

# Properly Insuring Your Employees in Case of Injury



Chris Richmond

By Chris Richmond

Originally Submitted to [WorkBoat Magazine](#)

Shipyards and marine related business are comprised of a wide variety of jobs and with this variety comes different types of injury coverage for the people who work there. Just because you believe your employees are properly covered does not mean they are. Take a moment to review these three areas of injury coverage.

## **Jones Act**

Officially called “The Merchant Marine Act of 1920,” this covers employees who are considered crew members on your vessels. Seamen employed on vessels traveling from U.S. port to U.S. port are entitled to coverage under the Jones Act, with the coverage provided under a vessel’s Protection and Indemnity policy. Crew are covered for injury and illness while ‘in service to the ship’ through the Maintenance and Cure portion of the coverage. Crew are also entitled to sue the ship or ship owner for unseaworthy or negligent conditions which they believe caused their injury. To be considered a crew member, the employee must spend roughly a third of their time at work in service to the

ship.

## **USL&H**

Employees who are working around docks, wharves or servicing a vessel will fall under the U.S. Longshore and Harbor Workers Act. These are your stevedores, repair crew, crane operators or similar employee who service, load or go on and off vessels but are not considered crew members. The two determining factors for USL&H are Situs and Status, both of which need to be met in order to be eligible for this coverage. To meet the Situs test, an injury must have occurred while working on or near navigable waters. The Status test is met by the work being done. Exclusions include office workers, aquaculture and boat builders who build recreational vessels less than 65 feet in length. Even if you have a boat yard where you feel you would never have a USL&H risk, it is very inexpensive to have this added to your state workers compensation policy on an 'if any' basis. This way you have at least some defense covered should a USL&H claim be filed against you.

## **State workers compensation**

Your office staff and other employees are covered under your state workers compensation act. Keep in mind that if you have employees who work in other states besides the one where your business is located then you need to list these as well. State workers compensation acts are no-fault laws which means they cover a claim as long as the employee's accident happened within the scope of their employment.

This is a very quick explanation of a very important insurance coverage. Take the time to review your operation and exposure with your agent to help you get the coverage you need.

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# Learning About Special Terms and Conditions on a Marine Insurance Policy



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Originally Submitted to [WorkBoat Magazine](#)

Your commercial vessel's insurance policy actually consists of two separate policies: Your hull policy and your protection and indemnity policy. While the actual hull and P&I policies typically consist of accepted insurance forms, insurance underwriters always add additional terms and conditions. These are worth noting because they can significantly affect your policy.

Look at the final pages of your policy to see these special terms and conditions. While these vary by insurance company, here are a few to keep an eye out for:

- **Commercial vessel use warranty:** This stipulates that there is only coverage for what has been declared on the policy for the vessel's commercial usage. If you are operating as

a passenger vessel but decide to do some commercial fishing , be sure to notify your agent as your commercial use warranty needs to be amended.

- **Lay up warranty:** If you do not operate your vessel year-round, you can get a break on the premium by adding a lay up warranty. But if you operate your vessel during this period no coverage will apply should you need it. Lay up warranty differs slightly from company to company but basically your boat needs to be in a state of decommission and not used for any purpose during the lay up period.
- **Diving warranty:** Do your operations sometimes involve commercial diving? This is excluded from your policy. Typically all overboard activities are excluded but some can be bought back (such as swimming or snorkeling). Diving requires a special policy.
- **Gear and cargo exclusion:** Some insurance companies will exclude fishing gear that is not permanently installed on your vessel (and your catch also will be excluded from coverage). Other cargo you are transporting may also not be covered. Cargo can often be added back on but if you are storing the cargo on shore before getting underway you will need additional coverage for that.
- **Crew warranty:** If you have crew covered on your policy, there will be a number stating how many crew members the policy is providing coverage for. Should you have more crew on board and you have not reported the increase to your insurance company, then the policy may only respond proportionally to the number of crew your policy states by the number of crew you have on board at the time of the claim.

Just as commercial vessels vary, a commercial hull and P&I policy is not a one-size-fits-all. Have a conversation with your agent about your operations and vessel usage to ensure that your insurance will be there when you need it.

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# Who Owns the Ship or the Shipyard? The Importance of a Named Insured

By Chris Richmond

Originally Submitted to [WorkBoat Magazine](#) / December 2020



This is about when what seems like a small thing can be a very big thing: Who actually owns the yard, building, ship, truck, tool box or other thing that needs insurance?

We're talking about something called "insurable interest." In basic terms, this means the named owner. The real owner is identified as the named insured on an insurance policy. We have seen times when there is an owner in the name of one company but another company (an operations company) actually runs the business.

Very often, the owner of both entities is one and the same. Also very often, that same business owner doesn't think to identify all of the entities he or she has set up. This will be a serious problem when a claim arises. If the actual legal owner of the property is other than what's shown on an insurance policy, the

policy may not respond because there is no “insurable interest” for the person or entity on the policy. In cases like these, it is most likely the claim will be denied.

In other words, if a company or entity is not named on an insurance policy, it is highly likely there is no coverage.

There was a claim at a local yard where the named insured on the insurance policy was the operating company but not the actual owner of the property. The bank holding the mortgage had accepted proof of insurance that showed the wrong name as the property owner.

There was a devastating fire. When the insurance company’s claims adjuster arrived, he asked who the owner was. When the company owner named the actual company that owned the property, the claims adjuster explained that he didn’t see that entity named anywhere on the insurance policy. Technically, both the owner and the bank were out of luck. After some very heavy negotiations, which included pointing out that the owners of both entities were one and the same, the insurer relented and agreed to pay the claim. This case is an exception to the rule.

When doing an insurance review, the first topic we discuss is the named insured – and we ask if there are any other entities operating that are not listed. As always, the time to have this discussion is before there is a claim as afterwards it is often too late.

The same goes for vessels. Many vessel owners have each vessel in a separate company. Send the vessel’s certificate of documentation to your insurance agent to make sure the actual owner of the vessel is listed correctly on the insurance policy.

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# Getting Back to Work After COVID-19

By Chris Richmond

Originally submitted to [WorkBoat Magazine](#) / November 2020



When the pandemic hit, you were probably looking for ways to save money as the economy ground to a halt. Changes in your insurance policy can reflect a lower premium, but can also affect your coverage. As you start to get back in to business, take a look at any changes you may have made to your insurance policy and see if you need to undo them.

As the pandemic hit, some of the first calls I received from clients were requests to remove navigation from their commercial vessels. Their business slowed down and there was no work for the boats, so this was an obvious way to see some immediate relief in their insurance premium. As the economy starts back up again and you see demand and work for your vessels, make sure to have lay up removed from your policy. While the boat is insured at the dock, during lay up the moment you drop the lines coverage ceases unless you have added navigation back to the policy.

Business owners also sought savings on their insurance bill by reducing the annual projected payroll for their workers compensation or USL&H. As renewals came along during the economic downturn, business reduced their workforce and renewals in WC and USL&H reflected this. As business picks up again and workers who had been laid off are brought back, your annual projected payroll will increase. You can wait until the audit at the end of the policy term and get hit with a large additional premium or you can contact your agent and report the increase in payroll. This will result in spreading out the increase in premium over the remaining term of your policy.

Finally, if you have been shut down for a period of time and equipment has been idle, be sure to do your due diligence and make sure all works as it should. Routine maintenance may have been missed or deferred. Inspection dates could have been missed for safety equipment or log books could be out of date for safety review. Take the time to clean up these area before a fine comes your way.

Starting business back up means getting both customers and your employees back in the door – but don't forget to contact your insurance agent as well. He or she should always be happy to hear from you and help keep your policy up to date.

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## **Pollution Liability: More Than Just the Clean Up**

By Chris Richmond

Originally submitted to [WorkBoat Magazine](#) / October 2020





Most commercial hull policies have a pollution exclusion clause attached. You can often get a buy back endorsement added but the coverages on this vary from company to company and often the clause will not cover what you really need to. What you really need is a stand-alone pollution policy.

A pollution policy not only covers spills related to the Oil Pollution Act of 1990 but also claims brought under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Remember, pollution is not only petroleum spills; they can also be spills or discharge of other hazardous materials stored or transported on your vessel. You can have just as much problem with a chemical spill as an oil spill.

And don't think that that barge you tow (the one without an engine or bunker fuel) is safe from pollution claims. What if you have a fuel storage container on deck that somehow ends up overboard? You now have a pollution claim. Should your tow come off and the barge has a collision or allusion - causing a fuel spill - you now have a pollution claim.

After the spill is contained and cleaned up, who is going to pay for your defense costs? As you are well aware, this is a part of liability policies and are key as potential litigation claims can drag on and defense costs mount. Whether or not you are found liable, your defense costs can add up quickly. Having these covered by your insurance policy is very important.

And what if your spill was a total accident? Will that stop any

finer or penalties imposed upon you but state or federal authorities? Don't count on it. A pollution policy can provide coverage for fines which may be imposed.

The only thing worse than the actual spill is the image on television or social media of oil-coated birds on the beach. Allowing the public to know that you are doing your best to take care of the situation can go a long way.

While you may never have to use your pollution policy, the coverage it provides for that one time will pay off in the long run. A stand-alone pollution policy is an important part of your vessel's coverage and in some instances is required by the Coast Guard's Certificate of Financial Reasonability (COFR) program. Have a talk with your insurance agent to find out more.

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## **On-Demand Webcast: Winds of Change: How Offshore Wind Farms Will Change the Landscape of Maritime Workers' Compensation**

Wind energy is poised to eventually be the dominant source of power in the United States.



As companies ramp up their workforce to support activities related to wind farm construction and maintenance, it's critical to understand the various workers' compensation laws that impact this sector. In this webcast, our [Dan Bookham](#) joins colleagues from American Equity Underwriters to discuss:

- The various workers' compensation laws that impact the wind energy sector
- Jurisdiction issues unique to offshore wind farms
- Old laws that will be interpreted to meet new circumstances

View the webcast: <https://loom.ly/bbj7q4w>

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## Checklist: Winter Storage for Boats

Source: *PatriotInsuranceco.com*

Sadly, boating season will come to an end soon, and Old Man Winter will be paving the way for snowmobiles. Winter storage for boats takes some careful planning. If you follow a checklist, winterizing your boat can be easy, ensuring your boat will be in great shape come spring.



For safe winter storage for your boat, follow our checklist:

### **Inspect for damage.**

- Thoroughly inspect the boat for any damage. Repair now, if possible.
- Check electrical systems and appliances to make sure they are functioning properly (make repairs before storing the boat, if possible).
- Check the battery to make sure it is fully charged before storing.

### **Prep the fuel system.**

- Fill the fuel tank but leave enough room for expansion.
- Treat the fuel with a stabilizer, then run the engine for 10 minutes to get it circulating throughout the engine.
- Seal the fuel valves.

### **Winterize the engine.**

- Change the oil and replace filters.
- Flush the engine with fresh water, then let it drain.
- Wash the engine with soap and water. Rinse thoroughly.
- Fog the engine cylinders with an aerosol fogging solution.
- Lubricate the engine's grease fittings.

## **Flush the cooling system.**

- Drain any remaining coolant.
- Run a less toxic propylene glycol antifreeze through the system.

## **Clean inside and out.**

- Clean the boat inside and out, removing any plant life or barnacles.
- Remove any valuables from inside the boat.
- Take out any food or drinks.
- Bring home any cushions and store them in a cool, dry place.

## **Store your boat.**

- Remove the battery and store it in a safe, dry spot.
- Consider purchasing a dehumidifier for the storage area to help prevent mildew.
- Lock your boat (and leave a key with the marina manager, if applicable).
- Cover and store your boat.
- Check your boat periodically or have the marina check it and report to you.

Then, when spring comes around, make sure you have the right protection for your boat. Talk to an Allen Insurance representative about boat insurance.

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# When a Collision is not a Collision

By Chris Richmond

Originally submitted to [WorkBoat Magazine](#) / January 2021



A client's vessel was tied to the dock, unloading its catch. Another fishing vessel struck his boat while backing out. The offending captain said not to worry, that he had excellent coverage and passed along his insurance agent's contact information. After a couple of weeks of dealing with the other company's adjustor, my client was informed that there was no coverage for this claim. The owner who had struck him had hull coverage, but no liability.

If you have a lender involved with your vessel, most likely they will require proof of hull coverage to protect their interests. What they do not ask for is proof of protection and indemnity (P&I) coverage. These are two separate policies that provide different coverages for your commercial vessel. P&I provides coverage for any crew and passengers, as well as any damage to something you hit, whether it be another vessel or a pier. Your hull insurance provides coverage for damage to your vessel, wreck removal and collision liability up to the limits of your hull coverage.

But when is a collision not a collision? You might think that in the case mentioned above that a collision occurred – one vessel

ran into another. But because one boat was secured to a dock and not moving, the event became an allision. In the insurance world, when one vessel strikes another moving vessel, this is a collision. When a vessel strikes a fixed or non-moving object, this is an allision.

In our client's claim, he was secured to the dock. It was an allision, which would normally be covered under the P&I policy. As the other vessel did not have P&I, the claim was denied. Fortunately, in this case our client's insurance company stepped in and covered the claim. The insurance company then has the option to go after the vessel owner to recover payments for the loss.

By opting to not carry P&I, a vessel owner opens himself up to a wide range of potential claims that would not be paid. Each part of a commercial vessel's policy is specifically worded to cover certain parts of a vessel, as well as its operation. Don't make the mistake of thinking some coverage is better than none.

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## **Chris Richmond Elected to Board of Directors of Maine Marine Trades Association**



Chris  
Richmond

Chris Richmond, a member of the marine insurance division of Allen Insurance and Financial, has been elected to a three-year term on the board of directors of the Maine Marine Trades Association.

Richmond, based in the company's Camden office, is a former schooner captain who maintains his USCG 100-ton master's license. He specializes in marine insurance, working with boat yards, builders and owners across the U.S.

Richmond has been with Allen Insurance and Financial since 2011. He is a graduate of The American University in Washington, D.C., and the Landing School of Boat Building and Design, where he serves on the school's program advisory board.