



www.ecsinsure.com

# Beware of the Water

**By: Chris Warren MBA, CBIA, CRIS**

*Vice President of Construction, Early, Cassidy & Schilling, Inc.*

**Scenario:** you just landed a large project to provide the wiring and lighting for a new marina building. There is no call for any wiring or lighting on the docks. Given that the wiring is all within the building and no over the water exposure exists, you assume there is no need for USL&H coverage. Think again.

In 1927 there was a new Federal Act introduced called the “Longshore and Harbor Workers Compensation Act” (USL&H), which was designed to eliminate a gap in State Act Workers Compensation plans regarding maritime exposure. This law originally protected those workers that engaged in stevedoring and ship building operations. Over the years through law suits and case laws, the “Act” was amended in 1972. The amended “Act” was now extended to cover landward maritime workers such as Marine contractors, diving contractors, and companies supplying equipment “on the water”.

For those contractors and companies involved and familiar with marine construction, the topic of USL&H coverage is usually not a big issue. It’s the sub contractors who are not as knowledgeable with the marine industry where the issue of USL&H becomes more prevalent.

Over the past couple of years with construction companies fighting to keep their doors open, we have seen a large number of contractors bidding work that they are unaccustomed to performing in order to keep their crews working. The differences between marine and inland construction can create major headaches and issues on a project that is under maritime construction.

One of the biggest problems is a sub-contractor who doesn’t think he needs USL&H thus starts the job without obtaining a USL&H policy. This can lead to fines and even jail time, which could increase project costs and delay the completion date. Fines for not obtaining USL&H can be very harsh. An employer who is facing a USL&H claim with no coverage can face a fine up to ten thousand dollars, imprisonment of up to one year, or both in some scenarios.

As a maritime professional, the GC or other Project Manager contracting the work out needs to verify the appropriate USL&H coverage that is necessary. A company can be held liable via Section 904(a) of the USL&H Act if the coverage is not in place. Because USL&H is under the Federal System, the benefits will usually be more lucrative than State benefits. Depending on what state the project is in, an injured worker can go after both the State and Federal benefits at the same time. This ultimately will result in an injured employee to make a USL&H claim. If their employer failed to purchase USL&H, then the hiring GC or Project Manager can be forced to take action.

Another issue facing contractors who are unaccustomed to maritime work is the fact that USL&H policies are not cheap. Typically a contractor who bids a job that requires USL&H coverage can expect to pay a minimum of \$12,000 per year premium. To purchase the USL&H afterwards can cost a sub-contractor any projected profits or put them in the red.

In conclusion, how does a contractor who is not familiar with maritime work protect themselves? There are two things to keep in mind. First is Status, which means, the work has a general maritime character. Second is SITUATION, which means, work is adjacent to navigable waters. Even with these two rules of thumb, because of the different interpretations of who needs USL&H, it still may be difficult for an employer to determine if they need the coverage. When in doubt, contact your insurance broker and if they are unsure, you can contact the department of labor USL&H division.

*\*\* Please remember that Early, Cassidy & Schilling, Inc. is not in a position to provide legal advice and none of the information provided is intended as legal advice. While an effort has been made to provide accurate information, EC&S advises that if you need guidance regarding a contract or specific issue to please contact a qualified attorney or legal service agency.*



**Early, Cassidy & Schilling, Inc.**

Commercial Insurance • Risk Management • Surety  
Employee Benefits • Executive Benefits

15200 Omega Drive, Suite 100, Rockville, Maryland 20850  
Phone (301) 948-5800, Fax (301) 948-5959