

## **Answers to Common Questions About a Longshore/LHWCA Case**

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*The facts of every case are unique. The answers provided here are brief and intended for general information only. If you wish to discuss any of these or other questions, please feel free to contact me. I would be happy to discuss your specific situation with you in greater detail.*

### **What determines whether I am covered under the state workers' compensation system (Department of Labor and Industries) or by the Longshore Act (U.S. Department of Labor)?**

If you are a longshoreman, or are working in practically any capacity involving ship construction or repair, you are clearly covered under the Longshore Act. If you are working in another type of maritime employment, coverage under the Act depends upon a variety of circumstances, such as whether your injury occurs over water, or whether "maritime" activities in your employment constitute a significant portion of your job. Determining whether Longshore Act coverage exists in a certain situation depends on what the law calls "situs" & "status." You must be in a location on, or immediately next to, a navigable waterway; and your job must have some connection to traditional maritime activities. Generally speaking, compensation for permanent partial disability is greater under the Longshore Act than the state system, but as with many legal issues, compensation depends on a variety of circumstances.

### **Can I sue the people or entities that were responsible for my injury?**

The Longshore Act, like all other workers' compensation systems, provides employers and co-workers with what is called "immunity" from suit, based on their fault or negligence. On the other hand, if a "third party" causes your injuries, you may be able to file a civil suit for damages in addition to recovering workers' compensation benefits. Examples of this type of action would include injuries resulting from the negligence of the vessel upon which services were being performed, or the manufacturer of a product to which you were exposed, such as asbestos or defective machinery. Whether or not a "third party" action exists depends upon a highly complex relationship of law and facts in any given situation.

### **How can an attorney assist me in my claim?**

There are thousands of cases interpreting various sections of the Longshore Act that may affect your entitlement to benefits. An attorney knowledgeable about that body of law, and how the Act is administered by the U.S. Department of Labor, can ensure that you receive the maximum benefits realistically obtainable under the circumstances of your case. This often entails dealing with complex medical-legal issues that the unrepresented claimant may be unable to present

adequately. Additionally, the Act encourages legal representation by making the employer/carrier responsible for legal fees if an attorney improves a claimant's recovery in the case.

### **How are attorney fees handled under the Longshore Act?**

As in most other workers' compensation cases, fees are contingent upon the attorney gaining some additional recovery for the injured worker. That is, if your position in the claim is not improved, there is no fee paid. The Longshore Act differs from many other workers' compensation laws in that, if your attorney does improve your position against the employer, he or she will be entitled to petition the Department of Labor to assess fees against the employer and/or its insurance company. Thus, in the vast majority of cases, the worker will not be responsible for paying attorney fees from whatever additional funds are recovered. In some cases, where a legitimate dispute exists between the worker and employer, and the claim is settled on a compromise basis, the worker may share in paying some or all of the attorneys fee from the additional compensation negotiated, but never as a percentage of the worker's settlement. In any case, all fees must be submitted to DOL for their approval.