

The Monthly Maritime Newsletter of SeaBright Insurance Company

Bridging Longshore's Jurisdictional Divide

The Longshore Act was first created to provide compensation coverage to workers whose injuries fell between the jurisdictional cracks – maritime workers injured on navigable waters who worked for a maritime employer. The Act's story started with the Supreme Court's decision that New York could not extend its workers' compensation law to longshoremen on a foreign-flagged vessel in U.S. navigable waters. *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917). Although the Act was originally conceived to fill a void made apparent by this case, it soon became apparent that drawing the lines of coverage would not be easy even though the law only applied to injuries occurring on the navigable waters of the United States. This has been particularly true where work in the building and repair of bridges is involved.

Soon after the USLHWCA was enacted, it became clear that workers other than longshoremen wanted to participate in this generous new compensation mechanism, and bridge workers were among them. Bridges were considered extensions of land and not traditional maritime locations, and the courts rebuffed initial efforts to expand coverage. In 1942 the Supreme Court considered the death claim of a widow whose husband drowned when he fell from a barge while dismantling a drawbridge over the Snohomish River in Washington. The Washington State Workmen's Compensation Fund denied benefits, believing it was deprived of jurisdiction by the Supreme Court's Jensen decision. In a short opinion the Supreme Court reversed, finding no constitutional impediment to Washington providing a state remedy to this widow. *Davis v. Dept. of Labor and Indus. of Washington*, 317 U.S. 249 (1942). The Court acknowledged that post-Jensen cases caused great confusion and acknowledged that "This Court has been unable to give any guiding, definite rule to determine the extent of state power in advance of litigation, has held that the margins of state authority must 'be determined in view of surrounding circumstances as cases arise.'" *Id.*, at 253, citing *Baizley Iron Works v. Span*, 281 U.S. 222, 230 (1930). The Supreme Court said workers like Davis who work partly on land and partly on water to "occupy that shadowy area within which, at some undefined and undefinable point, state laws can validly provide compensation." *Id.* Later in the same opinion the Court actually called this area the "twilight zone."

Looking back, we see that for the past 70 years the blurred jurisdictional boundary between state and federal coverage has remained undefined. A series of cases, however, showed resistance

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by the federal program to allow benefits to any bridge workers, even those like Davis, who were injured from a floating platform in navigable waters. Importantly, the original version of the Longshore Act contained a provision, no longer applicable, that extended federal benefits only where state law could not provide a remedy.

In 1972 Congress rewrote the jurisdictional provisions of the Act, requiring a worker to prove he was a "maritime employee" (now called "status") injured in a specifically designated location (now called the "situs" requirement) before Longshore benefits were payable. In 1983 the Supreme Court held that *any* worker who was injured working on navigable waters automatically had status and entitled to LHWCA benefits because "navigable waters of the United States" were a listed situs. Earlier the Court concluded that Congress did not intend the amended Act to be exclusive, raising the possibility that a worker injured on land could pursue both Longshore and state compensation benefits simultaneously for the same injury. Despite this, the courts continued to deny longshore benefits to bridge workers injured *on the bridge* or adjoining land, even if the injury occurred in an area where materials and supplies were loaded or unloaded from boats or floating platforms. Adhering to a rigid conclusion that a bridge was not a covered situs, the courts otherwise expanded Longshore benefits to a host of workers on or near water *except* those on bridges. In line with these denials, the Benefits Review Board affirmed denial of benefits to workers on the "Big Dig" project in Boston who worked below the water line in tunnels, finding their work area was not an "adjoining area" customarily used by an employer to "build, repair, load or unload" vessels. Recently it denied federal compensation to an electrician on the new Woodrow Wilson Bridge in Washington, D.C., whose injury occurred below the water line on the bridge.

In a few instances, bridge workers have been granted benefits when the bridge under construction was proven to be an "aid to navigation," such as a drawbridge or replacing a low bridge with a higher one to permit more vessels to pass.

Nevertheless, some courts have recognized the right to Longshore benefits of bridge workers injured on floating work platforms or spud barges when the injuries occurred over the water. Given the Supreme Court's adoption of an expansive definition of "vessel," the possibility exists that some bridge workers may qualify as seamen and receive maintenance and cure if injured. Maritime law extends that right regardless of where the injury occurs, as long as the "seaman" is subject to the mission of the vessel. All workers denied Longshore benefits should be entitled to state compensation instead. But the Supreme Court acknowledged that courts have difficulty determining the proper jurisdiction for bridge workers' compensation claims. There is no expectation that employers should be able to determine these issues for themselves.

The generous benefit structure of the Longshore Act attracts workers, and the controversy surrounding bridges likely will continue. SeaBright, with its broad experience in maritime and compensation claims, has expert underwriters and maritime claim examiners to sort out such complex jurisdictional questions involving bridge and construction work. SeaBright's ability to provide, in a single policy, coverage for State Act, Longshore and Maritime Employers Liability exposures assures that such jurisdictional questions do not needlessly delay the flow of benefits to injured workers and minimizes legal expense in determining the appropriate jurisdiction in such cases.

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