



Toolbox Talk

When Are Employees Covered Under USL&H?

The U.S. Longshore and Harbor Workers' Act covers "employees," defined as "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," exempting some specific jobs. 33 U.S.C. § 902(3). The original Longshore Act only covered injuries occurring on the navigable waters of the United States to individuals working for a "maritime employer."

While the term "maritime employer" continues to have great currency in case law, qualifying as such is not an explicit requirement for coverage. Instead, the Act refers to an "employer," defined as "an employer, any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel)." 33 U.S.C. § 902(4). The determination of coverage, then, rests on the actual work done by an injured worker as well as where the injury occurs (known as "situs").

The traditional jobs covered by the Act include ship loading, unloading, ship repair and ship breaking. But that short list is just the beginning. The Act mentions "person[s] engaged in longshoring operations and any harbor-worker," but does not attempt any more precise description of what jobs might satisfy that definition. After the 1972 Amendments, appellate courts attempted to explain the nexus required for a specific job to confer status. Among the tests articulated included whether a claimant was "directly involved" in loading/unloading, building or repairing a ship; where the work bore a "functional relationship to maritime activities," or whether the work "has a realistically significant relationship to traditional maritime activity involving navigation and commerce on navigable waters."

The Supreme Court encouraged an expansive view of occupations that can qualify for coverage in a pair of decisions interpreting the 1972 Amendments. In *Northeast Marine Terminal Co., Inc. v. Caputo*, 432 U. S. 249 (1977), the Supreme Court addressed the coverage of two employees, Caputo and Blundo, a cargo checker and a longshoreman assigned to putting goods already unloaded from a container (that was offloaded from a ship) onto a delivery truck. The Court held that Blundo was clearly engaged in covered employment when he was injured, as he was checking items being removed from a container. It held that work is clearly "an integral part of the unloading process" that was changed from traditional Longshore work by containerization. The Court held that it need not decide whether claimant Caputo's duties at the time of injury were maritime because he was a longshoreman by occupation and could have been assigned to covered or uncovered duties during his work day without losing coverage.

The Court was concerned with the possibility that a change in work duties in the course of a day might be used by employers to challenge longshore benefits. It clearly determined that once a worker did *any* job that constituted "maritime employment," his entitlement to benefits was fixed.



Having acquired status, the Court emphatically stated it did not want a worker “walking in and out of coverage,” even if a later assignment by his employer was not directly involved in loading or unloading. This directive led lower courts to award benefits to anyone whose longshore work was more than momentary or episodic. Longshore benefits were payable to any worker who once acquired “status” as a “maritime employee”, even if this work injury did not occur while longshore-related work was being done.

In *P.C. Pfeiffer Co. v. Ford*, 433 U.S. 904 (1977), the Court also found two warehousemen involved in handling cargo before and after it had been on a ship covered. Although neither of the claimants actually loaded or unloaded cargo from a ship, the Court found anyone involved in the intermediate steps of moving cargo between ship and land transportation was “as much an integral part of the process of loading or unloading a ship as a person who participates in the entire process.”

Appellate courts took this expansive interpretation to expand coverage to a wide range of land activities including truck drivers, container repair workers, bulldozer operators, railcar supervisors, carpenters, fabrication shop employees, dock repairmen, mechanics who maintained loading equipment, etc. The Benefits Review Board translated this concept to shipyard work, developing an “integral to shipbuilding” test to analyze which workers inside a yard were covered. This led to coverage for janitors, delivery clerks, maintenance workers and even to a worker whose job was to change air conditioning filters in a shipyard paint room.

Applying the same test, however, led the Board to deny benefits to shipyard claims adjusters and clinic nurses. These examples highlight the creative ways courts have expanded coverage beyond the traditional jobs of loading, unloading, building or repairing vessels.

The Act also covers injuries occurring on navigable waters. The Supreme Court held that the jurisdictional test extended coverage to *anyone* injured on navigable waters that was not expressly excluded from coverage by Congress (*Director, OWCP v. Perini North River Associates*, 459 U.S. 297 (1983)).

Raymond Churchill, a marine construction worker, was injured while supervising building of a sewage treatment plant in the Hudson River, working off a barge. The Court concluded that Churchill would have been covered prior to 1972 and that nothing in the legislative history suggested Congress intended to restrict coverage. In the year following this decision, Congress expanded the list of excluded jobs to include a number that would involve working over water, such as jobs at a floating restaurant, casino or museum. Despite this clear statement of jurisdiction, the Benefits Review Board has found coverage for some individuals doing supposedly excluded work when exposed to maritime risks or injured on navigable water, including security guards and a restaurant supervisor.

While most thought *Perini* applied to people working on floating structures, including vessels, some decisions have now found jurisdiction for individuals working on fixed structures, such as a permanently moored or sunken barge and a fixed platform in state waters, linking status to the work “over navigable waters.” Although bridges have long been considered extensions of land and *not* covered sites, this trend toward expansion of coverage may continue, eventually finding those who build or repair bridges to be working over navigable waters and therefore covered.



Determining coverage status can be challenging for maritime employers and their insurance brokers. 3CU assures that all employees are covered regardless of their duties, taking the guesswork out of insuring multi-jurisdictional exposures. For longshore, maritime employers' liability and state-act workers' compensation, 3CU is the right choice.

