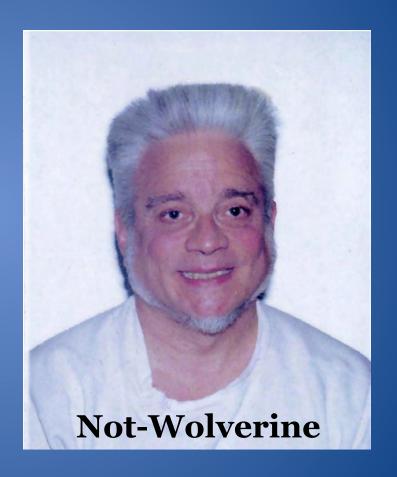
## Occupational Safety in the Marine Cargo Handling Industry



The Fundamental Parts of the Equation and The Current Experience

## How The Issues Are Presented

- Visually [Through PowerPoint Slides]
- Oral Narrative
   [To Better Understand The Stakeholders & The Relevant Laws and Regulations]
- Real Life Experience
   [Fatal Accidents That Have Occurred at US Ports In CY 2012]



## Appreciating The Financials

A Marine Terminal Operator's Hierarchy of Recurring Costs

- 1). Payroll (Labor)
- 2). Insurance (General Liability/Worker's Compensation)

## State Workers' Compensation Laws

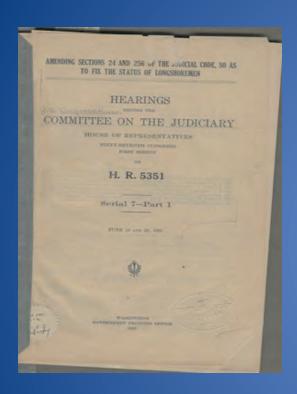
1855: Georgia; Alabama – Employer Liability Acts - Permitted Employees to File Suit and then Prove Employer Negligence/Omissions

1902: Maryland – First Neutral, No-Fault, Sole Remedy Worker's Compensation Law

1949: All States Had Similar Laws, Basing Compensation Payments on the SAWW (State Average Weekly Wage)

2012: Nat'l Average Weekly Wage: \$662.59

### 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.

### U.S. Constitution

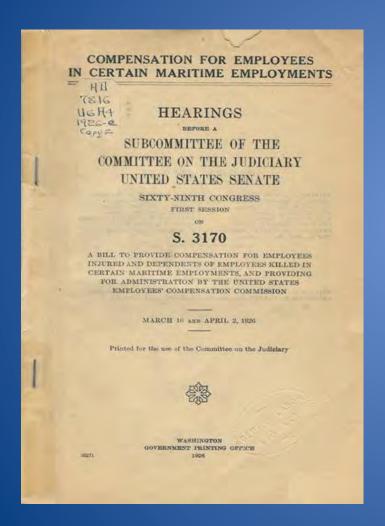
Article III.

\*\*\*

Section. 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States; ....

## 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.

Validated by the Supreme Court in:

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

## Compensation Rates (LHWCA) 10 Year Lookback

Point In Time	<u>NAWW</u>	MAX	MIN	% Incr
		K		
10/01/2012 - 09/30/2013	\$662.59	<b>\$1,325.1</b> 8	\$331.30	2.31%
10/01/2011 - 09/30/2012	\$647.60	\$1,295.20	\$323.80	3.05%
10/01/2010 - 09/30/2011	\$628.42	\$1,256.84	\$314.21	2.63%
10/01/2009 - 09/30/2010	\$612.33	\$1,224.66	\$306.17	2.00%
10/01/2008 - 09/30/2009	\$600.31	\$1,200.62	\$300.16	3.47%
10/01/2007 - 09/30/2008	\$580.18	\$1,160.36	\$290.09	4.12%
10/01/2006 - 09/30/2007	\$557.22	\$1,114.44	\$278.61	3.80%
10/01/2005 - 09/30/2006	\$536.82	\$1,073.64	\$268.41	2.53%
10/01/2004 - 09/30/2005	\$523.58	\$1,047.16	\$261.79	1.59%
10/01/2003 - 09/30/2004	\$515.39	\$1,030.78	\$257.70	3.44%
10/01/2002 - 09/30/2003	\$498.27	\$996.54	\$249.14	3.15%

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

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 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 Bureau of Labor Standards and the existing safety services of the Bureau have been utilized to bolster accident prevention programs

- ILA/ILWU
- Boilermakers
- Steelworkers
- Carpenters
  - > Higher than usual number of explosions in shipyards.
  - ➤ Increased trade volumes w/ more cargo gear failures.
  - ➤ Post 1953: Political incentives to reseat a Democratic president

## The Political Landscape U.S. House of Representatives (1955)

### 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., Pennsylvan RALPH W. GWINN, New York WALTER E. BREHM, Ohio WINT SMITH, Kansas CARROLL D. KEARNS, Pennsylvania THRUSTON BALLARD MORTON, Kenter THOMAS H. WERDEL, California HAROLD H. VELDE, Illinois CHARLES E. POTTER, Michigan RICHARD B. VAIL, 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

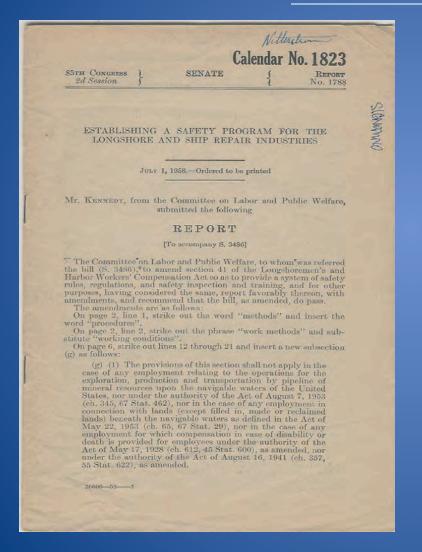
SUBCOMMITTEE ON SAFETY IN LONGSHORE AND HARBOR WORK

JOHN F. KENNEDY, Massachusetts, Chairman

CLEVELAND M. BAILEY, West Virginia

CARROLL D. KEARNS, Pennsylvania

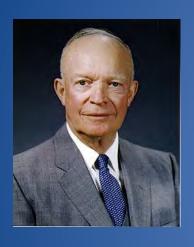
## The 85th Congress (1957-1958)



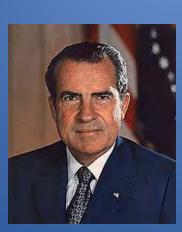
- Sustained organized labor efforts to widen LHWCA coverage and increase safety protection.
- Political impetus now gradually translated into labor support for one prospective Democratic presidential candidate.

## The 1958 LHWCA Amendments

[Public Law 85-742/ The Kennedy Maritime Safety Act]

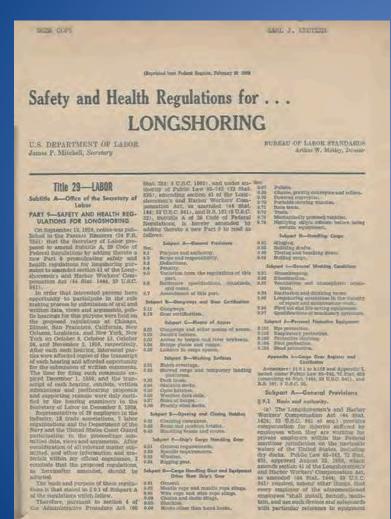






- Political compromise brokered by Senate Majority Leader Lyndon Johnson, with JFK as strongest proponent.
- Resisted by Ike; needed by Richard Nixon to appease Labor in his (1960) bid for Presidency.
- Expanded §41 of LHWCA, to provide for safety standards, enforcement and training.
- Put in the enforcement hands of DOL (LSB).

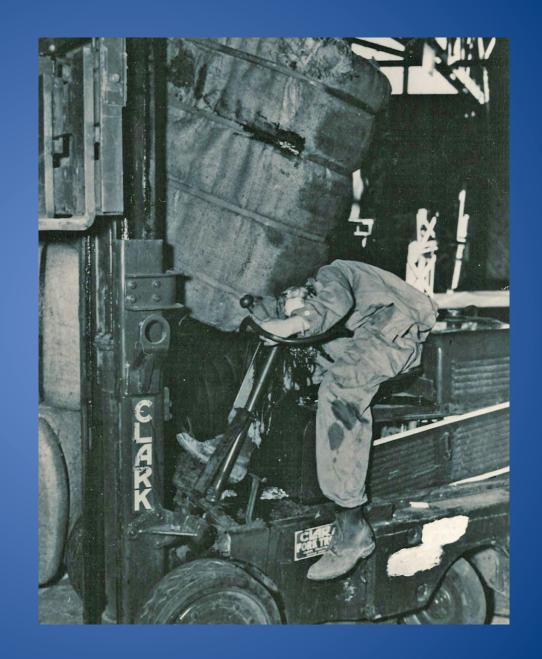
### The 1<sup>st</sup> U.S. Federal Longshoring Industry Safety Regulations



- 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, §3101, November 5, 1990

### An Art

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, edu-cation, and training in the field of occupational safety and health; and for

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

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, 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 severa 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 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

(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 Rayvay Commission for a waive set. pational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(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 prob-

(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 experi-

(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 under LSB care)
- "on the navigable waters" limitations of LHWCA (for safety/health purposes) no longer apply

Occupational Safety and Health Act of

84 STAT. 1590

29 USC 651

## LHWCA Extensions of 1972

### LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSA-TION ACT AMENDMENTS OF 19721'

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.

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

Sec. 2. When used in this Act-

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

or association.

(2) 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 accidental injury, and includes a proper property of the could be a such as the could be compared by the could be a such as the could be compared by the could be comp

raily or unavoidably results from such accidental 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 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 marker or marker of the same of the sam clude a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel

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 employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

(5) The term "carrier" means any person or fund authorized under section 32 to insure this Act and includes self-insurers.

(6) The term "deputy commissioner" means the deputy commissioner buying jurisdiction in respect of an injury or death.

sioner having jurisdiction in respect of an injury or death.

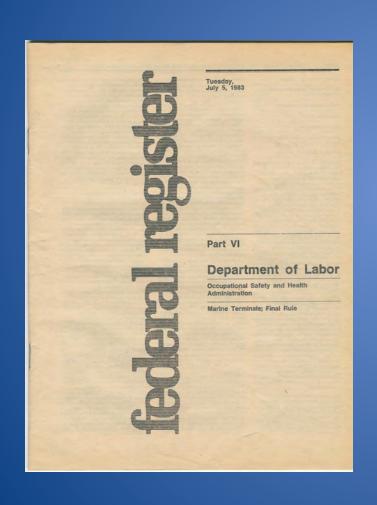
(8) The term "State" includes a Territory and the District of Columbia.

- Brings existing Federal program of compensation ashore
- Now, additionally covers "related employments"
- Substantially boosts amount of compensation paid to recipients

beludes 1972 amendments made by P.L. 92-576 printed in Italic.
The amendments (except section 19(d) of the Act) are effective thirty days after exactment (12:01 a.m., November 26, 1972).

# OSHA Regulations Having Application at Marine Cargo Handling Workplaces

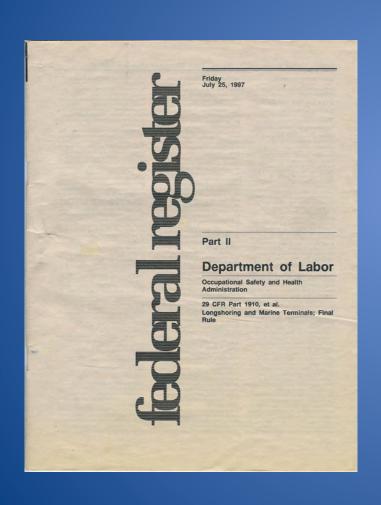
## The Marine Terminals Standard [29 CFR 1917]



Applies From the Terminal's Gate to the Foot of the Gangway

(and everything inbetween)

## Longshoring Standard [29 CFR Part 1918]



Applies From the Foot of the Gangway, to All Cargo Handling Operations Being Conducted Aboard Any Vessel

## Lots Of Regulations...

What's Their Purpose?

## Decrease Human Suffering



## Offset Financial Loss



## Help Prevent Even Greater Financial Loss



## Labor Relations





### 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 2012

## 31 January 2012 Mobile, Alabama

Dusty Roberts, a 21 year old ILA Checker, while noting the marks on steel coils in a State Docks warehouse, was struck by a reversing 10 Ton capacity forklift.

He was pinned between the industrial truck's counterweight and one such coil and suffered the internal injuries that claimed his life.

## 19 January 2012 Long Beach, California

Steve Saggiani, a foreman and ILWU member, while on deck aboard the C/V COSCO JAPAN, was crushed by a container that had fallen out of its on-deck stow.

Investigation revealed that a protruding edge at one of container's inboard corner fittings had been caught by one of the gantry crane's hoist wires. Once the crane operator began trolleying back to shore, the container tumbled down, landing on Mr. Saggiani.

## 02 July 2012 Anchorage, Alaska

Police are investigating why a truck driven by a security guard working at the Port of Anchorage drove off a dock Monday night into Knik Arm, killing the driver.

The driver was identified as Joseph Renteria, 42, a longterm employee of Doyon Universal Services, which provides security at the port.

## 22 February 2012 Port Newark, New Jersey

Ms. Earlene Brundage, a longshoreworker, was killed early tonight in an industrial accident while unloading a container ship at a Newark port, officials said.

The 47-year-old member of ILA Local Union 1235 was working at the Port Newark Container Terminal about 7:15 p.m. when she was caught between two of the railroad-carsized metal containers that had been taken from a ship in Newark Bay, a port spokesman said.

## 28 March 2012 Savannah, Georgia

A member of the International Longshoremen's Association Local 1475 was killed Wednesday morning when she was struck by a forklift while working at Georgia Ports' Ocean Terminal.

Dianne Pinckney Cobb, 57, had worked part-time as a Local 1475 clerk and checker for seven years before getting full-time status with the union a year ago.

The accident happened about 10:15 a.m. at Berth 13 beside the M/V ARIETTA, a 590-foot bulk carrier that arrived shortly before midnight from Wilmington, N.C.

## 14 May 2012 Port Manatee, Florida

Mr. Robert Dixon, a 48-year-old dockworker and member of ILA Local Union 1402, was killed Monday morning in an industrial accident at Port Manatee.

The victim was walking across a loading area in the lower hold of a refrigerated vessel carrying bananas, when he was pinned underneath a 5,500-pound cargo handling bin, according to sheriff's reports.

## 17 May 2012 Seattle, Washington

Paul Stuart, a forklift operator and member of ILWU Local Union 19, was killed in an industrial accident at Terminal 18 on Harbor Island last night.

Reports indicate that he was crushed between the forklift he was operating and a semi-automatic twist lock bin he had been loading onto a flat rack, for ultimate transfer to a containership docked at the facility.

## 28 June 2012 Houston, Texas

A 30-year-old crew member fell from the weather deck into a cargo hold to his death overnight on board the M/V THORKO ATLANTIC, a bulk cargo vessel ship docked in the Houston Ship Channel.

Year	Total		
1971	1,512,583,690		
1972	1,616,792,605		
1973	1,761,552,010		
1974	1,746,788,544		
1975	1,695,034,366		
1976	1,835,006,819		
1977	1,908,223,619		
1978	2,021,349,754		
1979	2,073,757,628		
1980	1,998,887,402		
1981	1,941,558,947		
1982	1,776,740,579		
1983	1,707,661,011		
1984	1,836,020,619		
1985	1,788,434,822		
1986	1,874,416,280		
1987	1,967,458,261		
1988	2,087,993,484		
1989	2,140,442,372		
1990	2,163,854,373		
1991	2,092,108,462		
1992	2,132,095,154		
1993	2,128,221,188		
1994	2,214,754,086		
1995	2,240,393,059		
1996	2,284,065,249		
1997	2,333,142,046		
1998	2,339,500,081		
1999	2,322,557,251		
2000	2,424,588,877		
2001	2,393,298,249		
2002	2,340,291,913		
2003	2,394,251,814		
2004	2,551,939,029		
2005	2,527,622,229		
2006	2,588,440,451		
2007	2,563,971,539		
2008	2,477,094,228		
2009	2,210,751,710		
2010	2,334,398,600		

## Total Waterborne Commerce of the U.S. (1971-2010)

In 2010:

2,334,398,600 Short Tons

Cargo-Related Fatal Accidents
Occurring at US Ports:

(Source: Bureau of Labor Statistics)

Source: USACE







"Be Careful Out There.....!"

www.blueoceana.com

