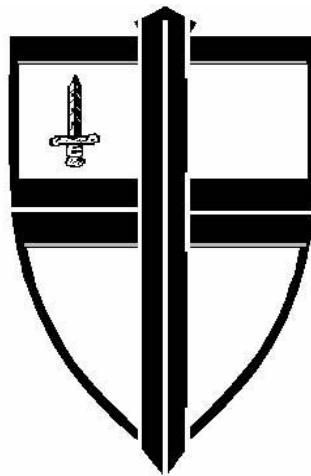


The Long & Short of Longshore

A Special Reprint from The Observer, Florida Surplus Lines Office, Fourth
Quarter 2002, Volume 5, Number 4



L.I.G. Educational & Consulting Services

300 1st Ave S., Suite 400, St. Petersburg FL 33701

Phone (727) 578-2800 **Facsimile** (727) 578-9977

E-Mail: IRG@LIGInsurance.com **Website:** www.LIGInsurance.com

THE LONG AND SHORT OF LONGSHORE

BY GUEST COLUMNIST, IAN R. GREENWAY, LIG INSURANCE

The Longshoremen and Harbor Workers Compensation Act (Longshore Act), was one of the first federal workers compensation laws originally enacted in 1927. Intended to cover all forms of commercial dock workers (longshoremen, ship repairers, etc.) it was expanded twice to now cover virtually every maritime employee unless specifically excluded (see chart on right). Longshore covers workers on "navigable waters of the United States" and "adjoining areas" and these terms are given very broad interpretation by the courts.

Like workers compensation, the Longshore Act contains a set of statutory benefits and eligible work which must be paid, with the trade off of "sole remedy" if properly insured.

The growth of the cruise (day and ocean going) industry, the increased size of recreational vessel (65ft was a rare vessel in 1984); increased enforcement at federal, state and local levels, and increased attentions by the legal community has conspired to make this a rapidly growing marketplace. Think of all the catering companies, carpet installers, plumbers and the like that are now working in this arena.

At the same time, the marketplace has shrunk due to general tightening of workers compensation reinsurance, eliminating Longshore reinsurance for many direct carriers, the exit of low cost or "if any" Longshore coverage especially from leasing carriers, general tightening of workers compensation underwriting and bankruptcy or withdrawal of some of the key carriers in this class.

In an effort to curb part of this expansion, in May of 2002, the Recreational Marine Employment Coalition (RMEC) worked to have a bill introduced in the House of Representatives titled, "The Recreational Marine Employment Act of 2002." However, Washington has had different priorities recently and, progress during the current session has been limited. The bill is slated to be reintroduced as one of the first items on the new congressional committee's agenda for the 109th Congress. At the same time, the RMEC is planning to gain Senate sponsorships so that the bill will run concurrently in both chambers. If passed in its current format it will exempt recreational marine employees including dock and seawall builders from Longshore. For more information, check out the RMEC website at www.uslh.org.

Longshore coverage is mandated by the federal government and the penalties for not having coverage are severe; fines, misdemeanors, removal of tort protection and the personal liability of the officers of a corporation for any

unpaid benefits (say goodbye to corporate veil!). Furthermore uninsured sub-contractors present serious problems under the Longshore Act. There are no "independent" sub-contractors and as such there is a direct pass back to the principal or general contractor for injuries to any employees of an uninsured sub-contractor.

If all of this is not enough, employees working from vessels in navigation, may also file claims against their employer under the various Admiralty laws (Jones Act, Unseaworthiness, Maintenance and Cure and others), regardless of whether these employees are on owned or non-owned vessels. These remedies are available on the same "navigable waters" of the United States as the Longshore Act, as well as offshore. Further, while the Longshore Act excludes certain groups of employees, Admiralty law contains no similar exclusions, and so even those in the recreational marine industries can be eligible.

Longshore coverage in Florida is most often underwritten by endorsing the Workers Compensation policy, but the market is restricted to the JUA and a handful of specialty voluntary Longshore carriers.

Two offshore mutual insurance companies offer monoline Longshore coverage but these carriers, while approved by the federal government to write Longshore, are not currently licensed or surplus lines approved by the state of Florida. Also remember, when a client joins one of these they are becoming liable for the losses of the group, regardless of whether that particular client has any losses or not. Look for a reliable estimate of potential assessments and compare the total costs, including those assessments with other available markets. The combination of assess-

The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include—

- (A) individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;
- (B) individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;
- (C) individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);
- (D) individuals who (i) are employed by suppliers, transporters, or vendors, (ii) are temporarily doing business on the premises of an employer described in paragraph (4), and (iii) are not engaged in work normally performed by employees of that employer under this Act;
- (E) aquaculture workers;
- (F) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length;
- (G) a master or member of a crew of any vessel; or
- (H) any person engaged by a master to load or unload or repair any small vessel under eighteen tons net;

if individuals described in clauses (A) through (F) are subject to coverage under a State workers' compensation law.

Continued on Page 7

Longshore Continued from Page 6

ments and long-term commitments may make the long-term cost far more than the dollars saved up front. Lastly, review the financials of the mutual; remember that it is the quality of those financials that support assessments.

As we all know workers compensation rates have been pretty much flat in Florida for the last two years, and Longshore rates with the JUA or voluntary markets are controlled by the same NCCI filings, so overall rates have suffered negligible increases. The same is not true for premiums. Probably the most drastic effect is the correct allocation of Longshore payroll. No longer will heavy Longshore accounts find leasing companies or traditional markets that will turn a blind eye to their true exposure, and risks who have enjoyed the bargains of the past are finding their rise to the true filed payrolls and rates are often doubling, or tripling the final outlay.

Ian Greenway is president and CEO of LIG Marine Manager. He has worked extensively with the Longshore Act and is a nationally known speaker and trainer on the subject. He is the author of Navigating Marine Workers Compensation and Navigating Marine Insurance. He can be reached at IRG@LIGInsurance.com

