Occupational Safety and Health & Related Issues



An Overview and History for Port Industry Executives



thefacts.com

Port Worker Dies From Fall

By Hunter Sauls

The Facts - Published October 18, 2007

FREEPORT — Port workers are mourning the death of a longshoreman working onboard a cargo ship at the Port of Freeport who port officials said accidentally fell to his death.

George Diaz, 54, of Freeport, a member of the International Longshoreman's Association union working for Ports America, was on the deck of the MV Green Music on Tuesday when he fell into a cargo hold, Ports America vice president Norman Lamb said. The distance of the fall through the cavernous cargo hold was enough to cause serious injury, he said.

"He's been involved in longshore work since 1972, and one of the more experienced and well-respected guys down there," Lamb said. "He's going to be missed. It's a tragedy."

Diaz suffered a head wound and was taken by ambulance to Brazosport Regional Health System. He was then taken by helicopter to Memorial Hermann Hospital, where he was pronounced dead upon arrival, Lamb said.

"We're investigating the accident, and we're in the middle of that process," Lamb said. "We don't have all the answers yet, because we haven't completed the interviews. But our thoughts and prayers go out to his family."

Diaz was married and the father of two girls, Lamb said.



Tribune

Update: Oakland Port Closed Until Tomorrow

By William Brand, Francine Brevetti, Erik N. Nelson, Staff Writers Article Last Updated: 09/25/2007 12:53:38 PM PDT

The entire Port of Oakland shipping operation remains shut down this afternoon, idling hundreds of port workers and truck drivers, while an investigation continues of the accidental death of an ILWU Longshoreman aboard a ship at the Port Monday afternoon.

Details remain sketchy, but the Alameda County Coroner's office said the worker was apparently struck by a shipping container as he worked aboard the Stutgard, a Hapag-Lloyd container ship. No one apparently witnessed the accident, which happened about 4:30 p.m., the coroner's office said. Coroners' deputies had to use a cargo lift to remove the body from the ship, a deputy said.

John Showalter of the ILWU said work was stopped immediately throughout the port pursuant to a contract provision. "It's standard for workers to stand down when there's a fatality," Showalter said. "The reasons are self-evident. If faulty equipment caused the death, it needs to be inspected," he said. Diann Castleberry of the Port of Oakland said all operations are shut down and will reamain shut down _ possibly until 8 a.m. Wednesday. The port was very quiet this morning. Every terminal was locked up and only a handful of trucks could be seen and none had containers on them.

Many customs and security offices were also closed. Outside the 7th Street terminal near Berth 40 there was a line of containers without cabs. Currently, there are seven container ships tied up at the port either in the process of loading or off-loading cargo, according to the Marine Exchange of the San Francisco Bay Region.



The Virginian-Pilot

Man Crushed to Death by Container at Portsmouth Terminal

By JEN MCCAFFERY AND GREGORY RICHARDS, The Virginian-Pilot © July 13, 2007 | Last updated 5:39 PM Jul. 13

A man was killed this afternoon at Portsmouth Marine Terminal when he was crushed by a truck-sized cargo container.

The victim was 42-year-old Vernon Leroy White, said Portsmouth Battalion Chief Ronnie Early. White lived in Norfolk, according to someone who answered the phone at his home this afternoon.

He had been working on the SCI Kiran, which was docked at the terminal, said Joe Harris, spokesman for the Virginia Port Authority.

Shortly before noon, White had walked down the ship's gangplank and onto the dock, Early said. White walked under a crane and was crushed by a container being lowered by the crane, Early said.

He yelled for help as the box was coming down, Early said, but his co-workers were not able to inform the crane operator in time. He was pronounced dead at 12:07 p.m.

From on-site investigators, The Blueoceana Company has learned that as Mr. White got to the bottom of the gangway (the workers were just knocking off for lunch) and proceeded forward his presence was hidden from on-the-ground spotters by a container that had been previously landed on dock. Moreover, it is likely that the container crane's sill beam blocked the crane operator's line of sight, contributing to this terrible accident. We understand that his Dad, Roy White, was working at a forward hatch at the time of this accident.





[Excerpted] Remarks at this Conference

Double Throughput Or Suffer, U.S. Ports Told

Journal of Commerce *Tuesday, October 16, 2007 By: Bill Mongelluzzo / The JOURNAL of COMMERCE ONLINE*

LONG BEACH, Calif. -- If the U.S. container trade continues to increase about 7.5 percent per year, three-quarters of the country's major ports will experience significant capacity problems by 2010, according to a marine architect who has designed container terminals around the world.

Ports in the United States handle less than 5,000 TEUs per-acre, per-year, while Asian ports handle more than 16,000 TEUs per acre, Vickerman told a marine terminal management training program Monday sponsored by the American Association of Port Authorities.

Although Asian terminal operators have more flexibility in their use of labor and equipment, the main reason they are so productive is that they work three full shifts per day, Vickerman said. Distribution facilities likewise work around the clock, so containers incur very little dwell time at marine terminals. In the U.S., where dock labor is more expensive, most terminals work only one shift per day. This explains the low productivity figures of about 2,661 TEUs per acre at East Coast ports and 4,944 TEUs at West Coast ports. Los Angeles-Long Beach now runs five extra shifts per week, and this increases productivity by moving about 30 percent of the truck traffic to off-peak hours.



Potential Translation:

Work Harder, Faster, and Longer

Potential Result:

More Accidents; More Deaths

Potential Moderating Factors:

Terminal Operators/Ocean Carriers Working Smarter; With Compatible Priorities

 Port Authorities Acting As Independent Catalysts, By Requiring Adherence to Tariff-Established Operational Parameters that Better Define Priorities

A Little U.S. History

[Comparable Circumstances at AAPA Member Ports in Canada, the Americas and the Caribbean]

The Jensen Era

AMENDING SECTIONS 24 AND 256 of THE JOUGLAL CODE, SO AS TO FIX THE STATUS OF LOWSHOREMEN HEARINGS

COMMITTEE ON THE JUDICIARY

ROUSE OF REPRESENTATIVES

H. R. 5351

Serial 7-Part 1

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STATES OF LONGSHOREMEN.

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Mr. CRAMMAN of New York, from the Committee on the dudiciney, astachard the dultiving

REPORT.

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 Knickerbocker v Stewart (1920)
 Washington v Dawson (1924)

Memorializing an internecine turf fight between the U.S. Congress and the Supreme Court, in determining the method (or indeed the existence) of worker's compensation for injuries sustained "on the navigable waters."



LHWCA of 1927

COMPENSATION FOR EMPLOYEES IN CERTAIN MARITIME EMPLOYMENTS

TENG UG H4 1922-2 Capy 2 SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

> SIXTY-NINTH CONGRESS FIRST SESSION

S. 3170

A BILL TO PROVIDE COMPENSATION FOR EMPLOYEES INJURID AND DEPENDENTS OF EMPLOYEES KILLED IN CERTAIN MARITIME EMPLOYMENTS, AND PROVIDING FOR ADMINISTRATION BY THE UNITED STATES EMPLOYEES' COMPENSATION COMMISSION

MARCH 16 AND APRIL 2, 1926

WARFIINGTON GOVERNMENT FRINTING OFFICE 1858 Creates a Federal scheme for the payment of compensation to marine cargo handling and shipyard workers injured "on the navigable waters."

 Clarified by the Supreme Court in:

 \checkmark T. Smith & Son *v* Taylor (1928)

✓ Minnie *v* Port Huron Terminals (1935)



(1951) Organized Labor Initiates Attempts to "Perfect" the LHWCA

[COMMITTEE PRINT]

) HOUSE OF REPRESENTATIVES 820 Congress REPORT 2d Session. No .

SAFETY IN LONGSHORE AND HARBOR WORK

The subcommittee of the Committee on Education and Labor, to which was referred the bill (H. R. 5796) to amend section 41 of the Longshoremen's and Harbor Workers' Compensation Act of 1927, as amended, to provide a system of safety rules, regulations, and safety inspection and training, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill be considered favorably by the full Committee on Education and Labor and be reported to the House of Representatives for passage

The subcommittee amendment is as follows: On page 5, line 8 of the bill, strike out the comma after the word "amended" and insert in lieu thereof a period and strike out all of line 9.

Hearings on H. R. 5796 were held on March 19, 20, and April 3, 1952, by the subcommittee. The subcommittee held hearings on H. R. 4032 on June 5, 11, 12, 19, 20, 22, and 26, 1951. Members of the subcommittee observed the longshoring operations at Cleveland, Ohio, Chicago, Ill., and in the Boston, Mass., and city of New York harbors. As a result of the subcommittee's consideration of H. R. 4032, certain amendments thereto were adopted, and the chairman of the subcommittee was instructed to introduce a new bill which was designated H. R. 5796.

HISTORICAL BACKGROUND

The Longshoremen's and Harbor Workers' Compensation Act was passed by Congress on March 4, 1927, to provide compensation for disability or death resulting from injury to employees, other than officers and crew members of vessels, who are injured while employed on the navigable waters of the United States and who are not covered on the navigable waters of the United States and who are not covered by the compensation laws of any State. Upon its enactment, the bill was administered by the United States Employees Compensation Commission. On June 16, 1946, the Commission was abolished and its functions transferred to the Federal Security Agency. Effective May 24, 1950, the functions previously transferred to the Federal Security Agency were transferred by Reorganization Plan No. 19 to the United States Department of Labor. This transfer was made to provide for better administrative efficiency. The functions and personnel relating to safety were placed under the Director of the personnel relating to safety were placed under the Director of the Bureau of Labor Standards and the existing safety services of the Bureau have been utilized to bolster accident prevention programs on a voluntary basis in the stevedoring industry. The Director of Employees Compensation administers the compensation features of this law

98325-52

ILA/ILWU **Boilermakers Steelworkers**

Higher than usual number of explosions in shipyards.

Increased trade volumes w/more cargo gear failures.

Political incentives to reseat a **Democratic president**



The Political Landscape

COMMITTEE ON EDUCATION AND LABOR

GRAHAM A. BARDEN, North Carolina, Chairman

AUGUSTINE B. KELLEY, Pennsylvania ADAM C. POWELL, JR., New York JOHN S. WOOD, Georgia JOHN F. KENNEDY, Massachusetts WINGATE H. LUCAS, Texas CLEVELAND M. BAILEY, West Virginia LEONARD IRVING, Missouri CARL D. PERKINS, Kentucky CHARLES R. HOWELL, New Jersey TOM STEED, Okinhoma ROY W. WIER, Minnesota BOYD TACKETT, Arkansas ERNEST GREENWOOD, New York SAMUEL K. McCONNELL, JR., Pennsylvar RALPH W. GWINN, New York WALTER E. BREHM, Ohio WINT SMITH, Kansas CARROLL D. KEARNS, Pennsylvania THRUSTON BALLARD MORTON, Kentu THOMAS H. WERDEL, California HAROLD H. VELDE, Illinois CHARLES E. POTTER, Michigan RICHARD B. VALL, Illinois E. Y. BERRY, South Dakota

FRED G. HUSSEY, Chief Clerk JOHN O. GRAHAM, Minority Clerk JOHN S. FORSYTHE, General Counsel DAVID N. HENDERSON, Assistant General Counsel RUSSELL C. DERRICKSON, Investigator

SUBCOMMITTEE ON SAFETY IN LONGSHORE AND HARBOR WORK JOHN F. KENNEDY, Massachusetts, Chairman CLEVELAND M. BAILEY, West Virginia CARROLL D. KEARNS, Pennsylvania



The 85th Congress

 STH CONGRESS
 SENATE
 Calendar No. 1823

 STH CONGRESS
 SENATE
 REPORT No. 1788

 STABLISHING A SAFETY PROGRAM FOR THE LONGSHORE AND SHIP REPAIR INDUSTRIES
 JULY 1, 1958.—Ordered to be printed

 JULY 1, 1958.—Ordered to be printed
 Mr. KENNEDY, from the Committee on Labor and Public Welfare,

Mr. KENNEDY, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany S. 3486]

⁷⁷ The Committee on Labor and Public Welfare, to whom was referred the bill (S. 3486).*to amend section 41 of the Longshoremen's and Harbor Workers' Compensation Act so as to provide a system of safety rules, regulations, and safety inspection and training, and for other purposes, having considered the same, report favorably thereon, with amendments, and recommend that the bill, as amended, do pass. The amendments are as follows:

On page 2, line 1, strike out the word "methods" and insert the word "procedures".

On page 2, line 2, strike out the phrase "work methods" and substitute "working conditions".

On page 6, strike out lines 12 through 21 and insert a new subsection (g) as follows:

(g) (1) The provisions of this section shall not apply in the case of any employment relating to the operations for the exploration, production and transportation by pipeline of mineral resources upon the navigable waters of the United States, nor under the authority of the Act of August 7, 1953 (ch. 345, 67 Stat. 462), nor in the case of any employment in connection with lands (except filled in, made or reclaimed lands) beneath the navigable waters as defined in the Act of May 22, 1953 (ch. 65, 67 Stat. 29), nor in the case of disability or death is provided for employees under the authority of the Act of May 17, 1928 (ch. 612, 45 Stat. 600), as amended, nor under the authority of the Act of August 16, 1941 (ch. 357, 55 Stat. 622), as amended.

20006-58-1

 Sustained organized labor efforts to widen LHWCA coverage and increase safety protection.

Political impetus now gradually translated into labor support for one prospective Democratic presidential candidate.



The 1958 LHWCA Amendments [Public Law 85-742]







Resisted by Ike; needed by Richard Nixon in his (1960) bid for Presidency.

Expanded §41 of LHWCA, to provide for safety standards, enforcement and training.

Put in the enforcement hands of DOL (LSB).







The Longshoring Industry Safety Regulations

DESK COPY

EARL J. KROTZER

(Reprinted from Federal Register, February 50 1008)

Safety and Health Regulations for . . . LONGSHORING

U.S. DEPARTMENT OF LABOR James P. Mitchell, Secretary

 Title 29—LABOR
 Stat. 228; 5 U.S.C. 1003), and under automorphic function of public Law 05-923 (72 Stat.)
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 PAR 5 - SAFETY AND HEALTH RED.
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- adopted. University of these regular The basis and purpose of these regular tions is that stated in 19.1 of Subpart A 561 General Analysis of the second state rope desp. Therefore, pursuant to needlon 4 of 80 EA Administrative Proceedings Act (90 Hocks other than hand hocks.

Paileta. Chutes, gravily conveyors and rollera. Powered couveyors. Portable showing winches. Rain tents. Tools. Mechanically powered vehicles. Notifying ship's efforts before using certain equipment.

BUREAU OF LABOR STANDARDS Arthur W. Motley, Director

- Subport I-General Working Condition

and Harbor Workers' Compensation Act as amended (44 Stat. 1444; 33 U.S.C. 941) requires, among other things, that every employer of the aforement. employees "shall install, furnish, main-tain, and use such devices and safeguards with particular reference to equipment

Published in the Federal Register - February 20, 1960

Applicability tracked the jurisdiction of enabling legislation (LHWCA), i.e., to work "on the navigable waters"

Work on terminals therefore, not covered





The Occupational Safety and Health Act of 1970 [Public Law 91-596]

Public Law 91-596 91st Congress, S. 2193 December 29, 1970 As amended by Public Law 101-552, §3101, November 5, 1990

An Act

To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Occupational Safety and Health Act of 1970."

CONGRESSIONAL FINDINGS AND PURPOSE

Occupational Safety and Health Act of 1970.

84 STAT. 1590

SEC. (2) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, ware loss, medical expresses and disability compensation payments

wage loss, medical expenses, and disability compensation payments. (b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—

(1) by encouraging employers and employees in their efforts (1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;
 (4) by building upon advances already made through em-

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health: Signed into law by Richard Nixon, December 29, 1970

Extended to all workplaces

Adopted all existing Federal Safety Standards (including the Longshoring safety regulations)

"on the navigable waters" limitations of LHWCA (for safety/health) no longer apply



LHWCA Extensions of 1972

LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSA-TION ACT AMENDMENTS OF 1972"

544

An Act To provide compensation for disability or death resulting from injury to employees in certain maritime employment, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 1. This Act may be cited as "Longshoremen's and Harbor Workers' Compensation Act."

DEFINITIONS

SEC. 2. When used in this Act-(1) The term "person" means individual, partnership, corporation,

30.2 2. When used in the Add The term "imperson" means individual, partnership, corporation, or association.
 The term "imperson" means accidental injury or death arising a season of and in the course of employment, and such occupational disease or infection as arise making from such accidental injury, and includes an injury caused by the insurbal of a third person directed against an employee because of hie employment.
 The term "input" means any person engaged in maritime in logation of the employment.
 The term "input" means any person engaged in maritime discovery of the employment.
 The term "employee" means any person engaged in maritime does not include any the market to load or unload or repair any small vessel and the term is the term is the load or unload or repair any small vessel and the term is the term is the load or unload or repair any small vessel and the term is the addition of the load or unload or repair any small vessel and the term is the addition of the load or unload or repair any small vessel and the addition of the addition of the load or unload or repair any small vessel and the term is the addition of the load or unload or any term is the addition of the addition of the load or unload or any the market addition of the addition of the load or unload or any term is the addition of the addition of the load or unload or any term is the addition of the addition of the load or unload or a term is loading any addition of the load or unload or term is the addition of the load or unload or term is the load or unload or term is the deputy of the addition of the load or unload or term is loading any addition of the load or unload or term is loading any addition of the loading addition of the addition of the loading addition addition

¹ Includes 1972 amendments made by P.L. 92-576 printed in italic. ^a The amendments (except section 19(d) of the Act) are effective thirty days after enact ment (12.01 a.m., November 26, 1972).

Brings Federal program of compensation ashore

Now additionally covers "related employments"

Substantially boosts amount of compensation paid to recipients (66 2/3%) of average wkly wage)



Applicability of OSHA Regulations to Marine Cargo Handling Operations

Vertical Rules:

Horizontal Rules: Designed specifically for application to a given industry. Applies in lieu of any other rule. In the case of marine terminal operations, 29 CFR Part 1917. In the case of longshoring operations (aboard vessels), 29 CFR Part 1918.

All regulations contained in 29 CFR Part 1910, OSHA's Rules for General Industry.



The Marine Terminals Standard



- 29 CFR Part 1917 reduced the volume of applicable regulations by 75%
- Custom tailored in unison with labor & management interests
 - Included criteria for safely conducting modern cargo handling operations
- Applies from gate to gangway



Modernizing Part 1918 Standards



Afloat marine cargo handling rules had very little change since the 1960's

 Needed to subjectively track, without any variance, the shoreside (Part 1917) rules



Human Suffering



Financial Loss (With Loss Of Life)



Greater Financial Loss



Accidents: Direct/Indirect Costs

Worker's Comp: "The Manual Rate"

All In Costs: 4-15 Percent of Total Payroll

Therein lies the difference between profit and loss in an industry with razor thin profit margins



Labor Relations

ILA Seeks Safety Talks Journal of Commerce Wednesday, December 01, 2004 By: The JOURNAL of COMMERCE ONLINE

The president of the International Longshoremen's Association has called for port safety meetings with employers and federal agencies following recent accidents that killed a union dockworker in New Jersey and injured three others in South Carolina.

"Safety remains a top priority with the ILA as it is with our employers," said ILA President John Bowers. "However, something is wrong when ILA members are killed or critically injured at the work sites. We need to address this problem immediately."



www.blueoceana.com

