different jurisdictions. They are part of the local labor force and are permanently subject to the same conditions as are other local workmen. The work of longshoremen is not all on ship. Much of it is on the wharves. They may be at one moment unloading a dray or a railroad car or moving articles from one point on the dock to another, the next actually engaged in the process of loading or unloading cargo. Their need for uniformity is one law to cover their whole employment, whether directly part of the process of loading or unloading a ship or not."

See also S Rep No. 139, 65th Cong, 1st sess, 1 (1917).

as unlawful delegations of congressional power. Washington v W. C. Dawson & Co. 264 US 219, 68 L Ed 646, 44 S Ct 302 (1924); Knickerbocker Ice Co. v Stewart, 253 US 149, 64 L Ed 834, 40 S Ct 438, 11 ALR 1145 (1920). Finally, convinced that the only way to provide workmen's compensation for longshoremen and harborworkers

[432 US 258]

injured on navigable waters was to enact a federal system, Congress, in 1927, passed the LHWCA.

The Act was, in a sense, a typical workmen's compensation system, compensating an employee for injuries "arising out of and in the course of employment." But it was designed simply to be a gapfiller—to fill the void created by the inability of the States to remedy injuries on navigable waters. Thus, it provided coverage only for injuries occurring "upon the navigable waters of the United States" and permitted compensation awards only "if recovery . . . through workmen's compensation proceedings [could] not validly be provided by state law."

[432 US 259]

Congress' initial apprehension of the difficulties inherent in the existence of two compensation systems for injuries sustained by amphibious workers proved to be well-founded. The courts spent the next 45 years trying to ascertain the respective spheres of coverage of the state and federal systems. As two commentators described it, "the relationship between [LHWCA] and the otherwise applicable State Compensation Act [was] shrouded in impenetrable confusion." G. Gilmore & C. Black, Law of Admiralty 409 (2d ed 1975) (Gilmore). It is unnecessary to examine in detail the Court's efforts to dispel the confusion. Suffice it to say that while the Court permitted recovery under state remedies in particular situations seaward of the Jensen line, see, e.g., Davis v Washington Labor Dept. 317 US 249, 87 L Ed 246, 63 S Ct 225 (1942), the Court made it clear that federal coverage stopped at the water's edge. Nacirema Operating Co. v Johnson, 396 US 212, 24 L Ed 2d 371, 90 S Ct 347 (1969).

In Nacirema Operating Co., supra, the Court held that the Act did not cover longshoremen killed or injured on a pier while attaching cargo to ships' cranes for loading onto the ships, even though coverage might have existed had the men been hurled into the water by the accident, Marine Stevedoring Corp. v Oosting, 238 F Supp 78 (ED Va 1965), aff'd 398 F2d 900 (CA4 1968) (en banc), or been injured on the

[432 US 260]

deck of the ship while performing part of the same operation, Calbeck v Travelers Ins. Co. 370 US 114, 8 L Ed 2d 368, 82 S Ct 1196 (1962). The dissent protested the incongruity and unfairness of having coverage determined by "where the body falls" and argued that the Act was "status oriented, reaching all injuries sustained by longshoremen in the course of their employment." 396 US at 224, 24 L Ed 2d 371, 90 S Ct 347 (Douglas, J., dissenting). The majority, however, did not agree.

> "There is much to be said for uniform treatment of longshoremen injured while loading or unloading a ship. But even construing the [Extension of Admiralty Jurisdiction Act of 1948, 46 USC § 740] [46 USCS § 740,] to amend the Longshoremen's Act would not effect this result, since longshoremen injured on a pier by pier-based equipment would still remain outside the Act. And construing the Longshoremen's Act to coincide with the limits of admiralty jurisdiction—whatever they may be and however they may change—simply replaces one line with another whose uncertain contours can only perpetuate on the landward side of the Jensen line, the same confusion that previously existed on the seaward side. While we have no doubt that Congress

had the power to choose either of these paths in defining the coverage of its compensation remedy, the plain fact is that it chose instead the line in Jensen separating water from land at the edge of the pier. The invitation to move that line landward must be addressed to Congress, not to this Court." Id., at 223–224, 24 L Ed 2d 371, 90 S Ct 347.[17]

In 1972, Congress moved the line.

[432 US 261]

The 1972 Amendments were the first significant effort to reform the 1927 Act and the judicial gloss that had been attached to it. The main concern of the 1972 Amendments was not with the scope of coverage but with accommodating the desires of three interested groups: (1) shipowners who were discontented with the decisions allowing many maritime workers to use the doctrine of "seaworthiness" to recover full damages from shipowners regardless of fault; (2) employers of the longshoremen who, under another judicially created doctrine, could be required to indemnify shipowners and thereby lose the benefit of the intended exclusivity of the compensation remedy; and (3) workers who wanted to improve the benefit schedule deemed inadequate by all parties.[18] Congress sought to meet these desires by "specifically

[432 US 262]

eliminating suits against vessels brought for injuries to longshoremen under the doctrine of seaworthiness and outlawing indemnification actions and 'hold harmless' or indemnity agreements[; continuing] to allow suits against vessels or other third parties for negligence[; and raising] benefits to a level commensurate with present day salaries and with the needs of injured workers whose sole support will be payments under the Act." Rep 5.[19]

In increasing the benefits, however, Congress recognized that the disparity between the federal compensation rates and the significantly

17. The Court reiterated its suggestion to Congress in Victory Carriers, Inc. v Law, supra, which held that a longshoreman injured on the pier by a pier-based forklift could not recover from the shipowner under a warranty of seaworthiness. The Court noted the sturdiness of the Jensen line in the absence of statutory modification. It observed, however, that "if denying federal remedies to longshoremen injured on land is intolerable Congress has ample power under Arts I and III of the Constitution to enact a suitable solution." 404 US, at 216, 30 L Ed 2d 383, 92 S Ct 418.

18. The Report of the Senate Committee on Labor and Public Welfare described the need for the bill:

"The Longshoremen's and Harbor Workers' Compensation Act was last amended in 1961, at which time the maximum benefit under the Act was set at $70 per week. . . . Clearly, in order to provide adequate income replacement for disabled workers covered under this law a substantial increase in benefits is urgently required.

. . . . . .

"While every one has agreed since at least the mid-1960's that the benefits under this Act should be raised, there has been some dispute over the years as to whether such benefits should be raised so long as this compensation law was not the exclusive remedy for an injured worker. It has been the feeling of most employers that while they were willing to guarantee payment to an injured worker regardless of fault, they would only do so if the right to such payment was the exclusive remedy and they would not be subject to additional law suits because of that injury.

"Since 1946, due to a number of decisions by the U. S. Supreme Court it has been possible for an injured longshoreman to avail himself of the benefits of the Longshoremen's and Harbor Workers' Compensation Act and to sue the owner of the ship on which he was working for damages as a result of this injury. The Supreme Court has ruled that such ship owner, under the doctrine of seaworthiness, was liable for damages caused by any injury regardless of fault. In addition, shipping companies generally have succeeded in recovering the damages for which they are held liable to injured longshoremen from the stevedore on theories of express or implied warranty, thereby transferring their liability to the stevedore company, the actual employer of the longshoremen." S Rep 4.

"The end result is that, despite the provision in the Act which limits an employer's liability to the compensation and medical benefits provided in the Act, a stevedore-employer is indirectly liable for damages to an injured longshoreman who utilizes the technique of suing the vessel under the unseaworthiness doctrine." Id., at 9.

"The social costs of these law suits, the delays, crowding of court calendars and the need to pay for lawyers' services have seldom resulted in a real increase in actual benefits for injured workers." Id., at 4.

19. See Pub L 92-576, §§ 5–11, 18, 86 Stat 1253.

lower state rates would exacerbate the harshness of the already unpopular Jensen line. It also realized that modern technology had moved much of the longshoreman's work onto the land so that if coverage were not extended, there would be many workers who would be relegated to what Congress deemed clearly inadequate state compensation systems.

To remedy these problems, Congress extended the coverage shoreward. It broadened the definition of "navigable waters of the United States" to include "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."[23] At the same time, Congress amended the definition of the persons covered

[432 US 264]

by the Act. Previously, so long as a work-related injury occurred on navigable waters and the injured worker was not a member of a narrowly defined class, the worker would be eligible for federal compensation provided that his or her employer had at least one employee engaged in maritime employment. It was not necessary that the injured employee be so employed. Pennsylvania R Co. v O'Rourke, 344 US 334, 340-342, 97 L Ed 367, 73 S Ct 302 (1953). But with the definition of "navigable waters" expanded by the 1972 Amendments to include such a large geographical area, it became necessary to describe affirmatively the class of workers Congress desired to compensate. It therefore added the requirement that the injured worker be "engaged in maritime employment," which it defined to include "any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, but . . . not . . . 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." 33 USC § 902(3) (1970 ed Supp V) [33 USCS § 902(3)].

The 1972 Amendments thus changed what had been essentially

[432 US 265]

only a "situs" test of eligibility for compensation to one looking to both the "situs" of the injury and the "status" of the injured. We must now determine whether respondents Caputo and Blundo satisfied these requirements.

III

We turn first to the question whether Caputo and Blundo satisfied the "status" test—that is, whether they were "engaged in maritime employment" and therefore "employees" at the time of their injuries.[24] The question is made difficult

23. The definition of "employer" was changed so as to correspond with the broadened definition of navigable waters. Title 33 USC § 902(4) (1970 ed Supp V) [33 USCS § 902(4)] now reads:

"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)."

24. There is no question in these cases that the injuries "arose out of and in the course of employment" and that the employers are statutory employers. See Pet for Cert App in No. 76-454, pp 53a-54a; Pet for Cert in No. 76-444, pp 52a-53a; Brief for Petitioners in No. 76-444, p 3.

by the failure of Congress to define the relevant terms—"maritime employment," "longshoremen," "longshoring operations"[25]—in either the text of the Act or its legislative history.[26]

[432 US 266]

The closest Congress came to defining the key terms is the "typical example" of shoreward coverage provided in the Committee Reports.[27] The example clearly indicates an

[432 US 267]

intent to cover those workers involved in the essential elements of unloading a vessel—taking cargo out of the hold, moving it away from the ship's side, and carrying it immediately to a storage or holding area. The example also makes it clear that persons who are on the situs but are not engaged in the overall process of loading and unloading vessels are not covered. Thus, employees such as truckdrivers whose responsibility on the waterfront is essentially to pick up or deliver cargo unloaded from or destined for maritime transportation are not covered. Also excluded are employees who perform purely clerical tasks and are not engaged in the handling of cargo. But while the example is useful for identifying the outer bounds of who is clearly excluded and who is clearly included, it does not speak to all situations.[28] In par-

25. As the definition of employee makes clear, the category of persons engaged in maritime employment includes more than longshoremen and persons engaged in longshoring operations. It is, however, unnecessary in this case to look beyond these two subcategories.

This case also does not involve the question whether Congress excluded people who would have been covered before the 1972 Amendments; that is, workers who are injured on navigable waters as previously defined. See Weyerhaeuser Co. v Gilmore, 528 F2d 957 (CA9), cert denied, 429 US 868, 50 L Ed 2d 148, 97 S Ct 179 (1976).

26. The Reports and discussions used only the terms of the statute without elaboration. Thus, for example, the Section-by-Section Analysis in the Senate Report states:

"Section 2(a) amends section 2(3) of the Act to define an 'employee' as any person engaged in maritime employment. The definition specifically includes any longshoreman or other person engaged in longshoreing [sic] operations, and any harborworker, including a ship repairman, shipbuilder and shipbreaker. It does not exclude other employees traditionally covered but retains that part of 2(3) which excludes from the definition of 'employee' masters, crew members or persons engaged by the master to unload, load or repair vessels of less than eighteen tons net." S Rep at 16.

See also HR Rep 14.

And in the section describing the shoreward extension, the Committee Reports state:

"The Committee believes that the compensation payable to a longshoreman or a ship repairman or builder should not depend on the fortuitous circumstance of whether the injury occurred on land or over water. Accordingly, the bill would amend the Act to provide coverage of longshoremen, harbor workers, ship repairmen, ship builders, shipbreakers, and other employees engaged in maritime employment (excluding masters and members of the crew of a vessel) if the injury occurred either upon the navigable waters of the United States or any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other area adjoining such navigable waters customarily used by an employer in loading, unloading, repairing, or building a vessel." S Rep 13; HR Rep 10.

27. "The intent of the Committee is to permit a uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their activity. To take a typical example, cargo, whether in break bulk or containerized form, is typically unloaded from the ship and immediately transported to a storage or holding area on the pier, wharf, or terminal adjoining navigable waters. The employees who perform this work would be covered under the bill for injuries sustained by them over the navigable waters or on the adjoining land area. The Committee does not intend to cover employees who are not engaged in loading, unloading, repairing, or building a vessel, just because they are injured in an area adjoining navigable waters used for such activity. Thus, employees whose responsibility is only to pick up stored cargo for further trans-shipment would not be covered, nor would purely clerical employees whose jobs do not require them to participate in the loading or unloading of cargo. However, checkers, for example, who are directly involved in the loading or unloading functions are covered by the new amendment. Likewise the Committee has no intention of extending coverage under the Act to individuals who are not employed by a person who is an employer, i.e., a person at least some of whose employees are engaged, in whole or in part in some form of maritime employment. Thus, an individual employed by a person none of whose employees work, in whole or in part, on navigable waters, is not covered even if injured on a pier adjoining navigable waters." S Rep 13; HR Rep 10–11.

28. That the example is not exhaustive is clear. Some types of cargo, for example, are never brought to a "holding or storage area" but are placed directly on a truck or railroad car for immediate inland movement. See Brief

ticular, it is silent on the question of coverage for those people, such as Caputo and Blundo, who are injured while on the situs, *see* Part IV, infra, and engaged in the handling of cargo as it moves between sea and land transportation after its immediate unloading.[29]

[432 US 268]

[5] Nevertheless, we are not without guidance in resolving that question. The language of the 1972 Amendments is broad and suggests that we should take an expansive view of the extended coverage. Indeed, such a construction is appropriate for this remedial legislation. The Act, "must be liberally construed in conformance with its purpose, and in a way which avoids harsh and incongruous results." Voris v Eikel, 346 US 328, 333, 98 L Ed 5, 74 S Ct 88 (1953). Consideration of the purposes behind the broadened coverage reveals a clear intent to reach persons such as Blundo and Caputo.

[432 US 269]

[6] One of the primary motivations for Congress' decision to extend the coverage shoreward was the recognition that "the advent of modern cargo-handling techniques" had moved

[432 US 270]

much of the longshoreman's work off the vessel and onto land. S Rep 13; HR Rep 10. Noted specifically was the impact of containerization. Unlike traditional break-bulk cargo handling, in which each item of cargo must be handled separately and stored individually in the hold of the ship as it waits in port, containerization permits the time-consuming work of stowage and unstowage to be performed on land in the absence of the vessel. The use of containerized ships has reduced the costly time the vessel must be in port and the amount of manpower required to get the cargo onto the vessel. In effect, the operation of loading and unloading has been moved shoreward; the container is a modern substitute for the hold of the vessel. As Judge Friendly observed below, "[S]tripping a container . . . is the functional equivalent of sorting cargo discharged from a ship; stuffing a container is part of the loading of the ship even though it is performed on

[432 US 271]

shore and not in the ship's cargo holds." Pittston Stevedoring Corp. v Dellaventure, 544 F2d 35, 53 (CA2 1976). Congress' intent to adapt the IHWCA to modern cargo handling techniques clearly indicates that these tasks, heretofore done on board ship, are included in the category of "longshoring operations."

[2b] It is therefore apparent that respondent Blundo was a statutory "employee" when he slipped on the ice. His job was to check and mark items of cargo as they were unloaded from a container. This task is clearly an integral part of the unloading process as altered by the advent of containerization and was intended to be reached by the Amendments. Indeed, the Committee Reports explicitly state: "[C]heckers, for example, who are directly involved in the loading or unloading functions are

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for Petitioner in No. 76-454, p 38 n 46; Tr of Oral Arg 44. And, while all would agree that persons bringing such cargo directly from a ship to a truck are engaged in maritime employment, see infra, at 274-275, 53 L Ed 2d 339-340, the example does not mention such activity. In addition, while it is incontrovertible that workers engaged in the process of loading a ship and performing steps analogous to those mentioned in the example—that is, moving cargo from storage and placing it immediately on the ship—are covered, the fact is that the example also does not mention these steps. See also discussion, n 38, infra.

29. Accord, Pittston Stevedoring Corp. v Dellaventura, 544 F2d, at 54; Jacksonville Shipyards, Inc. v Perdue, 539 F2d, at 540. The First Circuit in fact accused Congress of "seemingly [going] out of its way to avoid taking any express stance on the status of those engaged in stuffing and stripping containers as part of the loading and unloading process just as it is silent on the status of other terminal employees engaged in moving, storing and culling cargo on the pier." Stockman v John T. Clark & Son of Boston, Inc. 539 F2d, at 274.

covered by the new amendment." S Rep 13; HR Rep 11. We thus have no doubt that Blundo satisfied the status test.[33]

The congressional desire to accommodate the Act to modern technological changes is not relevant to Caputo's case, since

[432 US 272]

he was injured in the old-fashioned process of putting goods already unloaded from a ship or container into a delivery truck. Another dominant theme underlying the 1972 Amendments, however, assists us in analyzing Caputo's status. Congress wanted a "uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their activity." S Rep 13; HR Rep 10–11. It wanted a system that did not depend on the "fortuitous circumstance of whether the injury [to the longshoreman] occurred on land or over water." S Rep 13; HR Rep 10. It therefore extended the situs to encompass the waterfront areas where the overall loading and unloading process occurs. It is the view of the respondent Director of the OWCP that a uniform system must reach "all physical cargo handling activity anywhere within an area meeting the situs [test]." Brief for Federal Respondent 20. "[M]aritime employment," in his view, "include[s] all physical tasks performed on the waterfront, and particularly those tasks necessary to transfer cargo between land and water transportation." Id., at 25. Under this theory, it is clear that the Act would cover someone who, like Caputo, was engaged in the final steps of moving cargo from maritime to land transportation: putting it in the consignee's truck.

We need not decide, however, whether the congressional desire for uniformity supports the Director's view[34] and entitles

[432 US 273]

everyone performing a task such as Caputo's to benefits under the Act. It is clear, at a minimum, that when someone like Caputo performs such a task, he is to be covered. The Act focuses primarily on occupations—longshoreman, harbor worker, ship repairman, shipbuilder, shipbreaker. Both the text and the history demonstrate a desire to provide continuous coverage throughout their employment to these amphibious workers who, without the 1972 Amendments, would be covered only for part of their activity. It seems clear, therefore, that when Congress said it wanted to cover "longshoremen," it had in mind persons whose employment is such that they spend at least some of their time in indisputably longshoring operations and who, without the

33. [2c] We find no significance in the fact that the container Blundo was stripping had been taken off a vessel at another pier and then moved to the site of the injury. Until the container was stripped, the unloading process was clearly incomplete. The only geographical concern Congress exhibited was that the operation take place at a covered situs. See Part IV, infra. It was precisely Congress' intent to accommodate the mobility of containers and the ability to transport and strip them at locations removed from the ship.

34. While the Director identifies this as the BRB's position as well as his own, Brief for Federal Respondent 20, it appears to us that the BRB has gone further than this position suggests. For example, the BRB found that a clerk, who worked in an office processing the paperwork for the delivery of cargo to truckmen for removal from the terminal, was a covered "employee." It reasoned that this function, although clerical in nature, was "essential to the removal of cargo from the terminal and was an integral part of longshoring operations." Farrell v Maher Terminals, Inc. 3 BRBS 42, 45 (1975). Contrary to the view expressed by the Director, the Board showed no concern with the fact that the employee did not handle cargo. Citing the Committee Reports, see n 27, supra, the Third Circuit has rejected this conclusion and granted a petition for review. Maher Terminals, Inc. v Farrell, 548 F2d 476, 478 (1977).

Regardless of whether the view advanced by the Director is the position of the BRB, we agree with Judge Friendly that it would be useful for the BRB to engage in an extensive study of the structure of work on the various piers of the country. While the record before us contains sufficient information to enable us to decide the present cases, such a study will be helpful for future cases.

1972 Amendments, would be covered for only part of their activity.

[1b] That Caputo is such a person is readily apparent. As a member of a regular stevedoring gang, he participated on either the pier or the ship in the stowage and unloading of cargo. On the day of his injury he had been hired by petitioner northeast as a terminal laborer. In that capacity, he could have been assigned to any one of a number of tasks necessary to the transfer of cargo between land and maritime transportation, including stuffing and stripping containers, loading and discharging lighters and barges,[35] and loading and unloading

[432 US 274]

trucks. App 8. Not only did he have no idea when he set out in the morning which of these tasks he might be assigned, but in fact his assignment could have changed during the day. Thus, had Caputo avoided injury and completed loading the consignee's truck on the day of the accident, he then could have been assigned to unload a lighter. Id., at 24. Since it is clear that he would have been covered while unloading such a vessel, to exclude him from the Act's coverage in the morning but include him in the afternoon would be to revitalize the shifting and fortuitous coverage that Congress intended to eliminate.

Petitioners and the NAS seek to avoid these results by proposing a so-called "point of rest" theory. The

35. Lighters and barges are part of the modern technological advancements to which Congress referred when it mentioned "LASH-type vessels." The term LASH is an acronym for "lighter aboard ship." The National Association of Stevedores (NAS) describes the system as follows:

"[C]argo is placed in special uniform size 'lighters,' or barges, which are called LASH barges to differentiate them from river barges. The LASH barges are towed from the loading port to the location of the LASH vessel, which is sometimes called the mother ship. The barges are mechanically loaded by a crane on the mother ship and are stacked in specially constructed holds in the mother ship. The actual stowage or unstowage of the barges with their contents in the mother ship requires substantially fewer longshoremen than does the loading of cargo into a breakbulk type ship. A very similar type of operation called SEABEE differs from the LASH operation described only in the size of the barge and the mechanical means for loading or unloading the barge onto or from the mother SEABEE ship.

"The actual loading of the barges is performed by longshoremen in precisely the same manner traditionally employed in the loading or unloading of a breakbulk ship. However, in most instances the size of the longshore gang involved in LASH and SEABEE operations is smaller than the regular ship's gang primarily because of the smaller size of the barge. The barges are in fact vessels and ply the navigable waters of the United States and may be loaded or unloaded at any inland or coastal waterfront facility." Brief for NAS as Amicus Curiae 27–28.

term "point of rest" is claimed to be a term of art in the

[432 US 275]

industry that denotes the point where the stevedoring operation ends (or, in the case of loading, begins) and the terminal operation function begins (or ends, in the case of loading). Brief for Petitioner in No. 76–454, p 9. See n 4, supra. Petitioners contend that the "maritime employment of longshoremen" includes only "the stevedoring activity of the longshore gang (and those directly involved with the gang) which, in the case of unloading, takes cargo out of the hold of the vessel, moves it away from the ship's side, and carries it to its point of rest on the pier or in a terminal shed." Brief for Petitioner in No. 76–454, p 9. Since Caputo and Blundo were handling cargo that had already reached its first point of rest, petitioners argue they are not to be covered.

[7] This contention that Congress intended to use the point of rest as the decisive factor in the "status" determination has several fatal weaknesses. First, the term "point of rest" nowhere appears in the Act or in the legislative history. It is difficult to understand why, if Congress intended to stop coverage at this point, it never used the term. The absence of a term that is claimed to be so well known in the industry is both conspicuous and telling.

But it is not simply the term's unexplained absence that undermines petitioners' theory. More fundamentally, the

[432 US 276]

theory is simply too restrictive, failing to accomodate either the language or the intent of the 1972 Amendments. The operations petitioners would cover clearly are "longshoring operations" and are appropriately covered by the Act. But petitioners fail to give effect to the obvious desire to cover longshoremen whether or not their particular task at the moment of injury is clearly a "longshoring operation." The theory does not comport with the Act's focus on occupations and its desire for uniformity. As the First Circuit noted: "[T]he evil of the old Act was that it bifurcated coverage for essentially the same employment. The point-of-rest approach would seem to result in the same sort of bifurcation, since the same employee engaged in an activity beyond the point of rest would cease to be covered." Stockman v John T. Clark & Son of Boston, Inc. 539 F2d 264, 275 (1976). In addition, the theory fails to accommodate the intent to cover those longshoring operations that modern technology had moved onto the land. Coverage that stops at the point of rest excludes those engaged in loading and unloading the modern functional equivalents of the hold of the ship. As we have indicated, Congress clearly intended to cover such operations.[38]

38. Moreover, we are not convinced that the point-of-rest theory provides the workable definition that petitioners claim for it. The "point" varies from port to port and with different types of cargo. See, the Stevedore and Marine Terminal Industry of the United States unpublished survey (1974–1975); n 28, supra. The point can be moved seaward or landward at the whim of the employer. Such characteristics make it inconsistent with the uniform system Congress sought to design. As Judge Craven observed, when a panel of the Fourth Circuit adopted the point-of-rest theory and refused to cover persons holding jobs similar to Caputo's and Blundo's:

"[Respondents] will, I think, be surprised to learn that they are not longshoremen, and astonished to discover that they are not engaged in maritime employment of any kind. If they are not, as my brothers hold, then the Congress has labored prodigiously only to have accomplished nothing at all in its effort to simplify the problems of maritime workers'

[432 US 277]

The only support petitioners can find for their theory is the fact that it is consistent with the "typical example" given in the Committee Reports. See n 27, supra. But as we have already indicated, supra, at 266–267, 53 L Ed 2d 334–335, the example is equally consistent with a broader view of coverage. Consistency with an illustrative example is clearly not enough to overcome the overwhelming evidence against the theory.

In view of all this, it is not surprising that the "point of rest" limitation has been rejected by all but one of the Circuits that have considered it and by virtually all the commentators.

[432 US 278]

We too reject it. A theory that nowhere appears in the Act, that was never mentioned by Congress during the legislative process, that does not comport with

[432 US 279]

Congress' intent, and that restricts the coverage of a remedial Act designed to extend coverage is incapable of defeating our conclusion that Blundo and Caputo are "employees."

IV

Having established that respondents Blundo and Caputo satisfied the "status" test for coverage under the Act, we consider now whether their injuries occurred on a covered "situs"—"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)."

[3b] There is no dispute with respect to Caputo. The truck he was helping to load was parked inside the terminal area. As petitioner Northeast correctly concedes, this situs "unquestionably met the requirements of § 3(a) of the Act, . . . because the terminal adjoins navigable waters of the United States and parts of the terminal are used in loading and unloading ships." Brief for Petitioners in No. 76–444, p 3 n 1.

[4b] Blundo's injury was sustained while he was checking a container being stripped on a pier located within a facility known as the 21st Street Pier. The fenced-in facility was located on the water and ran between 19th and 21st Streets. It included

[432 US 280]

two "finger-piers." The pier on the 21st Street end was used to berth ships for purposes of loading and unloading them. The one on the 19th Street end was used only for stripping and stuffing containers and storage. See the Administrative Law Judge's decision in Pet for Cert App in No. 76–454, pp 52a–53a. Blundo was working on this latter pier.

Petitioner ITO argues that Blundo was not on a covered situs because the 19th Street Pier was not "customarily used by an employer for loading [or] unloading . . . a vessel." The Court of Appeals labeled this argument "halfhearted" and dismissed it in a footnote. 544 F2d, at 51 n 19. We agree that the argument does not merit extended discussion.

First, we agree with the court below that it is not at all clear that

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compensation. . . . Henceforth, injured employees and their counsel must comb the waterfronts of this circuit, probing hopelessly, like Diogenes with his lantern, for that elusive 'point of rest' upon which coverage depends." I.T.O. Corp. of Baltimore v BRB, 529 F2d 1080, 1089 (CA4 1975) (dissenting opinion), modified en banc, 542 F2d 903 (1976).

the phrase "customarily used" was intended to modify more than the immediately preceding phrase "other areas." We note that the sponsor of the bill in the House, Representative Daniels, described this section as "expand[ing] the coverage which was limited to the ship in the present law, to the piers, wharves, and terminals." 118 Cong Rec 36381 (1972). There was little concern with respect to how these facilities were used.

[432 US 281]

Second, even if we assume that the phrase should be read to modify the preceding terms, we agree with the BRB and the Court of Appeals that Blundo satisfied the situs test in the same way that Caputo did—by working in an "adjoining . . . terminal . . . customarily used . . . in loading [and] unloading." The entire terminal facility adjoined the water and one of its two finger-piers clearly was used for loading and unloading vessels.

Accordingly, we conclude that when Congress sought to expand the situs to avoid anomalies inherent in a system that drew lines at the water's edge, it intended to include an area such as the one at issue here. Accord, Stockman v John T. Clark & Son of Boston, Inc. 539 F2d, at 271–272; I.T.O. Corp. of Baltimore v BRB, 529 F2d 1080, 1083–1084 (CA 1975), modified en banc, 542 F2d 903 (1976).

Since we find that both Caputo and Blundo satisfied the status and the situs tests, we affirm.

It is so ordered.