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Navigating Maritime Employers Liability (M.E.L.)

Even though Maritime Employers Liability (M.E.L.) was first written over fifty years ago, and is widely available in the market today, it remains one of the most mysterious of marine coverage's falling into the twilight zone somewhere between Ocean Marine lines and Workers' Compensation. So what is M.E.L.?

M.E.L., simplistically, is coverage for an employer's liability to its employees that would fall under Admiralty Law roughly equivalent to Workers' Compensation when someone is on a vessel. It can include the Merchant Marine Act (a/k/a the Jones Act) as well as General Maritime Law remedies including Maintenance & Cure, Unseaworthiness and Death on the High Seas Act.

Sounds easy, but it is more important to define what M.E.L. is NOT in order to really understand the small niche it fills.

M.E.L. is NOT a compensation policy and does not cover any benefits available under Workers' Compensation, Longshore & Harbor Workers Act, Outer Continental Shelf Lands Act or any other state or federal workers' compensation system. Today most M.E.L. policies actually contain specific exclusions for all those, but some older policies did not contain these exclusions and are specifically endorsed to add them.

In addition, it is not a replacement for a Protection and Indemnity (P&I) policy. A P&I policy offers not only coverage for employees but also a large amount of third party Bodily Injury and Property Damage Liability coverage not found in the M.E.L. policy. Further, most M.E.L. policies actually exclude the true "crew" of an employer. Those are the people specifically covered by most decent P&I policies. (Although certain underwriters have used the M.E.L. as a crew "carve out" policy, the policy was never intended to be used in that fashion).

I would like to emphasize that I believe M.E.L. is one of the most critical parts of many marine insurance programs and, if properly understood and placed, can laser in to provide essential coverage.

So who does a M.E.L. policy cover?
It covers two groups:
First your employees on someone else's vessels. Small or large, oil rig, yacht, barge or cruise ship, you have a liability to your employees when placed aboard other vessels even though you are not the owner or operator of that vessel. In addition, most vessel/rig owners will require the employer to prove M.E.L. coverage is in place under their contracts before allowing other's employees on their vessels.

Second, the M.E.L. can be used to cover your employees who are temporarily on board one of your own vessels. For example, a marine construction company may have a full time captain who is covered under their P&I policy, but also employ some land-based employees who work on board vessels part of their time. These land-based employees can be best covered under M.E.L.

"But some M.E.L. policies have a rate on the Longshore payroll – how can it exclude Longshore?"
Unfortunately, the courts have held that certain employees who fall under the Longshore Act can also bring claims under Admiralty law. The classic precedent is Southwest Marine, Incorporated v. Gizoni, 112 S.Ct. 486 (1991). Gizoni worked as a foreman in a ship repair facility in San Diego, California and was injured while working aboard a floating platform. As a ship repairman, it was necessary to be aboard a floating platform and, thereby, he would "contribute to the function of the vessel or to the accomplishment of its mission". The U.S. Supreme court concluded that an employee whose work involves a "Longshore Act" named occupation is not automatically disqualified from seaman status as a matter of law. In writing the opinion for the Court, Justice White points out "because a ship repairman may spend all of his working hours aboard a vessel in the furtherance of its mission, even one used exclusively in ship repair work, that worker may qualify as a Jones Act seaman". Gizoni was ruled a seaman, and given Admiralty benefits.

Soft or Hard?
Most M.E.L. underwriters, brokers and agents talk about "Soft" and "Hard" M.E.L. This is purely a method of evaluating the exposure and has developed from a court case Chandris Incorporated, et al v. Latsis, 115 S.Ct. 2172 (1995). Antonio Latsis was a superintendent engineer for Chandris, Inc., responsible for maintaining and updating the electronic and communications equipment on Chandris' fleet of cruise ships. As a superintendent, his duties were to oversee other engineers, which required him to travel at different times on different vessels. Upon departure on a two day voyage from

Baltimore to Bermuda, Latsis developed a problem in his right eye and was diagnosed by the ship's doctor as having a possible detached retina. In Chandris, the Supreme Court held that the "employment-related connection to a vessel in navigation" necessary for a seaman status comprises two basic elements:

1. The worker's duties must contribute to the function of the vessel or the accomplishment of its mission, and
2. The worker must have a connection to a vessel in navigation **that is substantial in both duration and its nature.**

Whilst Chandris talks about 30% of his time on vessels, most underwriters and brokers use a safety margin and thus use a 25% number for the dividing line. That 25% is the portion of time any one employee spends on a vessel or fleet of vessels. If under 25% he/she is considered "Soft" and they obtain a lower rating base than one who spends over 25% and is described as "Hard".

Where are we covered?
Look now at the territorial limits on your M.E.L. policy. Most cover "The territorial limits of the United States of America and Canada or over their Outer Continental Shelves". For many in the cruise or energy business this is not broad enough to cover their exposures. Will your insurer change the territorial limits? Most Workers' Compensation insurers cannot amend the policy for wider territories and some marine carriers are unwilling to do so. Some will, but only IF you ask for it!

Limits
Finally, if you are using a Workers' Compensation carrier to provide M.E.L. coverage, check the M.E.L. endorsement for the limits. The Declarations page of the Workers' Compensation policy will NOT show M.E.L. limits and they are often different to the Employers Liability limits. M.E.L. basic limits start at only $25,000 – not enough to say "hello" in federal court.

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The markets for M.E.L. are a unique hybrid of the Workers' Compensation and traditional marine markets:

- Most state fund, assigned risk or JUA type carriers do offer M.E.L., but frequently can only offer the basic $25,000 limit

- Traditional Workers' Compensation carriers who operate in the Longshore market frequently can offer M.E.L. with higher limits by endorsement, but underwriting appetites vary greatly, as do the carrier knowledge and experience in admiralty claims. Further, they are often unable or unwilling to change geographical limits when needed.

- Traditional marine insurance, in particular Lloyd's, offer these coverage's and have a broader appetite.

M.E.L. – A small but critical coverage for many marine businesses – but be cautious; policy forms and underwriting vary greatly. Work with someone who is knowledgeable and active in this market and who will not only provide you a price, but the proper limits, geographic territories, and really take the time to understand the needs of that client!

Ian R. Greenway
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LIG Marine Managers, Inc.
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