

## PART I

### INTRODUCTION

#### **E. INCORPORATION OF THE PROVISIONS OF THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT (LHWCA) INTO THE ACT THROUGH SECTION 422**

Section 422 of the Act, 30 U.S.C. §932, incorporates the provisions of the Longshore and Harbor Workers' Compensation Act (LHWCA) as amended. The phrase "and as it may be amended from time to time" was added by the Reform Act. Some difficulty had arisen in the interpretation of this section in that Section 422 was added to the Act in early 1972 and subsequently, in late 1972, the LHWCA itself was amended. It had been contended that Section 422 only incorporated the LHWCA prior to its 1972 amendments. The Board and several United States Courts of Appeals, however, held that Section 422 effectively incorporated the appropriate provisions of the LHWCA, including any present or future amendments. See *Director, OWCP v. Eastern Coal Co.*, 561 F.2d 632 (6th Cir. 1977); *Director, OWCP v. Alabama By-Products Corp.*, 560 F.2d 710 (5th Cir. 1977); *Krolick Contracting Co. v. Benefits Review Board*, 558 F.2d 685 (3d Cir. 1977); *Director, OWCP v. National Mines Corp.*, 554 F.2d 1267 (4th Cir. 1977); *Director, OWCP v. Peabody Coal Co.*, 554 F.2d 310 (7th Cir. 1977). The Reform Act essentially adopted the holding of these cases.

It should be noted that Section 422 incorporates the provisions of the LHWCA, providing that every provision not specifically excluded is incorporated. 30 U.S.C. §932. The LHWCA sections that are therefore incorporated into the Act are as follows: Sections 5, 6, 7, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, 36, 39, 40 and 42. In recognition of the possibility that some of the LHWCA sections incorporated may not be completely compatible with the provisions of the Act, Section 422 provides that the LHWCA is incorporated "except as otherwise provided ... by regulations of the Secretary." In addition, the Act includes the Trustees of the Trust Fund as substitutes for references to "employer" under LHWCA, "as the Secretary considers appropriate and as is consistent with the provisions of Section 9501(d) of Title 26." For a discussion of the extent to which this grant of power to the Secretary is restrained, see *Republic Steel Corp. v. Director, OWCP*, 590 F.2d 77 (3d Cir. 1978).

### **CASE LISTINGS**

## DIGESTS

Section 422 of the Act, 30 U.S.C. §932(a), incorporates the provisions of the LHWCA except as otherwise provided. The Ninth Circuit in ***Metropolitan Stevedore Co. v. Brickner***, 11 F.2d 887 (9th Cir. 1993), held that neither the district director, the administrative law judge nor the Board has the authority to assess a party's costs as sanction against a claimant who institutes or continues, without reasonable grounds, workers' compensation proceedings under the LHWCA. The Court determined that only a federal court can impose Section 926 costs in those claims. The Board has determined that it will adopt the holding in ***Brickner*** and will apply it to cases arising under the Act. Thus, pursuant to ***Brickner***, the Board denied employer's motion for relief under Section 926 of the LHWCA. \*[While not cited in this decision, 20 C.F.R. §725.483 supports the holding herein.]\* ***Crum v. Wolf Creek Collieries***, 18 BLR 1-81 (1994)

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