

Slippery When Wet: Accidents on and Alongside Navigable Waterways within SC State Boundaries

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In coastal states like South Carolina, carriers and employers are frequently presented with accidents occurring on or near navigable waterways. There is a complex set of Federal and State laws that potentially apply to accidents in these watery venues. The three main “bodies of law” covering accidents on or around “bodies of water” are the Jones Act, the Longshore and Harbor Workers' Compensation Act (LHWCA) and the South Carolina Workers' Compensation Act.

The Jones Act is a federal law granting “seamen” who are injured in the course of employment a cause of action for negligence against their employers, and was intended as their exclusive remedy. An injured party must qualify as a “seaman” for the purposes the Jones Act. In a relatively recent decision by the South Carolina Workers' Compensation Commission, *Toomer v. Weeks Marine*, the hearing Commissioner determined Mr. Toomer's exclusive remedy was through the Jones Act. In that case, Claimant worked and slept on a boat full time. The Claimant was hired in South Carolina, and was injured in the navigable waters of New Jersey. The Commissioner was faced with the question of whether the Jones Act barred concurrent state law claims made pursuant to the South Carolina Workers' Compensation Act. The claimant received benefits under the Jones Act prior to the hearing before the Commission. Toomer also filed a Federal Jones Act suit in Charleston District Court seeking additional tort relief for his work-related injury in his capacity as a Jones Act seaman. The Commission determined the Claimant was limited to the benefits and remedies made available to him under the Jones Act. Ultimately, the Commission held the South Carolina Workers' Compensation Commissioner lacked subject matter jurisdiction over the claim because the Jones Act preempted South Carolina workers' compensation law.

The *Toomer* decision references a South Carolina Attorney General Opinion from 1977, which states:

“As a general rule the states are without the power to grant compensation to injuries sustained on navigable water because such injuries are exclusively within the federal admiralty jurisdiction.”

The question of whether a Claimant may choose to seek relief pursuant to the Longshore and Harbor Workers' Compensation Act (LHWCA) or the South Carolina Workers' Compensation Act has been litigated subsequent to the 1977 Attorney General's Opinion, which I explain more fully below.

Regarding the LHWCA, the United States Supreme Court in *Sun Ship Inc. v. Pennsylvania*, 447 U.S. 715, 65 L. Ed. 2d 458, 100 S. Ct. 2432 (1980), held Pennsylvania employees were entitled to claim benefits under the state workers' compensation statute as well as the LHWCA, because of the concurrent applicability of the federal and state statutes. While this case does not mean claimants are entitled to "double recovery," it simply confirmed state workers' compensation statutes were not automatically superseded by the LHWCA. This case is cited by [Garvin v. Alumax of South Carolina, Inc., 787 F.2d 910, 915-916 \(4th Cir. 1986\)](#), a South Carolina case. In *Garvin*, the Claimant was working on a pier at the time of injury. No vessel contributed in any way to his injury. Since the pier was adjacent to navigable waters of the United States, Garvin was within the coverage of the LHWCA, as well as within the coverage of the South Carolina Workers' Compensation Act. Accordingly, Garvin was entitled to proceed under the state statute or the Federal act, whichever route was more advantageous.

In sum, where a claimant is injured on or alongside a navigable waterway, the claimant may have multiple avenues of recovery under State and Federal law. One set of laws does not necessarily preclude application of the other. Consult with Defense Counsel to determine which laws may apply and whether there are any applicable set-offs or credits.

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