



LONGSHORE NEWSLETTER

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Fifth Circuit Reaffirms Statutory Fee Award Scheme

While the Ninth Circuit was reinventing fee awards under the Longshore Act, the Fifth Circuit reasserted its traditional view that the statute only allows fee awards against employers in limited circumstances. *Andrepoint v. Murphy Exploration and Production Co.*, 566 F.3d 415 (5th Cir. 2009), *aff'g* 41 BRBS 1 (2007).

Robert Andrepoint injured his left knee on May 14, 1999, but was able to continue working his offshore schedule seven days on and seven days off until April of 2000. He had five successful surgeries on his knee. He was paid temporary total disability from April 22, 2000, to December 12, 2001. The treating doctor found he reached maximum medical improvement on December 13, 2001, and the employer voluntarily initiated payment for PPD of 26% to the left leg. Andrepoint filed a claim for compensation on November 18, 2002, for permanent total disability benefits. Murphy's payments were continuing at that time and were made through the payment of the scheduled rate. Following an informal conference in September 2003, the claims examiner concluded the employer established suitable alternate employment and made no further compensation. The employer formally accepted this recommendation but claimant asked for a referral to an administrative law judge.

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