

## Arkansas Court of Appeals: Longshore Harbor Workers' Compensation Act Payments Not Assignable

In a recent unanimous decision, a three-judge panel of the Arkansas Court of Appeals held that Section 916 of the Longshore and Harbor Workers' Compensation Act (LHWCA)<sup>1</sup> bars the transfer of LHWCA structured settlement annuity payment rights.<sup>2</sup> The decision serves as a rebuke to factoring companies seeking to attempt to acquire such structured settlement annuity payments in exchange for steeply discounted lump-sum payments.

The LHWCA is a federal workers' compensation act that mandates coverage to certain maritime workers, including most dock workers and maritime workers not otherwise covered by the Jones Act.<sup>3</sup> The LHWCA also applies to, among others, U.S. government contractors working in foreign countries under the Defense Base Act.<sup>4</sup>

The *Hill* case concerned an LHWCA structured settlement that arose from work-related injuries Mr. Hill suffered while working in Afghanistan. A settlement was reached between Mr. Hill, his employer, and the employer's insurer, and provided for a structured settlement annuity which was owned by MetLife Assignment Company, Inc. and issued by Metropolitan Tower Life Insurance Company (collectively, MetLife). Mr. Hill subsequently sought to transfer his LHWCA payments to Roosevelt Lane Partners for a discounted lump-sum payment in accordance with the Arkansas Structured Settlement Protection Act (ARSSPA).<sup>5</sup> Disregarding MetLife's objection, the trial court approved the transfer, and MetLife appealed. The Court of Appeals reversed the trial court's approval, holding that it was barred by the clear anti-assignment language in Section 916.

Section 916 provides:

No assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid, and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.<sup>6</sup>

Despite this clear anti-assignment language, the United States Court of Appeals for the Eleventh Circuit had previously held that the recipient of an LHWCA structured settlement annuity could use the annuity payments as collateral for a business loan.<sup>7</sup> In *Sloma*, the Eleventh Circuit held that the annuity payments were not "due and payable" under the LHWCA because "they were made to him by a third party" and the "purpose of the anti-assignment provisions of the Act to benefit an injured employee was served and ended once the amount of the award of \$180,000.00 was paid [...] by the payment of \$10,000.00 and the purchase, in his behalf, of an annuity for \$170,000.00."<sup>8</sup> The *Sloma* court found that Section 916 did not apply because the payments to be transferred had, in its estimation, already been made and, as a result, were no longer "due and payable."

The *Hill* court resoundingly rejected *Sloma*, favoring the persuasive reasoning of the Pennsylvania Superior Court in *In re C. Dwyer*,<sup>9</sup> and the Texas Court of Appeals in *In re Great Plains Management Corp.*<sup>10</sup> In *Dwyer*, the court construed Section 916 according to its plain meaning to prohibit the transfer structured settlement annuity payments where the annuity arose as part of an LHWCA settlement. Similarly, in *Great Plains*, the court concluded that Section 916 prohibited the assignment of LHWCA structured settlement payment rights, and thus, the trial court improperly approved a transfer under the Texas SSPA. Agreeing with the interpretations of *Dwyer* and *Great Plains*, in *Hill*, the Arkansas Court of Appeals held that Section 916 barred Mr. Hill from transferring his LHWCA structure settlement payment rights. As a result, the court reversed the order approving the transfer and remanded the case for further proceedings.



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### Related Practice Areas

- Life Insurance & Annuities

The *Hill* decision provides yet additional support that LHWCA structured settlement payments are not assignable and effectively reduces *Sloma* to the aberration that structured settlement obligors and annuity issuers have always said it was.

<sup>1</sup> 33 U.S.C. § 901 *et seq.*

<sup>2</sup> *Metropolitan Tower Life Ins. Co, et al. v. Roosevelt Partners Corp., et al.*, 2023 Ark. App. 105 (Ark. Ct. App. 2023) (*Hill*)

<sup>3</sup> 46 U.S.C. § 30104.

<sup>4</sup> 14 U.S.C § 1461 *et seq.*

<sup>5</sup> Ark. Code Ann. § 23-81-701 *et seq.*

<sup>6</sup> 33 U.S.C. § 916.

<sup>7</sup> *See In Re Sloma*, 43 F.3d 637 (11th Cir. 1995).

<sup>8</sup> *Sloma* at 640.

<sup>9</sup> No. 149 WDA 2016, 2017 WL 384113, at \*4 (Pa. Super. Ct. Jan. 27, 2017) .

<sup>10</sup> 2022 WL 2960228 (Tex. App. 2022).

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