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Are A Jones Act Seaman's Wages Really Exempt From Garnishment?

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Federal agencies appear to be utilizing a new method for garnishing seaman's wages, which have historically been protected from garnishment by the seaman's non-garnishment statute, 46 U.S.C. §11109(a) (formerly 46 U.S.C. §601). Specifically, federal agencies are relying upon the Debt Collection Improvement Act of 1996, 31 U.S.C. §§3701, *et seq.*, (DCIA), to issue wage garnishment orders to recover all types of debts owed to the federal government, including student and FEMA loans.

In general, the seaman's non-garnishment statute prohibits the attachment of seaman's wages and provides as follows:

> Wages due or accruing to a master or seaman are not subject to attachment or arrestment **from any court**, except for an order of a court about the payment by a master or seaman of any part of the master's or seaman's wages for the support and maintenance of the spouse or minor children of the master or seaman, or both. A payment of wages to a master or seaman is valid, notwithstanding any prior sale or assignment of wages or any attachment, encumbrance, or arrestment of the wages.

(Emphasis added.) Here, the operative phrase is "from any court,' which requires some type of judicial authorization for the garnishment order.

The limited case law regarding the seaman's non-garnishment statute has previously recognized two exceptions to the statute. First, the statute has an express exception for the enforcement of payments owed to the spouse or minor child of a seaman. *See Hill v. Hill,* 1965 WL 149633 (E.D. La. 1965). The second exception has been judicially established and permits garnishment for purposes of satisfying a federal tax liability. *See U.S. v. Offshore Logistics International, Inc.,* 483 F.Supp. 1055 (W.D. La. 1979); 26 U.S.C. §6334. Up until the more recent proliferation of wage garnishment orders from administrative agencies, these were the only permitted reasons for garnishing a seaman's wages.

Yet federal agencies have taken the position that they do not actually need a court order to collect a debt owed by a seaman. Rather, "[a]n administrative wage garnishment requires only a 'debt' to the United States, not a judgment." *David v. Vislack*, C.A. No. 11-3383, 2013 WL 6865425, *5 (C.D. Ill. Dec. 31, 2013) (finding that the USDA could issue a wage garnishment order pursuant to DCIA to a housing program borrower's employer). Federal agencies are interpreting DCIA as a comprehensive statutory and regulatory scheme that permits debt collection without first obtaining or seeking court approval. Further, it does not appear that the debt owed needs to be tax-related, but instead can be related to a non-tax debt as well.

A federal regulation addressing DCIA defines "debt" as

> **any** amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by an individual, including debt administered by a third party as an agent for the Federal Government.

31 C.F.R. §285.11(c) (emphasis added).

An exclusive list of claims to which DCIA does not apply is enumerated in 31 U.S.C. §3711(g)(2). The only debts to which DCIA does not apply are ones owed under the Internal Revenue Code, Social Security Act, or tariff laws. This section of DCIA does not contain any exception for debts owed by seamen.

Numerous federal agencies have adopted similar interpretations of DCIA and the recovery of certain debts. For example, a July 2007 report issued by the Administrative Wage Garnishment Compliance branch of the Department of Education states:

> After conferring with the cognizant officials here and with my counterparts at Treasury, we believe that the HEA authorizes collection by administrative wage garnishment from 'seamen' and other protected by 46 U.S.C. Section 11109, Merchant Seamen Protection and Relief Act. This provision clearly protects 'seamen'—which term apparently also covers longshoremen from judicial garnishment. It states, in pertinent part,

'No wages due or accruing to any ... seaman ... shall be subject to attachment or arrestment from any court.'

> We do not see this prohibition as applicable to HEA garnishment orders, which are issued by an administrative agency, and not by court.

(Emphasis in original.) Considering the above, federal agencies appear to be making a clear distinction between wage garnishment orders issued by a court compared with those issued by a federal agency.

The argument that a seaman's wages can be garnished by an administrative order pursuant to DCIA is further buttressed by various rules related to federal regulations. For example, the Department of Education's 2003 rule suggests that because DCIA was passed more recently, it should supersede the older seaman's non-garnishment statute. *See* 34 C.F.R. §34, Appendix, Analysis of Comments and Changes. The seaman's non-garnishment statute was passed in 1983 and amended in 1984, approximately 13 years prior to DCIA.

The Department of Education has also adopted the position that Congress clearly intended for DCIA to apply to already existing statutory schemes. Accordingly, there is some support for the proposition that Congress's enactment of DCIA was meant to be comprehensive in nature and would supersede any inconsistent authority, including any statute that had previously limited certain actions, such as the seaman's non-garnishment statute.

Thus, employers should be mindful of these wage garnishment orders and the authority under which the various federal agencies purport to be acting. These federal agencies appear to be mindful of the seaman's non-garnishment statute and are making a narrow distinction between wage garnishment orders issued by a federal agency and those issued by a court. While the seaman's non-garnishment statute remains on the books, it appears that DCIA may supersede it in some contexts and that federal agencies are creatively working around certain statutory prohibitions. We will continue to monitor these developments.

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