

STATUS DETERMINATION AND THE INJURED MARITIME WORKER



**SOUTHEASTERN ADMIRALTY
LAW INSTITUTE**

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Moderator and *Fearless* Panelists



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Accidents Happen!



What's the Status?



- Jones Act Seaman?
- Covered under the Longshoreman and Harbor Worker's Compensation Act?



- Covered under a State Worker's Compensation Statute
- Are we unsure???

Determining Status?

- **Who, What, When, Where, How & Why?**
- **Vessel Based Crewmember** – very likely a Jones Act Seaman
- **Terminal Worker** – very likely covered under the LHWCA
- **Project Manager, Spill Response Personnel, etc., What do we do?**



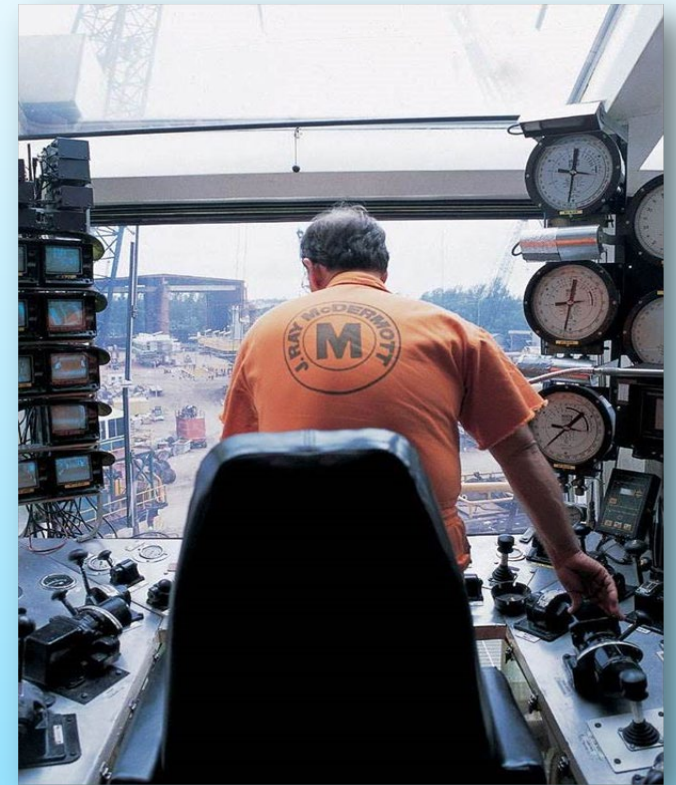
Which Coverage(s)?

Multiple policies at Issue: P&I, Maritime Employer's Liability, USL&H and State Act WC

The best approach is to structure coverage to address claims where there is uncertainty:

- **USL&H Coverage should have 'contingent MEL' to address situations where a longshoreman sues as a JA Seaman**
- **WC can contain an 'if any' USL&H endorsement (can also contain an 'if any' MEL if no vessel operations)**

Best case for larger employers is to have USL&H and P&I via mutuals



Evolution of Determining Seaman Status



- **The SCOTUS Past – *Chandris v. Latsis*; and *Harbor Tug & Barge Co. v. Papai*;**
- **2021 Fifth Circuit Decision – *Sanchez v. Smart Fabricators of Texas, LLC***
- **Focus on “seagoing activity” – Do the worker’s duties take him (or her) to sea?**
- **Post-Sanchez Decisions – *Sanchez v. American Pollution Control Corp.*; *Blanda v. Cooper/T. Smith Corp.*; *Meaux v. Cooper Consolidated***



Sanchez v. American Pollution Control Corp. (E.D. La. 2021)



- Sanchez worked for 23 days - 17 days onshore and 6 days on a shrimp boat before being injured
- Files suit under the Jones Act, and asserts the “change of assignment” exception
- Competing affidavits create issue of fact as to the “duration” requirement for seaman status
- As to “nature”, Sanchez’s work was seagoing activity; assignment included sailing from port to port; allegiance was not owed solely to AMPOL; and he was exposed to the perils of the sea
- MSJ denied, seaman status could not be determined

***Meaux v. Cooper Consolidated* (E.D. La. 2021)**



- **Meaux worked on a crane barge helping the crane operator put covers on another barge, when he was injured**
- **Cross motions for summary judgment on seaman status; the court grants Meaux’s motion**
- **On Post-Sanchez Reconsideration, Meaux satisfies *Sanchez* “just barely” – works on an identifiable fleet of vessels, moored midstream in the MS River, and his work assisted in the cargo-handling operations**

Meaux – Actual Midstream Operations at Issue

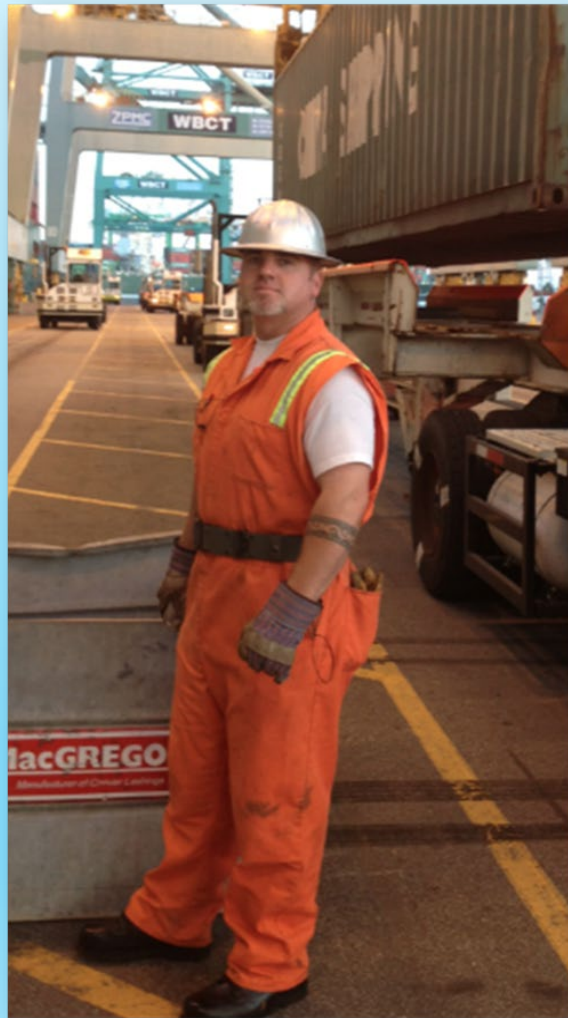


Consequences of Seaman Status

- **Maintenance & Cure Obligation** – need to investigate and risk of punitive damages
- **Potential liability for Negligence (reduced causation burden)** – Jones Act
- **Potential liability for Unseaworthiness**
- **Jury Trial** – may or may not be a good thing



Determining LHWCA Coverage



- **Status & Situs Requirement**
- **Any person engaged in maritime employment, including any longshoreman, and any harbor worker, including a ship repairman, ship builder and shipbreaker**
- **Claim must occur on U.S. navigable waters, or an adjoining area customarily used by an employer in loading, unloading, repairing, dismantling or building a vessel**
- **Includes maintenance and repair workers, construction workers, contractors and others who work on navigable waters**

Problems in Determining LHWCA Coverage

- **Risk/Reward evaluations in deciding whether to litigate over LHWCA Coverage vs. Seaman Status**
- **Potential 905 (b) Liability**
- **The *partial myth* of LHWCA and Jones Act mutually exclusivity**



“Houston, We have a Container Yard!”



Why Jones Act Seaman Status vs. LHWCA Status Matters

Jones Act:

- **Worker entitled to maintenance/cure**
- **Handled by state/federal courts, tried before judge or jury**
- **Negligence standard, damages can include subjective pain/suffering**

LHWCA:

- **Worker entitled to 2/3 of average pay**
- **Handled by the DOL tried before ALJ**
- **No fault compensation system where worker is compensated according to statute**

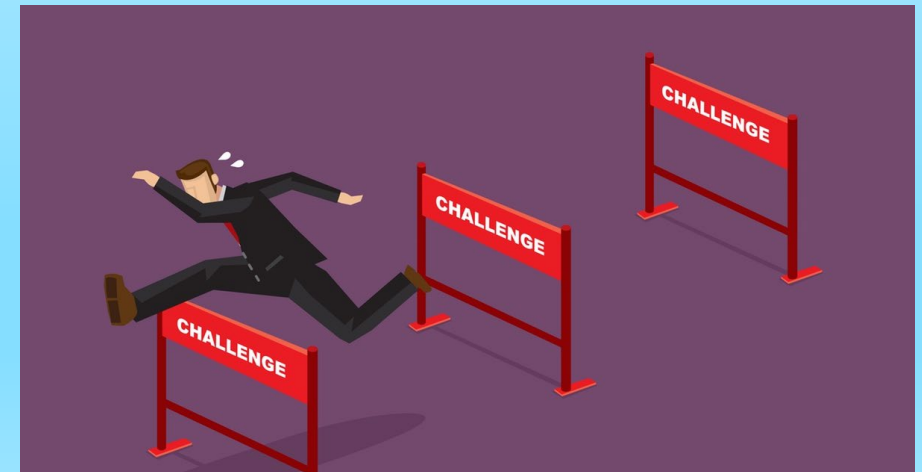
What About So Called “Flipper” Cases?



- **Workers who perform traditional longshoreman work and receive voluntary benefits later file a Jones Act suit**
- ***S.W. Marine, Inc., v. Gizoni*, 502 U.S. 81 (1991)**
- ***Gizoni*, coupled with the previous pre-*Sanchez* expansion of seaman status resulted in a lot of these types of cases – impact of *Sanchez*?**

Practical Considerations and Challenges in Dealing With These Issues

- **Proof Issues (documentation, witness availability, fact-intensive nature of inquiry)**
- **Jurisdictional Differences**
- **Managing Competing Insurance Interests**
- **Preservation of Jones Act defenses and implications for claims handling**



The State Compensation Conundrum



- *Green v. Vermillion Corp.* (5th Cir. 1988); and *Givens v. ES&H, Inc.* (E.D. La. 2012) – Louisiana State Worker’s Compensation remedies and general maritime law negligence claims are not mutually exclusive
- “unless such rights, remedies and damages are created by statute...expressly establishing same as available to such employee...as against her employer...for said injury...”
- U.S. Constitution grants exclusive and original jurisdiction to the federal district courts over all maritime claims

Takeaways!

- Status is *always* evolving, and judicial outcomes can be somewhat unpredictable
- Know the different playing fields: Jones Act, LHWCA, State Worker's Compensation schemes, and appropriately manage those risks
- Rush to action but not necessarily a rush to judgment



Questions, Thoughts, Comments?



Thank You...And Cheers!

