



The Monthly Maritime Newsletter of SeaBright Insurance Company

Adjoining Areas Under Longshore Jurisdiction

Entitlement to longshore benefits now requires proof of two separate facts: (1) status as a covered worker and (2) injury on a covered situs (location). However, the original Longshore Act restricted benefits to workers injured on the navigable waters of the United States (including any dry dock). Longshoremen on land were limited to state compensation benefits. The arbitrary land/water boundary produced disparate results when similar accidents, e.g., worker injured in crane accident, generated significantly different benefits due solely to the site of the injury.

Congress sought to eliminate this disparity by extending coverage landward in the 1972 Longshore Amendments. The Amendments provided coverage for maritime workers injured on navigable waters or on "any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel." 33 U.S.C. § 903 (a).

Section 3(a) specifically limits the geographic area of the Act's coverage. An employee injured outside a covered situs cannot be covered by the LHWCA even if he is within the course of his employment, though he would receive state benefits. Determining the extent that jurisdiction moved landward has caused continuous litigation since 1972. Employers first argued that this extension was limited to the dock apron, but the Supreme Court rejected that constrained interpretation in its first post-Amendment decision, *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249 (1977). There is now a split among the circuits regarding the boundaries for landward coverage of the Act. The major maritime circuits (Fifth, Ninth, and Fourth) have distinct tests, and the Supreme Court has shown no interest in resolving the conflict.

The Ninth Circuit's definition remains the most expansive. That court rejected the plain meaning of the word "adjoining" and instead determined "the phrase 'adjoining area' should be read to describe a functional relationship that does not in all cases depend upon physical contiguity. Consideration should be given to the following factors, among others, in determining whether or not a site is an 'adjoining area' under § 903(a): the particular suitability of the site for the maritime uses referred to in the statute; whether adjoining properties are devoted primarily to uses in maritime commerce; the proximity of the site to the waterway; and whether

Bound New Business Recap

SeaBright successfully wrote \$5.4 million in new estimated annual premiums during the third quarter of 2010 (includes Small Maritime Program):

Northern Region	\$2.7 million
Southern Region	\$2.1 million
Western Region	\$680,000

Large account successes:

Northern Region

Construction	\$2.3 million
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Southern Region:

Construction	\$525,000
Construction	\$145,000
Hospitality & Services	\$710,000
Oil & Gas	\$105,000

Western Region

Construction	\$360,000
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Federal and Admiralty Laws Booklet Available from SeaBright

This booklet is a great primer on who is covered under the Jones, USL&H and other federal acts, and when and where coverage applies. To request your complimentary copy, please visit the "Request a Brochure" page on our website at www.sbic.com.

the site is as close to the waterway as is feasible given all of the circumstances in the case.” *Brady Hamilton Stevedore Co. v. Herron*, 568 F.2d 137, 141 (9th Cir. 1978):

The Fifth Circuit also eschewed the plain meaning, holding that while an adjoining area need not be directly contiguous to navigable water, it must have a maritime nexus. This requires analyzing the characteristics of the activity in the area, and by applying this criterion the court found situs in a stevedore gear room approximately one-half mile outside the fenced Port of Houston. *Texports Stevedore Co. v. Winchester*, 632 F.2d 504, 12 BRBS 719 (5th Cir. 1980), *cert denied*, 452 U.S. 905 (1981). The geographical test was further limited in *Bazor v. Boomtown Belle Casino*, 313 F.3d 300 (5th Cir. 2002), *cert. denied*, 540 U.S. 814 (2003) by the addition of a temporal requirement, meaning that regardless of the proximity to water, an activity described in the act, *viz.*, loading, unloading, building or repairing a vessel, must be ongoing at the time of the injury to imbue the location with situs. “Whether an adjoining area is a § 903(a) situs is determined by the nature of the adjoining area *at the time of injury*.” *Id.*, at 304 (emphasis added).

The Fourth Circuit has the most restrictive interpretation, limiting land coverage to the area between the water and the first land boundary such as a street, rail line, fence, jogging path, etc. *Sidwell v. Express Container Services*, 71 F.3d 1134 (4th Cir.), *cert. denied*, 518 U.S. 1028 (1996). This decision came on the heels of the Supreme Court’s *Greenwich Collieries* case that instructed courts to adhere to the “plain language” of the Longshore Act. The Benefits Review Board has stated it will apply the restricted Fourth Circuit view only on cases arising within the Fourth Circuit but will continue the expansive application of jurisdiction in all other cases. *Arjona v. Interport Maintenance Co., Inc.*, 31 BRBS 86 (1997).

The circuits are split on whether such a physically contiguous pier or other structure must be connected to activity named in the Act. The Ninth Circuit held that any adjoining pier, wharf, etc. is a covered situs, without regard to what the pier’s use may be. *Hurston v. Director, OWCP [Hurston I]*, 989 F.2d 1547 (9th Cir. 1993). Interestingly, the court relied on the plain language of the Act for this conclusion (although it rejected the plain language for applying “adjoining”): “If Congress had wanted to restrict ‘any adjoining pier’ to cover only those piers used for maritime purposes, it could have easily said so. Or, it could have eliminated the phrase ‘other adjoining area,’ so that ‘pier, wharf, dry dock, terminal, building way, [and] marine railway’ would also have been modified by ‘customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel[].’ Likewise, the drafters could have put a comma after ‘other adjoining area’ had they wished ‘any adjoining pier’ to be modified by ‘customarily used.’ As written, the language does none of these things.” *Id.*, at 1549-1550. The court recognized that its decision meant that coverage could be “based solely on the location, name, or appearance of a structure because what were once piers, wharfs, and so forth, customarily used for loading or repairing vessels, are now offices, homes, restaurants, retail outlets, and parking lots. We are not greatly concerned, however, because people working on such places are covered only if they meet the status requirement; waiters, bellhops, parking lot attendants, and other similar workers do not qualify as ‘maritime employees’ under § 902(3).” *Id.* at 1553. The Second Circuit agrees with the Ninth on this point. *Fleischmann v. Director, OWCP*, 137 F.3d 131 (2nd Cir.), *cert. denied*, 525 U.S. 981 (1998).

The Fifth Circuit, on the other hand, has followed the Board’s original analysis in *Hurston*, *Thibodeaux v. Grasso Production Management, Inc.*, 370 F.3d 486 (5th Cir. 2004). Directly attacking the *Hurston* analysis, the court said: “[T]he terms enumerated in § 903(a) which accompany pier - wharf, dry dock, terminal, building way, and marine railway - connote maritime commerce... The approach adopted by the ALJ and the *Hurston* court results in just such an overly broad interpretation of the term ‘pier.’ But when [the enumerated locations in the statute are] viewed together in the context of the LHWCA, a connection to maritime commerce becomes the unifying thread connecting the listed structures.”

In sum, the meaning of “adjoining area” depends on the geographical area in which a longshore injury occurs. SeaBright’s experienced professionals can help you navigate through these legal swamps regardless of where insured operations are located.

From all of us at SeaBright, we wish you a joyous holiday season and a prosperous new year!

Contact Information:

Mary Ann Calkins, Senior Vice President - Maritime Division maryann.calkins@sbic.com 206-269-8583
Tracey Hughes, Underwriting Officer - Maritime Division tracey.hughes@sbic.com 206-269-8556



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