



# THE 7 CRITICAL SECRETS TO WRITING LONGSHORE INSURANCE

## BONUS:

Navigating Longshore  
& Admiralty Insurance  
**AN AGENT'S GUIDE**



## ABOUT THIS GUIDE

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Dear Agent,

It is our pleasure to present the 2022 IIMIS "The 7 Critical Secrets to Writing Longshore Insurance" Guide, which includes the 2012 Longshore regulations updates and the 2022 changes for Form LS202 penalty increases.

This Guide was developed to provide an overview of the most critical issues an agent faces when navigating Longshore and Admiralty Insurance in today's market.

The Guide also provides you with a bonus: "Navigating Longshore & Admiralty Insurance," that will help you understand the interlocking exposures your marine clients face and the proper way to structure these coverages to avoid E&O exposures.

It is our sincere hope that after reading this Guide, you will come away with a better knowledge of the complexity of Longshore, and utilize its best practices to assist your clients in decisions for protecting their business, their employees, and themselves.

If you would like more information, please feel free to contact us.

Best Regards,

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INTERNATIONAL INSTITUTE OF MARINE INSURANCE STUDIES

# THE 7 CRITICAL SECRETS TO WRITING LONGSHORE INSURANCE





# 1 INCORRECT EXPERIENCE MODIFIER

Unlike traditional Workers Compensation, the Longshore marketplace is made up of a number of different varieties of carriers. These, as discussed later in this guide in greater detail, fall roughly into three categories:

- Traditional licensed carriers
- Mutual/Group Self Insured carriers
- State Funds, Assigned Risk, JUA and other state specific insurers

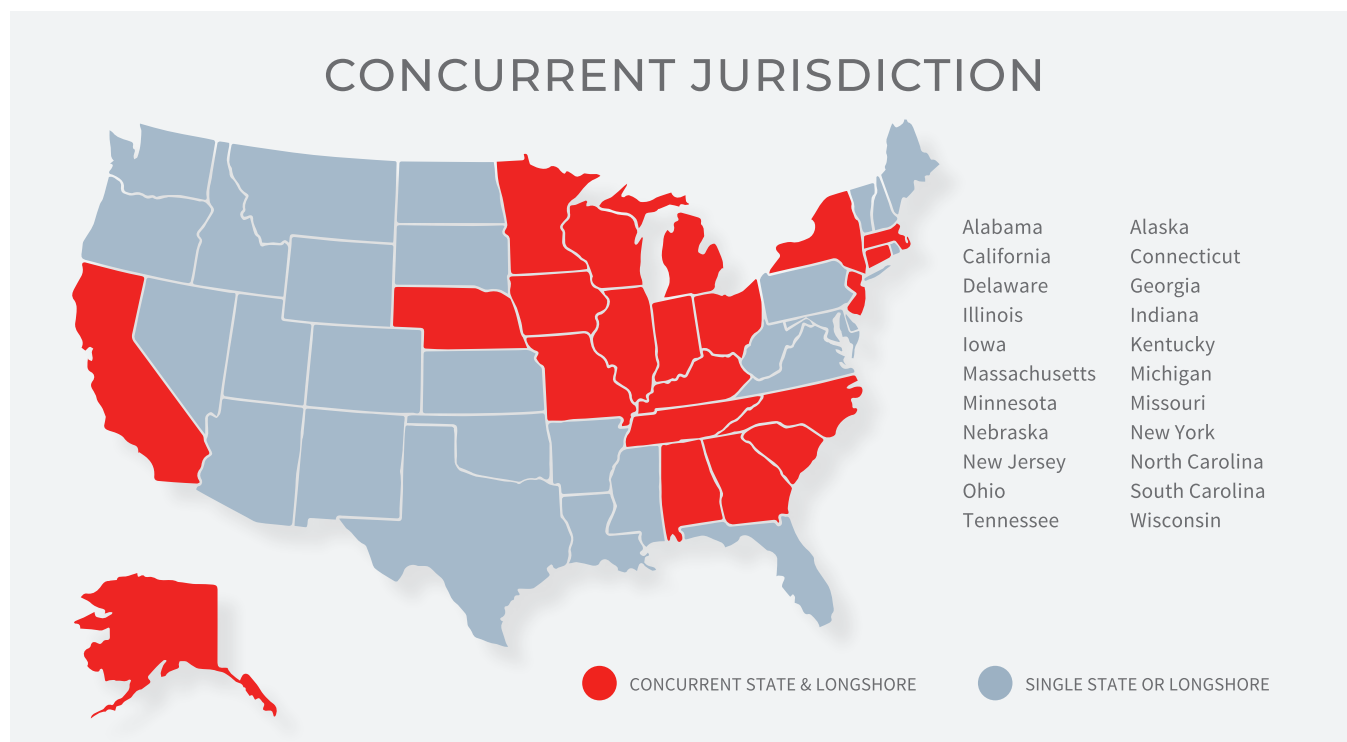
Of these three, the Mutual carriers count for a market share somewhere close to 50% of the total book of insured Longshore, and neither of those carriers are a member of NCCI or the other state rating bureaus. As such, the LONGSHORE payrolls and related claims are NOT part of the experience mod. In fact, for some Longshore clients who have little State Act payroll, that portion of their premium might not be large enough to even generate a mod. In the best case, the experience is skewed, or worse, non-existent? Is this good news? Possibly, but first we need to identify the state rules under which the client is operating.





# 1 INCORRECT EXPERIENCE MODIFIER

Are they in a Single or Concurrent Jurisdiction state?



**A Single Jurisdiction State** is one in which the claimant can have EITHER a State Act claim OR a Longshore claim, but not both. In these cases, if the Longshore experience is worse than the industry average, bringing that payroll and the associated claims into the mod calculation could drive up the mod and cost the client a lot of money. However, if the Longshore experience is better than average for those class codes, then the mod can be reduced. This has the benefit not only of directly reduced costs, but potentially bringing in more competition on an account with a lower mod.

**A Concurrent or Dual Jurisdiction State** is one where the claimant can pursue the State Act claim and supplement it with a Longshore claim. In this case, the Longshore payroll is omitted from the mod, BUT some, if not ALL of the claim is still counted in the mod as it is paid as State Act. This unrealistically drives the mod higher than logic says it should be and numbers of 2.0 and above are not unique, even for profitable accounts.

How do you solve this? All NCCI, and most other states, allow the filing of “non-affiliate” data using a form called an ERM-6. With the carrier's permission, this can be used to file the missing data. Be careful what you ask for and run a test mod first to see the effect. For one client filing this mod, it created a 30 point drop from 1.16 to 0.86 in one year, but a small increase in the next year.

Not surprisingly, California has a unique way of looking at Longshore and mods. Longshore claims CANNOT be counted in the mod EVEN IF written by the State Fund or a licensed carrier. What makes this particularly bad, is that California is a Concurrent Jurisdiction State. Many of the claims reported are under the State Act without the corresponding payroll. This causes Longshore account mods in California to be wildly unrepresentative of the true profitability of the account. Even worse, some carriers will apply these higher mods to the LONGSHORE rates, although that data was not included in the first place. Sorry California, there is no easy solution here!



## 2 MISSING CREDITS

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While Longshore risks have unique markets, most of the same credits that are in the State Act Programs are available when writing with the State Funds or licensed carriers.

Mutual carriers typically do not offer these credits.

State Drug Free Workplace and Safety are the most common credits, however, often forgotten, is the Contractors Premium Adjustment Credit, which is available in many states IF the relevant codes are on the Policy. Further, as Longshore rates are typically significantly higher than their state counterparts, these credits have a bigger effect on the bottom line.

Premium Credits are also standard with the Licensed and State carriers, but usually not available through Mutual carriers.

Managed Care itself is not permitted under the Longshore law and as such, carriers are not supposed to allow that credit on the LONGSHORE portion of the premium, although it can be included for the State Act portion. Having said that, some carriers will still include the Managed Care Credit either due to ignorance of the law, system limitations or in some cases a desire to be more competitive. However, be warned: we have seen it added up-front, but then, correctly removed from the Longshore premium at audit!





## 3 WRONG PAYROLL

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Payroll seems so simple and yet, is frequently misunderstood under Longshore. In some cases the rules are simply different.

First, we have payroll allocation between class codes. Here, LONGSHORE follows the same rules as State Act. However, similarly to NCCI or other state rules, you can split payroll, EVEN FOR ONE INDIVIDUAL, if you follow the appropriate rules for documentation of the payroll.

For example, let us take a carpenter who spends 75% of his time working landlocked and 25% of his time working on a ship. If you can support the records by contemporary time records required by NCCI or your state rating bureau rules, then you can split his payroll 75% Carpentry NOC (Class Code 5403) and 25% Longshore Carpentry NOC (Class Code 5403F). This means he could be paying half or less of the rate for 75% of his time. Yes, this does require a little extra paperwork, but it can be worth the effort.

**Payroll Limitations** – While the LONGSHORE Act does not specifically address the payroll limitations available for Executive Officers, Partners, Members of a LLC, etc., virtually every carrier accepts those same limitations in the Longshore policy. Check that you are using these if your Officers and Partners are performing LONGSHORE work. However, Officers of a corporation are NOT permitted to exempt themselves from coverage IF they do any LONGSHORE work, so those state exclusions have no value here.

**Overtime Deductions** – NCCI and most state rules permit the elimination of the premium portions of overtime for ALL class codes except stevedores (if anyone knows why stevedores are the exception to this rule, please let us know as we would love that explanation), plus some other minor forms of compensation. As such, those carriers following NCCI rules, basically the State and Licensed carriers, follow that same pattern. However, the Mutual insurance companies that write Longshore typically include ALL remuneration. If your client works 7 days a week or more than 8 hours a day, this could be a significant amount of money for them as the “NCCI” payroll could be lowered by 10%, 20% or more of the gross payroll.





## 4 LONGSHORE ACT

### PENALTIES FOR NOT CARRYING COVERAGE

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The wording of the penalties section of the Longshore Act is reproduced on the next page, but it really boils down to the following:

- A fine of up to \$10,000
- Potential Imprisonment
- Personal Liability of corporate officers for any unpaid benefits
- Loss of sole remedy, so that once Longshore benefits are paid, the (un)insured can also be subject to tort liability in excess of the Longshore benefits.

From our experience, there has never been a case where someone has been thrown in jail for not buying LONGSHORE insurance, but it is there in the Act. We are not aware of any other type of insurance that has the potential for jail time for failure to purchase!

What should be more concerning are the fines, personal liability, and the loss of sole remedy. These can be very expensive claims and this is serious.





## 4 LONGSHORE ACT

### PENALTIES FOR NOT CARRYING COVERAGE

**Employers (including corporate officers personally) that are subject to the Longshore and Harbor Workers' Compensation Act, who fail to secure the payment of benefits thereunder,** either by obtaining insurance or becoming authorized as a self-insurer by the U.S. Secretary of Labor, may be liable to the federal government for penalties or subject to criminal charges. In addition, the employer (and corporate officers) may be sued by the insured employee, or his representative for unlimited damages for which the employer may be uninsured.

### Section 938 Penalty for failure to secure payment of compensation

#### **(A) Failure to secure payment of compensation.**

Any employer required to secure payment of compensation under this Act who fails to secure such compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$10,000 (recently increased – see page 29), or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable for such fine or imprisonment as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under the said Act in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by Section 32 of this Act.

#### **(B) Avoiding payment of compensation.**

Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this Act, and with intent to avoid the payment of compensation under this Act to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

#### **(C) Effect on other liability of employer.**

This section shall not affect any other liability of the employer under this Act.



## 5 UNINSURED SUBCONTRACTORS

This title is very misleading. There are actually no uninsured subcontractors under Longshore.

**There are only two types of subcontractors:**

- the one with their own insurance and
- the one who is insured by you

The rules of the "independent" subcontractor fly out the window here, and the pass up is 100% clear and long-reaching, and keeps going up the chain to find the deep pocket.

What is worse for these uninsured subcontractors, is that the General Contractor, or company who hires them, could themselves be EXEMPT from Longshore. However, by hiring an uninsured subcontractor, it brings them back into Longshore. Two classic examples of this are Government employees and Marina employees - both of which are exempt from Longshore.

Let us say, for example, the marina hires a subcontractor to build a new dock for them (a clear Longshore job), but the subcontractor does not carry Longshore. The marina itself becomes liable for unpaid benefits but typically will themselves be uninsured for Longshore, as they are exempt and thus suffer all the penalties listed on the prior page.

The same is true for the Government who subcontracts stevedoring work to an uninsured employer even though the government's own employees would be exempt!

Nasty!

## LONGSHORE ACT

### Liability for Compensation

#### Section 4(a)

Every employer shall be liable for the payment of compensation

If employer is a subcontractor

if they fail to secure the payment of compensation  
the contractor may (will) be liable for compensation



# 6 OUT OF STATE LONGSHORE GAP

If there is one section of this guide that is the most critical, this is it!

## Consider two things here:

- Longshore is a Federal Act working in all 50 States, Washington D.C., Puerto Rico, etc.
- Marine work is portable. Even the most established shipyard will send employees to another state to check something out, or to finish some minor repairs on a vessel that left their facility some time ago.

Yet, the standard NCCI Longshore Endorsement restricts coverage to accidents occurring in **“A STATE LISTED IN THE SCHEDULE”** (of the Longshore endorsement).

What is worse here, is that sections 3a or 3c of the Workers' Compensation Policy have NO effect on LONGSHORE coverage. So you can have five states listed in 3a and forty-one in 3c and yet, if the Longshore endorsement only has one state listed, your coverage is limited to that one state.

## One day out = one day without coverage!

If you are in the great state of California, trips to another state for LONGSHORE work might be rare, but in New England or the Gulf Coast, these are everyday events. CARRIERS TODAY ARE DECLINING CLAIMS ON THIS BASIS.

Furthermore, some carriers, particularly the State Funds, do not have the ability to write Out of State LONGSHORE coverage and that could leave your client with a huge gap.

## There are two solutions:

1. Add every state that the client could perform LONGSHORE work in, on an IF ANY basis to the policy. If your carrier will/could do this, then it is usually free or low cost, normally only taking the largest expense constant of those states.
2. Look for an All States LONGSHORE Endorsement. This is rare, but possible. One carrier offers 46 states (no monopolistic) which causes concern with Washington and Ohio, as they can be significant marine states for certain accounts. At least one carrier offers a true ALL STATES LONGSHORE endorsement, which covers all 50 states, Washington D.C., and Puerto Rico. This is the best route if available for your account.

**WATCH OUT:** Listing a state in 3a does not mean it is on the LONGSHORE Endorsement. A client that has a salesman in TX, might just be hoping to do some work there, so add their Longshore class in TX as well!

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY		WC 00 01 06 A				
		(Ed. 4-92)				
<b>LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT COVERAGE ENDORSEMENT</b>						
This endorsement applies only to work subject to the Longshore and Harbor Workers' Compensation Act in a state shown in the Schedule. The policy applies to that work as though that state were listed in Item 3.A. of the Information Page.						
General Section C. <b>Workers' Compensation Law</b> is replaced by the following:						
<b>C. Workers' Compensation Law</b> Workers' Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page and the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950). It includes any amendments to those laws that are in effect during the policy period. It does not include any other federal workers or workmen's compensation law, other federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.						
Part Two (Employers Liability Insurance), C. Exclusions., exclusion 8, does not apply to work subject to the Longshore and Harbor Workers' Compensation Act.						
This endorsement does not apply to work subject to the Defense Base Act, the Outer Continental Shelf Lands Act, or the Nonappropriated Fund Instrumentalities Act.						
<div style="text-align: right;">Schedule</div> <table><thead><tr><th>State</th><th>Longshore and Harbor Workers' Compensation Act Coverage Percentage</th></tr></thead><tbody><tr><td>Florida</td><td>286%</td></tr></tbody></table> <p>The rates for classifications with code numbers not followed by the letter "F" are rates for work not ordinarily subject to the Longshore and Harbor Workers' Compensation Act. If this policy covers work under such classifications, and if the work is subject to the Longshore and Harbor Workers' Compensation Act, those non-F classification rates will be increased by the Longshore and Harbor Workers' Compensation Act Coverage Percentage shown in the Schedule.</p> <div style="text-align: center;"><b>FLORIDA</b></div>			State	Longshore and Harbor Workers' Compensation Act Coverage Percentage	Florida	286%
State	Longshore and Harbor Workers' Compensation Act Coverage Percentage					
Florida	286%					
This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)						
Endorsement Insured	Effective Policy No.	Endorsement No. Premium				
Insurance Company	Countersigned by _____					
WC 00 01 06 A (Ed. 4-92)						



## 7 EXPANDING DEFINITIONS

When the Longshore Act was originally written in 1927, it covered only Ship Repairers, Stevedores, Harbor Workers and Ship Builders. Over the years, it has been repeatedly expanded to include just about anyone over or next to the waterfront.

**Look at the following examples which have all been classified as Longshore and granted Longshore benefit levels:**

- A bookkeeper (clearly a clerical job) who collects invoices off packing crates in the warehouse.
- A security guard patrolling the docks. The Act excludes “Security”, but the court said that the word office modified the word security, so now only “office Security Guards” are considered excluded. We do not know how many guards are confined to the office in marine businesses.
- A roofer who is re-roofing the storage building of a marina.  
(See Uninsured Subcontractors, pg. 12)
- A tiler who was hired to tile the bathroom at a newly constructed cruise ship terminal.

Here is the big problem: If we recommend something today on a policy that may go into effect next year, the claims that happen later that year might take two to three years to be adjudicated. Four to five years after our advice is given, it is judged on the future standards.

This list is lengthening continuously, so if you are not recommending coverage for any borderline case, you are leaving a huge gap.

## LONGSHORE ACT STATUS-EXCLUSIONS

### Section 902(3)(A)

Individuals employed exclusively to perform office clerical, secretarial, security, or data processing work.



# CARRIERS





# LONGSHORE CARRIER OPTIONS

**As we have previously discussed, these are the three groups of carriers:**

- Traditional licensed carriers
- Mutual/Group Self-Insured carriers and
- State Funds, Assigned Risk, JUA and other state-specific Insurers

## **So what is the difference between these carriers?**

Licensed carriers are typically covered by the states' Guarantee Funds, as are most common state carriers. Having said that, some states specifically EXCLUDE or limit Longshore in their Guarantee Funds, EVEN FOR the licensed carriers, so check your state rules!

Furthermore, Mutuals are typically a Joint and Several Liability:

This means that the client guarantees the performance of the other members of the group and should one or more fail, then all the others would have to put up the funds to pay their losses.

**Joint and several liability** • liability that may be apportioned either among two or more parties or to only one or a few select members of the group, at the adversary's discretion; thus, each liable party is individually responsible for the entire obligation, but a paying party has rights of contribution and indemnity against nonpaying parties.

## **Premiums and Rates:**

The Licensed and State Carriers typically follow the top-down pricing method common to WC. They rate payroll and then allow all the discounts, mods and other applicable factors.



However, the Mutual Carriers often offer a bottom-up pricing. They offer a NET rate on payroll and then add items such as the DOL Surcharge.


In comparing these two types of approaches, we need to consider the bottom line for both. An account with a good mod, Drug Free, Safety Credits and Premium Discount, along with a \$15 "traditional rate" might net down to an effective rate in the \$10 range, whereas the "net" \$10 rate could end up costing \$11 - \$12 OR MORE.



# U.S. DEPARTMENT OF LABOR


## LONGSHORE AUTHORIZED CARRIERS

 An official website of the United States government. [Here's how you know](#) 

 U.S. DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

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FEDERAL EMPLOYEES | ENERGY PROGRAM | BLACK LUNG | LONGSHORE | MEDICAL PROVIDERS | ABOUT OWCP | CONTACT OWCP

OWCP > Longshore Program > Longshore Authorized Carriers and Self-insured Employers

## Longshore Authorized Carriers and Self-insured Employers

### Division of Longshore and Harbor Workers' Compensation (DLHWC)

The tables below show insurance carriers and self-insured employers that are currently authorized to write coverage under the Longshore and Harbor Workers' Compensation Act (LHWCA, depicted under ACTS COVERED as LS) and/or extensions. In very few cases an authorization date under an extension to the LHWCA (extensions include The Defense Base Act (DB), The Outer Continental Shelf Lands Act (OC), The Non-Appropriated Fund Instrumentalities Act (NF) and/or District of Columbia Workers' Compensation Act (DC)) will differ from the date shown.

The first table below shows authorized insurance carriers, the second table shows authorized self-insured employers. To find the second table, either scroll down the page or click on [authorized self-insured employers](#).

If there are any questions regarding authorization dates or any other specific information about a carrier/self-insured employer, please contact the Longshore National Office (202) 513-6809.

Longshore Authorized Carriers and Self-insured Employers

Authorized Insurance Carriers	Acts Covered	Authorization Date
Acadia Insurance Company	LS OC DB NF	04/01/1995
Accident Fund General Ins. Co.	LS	08/03/2010
Accident Fund Insurance Company of America	LS DB NF	04/15/1997
Accident Fund National Ins. Co.	LS	08/03/2010
ACE American Insurance Company	LS OC DB NF DC	10/29/1946

[www.dol.gov/owcp/dlhwc/lscarrier.htm](http://www.dol.gov/owcp/dlhwc/lscarrier.htm)



# COMPARE CARRIER OPTIONS

## TYPICAL STRUCTURE REVIEW

	Traditional	Mutual
Rating	NCCI	Composite
Reports to NCCI for Mod	Yes	No
Policies	WC and Longshore	Longshore Only*
Drug/Safety Credits	Yes	No
Assessable	No	Yes
Joint & Several Liability	No	Yes
"Excluded Remuneration"	Excluded	Included
DOL Assessments	Included	Additional
Payroll Limits	Applicable	None

\*companion state act policy

**BONUS**  
NAVIGATING  
LONGSHORE  
& ADMIRALTY  
INSURANCE





# EXPOSURES FOR MARINE EMPLOYERS



## State Act Workers Compensation

Exclusively office clerical, secretarial, security, data processing, and others excluded from Longshore.

*Compensation covered by standard WC policy*

## Longshore & Harbor Workers Compensation

Land-based workers on navigable waters or in areas adjoining navigable waters of the United States. For specific exclusions for certain occupations, see “Definition of an Employee” on pages 14 and 23.

*Compensation covered by endorsement to a WC policy or by a Monoline Longshore policy*



## Admiralty Exposures

“Jones Act” and other Admiralty Liabilities. Employees on board vessels worldwide.

*Liability covered by crew coverage within a Protection and Indemnity Policy or a Maritime Employers Liability Policy.*



# SAMPLE NOTICE TO EMPLOYERS

## Longshore and Harbor Workers' Compensation Act

You, as an Employer, may be liable under the Longshore and Harbor Workers' Compensation Act (contained in Title 33 of the United States Code 901) for the payment of benefits to your worker injured in the course of his employment, if that worker:

- Is your employee, or an employee of an independent contractor or subcontractor of yours that has no insurance for its liability under the Longshore Act; and
- Works on navigable waters of the United States in a port, shipyard, boatyard, dock, harbor, pier, or other area adjoining navigable waters;
- And performs any of the following types of work:
  1. Builds, repairs, dismantles, services or performs any other work on commercial vessels or on any equipment on commercial or government vessels of any size; or
  2. Constructs, repairs, replaces or expands a marina, dock, residential dock, harbor, sea wall, drawbridge or similar facility; or works on a bridge from a barge on navigable water.

2009  
CHANGE

3. Builds recreational vessels over 65 feet in length; or

2012  
CHANGE

4. Repair/Services Charter Boat or other Commercial Vessels

If your company employs such workers or hires uninsured subcontractors with such workers, you need insurance to secure payment of Longshore benefits. Coverage can be provided under a Longshore and Harbor Workers' Compensation Act Coverage Endorsement to be attached to your standard Workers' Compensation insurance policy.

**WARNING:** Employers (including corporate officers personally) that are subject to the Longshore and Harbor Workers' Compensation Act who fail to secure the payment of benefits thereunder, either by obtaining insurance or becoming authorized as a self-insurer by the U.S. Secretary of Labor, may be liable to the federal government for penalties or subject to criminal charges. In addition, the employer (and corporate officers) may be sued by the insured employee, or his representative, for unlimited damages for which the employer may be uninsured.

This is a summary of the coverage requirements of the Longshore Act, and is general in scope. Specific detailed information may be found in the [Longshore and Harbor Workers' Compensation Act](#).

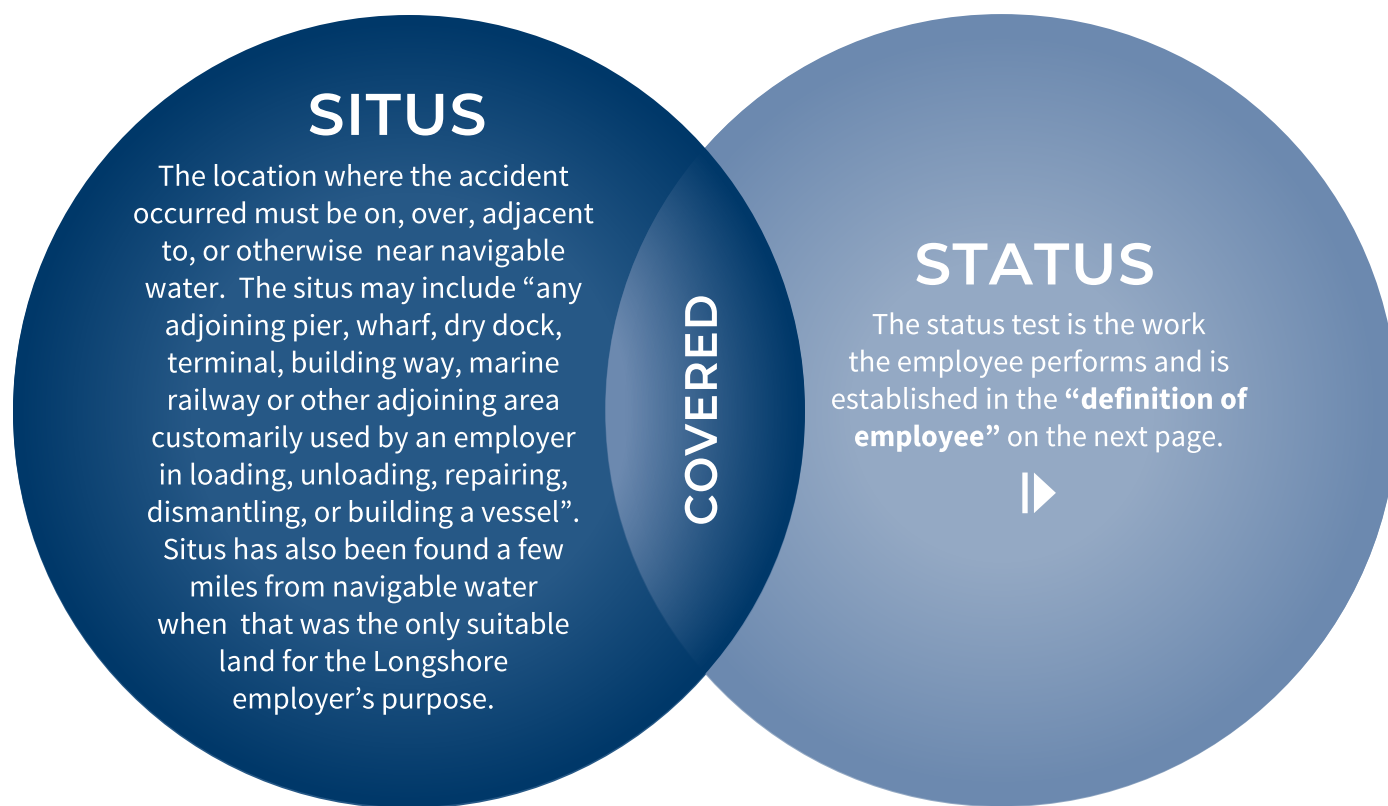
If you are uncertain as to whether you are subject to the Longshore and Harbor Workers' Compensation Act, we recommend you contact your marine insurance professional and/or Longshore attorney.



## WHO IS COVERED?

The Longshore and Harbor Workers' Compensation Act provides medical and wage benefits to employees whose work is maritime in nature and is performed on or near navigable waters of the United States.

**Injured employees must meet BOTH of the two tests to be covered under the Act:**



Under the Outer Continental Shelf Lands Act (OCSLA), employees who work in the energy industry in the Gulf of Mexico on the Outer Continental Shelf are also specifically covered under the Longshore Act.

Note that unlike State Workers' Compensation, corporate officers cannot be excluded from Longshore coverage, if they perform Longshore duties.



# LONGSHORE ACT

## DEFINITION OF AN EMPLOYEE

### Section 902 Definitions

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) Individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;
- (B) Individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;
- (C) Individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);
- (D) Individuals who
  - (i) Are employed by suppliers, transporters or vendors,
  - (ii) Are temporarily doing business on the premises of an employer described in paragraph (4) and
  - (iii) Are not engaged in work normally performed by employees of that employer under this Act;
- (E) Aquaculture workers;
- (F) Individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length **or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel;**
- (G) A master or member of a crew of any vessel; or
- (H) Any person engaged by a master to load or unload or repair any small vessel under eighteen tons net

2009  
CHANGE

**If individuals described in clauses (A) through (F) above are subject to coverage under a State Workers' Compensation law.**

Type of Vessel	Repair/Service	Build/Construct/Manufacture
Recreational <65ft	State WC	State WC
Recreational >65ft	State WC*	Longshore
Commercial	Longshore	Longshore

**\*2009 Change**



# LONGSHORE ACT

## DEFINITION OF A LONGSHORE VESSEL

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### Recreational Vessel Regulations Longshore

*January 30th 2012*

#### § 701.501 What is a Recreational Vessel?

- (a) Recreational vessel means a vessel—
    - (1) Being manufactured or operated primarily for pleasure; or
    - (2) Leased, rented, or chartered to another for the latter's pleasure.
- (BUT ONLY IF BAREBOAT AND UNDER 12 PASSENGERS)**

#### Repair/Service of Recreational Vessels - Exempt from Longshore

- Bareboat Charters 12 or less passengers
- Passenger vessels and Submersibles with no “passengers for hire” (but NOT ferries)
- 100% pleasure use
- Federal, State or Local Government Vessels
- Not more than “infrequent” commercial use

#### Repair/Service of Commercial Vessels - Subject to Longshore

- ALL Ferry
- ALL Skippered Charter
- ALL Passenger carrying vessels and Submersibles with at least one passenger for hire
- Bareboat charter over 12 people
- Commercial Use & Military Vessels





# POINT, CLICK, LONGSHORE

Right from your computer with the click of a mouse, you can use this free online tool to help you determine if your client has a Longshore or Admiralty exposure.

The Longshore Toolbox allows you to navigate Longshore and Admiralty exposures with ease. Simply visit [LongshoreToolbox.com](http://LongshoreToolbox.com), and select LongshoreFactor. The LongshoreFactor section of the site will guide you through a series of flow charts to evaluate the coverages needed to address identified exposures.

[LongshoreToolbox.com](http://LongshoreToolbox.com)

**Longshore Toolbox**

**Research**

**Learn**

**Quote**

**Library**

## Longshore Toolbox

The Longshore Insurance Toolbox is the single resource for you to research, learn, quote and use our library on Longshore (also known as USL&H) insurance.

To find out if your risk has a Longshore or Admiralty Exposure go to [Longshorefactor](#) Select the Research, Learn, Quote or Library tabs (left) for additional information.



## LONGSHORE F.A.Q.'S

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### **Many states allow officers to be excluded or have a minimum number of employees before I am required to buy Workers' Compensation insurance. Do these follow through to Longshore?**

These do not follow through to Longshore. One part-time Longshore employee is enough to trigger the need for coverage. Corporate officers doing any form of Longshore work are also required to be covered.

### **If I have Longshore insurance, do I need Workers' Compensation coverage as well?**

Yes. Most businesses will have employees who do not qualify for Longshore benefits (clerical/sales, etc.), but even if you do not have these classes of employees, Workers' Compensation provides the insurance necessary to do business in a particular state. The good news is that in most cases in a combined Workers' Compensation/Longshore policy, the only charge for Workers' Compensation is the normal charge associated with excluded employees.

### **If I use subcontractors who do not have Longshore coverage, what are the ramifications?**

If your subcontractor does not have coverage for Longshore, you are absolutely liable for unpaid benefits regardless of whether you have or do not have coverage. See Section 904(a) of the Act.

### **Is a sole proprietorship exempt from Longshore?**

A sole proprietor who has no employees can be exempt from Longshore. However, a business is not considered a sole proprietorship under Longshore if working "at the direction of another", which removes most sole proprietors from this exemption.

### **Can Sole Proprietorships exempt their employees?**

No.

### **How do I obtain Longshore Insurance? See pages 16 & 17**

Longshore Insurance must be purchased from an insurance carrier approved by the U.S. Department of Labor to write Longshore insurance.

### **Which Insurance companies are allowed to write Longshore Insurance?**

Only those approved by the U.S. Department of Labor. A list of approved carriers is available from <http://www.dol.gov/owcp/dlhwc/lscarrier.htm>, see page 17. However, many are approved that rarely write coverage. An insurance company who specializes in Longshore will provide the correct support and dedicated claims handling.



# LONGSHORE F.A.Q.'S

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## What happens if I have an injury to a Longshore Employee but no valid Longshore Insurance?

The penalties are severe and are detailed in this book on page 11. Simply stated, the employer and corporate officers are personally liable for any unpaid benefits under Longshore, plus they lose the protections of the Longshore Act and can be subject to a tort suit in addition to the Longshore benefits. There is even the potential for jail time.

## If my business is exempt from Longshore, am I also exempt from Jones Act and the other Admiralty liabilities?

No. The Longshore exemptions have no effect on Jones Act or any other Admiralty liability.

## When does Longshore stop and Admiralty exposure start?

This is determined on a case-by-case basis, but the most common position is that Admiralty benefits start when an employee spends more than 30% of their time in service of a particular vessel or identifiable fleet of vessels.

## How do we report claims?

Claims should be reported to your insurance company as soon as possible. In addition, there are certain forms and requirements for filing with the U.S. Department of Labor. A specialty Longshore carrier will be able to direct you on those. Make sure you have available in a readily accessible location your carrier's claims reporting hotline. The faster claims are reported, the better for everyone. See LS202 below.

If a claim happens on a vessel, also notify the MEL or P&I carrier **IMMEDIATELY**.

## What is LS202? What is a reportable injury?

DLHWC (Longshore) FORM LS202 - Employer's First Report of Injury or Occupational Illness  
This report is to be **filed in duplicate** with the District Director in the appropriate district office of the Office of Workers' Compensation Programs and is required by 33 U.S.C. 930(a). **File this form within 10 days from the date of injury or death or from the date the employer first has knowledge of an injury or death...**Penalties may be incurred for failure to comply with provisions of the law. Form LS202 is a reporting tool, not an admission of liability.

REPORTABLE INJURY – Any accidental injury which causes loss of one or more shifts of work or death allegedly arising out of and in the course of employment, including any occupational disease or infection believed or alleged to have arisen naturally out of such employment, or as a natural or unavoidable result from an accidental injury. If the employer controverts the right to compensation it must also file a notice of controversion with the District Director within 14 days after it has knowledge of the alleged injury or death. Further LS202 details on the next page. <https://www.dol.gov/sites/dolgov/files/owcp/dlhwc/ls-202.pdf>



# U.S. DEPT OF LABOR

## LONGSHORE FORM LS202

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### LS202

Never heard of this Longshore form? Perhaps you or your clients need to know about it now or at least need a reminder. Officially it is titled “Employer's First Report of Injury” – note carefully that first word “Employer’s”.

**“The LS202 is to be filed in duplicate with the District Director in the appropriate district office of the Office of Workers’ Compensation Programs within 10 days from the date of injury or death or from the date the employer first has knowledge of an injury or death...Penalties may be charged for failure to comply with provisions of the law.”**

**“REPORTABLE INJURY – Any accidental injury which causes loss of one or more shifts of work or death allegedly arising out of and in the course of employment, including any occupational disease or infection believed or alleged to have arisen naturally out of compensation it must also file”**

The responsibility for this lies with the Insured. This is common practice for Shipyards, Stevedores and the like who are used to Longshore claims. But for those businesses who have few Longshore claims this can easily be forgotten. The penalties are severe and were increased in January 2022. The DOL has the ability to fine up to \$26,269 PER CLAIMANT for this. One Insured whose Longshore exposure is a small part of their business, is being pursued for 7 such claims where they forgot to file and that bill could be as much as \$183,883 today!

It is simple to file online, at <http://www.dol.gov/owcp/dlhwc/ls-202.pdf> or print it out and fax it (if you still have a fax). But however you file, make sure your client keeps a proof of the filing so if the DOL misplaces the form, you have proof you filed within the required period.

WATCH OUT, THE FINES ARE COMING...Send this notice to ALL your clients with Longshore exposure (even incidental) to make sure they understand that the Longshore Act makes this clearly their responsibility, not the insurance companies.

One other benefit is that filing the LS202 starts the statute running on the Longshore claim. The employee has 12 months to file their Longshore claim once you have filed that form. The only problem with this scenario is that typically if they have not filed their claim in a reasonable period of time, the DOL will likely write to the employee asking them if they want to file a Longshore claim. Take advice from your Adjuster or Attorney on filing the form for this purpose based on the individual facts of that claim.

CARRIERS – a suggestion, why not ask not only for a copy of the LS202, but the record of filing. Not only will this help your ultimate customers, but also help in processing claims with the DOL. Try, for example, applying for the DOL to approve a settlement on a claim on which they don’t even have a LS202.

We know that we all love forms – but the penalties for NOT filing this far outweigh the time it takes.



# FLORIDA CODE CHANGES 2006

There has been much confusion on the codes for marine contractors in the state of Florida. Highlights of the codes are listed for your reference below.

## CODES FOR MARINE CONTRACTORS IN FLORIDA

<b>6006F</b>	All Marine Contractors Repair Work and Shoreline Construction are included in 6006F. NCCI Scopes Manual, an aid developed to understanding and assigning workers compensation classifications states “All operations to completion and drivers” are included in 6006F, and is applicable to all construction around all bodies of water regardless of whether the work is performed on navigable waters
<b>3724F</b>	Boat Lift Installation Specialty Contractors
<b>5403</b>	Carpentry NOC (not otherwise classified) would be applicable to work on wooden decks that are NOT related in any way to a dock, pier, etc. For example, a deck built behind a home on the land would fall under this class
<b>8227</b>	Contractors permanent yard, but only for employees that remain within the yard as defined in Scopes
<b>8720</b>	Inspection of risks for insurance or valuation purposes noc includes marine appraiser or surveyor, and boiler or elevator inspecting
<b>8742</b>	Sales
<b>8810</b>	Clerical

## CODES NO LONGER USED FOR MARINE CONTRACTORS IN FLORIDA

<b>6252</b>	May not be used for the construction of seawalls constructed solely for the retention of the land
<b>6005, 6005F, 6003, 6003F</b>	All have been discontinued in Florida
<b>6004</b>	Is only applicable to dry land pile driving in Florida and not related to ANY marine work
<b>6004F</b>	Is an invalid code in Florida... as of 6004, is only applicable to dry pile driving

## CREW COVERAGE

In addition, the vessel-based payroll for “crew” assigned to a vessel and covered by a Maritime Employers Liability (MEL) or Protection and Indemnity (P&I) policy may be excluded. Most Workers’ Compensation and Longshore carriers will require copies of such a policy in order to allow this credit.

**All these are subject to the exact detail contained in the NCCI’s Scopes Manual.**

**THIS DOES NOT APPLY IN ANY OTHER STATE!**

ADMIRALTY





# ADMIRALTY LAW

## Who is covered?

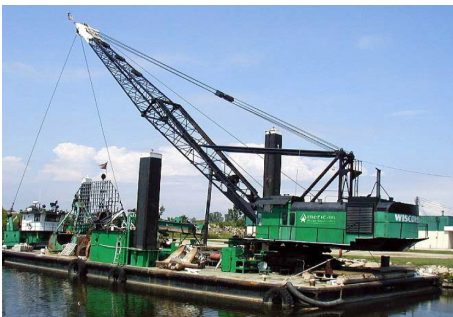
The Admiralty Law covers “masters and members of a crew of a vessel,” a.k.a. “Seaman”. An employee will be classified as a seaman if his duties contribute to the function or mission of a vessel (or fleet of vessels under common ownership or control) in navigation, and he has a connection to the vessel (or fleet of vessels) that is substantial in terms of both its nature and duration.

As a general rule, an employee who spends less than 30 percent of his time in the service of a vessel in navigation will generally not qualify as a seaman. Contract employees who work back and forth between vessels not under common ownership are usually covered under the Longshore Act, not Admiralty Law.

Employers should note that the terms “duration” and “nature” have been liberally construed by courts in favor of a finding for Admiralty Law coverage, and the 30 percent has not been defined in time, so one full day could be enough.

## What is a vessel?

Admiralty Law case history defines a vessel as a structure designed for and being used for the transportation of passengers, cargo or equipment across navigable waters. Court cases have drastically expanded this to include anything that floats and has the ‘CAPABILITY’ of horizontal movement. It is not necessary that the vessel be self-propelled or equipped with aids to navigation to be considered a “vessel.” In some circumstance even a surfboard has been held to be a vessel in navigation.





# ADMIRALTY LAW

## What Benefits Are Provided?

### Maintenance & Cure

This is a NO fault type of benefit for Maintenance (living expenses) and Cure (medical expenses). The exposure includes sickness, injury, transportation and unearned wages. This is often abbreviated to TWM&C. Claims can run up very quickly in this field, especially with the costs of evacuation of a sick or injured employee from a vessel at sea.

### Jones Act

Actually called the Merchant Marine Act of 1920, it was named after its author, Senator Jones. While the Act is far broader than just injury to seamen, it does provide a liability remedy for employees to sue the vessel owner or operator. In theory, the employee has to prove their employer was negligent, but in practice the employer often has to prove that there was no negligence to avoid liability.

## ADMIRALTY REMEDIES AVAILABLE

### Unseaworthiness

This remedy under General Maritime Law does not require that a vessel be in perfect condition, merely that something was not working properly, or inadequate number or training of crew.

### Wrongful Death

Permits the estate of an employee who dies in US territorial waters to sue under General Maritime Law.

### Death on the High Seas

Mirrors Wrongful Death, but only applies outside the US territorial waters. However, there is no seaman test required for status under this act.

All these remedies are covered under a traditional Commercial Protection and Indemnity Policy or a good quality Maritime Employers Liability Policy. Death On the High Seas coverage has to be added by endorsement. Many lawsuits will include two or more of the remedies in one suit, so watch out for policies that omit one or more of these remedies.



# NAVIGATING MARITIME

## EMPLOYERS LIABILITY

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Even though Maritime Employers Liability (MEL) was first written more than fifty years ago and is widely available in the market today, it remains one of the most mysterious of marine coverages—falling somewhere between Ocean Marine lines and Workers’ Compensation.

### **So what is MEL?**

MEL, simply stated, is coverage for an employer’s liability to its employees that would fall under Admiralty Law, roughly equivalent to Workers’ Compensation when someone is on a vessel. It can include the Merchant Marine Act of 1920 (a.k.a. the Jones Act), as well as General Maritime Law remedies including Maintenance & Cure, Unseaworthiness and Death on the High Seas Act.

It sounds easy, but it is more important to define what MEL is NOT, in order to really understand the small niche it fills.

MEL is NOT a compensation policy and does not cover any benefits available under Workers’ Compensation, Longshore & Harbor Workers Compensation Act, Outer Continental Shelf Lands Act or any other state or federal workers’ compensation system. Today most MEL policies actually contain specific exclusions for all those, but some older policies did not contain these exclusions and are specifically endorsed to add them.

In addition, it is not a replacement for a Protection and Indemnity (P&I) policy. A P&I policy offers not only coverage for employees, but also a large amount of third party bodily injury and property damage liability coverage not found in the MEL policy. Further, most unendorsed MEL policies actually exclude the true “crew” of an employer on owned vessels. Those are the people specifically covered by most P&I policies. (Although certain underwriters have used the MEL as a crew “carve out” policy, the policy was never intended to be used in that fashion.)

MEL is one of the most critical parts of many marine insurance programs and, if properly understood and placed, can provide essential coverage.

### **Who does a MEL policy cover?**

#### **It covers two groups:**

1) Your employees on someone else’s vessels. Small or large, oil rig, yacht, barge, or cruise ship, you have a liability for your employees when placed aboard other vessels even though you are not the owner or operator of that vessel. In addition, most vessel/rig owners will require the employer to prove MEL coverage is in place under their contracts before allowing your employees aboard their vessels.

2) Employees who are temporarily on board one of your own vessels. For example, a marine construction company may have a full-time captain who is covered under their P&I policy, but also employ some land-based employees who work on board vessels part of their time. These land-based employees can be best covered under MEL.



# NAVIGATING MARITIME EMPLOYERS LIABILITY

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## **“But some MEL policies have a rate on the Longshore payroll - how can I exclude Longshore?”**

Unfortunately, the courts have held that certain employees who fall under the Longshore Act can also bring claims under Admiralty Law. The classic precedent is *Southwest Marine v. Gizoni* 112 S.Ct.486 (1991). Gizoni worked as a foreman in a ship repair facility in San Diego, California and was injured while working aboard a floating platform. As a ship repairman, it was necessary to be aboard a floating platform and, thereby, he would “*contribute to the function of the vessel or to the accomplishment of its mission*”. The U.S. Supreme Court concluded that an employee whose work involves a “Longshore Act” named occupation is not automatically disqualified from seaman status as a matter of law. In writing the opinion for the Court, Justice White points out “*because a ship repairman may spend all of his working hours aboard a vessel in the furtherance of its mission, even one used exclusively in ship repair work, that worker may qualify as a Jones Act seaman*”. Gizoni was ruled a seaman and given Admiralty benefits.

## **Soft or Hard MEL?**

Most MEL underwriters, brokers and agents talk about “Soft” or “Hard” MEL. This is purely a method of evaluating the exposure and has developed over time from a court case, *Chandris v. Latsis*, 115 S.Ct.2172 (1995). Antonio Latsis was a superintendent engineer for Chandris, Inc., responsible for maintaining and updating the electronic and communications equipment on Chandris’ fleet of cruise ships. As a superintendent, his duties were to oversee other engineers, which required him to travel at different times on different vessels. Upon departure on a two-day voyage from Baltimore to Bermuda, Latsis developed a problem in his right eye and was diagnosed by the ship’s doctor as having a possible detached retina. In *Chandris*, the Supreme Court held that the “employment-related connection to a vessel in navigation” necessary for a seaman status comprises two basic elements:

- The worker’s duties must contribute to the function of the vessel or the accomplishment of its mission, and
- The worker must have a connection to a vessel in navigation that is substantial in both duration and its nature.

While *Chandris* talks about 30% of his time on vessels, most underwriters use a safety margin and therefore use a 25% number for the dividing line. That 25% is the portion of time any one employee spends on a vessel or fleet of vessels. If under 25%, he/she is considered “Soft” and they obtain a lower rating base than an employee who spends more than 25% on a vessel and is described as “Hard”.

*Continues on page 35 ►*



# NAVIGATING MARITIME EMPLOYERS LIABILITY

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*Continuing from page 34...*

## Where are we covered?

Refer to the territorial limits on your MEL policy. Most cover “The territorial limits of the United States of America and Canada or over their Outer Continental Shelves”. For many in the cruise or energy business, this is not broad enough to cover their exposures. Will your insurer change the territorial limits? Most Workers’ Compensation insurers who are capable of adding MEL, cannot amend the policy for wider territories, and some marine carriers are unwilling to do so. Some will, but only if you ask for it.

## Limits

If you are using a Workers’ Compensation carrier to provide MEL coverage, check the MEL endorsement for the limits. The Declarations page of the Workers’ Compensation policy will NOT show MEL limits, and they are often different to the Employers Liability limits. MEL basic limits start at only \$25,000 - not enough to even say “hello” in federal court.

## Markets for MEL

The markets for MEL are a unique hybrid of the Workers’ Compensation and traditional marine markets:

- Most State Fund, Assigned Risk or JUA type carriers do offer MEL, but frequently can only offer the basic \$25,000 limit.
- Traditional Workers’ Compensation carriers who operate in the Longshore market frequently can offer MEL with higher limits by endorsement, but underwriting appetites vary greatly, as do the carrier knowledge and experience in admiralty claims. Further, they are often unable or unwilling to change geographical limits when needed.
- Traditional marine insurers, in particular Lloyd’s, offer these coverages and have a broader appetite.

## MEL Policies and Underwriting

MEL is a small but critical coverage for many marine businesses - but be cautious; policy forms and underwriting vary greatly. Work with someone who is knowledgeable and active in this market and who will not only provide a price, but the proper limits, geographic territories, and who will really take the time to understand the needs of that client!

# IIMIS Education & CMIP Designation





# CERTIFIED MARINE INSURANCE PROFESSIONAL DESIGNATION

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**For more information and to register visit:**

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Questions? Contact Karen Tischler, CMIP Director of Education & Marketing  
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