Occupational Safety & Health/Worker's Compensation

In The U.S. Marine Cargo Handling Industry



An Overview and a History for Port Industry Executives

Appreciating The Financials

The Hierarchy of Recurring Costs

1). Payroll (Labor)

2). Insurance (General Liability/Worker's Compensation)

A Little U.S. History

[With Somewhat Comparable Circumstances at Canadian, Caribbean, Central & South American AAPA Member Ports]

The Jensen Era



- Southern Pacific *v*. Jensen (1917)
- 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 " of the U.S."

LHWCA of 1927



 Creates a Federal scheme for the payment of compensation to marine cargo handling and shipyard workers injured "on the navigable waters of the United States."

Clarified by the Supreme Court in:

- T. Smith & Son *v*. Taylor (1928)
- Minnie *v*. Port Huron Terminals (1935)

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

Research

(COMMITTEE FRINT)

SAFETY IN LONGSHORE AND HARBOR WORK

The subcommittee of the Committee on Education and Labor, to which was referred the bill (H. E. 3790) to amond socilion 41 of the Longsboremon's and Harbor Worksen' Componentian. Act of 1927, as attended, to provide a system of wiferty rules, regulations, and anisyrouportion and training, and for other purposes, having considered the same, report favorably thereon with no one-induced resonances that the bill be considered favorably by the full Committee on Education and Labor and be repaired to the Hanse of Representatives for puspers.

The subcommittee amondment is as follows:

On page 5. line 5 of the bill, strike out the commutative the word "amended" and insert in lieu thereof a period and strike out all of line 0.

Heinrings on H. R. 5796 were held on March 19, 26, and April 5, 1952, by the subcommittee. The subcommittee held hearings of H. R. 4032 on June 5, 11, 12, 19, 20, 22, and 26, 1951. Mendores of the subcommittee observed the lengthering operations at Cleveland, Ohie, Chicago, 10, and 10 the Bouton, Mass. and eity of New York harbors. As a result of the subcommittee's consideration of H. R. 4832, cornanation during the subcommittee's consideration of H. R. 4832, cornanation during the subcommittee's consideration of H. R. 4832, cornanation during the subcommittee's consideration of H. R. 4832, cornanmittee was matriced to introduce a new bill which was designated H. R. 5796.

HIPPORPAR BACKGROUPOUD

The Longshoremen's and Harbor Workses' Compensation Act was passed by Congress on March 4, 1927, to provide compensation for disability or doubt resulting from injury to compleyees, other than officers and ever members of vessels, who are injured while employed on the navigable waters of the United States and who are not covered by the compensation laws of any State. Upon its emactment, the bill was administered by the United States Employees Compensation Commission: On June 16, 1946, the Commission was abstehed and its functions transforred to the Foderal Scentrity Agency. Effective May 24, 1950, the functions previously transferred to the Federal Somirity Agoney 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 substy were planed under the Director of the Bureau of Labor Standards and the existing safety services of the Bureau have been utilized to bulster accident prevention programs. on a voluntary haves in the steeedoring industry. The Director of Employees Compensation administers the compensation features of This taw.

AUG223-02

- ILA/ILWU
- Boilermakers
- Steelworkers
- Carpenters

> Higher than usual number of explosions in shipyards.

Increased trade volumesw/more cargo gear failures.

Post 1953: Political
 incentives to reseat a
 Democratic president



The 85th Congress (1957-1958)

SIGNADAN

Nellevetron Calendar No. 1823 SENATE SSTIR. Continues Elseuser No. 1788 ESTABLISHING A SAFETY PROGRAM FOR THE LONGSHORE AND SHIP REPAIR INDUSTRIES. Jossy 1, 1068 .- Ordered to be printed Mr. Kinsung, from the Committee on Labor and Public Welfare, unfunctional the following REPORT [To arrangeny S. 3486] " The Committee on Labor and Public Welfare, to whom was referred the bill (S. 3486),*to amond section 41 of the Longsborement's and Harbar Workney Compensation Art so as to provide a system of safety

rible, regulations, and infety inspection and iraining, and for other purposes, having considered the same, report face-scaled thereas, with amendances, and recommends that the foll, as intended, do pass. The amendances are as follows:

On page 2, line 1, strike out the word "methods" and insert the word "precedures". On page 2, line 2, withe out the phrase "work methods" and sub-

On page 2, here 2, write out the phrase "over, mothods" and substitute "working combilitions".

On page 0, strike out lines 12 through 21 and lowert a new subsection (g) as follows:

(g) (1) The provisions of the section shall set apply in the case of any implegment relating to the operations for the operations, production and transportation for the United States, one mode the authority of the Art of Ampiret 7, 1955 (ed. 34), 67 Stat. 462), nor in the case of any supplement in complete the authority of the Art of Ampiret 7, 1955 (ed. 34), 67 Stat. 462), nor in the case of any supplement in commerciae with hade (second field on a second field of the Art of Ampiret 7, 1953 (ed. 35), 1053 (

anne in I

 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/ The Kennedy Maritime Safety Act]





- Political compromise brokered by Senate Majority Leader Lyndon Johnson, with JFK as strongest proponent.
- Resisted by Ike; needed by Richard Nixon to appease Labor 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 1st U.S. Federal Longshoring Industry Safety Regulations

(Reprinted from Federal Replater, Fahrmary 20 1808)

Safety and Health Regulations for . . . LONGSHORING

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

DESK COFY

BUREAU OF LABOR STANDARDS. Arthur W. Mothey, Director

HARL J. KROWZER

Title 29-LABOR

 PART 9—SAFETY AND HEALTH REG.
 PART 9—SAFET Industry, 18 trade associations, 7 labor 9.4 Coming destators regulations and the Department of the 9.4 Beam and pentoos bristee. Navy and the United Science Classed 4.43 modified beam and comes peritopating in the proceedings sub-mitted data, views and arguments. After

mitted data, views and arguments. After consideration of all viocant matter sub-mitted, and dher information and ma-fertals within my official cognizance, I 30 Regins par. conclude that the proposed regulations,

- The basis and purpose of these regula-tions is that studed in (9.1 of Schurt A. 4.6. the significant studed by 1.0 at Schurt A. 4.6. Wire resp and wire resp and wire resp single. Therefore, purposed to section 4 of 5.6. Administrative Proceedings Add (9.6. Administrative Proceedings Administrative Admini

Stat. 228; 5 U.S.C. 1995), and under su-thority of Public Law 05-762 (72 Stat. 9.47 835), amending section 41 of the Long-848, amending section Morgany Com-
 THUG Low
 Sealability
 Sealability

Patiens. Chuice, gravilly conveyors and rollers. Powered conveyors. Portable stowing winches. Rain tents.

(a) The Longshoremen's and Harbor Workery' Compensation Act (44 Stat, 1434; 33 U.S.C. 901 et acc.) provides componention for injuries suffered by employees when they are working for private employers within the Proternal maritime juriadiction on the navigable waters of the United States, including dry docks, Public Law 83-762, 72 Stat. 835, approved August 25, 1958, which conclude that the proposed regulations, as incretinater amonded, should be Solpart C-Ceeps Heading See and Explored and Stathor Workers' Compensation Act Other Than Ship's Geor as amendia edition \$1 of the Longstherement's and Stathor Workers' Compensation Act 941) remainer, among other things, that every employer of the aforementioned 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 Other Laborers and Industrial Workers Wanted To Be Protected On The Job, As Well.

To Achieve That Goal, They Must Take Their Message To Congress:



The Occupational Safety & 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, 53101, November 5, 1990

In Act

66 PIRT. 1590

To server sub- and builthful working conditions for sorking measured worker, by authorizing entersevent of the standards developed under the Act, by mainting and energy factors of their efforts to essent and scalability working conditions, by prevening for research, information, eduenteet, and transmig in the field of comparisonal unleys and boolth, and for other purposes.

Be it enserted by the Senate and House of Representatives of the United States of America to Congress converbled, That this Act may be crited as the "Occupational Solidy and Health Act of 1970."

CREATERING PARTY AND AND PARTY OF

Occupational Safety and Insalth Act of 1879.

Sint (2) The Congress finds that personal injuries and illnesses arising out of work attuations impose a substantial barden upon, and are a bindermass to, interestate commerce in terms of last production, wage loss, modeal expenses, and disability compensation payments.

The The Compress declares it to be its purpose and policy, through the coverise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfure, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human requires.

human resources.— (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 parfect estating programs for providing safe and benithful working conditions:

(2) by praviding that employees 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 basis neuron affecting interacting conservations and by creating an Occupational Safety and Health Review Commission for carrying our adjudicatory functions under the Act;

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

(b) by providing for research in the field of occupational subty and boalth, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational sufety and health prolema;

(6) by exploring ways to discover latent diseases, astabilishing causal connections between diseases and wark in environmental conditions, and conducting other research eviding to health problems, in recognition of the fact that occupational health standards present problems often different from those incodeed in occupational astropy.

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

(6) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational unlety and benith.

- Signed into law by Richard Nixon, December 29, 1970
- Extended to all workplaces
- Adopted all existing Federal Safety Standards (including the Longshoring safety regulations under LSB care)
- *"on the navigable waters"* limitations of LHWCA (for safety/health purposes) no longer apply

LHWCA Extensions of 1972

544

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

An Act To provide compensation for disability or death resulting from injury to employees in certain maritims employment, and for other purpose.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

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

DEPINITIONS.

SEC. 2. When used in this Act-

(1) The term "person" means individual, partnership, corporation, or association.

or association.
(3) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such acchaetal injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.
(3) The term "employee" means any person engaged in maritime employment, including any longabor-worker including a ship repairment, shipbuilder, and ship-breaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the matter to long or unload or repair any small vessel under existence.

engaged by the master to load or unload or repair any small vessel under eighteen tons net. (4) The term "employer" means an employer any of whose em-ployees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any ad-joining pier, wharf, dry dock, terminal, building way, marine rail-way, or other adjoining area customarily used by an employer in load-ing, unloading, repairing, or building a vessel). (3) The term "carrier" means any person or fund authorized under section 32 to insure this Act and includes self-insurers. (6) The term "carrier" means the Secretary of Labor.

(6) The term "Secretary" means the Secretary of Labor.
(7) The term "deputy commissioner" means the deputy commissioner having jurisdiction in respect of an injury of death.
(8) The term "State" includes a Territory and the District of Columbia.

¹ Includes 1973 associates made by P.L. 92–376 printed in Stalls. ² The sumelline(is (accept section, 19(d) of the Act) are effective thirty days after start went (12.01 a.m., Strender 26, 1972).

- Brings existing Federal program of compensation ashore
- Now, additionally covers "related employments"
- Substantially boosts amount of compensation paid to recipients (two-thirds of average weekly wage)

Applicability of Initial OSHA Regulations (1971) to Marine Cargo Handling Operations

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

Horizontal Rules: <u>All</u> regulations contained within 29 CFR Part 1910, OSHA's Rules for General Industry.

Confusing & Contradictory.... Labor & Management Rebel!

The Marine Terminals Standard [29 CFR 1917]



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

"Updated" Longshoring Standards [29 CFR Part 1918]



- Afloat marine cargo handling rules had changed very little since the 1960's
- Needed to subjectively track, without any variance, the shoreside (Part 1917) rules

Lots Of Regulations...

What's Their Purpose?

Decrease Human Suffering



Offset Financial Loss



Prevent Even Greater Financial Loss



Accidents: Direct/Indirect Costs

- Worker's Comp: "The Manual Rate"
- All-In Costs: 10 to 15 Percent of Total Payroll*
- Therein lies the difference between profit and loss in an industry with razor thin profit margins

*Estimated at \$2.8 Billion for C/Y 2010 [All U.S. Coasts]

COMPENSATION RATES (LHWCA)				
Point in Time	NAWW	Max\$	Min\$	Pct+
10/01/99 - 09/30/00	450.64	901.28	225.32	3.39
10/01/00 - 09/30/01	466.91	933.82	233.46	3.61
10/01/01 - 09/30/02	483.04	966.08	241.52	3.45
10/01/02 - 09/30/03	498.27	996.54	249.14	3.15
10/01/03 - 09/30/04	515.39	1030.78	257.70	3.44
10/01/04 - 09/30/05	523.58	1047.16	261.79	1.59
10/01/05 - 09/30/06	536.82	1073.64	268.41	<u>2</u> .53
10/01/06 - 09/30/07	557.22	1114.44	278.61	3.80
10/01/07 - 09/30/08	580.18	11 60.36	290.09	4.1 <u>2</u>
10/01/08 - 09/30/09	600.31	1200.62	300. 1 6	3.47
10/01/09 - 09/30/10	612.33	1224.66	306. 1 7	2.00
10/01/10 - 09/30/11	628.42	1256.84	314.21	2.63
10/01/11 - 09/30/12	647.60	1295.20	323.80	3.05

Labor Relations





Public Relations

HazMat Cargoes

HALIFAX HERALD

FAX WRECKED More Than One Thousand Killed In This City, Many Thousands Are Injured And Homeless.

structures, provident, inducated

I probably five thousand injured, many of them fatally, is the result of the explosion yesterday on French steamhip Mont Blanc, loaded with nitro-Sycerine and trinitrotuol. All of Haliax north and west of the depot is a mass f ruins and many thousands of people re honeiros. The Belgian Robit staamer ime, coning wa from Belliord Beats, cullided with the Most tent, which immediately took fire and was beaded in r Pier Bo, 8 and exploded. Buildings over 4 great as antispeed, burying men, women and children. Tag ats and unative vousit were enguided and then a nat wore wothed up over Campbell Rand. First uke out and beinne atometrollable, suppling the uck of yestion. Bot a house in Balifur second some amage, and the region bounded on the east by the they, south by North street and went by Windsty tet, in absolutely demantated.

THE

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Strater War.

G-la-santaria

fORE than one thousand dead and THE wounded and homeless'are it I different institutions and home over the city. The Halifax Herale is collecting information regarding the missing, and citizens who have victims of the disaster at their home are requested to telephone to Th Herald office. Hundreds of th hadies which were taken from the raise are recognizable and margare have been apound to fermi parts of the dity. Colorn' committees a holog formed for rescan work. Bullet a will issued thrappit the day giving information for a applicance of these who have lost relatives and frank While practically every home is the city of damage these who are able to give any tempotary account dation are asked to notify serve of the completeer.

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Number Street & Street

Military and naval putrois are knepting poder as superintunding the rotage work.







Goal No. 1

Accorded The Highest Priority, Taking Precedence Over Any Other Consideration:

All Workers Get To Go Home In The Same Good Physical Condition They Came To Work In.

No Ocean Carrier, Marine Terminal Operator, Stevedore, Labor Union or Port Authority Can Possibly Hope To Attain the Desired Increased Levels of Efficiency, Productivity or Profit, Without First Attaining Consistent Success In Achieving Goal No. 1.

Fatal Accidents at US Ports CY 2011

24 January 2011 Terminal Island, CA

A longshore worker riding her motorcycle on a break was struck and killed Friday morning by a truck whose driver made an unsafe left turn in front of her, Los Angeles traffic detectives said.

Georgia Fisher, 47, of Long Beach was traveling south on Earle Street at about 8 a.m. when a tractor-trailer truck made a left turn into the APL terminal. There are no traffic controls at the location and Fisher struck the side of the cab, said South Traffic Division Detective Supervisor Rodney Jones. 28 January 2011 Jacksonville, FL

According to recent news reports from Jacksonville, Florida, 58-year-old Anthony Roberts died on Saturday, Jan. 22 when the crane he was operating was struck by large pieces of an old gantry, resulting in the crane turning onto its side, trapping and crushing the crane's cab.

The fatal crane accident occurred at JaxPort when Roberts was using a crawler crane to dismantle a large port crane that had been sold and retired.

A contractor of the buyer of the port crane was hired to conduct the demolition of the crane. Roberts was employed by that contractor. He was pronounced dead at the scene of the accident.

Large

25 February 2011 New Orleans, LA

BE CAREFUL OUT THERE!, the ILA's quarterly safetynewsletter, reports with great regret the on-the-job death of Shawn Bertrand of New Orleans. A member of ILA Local Union 2036, Brother Bertrand was servicing a reach stacker's steer wheel tire at a New Orleans marine terminal when it violently exploded.

This quarter's newsletter reminds all mechanics at ILA Local Unions in each District of the critical importance in fully deflating all tires before attempting to perform any service. 28 March 2011 Portsmouth, VA

A 38-year-old female worker was killed Monday morning in a forklift accident at APM Terminals Virginia in Portsmouth, according to a spokesperson with the port authority.

Investigators have determined that the employee, identified as Paula Bellamy, of Portsmouth, was working as a "slinger" or guide to a crane operator when she was struck by a forklift. She died as a result of injuries suffered in the accident, officials said.

According to Jan Westerbeck with the Portsmouth Police Department, the forklift operator's vision was obstructed by some containers when he hit the victim. 30 March 2011 Miami, FL

Last Wednesday, March 30, 2011, a member of ILA Local Union 1416 was tragically killed when the nose end of a refrigerated container/chassis assembly stowed on an internal ramp aboard the Ro-Ro/Lo-Lo vessel **SEABOARD VICTORY** fell upon him.

Longshoreman Kevin Whyms had just released the last remaining chain securing device that had lashed the equipment in place during its ocean transit when, according to reports from individuals then aboard the ship, the equipment rolled forward, separated from its independent front end support, collapsed its landing gear and fell upon Mr.Whyms, who had been in a crouching position underneath.

12 April 2011 Baltimore, MD

A man died from his injuries Tuesday morning in an industrial accident involving the truck he was driving.

The accident happened at about 10:15 a.m. at the Dundalk Marine Terminal in the 2700 block of Broening Highway.

By the evening, Maryland Transportation Authority police only identified the person as a 46-year-old Maryland Environmental Service employee.

According to a preliminary investigation, the man parked the vehicle by berth 14 and got out. Seconds later, he realized that the truck was rolling and tried to jump back in the vehicle and stop it.
14 April 2011 Port Everglades, FL

A man working at **Port Everglades** was killed Thursday afternoon when he was struck by a tractor-trailer, the Broward Sheriff's Office said.

The victim, Antonio Del Hierro Perez, 29, of **Hialeah**, was assisting a truck driver who was picking up a container, Concepción said. Del Hierro was standing in front of the container as the driver, Osmar Figueredo, 37, of Hialeah, backed up to load it onto the bed of the tractor-trailer.

Figueredo's truck struck Del Hierro, pinning him between the trailer and the container, Concepción said. Broward Sheriff Fire Rescue pronounced Del Hierro dead at the scene.

4 May 2011 Miami, FL

Longshoreman and ILA member Ossie L. Hyman was fatally injured while on the stern ramp of the Ro-Ro Vessel **SEABOARD SPIRIT** today, when he was crushed between a moving vehicle and the ramp's starboard bulkhead.

Sources at Miami report that Mr. Hyman was working as a striker/lasher aboard the vessel, and had released several binders used to secure a container/chassis combination to the deck of the ship. Apparently, one such binder remained secured and when the operator of the vehicle attempted to drive the cargo down the ramp the unit shifted, pinning Mr. Hyman between the box and the bulkhead. 11 August 2011 Port Elizabeth, NJ

Don Delia, a member of ILA Local Union 1804-1, was electrocuted and died within the machinery house of a container gantry crane today.

Mr. Delia has just finished changing out a fuse, and was testing the reworked high voltage circuit when he made contact with a live electrical part.

12 August 2011 Philadelphia, PA

An investigation was continuing into the rare death Friday afternoon of a longshoreman at the Packer Avenue Marine Terminal in South Philadelphia, where workers were devastated by the loss of a colleague. "He's one of our superstars," Tom Holt Jr., who runs the marine terminal, said of Charles DiRago, 54, of Wenonah. "It's a big loss for us."

DiRago was apparently backed over by a yard tractor at the beginning of a work shift.

17 August 2011 New Orleans, LA

A 22-year-old longshoreman died Wednesday after he fell about 40 to 45 feet into the cargo hold of a ship berthed at the Louisiana Avenue Wharf along the Mississippi River in New Orleans.

The apparent industrial accident occurred about 6 p.m. The body of Samuel Montgomery II was removed from the site shortly after 7 p.m., said John Gagliano, chief investigator for the Orleans Parish Coroner's Office.

20 August 2011 Philadelphia, PA

A longshoreman fell to his death in a breakbulk ship Saturday in the second fatal accident in eight days on the Philadelphia waterfront.

Vernon Knight, 54, a member of International Longshoremen's Association Local 1291, fell from a tween deck into a ship's hold, said Robert Palaima, president of Delaware River Stevedores.

The ship, the M/V Rickmers New Orleans, was handling project cargo at Tioga Marine Terminal. Palaima said the accident is under investigation.

01 September 2011 Brownsville, TX

OSHA is now on the scene and investigating an accidental death at the Port of Brownsville.

Authorities say it happened late Thursday afternoon when a 59year-old Olmito man was loading a shipment of beams at the port. They say Guillermo Gonzalez was crushed to death.

Typified Accidents







"Be Careful Out There....!"

www.blueoceana.com

