

WORKER'S COMPENSATION

May 2020



TAYLOR WELLONS POLITZ DUHE

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Scott has committed over 27 years finding the most efficient and cost-effective ways to close claims for his employer and insurance company clients, whether the claim involves a work-related injury, an auto accident, an alleged wrongful termination, or subrogation. Sometimes the best option is reaching a favorable compromise, and other times it is proving in court that his client owes nothing. Whatever the case, Scott's creative and proactive approach to resolving disputes gets the job done. Experience, creativity, and efficiency; it is what Scott will bring to your case every time.

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U.S. DEPT. OF LABOR EXPANDS ONLINE FORMS FOR LHWCA CLAIMS

In an effort to further streamline the administrative process associated with Longshore and Harbor Worker's Compensation Act claims, the Department of Labor has expanded its online offerings of LHWCA Forms to include the following:

- **Form LS-4** - Attorney Fee Approval Request
- **Form LS-5** - Application for Special Fund Relief
- **Form LS-6** - Communication Application
- **Form LS-7** - Request for Intervention
- **Form LS-8** - Settlement Approval Request Section 8(i)
- **Form LS-9** - Stipulation Approval Request

Aside from the Form LS-8, Settlement Approval Request, the Forms should be uploaded online via Seaportal, or mailed to the DOL's central mail receipt site: U.S. Department of Labor, Office of Workers' Compensation Programs, Division of Longshore and Harbor Workers' Compensation, 400 W Bay St, Suite 63A, Box 28, Jacksonville, FL 32202. The Forms can be accessed here: <https://www.dol.gov/owcp/dlhwc/lforms.htm>.

The administration is also now accepting electronic signatures, but advises that the submitting party must maintain a record showing the date the signature was made and how the signature was obtained, in order to avoid any dispute regarding the signature authenticity. For more information on this new convenience, please see [Industry Notice 179, Electronic Signatures](#), or give us a call.

COURT REFUSES TO AWARD PENALTIES AND FEES FOR ALLEGED FAILURE TO UNCONDITIONALLY TENDER SETTLEMENT AMOUNT

The Third Circuit Court of Appeal declined to award penalties and attorney's fees to claimant based on allegations that the employer failed to unconditionally tender the amount due under a settlement. The employer submitted the settlement funds to claimant, but had included an endorsement on the back of the check as follows:



By endorsing this check, I certify that I have not worked for or earned wages from any business or individual during the period covered by this check, or that I have reported any earnings to the employer/carrier paying me workers' compensation benefits. I understand that making a false statement by endorsing this benefit check may result in civil or criminal penalties.

The Court noted that the claimant's counsel never sought permission from the employer's counsel to remove the endorsements before filing suit, although she had done so on other claims with counsel. For this reason, the Court declined to award penalties and fees in this case. However, it did not suggest that the endorsement would have been valid. *Zinn v. Zagis USA, LLC*, 2019-773 (La. App. 3 Cir. 4/22/20).

LHWCA: TECHNICIAN WORKING ON A PLATFORM ON A FLOATING PONTOON MET THE "SITUS" AND "STATUS" TESTS

The federal 5th Circuit Court of Appeals issued a recent LHWCA decision that addressed "situs" and "status," the two requirements to coverage under the Act. Claimant worked for MMR Constructors as a technician. He was injured assisting with electrical wiring during the construction of a tension-leg platform. The platform was under construction while on floating pontoons that were connected to land by steel cables and utility lines. In affirming the decision of the Benefits Review Board, the 5th Circuit first addressed the "situs" requirement, which includes navigable waters and certain adjoining land areas. The court emphasized that the extent to which a craft or pier is permanently attached to land is a critical determination. The Court held that "it is clear that if a craft resting on navigable waters is permanently attached to land, then the water underneath the craft is removed from navigation and is not navigable under the Act." Because the platform upon which claimant was injured was only temporarily attached, the water underneath it was still considered navigable. As such, the claimant met the situs requirement. In finding that claimant also met the "status" test, the Court noted that anyone who met the situs test is considered to have been working in "maritime employment" such that they would likely be considered a maritime employee as long as their presence on navigable water was more than "transient or fortuitous". MMR employed at least one employee, the claimant, who had been engaged in maritime employment for several months on navigable waters before this accident, which established that MMR was a maritime employer under to the Act. The 5th Circuit followed an expansive, rather than restrictive application of the Act. *MMR Constructors v. Dept of Labor*, No. 19-600027 (5th Cir. 03/26/2020).



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