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by such other methods would not be against equity and good conscience.

§ 340.12 Waiver not a matter of right.

A waiver under § 340.10 or § 340.11 is not a matter of right, but is at all times within the judgment of the Board.

§ 340.13 Compromise of amounts recoverable.

The Board or its designee may compromise an amount recoverable, provided such amount does not exceed \$100,000, excluding interest, or such higher amount as the Attorney General may from time to time prescribe. Compromise of an amount recoverable may not be considered in any case in which there is an indication of fraud, the presentation of a false claim or misrepresentation on the part of the debtor or his representative. Compromise is at all times within the discretionary authority of the Board or its designee.

[Board Order 27-22, 32 FR 3341, Feb. 28, 1967, as amended at 62 FR 41271, Aug. 1, 1997]

§ 340.14 Factors due to be considered in a compromise.

The following indicate the character of reasons which will be considered in approving a compromise:

(a) The debtor's ability to repay the full amount within a reasonable time;

(b) The debtor's refusal to pay the claim in full and the Board's inability to effect collection in full within a reasonable time by other collection methods;

(c) Doubt concerning the Board's ability to prove its case in court for the full amount because of a bona fide dispute as to the facts or because of the legal issues involved;

(d) The cost of collecting the amount recoverable does not justify the enforced collection of the full amount.

§ 340.15 Suspension or termination of collection action.

Collection action on a Board claim may be suspended or terminated under the following conditions:

(a) Collection action on a Board claim may be suspended temporarily when the debtor cannot be located and there is reason to believe future collection action may be productive or col-

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lection may be effected by offset in the near future.

(b) Collection action may be terminated when:

(1) The debtor is unable to make any substantial payment;

(2) The debtor cannot be located and offset is too remote to justify retention of the claim;

(3) The cost of collection action will exceed the amount recoverable;

(4) The claim is legally without merit or cannot be substantiated by the evidence.

§ 340.16 Debt collection.

(a) The Associate Executive Director for Unemployment and Sickness Insurance shall take steps to collect all delinquent debts due the Board under the benefit provisions of the Act, except those that have been classed as uncollectible. Such steps shall commence not later than July 1, 1985 and shall include notice to each debtor of the time limit for paying the debt and the consequences of failure to pay on time.

(b) It shall be the duty of every employer or other person paying remuneration for time lost or any sum or damages for personal injury to remit the amount of reimbursement due the Board, if any, within 30 days of the date of the payment of remuneration or damages to an employee. Failure to remit the amount due within 30 days shall subject the employer or other person to interest and penalties, in addition to the principal amount due the Board.

[50 FR 36872, Sept. 10, 1985]

PART 341—STATUTORY LIEN WHERE SICKNESS BENEFITS PAID

Sec.

341.1 Lien.

341.2 Sum or damages paid or payable.

341.3 Notice of lien.

341.4 Information required to be furnished by the employee.

341.5 Amount of reimbursement.

341.6 Report of settlement or judgment.

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Railroad Retirement Board

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AUTHORITY: Sec. 323, Pub. L. 79-572, 60 Stat. 740, 741; 45 U.S.C. 362(o).

SOURCE: 49 FR 570, Jan. 5, 1984, unless otherwise noted.

§ 341.1 Lien.

After notice in accordance with this part, the Board shall have a lien upon any sum or damages paid or payable to an employee based upon an infirmity for which the employee received sickness benefits.

§ 341.2 Sum or damages paid or payable.

(a) The term "sum or damages paid or payable" means the amount of money that an employee recovers because of any claim of liability based upon his or her injury or illness.

(b) The term "sum or damages paid or payable" does not include:

(1) An amount specified in a settlement or award as payment for any loss of property, or the amount of a settlement or award specifically apportioned as pay for lost time.

(2) An amount paid as a result of a lawsuit based on wrongful death.

(3) Workers' compensation payments.

(4) "No-Fault" personal-injury protection benefits or any other benefits paid under a health, sickness, accident or similar insurance policy carried by an employee.

(5) Payments made to an employee under the terms of his or her insurance policy providing for payment of all amounts that the employee is legally entitled to recover for bodily injury from the owner or operator of an uninsured motor vehicle.

§ 341.3 Notice of lien.

(a) *Notice to alleged tortfeasor.* The Board shall mail a "Notice of Lien" to each person or company identified as liable or potentially liable for causing the employee's infirmity. The "Notice of Lien" will notify the person or company of the Board's right to reimbursement. The notice shall include:

(1) The employee's name, address and social security number;

(2) The date and place of the accident; and

(3) The employee's occupation, if injured on duty.

(b) *Notice to employee.* A notice regarding repayment of sickness benefits shall be sent to an employee who names a party other than a railroad as the alleged tortfeasor.

(c) *Notice of amount of lien.* The amount of the Board's lien shall be reported, upon request, to a railroad or other person or company that may be liable for paying damages, or to the employee, or to an attorney representing any of those parties. The amount of the lien shall be reported whether or not the terms of a settlement have been agreed upon. When requested, a list showing the sickness benefits paid for each claim period may be furnished.

§ 341.4 Information required to be furnished by the employee.

(a) When applying for sickness benefits, an employee shall report the name and address of the person or company, if any, who is alleged to have caused his or her infirmity. The employee shall also provide whatever other details are reasonably needed so that the Board may establish its lien.

(b) The employee shall, upon request, tell the Board whether and from whom he or she has collected any damages for the infirmity.

(Approved by the Office of Management and Budget under control number 3220-0036)

[49 FR 570, Jan. 5, 1984, as amended at 52 FR 11018, Apr. 6, 1987]

§ 341.5 Amount of reimbursement.

(a) The Board shall receive as reimbursement the lesser of:

(1) The amount of sickness benefits paid to the employee for the infirmity for which he or she recovers any sum or damages; or

(2) The net amount of the sum or damages paid to the employee for the infirmity, after subtracting the amount of the expenses listed in paragraph (b) of this section.

(b) The expenses that may be subtracted from the amount of damages recovered are:

(1) The medical and hospital expenses that the employee incurred because of his or her injury. These expenses are deductible even if they are paid under an insurance policy covering the employee or are covered by his or her

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membership in a medical or hospital plan or association. But such expenses are not deductible if they are not covered by insurance or by membership in a medical or hospital plan or association and are consequently paid by a railroad or other person directly to the doctor, clinic or hospital that provided the medical care or services.

(2) The cost of litigation. This includes both the amount of the fee to which the attorney and the employee have agreed and the other expenses that the employee incurred in the conduct of the litigation itself.

§ 341.6 Report of settlement or judgment.

(a) When a person or company makes a settlement or must satisfy a final judgment based on an injury for which the employee received sickness benefits, the person or company shall notify the Board of the settlement or judgment. That notice shall be in writing and submitted within five days of the settlement or final judgment. That notification shall contain:

(1) The amount of the settlement or final judgment;

(2) The date of the settlement or final judgment; and

(3) The amount withheld from the settlement or final judgment to satisfy the Board's lien.

(b) Payment of the amount due the Board shall be delivered to the Board within 30 days after the date of the settlement agreement or the entry of final judgment.

(c) If the damages payable are to be paid directly to the court to satisfy a final judgment, thus making it impossible for the person or company to remit the amount of reimbursement due the Board, the person or company shall immediately notify the Board of the situation.

§ 341.7 Liability on Board's claim.

(a) A person or company paying any sum or damages to an employee who has received sickness benefits from the Board shall, upon receipt of notice as provided in § 341.3(a), be liable to the Board for the amount of reimbursement computed under § 341.5. This liability may be relieved by either:

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(1) Withholding the amount reimbursable to the Board from the sum or damages payable to the employee, and subsequently paying that amount to the Board; or

(2) Including the U.S. Railroad Retirement Board as a payee on the check or draft along with the employee and any others who have an interest in the damages.

(b) If the person or company paying the damages does not protect the Board's lien or attempts to protect the Board's lien in some manner other than those described in paragraph (a) of this section, that person or company shall remain liable to the Board until the Board is reimbursed in full.

§ 341.8 Termination of sickness benefits due to a settlement.

(a) Sickness benefits payable to an eligible employee shall be paid without regard to whether any person or company may be liable for causing the employee's infirmity. However, the Board will terminate the payment of sickness benefits upon receipt of an oral or written report that a settlement or final judgment for the infirmity has been made.

(b) A report of settlement shall be made to the Division of Claims Operations, Bureau of Unemployment and Sickness Insurance, and shall include the information required in § 341.6. Where the report is an oral report, and the informant is neither the employee nor his or her representative, the informant shall be told that written confirmation containing the information called for by § 341.6 must be submitted to the Board within five days from the date of the oral report.

(c) If, in the case of an oral report, the written confirmation as described in paragraph (b) of this section is not received within five days, the Division of Claims Operations shall take steps within five additional working days to verify whether there has been a settlement or final judgment. If there has been no settlement or final judgment, the payment of sickness benefits shall be reinstated.

(d) Within five days of the notification of a settlement or final judgment, the Board shall inform the employee of the report of the settlement or final

judgment. The notice to the employee shall state how the employee may inform the Board that there has not been a settlement or final judgment. If the employee states that there has not been a settlement or final judgment, the adjudicating office shall, within 10 days after the receipt of such a statement, make a determination as to the employee's rights to future sickness benefits and shall notify him or her accordingly.

(e) An employee shall have the right to appeal from the determination of the amount of sickness benefits recoverable from the settlement or judgment.

An employee shall also have the right to appeal the termination of his or her sickness benefits after the report of a settlement or final judgment made in accordance with the procedures provided in paragraphs (b), (c) and (d) of this section. Such appeals shall be filed and processed in accordance with part 320 of these regulations.

§ 341.9 Board as a party; attorney's fee.

(a) The Board shall not participate in the prosecution of a personal-injury claim of an employee eligible for sickness benefits and shall neither encourage nor discourage such employee with respect to the pursuit of a claim for damages.

(b) The Board shall not be a party in any action for damages brought by an employee claiming sickness benefits under the Railroad Unemployment Insurance Act. The Board's right of reimbursement under section 12(o) of the Railroad Unemployment Insurance Act shall not be construed as giving the Board a right of subrogation or other cause of action for damages against an alleged tortfeasor. The Board shall intervene in such an action only when it is apparent that intervention may be required to protect its right of reimbursement.

(c) The Board shall not be liable for the payment of any attorney's fee or other expenses incurred in connection with such a claim for damages.

PART 344 [RESERVED]

PART 345—EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

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