



## The Monthly Maritime Newsletter of SeaBright Insurance Company

### Concurrent Jurisdiction: Longshore and State Workers' Compensation

As originally enacted by Congress, the U.S. Longshore and Harbor Workers' Compensation Act carefully provided for the recovery of benefits only "if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law." 33 U.S.C. § 903(a), 33 U.S.C. § 903(a). Originally the Act applied exclusively to those injured on navigable waters while working for a maritime employer. Some thirty-five years later, the Supreme Court departed from the original intent of the act and recognized the right of shipyard workers to pursue longshore benefits in addition to those available under state workers' compensation laws. Justice Stewart, joined by two colleagues, dissented, saying "I cannot join in this exercise in judicial legerdemain." *Calbeck v. Travelers Ins. Co.*, 370 U.S. 114, 135 (1962)(Stewart, J., dissenting).

With the landward extension of the Act in 1972, the question of concurrent jurisdiction again arose. Could a maritime employee injured on a covered land situs pursue benefits under both a state and a federal compensation act? The Supreme Court answered this question in *Sun Ship, Inc. v. Commonwealth of Pennsylvania*, 447 U.S. 715 (1980). However, to comprehend the implications of this decision, it is necessary to understand the development of overlapping state and Longshore jurisdictions.

In *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917), the Supreme Court held that state workers' compensation acts did not have jurisdiction seaward of the water's edge. The Federal courts had exclusive jurisdiction in all admiralty and maritime cases, and with regard to state legislation, "no such legislation is valid if it contravenes the essential purpose expressed by an act of Congress, or works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations." *Id.* at 216. The water's edge became known as the "Jensen Line." From this, it seems clear that federal law alone should apply to such injuries, and indeed most state high courts that have considered the question have ruled on the side of exclusive Longshore jurisdiction for injuries involving maritime workers on navigable waters. (Note that California has conflicting appellate decisions, and Connecticut stands alone in holding that it may give state benefits to maritime workers injured on navigable waters.)

In *Western Fuel Co. v. Garcia*, 257 U.S. 233 (1922), the Supreme Court indicated that state law might apply in suits involving injuries that were "maritime and local" in character as long as they did not

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work “material prejudice to the characteristic features of the general maritime law, nor interfere with the proper harmony and uniformity of that law in its international and interstate relations.” In a 1942 case, the Supreme Court recognized that a narrow category of maritime work had no significant impact on interstate or foreign commerce, and the Court said that state compensation law could apply to this “maritime, but local” claim. *Davis v. Department of Labor and Industries*, 317 U.S. 249 (1942). This confusing doctrine has been sparingly applied, and there is considerable doubt as to whether it survived the 1972 Amendments to the Longshore Act. However, the concept was again reinforced by the Supreme Court’s decision in *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996). The Court affirmed the award of Oregon state workers’ compensation benefits in *Grant Smith Porter Ship Co. v. Rohde*, 257 U.S. 469 (1922), because the claimant’s injury was maritime and local in character.

The aforementioned Supreme Court decision in *Davis* held the Longshore Act covered workers injured in state navigable waters. A steelworker dismantling a bridge was knocked from a barge into the water and drowned. His widow applied for state benefits, but the state, believing *Jensen* barred her recovery under state law, denied the claim. The Supreme Court reversed, finding that “employees such as decedent here occupy that shadowy area within which, at some undefined and undefinable point, state laws can validly provide compensation.” The Court concluded that when a case fell within this “twilight zone,” the first tribunal, either state or federal, to which the claimant applied should presume it had jurisdiction in the absence of substantial evidence to the contrary. Since this decision involved non maritime work on the navigable waters, the situation also satisfied the maritime but local requirement.

In *Calbeck v. Travelers Insurance Co.*, 370 U.S. 114 (1962), the Supreme Court held “the Longshoremen’s Act was designed to ensure that a compensation remedy existed for all injuries sustained by employees on navigable waters, and to avoid uncertainty as to the source, state or federal, of that remedy.” The conclusion reached by the Court was that concurrent jurisdiction existed seaward of the water’s edge so that injuries on the navigable waters of the United States would be compensated under either state worker’s compensation or the Longshore Act. This decision emphasized maritime employees engaged in work defined as maritime and local could select the coverage most beneficial to them. The stern dissent of Justice White called the decision “an incredible exercise in jurisprudential legislation.”

*Sun Ship* involved injuries to workers on the extended situs landward of the “*Jensen Line*” who had sought Pennsylvania state workers’ compensation benefits. The Court found the states share jurisdiction with the federal government in the area landward of the “*Jensen Line*” and found no indication the Congress intended to reverse the Court’s decisions in *Davis* or *Calbeck*, and reached the conclusion that “the 1972 extension of federal jurisdiction supplements, rather than supplants, state compensation law.” 447 U.S. at 720.

Currently concurrent jurisdiction can be classified into three categories: the non local maritime injuries seaward of the “*Jensen Line*” which are to be compensated under the Longshore Act; those occurring seaward of the “*Jensen Line*” that are maritime and local and can be covered either under the Longshore Act or the respective state act; and maritime injuries landward of the “*Jensen Line*” which can be covered under the Longshore Act or the state acts.

While Congress clearly could resolve the overlap by a clear statement of pre-emption, it has not done so. The result is, in states that allow concurrent jurisdiction, workers are free to pursue benefit claims simultaneously in both their state and the Longshore system. Often the choice depends on whether they are represented by counsel and the system with which the attorney feels most comfortable.

At least eleven states have enacted statutes that modify state workers’ compensation law to provide exclusive Longshore remedies in many areas, including landward, that might otherwise support concurrent jurisdiction. These include Florida, Hawaii, Indiana, Louisiana, Maryland, Mississippi, New Jersey, Ohio, Oklahoma, Oregon, Texas, and Washington.

The maritime states that have retained concurrent jurisdiction include Alabama, California, Connecticut, Georgia, Illinois, Indiana, Kentucky, Maine, Massachusetts, Minnesota, Missouri, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, & Wisconsin. A maritime employer whose worker is injured in one of these states is in the crosshairs of potentially conflicting systems. SeaBright’s highly-experienced maritime claims staff can sort through such jurisdictional problems and deliver fair and appropriate handling of these cases.

**All of us at SeaBright wish you a happy holiday season and much success in the new year.**

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