RIVERS RUN THROUGH US – The Interface between Maritime and Workers' Compensation Law
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The terms "Admiralty" or "Maritime", whether used in a legal context or otherwise, conjure up visions of shipwrecks, piracy, movies such as Brando's "On The Waterfront" and in recent times, leaking oil tankers and exploding drilling platforms. Although maritime law began as a series of laws and principles that applied to commerce and catastrophe on the high seas and at the seashore, maritime jurisdiction has now spread up, and now covers, every navigable waterway in the U.S.

Many of us only need to look out our windows to confirm that states such as Missouri, Illinois and Kansas, although located in the center of the country, are surrounded by, and in some cases bisected by, the country's busiest rivers and as such, many workers earn their livings on or adjacent to those waterways - and many of those jobs are more dangerous than most.

The purpose of this article is to discuss one aspect of the interface between maritime and state workers' compensation law – the question of jurisdiction.

THE JONES ACT – is a federal statute that applies to injuries sustained by masters and members of a crew. "Masters" are those who pilot the vessels (think "The Skipper") that operate on the waterways and the "crews" consist of those workers who aid in the navigation of the vessels (think "Gilligan"). To be a crew member, still also called a "seaman", a worker must be assigned to a vessel, or group of vessels, actually engaged in navigation. In this area, the vessels most often being referred to are towboats and barges but other types of watercraft will qualify. The Jones Act is not a no-fault compensation law but instead provides for a civil cause of action which often involves substantial exposure, exposure that can dwarf that presented under the workers' compensation laws for an identical injury.

THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT (usually shortened to the "LHWCA" or "Longshore") - is a federal law that covers those who are engaged in traditional maritime work but who are not masters or members of a crew. Typically, these are the workers who load, unload, service, repair, build or scrap vessels on or adjacent to navigable waterways. In order to fall within the coverage of the LHWCA, a claimant must satisfy the "status" and "situs" tests. The concept of "status" refers to whether the work being performed involved traditional maritime activities and "situs" refers to the location of the injury in relation to the navigable waterway. Both tests have been interpreted very liberally by the courts so the number of cases that fall within LHWCA jurisdiction might surprise you. Longshore benefits are similar to those provided by the state workers'

compensation laws with which you are familiar but with some notable differences from both a benefit and procedural standpoint.

WHICH LAW APPLIES? – if the injured worker is the master or member of a crew, their exclusive remedy is under the Jones Act for better (for them) or worse (for the employer). Jones Act coverage precludes LHWCA jurisdiction and state workers' compensation as well. To illustrate, in Missouri, Section 287.110 provides that: "This chapter shall apply to all cases within its provisions except those exclusively covered by any federal law . . . ." Thus, under both Missouri and federal statutory law, and also in recognition of the general principles of federal pre-emption, the Jones Act is an exclusive remedy.

However, the same cannot be said with respect to the LHWCA. As the result of a series of statutory amendments and U. S. Supreme Court cases, a non Jones Act injured maritime worker has the option of filing a Longshore case or a state workers' compensation claim and may even be able to do both simultaneously or consecutively. Fortunately, the "credit doctrine" prevents a double recovery. The one remaining issue is whether an injured Longshore worker, who is injured while on a waterway and due to an instrumentality also located on the waterway, can pursue a state workers' compensation case or is limited to seeking LHWCA benefits. In Illinois, the cases have held that in those unique situations, that the Illinois Industrial Commission has no jurisdiction. However, that issue has not been decided in either Missouri or Kansas and there is a split of authority, and differing statutory approaches, county wide.

A discussion of why an employer/insurer would want a case to fall exclusively under the LHWCA versus a state's workers' compensation law is beyond the scope of this article but suffice it to say that there are situations where exclusivity could work to either the employee's or employer's advantage.