

## **Buren, David**

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### **COVERAGE AND EXCLUSIONS**

#### **Longshore and Harbor Workers' Compensation Act**

The Department must make its own determination regarding federal coverage, rather than wait for the pending federal claim to be resolved. [RCW 51.12.100.] ...*In re David Buren*, BIIA Dec., 65,127 (1984) [*Editor's Note*: See later statutory amendments, Laws of 1988, ch. 271, § 1 (RCW 51.12.102).]

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1           way, marine railway or other adjoining area customarily used by an  
2 employer in loading, unloading, repairing, or building a vessel)."  
3 (Emphasis supplied) 33 U.S.C.A. § 903(a).  
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5 Thus, it would appear to be indisputable that Mr. Buren's claim is covered under the federal Act. In  
6 point of fact, the claimant's trial brief notes that he has filed a claim for benefits for his asbestosis  
7 under the federal Act. This being the case, the claimant's claim for asbestosis under our state's  
8 Workers' Compensation Act is foreclosed by RCW 51.12.100, to wit:  
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10           "The provisions of this title shall not apply to a master or member of a  
11 crew of any vessel, or to employers and workers for whom a right or  
12 obligation exists under the maritime laws for personal injuries or death of  
13 such workers." (Emphasis added)  
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16 The fact that the claim herein is predicated on an "occupational disease" rather than an "injury" is of  
17 no legal consequence inasmuch as the two terms are synonymous under the federal Act.  
18 Specifically 33 U.S.C.A. § 902(2) provides:  
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20           "The term 'injury' means accidental injury or death arising out of and in  
21 the course of employment, and such occupational disease or infection  
22 as arises naturally out of such employment..." (Emphasis supplied).  
23

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25 The claimant, however, contends that RCW 51.12.100, supra, cannot legally bar his claim for  
26 benefits under our state Act prior to a formal adjudication of his claim under the federal Act by the  
27 federal authorities. The claimant's position in this regard is set forth in his trial brief as follows:  
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29           "Until such time as Mr. Buren is adjudicated to have a remedy under the  
30 federal statute, RCW 51.12.100 cannot act as a bar to his recovery  
31 under the Washington Workmen's [sic] Compensation Act. By definition,  
32 no right or obligation exists under the federal maritime laws for the loss  
33 of pulmonary function sustained by the claimant until there is a formal  
34 adjudication. Mere filing for benefits under the federal law does not  
35 mean he will receive them."  
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37 We do not agree. In our opinion, the provisions of RCW 51.12.100 make it incumbent upon the  
38 Department in those cases involving maritime employment to make its own determination as to  
39 federal coverage for the purpose of determining if our Act is applicable to the claim. Our decision in  
40 this regard accords with the court's disposition in the most recent case of Lindquist v. Department  
41 of Labor and Industries, 36 Wn. App. 646 (1984), wherein the court made its own determination as  
42 to coverage of the claim therein under the state and federal Act despite the fact that the claimant  
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1 therein had also filed a claim under the federal Act which was pending before the federal  
2 authorities.  
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4 In sum, we hold and conclude that the claimant's remedy for coverage of his asbestosis  
5 condition properly lies under the Federal Longshoremen's and Harbor Workers' Act, 33 U.S.C.A.  
6 §901 et.seq. Therefore the provisions of Title 51, RCW, are inapplicable to his claim herein.  
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8 The facts herein having been stipulated, and therefore uncontested, no findings will be  
9 entered. RCW 51.52.106.  
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11 It is so ORDERED.  
12

13 Dated this 31st day of May, 1984.  
14

15 BOARD OF INDUSTRIAL INSURANCE APPEALS  
16

17 /s/  
18 MICHAEL L. HALL Chairman  
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20 /s/  
21 FRANK E. FENNERTY, JR. Member  
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