Occupational Safety & Health/Worker’s Compensation

In The U.S. Marine Cargo Handling Industry

An Overview and History for Port Industry Executives
A longshoreman was killed at the Port of Los Angeles when he was crushed to death under the rear wheels of an empty trailer, authorities said today.

The accident was reported at 7:23 p.m. Saturday and occurred on the grounds of the Evergreen terminal at Berth 229, said port spokesman Phillip Sanfield. A Los Angeles Fire Department spokesman said that the unidentified victim was pronounced dead at the scene.

The Los Angeles Port Police determined that the accident was job-related, Sanfield said. Its cause is being investigated by Cal-OSHA, the state’s workplace safety office.

Coroner's officials have released the name of the man. He was John Robert Kiser, 53, of Lakewood.
Worker Killed at Fairview Terminal
Mon. September 14, 2009

Police and Labour Department inspectors are investigating a fatal accident at the Fairview container terminal in Halifax on Sunday night.

At about 9:50 p.m. emergency responders were called to a report that a worker had been run over by a tractor trailer at the Ceres terminal, a police spokesman said. The man was dead when help arrived, the officer said.

From the Bedford Highway the red and blue flashing lights of emergency vehicle could be seen near the pier’s third crane.

Shortly after the accident, a security guard working at the entrance to the terminal said he could not confirm what had happened and requested that media call the officer later.
QuickTime™ and a H.264 decompressor are needed to see this picture.
QuickTime™ and a decompressor are needed to see this picture.
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.
Accepted Translation:

Work Harder, Smarter, Faster, and Longer

Predictable Result:

More Accidents; More Deaths
Potentially Moderating Factors:

- Terminal Operators/Unions/Ocean Carriers Working Smarter; With Compatible Safety Priorities;

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

That’s Where We Want To Be. Let’s See Where We’ve Been…
A Little U.S. History

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

- 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 “Perfect” the LHWCA

- 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**

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<td>Graham A. Barden</td>
<td>North Carolina</td>
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<td>Members</td>
<td>Augustine B. Kelley</td>
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**Staff**

- 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**

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<td>Carroll D. Kearns</td>
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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 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

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

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

- Brings existing 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 Initial OSHA Regulations (1971) to Marine Cargo Handling Operations


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
“Modernized” Part 1918 (Shipboard) Standards

- 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 the 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 $2.5 Billion for C/Y 2008 [All U.S. Coasts]
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."
Public Relations
The East & Gulf Coast Master Contract of 2010
HALIFAX WRECKED

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

The wounded and homeless are in different institutions and homes over the city. The Halifax Herald is collecting information regarding the missing, and citizens who have victims of the disaster at their homes are requested to telephone to The Herald office. Hundreds of the bodies which were taken from the ruins are not recognizable and morgue has been opened in different parts of the city. Citizens committee is being formed for rescue work. Bulletin will be issued throughout the day giving information for the assistance of those who have lost relatives and friends. While practically every home in the city is damaged those who are able to give any temporary accommodation are asked to notify some of the committees.

Military and naval patrols are keeping order and superintending the rescue work.
QuickTime™ and a decompressor are needed to see this picture.
NON-FLAMMABLE GAS 2
3 Longshoremen Dead at Port Everglades

Why?
Hayman Sooknanan
Rene Duterttre
The Venting Tank Container
Crewmember with Blower
Recovering the Bodies
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.
A New Day Dawning?

The Employee Free Choice Act
117th CONGRESS
1st SESSION

H.R. 2067

To amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES
March 2, 2021

Ms. Woolsey (for herself, Mr. Abercrombie, Ms. Berkley, Mr. Brady of Pennsylvania, Mr. Cohen, Mr. Hare, Mr. Hinchey, Ms. Hinojo, Mr. Honda, Mr. Maloney, Mr. G. Miller of California, Mr. Payne, Mrs. Pelosi, Mr. Scott, Mr. Serrano, Ms. Sherrill, Mr. Thompson, Ms. Tubbs Jones, Mr. West, and Mrs. Watson Jones) in camera.

A BILL

To amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 This Act may be cited as the "Protecting America's
5 Workers Act".
(5) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States (not including the United States Postal Service) or any State or political subdivision of a State.

SEC. 101. COVERAGE OF PUBLIC EMPLOYEES. (a) IN GENERAL.—Section 3(5) (29 U.S.C. 652(5)) is amended by striking “but does not include” and all that follows through the period at the end and inserting “including the United States, a State, or a political subdivision of a State.”
Other Probable Changes Within This Legislation

> Increased protection for “Whistleblowers”
> No “discouragement” from reporting injuries
> Mandatory “serious incident” notification
> Victim’s rights enhanced
> Substantial civil penalty increases
> Employee right to contest proposed settlements
> Criminal fines/Prison terms go up substantially, as will the likelihood of criminal prosecution of individual employer officials
“Be Careful Out There…………!"

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